

[Products Liability Law Daily Wrap Up, EVIDENTIARY ISSUES—AIRCRAFT AND WATERCRAFT—D. S.C.: Judgment in favor of PWC manufacturer related to warning and design defect claims affirmed, \(Dec. 19, 2016\)](#)

Products Liability Law Daily Wrap Up

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By Kathleen Bianco, J.D.

A passenger injured while riding on a personal watercraft failed to show that judgment in favor of the PWC manufacturer had been the result of a clear error of law, a federal district court in South Carolina ruled in a decision denying the passenger's request for reconsideration of the summary judgment order ([Hickerson v. Yamaha Motor Corp., USA](#), December 16, 2016, Childs, J.).

On June 30, 2012, Deborah Hickerson was a passenger on a personal watercraft (PWC), designed, manufactured, and distributed by Yamaha Motor Corp., U.S.A. and Yamaha Motor Co., Ltd. She was seated in the position closest to the rear of the watercraft. At the time of the incident, the driver of the PWC had come to a stop and then began to accelerate when the rear-seated passenger slid off the seat falling directly behind the PWC in close proximity to the jet thrust of the jet drive propulsion system. As a result of the contact with the output pressure from the jet drive, the passenger sustained serious, severe, painful and permanent injuries.

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 filed negligent and strict liability design defect and inadequate warning claims, along with breach of warranty claims, against the manufacturer. After a series of motions *in limine* were decided, the manufacturer filed a motion for summary judgment, which was granted. The injured passenger seeks reconsideration of the summary judgment order, asserting that the judgment was based on clear errors of law arising from the exclusion of expert testimony and the court's interpretation of state law dealing with design defect claims.

Denial of motion to reconsider. Upon review of the evidence, the court determined that the court had not committed any clear error of law in granting the manufacturer's motion for summary judgment [see *Products Liability Law Daily's* August 17, 2016 [analysis](#)]. As to the inadequate warning claim, it was determined that the court had not erred by excluding the passenger's expert witness testimony related to the adequacy of the provided warning [see *Products Liability Law Daily's* August 1, 2016 [analysis](#)], finding that the expert's failure to subject his proposed warning to testing or to tie his opinions regarding the adequacy of the warning to any specific research or studies was enough for the court to conclude that his testimony did not meet the required reliability standards. Furthermore, the passenger's assertion that the court failed to account for other evidence related to the sufficiency of the warning was unavailing because the referenced deposition evidence had not been raised by the passenger in her opposition to the motion for summary judgment. The court reasoned that there can be no error resulting from a failure to address testimony that was never cited by the passenger even though it was available.

As to the design defect claim, under South Carolina law, if a warning is given which, if followed, would make the product safe for use, the product cannot be deemed defective or unreasonably dangerous. Because the warning was not found to have been deficient, the passenger could not prove that the product was defective. The passenger's claim that this analysis was an incorrect interpretation of law was fruitless and amounted to a mere disagreement with the court's evaluation, which was not appropriate grounds for reconsideration. As such, the court could not find the requisite clear error or manifest injustice warranting reconsideration.

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

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

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