

1991

Monte C. Hansen, Linda Hansen, Monte T.  
Hansen, Duane Jess Humphries, Carol Ravarino,  
and Richard Ravarino v. Sea Ray Boats, INC : Brief  
of Appellee

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc1](https://digitalcommons.law.byu.edu/byu_sc1)

 Part of the [Law Commons](#)

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

Anthony M. Thurber; Attorneys for Petitioners.

Stephen G. Morgan, Dennis R. James; Morgan & Hansen; Attorneys for Respondents.

---

#### Recommended Citation

Brief of Appellee, *Hansen v. Sea Ray Boats*, No. 910512.00 (Utah Supreme Court, 1991).  
[https://digitalcommons.law.byu.edu/byu\\_sc1/3729](https://digitalcommons.law.byu.edu/byu_sc1/3729)

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court 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](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH  
DOCUMENT  
KFU  
45.9  
.S9  
DOCKET NO. 910 ~~000~~ 512

---

IN THE SUPREME COURT OF UTAH

---

MONTE C. HANSEN, LINDA HANSEN, )  
MONTE T. HANSEN, DUANE JESS )  
HUMPHRIES, CAROL RAVARINO, and )  
RICHARD RAVARINO, )  
Plaintiffs/Petitioners, )  
vs. )  
SEA RAY BOATS, INC., an Arizona )  
Corporation, SOUTHWEST MARINE, an )  
Arizona Corporation, PROFESSIONAL )  
MARINER, a California Corporation, )  
and NEWMARK PRODUCTS, INC., a )  
California Corporation, )  
Defendants/Respondents. )

Case No. 900512

Priority: 12

---

BRIEF OF RESPONDENTS NEWMARK PRODUCTS, INC.

---

Certification of Question of Law from United States District Court

Anthony M. Thurber  
Suite 735, Judge Building  
8 East Broadway  
Salt Lake City, Utah 84111  
Attorney for Petitioners

Stephen G. Morgan  
Dennis R. James  
MORGAN & HANSEN  
Kearns Building, Eighth Floor  
136 S. Main Street  
Salt Lake City, Utah 84101  
Telephone: (801) 571-9115

Attorneys for Respondents  
Newmark Products, Inc.

FILED

JUL 31 1991

CLERK SUPREME COURT,  
UTAH

---

IN THE SUPREME COURT OF UTAH

---

MONTE C. HANSEN, LINDA HANSEN, )  
MONTE T. HANSEN, DUANE JESS )  
HUMPHRIES, CAROL RAVARINO, and )  
RICHARD RAVARINO, )

Plaintiffs/Petitioners, )

vs. )

SEA RAY BOATS, INC., an Arizona )  
Corporation, SOUTHWEST MARINE, an )  
Arizona Corporation, PROFESSIONAL )  
MARINER, a California Corporation, )  
and NEWMARK PRODUCTS, INC., a )  
California Corporation, )

Defendants/Respondents. )

Case No. 900512

Priority: 12

---

BRIEF OF RESPONDENTS NEWMARK PRODUCTS, INC.

---

Certification of Question of Law from United States District Court

Anthony M. Thurber  
Suite 735, Judge Building  
8 East Broadway  
Salt Lake City, Utah 84111

Attorney for Petitioners

Stephen G. Morgan  
Dennis R. James  
MORGAN & HANSEN  
Kearns Building, Eighth Floor  
136 S. Main Street  
Salt Lake City, Utah 84101  
Telephone: (801) 571-9115

Attorneys for Respondents  
Newmark Products, Inc.

ADOPTION OF BRIEF  
OF RESPONDENT SEA RAY BOATS, INC.  
BY RESPONDENT NEWMARK PRODUCTS, INC.

Defendant Newmark Products, Inc., in accordance with Rule 24(i) of the Utah Rules of Appellate Procedure, hereby adopts by reference the Brief of Respondent Sea Ray Boats, Inc., and specifically joins in the objection to Petitioner's statement of facts and reference to facts throughout her brief that are outside the statement of facts agreed to by all parties as contained in the Order of Certification.

SUMMARY AND CONCLUSION

As indicated in Johnson v. Rogers, 763 P.2d 771 (Utah 1988), the standard adopted by this Court's majority for determining liability for negligent infliction of emotional distress is set forth in section 313 of the Restatement (Second) of Torts (1965). Petitioner acknowledges that she does not qualify for recovery under the requirements of section 313. Brief of Petitioners, pp. 6-7, 16-19. Petitioner therefore requests of this Court the adoption of section 436 of the Restatement (Second) of Torts under the mistaken belief that the adoption of section 436 will give her a cause of action under the stipulated facts of this case.

As so aptly set forth in the Brief of Respondent Sea Ray Boats, Inc., even with the adoption of section 436, Petitioner would have no cause of action for negligent infliction of emotional distress. Petitioner acknowledges that the "zone of danger"

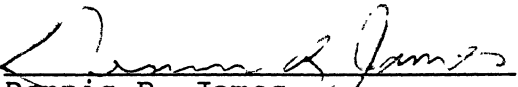
requirement is found in section 436. Brief of Petitioners, p. 7, 13, 16. At the same time, she acknowledges that the only real danger was in the water where the electricity was leaking.

Petitioner nevertheless argues that restricting recovery to those in the water would constitute an adoption by the Court of the "impact rule." Admittedly, electrical accidents present a much different set of facts than car accidents, and the "zone of danger" with respect to electrical accidents may be much narrower than in the traditional automobile case. That does not imply adoption by the Court of the "impact rule." Given appropriate facts, recovery for negligent infliction of emotional distress is possible in an electrical accident. However, Petitioner does not present to this Court appropriate facts for recovery within the parameters of the Restatement.

As indicated in the Brief of Respondent Sea Ray Boats, Inc., the question of duty must necessarily control. There was a known, foreseeable danger in allowing electricity to escape into the water. The foreseeable "zone of danger" is clearly the water immediately surrounding the boat. Mrs. Hansen was not in that "zone of danger" and is not entitled to a recovery.

DATED this 31 day of July, 1991.

MORGAN & HANSEN

BY:   
Dennis R. James  
Attorneys for Newmark Products,  
Inc.  
Kearns Building, Eighth Floor  
136 S. Main Street  
Salt Lake City, UT 84101  
Telephone: (801) 571-7888


CERTIFICATE OF MAILING

I hereby certify that on the 31 day of July, 1991, I caused a true and correct copy of the foregoing BRIEF OF RESPONDENTS to be mailed by first-class mail, postage prepaid, to the following:

Anthony M. Thurber  
Attorney for Petitioners  
Suite 735, Judge Building  
8 East Broadway  
Salt Lake City, Utah 84111

Tim Dalton Dunn  
Glen T. Hale  
DUNN & DUNN  
Attorneys for Defendant Professional Mariner, Inc.  
460 Midtown Plaza  
230 South 500 East  
Salt Lake City, Utah 84102

E. Scott Savage  
Donald L. Dalton  
VAN COTT, BAGLEY, CORNWALL & MCCARTHY  
50 South Main Street, Suite 1600  
P.O. box 45340  
Salt Lake City, Utah 84145

A handwritten signature in dark ink, appearing to read "Daniel R. Jones", is written over a horizontal line.