DOCUMENT NO. 646
May 24, 1983

REPORT
of the
COMMITTEE ON MARITIME LEGISLATION
of the
MARITIME LAW ASSOCIATION
of THE UNITED STATES

RECOMMENDATIONS FOR REPEAL OF THE PUBLIC VESSELS ACT AND AMENDMENT OF THE SUITS IN ADMIRALTY ACT

The Suits in Admiralty Act (SIAA) was enacted in 1920 to overcome decisions by Judge Learned Hand and by the Supreme Court under the Shipping Act, 1916, holding that merchant vessels, requisitioned by the Federal Government during World War I, were subject to arrest for collisions while in Government service and the Government could be required to post bonds to secure release of the ships. The LAKE MONROE, 250 U.S. 246 (1919); The FLORENCE H, 248 Fed. 1012 (S.D.N.Y. 1918). The Congress felt that these decisions put the United States "to unnecessary expense and its vessels to great delays". S.Rep. No. 223, 66th Cong. 1st Sess. 3 (1919). The solution was to prohibit seizure of Government-owned merchant vessels, eliminate any requirement for Government bonding, and substitute in personam liability of the Government for the in rem liability of such ships.

Legislation was proposed by a committee of our Association, which was appointed at the December 1917 meeting, under Chairman Van Vechten Veeder of New York. In 1919 Mr. Veeder and his committee filed a brief with the House Judiciary Committee arguing in favor of a bill authorizing suits for claims involving all Government ships including warships. M.L.A. Docs. p. 1047. The brief noted that in The ESPARTA, 160 Fed. 289 (5 Cir. 1908), where the Government sued for damages in a collision case and the Government ship was held to be solely responsible, it still required a private bill before the Government paid the damages. The Congress had regularly been passing private bills allowing suits to be brought for collisions that had occurred from 1 to 39 years earlier. No case could be recalled where Congress had refused to enact such private legislation.

Originally the bill which became the SIAA was intended to cover all vessels belonging to the United States, but an amendment in conference committee limited its scope only to cargo as well as merchant ships and tugs owned by the Government. H.R. Rep. No. 669, 66th Cong. 2d Sess. 5 (1920). However, suit was authorized for claims involving such maritime property belonging to the United States, in both tort and contract.

Our Association immediately formed a new committee, under Chairman Charles S. Haight of New York, to expand the SIAA to cover public vessels. M.L.A. Docs. p. 1056. A bill was introduced the same year; hearings were held; and it was favorably reported by the House Judiciary Committee, which adopted much of the brief previously filed by Mr. Veeder and his committee, noting in the report that the bill had also received support from Acting Secretary of the Navy Franklin D. Roosevelt. H.R. 13491, 66th Cong. 3d Sess. (1920); H.R. Rep. No. 1301, 66th Cong. 3d Sess. (1920); see M.L.A. Docs. pp. 1092, 1096. Unfortunately the bill did not pass. But strenuous efforts were undertaken thereafter by committees under Chairman Henry Galbraith Ward of New York and Chairman George W. Betts of New York throughout the early 1920s. M.L.A. Docs. pp. 1190, 1220, 1243, 1260, 1269.

Their efforts were spurred by the decision of the Supreme Court in The Western Maid, 257 U.S. 419 (1922), holding that Government vessels in public service were not subject to arrest for collisions.

In 1925 Congress enacted the Public Vessels Act (PVA), authorizing in personam suits for tort, salvage and towage claims involving Government-owned vessels in public service, such as warships, which had been excluded from the SIAA. In its report supporting the bill the Senate Claims Committee noted that about 80 requests for private bills in this area were being received annually and there were more than 450 collisions involving Government vessels in public service over just a three year period. S.Rep. No. 941, 68th Cong. 2d Sess. 3, 9, 10, 14, 17-23 (1925). Suits on contract claims involving Government-owned vessels in public service (other than salvage and towage) continued to fall exclusively within the Tucker Act. 28 U.S.C. §1346(a); see Eastern S.S. Lines v. United States, 187 F.2d 956, 959 (1 Cir. 1951); Continental Cas. Co. v. United States, 140 Ct. Cl. 500, 156 F. Supp. 942 (1957); but cf. United States v. United Continental Tuna Corp., 425 U.S. 164, 181 n.21 (1976); Calmar S.S. Corp. v. United States, 345 U.S. 446, 456 n.8 (1953).

As the Government became more and more involved in shipping operations, it sometimes was very difficult in contract actions to determine whether the particular ship involved was a "public vessel" or a "merchant vessel". E.g. Sword Line v. United States, 351 U.S. 976 (1956); Calmar S.S. Corp. v. United States, 345 U.S. 446 (1953). If it were a public vessel, often suit on such contract claims would lie only in the Court of Claims under the Tucker Act which had a six-year statute of limitations; if a merchant vessel, suit would lie only in the district courts under the SIAA subject to a two-year statute of limitations. By the time this issue was sorted out, if a litigant found himself in the wrong court, the suit might well be time barred in the proper court, a situation aggravated by the lack of authority to transfer cases between the Court of Claims and the district courts.

Other problems surfaced in cases where Government maritime property was not easily characterized as "cargo"; or a Government ship was not actually "employed" as a merchant vessel within the literal meaning of the SIAA. E.g. Aliotti v. United States, 221 F.2d 598 (9 Cir. 1955); Eastern S.S. Lines v. United States, 187 F.2d 956 (1 Cir. 1951); Ryan Stevedoring Co. v. United States, 175 F.2d 490 (2 Cir.), cert. denied 338 U.S. 899 (1949).

In the late 1950s Congress was urged by our Association to enact remedial legislation. A special committee under Chairman Robert E. Kline, Jr. of Washington, D.C. eventually was successful in securing passage of a bill. M.L.A. Docs. pp. 4139, 4504, 4536.

In 1960 Congress amended the SIAA to authorize suits against the Government for all maritime claims, including matters involving all vessels owned, possessed, or operated by or for the United States, as well as cargo owned or possessed by the United States, provided that if such vessel were "privately owned or operated", or if such cargo were "privately owned or possessed", or in the broadest terms, "if a private person or property were involved" a proceeding in admiralty could have been maintained against the private party defendant.

The 1960 amendment to the SIAA seemingly extended to the "full range of admiralty cases" against the Government (S. Rep. No. 92-1079, [1972] U.S. Code Cong. & Adm. News 3129, 3134)* and the need for the PVA would appear to have completely disappeared. Thus, Sections 1, 3, 4, 8, 9, and 10 of the PVA now just mostly duplicate for warships what already exists generally in the SIAA for all government vessels.

Two circuit courts ruled that the PVA was redundant. United Continental Tuna Corp. v. United States, 499 F.2d 774 (9 Cir. 1974), rev'd, 425 U.S. 164 (1976); United Philippine Lines v. S.S. DANIEL BOONE, 475 F.2d 478, 480 (4 Cir. 1973). Although the Supreme Court in dicta had noted that in the 1960 amendment "Congress abolished the distinction between public and merchant vessels", Amell v. United States, 384 U.S. 158, 164 (1966), when the precise issue of the continued vitality of the PVA came before it, the Court decided otherwise, holding that "claims within the scope of the Public Vessels Act remain subject to its terms after the 1960 amendment to the Suits in Admiralty Act". United States v. United Continental Tuna Corp., 425 U.S. 164, 178 n.16, 181 (1976).

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* Except, perhaps, wage claim by Government employees working aboard Government ships that are still cognizable exclusively in the Court of Claims, which has traditionally heard wage claims by Government employees. Amell v. United States, 384 U.S. 158 (1966); see United States v. United Continental Tuna Corp., 425 U.S. 164, 179 n.18 (1976).

This decision put an end to plain meaning interpretations of the 1960 amendment. Compare the early case of De Bardeleben Marine Corp. v. United States, 451 F.2d 140 (5 Cir. 1971) with the later cases of Bearce v. United States, 614 F.2d 556 (7 Cir.), cert. denied, 449 U.S. 837 (1980) and Gercey v. United States, 540 F.2d 536 (1 Cir.), cert. denied, 430 U.S. 954 (1977). Indeed, in one suit, until the Fifth Circuit changed its mind on rehearing, it had started to move backwards, suggesting that the Supreme Court's ruling required it to ignore the literal terms of the 1960 amendment and to reopen jurisdiction for some maritime torts under the Federal Tort Claims Act. McCormick v. United States, 645 F.2d 299 (5 Cir. 1981), vacated, 680 F.2d 345 (5 Cir. 1982).

Thus, the continued existence of the PVA not only has ceased to serve any purpose; it has provoked needless litigation. It is clear, however, that elimination of the PVA would require a new act of Congress.

1. PVA Reciprocity.

The only significant change that would be occasioned by repeal of the PVA would be the elimination of the strict "reciprocity" limitation on the right of aliens to sue for damages caused by warships and other public vessels. Section 5 of the PVA, 46 U.S.C. 785, provides that an alien cannot bring suit unless the foreign state of which he is a national, "under similar circumstances, allows nationals of the United States to sue in its Courts."

On its face, reciprocity expresses an attractive symmetry: if a foreign national's law would not let a United States citizen sue the government there, the United States will not let the foreign national sue it here. No other reason has been advanced for demanding reciprocal waivers of governmental immunity in order to give a foreign national standing to sue the United States.

No similar reciprocity requirement exists for aliens with maritime contract claims (whether or not involving a public vessel) under the SIAA, or claims for non-maritime torts under the Tort Claims Act, and reciprocity is not required generally for small contract claims (below $10,000) asserted by aliens in the district courts under the Tucker Act.

A reciprocity requirement does exist for suits in the United States Claims Court. Section 2502(a) of Title 28 provides that aliens cannot bring suit there unless the foreign government of which they are nationals gives "citizens of the United States the right to prosecute claims against their government in its courts." But this is a mild reciprocity

requirement when compared with that of the PVA. Compare Marcos v. United States, 122 Ct. Cl. 641, 648, 102 F. Supp. 547, 551 (1952) with Luzon Stevedoring Corp. v. United States, 1970 A.M.C. 1991 (D.D.C. 1970).

The main analytical problem with Section 5 is that while reciprocity can be achieved only by the deliberate actions of governments, the demand for damages arises from the inadvertent conduct of individuals, both wrongdoers and victims. For example, if a United States Navy destroyer through negligent navigation had the dilemma of colliding with one of two foreign merchant vessels, it is inconceivable that the officer having the conn would choose to strike the Philippine freighter because her government offers no reciprocity to a hypothetical action by a United States citizen, and to turn away from the South Korean tanker because her government has waived immunity.

As between the United States and foreign governments, if Congress intended by Section 5 to persuade other nations to waive their sovereign immunity to all suitors, Section 5 looks like either an inadequate instrument for effective coercion, or a condescending export of United States policy to nations whose legal heritage does not include waiver.

As for foreign nationals, when reciprocity bars a foreign vessel owner who would have had standing to sue if he were a citizen of the United States or a national of an immunity-waiving nation, then United States law deliberately discriminates against a foreign victim of United States negligence who has no choice but to be governed at home by his national law. If the foreign government were to waive only enough immunity to solve the reciprocity problem, it would then discriminate against its own citizens so as to let United States citizens sue it--an equally ludicrous and improbable example of unequal protection.

The Congress itself has eliminated the reciprocity requirement in suits by aliens in the Court of Claims for tax refunds. 28 U.S.C. §2502(b), 26 U.S.C. §7422(f).

Many recent treaties of Friendship, Commerce and Navigation provide for "national" or "most favored nation" treatment with regard to access to our courts (6B Benedict on Admiralty 15-3 thru 15-33 (1982)) which means on the same basis that U.S. citizens have such access including, presumably, suits against the United States. Cf. Farmanfarmaian v. Gulf Oil Corp., 588 F.2d 880 (2 Cir. 1978). These treaties, after the enactment of the PVA in 1925, would appear to conflict with, and supersede, the reciprocity requirement in Section 5 of the PVA. But cf. Maiorano v. Baltimore & O.R.R., 213 U.S. 268 (1908).

Although the doctrine of reciprocity was embraced in a 5-4 decision by the Supreme Court nearly ninety years ago, Hilton v. Guyot, 159 U.S. 113 (1895), it has been expressly repudiated by the state courts, foremost among them, the courts of New York, Johnston v. Compagnie Generale Transatlantique, 242 N.Y. 381, 152 N.E. 121 (1926); Cowans v. Ticonderoga Pulp & Paper Co., 219 A.D. 120, 219 N.Y.S. 2d 294, aff'd, 146 N.Y. 603, 159 N.E. 669 (1927); see Tahan v. Hodgson, 662 F.2d 862 (D.C. Cir. 1981); Restatement (Revised) on the Foreign Relations Law of the United States § 491 Rep. Note 1 (Tent. Draft No. 4, April 1, 1983).

In practical operation Section 5 is applied to produce the discriminatory results that in the abstract would seem inevitable. In Luzon Stevedoring Corp. v. United States, 1970 A.M.C. 1991 (D.D.C. 1970) the Government admitted collision liability on the merits, but recovery was denied due to a lack of reciprocity. In Lauro v. United States, 162 F.2d 32 (2 Cir. 1947) a naturalized American was held to the reciprocity requirement because she was an alien when the maritime accident occurred. In Maiorano v. United States, 111 F. Supp. 817 (S.D.N.Y. 1952) an alien who was resident here for 30 years was denied a recovery due to a lack of reciprocity. See also Lopez v. United States, 102 F. Supp. 870 (E.D.N.Y. 1952). In United Continental Tuna Corp. v. United States, 550 F.2d 569 (9 Cir. 1977) American citizens owned 99 percent of the shares of the alien corporation whose collision claim was barred by a lack of reciprocity.

In Blanco v. United States, 464 F. Supp. 927 (S.D.N.Y. 1979) the decedent in a Jones Act wrongful death case was not only a citizen of the United States but a civilian employed as a seaman by the Government itself. He left a wife and ten children, all aliens, who were barred from suit unless they could establish that reciprocity existed under the foreign law.

The logical answer to the illogical operation of Section 5 is to repeal it.

2. SIAA Venue.

Congress should take advantage of the opportunity, when repealing the PVA, to tidy up the SIAA. Although generally the SIAA is broader than the PVA, this is not true of the venue provisions. Both the SIAA and the PVA provide venue in the district where the Government vessel or cargo is found, and in the district where the plaintiff resides or has a place of business. 46 U.S.C. §§ 742, 782. But the PVA goes further and provides that if there is no such district, suit may be brought in any district. 46 U.S.C. § 782.

after which denial is statutorily presumed. 46 U.S.C. § 740; see former War Shipping Adm'n Gen. Order 32, §§304.20, 304.24, 8 Fed. Reg. 5414 (1943). The uniformed services all have express authority to process maritime claims administratively. 10 U.S.C. §§ 4802, 7622, 9802; 14 U.S.C. §646.

The Federal Tort Claims Act expressly extends the statute of limitations until six months after denial of a claim by an agency. 28 U.S.C. §§ 1346(b), 2401(b). By contrast, no provision is made in the SIAA to toll the statute of limitations for the six months while the administrative claim is pending. Hahn v. United States, 218 F. Supp. 562 (E.D. Va. 1963). The Fifth Circuit recently held, in conflict with other courts, that the SIAA statute of limitations can be tolled under some circumstances while an administrative claim is pending. McCormick v. United States, 680 F.2d 345 (5 Cir. 1982).

Rather than requiring claimants to rely on such judge-made law, it would be better if the SIAA were amended to eliminate the time bar trap for the unwary, at least for cases, such as those under the Admiralty Extension Act, where the filing of an administrative claim is mandatory. The Committee takes no position on whether the statute of limitations should be tolled where an administrative claim may be filed but is not a prerequisite to suit against the Government.

5. SIAA Interest.

Section 3 of the SIAA provides for interest to run against the Government at the 1920 rate of only 4 percent. This rate is simply unfair and out-of-date. Indeed, one court lamented that it regarded itself as bound to award the Government a high rate of interest on its maritime claims, but the private litigant could recover only 4 percent on its counterclaims. In re Sincere Navigation Corp., 447 F. Supp. 672, 676 (E.D. La. 1978); see also United States v. Hougham, 301 F.2d 133 (9 Cir. 1962); Stoddard v. Ling-Temco-Vought, 513 F. Supp. 314, 330-32 (C.D. Cal. 1981).

In recent years Congress has been mindful of the need to provide for realistic interest rates in both private and Government claims litigation. Thus in the Contract Disputes Act and the Prompt Payment Act, Congress obligated the Government to pay interest on contract claims, at the rate established by the Secretary of the Treasury for the Renegotiation Board. 31 U.S.C. § 1801; 41 U.S.C. § 611. Similarly, last year Congress directed that interest in Federal suits generally run at a rate based on the coupon issue yield of Treasury bills, compounded annually. 28 U.S.C. §§ 1961(a), (b).

Thus, if the PVA were repealed, the SIAA would cover maritime torts abroad by the United States against aliens, but no district court would have venue, and suit could not be maintained unless the tort involved a Government ship or cargo which ultimately returned here.

To eliminate this lacuna, it would be desirable to add the broader venue provisions of the PVA to the SIAA.

3. SIAA Service of Process.

Section 2 of the SIAA now contains specific provisions for effecting service of process on the United States. These provisions are stricter than the requirements of Rules 4(d)(4), 4(d)(5) of the Federal Rules of Civil Procedure. See Kenyon v. United States, 676 F.2d 1229 (9 Cir. 1982); Battaglia v. United States, 303 F.2d 683 (2 Cir.), cert. dismissed, 371 U.S. 907 (1962). There can be no reason to require different formalities in maritime suits than in any other suits against the Government and the service of process provisions of Section 2 should be deleted as obsolete.

4. SIAA Statute of Limitations.

Section 5 of the SIAA now provides a two-year statute of limitations for all suits whether sounding in tort or contract. Up until a few years ago, only the broad doctrine of laches applied to most maritime claims. Under these circumstances a definite statute of limitations for claims against the Government was not inappropriate--and a two-year period, which was the same time bar provided in the 1910 Collision and Salvage conventions, seemed reasonable.

However, Congress has now enacted a three-year statute of limitations for maritime personal injury and death actions. 46 U.S.C. § 763a. Since the SIAA standard is to treat the Government "as if a private person or property were involved," the same statute of limitations ought to apply to personal injury suits against the United States as applies to such suits against everyone else. Section 2 should, therefore, be amended to provide that a two-year statute of limitations will apply, unless a different period is otherwise prescribed by Federal statute or treaty.

Another time bar problem is the requirement in some maritime tort cases that before suit is commenced a claim must be filed with the appropriate Federal agency and either be denied, or have been lodged with the agency for six months

Amendment of the SIAA interest rate, unchanged for more than sixty years, is long overdue. A suitable amendment would recite, "interest shall be granted as provided in 28 U.S.C. § 1961 unless otherwise provided by Federal statute."

Another related provision that needs to be altered involves pre-judgment interest. Section 2 of the PVA now flatly prohibits any award of prejudgment interest except in suits on Government contracts expressly stipulating for the payment of interest. Section 5 of the SIAA permits prejudgment interest, but not for the period prior to the time when suit is brought. Richmond Marine v. United States, 350 F. Supp. 1210, 1220 (S.D.N.Y. 1972). In the Prompt Payment Act, Congress recently directed interest to be paid on certain contract claims starting thirty days after receipt by the Government of a proper invoice. 31 U.S.C. §1801.

Repeal of the PVA will allow for the award of prejudgment interest in tort cases involving warships.

It is, of course, common for a district court in admiralty cases to grant prejudgment interest even from a date before the suit was filed. E.g. Bunge v. American Commercial Barge Line, 630 F.2d 1236 (7 Cir. 1980). Prior to 1932, that policy applied to suits against the United States, under the SIAA which provided in Section 3 that interest runs "as ordered by the court." But in 1932, without changing Section 3, Congress amended Section 5 to eliminate pre-litigation interest.

The legislative history of the amendment indicates that it was intended to apply only to a particular group of then time-barred cases for which the Congress was specially waiving sovereign immunity. Unhappily, the language was broad enough to apply to all cases under the SIAA and the courts have so construed it, suggesting that relief from the "hardship" caused "must be sought in Congress." United States v. Eastern S.S. Lines, 171 F.2d 589, 594 (1 Cir. 1948); National Bulk Carriers v. United States, 169 F.2d 943, 949-51 (2 Cir. 1948).

All of the cases to which the provision was intended to apply have long been concluded. Under these circumstances, the restriction on the award of pre-suit interest should be deleted, thereby restoring the full force of Section 3's authority for the court to award pre-judgment interest in its discretion and placing the Government in the same position as "if a private person or property were involved." 46 U.S.C. 742.

6. PVA Subpoenas.

Section 4 of the PVA restricts subpoenas against officers and crews of public vessels in a suit under the act

without the consent of the head of the Government department or the commanding officer of the vessel. No similar provisison now exists in the SIAA. The restriction may be worth transferring to the SIAA and expanding to cover any employee of the United States who is an officer or member of the crew of a Government vessel.

7. Arbitration, Compromise or Settlement.

Under Section 9 of the SIAA the head of the appropriate department may arbitrate, compromise, or settle any claim in which suit "will lie" under the SIAA. Section 6 of the PVA gives the Attorney General the power to arbitrate or settle such cases but, at the suggestion of Secretary of Commerce Herbert Hoover, the power of the Attorney General was restricted to cases in which suit has already been started, in order to preserve the administrative authority of the Armed Forces and Coast Guard to settle maritime claims within certain limits. 10 U.S.C. §§4802, 7622, 9802; 14 U.S.C. §646; see S. Rep. No. 941, 68th Cong. 2d Sess. 13 (1925). Upon repeal of the PVA, such administrative authority will continue to exist but Section 9 of the SIAA will be the only statutory authority for a department head to consent to arbitrate a maritime claim.

8. Miscellanenous.

There are a number of obsolete or redundant provisions in the SIAA as well as old-fashioned terms such as "libel" and "libelant". A few minor changes in phrasing would also be needed to make accommodation in the SIAA for parallel provisions repealed in the PVA. Finally, repeal of the PVA would require deletion of cross references to the PVA in other statutes, such as 46 U.S.C. § 740, 28 U.S.C. § 2680(d) and 10 U.S.C. § 7721(a).

At our Committee meeting on May 5, 1983 the Committee unanimously recommended (with two abstentions) that the Association pass the following resolution which will be offered for consideration at the November 1983 meeting:

"Resolved that the Maritime Law Association of the United States supports the enactment of legislation to repeal the Public Vessels Act and to amend the provisions of the Suits in Admiralty Act affecting venue, service, interest and prescription, and the President is authorized to designate a representative of the Association to make this resolution known, and to facilitate its implementation by the appropriate Committees of the Congress."

May 24, 1983

Michael Marks Cohen, Chairman

Joseph D. Cheavens, Vice Chairman

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Donald J. Anzelmo
Michael Hardie Bagot, Jr.
Almer W. Beale, II
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David F. Sipple
Robert C. Taylor
A. Jackson Timms

*Abstained.