IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ROSE PENA DE MOLINA et al., Plaintiffs and Appellants, v. GLASSWERKS LA, INC. et al., Defendants and Respondents.	B301736 (Los Angeles County Super. Ct. No. BC611416)

APPEAL from judgments of the Superior Court of Los Angeles County, Gregory Wilson Alarcon, Judge. Affirmed.

Metzger Law Group, Raphael Metzger and Laura Goolsby for Plaintiffs and Appellants.

Poole, Shaffery & Koegle, John H. Shaffery and Jason A. Benkner for Defendant and Respondent PRL Glass Systems, Inc. and PRL Aluminum, Inc.

Booth, Jason M. Booth, Benjamin L. Caplan and Allan P. Bareng for Defendant and Respondent New Glaspro, Inc.

Everett Dorey, Seymour B. Everett, Samantha E. Dorey, Christopher D. Lee, and Alexis N. Hishmeh for Defendant and Respondent Glasswerks LA, Inc.

Lewis Brisbois Bisgaard & Smith, Jeffrey A. Miller, Ernest Slome and Patrick J. Foley for Defendant and Respondent Pilkington North America, Inc.

INTRODUCTION

Plaintiffs,[1] family members of decedent Oscar Molina (Molina), filed a product liability action alleging that Molina died of lung disease resulting from inhalation of glass and metal particles arising from his work as a glazier. Plaintiffs sued companies that supplied glass and mirrors to Molina's employer, alleging that their products caused Molina's illness and death when the glass and mirrors were cut, ground, or sanded, releasing aerosolized particles that Molina inhaled. Five of the defendants filed motions for summary judgment, asserting that the products they supplied were all finished products—not raw or stock glass that needed to be cut, ground, or sanded—so defendants' products would not have been manipulated in any way that would have released airborne particles of glass and metals. The trial court granted the motions, and plaintiffs appealed.

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[1] Plaintiffs are Molina's wife, Rosa Pena de Molina, and Molina's children, Dina Molina, Andrea Molina, Jenny Molina, and Arnold Molina Pena. Rosa sued individually, as successor-in-interest to Molina, and as guardian ad litem for Arnold. Because the plaintiffs and some of the witnesses share last names, we refer to them individually by first name to avoid confusion. No disrespect is intended.

We affirm. Each of the defendants presented evidence sufficient to show the lack of a connection between defendants' finished products and Molina's exposure to harmful substances. The evidence plaintiffs submitted in response did not demonstrate a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (c).) [2]

FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs' allegations

On February 23, 2016, plaintiffs filed a complaint against Doe defendants 1 through 100. On October 17, 2017, they substituted the five respondents to this appeal as Doe defendants: Glasswerks LA, Inc.; New Glaspro, Inc. dba GlasPro; Pilkington North America, Inc.; PRL Aluminum, Inc.; and PRL Glass Systems, Inc. (collectively, defendants). Plaintiffs then filed a first amended complaint (FAC) against defendants and 28 additional parties who had been substituted as Doe defendants. The FAC was the operative complaint for purposes of the motions for summary judgment at issue in this appeal.

In the FAC, plaintiffs alleged that Molina worked for Lucky's Glass[3] from about 1993 to 2014, and there he "worked with and around inherently hazardous metal alloys, glass products, fiberglass products, machines, abrasive products, sand products, welding and brazing products, solvents, thinners, paints, lubricants, silicones, mastics, and other chemical products manufactured, distributed and/or supplied by" the defendants.

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[2] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[3] Throughout the record, variations of Molina's employer's name include "Lucky Glass" and "Lucky's Glass."

They asserted that Molina's work, including the "transporting, mixing, preparing, and use" of the products, "resulted in the generation and release of toxic airborne fumes, dusts, and vapors which contained various toxins." As a result, Molina "sustained serious injuries to his internal organs, including his lungs, resulting in interstitial lung disease, from which he ultimately died."

Plaintiffs alleged seven causes of action based on product liability: negligence, negligence per se, strict liability – failure to warn, strict liability – design defect, fraudulent concealment, breach of implied warranties, and loss of consortium. Plaintiffs sought actual damages, punitive damages, and costs.

B. Motions for summary judgment

Defendants filed motions for summary judgment, or in the alternative, summary adjudication. Although the motions do not clearly discuss Molina's work, his job duties were discussed in transcripts from the deposition of Christopher Ettley, president of Lucky's Glass and its designated person most knowledgeable (PMK),[4] which were attached to some of the motions. Ettley stated that Molina had been "a helper" to glass installers in the field, and a "shop guy" at Lucky's Glass for around 34 years. When asked what Molina's job responsibilities were, Ettley responded, "Cutting glass. Fixing windows at the shop. Help loading up. Grab all of the deliveries during the day. Clean." Ettley estimated that Molina's job duties required him to work in the shop about 80 percent of the time, and in the field about 20 percent of the time.

[4] See § 2025.230.

In their motions for summary judgment, defendants each alleged that they supplied Lucky's Glass with only finished glass products that were ready to be installed, which did not require cutting, grinding, sanding, or any other manipulation that would release particulates into the air. Each defendant asserted that its products did not expose Molina to airborne particles that could cause harm, asserting generally that if "there has been no exposure, there is no causation." (*McGonnell v. Kaiser Gypsum Co., Inc.* (2002) 98 Cal.App.4th 1098, 1103 (*McGonnell*).) Plaintiffs opposed each motion on the basis that Molina's lung disease was caused by aerosolized glass and metal particles, and defendants' products supplied to Lucky's Glass were capable of being cut, ground, or sanded. The details of the motions, oppositions, evidence, and court rulings specific to each defendant are summarized below.

1. *PRL*

a. *PRL's motion for summary judgment*

PRL Aluminum, Inc. and PRL Glass Systems, Inc. (collectively, PRL) moved for summary judgment on the basis that plaintiffs could not establish that PRL supplied products to Lucky's Glass that "were cut, sanded, ground, or otherwise manipulated in such a way to cause an aerosolization release of purported toxins" that Molina could inhale. PRL asserted that plaintiffs had not identified any specific PRL product at issue that had exposed Molina to toxins, but only alleged generally that Molina was exposed to "aluminum silicates and other silicates."

PRL relied in part on the declaration of David Landeros, the owner, vice president, and CFO of PRL. Landeros stated in his declaration that he was "intimately familiar with the manufacturing and sales activity for both PRL Glass and PRL

Aluminum during the relevant time period (1993-2014)." He stated that PRL Glass "sold fabricated glass products to Lucky Glass," but all such products "were in their finished form, including glass panels (mostly tempered), which were cut-to-size and ready for install. There would be no need for any person . . . to cut, sand, grind, or manipulate PRL Glass products in such a way that would cause an aerosolization release of dust or other particulates from the hardened and finished products." He also stated that PRL Aluminum had sold "aluminum fabricated glass products" to Lucky's, such as "tempered sliding glass door units with hardware," but these were also "finished, cut-to-size and fabricated to ensure that no person . . . would be required to cut, sand, grind, or manipulate any PRL Aluminum product in such a way that would cause an aerosolization release of dust or other particulates."

PRL also contended that Ettley, Lucky's Glass's PMK, testified in his deposition that the PRL products reflected in invoices he reviewed at his deposition did not require any cutting, sanding, or other manipulation by Lucky's Glass. PRL further asserted that in discovery responses, plaintiffs "failed to identify any specific date, duration, frequency, or proximity to purportedly harmful elements of PRL Glass or PRL Aluminum products." PRL asserted that plaintiffs had "no evidence that there was any aerosolization release of any product sold by" PRL, and therefore "they cannot carry their burden to show that any [PRL] product . . . caused [Molina's] purported injuries."

b. *Plaintiffs' opposition to PRL's motion*

Plaintiffs asserted that PRL failed to meet the threshold burden required in a motion for summary judgment, and "submitted no admissible evidence to support [its] purported no

exposure argument." In their opposition and in written objections, plaintiffs argued that Landeros's declaration was "inadmissible in its entirety." Plaintiffs asserted that although Landeros stated that he had personal knowledge and was intimately familiar with the manufacturing and sales activity for PRL, he did not establish "what 'intimately familiar' means in order to establish that he has personal knowledge." Plaintiffs also contended that Landeros's statement that no PRL products would have been cut, ground, or sanded to release airborne toxins was "purely conclusory and speculative as he offers no statements establishing himself as having expertise on the release of toxic chemicals from aluminum and glass products." Plaintiffs further asserted that even if PRL products did not "require" cutting, grinding, or sanding, "[a]t the very least, whether [PRL's] glass and aluminum supplied to Lucky's Glass from 1993-2004 was capable of being cut, sanded and/or ground . . . is a triable issue of material fact for the jury to decide."

Plaintiffs also argued that although Ettley reviewed invoices reflecting sales from PRL to Lucky's Glass at his deposition, PRL "presented Mr. Ettley with only a handful of invoices from 2013." Ettley "was not asked at his deposition, and he did not testify that PRL" had presented him with the entire PRL "universe of Lucky's Glass invoices/purchase orders."

Plaintiffs pointed out that Ettley testified that Lucky's Glass employees sometimes ground aluminum. Ettley testified, "Sometimes maybe the piece of aluminum is a little too long and you kind of take a grinder and grind it down." Ettley said this was not common, and it was done by installers out on a job site. Ettley did not know whether Molina ever ground aluminum.

In addition, plaintiffs referenced Rosa's deposition testimony that Molina complained he "would inhale the dust from the glass" at work. When he came home from work, "he had metal particles on his skin, on his clothing, and his eyes were bloodshot," and his "hair was hard from all the dust."

Plaintiffs submitted the declaration of Jerrold L. Abraham, M.D., who stated that he had analyzed the inorganic particles in Molina's lungs. Abraham stated that "high levels (substantially above background) of aluminum silicates, silica and metals were found in Mr. Molina's lung tissue, reflecting occupational exposure consistent with his history of exposure to glass and metals. So I disagree with the premise of PRL's summary judgment motion that there is no evidence Mr. Molina was exposed to glass or metal particulates." In addition, plaintiffs submitted a workers' compensation medical evaluation report by Stewart A. Lonky, M.D., stating that Molina died from "an infectious complication and respiratory failure related to his interstitial lung disease induced by the inhalation of silica and aluminum which were present as a result of his job as a glazier."

Plaintiffs asserted that their evidence established that "aluminum silicates, silica and metal were present in Mr. Molina's lung tissue from the autopsy," and that PRL Aluminum and PRL Glass were "long-time regular suppliers of aluminum and glass to Lucky's Glass during the relevant time period." Thus, plaintiffs contended that "there is ample evidence before the Court that Decedent was regularly exposed to [PRL's] products, over a period of many years, which is sufficient to defeat summary judgment." They also argued that their evidence raised "triable issues as to [PRL's] alleged no exposure argument and liability."

Although not discussed in their opposition, plaintiffs submitted excerpts of deposition testimony from three of Molina's coworkers: Juan Colin, Armando Bravo, and Esteban Bravo. Colin testified that he was an installer, and he had been working at Lucky's Glass for about nine years. Molina worked in the shop, and Colin "didn't see him a lot" and had not worked with him. Colin was asked whether Molina's job required him to sand, grind, or abrade glass, and Colin responded, "If it was a mirror, yes, but just for the mirror." Colin said he sometimes observed Molina cutting mirrors, but he did not know what company supplied the mirrors.

Armando Bravo testified that he worked with Molina for about 20 years at Lucky's Glass. He only worked directly with Molina "when we could come by to load up a mirror that he produced. He would help to load it." Molina did work around the warehouse, including sweeping, accepting deliveries, cutting glass, cutting mirror, and cutting "the channel for the mirrors or metal for the screens." Armando did not know the names of any of Lucky's Glass suppliers. He knew stock sheets of glass and mirror were delivered to Lucky's Glass, the sheets were cut with glass cutters, and the edges were sanded with belt sanders, but he did not see Lucky's Glass employees doing this work.

Esteban Bravo testified that he had worked at Lucky's Glass since the early 1990's as an installer. Molina worked in the shop, and Esteban did not really work with him. Esteban did not know what Molina's job duties were, but he knew that Molina cut glass and mirrors. Esteban identified PRL as a supplier to Lucky's Glass.

c. *PRL's reply*

PRL asserted in its reply and in written objections that plaintiffs failed to distinguish raw or stock products from finished products. Molina and his coworkers would have only cut stock or raw glass and mirror—not finished products. PRL asserted, "Without showing a release of particulates from [PRL's] glass or aluminum products, there is no factual question as to whether any of those particulates could have ended up in [Molina's] lungs." PRL also contended that Abraham's declaration was immaterial to the issues in the motion because the declaration did not establish the source of any of the particulate material in Molina's lungs.

d. *Court ruling*

Following a hearing, the court granted PRL's motion. In its written ruling, the trial court overruled most of plaintiffs' objections to Landeros's declaration.[5] The court stated that Landeros's declaration and Ettley's deposition testimony were sufficient to establish that PRL "sold only finished products" to Lucky's Glass, and "no cutting would have occurred, and no aerosolized release of toxins would have resulted therefrom." Thus, PRL met its initial burden of showing no triable issue as to Molina's exposure to toxins from PRL products.

The court referenced plaintiffs' assertion that the products were *capable* of being cut, and stated, "[T]he issue is not whether such products could be cut. . . . The relevant issue is whether

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[5] The court sustained plaintiffs' objections to two paragraphs of Landeros's declaration in which Landeros referenced PRL's invoices to Lucky's Glass, but did not include the invoices.

[PRL's] products served a role as a substantial factor in [Molina's] disease." The court noted that plaintiffs' "evidentiary submissions as to the gravity and cause of [Molina's] disease do not establish a causal link." Although plaintiffs showed that Molina's lung disease was caused by airborne particles relating to his employment, "such evidence does not create a triable issue as to whether [PRL's] products in particular were a substantial factor in such harm. [¶] Rather, the only evidence presented to this Court demonstrates that PRL Glass and PRL Aluminum provided finished products to Lucky's Glass which required no manipulation." The court therefore held that plaintiffs had not met their burden of demonstrating a triable issue of fact "as to whether [PRL's] products were a substantial factor in causing [Molina's] lung disease," and granted the motion.

2. *GlasPro*

a. *GlasPro's motion for summary judgment*

GlasPro contended in its motion that "GlasPro's products were finished glass products that did not require cutting, grinding, sanding, or manipulation" by Lucky's Glass. GlasPro relied on the declaration of its chief executive officer and president, S. Joseph Green. Green stated that he had personal knowledge of the products manufactured and sold by GlasPro, which "manufactures and sells finished glass products, built to customer specifications, and ready for installation. GlasPro does not sell raw or unfinished products to its customers. GlasPro has never manufactured, supplied, or sold metal alloys." Green also stated, "There is no reason any person employed by Lucky's Glass would need to cut, grind, sand, or manipulate GlasPro's finished glass products."

GlasPro also contended in its motion that Ettley of Lucky's Glass testified that he did not know whether the glass purchased from GlasPro had been cut, ground, sanded, or altered. It attached excerpts of Ettley's deposition transcript, in which Ettley testified that he could not remember if all the products Lucky's Glass purchased from GlasPro were finished products. When asked if some of the GlasPro products would need to be cut, Ettley answered, "It's possible. Depends on what type of glass it was." When asked whether the glass from GlasPro needed to be cut, ground, or altered, Ettley said he did not recall. Ettley also testified that he did not recall ever seeing Molina or any other Lucky's Glass employee cut, grind, or sand GlasPro products. GlasPro argued that based on this evidence, plaintiffs "cannot provide any evidence that [Molina] was involved in or exposed to the cutting, grinding, or sanding of GlasPro's products." .

b. *Plaintiffs' opposition to GlasPro's motion*

In their opposition to GlasPro's motion for summary judgment, plaintiffs asserted that GlasPro failed to meet its threshold burden. In their opposition and in written objections, plaintiffs asserted that Green's declaration in support of GlasPro's motion was "inadmissible in its entirety. Mr. Green's declaration does not establish that he has personal knowledge of the products that were sold to Lucky's Glass. He does not state when he started working for GlasPro, or how long he has been with the company. His statements regarding GlasPro sales invoices are hearsay. He has not established himself as an expert on the 'aerosolization' release of dust or other particulates from glass products that are cut, although he opines on the subject."

Plaintiffs submitted excerpts of Rosa's deposition testimony, in which she stated that Molina would come home

from work with dust and metal particles on his clothes and in his hair. They also submitted Abraham's declaration responding to PRL's assertions and describing the particulate matter in Molina's lungs, and Lonky's report attributing Molina's lung disease to his employment.

Plaintiffs asserted that the relevant issue "is not whether the glass products 'require' cutting, but rather, whether the products were capable of being cut such that, if the product was cut, a fine mist of glass and metal particulates entered [Molina's] breathing zone." Plaintiffs pointed to Ettley's testimony that if a finished product did not quite fit an installation, the installer would grind it down with a grinder. Plaintiffs also noted that Ettley did not recall if the products Lucky's Glass purchased from GlasPro were all finished products. They asserted that Ettley "was only asked at his deposition if he could remember whether the GlasPro products were finished products. He was not asked if the products were capable of being cut."

Plaintiffs also noted that Ettley testified that Lucky's Glass purchased laminated glass from GlasPro. Plaintiffs submitted excerpts from the deposition testimony of Rick Leserman, the PMK for a company called Girard Glass, which plaintiffs characterized as "a middleman purchaser of wholesale glass between glass manufacturers, such as GlasPro, and retailers, such as Lucky's Glass." Leserman testified that laminated glass is capable of being cut, sanded, and polished.

c. *GlasPro's reply*

In reply, GlasPro referenced the evidence that its products were finished, not raw, and argued that plaintiffs' assertion that GlasPro products were "capable" of being cut was speculative. GlasPro stated that cutting, grinding, or sanding its finished

products "would have caused serious physical damage to the finished glass product[s] (necessarily rendering them useless)." GlasPro contended that plaintiffs' failure to present evidence to support their position "constitutes a tacit admission by Plaintiffs and their counsel that they cannot meet their burden."

GlasPro also asserted that plaintiffs' objections to Green's declaration were meritless, and noted that plaintiffs had not sought to depose Green. GlasPro further argued that plaintiffs' causation evidence, including Abraham's declaration, did not warrant denial of the motion because Molina "may have been exposed to glass particulates at Lucky's Glass, but not from GlasPro's glass."

d. *Court ruling*

The court granted GlasPro's motion.[6] In its written ruling, the court noted that Green stated in his declaration that GlasPro does not sell products that require cutting, grinding, or sanding.[7] The court also relied on Ettley's testimony that he did not recall seeing any employees cutting, grinding, or sanding GlasPro products. The court found that GlasPro had shifted the burden because it "submitted evidence that [GlasPro] submitted [*sic*] only finished, ready for installation glass products to Lucky's Glass, and that Lucky's Glass PMK has no recollection of any employee ever working on a [GlasPro] product in such a way that would create an aerosolized release of glass and metal particles."

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[6] The record on appeal does not include a reporter's transcript of the hearing on GlasPro's motion.

[7] The court sustained plaintiffs' objections to paragraphs of Green's declaration relying on sales records that were not submitted, but stated that "such paragraphs were not required to shift the burden."

Turning to plaintiffs' opposition, the court stated, "Plaintiffs contend that Green does not possess personal knowledge or expert knowledge on aerosolization. This argument is clearly unavailing because Green does not need to be an expert in the field of aerosolization of glass particles to declare that his company sells only finished, built to specification products which require no manipulation by the customer." The court rejected plaintiffs' reliance on Leserman's testimony, stating, "Aside from creating the inference that laminated glass is capable of being cut, this evidence does little to create a triable issue that [Molina] was exposed to harmful particles emanating from the manipulation of [GlasPro's] glass." The court held that "[p]laintiffs have failed to submit evidence that [Molina], or any employees of Lucky's Glass, manipulated [GlasPro's] glass products in such a way that would expose him to the harmful particulates found in his lungs." The court concluded that plaintiffs "have submitted no evidence that elevate[s] their argument beyond conjecture and speculation," and therefore "failed to meet their burden of creating a triable issue of material fact."

3. *Glasswerks*

a. *Glasswerks' motion for summary judgment*

Glasswerks asserted in its motion for summary judgment that Ettley testified that the products Lucky's Glass received from Glasswerks were not cut, ground, or sanded. The testimony Glasswerks cited does not support that statement, however. Instead, Ettley testified that he did not recall ever seeing Molina cut, grind, or sand products from Glasswerks.

Glasswerks also noted that it propounded discovery to plaintiffs asking if they had personal knowledge about Molina's

exposure to any Glasswerks products; plaintiffs responded that they did not. The discovery Glasswerks submitted with its motion showed that Glasswerks asked plaintiffs for "all facts" to support each cause of action. Plaintiffs stated generally that Molina worked for Lucky's Glass, Glasswerks supplied glass and perhaps metal products to Lucky's Glass, and Molina suffered from lung disease caused by exposure to toxic chemicals. Glasswerks also asked about the location of the products Molina used, as well as the frequency and duration of use. Plaintiffs responded that they did not have any responsive information, and referred Glasswerks to Molina's employer and coworkers. Glasswerks noted that plaintiffs named it as a Doe defendant in October 2017, and by the time Glasswerks filed its motion for summary judgment in May 2019, plaintiffs had not produced any evidence supporting their theories against Glasswerks.

Based on Ettley's testimony and plaintiffs' factually devoid discovery responses, Glasswerks contended that plaintiffs did not have sufficient evidence to create a triable issue of fact as to whether Molina was exposed to harmful substances from Glasswerks products. Glasswerks argued that as a result, plaintiffs could not prove the element of causation.

b. *Plaintiffs' opposition to Glasswerks' motion*

Plaintiffs opposed Glasswerks' motion on the basis that "high levels of aluminum silicates, silica, other constituents of glass and metals were found in Mr. Molina's lung tissue," and Glasswerks "was a regular supplier of cuttable glass products to Lucky's Glass" while Molina was employed there. Plaintiffs pointed to Rosa's testimony that Molina said he inhaled dust from the glass at work, and he came home with dust on his clothing and in his hair.

Plaintiffs asserted that Glasswerks did not meet its initial burden on summary judgment, because Glasswerks "bears the burden to show that Plaintiffs cannot establish that Mr. Molina was not exposed to aluminum silicates, silica, other constituents of glass and metals contained in [Glasswerks] products," and Glasswerks "presented no evidence to satisfy its initial threshold burden." Plaintiffs asserted that they gave defendants the name of several witnesses during discovery, including Ettley and coworkers Colin, Armando, Esteban, and "[t]hese deponents provided information that Glasswerks supplied products to Lucky's Glass during the time [Molina] worked there and that those products were capable of being cut, which meant that glass and metal dust were emitted into [Molina's] breathing zone." Plaintiffs asserted that although Ettley could not remember seeing Molina cut glass or mirrors from Glasswerks, his inability to remember did not amount to a lack of evidence.

Plaintiffs further asserted that Ettley testified that Glasswerks sold "miscellaneous glass" to Lucky's Glass, and argued that such glass was capable of being cut or sanded. Plaintiffs again relied on the testimony of Leserman of Girard Glass, who testified that "regular glass," which he described as an "unprocessed piece of glass," was capable of being cut and polished. Plaintiffs argued that "whether [Glasswerks'] glass products supplied to Lucky's Glass [were] capable of being cut, sanded and/or ground is a triable issue of material fact for the jury to decide."

Plaintiffs also submitted Abraham's declaration addressing PRL's allegations and stating that aluminum silicates, silica, and metals were found in Molina's lungs, as well as Lonky's workers' compensation report stating that Molina's lung disease was

caused by his employment. Plaintiffs asserted there was "ample evidence before the Court that [Molina] was exposed to Glasswerks products."

c. *Glasswerks' reply*

Glassworks stated in its reply that it requested all information relating to Molina's exposure to Glasswerks products in discovery. In response, plaintiffs said they had no responsive information. Plaintiffs identified potential witnesses in their discovery responses—Colin, Esteban, Ettley, and Leserman—but none of these witnesses saw Molina cut, grind, or sand Glasswerks' products. In separate written objections, Glasswerks objected to plaintiffs' evidence as "confusing and misleading." Glasswerks also pointed out that Colin testified Glasswerks products did not require cutting, grinding, or sanding, and Armando's testimony did not reference Glasswerks. Esteban testified that he was not aware of anyone at Lucky's Glass cutting or grinding Glasswerks products. Ettley testified that he did not recall seeing Molina cut, grind, or sand Glasswerks products.

Glasswerks argued that plaintiffs' theory that Glasswerks products were "capable" of being cut amounted to speculation, since there was no evidence Molina was near Glasswerks products while they were being cut, ground, or sanded. It also asserted that Abraham's declaration regarding the cause of Molina's lung disease did not suggest any exposure to Glasswerks products.

d. *Court ruling*

Following a hearing, the court granted Glasswerks' motion. In its written ruling, the court noted that Ettley testified he did not recall ever seeing Molina cut, grind, or sand Glasswerks

products, and plaintiffs stated in their discovery responses that they had no personal knowledge of Molina's exposure to toxins from Glasswerks products. The court held that this evidence was sufficient to meet Glasswerks' initial "burden of showing that no triable issue exists as to whether [Glasswerks'] products were a substantial factor in the causation of [Molina's] disease because no evidence of causality has been presented."

The court stated that plaintiffs' opposition "submits no evidence to support [their] claim of causation. Rather it does the opposite." The court noted that Colin testified Glasswerks products at Lucky's Glass were "finished." The court referenced plaintiffs' evidence that Girard Glass, a competitor of Glasswerks, sold unfinished glass to Lucky's Glass, and stated, "[S]uch testimony does nothing to create a triable issue as to whether [Molina] was specifically exposed to particulate matter emanating from Glasswerks glass." The court concluded that plaintiffs had not met their burden "of creating a triable issue as to whether Glasswerks' products were a substantial factor in causing [Molina's] lung disease."

4. *Pilkington*

a. *Pilkington's motion for summary judgment*

Pilkington asserted in its motion for summary judgment, "[C]omprehensive discovery completed in this case reveals that Plaintiffs in fact have no evidence that [Molina] was actually exposed to any toxic airborne fumes, dusts or vapors from any product manufactured, sold, supplied or distributed by Pilkington." Pilkington submitted excerpts from Ettley's deposition in which Ettley estimated that about "95 percent of our glass is delivered to the size we require. Because it's tempered glass. You can't alter tempered glass." Ettley stated

that "we would cut in the shop or in the field" "maybe five percent" of the glass.

When Ettley was asked what products he associated with Pilkington, Ettley responded, "Low-E glass." He explained that "Low-E" coated glass consists of "[t]wo pieces of glass put together with an air spacer in between, it's sealed with a metal gasket all the way around. It comes from the factory like that." He also referenced glass that had a "Low-E coating but sealed in an I.G. unit." Ettley stated that Lucky's Glass would not cut, sand, or grind Low-E glass.

Pilkington's counsel showed Ettley "some of the invoices that reference Pilkington North America," stating that she "just grabbed a few so we don't go through 35 pages of invoicing." Ettley testified that the products on the invoices, an I.G. unit and Low-E glass, would not be manipulated in any way by Lucky's Glass. Ettley did not know of any other Pilkington product that Lucky's Glass may have purchased.

Pilkington also submitted excerpts from the depositions of Colin, Armando, and Esteban. They each testified that they had never heard of Pilkington, and had no knowledge that Molina had ever worked with Pilkington products. In addition, Pilkington referenced plaintiffs' discovery responses, and contended that plaintiffs failed to provide any information beyond the general allegations in the complaint.

Pilkington argued that plaintiffs could not "establish causation against Pilkington as there is no evidence [Molina] was ever exposed to any toxic vapors, fumes, or dust from any product manufactured, supplied, sold or distributed by Pilkington." It added that plaintiffs "have not produced any documents and have

not identified any product identification witnesses with any evidence supporting Plaintiffs' allegations against Pilkington."

b. *Plaintiffs' opposition to Pilkington's motion*

In their opposition to Pilkington's motion for summary judgment, plaintiffs argued that Pilkington failed to meet its threshold burden because "Pilkington bears the burden to show that Plaintiffs cannot establish that Mr. Molina was not exposed to aluminum silicates, silica, other constituents of glass and metals contained in its glass products." Plaintiffs asserted that Pilkington "submitted no evidence to satisfy its initial burden of proof." Plaintiffs argued that Pilkington could not rely on Molina's coworkers' testimony, "who were rarely around Mr. Molina at work" because they spent most of their time working as installers off-site.

Plaintiffs also relied on the deposition testimony of Leserman, who testified that in general, the products Girard Glass sold to Lucky's Glass included "regular glass that for the most part is not fabricated or ready to install for the end use." Leserman also testified that Girard Glass, a glass wholesaler, bought various types of glass from Pilkington, a glass manufacturer. Plaintiffs asserted in their opposition that Pilkington manufactured clear glass, and Girard Glass sold "regular glass" to Lucky's Glass from the mid 1990's through approximately 2010. Plaintiffs asserted that "the glass manufactured by Pilkington, that Girard Glass sold to Lucky's Glass, was capable of being cut, sanded and/or ground, whether or not it was required."

Plaintiffs further asserted that Ettley was not asked in his deposition about all of the Pilkington products Lucky's Glass purchased, and he was "not presented with the universe of

Pilkington documents at his deposition to determine if Pilkington had indeed manufactured and supplied other glass products to Lucky's Glass." Ettley testified that he did not have all of the vendor invoices for the time Molina worked at Lucky's Glass.

Plaintiffs referenced Rosa's testimony that Molina came home with dust and metal particles on his clothing and in his hair. Plaintiffs also relied on the causation opinions of Abraham and Lonky, and argued that Pilkington's glass products were in Molina's lungs at the time of his death. They asserted that their evidence, "at a minimum, raise[s] triable issues as to [Pilkington's] alleged no exposure argument and liability as to each cause of action."

c. *Pilkington's reply*

Pilkington asserted in its reply that "none of the witnesses identified by plaintiffs, or any of the other witnesses in this case, ever observed [Molina] cut, sand, grind, abrade, or manipulate in any way any Pilkington product." It argued, "The mere fact that a defendant's finished product was present at a jobsite where decedent worked is immaterial unless plaintiffs can also show that someone manipulated that product in such a way to cause a release of harmful particulates." Pilkington further contended that plaintiffs' argument that glass was "capable of being cut" and therefore Molina must have been exposed amounted to speculation. Pilkington also asserted that Abraham's declaration did not support causation as to Pilkington.

d. *Court ruling*

Following a hearing, the trial court granted Plikington's motion. In its written ruling, the court noted that Ettley associated only Low-E glass with Pilkington, and testified that Low-E glass is not cut, ground, or sanded. The court observed

that Colin, Armando, and Esteban each testified that they were not familiar with Pilkington products. The court found that Pilkington "met its burden of showing no triable issue of material fact as to a causal link between [Pilkington's] products and [Molina's] lung disease."

Turning to plaintiffs' evidence, the court noted that plaintiffs argued that Colin, Armando, and Esteban did not work closely with Molina, but stated that this fact did not "challenge or overcome" Pilkington's evidence. The court acknowledged that Leserman testified that Girard Glass sold "clear, cuttable" glass to Lucky's Glass during Molina's employment, but this "does not directly address the requisite causation in this action." Plaintiffs' evidence "does not provide that [Molina] was exposed to airborne toxins generated from manipulation of [Pilkington's] glass, nor that [Molina] worked directly with such glass. . . . [A]lthough 'it is at least within the realm of possibility' that [Molina] encountered a Pilkington clear [g]lass product during his employment with Lucky's Glass, without evidence that such glass was cut in [Molina's] presence, it would be mere speculation to find that [Molina] was exposed to toxins stemming therefrom." The court also stated that Abraham's declaration referred only to defendant PRL, and "absent from the expert opinion is any tie between Defendant Pilkington and [Molina's] harm." The court therefore granted the motion.

The court entered judgments in favor of each of the moving defendants. Plaintiffs timely appealed all four judgments in a single notice of appeal.

DISCUSSION

A. Standard of review

"We review a grant of summary judgment de novo; we must decide independently whether the facts not subject to triable dispute warrant judgment for the moving party as a matter of law." (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1348.) We . . . ""consider[ ] all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained."' [Citation.] We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.)

"The party moving for summary judgment generally bears the burden of persuasion that there is no triable issue of material fact and that summary judgment is proper as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*); see also § 437c, subd. (c).) "The moving party bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar, supra,* 25 Cal.4th at p. 845.) "[H]ow the parties moving for, and opposing, summary judgment may each carry their burden of persuasion and/or production depends on which would bear what burden of proof at trial." (*Id.* at p. 851.)

A defendant moving for summary judgment meets its threshold burden on summary judgment by demonstrating that one or more elements of the plaintiff's cause of action cannot be established. (§ 437c, subd. (p)(2); *Aguilar, supra,* 25 Cal.4th at p.

853.) A defendant may meet this burden by presenting evidence that the plaintiff does not possess and cannot reasonably obtain evidence needed to establish the element. (*Aguilar, supra,* 25 Cal.4th at pp. 853-854.) A defendant is *not* required "conclusively negate an element of the plaintiff's cause of action." (*Id*. at p. 853.) "After the defendant meets its threshold burden, the burden shifts to the plaintiff to present evidence showing that a triable issue of one or more material facts exists as to that cause of action or affirmative defense. [Citations.] The plaintiff may not simply rely on the allegations of its pleadings but, instead, must set forth the specific facts showing the existence of a triable issue of material fact." (*Collin v. CalPortland Co*. (2014) 228 Cal.App.4th 582, 588.)

B. Exposure as a threshold causation issue

As an initial matter, we address what a plaintiff must prove in a toxic tort case regarding exposure and causation. Plaintiffs assert that the "trial court erroneously relied on a causation standard although [defendants] only tendered the issue of exposure – not causation." They argue that although each defendant only moved on the issue of *exposure*, the trial court required plaintiffs to show that defendants' products were not a substantial factor in *causing* Molina's lung disease. We disagree with plaintiffs' interpretation of the trial court's rulings, and also note that we review the trial court's rulings, not its rationale. (See *Reliance Nat. Indem. Co. v. General Star Indem. Co*. (1999) 72 Cal.App.4th 1063, 1074.) Nevertheless, we briefly address plaintiffs' exposure/causation contention, as it seems to be a point of confusion.

In a toxic tort case such as this one, a plaintiff must prove both exposure and causation. As our Supreme Court has

explained in the context of asbestos litigation, "[T]he plaintiff must first establish some threshold *exposure* to the defendant's defective asbestos-containing products,[ ] *and* must further establish in reasonable medical probability that a particular exposure or series of exposures was a 'legal cause' of his injury, i.e., a *substantial factor* in bringing about the injury." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 982 [emphasis in original].) Thus, a "threshold issue" in a toxic tort litigation "is exposure to the defendant's product. The plaintiff bears the burden of proof on this issue." (*McGonnell, supra,* 98 Cal.App.4th at p. 1103.) If a plaintiff "cannot make the threshold showing of exposure to a harmful product, . . . we do not get to the next step of determining if the 'product' was a substantial factor" in causing the injury. (*Miranda v. Bomel Construction Co., Inc.* (2010) 187 Cal.App.4th 1326, 1339.)

Here, to succeed on their claims against defendants, plaintiffs were required to prove that Molina was exposed to defendants' products in a way that could have caused Molina's injury. Plaintiffs are correct that defendants' motions for summary judgment challenged only plaintiffs' ability to prove exposure to defendants' products, and did not challenge plaintiffs' ability to prove the cause of Molina's lung disease. With those limitations in mind, we turn to plaintiffs' contentions as to the defendants' individual motions.

C. PRL

1. *PRL met its initial burden*

Plaintiffs assert on appeal that PRL did not meet its initial burden on summary judgment because "PRL failed to present any admissible evidence to meet its burden of proof." They argue that the trial court abused its discretion in overruling their

evidentiary objections to the declaration of PRL's owner, vice president, and CFO, David Landeros, because his declaration is inadmissible in entirety. Plaintiffs further contend that Ettley's testimony "did not conclusively negate exposure." We address each of these arguments.

Plaintiffs make two arguments regarding Landeros's declaration: first, that Landeros's statements regarding PRL's manufacturing and sales activities lacked foundation, and second, that Landeros's description of PRL's products as "finished" constituted impermissible expert testimony. "We review the trial court's evidentiary rulings on summary judgment for abuse of discretion. [Citations.] As the parties challenging the court's decision, it is plaintiffs' burden to establish such an abuse, which we will find only if the trial court's order exceeds the bounds of reason." (*DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 679 (*DiCola*).)

First, plaintiffs assert that although Landeros stated that he was "intimately familiar" with PRL's manufacturing and sales activities, he "does not set forth facts establishing what 'intimately familiar' means." Plaintiffs further contend that Landeros did not state that he was "a percipient witness to the manufacturing or sale of glass to Lucky's Glass," so that his statement that PRL supplied only finished glass to Lucky's "is conclusory and speculative because his declaration lacks foundation as to his personal knowledge." The trial court overruled plaintiffs' objections on this basis.

The trial court did not abuse its discretion. Declarations supporting a motion for summary judgment must rely on "personal knowledge." (§ 437c, subd. (d); see also Evid. Code,

§ 702, subd. (a) ["the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter"].) Landeros stated in the first paragraph of his declaration that he had personal knowledge of the facts stated in his declaration. Although a recital that a declaration is based on personal knowledge may be disregarded "where a basis in personal knowledge does not otherwise appear" in the declaration (see *Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 692 fn. 1), that is not the case here. Landeros stated that he was the "Owner, Vice President/CFO" of PRL, and that he was "intimately familiar with the manufacturing and sales activity for both PRL Glass and PRL Aluminum during the relevant time period (1993-2014)." He further stated, "I have been in the finished glass production industry since 1989, and in that time I have personally fabricated glass products, supervised the production of fabricated glass products, and have developed and maintained relationships with our customers, including Lucky Glass, Inc." Landeros's declaration therefore supports his statement that he has personal knowledge of the facts stated.

Plaintiffs cite only a single authority in support of their contention, *Snider v. Snider* (1962) 200 Cal.App.2d 741. In that case, the Court of Appeal found that a declaration containing "a series of conclusions of law and fact [that] merely repeats the complaint" was insufficient to overcome summary judgment. (*Id.* at p. 751.) *Snider* is inapposite. Here, Landeros did not state legal conclusions; he stated facts reasonably within the scope of his knowledge given his position with PRL. The trial court did not abuse its discretion in overruling plaintiffs' objections on this basis.

Second, plaintiffs contend that Landeros's declaration was inadmissible because "Landeros has not established himself as an expert on 'finished' glass products" or as "an expert on the release or 'aerosolization' of glass particulates" from glass when it is cut, sanded, polished or ground. The trial court also overruled plaintiffs' objections on this basis. Again, we find no abuse of discretion.

Landeros's statement that PRL sold only "finished glass products" to Lucky's Glass was not an expert opinion; it was a factual statement. Because Landeros was the owner, vice president, and CFO of PRL, and someone who personally worked with fabricated glass products for decades, it was reasonable to conclude that he knew what kind of products PRL produced and sold to Lucky's Glass. There was no need for Landeros to have expertise in the aerosolization of glass particles to support his statement that the products PRL sold to Lucky's Glass were finished and needed no further cutting, grinding, or sanding. Thus, the trial court did not abuse its discretion in overruling plaintiffs' objections to Landeros's declaration.

Finally, plaintiffs contend that Ettley's deposition testimony was insufficient for PRL to shift its summary judgment burden. They assert that PRL questioned Ettley about only "a handful of invoices from the year 2013" and "Ettley was not questioned regarding glass products that PRL supplied the other 20 years" that Molina worked at Lucky's Glass. Plaintiffs argue that the "failure of a defendant moving for summary judgment to ask pertinent questions at a deposition does not prove or infer anything."

Plaintiffs rely on *Scheiding v. Dinwiddie Construction Co.* (1999) 69 Cal.App.4th 64 (*Scheiding*), in which defendant

Dinwiddie asserted in its motion for summary judgment that there was no evidence to support plaintiff's claims against it. The Court of Appeal rejected this assertion, finding that Dinwiddie's failure to complete any discovery was not tantamount to a lack of evidence suggesting no triable issue of fact. The court stated, "Dinwiddie conducted no discovery. In his deposition plaintiff was not asked a single question concerning Dinwiddie. . . . [T]here is nothing in this record to suggest his answers were complete as to Dinwiddie." (*Scheiding, supra*, 69 Cal.App.4th at p. 80.) Dinwiddie could therefore not "rely on the inference of completeness" in the discovery conducted. (*Ibid*.)

Here, by contrast, PRL questioned Ettley at his deposition, including asking specific questions about invoices for sales of PRL's products to Lucky's Glass. To the extent plaintiffs felt more discovery was needed on that topic, plaintiffs could have asked additional questions or pursued further written discovery to PRL or Lucky's Glass. Moreover, PRL propounded written discovery to plaintiffs, and plaintiffs did not provide information specific to PRL in their discovery responses. Ettley's lack of any knowledge connecting PRL products to Molina's exposure, along with plaintiffs' discovery responses failing to link PRL's products to Molina's exposure and Landeros's declaration stating that no PRL products would have been cut at Lucky's Glass, constituted sufficient evidence to meet PRL's burden.

2. *Plaintiffs did not present evidence of a triable issue of material fact as to PRL*

Plaintiffs assert that they demonstrated a triable issue of material fact as to PRL because "PRL has been a long-time, regular supplier of aluminum and glass to Lucky's Glass." However, PRL presented evidence that its sales to Lucky's Glass

consisted of only finished products, which did not require cutting and would therefore not release aerosolized particulates that could enter Molina's lungs. Thus, the fact that PRL supplied products to Lucky's Glass does not support plaintiffs' position.

Plaintiffs also contend that Ettley "was presented with only a handful of selected documents from the year 2013 that [PRL's] counsel decided to present him for his review at his deposition," because "PRL only deposed Ettley on what it chose." If plaintiffs suspected PRL might have additional information, it was incumbent upon plaintiffs' counsel to ask Ettley additional questions at his deposition, or to conduct other discovery to seek relevant invoices or gather further information to support plaintiffs' claims. Even at the summary judgment stage of litigation, plaintiffs bear the burden of proof. (*Aguilar, supra*, 25 Cal.4th 826, 851 ["how the parties moving for, and opposing, summary judgment may each carry their burden of persuasion and/or production depends on *which* would bear *what* burden of proof at trial"].) If plaintiffs did not have sufficient evidence to oppose the motion, they could have requested a continuance. (§ 437c, subd. (h).) Plaintiffs did not do so, and have not suggested that additional evidence was available to support their position. Thus, plaintiffs failed to meet their burden to show a triable issue of material fact as to Molina's exposure to PRL's products. PRL's motion for summary judgment was appropriately granted.

D. GlasPro

1. *GlasPro met its initial burden*

Plaintiffs contend that GlasPro "did not conclusively negate exposure to satisfy its burden of proof." They assert the trial court abused its discretion in overruling their evidentiary

objections to the declaration of GlassPro's chief executive officer and president, S. Joseph Green, because his declaration is inadmissible in entirety. They also argue that Ettley's lack of memory connecting Molina to any GlasPro product "was insufficient to create an inference of non-exposure." We find the evidence was sufficient to shift the burden.

Regarding Green's declaration, plaintiffs make two primary arguments: first, that Green's statements about the type of products GlasPro sold lacked foundation, and second, that Green's description of GlasPro's products as "finished" constituted impermissible expert testimony. As noted above, we review the trial court's evidentiary rulings for abuse of discretion, and it is plaintiffs' burden to establish such an abuse. (*DiCola, supra*, 158 Cal.App.4th at p. 679.)

Plaintiffs contend that Green failed to lay a foundation for his testimony. They argue that Green's position as chief executive officer of GlasPro "served as the sole foundation for his purported 'personal knowledge,'" and the trial court abused its discretion by giving his title "much credence and weight." They assert that Green "nowhere states in his declaration when he started working for GlasPro, or how long he had been working for GlasPro. He also did not state facts establishing the basis for his personal knowledge that GlasPro allegedly only manufactures 'finished' products." They further contend that "no facts are provided that Green was a percipient witness to the manufacture or sale of GlasPro glass and when such took place."

As noted above, declarations supporting a motion for summary judgment must rely on "personal knowledge." (§ 437c, subd. (d).) Green stated that he had personal knowledge of the facts stated in his declaration, he was the chief executive officer

and president of GlasPro, and GlasPro "manufactures and sells finished glass products, built to customer specifications, and ready for installation. GlasPro does not sell raw or unfinished products to its customers." It was not an abuse of discretion for the court to accept at face value a statement that the CEO and president of a company had personal knowledge of the types of products the company sold (and did not sell) to its customers. In addition, Green's knowledge of GlasPro's business and products did not depend on when he began working for GlasPro or whether he personally witnessed the manufacture of GlasPro's product, as plaintiffs suggest. There was no suggestion that GlasPro sold raw or unfinished glass to Lucky's Glass at any point, and Green did not need to personally witness the manufacturing of the products in order to know what types products GlasPro sold.

Plaintiffs further contend that "Green has not established himself as an expert on 'finished' glass products" or as "an expert on the release or 'aerosolization' of glass particulates from glass when it is cut, sanded, polished or ground." The trial court dismissed these contentions as "clearly unavailing because Green does not need to be an expert in the field of aerosolization of glass particles to declare that his company sells only finished, built to specification products which require no manipulation by the customer." Indeed, there was no need for Green to have expertise in the aerosolization of glass particles to support his statement that the products GlasPro sold to Lucky's Glass were finished and ready to install, and required no further cutting, grinding, or sanding. Thus, the trial court did not abuse its discretion in overruling plaintiffs' objections to Green's declaration.

Plaintiffs also argue that defendants could not rely on the fact that Ettley did not recall seeing Molina cut, grind, or sand

any products supplied by GlasPro, or that Ettley was not sure whether *all* GlasPro products were finished. They assert, "As a matter of law, lack of memory of a deponent, without more, does not satisfy a defendant's initial burden." Plaintiffs rely on *Weber v. John Crane, Inc.* (2006) 143 Cal.App.4th 1433 (*Weber*), in which the injured plaintiff, Weber, alleged he was exposed to asbestos at many worksites, including on Navy vessels. He testified "that while he was familiar with the name 'Crane,' he had not heard of the name 'John Crane, Inc.' and did not associate any product or service with that name. He did not recall ever working with or around a product manufactured by John Crane. Weber assumed the Navy would have documents that would provide information as to whether he had worked with or around a John Crane product, but he had no personal knowledge of any such documents." (*Id.* at p. 1436.)

Defendant John Crane moved for summary judgment and "contended Weber's testimony showed that plaintiffs could not establish that John Crane was a cause of Weber's disease." (*Ibid.*) The plaintiffs opposed the motion, asserting "that John Crane had not conducted any 'special discovery' designed to ascertain what evidence plaintiffs had beyond the statements of Weber himself." (*Ibid.*) The trial court granted the motion.

The Court of Appeal reversed, finding that John Crane had not shifted its summary judgment burden: "That Weber was unable to recall whether he worked around a John Crane product over 40 years ago suggests only that plaintiffs will not be able to prove their case with Weber's deposition testimony. . . . It . . . cannot be inferred that there is no witness or other evidence linking John Crane to Weber's jobsite. Similarly, that Weber had no personal knowledge of documents retained by the Navy does

not create an inference that the Navy has no such documents or that plaintiffs will be unable to produce them." (*Weber, supra*, 143 Cal.App.4th at p. 1439.) The court added, "John Crane produced no evidence allowing an inference that plaintiffs neither possess, nor reasonably can obtain, any evidence that Weber was exposed to an asbestos-containing product manufactured or supplied by John Crane." (*Id*. at p. 1442.)

The evidence GlasPro submitted was not similar to the evidence presented in *Weber*. Green affirmatively stated that GlasPro sold only finished products that did not need to be cut, ground, or sanded, which allowed for an inference that Molina did not cut, grind, or sand products from GlasPro. Ettley's testimony demonstrated that he had no information to contradict Green's statements. This evidence was sufficient to shift GlasPro's burden on summary judgment.

2. *Plaintiffs did not present evidence of a triable issue of material fact as to GlasPro*

Plaintiffs assert that they raised a triable issue as to GlasPro. They contend that "Ettley testified that GlasPro supplied primarily laminated glass to Lucky's Glass," and point out that Leserman of Girard Glass "testified that GlasPro laminated glass was cuttable." They argue that "viewing this evidence in the best light, there is a reasonable inference that [plaintiffs] met their burden" of showing a triable issue of material fact.

The trial court rejected this contention, stating, "Aside from creating the inference that laminated glass is capable of being cut, this evidence does little to create a triable issue that [Molina] was exposed to harmful particles emanating from the manipulation of [GlasPro's] glass." We agree. Even if laminated

glass generally can be cut or sanded, it would take a leap of conjecture, unsupported by any evidence, to conclude that Molina cut or sanded laminated glass supplied by GlasPro. Moreover, such a conclusion would contradict the evidence, since Green stated in his declaration that GlasPro did not supply products to Lucky's Glass that would need to be cut or sanded. Thus, plaintiffs did not demonstrate a triable issue of material fact, and GlasPro's motion was appropriately granted.

E. Glasswerks

1. *Glasswerks met its initial burden*

Plaintiffs contend that Glasswerks failed to meet its threshold burden on summary judgment because the evidence it presented—plaintiffs' discovery responses and Ettley's testimony—was insufficient. With respect to the discovery responses, plaintiffs argue, "It is absurd that Glasswerks relies on [plaintiffs'] lack of personal knowledge of [Molina's] exposure to its products gleaned from written discovery responses to attempt to prove an absence of evidence of such exposure." They argue that as Molina's family members, they are not in a position to have personal knowledge about Molina's exposure to defendants' products during his employment.

Plaintiffs' argument does not account for the scope of discovery served on them. Glasswerks submitted written discovery asking plaintiffs to identify all facts, witnesses, and documents supporting each cause of action. It also asked plaintiffs to identify all persons with knowledge of Molina's exposure and all people who used Glasswerks products in Molina's presence. Plaintiffs identified Ettley and Molina's coworkers as potential witnesses, but did not provide additional information specific to Glasswerks products.

Plaintiffs also assert that Ettley's testimony did not allow for an inference that evidence was lacking because he "was not asked pertinent questions regarding the mirrors that Glasswerks produced for Lucky's Glass." They contend that "when pertinent questions are neither asked nor answered, nothing can be inferred." Plaintiffs again rely on *Scheiding, supra,* 69 Cal.App.4th 64, in which the defendant conducted almost no discovery.

Here, by contrast, Glasswerks did conduct discovery, including propounding extensive written discovery to plaintiffs and participating in Ettley's deposition. Plaintiffs did not provide information specific to Glasswerks in their discovery responses, and referred Glasswerks to various witnesses, including Ettley. At his deposition, Ettley was asked specific questions about Glasswerks products at Lucky's Glass and Molina's possible exposure, and responded that he had no recollection of Molina cutting, grinding, or sanding Glasswerks' products. Ettley's lack of knowledge, coupled with plaintiffs' factually devoid discovery responses, was sufficient for Glasswerks to shift the burden of proof. A defendant may meet its burden on summary judgment "through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing." (*Aguilar, supra*, 25 Cal.4th at p. 855.)

2. *Plaintiffs did not present evidence of a triable issue of material fact as to Glasswerks*

Plaintiffs acknowledge in their opening brief that Ettley testified that Lucky's Glass bought unfinished annealed glass from Glasswerks, but he "could not remember if [Molina] cut annealed glass supplied by Glasswerks." However, they assert that Ettley "does recall witnessing [Molina] cut and sand clear

glass and annealed glass from Avalon Glass & Mirror Company." Leserman stated in his deposition that he believed that Glasswerks owned Avalon.

This information does not warrant reversal. There is no evidence in the record suggesting any legal or factual basis for finding Glasswerks liable for Avalon's products. (See, e.g., *O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 349 ["It is fundamental that the imposition of liability requires a showing that the plaintiff's injuries were caused by an act of the defendant or an instrumentality under the defendant's control."].) Thus, plaintiffs did not meet their burden to show a triable issue of fact as to Molina's exposure to Glasswerks products. The motion for summary judgment was properly granted.

F. Pilkington

1. *Pilkington met its initial burden*

Pilkington's motion relied in part on the deposition testimony of Colin, Armando, and Esteban, who testified that they had never heard of Pilkington, and had no knowledge that Molina had ever worked with Pilkington products. Plaintiffs assert that these witnesses' lack of memory cannot show that Molina did not work with Pilkington products, because Molina did not work closely with Colin, Armando, or Esteban. They compare *McGonnell, supra*, 98 Cal.App.4th 1098, in which the appellate court noted that "McGonnell's deposition excerpt is precisely the type of evidence" required to support a summary judgment motion, because McGonnell himself "was one of the best persons, if not the best person, to identify the various products and substances to which he had been exposed during his employment." (*Id.* at p. 1104.) They argue that Colin, Armando, and Esteban's deposition testimony does not meet this standard,

and therefore did not assist Pilkington in shifting the burden on summary judgment.

We disagree. In written discovery, plaintiffs themselves identified Colin, Armando, and Esteban as witnesses with knowledge of Molina's exposure to the products that caused his illness. These witnesses' lack of knowledge about Pilkington's products and Molina's exposure to them showed that plaintiffs could not support their allegations by relying on the very witnesses they named.

Plaintiffs also assert that Pilkington could not rely on plaintiffs' discovery responses or Ettley's testimony. They assert that their discovery responses were "meaningful" rather than "'factually devoid' or boilerplate." However, they have not demonstrated that any of their discovery responses suggest that Molina was exposed to Pilkington's products. As for Ettley's testimony, plaintiffs contend that Ettley was only asked about a small number of relevant invoices and "Pilkington's counsel . . . did not ask Ettley at his deposition if the documents constituted the universe of documents for Pilkington purchase orders." Plaintiffs point out that Ettley testified that Lucky's Glass did not have records from earlier than 2008 or 2009. They argue that "the lack of recollection of deponents and Pilkington's failure to ask pertinent questions do not, as a matter of law, support an inference that [plaintiffs] do not possess and cannot reasonably obtain evidence of [Molina's] exposure to Pilkington's glass."

We disagree. Plaintiffs' discovery responses and Ettley's testimony failed to connect Molina's exposure to Pilkington. There was no suggestion that additional invoices from Lucky's Glass would have demonstrated that Pilkington supplied different products that could have contributed to Molina's

exposure. If plaintiffs suspected Lucky's Glass might have additional information, it was incumbent upon plaintiffs to ask Ettley relevant questions. Along with Colin, Armando, and Esteban's lack of knowledge connecting Molina's exposure to Pilkington, the evidence Pilkington submitted was sufficient to shift the summary judgment burden.

2. *Plaintiffs did not present evidence of a triable issue of material fact as to Pilkington*

Plaintiffs assert that they raised a triable issue of fact as to Pilkington's products because Leserman testified that his company, Girard Glass, sold non-fabricated "regular glass" to Lucky's Glass, and Pilkington was one of Girard Glass's biggest suppliers. As the trial court noted, this evidence is insufficient to allow an inference that Molina was exposed to aerosolized glass particles from Pilkington's glass.

The trial court compared plaintiffs' evidence to that in *McGonnell, supra*, 98 Cal.App.4th 1098. There, the plaintiffs presented evidence that "showed McGonnell would cut into walls and disturb building materials." (*Id*. at p. 1104.) However, the evidence did not connect those building materials to the defendant, or show that the defendant's products exposed McGonnell to asbestos: "Unfortunately for plaintiffs, they had little evidence that McGonnell disturbed Kaiser products, and virtually no evidence he had disturbed Kaiser products containing asbestos." (*Ibid*.) The court held that this was not sufficient to carry plaintiffs' burden. "Viewed in its best light, plaintiffs' evidence suggests that Kaiser Cement products might have been used once on a construction project at California Pacific. There is no evidence, however, that these products contained asbestos at the time of their use." (*Id*. at p. 1105)

As plaintiffs do here, the plaintiffs in *McGonnell* connected the defendant's product through a distributor to McGonnell's employer. The Court of Appeal recognized that "it is at least within the realm of possibility that McGonnell encountered a wall with Kaiser joint compound during his 24 years of employment at California Pacific." (*McGonnell, supra*, 98 Cal.App.4th at p. 1105.) But such a possibility was not sufficient to meet the plaintiffs' burden: "All that exists in this case is speculation that at some time McGonnell might have cut into a wall that might have contained Kaiser joint compound that might have contained asbestos. The evidence creates only 'a dwindling stream of probabilities that narrow into conjecture.'" (*Ibid*.)

Here, the trial court's comparison to *McGonnell* was apt. Plaintiffs have presented evidence that Girard Glass bought glass from Pilkington, and that Girard Glass sold glass to Lucky's Glass. They have also shown that some of the glass Girard Glass sold to Lucky's Glass was capable of being cut. But plaintiffs have offered no evidence suggesting that Molina was exposed to Pilkington's glass. The possibility that cuttable glass from Pilkington may have been present at Lucky's Glass while Molina worked there, without more, is insufficient to establish a triable issue of fact as to Molina's exposure to Pilkington's products. "The mere 'possibility' of exposure does not create a triable issue of fact." (*Andrews v. Foster Wheeler LLC* (2006) 138 Cal.App.4th 96, 108.) Summary judgment was therefore properly granted.

DISPOSITION

The judgments in favor of PRL Aluminum, PRL Glass Systems, GlasPro, Glasswerks, and Pilkington are affirmed. Defendants are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

MANELLA, P. J.

CURREY, J.