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# 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)

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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 necessaries were not provided in the United States because Zernavi coordinated all of its supplying activities in Italy. Accordingly, CILMA would not apply and the Bank's lien would take precedence over Zernavi's. This line of reasoning was rejected by the Court because CILMA does not require that the stocking of the vessel be orchestrated in the United States. All that CILMA stipulates, according to the court, is that "all activities related to the provision of necessaries 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 (11th 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

lights. The allision occurred around sunset on July 3, 2001, throwing Fuesting from his boat and rendering him unconscious.

Fuesting sued the District and the District's insurer, Lafayette Insurance Co. ("Lafayette"), along with other defendants. The other defendants were dismissed from the case. Fuesting's allegations centered around negligence under general maritime law and the Wreck Act. The district court granted summary judgment as to the negligence claim because the Louisiana Revised Statute § 9:2798.1(B) (La. Rev. Stat. 9:2798.1), which grants statutory immunity to public entities for policy making or discretionary acts, was found applicable because the District was found to be a public entity which performed a discretionary act. Similarly, the district court granted the appellees' motion for summary judgment as to the Wreck Act by finding that the District was not an operator of the shrimp boat when it attempted to remove it from the river. Michael Fuestings appealed.

On appeal the United States Court of Appeals for the Fifth Circuit first addressed the general maritime law negligence claim by looking to *Workman v. City of New York*, 179 U.S. 552 (1900) which held that the New York City Fire Department could not employ a New York state law exempting municipal entities from tort liability to defeat a suit against it in admiralty. The Fifth Circuit then looked to the Supreme Court in *N. Ins. Co. of New York v. Chatham County*, 126 S.Ct. 1689 (2006), which endorsed the *Workman's* principle that municipalities do not enjoy Eleventh Amendment sovereign immunity. The Fifth Circuit ultimately held that a municipality can be immune from suit if it was "acting as an arm of the State, as delineated by [the Supreme] Court's precedents." *N. Ins. Company,* 126 S.Ct. at1694 (citing *Alden v. Maine*, 527 U.S. 706, 756 (1999), and *Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 400-01 (1979)). As a result of the holding, the Fifth Circuit remanded the case to the district court to consider whether the *Workman* principle applies.

The Fifth Circuit then addressed the Wreck Act claim and disagreed with the district court's findings that the District was not an operator. The district court's rationale was that the written agreement was a mere release from liability that did not contain any statements relating to movement of the vessel or towage. The Fifth Circuit found this assessment too narrow because it ran counter to the purpose of the Wreck Act which the Fifth Circuit said was to facilitate the marking or removal of dangerous obstructions in navigable waters. Furthermore, the Fifth Circuit stated that oral contracts are valid in admiralty and that the district court erred by resolving this issue by reference to the written agreement alone. The Fifth Circuit ultimately held that an entity that enters a towing contract but subsequently fails to tow the vessel as far as intended does not escape operator status because of its failure. The Fifth Circuit reasoned that this determination is in accord with Congress's intent not to limit the pool of persons responsible under the Wreck Act, as well as those sources liable for cost recovery. The district court's decision was reversed and remanded.

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