

1. PARTIES TO A PRODUCTS LIABILITY ACTION

A. Plaintiffs

Individuals, corporations, and other business entities may allege strict product liability tort claims. A strict product liability plaintiff, whether an individual or a business, must allege personal injury and/or property damage caused by the product defect. As described previously herein, the product liability plaintiff need not be the purchaser of the product and need not be in privity with the defendant.

Consumers, users and bystanders

The Restatement (2d) of Torts §402A, comment 1, recognizes that consumers, users and bystanders may be hurt or damaged by defective products and, therefore, are within a class of plaintiffs foreseeable to product manufacturers and sellers. In California, the case of Greenman v. Yuba Power Products, Inc. (1963) 59 Cal.2d 57 held that the protection of the strict product liability doctrine was applicable to both direct consumers and injured bystanders to further the purpose of shifting the costs of injuries and damages to manufacturers and away from the injured parties. The Greenman court noted that a bystander should be entitled to a level of protection at least as great as that afforded to a user because, unlike a consumer, the bystander did not have the opportunity to inspect the product for defects or to avoid the risk by purchasing another product.

Commercial plaintiffs

Corporations and other business entities can assert a strict product liability claim. International Knights of Wine v. Nave Pierson Winery Inc. (1980) 110 Cal.App.3d 1001. However, commercial entities may bargain away the right to make such claims. Typically, the seller or manufacturer of a product cannot require a consumer to waive strict product liability claims as a condition of purchase. Some courts have made exceptions to this general rule in situations involving large and sophisticated commercial entities with relatively equal bargaining powers. In such situations, some courts permit the parties to allocate the risk of loss from a defective product.

B. Defendants

Parties liable in tort for damages caused by defective products include manufacturers, distributors, sellers, retailers and entities that are “an integral part of the overall producing and marketing enterprise.” Vandermark v. Ford Motor Co. (1964) 61 Cal.2d 256.

Manufacturers

Manufacturers are strictly liable for damages caused by defective products that are placed in the stream of commerce. Cronin v. Olson Corp. (1972) 8 Cal.3d 121. The policy justifications for strict liability are especially appropriate with respect to manufacturers who are in the best position to guard against creating the potential of harm caused by defective products and to pass

on the cost of injuries and damages resulting from defective products. Daly v. General Motors Corp. (1978) 20 Cal.3d 725.

Interestingly enough, a manufacturer can be strictly liable for damage caused by a defective product even if the product is manufactured in accordance with plans furnished by the buyer. DeLeon v. Commercial Manufacturing & Supply Co. (1983) 148 Cal.App.3d 336.

A product manufacturer is liable for damages caused by product defects even if the defect is within a component part manufactured by another manufacturer. Brocklesby v. United States 767 F.2d 1288 (9th Cir. 1985).

Retailers

Retailers, like manufacturers, are engaged in the business of distributing goods to the public. Retailers are in the chain of product distribution; they are an integral part of the overall production and marketing enterprise. Often, the manufacturer of a defective product is unavailable or judgment proof and the retailer is the only party in the chain of product distribution from which the injured party can reasonably expect to obtain recovery. Thus, retailers are held to bear the cost of injuries and damages resulting from defective products. Vandermark v. Form Motor Company (1964) 61 Cal.2d 256.

As between a manufacturer and retailer, the manufacturer will normally be held primarily liable for damages caused by a product defect. When a retailer's liability arises from a manufacturing defect that it did not create, and that it had little or no opportunity to correct or discover, it will normally be entitled to complete indemnity from the manufacturer. Pearson Ford Co. v. Ford Motor Company (1969) 273 Cal.App.2d 269. However, a manufacturer's good faith settlement with an injured party will bar a retailer's claim for indemnity against the manufacturer. Far West Financial Corp. v. D & S Co. (1988) 46 Cal.3d 796.

When a retailer has an independent duty to inspect a product and/or is comparatively at fault for causing the injury or damage, the retailer is not able to shift the entire judgment to the manufacturer. Fagerquest v. Western Sun Aviation, Inc. (1987) 191 Cal.App.3d 709.

Wholesalers and Distributors

Restatement (2d) of Torts §402A imposes liability not only on the manufacturer and retailer of a defective product, but also any person or party "engaged in the business of selling products for use or consumption thereof including any manufacturer, wholesaler or retail dealer or distributor." Consequently, wholesalers and distributors of defective products can be held liable to persons injured by the defects. Barth v. B.F. Goodrich Tire Co., (1968) 265 Cal.App.2d 228.

Franchisers and Licensors

Courts have held that "as long as the franchiser or trademark licensor can be said to be a link in the marketing enterprise which placed a defective product within the stream of commerce, there is no reason in logic for refusing to apply strict liability in tort to such an entity." Kasel v. Remington Arms, Co. (1972) 24 Cal.App.3d 711.

The precise legal relationship between parties in the product marketing chain is not the decisive factor in determining whether strict liability applies. Rather, it is the defendant's participatory connection with the injury-producing product and with the enterprise that created consumer demand for the product that calls for imposition of liability. Id. at 24-26.

Landlords and Lessors

Lessors of defective products have been held liable under the doctrine of strict products liability. McClafflin v. Bayshore Equipment Rental Co. (1969) 274 Cal.App.2d 446. Courts have made it clear, however, that strict liability can be imposed only upon commercial lessors. Analogizing to

the liability of manufacturers and retailers, courts have held that that imposing strict liability on an occasional seller or lessor not engaged in that activity as part of a business trade would be unfair. Prince v. Shell Oil Co. (1970) 2 Cal.3d 245. As a specific example, the court in Fakhoury v. Magner held that a landlord who leased premises and furniture in five apartments had sufficient business ties to be held liable for strict liability. In Becker v. IRM Corp. (1985) 38 Cal.3d 454. (**Warning: Becker v. IRM was overruled in 1995 by Peterson v. Superior Court, 10 Cal.4th 1185.**) the California Supreme Court found against a landlord who leased an apartment in which a tenant was injured by a sliding shower door installed by the builder. The Court stated: "... a landlord engaged in the leasing of dwellings is strictly liable in tort for injuries resulting from a latent defect in the premises when the defect existed at the same time the premises were let to the tenant." Thus far, this reasoning has only been applied to residential lessors. Muro v. Superior Court (1986) 184 Cal.App.3d 1089

Component and Part Suppliers

Courts have consistently held that the manufacturer of a defective component of a product is strictly liable for injuries caused by defects in the component part. The injured party may recover from the component part manufacturer and is not limited to an action against only the manufacturer of the defective product. Edison v. Lewis Manufacturing Co. (1959) 168 Cal.App.2d 429. However, the manufacturer of the product is also liable even though the defect in the product arises solely from a defect in the component part manufactured or supplied by another. Brocklesby v. United States, 767 F.2d 1288 (9th Cir. 1985).

Used-Product Vendors

The seller of a secondhand product may be strictly liable for damages caused by defects in the product if it was somehow responsible for creating the defect. Brejcha v. Wilson Machinery, Inc. [1984] 106 Cal.Rptr. 688. For example, strict liability has been imposed if the used product vendor significantly modified the product. Green v. City of Los Angeles (1974) 40 Cal.App.3d 819. Furthermore, where the used-product vendor participates in the enterprise that created consumer demand, strict liability for defects in the product may be imposed. Tauber-Arons Auctioneers Co. v. Superior Court (1980) 101 Cal.App.3d 268.

Successor Liability

A corporation that purchases the assets of another corporation is not generally deemed to assume the seller's liabilities except under the following circumstances: (1) the purchaser expressly or impliedly agrees to such an assumption, (2) the transaction is tantamount to a merger or consolidation of two companies or corporations, (3) the purchase is merely a continuance of the seller corporation or (4) the transaction was entered into fraudulently to escape potential liability. Ortiz v. South Bend Lathe (1975) 46 Cal.App.3d 842.

Successor corporations have been found liable for product defect damages when, despite knowledge of defects in a product, the successor corporation failed to provide adequate warnings against the defect. Gee v. Tenneco, Inc., 615 F.2d 857 (9th Cir. 1980).

Designers

Manufacturers are liable for damages caused by defective product designs. However, the designers actually responsible for creating the defective design but not involved in manufacturing or sale of the product are not subject to strict product liability. Del Mar Beach Club Owners Association v. Imperial Contracting Co. (1981) 123 Cal.App.3d 898. The reasoning for excluding designers, such as architects and engineers, from the strict product liability doctrine is that such parties provide a service and not a product. Sweet v. Gribaldo, Jones & Associates (1974) 40 Cal.App.3d 573.

Homebuilders and Developers

California courts have imposed strict liability on builders/developers of mass produced homes based upon the finding that “there are no meaningful distinctions between the mass production and sale of homes and the mass production and sale (of other products) and the overriding policy considerations are the same.” Kreigler v. Eichler Homes, Inc. (1969) 269 Cal.App.2d 224. Other states, such as Arizona, have neither adopted nor rejected the doctrine of strict product liability in the context of residential construction. Those states that have adopted strict product liability in the context of residential construction only allow the doctrine to be asserted for the recovery of damages caused by the defective condition and not for the costs of repairing the defect itself. The occasional builder/seller, of residential construction is not subject to strict liability principles.

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