IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S218176

FLAVIO RAMOS, et al.,
Plaintiffs and Appellants,

v.

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

After an Opinion by the Court of Appeal,
Second Appellate District, Division Four
(Case No. B248038)

On Appeal from the Superior Court of Los Angeles County
(Case No. BC449958, Honorable Amy D. Hogue, Judge)

APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANTS AND RESPONDENTS

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APPLICATION TO FILE BRIEF AMICUS CURIAE

Pursuant to California Rule of Court 8.520(f),[1] Pacific Legal Foundation requests leave to file the attached brief amicus curiae in support of Defendants and Respondents. Amicus is familiar with the issues and scope of their presentation, and believes the attached brief will aid the Court in its consideration of the issues presented in this case.

IDENTITY AND INTEREST OF AMICUS CURIAE

Pacific Legal Foundation's (PLF) Free Enterprise Project was developed to protect the free enterprise system from abusive regulation, the unwarranted expansion of claims and remedies in tort law, and barriers to the freedom of contract. PLF has participated in cases across the country on matters affecting the expansion of tort liability, including cases that involve asbestos liability and the component parts doctrine, *see, e.g.*, *O'Neil v. Crane Co.*, 53 Cal. 4th 335 (2012); *Macias v. Saberhagen Holdings, Inc.*, 282 P.3d 1069 (Wash. 2012), and the component parts doctrine described in the Restatement (Third) of Torts: Product Liability. *See Aubin v. Union Carbide*

[1] Pursuant to California Rule of Court 8.520, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

Co., Fla. S. Ct. docket no. 12-2075 (pending); *Tincher v. Omega Flex, Inc.*, 104 A.3d 328 (Pa. 2014).

INTRODUCTION AND SUMMARY OF ARGUMENT

Flavio Ramos worked as a mold maker, machine operator, and laborer for Supreme Casting & Pattern, Inc., which manufactured metal parts through "a foundry and fabrication process," from 1972 to 2009. During this time, the industrial processing of raw materials created fumes from molten metal and dust from the plaster, sand, limestone, and marble. In 2010, he sued ten suppliers of all the raw materials to which he was exposed, alleging that his exposure caused his lung disease. *Ramos v. Brenntag Specialties, Inc.*, 224 Cal. App. 4th 1239, 169 Cal. Rptr. 3d 513, 518-19 (2014). The court of appeal held that suppliers of raw materials or component parts owe a duty to workers in plaintiff's position where it is foreseeable that the raw material will be used in processes that may pose health hazards, even where the raw material posed no health hazard when transferred from the supplier to the manufacturer. *Id.* at 527.

Although Ramos alleged that the raw materials were "inherently dangerous," *id.*, the danger he describes is not inherent at all, but arises only "when [the materials] melted during the casting process." *Id.* To "inhere" means "to exist in and inseparable from something else." Black's Law Dictionary 703 (5th ed. 1979). If the danger arises only when the material is

melted, then the danger cannot be inherent—the material *itself* presents no risk of injury. Acknowledging this fact, Ramos and the court below focus on the *manufacturing process* that created the fumes that allegedly caused Ramos's illness. But if it is the *manufacturing process* that caused the employee's injury, then this case presents nothing more or less than a typical workers' compensation claim and Ramos should seek compensation through that exclusive remedy. Should this Court find that this case presents an exception to the exclusive remedy of workers' compensation, then the suppliers of raw materials should be held to have no duty to warn an employee who should have received safety information and instruction from the party in the best position to provide it: his employer.

The decision below should be reversed.

ARGUMENT

I

INJURIES RESULTING FROM THE PROCESS OF MELTING AND CASTING ALUMINUM—A TYPICAL INDUSTRIAL MANUFACTURING PROCESS—SHOULD BE COVERED BY WORKERS' COMPENSATION

Ramos claims that Alcoa's products were specialized materials specifically designed to be used in Supreme's manufacturing process, *Ramos*, 224 Cal. App. 4th at 526-27, but became "inherently dangerous" only "when melted during the casting process" *id*. at 527. This confirms that Ramos is alleging injury caused by environmental hazards created by the day-to-day

work of the foundry—e.g., melting and casting the metal. The other raw materials were simply scooped out of their bags, resulting in airborne dust, as they were used in the regular course of Ramos's work. *Id*.

During the manufacturing process of aluminum and other raw materials, fumes or other collateral effects can present health hazards to workers. Should the workers become ill from exposure to industrial fumes, California's workers' compensation system provides prompt recompense. *See* Cal. Lab. Code §§ 3600-3602 (Workers' compensation proceedings are the exclusive remedy for injuries to employees arising out of their employment.); *LeFiell Mfg. Co. v. Sup. Ct.*, 55 Cal. 4th 275, 279 (2012) ("Where an employee is injured in the course and scope of his or her employment, workers' compensation is generally the exclusive remedy of the employee and his or her dependents."). *See also* Mark L. Matulef, *On-the-Job Lead Poisoning: Early Judicial Treatment of Claims for Recovery from Exposure to Workplace Lead*, 10 U. Balt. J. Envtl. L. 1, 15 (2002) (workers' compensation has been awarded or recognized as awardable for employment-connected aplastic anemia, benzol poisoning, beryllium poisoning, lead poisoning, poisoning from gas or fumes, including carbon monoxide poisoning, poisoning from eating or drinking, and septicemia or blood poisoning) (citation omitted).

Workers' compensation operates as a no-fault system of recovery for the injured employee: the payment of compensation is determined by the worker's status as an employee at the time of the injury, rather than by the

extent of the employer's fault. *Boehm & Associates v. Workers' Compensation Appeals Bd.*, 108 Cal. App. 4th 137, 147 (2003). Thus, if the worker meets the statutory requirements, he or she receives guaranteed compensation without suffering the lengthy interruption in income that can occur when the employee seeks recovery through the court system. Carole A. Cheney, *Not Just for Doctors: Applying the Learned Intermediary Doctrine to the Relationship Between Chemical Manufacturers, Industrial Employers, and Employees*, 85 Nw. U. L. Rev. 562, 576 (1991).

Workers who become ill due to exposure to fumes created by industrial manufacturing or processes are entitled to recover workers' compensation. For example, in *Culligan v. State Compensation Insurance Fund*, 81 Cal. App. 4th 429, 432 (2000), workers claimed that their illnesses were caused by "noxious odors" coming from a printing and dry cleaning business adjacent to their own workplace within the same building. The court of appeal held that workers' compensation was the exclusive remedy. *Id*. at 437. Similarly, in *Brannen v. Workers' Compensation Appeals Board*, 46 Cal. App. 4th 377, 379 (1996), the plaintiff worked as a mechanic, manager, and driver for Cities Towing, Incorporated, during which time he was continually exposed to exhaust fumes and dust. The exposure caused viral bronchitis, followed by viral meningitis, and, after those infections cleared, Brannen continued to experience pain and difficulty breathing. *Id*. Because the exhaust fumes at work aggravated his symptoms, the court held that the illness constituted an industrial injury

compensable by workers' compensation. *Id*. at 383-84. *See also Palmer v. Workers' Comp. Appeals Bd.*, 192 Cal. App. 3d 1241, 1243 (1987) (Alcoa employee sought workers' compensation for "industrial injury to his lungs due to exposure to noxious fumes" while working as a foreman and machine operator for 30 years.); *General Foundry Service v. Workers' Comp. Appeals Bd.*, 42 Cal. 3d 331, 333-34 (1986) (Worker's compensation available to employee whose "exposure to asbestos and silica dust caused him to develop a progressive lung disease.").

California's workers' compensation provisions cover a wide range of work-related illness and injuries, and claims not only by the workers, but also by family members who bring derivative claims. For example, workers' compensation is the exclusive remedy for an employee's spouse for loss of the employee's services, *Gillespie v. Northridge Hospital Foundation*, 20 Cal. App. 3d 867, 868-70 (1971), or loss of consortium, *Cole v. Fair Oaks Fire Protection District*, 43 Cal. 3d 148, 162-63 (1987). The workers' compensation system has such importance in California law that it trumps even the very wide-ranging Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq*. *Loeffler v. Target Corp*., 58 Cal. 4th 1081, 1126 (2014) (A claim cannot be brought under the Unfair Competition Law if it falls within the scope of the exclusive remedy provision of the workers' compensation law and the "risks encompassed by the compensation bargain"—even if the claim is

" 'collateral to or derivative of' an injury compensable by the exclusive remedies of the [workers' compensation system].") (citations omitted).

Ramos's claim represents his fifth attempt to avoid the workers' compensation system and recover in tort. *Ramos*, 169 Cal. Rptr. 3d at 520 (noting the operative *fourth* amended complaint). Yet this case sets up like many others, cited above, in which workers received compensation for illnesses caused or aggravated by exposure to fumes generated during a manufacturing process. As the court of appeal noted in *General Foundry Service*, 42 Cal. 3d at 338, the Workers' Compensation Appeals Board enjoys broad authority to extend its jurisdiction over progressive diseases, so as not to foreclose a worker's ability to recover compensation for illnesses that have a long gestation period. *See also Cooper v. Workers' Comp. Appeals Bd.*, 173 Cal. App. 3d 44, 48 (1985) ("[T]he Workers' Compensation Act, is to be liberally construed in favor of extending compensation benefits to the injured worker, and all reasonable doubts whether the injury arose out of the employment are to be resolved liberally in favor of the employee."); *Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.*, 219 Cal. App. 3d 1265, 1271 (1990) ("The fact of injury (exposure) and the date of injury (disability), by definition, are not equivalent in cases involving the latent effects of an occupational disease.") (citations omitted).

Because the workers' compensation system requires employers to protect their employees from hazards related to industrial materials, the courts

should not employ the tort system to place "manufacturers and sellers of the materials in a position where they are compelled to provide redundant, incomplete, speculative, conflicting, or otherwise ineffective warnings." Victor E. Schwartz and Christopher E. Appel, *Effective Communication of Warnings in the Workplace: Avoiding Injuries in Working with Industrial Materials*, 73 Mo. L. Rev. 1 (2008). Here, the cause of Ramos's illness is allegedly caused by an industrial process resulting in his exposure to noxious fumes. This Court, therefore, should hold that his exclusive remedy is workers' compensation and he can assert no viable tort claim against the Defendants.

II

SUPPLIERS OF RAW MATERIALS HAVE NO DUTY TO WARN OF DANGERS RESULTING FROM A MANUFACTURING PROCESS

The bulk supplier, sophisticated user, and learned intermediary doctrines all stem from the "obvious danger" rule, which is based on the principle that manufacturers have no duty to warn end users of their products' risks if the end user knows or should know about the products' dangers. Jeffrey W. Kemp & Lindsy Nicole Allerman, *The Bulk Supplier, Sophisticated User, and Learned Intermediary Doctrines Since the Adoption of the Restatement (Third) of Torts*, 26 Rev. Litig. 927, 933-34 (2007). There are "shades of difference between these rules," but "the fundamental tenet is that

a manufacturer should be allowed to rely upon certain knowledgeable individuals to whom it sells a product to convey to the ultimate users warnings regarding any dangers associated with the product." *In re TMJ Implants Prods. Liab. Litig.*, 872 F. Supp. 1019, 1029 (D. Minn. 1995), *aff'd*, 97 F.3d 1050 (8th Cir. 1996). *See also* David A. Fischer, *Product Liability: A Commentary on the Liability of Suppliers of Component Parts and Raw Materials*, 53 S.C. L. Rev. 1137, 1140 (2002) ("[C]ourts should apply, as the normal rule, the principle that suppliers of raw materials and component parts should be exempt from liability unless the component or material is clearly defective.").

California tort law is in accord with these general rules. It does not require a manufacturer to warn users of obvious risks. *Johnson v. American Standard, Inc.*, 43 Cal. 4th 56, 67 (2008) ("California law also recognizes the obvious danger rule, which provides that there is no need to warn of known risks under either a negligence or strict liability theory.") (citations omitted). It recognizes both the sophisticated user doctrine, *id*. at 70, and the learned intermediary doctrine. *See, e.g., Conte v. Wyeth, Inc.*, 168 Cal. App. 4th 89, 99 n.5 (2008) ("[U]nder the learned-intermediary doctrine Wyeth's duty to warn of risks associated with its usage runs to the physician, not the patient."); *Plenger v. Alza Corp.*, 11 Cal. App. 4th 349, 362 (1992) ("We are aware of no authority which requires a manufacturer to warn of a risk which is readily known and apparent to the consumer, in this case the physician."). In this

case, the Court should explicitly adopt the bulk supplier rule, which places the duty to warn about potential hazards created by industrial processing of raw materials on the party best able to assess and communicate it: the employer.

A. Employers Bear Responsibility for Providing Safety Information to Employees

A tort system that imposes a duty to warn on the party that can most efficiently convey safety information—the employer—better serves the tort liability system's twin goals of compensation and deterrence than expanding the duty to cover the suppliers of raw materials and component parts. *See* Cheney, *Not Just for Doctors*, *supra*, 85 Nw. U. L. Rev. at 564. Raw material suppliers and component part manufacturers control neither the safety procedures observed in the industrial workplace, nor the manner and the work environment in which their products are used. Charles E. Carpenter, Jr., *Products Liability—An Analysis of the Law Concerning Design and Warning Defects in Workplace Products*, 33 S.C. L. Rev. 273, 275 (1981). For this reason, employers are in the best position to convey safety information to employees. *See Ferebee v. Chevron Chem. Co.*, 736 F.2d 1529, 1539 (D.C. Cir.), *cert. denied*, 469 U.S. 1062 (1984) ("[W]orkplace communication about the dangers associated with various chemicals usually took the form of oral instructions from supervisors to workers, the latter of whom then retransmitted the information to co-workers. This, rather than individual reading of product warnings, is a typical method by which information is disseminated in the

modern workplace."). In *Goodbar v. Whitehead Brothers*., 591 F. Supp. 552 (W.D. Va. 1994), the court explained that employers have superior knowledge of the work environment and the levels of skill possessed by their employees: "[O]nly the Foundry itself would be in a position to provide the good housekeeping measures, training and warnings to its workers on a continuous and systematic basis necessary to reduce the risk of silicosis." *Id*. at 566-67.

The employers' knowledge is particularly important when compared to suppliers of commodities that have multiple uses. When the end product could be anything that incorporates the industrial material, the product packaging, labels, or inserts cannot reasonably be expected to effectively address all the possibilities with a "one size fits all" warning. Victor E. Schwartz and Christopher E. Appel, *Effective Communication of Warnings in the Workplace: Avoiding Injuries in Working with Industrial Materials*, 73 Mo. L. Rev. 1, 4 (2008). For example, in *Toshiba International Corporation v. Henry*, 152 S.W.3d 774 (Tex. App. 2004), Toshiba supplied an inverter that could be used in many different ways, often to control the speed of a "fan, conveyor, water pump, or rock crusher." *Id*. at 782. But the manufacturer to whom Toshiba sold the inverter did not invite Toshiba to design the inverter or modify its design to best serve the manufacturer's requirements; the manufacturer was "in total control of the design of that system." *Id*. at 781. The control aspect was particularly important because a "safety feature important for one adaptation may be wholly unnecessary or inappropriate for

a different adaptation." *Id.* at 782 and n.2 (citing Edward M. Mansfield, *Reflections on Current Limits on Component and Raw Material Supplier Liability and the Proposed Third Restatement*, 84 Ky. L.J. 221, 228 (1995) ("If the component has no general use danger because it is suitable for many end-products in which the danger does not arise, then the safe use of the component . . . in the finished product becomes the finished product manufacturer's responsibility.")).

California courts place a high value on this element of control. *See Fierro v. Int'l Harvester Co.*, 127 Cal. App. 3d 862, 869 (1982) (truck chassis manufacturer not liable for defective design where purchaser *exercised control* over the purchased part and custom-built the truck with a poorly-placed fuel tank); *Walker v. Stauffer Chemical Corp.*, 19 Cal. App. 3d 669, 674 (1971) (Holding that it is neither "realistically feasible or necessary to the protection of the public" to require a bulk supplier who lacks control over the "subsequent compounding, packaging or marketing of an item eventually causing injury to the ultimate consumer, to bear the responsibility for that injury.").

The Defendants' materials in this case are multi-use raw materials and commodities: aluminum, plaster, sand, limestone, and marble. *Ramos*, 169 Cal. Rptr. 3d at 519.[2] Aluminum, for example, is lightweight, strong,

[2] Each material is recognized as a raw material or commodity used in many varied end products. *See, e.g., Bonjorno v. Kaiser Aluminum & Chemical*

nonmagnetic, and nontoxic. It conducts heat and electricity and reflects heat and light. It is strong but easily workable, and it retains its strength under extreme cold without becoming brittle. The surface of aluminum quickly oxidizes to form an invisible barrier to corrosion. All these properties make it a popular and cost-effective ingredient in thousands of products from foil and kitchen utensils to airplanes and rockets. Jefferson Lab, *It's Elemental: The Element Aluminum*.[3] Furthermore, aluminum can easily and economically be recycled, with no degradation in quality, into new products. *See* wiseGEEK, *What is Made from Recycled Aluminum?* (recycled aluminum is a component of cement, beverage cans, dishwashers, lawn furniture, bicycles, siding on houses, and more).[4] Recognizing these benefits, California strongly encourages recycling of aluminum.[5]

Corp., 752 F.2d 802, 809 (3d Cir. 1984) (describing commodity price market for aluminum coil and sheet); *Consol. Aluminum Corp. v. Krieger*, 710 S.W.2d 869, 870 (Ky. App. 1986) (explaining, in a case about aluminum used to manufacture weatherstripping, that "aluminum is a commodity"); *Stoneco, Inc. v. Limbach*, 560 N.E.2d 578, 580 (Ohio 1990) (limestone is a raw material; "limestone aggregate" is a commodity); *Martin Marietta Corp. v. U.S.*, 387 F. Supp. 493, 494 (D. Md. 1975) (limestone and marble are raw materials); *Shasta Indus., Inc. v. C.I.R.*, 52 T.C.M. (CCH) 190 (1986) (raw materials used to construct swimming pools included concrete, plaster, and gunite).

[3] *Available at* http://education.jlab.org/itselemental/ele013.html (last visited Mar. 17, 2015).

[4] *Available at* http://www.wisegeek.org/what-is-made-from-recycled-aluminum.htm (last visited Mar. 17, 2015).

[5] Details of California's aluminum recycling can be found at www.calrecycle.ca.gov/bevcontainer (last visited Mar. 17, 2015). *See also*

Each of these potential uses has its own manufacturing process, the details and potential hazards of which best—and perhaps only—known by the manufacturer who purchased the raw material. There does not exist a meaningful single warning that an aluminum supplier could offer to the multiplicity of foundries and other metalworking businesses, all with different products and clients in mind. And if a single warning does not suffice—if the supplier must append *unique* warnings specifically designed for the purchaser's business, the cost of the raw materials and component parts would skyrocket as the suppliers could not absorb all the additional costs of researching and designing warnings for each individual client. This would have dire consequences on California's already-suffering manufacturing base.[6]

B. Making Raw Material Suppliers Responsible for an Employer's Manufacturing Process Raises Significant Policy Concerns

The Plaintiff's approach, adopted by the court below, would stifle innovation because component suppliers would have to micromanage their

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Benefits-of-Recycling, http://www.benefits-of-recycling.com/aluminumrecyclingprices/ (last visited Mar. 17, 2015) ("Aluminum recycling has been a common practice since the early 1900's and was quite widespread and intensive during World War II. Since aluminum does not lose any of its important properties or damage the metal's structure it can then be recycled indefinitely.").

[6] Between 2001 and 2011, California lost 33% of its manufacturing base, losing 613,000 jobs. California State Assembly, Comm. on Jobs, Economic Development, and the Economy, *Importance of Manufacturing within California Economy, available at* http://ajed.assembly.ca.gov/index (last visited Mar. 17, 2015).

buyers. *See* Brett W. Roubal, *Protecting Suppliers of Safe Component Parts and Raw Materials Through the Component Part Doctrine and the Sophisticated Purchaser Doctrine: In re Temporomandibular Joint (TMJ) Implants Products Liability Litigation*, 31 Creighton L. Rev. 617, 663 (1998). For example, in *Jacobs v. E.I. Du Pont de Nemours & Co.*, 67 F.3d 1219, 1241 (6th Cir. 1995), plaintiffs received Teflon-coated implants from a company called Vitek. Du Pont (Teflon's manufacturer) warned Vitek that Teflon was intended for industrial use and likely dangerous if used in implants. But Vitek conducted its own research showing it was safe and received FDA approval. *Id*. at 1224 n.10. As it turned out, the Teflon was harmful, leading to numerous lawsuits against Vitek. Once Vitek went bankrupt, the plaintiffs went after Du Pont for compensation; however, the court refused to hold Du Pont liable, because the Teflon was not defective. *Id*. at 1241. Moreover, liability would have impeded innovation:

> If we adhered to Appellants' theory, access to raw materials like Teflon for entrepreneurs seeking new applications would either disappear or be undermined by an inevitable increase in price. This . . . would stymie the kind of beneficial scientific innovation which, sadly, did not take place here, but which has occurred in many other areas of human endeavor.

Id. In the case of the Teflon-coated implants, the Teflon accounted for only a few cents' worth of the cost of the fifty-dollar implant. *Id*. at 1225 n.14. Huge liability potential and small profit might lead component manufacturers

to bar start-ups and innovative companies from purchasing their goods as component parts.

Alternatively, the suppliers might be able to acquire insurance, but even if insurance is available, it would be an enormous cost passed on to consumers. M. Stuart Madden, *Component Parts and Raw Materials Sellers: From the Titanic to the New Restatement,* 26 N. Ky. L. Rev. 535, 570 (1999). The availability of insurance, however, is not a sure thing:

> Those saddled with the task of actuarially determining a proper rate would be faced with indeterminate liability because they would not know what products would eventually be made. Delineating a rational starting point for, or cessation of potential liability, would be impossible. By way of contrast, an insurer for the end-use product producer can look at, and evaluate, based on history and rational projections, insurance risks of end-use products. Information on liability costs, past and projected, is crucial to carriers seeking to make coverage decisions and to set premiums. This information is available to the manufacturer of the end product, while it is normally unavailable to the supplier of raw materials potentially suited to a large number of potential end uses.

Id. Thus, a product that otherwise would have cost a few cents would become much more expensive, pricing some valuable and innovative technologies out of range of most consumers. Fortunately, in *Jacobs* and similar cases, courts rejected plaintiffs' arguments against Du Pont. Roubal, 31 Creighton L. Rev. at 635 (citing, *e.g.*, *Bond v. E.I. DuPont de Nemours & Co.*, 868 P.2d 1114, 1118 (Colo. Ct. App. 1993)).

The policy concerns are heightened in this case because the Plaintiff wants suppliers of raw materials and component parts to have a duty to warn

employees about potential perils of a purchaser's *manufacturing process*. As a practical matter, how is this supposed to work? Is a manufacturer required to provide information about its processes to each and every material or component part supplier? Many manufacturing processes are protected as trade secrets. *See, e.g., Components v. Research, Inc. v. Isolation Products, Inc.*, 241 Cal. App. 2d 726, 727 (1966) (Trade secret in manufacturing process in the electronics industry, involving "use of metal conductors to transmit high electrical energy, using epoxy resin as an insulating material."); Susan D. Carle, *A Hazardous Mix: Discretion to Disclose and Incentives to Suppress Under OSHA's Hazard Communications Standard*, 97 Yale L.J. 581, 597 n.103 (1988) (" '[B]asic chemical' manufacturers do not have trade secret concerns because for them 'it is *usually the process* rather than the chemical identity that is considered a trade secret[;] . . . the identity of the basic chemical has no intrinsic value.' ") (emphasis added) (citing Statement of Master Chemical Corporation for the Public Hearings on the Department of Labor's Proposed Rule on Hazard Communication 3 (July 27, 1982)). In any event, as noted above, the manufacturers themselves have superior knowledge of their industrial processes and final products. *See Apperson v. E.I. du Pont de Nemours & Co.*, 41 F.3d 1103, 1107 (7th Cir. 1994) ("The manufacturer of a finished product knows the precise use it intends to make of the raw material or component part, and is in a far better position than the manufacturer of raw materials to determine whether it is safe for that purpose.").

Even assuming the suppliers could obtain the process information, can they demand alterations to reduce risk? Are they entitled to information about other materials purchased by the manufacturer, so they can assess how their material will interact with other materials? How does the manufacturer balance the demands of all his suppliers with regard to their preferred warnings? *See* Hildy Bowbeer, *The Restatement (Third)'s Approach to Component Supplier Liability—Where the Common Law and Sound Policy Converge*, 8-FALL Kan. J.L. & Pub. Pol'y 109, 111 (1998) ("The supplier cannot and should not have to hire its own experts, do its own end-use testing and essentially redesign or shadow-design and shadow-test the product with the integrated product manufacturer."). A commodity might be perfectly safe when used in most products, but present a risk of harm in others. Must a bulk supplier append a general warning for all uses of the product when the risk appears in only a small fraction of uses?

A failure to shelter raw material and component suppliers could also render products less safe or effective as suppliers whose expertise is naturally only in their own field would be required to become involved in downline designs and other companies' warnings as a means to limit their own liability. The various and possibly competing needs of the (multiple) component suppliers and the end product manufacturer could compromise the quality of the final design or warning. Requiring manufacturers to include extensive warnings on their products often leads to consumer frustration and confusion.

It especially encourages end-users to simply ignore warnings, when there is no obvious applicability to the user's own product or manufacturing process. As this Court noted, such redundant over-warnings "invite mass consumer disregard and ultimate contempt for the warning process." *Johnson*, 43 Cal. 4th at 70 (citing *Finn v. G.D. Searle & Co.*, 677 P.2d 1147 (Cal. 1984)) (quoting Aaron D. Twerski, *et al.*, *The Use and Abuse of Warnings in Products Liability—Design Defect Litigation Comes of Age*, 61 Cornell L. Rev. 495, 521 (1976)).

"[H]olding a manufacturer liable for failing to provide warnings to employees of an intermediate purchaser has the unreasonable potential of imposing absolute liability in those situations where it is impracticable for the manufacturer to warn the product user directly." Rebecca Korzec, *Restating the Obvious in Maryland Products Liability Law: The Restatement (Third) Of Torts: Products Liability And Failure To Warn Defenses*, 30 U. Balt. L. Rev. 341, 363-64 (2001). This Court has disclaimed any intent to place absolute liability on suppliers, who do, after all, provide useful—often essential—materials to California manufacturers. *See Anderson v. Owens-Corning Fiberglas Corp.*, 53 Cal. 3d 987, 1003-04 (1991) ("[A]n important goal of strict liability is to spread the risks and costs of injury to those most able to bear them. However, it was never the intention of the drafters of the doctrine to . . . impose *absolute* liability.").

CONCLUSION

Ramos's claims are based on allegations that he was injured by an industrial manufacturing process. As such, he should recover workers' compensation as his exclusive remedy. If this Court nonetheless reaches the issue of component part and raw material supplier liability, it should join the majority of courts to hold that the suppliers owe no duty directly to the worker, but only to the employer, their customer, to whom they must convey all safety information and who, in turn, must use that information to provide a safe workplace. California's "economy depends upon the availability of affordable basic components and raw materials, unburdened by end-use specific warning requirements. . . . [R]equiring end-use-specific warnings from suppliers would 'preclude a sensible division of labor' between suppliers and finished product manufacturers." Mansfield, *Reflections on Current Limits*, *supra*, at 247.

The decision below should be reversed.

DATED: March 17, 2015.

Respectfully submitted,

_____

DEBORAH J. LA FETRA

Attorney for Amicus Curiae
Pacific Legal Foundation

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANTS AND RESPONDENTS is proportionately spaced, has a typeface of 13 points or more, and contains 4,661 words.

DATED: March 17, 2015.

_____

DEBORAH J. LA FETRA

DECLARATION OF SERVICE BY MAIL

I, SUZANNE M. MACDONALD, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California.

I am over the age of 18 years and am not a party to the above-entitled action.

My business address is 930 G Street, Sacramento, California 95814.

On March 18, 2015, true copies of APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANTS AND RESPONDENTS were placed in envelopes addressed to:

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Second Appellate District, Division Four
Ronald Reagan State Building
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which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 18th day of March, 2015, at Sacramento, California.

_____
SUZANNE M. MACDONALD