

~ ~ November 15, 2005 ~ ~

FIRST CIRCUIT

Puerto Rico

Puerto Rico Ports Auth. v. Barge Katy, 2005 U.S. App. LEXIS 23010 (1st Cir. Oct. 25, 2005). The Puerto Rico Ports Authority (PRPA) lost its lawsuit over pier fees owed by the owner of a barge, with the lower court quashing the arrest of the vessel due to PRPA's waiver of its maritime lien. PRPA filed an interlocutory appeal. The First Circuit held that PRPA indeed had waived its maritime lien, and PRPA's other claims were dismissed for lack of jurisdiction.

<http://laws.findlaw.com/1st/051016.html>

THIRD CIRCUIT

Hartz Mountain Indus., Inc. v. Polo, 2005 U.S. Dist. LEXIS 25411 (D.N.J. Oct. 26, 2005).

Hartz filed suit over a permit the ACOE issued for the filling of wetlands in New Jersey's Meadowlands. The Plaintiff claimed the permit issuance, failure of ACOE to prepare an Environmental Impact Statement, and the proposed construction of a hotel and entertainment center on the site would violate the National Environmental Protection Act, the Clean Water Act, and the Rivers and Harbors Act. The Court held the plaintiffs lacked standing, since they failed to demonstrate a cognizable injury in fact and could not show a 'genuine nexus' between their supposed injuries and ACOE's conduct. The lawsuit was dismissed. This is an unpublished court opinion which does not constitute precedent and is not binding upon any court.

FOURTH CIRCUIT

North Carolina

Parker v. New Hanover County, 619 S.E.2d 868 (N.C. Ct. App. Oct. 18, 2005).

Parker filed suit to avoid paying a special assessment for the relocation of a coastal inlet, which had been changing shape and affecting navigation. Parker claimed the assessment violated North Carolina law and its constitution. The Court held the assessment was constitutional, because the relocation would serve a public purpose and was authorized under state law.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2005/pdf/041093-1.pdf>

Fabrikant v. Currituck County, 2005 N.C. App. LEXIS 2219 (N.C. Ct. App. Oct. 18, 2005).

Plaintiffs in the Whalehead Club community sued North Carolina and several state agencies, seeking a declaratory judgment that would affirm their ownership of beachfront property between the high tide mark and the vegetation line. Plaintiffs bought their property based on assurances from sellers that their dry sand beaches were private property. Plaintiffs filed this interlocutory appeal after the trial court dismissed five of their twenty-three claims. The Appeals Court dismissed the appeal, due to the plaintiffs' failure to properly claim that the state had waived its sovereign immunity and lack of proof showing the state claimed title to the dry sand beaches.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2005/pdf/040250-1.pdf>

Virginia

Alliance to Save the Mattaponi v. Commonwealth Dep't of Env'tl. Quality ex rel. State Water Control Bd., 2005 Va. LEXIS 100 (Va. Nov. 4, 2005).

The Mattaponi Indian Tribe, Sierra Club and others filed suit over a permit issued by the Virginia Water Control Board to construct the King William Reservoir. The plaintiffs claimed the permit had been issued without sufficient scientific information, the reservoir might pose environmental hazards to the Mattaponi River, and the project would impinge on the Tribe's rights to 'hunt, fish, and gather,' as secured by the 1677 Treaty at Middle Plantation. The Court found the Board had relied on adequate scientific data in granting the permit, and that state law should govern the Tribe's treaty claims. The case was remanded.

<http://www.courts.state.va.us/opinions/opnscvwp/1042196.pdf>

Evelyn v. Commonwealth Marine Res. Comm'n, 2005 Va. App. LEXIS 428 (Va. Ct. App. Oct. 25, 2005).

Evelyn, a waterfront property owner along the Pamunkey River in Virginia, applied for a pier construction permit from the Virginia Marine Resources Commission (VMRC). The permit was issued, but Evelyn built a roof/deck with stairs on the pier, which the permit did not authorize. VMRC demanded that Evelyn remove the deck and stairs, and Evelyn filed suit. The Court of Appeals held that, without a permit, Virginia law limited Evelyn's wharfing rights to building only those structures "necessary" to access the river. The roof/deck and stairs were not necessary and VMRC had the authority to order them removed.

<http://www.courts.state.va.us/opinions/opncavwp/2945042.pdf>

FIFTH CIRCUIT

Holmes v. Atl. Sounding Co., 2005 U.S. App. LEXIS 23122 (5th Cir. Oct. 25, 2005).

Holmes was injured while working onboard a moored dormitory barge owned by Weeks Marine. She filed suit under general maritime law and the Jones Act. The Fifth Circuit held that the dormitory barge was not a vessel under the Jones Act, since it had no means of self-propulsion, no radar, and there was no evidence of any personnel being transported on the barge when it was towed to a new location. The Court upheld the lower court's dismissal of the Jones Act and general maritime claims.

<http://www.ca5.uscourts.gov/opinions/pub/04/04-30732-CV0.wpd.pdf>

SEVENTH CIRCUIT

Bricks, Inc. v. EPA, 426 F.3d 918 (7th Cir. Oct. 21, 2005).

Bricks began filling wetlands on its property before securing the necessary permits from the Army Corps of Engineers. The EPA sued Bricks, claiming the company had discharged dredge and fill material into wetlands near Illinois' navigable Fox River, thus violating the Clean Water Act (CWA). Bricks successfully argued that the wetlands were not subject to the CWA and demanded attorney's fees in excess of the statutory limit. The Seventh Circuit denied this demand, finding that the EPA had a reasonable basis and adequate evidence for attempting to fine Bricks for the alleged CWA violation.

<http://www.ca7.uscourts.gov/tmp/NU021T1M.pdf>

NINTH CIRCUIT

Pac. Coast Fed'n of Fishermen's Ass'ns v. United States Bureau of Reclamation, 426 F.3d 1082

(9th Cir. Oct. 18, 2005).

Several groups sued the U.S. Bureau of Reclamation and the National Marine Fisheries Service, claiming the government failed to show how the threatened Southern Oregon/ Northern California Coast coho salmon would be protected from the adverse impacts of an irrigation project. The Ninth Circuit ruled that the irrigation plan violated the Endangered Species Act, since the ten-year plan did not include information regarding the protection of coho salmon during the first eight years.

<http://caselaw.lp.findlaw.com/data2/circs/9th/0316718p.pdf>

Washington

Thielen v. Blazer, 2005 U.S. Dist. LEXIS 26422 (W.D. Wash. Oct. 21, 2005).

Thielen was injured while working onboard a vessel owned by Blazer Fishing, Inc. Thielen sued for maintenance to cover the eighteen months his wounds would need to heal, despite returning to work three weeks after he was injured. Blazer asked the court to dismiss the case. The Court held that, under maritime law, Thielen's return to work did not automatically prove that that he was fit to do so. The court denied Blazer's dismissal motion.

United States v. Washington, 2005 U.S. Dist. LEXIS 26403 (W.D. Wash. Oct. 27, 2005).

The Tulalip Tribes asked the District Court to determine that certain marine waters around Puget Sound were outside of the Suquamish Tribe's usual and accustomed fishing grounds. The Court denied the determination request, finding that the Tulalip waited too long to file their claim and dismissed the case. The Tulalip should have asked for this determination in a previous hearing held in 1975 and/or a subsequent 1983 settlement.

TENTH CIRCUIT

Paper, Allied-Industrial, Chem. and Energy Workers Int'l. Union v. Cont'l. Carbon Co., 2005

U.S. App. LEXIS 24036 (10th Cir. Nov. 8, 2005).

Plaintiffs claimed a rubber and plastic-producing manufacturer was discharging wastewater into Oklahoma's Arkansas River, in violation of the Clean Water Act (CWA). The Court ruled that Oklahoma's water pollution laws were comparable to the CWA, which gave the state jurisdiction over water pollution cases involving civil penalties.

<http://www.kscourts.org/ca10/cases/2005/11/03-6243.htm>

United States v. Ortiz, 2005 U.S. App. LEXIS 23559 (10th Cir. Nov. 02, 2005).

A jury convicted Ortiz of violating the Clean Water Act (CWA) by negligently discharging industrial wastewater into the Colorado River. The trial court then acquitted Ortiz, claiming a charge of negligent discharge required knowledge that the discharge would end up in protected waters. The Tenth Circuit reversed the acquittal, stating that the CWA did not require such knowledge; ordinary negligence was sufficient to violate the CWA.

<http://laws.lp.findlaw.com/10th/044198.html>

ELEVENTH CIRCUIT

Florida

Fla. Wildlife Fed'n v. United States Army Corps of Eng'rs, 2005 U.S. Dist. LEXIS 27356 (S.D. Fla. Nov. 10, 2005).

The Florida Wildlife Federation and Sierra Club sued the U.S. Army Corps of Engineers (ACOE), following the issuance of a permit to fill wetlands in Florida. In a previous decision, the Court held that ACOE had acted arbitrarily and capriciously in granting the permit, and directed each side to prepare a memorandum of law regarding which remedies would be sought. On November 10, the Court decided that the appropriate remedies were to set aside the issued permit, require an environmental assessment of the area to be developed before further construction commenced, and remand the matter to ACOE.

<http://www.flsd.uscourts.gov/viewer/viewer.asp?file=/cases/opinions/05cv80339d99.pdf>