

Following the ruling of that trial court on the issue of Collateral Estoppel, an application for Writ of Mandamus was made to the 5th Circuit, which was denied. That particular case was subsequently settled before trial, and the matter has never reached the appellate courts. Frankly, I feel that the trial judges, confronted with a flood of these cases, are using the threat of Collateral Estoppel to encourage the reduction of the docket by settlements.

It is my opinion that the question of Collateral Estoppel will ultimately be applied as to those defendants who have actually litigated the issue. If so, any given manufacturer will sooner or later be cast in judgment, and thereby collaterally estopped. Thus, it is probably only a matter of time until the issue of primary liability in these cases is no longer viable.^{16/}

There has been a good deal of conflict among the various jurisdictions concerning the availability of the State of the Art as a defense. There have been a few cases in which it has been held that a defendant in a strict liability case cannot defend on the ground that at the time the product was manufactured, the State of the Art was such that the particular method of manufacture

^{16/} Some hope that the doctrine will not be applied offensively may be derived from Parklane Hosiery v. Shore, 99 S.Ct. 645 (1979). This is particularly true where the results of the litigated cases vary, as in these asbestosis cases. See "Collateral Estoppel: The Changing Role of the Rule of Mutuality" 41 Missouri Law Review 521 (1976).