

1 **13-1402. Duty of the supplier.**

2 The supplier of a product has a duty to use ordinary care to avoid a foreseeable risk of
3 injury caused by a condition of the product or manner in which it is used. This duty is owed [to
4 persons who can reasonably be expected to use the product] [and] [to persons who can reasonably
5 be expected to be in the vicinity during the use of the product.]

6 [The supplier's duty to use ordinary care continues after the product has left ~~[[his] [her]~~
7 ~~[its]]~~ the supplier's possession. A supplier who later learns, or in the exercise of ordinary care
8 should know, of a risk of injury caused by a condition of the product or manner in which it could
9 be used must then use ordinary care to avoid the risk.]

10 USE NOTES

11 This instruction must be given in any products liability case in which the court submits
12 negligence as a theory of liability. The instruction ordinarily will be followed by UJI 13-1403
13 NMRA and UJI 13-1404 NMRA, defining the duty of all product suppliers. The bracketed second
14 paragraph shall be given only where an issue is presented concerning a supplier's failure to act to
15 prevent injury after selling the product and learning of a risk.

16 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-
17 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

18 **Committee commentary.** — All persons supplying a product owe the duty of ordinary care. The
19 duty stated by this instruction and the supplier's duty under strict liability in tort are imposed upon
20 the entity responsible for the act of supplying the product. If the supplier is a corporation, the
21 corporation is regarded as the "supplier" within the meaning of this instruction. Corporate
22 employees are not liable, absent negligent conduct on their part independent of a corporate failure

1 to provide a product which satisfies the duty of ordinary care or is free from unreasonable risk of
2 injury. *See* Restatement (Second) of Torts § 388, comment c (1966).

3 In contrast to strict products liability under UJI 13-1406 NMRA, the duty of ordinary care does
4 not depend upon the supplier's regular engagement in the business of supplying chattels and applies
5 even to the gratuitous, isolated bailment. Restatement (Second) of Torts §§ 388-390, "Rules
6 applicable to all suppliers." However, these instructions are drafted for the usual complaint against
7 a defendant who is regularly engaged in the business of making, distributing, retailing, leasing or
8 selling products. In an appropriate case, the negligence instructions of this chapter can be modified
9 to cover the gratuitous bailor. UJI 13-1402 and 13-1403 would be given without modification and
10 UJI 13-1404 would be modified so that the first sentence reads: "Ordinary care is that care which
11 a reasonably prudent [~~man~~]person would use in the circumstances."[-] "Reasonably prudent
12 [~~man~~]person" would also be substituted for "reasonably prudent supplier" in the last sentence of
13 UJI 13-1404. If a product is not supplied to satisfy a business purpose of the gratuitous bailor, the
14 gratuitous bailor has no duty to inspect and the bailor's duty to warn extends only to risks of injury
15 known to the bailor. *See* Restatement (Second) of Torts § 388, comment n and § 392, comment a.
16 UJI 13-1402 states the basic duty. Subsequent instructions in this chapter refine this duty under
17 particular conditions and circumstances. Instructions defining obligations of warning, design and
18 inspection are not all-inclusive. This chapter does not contain instructions for all conceivable
19 applications of the basic duty stated in UJI 13-1402. For example, instructions have not been
20 drafted to fit the situation described in Restatement (Second) of Torts §§ 389 and 390. There are
21 cases in which the plaintiff will have the argument that a particular product was so unsafe for the
22 use for which it was likely to be put that the supplier could not reasonably assume that a warning
23 would be adequate to protect the user. In such a case, UJI 13-1402 and 13-1419 NMRA can be

1 used and plaintiff's specific theory of liability should be stated in UJI 13-1401 NMRA. Cases
2 falling within the circumstances of Restatement (Second) of Torts § 389, such as *Zamora v. J.*
3 *Korber & Co.*, 1954-NMSC-120, 59 N.M. 33, 278 P.2d 569[~~(1955)~~], are also embraced by the
4 general duty stated by this instruction but will require special instructions and a specification of
5 the issue in UJI 13-1401.

6 The supplier's duty of ordinary care is not bounded by contractual concepts of privity. *Steinberg*
7 *v. Coda Roberson Constr. Co.*, 1968-NMSC-055, ¶¶ 3-7, 79 N.M. 123, 440 P.2d 798[~~,799 (1968)~~].

8 The duty is owed to all who may be foreseeably endangered by a failure to exercise ordinary care,
9 *Baker v. Fryar*, 1966-NMSC-268, ¶¶ 5-9, 77 N.M. 257,[~~259-61,~~] 421 P.2d 784, [786-7 (1966),
10]including a bystander who is not a user of the product. While § 402A of the Restatement (Second)
11 of Torts originally took a neutral position towards application of strict liability to persons other
12 than user, the decided trend of the cases adopting the doctrine has been toward inclusion of
13 bystanders. *See Elmore v. American Motors Corp.*, 75 Cal. Rptr. 652, 451 P.2d 84 (1969) (cited
14 without adoption or rejection in *Stang v. Hertz Corp.*, 1972-NMSC-031, ¶¶ 12-15, 83 N.M. 730,[
15 733,] 497 P.2d 732[~~,735, 52 A.L.R.3d 112 (1972)~~]).

16 The continuing duty of the supplier is merely one application of negligence law. When a product
17 supplier learns of a defect after supplying the product, the supplier must use reasonable prudence
18 to protect those exposed to the risk created by the defect. *See* 1 Frumer and Friedman, *Products*
19 *Liability* § 8.02 (1976). Ordinary care is all that is required. Given that standard, the fact finder
20 determines what should have been done under the circumstances—product recall, warning, etc.

21 [As revised[~~, effective November 1, 1991~~]; as amended by Supreme Court Order No. S-1-RCR-
22 2025-00126.]