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JUDICIAL NON-RESTRAINT AS A REMEDY FOR JUDICIAL NON-RESTRAINT

ALLAN AXELROD *

If judges were to be taken at their word, and if newspapers cared a little more about judges, the *Mendel* opinion would have gotten headlines: "High Court Blasts Juries"; "N.Y. Trial Judges Scored"; "Most Product Injury Claims Fake, Says Scileppi."

The headlines would be justified, even though the *Mendel* opinion confines its blasts to the cases which WOULD be brought (and improperly decided) if the Court of Appeals accepted a statute of limitations permitting commencement of product-liability actions more than six years after sale. The opinion states that *injuries* more than six years after sale are mostly from causes beyond the manufacturer's responsibility. And how does the Court know that this class of injuries for which the manufacturer is not liable will be converted into judgments for which he is? The link can only be supplied by an assessment of the moral character of New York's injured citizens and plaintiffs' bar, and of the quality of inferior court judicial decision.

When a state's highest court speaks to the ethics of its people, and the competence of its courts, it is unseemly to disagree. However, all this is mere policy, and the decision, though touching on such policy, is rested on legal analysis. Whether the analysis of the majority is sounder than that of the dissent has been adequately mooted elsewhere in this issue. But I'm looking forward to the majority's decision in a case which I hope will soon be before it.

It will be one of a series of daily actions against General Motors for breach of implied warranty brought by a plaintiffs' class consisting, at least, of everyone in the State of New York. The complaint will allege that on the previous day, such and such a number of G.M. cars were sold in the State, and that on information and belief such and such a number of those cars were defective. Having thus established its *Mendel* cause of action (*sale* of a defective article creates a stranger's cause of action on contract), the complaint will then pray damages. Six cents a head for each defective car will do for starters; but there must be some damages formula implicit in the *Mendel* opinion, though I haven't quite worked it out.

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