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Ralph C. Anzivino

Marquette University Law School, ralph.anzivino@marquette.edu

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Does the Federal Boat Safety Act Preempt State Common-Law Tort Claims?

by Ralph C. Anzivino

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Ralph C. Anzivino is a professor of law at Marquette University Law School in Milwaukee, Wis., Rcanzivino@aol.com or (414) 288-7094

ISSUE

Is petitioner's state common-law tort action (based on respondent's failure to install a propeller guard on a motorboat) preempted by either the Federal Boat Safety Act of 1971 or the Coast Guard's 1990 decision not to require the installation of propeller guards on recreational boats?

FACTS

This case arises out of a boating accident in Tennessee in which the petitioner's wife, Jeanne Sprietsma, fell from a motorboat and was struck by the motor's propeller. As a result, she suffered serious injuries and later died. The boat was equipped with an outboard motor that did not have a propeller guard. The motor was designed, manufactured, and sold by respondent Mercury Marine, a division of Brunswick Corporation.

Petitioner Rex Sprietsma is the administrator of the estate of his deceased wife. He filed a wrongful death and survival action against

Mercury Marine in the Circuit Court of Cook County, Illinois, seeking to recover damages based on negligence and strict liability for his wife's pain and suffering, along with the financial losses suffered by him and his son. The complaint alleged that the Mercury Marine boat engine was defectively designed because it was not equipped with a propeller guard.

Mercury Marine moved to dismiss on the ground that Sprietsma's claims were preempted by the Boat Safety Act and by the Coast Guard's decision not to require propeller guards. The trial court granted the manufacturer's motion to dismiss. The intermediate appellate court affirmed and held that Sprietsma's claims were expressly preempted by the Boat Safety Act. *Sprietsma v. Mercury Marine*, 312 Ill. App.3d 1040, 729 N.E.2d 45 (2000).

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SPRIETSMAS V. MERCURY MARINE
DOCKET NO. 01-706

ARGUMENT DATE:
OCTOBER 15, 2002
FROM: THE ILLINOIS SUPREME
COURT

Case at a Glance

The Federal Boat Safety Act of 1971 authorizes the Secretary of Transportation to promulgate safety standards for recreational boats. The secretary delegated this regulatory authority to the United States Coast Guard, which decided *not* to require engine propeller guards. After Rex Sprietsma's wife died in a boating accident, he filed a wrongful death action against the manufacturer for failing to install propeller guards. The Supreme Court will decide whether the Coast Guard's decision not to require propeller guards preempts Sprietsma's state common-law suit.

On appeal, the Illinois Supreme Court rejected the appellate court's "express" preemption ruling but held that federal law "impliedly" preempted petitioner's claims. The court held that the case was not subject to the strong presumption against federal preemption that ordinarily applies to health and safety issues. It declined to apply the presumption against preemption on the theory that federal concerns controlled the case. The court relied on *United States v. Locke*, 529 U.S. 89 (2000), which held that the presumption against preemption does not apply to cases involving international maritime commerce.

Next, the Illinois Supreme Court considered the question of express and implied preemption under the Boat Safety Act. It concluded that the act's broadly worded "savings clause" (a statutory clause designed to save certain state laws from being preempted by federal legislation) precluded any finding of express preemption of common-law claims. However, the court did hold that Sprietsma's claims were impliedly preempted on the theory that a jury verdict finding Mercury Marine liable for not installing a propeller guard would "frustrate" federal purposes. The court found that the agency's regulatory decision *not* to require guards amounted to an affirmative decision to preclude any common-law claims seeking to hold a manufacturer liable for failing to install propeller guards. *Sprietsma v. Mercury Marine*, 197 Ill.2d 112, 757 NE2d 75 (2001). Sprietsma appealed to the Supreme Court, and certiorari was granted. *Sprietsma v. Mercury Marine*, 122 S.Ct. 917 (Jan. 22, 2002).

CASE ANALYSIS

The Boat Safety Act of 1971 was enacted to authorize the creation of federal safety standards for recreational boats used on the navigable

waters of the United States. At the time of its enactment, more than 40 million Americans were engaged in recreational boating in approximately 9 million boats. In addition, usage was increasing at the rate of about 4,000 boats per week. Naturally, the increase in recreational boating was accompanied by a marked increase in accidents, deaths, and injuries. Congress estimated that from 1965–1970, nearly 7,000 Americans died in boating mishaps.

Congress surmised that the lack of adequate federal regulation was contributing to the hazards of recreational boating. As of 1971, only two laws affected recreational boat users—the Motor Boat Act of 1940 and the Federal Boating Act of 1958. Both laws imposed requirements principally relating to lighting, fire extinguishers, and boat numbering. They did not address federal construction or design standards for boats or motors. Thus, Congress concluded that these two statutes were not sufficient to improve safe boating.

Against this background, the Boat Safety Act of 1971 was enacted. The major thrust of the legislation was to grant the Coast Guard the authority to promulgate design and construction standards for recreational boats. Congress observed that similar authority already existed with respect to aircraft and motor vehicles. Congress further noted that, although safety standards for larger commercial vessels had existed for many years, recreational vessels had never before been a focus of federal law.

Under the act, the Coast Guard's authority to issue safety standards is permissive and not mandatory. 46 U.S.C. § 4301(a)(1). Moreover, the act sets out a number of limitations on the circumstances under which the Coast Guard may exercise its

rulemaking authority. For example, the act prohibits the Coast Guard from establishing regulations that would compel substantial alteration of existing recreational vessels unless it determines that the regulation is both necessary to avoid a substantial risk of personal injury to the public and appropriate in relation to the degree of hazard that compliance will correct. 46 U.S.C. § 4302(c)(2). In addition, before establishing any safety regulations, the Coast Guard is required to consult with the National Boating Safety Advisory Council (the Advisory Council). 46 U.S.C. § 4302(c)(4). Finally, before issuing any regulations under the act, the Coast Guard must comply with the formal rulemaking procedures of the Administrative Procedure Act.

The act contains two provisions addressing the effect of Coast Guard regulations on state law. First, Congress included a preemption clause providing, in pertinent part, that unless permitted by the Secretary of Transportation, "a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard ... that is not identical to a regulation prescribed under the Act." 46 U.S.C. § 4306. Second, Congress included a savings clause, providing that compliance with the act or standards, regulations, or orders prescribed under the act does not relieve a person from liability at common law or under state law. 46 U.S.C. § 4311(g). The preemption provision and the savings clause are the only provisions in the act to address the preemptive effect of federal regulations.

In May 1988, at the request of the U.S. Coast Guard, the Advisory Council appointed a five-person

subcommittee to assess the arguments for and against some form of mechanical guard to protect against propeller strikes. In November 1989, the subcommittee recommended that the Coast Guard take no regulatory action to require propeller guards. Shortly thereafter, the Advisory Council accepted the subcommittee report and adopted its recommendation. Finally, the Coast Guard, in turn, adopted the Advisory Council's recommendation that it take no regulatory action to require propeller guards.

"Preemption" occurs in three principal ways. First, Congress may expressly preempt state law. *English v. General Elec. Co.*, 496 U.S. 72, 78 (1990). Second, Congress may override state law by indicating its intent to occupy the field. *Id.* At 79. Third, state law may conflict with federal law, either by making it impossible to comply with both state and federal requirements or by creating an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Preemption is a matter of statutory interpretation that turns on the language, structure, and purposes of the enactment. *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 638 (1973). All nine federal courts to consider this issue have concluded that propeller-guard claims are preempted on one or more preemption grounds. *Lady v. Neal Glaser Marine*, 228 F.3d 598 (5th Cir. 2000); *Lewis v. Brunswick Corp.*, 107 F.3d 1494 (11th Cir. 1997), cert. dismissed, 523 U.S. 1113 (1998); *Carstensen v. Brunswick Corp.*, 49 F.3d 430 (8th Cir. 1995); *Moss v. OMC*, 915 F.Supp. 183 (E.D. Cal. 1996); *Davis v. Brunswick Corp.*, 854 F.Supp. 1574 (N.D. Ga. 1993); *Shield v. Bayliner Marine Corp.*, 822 F.Supp. 81 (D.Conn. 1993); *Shields v. OMC*, 776 F.Supp.

1579 (M.D. Ga. 1991); *Parker v. OMC*, (S.D. Miss. 1991); accord *Ryan v. Brunswick Corp.*, 557 N.W.2d 541 (Mich. 1997); *Farner v. Brunswick Corp.*, 607 N.E.2d 562 (Ill. App. 1992).

Sprietsma argues that this case is governed by a strong presumption against preemption. Where Congress has legislated in a field the states have traditionally occupied, one starts with the assumption that the historic police powers of the states are not to be superseded by federal law unless that was the clear and manifest purpose of Congress. This presumption is at its strongest when the question is, as here, whether Congress intended to prohibit the states from protecting the health and safety of their citizens through the exercise of such traditional and core police powers as the provision of common-law tort remedies.

In this regard, Sprietsma contends it is particularly significant whether the federal statute provides any substitute for the traditional court procedure for collecting damages for injuries caused by tortious conduct. The Boat Safety Act does not provide any such substitute. In the absence of such a substitute, plaintiffs who could prove that their physical injuries resulted from the wrongful conduct of defendants under state law would be left wholly without any remedy. Such a result should not readily be attributed to Congress. In addition, numerous prior decisions of the Supreme Court have made clear that, absent a direct conflict with federal law, the states' police powers in the areas of health and safety may be exercised concurrently with the federal government's jurisdiction over maritime matters.

Petitioner also maintains that his tort claim is expressly preserved by

Boat Safety Act's savings clause. The savings clause provides that compliance with the act or standards, regulations, or orders prescribed under the act does not relieve a person from liability at common law or under state law. Sprietsma believes that such language precludes any finding of express preemption. Petitioner's belief is based on *Geier v. American Honda Motor Co.*, 529 U.S. 861 (1999). In *Geier*, the Supreme Court construed a similarly worded savings clause in the National Traffic and Motor Vehicle Safety Act as precluding any express preemption of common-law claims.

Further, Sprietsma believes that the act's preemption clause does not preempt common-law tort claims. According to petitioner, the most cursory review of the plain wording of the preemption clause shows that Congress did not preempt common-law claims. The clause only preempts any "law or regulation" establishing a recreational vessel or associated equipment performance or other safety standard that is not identical to a regulation prescribed under the act. The most notable feature of this provision is the absence of any reference to common-law claims. Congress has shown its ability to refer to "common law" when it intends to include it within the scope of a preemption clause. Indeed, the reference to "common law" in the Boat Safety Act's savings clause shows that Congress was cognizant of common law in this very piece of legislation. Thus, Sprietsma argues, the plain meaning of the preemption clause defeats any notion that Congress intended the preemption provision to preempt common-law claims.

Further, Sprietsma contends that the act merely preempts state "laws or regulations" that are not identical to federal requirements. Although

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“law,” standing alone, is susceptible to a broad reading, language cannot be interpreted apart from its context. Here, the term *law* does not stand in isolation, but rather as a counterpart to the word *regulation*, which is a prescriptive requirement promulgated by an administrative rather than legislative body. Indeed, the Supreme Court has repeatedly noted that the word *regulation* is a reference only to positive law and not to common-law duties or damages liability. Thus, if the Supreme Court is to adhere to the oft-stated assumption that Congress’s legislative purpose is expressed by the ordinary meaning of the words used, the phrase *law or regulation* cannot plausibly be read to encompass petitioner’s common-law tort claims.

Contrary to the Illinois Supreme Court’s decision, petitioner also argues that its lawsuit is not impliedly preempted. “Implied preemption” arises only when there is a conflict between federal and state law. A conflict occurs when it is impossible for a private party to comply with both laws or because the state law stands as an obstacle to the accomplishment and execution of the full purposes of Congress. This “impossibility” analysis is not applicable to this case because it is undisputed that the Coast Guard has not regulated propeller guards and that nothing in federal law would prohibit respondent from installing propeller guards on its boat engines. The question under implied preemption, therefore, is whether petitioner’s tort claim somehow stands as an obstacle to Congress’s purpose in enacting the Boat Safety Act.

Sprietsma also asserts that his claims do not in any way stand as an obstacle to Congress’s purposes. To the contrary, petitioner asserts that his claims are entirely consistent with the overriding goal of the

Boat Safety Act, which is to promote safe, recreational boating. When passing the act, Congress recognized that existing standards for boat safety were inadequate, and that more needed to be done to protect the public from unsafe recreational boats. Common-law actions help to promote this goal by identifying safer products and raising public awareness of the hazards of unguarded propellers. Thus, Sprietsma contends, lawsuits such as his actually further Congress’s primary goal—safer boating.

Petitioner also asserts that his claims do not conflict with the Coast Guard’s rationale in not requiring propeller guards. Sprietsma maintains that the Coast Guard’s decision was not based on a finding that propeller guards are dangerous, but rather on its concerns that (1) the existing data could not meet the stringent rule-making standards of the act (which require a finding that any rule compelling the substantial alteration of existing boats be necessary to avoid a “substantial risk of personal injury to the public”) and (2) there was no technically feasible solution to the problem of unguarded boat propellers in all modes of boat operation. Neither of these rationales would be undermined by a jury verdict holding a manufacturer liable for failing to include a particular propeller guard on a particular engine.

Finally, Sprietsma argues that the Supreme Court’s recent decision in *Geier*, in which the Court found implied preemption of tort claims under the National Highway Traffic and Motor Vehicle Safety Act (NHTSA), is not applicable. *Geier* involved a highly complex federal safety standard that did, in fact, regulate the use of airbags. In *Geier*, the Supreme Court confronted “Standard 208,” which required

auto manufacturers to phase in the use of passive restraint devices in passenger automobiles gradually. Standard 208 deliberately sought variety by setting a performance requirement for passive restraint devices and allowing manufacturers to choose among different passive restraint mechanisms, such as airbags, automatic belts, or other passive restraint technologies to satisfy that requirement.

Against that backdrop, *Geier* held that a common-law damage action holding a manufacturer liable for its failure to install an airbag would conflict with NHTSA’s goal of encouraging a mixture of passive restraint devices. Therefore, the Supreme Court held Standard 208 impliedly preempted any state law tort claims. Petitioner argues that the facts here could not be farther from those in *Geier*. Unlike the complex set of regulatory obligations imposed by Standard 208, which affirmatively encouraged a mixture of passive restraint devices, there is no federal regulation whatsoever governing propeller guards. Thus, unlike *Geier*, there is no federal regulatory framework with which Sprietsma’s common-law claims could possibly conflict. Therefore, no implied preemption can be found.

As an initial matter, Mercury Marine responds that petitioner’s common-law tort claim is barred by federal maritime law. Federal maritime jurisdiction is an area outside the traditional police powers of the states. Safe boating is not and never has been the subject of traditional state regulation. The Boat Safety Act is a comprehensive federal statute. Congress assigned the task of establishing uniform design standards to the Coast Guard. After 18 months of study, the Advisory Council recommended against a

propeller guard requirement. The Advisory Council reasoned that such a requirement would impair public safety, degrade fuel economy, and confront manufacturers with insurmountable feasibility problems.

In turn, the Coast Guard refused to mandate propeller guards, pointing to problems of economy and feasibility and noting that available accident data did not support such a requirement. The appropriate authorities made a considered decision to forgo federal regulation of propeller guards. Under maritime law, that decision is controlling. Therefore, there can be only one federal rule on propeller guards.

Respondent also argues that the statute's preemption clause expressly bars petitioner's claim. The preemption clause mandates that no state may establish or enforce any law requiring an item of boat equipment that is not "identical" to a Coast Guard regulation. The act's plain language demonstrates that Sprietsma's claim is preempted. He is seeking to establish and enforce a rule of state law requiring propeller guards on a recreational vessel, but that rule is not identical to any Coast Guard regulation. Clearly, states may not establish or enforce any standards that are not identical to federal standards.

Further, respondent asserts, the Boat Safety Act's preemption clause has far broader application than the preemption clause in *Geier*. The clause in *Geier* preempted state law only when a federal motor-vehicle safety standard was in effect. Under the Motor Vehicle Safety Act (MVSA), states were free to impose safety standards if no federal standard was in effect. Under the Boat Safety Act, respondent argues, the decision *not* to require a federal standard preempts any state standards. Thus, when petitioner relies

on *Geier* in contending that the Coast Guard's decision *not* to require propeller guards cannot have preemptive effect because that decision was not embodied in a formal safety standard, he overlooks the crucial difference between the statutory preemption clauses. Preemption under the MVSA was triggered only by the promulgation of a federal safety standard, but according to Mercury Marine, preemption under the Boat Safety Act extends to the absence as well as the presence of federal regulation. Therefore, the Boat Safety Act's preemption clause bars Sprietsma's claim.

The respondent also argues that the legislative history of the Boat Safety Act confirms that Congress preempted the "boat design standards" field. The House report on the act stated that recreational boats should be built in accordance with standards prescribed by one federal agency. Similarly, the Senate report's conclusion that uniform standards are needed to avoid unduly impeding interstate commerce supports the establishment of uniform construction and equipment standards at the federal level. The Boat Safety Act thus ensures that recreational boat manufacturers can comply with one standard rather than widely varying local requirements.

Mercury Marine further contends that the Boat Safety Act's "savings clause" cannot be read to save petitioner's defective design claim. Respondent argues the clause does not apply to defective design claims at all and that the legislative history confirms this reading. The legislative history shows that Congress added the savings clause as a "technical" amendment to clarify that a manufacturer's compliance with promulgated standards would not by itself relieve it from any tort liability

that could pertain—i.e., for breach of warranty or negligence. The Senate report explains that the purpose of the savings clause was to assure that in a product liability suit, mere compliance by a manufacturer with the minimum standards promulgated under the federal act would not be a complete defense to liability under state law. Thus, the savings clause merely bars manufacturers from relying on compliance with federal law as an absolute defense when state law properly plays a role.

Several types of common-law actions are preserved by the savings clause. First, as the legislative history indicates, the savings clause does not permit manufacturers to avoid liability for breach of contractual warranties. Second, the savings clause preserves claims against boat owners and operators for negligent operation. The supervision of safe boat operation and use is appropriately within the purview of state or local concern. Third, manufacturers may be sued for negligently manufacturing or installing marine products. For example, a manufacturer could be held liable for selling defective start-in-gear devices that would allow motors to start with moving propellers. Respondent asserts that most common-law claims involving marine products will fall within one of these three categories. Therefore, the savings clause does have broad application, but it does not save defective design suits.

Respondent adamantly maintains that permitting petitioner's claim to proceed will frustrate the purpose of the Boat Safety Act. In enacting the act, Congress intended to replace a patchwork of state regulations with a single, uniform, feasible, economic set of safety rules established by an expert agency and imposed on a prospective basis. The Boat Safety

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Act protects those who mass-produce boats or motors from having to satisfy varying (and potentially conflicting) state design standards that would interfere with interstate commerce. According to Mercury Marine, to allow individual state court juries to impose damages, including punitive damages, against manufacturers for their failure to install propeller guards would clearly frustrate Congress's intention to achieve uniformity in this field. Coincidentally, petitioner's claim would clearly frustrate the Boat Safety Act's policy of protecting interstate commerce.

It is no answer, argues Mercury Marine, to say that this case involves only the imposition of damages, and not the setting of inconsistent standards. Such an argument disregards the regulatory effect of tort law. A rule of state tort law imposing a duty to install certain safety equipment by its terms would require manufacturers of all similar products to install such equipment. A verdict holding a manufacturer liable for not installing a propeller guard would obligate the manufacturer to retrofit all similar motors. Its effect would not be limited to a particular boat engine. Thus, Congress's interest in uniformity would be directly implicated by inconsistent tort judgments.

Sprietsma argues that holding a manufacturer liable for failing to include a particular propeller guard on a particular boat engine would not frustrate the Coast Guard's judgment that no universally acceptable propeller guard is required. Respondent, however, maintains that this reflects a fundamental misunderstanding of the problem. Outboard motors are not custom-made for particular boats; they are made to fit any boat with an appropriate horsepower rating. Any propeller guard must be hydrodynamically

and structurally compatible with the intended propulsion unit and the hull on which the motor is used.

There are thousands of hull designs and hundreds of propulsion units, and manufacturers have no way of knowing which of the vast array of boats will be paired with their motors. Thus, the question is not whether a particular motor should be fitted with a particular propeller guard, but how a guard could be designed that would be compatible with the full range of boats on which the motor might be used. As the Coast Guard concluded, no universally acceptable propeller guard is available or technically feasible, and retrofitting millions of boats would certainly be a major economic undertaking. Congress carefully drafted this statute to prevent just such an undertaking, absent satisfying stringent statutory requirements.

Respondent also contends that permitting petitioner's claim to proceed would violate the Boat Safety Act's ban on substantial alteration of existing boats. Congress determined that safety standards should be established and enforced on a prospective basis. The Coast Guard may not compel substantial alteration of existing recreational vessels or items of associated equipment absent a finding that the cost is justified in light of the risk of injury. 4 U.S.C. § 4302(c)(3). The legislative history indicates that the term *substantial alteration* encompasses economic as well as physical considerations, and that great caution should be exercised in applying standards to existing boats because of the great burden that would be imposed on both manufacturers and the boating public. A common-law propeller guard requirement would plainly frustrate the Boat Safety Act's ban on imposing substantial

alterations on existing boats. Such a requirement would work a major redesign of the boat motor's drive system. Moreover, tort law inevitably operates retrospectively, and manufacturers would be pressured by tort judgments to modify millions of outboard motors to avoid open-ended civil liability.

Finally, Mercury Marine maintains that a common-law damages action for failure to install propeller guards is impliedly preempted by the Coast Guard's decision not to require propeller guards on recreational boats. The Coast Guard considered the benefits and risks of a single piece of equipment and made a judgment that the purposes of the Boat Safety Act would best be served if the item was not required. The act reflects a deep concern for uniformity and decision making by a single expert regulator. The Coast Guard followed the act's requirements to the letter and decided not to require propeller guards. That decision plainly has the character of a ruling that no such regulation would be appropriate or approved pursuant to the policy of the Boat Safety Act. Accordingly, it must be given preemptive effect.

SIGNIFICANCE

Federal preemption of state law is a necessary incident of the Constitution's supremacy clause, which provides that federal law is superior to and overrides state law when they conflict. Art. IV, § 2. Federal preemption can be either express or implied. Express preemption occurs when a federal statute expressly preempts an area for federal regulation only. Implied preemption occurs when a court concludes that state involvement in an area would conflict with the fundamental purpose of a federal statute.

Boating is one of America's favorite pastimes. Unfortunately, each year

many thousands of people are injured or killed in boating mishaps. Often the aggrieved party seeks recompense through state product liability law. One of the common grounds for placing liability on a manufacturer is that its product was defectively designed. In 1971, Congress passed the Federal Boat Safety Act. Pursuant to the act, the Coast Guard concluded that a propeller guard on recreational motor boats was not required. Thus, no regulation was promulgated requiring propeller guards.

This case presents the interesting question of whether the Boat Safety Act preempts tort claimants from pursuing a product liability action against a manufacturer for an alleged design defect when the responsible federal agency has concluded that the particular design is not required. In addition to answering that specific question, the Court's opinion may help clarify the scope of implied preemption generally, an issue that is often at the heart of the "federalism" debate over the proper roles for federal and state governments.

ATTORNEYS FOR THE PARTIES

**For Rex R. Sprietsma,
Administrator of the Estate of
Jeanne Sprietsma** (Leslie A.
Brueckner (202) 797-8600)

For Mercury Marine (Stephen M.
Shapiro (312) 782-0600)

AMICUS BRIEFS

**In Support of Rex R. Sprietsma,
Administrator of the Estate of
Jeanne Sprietsma**

The Association of Trial Lawyers
of America (Ross Diamond III, Esq.
(251) 432-3362)

The States of Missouri, Arkansas,
California, Connecticut, Florida,
Hawaii, Indiana, Maryland,
Montana, Nevada, New Hampshire,
New Mexico, North Carolina,
Oregon, Utah, Washington, West
Virginia (Charles W. Hatfield (573)
751-3321)

The United States (Theodore B.
Olson, Solicitor General, U.S.
Department of Justice (202) 514-
2217)

In Support of Mercury Marine

The National Association of
Manufacturers and the National
Marine Manufacturers Association
(Kenneth W. Starr (202) 879-5000)

The Chamber of Commerce of
the United States of America (Robin
S. Conrad (202) 463-5337)

The Maritime Law Association of
the United States (Joshua S. Force
(504) 299-2100)

The Product Liability Advisory
Council, Inc. (Alan Untereiner (202)
775-4500)