Legal Opinion Letter

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CALIFORNIA HIGH COURT ADOPTS "SOPHISTICATED USER" LIABILITY DEFENSE

by
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Earlier this month in *Johnson v. American Standard, Inc.*, 2008 WL 878933 (Cal. Apr. 3, 2008), the California Supreme Court unanimously held that a manufacturer is not liable to a sophisticated user of its product for failing to warn of dangers about which the sophisticated user knew or should have known. In recognizing the so-called "sophisticated user doctrine," California applied sound and reasoned principles that limit manufacturers' liability for failure to warn.

The* Johnson *Decision. In *Johnson*, plaintiff William Johnson alleged that he had been injured by phosgene gas created during the ordinary maintenance and repair of a commercial air conditioning system. Plaintiff sued American Standard, Inc., the manufacturer of a component used in the system. The crux of each cause of action was that American Standard failed to adequately warn that harmful phosgene gases could be created should workers braze the refrigerant lines during service.

The trial court granted summary judgment for American Standard on two grounds. First, that American Standard had no duty to warn about injuries caused by the refrigerant, because it was another company's product. Second, that under the sophisticated user doctrine, American Standard had no duty to warn because it reasonably could expect Plaintiff – a certified HVAC technician with years of training and experience – to have been aware of the phosgene gas danger.

The Court of Appeals affirmed summary judgment for American Standard on the second ground. *See Johnson v. American Standard*, 133 Cal. App. 4th 496 (2005). After holding that the sophisticated user doctrine was part of California law, the court concluded that Plaintiff's evidence – consisting of declarations from himself and three coworkers stating that they personally did not know phosgene gas could cause lung damage – "did not create a triable issue of fact on whether American Standard could reasonably expect that the HVAC technicians would know the risk." *Id.* at 506.

In affirming the Court of Appeals' judgment, the Supreme Court recognized that while no California court had expressly adopted the sophisticated user doctrine, it was not necessarily creating "new" California law. To the contrary, the *Johnson* Court recognized that, to some extent, the sophisticated user doctrine has long been a part of California law. The Supreme Court noted that it already had adopted Section 388 of the Restatement (Second) of Torts, which provides that a supplier of goods is liable for injuries caused by those goods only where it "has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition." *See Stevens v. Parke, Davis & Co.*, 9 Cal.3d 51, 64 (1973). The Court also noted that California follows the "obvious danger rule," which provides that manufacturers need not warn of known risks. *See e.g. Bojorquez v. House of Toys, Inc.*, 62 Cal.App.3d

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930 (1976) (no need to warn of dangers associated with slingshots); *Fierro v. International Harvester Co.*, 127 Cal.App.3d 862, 866 (1982) (no duty to warn that gasoline is volatile).

Finding the sophisticated user doctrine the "natural outgrowth" of the Restatement and obvious danger rule, the *Johnson* Court held 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." 2008 WL 878933 at *8. The Court then noted several unique aspects of the rule in California.

First, the Court made clear that the standard is an objective one that focuses on what users knew or should have known, rather than a subjective standard that focuses on what a particular sophisticated user actually knew. Perhaps anticipating future arguments, the Court explained that the doctrine would apply even if particular sophisticated users fell short of the standards of their profession, perhaps because they "misread their training manuals, failed to study the information in those manuals, or simply forgotten what they were taught." *Id.*

Second, the Court stated that the doctrine applies to failure-to-warn claims couched in both negligence and strict liability causes of action. In fact, the *Johnson* Court entered judgment for American Standard on Plaintiff's causes of action for negligence, strict liability, design defect and breach of warranty, because the "theory" upon which each cause of action was predicated was failure-to-warn regardless of the nominal causes of action in the complaint. *Id.* at *9.

Third, the Court stated that user sophistication is determined at the time of the alleged injury, not the date the product was manufactured. *Id.* at *10. This provides some additional protection from liability in circumstances where a safety issue is discovered after a product becomes available, but publicity about the identified issue should put sophisticated users on notice of it.

Future Development of the Doctrine. While the *Johnson* Court affirmed the Court of Appeals decision, and cited the Restatement with approval, the rule applied by the *Johnson* Court is that manufacturers are not liable "if the sophisticated user knew or should have known of [the] risk, harm, or danger." It also affirmed judgment for American Standard because "defendant presented undisputed evidence that HVAC technicians could reasonably be expected to know of the hazard of brazing refrigerant lines." *Id.* at *8.

It is interesting to note that by contrast, the Court of Appeals, applying the Restatement's articulation of the doctrine, affirmed judgment for American Standard because Plaintiff's evidence "[did] not create a triable issue of fact on whether American Standard could reasonably expect that the HVAC technicians would know the risk." *See* 133 Cal.App.4th at 506. In other words, the Supreme Court's decision focused on what the *user* knew or should have known given industry standards and training, while the Court of Appeals' decision and Restatement focused on what the *manufacturer* had reason to believe.

Because the California Supreme Court cited the Restatement with approval even as it set forth its own standard, manufacturers arguably have two ways to assert the defense: Defendants can argue that summary judgment should be granted where the sophisticated *user* knew or should have known of the potential danger (the Supreme Court standard) or where the *manufacturer* had a reasonable basis for believing the sophisticated users knew of the potential danger, even if, for whatever reason, they did not (the Court of Appeals and Restatement standard).

Conclusion. *Johnson* provides helpful guidance for manufacturers in failure to warn cases, and recognized appropriate limits on the duty to warn. Products made for a particular industry or used by those with training should carry warnings necessary to inform users about unknown hazards. But warnings need not be written as if that heightened level of experience does not exist, and liability should not result where one careless user fails to live up to the expertise of his or her profession. The decision is a significant victory for product manufacturers, and sets out a standard amenable to application by way of summary judgment motion.

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