SYMPOSIUM

PRODUCTS LIABILITY

STATE

STRICT PRODUCTS TORT LIABILITY IN GEORGIA: SMUDGING A CLEAN SLATE

R. Perry Sentell, Jr.*

I. INTRODUCTION

It was described as a movement "in search of a doctrine." The "movement" was that of liability without fault on the part of providers of defective products, and the "doctrine" it eventually discovered resided in the domain of tort law. Whatever the terminology, "strict products liability" has turned great turbulence in traditional torts teachings in recent times.

The precept was not always so popular. The first Restatement of the Law of Torts declared no such principle, and the prerequisite of negligence then ruled the day. Even so, straws of other sentiments were propelled about in the judicial winds. The restriction of privity, the expansion of res ipsa loquitur, special rules for foodstuffs, and jumping warranties—these liability producing tendencies are well remembered.

The more frontal attacks upon the existing order were perhaps as famous for their personalities as for their content. For instance, there was the early eloquence of Justice Traynor's legendary concurring opinion in Escola v. Coca-Cola Bottling Co. This was followed by the later persistence of Dean Prosser's analytical musings over endangered citadels. Finally, the early 1960's yielded a few striking decisions from a few influential state courts; by far the most illustrious of these was the California Supreme Court's unanimous dec-

* Regents’ Professor of Law, University of Georgia School of Law.

This was the characterization employed by the authors for a section title in C. Gregory & H. Kalven, CASES AND MATERIALS ON TORTS 584 (2d ed. 1969).


3 Prosser, The Assault Upon the Citadel (Strict Liability to the Consumer), 69 YALE L. J. 1099 (1960); Prosser, The Fall of the Citadel (Strict Liability to the Consumer), 50 MINN. L. REV. 791 (1966).

laration of strict tort liability in *Greenman v. Yuba Power Products, Inc.*.\(^4\) Shortly thereafter, the *Restatement of the Law of Torts Second* put the finishing touches on its then controversial "section 402A," which quickly and dramatically became the rule, or at least the point of departure, in the great majority of American state courts.

All these milestones are commonplace in the literature, and no useful purpose would be served by further elaboration of them. Their sum total is the manifestation of a national change of mood. Across a span of time, a legal system mirrors the sentiments of the population it serves. Upon the eve of the 1970's, therefore, in a Louis Harris survey of "America's Changing Morality," many suspicions were confirmed when 68% versus 22% of the people polled subscribed to the following conviction: "A manufacturer of unsafe automobiles is worse than a mugger."\(^6\)

**II. GEORGIA: IN THE BEGINNING**

Against the national backdrop, Georgia strict products liability history is more current, less explainable, and most intriguing.\(^7\) With its penchant for codification, the General Assembly long ago enacted the following statutory acorn:

> No privity is necessary to support an action for a tort; but if the tort results from the violation of a duty, itself the consequence of a contract, the right of action is confined to the parties and privies to that contract, except in cases where the party would have had a right of action for the injury done, independently of the contract.\(^8\)

Whatever the intended thrust of this legislative expression, the court of appeals viewed it as but "a codification of the common law."\(^9\) Obviously, it manifested no imposition of liability without fault. Many years later, however, in 1968, the legislature selected this early statute as the subject of the following "amendment":

> ... and except as provided in Code section 109A-2-318. However, the manufacturer of any personal property sold as new property,
either directly or through a dealer or any other person, shall be liable in tort, irrespective of privity, to any natural person who may use, consume or reasonably be affected by the property and who suffers injury to his person or property because the property when sold by the manufacturer was not merchantable and reasonably suited to the use intended and its condition when sold is the proximate cause of the injury sustained; a manufacturer may not exclude or limit the operation hereof.10

Among a number of possible observations on the 1968 statutory addition,11 now known as "Code section 105-106," was the point that it too contained no explicit mandate of strict liability. Although it did not expressly require a showing of negligence, neither did it expressly eliminate such a requirement. Primarily, it provided for "tort" liability "irrespective of privity." Rather clearly, therefore, if change in the Georgia law was forthcoming, guidance from the appellate courts would be necessary.

Essentially, the ensuing judicial guidance appeared to counsel one message: no change. Thus on several occasions after 1968, the court of appeals was at pains to emphasize that Georgia was not a strict liability jurisdiction.12 One illustrative such instance was *Stovall & Co. v. Tate*,13 a 1971 case presenting an action by a school girl who was struck in the eye by a rock from a rotary power lawn mower. In rejecting the plaintiff's strict liability complaint against the manufacturer and distributor of the mower,14 the court of appeals could hardly have been more emphatic:

Georgia has not adopted the doctrine of strict liability, a doctrine under which a plaintiff need not prove negligence, a doctrine under which the highest degree of care by a manufacturer is no defense. If there is to be a departure in product liability law from "liability for fault" to "liability without fault," it should be via legislative enactment.15

With *Stovall & Co.* in 1971, therefore, the court of appeals appeared firmly on record in several respects: prior Georgia law required a showing of fault for the imposition of product tort liability;

---

11 For such observations, see Taylor, *Georgia's New Statutory Liability for Manufacturers: An Inadequate Legislative Response*, 2 *GA. L. REV.* 538 (1968), an article written in the wake of the 1968 enactment.
14 The court affirmed the trial judge's grant of summary judgment for the defendants.
the doctrine of strict liability entailed no such requirement; that doctrine could replace prior law only by legislative action; no such action had thus far occurred. The Georgia Supreme Court was also aware of Stovall & Co.—it denied the application for certiorari in the case.

III. EXPOSITION OF THE DOCTRINE

The court of appeals continued its performance three years later in the historic case of Ellis v. Rich's, Inc. That litigation presented a claim for damages resulting from injuries suffered when hot oil spilled on the plaintiff's legs from a tilting fondue pot. Offering expert testimony of the pot's "instability" and "unacceptable engineering design," the plaintiff mounted actions in breach of warranty, negligence, and strict liability in tort against the manufacturer, distributor and retailer. The manufacturer, a foreign corporation, refused to submit to the court's jurisdiction; the case proceeded against the other defendants; and the trial judge granted the defendants' motions for summary judgment. Affirming the judgment, the court of appeals again declared that Georgia was not a strict liability jurisdiction and quoted its prior language from Stovall & Co.

Again application for review of the case was made, and this time, explained the supreme court, "we granted certiorari to consider whether the doctrine of 'strict liability' is applicable in Georgia." First, the court relied upon the works of Dean Prosser and section 402A of the Restatement (Second) to define this doctrine. "Essentially," it said, the doctrine "eliminates questions of negligence in tort actions and the Uniform Commercial Code defenses, including privity, in contract actions for breach of warranty." The court conceded the contrast between this precept and past Georgia practice: "Georgia has adhered generally to the traditional concepts requiring proof of negligence in tort actions and privity in contract actions on warranties." The issue was thus focused: Had past prac-

---

17 The pot had been manufactured in Taiwan, imported by the distributor, and sold by the retailer. It had been purchased by a third party who then gave it to the plaintiff as a Christmas gift.
18 Objection went to the method used to attach the handle to the pot.
20 Id. at 575, 212 S.E.2d at 375.
21 Id. at 576, 212 S.E.2d at 375.
22 Id. at 576, 212 S.E.2d at 376.
tice now been replaced by the modern doctrine?

The supreme court highlighted two legislative developments—the enactment of the Uniform Commercial Code in 1962, and the 1968 amendment to Code section 105-106. These "are recent expressions of the legislature establishing but also limiting the public policy of this state in this area." The court then formulated the results of these expressions. First, privity remains a requirement generally in contract actions. The second formulation was the striking one: "[T]he 1968 amendment to Code Ann. sec. 105-106 imposes 'strict liability' upon the manufacturers of new personal property for injury to persons and property as stated therein irrespective of privity." Although this conclusion corrected the court of appeals' opinion, it had no effect upon its decision: "[A]ppellant cannot proceed against appellees for 'strict liability' because none is a manufacturer."

In early 1975, therefore, with the supreme court's opinion in Ellis, strict products liability of some sort had finally arrived in Georgia. Preliminarily, it was at least noteworthy that the court had declared new doctrine by way of pure dictum. For once it concluded that the case was controlled by the 1968 statute, and held the statute applicable only to manufacturers, the court had resolved the litigation. Although the impact of introducing new law into a jurisdiction might be softened by dictum announcement, the attorney's task of advising clients is thereby rendered difficult indeed.

Several slightly more substantive observations might be tendered. First, the supreme court did appear to indicate that, within the confines of the 1968 statute, questions of negligence were eliminated. Both its definition of "strict liability," and its express "correction" of the court of appeals, would seem to carry that thrust. The specific point corrected, it will be recalled, was the court of appeals' declaration that the doctrine of strict liability—"a doc-

---

21 This Code extended privity to "any natural person who is in the family or household of his buyer or who is a guest in his home . . . ." GA. CODE ANN. § 109A-2-318 (1962).
23 233 Ga. at 577, 212 S.E.2d at 376. The court said these enactments precluded any judicial extension of strict liability.
24 The only exceptions are those enumerated in GA. CODE ANN. § 109A-2-318.
25 233 Ga. at 577, 212 S.E.2d at 376.
26 "Our conclusion that it does impose a degree of strict liability upon manufacturers corrects a statement to the contrary appearing in division 2 of the Court of Appeals opinion under review." Id.
27 Id. at 577-78, 212 S.E.2d at 376. The court of appeals' decision, affirming the grant of summary judgment for defendants, was affirmed.
trine under which a plaintiff need not prove negligence"—was not the rule in Georgia. Mildly puzzling in this connection was the supreme court's insistence throughout its opinion upon enclosing the words "strict liability" within quotation marks. In an area this sensitive, and an opinion this tentative, one might perhaps be forgiven for wondering whether the court was now ushering in a doctrine of "strict liability" which was somehow different from the doctrine of strict liability.

Additional ironies surrounded the supreme court's performance. On the one hand, for example, it was striking that the court had decided to take this momentous step in a products case which alleged defective design rather than defective manufacture. Some strict liability jurisdictions have considered defective design a more difficult problem. On the other hand, the court couched its adoption of "strict liability" in a defensive posture, not to be extended beyond the limiting confines of the 1968 statute. Clearly, additional exposition would be necessary on a number of fronts.

Although not responsive on all fronts, the next episode to reach the appellate courts, also in 1975, was Parzini v. Center Chemical Co. There a restaurant employee sought damages from the manufacturer of a drain cleaner which consisted of almost pure sulphuric acid. The plaintiff demanded recovery for injuries suffered when the liquid squirted over him as he and co-workers attempted to forcefully open its container. In its initial consideration of the case, the court of appeals reversed a jury verdict for the manufacturer. The court viewed Ellis to require that the statutory strict liability issue be presented to the jury, and that "under merchantability may be considered such questions as whether a drain solvent consisting of 95% to 99 1/2% pure sulphuric acid is unmerchantable and dangerous because too potent for ordinary use."

Taking Parzini on certiorari, the supreme court enumerated some results of its decision in Ellis. First, the court reaffirmed that under Code section 105-106 "the action is in tort and privity of contract is not necessary," and that "the claimant is not required to prove negligence." This does not mean that the manufacturer

---

33 Id. at 416, 214 S.E.2d at 702.
35 Id.
36 Id. at 869, 218 S.E.2d at 581.
is an "insurer," however, because the statute limits liability to products "not merchantable and reasonably suited to the use intended." Although this language of limitation is not the language typically employed to describe strict liability in tort, the court construed it to dictate that "the plaintiff must show that the manufacturer's product when sold by the manufacturer was defective." This limitation, however, does not include the additional limitation "that the defective product must be 'unreasonably dangerous'"—"to hold otherwise would discourage the marketing of many products because some danger attended their use." This rationale, the court elaborated as follows:

Many products can not be made completely safe for use and some can not be made safe at all. However, such products may be useful and desirable. If they are properly prepared, manufactured, packaged and accompanied with adequate warnings and instructions, they can not be said to be defective.

In this case, therefore, the question formulated by the court of appeals—whether the drain solvent was dangerous—was "incorrect." Rather, concluded the supreme court,

Under Code Ann. sec. 105-106 the question is whether the product was defective in its manufacture, its packaging, or the failure to adequately warn of its dangerous propensities. If so, the question arises as to whether the user knew of the defect and the danger it presented but proceeded unreasonably to use the product.

On the remand, the court of appeals praised the supreme court's opinion as one of "admirable clarity and conciseness," and held it to require a new trial. Strict liability in tort had not been charged in the first trial, said the court, and the case had proceeded on a negligence theory alone. The court then stated the boundaries for the new trial as follows:

37 Id. at 869, 218 S.E.2d at 582.
38 As a contrast, the court referred to RESTATEMENT (SECOND) OF TORTS § 402A.
39 234 Ga. at 869, 218 S.E.2d at 582.
40 Id. at 870, 218 S.E.2d at 582.
41 Id.
42 Id.
43 Id. at 871, 218 S.E.2d at 583.
44 Id.
46 Id. at 397, 221 S.E.2d at 477.
47 Id. "It is thus obvious that the doctrine of strict tort liability as it applies to this case was not charged by the court. The evidence would have authorized such a charge, and the plaintiff objected to its omission."
The jury is first to determine whether the product was defective. In this it has for consideration the manufacture, the packaging, and the warnings connected with its use. If the jury finds the product defective, it next considers whether the user knew of the defect and danger, and whether his use of the product in view of this knowledge was unreasonable. If so, the plaintiff may not recover on this legal theory. Thus, contributory negligence applies to the negligence theory of action, whereas assumption of risk applies to the strict liability theory.48

By late 1975, therefore, with the conclusion of appellate court consideration of Parzini v. Center Chemical Co., the second step had been taken in the exposition of a strict products liability doctrine for Georgia. Although numerous unanswered questions remained,49 the outlines of a basic principle were now indicated. The dictum declaration of Ellis was confirmed. The liability imposed sounded in tort but did not depend upon negligence. Under the statute, the liability declared was strict, not absolute. Although it required a “defective” product, the defect need not render the product “unreasonably dangerous.” Although the doctrine was not affected by “contributory negligence,” the defendant manufacturer could still take cover behind the plaintiff’s “assumption of risk.”

Two parting observations might be offered at this juncture. First, Georgia is not the only strict liability jurisdiction to reject the requirement that the defect must render the product “unreasonably dangerous.” The rationale for rejection elsewhere, however, sounded in sympathy for the plaintiff—the requirement was viewed to “ring of negligence” and thus to impose a burden upon the plaintiff which was not in harmony with adoption of strict liability.50 The Georgia rejection approached from the opposite perspective—some useful products are unavoidably dangerous, and manufacturers cannot be made “insurers” of them. Secondly, although contributory negligence is not, assumption of risk is a defense to the Georgia doctrine.

---

48 Id. at 399, 221 S.E.2d at 478. “The question under the strict liability theory . . . is whether the product was defective in that there was a failure to adequately warn of its dangerous propensities. If so, the jury should look to the evidence to see whether the plaintiff knew these facts and nevertheless assumed the risk of its use in the manner in which it was used, so as to bar him from recovery.” Id. at 400, 221 S.E.2d at 479.

49 For an equally sparkling treatment of much of this development, posing valuable specific queries in respect to its possible extensions by the courts, see Note, Products Liability in Georgia, 12 GA. L. REV. 83 (1977).

50 See, e.g., Cronin v. J.B.E. Olson Corp., 8 Cal.3d 121, 501 P.2d 1153, 104 Cal. Rptr. 433 (1972).
In order to qualify, however, the plaintiff’s use of the product must be an “unreasonable” one. Does this “unreasonableness” transpose issues of negligence into the doctrine of assumption of risk in strict liability cases? If so, does this render the Georgia “comparative negligence” formula applicable to strict liability recoveries? If not, does this mean that the plaintiff in such cases is absolutely barred from recovery if guilty of “assumption of risk,” but recovers all if “negligent”? In that event, of course, erring plaintiffs injured by defective products may well face the prospects of minute but crucial judicial line drawing in future strict liability actions.

IV. Development

Given the supreme court’s view of Code section 105-106 as “establishing but also limiting” strict products tort liability in Georgia, the exact language of that statute assumes pervasive prominence. Its provisions posit points of both departure and destination for claims under the “new” doctrine, and upon its nuances hinges success or failure. Yet again, therefore, familiar legal history repeats itself: glittering generalities are eclipsed by the flashings of details, particulars, and specifics. In the absence of further celestial guidance from the General Assembly, moreover, these sightings must continue from the judicial galaxy.  

A. “Personal Property”

Whatever the precept of liability declared by the code section, it is directed only against “the manufacturer of any personal property sold as new property.” Among the remarkably numerous points of intrigue crowded within this brief declaration, one is the focus upon “personal property,” and already it has projected controversy.  

*Garrett v. Panacon Corp.* presented an action for personal injury allegedly resulting from a fall on a wet floor caused by defective roofing manufactured by the defendant. Contesting the plaintiff’s claim under Code section 105-106, the defendant argued that “the roofing material had been incorporated into the realty prior to the occurrence and thus was not personal property.” The court of ap-

---

52 One is reminded of the old common law chant, “May the force be with you.”
53 GA. CODE ANN. § 105-106 (1968).
55 This case was decided prior to Ellis, and thus was not resolved in strict liability.
56 130 Ga. App. at 643, 204 S.E.2d at 356.
peals conceded the case to be one of first impression, and formulated the precise issue as "whether the statutory phrase 'personal property' includes or excludes items which have been affixed to realty." Expressing considerable consternation over the prospect that the statute might "import the law of fixtures into the law of products liability," the court firmly rejected that construction. Rather, we rule that it was the intention of the legislature in using the phrase "personal property" to eliminate from the operation of the statute the sale of buildings by those who might with respect to them be regarded as manufacturers, and thereby to retain with respect to the sale of real property the rules . . . requiring fraud to overcome the normal rule of caveat emptor. Under this interpretation, with respect to personal property such as roofing, it matters not at all whether such is subsequently installed in a building.

B. "Manufacturer"

A second statutory particular, forcefully confirmed by Ellis itself, is the limitation of liability to the property "manufacturer." Some limitations are less limiting than others, however, and the court of appeals may already have signaled a receptiveness to limiting this limitation.

The plaintiff in Pierce v. Liberty Furniture Co. had purchased a "porch swing kit," assembled a swing from the kit, and suffered personal injury when the swing then collapsed because of a defective hardware piece. The plaintiff had purchased from a retailer who in turn had purchased the kit in a sealed package from the defendant. Seeking protection behind the "manufacturer" limitation, the defendant explained that it had not constructed the hardware components but had purchased them "from another company in a

---

57 Id. at 642, 204 S.E.2d at 355. The trial court had granted the defendant's motion for summary judgment.
58 Id. at 645, 204 S.E.2d at 357. The court said that "products liability law in Georgia is a patchwork of certain hurdles and uncertain remedies for an injured plaintiff. On top of this complexity and in the absence of any requirement to do so, we decline to add yet another issue of mixed law and fact, namely, whether or not the defective item has been or has not been incorporated into the realty."
59 Id. The trial court's grant of summary judgment for the defendant was reversed.
60 GA. CODE ANN. § 105-106 (1968).
62 The kit consisted of a sealed package complete with oak chair and hardware.
63 The plaintiff had also sued the retailer and was held to have stated sufficient grounds for liability under "breach of warranty." Her action against the retailer under Code section 105-106 was unsuccessful, "because there is absolutely no evidence that Liberty manufactured the swing." 141 Ga. App. at 175, 233 S.E.2d at 35.
closed, plastic container for insertion in the swing kit." The defendant’s argument prevailed in the trial of the case, with the court granting its motion for summary judgment.

In considering the propriety of the trial judge’s action, the court of appeals indicated the significance of the quandary: “It is an issue of first impression in this state as to whether one who assembles component parts and sells them as a single product under its trade name is a manufacturer of the entire product into which the parts are integrated.” With a minimum of analytical fanfare, the court proceeded to resolve this novel issue. The defendant, it concluded, “did not act as a mere distributor selling products acknowledged to have been constructed by others.” Rather, it sold the product under its own trade name which “causes the chattel to be used in reliance upon its care in making the item . . .” Accordingly, the court held, “an entity which assembles component parts and sells them as a single product under its trade name is a ‘manufacturer’ within the meaning of Code Ann. sec. 105-106 . . . .” Summary judgment for the defendant was thus reversed.

C. “Natural Person”

Not only does the statute limit the class against which its imposition of liability is directed, it also restricts the category of those who may partake of its potential protections. Thus, the liability declared is “to any natural person” suffering the prescribed injury. In several contexts, the court of appeals has featured this restriction.

In American Sanitation Services, Inc. v. EDM of Texas, Inc., one corporation sued another for damages allegedly resulting from the manufacture of defective garbage collection vehicles. Affirming the trial judge’s dismissal of the tort contentions, the court employed a two-pronged rationale:

Not only is there some evidence to support the finding of fact that the appellant suffered no damages, but also Code Ann. sec. 105-106 . . . .

---

64 Id. at 175, 233 S.E.2d at 34.
65 Id. at 179, 233 S.E.2d at 36.
66 Id. at 178-79, 233 S.E.2d at 36.
67 Id. at 179, 233 S.E.2d at 37. The court quoted RESTATEMENT (SECOND) OF TORTS, § 400, as follows: “One who puts out as his own product a chattel manufactured by another is subject to the same liability as though he were its manufacturer.”
68 141 Ga. App. at 179, 233 S.E.2d at 37.
71 The action was brought in both contract and tort.
106 . . . upon which the appellant bases his action in tort, by its specified terms runs to the benefit of natural persons only. The appellant is a corporation and not a natural person.2

Another instance in which the court gratuitously went out of its way to make the point was that embodied by *Cobb Heating & Air Conditioning Co., Inc. v. Hertron Chemical Co.*73 There the plaintiff corporation brought an action against the manufacturer of a floor finish which exploded and damaged the plaintiff's property. Emphasizing that the plaintiff's allegations sounded in negligence,74 the court added the following footnote: "No allegation is made of strict liability under . . . Code Ann. sec. 105-106 presumably because the appellant is not a 'natural person.'"75

The tort action is not always the typical one, and the court's reference to the "natural person" restriction is not always gratuitous. For example, a far more crucial consideration of the matter was that devoted by the court to the claim in *Independent Mfg. Co., Inc. v. Automotive Products, Inc.*76 There the plaintiff corporation had allegedly produced a defective auger, and was sued for personal injuries suffered by the user. During discovery proceedings, the plaintiff determined that a component part of the auger may have contributed to the injury and filed a third-party complaint against the manufacturer of the component.77 The court of appeals disposed of the strict liability ground of this complaint in the following fashion: "The appellant's cause of action for strict liability under . . . Code Ann. sec. 105-106 was properly dismissed. This code section specifically refers to 'any natural person,' which the appellant is not."78 The prospect was thus raised that although a corporate final assembler of a defective product might be held strictly liable to the injured consumer, it could not pass that strict liability on to the manufacturer of the component which caused the product to be defective.

A final variation on the theme is illustrated by *Mike Bajalia, Inc. v. Amos Construction Co., Inc.*79 That case presented an action by a plaintiff in both his individual and corporate capacities for dam-

---

2 139 Ga. App. at 663, 229 S.E.2d at 137.
4 The negligence action was unsuccessful also.
5 139 Ga. App. at 803 n. 1, 229 S.E.2d at 682.
7 The complaint alleged both tort and contractual grounds of liability.
8 141 Ga. App. at 521, 233 S.E.2d at 876.
age to a building allegedly resulting from defective components supplied by the defendant.\textsuperscript{80} Again, the court viewed the restriction under discussion as controlling: "There is no error in the court granting Butler's motion for summary judgment on the strict liability issue as to the corporate plaintiff, Mike Bajalia, Inc. Strict liability is applicable only in actions by natural persons."\textsuperscript{81}

D. "Injury"

For or against whomever it may be employed, the liability declared by Code section 105-106 is imposed to cover "injury to . . . person or property." Beyond obvious bodily injuries suffered by claimants in such cases as Ellis and Parzini, the nature of the loss protected thus emerges as yet another statutory coverage conundrum.

In 1975, the court characterized the "sole issue presented" by Long v. Jim Letts Oldsmobile, Inc.\textsuperscript{82} as "whether Long may recover in tort against the manufacturer and seller of a new automobile for damages to the vehicle itself arising from defects in the engine."\textsuperscript{83} Construing the plaintiff's claim to be based upon negligence in manufacture and repair,\textsuperscript{84} the court expressly disclaimed any concern with breach of contract or warranty, "or with any kind of strict liability under Code Ann. sec. 105-106."\textsuperscript{85} For success in negligence, however, the plaintiff must allege the breach of duties arising independently of contract,\textsuperscript{86} "such as the duty . . . to use reasonable

\textsuperscript{80} Other strict liability issues in the case are discussed in the text, infra at notes 105-114.

\textsuperscript{81} 142 Ga. App. at 226, 235 S.E.2d at 665. Strict liability was held to be available to the plaintiff in his individual capacity.

One other possible ramification of the "natural person" restriction is still not clear. In the litigation Ford Motor Co. v. Carter, discussed infra, at note 118, the defendant argued that a plaintiff wife, in an action for the wrongful death of her husband, was not a "natural person" within the meaning of Code section 105-106. In its consideration of the case, the court of appeals appeared to reject this argument, observing that the husband who had used the product was a natural person. 141 Ga. App. at 375, 233 S.E.2d 444, 448 (1977). When it took the case on certiorari, however, and reversed on other grounds, see discussion infra, the supreme court noted the defendant's argument, but said this point had not been discussed in the court of appeals' opinion. 239 Ga. 657, 659, 238 S.E.2d 361, 364 (1977).

\textsuperscript{82} 135 Ga. App. 293, 217 S.E.2d 602 (1975).

\textsuperscript{83} Id. The plaintiff alleged that throughout his ownership of the car the engine ran hot and blew out the liquid in the radiator. His alleged damages were repairs not covered by warranty, time lost from work, loss of use of the car, diminution in value, and inconvenience.

\textsuperscript{84} I.e., "that General Motors negligently manufactured and that Jim Letts negligently repaired the car." 135 Ga. App. at 294, 217 S.E.2d at 604.

\textsuperscript{85} Id.

\textsuperscript{86} "It is well settled that misfeasance in the performance of a contractual duty may give rise to a tort action . . . . But in such cases the injury to the plaintiff has been 'an indepen-
care not to place in the hands of the consumer a 'product which may reasonably be expected to be capable of inflicting substantial harm if it is defective.' "Substantial harm," the court defined as "'bodily harm,' injury to 'life and limb,' injury to others and damage to property other than the product itself." With this framework as justification, the court affirmed summary judgments for both defendants:

Here, Long's only damages claimed are economic; diminution in value, and out-of-pocket expenses for repairs. While we sympathize with Long for the aggravation and inconvenience he has suffered because of the defects in the car, such inflictions are not compensable elements of damages in this case, and his only remedy for the pecuniary damages suffered is in contract. In the Long excursion, therefore, the point from which the court departed and the destination at which it eventually arrived were separated by a distance of considerable disparity. Beginning with an express disavowal of concern with either contract or strict tort liability, it finished with a formulation which appeared to affect both. For success in negligence, it explained, the duty breached must result in a particular kind of harm. That harm did not encompass damage to economic interests, it appeared to reason, and in this case the only damages claimed were economic. Accordingly, it concluded, the plaintiff's only available remedy was in contract, not in negligence, and—if "only" means only—not in strict tort liability.

One year later, the court decided Long Manufacturing, N.C., Inc. v. Grady Tractor Co. There the plaintiff corporation sued in tort for the alleged defective design of a portable tobacco barn manufactured by the defendant, which arguably caused the barn to collapse after being moved over a railroad crossing. The only damage claimed was the monetary difference in the value of the barn before and after its collapse, and the plaintiff was awarded a verdict and

---

"It is thus clear that the appellee's verdict must stand or fall on the sufficiency of this witness' testimony as to negligent design, there being none as to negligent manufacture." Id. at 321, 231 S.E.2d at 107.

"There were no allegations of personal injuries, only the pecuniary damage suffered through the collapse of the allegedly defective barn itself being sought." Id. at 320, 231 S.E.2d at 106.
judgment in the trial court. Reversing on the ground of an “unwarranted charge” to the jury, the court of appeals also purported to treat both negligence and strict liability in the context of the case. As to the former, the court said that “a cause of action in negligence for property damage to the defective personal property itself is cognizable under Code Ann. sec. 105-106.” This precept, the court advised, one should “compare with ‘economic’ damages only . . .”, citing Long v. Jim Letts Oldsmobile, Inc. As to strict liability, the court observed that “here the only damage for which recovery is sought is to the alleged defective personal property itself.” This point was a crucial one, it explained, because “we do not believe recovery in strict liability in tort can be had solely for property damage to the allegedly defective property itself.”

In the long view, the analytical distinction between Long and Long Manufacturing, Inc. was striking. In Long, the court deemed damage to the defective product itself as economic in nature. This characterization in turn precluded remedies in either negligence or strict tort liability, and relegated the plaintiff to a claim in contract. By Long Manufacturing, Inc., damage to the defective product itself remained sufficiently economic to preclude recovery in strict liability. As to a negligence action, however—even a negligence action under Code section 105-106—“economic damage” was no longer the concept it once had been. At no point in the entire opinion was the feasibility of a contract claim even mentioned.

One year later, the court decided Chrysler Corp. v. Taylor. There the plaintiff purchaser brought an action for the defendant’s alleged defective manufacture and repair of a new automobile, and sought damages for cost of replacement, loss of bargain, lost interest and wages, and attorney fees. The trial judge presented the case to the jury “solely on the grounds of negligence and strict liability for

---

83 The trial judge charged the jury on the defendant’s failure to provide “fasteners,” and the court could find no evidence to justify such a charge.

84 Id. at 321, 231 S.E.2d at 106.

85 Id. at 321, 231 S.E.2d at 107.

86 Id. at 322-23, 231 S.E.2d at 107-08.

87 Id. at 323, 231 S.E.2d at 108. The court cited a decision by the Supreme Court of California, Seely v. White Motor Co., 63 Cal. 2d 9, 403 P.2d 145, 45 Cal. Rptr. 17 (1965), and said that “the Seely decision has been cited with approval in Long v. Jim Letts Oldsmobile, Inc.”


89 The plaintiff alleged his discovery of numerous defects in the vehicle and several unsuccessful attempts by the defendant to repair them.
manufacturers,"\textsuperscript{100} and the plaintiff recovered a verdict and judgment. On appeal, the trial judge was held to have erred on both grounds. First, said the court of appeals, the plaintiff alleged negligent manufacture and repair, but

did not allege that this negligence caused any damage to his person or property other than damages attendant to his receiving a vehicle not up to the standards that he contracted to purchase; he simply sued for loss of the benefit of his bargain. Such damages are not recoverable in negligence. \textit{Long v. Jim Letts Oldsmobile, Inc.}\textsuperscript{101}

Secondly, the court focused upon the issue of strict liability: "We hold that an 'injury' within the context of Code Ann. sec. 105-106, does not include damages stemming from loss of the benefit of one's bargain."\textsuperscript{102} Rather, the court continued,

[a] manufacturer's duty to sell goods meeting consumer expectations is governed by the requirements of warranty law. Warranty law, as set out in the Uniform Commercial Code, does not require products that in \textit{all} instances meet \textit{all} consumers' expectations; it is much more subtle. But if strict liability in tort were considered to apply to the loss of bargains by disgruntled consumers, the subtle and technical provisions of warranty law established by the General Assembly through its enactment of the U.C.C. would be useless.\textsuperscript{103}

Finally, concluded the court, "because the appellee can not recover as a matter of law under either negligence or strict liability in tort theories, the trial judge erred in his denial of the appellant's motions for directed verdict."\textsuperscript{104}

With its disposition of \textit{Chrysler Corp.}, therefore, the court of appeals had achieved a remarkable posture. Although the claimed items of recovery seemed substantially the same, now they were designated "loss of bargain benefits" rather than "economic damages." This change in terminology did not change the result in strict liability, however—indeed, the court finally formulated a rationale for that result. As to negligence, on the other hand, the court applied

\textsuperscript{100} 141 Ga. App. at 671, 234 S.E.2d at 124.
\textsuperscript{101} \textit{Id.} at 671, 234 S.E.2d at 124. This was the extent of the court's discussion of negligence.
\textsuperscript{102} \textit{Id.} at 672, 234 S.E.2d at 124.
\textsuperscript{103} \textit{Id.} Again, the court relied forcefully upon the California court's decision in the \textit{Seely} case: "This distinction between recovery by strict liability in tort and recovery for loss of bargain in warranty is not arbitrary. The distinction rests on the nature of the responsibility which a manufacturer must assume in distributing its products."
\textsuperscript{104} \textit{Id.} at 673, 234 S.E.2d at 125.
Long and ignored Long Manufacturing, Inc. Thus, there could be no liability in tort, and again the plaintiff was judicially counseled in the "subtle" ways of contract law.

Less than one year later, the court decided Mike Bajalia, Inc. v. Amos Construction Co., Inc. There the owner of a building brought an action against the manufacturer of allegedly defective building components, arguing breach of contract and warranty, negligent design, and strict liability in tort. Reviewing the trial judge's grant of summary judgment for the defendant, the court agreed that Long dictated no recovery in negligence "for damage to building components . . . arising from defects in these same components." At this point, however, the court drew a distinction: not all the components used in the plaintiff's building were supplied by this defendant. For damage to those other components caused by defects in the defendant's components, a negligence action was available; and the trial judge had "erred in granting summary judgment on the negligence issue."

Next, the court approached the issue of strict liability. To be cleared from the plaintiff's glide path, it conceded, were the prior decisions of Long; Long Manufacturing, Inc.; and Chrysler Corp. First, the court tackled Long in the following fashion: "The strict liability action, being predicated upon the breach of a legal duty, is an action ex delicto . . . . Therefore, the reasoning of Long . . . is not applicable to the strict liability issue." Second, the court disposed of Chrysler Corp.: "Also distinguishable is Chrysler Corporation . . . where this court held that an "injury" within the context of Code Ann. sec. 105-106 . . . does not include damages stemming from loss of the benefit of one's bargain." Third, the court turned to Long Manufacturing, Inc.:

In Division 4 thereof we find the language, "We do not believe recovery in strict liability in tort can be had solely for property

106 For treatment of other aspects of this decision, see discussion in text, supra at notes 79-81.
108 The most notable of these other components, said the court, was the roof of the building.
109 The court noted evidence that the defendant's components were not sufficiently strong to support the roof thereby causing damage to it.
111 Id. at 227, 235 S.E.2d at 666. "Code Ann. sec. 105-106 . . . imposes a statutory duty on manufacturers of personal property, the breach of which gives rise to an action on a theory of strict liability."
112 Id. at 227, 235 S.E.2d at 666. This was the extent of the court's "distinction."
damage to the allegedly defective property itself." But in that case the plaintiff, a corporation and not a natural person, was suing for negligence in the design and was not seeking judgment under the Georgia strict liability statute; nor could it do so . . . . The language in Division 4 is therefore obiter dicta, and does not control this case in any manner. 113

Finally, the way was clear:

The court erred in granting the motion for summary judgment of defendant . . . on the strict liability issue . . . . In the case sub judice, the plaintiff's strict liability action is not predicated solely upon his economic loss, but is also based upon the physical injuries to the building. 114

Obviously, this tale of four cases is a trying one. Its mere recitation is challenging; divining its ramifications is awesome. An effective taking of stock requires stock worth taking and here that requirement is not fulfilled. A point of beginning, nevertheless, is one last emphasis on the factual settings of the cases. Long (damage to defective car); Long Manufacturing, Inc. (damage to defective barn); and Chrysler Corp. (damage to defective car) were all viewed as presenting claims for damages to the defective products themselves. Mike Bajalia, Inc. was seen to advance not only that claim but one also for damage to other property caused by the defective product. Any effort at assessment of the cases must take account of this factual distinction.

One preliminary point for reflection is the status of the action in negligence at this juncture. Although Long and Chrysler Corp. both disallowed recovery in negligence, Long Manufacturing, Inc. —intervening between those decisions—recognized such a right of action. Mike Bajalia, Inc. appeared to subscribe to Long and Chrysler Corp. in rejecting a negligence action for damage to the defective components themselves. For damage to other components, however, the latter case did recognize a right to recovery in negligence.

As to strict liability, the results refuse to compute. Long strongly indicated—and both Long Manufacturing, Inc. and Chrysler Corp. expressly said—there could be no recovery in strict liability for the damages in question. In Mike Bajalia, Inc., the court expressly recognized a strict liability action for physical injuries to the plaintiff's

113 Id. at 227-28, 235 S.E.2d at 666.
114 Id. This was in respect to the plaintiff in his individual non-corporate capacity.
building caused by defendant's defective components. Whether the court was now prepared to extend this action to damages to the defective components themselves is simply unclear. Although on the one hand it denigrated the obstructing language from *Long Manufacturing, Inc.* as "obiter dicta" and not controlling, it continued to distinguish what it allowed in strict liability recovery from what it still referred to as "economic loss." Whether that reference still covers damage to the defective product, the court did not say.

Less crucial, perhaps, but analytically more infuriating, was the cavalier disposition made of the first three cases by the court's opinion in *Mike Bajalia, Inc.* The reasoning in *Long* was inapplicable, the court explained, because the action in *Mike Bajalia, Inc.* was "ex delicto." What does that mean? Does it mean the court thought the action in *Long* was not ex delicto? If so, this is strange indeed, because the court in *Long* expressly construed the plaintiff's claim to be based on negligence—if a negligence action is not an action ex delicto, then what is it? True, the court in *Long* counseled the plaintiff to go to contract, but that does not change the nature of the claim which the plaintiff there in fact presented.

*Chrysler Corp.*, the court said, was "also distinguishable." What the court did not say was exactly where the distinction lay. At the most, it appeared to point out that what *Chrysler Corp.* excluded from "injury" under Code section 105-106 was loss of bargain benefits. Perhaps this means that the court viewed *Mike Bajalia, Inc.* not to involve such losses, but the court never explicated the legal nature of the losses which the case did involve.

*Long Manufacturing, Inc.* was given a three-point treatment. First, the court designated it as only an action in negligence. Although of course this may be true, that point was not made clear in that case. Also, if it is true, it makes all the more unexplainable the court's completely gratuitous yet forceful statement on strict liability there. Second, the court noted that the plaintiff in *Long Manufacturing, Inc.* was a corporation and, under other decisions, could not bring an action in statutory strict liability. This was a late date for finally getting around to announcing the true reason for a decision rendered a year ago, a decision which itself never even alluded to this reason. Retroactive rationalization leaves much to be desired in effectively resolving important litigation. Third, as already observed, the court appeared to indicate that *Long Manufacturing, Inc.* presented only a claim for "economic loss," and that *Mike Bajalia, Inc.* presented more. As also noted, however, the court never clarified what it now viewed "economic loss" to encompass.
Finally, this series of decisions does no credit to the court of appeals. If the court thinks the General Assembly was "subtle" and "technical" in adopting the warranty law of the Uniform Commercial Code, perhaps it should attempt an objective reading of these opinions. One need possess no substantive ax to grind in order to urge more thoughtful treatment of basic legal issues. Had it purposely set out to do so, the court would have been hard pressed to more thoroughly boggle the bar.

E. Strict Liability and Wrongful Death

The final issue thus far unfolded in Georgia's development of strict products tort liability portrays an intriguing instance of the modern confronting the ancient. More than 100 years ago, the Georgia General Assembly overturned the common law by expressly establishing a cause of action for the tort of "wrongful death." This statute enumerates individuals in whose behalf the action is provided and declares them entitled to recover for the "homicide" of the decedent. The provision is then supplemented by the following definition: "The word 'homicide' as used in this Chapter shall include all cases where the death of a human being results from a crime or from criminal or other negligence."

In the recent case of Ford Motor Co. v. Carter, the plaintiff wife sought to invoke the wrongful death statute against the manufacturer of the automobile in which her husband was riding when killed. Alleging the existence of a defect, one of the plaintiff's complaints was grounded in strict liability under Code section 105-106. In return, the defendant's motion to strike was posited upon the point that the wrongful death statute—requiring death from criminal or other "negligence"—was not covered by the strict liability statute, where no negligence is necessary for recovery. The perplexity was thus neatly focused: Could the ancient provision for wrongful death be accommodated to the modern demands of strict products liability?

115 See GA. CODE ch. 105-13 (1933).
116 GA. CODE § 105-1302 (1933).
117 GA. CODE § 105-1301 (1933).
119 The plaintiff also alleged gross negligence against the driver of the vehicle, as well as negligent design, manufacture, and assembly by the manufacturer.
120 The defendant's motion had been denied by the trial judge.
121 We thus have for decision the question of whether or not a wrongful death action is allowed under the amendment of Code Ann. sec. 105-106 by Georgia Laws 1968,
The court of appeals' response took the form of an opinion which was remarkable from several perspectives. The court agreed that in *Center Chemical Co. v. Parzini* the supreme court had established that proof of negligence was not necessary for recovery in strict liability. Still, the court hedged: "But even though strict liability in tort does not arise out of either common law negligence or breach of implied warranty, it is a tortious action based squarely on the tort concept of culpability or fault." If this was mildly puzzling, the court's next pronouncement went the limit: "The strict liability doctrine is not liability without fault because the manufacturer is not made the insurer of his products." Rather, "if the manufacturer's product is defective, it amounts to negligence per se or as a matter of law." In clarification, the court summed up as follows:

Thus, the supreme court in defining the legal duty put upon manufacturers in *Parzini*, supra, has merely held that negligence in the manufacture need not be shown, but proof must be offered that the product was defective in itself, amounting to negligence as a matter of law (in itself, that is, per se), or what this court has previously referred to as statutory negligence as opposed to nonstatutory negligence.

In conclusion, "it follows that an action for wrongful death may be maintained under the strict liability statute." Even in the land of the unique, this opinion would constitute a rarity. Essentially, it may be distilled—with parenthetical commentary—as follows. Strict liability does not require proof of negligence, but it is a tort action based squarely upon the concept of negligence. (Was tweedle dum and tweedle dee ever so tweedled?) Further, strict liability is not liability without fault. (From all the literature of strict liability law, this statement is a find. Some have said that strict liability is not absolute liability, because there are limitations

---

1166, 1167, and as clarified by later decisions of the supreme court, under products liability or strict liability as shown and defined therein simply because negligence need not be proven. 141 Ga. App. at 373, 233 S.E.2d at 446.

123 234 Ga. 868, 218 S.E.2d 580 (1975). See the discussion of this case in text, *supra* at note 34.

124 However, the court emphasized the requirement of a "defect" in the product.

127 141 Ga. App. at 374, 233 S.E.2d at 447.

128 *Id.*

129 *Id.* The court relied upon BLACK'S LAW DICTIONARY.

130 *Id.* at 375, 233 S.E.2d at 447-48.

131 *Id.* at 375, 233 S.E.2d at 448. The court also appeared to hold that the wrongful death statute met the strict liability statute's requirement of injury to a "natural person."
upon it. Some have said that establishing strict liability is virtually as difficult as proving negligence, because of the complexities of showing a defect. Some have said that recovery in strict liability can be limited by a comparative negligence formula. But few indeed have said that liability without fault is not liability without fault.)

Finally, although it is not necessary to prove negligence in strict liability, once the defect necessary to strict liability has been proved, negligence per se exists. (That is, you don’t have to, but once you do, you have. This is an interesting use of negligence per se. Ordinarily, this doctrine arises in the context of showing the defendant’s violation of appropriate criminal legislation in order to set the standard of care in a negligence case.) Ergo, wrongful death, which requires negligence, comes within strict liability, which does not!

Taking the case on certiorari, the supreme court divided four-to-two, and reversed. The majority opinion sought first to place the controversy in context. Both statutes involved—the provision for wrongful death and that for strict liability—were in derogation of the common law, and thus must be afforded a strict construction. The only theory of recovery provided for wrongful death was that of negligence; thus, strict liability permitted wrongful death recovery only if “the strict liability imposed under Code Ann. sec. 105-106 embraces negligence.” In both Ellis and Parzini, the supreme court had defined strict liability to eliminate questions of negligence. Accordingly,

we hold that the strict liability imposed under sec. 105-106 is not based on negligence. While negligence on the part of the manufacturer may happen to be involved as a matter of fact, in a given situation, it is not necessarily so, and the statute imposes liability irrespective of negligence.

---

129 The closest analogy which comes to mind is the title which Professor Ehrenzweig conferred upon his book, EHRENZWEIG, NEGLIGENCE WITHOUT FAULT (1951), but he was making a point, and everyone knew it.


131 The court’s opinion was written by Justice Bowles, with Chief Justice Nichols concurring only in the judgment. Justice Hill wrote a dissenting opinion, with which Presiding Justice Undercoffer concurred. Justice Marshall was disqualified.

132 239 Ga. at 659, 238 S.E.2d at 363.

133 Id. at 660, 238 S.E.2d at 364. Noting the rather unique terminology of Code § 105-106, the court said “the result is somewhat hybrid. Clearly, there is no standard of conduct set, nor any actual prohibition imposed in the Code section.” Id. at 661, 238 S.E.2d at 364.
Indeed,

a manufacturer can still be held liable irrespective of how carefully he observes; or any degree of care, precaution or vigilance he observes, in trying to protect the interest of another. The statute imposes strict liability for a defective new product and nothing else.\textsuperscript{131}

The court acknowledged the modern judicial tendency to compensate for harms ensuing from defective products, as well as the "illogical" results of Georgia's provisions.\textsuperscript{135} Still, the court maintained, the General Assembly was aware of the wrongful death enactment when it adopted the strict liability statute:\textsuperscript{136}

We conclude that neither negligence as a matter of fact or per se is involved in a cause of action brought under Code Ann. sec. 105-106, whether brought separately or in conjunction with . . . [the wrongful death statute]. With that, plaintiff's action for wrongful death based on such a premise cannot stand.\textsuperscript{137}

Whatever the complications created, the court advised, "these problems address themselves to the legislature and not to the courts."\textsuperscript{138}

F. Recent Legislative Activity

During its 1978 regular session, the Georgia General Assembly confronted a plethora of proposals affecting the tort law of products liability. Amid this flurry of activity, several bills were enacted by the two houses and presently await consideration and action by the Governor. Although tentative, therefore, a brief description of some of these measures might prove instructive.

\textsuperscript{131} Id. at 662, 238 S.E.2d at 365. "If negligence or lack of negligence is not involved, there is really no need to consider whether or not a violation of the Code section would be negligence per se." Id. at 661-62, 238 S.E.2d at 365.

\textsuperscript{135} The court said that at one extreme, "there is a cause of action for a scratch inflicted on a person but no cause of action for his death," and at the other, "a manufacturer could possibly be held responsible in 1977 for a defect in a motor vehicle manufactured in 1930." Id. at 663, 238 S.E.2d at 365.

\textsuperscript{136} "Nowhere was negligence, wrongful death or survivors mentioned. We do not feel that this court can, by judicial opinion, enlarge upon or by construction grant rights or causes of action not clearly included in the statute itself." Id. at 663, 238 S.E.2d at 365.

\textsuperscript{137} Id. at 662-63, 238 S.E.2d at 365. The dissenting opinion argued that the court should fill the void in the strict liability statute, and lamented that "we are declaring our inability to provide solutions to today's problems. We are forgetting our history and renouncing our inheritance." Id. at 664, 238 S.E.2d at 366.
Two of the enactments appear designed primarily to accumulate information. One of these would require insurers to file annual reports with the State Insurance Commissioner concerning product liability insurance.  Information provided by the reports would include the number of product liability claims during the period, the amounts paid in discharging the claims, the amount of reserves available to pay the claims, the amount of product liability insurance premiums received, the number of insured persons, the number of cancellations or refusals to renew, and the number of insureds who failed to renew. The second enactment would require these same items of information to be supplied in addition to the quarterly affidavits filed with the Insurance Commissioner by surplus line brokers.

The other three measures to be noted would all expressly amend Code section 105-106. One of these appears to constitute the legislature's response to the supreme court's decision in Ford Motor Co. v. Carter—it would expressly incorporate claims for death by successors of causes of action into the statute. It would also expressly amend the wrongful death statute to provide such an action for death resulting "from defectively manufactured property whether or not the result of negligence."

The second measure would permit a manufacturer sued under Code section 105-106 to establish as "an affirmative defense" that the personal property causing the plaintiff's injury had been "substantially altered, other than normal wear and tear, after sale from its condition when sold and such alteration was the proximate cause of the injury sustained."

---

140 Id. The act specifies that it is to become effective upon its approval by the Governor or upon its becoming law without his approval. The first reports are to be made in 1979.
142 Actually, all three measures would expressly repeal Code section 105-106 and reenact it as thus changed.
144 H.B. 1327 (1978). Thus, this measure would add the word "death" to "injury" in Code section 105-106 and expressly include actions brought under the wrongful death statute. The measure states that it becomes effective upon its approval by the Governor or upon its becoming law without his approval.
146 H.B. 1327 (1978). This part of the measure also would become effective upon its approval by the Governor or upon its becoming law without his approval.
147 S.B. 511 (1978). This measure specifies no date of taking effect, hence its effective date would presumably be July 1, 1978.
Finally, the remaining enactment would prohibit commencing any action under Code section 105-106 "with respect to an injury after 10 years from the date of the first sale for use or consumption of the personal property causing or otherwise bringing about the injury."\(^{148}\)

Whether the Governor will approve all, some, or none of these enactments remains to be seen. Additionally unknowable, therefore, is the exact future formulation of Code section 105-106, as well as its posture once litigated and construed.\(^{149}\)

V. CONCLUSION

Few courts in modern times are ever presented with a clean slate upon which to write for an entire legal domain. Scarce is the subject about which no cases have been decided and no questions have been judicially treated in one fashion or another. Yet in early 1975, when the Supreme Court of Georgia announced that Code section 105-106 imposed "a degree of strict liability," such was the situation thereby structured. Whatever the errors of the past—indeed however questionable this announcement itself—the point was at least settled. Prospective plaintiffs now learned that an additional action in tort was available, immediate ramifications were highly foreseeable, and the appellate courts were completely free to craft a logical and un-

\(^{148}\) S.B. 512 (1978). This measure specifies no date of taking effect, hence its effective date would presumably be July 1, 1978.

\(^{149}\) The indicated quandaries are worrisome ones. As previously noted, each of the three proposed "amendments" to Code section 105-106 would actually expressly repeal the code section and then reenact it as changed by that particular amendment. In setting out the "new" code section, however, not one of the three measures refers to the changes made by the other two. If all three measures are approved by the Governor, or permitted to become law without his approval, the result appears to be three new, and different, versions of Code section 105-106. In this event, the problem of determining the controlling version would appear crucial. As noted, the measure which would incorporate a wrongful death action into Code section 105-106 (H.B. 1327) would become effective upon date of approval. Both the measure providing the "product alteration" defense (S.B. 511) and that establishing a ten-year "statute of limitations" (S.B. 512) would only become effective on July 1, 1978. Would these later amendments, on July 1, wipe the wrongful death incorporation out of Code section 105-106 yet again? Or, even if they did, would the additional amendment to the wrongful death statute itself (Code section 105-1301) still be sufficient to accomplish the purpose of permitting a wrongful death action in strict tort liability? Finally, what of the two measures which would take effect on July 1? Could they both be given operation, or would the happenstance of the order in which the Governor approved them determine the controlling version of Code section 105-106?

Will the real Code section 105-106 please stand up?
derstandable system of statutory strict products liability.

This survey depicts the results of the almost three-year period which has since transpired. Let it suffice to observe that on a number of occasions these results have been neither logical nor understandable. The slate has been smudged. The plea here is neither pro-plaintiff nor pro-defendant, but rather for thoughtful attention to individual issues as they arise, with a larger concern for the mosaic necessarily being created. This would not seem an unreasonable plea. The subject is a vitally important one in Georgia law, many unanswered questions about it yet remain, and the cases will continue to come. In confronting them, fulsome forethought would be a happy hallmark for the appellate courts—indeed, for the General Assembly itself.

Both the courts and the legislature must remember that a boggled bar is not an effective bar.