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Article 3

Darlak v. Columbus-America Discovery Group, CA4, 59 F.3d 20, 7/7/95

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of the salvors and that maritime law has traditionally favored liberal salvage awards in order to encourage recovery, the court of appeals affirmed the lower court judgment granting Discovery Group 90% of the cargo. Because of the magnitude of the gold's value— estimated at almost $1 billion— the court upheld the district court's finding that it would be better to coordinate sales so as not to depress world gold prices.

The case was remanded to consider evidence establishing the validity of Insurer claims as a prerequisite to underwriter recovery.

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In Rem Actions

IN PERSONAM ACTION ON SALVAGE CLAIM BARRED BY *IN REM* LIABILITY DECISION

Once *in rem* liability is established in an admiralty action, it is *res judicata* and binding on all parties; attempts to convert salvage claims to *in personam* actions are barred.

(Darlak v. Columbus-America Discovery Group, CA4, 59 F.3d 20, 7/7/95)

[*NOTE FROM EDITOR:* The following is provided as a companion to the case, *supra*. It is illustrative of the position taken by the "Intervenors" in that case.]

Jack F. Grimm and Harry G. John (Grimm and John) commissioned an expedition to perform a sonar survey of a section of ocean floor thought to be the location of the S.S. *Central America*, which had sunk in 1857. Grimm had designated Joseph W. Darlak (Darlak), who spent six months researching the *Central America*'s position, as his representative on the expedition. On February 26, 1984, the expedition departed from Norfolk, Virginia, aboard the research vessel, *Robert W. Conrad*. The group included Darlak and a team of oceanographers from Columbia University. The survey revealed a target close to where the *Central America* was later discovered by Columbus-America Discovery Group (Columbus-America) in 1988.

After locating the *Central America*, Columbus-America filed an *in rem* action in district court to determine its salvage rights in the ship. The court granted Grimm and John leave to intervene in the proceeding, based on their claim that they were entitled to a share of the salvage due to Columbus-America's alleged use of the position information gathered during the *Conrad* expedition. Darlak was present with his own attorney when counsel for Grimm and John made his opening statement. The proceeding resulted in a determination, on appeal, that Columbus-America did not rely on the position information gathered by the *Conrad* expedition. *Columbus-America Discovery Group* v. *Atlantic Mut. Ins. Co.*, 56 F.3d 556 (4th Cir. 1995.)

During the proceeding, Darlak entered into an agreement with Grimm and John stating that he had developed the position information used during the *Conrad* expedition, and that in consideration of his not intervening in the proceeding, Darlak would not be prejudiced in any future action regarding his claim to the salvage of the *Central America*. Darlak also agreed to testify and provide records for Grimm and John in their action.

Darlak later independently filed an action in the Southern District of New York against Columbia University, Columbus-America Discovery Group, Inc. and its president, Thomas G. Thompson (Thompson), when he learned of the decision in district court adverse to the claim of Grimm and John. The case was transferred to the Eastern District of Virginia, whereupon Darlak disregarded his agreement with Grimm and John and moved to intervene in the *in rem* action. Columbus-America and Thompson were granted summary judgment on the motion and Darlak appealed.

The fourth circuit considered whether Darlak's *in personam* action seeking a share of the salvage could be entertained following the determination of the liability phase of an *in rem* action. The court recognized that there was validity in the argument against Darlak's making a separate claim from that of Grimm and John, because he had no cognizable proprietary interest in the information he provided to the *Conrad* expedition for two reasons. First, Darlak's claim was derivative in nature, since he was acting as an agent of Grimm in supplying the information. Second, the position information Darlak provided to the expedition was already public knowledge. Although the fourth circuit agreed with Darlak that both points involved issues of fact, it affirmed summary judgment because Darlak had failed to assert his claim during the *in rem* proceeding.

The court noted that *in rem* actions were designed to decide the rights to "specific property as against all of the world, and judgments in such cases are binding to the same extent." *Darlak*, 59 F.3d at 22 (citing Black's Law Dictionary 713 (5th ed. 1979)). *In rem* actions in admiralty receive the same treatment as general *in rem* actions. "The whole world, it is said, are parties in an admiralty cause; and, therefore, the whole world is bound by the decision." *Thorsteinsson* v. *M/V Drangur*, 891 F.2d 1547, 1553 (11th Cir. 1990) (quoting *The Mary*, 3 U.S. (9 Cranch) 126, 144 (1815)).

Darlak's claim to a percentage of salvage was based on the assertion that Columbus-America used his proprietary information to locate the *Central America*. Were the assertion true, Darlak could have recovered a portion of the salvage *res*. The claim should have been asserted during the liability phase of the *in rem* action, the court said, and thus the completion of the *in rem* liability phase had a *res judicata* effect on Darlak's claim. (The court acknowledged that Darlak had ample notice of the *in rem* action.) The result was that the *in personam* action was barred.

Darlak failed in his attempt to convert his potential *in rem* claim into an *in personam* action, because he twice decided to avoid intervening and "[was] not entitled to a bite of a different apple merely because he could not taste the first one." *Darlak*, 59 F.3d at 23.

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