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Products Liability
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Non-Manufacturer Seller Dismissed From Product Liability Suit

Tantillo v. Cordis Corporation,
2004 WL 2212113 (E.D. La. 9/30/04)

On behalf of herself, her minor children, and her husband's estate, plaintiff Tammy Tantillo sued Cordis Corporation and St. Tammany Parish Hospital. She alleged that the hospital was liable under the Louisiana Products Liability Act for selling a defective filter used during a cardiovascular operation, which caused the death of her husband. Though originally filed in state court, Cordis removed to federal court, alleging that plaintiff improperly joined St. Tammany Parish Hospital to avoid federal diversity jurisdiction.

A federal court has the jurisdiction to hear a case when there is diversity jurisdiction, meaning that more than $75,000 in damages are at issue and neither any defendant nor any plaintiff are citizens of the same state. Because both the hospital and plaintiff were Louisiana citizens, this seemingly prevented the federal court from having the power to decide the case. Cordis contended, however, that plaintiff had improperly joined the hospital to keep the suit in state court. Improper joinder can arise where a plaintiff is unable to establish a cause of action against the same-state defendant. Here, Cordis argued that the hospital was improperly joined because the plaintiff had no right to sue the hospital under the LPLA.

The LPLA defines "seller" as a person or entity who is not a manufacturer and who is in the business of conveying title to or possession of a product to another person or entity in exchange for anything of value. Though the hospital was properly classified as a "seller," the LPLA only allows suit against manufacturers, not sellers. Thus, plaintiff could not recover against the hospital under the LPLA.

A non-manufacturer seller such as the hospital may be held liable in ordinary tort for negligently failing to warn consumers about the potential dangerousness of a product. Additionally, a seller may be liable if he had knowledge or should have had knowledge of a product's defect, yet failed to declare it. Here, even though plaintiff alleged that the hospital had knowledge of the defective product, she could not maintain suit against the hospital under the LPLA because it was not a manufacturer.

Because plaintiff could not proceed against the hospital under the LPLA, she sought to amend her petition to state a claim against the hospital in ordinary tort. The federal court ignored these amended allegations for purposes of retaining jurisdiction, because jurisdiction is only determined on the basis of the initial state complaint. Further, plaintiff's allegations against the hospital in her second complaint were conclusory and failed to contradict evidence that the hospital had no knowledge of the defect.

- *Sarah B. Belter*

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Design & Warning Claims Against LARS Unit Manufacturer Survive Motion To Dismiss

Laird v. Deep Marine Technology,
2004 WL 2347565 (E.D. La. 10/18/04)

Plaintiff, James Laird, was injured when a Launch And Recovery System (LARS) unit for the vessel on which he worked was dropped on him. Laird sued his employer, Deep Marine Technology, Atlas Boats, Inc., the owner of the vessel, and Ashton Marine, the owner of the docking/loading facility.

Ashton filed a third-party complaint against Harbor Branch Oceanographic Institution, Inc., the manufacturer of the LARS unit and A-frame. Ashton alleged that the unit lacked a proper collapsing mechanism and was therefore defectively designed and/or lacked an adequate warning. Ashton sought indemnity or contribution from Harbor Branch for any resulting liability against it.

Harbor Branch filed a Motion to Dismiss Ashton's claims. In it, Harbor Branch argued that Ashton failed to either state a claim under the Louisiana Products Liability Act or failed to allege facts sufficient to support a products liability claim under that act.

The elements of a products liability claim under the LPLA are: 1) that the defendant is a manufacturer of the product; 2) that the claimant's damage was proximately caused by a characteristic of the product; 3) that the characteristic made the product unreasonably dangerous because of a construction or composition defect, a design defect, an inadequate warning or nonconformity to an express warranty, and 4) that the claimant's damage arose from a reasonably anticipated use of the product by the claimant or someone else.

Chief Judge Berrigan examined Ashton's third party complaint. In it, Ashton clearly alleged that the launch was manufactured by Harbor Branch. Ashton also alleged that a design defect and an inadequate warning made the product unreasonably dangerous and caused or contributed to Laird's injuries. And, Ashton alleged that Harbor Branch should have "reasonably anticipated" that the lack of a proper collapsing mechanism on the LARS unit and A-frame would result in injury.

Accordingly, the court found that Ashton alleged each element with enough sufficiency to satisfy the pleading requirements of the Federal Rules of Civil Procedure. Consequently, the Eastern District denied Harbor Marine's Motion to Dismiss.

- *Michelle D. Craig*

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