No. SJC-13108
Appeals Court Case No. 2021-P-0190

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

OFER NEMIROVSKY,

Plaintiff-Appellee,

v.

DAIKIN NORTH AMERICA, LLC,

Defendant-Appellant.

On Direct Appellate Review from a Judgment of the
Superior Court for Suffolk County, No. 1684cv02022

AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF DEFENDANT-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Judicial Court Rule 1:21, the National Association of Manufacturers (NAM) states it is a nonprofit organization with no parent corporation. No publicly held corporation has a 10% or greater ownership interest in NAM.

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ISSUE PRESENTED DISCUSSED IN THIS *AMICUS* BRIEF

Whether Massachusetts will recognize two new exceptions to its traditional component part liability laws, thereby subjecting a manufacturer or seller of a non-defective, merchantable replacement part to liability for the failure of an end-product into which the part was incorporated, so long as the part was made for that specific end-product or does not function separately from the defective end-product.

INTEREST OF *AMICUS CURIAE*

Amicus is the National Association of Manufacturers (NAM), whose members include thousands of businesses, many of whom are small, privately-owned manufacturers of component and replacement parts. The NAM and its members are deeply concerned about the Superior Court's substantial departure from traditional component part liability law that has long existed in Massachusetts and around the country. Specifically, the Superior Court's order subjects a manufacturer or seller of a non-defective, merchantable component replacement part to liability solely because the end-product system into which the component was placed failed. This ruling places these companies at risk of extraordinary liability for risks they cannot control and harm they did not cause.

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states, including manufacturers of component parts. Manufacturing employs more

than 12 million men and women, contributes $2.3 trillion to the U.S. economy annually, the largest economic impact of any major sector, and accounts for nearly two-thirds of all private-sector research and development in the Nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. The NAM's Legal Center advocates on behalf of manufacturers in the courts.

The NAM regularly appears as *amicus curiae* in cases, such as this one, that raise issues of general concern for the business community in Massachusetts. The NAM believes this brief will provide an additional perspective that may assist the Court. Accordingly, the NAM has sought leave to file this brief.[1]

STATEMENT OF THE CASE AND FACTS

The key facts and case history are set out in detail with record citations in the Defendant-Appellant's Brief. For purposes of this *amicus* brief, they key facts and case history are as follows:

This case involves a multi-million dollar judgment against the seller of fan coils, Daikin North America (Daikin NA), which supplied replacement parts for a

[1] Pursuant to Rule 17(c)(5), undersigned counsel states that (1) Shook Hardy & Bacon LLP does not represent any of the parties to this case in other litigation presenting the same issues as are presented in this case; and (2) no counsel for a party authored this brief in whole or in part, nor has any party made a monetary contribution intended to fund the preparation or submission of this brief.

custom heating and cooling system installed in Plaintiff's residence. Daikin NA had no part in designing, manufacturing, or selling Plaintiff's original HVAC system. Rather, it provided replacement evaporator coils after the Plaintiff's system began experiencing failures. Here, both sides agree the HVAC system failed as a result of certain fan coils corroding, though not because the coils supplied by Daikin NA were defective or not merchantable. Plaintiff's expert testified the system's *drain pan*, which was made of a nonconductive material, allowed electrons to circulate back up the unit and cause that corrosion. Daikin NA offered additional reasons for the system's failure, including inaccessibility of the units for routine maintenance and environmental factors. Yet, the jury awarded nearly $3.4 million in damages against this component part seller, which includes the cost of replacing Plaintiff's entire HVAC system. The Superior Court doubled these damages under the Consumer Protection Act.

In sustaining the jury's verdict, the Superior Court recognized that it is established law that "[w]hen a component of an integrated product is not itself defective, the maker of the component is not liable for injury that results from a defect in the integrated product." Def. Add. at 68, 76 (quoting *Cipollone v. Yale Indus. Prods., Inc*., 202 F.3d 376, 379 (1st Cir. 2000)). Yet, the court created two new exceptions to allow the liability finding here: (1) for component parts that "do not function separately from the system in which there was a defect;" and (2) if a

part is specially designed to fit a particular system, rather than made for general use. *Id*. at 68-69. As a result, the supplier of $9,000 in replacement coils was held liable for defects in a HVAC system that it did not design, make, or sell and required to cover multi-million dollar costs associated with replacing that entire system.

ARGUMENT

The Superior Court's decision to subject Daikin NA—the supplier of a non-defective, merchantable component part—to liability for defects in the larger HVAC system has no basis in the law. Under longstanding Massachusetts and American liability law, manufacturers and sellers of products, including component parts, are liable only for the products they put into the stream of commerce. Accordingly, companies that make or sell component or replacement parts are generally not liable for flaws in end-products. As this case shows, they have no control over risks posed by the larger system, and their product is not the proximate cause of the alleged harm. It is of no consequence, as the Superior Court suggested, whether the component was made for use in this system or could be used as a standalone product. These companies cannot be liable for risks they did not create and cannot control.

In addition to contradicting longstanding liability law, the Superior Court's novel tort theory is unprincipled, would advance unsound legal policy, and—as this brief explains—could improperly alter the parties' economic incentives and market behavior. As courts around the country have held, component part manufacturers

and sellers do not necessarily have the expertise, resources, or insurance to cover the systems into which their components are incorporated—nor should they. Such a requirement is impractical and, worse, would allow end-product manufacturers to externalize the cost of their own alleged misconduct. Makers and sellers of a non-defective bolt, electrical wire, or coil, as here, cannot shoulder the blame for defects in a larger system, such as a fire protection system, aircraft, or industrial machine that they had no responsibility for designing, making, installing, or maintaining. To remain fair, tort liability must be connected to the particular product at fault.

Amici respectfully requests that this Court reverse the ruling below. The Superior Court's novel ruling departs significantly from traditional liability law in ways that could have widespread impacts on product litigation and undermine the viability of the component part industry in Massachusetts.

I. The Component Part Liability Theory Articulated in the Superior Court's Ruling Below Is a Major Departure from Well-Settled Law.

It has long been black letter law that a component part manufacturer or seller cannot be subjected to liability for injury caused by a defect in an integrated end-product. There are only two circumstances where such liability can ensue: the harm was caused by a defect in the component itself or the component manufacturer or seller was substantially involved in designing the aspect of the end-product or system that caused the harm. *See* Restatement (Third) of Torts: Prod. Liab. § 5 (1998)

(hereinafter "Restatement Third"). Here, Plaintiff does not allege either of these two situations. Therefore, Daikin NA cannot be liable for the HVAC system's failure.

The situation at bar has been litigated numerous times, including under Massachusetts law. *See Cipollone v. Yale Indus. Prods., Inc*., 202 F.3d 376 (1st Cir. 2000). In *Cipollone*, the U.S. Court of Appeals for the First Circuit properly applied Massachusetts law in upholding the trial court's grant of summary judgment on a breach of warranty of merchantability claim against a component part manufacturer. There, the part was a "customized dock lift" integrated into a larger "material-handling system" at a FedEx facility. The court found there was no evidence the lift itself was defective and refused to create a special carve out under Massachusetts law because the lift was manufactured to FedEx's specifications. *See id.* at 379.

Cipollone was well-grounded in Massachusetts law, which has also rejected broad exceptions to component part liability. For example, in *Pantazis v. Mack Trucks, Inc*., 92 Mass. App. Ct. 477, 483-85 (2017), the Appeals Court declined to impose liability on makers of non-defective components of a dump truck on the theory that they had a duty to warn end users of foreseeable risks presented by the completed system. In *Mitchell v. Sky Climber, Inc*., this Court stated that "a supplier of a component part containing no latent defect has no duty to warn the subsequent assembler or its customers of any danger that may arise after the components are assembled." 396 Mass. 629, 631 (1986).

Yet, here, the Superior Court created two unprecedented exceptions to the component part liability doctrine. First, it would subject component manufacturers and sellers to liability for the systems into which their parts are integrated, unless the component is a "standalone product" that operates separately from that system. Def. Add. at 68. Second, it would impose liability if the component part manufacturer or seller provides a custom part for that end-product. *Id.* at 77. These exceptions create new, unprincipled and potentially limitless liability over many types of component and replacement parts when their manufacturers or sellers did not design, make, or sell the end-products and their part was non-defective and fully merchantable.

The Restatement specifically cautions against any such expansive rulings: "A component seller who simply designs a component to its buyer's specifications, and does not substantially participate in the integration of the component into the design of the product" is not subject to liability. Restatement Third § 5, cmt. e. Further, even "providing mechanical or technical services or advice concerning a component part does not, by itself, constitute substantial participation that would subject the component supplier to liability." The bottom line is that "[i]f the component is not itself defective, it would be unjust and inefficient to impose liability solely on the ground that the manufacturer of the integrated product utilizes the component in a manner that renders the integrated product defective." Restatement Third § 5 cmt. a.

As the Supreme Court of Tennessee has observed, this is the rule in every state where courts have considered this scenario. *See Davis v. Komatsu Am. Indus. Corp.*, 42 S.W.3d 34, 38-39 (Tenn. 2001) (collecting cases). Indeed, case law is littered with examples of rulings denying liability in situations akin to the case at bar. For example, a manufacturer of a seat installed in a garbage truck was not liable for injuries sustained in a rollover: "At best, the evidence supports a possible conclusion that using the seat in this specific truck created an allegedly defective restraint system design." *Bostrom Seating, Inc. v. Crane Carrier Co.*, 140 S.W.3d 681, 684-85 (Tex. 2004). But, because the truck manufacturer "was in total control of the design of that system" and the seat manufacturer played "no part in the design of the truck," the seat manufacturer "cannot be held liable for its possible defectiveness." *Id.* at 685. Similarly, the manufacturer of a liquefied petroleum hose integrated into a barbecue pit was not liable when the pit exploded. *See Martinez v. Yoho's Fast Food Equip.*, No. 02AP-79, 2002 WL 31752047 (Ohio Ct. App. Dec. 10, 2002).

When a trial court departs so significantly from well-settled, core liability principles, this Court has an obligation to restore the law, particularly here given the broad impact this ruling could have on product litigation in Massachusetts. These principles are longstanding and straightforward. To that end, the Court should not be distracted by Plaintiff's attempt to recast its claims as "contract-based warranty claims." Br. at 33. The Superior Court clearly analyzed these issues under tort-based

warranty claims, referring to "the awards on the tort claims." Tr. Ord., Oct. 4, 2019, at 9. Regardless, under either theory manufacturers and sellers of non-defective component parts must not subject to liability for defects in the larger end-product.

II. Subjecting Component Part Manufacturers to Liability for Failures of an End-Product Would Undermine Central Rights and Responsibilities of Manufacturers.

The Superior Court's imposition of liability on Daikin NA would destabilize Massachusetts' manufacturing environment, where manufacturers and sellers often provide components and replacement parts for others' end-products. Some of these component and replacement parts are highly sophisticated and designed to meet the specifications of a particular end-product. Although these products do not, in the Superior Court's words, "standalone," their manufacturers and sellers do not necessarily have greater involvement in the design, manufacture, and performance of the end-product than those who make or sell stand-alone products. In either situation, the component part manufacturer or seller must have been substantially involved in designing the aspect of the larger product that failed in order to be responsible for any harms. Except in this specific situation, making or selling parts should not expose a business to liability for a flaw in the larger end-product.

Courts have consistently explained the legal and business rationales for maintaining these lines in liability law. Most significantly, component part suppliers cannot guarantee the safety of other manufacturers' machinery; they do not control

those risks, are not culpable for any such harm, and do not have the expertise to prevent them. *See Crossfield v. Quality Control Equip. Co.*, 1 F.3d 701, 704 (8th Cir. 1993) (applying Missouri law); *see also Temple v. Wean United, Inc.*, 364 N.E.2d 267, 272 (Ohio 1977) (refusing to extend a component part manufacturer's duty to the "speculative anticipation of how manufactured components, not in and of themselves dangerous or defective, can become potentially dangerous dependent upon their integration into a unit designed and assembled by another"). The Court should also not be distracted by Plaintiff's effort to pierce the corporate veil between the manufacturer of the HVAC system and Defendant Daikin NA. There is no disputing that the two are entirely different companies, and the Superior Court did not rely on any relationship between the companies in creating this new liability rule.

Thus, in this and other cases, the impact of this ruling would be "tantamount to charging a component part manufacturer with knowledge that is superior to that of the completed product manufacturer." Restatement Third § 5 cmt. a (quoting *Childress v. Gresen Mfg. Co*., 888 F.2d 45, 49 (6th Cir. 1989)). "This would require the component seller to develop sufficient sophistication to review the decisions of the business entity that is already charged with responsibility for the integrated product." *Id.* They would have to "retain an expert in the client's field of business to determine whether the client intends to develop a safe product." *Taylor v. Elliott Turbomachinery Co.*, 171 Cal. App. 4th 564, 584 (2009). Assigning this requirement

to component part manufacturers, particularly for highly complex custom machinery is impractical, would grind manufacturing to a halt, and be exceedingly costly.

It is not consequential, which the Superior Court asserted, that the manufacturer or seller of the component part had knowledge of the design of the final product. "[T]here is a marked difference between knowing the identity of the equipment into which a component part will be integrated and anticipating any hazardous operation by that equipment that might be facilitated by the addition of the component part." *Childress*, 888 F.2d at 49 (manufacturer of a hydraulic valve held not liable for its use in a log-splitting machine). "To impose responsibility on the supplier of [the component] in the context of the larger defectively designed machine system would simply extend liability too far." *Crossfield*, 1 F.3d at 704.

Additionally, the "finished product manufacturers know exactly what they intend to do with a component or raw material and therefore are in a better position to guarantee that the component or raw material is suitable for their particular applications." *Taylor*, 171 Cal. App. 4th at 584. Dean John Wade, reporter of the Restatement (Second) of Torts, explained long ago the reasons a manufacturer must not be liable for another company's products. He wrote that, in addition to having no moral or legal obligation to stand behind another's goods, they are not in a position to incorporate the costs of liability into their prices. *See* John Wade, *On the Nature of Strict Tort Liability for Products*, 44 Miss. L.J. 825, 828 (1973).

"The added cost of such a procedure both financially and in terms of stifled innovation outweighs the public benefit of giving plaintiffs an additional pocket to look to for recovery." *Orion Ins. Co., Ltd. v. United Tech. Corp.*, 502 F. Supp. 173, 178 (E.D. Pa. 1980). Part suppliers forced to pay in these circumstances would face the difficult decision of potential bankruptcy or raising prices on their own consumers, even if they could quantify the risk. As a result, component part manufacturers may refuse to supply parts for complex products, some of which may be critical to modern life, where an end-product failure could cause significant harm.

Finally, making component part manufacturers and sellers pay for injuries caused by the larger system could improperly alter the parties' economic incentives and market behavior. For instance, if an end-product manufacturer suspects a deep-pocket part supplier will have to pay for harms caused by its end-product, the manufacturer will have less incentive to maintain sufficient liability insurance or adhere to proper safety precautions. Also, given these incentives, end-product manufacturers may not purchase component parts from small businesses who could not afford to subsidize their liability risks. Such a development would undermine American ingenuity, as 98.6% of all manufacturing companies in the United States are small businesses, with the majority having fewer than 20 employees. Bridget Weston, *How Small Manufacturing Businesses Drive the U.S. Economy*, Score (May

9, 2019), https://www.score.org/blog/how-small-manufacturing-businesses-drive-us-economy. These manufacturers could not afford these new risks.

The case at bar illustrates the consequences of the Superior Court's liability theory. Here, the seller of $9,000 in parts must pay nearly $7 million for harm that, according to Plaintiff's own theory, the seller did not cause and was not responsible for avoiding. Such liability is unsustainable.

III. Failure to Overturn the Ruling Below Would Destabilize a Major Massachusetts Industry.

This case is of critical importance to the component parts industry, which is a significant driver of innovation and jobs in Massachusetts and in every state around the country. This industry encompasses the component and replacement parts used to make countless products for consumers, governments, and vital industries.

Consider the auto industry. As with HVAC systems, there are a multitude of non-original part equipment manufacturers that make replacement parts for other companies' end-products. These parts replace fenders, bumpers, mirrors, grills, headlights, rims, wires, switches, or sparkplugs, among other components that may be damaged or wear out. The parts are often designed for specific makes, models, and years of vehicles. Some manufacturers make parts for specialized automobiles, such as vintage cars. These parts neither function separately nor are for general use. Auto parts manufacturers in Massachusetts employ about 5,000 people, leading to more than 20,000 total direct and indirect employment opportunities. *See* Motor &

Equipment Manufacturers Ass'n, *US Labor & Economic Impact of Vehicle Supplier Industry – 2019CY* (Dec. 2020). This ruling puts these jobs at risk, as the auto parts industry is a "highly competitive business involving small margins of profit." *Dayco Corp. v. F.T.C.*, 362 F.2d 180, 183-84 (6th Cir. 1966). Massachusetts manufacturers should not lose a competitive edge because they have to pay the liability of others.

The HVAC and automotive industries are not unique. Businesses make replacement parts specifically to fit a wide range of products for a wide range of industries. Examples include filters for a particular refrigerator, a valve that fits certain washing machines, tools for a certain vacuum cleaner, or a fuel injector for a plane. In Massachusetts, many of the state's manufacturing sectors are component part suppliers, including for computer and electronic products, fabricated metal products, aerospace products and parts, electrical equipment and supplies, and others. *See* The National Association of Manufacturers, *Massachusetts Manufacturing Facts* (2020), https://www.nam.org/state-manufacturing-data/2020-massachusetts-manufacturing-facts. Overall, manufacturers in Massachusetts account for 9.39% of the total output in the state, employing 6.60% of the workforce. *See id.* In addition, there were an average of 243,000 manufacturing employees in Massachusetts in 2019, with an average annual compensation of $103,826.30 in 2018. *See id.*

Component part manufacturers and the manufacturing community as a whole undergird the Massachusetts and U.S. economies. The Superior Court's decision to fundamentally shift their rights and responsibilities in ways that are unprincipled, uncontrollable, and unsustainable must not be allowed to stand. The Court should reverse the ruling below and restore Massachusetts' component parts law to its longstanding, mainstream moorings.

CONCLUSION

This Court should reverse the judgment against Daikin NA.

Respectfully submitted,

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September 15, 2021

RULE 16(k) CERTIFICATE OF COMPLIANCE

Pursuant to Mass. R. App. P. 16(k), I hereby certify that this brief complies with the rules of court pertaining to the filing of an amicus brief, including, but not limited to, Mass. R. App. P. 17 (brief of an *amicus curiae*).

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CERTIFICATE OF SERVICE

I, Brandon L. Arber, hereby certify, under the penalties of perjury that on September 15, 2021, I caused a true and accurate copy of the foregoing Brief of the National Association of Manufacturers as *Amicus Curiae* in Support of Defendant-Appellant's Application for Leave to Obtain Direct Appellate Review to be filed via the Massachusetts Odyssey File & Serve site and served two copies upon the following counsel by electronic and overnight mail:

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