

injury in a shallow recreational bay did not disrupt maritime commerce or bear a sufficient relationship to traditional maritime activity (NYLJ, Feb. 13, 2015).

On the appeal, Katzmann said Sannes applied the right test for whether U.S. maritime law applied to the case, but came to the wrong result because "The alleged tort here involves a vessel on navigable waters—factors the Supreme Court has reminded us will ordinarily place a case within the bounds of admiralty jurisdiction." *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995).

Katzmann said the lower court, in applying *Grubart*, was "emphasizing the recreational nature of the vessel and its passengers as well as the location of the incident in shallow waters."

"We disagree that these factors remove the case from admiralty jurisdiction," he said.

The Supreme Court made it clear in its "connection test" under *Grubart* that it doesn't matter whether the vessel is used for commercial or recreational purposes, nor does it matter whether the "waters at issue are shallow or deep" or what the various roles of the people involved were, Katzmann said.

"[T]he potential effects on maritime commerce of an injury to a passenger who jumped from a vessel on open navigable waters include collisions with commercial vessels caused by distracted crews and disruption to maritime traffic caused by maritime rescue," he said. "These potential effects may be the same whether the injured passenger was recreational or employed in maritime commerce, and they are also sufficient to satisfy the test."

Katzmann noted that the Supreme Court took "an expansive view of the possible commercial effects caused by collisions of even small recreational vessels on navigable waters, regardless of the precise location of those vessels in relation to commercial traffic."

And he easily distinguished the case from another major case where the circuit rejected admiralty jurisdiction—an alcohol-fueled fist fight on a dock in a marina near Long Island Sound—in *Tandon v. Captain's Cove Marina of Bridgeport, Inc.* 752 F.3d 239 (2d Cir. 2014) (NYLJ, May 22, 2014).

"Here, for example, Ficarra was allegedly rescued by boat and rushed five nautical miles across Lake Oneida back to Brewerton through a federal shipping lane," he said. "Such maritime rescues on open navigable waters could divert resources that would be called upon in the event of an incident involving a commercial vessel, require commercial boats themselves to aid in the rescue efforts, or otherwise disrupt commercial shipping by, for example, using federal shipping lanes to transport injured passengers to safety."

Finally, the circuit disagreed with the lower court's description of the "general character" of Germain's actions, saying "a more accurate description ... was the transport and care of passengers on board a vessel on navigable waters, which more generally captures the many aspects of Germain's activity that Ficarra alleges gave rise to his injury."

Katzmann also noted that Sannes had engaged in a "thoughtful analysis" and that the "modern test for admiralty jurisdiction leaves something to be desired." But he was constrained to apply the test as it sits. Therefore, the court could not adopt Germain's suggestion, one similar to the one that Justice Clarence Thomas suggested in his concurrence in *Grubart*, that jurisdiction "extends to all torts originating on a vessel on navigable waters."

James Mercante of Rubin Fiorello & Friedman argued for Germain before the court on Feb. 29.

"As a maritime lawyer for 29 years, I was so fascinated reading such a well-written and well-reasoned decision that laid out the modern test for admiralty jurisdiction so deliberately and thoughtfully—that I forgot for a moment it was my case," Mercante said. "As an admiralty attorney, it was a page turner. This showed that admiralty has a much wider net."

Jan Kublick of McMahon, Kublick & Smith in Syracuse argued for Ficarra.

"Obviously we believe that the district court has properly applied the relevant standard to Limitation of Liability Act—the Second Circuit certainly agreed that the court had used the correct standard but disagreed with the outcome," Kublick said. "The circuit's decision notes the difficulty of applying federal admiralty law to what would otherwise be a state tort."

Mark Hamblett can be reached [via email](#) or on Twitter [@Mark_Hamblett](#).

Copyright 2016. ALM Media Properties, LLC. All rights reserved.