DePaul Law Review

Volume 26
Issue 2 *Winter 1977*

Article 11

Torts - Strict Liability - A Manufacturer's Duty to Warn Does Not Extend To Electrical Injuries - Genaust v. Illinois Power Co., 62 Ill.2d 456, 343 N.E.2d 465 (1976)

Jeffrey Kripton

Torts—Strict Liability—A MANUFACTURER'S DUTY TO WARN DOES NOT EXTEND TO ELECTRICAL INJURIES—*Genaust v. Illinois Power Co.*, 62 Ill.2d 456, 343 N.E.2d 465 (1976).

Recently, the Supreme Court of Illinois has refused to extend the doctrine of strict liability to electricity. In *Genaust v. Illinois Power Co.*,[1] the court narrowed the concept of strict liability by excluding electricity from those products considered to be in a marketable state which have been released into the stream of commerce, and by limiting the requirement of a duty to warn.

Ben Genaust was injured while installing a citizen's band radio antenna in proximity to overhead electrical wires.[2] Although there was no direct contact with the wires, Genaust sustained severe burns when an electrical arc[3] from the wires was conducted through the radio antenna. An action based on strict liability was brought against the manufacturers of the electricity[4] and the manufacturers of the radio antenna and its metal support tower.[5] The trial court dismissed the complaint for failure to state a cause of action.[6] The dismissal was upheld on appeal.[7]

---

1. 62 Ill.2d 456, 343 N.E.2d 465 (1976).

2. The wires were alleged to have been power transmission wires containing 12,500 volts. Brief for Appellant at 9, Genaust v. Illinois Power Co., 62 Ill.2d 456, 343 N.E.2d 465 (1976).

3. An electrical arc is a sustained movement of electrons from one point to another in the shape of a curved line formed when a break is made in an electrical circuit. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 110 (3d ed. 1968).

4. The wires were alleged to be in an unreasonably dangerous condition because they were uninsulated and were located too close to the ground. 62 Ill.2d at 461, 343 N.E.2d at 468.

5. The alleged defect of the product asserted against Rohn Tower Manufacturing Co., Lurtz Electric Co., and Hy-Gain Electronics, as manufacturers and sellers of the radio-antenna unit, was a failure to adequately warn of the danger of electrocution by electricity traveling from overhead wires through space to the radio antenna and tower. *Id.* at 465, 343 N.E.2d at 470.

6. All counts were dismissed except a negligence count against the power company. *Id.* at 460, 343 N.E.2d at 467.

7. The appellate court applied Section 388 of the Second Restatement of Torts in holding that no duty to warn was required of the manufacturers of the antenna and support tower. Section 388 states:

> One who supplies directly or through a third person a chattel for another to use is subject to liability to those whom the supplier should expect to use the chattel with the consent of the other or to be endangered by its probable use, for physical harm caused by the use of the chattel in the manner for which and by a person for whose use it is supplied, if the supplier
>
> (a) knows or has reason to know that the chattel is or is likely to be dangerous for the use for which it is supplied, and
>
> (b) has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition, and

The Illinois Supreme Court affirmed the decisions of the lower courts.[8] The court observed that the electricity was in an unmarketable state and never entered the stream of commerce. It held that the doctrine of strict liability did not apply since the "product" never left the manufacturer's control and was not sold to the consumer.[9] The strict liability counts against the manufactuers of the radio antenna and support tower were dismissed on the basis that no duty to warn was required. The court stated that a duty to warn is not required when the product manufactured is not defective and the injury results from a common propensity of the product that is open and obvious.[10] In the present case, it was not "objectively reasonable"[11] that the manufacturer would anticipate any individual being so careless as to place the antenna-tower unit near the overhead power wires.[12] This case note will examine the court's rationale, the decision in relation to the theory of strict liability in tort, and the ramifications of this decision in Illinois.

Strict liability was first imposed upon manufacturers in Illinois in *Suvada v. White Motor Co.*[13] The court in *Suvada* abolished the requirement of privity[14] and set forth three requirements for application of strict liability to manufacturers. The requirements are: 1) that there be a sale of a defective product by the manufacturer; 2) that a defect existed when the product left the manufacturer; and 3) that the injury resulted from the dangerous condition created by the defect.[15] In gen-

---

(c) fails to exercise reasonable care to inform them of its dangerous condition or of the facts which make it likely to be dangerous.

RESTATEMENT (SECOND) OF TORTS §388 (1965).

8. 62 Ill.2d 456, 343 N.E.2d 465 (1976).

9. *Id.* at 465, 343 N.E.2d at 470.

10. *Id.* at 467, 343 N.E.2d at 471.

11. *Id.* at 466, 343 N.E.2d at 471, *citing* Winnett v. Winnett, 57 Ill.2d 7, 310 N.E.2d 1 (1974).

12. *Id.* at 466, 343 N.E.2d at 471.

13. 32 Ill.2d 612, 210 N.E.2d 182 (1965). The Illinois Supreme Court abolished privity and negligence as absolute requirements in product liability claims and imposed strict liability in tort as a means of determining ultimate responsibility. *See* RESTATEMENT (SECOND) OF TORTS §402A (1965).

14. In Illinois, contractual privity was required before *Suvada*. The general rule of nonliability to consumers of a product not in contractual privity was first developed from dicta in Winterbottom v. Wright, 152 Eng. Rep. 402 (Ex. 1842). The reason for requiring privity was that the manufacturer could not foresee any injuries beyond the immediate purchaser. The requirement of privity, which limited the number of actions that could be brought against the manufacturer, was abolished in MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916). *MacPherson* rejected the *Winterbottom* rationale and imposed a duty on the manufacturer to exercise due care and to inspect the product. *Id.* at 393-94, 111 N.E. at 1054-55. The court in *Suvada* traced the historical erosion of privity in product liability cases and announced its abolition in Illinois. 32 Ill.2d at 615-16, 210 N.E.2d at 184.

15. 32 Ill.2d at 623, 210 N.E.2d at 188. The court fully accepted Section 402A of the

eral, Illinois courts have accepted the *Suvada* decision and have developed the elements in light of the purposes of the doctrine.[16]

However, application of strict liability to electricity has not been adjudicated previously in Illinois. Other jurisdictions addressing the issue have rejected application of the doctrine to electricity on the basis that there was no sale[17] or defect.[18] In *Genaust*, the plaintiff argued that the electricity sold by Illinois Power Co. was a product and that the lack of insulation rendered the product defective and unreasonably dangerous when it left the control of Illinois Power.[19] However, the court re-

---

Restatement as the strict liability criteria. Section 402A states:

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
  (a) the seller is engaged in the business of selling such a product, and
  (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.
(2) The rule stated in Subsection (1) applies although
  (a) the seller has exercised all possible care in the preparation and sale of his product, and
  (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

RESTATEMENT (SECOND) OF TORTS §402A (1965).

16. Following *Suvada*, a trend toward expanding the scope of strict liability developed. Liability under the theory was extended to sellers of the product, as well as manufacturers. Texaco, Inc. v. McGrew Lumber Co., 117 Ill.App.2d 351, 254 N.E.2d 584 (1st Dist. 1969). Courts provided greater protection to the consumer by: 1) holding the manufacturer to the knowledge and skill of experts, Moren v. Samuel M. Langston Co., 96 Ill.App.2d 133, 237 N.E.2d 759 (1st Dist. 1968); 2) requiring that the manufacturer know the technical advances in his field, *id.*; 3) requiring the manufacturer to install safety devices, Rivera v. Rockford Mach. & Tool Co., 1 Ill.App.3d 641, 274 N.E.2d 828 (1st Dist. 1971); 4) disallowing as a defense, the inability to detect defects before injury occurs, Cunningham v. MacNeal Memorial Hosp., 47 Ill.2d 443, 266 N.E.2d 897 (1970). Further, the plaintiff is not required to prove freedom from contributory negligence, Williams v. Brown Mfg. Co., 45 Ill.2d 418, 261 N.E.2d 305 (1970), or a specific defect as a prerequisite to recovery. Larson v. Thomashow, 17 Ill.App.3d 308, 307 N.E.2d 707 (1st Dist. 1974). Only two recent Illinois cases, Winnett v. Winnett, 57 Ill.2d 7, 310 N.E.2d 1 (1974), and Rios v. Niagara Mach. & Tool Works, 59 Ill.2d 79, 319 N.E.2d 232 (1974), indicate a diversion from the trend of extending the doctrine of strict liability. *Rios* limited the doctrine by holding that a manufacturer has no duty to install a safety device where the purchaser has taken it upon himself to install a safety device. For a discussion of *Rios*, see Note, *Strict Liability: An Unwarranted Limitation Upon the Manufacturer's Duty to Produce a Reasonably Safe Product*—Rios v. Niagara Machine & Tool Works, 25 DEPAUL L. REV. 533 (1976).

17. *See* Kemp v. Wisconsin Elec. Power Co., 44 Wis.2d 571, 172 N.W.2d 161 (1969) (strict liability not applicable because electricity was not sold and was still in the control of the power company).

18. *See* Erwin v. Guadalupe Valley Elec. Co-op, 505 S.W.2d 353 (Tex. Civ. App. 1974) (strict liability not applicable because no defect in electricity was alleged). *See also* Wood v. Public Serv. Co., 114 N.H. 182, 317 A.2d 576 (1974) (no urgent reason to extend strict liability to electricity).

19. 62 Ill.2d at 464, 343 N.E.2d at 470.

fused to hold the power company strictly liable, stating that the electricity was not in a marketable state and was not released into the stream of commerce.[20] Thus, the court found that there was no sale giving rise to application of strict liability.[21]

The second issue addressed by the court was whether the manufacturers of the antenna-tower unit were under a duty to warn against the possibility of electrical arcing.[22] The manufacturer's burden of adequate warning is well established in Illinois,[23] and the failure to warn may constitute a defect for purposes of strict liability.[24] A duty to warn exists where there is unequal knowledge, actual or constructive, and the defendant knows or should have known that injury could occur if no warning is given.[25] A manufacturer is not held to hindsight as a gauge of foreseea-

20. *Id.* at 465, 343 N.E.2d at 470.

21. The court specifically declined to hold that electricity was not a product. 62 Ill.2d at 463, 343 N.E.2d at 469. Assuming there is a sale, for example, to a consumer in his home, it could be argued that electricity should qualify as a product. By way of analogy, electricity bears close resemblance to other products in which the manufacturer has been held strictly liable. The doctrine has been held to apply to natural gas, Pioneer Hi-Bred Corn Co. v. Northern Ill. Gas Co., 16 Ill.App.3d 638, 306 N.E.2d 337 (3d Dist. 1973) (improper or fluctuating pressures in natural gas supplied to consumer constituted a defect under strict liability), and to human blood furnished by a hospital, Cunningham v. MacNeal Memorial Hosp., 47 Ill.2d 443, 266 N.E.2d 897 (1970) (patient contracted serum hepatitus from blood transfusion during medical treatment). These products bear little resemblance to the typical range of products which consumers traditionally purchase. However, the public policy rationale of placing the financial burden for defective products on manufacturers is fully applicable.

22. 62 Ill.2d at 465, 343 N.E.2d at 470. A third issue presented to the court was whether Hubert Plumbing & Heating Co. was liable as owner of the premises under a business invitee theory of negligence. This issue was dismissed by the court and will not be discussed in this casenote.

23. *See* Biller v. Allis-Chalmers Mfg. Co., 34 Ill.App.2d 47, 180 N.E.2d 46 (2d Dist. 1962) (notwithstanding that a product is made properly, a manufacturer who knows that a product is imminently or inherently dangerous when used in its customary manner must exercise care to warn of such a danger). *See also* Williams v. Brown Mfg. Co., 93 Ill.App.2d 334, 236 N.E.2d 125 (5th Dist. 1968); Kirby v. General Paving Co., 86 Ill.App.2d 453, 229 N.E.2d 777 (4th Dist. 1967).

24. It is well settled that the lack of adequate warning renders the product "defective." *See* Jackson v. Coast Paint & Lacquer Co., 499 F.2d 809 (9th Cir. 1974); Davis v. Wyeth Laboratories,Inc., 399 F.2d 121 (9th Cir. 1968); Williams v. Brown Mfg. Co., 93 Ill.App.2d 334, 236 N.E.2d 125 (5th Dist. 1968). *See also* Prosser, *The Fall of the Citadel*, 50 MINN. L. REV. 791 (1966); RESTATEMENT (SECOND) OF TORTS §402A, Comment j at 352 (1965).

25. *See* Weiss v. Rockwell Mfg. Co., 9 Ill.App.3d 906, 293 N.E.2d 375 (1st Dist. 1973) (strict liability action); Kirby v. General Paving Co., 86 Ill.App.2d 453, 229 N.E.2d 777 (4th Dist. 1973) (strict liability action); Hamilton v. Faulkner, 80 Ill.App.2d 159, 224 N.E.2d 304 (4th Dist. 1967) (property action); Herington v. Illinois Power Co., 79 Ill.App.2d 431, 223 N.E.2d 729 (4th Dist. 1967) (negligence action). The purpose of a warning is to apprise a party of a danger which he is not aware, and thus enable him to protect himself against it. Jonescue v. Jewel Home Shopping Serv., 16 Ill.App.3d 339, 306

bility; rather, he may be liable if the injury is likely to be serious and the burden of adequate precaution is small.[26]

The court in *Genaust* found that the injury resulted from a common propensity of the product that was readily apparent; thus, no duty to warn was required.[27] It is clear that the dangers of electricity are obvious and fully appreciated.[28] However, the court should not have assumed that electricity arcing between two metal conductors spaced a considerable distance apart is necessarily a known hazard.[29]

The question of electrical arcing as a known occurrence had been addressed previously in *Stilfield v. Iowa-Illinois Gas and Electric Co.*[30] In deciding an issue of contributory negligence, the court in *Stilfield* stated:

> Plaintiff appears to have had, as so many persons have, only the nebulous notion that electric wires are generally dangerous and direct contact with them is to be avoided. [However] [p]laintiff had no knowledge that . . . electricity would arc when a metal object was placed within 3 or 4 feet of the wire . . . .[31]

Thus, the court in *Stilfield* indicated that electrical arcing is not a known, obvious danger.[32] The question whether the danger is generally known and recognized necessarily involves a determination of the

---

N.E.2d 312 (2d Dist. 1973). Statistically small chances or remote possibilities do not eliminate a duty to warn. Davis v. Wyeth Laboratories,Inc., 399 F.2d 121 (9th Cir. 1968).

26. *See* Williams v. Brown Mfg. Co., 93 Ill.App.2d 334, 361, 236 N.E.2d 125, 139 (5th Dist. 1968).

27. The law does not require that a manufacturer warn against mishaps resulting from common propensities of products. *See* Fanning v. LeMay, 38 Ill.2d 209, 230 N.E.2d 182 (1967) (injuries sustained from slippery shoes in strict liability action); Jonescue v. Jewel Home Shopping Serv., 16 Ill.App.3d 339, 306 N.E.2d 312 (2d Dist. 1973) (injuries sustained when child drank toxic household cleaner); Wallinger v. Martin Stamping & Stove Co., 93 Ill.App.2d 437, 236 N.E.2d 755 (3d Dist. 1968) (carbon monoxide poisoning resulted from improper installation of gas heater); Withey v. Illinois Power Co., 32 Ill.App.2d 163, 177 N.E.2d 254 (2d Dist. 1961) (injuries sustained in fall from television tower).

28. Genaust admitted in his pleadings that contact with electricity is a known danger. The court must accept the factual allegations as true for purposes of the motion to dismiss the complaint as well as all reasonable inferences which can be drawn from those facts. Gertz v. Campbell, 55 Ill.2d 84, 302 N.E.2d 40 (1973); *In re* Hansen, 109 Ill.App.2d 283, 248 N.E.2d 709 (1st Dist. 1969).

29. *See* Stilfield v. Iowa-Illinois Gas & Elec. Co., 25 Ill.App.2d 478, 167 N.E.2d 295 (2d Dist. 1960); Burk v. Missouri Power & Light Co., 420 S.W.2d 274 (Mo. Sup. Ct. 1967); Black v. Public Serv. Elec. & Gas Co., 56 N.J. 63, 265 A.2d 129 (1970).

30. 25 Ill.App.2d 478, 167 N.E.2d 295 (2d Dist. 1960) (in negligence action, workman not held to knowledge of electricity arcing from overhead wires to crane).

31. *Id.* at 487, 167 N.E.2d at 299.

32. *Id.*

knowledge common to the ordinary consumers of the product.[33] The experience and ability of forseeable users will vary greatly; a product which might be used safely by one individual may prove to be lethal in the hands of another.[34] Thus, reasonable persons could differ on the question of electrical arcing and the complaint in *Genaust* should not have been dismissed on the basis that the danger was obvious.

Since the injury resulted from a common propensity, the court in *Genaust* held that it was not reasonable that the manufacturers would foresee this type of injury.[35] This examination of the manufacturer's expectations is misplaced. Strict liability arises from a condition of the product, not the subjective expectations of the manufacturer.[36] The proper test in resolving a duty to warn issue is whether the danger is generally known and recognized by the reasonable person.[37]

The court based its determination of duty on a foreseeability test.[38] While it is true that underlying any determination of a duty is the issue of forseeability,[39] the existence of a duty does not depend upon forseeability alone. The seriousness of the injury and the magnitude of the burden of guarding against it must also be taken into account.[40] However, the court in *Genaust* ignored these two vital factors. It could be argued that installation of equipment in proximity to electrical wires is analogous to inherently dangerous activities, such as the handling of explosives.[41] Therefore, the serious nature of the activity and the gravity of the potential harm[42] give rise to a duty to warn. Also, the fact that

33. Jackson v. Coast Paint & Lacquer Co., 499 F.2d 809, 812 (9th Cir. 1974).

34. Williams v. Brown Mfg. Co., 93 Ill.App.2d 334, 236 N.E.2d 125 (5th Dist. 1968); Hardman v. Helene Curtis Indus., Inc., 48 Ill.App.2d 42, 198 N.E.2d 681 (1st Dist. 1964).

35. 62 Ill.2d at 466, 343 N.E.2d at 471.

36. *See* RESTATEMENT (SECOND) OF TORTS §402A (1965).

37. Jackson v. Coast Paint & Lacquer Co., 499 F.2d 809, 812 (9th Cir. 1974).

38. Technically, the doctrine of foreseeability and the scope of duty have no place in strict liability. However, in duty to warn cases, the burden rests upon the plaintiff to prove the existence of a duty as a prerequisite to strict liability. *See* Rios v. Niagara Mach. & Tool Works, 59 Ill.2d 79, 319 N.E.2d 232 (1974). *See also* Turkington, *Foreseeability and Duty Issues in Illinois Torts; Constitutional Limitations to Defamation Torts Under Gertz*, 23 DEPAUL L. REV. 243 (1975).

39. Mieher v. Brown, 54 Ill.2d 539, 306 N.E.2d 307 (1973).

40. United States v. Carroll Towing Co., 159 F.2d 169 (2d Cir. 1947) (damage to barge resulting from unsecured lines in foul weather); Hall v. E.I. DuPont De Nemours & Co., 345 F. Supp. 353 (E.D.N.Y. 1972) (children injured by explosion resulting from blasting caps); Lance v. Senior, 36 Ill.2d 516, 224 N.E.2d 231 (1967) (hemophiliac injured by a needle ingested into lung tissue); Dunham v. Vaughn & Bushnell Mfg. Co., 86 Ill.App.2d 315, 229 N.E.2d 684 (4th Dist. 1967) (blindness caused by chips from face of defective hammer); Kay v. Ludwick, 87 Ill.App.2d 114, 230 N.E.2d 494 (4th Dist. 1967) (four-year-old injured by rotary mower in operation).

41. *See* Hall v. E.I. DuPont De Nemours & Co., 345 F. Supp. 353 (E.D.N.Y. 1972).

42. It is well-settled in Illinois that electricity is a silent, deadly and dangerous agency.

the burden of adequate precaution is relatively slight supports an imposition of a duty to warn. A warning label attached to a component part of the antenna-tower unit would be a simple, inexpensive method of warning and would give the consumer actual knowledge of any dangers involved in the use of the product.[43] By use of a foreseeability test alone, the court is narrowing the scope of the manufacturer's duty to warn.

In refusing to allow strict liability counts to stand against the manufacturers of the antenna-tower unit, the court ignored the foundation and policy reasons behind the doctrine of strict liability. The doctrine of strict liability is a judicial response to a public interest in preserving human life and health, and to public policy considerations of protecting the consumer. In light of these policies, the court should have compared the gravity of an injury from electrical arcing with the slight burden of adequate precaution. Since the manufacturer is in the best position to anticipate these accidents and the reasonable person's knowledge is disputed, the policy of consumer protection would have been better served if a duty to warn was imposed. Therefore, the failure to warn should have been classified as a defect for purposes of strict liability.[44]

See, e.g., Merlo v. Public Serv. Co., 381 Ill. 300, 45 N.E.2d 665 (1942); Austin v. Public Serv. Co., 299 Ill. 112, 132 N.E. 458 (1921); Hausler v. Commonwealth Elec. Co., 240 Ill. 201, 88 N.E. 561 (1909); Rowe v. Taylorville Elec. Co., 213 Ill. 318, 72 N.E. 711 (1904); Floyd v. Galva Elec. Light Co., 227 Ill.App. 541 (2d Dist. 1923); Martens v. Public Serv. Co., 219 Ill.App. 160 (2d Dist. 1920). Contact with overhead electrical wires often results in death by electrocution. *See, e.g.*, Clinton v. Commonwealth Edison Co., 36 Ill.App.3d 1064, 344 N.E.2d 509 (1st Dist. 1976) (minor electrocuted when aluminum pole struck overhead wire containing 7200 volts). The degree of danger involved with electricity is comparable to the operation of a firing range or handling of explosives. *See* Spence v. Commonwealth Edison Co., 34 Ill.App.3d 1059, 1067, 340 N.E.2d 550, 556 (1st Dist. 1975); Mullen v. Chicago Transit Auth., 33 Ill.App.2d 103, 113, 178 N.E.2d 670, 674 (1st Dist. 1961).

43. Legislators have recognized the advantages of warning labels and have imposed warning label requirements on manufacturers of other types of products. *See, e.g.*, 15 U.S.C. §1333 (1970) (health warnings required on cigarette packages).

44. *See* Cunningham v. MacNeal Memorial Hosp., 47 Ill.2d 443, 266 N.E.2d 897 (1970); Krammer v. Edward Hines Lumber Co., 16 Ill.App.3d 763, 306 N.E.2d 686 (4th Dist. 1971); Rivera v. Rockford Mach. & Tool Co., 1 Ill.App.3d 641, 274 N.E.2d 828 (4th Dist. 1971); Texaco v. McGrew Lumber Co., 117 Ill.App.2d 357, 254 N.E.2d 584 (1st Dist. 1969). The justification for strict liability is that the seller, in marketing his product, assumes the responsibility to the consuming public and must bear the burden of injuries resulting from the product's use. RESTATEMENT (SECOND) OF TORTS §402A, Comment c at 349-50 (1965). The imposition of strict liability does not require a manufacturer to guarantee that his product is free from all injury, nor is he required to become an absolute insurer of his product. Suvada v. White Motor Co., 32 Ill.2d 612, 623, 210 N.E.2d 182, 188 (1965). The manufacturer is under a duty of reasonable care in designing and manufacturing his product, Rios v. Niagara Mach. & Tool Works, 59 Ill.2d 79, 319 N.E.2d 232 (1974), and is required to adequately warn of foreseeable dangers to intended users, Dunham v. Vaughn & Bushnell Mfg. Co., 86 Ill.App.3d 315, 229 N.E.2d 684 (4th Dist. 1967).

The legitimate conclusions to be drawn from *Genaust* are speculative in nature. However, one conclusion is that the Illinois Supreme Court is continuing to take a restrictive attitude toward product liability claims. This trend began in *Winnett v. Winnett*,[45] in which the court held that a bystander was not an intended user and not foreseeable as a matter of law. Thus, in *Genaust* as in *Winnett*, the scope of duty has been restricted by use of a foreseeability test. This desire to limit the number of strict liability actions was also indicated in *Rios v. Niagara Machine and Tool Works*.[46] The court in *Rios* held that once a purchaser of a product installs a safety device thereon, any unreasonably dangerous condition that existed due to the lack of such device was no longer present. Thus, the manufacturer was not liable for failure to install a safety device.

The future role of foreseeability in duty to warn cases is a major concern. It is likely that foreseeability will become the only factor which will determine whether there is a duty to warn. Courts will not consider the seriousness of the injury or the burden of precaution.[47] The decision may impede the development and expansion of the manufacturer's duty to warn. Closer scrutiny must be given to the duty of the manufacturer in future cases as modern and rapid advances in technology result in the production of highly sophisticated products. Many consumers will lack the experience, skill and knowledge necessary to fully comprehend the dangerous propensities of the products and must be made aware of the possible dangers resulting from their use. In this respect, the courts should be the vanguard of the public to minimize the adverse effects of a narrowed scope of the duty to warn.[48]

Jeffrey Kripton

Discovery—Testing—PARTIALLY DESTRUCTIVE TESTING IS WITHIN THE SCOPE OF THE ILLINOIS DISCOVERY RULES—*Sarver v. Barrett Ace Hardware, Inc.*, 63 Ill.2d 454, 349 N.E.2d 28 (1976).

In Sarver v. Barrett Ace Hardware, Inc.,[1] the Illinois Supreme Court

45. 57 Ill.2d 7, 310 N.E.2d 1 (1974) (injury to child resulting when her hands were placed in a conveyor belt, held not foreseeable on a motion to dismiss).

46. 12 Ill.2d 79, 319 N.E.2d 232 (1974).

47. *See* notes 38-43 and accompanying text *supra*.

48. For an overview concerning other types of defects in strict liability, see Hofeld, *Looking At a Decade of Product Liability Law in Illinois—Where We've Been and Where We're Going*, 64 ILL. B.J. 344 (1976); Pope & Pope, *Design Defects Cases: The Present State of Illinois Product Liability Law*, 8 J. Mar. J. Prac. & Proc. 351 (1975).

1. 63 Ill.2d 454, 349 N.E.2d 28 (1976).