

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:20-cv-02113-RM-KLM

KRISTINE MARANDOLA, a citizen of Arizona,

Plaintiff,

v.

PUEBLO SUZUKI, INC., a Colorado corporation,
doing business as ROCKY MOUNTAIN BOAT COMPANY;
LAND 'N' SEA DISTRIBUTING, INC., a Florida corporation,
doing business as SEACHOICE PRODUCTS;
ATTWOOD CORPORATION, a Delaware corporation,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff Kristine Marandola's **Motion [to Clarify] Choice of Law to Establish Maritime Law as Applicable in this Case** [#30]¹ (the "Motion")². The Court has reviewed the Motion [#30], the Responses [#34, #36], the Replies [#37, #38], the entire case file, and the applicable law, and is sufficiently advised in the premises. For the reasons stated below, the Court recommends that the Motion [#30] be **granted**. Consistent therewith, the Court recommends that maritime jurisdiction be found to exist, that federal maritime law be applied, and that the so-called "innocent

¹ "[#30]" is an example of the convention the Court uses to identify the docket number assigned to a specific paper by the Court's case management and electronic case filing system (CM/ECF). This convention is used throughout this Order.

² The Motion [#30] has been referred to the undersigned pursuant to 28 U.S.C. § 636(c) and D.C.COLO.LCivR 40.1(c). See [#48, #50].

seller” statute set forth in Colo. Rev. Stat. §13-21-402 not be applied in this case as inconsistent with the maritime law.

I. Background

This case arises from a tragic accident during recreational boating on Lake Powell in which a carabiner connecting the anchor line used on a boat to tow a disabled boat suddenly failed and struck Plaintiff in the head, causing serious injuries. *See Am. Compl.* [#10] ¶¶ 1, 17=23. Plaintiff avers that this Court has diversity jurisdiction in this matter pursuant to 28 U.S.C. § 1332 as well as original jurisdiction by the admiralty and maritime statute, 28 U.S.C. § 1333. *Id.* ¶¶ 9-10.

Plaintiff commenced this product liability lawsuit on July 20, 2020, asserting claims for strict liability, negligence, and breach of warranty. *Am. Compl.* [#10] at 7, 12, 16. Plaintiff alleges that sometime around 2016, Defendants Land ‘N’ Sea Distributing Inc. (“Seachoice”) or Attwood Corporation (“Attwood”) sold the anchor line and carabiner to Defendant Pueblo Suzuki, Inc., d/b/a Rocky Mountain Boat Company (“ROMOBOCO”), and that both products were then sold to Randy Paulson, a friend of Plaintiff and an owner of a boat involved in the incident at issue. *Id.* ¶¶ 14, 24, 25. Plaintiff asserts that she learned in May 2021 that the manufacturer of the anchor line and carabiner is Shandong Santog Rope Co., Ltd. (“Shandong”). *Motion* [#30] at 2. According to the Motion [#30], Shandong is “a Chinese company [on China’s mainland] with no known physical presence in the United States[.]” and has not been named as a defendant. *Id.* at 2, 4.

The Motion [#30] seeks an adjudication of choice of law. Plaintiff seeks a ruling that maritime jurisdiction exists in the case and that federal maritime law adopting Section 402A of the Restatement (Second) of Torts (“Section 402A”) will be applied, which allows

suits against anyone in a defective product's chain of distribution, including a seller. See *Motion* [#30] at 1. Plaintiff further asserts that the Court should rule that the innocent seller statute in the Colorado Product Liability Act, which limits the ability to sue a seller as discussed further below in Section II, is inapplicable. *Id.* Plaintiff argues that such a ruling is critical at this juncture because the choice of law in this case will determine whether she brings in, or attempts to bring in, Shandong, the recently identified manufacturer of the alleged defective product at-issue, and whether the existing parties ultimately remain in the case. *Id.* at 2.

Defendant ROMOBOCO does not oppose Plaintiff's Motion [#30] to the extent that Plaintiff seeks a judicial declaration that maritime law applies to Plaintiff's claims in this case. *Response* [#34] at 1. ROMOBOCO objects, however, to the extent that the Motion [#30] purports to summarize or argue the effect of applying federal maritime law, as it asserts that these issues are premature and not properly before the Court. *Id.* at 1, 3. Proceeding under federal maritime law will, according to ROMOBOCO, involve many substantive legal issues, not just applicability of the "innocent seller" defense, including Defendants' ability to designate nonparties at fault, the applicability of a casual bystander defense, and the interplay between comparative fault and joint and several liability. *Id.* at 4. To the extent that the parties disagree regarding the effect of applying substantive federal maritime law, ROMOBOCO argues that those disagreements should be resolved in separate motions where the parties can fully brief the issues for the Court. *Id.* Similarly, Defendants Attwood and Seachoice state that they "do not generally dispute the case law Plaintiff cites applying maritime law to recreational boating incidents like the one at issue," but "dispute Plaintiff's assumption that application of maritime law

automatically displaces all state law,” including Colorado’s innocent seller statute. *Response* [#36] at 2.

II. Analysis

While Plaintiff asserts that this Court has jurisdiction based on diversity of citizenship, 28 U.S.C. § 1332; she also avers that the Court is “vested with original jurisdiction of this action by the admiralty and maritime statute, 28 U.S.C. § 1333.” *Am. Compl.* [#10] ¶¶ 9-10. As discussed before, Defendants have not opposed Plaintiff’s averment that the Court has jurisdiction under the admiralty and marine statute and that maritime law applies, at least over Plaintiff’s negligence and strict liability claims, or offered any substantive analysis of the issue. Defendants only object to the effect of maritime law on the case and whether it completely displaces state law, including Colorado’s innocent seller statute. The Court first addresses whether maritime jurisdiction applies and then addresses the choice of law issue.

A. The Exercise of Maritime Jurisdiction

The Court finds, consistent with the parties’ understanding, that jurisdiction under the admiralty and maritime statute, 28 U.S.C. § 1333, exists in this case. The United States Constitution provides for federal “judicial” power extending to “all cases of admiralty and maritime jurisdiction.” Art. III, § 2, cl. 1. 28 U.S.C. §1333 provides the statutory basis for such jurisdiction, stating that “[t]he district courts shall have original jurisdiction . . . of . . . [a]ny civil case of admiralty or maritime jurisdiction. . . .” Application of maritime jurisdiction is broad, applying to incidents on public navigable waters which are navigable in fact, meaning “when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or

may be conducted in the customary modes of trade and travel on water.” *Davis v. United States*, 185 F.2d 938, 942 (9th Cir. 1950) (quoting *The Daniel Ball*, 10 Wall. 557, 77 U.S. 557 (1870)). The term “[n]avigable waters” of the United States, “in contradistinction from the navigable waters of the States,” applies to waters “when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water.” *Id.* (quoting *id.*)

Consistent with this, courts have found, for example, that the Great Lakes are navigable waters of the United, as is Lake Tahoe that is located geographically in both Nevada and California. *Davis*, 185 F.2d at 943 (citing *Sanitary Dist. Of Chicago v. United States*, 266 U.S. 405 (1925); *State of Wisconsin v. State of Illinois*, 278 U.S. 367 (1929)). Thus, “[w]ater having actual navigable capacity in its natural state and capable of carrying commerce among the states, is within the power of Congress to preserve for purposes of future transportation,” even if it not presently being used for such commerce. *Id.* More to the point, the Tenth Circuit has held that Lake Powell, the lake where the incident at issue occurred and which is on the border of Arizona and Utah, is navigable water for purposes of maritime jurisdiction. *In Re Aramark Leisure Servs.*, 523 F.3d 1169, 1174-75 (10th Cir. 2008).³

³ Plaintiff attaches a Request for Judicial Notice [#30-2] to the Motion [#30]. Pursuant to Fed. R. Evid. 201, the Court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the Court’s territorial jurisdiction or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Here, the Court grants Plaintiff’s request for judicial notice, and takes judicial notice of the following: (1) “Lake Powell is a freshwater lake fed by the Colorado river that is located in the states of Utah and Arizona” and (2) “[c]ommercial activities on Lake Powell include house boat rentals and sales, resort lodging, restaurants, marinas including powerboat, watercraft, and jet ski rentals, boat tours, boat repairs and maintenance, dry and wet dock storage, private tours, bait shops, fishing license sales, lake guide and outfitters.” *Motion* [#30-2].

The *Aramark* case is directly on point. It set forth the test for applying admiralty and maritime jurisdiction when the case involves a tort as in this case, stating “a party seeking to invoke federal admiralty jurisdiction pursuant to 29 U.S.C. § 13311) over a tort claim must satisfy conditions both of location and of connection with maritime activity.” *Id.*, 523 F.3d at 1174 (quoting *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995)). “A court applying the location test must determine whether the tort occurred on navigable water or whether injury suffered on land was caused by a vessel on navigable water.” *Id.* (quoting *id.*) The *Aramark* court explained:

The connection test raises two issues. A court, first, must assess the general features of the type of incident involved, to determine whether the incident has a potentially disruptive impact on maritime commerce. Second, a court must determine whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity.

Id. (quoting *id.*)

Applying that test in a case involving a boating accident, the Tenth Circuit held that allegations that the plaintiff was engaged in recreational boating on the navigable waters of Lake Powell “when the accident occurred satisfied *Grubart*’s ‘location test.’” *Aramark Leisure Servs.*, 529 F.3d at 1174. The court also found that “Aramark’s claim satisfied the first of the ‘maritime connection enquiries,’ because the collision of the boat with a canyon wall was an ‘incident ... of a sort with the potential to disrupt maritime commerce.’” *Id.* at 1174-75 (quoting *Grubart*, 513 U.S. at 538-39). In so finding, the Tenth Circuit noted the Supreme Court’s holding that “a fire on a vessel docked at a marina on navigable waters” satisfied this test in *Sisson v. Ruby*, 497 U.S. 38, 363 1990), and that the

“damag[e] [to] a structure beneath the riverbed” in *Grubart* also satisfied the test, because it could lead to a disruption in the water course itself and to “restrictions on the navigational use of the waterway during required repairs”). Finally, the Tenth Circuit found that Aramark’s complaint “satisfied the second of the ‘maritime connection enquiries’— ‘whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity’— because it involved ‘[n]avigation of boats in navigable waters,’ which ‘clearly falls within the substantial relationship.’” *Id.* at 1175 (quoting *Grubart*, 513 U.S. at 539-40).

The same analysis applies here. The “location test” of *Grubart* is satisfied by Plaintiff’s allegations of recreational boating on Lake Powell that gave rise to the incident at issue. The first of the maritime enquiries is satisfied because Plaintiff’s allegations involve a disabled boat being towed to shore by another boat, and Plaintiff asserts that after she was struck in the head by the carabiner, the disabled boat was cut loose and left adrift across Lake Powell. *See Am. Compl.* [10]; *Motion* [#30] 10. As with the collision of the boat in *Aramark*, the Court finds that this “could lead a lead to a disruption in the water course itself” and have a “potentially disruptive impact on maritime commerce.” *Id.*, 523 F.3d at 1175; *Sisson*, 497 U.S. 362.⁴ Finally, the allegations satisfy “the second of the ‘maritime connection enquiries’— ‘whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity’— because it involves the ‘[n]avigation of boats in navigable waters[.]’” *Aramark*, 529 F.3d at 1175 (quoting *Grubart*, 513 U.S. at 539-40). Accordingly, the Court finds that

⁴ This test looks at “potential effects, not to the ‘particular facts of the incident,’” which turns on “whether the ‘general features’ of the incident were ‘likely to disrupt commercial activity.’” *Grubart*, 513 U.S. at 538 (quoting *Sisson*, 497 U.S. at 363).

jurisdiction exists under the admiralty and maritime statute, 28 U.S.C. § 1333, and the Motion [#30] is granted as to this issue.

B. The Choice of Law Determination

The next issue that must be determined is the impact of maritime jurisdiction and what law should be applied. Plaintiff asserts that federal maritime law should be applied in this case, which has adopted Section 402A of the Restatement of Torts. Plaintiff asserts that Colorado's innocent seller statute should not be applied because is inconsistent with Section 402A and federal maritime law, and that she is "free to maintain her causes of action against Attwood, Seachoice and/or Pueblo Suzuki who are all 'sellers' in the stream of commerce[.]" without having to attempt jurisdiction over Shandong as the manufacturer.⁵ The issue of which law applies is not as straightforward as Plaintiff suggests. In fact, the Supreme Court stated in *Grubart* that "a fundamental feature of admiralty law" is that it "sometimes . . . appl[ies] state law." 513 U.S. at 546.

Nonetheless, the Supreme Court has made clear that "[w]ith admiralty jurisdiction comes the application of substantive maritime law." *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 864 (1986). The Court further made clear that "[a]bsent a relevant statute, the general maritime law, as developed by the judiciary, applies." *Id.* This law, drawing from state and federal sources, is composed of "an amalgam of traditional common law rules, modification of those rules, and newly created rules." *Id.* at 865-65. Product liability law, including strict liability, "is part of the general maritime law."

⁵ While ROMOBOCO asserts that the Court should not address the issue as it is not before the Court (Response [#34] at 2-3), the Court disagrees. Plaintiff has asked for a determination of which law applies – Colorado's innocent seller statute or federal maritime law and its application of Section 402A. This issue is squarely before the Court, and impacts which parties Plaintiff may sue in the case. ROMOBOCO's decision at its own peril to take no position on the choice of law issue does not provide a basis for a delay in determining the issue.

Id. Courts applying maritime law have almost universally adopted Section 402A of the Restatement of Torts, as discussed further below and which Defendants do not dispute. *See, e.g., Pan-Alaska Fisheries, Inc. v. Marine Const. & Design Co.*, 565 F.2d 1129, 1135 (1977) (citing cases). Section 402A allows a plaintiff to sue the seller of a defective product, and does not require that the manufacturer be sued. *See, e.g., Daigle v. L & L Marine Trans. Co.*, 322 F. Supp. 2d 717, 727 (E.D. La. 2004) (“Under the Restatement, a seller as well as a manufacturer may be held liable for harm caused by a defective product placed in the stream of commerce.”).⁶ Colorado also adopted Section 402A, *Hiigel v. GM*, 190 Colo. 57, 63 (1975), but two years later enacted the Product Liability Act which limited its application through adoption of the innocent seller statute. The innocent seller statute prohibits a product liability action “against any seller of a product unless said seller is also the manufacturer of said product. . . .” Colo. Rev. Stat § 13-21-402(1). The only exception applies when jurisdiction cannot be obtained over the manufacturer of a product, in which case “the manufacturer’s principal distributor or seller over whom jurisdiction can be obtained shall be deemed the manufacturer.” *Id.* § 13-21-402(2).

There appears to be no dispute between the parties that an innocent seller defense has not been recognized as part of the federal maritime law. Again, however, the exercise of admiralty jurisdiction does not “result in automatic displacement of state law.” *Grubart*,

⁶ Section 402A states: “(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if “(a) the seller is engaged in the business of selling such a product, and “(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.” (2) The rule stated in Subsection (1) applies although “(a) the seller has exercised all possible care in the preparation and sale of his product, and “(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.” Restatement of Torts (Second) § 402-A.

513 U.S. at 545. Accordingly, that requires the Court to resolve whether Colorado's innocent seller defense should be used to supplement the maritime law.

Courts have noted that state law can be applied in admiralty cases where the general maritime law is silent on an issue or where a local matter is at issue, but "may not be applied where it would conflict with maritime law." *See, e.g., Floyd v. Lykes Bros. S.S. Co., Inc.*, 844 F.3d 1044, 1047 (3rd Cir. 1988); *Coastal Iron Works, Inc. v. Petty Ray Geophysical, Div. of Geosource, Inc.*, 783 F.2d 577, 582 (5th Cir. 1986) (collecting cases). Under these circumstances, state law can supplement the general maritime law to fill a gap therein. *See Albany Ins. Co. v. Anh Thi Kieu*, 927 F.2d 882, 886 (5th Cir. 1991); *Parekh v. Argonautica Shipping Investments B.V.*, No. CV 16-13731, 2017 WL 3456300, at *2 (E.D. La. Aug. 11, 2017) (citing *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996)). Thus, while doctrines of uniformity and supremacy apply when determining whether to applying maritime law, the Court must also accommodate state interests. *Kossick v. United States*, 364 U.S. 371, 738-39 (1961). The process involved in determining what law applies is "somewhat analogous to the normal conflict of laws situation where two sovereignties assert divergent interests in a transaction as to which both have some concern." *Id.* For example, the Supreme Court determined that "the regulation of insurance is, in most instances, properly left with the states." *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 321 (1955). Accordingly, "the interpretation of a contract of marine insurance is—in the absence of a specific and controlling federal rule—to be determined by reference to appropriate state law." *Albany Ins. Co.*, 927 F.2d at 886 (quotation omitted).

The Court finds persuasive the three factors the Fifth Circuit has identified that should be considered in determining whether a federal maritime rule or state law controls the disputed issue: (“1) whether the federal maritime rule constitutes “‘entrenched federal precedent,’ . . . (2) whether the state has a substantial and legitimate interest in the application of its law; . . . [and] (3) whether the state's rule is materially different from the federal maritime rule.” *Albany Ins. Co.*, 927 F.2d at 887. Put another way, courts have found that state law can only supplement the general maritime law if: “(1) it does not conflict with an applicable act of Congress; (2) it does not work material prejudice to a characteristic feature of general maritime law; or (3) it does not interfere with the proper harmony and uniformity of the general maritime law in its international and interstate relations.” *In re Antill Pipeline Const. Co., Inc.*, 866 F. Supp. 2d 563, 567-68 (E.D. La. 2011) (citing *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917)).

In the case at hand, the Court recommends that federal maritime law and its adoption of Section 402A be applied, and that the innocent seller statute in the Colorado Product Liability Act not be applied. First, the application of Section 402A in federal maritime law appears to constitute entrenched federal precedent. *See Pan-Alaska Fisheries*, 565 F.2d at 1134 (holding that “the correct law to be applied in this [product liability] case [under admiralty law] is expressed in [Section 402A], as it is the best expression of the doctrine as it is generally applied, and for the additional reason that several federal courts have previously used that section in maritime cases”); *see also Saratoga Fishing Co. v. J.M. Martinac & Co.*, 520 U.S. 875, 879 (1997); *Vickers v. Chiles Drilling Co.*, 822 F.2d 535, 537 (5th Cir. 1987); *Ocean Barge Transp. Co. v. Hess Oil Virgin Islands Corp.*, 726 F.2d 121, 123 (3d Cir. 1984).

The Court also finds that Colorado's innocent seller statute, is materially different from, and conflicts with, the federal maritime law applying Section 402A which gives an injured person the ability to hold liable a manufacturer or seller of a defective product. A state law such as Colorado's innocent seller statute which limits the ability of an injured person to sue the seller would "work material prejudice to a characteristic feature" of general maritime law as applied to product liability claims. *Antill Pipeline Constr. Co.*, 866 F. Supp. 2d at 567-68. As the Ninth Circuit noted in adopting Section 402A, "[u]nder the doctrine of strict products liability, manufacturers,. . . and retailers . . . are all subject to liability because '(t)hey are an integral part of the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products.'" *Pan-Alaska Fisheries*, 565 F.2d at 1135 (quotation omitted). Applying Colorado law which restricts who can be sued in the chain of commerce is contrary to that principle.

The Court finds from the foregoing that there is no "gap" to fill in connection with maritime law in connection with who can be sued in the stream of commerce. See *Parekh*, 2017 WL 3456300, at *2. The Court finds the *Parekh* case particularly instructive. There the court declined to apply the Louisiana Product Liability Act in a maritime case, finding that it did not supplement or supplant strict liability law under general maritime law. *Id.* at *2-3. The court found that the conditions for applying state law did not apply, stating:

Courts have found that, by applying the Restatement in maritime products liability cases, 'the Court furthers the federal interest in establishing uniform rules of maritime law.' Stated another way, state interest does not predominate and the uniformity principle is indeed crucial, such that the Court will not supplement the general maritime law with state law.

Id. at *3 (citing *Transco Syndicate #1, Ltd. v. Bollinger Shipyards, Inc.*, 1 F. Supp. 2d 608, 614 (E.D. La. 1998) (citing *Louisiana ex rel Guste v. M/V TESTBANK*, 752 F.2d 1019, 1032 (5th Cir. 1985)); see also *Matter of Am. River Transportation, Co., LLC*, No. CV 18-2186, 2019 WL 2847702, at *3-4 (E.D. La. July 2, 2019) (also finding that federal maritime law applied rather than the Louisiana Product Liability Act based on the reasoning in *Parekh* which the court stated was “well-founded” and which “results in maintaining uniformity in admiralty cases”).

Further supporting this holding, the Court notes that federal courts have rejected application of state tort reform laws that seek to limit damages or sources of recovery if they conflict with or would interfere with the uniformity of maritime law. See *Associated Elec. Coop., Inc. v. Mid-America Transp. Co.*, 931 F.2d 1266, 1269 (8th Cir. 1991) (holding that federal maritime law regarding settlement applied, whereby a settlement between an injured seaman and a joint tortfeasor may not prejudice the rights of the other tortfeasor, rather than Missouri statute whereby a settlement would discharge the tortfeasor who settles from all liability for contribution or noncontractual indemnity to any other tort-feasor) (citing *Daughtry v. Diamond M. Co.*, 693 F. Supp. 856, 863 (C.D. Cal. 1988) (declining to apply a similar California settlement rule because it would subject maritime parties “to varying rules of liability” that “would violate the policy of “creat[ing] uniform laws which tend to facilitate maritime commerce[,]” and stating that “even a “possible conflict [of the statute] with federal maritime law ... prevents application of the state rule”); *Price v. Atlantic Ro-Ro Carriers*, 45 F. Supp. 3d 494, 501 (D. Md. Sept. 18, 2014) (declining to apply Maryland's cap on noneconomic damages in personal injury to supplement the federal maritime law as the cap “both materially prejudices maritime law's

treatment of noneconomic damages and interferes with maritime law's uniform application"). As in above cases, the Court finds that "direct application" of a state statute providing an innocent seller defense in a maritime action would violate the policy of creating uniform laws to facilitate maritime commerce and "subject the parties "to varying rules of liability depending on the forum chosen by plaintiff." *Daughtry*, 693 F. Supp. at 863.⁷

Defendants Attwood and Seachoice rely, however, on the Supreme Court's decision in *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), arguing that it supports the Court's application of Colorado's innocent seller statute. See *Response* [#36] at 4. In that case, the Court held that notwithstanding the applicability of federal maritime law, state remedies for wrongful death arising from accidents to nonseamen in territorial waters were also applicable. *Id.* at 209. "In so ruling, the Court explained that it was carving out an exception for wrongful death injuries where a gap in federal law previously existed, such that 'within territorial waters, identical conduct violating federal law (here the furnishing of an unseaworthy vessel) produces liability if the victim is merely injured, but frequently not if he is killed.'" See *White v. Fincantieri Bay Shipbuilding*, 429 F. Supp. 3d 582, 588 (E.D. Wis. 2019) (quoting *Yamaha*, 516 U.S. at 211). Here, there

⁷ For clarification, the cases discussed in this Recommendation are cited only as support for the Court's recommendation that Colorado's innocent seller statute should not be applied in this case to supplement federal maritime law. The Court does not address or mean to suggest any particular outcome as to other issues raised by the Defendants in this case, such as whether federal maritime law is applicable to Plaintiff's breach of warranty or punitive damages claims, or the effect of federal maritime law on Defendants' ability to designate nonparties at fault, a casual bystander defense, or comparative fault and joint and several liability. See *ROMOBOCO Response* [#34] at 4; *Attwood and Land 'N' Sea's Response* [#36] at 2. Any ruling on these issues is premature, as the issues were not raised in Plaintiff's Motion [#30] and have not been adequately briefed.

is no gap that needs to be filled as to the law of product liability in federal maritime law. Moreover, as the *White* court correctly noted, “*Yamaha* left intact prior precedent holding that federal maritime law and not state law applied to claims for injury sustained aboard ships in navigable waters[,]” and the case is inapplicable to personal injury cases. *Id.*, 429 F. Supp. 3d at 588 (citing *In Re Amtrak Sunset Ltd. Train Crash in Bayou Canot, Ala.*, 121 F.3d 1421, 1429 (11th Cir. 1997)).

Based on the foregoing, the Court recommends that Plaintiff’s Motion [#30] requesting a choice of law ruling that federal maritime law, and its application of Section 402A of the Restatement (Second) of Torts, applies in connection with Plaintiff’s product liability claims and that Colorado’s innocent seller statute, Colo. Rev. Stat. § 13-21-402, should not be applied to supplement federal maritime law be granted.

II. Conclusion

For the reasons stated above,

IT IS HEREBY **RECOMMENDED** that the Motion [#30] be **GRANTED**. In accordance therewith,

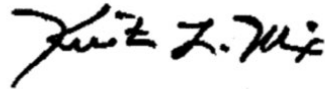
IT IS FURTHER **RECOMMENDED** that the Court finds that it is has jurisdiction under the admiralty and maritime statute, 28 U.S.C. §1333, that federal maritime law and its application of Section 402A of the Restatement (Second) of Torts applies in this case, and that Colorado’s innocent seller statute, Colo. Rev. Stat. § 13-21-402, is not applicable.

IT IS FURTHER **ORDERED** that pursuant to Fed. R. Civ. P. 72, the parties shall have fourteen (14) days after service of this Recommendation to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is

assigned. A party's failure to serve and file specific, written objections waives de novo review of the Recommendation by the District Judge, Fed. R. Civ. P. 72(b); *Thomas v. Arn*, 474 U.S. 140, 147-48 (1985), and also waives appellate review of both factual and legal questions. *Makin v. Colo. Dep't of Corr.*, 183 F.3d 1205, 1210 (10th Cir. 1999); *Talley v. Hesse*, 91 F.3d 1411, 1412-13 (10th Cir. 1996). A party's objections to this Recommendation must be both timely and specific to preserve an issue for de novo review by the District Court or for appellate review. *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996).

Dated: January 28, 2022

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kristen L. Mix".

Kristen L. Mix
United States Magistrate Judge