

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Sawyer Brothers, Inc. v. Island Transporter, LLC

Sawyer Brothers, Inc. v. Island Transporter, LLC, 887 F.3d 23 (1st Cir. 2018) · No. No. 16-2470 · Decided April 3, 2018

SUMMARY

The First Circuit held that the "zone of danger" test applies to negligent infliction of emotional distress (NIED) claims under general maritime law, allowing passengers who face immediate risk of physical harm to recover for emotional distress without a contemporaneous physical impact. The court affirmed findings that the ship captain was negligent for failing to lash down vehicles and for disregarding relevant weather forecasts, and that the damaged cargo (a Mack truck) allowed replacement cost as an alternative measure of damages when fair market value could not be established. The court also ruled that lost-profit damages for cargo are not barred by the **Umbria** rule (which limits such damages for vessels), and that an insured remains a real party in interest when its insurer pays only part of the loss. The award for damaged plywood panels was vacated as clearly erroneous because the plaintiffs continued to use all damaged panels without showing resulting injury.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Lipez; Barron; Selya
JURISDICTION	Federal
DECIDED	April 3, 2018
DOCKET	No. 16-2470
DISPOSITION	affirmed in substantial part, vacated as to the plywood panels award, and remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Maine after a bench trial finding negligence and awarding damages.
STANDARD OF REVIEW	Factual findings from bench trial reviewed for clear error; legal conclusions reviewed de novo; damages calculations reviewed for clear error as to facts and de novo as to law.
PRECEDENTIAL VALUE	Published
PARTIES	Island Transporter, LLC; M/V ISLAND TRANSPORTER v. Sawyer Brothers, Inc.; Ryan Sawyer; Ross Sawyer

TOPICS

negligence

negligent infliction of emotional distress

damages

standard of review

appellate procedure

PRACTICE AREAS

Admiralty and Maritime Law

Torts

Damages

QUESTIONS PRESENTED

1. Whether the district court erred in finding Captain Morse negligent based on available weather information and rejection of the rogue wave theory.
2. Whether the district court correctly awarded damages for the Mack truck using replacement cost instead of fair market value, correctly declined to deduct salvage value, and correctly found Sawyer Brothers was a real party in interest.
3. Whether the district court erred in awarding damages for damaged plywood panels.
4. Whether the district court erred in awarding lost profits damages.
5. Whether the district court correctly awarded emotional distress damages, including the standard for NIED under maritime law, the zone of danger test, and the physical consequences requirement.

HOLDINGS

1. The district court's finding of negligence was not clearly erroneous. The weather information available to Captain Morse, including the Coastal Waters forecast and buoy data, made rough seas foreseeable, and the court's rejection of the rogue wave theory was supported by the evidence.
2. The district court did not err in using replacement cost because fair market value could not be reasonably established. The lay testimony and expert valuation were insufficient or flawed.
3. The district court correctly declined to deduct salvage value because Sawyer Brothers forfeited the salvage to its insurer as part of the insurance settlement.
4. Sawyer Brothers was a real party in interest because its insurer paid only part of the loss.
5. The district court's award for the plywood panels was clearly erroneous because it mistakenly found that Sawyer Brothers only used some of the damaged panels, whereas Ryan Sawyer testified they used all of them, and no evidence of injury from that use was presented.
6. The rule from *The Umbria* limiting lost profits to vessels does not apply to cargo; lost profits are recoverable here.
7. Plaintiffs within the zone of danger may recover for negligent infliction of emotional distress under general maritime law. The Sawyers were within the zone of danger and satisfied the physical consequences requirement (assuming it applies).

KEY QUOTATIONS

“With the exception of one minor damages issue, we agree with the district court's well-reasoned decision, including its determination on an issue of first impression in our circuit -- that a plaintiff within the zone of

danger can recover for negligent infliction of emotional distress in maritime cases.” (2)

“Given its application to seamen, we see no principled basis for imposing the more restrictive physical impact test upon passengers alleging NIED under the general maritime law.” (27)

“It is fair to characterize the Sawyers' experience on board the M/V ISLAND TRANSPORTER as involving more immediate peril than any of the cases summarized above.” (30)

“For example, emotional distress may 'physically' manifest as a psychological condition -- i.e., a nervous disorder or a stress disorder -- so long as the condition is capable of objective determination.” (33)

FACTUAL BACKGROUND

Sawyer Brothers hired Island Transporter to ferry three construction vehicles and their drivers from Rockland, Maine to North Haven, Maine. The vessel encountered rough seas in Penobscot Bay, causing two vehicles to tip over. The captain had access to weather forecasts and buoy data indicating significant wave heights. The vehicles were not lashed down. The Sawyers were on board and feared for their safety. The Mack truck was totaled, and the Sawyers suffered emotional distress.

PROCEDURAL HISTORY

Sawyer Brothers filed a maritime action in the District of Maine alleging negligence and seeking damages for property loss and emotional distress. Following a bench trial, the district court found for Sawyer Brothers and awarded \$257,154.03 in damages. Island Transporter appealed.

DISPOSITION

affirmed in substantial part, vacated as to the plywood panels award, and remanded

REMAND INSTRUCTIONS

Enter judgment consistent with this opinion, recalculating the damages for the plywood panels.

CASES CITED

- *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959)
- *Commercial Molasses Corp. v. N.Y. Tank Barge Corp.*, 314 U.S. 104 (1941)
- *Muratore v. M/S Scotia Prince*, 845 F.2d 347 (1st Cir. 1988)
- *DiMillo v. Sheepscoot Pilots, Inc.*, 870 F.2d 746 (1st Cir. 1989)
- *The Lizzie D. Shaw*, 47 F.2d 820 (3d Cir. 1931)
- *N. Ins. Co. of N.Y. v. Point Judith Marina, LLC*, 579 F.3d 61 (1st Cir. 2009)
- *Sierra Fria Corp. v. Donald J. Evans, P.C.*, 127 F.3d 175 (1st Cir. 1997)
- *La Esperanza de P.R., Inc. v. Perez y Cia. de P.R., Inc.*, 124 F.3d 10 (1st Cir. 1997)
- *Lawton v. Nyman*, 327 F.3d 30 (1st Cir. 2003)
- *Canal Barge Co. v. Torco Oil Co.*, 220 F.3d 370 (5th Cir. 2000)

- Carr v. PMS Fishing Corp., 191 F.3d 1 (1st Cir. 1999)
- Dimillo, 870 F.2d at 752
- Texas Co. v. R. O'Brien & Co., 242 F.2d 526 (1st Cir. 1957)
- Standard Oil Co. of N.J. v. S. Pac. Co., 268 U.S. 146 (1925)
- Moench v. Marquette Transp. Co. Gulf-Inland, 838 F.3d 586 (5th Cir. 2016)
- Greer v. United States, 505 F.2d 90 (5th Cir. 1974)
- Columbia Brick Works, Inc. v. Royal Ins. Co. of Am., 768 F.2d 1066 (9th Cir. 1985)
- Ill. Cent. R.R. v. Crail, 281 U.S. 57 (1930)
- United States v. Aetna Cas. & Sur. Co., 338 U.S. 366 (1949)
- State Farm Mut. Liab. Ins. Co. v. United States, 172 F.2d 737 (1st Cir. 1949)
- The Umbria, 166 U.S. 404 (1897)
- A & S Transp. Co. v. Tug Fajardo, 688 F.2d 1 (1st Cir. 1982)
- Matter of P & E Boat Rentals, Inc., 872 F.2d 642 (5th Cir. 1989)
- Barger v. Hanson, 426 F.2d 640 (9th Cir. 1970)
- The Hamilton, 95 F. 844 (E.D.N.Y. 1899)
- Petition of the U.S. (Petition), 418 F.2d 264 (1st Cir. 1969)
- Consol. Rail Corp. v. Gottshall, 512 U.S. 532 (1994)
- Ellenwood v. Exxon Shipping Co., 984 F.2d 1270 (1st Cir. 1993)
- Fairest-Knight v. Marine World Distribs., Inc., 652 F.3d 94 (1st Cir. 2011)
- Mitchell v. Trawler Racer, Inc., 362 U.S. 539 (1960)
- Butynski v. Springfield Terminal Ry. Co., 592 F.3d 272 (1st Cir. 2010)
- Miles v. Apex Marine Corp., 498 U.S. 19 (1990)
- Chan v. Soc'y Expeditions, Inc., 39 F.3d 1398 (9th Cir. 1994)
- Chaparro v. Carnival Corp., 693 F.3d 1333 (11th Cir. 2012)
- Stacy v. Rederiet Otto Danielsen, A.S., 609 F.3d 1033 (9th Cir. 2010)
- Blair v. NCL (Bahamas) Ltd., 212 F. Supp. 3d 1264 (S.D. Fla. 2016)
- Nieto-Vincenty v. Valledor, 22 F. Supp. 3d 153 (D.P.R. 2014)
- Smith v. Carnival Corp., 584 F. Supp. 2d 1343 (S.D. Fla. 2008)
- Douville v. Casco Bay Island Transit, 1998 A.M.C. 2775 (D.N.H. 1998)
- Williams v. Carnival Cruise Lines, Inc., 907 F. Supp. 403 (S.D. Fla. 1995)
- Metro-North Commuter R.R. Co. v. Buckley, 521 U.S. 424 (1997)
- In re Clearsky Shipping Corp., No. Civ. 96-4099, 2002 WL 31496659 (E.D. La. Nov. 7, 2002)
- Hutton v. Norwegian Cruise Line Ltd., 144 F. Supp. 2d 1325 (S.D. Fla. 2001)
- Tassinari v. Key W. Water Tours, L.C., 480 F. Supp. 2d 1318 (S.D. Fla. 2007)
- Haught v. Maceluch, 681 F.2d 291 (5th Cir. 1982)
- Atchison, Topeka & Santa Fe Ry. Co. v. Buell, 480 U.S. 557 (1987)
- Whalley v. Sakura, 804 F.2d 580 (10th Cir. 1986)

- Doe v. Trs. of the Univ. of Pa., 270 F. Supp. 3d 799 (E.D. Pa. 2017)
- Terry v. Carnival Corp., 3 F. Supp. 3d 1363 (S.D. Fla. 2014)
- Sullivan v. Bos. Gas Co., 605 N.E.2d 805 (Mass. 1993)
- Vance v. Vance, 408 A.2d 728 (Md. 1979)
- Corso v. Merrill, 406 A.2d 300 (N.H. 1979)
- Walters v. Mintec/Int'l, 758 F.2d 73 (3d Cir. 1985)