Limiting Manufacturers' Duty to Warn: The Sophisticated User and Purchaser Doctrines

By Mary-Christine (M.C.) Sungaila and Kevin C. Mayer

THE coffee cup says "Caution: Contents may be hot." The ladder decal says "Danger: Do not stand on top platform. You may fall." The baseball bat wrapper says "Warning: This bat should not be used for any purpose other than hitting a baseball."

We tend to roll our eyes at such precautionary information. After all, who needs to be "warned" about such obvious hazards or potential misuses? Because the appropriateness of a warning largely depends on whether product risks are open and obvious to product users, the question of what hazards are "known or knowable" is often the critical dispute in product liability litigation.

In April 2008, California joined 28 other states when it unanimously adopted the "sophisticated user" doctrine in failure to warn cases.[1] The doctrine negates a manufacturer's duty to warn of a potential danger posed by a product where the plaintiff (or present user) has, or should have had, advance knowledge of a product's inherent hazards.

Here, we explain the contours of the sophisticated user doctrine in California and other jurisdictions, as well as the sophisticated purchaser doctrine which is likely to extend from it. We also provide practical tips—including a sample jury instruction—on raising the doctrines in the trial court.

A. The Recently-Adopted Sophisticated User Doctrine in California

William Keith Johnson was a trained and U.S. EPA certified heating, ventilation, and air conditioning (HVAC) technician.

[1] *See infra* Appendix A, listing exemplary cases from jurisdictions other than California that also have adopted the doctrine.

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He claimed that various commercial refrigerant manufacturers and distributors and HVAC equipment manufacturers should have warned him that brazing an air conditioner evaporator containing residual refrigerant would create harmful phosgene gas, a danger of which he claimed to be ignorant. The Court of Appeal affirmed the grant of summary judgment in favor of defendants on the ground they had no duty to warn of a danger generally known or reasonably expected to be known by members of Johnson's profession, who were specifically trained about such dangers.

In *Johnson v. American Standard, Inc*.,[2] the California Supreme Court affirmed the summary judgment, and explicitly adopted the sophisticated user doctrine as an outgrowth of the "obvious and known danger" rule.[3]

The Supreme Court held the sophisticated user doctrine applies equally to negligence and strict liability failure-to-warn claims, and that the focus should be on "whether the plaintiff knew, or should have known, of the particular risk of harm from the product giving rise to the injury."[4] The court acknowledged that, under this standard, "there will be some users who were actually unaware of the dangers. However, the same could be said of the currently accepted obvious danger rule; obvious dangers are obvious to most, but are not obvious to absolutely everyone." Additionally, a sophisticated user's knowledge of the risk should be measured "from the time of the plaintiff's injury, rather than from the date the product was manufactured."[5]

The court reasoned that public policy favored adoption of the defense because it discouraged "overwarning" and therefore "help[ed] ensure that warnings will be heeded."[6] By not requiring manufacturers or sellers to warn about obvious dangers, the court thereby avoided the

> social cost of "overwarning," . . . in the diversion of limited user attention to warnings that are perceived as verbose, irrelevant false alarms . . . [t]he [resulting] increased competition for user attention would come at the expense of those truly necessary warnings about hidden dangers that, if read and heeded, have the potential to motivate a change in the user's safety-related behavior.[7]

B. The Sophisticated User Doctrine and The Trained Professional

Courts in other jurisdictions have found members of numerous professions to have special knowledge of hazards sufficient to preclude the duty to warn, including: electricians, electronics technicians, beauticians, carpenters, plumbers, painters, crewmembers of a barge with tanks used for chemical products, mechanics, forklift

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[2] Johnson v. American Standard, Inc., 179 P.3d 905 (Cal. 2008).

[3] *See infra* Appendix B, listing jurisdictions in addition to California which have embraced the obvious danger rule.

[4] *Johnson,* 179 P.3d at 915.

[5] *Id*. at 916.

[6] *Id.* at 914.

[7] Hildy Bowbeer & David S. Killoran, Liriano v. Hobart Corp.: Obvious Dangers, the Duty to Warn of Safer Alternatives, and the Heeding Presumption, 65 BROOK. L. REV. 717, 740-41 (1999); *see also* 3 AM. L. PROD. LIAB., *Warnings Liability* § 32:57, at 144 (3d ed. 2008) ("Warning of an obvious or generally known risk in most instances will not provide an effective additional measure of safety. Furthermore, warnings that deal with obvious or generally known risks may be ignored by users and consumers and may diminish the significance of warnings about nonobvious, not-generally-known risks. Thus, requiring warnings of obvious or generally known risks could reduce the efficacy of warnings generally"); Aaron Gershonowitz, The Strict Liability Duty to Warn, 44 WASH. & LEE L. REV. 71, 99 (1987) ("Most courts agree that if a danger is so well known that a warning would probably have no impact, there is no duty to warn").

operators, and a certified HVAC technician like plaintiff in *Johnson*.[8]

Indeed, the sophisticated user doctrine applies with particular force to plaintiffs who are trained professionals.

> Under traditional failure-to-warn doctrine, if more than one category of users and consumers is foreseeably likely to use or consume the product, then the duty owed to the particular plaintiff will be judged by the category of users or consumers into which the plaintiff falls. If the plaintiff is an expert, no duty to warn may be owed him even if such duties are owed to non-expert users or consumers.[9]

One treatise has put it this way:

> The effect on the duty to warn arising from the sophistication or special knowledge of the user is especially significant when the user is a professional who should be aware of the characteristics of the product. An experienced professional, employed for the very purpose of handling the . . . [product] in question, is more likely than an ordinary consumer to have the requisite knowledge of the specific risks."[10] Implicit in this analysis is a policy judgment that a professional, when faced with a risk commonly encountered in his profession, will be in the best position to determine how to respond to these risks and adjust his behavior accordingly.[11]

Thus, in assessing whether a warning is required, many courts — as did the California Supreme Court in *Johnson* — look to the general or common knowledge that may be attributed to members of plaintiff's profession.[12]

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[8] Rosebrock v. Gen. Elec. Co., 140 N.E. 571, 574-75 (N.Y. 1923) (electrician); Bigness v. Powell Elecs., Inc., 619 N.Y.S.2d 905, 906(App. Div. 1994) (electronics technician); McDaniel v. Williams, 257 N.Y.S.2d 702(App. Div. 1965) (beauticians); Borowicz v. Chicago Mastic Co., 367 F.2d 751, 757-58 (7th Cir. 1966) (carpenter); Ducote v. Liberty Mut. Ins. Co., 451 So. 2d 1211, 1213, 1215 (La. Ct. App. 1984) (carpenter); Collins v. Ridge Tool Co., 520 F.2d 591, 596 (7th Cir. 1975) (plumber); Antcliff v. State Employees Credit Union, 327 N.W.2d 814, 821 (Mich. 1982) (painter); Martinez v. Dixie Carriers, Inc., 529 F.2d 457, 463-67 (5th Cir. 1976) (barge crew members (applying Texas law)); Bavuso v. Caterpillar Indus., Inc., 563 N.E.2d 198, 201-02 (Mass. 1990) (forklift operator); Baltus v. Weaver Div. of Kidde & Co. 557 N.E.2d 580, 588 (Ill. App. Ct. 1990) (mechanic); Broadie v. Gen. Motors Corp., 628 N.Y.S.2d 403, 404(App. Div. 1995) (mechanic); Eyster v. Borg-Warner Corp., 206 S.E.2d 668, 670, 671 (Ga. Ct. App. 1974) ("As the specific danger of the aluminum-copper connection was one commonly known to those in the trade, there was no duty on the manufacturer to warn of this hazard"; "[T]he danger of an aluminum-copper connection was common knowledge to those generally engaged in the installation of heating and air conditioning units. Accordingly, the manufacturer was not required to warn against this widely known risk").

[9] James A. Henderson Jr. & Aaron D. Twerski, Doctrinal Collapse in Products Liability: The Empty Shell of Failure to Warn, 65 N.Y.U. L. REV. 265, 283 (1990) (footnote omitted).

[10] 3 AM. L. PROD. LIAB., *Warnings Liability* § 32:70, at 170-71 (footnote omitted).

[11] *Cf.* Priebe v. Nelson, 140 P.3d 848, 854-57, 859-60 (Cal. 2006) (explaining one of the policy rationales for the "veterinarian's rule," under which a dog owner is generally exempt from liability when the dog bites or injures a veterinarian or veterinarian's assistant, or those in similarly stated professions, during treatment: such professionals "are in the best position, and usually the only position, to take the necessary safety precautions and protective measures to avoid being bitten or otherwise injured by a dog left in their care and control").

[12] *See* 3 AM. L. PROD. LIAB., *Warnings Liability* § 32:70, at 171-2; Thibodaux v. McWane Cast Iron Pipe Co., 381 F.2d 491, 495 (5th Cir. 1967) (consulting engineers chargeable with knowledge of corrosion characteristics of cast iron pipe that allowed gas to escape); Strong v. E. I. DuPont de Nemours Co., Inc., 667 F.2d 682, 687 (8th Cir. 1981) (no duty to warn of hazards because plaintiff and his employer, Nebraska Natural Gas Co. "[k]new or should have known of the pull-out hazard [in] natural gas lines"; moreover, "the Nebraska Natural Gas Company was under a high duty of care with respect to the safety of its gas lines. Given this high duty of care, a manufacturer

C. Extending The Sophisticated User Doctrine to Eliminate The Duty to Warn Knowledgeable Purchasers

The contours of the sophisticated user defense adopted in *Johnson* apply to a limited class of cases: where the direct product user belongs to a highly knowledgeable and trained class of professionals. But what about cases where the intermediate purchaser (the user's employer or finished product manufacturer, for example) either has or can be charged with knowledge of the product's or component's hazards and can be expected to pass this knowledge on to the ultimate user?

The sophisticated purchaser doctrine provides that, where a product is sold to a sophisticated or knowledgeable purchaser, the manufacturer or distributor has no duty to directly warn the ultimate product users (such as the purchaser's employees) of any hazards posed by the product where it is reasonable to rely upon the purchaser to communicate the necessary warnings (because the purchaser either has or can be expected to have independent knowledge of the hazards, or was informed of them by the manufacturer).

Although the California Supreme Court did not expressly define the contours of the sophisticated purchaser doctrine, the *Johnson* opinion indicates that, if given the opportunity, the court would apply sophisticated user principles to sophisticated purchasers.

In analyzing other California and federal court decisions that purportedly signaled the court's adoption of the sophisticated user doctrine, the Court in *Johnson* favorably referred to decisions expressing support for the sophisticated purchaser doctrine.[13]

Moreover, one California Court of Appeal, citing the Restatement, has approved the sophisticated purchaser doctrine, holding that where a product is sold to a sophisticated and knowledgeable purchaser, the manufacturer or distributor has no duty to directly warn the ultimate product users (such as the purchaser's employees) of any hazards posed by the product so long as it is reasonable to rely upon the purchaser to communicate the necessary warnings. In *Persons v. Salomon North America, Inc.*,[14] the court held a ski-bindings manufacturer had no duty to warn

such as [defendant] could have assumed that [the company] was aware of the pull-out problem. Indeed, [a court previously] found that the danger was 'well known throughout the industry'") (applying Nebraska law); Mayberry v. Akron Rubber Machinery Corp., 483 F. Supp. 407, 413 (N.D. Okla. 1979) ("There is ordinarily no duty to give a warning to members of a profession against dangers generally known to members of that profession. . . . A duty to warn exists only when those to whom the warning is to be communicated can reasonably be assumed to be ignorant of the dangers to which the warning relates. If it is unreasonable to assume they are ignorant of those facts, there is no duty to warn. In other words, where the danger or potentiality of danger is known or should be known to the user, the duty [to warn] does not attach") (citations omitted) (applying Oklahoma law); Mackowick v. Westinghouse Elec. Corp., 575 A.2d 100, 103 (Pa. 1990) ("A seller or manufacturer should be able to presume mastery of basic operations by experts or skilled professionals in an industry, and should not owe a duty to warn or instruct such persons on how to perform basic operations in their industry"); Bartkewich v. Billinger, 247A.2d 603, 606 (Pa. 1968) ("[W]e hardly believe it is anymore necessary to tell an experienced factory worker that he should not put his hand into a machine that is at that moment breaking glass than it would be necessary to tell a zoo-keeper to keep his head out of a hippopotamus' mouth").

[13] *See Johnson,* 179 P.3d at 9-14 (citing Fierro v. Int'l Harvester Co., 179 Cal. Rptr. 923, 925 (1982) (where the court recognized the obvious danger rule, the court also noted that "there was nothing about the [manufacturer's] unit which required any warning to [the purchaser])). A sophisticated organization like [the purchaser] does not have to be told that gasoline is volatile and that sparks from an electrical connection or friction can cause ignition"); and In re Related Asbestos Cases, 543 F. Supp. 1142, 1151 (N.D. Cal. 1982) (noting as far back as 1982 that the sophisticated purchaser defense was "taking hold in California").

[14] Persons v. Salomon North America, Inc., 265 Cal. Rptr. 773, 779 (1990) (citing RESTATEMENT (SECOND) OF TORTS § 388 cmt. n. at 308).

plaintiff skier directly of the danger posed by pairing its bindings with certain types of boots; the manufacturer "had a reasonable basis to believe [its dealers] would pass along [its] product warning and was justified in relying upon [the dealer] to perform its independent duty to warn as required by law." The ski-binding purchaser in *Persons* happened to gain its knowledge of hazards from the manufacturer, but there is no indication that the *Persons* court conditioned its application of the sophisticated purchaser doctrine on that fact, or would reject the doctrine where the purchaser has independent knowledge of a product's hazards.[15]

Nationwide, the sophisticated purchaser doctrine has gained particularly wide acceptance: over 30 states have adopted the defense.[16] While the exact formulation of the defense varies from state to state, it does not necessarily depend on an adequate warning being given by the manufacturer. Under either the minority or the majority view of the sophisticated purchaser doctrine, there is no duty to warn a purchaser who is already knowledgeable about a product hazard and can be expected to pass on that knowledge to the product user.

The Minority View: The Intermediate Purchaser's Knowledge Categorically Defeats Any Duty to Warn the End User. Approximately one-third of the jurisdictions that have adopted the sophisticated purchaser defense have taken a strict common law duty approach, which focuses exclusively on the intermediate purchaser's knowledge and absolves the seller of any duty to warn the ultimate product user so long as the purchaser is or should be aware of the product's hazards. Under this formulation of the sophisticated purchaser doctrine, an adequate warning by the manufacturer is not necessary for the defense to apply, so long as the intermediary had independent knowledge of the product's hazards. The relevant inquiry under this formulation of the defense is simple: If the purchaser-employer had knowledge or notice of the product's hazards, through either the supplier's warnings or independently-obtained information, the supplier has no duty to warn the purchaser's employees or customers and judgment will be entered as a matter of law in the supplier's favor.[17]

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[15] *But see* Torres v. Xomox Corp., 49 Cal. App. 4th 1, 21 (1996) (interpreting Persons to require an adequate warning by the defendant to the intermediary).

[16] *See* In re Asbestos Litigation (Mergenthaler), 542 A.2d 1205, 1210-11 (Del. Super. Ct. 1986) ("some version of a 'sophisticated purchaser' defense is the norm in most jurisdictions"); Kennedy v. Mobay, 579 A.2d 1191, 1197 (Md. Ct. Spec. App. 1990) ("The legal premise underlying [the sophisticated purchaser] defense, and indeed the defense itself, seems to have gained fairly wide acceptance"), aff'd 601 A.2d 123 (Md. 1992)).

[17] Cases reflecting the minority approach include: *Mergenthaler*, 542 A.2d at 1211-12 ("[w]hen the employer already knows or should be aware of the dangers which the warning would cover, there [is] no duty to warn on the part of the supplier," unless "the supplier knows or has reason to suspect that the requisite warning will fail to reach the employees, the users of the product") (applying Delaware law); Stiltjes v. Ridco Exterminating Co., 343 S.E.2d 715, 718-20 (Ga. Ct. App. 1986), aff'd on other grounds 347 S.E.2d 568 (Ga. 1986) (supplier of pesticides to professional pesticide control operator entitled to summary judgment on failure to warn claim brought by tenant whose home the pesticide was applied in; supplier had no duty to warn since the pesticide operator was charged as a matter of law with knowledge of the dangers posed by use of the pesticide); Cruz v. Texaco, Inc., 589 F. Supp. 777, 779-80 (S.D. Ill. 1984) (seller of truck designed to transport heavy equipment had no duty to warn employee of truck company where employer was already aware of danger of driving the truck too fast, and employee operation of the truck involved specific, complex on-the-job training); Mays v. Ciba-Geigy Corp., 661 P.2d 348, 364, 365 (Kan. 1983) ("no warning is required to be given by the manufacturer to a purchaser who is well aware of the inherent dangers of the product, [and] there is no duty on the part of the manufacturer to warn an employee of that purchaser"); McWaters v. Steel Service Co., 597 F.2d 79, 80 (6th Cir. 1979) (per curiam) (upholding directed verdict in favor of steel rod manufacturer on strict liability failure to warn claim brought by employee of experienced bridge contractor, since the employer already knew the

The Majority View: Multi-factor Approach Defeating a Duty to Warn an End User If the Manufacturer Could Properly Rely on the Knowledgeable Purchaser to Warn. The majority of states adopting the sophisticated purchaser doctrine opt for a multifactor approach embodied in the Restatement, under which a manufacturer has no duty to warn where it is objectively reasonable for the manufacturer to rely on the intermediary to convey necessary warnings to the product's ultimate users. Indeed, a number of states that pioneered the strict common law duty approach discussed above have since moved towards, and supplanted the common law approach with, the Restatement's multifactor approach.[18]

The Restatement Third of Torts (Products Liability) sets forth the most up-to-date formulation of the sophisticated purchaser doctrine and identifies three factors to be considered in determining

> whether one supplying a product for the use of others through an intermediary has a duty to warn the ultimate product user directly or may rely on the intermediary to relay warnings: the gravity of the risks posed by the product, the likelihood that the intermediary will convey the information to the ultimate user, and the feasibility and effectiveness of giving a warning directly to the user.[19]

The required analysis is an objectively reasonable one that is not dependent upon evidence of actual, conscious reliance by the manufacturer on the intermediate purchaser. Nor is the test dependent upon what the intermediate purchaser in fact did with the product hazard information it possessed.[20]

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dangers posed by the rod and controlled the manner in which the rod would be used [applying Kentucky law]); Davis v. Avondale Indus., Inc., 975 F.2d 169, 172, 174-75 (5th Cir. 1992) (manufacturer has no duty to warn a sophisticated purchaser; defendant manufacturer was therefore entitled to a specific jury instruction that its duty to warn the plaintiff's employee "may be completely discharged by [the employer's] status as a sophisticated purchaser with a duty to warn its employees of the relevant hazard") (applying Louisiana law); Scallan v. Duriron Co., 11 F.3d 1249, 1252 (5th Cir. 1994) (summary judgment for defendant manufacturer where plaintiff's employer ranked "among the world leaders" in chemical processing); Jacobson v. Colorado Fuel and Iron Corp., 409 F.2d 1263, 1271-72 (9th Cir. 1969) (manufacturer of steel strand not required to warn that strand might snap during pre-stressing operation when victim's employer was already aware of the risk) (applying Montana law); Marker v. Universal Oil Prods. Co., 250 F.2d 603, 606-07 (10th Cir. 1957) (supplier of catalyst used in construction of petroleum refining vessel not required to warn victim's employer about danger of asphyxiation from carbon monoxide gas generated by the catalyst, since the employer already knew of the risk) (applying Oklahoma law); Akin v. Ashland Chem., 156 F.3d 1030, 1037 (10th Cir. 1998) (summary judgment in favor of defendant chemical manufacturers on failure to warn claim brought by Air Force officers: "[w]e read Oklahoma case law to impose no duty to warn a purchaser as knowledgeable as the United States Air Force of the potential dangers of low-level chemical exposure. . . . This is tantamount to the familiar 'sophisticated purchaser defense' . . . [which is the] exception [that] absolves suppliers of the duty to warn purchasers who are already aware or should be aware of the potential dangers").

[18] *See, e.g.*, Frantz v. Brunswick Corp., 866 F. Supp. 527, 535 n.55 (S.D. Ala. 1994) (analyzing manufacturer's duty to warn end-user under the "reasonableness" factors of the Restatement, instead of the strict duty analysis employed by an earlier Alabama court); Carter v. E.I. DuPont de Nemours & Co., Inc., 456 S.E.2d 661, 663-64 (Ga. Ct. App. 1995) (rejecting strict duty approach previously applied by Georgia courts in favor of Restatement multifactor approach); Miller v. G & W Elec. Co., 734 F. Supp. 450, 454 (D. Kan. 1990) (indicating that, since Kansas courts implicitly adopted the Restatement in applying common law duty approach, the appropriate analysis is now the Restatement multifactor approach).

[19] RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 2, cmt. i (1998); see also Richard C. Ausness, Learned Intermediaries and Sophisticated Users: Encouraging the Use of Intermediaries to Transmit Product Safety Information, 46 SYRACUSE L. REV. 1185, 1205-07 (1996) (describing the Restatement's multifactor approach).

[20] *Cf.* Manning v. Ashland Oil Co., 721 F.2d 192, 196 (7th Cir. 1983) ("We are not concerned with the reasonable inferences that may be drawn from the circumstances of the actual internal operation of [the employer's] business, but rather, whether

An adequate warning from the manufacturer is not a prerequisite for this multifactor version of the sophisticated purchaser defense to apply.[21]

Given the approach adopted by the California Supreme Court in Johnson, as well as its earlier adoption of the Restatement in this area, the Court is likely to adopt the Restatement version of the sophisticated purchaser doctrine. Indeed, at least one California trial court, post-Johnson, has granted an asbestos defendant's motion for judgment notwithstanding the verdict based on the Johnson court's favorable reference to sophisticated purchaser cases, even though the California Supreme Court has not yet expressly embraced the doctrine.[22]

Savvy defense counsel should assert this defense in answer to complaints, conduct discovery focused in learning about the employer or other intermediary's knowledge concerning relevant product hazards, raise the defense in dispositive motions and, as appropriate, in motions in limine, propose special jury instructions, and file and post-trial motions based on the doctrine. A sample jury instruction embodying the Restatement version of the sophisticated purchaser doctrine appears in Appendix C.

Conclusion

By requiring manufacturers to warn only about product hazards that are not obvious or generally known to the anticipated sophisticated users of these products, the California Supreme Court and numerous other federal and state courts have placed common-sense limits on manufacturers' duty to warn. These principles can and likely will be extended to eliminate the need to warn about hazards that sophisticated purchasers know, or should know, and about which they can be expected to warn anticipated users.

Ashland acted reasonably in light of what [a supplier like Ashland reasonably could know] about the party to whom it sold the lacquer thinner").

[21] *See* Goodbar v. Whitehead Bros., 591 F. Supp. 552, 561 (W.D. Va. 1984) ("when the supplier has reason to believe that the purchaser of the product will recognize the dangers associated with the product, no warnings are mandated"; it then "becomes the employer's responsibility to guard against the known danger by either warning its employees or otherwise providing the necessary protection"); Fisher v. Monsanto Co., 863 F. Supp. 285, 288-89 (W.D. Va. 1994) (following Goodbar and granting summary judgment for defendant manufacturer on plaintiff-employee's negligent failure to warn claim; defendant could reasonably rely on employer, a sophisticated purchaser of defendant's products, to warn its employees because (1) the employer had considerable knowledge and expertise regarding the product, (2) defendant provided the product in bulk, so that any warnings placed by the manufacturer could not reach employees, and (3) the defendant was not in a position to constantly monitor the turnover in the employer's workforce); Whitehead v. Dycho Co., Inc., 775 S.W.2d 593, 600 (Tenn. 1989) (affirming summary judgment for bulk supplier of naphtha pursuant to the Restatement formulation of the sophisticated purchaser defense because the intermediary employer "was knowledgeable about the product in question and it was the only party in a position to issue an effective warning to the [p]laintiff. The [d]efendants had no reasonable access to plaintiff"); Aetna Cas. & Sur. v. Wilson Plastics, 509 N.W.2d 520, 523-24 (Mich. Ct. App. 1993) (affirming grant of summary judgment in favor of defendant manufacturer under sophisticated user doctrine; "[c]ommercial enterprises that use materials in bulk must be regarded as sophisticated users, as a matter of law" because "[t]hose with a legal obligation to be informed concerning the hazards of materials used in manufacturing processes must be relied upon, as sophisticated users, to fulfill their legal obligations"); Jodway v. Kennametal, Inc., 525 N.W.2d 883, 889 (Mich. Ct. App. 1994) (following Aetna); Kennedy, 579 A.2d at 1200-02 (jury properly allowed to consider sophisticated purchaser doctrine where: (1) defendants had no ability to give direct warnings to purchaser's employees and (2) purchaser was aware of the hazards posed by defendants' products).

[22] Rollin v. American Standard, No. BC 372275 (L.A. Super. Ct., June 9, 2008).

APPENDIX A (Sophisticated User Cases & Statutes)	
STATE	CASE / STATUTE
Alabama	Ex Parte Chevron Chemical Co., 720 So. 2d 922, 924-26 (Ala. 1998)
Alaska	Robles v. Shoreside Petroleum, Inc., 29 P.3d 838, 843 (Alaska 2001)
Arizona	Southwest Pet Products, Inc. v. Koch Indus., Inc., 273 F. Supp. 2d 1041, 1061 (D. Ariz. 2003) (applying Arizona law)
Colorado	Halter v. Waco Scaffolding & Equip. Co., 797 P.2d 790 (Colo. Ct. App. 1990)
Connecticut	Sharp v. Wyatt, Inc., 627 A.2d 1347 (Conn. App. Ct. 1993) CONN. GEN. STAT. § 52-572q (b)(2) (2008) (among factors to be considered in determining whether there is a duty to warn is "the ability of the product seller to anticipate . . . that the expected product user would be aware of the product risk, and the nature of the potential harm")
Dist. of Columbia	East Penn. Mfg. Co. v. Pineda, 578 A.2d 1113, 1120 (D.C. Cir. 1990)
Georgia	Brown v. Apollo Industries, Inc., 404 S.E.2d 447, 449-50 (Ga. Ct. App. 1991)
Hawaii	Tabieros v. Clark Equip. Co., 944 P.2d 1279, 1308 (Haw. 1997)
Indiana	Westchester Fire Ins. Co. v. American Wood Fibers, Inc., No. 2:03-CV-178-TS, 2006 WL 752584, at *15 (N.D. Ind. Mar. 21, 2006)
Iowa	Bergfeld v. Unimin Corp., 319 F.3d 350, 353 (8th Cir. 2003) (applying Iowa law) Vandelune v. 4B Elevator Components Unlimited, 148 F.3d 943, 946 (8th Cir. 1998) (applying Iowa law) West v. Broderick & Bascom Rope Co., 197 N.W.2d 202, 210-11 (Iowa 1972)
Kansas	KAN. STAT. ANN. § 60-3305 (2007) (no duty to warn about risks "which a reasonable user or consumer of the product, with the training, expertise, experience, education and any special knowledge the user or consumer did, should or was required to possess")
Louisiana	American Mut. Liability Ins. Co. v. Firestone Tire and Rubber Co., 799 F.2d 993, 994 (5th Cir. 1986) (applying Louisiana law) ("duty to warn is limited . . . where 'the purchaser or the user has certain knowledge or sophistication, professionally or otherwise, in regard to the product'") Davis v. Avondale Industries, Inc., 975 F.2d 169, 172 (5th Cir. 1992) (interpreting Louisiana statute to preclude any duty to warn a sophisticated user) Gautreaux v. Tex-Steam Co., 723 F. Supp. 1181, 1182 (E.D. La. 1989) (applying Lousiana law)

APPENDIX A (Sophisticated User Cases & Statutes)	
STATE	CASE / STATUTE
Louisiana	Hines v. Remington Arms Co., Inc., 522 So. 2d 152, 156 (La. Ct. App. 1988) (plaintiff, who was an experienced gun user and had previously used similar customized shotgun "was, in fact, what the courts have described as a sophisticated user who already knew or should have known of the dangers involved in handling a loaded target rifle with no safety device. [The gun manufacturer] was under no duty to warn him of a danger with which he was already familiar") Mozeke v. International Paper Co., 933 F.2d 1293, 1297 (5th Cir. 1991) (applying Louisiana law) LA. REV. STAT. ANN. § 9:2800.57(B)(2) (2006)
Maine	Koken v. Black & Veatch Constr., Inc., 426 F.3d 39, 45 (1st Cir. 2005) (determining that Maine Supreme Court would adopt sophisticated user doctrine "because that doctrine is simply a corollary of the open and obvious doctrine," which enjoys "widespread acceptance")
Maryland	Emory v. McDonnell Douglas Corp., 148 F.3d 347, 350 (4th Cir. 1998) (open and obvious doctrine to be applied in light of expected user's expertise) (applying Maryland law)
Massachusetts	Carrel v. National Cord & Braid Corp., 852 N.E.2d 100, 108 (Mass. 2006) (explicitly adopting sophisticated user doctrine for both negligent and strict liability failure to warn claims in Massachusetts)
Michigan	MICH. COMP. LAWS § 600.2947(4) (2008) ("a manufacturer or seller is not liable in a product liability action for failure to provide an adequate warning if the product is provided for use by a sophisticated user") MICH. COMP. LAWS § 600.2945(j) (2008) (defining "sophisticated user") MICH. COMP. LAWS § 600.2948(2) (2008) ("[a] defendant is not liable for failure to warn of a material risk that is or should be obvious to a reasonably prudent product user or a material risk that is or should be a matter of common knowledge to persons in the same or similar position as the person upon whose injury or death the claim is based in a product liability action")
Minnesota	Gray v. Badger Mining Corp., 676 N.W.2d 268, 276 (Minn. 2004)
Missouri	Donahue v. Phillipps Petroleum Co., 866 F.2d 1008, 1012 (8th Cir. 1989) (applying Missouri law)
Nebraska	Jordan v. NUCOR Corp., 295 F.3d 828, 837 (8th Cir. 2002) (applying Nebraska law)
New Jersey	Wasko v. R.E.D.M. Corp., 524 A.2d 1353, 1356-57 (N.J. Super. Ct. Law Div. 1986)
New Mexico	Madrid v. Mine Safety Appliance Co., 486 F.2d 856, 859-60 (10th Cir. 1973) (applying New Mexico law)
New York	Rypkema v. Time Mfg. Co., 263 F. Supp. 2d 687, 694 (S.D.N.Y. 2003) (applying New York law)

APPENDIX A (Sophisticated User Cases & Statutes)	
STATE	CASE / STATUTE
Oklahoma	Duane v. Oklahoma Gas & Elec. Co., 833 P.2d 284, 286-87 (Okla. 1992)
Pennsylvania	Mackowick v. Westinghouse Electric Corp., 575 A.2d 100, 103 (Pa. 1990)
Tennessee	Pittman v. Upjohn Co., 890 S.W.2d 425, 430 (Tenn. 1994)
Texas	Humble Sand & Gravel, Inc. v. Gomez, 146 S.W.3d 170, 183-84 (Tex. 2004) Koonce v. Quaker Safety Products & Mfg. Co., 798 F.2d 700, 716 (5th Cir. 1986) (applying Texas law)
Utah	House v. Armour of America, Inc., 929 P.2d 340, 345 (Utah 1996)
Wisconsin	Mohr v. St. Paul Fire & Marine Ins. Co., 674 N.W.2d 576, 584-85 (Wis. Ct. App. 2003)

APPENDIX B (Obvious Danger Cases & Statutes)	
STATE	CASE / STATUTE
Arizona	Brown v. Sears & Roebuck Co., 667 P.2d 750, 756 (Ariz. Ct. App. 1983) ("Surely every adult knows that if an electrical extension cord is cut or frayed a danger of electrical shock is created. We find that reasonable minds could not differ as to the obviousness of this danger. Because the danger was so obvious, . . . [defendant] had no duty to warn of the danger of electrical shock")
Arkansas	Forrest City Mach. Works, Inc. v. Aderhold, 616 S.W.2d 720, 723 (Ark. 1981) ("[T]here is no duty on the part of a manufacturer to warn of a danger when the dangerous defect is open and obvious")
Florida	Knox v. Delta Int'l Mach. Corp., 554 So. 2d 6, 7 (Fla. Dist. Ct. App. 1989) (no duty to warn of the obvious dangers associated with removing a detachable safety guard on a joinder machine)
Georgia	Fluidmaster, Inc. v. Severinsen, 520 S.E.2d 253, 255 (Ga. Ct. App. 1999) ("[T]he duty-to-warn doctrine does not require a product manufacturer to warn of a product-connected danger which is obvious or generally known") Powell Duffryn Terminals v. Calgon Carbon Corp., 4 F. Supp. 2d 1198, 1203 (S.D. Ga. 1998) (applying Georgia law) ("There is no duty to warn of an open and obvious danger of a product")
Idaho	Puckett v. Oakfabco, Inc., 979 P.2d 1174, 1182 (Idaho 1999)
Illinois	Kokoyachuk v. Aeroquip Corp., 526 N.E.2d 607, 610-11 (Ill. App. Ct. 1988) (no duty to warn of the obvious dangers associated with a refrigerated trailer)
Iowa	Nichols v. Westfield Industries, Ltd., 380 N.W.2d 392, 400-01 (Iowa 1985) (no duty to warn of the obvious dangers associated with a grain auger)
Kansas	KAN. STAT. ANN. § 60-3305 (2007) ("[A]ny duty on the part of the manufacturer . . . to warn . . . shall not extend . . . to warnings, protecting against or instructing with regard to dangers, hazards or risks which are patent, open or obvious and which should have been realized by a reasonable user or consumer of the product")
Louisiana	Albert v. J. & L. Eng'g Co., 214 So. 2d 212, 214-15 (La. Ct. App. 1968) (a manufacturer of a sugar cane harvesting machine has no duty to warn of obvious dangers posed by the machine) LA. REV. STAT. ANN. § 9:2800.57(B) (2008) ("[a] manufacturer is not required to provide an adequate warning about his product when . . . [t]he product is not dangerous to an extent beyond that which would be contemplated by the ordinary user . . .")

APPENDIX B (Obvious Danger Cases & Statutes)	
STATE	CASE / STATUTE
Maine	Lorfano v. Dura Stone Steps, Inc., 569 A.2d 195, 197 (Me. 1990) ("[A] manufacturer has no duty to warn of a danger that is obvious and apparent. We conclude that the dangers posed by the use of steps without a handrail are patently obvious and equally apparent to all. The Superior Court [therefore] correctly entered summary judgment as a matter of law")
Maryland	Nicholson v. Yamaha Motor Co., 566 A.2d 135, 148 (Md. Ct. Spec. App. 1989) (there is no negligence, in either design or failure to warn, for the obvious danger of riding a motorcycle without crash bars)
Minnesota	Mix v. MTD Prods. Inc., 393 N.W.2d 18, 19-20 (Minn. Ct. App. 1986) (operational dangers of a riding lawnmower are obvious dangers not requiring a warning)
New Jersey	N.J. STAT. ANN. § 2A: 58C-3(a) (West 2008) ("[M]anufacturer . . . shall not be liable if . . .[t]he characteristics of the product are known to the ordinary consumer or user, and the harm was caused by . . . an inherent characteristic of the product and that would be recognized by the ordinary person . . .")
North Carolina	Simpson v. Hurst Performance, Inc., 437 F. Supp. 445, 447 (M.D.N.C. 1977) (manufacturer of car gear shift not liable for failing to warn about the risk of injury to a person sitting on a bench type front seat without a seat belt when the danger was obvious)
Ohio	Taylor v. Yale & Town Mfg. Co., 520 N.E.2d 1375, 1377 (Ohio Ct. App. 1987) (manufacturer has no duty to warn of the obvious danger of an industrial truck's propensity to spark) OHIO REV. CODE ANN. § 2307.76(B) (West 2008) ("A product is not defective due to lack of warning . . . as a result of the failure of its manufacturer to warn . . . about an open and obvious risk or a risk that is a matter of common knowledge")
Oklahoma	Cox v. Murray Ohio Mfg. Co., 732 F. Supp. 1555, 1560-61 (W.D. Okla. 1987) (because an ordinary user would recognize the exposed chain and sprockets of a mower as an obvious danger, there was no duty to warn)
S. Carolina	Anderson v. Green Bull, Inc., 471 S.E.2d 708, 710-11 (S.C. Ct. App. 1996) (no duty to warn because "[a]ny person of normal intelligence would know 'the risk posed by an aluminum ladder in close proximity to an energized high-voltage line'") Dema v. Shore Enterprises, Ltd., 435 S.E.2d 875, 876 (S.C. Ct. App. 1993) ("A product is not defective for failure to warn of the obvious")
Tennessee	Pemberton v. American Distilled Spirits Co., 664 S.W.2d 690, 692-93 (Tenn. 1984) (no duty to warn of the obvious danger associated with excessive consumption of alcohol) TENN. CODE ANN. § 29-28-105(d) (2007) ("A product is not unreasonably dangerous because of failure to adequately warn of a danger . . . that is apparent to the ordinary user")

APPENDIX B (Obvious Danger Cases & Statutes)	
STATE	CASE / STATUTE
Utah	Shuput v. Heublein, Inc., 511 F.2d 1104, 1106 (10th Cir. 1975) (applying Utah law)
Vermont	Menard v. Newhall, 373 A.2d 505, 507 (Vt. 1977) (no duty to warn of the obvious danger that a BB gun, if fired, could injure an eye) (applying Virginia law)
Virginia	Austin v. Clark Equipment Co., 48 F.3d 833, 836 (4th Cir. 1995)
Washington	Anderson v. Dreis & Krump Mfg. Corp., 739 P.2d 1177, 1182 (Wash. Ct. App. 1987) ("warning's contents, combined with the obviousness of the press' dangerous characteristics, indicate that any reasonable operator would have recognized the consequences of placing one's hands in the point-of-operation area")
Wisconsin	Estate of Schilling v. Blount, Inc., 449 N.W.2d 56, 60-61 (Wis. Ct. App. 1989) (manufacturer of firearm bullets owes no duty to warn of the obvious dangers associated with their use)
Wyoming	Parker v. Heasler Plumbing & Heating Co., 388 P.2d 516, 519 (Wyo. 1964) ("a seller's duty to warn does not require that he warn a user of equipment of dangers of which the user is aware or of obvious dangers" and holding that a manufacturer of an incinerator owes no duty to warn, absent a latent defect unknown to the plaintiff)

APPENDIX C
Sample Sophisticated Purchaser Instruction

A manufacturer or supplier does not have a duty to warn about potential hazards associated with its products when it sells them to a sophisticated purchaser on whom it can reasonably rely to warn ultimate product users.

A sophisticated purchaser is someone who has independent knowledge of a product's hazards or, like a knowledgeable employer in a knowledgeable industry, an organization that can be expected to know about such hazards.

In determining whether the defendants had a duty to warn the plaintiffs directly or could reasonably rely on plaintiffs' employer to provide plaintiffs with the necessary warnings for defendants' products, proof of actual reliance by the manufacturer or supplier on the employer's knowledge is not necessary. Instead you should consider (1) the gravity of the risks posed by the product; (2) the likelihood that the employer would communicate necessary warnings to its employees; and (3) the feasibility and effectiveness of defendants giving a warning directly to the plaintiffs, who worked in a secure facility. In particular, you should consider: (1) whether plaintiff's employer already knew about any hazards posed by defendants' products; (2) the employer's obligation under the law to keep plaintiffs' workplace safe; (3) whether the employer was in the best position to provide necessary warnings and safety training; and (4) the secure nature of the facility at which plaintiffs worked.

If you find that defendants could reasonably rely on plaintiff's employer to warn the plaintiffs about the hazards associated with defendants' products, then defendants owed no duty to warn and you must find in favor of the defendants in this case.

Authority: Johnson v. American Standard, 179 P.3d 905, 911-14 (Cal. 2008); RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY § 2 cmt. i at 29-30; Goodbar v. Whitehead Bros., 591 F.Supp. 552, 561-567 (W.D.Va. 1984); Kennedy v. Mobay Corp., 579 A.2d 1191 (Md. Ct. Spec. App. 1990); Fisher v. Monsanto Co., 863 F.Supp. 285, 288-289 (W.D.Va. 1994); Emory v. McDonnell Douglas Corp., 148 F.3d 347, 351-352 (4th Cir. 1998); Persons v. Salomon North America, Inc., 265 Cal. Rptr. 773, 779, (1990); Fierro v. International Harvester Co., 179 Cal. Rptr. 923, 925 (1982); *see also* Baez v. Southern Pacific Co., 26 Cal. Rptr. 899, 900-01 (1962).