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Federal v. State Law in Maritime Cases

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It is often said there should be uniformity in the law governing maritime cases no matter where they are tried. Article III, section 2 of the United States Constitution gives judicial power to the federal courts to hear maritime cases. Federal statutory law allows certain types of maritime cases also to be tried in state courts, which supposedly are to follow federal maritime law, not state law, when the cases are decided. However, legal issues arising in maritime cases often are decided differently depending on whether the case is tried in federal or state court and whether federal or state law is applied. This article addresses four examples of the many maritime issues that have not been resolved consistently by the federal and state courts. It appears some courts have become entrenched in their approaches making it doubtful true uniformity will ever be achieved.

Overtime Wages for Seamen

The federal Fair Labor Standards Act [FLSA], 29 U.S.C. § 201 *et seq.*, first enacted in 1938, applies to, among others, employees who are engaged in interstate commerce or in the production of goods in commerce. The FLSA addresses the right of employees to overtime pay when they work more than eight hours in one day. The FLSA also exempts certain types of employees from the overtime pay requirement. Among the types of exempt employees are "seamen." 29 U.S.C. § 213(b) (6).

The labor laws in some states, for example, Washington, are consistent with federal law and provide an express statutory exemption from overtime for seaman. The labor statutes in other states, for example, California, do not provide a statutory exemption from overtime for seamen. A collective bargaining agreement with the seamen's unions can override the federal and state overtime requirements. However, for the non union maritime employer, the lack of uniformity can be problematic. Equally problematic can be the contradictory results in suits for overtime in state and federal courts.

In *Coil v. Jack Tanner Towing Co, Inc.*, 242 F.Supp.2d 555 (S.D. Ill. 2002), seamen who worked on tugboats on the Mississippi and Illinois Rivers sued their employer for overtime pay. The seamen worked primarily in Illinois waters transporting grain that had originated outside Illinois. The district court held they were exempt from overtime under the FLSA, which preempted state labor laws. The district court further held states may not apply their respective laws if those laws would "interfere with the proper harmony and uniformity of existing admiralty law."

Under similar facts, a California state appellate court reached the opposite conclusion, holding state labor law preempted federal law and awarding overtime to a seaman. *Karmin v. Marine Express, Inc.*, 2009 WL 2625873 (Cal. Ct. of App. 2009) involved a tugboat operator who transported goods and personnel originating outside of California to oceangoing vessels docked or anchored in San Francisco Bay. He sought overtime pay for hours worked in excess of eight per day. The California court of appeal reversed the trial court, holding California overtime law applied and preempted federal statutory law because Karmin was a California resident and worked in interstate commerce in California waters. The court of appeal also imposed a monetary penalty on the employer for having paid Karmin in accordance with federal maritime law.

Assumption of the Risk Doctrine

As a defense in a maritime case, defendants often allege the plaintiff's action should be barred because the plaintiff assumed the risk of injury or property damage when engaging in the



activity giving rise to the injury or property damage. In maritime cases, the federal courts have rejected the assumption of risk defense and instead use a comparative fault analysis. Under a comparative fault analysis, a party's recovery is reduced in proportion to his share of fault in causing the injury or property damage. Some states, such as Oregon, have statutorily abolished the assumption of risk doctrine. Other states, such as Washington and California, recognize the primary assumption of the risk doctrine as a potential bar to recovery depending on the circumstances.

In *Manning v. Gordon* 853 F. Supp. 1187 (N.D. Cal. 1994), a yacht owner sued another yacht owner in federal court for property damage suffered when their yachts collided as they rounded a course mark in a race. The defendant yacht owner asserted the assumption of risk doctrine as a defense. He argued that when the plaintiff entered the race, he knew his yacht would encounter high speed maneuvers and be in close proximity to other yachts and accordingly assumed the risk of damage to his yacht. The federal court struck the defense as "invalid under the general maritime law of the United States."

In reaching its conclusion, the federal court in *Manning* considered a California state court decision reaching the opposite result, that is, holding assumption of the risk was a valid defense in an action for personal injuries sustained during a yacht race. In *Stimson v. Carlson* 11 Cal.App. 4th 1201 (1993), the plaintiff crewmember on yacht suffered an injury to his arm and wrist during a race when the captain executed a course change and jibe without warning the crew. The plaintiff was able to avoid the boom but was struck by the mainsheets attached to it. The court of appeal affirmed the trial court's grant of summary judgment in favor of the defendant holding the personal injury action was barred by the assumption of risk doctrine. It reasoned a swinging boom is an inherent risk in the sport of sailing and the defendant yacht captain did not have a duty to eliminate that risk or protect a crewmember from it. The court further held when an inherent risk of a sport is involved, the defendant is liable only if intentionally injuring a participant in the sport or engaging in reckless conduct outside the ordinary range of the sport. Failing to announce a course change was held neither intentional nor reckless.

The defense of assumption of the risk has been rejected by the federal courts in other maritime contexts including suits for personal injuries under the Jones Act, for unseaworthiness, and for negligent yacht repairs. At the same time, the assumption of the risk defense has been recognized by the California state courts in suits involving other marine contexts such as waterskiing and jet skiing.

Punitive Damages Under the Jones Act

A third example of the disparity of results in cases tried in federal and state court involving the same legal issue can be found in *Wagner v. Kona Blue Water Farms, LLC*, 2010 AMC 1217 (D. Hi 2010), and *Larson v. Kona Blue Water Farms, LLC*, 2010 AMC 1230 (Cal. Sup. Ct. 2010). *Wagner* was filed in federal court in Hawaii and *Larson* was filed in state court in California.

In *Wagner*, the federal court held punitive damages are not recoverable in a personal injury action brought by a seaman against his employer under the Jones Act. It reasoned punitive damages are non-pecuniary damages not provided for in the Jones Act and precluded by the federal statute on which the Jones Act is based. In *Larson*, which involved the same employer, a California state trial court held punitive damages were recoverable in a personal injury action brought by a seaman against his employer under the Jones Act. It reasoned it was not bound by federal authorities on the issue and the recovery of punitive damages was not specifically



precluded by the Jones Act.

Safe Berth

Under federal law, a wharfinger/marina owner has a duty to exercise reasonable diligence to determine the condition of a berth and if possible remove any dangerous obstructions. Reasonable diligence may require dredging to maintain adequate water depth in the berths. [See *Pacific Maritime Magazine, A Wharfinger's Duties*, September 2009.]

In *Red Shield Insurance Company v. Barnhill* 2009 WL 1458022 (N.D. Cal. 2009), a federal court applied state law to achieve a result contrary to federal law. *Red Shield* involved an action for damage to a floating home that grounded due to accumulated silt and mud in its sporadically dredged berth. The federal court, which heard the case pursuant to its admiralty jurisdiction, stated it could not find any federal maritime law on point. Instead, it found for the defendant, applying California state law, which only requires marina owners to maintain common areas in a marina, and holding the berths were not common areas.

While countless courts give lip service to the need for uniformity in the law governing maritime cases, the desired uniformity is not yet, and may never be, a reality. The same issues may be decided differently by federal and state courts depending on the law they apply, resulting in uncertainty for those in the maritime industry.

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