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Products Liability--Strict Liability in Torts - The New Mexico Rejection of the Restatement (Second) of Torts 402A

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PRODUCTS LIABILITY—STRICT LIABILITY IN TORTS

The New Mexico Rejection of the Restatement (Second) of Torts §402A.—Stang v. Hertz Corp., 83 N.M.____, 490 P.2d 475 (N.M. Ct. App. 1971), *cert. granted* Oct. 20, 1971

Catherine Lavan, a nun, was a passenger in an automobile rented by another nun from Hertz Corporation, when a blowout occurred. In the ensuing accident Catherine Lavan suffered injuries resulting in her death. The tire which blew out was manufactured by Firestone Tire and Rubber Corporation and was mounted on an automobile owned by Hertz. Catherine Lavan's personal representative brought an action against the tire manufacturer, Firestone, and the lessor of the automobile, Hertz. The case against Firestone was tried and submitted to a jury. The verdict was in favor of Firestone, and no appeal was taken from that verdict. The trial court directed a verdict in favor of Hertz. The plaintiff appealed this verdict and contended there were issues for the jury concerning express warranty and strict liability in tort. The evidence concerning the latter contention was that the "tire failure was the cause of the accident; this failure resulted from impact damage to the car; the impact damage existed at the time the car was rented; and the impact damage was not discoverable by normal inspection procedures."[1] *Held:* there was insufficient evidence for the question of express warranty to be submitted to the jury. An extention of a seller's liability from liability for negligence to strict liability under Section 402A of the Restatement (Second) of Torts lies with the legislature and not the court. Such an extension involved unknown accident statistics, economic consequences, and public demands which the court felt unable to ascertain.

The decision rejecting strict tort liability was unexpected. The trend of recent court decisions has been toward the imposition of strict tort liability on manufacturers and dealers for product defects which cause injuries to consumers or third parties. In early 1971, the status of the law in all United States jurisdictions as most recently determined by the highest court of the particular jurisdiction was that strict tort liability was imposed in twenty-two states and the admiralty jurisdiction.[2] In addition, the Indiana Appellate Court and

1. Stang v. Hertz Corp., 83 N.M.___, 490 P.2d 475 (N.M. Ct. App. 1971), *cert. granted* Oct. 20, 1971.

2. This list is compiled from 1 CCH Prod. Liab. § 4070 (1968); Annot., 13 A.L.R.3d

federal courts interpreting the laws of Colorado, Louisiana, Rhode Island, and Vermont have anticipated adoption of strict tort liability in those states.[3] Michigan and New York have inferentially adopted the doctrine.[4]

The imposition of strict tort liability has been a step-by-step process usually achieved by the judiciary, beginning with the creation of exceptions to the privity rule which protected manufacturers and dealers from liability,[5] and culminating in extension to the strict tort liability rule.[6] This gradual growth has generally followed this pat-

1057, 1071-72 (1967); and 13 A.L.R.3d 1057 (Supp. 1971). The 22 states are Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Washington, and Wisconsin.

3. *Id.* In Moomey v. Massey Ferguson, Inc., 429 F.2d 1184 (10th Cir. 1970), the court anticipated the adoption of Restatement (Second) of Torts § 402A (1965) (strict tort liability) in New Mexico.

4. *Id.*

5. From the 1842 case of Winterbottom v. Wright, 152 Eng. Rep. 402, 10 M. & W. 109 (Ex. 1842), there developed a general rule of non-liability to consumers or users of products where the consumer or user was not in contractual privity with the manufacturer. Possibly because manufacturing was in its infancy, there was a strong desire on the part of the courts to have definite limits on the liability of manufacturers to third persons. Lord Abinger, C. B., stated in *Winterbottom* what was to become the general rule requiring privity of contract between the consumer and manufacturer before the consumer might recover damages for an injury caused by a latent or hidden defect in the manufacturer's product:

> I am clearly of opinion that the defendant is entitled to our judgment. We ought not to permit a doubt to rest upon this subject, for our doing so might be the means of letting in upon us an infinity of actions. . . . Here the action is brought simply because the defendant was a contractor with a third person; and it is contended that thereupon he became liable to everybody who might use the carriage. . . . There is no privity of contract between these parties; and if the plaintiff can sue, every passenger, or even any person passing along the road, who was injured by the upsetting of the coach, might bring a similar action. Unless we confine the operation of such contracts as this to the parties who entered into them, the most absurd and outrageous consequences, to which I can see no limit, would ensue. . . .
> 10 M. & W. at 112-13.

6. The first court to hold a manufacturer strictly liable in tort was the California Supreme Court in Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 67, 377 P.2d 897, 27 Cal. Rptr. 697 (1963). The concept of strict liability in tort was adopted by the Restatement (Second) of Torts § 402A (1965):

> (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.

tern: (1) elimination of the privity requirement with respect to food and beverages sold for human consumption;[7] (2) abolition of the requirement of privity when dealing with inherently[8] and imminently[9] dangerous products; (3) total abandonment of the privity requirement in a tort action against a manufacturer or supplier;[10] (4) extension of warranty liability to cover the sale of any product without regard to privity, sale or notice of a breach of warranty;[11] and (5) judicial acceptance of the strict tort liability doctrine.[12]

7. *See, e.g.,* Tomlinson v. Armour & Co., 75 N.J.L. 748, 70 A. 314 (1908).

8. *See, e.g.,* Thomas V. Winchester, 6 N.Y. 397 (1852). In *Thomas* a drug manufacturer had falsely labeled a bottle which contained belladonna, a deadly poison, as extract of dandelion, a harmless medicine. Winchester, the manufacturer, had sold the incorrectly labelled drug to a druggist in New York City, who later sold it to a druggist in Cazenovia, New York. Upon a doctor's instruction, Thomas bought what he belived was the extract of dandelion from the Cazenovia druggist and administered it to his wife, who became ill. Thomas sued the drug company for damages and the court allowed him to recover though he was not privy in contract with the manufacturer. As to "inherently dangerous products," a distinction was recognized between an act of negligence dangerous to the lives of others and one that was not. Sales of drugs (described as "inherently dangerous products") were excepted from the privity rule, and liability was imposed in this case on the manufacturer upon general principles of negligence.

9. *See, e.g.,* Devlin v. Smith, 89 N.Y. 470, 42 Am. R. 311 (1882) and cases cited in MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).

10. The complete rejection of the privity requirement began with the most famous case of product liability law, MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916). *See also* Smith v. Atco Co., 6 Wis.2d 371, 94 N.W.2d 697 (1959); Carter v. Yardley, 391 Mass. 92, 64 N.E.2d 693 (1946). In *Carter* the court stated:

> The MacPherson case caused the exception to swallow the asserted general rule of nonliability, leaving nothing upon which that rule could operate. . . .
>
> The time has come for us to recognize that the asserted general rule [requiring privity] no longer exists. In principle it was unsound. It tended to produce unjust results. 64 N.E.2d at 700.

11. *See, e.g.,* Henningsen v. Bloomfield Motor Co., 32 N.J. 358, 161 A.2d 69 (1960), which held that an implied warranty of reasonable suitability for use accompanies a product into the hands of the ultimate purchaser. This case is the basis for the strict liability in warranty doctrine. *See generally* Prosser, Law of Torts § 97 (4th ed. 1971).

It has been argued that strict tort liability and strict liability in warranty are identical. In 2 L. Frumer & M. Friedman, Products Liability § 16[4a] (1970) it is stated that:

> If a court does not require, *inter alia,* privity of contract, a sale, or notice of a breach of warranty, does it matter that the defendant is being held strictly liable in warranty rather than in tort? The answer seems obvious. If a court imposes strict warranty liability irrespective of contract and sales rules, then strict liability in warranty and tort are synonymous.

Prosser feels that for purity of theory strict warranty liability should be discarded and that liability should be imposed in tort:

> Warranty . . . had been from the outset only a rather transparent device to accomplish the desired result of strict liability. No one disputed that "warranty" was a matter of strict liability. No one denied that where there was no privity, liability to the consumer could not sound in contract and must be a matter of tort. Why not, then, talk of the strict liability in tort . . . and discard the word "warranty" with all its contract implications? Prosser, *The Fall of the Citadel (Strict Liability to the Consumer)*, 50 Minn. L. Rev. 791, 802 (1966).

12. Cases and authorities cited notes 2 and 6 *supra.* For further historical development of

In products liability law the trend has been to gradually shift the risk from the consumer to the seller, then to the middleman, and ultimately to the manufacturer. Whether or not the next step is taken is a choice of allocation of risk of loss due to personal injury.[13]

New Mexico case law on product's liability is limited, but a definite historical development, similar to the one outlined above, can be traced.

In *Wood v. Sloan,*[14] a negligence action, the Court had before it a question involving the liability of independent contractors to third persons after completion of the contracted work, and its acceptance by the owner. The Court stated the general rule that the independent contractor continued to be liable to third persons for injuries received as a result of defective construction or installation only in situations falling into two general classes of exceptions:

> (1) Those where the thing dealt with is imminently dangerous in kind; and
> (2) those where the thing dealt with is not imminently dangerous in kind, but is rendered dangerous by defect.[15]

Thus the *Wood* decision supported the inherently and imminently dangerous product exceptions to the doctrine which required privity as a prerequisite of recovery for a manufacturer's or contractor's negligence.[16]

No case in New Mexico has dealt directly with the elimination of the privity requirement with respect to food and beverages sold for human consumption, but it is clear from the cases that lack of privity in food or beverage cases does not provide the manufacturer with a defense.[17]

The doctrine of *res ipsa loquitur* has been used by a New Mexican consumer to hold a Coca-Cola bottler liable for personal injuries.[18] The consumer became ill after drinking part of the contents of a

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the adoption in American jurisdictions of strict tort liability *see* Prosser, *The Fall of the Citadel (Strict Liability to the Consumer),* 50 Minn. L. Rev. 791 (1966); 1 R. Hursh, American Law of Products Liability § 5A (Supp. 1971); 1 CCH Prod. Liab. § § 4050 and 4500 *et. seq.* (1968).

13. The court in *Stang* recognized that the choice of whether or not to impose strict tort liability was in part a choice of how to allocate the risk of loss. Stang v. Hertz Corp., 83 N.M.__, 490 P.2d 475, 478-79 (N.M. Ct. App. 1971), *cert. granted* Oct. 20, 1971.

14. 20 N.M. 127, 148 P. 507 (1915).

15. *Id.* at 133, 148 P. at 508.

16. *Compare* Wood v. Sloan, 20 N.M. 127, 148 P. 507 (1915) with cases cited *supra* notes 8 and 9.

17. *Cf.* Wood v. Sloan, 20 N.M. 127, 148 P. 507 (1915); Tafoya v. Las Cruces Coca-Cola Bottling Co., 59 N.M. 43, 278 P.2d 575 (1955).

18. *See* Tafoya v. Las Cruces Coca-Cola Bottling Co., 59 N.M. 43, 278 P.2d 575 (1955).

bottle containing some unidentified foreign matter. The bottler appealed from a judgment and verdict. The Supreme Court affirmed, holding the doctrine of *res ipsa loquitur* applicable. The doctrine raised a presumption of negligence on the part of the bottler where it was shown that there was no reasonable probability that the bottle or its contents had been tampered with while they were in the possession of the retailer. It is important to note in this case no proof of a specific act of negligence was established, but the presumption of negligence arose under the doctrine of *res ipsa loquitur.* In explaining the policy behind the doctrine of *res ipsa* the Court stated:

> "... It ... is recognized as a rule of necessity, and is based upon the postulate that under the common experience of mankind an accident of the particular kind does not happen except through negligence. It bases its chief claim to justification on the fact that ordinarily the cause of the injury is accessible to the party charged and inaccessible to the person injured."[19]

Although in theory the doctrine of *res ipsa loquitur* is consistent with the law of negligence, it often works to impose a type of strict liability since no specific act of negligence must be shown. In reality all that need be shown is that the product was defective when in the hands of the consumer and that it was probably defective when it left the hands of the manufacturer.[20] "In practice, the opportunity to hold for the plaintiff has often been all that the jury needed, and juries must have sometimes found manufacturers negligent in creating or failing to discover a defective condition when the facts were actually otherwise."[21] For policy reasons, courts have applied the doctrine of *res ipsa loquitur* to hold a manufacturer liable to an ultimate purchaser even where no negligence can be shown.

In 1968, the New Mexico Supreme Court took another step in the development of products liability law. The Court totally discarded the privity requirement in a tort action against a manufacturer or supplier. It held a corporate homebuilder liable to a remote purchaser for losses due to negligent construction.[22] They felt the time had come to fall in line with the established trend in products liability cases and adopted the reasoning used in *Smith v. Atco Company:*[23]

19. *Id.* at 46-47, 278 P.2d at 577-78 citing Hepp v. Quickel Auto & Supply Co., 37 N.M. 525, 528, 25 P.2d 197, 199 (1933).

20. *See* Prosser, *The Fall of the Citadel (Strict Liability to the Consumer),* 50 Minn. L. Rev. 791, 842-44 (1966); Wade, *Strict Tort Liability of Manufacturers,* 19 SW. L.J. 5, 8-9 (1965). *Cf. Escola v. Coca Cola Bottling Co.,* 24 Cal.2d 453, 150 P.2d 436 (1943).

21. Wade, *supra* note 20, at 9.

22. Steinberg v. Coda Roberson Constr. Co., 79 N.M. 123, 440 P.2d 798 (1968). *Compare Steinberg* with cases and associated text *supra* note 10.

23. 6 Wis. 2d 371, 94 N.W.2d 697 (1959).

> We deem that the time has come for this court to flatly declare that in a tort action for negligence against a manufacturer, or supplier, whether or not privity exists is wholly immaterial. . . . Such an approach will eliminate any necessity of determining whether a particular product is "inherently dangerous."[24]

Until the *Stang* decision, it appeared New Mexico would take the next step in the development of products liability law. This step would be to adopt strict tort liability by accepting Section 402A of the Restatement (Second) of Torts. In *Moomey v. Massey-Ferguson, Inc.*,[25] a federal court predicted New Mexico's adoption of strict tort liability. In *Moomey*, a workman sustained an eye injury while installing a new steel tooth on a dirt scoop. He instituted suit against the manufacturer. The tooth had splintered when the plaintiff tapped it with a 16-ounce ball peen hammer. An expert metallurgist testified that because of its carbon content, the tooth was susceptible to splintering, that it exceeded the other teeth in hardness, and that it exceed the manufacturer's specifications for hardness and carbon content. Judge Bratton of the Federal District Court submitted the case to the jury on the theory of strict liability as stated in Section 402A. The jury returned a verdict for the workman, and Massey-Ferguson appealed to the United States Court of Appeals (10th Circuit). They urged that Judge Bratton had erroneously assumed New Mexico courts would adopt and apply the Section 402A rule of strict liability. The court of appeals affirmed the district court's decision and embraced Judge Bratton's decision to apply strict tort liability:

> New Mexico has not explicitly adopted § 402A strict liability as the law of New Mexico. But in *Scrib v. Seidenberg*, 458 P.2d 825 (N.M. 1969), the New Mexico Court of Appeals did apply Section 402A strict liability as the law of that case even though it specifically declined to generally embrace the section as the law of New Mexico. We have recently deferred to Judge Bratton's judgment of the law of New Mexico in a case involving the application of other sections of the American Law Institute restatement on tort law [Citations omitted]. We see no reason for not doing so in this case where the logic is equally persuasive.[26]

Judge Bratton and the Court of Appeals for the 10th Circuit were incorrect. The New Mexico Court of Appeals in *Stang* rejected strict tort liability as outlined in 402A.

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24. Steinberg v. Coda Roberson Constr. Co., 79 N.M. 123, 124, 440 P.2d 798, 799 (1968) citing Smith v. Atco. Co., 6 Wis. 2d 371, 94 N.W.2d 697 (1959).

25. 429 F.2d 1184 (10th Cir. 1970).

26. Moomey v. Massey Ferguson, Inc., 429 F.2d 1184, 1186 (10th Cir. 1970).

One of the reasons the court advanced for not applying the section was that it involved "economic considerations, the consequences of which are unknown, accident statistics which are also unknown and public demands which [the court is] not structured to ascertain. . . ."[27] It should be pointed out that at each step in the historical movement in products liability law in New Mexico the courts made their decisions to reject the requirement of privity or to impose *res ipsa loquitur* on the basis of logic, justice, and policy as the court ascertained it, rather than on economic statistics or public surveys. One writer has analyzed the development:

> The law of products liability has been in continual change in an attempt to allocate the burden of injuries which inevitably result from socioeconomic interaction in a modern mass-production society. Courts have employed a progression of legal theories to effectuate a proper balance among the interests of the injured consumer, the manufacturer, and society, each successive concept being designed to increase the protection and compensation afforded the consumer.[28]

The reasons advanced for taking the next step and imposing strict liability in tort seem logical and realistic.[29] Imposition of strict liability when a consumer is injured by a defective product will work to protect the public health and safety.[30] A closely related argument is that imposition of strict tort liability will reduce the number of injuries resulting from unfit and unsafe products.[31] Another reason

27. Stang v. Hertz Corp., 83 N.M.___, 490 P.2d 475, 479 (N.M. Ct. App. 1971), *cert. granted* Oct. 20, 1971.

28. Note, *Products Liability and Section 402A of The Restatement of Torts*, 55 Geo. L.J. 286 (1966).

29. For the opposite view *see* Keeton, *Products Liability–Some Observations About Allocation of Risk*, 64 Mich. L.R. 1329 (1966).

30. *See, e.g.*, Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964); Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 67, 377 P.2d 897, 27 Cal. Rptr. 697 (1963); Garthwait v. Burgio, 153 Conn. 284, 216 A.2d 189 (1965); Suvada v. White Motor Co., 32 Ill. 2d 612, 210 N.E.2d 182 (1965). Restatement (Second) of Torts § 402A, comment c (1965) states:

> . . . [T]he justification for the [imposition of] strict liability has been said to be that the seller, by marketing his product for use and consumption, has undertaken and assumed a special responsibility toward any member of the consuming public who may be injured by it; that the public has the right to and does expect, in the case of products which it needs and for which it is forced to rely upon the seller, that reputable sellers will stand behind their goods; that public policy demands that the burden of accidental injuries caused by products intended for consumption be placed upon those who market them, and be treated as a cost of production against which liability insurance can be obtained; and that the consumer of such products is entitled to the maximum of protection at the hands of someone, and the proper persons to afford it are those who market the products.

31. Cases cited note 30 *supra*. *But see* Plant, *Strict Liability of Manufacturers for Injuries Caused by Defects in Products–An Opposing View*, 24 Tenn. L. Rev. 938, 945-48 (1957).

commonly advanced in support of imposing the doctrine is that those engaged in the manufacturing and distributing process have the capacity to distribute the loss to the consuming public through liability insurance and higher prices.[32] Yet another policy argument is that the consumer has a right to compensation from the manufacturer or distributor when he is injured by a defective product because mass media advertising and marketing induce reliance on the part of the buying public.[33] The much vaunted product should do safely what it is advertised to do.

The New Mexico Court of Appeals recognized these policy considerations. But the court felt that since "risk spreading" may depend on the size of the defendant organization, and New Mexico has little "large-scale enterprise," strict liability in New Mexico might be an unsound decision. However, since there is so little manufacturing and production in New Mexico, most consumer products must be imported from other states. Therefore many of the suits for defective products will necessarily be against out-of-state manufacturers. Many companies engaged in mass production have already figured the cost of insurance into the cost of their products.[34] It is possible that the New Mexican consumer is paying more for products for protection he may not get. There seems to be little reason to make recovery against a seller or manufacturer more difficult in New Mexico than in California when consumers in both states are using the same products.

In general, retailers may protect themselves from loss by purchasing insurance. Also, in appropriate cases, such as the sale by a retailer of a defectively manufactured product, the manufacturer

32. *See, e.g.,* Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964); Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 67, 377 P.2d 897, 27 Cal. Rptr. 697 (1963). *But see,* Plant, *supra* note 31, at 945-48.

33. *See, e.g.,* Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 67, 377 P.2d 897, 27 Cal. Rptr. 697 (1963); Garthwait v. Burgio, 153 Conn. 284, 216 A.2d 189 (1965); Suvada v. White Motor Co., 32 Ill. 2d 612, 210 N.E.2d 182 (1965); Inglis v. American Motors Corp., 3 Ohio St.2d 132, 209 N.E.2d 583 (1965).

34. Jentz, *The Increasing Responsibility of the Seller in Products Liability,* 4 Am. Bus. L.J. 1 (1966). At page 22 of his article Jentz states:

> This growing trend [in products liability] has led the seller at all levels to increase its vigilance in producing and selling products free from defects, and giving the consumer adequate warning of any possible injury to him. In addition, it has caused business men to procure adequate products liability insurance to cover the increasing claims-conscious consumer. The increased responsibility, leading to strict or absolute liability, has caused an additional financial liability in the cost of doing business. Whether you agree or disagree to the extent of this trend of protecting the consumer and nonpurchaser user, the cost will still usually be passed on to the consumer in the selling price of the product.

who introduced the product into the stream of commerce may be impleaded.[35]

The best expression of the value of strict tort liability may be the first judicial expression of it in the concurring opinion of Justice Traynor in *Escola v. Coca Cola Bottling Co.*:[36]

> ... [T]hose who suffer injury from defective products are unprepared to meet its consequences. ... [T]he risk of injury can be insured by the manufacturer and distributed among the public as a cost of doing business. ... Against such a risk there should be general and constant protection and the manufacturer is best situated to afford such protection.[37]

The *Stang* decision by the New Mexico Court of Appeals was a retreat from the growing tendency toward consumer protection in products liability cases. The total rejection of strict tort liability in New Mexico will probably be short lived. Three alternatives suggest themselves. First, as more and more products liability cases are litigated in New Mexico, pressure for change or limitation of *Stang* will become great. That change could come by legislative mandate as the *Stang* court suggests it should. Second, since the court held only that it would not adopt Section 402A in this case, it is possible that a New Mexico appellate court would adopt a narrower version of strict tort liability.[38] This version could be accepted when a direct suit is brought against a manufacturer or producer. But it should be remembered that:

> ... [A]ll of the valid arguments supporting the strict liability ... apply with no less force against the dealer. There are enough cases in which the manufacturer is beyond the jurisdiction, or the

35. N.M. Stat. Ann. § 21-1-1(14) (Repl. 1970). This rule permits a defending party, as a third-party plaintiff, to cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim. For one example of the use of this procedure in a federal court *see* Jeub v. B/G Foods, Inc., 2 F.R.D. 238 (C.D. Minn. 1942).

It should usually be possible to obtain jurisdiction over an out-of-state manufacturer through use of New Mexico's long-arm statute, N.M. Stat. Ann. § 21-3-16 (Supp. 1971). For a general discussion of how a consumer in a products liability action obtained jurisdiction by the use of a long-arm statute over an out-of-state manufacturer who placed his product within the "stream of interstate commerce" (the only contact with the state was the sale of its product within the state by a third-party retailer) *see* 2 Tex. Tech. L.R. 328 (1971).

36. 24 Cal. 2d 453, 150 P.2d 436 (1943) (concurring opinion).

37. *Id.*, 150 P.2d at 441.

38. In this case Hertz Corporation was a lessor. Section 402A applies to sellers. But the court stated that if it applied strict liability against a seller, it saw "no reason for distinguishing a lessor because the practical effect is the same." It also noted that "[t]he strict liability rule has been extended to lessors." (Citations omitted.) Stang v. Hertz Corp., 83 N.M.___, 490 P.2d 475, 477 (N.M. Ct. App. 1971), *cert. granted* Oct. 20, 1971.

> injured plaintiff does not even know his identity, to justify requiring the dealer to assume the responsibility, and argue out with the manufacturer any questions as to their respective liability. One may suspect that the courts which relieve the dealer have had in mind the little corner grocery store. But in these days the dealer is more likely to be Safeway Stores, or some other nation-wide enterprise which is the prime mover in marketing the goods, and the manufacturer only a small concern which feeds it to order.[39]

Finally, the New Mexico Supreme Court may continue its development of products liability law and reverse the court of appeals. This would certainly be the most desirable development since eventual adoption of strict tort liability seems inevitable. The federal district court and court of appeals judges for the tenth circuit projected the adoption of Section 402A almost two years ago.

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39. Prosser, *supra* note 20, at 816.