

Liability of Manufacturers of Marine Propulsion Packages

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The manufacturers of marine propulsion packages are exposed to potential liability in a number of ways. The failure of engines or components, even relatively minor components, can cause damage to the vessel on which they are installed, personal injury or death to crew members and passengers, damage to the property of others, and environmental damage. Although manufacturers by contract may limit their liability to purchasers of their propulsion packages, potential exposure to third parties for large and possibly catastrophic liability remains. This article examines engine manufacturers' liability under current law and muses how that law likely will be applied to manufacturers of new superconductor motors being developed for use in commercial vessels.

For over 20 years, and certainly since 1986 when the Supreme Court decided *East River Steamship Corp. v. Transamerica Delaval, Inc.*, manufacturers and sellers of marine propulsion packages and their components have been liable under products liability law, including strict liability, for personal injury and/or property damage caused by the failure or malfunction of engines or their components. Liability will be imposed if a claimant can establish: (1) the defendant sold or manufactured the product; (2) the product was unreasonably dangerous or was in a defective condition when it left the manufacturer's control; and (3) the defect or dangerous condition resulted in an injury to the claimant. The law considers the imposition of such strict liability on manufacturers necessary and desirable "because public policy demands that responsibility be fixed wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market."

A product is "unreasonably danger-

ous" if it was negligently or defectively designed or if the risks inherent in the product are greater than a reasonable buyer would expect. A manufacturer also can be strictly liable where the manufacturer knew or should have known of a dangerous condition and failed to provide the end user with adequate warning about it. This duty to warn includes warning of defects learned after the product has been sold and is on the market. A "warning" is sufficient if it alerts the user to foresee-

limit liabilities and restrict remedies. An engine manufacturer's potential liability also is greatly minimized by the Supreme Court's holding in *East River* that a party cannot recover under products liability theories for damage to the property that failed or for consequential damages resulting therefrom. But these contractual arrangements and legal restrictions on liability do little to protect an engine manufacturer from suits by third parties who have been injured or their property damaged as a result of

a defective or dangerous condition. In fact, property other than the subject of the commercial transaction at issue is expressly excluded from the *East River* limitation. And while indemnity provisions in sales contracts requiring the purchaser of propulsion systems to defend and indemnify the manufacturer can reduce the losses from third party claims (assuming such clauses are enforceable), they are of little help if the purchaser

is out of business, in a foreign jurisdiction, or otherwise of questionable financial health.

The fairness of holding a manufacturer of a relatively inexpensive component liable for millions of dollars in damages can be debated, but the law is settled and the essential principles are unlikely to change in the foreseeable future. The question is how the existing law will impact engine manufacturers with respect to new developments, such as the superconductor motor.

The emergence of superconductor motors is being heralded as a revolutionary advance in propulsion technology. It has the potential to make propulsion packages smaller, more powerful, energy efficient and quieter than their standard counterparts. The very infancy of the technology and manufacturing process, however, expose manufacturers of superconductor propulsion packages installed in vessels to increased risk of liability under products liability theories. Standard combustion propulsion technology has been available for

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able harm and enables him to avoid that harm. In the case of vessel components such as engines the duty to warn is owed to all people lawfully aboard a vessel such as the crew, passengers, and longshoremen, and may even include bystanders.

The parties potentially liable for damages caused by dangerous or defective products include engine manufacturers, component manufacturers, any parties assembling the components, and all sellers in the chain. A shipowner also is liable in tort for damages caused by an unreasonably dangerous or defective engine. A claimant in product liability litigation usually names as many parties as can be identified. The various parties have indemnity or contribution rights against the others depending on the final allocation of responsibility for the defective or dangerous product.

An engine manufacturer's potential liability to the owner of the vessel in which the engine is installed is generally restricted by provisions in the relevant sales contracts that disclaim or

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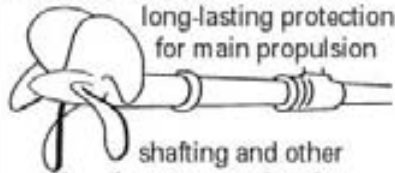
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a long time. Most of the components in combustion systems that are likely to fail or create a danger during operation have been identified over time and either corrected or appropriate warnings given.

Superconductor motors have not passed the test of time and, notwithstanding that they apparently involve no major changes in fundamental motor technology, may have defects or experience failures when applied to commercial vessel propulsion that give rise to potential claims under existing law. Superconductor motor manufacturers no doubt will be able to identify many of the potential dangers that may arise from the new technology, but it is doubtful they will be able to identify them all. This further exposes manufacturers to liability for breach of the duty to warn of

potential dangers.

The courts at least for a time should, and likely will, apply "strict liability" law less strictly to superconductor motor manufacturers. Current law allows such latitude in two areas. First, although a product may be "unreasonably dangerous" if the risks are greater than a reasonable buyer would expect, in determining "unreasonableness" the law also weighs the likelihood and gravity of harm caused by the product against the potential utility of the product. A court can find that a product is not "unreasonably" dangerous if the utility outweighs the potential harm. The substantial utility and potential benefits of superconductor motor technology should weigh heavily in this scale.

Second, the duty to warn is not considered in a vacuum, but is judged



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against a "reasonableness" standard in view of the danger created by the product. The courts have considerable latitude in determining whether a manufacturer knew or should have known of a defect (i.e., was negligent in not appreciating the defect), and whether the warning given was sufficient under the circumstances. The courts thus have ample discretion within the existing legal framework to nurture the develop-

ment of superconductor motor technology by imposing liability on manufacturers only when they have acted unreasonably (i.e., negligently), the product is truly defective, or where the gravity of the harm outweighs the potential utilities/benefits of superconductor motors. Whether and how they will exercise that discretion—as with the performance of superconductor motors themselves—will have to await the test of time.

THE FULL PICTURE

LOGBOOK: 22:30HRS • THE CARIBBEAN SEA - EN ROUTE FROM ST MARTIN TO ANTIGUA. POS 17°30.25'N • 062°13.15'W

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