

Case No. B251933

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR**

JOVANNA HERNANDEZCUEVA, Individually and as Successor In
Interest, et. al.
Plaintiff and Appellant,

v.

AMERICAN STANDARD, INC.; E.F. BRADY COMPANY, INC., et. al.
Defendant and Respondent.

Appeal from Judgment of the Superior Court for the County of Los Angeles
(Case No. BC475956; JCCP 4674)
The Honorable Joseph Di Loreto, Judge.

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE
LETTER BRIEF ON BEHALF OF THE ASSOCIATION OF
SOUTHERN CALIFORNIA DEFENSE COUNSEL AND THE
ASSOCIATION OF DEFENSE COUNSEL OF NORTHERN
CALIFORNIA AND NEVADA**

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The Association of Southern California Defense Counsel and the Association of Defense Counsel of Northern California and Nevada request leave to file the amicus letter brief accompanying this Application, based on the following grounds.

A. INTEREST OF PROPOSED AMICI CURIAE

1. The Association of Southern California Defense Counsel (“ASCDC”) is the nation’s largest regional organization of lawyers who specialize in defending civil actions. ASCDC counts as members approximately 1,200 attorneys in Southern and Central California. The ASCDC is actively involved in assisting courts on issues of interest to its members. It has appeared as amicus curiae in numerous cases before the California Supreme Court and Courts of Appeal. (see, e.g., *Howell v. Hamilton Meats & Provisions* (2011) 52 Cal.4th 541; *Village Northridge Homeowners Assn. v. State Farm Fire & Casualty Co.* (2010) 50 Cal.4th 913; *Reid v. Google, Inc.* (2010) 50 Ca1.4th 512; *Colony Bancorp of Malibu, Inc. v. Patel* (2012) 204 Cal. App. 4th 410; *Burlage v. Superior Court* (2009) 178 Cal.App.4th 524.)

2. The Association of Defense Counsel of Northern California and Nevada (“ADC-NCN”) is an association of over 800 attorneys primarily engaged in the defense of civil actions. As with the ASCDC,

ADC-NCN members have a strong interest in the development of substantive and procedural law in California, and have extensive experience with personal injury matters, including asbestos cases such as *Hernandezcueva*. The Association's Nevada members are also interested in the development of California law because Nevada courts often follow the law and rules adopted in California. ADC-NCN has appeared as amicus in numerous cases before the California Supreme Court and Courts of Appeal. (see, e.g., *Howell*, 52 Cal.4th at 541; *Nalwa v. Cedar Fair, L.P.* (2012) 55 Cal.4th 1148; *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763; *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308.)

3. The two Associations are separate organizations, with separate memberships and governing boards. They coordinate from time to time on a number of matters of shared interest, such as this application and the accompanying letter brief.

B. WHY THIS APPLICATION SHOULD BE GRANTED

4. The accompanying proposed amicus letter brief could help this Court by providing a broader perspective than that offered by the parties, including a discussion of why settlements paid by asbestos bankruptcy trusts are not a collateral source. The Associations are requesting leave to file their proposed letter brief to present concerns that support their request to modify the first full paragraph on page 23 of this Court's December 22, 2015 Opinion, which relates to whether a

bankruptcy trust is a collateral trust. The Associations believe that this paragraph presents a serious risk of being misconstrued and misused on the issues of (a) whether a defendant is entitled to a settlement credit for payments made by a bankruptcy trust on behalf of a joint tortfeasor and (b) whether bankrupt entities may be assigned a share of responsibility on a verdict form, thereby reducing the liability of defendants for noneconomic damages. Although neither was at issue in *Hernandezcueva*, and hence the paragraph on page 23 of the Opinion was not central to the conclusion that a strict products liability claim could be asserted against the defendant, settlements obtained from bankruptcy trusts are commonly the subject of a credit under Code of Civil Procedure § 877 in asbestos-litigation cases.

5. As discussed in the proposed amicus letter brief, bankrupt entities that have contributed to cause a plaintiff's injuries are joint tortfeasors and settlement payments made to resolve claims for their tortious conduct are not a collateral source. Thus, defendants are entitled to a credit for these settlements under Code of Civil Procedure § 877 and may allocate fault to these joint tortfeasors under Civil Code § 1431.2.

6. The Associations' members regularly defend civil cases involving alleged asbestos exposures, as in *Hernandezcueva*, in which settlement monies are received by plaintiffs from bankruptcy trusts, to settle claims against joint tortfeasors. Thus, they have a significant interest

to ensure that any confusion is avoided and that plaintiffs do not seize upon language in this Court's opinion to make arguments in other cases to impact a defendant's rights to a settlement credit and to allocate fault to bankrupt entities, which were not issues that were raised or briefed by the parties in *Hernandezcueva*. The concerns directly impact and can also extend beyond the hundreds of asbestos cases that are filed each year.

C. NO OTHER PARTY INVOLVED

7. No other party or its counsel has authored this brief in whole or in part, or has made a monetary contribution to fund the preparation or submission of this brief. (Cal. Rules of Court, rule 8.520(0(4).)

D. CONCLUSION

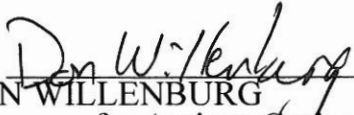
For these reasons, the Court is respectfully requested to grant this application, and grant the Association of Southern California Defense Counsel and the Association of Defense Counsel of Northern California and Nevada leave to file the accompanying amicus brief.

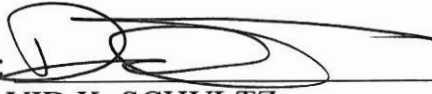
Dated: January 6, 2016

Dated: January 6, 2016

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PROOF OF SERVICE

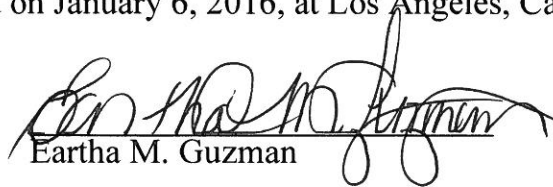
I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and not a party to the within action; my business address is 2049 Century Park East, Suite 2900, Los Angeles, CA 90067.

On January 6, 2016, I served the following document(s) described **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE LETTER BRIEF ON BEHALF OF THE ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL AND THE ASSOCIATION OF DEFENSE COUNSEL OF NORTHERN CALIFORNIA AND NEVADA** on the interested parties in this action as follows:

See Attached Service List

BY FIRST CLASS MAIL: I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 6, 2016, at Los Angeles, California.


Eartha M. Guzman

SERVICE LIST

Hernandezcueva v. American Standard, Inc., Case No. B251933

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Eartha Guzman

From: nobody@jud.ca.gov
Sent: Wednesday, January 06, 2016 1:40 PM
To: Eartha Guzman
Subject: E-File Case B251933, Hernandezcueva v. American, Submitted 01-06-2016 01:39 PM
Attachments: B251933_MOT_ASCDC&ADCNCN.pdf

The following Appellate Document has been submitted.

Case Type: Civil

Division: 4

Case Number: B251933

Case Name: Hernandezcueva v. American Standard, Inc. (E.F. Brady Co., Inc.)

Name of Party: Amicus Curiae Assoc. of So. CA Defense Counsel & Assoc. of Defense Counsel of No. CA & NV

Type of Document: Motions (MOT)

Name of Attorney or Self-Represented Party Who Prepared Document: David K. Schultz

Bar Number of Attorney: 150120