



California Supreme Court adopts sophisticated intermediary defense but finds factual issues that preclude judgment for the defendant

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Webb v. Special Electric Company, Inc.
(May 23, 2016, S209927)

The Supreme Court today decided the applicability and scope of the sophisticated intermediary doctrine under California law. The case involved a plaintiff injured by a product sold by Johns-Manville (J-M), the world's leading supplier of asbestos-containing materials. The defendant, Special Electric, acted as a broker for the sale of raw asbestos to J-M. At trial, the jury found Special Electric liable solely on a failure to warn theory. The trial court granted JNOV under the sophisticated intermediary doctrine because J-M already knew everything there was to know about the dangers of asbestos. The Court of Appeal reversed in a 2-1 decision.

In a 5-2 opinion by Justice Carol Corrigan, the Court for the first time definitively ruled that the sophisticated intermediary doctrine applies in California. "To establish a defense under the sophisticated intermediary doctrine, a product supplier must show not only that it warned or sold to a knowledgeable intermediary, but also that it actually and reasonably relied on the intermediary to convey warnings to end users."

In its majority opinion, the Court expressly disapproved *Stewart v. Union Carbide Corp.* (2010) 190 Cal.App.4th 23, 29-30), which had held that the sophisticated intermediary defense applied only when the defendant gave a warning to the intermediary. The Court noted that "[a]lthough in most cases a warning to the intermediary will be necessary, warnings are not required if the intermediary was so sophisticated that it actually knew or reasonably should have known about the potential harm."

Applying the ruling to the facts of this case, the Court agreed it was undisputed that J-M was a sophisticated entity. The Court, however, affirmed the Court of Appeal's reversal of the JNOV motion because it found that Special Electric had not conclusively established that Special Electric reasonably relied on J-M to give warnings to its customer.

A concurring and dissenting opinion by Chief Justice Tani Cantil-Sakauye — joined by Justice Ming Chin — agreed the JNOV ruling should be reversed, but disagreed with the test set forth in the majority opinion absolving defendants of their duty to warn based on what the intermediary should have known. The dissenting justices instead would have required the defendant establish that the intermediary had actual knowledge of the alleged dangers.

More Information

For further information about this case, please contact Horvitz & Levy partners Lisa Perrochet, Curt Cutting and Jason R. Litt (818.995.0800).