

ADMIRALTY LAW

BY JAMES E. MERCANTE

The 'Fall' of Ships

What is it about the fall? It seems that marine casualties and the fall months of October and November go together like trick or treat.

On Oct. 31, Halloween, the tanker Puerto Rican exploded off San Francisco Bay in California, killing a crew member and spilling 30,000 barrels of oil into the sea. The Edmund Fitzgerald mysteriously sank in Lake Superior with all hands in November. The bow section of MSC Carla broke off and sank in November. The DG Harmony exploded in November. The ill-fated Staten Island Ferry hit a concrete pier in New York Harbor at full speed in October. The Contship France exploded and became a total loss in October.

This October, a couple of weeks ago, a pleasure boat in Ambrose Channel got tangled in the towing line between a tug and barge and capsized resulting in the death of two of the four crew members. There are many others. But, who can forget the Achille Lauro? Yes, that craziness, warranting further discussion in today's environment, occurred 22 years ago...in October.

The Achille Lauro

The Achille Lauro was an Italian-passenger liner most remembered for its 1985 hijacking. On Oct. 7, 1985, four heavily armed members of the Palestine Liberation Front (PLF) hijacked the cruise ship in the eastern Mediterranean Sea. Their demand was for Israel to free 50 Palestinian prisoners. One passenger "created troubles" and was "provoking the other passengers" so "the decision was made to kill him." This is what the so-called mastermind, Abu Abbas, reportedly said. The alleged "rabble-rouser," a 69-year-old Jewish-American passenger, Leon Klinghoffer, was disabled and confined to a wheelchair. Nonetheless, to quiet him, the gang of four shot Mr. Klinghoffer to death in his wheelchair and threw him overboard. See, www.palestinefacts.org (Israel 1967-1991 Achille Lauro).

The killing was not immediately known to authorities, so the Egyptian government negotiated a resolution by providing the hijackers with safe passage to Tunisia aboard a commercial airplane in exchange for freeing the ship and passengers. However, once the killing was exposed, U.S. Navy jets intercepted the airliner and forced it to land in Sicily. In Italy, the hijackers were convicted of crimes related to the seizure and sentenced to long prison terms. *Klinghoffer v. S.N.C. Achille Lauro, et al.*, 937 F.2d 44 (2d Cir. 1991).

One of the hijackers, Abu Abbas, blended in with the airline passengers, perhaps in disguise, and escaped. If the name Abu Abbas sounds familiar, it is because he was captured by U.S. special forces in April 2003, in Baghdad, Iraq, where he had been in hiding since being convicted in absentia for Mr. Klinghoffer's murder.

The high seas' hijinks spurred multiple litigations in federal court in New York. The cases kept Judge Louis L. Stanton of the U.S. District Court for the Southern



District busy from 1988 to 1993. The U.S. Court of Appeals for the Second Circuit issued four opinions and even the U.S. Supreme Court issued an Achille Lauro ruling in 1989. *Lauro Lines S.R.L. v. Chasser*, 490 U.S. 495, 109 S.Ct. 1976 (1989).

The ship's passengers and Mr. Klinghoffer's personal representatives had commenced federal actions in admiralty against the shipowner, charterer and the travel agency. These defendants impleaded the Palestine Liberation Organization (PLO) for indemnification and contribution. Other passengers of the Italian liner filed actions directly against the PLO.

That is when the battles began which involved everything from personal and subject matter jurisdiction over the PLO, to service of process and the applicable law. The PLO argued that it was immune from suit here in New York and moved to dismiss all actions on the grounds of lack of subject matter or personal jurisdiction; insufficiency of service of process; failure to state a claim and lack of capacity to be sued. Judge Stanton denied the PLO's motions finding that it was present in New York and subject to the court's jurisdiction and that the PLO was not immune from suit: 739 F. Supp. 854 (S.D.N.Y. 1990). The Second Circuit vacated and remanded: 921 F.2d 21 (2d Cir. 1990). Judge Stanton reiterated that the PLO was subject to personal jurisdiction in New York on other grounds: 816 F. Supp. 930 (S.D.N.Y. 1993). Then, after considering the choice-of-law factors that govern a maritime tort claim under *Lauritzen v. Larsen*, 345 U.S. 571 (1953), Judge Stanton found that Italian, rather than U.S. law applied. In addition, the passenger tickets (contract between the cruise line and passenger) specified the law of Italy applied to disputes. Judge Stanton determined that the choice-of-law factors did not "operate in this case to bring under United States law the governance of the attack upon an Italian vessel in Mediterranean waters."

The shipowner, Lauro Lines, SrL, was in charge of security at the port of embarkation, Genoa, Italy, and also aboard the ship. The allegations included that the shipowner failed to conduct an adequate inspection of passports, luggage, and persons boarding the Achille Lauro: 816 F.Supp. at 937.

Settled Claims

The personal injury and death claims never made it to trial. They were eventually settled by the shipowner and its Protection and Indemnity Club. The claims against the charterer of the vessel and the travel agency were dismissed on motion because neither had control of or operated the ship. Thus, neither could be held liable for the shipowner's negligence: 816 F.Supp. 934 (S.D.N.Y. 1993).

Like most cursed ships, the Achille Lauro did not survive for long. It was destroyed by fire in 1994, and, yes, the fire occurred in the month of November. Even her sister ship was eventually destroyed by fire.

On land, we must "Beware the Ides of March." At sea, for some reason, it's the months of October and November that scare.

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