**S209927**
**B233189**

SUPREME COURT
FILED

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Deputy

# IN THE

# SUPREME COURT OF CALIFORNIA

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**WILLIAM B. WEBB and JACQUELINE V. WEBB,**

Plaintiffs, Appellants, and Respondents,

v.

**SPECIAL ELECTRIC COMPANY, INC.,**

Defendant, Respondent, and Petitioner.

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AFTER DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION ONE, NO. B233189;
ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,
HONORABLE JOHN SHEPARD WILEY, JUDGE, NO. BC436063

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## ANSWER TO PETITION FOR REVIEW

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## INTRODUCTION

The petition for review ("Petition") filed by Special Electric Company, Inc. ("Special Electric") should be denied.

The Petition fails to show any Rule 8.500 grounds for this Court's review. The only mention of those grounds is in the "Conclusion," when Special Electric simply states that its arguments show a need to "secure uniformity of decision" and "settle an important question of law." Petition at 29. But the previous 28 pages contain no effort to show either ground, let alone any pertinent analysis. Nothing in the Petition even hints at a lack of uniformity of decision among the appellate districts. Instead, Special Electric appears to invoke the "important question" ground, asserting at the outset that this case "presents major issues of compelling interest to litigants across California." Petition at 2.

But the Petition, the Opinion, and the record bely this assertion. Far from having any interest to, or impact on, other "litigants across California," this case arises from extremely specific circumstances that are unique to this case. The Opinion's primary ground for reversal is a trial-court procedural error (attempting to rule on pre-verdict motions after the verdict) that is so uncommon there is not one other published decision addressing it. *See* Opinion at 11-15. Likewise, the Opinion's second ground (substantive error) arises from this case's unique factual circumstances. *See* Opinion at 15-29. Accordingly, there is little likelihood that these issues will ever recur, let alone often enough to pose an issue of statewide importance for this Court to "settle."

This case is a poor candidate for review also because the Opinion's disposition—reversal of the trial court's JNOV (on "failure to warn" claims) and reinstatement of the underlying jury verdict—rests on three independent

rulings, each wholly supporting the reversal. Specifically, the Opinion holds that the JNOV was not only (1) procedurally defective and (2) substantively erroneous but also (3) unduly broad—even if the trial court had properly negated the "failure to warn" verdicts, the judgment for Webb still rested properly on a discrete verdict for general negligence independent of failure to warn (Opinion at 29-32). To affect the Opinion's disposition, this Court would need to reverse all three of these holdings. We are confident that the first two holdings are correct and would not be reversed. But the third holding virtually cannot be reversed because it rests on Special Electric's waiver of the issue on appeal (Opinion at 32)—a waiver ruling that the Petition does not challenge. *See* Petition at 22-23.

Finally, review should be denied because the Petition rests on an asserted version of this case that is simply not supported by the record or the Opinion below. The petition postures Special Electric as some sort of innocent manufacturer who cared about the users of its dangerous product and did all it could to warn them, reasonably believing that industry "behemoth" Johns-Manville (Petition at 15) would warn downstream product users of the dangers. According to this tale, Johns-Manville's failure to warn consumers was a shock to Special Electric, a "highly extraordinary" failure that Special Electric had no "reason to believe" would occur. Petition at 17.

But this tale is false, belied again by the record and the Opinion. The evidence showed that Special Electric not only made no effort to warn its product's users but took active steps to "conceal" the dangers, as the Opinion summarizes in detail:

> The jury [was] justified in concluding that, far from reasonably relying on Johns-Manville to warn potential users of it[s] asbestos,

> Special Electric was itself engaged in an effort to conceal the dangers of it[s] asbestos—dangers of which both it and Johns-Manville were, or should have been, well aware. . . .
>
> Under the evidence before it, the jury was entitled to conclude that Special Electric . . . had no intention of making any effort to warn potential users or obtaining Johns-Manville's aid in doing so, and that, indeed, Special Electric and Johns-Manville together engaged in efforts to prevent asbestos users from becoming informed of its dangers.

Opinion at 26 (emphasis added).

That is what this case is about. Special Electric exposed innumerable people to thousands of tons of its dangerous product (Opinion at 3) without caring about the hazards or even attempting to adequately warn its consumers—indeed trying to conceal those hazards. Now faced with liability for its actions, Special Electric is trying to hide behind Johns-Manville and detach itself from its callous misconduct.

The appellate court below properly rejected this effort. Review is not warranted and should be denied.

## DISCUSSION

## I.

## Review of the Opinion is not warranted.

Review of the Opinion below is not warranted because (1) the Petition fails to show any grounds for this Court's review, (2) the Opinion's reversal of the JNOV and reinstatement of the jury's underlying verdict rests independently on a general-negligence verdict as to which Special Electric has waived any challenge, and (3) the Petition rests on false narrative that is belied by the record and the Opinion, raising various other challenges that are inaccurate, unavailable, and unpersuasive.

## A. No Rule 8.500 grounds for review.

First and foremost, the Petition fails to raise any grounds for review under Rule 8.500.

Indeed, the Petition does not even invoke or reference those mandatory grounds until the "Conclusion," when Special Electric baldly asserts that the "issues" raised in the Petition "more than satisfy the requirements of Rule 8.500(b)(1)": "'to secure uniformity of decision,' and 'to settle an important question of law.'" Petition at 29.

But aside from this claim, the Petition lacks any analysis or showing that either asserted ground for review exists. Indeed, the Petition does not remotely assert a lack of "uniformity of decision," *i.e.*, that the Opinion's resolution of some issue conflicts with a ruling from another appellate district. Instead, the only ground for review that is even remotely invoked in the Petition appears to be the "important question of law" ground. Although the Petition never states it expressly, it does open its discussion by asserting the existence of "major issues of compelling interest to litigants across California." Petition at 2.

Unfortunately, the balance of the Petition does nothing to support this claim. To the contrary, the Petition, in concert with the Opinion and the record, shows that the Opinion rests on specific circumstances that are unique to this case and thus unlikely to recur, let alone recur so frequently that they raise an "important question" for this Court to "settle."

Specifically, although Special Electric initially paints a laundry list of "Issues Presented" (Petition at 1), it limits its assertion of "compelling" issues to two:

1. The procedural error: "How and when a trial court may rule on timely submitted motions for nonsuit, directed verdict, and JNOV."

2. The substantive error: "Whether a broker to a sophisticated manufacturer is subject to a duty to warn that manufacturer of hazards the manufacturer already knows." Petition at 2.

But neither of these issues raises an issue of statewide importance.

### 1. The procedural error: The trial court tried to rule on pre-verdict motions after the verdict—an error so rare that no other published decision addresses it.

The Opinion's first independent ground for reversing the trial court and reinstating the jury's verdict is that the order vacating the verdict was procedurally erroneous. Opinion at 11-15.

This holding arises from a fact pattern so unique that it has never before been addressed in a published decision—and will likely never recur:

1. Before the verdict, Special Electric timely moved for nonsuit and a directed verdict. Opinion at 3, 5. These motions raised entirely different grounds. The nonsuit motion challenged only "the failure to warn cause of action," asserting that (1) Special Electric had given warnings, and (2) Special Electric was "absolve[d]" of its "duty to warn" because Johns-Manville was a "sophisticated user." *Id.* at 3. The directed-verdict motion challenged only "strict liability," asserting that Special Electric was only a "broker" that was "outside the chain of distribution." *Id.* at 5.

2. The trial court did not rule immediately and allowed briefing. Opinion at 4, 5; 11 RT 3004:1-3. Webb filed his opposition to the February 2 nonsuit on February 9, over a week before the February 17 verdict. 1 AA 78-85, 143-150.

3. Special Electric failed to press for or obtain a ruling on its pre-verdict motions, allowing the jury to deliberate and return a verdict on February 17. Opinion at 4, 5; 1 AA 143-150.

4. After the verdict, the trial court announced its intention to deny the pre-verdict motions and suggested that Special Electric bring a proper, post-verdict JNOV motion. Opinion at 6.

5. Special Electric declined to file a JNOV (or other post-verdict) motion and insisted that the court rule instead on its pre-verdict motions. *Id.*

6. The trial court acquiesced, allowing subsequent briefing and scheduling a hearing on the pre-verdict motions. *Id.*

7. In post-verdict briefing, Special Electric repeatedly shifted and changed its asserted grounds and supporting arguments. Opinion at 6-7. Special Electric pressed only the "failure to warn" based grounds from its nonsuit, abandoning its "only a broker" argument that had been the sole ground for a directed verdict. *Id.* Special Electric now argued that both nonsuit and directed verdict involved the challenge to "failure to warn" liability. *Id.* Moreover this failure-to-warn challenge evolved—Special Electric no longer asserted "sophisticated user," now arguing for the first time that Johns-Manville was a "sophisticated intermediary," that Special Electric reasonably "relied" on Johns-Manville to warn the users, and that the warnings that Special Electric supposedly gave were "adequate as a matter of law." Opinion at 7.

8. The trial court granted Special Electric's motion, via either of two alternative procedures: (1) the court granted the pre-verdict nonsuit and directed-verdict motions; or (2) the court treated the pre-verdict motions as a JNOV motion and granted that. Opinion at 8-9. As a predicate to this

ruling, the court "entered" judgment "as to the jury verdict," then vacated that judgment by its post-verdict order. Opinion at 9.

9. Because the trial court had entered judgment on the verdict, negating the pre-verdict motions and leaving JNOV as the only available challenge, the appellate court considered the propriety of granting JNOV and ruled it procedurally improper. Opinion at 12-15. The JNOV could not be granted because it violated numerous statutory mandates: no JNOV motion was ever brought, no statutory notice was given, and the JNOV was granted at an improper time. *Id.*

It is upon this elaborate fact pattern that the Opinion's procedural ruling rests. Needless to say, the chances of this recurring are slim and none.

Nevertheless, Special Electric asserts the following issue as (supposedly) affecting other California litigants: "may a trial court rule after a verdict upon otherwise valid pre-verdict motions for nonsuit and directed verdict?" Petition at 1.

But this general framing of the issue makes its recurrence no more likely. Indeed, through numerous rounds of briefing, neither the courts nor either party have identified even one case where a court attempted to rule on pre-verdict motions for nonsuit and a directed verdict after the verdict. And the reason for this is simple: it never happens. Instead, the correct (and common) procedure is that, if the trial court is unable to rule on the pre-verdict motions (*e.g.*, due to time constraints), the proper procedure is to "deny the motion[s] in favor of" and in "reliance upon" the "power to grant [JNOV] after the jury's deliberations." *Beavers v. Allstate Ins. Co.* (1990) 225 Cal.App.3d 310, 328. This procedure allows the "court to delay, in effect, ruling upon" the pre-verdict motion in favor of a later JNOV. *Id.* at 328 n.6.

That is the normal course—if the party cannot get its pre-verdict motion(s) ruled on, it brings a post-verdict JNOV. And that is what Special Electric should have done here and indeed was encouraged to do by the trial court, but refused. Opinion at 6.

The Opinion below does nothing more than identify Special Electric's mistake and tell litigants to follow the proper procedure that everyone but Special Electric already follows: challenge a verdict by moving for JNOV, new trial, or any other statutorily authorized post-verdict motion.

The Opinion's procedural holding is limited to this case and thus does not raise a statewide question of law for this Court to settle.

2. **The substantive error: The trial court does nothing novel, upholding a jury's verdict under governing law based on substantial evidence that Special Electric failed to warn users of its dangerous product.**

Like the procedural holding, the trial court's substantive holding does not raise any issue of statewide importance for this Court to settle.

Special Electric, trying to concoct such an important question, posits the following issue:

> Whether a broker to a sophisticated manufacturer [Johns-Manville] is subject to a duty to warn that manufacturer of hazards the manufacturer already knows.

Petition at 2; *accord id.* at 1 ("Is it a tort not to warn a manufacturer of hazards the manufacturer already knows?").

But this supposed "issue" is not presented by the Opinion or this case. Webb did not assert, the jury did not find, and the Opinion does not hold, that Special Electric owed a duty to warn Johns-Manville. Instead, the Opinion upholds Special Electric's well-established duty to warn users of its

asbestos of that product's dangers, a duty that the jury properly found was not fulfilled. Opinion at 15-16; *see* 1 AA 121 (instructions), 146 (verdict).

The issue of Johns-Manville's knowledge arose only when Special Electric asserted that its duty to warn users like Webb was "discharged" because Johns-Manville was a sophisticated "intermediary" who did not need to be "warned." Opinion at 7.

The Opinion properly rejects this argument, based on settled law and the evidence and instructions in this case. Opinion at 16-29. The Opinion rests on and follows this Court's decision in *Johnson v. American Standard* (2008) 43 Cal.4th 56, the appellate court in *Stewart v. Union Carbide Corp.* (2010) 190 Cal.App.4th 23, and section 402A of the Restatement (Second) of Torts. *E.g.*, Opinion at 20.

The Opinion raises no new interpretation of the law. Any factual difference in this case from *Johnson* or *Stewart* arises (again) from this case's unique factual circumstances. As the Opinion finds, substantial evidence establishes that: (1) Special Electric knew that its product was hazardous and would give rise to liability but intentionally marketed its product as safer than other asbestos; (2) Special Electric sold most of its product to Johns-Manville, without warnings; (3) Johns-Manville put the asbestos into products and sold it to downstream consumers, without warnings; and (4) "Special Electric and Johns-Manville together engaged in efforts to prevent asbestos users from becoming informed of its dangers." Opinion at 25-26. In light of these unique facts, the jury, applying the well-settled law (under the instructions), reasonably rejected Special Electric's argument that its duty to warn should be discharged.

As with the procedural issues, these unique circumstances are simply not likely to recur—thus raising no ground for this Court's review.

## B. The Opinion rests on independent grounds not challenged by the Petition.

Review is not warranted also because the Opinion's reversal rests on an independent holding that the Petition fails to challenge: even a proper JNOV of Webb's "failure to warn" claim would not have properly upset the judgment on the jury's verdict because that verdict rested independently on Webb's general-negligence claim. Opinion at 29-32.

As the Opinion shows, the jury was asked to make findings on several discrete claims, including strict liability, failure to warn, and general negligence. Opinion at 6, 30. The jury was instructed that these were discrete claims with different elements—in particular, the negligence claim rested not on any failure to warn but on negligence in the "design, manufacture, or supply of asbestos." *Id.* at 30-31. Consistent with these instructions, the verdict elicited separate findings on these discrete claims. *Id.* at 30, 31.

Under these instructions, the jury found for Webb on both claims, including on general negligence that Special Electric was "negligent in the supply of its asbestos." Opinion at 30.

On appeal, Webb showed that the JNOV, even if somehow proper, could not have affected the general-negligence claim. The nonsuit motion—the only motion ever brought to challenge the negligence-based claims—expressly "targeted only 'the failure to warn cause of action.'" Opinion at 3. Accordingly, it did not "purport to challenge or address the general negligence verdict." *Id.* at 31. Because that verdict stood unaffected by the trial court's post-verdict ruling on failure-to-warn, a JNOV vacating the entire verdict was improper. Judgment for Webb rested on the unaffected general-negligence verdict.

The Opinion finds substantial evidence to support a verdict for general negligence in the "supply of asbestos" unrelated to failure to warn. Opinion at 31. Specifically, the jury could have reasonably found that "Special Electric had marketed its asbestos with unreasonable disregard for its dangers" based on evidence that Special Electric (1) sold an asbestos type (crocidolite) that was "particularly dangerous," (2) marketed its more dangerous asbestos as "much safer" than other asbestos types, and (3) sought to "distance itself" from its "dangerous product" by selling it through the entity "Special Electric" (instead of "Special Asbestos"). Opinion at 31 (as modified). In sum, this evidence supported a finding that Special Electric not only "failed to warn foreseeable users that its asbestos is dangerous" but also "attempted to affirmatively enhance its marketing of particularly dangerous asbestos by concealing the added danger and by marketing it as having lesser danger than other asbestos." Opinion at 31.

In response to Webb's showing below that this evidence supported a finding of negligent asbestos supply, unrelated to failure to warn, Special Electric offered no "cogent" argument. Opinion at 31-32. As the Opinion holds, "Special Electric does not explain why the cited evidence could not support the jury's findings that Special Electric acted negligently" in "marketing and supplying" its product. *Id.* at 31.

Accordingly, the Opinion holds that Special Electric waived its challenge to the general-negligence verdict:

> Special Electric offers neither case law nor any other authority on the subject to support its contrary contention that this evidence shows only a failure to warn. For that reason, it is insufficient to support that conclusion. (*Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 956 [Absence of cogent legal argument or citation to authority allows court to treat contention raised on appeal as waived"].)

Opinion at 32 (emphasis added).

Here, although Special Electric purports to challenge the general-negligence verdict, it fails to address its waiver below. Petition at 22-23. Instead, Special Electric pretends that the appellate court rested its holding about the general-negligence verdict not on "evidence" but on mere "allegations in the complaint, arguments to the jury, and jury instructions." Petition at 22. But Special Electric then attacks the quality of the evidence of negligent marketing set forth in the Opinion (*id.* at 22-23)—ignoring the standard of review requiring all evidence to be construed "in the light most favorable" to the verdict. Opinion at 11.

Like in the court below, Special Electric again fails to present any cogent legal argument, nor any law or other authority, as to why the evidence is not substantial in support of the general-neglience verdict. Nor does Special Electric challenge the holding of its waiver below.

Accordingly, the sufficiency of the general-negligence verdict to support the underlying judgment, and thus to foreclose JNOV, is not properly presented by the Petition.

Thus, review cannot result in a reversal and should be denied.

### C. The Petition rests on numerous misstatements and asserted issues that cannot be raised here.

Finally, the Petition should be denied because it rests on a host of misstatements and inaccuracies, including the assertion of issues that are not properly presented here because they were not preserved below.

Because these instances are scattered throughout the Petition and touch on numerous asserted issues, we list them here in no particular order, to inform this Court's consideration of the propriety of granting review.

1. Special Electric continues to assert that the asbestos it sold always came with a warning. *E.g.*, Petition at 11 ("bags with the OSHA warning"). And Special Electric cites authorities for the proposition that, once a manufacturer gives an "adequate warning," it can rely on others to pass that warning along. *E.g.*, Petition at 4, 16 ("responsibility must be absolved at the time it provides adequate warning"); *see Stewart v. Union Carbide Corp.* (2010) 190 Cal.App.4th 23, 29 (under "sophisticated intermediary" doctrine, a manufacturer can fulfill its duty to warn by (1) "provid[ing] warnings to the intermediary" and then (2) "rely[ing] upon the intermediary" to "pass on" the warning to the product user, if such reliance is reasonable and justified under the circumstances).

These assertions that Special Electric gave a warning ignore the Opinion's correct holding that there was "substantial conflicting evidence" on whether Special Electric's asbestos contained any warnings. Opinion at 8 and n.12; *accord id.* at 19 and n. 19 ("evidence was disputed" as to "whether warnings were on all the bags of asbestos shipped by Special Electric").

Thus, any defense based on giving a warning (and then relying reasonably on an "intermediary" to pass on the warning) was rejected by the jury based on substantial evidence.

2. The Petition repeatedly claims that Webb "did not assert" that Special Electric had a duty to "warn Webb." *E.g.*, Petition at 3, 15.

This is simply wrong. Consistent with the well-established law, Webb always contended that Special Electric, like every product manufacturer, had a duty to take reasonable steps to warn users of its dangerous product, thus including Webb. What Webb's counsel "disclaimed" at oral argument was whether the duty required Special Electric to "warn Webb directly"—*i.e.*, to know the identity of every ultimate downstream user of products containing

Special Electric's asbestos. Petition at 14; Opinion (Dissent) at 3. And this is correct. The duty is to take reasonable steps to warn, a duty that a manufacturer can fulfill without direct contact with every consumer.

But Special Electric did not come close to fulfilling its duty. To the contrary, substantial evidence showed that it "had no intention of making any effort to warn potential users or obtaining Johns-Manville's aid in doing so." Opinion at 26.

3. The Opinion does not "hol[d] in general that there was a duty to warn Webb and then leav[e] it to the jury to decide the scope of that duty." Petition at 16. Special Electric's duty was to take reasonable steps to warn users of its products dangers. The jury properly decided whether Special Electric breached that duty—*i.e.*, whether Special Electric took reasonable steps to warn.[1] And substantial evidence supports the jury's finding that Special Electric breached its duty.

4. The Petition continues a false theme that Special Electric sounded below: that the trial court had no time to rule on Special Electric's pre-verdict motions and expressly deferred those rulings until after the verdict, with Webb's acquiescence. *E.g.*, Petition at 2, 5 (verdict returned "before any hearings on the two pre-verdict motions could be held"), 24 (court "deferred ruling so as not to delay the trial and impose further on the jurors"). According to Special Electric, Webb "never objected to deferring the rulings" and in fact "asked for more time to brief the issues." Petition at 24 (*citing* 11 RT 3003-3005; 18 RT 6602:23-28).

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[1] This Court recently reiterated this distinction between duty and breach issues in *Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, cautioning lower courts against deciding factual "breach" questions under the guise of "duty" analysis.

Not so. The only procedure that Webb agreed to acquiesced was "deferring" the ruling to allow briefing, and then a ruling, before the verdict—prior to which there was plenty of time to rule. Special Electric moved for nonsuit on February 2, and the trial court allowed briefing (11 RT 3004:1-3); Webb filed his opposition on February 8 (1 AA 77-85); and the jury returned its verdict on February 17 (1 AA 143-150). From February 8-17, Special Electric was free to request a ruling, but it never did do so. More importantly, nowhere does the record reflect that the court or counsel, before the verdict, ever discussed delaying the pre-verdict-motion ruling until after the verdict—let alone Webb agreeing to that improper procedure.

5. The Petition is wrong to claim that the Opinion "has created new and unreasonable procedural traps for litigants and trial judges." Petition at 29. The procedural missteps were taken by Special Electric, and any supposed "traps" were of its own creation. Special Electric moved for nonsuit and directed verdict, then failed to request or obtain a ruling before the verdict was entered (many days later). Once the verdict was in, all Special Electric had to do to continue its challenge was to file a post-verdict motion for JNOV (or new trial)—the usual procedure. *See Beavers*, 225 Cal.App.3d at 328 and n.6. Indeed, this is what the trial court, just after the verdict, "suggest[ed]" Special Electric do—but Special Electric declined. Opinion at 6 ("Special Electric said it would not move for new trial and [JNOV]"). Far from falling into a "trap," Special Electric ensnared itself.

6. The Petition is wrong to contend that Special Electric's procedural gaffe should be overlooked because the trial court's order vacating judgment on the verdict, although procedurally erroneous, caused no "prejudice." Petition at 27-28. According to Special Electric, the "same result would have obtained" if the trial court had not granted an improper

"JNOV" motion that was never brought but had instead (1) ruled before the verdict on nonsuit, or (2) ruled post-verdict on a properly noticed JNOV motion. Petition at 28.

But that is not how the "prejudice" inquiry works. Special Electric asks this Court to assess what would have happened if Special Electric had followed some procedure that it never followed, *i.e.*, obtained a ruling on nonsuit, or brought a proper JNOV motion (as the trial court suggested). We do not know what would have then happened because Special Electric never followed these procedures.

Instead, in assessing a trial court error for prejudice, the reviewing court asks simply: if the trial court had not entered the erroneous ruling, would it have affected the outcome? Here the answer is "yes." The only motion presented to the court for a ruling was a pre-verdict nonsuit motion that had been vitiated by the verdict. The trial court's granting of that motion (in the guise of a JNOV ruling) was error. If the trial court had not committed that error, *i.e.*, had not granted a JNOV that vacated the verdict, then the judgment for Webb on the verdict would be intact. That is prejudice.

Moreover, the entire procedure prejudiced Webb also because Special Electric's arguments continually changed, denying Webb the opportunity to properly oppose them. As the Opinion notes, after the verdict the "grounds argued by Special Electric . . . were <u>not the same</u> as those stated in its initial briefs"—*i.e.*, in the only motions Special Electric ever brought. Opinion at 6. Moreover, if Special Electric had pressed for a pre-verdict ruling on the nonsuit motion that was brought, Webb would have been afforded the "opportunity to offer additional evidence to overcome the claimed deficiencies in [his] case." Opinion at 8 n.10.

7. The Petition continues to assert "no evidence that Webb was exposed to asbestos attributable to Special Electric. Petition at 4.

But this argument is not preserved. The jury found in its verdict that that "Webb was exposed to asbestos products sold or supplied by Special Electric." Opinion at 6; *see* 1 AA 144. Special Electric's pre-verdict motions did not challenge the exposure evidence. Opinion at 3-4, 5. Accordingly, the trial court's JNOV vacating the verdict did not address exposure, resting only on a supposed lack of a duty to warn. Opinion at 7-9.

Webb appealed the JNOV, challenging that order and its reasoning. But Special Electric did not file a protective cross-appeal, which was required if Special Electric wanted to challenge any part of the underlying verdict. Opinion at 31-32; *see Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 910. Lacking a cross-appeal, Special Electric has no "standing" to challenge other verdict findings unaffected by the erroneous JNOV. *Savnik v. Hall* (1999) 74 Cal.App.$4^{th}$ 733, 739 n.5.

8. The Petition also tries to revive a claim that Special Electric has long abandoned—that Special Electric could not face "strict liability" because it was supposedly not a seller but a mere "broker" of asbestos. Petition at 19-22.

Special Electric's directed-verdict motion initially raised this argument. Opinion at 5. But after the verdict, Special Electric dropped this argument, tethering <u>both</u> its nonsuit and directed-verdict motions to its arguments about its "duty to warn." Opinion at 6-7. And the trial court ruled only on the "duty to warn" issues, never again addressing the long-abandoned "broker" argument. Opinion at 7-9.

Moreover, the old "broker" argument expressly challenged only a "strict liability" finding. Opinion at 5. But on strict liability, the jury found

for Special Electric. Opinion at 6 ("no design defect"). Accordingly, the verdict does not rest on strict liability, making Special Electric's challenge to strict liability meaningless.

## CONCLUSION

Special Electric's petition fails to present any grounds for this Court's review, which should be denied.

Dated: May 13, 2013

PAUL & HANLEY LLP

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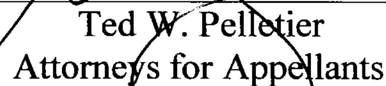

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## CERTIFICATION OF WORD COUNT

I Ted W. Pelletier, hereby certify that this brief, exclusive of tables, consists of 4,846 words, in 14-point Times New Roman type, as counted by my word-processing program.

Ted W. Pelletier

PROOF OF SERVICE BY MAIL
(C.C.P. §1013(a), 2015.5)

I, the undersigned, hereby declare under penalty of perjury as follows:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 22 Skyline Road, San Anselmo, CA 94960.

On this date I served on the interested parties in this action the within document:

**ANSWER TO PETITION FOR REVIEW**

by placing a true copy thereof enclosed in a sealed envelope, postage prepaid, in the United States Mail at San Anselmo, California, addressed as follows:

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Executed at San Anselmo, California on May 13, 2013

Ted W. Pelletier