SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 06/02/2026 TIME: 04:08:00 PM DEPT: C32

JUDICIAL OFFICER PRESIDING: Lee Gabriel
CLERK: D. Hentschke
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: R. Lau

CASE NO: **30-2023-01357407-CU-PL-CJC** CASE INIT.DATE: 10/16/2023
CASE TITLE: **Strumpfer vs. Kawasaki Motors Corp., U.S.A.**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Product Liability

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EVENT ID/DOCUMENT ID: 74868186

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 06/02/2026 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court **CONFIRMS** and **MODIFIES** the tentative ruling as follows:

Defendant's Motion for Summary Judgment is DENIED.

Objections to Evidence:

Both parties improperly object to facts rather than individual items of evidence. (See Cal. Rules of Court, Rule 3.1354.) Nonetheless, the Court will attempt to address the merits of the objections to the extent they are reasonably limited to a particular factual statement or item of evidence.

Plaintiff's objections to evidence (ROA 163) are sustained as to objections #1-4, (hearsay statements in police report and State Department of Parks and Recreation findings) and overruled as to the remaining objections.

Defendant's objections to evidence (ROA 177) are overruled.

Legal Standard:

At summary judgment, "A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the Plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or

denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (Code. Civ. Proc. § 437c(p)(2).)

"The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact." (Code Civ. Proc. § 437c(c).)

Summary of Motion:

In the complaint filed on 10/26/23, Plaintiff alleges injuries arising from the 10/21/22 explosion on Lake Havasu of a jet ski manufactured by Defendant. (¶ 13.)

On 3/10/26, the Court granted Defendant's motion to determine that maritime law applies and allowed Plaintiff to file an amended opposition brief addressing maritime law.

Defendant moves for summary judgment or adjudication as to Plaintiff's claims for (1) strict product liability and (2) negligence. Defendant contends the incident was caused by Plaintiff's failure to inspect or maintain the PWC and there is no evidence of a design/manufacturing defect, failure to warn, or negligence.

Summary of Facts:

The subject jet ski, or personal watercraft ("PWC") was a 2003 or 2004 model which Plaintiff received from a friend for free in approximately 2022. (Undisputed Material Facts [UMFs] 1-6.) Plaintiff and the friend, Michelle Collins, disagree as to who technically retained ownership of the PWC after Plaintiff took possession of it – Collins asserts she intended to transfer ownership to Plaintiff which Plaintiff denies. (UMFs 2, 7-8.) Collins testified the PWC had been sitting in her garage unused since 2015. (UMFs 9-10.)

Plaintiff considers himself a very experienced PWC operator who purchased his first PWC in 1989. (UMFs 12-13.) He did not receive or try to obtain an owner's manual for the subject PWC but testified he had previously read owners manuals for other Kawasaki PWCs. (UMFs 16-17.) He performed repairs including changing the spark plugs, oil and oil filter, and battery and performed a visual inspection for potential fuel leaks. (UMFs 18-19.) Although he performed a visual inspection, he did not individually disassemble each fuel line or replace the fuel filter. (UMFs 20-22.)

On 10/21/22, Plaintiff filled up the PWCs with fuel and made sure the PWC would start. (UMFs 23-25.) After arriving at Lake Havasu, Plaintiff rode the subject PWC while his girlfriend followed riding a different PWC. (UMFs 26-28.) Plaintiff's girlfriend smelled gasoline while riding her PWC behind Plaintiff but did not tell Plaintiff about the smell. (UMFs 28-30.) Plaintiff and his girlfriend turned off the PWCs and dismounted to swim near the marina while the PWCs floated in the lake. (UMF 31.) Plaintiff re-mounted the PWC and started the engine and the PWC "exploded." (UMF 32.)

Defendant asserts it provided warnings for the PWC including the owner's manual and on-product warnings which warned of the risk of explosion due to lack of ventilation including a warning to ventilate the engine compartment "after transporting or refueling and before starting the engine." (UMFs 33-36.) A label on the PWC at the front of the craft stated, "WARNING A concentration of gasoline fumes in the engine compartment can cause a fire or explosion. Open the

engine compartment for ventilation before starting the engine for each ride and after transporting or refueling." (UMFS 38-39.)

Defendant also asserts Plaintiff was aware of the risk of explosion for failure to ventilate, based on years of experience with marine vehicles and having read a similar warning on his other PWC, a Yamaha. (UMFs 41-45.)

Defendant asserts Plaintiff failed to adequately ventilate the engine compartment just prior to the explosion, although Plaintiff did ventilate the engine when he refueled and tested the engine before entering the water. (UMFs 46-47.)

Plaintiff had the subject PWC, which he asserts was largely destroyed in the explosion, taken to the dump in October 2022. (UMFs 48-51.) Defendant asserts this deprived it of the ability to inspect the vehicle.

Plaintiff filed this lawsuit on 10/16/23.

Application of Restatement (Third) of Torts:

On 3/10/26, this Court determined that federal maritime law is applicable in this case.

Defendant asserts the Restatement (Third) of Torts ("Third Restatement") applies to Plaintiff's product liability claims in light of the Court's determination that federal maritime law applies. Defendant cites the Ninth Circuit Court of Appeals' opinion in *Oswalt v. Resolute Industries, Inc.* (9th Cir. 2011) 642 F.3d 856, 860, which holds:

"Resolute's products liability claims against Webasto are controlled by the federal common law of maritime torts, which is informed by the American Law Institute's Restatement of Torts. See *Pan–Alaska Fisheries, Inc. v. Marine Constr. & Design Co*., 565 F.2d 1129, 1134 (9th Cir.1977). We have previously adopted Section 402–A of the Restatement (Second) of Torts as the law of products liability in admiralty cases. See id. at 1134–35; see also *Saratoga Fishing Co. v. Marco Seattle Inc*., 69 F.3d 1432, 1437–38 (9th Cir.1995), rev'd on other grounds sub nom. *Saratoga Fishing Co. v. J.M. Martinac & Co*., 520 U.S. 875, 117 S.Ct. 1783, 138 L.Ed.2d 76 (1997). In Saratoga Fishing, we also relied on a preliminary version of the Products Liability Section of the Restatement (Third) of Torts, although we declined at that time to adopt that early draft as controlling. See *Saratoga Fishing*, 69 F.3d at 1441 (citing Restatement (Third) of Torts: Products Liability § 2, Tentative Draft No. 1, 1994). Since the Restatement (Third) was finalized in 1998, however, we and other circuits have relied on it."

In opposition, Plaintiff contends the Ninth Circuit and California Court of Appeal have applied the Second Restatement rather than the Third Restatement in admiralty cases, citing *Pan-Alaska Fisheries, Inc. v. Marine Const. & Design Co.* (9th Cir. 1977) 565 F.2d 1129 and *Colombo v. BRP US Inc.* (2014) 230 Cal.App.4th 1442. (Opp. at p. 12.) Defendant responds the "consumer expectation" test set out in the Second Restatement is no longer applicable because *Pan-Alaska Fisheries* was decided prior to the publication of the Third Restatement in 1998. (Reply, pp. 2-3.)

The Court will follow the more recent Ninth Circuit decision in *Oswalt v. Resolute Industries, Inc.* (9th Cir. 2011) 642 F.3d 856, 860 which applies products liability principles from the Third Restatement to tort claims under federal maritime law. (See also *McIndoe v. Huntington Ingalls Inc.* (9th Cir. 2016) 817 F.3d 1170, 1173 ["When analyzing products-liability claims under maritime law, we look to the Restatement of Torts (the 'Restatement')—particularly the most recent Third Restatement—for guidance."])

There is a Triable Issue Regarding Strict Product Liability for Failure to Warn:

The Third Restatement summarizes the categories of product defect liability in section 2 as follows:

"A product is defective when, at the time of sale or distribution, it contains a manufacturing defect, is defective in design, or is defective because of inadequate instructions or warnings. A product:
(a) contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product;
(b) is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe;
(c) is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the instructions or warnings renders the product not reasonably safe."

Plaintiff asserts the warnings provided by Defendant addressed the wrong hazard, i.e. gasoline fumes from failure to ventilate after refueling or transport rather than "active, pressurized fuel leakage from a defective fuel line, fitting, or pump, which generates a continuous source of combustible vapor during engine operation and which ventilation will not remedy." (Opp. at p. 17.)

Defendant responds that the on-product warning included the following:

"Under a day-glo orange banner with the triangle safety alert symbol, the label states: "WARNING A concentration of
gasoline fumes in the engine compartment can cause a fire or explosion. Open the engine compartment for ventilation before
starting the engine for each ride and after transporting or refueling." (UMF 39.) Plaintiff does not dispute the on-product label contained this text, but contends the label "addresses only stale-vapor accumulation" "after refueling or transport." (Response to UMF 39.) Plaintiff asserts the incident was likely caused by "active fuel system leakage, not stale-fume accumulation." (Id.)

It is undisputed that Plaintiff was aware of the warning and that the warning instructed users to ventilate the engine compartment after each ride. Plaintiff does not present expert witness testimony supporting his assertion that the incident was caused by active fuel system leakage rather than stale-fume accumulation, or showing that ventilation would not have prevented an explosion due to active fuel system leakage. Moreover, the plain language of the on-product warning instructed users to ventilate the engine compartment "for each ride and after transporting or refueling." (Emphasis added.)

However, Defendant's arguments rest on the premise that the warning was applicable to the cause of Plaintiff's injuries in this case, i.e. that the explosion could have been prevented by adequately ventilating the engine compartment as instructed by the on-product label. This conclusion is based on the Vessel Accident Report prepared by the San Bernardino County Sheriff Investigator. (Defendant's Ex. I.)

The Sheriff's report states in part, "On Friday, October 21, 2022 at approximately 1605 hours, deputies responded to a PWC explosion on the Colorado River, in front of Havasu Rivera State Park. Through investigation the ski was not properly vented prior to restart up and an explosion occurred launching the sole operator. The operator sustained injuries to both is feet and lower legs where he was transported to Havasu Regional Medical Center. [¶] CAUSE: Improper ventilation was determined to be the cause of the explosion."

The report itself is inadmissible hearsay and the conclusions in the report also appear to be based on a second layer of hearsay. (Evid. Code § 1200 et seq.; see *People v. Dixon* (2026) 118 Cal.App.5th 116, 136.)

Defendant asserts the report is admissible under the public employee records exception. (ROA 169,

Response to Objections.) Evidence Code section 1280 states, “Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies:
(a) The writing was made by and within the scope of duty of a public employee.
(b) The writing was made at or near the time of the act, condition, or event.
(c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.”

Defendant does not present independent testimony of the Sheriff Investigator or other expert testimony demonstrating the likely cause of the explosion was fuel vapor accumulation that could have been prevented by ventilating the engine compartment.

Defendant also relies on Plaintiff’s special interrogatory responses, which stated the following:

“SPECIAL INTERROGATORY NO. 20:
If YOU contend that the SUBJECT JET SKI, in whole or in part, lacked adequate warnings, state the factual basis of YOUR contention.
RESPONSE TO SPECIAL INTERROGATORY NO. 20:
Through investigation by the state of CA Natural Resources Agency Department of Parks and Recreations Division of Boating and Waterways it was determined the ski was not properly vented prior to restart up and an explosion occurred launching the Plaintiff.
Responding Party reserves the right to amend add/or supplement this response as discovery and investigation are ongoing and continuing.” (UMF 60; Defendant’s Ex. H, Plaintiff’s 7/12/24 Responses to Special Interrogatories, Set One.)

At this stage, Defendant has not presented sufficient evidence regarding the foundation for the opinions contained in the Sheriff’s report or demonstrated the methods of its preparation are sufficient to establish the public employee records exception.

Moreover, even assuming Plaintiff has adopted the finding of the Sheriff’s report via his interrogatory responses, there is a triable issue as to the reasonable interpretation of the warning provided and whether a reasonable consumer would have construed the warning to “open the engine compartment for ventilation before starting the engine for each ride and after transporting or refueling” as a recommendation to ventilate the engine each time the PWC was turned off and on, including after the type of short on-water break in use that occurred here.

Therefore, Defendant has not met its initial burden to demonstrate the warning label on the PWC was applicable to the cause of the explosion and following the instructions would likely have prevented the incident and the motion is denied as to Plaintiff’s failure to warn claim.

Because Defendant did not move in the alternative for summary adjudication of issues, and moved only for summary judgment as to Plaintiff’s entire complaint, the motion is denied in its entirety. (See Code Civ. Proc. § 437c(f).) “It is elemental that a notice of motion must state in writing the ‘grounds upon which it will be made.’ (Code Civ. Proc., § 1010; Cal. Rules of Court, rule 311(a); *Silva v. Holland* (1888) 74 Cal. 530, 532, 16 P. 385.) Only the grounds specified in the notice of motion may be considered by the trial court. This rule has been held to be especially true in the case of motions for summary adjudication of issues.” (*Gonzales v. Superior Court* (1987) 189 Cal.App.3d 1542, 1545 [cleaned up].) “[I]t is improper to grant summary adjudication absent a motion therefor. Therefore, because Wilton did not move in the alternative for summary adjudication of specified issues, we will not address whether Wilton may have prevailed on some issues in this case.” (*Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 949 [cleaned up].)

Therefore, the Court need not evaluate the other claims in Plaintiff’s complaint because Defendant’s motion does not alternatively request summary adjudication of those issues.

Court orders Clerk to give notice.