

1 **13-1412. Obvious or known danger; design and safety device.**

2 The supplier is not relieved of a duty to use ordinary care [to design the product to avoid a  
3 risk] [or] [to adopt a safety device] simply because the risk is obvious or may be known to the  
4 user. The supplier must use ordinary care [to design the product to avoid the risk] [or] [to adopt a  
5 safety device] if the supplier could reasonably expect that the user will fail to protect [~~himself~~  
6 ~~herself~~]themselves or others, despite awareness of the danger.

7 In connection with the claim under "products liability," a product may present an  
8 unreasonable risk of injury even though the risk is obvious or may be known to the user. An  
9 obvious risk of injury is unacceptable and must be avoided by [product design] [or] [the adoption  
10 of a suitable safety device] where a reasonably prudent supplier having full knowledge of the risk  
11 would expect that the user will fail to protect [~~himself~~ ~~herself~~]themselves or others, despite  
12 awareness of the danger.

13 USE NOTES

14 This instruction shall be given where a submissible issue is the adequacy of product design  
15 and defendant contends that the risk of injury associated with the design is obvious. This  
16 instruction must not be given where the sole theory of liability in the case is failure to warn. In a  
17 warning case, obviousness of the risk eliminates a duty to warn against the danger.

18 The first paragraph shall be given in the negligence action; the second paragraph applies  
19 to strict liability in tort. Where both theories apply, the entire instruction shall be read, and court  
20 and counsel should determine whether the negligence and strict liability portions should be read  
21 together or separated to avoid close repetition of similar language. Appropriate bracketed language  
22 shall be selected, depending upon the nature of plaintiff's design allegation.

1 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-  
2 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

3 **Committee commentary.** — While obviousness of a danger eliminates a duty to warn of that  
4 danger (UJI 13-1415 NMRA, bracketed third paragraph), it does not eliminate the duty to use  
5 ordinary care in the design and manufacture of a product. In the design of a product, a supplier  
6 may be required by ordinary care to consider and guard against an obvious danger.

7 The same principle applies in strict liability cases, where the focus is the acceptability of a  
8 particular risk of injury. The issue is whether the overall plan or design makes the product  
9 unreasonably dangerous. *Skyhook Corp. v. Jasper*, 1977-NMSC-017, ¶¶ 14-20, 90 N.M. 143, 560  
10 P.2d 934[~~938 (1977)~~]; *Rindlisbaker v. Wilson*, 95 Idaho 752, 519 P.2d 421, 427 (1974). With  
11 increasing frequency, products liability cases are predicated upon the supplier's failure to adopt a  
12 plan or design which incorporates features to reduce or eliminate obvious hazards. An example is  
13 the cases dealing with products sold without safety devices. *E.g., Pike v. Frank G. Hough Co.*, 2  
14 Cal. 3d 465, 85 Cal. Rptr. 629, 467 P.2d 229 (1970). The Supreme Court's adoption of the principle  
15 of this instruction is implicit in its decisions in *Proctor v. Waxler*, 1972-NMSC-057, 84 N.M. 361,  
16 503 P.2d 644[~~(1972)~~] and *Villanueva v. Nowlin*, 1966-NMSC-248, 77 N.M. 174, 420 P.2d 764[  
17 ~~(1966)~~]. In the [~~first case~~] *Villanueva*, the court recognizes that no duty exists to warn of obvious  
18 dangers. 1972-NMSC-057, ¶ 9 [~~77 N.M. at 176, 420 P.2d at 766~~]. In [~~the second~~] *Proctor*, the  
19 court holds that ordinary care may require some action, apart from warning, to protect against  
20 obvious hazards. 1972-NMSC-057, ¶¶ 9-14 [84 N.M. at 363-4, 503 P.2d at 646-7].

21 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]