

A Point Of Clarity: California Court Of Appeal Rules, Once And For All, That Retailer Defendant In Products Liability Action Has No Equitable Indemnity Obligation To Manufacturer Where It Is Not Independently At Fault

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As many are aware, the doctrine of strict products liability imposes liability on all participants in the chain of distribution of a defective product. See, Greenman v. Yuba Power Products, Inc. (1963) 59 Cal.2d 57.¹ However, a question that has arisen is whether a manufacturer of an alleged defective product has equitable indemnity rights against the retailer of the defective product. In that regard, California courts have regularly held that the right to indemnity flows from the payment of a joint legal obligation on another's behalf, but the doctrine of comparative equitable indemnity, at the same time, is designed only to do equity among defendants. See, GEM Developers v. Hallcraft Homes of San Diego, Inc. (1989) 213 Cal.App.3d 419, 426. These competing principles have caused a tension because, while strict product liability defendants are jointly and severally liable to the plaintiff, their liability as among themselves is determined according to a different standard (i.e. comparative equitable indemnity principles). See, Expressions at Rancho Niguel Association v. Ahmanson Developments, Inc. (2001) 86 Cal.App.4th 1135, 1139.

Given that tension, a question that has been raised over the years is whether a retailer, independent of any negligence on its own, can be liable for equitable indemnity to the manufacturer of a product which is found to be defective and for which the retailer and the product manufacturer would otherwise be strictly liable to a personal injury plaintiff.

This question has now been addressed in the California Court of Appeal decision in Bailey v. Safeway, Inc. (2011) 199 Cal.App.4th 206 (opinion published September 15, 2011) ("Bailey Case"). In the Bailey Case, Jeffrey Bailey ("Bailey") suffered an eye injury when a bottle of Cook's Champagne exploded as he was

¹ Liability on each participant in the chain of distribution may be premised upon a theory of design defect, manufacturing defect, or a failure to warn. See, Anderson v. Owens-Corning Fiberglass Corporation (1991) 53 Cal.3d 587.

erecting a sales display in one of Safeway, Inc.'s ("Safeway") stores. Bailey sued the manufacturer of the champagne bottle, Saint-Gobain Containers, Inc. ("Saint-Gobain") for strict liability design defect under a consumer expectation theory. Bailey also sued Safeway under that same theory and for negligence.

Bailey settled out of court with Saint-Gobain and others for \$1,000,000 plus and an assignment of Saint-Gobain's equitable indemnity rights against Safeway. After the settlement was confirmed, the case went to trial against Safeway, only. The jury found that Safeway was not negligent but found that it was liable under a strict liability design defect theory and awarded \$718,915.78 in damages. Thereafter, Bailey filed a separate complaint for equitable indemnity against Safeway as Saint-Gobain's assignee. Safeway then filed a Demurrer on the basis that the jury's findings of no negligence were binding on collateral estoppel principles and other bases. The Trial Court sustained Safeway's Demurrer without leave to amend and Bailey appealed.

On appeal, the California Court of Appeal, First District, ruled that Safeway had no liability based on equitable indemnity principles. The Court of Appeal reviewed case law on point and found that, under the circumstances, Bailey had not cited any authority, nor could the Court of Appeal find any, which would allow the manufacturer of a product found to be defectively designed to obtain equitable indemnity against the retailer who did nothing more than offer the product for sale. Quoting the Court of Appeal's opinion:

"[w]ithout any independent basis for finding the retailer at fault, and in light of the legal principles underlying the assignment of legal responsibility in this case, we conclude that Saint-Gobains, and its assignee Bailey, are not entitled to indemnity against Safeway."

Bailey v. Safeway, *supra*, 199 Cal.App.4th at 214.

It is noted that the Court distinguished the decision in GEM Developers v. Hallcraft Homes of San Diego, Inc. (1989) 213 Cal.App.3d 419 on the basis that that case involved co-developers where both of the defendants could have been found liable under a strict liability theory (and there could be equitable indemnity between the two of those parties). The Court also cited other decisions and distinguished them on the same basis.

The Bailey Case is important in that it does provide a clear marker as to equitable indemnity liability for retailers.

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