Weekly Law Resume

A Newsletter published by Low, Ball & Lynch
Edited by David Blinn and Mark Hazelwood

WEEKLY LAW RESUME™

Issue By: NEIL P. CHERUBIN

October 6, 2011

Manufacturer of Defectively Designed Product Cannot Recover Equitable Indemnity From Product Retailer Without Retailer's Additional, Independent Fault

Jerry Bailey v. Safeway, Inc.
Court of Appeal, First District (September 15, 2011)

This case addresses the issue of equitable indemnity between product manufacturers and retailers. The First Appellate District ruled that the manufacturer of a product found to be defectively designed may not recover equitable indemnity from a downstream retailer who merely offered the product for sale, and was not independently at fault.

Plaintiff/appellant Jerry Bailey ("Bailey"), then an employee of Safeway, Inc. ("Safeway"), was stocking a display of Cook's Champagne bottles when one of the bottles exploded, causing eye injuries. Bailey sought recovery in an action against Saint-Gobain Containers, Inc. ("Saint-Gobain"), the manufacturer of the bottle, in strict product liability for defective design. Safeway, the retailer of the product, was sued under the same theory, and for negligence. Bailey reached a settlement agreement with Saint-Gobain for $1 million, plus an assignment of any equitable indemnity rights Saint-Gobain had against Safeway.

Following Saint-Gobain's dismissal, Bailey and Safeway proceeded to trial. The jury found that the bottle provided by Safeway to Bailey was defectively designed under the consumer expectations test; however, the jury also found that Safeway was neither negligent nor "at fault." Bailey and Safeway thereafter stipulated that the verdict be changed to reflect that Safeway was 100% liable under strict liability for design defect, and the court entered judgment in favor of Safeway.

San Francisco Office
505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office
2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

Web: www.lowball.com

Thereafter, Bailey, as the assignee of Saint-Gobain's rights, filed a separate action for equitable indemnity against Safeway. In the complaint, Bailey alleged that Safeway was found to be 100% at fault-as reflected in the modified jury verdict-and that the doctrine of collateral estoppel precluded Safeway from litigating its liability. The trial court disagreed. In sustaining Safeway's demurrer without leave to amend, the court ruled that Bailey could not establish that Safeway was a substantial factor in causing the harm because the jury ruled Safeway was not negligent in the first action. Bailey appealed this decision.

The Court of Appeal affirmed. Though Bailey argued that Safeway was collaterally estopped from re-litigating its liability, the Court of Appeal took one step back and ruled that it was Bailey who was estopped from pursuing indemnity. Bailey was a party to the prior litigation, and was in privity with Saint-Gobain, the assignor of the right to pursue equitable indemnity. With these initial hurdles cleared, the final determination of whether collateral estoppel should preclude the action turns on "the fundamental principle of fairness underlying the doctrine." Safeway was liable only under a design defect cause of action as the retailer for Saint-Gobain's product. Here, the Court noted that the policy behind strict products liability was to ensure that the cost of injuries caused by defective products would be borne by those in the chain of distribution rather than the injured parties who could not protect themselves from defective products. Accordingly, liability was only imposed on Safeway as a matter of social policy, and not because of any negligence or fault on the part of Safeway. Fairness dictated that Bailey could not recover equitable indemnity from Safeway.

The Court went on to clarify that its decision does not preclude equitable indemnity in a strict liability action. Principles of equitable indemnity may be applied to apportion liability among multiple strictly liable tortfeasors (*GEM Developers v. Hallcraft Homes of San Diego, Inc.* (1989) 213 Cal. App. 3d 419). *GEM Developers*, unlike the present case, involved two developers who committed separate, independent acts that each gave rise to strict liability. In that case, it was appropriate to apportion liability on the basis of each developer's comparative fault. In the present case, Safeway's liability was not based on its independent acts or omissions.

Finally, the Court ruled that Bailey could not use the stipulated verdict finding Safeway 100% responsible to preclude Safeway's defense against the indemnity claim. Following the settlement between Saint-Gobain and Bailey, Safeway was left as the sole defendant in the action to defend Saint-Gobain's product design. As a downstream retailer, Safeway was liable for Saint-Gobain's design defect in the same degree as the manufacturer. Safeway would have had nothing to gain in defending itself by arguing that Saint-Gobain was liable in strict liability, as this would have left Safeway liable as the retailer. Accordingly, it could not be said that the issue of comparative fault between Safeway and Saint-Gobain

San Francisco Office
505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office
2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

Web: www.lowball.com

Weekly Law Resume

A Newsletter published by Low, Ball & Lynch
Edited by David Blinn and Mark Hazelwood

was "actually litigated," and therefore collateral estoppel does not apply.

The Court of Appeal affirmed the trial court's judgment, granting Safeway's demurrer without leave to amend.

COMMENT

This case clarifies the role of equitable indemnity between multiple strict product liability defendants. While each defendant may be jointly and severally liable to the plaintiff, equitable indemnity operates according to the principles of comparative fault to apportion loss among defendants based on determinations of fault. The Court noted that it found no authority allowing a manufacturer of a defective product to obtain equitable indemnity from a retailer who merely offered the product for sale. This decision articulated the policy behind comparative fault determinations and principles of fairness, with a satisfying result prevailing over a somewhat bootstrapping argument.

For a copy of the complete decision see:
HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/A131349.PDF

The Weekly Law Resume TM is published fifty-two times a year, and is a complimentary publication of Low, Ball & Lynch, Attorneys at Law, a Professional Corporation, with offices in San Francisco and Monterey, California. Information regarding this and other Weekly Law Resume TM articles is available at www.lowball.com.

San Francisco Office
505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office
2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

Web: www.lowball.com