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PRODUCTS LIABILITY—Hospitals Held Strictly Liable in Tort for the Transfusion of Hepatitis Infected Blood

In May of 1960, Mrs. Frances Cunningham was admitted into the MacNeal Memorial Hospital, Berwyn, Illinois. In the course of her treatment, she received several transfusions of whole blood. She subsequently contracted a serum hepatitis infection requiring her to have additional hospitalization.[1]

Mrs. Cunningham then filed suit against the hospital, seeking recovery for further hospitalization and medical treatment, and also for permanent injuries. Following the adoption of the theory of strict liability in tort by the Supreme Court of Illinois in 1965,[2] a second amended complaint, alleging strict liability against the hospital was filed. This complaint alleged that the defendant hospital, as an ancillary part of its services rendered to the plaintiff, sold and supplied her blood for the purposes of transfusion in the treatment of her condition. She submitted that the blood had been received by the defendant in the commercial line of distribution from a blood bank, and that the blood supplied by defendant to plaintiff was defective and in an unreasonably dangerous condition at the time it left the control of the defendant. Plaintiff's allegation concluded that as a direct and proximate result of such defect, she was infected with serum hepatitis, damaging her in the sum of $50,000.[3]

Defendant responded by moving for a judgment on the ground that a cause of action in strict tort liability does not apply to the transfusion of blood by a hospital as a part of its services rendered to patients.[4] The Circuit Court of Cook County sustained defendant's motion, and the plaintiff took an appeal to the Illinois Appellate Court for the First Judicial District. In a two-to-one decision the Appellate Court held that the second amended complaint did state a cause of action in strict tort liability, reversed and remanded the case to the circuit court. After the Appellate Court certified the question as one of importance, the defendant then appealed to the Illinois Supreme Court.[5]

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1. Cunningham v. MacNeal Memorial Hospital, 113 Ill. App. 2d 74, 251 N.E.2d 733 (1969).
2. Suvada v. White, 32 Ill. 2d 612, 210 N.E.2d 182 (1965).
3. Cunningham v. MacNeal Memorial Hospital, — Ill. 2d —, — N.E.2d — (1970).
4. *Id.*
5. *See* Ill. Supreme Court Rule 316.

HELD: Affirmed

The Illinois Supreme Court ruled that the plaintiff had stated a cause of action on the theory of strict tort liability, holding that the transfusion of blood fell within the scope of the decision in *Suvada v. White Motor Co.*[6]

The decision in *Cunningham v. MacNeal Memorial Hospital is* significant because it is the first decision that authorized the application of strict tort liability in a case where the transfusing of blood by a hospital was at issue. It rejected over fifteen years of decisions and statutes from other jurisdictions which had specifically exempted blood transfusions from strict tort and warranty liability.[7]

The theory of strict liability in tort was first adopted by the Illinois Supreme Court in *Suvada v. White Motor Co.*, holding that when a manufacturer sells a defective product that is unreasonably dangerous, the Illinois courts will not look to the old theory of warranty but rather to strict tort liability.[8]

Courts have given effect to two theories to achieve products liability: (i) warranty and (ii) strict tort liability. In *Suvada,* the Illinois Supreme Court established strict tort liability as the principle theory applicable in Illinois, leaving small scope for the concept of warranty and its concomitant requirement of privity.[9]

Strict liability, as embodied in *Suvada,* is the imposition of liability wihout negligence on a seller of a defective product. The rule subjects a seller to liability for physical harm or property damage to the user or consumer despite the fact that all possible care in the preparation and sale of the product has been exercised. Proof of negligence is not essential to the imposition of liability, and the lack of it is immaterial.[10]

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6. *See,* for example, Perlmutter v. Beth David Hosp., 308 N.Y. 100, 123 N.E.2d 792 (1954); Balkowitsch v. Minneapolis War Memorial Bank, Inc., 270 Minn. 151, 132 N.W.2d 805 (1965); *cf.* California Health and Safety Code § 1623, which provides, "The procurement, processing, distribution, or use of whole blood, plasma, blood products, and blood derivatives for the purpose of injecting or transfusing the same, or any of them, into the human body shall be construed to be, and is declared to be for all purposes whatsoever, the rendition of a service by each and every person, firm, or corporation participating therein, and shall not be construed to be, and is declared not to be, a sale of such whole blood, plasma, blood products, or derivatives, for any purpose or purposes whatsoever." and similar statutes.

8. *See* note 2, *supra.*

9. *Id. See also,* W. Prosser, *The Assault upon the Citadel,* 69 Yale L.J. 1099 (1960); W. Prosser, *The Fall of the Citadel,* 50 Minn. L. Rev. 791 (1966). Tort liability applies only in cases of personal injury and property damage.

10. *Id. See* also, N. Ozmon, *Products Liability under the Suvada Theory,* 55 Ill. B.J. 906 (1967).

Warranty principles were discussed in the *Cunningham* case because of the array of precedent on point.[11] Where the warranty theory has been invoked, courts have considered troublesome questions with regard to hepatitis contaminated blood. The issue of whether the blood transfusion constituted a sale, and whether such a "sale" was of "goods", required resolution. Under existing warranty law, only a *sale* of *goods* gives rise to a warranty.

The only case prior to *Cunningham* which held that transfusions constitute a sale of blood, rather than a service was *Russell v. Community Blood Bank, Inc.*[12] where the appellate court of Florida held that a cause of action for breach of warranty was stated against a blood bank. That court distinquished the blood bank from a hospital on the ground that its sole purpose was to collect and distribute blood for a specific monetary consideration. Ruling that the transfer of blood from the bank to the patient was not a service, but rather a sale to which a warranty was attached, the Court stated:

> It seems to us a distortion to take what is, at least arguably, a sale, twist it into the shape of a service, and then employ this transformed material in erecting the framework of a major policy decision.[13]

Through case and statutory law, the vast majority of jurisdictions have taken the position that, for all purposes, the transfusing of blood is not a sale but a service.[14] The apparent reluctance of these jurisdictions to impose warranty in contaminated blood cases is possibly caused by the fact that many of the defendants have been charitable institutions or non-profit corporations, and that hepatitis virus in blood is said to be both undetectible and unremovable. These were the reasons that the court in *Perlmutter v. Beth David Hospital*[15] emphasized in holding defendant hospital not subject to liability for breach of an implied warranty. That case involved facts similar to those in *Cunning-*

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11. *See* note 3, *supra.*
12. 185 So. 2d 749 (1966).
13. *Id.* at 752.
14. For examples see Perlmutter v. Beth David Hosp. and Balkowitsch v. Minneapolis War Memorial Blood Bank, Ind. note 7, *supra*; Gile v. Kennewick Public Hosp. District, 48 Wash. 2d 774, 296 P.2d 662 (1956); Fischer v. Wilmington General Hospital, 51 Del. 554, 149 A.2d 749 (1959); Goelz v. J.K. & Susie L. Wadley Research Institute and Blood Bank, 350 S.W.2d 573 (Texas Civ. App. 1961); Dibblee v. Dr. W.H. Groves Latter-Day Saints Hospital, 12 Utah 2d 241, 364 P.2d 1085 (1961); Sloneker v. St. Joseph's Hospital, 233 F. Supp. 105 (D. Colo. 1964); Koenig v. Milwaukee Blood Center, Inc., 23 Wis. 2d 324, 127 N.W.2d 50 (1964); Whitehurst v. American Nat'l Red Cross, 402 P.2d 584 (Ariz. App. 1965). Note 3, *supra.* At least 25 jurisdictions have enacted such statutes. *See* also applicable statutes, for example, West's Ann. Health and Safety Code § 1623, note 6, *supra.*
15. *Id.*

ham. The court reasoned that the contract between patient and hospital was one for healing services and that a contract for the sale of blood could not be separated from it. However, they implied that the nature of the hospital's business, that of healing the sick, and its position as a charitable or non-profit corporation, should exempt it from liability.[16]

In *Balkowitsch v. Minneapolis War Memorial Blood Bank,*[17] the Minnesota Supreme Court made explicit what the court in *Perlmutter* had only implied, that a non-profit or charitable corporation should not be held to the same standards as a commercial business where the sale of hepatitis contaminated blood is at issue. In addition to relying on the charitable policy consideration in deciding no sale existed, the court in *Balkowitsch* relied on available scientific literature showing that it was impossible to detect the presence of hepatitis virus in blood.[18]

In products cases, courts have been moved to adopt strict tort liability for policy considerations.[19] These policies include: (i) protection of the public interest in human life, health and property; (ii) placing the burden of injury or damages on those best able to foresee expenses and spread the cost; and (iii) a desire by the courts to force the manufacturer to improve his product.[20]

In blood cases, courts have been required to evaluate the special effects which these considerations have upon hospitals. First to be considered would be whether the burden placed upon the hospital under the strict tort liability doctrine is a protection of the public interest in human life and health. The hospital is pledged to doing work, which by its very nature, is the protection of human life and health. It may seem inequitable to inflict such an institution with the burden and expense of strict liability.

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16. A case relied upon by the *Perlmutter* court was *Babcock v. Nudelman,* 367 Ill. 626. Although not precisely on point with the issue raised in Perlmutter, the court stated: "The furnishing of tangible personal property such as eyeglasses to a purchaser, under the circumstances of this case, is merely incidental to the services rendered . . .", at 630.

The case involved the imposition of the Retailers Occupation Tax upon optometrists. The Court held that they were not subject to the tax, and indicated that this is also true of physicians who must necessarily furnish medicines or surgical dressings, and dentists who furnish inlays, fillings, crowns, etc.

However, it seems that a logical distinction exists between the Court's interest in collecting a tax for the state and the interest it has in protecting the health and property of an individual.

17. *See* note 7, *supra.*

18. *Id.*

19. *See* note 9, *supra.*

20. *Id.* See also RESTATEMENT (SECOND) OF TORTS § 402A, Comment c, (1965) Escola v. Coca-Cola Bottling Co., 24 Cal. 2d 453, 150 P.2d 436 (1944), Traynor concurring, and Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 57, 377 P.2d 897 (1962).

Second, when a court applies the policy of "spreading the cost" to a hospital, as the seller of a defective product, it is adding those costs to the already high price of hospital care for each patient. It is questionable whether it is desirable to spread costs among a class of people already faced with the adversity of illness.

Finally, if a court desires that a hospital improve this product, it is saying to the institution, "Find an effective method of detecting the virus and removing it from blood." The question arises as to whether hospitals and their scientists will work faster and be more successful as a result of judicial pressure.

Jurisdictions like Illinois, which have adopted strict tort liability in products cases,[21] have generally adopted the form set forth in § 402A of the RESTATEMENT (SECOND) OF TORTS.[22] The strict tort liability theory as embodied in the RESTATEMENT does not require the traditional warranty elements of buyer reliance, notice of injury, disclaimer and privity of contract.[23] The rationale for the rejection of these warranty requirements was the hardship which they placed upon the injured party.

In strict tort liability, a plaintiff need only prove that a seller supplied a defective product which was in an unreasonably dangerous condition at the time it left seller's control, and that this dangerous condition was the proximate cause of plaintiff-consumer's injury.[24] No issue as to privity can or need be raised, as the theory applies to anyone who becomes the ultimate consumer.[25]

The issue in *Cunningham* was whether the transfusion of blood fell within the scope of strict liability in tort. Before the court was required to determine whether a "sale" was present, it was called upon to decide whether blood was a "product" under that theory.

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21. *See* note 2, *supra.*
22. § 402A Special Liability of Seller of Product for Physical Harm to User or Consumer
(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
(a) the seller is engaged in the business of selling such a product, and
(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.
(2) The rule stated in Subsection (1) applies although
(a) the seller has exercised all possible care in the preparation and sale of his product, and
(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.
23. *Id.* at Comments *a* and *m.*
24. *Id.* Implicit in Suvada is this requirement . . . See note 10, *supra.*
25. RESTATEMENT (SECOND) OF TORTS § 402A, Comment *c* (1965).

The federal government controls the sale of blood as a product in interstate commerce. The Federal Trade Commission in filing its opinion in the *Matter of Community Blood Bank of Kansas City Area, Inc.*[26] rejected the theory that blood is not a product, as defendants in that case had contended, when charged with illegally restraining the exchange, sale and distribution of human blood. In doing so, the Commission noted *United States v. Calise*,[27] where blood was held to be a serum, causing it to fall within the scope of the Federal Mislabeling of Package or Containers Law, which indicates that it is a product.[28]

Rather than citing these decisions, the Illinois Supreme Court in *Cunningham* relied upon the RESTATEMENT[29] which provides that products include both articles which have undergone some processing and articles which have not. Perhaps the reason for Illinois' adoption of this position was best expressed by the appellate court in *Cunningham,* stating:

> It would appear that the real reason some would refrain from calling human blood a product is the belief that those dealing in it are doctors, hospitals and blood banks, who perform a meritorious service for the community and are entitled to preferential treatment from the law. However, our Supreme Court has indicated that a hospital should not be treated any differently from any other organization; at least, insofar as the rules of negligence are concerned. *Darling v. Charleston Hospital*, 33 Ill. 2d 326, 211 NE2d 253. In other words, we feel that those favoring special protection for hospitals of the kind they had enjoyed before the *Darling* decision, would read back into the law a preferential treatment for hospitals by circuitous means, such as concluding that blood is not a product, and that those handling it are to be treated differently from those handling "true" products.[30]

The Illinois Supreme Court then turned to the issue of whether the transfusion of blood was a service rather than a sale.[31] In *Perlmutter,* the court resolved this issue by reasoning that the thing bargained for was a service, *ie.* medical skill and technology. The court viewed a blood transfusion as being only ancillary to this activity and not divisible from it.[32] The *Cunningham* court, noting that *Perlmutter* had been decided upon policy bases which it rejected, adopted the reasoning set

26. Docket number 8519, reported in Trade Regul. Rep. 22, 023 (June 8, 1964).
27. 217 F. Supp. 705 (S.D.N.Y., 1962).
28. 42 U.S.C. § 262(b) (1964). No person shall falsely label container of any virus, serum, toxin, antitoxin, or other product. . . .
29. *See* note 23, *supra.*
30. *See* note 1, *supra,* at 80.
31. Or a placing into the stream of commerce, see note 25, *supra.*
32. *See* note 7, *supra.*

forth in *Russell*; that, as to a blood bank, a sale did exist. Like the Florida court in *Russell*, the Illinois Supreme Court could find no logical distinction between a blood transfusion and the sale of a product. The court examined the similar procedures of blood banks and hospitals, and held that if the former was a sale, so, obviously was the latter.

Related to the sale-versus-service issue was whether the hospital could be a seller as embodied in the RESTATEMENT if it were not in the business of selling. The hospital contended that its business was that of providing a service *ie.* healing, and therefore, it could not be a seller of any products. The court, however, indicated that the theory of strict tort liability encompasses anyone who manufactures, distributes, wholesales, sells or supplies the product.[33] It is not necessary that their principle occupation be that of a seller. All that is required is that they do in fact sell or supply the product.

Once it was determined that a sale of a product existed, it was necessary to consider whether infected blood is defective and whether strict liability should apply when, arguably, no scientific method of detection of the virus presently exists. The *Cunningham* court recognized that the theory of strict liability requires a product to be in a defective condition as a basis for recovery.[34] This requirement of a defect differentiates strict from absolute liability.[35] Its proof being a prerequisite to recovery, the meaning of "defective" is crucial in strict tort liability. A "defective condition" has been defined as one not contemplated by the ultimate consumer which would be unreasonably dangerous to him.[36] Wholesome blood then, is not in a defective condition; it is safe for normal consumption.[37] Virused blood, however, is not. Blood is not an inherently defective product, so no supplier, aware of the actual presence of the hepatitis in a given blood sample, would market the product when a supply of nonvirused blood is available. The fact that the supplier is unaware of the defect does not alter the fact of its presence nor the fact that the product is defective.[38]

In deciding that infected blood was in an unreasonably dangerous condition, the Illinois Supreme Court considered Comment K of the

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33. *See* RESTATEMENT (SECOND) OF TORTS § 402A Comment *f* (1965).
34. *See* notes 14 and 23, *supra.*
35. *See* RESTATEMENT (SECOND) OF TORTS § 402A Comment *g* (1965). *See also*, J. Wade, *Strict Tort Liability of Manufacturers*, 19 Sw. L.J. 5 (1965).
36. See RESTATEMENT (SECOND) OF TORTS § 402A Comment *g* (1965).
37. *Id.*, Comment *h.*
38. P. Keeton, *Products Liability—Liability Without Fault and the Requirement of a Defect*, 41 Texas L. Rev. 855 (1963).

RESTATEMENT.[39] That section advocates a limited basis for exempting liability in certain cases where the products are "incapable of being made safe for their intended and ordinary use."[40] The defendants sought to include blood within this exception by submitting that there is no present method for full detection or decontamination of blood containing the hepatitis virus.

Two points of importance address themselves to this issue. First whether the "unavoidable unsafe" exemption to the strict tort liability doctrine was applicable;[41] and second, whether strict liability renders immaterial the fact that the defendant could not have detected the defect in the blood.

A not uncommon analogy is invoked for purposes of applying the "unavoidably unsafe" exemption, which compares the transfusion of virused blood to an innoculation of vaccine in the Pasteur treatment of rabies. This example is expressly contained within Comment K of the RESTATEMENT,[42] and was extensively discussed in the proceedings leading to the adoption of § 402A.[43] The ailments against which vaccination and transfusion are directed may lead to death. However, recourse to either may lead to other serious consequences, though from a cause other than of the original ailment. The RESTATEMENT advocates that marketers and suppliers of rabies vaccine ought to be granted specific exemption from the strict tort liability principle.

But the vaccine example is not truly analogous to contaminated blood. Rabies vaccine is not defective,[44] whereas virused blood is in a defective condition. Any given sample of the rabies vaccine may result in injury, depending on the tolerance of the person who is to receive it. Use of the vaccine will cause unpredictable harm to certain individuals and not to others.[45] It is not the adulterated vaccine, but rather the particular constitution of the recipient of good vaccine which is responsible for any resultant harm. The harm, like that accompanying an allergic reaction, is reactive.[46]

By contrast, virused blood typifies an example of a product which is defective. Contaminated blood is defective because of the presence of a foreign element, *ie.* the hepatitis virus. Because of its impurity, bad

39. RESTATEMENT (SECOND) OF TORTS § 402A, Comment *k.* (1965).
40. *Id.*
41. *Id.*
42. *Id.*
43. 41 ALI Proceedings 349 (1964).
44. See note 39, *supra.*
45. 15 Am. Jr. Proof of Facts, p. 638 (1964).
46. Grau v. Proctor & Gamble Co., 324 F.2d 309 (5th Cir. 1963).

blood will invariably, and independently of a person's allergic responses,[47] produce illness upon being transfused. The defect attendant to hepatitus infected blood is not in the consumer but in the product.

The second aspect of the issue, that is, whether the fact that the presence of a hepatitis infection in the blood is, as a practical matter, undiscoverable should preclude application of the doctrine of strict liability in tort, was only briefly discussed by the *Cunningham* court. That court concluded that to give weight to that factor would "signal a return to a negligence theory."[48] Deeming that concepts of negligence had no place in a strict liability in tort action, the court held this factor irrelevant.

This resolution of the issue causes implications for the Illinois law of strict liability in tort which go far beyond the facts in the case. Up to this time the doctrine had only been applied to products which were defective and should not have been. The products which created liability were either improperly designed or manufactured.[49] It was this fact that led the Illinois Supreme Court to say in its first opinion in *Williams v. Brown Manufacturing Co.*, an opinion later withdrawn, that strict liability in tort is "liability without negligence but it is not liability without fault."[50] If, however, it is granted that there is no way that the virus could have been detected in the blood, *Cunningham* extends strict liability in tort to situations where no fault can be predicated on the part of the defendants.

It must, however, be noted that support for this result can be found in the decision in *Kenower v. Hotels Statler, Co.*,[51] a Sixth Circuit opinion cited with approval by the *Cunningham* court. There, under an implied warranty theory, a vendor was held responsible when a customer contracted typhoid fever as a result of eating clams infected with typhoid bacilli even though there was no way of determining if the clams were so infected without destroying their marketability. Yet distinctions can be drawn between *Kenower* and *Cunningham*. First, *Kenower* was an implied warranty case, and fault does not hold the same position in an action of contract as it does in one sounding in tort. Sec-

47. Allen, Enerson, Barron & Sukes, *Pooled Plasma with Little or No Risk of Homalogous Serum Jaundice*, 154 A.M.A.J. 103 (1954). See also, Allen, *Advantages of the Single Transfusion*, 164 Ann. Surg. 475 (Sept. 1966).
48. *See* note 3, *supra*, at —.
49. *See* note 2, *supra*. See also, Williams v. Brown Mfg. Co., — Ill. —, — N.E. — (1970).
50. Unpublished opinion, Williams v. Brown Manufacturing Company. *See* 1 Loyola (Chi.) L.J. 388 (1970).
51. 124 F.2d 658 (6th Cir. 1942).

ond, and perhaps more significant, is the fact that a vendor may, if he chooses, elect not to sell clams because of their dangers. No such election is often open to a hospital in the case of a blood transfusion. They must transfuse or the patient will die. Because of his freedom of choice a clam vendor can be said to have "assumed the risk" of infected clams. This, in many cases, cannot be said of a hospital.

A final possible ground of distinction lies between *Kenower* and *Cunningham*. In *Kenower*, the clam market is such that each purchaser may pay a slightly higher cost and thus spread the risk of unavoidable illness upon all purchasers of clams. It remains to be seen if this is a viable alternative in the case of infected blood.

The desirability of spreading the cost to those best able to foresee and afford the damage was advanced over two decades ago by Justice Traynor in *Escola v. Coca-Cola Bottling Co.*[52] He stated that the manufacturer would be best prepared to assume the burden for injuries from a defective product and it would be unjust to ask the unsuspecting consumer to do so.[53] But are hospitals, like manufacturers selling items at a fixed price, able to add to the cost of each item for the purpose of reimbursing themselves for the expense of consumer injuries?

When speaking of cost sharing in a blood transfusion situation, it is first necessary to determine if the added cost is to be spread between all hospital patients or only those who receive transfusions. If limited to transfusion recipients it has been suggested that the cost of a pint of blood would rise from approximately fifty dollars to one hundred and fifty dollars.[54] This would apparently be the appropriate group over which to spread the costs by analogy to the infected claim situation. If, on the other hand, the risk were to be spread over all hospital patients, it has been estimated that it would increase the cost of a hospital bed fourteen dollars per patient per day.[55] It may be questioned if patients who are not in need of transfusions should be required to bear the cost of the use to those that are. It is likewise true that the hospital patient is not a person who desires a product and, therefore, must pay for the risks of that product, but one who is forced by necessity to require it.

On the other hand, this high price of cost socializing indicates the immensity of the burden which hepatitis places upon an afflicted in-

52. *See* note 21, *supra.*
53. *Id.* at 462.
54. Chicago Tribune, Voice of The People, October 17, 1970.
55. Medical News, 214 J.A.M.A. 3 (October 19, 1970).

dividual. Leaving the cost rest where it originally lay seems to be an alternative which is an undesireable as cost spreading.

Hospitals have claimed that a decision such as *Cunningham* can provide no possible incentive for a seller to "improve his product" because scientists have been unable to find a viable test for screening out the impure blood. Nevertheless, an increased emphasis upon hepatitis research has resulted in the reporting of new and better tests.[56]

One area apparently overlooked by those concerning themselves with the legal issues surrounding contaminated blood is that of preventive control. This potential safeguard is available only at the donor level. Blood donors and donor stations differ from community to community. In communities where blood donors are paid professionals, a larger amount of virused blood is collected than in those consisting of mainly volunteers. This situation is due to the fact that paid donors come from lower socio-economic backgrounds and know little of their medical history. This type of donor is reluctant to discuss that subject, possibly from fear that he will not be accepted, and will suffer a loss of income.[57] In order to implement an effective program of preventive control, blood banks could enforce more strictly the existing regulations as to the collection of blood.

Consequences which the *Cunningham* case will have upon future patients and hospitals is open to speculation. It is believed that the hospitals will apply to the Illinois legislature for the adoption of a statute similar to one already enacted in twenty-five other states. It is questionable whether this type of solution is desireable because of the hardship which it places upon the individual infected.

The consequences which the *Cunningham* decision may effect upon Illinois law the field of strict liability in tort, however, may be much more far reaching. While the legislature will be forced to decide whether to spread the cost of serum hepatitis among many or to let it rest upon the individual, that decision will have little to do with the fact that Illinois law now seems to disregard the concept of fault in its application of products liability.

David L. Tomchin

56. See note, *Red Blood Cell Washing May Reduce Risk of Hepatitis,* 214 J.A.M.A. 678 (October, 1970). Also J. Tullis, J. Hinnin, M. Sproul & R. Nickerson, *Incidence of Post Transfusion Hepatitis in Previously Frozen Blood,* 214 J.A.M.A. 719 (October, 1970).

57. P. Galloway, Chicago Sun-Times, October 18, 1970, p. 5.