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### Design Defects in Equipment: When Are Government Contractors Liable for Injuries to Military Personnel?

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## *Design Defects in Equipment: When Are Government Contractors Liable for Injuries to Military Personnel?*

by Emily Calhoun

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**Delbert Boyle**

v.

**United Technologies Corp.**

(Docket No. 86-492)

*Argued October 13, 1987*

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Military contractors do a substantial business with the United States government. On occasion, the equipment that they provide malfunctions and injures military personnel. In recent years, there have been a number of efforts to hold military contractors liable for these injuries.

State tort principles of negligence or strict liability usually govern manufacturers' liability for personal injuries. Proposals for a federal products liability statute that would preempt state tort law have not been adopted by Congress. Although there is no directly applicable federal statute, when personal injury actions involve military contractors, equipment and personnel, federal courts often adopt a "military contractor defense" that significantly restricts the liability of a military contractor.

This case gives the Supreme Court an opportunity to decide whether the liability of a military contractor to military personnel injured because of defectively designed equipment is limited by a federal, military contractor defense. It poses fundamental questions about federal courts' authority to fashion a federal common law. It also poses a troublesome set of policy and factual issues that must be resolved if a military contractor defense is to be recognized by the Court.

### ISSUES

The parties have framed a number of issues for the Supreme Court. Two are of major concern to military contractors and military personnel who may be injured due to design defects in military equipment:

1. In a diversity case, should the liability of military contractors for injuries to military personnel be based entirely on varying state tort principles, or should it be limited by a uniform military contractor defense prescribed by the Supreme Court?

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2. If liability is limited by a military contractor defense, what is the appropriate scope of that defense?

### FACTS

In 1983, Marine Lieutenant David Boyle was co-pilot of a helicopter in a military training exercise off the coast of Virginia. The helicopter had been designed by Sikorsky Aircraft, a division of United Technologies Corporation (UTC/Sikorsky), as a transport for military equipment and personnel in amphibious assault operations. During an attempted landing, the helicopter crashed in the Atlantic Ocean. Lieutenant Boyle, along with all others in the helicopter, survived the crash. Unlike the others, however, he did not escape from the sinking helicopter. Evidence showed that his death was due to drowning.

Delbert Boyle, Lieutenant Boyle's father, sued UTC/Sikorsky for damages arising out of his son's death. Boyle alleged that UTC/Sikorsky had negligently introduced a metal chip into the helicopter's power steering mechanism which had caused the helicopter to crash. He also contended that the system that was to permit an override of a malfunctioning control mechanism was defectively designed. Finally, he argued that the co-pilot's escape hatch was defectively designed, because it would not open when subjected to external water pressure and because another piece of equipment blocked access to the escape hatch.

Boyle and UTC/Sikorsky introduced conflicting evidence on the source of the metal chip and whether the chip had caused the helicopter to crash. They also offered conflicting views of the relative responsibilities of the Navy and UTC/Sikorsky for design defects in the helicopter. The initiation of the Navy-UTC/Sikorsky relationship, in which UTC/Sikorsky responded to a request to submit a basic helicopter design that would ensure compliance with Navy performance standards, was not in dispute. There was, however, disagreement on the extent of subsequent collaboration, the Navy's control over the specifics of the helicopter's design and the Navy's reliance on UTC/Sikorsky's expertise to identify and warn of potential design deficiencies.

The trial court instructed the jury that UTC/Sikorsky, as a military contractor, could not be held liable for a design failure if the Navy had established or approved specifications for the escape hatch, the helicopter conformed to the specifications and the Navy

knew as much or more than UTC/Sikorsky about the helicopter's hazards. The jury returned a general verdict of \$725,000 for Boyle.

The Court of Appeals for the Fourth Circuit overturned the verdict (792 F. 2d 413 (1986)). It determined that there was insufficient evidence to support Boyle's argument that UTC/Sikorsky was responsible for the initial crash of the helicopter. It also concluded, applying a slightly revised version of the trial court's military contractor defense, that UTC/Sikorsky should not be held liable for a design defect in the co-pilot's escape system.

## BACKGROUND AND SIGNIFICANCE

Military personnel injured by defective military equipment have limited options for securing compensation for their injuries. The United States cannot be sued in most instances. Although Congress has adopted a no-fault Veterans' Benefits Act for military personnel, compensation under the Act is limited. The only source of potentially substantial compensation is the military contractor responsible for producing the defective equipment.

Under these circumstances, it is not surprising that military contractors are increasingly named as defendants in lawsuits filed on behalf of military personnel injured by allegedly defective equipment. More surprising is the occasional application, in these lawsuits, of what appears to be a federal common law defense that limits the liability of the military contractor.

Ordinarily, product designers and manufacturers are liable for personal injuries by virtue of state tort principles. There is no federal product liability statute to preempt state law, and it is conventional constitutional wisdom that there is no general federal common law of torts. Federal courts are courts of limited jurisdiction, and in many instances, as in *Boyle*, they are involved in adjudicating military contractor-personnel disputes only because the opposing parties are citizens of different states. In the absence of a federal statute that preempts state law, they must ordinarily rely on state law to resolve disputes between private parties.

Given conventional constitutional premises, it is curious that so little attention has been given, in *Boyle*, to the application of what is apparently a federal common law defense. There are well-established federal limitations on the liability of the United States to injured serviceman, but the Supreme Court has not yet recognized federal limitations on state product liability actions.

Some lower federal courts have justified their use of a federal common law defense in state product liability actions against military contractors by pointing to the unique federal interests involved in the lawsuits. These interests arguably include: the relationship between the United States government and its military contractors, a relationship that may be adversely affected by state

product liability principles; the federal purse, which also may be adversely affected by contractor liability; the constitutional authority given to the federal government to defend and protect the United States, an authority that may be undermined by contractor liability; and the constitutional principle of separation of powers, a principle that may be threatened if the judiciary begins to second-guess military decisions about the design of military equipment.

Although these federal interests may sometimes warrant creation of federal common law, especially if the United States is a named party or is directly affected by a lawsuit, the Supreme Court may view the interests differently in a case like *Boyle*. Impacts on the federal purse are, for example, much more attenuated when a military contractor is sued than when the United States itself is a defendant. Moreover, the Court has previously indicated that impacts on the purse may be insufficient justification for creation of federal common law, especially when Congress has the opportunity to protect the purse from these impacts through legislation. The most significant federal interest in *Boyle* is rooted in the principle of separation of powers and the reluctance of courts to interfere with military decisions about appropriate designs for military equipment. A critical issue in *Boyle* is whether that interest demands recognition of a uniform military contractor defense as a matter of federal common law.

If the Court decides to set out a uniform defense for military contractors in product liability suits, it must resolve a variety of issues. Boyle argues that a military contractor's liability should be limited only when the government accepts allegedly defective equipment with knowledge of the specific risks presented by the equipment's design. Liability would be limited only when a judgment of liability would involve the judiciary in second-guessing a military decision. UTC/Sikorsky, on the other hand, argues that the military contractor defense should be more broadly formulated.

The scope of the defense that is recognized will depend on the Court's view of the relationship of the United States to its military contractors; whether contractor liability will facilitate or interfere with a constructive relationship; whether military equipment differs from and ought to be judged by different standards than those applied to ordinary consumer goods and whether a requirement that contractors warn the government about specific product risks will engage the judiciary in resolving complicated issues of causation and in second-guessing military decisions. The Court must also evaluate whether liability will delay acquisition and production of military equipment because of wasteful testing; the impact of various formulations of the defense on the federal purse, insurance rates, contract prices and incentives for safety; and whether military contractors, extensively regulated under government

procurement policies, should be subjected to liability principles developed for ordinary market settings.

A simple list of these issues gives some indication of why the Court might hesitate to attempt to formulate a military contractor defense for product liability suits. Resolving the issues will engage the Court in factual and policy debates that are familiar to legislatures but which the Court may view as foreign to its constitutional role.

#### **ARGUMENTS**

*For Delbert Boyle (Counsel of Record, Louis S. Franecke, 221 Pine Street, Suite 600, San Francisco, CA 94104; telephone (415) 391-1560)*

1. The military contractor defense should be available only when the United States has accepted military equipment knowing of the specific design features that risk injury. Only under those circumstances do separation of powers principles justify the defense.
2. Even if the military contractor defense adopted by the court of appeals is a correct formulation of the defense, the case should be remanded to the district court for a new trial.

*For United Technologies Corporation (Counsel of Record,*

*Lewis T. Booker, 707 E. Main Street, P. O. Box 1535, Richmond, VA 23212; telephone (804) 788-8200)*

1. The military contractor defense should relieve a manufacturer of tort liability if the United States established or approved reasonably precise specifications for the equipment, the equipment conformed to the specifications and the supplier warned the United States about dangers involved in using the equipment that were known to the supplier but not to the United States.
2. The Supreme Court should not interfere with a court of appeals' determination regarding sufficiency of evidence.

#### **AMICUS BRIEFS**

*In Support of Delbert Boyle*

Association of Trial Lawyers of America; Joan S. Tozer (with other family members, litigants in a similar case now pending before the Court)

*In Support of United Technologies Corporation*

The United States; Chamber of Commerce of the United States; Defense Research Institute, Inc.; Bell Helicopter Textron, Inc.