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IN THE SUPREME COURT OF CALIFORNIA

FLAVIO RAMOS et al.,
Plaintiffs and Appellants,

v.

BRENNTAG SPECIALTIES, INC. et al.,
Defendants and Respondents.

SUPREME COURT
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AFTER A DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION FOUR, CASE NO. B248038

OPENING BRIEF ON THE MERITS

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OPENING BRIEF ON THE MERITS

ISSUE PRESENTED

Is a supplier of multiuse raw material responsible for injuries allegedly caused while the material is subjected to manufacturing processes by an intermediary purchaser, without any input from or control by the supplier?

INTRODUCTION

Plaintiffs Flavio and Modesta Ramos have sued various raw material suppliers because Mr. Ramos allegedly suffered injuries while working for an industrial foundry operation that made metal parts. They do not identify any hazard posed by the raw materials in the form as delivered to the foundry. Rather, it is the

manufacturing process that, according to the facts alleged, led to harmful exposures. Under these circumstances, the raw material/component parts doctrine should preclude liability against the raw material supplier absent any evidence of participation or control by the supplier in the manufacturing process. Where, as here, the employer-manufacturer develops and controls its own processes, the sophisticated purchaser doctrine provides an independent ground for finding no duty on the part of the raw material supplier to protect the purchaser's workers.

Defendant Alcoa Inc. is a seller and supplier of aluminum, one of the most abundant raw materials on Earth. Aluminum is used in innumerable ways in industrial processes, and it is a building block of countless consumer products, including soda cans, aluminum foil, and aspirin. Plaintiffs have identified no defect in the aluminum sold by Alcoa, nor is there anything inherently dangerous about aluminum. Nor does Alcoa have any influence or control over the innumerable manufacturing processes undertaken by the purchasers of its aluminum, including Mr. Ramos's employer. Nevertheless, overruling the trial court's sustaining of Alcoa's demurrer, the Court of Appeal determined that Alcoa is potentially liable for injuries allegedly caused by the employer's decision to subject the aluminum to industrial foundry processes that plaintiffs say released hazardous fumes from the aluminum.

Under traditional principles of tort law, the supplier of a raw material is generally not responsible for allegedly injurious post-sale manufacturing processes in which the raw material is used unless (1) the raw materials are defective or "tainted" at the time of

the sale, or (2) the supplier exerted control over the manufacturing process. (Rest.3d Torts, Products Liability § 5.)

California follows this rule. For example, in *Maxton v. Western States Metals* (2012) 203 Cal.App.4th 81 (*Maxton*), the court affirmed a judgment in favor of a raw material supplier on facts essentially identical to those presented here. There, the court found that Alcoa, as a supplier of non-defective, multi-use aluminum raw materials, was not potentially liable on negligence or strict liability theories for injuries allegedly sustained by employees of the buyer-manufacturers that manipulated Alcoa's aluminum. Similarly in *Artiglio v. General Electric Co.* (1998) 61 Cal.App.4th 830 (*Artiglio*), the court affirmed summary judgment for a supplier of silicone used in manufacturing breast implants. The court concluded that the supplier had no duty to disclose to consumers information about potential dangers posed by use of silicone in medical devices, because the silicone materials had numerous other uses, and were subject to further processing by the breast implant manufacturers, which had the ability to determine the suitability and safety of the implants.

Courts around the country also agree, as reflected in the Restatement of Torts: "Inappropriate decisions regarding the use of [raw] materials are not attributable to the supplier of the raw materials but rather to the fabricator that puts them to improper use. The manufacturer of the integrated product has a significant comparative advantage regarding selection of materials to be used. Accordingly, raw-materials sellers are not subject to liability for harm caused by defective design of the end-product. To impose a

duty to warn would require the seller to develop expertise regarding a multitude of different end-products and to investigate the actual use of raw materials by manufacturers over whom the supplier has no control. Courts uniformly refuse to impose such an onerous duty to warn." (Rest.3d Torts, Products Liability § 5, com. c, p. 134.)

The Court of Appeal below departed from these well-established, control-based principles and instead held that a raw material supplier like Alcoa can be legally responsible for injuries arising from any conceivable use by a manufacturer of its multi-use, non-defective raw materials, so long as the use is foreseeable (in hindsight) or "intended." This novel approach is an outlier that fails to account for the real-world infeasibility of improving safety by imposing liability on a raw material supplier. The foreseeability test represents a dramatic and inappropriate expansion of the potential liability for the numerous entities that conduct business in California by supplying the basic materials and components from which all other products are made. This Court should reject this expansion and instead apply a control-based approach to define the scope of duties owed by raw material suppliers.

An alternative basis on which to affirm the trial court's sustaining of the demurrer here is the "sophisticated purchaser" doctrine, under which a bulk supplier of raw materials has no duty to warn a sophisticated purchaser, such as an employer who

manufactures aluminum products, of the alleged dangers to workers created by the employer-manufacturer's own operations.[1]

The sophisticated purchaser doctrine may apply in some cases where the raw material supplier defense is inapt—such as where the supplier participated in the manufacturing process in some way or supplied an inherently hazardous material, but the manufacturer could be expected already to know of the hazards about which the plaintiff says the supplier should have warned or protected against. The converse is also true; the raw material supplier doctrine may apply where the sophisticated purchaser doctrine is inapt—such as where the purchaser has no reason to understand hazards posed by its manufacturing process or end products, but the supplier has no participation in directing those processes or designing those products. In this case, however, both rules apply. The trial court's order sustaining defendants' demurrers should be affirmed.

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[1] A related issue is currently under review by this Court in *Webb v. Special Electric Company, Inc.* (2013) 214 Cal.App.4th 595, review granted June 12, 2013, S209927 (*Webb*), involving a product user's claimed asbestos exposure from cutting pipe that his employer bought from a pipe supply company, that in turn bought its inventory from a manufacturing company (Johns Manville), that in turn incorporated into its pipe products asbestos supplied in bulk form in a sale brokered by the defendant.

STATEMENT OF THE CASE

Plaintiff Flavio Ramos worked for Supreme Casting & Pattern, Inc. (Supreme Casting), an industrial foundry that made metal parts. Ramos and his wife claim that Ramos's work for Supreme Casting exposed him to manufacturing processes that generated fumes from melted down metals, as well as dusts from plaster, sand, limestone, and marble, all of which allegedly caused him to develop interstitial pulmonary fibrosis. (Typed opn. 4.)

Seeking a remedy beyond the worker's compensation benefits that would be available from Ramos's employer, plaintiffs sued several of the companies that supplied the raw materials that were subjected to the various industrial foundry and fabrication processes used to make the metal parts. (Typed opn. 3-4.) One such company was Alcoa, which generally sold primary aluminum, aluminum alloys, and aluminum-containing products, and which along with six other suppliers, sold metal products to Supreme Casting. (Typed opn. 4.) Plaintiffs asserted theories of strict liability (design defect and failure to warn), negligence, negligence per se, fraudulent concealment, breach of implied warranties, and loss of consortium based on Mr. Ramos's alleged injuries. (Typed opn. 3.)

Aluminum, one of the most abundant and versatile materials on Earth, is found in a wide range of products and materials, and can be used as a raw material in "innumerable ways" in modern industry. (See *Maxton*, *supra*, 203 Cal.App.4th at p. 85.) Alcoa's aluminum materials at issue here are not consumer products; they

are instead supplied to manufacturers who use the materials to make various end-use products. (*Ibid.*)

Nowhere in their four amended complaints have plaintiffs alleged that (1) Alcoa's aluminum materials were contaminated, or otherwise deviated from normal aluminum materials, (2) the aluminum materials released harmful agents in their undisturbed state or (3) Alcoa controlled the way in which Mr. Ramos's employer used those aluminum materials.

Although plaintiffs alleged that Alcoa's aluminum was not "substantially altered" during Supreme Casting's industrial processes, they also concede that Mr. Ramos's alleged injurious exposure occurred only when the aluminum was "melted in furnaces" and, once in a "molten" state, generated metal fumes. (Typed opn. 4.) Thus, as the Court of Appeal noted in its opinion, plaintiffs alleged that Alcoa's aluminum materials became " 'inherently dangerous' " only "when melted during the casting process," which was controlled solely by Supreme Casting. (Typed opn. 17.)

Alcoa demurred to plaintiffs' fourth amended complaint, arguing that the supplier of a multi-use raw material like aluminum is not liable for injuries that occur when a third party, like Mr. Ramos's employer Supreme Casting, subjects the otherwise safe raw materials to industrial processes that create an allegedly harmful condition. The trial court, relying on *Maxton* and *Artiglio* sustained Alcoa's demurrer without leave to amend. (12 AA 2969-2970.)

The Court of Appeal reversed, declining to apply that aspect of the so-called "component parts" doctrine that protects raw materials suppliers from injuries caused when the raw material is incorporated into another product.[2] The court concluded the doctrine does not apply here "[b]ecause the [complaint] alleges that Ramos's injuries resulted from the direct and intended use of respondents' products, and not from injuries resulting from the use of any end product . . . ." (Typed opn. 6.) The Court of Appeal also rejected the argument that the defendants were protected by the sophisticated purchaser doctrine. (Typed opn. 24-25.)

The Court of Appeal expressly disagreed with *Maxton*'s rationale on these points. (Typed opn. 20.) The Court of Appeal, however, did not appear to disagree with the conclusion in *Maxton* that, if its rationale were followed, all causes of action failed as a matter of law whether pleaded under negligence or strict liability theories. (Compare *Maxton, supra*, 203 Cal.App.4th at p. 89 with typed opn. 12.)

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[2] Not all "component parts" are raw materials. They may be separately manufactured products. The component parts doctrine applies to components "such as raw materials, valves, or switches, [which] have no functional capabilities unless integrated into other products." (Rest.3d Torts, Products Liability § 5, com. a, pp. 130-131.)

LEGAL DISCUSSION

I. AS THE SUPPLIER OF MULTI-USE RAW MATERIALS, ALCOA IS NOT RESPONSIBLE FOR INJURIES ALLEGEDLY CAUSED BY THE PLAINTIFF'S EMPLOYER'S OWN MANUFACTURING PROCESS.

A. The purpose of products liability law is to impose liability on those who control the creation and distribution of defective products, and who are in the best position to enhance safety by reducing injuries from those products.

Strict liability is not *absolute* liability, requiring product suppliers and manufacturers to become insurers of their product's safety. (*O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 362 (*O'Neil*), quoting *Daly v. General Motors Corp.* (1978) 20 Cal.3d 725, 733 ["From its inception, . . . strict liability has never been, and is not now, *absolute* liability"].) Rather, only those suppliers and manufacturers who exercise control over the product and the circumstances giving rise to injury are the ones that properly bear liability when injury occurs. (*O'Neil* at p. 349, quoting *Sindell v. Abbott Laboratories* (1980) 26 Cal.3d 588, 597 ["It is fundamental that the imposition of liability requires a showing that the plaintiff's injuries were caused by an act of the defendant or an instrumentality under the defendant's control"].)

"[T]he avowed purpose of imposing strict liability upon the manufacturer is twofold: (1) loss-distribution or risk-spreading and (2) injury-reduction by enhanced safety." (*Shepard v. Superior Court* (1977) 76 Cal.App.3d 16, 26 (*Shepard*); accord, *Escola v. Coca Cola Bottling Co.* (1944) 24 Cal.2d 453, 462 (conc. opn. of Traynor, J.) ["Even if there is no negligence, however, public policy demands that responsibility be fixed wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market"].)

The first rationale, risk-spreading, ensures that costs of injuries resulting from defective products are borne by the manufacturers who put such defective products on the market rather than by the injured persons. (*Greenman v. Yuba Power Products, Inc.* (1963) 59 Cal.2d 57, 63; *Vandermark v. Ford Motor Co.* (1964) 61 Cal.2d 256, 262-263.) The second rationale, injury reduction, imposes liability on those entities "in the best position to discover and correct the dangerous aspects of [their] products before any injury occurs." (*Shepard*, *supra*, 76 Cal.App.3d at p. 27, citing *Vandermark* at p. 256.)

Neither policy rationale is served by imposing liability on the suppliers of multi-use raw materials that become dangerous only when subject to the purchaser/manufacturer's industrial process over which the raw material supplier has no control.

B. The purchaser-manufacturers that incorporate raw materials into their own manufacturing processes or products are in the best position to prevent injuries from such uses of the raw materials.

As recognized by the drafters of the Restatement of Torts, traditional product liability theories do not impose liability upon suppliers of non-defective fungible components or non-dangerous naturally occurring raw materials that are capable of multiple uses. (See Rest.2d Torts, § 402A, coms. p and q, pp. 357-358; Rest.3d Torts, Products Liability § 5, com. a, p. 131 ["As a general rule, component sellers should not be liable when the component itself is not defective"][3]; accord, *Jimenez v. Superior Court* (2002) 29 Cal.4th 473, 480 (*Jimenez*) [noting that "component part" suppliers ordinarily are not liable unless their components were defective when they "left the factory"].) This is true whether the injury occurs to a worker engaged in the manufacturing process (*Maxton, supra,* 203 Cal.App.4th 81) or is sustained by a consumer using the

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[3] As used in the Restatement and the case law, "component sellers" include the sellers of raw materials. (*Maxton, supra,* 203 Cal.App.4th at p. 88 ["A comment of the Restatement Third provides: 'Product components include raw materials, bulk products, and other constituent products sold for integration into other products.' (Rest.3d, § 5, com. a, p. 130.)"].) The reason for this rule is that like finished products intended to be incorporated into yet other finished products, raw material suppliers generally lack control over the post-sale processes that convert the raw materials into something else. (Rest.3d Torts, Products Liability, § 5, com. a, pp. 130-131.)

end-product incorporating the raw material (*Artiglio, supra,* 61 Cal.App.4th 830).

The rationale for not imposing liability on a supplier of raw materials "is a matter of equity and public policy." (*Maxton, supra,* 203 Cal.App.4th at p. 89.) The purchasers of the raw materials "are in a better position [than the suppliers] to guarantee the safety of the manufacturing process" that they oversee, and the safety of the "end product" to the consumer, because the purchaser-manufacturers are the ones that plan and control how they incorporate the raw materials into their finished products (*Ibid.*; *Taylor v. Elliott Turbomachinery Co. Inc.* (2009) 171 Cal.App.4th 564, 584, quoting *Springmeyer v. Ford Motor Co.* (1998) 60 Cal.App.4th 1541, 1554 [" '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' "].)

Moreover, employer-manufacturers (like Supreme Casting here) have nondelegable duties to guarantee the safety of the workplace and to each of its employees. (*Bridges v. Los Angeles Pacific Ry.* (1909) 156 Cal. 492, 494 ["the obligation of the master to furnish to his employees safe appliances and a safe place for work is one that cannot be delegated"]; *Bonner v. Workers' Comp. Appeals Bd.* (1990) 225 Cal.App.3d 1023, 1034 (*Bonner*).)

In contrast, " '[s]uppliers of versatile materials like chains, valves, sand gravel, etc., cannot be expected to become experts in the infinite number of finished products that might conceivably

incorporate their multi-use raw materials or components.' " (*Artiglio, supra,* 61 Cal.App.4th at p. 837, quoting *In re Temporomandibular Joint (TMJ) Implants Products Liability Litigation* (8th Cir. 1996) 97 F.3d 1050, 1057 (*In re TMJ*).) Thus, " '[m]aking suppliers of inherently safe raw materials and component parts pay for the mistakes of the finished product manufacturer would not only be unfair, but it also would impose an intolerable burden on the business world.' " (*Ibid.*; accord, *Maxton, supra,* 203 Cal.App.4th at p. 89 ["Imposing liability on suppliers of product components would force them to scrutinize the buyer-manufacturer's manufacturing process and end products in order to reduce their exposure to lawsuits. This would require many suppliers to retain experts in a huge variety of areas, especially if the product components are versatile raw materials."]; Rest.3d Torts, Products Liability § 5, com. c, p. 134 ["To impose a duty to warn would require the seller to develop expertise regarding a multitude of different end-products and to investigate the actual use of raw materials by manufacturers over whom the supplier has no control"].)

This "refusal to impose liability on sellers of nondefective components [or raw materials] is expressed in various ways, such as the 'raw material supplier defense' or the 'bulk sales/sophisticated purchaser rule.' " (Rest.3d Torts, Products Liability § 5, com. a, p. 131; *Artiglio, supra,* 61 Cal.App.4th at p. 837 ["cases have subjected claims made against component suppliers to two related doctrines, the 'raw material supplier defense' and 'the bulk sales/sophisticated purchaser rule' "].)

But however expressed, "these formulations recognize that component sellers who do not participate in the *integration of the component* into the design of the product should not be liable merely because the integration of the component causes the product to become dangerously defective." (Rest.3d Torts, Products Liability § 5, com. a, p. 131, emphasis added.) Suppliers of raw materials should thus be liable only when (1) the raw materials themselves are defective, or (2) the raw material providers substantially participate in the integration of the raw materials into the design of the other products. (*Ibid.*)

C. As the supplier of raw materials, Alcoa is as a matter of law not liable for plaintiffs' claimed injuries because there is no allegation that its aluminum was unsafe when sold or that it controlled the manufacturing process that is alleged to have cause plaintiffs' injury.

As explained by the *Maxton* court in denying liability to a plaintiff on facts essentially identical to those here, "[t]he metal products at issue here are clearly raw materials." (*Maxton*, *supra*, 203 Cal.App.4th at p. 92 [aluminum suppliers not liable for injuries caused during the manufacturing process because aluminum is a raw material].) Alcoa's aluminum products were alleged in plaintiffs' complaint to have been sold to Supreme Casting, which then subjected the aluminum to different industrial foundry and fabrication processes specifically "for the purpose of using them to manufacture other products." (*Ibid.*; see also *Artiglio*, *supra*, 61

Cal.App.4th at p. 840 [defendant not liable for supplying silicon to "a number of other manufacturers which safely incorporated [the silicone] into a host of other" finished products].) In other words, the allegedly injurious conditions occurred during the integration of the aluminum into something else. (Rest.3d Torts, Products Liability § 5, com. a, p. 131.)

The aluminum products sold by Alcoa had no usefulness standing alone, and their utility in this specific instance (aluminum products can be melted, bent, cut, welded, or changed in myriad ways) depended on the outcome of an industrial process that melted the aluminum—a process that was conducted entirely under the direction of Supreme Casting. Alcoa's aluminum is thus exactly the type of multi-use "intermediate" product for which the supplier is not responsible after it is sold. (*Maxton, supra*, 203 Cal.App.4th at p. 92.)

In contrast to the authorities discussed above and common knowledge, the Court of Appeal concluded that the aluminum products supplied by Alcoa were not "raw materials" because (1) plaintiffs alleged that the products "were specialized materials . . . sold for use in the metal casting manufacturing process" and (2) plaintiffs did not plead that the products were "sold . . . in the form of 'basic' raw materials." (Typed opn. 27-28.) But such conclusory statements in plaintiffs' complaint provide no basis to defeat a demurrer as a matter of law. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126 [this Court treats a " 'demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law' "; demurrer

order reinstated]; accord *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6, 20 [demurrer properly sustained where conceded and pleaded facts demonstrated lack of cognizable claim, despite contrary factual and legal conclusions in the complaint].)

There is simply no *factual support* for plaintiffs' conclusion that Alcoa's aluminum was a "specialized" product, and indeed the allegation contradicts other *facts* alleged in the complaint. For example, plaintiffs' complaint acknowledges that Supreme Casting issued no design specifications to Alcoa defining the characteristics of any so-called "specialized" aluminum. (9 AA 2449: 14-25.) And the idea that Alcoa's aluminum was "special" is belied by the allegation in plaintiffs' complaint that Alcoa supplied the same aluminum "products" as at least four other defendants. (9 AA 2275-2280.)

Plaintiffs, moreover, never pleaded or suggested that the aluminum materials supplied by Alcoa were used *only* by Supreme Casting and *only* for the limited and specific purposes of Supreme Casting's foundry operations. The reason there is no such allegation is that, as explained by the court in *Maxton*, aluminum products can be used in "innumerable ways." (*Maxton*, *supra*, 203 Cal.App.4th at p. 94.)

Contrary to the Court of Appeal's analysis, it is irrelevant that plaintiffs did not plead that the aluminum products were "sold . . . in the form of 'basic' raw materials." (Typed opn. 27-28.) Rather, since it is undisputed that the materials Alcoa supplied (1) had multiple uses and (2) were supplied "for the purpose of using them to manufacture other products" (*Maxton*, *supra*, 203

Cal.App.4th at p. 92), the doctrines applicable to raw materials and component parts apply here regardless of plaintiffs' failure to specifically say so in their complaint.

For all the same reasons that underlie the component parts doctrine with respect to items such as valves or switches, liability generally should not be imposed on raw materials suppliers. Indeed, as explained by the court in *Maxton*, there is a stronger reason to shield suppliers of intermediate raw materials such as Alcoa's aluminum than there is to more complex, finished component parts. The lack of processing of the raw materials means they typically may be put to a myriad of different uses: "The metal products . . . are closer to raw materials like kerosene [citation] and nuts and screws [citation] than they are to more-developed components of finished products . . . because they can be used in innumerable ways." (*Maxton*, *supra*, 203 Cal.App.4th at p. 94; see also *In re TMJ*, *supra*, 97 F.3d at p. 1056 [applying component parts doctrine to product component that constituted a "building-block material suitable for many safe uses"].)

Because the aluminum supplied by Alcoa is undeniably a raw material, Alcoa should not be liable because the plaintiffs have not alleged that the aluminum was defective or tainted, or that Alcoa participated in the allegedly injurious post-sale industrial processes to which the raw material was subjected while being integrated into something else. For this reason, the trial court was correct to follow *Maxton* and sustain Alcoa's demurrer.

D. This Court should reject the foreseeability and "intended use" tests adopted by the Court of Appeal to hold raw material suppliers responsible for injuries that occur during a manufacturing process.

The Court of Appeal here acknowledged that raw material/component part suppliers are not responsible for injuries where an "ultimate consumer" seeks to hold suppliers liable for injurious "end products" into which the component parts or raw materials are integrated. (Typed opn. 21, emphasis omitted.) However, the court distinguished the situation where, as here, the plaintiff is a manufacturing worker whose employer purchased the raw materials used in an allegedly hazardous manufacturing process.

The court concluded that the so-called component parts doctrine is limited to "finished products" and thus protects a component supplier only where the injury is " 'caused by a product into which the component is integrated.' " (Typed opn. 20-26.) The court held a raw material supplier whose product is foreseeably used, or "intended" by the supplier to be used, in another manufacturer's process is liable for downstream injuries caused by that second manufacturer's conduct. (Typed opn. 6, 24.) Another appellate panel recently drew the same distinction in *Uriarte v. Scott Sales Co.* (2014) 226 Cal.App.4th 1396 (*Uriarte*). For multiple reasons, this Court should approve the contrary rule set forth in *Maxton* and the Restatement that suppliers of raw materials are not responsible for post-sale injuries unless the product is defective

when sold or the supplier has control over the manufacturing process.

The "component parts" doctrine is nothing more than the legal embodiment of the common-sense recognition that entities that sell raw materials destined to be incorporated into many other products prior to reaching the consumer market ordinarily do not exercise control over the integration of the raw material into those products. There is no principled reason to distinguish between injuries sustained by employees of an intermediate manufacturer and injuries sustained by ultimate consumers. In both cases the injuries are the result of the *purchasing* manufacturer's decisions as to whether and how to use raw materials *after* the supplier relinquished control of a safe raw material. Both situations call for application of the general rule that raw material suppliers are not responsible for post-sale injuries unless certain conditions are established. (Rest.3d Torts, Products Liability § 5, com. a, pp. 130-131 [noting the adoption of a "general rule" of nonliability for suppliers of "raw materials, bulk products, and other constituent products sold for integration into other products"]; *Jimenez, supra,* 29 Cal.4th at p. 480 [suppliers of component parts ordinarily are not liable unless their components were defective when they "left the factory"].)

A simple example shows the illogic of the Court of Appeal's distinction imposing liability for alleged injuries from raw materials during the manufacturing process when there is no liability for supplying raw materials incorporated into a finished product. Under the Court of Appeal's rationale, Alcoa is potentially

responsible for injuries to workers like Mr. Ramos if his buyer-manufacturer employer melts aluminum to make aluminum cans, even though Alcoa is unquestionably not responsible for injuries to a worker who sustains the same injuries from fumes released at a recycling facility that melted the same cans. There is no principled basis for this distinction. In both cases, the raw material supplier has no control over the decision how or when to melt the aluminum, or in what environment the melting takes place.

Even the Court of Appeal acknowledged that courts generally apply the component parts doctrine when the plaintiff is injured during the manufacturing process. The Court of Appeal opinion notes that "the [component parts] doctrine may be invoked when a worker suffers injury while engaged in employment that incorporates or uses a supplier's component part" under circumstances where the "the injuries were attributable to an item over which the supplier lacked material control." (Typed opn. 21.) That rule should apply here, where Alcoa is not alleged to have had "material control" over the manufacturing processes that are alleged to have cause Mr. Ramos's injuries. But the Court of Appeal then inexplicably says this rule does not apply here because the alleged injury was caused by an *intended* use of the raw material and not from some other component within the entirety of the employer's manufacturing process. (*Ibid.*)

These convoluted distinctions drawn by the Court of Appeal should be rejected. On the facts here, just as on the facts of other types of cases in which a manufacturing worker or consumer of an end-use product is allegedly harmed when a raw material is used to

make another product, the imposition of liability would force the raw material suppliers to " 'become experts in the infinite number' " of uses for their " 'raw materials or components.' " (*Artiglio*, *supra*, 61 Cal.App.4th at p. 837.) And in such cases, " '[m]aking suppliers of inherently safe raw materials and component parts pay for the mistakes of the finished product manufacturer . . . would impose an intolerable burden on the business world.' " (*Ibid.*)

The Restatement, indeed, makes clear that the supplier's knowledge of the intended use of the product is irrelevant in determining the scope of the component parts doctrine. Even when a supplier of "bulk foam" has actual knowledge that its product when processed can cause "skin reactions," the supplier has no duty to warn either the buyer-manufacturer or the consumer where the foam is not defective as sold and the supplier is not involved in the design of the finished product. (Rest.3d Torts, Products Liability § 5, com. b, illus. 4, pp. 133-134.) Yet under the Court of Appeal's rule, the supplier *would* have a duty to warn the supplier just in case an employee, as opposed to a consumer, developed an allergy to the processed foam.

The Court of Appeal and the *Uriarte* court rely on *Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzger Co.* (2004) 129 Cal.App.4th 577 (*Tellez-Cordova*). (Typed opn. 14-15; *Uriarte*, *supra*, 226 Cal.App.4th at pp. 1401-1401.) But neither the facts nor holding of *Tellez-Cordova* dictates the broad "intended use" rule of liability advocated by the Court of Appeal and in *Uriarte*. The Court of Appeal in *Tellez-Cordova* confronted a claim against a grinding wheel manufacturer by an end-use consumer—one who

worked with power grinding tools that "necessarily operated" with the defendant's wheels that were in themselves finished products, composed of harmful respirable materials that were released into the air when used, such that the "specifically designed, intended, and reasonably foreseeable use" of the tools resulted in the injury. (*Tellez-Cordova*, at p. 582; see also *id.* at p. 583 [declining to apply component parts doctrine when "there is only one use" for the defendant manufacturer's finished product]; *O'Neil*, *supra*, 53 Cal.4th at pp. 360-361 [distinguishing *Tellez-Cordova* from the circumstances in *O'Neil* because the power tools at issue there "could *only* be used in a potentially injury-producing manner"].) The holding in *Tellez-Cordova* is debatable even as to single purpose end-use products, but in any event it has no bearing on multi-use raw material suppliers' liability.[4]

The Court of Appeal's "intended use" standard goes well beyond *Tellez-Cordova*, turning on its head the traditional rule that the suppliers of a safe raw material are not responsible for injuries caused by another's processing of the product, and imposing liability any time the use by the purchaser-manufacturer is foreseeable. (See *Thing v. La Chusa* (1989) 48 Cal.3d 644, 668 ["there are clear judicial days on which a court can foresee forever and thus determine liability but none on which that foresight alone provides

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[4] To the extent that *Gray v. Badger Min. Corp.* (Minn. 2004) 676 N.W.2d 268 (cited by the Court of Appeal) and *Uriarte* suggest to the contrary with respect to the products at issue in those cases, they are inconsistent with California law and should not be followed.

a socially and judicially acceptable limit on recovery of damages for that injury"].)

Similarly, an "intended use" standard is no standard at all, imposing potentially unlimited liability. After all, a raw material supplier generally "intends" that its multi-use raw materials will be used in a myriad of industrial processes that are not of its choosing and are outside its control. Under the "rule" of the Court of Appeal, the supplier will be responsible for the entire gamut of risks that may arise during the manufacturing process. For example, under the Court of Appeal's rationale, one who delivers distilled water to a manufacturer that uses steam in an industrial process would be liable for steam burns to a worker, because a steam process is, for that particular customer purchasing the multi-use product, the "intended" use for the delivered water.

This Court should reject this broad liability rule, and instead adopt *Maxton*'s control-based approach, which is consistent with the underlying principles of product liability law and the rationale underlying the limitation on liability addressed in the component parts doctrine.

II. THE SOPHISTICATED PURCHASER DOCTRINE ALSO BARS PLAINTIFFS' CLAIMS.

As described above, multiple doctrines protect bulk suppliers of raw materials from liability except in narrow circumstances. The raw material/component parts doctrines described above apply to safe raw materials like the aluminum at issue here. Another doctrine—the bulk supplier/sophisticated purchaser doctrine—applies as well.

Under the sophisticated purchaser doctrine, a bulk supplier of a raw material, even one that is considered unsafe in its raw form (unlike aluminum), has no duty to warn the purchaser of risks already known to the purchaser. (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 67 (*Johnson*) ["there is no need to warn of known risks"]; accord, *Fierro v. International Harvester Co.* (1982) 127 Cal.App.3d 862; *Akin v. Ashland Chemical Co.* (10th Cir. 1988) 156 F.3d 1030; and *In re Related Asbestos Cases* (N.D. Cal. 1982) 543 F.Supp. 1142.) "The rationale supporting the defense is that 'the failure to provide warnings about risks already known to a sophisticated *purchaser* usually is not a proximate cause of harm resulting from those risks . . . .'" (*Johnson*, at p. 65, emphasis added, quoting Owen, Products Liability Law (2005) § 9.5, p. 599; *Billiar v. Minnesota Mining and Mfg. Co.* (2d Cir. 1980) 623 F.2d 240, 243.)

The scope of the sophisticated purchaser doctrine is currently under review by this Court in *Webb*, *supra*, 214 Cal.App.4th 595, review granted June 12, 2013, S209927. In that case, the plaintiff

worked with asbestos-containing products, and sued a defendant (Special Electric) that brokered the sale of asbestos between the raw asbestos supplier and a manufacturer (Johns Manville) who used the asbestos to make pipes that were ultimately sold to the plaintiff's employer. Here, as in *Webb*, this Court should conclude that the supplier of a bulk raw material has no obligation to warn a sophisticated purchaser of dangers that could arise from the purchaser's use of the raw material.

The Court of Appeal in this case rejected application of the sophisticated purchaser doctrine for two reasons: (1) because the fourth amended complaint alleged that Supreme Casting "was 'a small unsophisticated company with a relatively small number of employees,' " (typed opn. 18) and (2) even if it were established that Supreme Casting was sophisticated, there must be evidence that the supplier "had some reason to believe the worker knew, or should have known of the product's hazards." (Typed opn. 24-25.)

Neither argument is persuasive. The sophisticated purchaser doctrine applies not just to what the purchaser actually knew but to what the purchaser "should have known." (*Johnson*, *supra*, 43 Cal.4th at pp. 61, 71.) Supreme Casting at the very least *should have known* about ensuring a safe environment for its workers engaged in the industrial foundry processes it used to manipulate the aluminum supplied by Alcoa. Supreme Casting had a nondelegable, statutory duty to learn of any dangers in the workplace and to keep its employees safe. (See *Bonner*, *supra*, 225 Cal.App.3d at p. 1034 ["duty to maintain a safe workplace exists as a matter of statute"]; *Devens v. Goldberg* (1948) 33 Cal.2d 173, 178,

citing *Cordler v. Keffel* (1911) 161 Cal. 475, 479 ["The duty of a master to his servant requires him to make a reasonably careful inspection at reasonable intervals to learn of dangers not apparent to the eye, to which the servant may be exposed while engaged at the place where he is directed to work"].) Thus, regardless of its size, Supreme Casting had statutory and common law duties that made it a "sophisticated purchaser" as a matter of law. (See, e.g., *Johnson, supra*, 43 Cal.4th at p. 74 [sophisticated user defense applied, based on "undisputed evidence that HVAC technicians could reasonably be expected to know of the hazard of brazing refrigerant lines"].)

That is not to say that every employer is automatically a sophisticated purchaser of every product it buys for its employees to use. But when the employer is itself a manufacturer that controls the process by which ingredients are used to make other products, the employer-manufacturer must be deemed to know how properly to use the raw materials that comprise those ingredients.

As to the Court of Appeal's second point, it cannot be that a required element of the sophisticated purchaser defense is evidence that the product seller has reason to believe its manufacturer customers are fulfilling their duty to educate their employers about workplace hazards. (See *Harris v. Johnson* (1916) 174 Cal. 55, 58 [" 'every person has a right to presume that every other person will perform his duty and obey the law' "].) Even the *Uriarte* court disagreed with the Court of Appeal on this point: "[W]e are not persuaded by *Ramos*'s assertion that a product supplier raising a sophisticated intermediary defense must 'show that it had some

reason to believe the [plaintiff worker] knew, or should have known, of the product's hazards.' " (*Uriarte, supra,* 226 Cal.App.4th at p. 1403, fn. 4.)

The Court of Appeal's formulation of the rule cannot be squared with the rationale behind a sophisticated purchaser rule, given that it is not feasible for the seller of a raw material to know the environment in which its materials will be used by another manufacturer, much less to know or dictate what the other manufacturer's employees are being told. The purposes of tort law, including strict liability, are not advanced by imposing duties that are not feasible to carry out. As noted in *Maxton,* " '[i]nappropriate decisions regarding the use of [raw] materials are not attributable to the supplier of the raw materials but rather to the fabricator that puts them to improper use.' " (*Maxton, supra,* 203 Cal.App.4th at p. 90, quoting Rest.3d Torts, Products Liability § 5, com. c, p. 134.)

For these reasons, this Court should hold the sophisticated purchaser doctrine applies as a matter of law.

CONCLUSION

A variety of protections and remedies exist for workers injured on the job. They may collect worker's compensation benefits. In appropriate cases, they may also sue the manufacturer of a defective finished product that the worker uses to perform tasks at the jobsite. But they should not be allowed to sue the suppliers of non-defective raw materials that the worker's employer chose to use in the manufacturing process, where the supplier exercised no control over that process. To impose liability in such circumstances goes far beyond the bounds of proper risk-spreading among responsible parties. Accordingly, the Court should reverse the Court of Appeal and uphold the trial court's sustaining of the demurrer and dismissal of plaintiffs' claims with prejudice.

September 5, 2014

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.520(c).)

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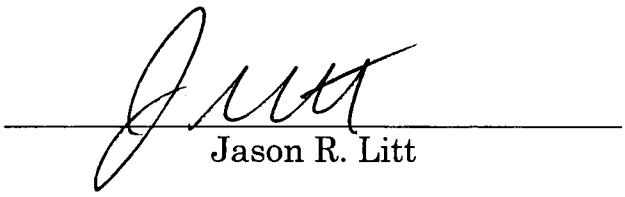

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

On September 5, 2014, I served true copies of the following document(s) described as **OPENING BRIEF ON THE MERITS** on the interested parties in this action as follows:

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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 5, 2014, at Encino, California.

/s/

Jan Loza

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