A Plaintiff Cannot Claim Failure To Warn When They Did Not Read

The term "Product Defect Claim" refers to three intrinsically linked claims; Defective Design, Defective Manufacturing/Construction, and Failure to Warn. Washington State, like many states, has codified the elements of product defect claims. To establish a product defect claim under the Washington Products Liability Act, RCW 7.72 *et. seq*. ("WPLA") – and most states' product liability statutes – a Plaintiff must prove that the subject product was not reasonably safe for its intended use (either through its faulty design, faulty construction, or faulty warnings) and that their alleged injuries were proximately caused by the alleged defect. While defective design and defective construction claims are generally held to a strict liability standard, failure to warn claims are not. RCW 7.72.030 provides in part:

> (1) A product manufacturer is subject to liability to a claimant if the claimant's harm was proximately caused by the negligence of the manufacturer in that the product was not reasonably safe as designed or not reasonably safe because adequate warnings or instructions were not provided.

In other words, as a threshold matter, Plaintiffs must prove that the warnings offered by the manufacturer were negligent constructed, and that the defective warnings proximately caused the alleged injuries. Taken to its inevitable conclusion, a Plaintiff must be able to demonstrate not only that the warnings were negligently deficient, they also must proximately link these deficient warnings with their injuries by showing that they reviewed the warnings. In *Hiner v. Bridgestone/Firestone, Inc.*, 138 Wn.2d 248, 978 P.2d 505, (1999), the Washington Supreme Court found that, in addition to demonstrating that the warnings were deficient, a Plaintiff must proffer actual evidence that they would have read these warnings, no matter how deficient they were.

In *Hiner*, Plaintiff brought suit against tire manufacturers alleging that their failure to provide competent warnings caused her to lose control of her vehicle and sustain injuries in a collision. Plaintiff had mounted two snow tires on the front of her vehicle, and two non-snow tires on the rear. Plaintiff argued that, if there had been a warning printed on the tires warning against affixing mixed sets of tires, she would not have had the mixed set mounted. Crucially, the tire manufacturer defendants were able to show that the owner's manual of Plaintiff's vehicle contained a warning that "[s]now tires should be installed on all four wheels; otherwise, poor handling may result," and Plaintiff admitted she had never read this warning. Despite the fact that the tire

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manufacturers had not written, promoted, or published the warning contained in the owner's manual, the Washington Supreme Court held that, where it was unlikely Plaintiff would have read the hypothetical curative warnings, based upon evidence that Plaintiff had not read the other warnings associated with other portions of her vehicle, there could be no finding of liability for failure to warn. Plaintiff in *Hiner* even specifically testified that she would have read such warnings, had they existed, and the Court did not find this sufficient given the proof that Plaintiff had not read the owner's manual of her vehicle, or the existing warnings imprinted on her tires.

This 1999 decision is still alive in the 21st century; in an August, 2023 opinion, the trial court in *Payne v. Charlatte of America et. al*, King County Superior Court, 22-2-01229-3 KNT, granted summary judgment in favor of product manufacturer Charlatte when, amongst other bases, no-party could show that Plaintiff Payne, the end user, would have read any of the warnings contained in Charlatte's manual. In *Payne*, Charlatte had shipped a manual containing warnings along with their product. A 3rd party had taken it upon themselves to train Plaintiff in the safe use of the product, but there was no evidence that this training included providing Plaintiff with a copy of the manual, and no evidence was presented that Plaintiff had ever actually seen the warnings contained in the manual. The *Hiner* and *Payne* decisions highlight the need for counsel representing product manufacturers to establish not only the reasonableness of the warnings which existed at the time the product shipped, but also the manner with which the Plaintiff interacted with all warnings associated with the use of their product. Testimony from a Plaintiff that they would have read hypothetical curative warnings is insufficient to establish liability where the defense can show that Plaintiff tended to not read warnings on other similar products.