

2010

Patricia Niemela v. Imperial Manufacturing, Inc., an
Alabama corporation, d/b/a Imperial Mailbox
Systems, and John Does I-V : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Cory D. Memmott; Ray, Lego and Associates; Attorneys for Defendants.

Daniel F. Bertch; Kevin R. Robson; Bertch Robson; Attorneys for plaintiff.

Recommended Citation

Brief of Appellant, *Niemela v. Imperial Manufacturing*, No. 20100682 (Utah Court of Appeals, 2010).
https://digitalcommons.law.byu.edu/byu_ca3/2477

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

PATRICIA NIEMELA,

Plaintiff/Appellant,

v.

IMPERIAL MANUFACTURING, INC., an
Alabama corporation, d/b/a IMPERIAL
MAILBOX SYSTEMS, and JOHN DOES I-
V,

Defendants/Appellees.

APPELLANT'S BRIEF

Appellate Case No. 20100682-CA

BRIEF OF APPELLANT

Appeal from a Judgment of Third Judicial District Court
Tooele County, State of Utah
Honorable Stephen Henriod

Cory D. Memmott
RAY LEGO AND ASSOCIATES
1100 East 6600 South, Suite 350
Salt Lake City, UT 84121
Attorneys for Defendants/Appellees

Daniel F. Bertch (4728)
Kevin R. Robson (6976)
BERTCH ROBSON
1996 East 6400 South Suite 100
Salt Lake City, Utah 84121
Attorneys for Plaintiff/Appellant

FILED
UTAH APPELLATE COURTS
DEC 27 2010

IN THE UTAH COURT OF APPEALS

PATRICIA NIEMELA,

Plaintiff/Appellant,

v.

IMPERIAL MANUFACTURING, INC., an
Alabama corporation, d/b/a IMPERIAL
MAILBOX SYSTEMS, and JOHN DOES I-
V,

Defendants/Appellees.

APPELLANT'S BRIEF

Appellate Case No. 20100682-CA

BRIEF OF APPELLANT

Appeal from a Judgment of Third Judicial District Court
Tooele County, State of Utah
Honorable Stephen Henriod

Cory D. Memmott
RAY LEGO AND ASSOCIATES
1100 East 6600 South, Suite 350
Salt Lake City, UT 84121
Attorneys for Defendants/Appellees

Daniel F. Bertch (4728)
Kevin R. Robson (6976)
BERTCH ROBSON
1996 East 6400 South Suite 100
Salt Lake City, Utah 84121
Attorneys for Plaintiff/Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES -iii-

JURISDICTION 1

ISSUES ON APPEAL 1

DETERMINATIVE AUTHORITIES 1

STATEMENT OF THE CASE 2

 Nature of the Case 2

 Course of Proceedings and Disposition in the Court Below 2

 Statement of Relevant Facts on Appeal 3

SUMMARY OF ARGUMENT 6

ARGUMENT 7

 POINT ONE 7

IMPERIAL HAD A DUTY IN NEGLIGENCE NOT TO SELL DEFECTIVE OR
 UNREASONABLY DANGEROUS MAILBOXES 7

 POINT TWO 9

NIEMELA’S TESTIMONY ABOUT THE DEFECTS IN THE IMPERIAL
 MAILBOX CREATED A GENUINE ISSUE OF MATERIAL FACT
 WHETHER THEY WERE DEFECTIVE 9

 POINT THREE 12

EVEN IF IMPERIAL COMPLIED WITH THE PRE-2001 REGULATION,
 THERE IS SUFFICIENT EVIDENCE TO CONCLUDE THAT
 THE SMALL KNOB IMPERIAL MAILBOX IS DEFECTIVE 12

CONCLUSION 13

CERTIFICATE OF SERVICE 14

TABLE OF AUTHORITIES

CASES:

<i>Egbert v. Nissan Motor Co., Ltd.</i> , 2010 UT 8, 228 P.3d 737 (Utah 2010)	9, 12
<i>Eskelson v. Davis Hospitaland Medical Center</i> , 2010 UT 59, ¶6	1
<i>Fox v. Brigham Young Univ., Inc.</i> , 2007 UT App 406, 176 P.3d 446	9
<i>Jacobsen Const. Co., Inc. v. Structo Lite Engineering, Inc.</i> , 619 P.2d 306 (Utah 1980)	7, 8
<i>Slisze v. Stanley-Bostich</i> , 1999 UT 20, 979 P.2d 317	7

STATUTES:

U.C.A. § 78A-4-103(j)(2009)	1
U.C.A. §78-15-6(2)(1977)	1, 9
U.C.A. §78A-3-102(4)(2009)	1

OTHER AUTHORITIES:

39 C.F.R. §111 (2001)	1, 10
-----------------------------	-------

JURISDICTION

This court has jurisdiction to decide this appeal, pursuant to U.C.A. § 78A-4-103(j)(2009), as an appeal from a grant of Summary Judgment by the Third Judicial District Court of Tooele County, State of Utah, entered on July 21, 2010. This appeal was “poured-over” to the Utah Court of Appeals pursuant to U.C.A. §78A-3-102(4)(2009).

ISSUES ON APPEAL

The following issues are raised in this appeal:

1. Whether a manufacturer has a duty to stop selling a defective product that no longer complies with applicable federal regulations?
2. Whether there was evidence that Niemela’s injuries were proximately caused by the mailboxes?
3. Was there a genuine issue of material fact whether the mailbox was defective, or unreasonably dangerous, under U.C.A. §78-15-6(2)(1977), due to the faulty knob design, together with faulty workmanship?

These issues were raised by motion at R. 106, and opposed by Niemela at R. 192. Summary judgment is reviewed *de novo*. *Eskelson v. Davis Hospital and Medical Center*, 2010 UT 59, ¶6. The trial court ruling is attached as an addendum.

DETERMINATIVE AUTHORITIES

The determinative authorities include:

39 C.F.R. §111 (2001):

Standard 3.4:

... The carrier door must operate freely and solely by pulling outward and downward with a convenient handle or knob. The design of the door, including hinges and handles must provide protection against wind, rain, sleet, or snow. Door latches must hold the door closed but allow easy opening and closing requiring no more than 5 lbs of force.

Standard 3.4.1 Handle/Knob

The handle or knob shall have adequate accessibility to permit quickly grasping and pulling it with one hand (with or without gloves) to open the door. . .

Standard 3.14 Workmanship

The mailbox shall be properly assembled and utilize the best commercial practice workmanship standards in the fabrication of all components and assemblies. All moveable parts shall fit and operate with no unintended catch or binding points. . .

Fed. Reg. Vol. 66, No. 27, Thursday, February 8, 2001.

U.C.A. §78-15-6(2)(1977):

... “unreasonably dangerous” means that the product was dangerous to an extent beyond which would be contemplated by the ordinary and prudent buyer, consumer or user of that product in that community considering the product’s characteristics, propensities, risks, dangers, and uses . . .”.

STATEMENT OF THE CASE

1. Nature of the Case

This case is a suit for damages for personal injuries, arising out of a defective mailbox design and manufacture by Imperial, of mailboxes in the Overlakes development in Tooele County, Utah.

2. Course of Proceedings and Disposition in the Court Below

Niemela sued for personal injuries in Third District Court, Salt Lake County, Utah. The case was removed to the United States District Court, but then remanded back to Salt Lake County. From there, the trial court granted a motion to change venue to Tooele County. Imperial moved for summary judgment, which was granted, and this appeal followed. The appeal was “poured-over” to

this Court by the Utah Supreme Court.

3. Statement of Relevant Facts on Appeal

The following facts were undisputed before the trial court:

Niemela Was a Letter Carrier at Overlake HOA

Niemela was a USPS letter carrier delivering to the Overlake HOA in Tooele, Utah. (R. 109, Niemela Aff., ¶4). This route consisted of about 600 homes. (R. 140, Niemela Depo., p. 33, l. 6-9). All had identical decorative mailboxes manufactured by Imperial with the same knob design. In fact, homeowners were fined \$300 if they did not use the Imperial mailbox. (R. 114). She began delivering mail in the Overlake HOA in the fall or winter of 2001. (R. 109). Niemela opened and closed nearly 600 Imperial mailboxes every day, five days a week, fifty-two weeks a year for seven years. (R. 140).

The USPS Imposed New Standards on Letterboxes on February 8, 2001

On May 5, 1995, the United States Postal Service approved Imperial's design of the mailboxes at issue and found the design to be in compliance with the requirements of USPS-STD-7, the governing standard. (R. 105, Fact 2). On February 8, 2001, the United States Postal Service revised its 1992 Standards Governing the Design of Curbside Mailboxes. See 66 Fed Reg 9509-02. (Id., Fact 3). "The revision was developed through a consensus process and was approved by a committee of representatives from mailbox manufacturers, mailbox accessory manufacturers, and the Postal Service". (Id., Fact 4). The United States Postal Service required that all approved manufacturers' designs for future mailboxes go through a re-approval process. (Id.).

The 2001 regulations require the mailbox knobs to "have adequate accessibility to permit

quickly grasping and pulling it with one hand . . . to open the door.”39 C.F.R. §111, Standard 3.4.1. Further, the mailbox knobs were required to “allow enough finger clearance and surface area for carriers to grasp.” (Id.). Also, the mailbox knobs were to “operate freely and solely by pulling outward and downward with a convenient handle or knob.” Id., Standard 3.4. They were required to “allow easy opening and closing requiring no more than 5 pounds of force”. Id. Additionally, they had to “fit and operate properly with no unintended catch or binding points.” Id., Standard 3.14. Finally, they were to “utilize the best commercial practice workmanship standards in the fabrication of all components and assemblies.” Id. Pursuant to these standards, Imperial re-designed its mailbox and these changes were approved by the USPS on September 30, 2002. (R. 105, Fact 4).

Overlake HOA Installed 1995 Imperial Letterboxes Sold to it After the 2001 Change in USPS Regulations

The bulk of the Imperial mailboxes, if not every single mailbox, in the Overlake HOA was installed after the February 8, 2001 revisions by the USPS. (R. 109). However, the Overlake HOA mailboxes were all designed pursuant to the 1995 standards, not the 2001 standards. (R. 105). The biggest differences between the 1995 mailboxes and the 2002 mailboxes were 1) the knob depth, which was increased in 2002 from 3/4" to 1 1/2", and 2) the knob size was increased substantially. (R. 10-11).

The Imperial Mailboxes at Overlake HOA Did Not Comply With the 2001 Standards And Were Defective

Niemela averred that the mailbox knobs on the mailboxes in the Overlake HOA did not “have adequate accessibility to permit quickly grasping and pulling it with one hand . . . to open the door.” (R. 109). The 3/4" depth was not adequate “to permit quickly grasping and pulling it with one

hand” without injury. The 1 ½" depth was adequate to prevent hand and arm strain and injury.(Id.). Niemela averred that the mailbox knobs on the mailboxes in the Overlake HOA did not “allow enough finger clearance and surface area for carriers to grasp.” (Id.). The ¾" depth was not adequate “for carriers to grasp” without possible injury. (Id.). Niemela stated that the 1 ½" depth was adequate to prevent hand and arm strain and injury. (Id.). Niemela averred that the mailbox knobs on the mailboxes in the Overlake HOA did not “operate freely and solely by pulling outward and downward with a convenient handle or knob”. (Id.). The mailbox knobs frequently required the use of a screwdriver to open the doors. (Id.). Also, Niemela described how the accumulation of water (turning into ice) in the hinge frequently prevented the doors from operating freely. (R. 108). The mailbox knobs on the mailboxes in the Overlake HOA did not “allow easy opening and closing requiring no more than 5 pounds of force”. (R. 109). The mailboxes frequently required much more than 5 pounds of force. (Id.). Frequently they did not allow “easy opening.” (Id.). Niemela averred that the mailbox knobs on the mailboxes in the Overlake HOA did not “fit and operate properly with no unintended catch or binding points”. (Id.). Instead, they frequently caught and bound, requiring additional strength to open, and sometimes the use of a lever such as a screwdriver. (Id.). Niemela declared that the mailbox knobs on the mailboxes in the Overlake HOA did not “utilize the best commercial practice workmanship standards in the fabrication of all components and assemblies.” (Id.). The hinges, for example, were too light-weight for the cast-metal doors, and progressively became weakened and loose. (Id.). This allowed the doors to misalign and jam, or to become frozen shut during adverse weather. (Id.). Niemela explained that she had episodes of cramping and pain in her right hand from repetitively pulling open the Imperial mailbox doors before December 5,

2005. (Id.). These episodes were transient and did not require medical attention until December 5, 2005. (Id.).

When she spoke to Imperial, they claimed that the USPS regulations for mailboxes changed in April, 2004, to require the 1 ½" depth on mailbox knobs. (Id.). She was told that USPS set this standard for mailboxes. (Id.). When she spoke to Imperial about the problems with the mailbox knob depth, they told her that it would cost consumers about \$5.00 per knob to replace them. (Id.).

Niemela stated that the ¾" knobs are easily replaced by anyone with the 1 ½" knob, by loosening an ordinary machine screw with a standard Phillips head screwdriver. (Id.). She used both the ¾" depth mailbox knobs as well as the 1 ½" depth knobs in her delivery route at Overlake HOA. (Id.). In her experience, the 1 ½" depth knobs caused no difficulty or strain from repetitive opening, while the ¾" depth caused her difficulty and injury to the point that she was ultimately unable to return to my postal delivery service. (Id.).

SUMMARY OF ARGUMENT

Niemela clearly described a defective product, both in design and manufacture. The Imperial mailbox had a knob that was too small, too shallow in depth, and insufficient weight. The mailbox was constructed with holes and gaps that allowed rain and snow to bind or freeze the hinge points. Due to the repetitive nature of Niemela's mail route, consisting of over 600 Imperial mailboxes, it was only a matter of time before her hand gave out, which it did. The trial court erred in deciding that Niemela had alleged no duty on Imperial to stop selling these mailboxes, or to warn consumers who had already purchased them. It erred in deciding that there was no evidence of defect in the

mailboxes, by completely disregarding Niemela's testimony. It erred in believing that Niemela's testimony did not rebut the presumption of safety from compliance with federal regulations.

ARGUMENT

POINT ONE

IMPERIAL HAD A DUTY IN NEGLIGENCE NOT TO SELL DEFECTIVE OR UNREASONABLY DANGEROUS MAILBOXES

Imperial owed Niemela a duty of care in the design and manufacturing of the mailboxes in the Overlake development. *Jacobsen Const. Co., Inc. v. Structo Lite Engineering, Inc.*, 619 P.2d 306 (Utah 1980)(duty of care to supply properly manufactured product). The trial court mis-characterized the issue as a lack of duty to recall or discontinue a non-defective product. Niemela does not disagree with this statement of law from *Slisze v. Stanley-Bostich*, 1999 UT 20, 979 P.2d 317. However, Niemela alleged that the mailbox, even if manufactured prior to 2001, was defective and unreasonably dangerous. For that reason, *Slisze* is inapposite.

The trial court alternatively assumed a duty to Niemela, but asserted that Imperial had no actual or constructive notice of the risk of injury created by the earlier mailbox design, prior to January, 2001. To that assertion, Niemela responds that the rule-making process by the USPS, which culminated in the February, 2001 regulations, necessitates the conclusion that entities that manufacture mailboxes were on notice prior to 2001 that the USPS had a concern about the proper knob size, and depth, and related issues to opening mailboxes. Whether Imperial had actual notice of a prior complaint about the mailboxes (at this point, Imperial has offered no evidence on that), there is a question of constructive or inquiry notice about the reasonableness of the design of its

mailbox. The notice of proposed rulemaking from the USPS was November 1, 2000, which clearly put Imperial on notice by that date that there was a potential problem with the mailbox design.

The trial court further found no evidence of breach of any duty. However, the trial court did not address Niemela's testimony that the mailbox was not properly constructed according to the 1995 design standards. The Utah Supreme Court has recognized that a failure to manufacture a product according to a safe design plan can result in liability. See *Jacobsen Const. Co., Inc.*, supra. Even if Imperial is not negligent in designing a different mailbox prior to 2001, the ones it did manufacture according to that earlier design had manufacturing defects that created an unreasonable risk of injury to Niemela. Niemela testified that the Imperial knob did not "operate freely and solely by pulling outward and downward". Specifically, she testified that the Imperial mailboxes frequently required use of levers, such as a screwdriver, to pry them open. Niemela depo., p. 40, l. 11-25; p. 41, l.1. In fact, the day her hand finally failed, Niemela used a hammer together with a screwdriver to open mailboxes. Id., p. 55, l. 1-6. See also Niemela aff., ¶8. Customers also complained of having to use screwdrivers or other levers to open their mailboxes. Niemela depo., p. 38, l. 17-25; p. 39, l. 1.

Niemela testified that the wind, combined with rain and snow, formed ice which prevented the proper opening and closing of the doors. One specific cause was the holes at the top of the mailbox, where the address attached, without properly sealing or protecting the holes. This allowed rain and snow to run down into the mailbox, freezing into ice at the hinge. See Niemela depo., p. 33, l. 24-25; p. 34, l. 1-25, p. 35, l. 1-24. Also, the point where the door and the mailbox housing fit was not protected from the rain and snow, unlike other simpler and less expensive mailboxes, allowing ice to form there also. See Niemela depo., id., supra.

The trial court suggested that Niemela needed expert testimony to show a breach of duty. However, the numerous problems that Niemela testified to are matters well within the understanding of a jury, without additional expert testimony. Her testimony of the problems with the mailboxes must be accepted at face value in ruling on summary judgment. The trial court did not do that. The trial court did cite *Fox v. Brigham Young Univ., Inc.*, 2007 UT App 406, 176 P.3d 446. However, the *Fox* case involved medical causation issues that were beyond the ken of an average juror. The problems Niemela and other customers experienced with the Imperial mailboxes were understandable to anyone who has used a mailbox, which is, basically, every potential juror.

These numerous problems created an issue of material fact whether Imperial acted negligently in the manufacture of its mailboxes, apart from the design. ¹

POINT TWO

NIEMELA'S TESTIMONY ABOUT THE DEFECTS IN THE IMPERIAL MAILBOX CREATED A GENUINE ISSUE OF MATERIAL FACT WHETHER THEY WERE DEFECTIVE

Imperial admits that it must show that it complied with the applicable governmental regulations in 2001 in order to benefit from the common law presumption based upon U.C.A. §78-15-6(2)(1977).² But there is abundant evidence that Imperial's 2001 mailboxes, as installed at the Overlook Point development, did not comply with the applicable governmental standards.

¹The trial court did not discuss any issue of express or implied federal pre-emption.

² Niemela's injury occurred during the "gap", where compliance with federal regulations created a common law presumption of due care, rather than a statutory one. *Egbert v. Nissan Motor Co., Ltd.*, 2010 UT 8, 228 P.3d 737 (Utah 2010).

Applicable Governmental Standard:

This writer has performed a diligent search for applicable governmental standards, and believes that the standard at the time the Overlake HOA was brought into postal service, was found at 39 C.F.R. 111 (February 8, 2001), which is otherwise referred to as USPS-STD-7B. See Addendum B. He believes that this is still the only governing standard. It appears that the mailboxes at the Overlake HOA were installed after that regulation went into effect. Imperial offered no evidence of when the mailboxes were purchased or delivered to the Overlake HOA after the 2001 regulation went into effect. The shorter, shallower 3/4" knob mailboxes used at Overlake HOA were approved under the 1992 regulations. The larger, deeper 1 1/2" knob Imperial mailboxes used later at Overlake HOA were apparently approved under the 2001 regulation, in 2002, well after installation at Overlake.

The 2001 regulation required all existing approved manufacturers to obtain re-approval of their mailbox designs. It appears that Imperial was selling Overlake HOA unapproved mailboxes after the 2001 regulation went into effect, but before it obtained approval in 2002 for its newer designed mailboxes.

Evidence of Violations of 39 C.F.R. 111:

Standard 3.4:

... The carrier door must operate freely and solely by pulling outward and downward with a convenient handle or knob.

As noted above, Niemela averred that the Imperial knob did not "operate freely and solely by pulling outward and downward". Specifically, she testified that the Imperial mailboxes frequently required

use of levers, such as a screwdriver, to pry them open. Niemela depo., p. 40, l. 11-25; p. 41, l.1. In fact, the day her hand finally failed, Niemela used a hammer together with a screwdriver to open mailboxes. Id., p. 55, l. 1-6. See also Niemela aff., ¶8. Customers also complained of having to use screwdrivers or other levers to open their mailboxes. Niemela depo., p. 38, l. 17-25; p. 39, l. 1.

Standard 3.4:

The design of the door, including hinges and handles must provide protection against wind, rain, sleet, or snow . . .

Niemela testified that the wind, combined with rain and snow, formed ice which prevented the proper opening and closing of the doors. One specific cause was the holes at the top of the mailbox, where the address attached, without properly sealing or protecting the holes. This allowed rain and snow to run down into the mailbox, freezing into ice at the hinge. See Niemela depo., p. 33, l. 24-25; p. 34, l. 1-25, p. 35, l. 1-24. Also, the point where the door and the mailbox housing fit was not protected from the rain and snow, unlike other simpler and less expensive mailboxes, allowing ice to form there also. See Niemela depo., id., supra.

Standard 3.4:

Door latches must hold the door closed but allow easy opening and closing requiring no more than 5 lbs of force.

Niemela averred that the door latches did not “allow easy opening and closing” and required much more than “5 lbs of force”. Niemela aff., ¶8-9.

Standard 3.4.1 Handle/Knob

The handle or knob shall have adequate accessibility to permit quickly grasping and

pulling it with one hand (with or without gloves) to open the door.

Niemela averred that the Imperial knobs did not “permit quickly grasping and pulling”. Niemela aff., ¶6-7.

Standard 3.14 Workmanship

The mailbox shall be properly assembled and utilize the best commercial practice workmanship standards in the fabrication of all components and assemblies. All moveable parts shall fit and operate with no unintended catch or binding points.

Niemela’s testimony about the poor workmanship of the mailboxes creates an issue of fact whether Imperial met this standard. The doors did not “fit and operate with no unintended catch or binding points”; Niemela aff., ¶10-11; on the contrary, they were constantly catching and binding, requiring extra pulling force to open them.

POINT THREE

EVEN IF IMPERIAL COMPLIED WITH THE PRE-2001 REGULATION,
THERE IS SUFFICIENT EVIDENCE TO CONCLUDE THAT
THE SMALL KNOB IMPERIAL MAILBOX IS DEFECTIVE

The litany of problems posed by the small knob Imperial mailbox is sufficient to create an issue of fact as to defective design. “Defective” means “dangerous to an extent beyond which would be contemplated by the ordinary and prudent . . . user of that product in that community considering the product’s characteristics, propensities, risks, dangers, and uses . . .”. U.C.A. §78-15-6(2)(1977). Niemela need only persuade a jury, by a preponderance of the evidence, that the small knob Imperial mailbox was defective. *Egbert v. Nissan North America, Inc.*, 167 P.3d 1058, 1062; 2007 UT 64, ¶14-17. The list of problems includes:

- 1) knob diameter too small
- 2) knob depth too shallow
- 3) holes in top of mailbox not sealed to prevent water intrusion and ice buildup at hinge
- 4) exposed joint between door and box allows direct entry of water to form ice

These problems result in a mailbox that is “dangerous to an extent beyond which would be contemplated by the ordinary and prudent . . . user”. This point is highlighted by the stark difference between the Imperial mailbox in question and the Imperial mailbox with the larger, deeper knob. It is also highlighted by the difference between the Imperial mailbox in question and the ordinary aluminum mailboxes. Neither of these other designs created any problem for Niemela in delivery.

CONCLUSION

Niemela described in detail the specific and myriad ways that the Imperial mailboxes were defective. They had a knob that was too small around, too lightweight, and which had too little depth. They were poorly manufactured, with holes that allowed ice to form, freezing the mailbox doors shut. This evidence sufficed to create a genuine issue of material fact, whether the mailboxes were negligently designed, or negligently manufactured. That same evidence created a genuine issue of material fact whether the mailboxes were defective, and unreasonably dangerous to a consumer like Niemela. This was not a situation where a manufacturer replaced one non-defective product with another non-defective product. Niemela clearly explained how the design changes adopted in 2002 eliminated the problems with the prior design. The earlier Imperial mailboxes were unreasonably dangerous. Imperial

should have stopped selling them by November 1, 2000, at the very latest. It should have warned consumers to fix the ones that were in the distribution chain, but not installed, to install the newer, larger knob. Imperial did nothing but pocket its profits. Summary judgment should be reversed.

DATED this 27th day of December, 2010.

BERTCH ROBSON ATTORNEYS

Daniel F. Bertch
Attorney for Plaintiff/Appellant Niemela

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2010, a true and correct copy of the foregoing APPEAL BRIEF was mailed by U.S. Mail, first-class postage prepaid, as follows:

Cory D. Memmott
RAY LEGO AND ASSOCIATES
1100 East 6600 South, Suite 350
Salt Lake City, UT 84121
email: CMEMMOTT@travelers.com

ADDENDA

A

Trial Court Ruling - July 20, 2010

argues that because the mailboxes at issue were made in conformity with governmental standards then pursuant to Utah Code Annotated Section 78B-6-703, there is a rebuttable presumption that mailboxes are free from any defect or defective condition and accordingly, it is entitled to summary judgment.

Summary judgment can be granted only if the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Mountain States Tel. & Tel. Co. v. Atkin, Wright & Miles, Chartered, 681 P.2d 1258, 1261 (Utah 1984) (citations omitted).

To prevail on a negligence claim, a plaintiff must establish four essential elements: (1) that the defendant owed plaintiff a duty, (2) that the defendant breached that duty, (3) that the breach of duty was the proximate cause of the plaintiff's injury, and (4) that the plaintiff in fact suffered injuries or damages. Thurston v. Workers Comp. Fund of Utah, 2003 UT App 438, ¶12, 83 P.3d 391 (citation omitted).

Plaintiff maintains that Defendant breached its duty by designing mailboxes with a small, shallow pull knob that created an unreasonable strain on the fingers/hand while opening it, and, failing to notify users of the alleged hazards of the small knob. (Compl. 24-25).

The mailboxes and related components e.g. knobs, that Plaintiff complains of were in place in or about 1995. (Pl.'s

Opp. Ex. C, Niemela Dep. 23:7-10). These mailboxes were approved to be in compliance with the United States Postal Services' ("USPS") compliance requirements established at that time. (Def.'s Mem. In Supp. Ex. A). Plaintiff's claims stem from changes made to the USPS' regulations, which were made effective on or about January 10, 2001. (Pl.'s Opp. Ex. B).

Plaintiff fails to show that the January 10, 2001, mandated structure of the mailboxes, including guidance on the handles/knobs, was in effect in or about 1995, when the mailboxes at issue were manufactured. Furthermore, Plaintiff has failed to show that Defendant had prior knowledge or any knowledge that the manufactured handles/knobs caused injuries or were in any way defective. The only support Plaintiff provides for her allegations are that of her own testimony and the new USPS provisions made effective on January 10, 2001. Plaintiff fails to provide expert or other testimony regarding the design of the handles/knobs of the mailboxes at issue. See e.g. Fox v. Brigham Young Univ., Inc., 2007 UT App 406, ¶22, 176 P.3d 446.

In a personal injury case in which plaintiff brought in part a negligence case against the manufacturer of a pneumatic nailer, the Utah Supreme Court explained, "In order to prevail on a negligence claim, *there must be evidence of a duty breached*. We have *never*, nor has any other jurisdiction, recognized a duty on the part of a manufacturer to refrain from marketing a

non-defective product when a safer model is available, or a duty to inform the consumer of the availability of the safer model."

Slisze v. Stanley-Bostitch, 1999 UT 20, ¶10, 979 P.2d 317

(emphasis added).

Furthermore, "the causal connection between the alleged negligent act and the injury is *never presumed* and . . . this is a matter the plaintiff *is always required to prove affirmatively*." Fox, 2007 UT App at ¶21 (citation omitted) (emphasis added). Plaintiff has failed her burden to present evidence that her injuries were the proximate and actual result of Defendant's mailboxes. Id. (citation omitted).

An essential element of negligence is duty. "Absent a showing of duty, [the plaintiff] cannot recover." Slisze, 1999 UT at ¶9; see Sanns v. Butterfield Ford, 2004 UT App 203, P6, 94 P.3d 301. ("[W]hen a party fails to produce evidence sufficient to meet one of the elements of a claim, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." (citation and quotation omitted)).

Therefore, the Court GRANTS Defendant's Motion for Summary Judgment against Plaintiff on her claim of Negligence.

In regards to Plaintiff's claim of Product Liability and Breach of Implied Warranty, Section 78B-6-703 provides:

(1) In any action for damages for personal injury, death, or property damage allegedly caused by a defect in a product, a product may not be considered to have a defect or to be in a defective condition, *unless at the time the product was sold* by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the product *unreasonably dangerous*¹ to the user or consumer.

(2) There is a *rebuttable presumption* that a product is free from any defect or defective condition where the alleged defect in the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were in conformity with government standards established for that industry which were in existence at the time the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were adopted.

(2010) (emphasis added).

Consistent with the statutory language, Plaintiff has failed to show that the mailboxes in question were "unreasonably dangerous," Kleinert v. Kimball Elevator Co., 854 P.2d 1025, 1027 (Utah Ct. App. 1993) ("In statutory terms, Ms. Kleinert needed to submit some evidence that there was a defect in the elevator, that the defect existed at the time the elevator was sold, and that the defect made the elevator unreasonably dangerous. . . . She merely alleged that because she was injured, the elevator must have been defective. She did not submit any evidence showing

¹Utah Code Annotated Section 78B-6-702 provides that unreasonably dangerous "means that the product was dangerous to an extent *beyond* which would be contemplated by the *ordinary and prudent buyer, consumer, or user of that product* in that community considering the product's characteristics, propensities, risks, dangers, and uses together with any actual knowledge, training, or experience possessed by that particular buyer, user, or consumer." (2010) (emphasis added).

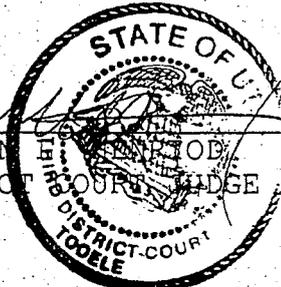
a defect or defective condition, let alone evidence showing the defect existed at the time of the sale or that the defect made the elevator unreasonably dangerous."), or, present sufficient evidence to overcome the presumption of nondefectiveness. See Egbert v. Nissan N. Am., Inc., 2007 UT 64, ¶14, 157 P.3d 347 (explaining that a preponderance of the evidence is sufficient to overcome the presumption of nondefectiveness).

Based upon the foregoing, the Court GRANTS Defendant's Motion for Summary Judgment against Plaintiff on her claims of Product Liability and Breach of Implied Warranty.

This Minute Entry stands as the Order for the Court. No further order is required.

Dated this 20 day of July 2010.

BY THE COURT:


STEPHEN E. TOOLE
DISTRICT COURT JUDGE


CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing Minute Entry dated this 21 day of

July 2010, postage prepaid, to the following:

Cory D. Memmott
Ray Lego & Associates
1100 East 6600 South, Suite 350
Salt Lake City, UT 84121

Daniel F. Bertch
Kevin K. Robson
Bertch Robson
1996 East 6400 South, Suite 100
Salt Lake City, UT 84121

Nancy Watkins
CLERK OF COURT

B

39 C.F.R. §111

Federal Register Vol. 66, No. 27, February 8, 2001

1. Eliminated the requirement that "Traditional" mailboxes must be built in conformance with USPS drawings (formerly designated T1, T2, & T3). All three USPS drawings were eliminated and replaced with a new figure, which gives manufacturers more design flexibility.

2. Removed all requirements to comply with military and federal specifications and standards.

3. Deleted flammability, solar exposure, and color intensity test requirements that were determined to be invalid or unnecessary.

4. Dropped requirement that manufacturers comply with the National Motor Freight Classification Rule 222.

5. Introduced a new "Locked" mailbox classification with two new figures. This design will provide customers with an option to purchase mailboxes that offer increased security for their mail.

6. Incorporated quality assurance provisions.

7. Added a figure depicting three new alternative flag designs.

8. Included new guidelines and a figure for acceptable door handle/knob designs.

9. Clarified application requirements and introduced independent laboratory testing.

Comment and Analysis

The Postal Service makes this revision after consideration of the single substantive comment submitted in response to the Notice of Proposed Rulemaking published in Vol. 65 *Federal Register* No. 212 on November 1, 2000. The commenter recommended that the proposed standard be modified to permit use of retrofit locking devices on mailboxes. The commenter argued that such devices would address mail theft concerns, provide a low cost alternative to purchasing a locking mailbox, and enable more efficient carrier delivery.

Although the commenter recommends that retrofit locking devices be permitted only if they do not otherwise violate any provision of the new standard, the Postal Service and the Consensus Committee have concluded that the recommended modification should not be made.

The Postal Service has evaluated numerous locking devices intended to be retrofitted on customers' curbside mailboxes. In every case, mailboxes equipped with those devices required significant additional carrier effort. In addition, all were susceptible to incorrect homeowner installation and/or incorrect operation by carriers. These pervasive problems would decrease the

effectiveness of mail security afforded by these devices and increase the operational difficulty of servicing mailboxes equipped with those devices. For these reasons, the Postal Service has consistently determined that retrofit locking devices should not be permitted on curbside mailboxes, and all members of the Committee opposed adoption of the change recommended by the commenter.

In response to concerns about mail security, the Consensus Committee recommended new design requirements for locked mailboxes. The new locked mailboxes permitted under the revised standard will not present any of the inherent problems associated with retrofit locking devices, and will provide increased mail security to customers.

Re-approval of Manufacturers' Curbside Mailboxes

The re-approval process for manufacturers with mailbox designs that were approved before the final publication date of USPS STD 7B will be conducted as follows. The approval process for all other mailbox designs will be conducted in accordance with USPS STD 7B, part 5.

1. The USPS will notify currently approved manufacturers within five business days after final publication of USPS STD 7B in the *Federal Register* when to submit their mailboxes for re-approval. All mailboxes must be submitted to: ATTN: Test Evaluation & Quality, USPS Engineering, 8403 Lee Hwy, Merrifield VA 22082-8101.

2. Manufacturers will have 90 days after receipt of this notification to submit a sample of each of their previously approved mailboxes. In addition, manufacturers shall submit their quality assurance manual, and each mailbox must be accompanied with a compliance certificate, one set of drawings, product information, and instructions. Mailboxes will be tested on a first-come, first-served basis.

3. If a previously approved mailbox is not submitted within the 90-day period, it will automatically lose its approval status. A manufacturer may receive an extension of up to 45 days, provided reasonable justification is demonstrated to the USPS. Manufacturers seeking an extension must write to: ATTN: Delivery & Retail Systems, USPS Information Platform, 8403 Lee Hwy, Merrifield VA 22082-8101.

4. The USPS will have up to 90 days to respond to submissions, during which time manufacturers can continue to sell their mailboxes.

5. If a submitted mailbox does not pass the revised standard's

requirements, the manufacturer may make modifications and re-submit their mailbox one additional time. The manufacturer will have 45 days after the date of USPS's notice of denial of the manufacturer's first application to submit a second sample. Should the second sample fail testing, the manufacturer has up to 180 days from notification of failure to cease selling it. The manufacturer is also to cease production immediately and use the 180 days to deplete existing inventory.

6. If a mailbox fails two testing attempts, manufacturers may still make modifications and re-submit in accordance with the new application requirements specified in the revised standard. However, the conditions identified in #5 above remain in effect.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. § 552(a), 39 U.S.C. §§ 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 3626, 5001.

2. Revise USPS STD 7A as set forth below:

USPS-STD-7B.

February 8, 2001.

Supersedes Rev A.

Dated: December 17, 1992.

1. SCOPE AND CLASSIFICATION

1.1 Scope

This standard covers all curbside mailboxes. Curbside mailboxes are defined as any design made to be served by a carrier from a vehicle on any city, rural or highway contract route. This standard is not applicable to mailboxes intended for door delivery service (see 6.1).

1.2 Classifications

Based on their size and design, curbside mailboxes are classified as either:

T—Traditional, Full or Limited Service (see 3.2.1 & Figure 1).

C—Contemporary, Full or Limited Service (see 3.2.2).

L—Locked, Full or Limited Service (see 3.2.3 & Figures 2 & 3).

1.3 Approved Models

1.3.1 Approved Models

Manufacturers whose mailboxes have been approved by the United States Postal Service (USPS) will be listed in the Postal Operations Manual (POM) and published in the Postal Bulletin.

1.3.2 Interested Manufacturers

Manufacturing standards and current information concerning the manufacture of curbside mailboxes may be obtained by writing to: USPS, Information Platform, Delivery & Retail Operation Equipment, 8403 Lee Highway, Merrifield, VA 22082-8101.

2. APPLICABLE DOCUMENTS**2.1 Specifications and Standards**

Except where specifically noted, the specifications set forth herein shall apply to all curbside mailbox designs.

2.2 Government Documents

The following documents of the latest issue are incorporated by reference as part of this standard.

*United States Postal Service***POM Postal Operations Manual**

Copies of the Postal Operations Manual can be obtained from the USPS New Jersey Material Distribution Center, 2 Brick Plant Road, South River, NJ 08877-9998.

2.3 Non-Government Documents

The following documents of the latest issue are incorporated by reference as part of this standard.

American Standards for Testing Materials (ASTM)

ASTM G85 Standard Practice for Modified Salt Spray (Fog) Testing
ASTM D968 Standard Test Methods for Abrasion Resistance of Organic Coatings by Falling Abrasive

Copies of the preceding documents can be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

Underwriters Laboratories

UL 771 Night Depositories (Rain Test Only)

Copies of the preceding document can be obtained from Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096

American Society for Quality

ANSI/ASQC Q9002-1994 Quality Systems—Model for Quality Assurance in Production, Installation, and Servicing
ANSI/ISO/ASQC Q10013-1995 Guidelines for Developing Quality Manuals

Copies of the preceding documents can be obtained from the American Society for Quality, PO Box 3066, Milwaukee, WI 53201-3066.

3. REQUIREMENTS**3.1 Quality**

Mailbox manufacturers must ensure and be able to substantiate that units manufactured conform to the requirements of this specification.

3.1.1 Inspection

The Postal Service reserves the right to inspect units for conformance to this specification at any stage of manufacture. Inspection by the Postal Service does not relieve the manufacturer of the responsibility to provide performance that conforms to the requirements set forth in this specification. Prior to any visits, the Postal Service will provide a minimum notice of 30 business days. The Postal Service may, in its discretion, suspend the approval status of any manufacturer's model that is found to be out of conformance with approved drawings (see 5.2.2).

3.1.2 System

The manufacturer shall use a documented quality system acceptable to the Postal Service. As a minimum, the manufacturer's quality system shall include controls and record keeping in the following areas: (A quality system in compliance with ANSI/ASQC Q9002-1994 meets this requirement).

- 3.1.2.1 Inspection and testing;
- 3.1.2.2 Inspection, measuring, and test equipment;
- 3.1.2.3 Control of nonconforming products;
- 3.1.2.4 Document control; and
- 3.1.2.5 Corrective action.

3.1.3 System Evaluation

The Postal Service has the right to evaluate the acceptability and effectiveness of the manufacturer's quality system before approval and during tenure as approved source.

3.1.4 Records

All of the manufacturer's records pertaining to the approved product shall be kept for a minimum of three (3) years after shipment of product.

3.2 General Design

Mailboxes must meet regulations and requirements as stipulated by USPS collection and delivery, operation and policy (see 2.2). This includes carrier door operation as stated in 3.4, flag operation as stated in 3.7, in-coming mail openings and the retrieval of out-going mail. The opening style, design and size are determined by the manufacturer, however, the carrier must be able to deposit the customer's mail. Out-going mail of all designs must be

able to be pulled straight out of the mailbox without interference from protrusions, hardware, etc. Mailboxes must be capable of passing the applicable testing requirements in 3.15. Mailboxes must not be made of any transparent, toxic, or flammable material (see 3.3). The mailbox must protect mail from potential water damage that may result from wet weather conditions (see section 3.15.3). Any advertising on a mailbox or its support is prohibited. Additional specific requirements follow.

3.2.1 Traditional Designs (Limited & Full Service)

Figure 1 and meet capacity requirements specified in 3.15.1 will be classified as Traditional. Designs incorporating a carrier signal flag (see 3.7) will be classified as full service mailboxes. Designs with no flag will be classified as limited service (see 3.12). As specified in 3.5, a rear door is permitted to enable the customer to remove mail without standing in the street. The use of locks, locking devices or inserts is prohibited.

3.2.2 Contemporary Designs (Limited & Full Service)

Mailbox designs that do not conform to the dome-rectangular shape of Traditional designs but meet capacity requirements specified in 3.15.1 will be classified as Contemporary. In addition, Contemporary designs shall not exceed the maximum limitations on dimensions A, D, E, F and G in Figure 1. Designs incorporating a carrier signal flag (see 3.7) will be classified as full service mailboxes. Designs with no flag will be classified as limited service (see 3.12). Although the shape and design is less restrictive, Contemporary mailboxes must meet the same applicable functional requirements. Contemporary designs can also incorporate a rear door, as specified in 3.5, to enable the customer to remove mail without standing in the street. The use of locks, locking devices or inserts is prohibited.

3.2.3 Locked Designs

Mailbox designs that provide security for customer's in-coming mail will be classified as Locked mailboxes (see Figures 2 & 3). Although the shape and design is less restrictive, Locked mailboxes must meet the same applicable functional requirements. Designs having a slot for in-coming mail must be at least 1.75 inches high by 10 inches wide. If a slot has a protective flap it must operate inward to ensure mail can be inserted in a horizontal manner without requiring any additional effort of carriers (see Figure

3). The slot must be positioned on the front side of the mailbox facing the street. In addition, the slot must be clearly visible and directly accessible by mail carriers. Any designs, which allow for out-going mail, must meet all applicable requirements of this standard.

3.2.3.1 Full Service

Locked mailbox designs of this class allow for both in-coming and out-going mail as depicted in Figure 2. It is preferred¹ that both in-coming and out-going mail compartments be located behind a single carrier service door as shown in Figure 2. Alternate positioning of the in-coming mail compartment such as beneath or side-by-side with the out-going compartment is permitted provided that no additional carrier service is introduced.

3.2.3.2 Limited Service

Locked mailbox designs of this class only allow for in-coming mail as shown in Figure 3.

3.2.4 Mailbox Accessories

Decorative art and devices can be attached to the exterior of approved mailbox designs provided they do not interfere with mail delivery or present a safety hazard. Devices can also be mounted in the interior of approved mailboxes provided they do not cause the intended mailbox to fail capacity test described in 3.15.1 and do not interfere with mail delivery or present a safety hazard. Any advertising on a mailbox or its support is prohibited. Unrestricted spring-loaded devices and designs are prohibited. Auxiliary flags or devices used to signal the customer that the mail has arrived must operate automatically without requiring additional carrier effort.

3.3 Materials

Ferrous or nonferrous metal, wood (restrictions apply), plastic, or other materials may be used, as long as their thickness, form, mechanical properties, and chemical properties adequately meet the operational, structural, and performance requirements set forth in this standard. Materials used must not be toxic, flammable or transparent.

3.3.1 Mailbox Floor

The entire bottom area of all mailboxes where mail would rest shall be fabricated to prevent mail from damage due to condensation or moisture. Except for the internal mail

¹ The term 'preferred' as used throughout this document in conjunction with any requirement implies that compliance is desired but not mandatory.

compartment of locked style mailboxes, all designs must not present a lip or protrusion that would prevent the mail from being inserted or pulled straight out of the mailbox. The surface of the floor cannot be made of wood material. The floor shall be ribbed as shown in Figures 1, 2, and 3 or dimpled, embossed, or otherwise fabricated provided the resulting surface area (touching mail) does not exceed .25 square inch (per dimple/impression) and is a minimum of .12 inch high on centers not exceeding 1 inch. A mat insert having a raised surface contour may be used for the internal mail compartment of locked style mailboxes only (see Figures 2 & 3).

3.3.2 Carrier Signal Flag

Cannot be made of wood. Plastic is the preferred material.

3.3.3 Door Handle

Cannot be made of wood. Plastic is the preferred material.

3.4 Carrier Service Door

There shall be only one carrier service door which must provide access for mail delivery and collection intended by the unit and meet USPS delivery operational requirements (see 2.2). The door must meet the applicable testing requirements specified in 3.15.2. The carrier service door must operate freely and solely by pulling outward and downward with a convenient handle or knob. The design of the door, including hinges and handles must provide protection against wind, rain, sleet, or snow (see 3.15.3). Door latches must hold the door closed but allow easy opening and closing requiring no more than 5 pounds of force. Action of the latch must be a positive mechanical one not relying solely on friction of the hinge parts. The door shall not be spring-loaded. Magnetic latches are acceptable provided adequate closure power is maintained during ambient conditions specified in 3.15.6 and applicable testing described in 3.15. It is preferred that by either tactile or by sound (i.e. "snap" or "click") carriers are alerted that door is properly shut. The door, once opened, must remain in the open position until the carrier pushes it closed. The door must rotate a minimum of 100 degrees when opened and it is preferred that the maximum rotation be limited to 120 degrees or less. When in a fully opened and rest position, the opening angle of the door cannot measure more than 180 degrees. No protrusions other than the handle/knob, door catch, alternate flag design, decorative features or markings are permitted on the carrier service door.

Protrusions of any kind that reduce the usable volume within the mailbox when closed are not acceptable. See section 3.2.3 for carrier service door requirements for Locked mailbox designs.

3.4.1 Handle/Knob

The handle or knob shall have adequate accessibility to permit quickly grasping and pulling it with one hand (with or without gloves) to open the door. The handle or knob shall be located within the top 1/3 of the door. Various acceptable handle/knob designs with required dimensions are depicted in Figure 5. Other designs may be acceptable provided they allow enough finger clearance and surface area for carriers to grasp.

3.5 Rear Doors

Mailboxes may have a rear door, provided that it does not interfere with the normal delivery and collection operation provided by the carrier or require the carrier to perform any unusual operations. The rear door must not be susceptible to being forced open as a result of large mail items such as newspapers and parcels being inserted through the carrier door. The rear door must meet the applicable testing requirements specified in 3.15.

3.6 Locks

Locked mailbox designs shall have an effective means to ensure that in-coming mail is only accessible by the customer. The use of locks on Contemporary and Traditional mailbox designs is prohibited. Manufacturers must include the following statement in their instructions to customers: **IT IS IMPORTANT TO NOTE THAT IT IS NOT THE RESPONSIBILITY OF MAIL CARRIERS TO OPEN MAILBOXES THAT ARE LOCKED, ACCEPT KEYS FOR THIS PURPOSE, OR LOCK MAILBOXES AFTER DELIVERY OF THE MAIL.**

3.7 Carrier Signal Flag

Traditional, Contemporary, and Locked mailbox designs classified as Full Service shall have a carrier signal flag. The flag design must be one of the approved concepts depicted in Figures 1, 2, and 4. As shown in each figure, the flag must be mounted on the right side when facing the mailbox from the front. The flag must not require a lift or more than 2 pounds of force to retract. Additionally, when actuated (signaling out-going mail) the flag must remain in position until retracted by the carrier. The color of the flag must be in accordance with requirements described in 3.10. The operating mechanism of the

flag must not require lubrication and must continue to operate properly and positively (without binding or excessive free play) after being subjected to test described in 3.15. Optionally, the flag may incorporate a self-lowering feature that causes it to automatically retract when the carrier service door is opened provided no additional effort is required of the carrier. The self-lowering feature cannot present protrusions or attachments and must not interfere with delivery operations in any manner or present hazardous features as specified in 3.2.

3.8 Marking

The mailbox must bear two inscriptions on the carrier service door: "U.S. MAIL" in a minimum of .50 inch high letters and "Approved By The Postmaster General" in a minimum of .18 inch high letters. These inscriptions may be positioned beneath the incoming mail slot for Limited Service Locked Mailboxes as shown in Figure 3. Markings must be permanent and may be accomplished by applying a decal, embossing on sheet metal, raised lettering on plastic, engraving on wood or other methods that are suitable for that particular unit. The manufacturer's name, address, date of manufacture (month and year), and model number or nomenclature must be legible and permanently marked or affixed on a panel (rear, backside of door, bottom or side interior near the carrier service door) of the mailbox that is readily accessible and not obscured.

3.8.1 Modified Mailbox Marking

Mailboxes that use previously approved units in their design must include marking stating the new manufacturer's name, address, date of manufacture and model nomenclature in a permanent fashion and location as described above. Additionally, The "U.S. MAIL" and "Approved By The Postmaster General" marking shall be reapplied if it is obscured or obliterated by the new design.

3.9 Coatings and Finishes

Choice of coatings and finishes is optional, provided all requirements of this standard are met. All coatings and finishes must be free from flaking, peeling, cracking, crazing, blushing, and powdery surfaces. Coatings and finishes must be compatible with the mailbox materials. Accept for small decorative accents, mirror-like coatings or finishes are prohibited. The coating or finish must meet the applicable testing requirements described in 3.15.5.

3.10 Color

The color of the mailbox and flag must be in accordance with the following requirements. The mailbox may be any color. The carrier signal flag can be any color except any shade of green, brown, white, yellow or blue. The preferred flag color is fluorescent orange. Also, the flag color must present a clear contrast with predominant color of the mailbox.

3.11 Mounting

The mailbox shall be provided with means for convenient and locked mounting that meets all applicable requirements of the POM. The manufacturer may offer various types of mounting accessories such as a bracket, post or stand. Although the USPS does not regulate the design of mounting accessories, it is pointed out that no part of them is permitted to project beyond the front of the mounted mailbox. Mounting accessories must not interfere with delivery operations as described in 3.2 or present hazardous features as described in 3.14. See section 6 for additional important information.

3.12 Instructions and Product Information

3.12.1 Assembly and Installation

A complete set of instructions for assembling and mounting the mailbox shall be furnished with each unit. The instructions must include the following conspicuous message: CUSTOMERS ARE REQUIRED TO CONTACT THE LOCAL POST OFFICE BEFORE INSTALLING THE MAILBOX TO ENSURE ITS CORRECT PLACEMENT AND HEIGHT AT THE STREET. GENERALLY, MAILBOXES ARE INSTALLED AT A HEIGHT OF 41-45 in. FROM THE ROAD SURFACE TO INSIDE FLOOR OF THE MAILBOX OR POINT OF MAIL ENTRY (LOCKED DESIGNS) AND ARE SET BACK 6-8 in. FROM FRONT FACE OF CURB OR ROAD EDGE TO THE MAILBOX DOOR.

3.12.2 Limited Service Mailboxes

The following conspicuous note shall be included with each mailbox: THIS IS A LIMITED SERVICE MAILBOX (WITHOUT FLAG) AND IT IS ONLY INTENDED FOR CUSTOMERS WHO DO NOT WANT POSTAL CARRIERS TO PICK-UP THEIR OUT-GOING MAIL. UNLESS POSTAL CARRIERS HAVE MAIL TO DELIVER THEY WILL NOT STOP AT LIMITED SERVICE MAILBOXES.

3.13 Newspaper Receptacles

A receptacle for the delivery of newspapers may be attached to the post

of a curbside mailbox provided no part of the receptacle interferes with the delivery of mail, obstructs the view of the flag, or presents a hazard to the carrier or the carrier's vehicle. The receptacle must not extend beyond the front of the box when the door is closed. No advertising may be displayed on the outside of the receptacle, except the name of the publication.

3.14 Workmanship

The mailbox shall be properly assembled and utilize the best commercial practice workmanship standards in the fabrication of all components and assemblies. All movable parts shall fit and operate properly with no unintended catch or binding points. The unit must be free from harmful projections or other hazardous devices. The unit must not have any sharp edges, sharp corners, burrs or other features (on any surfaces) that may be hazardous to carriers/customers, or that may interfere with delivery operations as described in 3.2 (General Design).

3.15 Testing Requirements

Mailboxes will be subjected to all applicable testing described herein (specific requirements follow). A mailbox that fails to pass any test will be rejected. Testing will be conducted in sequence as listed herein and in Table III.

3.15.1 Capacity

Traditional and Contemporary designs must meet minimum capacity requirements tested by insertion and removal of a standard test gauge which measures 18.50" long x 5.00" wide x 6.00" high. The test gauge is inserted with its 6.00" dimension aligned in the vertical axis (perpendicular to the mailbox floor). The gauge must be capable of easy insertion and removal; and while inserted, allow for the door(s) to be completely closed without interference. The capacity of Locked designs, which have slots, chutes or similar features, will be tested and approved based upon whether standard USPS mail sizes (see Table I) can be easily inserted through the mail slot or opening. Retrieval of this mail from the locked compartment shall be equally as easy.

TABLE I.—STANDARD MAIL (LOCKED DESIGNS)

Description	Size (L x H x Thk)
Express & Priority Mail Envelopes.	12½" x 9½" x ½"
Priority Mail Box	8¾" x 5¾" x 1¾"