JONES WALKER

e*bulletin

PRODUCTS LIABILITY

April 2009 Vol. 98 productsliability@joneswalker.com

## IN THIS ISSUE:



---

# PLATFORM MANUFACTURER NOT LIABLE FOR ALLEGEDLY DEFECTIVE BUNK BED AND LADDER

***Hughes v. Pogo Producing Co.*, NO. 06-1894, 2009 WL 536047 (W.D. La. Mar. 3, 2009)**

On January 2, 2006, Daniel Hughes, a field superintendent assigned to work on a fixed platform rig off the coast of Louisiana, was severely injured in a fall from the top bunk bed in the living quarters of the platform. As Hughes attempted to climb down from the top bunk, he missed a step and fell backward onto a bench located in the middle of the bunkroom. Hughes filed suit against Discovery Producing Services, LLC, the owner of the rig; Pogo Producing Company ("Pogo"), the operator of the platform; Atlantia Corporation ("Atlantia"), one of the companies that allegedly manufactured the platform, including the living quarters; and ENI, the company that allegedly "ordered" the platform and, according to the plaintiffs, exercised a degree of control over the design and construction of the platform and living quarters.

Atlantia moved for summary judgment, dismissing all of Hughes' claims against it, on grounds that (1) Atlantia was not liable under Louisiana Civil Code article 2317.1 or 2322 because it did not own or control the offshore platform at Grand Isle 115; (2) under the Louisiana Products Liability Act ("LPLA"), Atlantia was not a manufacturer of the bunk bed or ladder that allegedly caused Hughes' accident; and (3) Atlantia turned the platform over to its owner in 1997.

At the time of his injury, Hughes was employed by Wood Group Production Services ("Wood Group"), a contract operator for Pogo. Pogo is the MMS operator of record for Grand Isle 115, the platform at issue in this case. In 1996, Atlantia agreed to build a production platform for British Borneo in the Gulf of Mexico. Atlantia Corporation admitted that it designed and built the jacket and decks of the platform with design input from British Borneo. However, Atlantia denied approving the details of the design of the living quarters package or the bunk beds and ladders found within the living quarters package. Rather, Atlantia alleged British Borneo specified the platform should have living quarters for eight men; therefore, Atlantia shopped for and bought an eight-man living quarters package from Total Building Systems, Inc. ("TBS").

Atlantia oversaw the welding and permanent attachment of the living quarters package to the top of the platform. Then, on September 23, 1977, Atlantia finalized the design, construction, and sale of Grand Isle 115, and turned the platform to its client, British Borneo.

JONES WALKER

e*bulletin

PRODUCTS LIABILITY

April 2009 Vol. 98 productsliability@joneswalker.com

Finding persuasive Atlantia's argument that it did not own or control the platform at the time of Hughes' injury, the court dismissed Hughes' claims arising under Louisiana Civil Code articles 2317.1 and 2322 . Because Hughes did not present evidence of the essential element of "custody" required to recover under those articles, there was no genuine issue of material fact that at the time of the Hughes' injury, Atlantia did now own or control the platform in question.

The court further found that Atlantia was not liable under the LPLA because it was not a "manufacturer" of either the bunk bed from which Hughes fell, the allegedly defective ladder, or the living quarters package in which the bunk bed and ladder were located. Because the Grand Isle 115 platform manufactured by Atlantia was not deemed by the court to be a "product" under the LPLA, there could be no liability against Atlantia. Atlantia proved that it manufactured the platform but not the bunk beds, ladder, and living quarters in question. Hughes failed to present evidence to show that there was a genuine issue of material fact; thus, Hughes' claims under the LPLA were dismissed with prejudice.

Because Atlantia did not clearly state which of Hughes' claims it sought to have dismissed on summary judgment, the Court adjudicated only Atlantia's motion to dismiss Hughes' LPLA and premises liability claims. Any remaining claims against Atlantia—to the extent there were any remaining claims in Hughes' complaint that were not resolved in this opinion—remain pending against Atlantia at this time.

For an earlier report on this case, see BUNK BED WITHOUT RAILINGS MAY BE A DEFECTIVE PRODUCT (March 2009 issue).

– *Carla T. Ashley*

---

# MANUFACTURER OF PAXIL DISMISSED FROM CASE ON LEARNED INTERMEDIARY DOCTRINE

***Allgood v. SmithKline Beecham Corp.*, No. 06-3506, 2009 WL 646285 (5th Cir. Mar. 13, 2009)**

In a one-paragraph *per curiam* opinion, the United States Fifth Circuit confirmed that Louisiana applies the "learned intermediary doctrine" to products liability claims involving prescription drugs. Thus, the court affirmed summary judgment in favor of the manufacturer of the prescription drug Paxil.

For an earlier report on the district court's opinion in this case, see CANCER PATIENT'S SUICIDE NOT CAUSED BY WARNINGS ON ANTI-DEPRESSANT DRUG (April 2008 issue).

– *Madeleine Fischer*

---

JONES WALKER

e*bulletin

PRODUCTS LIABILITY

April 2009 Vol. 98

productsliability@joneswalker.com

# LOUISIANA PRODUCTS LIABILITY ACT REMAINS EXCLUSIVE REMEDY AGAINST MANUFACTURERS OF DEFECTIVE PRODUCTS

***Bezet v. Smith & Wesson Corp.*, No. 08-685, 2009 WL 632080 (M.D. La. Mar. 11, 2009)**

***Harrington v. Gulf Stream Coach, Inc.*, No. 08-4810, 2009 WL 580432 (E.D. La. Mar. 4, 2009)**

Louisiana state and federal courts have consistently held that the Louisiana Products Liability Act ("LPLA") establishes the exclusive theories of recovery against manufacturers for damages caused by their products. Two recent products liability cases have confirmed this.

In *Bezet v. Smith & Wesson Corp.*, the plaintiff asserted a standard negligence claim as an alternative theory of liability independent of his LPLA claim. Holding that "neither negligence, strict liability, nor breach of express warranty is any longer viable as an independent theory of recovery against a manufacturer," the United States District Court for the Middle District of Louisiana dismissed all of the plaintiff's non-LPLA claims.

Similarly, in *Harrington v. Gulf Stream Coach, Inc.*, the plaintiffs sued the manufacturer of a FEMA trailer for damages resulting from an explosion. In addition to a LPLA claim, the plaintiffs also sued under other various theories of general negligence and improper design, installation, and maintenance of the premises at issue. The United States District Court for the Eastern District of Louisiana, however, held that the LPLA was the exclusive theory of recovery, and dismissed all of the plaintiffs' non LPLA claims.

Louisiana jurisprudence continues to confirm that the LPLA is the exclusive avenue to recovery in products liability actions. Plaintiffs will not be able to get around the LPLA by suing under "alternative" theories.

– *Tarak Anada*

JONES WALKER

e*bulletin

PRODUCTS LIABILITY

April 2009 Vol. 98 productsliability@joneswalker.com

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:

Leon Gary, Jr.
Jones Walker
Four United Plaza
8555 United Plaza Boulevard
Baton Rouge, LA 70809-7000
225.248.2024 *tel*
225.248.3024 *fax*
lgary@joneswalker.com

## Products Liability Practice Group

| | | |
|---|---|---|
| Ainsworth, Kevin O. | Gary, Jr., Leon | Ourso, III, A. Justin |
| Anada, Tarak | Geary, Covert J. | Quirk, Aimee M. |
| Anseman, III, Norman E. | Gomila, John G. | Rebarchak, James |
| Balart, L. Etienne | Hammett, Wade B. | Regard, Olivia S. |
| Brehm, Sarah S. | Hurley, Grady S. | Schuette, William L. |
| Casey, Jr., Thomas A. | Jenkins, R. Scott | Schulz, James R. |
| Collins, Donald O. | Joyce, William J. | Tillery, Jefferson R. |
| Crosby, Michele W. | Leitzelar, Luis A. | Truett, Amy W. |
| Curtis, Tracy P. | Lemoine, Michael G. | Valentine, Sara C. |
| Duvieilh, John L. | Liddick, Eric Michael | Veters, Patrick J. |
| Eagan, Emily Elizabeth | Lowenthal, Jr., Joseph J. | Walsh, Robert Louis |
| Eitel, Nan Roberts | Mann, Christopher S. | Windhorst, Judith V. |
| Fischer, Madeleine | Nosewicz, Thomas M. | Wynne, William P. |



To subscribe to other E*Zines, visit http://www.joneswalker.com/ecommunications.html.