

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Entergy Mississippi, Inc. v. Marquette Transportation Company,
L.L.C.

No. 17-60719, United States Court of Appeals for the Fifth Circuit (July 16, 2018)

SUMMARY

In this maritime allision case, the Fifth Circuit affirmed liability and damages against the owner and operator of a towboat whose loose barge struck a mooring dolphin. The court held that even if the dolphin was unpermitted under the Rivers and Harbors Act, the Pennsylvania rule did not shield the defendants because their own negligence caused the allision. The court also upheld the district court's allowance of pleading amendments to increase damages, reliance on a state court's reasonable repair cost determination, denial of depreciation deduction, and award of prejudgment interest from the date of loss. The opinion is unpublished and not precedential.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per Curiam; W. Eugene Davis; Gregg Costa; Kurt D. Engelhardt
JURISDICTION	Federal
DECIDED	July 16, 2018
DOCKET	17-60719
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Southern District of Mississippi, USDC No. 3:13-CV-879.
STANDARD OF REVIEW	Summary judgment reviewed de novo; damages reviewed for clear error; amendments reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Marquette Transportation Company, L.L.C. and Bluegrass Marine, L.L.C. v. Entergy Mississippi, Inc.

TOPICS

- torts
- negligence
- civil procedure
- summary judgment
- damages

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Defendants should be liable because the dolphin was unpermitted under the Rivers and Harbors Act
2. Whether the district court erred in allowing Entergy to amend its complaint to increase damages
3. Whether the district court erred in relying on the state court's determination of reasonable repair costs
4. Whether the prejudgment interest award was excessive

HOLDINGS

1. The Pennsylvania rule does not shield defendants from liability when they were aware of the structure and it did not obstruct navigation; the allision was caused by the tow boat's prior allision with the bridge.
2. The district court did not abuse its discretion in allowing amendments because there was good reason (misunderstanding about scope of repairs and river conditions) and no bad faith or prejudice.
3. Even if issue preclusion did not apply, the district court independently reviewed the evidence and reached the same result, which was not clearly erroneous.
4. The district court did not abuse its discretion in awarding prejudgment interest from the date of loss, as is the normal rule in admiralty.

KEY QUOTATIONS

"The Pennsylvania rule applies when the stationary object is not authorized to be in the water, in which case the party violating the statute must 'show not only that its conduct was not a contributing cause of the collision, but that it could not have been a cause of the collision.'" (at 4)

"The court should freely give leave when justice so requires." (at 5)

"[W]here the repairs do not extend the useful life of the property as it existed just before the collision, there should be no deduction for depreciation." (at 5)

FACTUAL BACKGROUND

A barge being pushed down the Mississippi River by a tow boat came loose and hit a mooring dolphin structure owned by Entergy. The dolphin was part of a fuel unloading facility near Vicksburg. Entergy sued the owner and operator of the tow boat for the cost of repairs. The district court found Defendants liable and awarded damages.

PROCEDURAL HISTORY

Entergy sued Defendants for damages after a barge allided with its mooring dolphin. The district court granted summary judgment on liability for Entergy and after a bench trial awarded damages of just over \$1 million. Defendants appealed.

DISPOSITION

affirmed

CASES CITED

- Pillsbury Co. v. Midland Enters., Inc., 715 F. Supp. 738 (E.D. La. 1989), aff'd, 904 F.2d 317 (5th Cir. 1990)
- Koch-Ellis Marine Contractors v. Sewerage & Water Bd. Of New Orleans, 218 F.2d 772 (5th Cir. 1955)
- Ultraflo Corp. v. Pelican Tank Parts, Inc., 845 F.3d 652 (5th Cir. 2017)
- Fla. E. Coast Ry. Co. v. Revilo Corp., 637 F.2d 1060 (5th Cir. 1981)
- The Pennsylvania, 86 U.S. 125 (1873)
- Dow Chem. Co. v. Dixie Carriers, Inc., 463 F.2d 120 (5th Cir. 1972)
- Jebaco, Inc. v. Harrah's Operating Co., Inc., 587 F.3d 314 (5th Cir. 2009)
- Todd Shipyards Corp. v. Turbine Serv., Inc., 674 F.2d 401 (5th Cir. 1982)
- Brunet v. United Gas Pipeline Co., 15 F.3d 500 (5th Cir. 1994)
- Freeport Sulphur Co. v. S.S. Hermosa, 526 F.2d 300 (5th Cir. 1976)
- Alcoa S.S. Co. v. Charles Ferran & Co., 443 F.2d 250 (5th Cir. 1971)