



# Sophisticated users have rights, too

*Can a failure-to-warn eliminate the grounds of a product defect?*

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There exists a common misconception that the sophisticated-user defense bars a sophisticated user's product-liability action. The recent case of *Chavez v. Glock, Inc.* (July 24, 2012) 207 Cal.App.4th 1283, 1314, confirms that a sophisticated user can recover for injuries in a product-liability action, under a design-defect theory.

## The sophisticated-user defense

Generally, a product supplier has a duty to warn consumers about the hazards inherent in the product. (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.) A product supplier is subject to strict liability for injuries that result from the failure to warn about a product's known dangers. (*Ibid.*) But, under the sophisticated-user defense, "A manufacturer is not liable to a sophisticated user of its product for failure to warn of a risk, harm, or danger, if the sophisticated user knew or should have known of that risk, harm, or danger." (*Chavez, supra*, 207 Cal.App.4th at 1313, quoting *Johnson, supra*, 43 Cal.4th at 71.)

## Determining user sophistication

Determining whether a plaintiff qualifies as a sophisticated user involves an analysis of what the user knew or should have known at the time of the injury. (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 73-74.) This test focuses on "objective general predictions of the anticipated user population's knowledge, not case-by-case hindsight examinations of the particular plaintiff's subjective state of mind." (*Ibid.*)



## Claiming design-defect strict liability

In *Glock*, the three-year-old son of an off-duty police officer shot him in the back with his service weapon. The officer sued the gun maker and holster supplier based on negligence and strict product liability theories, including failure to warn of the gun's danger under the circumstances.

Specifically, the officer claimed the gun had a light trigger pull and, because it had no safety, defendants should have warned him to use a specific holster that restricted a child's access to the trigger. The defendants moved for summary judgment and argued that the sophisticated-user defense precluded recovery for failure to warn because the danger was obvious to a police officer.

The Court of Appeal agreed and held that the sophisticated-user defense barred recovery for failure to warn. But the court said the officer could proceed under a strict-product-liability design-defect theory. (*Glock, supra*, 207 Cal.App.4th 1283, 1314 ["[Plaintiff] argues, correctly, the sophisticated user defense does not bar a design defect cause of action asserted under a risk-benefit theory."])

## The design-defect theory

A product maker or supplier who places a defective product on the market is subject to strict liability if the plaintiff's injury results from the product's foreseeable use. (*Glock, supra*, 207 Cal.App.4th at 1302.) A plaintiff can pursue strict product liability under three theories: design defect, manufacturing defect, and failure to warn. (*Ibid.*)

A design defect exists when a product is built in accordance with its intended specifications, but the design itself is inherently defective. (*Glock, supra*, 207 Cal.App.4th at 1302.) California has recognized two tests to prove design defect: the consumer-expectation test, and the risk-benefit test. (*Ibid.*)

The consumer-expectation test requires a plaintiff to prove that the product fails to meet the minimum expectations of an ordinary consumer. (*Glock, supra*, 207 Cal.App.4th at 1302.) Alternatively, a plaintiff may prove a design defect under a risk-benefit test. "To prove a defect under the risk-benefit test, a plaintiff need only demonstrate that the design proximately caused the injuries. Once proximate cause is demonstrated, the burden shifts to the defendant to establish that the benefits of the challenged



design, when balanced against such factors as the feasibility and cost of alternative designs, outweigh its inherent risk of harm.” (*Ibid.*) These tests are alternative – the inability to prove one does not preclude the other. (*Ibid.*)

### **Glock: risk-benefit design-defect theory**

In *Glock*, the Court held that the consumer expectation theory was unprovable because “no reasonable consumer ... would expect an unlockable and loaded weapon, left in ready-to-fire condition in a location accessible to a child or other unauthorized users, not to accidentally discharge.” (*Glock, supra*, 207 Cal.App.4th at 1312.) But the court held that the officer could proceed under a risk-benefit theory, “notwithstanding [the officer’s] inability to prove design defect under the consumer expectation test.” (*Id.* at 1312.)

### **The sophisticated-user defense and warning-based actions**

The misconception that the sophisticated-user defense bars sophisticated users’ product-liability actions may derive from the defense-sided case of *Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56. In *Johnson*, for the first time, the Supreme Court expressly adopted the sophisticated-user defense as California law, and held that the defense barred a plaintiff’s failure-to-warn-based product-liability and negligence claims. (*Id.* at 74.)

Johnson worked as a trained and certified heating, ventilation, and air conditioning (HVAC) technician. He alleged he sustained injury when he brazed air conditioner pipes that contained a refrigerant known to decompose into dangerous gas when heated. He sued under negligence and product-liability theories, each of which claimed the defendant failed to provide an adequate warning of the danger. The defendant moved for summary judgment under the sophisticated-user

defense and argued that Johnson knew or should have known of the danger based on his HVAC training and experience.

The trial court granted summary judgment for the defendant. (*Johnson, supra*, 43 Cal.4th at 63.) The Court of Appeal affirmed and held that “because plaintiff’s theory was the same in all causes of action, i.e., product liability through the failure to warn, the sophisticated user defense should apply to plaintiff’s complaint in its entirety.” (*Id.* at 63.)

In affirming these decisions, the Supreme Court in *Johnson* explained that the sophisticated-user defense rests on a basic causation analysis: “Because these sophisticated users are charged with knowing the particular product’s dangers, the failure to warn about those dangers is not the legal cause of any harm that the product may cause.” (*Johnson, supra*, 43 Cal.4th at 65.) Because Johnson based his design-defect case on the defendant’s failure to warn, the Supreme Court did not consider whether the sophisticated-user defense barred design-defect cases generally.

However, the following year, the Court of Appeal in *Johnson v. Honeywell Intern. Inc.*, 179 Cal.App.4th 549, 559, held that Johnson, who had amended his complaint to include a design-defect action, could proceed with that action, despite the fact that the sophisticated-user defense barred his warning-based actions. The court explained:

Johnson’s design defect cause of action was not concerned with warnings. Instead, he alleged that respondents’ design of their refrigerant was defective. We see no logical reason why a defense that is based on the need for warning should apply. (*Ibid.*)

### **Conclusion**

A product maker or supplier who places a defectively designed or manufac-

tured product on the market is subject to strict product liability, if a sophisticated user’s injury results from the product’s foreseeable use. (See, *Glock, supra*, 207 Cal.App.4th at 1314; see also, *Honeywell Intern. Inc.*, 179 Cal.App.4th at 559.) The sophisticated-user defense only bars warning-based actions. (*Ibid.*)

So when representing a potential sophisticated user in a product-liability action, first determine whether your client qualifies as a sophisticated user. This analysis considers what your client knew or *should have known* (an objective test) at the time of the injury. (*Johnson, supra*, 43 Cal.4th at 73-74.)

When writing the complaint, state causes of action based on a design or manufacturing defect if the facts support such actions and your client is likely to qualify as a sophisticated user. Properly stated design- or manufacturing-defect actions will survive demurrer, even if you represent a sophisticated user.



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