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Court of Appeals No. 71345-1-I
King County Superior Court No. 13-2-06781-1 SEA

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

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CANDANCE NOLL, Individually and as Personal Representative of the Estate of Donald Noll, Deceased,

APPELLANT,

v.

SPECIAL ELECTRIC COMPANY, INC.,

RESPONDENT.

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# REPLY BRIEF OF APPELLANT

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## ARGUMENT

Appellant (Plaintiff below) Candance Noll asserted in her opening brief that the court below erred "when it relied upon the reasoning of the plurality from *J. McIntyre Machinery, Ltd. v Nicastro*, -- U.S. --, 131 S.Ct. 2780 (2011) to dismiss [Respondent (Defendant below) Special Electric Company]." *App. Br.*, p. 11. She argued that it is proper to "asser[t] specific jurisdiction, under the stream-of-commerce doctrine, over a component supplier that *regularly* sold a known toxic material (asbestos) in interstate commerce for use in manufacturing products (asbestos-cement pipe) that were to be sold through existing channels of interstate commerce, including channels *regularly* flowing into the State of Washington." *App. Br.*, p. 9 (*emphasis added*). She provided uncontroverted evidence that Special regularly supplied raw asbestos to CertainTeed's Santa Clara asbestos pipe plant, and that asbestos pipe from that plant was regularly distributed into Washington where Decedent Donald Noll was exposed to said asbestos from CertainTeed pipe. *See App. Br.*, pp. 2-6.

This Court's recent pronouncement in *State v. AU Optronics Corp.*, -- Wn.App. --, 2014 WL 1779256 (May 5, 2014) and the decisions discussed therein confirm the correctness of Plaintiff's legal positions—(1) that the decision below is in error for requiring "targeting" the forum,

and (2) that a regular flow or course of sales suffices by itself to establish minimum contacts.[1] Special tacitly concedes the first point by not defending the reasoning of the decision below. Instead, it now tries to interpret *AU Optronics* and other decisions as requiring direct evidence that it had actual knowledge concerning the details of CertainTeed's business and distribution scheme in addition to the evidence of its active participation in a regular course of sales into Washington. Neither *AU Optronics* nor any other applicable precedent imposes such a requirement. Special also criticizes Mrs. Noll's showing of a regular flow of its asbestos into Washington, despite having presented no evidence to the refute it, and otherwise suggests that 'something more' than *prima facie* proof of a regular flow is required. None of Special's points are well-taken.

Accordingly, Mrs. Noll submits that the decision below should be reversed and respectfully requests this Honorable Court to do so.

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[1] Both parties focus on minimum contacts as the key issue. In that regard, Special has not denied: that its alleged acts constitute committing a tort here per the long-arm act; or, that Plaintiff's claims relate its alleged contacts here. Special does not argue that if minimum contacts are met jurisdiction would be unreasonable—an issue as to which it has the burden. *See AU Optronics*, *supra* at *4, ¶ 18.

**(A)**
**The Court Below Erred In Dismissing Special Where, As Here, The Asbestos That Harmed Decedent Came To Washington As The Result Of The Regular Flow And Sales Of Said Material**

The court below, per the plurality opinion in *McIntyre Machinery*, 131 S.Ct. 2780, granted Special's motion to dismiss on the ground that Mrs. Noll failed to show that Special "proactively target[ed]" Washington with its asbestos. RP 31. This Court has now confirmed that Justice Breyer's concurrence—not Justice Kennedy's plurality opinion—represents the holding in *McIntyre Machinery*. *See AU Optronics*, 2014 WL 1779256, at *6, ¶ 30. Justice Breyer expressly rejected precisely the reasoning relied upon below to dismiss Special—namely, the plurality's "strict rules that limit jurisdiction where a defendant does not intend to submit to the power of a sovereign and cannot be said to have targeted the forum." 131 S.Ct. at 2793 (*internal quotations omitted*). It is, therefore, manifestly clear that the decision below, predicated on the perceived failure to meet a "proactive targeting" requirement, was based upon an erroneous interpretation of the law.

As Mrs. Noll previously argued, Justice Breyer held that a plaintiff can establish minimum contacts under the stream-of-commerce doctrine by either one of two alternative means as reflected by the competing pluralities in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102,

107 S.Ct. 1026 (1987). *See App. Br.*, pp. 25-26 (*citing McIntyre Machinery*, 131 S.Ct. 2792-93 (Breyer, J., *concurring in judgment*)). As one option, consistent with Justice Brennen's opinion in *Asahi*, a plaintiff may establish minimum contacts by showing a regular flow / regular course of sales of the defendant's injury-causing products into the forum. *Id.* (*referencing Asahi*, 480 U.S. at 117). Alternatively, if there is no evidence of such regular flow / course of sales, a plaintiff may establish minimum contacts consistent with Justice O'Connor's opinion in *Asahi* by providing evidence of "something more" such as "special state-related design, advertising, advice, marketing, or anything else." *Id.* (*referencing Asahi*, 480 U.S. at 112). Mrs. Noll's evidence satisfies the first of these alternatives by showing a regular flow of Special's asbestos into Washington via an established and recurring distribution scheme.

This Court, in *AU Optronics*, adopted precisely that interpretation of Justice Breyer's opinion, under which the above are *alternatives* and plaintiff is not required to provide evidence of *both* a "regular flow" and "something else." *See supra* at *7, ¶ 31. It cited with approval to decisions holding "that a foreign defendant is subject to personal jurisdiction in the forum state based upon the volume of sales in that state." S*upra* at *8, ¶ 35. It expressly held, without reference to *any* additional requirements:

> [T]he alleged sale in Washington of products containing LG Display panels at inflated prices was not an isolated or fortuitous occurrence. LG Display's alleged conduct plus a large volume of expected and actual sales established sufficient minimum contacts for a Washington court to exercise specific jurisdiction over it.

*AU Optronics*, *supra* at *8, ¶ 36. *See also* *9, ¶ 37 ("[s]ales to Washington consumers were not isolated; rather, they indicated a " 'regular ... flow' or 'regular course' " of sales in Washington").

In reaching its decision in *AU Optronics*, this Court favorably discussed and relied, in significant part, upon the Oregon Supreme Court's reasoning in *Willemsen v. Invacare Corp.*, 352 Or. 191, 282 P.3d 867 (2012) (also cited here in Appellant's opening brief). Although the opinion in *Willemsen* mentions various facts in the record—such as defendant's agreement to comply with federal, state, and local regulations—the court upheld jurisdiction on the express ground that "the sale of over 1,100 CTE battery chargers within Oregon over a two-year period [by an intermediary manufacturer with its wheelchairs] shows a 'regular ... flow or regular course of sales' in Oregon" such that "[t]he sale of the CTE battery charger in Oregon that led to the death of plaintiff's mother was not an isolated or fortuitous occurrence." 352 Or. at 203, 282 P.3d at 874 (*quoting* 131 S.Ct. at 2972) (*some internal quotes omitted*). Even more to the point, the court stated, "we *hold* that the volume of sales in this case

was sufficient to show a 'regular course of sales' and thus establish sufficient minimum contacts for an Oregon court to exercise specific jurisdiction over CTE." 282 P.3d at 875 (*emphasis added*).[2] Indeed, despite its efforts to turn recited facts into required factors, Special essentially admits that the holding in *Willemsen* was based simply upon the regular course of sales. *See Resp. Br.*, pp. 25-26.

In the case at bar, Plaintiff presented evidence that Special regularly supplied asbestos to CertainTeed including as much as 95% of the crocidolite used at its Santa Clara pipe plant during the relevant years. She presented evidence that CertainTeed regularly sold and distributed asbestos pipe into Washington including the years Special supplied it with asbestos and Mr. Noll was exposed. That evidence shows a regular flow of Special's asbestos—the material at issue—into Washington where it harmed Mr. Noll and, thus, establishes sufficient minimum contacts.

**(B)**
**Direct Evidence Of Actual Knowledge Is Not Required**

Special argues that *AU Optronics* and other decisions require direct evidence that a defendant, which supplied component materials to an intermediary manufacture, had actual knowledge concerning the details of

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[2] As noted, like Special, CTE had no other contacts with the forum state. *See App. Br.*, pp.27-28. CTE maintained no offices in Oregon. It did not advertise or directly sell its products in Oregon or otherwise "directly transact business [there]." *Willemsen*, 282 P.3d at 871.

that manufacturer's business and distribution scheme in addition to showing a regular course of sales. The flaw in its position is that, although many decisions discuss a defendant's knowledge, awareness or understanding of such matters, none actually *require* direct evidence of actual knowledge. Most of these decisions do not even specifically identifying any such direct evidence as having been offered.

In *AU Optronics*, this Court stated, without ever identifying any specific direct evidence of actual knowledge, that "[defendant] understood the third parties would sell products containing its LCD panels throughout the United States, including large numbers of those products in Washington." *Supra* *8, ¶ 36. Such understanding was inferred from defendant's participation in a distribution scheme involving the regular flow and course of sales into Washington. *See e.g. Queen City Farms, Inc. v. Central Nat. Ins. Co. of Omaha*, 12 Wn.2d 50, 69, 882 P.2d 703 (1994) (even subjective state-of-mind may, and usually must, be inferred from actions and circumstances). In any event, there was no specific evidence in *AU Optronics* as to the defendant's actual knowledge that devices incorporating its panels would be distributed in Washington. This Court held that jurisdiction existed based upon objective facts evidencing a regular course of sales. *See AU Optronics*, supra at *8 - *9, ¶¶ 35-37.

The court in *Willemsen* mentions "the fact that CTE sold its battery chargers to Invacare in Ohio with the expectation that Invacare would sell its wheelchairs together with CTE's battery chargers nationwide." 282 P.3d at 872. However, the decision does not identify any specific evidence offered to directly prove such expectations. Special claims that that CTE "conceded" that it expected that its products would be distributed in Oregon. *Resp. Brief*, p. 26. However, the opinion contains no reference to any such concession—just the court's conclusion that CTE had such expectations under the circumstances.[3]

It is noteworthy, as discussed in *Willemsen*, that both the plurality and concurrence in *McIntyre Machinery* expressly rejected analyses that would take a defendant's subjective expectations or awareness into consideration. "Justice Kennedy, writing for the plurality," stated "that what matters…'is the defendant's actions, not his expectations.'" 282 P.3d at 872 (*quoting* 131 S.Ct. at 2789). Justice Breyer, in his concurrence, stated that a single sale of a product would not confer jurisdiction "even if that defendant places his goods in the stream of commerce, fully aware (and hoping) that such a sale will take place." 282 P.3d at 873 (*quoting* 131 S.Ct. at 2791-92). Likewise, in *Asahi*, Justice O'Connor for herself

[3] Defendant's brief in *Willemsen* shows that it did, in fact, *deny* knowing that its chargers would be sold in Oregon. *See* Relator's Opening Brief, 2012 WL 436208, *6 & *24, n.8 (1/12/212). There is no indication that either side in *Willemsen* presented direct evidence as to CTE's awareness or expectations.

and three others stated that Asahi's awareness "that some of the valves sold to Cheng Shin would be incorporated into tire tubes sold in California was not sufficient to satisfy due process." 282 P.3d at 875 (*quoting* 480 U.S. at 112). It is difficult to understand how a factor, which the U.S. Supreme Court has consistently deemed irrelevant and/or insufficient to minimum contacts, could suddenly become a necessary prerequisite.

Like Special, the defendant in *Russell v. SNFA* "denied specific knowledge of the final destination of its custom-made helicopter tail-rotor bearings," but apparently offered no evidence to support such denial. 2013 IL, 113909, 987 N.E.2d 778, 782 (2013).[4] The court upheld jurisdiction without requiring or identifying any direct evidence that defendant had "specific knowledge of the final destination" of its tail-rotor bearings" (*Id.*), based upon the fact of "multiple sales of its products in Illinois." 987 N.E.2d at 797, ¶ 85. The court in *Sproul v. Rob & Charles, Inc.* simply and expressly rejected any test that required direct proof of a defendant's actual, subjective knowledge. 304 P.3d 18, 29 (N.M. App. 2012).

Special attempts to read a 'direct evidence' requirement into *AU Optronics*' recognition that some of the earliest Washington decisions on stream of commerce did not consider "purposefulness." Special overlooks

[4] As discussed more fully below, the defendant in *Jacobsen v. Asbestos Corp. Ltd.*, 119 So.2d 770 (La. App. 2013) did, in fact, offer direct evidence in support of its position that it had no knowledge concerning the manufacturer's distribution system or the intended use / destination of the material it supplied.

that the defendant in *AU Optronic* made a similar argument that the reasoning in *Willemsen* was contrary to the recognition of a "purposefulness" requirement in *Grange Ins. Assoc. v. State*, 110 Wn.2d 752, 757 P.2d 933 (1988). This Court rejected that argument and held that under Justice Breyer's opinion in *McIntyre Machinery*, as applied in *Willemsen*, purposefulness *was* considered and was established by showing that the sale of the injury-causing product was not "isolated or fortuitous." *AU Optronics*, *supra* at *9, ¶ 38. In *Russell*, the Illinois Supreme Court held that "purposeful availment" occurred when the component-maker defendant *chose* to regularly exploit the distribution system in question. 987 N.E.2d at 795, ¶ 76. Special even acknowledges that jurisdiction is proper where the material in question reaches the forum as a result of "the efforts of the [defendant] to serve directly or indirectly, the market…in other States," rather than being just "an isolated occurrence." *Resp. Br.*, p. 16 (*quoting World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559 (1980)). It fails to explain how its efforts to do business with CertainTeed fail to satisfy this standard.

Special also attempts to interpret comments from Justice Breyer's concurrence in *McIntyre Machinery* as requiring direct evidence of actual knowledge. Such is not the case. Justice Breyer took issue with New Jersey's 'absolute' approach that would allow jurisdiction "as long as the

manufacturer knows or should know that its products 'are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states." *See Au Optronics*, *supra* at *7, ¶ 31 (*citing McIntyre Machinery*, 131 S.Ct. at 2793) (*emphasis in original*). Based upon his own emphasis, Justice Breyer was not concerned with constructive, as opposed to actual, knowledge; rather, he was concerned with 'what' was known or knowable about how the distribution system– i.e. did it, in fact, involve a regular flow or course of sales into the forum, as opposed to the mere possibility of an isolated sale.

Special correctly notes that foreseeability, as "the mere likelihood that a product will find its way into the forum State," is not enough to confer jurisdiction. *Resp. Br.*, p.15. Rather, as the Special acknowledges and the Court held in *World-Wide Volkswagen*, the issue is whether the defendant's conduct and connection to the forum are such that it "should reasonably anticipate" having to answer there for that conduct. *Id.* (*quoting World-Wide Volkswagen*, 444 U.S. at 297). The term "should reasonably anticipate" is an objective standard that typically speaks to constructive awareness, not actual, subjective knowledge. Actual, as opposed to constructive, knowledge is also a different issue than whether or not knowledge can be inferred as opposed to requiring some specific, direct evidence. See Queen City Farms, 12 Wn.2d at 69. Under *Grange*,

which Special acknowledges as still viable, "purposeful contacts are established when an out-of-state manufacturer places its products in the stream of interstate commerce, because under those circumstances it is fair to charge the manufacturer with knowledge that its conduct might have consequences in another state." 110 Wn.2d at 761.

In the case at bar, Special's awareness and/or knowledge can be inferred from its ongoing relationship with CertainTeed and from the volume of asbestos it regularly provided to CertainTeed. In the absence of evidence to the contrary, it is reasonable to infer from these circumstances, including Special's efforts to obtain a multi-year supply agreement with CertainTeed's pipe division, that Special "reasonably should" have anticipated being haled into court where CertainTeed regularly distributed asbestos pipe made with Special's asbestos—including pipe from the Santa Clara plant sold in Washington.

**(C)**
**Plaintiff Presented Uncontroverted Evidence**
**Of A Regular Flow Of Special's Asbestos Into Washington**

In the court below, Special argued that Mrs. Noll's evidence was insufficient because she failed to prove "proactive targeting" and/or show that it had any "direct" contacts with Washington. Now that the decision in *AU Optronics* has foreclosed such argument, Special has turned to criticizing the sufficiency of Mrs. Noll's evidence to demonstrate a regular

flow of its asbestos into this State. Special presented no evidence to negate, refute or otherwise challenge Plaintiff's evidence in this regard. The only evidence Special offered was an affidavit signed in 2008, in which its then-president asserted that the company and its agents had never directly done business or physically set foot in Washington, and which is irrelevant to the existence of a regular course of sales. CP 44-46.[5]

A plaintiff need not prove jurisdiction beyond all doubt; rather a plaintiff can defeat a motion to dismiss by presenting prima facie evidence of facts supporting jurisdiction. *See MBM Fisheries, Inc. v. Bollinger Mach. Shop & Shipyard, Inc.*, 96 Wn.App. 414, 418, 804 P.2d 627 (1991). *See also*, Black's Law Dictionary (9th ed. 2009) (defining prima facie evidence as that evidence "that will establish a fact or sustain a judgment *unless contradictory evidence is produced*" (emphasis supplied)). Moreover, the evidence and all reasonable inferences to be drawn therefrom—including awareness and expectations—are viewed in the light most favorable to non-movant (i.e. Mrs. Noll). *See AU Optronics*, *supra* at *3, ¶ 15. This is especially so where, as here, Plaintiff's evidence showing a regular course of sales is completely uncontroverted.

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[5] Special seems to take exception to Plaintiff's use of evidence from prior asbestos cases—although such practice is typical for both sides in this litigation, and Special did the same by supporting its original motion with an old affidavit from someone it no longer even employs.

Prior to his death, Mr. Noll testified that he worked with CertainTeed asbestos pipe in Washington on many occasions from 1977 through 1979. CP 295, 307-08, 311-12. Plaintiff's undisputed evidence shows, as to those years: that the CertainTeed asbestos pipe distributed in Washington was made at its Santa Clara plant, CP 175-204, 329-30, 365;[6] that Special, as sales agent for General Mining, agreed to supply CertainTeed's pipe division with thousands of metric tons of crocidolite asbestos per year for five years, CP 136-38, 216, 229;[7] that most or all CertainTeed's asbestos pipe contained some amount of crocidolite CP 307-08; that, as sales agent for General Mining, Special supplied 95% of the crocidolite asbestos used at Santa Clara (where asbestos pipe used by Mr. Noll was made), CP 274, 279-80, 293-96; that additionally, as sales agent for Calvarias Asbestos, Special supplied about 17% of the chrysotile asbestos used at Santa Clara, *Id.* & CP 235; and, that Special supplied asbestos to other CertainTeed asbestos pipe division plants in Riverside, CA, Hillsboro, TX, St. Louis, MO, and Ambler, PA. CP 300.

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[6] Mrs. Noll provided a sampling of CertainTeed invoices reflecting shipments of more than 50,000 feet of asbestos pipe into Washington during the relevant years. Her counsel indicated that additional invoices showing more asbestos pipe sales into Washington were available if needed. CP 338.

[7] Special objects to characterizing this agreement as a "requirements" contract, but it offers no evidence to refute Plaintiff's position. Regardless of how the agreement is labeled, Special and General Mining agreed to supply CertainTeed with 4000 metric tons +/- 10% of crocidolite per year for five years. CP 138.

Such evidence shows that Special had an ongoing relationship with CertainTeed, a national-brand manufacturer of construction materials. Special has never denied that CertainTeed was a national-brand manufacturer with a national distribution that included Washington—it just denies, *now* and without supporting evidence, that it knew as much. Plaintiff's evidence showed CertainTeed had operations in numerous states including: California, Georgia, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, and Washington. CP 298-302. Special itself actively sought to sell asbestos on a nationwide basis, per the testimony of its long-time principal owner. CP 218. It had offices in various locations, including west of Wisconsin, albeit none in Washington. CP 218.

Special continues to question whether the asbestos it supplied to the Santa Clara plant was used to make asbestos pipe. Plaintiff provided evidence that CertainTeed's Santa Clara plant produced *only* asbestos-cement pipe. CP 299-302. Thus, all of the asbestos that Special supplied during the relevant years was necessarily used to make pipe of the types to which Mr. Noll was exposed in Washington. Moreover, Special's agreement was to supply asbestos to CertainTeed's *pipe division*.

Special also suggests that doubt remains that it even knew that CertainTeed had a facility in Santa Clara. Plaintiff provided invoices

addressed to Special for shipments of chrysotile from Calaveras to the Santa Clara plant. CP 144-173. Plaintiff provided purchase orders from CertainTeed to Special with instructions regarding the destination for the asbestos being purchased. CP 125. Special's name on these documents may not prove receipt beyond any doubt, but such evidence is enough to establish a *prima facie* case—especially when it is un-refuted.

Special intimates that Mrs. Noll has not proved that Donald was even exposed to any asbestos it supplied to CertainTeed. Of course, Plaintiff is not required to *prove* her entire claim in order to make a *prima facie* case for jurisdiction. Her un-refuted evidence is more than sufficient to accomplish that purpose. Indeed, as noted, Plaintiff's evidence is sufficient to make a submissible case of exposure and causation as to Special under the prevailing Washington standard. *See App. Br.*, p. 16 (*citing Lockwood v. AC&S, Inc.*, 109 Wn.2d 235, 744 P.2d 605 (1987)).

**(D)**
**The Cases Cited by Special**
**Support Appellant's Position, or Are Distinguishable**

Notwithstanding Special's efforts to creatively interpret those decisions, *AU Optronics*, *Willemsen*, *Russell* and *Sproul* support Plaintiff's position here. Special conveniently overlooks the reality that, in all four cases, the courts held that jurisdiction over a component material supplier was proper upon showing a regular course of sales as opposed to an

isolated single occurrence. All four cases also confirm the well-established rule that a defendant can be subject to stream-of-commerce jurisdiction by *indirectly* distributing component materials into the forum state. *See also World-Wide Volkswagen*, 444 U.S. at 297 (*citing Gray v. American Radiator and Standard Sanitary Corp.*, 22 Ill.2d 432,176 N.E.2d 761 (1961)). Specifically, *AU Optronics* expressly rejects the argument—similar to the suggestions Special makes here—that minimum contacts cannot be based on "the independent actions of product manufacturers and retailers...." *5, ¶ 23. See also *9, ¶ 39 (characterizing defendants' contacts as involving "indirect sales to Washington consumers"). The Court in *Willemsen* also rejected "[defendant]'s view [that] the dispositive facts are that it did not sell battery chargers directly in Oregon and that it did not otherwise have any direct contacts here." 282 P.3d at 870-71, n. 5.

As Special notes, the court in *Russell* relied in part on the fact that the defendant had custom-made the bearings at issue for the OEM's helicopters. According to the court, that put the defendant component maker on notice that its bearings would be distributed, as original equipment or replacement parts, to the OEM's customers including those in the United States and Illinois. The fact that the bearings were custom-made was, thus, part of the circumstances from which awareness was inferred and not a requirement for exercising jurisdiction. See 987 N.E.2d

at 794, ¶ 73. In the case at bar, although Special's asbestos was not "custom-made," it was sold to CertainTeed's pipe division to be used as raw material for making asbestos pipe for sales to CertainTeed's customers. Thus, in similar fashion, by choosing to regularly do business with CertainTeed's pipe division and regularly supplying it with a substantial quantity of asbestos, Special was on notice that it's asbestos would ultimately reach CertainTeed's asbestos pipe customers—including those in Washington.

Special also notes that the defendant in *Russell* had had dealings with another company with an Illinois office (unrelated to the case and involving different components), and that at least one employee of the defendant had visited that office. However, the court found such evidence significant only to the extent that it would also satisfy Justice O'Connor's "something more" test for minimum contacts and provide an alternative basis for upholding jurisdiction. Those limited, unrelated contacts with Illinois were not essential the court's primary holding that regular course sales of the type of bearings at issue by the intermediary OEM established minimum contacts. See 987 N.E.2d at 796-97, ¶¶ 78-81.

Special correctly notes that, in *Sproul*, the New Mexico appellate court applied a broader version of stream-of-commerce jurisdiction. Based upon its determination that the absence of any subsequent majority

opinion left the law unchanged since *World-Wide Volkswagen*, the *Sproul* court fell back onto that state's broad interpretation of the doctrine. The court in *State v. NV Sumatra Tobacco Trading Co.*, 403 S.W.3d 726 (Tenn. 2013) likewise held that the failure of *Asahi* and *McIntyre Machinery* to produce a majority opinion left its law unchanged. It fell back onto Tennessee's traditionally narrower interpretations. Washington, Oregon and Illinois have tempered (but not abandoned) their traditionally broader approaches to stream of commerce by incorporating specific, limited requirements from the various non-binding opinions in *Asahi* and *McIntyre Machinery*. As noted, *AU Optronics*, *Willemsen*, *Russell* and *Sproul* all reaffirm the basic principle first applied in *Gray v. American Radiator*, that stream-of-commerce jurisdiction is properly exercised over a component material supplier that did not directly distribute its materials into the forum state.

*NV Sumatra Tobacco*, by contrast, involved the State's attempt to collect statutory escrow fund contributions from an Indonesian cigarette manufacturer, not redress an injury that occurred there as a result of tortious conduct that occurred elsewhere. The defendant was not accused of having directed any wrongful or negligent conduct to Tennessee, but of simply having failed to pay for the privilege of having its products sold there. Moreover, its products had reached the United States, and

specifically Tennessee, by way of multiple layers of intermediary distributors. Once that defendant learned that having its products distributed in the United States could subject it to various state regulations, it cut ties with its U.S. distributor and withdrew from the U.S. market entirely.

*Jacobsen v. Asbestos Corp. Ltd.*, 119 So.2d 770 (La. App. 2013) represents the only conflicting authority, involving a component material supplier, cited by Special. There, the Louisiana courts declined to exercise jurisdiction over a New York company that sold some asbestos to Johns Manville. In addition to Louisiana simply applying its narrower approach to stream of commerce, *Jacobsen* is readily distinguishable on the facts in several respects. First, the asbestos sales brokered by the defendant in *Jacobsen* were a sideline for that defendant and, in the overall scheme of things, minor purchases for Manville. In the case at bar, supplying asbestos was a significant part of Special's business and, for the times in question, Special was a regular major asbestos supplier to CertainTeed's pipe division. The plaintiffs' evidence in *Jacobsen* fell short of tracing a regular flow of asbestos from defendant to the point of exposure. Mrs. Noll's evidence makes out a *prima facie* case tracing the flow of Special's asbestos through the Santa Clara plant to her late husband's exposure in Washington. The defendant in *Jacobsen* offered evidence to affirmatively

support its claimed lack of knowledge concerning Manville's operations and its assertions of only irregular involvement. Special has criticized, but not contradicted, Mrs. Noll's proof concerning the flow of its asbestos through established streams of commerce, and offered evidence going only to its lack of unrelated collateral contacts with Washington.

## CONCLUSION

For the reasons stated herein and in Appellant's opening brief, Appellant Candance Noll respectfully requests this Honorable Court reverse the decision below dismissing Respondent Special Electric and hold that personal jurisdiction is properly exercised over said party.

DATED this 17th day of July, 2014.

Respectfully submitted,

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