Reversed and remanded.

Supplemental Opinion on Denial of Rehearing
April 27, 1987

727 S.W.2d 856

1. PRODUCTS LIABILITY — TESTIMONY THAT SINGLE BAND AROUND ROOFING BUNDLES CONTRIBUTED TO ACCIDENT DID NOT MAKE ROOFING A DEFECTIVE PRODUCT FOR PURPOSES OF STRICT PRODUCT LIABILITY. — Although there was testimony to support the proposition that the placement of only a single band around bundles of roofing was a contributing cause of an accident, the failure to place more bands around the bundles did not make the roofing a defective product for purposes of strict product liability.
2. JURY INSTRUCTIONS — INSTRUCTION ON NEGLIGENCE APPROPRIATE. — Under the facts presented, the case should have been given to the jury solely on the question of whose negligence proximately caused the accident.
3. NEGLIGENCE — ALLEGED DEFECT IN BANDING ROOFING BUNDLES FOR TRANSPORT — MANUFACTURER LIABLE ONLY ON NEGLIGENCE THEORY. — In a case involving an accident in which a tractor-trailer rig loaded with bundles of roofing overturned, the rolls of roofing themselves were the only "product" involved; the act of banding them together for shipment was simply part of the loading and transporting process for which the manufacturer can only be liable on a negligence theory.
4. PRODUCTS LIABILITY — STRICT PRODUCT LIABILITY STATUTE INAPPLICABLE. — The product (roofing) in this case was not being used, but was being hauled, and was not shown to be defective or unreasonably dangerous; therefore, the strict liability statute did not apply.

JACK HOLT, JR., Chief Justice. [1] Jackson argues in his petition for rehearing that testimony showed that Elk's failure to secure the bundles of twenty rolls of roofing with two metal bands, rather than a single band, caused the bundles to be more likely to come apart and thus made them unreasonably dangerous as "packages." The petition should be denied but clarification of this point is in order. While we agree that there was testimony to support the proposition that the placement of only a single band around the bundles was a contributing cause to the accident, and stated so in the original opinion, we are not persuaded that that action made the roofing a defective product for purposes of strict product liability.

[2] We stated in the original opinion that this case should have been given to the jury solely on the question of whose negligence was the proximate cause of the accident. Jackson contends that Ark. Stat. Ann. § 34-2802(e) (Supp. 1985) and *Stalter* v. *Coca-Cola Bottling Co. of Ark.*, 282 Ark. 443, 669 S.W.2d 460 (1984) support his position that because the rolls of roofing were banded together in an unsafe manner, strict product liability is equally applicable and was properly submitted to the jury. Section 34-2802(e) states:

> "Product liability action" shall include all actions brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formula, preparation, assembly, testing service, warning, instruction, marketing, *packaging* or labeling of any product. (emphasis added)

Stalter held that a verdict should not have been directed against the plaintiff on her theories of negligence and strict liability when a Coke bottle fell through the bottom of the carton she was carrying and injured her leg.

[3] Jackson maintains that banding the rolls together for shipment was "packaging" under § 34-2802(e) and that, like the Coke carton in *Stalter*, the bundles were defective packages which were unreasonably dangerous. Jackson correctly points out that a statement in the original opinion can be read to support his argument. There we said that "Jackson had to show that the packaging of the rolled roofing was supplied by Elk in a defective condition as defined in § 34-2802(d)." If a shipper's act of banding together rolls of roofing for loading on a tractor-trailer could be considered "packaging" in the same way that a coca-cola carton is a package for that product, then Jackson would be correct in asserting that this cause of action is covered by § 34-2802(e). As we indicated in the original opinion, perhaps not clearly enough, we consider the rolls of roofing themselves to be the only "product" in this case. The act of banding them together for shipment is simply part of the loading and transporting process for which Elk can only be liable on a negligence theory.

Stalter cannot be interpreted to extend strict product liabil-

ity to include the process by which the shipper secures a product for transportation. *Stalter* involved the ultimate consumer of the product carrying the soft drinks in the carton sold with the soft drinks. The carton was obviously intended to be an integral part of the product and its use. In this case, putting a band around Elk's product, the rolls of roofing, was simply to secure the load for shipping. Like the alleged acts of negligence in double stacking the bundles and the failure to secure the load with further safety devices, the process of holding the rolls together with a single metal band while in shipment was part of the alleged *negligence* which the jury should have compared with the alleged contributory negligence of Jackson. In *Stalter* the plaintiff could clearly point to the carton as the defective part of the product. Here, it was the *acts* of negligently securing the rolls, negligently stacking the bundles, and negligently failing to use safety devices that Jackson alleges caused the accident.

Although there was testimony that single banding contributed to the accident, as we noted in the opinion, that testimony was to the effect that the single banding, along with other factors, such as the double stacking, all contributed to making the load dangerous. Jackson should not be allowed to single out one step in that process which can be loosely described as packaging, in order to assert strict liability against Elk without the burden of proving negligence.

[4] Unlike the Restatement (Second) Torts, § 402A (1965) version of strict product liability, our statute, Ark. Stat. Ann. § 85-2-318.2 (Supp. 1985), does not limit strict liability actions to injuries to the ultimate consumer or user. Nevertheless, the product has to meet the definition of unreasonably dangerous found in Ark. Stat. Ann. § 34-2802(g) (Supp. 1985). A product is unreasonably dangerous if it is "dangerous to an extent beyond that which would be contemplated by the ordinary and reasonable buyer, consumer or user who acquires or uses such product. . . ." This definition indicates the emphasis in the product liability act on determining the product and whether it is defective by its consumer use. The product in this case is the roofing itself which was not being used, but rather was being hauled from Elk's dock, and which was not shown to be defective

or unreasonably dangerous.

Petition denied.