

7th Circuit dives into questions of admiralty law

Application of admiralty jurisdiction to personal-injury case involving riverboat casino depends on whether it is indefinitely or permanently moored to pier.

Today's column discusses a federal appeals court opinion involving the question of whether a personal-injury claim for a fall from an allegedly defective stool in a riverboat casino is to be brought under federal admiralty law or under state tort law.

The differences are significant: a three-year statute of limitations under admiralty law versus two years under state premises law and no jury under admiralty law versus jury trials under state tort law. *Tagliere v. Harrah's Illinois Corp.*, 445 F.3d 1012 (7th Cir. 2006).

Plaintiff Lucille Tagliere was playing a slot machine at defendant Harrah's riverboat casino in Joliet on the Des Plaines River. The stool she was leaning against collapsed and she allegedly was injured. Tagliere sued Harrah's Illinois Corp. in federal court under admiralty law.

The District Court, finding the accident had nothing to do with the fact the casino is on a boat floating on navigable waters, dismissed the suit, finding no admiralty jurisdiction due to the lack of a "maritime nexus."

The 7th U.S. Circuit Court of Appeals, in an opinion by Judge Richard A. Posner, reversed and remanded the suit for a determination of whether the riverboat was "permanently moored" or only "indefinitely moored" to the pier. If permanently moored, the riverboat casino would not be a "vessel" under admiralty law and no federal admiralty jurisdiction would exist.

Posner began by pointing out the need for clarity in the law applicable to the case:

"It is very unfortunate when parties are not sure which court they should be litigating their dispute in, as the case at hand illustrates. The plaintiff brought suit within the three-year statute of limitations applicable to admiralty tort suit, 46 U.S.C.A. §763a; but the statute of limitations applicable to personal-injury suits under Illinois law is only two years. 734 ILCS 5/13-202, so that if the ruling stands, the plaintiff is barred from any judicial relief because she sued more than two years after the accident."

The court discussed admiralty jurisdiction:

"Congress has extended the admiralty jurisdiction to 'all cases of



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By Jay S. Judge

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damage or injury, to person or property, caused by a vessel on navigable water.' Extension of Admiralty Jurisdiction Act, 46 U.S.C.A. §740. Since 'vessel' has been interpreted to include the vessel's fixtures, furniture and other 'appurtenances,' *Jerome B. Grubart Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 115 S.Ct. 1043, 130 L.Ed.2d 1024 (1995); *Scott v. Trump Indiana Inc.*, 337 F.3d 939 (7th Cir. 2003); the injury resulting from the defective stool in this case was an injury caused by a vessel. The vessel was on navigable waters, moreover, and while the Supreme Court has now held that a boat that 'has been permanently moored or otherwise rendered practically incapable of transportation or movement' is not a vessel for purposes of admiralty jurisdiction, *Stewart v. Dutra Construction Co.*, 543 U.S. 481, 125 S.Ct. 1118, 160 L.Ed.2d 932 (2005), there has been no showing that the boat in our case, though stationary for the past two years, is permanently moored in the court's sense (disabled from sailing) and is thus the equivalent of landfill.

"To subject an accident that occurs on a vessel afloat on a navigable body of water, and that is caused by the vessel or by some object in or attached to it, to the admiralty jurisdiction is a natural application of the Extension of Admiralty Jurisdiction Act."

Posner discussed the tension between the "maritime nexus" test used to determine admiralty jurisdiction, but not define it, under section 1333(1) and the "location" test depending on the circumstances of the accident and resulting damage:

"We do not think that the legislative history should override the broad statutory language, which provides a clear and simple jurisdictional test for cases like this, in contrast to the vague

maritime nexus (or connection) test ('the party seeking to invoke maritime jurisdiction must show a substantial relationship between the activity giving rise to the incident and traditional maritime activity'), that is used to determine jurisdiction under section 1333(1), which confers but does not define admiralty jurisdiction. Our case would pass that test as well; vagueness has its uses.

"The main practical use of the 'connection' test has been to expel from the admiralty jurisdiction freak cases. Thus, in describing the application of the test the Supreme Court in *Grubart* cited a case involving a plane crash in which a portion of the wreckage slid into navigable waters, *Executive Jet Aviation Inc. v. City of Cleveland*, 409 U.S. 249, 98 S.Ct. 493, 34 L.Ed.2d 454 (1972), the case of a swimmer diving off a pier into navigable waters, *Chapman v. City of Grosse Pointe Farms*, 385 F.2d 962 (6th Cir. 1967), and the case of a motorist rear-ended while waiting for a ferry on the ferry's landing which happened to be a floating pontoon. *Peytavin v. Government Employees Insurance Co.*, 453 F.2d 1121 (5th Cir. 1972). *Grubart* itself involved the flooding of tunnels and basements in Chicago caused by the fact that months earlier a crane sitting on a barge had driven piles too far into a riverbed above a tunnel.

"Yet unusual as were the facts in *Grubart*, the case was about an appurtenance (the crane) of a boat (a barge), afloat on navigable waters and an accident, albeit on land, caused by the handling of the appurtenance. A passage in the court's opinion suggests that the court thought the case rather simple: 'This court has not proposed any radical alteration of the traditional criteria for invoking admiralty jurisdiction in tort cases, but has simply followed the lead of the lower federal courts in rejecting a location rule so rigid as to extend admiralty to a case involving an airplane, not a vessel, engaged in activity far removed from anything traditionally maritime.' The 'location' rule at its broadest was that any accident that occurs on navigable waters is within the admiralty jurisdiction. *The Plymouth*, 70 U.S. (3 Wall.) 20, 18 L.Ed. 125 (1865). That would have encompassed the airplane, swimmer and motorist cases, and the court made clear in *Grubart* that it wouldn't go that far. When a boat is involved, however, the location rule is not only thoroughly compatible with the language of the Extension of Admiralty Jurisdiction Act, but appears to have

survived *Grubart* and thus to be the test under the general admiralty jurisdiction conferred by 28 U.S.C. §1333(1), as well."

The 7th Circuit opinion cited one of its decisions dealing with the connection test:

"*Weaver v. Hollywood Casino-Aurora Inc.*, 255 F.3d 379 (7th Cir. 2001), found even the connection test of *Grubart* and *Sisson* satisfied in a case like the present one, the main difference being that the injury was to a crew member of the gambling boat rather than to a passenger. An injury to a crew member is somewhat more likely to affect maritime commerce than an injury to a passenger, because the crew member might be vital to the operation of the boat and difficult to replace immediately. Yet even an injury to a passenger could have a disruptive effect, if the boat had to make an unscheduled stop to get him to a hospital (not that that could have happened here, since the boat was moored), or if the injury revealed a dangerous condition that required time-consuming repairs. We do not think it necessary to split these hairs — especially since effect on maritime commerce is not necessary to admiralty jurisdiction.

"We acknowledge that the distinctive substantive and procedural features of admiralty law, such as the longer statute of limitations and the absence of a right to a jury trial, were not designed for the kind of accident that occurred here, an accident that owed nothing to its maritime setting. So our suggested rule encroaches on a regulatory domain that might well be thought to belong more properly to state courts and legislatures than to federal admiralty courts. But to decide in each case whether admiralty law or state law would make a better fit with the particular circumstances of the accident that had given rise to the suit would make the determination of jurisdiction hopelessly uncertain. It is not a price worth paying for the slightly better match of law to fact that would result."

Concluding that whether admiralty law applied ultimately depended on whether the riverboat was "permanently" or "indefinitely" moored, the 7th Circuit explained:

"Without meaning to minimize these differences, which figure importantly in some cases, an effort to determine admiralty jurisdiction case by case by estimating the relative closeness of fit of state law and admiralty law to the particular circumstances of the case would create more uncertainty than

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efficiency. We conclude that the District Court erred in dismissing the suit, though it is open to the defendant to show on remand, if it can, that its boat was permanently rather than merely indefinitely moored when the accident occurred and was therefore no longer a 'vessel' for purposes of admiralty jurisdiction.

"The difference between 'permanently' and 'indefinitely' in this context is vague and has not been

explored by the parties. The *Stewart* case suggests that the boat must be permanently incapacitated from sailing. Yet maybe — by analogy to the difference between domicile and residence — a boat also is 'permanently' moored when its owner intends that the boat will never again sail, while if he has not yet decided its ultimate destiny it is only 'indefinitely' moored. These are matters for exploration on remand."