



## AlaFile E-Notice

02-CV-2016-000224.00

Judge: JOHN R LOCKETT

To: HAILS EDWARD BARRETT  
Barrett.Hails@phelps.com

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# NOTICE OF COURT ACTION

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IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

VALENTINA HENRY ETC VS FAIRHOPE YACHT CLUB  
02-CV-2016-000224.00

A court action was entered in the above case on 5/18/2017 5:00:12 PM

ORDER

[Filer: ]

Disposition: GRANTED IN PART  
Judge: JRL  
Notice Date: 5/18/2017 5:00:12 PM

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205 GOVERNMENT STREET  
MOBILE, AL, 36644

251-574-8420  
charles.lewis@alacourt.gov



**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA**

HENRY VALENTINA AS PERSONAL	)	
REP & ADMN OF ESTATE,	)	
Plaintiff,	)	
	)	
V.	)	Case No.: CV-2016-000224.00
	)	
FAIRHOPE YACHT CLUB,	)	
Defendant.	)	

**ORDER**

This matter comes before the Court on Defendant Fairhope Yacht Club's Motion for Partial Summary Judgment. After entertaining the briefs and responses of counsel as well as the arguments presented by each party at the hearing, this Court finds that Defendant's Motion for Partial Summary Judgment is due to be GRANTED in part and DENIED in part.

There are two issues to be resolved: first, whether the incident leading to the claims in this case is governed by federal maritime law and, second, whether the application of said law displaces state remedies. As to the first question, this Court does find that this matter is within admiralty jurisdiction. However as to the second, the applicability of maritime law does not preclude the Plaintiff from pursuing remedies based upon Alabama's Wrongful Death Statute, Ala. Code 1975 § 6-5-410.

**Preliminary Factual Matters**

Plaintiff Valentia Henry, as personal representative and administratrix of the estate of Decedent Robert Lonnel Thomas, is suing Defendant Fairhope Yacht Club, a non-profit Alabama Corporation, based upon the following chain of events. On April 25, 2015, the Defendant hosted a sailboat regatta that occurred in part in Mobile Bay. On the eve of and day of the race, inclement weather warnings from various organizations issued. After a brief delay or cancellation, the participants set out. While race participants were still on the water, a storm hit the area, causing multiple boats to capsize. The sailboat carrying Robert Thomas suffered this unfortunate fate. Mr. Thomas drowned.

In this wrongful death action, every allegation made in the complaint goes to the duty of a race organizer, specifically Defendant's purported responsibility to cancel the race, to ensure safe conditions during the race, or to warn participants of unsafe conditions during the race. With this general understanding of the circumstances at issue, this Court determines its holding.

## I. This Case Falls Within General Admiralty Jurisdiction

The Supreme Court of the United States has stated that maritime law applies to a tort claim when “conditions both of location and of connection with maritime activity” are satisfied. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995). As to the location prong of the test, the court “must determine if the tort occurred on navigable waters.” *Id.* The actions giving rise to this claim occurred on Mobile Bay and within its commercial shipping lane, collectively a body of water which is indisputably navigable waters. The location test of admiralty jurisdiction is satisfied.

As to the connection prong, a court must look to (A) the potential effects the incident in question may have on maritime activity as well as (B) the incident’s relationship to traditional maritime activity. *Id.* at 538–40. Capsized sailboats and overboard passengers in a commercial shipping lane can clearly disrupt commercial maritime activities. A sailboat regatta is unequivocally related to traditional maritime activities.

For these reasons, this Court holds in favor of Defendant as to this threshold matter. General maritime law applies to the case at bar.

## II. Admiralty Jurisdiction Does Not Displace Alabama Wrongful Death

The remedy that Plaintiff seeks in this case is provided by Alabama state law, specifically Alabama’s Wrongful Death Statute, Ala. Code 1975 § 6-5-410. In instances where maritime law applies, there is often a contention as to whether the need for uniform rules displaces the disparate claims available among the several states. Here, this Court must determine if admiralty jurisdiction prohibits Plaintiff from pursuing her state wrongful death claim. Fortunately, the Supreme Court of the United States, the Supreme Court of Alabama, and the 11th Circuit Court of Appeals have provided relatively clear guidance to aid this Court as it navigates these routinely plied, fog-prone waters.

In *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), the Supreme Court held that the availability of a federal maritime wrongful death claim did not supersede and preclude a state wrongful death claim where the decedent was a nonseafarer and where the death occurred in state territorial waters. The decedent was not acting in a commercial capacity; rather, the situation giving rise to her death was purely recreational, i.e. operating a jet ski manufactured by the defendant. *Id.* at 202. In *Choat v. Kawasaki Motors Corp.*, 675 So. 2d 879 (Ala. 1996), the Supreme Court of Alabama applied *Yamaha* and held accordingly, that Alabama’s wrongful death remedy was available despite the dispute being subject to admiralty jurisdiction. Similarly, the decedent was killed in a recreational jet ski accident, in this instance operated by another. *Id.* at 880. In both cases, Congress had not acted to displace state law remedies. Both claims were couched in terms of products liability.

After the *Yamaha* decision, the 11th Circuit meticulously charted the course that must be taken in these difficult cases. See *In re Amtrak Sunset Ltd.*, 121 F.3d 1421 (11th Cir. 1997). In this instance, the court specified that the *Yamaha* decision did not obviate the need to weigh state and federal interest when determining the law to apply to given factual situations. The following test was prescribed:

One must identify the state law involved and determine whether there is an admiralty principle with which the state law conflicts.... If there is an admiralty-state law conflict, the comparative interests must be considered—they may be such that admiralty shall prevail ... or if the policy underlying the admiralty rule is not strong and the effect on admiralty is minimal, the state law may be given effect...

*Id.* at 1425. (quoting *Steelmet, Inc. v. Caribe Towing Corp.*, 779 F.2d 1485, 1488 (11th Cir. 1986)(citations omitted).

Applying this conflicts analysis, the 11th Circuit ruled that general maritime law displaced Alabama’s Wrongful Death statute in the situation where a commercial tug in navigable waters obscured by fog allided with a bridge, causing the death of nonseafarers in state territorial waters. The court gave three primary reasons for its decision. First, the remedy sought conflicted with those available in admiralty. *Id.* at 1426. Second, the facts, claims, and arguments were “exceedingly maritime in nature.” *Id.* at 1427. Third, Congress had specifically spoken to the underlying facts of the case, precluding state law for the sake of uniformity. *Id.* (“[I]n passing the Admiralty Extension Act . . . [Congress] made clear its intent that in situations involving an allision between a vessel and a shore object, such as a railroad bridge, state laws should yield to federal maritime law.”).

Defendant argues that *In re Amtrak* stands for the proposition that the Alabama wrongful death remedies are never available where admiralty jurisdiction is found. Just as it was for the claimants before the *In re Amtrak* court, this gravitation to the poles is misguided, magnetism to one’s own cause leading venturers away from true north. As the *Yamaha* court did not doom maritime uniformity to founder leeward of state’s policing priorities, the *In re Amtrak* court did not scuttle particular claims at their berth. Rather, each voyage is unique despite the only two destinations. Unlike a compass, the sextant must be tuned precisely in each use.

In its decision, the 11th Circuit repeatedly highlighted the factual nature of the inquiry, stating “this balancing act . . . is, by its nature, made more or less difficult by the particular facts of a case,” “the particular facts of this case implicate a variety of federal maritime interests,” and “the facts of this case are so closely related to activity traditionally subject to admiralty law that the reasons for applying federal maritime law are undeniably present.” *Id.* at 1425, 26. The court concludes:

In sum, applying the Alabama wrongful death act ***in this case*** so as to

allow recovery for wrongful death based upon simple negligence only would deprive the litigants of substantive admiralty rights **that must be applied given the exceedingly commercial nature of this incident.**

*Id.* at 1427. (emphasis added). In a later decision, the 11th Circuit again repeated the fact-driven nature of these particular cases. *Tucker v. Fearn*, 333 F.3d 1216, 1224 n.11 (11th Cir. 2003) (“It is noteworthy that *Yamaha Motor* involved a recreational jet ski accident, whereas *In re Amtrak* involved a traditionally commercial maritime incident.”)(citations omitted).

Recognizing the fact-specific, interest-balancing mandate of *In re Amtrak*, the Southern District of Florida held that state law wrongful death remedies were available despite a conflict with general maritime law. *Pucci v. Carnival Corp.*, 160 F. Supp. 3d 1329 (S.D.F.L. 2016). The tort at issue involved the duty that a cruise company owed to a patron on a snorkeling excursion. The court ruled in this manner because of the following factual stance of the case:

[T]he current case involves a nonseafarer who perished in the territorial waters of a state, while engaged in a recreational activity. No commercial activity was involved, nor federal statute directly implicated.

*Id.* at 1335. The court further bolstered its holding stating that “it appears the concerns for maritime-law uniformity are primarily implicated in commercial ventures.” *Id.*

By light of these channel markers, this Court is tasked to embark upon a similar conflict analysis, weighing state and federal interests to the facts at hand. In doing so, this Court finds that the present situation is more in line with *Yamaha*, *Choat*, and *Pucci* than it is with *In re Amtrak*. As in the former trio of cases, neither the decedent nor defendant was involved in commercial maritime shipping activities. The situation giving rise to this purported tort was purely recreational. The complaint is alleging negligence in managing a private race event, more similar to the products liability issues before *Yamaha* and *Choat* and general duty of care in *Pucci*, not issues of navigation, seaworthiness, collisions, allisions, and the like. This matter directly bears upon the State of Alabama’s interest to protect its citizenry within its borders, with little relation to the interests of admiralty and maritime commerce.

In addition, Congress has not addressed the type of harm that occurred in this instance. Again, squarely at issue is the purported wrongful death of a nonseafarer in state territorial waters. The only Congressional pronouncement that remotely speaks to facts before us is the Death on the High Seas Act, which as the *Yamaha* court recognized, specifically states its intention to leave state remedies in place. *Id.* at 216; 46 U.S. § 767 (“The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter.”).

State wrongful death statutes have long been the source of remedies in these cases. *Yamaha Motor Corp.*, 516 U.S. at 206. When it clarified the effect of the relatively

recently judicially-crafted federal maritime wrongful death action on those provided by the states, the unanimous *Yamaha* court clearly understood that the long-lived, legion latter would inevitably conflict with, or perhaps complement, the supplemented, singular former. See *id.* at 215. The mere fact that Alabama has a unique wrongful death statute is not enough to bar its application. Where the interests of uniform admiralty rules are slight and the state's policing role is great, state law remedies remain in effect. *In re Amtrak*, 121 F.3d at 1425. Allowing Plaintiffs to proceed under Alabama law against a race organizer created under Alabama law, on theories of duty owed on land, on sea, and in sky irrespectively, poses no threat to the venerable and ancient uniformity of law governing commerce across navigable waters.

For the foregoing reasons, this Court denies Defendant's Motion for Partial Summary Judgment so far as it moves to preclude Plaintiff from her wrongful death claim pursuant to § 6-5-410.

**DONE this 18<sup>th</sup> day of May, 2017.**

**/s/ JOHN R LOCKETT**  
**CIRCUIT JUDGE**

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