It is likely that Ye Olde Sawmill (YOS) will incur strict liability. Strict liability is where there are special circumstances arising where liability can be imposed without showing negligence of the defendant (Δ) or other forms of culpability. One area that strict liability is imposed is during ultra-hazardous or abnormally dangerous activities. In order to prove the activity is ultra-hazardous, the plaintiff (π) must show the degree of danger (the risk of serious harm and the inability to render safe the activity) and the uncommonness of the activity. Next, π must show the general requirements of negligence (actual causation, proximate causation, and damages). These elements can be applied to YOS and injuries sustained by each individual.

YOS was carrying on ultra-hazardous activities. The degree of danger can be shown by both the known risk of serious harm and the inability of the company to render it safe. The risk of serious harm is shown by three sources: 1) OSHA said it was harmful for employees to wear loose articles of clothing, 2) Danny knew it was harmful because he made the guests sign waivers, and 3) there were known prior injuries. YOS also had an inability to render the activity safe. There are many saws throughout the mill, the red lights installed only give a warning, but do not actually make the activity safe, and being a tourist attraction which they are dressed unsafe makes YOS unable to render their activities safe. Also, YOS is an uncommon activity as this is a new idea which Danny (YOS CEO) is using his business as a

tourist attraction. As far as we know, this is the first saw mill being used as a tourist attraction. Therefore, it can be argued that YOS could have action brought against them under strict liability for ultra-hazardous activity. But if strict liability is not found, then there will be individual liabilities and claims.

Each tourist is considered an invitee, because the persons entering land with permission for the owner/occupier's business or as a member of the public on open to the public; therefore Danny is the invitor and owes a duty to inspect and render safe concealed dangers, including that of a licensee, which is a duty to warn of or make safe any known, concealed, dangerous condition (whether natural or artificial). It is found that Danny breached this duty in several ways to the tourists.

There has been a breach of duty to Chris for the following reasons. Danny's practical joke can be considered battery. A battery occurs where there is an act, intent, causation, touching, and a harmful or offensive result. Applying the facts, the act was the joke, his intent was to make Chris duck, which caused Chris to hit his head. Touching can be indirect, such as setting something in motion, as Danny did (by telling him to duck), and Chris was injured as a result. The eggshell π rule applies, as any and all injuries which result are foreseeable. This is all judged by a reasonable person standard; we can assume a reasonable person would have acted in the same manner as Chris when

told to "duck." This leads Danny to be liable as he has a duty to act when a person is put in peril from the tortfeasor's actions. Danny refused to follow protocol which was displayed on the wall for caring for an injury of a concussion. As far as Chris having a claim against Danny for his business closing, it is likely this will be found too far remote as an injury. Just as the court in *Palsgraff* reasons, the tortfeasor can be held liable for the immediate harm caused to that person, but not the π that is too far removed. Therefore, it would be found Chris's employees are too far removed, but as far as Chris losing his job; his concussion is a but-for cause of him losing his business/job. Burt also has claims against Danny for the injuries he sustained.

Already established in Chris's situation, there was the same duty and standard of care toward Burt as an invitee because he was similarly a customer. The breach of duty is generally an issue for the jury or trier of fact. The courts would likely view Danny's actions as a breach of this duty. When Danny asked if anyone wanted to try the dangerous activity and when he made the option open the invitees, he did not fulfill his duty to make the situation safe.

The next aspect is causation. Generally if the injuries would not have happened but for the negligent actions of the Δ and the extent and severity of the injuries is foreseeable to the Δ then causation has been established. In the case at hand, Burt's injuries would not have

happened but for Danny making the option open to the invitees. It is also foreseeable that one would cut one of their body parts by being close to a saw on unstable grounds. Therefore, causation has been established in this situation.

The damages that Burt incurred were the loss of a limb, specifically his leg. Burt is now able to walk with a prosthetic limb.

One defense that may be used in this case is the assumption risk. The assumption of risk can be implied, when it is based on the circumstances. Burt implied this assumption of risk by knowing that riding a log into a spinning blade has a risk factor. He decided to take the risk and ride the log.

Another defense is through comparative responsibility. Comparative responsibility reduces the award to the π by the percentage of their fault. Depending upon the jurisdiction, they will use either a pure or partial comparative negligence. If it is pure, then π award is reduced by percentage of fault. If it is partial comparative negligence, π award is contingent upon Δ meeting a certain threshold percentage fault. π award is reduced by percentage of fault. Because Burt had the option of getting on the log, and the option to jump off at a safe period in time, and he knew it was dangerous (being warned by Danny); Danny made the option available and also turned on the machine. Therefore we would assign responsibility 40% to Danny and 60% to Burt. Thus, depending upon the jurisdiction, Danny would

either have to pay 40% or nothing in determining amount of fault. It is likely then Danny will arise certain defenses in light of these claims.

One point that Danny will raise in his defense is assumption of risk. By having the tourists sign the waiver which explained the possibility of harm, the tourists knew of the harm that might incur while at YOS. This would be an express assumption of risk as they signed the waiver. Also, it could be raised that Burt gave implied assumption of risk after he was told of the dangers of getting on the log, and he continued to do so. Even though he did not actually say he was "assuming the risk" his actions show that he implied assumption of risk. However, these defenses will fail as there is gross negligence on the part of Danny. Danny was reckless and failed to show the slightest care when taking into the account the safety of others. Therefore, it would be found his negligence resulted in gross negligence, and therefore assumption of risk wouldn't apply. There is a final claim Danny will face, which is against the hunters.

The hunters were crushed by the rolling theatre dome. First, the hunters are anticipated trespassers. They are anticipated because YOS knew of there presence in prior years, and thus it would be anticipated they would be returning. Danny specifically set up the debut of YOS lumber experience to coincide with hunting season, hoping some of the many hunters who frequent the forests around YOS might purchase a YOS lumber experience package while in the

area. There is a duty to warn or make safe concealed artificial condition, known to the owner/occupier, involving risk of death or serious bodily injury. Danny's breach of duty is proven by *Res Ipsa Loquitor*. Res Ipsa ("the thing speaks for itself)" is where breach of duty is shown by the act alone; the instrumentalities of the accident were in Δ's sole control, and the accident is of the type that would not normally occur absent negligence. In this case, Danny had sole control because he was the only person that could have turned off the saw and the globe rolling down the hill is not an act which naturally occurs but for the negligence of the tortfeasor. However, this is not foreseeable that the machine would jam, the extent of damage is not foreseeable either. Thus, this is like *Palsgraf*, as the injuries resulting were too far remote and unforeseeable by the Δ.

Abby has one claim, and that is against Burt for outrage. Outrage, which is also known as intentional infliction of emotional distress, is the intentional or reckless infliction, by extreme and outrageous conduct, of severe emotional distress. To bring forth a prima facie case for outrage, Abby would have to satisfy all the required elements. These include: act, intent, extreme and outrageous conduct, causation and severity.

Burt decided to go lumber surfing, which resulted in him losing a limb. This was the act that led to Abby's emotional distress. The intent element can be satisfied as the act in and of itself was reckless,

which satisfies the intent element. Burt deciding to go lumber surfing was completely outrageous and reckless. The recklessness can be shown by the fact that he lost his leg as a result. The conduct that Burt engaged in was extreme and outrageous and led to Abby's emotional distress. While the standard to satisfy this element is high, Burt's conduct was extreme enough to satisfy this element. It was seeing this act and the blood pouring out of his leg that caused Abby's emotional trauma. But for Burt's conduct, Abby would likely not have been emotionally disturbed. The trauma Abby suffered was so severe she had to seek medical treatment for post-traumatic stress disorder. She had to take anti-depressants and sleeps aids to overcome her distress.

While outrage does not apply to highly sensitive π's, Abby was reasonable in this situation to be emotionally disturbed from what she saw. She would not be considered highly sensitive in this situation.

Burt could argue that Abby was not a foreseeable π, but this argument would likely fail. Burt knew that Abby and the others were watching him lumber surf, and it was therefore foreseeable that they would be emotionally disturbed if something happened to him. It was also foreseeable that partaking in the lumber surfing would result in severe injuries. It was the sight of these foreseeable injuries that caused Abby's distress.

Chris has a claim against Abby. Where normally there is no legal duty to act in a situation where a person is in need of help (*see*

Osterlind, Theobald), there are common law exceptions. One of the exceptions is where there is a voluntary undertaking- where the Δ has volunteered to protect another from injury or to rescue another from peril. Once the rescue is undertaken, the rescuer owes a duty to the victim to perform under reasonable care. After Chris hit his head, he stated "I think I might have a concussion." Abby went over to take a look, and asserted that she knew about concussions and that Chris was fine.

When Abby took action to help Chris, she had a duty to continue helping him. She breached this duty when told him "you're absolutely fine, nothing to worry about," which negated anyone else from helping Chris. Furthermore, as pointed out from the first aid charts, Abby should have noticed that he met the symptoms of a concussion and taken the proper procedures of treatment (monitor level of consciousness, do not allow victim to fall asleep, and call 911 or take to ER). As a result of Abby's negligence, Chris sustained damages when he went into a comma for 18 months resulting in him losing his job and business. Therefore, it can be shown that although Abby had no duty to act in the first place, after she did act, she had a duty to help, and she breached that duty when she failed to help Chris. Her negligence was a proximate cause of his injuries and damages and will likely be found at fault.

Burt may also claim that Chris was negligent by not aiding in the rescue and would then hold him liable for his injuries. Generally a duty of care is owed to all foreseeable π's. Although, there is no affirmative duty for the Δ to act with exception to when one has already partially acted, when the peril was caused by the Δ's negligence, and when the Δ is a person who has solicited and gathered the public for their own profit, then they have a duty to act to aid their patrons.

Chris was asked by Danny to call "911" and Chris said no. Then Chris laid down on the floor to take a nap. In none of these facts could the court construe Chris's actions as an attempt to act on the situation. Therefore, he had not assumed the duty. Also Burt's severed limb was not caused by Chris's negligence because none of Chris's actions were a cause to the accident. Lastly, Chris was a paying tourist along side Burt. There was no relationship as a solicitor or gatherer to a patron. Because Chris does not fall under any of these three categories, he has no affirmative duty to act in aiding Burt. Therefore, he can not be held liable for Burt's injuries.

Next there may be a claim whether Danny can be held liable under negligence theory for 400 people who are unemployed after the closing's extended economic impact.

The general duty of care is owed to all foreseeable π's, where a general standard of care would be owed. The standard is what a

reasonably prudent person would exercise under the circumstances. The courts would likely not find a breach of this duty because the victims were not foreseeable. Like *Palsgraf*, the 400 people would be considered too attenuated from the accident to be foreseeable π's for the Δ.

In order for the doctrine of negligence per se to apply to this situation the π's must prove that 1) the regulation sought to protect a class of persons that they belong to and 2) the regulation sought to protect the class of risk the π's were engaged in. This case fails in the application of negligence per se as the applicable regulation promulgated by OSHA applies only to employees of the business. Abbey, Burt and Chris are not employees of Ye Olde Sawmill, therefore they cannot rely upon liability being imposed on Danny under the negligence per se doctrine.