PLAINTIFF'S EXHIBIT

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Products Liability Reports

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• *Decisions in This Report* •

Asbestos Manufacturers Strictly Liable for Fatal Illness

Six asbestos manufacturers were denied a rehearing of the affirmation by the U. S. Court of Appeals for the Fifth Circuit of their strict liability for an insulation worker's terminal illness contracted in his 33 years of work with independent contractors. None of the cautions against inhalation of asbesto placed on some of the products intimated the danger of a fatal disease and th jury could have concluded that these cautions were not warnings in the sense tha they adequately communicated knowledge of the dangers so as to give workers choice of working with a dangerous product. The jury, by its verdict on the theory of strict liability, found in effect that this worker had not assumed the risk by voluntarily continuing his employment with an appreciation of the danger.

Borel v. Fibreboard Paper Products Corp. (CA-5 Texas, 5718

Manufacturer Strictly Liable for Unguarded Needle Assembly

The manufacturer of a syringe assembly machine was strictly liable for injuries sustained by a worker when she slipped on some waste material ejected by the machine and instinctively thrust her hand forward, unable it in the machine's unguarded needle assembly station. The U. S. Court Appeals for the Second Circuit found substantial evidence to support the [illegible] sonably [illegible] port rejection of the manufacturer's claim that it simply built a special purpose machine in accordance with the purchaser's specifications.

Wheeler v. Standard Tool & Manufacturing Co. (CA-2 New York, 5711

Elevator Manufacturer and Servicer Not Liable to Passenger

Neither the manufacturer nor the servicer of a building elevator was liable for the injuries sustained by a secretary when the doors closed on her. The manufacturer was not liable, as a matter of law, according to the Oklahoma Supreme Court, because the injured passenger failed to use the safety devices. There was competent evidence to support the jury's in favor of the servicer. The passenger was not entitled to the applicat

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the doctrine of *res ipsa loquitur* because the elevator was not in the exclusive control of the servicer. *Seay v. General Elevator Co.* (Oklahoma) ¶ 7195

Contributory Negligence Bars Negligence and Strict Liability Recovery

The manufacturer of the ring base and outside rim of a wheel was not liable for injuries sustained by a truck owner when the wheel blew apart while he was inflating the tire. The injured person's contributory negligence barred recovery on both negligence and strict liability, according to the U. S. Court of Appeals for the Second Circuit. He was squatting on the tire despite the manufacturer's warnings to stand away during the inflation period. An essential element for recovery on strict liability is that the injured party would not have avoided his injury by the exercise of reasonable care.
Bass v. Firestone Tire & Rubber Co. (CA-2 New York) ¶ 7192

Res Ipsa Loquitur Applied To Furnace Explosion

On the theory of *res ipsa loquitur*, the installer of a furnace was liable for damage to a residence ($7,000) and for the injury of its lessee ($40,000) when an elm leaf was found within the enclosed gas supply between the plunger and the valve seat in the solenoid valve, permitting gas to escape in explosive quantities. It was not necessary to prove that the defendant had control of the instrumentality when the injury occurred. Common experience dictated, to the Iowa Supreme Court, that there should not have been an elm leaf in the enclosed gas control valve. The thing spoke for itself.
Palleson v. Jewell Cooperative Elevator (Iowa) ¶ 7191

Bystander Did Not Recover for Broken Bottle Injuries

The bottler of a cola drink was not liable, as a matter of law, for breach of implied warranty when a bottle broke and injured a bystander. The broken bottle was never identified as a "coke" bottle. Furthermore, in the opinion of the Florida District Court of Appeal, there was no showing that the injury was caused by a defective coke bottle or that the coke bottle was a dangerous instrumentality, so as to overcome the privity requirement in a warranty.
Mattes v. Coca Cola Bottling Co. of Miami (Florida) ¶ 7194

No Liability for Minor's Injury from Thrown Dart

Neither the seller of a dart game nor the seller of ammunition for the injuries [illegible] when a boy threw a dart in a vertical arc and it came down behind him and struck a companion in the eye. The Oklahoma Supreme Court recognized that the common use of darts could be perverted into a dangerous use or design and ruled that this dart was not "dangerous to an extent beyond that which would be contemplated by the ordinary consumer with the ordinary knowledge common to the community as to its characteristics."
Atkins v. Anna's Dept. Store of Norman, Inc. (Oklahoma) ¶ 7196

Damages Based on Rental Value for Down Time Improper

The manufacturer was liable for a purchaser's losses in synchronizing and regulating his new gravel crushing plant, but the calculation of damages on rental value for the down time of the machine was error, according to the Michigan Court of Appeals. The use of rental value is proper only when a

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substitute chattel is actually rented, which did not occur here. The appropriate measure of damages was lost profits due to the number of hours the machine was down. *Gilliland v. Baldwin-Lima-Hamilton Corp.* (Michigan) ¶ 7188

Manufacturer Not Reimbursed by Purchaser for Defense of Suit

The manufacturer of a paper pulp digester system was not entitled to indemnification from the purchaser for the costs of successfully defending an action by the purchaser's workman who was allegedly injured in the explosion of a flash tank independently selected and installed by the purchaser. Common law indemnification was not available because the claims of the worker were not sufficiently disclosed for a determination that, as between the employer and the manufacturer, it was the employer who should have paid if the worker had been successful in his action.

The Oregon Supreme Court also held that the employer could not be held liable for negligence in causing the manufacturer's loss because it was not shown that the employer caused the employee to sue.

Kamyr, Inc. v. Boise-Cascade Corp. (Oregon) ¶ 7193

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