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NO. 94732-5

IN THE 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,

**RESPONDENT PFIZER INC.'S
ANSWER TO BRIEFS OF AMICI CURIAE**

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I. INTRODUCTION

Three organizations—the American Association for Justice (“AAJ”), the Washington State Labor Council AFL-CIO (“WSLC”) and the Asbestos Disease Awareness Organization (“ADAO”)—have filed amicus briefs in support of Plaintiff. Amici, however, fail to offer any persuasive reason to extend the apparent manufacturer doctrine to this case. To the contrary, their briefs underscore that the extension of the doctrine sought by Plaintiff is unprecedented and lacks any basis in the policies underlying the doctrine. Even more remarkably, amici are unable to suggest how such an extension would serve any public interest.

As Pfizer showed in its prior briefing, the apparent manufacturer doctrine is a largely moribund rule, which was formulated in the early twentieth century when sellers were subject to more lenient standards for liability than manufacturers and limited discovery often prevented consumers from identifying the manufacturers of products that injured them. *See, e.g., Hebel v. Sherman Equip.*, 442 N.E.2d 199, 201-03 (Ill. 1982). Under modern products law, however, sellers and manufacturers are generally subject to the same strict liability standard, *see* Restatement (Third) of Torts: Prods. Liab., § 14m cmt. *a* (1998), and modern discovery makes the identity of manufacturers readily identifiable. Plaintiff, however, has a special reason for invoking the apparent manufacturer

doctrine: if she sued for strict liability, she would be subject to a channeling injunction in the Quigley bankruptcy and therefore has invoked the apparent manufacturer doctrine in hopes of escaping the limitations imposed by the injunction to equitably apportion recovery among claimants. *See* Opening Br. 9-10, 13-14. Noticeably absent from the briefs of Plaintiff's amici is any attempt to show how the public interest would be served by helping her evade those limitations, or, more generally, by expanding the scope of the apparent manufacturer doctrine.

Instead, Plaintiff's amici offer doctrinal arguments that are unprecedented and lack any persuasive justification. For example, mirroring Plaintiff's argument, AAJ and WSLC argue that in applying the objective reliance test—the most widely adopted and, in Pfizer's view, correct test for identifying an apparent manufacturer—the Court of Appeals should have focused not on the understanding of the purchasers of the product in question, but on the understanding of bystanders such as Mr. Rublee who did not even use the product. Like Plaintiff, amici fail to cite a single decision that has adopted this approach, thereby underscoring the utterly unprecedented nature of the position that they and Plaintiff urge this Court to adopt. In addition, amici make no attempt to reconcile this approach with the policies underlying the apparent manufacture doctrine or otherwise explain how focusing on the understanding of consumers—

or, in this case, bystanders—produces just and appropriate outcomes. Instead, amici simply note that products liability law uses a consumer expectations test to determine whether products are defective.

The Court of Appeals' decision, however, does not undermine the consumer expectations test. Under the decision, when a defendant qualifies as an apparent manufacturer, its products will be found unsafe and defective if they violate consumer expectations. Thus, consumers will receive the same protection against defects afforded by the consumer expectations test regardless of which standard is applied to identify an apparent manufacturer. The question presented here, however, is whether to take the unprecedented step of extending the consumer expectations test to encompass the very different question of whether a party qualifies as an apparent manufacturer. Amici fail to demonstrate how doing so would serve any relevant policy or purpose other than expanding the scope of liability broadly enough to allow Plaintiff to evade the channeling injunction in the Quigley bankruptcy.

Plaintiff's other amicus, ADAO, proposes a five-factor test that was once used by a federal district court applying the Washington Products Liability Act ("WPLA"). This test—which was not advanced by the Plaintiff below—has never been applied by any other court. Although it is purported to be derived from Illinois law, Illinois courts in fact have

adopted the reasonable purchaser standard, which neither ADAO, the other amici or the Plaintiff even attempt to argue is satisfied here.

Thus, amici curiae fail to show any error in the Court of Appeals' decision, which should be affirmed.

II. ARGUMENT

A. The Panel Correctly Evaluated The Evidence From The Viewpoint Of The Reasonable Purchaser

Plaintiff's amici do not dispute the Court of Appeals' determination that Plaintiff's apparent manufacturer claim fails under all previously recognized tests for identifying apparent manufacturers. Both WSLC and AAJ assert that the objective reliance test should be reformulated to focus on non-purchasing consumer expectations rather than reasonable purchasers. WSLC Br. 4-9; AAJ Br. 9-18. But neither is able to cite any authority for this approach, and they fail to offer any persuasive justification for departing from the unanimous precedent applying the objective reliance test based on reasonable purchasers.¹

¹ It also should be noted that neither WSLC nor AAJ challenges Pfizer's demonstration that Plaintiff's claim fails even when consumer expectations are examined because the Insulag and Panelag labels clearly identified Quigley as the manufacturer and Pfizer as Quigley's parent. *See* Pfizer Supp. Br. 15-18. Plaintiff's amici also do not dispute Pfizer's alternative argument that, whatever the test for identifying apparent manufacturers, Plaintiff's claim fails because the apparent manufacturer doctrine applies only to parties in the chain of distribution. *Id.* at 18-20.

1. Neither WSLC Nor AAJ Is Able To Cite Any Authority Applying The Objective Reliance Test Based On The Expectations Of Users Rather Than Purchasers

In rejecting Plaintiff's suggestion that it examine the expectations of a non-purchasing consumers in applying the objective reliance test, the Court of Appeals observed that courts applying the test "appear to have done so uniformly from the viewpoint of the 'purchasing public.'" *Ruble* slip op. at 9. Amici do not—and cannot—dispute this point.

WSLC makes no attempt to show that any court has ever focused on a non-purchasing consumer's expectation in applying the objective reliance test to the apparent manufacturer doctrine. In fact, WSLC cites only one apparent manufacturer case, *Swift & Co. v. Blackwell*, 84 F.2d 130 (4th Cir. 1936), in support of this approach. That case, however, is one of the first cases to *apply* the objective reliance test, holding that the defendant—a wholesaler of condensed milk—was liable as an apparent manufacturer because "the *average reader* would certainly conclude from a perusal of the label that the goods in the can were the product of" the wholesaler. *Id.* at 132 (emphasis added). Moreover, the injured plaintiff was also the purchaser of the condensed milk so the case had no occasion to address liability to non-purchasers. *Id.* at 131.

AAJ cites two cases, *Moody v. Sears, Roebuck & Co.*, 324 F. Supp. 844 (S.D. Ga. 1971), and *Chappuis v. Sears Roebuck & Co.*, 358 So. 2d

926 (La. 1978), in which plaintiffs sued for injuries caused by products purchased by others. *See* AAJ Br. 11-12. Both cases recognized that plaintiffs need not have been a purchaser in order to invoke the apparent manufacturer doctrine. But both also show that the actual purchaser's reasonable belief is key to determining whether the doctrine applies.

For example, in *Moody v. Sears, Roebuck & Co.*, the plaintiff was injured when a ladder that his father-in-law purchased from Sears collapsed. 324 F. Supp. 844-45 (S.D. Ga. 1971). Sears did not manufacture the ladder but in holding that Sears could be liable as an apparent manufacturer, the court found significant that the father-in-law purchased the ladder from Sears based on an advertisement and that “[t]he name of the manufacturer did not appear on the ladder. Sears’ trade-name, ‘Craftsman,’ did.” *Id.* at 846. Moreover, “[t]here was nothing connected with the sale to show that anyone but [Sears] was involved.” *Id.*

Similarly, in *Chappuis*, a sheet metal worker's helper was injured when a hammer purchased by his employer's wife broke, sending a piece of metal into his eye. 358 So. 2d at 928. The court noted that the hammer was labeled with the “Sears’ name and their ‘Craftsman’ trademark” without any indication of the true manufacturer. *Id.* at 929. And the wife purchased the hammer from Sears as part of an ordinary consumer transaction.

This issue of when a non-purchaser can evoke the apparent manufacturer doctrine was also squarely addressed in *Heinrich v. Master Craft Engineering, Inc.*, 131 F. Supp. 3d 1137 (D. Colo. 2015). In *Heinrich*, as in *Moody* and *Chappius*, the plaintiff was not the purchaser of the product in question. Instead, the plaintiff was a spectator at a drag race who was struck in the leg by a piece of metal that detached from a part on one of the race cars—a “flexplate” that the car’s driver had purchased from Jeg’s, an auto parts distributor. 131 F. Supp. 3d at 1141-42, 1144-45. Though Jeg’s did not manufacture the flexplate, it advertised it as “a Jeg’s flexplate” on its website and catalogue. *Id.* at 1145. In finding Jeg’s the “apparent manufacturer” of the flexplate, the court noted that it was evaluating evidence “through the lens of the *reasonable purchaser*,” *id.* at 1160 (emphasis added), not the injured bystander, as amici urge.

The Maryland Court of Special Appeals reached the same conclusion in *Stein v. Pfizer Inc.*, 137 A.3d 279 (Md. App. 2016), *cert. denied*, 146 A.3d 476 (Md. 2016), a case closely analogous to this one. In *Stein*, a bricklayer at a steel plant alleged that he used Insulag and, like Plaintiff, tried to evade the channeling injunction in the Quigley bankruptcy by asserting a claim against Pfizer based on the apparent manufacturer doctrine. The court rejected this claim on the ground that Pfizer had not held itself out as the manufacturer. *See id.* at 294-99. In

applying the objective reliance test, the Maryland Court of Special Appeals held that the plaintiff “must show that a *reasonable purchaser* of refractory materials” would have believed that Pfizer was the manufacturer. *Id.* at 296 (emphasis added).

Other decisions similarly recognize that the objective reliance test should be applied based on the understanding of the reasonable purchaser. For example, in its scholarly and comprehensive decision in *Hebel v. Sherman Equip.*, the Illinois Supreme Court examined whether the manufacturer’s conduct would “lead a *reasonable purchaser* to believe that the defendant, and not some other party, was the actual manufacturer.” 442 N.E.2d at 204 (emphasis added); *see also Carney v. Sears, Roebuck & Co.*, 309 F.2d 300, 304 (4th Cir. 1962) (“[T]he basic test is whether or not the *vendee* reasonably believed in and relied upon the vendor’s apparent manufacture of the product.”) (emphasis added); *Dudley Sports Co. v. Schmitt*, 279 N.E.2d 266, 273 (Ind. App. 1972) (applying doctrine where product is labeled so that “the *ultimate purchaser* has no available means of ascertaining who is the true manufacturer”) (emphasis added).

Decisions cited by ADAO (at 9-11) similarly recognize that the objective reliance test should be applied based on the reasonable purchaser’s, not the consumer’s, understanding. For example, in *Bilenky*

v. Ryobi Techs., Inc., 115 F. Supp. 3d 661, 664 (E.D. Va. 2015), *aff'd* 666 F. App'x 271 (4th Cir. 2016), the plaintiff was injured when the lawnmower he was riding caught fire. In applying the objective reliance test, the court examined the plaintiff's understanding "when he *purchased*" the lawnmower. *Id.* at 671 (emphasis added). In *Brandimarti v. Caterpillar Tractor Co.*, 527 A.2d 134 (Pa. Super. 1987), plaintiff claimed injury from a purportedly defective tractor. In determining whether the seller was the apparent manufacturer of the tractor, the court examined whether the seller could "expect others to *purchase the product* in reliance on skill and reputation" associated with the seller. *Id.* at 139-40 (emphasis added).²

Thus, as the Court of Appeals recognized, the approach urged by WSLC, AAJ, and Plaintiff is unprecedented and contrary to the unanimous weight of prior decisions addressing the issue.

² ADAO contends (at 9) that *E. I. du Pont de Nemours & Co. v. McCain*, 414 F.2d 369 (5th Cir. 1969) disregarded the objective reliance test. In fact, *E.I. du Pont* specifically declined to consider whether apparent manufacturer liability applied in that case. *Id.* at 372 n.1 ("Although Section 400 has been discussed by Texas Court ... it has never been examined in the context to which we advert. We decline the invitation now").

2. WSLC And AAJ Fail To Offer Any Persuasive Justification For The “Reasonable Bystander” Test Urged by Plaintiff

WSLC and AAJ fail to offer any persuasive reason for departing from the unanimous weight of precedent and focusing the objective reliance test on consumer expectation of bystanders. As already demonstrated, Pfizer Supp. Br. 9, this approach conflicts with the nature and purpose of the apparent manufacturer doctrine, which is “a species of estoppel”: it prevents a seller that holds itself out as a product’s manufacturer and invites customers “to buy the product in reliance on the vendor’s reputation and care in making it” from denying that it is the manufacturer for purposes of liability. *Hebel*, 442 N.E.2d at 201. Neither WSLC nor AAJ dispute that this is the purpose of the apparent manufacturer doctrine and both fail to explain how focusing on the expectation of non-purchasing users rather than the purchasers who rely on the vendor’s reputation in making purchases would serve this purpose.

Instead, WSLC asserts that Washington products liability law is governed by the “overarching” ordinary expectation test. WSLC Br. at 5 (“Product liability law in Washington is governed by the longstanding and overarching ‘ordinary consumer expectations test ...’”); *id.* at 7 (“the ‘ordinary consumer expectation’ test is a cardinal principle of Washington products liability law”). But far from showing that the consumer

expectations test applies to all aspects of Washington products liability law, WSLC simply notes that the test is applied in determining whether a product is not reasonably safe and therefore defective. *Id.* at 6-7. Moreover, as WSLC acknowledges (at 8), the reasonable expectations test is not even the exclusive test for identifying a defective product. *See, e.g., Seattle-First Nat. Bank v. Tabert*, 86 Wn.2d 145, 154, 542 P.2d 774, 779 (1975) (noting that a defect may be shown with risk-benefit analysis). Thus, WSLC fails to offer any reason to extend the reasonable expectations test beyond the product defect area to the apparent manufacturer doctrine.

AAJ attempts to offer reasons for extending the consumer expectations test, but none is persuasive. It asserts that under Washington products liability law “users, not purchasers, are the object of the law’s protection.” AAJ Br. at 16. While that is true, it does not follow that every aspect of products liability law should be examined based on the perspective of consumers without regard to the nature and purpose of the particular doctrine at issue. Indeed, many of the jurisdictions that employ the consumer expectations test for evaluating a product defect have also adopted the reasonable purchaser standard in applying the apparent

manufacturer doctrine.³ The suggestion that these states are not interested in protecting consumers is specious.

Even more important, applying the objective reliance test in a manner consistent with the nature and purpose of the apparent manufacturer doctrine does not deprive injured users of the protection of product liability law. As cases such as *Moody*, *Chappuis*, and *Heinrich* demonstrate, *see supra* at 6, even though the objective reliance test examines the understanding of reasonable purchasers rather than consumers, an injured user does not have to be a purchaser to invoke the doctrine. And even when the test renders the doctrine inapplicable, a user is still able to sue the party that sold the product in question as well as its parent under ordinary theories of strict liability and derivative liability. Plaintiff is invoking the apparent manufacturer doctrine here only because she hopes to evade the Quigley bankruptcy's channeling injunction.

AAJ also argues that focusing the objective reliance test on purchasers rather than consumers is anachronistic and inconsistent with

³ As noted above Illinois (*Hebel*), Colorado (*Heinrich*) and Maryland (*Stein*) have all endorsed the reasonable purchaser standard. These jurisdictions have also adopted the consumer expectations test for determining if a product is defective. *See Palmer v. Avco Distrib. Corp.*, 412 N.E.2d 959, 962 (Ill. 1980) (“A product is unreasonably dangerous when it is ‘dangerous to an extent beyond that which would be contemplated by the ordinary consumer.’”) (citation omitted); *accord Walker v. Ford Motor Co.*, 406 P.3d 845, 849 (Co. 2017); *Halliday v. Sturm, Ruger & Co.*, 792 A.2d 1145, 1150, 1158 (Md. 2002).

modern tort law because it “depend[s] on privity of contract.” AAJ Br. 12, 14-16. As the numerous recent decisions focusing on purchasers in applying the apparent manufacturer doctrine demonstrate, *see Heinrich*, 131 F. Supp. 3d at 1160; *Bilenky*, 115 F. Supp. 3d at 670; *Hebel*, 442 N.E.2d at 204; *Stein*, 137 A.3d at 295, that is wrong. Privity deals with standing. As AAJ acknowledges (at 14), it restricts the group of *plaintiffs* entitled to sue for injuries caused by product defects to those with a contractual relationship with the manufacturer. The apparent manufacturer doctrine deals with a different issue: the identity of the *defendants*, the parties that may be considered the manufacturer for purposes of products liability law. As demonstrated by cases such as *Heinrich*—in which a bystander at a car race was permitted to sue for a defect in a part that he did not purchase—applying the apparent manufacturer doctrine from the perspective of the reasonable purchaser imposes no limit on the identity of the plaintiffs permitted to sue.

Finally, AAJ points out that, due to the long latency period for asbestos-related diseases, Washington courts have modified the general discovery rule for asbestos cases, applied strict liability retroactively in such cases, and retained joint and several liability. AAJ Br. at 3-8. AAJ asserts that a different approach is likewise needed for the apparent manufacturer doctrine. But noticeably absent from AAJ’s brief is any

suggestion why the unique nature of asbestos-related diseases requires the apparent manufacturer doctrine to focus on consumers rather than purchasers. Here again, amici fail to offer any persuasive reason for departing from the uniform approach of other courts in order to allow plaintiffs to circumvent the Quigley bankruptcy's channeling injunction.

B. The Court Should Reject ADAO's Request To Adopt An "Balancing Test" That Does Not Accurately Reflect The Law Anywhere

ADAO urges the Court to adopt a five-factor balancing test that was crafted by a federal district court eighteen years ago—and never used before or since—to determine whether an American company could be held liable under the WPLA for a defective product manufactured by its foreign affiliate. *See Cadwell Indus., Inc. v. Chenbro Am., Inc.*, 119 F. Supp. 2d 1110, 1115 (E.D. Wash. 2000). The test should be rejected.⁴

First, the balancing test adopted in *Cadwell* is based on a misunderstanding of the law. *Cadwell* purported to derive the test from Illinois common law, particularly the Illinois Supreme Court's decision in

⁴ This argument is not even properly before the Court because ADAO's test was not advanced below and Pfizer has not had an opportunity to present evidence concerning it. *See* RAP 9.12 ("On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court."); *Long v. Odell*, 60 Wn.2d 151, 154, 372 P.2d 548 (1962) ("[T]he case must be made by the parties litigant, and its course and the issues involved cannot be changed or added to by friends of the court.")

Hebel. Cadwell, 119 F. Supp. 2d at 1114. But *Hebel* held the apparent manufacturer doctrine was inapplicable based on a single factor: in that case, as here, a reasonable purchaser would have known that the defendant did not manufacture the product at issue.

In *Hebel*, the plaintiff, a carwash employee, was injured when his foot was caught in a conveyer belt at the car wash. 442 N.E.2d at 200. Most of the car wash equipment was made by defendant Sherman Equipment and prominently labeled with the Sherman Equipment name and logo, but the conveyer belt was made by a different company. *Id.* at 203. The plaintiff argued that Sherman should be deemed an apparent manufacturer because “the reasonable person in plaintiff’s position would view the entire . . . car wash as one ‘system’ and would infer that Sherman manufactured all of its ‘component parts,’ including the conveyor.” *Id.* The court rejected this argument: “whether a holding out has occurred,” the court held, “must be judged from the viewpoint of the *purchasing public*, and in light of circumstances as of the time of purchase.” *Id.* (emphasis added). “That a casual observer,” like the car wash employee, “might think otherwise does not mean that a reasonable purchaser of car-washing equipment . . . would rely on such an impression.” *Id.*

In reaching this result, the *Hebel* court did not apply or even suggest a balancing test. Instead, the fact that a sophisticated purchaser of

car wash equipment would know that the conveyor was not manufactured by Sherman was dispositive and warranted summary judgment.

Ignoring this holding, the *Cadwell* court focused on a later portion of *Hebel* that explained and limited its prior ruling in *Connelly v. Uniroyal*, 389 N.E. 2d 155 (Ill. 1979), which held that a foreign parent could be found liable for products manufactured under a trademark and licensing agreement by its American subsidiary. Here again, *Cadwell* misconstrued *Hebel*.

The *Hebel* plaintiffs argued that the defendant Sherman should be found liable under *Connelly* because its logo appeared on marketing materials for car wash equipment. *Id.* at 375. *Hebel* rejected this argument, which it described as applying an “enterprise theory” of liability . . . dealing with trademark licensing and franchising agreements.” *Id.* at 378. It explained that “one factor” justifying the imposition of liability under the enterprise theory is “that the licensee’s use of the trademark induces consumer” reliance. *Id.* *Hebel*, however, made pellucid that “the inducement of consumer reliance” alone is insufficient to establish liability under the enterprise liability theory. *Id.*; *see also id.* at 379 (indicating that this factor should be applied in light of the impression made in the “purchaser’s” mind), To prove enterprise liability, a plaintiff must also show the trademark licensor’s “integral involvement

in the overall producing and marketing enterprise . . . and its participation in the profits from the distribution of the product.” *Id.* at 378.

The *Cadwell* court turned these requirements for establishing enterprise liability into a balancing test for evaluating whether a defendant “holds itself out as a manufacturer under the WPLA.” *Cadwell*, 119 F. Supp. 2d at 1114. But these “factors” have nothing to do with assessing whether a defendant held itself out as a manufacturer, and *Hebel* did not consider them in determining whether the defendant in that case was an apparent manufacturer; to the contrary, as noted above, the *Hebel* court had already decided that issue. Moreover, the “Illinois Supreme Court listed the factors in the *conjunctive* implying that *all* factors were required before liability would be imposed against the parent.” *Joiner v. Ryder Sys., Inc.*, 966 F. Supp. 1478, 1489 n.24 (C.D. Ill. 1996) (dismissing worker’s apparent manufacturer claim against parent company because commercial entity that purchased allegedly defective part knew it was manufactured by subsidiary) (emphasis in the original). In other words, these are *required elements* for establishing liability under an enterprise theory—not factors to be balanced.

Thus, *Hebel* and Illinois law provide no basis for a multi-factor test to identify an apparent manufacturer, much less a balancing test that can

be applied where, as here, a reasonable purchaser would be aware of the actual manufacturer.

Second, even if the multiple defects in the balancing test that the *Cadwell* court developed are ignored, the facts of the *Cadwell* case are fully supportive of the Court of Appeals' decision here. In *Cadwell*, plaintiff purchased a computer system that caught fire and caused property damage. The defective system that caused the fire was stamped with the trademark of the Chenbro Group, an assemblage of several foreign and domestic companies. *Cadwell*, 119 F. Supp. 2d at 1111. One member of the group, Chenbro America, moved to dismiss the claims against it, arguing that it did not manufacture the defective system. The court rejected that argument, holding that the Chenbro America could be liable under the WPLA because, among other things, (i) it issued a purchase order referring to itself as the manufacturer of the system, (ii) it used "the Chenbro Group's trademark, *and no other*, on its business cards, stationary, and office door," (iii) it shared Chenbro Group's internet site, which listed the Chenbro products with no indication that Chenbro America was not the actual manufacturer, and (iv) it sold thousands of computer chassis identical to the one that caused the fire every year. *Id.* at 1111-12, 1115.

This case is the mirror opposite. Here, the record establishes that after Pfizer acquired Quigley: (i) Quigley's independent sales force continued to send customers letters on "Quigley Company, Inc." stationary and to sign those letters on behalf of "QUIGLEY COMPANY, INC." and invoices for Quigley products were issued on "QUIGLEY COMPANY, INC." forms, CP 1806, 1828; CP 977 (emphasis omitted); (ii) to the extent the Pfizer logo appeared on Quigley promotional material, it did so in conjunction with the Quigley logo and correctly identified Quigley as a subsidiary of Pfizer; and (iii) Quigley maintained its own catalogues and materials providing product information, which were marked with the Quigley logo and indicated that Quigley was the manufacturer. This and other unambiguous record evidence supports the Court of Appeal's conclusion that "[n]one of the evidence relevant to the understanding of industrial purchasers suggests they would think Pfizer manufactured the products [at issue in this case]." *Rublee*, slip op. at 15.

Finally, it should be noted that the putative *Cadwell* test—and by extension any application of the enterprise liability theory to Pfizer in this case—is inconsistent with the federal channeling injunction, which bars all asbestos-related injury claims against Pfizer that are based on Pfizer's prior ownership, management, or control of Quigley. *See In re Quigley Co., Inc.*, 676 F.3d 45, 60 & n.18 (2d Cir. 2012), *cert. denied*, 133 S. Ct.

2849 (2013). The *Cadwell* test, however, expressly *requires* the court to consider whether Pfizer “derive[d] an economic benefit” from the sale of Quigley products and was “in a position to eliminate the unsafe character” of Quigley’s products by virtue of the fact that Pfizer was Quigley’s corporate parent. *Cadwell*, 119 F. Supp. 2d at 1114. Any consideration of these factors to assess Pfizer’s liability is expressly barred by federal law.

III. CONCLUSION

For these reasons and the reasons outlined in Pfizer’s principal briefs, the Court of Appeals’ decision should be affirmed.

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Respectfully submitted,

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