

1988

Jesse Brown v. Kevin K. Loh, Joseph Pluta, Norman
Liwanag, Eugene Long, and Thomas M. foley :
Reply Brief of Appellant

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Brown v. Loh*, No. 890288 (Utah Court of Appeals, 1988).
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IN THE SUPREME COURT

.A10
DOCKET NO. 890288-CP OF THE STATE OF UTAH

JESSE BROWN, by and
through his guardian
ad litem,
JEFFERY BROWN,

Plaintiff-
Appellant,

vs.

KEVIN K. LOH, JOSEPH
PLUTA, NORMAN LIWANAG,
EUGENE LONG, and THOMAS
M. FOLEY, dba THE KNIGHT
BLOCK PARTNERSHIP, a
Hawaii general partnership,

Defendants-
Respondents.

Case No. 870387

Category 14b

APPELLANT'S REPLY BRIEF

APPEAL FROM THE JUDGMENT OF THE FOURTH JUDICIAL
DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH,
THE HON. BOYD L. PARK, PRESIDING

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FILED

JUN 29 1988

Clerk, Supreme Court, Utah

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JESSE BROWN, by and
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Hawaii general partnership,	:	
	:	
Defendants-	:	
Respondents.	:	

APPELLANT'S REPLY BRIEF

INTRODUCTION
AND
SUMMARY OF ARGUMENT

This case presents the issue of whether recovery for emotional injuries should be governed by the same fluid rule of foreseeability which applies in tort cases generally, or whether emotional injury cases should be singled out and governed by some other, more mechanical, rule. The defendants have not disputed that the plaintiff's injuries are real and serious, and the courts generally acknowledge that emotional injury can just

as or more debilitating than physical injury.¹ Defendants' assertion that plaintiff should not be allowed to recover is based instead on two primary arguments: (1) This Court has previously stated that recovery for negligently inflicted emotional injury is not allowed, and should not reconsider that decision, and (2) even if the Court were to allow recovery for negligently inflicted emotional distress in some cases, the Court should not do so in this case because plaintiff received no impact, was not in the zone of danger, and was not a family member of the decedent.

Plaintiff has adequately addressed the first argument in his initial brief. Each of the prior statements by this Court concerning recovery for negligently inflicted emotional injury must be considered dictum. At best, the issue was a minor one in each prior Utah case and not fully and adequately briefed or considered. More importantly, stare decisis, standing alone, is a very weak basis for decision. While plaintiff would concur that this Court should not abandon long-established precedents without good cause, the Court should similarly not hesitate to reexamine and overrule its decisions if warranted.

The second argument made by defendants, that plaintiff should not recover under any rule of decision, is addressed below. The rules of decision announced by the various courts have been grouped generally under three broad categories: The

¹See, for example, the quotation from Johnson v. Ruark Obstetrics and Gynecology Associates, P.A., 365 S.E.2d 909, 916 (N.C. App. 1988), set forth on page 9 of this brief.

impact rule, the zone of danger rule and the foreseeability rule. Plaintiff has stated a cause of action under each of these rules. With respect to the impact rule, plaintiff's Complaint supports the inference, or in the alternative, plaintiff should be granted leave to amend its Complaint to clearly state, that plaintiff suffered physical consequences from the emotional distress, including sleeplessness and nightmares, with a result that he is not as physically active as he might otherwise have been. These allegations are sufficient under the impact rule.

With respect to the zone of danger rule, Jesse Brown was in the same elevator which killed his best friend. The elevator had to be cut open to allow Jesse to escape. Jesse was clearly within the zone of danger.

The foreseeability rule is really no rule at all, but an acknowledgement that emotional injury cases should be governed by the same rules of foreseeability as apply to tort cases generally. Defendants assert that even under the foreseeability rule, plaintiff would be denied recovery because he was not a close family member of the deceased. The objective of the courts which purport to require a close family relationship, however, is simply to insure that a defendant be required to compensate only injuries which were foreseeable. It was clearly foreseeable that Jesse would suffer serious emotional injury from witnessing the death of his best friend.

ARGUMENT

POINT I

THE FORESEEABILITY RULE SHOULD NOT BE RIGIDLY LIMITED TO CERTAIN SPECIFIED RELATIONSHIPS.

The foreseeability rule is followed today by more states than any single rule. Defendants challenge the applicability of the foreseeability rule on two grounds. First, defendants claim that many of the decisions cited in appellant's initial brief were not bystander cases and should not be considered persuasive. Second, defendants claim that the foreseeability "rule" limits recovery to close family members only. These claims are addressed in order:

Defendants claim that, of 34 jurisdictions listed in plaintiff's initial brief as following the foreseeability rule, only 16 are bystander cases. Defendants argue, apparently, that rules of decision announced in non-bystander cases involving emotional distress are not relevant to bystander cases. This entirely misses the point. The benefit and advantage of expressing the rule in terms of foreseeability is the elimination of a special rule for bystander cases.

One of the cases which defendants apparently claim was not a bystander case is Hunsley v. Giard, 87 Wash. 2d 424, 553 P.2d 1096 (1976). Hunsley was sitting in her living room when her neighbor drove her care into Hunsley's back porch utility room, and sued to recover for the emotional injuries she suffered. The trial court dismissed her complaint, and the Washington

Supreme Court, sitting en banc, reversed. The court made a thorough review of the various rules, and then stated:

It is apparent from a survey of this area of the law that the application of the various rules, their exceptions and aberrations, has led the courts to reach absurd results and created numerous artificial boundaries. Rather than add to the already existing confusion with the formulation of a new rule, we conclude that the wisest approach is to return to the traditional principles, theories, and standards of tort law. Thus we test the plaintiff's negligence claim against the established concepts of duty, breach, proximate cause and damage or injury.

. . . .

[W]e conclude that the plaintiff who suffers mental distress has a cause of action; that is to say, the defendant has a duty to avoid the negligent infliction of mental distress. It is not necessary that there be any physical impact or the threat of an immediate physical invasion of the plaintiff's personal security. Our experience tells us that mental distress is a fact of life. With adequate limitations, the courts can administer the adjudication of this tort just as it [sic] does the complex intricacies of products liability and medical malpractice.

553 P.2d at 1102-03 (citation omitted).

In any event, Jesse Brown in a very real sense was not a bystander, but was a direct victim of the same negligence which claimed the life of JoeDee Quinn. Plaintiff, then only ten years old, was trapped in the same elevator. It would be reasonable for a jury to conclude that much of his emotional injury was a direct result of being himself trapped inside an elevator with an alarm button that did not function and controls which did not work properly. He experienced a significant period of panic before his frantic cries for help were answered.

Defendants' second challenge to the foreseeability rule is the claim that non-family members are automatically excluded from its protection. Such a mechanical approach defeats the very purpose of adopting a foreseeability standard as opposed to one of the other more mechanical rules. This was clearly explained by the Supreme Court of Washington. Addressing the issue of the class of persons which may bring an action for the negligent infliction of emotional distress, the court in Hunsley v. Giard, 87 Wash. 2d 424, 553 P.2d 1096 (1976), wisely stated:

We decline to draw an absolute boundary around the class of persons whose peril may stimulate the mental distress. This usually will be a jury question bearing on the reasonable reaction to the event unless the court can conclude as a matter of law that the reaction was unreasonable.

553 P.2d at 1103 (citation omitted). See also Wright v. Arcade School District, 230 Cal. App. 2d 272, 277, 40 Cal. Rptr. 812, 815 (1964)(foreseeability is question of fact).

That a ten year old boy will suffer severe emotional injury from witnessing the death of his best friend, with whom he has spent most of his waking hours, is certainly just as foreseeable as it would be among family members who perhaps were not very close or were even antagonistic. Yet the construction of the foreseeability rule advocated by defendants would deny recovery in the one case while allowing it in the other. To adopt such a mechanical limitation would constitute a denial of equal protection of the laws. To deny recovery to plaintiff without a trial would be to hold that his emotional injuries are not serious (which at this stage of the action has not been dis-

puted) or that his injuries were not foreseeable. Neither proposition is correct.

Defendants also challenge certain of the states included in plaintiff's listing of states which follow the foreseeability rule. Plaintiff acknowledges, after rereading the cases, that some were cited in error, and apologizes for the error.² Even eliminating all such cases which were mis-cited or where the rule of decision is unclear, however, the foreseeability rule must still be characterized as the majority rule, followed by more states than any other single rule. Utah, once a leader in the area of recovery for emotional injuries, remains as having the most restrictive rule in the nation.

Defendants call attention to the fact that plaintiff cited the case of Selsnick v. Horton, 96 Nev. 944, 620 P.2d 1256 (1980), as being a case which applied the foreseeability rule. Plaintiff acknowledges that that case purports to require intentional injury as a prerequisite for recovery for emotional injury, and that the case was cited in error. The proposition for which the case was cited, however, is still correct. In State v. Eaton, 710 P.2d 1370 (Nev. 1985), the Nevada Supreme Court stated that the issue of recovery of damages for emotional distress caused by witnessing the death of another was an issue of first impression in Nevada, id. at 1374, and adopted a

²A listing of the cases, indicating the rule of decision as claimed by each party, is attached as Appendix "A" for the Court's convenience.

foreseeability rule of liability. Id. at 1376-79.³ Inexplicably, the court in Eaton did not refer to the prior decision in Selsnick.

The North Carolina case of Ledford v. Martin, 87 N.C. App. 88, 359 S.E.2d 505 (1987), review denied, 321 N.C. 473, 365 S.E.2d 1 (1988), does state that a physical injury is a prerequisite to bringing a claim for emotional injury in that state. A later North Carolina case, however, reveals that the requirement of a physical injury is more illusory than real. Johnson v. Ruark Obstetrics and Gynecology Associates, P.A., 365 S.E.2d 909 (N.C. App. 1988). Johnson also demonstrates the artificial reasoning which courts find necessary when they have adopted a rule different from the "foreseeability" rule applied in most other areas of tort law.

Johnson involved a claim for medical malpractice brought by the parents of a stillborn fetus. The parents alleged that the doctors' failure to properly treat the mother's diabetic condition caused their child to die of malnutrition. Each parent claimed damages for emotional injuries. The court had little difficulty finding that the mother had suffered the requisite physical injury, but the father's claim required more

³Although the plaintiff in Eaton had suffered a dislocated ankle in the accident which claimed her daughter's life, the emotional injuries complained of were not related to the injury to the ankle. The court expressly criticized decisions which purported to require a physical injury, but which allowed recovery for emotional injuries not related to the physical injury. Id. at 1375.

inventive logic. The court first noted that the distinction between "physical" and "emotional" injury is nebulous at best:

As to the "physical injury" requirement for negligently inflicted emotional distress, we first note as a preliminary matter that a physical "injury" is not required in North Carolina where "coincident in time and place with the occurrence producing the mental stress, some actual physical impact" is caused to the plaintiff. [Citation.] However, absent some impact, the emotional distress claimant must manifest some resulting physical injury. [Citation.] Furthermore, where the claim for emotional distress is otherwise proper, our courts do not bar recovery simply because strictly separating "physical" from "mental" injuries is difficult:

[T]he general principles of the law of torts support a right of action for physical injuries resulting from either a willful or a negligent act none the less strongly because the physical injury consists of a wrecked nervous system instead of wounded or lacerated limbs, as those of the former class are frequently much more painful and enduring than those of the latter.

May v. Western Union Tel. Co., 157 N.C. 416, 422, 72 S.E. 1059, 1061 (1911); accord Stanback v. Stanback, 297 N.C. 181, 199 n. 1, 254 S.E.2d 611, 623 n. 1 (1981). Given the difficulty distinguishing "physical" from "mental" injuries, we also note numerous courts have rejected requiring separate allegation or even proof of a physical injury in connection with negligently inflicted emotional distress. E.g., Saint Elizabeth Hosp. v. Garrard, 730 S.W.2d 649 (Tex. 1987); Molien v. Kaiser Foundation Hospitals, 27 Cal.3d 916, 167 Cal. Rptr. 831, 616 P.2d 813 (1980).

365 S.E.2d at 916.

The court in Johnson noted other decisions which had found the necessary physical injury where the distress resulted in such symptoms as "nervousness, weight loss, confinement in bed and other ailments." 365 S.E.2d at 918 (citation omitted). The court held that Mr. Johnson had adequately alleged the element

of physical injury, and reversed the trial court's dismissal of the complaint.

Defendants correctly point out that the court in Hatfield v. Max Rouse & Sons Northwest, 100 Idaho 840, 606 P.2d 944 (1980), did not adopt a foreseeability standard as claimed by plaintiff in his initial brief, but rather continued to require some physical manifestation of the emotional injury.⁴ Hatfield, however, involved a claim for emotional injury resulting from a breach of contract. Subsequent Idaho decisions indicate that Idaho has not yet adopted any rule of recovery for non-contract cases. In Brown v. Fritz, 108 Idaho 357, 699 P.2d 1371 (1985), the court reexamined and affirmed the Hatfield rule in the contract context, but was careful to emphasize that its holding was limited to contract cases. 699 P.2d at 1377.

Defendants also claim that to allow recovery in this case would be to adopt a rule vastly more liberal than any other state in the nation. Such is not the case. Although several states have stated that a close family relationship will normally be required, defendants did not cite, and plaintiff has not discovered, any cases which actually deny recovery to a best friend with a relationship as close as that in the instant case.

⁴It is important to note that Idaho does not require that there be a physical impact or contact, but only that the emotional injury be sufficiently serious that its effects are physically observable. Compare Wright v. Coca Cola Bottling Co. of Central South Dakota, Inc., 414 N.W.2d 608 (S.D. 1987), where the court, while not deciding which rule it would follow, held that the requirement of physical impact was satisfied where the only physical symptoms were nausea and diarrhea.

Furthermore, even if it would result in a more liberal rule, this Court should decline to place artificial limits on the right of recovery. The facts in this case, where Jesse Brown witnesses the painful and relatively slow death of his best friend, and where Jesse himself was a direct victim of the same negligence, demand recovery.

The injuries suffered by plaintiff were foreseeable. Plaintiff should be allowed to have a jury determine whether those injuries were caused by the negligence of defendants.

POINT II

PLAINTIFF WAS IN THE ZONE OF DANGER.

Defendants argue that plaintiff would not be allowed to recover under the zone of danger rule because he was safely located inside the elevator cage at the time that his friend was killed. It is true that with the benefit of hindsight, an adult might conclude that plaintiff was not in any danger. The zone of danger cases do not, however, require that the plaintiff be actually in danger. In each case, hindsight demonstrated that the danger was only perceived, not real, because the plaintiff received no physical injury.

It must also be remembered that the zone of danger rule is a substitute for the foreseeability standard found in other areas of the tort law. The rule attempts to define that class of persons which might reasonably be expected to have suffered a serious emotional injury as a result of witnessing an injury to another. Plaintiff, a ten year old boy, certainly perceived

himself to be in danger. In addition, had his friend been successful in his experiment with the elevator, plaintiff would in all probability have tried the same experiment.

Finally, that plaintiff was actually within the zone of danger is evidenced by the fact that plaintiff was trapped in the elevator. His emotional injuries from the incident were a result both of witnessing the death of his friend, and the terror of his own imprisonment in the elevator cage. Plaintiff has stated a cause of action under the zone of danger rule.

POINT III

PLAINTIFF HAS SUFFICIENTLY ALLEGED A PHYSICAL INJURY WITHIN THE IMPACT RULE.

In considering the sufficiency of the allegations of plaintiff's Complaint on this motion to dismiss, all inferences should be drawn in the light most favorable to plaintiff. The dismissal must be reversed unless this Court can "hold with certainty that plaintiff would be entitled to no relief under any state of facts which could be proved in support of the claim." Christensen v. Lelis Automatic Transmission Service, Inc., 24 Utah 2d 165, 467 P.2d 605, 608 (1970) (emphasis in original). The decree of specificity required was explained by the Court of Appeals of North Carolina in the case of Johnson v. Ruark Obstetrics and Gynecology Associates, P.A., 365 S.E.2d 909 (N.C. App. 1988). One of this issues in that case was whether the plaintiff's husband had suffered a physical impact as a

result of the defendant's negligence which allegedly killed his unborn child. The Court quoted from an earlier case as follows:

Although it is clear that plaintiff must show some physical injury resulting from the emotional disturbance caused by defendant's alleged conduct, given the broad interpretation of "physical injury" in our case law, we think her allegation as she suffered great mental anguish and anxiety is sufficient to permit her to go to trial upon the question of whether the great mental anguish and anxiety (which she alleges) has caused physical injury.

365 S.E.2d at 918 (quoting Stanback v. Stanback, 297 N.C. 187, 198-99, 254 S.E.2d 611, 623 (1981)).

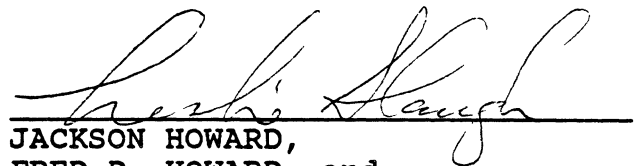
The Court in Johnson then continued to hold that "Mr. Johnson's pleadings reveal no fact which would as a matter of law prohibit him from later more specifically forecasting or introducing that his alleged mental distress resulted in the necessary physical injury." 365 S.E.2d at 918.

As set forth in plaintiff's initial brief, and in this reply brief, the degree of physical injury necessary to support a cause of action for negligently inflicted emotional injury is very slight, and amounts to only a requirement that there be some objective evidence that an injury has been suffered. The existence of a physical manifestation can be inferred from the facts alleged in plaintiff's Complaint. In the alternative, plaintiff should be granted leave to amend his complaint to allege the necessary physical impact. See Moviecolor Ltd. v. Eastman Kodak Co., 288 F.2d 80, 88 (2d Cir. 1961) (court on appeal has power to remand with instructions that trial court entertain motion to amend).

CONCLUSION

Defendants do not dispute that Jesse Brown was emotionally traumatized. His injuries are real and will affect him more severely and for much a longer time than many physical injuries for which the courts would allow recovery. No rational rule can be set forth which would justify continuing to deny redress for such claims. This case should be remanded to the trial court for trial.

DATED this 27th day of June, 1988.

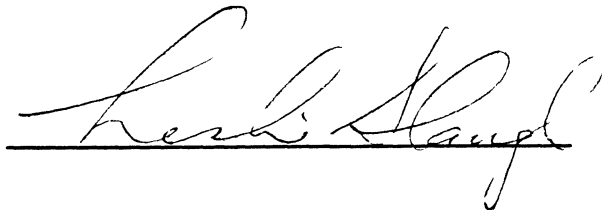


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MAILING CERTIFICATE

I hereby certify that four true and correct copies of the foregoing were mailed to the following, postage prepaid, this 27th day of June, 1988.

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APPENDIX "A"

SUMMARY OF RULES BY STATE

	<u>Appellant Claims</u>	<u>Respondent Claims</u>
Alabama: <u>Taylor v. Baptist Medical Center, Inc.</u> , 400 So. 2d 369 (Ala. 1981)	foreseeability	not bystander
Alaska: <u>Tommy's Elbow Room, Inc. v. Kavorkian</u> , 727 P.2d 1038 (Alaska 1986)	foreseeability	same
Arizona: <u>Keck v. Jackson</u> , 122 Ariz. 114, 593 P.2d 668 (1979)	zone of danger	same
Arkansas: <u>Midwest Buslines, Inc. v. Johnson</u> , 291 Ark. 304, 724 S.W.2d 453 (1987)	impact rule	same
California: <u>Dillon v. Legg</u> , 68 Cal. 2d 728, 69 Cal. Rptr. 72, 441 P.2d 912 (1968)	foreseeability	same
Colorado: <u>Towns v. Anderson</u> , 195 Colo. 517, 579 P.2d 1163 (1978)	zone of danger	same
Connecticut: <u>Montinieri v. Southern New England Telephone Co.</u> , 175 Conn. 337, 398 A.2d 1180 (1978)	foreseeability	non-bystander
Delaware: <u>Robb v. Pennsylvania Railroad Co.</u> , 58 Del. 454, 210 A.2d 709 (1965)	zone of danger	same
Florida: <u>Champion v. Gray</u> , 478 So. 2d 17 (Fla. 1985)	foreseeability	non-bystander
Georgia: <u>Hamilton v. Powell, Goldstein, Frazer & Murphy</u> , 252 Ga. 149, 311 S.E.2d 818 (Ga. 1984)	impact rule	same
Hawaii: <u>Kelley v. Kokua Sales & Supply Ltd.</u> , 56 Hawaii 204, 532 P.2d 673 (1975)	foreseeability	same
Idaho: <u>Hatfield v. Max Rouse & Sons Northwest</u> , 100 Idaho 840, 606 P.2d 944 (1980)	foreseeability	impact

	<u>Appellant Claims</u>	<u>Respondent Claims</u>
Illinois: <u>Rickey v. Chicago Transit Authority</u> , 98 Ill. 2d 546, 457 N.E.2d 1 (1983)	zone of danger	same
Indiana: <u>Boston v. Chesapeake & Ohio Railway Co.</u> , 223 Ind. 425, 61 N.E. 2d 326 (1945)	impact rule	same
Iowa: <u>Barnhill v. Davis</u> , 300 N.W.2d 104 (Iowa 1981)	foreseeability	same
Kansas: <u>Hoard v. Shawnee Mission Medical Center</u> , 233 Kan. 267, 662 P.2d 1214 (1983)	foreseeability	non-bystander
Kentucky: <u>Deutsch v. Shein</u> , 597 S.W.2d 141 (Ky. 1980)	impact rule	same
Louisiana: <u>Todd v. Aetna Casualty & Surety Co.</u> , 219 So. 2d 538 (La. 1969); <u>Mesa v. Burke</u> , 506 So. 2d 121 (La. App.), <u>cert. denied</u> , 506 So.2d 1226 (La. 1987)	foreseeability	non-bystander
Maine: <u>Rowe v. Bennett</u> , 514 A.2d 802 (Me. 1986)	foreseeability	non-bystander
Maryland: <u>Vance v. Vance</u> , 286 Md. 490, 408 A.2d 728 (1979)	foreseeability	non-bystander
Massachusetts: <u>Dziokonski v. Babineau</u> , 380 N.E.2d 1295 (Mass. 1978)	foreseeability	same
Michigan: <u>Wargelin v. Sisters of Mercy Health Corp.</u> , 385 N.W.2d 732 (Mich App. 1986)	foreseeability	same
Minnesota: <u>Stadler v. Cross</u> , 295 N.W.2d 552 (Minn. 1980)	zone of danger	same
Mississippi: <u>First National Bank v. Langley</u> , 314 So. 2d 324 (1975)	foreseeability	non-bystander
Missouri: <u>Bass v. Nooney Co.</u> , 646 S.W.2d 765 (Mo. 1983)	foreseeability	non-bystander
Montana: <u>Versland v. Caron Transport</u> , 671 P.2d 583 (Mont. 1983)	foreseeability	same

	<u>Appellant Claims</u>	<u>Respondent Claims</u>
Nebraska: <u>James v. Lieb</u> , 375 N.W.2d 109 (Neb. 1985)	foreseeability	same
Nevada: <u>Selsnick v. Horton</u> , 620 P.2d 1256 (Nev. 1980) [cited by error; proper cite is <u>State v. Eaton</u> , 710 P.2d 1370 (Nev. 1985)]	foreseeability	no recovery
New York: <u>Bovsun v. Sanperi</u> , 61 N.Y.2d 219, 473 N.Y.S.2d 357, 461 N.E.2d 843 (1984)	zone of danger	same
New Hampshire: <u>Corso v. Merrill</u> , 406 A.2d 300 (N.H. 1979)	foreseeability	same
New Jersey: <u>Portee v. Jaffee</u> , 417 A.2d 521 (N.J. 1980)	foreseeability	same
New Mexico: <u>Ramirez v. Armstrong</u> , 100 N.M. 538, 673 P.2d 822 (1983)	foreseeability	same
North Carolina: <u>Ledford v. Martin</u> , 359 S.E.2d 505 (N.C. App. 1987)	foreseeability	impact
North Dakota: <u>Whetham v. Bismarck Hospital</u> , 197 N.W.2d 678 (N.D. 1972)	zone of danger	same
Ohio: <u>Paugh v. Hanks</u> , 451 N.E.2d 759 (Ohio 1983)	foreseeability	same
Oklahoma: <u>Ellington v. Coca Cola Bottling Co. of Tulsa, Inc.</u> , 717 P.2d 109 (Okla. 1982)	foreseeability	impact
Oregon: <u>Saechao v. Matsakoun</u> , 78 Or. App. 340, 717 P.2d 165, review dismissed, 302 Or. 155, 727 P.2d 126 (1986)	impact rule	same
Pennsylvania: <u>Sinn v. Burd</u> , 404 A.2d 672 (Pa. 1979)	foreseeability	same
Rhode Island: <u>D'Ambra v. United States</u> , 338 A.2d 524 (R.I. 1975)	foreseeability	same
South Carolina: <u>Kinard v. Augusta Sash & Door Co.</u> , 336 S.E.2d 465 (S.C. 1985)	foreseeability	same

	<u>Appellant Claims</u>	<u>Respondent Claims</u>
South Dakota: <u>Wright v. Coca Cola Bottling Co. of Central South Dakota, Inc.</u> , 414 N.W.2d 608 (S.D. 1987)	foreseeability	impact
Tennessee: <u>Shelton v. Russell Pipe & Foundry Co.</u> , 570 S.W.2d 861 (Tenn. 1978)	zone of danger	same
Texas: <u>St. Elizabeth Hospital v. Garrard</u> , 730 S.W.2d 649 (Tex. 1987)	foreseeability	non-bystander
Vermont: <u>Vaillancourt v. Medical Center Hospital of Vermont, Inc.</u> , 139 Ut. 138, 425 A.2d 92 (1980).	zone of danger	same
Virginia: <u>Hughes v. Moore</u> , 197 S.E.2d 214 (Va. 1973)	foreseeability	impact
Washington: <u>Hunsley v. Girard</u> , 87 Wash. 2d 424, 553 P.2d 1096 (1976)	foreseeability	non-bystander
Washington, D.C.: <u>Waldon v. Covington</u> , 415 A.2d 1070 (D.C. App. 1980).	impact rule	same
West Virginia: <u>Harless v. First National Bank in Fairmont</u> , 289 S.E.2d 692 (W. Va. 1982)	foreseeability	impact
Wisconsin: <u>Garrett v. City of New Berlin</u> , 122 Wis. 2d 223, 362 N.W.2d 137 (1985).	zone of danger	same
Wyoming: <u>Gates v. Richardson</u> , 719 P.2d 193 (Wyo. 1986).	foreseeability	same