

Where Does the Buck Stop? A Navigation Guide for Products Liability Defendants

By Jeff C. Hsu and Patrick Gillespie

Imagine for a second that you are a retailer of household wares and you sell a desk lamp to a customer. After several uses, the light bulb unexpectedly explodes causing the customer injuries. The cause of the explosion is unknown, but your customer files a products liability lawsuit naming as defendants, the manufacturers of the lamp and light bulb, various component distributors, and you, the retailer of the lamp.

California imposes strict liability on all participants in the chain of distribution for a defective product based upon the theory that manufacturers and distributors should bear the cost of a defective product rather than the injured person who is powerless to protect themselves, see *Bostick v. Flex Equipment*, (2007) 147 Cal.App.4th 80, 88 (citing *Greenman v. Yuba Power Products*, (1963) 59 Cal.2d 57, 63, (*Greenman*); and *Vandermark v. Ford Motor*, (1964) 61 Cal.2d 256, 262-263); *Kaminski v. Western MacArthur* (1985) 175 Cal. App. 3d 445, 456. Consistent with this policy, downstream retailers and distributors have the right to seek indemnity against the manufacturer of the defective product. However,



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in reality, a retailer can find itself with the proverbial deck stacked against them, on the hook for potentially all of a plaintiff's damages and without real recourse against or contribution from the more culpable upstream distributors/manufacturers.

Going back to our hypothetical lamp explosion, let's assume that the lamp manufacturer reaches an early settlement with the plaintiff. How that settlement affects our retailer is complicated and requires analysis of two competing statutory frameworks: California's good faith settlement law, California Code of Civil Procedure Section 877.6, and

California's Proposition 51, rop. 51 is codified as *California Civil Code Section 1431.1-1431.5*.

California's good faith settlement law, CCP Section 877.6 encourages settlement by barring any other joint tortfeasors from any further claims for equitable comparative contribution, or partial or comparative indemnity against the settling tortfeasor. Assuming the manufacturer's settlement is deemed to be in good faith, the retailer will be without recourse against the manufacturer unless there exists some basis for contractual indemnity.

Now typically, if the plaintiff settled with the upstream manufacturer,

the non-settling retailer would be entitled to reduce the plaintiff's damages in the amount of consideration paid by the settling defendant, Code Civil Procedure Section 877(a); *Reed v. Wilson* (1999) 73 Cal. App. 4th 439, 443 (citing *Arbuthnot v. Relocation Realty Service* (1991) 227 Cal. App. 3rd 682, 687, and *Abbott Ford v. Superior Court* (1987) 43 Cal. 3rd 858, 873. But, that too can be partially foreclosed by California's Proposition 51.

In 1986, California voters passed Proposition 51, which modified the system of joint and several liability for damages in cases involving comparative fault, including some, but not all product liability cases. Prop. 51 divides the plaintiff's injuries into economic and noneconomic damages, defendants are jointly and severally liable for the plaintiff's economic damages, but only severally liable for noneconomic damages, see Civil Code Section 1431.2(a); *Romine v. Johnson Controls*, (2014) 224 Cal. App. 4th 990, 1011 (citing *DaFonte v. Up-Right*, (1992) 2 Cal. 4th 593, 600. Put another way, in cases where Proposition 51, applies, each defendant is solely responsible for his or her share of the noneconomic damages, and thus, a nonsettling defendant cannot reduce the plaintiff's claims for noneconomic damages, by any portion of the settlement attributable to noneconomic damages, *Espinoza v. Machonga* (1992) 9 Cal. App. 4th 268, 276. The importance of this point cannot be overstated in products

liability cases, as unfortunately, a plaintiff's noneconomic damages often exceed their economic damages, which means that the majority of settlement proceeds cannot be used for offset by non-settling defendants. With that said, courts have consistently held that Proposition 51 does not apply in strict products liability action when a single defective product produced a single injury to the plaintiff, see *Romine v. Johnson Controls*, (2014) 224 Cal. App. 4th 990, 1011; *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal. App. 4th 618, 633; *Bostick v. Flex Equipment*, (2007) 147 Cal. App. 4th 80, 92-93.

However, the analysis does not end here. The Second District Court of Appeal's decision in *Romine v. Johnson Controls* (2014) 224 Cal. App. 4th 990, expanded the scope of products liability cases in which Prop. 51 applies, beyond asbestos cases with divisible injuries. In *Romine*, the court found that Prop 51, applied to an automobile related product liability suit, involving multiple products, even though there was no evidence that the plaintiff's injuries were divisible for purposes of allocating noneconomic fault. Although the *Romine* decision has yet to be addressed by other District Courts of Appeal, it may create a race for defendants to be the first to settle, as the non-settling defendants are not entitled to offset the proceeds of settlement attributable to noneconomic damages, and provide a

plaintiff's counsel with a war chest to finance further litigation against any non-settling defendants.

Given the severe impact that Proposition 51 and the good-faith settlement law can have on a downstream products liability defendant, it is important that an early evaluation of whether or not Proposition 51 applies is made. Therefore, the retailer and any downstream defendant will want to thoroughly analyze the plaintiff's economic and noneconomic damages for potential impact on offset. Based on that evaluation, if noneconomic damages far exceed economic damages, the downstream defendant may want to evaluate if an early settlement is a viable option. Absent said consideration the lamp retailer or other downstream defendant, can find themselves in an unenviable position of having to litigate a case, without recourse against the upstream defendants who were best able to prevent the defect in the first place.

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