No. A15-1188

STATE OF MINNESOTA
IN SUPREME COURT

Nereus Montemayor,

Petitioner

Trial Court Case No.: 20-CV-14-32

v.

Sebright Products, Inc.,
d/b/a Bright Technologies,

Appellate Court Case No.: A15-1188

Respondent.

Date of Filing of Court of Appeals
Opinion: March 28, 2016

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Pacific Legal Foundation submits this brief pursuant to Minn. R. Civ. App. P. 129.01 in support of Respondent Sebright Products, Inc.[1] Pacific Legal Foundation's notice and request to file this brief were timely filed on July 13, 2016.

INTRODUCTION

This case involves a tragic accident that led to serious bodily injury of Nereus Montemeyer as a result of his employer's misuse of heavy equipment and its failure to adequately train employees on the equipment's proper use. Montemeyer was rightfully compensated for the injuries and his employer paid substantial fines for its neglect. However, this case raises the question of whether Sebright Products, Inc., the manufacturer of the equipment, should bear liability for injuries that arise from others' misuse of a product in an obviously dangerous manner and against manufacturer warnings. As explained below, it should not, and this court should affirm the decision below.

VZ Hogs, a hog farming operation, purchased an extruder from Sebright Products in 2008 for the purpose of extracting liquid from food waste to be used in hog feed. VZ Hogs later moved the extruder into a shed that was configured in a nonstandard way such that the control panel was not next to the machine. When the extruder jammed, the employees who worked in the shed tried to unjam it, although they had not been trained in clearing a jam. Montemayor climbed inside the discharge chute of the machine to remove debris. Montemayor did not disconnect the extruder from its power source, nor did he read the

[1] Pursuant to Minn. Rule of Civil Appellate Procedure 129.03, amicus curiae represents that no party, person or entity, other than amicus curiae, its members and its counsel, made a monetary contribution to the preparation and submission of this brief.

operating manual or heed "two prominent warning labels" on the extruder, located just above the discharge chute. *Montemayor v. Sebright Products, Inc.*, No. A15-1188, 2016 WL 1175089, *1 (Minn. App. Mar. 28, 2016). The shed supervisor eventually called the electrical maintenance man, who attempted to clear the jam from the control panel, by turning on the machine. He did not know Montemayor was inside and the view from the control panel was such that he could not see. *Id.* The employer's failure to train the employees and provide a safe workspace were serious OSHA violations for which VZ Hogs paid significant fines. *Id*. at *2.

After recovering workers' compensation benefits, Montemayor sued Sebright, alleging that it negligently failed to warn of the danger of being within the machine, and that the extruder was defectively designed. The trial court granted Sebright's motion for summary judgment on the grounds that it was not foreseeable that a worker would place his entire body within the machine without first neutralizing the power source, and that another worker would then turn on the machine. *Id*. The appellate court affirmed, holding that the chain of events resulting in Montemayor's injuries could not be foreseen by the extruder manufacturer: "While the constellation of circumstances that resulted in this tragic accident may have been within the realm of conceivable possibility, it is too remote to impose liability on Sebright as a matter of public policy." *Id*. at *4.

This Court should affirm. A manufacturer has no duty to warn (beyond the extensive warnings already provided both on the surface of the machine and in the operations manual) in these circumstances and the machine was not defective; it began operating only because

a worker turned it on and no one had disconnected the power supply. Public policy cautions against expanding manufacturer liability to the circumstances present in this case. A manufacturer cannot be held liable for injuries that arise from a person's decision to misuse a product in an obviously dangerous manner and against manufacturer warnings. This approach is not only legally sound, it advances important fairness and efficiency policies by ensuring that manufacturers do not waste time and money trying to achieve an unrealistic level of safety before marketing useful products, and that those truly at fault for injuries bear the cost of their actions.

ARGUMENT

I

PRODUCT MISUSE IN CONTRAVENTION OF WARNINGS AND DESPITE OBVIOUS DANGER IS NOT FORESEEABLE

A. Public Policies Caution Against Imposing Manufacturer Liability for User Misuse or Failure to Follow Instructions

Even under the theory of strict liability, manufacturers are not insurers of their goods. They need not make their products completely safe, but only ensure that their products are not "unreasonably dangerous." *Minn. Min. & Mfg. Co. v. Nishika Ltd.*, 565 N.W.2d 16, 21 (Minn. 1997). A long-standing limit on manufacturer liability is that producers are not expected to guard against unforeseeable consumer misuse of their products. *Magnuson v. Rupp Manufacturing, Inc.*, 285 Minn. 32, 44-45, 171 N.W.2d 201, 209 (1969); *see also Westerberg v. School Dist. 792*, 276 Minn. 1, 6, 148 N.W.2d 312, 315 (1967) ("The manufacturer of a chattel can hardly be expected to warn of every conceivable danger that

might arise from misuse of the chattel or failure to maintain it after it breaks down."). This limit on liability protects producers from being held responsible for accidents that are outside of their control, or more fairly attributed the user (and, in this case, the employer).

Further, a product manufacturer owes no duty to warn of an improper use that could not have been foreseen. *Huber v. Niagara Mach. and Tool Works*, 430 N.W.2d 465, 467 (Minn. 1988). *See also Balder v. Haley*, 399 N.W.2d 77, 81 (Minn. 1987) (A valve manufacturer owes no duty to warn users of dangers associated with misuse of its product where there was no defect when its product left the factory, and therefore no hazard to warn against.). Courts recognize the difference between an accident and either an intended use or an unintended but reasonably foreseeable use. *Drager by Gutzman v. Aluminum Indus. Corp.*, 495 N.W.2d 879, 884 (Minn. App. 1993); *Germann v. F.L. Smithe Mach. Co.*, 395 N.W.2d 922, 925 (Minn. 1986). In short, a "manufacturer is under no duty to design an accident-proof or fool-proof" product. *Larsen v. General Motors Corp.*, 391 F.2d 495, 502 (8th Cir. 1968); *Altinma v. East 72nd Garage Corp.*, 54 A.D.3d 978, 982, 865 N.Y.S.2d 109, 114 (2008) (no duty "to design invincible, fail-safe, and accident-proof products.").[2]

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[2] Minnesota courts are also mindful that they must engage in a cost-benefit analysis prior to creating a new duty or expanding an existing one. *Erickson v. Curtis Inv. Co.*, 447 N.W.2d 165, 169 (Minn. 1989) ("Presumably we do not live in a risk-free society; if this is so, a cost-benefit analysis is unavoidable."). The cost-benefit analysis asks, "how much risk is an acceptable risk?" *Spitzak v. Hylands, Ltd.*, 500 N.W.2d 154, 157 (Minn. App. 1993). It never presupposes that the answer is "no risk at all." *See K.L. v. Riverside Med. Center*, 524 N.W.2d 300, 303 (1994) (posting security guards at hospital entrances would be "grossly out-of-proportion" to the risk that a trespasser would enter a patient's room and assault her, when no similar crime had previously occurred on the premises).

Another limitation on manufacturer liability is that there is no duty to warn of dangers that are obvious to everyone. *Minneapolis Society of Fine Arts v. Parker-Klein Associates Architects, Inc*., 354 N.W.2d 816, 821-22 (Minn. 1984); *Westerberg,* 276 Minn. at 10, 148 N.W.2d at 317. This is because, where the alleged danger is open and obvious, there is no reason to think that a warning would make the product any safer. *Independent Sch. Dist. No. 14 v. AMPRO Corp.*, 361 N.W.2d 138, 143 (Minn. App. 1985) (quoting William L. Prosser, *Handbook of the Law of Torts* § 96, at 649 (4th ed. 1971) ("There is certainly no usual duty to warn the purchaser that a knife or an axe will cut, a match will take fire, dynamite will explode, or a hammer may mash a finger."); *Thompson v. Hirano Tecseed Co., Ltd.*, 371 F. Supp. 2d 1049, 1054 (D. Minn. 2005) (the risk to machine operator's fingers by an industrial laminator machine's rollers was open and obvious).

Courts determine whether a danger is obvious by using an objective standard, not a subjective one. As this Court explained in *Domagala v. Rolland*, 805 N.W.2d 14, 26 (Minn. 2011), to determine whether risk of injury from the defendant's conduct is foreseeable, a court "look[s] at whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of any conceivable possibility." (Citation omitted.) The test is not whether the precise nature and manner of the plaintiff's injury was foreseeable, but whether "the possibility of an accident was clear to the person of ordinary prudence." *Id.* at 27 (citation omitted). *See also Glittenberg v. Doughboy Recreational Indus.*, 441 Mich. 379, 391-92, 491 N.W.2d 208 (1992) ("The focus is the typical user's perception and knowledge and whether the relevant condition or feature that creates the danger associated with the use

is fully apparent, widely known, commonly recognized, and anticipated by the ordinary user and consumer.”).

Courts apply this practical approach to an obvious danger in the context of industrial accidents. For example, in *Kline v. ABCO Engineering Corp.*, 991 F. Supp. 747, 750-51 (D. Md. 1997), a district court refused to hold the manufacturer liable under Maryland law for injuries that resulted after the plaintiff deliberately inserted his entire forearm into a conveyor machine. He had read the safety manual, which stated that the machine should be shut down during maintenance, and clearly posted warnings instructed employees to “‘stop engine or disconnect power, and wait for all movement to stop before cleaning, inspecting or repairing machine,’ and to ‘switch off and disconnect power source before servicing or inspecting.’” *Id.* at 751. Nonetheless, the plaintiff stuck his arm into the machine to loosen a caught roller, resulting in severe injuries. The court held that, given the plaintiff’s refusal to follow the warnings and the obviousness of the risk, his misuse was not foreseeable. *Id.* at 750-51. The plaintiff’s deliberate actions were an “intervening cause that relieve[d] the manufacturer[] of liability” as a matter of law. *Id.* at 751.

B. The Need to Unplug Machines with Moving Parts Prior to Performing Maintenance is Open and Obvious

Some courts describe the need to disconnect the power supply before performing maintenance on an industrial machine as the type of open and obvious danger that requires no warning. For example, in *Terry v. Erie Foundry Co.*, 235 A.D.2d 414, 652 N.Y.S.2d 308 (1997), the plaintiff was injured while cleaning a two-story, steam-powered forging hammer

manufactured by the defendant, Erie Foundry Company. The accident occurred when the plaintiff inadvertently stepped on the foot treadle used to operate the machine while his hand was in the path of the hammer. The court held that Erie had no duty to warn the plaintiff of the dangers of placing his hand in the striking area of the forging hammer from the operator's side of the machine while its power supply was still connected: "There is no duty to warn of a danger which is obvious and which the injured party either did or should have appreciated to the same extent as a warning would provide." *Id.* at 416, 652 N.Y.S.2d at 309 (citation omitted). *See also Eaton v. Jarvis Products Corp.*, 965 F.2d 922, 929 (10th Cir. 1992) ("A reasonably prudent user would have appreciated that the unguarded trigger could be bumped, thereby activating the hockcutter, which was still connected to its power source."); *Mix v. MTD Products, Inc.*, 393 N.W.2d 18, 19 (Minn. App. 1986) ("[A]ttempting to reattach a [lawnmower] belt while a drive pulley is running, when the user cannot see his hand or the pulley, presents an obvious danger of which a user need not be warned." Moreover, "[r]epeated instances of the belt slipping off the pulley did not make the danger less obvious or transform it into a 'hidden trap.' ").

Similarly, as the Florida appellate court held in *List Indus., Inc. v. Dalien*, "some types of work (and in this case some machines) that are so obviously and inherently dangerous that the danger would be obvious to anyone working in the vicinity." 107 So.3d 470, 473 (Fla. App. 2013). The court cited a commercial wood chipper as one such example of the type of industrial machine that one need only observe to know that it is dangerous. *Id.* The press brake at issue in *Dalien*—a crushing machine—fell into the same category: "There can be

no question that it was obvious to the employee that the machine could crush a hand from the times he saw steel being inserted into the Press Brake and the operator activating the foot pedal which caused the 60 ton press to bend the steel." *Id.* Unlike the current case, the employee in *Dalien* was trained on the equipment and supervised in its operation. These differences do not go to the *obviousness of the danger*, however, because that was apparent to anyone who had seen the machine in action.

Even users lacking particular technical or mechanical expertise are presumed to understand the importance of disconnecting a machine with moving parts from its power source prior to attempting repairs or maintenance. *See Ward v. Hobart Mfg. Co.*, 450 F.2d 1176, 1187 (5th Cir. 1971) (homemaker could not recover from manufacturer for injuries to her hand sustained while cleaning a meat grinder because "[a] perfectly safe and reasonable method was incorporated into the machine's design to prevent injury while cleaning—unplug it, or make certain the switch was turned off."); *Thompson v. Sunbeam Products, Inc.*, 503 Fed. App'x. 366, 367 (6th Cir. 2012) (manufacturer of a household mixer was not liable for a consumer's injury from moving beaters when the consumer disregarded instructions to unplug the mixer before inserting the beater attachments).[3]

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[3] Courts expect consumers in general to employ common sense. In *Stewart v. Von Solbrig Hospital, Inc.*, 321 N.E.2d 428, 432 (Ill. App. Ct. 1974), the court found that the manufacturer of a steel pin was not liable when a patient walked with the pin in his leg with his full weight—against his doctor's orders—because the injury "had nothing to do with the pin's failure to perform." *Id.* Instead, it was a result of the patient's deliberate decision to ignore his doctor. *Id.*; *see also Sisco v. Broce Mfg., Inc.*, 1 Fed. App'x 420, 423 (6th Cir. 2001) (employer's deliberate decision not to maintain highway sweeper in contravention of warnings was intervening cause in plaintiff's death); *Kampen v. American Isuzu Motors, Inc.*, 157 F.3d 306, 309 (5th Cir. 1998) (en banc) (applying Louisiana law and barring plaintiff's

C. The Plaintiff's Misuse Was Not Foreseeable in this Case

It is a recurring theme throughout products liability law across the United States that a manufacturer's warning, in conjunction with the obviousness of the risk, puts users on notice of the danger. *See* Richard C. Ausness, *When Warnings Alone Won't Do: A Reply to Professor Phillips*, 26 N. Ky. L. Rev. 627, 633 (1999). Both make the injury unlikely to occur. Where a person proceeds despite explicit warnings and in the face of that obvious risk, the manufacturer is not liable for the resulting injuries.

Montemayor argues that employees commonly unjammed the extruder by entering the machine and manually pulling out jammed material. *See* Appellant's Principle [sic] Brief and Addendum at 8-9. However, the "everybody does it" explanation for engaging in obviously dangerous activity does not shift the burden of protection from the individual engaging in the activity to the product manufacturer. In *Maneely v. General Motors Corp.*, 108 F.3d 1176, 1180 (9th Cir. 1997), the Ninth Circuit determined that riding in the bed of a pickup truck is an open and obvious danger even though many people ride in the beds of pickup trucks: "While we recognize that some individuals, including Appellants, do ride in pickup cargo beds, this does not mean that the ordinary product user is ignorant of the accompanying risks. Unfortunately, ordinary intelligent people defy obvious dangers all the time[.]"

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claim when he failed to read instructions in manual and spare tire compartment not to "get beneath the car" and was crushed because jack supporting car collapsed).

Here, the court can only determine foreseeability in light of the fact that the plaintiff voluntarily put his entire body into a crushing machine without ensuring that it was disconnected from the power supply. In *Cooper v. Ingersoll Rand Co.*, 628 F. Supp. 1488 (W.D. Va. 1986), a similar industrial accident occurred. There, the widow of a worker killed by an industrial miner machine sued the manufacturer on a variety of negligence and warranty theories. *Id.* at 1489. In that case, one co-worker instructed another to disconnect the power supply; however, when attempting to do so, the main circuit breaker operating level was inadvertently positioned such that it would not effectively control the current through the circuit breaker. *Id.* The machine suddenly started operating while maintenance was still being performed, trapping Orville Cooper in the works. Despite efforts to shut off the machine, his co-workers could not do so because of the improperly set circuit breaker lever. By they time they eventually shut down the machine, Cooper was dead. *Id.* at 1489-90. The court held that the "failure to de-energize the mining machinery before undertaking repairs" was the direct and proximate cause of Cooper's death and that "[t]he alleged improper design and any negligence possibly involved in manufacture and rebuilding is merely a circumstance of the accident and at best only a remote cause thereof." *Id.* at 1494. While acknowledging other contributing factors, "the crucial fact is that a negligent omission occurred in the course of events which intervened and superseded all, if any, antecedent negligence on defendants' part." *Id.*

Under the circumstances in this case, the extruder functioned as designed and the existing warnings—as well as common sense—should have sufficed to keep workers outside

of a crushing machine still connected to its power supply. *Cf. Snilsberg v. Lake Washington Club*, 614 N.W.2d 738, 744 (Minn. App. 2000) (plaintiffs must exercise common sense). The workers' actions in this case should be categorized as dangerous misuse that manufacturers cannot be expected to guard against. Because products might be misused in myriad different ways, and because a jury might deem any and all of those misuses foreseeable in hindsight, it is important that courts police this limit carefully. Here, the court below properly considered the tragic circumstances of this case and held that, while there are many human beings whose actions and omissions combined to cause Montemayor's injuries, the manufacturer of the extruder could not have foreseen the accident that occurred and therefore had no duty to prevent it.

II

HOLDING MANUFACTURERS LIABLE IN CASES OF EGREGIOUS MISUSE UNDERMINES FAIRNESS AND EFFICIENCY

Excluding liability when the plaintiff misuses a product in violation of explicit warnings and in an obviously dangerous manner furthers several core policies that underlie products liability law—like balancing safety with utility, incentivizing safe conduct, and promoting fairness and autonomy. A rule requiring manufacturers to bear the cost of deliberate and egregious product misuse results in products engineered to guard against phantom risks at the expense of utility, encourages careless behavior, and forces careful users to bear the costs of other individuals' irresponsible actions.

A. Courts Should Balance Safety and Efficiency

Improvements in safety have trade-offs. Users may encounter less risk of injury, but the product itself will often have more limited utility, and cost more. *Cf. Minder v. Anoka County*, 677 N.W.2d 479, 484 (Minn. App. 2004) (governmental statutory immunity for accidents resulting from road maintenance and inspection reflects a balancing of policy objectives, including safety and economic considerations); Sherzod Abdukadirov, *Risky Business: When Safety Regulations Cause Harm*, 6 Wm. & Mary Pol'y Rev. 1, 3 (2015) (examining effect of risk trade-offs in undermining safety regulations). While a product can almost always be made safer by the addition of more safeguards, stronger materials, failsafes, etc., such alterations will always make the product more expensive, will increase scarcity (which in the long run may decrease overall safety), and may discourage consumers from taking warnings seriously, if they come to view these safeguards as overkill. In other words, "[s]ociety does not benefit from products that are excessively safe." Restatement (Third) of Torts: Prod. Liab. § 2 cmt. a (1998).

Holding manufacturers liable in cases of egregious misuse would force producers to "hold other users hostage to the lowest common denominator." *Hernandez v. Tokai Corp.*, 2 S.W.3d 251, 260 (Tex. 1999). In *Wheeler v. HO Sports Inc.*, 232 F.3d 754, 758 (10th Cir. 2000), for example, the court observed that a life vest was not defectively designed when it included only 7.1 pounds of floatation, rather than the 10 pounds necessary to keep afloat an average person, because the vest "was designed for use by experienced, skilled wakeboarders," who are "willing to forego some degree of floatation for the sake of

enhanced mobility." In other words, more knowledgeable wakeboarders were entitled to choose between products with different levels of safety, rather than be stuck with a less useful, but safer product. Wise public policy avoids tort law that over-deters useful but risky products "to the net detriment of society." David G. Owen, *The Moral Foundations of Products Liability Law: Toward First Principles*, 68 Notre Dame L. Rev. 427, 484 (1993).[4]

Further, the decision below properly considered the efficiency-oriented products liability principle that the party who is able to foresee the risks of harm and guard against them at the least cost should be liable for that harm. Ausness, *When Warnings Alone*, 26 N. Ky. L. Rev. at 640. Placing liability on the party who can avoid the risk of harm at the least cost (typically called a least-cost avoider) is an efficient way of incentivizing safer products. *Wilder Corp. of Delaware v. Thompson Drainage and Levee Dist.*, 658 F.3d 802, 806 (7th Cir. 2011); *Chicago Title Ins. Co. v. Washington State Office of Ins. Comm'r*, 178 Wash.2d 120, 150, n.5, 309 P.3d 372, 386 n.5 (2013) (Personal responsibility for accidents creates incentives for using one's powers of observation to avoid injury.). The manufacturer is not always the least cost avoider. Holding users liable when they flout warnings and proceed in the face of obvious danger provides consumers with the proper incentives to behave

[4] Producers held to standard of creating exceptionally safe, extremely low-risk products, may not only forego creating extruders like Sebright's, but also valuable new medicines and treatments. *See* Peter Huber, *Safety and the Second Best: The Hazards of Public Risk Management in the Courts*, 85 Colum. L. Rev. 277, 285-90 (1985) (discussing how excessive tort liability hampered the production of life-saving drugs, including the whooping cough vaccine).

prudently when they are able to do so. *See* W. Kip Viscusi, *Wading Through the Muddle of Risk-Utility Analysis*, 39 Am. U. L. Rev. 573, 585 (1990).

Where courts ignore that policy in favor of cost-spreading, they do product users a disservice, as courts are inefficient providers of social insurance. *See, e.g.*, William A. Worthington, *The "Citadel" Revisited: Strict Tort Liability and the Policy of Law*, 36 S. Tex. L. Rev. 227, 250 (1995) (explaining how cost-spreading increases prices, reduces the availability of insurance, and entails high transaction costs).[5] In *Marston v. Minneapolis Clinic of Psychiatry and Neurology, Ltd.*, 329 N.W.2d 306, 314 (Minn. 1982), dissenting Justice Peterson commented on the social costs of spreading risk when the plaintiff is in the best position to monitor his behavior to avoid harm. In that circumstance, vicarious liability "tends to increase the number of torts, perhaps to the detriment of efficiency, by diluting the [plaintiff's] incentives for precautionary behavior." (Citation omitted.) Lawsuits often entail long waits, after which a plaintiff may receive no reward at all or, more likely, a settlement for less than the desired amount. Viscusi, *Risk-Utility Analysis*, 39 Am. L. Rev at 586. These policies should inform the Court's decision in this case.

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[5] Workers' compensation statutes are a classic example of legislative balancing that spreads costs of compensating for injury in exchange for limited employer liability in tort. *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 755-56 (Minn. 2005). Montemayor received workers' compensation benefits in this case. *Montemayor v. Sebright Products, Inc. v. VZ Hogs, LLP*, Third-Party Defendant's Counterclaim, No. 20CV14332, 2014 WL 10383835 (D. Minn. Feb. 14, 2014) ("Defendant and Third-Party Plaintiff Bright [Sebright Products, Inc.] duly paid Plaintiff worker's compensation benefits as a consequence of the injury suffered by Plaintiff and will in the future be required to pay additional sums for the care and treatment of Plaintiff's injuries.")

B. Courts Should Not Impose Liability Where it Is Unfair to Do So

From a fairness perspective, it is fundamentally unjust to hold manufacturers liable for risks outside of their control. *See* David G. Owen, *Products Liability: User Misconduct Defenses*, 52 S.C. L.R. 1, 55 (2000) ("If there is common thread in the decisions on the meaning of the 'foreseeability' limitation to product uses, it is one of limiting a seller's responsibility to uses that are *fair*."). Limiting liability to cases where the product is actually defective, not merely capable of being egregiously misused, underscores the fact that "manufacture and use of products is in general good. As a form of property, products generally promote the autonomy of both their makers and their users." Owen, *The Moral Foundations*, 68 Notre Dame L. Rev. at 459 (footnote omitted). *See Horst v. Deere & Co.*, 319 Wis. 2d 147, 161, 769 N.W.2d 536, 543 (2009) ("We do not want to hold businesses liable for every injury involving their products. Such an approach would eliminate some useful products from the market that cannot possibly be made completely safe (such as knives, guns, medicine, and even sugar in the case of a diabetic.)").

Limiting liability in the case of unforeseeable misuse places responsibility on those who make bad choices when harm results from them. *Wilson v. Good Humor Corp.*, 757 F.2d 1293, 1310, n.1 (D.C. Cir. 1985) (Bork, J., concurring) (noting "fundamental" concepts in tort of "fault and of individual responsibility"); *Alexander v. Mitchell*, 930 A.2d 1016, 1020 (Me. 2007) (Courts limit recovery based on "societal expectations regarding behavior and individual responsibility in allocating risks and costs."). Calling products "defective"

because one user used a product dangerously unreasonably restricts consumer choice and places the financial burden on a party that did not cause the harm.

In short, "[t]here is simply no social or economic benefit to be gained by giving large damage awards to product users who fail to follow simple instructions or heed clear warnings," especially when the risk of injury is apparent. Owen, *User Misconduct Defenses*, 52 S.C. L.R. at 17 ("[W]orkers do not have a license to act carelessly, and the conduct of a person injured on the job is properly subject to the normal standard of a reasonably prudent employee in the same or similar circumstances."); *Wilson v. Sentry Ins.*, 993 F. Supp. 2d 662, 669 (E.D. Ky. 2014) (a warning is not inadequate because the plaintiff failed to heed it); *Higgins v. E.I. DuPont de Nemours & Co.*, 863 F.2d 1162, 1167 (4th Cir. 1988) (manufacturer not responsible for injuries resulting from chemicals used by untrained product users who failed to observe warnings on the product). The court below recognized that it would be unfair to hold the extruder manufacturer liable for an accident that would have been prevented if the employer properly trained its employees or any of the employees involved in the maintenance of the machine followed the instructions.

CONCLUSION

The decision below should be affirmed.

DATED: August 31, 2016

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with proportional 13 point font. The length of this brief is 4607 words. This brief was prepared using WordPerfect 17.

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