
MEMORANDUM

To: Autonomous Ships and Smart Marine Technology, Government Counsel, and Marine Torts & Casualties Committees
From: Joshua DuBois*
Date: Oct. 17th, 2023
RE: MLA: Autonomous Vessel Tabletop.

INTRODUCTION

The cases included are related to electronic, electrical, or other systems failures which resulted in marine casualties. I primarily selected cases which involved some kind of electronic failure, to include sensors and detectors, steering systems, and propulsion systems. I did find many cases which centered on mechanical failures of either the steering or propulsion systems but did not target those cases. I also included cases with alleged product liability. I selected primarily cases which centered on individual systems, rather than those in which it was alleged that an entire vessel was built improperly. The first three cases under products liability deal with the issue of whether tort liability, through products liability, applies.

FAILURE OF ONBOARD SYSTEM

Cherewick v. State Farm Fire and Casualty, 578 F.Supp.3d 1136 (S.D. Cal. 20222)

This case is an insurance contract dispute. *Id.* at 1143. The dispute itself centers on whether insurance would cover damage to the vessel occurring during the vessel's sea trials. *Id.* The damage was caused by a failure of the vessel's electronic controls. *Id.* at 1145. The loss of control led to an allision with a concrete piling at the dock. *Id.* The

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court concluded that this type of damage was excepted from the insurance policy under the policy's repair exception, concluding that sea trials are part of the repair process. *Id.* at 1173–74.

Matter of Energetic Tank, Inc., 607 F.Supp.3d 328 (S.D. N.Y. 2022)

This case resulted from the collision between a Navy destroyer and Liberian oil tanker. *Id.* at 335. The Navy vessel had experienced multiple failures to its electronic controls, as well as user error in operating those controls. *Id.* at 347–48. The case was decided under Singapore law, and the Navy vessel was found 80% at fault. *Id.* at 360. Specifically, the court described the vessel's electronic control system as “new, glitchy, and unwieldy, complicating MCCAIN's ability to navigate,” as well as experiencing “persistent [system] snafus.” *Id.* at 361. The court found that the lack of training in using such a system, as well as the “long unaddressed” issues played a role assigning the comparative fault. *Id.*

Penn Maritime, Inc. v. Rhodes Electronic Services, Inc., 41 F.Supp.3d 507 (E.D. La. 2014)

This case resulted from a collision between two barges. *Id.* at 510. The ship driver alleged that the collision was caused by a malfunctioning autopilot system. *Id.* Ultimately, the court issued a judgment to the defendant, stating that plaintiff had failed to prove that the collision was a result of any error or defect in the system. *Id.* at 524. The court found that it was equally probable to have been the result of operator error. *Id.*

Hatteras/Cabo Yachts, LLC v. M/Y Epic, 2020 WL 577514 (E.D. N.C. 2020)

The pertinent part in this case involves a fire onboard a yacht. *Id.* at *2. Here, the vessel owner alleges that a nonconforming vessel was provided because the fire system onboard had not been properly installed. *Id.* at *21. They alleged that the system was placed in a location where it could not reasonably combat a fire or sound the necessary alarm. *Id.* at *21–22. The defendants replied that the system only activates at a certain temperature, and that this fire was not hot enough to trigger the system. *Id.* at *23. Being a review of summary judgment, the court found that there was a material issue of fact as to whether the fire system would have triggered given the temperature of the fire. *Id.*

China Union Lines, Ltd. v. A. O. Andersen & Co., 364 F.2d 769 (5th Cir. 1966)

This case resulted from a collision between two vessels. *Id.* at 773. The collision resulted from a loss in steering on the part of an outbound vessel. *Id.* at 777. The steering gear had failed, holding the rudder angle at a slight turn to port. *Id.* This led to the vessel colliding with an inbound vessel. *Id.*

Great Lakes Reinsurance (UK) PLC v. Kan-Do, Inc., 639 Fed.Appx. 599 (11th Cir. 2016)

This case is an insurance dispute where Kan-Do, Inc., the owner of a yacht, held an “all-risk” policy, and the yacht sank after flooding. *Id.* at 600. The vessel flooded because its bilge-pump system blew a fuse and could not properly dewater the bilges. *Id.* The court held that this was a fortuitous loss under the policy but remanded because of potential application of other exclusions. *Id.* at 604.

PRODUCTS LIABILITY

East River Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858 (1986)

This case is arguably the leading case involving products liability in the maritime domain. Here, the parties had entered a chartering agreement, and the vessel then suffered damage to both its propulsion and turbine systems. *Id.* at 875–76. The court agreed that the damage was caused by defective parts or installation. *Id.* After that determination, the court then had to decide if there existed tort liability for the damage to the vessel systems, or if any liability must be based in contract law. *Id.* Because the error caused damage only in the products themselves, liability could only be found in contract law. *Id.*

Saratoga Fishing Co. v. J.M. Martinac & Co., 520 U.S. 875 (1997)

This case follows the same theory as *East River*. Under the theory of product liability in torts, a plaintiff can only recover for damages to other property not to the product itself. *Id.* at 875. Damages to the product itself must be recovered under a contract theory. *Id.* In this case, the ship was damaged due to a poorly designed hydraulic system installed on the ship before it was delivered. *Id.* The question in this case is the same; what is the product? The Supreme Court held that, in this case, the ship was the product, but any equipment added after sale of the ship is considered other property. *Id.* at 884.

Mays Towing Co., Inc. v. Universal Machinery Co., Inc., 755 F.Supp 830 (S.D. Ill. 1990)

This case involves a products liability allegation against Caterpillar, which sold

marine engines to the plaintiff. *Id.* 831. One year after installation, the engines caused a catastrophic fire to the plaintiff's vessel. *Id.* This brought an argument by defense that the engines had been integrated with the vessel, making the engine and vessel collectively the product. *Id.* at 833. This would mean that damages were only recoverable in contract and warranty, but not under product liability. *Id.* The court, however, looked to the contract itself to determine that the parties only contracted to supply the engine, and not to building or supplying the vessel in its entirety. *Id.* Therefore, the plaintiffs were permitted to seek damages to their vessel under product liability law. *Id.*

Markel American Insurance Company v. Pacific Asian Enterprises, Inc., 2009 WL 5102400 (N.D. Cal. 2008)

In this case, the plaintiff insurer seeks to find liability in a manufacturer for a fire resulting from alleged electrical malfunction. *Id.* at *2. This ruling only addresses whether the plaintiff met the pleading standard. *Id.* However, it outlines that the pleading for such a product liability case succeeds when the specific component, basis for belief, location and nature of fire, and resulting damage is stated. *Id.*

Boucvalt v. Sea-Trac Offshore Services, Inc., 943 So.2d 1204 (La. App. 5 Cir. 2006)

This case comes from a products liability allegation for an autopilot system in which the plaintiffs sought punitive damages. *Id.* at 1205. Under general maritime law, punitive damages are available for gross negligence. *Id.* at 1206. The plaintiffs alleged a failure to adequately test the compass used in the autopilot system. *Id.* However, the court

found that the plaintiffs alleged, at most, simple negligence and could not seek punitive damages. *Id.*

Delta Steamship Lines, Inc. v. Avondale Shipyards, 747 F.2d 995 (5th Cir. 1984)

Here, the court reviewed a case in which a coupling failed, resulting in a loss of propulsion of a liner owned by Delta. *Id.* at 997. The propulsion equipment was supplied to Avondale Shipyards by Delaval Turbine, Inc. which obtained the coupling from Zurn Industries, Inc. *Id.* The liability was compromised between the parties, and the court only had to determine damages. *Id.* at 998. The trial court dismissed the case against Avondale and found that the suppliers of the coupling and the propulsion equipment were required to pay damages. *Id.* The appeals court found error in the damage calculations, and so reversed the damages decision. *Id.* at 997. It did, however, agree with the dismissal of Avondale. *Id.*