JONES WALKER

E*ZINES
May 2006 Vol. 64

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IN THIS ISSUE:

CHILD-RESTRAINT SEAT MAKER MUST DEFEND DESIGN AT TRIAL; WARNINGS CLAIM DISMISSED

***Fielder v. Graco Children's Products, Inc.*, 2006 WL 725099 (W.D. La. 3/20/06)**

On March 2, 2004, Angela Fielder and her 20-month old twin daughters, Arielle and Michala were involved in a fatal car accident that resulted in the death of Angela and one of the twins, Arielle. Both twins were in child-restraint seats manufactured by Graco Children's Products. After arriving on the scene, the investigating officer observed that the harness tie and the left prong of the crotch buckle on Arielle's car seat were unlatched.

On August 15, 2004, plaintiffs brought suit against Graco seeking damages under the Louisiana Products Liability Act ("LPLA"). They alleged that the child restraint seat's defective design and Graco's failure to warn of the hazards associated with the use of the seat caused the injuries that resulted in Arielle's death.

Graco filed a motion for summary judgment on all of plaintiffs' claims. It first argued that plaintiffs could not show a causal connection between the alleged defects and the characteristics of the seat and the injury sustained by the deceased child. To rebut Graco's arguments, plaintiffs introduced habit evidence that Angela Fielder always wore her seatbelt and that Arielle Fielder had mastered escaping her car seat. Plaintiffs also relied upon observations and conclusions of the state trooper who responded to the scene, testimony from the plaintiffs' expert who found evidence of a defect in the buckle, and the absence of Graco's pinch force test documentation for the particular seat model. Plaintiffs' evidence convinced the court that there was a genuine issue of material fact as to causation.

Next, Graco argued that plaintiffs could not establish that, at the time of the accident, the child-restraint seat was being used in a reasonably anticipated manner. Graco argued that Angela Fielder was driving the vehicle at a high

speed without wearing a seatbelt, while turned toward the backseat and using one or more hands to buckle Arielle into a restraint. The record revealed, however, that the children's father placed them in their seats before leaving the house. It also showed that some of the buckles on Arielle Fielder's seat were fastened. It further established that Michala Fielder remained strapped in her seat during and after the accident. Because of these facts, the court denied the motion for summary judgment on this issue.

As its last argument, Graco asserted that plaintiffs could not establish that the warning on the child-restraint seat was inadequate. Graco argued that the danger that the child-restraint seat created was open and obvious, known by the plaintiffs, and warned about in the instruction manual.

On this issue, the court found that both Thomas and Angela Fielder were aware of the dangers associated with operating a vehicle while their daughters were not properly secured. In addition, Thomas Fielder testified that he knew the children were capable of escaping the safety restraint seats. Therefore, the court found that Graco had no duty to warn of the obvious risk of driving while attempting to re-secure a child. The court granted Graco's motion on this issue. Accordingly, Graco's motion for summary judgment was denied in part and granted in part.

—*Michelle D. Craig*

THIRD CIRCUIT CLARIFIES DISTINCT LEGAL THEORIES IN CRUISE SHIP LIGHTING CASE

***Cunard Line Ltd. Co. v. Datrex, Inc.*, 2005-1171 (La.App. 3 Cir. 4/5/06), 2006 WL 861631**

In 1997, Datrex, a manufacturer of lighting systems, sold several systems to Cunard for use on its cruise ships. Cunard agreed to pay Datrex an additional fee for installing the systems and/or for Datrex to train Cunard employees to install the systems. However, in the end Cunard employees installed the systems without any assistance or training from Datrex.

Cunard became immediately aware of problems with the lighting systems, including shorting out. Datrex made some attempts at repair, but came to the conclusion that the problems were caused by improper installation and ceased trying to repair the systems in 1999.

In 2002, Cunard filed suit against Datrex contending that the system was both defectively designed and installed, and as a result was not suitable for use on

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E*ZINES
May 2006 Vol. 64

Products Liability
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its cruise ships. Datrex responded by arguing that Cunard's suit was prescribed (time barred) by the one year statute of limitations applicable to claims in redhibition and tort.

The facts of this case raise a tangle of possible theories under Louisiana law. The Louisiana Products Liability Act (La. R.S. 9:2800.51 *et seq.*) states that it "establishes the exclusive theories of liability for manufacturers *for damages caused by their products*." The one exception to this rule is when such damages include damages to the product itself and economic loss arising from a deficiency or loss of use of the product when covered by another special Louisiana law called "redhibition".

"Redhibition" is a legal theory associated with the sale of a product. The redhibition laws are set forth in the articles of the Louisiana Civil Code. To simplify somewhat, the redhibition articles provide that the seller of a product warrants that it will not contain defects which are so severe that they render the thing useless or diminish its usefulness to the extent that a buyer would not have purchased the product. If a buyer can prove that the thing he bought has a redhibitory defect, then in some instances he may be awarded attorneys fees, in addition to the purchase price and damages flowing from the defect. Through case law, the redhibition remedy has been extended to apply to manufacturers of products, even when the buyer purchases the product through a middleman, rather than directly from the manufacturer.

The redhibition articles have existed in one form or another for well over a century in Louisiana and have been viewed as straddling the divide between tort and contract. The Louisiana Products Liability Act, a tort law, was enacted in 1988. Because of the "exclusivity" provision in the LPLA, Louisiana litigants have tussled with the distinction between redhibition and the LPLA for almost two decades. Actions brought under either redhibition or the LPLA have a one year statute of limitations.

In this case, Cunard attempted to avoid the one year statute of limitations by arguing that they were suing under a contract theory, rather than redhibition or any other tort theory. The statute of limitations for a breach of contract claim is 10 years. Because Cunard received the lighting systems in 1997, their suit in 2002 was too late for redhibition, but would have been timely as a contract action.

Cunard contended that its suit was brought under Article 2524 of the Civil Code which states that, "The thing sold must be reasonably fit for its ordinary use." Article 2524 further provides: "If the thing is not so fit, the buyer's rights are governed by the general rules of [contracts]."

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Article 2524 was added by the Louisiana legislature by Act 841 of 1993, effective January 1, 1995. Article 2524 falls within a chapter of the Civil Code entitled "Redhibition". However, the Third Circuit in its opinion explained that Article 2524 was in effect a different animal from traditional redhibition. A traditional redhibition claim focuses on a "defect" in the product, whereas a claim under Article 2524 is based upon the product's fitness for ordinary use.

Although Cunard argued that the lighting systems were "unsuitable for ordinary use in a cruise ship", the Third Circuit found that, "Regardless of the language in which Cunard couched its cause of action, it is evident that Cunard's cause of action arose out of the allegedly defective condition of the [lighting] systems. Importantly, Cunard did not contend that a properly functioning Datrex LLL system would fail to meet either IMO requirements or Cunard's needs or purposes." In short, Cunard was not permitted to transform through mere verbiage, what was in essence a claim, based on a defective product (redhibition) into a contractual warranty claim under Article 2524.

Because the claim was found to be a redhibition claim, it was subject to a one year statute of limitations and was dismissed as untimely filed.

—Madeleine Fischer

TOXIC SUBSTANCES CONTROL ACT DOES NOT PREEMPT LPLA IN PCB LEAK CASE

***Stewart v. Rheem Mfg. Co.*, 2005-0726 (La.App. 3 Cir. 3/29/06), ___ So.2d ____**

Plaintiffs brought suit against the owner of their leased home and two manufacturers to recover damages for exposure to polychlorinated biphenyls (PCBs) when a capacitor in the home's air conditioning unit ruptured. The owner of the home, the air conditioning unit manufacturer, and the capacitor manufacturer filed motions for summary judgment. The trial court denied the homeowner's motion for summary judgment, but granted the manufacturers' motions for summary judgment on the grounds of federal preemption, namely the Toxic Substances Control Act (TSCA). 15 U.S.C. § 2617. Plaintiffs appealed the granting of the manufacturers' motions. Louisiana's Third Circuit Court of Appeal reversed the trial court's ruling and reinstated the case against the manufacturers.

Under TSCA, Congress prohibits states from imposing requirements designed to protect against the risk of injury when the EPA has already imposed a bind-

ing regulation on the same subject. The Third Circuit found that the plaintiffs' lawsuit over the PCB leak from the capacitor was not preempted by TSCA.

The manufacture of PCBs was banned in 1976, but manufacturers were allowed to continue to distribute already-manufactured PCBs if done in a "totally enclosed manner". TSCA defines a "totally enclosed manner" as "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule." The trial court deemed this provision of TSCA to be a rule which preempted plaintiffs' LPLA lawsuit against the manufacturers arising out of the PCB leak. The Third Circuit held, however, that through TSCA the EPA regulated only the permissible risk of exposure to PCBs – not the specific manner in which manufacturers minimized that risk. There were no requirements, such as design or the use of particular materials, provided in TSCA regulations. Thus, the Third Circuit concluded that the TSCA did not preempt plaintiffs' state LPLA claim.

Moreover, the Third Circuit ruled that if, despite the lack of language on the issue, courts did construe TSCA as regulating the same behavior covered by the LPLA, then TSCA must also be deemed to be in harmony with the LPLA. Indeed, TSCA specifically allows a state to prohibit the use of PCBs altogether. If a state may prohibit the use of PCBs entirely, it stands to reason that the state must have authority to regulate their permissible use, given the lack of specific federal regulations on the subject.

The Third Circuit believed that Congress recognized a serious problem and attempted to remedy it in an economically feasible manner without abrogating traditional state powers. To that end, Congress allowed the distribution of previously manufactured PCBs, but only in a manner that would not allow exposure to humans or the environment. The manufacturers availed themselves of this allowance by incorporating PCB-containing capacitors into air conditioning units. The Third Circuit held, however, that it was reasonable to expect that a component part, such as a capacitor containing PCBs, would not leak for the life of the air conditioning unit. The part at issue here leaked and exposed plaintiffs and the environment to PCBs. The Third Circuit held that this was precisely the type of injury TSCA seeks to avoid; however, TSCA does not specifically provide for the means of accomplishing that end. As a result, the Third Circuit ruled that plaintiffs' LPLA suit was not preempted by TSCA.

—*Don A. Rouzan*

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
ph. 225.248.2024
fax 225.248.3324
email lgary@joneswalker.com

Products Liability Practice Group

Allgood, Davis B.
Anseman, III, Norman E.
Balart, L. Etienne
Belter, Sarah B.
Casey, Jr., Thomas Alcade
Collins, Donald O.
Duvieilh, John L.
Eagan, Emily Elizabeth
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