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## California Supreme Court Adopts "Sophisticated User" Doctrine In Product Liability Failure To Warn Cases

On April 3, 2008, the California Supreme Court issued its decision in *William Keith Johnson v. American Standard, Inc. et al.*, No. S139184, and adopted the "sophisticated user" doctrine as a defense to negate a manufacturer's duty to warn of a product's potential danger when the plaintiff has (or should have) advance knowledge of the product's inherent hazards. The Court held that "the defense is specifically applied to plaintiffs who knew or should have known of the product's hazards, and it acts as an exception to manufacturers' general duty to warn consumers." Significantly, the Court adopted a broad application of the "sophisticated user" defense and held that it applies to both negligence and strict liability causes of action.

### Factual And Procedural Background

The plaintiff in the *Johnson* case was a trained and certified heating, ventilation and air conditioning (HVAC) technician who sued various chemical and equipment manufacturers and suppliers in Los Angeles County Superior Court for bodily injury he allegedly suffered as a result of exposure to hydrofluorocarbon refrigerant (R-22 refrigerant) and phosgene gas. Phosgene gas may cause various health problems and the undisputed facts were that manufacturers and HVAC technicians have generally known of the dangers this exposure could cause since as early as 1931. Moreover, it was undisputed that under federal law HVAC technicians must be certified by the EPA with universal certification, which is granted after an exam, and that most technicians have some kind of professional training.

Defendant moved for summary judgment on grounds that it had no duty to warn about the potential hazards of R-22 because it could assume that the group of trained professionals to which plaintiff belonged, and plaintiff himself, were aware of those risks. The court granted defendant's motion for summary judgment and the Appellate Court affirmed.

### The California Supreme Court's Opinion

On appeal to the California Supreme Court, the court characterized the applicability of the "sophisticated user" doctrine as a matter of first impression. The Court first explained that, "[u]nder the sophisticated user defense, sophisticated users need not be warned about dangers of which they are already aware or should be aware." The Court recognized that "[b]ecause these sophisticated users are charged with knowing the particular product's dangers, the failure to warn about those dangers is not the legal cause of any harm that product may cause." The failure to warn about already known risks to a sophisticated purchaser "usually is not a proximate cause of harm resulting from those risks suffered by the buyer's employees or downstream purchasers."

In surveying prior case law, the court noted that "no California court had squarely adopted the [sophisticated user] doctrine." Rather, the sophisticated user doctrine had been addressed in two 1982 decisions: (1) a California Appellate Court decision, *Fierro v. International Harvester Co.*, 127 Cal.App.3d 862 (1982); and (2) a Northern District of California decision, *In re Related Asbestos Cases*, 543 F. Supp. 1142 (N.D.Cal. 1982). In 1982, the Northern District of California took note of the *Fierro* decision and predicted that the California Supreme Court would adopt the sophisticated user defense. However, the sophisticated user doctrine largely disappeared from the legal landscape in California for the next 20 years, with the exception of drug and pharmaceutical cases.

The Court noted that the sophisticated user defense evolved out of Section 388 of the Restatement Second of Torts, which provides that a supplier of goods is liable for physical harm the goods cause if the supplier knows, or should have known, the items are likely to be dangerous, fails to reasonably warn of the dangers, and "has no reason to believe that those

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for whose use the chattel is supplied will realize its dangerous condition.” The Court adopted comment k to Section 388, entitled “When warning of defects unnecessary,” and held:

“[Comment k] declares that although the condition may be one that only specialists would perceive, the supplier is only required to inform the users of the risk if the manufacturer has ‘no reason to believe that those who use it will have such special experience as will enable them to perceive the danger[.]’”

The Court recognized that comment k and the sophisticated user doctrine were consistent with the “obvious danger” rule, which was already recognized as a defense under California law.

### **The Sophisticated User Doctrine Is Consistent With California Public Policy**

Recognizing that not all warnings promote user safety, the California Supreme Court found that requiring manufacturers to warn their products’ users in all instances would not only place an onerous burden on them, but it would “‘invite mass consumer disregard and ultimate contempt for the warning process.’” The sophisticated user defense promotes consumer safety because “it helps ensure that warnings will be heeded.” Moreover, the court reiterated, “[a]lthough manufacturers are responsible for products that contain dangers of which the public is unaware, they are not insurers, even under strict liability, for the mistakes or carelessness of consumers who should know of the dangers involved.”

### **The Contours Of The Sophisticated User Defense**

Under California law, the sophisticated user defense applies in products liability, duty to warn cases as follows:

- ♦ Applicable to both negligence and strict liability causes of action;
- ♦ Objective standard based on whether the user “knew, or should have known, of the

particular risk of harm from the product giving rise to the injury;”

- ♦ The relevant time for determining user sophistication is when the user is injured, rather than the date the product was manufactured.

The *Johnson* Court’s opinion is clear that an alleged lack of actual knowledge regarding the risk involved is not sufficient to defeat the sophisticated user defense where there is undisputed evidence the user could reasonably be expected to know of the hazard.

#### ***ABOUT THE AUTHORS***

Laura S. McKay and David C. Butman are attorneys in Locke Lord Bissell & Liddell LLP’s Litigation Department. Laura concentrates her practice in complex insurance litigation, including matters involving asbestos and mass torts. David represents insurers and reinsurers in complex commercial disputes, and he is coordinating counsel for an asbestos fiber supplier in products liability lawsuits pending nationwide.