

[Products Liability Law Daily Wrap Up, WARNINGS ISSUES—AIRCRAFT AND WATERCRAFT—D. S.C.: Watercraft passenger sufficiently warned against riding without protective wetsuit, \(Aug. 17, 2016\)](#)

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

A bikini-wearing personal watercraft (PWC) passenger could not bring inadequate warning and design defect claims against Yamaha for internal injuries she sustained when she fell into its jet stream because she had been adequately warned of the need to wear a protective wetsuit while on the watercraft, a federal district court in South Carolina ruled ([Hickerson v. Yamaha Motor Corp., U.S.A.](#), August 15, 2016, Childs, J.).

The passenger sustained injuries to her anus, rectum, perineum, and vagina when she fell from the rear of a Yamaha VXS WaveRunner into its jet stream when the driver accelerated the craft. At both the front and rear of the PWC were warnings of the risk of severe internal injuries from water being forced into body cavities from falling into the water or being near the jet stream if not wearing a wetsuit bottom or similarly protective clothing, and that normal swimwear would not adequately protect against forceful water entry. The passenger, who was wearing a bikini, did not read any of the warnings before riding the PWC.

The passenger brought negligent and strict liability design defect and inadequate warning claims, along with breach of warranty claims, against Yamaha Motor Corporation, U.S.A. and Yamaha Motor Co., Ltd. (together, "Yamaha"). Yamaha moved for summary judgment.

Inadequate warnings. The plain language of the warnings, which were mounted front and rear, clearly warned PWC passengers of the specific danger experienced by this passenger and provided specific recommendations on how to avoid this danger. Yamaha's evidence showed that the warnings were uniform labels developed by major PWC manufacturers and approved by the Coast Guard, and that they had also been evaluated by the Boating Safety Advisory Council. The passenger conceded that she had not read the warnings, and there was no evidence to support her assertion that the warnings could not be seen from the passenger seats. Although her expert was qualified to opine that the warnings were inadequate, his proposed alternative warnings system was excluded as unreliable because he had not tested it and he had provided no specific relevant research or studies supporting its use. Because her claim was supported mainly by the testimony of her expert, without this testimony there was no genuine issue of material fact regarding whether the product was unreasonably dangerous due to failure to provide an adequate warning.

Design defect. The court granted summary judgment to Yamaha on the strict liability, negligence, and breach of warranty claims. Under South Carolina law, a product is not defective or dangerous if a warning is given that makes the product safe for use if followed. Because the court already found that the warnings were adequate as a matter of law, it could not find that the PWC was defective or unreasonably dangerous.

The case is No. [8:13-cv-02311-JMC](#).

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Companies: Yamaha Motor Corp. USA; Yamaha Motor Co. Ltd.

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