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Strict Liability: An Unwarranted Limitation upon the Manufacturer's Duty to Produce a Reasonably Safe Product - Rios v. Niagara Machine & Tool Works

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STRICT LIABILITY: AN UNWARRANTED LIMITATION UPON THE MANUFACTURER'S DUTY TO PRODUCE A REASONABLY SAFE PRODUCT—*RIOS V. NIAGARA MACHINE & TOOL WORKS*

Since strict tort liability was first applied to manufactured products in Illinois,[1] the trend has been to treat manufacturers and others within the chain of distribution severely, holding them liable for all injuries, both to person and property, arising out of the use of unreasonably dangerous products.[2] The recent Illinois Supreme Court decision in *Rios v. Niagara Machine & Tool Works*[3] is at variance with this trend, and if strictly applied, may halt the progress of products liability law in Illinois.

1. Suvada v. White Motor Co., 32 Ill.2d 612, 210 N.E.2d 182 (1965). The Illinois Supreme Court permanently abolished the requirements of privity and negligence in products liability and approved the application of strict tort liability to manufacturers of products. *See* RESTATEMENT (SECOND) OF TORTS § 402 (1965).

2. In *Suvada*, the court emphasized that strict liability was not to be equated with absolute liability (*e.g.* that the manufacturer was not an insurer of his product). The plaintiff was required to prove that the injury or damage resulted from an unreasonably dangerous condition of the product which existed when it left the manufacturer's control. 32 Ill.2d at 619, 210 N.E.2d at 188.

During the next decade, these requirements were interpreted most favorably to the consumer. Strict liability was applied to design defects as well as defects in manufacture. Wright v. Massey-Harris, Inc., 68 Ill.App.2d 70, 215 N.E.2d 465 (5th Dist. 1966). A manufacturer is held to the degree of knowledge and skill of experts. This imposes a "duty. . . . to keep abreast and informed of developments in his field, including safety devices and equipment used in his industry with the type of product he manufactures." Moren v. Samuel M. Langston Co., 96 Ill.App.2d 133, 145, 237 N.E.2d 759, 765 (1st Dist. 1968). Defective products were defined as those "which are dangerous because they fail to perform in the manner reasonably to be expected in light of their nature and intended function." Dunham v. Vaughn & Bushnell Mfg. Co., 42 Ill.2d 339, 342, 247 N.E.2d 401, 403 (1969). The theory of strict liability was applicable not only to manufacturers, but also to sellers and suppliers of the product. Texaco, Inc. v. McGrew Lumber Co., 117 Ill.App.2d 351, 254 N.E.2d 584 (1st Dist. 1969). Contributory negligence was held not to bar recovery in a strict tort liability action and plaintiff was not required to plead or prove the exercise of due care. Williams v. Brown Mfg. Co., 45 Ill.2d 418, 261 N.E.2d 305 (1970). It is not a valid defense for the manufacturer to contend that there is no practical or theoretical way in which the unreasonably dangerous defect can be ascertained (plaintiff allegedly contracted serum hepatitis from defective blood supplied in the course of treatment). Cunningham v. MacNeal Memorial Hosp., 47 Ill.2d 443, 266 N.E.2d 897 (1970). In proving the elements of a prima facie case in products liability, the plaintiff need not specify wherein the product is defective. Larson v. Thomashow, 17 Ill.App.3d 208, 307 N.E.2d 707 (1st Dist. 1974). *See* Pope, *Design Defect Cases: The Present State of Illinois Products Liability Law*, 8 JOHN MARSHALL J. OF PRAC. & PROC. 351 (1975).

3. 59 Ill.2d 79, 319 N.E.2d 232 (1974).

In *Rios*, plaintiff was injured in the course of his employment at the Hammond Organ Company while operating a punch press[4] manufactured by the defendant, Niagara Machine and Tool Works. The press was not equipped with a safety device by the manufacturer, other than a nonrepeat device which prevented the ram from descending more than once each time the foot pedal was depressed. At the time of the accident, however, the press had been fitted with a Posson safety device[5] by the plaintiff's employer. Expert testimony at the trial level indicated that the press was not reasonably safe for use in its manual operation without a safety device.

The plaintiff testified that he inserted a part into the machine with his right hand and then activated the machine. When the ram ascended, he put his left hand into the machine to remove the finished part, whereupon the ram descended a second time, severely injuring his hand. The plaintiff testified that he had not depressed the foot pedal a second time. Hammond's fabricating superintendent inspected the machine after the accident and testified at trial that the nonrepeat device was working properly. The parties stipulated that the Posson safety device was inoperable at the time of the accident and that plaintiff's hand, therefore, remained within the danger zone when the ram descended a second time.[6] At trial, a jury found for the plaintiff.

The appellate court for the first district reversed. The court held that where a machine is multi-functional and the type of device required to make the machine reasonably safe for use in manual operations necessarily varies with the function the machine is performing, the manufacturer has no duty to install a safety device.[7] Emphasizing the necessity of considering the reasonability of the duty imposed upon the manufacturer, the court found that it could not hold the manufacturer liable on the basis of strict tort liability.

The Illinois Supreme Court affirmed the appellate court's decision,

4. This punch press is capable of supplying a pressure equivalent to 45 tons. The press may be used in two operations. The primary operation is automatic, and an operator is necessary only to make certain an adequate supply of raw material is at hand. The secondary operation is manual and requires that the operator place his hands within the machine to place and remove the part to be finished. The ram is activated by depressing a foot pedal.

An appropriate safety device is selected according to the type of dies installed and the manner of operations. Hammond installed some type of safety device upon every press before it was used in a secondary operation.

5. This device is attached to the operator and is designed to pull his hands away from the machine as the ram descends.

6. 59 Ill.2d at 82-83, 319 N.E.2d at 234.

7. Rios v. Niagara Mach. & Tools Works, 12 Ill.App.3d 739, 745-46, 299 N.E.2d 86, 91 (1st Dist. 1973).

but employed a different rationale, focusing upon two facts.[8] First, the purchaser had attached a safety device appropriate for the use being made of the press. Second, there was no evidence that the failure of the device installed by the purchaser was caused by the failure of the manufacturer to attach such a device. The court further stated that once a safety device is attached by the purchaser, any unreasonably dangerous conditions existing because of the lack of safety devices were fully corrected.

A thread of public interest in human life and health runs through all products liability decisions.[9] Courts have responded by protecting the consumer who, in almost every instance, is less familiar with the product and therefore is less aware of the dangers involved in its use than the manufacturer. The courts have attempted to insure that manufacturers are more diligent in the design and manufacture of their products, both by imposing greater duties on them and by placing the financial burden where it is most equitable, namely, "on the one creating the risk and reaping the profit."[10] In *Rios*, however, the court appeared to totally ignore the policy considerations which have been the basis for products liability since its inception.

Although rarely moving as far and as quickly as the California and New Jersey courts,[11] Illinois courts have nevertheless continually expanded the concept of products liability as established in *Suvada v. White Motor Co.*[12] The *Rios* decision, however, may signal an end to this expansion. While it is clearly possible to avoid *Rios* in future products

8. 59 Ill.2d at 85, 319 N.E.2d at 236.

9. *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 (1st Dist. 1974); Rivera v. Rockford Mach. & Tool Co., 1 Ill.App.3d 641, 274 N.E.2d 828 (1st Dist. 1971); Texaco, Inc. v. McGrew Lumber Co., 117 Ill. App.2d 351, 254 N.E.2d 584 (1st Dist. 1969).

10. Suvada v. White Motor Co., 32 Ill.2d 612, 619, 210 N.E.2d 182, 186 (1965).

11. The modern view of products liability was first adopted by the California Supreme Court in Greenman v. Yuma Power Prod., Inc., 59 Cal.2d 57, 377 P.2d 897, 27 Cal.Rptr. 697 (1963). To this day, California has led the field of products liability favoring the consumer. For example, California has held an automobile manufacturer to a duty to produce a car that is reasonably safe in case of a crash. Badorek v. General Motors Corp., 11 Cal.App.3d 902, 90 Cal.Rptr. 305 (1971). As early as 1972, California no longer required proof that a product is unreasonably dangerous and held that a product is defective, regardless of foreseeability, if it causes harm in its normal use. Cronin v. J.B.E. Olson Corp., 8 Cal.3d 121, 501 P.2d 1153, 104 Cal.Rptr. 433 (1972). The furthest extension of strict liability was in Santor v. A & M Karagheusian, Inc., 44 N.J. 52, 207 A.2d 305 (1965) where the court allowed recovery for purely economic loss.

12. 32 Ill.2d 612, 210 N.E.2d 182 (1965).

liability disputes, it may long haunt Illinois products liability law.[13]

CAUSATION

Suvada set out three requirements for the application of strict tort liability to manufacturers:

> The plaintiffs must prove that their injury or damage resulted from a condition of the product, that the condition was an unreasonably dangerous one, and that the condition existed at the time it left the manufacturer's control.[14]

In an effort to meet the burden of *Suvada*, the plaintiff in *Rios* contended that the malfunction of the purchaser-installed safety device was not an independent intervening variable which would relieve the defendant of its liability. The court, however, agreed with the defendant and found no evidence that the injury was caused by the fact that the machine was not equipped with a safety device when it left the defendant's control. Thus, with one of the three aforementioned elements lacking —the injury did not result from a condition of the press—the supreme court could not allow the trial court's judgment to stand.

This rationale, however, lacks support. At the trial level, the issue of causation was left to the jury. It is fundamental that a reviewing court's authority to substitute its own findings of fact for those of the jury is very limited.[15] The reluctance to disregard the findings of a jury unless

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13. *See* text at notes 29-32 *infra*.

14. 32 Ill.2d at 623, 210 N.E.2d at 188. It should be noted that "not reasonably safe" has been suggested as a more appropriate term, since "unreasonably dangerous" seems to imply that something can be "reasonably dangerous." Wade, *Strict Tort Liability of Manufacturers*, 19 Sw. L.J. 5 (1965). The use of the term "unreasonably dangerous" seems to be avoided in some Illinois decisions. *See* Cunningham v. MacNeal Memorial Hosp., 47 Ill.2d 443, 266 N.E.2d 897 (1970); Dunham v. Vaughn & Bushnell Mfg. Co., 42 Ill.2d 339, 247 N.E.2d 401 (1969); Scott v. Dreis & Krump Mfg. Co., 26 Ill.App.3d 971, 326 N.E.2d 74, 84 (1st Dist. 1975) ("reasonably safe").

15. ILL. REV. STAT. ch.110A, §366(b)(1)(ii) (1973) provides:

> Any error of fact, in that the judgement or order appealed from is not sustained by the evidence or is against the weight of the evidence, may be brought up for review.

Cases interpreting this rule have held that the findings of a jury cannot be disturbed by a reviewing court unless they are clearly erroneous or against the manifest weight of the evidence. Wallace v. Blue Cross Hosp. Serv., Inc., 13 Ill.App.3d 803, 300 N.E.2d 531 (5th Dist. 1973). It has been especially emphasized that a jury's resolution of fact questions may not be set aside merely because the judge feels a different conclusion is more reasonable. Hamas v. Payne, 107 Ill.App.2d 316, 246 N.E.2d 1 (2d Dist. 1969). The jury verdict will not be set aside on the basis of manifest weight of the evidence unless the opposite conclusion is indisputable. Morrison v. Mitchell, 96 Ill. App.2d 332, 239 N.E.2d 289 (3d Dist. 1968).

they are clearly erroneous has been clearly manifested in products liability cases.[16] The court does not clarify whether the reversal is a substitution of findings of fact or a reversal as a matter of law. It is reasonable to assume that the court would have explained a reversal based on issues of fact. Its failure to do so leads to the conclusion that it was establishing a rule of law with regard to causation in cases where a purchaser takes it upon himself to correct any unreasonably dangerous aspects of a product.

This reasoning necessarily precludes consideration by the trier of fact of the question of

> . . .whether it was foreseeable that the plaintiff's employer might install an insufficient or defective safety device mechanism, thereby requiring the defendant to include an adequate safety device aside from the so-called 'nonrepeat feature' of the punch press.[17]

As the dissenting opinion points out, it is quite reasonable to conclude that the jury found it was foreseeable that Hammond would install an inoperable safety mechanism and that it was not infeasible for the defendant to install some additional safety device. The jury was, therefore, justified in holding the defendant liable for injuries to the plaintiff arising from the manufacturer's failure to provide such a feature. Moreover, there is clear precedent for leaving such a determination to the jury.[18]

But the significance of *Rios* extends beyond the problem of causation, because in taking the question of foreseeability from the jury, the court raises the more profound issue of a manufacturer's duty to deliver a reasonably safe product. It appears that the greatest impact of *Rios* will ultimately be on that matter.

MANUFACTURER'S DUTY

The court cites *Vandermark v. Ford Motor Co.*[19] and *Bexiga v. Havir*

16. In Krammer v. Edward Hines Lumber Co., 16 Ill.App.3d 763, 306 N.E.2d 686 (1st Dist. 1974), the court refused to reverse a jury's determination of the issues of whether the injuries were caused by a defective plank or misuse, or whether the supplier could have foreseen the use to which a plank would be put and could have warned against it. The court in Collins v. Montgomery Ward & Co., 21 Ill.App.3d 1037, 315 N.E.2d 670 (4th Dist. 1974), held that the evidence was sufficient for submission to the jury on the issue of defective design of a ladder. In Wells v. Web Mfg. Co., 20 Ill.App.3d 545, 315 N.E.2d 301 (1st Dist. 1974), the court found that the issue of proximate cause was for the jury.

17. 59 Ill.2d at 88, 319 N.E.2d at 237 (Kluczynski, J., dissenting).

18. Rivera v. Rockford Mach. & Tool Co., 1 Ill.App.3d 641, 274 N.E.2d 828 (1st Dist. 1971). In that case the court held that the resolution of the issue of whether the defendant's machine was unreasonably dangerous for failure to incorporate certain safety devices which were available at the time the machine left the manufacturer's control was the function of the jury.

19. 61 Cal.2d 256, 391 P.2d 168, 37 Cal.Rptr. 896 (1964). An automobile manufacturer

Manufacturing Corp.[20] in support of its holding; however, both cases espouse a position contrary to *Rios*. Those decisions strongly emphasize that a manufacturer may not delegate his duty to deliver his product in a reasonably safe condition.

In *Bexiga*, the New Jersey Supreme Court held that when a machine is unreasonably dangerous due to the lack of a safety device, the jury may infer that the machine was defective in design, unless it can be found that incorporation of a safety device would render the machine useless for its intended purpose.[21] The defendant contended that a state statute requiring purchasers to install a safety device on all such machines alleviated him of the duty to deliver a safe product. Additionally, he asserted that it was the custom of the industry for purchasers to install such devices. The court found these contentions to be an insufficient basis for making an exception to the rule of non-delegability.

The *Rios* court distinguished *Bexiga* on the ground that Hammond had installed a safety device, whereas the basic design of the press in *Bexiga* contained no safety devices and none were installed by the purchaser.[22] This distinction is unacceptable. The *Bexiga* court noted that the violation of a statutory duty imposed upon the purchaser would not justify a finding that the manufacturer was not liable for selling a machine that was unreasonably dangerous.[23] It would appear easier to refrain from imposing liability on the manufacturer of a punch press when a state statute requires the purchaser to install a safety device and he fails to do so, than where no state statute exists imposing such a duty. In the former situation, it is probable that the legislature recognized the danger involved in the operation of such machines and felt justified in placing the burden on the purchaser to make the machine safe for use. No such justification existed in *Rios*. Nevertheless, the Illinois court, in recognition of the non-delegable duty of a manufacturer quoted *Bexiga*:

> The public interest in assuring that safety devices are installed demands more from the manufacturer than to permit him to leave such

relied on the dealer to make the final inspection and corrections necessary to make the cars safe for use. The court held that it was error to grant a nonsuit as to the plaintiff's cause of action against the manufacturer, because the manufacturer had a non-delegable duty to deliver the car in a reasonably safe condition and therefore could not escape liability.

20. 60 N.J. 402, 290 A.2d 281 (1972).

21. An even stricter approach has been taken in Illinois. A manufacturer has been required to adopt any and all devices necessary to render his product reasonably safe. *See* Mahoney v. Roper-Wright Mfg. Co., 490 F.2d 229 (7th Cir. 1973); Rivera v. Rockford Mach. & Tool Co., 1 Ill.App.2d 641, 274 N.E.2d 878 (1st Dist. 1971).

22. 59 Ill.2d at 85, 319 N.E.2d at 236.

23. 60 N.J. at 410, 290 A.2d at 285.

> a critical phase of his manufacturing process to the haphazard conduct of the ultimate purchaser. The only way to be certain that such devices will be installed on all machines—which clearly the public interest requires—is to place the duty on the manufacturer where it is feasible for him to do so.[24]

This recognition of the rule of non-delegability, however, was followed by the court's holding that this rule was inapplicable under circumstances where the employer attached a safety device to the machine. The court further noted that this conduct of the employer corrected whatever unreasonably dangerous conditions existed as a consequence of the absence of a safety device when it left the manufacturer's control.[25]

In effect, this shifts the burden of producing a safe product upon one who fortuitously installs a device which becomes inoperable, a duty which the court purports to characterize as non-delegable. Illinois courts, however, have previously dealt with the question of duty to install safety devices and have taken a view consistent with the policy reasons underlying all products liability law.[26] In *Rivera v. Rockford Machine and Tool Co.*,[27] the appellate court found that the trier of fact must be allowed to consider methods and devices which were available at the time the machine left the manufacturer's control, even if they were not generally adopted in the industry. For policy reasons, such information was necessary to determine whether the plaintiff was exposed to an unreasonable danger in using the defendant's product. The *Rivera* court noted:

> If such were not the case, manufacturers would be free to ignore the risks attendant to the use of their products secure in their knowledge

24. 59 Ill.2d at 85, 319 N.E.2d at 235 *citing* Bexiga v. Havir Mfg. Corp., 60 N.J. at 410, 290 A.2d at 285.

25. 59 Ill.2d at 85, 319 N.E.2d at 235-36. The court does, however, indicate that the manufacturer might have been liable for the plaintiff's injuries had the failure of the purchaser-installed device been caused by "[e]xcessive wear, defective construction, improper maintenance, failure to properly attach it to the machine or a defect in the machine itself. . . ." *Id.*, 319 N.E.2d at 236.

26. In Wells v. Web Mfg. Co., 20 Ill.App.3d 545, 315 N.E.2d 301 (1st Dist. 1974), the manufacturer was held liable for an unreasonably dangerous defect even though the defect was due to the malfunction of a part replaced by the purchaser. The court stated that ". . . the suggested authority. . . that intervening negligence or misconduct of a third person disrupts the causal relationship is totally inapplicable to the facts here. . . ." 20 Ill.App.3d at 553, 315 N.E.2d at 309. In Rivera v. Rockford Mach. & Tool Co., 1 Ill. App.3d 641, 274 N.E.2d 828 (1st Dist. 1971), the manufacturer of a punch press was held liable for injuries to the plaintiff even though the machine's malfunction was caused by a limit switch which had been both *manufactured* and installed by the purchaser.

27. 1 Ill.App.3d 641, 274 N.E.2d 828 (1st Dist. 1971).

> that their own failure to adopt new developments, techniques or devices to practical use will shield them from liability.[28]

The *Rivera* court proposed that the manufacturer must not only insure the reasonable safety of his machine, but must continue to search for and develop safety techniques and devices to be used with it. Clearly, products liability law would have taken a significant step forward had the *Rios* court followed this position.

CONCLUSION

The *Rios* decision may signal a retreat from the policy reasons which have formed the basis for strict tort liability. The decision is capable of leading to the same result the appellate court was trying to avoid in *Rivera*. Certainly, if *Rios* is extended, the manufacturer may be assured that he need not worry about liability attaching to his failure to provide safety devices, much less develop or perfect them.

Fortunately, one appellate court recognized this danger and applied *Rios* narrowly. As evidenced in *Scott v. Dreis and Krump Manufacturing Co.*,[29] however, this narrow application can not and will not negate the confusion *Rios* may cause in the field of products liability.[30] In *Scott*, the operator of a press brake brought an action based on strict tort liability against the manufacturer for injuries sustained when the ram fell on his hand. Both the manufacturer and the purchaser had failed to install any safety device. Based on the rule of non-delegability, the court rejected the defendant's argument that the sole proximate cause of the accident was the purchaser's failure to install a safety device.[31] The difference between *Scott* and *Rios* was in the conduct of the two

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28. *Id.* at 647-48, 274 N.E.2d at 833.

29. 26 Ill.App.3d 971, 326 N.E.2d 74 (1st Dist. 1975).

30. The language of *Scott* taken together with *Rios* simply serves to increase this confusion. The *Scott* court read *Rios* as indicating that the supreme court's holding on the issue of causation was

> . . . addressed to the character of the instrumentality, not the conduct of the employer. In the instant case, unlike *Rios*, the unreasonably dangerous condition of the press alleged in the complaint existed both at the time the press left the defendant's control and at the time of the plaintiff's injury.

Id. at 986 n. 3, 326 N.E.2d at 84 n. 3. Further, based upon its interpretation of *Rios*, the *Scott* court held ". . . that a manufacturer is under a non-delegable duty to produce a product which is reasonably safe and that such duty is not obviated when a multifunctional machine is placed into the stream of commerce." *Id.* at 986, 326 N.E.2d at 84. The statements are difficult to reconcile with the language in *Rios*. In effect, the conduct of the employer/purchaser *was* decisive and the manufacturer *was* allowed to delegate his duty. *See* text accompanying note 24 *infra*.

31. 26 Ill.App.3d at 986, 326 N.E.2d at 84.

purchasers; but it is illogical that a manufacturer's liability should be dependent upon the actions of a third party. In strict liability, the conduct of a third party is generally not in issue.[32] The basis of liability is the condition of the product.

The greatest potential for harm, however, lies in the possibility that the *Rios* decision will undermine the public policy foundation of products liability law.[33] While *Scott* indicates that the danger of *Rios* being extended may be minimal, it is nonetheless quite discouraging that the Illinois Supreme Court felt justified in ignoring the policy reasons which are the *raison d'être* of products liability law.[34] The supreme court's disregard of these considerations in *Rios* may spell the end of its heretofore receptive attitude towards products liability claims.

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32. *See, e.g.*, Kossifos v. Louden Mach. Co., 22 Ill.App.3d 587, 317 N.E.2d 749 (1st Dist. 1974), in which a manufacturer held strictly liable was denied indemnity from a third party who had carelessly installed and maintained the manufacturer's product. *But cf.* Young v. Aeroil Prods. Co., 248 F.2d 185 (9th Cir. 1957) (material alteration); Zesch v. Abrasive Co. of Philadelphia, 354 Mo. 1147, 193 S.W.2d 581 (1946) (mishandling). It is unclear whether *Rios* can be classified as an alteration case because of the failure of the court to discuss it in those terms.

33. It is unfortunate that the supreme court found it necessary to reject the approach the appellate court took in *Rios*, focusing on the multi-functional aspect of the machine. Requiring the manufacturer of a multi-functional machine, where each function may demand a different safety device, to attach an appropriate safety mechanism admittedly places a great burden on him. Nevertheless, the public interest demands that the manufacturer be liable for injuries which could have been avoided through his reasonable efforts. Therefore, while even the appellate court's decision may have been too lax in its requirements on manufacturers, its decision was more narrowly drawn and more reasonable than that of the supreme court. First, the appellate court's holding clearly could not be applied to machines which are not multi-functional. Second, it focuses on the characteristics of the machine in question and on the manufacturer's actions rather than on the haphazard activity of a third person.

34. Decisions such as *Rios* will cause the ultimate loss to be absorbed by the employee who, in most cases, will be barred from bringing an action against his employer because of the statutory remedy under the Workmen's Compensation Act. Moreover, the remedies thereunder are usually inadequate to fully compensate for serious injuries.