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**recent developments in salvage law**

 ***Farnsworth v. Towboat Nantucket Sound, Inc.*, 790 F.3d 90 (1st Cir. 2015)**

Editors:

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Plaintiff Farnsworth entered into a salvage contract with defendant TNS after his recreational craft ran aground near the Weepecket Islands in Buzzards Bay, Massachusetts. After initiating the arbitration process called for by the terms of the contract, the plaintiff brought an action in federal district court to enjoin the arbitration on the grounds that the entire contract was signed under duress.

The district court denied the motion for injunctive relief, but stayed the case pending the resolution of the arbitration. The arbitration panel determined a liability against Farnsworth of $60,306.85, and the federal court affirmed this award over the plaintiff’s objection.

Deciding that the plaintiff “did not challenge the validity of the arbitration clause specifically in his complaint (or indeed at any time before the conclusion of the arbitration proceedings),” the duress claim was in all aspects “for the arbitrator to resolve,” *id.* at 92-93, the First Circuit affirmed the trial court’s approval of the arbitral liability determination.

***St. Clair Marine Salvage, Inc. v. Bulgarelli*, 796 F.3d 569 (6th Cir. 2015)**

Here, the owner of a pleasure craft appeared as a defendant after the craft ran aground in Lake St. Clair, in Michigan. Here, however, the court found that the salving company was fraudulent in its contractual dealing with the owner of the craft, in that the company’s representative verbally agreed to one price with the defendant, then later made a written notation on the contract itself with a much higher price. In doing so, the court employed a series of factors from *Black Gold Marine, Inc., Inc. v. Jackson Marine Co.*, 759 F.2d 466, 470 (5th Cir. 1985), as part of a determination of whether the contract as presented was, indeed, fraudulently formed.

***St. Michael Press Pub. Co., Inc. v. One Unknown Wreck Believed to be the Archangel Michael*, 610 Fed. App’x 940 (11th Cir. 2015)**

With perhaps the best case style in the past several years, this *per curiam* decision from the Eleventh Circuit consisted of that court’s affirmance of a grant of summary judgment against the alleged discoverer of an ancient Spanish wreck, on the grounds that the would-be salvor presented insufficient evidence of his discovery. The plaintiff filed a sworn affidavit attesting to the discovery, the court viewed his position dimly, and so affirmed summary judgment in favor of the Kingdom of Spain, the nominal owner of the wrecked vessel.

***Recovery Ltd. Partnership v. Wrecked and Abandoned Vessel S.S. CENTRAL AMERICA*, 790 F.3d 522 (4th Cir. 2015)**

A hurricane claimed the S/S CENTRAL AMERICA off the South Carolina coast in 1857, not to be discovered until the 1980s due to the efforts of the Columbus-America Discovery Group. From the 1980s until the third quarter of 2013, the salvage group hired an attorney to establish its salvage rights to the CENTRAL AMERICA. During the pendency of these efforts, the company’s founder absconded with some 500 gold coins from the wreck in around 2011. The attorney withdrew as counsel for the company, then (not having been paid over $2M worth of legal fees) filed an *in rem* action to obtain a salvage award for himself, claiming that his voluntary assistance to the Receiver in turning over files and documents related to the salvage operation constituted continuing salvage of the CENTRAL AMERICA.

The district court dismissed the attorney’s claim, concluding that he was *obligated* to return the files and documents under both agency law and professional responsibility principles, and that therefore, no voluntary act took place by which he could obtain a salvage award. The Court of Appeals agreed and affirmed.

***Biscayne Towing & Salvage, Inc. v. M/Y BACKSTAGE*, 615 Fed. App’x 608 (11th Cir. 2015)**

As the yacht BACKSTAGE lay in harbor one fateful morning, the yacht docked nearby caught fire, igniting a domino reaction of immolated vessels that threatened to engulf her, too. The owner of Biscayne towing arrived on scene with a towboat at this point, and created a firebreak by moving the most recently afire vessel out of its slip. The owner and assistant pilot of the BACKSTAGE then arrived, and attempted to shift her, but the local fire department blocked this maneuver. By the time the fire was eventually put out, the BACKSTAGE had suffered extensive fire damage to her starboard hull.

Reasoning that its movement of the antecedent vessel saved the BACKSTAGE from the conflagration, the towing company claimed salvage thereof, but the district court found that the BACKSTAGE faced no “maritime peril,” a necessary requirement of any salvage claim. Holding that a genuine issue of material fact remained as to the existence of the maritime peril, the Eleventh Circuit reversed the trial court’s grant of summary judgment in favor of the BACKSTAGE, and remanded the case for further proceedings.

***Hunters, LP v. S.S. Port Nicholson*, 2015 U.S. Dist. LEXIS 42437
(D. Me. Apr. 1, 2015); 2015 U.S. Dist. LEXIS 158950 (D. Me. Nov. 24, 2015)**

This salvage litigation dates to 2008 and concerns the submerged wreck and cargo of The S.S. Port Nicholson (“Port Nicholson”), a British merchant vessel torpedoed and sunk during World War II. The salvor-in-possession, Sea Hunters, sought dismissal of its Complaint without prejudice. The court found that there was no good cause for dismissal without prejudice, based on Sea Hunters’ filing of falsified documents into the record and its inability to salvage any items of substantial value. Thus, Sea Hunters was dismissed and forfeited any right to a salvage award or any ability to reassert salvage rights at the wreck location in the future. Mission Recovery then sought to be substituted as salvor-in-possession. However, the court denied such relief, holding that a new standalone *in rem* action was the best method for Mission Recovery to seek such protection.

Later, the Secretary of State for Transport of the United Kingdom, which had entered a restricted appearance to defend the claims against the Port Nicholson, moved for an award to recoup its attorney fees, totaling $902,179.70. Although Sea Hunters had filed falsified documents into the court's docket, altered from the originals to show the existence of valuable cargo, and failed to salvage any items of substantial value since filing the case in August 2008, the court denied the Secretary of State’s motion, finding that it fallen short of carrying “the heavy burden of demonstrating that an award of attorney fees predicated on the bad faith exception: to the American Rule.

***In re Oil Spill by the Oil Rig*, 2016 U.S. Dist. LEXIS 30818
(E.D. La. Mar. 10, 2016)**

The issue addressed in this decision was whether a “responsible party” is liable under the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702(a), (b)(2)(E), for a claimant's economic loss that resulted from the moratorium on offshore drilling imposed by the federal government in the aftermath of the DEEPWATER HORIZON/Macondo Well blowout and oil spill. Bisso Marine, LLC, one of the claimants, alleged that the blowout and “consequent explosion, fire, vessel sinking and massive oil spill prohibited it from engaging in its marine salvage and commercial diving operations.” The court dismissed Bisso’s claims, as well as those of other class members claiming economic losses under OPA. The court reasoned that the moratorium addressed the risk of possible future blowouts and oil spills from wells other than Macondo, but the perceived threats of discharge from other wells were different OPA “incidents” (if they were “OPA incidents at all”) than the HORIZON/Macondo incident for which BP was a responsible party. In OPA terms, then— and putting aside the question of whether Plaintiffs' claims are due to the injury, destruction, or loss of property or natural resources—the claimants’ losses did not result from the discharge or substantial threat of discharge of oil from the Macondo Well, but rather from the perceived threat of discharge from other wells.

***Recovery Ltd. P’ship v. S.S. Cent. Am.*, 120 F. Supp. 3d 500**

**(E.D. Va. 2015)**

This is an important decision addressing the law of salvage vs. the law of finds. Rather than seek a salvage award, the salvor-in-possession of a sunken treasure ship, the S.S. Central America, sought to use the common law of finds to obtain immediate title to some recovered artifacts. The court held that salvage law applies to historic wrecks under Fourth Circuit precedent, and the salvor-in-possession was required to seek a salvage award. Citing to the *Titanic* cases, “under salvage law, the salvor receives a lien in the property, not title to the property, and as long as the case remains a salvage case, the lienholder cannot assert a right to title even though he may end up with title following execution or foreclosure of the lien.” Thus, the court found that the salvor could not be a salvor-in-possession and also apply the law of finds to recovered artifacts from this historic wreck. “Whereas salvage law is based on the principle of mutual aid, ‘a free finders-keepers policy is but a short step from active piracy and pillaging.’ Thus, the law of finds should be ‘applied sparingly — only when no private or public interest would be adversely affected by its application.’”

***Thuan Vo Tran v. Abdon Callais Offshore*, LLC, 120 F. Supp. 3d 554 (E.D. La. 2015)**

Following a collision between two vessels near the mouth of the Mississippi River and Gulf of Mexico, one of the plaintiffs, Tom's Marine & Salvage, LLC, sought to recover the amount of a salvage contract entered into with the owner of the F/V STAR OCEAN, which sank after the collision. The contract set forth, in pertinent part, that:

4. SALVOR'S ONLY OBLIGATION UNDER THIS CONTRACT SHALL BE TO USE ITS BEST EFFORTS TO REMOVE THE SAID VESSEL . . . .

5. AN INITIAL DEPOSIT OF 20,000.00 DOLLARS U.S. IS DUE AT THE SIGNING OF THIS CONTRACT PRIOR TO THE START OF SALVAGE WORK. THE REMAINING BALANCE OF 120,000.00 DOLLARS U.S. IS DUE AT THE SETTLEMENT OF THE LAWSUIT.

Despite good faith efforts, the F/V STAR OCEAN was eventually unsalvageable. Following a bench trial, the court found that the phrase “due at the settlement of the lawsuit” was both ambiguous and would lead to absurd consequences. The court found that the parties intended “due at the settlement of the lawsuit” to indicate that the amount would become due once the lawsuit had concluded. The court further noted that while there are “no cure / no pay” salvage arrangements, the advent of salvage contracts was largely to protect salvors from just such a scenario when unintended. Therefore, the failure to state in the contract, either expressly or impliedly, that this was a “no cure / no pay” arrangement evidenced that the parties’ intent was in fact the opposite. The vessel owner owed the salvor $120,000 on the contract.