The U.S. Supreme Court has heard oral arguments on whether the manufacturer of an outboard boat motor is immune from negligent design and products liability claims filed by a man whose wife was fatally injured when she fell from their pleasure craft and came into contact with the spinning, unguarded propeller. Sprietsma v. Mercury Marine et al., No. 01-706, oral arguments heard (U.S., 10/15/2002); See previous story in Products Liability LR, July 2002, P. 3.

During the Oct. 15 session, attorneys for Mercury Marine and corporate parent Brunswick Corp. told the high court that Rex R. Sprietsma's suit for the 1996 death of his wife Jeanne was properly dismissed by an Illinois trial court and affirmed by that state's supreme court. Both courts found that since Congress vested the U.S. Coast Guard with the authority to regulate the design of outboard motors, and to decide if propeller guards would be required, the suit was federally preempted.

Attorneys for Sprietsma, however, told the high court that the Coast Guard's decision not to impose a requirement for propeller guards should not prevent him from seeking tort relief because the Mercury Marine outboard motor in question lacked a design element that could have saved Jeanne's life.

"If these claims are preempted, then no victims of propeller guard accidents will have any right to seek recovery for their injuries in any court in America," attorney Leslie A. Brueckner told the panel on behalf of Sprietsma. She urged the high court to "make it clear that a federal agency's inaction cannot wipe out tort remedies under state law."

Brueckner said, "If the court were to rule that these claims are preempted, then federal preemption could expand enormously to eliminate claims involving all sorts of dangerous products that federal agencies study and then, for whatever reasons, decline to regulate."

Brueckner shared her argument time before the high court with Malcolm L. Stewart, assistant to the U.S. solicitor general.

Chicago attorney Stephen Shapiro argued for Mercury Marine.

The preemption question came before the Supreme Court five years ago in Lewis v. Brunswick Corp., 522 U.S. 978 (1997), an almost identical case that settled privately before the court could rule.

U.S. Solicitor General Theodore Olson entered an amicus brief on behalf of Sprietsma. He advised the high court that although the Boating Safety Act of 1971, 46 U.S.C. § 4301, "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, Olson 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, Olson added. "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," he said. Donald Ivansek and Sandra Kupelian of Cassiday, Shade & Gloor in Chicago represent Mercury Marine.

In addition to Brueckner, Sprietsma is represented by Arthur H. Bryant and Michael J. Quirk, all of Trial Lawyers for Public Justice in Washington, D.C.; Joseph A. Power Jr., Todd A. Smith and Devon C. Bruce of Power, Rogers & Smith in Chicago; and John B. Kralovec of Kralovec, Jambois & Schwartz in Chicago. The Justice Department brief was submitted by Olson, General Counsel Kirk Van Tine and Assistant General Counsel for Litigation Paul M. Geier, all of Washington, D.C.