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## **Appeals in Maritime Cases**

By Marilyn Raia

There is a common misperception that a party who loses at trial can simply file an appeal and get the proverbial "second bite at the apple." In fact, the roles of the trial court and appellate court with respect to a case are quite different. For example, the appealing party may not present any new evidence to the appellate court nor argue issues not raised in the trial court. Rather, the appellate court may consider only the evidence presented during the trial. This article explains the basics of an appeal in a federal maritime case.

### **The Trial And Appellate Court Systems**

Each state and territory has at least one federal trial court, known as a United States District Court. Some states like Oregon and Nevada have just one judicial district within their borders. Other states, such as California and Washington, have more than one. California has four and Washington has two.

Appeals from the United States district courts are heard by the United States courts of appeals. The states and territories are grouped into thirteen appellate circuits. The smallest circuit based on the number of judgeships is the First Circuit, which handles appeals from the district courts in Massachusetts, New Hampshire, Rhode Island, and Puerto Rico. The largest circuit based on the number of judgeships is the Ninth Circuit, which handles appeals from the district courts in California, Oregon, Washington, Nevada, Idaho, Montana, Arizona, Alaska, Hawai'i, Guam, and the Northern Marianas Islands.

A party has an absolute right to appeal a final judgment from the district court to the court of appeals. However, the right to appeal a judgment from the court of appeals to the next (and highest level) court, the United States Supreme Court, is discretionary. A party can file an appeal from a judgment of the court of appeals to the United States Supreme Court only if the Supreme Court issues an order, known as a writ of certiorari, permitting the appeal. A writ of certiorari is rarely granted. The Supreme Court may agree to consider a case when the holdings of the courts of appeal in different circuits are inconsistent on the same point of law or when an unusually important issue of constitutional law is involved, such as the 2000 presidential election case of *Bush v. Gore*, 531 U.S. 98 (2000).

### **Appealable Judgments and Orders**

As a general rule, only a final judgment in a district court case can be appealed. However, there are a few exceptions. Under certain circumstances, an appeal is allowed in a maritime case before a final judgment is entered. Such appeal is called an "interlocutory appeal."

The interlocutory appeal has its roots in the way maritime cases are often tried. In maritime cases, liability and damages issues may be tried separately. That is, the court first tries the liability issues and, if liability is found, the court then determines the damages. An appeal after the liability phase of the trial has the potential to eliminate the need to try the damages issues if the finding of no liability is upheld. Congress recognized the way maritime cases may be tried and enacted a statute allowing interlocutory appeals.

For example, *RMS Titanic Inc. v. Wrecked and Abandoned Vessel*, 2006 AMC 305 (4th Cir. 2006) involved the plaintiff's alleged rights to artifacts salvaged from the wreck of the *Titanic*. The district court: 1) refused to recognize a prior decision of a French tribunal which awarded title to artifacts recovered in 1987 to the plaintiff; and 2) rejected the plaintiff's claim of title to artifacts recovered at a later date. It did however, set the matter for a hearing to determine the monetary salvage award to which plaintiff would be entitled in lieu of the artifacts themselves.



Plaintiff filed an interlocutory appeal, i.e. an appeal before a final judgment had been entered for the amount of the salvage award. The Fourth Circuit held the interlocutory appeal was proper because the district court's order was a ruling on all liability issues and left open only the amount of the plaintiff's salvage award.

### **Standards of Review**

When an appeal is filed in the court of appeals, among the threshold issues the appellate court considers are whether the appeal was timely filed and if so, whether the trial court had jurisdiction over the case in the first instance. The appellate court then determines the standard of review, or how it is going to consider and analyze the judgment and rulings of the district court. There are different standards of review depending on the types of errors the appealing party contends were made by the district court. And, an appeal may involve multiple alleged errors necessitating a different standard of review for each error.

If the district court's alleged error involved a question of law, the court of appeals reviews the case *de novo*, which means the court of appeal considers the matter "from scratch". It can substitute its own judgment on the appealed legal issue for the district court's judgment. The *de novo* standard of review does not require the court of appeals to give any deference to the district court's reasoning or judgment.

If the district court's alleged error involved a factual determination by the trial judge deciding a case in admiralty without a jury, the court of appeals reviews the judgment on a "clearly erroneous" standard. That means the court of appeals gives deference to the district court's reasoning and judgment, and will uphold the judgment unless it is left with "a definite and firm conviction that a mistake has been committed."

If the district court's alleged error involved an evidence-related issue, the court of appeals reviews the judgment on an "abuse of discretion" standard. That means, the court of appeals defers to the district court's ruling and will uphold the resulting judgment unless it finds the trial judge abused his or her discretion and prejudice resulted. If the error was harmless to the outcome of the case, the judgment will be affirmed.

### **Procedural Requirements**

Appeals from the district courts to the courts of appeal are governed by special appellate rules. The rules dictate the deadlines for filing appellate pleadings as well as what pleadings must be included in the record and what pleadings may not be included in the record. Not all of the pleadings filed in the trial court are allowed to be in the appellate record.

The appellate rules also dictate the topics to be addressed in the appellate briefs, the type size, the maximum number of words, the binding of the brief, and even the color of the brief's cover. The party filing the appeal is known as the "appellant"; the opposing party is known as the "appellee". Both sides in a case may file an appeal. Sometimes non-parties to the case have an interest in the outcome of an appeal and may file a brief to have their point of view considered. Such parties are known as *amicus curiae* or "friends of the court".

Lawyers who do not follow the appellate rules risk severe adverse consequences for their clients and themselves. Not filing the required notice of appeal within the time allowed results in a waiver of the right to appeal. Although a notice of appeal is usually just one sentence long, the failure to draft it properly may result in a waiver of the right to appeal. In *All Pacific Trading, Inc. v. M/V Hanjin Yosu*, 7 F.3d 1427 (9th Cir. 1993), the district court entered judgment against the vessel owner and the vessel itself. An appeal was filed. Although the name of the



vessel was in the title of the case on the notice of appeal, it was not in the text of the notice as an appealing party. The Ninth Circuit held the vessel was not a proper party to the appeal, i.e. it had lost its right to appeal, because of that omission.

The failure to follow the formatting rules may result in the initial rejection of an appellate brief although often the court of appeals permits correction of minor mistakes in a timely filed brief.

**Possible Results of an Appeal**

There are many possible outcomes of an appeal. The most common result is no change to the district court's judgment. Moreover, the court of appeals may affirm the district court's judgment on any grounds supported by the trial court record even if not considered by the trial judge. Among the many other possible results of an appeal are 1) reversal of the district court's judgment with instructions to the district court to enter a new judgment; 2) reversal of the district court's judgment with instructions to the district court to hold further proceedings; or 3) affirmance of part of the district court's judgment and reversal of another part of it. There is no time limit for the court of appeals to make its decision.

Appeals can be costly and time-consuming. Although a party has the right to appeal an adverse judgment from the district court, such appeal should not be thought of as a "mulligan" or a chance to completely re-try the case.

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