

THE ABSENCE OF FACT ALLEGATIONS IN NON-PARTY AT FAULT NOTICE IS NOT FATAL IF DEFENDANT'S DISCLOSURE STATEMENTS REVEAL FACTUAL BASIS FOR NON-PARTY AT FAULT

January 24, 2013 | Law Alerts

Bowen Productions, Inc. v. Superior Ct.
Ct. Appeals, Division One, January 24, 2013

Authored by the [JSH Appellate Team](#)

"E&S" was the subcontractor for the design and installation of a sound system for a planetarium. E&S in turn contracted with defendant Bowen and an E&S subsidiary named Spitz to work on the project. E&S installed the dome and Bowen installed the audio system. E&S sued Bowen alleging that Bowen's installers damaged the dome. Bowen's initial disclosure statement listed an expert witness and attached his report attributing fault to Spitz. Bowen then named Spitz a non-party at fault, but did not go into the facts underlying that designation. Bowen's supplemental disclosure statements identified additional expert witnesses and reports against Spitz. The trial court struck E&S's non-party at fault notice for failing to present facts supporting Spitz's fault. The court of appeals reversed, holding the notice valid as a matter of law. The nonparty at fault notice must be read together with a party's timely disclosures, and a notice may be considered sufficient when the disclosures reveal the factual basis for the nonparty's alleged fault. The Court cautioned, however, that a party cannot salvage a defective notice by serving a last-minute disclosure: "If the timing of disclosure prevents meaningful notice for long enough to cause prejudice, the court retains jurisdiction to strike a notice of nonparty at fault."