Sprietsma v. Mercury Marine
A man seeking to sustain a state law design defect suit against the manufacturer of an outboard boat motor has received support from the U.S. Justice Department, the Association of Trial Lawyers of America and several state attorneys general in his attempt to have the U.S. Supreme Court rule that the action is not federally preempted by the Boating Safety Act of 1971. Sprietsma v. Mercury Marine et al., No. 01-706, amicus curiae briefs filed (U.S., Mar. 29, 2002); see Products Liability LR, April 2002, P. 3.

In three separately filed amicus briefs, each argued that Rex R. Sprietsma should be allowed to pursue his common-law negligence suit against Mercury Marine and parent Brunswick Corp. in Illinois state court, rejecting the defendants’ claim that the action is preempted because the authority to regulate outboard motor design rests with the U.S. Coast Guard.

Sprietsma filed suit claiming that his wife’s death in a 1995 boating accident was largely due to the failure of Mercury Marine to include a propeller guard on the motor powering the pleasure boat from which she fell. Although the manufacturers successfully obtained an Illinois Supreme Court decision that the action is preempted because the authority to regulate outboard motor design rests with the U.S. Coast Guard.

In his petition, Sprietsma said the high court had previously accepted the question in 1997 in a case that settled before a ruling was issued: Lewis v. Brunswick Corp., 522 U.S. 978 (1997).

As it did in Lewis, the Justice Department has again submitted an amicus brief in support of the plaintiff’s position that the case should proceed because Sprietsma’s claims are not preempted by either the BSA or the Coast Guard’s 1990 decision not to promulgate a regulation requiring propeller guards. That sentiment was echoed in the amicus briefs entered on Sprietsma’s behalf by ATLA and the attorneys general from 17 states, including California, Missouri and Hawaii.

In its brief, the Justice Department observed that while the BSA ‘categorically preempts state prescriptive laws and regulations establishing recreational vessel performance and safety standards unless [federally authorized] or identical to an existing federal standard,’ a saving clause permits common-law actions. That clause, the agency said, ‘makes clear that petitioner’s suit is not foreclosed either by the act’s express preemption provision or by principles of field preemption.’

Sprietsma’s suit is also not foreclosed by implied conflict preemption principles, the Justice Department said.

‘The fact that the Coast Guard focused upon the issue and made a considered decision not to take regulatory action to require propeller guards in 1990 does not, in and of itself, give rise to an inference that state law is preempted,’ the agency said.
It describes as ‘lacking merit’ Mercury Marine’s claims that the imposition of common-law damages liability here would be inconsistent with the Coast Guard’s reasons for declining to adopt a propeller guard requirement after extensively researching the issue.

ATLA told the Supreme Court that ‘congressional intent to pre-empt state positive law or regulation does not ordinarily extend to preemption of product liability actions in the absence of a plain statement of intent to do so.’

The state attorneys general added that the presumption against federal statutory preemption of state common-law claims plays a ‘critical federalism role in protecting the police powers of the states.’

The Justice Department brief was submitted by Solicitor General Theodore Olson, General Counsel Kirk Van Tine and Assistant General Counsel for Litigation Paul M. Geier.

ATLA’s amicus brief was submitted by Ross Diamond III of Mobile, Ala., and Jeffrey Robert White of Washington, D.C.

The state attorneys general brief was submitted by Charles W. Hatfield, counsel to Missouri Attorney General Jeremiah Nixon, of Jefferson City, Mo.

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

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