

CHAPTER 21 ACTIVITY
Analyzing 2

Directions: Read the case study below, keeping strict liability in mind. Then decide the case. Discuss the reasons for your decision.

Kai-Lin's boss wanted to display some new items in the store. He asked Kai-Lin to use polyurethane foam sheets to make a little display box and gave Kai-Lin a soldering gun to melt the foam and cut it into pieces that were the size she needed to make the box.

During heating, the foam gave off smoke and fumes. Shortly thereafter, Kai-Lin was diagnosed as having a progressive, debilitating illness that caused shortness of breath, reduced pulmonary function, bronchitis, and chest pains. Kai-Lin sued the manufacturer of the foam. Experts testified that such illness may be caused by toluene diisocyanate (TDI), a chemical used to make polyurethane that remains in the foam.

The Occupational Safety and Health Administration (OSHA) has found it dangerous to inhale concentrations of TDI above 0.02 parts per million for 20 minutes. Kai-Lin testified that she was never warned of any hazard in heating the material and that she did not see a warning label that was included with each shipment of foam.

She argued that each polyurethane foam sheet should have had the label stapled to it so that the ultimate user could not avoid seeing it. Her lawyers did not indicate that the warning sheet itself was inadequate, only that its distribution was faulty.

The manufacturer countered that the employer had received a 40-page safety booklet that experts testified was one of the best in the industry, that the employer also had had personal experience that indicated that these materials were hazardous under certain conditions, that stapling the safety note to the sheets would have destroyed the sheets, and that many of the notes would have been torn off during packaging. In addition, the company sold the materials only to knowledgeable customers and gave them clear warning of the dangers inherent in using the product, including cutting it with a hot wire or heat contact. They indicated that this process should be done only with adequate ventilation.

How should this case be decided? Give your reasons.
