Ocean and Coastal Case Alert

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SECOND CIRCUIT

Connecticut

Fanotto v Inlands Wetlands Comm'n, 2008 Conn. App. LEXIS 272 (Conn. App. Ct. June 3, 2008).

The Seymour, Connecticut Inlands Wetland Commission denied property owners a permit to buil subdivision on their property. The property owners appealed the decision to a trial court, which dismiss their appeal. The landowners appealed their decision, arguing that the Commission lacked adequat support for the denial of the application. The appellate court agreed. The landowners provided credib expert testimony showing that the subdivision would have a minimal impact on the wetlands, an Commission did not rebut the experts' findings. The appellate court reversed the trial court's decision.

http://www.jud.ct.gov/external/supapp/Cases/AROap/AP108/108AP328.pdf

FOURTH CIRCUIT

AES Sparrows Point LNG, LLC v Smith, 2008 USUS App. LEXIS 10664 (4th Cir. Md. May 19, 2008).

Baltimore County adopted a bill that prohibited the siting of any liquefied natural gas terminal in Chesapeake Bay Critical Area. Two companies filed suit, alleging that the bill was preempted by federa law. The United States District Court for the District of Maryland granted summary judgment to the coun and the plaintiffs appealed. The Fourth Circuit reversed the judgment. The Coastal Zone Manageme includes a savings clause for state laws that are part of a state's federally-approved Coastal Z Management Plan; however, the court found that the bill was an amendment to the state's CZMP that ha not been approved by the National Oceanic and Atmospheric Administration (NOAA). Therefore, tl preempted until NOAA approves an amendment incorporating the bill.

http://pacer.ca4.uscourts.gov/opinion.pdf/071615.P.pdf

FIFTH CIRCUIT

Willis v Fugro Chance, Inc., 2008 US App. LEXIS 10838 (5th Cir. May 21, 2008).

As an employee of Fugro Chance, Stephen Willis assisted the company with coordinating the positioning of offshore drilling rigs and other devices used in producing offshore energy. While performing his du aboard an offshore drilling unit owned by one of the company's clients, he was exposed to mercury an other toxic chemicals that damaged his brain and central nervous system. He sued his employer under the Jones Act. The United States District Court for the Eastern District of Texas granted summary judgment to

did not own or control the vessels on which Willis worked, he did not meet the requirements of the Chandris Rule and could not recover damages from negligence under the Jones Act.

http://www.ca5.uscourts.gov/opinions%5Cunpub%5C07/07-41104.0.wpd.pdf

McLaurin v Noble Drilling (US) Inc., 2008 US App. LEXIS 11054 (5th Cir. May 22, 2008).

While working in a shipyard as a scaffold carpenter for an offshore drilling unit, Mark McLaurin was injured when an object fell from an unattended crane, crushing his left hand and arm. McLaurin received m benefits and compensation from the shipyard owner under the Longshore Harbor and Worke Compensation Act (LHWCA). McLaurin then sued the owner of the offshore drilling unit, which was located 200 feet from his worksite, under state and federal law claiming that the owner had assumed control over the project and had negligently followed safety procedures. The United States District Court for the Southern District of Mississippi granted summary judgment to the owner of the offshore drilling unit, finding that the actions were preempted by the LHWCA. On appeal, the Fifth Circuit found that al McLaurin's claim under 33 USC.S. 905(b) of LHWCA was preempted, the state-law tort claim wa preempted by the LHWCA. Accordingly, the court reversed the district court's dismissal of the state-law tort claims.

http://www.ca5.uscourts.gov/opinions/pub/07/07-60402-CV0.wpd.pdf

Envtl. Conservation Org. v City of Dallas, 2008 US App. LEXIS 11381 (5th Cir. May 27, 2008).

An environmental group brought a Clean Water Act (CWA) suit against the city of Dallas regarding the city's compliance with its CWA permit. The United States District Court for the Northern District of T granted summary judgment in favor of the city. The district court found that the suit was barred by *res judicata*, a doctrine that bars litigation of an issue that has been decided in a prior judicial decision, given that the Environmental Protection Agency had entered a consent decree in a separate enforcement action. On appeal, the environmental group argued that *res judicata* did not apply to CWA citizen suits. The Fifth Circuit found that the EPA consent decree did not give rise to an immediate *res judicata* dismissal. However, the court held that the consent decree rendered the citizen suit moot, because the environmental group did not prove that the CWA violations would continue notwithstanding the cons decree. The Fifth Circuit vacated and remanded the case to the district court, with instructions to dismiss the case based on mootness.

http://www.ca5.uscourts.gov/opinions/pub/07/07-10583-CV0.wpd.pdf

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