

Admiralty

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I. INTRODUCTION

The United States Court of Appeals for the Eleventh Circuit's admiralty docket was not particularly active this year, perhaps reflecting the state of the maritime practice. Interestingly, it was a good year for district court judges in the circuit, as the Eleventh Circuit affirmed nearly all of the lower courts' maritime decisions in the context of sovereign immunity, maritime statutes of limitation, jurisdiction, international carrier bonds, limitation of liability, allision, maritime liens, choice of law, and pollution.

II. SOVEREIGN IMMUNITY

The Eleventh Circuit saw one of its admiralty opinions reviewed by the United States Supreme Court. In *Northern Insurance Co. of New York v. Chatham County, Georgia*,¹ the Supreme Court addressed the assertion of sovereign immunity by Chatham County, Georgia (the "County"), the owner of a drawbridge that malfunctioned and damaged

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1. 126 S. Ct. 1689 (2006).

a boat insured by the petitioner.² The County contended that it was immune from suit because it was an arm of the State of Georgia and therefore was protected from suit under the Eleventh Amendment.³

The United States District Court for the Southern District of Georgia held that sovereign immunity did indeed extend to counties and municipalities when acting under a power delegated to them by the state. The Eleventh Circuit affirmed this holding and concluded that the common law had created a “residual immunity” that protected subdivisions of the state like the County in this case.⁴

The United States Supreme Court granted certiorari and reversed.⁵ The Court, citing *Alden v. Maine*,⁶ held that only states and “arm[s] of the state” possess Eleventh Amendment immunity from suits under federal law.⁷ The Court determined that the County in *Northern Insurance* was not an arm of the state and rejected the lower courts’ conclusions that the County fell under a broader “residual immunity” from suit.⁸

The Supreme Court also rejected the County’s alternative argument that the Court should recognize “a distinct sovereign immunity against in personam admiralty suits arising from a county’s exercise of core state functions with regard to navigable waters.”⁹ The Court cited *Workman v. New York City*¹⁰ in rejecting the County’s argument, holding that there is a general precedent that sovereign immunity does not protect a city from an admiralty suit.¹¹ In *Workman* the Court concluded that admiralty courts have jurisdiction over municipal corporations.¹² The County, however, argued that *Ex Parte New York*¹³ was controlling.¹⁴ In *Ex Parte New York*, the Court held that no redress could be granted because the Court did not have jurisdiction over the municipality.¹⁵ In *Northern Insurance*, the Supreme Court distinguished *Ex Parte New York* on the ground that there was no jurisdiction over the person or

2. *Id.* at 1692.

3. *Id.*; U.S. CONST. amend. XI.

4. *N. Ins. Co.*, 126 S. Ct. at 1692.

5. *Id.* at 1692, 1695.

6. 527 U.S. 706, 713 (1999).

7. *N. Ins. Co.*, 126 S. Ct. at 1693.

8. *Id.*

9. *Id.* at 1694.

10. 179 U.S. 552 (1900).

11. *N. Ins. Co.*, 126 S. Ct. at 1694.

12. *Workman*, 179 U.S. at 565.

13. 256 U.S. 490 (1921).

14. *N. Ins. Co.*, 126 S. Ct. at 1694.

15. *Ex Parte New York*, 256 U.S. at 498.

property in that case, whereas in *Northern Insurance*, there was no question that the defendant was an entity within the jurisdiction of the district court.¹⁶

*Cranford v. United States*¹⁷ is another decision in 2006 involving sovereign immunity. In *Cranford* the plaintiffs filed complaints against the United States for personal injuries and death suffered in an allision of a pleasure boat and a submerged wreck. The complaints alleged negligence by the government in marking the wreck and in refusing to remove the wreck. The plaintiffs maintained that the district court had jurisdiction over their claims under the Federal Tort Claims Act,¹⁸ the Suits in Admiralty Act,¹⁹ the Public Vessels Act,²⁰ and the Wreck Act.²¹

The United States District Court for the Southern District of Alabama dismissed the complaints for lack of subject matter jurisdiction on the ground that the United States had not waived its sovereign immunity.²² The district court relied on *United States v. Gaubert*²³ to conclude that “the marking of the . . . [w]reck and refusal to remove it fell within the ‘discretionary function exception’ of the Federal Tort Claims Act . . . and that the waivers of sovereign immunity in the Suits in Admiralty Act and the Public Vessels Act did not apply.”²⁴

The issue on appeal was whether the discretionary function exception to the waivers of sovereign immunity in the Suits in Admiralty Act and the Public Vessels Act applied to decisions of federal officials in marking and choosing not to remove a submerged wreck.²⁵ To resolve this issue, the court addressed three matters: (1) the legal standard for the discretionary function exception; (2) whether the marking of the wreck fell within the exception; and (3) whether the refusal to remove the wreck fell within the exception.²⁶

In addressing the legal standard for the discretionary function exception, the court in *Cranford* discussed the test outlined by the United States Supreme Court in *Gaubert*. The test involves a two-step

16. *N. Ins. Co.*, 126 S. Ct. at 1695.

17. 466 F.3d 955 (11th Cir. 2006).

18. 28 U.S.C. §§ 1346(b), 2671-2680 (2000).

19. 46 U.S.C. app. §§ 741-52 (2000).

20. 46 U.S.C. app. §§ 781-90 (2000).

21. 33 U.S.C. §§ 409, 411, 412, 414, 415 (2000 & Supp. III 2003); *Cranford*, 466 F.3d at 956-57.

22. *Cranford*, 466 F.3d at 957.

23. 499 U.S. 315 (1991).

24. *Cranford*, 466 F.3d at 957-58 (citations omitted).

25. *Id.* at 956.

26. *Id.* at 957.

inquiry: (1) “whether the conduct involves ‘an element of judgment or choice’” and (2) “whether the judgment or choice is grounded in considerations of public policy, because the ‘purpose of the [discretionary function] exception is to “prevent judicial second-guessing of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort.””²⁷ The Eleventh Circuit held that the marking of the wreck and the refusal to remove it were “discretionary decisions grounded in social, political, and economic policy,” and thus, the court affirmed the district court.²⁸

III. STATUTE OF LIMITATIONS

*Jane Doe (A.H.) v. Carnival Corp.*²⁹ involved a suit against a cruise line by a passenger. The passenger claimed that she was sexually assaulted by a ship employee while aboard the ship when she was seventeen years old. The only issue on appeal was whether the plaintiff was barred from suit by the statute of limitations.³⁰

Although the statute of limitations for maritime personal injuries is three years, the defendant cruise line was permitted to contract for a shorter limitations period.³¹ Carnival sent each passenger a contract whereby the passenger agreed to a one-year limitations period for the filing of any personal injury suits for injuries sustained while aboard the ship. The plaintiff in *Jane Doe* did not dispute the fact that she signed this contract upon purchase of her cruise ticket. However, she claimed that the contract she signed establishing a one-year limitations period was not valid because she signed it as a minor, and therefore, the maritime three-year statutory limitations period trumped the contractually shortened one.³²

The United States District Court for the Southern District of Florida entered summary judgment for the shipowner on the ground that the plaintiff was time-barred from bringing suit, and the court of appeals affirmed.³³ The Eleventh Circuit concluded that 46 U.S.C. app. § 183b(a)³⁴ contained a restriction that permitted the cruise line to contract for a shorter statute of limitations, provided such period was

27. *Id.* at 958 (quoting *OSI, Inc. v. United States*, 285 F.3d 947, 950 (11th Cir. 2002); *Gaubert*, 499 U.S. at 322-23).

28. *Id.* at 956.

29. 167 F. App'x 126 (11th Cir. 2006).

30. *Id.* at 127.

31. *Id.* (citing 46 U.S.C. app. § 183b(a) (2000)).

32. *Id.* at 127-28.

33. *Id.*

34. 46 U.S.C. app. § 183b(a).

not less than one year.³⁵ Furthermore, the court rejected the plaintiff's assertion that because she was a minor at the time of execution, the contract in which she agreed to a one-year limitations period was unenforceable.³⁶ The court cited 46 U.S.C. app. § 183b(c)³⁷ in concluding that the contract was indeed enforceable and that the one-year period began to run when a guardian was appointed or the minor reached the age of majority.³⁸ Therefore, 46 U.S.C. app. § 183b(c) did not render void the contractually shortened limitations period; it merely tolled its operation.³⁹ The plaintiff in *Jane Doe* filed suit more than one year after her eighteenth birthday and thus exceeded the one-year period allotted by the contract; this period began to run from the date the plaintiff reached the age of majority and not from the date of the injury.⁴⁰ Therefore, the plaintiff's personal injury claim against the defendant was barred by the statute of limitations.⁴¹

IV. INTERNATIONAL CARRIER BOND

*United States v. Kafleur*⁴² involved another cocaine smuggling vessel. The defendants were Washington International Insurance Co. ("WIIC") and an entity known as Riverside Shipping ("Riverside"), which acted as an agent for vessel owners or charterers. Riverside filed a customs form for one of its vessels, the M/V GREAT NORTHEASTERN EXPRESS ("EXPRESS"). The EXPRESS did not arrive at its expected destination and was towed by the U.S. Coast Guard to Miami Beach. It was there that the Coast Guard discovered a steel box containing 89.9 pounds of cocaine. The Coast Guard then instructed the EXPRESS to continue to its final destination for formal entry, where upon docking, the crew fled before an investigation could be conducted or a manifest could be retrieved.⁴³ United States Customs then issued a notice of statutory penalty to Riverside under 19 U.S.C. § 1584⁴⁴ for \$1000 per ounce of cocaine found aboard and \$100,000 for the full amount of the surety bond. The government agreed to mitigate the penalty from \$1,438,400 to \$143,840, but the defendants still refused to pay the penalty or the

35. *Jane Doe*, 167 F. App'x at 127.

36. *Id.*

37. 46 U.S.C. app. § 183b(c) (2000).

38. *Jane Doe*, 167 F. App'x at 128.

39. *Id.*

40. *Id.*

41. *Id.*

42. 168 F. App'x 322 (11th Cir. 2006).

43. *Id.* at 323-24.

44. 19 U.S.C. § 1584 (2000 & Supp. III 2003).

surety bond amount. The government then initiated suit to compel payment of these fines from an international carrier bond.⁴⁵

The United States District Court for the Southern District of Florida dismissed the motions of the principal and surety for summary judgment and granted summary judgment to the government. The district court found that the defendants were liable under § 1584 for the full amount of the \$100,000 bond.⁴⁶ The principal and surety appealed, and the Eleventh Circuit affirmed, holding that (1) the principal and bond were not outside the scope of enforcement provisions of the Tariff Act;⁴⁷ (2) the government's demand for a manifest was not a prerequisite to the imposition of penalties under the Tariff Act; (3) the principal was not entitled to an evidentiary hearing to ascertain whether the captain of the vessel had knowledge that the cocaine was onboard; and (4) the surety waived appellate consideration of arguments raised for the first time on appeal.⁴⁸

Riverside's first argument, which alleged that the principal and the international carrier bond were outside the scope of the enforcement provisions, was rejected by the court on the ground that Riverside, as the ship's agent, contracted with the surety and was listed on the bond.⁴⁹ Therefore, Riverside was held liable for the actions of the principal under § 1584(a)(2) because it was clear that Customs intended for the carrier bond to ensure the payment of any penalties imposed.⁵⁰

The court also rejected Riverside's second argument, which alleged that penalties could not be assessed where there was no demand for or production of a manifest.⁵¹ Citing *Gillam v. United States*,⁵² the court concluded that penalties for failure to include merchandise on a manifest apply when the manifest *is* produced and merchandise is missing *or* when no manifest is produced at all.⁵³ Regardless of whether a formal demand for the manifest had been made, the crew was to stay aboard the ship until the inspection was completed.⁵⁴ Therefore, the argument that penalties cannot be imposed where no manifest has been produced

45. *Kafleur*, 168 F. App'x at 324.

46. *Id.* at 324-25.

47. 19 U.S.C. §§ 1202-1681b (2000).

48. *Kafleur*, 168 F. App'x at 325-27.

49. *Id.* at 325.

50. *Id.*

51. *Id.* at 325-26.

52. 27 F.2d 296, 301 (4th Cir. 1928).

53. *Kafleur*, 168 F. App'x at 325.

54. *Id.* (citing 19 C.F.R. § 4.7(b) (2007); 19 C.F.R. § 4.1(b)(2) (2007)).

lacked merit, especially where drugs were found onboard and the crew fled the vessel.⁵⁵

The district court did not address Riverside's third contention that it was entitled to an evidentiary hearing to assess whether those in charge of the vessel knew about the presence of the cocaine.⁵⁶ The Eleventh Circuit stated that the master and owner of the vessel are not the parties who would be held liable when there was another entity acting as the surety.⁵⁷ In the case at bar, Riverside was named on the bond for the EXPRESS, so the issue of whether the captain or owner of the EXPRESS knew of the presence of the cocaine was irrelevant because neither was charged with a Tariff Act violation.⁵⁸ Regarding this argument, the court stated that it was unclear whether Riverside was disputing the EXPRESS's status as a "common carrier."⁵⁹ Since the issue was not clearly presented to the district court, the Eleventh Circuit declined to address it on appeal.⁶⁰

The Eleventh Circuit also refused to address Riverside's final argument that its affirmative defenses raised genuine issues of material fact, which should have precluded a grant of summary judgment.⁶¹ Because Riverside failed to include the affirmative defenses of assumption of risk and estoppel in its motion for summary judgment, the defenses were considered abandoned and could not be brought up on appeal, even though they were argued in Riverside's answer to the government's amended complaint.⁶² The court cited *Road Sprinkler Fitters Local Union No. 669 v. Independent Sprinkler Corp.*⁶³ to support the conclusion that "[t]he district court 'could properly treat as abandoned a claim alleged in the complaint but not even raised as a ground for summary judgment.'"⁶⁴

WIIC, the insurance company, asserted two arguments on appeal, but the court refused to address them, as the arguments had not been raised before the district court.⁶⁵ After a de novo review of the appellants' arguments, the Eleventh Circuit held that there were no material issues

55. *Id.* at 326.

56. *Id.*

57. *Id.* at 326-27.

58. *See id.* at 327.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. 10 F.3d 1563 (11th Cir. 1994).

64. *Kafleur*, 168 F. App'x at 327 (quoting *Road Sprinkler*, 10 F.3d at 1568).

65. *Id.* at 327-28.

of fact in dispute and upheld the grant of summary judgment to the government.⁶⁶

V. LIMITATION OF LIABILITY

In *P.G. Charter Boats, Inc. v. Soles*,⁶⁷ the owner of a vessel filed a limitation of liability action pursuant to the Limitation of Liability Act.⁶⁸ The Limitation of Liability Act limits a vessel owner's liability for any damages from an accident to the value of the vessel and its freight.⁶⁹ Soles, an employee of Quality Inspection Services ("QIS"), was injured by a defective anchoring device while inspecting gas lines aboard the NAV1, a barge owned by P.G. Charter Boats ("P.G."). Soles and QIS filed a cause of action in Alabama state court for bodily injury and negligence against several defendants, including three fictitious corporations. These corporations were named as parties to the suit because at the time the complaint was filed, the identity of the owner of the NAV1 was not yet known. During discovery, Soles learned that P.G. was the owner of the vessel and moved to amend his state court complaint to expressly name P.G. as a defendant. This limitation of liability action was filed by P.G. thirteen months after the initial complaint was filed but only six months after P.G. was formally added as a party.⁷⁰

P.G. filed a limitation of liability action naming Soles and QIS as claimants, and Soles and QIS moved to dismiss the action as untimely. The court agreed with Soles and QIS that P.G. had failed to file the action within six months of receiving written notice of the claim. When the action was dismissed for not being within the requisite six-month period, P.G. filed an appeal.⁷¹ The sole issue on appeal was whether the initial state court complaint provided sufficient written notice to P.G. to begin the running of the six-month filing period or whether P.G. did not have notice until the complaint was amended, and it was formally added as a party to the lawsuit.⁷²

Pursuant to § 185 of the Limitation of Liability Act, a party must have "written notice of a claim" before the six-month filing period begins to run, but the Act does not state what information must be included in the

66. *Id.* at 328.

67. 437 F.3d 1140 (11th Cir. 2006).

68. 46 U.S.C. app. §§ 181-196 (2000); *P.G. Charter Boats*, 437 F.3d at 1141.

69. *P.G. Charter Boats*, 437 F.3d at 1142 (citing 46 U.S.C. app. § 183(a)).

70. *Id.* at 1141-42.

71. *Id.* at 1142.

72. *Id.* at 1142-43.

written notice to constitute adequate warning.⁷³ Courts have developed two tests to answer this question.⁷⁴ Under the first test, the notice must “reveal a “reasonable possibility” that the claim made is one subject to limitation.”⁷⁵ Under the second test, the writing must: “(1) demand a right or supposed right; (2) blame the vessel owner for any damage or loss; and (3) call upon the vessel owner for anything due the claimant.”⁷⁶ P.G. argued that it did not have adequate notice that Soles was asserting a claim against it because the original complaint did not explicitly name P.G. as the vessel owner.⁷⁷

The Eleventh Circuit disagreed with P.G., holding that Soles’s original complaint clearly asserted claims against the owner of the NAV1, which was sufficient under both tests to put P.G. on notice of the pending allegations.⁷⁸ The court concluded that the fact that P.G.’s name was not used in the initial complaint was not determinative because it was clear which vessel was at issue and Soles clearly stated that he intended to sue the owner of the vessel.⁷⁹ Therefore, because P.G. knew that it was the owner of the NAV1, it was put on notice of the pending claims thirteen months before it filed the limitation of liability action and was therefore time-barred from bringing its claim.⁸⁰

VI. ALLISION

Boat passengers sued the charterer of a stationary barge when their pleasure boat allided with the barge in *Superior Construction Co. v. Brock*.⁸¹ An “allision,” as opposed to a collision, is defined as “[t]he sudden impact of a vessel with a stationary object such as an anchored vessel or a pier.”⁸² The passengers of the pleasure boat sustained injuries due to the accident and subsequently filed this cause of action.⁸³

Superior Construction Co. (“Superior”) was the general contractor for the Florida Department of Transportation project to widen the Blanding Boulevard Bridge over the Cedar River in Jacksonville, Florida. For this project, Superior chartered a barge called MOBRO 605 and a tug called

73. *Id.* (citing 46 U.S.C. app. § 185).

74. *Id.* at 1143.

75. *Id.* (quoting *Paradise Divers, Inc. v. Upmal*, 402 F.3d 1087, 1090 (11th Cir. 2005)).

76. *Id.* (quoting *Paradise Divers*, 402 F.3d at 1090).

77. *Id.*

78. *Id.* at 1143-44.

79. *Id.*

80. *Id.* at 1145.

81. 445 F.3d 1334, 1336 (11th Cir. 2006).

82. *Id.* at 1336 n.1 (quoting BLACK’S LAW DICTIONARY 75 (7th ed. 1999)).

83. *Id.* at 1338.

MARY ANNE from Mobro Marine. The barge was 128 feet long, 38.5 feet wide, and 7 feet deep, and the tug was 36 feet long, 14.5 feet wide, and 4 feet deep. The barge was painted black, as were the hull and lower superstructure of the tug. Because Mobro Marine did not provide lights with the chartered vessels, Superior developed its own lighting scheme, consisting of ten lights positioned strategically on the barge and two lights on the stern of the tug.⁸⁴

During the project, Superior usually stationed the barge and tug in a manner that allowed recreational boaters to pass under the bridge because Superior had witnessed the frequent passage of boats through the designated channels during the six months of construction. However, on the night of the allision, the barge was parallel to the bridge so that it blocked all but thirty-eight feet of the 120-foot channel. In addition to that danger, the tug was moored perpendicular to the barge. The vessels remained so positioned for the duration of the holiday weekend.⁸⁵

On the night of the allision, only three of the ten lights on the barge and only one of the two lights on the tug were working.⁸⁶ One of the three barge lights was described by an eye witness as “looking like a bathroom nite-light,” and the other two barge lights and the one tug light were flashing white lights.⁸⁷ These four lights were described as “old, scratched, sun-damaged, rust-stained, dirty, and generally in poor condition.”⁸⁸ The court determined that the “[b]arge’s black color, inadequate lighting, and unorthodox location rendered it virtually invisible to recreational boaters on the Cedar River.”⁸⁹

The plaintiffs in this case—the injured boaters—attended a family gathering at a house located near the Cedar River on the night of the accident and then decided to go on a pleasure boat ride. Prior to the boat ride, the driver of the vessel and some of the passengers had consumed alcoholic beverages, and the defendants argued that this contributed to the allision. However, there was evidence that the driver of the pleasure boat slowed the speed down from thirty-five mph to twenty-two mph and accurately aimed his boat through the channel according to the painted arrows drawn under the bridge. The driver had frequently driven his boat under the bridge at night, and the driver and the nonintoxicated passengers testified that they had an unobstructed

84. *Id.* at 1336-37.

85. *Id.* at 1337.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

view and yet could not see the barge until it was too late to avoid the allision.⁹⁰ Although there was conflicting evidence, the district court assumed *arguendo* that the driver was intoxicated beyond the legal limit but found that his legal intoxication was not a cause of the allision.⁹¹

The suit against Mobro Marine was subsequently dismissed after mediation, and Superior brought a limitation of liability action pursuant to the Limitation of Liability Act.⁹² Following a bench trial, the United States District Court for the Middle District of Florida entered judgment for the passengers and awarded economic and noneconomic damages in the amount of \$19,214,689.63. The defendant appealed.⁹³ The Eleventh Circuit agreed with the district court that the barge and the tug were liable for the passengers' injuries and that the operator of the pleasure boat was not comparatively at fault for his intoxication.⁹⁴

On appeal, Superior argued that the plaintiffs did not meet their burden of proving that their intoxication could not have caused the allision under the *Pennsylvania* Rule.⁹⁵ The court found that this burden was met and discussed the differences between the *Pennsylvania* Rule, the *Oregon* Rule,⁹⁶ and the *Louisiana* Rule.⁹⁷ Superior argued that the *Oregon* Rule should apply and that there should be a presumption of liability of the plaintiffs because they were the moving vessel and

90. *Id.* at 1337-38.

91. *Id.* at 1338 & n.6.

92. *Id.* at 1338 & n.7; see 46 U.S.C. app. §§ 183-89 (2000).

93. *Superior Construction*, 445 F.3d at 1338-39.

94. *Id.* at 1347-48.

95. *Id.* at 1339. Under the *Pennsylvania* Rule, when a vessel is, at the time of a collision, in actual violation of a statutory rule intended to prevent collisions, there is a rebuttable presumption that the violation, if not the sole cause, was at least a contributory cause of the collision. The PENNSYLVANIA, 86 U.S. 125, 136 (1874). In such a case, the burden rests upon the vessel to show not merely that her fault might not have been one of the causes, or that it probably was not, but that it could not have been a contributing cause of the collision. *Id.*

96. The OREGON, 158 U.S. 186 (1895). The *Oregon* Rule creates a rebuttable presumption of fault against a moving vessel that, under its own power, allides with a stationary object. *Id.* at 197. The "presumption of negligence may be rebutted by showing, by a preponderance of the evidence, either that the allision was the fault of the stationary object, that the moving vessel acted with reasonable care, or that the allision was an unavoidable accident." *Superior Construction*, 445 F.3d at 1339-40 (quoting *Bunge Corp. v. Freeport Marine Repair Inc.*, 240 F.3d 919, 923 (11th Cir. 2001)).

97. The LOUISIANA, 70 U.S. 164 (1865). The *Louisiana* Rule is similar to the *Oregon* Rule in that while both presume fault on the moving vessel, under the *Louisiana* Rule, a vessel drifts into a stationary object, while the *Oregon* Rule involves a vessel that moves under its own power into a stationary object. *Id.* at 173; *Superior Construction*, 445 F.3d at 1340 n.10.

the barge and tug were stationary.⁹⁸ The court held that this presumption gives way to the *Pennsylvania* Rule when the stationary vessel is in violation of a statute designed to prevent allisions.⁹⁹ The stationary vessel then bears the burden of proving that its violation was not a contributory cause of the allision.¹⁰⁰ In this case, Superior violated statutes pertaining to the obstruction of channel navigation¹⁰¹ and failed to meet its burden under the *Pennsylvania* Rule.¹⁰² The Eleventh Circuit rejected the argument that at least some fault must be apportioned to a driver who was legally intoxicated.¹⁰³ It affirmed the trial court's finding that the allision could not have been attributed to the alcohol level of the plaintiff, as the plaintiff handled the boat in a manner indicating that his motor skills, control over the vessel, and mental faculties were not impaired due to alcohol.¹⁰⁴ The evidence indicated that had the barge and tug boat not been obstructing navigation of the channel, the plaintiff would have safely maneuvered the boat under the bridge.¹⁰⁵ Accordingly, the Eleventh Circuit affirmed the award of economic and noneconomic damages and held that neither award was clearly erroneous or excessive.¹⁰⁶

VII. EQUIPMENT AS APPURTENANT

The Eleventh Circuit addressed the question of what equipment is appurtenant to a vessel in *Motor-Services Hugo Stamp, Inc. v. M/V Regal Empress*.¹⁰⁷ The REGAL EMPRESS is a luxury cruise ship. A maritime lienholder brought this cause of action against the vessel for failure to pay for work performed while it was in a shipyard. Plaintiff Maritime Telecommunications Network ("M.T.N.") was the provider of telecommunications and internet services for the ship, and it filed a motion requesting removal of its equipment from the vessel before it was to be sold in a judicial foreclosure sale. The United States District Court for the Middle District of Florida denied the motion but filed an order segregating certain sums to remain within the court's registry until any

98. *Superior Construction*, 445 F.3d at 1340.

99. *Id.*

100. *Id.*

101. *See* 33 U.S.C. § 409 (2000).

102. *Superior Construction*, 445 F.3d at 1340, 1343.

103. *Id.* at 1344-45.

104. *Id.* at 1345.

105. *Id.*

106. *Id.* at 1347-48.

107. 165 F. App'x 837 (11th Cir. 2006).

objections to the sale could be filed. The ship was sold for \$1,750,000, and no objection was filed.¹⁰⁸

Three months later, M.T.N. filed a motion for the court to reconsider the initial decision approving the sale of the vessel without the removal of the telecommunications equipment. M.T.N. requested that the court rule as a matter of law that it was entitled to recover the money for the equipment, but the court refused to do so. The court determined that M.T.N. did not file a timely objection to the order for sale of the REGAL EMPRESS, and it agreed with the district court that the telecommunications equipment was appurtenant to the vessel and could not be removed before it was sold.¹⁰⁹ The court noted that it is “unimaginable in today’s world that a luxury cruise ship could be successful without a fully functioning telecommunications system.”¹¹⁰ Because M.T.N. failed to present any new evidence disputing the determination that the equipment was essential to the ship’s navigation and operation, the court refused to grant the plaintiff’s motion.¹¹¹

Citing *SS Tropic Breeze v. Tropical Commerce Corp.*,¹¹² *The Augusta*,¹¹³ *Gonzales v. M/V Destiny Panama*,¹¹⁴ and *Gowen, Inc. v. F/V Quality One*,¹¹⁵ the Eleventh Circuit concluded that like radio equipment, uninstalled engines, and fishing permits, telecommunications equipment is an appurtenance subject to a maritime lien on the ship.¹¹⁶ Therefore, the Eleventh Circuit affirmed the decision of the district court and held that the procedure employed by the district court for the judicial sale of the REGAL EMPRESS and the manner in which the plaintiff’s claim was handled were proper.¹¹⁷

VIII. CHOICE OF LAW IN A MARITIME CONTRACT

In *Dresdner Bank AG v. M/V Olympia Voyager*,¹¹⁸ the Eleventh Circuit issued an important decision regarding choice of law rules to be applied in maritime contract disputes. *Dresdner* involved a claim by a Greek travel agency against a cruise vessel following an in rem action brought by a German bank seeking to foreclose on the ship’s mortgage.

108. *Id.* at 838.

109. *Id.* at 838-39.

110. *Id.* at 840.

111. *Id.* at 839.

112. 456 F.2d 137, 141 (1st Cir. 1972).

113. 15 F.2d 727, 728 (E.D. La. 1920).

114. 102 F. Supp. 2d 1352, 1354-57 (S.D. Fla. 2000).

115. 244 F.3d 64, 67-70 (1st Cir. 2001).

116. *Motor-Services*, 165 F. App’x at 840.

117. *Id.*

118. 446 F.3d 1377 (11th Cir. 2006).

The district court entered a default judgment of foreclosure and ordered the vessel sold. Subsequently, numerous entities filed claims and motions asserting rights to share in the proceeds of the sale. One such entity was the Greek travel agency Aktina Travel, S.A. ("Aktina"), which had contracted with the owners and operators of the OLYMPIA VOYAGER to provide airline tickets between Greece and the United States for the vessel's crew members. The parties negotiated the agreement and orally contracted in Greece, and Aktina provided the travel arrangements via phone from Greece.¹¹⁹ Aktina asserted a claim for a maritime lien under the Commercial Instruments and Maritime Liens Act¹²⁰ based on the provision of travel services that benefited the vessel.¹²¹ Judgment was entered in favor of Aktina on its claim for payment from the proceeds of the sale of the vessel, and the bank (standing in the shoes of the vessel) appealed.¹²² The central issue on appeal was the proper choice of law to be applied to the underlying suit.¹²³

The court of appeals first determined that a conflict of law existed because United States law would afford a maritime lien to Aktina, while Greek law would not.¹²⁴ To determine which law applies in an admiralty case, courts generally examine a number of factors outlined by the United States Supreme Court in *Lauritzen v. Larsen*¹²⁵ and *Hellenic Lines Ltd. v. Rhoditis*.¹²⁶ Because *Lauritzen* and *Rhoditis* addressed maritime choice of law analysis in the tort context, the court of appeals instead looked to the Fifth Circuit's opinion in *Gulf Trading & Transport Co. v. The Vessel Hoegh Shield*¹²⁷ for guidance on choice of law analysis in the breach of contract context.¹²⁸ The *Gulf Trading* analysis applies the Second Restatement¹²⁹ approach to choice of law questions and bases the decision upon a determination of which sovereign entity

119. *Id.* at 1379-80.

120. 46 U.S.C. §§ 31301-31343 (2000).

121. *Dresdner*, 446 F.3d at 1379-80.

122. *Id.* at 1379.

123. *Id.*

124. *Id.* at 1381.

125. 345 U.S. 571, 583-92 (1953). The *Lauritzen* factors include (1) the situs of the claim; (2) the law of the flag of the vessel; (3) the allegiance of the seamen; (4) the allegiance of the ship owner; (5) the place of the contract; (6) the access to a foreign forum; and (7) the law of the forum making the choice of law. *Id.*

126. 398 U.S. 306 (1970). In *Hellenic Lines*, the Supreme Court added the additional factor of the shipowner's base of operations. *Id.* at 309.

127. 658 F.2d 363, 366-68 (5th Cir. 1981).

128. *Dresdner*, 446 F.3d at 1381-82.

129. RESTATEMENT (SECOND) OF CONFLICTS OF LAW §§ 6, 188 (1967).

has the “most significant relationship” with the transaction.¹³⁰ This Restatement approach examines the following factors: “[1] the place of contracting; [2] the place of negotiation; [3] the place of performance; [4] the locus of the subject matter in the contract; and [5] the domicile of the parties.”¹³¹

The court in *Dresdner* focused on the “place of performance” and the “locus of subject matter” factors in deciding that Greek law governed Aktina’s claim.¹³² Both the place of contracting and the place of negotiation was Greece, which was also the domicile of the parties involved.¹³³ Because Aktina is a travel agent and not a physical transport service, the court decided that the “performance” involved was the actual purchase of the tickets, which was done in Greece.¹³⁴ Furthermore, the invoices were to be paid in euros, rather than dollars, and the breach of the contract took place in Greece.¹³⁵ The Eleventh Circuit therefore concluded that the locus of the subject matter was Greece, where the tickets were procured.¹³⁶ The court also addressed the “significant relationship” test under Restatement section 6 and determined that Greece had a more significant relationship and greater interest in the transaction.¹³⁷ Because the governmental interest analysis and the substantial relationship analysis both favored application of Greek law, the court held that the district court’s application of United States law was clearly erroneous.¹³⁸ Once it was determined that Greek law governed, the court held that Aktina was not entitled to a maritime lien superior to the bank’s preferred mortgage lien because Greek law does not provide for such a lien.¹³⁹ Aktina’s request for payment of its claim from the proceeds of the foreclosure sale of the vessel was therefore denied.¹⁴⁰

IX. POLLUTION OF INTERNATIONAL WATERS

The defendant in *United States v. Stickle*¹⁴¹ was charged with and convicted in the United States District Court for the Southern District

130. *Dresdner*, 446 F.3d at 1382.

131. *Id.* (citing RESTATEMENT (SECOND) OF CONFLICTS OF LAW § 188(2)).

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.* at 1382-83.

137. *Id.* at 1383-84.

138. *Id.* at 1384.

139. *Id.*

140. *Id.*

141. 454 F.3d 1265 (11th Cir. 2006).

of Florida of deliberate pollution of international waters. The defendant then appealed his convictions of (1) conspiring to violate the law of the United States and (2) knowingly discharging an oily mixture into the sea without an oil discharge monitoring system. The defendant admitted that laborers aboard the vessel, the S.S. JUNEAU, discharged contaminated wheat and diesel fuel into the South China Sea without the proper monitoring system. However, Stickle, the owner and chairman of the company that managed and operated the JUNEAU, the Sabine Transportation Company ("STC"), claimed that the charges should have been dismissed because (1) the JUNEAU was not a freight vessel as defined in the charged statute and (2) venue in the Southern District of Florida was not appropriate as the government was required to prove venue beyond a reasonable doubt, which it failed to do.¹⁴² The Eleventh Circuit Court of Appeals affirmed the convictions.¹⁴³

STC was a company with headquarters in Iowa that owned, managed, and operated a fleet of tank ships used to transport cargo. Stickle was the owner of this and other like entities. The JUNEAU was purchased by STC and was originally built as an oil tanker. The U.S. Coast Guard conducted an inspection of the vessel and issued a Certificate of Inspection permitting the JUNEAU to operate as a freight vessel for a single trip to Bangladesh. The vessel also obtained a Form A International Oil Pollution and Prevention certificate, which is required of freight vessels, as opposed to a Form B certificate for oil tankers.¹⁴⁴

The JUNEAU's cargo consisted of 113,000 metric tons of wheat. It stopped in Singapore to load diesel fuel en route to Bangladesh. Upon arriving at its destination, crew members aboard the JUNEAU realized that the fuel leaked onto the cargo deck and contaminated the wheat on board. As a result of the contamination, the Bangladeshi purchasers refused delivery of the goods. Due to barriers to unloading the contaminated wheat in Bangladesh, the JUNEAU headed back out into the South China Sea with the oil-covered wheat still onboard. Various options for dumping were discussed for more than a month with Stickle and other officers. Eventually, the decision was made to discharge the wheat overboard, and because the vessel was not a certified oil tanker and did not have a Form B, it did not have the proper monitoring devices for discharging the wheat and oil.¹⁴⁵

The JUNEAU arrived back in Portland and learned that the Coast Guard would be inspecting the vessel. During the crew member

142. *Id.* at 1267.

143. *Id.*

144. *Id.*

145. *Id.* at 1268.

interviews, the captain and some members sought to minimize the effect of the contamination by falsely stating that the wheat was contaminated by sea water rather than by oil. Following these interviews, a criminal investigation ensued, and the FBI became involved. In addition to lies told by the captain and some crew members to FBI agents, a false letter was sent by Stickle and the corporate office stating that they were not aware of this illegal dump.¹⁴⁶

The Eleventh Circuit reviewed de novo the district court's denial of the motion for a judgment of acquittal and denial of the motion for improper venue.¹⁴⁷ In response to Stickle's argument that he was not properly charged with violating 33 C.F.R. section 151.10(a)¹⁴⁸ for knowingly discharging contaminated wheat and fuel into the sea without the proper discharging monitoring device, the court determined that the JUNEAU was accurately characterized as a freight vessel, rather than an oil tanker.¹⁴⁹ Disagreeing with Stickle, the Eleventh Circuit determined it was irrelevant that the JUNEAU was originally constructed for use as an oil tanker.¹⁵⁰ The court stated, "[I]t is undisputed that the S.S. JUNEAU was certified, inspected, and approved for use as a freight vessel."¹⁵¹ The court further noted that the vessel obtained a Form A certificate rather than a Form B certificate, and for a Form A certificate there is no inspection of the monitoring devices because the vessel is not being certified to transport oil.¹⁵² Therefore, an indictment under 33 C.F.R. section 151.10(a), which applies to "a ship other than an oil tanker," was applicable to the JUNEAU.¹⁵³

The defendant also argued that the government failed to establish venue by a preponderance of the evidence or beyond a reasonable doubt under 18 U.S.C. § 3238¹⁵⁴ and therefore violated his due process rights.¹⁵⁵ The court stated that "[i]t has long been settled that when the government is proving a non-essential element of a crime, like venue, the prosecution is not required to meet the reasonable doubt stan-

146. *Id.* at 1269-70.

147. *Id.* at 1270.

148. 33 C.F.R. § 151.10(a) (2006).

149. *Stickle*, 454 F.3d at 1271.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.* at 1271 & n.1 (quoting 33 C.F.R. § 151.10(a)).

154. 18 U.S.C. § 3238 (2000).

155. *Stickle*, 454 F.3d at 1271.

dard.”¹⁵⁶ Thus, a preponderance of evidence is standard enough, and the government satisfied this burden in establishing venue.¹⁵⁷

Defendant Stickle also claimed that venue was not proven for the conspiracy count of the indictment because all overt acts of this conspiracy occurred on the high seas and in Iowa.¹⁵⁸ The Eleventh Circuit did not dispute this fact but pointed out that a false statement was made by one of the coconspirators while he was in West Palm Beach, Florida.¹⁵⁹ The court held that this established venue in the Southern District of Florida.¹⁶⁰

The defendant also stated that venue did not exist under § 3238 for the knowing discharge of contaminated grain and fuel without proper monitoring devices because the *locus delicti* of this count was the high seas.¹⁶¹ The court determined that when this is the case, venue can be established by looking to the last known residence of any offender, which in this case was the Southern District of Florida.¹⁶² The Eleventh Circuit concluded there was no merit to the defendant’s contentions and affirmed the convictions.¹⁶³

X. CARRIAGE OF GOODS BY SEA ACT

In *Altadis USA, Inc. v. Sea Star Line, LLC*,¹⁶⁴ the Eleventh Circuit examined the effect of the Carriage of Goods by Sea Act’s (“COGSA”)¹⁶⁵ one-year statute of limitations on cargo losses sustained during the inland portion of a shipment under a through bill of lading.¹⁶⁶ *Altadis* involved the transport of a container of cigars from Puerto Rico to Tampa, Florida, via the port of Jacksonville. The shipper, Altadis, contracted with an ocean carrier, Sea Star Line, LLC (“Sea Star”), which issued a through bill of lading for the shipment. The Sea Star through bill of lading incorporated the provisions of COGSA, including its one-year statute of limitations. Sea Star engaged the inland carrier, American Trans-Freight (“ATF”), for the inland portion of the car-

156. *Id.*

157. *Id.* at 1272.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* at 1272-73.

163. *Id.* at 1273.

164. 458 F.3d 1288 (11th Cir. 2006).

165. 46 U.S.C. app. §§ 1300-1315 (2000).

166. *Altadis*, 458 F.3d at 1289-90.

riage.¹⁶⁷ During ATF's inland transport from Jacksonville to Tampa, the container was stolen on or about March 18, 2003 and was found empty on March 25, 2003.¹⁶⁸ After Altadis filed suit in the Middle District of Florida against both Sea Star and ATF for the loss of the cargo, Sea Star filed a cross-claim against ATF for common law contribution and indemnity and for breach of contract.¹⁶⁹

The district court determined that under the bill of lading and the applicable provisions of COGSA, Altadis's suit was not timely filed because it was not served until April 13, 2004.¹⁷⁰ The district court therefore granted the summary judgment motions filed by Sea Star and ATF on Altadis's complaint.¹⁷¹ Having thereby determined that Altadis's complaint was time-barred, the district court (1) denied Sea Star's motion for summary judgment on the cross-claims it had brought against ATF for contribution and indemnity and breach of contract (effectively ruling that those claims were not meritorious) and (2) instructed the clerk of court to close the case. Altadis appealed the grant of summary judgment on its complaint, while Sea Star sought review of the district court's denial of its motion for summary judgment on its cross-claims.¹⁷²

On appeal, Altadis argued that the two-year statute of limitations of the Carmack Amendment¹⁷³ should apply because the cargo losses were incurred during the overland leg of the transport.¹⁷⁴ The Elev-

167. *Id.* at 1289 & n.1. The contract entered into between Sea Star and ATF for the inland transport of the container was the Uniform Intermodal Interchange and Facilities Access Agreement ("UIIA"), which is an agreement commonly used for the inland transport of containers to define the rights and obligations of inland carriers and ocean carriers during the inland leg of the transportation. *Id.* at 1289 n.2. The UIIA included an agreement by ATF to indemnify and hold Sea Star harmless in the event of damage or loss caused by ATF. *Id.*

168. *Id.* at 1290. The opinion deems March 25, 2003 as the date of loss for the purpose of calculating the statute of limitations time period. *Id.* at 1291.

169. *Id.* at 1290.

170. *Id.* at 1290-91. The opinion in *Altadis* does not refer to the date when suit was actually filed but instead uses the date of service, April 13, 2004, to calculate the statute of limitations period. *Id.* at 1291.

171. *Id.* at 1291. The inland carrier, ATF, benefited from the one-year statute of limitations under COGSA due to the presence of a "Himalaya Clause" in the bill of lading, which extends to inland carriers certain defenses available to ocean carriers under COGSA. *Id.* at 1294 & n.13.

172. *Id.* at 1290.

173. 49 U.S.C. § 14706(e) (2000). The general rules of liability of common carriers by rail, motor-freight, and pipeline are codified in the Carmack Amendment to the Interstate Commerce Act. The Carmack Amendment states that a carrier cannot provide, by rule or contract, for a statute of limitations of less than two years for bringing a civil action. *Id.*

174. *Altadis*, 458 F.3d at 1290.

enth Circuit disagreed, reasoning that case law has established that the Carmack Amendment does not apply to a shipment from a foreign country¹⁷⁵ to the United States unless the domestic, overland leg is covered by a separate bill of lading.¹⁷⁶ The container of cigars was shipped from Puerto Rico to Tampa under a through bill of lading, so there was no separate bill of lading for the overland leg from Jacksonville to Tampa.¹⁷⁷ The court of appeals therefore affirmed the grant of summary judgment on the complaint.¹⁷⁸

The court of appeals next turned its attention to the district court's denial of the two cross-claims brought by Sea Star against ATF.¹⁷⁹ The court noted that Sea Star's common law claim for contribution and indemnity was properly denied.¹⁸⁰ The court noted that "because there is no liability on the part of Sea Star to Altadis, there is nothing for it to receive from ATF by way of contribution or indemnity."¹⁸¹ As for Sea Star's breach of contract claim, which sought a recovery of Sea Star's attorney fees from ATF, the court of appeals held that the district court failed to examine the language of the contract in rendering its decision on this claim.¹⁸² The court of appeals therefore vacated the district court's implicit denial of the breach of contract cross-claim and remanded that claim to the district court for reconsideration.¹⁸³

175. The court of appeals was not persuaded by Altadis's argument that this case law should not apply because Puerto Rico is a United States territory as the "test is not where the shipment originated, but where the obligation of the carrier as receiving carrier originated." *Id.* at 1292 (quoting *Reider v. Thompson*, 339 U.S. 113, 118-19 (1950)).

176. *Id.* at 1293 (citing *Shao v. Link Cargo (Taiwan) Ltd.*, 986 F.2d 700, 703 (4th Cir. 1993); *Capitol Converting Equip., Inc. v. LEP Transp., Inc.*, 965 F.2d 391, 394 (7th Cir. 1992); *Swift Textiles, Inc. v. Watkins Motor Lines, Inc.*, 799 F.2d 697, 701 (11th Cir. 1986)).

177. *Altadis*, 458 F.3d at 1293.

178. *Id.* at 1294-95.

179. *Id.* at 1294.

180. *Id.* at 1294-95.

181. *Id.* at 1295.

182. *Id.*

183. *Id.*