

This article appeared in the Winter 2007 edition of Products Liability Newsletter, a section newsletter of the Oregon State Bar.

Update on Post-Sale Duty to Warn By Bruce Hamlin, Lane Powell PC

The Summer 2006 issue of the Product Liability Newsletter contained a point-counterpoint on the state of Oregon law on post-sale duty to warn. Executive Committee member Lawrence Baron took the plaintiff's perspective, and Andrew Lee of Schwabe, Williamson & Wyatt, took the defense perspective. Both articles include a discussion of three Oregon cases, the last of which was decided in 2004: *Simonsen v. Ford Motor Co.*, 196 Or App 460, 102, P3d 710 (2004); *Kambury v. DaimlerChrysler Corp.*, 185 Or App 635, 60 P3d 1103 (2003) and *Erickson v. Air-Crane Co. v. United Tech. Corp.*, 303 Or 281, 735 P2d 614 (1987).

Since the Summer issue was written, Magistrate Judge Hubel granted summary judgment to a company that installed and provided "on-call" service to a printing press, in *Quiray v. Heidelberg, USA*, United States District Court for the District of Oregon, Civ No. 05-1234 (August 8, 2006). The case was handled by the author, and it was settled on appeal to the Ninth Circuit.

The printing press was manufactured in Germany. It was sold by the manufacturer to defendant's predecessor, and installed (in 1990) and serviced when requests were made by plaintiff's employer. It was last serviced in 1999, some four years before the accident that occurred while plaintiff was cleaning the press "on the fly." That service did not involve the part of the press involved with plaintiff's injury. There was no evidence in the record that defendant performed some affirmative post-sale negligent act, or made a post-sale affirmative misrepresentation, about the press or procedures.

On that record, Magistrative Judge Hubel granted summary judgment against nine specifications of negligence, including failure to inspect for and warn against dangers associated with cleaning and maintenance of the press, failing to recommend or advise the employer to upgrade the printing press, and failing to offer or recommend new employee training. Hubel discussed the *Simonsen, Kambury, Erickson* trilogy, as well as the Court's own decision in *Evans v. Bell Helicopter Textron*, Civ No. 97-17880-HU, Findings & Recommendation (D Or June 19, 1998), adopted by Judge Redden (D Or August 7, 1998), and concluded that:

Based on the record which shows that the specified acts of negligence all relate to conditions, defects, or failures that existed at the time of sale and persisted to the time of plaintiff's injury, and which fails to show any affirmative act or representation by defendant cognizable as a separate post-sale specification of negligence, the action is time-barred and defendant's summary judgment motion is granted.