

Webb v. Special Electric Co., Inc. (Case No. S209927, May 23, 2016)

A supplier can discharge its duty to warn under the “sophisticated intermediary doctrine,” defense if it: 1) provides adequate warnings to the product’s immediate purchaser, or sells to a sufficiently sophisticated buyer, *and* 2) reasonably relies on the buyer to warn end users about the harm.

FACTS/PROCEDURE:

Plaintiff William Webb (Webb) was diagnosed with mesothelioma, a fatal cancer caused by inhalation of asbestos fibers. One company Webb sued was Defendant, Special Electric Co., Inc. (Special Electric), a raw asbestos supplier, for failing to warn him about the danger. Webb worked at Pyramid Pipe & Supply Co., which received products from distributor Familian Pipe & Supply that were manufactured by Johns-Manville. Defendant was the company that supplied the asbestos products to Johns-Manville and began this chain of commerce.

At the close of Webb’s case, Special Electric moved for nonsuit on the failure to warn claims. Special Electric argued, in part, that it had no duty to warn a sophisticated purchaser like Johns-Manville about the health risks of asbestos. Special Electric also moved for a directed verdict on Webb’s strict liability claims. The trial court deferred ruling on both motions. The jury returned a verdict finding Special Electric liable for failure to warn and negligence. After Special Electric requested a ruling on its nonsuit and directed verdict motions, the court determined Special Electric was not liable for failure to warn and granted the motions. The court construed the motions as seeking judgment notwithstanding the verdict (JNOV) and entered judgment on the jury verdict in favor of Special Electric.

The Court of Appeal determined that the JNOV ruling was improper because substantial evidence demonstrated that Special Electric breached a duty to warn Johns-Manville and foreseeable downstream users like Webb about the risks of asbestos exposure. The issue on appeal was, when a company supplies a hazardous raw material for use in making a finished product, what is the scope of the supplier’s duty to warn ultimate users of the finished product about the risks related to the raw material?

DISCUSSION/HOLDING:

Affirmed. Because substantial evidence supports the jury’s verdict against Special Electric, the Court of Appeal correctly found the trial court erred when it granted JNOV.

When a hazardous raw material is supplied for any purpose, including the manufacture of a finished product, the supplier has a duty to warn about the material’s danger. However, the supplier in some cases may discharge that duty by relying on others to warn downstream users, in a defense referred to as “the sophisticated intermediary doctrine.”

Under the sophisticated intermediary doctrine, the supplier can discharge this duty if it: 1) provides adequate warnings to the product’s immediate purchaser, or sells to a sophisticated purchaser that it knows is aware or should be aware of the specific danger, and (2) reasonably relies on the purchaser to convey appropriate warnings to downstream users who will encounter the product. Reasonable reliance depends on many circumstances, including the degree of risk posed by the material, the likelihood the purchaser will convey warnings, and the feasibility of

directly warning end users. This doctrine balances the competing policies of compensating those injured by dangerous products and encouraging conduct that can feasibly be performed.

The Court emphasized that the defendant supplier bears the burden of proving this defense. This includes proving the adequacy of the warning to the purchaser, or the sufficiency of the purchaser's sophistication to obviate the need for any warning. Proof of the reasonableness of the supplier's reliance on the intermediary to convey warnings to end users would "typically raise questions of fact for the jury to resolve unless critical facts establishing reasonableness are undisputed."

The record did clearly show that Johns-Manville, the purchaser of asbestos products supplied by Special Electric, was aware of the risks of asbestos *in general*. However, there was no evidence that it knew about the particularly acute risks posed by the particular asbestos Special Electric supplied. Further, the record does not establish as a matter of law that Special Electric actually and reasonably relied on Johns-Manville to warn end users like William Webb about the dangers of asbestos. Thus, the evidence in this particular case did not justify the trial court's decision to grant a defense judgement notwithstanding the verdict in the face of a jury verdict finding negligence.