

S218176

IN THE
SUPREME COURT OF CALIFORNIA

FLAVIO RAMOS et al.,
Plaintiffs and Appellants,

v.

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

SUPREME COURT
FILED

SEP 8 - 2014

Frank A. McGuire Clerk

Deputy

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

DEFENDANT AND RESPONDENT CENTURY KENTUCKY,
INC.'S JOINDER IN THE OPENING BRIEF ON THE MERITS
OF DEFENDANT AND RESPONDENT ALCOA, INC.

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**DEFENDANT AND RESPONDENT CENTURY
KENTUCKY, INC.'S JOINDER IN THE OPENING
BRIEF ON THE MERITS OF DEFENDANT AND
RESPONDENT ALCOA, INC.**

Defendant and Respondent Century Kentucky, Inc. hereby joins in the Opening Brief on the Merits filed by defendant and respondent Alcoa, Inc. This joinder is filed pursuant to California Rules of Court, rule 8.200(a)(5), to avoid duplication and needless waste of paper, and yet to protect the interests of defendant and respondent Century Kentucky, Inc..

By this joinder, Respondent Century Kentucky, Inc. hereby joins in and incorporates by reference the entire Opening Brief on the Merits.

Century Kentucky, Inc. is similarly situated to Alcoa, Inc. in that plaintiffs make identical allegations as to each defendant. Century Kentucky, Inc., like Alcoa, Inc., supplied the raw material

of aluminum for a manufacturing process undertaken by plaintiff's employer, who exercised total control over the process that allegedly gave rise to plaintiff's claimed injuries. The grounds set forth in the Opening Brief on the Merits are equally available to Century Kentucky, Inc.

In addition to the argument and authorities set forth in the Opening Brief on the Merits, in which Century Kentucky, Inc. fully joins, Century Kentucky, Inc. submits that the ruling by Division Four of the Second Appellate District improperly expands the duties of raw material suppliers like Century Kentucky, Inc., and imposes upon such raw material suppliers responsibility for results of actions by purchasers of those raw materials or their employees, over whom Century Kentucky, Inc. lacks control.

Traditionally, liability may be imposed on a component part or raw material supplier only under certain circumstances: when the raw material is contaminated, when the supplier exercises substantial control over the manufacturing process, or when the raw material is inherently dangerous. *Maxton v. Western States Metals*, 203 Cal. App. 4th 81, 85 (2012); *Artiglio v. Gen. Electric Co.*, 61 Cal. App. 4th 830, 837 (1998). In the case at bar, Plaintiff nowhere alleges that the raw aluminum supplied by Century Kentucky, Inc. contained any inherent defect, nor has Plaintiff alleged that Century Kentucky, Inc. exercised any control over the manufacturing processes of Plaintiff's employer. Instead, Plaintiff alleges that at the direction of his employer and pursuant to his employer's guidelines, he and his fellow employees melted the aluminum—changing the consistency and composition of the raw

material according to his employer's instructions—after it left Century Kentucky, Inc.'s control and that he was injured when he inhaled allegedly toxic fumes released during this process.

The Court of Appeal's decision effectively and improperly transfers liability from the raw material purchaser to the raw material supplier when a purchaser's employee is injured using raw material that has been altered during the purchaser's manufacturing process, over which the raw material supplier has no control. *See generally Sindell v. Abbott Labs.*, 26 Cal. 3d 588, 597 (1980) (“[A]s a general rule, the imposition of liability depends on a showing by the plaintiff that his or her injuries were caused by the act of the defendant or by an instrumentality under the defendant's control.”); *cf. Lee v. Elec. Motor Div.*, 169 Cal. App. 3d 375, 385 (1985) (component part manufacturer who had no control over formulation of finished product not liable under negligence theory); *Walker v. Stauffer Chem.*, 19 Cal. App. 3d 669, 672 (1971) (refusing to extend strict liability to the producer of a bulk raw material—sulfuric acid—that was substantially altered by manufacturer to produce drain cleaning product). Indeed, under Plaintiffs' theory and the Court of Appeal's decision, despite that Century Kentucky, Inc. could not control whether Plaintiff wore protective gear while melting aluminum, Century Kentucky, Inc. bears the burden of Plaintiff's failure to do so.

The ruling by Division Four of the Second Appellate District improperly expands the duties of raw material suppliers based on mistakes of law and fact, and should be reversed.

September 5, 2014

McGuireWoods LLP
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By: Joan S. Dinsmore
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 1800 Century Park East, 8th Floor, Los Angeles, CA 90067-1501.

On September 5, 2014, I served the following document(s) described as **DEFENDANT AND RESPONDENT CENTURY KENTUCKY INC.'S JOINDER IN THE OPENING BRIEF ON THE MERITS OF DEFENDANT AND RESPONDENT ALCOA, INC.** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED LIST

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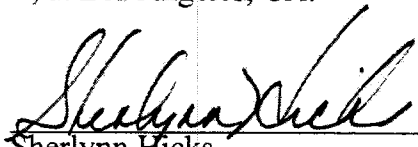
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 5, 2014, at Los Angeles, CA.



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