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June 21, 2021

Honorable Frances Rothschild, Presiding Justice
and Associate Justices Victoria Gerrard Chaney and Helen I. Bendix
Second Appellate District, Division One
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, California 90013

Re: *Swanson v. The Marley-Wylain Company*
Case No. B294181
Opinion Date: June 4, 2021
Request for Publication

To The Honorable Justices:

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I am writing on behalf of the Association of Southern California Defense Counsel (“ASCDC”). Pursuant to Rule 8.1120 of the California Rules of Court, we request that the Court publish its opinion in *Swanson v. The Marley-Wylain Company*, B294181, Second Appellate District, Division One, which was filed on June 4, 2021.

ASCDC is the nation’s largest regional organization of lawyers who specialize in defending civil actions. ASCDC counts as members approximately 1,000 attorneys in Southern and Central California. ASCDC is actively involved in assisting courts on issues of interest to its members. Many of ASCDC’s members specialize in the area of products liability and asbestos-exposure claims, and many regularly appear before the California Court of Appeal. This Court’s opinion provides helpful guidance for applying the choice of law doctrine. It explains the subtle but important distinction between the causation standard in California (substantial factor *contributing to an increased risk of a plaintiff’s injury*) and the causation standard in Michigan (substantial factor in *producing the injury*). Michigan is a forum that is disproportionately involved in California choice of law motions. The opinion also explains why a new trial is the proper remedy where the jury was erroneously instructed on California law, even though the evidence was sufficient to support the verdict under Michigan law. Therefore, ASCDC has an interest in having this Court’s opinion published.

The Court’s opinion meets the standards for publication for a number of reasons.

First, it explains that a choice of law motion need not address every element of every cause of action in order to satisfy the requirement that the choice of law determination be made on an issue-by-issue basis. The explanation of this

nuanced distinction satisfies the requirements set forth in both Rule 8.1115, subdivision (c)(3) [...explains ... with reasons given, an existing rule of law] and subdivision (c)(4) [Advances a ... clarification ... or construction of a provision of a constitution, statute, ordinance, or court rule]. The choice of law issue arises frequently, especially in the asbestos-exposure context. See *McCann v. Foster Wheeler LLC* (2010) 48 Cal.4th 68; *Cossmann v. DaimlerChrysler Corp.* (2003) 108 Cal.App.4th 370; *Sabetian v. Fluor Enterprises, Inc.* (Cal. Ct. App., Mar. 24, 2021, No. B298989) 2021 WL 1115575; *Green v. CertainTeed Corporation* (Cal. Ct. App., Feb. 10, 2015, No. A134983) 2015 WL 556407.

Second, the opinion expounds on the important distinction between the asbestos-causation standard under California law as opposed to Michigan law. California is often the forum of choice in asbestos cases, even where the exposures occurred largely or exclusively in other states, including Michigan, where a large number of claims arise. In fact, Michigan ranks in the top 10 states for mesothelioma deaths, with a higher rate than California (1 in 100,000 deaths vs. 0.8 in 100,000 deaths).¹ Michigan “is part of the Rust Belt area of the United States, which tends to have a higher amount of asbestos exposure and a greater incidence of mesothelioma than other states.”² ASCDC members often defend claims in which the asbestos exposure allegedly attributable to their client occurred primarily or exclusively in Michigan.

And while the opinion explains that the evidence in this case could have supported a liability finding, even under Michigan’s stricter standard, it was prejudicial error to instruct the jury on California law. This meets the grounds for publication set forth in subdivision (c)(2) [Applies an existing rule of law to a set of facts significantly different from those stated in published opinions] and (c)(6) [Involves a legal issue of continuing public interest]. The Court’s reasoned analysis would provide much needed guidance in applying choice of law principles in all cases in which that doctrine arises, and it makes a significant contribution to the legal literature regarding the differing legal standards in California and Michigan.

For all of the foregoing reasons, ASCDC respectfully requests publication of the *Swanson v. The Marley-Wylain Company* decision.

Sincerely,



J. Alan Warfield
Polsinelli, LLP on behalf of ASCDC

¹ See the Centers for Disease Control and Prevention’s United States Cancer Statistics: Data Visualizations at <https://gis.cdc.gov/Cancer/USCS/#/AtAGlance/>

² See Mesothelioma.com at <https://www.mesothelioma.com/states/michigan/>

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and not a party to the within action; my business address is **2049 Century Park East, Suite 2900, Los Angeles, CA 90067.**

On June 21, 2021, I served the following document(s) described **AMICUS LETTER IN SUPPORT OF REQUEST FOR PUBLICATION (Cal. Rules of Court, rule 8.1120)** on the interested parties in this action as follows:

See Attached Service List

BY ELECTRONIC SERVICE: I caused all the pages of the document identified above to be served by electronic submission through TrueFiling website: <https://tf3.truefiling.com>.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on June 21, 2021, at Los Angeles, California.

Sheree Anderson

Sheree Anderson

SERVICE LIST

SWANSON v. THE MARLEY-WYLAIN COMPANY, et al.
Case No. B294181

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