April 11, 2008

Johnson v American Standard

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Products liability; Sophisticated user defense

In this case, the California Supreme Court addresses the "sophisticated user" doctrine and defense to negate a manufacturer's duty to warn of a product's potential danger when the plaintiff has or should have had advance knowledge of the product's inherent hazards.

Plaintiff was a trained and certified heating, ventilation, and air conditioning (HVAC) technician. He received substantial training and passed a five part exam to achieve EPA "universal" certification, the highest credential given by the EPA. Universally trained technicians include within their skills brazing (welding) and part replacement.

Large air conditioning units use R-22, a hydrochlorofluorocarbon refrigerant. When exposed to heat, it can decompose into phosgene gas which is the cause of numerous health problems. The dangers and risks of this substance are included in the material safety data sheets (MSDS) accompanying the product. Employers are required to train employees about MSDS's and how to protect themselves from these materials.

Inn 2002, Plaintiff brazed refrigerant lines on an evaporator defendant manufactured in 1965 that contained R-22 refrigerant, exposing himself to phosgene gas. He developed pulmonary fibrosis. He sued defendant for an alleged failure to warn of the potential hazards of R-22.

Defendant moved for summary judgment on the basis it had no duty to warn because it did not manufacture the refrigerant and because it could assume that trained professionals like the plaintiff were aware of the risks. The trial court granted the motion and the Appellate Court affirmed, holding that a manufacturer cannot be liable to a sophisticated user of its product for failure to warn of a risk, if a sophisticated user reasonably should know of that risk.

Manufacturers have a duty to warn consumers about the hazards inherent in their product. (*Anderson v Owens-Corning Fiberglass Corp*. (1991) 53 Cal. 3d 987). Conversely, when a sufficient warning is given, the seller may reasonably assume that it will be read and heeded, and a product bearing such a warning, which is safe for use if it is followed, is not in defective condition, nor is it unreasonably dangerous. (Restatement 2d Torts, section 402A)

The sophisticated user defense *exempts* manufacturers from their typical obligation to provide product users with warnings about the products' potential hazards. (*In re Asbestos Cases* (1982) 543 F. Supp. 1142) The defense is considered an exception to the manufacturer's general duty to warn consumers, and if successful, acts as an affirmative defense to negate the manufacturer's duty to warn.

Under the sophisticated user defense, sophisticated users need not be warned about the dangers of which they are already aware or should be aware. This is because the user's knowledge of the dangers is the equivalent of prior notice. The defense evolved out of the Restatement Second of Torts section 388 and the obvious danger rule, an accepted principle and defense in California. (*Stevens v Parke, Davis & Co.* (1973) 9 Cal. 3d 51)

Section 388 relieves the manufacturer of the duty to warn, especially when the user is a professional who should be aware of the characteristics of the product. (*Strong v E. I. DuPont de Nemours Co., Inc.* (1981) 667 F. 2d 682) California law also recognizes the obvious danger rule which provides that there is no need to warn of known risks under either a negligence or strict liability theory. (*Bjorquez v House of Toys, Inc.*(1976) 62 Cal. App. 3d 930)

Accordingly, the Supreme Court finds that a manufacturer is not liable to a sophisticated user of its product for failure to warn of a risk, harm, or danger, if the sophisticated user knew or should have known of that risk, harm, or danger. The defense is applicable to both negligence and strict liability causes of action. The obvious danger rule is an objective test and the courts do not inquire into the user's subjective knowledge in such a case. In other words, even if a user was truly unaware of a product's hazards, that fact is irrelevant if the danger was objectively obvious.

Thus, under the defense, the inquiry focuses on whether the plaintiff knew or should have known, of the particular risk of harm from the product. The question is whether the danger in question was **so generally known within the trade or profession** that a manufacturer should not have been expected to provide a specific warning to the group to which plaintiff belonged.

The relevant time for determining user sophistication for purposes of this exception to a manufacturer's duty to warn is when the sophisticated user is injured and knew or should have known of the risk. (See *Crook v Kaneb Pipe Line Operating Partnership* (2000) 231 F. 3d 1098) Knowledge of the risk is measured from the time of the plaintiff's injury, rather than from the date the product was manufactured.

The sophisticated user defense applies in California and defeats all of the causes of action brought for defendant's alleged failure to warn. The evidence is clear that HVAC technicians knew or should have known of the dangers of R-22 heat exposure. The judgment is affirmed.

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