

Judges grant admiralty protection

Panel says case of paralyzed swimmer belongs in federal court, where award limitations could apply

By Jim Flannery / Senior Writer

A federal appeals court has ruled that an injury suffered on a recreational boat anchored in a shallow though navigable recreational bay falls under admiralty jurisdiction despite a 1972 Supreme Court decision that narrows admiralty's purview a bit to weed out "absurd" cases that have little to do with maritime commerce.

In the 1972 decision the justices said they wanted to exclude from admiralty's reach cases such as airplanes crashing into lakes and swimmers colliding with one another, Chief Judge Robert Katzmann wrote in his June 1 opinion for the U.S. Second Circuit Court of Appeals in New York.

But the high court also gave this guidance, Katzmann said: Ordinarily every injury involving a boat on navigable waters falls within the scope of admiralty jurisdiction. Katzmann said this case was well within that scope.

"The key issue on appeal is whether federal courts have admiralty jurisdiction over claims for injury to a passenger who jumped from a vessel in open navigable waters," the appellate court panel says. "They do."

The stakes were high. On July 30, 2011, Matthew Ficara, then 27 and from Syracuse, N.Y., broke his neck doing a back flip off the stern of Bruce Germain's 38-foot powerboat, *Game Day*, while it was anchored in Three Mile Bay, a popular — and on this day, crowded — anchorage on the north shore of New York's Oneida Lake.

Ficara, one of four guests aboard *Game Day*, hit his head on the lake floor, suffering a spinal cord injury that left him paralyzed virtually from the neck down. The boat was anchored 50 to 75 feet from shore in water 3 to 7 feet deep, less than a mile from a federal navigational channel, according to court filings.

Ficara's lawyer sued Germain in state court, alleging negligence and saying the skipper failed to operate the boat in a way that protected the safety of his passengers; failed to adequately instruct them in safe boating and diving; failed to adequately inspect the anchorage area; and failed to warn his passengers of dangerous conditions in the shallows.

Meanwhile, Germain's lawyer filed a petition in federal court seeking "exoneration from or limitation of liability" under the federal Limitation of Liability Act of 1851, a provision of admiralty law that allows vessel owners to limit their liability to the value of the vessel — or in cases of commercial carriers, the value of the vessel and its freight.

Ficara's lawyer responded, asking that the case be returned to state court, where a vessel owner cannot seek limitation of liability under the 1851 act, on grounds that the case was outside the scope of admiralty jurisdiction. The federal court judge agreed with Ficara, dismissed the limitation petition and sent the case back to state court.

Germain's lawyer appealed the federal court decision, and in their June ruling the three appellate judges reversed the lower court, agreeing with Germain that this is an admiralty case that can be tried in federal court, where he can seek a limitation of liability.

Katzmann stressed, too, that in deciding admiralty jurisdiction the high court has consistently said it does not matter whether the boat is recreational or commercial.

Katzmann said the appellate decision is rooted in a proper interpretation of the 1972 Supreme Court decision that had backed off the traditional view that if an

event happens on navigable waters — "the locality test" — it always falls within admiralty jurisdiction. In 1972 the high court fine-tuned the locality test so some cases could be kept out of admiralty: a jet that crashed into Lake Erie after its engines inhaled a flock of seagulls and a brawl on a floating dock in which several brawlers fell into navigable waters.

The courts, however, have used that locality test to keep other cases within the scope of admiralty: two pleasure boats that collided on the Amite River in Louisiana; a defective washer/dryer that caught fire at a marina dock, damaging other boats and the marina; and flooding in the Chicago Loop after a pile driver on a barge drove piles too close to a tunnel under the Chicago River, which gave way and caused landside flooding.

Further, a rescue boat took Ficara five miles across the lake for transfer to a helicopter, which also could have disrupted commercial traffic on the lake and the nearby navigational channel, Katzmann said.

As for the character of the activity — which the panel defined as the transport and care of passengers on *Game Day*, anchoring the vessel that day on Three Mile Bay and the skipper's alleged failure to properly warn his passengers about the dangers of diving there — these clearly were related to traditional maritime activity, the court concluded.

Katzmann acknowledged that the modern test for deciding whether a wrongful injury falls under admiralty jurisdiction "leaves something to be desired," the test being both complex and lacking in clarity. Katzmann seemed interested in a "simpler test" urged by counsel for the vessel owner, but that was not an option in light of the Supreme Court's binding precedent.

He said Supreme Court Justice Clarence Thomas made a plea for a test that goes back to asking simply whether the incident occurred on a vessel on navigable waters in his concurring opinion in the case of the flooding that the Chicago River pile driver caused. The majority of the high court did not agree with Thomas.

"The Second Circuit Court of Appeals is very experienced in admiralty matters, being that New York is such a large port and a major recreational boating venue, and therefore the federal judges here are quite familiar with multiple and various types of marine incidents in which

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This case met the test. It occurred on navigable, though shallow waters. The type of incident was injury to a passenger who jumped from a vessel in open navigable waters, which could have interfered with small-boat commercial traffic in the bay (charter fishing, diving or snorkeling boats).

admiralty law and rules play a major role," said New York lawyer James E. Mercante, who represented vessel owner Germain.

He said the three-judge panel's 45-page decision has "set the course for future courts to follow in applying the modern test for admiralty jurisdiction to a particular set of facts." Calling it a "see-worthy" decision, Mercante said it widens admiralty's reach in the interest of uniformity of admiralty law across the nation in the commercial maritime and recreational boating arenas. ■

The full opinion is available at <http://www.americanmaritimecases.com/assets/June-2016/Germain.pdf>.