

ADMIRALTY COMMITTEE

No Strict Product Liability for Builders of Custom Boats



Barbara Cook
Chair

Charles M. Davis, Esq., author of the Maritime Law Deskbook, reported to subscribers on a Ninth Circuit opinion that addressed what it deemed a matter of first impression for federal courts of appeals. “In the context of holding that “custom ordered ships” are not “products” for purposes of strict product liability, *McIndoe v. Bath Iron Works*, No. 13-56762 (9th Cir. 2016), referred to the Restatement (Third) of Torts for the definition of a “product”:

The Third Restatement defines a “product” subject to strict liability as “tangible personal property distributed commercially for use or consumption.” Restatement (Third) of Torts: Prods. Liab. § 19(a) (Am. Law Inst. 1998) (emphasis added). “[O]nly when the complained of injury was allegedly caused by a defect in something within this . . . definition of ‘product’ should the defendant manufacturer or seller be strictly liable for the harm caused.” *Id.* § 19 reporter’s note, cmt. a.