

WILSON TURNER KOSMO LLP

550 West "C" Street
Suite 1050
San Diego, CA 92101
Tel (619) 236-9600
Fax (619) 236-9669
www.wilsonturnerkosmo.com

California Products Liability Bulletin is published periodically by the law firm of Wilson Turner Kosmo LLP for the benefit and enjoyment of its clients and friends. While the information set forth in each article is accurate, every situation is unique in its facts and legal considerations. The information provided is intended to summarize recent developments, but not to provide legal advice. We, therefore, encourage the reader to contact legal counsel to ensure receipt of proper legal advice.

The Products Liability and Warranty Practice Group at Wilson Turner Kosmo LLP consists of trial lawyers with extensive experience representing manufacturers and sellers in products liability and warranty matters. The firm's experience includes representing manufacturers and retail sellers of automobiles, industrial equipment, hand tools, law and garden equipment, pharmaceutical products, medical devices and consumer goods in all aspects of complex litigation, including trial, arbitration and mediation.

PRODUCTS LIABILITY PRACTICE GROUP:

VICKIE E. TURNER
FREDERICK W. KOSMO, JR.
MERYL C. MANEKER
ROBERT A. SHIELDS
THERESA OSTERMAN STEVENSON
CHRISTIAN S. SCOTT
SOTERA L. ANDERSON
ROBERT C. RODRIGUEZ
HUBERT KIM

Component Parts Doctrine Defense Continues To Solidify

Recent California appellate court decisions have affirmed that component parts manufacturers cannot be successfully sued in this state for strict products liability simply because a finished product incorporates their component.

For example, in *Walton v. William Powell Company*, 183 Cal.App. 4th 1470 (April 22, 2010), the Second District Court of Appeal held that a manufacturer of valves used in a Navy carrier's propulsion system could not be held strictly liable for failure to warn or design defect caused by asbestos-containing parts used in the propulsion system where the injury-producing components of the system were not linked in the stream of commerce with the defendant component part manufacturer. The Court reasoned that a non-defective component part in an injury-causing shipboard propulsion or heating system was not, by itself, sufficient to trigger a duty to warn. Instead, the plaintiff must show that the component part manufacturer participated in the integration of the component into the design of the system. "[F]oreseeability alone does not warrant imposition of strict liability when ... the upshot of the imposition would be to require the component manufacturer to retain 'an expert in every finished product manufacturer's line of business and second-guess the finished product manufacturer whenever any of its employees received any information about any potential problem,'" the court said.

In *Flores v. Kaman Industrial Technologies Corp.*, 2010 Cal.App. Unpub. LEXIS 3454 (May 12, 2010), the Fifth District Court of Appeal issued an unpublished decision, affirming summary judgment in favor of a defendant component part manufacturer that had been sued for injuries sustained by a plaintiff using a conveyor belt system. Kaman supplied the motor and gearbox for the system, but plaintiff's hand was not caught in either of those components. Kaman did not participate in the design or assembly of the conveyor belt system. Further, there was no showing that Kaman's component part was defective. The court found that plaintiff failed to successfully counter Kaman's showing that plaintiff could not establish essential elements of his causes of action.

California Supreme Court Grants Review of Collateral Source Rule Affecting Medical Damages in Tort Cases

Briefs are currently being filed in the California Supreme Court to seek a final opinion on whether full charges for medical expenses should be payable to tort plaintiffs as damages even where those expenses have been partially paid by an insurer or written off by a provider.

In *Howell v. Hamilton Meats & Provisions, Inc.* (S179115), the Fourth Appellate District Court of Appeal reversed a trial court's order that reduced a jury's award of medical expenses to a plaintiff to the amounts actually collected by her medical providers, rather than permitting an award of an amount that was not expended for her medical services. In doing so, the Court of Appeal rejected and distinguished existing California authority, including *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635 and *Nishihama v. City and County of San Francisco* (2001) 93 Cal.App.4th 298. Instead, it concluded that the amount of medical expenses written off by plaintiff's medical providers should be awarded to her under the "collateral source rule." The collateral source rule applies when an injured party obtains payment for its medical expenses even if the injured party has already been compensated for these expenses by an independent source (i.e. an insurer). The Supreme Court granted review in March to determine, among other issues, whether the plaintiff's economic damages should be limited to the amount the medical provider accepts as payment. Hamilton Meats filed its opening brief in April, and Howell's brief is expected to be filed in June.

Supreme Court Adopts "Nerve Center" Test for Corporate Jurisdiction

Resolving a split between the Circuits, the U.S. Supreme Court recently held that a corporation's "principal place of business" for purposes of federal diversity jurisdiction is where its officers direct, control and coordinate the corporation's activities - typically where its corporate headquarters are located. In so doing, the Court rejected the Ninth Circuit's "substantial business activity" test in favor of the "nerve center" test. *Hertz Corp. v. Friend*, 130 S. Ct. 1181; 175 L. Ed. 2d 1029 (Feb. 23, 2010.)

Heightened Pleading Standard Being Applied

Trial courts throughout California are applying the heightened factual pleading standards of *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) to dismiss conclusory, nonspecific tort allegations by plaintiffs:

- **Southern District Dismisses Vitamin Class Action Complaint**

The U.S. District Court for the Southern District of California dismissed a class action complaint accusing Bayer Corp. of misrepresenting the cancer-preventing nature of its men's vitamin products.

Plaintiff filed a putative class action on behalf of all persons in the United States or, alternatively, all California residents, who since 2005 purchased the men's health vitamin products, alleging violations of California's Unfair Competition Law (CUL), Business & Professions Code § 17200; Consumers Legal Remedies Act (CLRA), and Civil Code § 1750.

Defendants moved to strike allegations in the Complaint that it claimed violated Plaintiff's duty under Fed. R. Civ. P. 11 to conduct a reasonable factual investigation. The Court granted Defendants' motion to strike, and then dismissed the Complaint, without prejudice, after finding it failed to meet the standard of factual pleading required by *Iqbal* and *Twombly*.

Providing guidance for Plaintiff on any further amendments, the Court noted that Plaintiff cannot expand the scope of his claims to include a product he did not purchase or advertisements relating to a product that he did not rely upon. The statutory standing requirements of the UCL and CLRA are narrowly prescribed and do not permit such generalized allegations. Plaintiff amended and another motion to dismiss the amended complaint is

currently before the Court. *Johns v. Bayer Corp. et al.*, 3:09-cv-01935 DMS(JMA) (S.D. Cal. Feb. 9, 2010).

- **It's Not Butter**

Similarly, in *Rosen v. Unilever United States, Inc.*, 2010 U.S. Dist LEXIS 43797 (May 3, 2010), the U.S. District Court for the Northern District of California dismissed an action alleging Unilever's advertising claim that "I Can't Believe It's Not Butter" is "made with a blend of nutritious oils" was untrue because the spread is made with partially hydrogenated oil, which it alleged has "widespread and debilitating" risks, such as coronary diseases, heart attacks, and even death. Unilever moved to dismiss, claiming that Rosen's Complaint was an attack on "nonactionable sales pitches" in the company's advertising. The court determined that the Complaint failed to meet the *Twombly* and heightened pleading standards, noting that "the court concludes that the illogical relationships Plaintiff draws between the nature of partially hydrogenated oil and the representations Defendant makes about the blend of oils renders Plaintiff's complaint implausible on its face."

No Post-Sale Duty To Warn

In a wrongful death action against the manufacturer of a propane heater, the Ninth Circuit Court of Appeals affirmed the District Court's entry of judgment for a defendant manufacturer on the grounds that there was no post-sale duty to warn of an already accounted for danger.

Plaintiff initiated the action on behalf of her husband and her father, who both died of carbon monoxide poisoning after using a Coleman heater inside a 25-foot camper during a hunting trip. Plaintiff argued that consumer claims of carbon monoxide poisoning from operating other Coleman model propane heaters in enclosed spaces gave Coleman a post-sale duty to warn of this risk for the product used by Plaintiff's family. The Ninth Circuit found that Plaintiff did not present evidence of a new and distinct danger which arose after the heater was originally sold. The danger of carbon monoxide poisoning was known to Coleman before the sale, and the heater was sold with warnings that, if followed, would prevent carbon monoxide poisoning. As such there was no post-sale duty to warn of a danger that was already accounted for in warnings given at the time of sale. *Daniel v. Coleman 2010 U.S. App. LEXIS 6289* (9th Cir.)

WILSON TURNER KOSMO LLP
LITIGATION AREAS:

➤ *Products Liability*

➤ *Pharmaceutical & Medical Devices*

➤ *Warranty*

➤ *Employment Law*

➤ *Contract Disputes*

➤ *Business Litigation*

➤ *First Amendment*

➤ *Class Actions*

➤ *Trade Secret*

➤ *Real Property*

➤ *Healthcare*

➤ *Libel*