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Product Liability Breach of Warranty Claims: California

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A Practice Note analyzing product liability warranty claims for personal injury under California law. This Note addresses who can be named as plaintiffs and defendants in a product liability breach of warranty claim, the standards of proof for a claim, the standard for proving causation, available damages, and the statute of limitations.

Although breach of warranty claims are generally based in contract and are not stand-alone product liability claims, California courts generally recognize breach of warranty claims as independent claims when brought with other product liability claims. The three kinds of warranties are:

- Express warranty.
- Implied warranty of merchantability.
- Implied warranty of fitness for a particular purpose.

This Note addresses personal injury claims based on these breach of warranty claims under California law.

Proper Plaintiffs

Under California law, any consumer of a product, even a remote consumer, may bring a claim for breach of express warranty. Vertical privity is not required. Vertical privity means that the buyer and seller were parties to the sales contract at issue. (*Cardinal Health 301, Inc. v. Tyco Elecs. Corp.*, 169 Cal. App. 4th 116, 143-44 (2008) (finding that it is fair to impose responsibility on a seller making affirmative claims regarding its products on which a remote consumer may rely).)

In contrast, vertical privity generally is required for actions based on the implied warranties of merchantability and fitness for a particular purpose (see *Cardinal Health 301, Inc.*, 169 Cal. App. 4th at 144 (finding that there is no similar justification for imposing liability on a defendant in favor of every remote purchaser); *U.S. Roofing, Inc. v. Credit Alliance Corp.*, 228 Cal. App. 3d 1431, 1441 (1991)).

However, there are many court-created exceptions to the privity requirement for the implied warranties of merchantability and fitness for a particular purpose. For example, a member of the purchaser's family is an exception to the privity requirement for actions based on breach of the implied warranty of merchantability (*Hauter v. Zogarts*, 14 Cal. 3d 104, 114 n.8 (1975)). Employees of purchasers of products may also state a claim for breach of the implied warranty of merchantability or the implied warranty of fitness for a particular purpose (*Peterson v. Lamb Rubber Co.*, 54 Cal. 2d 339, 348 (1960); see also *Jones v. ConocoPhilips Co.*, 198 Cal. App. 4th 1187, 1201 (2011) (identifying additional court-created exceptions to privity requirement)).

Potentially Liable Defendants

Who may be named as a defendant to a product liability breach of warranty claim under California law depends on the specific type of breach of warranty claim that a plaintiff brings. The statute providing for express warranty claims creates liability for sellers of goods where the seller makes an affirmation of fact or promise that becomes part of the basis of the bargain between the seller and buyer (Cal. Com. Code § 2313(1)(a)).

However, the statute providing for the implied warranty of merchantability creates liability for merchants of products. A merchant is defined as someone who either:

- Deals in the type of product at issue.
- Holds themselves out as having special knowledge or skill regarding the product at issue or to whom the knowledge or skill can be attributed because of their employment of an agent, broker, or intermediary who holds themselves out as having the knowledge and skill.

(Cal. Com. Code §§ 2104(1) and 2314(1); *Garlock Sealing Techs., LLC v. NAK Sealing Techs. Corp.*, 148 Cal. App. 4th 937, 948-49 (2007).)

A defendant that does not deal with the type of product underlying a plaintiff's complaint or who, by the defendant's occupation, has not held themselves out as having special knowledge or skills regarding these goods (for example, an incidental seller or a consumer selling an unwanted item to another consumer) cannot be held liable for an alleged breach of the implied warranty of merchantability related to these products (*Sacramento Reg'l Transit Dist. v. Grumman Flxible*, 158 Cal. App. 3d 289, 294-95 (1984)).

For breach of the implied warranty of fitness for a particular purpose, the defendant must be a seller of the goods at issue (Cal. Com. Code § 2315; *Cardinal Health 301, Inc.*, 169 Cal. App. 4th at 138). The defendant need not be a merchant, as with the implied warranty of merchantability. The implied warranty of fitness for a particular purpose may be imposed on a seller where the seller had reason to know the product was "required for a particular purpose" and the buyer relied on the seller's skill or judgment (*Williams v. Beechnut Nutrition Corp.*, 185 Cal. App. 3d 135, 142 (1986); *Eichler Homes, Inc. v. Anderson*, 9 Cal. App. 3d 224, 231 (1970)).

For implied warranty claims, vertical privity of contract is generally a prerequisite for recovery (*Cardinal Health 301, Inc.*, 169 Cal. App. 4th at 138-39 (exceptions to vertical privity requirement); *U.S. Roofing, Inc.*, 228 Cal. App. 3d at 1441).

Proving a Breach of Express Warranty Claim

To establish breach of an express warranty in a product liability case, a plaintiff generally must prove that:

- The seller of a product made an affirmation of fact or promise related to the product.
- The affirmation of fact or promise was part of the basis of the bargain.
- The product did not perform as stated or promised.
- The plaintiff took reasonable steps to notify the seller within a reasonable amount of time that the product was not as represented, whether the seller received the notice or not.
- The seller failed to repair the product or failed to provide another remedy as required by the warranty (if applicable).
- The plaintiff was injured.
- The failure of the product to conform as represented was a substantial factor in causing the plaintiff's injury.

(Cal. Com. Code § 2313; Judicial Council of California Civil Jury Instructions (CACI) 1230.)

Seller's Affirmation

Under California law, an actionable affirmation by the seller may be:

- A statement of fact or promise (written or oral) relating to the product.
- A description of the product's features or performance.
- A sample or model held out as equivalent in quality and features to the product to be purchased.

(Cal. Com. Code § 2313(1); *Martinez v. Metabolife Int'l, Inc.*, 113 Cal. App. 4th 181, 189-90 (2003); see CACI 1230.)

The seller does not have to use words like "warrant" or "guarantee" or have a specific intention to create an express warranty. However, a statement that is merely puffery or the seller's opinion or commendation of the goods or a statement regarding the product's value are not sufficient to give rise to a breach of express warranty claim. (Cal. Com. Code § 2313(2); *T&M Solar & Air Conditioning, Inc. v. Lennox Int'l Inc.*, 83 F. Supp. 3d 855, 875-76 (N.D. Cal. 2015) (applying California law).)

Buyer's Reliance

The express warranty must form part of the basis of the bargain between the buyer and seller (Cal. Com. Code § 2313(1)(a)). Section 2313 explains that affirmative statements of fact that a seller makes about its goods during a bargain are treated as part of the goods' description. A buyer does not need to show reliance on those statements to "weave them into the fabric of the agreement" (Cal. Com. Code § 2313 cmt. 3). Clear affirmative proof is required to take any statement of fact, once made, out of the agreement (*Weinstat v. Dentsply Int'l, Inc.*, 180 Cal. App. 4th 1213, 1227 (2010)).

An assertion made in advertising that is "disseminated to the consuming public in order to induce sales" may also become an express warranty (see *Burr v. Sherwin Williams Co.*, 42 Cal. 2d 682, 696 (1954); *Keith v. Buchanan*, 173 Cal. App. 3d 13, 22 (1985); but see *Carrau v. Marvin Lumber & Cedar Co.*, 93 Cal. App. 4th 281, 289-90 (2001) (general assertions made by manufacturer in its advertising did not extend warranty to future performance of windows)).

The defendant can plead the affirmative defense that the affirmation was not part of the basis of the bargain (*Weinstat*, 180 Cal. App. 4th at 1229, 1234 n.12; *Keith*, 173 Cal. App. 3d at 22; see CACI 1240).

Proving a Breach of Implied Warranty of Merchantability Claim

Unless excluded or modified by Section 2316 of the Commercial Code, the implied warranty of merchantability applies as a matter of law to any product sold by a seller acting as a merchant for products of that type (Cal. Com. Code § 2314(1)). This warranty requires that a product be merchantable. To be merchantable, the goods must:

- Pass without objection in the trade under the contract description.
- In the case of fungible goods, be of fair average quality.
- Be fit for the ordinary purpose for which these goods are used.
- Within the variations permitted by the agreement, be the same kind, quality, and quantity within each unit and among all units involved.
- Be adequately contained, packaged, and labeled as the agreement requires.
- Conform to the promises or affirmations of fact made on the container or label, if any.

(Cal. Com. Code § 2314(2).)

To prove that a merchant has breached the implied warranty of merchantability, the plaintiff must generally show that:

- The plaintiff purchased the product from the merchant.
- At the time of purchase, the merchant was in the business of selling these goods or, by its occupation, held itself out as having special knowledge or skills regarding these goods.
- The product failed to adhere to the requirements set out in Section 2314(2) of the Commercial Code in one or more ways (for example, it was not fit for the ordinary purpose for which these goods are used).
- The plaintiff took reasonable steps to notify the merchant within a reasonable time that the product did not have the expected quality.
- The plaintiff was injured.
- The failure of the product to have the expected quality was a substantial factor in causing the plaintiff's injury.

(Cal. Com. Code § 2314; see CACI 1231.)

The implied warranty of merchantability's requirement that a product be fit for the ordinary purpose for which the product is used does not mean that the product must be perfect or free from flaws. The implied warranty provides instead that the product be generally suitable for the purpose for which it is designed. (*Am. Suzuki Motor Corp. v. Super. Ct.*, 37 Cal. App. 4th 1291, 1296 (1995).)

Proving a Breach of Implied Warranty of Fitness for a Particular Purpose Claim

Unless excluded or modified by Section 2316 of the Commercial Code, the implied warranty of fitness for a particular purpose is implied by law when a seller "has reason to know that a buyer wishes goods for a particular purpose and is relying on the seller's skill and judgment to furnish those goods" (*Cardinal Health 301, Inc.*, 169 Cal. App. 4th at 138). To prove breach of the implied warranty of fitness for a particular purpose, the plaintiff must generally show that:

- The plaintiff purchased the product from the seller.
- At the time of purchase, the seller knew or had reason to know that the plaintiff intended to use the product for a particular purpose.
- At the time of purchase, the seller knew or had reason to know that the plaintiff was relying on the seller's skill and judgment to provide a product that was suitable for the particular purpose.
- The plaintiff justifiably relied on the seller's skill and judgment.
- The product was not suitable for the plaintiff's particular purpose.
- The plaintiff took reasonable steps to notify the seller within a reasonable time that the product was not suitable.
- The plaintiff was injured.
- The failure of the product to be suitable was a substantial factor in causing the plaintiff's injury.

(Cal. Com. Code § 2315; see CACI 1232.)

The inquiry here focuses not on the ordinary use for a product but on the specific use for which the buyer purchased it. Proving breach of this implied warranty does not require that the product be defective but merely that it be unsuitable for the particular purpose for which the buyer

bought it and the seller sold it. (*Am. Suzuki Motor Corp.*, 37 Cal. App. 4th at 1295 n.2; *Keith*, 173 Cal. App. 3d at 24-25.)

A plaintiff pursuing a claim for breach of the implied warranty of fitness for a particular purpose must prove that the plaintiff relied on the defendant's skill or judgment to select or furnish suitable goods for the plaintiff's intended use (Cal. Com. Code § 2315).

Notice Requirements

A seller is not generally liable for a breach of warranty unless the buyer gives notice of the breach to the seller within a reasonable time after the buyer knew or had reason to know of the alleged defect and breach (Cal. Com. Code § 1202(a) (defining notice)). Whether notice is given in a reasonable time depends on the facts and circumstances of the claim (Cal. Com. Code §§ 1205(a) and 2607(3)(a); see CACI 1243; *Vogel v. Thrifty Drug Co.*, 43 Cal. 2d 184, 188 (1954) (if the plaintiff dealt with the buyer directly, the plaintiff may be required to plead and prove notice based on terms of the agreement at issue)). However, timely notice is not required "in actions by injured consumers against manufacturers with whom they have not dealt" (*Greenman v. Yuba Power Prods., Inc.*, 59 Cal. 2d 57, 61 (1963)).

Causation

California uses the "substantial factor" test to determine causation in breach of warranty product liability actions (see, for example, *Cardinal Health 301, Inc.*, 169 Cal. App. 4th at 146; see CACI 1230, CACI 1231, and CACI 1232). Under this standard, a breach of warranty is a substantial factor (a cause-in-fact) in causing the plaintiff's injuries if a reasonable person would consider it to have contributed to the injuries. It does not need to be the only cause of the injury, but it must be more than a remote or trivial factor. (*Rutherford v. Owens-Illinois, Inc.*, 16 Cal. 4th 953, 969 (1997); *Soule v. Gen. Motors Corp.*, 8 Cal. 4th 548, 572 (1994).)

California courts have used the "substantial factor" test as a "clearer rule of causation" than the "but for" test, as the substantial factor test "subsumes the 'but for' test while reaching beyond it to satisfactorily address other situations, such as those involving independent or concurrent causes in fact" (*Rutherford*, 16 Cal. 4th at 969).

Damages

Available Damages

A plaintiff pursuing a breach of warranty claim may recover:

- Economic damages, such as the loss in value of the product itself.
- Incidental damages resulting from the breach, including:
  - expenses that were reasonably incurred in the "inspection, receipt, transportation and care and custody of goods rightfully rejected";
  - "any commercially reasonable charges, expenses or commissions in connection with effecting cover"; and
  - "any other reasonable expense incident to the delay or other breach."
- Consequential damages resulting from the breach, including:
  - "loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise"; and
  - "injury to person or property proximately resulting from any breach of warranty."

(Cal. Com. Code §§ 2714 and 2715(2)(b).)

A seller may limit or exclude consequential damages unless the limitation or exclusion is unconscionable (Cal. Com. Code § 2719(3)).

Punitive damages generally are not recoverable in an action based solely on breach of warranty. However, plaintiffs rarely bring product liability breach of warranty claims for personal injury without also bringing strict liability and negligence claims. (See, for example, *Hilliard v. A. H. Robins Co.*, 148 Cal. App. 3d 374, 395 n.19 (1983); *Miller v. Nat'l Am. Life Ins. Co.*, 54 Cal. App. 3d 331, 336 (1976) (punitive damages are not available for actions based solely on a breach of contract).)

In a wrongful death action, a plaintiff may seek economic damages in the form of:

- Financial support that the decedent would have contributed to the family.
- Loss of gifts or benefits the plaintiff would have expected to receive from the decedent.
- Funeral and burial expenses.
- The reasonable value of household services that the decedent would have provided.

In a wrongful death action, a plaintiff may also seek noneconomic damages for loss of:

- The decedent's love, companionship, comfort, and care.
- Consortium.
- The decedent's training and guidance.

(Cal. Civ. Proc. Code § 377.61.)

Limitations on Damages

Punitive damages generally are not recoverable in an action based solely on breach of warranty. However, plaintiffs rarely bring product liability breach of warranty claims for personal injury without also bringing strict liability and negligence claims. (See, for example, *Hilliard*, 148 Cal. App. 3d at 395 n.19; *Miller*, 54 Cal. App. 3d at 336 (punitive damages are not available for actions based solely on breach of contract).)

In those cases, courts may award punitive damages where the plaintiff can prove by clear and convincing evidence that the defendant is guilty of "oppression, fraud, or malice" (Cal. Civ. Code § 3294(a)).

Punitive damages cannot be imposed on a corporate defendant unless the plaintiff can prove that an officer, director, or managing agent of a corporation had "advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice" (Cal. Civ. Code § 3294(b); *Anaya v. Machines de Triage et Broyage*, 2019 WL 359421, at *5 (N.D. Cal. Jan. 29, 2019) (applying California law)).

Although California law itself does not provide a cap on punitive damages in a personal injury case, the US Supreme Court has held that, as a matter of substantive due process, punitive damages must bear a reasonable relationship to the compensatory damages awarded to the plaintiff (Cal. Civ. Code § 3294; *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419-20 (2003); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996)).

Under California Civil Code Section 1431.2 (known as Proposition 51), each defendant's liability for noneconomic damages is several and not joint (*B.B. v. County of Los Angeles*, 10 Cal. 5th 1, 9 (2020); *DaFonte v. Up-Right, Inc.*, 2 Cal. 4th 593, 600 (1992)).

Statutes of Limitations

The general four-year statute of limitations for warranty claims does not apply to claims resulting in personal injury. The two-year statute of limitations for personal injury actions generally applies instead unless another more specific personal injury statute of limitation applies (such as the one-year statute of limitation for asbestos exposure claims) (Cal. Civ. Proc. Code § 335.1; Cal. Com. Code § 2725; *Becker v. Volkswagen of Am., Inc.*, 52 Cal. App. 3d 794, 802 (1975)).

For product liability claims, the statute of limitations is generally two years from the date the cause of action accrues (Cal. Civ. Proc. Code § 312; Cal. Civ. Proc. Code § 335.1 (personal injury actions); Cal. Civ. Proc. Code § 361 (effect of limitation laws of other states); *Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 404-05 (1999) (calculating accrual of wrongful death actions)). A cause of action generally accrues when the cause of action is complete with all its elements (*Norgart*, 21 Cal. 4th at 397).

California recognizes the discovery rule, which "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action" (*Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 807-09 (2005)).

For asbestos exposure cases, the statute of limitations is one year after the date the plaintiff first suffered the disability or within one year after the plaintiff "knew, or through the exercise of reasonable diligence should have known, that such disability was caused or contributed to by exposure," whichever is later (Cal. Civ. Proc. Code § 340.2(a) (personal injury actions); Cal. Civ. Proc. Code § 340.2(c) (one year for wrongful death actions)).

For exposure to hazardous materials or toxic substances other than asbestos, the statute of limitations is two years from the date of injury or two years after the plaintiff becomes aware of "or reasonably should have become aware of":

- An injury.
- The physical cause of the injury.
- Sufficient facts to put a reasonable person on inquiry notice that the injury was caused or contributed to by the wrongful act of another, whichever occurs later.

(Cal. Civ. Proc. Code § 340.8(a) (personal injury actions); Cal. Civ. Proc. Code § 340.8(b) (two years for wrongful death actions).)

Other Product Liability Claims

In product liability cases for most products, California courts generally recognize:

- Strict liability claims, including claims for:
  - manufacturing defect;
  - design defect; and
  - failure to warn.

(*Trejo v. Johnson & Johnson*, 13 Cal. App. 5th 110, 116 (2017) (failure to warn and design defect); *Taylor v. Elliott Turbomachinery Co., Inc.*, 171 Cal. App. 4th 564, 577 (2009) (failure to warn); *In re Coordinated Latex Glove Litig.*, 99 Cal. App. 4th 594, 598 (2002) (manufacturing defect); CACI 1201 (manufacturing defect); CACI 1203 and CACI 1204 (design defect); CACI 1205 (failure to warn).) For more information on strict product liability claims under California law, see Practice Note, Strict Product Liability Claims: California.

- Negligence claims, including claims for negligent:
  - manufacture;
  - design; and
  - failure to warn.

  (*Trejo*, 13 Cal. App. 5th at 116 (design and failure to warn); *Chavez v. Glock, Inc.*, 207 Cal. App. 4th 1283, 1305 (2012) (design and failure to warn); *Putensen v. Clay Adams, Inc.*, 12 Cal. App. 3d 1062, 1078 (1970) (manufacture); CACI 1220 (manufacture and design); CACI 1222 (failure to warn).) For more information on product liability negligence claims under California law, see Practice Note, Product Liability Negligence Claims: California.
- Common law fraud and misrepresentation claims, including:
  - negligent misrepresentation; and
  - fraudulent (intentional) misrepresentation (see Standard Clause, Fraudulent Misrepresentation Cause of Action (CA)).

  (*Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680, 686 (1969) (negligent misrepresentation); CACI 1903 (negligent misrepresentation); CACI 1900 (intentional misrepresentation); Restatement of Torts (Second) § 533 (1977); see Litigating Fraud and Related Claims Checklist (CA) and Pleading a Fraud Claim Checklist: Scienter (CA).)
- Deceit claims, including fraudulent:
  - inducement (see Standard Clause, Promissory Fraud Cause of Action (CA)); and
  - concealment (see Standard Clause, Fraudulent Concealment Cause of Action (CA)).

  (Cal. Civ. Code §§ 1709 and 1710; *Jones v. ConocoPhillips Co.*, 198 Cal. App. 4th 1187, 1198 (2011).)