CARLTON FIELDS

Does Florida Recognize a Duty to Warn in Spanish or Additional Languages Other Than English?

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Introduction

In products liability suits, plaintiffs often premise liability on an alleged "failure to warn." This type of claim can travel under negligence or strict-liability theories, or both. While there are some distinctions between negligence and strict-liability warnings claims, they each boil down to (1) whether the warnings accompanying the item are inadequate under an objective standard, and, if so, (2) whether the inadequacy of the warnings caused the plaintiff's injury. Under Florida law, manufacturers and distributors of consumer products have a duty to provide accurate, clear, and unambiguous product warnings in order to avoid unreasonable risks of harm to potential users. However, there are no decisions from Florida state courts imposing a duty to warn in Spanish in addition to English. Indeed, the only decisions addressing this issue under Florida law come from federal courts applying Florida law.

Application under Florida Law

There are three reported decisions from the U.S. District Courts for the Middle and Southern Districts of Florida addressing the issue of whether a manufacturer or distributor might have a duty to warn in Spanish: (1) *Farias v. Mr. Heater, Inc.*, 757 F. Supp. 2d 1284 (S.D. Fla. 2010), *aff'd*, No. 11–10405, --- F.3d ----, 2012 WL 2354369 (11th Cir. June 21, 2012); (2) *Medina v. Louisville Ladder, Inc.*, 496 F. Supp. 2d 1324 (M.D. Fla. 2007); and (3) *Stanley Industries, Inc. v. W.M. Barr & Co., Inc.*, 784 F. Supp. 1570 (S.D. Fla. 1992). Both *Farias* and *Medina* held that Florida does not recognize a general common law duty to warn in Spanish (and, presumably, any language other than English). These decisions further explained that it would be improper for a federal district court to expand Florida common law beyond its existing parameters as determined by Florida's state courts. Indeed, as noted above, there are no Florida state court decisions imposing such a duty. It is also worth noting that Florida's Constitution identifies English as the state's official language. See Art. II, § 9(a), FLA.

CONST.

However, the earlier decision from the Southern District of Florida, *Stanley*, appeared to assume that when a manufacturer and distributor jointly advertise a consumer product in Spanish in an area with a significant population that speaks only Spanish (*e.g.*, portions of Miami-Dade County, Florida), then the manufacturer and distributor undertake a duty to warn in Spanish. Although *Stanley* addressed the issue as one of adequacy of the non-Spanish warnings, duty is a threshold issue of law for the court. Therefore, by denying summary judgment and permitting the fact finder an opportunity to hold a manufacturer and distributor liable for failing to provide Spanish language warnings, *Stanley* assumed that, in some situations, there is a duty to warn in Spanish under Florida law. In contrast, the Southern District's later decision in *Farias*, the Middle District's decision in *Medina*, and at least one federal decision outside Florida, *Martinez v. Triad Controls*, 593 F. Supp. 2d 741, 764-65 (E.D. Pa. 2009), disagreed with *Stanley* or limited it to its facts.

In a recent opinion, the Eleventh Circuit weighed in on this issue. *See Farias v. Mr. Heater, Inc.*, No. 11–10405, --- F.3d ----, 2012 WL 2354369 (11th Cir. June 21, 2012). In that case, the plaintiff appealed the Southern District of Florida's entry of a summary judgment in favor of the defendants, the manufacturer and distributor of an outdoor propane-fired heater manufactured in Cleveland, Ohio for national distribution.

In direct contravention of the instructions and warnings included with the product, the plaintiff, a naturalized U.S. citizen who read and spoke little English, used the outdoor heaters to heat the inside of her home. Specifically, she placed one of the two outdoor heaters she purchased within two to three feet of her living room sofa and, contrary to the instructions and warnings, used the heater indoors for several hours. Again violating the instructions and warnings, she later turned off the heater but left its gas valve open. The plaintiff then went to bed for the evening, and the heater ignited the sofa, causing a fire. Plaintiff's home suffered fire and smoke damage, but she was uninjured. She later acknowledged that, at the time of the fire, she understood that the English word "warning" meant "danger," and that she saw such language in several places on the product materials. However, she stated that she simply did not care to have someone explain to her the content of the instructions and warnings.

Plaintiff and her property insurer then sued the defendants, alleging they failed to warn her in Spanish not to use the outdoor heaters inside her home. The defendants moved for summary judgment based on the argument that they had no duty under Florida law to warn in a language other than English.

As noted above, the district court agreed and, applying Florida law, held that there is no general common law duty to warn in Spanish. In addition, the district court held that the English language instructions, warnings, and packaging included with the heaters clearly, accurately, and

unambiguously communicated that they were for outdoor use, could not be used inside a dwelling, and that any product misuse risked death, serious injury, or property damage because of fire, burn, explosion, or asphyxiation. On these bases, the district court granted a defense summary judgment that resolved all of the plaintiff's claims.

On appeal, the Eleventh Circuit agreed with each holding. However, the appellate court distinguished (rather than disapproved) the Southern District's earlier memorandum order in *Stanley*. In particular, the Eleventh Circuit recognized that *Stanley*'s holding depended on the manufacturer and distributor's concerted effort to target consumers who spoke only Spanish through their use of Spanish language radio, television, and print advertisements. Under such circumstances, the appellate court agreed that a duty might arise to instruct and warn in the languages used to advertise and market the product. In *Farias*, however, the Eleventh Circuit recognized that the defendants had not advertised or marketed the subject product in any language other than English. Therefore, *Stanley*'s limited holding did not apply, and there was no general common law duty to warn in a language other than English.

Conclusion

While there is no indication that Florida recognizes a general common law duty to warn in languages other than English, in light of the Eleventh Circuit's decision in *Farias* and the Southern District's earlier decision in *Stanley*, if a manufacturer or distributor elects to advertise and market a particular consumer product in a language other than English, it should be prepared to include product instructions and warnings that its target audience (non-English speakers) can understand. Outside this limited context, if the product is nationally distributed and there is no foreign language product advertising, English-only instructions and warnings appear to suffice under Florida law.

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