

PREEMPTION OF RECREATIONAL BOATING PRODUCTS LIABILITY CLAIMS

- **Discussion of the Federal Boat Safety Act (FBSA) - 46 U.S.C. §§ 4301-4311**
 - Brief history of pre-FBSA recreational boating statutes/regulations
 - Legislative history of FBSA
 - Regulatory authority of the United States Coast Guard under FBSA

- **Discussion of the United States Supreme Court's Decision in *Sprietsma* (2002)**
 - The Supreme Court addressed three preemption theories in *Sprietsma*, whether:
 1. The 1971 Act expressly pre-empts common-law claims;
 2. the Coast Guard's decision not to regulate propeller guards pre-empts the claims; and
 3. the potential conflict between diverse state rules and the federal interest in a uniform system of regulation impliedly pre-empts such claims.” *Sprietsma v. Mercury Marine, a Div. of Brunswick Corp.*, 537 U.S. 51, 56 (2002).

 - In *Sprietsma*, the Supreme Court held that:
 - The FBSA does not expressly preempt the common law claim
 - The Coast Guard's regulatory action/inaction on propeller guards does not preempt the claim
 - The FBSA does “not convey a clear and manifest intent to completely occupy the field so as to foreclose state common-law remedies.”

 - The MLA submitted an *amicus* brief in *Sprietsma*, the MLA argued:
 - The maritime nature of the case is critical; court should emphasize the importance of uniformity of federal maritime products liability law (*East River S.S. Corp v. Transamerica Delaval, Inc.* 476 U.S. 858, 864 (1986).
 - The federal statute, the FBSA, sets the applicable standard for maritime products liability claims for propeller guards.
 - In 1988, the Coast Guard considered whether to promulgate a safety standard under the FBSA to require propeller guards. The USCG instructed the National Boating Safety Advisory Council (NBSAC) to study the feasibility of requiring the guards. Upon completion of its study, the NBSAC declined to recommend adoption of a regulation requiring guards, the Coast Guard took no action noting “available propeller guard accident data do not support imposition of a regulation requiring propeller guards on motorboats.”
 - The MLA argued “In light of the . . . Coast Guard's affirmative decision not to impose a propeller guard requirement, this Court should not recognize Petitioner's propeller guard claim under federal maritime law.”

- **Discussion of *Rollins v. Bombardier Recreational Products, Inc.* (2015)**
 - Brief overview of the facts in *Rollins* – design defect claim for lack of powered ventilation system on jet ski.

 - Discussion of the court's reasoning in *Rollins*:
 - “We conclude that federal law impliedly preempts Rollins' state product liability claim because it directly conflicts with federal safety standards promulgated under the FBSA.” *Rollins v. Bombardier Recreational Products, Inc.*, 366 P.3d 33, 36 (Wash. App. Div. 1 2015).

