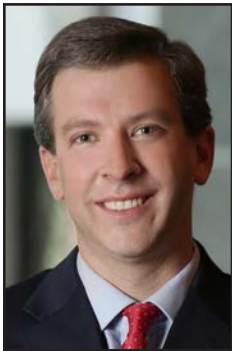




Admiralty and Maritime Law Committee



BEYOND NAVIGABLE WATERS: A LOOK AT THE CONCEPT OF AN APPURTENANCE AND JURISDICTION UNDER THE ADMIRALTY EXTENSION ACT

By: Matthew A. Moeller¹

In 1948 President Truman signed the Admiralty Extension Act (“the AEA”) into law, which expanded the scope of original jurisdiction held by admiralty courts. Pursuant to the Act, admiralty jurisdiction included ship-to-shore torts and did not affect or amend federal or concurrent state jurisdiction of maritime torts. The statute provides that “the admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land.”

The bedrock principle behind the AEA is that in order to properly invoke jurisdiction under pursuant to the AEA, the injury must emanate from a vessel in navigable waters. The party who invokes jurisdiction must allege vessel negligence, which relates to a defective appurtenance or negligent navigation as well as tortious conduct of the crew that results in an injury

on land. Furthermore, the AEA applies only to a vessel and her appurtenances and does not include those

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performing actions for the vessel such as the manner in which workers load and unload cargo and equipment.

The AEA was enacted specifically to remedy collisions, where vessels collide with objects fixed to the land, such as bridges that span navigable waterways. However, the development of the law concerning the determination of jurisdiction under the AEA has addressed some scenarios, where jurisdiction hinged on whether or not the injury arose from a defective appurtenance of a vessel. The development of the law on the issue suggests that analysis is technical yet flexible. Specifically, the evolution of the concept of an appurtenance since the Fifth Circuit's ruling in *Margin v. Sea-Land Services* has possibly opened the door to a more expansive reach of admiralty jurisdiction pursuant to the AEA.²

In *Margin*, plaintiff a ship repair employee brought suit against the vessel owner, its insurer and the stevedoring company as a result of injuries he suffered from a fall in the dock area. At the close of plaintiff's case, the court granted the defendants' motion to dismiss because the court found that plaintiff had failed to establish "vessel negligence" and could not fulfill the requirements for a tort claim under Section 905 (b) of the Longshore Harbor and Workers' Compensation Act. On appeal, plaintiff urged that jurisdiction was proper under the AEA, but the Fifth Circuit, relying on two previous U.S. Supreme Court decisions, fashioned a rule that in order to invoke jurisdiction under the AEA, a plaintiff must allege that the injury suffered on land was caused by a defective appurtenance of a vessel or at the very least, the vessel itself.

The rule established by *Margin* begs the question of what qualifies as an "appurtenance" of a vessel? The standard definition is of little help as the term is defined as "something subordinate to another more important thing; adjunct; accessory." However, in 2003, the 7th Circuit in *Scott v. Trump Indiana* defined an appurtenance "as any identifiable item that is destined for use aboard a specifically identifiable vessel and is essential to the vessel's navigation, operation or mission."³

The term appurtenance is ubiquitous throughout

maritime law as it is an integral concept for purposes of not only determining jurisdiction under the AEA but also property subject to maritime lien, seaman status and seaworthiness. In *Drachenberg v. Canal Barge, Co.*, the court identified three critical inquiries in determining whether equipment can be considered an appurtenance: (1) whether the equipment is attached to the vessel; (2) whether the equipment is utilized in a manner that is fundamentally related to traditional maritime activity; and (3) whether the accident occurred on a vessel.⁴ However, the court reasoned that "minimal attachment" could qualify equipment as an appurtenance if it is not part of the vessel's normal gear, not usually stored on board or not controlled by the vessel's crew.

Historically, courts have consistently found that docks and conveyor belts even when attached to a vessel by mooring lines and temporary steadying wires are not appurtenances. But, two more recent decisions demonstrate courts' willingness to expand the concept of an appurtenance. In *Gowen v. F/V Quality One*, the plaintiff filed suit pursuant to a maritime lien arising from wharfage and repair services provided to the vessel.⁵ A warrant was issued for the arrest of the vessel its equipment, engines and appurtenances. After obtaining a default judgment, plaintiff petitioned for sale of the vessel and requested that the fishing permits be included as appurtenances. The district court affirmed the sale, which included the permits. On appeal, the First Circuit, addressing a matter of first impression, determined that treating the permits as appurtenances advanced the purpose for which the liens were created, and there were no policy arguments against subjecting such permits to liens.

Similarly, just last October, a Louisiana Appellate Court took the analysis even further in a Jones Act case by concluding that a floating mat upon which a welder was injured while assisting in the construction of a bulkhead was an appurtenance of the vessel. In *Guidry v. ABC*, the court, relying on *Drachenberg*, articulated that the guiding principle is that one extending credit to the vessel has the right to assume that the entire vessel, including her equipment stands as security for the debt.⁶ Consequently, an appurtenance must be essential to the vessel's mission and purpose for which it was hired and must be used in conjunction

² *Margin v. Sea-Land Services, Inc.*, 812 F.2d 973 (5th Cir. 1987).

³ *Scott v. Trump Indiana*, 337 F.3d 939, 944 (7th Cir. 2003).

⁴ *Drachenberg v. Canal Barge, Co.*, 571 F.2d 912 (5th Cir. 1978).

⁵ *Gowen v. F/V Quality One*, 244 F.3d 64 (1st Cir. 2001).

⁶ *Guidry v. ABC*, 2016 WL 6128146, - So.3d. - La. App. 3 Cir. 10/19/16).

with the vessel's primary function at the time of the incident. One essential element lacking in *Guidry* that is typically found in other appurtenance designations is a physical connection to the vessel at the time of the accident. Even though courts have historically relied on a physical connection to the vessel at the time of injury, this court's reasoning was devoid of any such determination, and instead only mentioned the process by which the crane atop the barge would lift the mat out of the water for storage purposes.

While neither case involves an analysis of what constitutes an appurtenance where jurisdiction under the AEA was at issue, given the fact that appurtenance is such a pervasive concept within different areas of a maritime law any more inclusive determination of

an appurtenance could have potential future impact on a court deciding whether to exercise admiralty jurisdiction pursuant to that determination under the AEA. The decisions further demonstrate a courts' willingness to borrow an analysis from one context and apply it to another for purposes of determining what qualifies as an appurtenance. Policy considerations in favor of facilitating the fishing industry in the Northeast as well the protection of seaman likely played a role in both decisions. However, establishing different standards for an appurtenance in different areas of the law, particularly when one area is the exercising of a court's jurisdiction seems at odds with the objective of creating and facilitating one uniform body of law to govern commerce and navigation on the seas or other navigable waters. [↗](#)



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