

Calif. Supreme Court adopts "sophisticated user" defense

Pesticide and Toxic Chemical News
Monday April 14 2008

The Supreme Court of California has adopted the "sophisticated user" defense to negate a manufacturer's duty to warn of a product's potential danger. In *Johnson v. American Standard*, the court ruled April 4 that in cases where a plaintiff has or should have knowledge of a product's inherent dangers, this knowledge acts an exception to a manufacturer's duty to warn of the potential dangers associated with the product's use.

The plaintiff, William Johnson, was allegedly exposed to a decomposition product of a hydrochlorofluorocarbon refrigerant called R-22. When exposed to heat, R-22 decomposes into phosgene gas, which causes numerous health-related problems, including the pulmonary fibrosis suffered by Johnson. Johnson alleges he was exposed to phosgene gas while welding refrigerant lines on an evaporator manufactured by American Standard.

Johnson filed suit against American Standard under theories of negligence, strict liability and breach of implied warranty of merchantability. As the court pointed out, each of Johnson's causes of action rested upon the premise that the manufacturer, American Standard, had a duty to warn him of the inherent dangers of exposure to phosgene gas. American Standard alleged it had no duty to warn about the risks of R-22 exposure to trained professionals, such as Johnson, because it could assume that such professionals were knowledgeable of the risks associated with exposure to R-22 or its decomposition product, phosgene gas. Essentially, American Standard asserted the sophisticated user defense.

In its opinion, the Supreme Court of California acknowledged that California's state courts had not "squarely adopted the sophisticated user defense." To determine whether the defense should be applied in California to strict liability and negligence failure to warn cases, the court began by examining its underlying principles.

The court acknowledged that as a general proposition, manufacturers have a duty to warn consumers about the hazards inherent in their products. Further, the court acknowledged that manufacturers who fail to warn are strictly liable under California law.

Next, the court evaluated the obvious danger rule, which is generally recognized in California, because the sophisticated user defense is derived from it. The court deemed the obvious danger rule to mean that "if the manufacturer reasonably believes the user will know or should know about a given product's risk, the manufacturer need not warn that user of that risk."

Looking to the obvious danger rule, the court outlined which users are deemed to know or should know about a product's hazards. The court stated, "individuals who represent that they are trained or are members of a sophisticated group of users are saying to the world that they possess the level of knowledge and skill associated with that class. If they do not actually possess that knowledge and skill, that fact should not give rise to liability on the part of the manufacturer."

The court further explained that there may exist users who are actually unaware of the dangers. However, a user's subjective awareness or knowledge does not translate into liability for a manufacturer because of their failure to warn. Rather, the threshold determination rests upon whether a danger is objectively obvious to the user. In such instance, the manufacturer is not liable to the user for failure to warn of a product's risks.

"It is a common-sense standard," M.C. Sungaila, a partner in the law firm of Horvitz & Levy, told Pesticide & Toxic Chemical News, noting the court's adoption of the objective standard to determine when a consumer is deemed a sophisticated user thereby exempting a manufacturer from its duty to warn of a product's inherent dangers. Attorneys for the plaintiff did not return PTCN's calls requesting comment.

The court stated that California's adoption of the sophisticated user defense was a natural outgrowth to the obvious danger rule. Like the obvious danger rule, a user is deemed "sophisticated" when he or she knows or should know of the hazards associated with a product. In such instances, manufacturers are exempt from liability because "sophisticated users need not be warned about risks of which they are already aware or should be aware." Moreover, the court held that just as the obvious danger rule applies to both negligence and strict liability causes of action, so too should the sophisticated user defense.

In the instant case, the court asserted that Johnson constituted a sophisticated user because he knew or should have known of the hazards associated with phosgene gas since he was a trained heating, ventilation and air conditioning technician.

The court also noted that manufacturers and HVAC technicians have generally known the dangers of phosgene gas since 1931. Furthermore, the dangers of R-22 were regularly provided for on Material Safety Data Sheets (MSDS), which Johnson also received in the course of his work.

Johnson alleged that while he read the MSDS for R-22, he did not understand that he should avoid heating it. The court found this allegation unpersuasive, particularly in light of the observations of the Court of Appeals, which indicated that the MSDS for R-22 informed technicians that the product can decompose when in contact with heat, releasing toxic gases.

Specifically, the court looked at the Court of Appeals' conclusion that there is undisputed evidence HVAC technicians could reasonably be expected to know of the

hazard of brazing refrigerant lines. The Court of Appeals found this undisputed evidence from the relevant declarations and depositions of HVAC technicians who testified that EPA requires them to understand not only the properties of refrigerants, but also the decomposition products of refrigerants, including decomposition products resulting from exposure to high temperatures.

Noting the public policy element behind adoption of the sophisticated user defense, the court stated, "[n]ot all warnings . . . promote user safety. Requiring manufacturers to warn their products' users in all instances would place an onerous burden on them and would invite mass consumer disregard and ultimate contempt for the warning process." The court concluded that the sophisticated user defense "fits into this understanding of the role of warnings" by "ensuring that warnings will be heeded."

— Shawna Bligh

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