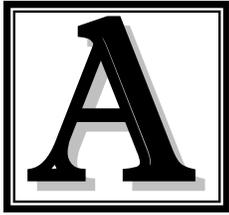


THE ARKIN



LAW FIRM

July 16, 2012

The Honorable Tani Cantil-Sakauye,
Chief Justice, and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Barker v. Hennessy Industries, Inc.*
(May 22, 2012) 206 Cal.App.4th 15

REQUEST FOR DEPUBLICATION

Honorable Justices:

On behalf of Consumer Attorneys of California (CAOC), this letter highlights key points supporting its request for depublication of the *Barker* case.

In *Barker*, the Second District Court of Appeal, Division 2, concluded that a brake grinder manufacturer could not, as a matter of law, be liable for asbestos-related diseases resulting from exposure caused by grinding asbestos-containing brakes. As the dissent in *Barker* explains, the problem with the majority's decision is that it conflicts with this Court's approval in *O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 362 of the analysis in *Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzer Co.* (2004) 129 Cal.App.4th 577 and it is in direct conflict with two other appellate decisions on the same issue (*Shields v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 782 and *Bettencourt v. Hennessy Industries, Inc.* (2012) 205 Cal.App.4th 1103).

CAOC's Interest as Amicus Curiae

Founded in 1962, CAOC is a voluntary non-profit membership organization representing over 6,000 consumer attorneys practicing in California. Its

225 SOUTH OLIVE ST.
SUITE 102
LOS ANGELES CA 90012

T: 541.469.2892

F: 866.571.5676

sarkin@arkinlawfirm.com

July 16, 2012

Page 2

members predominantly represent individuals subjected to consumer fraud, unlawful employment practices, personal injuries and insurance bad faith. CAOC has taken a leading role in advancing and protecting the rights of consumers, employees and injured victims in both the courts and the Legislature

**Depublication Is Required Because The Court Of Appeal's
Decision Is In Conflict With Controlling Authority
Approved By This Court**

Rather than burden this Court with an extensive discussion of the issue, CAOC would refer this Court to the dissenting opinion in *Barker* authored by the Hon. Ashmann-Gerst. Justice Ashmann-Gerst's dissent provides a comprehensive analysis of the reasons where the majority opinion went astray. Justice Ashmann-Gerst also references and relies on the two First District decisions which are more rationally reasoned and which conclude that the issue, i.e., whether the manufacturer of a grinder which was designed specifically to grind asbestos-containing brake shoes and linings, should be subjected to liability for the asbestos exposure that necessarily results from the use of the grinder. More significantly, Justice Ashmann-Gerst's dissent provides meaningful context for that result in light of this Court's approval of the decision in *Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzer Co.* (2004) 129 Cal.App.4th 577. (*O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 362.) The majority opinion in *Barker* fails to apply the proper analytical construct and, as a result, reaches the wrong conclusion.

Because *Barker* was wrongly-decided and because it will have a significant impact on the rights of innocent victims of asbestos exposure, it should be depublished and, if anything, the determination of liability in this context should be decided on a case-by-case basis.

Sincerely,

THE ARKIN LAW FIRM

SHARON J. ARKIN

:sja