LOUISIANA PRODUCTS LIABILITY ACT

Is a Cause of Action Against a Product Manufacturer for Negligent Training Barred by the LPLA?

By Andrew D. Mendez and Justin P. Lemaire

On its face, the Louisiana Products Liability Act (LPLA or the Act), La. R.S. 9:2800.51–.60, sets forth the exclusive theories of recovery against a product manufacturer for "damage caused by its product." Indeed, the second sentence of the Act could be read as an express statutory statement of that principle.[1] Thus, the Act may appear to foreclose a simple negligence claim against a product manufacturer for an injury related to its product. Notwithstanding the language of the LPLA, however, a negligence claim against a product manufacturer for its training of another in the use of its product may be viable in Louisiana. This article discusses such a theory of recovery against a manufacturer.

Negligent Training Theory of Recovery

A party asserting a negligent training theory of recovery could argue that, regardless of whether a manufacturer's product is "reasonably safe" or "unreasonably dangerous," a manufacturer should be held liable for damage that occurs as a result of its negligent training of another in the use of its product. If such a theory were accepted by the court, it would be significant for plaintiffs and manufacturers alike because it could open a manufacturer to a negligence standard of liability (in addition to the LPLA standard).

Many product manufacturers undertake to train others in the use of their products. (Note that as used here, "training" means an undertaking by the manufacturer above and beyond providing written warnings or directions in an owner's or instruction manual.)[2] In some cases, the manufacturer may train third parties, who in turn install or maintain the product for customers. In others, the manufacturer may train customers directly. Such training may be done at additional cost or included in the purchase price. In any event, these practices are widespread. Even a cursory search of the World Wide Web will uncover numerous manufacturers who offer training in the use of their products, including manufacturers of products that are potential sources of personal injury claims if the products are misused, such as chainsaws, construction equipment and monitoring systems.[3] A plaintiff could argue that, in addition (or in the alternative) to the four theories of liability found in the LPLA,[4] a manufacturer should be held liable if it negligently trained another in the use of its product, the product was misused by the trained party, and an injury resulted from the misuse. However, such a theory of liability is viable only if not foreclosed by the LPLA's exclusive remedy provisions.

Scope of the Louisiana Products Liability Act

As noted above, the Louisiana Products Liability Act "establishes the exclusive theories of liability for manufacturers for damage caused by their products."[5] Thus, a claimant arguably may not recover from a manufacturer for injury caused by a product under any theory other than those covered in the Act.[6] No express exception is found in the statute for claims based on negligent training of another, or any other non-enumerated theory.

The Act further provides that the manufacturer is liable for damage to a claimant that is proximately caused by a characteristic of the product that renders it "unreasonably dangerous," provided that the damage arose from a reasonably anticipated use of the product.[7] An LPLA claim, then, applies to claims with two crucial elements:

- the claim is asserted against a manufacturer; and
- the damage was caused by an unreasonably dangerous product.

The LPLA supplies four possible ways that a product can be "unreasonably dangerous" for purposes of the Act:

- in construction or composition (*i.e.*, a manufacturing defect or flaw);
- in design;
- failure to provide adequate warning of a potentially dangerous characteristic; and
- failure to conform to an express warranty.[8]

These are expressly identified as the exclusive grounds for finding a product is unreasonably dangerous, and thereby subjecting the manufacturer to liability under the Act for injuries attributable to the unreasonably dangerous condition.

Very little authority exists on the issue of whether a negligent training theory of recovery against a manufacturer is foreclosed by the LPLA. Whether such a claim is viable may turn on either, or both, of the two crucial elements of an LPLA claim mentioned above: specifically, whether a negligent training claim lies against a manufacturer defendant who acted in another role separate and apart from that of manufacturer, or whether the damages at issue were not caused by the product or a defective or unreasonably dangerous condition thereof.

The Louisiana Supreme Court has weighed in on the first issue and left open the possibility of holding a product manufacturer who undertakes to train another liable on a negligence theory. In the matter of *In re Kaiser Plant Explosion at Kaiser*,[9] the Louisiana Supreme Court granted a supervisory writ and reversed summary judgment in favor of a product manufacturer who had successfully argued in the 1st Circuit Court of Appeal that a negligence cause of action, on the basis of the manufacturer's alleged negligent training of another, was barred by the LPLA's exclusive remedy provisions. In that case,[10] a product manufacturer moved for partial summary judgment to dismiss a negligence cause of action based on its alleged negligent training of another in the use of its product, arguing that the LPLA was the exclusive remedy and thus barred a negligence cause of action. The trial court denied the motion, but a unanimous panel of the 1st Circuit Court of Appeal granted a writ application by the manufacturer and agreed with its argument, holding that partial summary judgment dismissing the negligence claim on the basis of the LPLA's exclusive remedy provision was appropriate. Plaintiff sought a writ from the Louisiana Supreme Court, which granted it and unanimously reversed the 1st Circuit. The Supreme Court held, without much elaboration, that a genuine issue of material fact existed as to whether the respondent "acted in a role other than manufacturer."[11]

The Supreme Court's short memorandum opinion in *In re Kaiser Plant Explosion* represents the only guidance to date on whether a negligent training claim is viable in light of the LPLA. The authors could find no other reported decision of a Louisiana state court, or any federal or state court applying Louisiana law, which has addressed the issue. The Louisiana Supreme Court's decision suggests that a manufacturer may be liable on a negligence theory if it wore multiple "hats," one as manufacturer and one as trainer. In other words, the Supreme Court's ruling suggests that where a claim sounds in negligent training, the manufacturer can be sued not only as a manufacturer *per se*, but also (or in the alternative) as a trainer, whose status as a manufacturer may merely be coincidental. Because the LPLA provides for theories of liability against manufacturers,[12] its statutory exclusive remedy provisions arguably may not apply where a claim is against a party whose alleged negligence was in the course of performing a role other than "manufacturer."

Another argument why a negligent training claim would not fall under the LPLA (so as to be beyond the scope of

the Act's "exclusive theories" provision)[13] turns on the second crucial element of an LPLA claim discussed above: an injury attributable to negligent training may not necessarily result from a defect or dangerous condition of the product. Louisiana courts hold that in order to recover under the Act, a plaintiff must prove that the product contained a "defective condition"[14] or a "dangerous characteristic"[15] that rendered it unreasonably dangerous. A "defective condition" under the LPLA exists if:

- the product materially deviates from the manufacturer's specifications or performance standards, or from otherwise identical products created by the same manufacturer;[16]
- a feasible alternative design is available which the manufacturer should have used[17] and would prevent the injury suffered by the plaintiff;[18] or
- the product injured plaintiff because it failed to conform to an express warranty which induced the plaintiff to purchase the product.[19]

A product has a "dangerous characteristic" for the LPLA purposes if it has a characteristic which could cause damage, and the manufacturer fails to use reasonable care to provide adequate warning of the characteristic and resulting danger to those who will use the product.[20] With either a "defective condition" or "dangerous characteristic," the plaintiff asserting an LPLA claim would contend that there is something wrong with the product that resulted in injury.

When the claim is negligent training, however, a plaintiff would not necessarily allege that the product itself was defective or had a dangerous characteristic. Rather, the product may have "caused" the damage only in the sense that it was improperly used due to negligent training of the user, and consequently served as a mechanism of injury. Nonetheless, the exclusive remedy provision of the LPLA would arguably still apply to such claims, as those claims could ultimately still be construed as based on damage caused by a product, and therefore within the ambit of the Act's exclusive remedy provisions.

As noted, the authors were unable to find any authority under Louisiana law that sheds light on the issue of whether a Louisiana court would find the foregoing reasoning persuasive. Some foreign authority, however, suggests claims may fall outside the purview of product liability where damages were not caused by the product itself. For example, in *Universal Underwriters Insurance Group v. Public Service Electric & Gas Co.*,[21] a federal court, applying New Jersey law, addressed a claim that a building was destroyed by fire partly caused by an electric utility's failure to adequately train and instruct its employees, resulting in inadequate emergency response services.[22] The defendant utility argued the New Jersey Products Liability Act (NJPLA) provided the exclusive theory of recovery against it because the claim was based on a problem with a "product" the utility provided, namely, electrical service. Putting aside the question of whether providing electricity is properly construed as a "product" in the first instance, the court disagreed with the utility's argument that the NJPLA provided the plaintiff's exclusive remedy, noting that:

> [b]ecause this conduct relates to maintenance of the electrical service, and not a defect inherent in the product, it does not qualify as a "harm caused by a product," and is therefore not cognizable under the NJPLA.[23]

Whether the same result would be reached under Louisiana law to a negligent training claim against a product manufacturer remains to be seen.

Conclusion

While the Louisiana Products Liability Act ostensibly provides the "exclusive theories of liability against manufacturers for damage caused by their products,"[24] the Louisiana Supreme Court has recognized that a negligence claim may nonetheless lie against a manufacturer who undertook to train another in the use of its product, and the trainee then improperly uses the product and injures the plaintiff. In addition, it is yet to be determined whether Louisiana courts would accept an argument that a negligence claim for an injury caused by a negligently-trained party's improper use of a product is outside the LPLA's scope, because this scenario would not necessarily involve either an "unreasonably dangerous" product or a product with a "defective condition." How these issues are ultimately resolved by the Louisiana courts could have a substantial impact on defendant-manufacturers and plaintiffs alike.

FOOTNOTES

1. *See* La. R.S. 9:2800.52.

2. For example, training could include manufacturer-sponsored training seminars, phone or Internet terminal supports and the like.

3. These statements are based on a one-hour survey of the World Wide Web using the Google

search engine and the search terms "manufacturer (training or train) (use or operate or implement or implementation or install or installation)." For specific examples, see STIHL Inc., *Know How*, at *www.Stihlusa.com* (last visited Dec. 13, 2005) (chainsaws); Caterpillar, *Caterpillar Equipment Training Solutions*, Fall 2004, available at *www.cat.com* (construction equipment); Met One Instruments, *Frequently Asked Questions*, at *www.metone.com/faq.htm* (monitoring instruments and systems).

4. La. R.S. 9:2800.54(B).

5. La. R.S. 9:2800.52.

6. *Id.*

7. La. R.S. 9:2800.54(A).

8. La. R.S. 9:2800.54(B).

9. In re Kaiser Plant Explosion at Kaiser, 2001-2555 (La. 9/26/01), 797 So.2d 678.

10. The authors' firm represented the writ applicants in the Louisiana Supreme Court, and in the appellate and trial courts below. The product at issue in the writ practice discussed here was a programmable relay used in transmission of electrical power at an industrial facility, which was alleged to have been improperly programmed by a third party (an electrical engineering consulting firm) that had been trained in the relay's use by the manufacturer.

11. In re Kaiser Plant Explosion, 797 So.2d at 678.

12. La. R.S. 9:2800.52.

13. La. R.S. 9:2800.52, .54(B).

14. *See, e.g.*, Delery v. Prudential Ins. Co., 94-0352 (La. App. 4 Cir. 9/29/94), 643 So.2d 807.

15. *See, e.g.*, Walsh v. Technotrim, Inc., 34,355 (La. App. 2 Cir. 1/24/01), 778 So.2d 728.

16. *See* La. R.S. 9:2800.55.

17. La. R.S. 9:2800.56 contains a nuanced balancing test to determine whether the manufacturer should reasonably have adapted an alternative design.

18. *See* La. R.S. 9:2800.56.

19. *See* La. R.S. 9:2800.58.

20. La. R.S. 9:2800.57.

21. 103 F. Supp. 2d 744 (D.N.J. 2000).

22. *Id.* at 747.

23. *Id.* at 748 (emphasis supplied).

24. La. R.S. § 9:2800.52.

ABOUT THE AUTHORS

Andrew D. Mendez graduated with honors in 1996 from the University of Texas at Austin School of Law, where he was administrative editor of Texas Law Review. *He is member of Stone Pigman Walther Wittmann, L.L.C., in New Orleans. He practices in the firm's litigation section. (546 Carondelet St., New Orleans, LA 70130)*

Justin P. Lemaire graduated magna cum laude *from the University of Notre Dame Law School in 2005, where he was executive editor of the* Notre Dame Law Review. *He is an associate of Stone Pigman Walther Wittmann, L.L.C., in New Orleans. He practices in the firm's litigation section. (546 Carondelet St., New Orleans, LA 70130)*