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MANUFACTURER OF TASER NOT RESPONSIBLE FOR DEATH OF KNIFE-WIELDING BAR PATRON

Smith v. Louisiana State Police, 2007 WL 2903299 (E.D. La. 10/02/2007)

Darvel Smith was pronounced dead at 2:31 a.m. on February 13, 2007, after a struggle with Louisiana State Police officers outside a French Quarter bar. Earlier that night, Smith became ill while in the bar and an ambulance was called. As he was being examined by paramedics, Smith wielded a knife and began waving it violently. The police were called for assistance and a struggle between the officers and Smith ensued, during which Smith was stunned once in the back with a TASER X 26. At that point, Smith ceased resisting and was handcuffed by the officers. Smith subsequently went into cardiac arrest and was rushed to Touro Hospital, where he was pronounced dead.

Smith's parents brought a wrongful death action against the Louisiana State Police, the Trooper who administered the TASER stun, and Taser International, Inc. seeking damages based on numerous theories, including violations of constitutional rights, assault and battery, negligence, intentional infliction of emotional distress, and products liability claims for negligent failure to warn, negligent design, assembly or distribution, strict liability for manufacturing and design defects, and for breaches of express and implied warranties. Taser International Inc. filed a motion for summary judgment seeking dismissal of all claims against it. The Smiths did not file an opposition to the motion. Chief Judge Helen Berrigan of the United States Federal Court, Eastern District of Louisiana granted summary judgment in favor of Taser. Applying the applicable Louisiana products liability law, Judge Berrigan held that the Smiths failed to prove a genuine issue of material fact regarding whether the product manufactured by Taser caused or contributed to the death of their son, Darvel Smith.

Under Louisiana's Products Liability Act, "the manufacturer of a product shall be liable to a claimant for damage proximately caused by a characteristic of the product that renders the product unreasonably dangerous when such damage arose from a reasonably anticipated use of the product by the claimant or another person or entity." La. R.S. § 9:2800.54. Taser argued in its motion that the Smiths' claims must be dismissed because they could not prove that the single TASER stun administered by the officer caused or contributed to Smith's death. Additionally, Taser's motion included an affidavit from the pathologist with the coroner's office which explicitly stated that "the TASER X 26 used by the Louisiana State Police did not cause or contribute to Mr. Darvel Smith's death." Rather, the finding of the coroner was that Smith's death resulted from "excited delirium and the presence of cocaine in his system." Taser also claimed that no medical study had ever proven that their product, the TASER X 26, a single touch stun, is capable of causing ventricular fibrillation, which was the ultimate cause of Smith's

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death. In Taser's view, this evidence, coupled with the Smith's failure to present any affidavits or other evidence in opposition, prevented the Smiths from prevailing on any claims against Taser. The Smiths simply did not, or could not, prove that the death of their son was proximately caused by TASER X 26.

Here, the Smiths failed to meet their burden under the Louisiana Products Liability Act because they did not prove that the TASER X 26 caused or contributed in any way to their son's death. The product was used for its reasonably anticipated use, namely by a police officer to subdue a perpetrator with a single touch stun. The Smiths could neither prove that the TASER X 26 used in this manner was unreasonably dangerous nor that its use contributed to or caused their son's death. This case reiterates that the burden to prove a causal connection between the damages alleged and the purportedly unreasonably dangerous product rests with the plaintiff. Without any evidence of this causal connection a plaintiff cannot prevail under the Louisiana Products Liability Act.

– *Wade B. Hammett*

FAILURE TO TEST SCAFFOLDING CONSTITUTES DESIGN DEFECT

Mazant v. Visioneering, Inc., No. 06-30758, 2007 WL 2908082 (5th Cir. 10/04/2007).

Paul Mazant, a production supervisor for Lockheed Martin Manned Space Systems, suffered injury when the scaffolding on which he was standing partially collapsed. Visioneering, Inc. designed and manufactured the "Unit 5 intertank platform," a form of scaffolding used by Lockheed, at Lockheed's behest. Lockheed awarded the design and fabrication contract to Visioneering. Accordingly, Visioneering was to design and manufacture the scaffolding in accordance with Lockheed's Statement of Work ("SOW"). Visioneering contacted Lockheed on several occasions about the need for point-load testing. On May 23, 2002, Kevin Yakes, Visioneering's corporate representative, e-mailed Lockheed and further recommended point-load testing. Lockheed responded in an e-mail that simply stated "Agree." Ultimately, neither Visioneering nor Lockheed performed "point-load" testing to determine the platform's strength before use, which, according to the Plaintiffs' expert, would have shown that the scaffolding panel had insufficient strength.

Mazant filed an action under the Louisiana Products Liability Act ("LPLA") in Louisiana state court. The suit was removed to the United States District Court for the Eastern District of Louisiana, where it proceeded to a jury trial. At trial, the jury determined that Visioneering's design should have included point-load testing, that Lockheed's failure to perform the point-load testing was a "superceding or intervening cause of the accident," and that Visioneering was 30 percent at fault.

Visioneering appealed the jury's finding to the Fifth Circuit Court of Appeals. Visioneering argued that the jury's conclusion that the failure to perform the point-load testing was a superceding or intervening cause which would preclude

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judgment against Visioneering and conflicted with the jury’s assessment of 30 percent of the fault to Visioneering. In a *per curiam* opinion, the Fifth Circuit affirmed the jury’s finding against Visioneering.

The trial court presented the jury with “special verdict” interrogatories, a series of specific questions to aid the jury in reaching a legal conclusion. The Fifth Circuit noted that a reviewing appellate court should attempt to reconcile the jury’s finding before disregarding the jury’s conclusion. Here, the jury concluded that the failure to perform the point-load test was an intervening cause of Mazant’s injury. The jury also apportioned 30 percent of the fault to Visioneering. The Fifth Circuit disagreed with Visioneering that the jury’s findings were inconsistent. Instead, the Fifth Circuit noted that “a reasonable jury could have determined from the evidence in the record that Visioneering shouldered part of the design responsibility” for the scaffolding project, “and this responsibility included the performance of the point-load test.” The jury, in the Fifth Circuit’s view, could reasonably conclude that the failure to conduct the point-load test was an intervening cause, “but not a *separate, independent, superseding* cause that would vitiate Visioneering’s liability.” The Court reasoned that intervening causes are not superseding causes when the intervening cause is foreseeable. Here, Visioneering had a duty to provide a platform that was not unreasonably dangerous in design, which “included the foreseeable risk that Lockheed would subsequently fail to perform the necessary point-load test, and that failure would lead to Paul Mazant’s injury.” Since Visioneering knew of the importance of such a test of which it recommended to Lockheed, the Court concluded that Visioneering could foresee the risk of Mazant’s injury. Therefore, the jury could properly apportion liability to Visioneering for the failure to perform the point-load test.

Mazant reveals that juries — and courts — are willing to assign liability under the LPLA for a design defect where a manufacturer fails to perform a test that would likely prevent foreseeable harm. In *Mazant*, the Fifth Circuit noted that Visioneering did not need to “rigidly comply with Lockheed’s SOW;” indeed, Visioneering’s failure to perform the point-load test constituted negligence that rendered the Unit 5 intertank platform unreasonably dangerous in design. Therefore, manufacturers should be careful to insist upon proper testing, especially where that testing may prevent a foreseeable risk of injury, in order to avoid liability for a defective product.

— [*Eric Michael Liddick*](#)

BACKFIRING RIFLE CASE HEADED TO TRIAL ON ISSUE OF ADEQUACY OF WARNING

Wilson v. Thompson/Center Arms Co., 2007 WL 2809991 (E.D.La. 09/25/2007)

Herbert “Sonny” Wilson was injured while using a Black Diamond muzzle-loader rifle manufactured by Thompson/Center Arms Company. Shortly after Wilson fired the rifle, it backfired violently and discharged several metal pieces into Wilson’s eye area, causing severe injuries. Before the accident, Wilson had installed a scope on the rifle. On the night before the accident, he disassembled, cleaned, and reassembled

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the rifle using the boxend breech plug wrench (“boxend wrench”) provided with the rifle to tighten the breech plug.

Wilson claimed that the use of the boxend wrench made it difficult for him to achieve proper alignment of the breech plug threads with the barrel breech end threads, a condition referred to as cross-threading. Wilson alleged that the cross-threaded condition of the breech plugs enabled Wilson to apply firm force to tighten the assembly without causing any stripping of the threads, thereby causing Wilson to believe the breech plug was properly inserted when it, in fact, was not. Wilson claimed that this improper assembly caused the rearward expulsion of the metal pieces of the rifle that struck Wilson’s face and eye area. Wilson contended that the use of an inline breech plug wrench (“inline wrench”), which is not included with the rifle, would have prevented the incorrect assembly and Wilson’s resulting injuries. Though the inline wrench was formerly supplied with the Thompson rifle, it subsequently became available only as an accessory that could be purchased.

Wilson sued Thompson under the Louisiana Products Liability Act (“LPLA”) asserting both defective design and inadequate warning claims. Though the Court addressed whether the rifle possessed a characteristic that may cause damage, i.e., the potential for cross-threading or misalignment, whether Wilson should have noticed the misalignment, and whether the misalignment of the breech plug was open and obvious, its primary focus was on the adequacy of the owner’s manual warning.

Although there are a number of considerations in determining whether a warning is adequate, the LPLA’s definition of “adequate warning” includes both alert and instruction components. The warning must both lead the ordinary user or handler to contemplate the danger in using the product (the warning component) and to either use it safely (the instruction component) or to decline to use it.

While the Court ultimately found that an issue of material fact existed as to whether Thompson’s warning was adequate, it noted that the manual failed to contain a warning that conveyed to the user that injury or damage could result, and failed to adequately instruct the user on the safe operation of the firearm, specifically, the proper installation of the breech plug. The Court also found that while the manual warned against cross-threading, and instructed against using a boxend wrench in favor of an inline wrench on a scoped rifle, the manual made no mention of the potential for bodily harm that could result from using a boxend wrench on a scoped rifle.

This case is important because it demonstrates that inherent in the definition of an “adequate warning” is the requirement that a manufacturer alert a potential user to the intensity of the potential danger and the consequences in using any product.

– [*Sarah B. Belter*](#)

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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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