Unique Challenges

Pre-Suit Claims Against Component Suppliers

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Practical steps that you can take to save your client unnecessary and unwanted expense.

A component supplier provides components or raw materials that a product manufacturer uses as part of a finished product. The components that these companies supply may become targets of consumer personal injury or property damage claims, or, more often, of indemnification claims from manufacturers of finished, completed products. Many states have adopted some variation of the component-part defense in the Restatement (Third) of Torts: Prod. Liab. §5 (1998). When you defend a component supplier you need to determine early on whether the component-part defense can provide a basis to avoid liability for design-defect or failure-to-warn claims given the particular facts of a case. This article addresses the component-part defense, the unique challenges involved in handling pre-suit product liability allegations against component suppliers, and the practical steps that you can take to assist clients in defense of these claims.

Background

A component supplier often becomes aware of a potential product defect late in the process, months or years after the supplier manufactured the component. Notice of a deviation from design specifications, product failures, or safety issues usually come from either another component supplier that installed the allegedly defective component, or by the manufacturer of the complete, finished product. In many cases, product defects are first discovered through warranty claims received by manufacturers of completed products after the completed products reach the hands of the consumer and suffer failure or, worse yet, after a series of events involving a product that lead to personal injury or property damage. The lag time between the manufacture of a component, its eventual installation in a finished, complete product, and discovery of a potential defect places a component supplier at a disadvantage when it comes to tracing the root cause of a problem and responding to a request for corrective action by the manufacturer of the finished, complete product. Unlike a component supplier, the manufacturer of a finished, complete product likely played some role in creating the overall design of the finished product and in incorporating your client's component into that

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product design. This knowledge offers a finished product manufacturer an advantage in attempting to understand which particular component or combination of components in a finished product caused reported failures or accidents. A finished product manufacturer also has access to warranty claims, field failure data, and customer complaints which permit the manufacturer to review the product's failure history globally. The component supplier has no access to this data. By the time that a complete, finished product manufacturer has investigated, has reached a preliminary conclusion that a defect in a component caused a reported problem, and has asked the component supplier to take corrective action, months or years may have passed since the supplier manufactured the component. This puts a component supplier behind the proverbial "eight ball" when defending itself.

A component supplier faces a major dilemma when responding to defect inquiries from a customer that manufactured a finished product using one of the supplier's components. A component supplier can, in an effort to maintain a business relationship, provide a customer with access to its manufacturing and quality-control data, issue some type of mea culpa, and agree to whatever corrective action the customer recommends. Alternatively, as this article suggests, a component supplier can take a tougher stance: an attorney, either behind the scenes or out front, can restrict or refuse to grant the customer access to manufacturing and quality-control information and company facilities, undertake an independent, root-cause analysis bringing a consulting expert into the mix, and review all communications with the finished product manufacturer concerning the issue, which, unless carefully drafted, could become fodder in future litigation.

While many less litigation-savvy component suppliers continue to try the first approach, more experienced component suppliers and their insurers now frequently retain outside product liability defense counsel early on and ask them to play active roles in managing pre-suit claims that could lead to product liability lawsuits. This sort of early intervention allows a component supplier to partner with a product liability attorney who understands the component-part defense and the negative impact at trial of taking inconsistent causation positions before and after a customer files a lawsuit, as well as of sending poorly worded e-mail communications, corrective action notices, and root cause analyses written to "please the customer" after a supplier first learns that its component may have caused some problems. These interventions can help a component supplier avoid many of the pitfalls that inevitably arise in the crucial period between when a potential problem with a component comes to light and when a component supplier's customer files a lawsuit. Involving an attorney during this crucial period may also provide a basis, in addition to the rarely upheld self-critical analysis privilege, to claim that the component supplier's investigation into the issue is privileged as attorney work product prepared in anticipation of litigation.

The Component-Part Defense

One of the first steps to take when handling a pre-suit product-defect claim against a component supplier is to determine whether your client can successfully rely on the component-part defense. The component-part defense generally shields manufacturers of defect-free component parts from liability for design-defect and failure-to-warn claims when their parts are incorporated into a finished product that the component supplier did not build or design.

The Restatement (Third) of Torts: Prod. Liab. §5 (1998) addresses the defense. It states as follows:

> §5. Liability Of Commercial Seller Or Distributor Of Product Components For Harm Caused By Products Into Which Components Are Integrated
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> One engaged in the business of selling or otherwise distributing product components who sells or distributes a component is subject to liability for harm to persons or property caused by a product into which the component is integrated if:
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> (a) the component is defective in itself, as defined in this Chapter, and the defect causes the harm; or
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> (b)(1) the seller or distributor of the component substantially participates in the integration of the component into the design of the product; and
>
> (b)(2) the integration of the component causes the product to be defective, as defined in this Chapter; and
>
> (b)(3) the defect in the product causes the harm.

Comment a to the Restatement explains the rationale for section 5 as follows:

> If the component is not itself defective, it would be unjust and inefficient to impose liability solely on the ground that the manufacturer of the integrated product utilizes the component in a manner that renders the integrated product defective. Imposing liability would require the component seller to scrutinize another's product which the component seller has no role in developing. This would require the component seller to develop sufficient sophistication to review the decisions of the business entity that is already charged with responsibility for the integrated product.

Comment e clarifies the parameters of the "substantial participation" described by section 5(b):

> When the component seller is substantially involved in the integration of the component into the design of the integrated product, the component seller is subject to liability when the integration results in a defective product and the defect causes harm to the plaintiff. Substantial participation can take various forms. The manufacturer or assembler of the integrated product may invite the component seller to design a component that will perform specifically as part of the integrated product or to assist in modifying the design of the integrated product to accept the seller's component. Or the component seller may play a substantial role in deciding which component best serves the requirements of the integrated product. When the component seller substantially participates in the design of the integrated product, it is fair and reasonable to hold the component seller responsible for harm caused by the defective, integrated product. *A component seller who simply designs a component to its buyer's specifications, and does not substantially participate in the integration of the component into the design of the product, is not liable within the meaning of Subsection (b). Moreover, providing mechanical or technical serv-*

> *ices or advice concerning a component part does not, by itself, constitute substantial participation that would subject the component supplier to liability.*

(Emphasis added.

Many courts nationwide have adopted some variation of the component-part defense. *In Re TMJ Implants Products Liability Litigation*, 872 F. Supp. 1019 (D. Minn.1995), *aff'd*, 97 F.3d 1050 (8th Cir. 1996) (applying Minnesota law); *Kealoha v. E.I. Du Pont de Nemours & Co.*, 844 F. Supp. 590 (D. Hawai'i 1994), *aff'd*, *Kealoha v. E.I. Du Pont de Nemours & Co., et al.*, 82 F.3d 894 (9th Cir. 1996) (applying Hawaii law); *Jacobs v. E.I. Du Pont de Nemours & Co.*, 67 F.3d 1219 (6th Cir. 1995) (applying Ohio law); *Apperson v. E.I. Du Pont de Nemours & Co.*, 41 F.3d 1103 (7th Cir. 1994) (applying Illinois law); *Crossfield v. Quality Control Equip. Co., Inc.*, 1 F.3d 701 (8th Cir. 1993) (applying Missouri law); *Childress v. Gresen Mfg. Co.*, 888 F.2d 45 (6th Cir. 1989) (applying Michigan law); *In Re Silicone Gel Breast Implants Products*, 996 F. Supp. 1110 (N.D. Ala. 1997); *Travelers Ins. Co. v. Chrysler Corp.*, 845 F. Supp. 1122 (M.D.N.C. 1994); *Sperry v. Bauermeister*, 786 F. Supp. 1512 (E.D. Mo. 1992); *Estate of Carey v. Hy-Temp Mfg., Inc.*, 702 F. Supp. 666 (N.D. Ill. 1988); *Orion Ins. Co., Ltd. v. United Tech. Corp.*, 502 F. Supp. 173 (E.D. Pa. 1980); *Artiglio v. General Electric Co.*, 61 Cal. App. 4th 830, 71 Cal. Rptr. 2d 817 (Cal. Ct. App. 1998); *Bond v. E.I. Du Pont de Nemours & Co.*, 868 P.2d 1114 (Colo. Ct. App. 1993); *Castaldo v. Pittsburgh-Des Moines Steel Co., Inc.*, 376 A.2d 88 (Del. 1977); *Murray v. Goodrich Eng'g Corp.*, 566 N.E.2d 631 (Mass. App. Ct. 1991); *Zaza v. Marquess & Nell, Inc.*, 675 A.2d 620 (N.J. 1996); *Parker v. E.I. Du Pont de Nemours & Co., Inc.*, 909 P.2d 1 (N.M. Ct. App. 1995); *Munger v. Heider Mfg. Corp.*, 90 A.D.2d 645, (N.Y. App. Div. 1982); *Hoyt v. Vitek, Inc.*, 894 P.2d 1225 (Or. Ct. App. 1995); *Moor v. Iowa Mfg. Co.*, 320 N.W.2d 927 (S.D. 1982); *Davis v. Dresser Indus., Inc.*, 800 S.W.2d 369 (Tex. App. 1990); *Bennett v. Span Indus., Inc.*, 628 S.W.2d 470 (Tex. App. 1982); *Westphal v. E.I. Du Pont de Nemours & Co.*, 531 N.W.2d 386 (WiS. Ct. App. 1995); *Noonan v. Texaco, Inc.*, 713 P.2d 160 (Wyo. 1986).

More experienced component suppliers and their insurers now frequently retain outside product liability defense counsel early on and ask them to play active roles in managing pre-suit claims.

Reviewing some of these cases reveals how courts generally apply the defense in real-world situations.

For example, in *Childress v. Gresen Mfg. Co.*, 888 F.2d 45, 48 (6th Cir. 1989), a case involving a hydraulic valve used in a log splitter, the Sixth Circuit, applying Michigan law, found that a component-part manufacturer did not have a duty to warn either the manufacturer or an end user about the possible harms in the final product. The plaintiffs claimed that the valve was defectively designed, not because it malfunctioned or deviated from its intended operation, but because when incorporated into the log splitter it caused the log splitter to function in an unreasonably dangerous manner. The plaintiffs also claimed that the valve was negligently supplied because the valve manufacturer knew or should have known that its incorporation into the log splitter would create an unreasonable risk of danger to a user of the log splitter. The court stated that

> there is a marked difference between knowing the identity of the equipment into which a component part will be integrated and anticipating any hazardous operation by that equipment that might be facilitated by the addition of the component part. Indeed, extending the duty to make a product safe to the manufacturer of a non-defective component part would be tantamount to charging a component part manufacturer with knowledge that is superior to that of the completed product manufacturer.

Id. at 49.

Similarly, in *Crossfield v. Quality Control Equipment Co.*, 1 F.3d 701 (6th Cir. 1993), a case involving a chain used as a component part in a cleaning machine, the court, applying Missouri law, held that raw material or component-part suppliers did not have duties to warn the ultimate consumer of the risks of other companies' finished products if the raw materials or components had multiple safe uses and were not inherently dangerous. *Id.* at 706. In *Crossfield*, a supplier sold a chain to a finished product manufacturer, which subsequently incorporated the chain into a chitterlings cleaning machine. Although the chain itself was not defective, a worker was severely injured when her hand was caught in the chain-sprocket mechanism of the machine. The court refused to hold the chain supplier liable, finding "the primary duty [to warn] was owed by the designer of the machine, not the supplier of only one component part, in itself a non-defective element." *Id.* at 704. The court reasoned that the dangerousness stemmed from the overall design of the chitterlings machine as a finished product and not from the chain alone as a mere component part. The court particularly emphasized the facts that "the chain, standing alone, is not an inherently dangerous product," and the chain supplier had no role in designing or building the finished product. *Id.* at 703–705.

And in *In re TMJ Implants Products Liability Litigation*, 97 F.3d 1050 (8th Cir. 1996), the Eighth Circuit found that a defendant was not liable when the defendant's product, a raw material used as a component of a dental implant for treating TMJ disorders, was "a mere building-block material suitable for many safe uses," and the finished product was unreasonably dangerous because the component part was unsuited for the use the finished product manufacturer chose. *See also Sperry v. Bauermeister, Inc.*, 4 F.3d 596, 598 (8th Cir. 1993) (affirming a summary judgment for a component airlock supplier when the part was "integrated into a larger [spice milling] system that the component part supplier did not design or build….").

The latest component-part defense battleground is in California in several pending asbestos cases. The issue is whether the component-part defense should protect manufacturers of shipboard pumps and valves that are not defective by themselves but when paired with asbestos-laden

insulation can cause injury to users. The plaintiffs argue that the manufacturers of the pumps and valves knew that insulation was required for their products and, therefore, should have warned of the risks associated with the insulation. The defendants, shipboard pump and valve manufacturers, argue that the components alone are not defective and that they should not be held responsible for the risks associated with attachments installed with the valves and pumps years after the valves and pumps were manufactured. California appellate courts have issued conflicting decisions on the issue, and the California Supreme Court is reviewing several of the cases.

One of the cases pending before the California Supreme Court is *O'Neil v. Crane Co.*, 99 Cal. Rptr. 3d 533 (Cal. Ct. App. 2009). In *O'Neill*, the plaintiffs, the widow and children of a naval officer who died of mesothelioma, sued the manufacturers of shipboard pumps and valves alleging that asbestos insulation used with those components caused the naval officer's injury. The trial court dismissed the claims under the component-part doctrine, but an appellate panel overturned the trial court's dismissal and said that the pump and valve makers could be liable for the officer's death. The appellate court found that the defendants did not supply a "building block" material, dangerous only when incorporated into a final product over which they had no control. Rather, they sold finished valves and pumps, which needed insulation of some kind and, therefore, the part manufacturers could be held liable for failure to warn that the asbestos-containing, insulation products used with the valves and pumps could cause injury.

The *O'Neill* decision conflicts with three other California appellate court decisions. In *Taylor v. Elliott Turbomachinery Co.*, 171 Cal. App. 4th 564 (Cal. Ct. App. 2009), California's First Appellate District found that pump and valve manufacturers were not liable as manufacturers of defect-free component parts of a greater whole, and they should not be held liable for harm caused by asbestos-containing replacement insulation products that were used with the pumps and valves and which actually caused the alleged harm.

Similarly, in *Merrill v. Leslie Controls Inc.*, 179 Cal. App. 4th 262, *modified*, 101 Cal. Rptr. 3d 614 (Cal. Ct. App. 2009), the court held that the fact that the

> use of asbestos-containing materials with Leslie Controls valves was foreseeable, and that Leslie Controls anticipated the use of such materials with its valves, does not alter this conclusion. The alleged foreseeability of the risk of the finished product is irrelevant to determining the liability of the component part manufacturer because imposing such a duty would force the supplier 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 problems. Foreseeability alone is not sufficient to justify the imposition of a duty to warn on the manufacturer of a component part.

Id. at 627 (citing *Artiglio v. General Electric*, 61 Cal. 4th 830, 838–39 (Cal. Ct. App. 1998), and *Taylor*, 171 Cal. App. 4th at 586).

And in a 2010 case, *Walton v. The William Powell Company*, 183 Cal. App. 4th 1470 (Cal. Ct. App. 2010), California's Second Appellate District unanimously held that a valve manufacturer was not responsible for asbestos-containing replacement parts manufactured or supplied by other companies that had been installed on its valves many years after the sale of the original valves. The court held that the plaintiffs were not entitled to recover on strict liability, negligent failure-to-warn, and design-defect theories.

It will be interesting to see how the California Supreme Court resolves this dispute.

Practical Steps to Protect a Client

So what do you need to do to protect your component-supplier client? Below you will find some practical recommendations that fall under six broad categories of tasks that you will want to complete when your client first receives a pre-suit claim involving its component: (1) hold an early meeting with your client; (2) retain and work with a consulting expert; (3) become involved in responding to a request for corrective action or a factory audit; (4) preserve evidence; (5) identify insurance coverage and tender opportunities; an (6) when expedient, settle a claim before your client's customer files a lawsuit.

Pursue an Early Client Meeting

When a product-manufacturer customer indicates that a component supplied by your client may have a defect or may have caused the customer's product to malfunction, that customer is usually way ahead of your client in terms of its knowledge of the claimed defect or product failure. The customer probably will have already investigated the issue and developed theories about root causes of the claimed defect or failure. For these reasons, you would do a huge disservice to a client if you do not aggressively and promptly undertake an investigation into the issue under the mistaken assumption that you will have ample time to investigate if the product manufacturer, your client's customer, does eventually file a lawsuit. You must use the time available to you wisely *before* your client's customer files a lawsuit. You must get to know your client and its product so that you can effectively handle the issues that arise before a lawsuit is filed and prepare a consistent defense theme that you can rely on should litigation result.

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As with any product liability case, you need to become an expert on whatever product you may end up defending. This means that you must meet with your client and visit the client's factory early in the process. It is important to answer the following questions: Who are all the key players? Whose names appear on the component design drawings? Who has knowledge about the component manufacturing and quality-control processes? Who was the liaison with the customer? Depending on the nature of the defect, you may need to interview all of these people. You must become knowledgeable about the entire design history of the component including

all revisions made to it. You will need access to the design drawings as well as to all initial specifications that the customer may have provided to your client. To analyze whether your client can escape liability under the component-part doctrine, you must determine whether your client played a significant role in integrating the component into the finished product. Questions to ask include the following: Who provided the initial design specifications for the component? Did the finished product manufacturer provide access to an exemplar product? What role, if any, did your client play in integrating the component into the final product? If the component underwent approval by Underwriters Laboratories (UL) or one of the other testing or standards agencies, you should review the UL submission with the employee who was responsible for the submission.

Retaining a consulting expert can help you decide whether you should mount a defense to a case or you should resolve it as soon as possible before litigation ensues and the costs of settlement increase.

Retain and Work with a Consulting Expert

Clients are often reluctant to retain an expert before a customer files a lawsuit. This can be a costly mistake. Retaining a consulting expert early can assist you and your client to take a fresh and objective look at a problem, to develop protocols for exemplar testing, to analyze root causes, to review the product's design and manufacturing processes and history, and, in general, to develop a consistent and scientifically supportable defense that you can use both before and during litigation. Retaining a consulting expert can help you decide whether you should mount a defense to a case or you should resolve it as soon as possible before litigation ensues and the costs of settlement increase.

Don't be unduly concerned that an opponent will use the potentially adverse opinions of a consulting expert against your client should litigation ensue. Under Federal Rule of Civil Procedure 26(b)(4)(B) it is very difficult to gain access to the work of a consulting expert:

> A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

Fed. R. Civ. P. 26(b)(4)(B).

The rule is designed to prevent one party from taking advantage of the other party's investigative work. Under Federal Rule 26(b)(4)(B), a party may discover facts known or opinions held by such an expert only if the party seeking to discover them establishes that it labors under exceptional circumstances that make it impracticable for that party to obtain facts or opinions on the same subject by other means. *See Notes of the Advisory Committee ('70)*; *see also*, *e.g.*, *USM v. American*, 631 F.2d 420 (6th Cir. 1980) (defendant could not discover letter written by expert informally consulted but not retained by plaintiff).

Become Involved in Responding to a Request for Corrective Action or a Factory Audit

A finished product manufacturer can request that a client take corrective action in many forms. A request can arrive informally by e-mail or during a telephone call to a component supplier's sales representative as a seemingly simple request for data. It can also arrive in a more formal format such as a "Request for Corrective Action" or as a "Request for Root Cause Analysis." No matter the form, in essence, these are pre-lawsuit requests for information by a finished product manufacturer to a supplier to explain a supposed defect in a component, how the defect occurred, and what corrective action the supplier will take. The "stick" used to gain compliance is often threatening to halt production or purchasing components until the issue is resolved or threatening to take business elsewhere in the future. Although a component manufacturer will want to keep its customer happy, you need to advise your client of the importance of carefully drafting responses to such requests and that you need to know about these types of requests as soon as the requests are received. While a component supplier could simply refuse to provide information to a customer in the face of a potential claim, in the real world, either because of contractual obligations or based on economics, a component supplier will often have no choice but to respond in some fashion. You can play a potentially pivotal substantive and economically beneficial role in this regard.

Component suppliers lacking significant litigation experience often believe that by responding to corrective action notices in a manner that they believe will please clients, problems will go away quickly and business can proceed as usual. All too often component suppliers fail to undertake their own root cause analyses, fearing that they will upset customers if they challenge the customers' conclusions. But frequently a hastily prepared, "please the customer" response to a corrective action request will not resolve the issue and instead, the response will become exhibit number one in building a case against a component supplier. Your first goal when facing resistance from a client is to educate the client on the pitfalls. Find an opportunity to review all requests for information related to a client's allegedly defective component part, and work with the client to prepare a response that meets the client's business goals without compromising your ability to defend the client in potential future litigation. You want to prevent your client from making potentially damaging admissions in e-mails or in other communications that may create significant challenges that you may have to overcome if a customer does sue your client after all.

The only way that you can effectively prevent your client from making potentially harmful admissions is to pursue an

early and aggressive investigation into the problem, and when appropriate, bring a consulting expert into the fold as soon as possible. This will place you and your client in a position to properly address any requests for information, root causes analyses, and corrective action notices. By determining independently and early on whether a client's component part potentially does pose a problem and what causes the problem, you will become best positioned to challenge a client's natural instinct to keep the customer happy by prematurely signing off on a corrective action notice or a root cause analysis prepared by the customer that places responsibility for a defect solely at the feet of your client. Having independently derived root-cause information permits a client to knowledgeably deal with a customer from a position of strength, educating the customer about other potential causes of a problem that may have nothing to do with your client's component at all.

A finished product manufacturer with a potential product defect may also ask to visit a client's factory to audit the client's manufacturing and quality-control processes. This type of factory audit often occurs before a supplier-purchaser relationship begins when a component supplier is pitching the business and must provide a potential customer with access to its manufacturing facilities to show that it is equipped to manufacture and ship the component that a customer wants. A factory audit takes on a different urgency and requires different handling when a client faces a potential claim. When you meet initially with your client, you must stress that the client notify you of all requests for factory audits/inspections so that you can guide a client to reject a request if the supplier-customer agreement does not provide for such inspections or, alternatively, place some controls on an inspection. Again, your goal is to try to strike a balance between your client's business goals and the realities of potential future litigation.

Preserve Evidence

If you have not done so already, when you initially meet with a client, instruct your client to preserve relevant evidence so that your client can avoid a spoliation claim later. Depending on how much experience a component supplier has, you may need to explain the type of evidence that your client should preserve including the need to preserve electronic evidence. You can also play a useful role in drafting or reviewing litigation hold documents to ensure that a litigation hold covers all relevant material and that your client distributes it to all employees who may possess relevant information.

Identify Insurance Coverage and Tender Opportunities

Sometimes when an attorney is retained to represent a seller of a particular component part, although the seller designed the part, a subsidiary or another party may have manufactured it. Whatever the particular facts, at the earliest stage possible it is imperative that you investigate and place on notice all potentially involved parties, as well as all primary and excess insurance carriers that may have coverage obligations for a claim. These parties should also receive notice when scheduled evidence inspections will take place. This is especially important in product liability cases involving fires or other situations in which you only have a limited amount of time to conduct a scene inspection before the property will be repaired and the evidence lost. Failing to promptly notify all involved parties and their insurance carriers can result in lost tender opportunities or a carrier denying insurance coverage because it received late notice. Making such a misstep obviously can severely damage your client.

Settle a Claim Before a Client's Customer Files a Lawsuit

Nothing in this article should be construed to mean that a component part is never responsible for a defect or malfunction in a finished product. Sometimes claims that component parts made finished products defective or malfunction are valid. The same counseling practices that will assist you if you defend your client in future litigation will also identify a valid claim early enough to increase the potential for resolving it cost-effectively and without litigation.

Nonetheless, you should proceed cautiously when drafting a settlement agreement and release before a client's customer actually sues your client. Given that these cases frequently involve third-party claims by parties all along the manufacturing chain or direct claims by end users, as part of a settlement, you may want to seek some type of defense, indemnification, and hold-harmless agreement to protect a client. If a releasing manufacturer refuses to provide such protection, you will need to caution your client that the release does not protect the client from third-party or end-user claims, and in the future other parties may assert claims. Failing to warn a client could result in an unpleasant surprise for the client.

Conclusion

Component suppliers face unique challenges handling pre-suit product liability claims, but they also have special protections under the law. By taking some or all of the steps discussed in this article, you can work to protect a client, position the client well for a strong defense if litigation ensues, and hopefully save the client unnecessary and unwanted expense. FD