

1 **13-1410. Particular duties of the manufacturer.**

2 The manufacturer of a product must use ordinary care in:

- 3 (1) [formulating] [designing] the product;
- 4 (2) making the product;
- 5 (3) [inspecting] [testing] the product; and
- 6 (4) packaging the product.

7 [A manufacturer need not necessarily design into the product or adopt features which
8 represent the ultimate in safety. You should consider a manufacturer's ability to eliminate a danger
9 without seriously impairing the usefulness of the product or without making it unduly expensive.]
10 Ordinary care requires a product that is reasonably safe for foreseeable use in light of all the
11 circumstances.

12 In [designing] [testing] [packaging] a product, the manufacturer has the duty to possess
13 and apply the knowledge available to reasonably prudent manufacturers.

14 **USE NOTES**

15 This instruction is to be given in a negligence action where the defendant supplier is the
16 manufacturer of the product or may be regarded by the jury as manufacturer under UJI 13-1411
17 NMRA. The proper brackets should be selected, depending upon the aspect of the manufacturing
18 process which is in issue in the case. If a step in the manufacturing and distributing process is not
19 involved in the lawsuit, it should be eliminated from the instruction. This instruction must not be
20 given if plaintiff's case is based solely upon strict liability.

21 The bracketed sentences in the second paragraph shall be given only if plaintiff contends
22 that the product was negligently designed.

1 **Committee commentary.** — In cases involving negligent design, the jury's focus should be upon
2 features of the design which make a product allegedly dangerous for any reasonably foreseeable
3 use. The manufacturer is permitted to consider factors other than safety, for example, feasibility,
4 in designing the product. *Gates v. Ford Motor Co.*, 494 F.2d 458, 460 (10th Cir. 1974); *Blohm v.*
5 *Cardwell Mfg. Co.*, 380 F.2d 341, 344 (10th Cir. 1967). Whether in negligence or strict liability,
6 allegations involving product design do not always present jury issues. *Skyhook Corp. v. Jasper*,
7 1977-NMSC-017, 90 N.M. 143, 560 P.2d 934[~~-(1977)~~]; *Dreisonstok v. Volkswagenwerk, A.G.*,
8 489 F.2d 1066 (4th Cir. 1974); *Stubblefield v. Johnson-Fagg, Inc.*, 379 F.2d 270 (10th Cir. 1967).
9 Ordinary care requires that a supplier, engaged in the manufacture of a product, possess sufficient
10 technical knowledge to make reasonably accurate judgments concerning product design,
11 manufacture, packaging and testing. At a minimum, the defendant should possess the technical
12 knowledge known to other responsible manufacturers of the product, and ~~[he]~~the defendant is
13 constructively charged with such knowledge. Restatement (Second) of Torts § 395, comment g
14 (1966).
15 In a negligence action, as distinguished from an action based upon strict liability in tort, the
16 manufacturer's obligation to possess and apply available knowledge relates to that which is
17 "knowable" at the time of manufacture and sale of the product. *See generally*, the discussion of
18 "knowledge" as a condition of liability which appears in *Ross v. Phillip Morris & Co.*, 328 F.2d 3
19 (8th Cir. 1964).
20 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]