

3242 NEGLIGENCE: DUTY OF MANUFACTURER (SUPPLIER) TO WARN

A manufacturer (supplier) of a product has a duty to exercise ordinary care to warn of dangers which he or she knows, or should know, are associated with the proper use of the product. This duty exists whether or not the product was properly designed. “Proper use” means a use which is intended by the manufacturer (supplier). In addition, a manufacturer (supplier) has the duty to warn of dangers inherent in a use not intended by the manufacturer (supplier) if such unintended use is reasonably foreseeable by the manufacturer (supplier).

However, a manufacturer (supplier) does not have a duty to warn about dangers that are known to the user, or are obvious to or readily discoverable by potential users, or are so commonly known that it can reasonably be assumed that users will be familiar with them. Additionally, the manufacturer does not have to warn about dangers associated with unforeseeable misuses of the product.

COMMENT

This instruction and comment were revised by the Committee in 1982. The comment was updated in 2010 and 2020. The 2020 revision updated case law citations.

Strahlendorf v. Walgreen Co., 16 Wis.2d 421, 114 N.W.2d 326 (1962); Smith v. Atco Co., 6 Wis.2d 371, 94 N.W.2d 697 (1959); Ryan v. Zweck-Wollenberg Co., 266 Wis. 630, 64 N.W.2d 226 (1954); Galst v. American Ladder Co., 165 Wis. 307, 162 N.W. 319 (1917); Hasbrouck v. Armour & Co., 139 Wis. 357, 121 N.W. 157 (1909); Restatement, Second, Torts §§ 388, 389, 392, 394 (1965); Prosser, Law of Torts § 96, pp. 646-50 (4th Ed. 1971).

Before a seller can be held responsible for failure to warn, he or she must have actual or constructive notice of the dangers of the product. Strahlendorf, *supra*.

Negligence: Duty of Manufacturer (Supplier) to Warn. A failure to warn is not an affirmative act of negligence. Thus, a supplier of a chattel who has failed to warn of its danger has committed an act of omission, not commission. See Tatera v. FMC Corp., 2010 WI 90, ¶ 30, 328 Wis.2d 320, 786 N.W.2d 810.

The duty to warn runs to all whom the supplier or manufacturer should expect to use the chattel or be endangered by its use. This includes purchasers, users, consumers, and handlers of the product. Restatement, Second, Torts § 388, Comment a (1965).

See also Wis JI-Civil 3262 for strict liability for failure to warn.