

STEPTOE & JOHNSON^{LLP}

ATTORNEYS AT LAW

Kevin C. Mayer (State Bar No. 118177)
Sonia O. Williams (State Bar No. 220069)
STEPTOE & JOHNSON LLP
633 West Fifth Street, Suite 700
Los Angeles, California 90071
Telephone: (213) 439-9400
Facsimile: (213) 439-9599

Donald D. Evans (Of Counsel)
AMERICAN CHEMISTRY COUNSEL
1300 Wilson Boulevard
Arlington, VA 22209
Telephone: (703) 741-5153

Dorothy Rothrock (Of Counsel)
**CALIFORNIA MANUFACTURERS AND TECHNOLOGY
ASSOCIATION**
980 Ninth Street, Suite 2200
Sacramento, CA 95814
Telephone: (916) 498-3319

Robin S. Conrad (Of Counsel)
Amar D. Sarwal (Of Counsel)
**NATIONAL CHAMBER LITIGATION
CENTER, INC.**
1615 H Street, NW
Washington, DC 20062
Telephone: (202) 463-5337

Jan S. Amundson (Of Counsel)
**NATIONAL ASSOCIATION OF
MANUFACTURERS**
1331 Pennsylvania Ave., NW, 6th Floor
Washington, DC 20004
Telephone: (202) 637-3058

April 18, 2006

Honorable Ronald M. George, Chief Justice
Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4783

Re: *County of Santa Clara v. Atlantic Richfield Company*
Supreme Court No. S142578
Court of Appeal No. H026651

Dear Chief Justice George and Associate Justices:

On behalf of the American Chemistry Council (the "ACC"), Chamber of Commerce of the United States of America (the "Chamber"), National Association of Manufacturers (the "NAM"), and California Manufacturers and Technology Association (the "CMTA"), pursuant to California Rule of Court 28(g), we respectfully write in support of the petitions filed by

Doc. #148768 v.1

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Respondents Atlantic Richfield Company et al. and The Sherwin-Williams Company for review of the Court of Appeal, Sixth Appellate District, decision in *County of Santa Clara v. Atlantic Richfield Company*, Court of Appeal No. H026651, filed on March 3, 2006, and certified for publication.

Interests of *Amici Curiae*

The ACC is a trade association representing the leading American companies engaged in the business of chemistry. ACC members apply the science of chemistry to design and manufacture innovative products and services that make people's lives better, healthier and safer. Its members' business is a \$520 billion enterprise, and a key element of the domestic economy. It is the nation's largest exporter, accounting for 10 cents out of every dollar in U.S. exports, and ACC members invest more in research and development than any other business sector.

The Chamber is the nation's largest federation of companies and associations, with underlying membership of more than 3,000,000 businesses and professional organizations of every size and in every sector and geographic region of the country. An important function of the Chamber is to represent the interests of its members by filing *amicus curiae* letters and briefs in cases involving issues of national concern to American business.

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing to America's economic future and living standards.

The CMTA is a trade association of more than 600 manufacturing firms doing business in California. The CMTA lobbies the state legislature and agencies for balanced laws, effective regulations and sound public policies to stimulate economic growth and create new jobs while safeguarding the environment. The CMTA also participates in judicial proceedings to promote a civil justice system that limits frivolous lawsuits and provides fair compensation to injured parties.

The Sixth District's decision, if permitted to stand, threatens to erode well-established doctrines of products liability in California, and would allow plaintiffs to circumvent the statute of

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limitations in product liability cases. This would create limitless and open-ended liability for manufacturers whose products are sold in California. Such precedent would drive manufacturers and their products out of California and negatively impact commerce throughout the United States. Accordingly, the ACC, Chamber, NAM and CMTA have a significant interest in this Court's decision to grant Respondents' Petitions for Review.

Reasons Review Should Be Granted

The ACC, Chamber, NAM and CMTA are gravely troubled with several aspects of the Court of Appeal's published opinion. First, the decision allows public agencies to sue product manufacturers, under a "public nuisance" claim, for "abatement" based on anticipated future harm. Second, the public nuisance claim was allowed despite the facts the products were used over 20 years before the lawsuit was filed, and complied with governmental standards in place at the time of manufacture and distribution. Third, plaintiffs' strict liability and negligence claims were held not to be time-barred even though plaintiffs had known about the health hazards associated with the products for decades. Fourth, the limitations period on plaintiffs' fraud claim was tolled based on only vague assertions that certain aspects of the products were unknown to them, or were minimized by defendants' marketing efforts. As discussed in more detail below, the ACC, Chamber, NAM and CMTA are concerned with these rulings because they could have a devastating effect on the manufacturing industry, damage California's economy, and create unnecessary ambiguity in the law.

By allowing product manufacturers to be sued under a nuisance claim, the Sixth District greatly expands the potential liability of every manufacturer whose product is sold in California, including manufacturers whose chemicals constitute a mere fraction of a given product. Each time a public agency decides, or is legislatively mandated, to abate a purported "public health hazard," the product manufacturers will become the principal target to fund these multi-million (and potentially multi-billion) dollar projects.

The opinion also allows for liability to be imposed *regardless* of how long ago the product was placed into the stream of commerce and used, whether the product satisfied governmental standards and the state-of-the-art at the time of use, whether the product was defective, or how long public agencies had known about prospective health effects associated with the product. This decision threatens to impose virtually absolute liability on manufacturers by making them the guarantors of public health in California.

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If this opinion is permitted to stand, it is certain that many manufacturers will pass the costs associated with greater liability onto consumers by charging substantially higher prices. Other manufacturers may seek to avoid the risk of increased liability altogether by refusing to sell their products and chemicals in California. In the end, it will be California's economy, and residents, that suffer most.

The decision also creates ambiguity in the law and raises due process concerns by its unprecedented attempt to integrate nuisance doctrines into the law of products liability. Nuisance concepts would eliminate plaintiffs' burden to prove the elements of a products liability claim, while at the same time deprive manufacturers of well-accepted defenses under the law of products liability. We respectfully urge that these separate theories cannot be integrated in a products claim without nuisance concepts swallowing up the law of products liability.

Lastly, the Court of Appeal's statute of limitations analysis unjustly imposes open-ended liability on manufacturers, thereby defeating the purpose behind the statute. The negligence and strict liability causes of action were held not to have accrued for limitations purposes even though the product was supplied, and its health hazards were known, decades earlier. The opinion permits the statute of limitations to be tolled on any occasion in which a plaintiff alleges certain aspects of a product were unknown or minimized by a defendant's promotional activities. This case will have a crippling effect on manufacturers who would be forced to defend against stale claims that could have, and should have, been brought shortly after the alleged injury arose.

For the foregoing reasons, and those set forth in Respondents' petitions, it is respectfully asserted that review by this Court is warranted.

Very truly yours,

STEPTOE & JOHNSON LLP

KEVIN C. MAYER

PROOF OF SERVICE

F.R.C.P. 5 / C.C.P. 1013a(3)/ Rules of Court, Rule 2060

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is: Steptoe & Johnson LLP, 633 West Fifth Street, Suite 700, Los Angeles, California 90071.

On **April 19, 2006**, I served the following listed document(s), by method indicated below, on the parties in this action: **AMICI CURIAE LETTER IN SUPPORT OF RESPONDENTS' PETITIONS FOR REVIEW**

SEE ATTACHED SERVICE LIST

BY U.S. MAIL

By placing the original / a true copy thereof enclosed in a sealed envelope(s), with postage fully prepaid, addressed as shown above, for collection and mailing at Steptoe & Johnson in Los Angeles, California following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of document for mailing. Under that practice, the document is deposited with the United States Postal Service on the same day in the ordinary course of business. I am aware that upon motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after date of deposit for mailing contained in this affidavit.

BY OVERNIGHT DELIVERY

By delivering the document(s) listed above in a sealed envelope(s) or package(s) designated by the express service carrier, with delivery fees paid or provided for, addressed as per the attached service list, to a facility regularly maintained by the express service carrier or to an authorized courier or driver authorized by the express service carrier to receive documents.

BY PERSONAL SERVICE

By personally delivering the document(s) listed above to the offices at the addressee(s) as shown on the attached service list.
 By placing the document(s) listed above in a sealed envelope(s) and instructing a registered process server to personally deliver the envelope(s) to the offices at the address(es) set forth on the attached service list. The signed proof of service by the registered process server is attached.

- STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- FEDERAL** I declare under penalty of perjury under the laws of the United States that I am employed in the office of a member of the bar of this court at whose direction the service is made.

BY ELECTRONIC SERVICE

(via electronic filing service provider)

By electronically transmitting the document(s) listed above to LexisNexis File and Serve, an electronic filing service provider, at www.fileandserve.lexisnexis.com pursuant to the Court's _____ Order mandating electronic service. See Cal. R. Ct. R. 2053, 2055, 2060. The transmission was reported as complete and without error.

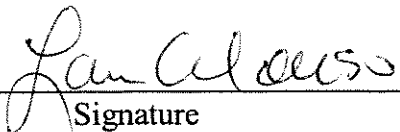
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By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list. The transmission was reported as complete and without error. See Rules of Court, rule 2060.

BY FACSIMILE

By transmitting the document(s) listed above from Steptoe & Johnson in Los Angeles, California to the facsimile machine telephone number(s) set forth above.

Laura Alonso
Type or Print Name


Signature

SERVICE LIST

County of Santa Clara, et al. v. Atlantic Richfield Company, et al.
Supreme Court Case No. S142578

Counsel for Plaintiffs and Appellants, COUNTY OF SANTA CLARA, COUNTY OF SANTA CRUZ, COUNTY OF SOLANO, COUNTY OF ALAMEDA, COUNTY OF KERN, CITY OF OAKLAND, OAKLAND HOUSING AUTHORITY, OAKLAND REDEVELOPMENT AGENCY, OAKLAND UNIFIED SCHOOL DISTRICT, and the Class	
Bruce L. Simon Cotchett, Pitre, Simon & McCarthy San Francisco Airport Office Center 840 Malcolm Road, Suite 200 Burlingame, CA 94010 (650) 697-6000	Ann Miller Ravel Kathryn J. Zoglin Office Of County Counsel County of Santa Clara 70 West Hedding St., Ninth Floor San Jose, CA 95110-1770 (408) 299-5900
Counsel for Plaintiffs and Appellants, CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO HOUSING AUTHORITY, SAN FRANCISCO UNIFIED SCHOOL DISTRICT	
Dennis Jose Herrera Owen J. Clements Ingrid M. Evans Office of the City Attorney, San Francisco 1390 Market Street, Sixth Floor San Francisco, CA 94102 (415) 554-3944	
Counsel for Plaintiffs and Appellants, CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO HOUSING AUTHORITY, SAN FRANCISCO UNIFIED SCHOOL DISTRICT	
Michael P. Thornton (<i>pro hac vice</i>) Thornton & Naumes 100 Summer Street, 30th Floor Boston, MA 02110 (617) 720-1333	Ronald L. Motley (<i>pro hac vice</i>) John J. McConnel, Jr. (<i>pro hac vice</i>) Fidelma L. Fitzpatrick (<i>pro hac vice</i>) Motley Rice 321 South Main Street P.O. Box 6067 Providence, RI 02940 (401) 457-7700

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Counsel for Plaintiff and Appellant, CITY AND COUNTY OF SAN FRANCISCO	
Mary Alexander Mary Alexander & Associates 44 Montgomery Street, Suite 1303 San Francisco, CA 94104 (415) 433-4440	Robert E. Cartwright The Cartwright Law Firm 222 Front Street, 5th Floor San Francisco, CA 94111 (415) 433-0444
Counsel for Plaintiffs and Appellants, CITY OF OAKLAND, OAKLAND HOUSING AUTHORITY, OAKLAND REDEVELOPMENT AGENCY	
John Anthony Russo Randolph W. Hall Andrea Ford Roberts Christopher Kee Office of the City Attorney, Oakland 1 Frank H. Ogawa Plaza, 6th Floor Oakland, CA 94612 (510) 238-3814	
Counsel for Plaintiff and Appellant, OAKLAND UNIFIED SCHOOL DISTRICT	
Roy Combs General Counsel Oakland Unified School District 1025 Second Avenue, Room 406 Oakland, CA 94606 (510) 879-8535	
Counsel for Plaintiff and Appellant, COUNTY OF SOLANO	
Dennis Bunting County Counsel County of Solano 675 Texas Street, Suite 6600 Fairfield, CA 94533 (707) 784-6140	

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Counsel for Plaintiff and Appellant, COUNTY OF SANTA CRUZ	
Samuel Torres Harry A. Oberhelman III County Counsel County of Santa Cruz 701 Ocean Street, Room 505 Santa Cruz, CA 95060-4068 (831) 425-2041	
Counsel for Plaintiff and Appellant, COUNTY OF KERN	
Bernard C. Barmann, Sr. Office of the County Counsel County of Kern 1115 Truxtun Avenue, 4th Floor Bakersfield, CA 93301 (661) 868-3813	
Counsel for Plaintiff and Appellant, COUNTY OF ALAMEDA	
Lorenzo Eric Chambliss Sr. Deputy County Counsel County of Alameda 1221 Oak Street, Suite 540 Oakland, CA 94612 (510) 272-6700	
Counsel for Defendant, Respondent and Petitioner, ATLANTIC RICHFIELD COMPANY	
Sean O'Leary Morris Shane W. Tseng Arnold & Porter 777 S. Figueroa Street, 44th Floor Los Angeles, CA 90017-5844 (213) 243-4000	Philip H. Curtis (<i>pro hac vice</i>) William H. Voth (<i>pro hac vice</i>) Arnold & Porter 399 Park Avenue New York, NY 10022-4690 (212) 715-1000

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Counsel for Defendant, Respondent and Petitioner, MILLENNIUM INORGANIC CHEMICALS, INC.	
LISA PERROCHET DAVID M. AXELRAD Horvitz & Levy LLP 15760 Ventura Boulevard, 18th Floor Encino, California 91436 (818) 995-0800	Michael T. Nilan (<i>pro hac vice</i>) Scott A. Smith Amanda M. Cialkowski HALLELAND, LEWIS, NILAN, & JOHNSON 600 U. S. Bank Plaza South 220 South Sixth Street Minneapolis, Minnesota 55402 (612) 338-1838
James C. Hyde Ropers, Majeski, Kohn & Bentley 80 North First Street San Jose, CA 95113-0036 (408) 287-6262	
Counsel for Defendant, Respondent and Petitioner, NL INDUSTRIES	
James McManis William Faulkner McManis, Faulkner & Morgan 50 West San Fernando Street, 10th Floor San Jose, CA 95113 (408) 279-8700	
Counsel for Defendant, Respondent and Petitioner, AMERICAN CYANAMID COMPANY	
Anna S. McLean Heller, Ehrman, White & McAuliffe 333 Bush Street San Francisco, CA 94104 (415) 772-6000	Richard W. Mark (<i>pro hac vice</i>) Elyse Echtman Orrick, Herrington & Sutcliffe 666 Fifth Avenue New York, NY 10103 (212) 506-5000

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Counsel for Defendant, Respondent and Petitioner, CONAGRA GROCERY PRODUCTS COMPANY	
Lawrence A. Wengel Bradley W. Kragel Greve, Clifford, Wengel & Paras, LLP 2870 Gateway Oaks Drive, Suite 210 Sacramento, CA 95831 (916) 443-2011	
Counsel for Defendant, Respondent and Petitioner, E.I. DU PONT DE NEMOURS & COMPANY	
Clement L. Glynn Glynn & Finley 100 Pringle Avenue, Suite 500 Walnut Creek, CA 94596 (925) 210-2800	William H. King, Jr. (<i>pro hac vice</i>) Colin J. Hite (<i>pro hac vice</i>) Steven R. Williams McGuireWoods LLP One James Center 901 East Cary Street Richmond, VA 23219 (805) 775-1000
Counsel for Defendant, Respondent and Petitioner, SHERWIN-WILLIAMS COMPANY	
John W. Edwards II Jones Day 2882 Sand Hill Road, Suite 240 Menlo Park, CA 94025 (650) 739-3912	Elwood Lui Jones Day 555 California Street, 26th Floor San Francisco, CA 94104 (415) 626-3939
Counsel for Defendant, Respondent and Petitioner, O'BRIEN CORPORATION	
Archie S. Robinson Robinson & Wood, Inc. 227 North First Street, Suite 300 San Jose, CA 95113 (408) 298-7120	Thomas Karaba (<i>pro hac vice</i>) Paul F. Markoff IV (<i>pro hac vice</i>) Crowley, Barrett & Karaba, Ltd. Two First National Plaza 20 South Clark Street, Suite 2310 Chicago, IL 60603 (312) 726-2468

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Supreme Court Case No. S142578

Counsel for Defendant, LEAD INDUSTRIES ASSOCIATION, INC.	
Mark L. Sullivan Sullivan, Sullivan & Nahigian 100 Franklin Street Boston, MA 02110 (617) 482-5100	Kurt D. Geske Bowman & Brooke 1741 Technology Drive, Suite 200 San Jose, CA 95110 (408) 279-5393