

SECOND CIRCUIT

Crawford v Electric Boat Corp., 2007 US Dist. LEXIS 74385 (D. Conn. Oct. 5, 2007).

Crawford was employed as an engineer aboard the SSN-023 (aka the USS Jimmy Carter), which was owned by Electric Boat but in the substantial possession and control of the United States. While working aboard the vessel, Crawford contracted an infection that subsequently spread to his wife and two children. Crawford and his family filed suit against the company and the United States, alleging that the defendants were negligent in making the vessel seaworthy. Electric Boat filed a motion to dismiss, arguing that the case should have been filed pursuant to the Suits in Admiralty Act, not the Federal Tort Claims Act. The United States District Court for the District of Connecticut agreed and granted the defendants' motion to dismiss.

<http://www.nysd.uscourts.gov/courtweb/public.htm>

FOURTH CIRCUIT

Bowman Apple Products Co. v State Water Control Board, 2007 Va. App. LEXIS 345 (Va. Ct. App. Sept. 18, 2007).

Bowman Apple Products Company, Inc. holds a Virginia Pollution Discharge Elimination System (VPDES) permit issued by the State Water Control Board that allows the company to discharge wastewater from its manufacturing operations into the Shenandoah River. The permit contains an "inspection and entry" provision that allows the Virginia Department of Environmental Quality (VDEQ) to monitor the company's compliance with the permit. During one inspection, the company refused to let the VDEQ take photographs. The State Water Control Board subsequently added a provision to the company's discharge permit stating that if the company prevented photographs from being taken during the inspections, it would be considered a violation of the VPDES permit. A trial court amended the requirement to prohibit the company from restricting photography "reasonably related" to inspection activities. The appellate court upheld the amended provision, rejecting arguments that the requirement was arbitrary and capricious. The court found that the amendment was authorized by Virginia state law, and, furthermore, the evidence of the company's refusal to allow photography supported the VDEQ's decision to amend the permit.

<http://www.courts.state.va.us/opinions/opncavwp/1977064.pdf>

FIFTH CIRCUIT

Spector v Norwegian Cruise Line Ltd., 2007 US Dist. LEXIS 73229 (D. Tex. Sept. 28, 2007).

In 2000, several cruise ship passengers alleged that Norwegian Cruise Line violated the Americans with Disabilities Act (ADA) by having physical barriers aboard the ship and by having pricing structures and corporate policies that had a discriminatory impact on them. The physical barrier claims were dealt with in prior court rulings. In this proceeding, Norwegian sought summary judgment on the corporate policy claims, arguing that the plaintiff's claims were moot because it had sold the two ships that were at the basis of the plaintiffs' complaint. The court first ruled that the plaintiffs' claims were not limited to the two ships that had been sold, because the corporate policies at issue were company-wide and not limited to the two ships. The court held that the plaintiffs did have standing to bring claims regarding Norwegian's policies and that the sale of the two ships did not render the claim moot.

<https://ecf.txsd.uscourts.gov/cgi-bin/login.pl>

Kaluom v Stolt Offshore, 2007 US App. LEXIS 23813 (5th Cir. Oct. 10, 2007).

Jenggi Kaluom, a Malaysian citizen, worked on a foreign vessel in US waters. While at sea, Kaluom was injured. He later filed a penalty wage claim against Stolt Offshore. The United States District Court for the Southern District of Texas granted Stolt summary judgment because the vessel on which Kaluom was injured was on neither an intercoastal nor a foreign voyage as required by the penalty wage statutes. On appeal, the Fifth Circuit affirmed. The court ruled that the voyage type requirements apply to crewmembers on foreign vessels. Since Kaluom's vessel was involved with laying sub-sea pipeline in US waters, and not making one of the required voyages, he could not recover penalty wages.

<http://www.ca5.uscourts.gov/opinions/pub/06/06-40396-CV0.wpd.pdf>

EIGHTH CIRCUIT

United States v Bailey, 2007 US Dist. LEXIS 71188 (D. Minn. Sept. 25, 2007).

In preparation for a residential development, Gary Bailey authorized construction of an access road through a 13-acre site consisting mainly of wetlands without first obtaining a Section 404 permit. The Corps informed Bailey that the permit would be necessary and Bailey filed an application for the permit. Despite instructions to stop road construction while the permit was pending, Bailey completed the road. The Corps ultimately denied the Section 404 permit application and Bailey was ordered to restore the property to its original condition. The United States brought an action to enforce the order. The United States District Court for the District of Minnesota granted the United States partial summary judgment, filing an injunction requiring Bailey to comply with the restoration order at his own expense.

<http://www.nysd.uscourts.gov/courtweb/public.htm>

NINTH CIRCUIT

Oregon Natural Resources Council Fund v Goodman, 2007 US App. LEXIS 22614 (9th Cir. Sept. 24, 2007).

Several environmental groups contested the United State's Forest Service's approval of a proposed expansion of a ski resort within the Rogue River and Klamath National Forest. The United States District Court for the District of Oregon granted summary judgment in favor of USFS. On appeal, the Ninth Circuit reversed the district court, holding that USFS had violated the National Environmental Policy Act and the National Forest Management Act by not properly evaluating the project's impact on the Pacific fisher. The court found that the approval also violated the NFMA by not designating riparian reserves and restricted watershed terrain.

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/499E49C2E3B21A128825736000533BBA/\\$file/0735110](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/499E49C2E3B21A128825736000533BBA/$file/0735110)

Friends of Pinto Creek v EPA, 2007 US App. LEXIS 23251 (9th Cir. Oct. 4, 2007).

The EPA issued a National Pollution Discharge Elimination System (NPDES) permit to Carlota Copper Company that allowed mining-related discharges into Pinto Creek, a river in Arizona. Several environmental groups sought a review of the permit in the Ninth Circuit. The Ninth Circuit granted the petition for review. The court found that the company's discharge of dissolved copper into the already impaired river would violate § 122.4(i) of the Clean Water Act, which specifies that a permit may not be issued to a new discharger that will contribute to the violation of water quality standards. Furthermore, the court agreed with the environmental groups that the permit was issued in violation of NEPA, because EPA failed to take a "hard look" at discharges from two diversion channels.

<http://caselaw.lp.findlaw.com/data2/circs/9th/0570785p.pdf>

ELEVENTH CIRCUIT

Florida

Papadopoulos v Cruise Ventures Three Corp., 2007 Fla. App. LEXIS 14584 (Fla. 3rd DCA Sept. 19, 2007).

In 2000, Solon M. Papadopoulos' vessel encountered a severe storm that caused it to sink. Papadopoulos filed suit, claiming that he developed post-traumatic stress disorder and leukemia as a result of the incident. In the preliminary stages of the case, Papadopoulos claimed that he was both medically and physically fit prior to the accident, that he was not taking any medicine or drugs, and that he had not previously been diagnosed with or received treatment for leukemia. He maintained that he had never been involved in litigation and that he had never received disability benefits or pension benefits in his native country. When the defense presented evidence that all of Papadopoulos' claims were false, the trial court dismissed the suit. On appeal, the court affirmed the trial court's ruling, noting that Papadopoulos forfeited his right to bring suit for the injuries when he made material misrepresentations and omissions about his claim to the court.

<http://www.3dca.flcourts.org/Opinions/3D06-1835.pdf>

Mellor v Moe, 2007 US Dist. LEXIS 71838 (D. Fla. Sept. 27, 2007).

A 21 year-old man, James Mellor, was killed while vacationing in the Bahamas when his jet ski collided with a 30-foot boat. Mellor's parents brought a Death on the High Seas Act (DOSHA) claim against the owner and operator of the vessel involved in the collision, Jens Peter Moe, as well as other defendants who were later dismissed. Moe argued that DOSHA was inapplicable to the case and that he was not negligent in the operation of his vessel. Based on several other court decisions, the court held that DOSHA jurisdiction extends to foreign territorial waters. To apply DOSHA to this case, the court used the International Regulations for Preventing Collisions at Sea to determine which party was negligent. The court found that based on Rules 13 and 15, Moe was partially to blame; however, the court found that the jet skis were also negligent under Rule 8(f)(iii). The court held that each party was 50% negligent and awarded the plaintiffs damages accordingly.

https://ecf.flsd.uscourts.gov/cgi-bin/login.pl?501635265586971-L_186_0-1

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

Forty six Texas irrigation districts, individuals, and corporations, known as "Bayview Irrigation District et al." brought an arbitration claim against Mexico to the International Center for the Settlement of Investment Disputes (Center) for a decision regarding water rights to the Rio Grande. The Center was formed under NAFTA Chapter 11. Mexico contended that the parties' claims were outside the jurisdiction of NAFTA, and, therefore, the tribunal did not have jurisdiction to hear the dispute. The Center agreed. Chapter 11 of NAFTA would have required that Bayview Irrigation District qualify as investors or have an investment in Mexico. The Center found that the claimants did not meet these requirements, because their investment was exclusively within the State of Texas and regulated by US law.

http://www.worldbank.org/icsid/cases/pdf/Bayview_English_June19_2007.pdf

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