



Seasonal Navigability and Maritime Jurisdiction

**U.S. FIFTH CIRCUIT DECISION IN
*THIBODEAUX V. BERNHARD***

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Thibodeaux v. Bernhard: Jurisdictional Issue

Whether a district court may exercise admiralty jurisdiction over a tort that occurred in Lost Lake, a seasonably navigable waterway in the Atchafalaya Basin of Louisiana.

Constitutional Basis of Admiralty and Maritime Jurisdiction in the United States

- **Article III, Section 2 of the U.S. Constitution** provides federal courts with jurisdiction over “all cases of admiralty and maritime jurisdiction.”
- **28 U.S.C. § 1333** grants district courts original jurisdiction over any civil case of admiralty or maritime jurisdiction.
- Maritime jurisdiction requires that the incident or contract occurred on navigable waters.
- Navigable waters are waters used, or capable of being used, for interstate or foreign commerce.

Relevant Statutes

- **28 U.S.C. § 1333**
 - Provides district courts with original jurisdiction over maritime claims, which would include any seasonal considerations as long as the waterway qualifies as navigable during that season.
- **Admiralty Extension Act (46 U.S.C. § 30101):**
 - Extends maritime jurisdiction to certain accidents or injuries caused by vessels on navigable waters, even if the injury occurs on land, as long as there's a connection to maritime activity.
- **Jones Act (46 U.S.C. § 30104):**
 - Provides a basis for maritime workers to sue for personal injury if they work aboard vessels on navigable waters, potentially relevant in a case involving seasonal navigation.

Jurisdictional Requirements: Satisfaction of Connection and Location Tests

CONNECTION TEST (NEXUS REQUIREMENT)

- General features of incident must have a potentially disruptive effect on maritime commerce
- General character of the activity giving rise to the incident must show a substantial relationship to traditional maritime activity

LOCATION TEST (SITUS REQUIREMENT)

- Tort must occur on navigable water
- Whether a waterway constitutes “navigable water” depends on whether it is “navigable in fact”
- Navigability “in fact” turns on the suitability of the waterbody for interstate travel and commerce

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Factual Background

- Plaintiffs Devin Thibodeaux and his grandfather Herby Angelle work as commercial fishermen and harvest crawfish in Lost Lake
- Lost Lake is an inland body of water on private property and is connected to the Atchafalaya Basin through a channel that is sometimes navigable
- Lost Lake is a prime location for trapping and harvesting crawfish and other wildlife
- While Thibodeaux and Angelle were harvesting crawfish traps in Lost Lake, Seth Bernhard and his father Kenneth Bernhard started verbal altercation, detained Thibodeaux's vessel, and misappropriated Thibodeaux's commercial crawfish traps
- Thibodeaux and Angelle asserted tort claims in U.S. District Court for the Western District of Louisiana, invoking admiralty jurisdiction
- Bernhard Defendants filed motion to dismiss based on lack of subject matter jurisdiction

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U.S. Fifth Circuit
Court of Appeals
Analysis of
Connection Test

- Prong 1: Whether the “general features of the type of incident involved” have “a potentially disruptive impact on maritime commerce”
 - Court found that Bernhards’ actions disrupted maritime commerce by preventing fishermen from freely navigating their vessels in Lost Lake
 - Impeding crawfish producers’ ability to harvest crawfish from their traps poses “more than a fanciful risk” to their commercial fishing efforts

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Court of Appeals
Analysis of
Connection Test

- Prong 2: Whether the “general character of the [tortfeasor’s] activity giving rise to the incident shows a substantial relationship to traditional maritime activity”
 - Court found that the Bernhards thwarted navigation and fishing efforts by harassing and accosting Thibodeaux and Angelle
 - Impeding crawfish producers’ ability to harvest crawfish from their traps poses “more than a fanciful risk” to their commercial fishing efforts
 - By commandeering the vessel and seizing Thibodeaux’s commercial fishing traps, the Bernhards interfered with a traditional maritime-based activity

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U.S. Fifth Circuit
Court of Appeals
Analysis of Location
Test

- “Location Test” turns on whether tort occurred on “navigable waters”
 - Determining whether a waterbody qualifies depends on whether it is “navigable in fact”
 - Lost Lake’s historical use and unity with the Atchafalaya River support the conclusion of navigability

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Court of Appeals
Analysis of Location
Test

Factual Findings

- i. Lost Lake is a "perched lake situated in a crook of undeveloped swampland between the Atchafalaya River and the Butte LaRose Cutoff Channel." A perched lake is "one in which the bottom of the lake is above the mean level of water in the surrounding river channels." Lost Lake is surrounded primarily by recreational property owned by Defendants.
- ii. A 10-to-20-foot-wide canal runs from Lost Lake to the Atchafalaya River. The Lake is accessible by water exclusively through a canal for roughly 110 days each year. Notably, Lost Lake's accessibility coincides with crawfish season.

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Analysis of Location
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Factual Findings

- iii. The depth of Lost Lake fluctuates with the depth of the Atchafalaya River. The Lake typically has a depth of 1.5-7.5 feet but, during particularly dry seasons, can "dr[y] up into ponds." At the time of the incident giving rise to this dispute, Lost Lake was approximately five feet deep.
- iv. Although it first appeared on a map in the late 1960's, it is unclear when or how the canal connecting Lost Lake to the Atchafalaya River first developed. However, "[o]ver the past several decades, the [canal] grew, likely due to erosion, from a small ditch to a larger body of water through which small boats, such as Plaintiffs' crawfish skiff[s], could pass [] when the water was high enough."

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Court of Appeals
Analysis of Location
Test

Factual Findings

- v. Lost Lake was first identified by that name in 1968, but it has been cartographically identified as a "low-lying, swampy area with numerous iterations over the years."
- vi. The state of Louisiana does not "presently" assert ownership over "the bed and bottom" of Lost Lake. However, fishermen—including Plaintiffs—have crawfished Lost Lake for generations.

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Analysis of Location
Test

Seasonable Navigability

- *Sanders v. Placid Oil Co.*
- Navigability of Catahoula Lake
- Catahoula Lake “fluctuates from nearly dry to up to 20 feet deep each year”
- Historical use
- Accessibility
- Found to be navigable

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Court of Appeals
Analysis of Location
Test

Seasonable Navigability

- *Meche v. Richard*
- Navigability of Lake Rycade
- Lake in Atchafalaya Basin
- Lake could be inundated with high water during certain seasons
- Accessible by pirogues and other fishing vessels but not tankers, tugboats, or ships
- Found to be navigable

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Analysis of Location
Test

Seasonable Navigability

- *Parm v. Shumate*
- Navigability of Gassoway Lake
- Lake receives runoff from Mississippi River's flooding
- *Parm* plaintiffs argued that susceptibility to overflow from navigable river rendered Gassoway Lake navigable
- Louisiana state court held that Gassoway Lake was non-navigable
- Found to be non-navigable

*Thibodeaux v.
Bernhard*

Holding: Lost Lake is navigable for purposes of establishing admiralty jurisdiction under 28 U.S.C § 1333.

Fifth Circuit Holding:

Lost Lake is Navigable in Fact

- (1) The Lost Lake area is and has historically been used to commercially harvest crawfish on small watercrafts;
- (2) Though temporary, Lost Lake's accessibility from the Atchafalaya River coincides with the most commercially viable period for crawfishermen; and
- (3) Lost Lake is connected to the Atchafalaya River through a ten to twenty foot wide drainage canal.