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Stolt Achievement, Ltd., v. Dredge B.E. Lindholm United States Court of Appeals for the 5th Circuit 447 F.3d 360 (Decided April 19, 2006)

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of only one factor weighing in a plaintiff's favor might not be sufficient to support a punitive damages award, and that the absence of all five factors would make any such award "suspect."

Taking *BMW v. Gore* and *State Farm* into account, the Court of Appeals engaged in a lengthy and thorough analysis of the punitive damages review factors gleaned from those cases as they applied to the facts of this case. In assessing the reprehensibility of Exxon's misconduct, the Court of Appeals held that although Exxon had exhibited reckless misconduct in placing a known, relapsed alcoholic in command of a supertanker loaded with millions of barrels of oil, the misconduct did not warrant sanctions at the highest range allowable under the due process analysis. In addition, mitigating facts -- including Exxon's prompt action to clean up the oil and to compensate the plaintiffs for economic losses -- worked to mollify, in the Court's view, the reprehensibility of Exxon's original misconduct in economic terms. Relying on *State Farm*, the Court held that the district court's imposition of punitive damages of \$ 4.5 billion represented damages at the highest range, and was not warranted. The Court added that although a one-to-one punitives to harm ratio marked the upper limit in *State Farm*, the conduct at issue in this case was far more egregious and justified a considerably higher ratio; thus a five-to-one punitives to harm ratio was appropriate.

The Court of Appeals vacated the judgment of the district court and remanded the matter with instructions that the district court further reduce the punitive damages award to the amount of \$ 2.5 billion. In a terse final sentence, the Court stated: "It is time for this protracted litigation to end."

Alan Katz
Class of 2007

COURT OF APPEALS SUSTAINS DISTRICT COURT'S APPORTIONMENT OF EQUAL LIABILITY IN CASE ARISING FROM A COLLISION OF A TANKER AND A DREDGE VESSEL

The Court of Appeals for the 5th Circuit affirmed the district court's finding of equal fault in a collision between two vessels in a channel. While acknowledging that findings of equal fault were rare in court cases, the Court of Appeals found that the district court had properly identified a variety of negligent acts by both parties which supported its finding of equal fault.

Stolt Achievement, Ltd., v. Dredge B.E. Lindholm
United States Court of Appeals for the 5th Circuit
447 F.3d 360
(Decided April 19, 2006)

Plaintiff ship owner appealed from a ruling of the United States District Court for the Southern District of Texas, complaining of various errors in the district court's resolution of its claims against Defendants, a dredge and its owner, in Plaintiff's action arising from the collision of its tanker and the dredge.

On October 21, 2002 a collision occurred between the chemical tanker STOLT ACHIEVEMENT ("tanker") and the dredge boat LINDHOLM ("dredge"). The tanker was headed inbound down the center of the Houston Shipping Channel. The dredge was traveling outbound, hugging the starboard side of the channel. All vessels in the Channel are required to navigate under the Uniform Inland Navigational Rules. As the vessels approached, the tanker contacted the dredge and the vessels agreed to a customary port-to-port, "one-whistle" passing. Approximately two minutes after the initial contact, the captain of the dredge lost control of the vessel, causing it to sheer port toward the tanker. The tanker captain attempted to contact the dredge captain; when reached on the third call, the dredge

captain informed the tanker captain that he had lost control of the ship. The tanker captain then took evasive action in order to minimize the damage from the looming collision; however, the dredge collided with the tanker midship.

After a two-day bench trial, the district court concluded that both vessels were responsible for the collision and apportioned liability equally, awarding each party 50% of damages claimed for reasonable repairs. Plaintiff was also awarded 50% of its loss-of-use damages.

On appeal, Plaintiff-appellant asserted five issues: 1) the district court clearly erred in concluding it was negligent in causing the collision; 2) the court abused its discretion in admitting testimony from Defendant's expert witness; 3) the court clearly erred in not finding the dredge's negligence to be a superseding cause of the accident; 4) the court's equal apportionment of liability was clearly erroneous; and 5) the court erred in holding Plaintiff failed to prove entitlement to average adjuster's fees. The Court of Appeals affirmed the holding of the district court for the following reasons.

In an admiralty action following a bench trial, the factual findings of the lower court are said to be binding unless they are clearly erroneous. A finding is clearly erroneous when, although evidence exists to support it, the reviewing court, based on all the evidence, is left with the definite impression that a mistake has been made. If a court's finding is plausible in light of the record, an appellate court may not reverse, even though it would have weighed the evidence differently if sitting as the trier of fact.

In a collision case, the applicable standard of care owed by a vessel is a combination of prudent seamanship, reasonable care, statutory and regulatory rules and recognized customs and uses. The Court took note of the *Pennsylvania* rule, which stipulates that when a vessel involved in a collision has violated a statutory duty, the burden is on the offending vessel to prove its conduct did not and could not have caused the collision. The Court stated in a footnote that the rule only applied to violations of statutes imposing a clear legal duty, not regulations requiring judgment of a particular circumstance. Where both parties to a collision violate statutes designed to prevent collisions, both parties can be assigned fault. This finding of fault can be overcome by proof that a party's statutory violation was not a substantial cause of the accident.

Plaintiff challenged the district court's finding that its vessel displaced approximately 41,000 tons of water and created a "bow wave" which pushed water in front and to the side of the ship, contributing to the accident. The Court of Appeals, however, while expressing reservations about the accuracy of the district court's finding, noted that there was ample support elsewhere for the court's conclusion that the tanker was negligent -- namely the tanker's excessive speed, a proximity too close to the centerline of the channel and a failure to heed a U.S. Coast Guard notice cautioning vessels in the vicinity to travel at their "slowest safe speed." Plaintiff contended the district court had used two differing definitions to define "safe speed;" however, the Court found that a definition of a safe speed as one "that does not have an adverse effect on other vessels in the area" was not inconsistent with a speed allowing a vessel to "take proper and effective action to avoid collision..." the latter stated in *Inland Rule 6*. Thus, the district court's finding of negligence was not clearly erroneous.

On the remaining four issues, the Court of Appeals sustained the district court's rulings. With respect to Plaintiff's assertion that the district court erred in not finding the dredge navigator's negligence to be a superseding cause of the collision, the Court noted that superseding cause doctrine applied where a defendant's negligence in fact substantially contributed to a plaintiff's injury, but the injury was brought about by a later, independent cause that was not foreseeable. The Court rejected Plaintiff's attempt to analogize the case at bar to *Lone Star Industries Inc. v. Mays Towing Co.*, 927 F.2d 1453 (8th Cir. 1991); in that case the negligence of a barge owner (in failing to inspect his vessel and discover a hull crack) caused harm "different in kind" from that caused by a towing company's negligence (which had caused the crack in the first place) and the former was thus deemed a superseding cause of damage to the vessel. In this case, the Court observed that the negligence of both parties occurred concurrently and were not events of independent origin. Furthermore, the actions of the dredge

captain were not so extraordinary as to be unforeseeable to the tanker. Thus, the Court concluded the district court did not clearly err in refusing to find the dredge captain's negligence to be a superseding cause of the collision.

With respect to the issue of equal apportionment of liability made by the district court, the Court referred to *United States v. Reliable Transfer Co.*, 421 U.S. 397 (1975), in which the Supreme Court discarded the divided damages rule in favor of an allocation of responsibility based on comparative fault. The Supreme Court had held in that case that equal apportionment of responsibility was proper only where the parties were equally at fault or if it was not possible to fairly measure the comparative degree of the parties' fault. In this case, the Court stated that apportionment of fault was not a mechanical exercise and that although findings of equal fault were rare, the district court had properly identified a variety of negligent acts by both parties which supported a finding of equal fault.

Finally, on the issue of adjuster fees, the Court of Appeals found that a stipulation between the parties had merely stated the amount of fees owed and not liability for their payment. As the party moving for recovery, Plaintiff had the burden of showing it was entitled to the fees, and could not rest on the stipulation alone. Therefore, the district court was correct in denying recovery of the fees.

For the foregoing reasons the Court of Appeals affirmed the district court's judgment.

Andrew Lemonda
Class of 2008

DECEDENT CONSTRUCTION WORKER RENOVATING SHIP BERTHS DEEMED A "HARBOR WORKER" UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

The Court of Appeals held that an order of the Department of Labor Benefits Review Board, concluding that a decedent was a "harbor worker" covered by the Longshore and Harbor Workers' Compensation Act, was proper, even though decedent's specific job was not uniquely maritime in nature, because he was engaged in construction of a maritime facility.

Healy Tibbitts Builders, Inc. v. Director, Office of Workers' Compensation Programs
United States Court of Appeals for the 9th Circuit
444 F.3d 1095
(Decided April 14, 2006)

Petitioner Healy Tibbitts Builders, Inc. ("Healy"), entered into a contract with the United States Navy to renovate three submarine berthing wharves at Pearl Harbor, Hawaii. Subcontractor John Mannering ("Mannering") was retained by Healy to construct an underground concrete duct housing electrical and communication cables. In May 2001, Mannering employee Finefeuiaki Maumau ("Maumau") was killed when a steel trench shield fell on him. Respondents, survivors of the decedent, sought benefits under the Longshore and Harbor Workers' Compensation Act ("Act").

In 2002, an Administrative Law Judge ("ALJ") appointed by a director of the Office of Workers' Compensation Programs ("OWCP") granted the claim, awarding \$1,166.78 per week in benefits, based on the decedent's average weekly wage during the project. The ALJ relied on past decisions in which the Benefits Review Board had interpreted the Act to cover construction workers involved in the construction of a dock housing a submarine repair facility and other maritime facilities. The ALJ concluded that it was irrelevant that the decedent's job duties were not "inherently maritime" in nature.

The Department of Labor's Benefits Review Board ("the Board") affirmed the ALJ's decision. In holding that the decedent was a "harbor worker" within the meaning of the Act, the Board stated that