

No. 80251-3

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

(Court of Appeals 57011-1-I)

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VERNON BRAATEN

*Plaintiff/Appellant*

v.

SABERHAGEN HOLDINGS, et. al.,

*Defendants/Respondents.*

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**MOTION OF THE COALITION FOR LITIGATION JUSTICE,  
INC., NATIONAL ASSOCIATION OF MANUFACTURERS,  
CHAMBER OF COMMERCE OF THE UNITED STATES OF  
AMERICA, NATIONAL FEDERATION OF INDEPENDENT  
BUSINESS LEGAL FOUNDATION, NATIONAL ASSOCIATION  
OF MUTUAL INSURANCE COMPANIES, PROPERTY  
CASUALTY INSURERS ASSOCIATION OF AMERICA,  
AMERICAN INSURANCE ASSOCIATION, AND AMERICAN  
CHEMISTRY COUNCIL TO RE-APPLY FOR *AMICI CURIAE*  
STATUS IN SUPPORT OF DEFENDANTS/RESPONDENTS**

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The Coalition for Litigation Justice, Inc., National Association of Manufacturers, Chamber of Commerce of the United States of America, National Federation of Independent Business Legal Foundation, National Association of Mutual Insurance Companies, Property Casualty Insurers Association of America, American Insurance Association, and American Chemistry Council – collectively “*amici*” – filed a motion and

accompanying brief on June 28, 2007 as *amici curiae* in support of the petition for review filed by Defendants/Respondents. This Court granted the motion on July 10, 2007. Now that this Court is hearing the case, *amici* seek status as *amici curiae* in the action, incorporating by reference the brief already on file with the Court.

*Amici* are organizations that represent companies doing business in Washington and their insurers. Accordingly, *amici* have a substantial interest in ensuring that Washington's tort system is fair, follows traditional tort law rules, and reflects sound public policy. The decision below violates these core principles.

The appellate court held that valve and pump manufacturers have a duty to warn about hazards in a component part (asbestos) sold by others and incorporated into a finished product (naval propulsion system) by a third party (the Navy). Under common law, however, manufacturers of component parts are liable only for defects or hazards in their *own* products, or in the use of their *own* products – not those of others.

To reach its decision, the appellate court blurred important differences between Defendants/Respondents' nonhazardous pumps and valves, the asbestos sold by others, and the Navy's finished product. Plaintiff/Appellant does not allege an injury from a defect in the nonhazardous components or from the use of those components in the

form they were supplied by Defendants/Respondents. Rather, Plaintiff/Appellant alleges harm from asbestos fibers (sold by others) that were released during the maintenance of the finished product made by the Navy. The finished product with asbestos was not Defendants/Respondents' "product." They should not be held liable for harms resulting from it.

Furthermore, the new duty created by the appellate court runs contrary to Washington law. The existence of a duty "depends on mixed considerations of 'logic, common sense, justice, policy, and precedent.'" *Stalter v. State*, 151 Wn. 2d 148, 155, 86 P.3d 1159, 1162 (2004) (citations omitted). The appellate court, however, relied upon foreseeability as the trigger for the legal duty (rather than to limit its scope).

The appellate court's holding also represents unsound public policy. The decision would worsen what the United States Supreme Court has described as an "asbestos-litigation "crisis," *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 597 (1997), and invite a flood of new cases into Washington. Civil defendants in other types of cases will be adversely impacted too. For example, if a manufacturer must warn of risks in others' products, syringe manufacturers could be held liable for failing to warn of risks in pharmaceuticals made by others; match or lighter makers could be held liable for failing to warn of cigarette-related risks; even

sellers of bread or jelly could be held liable for failing to warn of the foreseeable risk of peanut allergies in peanut butter and jelly sandwiches. Consumer safety could be undermined by the potential for over-warning (the “Boy Who Cried Wolf” problem) and through conflicting information that may be provided by manufacturers of different components and by makers of finished products.

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The Coalition for Litigation Justice, Inc. (Coalition) is a nonprofit association formed by insurers to address and improve the asbestos litigation environment.<sup>1</sup> The Coalition’s mission is to encourage fair and prompt compensation to deserving current and future litigants by seeking to reduce or eliminate the abuses and inequities that exist under the current civil justice system. The Coalition files *amicus curiae* briefs in important cases that may have a significant impact on the asbestos litigation environment.

The National Association of Manufacturers (NAM) is the nation’s largest industrial trade association, representing small and large manufacturers in every industrial sector and in all fifty states. NAM’s

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<sup>1</sup> The Coalition for Litigation Justice includes Century Indemnity Company; Chubb & Son, a division of Federal Insurance Company, CNA service mark companies, Fireman’s Fund Insurance Company, Liberty Mutual Insurance Group, and the Great American Insurance Company.

mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media, and the general public about the importance of manufacturing to America's economic strength.

The Chamber of Commerce of the United States of America (U.S. Chamber) is the world's largest business federation. The U.S. Chamber represents an underlying membership of more than three million businesses and organizations of every size, in every business sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in court on issues of national concern to the business community. Accordingly, the U.S. Chamber has filed more than 1,000 *amicus curiae* briefs in state and federal courts.

The National Federation of Independent Business Legal Foundation (NFIB), a nonprofit, public interest law firm established to protect the rights of America's small-business owners, is the legal arm of the National Federation of Independent Business. NFIB is the nation's oldest and largest organization dedicated to representing the interests of small-business owners throughout all fifty states. NFIB members own a

wide variety of America's independent businesses from manufacturing firms to hardware stores.

Founded in 1895, National Association of Mutual Insurance Companies (NAMIC) is a full-service, national trade association with more than 1,400 member companies that underwrite more than forty percent of the property/casualty insurance premium in the United States. NAMIC members account for forty-seven percent of the homeowners market, thirty-nine percent of the automobile market, thirty-nine percent of the workers' compensation market, and thirty-four percent of the commercial property and liability market. NAMIC benefits its member companies through public policy development, advocacy, and member services.

The Property Casualty Insurers Association of America (PCI) is a trade group representing more than 1,000 property and casualty insurance companies. PCI members are domiciled in and transact business in all fifty states, plus the District of Columbia and Puerto Rico. Its member companies account for \$184 billion in direct written premiums. They account for 52% of all personal auto premiums written in the United States, and 39.6% of all homeowners' premiums, with personal lines writers of commercial and miscellaneous property/casualty lines. In addition to the diversified product lines they write, PCI members include

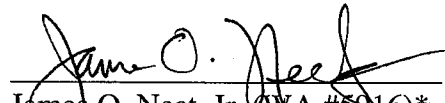
all types of insurance companies, including stocks, mutuals, and companies that write on a non-admitted basis. The PCI membership is literally a cross-section of the United States property and casualty insurance industry. In light of its involvement in Washington, the PCI is particularly interested in the resolution of the issue before the Court on behalf of its members and their interests.

The American Insurance Association (AIA), founded in 1866 as the National Board of Fire Underwriters, is a national trade association representing major property and casualty insurers writing business across the country and around the world. AIA promotes the economic, legislative, and public standing of its members; it provides a forum for discussion of policy problems of common concern to its members and the insurance industry; and it keeps members informed of regulatory and legislative developments. Among its other activities, AIA files *amicus* briefs in cases before state and federal courts on issues of importance to the insurance industry.

The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. The business of chemistry is a key element of the nation's economy, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies invest more in research and development than any other business sector.

For these reasons, *amici* ask this Court to grant this motion.

Respectfully submitted,



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Dated: January 14, 2008

**PROOF OF SERVICE**

I certify that on January 14, 2008, an original and one copy of the foregoing Motion were served on the Court via overnight mail, postage prepaid, addressed as follows:

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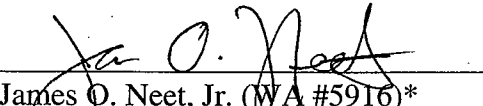
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