
Circuit Applies Admiralty Law to Diving Accident in Lake

Mark Hamblett, New York Law Journal

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The admiralty jurisdiction of federal courts extends to a case where a man was paralyzed while jumping from a pleasure boat into the shallow waters of Oneida Lake, the U.S. Court of Appeals for the Second Circuit has ruled.

Reversing a lower court, a three-judge panel held that the case over a 2011 recreational accident, in shallow but navigable waters that rendered claimant Matthew Ficarra a quadriplegic, could be heard by a U.S. District Court rather than be moved to a state court.

This means that, with maritime law governing, Germain's potential liability from the accident would be limited to the value of his vessel, according to the lower court ruling.

Judges [Robert Katzmann](#), [Robert Sack](#) and [Raymond Lohier](#) said in [In re Petition of Bruce Germain](#), 15-665, that while the U.S. Supreme Court has tightened the definition of whether a tort occurred on navigable waters to prevent "absurd" cases that have "little to do with maritime commerce," the Ficarra case was not one of them.

On July 30, 2011, Bruce Germain piloted his 38-foot motor boat "Game Day" away from Brewerton on the shore of Lake Oneida. With Ficarra and three other passengers aboard, he used a federal shipping lane to go to Three Mile Bay, a recreational swimming spot less than a nautical mile from the shipping lane.

Just before Germain and his passengers were getting ready to leave, Ficarra did a back flip off the back of the boat. His head hit the lake floor and he suffered a permanently damaging spinal cord injury.

In 2014, Ficarra sued Germain for negligence in state court for failing to properly protect the welfare and safety of his passengers, instruct them on safe diving and boating practices, inspect the area where the boat was anchored and provide adequate warning.

Germain removed the case to the Northern District, then filed a petition seeking exoneration for or limitation of liability under the Limitation of Liability Act of 1851, 46 U.S.C. §§30501-12 and Rule F of the Supplemental Rules for Claims and Asset Forfeiture Actions.

Northern District Judge Brenda Sannes found admiralty jurisdiction lacking because Ficarra's

injury in a shallow recreational bay did not disrupt maritime commerce or bear a sufficient relationship to traditional maritime activity (NYLJ, Feb. 13, 2015).

On the appeal, Katzmann said Sannes applied the right test for whether U.S. maritime law applied to the case, but came to the wrong result because "The alleged tort here involves a vessel on navigable waters—factors the Supreme Court has reminded us will ordinarily place a case within the bounds of admiralty jurisdiction." *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995).

Katzmann said the lower court, in applying *Grubart*, was "emphasizing the recreational nature of the vessel and its passengers as well as the location of the incident in shallow waters."

"We disagree that these factors remove the case from admiralty jurisdiction," he said.

The Supreme Court made it clear in its "connection test" under *Grubart* that it doesn't matter whether the vessel is used for commercial or recreational purposes, nor does it matter whether the "waters at issue are shallow or deep" or what the various roles of the people involved were, Katzmann said.

"[T]he potential effects on maritime commerce of an injury to a passenger who jumped from a vessel on open navigable waters include collisions with commercial vessels caused by distracted crews and disruption to maritime traffic caused by maritime rescue," he said. "These potential effects may be the same whether the injured passenger was recreational or employed in maritime commerce, and they are also sufficient to satisfy the test."

Katzmann noted that the Supreme Court took "an expansive view of the possible commercial effects caused by collisions of even small recreational vessels on navigable waters, regardless of the precise location of those vessels in relation to commercial traffic."

And he easily distinguished the case from another major case where the circuit rejected admiralty jurisdiction—an alcohol-fueled fist fight on a dock in a marina near Long Island Sound—in *Tandon v. Captain's Cove Marina of Bridgeport, Inc.* 752 F.3d 239 (2d Cir. 2014) (NYLJ, May 22, 2014).

"Here, for example, Ficarra was allegedly rescued by boat and rushed five nautical miles across Lake Oneida back to Brewerton through a federal shipping lane," he said. "Such maritime rescues on open navigable waters could divert resources that would be called upon in the event of an incident involving a commercial vessel, require commercial boats themselves to aid in the rescue efforts, or otherwise disrupt commercial shipping by, for example, using federal shipping lanes to transport injured passengers to safety."

Finally, the circuit disagreed with the lower court's description of the "general character" of Germain's actions, saying "a more accurate description ... was the transport and care of passengers on board a vessel on navigable waters, which more generally captures the many aspects of Germain's activity that Ficarra alleges gave rise to his injury."

Katzmann also noted that Sannes had engaged in a "thoughtful analysis" and that the "modern test for admiralty jurisdiction leaves something to be desired." But he was constrained to apply the test as it sits. Therefore, the court could not adopt Germain's suggestion, one similar to the one that Justice Clarence Thomas suggested in his concurrence in *Grubart*, that jurisdiction "extends to all torts originating on a vessel on navigable waters."

James Mercante of Rubin Fiorello & Friedman argued for Germain before the court on Feb. 29.

"As a maritime lawyer for 29 years, I was so fascinated reading such a well-written and well-reasoned decision that laid out the modern test for admiralty jurisdiction so deliberately and thoughtfully—that I forgot for a moment it was my case," Mercante said. "As an admiralty attorney, it was a page turner. This showed that admiralty has a much wider net."

Jan Kublick of McMahon, Kublick & Smith in Syracuse argued for Ficarra.

"Obviously we believe that the district court has properly applied the relevant standard to Limitation of Liability Act—the Second Circuit certainly agreed that the court had used the correct standard but disagreed with the outcome," Kublick said. "The circuit's decision notes the difficulty of applying federal admiralty law to what would otherwise be a state tort."

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