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Admiralty in the US Supreme Court, or Not

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The US Supreme Court is in the news nearly every day. But not for having decided an admiralty case. Lately, it has been a rare occurrence for that court to decide an admiralty case.

There is no statute dictating which cases the US Supreme Court should hear. The court has complete discretion to decide what will be on its docket. As a general rule, it chooses cases involving an important constitutional or legal question, the interpretation of a federal statute, or a disagreement among the circuits about a point of law.

Each year, the U. S. Supreme Court receives approximately 10,000 petitions but selects only 75-80 of them to hear and decide. Of the 750-800 petitions chosen for hearing over the last decade, only four involved substantive admiralty law.

Lozman v. City of Riviera Beach, Florida

In 2013, the Supreme Court clarified what a vessel is for the purpose of determining whether admiralty jurisdiction exists. Readers may recall *Lozman v. City of Riviera Beach, Florida* 133 S. Ct. 735 (2013) [*Pacific Maritime Magazine* March 2013]. Lozman owned a 60-foot by 12-foot floating home with no motive power. He towed it to a marina owned by the city of Riviera Beach, and docked it there. After failing to evict Lozman and his floating home, the city of Riviera Beach brought an admiralty action against the floating home for unpaid dockage and trespass damages. Lozman moved to dismiss the case alleging the floating home was not a vessel, precluding the district court from exercising its admiralty jurisdiction. The district court held the floating home was a vessel and concluded it had admiralty jurisdiction. The Eleventh Circuit agreed. The US Supreme Court reversed, holding the federal statutory definition of a "vessel", namely, "every description of watercraft or other artificial contrivance used or capable or being used, as a means of transportation on water" should not be broadly construed. It reasoned the floating home was not designed to be used for transportation of persons or objects over water nor was it used for that purpose.

Kawasaki Kisen Kaisha v. Regal Beloit Corp.

In *Kawasaki Kisen Kaisha Ltd. v. Regal Beloit Corp.*, 561 US 89 (2010), the US Supreme Court addressed what law would govern through bills of lading covering four shipments of goods originating in China. The shipments were discharged from the vessels that brought them from China, and loaded onto a Union Pacific train in Long Beach for on-carriage to the US Midwest. The shipments were destroyed in a train derailment in Oklahoma.

The K-Line bills of lading had five relevant clauses. They 1) extended the bill of lading defenses to K-Line's subcontractors; 2) allowed K-Line to subcontract "on any terms whatsoever" part of the transportation; 3) provided for the application of the US Carriage of Goods by Sea Act [COGSA] to the entire transportation; 4) required disputes to be governed by Japanese law; and 5) required actions relating to the transportation to be brought in Japan.

The owners and insurers of the destroyed goods sued K-Line and Union Pacific. Union Pacific moved to dismiss the cases based on the clause in K-Line's bill of lading requiring suits to be brought in Japan. The district court granted the motion. The Ninth Circuit reversed and concluded another federal law, the Carmack Amendment, which governs interstate rail transportation applied to the rail portion of the journey and "trumped" the bill of lading provision requiring suits in Japan. The US Supreme Court accepted the case to decide whether COGSA



or the Carmack Amendment would apply. Under the former, the Japanese forum selection clause would be enforceable; under the latter, it would not be.

The court first considered COGSA which governs the terms of contracts of carriage of goods to the United States in foreign trade such as the K-Line bills of lading and does not prohibit carriers from putting forum selection clauses in them. The court also noted COGSA allows carriers to extend its application to inland transportation under a through bill of lading.

The court next considered the terms of the Carmack Amendment which would apply to a bill of lading issued by a "receiving rail carrier" and not permit a foreign forum selection clause. The court concluded Union Pacific was not a "receiving carrier" because it was not the initial carrier receiving the shipment for domestic inland transportation. Rather, it had received the shipment from K-Line. Further, the court held K-Line's choice to provide rail transportation for one portion of the journey from China did not make K-Line a rail carrier subject to the Carmack Amendment. Accordingly, the court held COGSA applied to the entire transportation of the shipments and the clause requiring litigation in Japan was enforceable.

Atlantic Sounding v. Townsend

In *Atlantic Sounding Co., Inc v. Townsend*, 557 US 404 (2009), the US Supreme Court held an injured seaman can recover punitive damages when his employer fails to pay maintenance and cure. Townsend was injured when he slipped on the deck of a tug owned by his employer, Atlantic Sounding. Atlantic Sounding refused to pay maintenance and cure. (Maintenance and cure is the vessel owner employer's obligation to provide food, lodging and medical services to its seaman employee when injured while in the service of the vessel.) Atlantic Sounding and Townsend sued each other and Townsend sought punitive damages.

The district court denied Atlantic Sounding's motion to dismiss the punitive damages claim. The Eleventh Circuit agreed and held punitive damages may be awarded for the willful withholding of maintenance and cure. Because the Eleventh Circuit decision conflicted with those of other circuits, the US Supreme Court accepted the case.

The Supreme Court recognized that punitive damages for wanton, willful, or outrageous conduct have been a part of American jurisprudence since at least 1784 and recoverable in admiralty cases involving "tortious acts of a particularly egregious nature." The court held claims for maintenance and cure were not an exception to the rule allowing the recovery of punitive damages. Further, the court held the enactment of the Jones Act, which gives injured seamen a right to recover compensatory but not punitive damages from their employers for negligence did not preclude common law remedies, including the right to maintenance and cure and punitive damages.

Exxon v. Baker

In 2008, the US Supreme Court provided guidelines for the calculation of punitive damages when recoverable in an admiralty case. *Exxon Shipping Co. et al v. Baker*, 554 US 471 (2008) arose out of the 1989 grounding of the ***Exxon Valdez***. As a result of a criminal prosecution by the United States, Exxon agreed to pay a fine and restitution. Exxon also paid for the restoration of the environment, and settled the claims of some fishermen, property owners, and other private parties. The remaining claimants proceeded with their cases against Exxon and the tanker's master, Joseph Hazelwood.



Exxon conceded it was negligent and owed compensatory damages to the plaintiffs. The case then proceeded to a three-phase trial. Phase I was to determine whether Exxon and Hazelwood were reckless and subject to an award of punitive damages. Phase II was to determine the amount of compensatory damages owed to the plaintiffs. Phase III was to determine the amount of punitive damages.

In phase I, the judge instructed the jury that a corporation is liable for the reckless acts of its managerial employees while acting in the scope of their employment. The jury found Hazelwood and Exxon to have been reckless and liable for punitive damages.

In phase II, the jury awarded compensatory damages against Exxon in the amount of \$287 million. When added to the amounts already paid by Exxon, the compensatory damages exceeded \$500 million. In phase III, the jury awarded punitive damages of \$5,000 against Hazelwood and \$5 billion against Exxon.

On appeal, the Ninth Circuit agreed with the jury instruction about corporate liability for the acts of the corporation's managerial employees in the scope of their employment. However, the Ninth Circuit sent the case back to the district court twice for adjustment in the amount of the punitive damages award, and later reduced the amount of punitive damages to \$2.5 billion.

The US Supreme Court accepted the case for review to decide important questions of maritime law. It was equally divided on whether maritime law allows a corporation to be held liable for punitive damage based on the acts of its managerial employees. (Only eight of the nine members of the court were involved in the case because Justice Alito owned stock in Exxon Mobil and recused himself.) Accordingly, the Ninth Circuit's ruling on the issue could not be reversed.

The US Supreme Court also held punitive damages were recoverable in light of the longstanding common law doctrine of punitive damages. Moreover, the court noted the language of the Clean Water Act, which Exxon violated, did not preclude an award of punitive damages. Finally, the court held that in admiralty cases, punitive damages should be: 1) in an amount sufficient to deter the defendant and others from engaging in similar conduct; 2) proportionate to the defendant's conduct and ability to pay; and 3) not designed to financially destroy the defendant. It also reasoned the amount of punitive damages should be "reasonably predictable in its severity." To accomplish these goals, the court concluded the amount of punitive damages in a maritime case should not exceed the amount of compensatory damages recovered. The case was sent back to the Ninth Circuit for a revised judgment consistent with the 1:1 ratio guideline.

Admiralty lawyers and those in the maritime business look forward to the pronouncements of the US Supreme Court in maritime cases. Unfortunately, those pronouncements are few and far between.