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Book Reviews: Pattern Interrogatories: Products Liability

Eugene J. Davidson
University of Baltimore School of Law

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BOOK REVIEWS

PATTERN INTERROGATORIES: PRODUCTS LIABILITY. By Douglas Danner.* The Lawyers Co-operative Publishing Co., Rochester, New York 14603. 1972. Pp. 1108 with Supplement. \$35.00. Reviewed by Eugene J. Davidson.†

Your reviewer observed in the University of Baltimore Law Review Product Symposium issue¹ “in most [product liability] cases . . . counsel must rely on circumstantial evidence . . . [which] too often addresses itself to the question of ‘could’ and not ‘did’ the alleged defect cause the accident.”² The matter of establishing the “did” is only one of several problems of proof confronting counsel. The manner in which counsel goes about solving these problems is one of the distinguishing marks separating the novice from his more experienced colleague.

Astute trial lawyers know well the value of having the opposing party help furnish the needed evidence and, to this end, the value of imaginative pre-trial interrogations. But interrogatories have virtues beyond merely adducing evidence which otherwise may be unavailable or more difficult to adduce. AMERICAN JURISPRUDENCE, *Trials* suggests more than ten additional virtues, among which are:

1. Particularize vague and uncertain pleadings;
2. Narrow issues for trial;
3. Determine facts usable as a basis for planning further discovery;
4. Elicit information that may lead to the procurement of evidence;
5. Test the merit of a claim or defense;
6. Harass the timid, exaggerating, or false claimant;
7. Harass the blustering, arrogant, or defenseless tort-feasor;
8. Pierce the veil of a corporate tort-feasor;
9. Elicit information by which to impeach the credibility of a witness, on oral discovery or at trial;
10. Support a motion for summary judgment.³

It is of course, one thing to know the value of interrogatories and another to be able to know the question to ask. Equally important is the knowledge of what to avoid by way of interrogatories since

*Practicing Attorney, Massachusetts.

†Professor, University of Baltimore Law School.

1. 5 U. BALT. L. REV. 1 (1975).

2. *Id.* at 150.

3. Vol. 4, AM. JUR., *Trials* § 3, Discovery—Written Interrogatories at 9.

unimaginative or ineffective interrogatories may not only fail to achieve their purpose, but may focus opposing counsel's attention on deficiencies not otherwise apparent in the moving party's case. In this respect, the use of interrogatories may be likened to a double edged sword, a useful weapon in the hands of a trained protagonist, but dangerous to the novice wielder.

Pattern Interrogatories: Products Liability is a book which can assist both plaintiff's and defendant's counsel in drafting imaginative and effective interrogatories. Its format is designed for ready use by a busy practitioner in that it deals separately with plaintiff-to-defendant and defendant-to-plaintiff interrogatories, and contains interrogatory sets dealing with the 13 most common product liability situations. The seven chapters and 182 sections are introduced by a short author's comment designed to identify the chapter and section coverage or purpose. The sections also have research references keyed to AMERICAN JURISPRUDENCE and annotations in American Law Reports, a useful addition.⁴

Many of the questions are appropriately subdivided to elicit precise data and prevent generalized and, perhaps, evasive answers. Somewhat typical are the plaintiff's interrogatories directed to defendant's precautions with respect to products electrical in nature. These include questions relating to grounding the product; insulating current carrying components; thermostatic devices; exposed hot surfaces; safety devices to prevent user contact with these hot surfaces; and composition and location of handles and plugs.⁵ There is nothing startling about these questions which, as the author states in his comment, will indicate "not" only potential defenses . . . but . . . also reveal areas of potential hazard or danger . . . of which the defendant had actual knowledge and . . . took precaution."⁶ They are, however, essential in an electrical product case if plaintiff's case is to be fully prepared.

The author's approach is to start with circumstances and conditions dealing with the general areas into which plaintiff (Chapter 1) or defendant (Chapter 2) probably should direct interrogatories; move to interrogatories directed to personal injury, property damage and consequential damages (both plaintiff's and defendant's interrogatories); and then approach specific product situations. This latter coverage deals with bottle explosions, containers, drugs and medicines, electric appliances, food and beverages (both foreign substance and unwholesome), ladders,⁷ machinery, paints, snowmobiles, handtools,

4. The limitation of the research references to these sources probably is attributable to the fact that they are materials published by the book's publisher.

5. § 4:14, questions 15(a)-(h).

6. P. 99.

7. Falls from ladders cause about 150,000 injuries and 500 deaths annually, mostly to middle-aged males. The author adds that 90 percent of the ladder sales are of the household type, which some manufacturers concede are not redesigned because consumers allegedly are unwilling to pay for safety. P. 791 *supra*.

and toys. The book does not cover automobiles which is the subject of a separate book by the same author. While the only recreational type motorized vehicle covered is the snowmobile, this group of interrogatories is readily adaptable to many of the other types of recreational vehicles. The last two chapters present what are termed "comprehensive sets" for use in connection with retailers, wholesalers, manufacturers or assemblers, parts suppliers, and designers.

The book is a useful working tool for preparing a product liability case. If effectively used, interrogatories are valuable. That little "if," however, is the great hurdle. While Mr. Danner's book cannot guarantee making every lawyer an astute practitioner, it will provide the mechanics for enabling a practitioner to do a better job in ferreting out facts needed to prove his client's case and also in alerting him to deficiencies in that case.