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Dean Hedges v. United States of America United States Court of Appeals for the 3rd Circuit 404 F.3d 744 (Decided April 15, 2005)

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ADMIRALTY PRACTICUM

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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.

DOCTRINE OF EQUITABLE TOLLING IS APPLICABLE TO SUITS BROUGHT PURSUANT TO THE SUITS IN ADMIRALTY ACT

The Court held that equitable tolling is applicable to suits brought pursuant to the Suits in Admiralty Act, reversing a prior holding. The Court nevertheless affirmed dismissal of appellant sailboat owner's complaint, finding that equitable tolling was not justified under the circumstances, as the owner had not been actively misled by the National Park Service in erroneously pursuing an administrative claim under the Federal Tort Claims Act.

Dean Hedges v. United States of America
United States Court of Appeals for the 3rd Circuit
404 F.3d 744
(Decided April 15, 2005)

On December 12, 1996, appellant Dean Hedges' ("Hedges") sailboat was destroyed by heavy seas when it broke free from its moorings in the Virgin Islands National Park ("VINP"). Appellant contacted the National Park Service ("NPS") for information on how to pursue a claim and alleges NPS advised him to file an administrative claim under the Federal Torts Claims Act ("FTCA"). In December 1998, appellant filed an administrative claim under the FTCA with the Department of Interior (DOI), which denied the claim based on two grounds. Relevant here was the fact that appellant alleged a maritime tort, which was a Suits in Admiralty Act (SAA) cause of action and not a FTCA cause of action.

In January 2000, appellant filed a complaint against the United States in the District Court of the U.S. Virgin Islands. The United States, alleging that the SAA had exclusive jurisdiction for maritime tort claims, filed a Fed. R. Civ. P. 12(b)(1) motion to dismiss for lack of subject matter jurisdiction and claimed the action was time-barred because the two-year statute of limitations had expired. 46 U.S.C §745 states that suits in admiralty against the United be brought within two years after the cause of action arises; the cause of action arises upon the date of injury. Appellant unsuccessfully moved to amend to plead jurisdiction under the SAA and argued the limitations period should be equitably tolled because the NPS induced him to abstain from filing in the District Court by advising him to file an administrative claim.

On appeal, the appellant conceded that his complaint had not been brought before the expiration of the two-year statute of limitations period; however, he argued that the doctrine of equitable tolling should be applied to the time which he spent erroneously pursuing an administrative claim.

Equitable tolling is not available if the two-year limitation period in the SAA is a jurisdictional mandate. The Court determined the time period at issue was not a jurisdictional mandate, following the United States Supreme Court decision in *Irwin*, which held “statutes of limitations governing actions against the United States are subject to the same rebuttable presumption of equitable tolling applicable to suits against private defendants.” *Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 111 S.Ct. 453, 112 L. Ed. 2d 435 (1990).

Thereafter, the Court examined the Supreme Court decisions in *Beggerly* and *Brockamp*, which set forth several factors for consideration in determining whether the *Irwin* presumption was rebuttable. These factors are: 1) whether equity is already incorporated into the statute; 2) the length of the limitations period; 3) the substantive area of law; 4) the statutory language of the limitations period; 5) the availability of other explicit exceptions; and 6) the potential administrative burden of equitable tolling. *United States v. Beggerly*, 524 U.S. 38, 141 L. Ed. 2d 32, 118 S. Ct. 1862, (1998); *United States v. Brockamp*, 519 U.S. 347, 136 L. Ed. 2d 818, 117 S. Ct. 849, (1977).

An analysis under the aforementioned factors favored equitable tolling in this case. The limitations period established by the SAA does not incorporate equitable considerations such as the discovery rule available in *Beggerly*. The presumption favoring equitable tolling is stronger when the limitations period is short, and the two-year period in the SAA favors tolling in comparison to the twelve-year statute of limitations in *Beggerly*.

Tort law, the substantive body of law upon which admiralty law is based, requires the Court of Appeals to examine individual equities and balance case-specific facts. In contrast, in *Brockamp*, the Court decided equitable tolling was not applicable to tax claims because tax law is not characterized by case-specific exceptions reflecting individual inequities. The fourth factor advises consideration of the statutory language of the limitations period. The Court of Appeals decided in the *Hughes* case that the language of the FTCA, stating that a tort claim is barred if it is not filed within two years after the action accrues, was not jurisdictional. *Hughes v. United States*, 263 F.3d 272 (3rd Cir. 2001). Furthermore, the court found no language in the SAA indicating that the limitations period was necessary for the court to have subject matter jurisdiction. Lastly, the court found that claims filed under the SAA would not likely result in excessive administrative burdens.

Although the court found that the presumption that equitable tolling applied to the two-year limitations period of the SAA had not been rebutted, it nonetheless held that appellant Hedges was still not entitled to equitable tolling as a matter of law. The remaining issue before the court was whether appellant was entitled to equitable tolling based on the facts of the case.

Equitable tolling occurs (1) where the defendant has actively misled the plaintiff respecting the plaintiff’s cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum. If equitable tolling has occurred, there is a further requirement that the plaintiff have exercised due diligence in preserving his claim.

Appellant argued that his reliance on the advice of the DOI and NPS justified equitable tolling. The Court of Appeals held in *Bovell* that the limitations period in admiralty suits is not tolled during the time period in which an erroneously filed administrative claim is pending. *Bovell v. United States Department of Defense*, 735 F.2d. 755 (3d Cir. 1984). The court declined to deviate from this precedent and found that the advice rendered to the appellant by the DOI and NPS had not been actively misleading. In addition, the court held that appellant’s *pro se* status did not impose an extraordinary

barrier to the assertion of his rights and the fact that the government would not be prejudiced because it had received notice within the two-year statutory period was not sufficient to warrant equitable tolling.

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**THE SECOND CIRCUIT RE-CONCEPTUALIZES THE “MERELY INCIDENTAL”
EXCEPTION TO THE GENERAL RULE THAT MIXED CONTRACTS ARE NOT
MARITIME IN NATURE.**

**Admiralty jurisdiction existed over an insurance coverage dispute where the policy provided both
Comprehensive General Liability and Ship-repairers Legal Liability coverage and the nature of
that coverage was primarily marine.**

Folksamerica Reinsurance Company v. Clean Water of New York, Inc.
United States Court of Appeals for the Second Circuit
413 F.3d 307
(Decided on June 30, 2005)

Milton Rivera (“Rivera”) was injured while cleaning the oil tanks of an ocean-going barge that was docked in New York Harbor when he was overcome by fumes and fell off a ladder into the oil tank. The insured, Clean Water of New York, Inc. (“Clean Water”), was in the business of ship repair and maintenance. It had subcontracted some of its business to Rivera’s employer. Shortly thereafter Rivera brought a negligence suit against Clean Water in state court.

Clean Water was insured by Christiania General Insurance Corp. of New York (“Christiania”). The plaintiff herein, Folksamerica Reinsurance Company (“Folksamerica”), was the successor in interest to the insurer Christiania.

The insured sought defense and indemnification of Rivera’s suit via its insurance policy. The policy’s coverage was defined by a Comprehensive General Liability (“CGL”) section and a Ship-repairers Legal Liability (“SLL”) section.

Folksamerica filed a declaratory judgment suit against Clean Water in the United States District Court for the Eastern District of New York. The plaintiff averred that admiralty jurisdiction existed and sought avoidance of the policy, rescission, and a declaration that it was obligated to neither defend nor indemnify Clean Water. The defendant raised various defenses but the one at issue herein was its challenge to the court’s admiralty jurisdiction.

The district court agreed with the defendant that the CGL section of the policy was a standard “all-risk policy” and that any maritime risks that it covered were merely incidental to the covered non-maritime risks. The court declined jurisdiction because it believed that a CGL policy could not be characterized as one of the three traditional forms of marine insurance—hull insurance, cargo insurance, and indemnity insurance.

The issue before the Court of Appeals for the Second Circuit was simply whether this insurance policy was a maritime contract so as to sustain admiralty jurisdiction. The analysis began with a threshold inquiry, as required by Second Circuit precedent, of whether the subject-matter of the *dispute* involved maritime commerce. Curiously, the district court did not address this question and the Court of