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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the July 2020 issue of *Ocean and Coastal Case Alert*.

The Case Alert is a monthly newsletter highlighting recent court decisions impacting ocean and coastal resource management. (NSGLC-20-03-07).

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SECOND CIRCUIT

New York

Natural Resources Defense Council v. Bodine, No. 20 Civ. 3058, 2020 WL 3838017 (S.D.N.Y. July 8, 2020).

On March 26, 2020, the Environmental Protection Agency (EPA) issued a temporary policy stating that the agency will not seek civil penalties for regulatory violations in which COVID-19 is the cause of noncompliance. Fifteen environmental justice, public health, and public interest organizations petitioned the EPA to require entities to provide written notice to the EPA of their noncompliance that would then be made available to the public. After no response from the EPA, the organizations filed suit, claiming the EPA unreasonably delayed its response. The court ruled that the plaintiffs failed to establish standing. The court determined that the plaintiffs did not sufficiently establish that their injury was concrete or that the alleged injury was fairly traceable to the EPA's delayed response to the plaintiffs' petition. Thus, the plaintiffs' motion for summary judgment was denied, and the EPA's cross-motion for summary judgment was granted.

Opinion Here

ELEVENTH CIRCUIT

Lebron v. Royal Caribbean Cruises Ltd., No. 19-10115, 2020 WL 3397596 (11th Cir. June 19, 2020).

While ice skating with his daughters aboard the *Adventure of the Seas*, Edgardo Lebron broke his ankle after a fall on the ice rink. Lebron sued Royal Caribbean for negligence, arguing that Royal Caribbean's failure to maintain the ice rink led to gouges in the ice that contributed to his fall, and the cruise line's broken ice skate also contributed to or caused his injury. A jury found Lebron 35% negligent and Royal Caribbean 65% negligent; however, the district court granted Royal Caribbean's motion for a directed verdict, finding that Lebron did not prove Royal Caribbean had notice of the gouges in the ice rink. The U.S. Court of Appeals for the Eleventh Circuit disagreed on appeal, holding that because one of Lebron's daughters, an inexperienced skater, noticed the gouges in the ice ten minutes before her father's fall, Royal Caribbean's trained employees should have also noticed the gouges. Thus, the court found that

Lebron presented sufficient evidence that Royal Caribbean had constructive notice of the gouges in the ice. The directed verdict in favor of Royal Caribbean was reversed and the district court was ordered to reinstate the jury's verdict in favor of Lebron.

Opinion Here

DeRoy v. Carnival Corporation, No. 18-12619, 2020 WL 3525536 (11th Cir. June 30, 2020).

Carmela DeRoy sued Carnival Corporation in state and federal court for a foot injury sustained aboard the *Valor*, citing a loophole in the company's forum-selection clause that required all litigation to proceed in federal court. The federal district court agreed with DeRoy and dismissed the federal court action for lack of subject matter jurisdiction. On appeal, the U.S. Court of Appeals for the Eleventh Circuit held that the district court erred in dismissing the action because the negligence claim fell comfortably within the admiralty jurisdiction of the district court, regardless of whether or not DeRoy expressly invoked admiralty jurisdiction. Furthermore, the court found that the saving-to-suitors clause, which allows a party to pursue a remedy in state court, did not allow DeRoy to escape federal jurisdiction because she voluntarily filed her action in federal court rather than exclusively in state court. Thus, no loophole in Carnival's forum-selection clause exists, rather the clause ensures that claims with federal jurisdiction remain in federal court.

Opinion Here

Florida

Ewing v. Carnival Corporation, No. 19-20264-CIV, 2020 WL 3839699 (S.D. Fla. July 7, 2020).

While eating a slice of pizza in his stateroom, Eric Ewing was struck on the top of his head by a bunk bed that deployed from the wall without warning. Ewing claimed that a ship employee failed to properly secure the bunk bed to the wall; therefore, Carnival Corporation should be held vicariously liable for its employee's negligent actions, regardless of whether or not actual or constructive notice of the unsecured bunk bed could be proven. The court, however, determined that Ewing's argument that vicarious liability does not require actual or constructive notice is not consistent with current Eleventh Circuit law. Furthermore, the court determined that the doctrine of *res ipsa loquitur* was inapplicable to Ewing's case because the sudden release of a stowed bunk bed does not ordinarily happen without a negligent act. Ultimately, despite contentions that Ewing's evidence of negligence was "light," the U.S. District Court for the Southern District of Florida denied summary judgment for both parties, allowing a jury to determine whether Carnival Cruise Lines had actual or constructive notice of the unsecured bunk bed.

Opinion Here

Adams v. Paradise Cruise Line Operator Ltd., Inc., No. 19-CV-61141-CIV, 2020 WL 3619035 (S.D. Fla. July 2, 2020).

After a shower in her stateroom aboard Paradise Cruise Line's *Grand Celebration*, Marilyn Adams slipped and fell on a pool of water outside the shower, causing head and ankle injuries. The U.S. District Court for the Southern District of Florida found that Adams failed to provide proper evidence to support her three claims against Paradise Cruise Line. First, she failed to provide her own expert evidence to establish that a dangerous condition existed in the stateroom's bathroom. Second, the court found that the "slippery when wet" warning sign did not constitute Paradise Cruise Line's notice of the hazard, since the complained-of hazard was flooding of the bathroom and not the floor's slipperiness. Finally, the court found that the obviousness of the slippery conditions in the bathroom did not require Paradise Cruise Line to warn Adams of the conditions. Thus, the court granted Paradise Cruise Line's motion for summary judgment.

Opinion Here

NINTH CIRCUIT

California

Ronald Weissberger et al. v. Princess Cruise Lines, Ltd., No. 2:20-CV-02267-RGK-SK, 2020 WL 3977938 (C.D. Cal. July 14, 2020).

Ronald and Eva Weissberger sued Princess Cruise Lines based on their fear of contracting COVID-19 while on a cruise from San Francisco to Hawaii. Although there was an outbreak aboard the ship, the plaintiffs did not test positive for the virus or have symptoms of COVID-19. The Weissbergers alleged negligence and gross negligence and sought emotional distress damages based on their fear of contracting COVID-19 while confined to the ship. To recover for negligently inflicted emotional injury, the plaintiffs must meet the U.S. Supreme Court's "zone of danger" test which requires plaintiffs to either sustain a physical impact as a result of the negligent conduct or that the plaintiffs were placed in immediate risk of physical harm by that conduct. The U.S. District Court for the Central District of California ruled that the claims failed the zone of danger test and granted the cruise line's motion to dismiss.

Opinion Here

Redondo Beach Waterfront, LLC v. City of Redondo Beach, No. B291111, 2020 WL 3866848 (Cal. Ct. App. July 9, 2020).

A large development project in California's Redondo Beach King Harbor Pier area was halted due to an initiative, referred to as Measure C, created by local residents seeking to stop construction and development of the waterfront area. The court, however, found that because the City of Redondo Beach had approved the waterfront project's vesting tentative tract map in 2016, the developer obtained vested rights to development of the area before the passage of Measure C in 2017. The court explained that this reasoning, in addition to the fact that development efforts began back in 2010, was consistent with the Legislature's desire to provide stability for the private sector.

Opinion Here

California v. Wheeler, No. 20-cv-03055-RS, 2020 WL 3403072 (N.D. Cal. June 19, 2020).

California and sixteen other states challenged the new rule narrowing the definition of "waters of the United States" (WOTUS rule). The states asked for injunctive relief, claiming that the new rule was inconsistent with the U.S. Army Corps of Engineers (Corps) and Environmental Protection Agency's (EPA) previous findings and contrary to the objectives of the Clean Water Act (CWA), violating the Administrative Procedure Act. The court, however, found these arguments to be inadequate, determining it would be an overstep by the courts to hold that the Corps and EPA must interpret the CWA broadly. Furthermore, the court explained that while the Corps and EPA could have kept an expansive rule consistent with previous interpretations of the CWA, choosing to go the opposite direction and narrow the definition of navigable waters was not improper, even if it was done so due to a change in presidential administrations. Ultimately the preliminary injunction was denied, and the new WOTUS rule went into effect on June 22, 2020.

Opinion Here

DISTRICT OF COLUMBIA

District of Columbia

Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'r, No. 16-1534 (JEB), (D.D.C. July 6, 2020).

In a previous decision, the U.S. District Court for the District of Columbia found that the U.S. Army Corps of Engineers (Corps) violated the National Environmental Policy Act (NEPA) when the Corps failed to produce an environmental impact statement (EIS) regarding the Dakota Access Pipeline (DAPL). In that same decision, the court remanded the case to the Corps to prepare an EIS. The court asked for a separate briefing on whether the continuance of the DAPL should be vacated and emptied during remand. On July 6th, the court vacated the easement granted for the DAPL. The court noted that the Corps would not be able to find an adequate explanation for not preparing an EIS. The court then found that the possible economic disruptions from shutting down the DAPL, to the state of North Dakota, states who rely on North Dakota for oil, and people who rely on the DAPL for employment, do not outweigh the Corps' deficiencies of not preparing an EIS. Therefore, the court vacated the Corps' decision to grant the DAPL an easement and held that the DAPL must be emptied within thirty days.

Opinion Here

FEDERAL CIRCUIT

Alford v. United States, 961 F.3d 1380 (Fed. Cir. 2020).

After the U.S. Army Corps of Engineers (Corps) raised the water level of Eagle Lake to prevent a nearby levee from breaching, Mississippi property owners sought compensation from the government for the damages sustained to their lakefront properties due to the increased water levels. The Federal Circuit Court of Appeals reversed the Federal Claims Court's judgment, finding that the relative benefits doctrine was applicable to the case. This doctrine required a determination of whether the Corps' actions of raising Eagle Lake's water levels created a burden on the plaintiffs' property that outweighed the benefits of not having the levee breach. The court found that the plaintiffs' property would have suffered more serious damage if the Corps had not acted and allowed the levee to breach and flood the plaintiffs' properties. Thus, the government was not liable for the damages caused to the plaintiffs' lakefront properties.

Opinion Here

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