



SOUTHEASTERN ADMIRALTY LAW INSTITUTE NEWSLETTER

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COURT CASES

Arkansas Dept. of Health and Human Services v. Ahlborn, – S.Ct. 3 – 2006 WL 1131936 (May 1, 2006)

The U.S. Supreme Court held that an Arkansas statute automatically imposing a lien in favor of the State of Arkansas on torts settlement proceeds greater than the amount of the proceeds allocated for medical expenses was void. The federal Medicaid statute did not allow an incumbrance or attachment on the tort proceeds meant to compensate the recipient for damages that were distinct from the recipient's medical costs. Thus, the anti-lien provision of the federal Medicaid statute precluded the Arkansas statute's incumbrance or attachment of proceeds allocated for the recipient's non-medical damages. Arkansas attempted to assert a lien on the recipient's settlement in the amount exceeding the compensation allotted for medical care when the state had paid more medical costs under Medicaid than what was allotted for medical expenses under the settlement.

Borcea et al. v. Carnival Corporation, 19 Fla. L. Weekly Fed D549a (S.D. Fla. March 31, 2006).

The Court granted the shipowner/employer's motion to toll accrual of fines under the Seaman's Wage Act, 46 USCA 10301, *et seq.*, while the Eleventh Circuit considered an appeal in a similar case in which the issues on appeal were "germane" to those in the instant case. In the Order, the Court noted that if tolling were not allowed, the penalty and fines at issue could total an amount which would exert a "coercive effect" on the defendant requiring defendant to forego the presentation of its defenses.

Carnival Corporation v Iscoa, 922 So.2d 359 (3rd D.C.A. Fla 2006).

The Court denied a vessel owner's petition for certiorari review of a non-final order of the trial court granting the plaintiff [who claimed personal injury as a passenger of defendant's vessel] leave to amend his complaint to add a claim for punitive damages. The denial of the certiorari review was based on the trial court's proper observance of the procedural requirements of Fla Stat 768.72 concerning an evidentiary hearing. However, the Court, in its Opinion, expressed "serious doubts" about whether plaintiff's punitive damage claim could pass muster under the "very rare" exception to the general maritime law rule precluding punitive damages absent intentional wrongdoing recognized in In re Amtrak "Sunset Ltd", 121 F3d 1421 (11 Cir. 1997).

Fischer v. S/Y NERAIDA et al., 2006 AMC 508 (S.D. Fla 2005).

The Court exonerated the owner of a pleasure vessel for damages caused by that vessel to plaintiff's dock facilities when the vessel broke loose from its mooring during the passage of Hurricane Frances over South Florida in early September 2004. In arriving at its Opinion, the Court concluded that the vessel owner took "reasonable precautions" as known or reasonably to be anticipated to prepare the vessel for the hurricane. The Opinion provides guidance on the application of "The Act of God" defense and cautions that courts should "resist" the temptation to review the action taken to secure the vessel by the owner by looking backward after the event, but instead should "stand with eyes directed towards what the Owner knew at the time".

Grande v. St. Paul Fire and Marine Insurance Co., 436 F.3d 277 (1 Cir. 2006).

A purported insured brought suit against a marine insurer and insurance agent for losses occurred when a sailboat was damaged in transit, alleging that the insurer had an obligation to pay under an unissued trip insurance policy and the agent was liable for failure procure the policy. The vessel owner contacted his insurance broker requesting coverage for his new vessel during a trip from Florida to Maine. The vessel owner indicated to the broker that he intended to sail the vessel from Florida to Maine "in a timely fashion" and "as the crow flies." During the voyage from Florida to Maine, the vessel owner, of course, lost the sailboat in a storm. The marine insurer denied coverage based upon a previously issued policy that contained a navigational limits clause. The court of appeals overruled the district court's summary judgment to the marine insurance company. The court of appeals held that a factual dispute existed on whether the navigational limits applied.

Holmes v. Atlantic Sounding Co., Inc, 437 F.3d 441 (5 Cir. 2006).

A cook, who was injured while present on a barge used to provide temporary housing to employees hired to perform dredging work, filed a state court action to recover for her injuries under the Jones Act and the General Maritime Law. Following removal, the United States District Court denied the cook's motion to remand and dismissed her Jones Act and General Maritime claims on the grounds that the barge was not a vessel for Jones Act purposes. The cook appealed and the Fifth Circuit found that a barge used for temporary housing for employees was a vessel for the purposes of the Jones Act; although the barge was totally incapable of self propulsion. The court reasoned that the barge was practically capable of transporting equipment, possessed some objective characteristics of a vessel, including a raked bow and vessel like gear for securing it to shore or other vessels by lines, and was generally moored with anchors and land lines. This opinion superseded the Fifth Circuit's previous opinion that the barge was not a vessel for Jones Act purposes.

COURT CASES

House v. Maritime Transport Lines, Inc., 2005 WL 2861008 (S.D. Tex. October 31, 2005).

A seaman filed suit pursuant to the Jones Act against a vessel's manager, the United States, and the U.S. Maritime Administration ("MARAD") to recover for personal injuries. The court granted the government's motion to dismiss for lack of subject matter jurisdiction because the seaman had not followed the claims procedure as set forth in the Code of Federal Regulations. The seaman did not follow the requirements of the CFR's, Suits in Admiralty Act and the Clarification Act by filing the lawsuit 59 days after MARAD received the claim and not waiting the required 60 days. The court was not persuaded by the fact that the claim had been filed 90 days after it was mailed to the incorrect address at MARAD and spent three weeks being passed around till it reached MARAD's Division of Marine Insurance, the proper addressee under the CFR's.

In the Matter of the Complaint of Levenshon, 407 F.Supp.2d 1349 (S.D. Fla 2005).

The Court denied Claimants Motion to Increase Security [from the \$800,000 posted by the Limitation Petitioner at the time of filing to \$5,000,000, which claimant alleged was the amount necessary or sufficient to compensate her damages]. In denying any increase in the security, the Court noted that the petitioner's valuation of the vessel was properly factually supported, that claimant had not offered any factual evidence that petitioner's valuation of the vessel was improper, and that it is the owner's interest in the vessel and her freight which must be secured in a limitation action, not the value of claimant's damages.

In re Jensens Twin Palm Resort & Marina, 2006 WL 822520 (M.D. Fla, 24 March 2006).

This cases provides a useful and detailed guide for a stipulation which the Court believes satisfies the requirements of *Beiswenger Enterprises v Carletta*, 86 F.3d 1032 (11th Cir. 1996), so that multiple claimants in a limitation action can move to lift the limitation monition and proceed in another forum (and get a jury trial).

Motor-Services Hugo Stamp, Inc. v. M/V Regal Empress, 165 Fed Appx. 837 (11 Cir. 2006).

A maritime lien holder brought an action against a vessel, alleging that it had not been paid for work performed on the vessel. A provider of telecommunication and internet services for the vessel intervened, and filed a motion asking that it be allowed to remove its equipment from the vessel before a judicial sale of the vessel. The court of appeals affirmed the lower court's ruling that the telecommunication system was vital to the vessel's navigation and operation, and hence, was an appurtenance to the ship and rightly included to the sale. The equipment was subject to maritime liens asserted against the vessel.

Perkins v Ottershaw Investments Ltd., et al, 2005 U.S. Dist. Lexis 31067 (S.D. Fla. September 30, 2001).

The Court granted in part and denied in part defendant's motion to dismiss a complaint for wrongful death occurring during a recreational scuba diving course conducted at a resort in the Bahamas. As to defendant's contentions concerning *res judicata* and collateral estoppel based on a prior action against different parties, and a release executed by the deceased, the Court denied the dismissal as to the release, noting that the proper motion to raise that issue would be a motion for summary judgment, not a motion to dismiss. As to plaintiff's claims for non-pecuniary damages, the motion to dismiss was granted, the Court holding that the Death on the High Seas Act [46 USCA 761 *et seq.*] applied to this incident in the territorial waters of a foreign state.

P.G. Charter Boats, Inc. v. Soles, 437 F.3d 1140 (11 Cir. 2006).

An employee injured while working on a barge filed a tort action in state court against several defendants, including his employer and the president and sole shareholder of the barge's corporate owner. The plaintiff also named three fictitious corporations as defendants. During discovery, the plaintiff learned the name of the corporate owner of the barge and moved to amend his complaint to name the owner as a defendant. Five months after the barge owner was served with the amended complaint—twelve months after the original complaint was filed—the barge owner filed a limitation of liability action in federal court. The Court of Appeals held that the original notice served on the barge owner's president was a sufficient notice to the barge owner of the potential claims against the barge owner. Thus, the notice of the lawsuit triggered the six-month time frame in which a vessel owner must file a petition to limit its liability.

Pil-Jae Lee (Lee), D/B/A Alpha Oil International (H.K.) v. M/V Gem of Madras, 2006 U.S. Dist.LEXIS 12266 (S.D. Texas 2006).

The Gem of Madras, an India flagged vessel, was refueled in Korea and seized in Houston by Alpha Oil for non-payment. The trial court was considering opposing summary judgments and held the parties have not defined what foreign law should govern the preliminary issues presented in the summary judgment motions. Even though the law of any possible alternative forum is not likely to differ significantly from U.S. law regarding the formation of contracts, the application of foreign law is a question of fact that must be pled and proved.

COURT CASES

Rome v. Ingram Barge Co., 2006 La. App. LEXIS 632 (La. App. 5 Cir. March 28, 2006).

The Louisiana Court of Appeals affirmed a preliminary injunction issued to prevent Ingram from mooring or docking its boats and barges on the plaintiffs' bature frontage along the Mississippi River. Plaintiffs alleged that Ingram never obtained any right to use the bature frontage nor did it acquire any riparian and/or real rights to the described property, and that Ingram's actions constituted an unlawful invasion of their property and trespass. Ingram contended, *inter alia*, that both Louisiana and federal law allowed it to use the bank of the Mississippi River in front of the plaintiffs' bature property for all purposes incidental to navigation.

The court held that, under La. C. Civ. P. Art. 3663, it was not necessary for the plaintiffs to show irreparable injury with respect to a claim based on their ownership, possession or enjoyment of their property. Amazingly, although the court cited La. Civ. C. art. 456 that "The banks of navigable rivers ... are private things ... subject to public use," it did not address Ingram's contention that both state and federal law allow it to use the bank, stating merely that Ingram trespassed by butting its barges against the river bank. Ingram has sought writs from the Louisiana Supreme Court.

In re Superior Construction Company, 2006 WL 994105. (11th Cir. 2006).

The Court affirmed the judgment of the trial court which found and concluded that a moored construction barge and tug were solely at fault for a collision between those vessels and a 25' pleasure boat in a tributary of the St Johns River near Jacksonville, Florida. Several passengers on the pleasure boat sustained serious injuries, and the trial court had awarded over \$19,000,000 in economic and non-economic damages. The recreational vessel operator's legal intoxication was found not to be a cause of the collision as operator handled the vessel in such a way as to indicate his motor skills, mental faculties and control of the boat were not impaired due to intoxication as he perfectly aimed the boat in such a way that it would have passed safely under the bridge if not for the unexpected location of the barge.

In its analysis, the Court considered the application of the General Maritime Law rules found in "The Oregon" and "The Pennsylvania" to the circumstances of this collision. It is suggested that given the reading the Court placed on "The Pennsylvania Rule" in this Opinion, that which seemed clear before as to what evidentiary showing was necessary to escape any allocation of collision fault when a statutory rule intended to prevent collisions has been violated, has been substantially revised. While the factual circumstances in this incident are involved, the conduct which this Opinion has affirmed, and the basis for the affirmance, merit close attention. It is recommended that before digesting the Court's reading of "The Pennsylvania Rule" in this Opinion, that the 132-year-old ruling of the Supreme Court in *The Pennsylvania*, 80 US 125 (1874), be reviewed. Based on this Opinion, the distinction between proving that rule violating conduct was not a cause of a collision, and proving that the same rule violating conduct could not have been a cause of the collision, seems to be in serious doubt in this Circuit.

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