PRODUCTS LIABILITY

Duty to Warn - The "Heeding Presumption"

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One of the three grounds of product defectiveness upon which a plaintiff may seek to establish liability is the manufacturer's failure to warn product users adequately about dangers inherent in the use of its product. In fact, plaintiffs in most products liability cases include a failure-to-warn claim. In light of the universal rule that a manufacturer has no duty to warn about open and obvious dangers or dangers that are already known to a user, warning claims are most successful when the product is complex. It is just when such a product is involved, however, that a manufacturer is most likely to provide warnings in order to limit its potential liability. As with manufacturing and design defects, a plaintiff asserting that a manufacturer failed to provide adequate warnings about product dangers must prove causation, i.e., that the absence or inadequacy of a warning was a substantial factor in producing the plaintiff's harm. One defense that a manufacturer may interpose to the element of causation is that a warning would have made no difference because the plaintiff would not have paid attention to the warning. Such a defense necessarily depends upon proof of the plaintiff's conduct in relation to the particular product at issue, and, perhaps, his or her conduct more generally.

The Arizona Court of Appeals recently decided an interesting case involving various elements of proof with respect to warning liability, including the "heeding presumption" applied in numerous jurisdictions. See Golonka v. General Motors Corp., 2003 WL 1699323 (Ariz. Ct. App. 2003) [http://www.cofad1.state.az.us/opinionfiles/CV/CV000467.pdf]. The heeding presumption provides that the plaintiff in a defective warning case would have read and heeded an adequate warning, had one been furnished by the manufacturer. This presumption, therefore, prevents a manufacturer from successfully defending a warning claim upon the mere assertion that the plaintiff has introduced no evidence on the issue of causation. A manufacturer, however, is entitled to offer evidence to rebut the presumption that the plaintiff would have heeded an adequate warning. Such were the issues addressed in Golonka, a manufacturer's appeal from a jury award of compensatory and punitive damages to the plaintiffs.

Golonka indicates that the issue of causation in a defective warning case may be very much alive, even in states that recognize the heeding presumption. The decision furnishes guidance as to the type of evidence with which a plaintiff may have to contend in a manufacturer's effort to overcome the heeding presumption and also demonstrates how the presumption may be effectively rebutted. It is probably a mistake to conclude that Golonka makes mere evidence of inattentiveness sufficient to overcome the heeding presumption. If this were so, then few warning plaintiffs would recover since inattentiveness is frequently an element in product injuries. Rather, it appears to be the multiple mistakes made by the decedent on the occasion in question, which constituted violations of warnings and instructions in the vehicle owner's manual, which persuaded the court that one more warning would not have made a difference. By contrast, in a case where the plaintiff's only mistake was to ignore a single inadequate warning, the heeding presumption probably would not be overcome. [For a more detailed analysis of this case, subscribe to Product Liability Law Updates, a complimentary newsletter analyzing interesting developments in Products Liability Law. You may receive Products Liability Update via print or e-mail. Subscribe by sending an e-mail to research@nlrg.com with the words "subscribe
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