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RETAILER WHO ASSEMBLED COMPONENT PARTS OF MOBILE HOME HELD TO BE A MANUFACTURER

***Credeur v. Champion Homes Of Boaz, Inc.*, 2008-1096 (La. App. 3 Cir. 3/4/09), 2009 WL 530075**

Mitchell and Naomi Credeur bought a mobile home from Tatman's in 1999. Seven years later they discovered a corner of their ceiling was discolored, soft, and damp. Further investigation revealed mold and moisture throughout the home, which, the family claimed, had caused them health problems. The Credeurs sued Tatman's and Champion, the original manufacturer of the home.

Under Louisiana law, a purchaser may sue the seller of a defective product, but the time period allowed for filing suit differs depending upon whether the seller was in good faith (did not know the product was defective) or in bad faith (knew of the defect). A purchaser has four years from the date of delivery to sue a good faith seller. When the seller is found to be in bad faith, a purchaser has one year from the date of the purchaser's discovery of the defect to sue. Because the Credeurs discovered the defect in their mobile home seven years after purchase, their suit came too late if Tatman's was considered to be in good faith, but was timely if Tatman's was in bad faith.

Tatman's argued that the Credeurs had no evidence that Tatman's knew of any defects in the home when it was sold and, thus, the suit by the Credeurs against Tatman's came too late. The Credeurs argued that, regardless of what Tatman's actually knew, Tatman's should be presumed to be in bad faith, triggering the extra time period for suit. The Credeurs reasoned that because Tatman's had not simply sold the mobile home but had installed component parts of the home, Tatman's was the equivalent of a manufacturer. Under Louisiana law, a manufacturer is irrebutably presumed to know of the defects in any product it makes.

The trial court held that Tatman's was a good faith seller and dismissed the Credeurs' suit. The Credeurs appealed to the Louisiana Third Circuit Court of Appeal. The Third Circuit reversed, holding that because Tatman's received and installed component parts of the mobile home, it became "the actual maker of the complete mobile home the Credeurs

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received." Accordingly, in the Third Circuit's eyes, Tatman's was *presumed* to know of the defects in the home, regardless of its *actual* knowledge. Under this standard, Tatman's was a bad faith seller and could be sued within one year of the Credeur's discovery of the defect, regardless of when they bought the home.

The court's decision that a retailer can in some circumstances be held to the same standard as a manufacturer was an issue that had not previously been decided by the Third Circuit. The opinion raises many questions, not the least of which is whether the installation of any component part renders a retailer a manufacturer of the "whole," and, if not, what extent of assembly or installation is required? Also, how, if at all, is the Louisiana Products Liability Act applicable to a seller who is treated as a manufacturer by reason of assembly or installation of component parts? We will keep readers advised of developments on these questions in the event of further review of this case by the Louisiana Supreme Court or development of similar issues in Louisiana's other courts of appeal.

– *Madeleine Fischer*

INJURED WORKER'S CLAIMS AGAINST MANUFACTURER OF AERIAL LIFT FALL FLAT

***Barker v. Rental Service Corp. of Southwest Louisiana, Inc.*, No. 06-0822, 2009 WL 959988 (W.D. La. 4/8/09)**

On April 28, 2005, Chris Barker was injured on the job when he fell from an aerial work platform called a scissor lift. On April 27, 2006, he filed a products liability suit in state court against JLG Enterprises ("JLG"), whom he incorrectly believed was the manufacturer of the lift, and Rental Service Corporation of Southwest Louisiana ("RSC"), who leased the lift to his employer. The case was removed to federal court. During depositions, Barker learned that Skyjack Enterprises ("Skyjack") was the actual manufacturer of the scissor lift, and, on September 17, 2007, 17 months after the suit was filed, and more than 2 years after the accident that caused his injuries, Barker added Skyjack as a defendant to the suit. Before adding Skyjack, Baker voluntarily dismissed JLG from the suit and RSC was dismissed with prejudice by the court in July of 2007. The dismissal of these parties would prove fatal to Barker's efforts to sue Skyjack.

Under Louisiana law, an injured person has one year to sue a party he believes caused his injuries. Although Barker sued JLG and RSC within this one year period, there was no doubt that Skyjack was brought into the suit more than two years after Barker's fall. Therefore, to avoid dismissal, Barker needed to prove the one-year time period to sue was somehow interrupted or suspended. Barker first argued that the time period was interrupted because Skyjack, JLG, and RSC were all solidary obligors (each defendant could be held liable for the whole of the Barker's damages). Under Louisiana law, the timely filing of suit against one solidary obligor interrupts the time period to sue against them all. He next alleged that RSC's employees concealed Skyjack's identity as manufacturer of the lift. Therefore, he argued that the clock to sue Skyjack should not start ticking until he discovered Skyjack's identity. Lastly, he argued that his claims against Skyjack

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related back to his claims against RSC, because the two entities were closely related, but he presented no evidence to support this claim.

Judge Dee D. Drell rejected each argument and dismissed all of Barker's claims against Skyjack. Judge Drell held that the dismissal of all other defendants eliminated any possible solidarity between them. Judge Drell further found that the claims against Skyjack did not relate back to the original suit because Skyjack and RSC were not closely related. Lastly, Judge Drell found that Barker should have been more diligent in determining the identity of the manufacturer of the lift, and, therefore, the time to sue was not interrupted.

– *Wade B. Hammett*

PAPER MACHINE STRAPPER MANUFACTURER HEADED FOR TRIAL IN CRUSHING DEATH CASE

***Stogner v. Nielsen and Hiebert Systems, Inc.*, No. 07-4058, 2009 WL 928907 (E.D. La. 4/2/09)**

Stacey Stogner was injured while working as a scaleman on a machine connected to a strapper at the paper mill where he worked. The strapper, manufactured by Illinois Tool Works ("Illinois Tool"), affixed metal straps to rolls of paper. Stogner turned the strapper service switch to the "on" position, which should have de-energized the machine; however, the strapper did not properly de-energize, and Stogner was pinned between a large roll of paper and the frame of the strapper. Stogner died several days later.

Stogner's widow asserted product liability claims against Illinois Tool, and six other defendants, alleging the strapper was unreasonably dangerous at the time it was manufactured. Illinois Tool filed a motion for summary judgment arguing that plaintiff could not prove the allegedly dangerous characteristics existed when the machine left Illinois Tool's control. Specifically, Illinois Tool contended that the strapper's interlock system (which was supposed to de-energize the machine when switched on to "service mode") was defectively designed and the chute leading to the strapper was replaced with a different type of chute.

The district court denied the motion for summary judgment. The court found first that the chute replacement did not affect the dangerousness of the strapper and did not have any effect on Illinois Tool's liability. Second, the court found that there was a genuine issue of material fact concerning the design of the interlock system. Stogner's widow introduced expert testimony stating that the interlock system was defectively designed and that an alternative design would have been easy and inexpensive to implement. In addition to the expert's testimony about the defective design, other employees stated that the strapper interlock was never connected to the strapper's conveyor system and could not have prevented the accident even if it had been functioning properly.

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The court found sufficient evidence that the strapper might have contained one or two dangerous features at the time it left Illinois Tools' control. If a jury were to believe the plaintiff's expert, it could reasonably find that Illinois Tool defectively designed the interlock or that it was never connected to the machine's conveyor. Either way, there was a genuine issue of material fact.

– *Sarah S. Brehm*

LOUISIANA STATE COURT HOLDS *EAST RIVER* NO BAR TO ECONOMIC CLAIM MADE UNDER REDHIBITION THEORY

***Tucker v. Petroleum Helicopters, Inc.*, 2009 WL 792188, 2008-1019 (La. App 4th Cir. 3/23/09)**

This case involved claims by the helicopter owner, Petroleum Helicopters, Inc. ("PHI"), arising out of a crash of a helicopter manufactured by Bell Helicopter Textron, Inc. ("Bell"). PHI sought damages in the form of tort indemnity for damages to a passenger that filed suit as well as recovery for the loss of the aircraft. This appeal focused solely on the claim for the loss of the helicopter. In defense, Bell raised two main issues: an express, written waiver of warranty, and the maritime economic loss doctrine as set forth in *East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986). The rule of *East River* holds 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. The trial court had awarded PHI damages after finding that the helicopter crashed due to a redhibitory defect in the tail rotor assembly.

The court of appeal easily dismissed the challenge made by Bell to the trial court's finding that Bell had failed to prove that PHI had expressly waived all warranties. With respect to the claim for the loss of the helicopter, Bell argued that under *East River*, this claim could not be brought under state law theories of negligence or strict liability. The court of appeal first concluded that PHI's redhibition claim—made under the Louisiana Civil Code—was a permissible state law supplement to maritime law, citing *Green v. Industrial Helicopters, Inc.*, 593 So.2d 634 (La. 1992). The court next characterized PHI's redhibition claim as a claim in warranty, *i.e.*, contractual in nature, and not subject to *East River*'s bar to the tort-based negligence/strict liability products claims. Thus, the court of appeal endorsed the fashioning of a contractual remedy in redhibition outside of the written contract between the parties and concluded that this "contractual claim" was not subject to *East River*'s preclusion of tort-based remedies. Based upon the earlier affirmation of the trial court's ruling that PHI had not waived any warranties, the court of appeal affirmed the trial court's award of damages to PHI.

– *L. Etienne Balart*

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HIP SCREW PLAINTIFF FAILS TO MAKE HIS CASE AGAINST SCREW MANUFACTURER

***Reed v. Biomet Orthopedics, Inc.*, No. 08-30893, 2009 WL 890607 (5th Cir. 4/1/09)**

In June 2004, Herman Reed fractured his hip in an automobile accident. His orthopedic surgeon implanted a Vari-Angle Hip Screw device allegedly manufactured by Biomet Orthopedics, Inc. ("Biomet"). Eight months after the surgery, however, the device fractured, and Reed was forced to undergo a second hip surgery.

Reed brought a claim against Biomet under the Louisiana Products Liability Act in United States District Court for the Western District of Louisiana. Biomet moved for summary judgment and submitted affidavits from experts who claimed that the device did not suffer from any defects. Reed's surgeon also testified that the device most likely broke because Reed failed to comply with her instructions to limit the weight placed on his hip. Reed countered by disputing that his physician had properly instructed him on how to use the device. Finding that Reed had failed to show any evidence of a defect in the device's "construction or composition," or that there was a breach of an "express warranty," the district court dismissed Reed's claim.

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed, noting that regardless of whether Reed did or did not follow his surgeon's instructions, Reed had produced no evidence that the device had a defect. Reed did not appeal the breach of express warranty finding of the district court. Accordingly, Reed's case was dismissed in its entirety.

– *Tarak Anada*

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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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