

**THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES**

PRACTICE AND PROCEDURES COMMITTEE

SPRING 2008 MEETING

**APRIL 30, 2008
10:00 AM to 12:00 PM**

**CARTER LEDYARD & MILBURN
Two Wall Street, 13th Floor
Conference Room 19C
New York, New York 10005**

AGENDA

- I. Update on Proposed Revisions to the Local Admiralty Rules (David Sharpe)
- II. Update on Supplemental Rule B Cases and Issues (Lawrence Kahn)
- III. New Forms and Possible Changes to the Supplemental Rules
- IV. New Cases of Interest
 - A. Failure to enforce standard of reasonable care bars limitation of liability: The US Court of Appeals for the Second Circuit ruled that the failure of the City of New York to enforce a requirement for at least two officers to be on the bridge of a State Island Ferry while underway prevents the City from limiting its liability for injuries and damages resulting from an allision of the ferry with its dock when only one officer

was on the bridge and that officer collapsed, rendering him unable to control the movement of the ferry. In the instant case, ten passengers were killed and 19 passengers were injured seriously in the casualty. The City had previously promulgated a rule requiring both the captain and the assistant captain to be in the operating pilot house when the ferry was underway. The City (through its senior personnel in the Department of Transportation) was aware that compliance with the rule was lacking, but took no action. Failure to comply with the “two-pilot rule” was found to be a significant factor in the casualty. The court found that a US Coast Guard requirement for there at least one standard of care for this ferry operation. The failure of the City to enforce not only the strict two-pilot rule but any policy that would meet the minimum applicable standard of care constituted negligence that was within the privity and knowledge of the City, preventing the City from limiting its liability for injuries and damages related to the casualty. *In re City of New York*, No. 07-1251-cv (2nd Cir., March 27, 2008).

- B. Lack of personal jurisdiction over foreign ship owner: The US Court of Appeals for the Second Circuit ruled that the court did not have personal jurisdiction over a foreign ship owner whose ship was alleged to have been involved in a fatal collision in foreign waters. In the instant case, the ship had made a number of calls in US ports in recent years, but always at the direction of the long-term time charterer. The court held that, since the owner did not control the port calls of the ship, it had not availed itself of the advantages of doing business in the United States in a manner sufficient to support personal jurisdiction under the Due Process Clause of the Constitution. *Porina v. Marward Shipping Co., Ltd.*, No. 06-5397-cv (2nd Cir., April 1, 2008).

C. Availability of equitable tolling of limitation period in admiralty: The US Court of Appeals for the Eleventh Circuit ruled that equitable tolling is available in admiralty during the pendency of plaintiff's parallel suit in a state court of competent jurisdiction. In the instant case, plaintiff's decedent died during a scuba diving excursion related to his voyage as a passenger on defendant's cruise ship. The cruise ticket required written notice of any claim within 185 days of the incident. It further specified that the federal district court in the Southern District of Florida would be the appropriate venue, assuming that court had subject matter jurisdiction. Finally, the ticket provided that, if the federal court did not have jurisdiction, then venue would lie with the state courts in Miami-Dade County. Plaintiff submitted a timely notice of claim. He then filed suit in the state court in Miami-Dade County within the contractual limitation period. After the limitation period had run, but while the state action was pending, plaintiff filed an identical suit in federal court. The state action was eventually dismissed based on improper venue. Defendant ship owner then moved to dismiss the federal action, based on late filing. The federal district court issued an interlocutory order that the limitation period was tolled during the pendency of the state action. Defendant appealed. On appeal, the court held that because defendant was fully aware of the claim, the state action was dismissed solely based on improper venue, and the plaintiff had diligently pursued his claim, the unusual remedy of equitable tolling of the limitation period was available in this particular admiralty suit. *Booth v. Carnival Corporation, No. 07-10689 (11th Cir., April 1, 2008).*

V. New Business

- A. Court of Claims (Philip Berns)
- B. Current discussion on UN Convention Independent Guarantees and Standby Letters of Credit (Robert Zapf)

VI. Adjournment