

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Stephanie B. Barrett,
individually; and as
Administratrix of the Estate
of Robert C. Barrett, deceased;
and as natural mother of
Madison H. Barrett, a minor,
Plaintiff

v.

Civil No. 06-cv-240-SM

Ambient Pressure Diving, Ltd.,
Defendant

NOTICE OF RULING

Re: (Document No. 327) Plaintiff's Motion for Judgment as a
Matter of Law and Request for New Trial

Ruling: Denied, essentially for the reasons argued in defendant's objection. The verdict in this case was not , in any sense, against the clear weight of the evidence. In fact, the verdict was entirely consistent with the evidence presented, was plausible, and was predictable. The jury was not required to accept Dr. Deas' doubtful theories of causation when more persuasive expert opinion and factual evidence was offered in contradiction and the evidence as a whole plainly pointed to diver error as the most likely cause of Mr. Barrett's tragic death. Moreover, plaintiff conceded on the record that effective notice of a warranty claim was not made, and that absent a finding of defective and dangerous product, the Consumer Protection Act claim was reduced to an allegation (generally unsupported) that the rebreather device was sold as "new" when in fact it was "used," but, in that case, the resulting damages would be negligible.



Steven J. McAuliffe
Chief Judge

Date: January 5, 2009

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