

**3262 STRICT LIABILITY: DUTY OF MANUFACTURER (SUPPLIER) TO WARN
(FOR ACTIONS COMMENCED BEFORE FEBRUARY 1, 2011)**

A manufacturer (supplier) of a product must provide warnings concerning any dangerous condition of the product or any danger connected with its proper use of which he or she knows or should know. "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 was 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 originally published in 1971 and revised by the Committee in 1982. The title was updated in 2011. The comment was updated in 2014. For a comparison of how 2011 Wisconsin Act 2 changed common law products liability, see Wis JI-Civil 3260.1.

Schuh v. Fox River Tractor Co., 63 Wis.2d 728, 213 N.W.2d 279 (1974); Kozlowski v. John E. Smith's Sons Co., 87 Wis.2d 882, 275 N.W.2d 915 (1979); Shawver v. Roberts Corp., 90 Wis.2d 672, 686, 280 N.W.2d 266 (1979); Wisconsin Elec. Power Co. v. Zallea Bros. Inc., 606 F.2d 697 (7th Cir. 1979); Restatement, Second, Torts § 402A, Comments h, j, and k (1965); Crane v. Sears Roebuck & Co., 218 Cal. App.2d 855, 32 Cal. Rptr. 754, 757 (1963); 13 A.L.R.3d 1057, 1078-80 (1967).

The failure to give a warning when required by the above instruction constitutes the product "defective" and unreasonably dangerous even though it is faultlessly made and, therefore, within the strict liability rule. Restatement, Second, Torts § 402A, Comments j and k (1965).

The Wisconsin Supreme Court has recognized that "foreseeable use is a requirement for a case in strict liability in tort, just as it is in negligence or warranty cases." Schuh, supra at 742 (citing 2 Frumer, Products Liability, Scope of Liability, pp. 3-297 to 3-301, § 16A(4)(d)).

A manufacturer or supplier of a product is only obligated to warn of dangers that are known or reasonably foreseeable and anticipated. Restatement, Second, Torts § 402A, Comment j (1965); Wisconsin Elec. Power Co. v. Zallea Bros. Inc., 606 F.2d 697 (7th Cir. 1979).

In Kozlowski, supra at 899, the court said the existence of a hidden as opposed to an obvious defect is properly a jury question.

A manufacturer is not obligated to warn of the danger inherent in a product that has been altered or modified by the user. Shawver v. Roberts Corp., supra.