

Products Liability Law Daily Wrap Up, TOP STORY—S.C. App.: Sophisticated user doctrine instruction proper in action arising out of a workplace fire involving sodium bromate, (Aug. 22, 2013)

By Pamela C. Maloney, J.D.

A jury instruction on the sophisticated user doctrine was proper in an action brought by a worker against the manufacturer and suppliers of sodium bromate, the South Carolina Court of Appeals ruled (*Lawing v. Trinity Mfg., Inc.*, August 21, 2013, Few, J.). The court also determined that federal regulations did not preempt the doctrine and that the trial court had too narrowly construed the word “user” for purposes of the worker’s strict products liability claim.

Background. The worker, Scott Lawing, was part of a pipe removal team employed by Engelhard Corporation, a company that refined precious metal. The company’s refining process involved the use of sodium bromate, a highly flammable chemical used as an oxidizer. A number of pallets containing bags of the chemical had been moved to a staging area prior to the time the pipe removal team began its assignment to remove and replace old pipe. Although the bags were labeled “SODIUM BROMATE” and were marked with the oxidizer symbol, these labels were not visible to the inspector who cleared the work area. Hot molten bits of metal created by the use of a blowtorch to remove the pipe created a flash on one of the pallets and an “inferno” ensued. The worker, who was standing on a pipe rack in order to lower cut sections of the pipe to another worker who was on a lift, was enveloped in flames and was burned over 42 percent of his body. He also fell from the lift, shattering his heels, knees and four vertebrae, and lacerating his head. The worker brought products liability claims against the manufacturer, the supplier, the supplier’s subsidiary, and several other companies in the chain of distribution.

Sophisticated users doctrine. In reaching its determination that the jury charge on the sophisticated user doctrine was proper, the court first clarified that this doctrine was the law in South Carolina, contrary to the worker’s contention. A 1995 decision by the court of appeals (*Bragg v. Hi-Ranger, Inc.*, 319 S.C. 531, 462 S.E.2d 321) affirmed a decision by a trial court to charge the jury on the doctrine, thus recognizing it as part of the products liability law of South Carolina. The sophisticated user doctrine arose from circumstances in which a seller warned the intermediate purchaser and relied, in part, on that purchaser to warn the end user. Under comment *n* to section 388 of the Restatement (Second) of Torts, a seller in this situation could rely on the intermediary to provide warnings to the end user “if that reliance was reasonable under the circumstances.”

The court explained that it was appropriate to charge the jury on the doctrine when there is evidence that supports a finding that the seller or supplier acted reasonably in assuming that the seller or supplier would recognize the danger and take precautions to protect the end users. The evidence in this case demonstrated that the suppliers knew of the nature of the worker’s employer’s business, that the employer understood the dangers of sodium bromate, and that the employer took steps to protect its employees from the dangers of hazardous materials. The suppliers also knew that the employer had required that samples of the chemical be delivered to its facility for testing. Finally, the suppliers had provided the employer with the material safety data sheet (MSDS) for the sodium bromate by fax before delivery and a hard copy upon arrival

of the shipment. From this evidence, a jury could infer that the suppliers had acted reasonably in providing warnings on the bags and in the MSDS, relying on the employer to provide its employees with additional warnings about the dangers of sodium bromate.

Preemption doctrine. The court rejected the worker's claim that federal regulations specifying labeling requirements for hazardous materials and those describing the specific design for the oxidizer symbol preempted the application of the sophisticated user doctrine in this instance. The worker argued that the regulations impose a duty on suppliers to warn about the dangers of sodium bromate, and the sophisticated user doctrine conflicted with the regulations because it had "the effect of defeating the duty to warn that was clearly imposed as an integral part of the federal regulatory scheme." The court opined that the worker's argument was based on a faulty premise—that the sophisticated user doctrine, if applicable, meant that a supplier had no duty to warn. The doctrine did not defeat the supplier's duty, it simply identified the circumstances which the jury must consider when determining whether the supplier's duty to warn had been breached. Thus, it did not stand as an obstacle to fulfillment of the safety objectives embodied in the applicable federal regulations. Instead the requirements of the regulations coincide with the reasonableness requirement on which the doctrine is based. As the court stated, "Because the federal regulations require warnings that are 'appropriate' under the circumstances, and the sophisticated user doctrine requires only that certain circumstances be considered in determining what is reasonable (or appropriate), there is no conflict between the two, and the sophisticated user doctrine is not preempted."

Definition of user. In overruling the trial court's determination that the worker was not a user or consumer of the sodium bromate because the chemical was not involved in the pipe removal operation, the court of appeals agreed with the worker that the trial court took too narrow a view of the term "user" in the state's products liability statute. To determine the legislature's intent behind this undefined term, the court looked at the comments to section 402A of the Restatement (Second) of Torts. In considering all the comments together, the court believed that the legislature intended the term "user" to include persons who could foreseeably come into contact with the dangerous nature of a product. Thus, the court noted, a person who examined a product for warnings and other safety information was one whom the seller intended would use that information to avoid the dangers associated with the product, and thus was a person who foreseeably could come into contact with its dangerous nature. Such a person was not a "casual bystander" but would use the product by reading the warning to learn what, if anything, they could safely do with it. The court went on to clarify that the focus was on the product as an integrated whole, including the warnings and other safety information on the packaging, and that manufacturers and suppliers of chemicals and other products not only foresee, but intend, that workers, including the plaintiff, would use the information on the packaging even if they were not actually using the chemical itself.

The case number is: [2009-112467; Opinion No. 5166](#).

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Companies: Trinity Manufacturing, Inc.; Matrix Outsourcing, LLC; Univar, USA, Inc.

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