

## Product Liability Negligence Claims: California

by Jonathan S. Tam and Mary H. Kim, Dechert LLP, with Practical Law Commercial Litigation

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A Practice Note analyzing product liability negligence personal injury claims under California law. This Note addresses who can be named as plaintiffs and defendants in a product liability negligence claim, types of product liability negligence claims, standards of proof, duty of care, causation, damages, and the statute of limitations.

While product liability claims are often based on a theory of strict liability, there are circumstances in which it is preferable or necessary to bring a product liability claim based on a negligence cause of action instead of or in addition to a strict liability cause of action. This Note addresses product liability claims for negligent manufacture, negligent design, and negligent failure to warn under California law.

### Proper Plaintiffs

To assert a viable negligence claim under California law, the plaintiff must be a person to whom the defendant owed a duty of care. Privity between the parties is not required. Whether the duty exists is a question of law to be answered by the court. (*Merrill v. Navegar, Inc.*, 26 Cal. 4th 465, 475, 477 (2001); *Artiglio v. Corning Inc.*, 18 Cal. 4th 604, 614 (1998); *Sharufa v. Festival Fun Parks, LLC*, 49 Cal. App. 5th 493, 498 (2020).)

All persons must use due care in managing their property and activities (Cal. Civ. Code § 1714(a)). California law generally imputes a duty of care to manufacturers and sellers of consumer goods that extends beyond the purchaser of a product to include all foreseeable users of a product as well as foreseeable bystanders to the use of a product (Cal. Civ. Code § 1714(a); *Bettencourt v. Hennessey Indus., Inc.*, 205 Cal. App. 4th 1103, 1118 (2012); *Barrett v. Super. Ct.*, 222 Cal. App. 3d 1176, 1187 (1990)).

For wrongful death claims, the estate of a person who would have been a proper plaintiff if the person had survived to bring suit may generally bring the claim. Section 377.60 of the California Code of Civil Procedure identifies the persons who may be proper plaintiffs in a wrongful death action, including the decedent's

surviving spouse, domestic partner, children, and lineal descendants of deceased children.

In addition to a wrongful death action, the decedent's personal representative (or if none, the decedent's successor in interest) may bring a survival action (Cal. Civ. Proc. Code § 377.30). If applicable, plaintiffs may bring causes of action for **both** wrongful death and survival (Cal. Civ. Proc. Code § 377.62). Survival actions focus on the injury suffered by the decedent, while wrongful death actions focus on the injury suffered by the heirs (Cal. Civ. Proc. Code §§ 377.30 to 377.35 (survival actions); Cal. Civ. Proc. Code §§ 377.60 to 377.62 (wrongful death actions); *Williams v. Pep Boys Manny Moe & Jack of Cal.*, 27 Cal. App. 5th 225, 228-29 (2018)).

### Potentially Liable Defendants

Under California law, the plaintiff may assert a product liability negligence claim against any defendant who owed the plaintiff a duty of care related to the product at issue. This may include the product's manufacturer and others within the chain of distribution (see, for example, *O'Neil v. Crane Co.*, 53 Cal. 4th 335, 356 (2012)).

A defendant that owes the plaintiff a duty of care may be subject to a product liability negligence claim even if the defendant cannot be held liable on a strict product liability claim. For example, a plaintiff may bring a negligence claim against a prescription drug manufacturer even if that manufacturer cannot be sued under a strict product liability claim. (See, for example, *Conte v. Wyeth, Inc.*, 168 Cal. App. 4th 89, 102 (2008); see [Practice Note, Strict Product Liability Claims: California: Prescription Drugs and Medical Devices.](#))



California courts recognize a market share theory of liability in narrow classes of defective products in negligence cases. The theory is limited to two narrow classes of fungible goods, being generic and generally fungible goods (*Wheeler v. Raybestos-Manhattan*, 8 Cal. App. 4th 1152, 1155-56 (1992); *Sindell v. Abbott Labs.*, 26 Cal. 3d 588, 611 (1980)). Market share liability allocates liability among all manufacturers of a class of products based on each manufacturer's relative market share for the type of product at issue when the plaintiff encountered the product (*Sindell*, 26 Cal. 3d at 608 n.24, 616). Market share liability is imposed in the rare case where the nature of the product makes it so that the plaintiff cannot identify the manufacturer of the product that caused their injury but can allege that all manufacturers produced the product from an identical formula or substance (*Sindell*, 26 Cal. 3d at 611, 616).

### Types of Product Liability Negligence Claims

Negligence product liability claims under California law include claims for negligent:

- Manufacture.
- Design.
- Failure to warn.

(Judicial Council of California Civil Jury Instructions (CACI) 1220 (jury instructions for negligent manufacture and design); CACI 1222 (failure to warn); *Trejo v. Johnson & Johnson*, 13 Cal. App. 5th 110, 116 (2017) (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).)

### Standard for Proving Product Liability Negligence

To prove a negligence claim under California law, a plaintiff must establish facts showing that:

- The defendant owed a duty to the plaintiff.
- The defendant breached that duty.
- The plaintiff was injured.
- The defendant's breach was a substantial factor in causing the plaintiff's injuries.

(*Trejo*, 13 Cal. App. 5th at 116 (design and failure to warn); *Chavez*, 207 Cal. App. 4th at 1305 (design and failure to

warn); *Putensen*, 12 Cal. App. 3d at 1078 (manufacture); see CACI 1220, CACI 1221, and CACI 1222.)

While a strict liability claim focuses on the product itself, recovery on a negligence claim requires the plaintiff to prove that the defendant deviated from acceptable standards of conduct in its actions or omissions (*Carlin v. Super. Ct.*, 13 Cal. 4th 1104, 1112 (1996); *Anderson v. Owens-Corning Fiberglas Corp.*, 53 Cal. 3d 987, 1003 (1991)). The acceptable standard of conduct is typically framed as the conduct of a reasonable manufacturer or seller of the particular type of product at issue (*Chavez*, 207 Cal. App. 4th at 1305; *Barker v. Lull Engineering Co.*, 20 Cal. 3d 413, 434 (1978)).

### Duty and Breach

A manufacturer has a duty to exercise reasonable care in the manufacture of its products. Manufacturers and sellers owe consumers the same duty of care that a reasonable manufacturer or seller of the same type of product would provide. This includes the duty to not create an unreasonable risk of harm to those who use (or misuse) the product in a foreseeable way. (*Putensen*, 12 Cal. App. 3d at 1076-77; see CACI 1221.)

A manufacturer (or seller) must also use reasonable care in giving warnings of dangerous conditions if the manufacturer (or seller) has reason to believe the users will not realize the dangerous condition. The failure to fulfill that duty is a breach of the duty. Courts look to what a reasonably prudent manufacturer would have known and warned about. (*Putensen*, 12 Cal. App. 3d at 1076-77; *Artiglio v. General Electric Co.*, 61 Cal. App. 4th 830, 835 (1998); see CACI 1222.)

In determining the scope of the duty of care, California courts weigh:

- The foreseeability of harm to the plaintiff.
- The degree of certainty the plaintiff suffered injury.
- The closeness of the connection between the defendant's conduct and the plaintiff's injury.
- The moral blame attached to the defendant's conduct.
- The policy of preventing future harm.
- The extent of the burden to the defendant and the consequences to the community of imposing a duty to exercise care with resulting liability for breach.
- The availability, cost, and prevalence of insurance for the risk involved.

(*Rowland v. Christian*, 69 Cal. 2d 108, 112-113 (1968), superseded by statute on unrelated grounds as stated in *Calvillo-Silva v. Home Grocery*, 19 Cal. 4th 714 (1998) (known as the *Rowland* factors); *Vasilenko v. Grace Family Church*, 3 Cal. 5th 1077, 1083 (2017); *Taylor v. Elliott Turbomachinery Co., Inc.*, 171 Cal. App. 4th 564, 593 (2009).)

No single factor is dispositive. The court determines the extent of the defendant's duty based on the balance of all these factors. (*Rowland*, 69 Cal. 2d at 112-13, superseded by statute on unrelated grounds as stated in *Calvillo-Silva*, 19 Cal. 4th at 714; *Taylor*, 171 Cal. App. 4th at 593 (duty and the scope of any duty are legal questions for the court).)

### Causation

California has adopted the substantial factor test to determine proximate causation (*Rutherford v. Owens-Illinois, Inc.*, 16 Cal. 4th 953, 968-69 (1997); see Restatement of Torts (Second) § 431(a)). Under this test, a plaintiff must prove that the defective product supplied by the defendant was a substantial factor in bringing about the plaintiff's injury. It does not need to be the only cause of the injury but must be more than a remote or trivial factor. (*Rutherford*, 16 Cal. 4th at 969; *Soule v. General Motors Corp.*, 8 Cal. 4th 548, 572 (1994); *Mize v. Mentor Worldwide LLC*, 51 Cal. App. 5th 850, 861 (2020); *Union Pacific Railroad Co. v. Ameron Pole Prods. LLC*, 43 Cal. App. 5th 974, 981 (2019).)

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

### Damages

#### Available Damages

Under California law, a plaintiff who prevails on a negligence claim may potentially recover:

- Compensatory damages for economic losses, including:
  - costs of required medical care;
  - loss of earnings; and
  - property damage other than to the product at issue.
- Compensatory damages for noneconomic losses, including compensation for:
  - pain and suffering; and
  - loss of consortium (typically brought by the spouse).
- Punitive damages.

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.
- Reasonable value of household services that the decedent would have provided.

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

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

(Cal. Civ. Proc. Code § 377.61.)

California recognizes the economic loss rule, which generally bars tort recovery under a negligence theory for damage to the defective product itself. Under this rule, a manufacturer or distributor cannot be liable for "purely economic losses" (*KB Home v. Super. Ct.*, 112 Cal. App. 4th 1076, 1084 (2003)).

#### Limitations on Damages

Punitive damages may be awarded 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 the corporation had advance knowledge and conscious disregard, authorized, ratified, or acted with 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)).

Under California Civil Code Section 1431.2 (called Proposition 51), the liability of each defendant for noneconomic damages is several and not joint (*B.B. v. Cnty. of Los Angeles*, 10 Cal. 5th 1, 8-9, 29 (2020); *DaFonte v. Up-Right, Inc.*, 2 Cal. 4th 593, 600 (1992)).

California has no cap on punitive damages in a personal injury case, although the US Supreme Court has held that 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)).

### Statutes of Limitations

The statute of limitations in California for product liability claims 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).

A product liability cause of action for personal injury accrues when the plaintiff is injured or knows or should have known that they have suffered an injury due to an allegedly defective product. 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 should have known that the disability was caused by asbestos 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 been aware of an injury, the physical cause of the injury, and sufficient facts to put a reasonable person on notice regarding the cause of the injury, whichever is later (Cal. Civ. Proc. Code § 340.8(a) (personal injury actions); Cal. Civ. Proc. Code § 340.8(b) (two years for wrongful death actions)).

### Statutes of Repose

California does not have a statute of repose applicable to product liability actions, generally.

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### Other Product Liability Claims

In addition to negligence claims, California courts generally recognize the following causes of action in product liability cases for most products:

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

(*Taylor*, 171 Cal. App. 4th at 577; *Trejo*, 13 Cal. App. 5th at 116 (failure to warn and design defect); *In re Coordinated Latex Glove Litigation*, 99 Cal. App. 4th 594, 598 (2002) (manufacturing defect).) For more information on strict product liability claims under California law, see [Practice Note, Strict Product Liability Claims: California](#).

- Breach of warranty claims, including breach of:
  - express warranty (Cal. Com. Code § 2313);
  - implied warranty of merchantability (Cal. Com. Code § 2314); and
  - implied warranty of fitness for a particular purpose (Cal. Com. Code § 2315).

(*Hauter v. Zogarts*, 14 Cal. 3d 104, 114-15 (1975); *Barth v. B.F. Goodrich Tire Co.*, 265 Cal. App. 2d 228, 245-46 (1968); *Greenman v. Yuba Power Prods., Inc.*, 59 Cal. 2d 57, 59 (1963).) For more information on breach of warranty claims under California law, see [Practice Note, Breach of Warranty Product Liability Claims: California](#).

- Common law misrepresentation claims, including:
  - negligent misrepresentation; and
  - fraudulent (intentional) misrepresentation (see [Standard Clause, Fraudulent Misrepresentation Cause of Action \(CA\)](#)).

(*Boeken v. Philip Morris, Inc.*, 127 Cal. App. 4th 1640, 1660 (2005) (fraudulent misrepresentation); *Hanberry v. Hearst Corp.*, 276 Cal. App. 2d 680, 686 (1969) (negligent 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).)