

Products Liability Law Daily Wrap Up, DESIGN AND MANUFACTURING DEFECTS—AIRCRAFT AND WATERCRAFT—D.P.R.: Evidence insufficient to support boating accident claims, (Mar. 16, 2015)

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By Susan Lasser, J.D.

A family's evidence of design and warning defects was insufficient to support their claims against the manufacturer of a boat's hydraulic steering system, a federal court in Puerto Rico ruled. A rod-end attachment on the system broke, resulting in an accident that left a passenger on the boat a paraplegic. He and his family brought suit against the manufacturer, but the court found their expert's report insufficient in support of the design defect claim, and that their evidence of proximate causation in support of the failure-to-warn claim was lacking (*Rodriguez v. Torres*, March 13, 2015, López, M.).

Background. On or about June 25, 2010, Bernardino Santos Rodríguez (Santos), together with Marcelo Colón López (Colón), Wilfredo O. Sandoz (Sandoz) and Martha M. Mercado (Mercado) (passengers), spent the day at Bahía Jobos, Guayama, Puerto Rico in a boat owned by Raúl Viera-Torres (Viera)(who was not on board) and was captained and controlled by Colón. The four were the only individuals aboard the vessel, which had a Teleflex hydraulic steering system, model number HC5380, with a rod-end attachment manufactured by SeaStar Solutions (formerly known as Teleflex Canada, Ltd.) in 2002 (the Teleflex). During the voyage, the rod end of the Teleflex broke and an accident occurred from which Santos sustained extensive injuries, resulting in paraplegia.

The 2000 Revision M of the SeaStar/Teleflex Installation Instructions and Owner's Manual (the manual) was in effect at the time the Teleflex was manufactured. The manual contained warnings regarding corrosion of the hydraulic hose steering, but it did not contain a specific warning as to corrosion of the rod end of the Teleflex system or about "end of life" maintenance. When Viera acquired the vessel second-hand, he did not request any maintenance log or maintenance documentation from the previous owner. Also, he did not: read the warnings and/or stickers on the Teleflex, review the manual, or perform maintenance to the vessel himself or keep a maintenance log. The maintenance to the vessel was provided by third-party mechanics that Viera retained or hired; and he had no knowledge as to what type of maintenance or services were provided to the vessel by those mechanics. Moreover, during the course of the seven to eight years that Viera had the vessel, none of the mechanics who had provided maintenance brought to his attention that the rod end of the Teleflex needed to be replaced.

On June 14, 2012, Santos and family relatives (collectively, family) filed a second amended complaint claiming both diversity and maritime jurisdiction and alleging a cause of action for products liability against SeaStar, in addition to other claims against other defendants that were later dismissed. Sometime following the accident, the Teleflex was stolen and not found. The family's liability expert, Farhad Boeshaghi (Dr. Boeshaghi), in preparation of his expert report, did not physically inspect the Teleflex which was on the vessel on the day of the accident. Instead, he physically inspected an exemplar Teleflex product for his report. The date of manufacture of the exemplar he inspected was 1998, while the original Teleflex was manufactured in 2002.

Choice of law. Although the parties agreed that the underlying claim was a maritime tort so that admiralty jurisdiction was applicable in the case, there was a dispute regarding which substantive law applied. The court determined that because it had admiralty jurisdiction, substantive federal admiralty law governed the controversies in the case. However, the court also stated that state law would supplement maritime law "[w]here maritime law is silent."

Design defect claim. The court explained that products liability claims are “part of the general maritime law,” and that the substantive law in products liability cases arising under admiralty jurisdiction are informed by the Restatements (Second) and (Third) of Torts. Notably, under the Restatement (Third), a product is defectively designed “when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller . . . , and the omission of the alternative design renders the product not reasonably safe.”

The manufacturer argued that the family’s design defect claim should be dismissed, noting that Dr. Boeshaghi’s expert report did not “identify the existence of any design defect in the Teleflex.” The court agreed, finding that in his opinion and conclusions, the expert did not identify any aspect of the design of the Teleflex system as the cause of the incident. In response, the family asserted that the expert testified in his deposition that the material used for the rod end, Stainless Steel 303, was prone to corrosion and that Stainless Steel 316 had superior resistance to corrosion in a marine environment. The court, however, observed that Dr. Boeshaghi’s expert report did not mention that the Teleflex was composed of Stainless Steel 303 or 316, let alone that Stainless Steel 303, or any other component of the Teleflex design, was not well-suited to a marine environment or that Stainless Steel 316 was a better choice for marine applications.

Further, the court said, based on the expert disclosure rule, courts routinely confine expert witnesses to testifying about the opinions contained within their original expert report or a timely-filed amendment or supplement. Additionally, the family did not offer any explanation or excuse as to why the opinions of Dr. Boeshaghi, which they relied upon as evidence for their design defect claim, were not included in his expert report. The court ruled that because Dr. Boeshaghi’s expert report was silent with regard to the use of Stainless Steel 303 and the family had not moved for leave to allow him to amend or supplement his report, he could not testify regarding his opinion about its use in the Teleflex design at trial. The court added that given the advanced stage of the litigation, the admission at trial of the expert’s opinion pertaining to the alleged design defect, which was absent from his expert report, would not be harmless. Therefore, in light of: Dr. Boeshaghi’s September 15, 2014 expert report not containing any statement from which a reasonable jury could conclude that the Teleflex was defectively designed; his statements regarding Stainless Steel 303 and 316 not being included in his report and thus inadmissible at trial; and the family not having brought any additional evidence to the court’s attention to support their design defect claim, the court dismissed the family’s design defect claim with prejudice.

Inadequate warnings claim. The court also ruled that no matter whether a standard of general maritime law informed by the Restatement (Third) of Torts or the four-prong test from non-admiralty, Puerto Rico jurisprudence standard was applied to the facts at issue concerning the family’s failure-to-warn claim, the claim failed for the same reason as did the design defect claim—the family did not present sufficient evidence of proximate causation to create a genuine issue of material fact. The court explained that as with design defect claims, in the failure-to-warn context, admiralty law has gradually transitioned from the consumer expectations test to the risk-utility test of the Restatement (Third), under which a product “is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor . . . , and the omission of the instructions or warnings renders the product not reasonably safe.” A plaintiff must show that the defect in the warnings proximately caused the injuries in question.

Under Puerto Rico law a “plaintiff alleging failure to warn must prove (1) the manufacturer knew, or should have known of the risk inherent in the product; (2) there were no warnings or instructions, or those provided were inadequate; (3) the absence of warnings made the product inherently dangerous; and (4) the absence of adequate warnings or instructions was the proximate cause of plaintiff’s injury”—generally adopting the strict products liability principles of the Restatement (Second) of Torts §402A. The court pointed out that under Puerto Rico’s strict liability, consumer-expectations based regime, “[t]he manufacturer’s liability will depend on whether the deficiencies in the warnings or instructions render the product unreasonably dangerous, that is, more dangerous than would be expected by the ordinary consumer.” Referencing the Restatement (Second), the

court noted that “strict liability[] mak[es] the seller subject to liability to the user or consumer even though he has exercised all possible care in the preparation and sale of the product.”

Nonetheless, the court found that the “practical differences” between an application of a strict liability-consumer expectations standard and a risk-utility standard with regard to both design defect and failure to warn claims are slight. The court said that in the family’s case, it was unnecessary “to parse out what material differences, if any, exist between to a failure to warn claim under admiralty and Puerto Rico law, because Puerto Rico’s strict liability regime does not obviate the requirement from admiralty law that plaintiffs must prove that the allegedly defective warnings caused the injuries in question in order to succeed on their failure to warn claim.”

The family argued that under Puerto Rico law, the element of causation necessary to support a failure-to-warn claim was satisfied by the absence of adequate warnings. The court, however, found that the cases cited by the family did not support this proposition. Additionally, even though, as the family argued, Santos was an invitee (and not the boat’s owner or operator at the time of the accident), and, thus, did not have a duty to read the manual, the court opined that there had to be some evidence tending to suggest that had better warnings been provided then the accident and consequent injuries Santos sustained would have been avoided. The court found no such evidence, and held that without this or other evidence from which a rational jury could find that the lack of warnings contributed to the incident was fatal to the family’s failure-to-warn claim. The court found no evidence from which the trier of fact could reasonably infer that the omission of additional warnings caused Santos’s damages.

Expert report. While the court found that Dr. Boeshaghi’s expert report provided sufficient evidence from which a rational factfinder could conclude that the warnings in the manual were lacking certain information regarding the risks of corrosion of the rod end of the Teleflex, as well as the preventive maintenance measures to be taken, it also found a “gap in the record” as to how the inclusion of the additional language would have prevented the injury-producing incident because the boat owner did not read the manual. Nor was there evidence of anyone else having read it. As such, the family could not defeat summary judgment of their failure to warn claim based on the proximate cause element. Aside from Dr. Boeshaghi’s expert opinion, the family failed to bring any additional evidence to the court’s attention to support their claim that the Teleflex was defective due to inadequate warnings or instructions. Thus, the court found that even assuming that Puerto Rico law governed the failure to warn cause of action, the language on which the family relied from a Puerto Rico Supreme Court opinion did not resolve the matter of proximate causation in the case.

Thus, the court held that given that the summary judgment record established that the boat owner did not read any of the warnings SeaStar provided, and given that no evidence of an alternative causal link had been identified such that the jury could rationally infer the requisite proximate causation, regardless of whether maritime or Puerto Rico law was applied, SeaStar’s motion for summary judgment was granted on the family’s failure-to-warn claim.

The case is [Civil No. 11-1602 \(MEL\)](#).

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