NEWS

Admiralty Law

Jurisdiction, Fisticuffs and Oil Spills

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A fistfight aboard a vessel in navigable waters can spark federal admiralty jurisdiction. So can "national contacts." This article will discuss jurisdiction and an update on the never ending saga of the Exxon Valdez oil spill.

Onboard Altercation

Admiralty jurisdiction is limited. In *Gruver v. Lesman Fisheries Inc.*, the question of admiralty jurisdiction arose in the context of a fight, or perhaps a mugging, aboard a commercial fishing vessel.1

Mr. Gruver worked as a deckhand for Lesman Fisheries aboard the shrimp and crab boat F/V Sunset Charge. He quit and joined the crew of a competing fishing vessel, F/V Adventurous. At the time Mr. Gruver resigned, he was owed some seaman's wages, but not according to Lesman Fisheries.

This prompted Mr. Gruver to angrily confront Mr. Lesman on the dock to demand his unpaid wages. Mr. Gruver also left a threatening message on Mr. Lesman's voice-mail. In the message, Mr. Gruver demanded the money and warned that he would hurt Mr. Lesman and damage the F/V Sunset Charge if he was not paid. Mr. Gruver received a payment the next day, but the amount was insufficient for his appetite. He again called Mr. Lesman, threatening him and his property if the full amount of wages owed to him was not paid.

This sounded fishy to Mr. Lesman so he boarded F/V Adventurous to greet Mr. Gruver on the pretense that he was there to give Mr. Gruver a check for the remainder of his wages. To help deliver the hefty check, Mr. Lesman brought his 380-pound nephew.

Naturally, the stories diverge at this point, with Mr. Lesman claiming that Mr. Gruver attacked him and his heavyweight sidekick and Mr. Gruver stating that he was asleep in his bunk when the two intruders beat him severely, attempting to break his legs and vowing to kill him for leaving the threatening messages. Mr. Gruver was hospitalized for several days with broken ribs and a punctured lung.

In the rematch, Mr. Gruver filed suit for damages against Mr. Lesman in federal district court, invoking admiralty and maritime jurisdiction. The complaint alleged negligence, unpaid wages and assault. Mr. Lesman countered with a motion to dismiss the entire case for lack of subject matter (admiralty) jurisdiction. The federal district court agreed and dismissed the complaint, holding that Mr. Gruver failed to establish grounds for federal admiralty jurisdiction.2 Not to be deterred, Mr. Gruver appealed the decision and the U.S. Court of Appeals for the Ninth Circuit accepted the review as a basis to delve deeply into the historic principles of admiralty jurisdiction.

Admiralty Jurisdiction

Federal district courts have original jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction." 28 U.S.C. §1331(1). At one time; if an incident occurred on "navigable waters," that was a sufficient nexus to trigger admiralty jurisdiction. *Jerome B. Grubart Inc. v. Great Lakes Dredge & Dock Co.*3 The test was refined over time to require not only a location upon navigable waters, but also a solid "connection" to things traditionally maritime. The "location" test was easily satisfied in the *Gruver* case because the altercation did occur aboard a vessel on navigable waters.

The "connection" test required a bit more analysis. The Court of Appeals explained that the connection test has two prongs, each of which must be met before admiralty jurisdiction will attach. First, a court must assess the general features of the type of incident involved to determine whether the incident has a "potentially disruptive impact" on maritime commerce. *Sisson v. Ruby*, 497 U.S. 358, 363 (1990). The second prong of the test requires the court to examine whether the general character of the "activity

giving rise to the incident shows a substantial relationship to traditional maritime activity."4

In this case, neither the "location" test nor the first prong of the "connection" test (potentially disruptive impact on maritime commerce) was contested. The location test was satisfied because the alleged assault took place aboard the F/V Adventurous while the vessel was floating on navigable waters. The parties agreed that with respect to the first prong of the connection test that the type of incident could have had the potential to disrupt maritime activity. For example, a seaman's injury can have a "disruptive impact" on maritime commerce by (i) stalling or delaying the primary activity of the vessel, i.e., fishing; or (ii) rendering a crew member unable to perform his fishing duties.5 Interestingly, the disruptive impact does not have to actually occur, the fact that it could have had a disruptive impact, even hypothetically, is enough to satisfy the admiralty courts that this prong of the test has been met.

Thus, the only dispute in the case was over the second prong of the "connection" test for admiralty jurisdiction: whether the "general character of the activity" that gave rise to the incident has a "substantial relationship to traditional maritime activity." This was not an easy question due to the unusual facts. Was the "activity" the assault (not maritime) or the seaman's wage dispute (maritime)? The altercation did not comport with the typical maritime tort scenario "where tortfeasors are vessel owners engaging in some sort of maritime activity and where the vessel itself is directly implicated in the incident."6 The district court defined the activity as the vessel owner's failure to pay wages and concluded that this did not have a substantial enough relationship to "traditional maritime activity" to trigger the second prong of the connection test.

The U.S. Supreme Court has held that to warrant federal maritime jurisdiction, a tortfeasor's actions must be so closely related to an activity traditionally subject to admiralty law that the reasons for applying special admiralty rules are present.7 With this in mind, the Ninth Circuit in *Gruver* had to evaluate what constituted the "activity giving rise to the incident" and whether it was traditionally "admiralty." Here, the Court of Appeals disagreed with the district court and found that admiralty jurisdiction existed because the failure to pay "seaman's wages" had a sufficient connection to traditional maritime activity.

Wage Fight Passes Muster

The court did not find that a fight on a vessel will always trigger admiralty jurisdiction. Since this fight was over a claim of unpaid seaman's wages, however, the link to maritime commerce was established. Paying seamen for their work at sea has a substantial relationship to traditional maritime activities.

Accordingly, because both the "location" and "connection" tests were satisfied, there was admiralty jurisdiction. Few practitioners would expect a fight to be worthy of admiralty jurisdiction. The judge's scorecard was unanimous and a surprising reaffirmation of the long reach of admiralty jurisdiction.

'National Jurisdiction'

A foreign vessel owner which makes many voyages to ports in the United States but may not "do business" in any one port, is subject to "national jurisdiction" under Rule 4(2)(k) of the Federal Rules of Civil Procedure. In a recent decision where a ship called on many U.S. ports, the Second Circuit held that there would be no jurisdiction over the vessel owner where the ship's charterer, not the owner, directed where the ship was to go. *Porina v. Marward Shipping Co.*, - F.3d, (2nd Cir. April 1, 2008). The case distinguished a Sixth Circuit case where the owner specially outfitted its vessel for service in the Great Lakes and jurisdiction was upheld. See *Fortis Corporate Ins. v. Viken Ship Mgt.*, 450 F.3d 214 (6th Cir. 2006). In *Fortis*, the court held that personal jurisdiction was proper under Rule 4(2)(k) over the Norwegian owner of a chartered vessel on a claim for cargo damaged on Lake Erie and delivered to Toledo, Ohio. But the defendants in the case had manifested their intent to service and to profit from the United States in particular, by confirming in the charter agreement that "'the vessel is suitable for Toledo,'" and by outfitting and rigging the ship for the fresh water of the Great Lakes. Id. at 221. These facts were deemed sufficient to show that the *Fortis* defendants, unlike *Marward Shipping*, had purposefully availed themselves of the benefits of doing business in the forum.

Similarly, a district court presumably would have upheld national jurisdiction against a charterer to whom the owner ceded wide control. *Mutualidad Seguros v. M.V. Liber*, 1998 U.S. Dist. Lexis 23105 (S.D.N.Y. 1998).

The Exxon Valdez Appeal

Believe it or not, the Exxon Valdez oil spill happened around this time almost two decades ago, in 1989. The massive oil spill lead to a new pollution regime in the passage of OPA 90 (Oil Pollution Act of 1990). Last January what may be a final appeal on maritime punitive damages, was argued in the U.S. Supreme Court. There were an enormous number of amicus briefs submitted covering all conceivable arguments. We address this topic in anticipation of a decision of the U.S. Supreme Court, perhaps before its summer recess.

One of the most interesting issues in the case, picked up by the justices, involved an 1818 punitive damages case called *The Amiable Nancy*, 16 U.S. 546. The crew of a privateer active in the War of 1812 looted a Haitian ship. The Court held that the actual owner of the privateer would not be liable for punitive damages unless it was shown that he had ratified the illicit acts of the crew. The crew members themselves could be held liable, but whether their "depredations" would lead to collectibility is conjecture.

The background of *The Amiable Nancy* is great history. During the War of 1812 with a large British Navy and a small, but developing, U.S. Navy at sea, the United States commissioned privateers to raid English merchant shipping. Hundreds of privateers were used in various wars, important since Elizabethan times. In the War of 1812, the Americans captured and looted dozens of ships. One of the leading privateers was aptly named The Scourge which looted The Amiable Nancy. Compensatory damages were allowed against the vessel owners and punishments were meted out to many of the individual crew members and officers involved. But in view of the ship's place as a privateer there was great reluctance to award punitive damages against the owners who were held in great admiration for their efforts. In addition, The Scourge would be at sea more than a year, out of touch with its owners, a vast difference from today's technology that enables regular lines of communication between the shore side vessel owner and the officers and crew aboard ship.

One of the Exxon Valdez plaintiffs' best arguments was how different it is today at sea with a shipowner's office in constant touch with its ships, including the Exxon Valdez.

One of the defense arguments is probably out of contention. At the time of the Exxon Valdez oil spill, the federal Clean Water Act would apply with its various elements of damages. But these limits on liability were not argued at the trial and would therefore probably not be available under the certiorari ruling of the Supreme Court.

The consensus of most of the lawyers involved in the case, in one form or another, is that maritime punitive damages are available under aforementioned precedent due to today's technology and a ship's close relation to shore-side management. But limits on punitives may be considered by the justices as they have been in other recent Supreme Court decisions on punitive damages in a nonmarine setting.

The maritime bar, and other practitioners as well, eagerly await the next, and perhaps last word on the Exxon Valdez case.

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Endnotes:

1. 489 F.3d 978 (9th Cir. 2007).

2. 2005 WL 2090666.

3. *Jerome B. Grubart v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534, 115 S.Ct. 1043 (1995).

4. *Gruver*, 498 F.3d at 983, citing *Jerome B. Grubart*, 513 U.S. 527, 534 (1995).

5. Id. at 983.

6. Id. at 983, citing *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 675, 102 S.Ct. 2654 (1982).

7. *Jerome B. Grubart*, 513 U.S. at 539.