

SECOND CIRCUIT

Lord Family of Windsor, LLC v Inland Wetlands & Watercourses Commission of Windsor, 103 Conn. App. 354 (Conn. App. Ct. Aug. 21, 2007)

The Inland Wetlands and Watercourses Commission of Windsor, Connecticut, denied a developer's application to modify a subdivision plan. On review in superior court, the commissioner of environmental protection intervened as a defendant and the trial court ruled in favor of the agency and commissioner. On appeal, the developer argued that the agency lacked the necessary evidence regarding the impact of the subdivision on surrounding wetlands and watercourses to deny its application. The Appellate Court of Connecticut found that the agency's evidence regarding the lack of structural integrity of the culvert and the negative impact of the access and neck roads was speculative. The court reversed the agency's denial of the developer's application.

<http://www.jud.state.ct.us/external/supapp/Cases/AROap/AP103/103ap424.pdf>

FIFTH CIRCUIT

Leonard v Nationwide Mutual Insurance Co., 2007 US App. LEXIS 20947 (5th Cir. Aug. 30, 2007)

In a case involving insurance coverage for a house damaged by Hurricane Katrina, the United States District Court for the Southern District of Mississippi struck down a clause in the homeowner's insurance policy that precluded the homeowners from collecting insurance because their house was damaged by a storm surge. The clause in question, an anticoncurrent-causation clause (ACC), stipulated that the policy did not cover damage that was caused by a combination of covered and excluded perils. On appeal, the Fifth Circuit held that the ACC clause was valid. The court noted that the clause was not ambiguous and that it had been approved by the state insurance commission. Furthermore, the court held that the rule could override the common law rule on efficient proximate causation. The homeowners also argued that they relied on statements by the insurance agent regarding their coverage. The court rejected this argument because the policy specifically stated that it could not be orally modified.

<http://www.ca5.uscourts.gov/opinions/pub/06/06-61130-CV0.wpd.pdf>

O'Neill v SeaRiver Maritime, Inc., 2007 US App. LEXIS 21016 (5th Cir. Aug. 30, 2007)

Douglas O'Neill worked aboard a SeaRiver Maritime vessel that transported crude oil. While aboard the ship, his duties included gauging and sampling the cargo tanks. After the voyage, O'Neill suffered neurological damage and brought suit against the company, alleging that his injuries resulted from exposure to large amounts of hydrogen sulfide vapors aboard the vessel. The United States District Court for the Southern District of Texas concluded that O'Neill was exposed to hydrogen sulfide at 200 ppm or greater levels and found the maritime company liable under the Jones Act. The Fifth Circuit upheld the judgment on appeal. The court found sufficient evidence that O'Neill was exposed to the toxic levels, including the fact that other crew members exhibited symptoms consistent with exposure to high levels of hydrogen sulfide.

<http://www.ca5.uscourts.gov/opinions/unpub/07/07-40029.0.wpd.pdf>

SEVENTH CIRCUIT

In re Illinois Marine Towing, 2007 US App. LEXIS 19746 (7th Cir. Aug. 20, 2007)

A marine towing company, Illinois Marine Towing (IMT), was involved in a marine collision. When the injured parties filed suit in state court, the company filed a petition in federal district court to limit its liability under the Limitation of Shipowners' Liability Act. The district court enjoined the state court proceedings. The United States District Court for the Central District of Illinois granted the injured plaintiffs a motion to modify a stay and allowed them to pursue their actions in state court. IMT appealed. Because the plaintiffs had stipulated to the district court's exclusive jurisdiction over all limitation of liability issues and waived any *res judicata* claims, the court determined that the claimants' stipulations adequately protected the towing company's right to have all limitation issues decided in federal court. The Seventh Circuit concluded that the district court did not abuse its discretion in lifting the stay of the claimants' state court actions and affirmed the district court's order.

<http://www.ca7.uscourts.gov/tmp/6M0XCCEJ.pdf>

EIGHTH CIRCUIT

In re Alexandria Lake Area Sanitary Dist., 2007 Minn. App. Unpub. LEXIS 874 (Minn. Ct. App. Unpub. Aug. 28, 2007)

The Alexandria Lake Area Sanitary District's wastewater treatment facility was designed and approved to treat 3.75 million gallons of sewage per day. Pursuant to that permission, the district discharged treated effluent into Lake Winona. Despite the lake's listing as an impaired water due to its excessive phosphorus levels, the Minnesota Pollution Control Agency (MPCA) reissued a National Pollutant Discharge Elimination System (NPDES) permit. The Minnesota Center for Environmental Advocacy sought review of the agency's decision with the Court of Appeals of Minnesota. On review, the appellate court found that the MPCA erred by ignoring a federal regulation that requires the agency to calculate and enforce effluent limits for phosphorus. The court reversed the reissued permit and remanded the case to the lower court.

NINTH CIRCUIT

Lockett v Catalina Channel Express, Inc., 2007 US App. LEXIS 18850 (9th Cir. Aug. 7, 2007)

After a passenger aboard a Catalina Channel Express (CCE) ferry requested an area free of animal dander, the company adopted a policy of excluding animals from a passenger lounge area. When Tricia Lockett, a legally blind patron, attempted to buy a ticket to the lounge area, the ferry company refused to sell her a ticket because her guide dog was prohibited from entering the area. The company changed its policy two weeks later; however, two months later, Lockett brought suit under the Americans with Disabilities Act (ADA). The United States District Court for the Central District of California granted CCE summary judgment. Lockett appealed to the Ninth Circuit. The court of appeals found that requiring Lockett to remain in the general passenger area was not a permissible accommodation under the ADA, because that area was not equivalent to the lounge. However, the Ninth Circuit affirmed the district court's judgment, reasoning that the ferry operator's actions were a one-time reasonable judgment that the company made while it was investigating the competing interests of the other passengers.

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/A6A47F98B17E83F8882573320059A478/\\$file/0556483.pdf](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/A6A47F98B17E83F8882573320059A478/$file/0556483.pdf)

NRDC v Winter, 2007 US App. LEXIS 20965 (9th Cir. Aug. 31, 2007)

After the United States District Court for the Central District of California issued a preliminary injunction enjoining the Navy's use of mid-frequency active sonar (MFA) during training exercises, the US Navy, along with other government agencies, filed a motion to stay the injunction. The Ninth Circuit granted the Navy's motion, finding that the district court erred in only considering the environmental impacts of the testing and not weighing the public interest in an effective national defense during wartime. The court also determined that the injunction was too broad, as the district court completely prohibited the exercises and gave no explanation as to why mitigation measures that the Navy had used in the past could not be used.

<http://caselaw.lp.findlaw.com/data2/circs/9th/0756157p.pdf>

Alaska

Pasternak v State, 2007 Alas. LEXIS 107 (Alaska Sept. 7, 2007)

In 1985 the Commercial Fisheries Entry Commission (CFEC) limited participation in the Northern Southeast Inside sablefish longline fishery to a maximum of seventy-three permits. The permits are issued to fishermen based on a point system that weighs an applicant's previous participation in the fishery. Walter Pasternak, an Alaskan fisherman, applied for a permit and was denied. Pasternak challenged CFEC's determination in superior court, claiming that he should have been awarded additional points for extraordinary circumstances. He also contended that CFEC erred in determining that seventy-three is the optimal number of permits. The superior court upheld CFEC's decisions. On appeal, the Alaska Supreme Court held that Pasternak's challenges to the number of permits for this fishery were foreclosed, because the supreme court had previously decided that seventy three was the maximum and optimum number of permits. The court, therefore, affirmed the superior court's decision.

<http://touchngo.com/sp/html/sp-6159.htm>

DC CIRCUIT

N.C. Fisheries Association v Gutierrez, 2007 US Dist. LEXIS 60047 (D.D.C. Aug. 17, 2007)

The North Carolina Fisheries Association, Avon Seafood, and two North Carolina fishermen brought suit challenging Amendment 13(C) of the South Atlantic Snapper-Grouper Fishery Management Plan. The plaintiffs claimed that the Secretary of Commerce violated the Magnuson-Stevens Fishery Conservation and Management Act, the Regulatory Flexibility Act, and the Administrative Procedure Act by passing the amendment. The United States District Court for the District of Columbia found that although Amendment 13(C) was designed to end overfishing of certain species, the plan neglected to establish a plan for rebuilding stocks of snowy grouper and black sea bass. The court held that the omission of the rebuilding plan was a violation of 16 USC.S. §§ 1851(a)(8) and 1853(a)(10) of the Magnuson-Stevens Act and granted partial summary judgment to the plaintiffs.

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

Environmental Defense v United States Army Corps of Engineers, 2007 US Dist. LEXIS 67633 (D.D.C. Sept. 13, 2007)

Environmental Defense and the National Wildlife Federation claimed that the Army Corps of Engineers' authorization of a flood control project in Missouri violated several federal acts. The United States District Court for the District of Columbia agreed that the Corps of Engineers used arbitrary and capricious reasoning. The court found that the Corps manipulated models and changed definitions to make the project comply with the Clean Water Act (CWA) and (NEPA). Because the Corps violated the Administrative Procedure Act, the court granted the plaintiffs' motion for summary judgment and enjoined further construction on the project. The court further ordered the Corps to restore any changes caused by preliminary construction work.

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

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Japan v Russian Federation (The "Tomimaru" Case), International Tribunal for the Law of the Sea, Case No. 15 (Aug. 6, 2007)

In October 2006, a Japanese fishing vessel was detained by Russian inspectors who found that the vessel had fish not included in and in excess of its license. Russian courts ordered the vessel confiscated and the owner to pay a fine. Japan applied to the ITLOS against the Russian Federation pursuant to Article 292 of the Convention, alleging that Russia violated an article requiring the prompt release of arrested vessels after posting of a bond. The International Tribunal for the Law of the Sea unanimously held that it would not render a decision on the case because Russian courts had already concluded their proceedings.

http://www.itlos.org/case_documents/2007/document_en_296.pdf

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