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### Court Limits Reach Of Sophisticated User Defense: Intermediary's Sophistication Does Not Per Se Eliminate Product Supplier's Duty To Warn Intermediary's Employee Or Servant

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In California, as in other states, the sophisticated user defense acts as an exception to a manufacturer's general duty to provide users of its product with appropriate warnings. *Johnson v. American Standard, Inc.*, 43 Cal. 4th 56 (2008). In *Johnson*, the California Supreme Court held that a manufacturer is not liable for an injury allegedly caused by its failure to warn when a plaintiff, by reason of his/her status or training, knew or should have known of a particular hazard. In essence, based on the obviousness of the danger to the plaintiff, the failure to warn is not considered a proximate cause of the injury.

In *Pfeifer v. John Crane, Inc.*, \_\_\_ Cal. App.4th \_\_\_, (B232315, October 29, 2013), a California Court of Appeal addressed an issue not decided in *Johnson*. To what extent may a defendant assert the sophisticated user defense against employees or servants of a "sophisticated user intermediary" who purchased the defendant's goods? The court held a plaintiff's employment or servant relationship with a sophisticated intermediary does not, in and of itself, eliminate a defendant's duty to warn. Instead, the supplier must also show that the existence of the relationship between the intermediary and the plaintiff provided it sufficient reason to believe that the employee or servant knows, or should know, of the product's hazards.

Plaintiffs alleged that William Pfeifer's ("Pfeifer") exposure to John Crane, Inc.'s ("JCI") asbestos-containing gaskets and packing was a substantial factor causing his mesothelioma. Pfeifer was exposed to such products during his service in the Navy between 1963 and 1971 and when he worked for the U.S. government as a civil boiler technician between 1971 and 1982. The evidence presented at trial established, in part, that: (1) JCI supplied gaskets and packing to the Navy; (2) Pfeifer removed JCI's products, sometimes utilizing techniques that created dusty conditions; (3) JCI did not provide warnings regarding its products while Pfeifer served in the Navy; (4) Pfeifer had no training or knowledge regarding the dangers of asbestos; (5) medical researchers agreed asbestos caused cancer by the 1960's; (6) the Navy had a medical staff with access to research on asbestos; (7) studies of Navy workers in the 1940's, 1960's and 1970's disclosed "some hazards" from asbestos dust; and that (8) in the early 1970's the Navy began an asbestos abatement program aimed at containing dust from asbestos insulation.

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JCI argued it was not liable for its failure to warn Pfeifer regarding the hazards of asbestos because the Navy had greater knowledge of those hazards than JCI. It requested jury instructions stating that a manufacturer has no duty to warn a sophisticated user or its employees of the potential hazards of its product and that the employees of a sophisticated user are “deemed” to be sophisticated users. The trial court rejected the proposed instructions and directed a verdict on the defense because, in its view, the instructions did not accurately state the defense and, even if properly stated, there was insufficient evidence to support it. The jury returned verdicts in favor of the Pfeifers on their claims for strict liability, negligence and loss of consortium. Judgment was entered awarding damages in excess of \$21 million.

On appeal, JCI argued that the trial judge erred in refusing to provide the requested instructions and directing a verdict on the defense. The appellate court affirmed, noting that the critical inquiry in determining whether the sophisticated user defense applies is the knowledge, or potential knowledge, of the employee or servant rather than that of the intermediary. Accordingly, an intermediary’s sophistication is not a sufficient reason to infer, as a matter of law, that it will use its knowledge to warn or otherwise protect its employee or servant.

The court further held that, in order to avoid liability, a product supplier must demonstrate that there was reason to believe that the intermediary’s sophistication would likely result in it protecting its employee or servant, or made it likely that the ultimate user would discover the product’s potential hazards in some other manner. This additional showing can be made by offering evidence that the supplier reasonably believed that the intermediary would warn the user (via actual and justifiable reliance); that the user knew or should have known of the dangers of a product (in light of the user’s training or experience, rendering both the intermediary and employee/servant sophisticated users); or that the “specific dangers” at issue were so “readily known and apparent” to the intermediary that it would be expected to protect the end user.

Despite acknowledging that the Navy may have been a sophisticated intermediary that was negligent regarding the dangers of JCI’s products, the court found that the evidence did not support application of the defense. There was no evidence indicating that JCI had reason to believe the Navy would issue warnings to Pfeifer regarding his work with JCI’s products. There was also no evidence that it was “readily known and apparent” to the Navy that the amounts of dust released from JCI’s products were hazardous. In fact, the court noted that Navy studies available during Pfeifer’s service classified JCI’s gaskets and packing as “nondusty.” As such, the defense did not apply and JCI had a duty to warn.

*Pfeifer* is the first California state appellate decision explicitly holding that a sophisticated intermediary’s knowledge of a product’s hazards may be imputed, in some circumstances, to an intermediary’s employee or servant for purposes of shielding a defendant from liability for failure to warn. Notwithstanding, the court determined that JCI was not entitled to the defense under the facts of this case because the Navy’s sophistication regarding asbestos did not, in the court’s view, extend to hazards specifically associated with work it deemed “nondusty.” The court made this finding even though it acknowledged evidence indicating the Navy was negligent in apparently not learning of those hazards. As such, in lieu of evidence showing it provided warnings to an intermediary, defendants seeking to employ the sophisticated user defense must present facts at trial demonstrating an intermediary’s knowledge of a product’s potential hazards under the specific working conditions allegedly encountered by the plaintiff. A sophisticated user intermediary who utilizes a product in its day to day operations may, in fact, be in the best position to learn of and evaluate these hazards.



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