Case No. S232754

IN THE SUPREME COURT OF CALIFORNIA

WILLIAM JAE KIM, et al.,
Plaintiffs and Appellants,

v.

TOYOTA MOTOR CORPORATION, et al.,
Defendants and Respondents.

Second District Court of Appeal No. B247672
Los Angeles County Superior Court
The Honorable Raul A. Sahagun
Civil Case No. VC059206

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS AND RESPONDENTS TOYOTA MOTOR CORPORATION, ET AL.

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

Pursuant to California Rule of Court 8.520(f), the Chamber of Commerce of the United States of America (the "Chamber") respectfully requests permission to file the accompanying brief as *amicus curiae* in support of Defendants and Respondents, Toyota Motor Corporation, *et al.*[1]

STATEMENT OF INTEREST AND PROPOSED *AMICUS* BRIEF

The Chamber is the world's largest federation of business, trade, and professional organizations, representing 300,000 direct members and an

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[1] No party or counsel for any party authored this brief, participated in its drafting, or made any monetary contributions intended to fund the preparation or submission of the proposed brief. *See* Cal. Rules of Court, rule 8.520(f)(4)(A). The Chamber certifies that no person or entity other than the Chamber, its counsel, or its members authored or made any monetary contribution intended to fund the preparation or submission of the proposed brief.

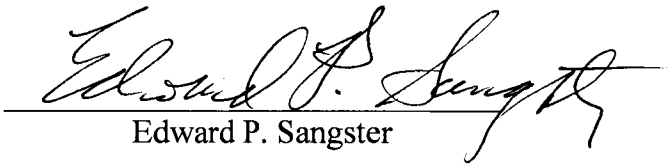
underlying membership of more than three million U.S. businesses and corporations of every size, from every sector, and in every geographic region of the country. In particular, the Chamber has many members located in California and others who conduct substantial business in the State. For that reason, the Chamber and its members have a significant interest in the sound and equitable administration of the California courts. The Chamber routinely advocates for its members' interests in courts across the nation by, among other activities, filing *amicus curiae* briefs in cases implicating issues of vital concern to the nation's business community. In fulfilling that role, the Chamber has appeared many times before this Court and the California Courts of Appeal.

The Chamber's members operate in nearly every industry and business sector in the United States. These members have a vital interest in promoting consistent, reasonable, and adaptable evidentiary rules. This interest extends to the contours of this and similar cases alleging claims for design defects of products, where it is important to balance the right of plaintiffs to litigate their claims and the right of defendant manufacturers to produce relevant evidence that influenced their designs.

The Plaintiffs' lopsided evidentiary rule, if adopted by this Court, would create a bizarre conundrum where plaintiffs would be allowed to introduce evidence of industry practice to support their design-defect claims, but would effectively bar defendants from introducing evidence of industry practice that informed the defendants' design decisions in the first place. Plaintiffs' rule would not only curtail manufacturers' design-defect defenses by limiting their ability to admit relevant evidence of industry practice; it could also deter manufacturers from developing new and safer products by mitigating or even eliminating market incentives to innovate. It is all but certain that if this Court adopts the Plaintiffs' one-way evidentiary ratchet for automobile cases, other enterprising plaintiffs' lawyers will no doubt

rely on this Court's decision in other contexts. Indeed, as the Chamber explains in this brief, evidence of industry practice is integral to and admissible in many areas of law, reflecting its centrality in a myriad of business decisions.

October 6, 2016 **K&L GATES LLP**

By: 
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AMICUS CURIAE BRIEF

INTRODUCTION

Appellants ("Plaintiffs") propose an evidentiary rule that would categorically prevent a defendant manufacturer from offering *any* evidence of industry practices and customs that informed the manufacturer's design decisions—evidence that may very well be relevant and probative to the risk-benefit test. But Plaintiffs wish to have their cake and eat it too. At the same time they seek to categorically exclude industry-practice evidence from defendants, Plaintiffs would have this Court allow plaintiffs to submit industry-practice evidence to support claims that products are defectively designed. Plaintiffs' rule would effectively create a one-sided standard. On one hand, plaintiffs in such cases could point to technological advances in the industry to show the existence of design defects in a product that fails to implement those advances. Then, on the same hand, plaintiffs could preclude any evidence of industry practice from manufacturers that would explain the risks and benefits of the design at issue.

Such a transparently one-sided evidentiary standard should be rejected for at least two reasons. First, it cannot be squared with California evidentiary rules, which reject *per se* standards for admitting or excluding evidence. The touchstone of admissibility is "relevance," and as the Chamber explains in this *amicus* brief, evidence of industry practice is frequently relevant and probative, whether in automobile cases or cases arising in other sectors. On virtually a daily basis, manufacturers take into account industry practices to inform their design decisions, particularly in a competitive marketplace.

The Court of Appeal correctly rejected a categorical evidentiary rule, instead fashioning a standard that preserves the traditional flexibility of trial courts to make evidentiary decisions on a case-by-case basis, depending on

the relevance, probative value, and purpose for which industry-practice evidence is introduced. The Court of Appeal correctly recognized that a categorical bar on industry-practice evidence submitted by defendants would result in poorly reasoned decisions by juries.

Nor is the Court of Appeal alone. Indeed, most other jurisdictions hold that industry-practice evidence is admissible when relevant in strict-products-liability cases, contract disputes, and general tort actions affecting nearly every industry across the nation. This reasonable, flexible approach allows manufacturers to innovate naturally and does not eliminate incentives inherent in a competitive, price-sensitive market.

Second, the Plaintiff's rule would effectively penalize manufacturers when they develop new and safer products and introduce them into the market ahead of their competitors. Such a punitive evidentiary rule threatens to stifle innovation by exposing companies to greater liability whenever they create new and safer versions of products.

ARGUMENT

I. THE LAW SHOULD REFLECT THE IMPORTANCE OF INDUSTRY PRACTICE AS IT AFFECTS BUSINESS AND LEGAL DECISIONS IN NUMEROUS CONTEXTS ACROSS A WIDE VARIETY OF INDUSTRIES.

To businesses across the country, "industry practice" is just part of the everyday market milieu in which they operate. Oftentimes, as in this case, industry practice evidence is the collective wisdom and experience in the industry in designing products to account for costs, benefits, and the advancement of new technologies. Recognizing this, many jurisdictions in various legal contexts admit this information to help inform various court and jury decisions, including in strict-liability cases. This Court should continue in this tradition, as did the Court of Appeal.

A. Evidence of Industry Practice Is Relevant and Admissible in Many Areas of Law, Demonstrating the Value of Industry Practice in Analyzing Business Decision-Making.

Beyond the specific context of this automotive-related case, evidence of industry practice often qualifies as relevant and admissible evidence in a variety of legal contexts and in numerous different industries.

To start in the realm of this particular case, most jurisdictions that apply design-defect tests in products-liability cases comparable to California's admit evidence of industry practice as relevant to the question of defect. *See, e.g., Green v. Schutt Sports Mfg. Co.* (5th Cir. 2010) 369 Fed. Appx. 630, 636-37 (holding, in a dispute over the manufacturing of sporting goods, that under Texas law industry practice is "relevant if offered to rebut the plaintiff's attempt to prove that a safer design was technological possible and economically feasible"); *Austin v. Will-Burt Co.* (5th Cir. 2004) 361 F.3d 862, 874 (finding that evidence of the practice of the "broadcast industry" not to insulate certain machinery used around power lines was relevant under Mississippi's design defect test); *Carter v. Massey-Ferguson, Inc.* (5th Cir. 1983) 716 F.2d 344, 348 (noting in a dispute over logging machinery that "evidence of industry custom is relevant to the ordinary user's expectations" and relevant to the risk-utility determination in Texas design defect claims). *See also* David G. Owen, *Proof of Product Defect* (2004) 93 Ky. L.J. 1, 7 ("A great majority of courts allow use of relevant evidence of industry custom."); David A. Urban, Note, *Custom's Proper Role in Strict Product Liability Actions Based on Design Defect* (1990) 38 UCLA L. Rev. 439, 442 n.12 (compiling cases from many states that admit evidence of industry practice in design defect cases).

In those jurisdictions that admit industry-practice evidence, though compliance or deviance from industry practice is not generally dispositive on the question of defect, it is often held to be relevant to "considerations of

cost, profits, or marketing strategies" under a risk-utility analysis, similar to California's risk-benefit test. Am. L. Prod. Liab. 3d § 17:78 (citing supporting cases from Arizona, Colorado, Florida, Illinois, Indiana, Louisiana, Missouri, New Jersey, South Dakota, South Carolina, Tennessee, and Texas); Owen, *supra*, 93 Ky. L.J. at 8-9 (noting that a "great majority" of jurisdictions hold that evidence of industry practice is "some evidence" bearing on defect). Moreover, some state legislatures have codified the relevance of industry practice as evidence in products liability cases. *See, e.g.*, Ky. Rev. Stat. Ann. § 411.310 (West 2016); Wash. Rev. Code Ann. § 7.72.050 (West 2016) ("Evidence of custom in the product seller's industry . . . may be considered by the trier of fact."). These many other jurisdictions recognize that because industry practice is a crucial influence in manufacturers' design decisions, such evidence is relevant and should be admissible in design-defect litigation.

Beyond torts, many jurisdictions apply industry-practice evidence in various other contexts, reflecting the centrality of industry practice as a factor in business decision-making.

For example, industry practice is foundational in the realm of contracts law. The Restatement Second of Contracts, section 222, and the Uniform Commercial Code expressly permit relevant "usage of trade" evidence to explain or supplement language, even in fully integrated contracts. *See* Cal. U. Com. Code § 1303 (2007). The UCC assumes up front that "usages of trade were taken for granted when [contracts were] phrased." UCC § 2-202 (1977) cmt. 2. Additionally, in some jurisdictions, if "the jury concludes that there was a long standing, industry-wide 'custom and usage' it will have the effect of law and be binding on the parties." 2 Lane, Lane Goldstein Trial Technique § 11:150. Consequently, because contracts are so ubiquitous, the importance and relevance of industry practice is deeply

embedded in everyday commerce and business decisions across the country, including manufacturers' product design decisions.

To name only a few examples, industry-practice evidence has been held to be relevant and probative in the oil-and-gas industry, *Shell Offshore, Inc. v. Kirby Exploration Co. of Tex.* (5th Cir 1990) 909 F.2d 811, 816 ("It is in the interests of justice for the district court to explore the customs and practices in the offshore oil and gas industry dealing with the type of problem presented in this case [maintenance of abandoned offshore platform used to support pipeline]."), the banking industry, *Gill v. Arab Bank, PLC* (E.D.N.Y. 2012) 893 F. Supp.2d 523, 537 (allowing expert witnesses to testify as to "international banking practices" and the "customs and practices" of the United States banking industry); the insurance industry, *SR Intern. Bus. Ins. Co., Ltd. v. World Trade Center Props., LLC* (2nd Cir. 2006) 467 F.3d 107, 133 (allowing witnesses to testify about relevant "customs and practices of the insurance industry"); the sporting goods industry, *Green v. Schutt Sports Mfg. Co.* (5th Cir. 2010) 369 Fed. Appx. 630, 636-37 (holding in a products liability case that plaintiff cannot introduce evidence of industry practice and then argue that such evidence is inappropriate or inadmissible, and that evidence of industry practice is relevant to factors in a risk-utility analysis), and the entertainment industry, *Reach Music Pub., Inc. v. Warner Chappell Music* (S.D.N.Y. 2013) 988 F. Supp.2d 395, 403-04 (holding that expert testimony regarding music industry practice would be valuable to a jury in a complicated copyright case).

Although this is only a partial summary of the areas in which industry practice is admitted in cases as relevant to and probative of particular issues, it helps to provide context regarding where this case fits in the broader legal landscape.

B. Because of the Broad Scope of Industry Practice in the Law and its Crucial Value to Business Decision-Making, this Court Should Affirm the Court of Appeal's Reasonable, Flexible Evidentiary Rule.

Given the importance of industry practice, the Chamber urges this Court to affirm the Court of Appeal's decision and hold that relevant evidence of industry practice can be admitted and used as part of the risk-benefit test under California law. The Court of Appeal's decision strikes an appropriate balance, for at least the two following reasons.

First, industry-practice evidence may be useful to juries in understanding risks and benefits of new technology and, in particular, the cost of new innovations and the various "trade-offs" of implementing new technologies into certain products. As Respondents note in their brief, manufacturers cannot force new or additional technology into a product if consumers are not willing to pay the extra cost, regardless of how beneficial the additional features might be. (Resp't Merits Br., 11.) Consequently, in a competitive market, marginal cost-sensitive consumers often drive the pace of innovation. Any manufacturer that includes unwanted add-ons in its base product loses advantage to its competitors who can offer exactly what the consumer wants at a lower price. (*Id.*) Thus, manufacturers often have to gradually phase in new technology, testing the market response through optional add-ons, before making new features standard. (*Id.*, 11-12.)

This comports with this Court's decision in *Barker*, where this Court created the risk-utility test because it reasoned that an important consideration in determining the existence of a design defect is the "trade-offs" inherent in certain designs. *Barker v. Lull Engineering Co.* (1978) 20 Cal. 3d 413, 431, 447. This is not limited to the automotive context. Across many industries, industry practice can assist in explaining issues of feasibility, cost, and trade-offs between products, particularly in industries driven by consumer cost sensitivity, advancing technologies, and various degrees of

product lines and options. All of these considerations are consistent with *Barker*'s enumerated risk-benefit factors.

Second, the Court of Appeal's flexible approach that considers industry practice is principled and aligned with California law. Plaintiffs argue that industry-practice evidence sounds only in negligence, and that to admit such evidence in strict-liability, design-defect cases would be to "erode[] the doctrinal basis of strict liability." (Pls.' Opening Br., 39.) There are several problems with this argument.

Initially, as a matter of California law, the risk-benefit test is derived from negligence principles. *See Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 480 ("[O]ver the years, we have incorporated a number of negligence principles into the strict liability doctrine, including *Barker*'s risk/benefit test."). The risk-benefit test requires juries to consider whether, "in light of the relevant factors, . . . the benefits of the challenged design outweigh the risk of danger inherent in such design." *Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413, 432. This inquiry, by nature, is one of *reasonableness*—a similar inquiry to that inherent in a negligence analysis. Indeed, Plaintiffs elsewhere appear to concede this point, admitting that *Barker*'s "weighing process incorporates a *defined rationality*"; *i.e.*, reasonableness. (Pls. Opening Br., 37.)

Further, even setting that aside, evidence of industry practice is broader than just reasonableness; it bears on a product's potential defect. *See* David G. Owen, *Design Defects* (2008) 73 Mo. L. Rev. 291, 311 ("The risk-utility test for establishing design defectiveness is unaffected by whether the underlying recovery is negligence [or] strict liability in tort, . . . because the appropriate balance between a particular design feature's safety, costs, and effect on product utility remains the same."). As the Court of Appeal noted, "[t]he fact that [industry-practice] evidence may also be relevant to the standard of care in a negligence action does not justify its cate-

gorical exclusion in a strict products liability case." (Ct. Appeal Op., 17.) The central question in a strict-liability, design-defect case is whether a product's design is defective. To answer this, the risk-benefit test requires the jury to decide "whether the product's design is an acceptable compromise of competing considerations." *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 567 n.4. For a jury to properly and reasonably analyze a "product's design," it must have all the "competing considerations" to review, including evidence of industry practice, which is a central factor in manufacturers' design decisions. The Court of Appeal recognized this and so created a flexible rule that admits evidence of industry practice when, in the discretion of the trial judge, it is relevant to the determination of defect.

Finally, this Court already rejected an identical argument in *Barker*. In that case, an *amicus curiae* urged this Court to reject any test that would give juries discretion to "'weigh' or 'balance' a number of factors, or [would set] forth a list of completing considerations for the jury to evaluate in determining the existence of a design defect," arguing that any such test "rings of negligence." *Barker*, 20 Cal.3d at 433. The *amicus* advised this Court that to allow any sort of balancing framework into strict-liability, design-defect cases would run contrary to this Court's previous holding in *Cronin v. J.B.E. Olson Corporation*, (1972) 8 Cal.3d 121, which, as the *amicus* read it, "broadly preclude[d] any consideration of 'reasonableness' or 'balancing' in a product liability action." *Barker*, 20 Cal.3d at 433.

This Court rejected the concerns of *amicus* in *Barker* because: (1) *Cronin*'s central holding was only to lighten the burden on plaintiffs in design-defect cases by shifting the burden of proof to manufacturers; *Cronin* did not deal with balancing tests more broadly; (2) often, "it is simply impossible to eliminate the balancing or weighing of competing considerations in determining whether a product is defectively designed or not"; (3) the risk-benefit balancing test is totally distinct from the question of a man-

ufacturer's negligence: "in a strict liability case, as contrasted with a negligent design action, the jury's focus is properly directed to the condition of the product itself, and not to the reasonableness of the manufacturer's conduct"; and (4) the categorical bar of balancing tests plaintiffs proposed in *Barker* is inappropriate in design-defect cases: "[i]nasmuch as the weighing of competing considerations is implicit in many design defect determinations, an instruction which appears to preclude such a weighing process under all circumstances may mislead the jury." *Id.* at 433-34.

Plaintiffs in this case make the same argument as *amicus* in *Barker* regarding industry practice: "[t]he indiscriminate introduction of what others in the industry do as an alternative standard undercuts *Cronin*'s rejection of a [sic] ill-defined 'reasonableness' based on objective design criteria." Pls. Merits Br., 37. All the reasons for which this Court rejected *amicus*'s arguments in *Barker* apply with equal force to Plaintiffs' arguments in this case. The risk-benefit test represents the work of this Court in *Barker* to create a flexible standard by which juries in design-defect cases may hear all evidence relevant to either or both of the test's two prongs. This Court has recognized that, though they share some of the same principles, the risk-benefit test and a negligence analysis are distinct in practice. Consequently, there is no reason to categorically bar relevant evidence of industry practice under the risk-utility framework.

In light of the central importance of industry practice to manufacturers' design decisions and the application of this Court's decision to a number of industries, the Court of Appeal's adaptable approach is more appropriate than Plaintiffs' suggested categorical, one-size-fits-all bar. For these reasons, this Court should affirm the Court of Appeal's reasoning and permit industry-practice evidence to be introduced in design-defect cases when, in the discretion of the trial judge, it is relevant to and probative of either or both of the two prongs of the risk-benefit analysis.

II. ADMITTING EVIDENCE OF INDUSTRY PRACTICE PROTECTS AND PROMOTES RESEARCH, DEVELOPMENT, AND INNOVATION.

This Court, as it fashions a rule in this case, should seek to protect and promote existing market incentives for manufacturers to design and implement new safety features and innovations. The Court of Appeal's flexible rule—a case-by-case discretionary approach that admits industry practice evidence when relevant—allows manufacturers the freedom to innovate without fear of repercussion if they must later defend their design decisions in court. Plaintiffs' proposed evidentiary rule—a categorical bar on industry-practice evidence—would have the opposite effect.

New technology and product advancement happens gradually. In a competitive market, product manufacturers must innovate to gain a competitive advantage. *See Douglas Dynamics, LLC v. Buyers Products Co.* (Fed. Cir. 2013) 717 F.3d 1336, 1346 ("This court agrees with the general premise that competition serves the public interest. Among other things, it ensures competitive pricing and fosters innovation."). Yet, if manufacturers implement new features too quickly, they may lose an advantage to their competitors, especially if the new features are unknown or unwanted by the public. Consequently, as Respondents note in their brief, new technologies are often "phased in" gradually to promote "consumer acceptance" before making them standard. (Resp't Merits Br., 11-12.)

Plaintiffs' categorical bar would disrupt innovation's process. Plaintiffs' rule would find that a manufacturer's failure to incorporate innovative technology into a product is a design defect, and simultaneously bar the admission of evidence that would assist the jury by explaining industry practice regarding the implementation of new technologies. This one-sided rule could force potential liability on manufacturers for not incorporating new safety advancements into products at their earliest inception, thereby

removing manufacturers' incentives to develop new safety features in the first place. This is problematic, in at least two respects.

First, under Plaintiffs' proposed rule, once new safety technology is introduced to the market, manufacturers could be held liable if they do not immediately incorporate it into their products, even though it might be an unwise decision and inconsistent with industry practice. In other words, Plaintiffs' rule would create a liability standard pegged to the newest top-of-the-line safety innovation on the market, regardless of how prohibitively expensive it might be to incorporate into products, and regardless of the fact that consumers do not want the new feature. Each new safety advancement would raise the standard for what manufacturers would have to include in their products to stay ahead of liability. Although there is a countervailing market pressure on manufacturers to develop new technology to stay ahead of competition, Plaintiffs' rule could mitigate that incentive by penalizing innovation frontrunners through liability. Market safety leaders would not be able to show juries that they are, in fact, market safety *leaders* relative to their competition. As a result, rather than continue innovating and face potential increased liability for each new advancement, manufacturers could choose to decrease safety innovation and stay out of the liability limelight.

Second, relatedly, Plaintiffs' rule would preclude relevant industry-practice evidence of the costs associated with innovative new technology. Not all new technologies are cost-effective, particularly as they are being implemented; and industry practice, including evidence on market demand and consumer price sensitivity, and feasibility are important considerations in determining the existence of a purported design defect, as well as creating a rule that would not disincentivize innovation.

For example, suppose that plaintiff John Smith is a recreational league football player who sues helmet manufacturer Blackstone Helmets

after Smith is injured in a football game, alleging that Blackstone's helmet design is defective because it does not include a concussion-tracking data technology that Blackstone recently developed and implemented into its professional helmets. The tracking-data technology assists players and teams in tracking whether a certain impact causes a concussive event; but it is new and expensive, and it increases the cost of the helmet by 50 percent.

Under Plaintiffs' proposed rule, Blackstone would be precluded from presenting any evidence of industry practice that no other helmet manufacturers have included the tracking-data technology in its base retail line of helmets. Without relevant evidence of industry practice, the jury could not consider: (1) whether the additional 50 percent increase in the price for the base retail helmets would price Blackstone's helmets out of the market such that Blackstone could no longer sell its line of base retail helmets to recreational players like Smith; and (2) that no other manufacturer offered this new technology because no retail consumers wanted it. At some point, safety enhancements become too expensive for manufacturers to implement because consumers do not want to pay the extra cost of added safety. Manufacturers should be allowed to produce relevant industry-practice evidence to show that their product was the safest product *that consumers would buy*. Otherwise, the jury would have to decide in a vacuum whether the extra cost to Blackstone is worth the added safety to Smith. Depending on the "gravity of the danger," and the "likelihood that such danger would occur," both *Barker* factors, a jury in such context divorced from market reality could find that not including any number of prohibitively expensive and unwanted safety features, such as the tracking-data technology, was a design defect. Such a result could disincentivize Blackstone and other manufacturers from developing and implementing cutting-edge technology in the first place, knowing that any improvements they

make could simply be used to increase potential liability without the benefit of any defense or explanation.

Indeed, this Court has recognized this concern before. For example, in *Brown v. Superior Court*, (1988) 44 Cal. 1049, this Court held that strict liability should not apply to drug manufacturers in design-defect cases under the clear public-policy rationale that the public has an "interest in the development, availability, and reasonable price of drugs." *Id.* at 1061. This Court reasoned that "[i]f drug manufacturers were subject to strict liability, they might be reluctant to undertake research programs to develop some pharmaceuticals that would prove beneficial or to distribute others that are available to be marketed, because of the fear of large adverse monetary judgments." *Id.* at 1063. Consequently, this Court imposed a foreseeability limitation on the liability of drug manufacturers, following the lead of most other states that have considered the issue. *Id.* at 1069.

Plaintiffs' proposed rule here presents the same concerns as those addressed by *Brown*. Short of eliminating strict liability altogether, a sensible, pro-innovation approach in cases like this one would be to permit admission of industry-practice evidence to explain the context in which new technologies are implemented.

In short, the risk-benefit test requires juries essentially to evaluate "the costs and benefits of the untaken precaution," which involves "balancing the various costs of a particular accident prevention measure against the particular resulting safety benefits." David G. Owen, *Risk-Utility Balancing in Design Defect Cases*, 30 U. Mich. J.L. Ref. 239, 246. The Court of Appeal's flexible approach is consistent with this test and promotes innovation by allowing case-by-case adjudication of the relevance and merits of industry-practice evidence. Manufacturers would be permitted to introduce the full scope of the relevant cost and benefit factors that influenced their de-

signs—promoting just decisions, and allowing manufacturers' *ex ante* cost-benefit analyses to be factored into the risk-benefit test by juries.

CONCLUSION

The Chamber respectfully requests affirmance of the Court of Appeal's decision. The Chamber further urges this Court to fashion a decision ensuring that industry-practice evidence (regardless of the industry) is admissible in design-defect cases when, in the discretion of the trial judge, it is relevant to and probative of the factors under California's design-defect tests, and that such a rule accounts for and protects product innovation.

October 6, 2016

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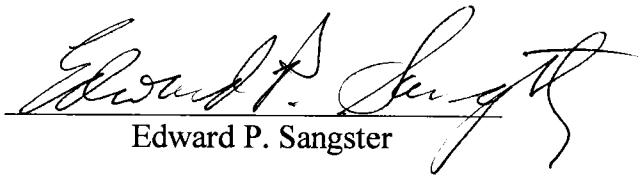
By: 
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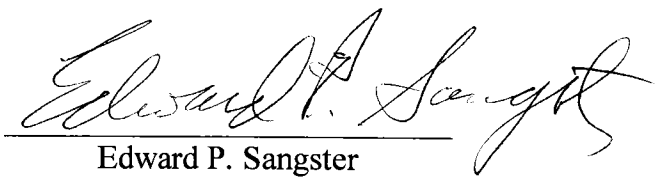
WORD COUNT

I certify, pursuant to Rule 8.204(c) of the California Rules of Court, that the attached brief, including footnotes, but excluding the caption page, tables, and this certification, as measured by the word count of the computer program used to prepare the brief contains 4,569 words.

DATED: October 6, 2016.



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