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- No Tort Claim Against Manufacturer for Loss of Helicopter in Maritime Crash

## MANUFACTURER NOT LIABLE FOR UNSUPPORTED CLAIM OF AIRBAG SYSTEM MALFUNCTION

*Marshall v. DaimlerChrysler Motors Corp., LLC*, 2007 WL 2127586 (E.D. La. July 24, 2007)

Antonio Marshall alleged that while driving a rented 2005 Dodge Durango the vehicle suddenly and without warning went off the roadway, striking a tree at approximately 35 mph. According to Marshall, the airbag failed to deploy, and he sustained injuries to his shoulder, neck, back, and face. After the accident, Marshall did not have possession, custody, or control of the Durango or any component of its airbag system. He also did not have the vehicle or its airbag system inspected by any expert. Nevertheless, Marshall claimed that the Durango's driver's side airbag should have deployed in the accident and sued DaimlerChrysler Motors Corp., LLC, asserting that the Durango, and specifically its airbag system, was unreasonably dangerous and thus violated the Louisiana Products Liability Act (LPLA).

DaimlerChrysler filed a motion for summary judgment, asserting that Marshall could not provide any evidence supporting his claim that the airbag system was unreasonably dangerous. In opposition, Marshall represented to the court that he only claimed that the airbag system was unreasonably dangerous because DaimlerChrysler failed to provide an adequate warning and because the airbag system failed to conform to an express warranty. Marshall further asserted that with additional discovery, he would be able to acquire the evidence necessary to carry his burden of proof that the airbag system was unreasonably dangerous.

Under the LPLA, a product is unreasonably dangerous for lack of an adequate warning if, at the time the product left the manufacturer's control, the product possessed a characteristic that may cause damage and the manufacturer failed to use reasonable care to provide an adequate warning of such characteristic and its danger to users and handlers of the product. Marshall's lawsuit alleged that DaimlerChrysler did not provide an adequate warning about the airbag. The Court noted that the record contained no evidence to support Marshall's claim that the airbag system was unreasonably dangerous in design. The Court found that DaimlerChrysler could not be liable for failing to warn of a design defect whose existence has not been established by the evidence.

The Court further noted that the deadline for Marshall to file his expert's written reports had passed and that Marshall had neither submitted any expert reports nor had he requested an extension of the deadline. Marshall was precluded from raising questions of fact based on anticipated trial testimony of an expert witness whose report had not been submitted to the Court.

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The defendant also argued, and the Court agreed, that the plaintiff had put forth no evidence to establish the existence of the alleged express warranty, and the record did not contain any evidence that the Durango in question failed to comply with any National Transportation Safety Board (NTSB) and federal government safety standards. As such, the plaintiff's warranty claim also failed, as there was no evidence to establish the existence of the alleged express warranty and no evidence to establish, or even suggest, that the alleged express warranty was untrue.

– [\*Don A. Rouzan\*](#)

## NO TORT CLAIM AGAINST MANUFACTURER FOR LOSS OF HELICOPTER IN MARITIME CRASH

*Boutte v. ERA Helicopters, L.L.C.*, \_\_\_ F.R.D. \_\_\_, 2007 WL 2301288 (W.D. La. August 9, 2007)

A district judge in the Western District of Louisiana was presented with a motion to dismiss and a motion for judgment on the pleadings in a maritime products liability case. The case involved allegations of personal injury following an emergency landing in the Gulf of Mexico and subsequent rollover of a helicopter. The plaintiff alleged personal injuries resulting from the crash and sued both the operator of the aircraft, ERA Helicopters, and the manufacturer of the aircraft, Turbomeca USA, Inc. Both ERA and Turbomeca filed cross-claims against each other.

Specifically, ERA sought damages consisting of the economic loss of the helicopter and alleged that this loss was due to a defective engine. ERA brought both a tort-based cause of action and contractual-based causes of action against Turbomeca. After an unsuccessful mediation, Turbomeca instituted a declaratory judgment action seeking, *inter alia*, a ruling that ERA could not recover against it because of the maritime economic loss doctrine as set forth in *East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986). The *East River* doctrine stands for the proposition that a maritime plaintiff may not maintain a tort cause of action against a product manufacturer “when a defective product, purchased in a commercial transaction malfunctions, injuring only the product itself and causing purely economic loss” (*East River*, 476 U.S. at 859). In opposition to this motion, ERA argued that alleged post-sale negligence of Turbomeca excepted its claim from the *East River* doctrine.

After recognizing that neither the United States Supreme Court nor the United States Court of Appeals for the Fifth Circuit had expressly considered such an exception, the district court nevertheless granted Turbomeca's motion for judgment on the pleadings and dismissed ERA's claims sounding in tort. The district court reasoned that the great weight of federal jurisprudence understood the *East River* doctrine to be “a broad, unadulterated bar precluding all negligence claims for economic loss arising out of damages to a defective product.” Simply put, the district court found no equivocation in *East River*'s directive that “whether stated in negligence or strict liability, no products liability claim lies in admiralty when the only

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injury claimed is economic loss.” ERA’s contractual-based claims of breach of express and implied warranties were not implicated in the district court’s ruling.

– *L. Etienne Balart*

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*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

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