

Warnings & Defenses

“Reasonable Alternative Design” Challenges



*Alive
with pleasure!*
Newport



*After all, if smoking
isn't a pleasure,
why bother?*

Warning: The Surgeon General Has Determined
That Cigarette Smoking Is Dangerous to Your Health.

Full Flavor "tar" 17 mg., nicotine av. per cigarette 1.1 mg. menthol
100's "tar" 14 mg., nicotine av. per cigarette 1.1 mg. menthol
©1978 Philip Morris Inc.

You are the lawyer for the plaintiff in a case where the plaintiff has smoked cigarettes since she was 16 years old. She's now in her 50s and she has terminal lung cancer, and she is suing the cigarette manufacturers for products liability under a design-defect theory. What do you propose as a reasonable alternative design?

Should the plaintiff succeed on this theory? Should the plaintiff succeed on the merits of the case but for different reasons? Should the plaintiff not prevail at all?

You are the lawyer for the plaintiff in a case where the plaintiff dove into a 3.5 foot, above-ground pool and broke their spine. What do you propose as a reasonable alternative design?

Should the plaintiff succeed on this theory? Should the plaintiff succeed on the merits of the case but for different reasons? Should the plaintiff not prevail at all?



Warnings

Products Liability Claims

1. ??????????????????

2. ??????????????????

3. ??????????????????

Products Liability Claims

1. Manufacturing Defects
2. Design Defects
3. Failure to Warn

Elements of a Claim

Negligence

- Duty
- Breach
- Causation
- Harm

Strict Liability

- Defendant was engaged in the kind of activity where strict liability applies
- Causation
- Harm

Products Liability

- Defect
- Causation
- Harm

What are our concerns with the effectiveness of warnings and warning labels?

- Clarity of labels
- Too much text
- Level of detail related to the possible harm
- Language and legalese / What languages?
- Location of label
- Overwarning
- Color and font, visibility

Hood v. Ryobi American Corp.

Couple nuances

“Heeding Presumption”

Warnings can't overcome design defects

In-Class Performance

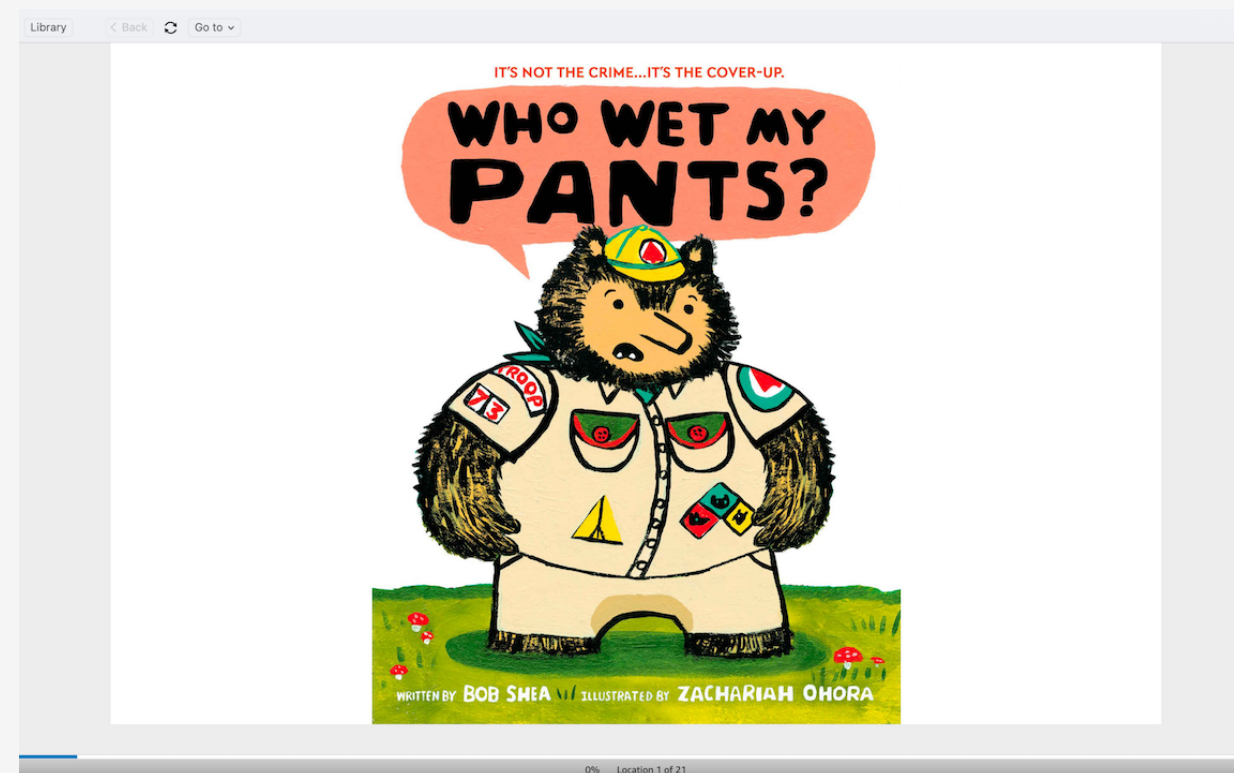
Rueben the bear →

Raccoon →

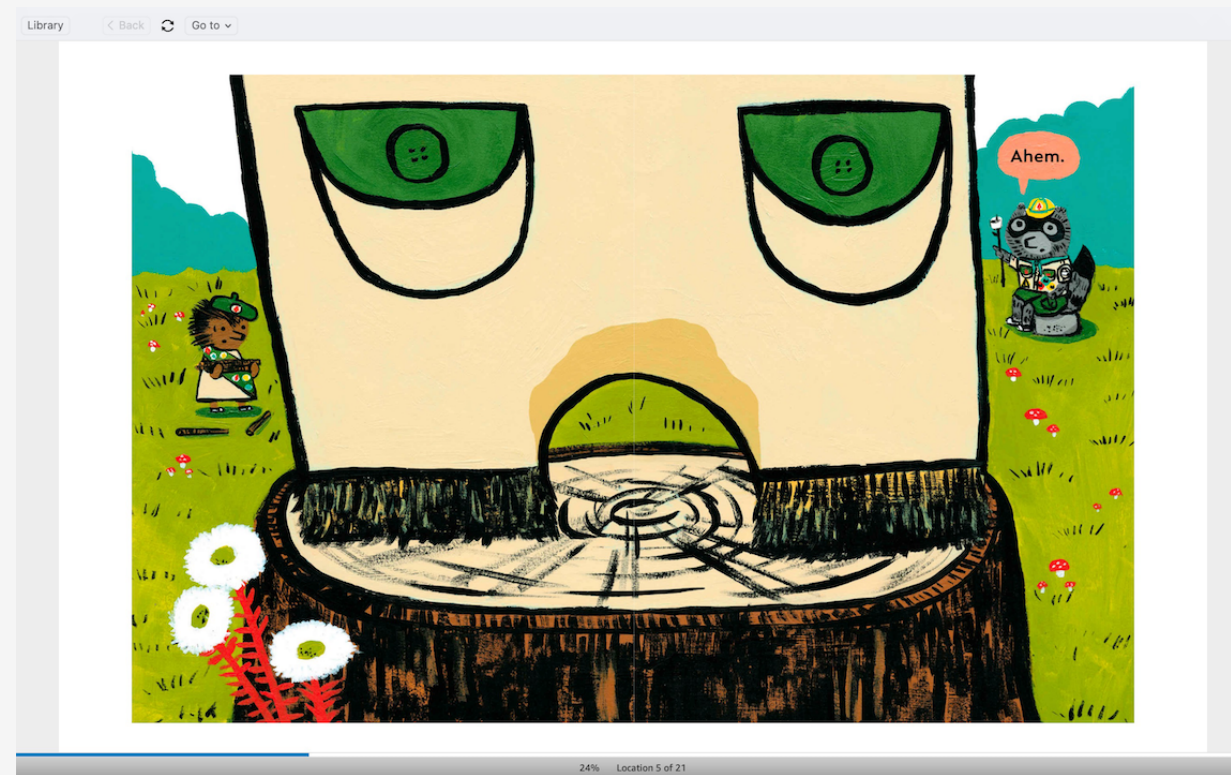
Turtle →

Bigfoot →

Dog →

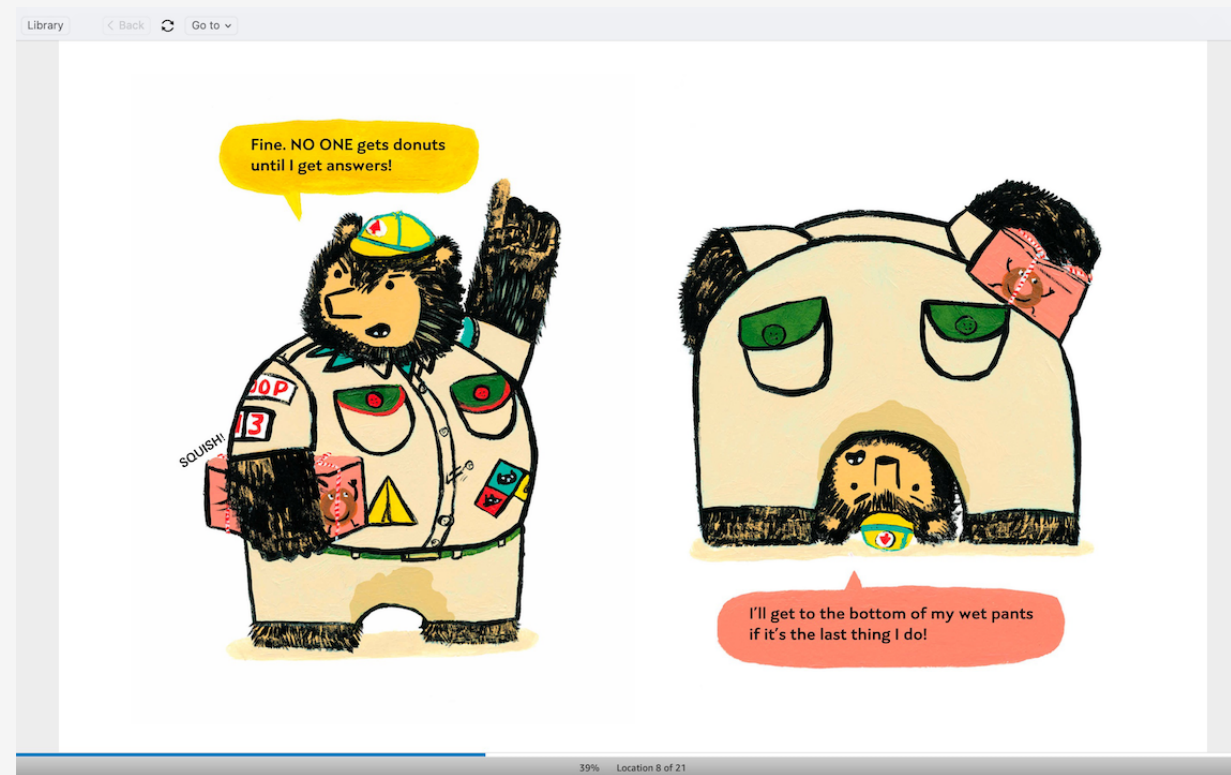














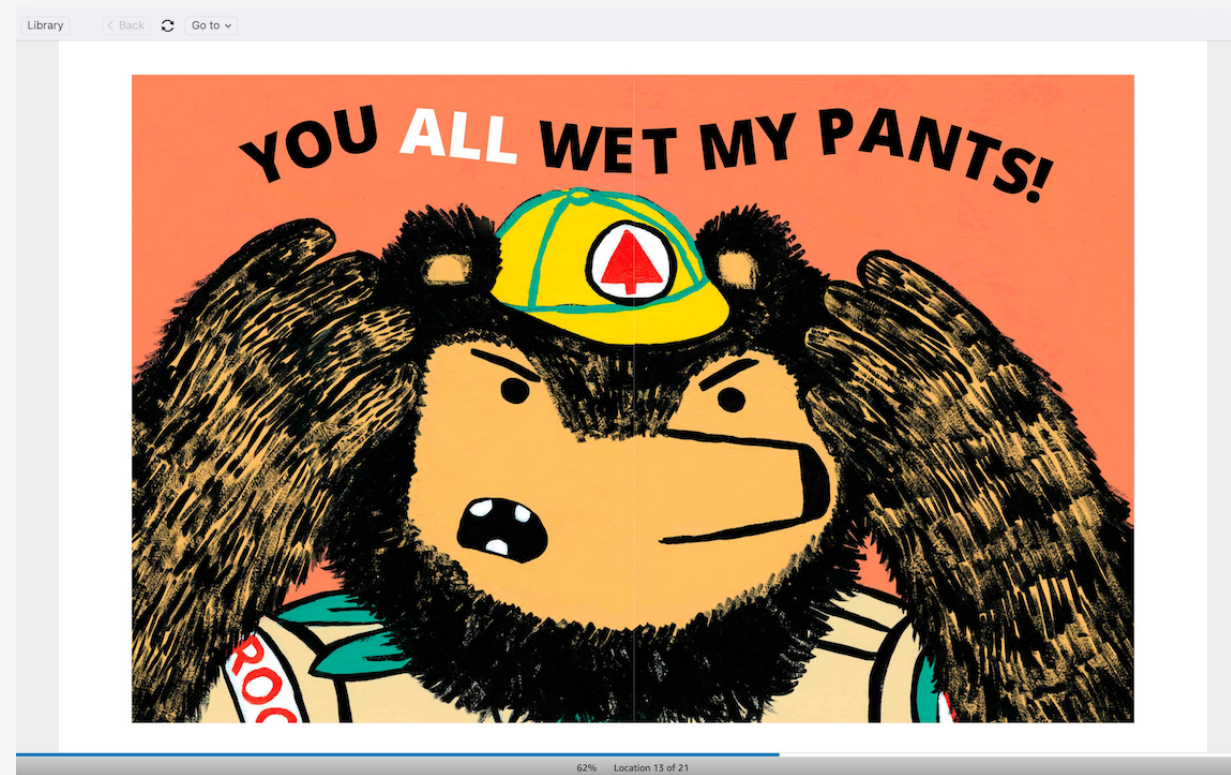
Hey, Tim. Bet you picked up some pretty great tricks before you ran away from the circus. What was the Big Top Showstopper? Was it...





53% Location 11 of 21





Library < Back ↻ Go to ▾

Look, here's all I know.



This morning I helped out at the lemonade stand.



Then I went for a hike to the waterfall.

67% Location 14 of 21

Library < Back ↻ Go to ▾

Later I fell asleep playing with my tropical fish.

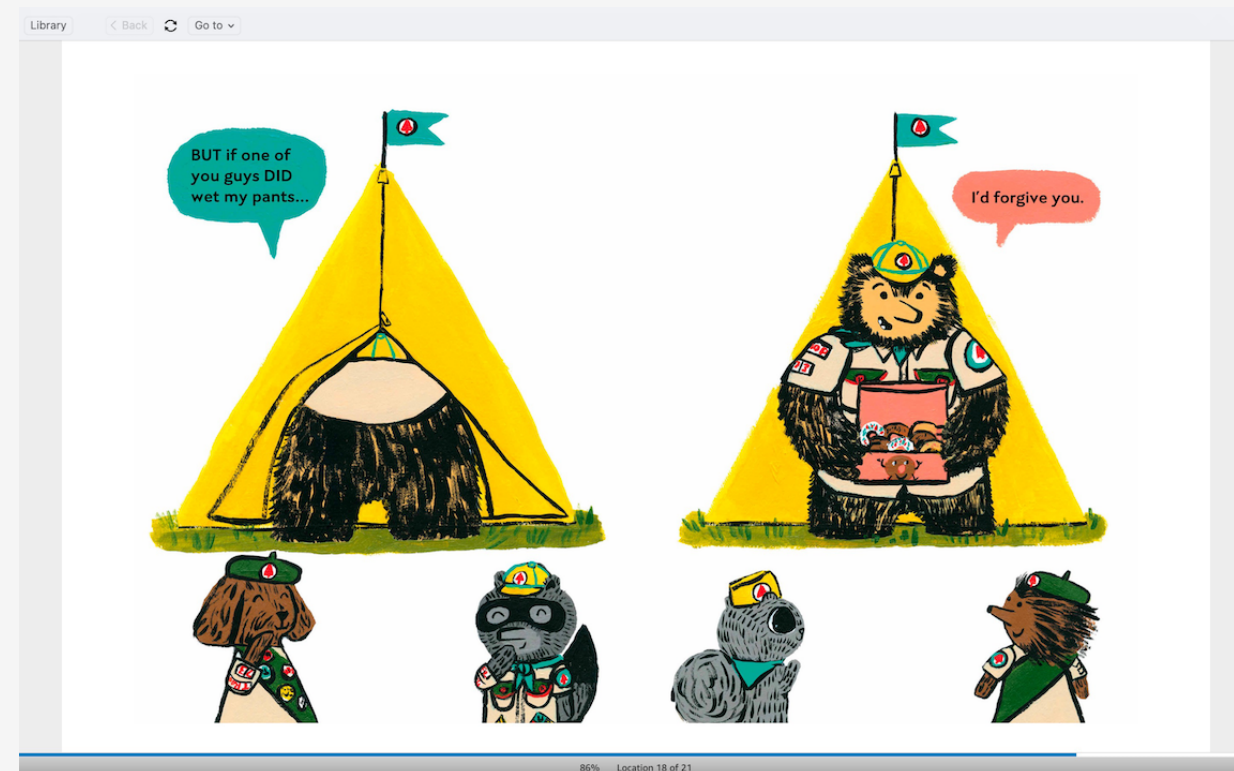
When I woke up, I got donuts and came straight here.

72% Location 15 of 21





81% Location 17 of 21





What products liability claims might Reuben the bear assert against the manufacturer of his pants?

**We all have an intuition that Reuben should lose his case,
but for what reason?**

**How can you defend against a
strict liability or products liability
claim?**

Plaintiff's failure to discover a defect

Restatement (Second) of Torts

Contributory negligence of the plaintiff is not a defense when such negligence consists merely in a failure to discover the defect in the product, or to guard against the possibility of its existence.

Restatement Third

[W]hen the defendant claims that the plaintiff failed to discover a defect, there must be evidence that the plaintiff's conduct in failing to discover a defect did, in fact, fail to meet a standard of reasonable care. In general, a plaintiff has no reason to expect that a new product contains a defect and would have little reason to be on guard to discover it.

Comparative Responsibility is Hard

