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### Dresdner Bank AG, Dresdner Bank AG in Hamburg v. M/V OLYMPIA VOYAGER United States Court of Appeals for the 11th Circuit 463 F.3d 1210 (Decided September 6, 2006)

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**PROTECTION IS PROVIDED UNDER COMMERCIAL INSTRUMENTS AND  
MARITIME LIENS ACT TO A FOREIGN SERVICE-PROVIDER LIEN**

**The Court of Appeals for the Eleventh Circuit affirmed the District Court's judgment holding that CIMLA protected a foreign service-provider's lien from foreclosure on a vessel by a foreign mortgage holder.**

Dresdner Bank AG, Dresdner Bank AG in Hamburg v. M/V OLYMPIA VOYAGER  
United States Court of Appeals for the 11<sup>th</sup> Circuit  
463 F.3d 1210  
(Decided September 6, 2006)

This case arises out of an attempt by Dresdner Bank AG in Hamburg, Kreditanstalt Fur Wiederaufbau, and Norddeutsche Landesbank-Girozentrale ("the Banks") to foreclose a mortgage on the M/V OLYMPIA VOYAGER ("the Vessel"). The owner of the Vessel was Olympic World Cruises ("OWC"). Zernavi, an Italian ship catering company, had contracted with the operator of the Vessel, Royal Olympic Lines and/or Royal Olympia Cruises ("ROC"), to provide victuals and food and beverage management to the Vessel. Zernavi brought an action to intervene on the aforementioned foreclosure under the Commercial Instruments and Maritime Liens Act (CIMLA). The United States District Court for the Southern District of Florida entered judgment for Zernavi and the Banks appealed. The United States Court of Appeals for the Eleventh Circuit affirmed the District Court's ruling.

A preliminary agreement between Zernavi and ROC took place in Greece in October 2003. Further terms of the agreement were to be completed during on-going negotiations. Pursuant to the initial agreement, Zernavi purchased inventory already onboard the Vessel and in a shore-side warehouse in Greece. Subsequently, Zernavi began to perform during a voyage from Greece to Florida. When the Vessel arrived in Florida, Zernavi issued an invoice to OWC and ROC for services rendered during that voyage. After the initial voyage Zernavi purchased supplies in the United State that were used in two subsequent voyages both of which began and ended in Florida. During the second Florida cruise ROC submitted a contract to Zernavi for approval. Zernavi rejected the contract and never signed it. The rejected contract included a provision stating that English law would preside over any future contract disputes.

Ultimately, OWC filed for bankruptcy and the Banks filed an action to foreclose on the Vessel which Zernavi sought to block. The crux of Zernavi's claim was CIMLA, which protects creditors with maritime liens for necessities provided in the United States over anyone holding a preferred mortgage on a foreign vessel. The Banks attempted to thwart plaintiff's claim by arguing that either English law or Greek law – not U.S. law – was controlling. Both of those venues would prioritize the Bank's lien over Zernavi's. The Banks theory was that Zernavi was bound by the abovementioned rejected contract that would apply English law. According to the Bank, Zernavi violated a tenant of contract law when it sought to recover damages pursuant to the contract but simultaneously sought to repudiate the contract. The court rejected this argument because both parties had agreed that Zernavi had rejected the proposed contract. Furthermore, Zernavi based its recovery on CIMLA and had amended its complaint to eradicate any reference to the proposal. The court then went on to decide that United States law was controlling over

Greek law after consideration of a variety of factors set forth in the Restatement (Second) of Conflicts Law § 6 and § 188.

The Banks then tried to circumvent CIMLA. The Banks argued that the necessities were not provided in the United States because Zernavi coordinated all of its supplying activities in Italy. Accordingly, CIMLA would not apply and the Bank's lien would take precedence over Zernavi's. This line of reasoning was rejected by the Court because CIMLA does not require that the stocking of the vessel be orchestrated in the United States. All that CIMLA stipulates, according to the court, is that "all activities related to the provision of necessities take place inside the US," and Zernavi met this requirement since "Zernavi loaded [all] goods onto the Vessel and provided services to the Vessel while it was in Unites States port." 463 F.3d 1210 (11<sup>th</sup> Cir. 2006) Zernavi's lien, therefore, was superior to the Banks'.

Finally, the Banks argued that the judgment entered for Zernavi was miscalculated since the last invoice issued by Zernavi was a bill for goods and services that had already been charged in prior invoices. After the Vessel had stopped operating Zernavi sold all of the remaining food, beverage, and food service items to OWC and ROC and issued another invoice for \$420,646.22. Once again the court rejected the Banks' argument. Any prior invoices issued by Zernavi were for services rendered during cruises that Zernavi was contractually bound to service. The final invoice was for inventory on board the Vessel which had not already been billed.

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## **NEGLIGENCE IS AN ISSUE UNDER GENERAL MARITIME LAW AND WRECK ACT**

**An agency's status as a "public entity" within the meaning of a state statute limiting liability of public entities, did not, by itself, confer immunity as to a maritime claim, and the mere fact that the agency was unsuccessful in its attempt to remove the sunken boat from the river did not preclude the agency's status as a potentially liable "operator" under the Wreck Act.**

Michael T. Fuestings v. Lafayette Parish Bayou Vermillion Dist.  
United States Court of Appeals for the Fifth Circuit  
470 F.3d 576

(Decided November 14, 2006)

In July 2001, appellant Michael Fuestings ("Fuestings"), suffered injuries as a result of an allision with a sunken shrimp boat that appellee Lafayette Parish Bayou Vermillion District ("District") had unsuccessfully attempted to remove. Keith Griffin was the owner of the shrimp boat which was docked in 1994 and which ultimately sank to the riverbed after deteriorating over a number of years. The District received permission from Griffin to attempt to remove it from the river but the attempt failed and the boat remained partially submerged. At no time before or after the District's attempted removal was the submerged shrimp boat marked with buoys or