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Court of Appeals

STATE OF NEW YORK

RAYMOND FINERTY and MARY FINERTY,

Plaintiffs-Respondents,

against

ABEX CORPORATION, *et al.*,

Defendants.

FORD MOTOR COMPANY,

Defendant-Appellant.

BRIEF OF PLAINTIFFS-RESPONDENTS IN RESPONSE TO BRIEF OF *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

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PRELIMINARY STATEMENT

In its brief, *amicus curiae* the Chamber of Commerce of the United States of America ("the Chamber") presents the same fundamental misunderstanding, and thus misapplication, of New York law as does one of the Chamber's key members,[1] Appellant Ford Motor Co. ("Ford USA"). In complete disregard of well-settled products liability law in this State, the Chamber simply echoes the inaccurate mantra of Ford USA that the First Department's analysis should have focused on a corporation's control over its subsidiary rather than over a party's role in placing its defective product into the stream of commerce.

Continuously calling for the wrong legal analysis (corporate veil piercing) in no way, however, makes such an analysis any more applicable or legitimate. Indeed, the Chamber simply attempts to create an unprecedented means of escaping liability which our law simply does not recognize, nor should it.

The Chamber additionally errs by characterizing the Appellate Division's correct application of law as somehow novel, labeling the court's analysis as an "exert pressure test." The Appellate Division, however, simply applied a legal standard recognized by this Court and other New York courts as part of a proper determination of which parties within a chain of distribution are in the best position

[1] Indeed, Ford USA itself sits on the Chamber's "Litigation Center Board of Directors," and a member of Ford USA's Board of Directors is a board member and past chairman of the Chamber itself. In effect, through the Chamber, Ford seeks to create a chorus of opposition made up from its single, multi-layered voice.

to ensure the safety of products. *See, e.g., Sukljian v. Charles Ross & Son, Co.*, 69 N.Y.2d 89, 95 (1986) ("Where products are sold in the normal course of business, sellers, by reason of their continuing relationships with manufacturers, are most often in a position to exert pressure for the improved safety of products and can recover increased costs within their commercial dealings, or through contribution or indemnification in litigation"); *Godoy v. Abamaster of Miami, Inc.*, 302 A.D.2d 57, 60 (2d Dep't 2003) (acknowledging that strict liability "rests not upon traditional considerations of fault and active negligence, but rather upon policy considerations which dictate that those in the best position to exert pressure for the improved safety of products bear the risk of loss resulting from the use of the products" (internal quotation omitted)); *Brumbaugh v. Cejj*, 152 A.D.2d 69, 71 (3d Dep't 1989) (liability should be fixed "on one who is in a position to exert pressure on the manufacturer to improve the safety of the product").

Most blatant, however, is the Chamber's dismissal of the substantial evidence in this case, which is, of course, the cornerstone of a summary judgment analysis. In so doing, the Chamber is ignoring the foundation of the Appellate Division's decision finding that a jury must determine the role Ford USA played in placing defective products into the stream of commerce.

Regardless of how the Chamber attempts to sidestep New York's well-settled products liability law, the *actual* law set down by this Court and others has

repeatedly recognized and perpetuated New York's strong public policy for holding accountable those entities who played direct roles in defective products' distribution. The notion that a "corporate separateness" exception exists for a defendant's direct actions in ushering a defective product into the marketplace was unavailing to the Appellate Division, and this unsupported argument should be similarly dismissed by this Court.

ARGUMENT

As New York law demonstrates, Ford USA's liability is fastened to its direct role in placing a dangerous product into the stream of commerce. Whether or not Ford USA "controlled" its subsidiary is simply not the issue in the instant case; rather, the proper analysis of the evidence at hand instead focuses on Ford USA's own participation in placing a defective product into the stream of commerce.

Assigning liability to such a participator is by no means novel, but is indeed exactly how New York courts evaluate strict liability and negligence claims when reviewing the actions of a party such as Ford USA, which the evidence shows greatly influenced the placement of ultimately defective products into the marketplace.

Unable to legitimately avoid New York law on this issue, the Chamber – in an identical argument to Ford USA's own – erroneously attempts to limit strict liability to only those who physically manufacture, distribute, or sell the product.

(Br. at 4). Such a myopic view, however, ignores both New York's relevant case law and the evidence in this case.

I. THE APPELLATE DIVISION PROPERLY APPLIED NEW YORK LAW WHEN CONSIDERING EVIDENCE OF FORD USA'S DIRECT ROLE IN THE DESIGN, MANUFACTURE, MARKETING AND SALE OF DEFECTIVE *PRODUCTS* WHICH CONTRIBUTED TO PLAINTIFF'S INJURY, AND DID NOT ANALYZE FORD USA'S *CONTROL OVER ITS SUBSIDIARY*, AS THE CHAMBER WOULD HAVE IT DO

The Chamber inaccurately characterizes the First Department's proper application of New York's product liability law as a unique, self-created "exert pressure theory" which in effect would apply to any parent corporation and would skirt the need of piercing the corporate veil. [2] Nothing could be farther from the truth. In reality, the Appellate Division did no such thing, but rather looked specifically at Ford USA's own role and control over "Ford" products themselves, and not at any control Ford USA may or may not have exercised over its wholly-owned subsidiary:

> [T]he record demonstrates that Ford USA acted as the global guardian of the Ford brand, having a substantial role in the design, development, and use of the auto parts

[2] The Chamber further bolsters its strawman argument by claiming that the mere fact that a parent corporation "owns" its subsidiary necessarily means that the parent has the ability to exert pressure on it. (*Amicus* at 10). Again, the Chamber misses the point. Plaintiff's evidence reveals Ford USA's role in the chain of distribution at multiple stages, from product design, to marketing, to even actual manufacture of certain products. The all-purpose shield the Chamber seeks to create via Ford's wholly-owned subsidiary is simply not supported by the facts of this case, which is why, at a minimum, a jury should be permitted to evaluate Ford USA's non-peripheral role in placing defective products on the market.

> distributed by Ford UK, with the apparent goal of the complete standardization of all products worldwide that carried the signature Ford logo.

(R. 13).

The Appellate Division's specific (and correct) reference to Ford USA's control over *products* rather than control over its *subsidiary* was far from accidental; indeed, the heart of the issue before both Justice Heitler and the Appellate Division was whether the record evidence created a question of fact for the jury on the very issue of Ford USA's role – rather than Ford UK's – in contributing to Raymond Finerty's disease.

If anything, it is Ford USA – making arguments identical to the Chamber's – that is: 1) seeking to skirt established products liability law which should apply to its own direct actions and; 2) redefining corporate separateness principles by simply hiding behind the corporate veil which is supposed to protect a parent corporation from the wrongful conduct of its subsidiary, not its own wrongful conduct.

As our courts have long acknowledged, strict liability, similar to vicarious liability, is a policy-driven exception to the general proposition limiting one's liability to only their own wrongdoing. *Mondello v. New York Blood Ctr.*, 80 N.Y.2d 219, 226-27 (1992). From this exception has flowed New York law's duly-recognized analysis attaching strict liability to actors such as Appellant, regardless of whether they are labeled a *per se* "manufacturer," "distributor" or

"seller." The true issue New York law examines is what role such an actor played, and whether that actor has the ability to exert pressure on others in the chain to assure the safety of the products. *See, e.g., Caprara v. Chrysler Corp.*, 52 N.Y.2d 114, 124 (1981) ("If the product can be found to be defective when it leaves their possession, if the defect was a substantial factor in producing plaintiff's injuries, without more the defendant, the one in the best position to have eliminated the dangers must respond in damages (internal quotation omitted)); *Brumbaugh v. Cejj*, 152 A.D.2d 69, 70-71 (3d Dep't 1989) (acknowledging that strict liability is not limited to mere manufacturers, but indeed "essentially to *any one responsible for placing the defective product in the marketplace*" (emphasis added)); *Godoy v. Abamaster of Miami, Inc.*, 302 A.D.2d 57, 63 (2d Dep't 2003) ("Of those in the chain of distribution, the distributor or importer closest to the manufacturer (at the top of the chain of distribution) is in the best position to further the public policy considerations underlying the doctrine of strict products liability").

The Chamber's highlighting of other states' and federal laws discussing the entirely different legal standard of corporate separateness wholly disregards the actual facts at hand, illustrating Ford USA's direct role in the chain of distribution of defective "Ford" products, and thus misses the point. Plaintiff's case is not one of possible "corporate abuse" but one as simple as holding the correct party liable for its own actions or role in placing a dangerous product in the marketplace, a

notion New York law has long acknowledged in the context of products liability. *Hoover v. New Holland, Inc.*, 23 N.Y.3d 41, 53 (2014) ("Where a plaintiff is injured as a result of a defectively designed product, the product manufacturer *or others in the chain of distribution* may be held strictly liable for those injuries" (emphasis added) (internal citations omitted)).

In light of New York's clear case law, the Chamber's (like Ford USA's) obdurate clinging to a non-applicable legal standard serves no other purpose than to distract from the Appellate Division's proper analysis. It must therefore be rejected in its entirety.

A. The United States Supreme Court's Decision In *Best Foods* Illustrates The Proper Analysis For Determining Liability For An Entity's Direct Actions, And In No Way Stands For The Proposition That A Showing Of Derivative Liability Is Necessary In This Case

The Chamber claims that the U.S. Supreme Court's decision in *Best Foods* demonstrates why the Appellate Division's decision is "wrong." (*Amicus* at 11). Even a plain reading of the Court's decision, however, illustrates the exact point made time and again by our courts with regard to strict liability claims.[3]

In *Bestfoods*, a case involving the distinction between derivative and direct liability under CERCLA, the U.S. Supreme Court makes clear that "nothing in the

[3] Indeed, the Chamber does not seriously contest the Court's holding in *Bestfoods*, but in fact concedes (as it must) that the decision "establishes a straightforward principle: Veil-piercing is unnecessary to hold a corporation liable for its own actions". (*Amicus* at 11). Respondent agrees, and in fact cited this case for the very same principle in its brief. (Brief at 26-27).

statute's terms bars a parent corporation from direct liability ***for its own actions*** in operating a facility owned by its subsidiary." 524 U.S. 51, 57-58 (1998) (emphasis added); *see also Sidney S. Arst Co. v. Pipefitters Welfare Ed. Fund*, 25 F.3d 417, 420 (7th Cir.1994) ("the direct, personal liability provided by CERCLA is distinct from the derivative liability that results from piercing the corporate veil" (internal quotations omitted)).

To that end, and much like in the instant case, both the Supreme Court and the Sixth Circuit acknowledged the principle that "a parent can be held directly liable when the parent operates the facility in the stead of its subsidiary ***or alongside the subsidiary in some sort of joint venture.***[4]" *Bestfoods*, 524 U.S. at 62 (emphasis added). The Court then addressed the very concern expressed by appellant and the Chamber here: that parents ordinarily oversee and exert pressure upon their subsidiaries, observing that "the acts of direct operation that give rise to parental liability must necessarily be distinguished from the interference that stems from the normal relationship between parent and subsidiary". *Id.*

[4] By making only cursory reference to Plaintiff's evidence, the Chamber is in fact highlighting the weakness of its argument. As Plaintiff's evidence demonstrates, Ford's direct role working alongside its subsidiary in ushering these products into the market was more than just a typical general oversight of its subsidiary's affairs. Indeed, Ford USA's role in the manufacture of tractor products was exactly a "joint venture" (which the U.S. Supreme Court acknowledged is enough to extend direct liability under CERCLA), as evidenced by Ford USA's intimate, joint design and development of Ford tractors accomplished by "US & England Engineers" as part of the "Ford Tractor Division" of Ford USA. (R. 606, 592, 585). As the U.S. Supreme Court itself found, the record evidence is crucial when examining the nature and extent of a parent's direct liability; try as it might, the Chamber simply cannot disregard the copious evidence that the Appellate Division properly considered when arriving at its correct conclusion.

Of note, the Court specifically examined the underlying evidence in the record when determining that this evidence was "enough to raise an issue" of whether the parent corporation operated the facility in question, and thus could be held directly liable under CERCLA. *Id.* at 62-63. Indeed, it was this very evidence raising factual issues that caused the Court to remand the case to the District Court for further factual proceedings to determine what role the parent corporation had in operating the facility in question. *Id.* at 63.

The Chamber ignores this wholly relevant aspect of the *Bestfoods* decision and instead entirely mischaracterizes the Appellate Division's decision, claiming that it rests on Ford USA's control over its subsidiary. (*Amicus* at 12). The Chamber's reading is fundamentally incorrect. Indeed, the Appellate Division makes no mention of Ford USA's so-called control over its subsidiary, but rather specifically references the evidence of Ford USA's *"substantial role* in the design, development and use" of defective products ultimately distributed by Ford UK. (R. 1139 (emphasis added)). The only "manipulation" of the Appellate Division's decision occurs at the Chamber's hands.

As such, no aspect of the Appellate Division's decision in any way violates traditional notions of corporate separateness, but in fact properly perpetuates New York strict products liability law holding those parties involved in the placement of defective products into the chain of distribution responsible in tort.

II. PLAINTIFF'S EVIDENCE DEMONSTRATES FORD USA'S ACTUAL AND CLOSE INVOLVEMENT IN MULTIPLE AREAS OF THE DEVELOPMENT AND DISTRIBUTION OF DEFECTIVE PRODUCTS, AND IS THUS PROPERLY LIABLE UNDER NEW YORK LAW

Despite not having any actual evidence to contest the record, the Chamber next attempts a unilateral interpretation of *some* of Plaintiff's evidence in an unsuccessful effort to minimize Ford USA's involvement with the placement of defective products into the marketplace. The Chamber then draws on inapposite cases on strict liability, discussing such irrelevancies as newspapers distributing circulars, an internet provider listing its store locations, and an advertising agency providing copy, as the best examples[5] it could muster to somehow apply to the facts of the instant case. (*Amicus* at 15).

The Chamber's selective interpretation of evidence and cherry picking of case law aside, the fact remains that Plaintiff's evidence, demonstrating Ford USA's intimate role at several points in the distributive chain, including the actual manufacture of Ford Tractor components, as well as the design, marketing, and

[5] Under New York law, such entities as those listed by the Chamber are indeed free from liability as they are merely examples of parties performing a service (which is thus peripheral to the products' sale), rather than parties actually involved in some way with the manufacture, design, sale, or distribution of a product. *See Brumbaugh v CEJJ, Inc.*, 152 A.D.2d 69, 71 (3d Dep't 1989); *see also McCormack v. Safety-Kleen Sys. Inc.*, 927 N.Y.S.2d 817 (Sup. Ct. 2011) (finding that defendant merely transported another company's defective products, and was thus merely providing a "peripheral transportation service to the seller"). Ford USA lies in stark contrast to such peripheral actors as it actually oversaw and participated in the design, manufacture, marketing, and distribution of the products in question, as the evidence shows.

manufacturing process of Ford motor parts, sets the instant case firmly within the types of factual scenarios in which New York courts have traditionally found strict liability. (Resp. Br. at 9-18). Neither the Chamber nor Ford USA presents any relevant or legitimate factual or legal foundation for why New York law should change in this regard, and thus the Appellate Division's decision must be upheld.

A. New York Law Extends Strict Liability To All Entities Having A Non-Peripheral Role In The Chain Of Distribution Of Defective Products

While the Chamber may be correct that New York law does not currently extend strict liability to those *outside* the distribution chain, the law is clear that this chain does include those who are shown to be involved in placing a defective product into the stream of commerce, even if the party is not the *per se* manufacturer or seller of the product.

Despite the Chamber's (and Ford USA's) repeated misstatement of the law, New York law in no way limits strict liability to only "manufacturers, distributors and sellers." (*Amicus* at 13). Indeed, especially in the summary judgment context, courts consistently examine a party's role even beyond those categories to determine the level of involvement a party plays in placing a product on the market.

As a starting point, it is well settled that "a party injured as a result of a defective product may seek relief against the product manufacturer *or others in the distribution chain* if the defect was a substantial factor in causing the injury."

Speller v. Sears, Roebuck & Co., 100 N.Y.2d 38, 41 (2003) (emphasis added). Indeed, this Court has enunciated the importance of the public policy considerations behind our strict liability laws, noting that even those who market defective products owe a "special relationship" with the public to put out safe goods; similarly, those who bear a close relationship with the actual manufacturer may be held liable since they "are most often in a position to exert pressure for the improved safety of products and can recover increased costs within their commercial dealings, or through contribution or indemnification in litigation." *Sukljian v. Charles Ross & Son, Co.*, 69 N.Y.2d 89, 95 (1986).

This focused concern on consumer safety is precisely why New York does not place unreasonable limits on the extent of strict liability; indeed our courts have found parties involved in the distribution chain liable even if they "never inspected, controlled, installed, or serviced the product." *Perillo v. Pleasant View Assocs.*, 292 A.D.2d 773, 774 (4th Dep't 2002).

New York has consistently applied these principles in the summary judgment context, just as the Appellate Division did in the instant case. For example, in *Galluscio v. Atico Int'l, U.S., Inc.*, 41 Misc.3d 576 (Sup. Ct. 2013), the defendant was a sourcing company that referred an overseas manufacturer to the ultimate seller of a defective heating pad, and which also provided the seller with instructions for use of the product. The court denied the defendant's motion for

summary judgment based on the evidence that, while "defendant was not a part of the manufacturing, it certainly was part of the distribution chain of placing this product in the stream of commerce by providing the instructions for the use of the product." *Id.* at 578.

Similarly, in *Harrison v. ITT Corp.*, 198 A.D.2d 50 (1st Dep't 1993), the Appellate Division acknowledged that a trademark licensor, even though "not formally involved as a manufacturer, designer or seller may be subject to liability for injuries caused by a defective product where, for example, it has had *significant involvement in distribution* or is capable of exercising control over quality."[6] *Id.* (emphasis added); *see also Blackburn v. Johnson Chem. Co.*, 128 Misc.2d 623, 625 (Sup. Ct. 1985) ("As the law of strict liability has evolved in this jurisdiction, liability extends not only to those who manufacture the defective product, but also to *any party in the distributive chain*."[7] (emphasis added)).

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[6] Though the plaintiff in the *Harrison* case failed to present sufficient evidence that the defendant trademark licensor "had significant involvement" in the distribution of a defective product (unlike the plaintiff here), *id.*, such a factual insufficiency in no way changes the Appellate Division's proper application of product liability law to include those involved in the distributive chain beyond mere manufacturers, distributors, and sellers when the evidence so warrants.

[7] New York's application of strict liability to entities with an active involvement in the distributive chain is not an aberration, but is consistent with other courts' rulings in similar contexts. *See, e.g., Promaulayko v. Johns Manville Sales Corp.*, 562 A.2d 202, 205 (NJ 1989) ("In a strict-liability action, liability extends beyond the manufacturer to *all entities* in the chain of distribution" (emphasis added)); *Torres v. Goodyear Tire & Rubber Co.*, 163 Ariz. 88, 94 (AZ 1990) (finding a domestic parent strictly liable for a defective autopart manufactured by its European subsidiary since the parent "participated significantly in the design, manufacture, promotion, and sale that resulted in the product reaching the consumer").

The fact remains that Plaintiff's evidence establishes clear questions of fact regarding Ford USA's actual role in manufacturing both its tractor parts as well as its automotive parts. Additionally, this evidence demonstrates Ford USA's "significant involvement in distribution" of these products *vis-a-vis* its role in the design, marketing, and distribution of these products.

Put simply, Ford USA was not a tangential or peripheral bystander in its products' distribution (such that New York law would prevent a finding of strict liability) but was indeed intertwined with its products at major parts of their development, manufacture, and marketing. It is for this reason that, in the realm of products liability and public safety, the unprecedented corporate separateness shield the Chamber and Ford USA would have this Court implement has no place; an injured party under our law has the right to hold liable all who can be proven a part of the chain of distribution. *Hoover*, 23 N.Y.3d at 53 ("Where a plaintiff is injured as a result of a defectively designed product, the product manufacturer *or others in the chain of distribution* may be held strictly liable for those injuries" (emphasis added) (internal citations omitted)).

B. The Chamber's Citations To Case Law From Foreign Jurisdictions In No Way Changes New York's Well-Settled Products Liability Law

Even though New York law is clear in its application of strict product liability to all parties involved in the distributive chain, the Chamber goes so far as to suggest that this Court should accept its interpretation of foreign case law –

including unreported decisions (*Amicus* at 16) – to overturn well-settled, longstanding notions of products liability law. The Chamber's assertions, however, are inaccurate, as proven by some of the very cases it cites.

For example, the Chamber sites to the Eight Circuit's decision in *Ford v. GACS, Inc.*, 265 F.3d 670 (2001), for the proposition that Missouri law requires that a party place a product into the stream of commerce to be held liable. In that case, the plaintiff was injured by a defective ratchet that was used on a transport vehicle to hold in place new cars that were being transported. The plaintiff sued General Motors (GM), whose cars were being transported, among others for injuries that occurred from the failure of this defective ratchet. GM had nothing to do with the design or manufacture of this ratchet but was merely "the customer of the hauler, who in turn [was] the customer of the alleged defective product's designer and manufacturer". *Id.* at 681. Under such circumstances, the court upheld the summary judgment granted to GM, noting that the plaintiff offered no evidence "that GM ***was involved*** in the actual design, manufacture, or marketing of the ratchet, other than to accept or reject a particular tie down system consistent with its needs". *Id.* (emphasis added). But the Eighth Circuit in fact specifically acknowledged that other courts (much like our own) "have extended products liability to entities that are *an integral part of the composite business enterprise*

which was responsible for placing [the defective product] in the stream of commerce." *Id.* at 681 (emphasis added) (internal quotations omitted).[8]

One such case cited by the Eighth Circuit for this proposition (though which the Chamber ignores), and which is directly on-point with the instant case, was the Arizona Supreme Court's decision in *Torres v. Goodyear Tire & Rubber Co.*, 163 Ariz. 88 (1990). There, Goodyear claimed it could not be liable for a tire manufactured by its European subsidiary, Goodyear Great Britain. The Supreme Court of Arizona, however, disagreed, finding instead that the evidence supported strict liability since "Goodyear participated significantly in the design, manufacture, promotion, and sale that resulted in the product reaching the consumer." *Id.* at 94.

Notably, the Supreme Court of Arizona did not hesitate to apply products liability law for fear of "eviscerate[ing] basic principles of corporate separateness," as the Chamber (and Ford USA) fears. (*Amicus* at 4). Indeed, that court specifically *rejected* Goodyear's argument that a veil piercing requirement was needed, finding correctly that "[t]o hold, as we are asked, that when the product is defective and unreasonably dangerous it should not be considered a "Goodyear" tire but a "Goodyear GB" tire would be to espouse a doctrine that would no doubt

[8] While the Circuit did not find that the facts warranted finding that GM placed the defective ratchet system into the stream of commerce in that case, *id.*, the cases cited were nonetheless found to be instructive.

surprise most Goodyear customers, and perhaps some officers of Goodyear itself."[9] *Id.* at 93.

Another on-point case the Eighth Circuit recognized (and that the Chamber similarly ignored) is *Taylor v. Gen. Motors, Inc.*, 537 F.Supp. 949 (E.D. Ky. 1982). There, General Motors argued that it could not be held strictly liable for a defective fan manufactured by a completely separate company. *Id.* at 950. Upon review of the facts, the court determined that General Motors, although not the manufacturer, was "intimately involved in the entire process" specifically because G.M., similar to Ford USA here, "exercised strict control over the design and testing of the product." *Id.* at 950, 954.

Though ignoring these relevant cases, the Chamber instead points to the decision in *Smith v. Ford Motor Co.*, No. 1814, 2014 WL 8845355 *1 (Pa. Ct. Com. Pl. Jan. 24, 2014), wherein a different plaintiff attempted to pierce the corporate veil, but failed. Unlike the instant case, that plaintiff attempted to demonstrate that Ford USA both "dominated and controlled" Ford UK (which is based on evidence of a parent's control of its subsidiary), and that Ford USA was an "apparent manufacturer" (which is based on the product user's perception),

[9] The Chamber goes to great lengths, citing articles, studies, and its own general so-called expertise, to explain the importance of the parent-subsidiary relationship from a business perspective, including providing such benefits as "expertise in their own distinct legal, business, and cultural landscape." (*Amicus* at 16). While it is uncontested that parents and their subsidiaries share business-related benefits, the policy of product safety under New York law does not acknowledge a business-benefit exception that would allow those involved in placing a dangerous product into the stream of commerce to escape liability, nor should it.

neither theory of which the instant Plaintiff has brought in this case, and neither of which is based on the same areas of law. Given the plaintiff's theories in that case, the Pennsylvania court's subsequent decision is not particularly surprising; the Appellate Division in the instant decision likewise determined that "there is no basis for piercing the corporate veil" on this same evidence. (R. 1139). The Pennsylvania court did not "see through the noise," as the Chamber claims; it simply applied different legal theories to the evidence presented to it, advanced by a different plaintiff.

The Pennsylvania court's consideration of the facts and the different legal strategy presented by the plaintiff[10] in that case in no manner or form binds this Court. This is especially true considering Respondent's altogether different presentation of evidence supporting the legal theory in this case: that defendant

[10] In its Reply Brief, Ford USA attempts a similar distraction by citing to a different plaintiff's brief in an attempt to incorrectly tie the this case to the decision in *Balintulo v. Ford Motor Co.*, 796 F.3d 160 (2d Cir. 2015), which remained unpublished at the time Ford USA originally cited it. Ford USA, like the Chamber here, continues to misunderstand this Plaintiff's legal theory, and points to a different plaintiff's attempt to pierce the corporate veil by holding Ford directly liable for the acts of its South African subsidiary. (Appellant's Reply at 19-20). Indeed, the Second Circuit was clear that the plaintiff therein was attempting to pierce the corporate veil (rather than determine its role in the chain of distribution) by holding Ford liable for the conduct of its subsidiary: "But holding Ford to be directly responsible for the actions of its South African subsidiary, as plaintiffs would have us do, would ignore well-settled principles of corporate law, which treat parent corporations and their subsidiaries as legally distinct entities. While courts occasionally "pierce the corporate veil" and ignore a subsidiary's separate legal status, they will do so only in extraordinary circumstances, such as where the corporate parent excessively dominates its "subsidiary in such a way as to make it a 'mere instrumentality' of the parent." *Balintulo*, 796 F.3d at 168 (internal quotation omitted). The instant Plaintiff is not attempting to hold Ford USA directly liable for its *subsidiary's conduct* (as was the case in *Balintulo*), but for *it's own conduct,* which the instant evidence fully supports. Both the Chamber and Ford USA again ignore this crucial distinction by relying on the *Smith* and *Balintulo* decisions as support for their faulty proposition.

Ford USA is responsible for its direct role in placing these products into the stream of commerce. As New York law is clear on issues of strict products liability and the entities that may properly be held liable for their role in placing defective products into the stream of commerce, this Court should respectfully affirm the Appellate Division's proper application of that law in rejecting Ford USA's and the Chamber's identical arguments.

CONCLUSION

For the reasons set forth in Respondent's brief as well as in this Opposition, the Court should affirm the decision of the Appellate Division.

Date: New York, New York
December 29, 2015

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