

13-1412. Obvious or known danger; design and safety device.

The supplier is not relieved of a duty to use ordinary care [to design the product to avoid a risk] [or] [to adopt a safety device] simply because the risk is obvious or may be known to the user. The supplier must use ordinary care [to design the product to avoid the risk] [or] [to adopt a safety device] if the supplier could reasonably expect that the user will fail to protect [himself] [herself] or others, despite awareness of the danger.

In connection with the claim under "products liability," a product may present an unreasonable risk of injury even though the risk is obvious or may be known to the user. An obvious risk of injury is unacceptable and must be avoided by [product design] [or] [the adoption of a suitable safety device] where a reasonably prudent supplier having full knowledge of the risk would expect that the user will fail to protect [himself] [herself] or others, despite awareness of the danger.

USE NOTES

This instruction shall be given where a submissible issue is the adequacy of product design and defendant contends that the risk of injury associated with the design is obvious. This instruction must not be given where the sole theory of liability in the case is failure to warn. In a warning case, obviousness of the risk eliminates a duty to warn against the danger.

The first paragraph shall be given in the negligence action; the second paragraph applies to strict liability in tort. Where both theories apply, the entire instruction shall be read, and court and counsel should determine whether the negligence and strict liability portions should be read together or separated to avoid close repetition of similar language. Appropriate bracketed language shall be selected, depending upon the nature of plaintiff's design allegation.

[As amended, effective November 1, 1991.]