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Supreme Court Rules On Federal Preemption Argument

In *Sprietsma v. Mercury Marine*, 123 S.Ct. 518 (2002), the United States Supreme Court held that the Federal Boat Safety Act of 1971 (“FBSA”), did not preempt a common-law tort claim. The petitioner’s wife was killed in a boating accident when she was struck by the propeller of an outboard motor manufactured by Mercury Marine. Petitioner brought suit in Illinois state court alleging the motor was unreasonably dangerous, in part because it lacked a propeller guard. Although the FBSA was enacted to improve boating safety and contained authority for the Coast Guard to promulgate regulations establishing minimum safety standards for recreational vessels, the Coast Guard had not adopted regulations requiring propeller guards. Since 1972, the Coast Guard had issued detailed regulations concerning recreational boat safety. However, the Secretary of Transportation, interpreting the FBSA, exempted from preemption existing state laws regulating matters not covered by Coast Guard regulations. The Coast Guard had considered, but declined to adopt, regulations concerning propeller guards.

The Supreme Court began by noting that the FBSA contained an express preemption clause, preempting any state or local law or regulation. The Supreme Court interpreted this language as not encompassing common-law claims because the statutory language indicated that Congress preempted only positive enactments. The FBSA preemption language also contained a “saving clause” providing that compliance with the FBSA did not relieve a person from liability under common-law or state law. The defendants argued that the state law claims were implicitly preempted by the Coast Guard’s decision not to regulate propeller guards. The Supreme Court stated in unequivocal terms that it was “quite wrong” to view the Coast Guard’s decision “as the functional equivalent of a regulation prohibiting all states and their political subdivisions from adopting such regulation” concerning propeller guards. According to the Supreme Court, “history teaches us that a Coast Guard decision not to regulate a particular aspect of boating safety is fully consistent with an intent to preserve state regulatory authority in the adoption of specific federal standards.” The Court then rejected the argument that the statutory scheme of the FBSA implicitly preempted common law claims because of its conclusion that the express preemption language did not preempt common law claims.

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Louisiana Fourth Circuit Affirms Summary Judgment

In a decision even more rare than the granting of a summary judgment in Civil District Court, the Louisiana Fourth Circuit Court of Appeal affirmed Judge Robin Giarrusso's summary judgment to the defendants in a marine allision. *Shofstahl v. Board of Commissioners of the Orleans Levee District*, 2002-0018 (La.App. 4 Cir. 1/15/03); --- So.2d ---, involved two plaintiffs whose boat ran into an unlit pier at night. The plaintiffs' vessel allided with a stationary pier protruding 420ft into Lake Pontchartrain. At the time of the allision, the pier was being leased by the Board of Supervisors of Louisiana State University through the University of New Orleans. In granting summary judgment in favor of the defendant, the trial court ruled that there was no legal authority obligating the defendants to light the pier.

In reviewing the grant of summary judgment, the panel of the court of appeal--comprised of Judges Joan Armstrong, Michael Kirby and Max Tobias--began by noting the presumption that a moving vessel is at fault when it collides with a fixed object. The court then went on to note that after seven years of litigation, the plaintiffs had failed to produce any evidence that the U.S. Coast Guard ever required a light on the pier. Thus, the plaintiffs failed to prove that defendants were under any duty imposed by maritime law to light the pier. The court further noted that the legal duty under maritime law to avoid obstructions in navigation is on the operator and lookout of the vessel, not the owner of the obstruction. The court affirmed the trial court's reasoning that the actions of the plaintiffs were the superseding and sole proximate causes of their injuries. According to the court, "the plaintiffs' navigational negligence was the sole proximate cause of the allision and/or the superseding cause." The summary judgment evidence established that plaintiffs' vessel was travelling at full throttle in excess of 25 mph.

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Louisiana Third Circuit Finds Maritime Law Applicable

In *Wall v. Calcasieu Parish Police Jury*, 2002-0451 (La.App. 3 Cir. 12/11/02); 833 So.2d 528, the Louisiana Third Circuit Court of Appeal ruled that general maritime law applied to claims involving the death of a swimmer in a lake located in state territorial waters. The issue before the court was whether federal maritime law applied to a non-seafarer killed while swimming in a designated swimming area when a watercraft struck him. Applying *Sisson v. Ruby*, 497 U.S. 358 (1990), the court concluded that a sufficient maritime connection was present. The court rejected the argument of the defendants that the survivor's claim had no connection to a traditional maritime activity. Rather, the court focused on the activity giving rise to the incident and not the claim asserted to determine whether a maritime connection existed. The court went on to rule that although the claims would be governed by general maritime law, the plaintiffs could supplement with applicable state law where state law provided a remedy not available under general maritime law.

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Louisiana Third Circuit Affirms Jury Finding of 90% Fault to Injured Floorhand

Aycock v. Ensco Offshore Company, 2002-0853 (La.App. 3 Cir. 12/18/02); 833 So.2d 1246, involved a floorhand who filed suit alleging that he sustained serious lower back injuries when he was struck by the lead tongs. The case proceeded to a trial with a jury, and the jury concluded that Ensco was liable for Jones Act negligence and unseaworthiness. The jury also found the plaintiff comparatively negligent to the tune of ninety percent. The jury awarded damages totalling approximately \$350,000 before reduction for plaintiff's fault.

On appeal, plaintiff argued that the jury's finding of ninety percent of the fault was manifestly erroneous. The court found that irrespective of whether ENSCO was liable in a Jones Act capacity or on the general maritime law claim of unseaworthiness, "the jury was required to consider the fault of [plaintiff]." After reviewing the evidence, the court of appeal concluded that sufficient evidence existed to allow the jury to conclude that plaintiff bore a substantial amount of the fault, and affirmed the jury's assessment of ninety percent of the fault to plaintiff. Notably, the court found

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ample evidence that at the time of his alleged injury, the plaintiff was primarily responsible for his own safety. The plaintiff's expert was cross-examined at length on the fact that he did not personally inspect other tong setups to compare with the allegedly-dangerous ENSCO setup. The plaintiff's expert also conceded that a floorhand is responsible for determining how much swing is in a set of tongs. On this evidence, the jury's determination was not manifestly erroneous.

- L. Etienne Balart, Associate, Admiralty and Maritime

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, please email maritime@joneswalker.com.

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