

1 **13-1411. Supplier regarded as manufacturer.**

2 Under a claim of failure to use ordinary care, a supplier who permits a product to be sold
3 as ~~[[his] [her] [its]]~~ the supplier's own is subject to the duties of a manufacturer, even though the
4 product was, in fact, made by someone else.

5 A supplier permits a product to be sold as ~~[[his] [her] [its]]~~ the supplier's own if ~~[[he] [she]~~
6 ~~[it]]~~ the supplier labels or markets it in such a way that the purchaser is reasonably led to believe
7 that the supplier made the product or had the product made to ~~[[his] [her] [its]]~~ the supplier's
8 specifications.

9 USE NOTES

10 This instruction shall be given where an issue exists concerning the status of a defendant
11 who has distributed the product but did not make it. For the purpose of applying the particular
12 duties of the manufacturer contained in UJI 13-1410 NMRA, the plaintiff is contending that the
13 defendant has held ~~[itself]~~ themselves out as the manufacturer. This instruction must not be given
14 if plaintiff's case is based solely upon strict liability.

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

17 **Committee commentary.** — The duties of the manufacturer are applied to suppliers who either
18 appear to be the maker of a product or appear to have had a product manufactured for them.
19 Restatement (Second) of Torts § 400 (1966). The factors for consideration are analogous to those
20 which determine an agent's apparent authority. *Chevron Oil Co. v. Sutton*, 1973-NMSC-111, 85
21 N.M. 679, 515 P.2d 1283~~[-(1973)]~~. Under strict liability in tort, all in the chain of distribution of
22 the product share with the manufacturer liability for a product presenting an unreasonable risk of
23 injury. Restatement (Second) of Torts § 402A, comment f. Thus, provided ~~[[he] [she] [it]]~~ the

- 1 supplier is in the chain of distribution, the supplier's "status" with respect to manufacture of the
- 2 product is irrelevant.
- 3 [As revised~~[, effective November 1, 1991]~~; as amended by Supreme Court Order No. S-1-RCR-
- 4 2025-00126.]