

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

IN RE: SMITTY’S/CAM2 303 TRACTOR)	
HYDRAULIC FLUID MARKETING, SALES)	MDL No. 2936
PRACTICES, AND PRODUCTS LIABILITY)	
LITIGATION)	Master Case No. 4:20-MD-02936-SRB

ORDER

Before the Court is Defendants Smitty’s Supply, Inc. (“Smitty’s”) and CAM2 International, LLC (“CAM2”) (collectively, “Defendants”) Motion for Summary Judgment on the Claims of Plaintiff Dale Wendt. ([Doc. #838](#).) For the reasons discussed below, the motion is GRANTED IN PART and DENIED IN PART.

I. BACKGROUND

This MDL arises from Defendant’s manufacture, sale, and marketing of tractor hydraulic fluid (“THF”), a multifunctional lubricant designed to offer certain protective benefits when used in tractors and heavy equipment as a hydraulic fluid, transmission fluid, and gear oil. Plaintiffs represent a putative class of consumers who purchased at least one of four allegedly defective products at issue in this case: Smitty’s Super S Super Trac 303 Tractor Hydraulic Fluid (“Smitty’s Super Trac 303”), Smitty’s Super S 303 Tractor Hydraulic Fluid (“Smitty’s Super S 303”), Cam2’s Promax 303 Tractor Hydraulic Oil (“Cam2 Promax 303”), and Cam2’s 303 Tractor Hydraulic Oil (“Cam2 303”) (collectively, the “303 THF Products”). Defendants Smitty’s and CAM2 manufactured the 303 THF Products, which were sold nationwide by multiple retailers under various label names.

A. Plaintiff Dale Wendt

Plaintiff Dale Wendt (“Wendt”) is a Wisconsin resident. Wendt purchased and used CAM2 Promax 303 and CAM2 303 in the following equipment: a 1990s 742 Bobcat Skid Steer,

a 1980s Hydraulic Manure Spreader, a 1970 970 Case Tractor, a 1980 175 Case Tractor, and a 1950s 990 David Brown Tractor with Loader (collectively, “the Equipment”). Wendt claims purchase price and flush remedy damages for the Equipment. Wendt claims damages for repairs done to only his 1990s 742 Bobcat Skid Steer, 1980s Hydraulic Manure Spreader, and 1980 175 Case Tractor. Wendt claims damage to the Equipment, and seeks on behalf of himself and all class members a purchase-based injury and flush remedy.

Wendt testified that he read CAM2 303’s label before he first purchased it:

Q: The first time you purchased CAM2 303, did you read the label?

A: Yes.

Q: Did you read all the label?

A: You bet.

Q: Did you have any questions about the label when you read it?

A: Not at all.

Q: Did anything about the label confuse you?

A: Not really.

Q: Was there anything on there, the label when I say “There,” relevant to your purchase of CAM2 303?

...

A: It looked like it suited my needs.

([Doc. #940-1, p. 4.](#)) Wendt testified that he purchased CAM2’s 303 THF Products because of “[t]he price and . . . the label[.]” ([Doc. #940-1, p. 3.](#)) When asked what about the label stood out to Wendt, he testified “it said it was a universal fluid . . . and it – it listed 10 or 12 different tractors on it and construction equipment. It was good for wet brakes. It was good for everything I needed it for.” ([Doc. #940-1, p. 3.](#))

CAM2 Promax 303 contained the following label located on the back of the product (“the CAM2 Promax 303 Label”):

CAM2® PROMAX™ TRACTOR HYDRAULIC 303 FLUID is suitable as a replacement for the following manufacturers where a tractor hydraulic fluid of

this performance level is recommended: Allis Chalmers®, Allison®, Caterpillar®, Deutz, Ford® Tractor, International Harvester®, JI Case®/David Brown®, John Deere® 303 J20A, Kubota®, Massey Ferguson®, Oliver®, [and] White®.

CAM2® PROMAX™ TRACTOR HYDRAULIC 303 FLUID is formulated from a blend of highly refined base oils and superior additives. CAM2® PROMAX™ TRACTOR HYDRAULIC 303 FLUID provides performance in the areas of antiwear, PTO clutch, rust protection, extreme pressure properties, water sensitivity, foam suppression and brake chatter reduction.

CAM2® PROMAX™ TRACTOR HYDRAULIC 303 FLUID is recommended for ambient temperatures between +32°F and 104°F (0°C to 40°C). For ambient temperatures outside this range or where a premium tractor hydraulic/transmission oil is required, please use a CAM2® Premium Tractor Hydraulic Fluid.

Misapplication may cause severe performance problems. CAM2® PROMAX™ TRACTOR HYDRAULIC 303 FLUID has not been recommended by any OEM for model years later than 1974. For equipment built after 1974 requiring multi-functional fluid, use a CAM2® Premium Tractor Hydraulic Fluid.

([Doc. #815-2, p. 2](#)) (emphasis in original). CAM2 303 contained the following label, also located on the back of the product:

CAM2® TRACTOR HYDRAULIC 303 OIL is general-purpose lubricant for farm and industrial tractors and construction equipment. CAM2® TRACTOR HYDRAULIC 303 OIL provides performance in the areas of anti-wear, PTO clutch, rust protection, extreme pressure properties, water sensitivity, foam suppression and brake chatter reduction. CAM2® TRACTOR HYDRAULIC 303 OIL is recommended for ambient temperatures between +32°F and 104°F (0°C to 40°C). For ambient temperatures outside this range or where a premium tractor hydraulic/transmission oil is required, please use a CAM2® Premium Tractor Hydraulic Fluid.

CAM2® TRACTOR HYDRAULIC 303 OIL is suitable as a replacement for the following manufacturers where a tractor hydraulic fluid of this performance level is recommended: Allis Chalmers®, Allison®, Caterpillar®, Deutz, Ford® Tractor, International Harvester®, JI Case®/David Brown®, John Deere® 303 J20A, Kubota®, Massey Ferguson®, Oliver®, [and] White®.

WARNING: THIS PRODUCT IS NOT SUITABLE FOR USE IN MOST EQUIPMENT MANUFACTURED SINCE 1974. MISAPPLICATION IN NEWER EQUIPMENT MAY CAUSE UNSATISFACTORY PERFORMANCE OR EQUIPMENT HARM. FOR EQUIPMENT BUILT AFTER 1974, USE CAM2® PREMIUM TRACTOR HYDRAULIC FLUID.

([Doc. #839-5, p. 8](#)) (emphasis in original).

B. The Instant Action

Plaintiffs initiated suit against Defendants in multiple federal district courts where the 303 THF products were sold. On February 11, 2020, Defendants requested all pending actions be consolidated and transferred pursuant to [28 U.S.C. § 1407](#). On June 2, 2020, the J.P.M.L. consolidated and transferred the eight then-pending actions to the Western District of Missouri.¹ *See In re: Smitty's/CAM2 303 Tractor Hydraulic Fluid Mktg., Sales Practices & Prod. Liab. Litig.*, No. 2936, [2020 WL 2848377](#), at *1 (J.M.P.L. June 2, 2020). Following the creation of this MDL, Plaintiffs filed another lawsuit, *Feldkamp v. Smitty's Supply, Inc.*, No. 20-cv-02177, in the U.S. District Court for the Central District of Illinois, which was subsequently transferred to this Court. Pursuant to this Court's order dated August 3, 2020, Plaintiffs were permitted to file a Consolidated Amended Complaint that would serve to supersede all prior pleadings in the individual cases that were consolidated. Further, this Court's August 3, 2020 Order permitted direct joinder of new claims through the Consolidated Amended Complaint.

On September 24, 2021, Plaintiffs filed the Fourth Amended Consolidated Complaint ("FACC"). On October 25, 2021, Defendants filed a motion to dismiss the FACC, which the Court granted in part and denied in part on March 9, 2022. *See* ([Doc. #451](#).) On April 21, 2023, Plaintiffs filed a Fifth Amended Consolidated Complaint ("5ACC").²

¹ The pending actions consolidated before the undersigned are as follows: *Buford v. Smitty's Supply Inc.*, No. 19-cv-00082 (E. D. Ark.); *Fosdick v. Smitty's Supply Inc.*, No. 19-cv-01850 (N.D. Iowa); *Blackmore v. Smitty's Supply Inc.*, No. 19-cv-04052 (N.D. Iowa); *Zornes v. Smitty's Supply, Inc.*, No. 19-cv-0257 (D. Kan.); *Wurth v. Smitty's Supply Inc.*, No. 19-cv-00092 (W.D. Ky.); *Mabie v. Smitty's Supply, Inc.*, No. 19-cv-3008 (S.D. Tx.); *Klingenberg v. Smitty's Supply, Inc.*, No. 19-cv-2684 (D. Minn.); and *Graves v. Smitty's Supply, Inc.*, No. 19-cv-5089 (W.D. Mo.).

² The instant motion was filed before the 5ACC. Although an amended complaint supersedes the original complaint, the Court finds that the amended complaint did not affect the substance of this motion and treats the instant motion for summary judgment as a motion for summary judgment on the 5ACC. *See Cartier v. Wells Fargo Bank, N.A.*, [547 Fed. Appx. 800, 804](#) (8th Cir. 2013) (finding a district court did not abuse its discretion in treating a motion to dismiss an original complaint as a motion to dismiss an amended complaint).

Wendt seeks to represent a class of Wisconsin purchasers and asserts the following claims: (1) Count I, Negligence; (2) Count VI, Fraudulent Misrepresentation; (3) Count VII, Negligent Misrepresentation; and (4) Count XXXIII, Wisconsin Deceptive Trade Practices Act (“WDTPA”), Wis. Stat. Ann. § 100.18.³

On March 29, 2023, Defendants filed the instant motion for summary judgment on Wendt’s claims pursuant to [Federal Rule of Civil Procedure 56](#). Wendt opposes the motion.

II. LEGAL STANDARD

Under Rule 56, summary judgment is warranted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” [Fed. R. Civ. P. 56\(a\)](#). The moving party has the burden of identifying “the basis for its motion, and must identify those portions of the record which it believes demonstrate the absence of a genuine issue of material fact.” *Torgerson v. City of Rochester*, [643 F.3d 1031, 1042](#) (8th Cir. 2011) (en banc) (cleaned up). If the moving party makes this showing, “the nonmovant must respond by submitting evidentiary materials that set out specific facts showing that there is a genuine issue for trial.” *Id.* (quotation marks omitted). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Id.* (quotation marks omitted).

III. DISCUSSION

Defendants move for summary judgment on Wendt’s “claims for property damage to his 1990s 742 Bobcat Skid Steer, 1908s Hydraulic Manure Spreader, and 1980 1175 Case Tractor (together, ‘Post-1974 Equipment’)[.]” ([Doc. #839, p. 7.](#)) Defendants do not move for summary judgment as to Wendt’s claims for property damage on the remaining equipment, nor do they

³ The Court previously dismissed the Wisconsin Plaintiffs’ warranty claims (Counts II–IV) and unjust enrichment claim (Count V). ([See Doc. #451.](#)) Additionally, the Court has dismissed Wendt’s Count XXXIII, in so far as it relates to purchases of the 303 THF Products made on or before November 27, 2016. ([See Doc. #991.](#))

move for summary judgment on his claims as to purchase-price damages. The parties agree and the Court finds that Wisconsin law applies.⁴

Defendants argue they are entitled to summary judgment because Wendt cannot show causation as he “read the misapplication disclaimer on the CAM2 ProMax303 label” before purchasing it and that think “knowledge negates the causation element of all Mr. Wendt’s claims[.]” ([Doc. #839, pp. 7, 9.](#)) Wendt disagrees. The Court will address the parties’ arguments as to (1) Count I; (2) Counts VI and VII; and (3) Count XXXIII.

A. Count I

Defendants argue they are entitled to summary judgment on Count I because Wendt’s reading of the CAM2 303 THF Products’ labels severs proximate cause. Wendt disagrees.

The Court agrees with Defendants that causation is a necessary element of Wendt’s claims. *See Rockweit by Donahue v. Senecal*, [197 Wis.2d 409, 418, 541 N.W.2d 742, 747](#) (Wis. 1995) (negligence). However, beyond establishing causation as an element of Wendt’s claims, Defendants do not present any case law to support their argument that the label negates causation. The Court agrees with Wendt in that Defendants “assert only generically that causation is required for all claims without articulating what causation entails for any particular claim or what point they assert from any of the cases cited.” ([Doc. #940, p. 21.](#)) Because Defendants do not articulate support for their assertion that the label is an intervening cause, the Court, they have not shown they are entitled to summary judgment.

B. Counts VI and VII

Defendants argue that reasonable reliance is an element of Wendt’s misrepresentation claims, “either expressly or indirectly through causation,” and that they are entitled to summary judgment because Wendt read CAM2’s 303 THF Products’ labels and, therefore, could not have

⁴ See ([Doc. #451, p. 12](#)) (“Applying the relevant choice of law rules, the Court finds that for all identified conflicts of law each Plaintiff’s home state’s laws shall apply to their respective claims.”).

reasonably relied on representations about its suitability. ([Doc. #987, p. 23.](#)) Wendt disagrees, arguing “[t]here is no admission that Wendt knew and understood that the fluid was not what it purported to be or would harm his equipment.” ([Doc. #940, p. 24.](#))

In order to prevail on his intentional misrepresentation claims, Wendt must show that he justifiably relied on a misrepresentation. *Kaloti Enterprises, Inc. v. Kellogg Sales Co.*, [283 Wis.2d 555, 569–79, 699 N.W.2d 205, 211–16](#) (Wis. 2005). There cannot ““be justifiable reliance if [a plaintiff] relied on a representation which . . . is shown by the facts within [their] easy observation and [their] capacity to understand to be so obviously untrue.”” *Sanders v. Hertel*, [387 Wis.2d 685, 92 N.W.2d 803](#), at *2 (Wis. App. 2019) (quoting WIS JI–CIVIL 2401).

Here, the Court agrees with Defendants and finds that summary judgment is appropriate on Count VI. Wendt was not justifiable in relying on representations that the CAM2 303 THF Products were suitable for use in his tractors built after 1974 because he observed and had the capacity to understand the label. The labels clearly stated that the products were not suitable or recommended for equipment built after 1974 and could cause performance problems or equipment harm. The labels also clearly stated that CAM2 directed consumers to use a premium oil in equipment built after 1974. Wendt testified that he read and understood the label. Thus, any reliance on the benefits or recommended manufacturers listed on the labels was not justifiable.

Similarly, the Court finds that summary judgment is appropriate on Count VII. Under Wisconsin law, “justifiable reliance . . . is not a separate element of negligent misrepresentation.” *Imark Indus., Inc. v. Arthur Young & Co.*, [141 Wis.2d 114, 130, 414 N.W.2d 57, 64](#) (Wis. App. 1987). However, “[a] claim based on ‘negligent misrepresentation inquires whether the buyer was negligent in relying upon the misrepresentation.’” *Malzewski v. Rapkin*, [296 Wis.2d 98, 113, 723 N.W.2d 156, 163](#) (Wis. App. 2006) (quoting *Lambert v. Hein*, [218 Wis.2d 712, 731](#),

582 N.W.2d 84, 92 (Wis. App. 1998)). The record shows that Wendt read and understood the label such that he must have known that the CAM2 303 THF Products were not suitable for his equipment manufactured after 1974 and that CAM2 directed him to use a premium product. “[W]hen a buyer learns that a misrepresentation has been made prior to closing, the buyer is no longer deceived and, as a matter of law, can no longer rely upon the prior misrepresentation.” *Lambert*, 218 Wis.2d at 732, 582 N.W.2d at 92 (citation omitted).

Accordingly, the Court finds that Defendants are entitled to summary judgment on Counts VI and VII, as they relate to Wendt’s claims for property damages for his equipment built after 1974.

C. Count XXXIII

Defendants argue that they are entitled to summary judgment on Count XXXIII because “the WDTPA require a showing that a plaintiff sustained pecuniary loss *as a result of* a false statement,” which Wendt cannot show. (Doc. #987, p. 23.) Wendt disagrees.

“[A] plaintiff is not required to prove reasonable reliance as an element of a [WDTPA] misrepresentation claim.” *Novell v. Migliaccio*, 309 Wis.2d 132, 158, 749 N.W.2d 544, 556 (Wisc. 2008). “However, the reasonableness of a plaintiff’s reliance may be relevant in considering whether the representation materially induced (caused) the plaintiff to sustain a loss.” *Id.* For the same reasons discussed above, III.A., Wendt cannot claim that misrepresentations regarding the quality or performance of the CAM2 303 THF Products materially induced him to sustain equipment damage because Wendt read and understood the label.

Accordingly, the Court finds that Defendants are entitled to summary judgment on Count XXXIII, as it relates to Wendt’s claims for property damages for his equipment built after 1974.

IV. CONCLUSION

Accordingly, Defendants Partial Motion for Summary Judgment on the Claims of Plaintiff Dale Wendt ([Doc. #838](#)) is GRANTED IN PART and DENIED IN PART. The motion is GRANTED as to (1) Counts VI and VII, as they relate to Wendt's claims for property damages for his equipment built after 1974; and (2) Count XXXIII, as it relates to Wendt's claims for property damages for his equipment built after 1974. The motion is DENIED in all other respects.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: July 20, 2023