

1 **13-1415. Duty of the supplier; warning.**

2 The supplier must use ordinary care to warn of a risk of injury. However, there is no duty  
3 to warn of a risk unknown to the supplier, unless, by the use of ordinary care, the supplier should  
4 have known of the risk.

5 Under plaintiff's claim of "products liability", a product presents an unreasonable risk of  
6 injury if put on the market without warning of a risk which could be avoided by the giving of an  
7 adequate warning.

8 [The supplier has no duty to warn of risks which ~~[[he][she][it]]~~ the supplier can reasonably  
9 expect to be obvious or known to foreseeable users of the product.]

10 USE NOTES

11 This instruction must be given where the supplier's failure to warn of a risk of injury is a  
12 submissible issue.

13 The first paragraph shall be given in a negligence case. The second paragraph shall be  
14 given in a strict liability case. Where both theories are submitted, both paragraphs shall be given.

15 The bracketed third paragraph is used only if there is sufficient evidence to support a jury's  
16 determination that the risk of injury involved was one which a supplier could reasonably expect to  
17 be obvious to foreseeable users.

18 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-  
19 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

20 **Committee commentary.** — Product suppliers have a duty to warn of nonobvious dangers  
21 associated with a product's use. Restatement (Second) of Torts § 388 (1965); *Villanueva v. Nowlin*,  
22 1966-NMSC-248, ¶¶ 3-9, 77 N.M. 174, [~~175-176,~~]420 P.2d 764[~~, 765 (1966)~~]. See also *Fabian*  
23 *v. E.W. Bliss Co.*, 582 F.2d 1257 (10th Cir. 1978); *Skyhook Corp. v. Jasper*, 1977-NMSC-017, 90

1 N.M. 143, 560 P.2d 934[~~-(1977)~~]; [~~and~~] *Garrett v. Nissen Corp.*, 1972-NMSC-046, 84 N.M. 16,  
2 498 P.2d 1359[~~-(1972)~~]. No attempt has been made in this chapter to define an obvious danger. It  
3 is believed that the concept of obviousness is one which is understandable to, and can be applied  
4 by, jurors without further definition and that any attempt to provide more specific guidelines would  
5 simply be confusing. Similarly, there is no duty to warn [~~a~~]product [~~user~~]users of risks of which  
6 [~~he has~~]they have actual knowledge. *Jones v. [Minnesota]Minn. Mining & Mfg. Co.*, 1983-NMCA-  
7 106, 100 N.M. 268, 669 P.2d 744[~~-(Ct. App. 1983)~~].

8 The duty to warn is further restricted by the concept of foreseeability. UJI 13-1403 NMRA. A  
9 remote, unforeseeable risk of injury does not give rise to a duty to warn. *First Nat'l Bank v. Nor-*  
10 *Am [Agrl.]Agric. Prods., Inc.*, 1975-NMCA-052, 88 N.M. 74, 537 P.2d 682[~~-(Ct. App. 1975)~~];  
11 *Standhart v. Flintkote Co.*, 1973-NMSC-040, 84 N.M. 796, 508 P.2d 1283[~~-(1973)~~]; *Van de Valde*  
12 *v. Volvo of [America]Am. Corp.*, 1987-NMCA-130, [~~101~~]106 N.M. 457, 744 P.2d 930[~~-(Ct. App.~~  
13 ~~1987)~~]. As stated in the committee comment to UJI 13-1403, because the focus is foreseeable risk  
14 of injury, the duty to warn is not limited to risk of injury arising from the use intended by the  
15 supplier. A risk of injury which arises from an anticipatable, but unintended, use of the product  
16 gives rise to a duty to warn. *Spruill v. Boyle-Midway, Inc.*, 308 F.2d 79, [~~83-4~~]83-84 (4th Cir.  
17 1962).

18 Failure to warn is a theory under strict products liability. In the language of Restatement (Second)  
19 of Torts § 402A, a product sold without an adequate warning of danger from a particular condition  
20 or use of the product is "defective;" in the language of these instructions, the product presents an  
21 "unreasonable risk of injury." Cf. [*First Nat'l Bank v. Nor-Am Agrl. Prods., Inc.*]Nor-Am, 1975-  
22 NMCA-052, ¶¶ 63-68[88 N.M. 74, 85, 537 P.2d 682, 693 (Ct. App. 1975)]; *Schrib v. Seidenberg*,  
23 1969-NMCA-078, ¶¶ 18-34, 80 N.M. 573,[~~577-8,~~] 458 P.2d 825[~~, 829-30 (Ct. App. 1969)~~].

- 1 [As revised~~[, effective November 1, 1991]~~; as amended by Supreme Court Order No. S-1-RCR-
- 2 2025-00126.]