

PRODUCT LIABILITY: HOW IT AFFECTS CUSTOM-BUILT MACHINERY

SUMMARY

This BMA identifies the potential liability of tooling and machining manufacturers for injuries to users of their products. Typically, a situation arises where an employee of a purchaser is injured while operating a custom-built machine and sues the manufacturer for damages. The injured person's claim is usually that the machine was defectively, or unsafely designed — such as the omission of an available safety device that might have prevented the injury.

Products liability is governed by state law, and varies considerably among jurisdictions. Even if you are well informed about the law in your state, it is important to be aware of the law in other states because a court may find it appropriate to apply the law of one or more other states to the facts of a particular case.¹ Thus, this discussion will focus on general concepts and principles, paying special attention to current trends and possible future developments in this area of increasing concern to all manufacturers and sellers.

SOURCES OF POTENTIAL LIABILITY

Manufacturers of custom machinery are subject to liability under theories of negligence, warranty, and strict liability. The third area is the most important because it provides an injured party the easiest path to recovery, and because it incorporates much of the law which has developed under the other two theories. Thus, this analysis will briefly explore negligence and warranty before turning full attention to strict liability.

Regardless of what theory a suit is brought under, there are certain factors which a court may consider important in allocating liability for design, particularly where both manufacturer and customer-employer are joined as defendants. The relative expertise of the parties may be important. For example, where the customer is very large and quite experienced in the field, such as an automaker, a court may view this individual as more properly "responsible", especially if there is great disparity in bargaining power between seller and customer. Conversely, when the customer's expertise is more limited to the specifications of his or her own product, and not including in-depth knowledge of the engineering and design of production processes, then the seller may be subject to greater responsibility.

The qualifications of prospective users may also be important. A piece of equipment operated by a highly-trained and experienced craftsman familiar with engineering design may be considered a safe situation. However, if the same piece of

equipment is operated by an unskilled production worker, the situation could be viewed as unreasonably dangerous.

Even reasonable care by the manufacturer cannot save the seller from liability in every case. First, the plaintiff might not name the customer-employer as defendant. Secondly, as noted below, a court may ignore such factors if it adopts a "pure" strict liability theory.

1. Negligence

Negligence involves traditional standards governing the conduct of daily business: one must avoid acting (or failing to act) in such a way that one's conduct creates an unreasonable risk of harm to others of which one is or should be aware. An example of negligence is when the seller both designs and manufactures a machine for use in a simple, known process without the appropriate safety guards. It is unlikely that a manufacturer would be held liable for negligent design when plans and specifications are provided solely by the customer; since this person did not "create" the risk of harm, then he or she should not be responsible for resulting injury.² Negligence may nevertheless be found when the court construes the custom manufacturer's role as more than a mere assembler, such as when the manufacturer selects the type or composition of materials to be used or supplies significant details not provided by the customer's specifications and without obtaining the customer written consent.

It is conceivable that a manufacturer may be negligent, even though every detail is provided by the customer, if the plans and specifications are so "glaringly dangerous" that no pru-

dent manufacture would construct such an item.³ Of course, a manufacturer will be liable for negligent performance of his or her own functions (for example, substandard performance of the manufacturing process itself).

2. Warranty Liability

A non-designing manufacturer may be liable under an express warranty if it is (a) asserted that the machine is safe, (b) and this assertion of fact is attributable to the manufacturer and was intended to be passed on to the injured party, (c) and the injured party was aware of the assertion and was injured in reliance on assertion. Employees of the purchaser may recover since they are expected users. The multiple and precise requirements make recovery under an express warranty theory unlikely. Such liability can be avoided altogether; simply do not make any such statement either in negotiations, sales literature, within the contract itself, or upon delivery. Further, you can disclaim all express warranties not made part of the final contract itself.

Implied warranties of safety may be more troublesome. If an item is exchanged between a buyer and a seller, the law will imply a warranty that the product is not unreasonably dangerous. Jurisdictions vary as to when such warranties will be implied; frequently they are limited to consumer goods. No implied warranty will arise when goods are manufactured under precise technical specifications furnished by the buyer.⁴ As noted in the discussion of negligence above, the manufacturer may have to prove that all plans and specifications originated solely with the buyer. The seller will not be excused from warranty liability when the buyer makes the general requirements known, or when the manufacturer's expertise is relied upon in developing the specific product. When such warranty is found, however, it usually extends not only to the immediate purchaser, but to all users.⁵ Implied warranties may sometimes be avoided with an express disclaimer. Although courts frequently declare personal injury disclaimers void as against public policy, that policy is to protect the general public, and purchasers of consumer goods in particular. Since industrial machinery is not used in the household, this policy may not be fatal to business. Such result should not be presumed, however, as the direction of the law is clearly toward greater protection of industrial workers.

3. Strict Liability

The central concept of "strict liability" is set out in Section 402A of the Second Restatement of the Law of Torts which has been accepted in varying degrees in most states. It provides that liability may be imposed without fault when (a) a product is defective; (b) the defect arose while the product was under the control of the manufacturer; and (c) such defect caused some person harm. The difference between negligence and strict liability is that negligence is primarily concerned with the defendant's conduct, whereas strict liability looks at the product itself. For example, selection of a design which consciously excludes a possible safety device may not constitute negligence under traditional tort standards, yet the manufacturer may nevertheless be strictly liable if the product is found "defective." In negligence cases, the manufacturer's

conduct may be guided according to reasonable business decisions, whereas in strict liability safety design decisions must be made with a view toward society's sensitivity to the risk of personal harm to users.

Strict liability is not, however, absolute liability. Thus, a product is not defective merely because it causes injury; manufacturers are not treated as insurers. Rather, a product is in a defective condition only if it is unreasonably dangerous to the user. This determination is made by judging whether the product meets current reasonable standards of safety.

Custom within an industry may be viewed as current standards. Such customs are not standards, however. Current standards may also be based on statutory safety codes, administrative rules and regulations, or statements by manufacturers' associations. Indeed, the Occupational Safety and Health Commission has adopted a set of regulations for machine guarding and safety devices. These are set out in Appendix I and are discussed more fully below. A product's failure to meet such indicators is strong evidence of defectiveness, although adherence to them does not assure that current standards have been met in any particular case.⁶

STRICT LIABILITY AND INDUSTRIAL MACHINERY

The doctrine of strict liability is applicable to the manufacturer of dies, tools, presses and other machinery. Indeed, the modern law of strict liability under Section 402A was ushered in by the decision of the California Supreme Court in *Greeman v. Yuba Products, Inc.*⁷ In that case a combination tool, used as a wood lathe, allowed a piece of wood to fly up, which struck and injured the operator in the head. Upon proof that a feasible safety device could have been incorporated, the court held that the product was "defective" and the designer/manufacturer was liable for resulting injuries.

Today, two-thirds of the states have followed the *Greeman* precedent. The doctrine has been applied to injuries caused by actual defects in machinery or the assembly of machinery, the inadequacy of component parts, and the absence of safety devices. Safety devices are the primary focus of this inquiry. Inclusion or exclusion of such devices, whether attributable to manufacturer or purchaser, are considered under the topic of design defects.

1. Safety Devices

Safety devices are vital components of all products, but particularly with equipment such as dies and presses, which incorporate human activity. Guards are among the simplest of such devices and serve to prevent inadvertent contact between the operator's body and the moving parts. It is no response to a claim of strict liability, as it might be in negligence, that the user was or should have been aware of a potential hazard (such as the obvious danger of placing one's hands between the ram and die during operation). If the operator could not use the equipment as sold without unreasonable risk of injury, the absence of a guard or shield (which might feasibly have been included) may make the machine as a whole defective.

Examples of other safety devices include microswitches and manual releases allowing for disengagement from hazardous situations. The OSHA standards contained in Appendix 1 stress the importance of such devices. As noted, these standards are of great importance in determining whether a particular piece of equipment is defective.

Many products possess latent limitations or dangers, such as the risk of unforeseeable attempts to use a machine in an unintended manner, or to clean or repair the item in an unsafe manner. To cope with such hazards, manufacturers are expected to warn users of dangers they are probably unaware of. This obligation of providing all information necessary to safe operation of the product can be met with such things as labels, decals, manuals or other instructional materials. Of course, where the intended operator is known to have experience and expertise, such limitations and hazards will not be "latent," and thus warning will be unnecessary.

Although manufacturers of equipment made to buyer specifications can argue that only the buyer should be liable for defective design, legal precedent does not release the manufacturer of the responsibility to warn users of potential dangers during operation.

2. Current Standards

The Occupational Safety and Health Act of 1970⁸ (OSHA) included a set of standards for machinery and machine guarding (see Appendix 1) which were initially developed by the American National Standards Institute. The importance of safety standards in this area is highlighted by the fact that these were among the "initial standards," or first to be promulgated under the Act, effective September 27, 1971.

Section 5 states that each "employer shall comply with occupational safety and health standards promulgated under" this Act. Enforcement proceedings and remedies are all directed toward ensuring compliance by employees. As such, a manufacturer of machinery is not directly subject to OSHA (with respect to machines sold). The OSHA standards are significant for manufacturers, however, as strong evidence of what industry members, professional associations and government regulators consider to be appropriate safety measures.

3. Relation to State Regulation

OSHA only temporarily pre-empted the field of safety regulation. Federal jurisdiction is surrendered when a state submits a plan which is approved by the Occupational Safety and Health Commission. State plans must include standards at least as comprehensive as those under OSHA. Most state plans incorporate OSHA standards. States may, however, regulate more comprehensively, as in California and Michigan.

An added feature of state regulation is that it may be directly applicable to manufacturers of equipment. In *Balido V. Improved Machinery, Inc.*, the California Supreme Court held that a manufacturer (there it was both designer and maker) was obligated not to sell equipment without safety devices prescribed by state regulation, even though the statute was directed to employers. In contrast, a similar Michigan statute was declared not directly applicable to manufacturers.

4. Variance

A variance, or deviation from prescribed standards, may be sought under OSHA and most state plans. Pursuant to OSHA regulations, a variance may be granted when the applicant can show (a) an equivalent level of work safety under the proposed deviation in work process; (b) all affected employees have been informed of the application and have an opportunity to comment; and (c) need and rationale for the deviation.

A seller may be interested in an employee's variance as providing justification for making and selling otherwise non-conforming equipment. Further, a manufacturer may suggest that a customer seek a variance when the customer provides non-conforming specifications. The time delay and expense of seeking an administrative variance often makes redesign easier.

5. Federal Statutes Which Are Not Applicable

There are two other federal safety regulation schemes which should not be confused with OSHA or strict liability standards. Foremost is the Consumer Product Safety Act.¹⁰ Industrial machinery is not covered by this Act since 3(a)(1) defines the term "consumer product" as an article produced or distributed for use by consumers in or around the household, or for personal consumption.

Similarly, the National Traffic and Motor Vehicle Safety Act of 1966¹¹ is not relevant. Section 102, is concerned with protecting the public from unreasonable risk of accidents arising out of the operation of the final product.

Thus, it is automobile, not industrial, accidents that are covered. While suppliers of component parts are as liable as other sellers of products, a manufacturer of production equipment is not a component supplier since this product is not incorporated in the final product.

CONSEQUENCES OF DESIGN DEFECTS FOR THE NON-DESIGNING MANUFACTURER

There is no legislation, state or federal, providing either liability or non-liability for the manufacturer where the customer provides detailed specifications. Likewise, there have been few reported cases in which this was a central issue. Thus, it is necessary to extrapolate from existing law and current trends in the area of strict liability and industrial safety.

1. Case Law to Date

Cases decided-to-date have been few and inconclusive on this point. In Section 4745 of the Commerce Clearing House Products Liability Reporter, a publication which reports and reviews happenings in the area of products liability, there appears the bold assertion: "Where a product is manufactured to the purchaser's specification, of course, the manufacturer will not be held liable for design defects." Although no logic was cited for this proposition, there are several cases which suggest the same result. There are also recent cases suggesting the opposite conclusion which, together with the trends toward increasing plaintiffs' recoveries and growing concern for mechanical safety, dictate a prudent course of conduct consisting of caution and preventive management.

Non-liability appears to have been assumed in the past. As long ago as 1963 it was stated that a supplier was free of negligence when the item supplied was made to specifications of the buyer.¹² Though this case was based on negligence, it has been cited with approval by more recent cases in strict liability as well. Most recently, the United States Court of Appeals for the Second Circuit recognized the no liability principle in *Wheeler v. Standard Tool & Mfg. Co.* while finding it inapplicable to the particular case:

*There is no reason in principle, or under Section 402A, why a manufacturer of a complicated machine which is to be used by another manufacturer may not avoid its strict liability by making it plain to the purchaser that it is relying on it to take over the provision of safeguards at a certain point.*¹³

Note that the court did not state that a manufacturer may simply ignore with impunity defects to the specification supplied. Rather, strict liability was presumed to exist until avoided. The defendant was given the burden of proving an agreement or understanding between him/herself and the purchaser that the latter would provide the appropriate safeguards. Thus, there appears from this case, at a minimum, a requirement to evaluate the customer's design with respect to safety features, bring any deficiencies to the attention of the customer, and reach agreement as to who will provide the necessary features.

It is extremely dangerous to assume that a purchaser will install necessary guards unless specified in a written agreement. This fact is illustrated by *Pust v. Union Supply Co.*, where a Colorado court held that a fabricator who manufactured a product according to unsafe designs submitted by the customer could be liable if it was feasible for the fabricator to install the needed safety devices. The Colorado Supreme Court emphasized that in a strict liability case like *Pust*, the fundamental question was whether the product was unreasonably dangerous because of the absence of guards, not who had the duty to provide the guards.¹⁴

In another recent case, *Garrison v. Rohm & Hass Co.*, the Court of Appeals for the Sixth Circuit used terms as bold as the Products Liability Reporter section noted above to declare the manufacturer not liable for injury from use of a custom-made dolly:

*To hold (the manufacturer) liable for defective design would amount to holding a non-designer liable for design defect. Logic forbids any such result.*¹⁵

Again no authority was cited for this proposition. The "forbidding logic" apparently loses sight of the essence of the theory of strict liability. In other words, it is the product's condition, not the defendant's conduct, which is important.

A third relatively recent case also lends support to the non-liability principle, but again it is not a particularly strong case. In *Spangler V. Kranco, Inc.*¹⁶ Defendant Kranco made and shipped three cranes according to plans and specifications of the buyer-Reynolds-who assumed responsibility for installing them in its plant. Spangler, a Reynolds employee, was struck from behind by one of the cranes, and sued Kranco on the theory that the crane was defective for lack of any warning device (such as a bell) which would be activated whenever the crane was in motion.

While the court held Kranco not liable in that case, each ground of the decision might easily be distinguished given a different set of facts. First, the court held the lack of a safety device was not a defect since the danger arose only because of the situation in which the crane was used. That is to say, in a less congested area, or an area specifically designated for crane operation only, the machine would be dangerous without a safety device in all environments, since the hazard arises from human interaction necessary to operate it. Secondly, the court stated that:

*The products liability role holding a manufacturer liable does not apply where the product has been manufactured in accordance with the plan and specification of the purchaser except when such plans are so obviously dangerous that they should not reasonably be followed.*¹⁷

The authorities cited in support of the principle are not strong, as they do not present close analogies to the situation involving industry machinery.¹⁸ Finally, the court stated:

*While we do not suggest that the foregoing principle should be applied to immunize a manufacturer from liability in every case, we are of the opinion that Kranco acted reasonably in relying upon Reynolds' industrial expertise and following its plans and specifications, especially since it is conceded that neither the National Safety Code nor the Occupational Safety and Health Act require warning devices or pendant-operated cranes such as the one herein question.*¹⁹

It is significant that the court denied absolute status to the non-liability principle, and particularly that OSHA standards may be a determining factor. The implications for prudent makers of machinery covered by OSHA are clear. Further, one should note the strong dissenting opinion in *Spangler* by Judge Butzner:

Customer specifications do not insulate a manufacturer from liability to third persons who might foreseeably be injured by negligent design or fabrication, although the specifications might offer the manufacturer a defense in an action brought by the customer. Cf. *Wirth v. Clark Equipment Co.*, 457 F. 2d 1262, 1967 1972), cert. denied., 409 U.S. 876, 93 S. Ct. 127, 34 L. Ed. 2d 129 (1972).²⁰

The *Wirth* case, cited in the previous quotation, is the leading case to find a non-designing manufacturer liable. Due to design, the operator of a large construction vehicle lacked visibility to the areas 40 feet directly in front and to the rear of the vehicle. Upholding the right of a worker who was run over, the appellate court adopted a literal view of Section 402A:

*We think that the custom-built concept need not be fatal to the plaintiff's case.. even if the machine had been fully custom-made, we are by no means convinced that this circumstance would prevent this plaintiff from recovery under the doctrine of strict liability.*²¹

In its bare essentials Section 402A requires only three elements for liability: (a) A defect, (b) which arises while under the defendant's control, and (c) causes injury. The willingness of that court to view only these elements represents the pure theory of strict product liability. While clearly not all courts will adopt such a view, we should expect more courts to move in this direction than away from it.

Though seemingly dogmatic the Wirth opinion recognizes what the *Spangler and Garrison* decisions failed to appreciate; to the extent that products liability and industrial safety law seek to avoid accidents and compensate for losses which do arise, it is no consolation for an injured worker that the employer (as designer), rather than the manufacturer alone, was “responsible.” As stated by the California Supreme Court in a case similar to *Wirth*, “The danger to workers is not diminished because the employer is aware of its deficiencies of design.”²² Indeed, the *Wirth and Pike* opinions suggest the possibility of an even greater duty:

*‘Surely it is well within the framework and spirit of recent common law modifications to require reasonable care to protect even the buyer himself from what may be foreseen as an unreasonable danger to him.’*²³

The harshness to the non-designing manufacturer of this view may be softened when applied as by the *Wheeler* court, requiring express recognition of dangerous risks and allocation of final responsibility for minimizing them. Further, the concept of indemnification may aid the manufacturer in avoiding undue pecuniary liability for merely fulfilling the customer’s expectations.

2. Indemnification

Indemnification is a doctrine providing that when one person (the initial defendant) is required to compensate for injury which was primarily caused by conduct of a third party, the initial defendant may recover from the third party amounts paid to the injured person. Traditionally, to obtain indemnification the initial defendant must show that he or she was only “passively” at fault whereas the third party was “actively” at fault. The typical situation is when a retailer is sued by a consumer for malfunctioning or defectively-made goods. The retailer will usually be allowed indemnity from the maker since this person was not in any active way responsible for the condition of the goods (assuming proper handling, storage, etc.)

It is attractive to analogize to the situation where the manufacturer is held liable for defects inherent in the customer’s specifications. However, there may be one of several barriers to recovery back against the designing customer. First, a court might characterize the manufacturing process itself as active conduct, thus barring any right to indemnification. Secondly, some courts hold that the indemnification doctrine is limited to negligence cases, and that it plays no role in the area of strict liability, since only the former is concerned with “fault” or “culpability.”²⁴

These common law and statutory rights of indemnification should not be confused with indemnity provisions in contracts. The latter are separate, independent actions which may be maintained regardless of the state’s position on extra-contractual indemnity. A sample indemnity clause appears in the next section.

3. Workers' Compensation

Almost every jurisdiction has a statutory workers’ compensation program under which employers are typically liable regardless of fault for on-the-job injuries in most instances, in

return, injured employees are restricted as to the type and size of awards which may be recovered against their employers. Some statutes further provide that a statutory recovery will bar any subsequent suit for recovery related to the same injury, including for negligence or strict liability. In such cases the manufacturer of machinery will have an absolute defense.

PREVENTIVE MANAGEMENT

This section suggests a variety of activities and contract features which can minimize exposure to liability for design defects. Of course the best way to avoid liability is to prevent accidents. To the extent that is achieved, you will avoid not only ultimate liability, but also the expense and irritation attendant even from successful defenses against claims. Customers will benefit from assistance in complying with safety standards and regulations, lessened personal injury liability, and a healthier and more secure workforce. Most important, individual operators and workers will be spared the personal tragedy of industrial accidents.

The following suggestions will vary in effectiveness from state to state, and each should be viewed with the recognition that in many instances an injured worker will first, or at least concurrently, sue the employer. The bargaining leverage and expertise of customers and users may further make some suggestions inappropriate or unnecessary, such as where the customer would deem a contract with multiple disclaimers too unattractive, or where the user is so expert and experienced that warnings would constitute a meaningless gesture.

1. Evaluate Plans and Designs

Upon receipt of customer specifications, scrutinize them in terms of your own professional judgment, industry customs or codes, and state as well as OSHA standards.

2. Notify Customer of Suspected Design Defects

Bring any deficiencies noted by your own evaluation to the customer’s attention, indicating the rationale for your determination and a foundation for correction; that is, cite OSHA standards where applicable. Whenever possible you should note defective aspects without making express suggestions so as to avoid being the originator of particular design aspects. This problem can be avoided by initially requesting customers to consider OSHA or other safety standards when drawing up plans and specifications. Where the customer is adamant about retaining a questionable design for practical or commercial reasons, suggest that he or she consider application for a variance.

3. Obtain Precise Specifications for All Aspects

To maintain complete records to avoid liability for defective design you must be able to prove that all details originated with the buyer. Thus, where incomplete specifications involving potentially hazardous features are submitted, request supplemental instructions. Maintain accurate records of all communications from preliminary negotiations through delivery and payment. Reach agreement as to who will supply adequate safeguards. Never silently assume the buyer will make safe your product on his or her own initiative.

4. Provide Warnings

When the customer insists on a design which you have reason to believe is defective, offer a warning of caution *again upon delivery*. Similarly, provide warnings to actual users of all dangerous aspects of which they are not likely to be aware. Labels affixed to the equipment, introductory or training sessions, and operating and repair manuals may provide convenient means of communications.

Many cases impose liability on manufacturers who fail to warn of known dangers. However, no company should assume that a warning is a cure-all for any known defect in a machine. One federal court recently expressed its doubt that a warning alone would absolve a manufacturer who failed to install necessary safety devices, stating that:

*As a matter of policy, it is questionable whether a manufacturer which produces a machine without minimal available safeguards is entitled to escape liability by warning of a dangerous condition which could reasonably have been avoided by a better design.*²⁵

5. Provide Instructions

In addition to noting dangerous conditions, offer instructions as to the *proper* manner of operation and maintenance. Such action will help avoid unintended and possibly hazardous contact with the machine.

6. Avoid Warranties

Do not make any express statements or representations as to the safety of the product. Further, to avoid implied warranties, include in the purchase contract an express disclaimer of any and all warranties. A typical disclaimer would be:

Buyer has furnished plans and specifications for the goods and is not relying upon seller's skill and judgement to select, design or furnish suitable goods, Accordingly, seller does not warrant that the goods are as described in this agreement, but no other express or implied warranties are made in respect to the goods. The goods are sold as is.

7. Indemnification Clause

Include an indemnification clause in the final purchase contract. Such a clause might read:

Buyer hereby agrees to indemnify seller for all expenses, including payment of damage awards, settlements, costs, and legal fees, incurred by seller arising out of or related to the defense of any claim or action for injury to person or property caused, or alleged to be caused, by the plan or design of the goods purchased under this contract.

8. Insurance

Finally, you may desire to investigate the cost and availability of insurance coverage for such hazards. Industrial insurers sometimes offer coverage for products liability as well as property, in-plant accident losses and liability defense costs.

This BMA has attempted to provide general guidance for maintaining your exposure to liability. You may be wise to consult with your attorney to include these suggestions in your course of business. Further, upon notice of any claim against you, be sure to consult with counsel prior to making any

statement, admission or offer of settlement. In any event, please retain this BMA and present it to your attorney when dealing with one of these matters.

FOOTNOTES

1. The decision of what law to apply to a given set of facts will initially require the characterization of a case as involving traditional tort, product liability, contract, employer-employee, or even criminal law. Further, the choice of applicable law may depend upon the place of particular contacts, such as the place where the contract or sale was made, the place of manufacture or delivery, etc. Consequently, a manufacturer cannot only rely on compliance with the law of only the state in which he or she principally conducts business.
2. The Second Restatement of Torts Section 398 provides: manufacturer of a chattel made under a plan or design which makes it dangerous for the uses for which it is manufactured is subject to Liability to others whom he should expect to use the chattel ..[and are injured] ... by the failure to exercise reasonable care in the adoption of a safe plan or design. The comments to this action do not elaborate on the situation where the design is wholly customer-originated, and where the maker is without discretion in the construction or fabrication. The lack of any reported discussion holding the maker liable in negligence in such instances indicated that this action is not applicable to such facts. The possibility that Section 398 may be literally read to find the non-designer negligent is discussed below.
3. No case has so hold regarding custom machinery, but such a test has been applied in building contractor cases, See e.g., *Davis V. Henderflong Lumber Company*, 221 F. Supp. 129.134 (N.D. Ind.. 1963). See also, Prosser, *Handbook of the Law of Torts* Section 104 (1973).
4. See *Aluminum Company of America v. Electro Flo Corporation*, 451 F. 2nd 1115, 1119 (10th Cir. 1971). See also Uniform Commercial Code, Official Comment 2 to Section 2-315.
5. This rule has been adopted in almost all of the states. Thus, sellers of machinery may be liable to vendors, their employees, and even to subsequent purchasers and their employees upon resale. Section 2-318 of the Uniform Commercial Code extends liability to all who may be foreseeable Injured.
6. See *Spangler v. Kranco, Inc.*, 481 F.2d373, 376 (4th Cir. 1973).
7. 59 Cal. 2d57, 27 Cal. Rptr. 697, 377P.2d 897 (1963).
8. 29 U.S.C. Section 651, et seq.
9. 105 Cal. Rptr. 890, 29 Cal. Ap. 3d 633 (1973).

10. 15 U.S.C. Section 2051.
11. 15 U.S.C. Section 193 1.
12. Maryland Casualty Co. v. Independent Metal Products, 203 F.2d 838 (Bth Cir. 1953).
13. 497 F.2d 897, 898 (2nd cir. 1974).
14. 583 P.2d 276, 283 (Colo. 1978).
15. 492 F. 2d 346, 351 (6th Cir. 1974).
16. 481 F. 2d 373 (4th Cir. 1973).
17. 481 F.2d at 375.
18. Cited cases include Littlehale v. E.I. duPont, etc., & Co., 268F. Supp. 791 (S.D.N.Y. 1966), aff'd, 380 F. 2d 274(2nd Cir. 1967), blasting caps made during war time under government contract for army ordinance providing specifications, without warning label or device, exploded 13 years later when exposed to heat, sparks or flame; and Davis v. Henderlong Lumber Co., 221 F. Supp. 121 (N.D. Ind. 1963), a building contractor constructed a laboratory structure according to an architect's plans and specifications. The evidence failed to show that the builder knew, or should have known, that such plans were dangerous.
19. 481 F.2d at 375.
20. 481 F.2d at 376.
21. 457 F.2d at 1267.
22. Pike v. Frank G. Hough Co., 2 Cal. 3d 465, 85 Cal. Rptr. 628, 634, 467 P.2d 229, 234 (1970).
23. 457 F.2d at 1267, quoting 2 Cal. 3d at 474, 467 P. 2d at 235, 85 Ca 1. Rptr. at 635, quoting Harper and James, The Law of Torts, p. 1545.
24. See, e.g., Kaymr, Inc. v. Boise-Cascade, CCH Prod. I., Rptr. 7193 (Ore. Sup. Ct. 1974), Stansfield v. Meadlist Industries, CCH Prod. 1, Rptr. 7181 (111. App. Pt. 1974). On the other hand, see Roy v. Star Chopper Co., Inc., 442 F. supp. 1010, 1020 (D.R.I. 1977), allowing a manufacturer to assert and implied indemnification claim against a customer who allegedly furnished complete design and undertook to add guards which the manufacturer said were necessary.
25. 361 P.2d 355, 361 (Colo. App. 1976), aff'd., 583 P.2d 276 (Colo. 1978).

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