

Propellor Guard Suit Is 'Quarrel' over Settled Law, Says Motor Maker

The U.S. Supreme Court need not review a boat motor design defect suit rejected by the Illinois Supreme Court because the petition is "nothing more than a quarrel with the application of settled law," says defendant Mercury Marine. *Sprietsma v. Mercury Marine*, No. 01-706, petitioner's reply filed (U.S., 1/2/2002); See previous story in *Products Liability LR*, December 2001, P. 3.

Rex Sprietsma, whose wife was killed when she fell from a pleasure boat in 1995 and was struck by the blades of a Mercury Marine outboard motor, has asked the high court to review the Illinois Supreme Court's finding that his design defect suit against the company is federally preempted. He says his wife sustained fatal injuries because the motor was negligently designed without a propeller guard. Also, he says the Illinois court erred in holding that his suit against Mercury Marine is preempted by the Boat Safety Act of 1971, 46 U.S.C. § 4301.

Sprietsma says the U.S. Supreme Court should now take up the issue that went before it in a 1997 propeller guard suit, which settled before a ruling on the preemption question. *Lewis v. Brunswick Corp.*, 522 U.S. 978 (1997). He says his common-law claims over the absence of a propeller guard on the motor are not federally preempted because the Boat Safety Act rests jurisdiction over boat motor design and safety features with the U.S. Coast Guard, which has failed to promulgate such standards despite having been given the opportunity to do so.

In opposition to high court review, Mercury Marine, a division of recreational products manufacturer Brunswick Corp., says the Coast Guard closely investi-

gated the propeller guard issue and, after an 18-month review, decided against imposing a requirement for the devices in 1998.

Mercury Marine says the Coast Guard subcommittee charged with the investigation concluded that the benefits of various propeller guard designs were of questionable value in balance with their effect on the normal operation of the boat. The subcommittee declared that "propeller guarding at best could have only a negligible impact on improving boating safety" and that "operators of a 'guard-equipped' boat can be expected to have a false sense of security when approaching persons in the water at low speeds, with a very real risk of impacting and/or entrapping a body appendage."

Although a decision was not rendered on the preemption issue in *Lewis*, Mercury Marine says, the questions posed by *Sprietsma* have been answered, against Sprietsma's favor, in intervening cases including *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000), and *United States v. Locke*, 529 U.S. 89 (2000). Both decisions, the manufacturer says, repudiate Sprietsma's reliance on a 1994 Texas Supreme Court opinion holding that the Boat Safety Act neither expressly nor impliedly preempts "no-propeller-guard" claims, *Moore v. Brunswick Bowling & Billiards Corp.*, 889 S.W.2d 246 (Tex., 1994), cert. denied, 115 U.S. 664 (1994).

In considering the instant case, Mercury Marine says, the Illinois Supreme Court "carefully applied those precedents [including *Locke* and *Geier*] in concluding that the Coast Guard's considered decision regarding propeller guards has preemptive force, and

nine other federal courts - including the only other post-*Geier* case - have unanimously reached the same result.” The post-*Geier* case is *Lady v. Neal Glaser Marine Inc.* 228 F.3d 598 (5th Cir., 2000), *cert. denied*, 121 S. Ct. 1402 (2001).

A reply brief recently filed on Sprietsma’s behalf argues that Mercury Marine has mischaracterized *Geier* as holding that “allowing a jury to require auto makers to install airbags would frustrate the purpose of a federal decision not to install an airbag requirement.” Sprietsma argues that, based on this misinterpretation, Mercury Marine now incorrectly claims that

the Coast Guard’s decision not to mandate propeller guards must be accorded the similar preemptive effect.

Donald Ivansek and Sandra Kupelian of Cassidy, Shade & Gloor in Chicago represent Mercury Marine.

Representing Sprietsma are Leslie A. Bruecker and Michael J. Quick of Trial Lawyers for Public Justice in Washington, D.C., and Joseph Power Jr., Todd A. Smith, and Devon C. Bruce of Power, Rogers & Smith in Chicago.