

1 **13-1406. Strict products liability; care not an issue.**

2 Under the “products liability” claim, a supplier in the business of putting a product on the  
3 market is liable for harm caused by an unreasonable risk of injury resulting from a condition of  
4 the product or from a manner of its use. Such a risk makes the product defective. This rule applies  
5 even though all possible care has been used by the supplier in putting the product on the market.

6 The liability of the supplier is [to persons whom the supplier can reasonably expect to use  
7 the product] [and] [to persons whom the supplier can reasonably expect to be in the vicinity during  
8 the use of the product].

9 USE NOTES

10 This is the basic instruction defining strict products liability and, together with UJI 13-1407  
11 NMRA, must be used in every strict products liability case based upon Restatement (Second) of  
12 Torts § 402A. For bystander injury, use the second bracketed phrase.  
13 [Adopted by Supreme Court Order No. 09-8300-011, effective May 15, 2009; as amended by  
14 Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after  
15 December 31, 2025.]

16 **Committee commentary.** — The New Mexico Supreme Court’s rationale for adopting strict  
17 products liability in tort for any supplier in the business of putting the product on the market is the  
18 risk distribution approach taken in *Greenman v. Yuba Power Prods., Inc.*, 59 Cal. 2d 57, 27 Cal.  
19 Rptr. 697, 377 P.2d 897 (1962) and *Escola v. Coca Cola Bottling Co.*, 24 Cal. 2d 453, 150 P.2d  
20 436 (1944). *Stang v. Hertz Corp.*, 1972-NMSC-031, 83 N.M. 730, 497 P.2d 732[~~, 52 A.L.R.3d~~  
21 ~~112 (1972)~~].

22 The language of strict products liability, taken from Restatement (Second) of Torts § 402A, has  
23 less than the universal application which these instructions are intended to have for strict products

1 liability relating to production flaw defects, unsafe design or formulation, warning inadequacies,  
2 safety options and products which are unavoidably unsafe, with a risk of harm not justified by  
3 usefulness or desirability of the product.

4 Since certain commercial promotions or other transactions do not involve “the business of selling”  
5 a product, the committee chose “business of putting the product on the market.” *Cf. Stang, 1972-*  
6 *NMSC-031, ¶¶ 12-16 [83 N.M. at 733-34, 497 P.2d 735-36]* (holding that, so long as a bailor is in  
7 the business of leasing, ~~he~~the bailor will be held to the same standard as a retailer). Likewise,  
8 “supplier” was preferred over “seller.”

9 “Defective condition” is a phrase most applicable to the production flaw. “Risk of injury” was  
10 introduced by the committee as a complementary phrase, giving the instructions clearer universal  
11 application. For the reasons commented upon under UJI 13-1407, the committee chose a  
12 reasonably prudent person standard of “unreasonable risk of injury,” rather than the Restatement  
13 user-oriented standard of danger “to an extent beyond that which would be contemplated by the  
14 ordinary consumer who purchases it, with the ordinary knowledge common to the community as  
15 to its characteristics.” *See* Restatement (Second) of Torts § 402A, comment i.

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