Case No.
S218176

IN THE SUPREME COURT OF CALIFORNIA

FLAVIO RAMOS et al.,

Plaintiffs and Respondents,

v.

BRENNTAG SPECIALTIES et al.,

Defendants and Petitioners.

ANSWER BRIEF ON THE MERITS

After a Decision By the Court of Appeal,
Second Appellate District, Division Four
Case No. B248038

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INTRODUCTION

This Court granted review to resolve a conflict in the lower appellate courts as to whether the component parts doctrine bars claims for an occupational disease caused by exposure to a defendant's own product. Although Alcoa, Inc. (the only defendant that submitted a brief on the merits) argued below that the component parts doctrine excused it from liability, it does not make that specific argument here. Rather, Alcoa concedes the doctrine's inapplicability in this case and essentially abandons the only issue upon which this Court granted review.

Alcoa (joined by the other product suppliers) nevertheless urges this Court to reverse the Court of Appeal's decision based on reformulated versions of the so-called raw material and sophisticated intermediary defenses. Although it never made such arguments below, Alcoa now contends that public policy considerations favor a new rule of non-liability for manufacturers of allegedly safe products that cause injury in an industrial manufacturing setting. Alcoa's arguments, however, are fact-based, cannot be considered in the context of a facial challenge to the complaint, and should not be considered for the first time in this Court. Moreover, Alcoa's arguments are based on purported facts that either do not appear on the face of Ramos's complaint or are contrary to its allegations.

Given the procedural context in which this matter arises, and Alcoa's abandonment of the component parts doctrine as a viable defense in this case, this Court's ability to issue a meaningful opinion is rather limited. Review should therefore be dismissed as improvidently granted and the Court of Appeal's original opinion ordered republished. Otherwise, this Court should issue an opinion affirming the Court of Appeal's decision. Either way, this Court should disapprove the erroneous ruling in *Maxton v. Western States Metals* (2012) 203 Cal.App.4th 81.

STATEMENT OF FACTS[1]

Flavio Ramos worked for nearly thirty years at Supreme Casting & Pattern, Inc. {Typed opn. 3-4} While there, he worked with "specialized metal alloys manufactured and sold . . . for specialized applications, and were not merely bulk materials susceptible to myriad applications." {9 AA 2282} Ramos also worked with plaster and silica sand products that were manufactured "for the specialized application of making molds for casting of non-ferrous metals, and were not merely bulk materials susceptible to myriad applications by customers." {9 AA 2292, 2306-2307}

Ramos contends that occupational exposure to fumes from the molten alloys and dusts from the plaster and sand products caused him to develop interstitial pulmonary fibrosis. {Typed opn. 4} He asserted causes of action against multiple product suppliers for negligence, strict liability based on failure to warn and design defects, fraudulent concealment, and breach of implied warranties. {*Id.* at 3} The suppliers moved for judgment on the pleadings asserting that Ramos's claims invoked the component parts defense. After permitting various amendments, the trial court granted judgment on the pleadings and entered a judgment of dismissal in favor of the suppliers. {*Id.* at 5}

The Court of Appeal reversed, finding that the component parts doctrine did not apply "[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 declined to follow *Maxton* or its rationale, explaining "neither the component parts doctrine nor its

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[1] Ramos offers this short summary, but otherwise adopts the Court of Appeal's factual and procedural statement.

underlying rationale supports such application to the facts alleged here." {*Id.* at 20}

Alcoa and the other defendants petitioned for review "to address the direct and irreconcilable conflict between published decisions of the Second District Court of Appeal." (Petn. at 8.) Alcoa, joined by the other suppliers, now argues that it should be excused from liability because it allegedly sold "multiuse raw materials" to a sophisticated buyer.

LEGAL ARGUMENT

I.

Review Should Be Dismissed As Improvidently Granted Because Alcoa and the Other Suppliers Have Abandoned the Specific Issue That Created Grounds for Review.

In both the trial and lower appellate court, Alcoa and the other suppliers argued that the component parts doctrine, as applied in *Maxton,* barred Ramos's causes of action. When the Court of Appeal disagreed with *Maxton* and concluded that there were no facts on the face of Ramos's complaint to invoke that doctrine, Alcoa and the other suppliers sought review based on a split of appellate authority.

Alcoa, which was the only party to file an opening brief on the merits, does not address that split or the arguments it made below. Rather, Alcoa abandons it previous arguments that the component parts doctrine applies. Instead, Alcoa asserts for the first time, new arguments based on different defenses—the "raw material" and "sophisticated intermediary" doctrines. In doing so, Alcoa concedes the general inapplicability of the component parts doctrine under these circumstances and attempts to have this Court review different issues that were never raised below. Since Alcoa has abandoned its component parts argument, it concedes that the question

originally presented by this case, best defined by the conflict between *Maxton* and the Court of Appeal's opinion, is no longer at issue. Put another way, its abandonment of the component parts doctrine shows that Alcoa itself does not believe the component parts doctrine applies to this case and constitutes tacit recognition that *Maxton* was wrongly decided.

Moreover, given the procedural context of this case, Alcoa's new arguments only leave this Court with the mundane task of determining whether Ramos's complaint contains factual allegations necessary to satisfy Alcoa's proposed new defenses. There is no evidentiary record, no statements of the law by the Court of Appeal, or any other matter upon which this Court could base a decision of any significance. Lastly, as Alcoa concedes, some of the new issues it raises (most notably the sophisticated intermediary argument) are already before this Court in other cases with full evidentiary records that are more suitable for review. (Brf., p. 5, citing *Webb v. Special Electric Co., Inc.* (2013) 214 Cal.App.4th 595, rev. granted June 12, 2013, S209927.)

Given Alcoa's concessions regarding the component parts doctrine, there is literally nothing left for this Court to review. Alcoa does not dispute the Court of Appeal's determination that no facts in the complaint invoke that defense. Moreover, the Court of Appeal already performed that analysis, as has another court under nearly identical circumstances. (*Uriarte v. Scott Sales Co.* (2014) 226 Cal.App.4th 1396, rev. granted September 17, 2014, S220088.) In light of Alcoa's concession that the component parts doctrine does not apply here, review is unnecessary and was improvidently granted. This Court should dismiss review under Rule 8.528, and resolve the split of authority with *Maxton* by ordering publication of the Court of Appeals' opinion in this case and *Uriarte*.

II.

Ramos's Complaint Does Not Contain Facts That Invoke Any Defense Limiting the Suppliers' Liability For Their Own Products.

This case arose in the context of a motion for judgment on the pleadings. In ruling on such a motion, like a demurrer, trial courts are confined to the facts alleged in the challenged pleading, and must accept them as true. (*Smiley v. Citibank* (1995) 11 Cal.4th 138, 145; *Harris v. Grimes* (2002) 104 Cal.App.4th 180, 185.) The moving party carries the burden, and motions "based on an affirmative defense will be sustained only where the face of the complaint discloses that the action is necessarily barred by the defense." (*McKenney v. Purepac Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, quoting *Casterson v. Superior Court* (2002) 101 Cal.App.4th 177, 182-183.) "It must appear clearly and affirmatively that, upon the face of the complaint, the right of action is necessarily barred. This will not be unless the complaint alleges every fact which the defendant would be required to prove if he were to plead the bar of the . . . affirmative defense." (*Leasequip, Inc. v. Dapeer* (2002) 103 Cal.App.4th 394, 400.)

Alcoa and the other suppliers moved for judgment on the pleadings based on the component parts doctrine. Perhaps recognizing the lack of merit to that argument, Alcoa now argues for a new approach that attempts to incorporate certain aspects of different doctrines that at times limit liability of certain product suppliers. In doing so, Alcoa's new proposals conflate and distort well-established principles of products liability without regard for their underlying rationales. But whatever new arguments Alcoa asserts, the ultimate and rather basic question remains whether facts establishing any such defenses appear on the face of Ramos's complaint. As will be shown, the answer is "no."

A. Ramos Did Not Allege Facts Invoking the Component Parts Doctrine.

The component parts doctrine sometimes operates as an affirmative defense for suppliers of non-defective products that are used as components in other finished products that cause an injury. (*Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzger* (2004) 129 Cal.App.4th 577, 581.) For the defense to apply, the alleged injury must be caused by the finished product: "The component parts doctrine provides that the manufacturer of a component part is not liable for injuries caused *by the finished product* into which the component has been incorporated unless the component itself was defective and caused harm." (*O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 355, emphasis added.) By its own terms, the doctrine does not excuse liability for harm caused by the component itself, but only for harm "caused by a product into which the component is integrated . . . ." (Rest.3d Torts, Products Liability, § 5.)

Here, there are no facts in Ramos's complaint alleging that he was injured by any finished product. To the contrary, Ramos alleged his injuries were caused by the suppliers' products themselves when used as intended. As the Court of Appeal explained, "the [operative complaint] alleges that Ramos suffered injuries not from a defective 'integrated product' that incorporated respondents' products, but from those products themselves, which he used as respondents intended in the course of Supreme's manufacturing process." (Typed opn. 23.) According to the Court of Appeal, this allegation alone placed Ramos's claims outside "the letter of the component parts doctrine" and precluded its application. (*Ibid.*)

Beyond showing that their products were integrated into a finished product that caused the alleged injuries, Alcoa and the other suppliers were also required to show the additional elements of the defense: (1) the

products were not inherently dangerous; (2) the products were supplied in bulk to a sophisticated buyer; (3) the products were significantly altered during their integration into a finished product; and, (4) the product manufacturers had a limited role in developing or designing the finished product that caused injury. (*Artiglio v. General Electric Co.* (1998) 61 Cal.App.4th 830, 839.)

None of the suppliers ever identified any allegations in Ramos's complaint that satisfied these *Artiglio* factors. Moreover, the Court of Appeal methodically evaluated each of them in turn, and concluded they were irrelevant when a plaintiff alleges, as Ramos did, that his injuries were caused by the supplier's own product. For example, regarding the fourth *Artiglio* factor—whether the supplier has control over the end product—the Court of Appeal explained "[w]hen . . . a worker alleges that he suffered injuries directly from the supplier's product, but not from his employer's end product, the supplier's lack of control over the design and development of the end product is irrelevant to the rationale underlying the component parts doctrine and thus to the supplier's liability." (Typed opn. 26.)

B. The Raw Material Doctrine Does Not Apply Because Ramos Never Alleged That the Metal and Sand Products Were "Multiuse Raw Materials."

Shifting their focus away from the component parts defense, Alcoa and the other suppliers now contend—for the first time—that their products are "multiuse raw materials" for which they should not, as a matter of policy, be held responsible. The raw material doctrine is related to the component parts doctrine, but only applies when facts disclose that the supplier's product is a non-defective multi-use material. Strictly speaking, the doctrine does not exist in California, as there are multiple cases holding

that even supposed "raw materials" are products for purposes of liability. (See, e.g., *Garza v. Asbestos Corporation, Ltd.* (2008) 161 Cal.App.4th 651; *Arena v. Owens-Corning Fiberglas Corp.* (1998) 63 Cal.App.4th 1178; *Jenkins v. T&N PLC* (1996) 45 Cal.App.4th 1224.)

Regardless of the viability of the raw material doctrine in California, the characterization of a product as "raw" or "multi-use" is a factual question. In his complaint, Ramos did not allege that the suppliers' products were raw multi-use products. Rather, he alleged that the metal products he worked with "were specialized metal alloys manufactured and sold . . . for specialized applications, and were not merely bulk materials susceptible to myriad applications." {9 AA 2282} Metal alloys, by definition, do not appear in nature and are manufactured products in that they are comprised of different metals in certain proportions, sold to be "melted as specifically designed and intended by defendants in furnaces during foundry operations . . . ." {9 AA 2275-2277, 2281} Ramos alleged that the metal products released toxins that he inhaled when using them as they were intended. {9 AA 2281-2282; 2355}

Similarly, Ramos alleged that the plaster and sand were manufactured and sold "for the specialized application of making molds for casting of non-ferrous metals, and were not merely bulk materials susceptible to myriad applications by customers." {9 AA 2292, 2306-2307} Indeed, the sand and plaster products were—by definition—sieved, graded, cleaned, and quality-controlled, and were thus processed finished products in their own right. The sand and plaster, as supplied here, were single-purpose final products that were manufactured and marketed for molding of molten metal.

No matter how the suppliers' products are characterized, the same underlying requirements to invoke the doctrine as a variant of the component parts doctrine still apply. Most notably, Alcoa and the other suppliers still had to show that Ramos was injured by a finished product into which the "raw materials" were integrated, as well as the other elements of the defense. As explained above, Ramos's complaint did not allege he was injured by any finished product, even one supposedly comprised of formerly raw materials. As the Court of Appeal stated, Ramos's complaint "does not allege that respondents' products were sold to Supreme in the form of 'basic' raw materials. On the contrary, the [complaint] alleges that the products were specialized materials that respondents sold for use in the metal casting manufacturing process, and that the products posed known hazards to Ramos when used as intended." (Typed opn. 27-28.) Since the truth of these allegations must be accepted, they preclude invocation of any defense based on the purported raw material doctrine.

C. Ramos Did Not Allege Any Facts Supporting a Sophisticated Intermediary Defense.

Alcoa contends for the first time that its liability should be limited pursuant to a formulation of the sophisticated intermediary defense that focuses on knowledge purportedly held by Ramos's employer. Alcoa and the other defendants addressed this general concept below, but only as the third *Artiglio* factor required to invoke the component parts doctrine. None of the suppliers asserted, as Alcoa does now, a specific affirmative defense based on any sophisticated intermediary principle.

Moreover, the doctrine is fact-intense and requires a product supplier to prove that it provided adequate warning of its product's hazards to an intermediary, that the intermediary was sophisticated (i.e., possessed expert

knowledge regarding the hazards and the means to prevent injury from such hazards), and that the intermediary could reasonably be relied on by the defendant to convey the hazard warnings to the user. (*Stewart v. Union Carbide Corp.* (2010) 190 Cal.App.4th 23, 28.) As the Court of Appeal put it, "the employer's status as a sophisticated purchaser does not shield the supplier from liability as a matter of law; the supplier must also show that it had some reason to believe the worker knew, or should have known, of the product's hazards. (Typed opn. 25, citing *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1298-1299.)

The defense, however formulated, raises multiple factual questions that cannot be determined from the face of a complaint. The adequacy of a manufacturer's warnings of toxic hazards is always a question of fact. (*Schwoerer v. Union Oil Co.* (1993) 14 Cal.App.4th 103, 111-114.) The issue whether an employer is "sophisticated" is also a question of fact. (*Mozeke v. International Paper Co.* (5th Cir. 1991) 933 F.2d 1293, 1297.) And whether a manufacturer reasonably relies on an intermediary to convey adequate warnings to an ultimate user is yet another prerequisite left to the trier of fact. (*Carmichael v. Reitz* (1971) 17 Cal.App.3d 958, 989.)

Ramos's complaint does not allege facts showing a sophisticated intermediary defense. To the contrary, as the Court of Appeal noted, Ramos alleged that Supreme (Ramos's employer) was unaware of the hazards presented by the suppliers' various products. (Typed opn. 25, fn. 17.) Moreover, the Court of Appeal rejected the suppliers' contention that longtime use of the products made Supreme a sophisticated buyer as a matter of law. (*Id.* at 24.) Since the sophisticated intermediary defense requires resolution of multiple factual issues to determine its applicability, and since Ramos never alleged facts showing the defense, it cannot be invoked from the face of the complaint.

III.

Any "Control-Based" Rule of Non-liability Has No Factual or Legal Support.

Relying on no legal authority other than *Maxton,* Alcoa and the other suppliers argue for a new "control-based" approach that would exempt manufacturers of non-defective multi-use raw materials from liability for injuries caused by their own products. (Brf. at p. 18.) Such an argument incorrectly presupposes that the products here were safe multi-use raw materials. As explained above, Ramos's complaint alleged the opposite—that the products were dangerous defective products that the suppliers knew would be used for a single intended use.

Alcoa and the other suppliers propose a new rule to shield suppliers of purported raw materials that, when used as intended in a manufacturing process, cause injury to a worker involved in that process. As explained by the Court of Appeal in this case, prior to *Maxton*, the component parts defense was limited to circumstances where a *finished product* caused the injury to an end user, as opposed to a situation where a product intended to be used in manufacturing finished products causes injury to workers using it during a manufacturing process.

Indeed, the authorities upon which the *Maxton* court relied were all cases involving raw materials that actually became components or ingredients in finished products. (Typed opn. 21-23, fn. 15.) Like the *Maxton* court, Alcoa cites no legal authority holding that a supplier of a material, such as the metal ingots and tubing in that case, cannot be liable for injuries caused by exposure to the material during its intended industrial use. The reason *Maxton* and Alcoa offer no such authority is plain—no such authority exists.

Alcoa thus proposes an unprecedented new rule of products non-liability that focuses not on the downstream product into which a supposed raw material may have been incorporated, but defendants' products themselves when they are melted, cut, ground, or otherwise used as intended during a manufacturing process. Alcoa's proposed new defense is contrary to well-established principles because it would immunize manufacturers of toxic products from all liability even though it is *their own products*, as opposed to a downstream finished product, that results in a worker's exposure to injurious toxins released from the material itself. Alcoa's proposed rule, relying as it does on *Maxton,* is contrary to the longstanding principle that suppliers of all products must provide warnings of the scientifically-known health hazards that result from the intended and reasonably foreseeable use of their products. (See, e.g., *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64-65 ["we hold manufacturers strictly liable for injuries caused by their failure to warn of dangers that were known to the scientific community . . . ."].)

Without legal authority to support its new version of the defense, the *Maxton* court offered a public policy rationale that, again, borrowed from cases only involving finished products. (*Maxton, supra,* 203 Cal.App.4th at pp. 90-91, citing *Walker v. Stauffer Chemical Corp.* (1971) 19 Cal.App.3d 669 [sulfuric acid used as ingredient of drain cleaner]; *Jenkins v. T&N PLC, supra,* 45 Cal.App.4th at p. 1224 [raw asbestos as ingredient]; *Arena v. Owens-Corning Fiberglas Corp., supra,* 63 Cal.App.4th at p. 1178 [raw asbestos as ingredient]; *Artiglio, supra,* 61 Cal.App.4th at pp. 837-839 [liquid silicone used in breast implants]; *Zaza v. Marquess & Nell, Inc.* (1996) 144 N.J. 34, 675 A.2d 620, 634 [sheet metal used in coffee bean system].) The *Maxton* court explained, referring to the Restatement, that requiring suppliers to warn of the hazards resulting from

the intended use of their raw materials during a manufacturing process would "require the seller [of the raw material] to develop expertise regarding the multitude of different end-products and to investigate the actual use of the raw materials by manufacturers over whom the supplier has no control." (*Maxton, supra,* 203 Cal.App.4th at p. 90, quoting Rest.3d Torts, § 5, com. c, p. 134.)

Such an approach has no merit because a product supplier in these circumstances has no need to know about any end product, or how its own product might be used, to warn about the dangerous aspects of its own product. Again, the focus here should not be on a manufacturer's lack of control over any finished, end-use product, but on the dangerous characteristics of their own metal, sand, and plaster products themselves. A supplier of a true raw material used as an ingredient might not know exactly what its customer intends to do with that material, but the supplier is certainly still required to know (and warn about) any inherent dangers that might result from use of its own product during a manufacturing process. Informed by that critical information, companies and their workers can then choose not to use a product, or to "evade" the dangers by taking appropriate precautions. (See *O'Neil v. Crane Co., supra,* 53 Cal.4th at p. 351.) The ability to make such informed choices, of course, is the ultimate goal of California's duty to warn. Simply put, hidden dangers of a product known to its manufacturer or supplier should never be permitted to stay hidden.

There is no question that product suppliers are required to use due care with regard to known hazards inherent in their own products. Indeed, just as in *Tellez-Cordova,* which this Court cited with approval in *O'Neil,* defendants "are not asked to warn of defects in a final product over which they had no control, but of defects which occur when their products are used as intended . . . ." (*Tellez-Cordova, supra,* 129 Cal.App.4th at p. 583.)

Requiring a product supplier to warn of otherwise hidden dangers that could result from use of a seemingly safe product is the essence of product liability in California. Alcoa's attempt to rely on *Maxton,* and its incorrect version of the component parts defense, to relieve defendants from their duty to warn is misguided and should not be accepted by this Court.

CONCLUSION

Alcoa and the other suppliers abandon their previous attempts to invoke the component parts doctrine, instead arguing that they should be exempt from liability under their version of the raw materials doctrine. But regardless of what doctrine Alcoa attempts to invoke, Ramos's complaint does not allege facts establishing any of its purported new defenses. Ramos alleges that he was injured by using the suppliers' own products as they were intended, and not by any finished or downstream product over which the suppliers had no control. Alcoa's own arguments show that review was improvidently granted and should be dismissed. Upon any such dismissal, this Court should adopt the Court of Appeal's decision as its own by ordering publication of the opinions in this case and/or in *Uriarte*. Alternatively, Ramos requests this Court to affirm the Court of Appeal's judgment and disapprove of *Maxton* as contrary to California law.

Respectfully submitted,

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WORD COUNT CERTIFICATION [CRC 14(c)(1)]

Counsel for appellants hereby certify that this brief contains 4703 words as measured by Microsoft Office Word 2007 word processing software.

Respectfully submitted,

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PROOF OF SERVICE

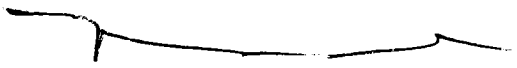
I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 401 East Ocean Boulevard, Suite 800, Long Beach, California, 90802. On the date set forth below, I served the following document(s) described as **ANSWER BRIEF ON THE MERITS** on the interested parties in this action by preparing true copies and delivering them as follows:

SEE ATTACHED SERVICE LIST

I am readily familiar with my firm's practice for collecting and processing correspondence for mailing. Under that practice, it would be deposited with the service carrier that day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Long Beach, California, on that same day following ordinary business practices.

BY U.S. MAIL: I caused copies of the aforementioned document to be delivered to counsel for the listed parties via U.S. Mail as indicated.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed December 8, 2014, at Long Beach, California.



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