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STATE OF WASHINGTON
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No. 94732-5

SUPREME COURT
OF THE STATE OF WASHINGTON

MARGARET RUBLEE, Individually and as Personal Representative of
the Estate of VERNON D. RUBLEE,

Plaintiff-Petitioner,

v.

PFIZER, INC.,

Defendant-Respondent.

PETITIONER'S ANSWER TO AMICUS BRIEFS

Matthew P. Bergman
Colin B. Mieling
Justin Olson
BERGMAN DRAPER OSLUND
821 Second Avenue, Suite 2100
Seattle, WA 98104
(T) 206-957-9510

Leonard J. Feldman
PETERSON WAMPOLD
ROSATO FELDMAN LUNA
1501 Fourth Avenue, Suite 2800
Seattle, WA 98101
(T) 206-624-6800

Attorneys for Plaintiff-Petitioner

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A. Petitioner’s Answer to Amicus PLAC.

1. *PLAC misstates material facts.*

At the outset, amicus Product Liability Advisory Council, Inc. (“PLAC”) relies upon blatant misstatements of the factual record made by respondent Pfizer. For example, PLAC states that “the employer knew all along that Quigley, not Defendant Pfizer, was the manufacturer.” PLAC Br. 17. This is in error; there is no evidence in the record as to what Puget Sound Naval Shipyard *actually* knew about Quigley and Pfizer’s relationship. Petitioner’s branding expert testified that even reasonable purchasers would perceive Pfizer to be a manufacturer of the products at issue. CP at 1270-72 (“I would see it as a Pfizer Quigley product.”).

Another misrepresentation by Pfizer and adopted by PLAC is that Mr. Rublee’s side-by-side coworker, Charles Edwards, affirmatively identified a photograph of Panelag containing the Quigley logo. Yet as pointed out in Petitioner’s supplemental brief, Mr. Edwards clarified that the bags he saw at Puget Sound Naval Shipyard were emblazoned with the Pfizer logo:

During my deposition, I was also shown photo of a bag of Panelag and asked if it resembled the product that I recall seeing at the shipyard. My answer at the deposition, and my answer today, is that although the bag sort of resembles what I saw at the shipyard, it was exactly what I recall. . . . I remember seeing the Pfizer logo . . . on the bags of Panelag that I worked around at Puget Sound Naval Shipyard between 1969 and 1975.

CP 979-84. In stark contrast to *Stein v. Pfizer*, 228 Md. App. 72, 137 A.3d 279 (2016), and every other case to consider Pfizer/Quigley apparent manufacturer liability, the evidence in this record is unequivocal that *every* consumer of Insulag and Panelag identified Pfizer—not Quigley—on the packaging. PLAC improperly relies on these misstated facts.

2. *Restricting Apparent Manufacturer Liability to Entities Within the Chain of Distribution Renders § 400 and RCW 7.72.010(2) a Nullity.*

Strict products liability, whether derived from the Restatement (Second) of Torts § 402A or from the WPLA, imposes liability upon entities within the chain of distribution of products that are not reasonably safe due to design defects and/or inadequate warnings. *Simonetta v. Viad Corp.*, 165 Wn.2d 341, 355, 197 P.3d 127 (2008); *Braaten v. Saberhagen Holdings*, 165 Wn.2d 373, 384, 198 P.3d 493 (2008). However, apparent-manufacturer liability as specifically referenced in § 400 provides an independent basis upon which liability may be imposed.

PLAC argues that the apparent manufacturer doctrine is an anachronistic holdover from the First Restatement, where the common law applied a “more onerous legal standard . . . for proof of negligence by a non-manufacturing seller compared with that of the actual manufacturer.” PLAC Br. at 3. Such an explanation does not account for the doctrine’s very presence in the Second Restatement. The drafters of the Second

Restatement expressly included the apparent manufacturer doctrine under § 400, even while they also established strict liability for all entities within the chain of distribution. RESTATEMENT (SECOND) TORTS § 402A; *see also Zamora v. Mobil Corp.*, 104 Wn.2d 199, 206, 704 P.2d 584 (1985) (extending strict liability “beyond manufacturers to all others in the chain of distribution”). Put simply, PLAC’s argument would render § 400 entirely superfluous.

PLAC further suggests that “the Doctrine is rarely invoked anymore because all suppliers in the chain of distribution are routinely subject to strict liability.” PLAC Br. 11. If this were so, the question remains why the Washington Legislature expressly included apparent manufacturer liability when it codified the common law in the WPLA. The Legislature had an opportunity to do away with the apparent manufacturer doctrine when it adopted the WPLA in 1981, yet expressly included the doctrine within the definition of “manufacturers” found in RCW 7.72.010. More importantly, the Legislature signaled that the apparent manufacturer doctrine is not limited to those within the chain of distribution, as it applies to both “a product seller or entity not otherwise a manufacturer.” RCW 7.72.010(2). It is well-settled that the Court may not interpret a statute so as to render any language meaningless. *State v. Ervin*, 169 Wn.2d 815, 823, 239 P.3d 354, 358 (2010). “Another

fundamental rule of statutory construction is that the legislature is deemed to intend a different meaning when it uses different terms.” *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005). PLAC’s interpretation of the apparent manufacturer doctrine as applying *only* to entities within the chain of distribution would nullify both § 400 of the Second Restatement and the apparent manufacturer language of RCW 7.72.010(2).

Insofar as PLAC invites the Court to adopt the language of the Restatement (Third) of Torts § 14, the Court should decline to do so. Washington has not expressly adopted the Third Restatement, and for good reason: it has been criticized nationally and has been rejected in most states. Matthew R. Sorenson, *A Reasonable Alternative? Should Wyoming Adopt the Restatement (Third) of Torts: Products Liability?*, 3 WYO. L. REV. 257, 258 (2003) (noting that most states have struggled with the Third Restatement’s discussion of products liability); *see also* RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY, Foreword (1997) (admitting the Restatement “‘goes beyond the law’ as the law otherwise would stand”); Marshall S. Shapo, *A New Legislation: Remarks on the Draft Restatement of Products Liability*, 30 U. MICH. J.L. REFORM 215, 217 (1997) (describing reporters as “brokers of competing political forces”); Marshall S. Shapo, *In Search of the Law of Products Liability:*

The Ali Restatement Project, 48 VAND. L. REV. 631, 645 (1995) (reporters “found themselves enmeshed in interest group appeals”). As a practical matter, the apparent manufacturer requirements in § 14 of the Third Restatement conflict with the express statutory provisions of the WPLA. Perhaps for that reason, Pfizer does not ask the Court to adopt the Third Restatement.

3. *A Fact Question Exists as to Pfizer’s Role in the Chain of Distribution of Insulag and Panelag.*

Washington courts have consistently defined chain of distribution broadly. This Court has previously held that strict liability applies, not just to manufacturers, but to “*all* others in the chain of distribution” because the policy objective of product liability law is the “maximum of protection” for consumers. *Zamora*, 104 Wn.2d at 206. In *Zamora*, the Court held that a seller of propane whose only connection to the product was through a paper transaction fell within the chain of distribution for purposes of strict product liability. *Id.* at 207. As set forth in detail in Petitioner’s briefing, there is ample evidence to create fact issues regarding whether Pfizer placed itself within the “chain of distribution” of asbestos-containing products to impose liability under *Zamora*. See Am. Reply Br. of Appellant, *Rublee v. Pfizer, Inc.*, No. 75009-7-I (Div. I, 2016) at 21-25.

Washington law does not require that Pfizer insert itself at *every* level of the chain of distribution rather than simply assume an “identifiable role in placing a defective product on the market.” *Zamora*, 104 Wn.2d at 207. Here, Pfizer was involved in the manufacture, marketing, and sale of Insulag and Panelag and directed Quigley to continue manufacturing these products without *any* asbestos warnings, translating its extensive knowledge of asbestos hazards “into a cost of production against which [joint] liability insurance [was] obtained.” *Simonetta*, 165 Wn.2d at 355. There are, at the very least, fact issues regarding whether Pfizer fell within the “chain of distribution” of Insulag and Panelag. Accordingly, even if this Court adopts PLAC and Pfizer’s interpretation of § 400, it should reverse the trial court’s ruling and remand this case for trial on whether Pfizer fell within the chain of distribution of the injurious products at issue.

4. *The Apparent Manufacturer Doctrine Focuses on Product Users, Not Purchasers.*

In advocating for a rule establishing liability based on the perspective of the purchaser, PLAC ignores decades of Washington products liability jurisprudence, which has always sought to provide the “‘maximum of protection’ to the consumer.” *Zamora*, 104 Wn.2d at 206. In fact, PLAC goes so far as to declare that the apparent manufacturer

doctrine “has one foot in transactional contract law” and asks this Court to impute notions of detrimental reliance, promissory estoppel, and privity into the realm of tort law—concepts that Washington’s products liability jurisprudence has long since abandoned. *See* PLAC Br. at 7.

For many decades, Washington has extended tort protections for products liability “to all whom a manufacturer should reasonably expect to use its product.” *Bach v. Gen. Elec. Co.*, 27 Wn. App. 25, 29, 614 P.2d 1323 (1980). As noted in Petitioner’s supplemental brief, this policy carried forward into the WPLA, which defines a “claimant” as “any person or entity that suffers harm . . . even though the claimant did not buy the product from, or enter into any contractual relationship with, the product seller.” RCW 7.72.010(5). Pre-WPLA common law was no different. Comment d to the Restatement (Second) of Torts § 400 does not refer to contractual reliance, but rather speaks of the “user” relying on the apparent manufacturer’s “trade name or trademark . . . as an indication of the quality or wholesomeness of the chattel.”

PLAC’s suggestion that the apparent manufacturer doctrine “is first cousin to promissory estoppel” is wholly bereft of legal support. *See Alejandro v. Bull*, 159 Wn.2d 674, 697, 153 P.3d 864 (2007) (noting that products liability “had its origins in contracts before finding its home in tort”); *Ulmer v. Ford Motor Co.*, 75 Wn.2d 522, 530, 452 P.2d 729 (1969)

(absent privity, claims for products liability must sound in tort); *Staton Hills Winery Co. v. Collons*, 96 Wn. App. 590, 595, 980 P.2d 784 (1999) (products liability is a creature of tort law, “which has traditionally redressed injuries classified as physical harm or property damage”).

PLAC’s argument represents a pronounced step backwards for Washington tort law. By re-injecting contract principles such as privity into the analysis, PLAC ignores the many cases applying § 400 in circumstances where the injured plaintiff played no role in purchasing the injurious product. *See, e.g., Heinrich v. Master Craft Eng’g, Inc.*, 131 F. Supp. 3d 1137, 1141 (D. Colo. 2015) (vehicle race spectator injured when flexplate used in vehicle engine came loose at a race track); *Davis v. U.S. Gauge*, 844 F. Supp. 1443, 1443 (D. Kan. 1994) (employee injured by exploding welding gauge that employer had purchased); *Lovelace v. Astra Trading Corp.*, 439 F. Supp. 753, 755 (S.D. Miss. 1977) (plaintiff injured when defective hair dryer purchased by his wife caught fire); *Turner v. Bituminous Cas. Co.*, 397 Mich. 406, 411-12, 244 N.W.2d 873 (1976) (employee injured by power press that employer had purchased); *Martin v. Schoonover*, 13 Wn. App. 48, 50, 533 P.2d 438 (1975) (boy attacked by dog owned by third party when dog chain snapped). Under this argument, a bystander would enjoy products liability protections against manufacturers of an injurious product, but they would lose those same

protections where they are misled by an apparent manufacturer. Such a holding defies logic.

PLAC's argument that "there is nothing for bystander victims to benefit from, derivatively, by way of holding the non-manufacturer-defendant liable as a manufacturer" (PLAC Br. at 16) is belied by the facts of this case. The record is unequivocal that Pfizer did not direct its communications only to product purchasers. Rather, instructional literature emblazoned with the Pfizer logo explicitly directed *users* of Insulag to pour and mix the product in a bucket, without a single warning that such activity would expose them to millions of asbestos fibers. CP 1026, 1269-72. At the same time as Johns-Manville and other asbestos product manufacturers were explicitly warning users to take precautions, promotional materials put forth by Pfizer lauded Insulag as being "non-injurious." CP 1028. Users of Insulag and Panelag were deceived into thinking that Pfizer was the manufacturer and, thus, the product was safe and wholesome for use. Pet'r's Supp. Br. 11-12.¹ The benefit to bystander victims is to simply hold Pfizer accountable for the role it played to push and benefit from the sale of hazardous products that utilized Pfizer's own logo as an assurance of safety.

¹ Mr. Rublee's testimony is mirrored by Charles Edwards, Lawrence Wedvik, and Joseph Vrcan. Pet'r's Supp. Br. 12.

PLAC's reliance upon *Stein* is misplaced. In *Stein*, there was no evidence that *either* the exposed workers or the product purchasers knew of Pfizer's involvement in the products at issue or were otherwise misled by seeing Pfizer logos on Quigley products. 228 Md. App. at 103. Here, the plaintiff furnished unrebutted evidence of actual confusion by product users at PSNS and expert testimony that *both* ordinary consumers and sophisticated purchasers would be misled by Pfizer's logo on the packaging and other materials. In support of this opinion, the plaintiff produced data sheets directed at purchasers bearing the Pfizer logo only, which referred to "our research" and "our products" while advising purchasers that the information could not be copied or distributed "without written permission from Pfizer, Inc." CP 975. Finally, whereas the court in *Stein* was confronted with cross-motions for summary judgment where both sides agreed that there were no disputed factual issues over Pfizer's liability as an apparent manufacturer, here Appellant simply contends that the record before this Court could permit a jury to reasonably find that Pfizer held itself out as a manufacturer of Insulag and Panelag under § 400.

The facts of this case also demonstrate why a user-focused rule is appropriate under Washington law and the natural result of our state's products liability jurisprudence. Where a corporation uses its own brand

recognition to reassure people that the product they are using is safe and wholesome, liability for injuries caused by the unreasonably dangerous nature of the product must lie at the feet of that corporation. The contract principles advanced by PLAC have no place in this issue of pure tort law.

5. *Public Policy Supports Petitioner's Interpretation of the Apparent Manufacturer Doctrine.*

PLAC warns that “marginal increases in the opportunities of plaintiffs to recover by applying a vague consumer-protection approach to apparent manufacturers generates social costs that are unnecessary, unpredictable, and unjustifiably high.” PLAC Br. 17. Yet rather than impose “wide-open, potentially crushing, socially wasteful exposure to liability,” application of the apparent manufacturer doctrine to the facts of this case places the burden of injury close to the benefits of creating demand for the product. This goes to the very heart of Washington products liability jurisprudence. *Zamora*, 104 Wn.2d at 206 (“[C]onsumer protection is the ultimate factor considered by this court.”); RCW 7.72.020(1) (“The previous existing applicable law of this state on product liability is modified only to the extent set forth in this chapter.”).

While there are certainly triable issues of fact in this case, it is worth noting the undisputed facts as well. Vernon Rublee was exposed to asbestos from products emblazoned with Pfizer's logo. This exposure

resulted from the product being used in the exact manner that Pfizer's instruction manuals suggested. At no time during Mr. Rublee's exposure was there ever a warning label on the Pfizer product. One of Quigley's own plant managers, Louis Kilian, explained that Quigley "was a relatively small company" that "took comfort in having a large parent corporation" like Pfizer. CP 918. Moreover, both Mr. Rublee and his side-by-side coworkers relied on the Pfizer logo in determining that the product was safe to work with and around because it was made by a highly-recognizable drug company. And finally, Pfizer benefited directly from the sale of Insulag and Panelag. Permitting a jury to impose liability under these facts would be entirely consistent with Washington's public policy.

B. Petitioner's Answer to Amicus WSAJ.

Amicus Washington State Association for Justice ("WSAJ") agrees that the focus of Washington's products liability law should remain on the injured users of a defective product rather than on the original purchaser. WSAJ Br. 15. Moreover, WSAJ argues that the plain text of Restatement (Second) of Torts § 400 calls for no requirement of actual reliance by the user. WSAJ Br. 12-13. While Petitioner agrees with most arguments advanced by WSAJ, she disagrees with application of the

apparent-manufacturer doctrine to entities who do nothing more than license their trademark or logo to actual manufacturers.

If requiring that an apparent manufacturer be in the chain of distribution sets too high a bar for recovery, a rule that provides for liability against a mere licensor—without anything more—arguably sets the bar too low. WSAJ does not err in its reading of comment d to § 400, yet it may overestimate the ability of a licensors to “exert pressure on the manufacturer to ensure the product is safe.” WSAJ Br. 19. For example, a clothing manufacturer who licenses the Budweiser logo for application on its tee shirts probably does not use Budweiser’s brand identity to promote the quality of its products. Conversely, a Versace logo on a \$100 tee shirt sold at Nordstrom’s arguably communicates a higher level of quality wholesomeness than provided by a \$10 tee shirt purchased at Costco. Thus, while Versace may incur apparent manufacturer liability under this scenario, Budweiser arguably would not. However, in each case it is not the mere licensing of the brand logo that gives rise to apparent manufacturer liability but rather the purpose for which the logo is used and the manner in which it is perceived by ordinary consumers.

Yet whether or not the Court adopts WSAJ’s argument, the facts of this case do not in any way implicate a licensor. Pfizer did not merely contract with Quigley for the right to affix its logo; rather, as the parent

company, Pfizer had an express interest in leveraging its reputation for safety and quality to push sales of Quigley asbestos-containing products. Thus, the Court need not determine whether a licensor could be an apparent manufacturer through the sole act of allowing its logo or trademark to be affixed to a defective product. Rather, the Court need only provide a test that allows this question to be examined and resolved in accordance with Washington's products liability jurisprudence. As it happens, amicus Asbestos Disease Awareness Organization ("ADOA") provides a helpful template for analyzing this issue.

C. Petitioner's Answer to Amicus ADOA.

ADOA points chiefly to the District Court's analysis in *Cadwell Indus., Inc. v. Chenbro America, Inc.*, 119 F.Supp.2d 1110 (2000), as the best method for applying the apparent manufacturer doctrine in Washington. While *Cadwell* relies upon the WPLA for its analysis, the opinion is nevertheless persuasive as the WPLA represents a continuation of Washington's common law principles. Drawing inspiration from Illinois common law, the court distilled five factors that make up the consideration of whether an entity should be deemed to be an apparent manufacturer:

- (1) Whether the entity labels or affixes to the product its own name, trade name, or trademark;

- (2) Whether the entity identifies itself on advertisements or promotional literature as the maker of the product;
- (3) Whether the entity participates in the manufacture, marketing and distribution of the product;
- (4) Whether the entity derives economic benefit from placing the product in the stream of commerce; and
- (5) Whether the entity is in a position to eliminate the unsafe character of the product.

Id. at 1114-15. The court found that four of the five factors had been met and, accordingly, granted summary judgment in favor of the plaintiff as to the defendant's apparent-manufacturer status. *Id.* at 1117.

The appeal of *Cadwell* is that it provides a factors-based approach rather than a bright-line, linear rule. Not included in *Cadwell's* factors is a requirement of actual reliance, suggesting again that an objective test is more appropriate. Where *Cadwell* misconstrues Washington law is in the third factor. As outlined previously, neither the Restatement (Second) of Torts § 400 nor the WPLA requires an apparent manufacturer to be within the chain of distribution. *Cadwell* also makes reference to the “viewpoint of the purchasing public,” which again misses the mark as to Washington's policy of protecting end users. *Id.* at 1115 (quoting *Hebel v. Sherman Equip.*, 92 Ill.2d 368, 375 (1982)).

Applied to the facts of this case, the *Cadwell* factors reveal the propriety of holding Pfizer liable as an apparent manufacturer. Under the first factor, numerous eyewitnesses reported seeing Pfizer's logo affixed to

the products at issue. Under the second factor, Pfizer's logo appeared on the instructional materials designed for the end user. CP 1026. As to the third and fourth factors, Pfizer reviewed and approved all labeling of Quigley's asbestos products and directly benefited from increased sales. CP 1079-80, 1004. Pfizer's own safety director was involved in the decision to phase out asbestos products and approved a plan to deplete its stockpile of raw asbestos. CP 1110-11, 1113. Finally, regarding the fifth factor, Pfizer directed and funded the research and development of Quigley products, including asbestos-free substitutes for Insulag and Panelag. CP 1054-55, 1057-60.

The factors approach described in *Cadwell* may also provide the necessary limiting principle for cases where the defendant endeavored only to license its trademark to the actual manufacturer. In such a case, only the first and fourth factors are likely to be met. Yet under the appropriate circumstances—such as when the affixing of the trademark would lead a reasonable end user to rely upon it for the product's safety and wholesomeness—it may well be that the court finds this to be sufficient. Thus, a factors-based test may provide parties with the best mechanism for sorting through all the myriad ways an entity may hold itself out as an apparent manufacturer.

D. Petitioner’s Answer to Amicus WSLC.

Amicus Washington State Labor Council (“WSLC”) argues that “Washington law readily answers the question at issue here” by way of the “ordinary consumer expectations” test. WSLC Br. 5. WSLC also notes that “claimants” under the WPLA are not limited to purchasers of products. WSLC Br. 7 (quoting RCW 7.72.010(5)). As support, WSLC appropriately cites to comment d of the Restatement (Second) of Torts § 400, which refers to “the user” relying upon the reputation of the apparent manufacturer. WSLC Br. 3. Petitioner agrees on both points. The plain language of comment d dispels any notion that apparent manufacturers must reside within the chain of distribution, and Washington law has long relied upon the ordinary consumer expectations test to ascertain whether a product is defective. Much like the question of defect, determining whether an entity is an apparent manufacturer is also “an intensively factual analysis best suited for a jury.” WSLC Br. 5. Because the jury is quintessentially qualified to adjudicate the ordinary consumer’s expectations, it is reasonable to utilize the same test for both inquiries.

Moreover, the practical application of the ordinary consumer expectations test inherently utilizes the same factors that were laid out in *Cadwell*. Under the Legislature’s present definition of the test, “the trier

of fact shall consider whether the product was unsafe to an extent beyond that which would be contemplated by an ordinary consumer.” RCW 7.72.030(3). If the test were applied to the question of an apparent manufacturer, the trier of fact would naturally look to the same *Cadwell* factors as guidance to determine the expectations of an ordinary consumer. The presence or absence of an entity’s logo would necessarily weigh on the expectations of the ordinary consumer, as would evidence an entity’s involvement in advertising and marketing materials. Thus, it may be said that the ordinary consumer expectations test encompasses the same inquiry that the District Court undertook in *Cadwell*.

In this case, a jury could easily determine that the ordinary consumer would expect Pfizer to have been the manufacturer of the products at issue. Pfizer’s logo appeared in communications to both end users (the “How to Use Insulag” instruction manual) and to purchasers (technical data sheets). CP 975, 1026. Promotional materials declaring Insulag to be “non-injurious” contained the Pfizer logo, CP 1028, leading actual users such as Charles Edwards to believe “it would be safe” because it was “produced by a drug company.” CP 878; *see* CP 991-92. Plaintiff’s branding expert testified at great length how the size, position, and presence of Pfizer’s logo on various materials would lead the average consumer to associate Quigley products with Pfizer’s notoriety in the

health industry. CP 1271. And most important of all, numerous witnesses testified that they directly observed Pfizer's logo on the product packaging and *actually believed* Pfizer to be the manufacturer. CP 871, 879, 990-93.

E. Petitioner's Answer to Amicus AAJ.

Finally, Amicus American Association for Justice ("AAJ") reaffirms that contract principles such as privity have no place in modern tort law. AAJ Br. 12. Petitioner agrees that in analyzing Pfizer's apparent manufacturer status from the perspective of the purchaser rather than the end user, the Court of Appeals "engaged in an anachronistic inquiry by examining the contractual and business relationships." AAJ Br. 14. Instead, as AAJ rightly points out, the Restatement contemplates the confusion that results from a "casual reader of a label [who] is likely to rely upon the featured name, trade name, or trademark." AAJ Br. 10 (quoting RESTATEMENT (SECOND) OF TORTS § 400, comment d).

In many cases, the purchaser of a product will also be the end user. Yet where, as here, those two entities become separate, Washington tort law has always provided protections to the end user. Petitioner agrees with AAJ's succinct conclusion that "[n]o additional or different considerations are due merely because the defendant is an apparent manufacturer, rather than an in-fact manufacturer." AAJ Br. 17.

F. Conclusion.

Amici resoundingly identify the troubling consequences of Respondent's arguments in this case that, along with amicus PLAC, would have this Court reintroduce long-abandoned concepts of contract law into Washington's product liability jurisprudence. Such a holding would be a stark departure from over four decades of providing robust protections to those injured by defective products. The facts of this case demonstrate the need to formally adopt the Restatement (Second) of Torts § 400 and to adopt a test for apparent manufacturers that focuses on the user, not the purchaser.

Whether the Court applies the ordinary consumer expectations test for this particular task or instead chooses to adopt *Cadwell's* five-factor approach, there is more than ample evidence in this record from which a jury could find that Pfizer held itself out as an apparent manufacturer of the Quigley products at issue. The trial court's judgment should therefore be reversed, and this case remanded for trial.

RESPECTFULLY SUBMITTED this 30th day of April, 2018.

BERGMAN DRAPER OSLUND, PLLC

/s/ Matthew P. Bergman

By: _____
Matthew P. Bergman, WSBA # 20894

CERTIFICATE OF SERVICE

I certify that on April 30, 2018, I caused to be served a true and correct copy of the foregoing document through the Washington State Appellate Courts' Portal upon:

Pfizer Inc.

Marissa Alkhazov
BETTS PATTERSON MINES
701 Pike Street, Suite 1400
Seattle, WA 98101

**Asbestos Disease Awareness
Organization**

Ted W. Pelletier
Michael T. Stewart
KAZAN, McCLAIN,
SATTERLEY & GREENWOOD
55 Harrison Street, Suite 400
Oakland, CA 94607

American Association for Justice

Jeffrey L. Needle
LAW OFFICES OF JEFFREY L.
NEEDLE
705 Second Avenue, Suite 1050
Seattle, WA 98104

American Association for Justice

Kathleen Nastri, President
American Association of Justice
777 6th Street NW, Suite 200
Washington, D.C. 20001

Lone Star Industries, Inc.

Howard (Terry) Hall
Andrew Rapp
FOLEY MANSFIELD
800 Fifth Avenue, Suite 3850
Seattle, WA 98104

**Asbestos Disease Awareness
Organization**

Brian D. Weinstein
WEINSTEIN COUTURE PLLC
601 Union Street, Suite 2420
Seattle, WA 98101

American Association for Justice

Robert S. Peck
Center for Constitutional Litigation
One Riverside Park
50 Riverside Blvd., Suite 12A
New York, NY 10069

Washington State Labor Council

AFL-CIO
Philip A. Talmadge
TALMADGE FITZPATRICK
TRIBE
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126

PRODUCT LIABILITY
ADVISORY COUNCIL, INC.

Michael A. Yoshida
Jonathan M. Hoffman
117 SW Taylor Street, Suite 200
Portland, OR 97204

PRODUCT LIABILITY
ADVISORY COUNCIL, INC.

Prof. James A. Henderson, Jr.
1403 Old Winter Beach Road
Vero Beach, FL 32963

Dated at Seattle, Washington this 30th day of April, 2018.

BERGMAN DRAPER OSLUND

/s/ Shane A. Ishii-Huffer

Shane A. Ishii-Huffer

BERGMAN DRAPER OSLUND

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- sheilabirnbaum@quinnemanuel.com
- thall@foleymansfield.com
- tpelletier@kazanlaw.com
- valeriemcomie@gmail.com
- zpaal@foleymansfield.com

Comments:

Sender Name: Shane Ishii-Huffer - Email: shane@bergmanlegal.com

Filing on Behalf of: Matthew Phineas Bergman - Email: matt@bergmanlegal.com (Alternate Email: service@bergmanlegal.com)

Address:

821 2nd Avenue
Suite 2100
Seattle, WA, 98104
Phone: (206) 957-9510

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