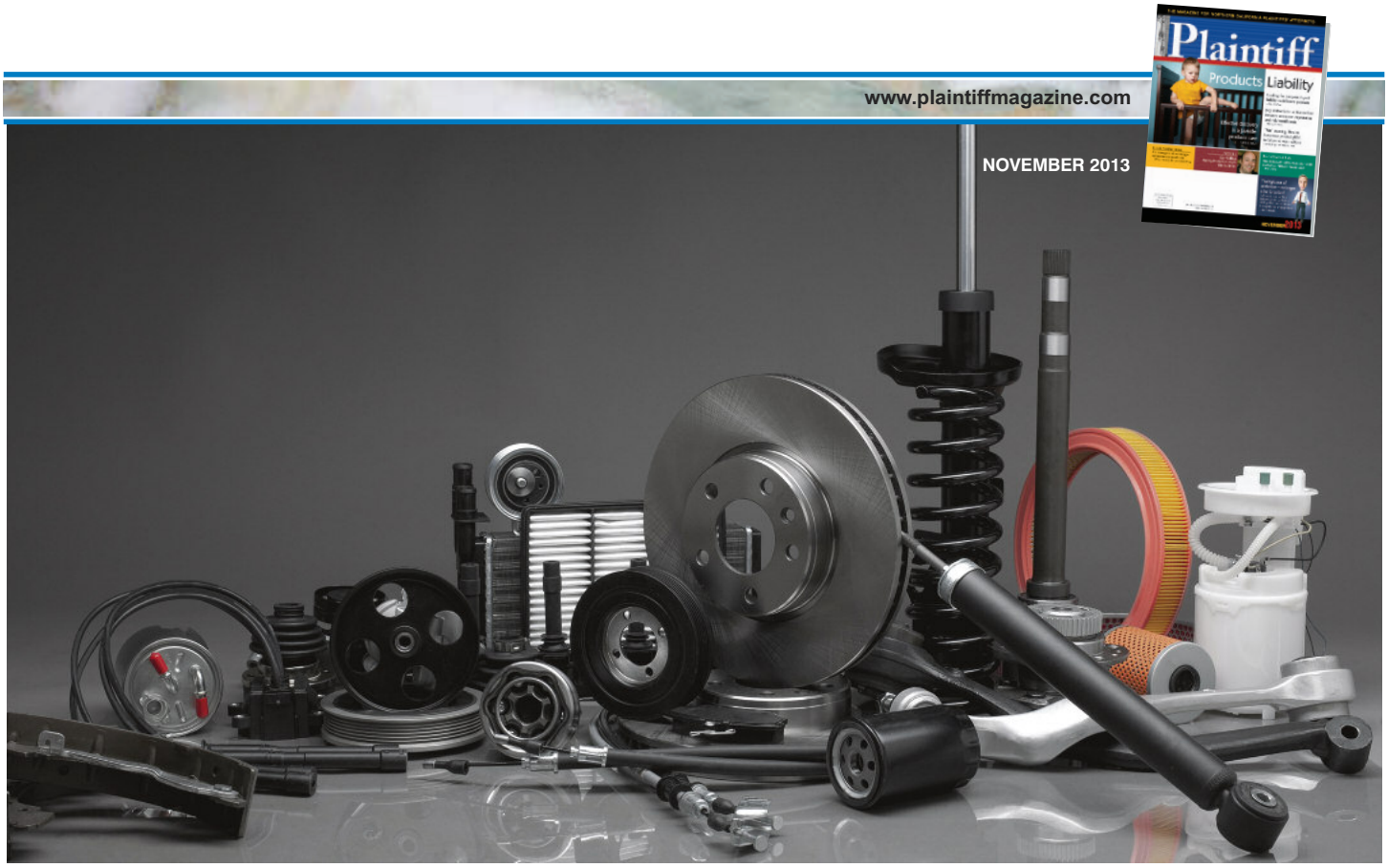

Looking for component-part liability in defective products

Proving liability against both the manufacturer and its subcomponent suppliers

By Brian D. Chase

Often, in the auto-defect case (and other products-liability cases), the defect that your client is basing his claim on arises from a defect in a component part, or even a subcomponent part, that failed or was otherwise defective in and of itself and thus a legal cause of your client's injury. An auto manufacturer is clearly responsible for any defects contained within its vehicle, notwithstanding the fact that the defect may be in a component part manufactured or supplied by someone else. California courts adhere to the rule that the manufacturer of a completed product cannot escape liability by tracing the defect to a component part supplied by someone else. (*Blackhawk v. Gotham Insurance Company* (1997) 54 Cal.App.4th 1090, 1100.)

But this rule does not shield the component-part manufacturer or supplier from its own liability for having supplied the defective part, for two reasons: (1) the so-called "component part defense" is related to fungible or multi-use products that can be purchased off the shelf by any consumer to use in any manner she deems fit; and (2) regardless of the generic nature of the product, the defense is not applicable since a component-part manufacturer may be held liable for damages caused by a component part which, itself, was defective at the time it left the component-part manufacturer's factory. (*Wiler v. Firestone Tire & Rubber Co.* (1979) 95 Cal.App.3d 621, 629.) Accordingly, when you have a clear defect in the vehicle and can causally trace the defect to a defective part manufactured or supplied by a component-part supplier, your client has a viable claim against both the auto manufacturer and the component-part seller.

There are two types of arguments you may have to deal with when bringing a claim against the component-part supplier, which are the main focus of this article. First, the component-part manufacturer will often claim that it is not legally liable for your client's injuries and will assert it is protected from liability by the "component parts doctrine." If the component-part supplier supplied a defective part or parts that were incorporated into the original design of the vehicle, and they had a causal link to the accident or injuries, then that defense will fail for reasons detailed below.

Then, if you settle your claims against the car manufacturer and the case goes to trial solely against the

component-parts suppliers, you can expect them to argue that they are entitled to apportion fault to the manufacturer on the verdict form. In California this argument is erroneous.

This article is intended to help you draft the appropriate trial briefs and in limine motions to address these sometimes complex and poorly understood issues, so you can explain to the court why your client is entitled to full recovery of damages against all of these contributory participants in the vehicle's design and manufacturing chain.

The component-part supplier's defense

There is no blanket tort immunity under California law for a subcomponent manufacturer merely because it did not manufacture a finished product. The subcomponent part maker is considered to be within the chain of distribution of its final product and potentially subject to strict product liability. As our Supreme Court recently stated, "Strict liability encompasses all injuries caused by a defective product, even those traceable to a defective component part that was supplied by another." (*O'Neil v. Crane* (2012) 53 Cal.4th 335, 348 ("*O'Neil*").) "Regardless of a defendant's position in the chain of distribution, 'the basis for his liability remains that he has marketed or distributed a defective product' (*Daly v. General Motors Corp.* [(1978)] 20 Cal.3d [725,] 739), and that product caused the plaintiff's injury." (*O'Neil, supra*, 53 Cal.4th at 348.)

This leaves open a defense known as the "component-part" doctrine or defense for the maker of a so-called "off-the-shelf" component part that is not otherwise defective, or where the component-part manufacturer has had no involvement in its integration into the final product. (*O'Neil, supra*, 53 Cal.4th at 348.) The doctrine applies to "'generic' or 'off-the-shelf' components, as opposed to those which are 'really a separate product with a specific purpose and use.' [Citation.]" (*Springmeyer v. Ford Motor Co.* (1998) 60 Cal.App.4th 1541, 1554 (hereafter *Springmeyer*); see also *Tellez-Cordova v. Campbell-Hausfeld/Scott Fetzger Company* (2004) 129 Cal.App.4th 577, 582 (hereafter *Tellez-Cordova*).)

The policy reasons behind the component parts doctrine are well established:

> [M]ulti-use component and raw material suppliers should not have to assure the safety of their materials as used in other companies' finished products. First, . . . that would require suppliers "to retain experts in a huge variety of areas in order to determine the possible risks associated with each potential use." [Citation.] A second, related rationale is that finished product manufacturers know exactly what they intend to do with a component or raw material and therefore are in a better position to guarantee that the component or raw material is suitable for their particular applications.

[Citations.] (*Springmeyer*, *supra*, 60 Cal.App.4th at p. 1554; see also *Tellez-Cordova, supra,* 129 Cal.App.4th at p. 582.)

Strict product liability *will* attach, however, "when the defendant bears some direct responsibility for the harm, either because the defendant's own product contributed substantially to the harm . . . or because the [subcomponent-part maker] defendant participated substantially in creating a harmful combined use of the products." (*O'Neil*, *supra*, 53 Cal.4th at p. 362.) This restatement of the exception to the doctrine recently set forth by the Supreme Court in *O'Neil* was a long-overdue effort to harmonize a vast body of frequently inconsistent appellate cases, which approached the doctrine on essentially a fact-specific, case-by-case basis.

O'Neil subsumes the conclusions of prior cases that the subcomponent-part supplier cannot invoke the component part defense where its component part's individual defective design or manufacture has a causal relationship to the injuries sustained by the plaintiff; i.e., it was itself defective. (See *Jimenez v. Superior Court* (2002) 29 Cal.4th 423, 480 and *Taylor v. Elliott Turbomachinery Co., Inc.* (2009) 171 Cal.App.4th 564, 585 ["California law makes the liability of a component-part manufacturer dependent on two factors: (1) whether the component itself was defective when it left the component manufacturer's factory, and (2) whether these defects caused injury"].)

The chief example cited in *O'Neil* for proper application of the exception to the component-part defense involved a component-part manufacturer's liability for its abrasive grinding wheels, destined for inclusion in final grinder products which, when used for their intended purpose, gave off dangerous and harmful, toxic dust regardless of the mode of operation of the final product. (*O'Neil*, *supra*, 53 Cal.4th at pp. 358-61.) "[I]t was the action of the [end-product] power tools . . . that *caused* the release of harmful dust [from the component parts], even though the dust itself emanated from another substance [i.e., the component part]." (*Id.* at p. 361.) "'[T]he tools had no function without the abrasives which disintegrated into toxic dust,' and 'the abrasive products were not dangerous without the power of the tools.' [Citation.]" (*Id.* at p. 360.)

Similarly, the Court cited, as another example, *Wright v. Stang Manufacturing Co.* (1997) 54 Cal.App.4th 1218 (hereafter *Stang*). In *Stang*, plaintiff, a firefighter, "was injured when a deck gun he was using broke loose from its mounting assembly under high water pressure." (*O'Neil*, *supra*, 53 Cal.4th at p. 360.) "Even though the deck gun itself did not break or 'fail' in the accident, the Court of Appeal found a triable issue as to whether the gun was defectively designed because it did not include a 'flange' mounting system and was not compatible for use with this safer mounting system." (*Ibid.*) "[Plaintiff's] injury was not traceable to a single product made by another manufacturer; it was allegedly caused by a

foreseeable failure of the entire system to withstand high water pressure." (*Ibid*.)

These examples of appropriate exceptions to the component-part defense provide useful and analogous guidance in your auto-defect case for finding and imposing liability on component-part manufacturer defendants, especially where the component part is a critical crashworthiness safety system. In each instance, whether "the defendant bears some direct responsibility for the harm, either because the defendant's own product contributed substantially to the harm . . . or because the [subcomponent part maker] defendant participated substantially in creating a harmful combined use of the products" is squarely a factual issue that cannot be decided as a question of law. (*O'Neil*, *supra*, 53 Cal.4th at p. 362; see also *Gonzalez v. Autoliv ASP, Inc.* (2007) 154 Cal.App.4th 780, 791 [summary judgment on the component part defense is unavailable where plaintiffs' expert opined that a vehicle's subcomponent safety system's parts were defective and a cause of plaintiff's injury].)

The simplest real-world example is where the forensic or other post-crash physical evidence shows that the subcomponent was defectively manufactured; e.g., a microscopic metallurgical crack in the steel in the fork of a bicycle manufactured by a component-part maker, which caused a catastrophic failure and crash, severely injuring its rider. (*Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618 (hereafter *Wimberly*).) And with respect to more complex design-defect cases, in *Gonzalez* the defendant component-part maker of an airbag package that failed to deploy under substantial accident impact forces was held properly the subject of strict liability under the exception to the component parts doctrine, where plaintiff's evidence established that the airbag safety system was defectively designed under the risk-benefit test, and was a cause of the plaintiff's injuries. (*Gonzalez*, *supra*, 154 Cal.App.4th at p. 791.) Likewise, a seat belt/shoulder harness assembly that fails to restrain an occupant in an accident, or a seat back recliner mechanism that fails (permitting a seat to collapse rearward and injure an occupant during a foreseeable rear-end impact), similarly fall comfortably within the scope of the exception as articulated in *O'Neil*.

In each of these cases, because the component parts are safety systems designed to prevent or mitigate auto-accident injuries, they do not become dangerous without the operation of the vehicle into which they are finally installed. (See *Tellez-Cordova*, *supra,* 129 Cal.App.4th at pp. 358-361.) Further, if the occupant of the vehicle is injured by the defectiveness of such a subcomponent safety system during a crash, "[h]is injury [i]s not traceable to a single product made by another manufacturer; it was allegedly caused by a foreseeable failure of the entire system [i.e., the vehicle] to withstand high water pressure." (*O'Neil*, *supra*, 53 Cal.4th at p. 360.) The defective subcomponent part was also obviously "incompatible with the mounting system." (*Ibid*.; *Stang*, *supra*, 54 Cal.App.4th at p. 1229.)

If you have decided to sue a component-part maker along with the vehicle's manufacturer, it is probably because you and your expert(s) have already concluded that the component part was a subsystem of the vehicle that was independently defectively designed or manufactured. If so, your expert should be in a position early in the case to easily identify and explain the subcomponent's failure mechanism, as well as its causal link to the accident. This expert evidence is more than sufficient to establish inapplicability of the component-part doctrine, both on summary judgment and through trial.

Non-apportionment of liability with the auto manufacturer

Assuming the trier of fact finds that the component part at issue was itself defectively designed or manufactured and a cause of plaintiff's injury, the subsequent line of defense asserted by non-settling component-part manufacturers is that they are entitled to apportionment of fault with the settling manufacturer in the concluding portion of the special verdict form. This is a common legal misperception by non-settling strict-product-liability component makers at trial.

Under the California rule, Proposition 51 does *not* apply to strict products liability where the plaintiff's injuries are caused solely by a defective product. (*Bostick v. Flex Equipment Co., Inc.* (2007) 147 Cal.App.4th 80, rev. den. Apr. 18, 2007 (hereafter *Bostick*), and *Wimberly v. DerbyCycle Corp.,* 56 Cal.App.4th at p. 624.) As a result, the non-settling component-part supplier is not entitled to apportion fault against the manufacturer and does not have the right to place the manufacturer's name on the special verdict form. The reasons for this are somewhat complicated, and understanding this rationale (in order to explain it to a judge unfamiliar with the law, as well as to opposing counsel) requires a close look at the courts' explanation of the reasoning in these cases.

As articulated by the Court of Appeal, Second District in *Bostick*, "in a strict products liability action involving a single defective product where all of the defendants are in the same chain of distribution, Proposition 51 does *not* eliminate the liable defendants' joint responsibility for noneconomic damages because each defendant's liability is not based on fault but rather is imposed by a rule of law as a matter of public policy." (*Bostick*, *supra*, 147 Cal.App.4th at p. 95, italics added.) The majority in *Bostick* based its ruling on the prior decision of the Court of Appeal, Fourth District, in *Wimberly*. (*Ibid*.; but see *id.* at p.109 (conc. opn. of Croskey. ["[I]t is my view that pursuant to Proposition 51, in a strict products liability action, a defendant's liability to the plaintiff for noneconomic damages caused by a defective product is several only . . ."]).)

The *Wimberly* decision

In *Wimberly*, plaintiff settled before trial with a subcomponent manufacturer of a defective front bicycle fork that was ultimately incorporated into the final product and sold by the bicycle's manufacturer, defendant Derby. (*Wimberly*, *supra*, 56 Cal.App.4th at p. 624.) Trial proceeded solely against the non-settling defendant, Derby. (*Ibid.*) Prior to submission of the case to the jury, the trial court declined to permit Derby to apportion fault to the component manufacturer, although the court reduced the resulting judgment for plaintiff against Derby by the amount of the prior settlement, under Code of Civil Procedure section 877, subdivision (a) (hereafter section 877(a)). (*Ibid.*)

Wimberly held that Proposition 51 should not apply to strict product liability cases "where . . . the plaintiff's injuries are caused solely by a defective product." (*Wimberly*, *supra*, 56 Cal.App.4th at p.632.) The *Wimberly* court reasoned that, as in respondeat superior cases, in which a defendant employer's joint and several liability is not based on its own negligence but on vicarious liability, a defendant in the chain of distribution of a defective product cannot invoke Proposition 51 to reduce or eliminate responsibility for plaintiff's noneconomic damages. (*Id*. at pp. 629-30.) The *Wimberly* court analogized the roles of the manufacturer and its component-parts suppliers to respondeat superior cases:

> [Respondeat superior] [l]iability is imposed on the employer as "'a rule of policy, a deliberate allocation of the risk.'" . . .The entire liability of the employer and its employee to the plaintiff is co-extensive. The employer nonetheless enjoys Proposition 51's benefits because its liability for noneconomic damages is limited to its percentage of fault allocated to its employee.

(*Id*. at p. 629.)

The court reiterated: "While strict liability is not commonly referred to as vicarious liability," the concepts are similar: "*[T]he modern justification for vicarious liability closely parallels the justification for imposing liability on the nonnegligent manufacturer of a product*: 'What has emerged as the modern justification for vicarious liability is *a rule of policy, a deliberate allocation of risk*. . . .'" (*Id*. at p. 630.)

The *Wimberly* court also reasoned: "Strict liability is imposed 'in order to relieve injured consumers "from *problems of proof* inherent in pursuing negligence . . . and warranty . . . remedies...." [Citations.]'" (*Wimberly*, *supra*, 56 Cal.App.4th at p.632.) And *Wimberly* held:

> In sum, the retention of joint and several liability of parties in a defective product's chain of distribution for the plaintiff's full damages without a showing of negligence is essential to the theory of strict product liability. . . . The parties in a defective product's chain of distribution are not joint tortfeasors in the traditional sense; rather, as a matter of law their liability to plaintiff is co-extensive with others who may have greater fault, as in other instances of statutorily or judicially imposed vicarious, imputed, or derivative liability. [¶] Accordingly, we hold Proposition 51 has no application in a strict liability case where, as here, the plaintiff's injuries are caused solely by a defective product.

(*Id*. at pp. 632-633.)

The court reasoned that potentially reducing or eliminating the defendant's responsibility for noneconomic damages would thwart the public policy of insuring that the costs of injuries caused by defective products are borne by those putting them on the market, rather than by the injured persons who are powerless to protect themselves. (*Wimberly*, *supra*, 56 Cal.App.4th at p. 632.) "[I]f parties in the chain of distribution can escape liability for noneconomic damages, which are frequently much greater than economic damages, they will avoid risks incident to their businesses, losses will not be spread throughout society and incentives for promoting safety will significantly decrease." (*Id.* at p. 633, citing *Vandermark v. Ford Motor Co.* (1964) 61 Cal.2d 256, 262-63.)

The *Bostick* decision

In *Bostick v. Flex Equipment Co., Inc.* (2007) 147 Cal.App.4th 80, the Court of Appeal, Second District followed the court's reasoning in *Wimberly*. In *Bostick*, the plaintiff was seriously injured when a defective weight machine failed while plaintiff was using it at the gym. Plaintiff settled with the gym and proceeded to trial, where he obtained a large judgment against the manufacturer. (*Bostick*, *supra*, 147 Cal.App.4th at pp. 83-87.)

The trial court applied *Wimberly*, finding that Proposition 51 was inapplicable and apportionment of fault among defendants improper because plaintiff's "injuries were caused solely by a defective product and [both defendants] were in the same chain of distribution." (*Bostick*, *supra*, 147 Cal.App.4th at p. 87.) However, the trial court reduced the resulting judgment against the non-settling manufacturer by the full amount of the pretrial settlement against the gym, including both economic and noneconomic damages. (*Ibid*.)

Plaintiff's argument on appeal – that the trial court erred in reducing the judgment by the amount of both the economic and non-economic damages, because Proposition 51 should have been applicable – was rejected. The Court of Appeal concluded that because Proposition 51 did *not* apply, all damages included in the prior settlement were fully joint and several, and the total amount of the prior settlement with the gym was properly deducted from the resulting judgment, pursuant to section 877(a). (*Bostick*, *supra*, 147 Cal.App.4th at p. 95.)

Also instructive is *Arena v. Owens-Corning Fiberglas Corp*. (1998) 63 Cal.App.4th 1178, in which the court held that the focus of a Proposition 51 allocation in an asbestos case is on each specific *product*, not each specific *defendant*.

The court noted that "there is long-standing Supreme Court authority allocating fault between *strictly liable* [on the one hand] *and negligent* [on the other] *defendants*." (*Id.* at p. 1193, italics added.) The court affirmed, however, that no Proposition 51 allocation can be made *between defendants involved in the chain of distribution for a specific product*. (*Id*. at p. 1992.) It also noted, "[D]efendants within a chain of distribution are free to adjust liability *among themselves* in an indemnity action." (*Id*. at. p. 1197,fn. 13, italics added.)

These cases therefore firmly establish that where all of the defendants in a strict products-liability action are in the same chain of distribution, and where the plaintiff's injuries are caused solely by a single defective product, a non-settling defendant cannot apply Proposition 51 and therefore may not apportion fault to the settling defendants within the same distribution chain. Of course, it's immaterial whether the non-settling defendants in such a chain are subcomponent manufacturers or the final product's manufacturer.

Concluding thoughts

As shown above, in most automobile-defect cases where your client's injuries can be attributed to one or more specific subcomponent safety system failures, you probably want to sue both the manufacturer and the subcomponent-part maker, for all of the reasons discussed above. Since you need your experts to lay out the step-by-step causal link between the defect(s) and the accident injuries (usually sufficient to negate the component-part defense through trial), there is really no downside to naming all of the identifiable subcomponent part makers as co-defendants at an early point in the case. If you plan carefully in advance and play your tactical cards right, you may end with a very satisfying "gestalt" outcome: the totality of piecemeal products-liability settlements may end up being greater than the whole, had you decided to sue the manufacturer alone.


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