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Heaters

No Duty to Supply Bilingual Warnings For Heater Not Targeted at Hispanic Market

A jury did not need to determine whether the manufacturer of a propane gas heater should have provided warnings in Spanish when no proof had been presented showing that the product was specifically marketed to Spanish-speaking customers, the U.S. Court of Appeal for the Eleventh Circuit held June 21 (*Farias v. Mr. Heater Inc.*, 11th Cir., No. 11-10405, 6/21/12).

Judge Rosemary Barkett said a federal district court in Florida correctly found as a matter of law that English instructions on a Mr. Heater MH24T propane gas heater were sufficient to warn Spanish-speaking plaintiff Lilybet Farias of the dangers of using the product indoors.

Affirming summary judgment for manufacturers Enerco Group Inc. and Mr. Heater Inc., the appeals court distinguished *Stanley Industries Inc. v. W.M. Barr & Co.*, 784 F. Supp. 1570 (S.D. Fla. 1992), in which a jury was allowed to determine the adequacy of an English-only product warning.

Greg Cesarano, who represented Mr. Heater, told BNA June 28 the ruling is “significant because there is no general duty or obligation on the part of manufacturers or retailers to provide bilingual warnings.”

“There is the exception, which was first stated in the *Stanley* case, that if a retailer or manufacturer specifically targets a market then there may well be a duty to provide bilingual warnings. That case said it was a jury question, but in our case there was no targeted marketing. It was a national product sold and marketed the same way throughout the country,” Cesarano said.

Farias’s counsel could not be reached for comment.

The appeals court also held that the warnings on the specific heater at issue in this case were not ambiguous. “We find these warnings to be of such intensity as to cause a reasonable man to exercise for his own safety caution commensurate with the potential danger of fire that occurred due to Farias’s misuse of the heater,” the appeals court said.

Spanish Speaker Buys Heater. Farias, a Spanish-speaker who said she understands very little English, purchased a Mr. Heater propane gas heater at a Home Depot for use in her home. Farias said she failed to close the valve on the propane gas tank before going to bed and her home caught on fire, causing approximately \$300,000 in damages.

Farias sued in strict liability and negligence, arguing the manufacturers had a duty to warn of the product’s danger by providing bilingual warnings.

The district court disagreed, granting summary judgment in favor of the heater manufacturers (38 PSLR 1211, 12/6/10).

Farias appealed to the Eleventh Circuit, arguing the district court erred by resolving as a matter of law the question of the adequacy of the warnings and instructions. Only the negligence claim was part of the appeal.

English Warnings Adequate. Farias argued the heater should have included warnings in Spanish because it was marketed to the Hispanic community. Farias also said the jury should have been able to decide whether the heater’s warning, to be adequate, needed instructions or warnings in a language other than English.

Farias cited *Stanley Industries*, in which the defendant advertised its linseed oil in the Hispanic media by marketing the product on Hispanic television, on four different Hispanic radio stations, and in a Spanish-language newspaper.

The court said that unlike the case here, in *Stanley Industries*, the manufacturer and seller of the linseed oil, which caused a fire, marketed specifically to the “unskilled and semiskilled” Hispanic audience.

The appeals court noted Farias produced no evidence that Enerco or Home Depot specifically marketed the product to Spanish-speaking consumers through the use of the Hispanic media, and upheld dismissal of the claim.

Farias also argued the English-language written warnings and graphic depictions on the packaging were not “adequate” because they were inherently contradictory, inaccurate, and ambiguous.

Farias said the illustrations on the packaging material and the written instructions created uncertainty as to whether the heater could be used indoors because the product’s box contained images of the heater’s use in a warehouse and a patio.

But the court was not swayed, noting there were several written warnings that the heater must only be used outdoors, and the depicted patio use featured the user performing an outdoor activity.

“The warnings also adequately convey the message that misuse of the heater runs a serious risk of not only fire, but explosions, asphyxiation, carbon monoxide poisoning, electrical shock, and personal injury, loss of life, and property damage. Those warnings are provided in bold and capital letters and contain the headings ‘WARNING,’ ” the court said

The court then affirmed the district court by holding the warning was accurate, clear, and unambiguous and could be resolved as a matter of law. It cited in support

Felix v. Hoffmann-LaRoche Inc., 540 So. 2d 102 (Fla. 1989).

George Charles Ellison and George Daniel Pilja, of Foran Glennon Palandech & Ponzi PC in Chicago, represented Farias.

Douglas Joseph Chumbley and Gregory Morgen Cesarano, of Carlton Fields in Miami, represented Mr. Heater and Enerco.

BY TERA E. BROSTOFF

The opinion is at <http://op.bna.com/tclr.nsf/r?Open=tbrf-8vnpmp>.