The Relationship Between State Exclusive Remedy Statutes and Workers Compensation Claims Under General Maritime Law

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Introduction

Absent a relevant federal statute, a court exercising admiralty jurisdiction applies the general maritime law, an "amalgam of traditional common law rules, modifications of those rules, and newly created rules." *East River S.S. Corp. v. Transamerica Delaval, Inc.,* 476 U.S. 858, 864, (1986). A court sitting in admiralty should apply the general maritime law in the interest of providing a uniform body of law for resolving claims that arise on the navigable waters of the United States. *Chelentis v. Luckenbach S.S. Co., Inc.,* 247 U.S. 372, 382 (1918) (quoting *Southern Pacific Co. v. Jensen,* 244 U.S. 205, 215 (1917)). Accordingly, there are limits on the extent to which state laws can modify or affect the general maritime law. Specifically, "a state may not deprive a person of any substantive admiralty rights as defined in controlling acts of Congress or by interpretive decisions of [the Supreme] Court." *Pope & Talbot, Inc. v. Hawn,* 346 U.S. 406, 410 (1953).

Stated another way, a state's laws may not work "material prejudice to the characteristic features of the general maritime law or interfere[ ] with the proper harmony and uniformity of that law in its international and interstate relations." *Am. Dredging Co. v. Miller,* 510 U.S. 443, 447 (1994) (quoting *Jensen,* 244 U.S. at 216).

When this issue arises in the context of worker's compensation claims, a Court's task, therefore, is to consider whether the exclusive remedy provision of the state runs afoul of either of these standards. If so, the state law must yield. Unfortunately, how the Courts should apply these guidelines is far from clear. Various courts have decided this issue, creating two distinct camps.

The Split: No Contraction of Remedies in the Fifth and Ninth Circuits vs. the Eleventh Circuit's Balancing Test

In *Grant Smith–Porter Ship Co. v. Rohde*, 257 U.S. 469 (1922), the plaintiff was injured while performing carpentry work aboard a partially constructed vessel in the Willamette River in Portland, Oregon. *Id.* at 474. He sought workers' compensation benefits through the state of Oregon. *Id.* at 474–75. Because the state had, through a "positive enactment," prescribed an "exclusive remedy" for the plaintiff's injury, and because performing carpentry work on an uncompleted vessel had "no direct relation to navigation or commerce," the Court applied Oregon law, barring the employee's general maritime negligence claim. *Id.* at 475–77. The fact that the plaintiff and his employer had not "consciously contracted with each other in contemplation of the general system of maritime law" meant that giving effect to the state workers' compensation law would not work "material prejudice to the general features of maritime law." *Id.* at 476. Instead, the state statute merely "modified" or "supplemented" the general maritime law. *Id.* at 477; *see also Millers' Indem. Underwriters v. Braud*, 270 U.S. 59,

(1926) (applying the reasoning of *Rohde* to allow the Workmen's Compensation Law of Texas to bar plaintiff's general maritime tort claim).[1]

More recently, the Eleventh Circuit has likewise held that a state's workers' compensation law could bar an injured employee's general maritime negligence claim. However, the Fifth and Ninth Circuits have reached the opposite conclusion. The Third Circuit has not addressed the issue.

In *Brockington v. Certified Electric, Inc.*, 903 F.2d 1523 (11th Cir.1990), the plaintiff was injured off the coast of Georgia while traveling by boat to an island where he was to perform electrical wiring work. *Id.* at 1525–26. The court held that the plaintiff was not covered by the Longshore and Harbor Workers' Compensation Act (LHWCA), and that his claim for a general maritime tort was barred by the exclusivity provision of the Georgia Workers' Compensation Act. *Id.* at 1533 The court noted that federal supremacy in admiralty cases is "adequately served by the availability of a federal forum." *Id.* at 1529 (quoting *Kossick v. United Fruit Co.*, 365 U.S. 731, 739 (1961)). Thus, "federal courts sitting in admiralty should, according to the dictates of comity, acknowledge and protect state-created rights, even at times to the exclusion of an existing maritime law." *Id.* at 1530. From this premise, the Court relied on a balancing test to resolve the conflict between the state workers' compensation exclusivity provision and the general maritime tort claim. It weighed "the comparative interests" between the state and maritime law. *Id.* (citation omitted). The court was thus presented with a land-based worker who had suffered non-fatal injuries in navigable waters, who was covered by a state workers' compensation statute, who asserted a federal common law cause of action, and who exhibited only a slight connection to navigation and commercial activity. *See id.* at 1530–33. Viewed in this light, the court concluded that the state's interest in applying its workers compensation system outweighed a relatively weak federal interest in allowing a person such as the plaintiff to assert a general maritime tort claim against his employer. *Id.* at 1532–33. Accordingly, it granted summary judgment for the defendants. *Id.* at 1533.

In *Chan v. Society Expeditions*, 39 F.3d 1398 (9th Cir.1994), the plaintiff, a shore-based employee, was a passenger on a cruise ship that his employer had chartered. *Id.* at 1402. While ferrying between the ship and a shore destination, his raft capsized, causing him injuries. *Id.* He applied for workers compensation benefits from the state of Washington, and then brought a negligence claim against his employer under the general maritime law. *Id.* at 1402. The district court dismissed the claim because of the exclusive remedy provision in Washington's workers' compensation law. *Id.* The Ninth Circuit reversed, holding that the plaintiff had "a federal maritime right to sue [his employer]." *Id.* at 1403. He had "a general claim in admiralty for

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[1] The force of *Rohde* and *Millers'* is limited, however, by the Court's subsequent holdings. *Rohde* was decided before the Court in *Pope & Talbot* expressly held that a state may not deprive a plaintiff of a substantive admiralty right. *See* 346 U.S. at 410. In addition, *Rohde* is one in a line of cases relying on the so-called "maritime but local" doctrine. *See Green v. Vermilion Corp.,* 144 F.3d 332, 340 (5th Cir.1998). This doctrine applies primarily to cases in which there is no applicable admiralty rule. 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law* 165 (4th ed. 2004). Because the Supreme Court has recognized an injured employee's right to bring a general maritime negligence claim against his employer, *Chandris, Inc. v. Latsis,* 515 U.S. 347 (1995), the application of this doctrine is inapposite.

negligence, and adjudication of that claim is governed by federal common law." *Id.* Thus, the Ninth Circuit's analysis suggests that a party injured on navigable waters possesses a substantive maritime right to sue for general negligence and that a state workers' compensation law which abridges that right must give way to the maritime law in an admiralty court.

In the Fifth Circuit, a similar approach to the Ninth's prevails. In *Green v. Vermilion Corp*., 144 F.3d 332 (5th Cir.1998), the plaintiff worked at a duck hunting camp as a cook and a watchman. He reached the camp by ferry. *Id.* at 334. He slipped and fell one day while on the ferry, injuring himself. *Id.* He sued under the LHWCA as well as under the general maritime law for negligence. *Id.* While he did not seek state workers' compensation benefits, the parties agreed that he fell squarely within the purview of that system, including its exclusive remedy provision. *Id.* at 335, n. 1. The district court found that the plaintiff was not covered by the LHWCA, and that the workers' compensation system barred the claim for general maritime negligence against the plaintiff's employer. *Id.* at 333–34. The Fifth Circuit reversed the latter holding, ruling that the workers' compensation system could not bar the general maritime negligence claim. *Id.* at 341–42. The Court concluded that maintaining uniformity in maritime law was the key factor in the analysis. *Id.* at 341. Given that an "action for negligence has long been a vestige of general maritime law, subjecting it to the ebbs and flows of state legislation would disrupt the essential features of admiralty law." *Id.* For this reason, the plaintiff was able to pursue his negligence claim, despite the exclusive remedy provision of Louisiana's state workers' compensation law.

At least three recent district court decisions have followed the Fifth Circuit approach, allowing the plaintiff to bring his general maritime negligence claim despite an otherwise applicable workers' compensation exclusivity provision; neither relies on an interests balancing test. *See Frazier v. Carnival Corp.*, 492 F.Supp.2d 571 (E.D.La.2007) (bound by Fifth Circuit precedent to apply the approach in *Green*); *Moore v. Capital Finishes, Inc.*, No. 2:09cv392, 2010 WL 1190822 (E.D.Va. Mar. 9, 2010) (acknowledging that the issue was a novel one in the Fourth Circuit, surveying the Fifth Circuit and Eleventh Circuit approaches, adopting the former); *Morrow v. MarineMax, Inc.*, 731 F. Supp. 2d 390 (D.N.J. 2010) (acknowledging that the issue was a novel one in the Third Circuit, surveying the Fifth Circuit and Eleventh Circuit approaches, adopting the former).

On the other hand, the Virginia Supreme Court has embraced the Eleventh Circuit's balancing test. *Mizenko v. Electric Motor & Contracting Co., Inc.*, 244 Va. 152, 164 (1992). It produced a sharply divided opinion in which a bare majority concluded that the federal interest in allowing the plaintiff, a subcontractor working on a Navy destroyer, to bring a general maritime negligence claim against his private employer outweighed the state's interest in enforcing the exclusive remedy provision of its workers' compensation system. Id. Finally, a Washington Appeals Court, citing Fifth Circuit precedent, and without applying any balancing test, determined that a plaintiff injured on a ferry ride could bring a claim for general maritime negligence despite the applicability of Washington's workers' compensation law. *Maziar v. State Dept. of Corrections*, 151 Wash.App. 850, (2009).

Conclusion

In the interest of providing a uniform body of law for resolving claims that arise on the navigable waters of the United States, the Fifth and Ninth Circuits' approach is perhaps more compelling, since it preserves the general maritime law remedy.

Finding common ground on this important choice of law issue will help employers in the maritime industry determine the cost of doing business. Recently, the Supreme Court has made several influential decisions in maritime cases so it is perhaps reasonable to expect that this Circuit Split could come up on their docket. However, "[t]he scope of application of state law in maritime cases is one of the most perplexing issues in the law." 1 Thomas J. Schoenbaum, Admiralty and Maritime Law 161 (4th ed. 2004); *See also,* Robert Force, Choice of Law in Admiralty Cases: "National Interests" and the Admiralty Clause, 75 Tul. L. Rev. 1421, 1438 (2001) (stating that the Supreme Court's choice-of-law decisions admit of "no rationale for favoring the application of federal law in some cases and for favoring state law in other cases").

Margaret Stando Bio

Margaret Stando joined Peacock Piper Tong + Voss LLP as an associate in 2021. Margaret concentrates her practice on the litigation, regulatory, and transactional needs of Peacock Piper's clients in the maritime, maritime terminals, transportation, energy, construction, and other industries.

After graduating from the University of Michigan, Ann Arbor with a degree in Ecology and Evolutionary Biology, Margaret attended Tulane University Law School where she obtained her Certificate of Specialization in Admiralty and Maritime Law. While at Tulane, Margaret was a Student Attorney for the Tulane Environmental Law Clinic and a member of the Tulane Maritime Law Journal, which published her article Clause for Concern? The Flawed Expansion of the Himalaya Clause and the Rise of Circular Indemnity Clause in the United States, 44 Tul. Mar. L.J. 323. In 2021, Margaret obtained her LLM in International and Comparative Law from the University of California, Los Angeles School of Law.

Margaret is licensed to practice in Louisiana and California. She is a member of the Maritime Law Association (MLA), and the Women's International Shipping & Trading Association (WISTA).