

## Products Liability Law Daily Wrap Up, DESIGN AND MANUFACTURING DEFECTS—FOOD AND BEVERAGES—D.P.R.: Application of strict liability to non-manufactured food uncertain in Puerto Rico, (Sept. 14, 2015)

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

The question of whether the sellers and suppliers of a shrimp containing a natural toxin can be strictly liable to a restaurant diner who suffered paralytic shellfish poisoning after eating the shrimp has been certified to the Puerto Rico Supreme Court by the U.S. District Court for the District of Puerto Rico ([González Cabán v. JR Seafood](#), September 11, 2015, Gelpi, G.).

**Background.** In 2005, Luis González Cabán was hospitalized in critical condition for several days after he began to eat a restaurant meal containing a shrimp product. He was unable to completely recover and was diagnosed with incomplete quadriplegia. Medical experts eventually determined that his illness was caused by Paralytic Shellfish Poisoning from eating the shrimp, which contained a natural toxin called saxitoxin. González and family members brought various claims against three seafood suppliers/sellers, the restaurant, and their insurers, asserting, *inter alia*, that the allegedly contaminated shrimp was a defective product for which they should be held strictly liable for failure to warn and for breach of implied warranty, as well as jointly and severally liable for providing an unsafe food product. The defendants moved to dismiss, arguing that the complaint did not sufficiently allege the application of strict liability doctrine to the case because shrimp is caught in the wild, not a manufactured product, and did not establish that the defendants had a duty to test for the presence of saxitoxin.

**Strict liability/non-manufactured food product.** The district court will certify on October 1 the following question to the Puerto Rico Supreme Court: “Under the principles of product liability, is a supplier/seller strictly liable for the damages caused by human consumption of an extremely poisonous natural toxin found in a shrimp, even if said food product (and its “defect”) are not a result of manufacturing or fabrication process? If the previous question is answered in the affirmative, would it make a difference if the “defect” of the food product is readily discoverable scientifically or otherwise?”

The Puerto Rico Supreme Court last considered the issue of strict liability for food products in *Mendoza v. Cervecería Corona*, 97 P.R. 487, 499 (1969). In *Montero-Saldaña v. Amer. Motors Corp.*, 107 P.R. Dec. 452, 7 P.R. Offic. Trans. at 501 (1978), the commonwealth high court said that that “the defect which gives rise to the application of the strict liability doctrine includes both a defect in manufacture and a defect in design. A defect can arise from the designer’s mind as well as from the workman’s hand.” However, the defects alleged in the present case are products of forces of nature because saxitoxin develops from a shrimp’s consumption of dinoflagellates. Because the Puerto Rico Supreme Court has not addressed whether strict liability applies to food products that have not been manufactured or fabricated, and there is no local precedent on this issue, the district court certified the question to the commonwealth high court.

The district court observed that this issue has been considered in other jurisdictions, which generally followed one of two rules: the “foreign/natural test,” which focuses on the nature of the object in the food, or the “reasonable expectation test,” which focuses on whether a consumer would reasonably expect to find the object in the food. According to the district court, Puerto Rico law is unclear as to application of strict liability to highly improbable or unforeseeable situations. If strict liability does not apply in this case, the consumer will have the higher burden of proving his negligence claims against the defendants. The court also observed that whether the presence of saxitoxin was detectable at the time of the events in this case likely will be proven based on expert testimony and, thus, is a question for a jury to decide.

The case is No. [14-1507 \(GAG\)](#).

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Companies: JR Seafood, Inc.; Packers Provisions of Puerto Rico, Inc.; Integrand Assurance Co., Inc.; Cooperativa de Seguros Múltiples de Puerto Rico

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