



The Industrial Machinery and Tool Products Liability Case by John D. Rowell

The law applicable to industrial machinery and tool cases is the same as that applicable to cases involving consumer products. In fact, many of the cases in which the concepts of products liability law were first stated can be properly categorized as industrial machinery cases. In *Greenman v. Yuba Power Products* (1963) 59 Cal.2d 57, a power tool case, a unanimous Court established the basis for strict products liability in California. The leading case on defective design, *Barker v. Lull Engineering Co* (1978) 20 Cal.3d 413, involved a 17,000 lb high lift loader being operated on a construction site.

Although the applicable law is the same, in the industrial case you will find some major issues arise more frequently. This article will address the major issues which I have found pop up a lot when dealing with the industrial machinery and tool case. Some limited practical observations and advice is included and I also generated a list of reported decisions arranged by type of equipment for quick review. I have found this to be extremely helpful when analyzing new cases.

COMMON LEGAL ISSUES IN INDUSTRIAL MACHINERY AND TOOL CASES

A. Manufacturer

In this area, which can involve unique equipment put together for a specific plant, you will frequently run into fact patterns which raise the issue of what exactly qualifies as a manufacturer. Thankfully, California's definition is broad.

The uniqueness of a purchase order does not alter the manufacturer's responsibility and is not a defense. (*DeLeon v. Commercial Manufacturing & Supply Co.* (1983) 148 Cal.App.3d 336, 346-347.)

However, strict liability does not apply to isolated transactions, but rather to sellers "found to be in the business of manufacturing or selling." (*Price v. Shell Oil* (170) 2 Cal.3d 245, 254.) As a result, the one-time sale of a plastic extrusion machine does not bring the seller within the rule. (*Ortiz v. HPM Corp.* (1991) 234 Cal.App.3d 178.) On the other hand, a defendant who makes major modifications for resale will be considered a manufacturer. (*Green v. City of Los Angeles* (1974) 40 Cal.App.3d 819,

838 [failed gantry crane modified by reseller to increase capacity].)

A company which creates a product only for its own use does not place the product in the stream of commerce. Such a party is only an "occasional or casual" manufacturer with respect to the equipment and not liable. (*Shook v. Jacuzzi* (1976) 59 Cal.App.3d 978.) However, in the same decision, the Court held that an independent contractor, who allegedly participated in the design and manufacture of the wheel manufacturing machine, could be liable. On the other hand a product generally manufactured for sale to others does not lose its character just because the manufacturer uses it in its own facility without selling it. (*Douglas v. E & J Gallo Winery* (1977) 69 Cal.App.3d 103.)

B. Safety Devices

Machines may be defective because they lack safety devices. (*Garcia v. Halsett* (1970) 3 Cal.App.3d 319, 323 [washing machine not equipped with micro safety switch to shut off power when door opened]; *Balido v. Improved Machinery* (1972) 29 Cal.App.3d 633, 641 [plastic

Continued next page

injection molding press with safety devices inadequate to protect operator]; *Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413 [high lift loader, with a narrow base, lacked seat belts, an automatic locking device on the leveling lever].

Whether a machine is dangerous due to the lack of safety devices is normally a question of fact to be determined by the jury. (*Pike v. Frank G. Hough Co.* (1970) 2 Cal.3d 465.)

C. Location

In the industrial plant case, the location of equipment and its proximity to other equipment, is often a contributing factor to injury. A frequently overlooked theory of recovery under the strict products liability doctrine is location.

In *DeLeon v. Commercial Mfg. & Supply Co.* (1983) 148 Cal.App.3d 336, 340, the Court held that custom-made factory equipment which is safe for use in some locations was "defective" because in a particular location its use would bring the operators into contact with an adjacent rotating line shaft built and maintained by the plant owners. The accident happened as the operator stood on the conveyor belt to clean out a bin (both of which were designed and manufactured by the defendant). However, the location of the bin and belt placed the Cal Can employee directly under the line shaft. As she was trying to clean

out the bin she raised her arm and it was severed by the line shaft. The Court reasoned that evidence that the design of the equipment included the location and the evidence that the location exposed the operators to such risk would warrant imposition of liability. *DeLeon* was preceded by an unusual case which first identified location as an element of design defect. In *Hyman v. Gordon* (1973) 35 Cal.App.3d 769, a home builder was sued for damages when gasoline from an overturned can ignited a gas water heater. The theory was that the builder had located the heater in an area where a fire was likely to occur. Nonsuit was reversed. The Court explained that an article of machinery may function safely in one location, but not another. The *Hyman* Court extended the doctrine of strict products liability for design to cover defective location. *Hyman* spawned *Self v. General Motors Corp.* (1974) 42 Cal.App.3d 1, which applied the design location rule to automobile fuel tanks.

D. Enhanced Injuries

Machinery manufacturers may be subject to liability for enhancement of injuries caused by defects in their machines, even when the injury producing event is not due to any defect. The lack of an accessible emergency stop device is classic example of a design which is defective because it fails to take into consideration the fact that industrial accidents will occur and to

incorporate the means to minimize injuries. (See, *Barker v. Lull Engineering Co.*, *supra.*)

E. Who to Look for as Defendants

It has long been the rule that a seller of a machine it did not manufacture has a duty to see that the product is not in such condition that in its normal use it would be dangerous. (*Cunningham v. Coca-Cola Bottling Co.* (1948) 87 Cal.App.2d 106; *Vandermark v. Ford Motor Co.* (1964) 61 Cal.2d 256.)

However, sellers of second hand goods are not liable unless they did something in connection with the goods. (*Tauber-Arons Auctioneers Co. v. Superior Court* (1980) 101 Cal.App.3d 268, 282; *LaRosa v. Superior Court* (1981) 122 Cal.App.3d 741.) As a result, plant equipment which has been sold off will not expose the seller to liability, unless this was not a one-time sale. (*Ortiz v. HPM Corp.* (1991) 234 Cal.App.3d 178.)

Distributors and wholesalers may be liable. (*Canifax v. Hercules Powder Co.* (1965) 237 Cal.App.2d 44, 52; *Barth v. B. F. Goodrich Tire Co.* (1968) 265 Cal.App.2d 228, 251.)

In *Garcia v. Halsett* (1970) 3 Cal.App.3d 319, the Court declared that a licensor, like a manufacturer, retailer or lessor, is part of the marketing enterprise. The Court held that the operator of a launderette could be liable to the plaintiff customer as a licensee using the

Continued next page

machines with the operator's permission.

In *Kasel v. Remington Arms Co.* (1972) 24 Cal.App.3d 711, 727, the Court held a franchisor could be held liable, provided the franchisor had aided in placing the product (a defective shell) into the stream of commerce.

PRACTICAL POINTERS

The industrial products liability case will involve practical problems which do not normally arise in the context of other consumer products case, such as automobiles. In a consumer products case, the first order of business is to obtain the product at issue and compare it to an exemplar. In an industrial case this will be a difficult, if not impossible task. In many cases, the product is unique or has been made so. The cost of obtaining an end product is generally prohibitive so obtaining an exemplar is not possible. As a result, it will be important to take video of the equipment at its site, hopefully while in operation.

There will be advantages, however. Defense counsel is not likely to have much more knowledge about the product than you do. Ready access to percipient witnesses is more likely. If the injury occurs at a plant, it is much more likely that you will have a detailed government report. If the operation is unionized, accurate records of prior and subsequent injuries and incidents will be more available. Past victims will be much more likely to live in the area. Friendly

witnesses will be accessible and much more likely to talk to you. All live witnesses are more likely to live in the general area of the trial. Then there is the problem of experts. An industrial case requires a lot of time and effort be devoted to identifying, locating and recruiting the engineering experts you need. You will normally not have a group of experts available as you would in a consumer products case and you should immediately start looking.

INDUSTRIAL MACHINERY AND TOOL CASES BY TYPE OF EQUIPMENT

Abrasive and grinding devices and wheels:

Peterson v. Lamb Rubber Co. (1960) 54 Cal.2d 339, 5 Cal.Rptr. 863.

Aerial lifts:

Magnante v. Pettibone-Wood Mfg. Co. (1986) 183 Cal.App.3d 764, 228 Cal.Rptr. 420.

Back hoes:

Smith v. DHY-Dynamic Co. (1973) 31 Cal.App.3d 852, 107 Cal.Rptr. 907

Balers and compactors:

Martinez v. Nichols Conveyor & Engineering Co. (1966) 243 Cal.App.2d 795, 52 Cal.Rptr. 842

Boilers:

Pedroli v. Russell (1958) 157 Cal.App.2d 281, 320 P.2d 873

Bulldozers:

Darling v. Caterpillar Tractor Co. (1959) 171 Cal.App.2d 713, 341 P.2d 23

Circular saws:

McGoldrick v. Porter-Cable Tools (1973) 34 Cal.App.3d 885, 110 Cal.Rptr. 481

Cranes:

Henderson v. Harnischfeger Corp. (1974) 12 Cal.3d 663, 117 Cal.Rptr. 1, 527 P.2d 353

Brooks v. Allis-Chalmers Mfg. Co. (1958) 163 Cal.App.2d 410, 329 P.2d 575

Lewis v. American Hoist & Derrick Co. (1971) 20 Cal.App.3d 570, 97 Cal.Rptr. 798

Green v. Los Angeles (1974) 40 Cal.App.3d 819, 115 Cal.Rptr. 685

Southern California Edison Co. v. Harnischfeger Corp. (1981) 120 Cal.App.3d 842, 175 Cal.Rptr. 67.

Die-casting machines:

Robinson v. Reed-Prentice Corp. (9th Cir., 1961) 286 F.2d 478 (applying California law)

Drilling and boring machines:

Greenman v. Yuba Power Products, Inc. (1963) 59 Cal.2d 57, 27 Cal.Rptr. 697, 377 P.2d 897

Dockboard

Akers v. Kelley Co. (1985) 173 Cal.App.3d 633, 219 Cal.Rptr. 513.

Continued next page

Earth compactors and rollers:

Varas v. Barco Mfg. Co. (1962)
205 Cal.App.2d 246, 22 Cal.Rptr.
737

Earth graders:

McNeal v. Greenberg (1953) 40
Cal.2d 740, 255 P.2d 810

Earth movers and scrapers:

Henderson v. Harnischfeger Corp.
(1974) 12 Cal.3d 663, 117 Cal.Rptr.
1, 527 P.2d 353

Elevators:

Young v. Aeroil Products Co. (9th
Cir., 1957) 248 F.2d 185 (applying
California law)

Escalators:

*J.C. Penney Co. v. Westinghouse
Electric Corp.* (1963) 217
Cal.App.2d 834, 32 Cal.Rptr. 172

Feeders:

*DeLeon v. Commercial
Manufacturing & Supply Co.* (1983)
148 Cal.App.3d 336, 195 Cal.Rptr
867.

Forklift trucks:

Dimond v. Caterpillar Tractor Co.
(1976) 65 Cal.App.3d 173, 134
Cal.Rptr. 895
Persons v. Gerlinger Carrier Co. (9th
Cir., 1955) 227 F.2d 337 (applying
California and Oregon
law)

Furnaces, ovens, and dryers:

*Reynolds v. Natural Gas Equipment,
Inc.* (1960) 184 Cal.App.2d 724, 7
Cal.Rptr. 879
*Rowlings v. DM
Oliver, Inc.* (1979) 97 Cal.App.3d

890, 159 Cal.Rptr. 119.

Lathe:

*Greenman v. Yuba Power
Products, Inc.* (1963) 59 Cal.2d
57, 27 Cal.Rptr. 697.

Laundry machinery-washing machines:

Garcia v. Halsett (1970) 3
Cal.App.3d 319, 82 Cal.Rptr. 420
Thomas v. General Motors Corp.
(1970) 13 Cal.App.3d 81, 91
Cal.Rptr. 301 (disapproved on
other grounds *Cronin v. J.B.E.
Olson Corp.* (1972) 8 Cal.3d 121,
104 Cal.Rptr. 433 as stated in
Foglio v. Western Auto Supply
(1976) 56 Cal.App.3d 470, 128
Cal.Rptr. 545.)

Loaders and unloaders:

McNeal v. Greenberg (1953) 40
Cal.2d 740, 255 P.2d 810
Barker v. Lull Engineering Co.
(1978) 20 Cal.3d 413, 143
Cal.Rptr. 225, 573 P.2d 443.
Smith v. DHY-Dynamic Co. (1973)
31 Cal.App.3d 852, 107 Cal.Rptr.
907
Lunghi v. Clark Equipment Co.
(1984) 153 Cal.App.3d 485, 200
Cal.Rptr. 387.

Molding machines:

Wiese v. Rainville (1959) 173
Cal.App.2d 496, 343 P.2d 643
*Thompson v. Package Machinery
Co.* (1971) 22 Cal.App.3d 188, 99
Cal.Rptr. 281
Balido v. Improved Machinery, Inc.
(1972) 29 Cal.App.3d 633, 105
Cal.Rptr. 890 (disapproved
as to liability for defective design
in *Cronin v. J.B.E. Olson Corp.*
(1972) 8 Cal.3d 121, 104

Cal.Rptr. 433, 501 P.2d 1153 as
stated in *Foglio v. Western Auto
Supply* (1976) 56 Cal.App.3d
470, 128 Cal.Rptr. 545
Pollock v. Koehring Co. (9th Cir.,
1976) 540 F.2d 425 (applying
California law)
Wiese v. Rainville (1959) 173
Cal.AoD.2d 496. 343 P.2d 643

Paydozers:

Pike v. Frank G. Hough Co. (1970)
2 Cal.3d 465, 85 Cal.Rptr. 629, 467
P.2d 229

Planers:

*Tauber-Arom Auctioneers Co. v.
Superior Court of Los Angeles
County* (1980) 101 Cal.App.3d 268,
161 Cal.Rptr. 789

Power, punch and die presses:

*La Rosa v. Superior Court of Santa
Clara County* (1981) 122
Cal.App.3d 741, 176 Cal.Rptr.
224.
Wilkinson v. Hicks (1981) 126
Cal.App.3d 515, 179 Cal.Rptr. 5.

Regulators and valves:

Cracknell v. Fisher Governor Co.
(1967) 247 Cal.App.2d 857, 56
Cal.Rptr. 64

Sanding Machines:

Pisano v. American Leasing (1983)
146 Cal.App.3d 194, 194 Cal.Rptr.
77.

Sawing machinery:

*Greenman v. Yuba Power Products,
Inc.* (1963) 59 Cal.2d 57, 27 Cal.Rptr.

Continued next page

697. *Alvarez v. Felker Mfg. Co.*
(1964) 230 Cal.App.2d 987,41
Cal.Rptr. 514.

Vaporizers:

Yecny v. Eclipse Fuel Engineering Co. (1962) 210 Cal.App.2d 192, 26
Cal.Rptr. 402

Vending machines:

Cunningham v. Coca-Cola Bottling Co. (1948) 87 Cal.App.2d 106,198
P.2d 333

Textile machinery:

Aguayo v. Crompton & Knowles Corp. (1986) 183 Cal.App.3d 1032,
228 Cal.Rptr. 768

**Well and well-drilling
machinery:**

Titus v. Bethlehem Steel Corp. (1979)
91 Cal.App.3d 372, 154 Cal.Rptr.
122

John D. Rowell is a partner in the law firm Cheong, Denove, Rowell & Bennett.

John Rowell has been a pioneer in the field of consumer safety. He has represented clients in cases involving a wide array of products where the product design was unsafe such as airplanes, automobiles and tires.

www.CDRB-Law.com