

Jury gives CCR fault claim short shrift

A FOUR-YEAR COURT CASE IN AMERICA has finally come to an end with the failure of a claim against British rebreather manufacturer Ambient Pressure Diving (APD) that malfunction through faulty design caused the death of a diver.

The case mirrored issues raised in an inquest earlier this year, into the death of an APD Inspiration rebreather diver off the Isle of Man.

Following the death of Robert Barrett in August 2002, while using an Inspiration in Pennsylvania, Barrett's family brought a series of claims against APD, SDS, TDI, O2 Technical Diving, Abucs Scuba, Teledyne and Dolphinos Dive Shop as well as three individuals.

These included claims for breach of warranty, deceptive trade practices and punitive damages. Teledyne and Dolphinos settled after two years, but all other parties continued with their defence, and succeeded in having the charges dismissed.

Final claims for negligence and strict product liability were brought against APD alone, and had to be put before a jury because of disputed issues of fact. Barrett v APD was heard over the first two weeks of November in Concord, New Hampshire.

Central to the plaintiff's case was that the Inspiration was "unreasonably dangerous" in suffering breaks in power supply, and malfunctioning as a result.

This, it was alleged, was caused by "battery-bounce", whereby battery-to-contact connections could be broken through rapid movement, due to poor design of the unit's battery box.

Central to APD's defence was that there was no evidence of such power interruptions, and that Barrett had made several unapproved modifications to his Inspiration, including adding environmental seals to his Apeks regulator first stages and fitting unapproved scrubber material, which had possibly been overused.

APD'S TECHNICAL EXPERT WITNESSES included Dr David Sawatzky, David Pence and Dr Bill Hamilton (not present in court). Barrett's technical expert witnesses included Dr Alex Deas, Admiral Donald Arthur and Stan Smith. The jury found unanimously in favour of APD in about an hour, "half of which was spent waiting for the exhibits to be sent to the jury room", said APD's legal counsel.

Counsel added: "This is an extraordinarily short period of time to deliberate in a complicated

products liability case, which tells me that the individual jurors were not persuaded by the plaintiff's case before the group deliberations began."

The allegation of battery-bounce lay also at the centre of an inquest held six months earlier in the Isle of Man, into the death of Briton Michael Bromsgrove, who died soon after entering the sea with an Inspiration off Port Erin in April 2006 (*News*, July).

There, too, it was contended by the technical expert representing Bromsgrove's widow – again Alex Deas – that the design of the Inspiration's battery-box made battery-bounce a possibility, and that this was a probable cause of Bromsgrove's rebreather failure.

This was disputed by APD, and the coroner on that occasion also decided that APD's was the more likely version of events, adding that Deas had caused him "at times a certain disquiet".

The coroner described Deas, who is the designer of the Apocalypse rebreather, as a "crusader" who



left himself "open to the allegation that he has already made up his mind and is trying to 'bend' the facts to suit his own theory".

The coroner in the Bromsgrove case did, however, record an open verdict because, while he said that the design fault argument was "not compelling", he could not say "with absolute certainty" that Bromsgrove had failed to turn on his unit.

Under US law, APD will automatically recover its costs of suit in the Barrett case, but Managing Director Martin Parker said the company intended to bring additional legal action against the plaintiff's lawyers to recover its own lawyers' fees, in order "to discourage frivolous litigation".

Atlantic fishing highly destructive, says IUCN

THREATS TO SHARK POPULATIONS AROUND the world have been well publicised by campaigners – but the latest shocker is a claim that more than a quarter of shark and ray species in the north-east Atlantic could face extinction through overfishing.

And that, according to a report from the International Union for Conservation of Nature (IUCN), gives the region a particularly bad record in world terms.

Of 116 types of shark, ray and chimaera assessed, 7% are listed as Critically Endangered, 7% Endangered, and 12% as Vulnerable. Porbeagle sharks and spiny dogfish are among the most threatened species, says the IUCN – yet they continue to be a popular target for fishermen in European waters. Common skate too, once a regular sight for divers, are under severe pressure.

The 26% total exceeds the worldwide figure

of 18% of species giving cause for concern. But some seas, says the IUCN, require more detailed observation.

In the north-east Atlantic, full protection for any shark or ray species has been applied only by Britain and Sweden. In British waters, the basking shark (with Vulnerable IUCN listing) and angel shark (Critically Endangered) are notable beneficiaries.

The report was released in November, just ahead of expected EU recommendations for tighter fishing controls. Bans on takes of porbeagle and angel sharks, spiny dogfish and several skate species, including common skate, were reportedly in the pipeline, with a requirement that all attempts should be made to return by-catch safely to the sea.

As *DIVER* went to press, EU fisheries ministers were due to discuss the proposals before the end of the year.

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