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American Steamship Owners Mutual Protection and Indemnity Association, Inc. v. Dann Ocean Towing, Inc. 756 F.3d 314 United States Court of Appeals for the Fourth Circuit (Decided June 26, 2014)

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TIMELINESS OF CLAIM OVER MARITIME INSURANCE CONTRACT IS TO BE GOVERNED BY THE CONTRACT'S CHOICE-OF-LAW PROVISION RATHER THAN THE COMMON LAW DOCTRINE OF LACHES

American Steamship Owners Mutual Protection and Indemnity Association, Inc. v Dann Ocean Towing, Inc.
756 F.3d 314
United States Court of Appeals for the Fourth Circuit
(Decided June 26, 2014)

The Fourth Circuit Court of Appeals upheld the District Court for the District of Maryland's decision that parties to a maritime insurance contract may elect to avoid the common law application of the Doctrine of Laches by including a choice-of-law provision in their contract, which requires the application of that jurisdiction's statute of limitations.

The American Steamship Owners Mutual Protection and Indemnity Association, Inc. (the "Club") sought to use the equitable doctrine of laches when filing a civil action for breach of insurance contract with Dann Ocean Towing Inc. ("Dann").[1] The Club, a non profit provider of protection and indemnity insurance covering vessel owners and charterers against third-party liabilities arising from the ownership and operation of insured vessels, entered into a contract with Dann for a tugboat.[2] Dann's tugboat ran aground on a coral reef in 1998, damaging a barge.[3] Both the barge owner and the United States asserted claims against Dann for property damage and environmental damage to the reef, respectively.[4]

The claims were settled for a total of $2,170,000 in November 2001.[5] Despite originally agreeing to contribute only $1,170,000 towards the settlement, the Club paid an additional $278,552.55, after one of the underwriters of Dann's liability insurance became insolvent and could not pay its portion of the settlement.[6] The Club sought reimbursement from Dann for its additional contributions, but Dann refused to provide any monetary relief.[7] Thereafter, the Club declined to reimburse Dann for certain insurance claims that would have otherwise been payable to Dann, which totaled $131,085.43.[8] Dann responded by refusing to pay its insurance premiums to the Club for the policy years between 1999 and 2001, which totaled $452,610.23.[9] The Club filed an action against Dann, relying on the doctrine of laches over the application choice-of-law statute of limitations provision in the original contract.[10] In its pertinent part, the insurance contract stated: "any contract of insurance between the [Club] and a Member shall be governed by and construed in accordance with the law of the State of New York. In no event shall suit on any claim be maintainable against the [Club] unless commenced within two years after the loss, damage or expense resulting from liabilities, risks, events, occurrences and expenditures specified under this Rule shall have been paid by the Member."[11] The Club relied on the equitable common law relief by asserting that its delay in filing was reasonable as it made various out-of-court attempts to obtain reimbursement from Dann, a delay

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[1] *Am. Steamship Owners Mut. Prot. & Indem. Ass'n, Inc. v. Dann Ocean Towing, Inc.*, 756 F.3d 314, 317 (4th Cir. 2014).
[2] *Id.* at 316.
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.* at 317.
[9] *Id.*
[10] *Id.*
[11] *Id.* at 316.

that did not prejudice Dann, who asserted that the claim was time-barred under New York's six year statute of limitations.[12]

The doctrine of laches is an equitable common law relief that has generally governed in assessing the timeliness of a maritime claim.[13] The doctrine can be raised by a defendant as an affirmative defense to a claim as long as the defendant shows (1) a lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.[14] This doctrine has commonly been applied when determining whether a claim is time-barred irrespective of any fixed statute of limitations, with certain exceptions.[15]

The district court agreed with Dann that parties may elect to avoid the doctrine of laches by including in their contract an enforceable choice-of-law provision that requires the application of another jurisdiction's statute of limitations.[16] The district court thus held that New York's six-year statute of limitations barred all the Club's claims except for one concerning the $76, 925.56 premium.[17]

Ultimately, the Fourth Circuit distinguished exceptions to the common application of the doctrine of laches in upholding the district court's ruling. These exceptions include statutory provisions that impose time-bars on personal injury actions arising out of maritime torts,[18] on certain cargo loss contract claims under the Carriage of Goods by Sea Act,[19] and on maritime salvage actions.[20] Additionally, the court relied on prior caselaw in which courts have allowed the application of contract specifications regarding jurisdiction's statute of limitations.[21] In doing so, it rejected the Club's attempt to distinguish prior caselaw due to the procedural and substantive nature of the choice-of-law clauses in each given jurisdiction.[22] The court reasoned that even assuming the New York's statute of limitations constitutes a "procedural" rule of law, New York law states that unambiguous provisions of an insurance contract must be interpreted through its plain and ordinary meaning.[23]

Accordingly, the Fourth Circuit affirmed the district court's judgment in applying New York's six-year statute of limitations to the Club's claims arising under its maritime insurance contract with Dann.[24]

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[12] *Id.* at 317.
[13] *Id.* at 318.
[14] *Id. See also Giddens v. Isbrandtsen Co.,* 355 F.2d 125, 127 (4th Cir.1966).
[15] *Id.*
[16] *Id.*
[17] *Id.* at 317.
[18] *Id.* at 318. *See also* 46 U.S.C. §30106.
[19] *Id. See also* 48 Stat. 1207, 1209 (1936) (codified at 46 U.S.C. §30701 note).
[20] *Id. See also* 46 U.S.C. §80107(c).
[21] *Id. See Cooper v. Meridian Yachts, Ltd.,* 575 F.3d 1151 (11th Cir.2009) (holding that the parties' contract, stating that "all disputes arising out of or in connection with [the contract]...shall be construed in accordance with and shall be governed by the Dutch law," clearly meant that the parties' choice of Dutch law governed not only the timeliness of pure contract claims, but also the timeliness of the indemnification and contribution action for related tort claims); *See also Italia Marittima, S.P.A. v. Seaside Transportation Services, LLC,* 2010 WL 3504834 (N.D. Cal. Sept. 7, 2010) (holding that California's statutes of limitations applied to both the breach of contract claims and the negligence claims based on a choice-of-law provision in the parties contract, which clearly promoted California law, and because laches is a common law doctrine rather than codified federal law).
[22] *Id.* at 319.
[23] *Id. See White v. Cont'l Cas. Co.,* 9 N.Y.3d 264, 848 N.Y.S.2d 603, 878 N.E.2d 1019, 1021 (2007).
[24] *Id.*