Admiralty Practicum

Volume 1993
Issue 1 *Fall 1993*

Article 5

Ceramic Corp. of America v. Inka Maritime Corp. United States Court of Appeals, Ninth Circuit 6 August 1993 1 F.3d 947 (9th Cir. 1993)

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appellees' argument that *Sisson* precluded an analysis of what actually occurred because here, unlike *Sisson*, maritime commerce was actually disrupted and thus such a counter-factual analysis was not necessary. *Id.* at 230 n.7 (citing *Sisson*, 497 U.S. at 358 and *Foremost*, 457 U.S. at 668).

(3) Finally, the Seventh Circuit noted that when determining if an activity is "substantially related to traditional maritime activity," a court need only be "concerned with 'the general character of the activity.'" *Id.* at 230 (quoting *Sisson*, 497 U.S. at 365). Although one of the purposes of pile clusters is to protect bridges, the court held that the installation of pile clusters is related to maritime activity because pile clusters also protect ships when they collide with bridges and aid ships in navigation. *Id.*

(b) The Limitation Act, 46 App. U.S.C.A. § 183(a) (West 1993), is intended to shield owners from liability beyond their interest in the vessel for loss or damage incurred without the privity or knowledge of the ship owner. *Great Lakes*, 3 F.3d at 230. Although the Limitation Act does not define "privity or knowledge," the court stated that "privity or knowledge" is understood to be an owner's 'personal participation ... in the fault or negligence which caused or contributed to the loss or injury.'" *Id.* at 231 (quoting *Coryell v. Phipps*, 317 U.S. 406, 411 (1943). The court further noted that a corporate shipowner's employees consist of two groups: corporate managers, who have discretionary authority, and ministerial employees. *Id.* (citing 3 Benedict on Admiralty § 42 at 5-14 (7th rev. ed. 1991)). The court ruled that a corporate shipowner is shielded from liability for damages resulting from the acts of purely ministerial employees, but is not shielded from liability when a managerial employee personally participates in the negligent act. *Id.* (citing 3 Benedict on Admiralty § 42 at 5-14 (7th rev. ed. 1991)). Because the record did not indicate whether the alleged negligent act was performed by a managerial or ministerial employee, the court held that the district court erred in dismissing Great Lakes' claim without making such a factual determination. *Id.* The court rejected the district court's reliance on *Joyce v. Joyce*, 975 F.2d 379 (7th Cir. 1992), for the proposition that the Limitation Act, 46 App. U.S.C.A. § 183(a) (West 1993), will not limit Great Lakes' liability. *Great Lakes*, 3 F.3d at 231-32. The court ruled that *Joyce* was not applicable to the present case because *Joyce* involved the negligent entrustment of an individual rather than a corporate shipowner. *Id.* at 232. Finally, the court ruled that the "personal contracts doctrine" would not prevent Great Lakes from utilizing the Limitation Act, 46 App. U.S.C.A. § 183(a) (West 1993), as the district court ruled, because the "personal contracts doctrine" only applied to contracts and this action sounded in tort. *Great Lakes*, 3 F.3d at 232.

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CERAMIC CORP. OF AMERICA V. INKA MARITIME CORP.
UNITED STATES COURT OF APPEALS, NINTH CIRCUIT
6 AUGUST 1993
1 F.3d 947 (9th Cir. 1993)

Japan is not an alternative forum for a judgment declaring that vessel interests have no right to recover general average contributions because Japan would automatically enforce a forum selection clause in the bill of lading and dismiss the action, thus providing a "clearly unsatisfactory" remedy.

FACTS: The M/V Bremen Senator ("vessel") collided with a pier in Japanese territorial waters in mid May 1991, disrupting the vessel's trip to the United States. *Ceramic Corp. of America v. Inka Maritime Corp.*, 1 F.3d 947, 948 (9th Cir. 1993). The vessel owner, Inka Maritime Corp. ("Inka"), a Liberian corporation with its principal place of business in Germany, filed a general average claim against Ceramic Corp. of America and 22 other American owners and insurers of cargo aboard the M/V Bremen Senator ("Ceramic"). *Id.* Ceramic, in turn, filed an action in admiralty in the United States District Court for the Central District of California against the vessel in rem, Inka, the vessel's manager, and the vessel's two charterers (collectively, "vessel interests") seeking money damages and a declaratory judgment that vessel interests had no right to recover general average contributions or contributions to any salvage award following the vessel's collision. *Id.* The vessel interests filed a motion to dismiss the action on the grounds of forum non conveniens. *Id.* The district court granted the motion, holding that Japan was a more convenient forum. *Id.* Ceramic appealed to the United States Court of Appeals for the Ninth Circuit. *Ceramic*, 1 F.3d at 948.

ISSUE: Does Japan provide an adequate forum for the resolution of a judgment declaring that vessel interests have no right to recover general average contributions when Japan would automatically enforce a forum selection clause in the bill of lading and dismiss the suit?

ANALYSIS: The Ninth Circuit noted that review of a trial court's dismissal on the grounds of forum non conveniens is limited to one of abuse of discretion. *Id.* at 948-49 (citing *Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764, 767 (9th Cir. 1991); *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981)). The circuit court stated that a party seeking dismissal on the grounds of forum non conveniens "has the burden of showing '(1) the existence of an adequate alternative forum, and (2) that the balance of private and public interest factors favors dismissal.'" *Id.* at 949 (quoting *Contact Lumber Co. v. P.T. Moges Shipping Co.*, 918 F.2d 1446, 1449 (9th Cir. 1990)). The court first determined whether Japan provided an adequate alternative forum. *Id.* The court stated that an alternative forum is adequate when the defendant is amenable to having the case tried in the alternative jurisdiction. *Id.* (citing *Piper Aircraft*, 454 U.S. at 254 n.22). In the present case, the district court conditioned the dismissal on the ground that the defendant would not raise a statute of limitations defense on any claim resulting from this accident filed in Japan within one year. *Ceramic*, 1 F.3d at 949. The circuit court ruled that this conditional dismissal satisfied the adequate alternative test. *Id.*

The Ninth Circuit stated that even when a defendant is amenable to the alternative forum, there are "rare circumstances" in which the remedy is so inadequate that the forum provides no remedy at all. *Id.* (quoting *Piper Aircraft*, 454 U.S. at 254 & n.22). Dismissal is not "appropriate 'where the alternative forum does not permit litigation of the subject matter of the dispute.'" *Id.* (quoting *Piper Aircraft*, 454 U.S. at 254 n.22) The court further ruled that dismissal on forum non conveniens grounds may be appropriate even if the other jurisdiction does not provide all the remedies available in the original court, provided some remedy is available in the other jurisdiction. *Id.* (citing *Lockman*, 930 F.2d at 768-69).

The court noted that Japan would honor a German forum selection clause in the bill of lading and automatically dismiss

this case, thus preventing Ceramic from obtaining relief in that forum. *Ceramic*, 1 F.3d at 949. As a result, the court ruled that this case falls within the exception "where the remedy provided by the alternative forum is 'clearly unsatisfactory.'" *Id.* at 949-50 (citing *Piper Aircraft*, 454 U.S. at 254 n.22). Because no adequate remedy existed in Japan, dismissal was an abuse of discretion. *Id.* at 950. The vessel interests contended that dismissal was appropriate regardless of the German forum selection clause because Germany is an adequate forum and U.S. courts would have honored the forum selection clause anyway, thus forcing litigation in Germany. *Id.* The court did not decide these issues because they didn't pertain to whether Japan was an adequate forum. *Id.*

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INSURANCE CO. OF NORTH AMERICA V. G.I. TRUCKING CO.
UNITED STATES COURT OF APPEALS, NINTH CIRCUIT
2 AUGUST 1993
1 F.3d 903 (9th Cir. 1993)

Ninth Circuit holds that the Interstate Commerce Commission ("ICC") regulations, specifying the minimum requirements of a written claim against a carrier under the Uniform Bill of Lading ("UBL"), apply to both contested and uncontested claims. A written claim against a carrier which identifies the shipment, contains a clear intention to hold the carrier liable, and provides a reasonable estimate of the claim, but does not specify a dollar amount, is legally sufficient under the ICC regulations, outlining the minimum requirements of the UBL.

FACTS: The G.I. Trucking Company ("G.I.") transported a shipment of intraocular lenses for Eye Technology, Inc. ("Eye Tech") from Los Angeles to Calexico, Ca., on April 19, 1988. *Insurance Co. of North America v. G.I. Trucking Co.*, 1 F.3d 903, 904 (9th Cir. 1993). The shipment was damaged. *Id.* Eye Tech's insurer, Insurance Company of North America ("INA"), compensated Eye Tech and became the subrogee of Eye Tech's claim against G.I. *Id.* On December 2, 1988, INA's subrogation unit, Recovery Services, International ("RSI"), sent G.I. a written notice of damage which identified the shipment, communicated an intent to hold G.I. liable and provided an estimate of $100,000 in damages to the lenses. *Id.* INA paid Eye Tech $97,500 on March 3, 1989. *Id.* On March 27, 1989, RSI sent G.I. a "Standard Form for Presentation of Loss" in the amount of $100,000, but G.I. denied liability and refused to pay. *Insurance Co.*, 1 F.3d at 904-05.

INA filed a claim against G.I. for carrier liability and negligence in California State court. *Id.* at 905. G.I. denied the claims, removed the suit to federal district court, and filed a motion for summary judgement, asserting that INA failed to file a written claim within the nine month period required by the ICC regulations. *Id.* The United States District Court for the Northern District of California granted the motion holding that INA's December 2nd notice of claim was for an "uncertain amount" and was not considered a legally sufficient claim within the requirements of the ICC regulations. *Id.* INA appealed to the United States Court of Appeals for the Ninth Circuit. *Id.*

ISSUES: (a) Do the ICC regulations,