April 29, 2016

SHOOK
HARDY & BACON

Honorable Chief Justice Tani Cantil-Sakauye
and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4783

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RE: ***Nickole Davis v. Honeywell International, Inc.***
(Petition for Review filed April 13, 2016)
Supreme Court, Case No. S233753
Second Appellate District, Div. 4, Case No. B256793
Superior Court, Los Angeles County, Case No. BC469472

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Amici curiae National Association of Manufacturers, Association of Global Automakers, Inc., NFIB Small Business Legal Center, Motor & Equipment Manufacturers Association, Truck Trailer Manufacturers Association, Inc., and American Tort Reform Association write pursuant to Rule 8.500(g)(1) to support Honeywell International, Inc.'s Petition for Review in the above-referenced appeal.

QUESTION PRESENTED FOR REVIEW

Whether, in contrast to the rule in other jurisdictions, expert testimony on causation is admissible when the expert opines that "every exposure" to a toxin is a substantial factor in causing a plaintiff's disease, regardless of the frequency, regularity, proximity, or circumstances of exposure.

INTEREST OF *AMICI CURIAE*

Amici are organizations whose members are named as defendants in asbestos cases in California. *Amici* have a substantial interest in ensuring that the legal rules applied to asbestos and other toxic tort cases are consistent with well-established tort law, sound science, and good policy. The decision below violated these principles by permitting liability to be imposed based on flimsy causation testimony that is being rejected by an increasing number of courts. For these reasons, the Petition should be granted.[1]

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[1] The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all fifty states. Manufacturing employs over 12 million men and women, contributes roughly $2.17 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for three-quarters of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The Association of Global Automakers is a nonprofit trade association whose members include the U.S. manufacturing and distribution subsidiaries of thirteen international motor vehicle manufacturers, including: American Honda Motor Co., Inc., Aston Martin Lagonda of North America, Inc., Ferrari North America, Inc., Hyundai Motor America, Inc., Isuzu Motors America, LLC, Kia Motors America, Inc., Maserati North America, Inc., McLaren Automotive, Ltd., Nissan North America, Inc., Peugeot

REASONS WHY THIS COURT SHOULD GRANT THE PETITION

I. Guidance is Needed as to What Constitutes a "Substantial Factor" Under *Rutherford*

In California, an asbestos plaintiff must "establish some threshold *exposure* to the defendant's defective asbestos-containing products, *and* must further establish in reasonable medical probability that a particular exposure or series of exposures was a 'legal cause' of his injury, i.e. a *substantial factor* in bringing about the injury." *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 981 (emphasis in original).

Not all exposures are sufficient to meet the "substantial factor" test. For example, the *Rutherford* Court said that the "length, frequency, proximity and intensity of exposure" should be considered along with "the peculiar properties of the individual product" in determining whether a particular exposure contributed "significantly enough." *Id.* at 975, 977.[2] Clearly, the Court appreciated that "each and

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Motors of America, Subaru of America, Inc., Suzuki Motor of America, Inc. and Toyota Motor North America, Inc.

The NFIB Small Business Legal Center, a nonprofit, public interest law firm established to protect the rights of America's small-business owners, is the legal arm of the National Federation of Independent Business (NFIB). NFIB is the nation's oldest and largest organization dedicated to representing the interests of small-business owners throughout all fifty states. The approximately 325,000 members of NFIB own a wide variety of America's independent businesses from manufacturing firms to hardware stores.

The Motor & Equipment Manufacturers Association (MEMA) represents vehicle suppliers that manufacture and remanufacture components and systems for use in passenger cars and heavy trucks providing original equipment (OE) to new vehicles as well as aftermarket parts to service, maintain and repair over 256 million vehicles on the road today. Suppliers are the largest employers of manufacturing jobs in the U.S. directly employing over 734,000 Americans with a total employment impact of 3.6 million jobs. Our members lead the way in developing advanced, transformative technologies that enable safer, smarter and more efficient vehicles, all within a rapidly growing global marketplace with increased regulatory and customer demands. Ultimately, about two-thirds of the value of today's vehicles come from suppliers. MEMA represents vehicle suppliers through the following four divisions: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), Motor & Equipment Remanufacturers Association (MERA) and Original Equipment Suppliers Association (OESA).

Truck Trailer Manufacturers Association, Inc. (TTMA) is an international trade association whose current membership produces more than 90% of the truck trailers built in the United States. TTMA's Associate Members include more than 100 global material and component suppliers who keep those lines moving. TTMA efforts engage policies and regulations that play a role in assuring the timely, smooth flow of material to keep production flowing or that affect the cost of production.

The American Tort Reform Association (ATRA) is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For over two decades, ATRA has filed *amicus curiae* briefs in cases before state and federal courts that have addressed important liability issues.

[2] *See also Lineaweaver v. Plant Insulation Co.* (1st Dist. 1995) 31 Cal.App.4th 1409, 1416-17 ("Many factors are relevant in assessing the medical probability that an exposure contributed to

every exposure" to asbestos is not sufficient to satisfy the substantial factor test, otherwise the care the Court took to consider the "length, frequency, proximity and intensity of exposure" would be superfluous.

Rutherford's substantial factor test is grounded in the Restatement (Second) of Torts § 431 and the fundamental *dose requirement* of toxicology. *See* David L. Eaton, Scientific *Judgment and Toxic Torts—A Primer in Toxicology for Judges and Lawyers* (2003) 12 J.L. & Pol'y 5, 11 ("Dose is the single most important factor to consider in evaluating whether an alleged exposure caused a specific adverse effect."). Since the time of Paracelsus, toxicology has rested on the bedrock principle that "the dose makes the poison." *See* Federal Judicial Center, *Reference Manual on Scientific Evidence,* "Reference Guide on Toxicology," at 636 (3d ed. 2011) ("all chemical agents are intrinsically hazardous – whether they cause harm is only a question of dose.").

A tension has arisen between *Rutherford*'s "substantial factor" test and other language in *Rutherford* which states that a plaintiff "may prove causation . . . by demonstrating that the plaintiff's exposure to defendant's asbestos-containing product in reasonable medical probability was a substantial factor in contributing to the aggregate dose of asbestos the plaintiff inhaled or ingested, and hence to the *risk* of developing asbestos-related cancer." *Rutherford,* 16 Cal.4th at 984.

In cases such as this one,[3] plaintiffs have been allowed to prove causation merely by showing some exposure to a defendant's product and presenting "any exposure" expert testimony. As applied in California, the "any exposure" theory – sometimes called the "any fiber," "cumulative exposure," or "every exposure above background" theory – contends that *any* exposure to asbestos during a person's lifetime substantially contributes to the *risk* of disease. Consequently, any exposure can be considered causative.

As a result of this expansive interpretation of *Rutherford*, the two-part test in *Rutherford* has been diluted into a single test that equates exposure with causation. This approach "not only completely abandon[s] the most fundamental common law principles governing tort causation, but [is] also irreconcilable with the relaxed, special rule set forth in *Rutherford* itself." Craig Woods et al., *Asbestos Litigation in California: The Creation And Retroactive Application of Special, Expansive, Asbestos –Only Rules of Liability – Part One* (Aug. 26, 2015) 30-14 Mealey's Litig. Rep.: Asbestos 25; *see also* Steven D. Wasserman et al., *Asbestos Litigation in California: Can it Change for the Better?* (2007) 34 Pepp. L. Rev. 883, 894 (*Rutherford*'s

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plaintiff's asbestos disease. Frequency of exposure, regularity of exposure, and proximity of the asbestos product to plaintiff are certainly relevant" in addition to "the type of asbestos product to which plaintiff was exposed, the type of injury suffered by plaintiff, and other possible sources of plaintiff's injury.") (citations omitted).

[3] *See also Izell v. Union Carbide Corp.* (2d Dist. 2014) 231 Cal.App.4th 962; *Jones v. John Crane, Inc.* (1st Dist. 2005) 132 Cal.App.4th 990.

"substantial factor" test "has been much quoted, interpreted, and misapplied to the point that any exposure to asbestos, however insubstantial, seems to be sufficient for a plaintiff to defeat summary judgment.").

No other jurisdiction in the entire country has embraced the permissive causation standard adopted by the Court of Appeal. To the contrary, "a growing number of courts have expressly considered and rejected the construction of *Rutherford* adopted in subsequent California appellate court decisions [including this case]: that every occupational exposure, regardless of extent or the presence of other more extensive and/or dangerous exposures, may be a substantial contributing factor of asbestos-related disease." Herb Zarov et al., *Asbestos Litigation in California: The Creation And Retroactive Application of Special, Expansive, Asbestos –Only Rules of Liability – Part Two* (Aug. 26, 2015) 30-14 Mealey's Litig. Rep.: Asbestos 26; David E. Bernstein, *Getting to Causation in Toxic Tort Cases* (2008) 74 Brook. L. Rev. 51, 59 ("The recent, increasingly strict exposure cases . . . reflect a welcome realization by state courts that holding defendants liable for causing asbestos-related disease when their products were responsible for only *de minimis* exposure to asbestos, and other parties were responsible for far greater exposure, is not just.").[4]

This Court should resolve the tension between *Rutherford* and decisions such as the one from the Court of Appeal below. The Court should clarify what evidence is needed to satisfy the "substantial factor" test, bring California law more into line with other states, and address the state's status as an extreme outlier on asbestos causation.

For example, the Ninth Circuit very recently rejected the "each and every exposure" theory of causation in a maritime case as "precisely the sort of unbounded liability that the substantial factor test was developed to limit." *McIndoe v. Huntington Ingalls Inc.* (9th Cir. Mar. 1, 2016) 2016 WL 1253903, at *5. Other courts rejecting the "any exposure" theory include the Sixth Circuit Court of Appeals; the highest courts of Pennsylvania, Texas, and arguably Virginia, among many other courts.

The Sixth Circuit Court of Appeals rejected the "any exposure" theory as a basis for asbestos causation in *Moeller v. Garlock Sealing Technologies, LLC* (6th Cir. 2011) 660 F.3d 950; *Martin v. Cincinnati Gas & Electric Co.* (6th Cir. 2009) 561 F.3d 439; *Lindstrom v. A-C Prod. Liab. Trust* (6th Cir. 2005) 424 F.3d 488; and *Pluck v. B.P. Oil Pipeline Co.* (6th Cir. 2011) 640 F.3d 671 (benzene). In *Moeller*, the court held:

> While [decedent's] exposure to Garlock gaskets may have contributed to his mesothelioma, the record simply does not support an inference that it was a *substantial* cause of his mesothelioma. Given that the Plaintiff

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[4] *See also* Mark A. Behrens & William L. Anderson, *The "Any Exposure" Theory: An Unsound Basis for Asbestos Causation and Expert Testimony* (2008) 37 Sw. U. L. Rev. 479; William L. Anderson et al., *The "Any Exposure" Theory Round II: Court Review of Minimal Exposure Expert Testimony in Asbestos and Toxic Tort Litigation Since 2008* (2012) 22 Kan. J.L. & Pub. Pol'y 1.

> failed to quantify [decedent's] exposure to asbestos from Garlock gaskets and that the Plaintiff concedes that [decedent] sustained massive exposure to asbestos from non-Garlock sources, there is simply insufficient evidence to infer that Garlock gaskets probably, as opposed to possibly, were a substantial cause of [decedent's] mesothelioma.

Moeller, 660 F.3d at 955. According to the court, "saying that exposure to [defendant's] gaskets was a substantial cause of [decedent's] mesothelioma would be akin to saying that one who pours a bucket of water into the ocean has substantially contributed to the ocean's volume." *Id.*; *see also Martin*, 561 F.3d at 443 (noting the "any exposure" approach "would make every incidental exposure to asbestos a substantial factor").

The Pennsylvania Supreme Court affirmed the exclusion of expert testimony based on the "any exposure" theory in *Betz v. Pneumo Abex, LLC* (Pa. 2012) 44 A.3d 27; *see also Gregg v. V-J Auto Parts, Inc.* (Pa. 2007) 943 A.2d 216; *Howard ex rel. Estate of Ravert v. A.W. Chesterton, Inc.*, (Pa. 2013) 78 A.3d 605. The *Betz* court found that that theory was in "irreconcilable conflict with itself" because "one cannot simultaneously maintain that a single fiber among millions is substantially causative, while also conceding that a disease is dose responsive." *Id.* at 56. The court added: "[W]e do not believe that it is a viable solution to indulge in a fiction that each and every exposure to asbestos, no matter how minimal in relation to other exposures, implicates a fact issue concerning substantial-factor causation in every 'direct-evidence' case." *Id.* at 56-57 (quoting *Gregg*, 943 A.2d at 226-27).

Similarly, the Texas Supreme Court in *Borg-Warner Corp. v. Flores* (Tex. 2007) 232 S.W.3d 765, an asbestos case brought by a retired brake mechanic, rejected the idea that mere proof of exposure is sufficient for causation. *See id.* at 773–74 ("[T]he court of appeals erred in holding that '[i]n the context of asbestos-related claims, if there is sufficient evidence that the defendant supplied *any* of the asbestos to which the plaintiff was exposed, then the plaintiff has met the burden of proof.'" (emphasis in original)). The Texas Supreme Court held that, in order to prove causation, a plaintiff must show "[d]efendant-specific evidence relating to the approximate dose to which the plaintiff was exposed, coupled with evidence that the dose was a substantial factor in causing the asbestos-related disease." *Id.* at 773.

More recently, in *Georgia-Pacific Corp. v. Bostic* (Tex. 2014) 439 S.W.3d 332, the Texas Supreme Court held that "even in mesothelioma cases proof of 'some exposure' or 'any exposure' alone will not suffice to establish causation." *Id.* at 338; *see also Georgia-Pacific Corp. v. Stephens* (Tex.App.-Hous. 2007) 239 S.W.3d 304; *Smith v. Kelly-Moore Paint Co., Inc.* (Tex.App.-Fort Worth 2010) 307 S.W.3d 829.

State appellate courts and many state and federal trial courts have also rejected "any exposure" testimony. *See Brooks v. Stone Architecture, P.A.* (Miss.Ct.App. 2006) 934 So. 2d 350; *McPhee v. Ford Motor Co.* (Wash.App. Oct. 16, 2006) 135 Wash.App.1017, 2006 WL 2988891. In *Smith v. Ford Motor Co.* (D. Utah Jan. 18,

2013) 2013 WL 214378, the court "agree[d] with the general assessment of ... various state and federal courts that the every exposure theory does not qualify as admissible expert testimony." *Id.* at *5. The court said that "any exposure" opinion testimony "asks too much from too little evidence as far as the law is concerned." *Id.* at *3.[5]

II. Guidance is Needed as to Whether "Any Exposure" Testimony Must Be Excluded as Speculative Under *Sargon*

In *Sargon v. University of Southern California* (2012) 55 Cal.4th 747, the Court weighed in heavily to provide a broad and more robust gatekeeper role for trial judges. *Sargon* was not an asbestos case, but involved an expert theorizing about future profits at a dental implant company. The Court said that expert testimony must not be speculative and that "trial courts have a substantial 'gatekeeping' responsibility." *Id.* at 769. The Court held: "[U]nder Evidence Code sections 801, subdivision (b) and 802, the trial court acts as a gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative." *Id.* at 771-72.

Under *Sargon*, the trial court "does not resolve scientific controversies," *id.* at 773, but that does not preclude courts from excluding testimony that is based upon unreliable principles and methodology. With respect to "any exposure" testimony in particular, outside of California the "judicial reception to this theory has been largely negative," because the theory "lacks sufficient support in facts and data . . . cannot be tested, has not been published in peer-reviewed works, and has no known error rate." *Vedros v. Northrup Grumman Shipbuilding, Inc.* (E.D. La. 2015) 119 F. Supp. 3d 556, 562-63; *see also Yates v. Ford Motor Co.* (E.D.N.C. June 29, 2015) 113 F. Supp. 3d 841, 846, *reconsideration denied*, 2015 WL 6758983. The "any exposure" theory is not scientific, it is mere speculation, and should not be permissible under the scrutiny required by *Sargon*.

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[5] *See also Krik v. Crane Co.* (N.D. Ill. 2014) 76 F. Supp. 3d 747; *Comardelle v. Pa. Gen. Ins. Co.* (E.D. La. 2015) 76 F. Supp. 3d 628; *Stallings v. Georgia-Pacific Corp.* (W.D. Ky. Nov. 17, 2015) 2015 WL 7258518; *Lund v. 3M Co.* (C.D. Cal. July 21, 2015) 2015 WL 4497800; *Spychalla v. Boeing Aerospace Operations* (E.D. Wis. June 3, 2015) 2015 WL 3504927, *reconsideration denied* (E.D. Wis. July 8, 2015) 2015 WL 4130652; *Suoja v. Owens-Illinois, Inc.* (W.D. Wis. May 14, 2015) 2015 WL 2341436; *Mortimer v. A.O. Smith Corp.* (E.D. Pa. Jan. 6, 2015) 2015 WL 1606149; *Davidson v. Georgia Pacific LLC* (W.D. La. July 14, 2014) 2014 WL 3510268; *Mannahan v. Caterpillar, Inc.* (Ky. Jefferson Cnty. Cir. Ct. Feb. 17, 2014) 2014 WL 699090; *Anderson v. Ford Motor Co.* (D. Utah 2013) 950 F. Supp. 2d 1217; *Sclafani v. Air & Liquid Sys. Corp.* (C.D. Cal. 2014) 14 F. Supp. 3d 1351; *In re Asbestos Prods. Liab. Litig (No. VI) (Sweeney v. Saberhagen Holdings, Inc.)* (E.D. Pa. Jan. 13, 2011) 2011 WL 346822, *adopted* (E.D. Pa. Feb. 3, 2011) 2011 WL 359696; *Daly v. Arvinmeritor, Inc.* (Fla. Cir. Ct. Broward Cnty. Nov. 30, 2009) 2009 WL 4662280; *Free v. Ametek* (Wash. Super. Ct. King Cnty. Feb. 28, 2008) 2008 WL 728387; *In re W.R. Grace & Co.* (Bankr. D. Del. 2006) 355 B.R. 462.

III. Asbestos Litigation Environment in Which Petition Must Be Considered

In earlier years, the asbestos litigation typically pitted a "dusty trade" worker "against the asbestos miners, manufacturers, suppliers, and processors who supplied the asbestos or asbestos products that were used or were present at the claimant's work site or other exposure location." James S. Kakalik et al., *Costs of Asbestos Litigation* 3 (Rand Corp. 1983). Much of this work involved insulation that was friable (could crumble easily when dry) and contained amphibole fibers. In the 1990s, the asbestos litigation had reached such proportions that the Supreme Court of the United States referred to the litigation as a "crisis," *Amchem Prods. Inc. v. Windsor* (1997) 521 U.S. 591, 597, and a California Court of Appeal noted that the courts were "overburdened with asbestos litigation." *Hansen v. Owens-Corning Fiberglas Corp.* (1st Dist. 1996) 51 Cal.App.4th 753, 760.

By the end of 2002, virtually all of the major asbestos producers had entered bankruptcy. Pursuant to Section 524(g) of the federal Bankruptcy Code, these companies were able to reorganize in bankruptcy, channel their asbestos liabilities into trusts, and emerge from bankruptcy with immunity from future asbestos-related litigation. *See* 11 U.S.C. § 524(g); *see also* Lloyd Dixon et al., *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts* (Rand Corp. 2010).

Plaintiffs' lawyers adapted to the exit of the major asbestos producers from the tort system by focusing on still-solvent defendants associated with asbestos-containing products such as gaskets, pumps, automotive friction products, and residential construction products. These companies had not been the focus of the litigation when the major asbestos producers were subject to personal injury lawsuits because their products were made of a type of asbestos fiber (chrysotile) that is far less potent than amphibole insulation,[6] and may not be potent at all except in large doses.[7] Further, in the case of gaskets and friction products, the products were encapsulated, and not easily friable.

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[6] *See, e.g., Bartel v. John Crane, Inc.* (N.D. Ohio 2004) 316 F. Supp. 2d 603, 605 ("While there is debate in the medical community over whether chrysotile asbestos is carcinogenic, it is generally accepted that it takes a far greater exposure to chrysotile fibers than to amphibole fibers to cause mesothelioma."), *aff'd sub nom. Lindstrom v. A-C Prod. Liab. Trust* (6th Cir. 2005) 424 F.3d 488.

[7] For instance, multiple studies of vehicle mechanics who worked with chrysotile-containing brake pads have not found a consistent increased incidence of mesothelioma. *See* Francine Laden et al., *Lung Cancer and Mesothelioma Among Male Automobile Mechanics: A Review* (2004) 19 Revs. on Envtl. Health 39; Michael Goodman et al., *Mesothelioma and Lung Cancer Among Motor Vehicle Mechanics: A Meta-analysis* (2004) 48 Annals Occup. Hygiene 30; *see also* Joseph Sanders, *The 'Every Exposure' Cases and the Beginning of the Asbestos Endgame* (2014) 88 Tul. L. Rev. 1153, 1183 (discussing asbestos litigation against brake product defendants and noting "the epidemiological research that overall has failed to show a consistent significant correlation between employment in these areas and an increased incidence of mesothelioma").

The exit of the asbestos producers from the tort system produced exponential growth in the dimensions of the litigation because of the expanded range of defendants dragged into the litigation. The Towers Watson consulting firm has identified "more than 10,000 companies, including subsidiaries, named in asbestos litigation." Jenni Biggs et al., *A Synthesis of Asbestos Disclosures from Form 10-Ks — Updated* 1 (Towers Watson June 2013). Companies that used to be seen as peripheral defendants are "now bearing the majority of the costs of awards relating to decades of asbestos use." American Academy of Actuaries' Mass Torts Subcommittee, *Overview of Asbestos Claims Issues and Trends* 3 (Aug. 2007). One plaintiffs' attorney described the asbestos litigation as an "endless search for a solvent bystander." *'Medical Monitoring and Asbestos Litigation'–A Discussion with Richard Scruggs and Victor Schwartz*, 17:3 Mealey's Litig. Rep.: Asbestos 5 (Mar. 1, 2002) (quoting Mr. Scruggs); *see also* Steven B. Hantler et al., *Is the Crisis in the Civil Justice System Real or Imagined?* (2005) 38 Loy. L.A. L. Rev. 1121, 1151-52 (discussing spread of asbestos litigation to "peripheral defendants").[8]

The "any exposure" theory is the path that allows plaintiffs' counsel to sue countless defendants every year whose supposed "contribution" to disease is trivial (or indeed nonexistent) and where the dose is far below the type actually known to cause disease. *See* Joseph Sanders, *The 'Every Exposure' Cases and the Beginning of the Asbestos Endgame* (2014) 88 Tul. L. Rev. 1153, 1183 ("In a few of the 'any exposure' cases, one gets the impression that the plaintiff has sued the named defendant because there is no other defendant available.").

Apart from being unfair to today's asbestos defendants, the any exposure theory attracts filings by nonresidents. "Litigation tourists" are drawn to California by the belief that the state's asbestos litigation rules will give them an advantage. *See* Victor E. Schwartz et al., *Litigation Tourism Hurts Californians* (Nov. 15, 2006) 21:20 Mealey's Litig. Rep.: Asbestos 41 (*thirty percent* of plaintiffs in a sample of 1,047 asbestos filings in California had addresses outside the state); *see also* Patrick M. Hanlon & Anne Smetak, *Asbestos Changes* (2007) 62 N.Y.U. Ann. Surv. Am. L. 525, 599 ("plaintiffs' firms are steering cases to California, partly to the San Francisco-Oakland area, which is traditionally a tough venue for defendants, but also Los Angeles, which was an important asbestos venue in the 1980s but is only recently seeing an upsurge in asbestos cases."); Alan Calnan & Byron G. Stier, *Perspectives on Asbestos Litigation: Overview and Preview* (2008) 37 Sw. U. L. Rev. 459, 462 ("[T]here is a sense locally among the bar that Southern California may be in the midst of a surge.").

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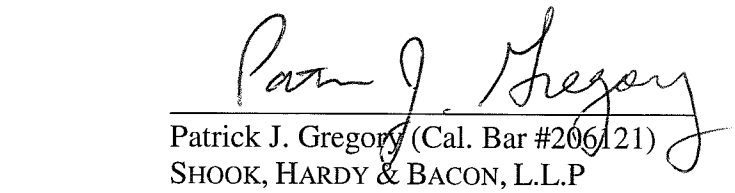
[8] The universe of plaintiffs has expanded too. For example, there has been an increase in cases claiming exposures in settings outside the workplace, including "take-home" cases involving family members exposed to asbestos at home through contact with an occupationally exposed worker's clothes, plaintiffs exposed to asbestos through projects such as home remodeling, and through "shade tree" automotive brake repair.

If the Court of Appeal's decision stands, it will reinforce California's status as a magnet jurisdiction and signal to plaintiffs nationwide that they should file in California because they can obtain judgments based on flimsy expert causation testimony that has been rejected elsewhere.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court grant Honeywell International, Inc.'s Petition.

Respectfully submitted,



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I certify that on April 29, 2016, I sent an original and eight copies of the foregoing by courier to:

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