
NINTH CIRCUIT UPHOLDS SUMMARY JUDGMENT FOR TASER IN DEATH CASE

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Rosa v. TASER

Ninth Circuit Court of Appeals, July 10, 2012

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Rosa was under the influence of methamphetamine when he was tased almost a dozen times by several police officers trying to subdue him. After a long struggle, he was finally handcuffed, but almost immediately went into cardiac arrest caused by metabolic acidosis. Rosa did not survive.

Rosa's family and estate (collectively "Rosa") sued TASER under California strict product liability and negligence law. They alleged TASER had a duty to warn police officers that repeated exposure to TASER products could result in fatal levels of metabolic acidosis. The trial court granted summary judgment for TASER on both the strict liability and negligence claims; Rosa appealed.

The court of appeals affirmed. Under California strict products liability law, a manufacturer has a duty to warn of particular risks that are known or knowable in light of the generally recognized and prevailing best scientific and medical knowledge available at the time of manufacture. The law does not require a manufacturer to warn of all possible risks, no matter how speculative, conjectural or tentative. Here, Rosa could only advance scientific articles speculating that electric shock devices could cause metabolic acidosis – but no articles pre-dating manufacture had confirmed this. Further, under California negligence principles, a manufacturer has a duty to warn of risks that are likely to be dangerous for the product's intended use. The court of appeals found very few circumstances under which this duty would be broader than that under strict liability. For example, a manufacturer could have a duty to disclose and warn of a risk it discovers after the manufacture of a product. A manufacturer could also be liable for failing to perform adequate testing. Lastly, a manufacturer could have a duty to warn those who, although using another's product, might rely on warnings supplied by the manufacturer- i.e., a name brand pharmaceutical company should know that users of generics will rely on warnings supplied by the name brand. Rosa did not provide evidence of any of the above.