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## Tug Allie-B, Inc. v. United States 273 F.3d 936 (11th Cir. 2001)

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Finally, Laufer claims that Yang Ming failed to mitigate damages. The court held that the damages were reasonable and that extraordinary measures to reduce harm need not be taken. The duty to mitigate arises only when the measures are small in relation to the possible loss. The \$25,000 to dispose of the tires in Japan was a significant cost that Yang Ming was not required to take. Shipping reduced the out-of-pocket expenses of the company.

The court affirmed the summary judgment for Yang Ming but reversed and remanded the district courts award of damages.

### **LIMITATION OF LIABILITY IN CLAIMS INVOLVING THE PARK SYSTEM RESOURCES PROTECTION ACT**

**The Eleventh Circuit Court of Appeals in considering whether a vessel owner may limit his liability, pursuant to 46 U.S.C. app. § 183(a) (“Limitation Act”), in a claim brought by the United States for damages under the Park System Resources Protection Act (“PSRPA”). 16 U.S.C. § 19jj-1 held that the two statutes irreconcilably conflicted with one another and that the Limitation of Liability Act does not protect vessel owners from PSRPA claims because the PSRPA is the more recent and more specific statute.**

Tug Allie-B, Inc. v. United States  
273 F.3d 936 (11<sup>th</sup> Cir. 2001)

On July 20, 1998, the tug ALLIE-B, while towing a barge through Ledbury Reef in the Biscayne National Park, ran aground alliding with coral reefs in the national park. When the tugboat pulled itself and the barge free from the reefs, it damaged the corals and the reef framework. When Tug Allie-B, Inc. (“Tug Allie”), as owner of the vessel, filed a petition for limitation of liability of damages caused by the collision in the sum of \$1,204,860, the United States filed an answer and counterclaim for damages to the national park for \$3,069,200.

The Limitation Act provides, in pertinent part, that “the liability of the owner of any vessel . . . for any loss, damage, or injury by collision . . . without the privity or knowledge of such owner or owners, shall not . . . exceed the amount or value of the interest of such owner in such vessel and her freight then pending.” 46 U.S.C. app. § 183 (a). Tug Allie argued that its

liability should be limited to the post accident value of the vessel and pending freight, as provided in the federal Limitation of Liability Act.

The United States argued that Tug Allie's liability should not be limited in light of the damages provided for under the PSRPA. The PSRPA provides, "[A]ny person who destroys, causes the loss of, or injures any park system resource is liable to the United States for the response costs and damages resulting from such destruction, loss or injury." 16 U.S.C. § 19jj-1(a). This provision, the government argued, conflicts with the federal Limitation Act and must be resolved by applying the PSRPA without limitation because it is the later-enacted statute and because it is more specific.

In its decision not to limit Tug Allie's liability, the Court of Appeals looked at the specific language of both the PSRPA and the Limitation Act and applied the rule that "a new[er] statute will not be read as wholly or even partially amending a prior one unless there exists a positive repugnancy between the provisions of the new and those of the old that cannot be reconciled." *Tug Allie-B, Inc. v. U.S.*, 273 F.3d 936, 941 (11<sup>th</sup> Cir. 2001) (quoting *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 133-34, 95 S.Ct. 335, 42 L.Ed.2d 320 (1974)). In considering whether the two statutes irreconcilably conflicted with one another, the Court of Appeals noted three conflicts: (1) the PSRPA contemplates full recovery by the Government for accidents causing injury to park lands while the Limitation Act provides for a limitation of recoverable damages "in a marine accident to the post-accident value of the ship and its cargo . . ." *Id.* at 942; (2) the PSRPA "is a strict liability statute that looks exclusively to the cause of the damage . . ." (*Id.* at 943) while the Limitation Act operates under a negligence theory; and (3) the PSRPA provides for both an *in rem* and an *in personam* cause of action while the Limitation Act limits recovery to the post-accident value of the *res* causing the damage. These three discrepancies were considered a "positive repugnancy" by the Court of Appeals and led the Court to consider which statute governed.

Relying on the principle that a more recent statute governs when two statutes conflict, the Court of Appeals recognized that the PSRPA was enacted nearly 140 years after the Limitation Act in determining that Tug Allie-B's liability would not be limited. Additionally, the Court noted that the PSRPA is more specific because it addresses situations involving damage to "park system resources" while the Limitation Act's scope is much broader. Although it is arguable that

the Limitation Act's broader scope includes damages to park system resources, the Court held that the specific tailoring of the PSRPA compels the Court to apply the more specific statute.

In short, the Court of Appeals determined that Tug Allie-B's liability could not be limited under the act because the PSRPA's unlimited damage provisions irreconcilably conflicted with the Limitation Act and the PSRPA was the more recent and more specific statute.

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**HANDLING OF ASBESTOS CLAIMS UNDER THE JONES ACT,  
UNSEAWORTHINESS AND MAINTENANCE AND CURE**

**A complaint under the Jones Act which claims an asbestos related medical condition requires a single baseline examination where none of the plaintiffs had been so diagnosed or significantly exposed was dismissed because plaintiffs were neither sick nor injured and had not as yet developed symptoms of disease. Nor were causes of action for unseaworthiness, maintenance and cure assault and battery or intentional infliction of emotional distress viable.**

Marine Asbestos Cases v. American Hawaiian Cruises, Inc.,  
265 F.3d 861 (9<sup>th</sup> Cir. 2001)  
(Filed September 10, 2001)

Plaintiffs, 174 seamen who had worked aboard the S.S. Independence and/or the S.S. Constitution, appeal the dismissal of their claims under the Jones Act, 46 U.S.C. App. § 688 (2000), based on theories of unseaworthiness, maintenance and cure, assault, battery, and intentional infliction of emotional distress. Plaintiffs claim to have been exposed to asbestos in the course of employment on board the vessels. However, at the time of litigation, none of these plaintiffs has been diagnosed with any asbestos-related medical condition, but have sought recovery in the form a court-supervised medical monitoring program that would provide each plaintiff with a single baseline medical examination. Plaintiff also sought punitive damages as well as damages and costs for defendants' continuing failure to provide relief. The Ninth Circuit