Admiralty Practicum

Volume 1990
Issue 1 *Spring 1990*

Article 4

Stockstill v. Petty Ray Geophysical United States Court of Appeals, Fifth Circuit, 29 November 1989 838 F.2d 1493

Seh-Yoon Park '91

McALLISTER BROTHERS v. UNITED STATES
United States Court of Appeals, Second Circuit, 17 November 1989
890 F.2d 582

The mere fact that the U.S. Coast Guard had considered improving the marking configuration of a reef, together with its knowledge of prior vessel casualties on the reef, did not give rise to a duty to improve its then existing markers for the reef..

FACTS: The Barge McAllister #80 was being pushed by the tug Majorie McAllister. The two vessels were lashed togther, in a configuration forming an integrated tug and barge unit 445 feet long. The mate on watch during the grounding was Anthony J. McAllister, III, who had received his mates license in 1981 and joined the tug as mate in July, 1982. Mr. McAllister had made one prior trip, as a tug mate, up the Hudson to Albany.

The mate had relieved the watch at 1750 hours in the vicinity of the Tappan Zee Bridge, and had available to him a seven inch Decca radar and applicable charts of the Hudson River. The tug and barge were proceeding at nine knots with an additional one knot due to the flood current, making the true speed over ground ten knots. The weather during the time of the grounding was clear although the shadows were considerable along the river's edge.

The reef on which the barge grounded, Diamond Reef, lies in the center of the river and is charted to be 100 yards wide with a minimum depth of 5 feet inside the 18 foot curve. The chart 12347, provides the above information and shows the reef area tinted in blue. The chart also shows two channels, one on the east side of the river and a wider one on the west.

The reef is marked by a single buoy to its south. The buoy is attached to a concrete sinker with a chain. Its length permits the buoy to withstand the pressures of the current, wind and winter ice. The Coast Guard publication, Light List stated that the Diamond Reef lighted buoy was replaced by an unlighted nun buoy during winter months. The Diamond Reef buoy was also painted to show that the preferred channel was to the west. The lower court found that the buoy would move in a north south direction for a few yards due to the current.

At the trial, experts showed that the preferred channel past the reef was to the west. Also brought out at trial, was the cost of installing a ice resistant warning which would have been $600,000. The evidence showed that during the 13 years prior to 1983, over 1.2 million vessels passed the reef area, which was then marked by only the southerly buoy.

Prior to the accident the Coast Guard had considered improving the marking of the reef, due to three specific vessel casualties caused by passing the marker within 50 feet.

Mr. McAllister stated that on the date of the accident, he observed the Diamond Reef buoy by radar at a distance of 1.5 miles. He stated that he attempted to pass the buoy to the west by at least 140 feet. Mate McAllister found, after the grounding, he was 150 feet from the buoy. At a Coast Guard hearing, Mr. McAllister admitted culpability by saying he had let down his fellow employees.

ISSUE: Whether the U.S. Government breached its duty to mariners by allowing the buoy to be mispositioned or whether there was a duty to use other means to adequately mark the reef?

ANALYSIS: The appellants McAllister Brothers Inc. (McAllister Bros.) in this case were relying on the *Eklof Marine Corp. v. United States* 762 F.2d 200 (2d Cir. 1985), decision which stated that the Coast Guard was, "under a duty to place the buoy in such a position that mariners who follow normal practice would not be enticed to enter upon a danger that otherwise might have been avoided." Id at 203.

The Court of Appeals for the Second Circuit, in this case however agreed with the trier of fact, that the buoy was not mispositioned and that more buoys were not necessary to mark the obstruction adequately. The Court acknowledged that the buoy marking for Diamond Reef was subsequently changed, but stated the Coast Guard has been granted broad discretion in the marking of obstructions to navigation.

The Court was not persuaded by the McAllister Bros. argument that the chain length attached to the buoy was excessive and the actual position of the buoy was improper. McAllister Bros. showed that the chain length was 135 feet while the water depth was only 50 feet, and stated that the considerable length of chain created a range of movement of 125.39 feet. The court was not persuaded by this argument due to the testimony of a licensed Hudson River pilot, Captain Sherwood Patrick, who stated that the buoy would be either going upstream or downstream according to the current. The pilot also stated that during the 150 trips he made on the river, the buoy was only a few yards out of its east-west placement.

The Court of Appeals affirmed the District Court's finding in favor of the Government. The Court stated that the cause of the grounding was attritutable solely to the inexperience of the pilot and his undue concern about the shoreline of the Hudson River.

Edward F. Kenny '90

STOCKSTILL v. PETTY RAY GEOPHYSICAL
United States Court of Appeals, Fifth Circuit, 29 November 1989
838 F.2d 1493

Barge owner is liable to bareboat charterer for failing to comply with charter provision requiring it to name charterer as additional insured under its P&I policy. Barge owner's failure to file a timely notice of appeal, precluded appelate review of the dismissal of its third party action against the P&I insurer.

FACTS: Terry Wayne Stockstill (Stockstill) was injured while unloading seismic equipment from a barge, the BB-300. He sued his employer Petty Ray Geophysical, a division of Geosource, Inc. (Geosource); the barge owner Thomas A. Blankenship d/b/a B&B Operators (B&B); and various other defendants under the Jones Act and general maritime law. Geosource cross-claimed against B&B, and B&B filed a third party claim against its P&I insurer. Geosource and Stockstill settled prior to trial which left only Geosource's cross-claims and B&B's third plarty claim to be adjudicated.

Geosource operated the barge as bareboat or demise charterer. B&B agreed to have its P&I insurance policy endorsed to name Geosource as an additional insured. Since B&B failed to do so, Geosource argues that B&B must stand in the shoes of the P&I insurer. B&B claims that its P&I insurance agent, Barly, Martin and Fay of Louisiana, Inc. (BMF) failed to endorse B&B's P&I insurance to include Geosource as an additional insured.

Before trial Geosource and B&B stipulated to the following facts: (1) Stockstill was employed by Geosource as a Jones Act seaman and he was a member of the crew of a fleet of vessels including the barge BB-300; (2) Stockstill's injury aboard the barge was caused solely by the negligence of a fellow employee, Sandidge; (3) the barge was not unseaworthy; and (4) the amount of money owed Geosource after it settled with Stockstill.

The District Court held that B&B was not liable to Geosource and that BMF, therefore was not liable to B&B. Geosource filed

(continues ...)

STOCKSTILL v. PETTY RAY *(Cont.)*

a notice of appeal from the dismissal of its claim against B&B. B&B did not file a notice of appeal from the dimissal of its claim against BMF.

BMF contends that B&B may not appeal this determination because it failed to file a notice of appeal and that Geosource has no standing to appeal this dismissal because it never filed a claim against BMF.

ISSUES: (1) Is B&B liable to Geosource?

(2) May appellate jurisdiction be exercised over the claim against BMF?

ANALYSIS: The District Court relied upon *Lanasse v. Travelers Ins. Co.*, 450 F.2d 580 (5th Cir. 1971) in dismissing Geosource's claim against B&B. Geosource's claim was based upon the fact that it would have been covered, had B&B included Geosource as an additional insured on B&B's P&I policy, as agreed. The *Lanasse* case stated that a charterer could be covered by an owner's P&I policy if (1) the accident was caused by a vessel or its crew and (2) liability flowed from the insured's status as vessel owner. The Court of Appeals for the Fifth Circuit, found, contrary to the district court, that Stockstill and Sandidge were crew members of the BB-300. In fact, the parties stipulated that Stockstill was a member of the crew of the fleet of vessels which included the barge. Geosource also passes the second requirment because, as a demise or bareboat charterer, it may be considered a vessel "owner" for the purposes of P&I coverage.

Since B&B breached its agreement to have its P&I insurance endorsed to name Goesource as an additional insured it must provide such coverage to Geosource.

The Court of Appeals rejected B&B's contention, relying on *Anthony v. Petroleum Helecoptors, Inc.*, 693 F.2d 495 (5th Cir. 1982) and *Bryant v. Technical Research Co.*, 654 F.2d 1337 (9th Cir. 1981), that an initial notice of appeal under Fed. R. App. P. (4)(a)(1) is mandatory and jurisdictional but a notice of protective or cross-appeal under Rule (4)(a)(3) is permissive and courts of appeal may retain all parties in order to do justice.

The Court stated that it is questionable whether *Anthony* or *Bryant* remains good law in light of *Torres v. Oakland Scavenger Co., 487* U.S. ___, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988) which held that the requirments of Rules 3 and 4 are mandatory and jurisdictional and that although the courts of appeal may liberally construe those rules to determine whether they have been complied with, the courts may not waive non-compliance.

The Court held, that even if *Anthony* or *Bryant* is good law, the present case does not fall within the exception. The exception is only available when the appealed decision could be read as not being adverse to the party who failed to file timely notice of appeal. B&B may not take advantage of this exception because the dismissal of its claim was clearly adverse to it.

Seh-Yoon Park '91

FEDERAL INSURANCE COMPANY v. LAKE SHORE INC.

United States Court of Appeals, Fourth Circuit, 20 September 1989
886 F.2d 654

Where defendant does not have sufficient minimum contacts with the forum state to justify the exercise of personal jurisdiction, neither a general "stream of commerce" theory nor the unique nature of ocean-going vessels will support the exercise of personal jurisditction.

FACTS: In April of 1985, General Electric Company (GE) shipped a turbine accessory base aboard the M/V Paul Bunyon. While the base was being loaded aboard the vessel a cargo winch allegedly malfunctioned causing the base to fall and become damaged. At the time of the accident the vessel was docked in Charleston, South Carolina. Under its contract of insurance, Federal Insurance Company (Federal) paid GE $322,543.46 for the damaged base. Plaintiff-appellant, Federal, a New Jersey Corporation, thus became entitled to the subrogated claim of GE.

The M/V Paul Bunyon was designed and manufactured by defendant-appellee Peterson Builders Inc. (Peterson), a Wisconsin corporation with its principal place of business in Sturgeon Bay, Wisconsin, engaged in the design and manufacture of ocean-going vessels. Defendant-appellee, Lake Shore Inc. (Lake Shore), is a Michigan corporation engaged in the design, manufacture, and sale of cargo winches, with its principal place of business in Iron Mountain, Michigan.

The Lake Shore cargo winch installed on the M/V Paul Bunyon was manufactured in Michigan and the vessel was designed and manufactured in Wisconsin for American Heavy Lift Shipping Company (AHL), a Delaware corporation. The contract of sale between Peterson and AHL was executed in Wisconsin and Pennsylvania. AHL accepted delivery of the vessel in Wisconsin.

In March of 1988, Federal filed suit against Peterson, Lake Shore and American Ship Management (American) in the United States District Court for the District of South Carolina, involving the court's admiralty and maritime jurisdiction. American is a Delaware Corporation that hired the vessel's crew and handled the vessel's insurance needs. Federal sought to recover the $322,543.46 paid to GE plus interest and costs, for causes of action including: negligence, strict liability, and breach of express and implied warranties. Peterson and Lake Shore entered special appearances and moved to dismiss for lack of in personam jurisdiction. American moved for summary judgment. The district court held that it did not have personal jurisdiction over the Defendants and granted Federal's and Lake Shore's motion to dismiss and American's motion for summary judgment.

Federal appealed the district court's grant of Lake Shore's and Peterson's motion to dismiss.

Lake Shore and Peterson do not maintain offices in South Carolina and are not licensed to do business in that state. Neither has agents, employees or subsidiaries in South Carolina and neither maintains a bank account or owns real or personal property in the state. Also, all of Lake Shore's products and materials sold to South Carolina residents have been shipped F.O.B. Michigan.

ISSUES: 1) Do defendants have sufficient "minimum contacts" with South Carolina such that the exercise of in personam jurisdiction would not offend the "traditional notions of fair play and substantial justice" embodied in the constitutional principles of due process?

2) In the absence of such "minimum contacts" will a general stream of commerce theory or the unique nature of ocean-going vessels support the exercise of personal jurisdiction?

ANALYSIS: The Court of Appeals, for the Fourth Circuit, affirmed the district court's finding that defendants lacked sufficient "minimum contacts" with South Carolina to be amenable to suit there. The court also held that without such contacts neither the nature of ocean-going vessels nor a stream of commerce theory supported the exercise of in personam jurisdiction over defendants.

The court noted that Congress had not authorized nationwide service of process in admiralty cases so that South Carolina's long-arm statute (construed to extend jurisdiction "to

(continues...)