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## Walker v. Braus United States Court of Appeals, Fifth Circuit 14 July 1993 995 F.2d 77 (5th Cir. 1993)

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## Recent Admiralty Cases

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VOLUME 15, NO. 1

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**WALKER V. BRAUS**  
**UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT**  
**14 JULY 1993**  
**995 F.2d 77 (5th Cir. 1993)**

**A charter to transport workers to charterer's oil field is a voyage charter where the vessel owner operated the vessel, was free to charter the vessel to anyone else when not in use, and was responsible for upkeep, repair, maintenance, and insurance on the vessel. Loss of consortium damages are probably not awardable to a non-longshoreman in inland waters.**

**FACTS:** In 1987, Action Oil Field Services ("Action") entered into a contract with Terra Resources, Inc. ("Terra") to provide Terra with workers to assist with its oil field operations. *Walker v. Braus*, 995 F.2d 77, 79 (5th Cir. 1993). In June of 1987, Terra began renting three twenty-five foot aluminum crew boats from Armogene Braus ("Braus") for the purpose of transporting the Action workers to the oil fields. *Id.* The charter agreement between Action and Braus was verbal and provided that Braus had total responsibility for the upkeep, maintenance, breakdowns, and insurance on the boats. *Id.* The daily price for the boats varied depending on whether

Braus operated them and Braus issued two different invoices depending on whether the rental was a bareboat or time charter. *Id.*

Terra chartered Braus's crew boats for four days in early January 1988 at which time Braus issued a "time charter" invoice for use of the boats and operator. *Id.* On January 5, 1988, a bass fishing boat, owned and operated by Wade J. Trahan ("Trahan"), collided with Braus's boat while he was transporting Action employees for Terra. *Walker*, 995 F.2d at 79. At the time of the collision, Trahan was travelling at an excessive rate of speed



around a sharp bend in the waterway. *Id.* Trahan was killed instantly. *Id.* Trahan's wife filed suit against Braus and Terra to recover damages for the wrongful death of Trahan. *Id.* Braus counterclaimed against Trahan's estate and his insurance company to recover for damage to his boat. *Id.* The United States District Court for the Eastern District of Louisiana assessed Trahan eighty percent and Terra twenty percent liable. *Walker*, 995 F.2d at 79.

The trial court found Terra liable after concluding that Terra was the demise or bareboat charterer. *Id.* at 80. The trial court based its decision on the fact that Terra's employees acted as lookouts and had done chores while on the boat. *Id.* at 79-80. Moreover, Terra paid the charter's operating expenses and gave Braus instructions. *Id.* at 80. The court also cited the fact that the charter was for an indefinite period and Braus had only traveled with the boat when Terra needed a driver. *Id.* The court concluded that these factors indicated that Terra was in complete control of the ship and therefore was the demise or bareboat charterer. *Walker*, 995 F.2d at 80. Terra appealed to the United States Court of Appeals for the Fifth Circuit and Trahan's wife cross-appealed. *Id.*

**ISSUES:** (a) Did the district court err in concluding that a charter to transport workers to charterer's oil field was a demise charterer where the vessel owner operated the vessel, was free to charter the vessel to anyone else when not in use, and was responsible for upkeep, repair, maintenance, and insurance on the vessel?

(b) Did the district court err in awarding damages for loss of consortium to a non-longshoreman in inland waters?

**ANALYSIS:** The Fifth Circuit first noted that "[a] 'charter' is an arrangement whereby one person (the 'charterer') becomes entitled to the use of the whole of

a vessel belonging to another (the 'owner')." *Id.* The court then distinguished between the two types of charters which exist: (1) the voyage or time charter, and (2) the bareboat or demise charter. *Id.*

The court reiterated the longstanding notion that a voyage or time charter exists when the vessel owner: (1) retains both possession and control over the vessel; (2) provides whatever crew is needed; (3) is responsible for normal operating expenses; (4) fully equips and maintains the vessel; (5) makes repairs as needed; and (6) provides insurance on the vessel. *Id.* at 81. A voyage charter, the court noted, is limited to a particular voyage between two defined points, whereas a time charter is limited to a definite period of time. *Walker*, 995 F.2d at 81.

The court stated that in a demise or bareboat charter, the owner transfers *full* possession and control of the vessel to the charterer. *Id.* Furthermore, the charterer obtains the vessel without crew, provisions, fuel or supplies and must pay for the essential operating expenses. *Id.* The court stated that "[b]ecause the charter's personnel operate and man the vessel during a demise charter, the charterer has liability for any and all casualties resulting from such operation and therefore provides insurance for such liability." *Id.*

The court held that the arrangement in this action was for "ferry or taxi service, or time charter" and therefore the district court erred in finding that a bareboat or demise charter existed. *Id.* The court cited the similarities between this case and *Gaspard v. Diamond D. Drilling Co.*, 593 F.2d 605, 606 (5th Cir. 1979), to justify its holding. *Walker*, 995 F.2d at 81. In *Gaspard*, the Fifth Circuit held that a verbal agreement of a crew boat operator to transport ferry drilling employees to their work site constituted a time charter. *Id.* (citing *Gaspard*, 593 F.2d



at 606). The court noted that the vessel operator in *Gaspard* "never surrendered possession, command or navigation of the boat; maintained the vessel; operated and navigated it; supplied the crews; insured it; and paid for all repairs." *Id.*

The court rejected Trahan's reliance on *Federal Barge Lines, Inc. v. SCNO Barge Lines, Inc.*, 711 F.2d 110 (8th Cir. 1983), which held that a bareboat charter existed even though the owner supplied the crew. *Walker*, 995 F.2d at 81. The court distinguished *SCNO* on the basis of a comprehensive written charter agreement in *SCNO* which stated that both parties intended to create a full demise charter. *Id.* (citing *SCNO*, 711 F.2d at 111-12).

The court also rejected Trahan's argument that Terra would be liable under the borrowed servant doctrine notwithstanding a finding that the charter was a time charter. *Id.* The court stated that the trial court did not hold that Braus was a borrowed servant for Terra. *Id.* Furthermore, the court held that the borrowed servant doctrine did not apply to

these facts. *Id.* (citing *Ruiz v. Shell Oil Co.*, 413 F.2d 310 (5th Cir. 1969)).

Finally, the court suggested that Trahan could not recover loss of consortium damages. *Walker*, 995 F.2d at 82. The court relied on *Miles v. Apex Marine Corp.*, 489 U.S. 19 (1990), which held that loss of society damages are not permitted in general maritime actions involving the death of a Jones Act seaman. *Walker*, 995 F.2d at 82. The court noted that it had already extended *Miles* to prevent recovery for loss of society damages in general maritime actions resulting from personal injury to seamen. *Id.* (citing *Michel v. Total Transportation, Inc.*, 957 F.2d 186, 191 (5th Cir. 1992); *Murray v. Anthony J. Bertucci Construction Co.*, 958 F.2d 127 (5th Cir.), *cert. denied*, \_\_\_ U.S. \_\_\_, 113 S. Ct. 190 (1992)). Because the Supreme Court has indicated an intention to maintain uniformity in admiralty actions, the court suggested, without deciding, that damages for loss of society should not be permitted in a general wrongful death action which involves the operator of a fishing boat. *Id.*

James Marks '94 & Andrew Menger '95

DEUTSCHE SHELL TANKER GESELLSCHAFT MBH V. PLACID REFINING CO.  
UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT  
8 JUNE 1993  
993 F.2d 466 (5th Cir. 1993)

Under a standard "New Jason clause," a general average claim may be invoked even if the carrier is negligent, provided the carrier is not liable for the damage under the Carriage of Goods by Sea Act (COGSA), 46 App. U.S.C.A. § 1301 et seq (West 1993). The carrier is liable for cargo damage under COGSA, 46 App. U.S.C.A. § 1304(1) (West 1993), when the vessel is unseaworthy as a result of the carrier's lack of due diligence. A general average act may be invoked when the failure to maintain a ship's radar results in radar failure and the subsequent grounding of a vessel during river flood stage.

**FACTS:** In 1983, Deutsche Shell contracted with Placid Refining Co. to transport a shipment of crude from Sullom Voe, Scotland to Placid's refinery in Port Allen, Louisiana aboard the tanker DIALA.

*Deutsche Shell Tanker Gesellschaft mbH v. Placid Refining Co.*, 993 F.2d 466, 467 (5th Cir. 1993). A compulsory Mississippi River pilot boarded the DIALA at the Mississippi to guide the tanker upstream. *Id.* While