

**MARITIME PRODUCTS LIABILITY -
EAST RIVER STEAMSHIP CORP. AND ITS PROGENY**

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It is now well established that a products liability claim can be asserted in admiralty under the general maritime law. *East River S.S. Corp. v. Transamerica De laval*, 476 U.S. 858, 106 S. Ct. 2295 (1986). In order for a products liability claim to be cognizable in admiralty, it must pass the two part test enunciated in *Executive Jet Aviation Inc. v. Cleveland*, 409 U.S. 249, 93 S. Ct. 493 (1972). The requirements are: 1) The tort must occur on navigable waters; and 2) there must be a nexus with traditional maritime activity.

As the Supreme Court recognized in *East River*, strict products liability was created because courts felt that contractual breach of warranty actions (expressed or implied) were inadequate to deal with consumer transactions in modern society. This concern ultimately led to the formulation of the Restatement (2nd) of Torts §402A, which provides that a plaintiff in a products liability case must prove: 1) That the defendant manufactured or sold the product; 2) that the product was defective; 3) that the defect caused injury to the plaintiff; and 4) that the product was defective when it left the custody of the defendant.

Under §402A, a product is considered defective when it is unreasonably dangerous in normal use. A product can be defective in any of four ways: 1) Design; 2) Construction; 3) Composition; or 4) Inadequate warning.

The concept of “normal use” in the context of products liability cases has been broadly defined. For example, in *Vickers v. Chiles Drilling Co.*, 822 F. 2d 535 (5th Cir. 1987), the Court

defined “normal use” to include all reasonably foreseeable uses of a product including foreseeable misuse. The Court adopted this definition because it was found to be a “virtually universal rule in all states”.

As mentioned above, failure to warn can constitute a defect within the framework of a products liability claim. *Pavrides v. Galveston Yacht Basin, Inc.*, 727 F.2d. 330 (5th Cir. 1984). To determine whether a warning is adequate, several factors must be considered. First, there is generally a duty to warn of hazards inherent in the ordinary intended use of a product. Second, the adequacy of a warning depends upon the nature of the hazard involved. If the product contains a latent condition or characteristic which could be hazardous in the absence of a warning, the manufacturer has a duty to warn the user of any such risk and the reasonable person test is applied to determine whether the absence of an appropriate warning renders the product defective.

The Supreme Court’s decision in *East River*, supra, analyzed the distinction between consumer transactions and commercial transactions in the context of maritime products liability claims. That decision involved manufacturing defects in the turbines of four supertankers that caused malfunctions and damages to the turbines. The shipowner brought suit in admiralty alleging strict products liability against the manufacturer of the turbines to cover repair costs and loss of profits. In deciding the case, the Supreme Court first stated that when there is federal admiralty jurisdiction, substantive admiralty law applies. The Court also held that products liability law and concepts of strict liability are part of the general maritime law. In this regard, the Court observed that products liability law developed because our Courts have recognized that consumers need more protection against dangerous products than that afforded by warranty law.

However, the Court concluded that this additional protection is available only when a defect causes injury to persons or to property other than that which is the subject of the lawsuit. The Court was concerned that allowing tort recovery for damage confined to the product itself would “drone” contract law in a “sea of tort”. The Court concluded that if the line were not drawn to preclude tort recovery for purely economic losses, there would no longer be a viable distinction between contract actions and tort actions. As a result, the Court concluded that the only remedy available to the plaintiff for damages confined to the vessel’s turbines must be grounded in contract and not tort.

The result in *East River* is harsh to vessel owners (and their underwriters) in a number of respects. First, with careful draftsmanship, warranties may be disclaimed entirely. Second, warranty claims by their very nature have built-in limitations of liability whereas actions in tort do not. Third, in warranty actions, recovery depends on privity with the manufacturer, whereas with tort causes of action, privity is not required.

A number of post *East River* cases have clarified the meaning and scope of the decision. *Shipco 2295, Inc. v. Avondale Shipyards, Inc.*, 825 F.2d 925 (5th Cir. 1987) answered the question of what is the product. In *Shipco*, a defective steering mechanism in a tanker, allegedly damaged other components of the vessel. The Court held that this is not “damage to other property” and therefore concluded that *East River* applied to preclude actions based in tort for economic losses arising from damage to the product itself. In concluding that the vessel was the “product,” the Court analyzed the question of what was the object of the contract or the agreement that governed the rights of the parties. Through this analysis, the Court found that the agreement between the buyer and the seller of the defective vessel contemplated the whole

vessel as the product and not the individual components from which the vessel was constructed.

Employers Insurance of Wasau v. Suwannee River SPA Lines, Inc., 866 F. 2d 752 (5th Cir. 1989), applied the holding in *East River* to contracts for professional services rendered in connection with the construction of a vessel. The Court held that suit could not be brought in tort against a naval architectural firm and other providers of professional services during the construction of a defective vessel. In reaching this decision, the Court held that the *East River* rule applies where the professional services at issue were an integral part of the construction of a vessel and where the only injury was to the vessel itself.

In cases involving defects and deficiencies in a vessel resulting in damages that are confined to the vessel itself, the importance of *East River* and its progeny in limiting rights of recovery to contract based actions cannot be overemphasized. The terms of contractual disclaimers of liability and warranty limitations must be closely analyzed and evaluated in handling such claims. Unfortunately for vessel owners, the remedies that are available to third parties who are injured by defects in a vessel based on strict products liability principles in tort are not available to vessel owners where defects in the vessel result in damages confined to the vessel itself. In such cases, the only actionable claim that can be asserted under the general maritime law is one grounded in contract and depending upon the contract involved, that remedy may be very limited.

For further information about maritime products liability, see:

- Robert Force, *Maritime Products Liability in the United States*, 11 Mar. Law. 1 (1986)