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TASER MANUFACTURER LET OUT OF SHOOTING DEATH CASE

Gosserand v. Parish of Jefferson, 2006 WL 3247113 (E.D. La. 11/7/06)

In September 2004, a Jefferson Parish Sheriff's Deputy responded to a call where he found Maurice Gosserand with a metal pipe in his hand. The deputy ordered Gosserand to drop the pipe, and he refused, at which time the deputy discharged his TASER device two times and immobilized him. Gosserand managed to remove the TASER wires, jumped to his feet, hit the deputy with the pipe, and fled on foot. He was intercepted by two other law enforcement officials, who again ordered him to drop the pipe. Instead, Gosserand swung the pipe at the officers, and one of the officers shot him three times. The autopsy report indicated that Gosserand died from multiple gunshot wounds.

In addition to the officers involved, the Sheriff, and the Parish, Gosserand's family sued the manufacturer of the TASER gun, TASER International, Inc., alleging its fault under the Louisiana Product Liability Act. Plaintiffs alleged that TASER failed to provide adequate warnings and training regarding its product. TASER filed a motion for summary judgment, which was granted by the Judge Feldman of the United States District Court for the Eastern District of Louisiana.

In support of its motion for summary judgment, TASER produced evidence, including the autopsy report, that stated that Gosserand was killed by the gunshot wounds. Nowhere was it suggested that the TASER was the cause of or contributed to his death. The plaintiffs offered no evidence to the contrary and, indeed, did not refute TASER's argument that the gunshot wounds were the cause of death. Instead, plaintiffs asked the court to delay its decision until they received responses from outstanding discovery to TASER concerning TASER's training policies and actions. Plaintiffs argued that these responses would establish issues of material fact. The Court disagreed, finding that TASER's training policies and actions had no bearing on the cause of death and, because the plaintiffs could not carry their burden of proof with respect to causation, summary judgment was warranted.

Instead of refuting TASER's evidence as to the cause of death, plaintiff offered conjecture. Specifically, plaintiff speculated that if the deputy that shocked Gosserand had been better trained by TASER, he would not have over-relied on the TASER as a means of restraining Gosserand, and instead would have used another method. Plaintiffs implied that if the deputy had used another method to restrain Gosserand, the deputy would have been successful in restraining him, and Gosserand would not have been able to make the threatening overtures to the other officers which eventually resulted in his being shot. Calling this line of reasoning "naked

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speculation,” the Court found that it was insufficient to defeat TASER’s summary judgment motion. Plaintiffs’ theory on causation, unsupported by any evidence, was insufficient to overcome TASER’s uncontested evidence of the cause of Gosserand’s death.

– [*Emily E. Eagan*](#)

AUTOPILOT MAKER ESCAPES PUNITIVE DAMAGES UNDER MARITIME PRODUCTS LIABILITY LAW

Boucvalt v. Sea-Trac Offshore Services, Inc., 2006-0103 (La.App. 5 Cir. 10/17/06)
___ So.2d ___

A yacht owner and his passengers were injured when the forty-foot yacht they were cruising in struck a well jacket in the Gulf of Mexico owned by Chevron, USA. None of the plaintiffs were seamen. Suit was filed in Louisiana state court against a number of defendants, including Raymarine, Inc., the manufacturer of the yacht’s autopilot which was alleged to have malfunctioned. Plaintiffs alleged a cause of action against Raymarine for gross negligence and sought recovery of punitive damages under general maritime law.

Raymarine filed a motion for summary judgment seeking to dismiss the punitive damage claims. Raymarine argued (1) that Louisiana law does not provide for the recovery of punitive damages under negligence, products liability, redhibition or warranty actions; (2) that punitive damages were not recoverable under the general maritime law; and (3) that plaintiffs had not alleged acts of intentional or reckless conduct amounting to gross negligence. The trial court granted Raymarine’s motion for summary judgment.

On appeal, the plaintiffs argued that the trial court improperly placed the burden of proof on plaintiffs to demonstrate gross negligence. In affirming the dismissal of the claims for punitive damages, the court acknowledged the split in Louisiana circuit courts of appeal as to the availability of punitive damages to non-seamen under general maritime law, with Louisiana’s First and Third Circuits recognizing a cause of action and the Fourth Circuit not recognizing a cause of action. Rather than answer the question in the Fifth Circuit where the *Boucvalt* case was pending, the court chose to affirm the trial court’s finding that the allegations of the petition did not as a matter of law rise to the level of gross negligence. Thus, the court of appeal affirmed a summary dismissal of gross negligence allegations.

– [*L. Etienne Balart*](#)

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CAR CRASH DEATH CASE DISMISSED FOR PLAINTIFF'S FAILURE TO PRODUCE EXPERT REPORT

Palmer v. State, ex rel. Dept. of Transp. and Development, 2005-2632 (La.App. 1 Cir. 11/3/06), ___ So. 2d ___

This case involved a vehicle accident in which decedent was thrown from his 1994 Pontiac Grand Am after it rolled over several times. Decedent's mother, Donna Palmer, filed suit against defendants including General Motors Corporation. Palmer sued General Motors, the car manufacturer, alleging that General Motors was liable for design and manufacturing failures including: failure to design and manufacture a vehicle that would not roll over; failure to design a crashworthy vehicle; failure to design and manufacture an adequate restraint system including door latches and safety belts to prevent ejection of occupants during roll over. General Motors filed a motion for summary judgment asking to be dismissed from the lawsuit. Palmer was granted a four month extension to obtain an expert report in order to respond to General Motors' motion. Palmer did not produce an expert report, and the trial court granted the motion and dismissed Palmer's claims. Palmer appealed, and the issue framed by the court was whether or not Palmer was given adequate time to conduct discovery prior to granting the motion. The Court of Appeal of Louisiana, First Circuit found that Palmer did have adequate time to conduct discovery, and ruled the dismissal of General Motors proper.

Louisiana law requires that the parties be given the opportunity to conduct adequate discovery prior to the granting of a motion for summary judgment. However, the law does not require the motion to be delayed indefinitely if parties do not diligently pursue the opportunity for discovery. The court noted several factors weighing against Palmer's claim of inadequate time to conduct discovery. First, the court found that General Motors motion for summary judgment was filed some five years after the Petition against them was filed. In the meantime, General Motors had filed numerous discovery requests and motions to compel discovery in order to narrow the scope of Palmer's allegations. Additionally, Palmer did not submit anything in opposition to General Motor's motion, and she neither verbally nor formally requested a continuance. Finally, Palmer had been granted a four month extension to obtain an expert report, yet failed to do so. While Palmer did assert that she had received a verbal report from her expert just two or three days before the hearing, she did not produce a written report or affidavit in opposition to General Motor's motion.

This case illustrates the principle that a party's failure to obtain an expert report may be fatal to their claims when they have been afforded an adequate opportunity to perform discovery, whether they avail themselves of the opportunity or not.

— [*Bernard H. Booth*](#)

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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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