Negligence – 'Bulk Supplier Doctrine' – Duty To Warn

Published: 1:00 am Mon, July 30, 2001
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Where a jury returned a verdict in favor of defendant manufacturers that had been charged in a civil suit with responsibility for an explosion and fire, the judgment should be affirmed because the trial court committed no reversible error in instructing the jury about the "bulk supplier doctrine."

Applicability Of Doctrine

"On March 6, 1989, an explosion and fire ripped through Gotham Ink of New England, Inc., an ink manufacturer in Marlborough. The blast killed two workers and severely injured several others. The plaintiffs commenced these personal injury and wrongful death actions against three manufacturers and suppliers of the chemicals allegedly involved in the conflagration: Exxon Company, U.S.A.; Unocal Chemicals Division, Union Oil Company of California; and Houghton Chemical Corporation. After nearly six weeks of testimony at a consolidated trial on the plaintiffs' claims for negligence and breach of warranty for faulty product design and failure to warn, the jury returned special verdicts in favor of all defendants, and the complaints were dismissed. The plaintiffs filed a motion for a new trial that was denied. The plaintiffs have appealed, and we transferred the cases to this court on our own motion. A pivotal question in this appeal concerns the duty of a bulk supplier to warn all foreseeable users of the risks associated with a product's use. We adopt the 'bulk supplier doctrine' as an affirmative defense in products liabilities actions, and affirm the judgments. …

"The bulk supplier doctrine allows a manufacturer-supplier of bulk products, in certain circumstances, to discharge its duty to warn end users of a product's hazards by reasonable reliance on an intermediary. …

"The goal of products liability law is to 'induce conduct that is capable of being performed.' … The bulk supplier doctrine advances that goal by permitting a bulk supplier to satisfy its duty to warn by reasonable reliance on an intermediary who understands the product's risks and is able to pass on to end users warnings about the product's hazards. Under the bulk supplier doctrine, the bulk supplier is by no means absolved of its duty either to supply adequate warnings to the intermediary or to ensure that its reliance on the intermediary is reasonable, but is permitted to discharge its duty to warn in a responsible and practical way that equitably balances the realities of its business with the need for consumer safety. We adopt the bulk supplier doctrine as an affirmative defense to products liability negligence claims. …

"We now turn to the issue whether the bulk supplier instruction given by the judge was proper in this case. We conclude that, in all respects but one, the instruction clearly, adequately, and correctly explained the applicable law to the jury. … The instruction properly required that the jury consider whether the defendants supplied their products in bulk; whether they gave ~'adequate and sufficient' warning; whether they had no reason 'to anticipate any negligence or other fault' on the part of Gotham; and whether the defendants 'had no indication' that Gotham 'was inadequately trained, or unfamiliar with the product, or incapable of passing on its knowledge about the product to the ultimate users of the product.' The jury were further instructed that the 'application of this doctrine turns on the reasonableness of the defendants' reliance on Gotham to provide adequate warnings.' … All these instructions were proper.

"However, the judge also instructed the jury to consider whether Gotham, as an employer, 'was in the best position to monitor the provision of warnings to its individual employees or users, and

train its individuals and employees.' We recognize that such 'best position' language is found in other bulk supplier decisions, generally to explain why the bulk supplier doctrine is sound public policy. … However, we think that requiring a jury to assess in hindsight whether the bulk supplier or the immediate purchaser was in the 'best position' to convey adequate warnings of a product's dangers injects a measure of uncertainty, of arbitrariness that undercuts the very raison d'etre of the doctrine, and may mislead a jury about the applicable law. All that is required to determine whether the bulk supplier has discharged its duty to warn is for the jury to evaluate the reasonableness of the bulk supplier's reliance on the intermediary. This is an objective standard. … To overlay this inquiry with a second, subjective 'weighing' requirement is unlikely to advance consumer safety, but is highly likely to create the kind of uncertainty that increases production costs and spurs on litigation.

"The 'best position' language of the judge's bulk supplier doctrine instruction, then, was given in error. However, as the faulty instruction increased the defendants' burden, not that of the plaintiffs, there was no reversible error. …"

Hoffman v. Houghton Chemical Corp., et al. (and a companion case) (Lawyers Weekly No. 10-129-01) (25 pages) (Marshall, C.J.) (SJC) Case tried before Lopez, J., in Superior Court. Richard T. Tucker for the plaintiffs; Joseph A. Regan for Houghton; F. Dore Hunter and Michael J. Calabro for Unocal Chemicals Division, Union Oil Co. of California; Hugh F. Young Jr., David R. Geiger and Hilary J. Ames submitted a brief for amicus curiae Product Liability Advisory Council Inc.; Douglas K. Sheff, John J. St. Andre and Jodi Petrucelli submitted a brief for amicus curiae Massachusetts Academy of Trial Attorneys (Docket No. SJC-08401).