A PRODUCT LIABILITY CLAIM BY ANY OTHER NAME REMAINS A PRODUCT LIABILITY CLAIM: CALIFORNIA COURTS SHOULD NOT PERMIT PLAINTIFFS TO RECAST PRODUCT LIABILITY CLAIMS IN THE TERMS OF FRAUD

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I. INTRODUCTION

California plaintiffs have routinely attempted to recast product liability causes of action in the terms of fraud. Some plaintiffs have done so to avoid the operation of the shorter statute of limitation that applies to product liability claims.1 Other plaintiffs have couched their product claims in the terms of fraud to increase their chances of recovering punitive damages. The end result is that California courts have been burdened by product liability cases masquerading as fraud lawsuits—lawsuits, which could have been disposed of at the initial stages of litigation but for the artful pleading of the plaintiff.

California courts faced with camouflaged product liability claims have taken two approaches to remedy the public policy problems created by such claims. Some courts have dismissed these claims on the grounds that the pleadings were insufficient to satisfy the specialized pleading requirements for fraud actions.2 Other courts have held that the particular claims were barred by the shorter statute of limitations for personal injury actions.3

A majority of California courts have attempted to preserve the state’s scarce judicial resources by dismissing product liability causes of action brought as fraud claims.4 A limited number of courts have thwarted these efforts and found exceptions to the two approaches taken by the majority.5

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4. Brown, 751 P.2d at 483; Rivas, 119 Cal. Rptr. 2d at 512-13; Clark, 100 Cal. Rptr. 2d. at 226 n. 2; Bennett, 65 Cal. Rptr. 2d at 83 n. 2; Goldrich, 31 Cal. Rptr. 2d at 168.


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defendant has made a substantive attack against a product claim recast in the terms of fraud, a minority of courts has held that alleged misrepresentations regarding product safety are sufficient to support the fraud cause of action.\(^6\) Where a defendant has launched a procedural attack against a product claim based on the running of the statute of limitations, a minority of courts has found that the claim relates to a separate and distinct wrong.\(^7\) Thus, the claim is subject to the longer statute of limitations for fraud causes of action.\(^8\)

Had the cases considered by the minority of courts related to dangerously defective products that had caused serious physical injuries, one might disagree with the rationale of those courts, but nonetheless applaud their decisions to let the fraud claims proceed. This has not been the case, however. Courts that have considered substantive attacks against product claims recast in the terms of fraud have dismissed a case involving defective breast implants that caused serious medical injury to the plaintiff, while allowing a case that involved minor injuries caused by a golf training device to stand.\(^9\) Similarly, courts that have considered statute of limitation attacks against product claims recast in the terms of fraud have reached varying results in cases that involved allegations of serious physical and emotional injuries. For instance, one court dismissed a toxic tort case involving claims of kidney failure;\(^10\) while another allowed a fraud claim to be maintained where a failed intrauterine contraceptive device (IUD) resulted in an unwanted pregnancy.\(^11\)

Although limited, those decisions recognizing exceptions to the disposal of product liability causes of action pleaded as fraud claims have created a significant problem for the product liability defendant. Notwithstanding the overwhelming weight of appellate authority dismissing such veiled fraud claims, a plaintiff who alleges that the defendant made misrepresentations regarding the safety of its product—or who casts his or her fraud claim as a separate and distinct wrong—is likely to survive a demurrer, motion for judgment on the pleadings or other pleading attack at the early stages of litigation.\(^12\) This is the case because, until the California Supreme Court resolves this conflict between the appellate courts, the trial courts are forced to acknowledge the exceptions established by the minority appellate courts.\(^13\)

This article is critical of the minority view in California that has allowed product liability claims recast in the terms of fraud to be advanced. This article advocates a uniform approach among the California courts whereby cloaked product liability claims are dismissed for lack of specificity, or, at a minimum, subjected to the two-year statute of limitation for personal injury actions.\(^14\) The article concludes that this is the most prudent approach for the California courts to take to prevent scarce judicial resources from being consumed by time-barred product liability lawsuits, or by lawsuits being advanced by plaintiffs who simply hope to hit the “punitive damages jackpot.”

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6. Hauter, 534 P.2d at 380-81; Continental Airlines, 264 Cal. Rptr. at 785.
7. E.g. Snow, 211 Cal. Rptr. at 280.
8. Id.
9. Compare Goldrich, 31 Cal. Rptr. 2d at 169 (dismissing a fraud claim relating to defective breast implants) with Hauter, 534 P.2d at 379 (allowing a fraud claim relating to golf-training equipment to stand).
11. Snow, 211 Cal. Rptr. at 278-79.
13. E.g. Auto Equity Sales, Inc. v. Super. Ct. (Hesenflow), 369 P.2d 937, 939-40 (Cal. 1962) (stating that under the doctrine of stare decisis, superior courts are bound to follow the decisions of the courts of appeal, even those from other districts).