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Dahlen v. Gulf Crews, Inc. 281 F.3d 487 (5th Cir. 2002) (Decided February 4, 2002, cert. denied 123 S.Ct. 261 (2002))

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According, the Court of Appeals affirmed the lower court's findings that Kinnear failed to take adequate measures to prevent or correct the accumulation of water in the lazarette and that Northern Queen had satisfied all the elements of the primary duty rule.

The dissenting opinion in this case agreed with the majority on most issues except for its treatment of the third prong of the primary duty rule. The dissent felt that the record supported the finding that Kinnear had been negligent, not that he had knowingly violated his duty, and did not agree with the finding that Northern Queen had satisfied the primary duty rule.

Mariya Link

**AN INJURY SUFFERED ON SHORE MUST BE CAUSED BY A DEFECTIVE APPURTENANCE
OF A SHIP ON NAVIGABLE WATERS UNDER THE ADMIRALTY EXTENSION ACT**

**Summary judgment was properly granted for the defendants against the plaintiff
who suffered a back injury while unloading groceries and supplies for an oil
platform from the back of an improperly loaded box.**

Dahlen v. Gulf Crews, Inc.
281 F.3d 487 (5th Cir. 2002)
(Decided February 4, 2002, cert. denied 123 S.Ct. 261 (2002))

Plaintiff Peter Dahlen ("Dahlen"), an employee of Island Operating assigned to work as a barge operator for the Forest Oil Corporation's ("Forest") platforms in the Gulf of Mexico was told on July 6, 1995 to pick up a grocery order. The order had been placed with Universal Ogden Services ("Universal") by Forest on July 5th for 3 platforms, West Cameron 44, High Island 116, and High Island 820. The groceries had been loaded into an eight-foot square metal cube called a "grocery box". They were transported by truck from Universal to a dock in Sabine Pass, Louisiana, then loaded onto the *M/V Billy Jay*, which was owned by Gulf Crews, Inc. and Gulf Marine Services, Inc. (collectively, "Gulf") had been time chartered by Forest to be taken to its offshore platforms. Dahlen was told to go to West Cameron 44 to perform routine maintenance and unload the groceries. When he opened the box, he found that the supplies for West Cameron 44 had been loaded in the back of the grocery box. Because the box only had one door, Dahlen had to take everything out to get the West Cameron 44 groceries out and then replace the supplies for the other platforms. Dahlen claimed that this caused him to suffer a back injury, for which he had to return to shore the following day. Eventually he had to undergo lumbar fusion surgery to stabilize his back.

Dahlen filed suit for negligence on May 2, 1996 in Louisiana state court, naming Gulf, Universal, and Forest as defendants. The defendants removed the action on May 28, 1996 to federal court based on federal question jurisdiction under the Outer Continental Shelf Lands Act ("OCSLA"). Gulf and Universal were granted motions for summary judgment based on the grounds that they owed no legal duty to Dahlen. Forest was granted summary judgment based on the claim of platform liability, but was denied

summary judgment on the claim against it as time charterer. A jury found Forest was not negligent. Dahlen appeals the findings.

Application of the Admiralty Extension Act

The court first found that there clearly was federal jurisdiction and the application of maritime law was proper under OCSLA. It then turned to *de novo* review of the district court's application of the Admiralty Extension Act. It notes that in order to apply the Admiralty Extension Act when a plaintiff is injured on shore, they must allege that the cause was "a defective appurtenance of a ship on navigable waters." *Margin v. Sea-Land Services, Inc.*, 812 F.2d 973, 975 (5th Cir. 1987). The court then turned to its analysis of *Gutierrez v. Waterman Steamship Corp.*, in which the Supreme Court applied the Extension Act to a longshoreman injured on a dock by defective cargo containers. 373 U.S. 206 (1963). However, the court in this case found that *Gutierrez* did not control based on 3 factors. First, the two situations are factually different. In *Gutierrez*, the cargo was being unloaded, not already on the dock. Second, none of the case law deals with the Extension Act working in conjunction with the OCSLA, which already has provisions to deal with state law. Third, for the Extension Act to apply, the defect must be in the appurtenance and not be due to the person performing services for the vessel. This leads the court to conclude that the Extension Act did not apply. It further noted that applying Louisiana state substantive law does not affect the outcome of the case.

The District Court's Jury Instructions Regarding Negligence

The court noted first that it reverses judgments based on a jury instruction "only if the charge as a whole creates a substantial doubt as to whether the jury has been properly guided in its deliberations." Dahlen requested that the jury be given instructions as to the "eggshell skull" doctrine, stating that if a defendant's negligence causes unforeseeable injuries, the defendant will still be liable. The district court declined to include this in its charge. On this appeal, however, the court says the defendant must be found negligent first, so the instructions were not in error.

The District Court's Jury Instructions Regarding Forest's Duty

Dahlen claimed that the instructions to the jury were improper for the duty owed by a time charterer. The charge to the jury stated:

The vessel charterer has the legal duty to exercise only reasonable care to have the vessel and cargo in such condition that the platform owner and its employees and workers would be able by the exercise of reasonable care to carry on the work of unloading the cargo with reasonable safety to persons and property. The charterer has no duty to supervise or inspect the loading or unloading of the cargo or to warn of open and obvious conditions.

Dahlen contended that the court should not have used this standard. Instead, Dahlen felt that the applicable standard was that from *Hodgen v. Forest Oil Corp.*, which stated that case law "establishes that the traditional spheres of activity in which a time charterer

exercises control and thus owes a duty include choosing a vessel's cargo, route, and general mission, as well as the specific time in which the vessel will perform its assignment." 87 F.3d 1512, 1520 (5th Cir. 1996). The court, however, factually distinguished *Hodgen* from this case because the *Hodgen* line of case law generally involves the transfer of cargo from vessel to platform, or vice versa, and in perilous weather conditions. It was unwilling to extend *Hodgen* to this set of facts. The court relied on the Supreme Court's statement in *Howlett v. Birkdale Shipping Co.*, that the duty of a vessel to warn of latent defects is a narrow one. 512 U.S. 92, 105 (1994). It concluded that the lower court did not abuse discretion by issuing the charge it did.

The Jury's Findings

The court gave substantial deference to a jury's decision in saying that it would overturn the jury's findings only if it believed that reasonable jurors could not have arrived at the conclusion they did. Dahlen said they could not have come to the conclusion that Forest was negligent due to the rule of "first in-last out" in loading groceries. The court did not find that this overcomes the deference it gives to jury decisions.

Granting Summary Judgment for Universal

The court reviewed the district court's grant of summary judgment for Universal *de novo*. In reviewing Louisiana state case law, it found that there is no duty owed by the grocer to label boxes as to weight, but only to properly pack groceries. It noted that federal maritime law has adopted this Restatement Second of Torts approach to "legal cause." It also determined that Universal did not know the order of delivery, so it was under no affirmative duty to pack the groceries in any specific order. Thus, the court concluded that there was no duty and the grocer could not have been negligent and summary judgment was properly granted.

The District Court's Dismissal of Forest's Cross-Claim for Indemnity

The court determined that it could review the interpretation of the indemnity clause *de novo*. For Forest to win, it must first have proved that Dahlen's injury arose out of or was related to performance of the vessel charter. Under Gulf's charter, the indemnification only gets triggered when the injury arises out of or is related to the performance of the vessel during the charter. The district court found this did not meet that standard and the appellate court agreed. Dahlen did not have any contact with the *M/V Billy Jay* nor did the vessel's crew go onto the platform. Second, Forest would have had to prove that Dahlen, a borrowed servant of Forest, was not a Forest employee for the purposes of the insurance clause in the time charter. The court concluded that Forest was seeking indemnification from a third party that had no contact with Dahlen. Thus, the dismissal was proper.

Jason Nielson