

U.S. COAST GUARD INACTION ON PROPELLER GUARDS DOES NOT PREEMPT COMMON LAW REMEDIES

It is highly unusual for the United States Supreme Court to review a boating safety matter, but, on December 3, 2002, the Court restored the right of petitioner, the husband of Jeanne Sprietsma, to sue under state law for common law remedies as a result of the death of his wife from an injury caused by an outboard motor manufactured by Mercury Marine. Sprietsma v. Mercury Marine, U.S., No. 01-706 (December 3, 2002). In an opinion written by Justice Stevens, a unanimous Court decided that Congress did not intend by enacting the Federal Boat Safety Act of 1971 (FBSA) to preempt any common law remedies that Mr. Sprietsma might have under Illinois law.

The petitioner's wife died on July 10, 1995, as a result of a boating accident on an inland lake that spans the Kentucky-Tennessee border. She was riding in an 18-foot ski boat equipped with a 115-horsepower outboard motor manufactured by respondent, Mercury Marine, a division of the Brunswick Corporation. When the boat turned, according to the Court's synopsis of the facts, she fell overboard and was struck by the propeller, suffering fatal injuries. Petitioner Sprietsma originally filed a lawsuit in Illinois state court seeking damages from Brunswick on the theory that Brunswick had manufactured an "unreasonably dangerous product" because, among other things, the motor was not protected by a propeller guard. Petitioner was denied the right to pursue this action by the Illinois Supreme Court on the theory that the FBSA impliedly preempted this right. The Supreme Court granted review to decide whether the FBSA preempts state common law claims of this character. And, the Supreme Court decided that it did not.

Initially, the Court reviewed the history of the Coast Guard's authority to regulate boating safety under the FBSA and the requirement to consult with the National Boating Safety Advisory Council prior to issuing any regulations. In the 1980s, NBSAC recommended against propeller guard regulations on the theory that they could increase the potential for blunt trauma. Consequently, in 1990, the Coast Guard made a policy decision not to require propeller guards on motorboats. Subsequently, in 2001, the NBSAC recommended that the Coast Guard issue four specific recommendations,* and, in December 2001, the Coast Guard published a notice of proposed rule-making addressing one of the recommendations. Since the Coast Guard had not issued any final rule either requiring or prohibiting propeller guards at the time of the lawsuit, there was no specific law or regulation which could be said to preempt a state law or regulation.

The Court also explicitly found that the preemption language of the FBSA was intended to apply only to a specific state law or regulation, and did not encompass any common law remedy that might be available to the petitioner. A common law remedy could include the right to bring a claim for damages caused by the absence of the propeller guard. Although the initial 1990 decision of the Coast Guard not to require propeller guards was an intentional decision, the Court refused to read into this decision an "authoritative" message of a federal policy against propeller guards. In fact, the Coast Guard, in a brief filed with the Court, informed the Court that the Coast Guard did not view its 1990 refusal to regulate as having any pre-emptive effect.

Respondent's final argument, rejected by the Court, was that the FBSA as a whole had as its goal to foster uniformity in manufacturing regulations and therefore impliedly preempted state remedies. The Court had accepted this argument in similar cases affecting the regulation and design of oil tankers (Ray v. ARCO, 435 U.S. 151 (1978)). However, absent a different decision from the Coast Guard, the Court ruled that the manufacturer's "concern with uniformity does not justify the displacement of state common-law remedies that compensate accident victims and their families and that serve the [FBSA's] more prominent objective, emphasized by its title, of promoting boating safety." (*Emphasis added.*)

It remains to be seen whether the Coast Guard and future courts take a different approach when the Coast Guard finalizes its series of pending regulations on propeller guards. For now, victims and families of victims of propeller injuries will be allowed to sue for damages in state court.

*The four specific recommendations are:

- 1) require owners of all propeller driven vessels 12 feet in length and longer with propellers aft of the transom to display propeller warning labels and to employ an emergency cut-off switch, where installed;
- 2) require manufactures and importers of new planning vessels 12 feet to 26 feet in length with propellers aft of the transom to select and install one of several factory installed propeller injury avoidance methods;
- 3) require manufacturers and importaers of new non-planing vessels 12 feet in length and longer with propellers aft of the transom to select and install one of several factory installed propeller injury avoidance methods; and
- 4) require owners of all non-planing rental boats with propellers aft of the transom to install either a jet propulsion system or a propeller guard or all of several propeller injury avoidance measures.

Safety: Up In Lights!

The National Safe Boating Council, Sea Scouts, National Association of State Boating Law Administrators, U.S. Power Squadrons and Popeye joined forces to present a safe boating entry in the Fort Lauderdale Winterfest Parade of Lights. (*see photo below*).



The Messingschlagers of Hollywood, FL, generously donated their 60-foot Sportsfishing boat, *Mr. Bob*. The beautiful vessel was decorated with red, white and blue flags; thousands of lights; a 10-foot illuminated Ring Buoy around the flying bridge inscribed with *Boat Smart. Boat Safe.* and two 40 foot banners (*made by Sign Language of Coconut Creek, FL*).

The safe boating design was created by Dale Madison and decorated with help from Power Squadron and Sea Scout members. Popeye was aboard courtesy of King Features Syndicate along with a number of others, all wearing life jackets!

PowerBoat Television covered the boat decorating and the Parade of Lights. Both, Speed Channel and The Outdoor Life Network will broadcast the event.

Financial support for the decoration of the vessel was provided through a grant from the NSBC and NASBLA. The two large banners were paid for through donations from all participating organizations

The entry placed first place in the 60 foot and under division.

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