

Frederick D. Baker
Partner, San Francisco, California

Appellate
 Pharmaceutical
 Medical Device Liability



Frederick D. Baker

415.781.7900 tel

415.781.2635 fax

frederick.baker@sedgwicklaw.com

Current Scope of Practice

Frederick D. Baker has practiced appellate law since 1983. He has briefed and argued 150 cases to the California Supreme Court and every district of the California Court of Appeal, as well as numerous federal circuit courts of appeals. He has tried four cases to verdict.

Mr. Baker has been appellate counsel for insurers, universities, manufacturers of a wide variety of products, retailers, utilities, builders, hotels, and a number of other private clients. He has been *amicus curiae* counsel representing the United States Chamber of Commerce, the Defense Research Institute, the American Insurance Association, the National Association of Manufacturers, the Chemical Manufacturers Association, and the American Petroleum Institute.

Litigation Matters

- *Terry McCann et al., Plaintiffs and Appellants v. Foster Wheeler LLC* (Cal. Supreme Ct. 2010) California Supreme Court adopts our client's view that product liability lawsuit should be governed by law of the state where the injury arose rather than by California law, reversing the Court of Appeal's contrary conclusion.
- *Prince v. Pacific Gas & Electric Co.*, (Cal. Supreme Ct. 2009) Reversed a published holding of the Court of Appeal, finding that the equitable indemnity principle that "there can be no indemnity without liability" applies to claims for implied contractual indemnity.
- *Oxford v. Foster Wheeler LLC*, 177 Cal.App.4th 700 (2009). Product installed on a Navy warship constitutes "military equipment" for purpose of government contractor defense.
- *Camenson v. Milgard Mfg. Corp.*, 2008 WL 2381904 (Cal. Ct. App. 2008). Product liability claims of plaintiffs representing putative class against manufacturer would not be certified for class treatment where plaintiffs failed to establish either that common issues of fact predominated or that class treatment was superior to individual actions.

- *Simonetta v. Viad Corp.*, 165 Wash.2d 341 (Wash. Supreme Ct. 2008); *Anderson v. Asbestos Corp.*, 2009 WL 2032332 (Wash. Ct. App. 2009). Product manufacturer not liable as a matter of law for allegedly defective component part manufactured by another which was attached to the product, even where such attachment was foreseeable.
- *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017 (9th Cir. 2008) Ninth Circuit affirms dismissal of class action complaint alleging defective design of an automobile engine. Held: Claims for violation of California's Unfair Competition Law, common law fraud, and breach of warranties fail because (1) the alleged defect did not manifest until after the warranty period had expired; (2) plaintiff was not in vertical privity with the manufacturer, and the recognized exceptions to this requirement did not apply; (3) the claims for fraud and UCL violations were barred by the statute of limitations, which was not tolled due to the pendency of a nationwide class action; and (4) the fraud claim further failed because plaintiffs failed to establish a *material* misrepresentation as a matter of law.
- *Durand v. SSA Terminals, LLC*, 2009 WL 321214 (Cal. Ct. App. 2009) Reversed jury decision that had awarded plaintiff \$905,000 in compensatory damages for terminating his employment without good cause, ruling that plaintiff was an at-will employee as a matter of law whose employment could be terminated with or without cause.
- *Jolly v. Eli Lilly & Co.*, 44 Cal.3d 1103 (Cal. Supreme Ct. 1988) Judgment in favor of pharmaceutical manufacturer on latent injury claims affirmed on statute of limitations grounds.
- *Nieves v. Dalkon Shield Claimants Trust*, No. H019758 (Cal. Ct. App. 1994) Affirmed summary judgment in favor of medical device manufacturer on grounds that plaintiff's expert's opinion failed to establish causation as a matter of law.
- *Norgart v. Upjohn Company*, 21 Cal.4th 383 (Cal. Supreme Ct. 1999) Plaintiffs' suspicion of wrongdoing starts statute of limitations running against all potential defendants.
- *Ritchey v. The Upjohn Company*, No. 94-15171 (9th Cir. 1998) Dismissal of product liability claim affirmed on statute of limitations grounds.
- *F. Hoffmann-La Roche v. Superior Court* (Wertheimer), 130 Cal.App. 4th 782 (Cal. Ct. App. 2005) Swiss parents of domestic corporations not subject to the jurisdiction of California courts.
- *Harral v. Surgitek*, No. D027649 (Cal. Ct. App. 1998) Affirmed summary judgment for breast implant manufacturer on statute of limitations grounds.
- *Lockheed Martin Corp. v. Superior Court*, No. S088458 (Cal. Supreme Ct. 2001) Representing *amicus curiae* in case addressing whether a class action may be certified for medical monitoring claims
- *Camargo v. Tjaarda Dairy*, No. S088032 (Cal. Supreme Ct. 2001) Representing *amicus curiae* in case addressing whether premises owner may be liable to employee of independent contractor on theory of negligent hiring.
- *Chavers v. Gatke Corp.*, No. A092551 (Cal. Ct. App. 2001) Representing asbestos products manufacturer in case addressing whether person not exposed to manufacturer's product can sue on theories of market share

and conspiracy.

- *Carlin v. Superior Court*, 15 Cal. 4th 1104 (Cal. Supreme Ct. 1996) Represented pharmaceutical manufacturer in case involving strict liability and failure to warn claims.
- *Dalton v. Logan Mfg. Corp.*, No. 93-15991 (9th Cir. 1995) Judgment in favor of manufacturer of all-terrain vehicle affirmed on grounds that vehicle's design did not cause plaintiff's injuries as a matter of law.
- *Dean v. Chrysler Corp.*, No. 93-3404 (5th Cir. 1995) Judgment in favor of automobile airbag manufacturer affirmed on ground that plaintiff failed to provide sufficient expert testimony on question of design defect.
- *Smith v. ACandS, Inc.*, 31 Cal.App.4th 77 (Cal. Ct. App. 1994) Judgment against premises owner in asbestos case reversed due to erroneously admitted plaintiffs' evidence, including unsupported expert testimony.
- *Goldrich v. Natural Y Surgical Specialties, Inc.*, 25 Cal.App.4th 772 (Cal. Ct. App. 1994) Summary judgment in product liability action affirmed on statute of limitations grounds against delayed discovery claim.
- *Ortega v. KMart Corp.*, No. S09188 (Cal. Supreme Ct. 2001) Representing retailer in case addressing whether injured customer must show storekeeper had constructive knowledge of transitory dangerous condition.
- *Jones v. KMart Corp.*, 17 Cal.4th 329 (Cal. Supreme Ct. 1998) A private shopkeeper is not a "state actor" for purposes of a civil rights claim brought by a wrongly-detained suspected shoplifter.
- *Ford v. Pacific Gas and Electric Company*, 60 Cal.App.4th 696 (Cal. Ct. App. 1997) Individual may not state a personal injury claim against a utility for exposure to EMF.
- *Law v. General Motors*, 114 F.3d 908 (9th Cir. 1997) State law tort claims against manufacturers of railroad locomotives are preempted by federal law.
- *Roache v. Burger King Corp.*, No. B1104496 (Cal. Ct. App. 1997) Judgment for restaurant upheld in wrongful death case involving claims of inadequate security.
- *Steele v. Collagen Corp.*, 54 Cal.App.4th 1474 (Cal. Ct. App. 1997) Federal law preempts state product liability law if conditions of federal approval are met.
- *Borem v. Exxon Corp.*, (Cal. Ct. App. 1996) Judgment in favor of oil refinery affirmed in case brought by employee of independent contractor alleging negligent control of the premises.
- *Markoff v. Pacific Gas and Electric Co.*, No. F017448 (Cal. Ct. App. 1994) Affirmed judgment for public utility, after trial in case alleging that negligent service caused house fire.
- *Privette v. Superior Court (Contreras)*, 5 Cal.4th 689 (Cal. Supreme Ct. 1993) Personal injury claim by employee of independent contractor barred by peculiar risk doctrine.
- *Smith v. Pust*, 19 Cal.App.4th 263 (Cal. Ct. App. 1993) Affirmed judgment for psychotherapist in claim brought by patient's husband.
- *Potter v. Firestone Tire & Rubber Co.*, 6 Cal.4th 965 (Cal. Supreme Ct. 1993) Represented *amicus curiae* in case

addressing various toxic exposure issues, including liability for fear of cancer and "increased risk."

- *Hort v. Sims*, No. 90-56067 (9th Cir. 1993) Judgment in favor of issuer of Directors and Officers Liability Policy affirmed in case involving enforcement of "insured versus insured" provisions.
- *Resolution Trust Corp. v. Fidelity and Deposit Co. of Maryland*, No. 90-56157 (9th Cir. 1992) Judgment in favor of issuer of financial institutions fidelity bond affirmed on grounds that bond provided no coverage as a matter of law.
- *World Trade Bank, N.A. v. Underwriters at Lloyd's, London*, No. B044739 (Cal. Ct. App. 1991) Judgment for insurer affirmed in case alleging bad faith denial of coverage for losses sustained by real estate syndicate.
- *California Union Ins. Co. v. American Diversified Savings Bank*, 948 F.2d 556 (9th Cir. 1991) Judgment in favor of insurer of financial institutions fidelity bond affirmed in case involving automatic termination provisions.
- *R.N.C., Inc. v. Tsegeletos*, 231 Cal.App.3d 967 (Cal. Ct. App. 1991) Judgment in commercial claim based upon an open-book account affirmed on statute of limitations grounds.
- *Jaw v. General Electric Co.*, No. A033261 (Cal. Ct. App. 1991) Judgment in favor of appliance manufacturer affirmed on grounds of failure to prosecute action.
- *Kanter v. Jaffe*, No. A032120 (Cal. Ct. App. 1990) Judgment for insurer, after jury trial, affirmed on grounds that life insurance application had never been properly completed, and thus there was no insuring contract.
- *Operating Engineers, etc. v. Weiss Bros. Construction*, 221 Cal.App.3d 867 (Cal. Ct. App. 1990) Judgment in favor of construction contractor affirmed on grounds that ERISA preempts state law breach of contract claim.
- *National Auto. and Cas. Ins. Co. v. Stewart*, 223 Cal.App.3d 452 (Cal. Ct. App. 1990) Judgment for insurer affirmed based upon construction of policy's "nonowned automobile" provisions.
- *Martinez v. Huerta*, No. A040502 (Cal. Ct. App. 1990) Judgment for manufacturer of commercial vehicle, after trial, affirmed on grounds that the alleged design defect did not cause the plaintiff's injuries as a matter of law.
- *Miller v. Bailey*, No. A035911 (Cal. Ct. App. 1990) Judgment for defendant, after bench trial, affirmed in case alleging breach of commercial real estate lease and fraud.
- *Morgan v. Westin St. Francis Hotel*, No. A043339 (Cal. Ct. App. 1990) Judgment in favor of hotel, after jury trial, affirmed in case brought by minor, severely injured by drug overdose, on theory that hotel should not have allowed her to register as a guest.

Affiliations, Activities and Accomplishments

Mr. Baker is admitted to practice in California (1983) and the District of Columbia (1985). He is a Fellow of the Litigation Counsel of America, an invitation-only honorary society of civil litigators. He is a contributor to Sedgwick's Appellate Strategist blog.

Education

Baker is a graduate of the University of San Francisco School of Law where he was granted his J.D. (1983). He received his B.A. (1973), with honors, from the College of Wooster.