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Published biannually by the Admiralty Law Society of St. John's University School of Law to bring to the attention of practitioners and other interested persons the highlights of recent court decisions in the admiralty field. The case summaries presented herein may not discuss all issues addressed by the various courts. Therefore, readers are advised to consult original case sources.

MEETING THE LOCALITY REQUIREMENT OF GENERAL ADMIRALTY JURISDICTION AND OF BEING ENGAGED IN MARITIME EMPLOYMENT UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT.

The Court of Appeals for the Seventh Circuit found that appellant did not satisfy the locality prong for general admiralty jurisdiction and affirmed the district court's grant of summary judgment because appellant was not engaged in maritime employment as required under the Longshore and Harbor Workers' Compensation Act.

Scott v. Trump Indiana, Inc.
United State Court of Appeals for the Seventh Circuit
337 F.3d 939
(Decided July 28, 2003)

Plaintiff Russell Scott ("Scott") and his wife Lauren Scott filed complaints under the Jones Act (46 U.S.C. §688), the Longshore and Harbor Workers' Compensation Act ("LHWCA") (33 U.S.C. § 905), and under general admiralty jurisdiction (28 U.S.C. §1333) as a result of a serious injury Scott sustained while standing on a pier at Buffington Harbor, Indiana. At the time Scott sustained this injury he was under the employ of, and on an assignment for Total Marine Safety Center ("Total Marine"). Total Marine had a contract with Trump Indiana, Inc. ("Trump") to install, design, and maintain the lifesaving equipment required by the United States Coast Guard, on board the vessel *Trump Casino*. A portion of Scott's employment at Total Marine consisted of developing a training course on the deployment of life rafts and, should the need arise, the safe evacuation of ships. Scott administered this course to Total Marine clients, including staff from the *Trump Casino*.

On the day of the injury, April 4, 1997, Scott was present at Buffington Harbor to observe a Coast Guard required life raft drill aboard the *Trump Casino*. While observing the drill, Scott spent time both onboard the vessel and on land. At no time during this drill did Scott spend time on the life raft itself. After the raft was inflated and deployed into the water, it was towed to an auxiliary pier. At this pier it was supposed to be lifted

out of the water so that it could be transported to Total Marine for inspection and repackaging.

Since the *Trump Casino* was not equipped with an onboard crane, Total Marine made a contract with Lola Crane to provide a hydraulic truck crane and a crane operator for the purpose of lifting the raft out of the water. When the raft reached the auxiliary pier, Total Marine employees aboard the raft attached the crane to it. At this point, Scott was standing on the auxiliary pier. As the raft was being lifted out of the water and across the pier, it swayed due to a gust of wind. The raft then hit Scott in the head, causing severe internal head injuries and swelling, which required a craniotomy.

Scott and his wife (“appellants”) filed claims against Total Marine under the Jones Act, against Trump under the LHWCA, and against Lola Crane, as well as the operator of the crane, Mark Nichols, under general maritime jurisdiction. The district court granted summary judgment against the appellants on all the claims. As to the claim against Total Marine, the court found that appellants did not state any allegations of fact that could establish jurisdiction under the Jones Act. Trump was granted summary judgment as the court held that, assuming Scott was covered by the LHWCA, there was no evidence of any negligence by the personnel of the *Trump Casino*. Finally, in dismissing the claims against Lola Crane and Nichols, the court found that appellants did not satisfy the requirements of federal admiralty jurisdiction. Appellants appealed the district court’s ruling on the LHWCA and general admiralty claims.

The Seventh Circuit first looked to appellants’ claim under general admiralty jurisdiction. It reviewed the district court’s decision that subject matter jurisdiction did not exist *de novo*, and the court’s factual findings under a clearly erroneous standard. First, the court looked to the *Extension of Admiralty Jurisdiction Act*, 46 U.S.C. § 740, which provides “the admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.” The court then enunciated the two-part test that was formulated by courts in response to the aforementioned act to determine if general admiralty jurisdiction exists in cases involving tort claims. According to the test, a party seeking to use federal admiralty jurisdiction over a tort claim has to meet conditions of both location and a connection or *nexus* with maritime activity. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995). The location prong determines whether the tort occurred on navigable waters, or whether the injury suffered on land was caused by a vessel on navigable water. 46 U.S.C. § 740. The connection or *nexus* prong has two components (1), whether the incident in question has a “potentially disruptive effect on maritime commerce;” and (2), “whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity.” *Weaver v. Hollywood Casino-Aurora, Inc.*, 255 F.3d 379, 382 (7th Cir. 2001).

The court first focused on the location prong. Since the accident did not occur on navigable water, the court stated that in order for this prong to be satisfied, the accident had to have been proximately caused by the vessel. Significantly, for the purposes of the locality test, the court stated that an appurtenance to a vessel is considered part of the vessel itself. *Grubart*, 513 U.S. at 535. Accordingly, the court focused its attention on whether Scott’s injury was caused by an appurtenance to the *Trump Casino*.

The appellants contended that their case was analogous to *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206 (1963), where jurisdiction was found to exist under the Extension Act. *Gutierrez* involved a longshoreman who was injured when he slipped on loose beans that had leaked out of a cargo container which had been unloaded from a ship. The Supreme Court found that the cargo container constituted a part of the ship's "gear." *Id.* at 215 (In a later case, *Victory Carriers, Inc. v. Law*, 404 U.S. 202, 210-11 (1971), the court classified *Gutierrez* as turning on the point that the injury was caused by an appurtenance to the ship). Before stating its holding, the Seventh Circuit looked to other decisions, namely *Victory Carriers* and *Anderson v. United States*, 317 F.3d 1235 (11th Cir. 2003). The plaintiff in *Victory Carriers* was injured on a pier while transporting cargo, with a forklift, to a location where it was to be loaded onto a vessel. The forklift's overhead protection rack came loose and injured the plaintiff; however, the forklift was owned by the plaintiff's stevedore employer. The court declined to expand jurisdiction to encompass "...pier side accidents caused by a stevedore's pier-based equipment." *Id.* at 204. The Eleventh Circuit in *Anderson* found that a fighter jet was an appurtenance to the *USS John F. Kennedy* because it was assigned to and housed on the ship, personnel aboard the ship controlled its operations, and at the time of the accident, the jet was carrying out the *Kennedy's* mission. *Anderson*, 317 F.3d at 1238. The court, in reaching its decision set forth a definition of an appurtenance: "any specifically identifiable item that is destined for use aboard a specifically identifiable vessel and is essential to the vessel's navigation, operation, or mission. *Id.*"

The court held that neither the crane nor the life raft were appurtenances to the *Trump Casino*. The court, in deciding that the crane was not an appurtenance, relied heavily on the definition of an appurtenance set forth in *Anderson*. Notably, the crane was never onboard the *Trump Casino*; it was never under the control of any personnel of the vessel; it was not attached to the vessel. Finally, Scott's injury did not occur onboard the vessel. According to the court, the crane was similar to the forklift in *Victory Carriers*. Much like the court in *Victory Carriers*, the Seventh Circuit refused to enlarge admiralty jurisdiction to include a "pier side accident caused by a pier-based piece of equipment that was not owned or operated by a vessel or its crew."

Likewise, the court determined that the raft was not an appurtenance. Although the life raft was part of the "gear" of the *Trump Casino*, the court found more influential the fact that at the time of Scott's injury, the raft was not under the control of any personnel of the *Trump Casino*. Instead, at that time, the raft was under the control of Lola Crane and Nichols. Therefore, because, at the time of the accident the raft was not under the control of personnel of the *Trump Casino*, it could no longer be considered an appurtenance to the vessel. Finally, the court noted that even if the raft were to be considered an appurtenance, the claim would still fail because appellants did not allege, and the facts of the case do not demonstrate, that the raft caused Scott's injury.

Because the locality prong was not satisfied, the court did not address the *nexus* prong. Having decided that neither the crane nor the raft were appurtenances to the *Trump Casino*, the court held that there could be no general admiralty jurisdiction. The court vacated the district court's grant of summary judgment and dismissed the claims against Lola Crane and Nichols for a lack of subject matter jurisdiction.

The court conducted a brief analysis of the appellants' claims under the LHWCA. From the court's point of view, the crucial language of this act was that a plaintiff is not

covered under the LHWCA unless he was involved in maritime employment. (33 U.S.C. § 903(3) (coverage portion of the LHWCA)). To aid in addressing this threshold requirement, the court looked to *Herb's Welding, Inc. v. Gray*, 470 U.S. 414 (1985). The Supreme Court, in *Herb's Welding*, interpreted the congressional intent of the language to cover workers on the site who are engaged in the vital elements of loading and unloading, but not all those that are engaged in the overall process of loading or unloading. *Id.* at 423. The Supreme Court also stated that although maritime employment is not limited to the positions listed in §903(3), it also cannot be read to eliminate the requirement of establishing a connection to the loading or construction of ships. *Herb's Welding* 470 U.S. at 423.

First, the court evaluated the largely passive nature of Scott's employment as Director of Training for Total Marine. Next, the court looked to the record and emphasized that Scott was not involved in the safety drill at all, but at most, was an observer. The court then evaluated these findings in light of the restrictive reading of §903(3) that was endorsed by the Supreme Court in *Herb's Welding*. As a result, the court concluded that Scott was not engaged in maritime employment, thus rendering appellants outside the scope of the LHWCA. Accordingly, the court affirmed the district court's grant of summary judgment.

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