

we are attempting to force a negligence concept into the framework of a strict liability concept. We pay lip service to the proposition that fault plays no part in a strict liability case, but at the same time, in a warning case, we apply the traditional negligence concepts of reasonableness and foreseeability. As shown by Borel, the general rule of strict liability subjects the seller to liability to the user even though the seller has exercised all possible care in the preparation and sale of the product. However, as the court pointed out, this is not the case where the product is alleged to be unreasonably dangerous only because of the failure to give adequate warning. Rather, a seller is under a duty to warn only of those dangers that are reasonably foreseeable. The Borel court recognized that in a warning case, we are really dealing with a negligence concept. This sentence is revealing:

"The requirement of foreseeability coincides with the standard of due care and negligence cases in that a seller must exercise reasonable care and foresight to discover a danger in his product and to warn users and consumers of that danger."

This is the concept of the restatement (Section 402a, Comment A). See too Davis v. Wyeth Laboratories, Inc., 399 Fed.2d 121 (9th Circuit, 1968). I would take the position,