To be Argued by:
CAITLIN J. HALLIGAN
(Time Requested: 30 Minutes)

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Court of Appeals
of the
State of New York

JOANN H. SUTTNER, Executrix of the Estate
of GERALD W. SUTTNER, Deceased, and Individually
as the Surviving Spouse of GERALD W. SUTTNER,

Respondent,

– against –

A.W. CHESTERTON COMPANY, *et al.*,

Defendants,

CRANE CO.,

Appellant.

BRIEF FOR APPELLANT

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Date Completed: December 22, 2014

CORPORATE DISCLOSURE STATEMENT

Pursuant to 22 NYCRR 500.1(f), Crane Co. states that it is a Delaware Corporation that has no corporate parent or affiliate. The following entities are the direct and indirect subsidiaries of Crane Co.:

ARDAC Inc., Armature d.o.o., Automatic Products (UK) Ltd., B. Rhodes & Son Ltd., Barksdale GmbH, Barksdale, Inc., CA-MC Acquisition UK Ltd., Coin Controls International Ltd., Coin Holdings Ltd., Coin Industries Ltd., Coin Overseas Holdings Ltd., Coin Pension Trustees Ltd., Conlux Matsumoto Co. Ltd., CR Holdings C.V., Crane (Asia Pacific) Pte. Ltd., Crane (Ningbo) Yongxiang Valve Company Ltd., Crane Aerospace, Inc., Crane Australia Pty. Ltd., Crane Canada Co., Crane Composites Ltd., Crane Composites, Inc., Crane Controls, Inc., Crane Electronics Corporation, Crane Electronics, Inc., Crane Environmental Inc., Crane Fengqiu Zhejiang Pump Co. Ltd., Crane Fluid & Gas Systems (Suzhou) Co. Ltd., Crane Global Holdings S.L., Crane GmbH, Crane Holdings (Germany) GmbH, Crane International Capital S.a.r.l., Crane International Holdings, Inc., Crane International Trading (Beijing) Co. Ltd., Crane Ltd., Crane Merchandising Systems Ltd., Crane Merchandising Systems, Inc., Crane Merger Co. LLC, Crane Middle East & Africa FZE, Crane Ningjin Valve Co., Ltd., Crane North America Funding LLC, Crane Nuclear, Inc., Crane Overseas, LLC, Crane Payment Solutions GmbH, Crane Payment Solutions Ltd., Crane Payment Solutions Pty

Ltd., Crane Payment Solutions Srl, Crane Payment Solutions Inc., Crane Pension Trustee Company (UK) Limited, Crane Process Flow Technologies (India) Ltd., Crane Process Flow Technologies GmbH, Crane Process Flow Technologies Ltd., Crane Process Flow Technologies S.P.R.L., Crane Process Flow Technologies S.r.l., Crane Pumps and Systems, Inc., Crane Resistoflex GmbH, Crane SC Holdings Ltd., Crane Stockham Valve. Ltd., Croning Livarna d.o.o., Delta Fluid Products Ltd., Donald Brown (Brownall) Ltd., ELDEC Corporation, ELDEC Electronics Ltd., ELDEC France S.A.R.L, Flow Technology Inc., Friedrich Krombach GmbH Armaturenwerke, Hattersly Newman Hender Ltd., Hydro-Aire, Inc., Inta-Lok Ltd., Interpoint S.A.R.L., Interpoint U.K. Limited, Kessel (Thailand) Pte. Ltd., Krombach International GmbH, MCC Holdings, Inc., MEI Australia LLC, MEI Auto Payment System (Shanghai) Ltd., MEI Conlux Holdings (Japan), Inc., MEI Conlux Holdings (US), Inc., MEI de Mexico LLC, MEI, Inc., MEI International Ltd., MEI Payment Systems Hong Kong Ltd., MEI Queretaro S. de R.L. de CV, MEI Sarl, Merrimac Industries, Inc., Mondais Holdings B.V., Money Controls Argentina SA, Money Controls Holdings Ltd., Multi-Mix Microtechnology SRL, NABIC Valve Safety Products Ltd., Nippon Conlux Co. Ltd., Noble Composites, Inc., Nominal Engineering, LLC, P.T. Crane Indonesia, Pegler Hattersly Ltd., Sperryn & Company Ltd., Terminal Manufacturing Co., Triangle Valve Co. Ltd., Unidynamics / Phoenix, Inc., Viking Johnson Ltd., W.T.

Armatur GmbH, Wade Couplings Ltd., Wask Ltd., Xomox A.G., Xomox Chihuahua S.A. de C.V., Xomox Corporation, Xomox Corporation de Venezuela C.A., Xomox France S.A.S., Xomox Hungary Kft., Xomox International GmbH & Co. OHG, Xomox Japan Ltd., Xomox Korea Ltd., Xomox Sanmar Ltd., and Xomox Southeast Asia Pte. Ltd.

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PRELIMINARY STATEMENT

Rastelli v. Goodyear Tire & Rubber Co., 79 N.Y.2d 289, 582 N.Y.S.2d 373 (1992), established the sound, widely followed legal principle that a seller of a product that is used with defective materials made and supplied by others has no duty to warn of the third parties' defective products, even if it was "foreseeable" that the products could be used together. That longstanding and fundamental principle applies regardless of whether the allegedly defective third-party product at issue replaced another part that was supplied with a piece of equipment at the time of its sale.

In this case, it is undisputed that (1) Crane Co. did not manufacture, sell, or otherwise place into the stream of commerce any alleged injury-causing asbestos-containing product to which Gerald Suttner was exposed, (2) Crane Co. had no connection with any asbestos fiber to which Mr. Suttner was exposed, (3) Crane Co. supplied Mr. Suttner's employer, General Motors Company, with equipment that would function with or without asbestos-containing materials, and (4) Crane Co. did not exercise any control over, or have any input in, the decisions of Mr. Suttner's employer, General Motors, as to how to use the Crane Co. valves that it installed in the Tonawanda, New York plant at which Mr. Suttner worked.

Yet, in spite of this evidence, and without articulating one consideration of policy supporting its holding, the trial court departed completely from *Rastelli* and

upheld a jury verdict that found Crane Co. liable for injuries allegedly caused by asbestos-containing products that Crane Co. did not make, sell, or in any sense control. The Appellate Division accepted the trial court's conclusions in a three-sentence opinion containing no analysis.

Although the trial court's amorphous analysis and the Appellate Division's terse decision lead to potentially varying interpretations, they appear to endorse a "test" for legal responsibility that would make an equipment manufacturer responsible for asbestos fibers contained in "replacement parts," even when the equipment manufacturer did not make, sell, or in any way control the choice or use of those "replacement parts." This "test" for legal responsibility is vastly different from the "test" for legal responsibility recently articulated by the First Department when faced with a similar factual scenario in the matter of *Dummitt v. A.W. Chesterton*, which is currently pending before this Court at docket number APL-2014-00209. Indeed, the "test" for legal responsibility articulated in *Dummitt* does not support the judgment here.

This Court should adopt neither the First Department's nor the Fourth Department's "test" for duty, because both tests are outcome-driven, and thus vague, overly broad, inconsistent with this Court's precedents, and completely detached from any considerations of the policies underlying product liability doctrine. Instead, the Court should affirm the control-based stream-of-commerce

analysis articulated in *Rastelli*, reverse the Appellate Division's decision, and restore a clear and consistent rule of law for imposing liability in cases like this one.

QUESTION PRESENTED FOR REVIEW

1. Is Crane Co. legally responsible for asbestos contained in "replacement parts" that Crane Co. did not manufacture or supply, when Crane Co. controlled neither (1) the selection and use of the asbestos-containing "replacement parts," nor (2) the individuals or entities who chose to use asbestos-containing "replacement parts" with Crane Co. products?

Appellate Division's Answer: Yes.

Correct Answer: No.

JURISDICTIONAL STATEMENT

Crane Co. seeks relief from a final order of the Appellate Division which affirmed a judgment awarding Plaintiff money damages upon a jury verdict. The Court has jurisdiction over this appeal pursuant to CPLR § 5602(a), because the action originated in the Supreme Court of the County of Erie, the Appellate Division issued a final order that is not appealable as a matter of right, and this Court granted Crane Co.'s motion for leave to appeal by Order dated October 21, 2014. (COA 7100.[1])

Crane Co. preserved the issues presented here by, *inter alia*, moving for judgment during trial pursuant to CPLR § 4401 on the theory that Plaintiff presented no evidence that Crane Co. made or sold any of the asbestos-containing materials that Mr. Suttner encountered, and such evidence was necessary to sustain Plaintiff's claims. (R. 830-31, 1168-75.) Crane Co. filed a post-trial motion under CPLR § 4404(a) moving the court for judgment on this same ground (R. 14), and then presented the same issue to the Appellate Division (COA 7102).

[1] Pursuant to 22 NYCRR 500.14(a)(3), Crane Co. submits herewith a new and full record, which includes the complete record filed with the Appellate Division (cited herein as "R.") and the additional materials required by section 500.14(a)(3) (cited as "COA").

STATEMENT OF THE CASE

I. Statement of Procedural History

This lawsuit arises from occupational exposures to asbestos that Plaintiff's decedent, Gerald Suttner, allegedly sustained from 1958 through 1960 while working at a Bethlehem Steel facility and from 1960 through 1979 while working at a General Motors plant in Tonawanda, New York. (R. 84-86.) Plaintiff, Joann Suttner, and Gerald Suttner initiated this action through a summons and complaint filed on December 15, 2010 in the Supreme Court of the County of Erie, alleging that Crane Co., along with thirty-six other named defendants,[2] caused Gerald Suttner to be exposed to asbestos-containing materials that ultimately caused him to contract mesothelioma, a cancer of the lining of the lung. (R. 63-86.) Following Gerald Suttner's death, Plaintiff was substituted as the sole party plaintiff.

Plaintiff proceeded to trial against Crane Co. on October 9, 2012. At trial, Plaintiff limited her theories of liability against Crane Co. to failure-to-warn claims, sounding in negligence and strict liability. (R. 14, 26-27, 75-83.) During the trial, Plaintiff produced no evidence that Crane Co. made, supplied, or

[2] Included among these defendants were entities that allegedly manufactured and/or designed certain of the asbestos-containing materials with which Mr. Suttner worked (like Owens-Illinois, Inc.), entities that allegedly sold and/or distributed those asbestos-containing materials (like Insulation Distributors, Inc.), and numerous entities that, like Crane Co., did not make or sell any of the asbestos-containing materials at issue, but whose products or equipment were used with or near asbestos-containing materials made and sold by others (like Cleaver-Brooks Company and Copes-Vulcan, Inc.).

otherwise placed into the stream of commerce any asbestos-containing material to which Mr. Suttner may have been exposed. Accordingly, Crane Co. twice moved for judgment pursuant to CPLR § 4401, arguing that—under *Rastelli* and other New York precedents—Crane Co. was not legally responsible for asbestos-containing materials that it did not make, sell, or otherwise place into the stream of commerce. (R. 830-31, 1168-75.) The trial court ultimately denied those motions.

On October 23, 2012, the jury returned a verdict for Plaintiff, awarding a total of $3,000,000—all in non-economic damages—and finding Crane Co. four percent liable.[3] (R. 9.) The jury allocated the majority of the fault (60%) to the four entities that allegedly made and sold the asbestos-containing materials with which Mr. Suttner most frequently worked, Johns-Manville, Owens-Corning, Eagle-Picher, and Garlock, and split the remaining fault among entities that distributed these materials (like Buffalo Insulations and Root, Neal & Co.) and entities that, like Crane Co., did not make or sell any of the asbestos-containing materials with which Mr. Suttner worked, but rather supplied GM with equipment that it used in its industrial plant. (R. 34.)

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[3] The unwarranted expansion of the "recklessness" exception to CPLR § 1601 (which Crane Co. addresses at length in its briefing in the appeal in the *Dummitt* matter, *supra*), coupled with increasing efforts by plaintiffs in "asbestos" cases across New York to argue for an entitlement to punitive damages arising from conduct that occurred decades ago (*see, e.g., Drabczyk, infra*), means that even in cases that, like this one, involve low fault allocations, there is a significant potential for defendants that played little to no role in bringing about a plaintiff's injury to face excessive damages awards in New York "asbestos" cases.

On November 6, 2012, Crane Co. moved the trial court to set aside the verdict and enter judgment in its favor pursuant to CPLR § 4404. (R. 14.) The trial court denied that motion through a Decision and Order entered on March 18, 2013, and subsequently entered judgment for Plaintiff in the amount of $126,424.99 on April 15, 2013. (R. 8-11, 41.) Crane Co. appealed to the Appellate Division on May 7, 2013. (R. 2-7.) The Appellate Division affirmed the trial court's judgment through an Order entered on March 21, 2014 (COA 7102) and, through a later Order entered on June 13, 2014, denied Crane Co.'s motion for leave to reargue or appeal to this Court (COA 7103). This Court granted Crane Co. leave to appeal on October 21, 2014. (COA 7100.)

II. Statement of Facts

A. The Nature of Gerald Suttner's Work at General Motors.

Plaintiff alleged that Gerald Suttner was occupationally exposed to asbestos during his career as a pipefitter during two different periods of employment: from 1958 through 1960 while working at a Bethlehem Steel facility, and from 1960 through 1979 while working at a General Motors ("GM") plant in Tonawanda, New York (sometimes referred to as the "Chevy plant"). (R. 84-86.) The trial evidence regarding Crane Co. products focused entirely on the latter period.

After an initial apprenticeship, Mr. Suttner spent 20 years working as a pipefitter assigned to the "pump shop" at the GM plant in Tonawanda. (R. 851,

868.) Pipefitters fabricate and assemble piping systems by fusing together different types of materials through precise cutting, threading, bending, and welding. During his years in the pump shop, Mr. Suttner was allegedly exposed to asbestos-containing insulation materials manufactured by Johns-Manville, Eagle-Picher, and Owens-Corning ("Kaylo" brand)[4] (R. 856-58) as well as asbestos-containing gasket and packing sealing products manufactured by Garlock[5] (R. 855, 881-83).

In general, gaskets are used to create a mechanical seal which fills the space between two or more surfaces in order to prevent leakage from or into the joined objects while under pressure. Gaskets are commonly produced by cutting from sheet materials such as paper, rubber, metal, silicone, cork, and other materials. Packing materials perform a similar function with metal valves. Gaskets and packing materials for specific applications may contain asbestos. Plaintiff claimed that Mr. Suttner's exposure to these products caused him to develop mesothelioma. (R. 292.)

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[4] These now-bankrupt entities are among those recently described in one opinion as the "big dusties"—the makers and sellers of asbestos-containing insulation materials that have largely become insolvent on account of asbestos litigation and that have formed personal injury trusts under 11 U.S.C. § 524(g) to compensate asbestos plaintiffs like the Plaintiff here. *See In re Garlock Sealing Techs., LLC*, 504 B.R. 71 (Bankr. W.D.N.C. 2014). The jury allocated these three entities in particular 45% of the causal fault. (R. 34.)

[5] Garlock Sealing Technologies, LLC, which the jury allocated 15% of the fault (R. 34), has also declared bankruptcy. *See supra*, note 4.

GM purchased insulation material from two local suppliers—Buffalo Insulation and Niagara Asbestos. (R. 858.) GM used the insulation material to insulate various components of its piping systems, including pipes, boilers, steam traps, and valves. (R. 856, 859, 865-66, 895.) GM also purchased the Garlock gaskets and packing used in the plant from a local supplier—Root Neal. (R. 869, 882-83.) The evidence at trial demonstrated that the piping system at GM generally featured "flanged" connections, meaning pieces of adjacent piping, as well as piping and equipment, were joined together at bolted flanges. (R. 871.) "Flange gaskets" were used to seal these connection points. (*Id.*) Mr. Suttner testified that he fabricated "thousands" of flange gaskets in his career as a pipefitter for GM. (R. 867; *see also* R. 872-73 [Mr. Suttner testifying he made "thousands" of gaskets used on "hundreds" of pumps during his career].) To do so, he would cut individual gaskets out of large sheets of the Garlock gasket material acquired from Root Neal. (R. 855, 871-72.) GM used packing (which is a rope-like material wrapped around the stem of a valve to prevent leakage) to seal the internal workings of valves, pumps, and other pieces of equipment. (R. 870, 881-82.) The trial evidence established that both gaskets and packing are "wear items" that wear out over time and need to be replaced with some frequency. (R. 560-61.)

B. The Crane Co. Equipment at Issue.

In general, a valve is a device that regulates, directs, or controls the flow of a fluid (gases, liquids, fluidized solids, or slurries) by opening, closing, or partially obstructing various passageways. Crane Co. valves are used to control the flow of fluids through piping systems. (R. 1052-53.) Crane Co. was one of several brands of valves that Mr. Suttner recalled in the piping system in the GM plant. (R. 879.) There was no evidence that Crane Co. supplied any of the gaskets or packing that Mr. Suttner encountered while working with Crane Co. valves. (R. 842.) Certain of Crane Co.'s valves may have been supplied with an internal "bonnet" gasket and a piece of internal stem packing at the time of sale, and those components may or may not have contained asbestos at the time of sale. (R. 433.) Mr. Suttner testified that he removed flange gaskets used between Crane Co. valves and adjacent piping and repacked Crane Co. valves. (R. 880-82.) Those flange gaskets were not included with the valves at the time of sale.

However, as noted above, these parts were "wear" items, and the GM plant at issue was constructed in the 1930s, some three decades prior to when Mr. Suttner began working there. (R. 1054.) Thus, there was no evidence that Mr. Suttner ever encountered a bonnet gasket or piece of stem packing that was incorporated originally within a Crane Co. valve (whether asbestos-containing or otherwise), and the circumstantial evidence would suggest the exact opposite,

based upon the passage of time (for example, downstream users may or may not have used asbestos packing to replace worn out packing, but Crane Co. has no control over that). Moreover, the evidence showed that all replacement gaskets and packing were sold to GM and made by third parties, not Crane Co. (R. 855, 869, 880-83.) And there was no evidence that Crane Co. valves required the use of asbestos-containing materials, of any kind, to operate. (R. 588-89.) The valves functioned with non-asbestos-containing seals as well. (*Id.*)

There was also no evidence that Crane Co. played any role in incorporating its valves into the piping systems at GM (R. 1053, 1056), or in selecting the gaskets and packing that GM would use with those valves in the years after their purchase (R. 884, 1056). The evidence did establish that Crane Co.'s valves were made to withstand certain maximum pressures and temperatures, and they could be used in a variety of settings, depending on the purchaser's choice. For instance, Mr. Suttner recalled working with a number of Crane Co. gate valves. (R. 879-80.) According to Crane Co.'s 1960 Catalog, which was entered into evidence, Crane Co. steel gate valves were "frequently considered general utility valves" and were "used in a variety of services, often at pressures and temperatures lower than the recommended maximum." (R. 5673.)

Although GM chose to use asbestos-containing gaskets and packing with at least some of Crane Co.'s valves following their sale, the design of Crane Co.'s

valves was compatible with both asbestos-containing and non-asbestos-containing gasket and packing seals. (R. 588-89, 1054-55.) Accordingly, these valves did not require asbestos-containing materials to function. (*Id.*) Throughout the period of Mr. Suttner's employment, various non-asbestos-containing gaskets and packing, such as metal gaskets, were commercially available and suitable for use with valves in steam systems. (R. 1054-55, 6053-54.) Indeed, the 1950s and 1960s Crane Co. product literature entered into evidence at trial demonstrates that some (indeed, seemingly many) of the Crane Co. valves that were rated for high-temperature, high-pressure services and manufactured during the relevant times were supplied with metal (soft iron or soft steel) bonnet gaskets, not asbestos ones. (R. 4032, 4049, 4058, 5680, 5702.) Crane Co. had absolutely no control over the types of materials that GM chose to use with Crane Co. valves post-sale.

The trial evidence demonstrated that, in addition to using asbestos-containing gaskets and packing manufactured by others with Crane Co.'s valves, GM insulated certain of those valves with asbestos-containing insulation materials manufactured and supplied by still other third parties. (R. 895.) There is no evidence that Crane Co. manufactured or supplied any of these insulation materials (R. 895-96), and Plaintiff made no claim that Crane Co. could be held legally responsible for insulation materials made and supplied by third parties that were

used with or near its valves (R. 1236). There was no evidence that GM looked to Crane Co. in any way for guidance on these issues.

C. The Trial Court's Decision & the Appellate Division's Affirmance of the Judgment.

Despite controlling law to the contrary, Plaintiff argued at trial that Crane Co. had a legal duty to warn of any asbestos-containing gasket or packing products that GM used with Crane Co.'s valves, at any time after their sale, regardless of the length of elapsed time or who made or supplied those products. The trial court accepted Plaintiff's argument. (R. 23.) In instructing the jury, the trial court stated that a manufacturer is liable for any injury resulting from the use of any "replacement parts that are foreseeably incorporated into its products" (R. 1347), and used a verdict sheet that permitted the jury to impose liability upon Crane Co. for any asbestos-containing gasket or packing that Mr. Suttner encountered during the "maintenance and/or repair" of Crane Co. valves (R. 26).

The Appellate Division affirmed the judgment for some undefined "reasons" stated by the trial court in the opinion it issued in support of its denial of Crane Co.'s motion for post-trial relief. (COA 7102.)

ARGUMENT

I. The Court Should Affirm the Control-Based Analysis of *Rastelli* and Reject the "Replacement Part" / "Endorsement" Theory Seemingly Applied by the Appellate Division Here.

In *Rastelli v. Goodyear Tire & Rubber Co.*, 79 N.Y.2d 289, 298, 582 N.Y.S.2d 373, 377 (1992), this Court held that the imposition of legal responsibility in the product liability context depends on a showing that the defendant had control over the production or use of the allegedly defective product or played a role in placing it in the stream of commerce.

The rule of *Rastelli* derives from one of the most basic policies of modern product liability law (and, indeed, all of tort law)—the notion that one is responsible only for things that are within his or her control. *See MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 389 (1916) ("If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully."); *Sindell v. Abbott Labs*, 26 Cal.3d 588, 597, 607 P.2d 924, 928 (1980) ("[A]s a general rule, the imposition of liability depends upon a showing by the plaintiff that his or her injuries were caused by the act of the defendant or by an

instrumentality under the defendant's control."); *accord* Restatement (Second) of Torts § 402A (1965); *Escola v. Coca Cola Bottling Co. of Fresno*, 24 Cal.2d 453, 150 P.2d 436 (1944) (Traynor, J., concurring); *O'Neil v. Crane Co.*, 53 Cal.4th 335, 266 P.3d 987 (2012).

That rule should apply equally in all product liability actions, whether focusing on "asbestos" products or other types of products. Yet, although courts across the United States have looked to *Rastelli* to define the "majority rule nationwide" in cases like this one, *see Braaten v. Saberhagen Holdings*, 165 Wash.2d 373, 385, 198 P.3d 493, 498 (2008), the Appellate Division did not follow *Rastelli* and its control-based approach to the question of legal responsibility here. Instead, in a three-sentence ruling, the Appellate Division broke sharply from *Rastelli* and, instead, upheld the imposition of legal responsibility on Crane Co. pursuant to a legal "test" that is seemingly unique to "asbestos" cases and inconsistent both with *Rastelli*, and with the "test" articulated by the First Department in the *Dummitt* matter (Docket No. APL-2014-00209) to govern the same inquiry. For all of the reasons stated in its briefing in the *Dummitt* matter and below, the Court should not adopt the "significant role" test utilized by the First Department in that case, and it should likewise reject the "replacement

part" / "endorsement"[6] theory seemingly adopted by the Appellate Division here, because neither New York law in the product liability area, nor the policy underlying that body of law, supports any such approach.

A. The Appellate Division's "Replacement Part" Theory Is Inconsistent With the Control-Based Approach to Legal Responsibility Taken in *Rastelli.*

It is difficult, if not impossible, to discern the precise legal reasoning that led the Appellate Division to its holding, because its opinion states only that the court affirmed the judgment for "reasons" stated by the trial court in its own opinion (COA 7102), without identifying the exact "reasons" that supported the imposition of legal responsibility here, as opposed to those that did not. Nevertheless, based upon the trial court's opinion and the argument Plaintiff made in the Appellate Division to support it, it appears that the Appellate Division adopted a rule that would make a manufacturer of one product legally responsible for certain products

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[6] An argument similar to the one Plaintiff raised here was styled as an "endorsement theory" by the Maryland Court of Special Appeals in *Ford Motor Co. v. Wood*, 119 Md.App. 1, 703 A.2d 1315 (Md. Ct. Spec. App. 1998), abrogated on other grounds in *John Crane, Inc. v. Scribner*, 369 Md. 369, 800 A.2d 727 (2002), because it appears to proceed from the (unsupported) notion that, by supplying a piece of equipment with a particular part, the equipment manufacturer is tacitly "endorsing" the use of similar parts when the original ones wear out and must be replaced and, by so doing, assumes a legal responsibility for products that it did not make, sell, control, or have anything to do with. For the reasons stated in *Wood*, which apply equally here, the *Wood* court rejected this "endorsement theory." *See also May v. Air & Liquid Sys. Corp.*, 219 Md.App. 424, 433-34, 100 A.3d 1284, 1289-90 (Md. Ct. Spec. App. 2014) (regarding the *Wood* holding as consistent with 2014 jurisprudence).

used with its own post-sale if those products "replaced" some similar parts supplied with the manufacturer's product originally. In light of the lack of analysis in the Appellate Division's decision, however, this may very well be an over-reading of that decision and, even if it is not, there is no indication in the Appellate Division's decision or the underlying trial court decision as to what the exact contours of this test for legal responsibility may be (i.e., exactly which types of "replacement" parts become the legal responsibility of the manufacturer and which do not) or why, as a policy matter, recognizing such a test is desirable.

1. The Pertinent Legal Question Under *Rastelli* Is the Defendant's Control Over the Harm-Causing Product, and Not the Extent to Which the Harm-Causing Product was "Similar" to Some Other Product.

The trial court opinion that the Appellate Division referenced in its own ruling is, itself, ambiguous as to the exact "rule" of law that applied in this case (and, as noted, completely silent on the policy rationale for recognizing any such rule). The trial court began its analysis by stating a series of general propositions of law, including that a manufacturer has a duty to warn of dangers resulting from "foreseeable" uses of its product and that a manufacturer may have a continuing duty to warn under certain circumstances, none of which supports imposing on one entity a legal responsibility for products made and sold entirely by others. (R. 17-18.)

After noting these well-established, but factually inapplicable,[7] propositions, the trial court fashioned an entirely novel rule of law: that a "manufacturer may be held liable where a plaintiff is injured by replacement parts, which it neither supplied nor specified, which are substantially similar to the original parts." (R. 18.) This "rule," is correct only in so far as it recognizes that foreseeability is legally irrelevant in the analysis of duty in a case like this one. *See also May*, *supra*, 219 Md.App. at 437, 100 A.3d at 1291-92 (holding that "foreseeability of harm is neither dispositive nor even material to the existence of a duty" in a case like this one, and rejecting the conclusion of the Appellate Division here—that an equipment manufacturer may bear legal responsibility for asbestos-containing materials the equipment's purchaser determined to use with the equipment post-sale).

The Court should not adopt the trial court's test for legal responsibility. Whether the facts of a given case involve "replacement parts" or some other type of third-party product, the *legal* question of responsibility is the same—did the defendant have "control over the production" or use of the allegedly defective product at issue or a "role in placing [it] in the stream of commerce." *Rastelli*,

[7] The question here is not whether Crane Co. is liable for the use of the valves, since it is uncontested that Crane Co. valves—nor any other Crane Co. product—did not emit a single asbestos fiber to which Mr. Suttner was exposed. Rather, the issue here is the extent, if any, to which Crane Co. could be held liable for the use of someone else's product, regardless of whether that use may have been "foreseeable."

supra, 79 N.Y.2d at 298, 582 N.Y.S.2d at 377. If the answer to these questions is "no," then legal responsibility should not lie, regardless of the exact type of third-party product involved.

And, this conclusion holds regardless of the alleged "foreseeability" of the use of the third-party product at issue, whether a "replacement part" or some other type of product. Either way, "[f]oreseeability, alone, does not define duty" in any tort claim, and it should not in this one. *See Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 232, 727 N.Y.S.2d 7, 12 (2001). In *Rastelli*, this Court made it clear that, although it was clearly "foreseeable" that certain of Goodyear's tires would be used with defective rims, that consideration did not lead to the imposition of legal responsibility.

Instead, the Court established clear lines defining the boundaries of legal responsibility in a case like this one, focusing on the defendant's control over, and profit from, the harm-causing product. *See id.*,79 N.Y.2d at 297–98, 582 N.Y.S.2d at 376–77; *accord Tortoriello v. Bally Case, Inc.*, 200 A.D.2d 475, 606 N.Y.S.2d 625 (1st Dep't 1994) (holding manufacturer of freezer did not have legal responsibility for flooring material used with freezer although that material was one of three flooring options identified in the freezer manufacturer's "own literature"); *Surre v. Foster Wheeler LLC*, 831 F.Supp.2d 797, 801 (S.D.N.Y. 2011) (citing *Rastelli* and holding, under New York law, a manufacturer generally

"has no duty to warn against defects in . . . third-party products so long as the manufacturer had no control over the production of the defective product and did not place it into the stream of commerce" . . . "[e]ven if the defective product is one of a limited number of third-party products that the manufacturer knows will be used in conjunction with its own"); *Kiefer v. Crane Co.*, No. 12 Civ. 7613 (KBF), 2014 WL 6778704, at *5 (S.D.N.Y. Feb. 3, 2014) ("Under New York law it is clear that one manufacturer cannot be held liable for the products of another."); *see also May*, *supra*.

Strikingly, the same Appellate Division previously recognized and applied precisely the boundaries established by this Court in *Rastelli* in *In re Eighth Judicial Dist. Asbestos Litig. (Drabczyk)*, 92 A.D.3d 1259, 1260, 938 N.Y.S.2d 715, 716 (4th Dep't 2012). In that decision, the Appellate Division held that a trial court (the same trial court involved here) erred in charging a jury that a defendant valve manufacturer could be held legally responsible for exposures to asbestos-containing materials used "in conjunction with defendant's valves," but which the valve maker neither made nor sold. *Id.* In *Drabczyk*, the Appellate Division relied explicitly on *Rastelli*, but here, the same court inexplicably disregarded *Rastelli* completely.

This was error, because the facts here are analogous to those that informed the Court's decision in *Rastelli*: Crane Co. "had no control over the production" or

use of the allegedly injurious asbestos-containing materials to which Mr. Suttner was exposed, "had no role in placing [those products] in the stream of commerce, and derived no benefit from [their] sale." *See Rastelli*, *supra*, 79 N.Y.2d at 297–98, 582 N.Y.S.2d at 376–77. Further, it was undisputed that the Crane Co. valves at issue did not require any asbestos-containing materials, of any type, to function. (R. 588-89, 1054-55, 4032, 4049, 4058, 5680, 5702, 6053-54.) Thus, although the trial court cited to the decision in *Rogers v. Sears, Roebuck and Co.*, 268 A.D.2d 245, 246, 701 N.Y.S.2d 359, 360 (1st Dep't 2000) in support of its own, that case is wholly inapposite because, there, unlike here, the defendant's product "could not be used without" the injury-causing product at issue.

In sum, the Appellate Division's approach to the question of legal responsibility was correct in *Drabczyk*, and there is no support for the court's decision to abandon that approach here.

2. There Is No Discernible Policy Rationale Underlying the Appellate Division's "Replacement Part" Theory.

The question of whether a particular entity may bear a legal responsibility for a product is a policy-based inquiry, whether the claim is asserted under a strict liability or a negligence theory. *See Hamilton*, *supra*, 96 N.Y.2d at 236, 727 N.Y.S.2d at 15 ("[A]ny judicial recognition of a duty of care must be based upon an assessment of its efficacy in promoting a social benefit as against its costs and burdens."); *Sukljian v. Charles Ross & Son Co., Inc.*, 69 N.Y.2d 89, 94-95, 511

N.Y.S.2d 821, 823 (1986) (noting that the imposition of strict liability "rests largely on considerations of public policy"). But here, neither the Appellate Division's opinion nor the trial court opinion the Appellate Division referenced identifies any policy that will be served by recognizing the broad rule of legal responsibility these courts appeared to recognize, a rule directly contrary to the rule the Appellate Division previously adopted in *Drabczyk*.

The only discernible policy that will be served by adopting the sort of vague, open-ended rule of "replacement part" responsibility described by the trial court is ensuring that plaintiffs will have a broader range of potential defendants to sue in "asbestos" cases like this one—i.e., *both* the entities that made, sold, and distributed the allegedly defective part *and* the entities that made, sold, and distributed the equipment with which it was used at some time years, or even decades, later. This Court has made it very clear in its precedents, however, that the goal of product liability law is not merely to compensate plaintiffs or to construct legal theories that will implicate the greatest number of defendants. Rather, it is to advance consumer safety by imposing legal responsibility on those entities that control the production or use of the harm-causing product, because those are the entities that "can fairly be said to know and to understand when an article is suitably designed and safely made for its intended purpose." *Codling v. Paglia*, 32 N.Y.2d 330, 340, 345 N.Y.S.2d 461, 468 (1973); *accord Sprung v. MTR*

Ravensburg, Inc., 99 N.Y.2d 468, 473, 758 N.Y.S.2d 271, 274 (2003) ("[T]he burden of accidental injuries caused by defective products is better placed on those who produce and market them, and should be treated as a cost of business against which insurance can be obtained."); *Micallef v. Miehle Co., Div. of Miehle-Goss Dexter, Inc.*, 39 N.Y.2d 376, 386-87, 384 N.Y.S.2d 115, 121-22 (1976) (noting that a manufacturer should bear "legal responsibility" for its injury-causing product because the manufacturer is "in the best position to have eliminated . . . dangers").

Imposing a legal responsibility on complete strangers to the distributive chain that produced a harm-causing product may enhance the *compensation* opportunities of injured consumers, but it would not lead to any clear enhancement of product, and thus consumer, safety. Imposing such a duty would, however, cut strongly against the rule that the law ordinarily does not impose legal responsibility on persons for conditions and activities over which they have no control. *See, e.g.*, *O'Neil, supra*, 53 Cal.4th at 363, 266 P.3d at 1006 ("It is also unfair to require manufacturers of nondefective products to shoulder a burden of liability when they derived no economic benefit from the sale of the products that injured the plaintiff."); *Faddish v. Buffalo Pumps*, 881 F.Supp.2d 1361, 1369 (S.D. Fla. 2012) ("The rationale underpinning the general rule of strict liability is that it logically and fairly places the loss caused by a defective product on those who create the risk and reap the profit by placing such a product in the stream of commerce, with

the expectation that these entities have the greatest incentive and resources to control and spread the risk of harm posed by the product."); *In re Deep Vein Thrombosis*, 356 F.Supp.2d 1055, 1062 (N.D. Cal. 2005) ("Can a manufacturer be held liable for a defective product with which it never had contact? To state the question is almost to answer it. . . .").

This Court's precedents have made it clear that the policy considerations underlying New York's product liability doctrine define the scope of that doctrine. *See Gebo v. Black Clawson Co.*, 92 N.Y.2d 387, 392, 681 N.Y.S.2d 221, 224 (1998) ("The decision to impose strict liability rests largely upon matters of public policy."). Thus, for example, because an entity in the business of selling a defective product has a "continuing relationship[] with [the] manufacturers" and adopts a "special responsibility to the public" by marketing goods as a regular part of its business, it may bear strict liability when the product causes harm. *Sukljian*, *supra*, 69 N.Y.2d at 95, 511 N.Y.S.2d at 823. But, because the same considerations of policy do not hold in the case of a casual seller, this Court has held that such an entity is not ordinarily liable in a strict liability claim. *Id.*, 69 N.Y.2d at 95-96, 511 N.Y.S.2d at 823-24 ("The policy considerations that have been advanced to justify the imposition of strict liability on manufacturers and sellers in the normal course of business obviously lack applicability in the case of a party who is not engaged in the sale of the product in issue as a regular part of its

business."); *accord* Restatement (Second) of Torts § 402A (limiting strict liability to those entities "engaged in the business of selling" the defective product at issue).

In light of the policy-focused nature of product liability doctrine, a lower court should not be at liberty to recognize a broad, and novel, form of legal responsibility in the product liability context without even considering the policy implications of the holding. *See, e.g., Anand v. Kapoor*, 61 A.D.3d 787, 792, 877 N.Y.S.2d 425, 430 (2d Dep't 2009) (holding that conducting a duty analysis in any type of tort claim "requires the court to consider and weigh competing public policy considerations."); *Northern Assurance Co., Ltd. v. Nick*, 203 A.D.2d 342, 343, 610 N.Y.S.2d 307, 308-09 (2d Dep't 1994) (holding a court "must consider the social consequences of imposing a duty" before imposing one). That is, however, exactly what the Appellate Division did here, and, in so doing, it adopted a "test" for duty that is not only at odds with this Court's precedents, and particularly the *Rastelli* decision, but also with the "test" for duty recently articulated by the First Department in a similar "asbestos" case—the *Dummitt* matter.

3. The Analysis of *Dummitt* Does Not Support the Result Here, and the Analysis Here Does Not Support the Result in *Dummitt*.

The need for this Court to re-affirm the control-based approach articulated in *Rastelli* is perhaps best demonstrated by the fact that, in departing from the principle underlying that decision and searching for some ill-defined alternative rule to govern the inquiry into legal responsibility in "asbestos" cases, the Appellate Division has now reached facially inconsistent results. Thus, the analysis underlying the decision of the Appellate Division here does not support the result reached by the First Department in the *Dummitt* matter, and *vice versa*. And, moreover, neither of these courts even attempted to explain how their conflicting "rules" advance the policies underlying product liability law (they do not). The Court should reject both of these decisions, and the inconsistent and vague "rules" outlined in them, and continue to apply the control-based test of *Rastelli* that has historically governed in New York.

The *Dummitt* majority held that an equipment manufacturer like Crane Co. may be held legally responsible for asbestos-containing materials it neither made nor sold only if it had a "significant role, interest, or influence in the type of component used with its product after it enter[ed] the stream of commerce. . . ." *In re New York City Asbestos Litigation (Dummitt & Konstantin)*, 121 A.D.3d 230, 250, 990 N.Y.S.2d 174 (1st Dep't 2014). In the matter *sub judice*, there is not a

shred of evidence that Crane Co. had any role, let alone a "significant" role, in anything that Mr. Suttner's employer did at its automotive plant or in selecting any of the asbestos-containing materials Mr. Suttner encountered. (R. 884, 1053, 1056.) Accordingly, even if the significant role" test of *Dummitt* were legally correct (it is not, for all of the reasons explained in Crane Co.'s briefing in that appeal), it would not support the judgment here.

Notably, the "replacement part" rule seemingly adopted by the Appellate Division in this case, likewise, would not fully support the result in *Dummitt*. In *Dummitt*, the First Department held that Crane Co. could bear a legal responsibility not only for gasket and packing sealing materials that the Navy used with Crane Co.'s valves to replace other gaskets and packing contained in the valves at the time of shipment, but also that Crane Co. could bear legal responsibility for external asbestos-containing insulation materials that the Navy applied to the exterior of Crane Co.'s valves after installing them on its ships. This latter product inarguably did not "replace" anything that came with the valves originally, and thus Crane Co. could have no legal responsibility for it under the analysis of the Appellate Division here.[8] The trial court appeared to recognize this point in its opinion in this matter, but ultimately avoided the question in light of Plaintiff's

[8] And, indeed, Plaintiff effectively conceded this point, making it clear that she made no claim that Crane Co. could bear liability for external asbestos-containing insulation materials used with its valves, as opposed to asbestos-containing gasket and packing sealing products. (R. 1236.)

concession that Plaintiff made no claim that Crane Co. could bear legal responsibility for any insulation materials that GM may have used with its valves. (R. 22 [the trial court finding that "exterior insulation" is "a product not at issue here"].)

The contradictory decisions of the First and Fourth Departments, that have seemingly resulted in different tests for legal responsibility applying to the same basic conduct and products implicated in "asbestos" cases filed in different New York counties, underscores the need for clear rules of law in this area. That is precisely what this Court adopted in *Rastelli*, and the Court should affirm the continuing validity of *Rastelli* and its applicability here.

4. *Sage* Does Not Support the Appellate Division's Decision.

Although the trial court did not discuss the policy implications of its decision, it did appear to rely heavily on this Court's decision in *Sage v. Fairchild-Swearingen Corp.*, 70 N.Y.2d 579, 523 N.Y.S.2d 418 (1987) to support its result. However, unlike the matter *sub judice*, which is based entirely on a failure-to-warn theory, *Sage* was a product liability claim based solely on a design defect theory. Thus, the analysis of the *Sage* court turned on the nature of the particular claim at issue in that case, which is not the theory at issue in this case. Here, Plaintiff did not even plead a claim for design defect, let alone pursue one at trial. (R. 14, 26-27, 75-83.)

In *Sage*, the court held that the manufacturer of an aircraft could be liable on a design defect theory for an injury caused by a replacement aft ladder used with the aircraft where (1) the replacement ladder was fabricated by the employees of the aircraft's purchaser; it was not acquired from a third party, (2) in fabricating the ladder, the aircraft purchaser's employees duplicated the defective design of the ladder originally supplied by the aircraft manufacturer, and (3) thus, the aircraft manufacturer was the designer of the replacement part that caused the plaintiff's injury. *See id.*, 70 N.Y.2d at 586-87, 523 N.Y.S.2d. at 421-22. The trial court here seemingly interpreted *Sage*, a design defect decision, to give rise to a broad duty to warn of any replacement parts "similar" to ones originally supplied, but that reading is incorrect—the *Sage* decision did not turn on a mere similarity between an original part and a replacement part; it turned on the fact that the trial defendant was the designer of the defective replacement ladder, and it had nothing to do with any warnings relating to this ladder. *See Niemann v. McDonnell Douglas Corp.*, 721 F.Supp. 1019, 1030 (S.D. Ill. 1989) (declining to apply *Sage* to hold an original equipment manufacturer liable for defective replacement parts in the absence of evidence that the original equipment manufacturer designed the replacement parts).

These factors are not present in this case, which as noted, was tried solely upon a failure-to-warn theory, not the design defect theory at issue in *Sage*. (R. 14,

26-27, 75-83.) The asbestos-containing gaskets and packing Mr. Suttner encountered while working with Crane Co. valves were designed, manufactured, and supplied entirely by third parties, Garlock (manufacturer) and Root Neal (supplier). It was undisputed at trial that Crane Co. had no role in designing these products; thus, *Sage* is inapplicable.

B. Courts Across the Country Have Uniformly Rejected a "Replacement Part" Theory of Legal Responsibility.

Contrary to the trial court's holding, courts addressing the legal responsibility of equipment manufacturers for asbestos-containing "replacement parts" have not imposed any duty to warn of dangers allegedly inherent in replacement parts supplied by others after the initial sale.

In *O'Neil*, the Supreme Court of California considered precisely the same replacement part theory endorsed by the trial court here. *See O'Neil*, 53 Cal.4th at 347, 266 P.3d at 994. The *O'Neil* court rejected that theory, finding that imposing a duty on manufacturers to "investigate the potential risks of all other products and replacement parts that might foreseeably be used with their own product and warn about all of these risks" would "impose an excessive and unrealistic burden." *Id.*, 53 Cal.4th at 363, 266 P.3d at 1006.

This was exactly the conclusion reached by the Supreme Court of Washington in the *Braaten* case after carefully analyzing the same issue:

> The harm in this case is a result of exposure to asbestos. These manufacturers, who did not manufacture, sell, or otherwise distribute the replacement packing and gaskets containing asbestos to which Mr. Braaten was exposed, did not market the product causing the harm and could not treat the burden of accidental injury caused by asbestos in the replacement products as a cost of production against which liability insurance could be obtained. Thus, the policies that support imposition of strict liability are inapplicable in this case. . . .

Braaten, 165 Wash.2d at 392, 198 P.3d at 501.

Notably, both the Supreme Courts of California and Washington supported their holdings by citing to this Court's decision in *Rastelli*. Yet, neither the trial court nor the Appellate Division even referenced the decisions rendered by these courts, let alone attempted to argue that these courts misinterpreted this Court's decision in *Rastelli*.

Courts addressing similar "replacement part" fact patterns, involving both asbestos-containing replacement parts and other sorts of replacement parts, have adopted the same approach adopted by the *O'Neil* and *Braaten* courts. *See Hansen v. Honda Motor Co.*, 104 A.D.2d 850, 480 N.Y.S.2d 244 (2d Dep't 1984) (applying the "stream of commerce" rule in the context of replacement parts, and holding that original manufacturer of a motorcycle had no duty to warn of use of defective replacement wheel and spoke assembly); *Baughman v. General Motors Corp.*, 780 F.2d 1131, 1133 (4th Cir. 1986) (declining to impose liability on an automobile manufacturer for injuries caused by a defective replacement wheel); *Wood, supra* , 119 Md.App. at 34-39, 703 A.2d at 1330-33 (rejecting an

"endorsement" theory of liability similar to the one for which Plaintiff argued here and holding an original equipment maker has no duty to warn of allegedly injurious replacement parts, regardless of the similarity between the replacement parts and those originally supplied); *Niemann*, *supra*, 721 F.Supp. at 1029-30 (holding airplane manufacturer has no legal responsibility for asbestos-containing "chafing strips" acquired from others and used to replace original asbestos-containing chafing strips supplied with airplane).

As recently as October of this year, the Maryland Court of Special Appeals succinctly summarized this clear trend in the precedents, which it had anticipated in its earlier decision in *Wood*, *supra*, by rejecting exactly the sort of "replacement part" theory of liability seemingly used by the Appellate Division here:

> [I]n the 16 years since this Court decided *Wood*, numerous courts around the country have either followed *Wood* or have applied the same line of reasoning to hold that a manufacturer generally has no liability for defective replacement or component parts that it did not manufacture or place in the stream of commerce.

May, *supra*, 219 Md.App. at 433, 100 A.3d at 1289 (citing *O'Neil*, *Braaten*, *Surre*, and *Faddish*, *supra*; *Lindstrom v. A-C Prod. Liab. Trust*, 424 F.3d 488 (6th Cir. 2005); *Simonetta v. Viad Corp.*, 165 Wash.2d 341, 197 P.3d 127 (2008); *Conner v. Alfa Laval, Inc.*, 842 F.Supp.2d 791 (E.D.Pa. 2012)); *see also* Mark A. Behrens & Margaret Horn, *Liability for Asbestos-Containing Connected or Replacement Parts Made by Third Parties: Courts Are Properly Rejecting this Form of Guilt by*

Association, 37 Am. J. Trial Advoc. 489 (2014). The *May* court, like the Supreme Courts of California and Washington, based its holding on the same considerations of policy that this Court has articulated in the product liability context for decades. *See May*, 219 Md.App. at 436, 100 A.3d at 1291 (describing at length how the "principles underlying strict products liability" militate strongly against the recognition of exactly the legal responsibility the Appellate Division seemingly recognized here).

The same rule should control here—the duty to answer in tort for injuries caused by replacement parts should "properly fall upon the manufacturer of the replacement component part," *Baughman*, 780 F.2d at 1133, who has the ability, and the incentive, to make those parts safe. If the law were to impose a broader duty, the "burden upon a manufacturer would be excessive"—having to test and warn against "any of a myriad of replacement parts supplied by any number of manufacturers." *Id.* Here, the producers and marketers of the alleged injury-causing products were Garlock, Johns-Manville, and several other entities, not Crane Co.; Crane Co. should bear no responsibility to answer in tort for the products of these other entities under New York law.

C. Even if Some Form of "Replacement Part" Test Were Applicable Here, There Would Be No Evidence to "Pass" It.

Just as the trial court's "replacement part" theory is unsupported legally, it is unsupported factually, whatever its exact contours may be. There was no evidence as to the types of gaskets and packing Crane Co.'s valves contained at the time of sale, let alone evidence that any such original parts were replaced with substantially similar ones. (*See* R. 433, 4032, 4049, 4058, 5680, 5702.) Although the trial court recited several factual "findings," discussed below, it made no finding as to the alleged "similarity" between any gasket or packing supplied in a Crane Co. valve and any replacement part (nor could it possibly have made such a finding, because there was no evidence on this point).

In *Wood, supra*, 119 Md.App. at 34-39, 703 A.2d at 1330-33, the court rejected an "endorsement" theory of liability that would have held an auto manufacturer legally responsible for replacement asbestos-containing component parts used with its automobile merely because those parts were similar to the parts originally supplied with the automobile. However, the court noted that even if such a theory were legally sound (which it is not), applying it would require evidence that by including certain parts with its own product, a manufacturer

thereby "endorsed" the use of similar replacement parts into the future,[9] as well as "an inquiry into whether the original and the replacement parts were manufactured by the same company," and, if so, whether the original and replacement parts were "sufficiently similar," and, if so, whether they were "manufactured utilizing a similar process and similar materials." *Id.*, 119 Md.App. at 35, 703 A.2d at 1331. The trial court assessed none of those factors here and there was no evidence that would have even permitted their assessment, because there was no evidence as to what the Crane Co. valves at issue contained at the time of shipment, who selected those products, why those products were selected, or whether those selections had any bearing on the later selections of replacement materials.

Indeed, instead of assessing the evidence going to the question pertinent to the trial court's "test" for legal responsibility (which evidence was completely absent on this record), the trial court made a series of "observations" regarding the factual record that are (1) factually inaccurate and (2) legally irrelevant under the trial court's (and thus the Appellate Division's) "test" for legal responsibility. For instance, the trial court wrote that Crane Co. "specified the use of asbestos for packing and gaskets for its valves." (R. 18.) However, the trial court did not

[9] The mere fact that equipment was supplied with certain parts, in the absence of any evidence regarding the selection of those parts, provides no basis for a conclusion that the equipment maker "endorsed" the parts at issue.

define the vague term "specified,"[10] or point to any evidence in the record (there was none) indicating that Crane Co. directed, recommended, or even suggested to GM how it should use the valves it purchased from Crane Co. (R. 1053, 1056.) Indeed, Mr. Suttner testified that although he was responsible for fabricating virtually all of the gaskets used in the GM plant (R. 867), he never encountered any Crane Co. product literature of any kind (R. 884).

The trial court also wrote that "Crane designed and marketed a product which, when used for one of its intended purposes, on high pressure steam lines, required asbestos-containing gaskets and packing." (R. 18.) This observation fails to make the necessary logical distinction between what a product, itself, "required" and what a particular customer decided to use for its particular unique application. *See O'Neil*, 53 Cal.4th at 350, 266 P.3d at 996. For instance, as the *O'Neil* court held, the fact that the Navy chose to use asbestos-containing materials within a pump or valve on a ship (or, here, GM at its industrial facility) has no bearing on the legally significant question of whether those valves required asbestos by design. *Id.* In the case *sub judice*, Plaintiff's own expert witness, after professing a lack of expertise in valve design (R. 544), conceded that a valve used with asbestos-containing gaskets and packing would also function with non-asbestos-

[10] That term could mean anything from "required" to "recommended" to "suggested" and thus it provides no clear standards for the imposition of legal responsibility in a case like this one.

containing gaskets and packing (R. 588-89), and the Crane Co. product literature that Plaintiff entered into evidence demonstrates that, during the relevant time period, at least some (and seemingly many) of the Crane Co. valves rated for high-temperature, high-pressure services were supplied with soft iron or soft steel bonnet gaskets, not asbestos ones (R. 4032, 4049, 4058, 5680, 5702.) Thus, the trial court's assertion that Crane Co. valves somehow "required" asbestos-containing materials (an assertion the trial court made without any supporting citation) is strongly contradicted by the record.

It is not clear what relevance the inaccurate factual assertions noted above had to the trial court's ultimate holding, which seemed based on little more than a finding that Mr. Suttner encountered "replacement parts" that GM used with Crane Co. valves. Indeed, the trial court's opinion, which the Appellate Division seemingly adopted, at least in part, for unexplained reasons is little more than a recitation of some legal principles and then a recitation of some (largely inaccurate) factual observations, without any legal or policy analysis linking the two and explaining the reasoning behind the holding. The Court should reject that analysis in its entirety and remit this case with instructions to enter judgment for Crane Co.

II. The "Component Parts" Doctrine Supports Judgment in Crane Co.'s Favor.

As discussed in Crane Co.'s briefing in the *Dummitt* matter, numerous precedents, which are collected and synthesized in the Restatement (Third) of Torts: Products Liability § 5 (1998), provide that the supplier of a component part (such as a valve) that can be used in numerous environments is not liable for every application in which the customer will use the component, even if the use was "foreseeable." *See, e.g., In re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.*, 97 F.3d 1050 (8th Cir. 1996); *Artiglio v. General Electric Co.*, 61 Cal.App.4th 830, 71 Cal.Rptr.2d 817 (Cal. Ct. App. 1998).

Under the "component parts" provision of the Restatement (Third), the seller of a component part can potentially be responsible for injuries caused by the finished assembly incorporating its component only if (1) the component itself is defective, and the defect causes the harm, or (2) the component seller substantially participates in the integration of the component into the design of the final assembly, the integration of the component renders the assembly defective, and the defect causes the harm. *See* Restatement (Third) of Torts: Products Liability § 5; *accord Taylor v. Elliott Turbomachinery Co., Inc.*, 171 Cal.App.4th 564, 585, 90 Cal.Rptr.3d 414, 430-31 (Cal. Ct. App. 2009). This rule applies to product liability claims asserted in both strict liability and negligence, *TMJ*, 97 F.3d at 1058-59, and it has been recognized in several New York decisions, *see, e.g., Gray v. R.L. Best*

Co., 78 A.D.3d 1346, 1349, 910 N.Y.S.2D 307, 309 (3d Dep't 2010); *Leahy v. Mid-West Conveyor Co., Inc.*, 120 A.D.2d 16, 18-19, 507 N.Y.S.2d 514, 515-16 (3d Dep't 1986); *Munger v. Heider Mfg. Corp.*, 90 A.D.2d 645, 456 N.Y.S.2d 271 (3d Dep't 1982).

The undisputed evidence here was that Crane Co.'s valves were multi-use components. (*See, e.g.*, R. 5673 [Crane Co. 1960 Catalog noting Crane Co. steel gate valves were often used as general purpose valves below their stated temperature and pressure tolerances].) The factual record demonstrates that GM had the ability to use its valves with asbestos or non-asbestos-containing gasket and packing sealing materials, and Crane Co. played no role in the decision as to which to use or in the design of the relevant piping system. It was undisputed that GM had complete control over the use of the valves and was in the best position to appreciate any dangers posed by the larger piping system in which they were installed. The evidence further demonstrated that Crane Co.'s valves had no function unless and until they were incorporated into such a system (R. 1052-53) and could be used (and can be used) with asbestos or non-asbestos-containing gasket and packing sealing materials (R. 588-89, 1054-55, 4032, 4049, 4058, 5680, 5702, 6053-54).

Further, Plaintiff produced no evidence that Crane Co. had any role, let alone a substantial participatory role, in designing the GM piping system into

which Crane Co.'s valves were incorporated. (R. 884, 1053, 1056.) Without such evidence, the maker of one component part should not be legally responsible for injuries caused by another system component.

CONCLUSION

For all of the foregoing reasons, Crane Co. respectfully requests that this Court reverse the decision of the Appellate Division, and direct entry of judgment for Crane Co.

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Respectfully submitted,

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