

NO. 94732-5

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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

Plaintiff-Petitioner,

v.

PFIZER INC.,

Defendant-Respondent,

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**DEFENDANT-RESPONDENT PFIZER INC.'S  
ANSWER TO MEMORANDUM OF AMICUS CURIAE  
WASHINGTON STATE LABOR COUNCIL AFL-CIO**

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Counsel for Defendant-Respondent Pfizer Inc.

Defendant-Respondent Pfizer Inc. (“Pfizer”) respectfully submits this Answer to Washington State Labor Council, AFL-CIO’s (“WSLC”) Memorandum of Amicus Curiae.

WSLC’s brief reiterates the same flawed arguments set out in Plaintiff’s Petition. Like Plaintiff, WSLC argues that the decision below is inconsistent with decisions from this Court. But WSLC is unable to identify any Washington decision addressing the apparent manufacturer doctrine. Rather, WSLC focuses on cases that address the standards for imposing strict liability under Section 402A of the Restatement (Second) of Torts. This section of the Restatement has nothing to do with whether a corporate parent can be held liable as an apparent manufacturer of a product manufactured and sold by its subsidiary. Thus, far from showing any conflict warranting review, WSLC fails to identify any inconsistency between this Court’s decisions and the Court of Appeals’ unanimous ruling in this case.

WSLC contends that the legislative history of the Washington Product Liability Act (“WPLA”) reveals a legislative intent to retain the common law test for determining if a product is unreasonably dangerous. WSLC Br. at 5-6. But it does not—and cannot—explain why the test for determining whether a product is unreasonably dangerous should be applied to the apparent manufacturer doctrine. Moreover, this case is not

governed by the WPLA; it is governed by common law, as Plaintiff admits. *See* Pet. at 11 n.3.

WSLC also contends that review will be in the interest of Washington's business community. WSLC Br. at 8-9. But what the business community counts on is a principled application of state tort law and a healthy respect for state/federal comity. The Court of Appeals' unanimous ruling, which is consistent with both Washington law and every other court to consider similar attempts to repurpose the apparent manufacturer doctrine to evade a federal channeling injunction,<sup>1</sup> accomplishes these goals.

In sum, like Plaintiff's brief, WSLC's amicus fails to offer any persuasive reason for reviewing the Court of Appeals' unanimous and well-reasoned decision.

The petition should be denied.

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<sup>1</sup> *See Turner v. Lockheed Shipbuilding Co.*, No. C13-1747 TSZ, 2013 WL 7144096 (W.D. Wash. Dec. 13, 2013) (dismissing apparent manufacturer claim against Pfizer under Washington law); *Sprague v. Pfizer, Inc.*, No. 14-5084 RJB, 2015 WL 144330, at \*3-5 (W.D. Wash. Jan. 12, 2015) (same), *appeal filed*, Jan 5, 2015 (9th Cir.); *Stein v. Pfizer*, 137 A.3d 279 (Md. Ct. Spec. App. 2016) (dismissing apparent manufacturer claim against Pfizer under Maryland law); *cert. denied*, 146 A.3d 476 (Md. Sept. 29, 2016).

DATED: October 13, 2017

Respectfully submitted,

s/ Sheila L. Birnbaum

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## CERTIFICATE OF SERVICE

I, Karen Langridge, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts, Patterson & Mines, P.S., whose address is One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101.

2) By the end of the business day on October 13, 2017, I caused to be served upon counsel of record at the addresses and in the manner described below, the following documents:

- **DEFENDANT-RESPONDENT PFIZER INC.'S ANSWER TO MEMORANDUM OF AMICUS CURIAE WASHINGTON STATE LABOR COUNCIL AFL-CIO**
- **CERTIFICATE OF SERVICE**

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- Overnight
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of October, 2017.

/s/ Karen Langridge  
Karen Langridge, Legal Assistant

**BETTS, PATTERSON & MINES, P.S.**

**October 13, 2017 - 3:53 PM**

**Transmittal Information**

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