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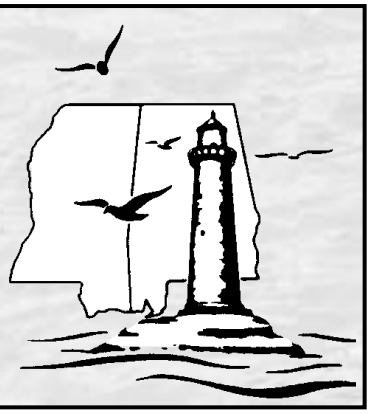
WATER LOG

A Legal Reporter of the Mississippi-Alabama Sea Grant Consortium



Florida Court Rules for Landowners in Beach Access Case

***Trepanier v. County of Volusia, Florida*, No. 5D05-3892 (Fla. Dist. App. Sept. 14, 2007)**

Andrew Miller[1]

Background

Alfred Trepanier, Louis Celenza, and Zsuzsanna Celenza (plaintiffs) hold record title to platted lots of beachfront property that run adjacent to the Atlantic Ocean in New Smyrna Beach, Florida, which is located in Volusia County. A portion of the plaintiffs' lots extends seaward of the established seawall and onto the sandy beach. As a result of hurricanes occurring in 1999 and 2004, the part of the shore adjoining the plaintiffs' property suffered erosion. Due to this erosion, public use of the beach, and Volusia County's regulation of that public use, shifted inland and onto the portion of the plaintiffs' lots lying seaward of their seawall.

To ensure that endangered sea turtles are not harmed by vehicular traffic, which has been allowed on many beaches throughout Florida, the county has created a thirty-foot Habitat Conservation Zone (HCZ) within which vehicles are prohibited. The county demarcates the eastern boundary of the HCZ with a line of posts. These posts are realigned annually to take into account erosion and accretion. Since cars are prohibited from driving in the HCZ, the county's location of traffic lanes and parking areas on the beach varies from year to year depending on conditions.

According to the plaintiffs, before 1999 the HCZ posts were just seaward of their platted lots and vehicle traffic and parking were, correspondingly, outside their lots. In 1999 hurricanes Floyd and Irene hit Florida's east coast, causing severe erosion to the part of the beach where the plaintiffs' property is located. The county subsequently reinstalled the HCZ posts substantially landward onto the plaintiffs' lots. Once this was done, vehicles began driving and parking on the plaintiffs' property up to the posts marking the HCZ. The hurricanes of 2004 resulted in substantial further erosion, which caused the posts and the traffic to shift even farther landward. On the Celenzas' property, for example, the posts were 120 feet from the seawall in 1997 but only sixty feet from the seawall in 2004.

History

At trial, the plaintiffs alleged that the county improperly used their property for traffic and parking. Based on these allegations, they made three claims and one request for declaratory relief: (1) they brought an inverse condemnation action against the county based on the county's appropriation of their property for parking and driving lanes; (2) they brought an action for trespass against

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the county, based on its maintenance of the parking and driving lanes, in which they sought an injunction to prevent such future activity, and monetary damages; and (3) they brought an inverse condemnation claim based on the county's installation of the HCZ posts on their property.

The plaintiffs requested declaratory relief establishing their right to exclude the public from using their property for vehicular traffic and parking, and injunctive relief prohibiting the public from using their property for those purposes.

In its answer, the county asserted two counterclaims. First, it asked the court to recognize a public right of use based on the theories of dedication, prescription, and custom on the plaintiffs' land, up to the seawall or line of permanent vegetation, for ingress, egress, recreational and other customary uses. The county sought an injunction from the plaintiffs' purpresture[2] which would interfere with, impair or impede the public's exercise and enjoyment of its rights of access. Second, the county asked the court to declare that it held, in trust for the public, title to the thirty-foot strip of beach (known as the "Boardwalk") in front of the Celenzas' platted lot and that the Celenzas had no interest in this property.

The trial court denied the plaintiffs' motion for partial summary judgment on the county's counterclaims and entered an order of summary final judgment in favor of the county. The plaintiffs appealed.

Sea Grant

WATER LOG is a quarterly publication reporting on legal issues affecting the Mississippi-Alabama coastal area. Its goal is to increase awareness and understanding of coastal problems and issues.

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The Plaintiffs' Challenge

On appeal the plaintiffs contended that material issues of fact precluded the entry of summary final judgment because it was in dispute whether all of the elements of dedication, prescription, and custom were satisfied with respect to the plaintiffs' lots, or, as to custom, the location of the permissive use, if any.

The county, relying primarily on *City of Daytona Beach v. Tona-Rama*, 294 So.2d 73 (Fla. 1974), asserted that the public has a superior right of access to and use of the dry sand beach, regardless of ownership of the underlying fee. The county further argued that the public's right to use the beach necessarily includes driving and parking. Finally, the county argued that this public right migrates with the change in the coastline. In other words, if the public has a right of use seaward of beachfront property and the beach migrates landward, the right of public use migrates landward onto private property.

Sources of the Public's Right of Use of the Beach

The District Court of Appeals began its discussion of the merits of the parties' claims with an explanation of the sources of the public's right of use of the beach. Florida courts have recognized that the public may acquire rights to the dry sand areas of privately owned portions of the beach through the doctrines of prescription, dedication, and custom.

Prescriptive Easement

For the public to gain a prescriptive easement in land, its use of private land must be: (1) continuous for the statutory period of twenty years, (2) actual, (3) adverse under a claim of right, and (4) either known to the owner or so open, notorious, and visible that knowledge of the adverse use by the public can be imputed to the owner.[3] Moreover

> the limits, location, and extent of [the] occupation must be definitely and clearly established by affirmative proof, and cannot be established or extended by presumption… And the pleadings, as well as the proof, particularly where a prescriptive way is claimed, must show a reasonably certain line, by definite route and termini.
>
> Acquisition of rights by one in the lands of another, based on possession or use, is not favored in the law and the acquisition of such rights will be restricted in favor of the owner.[4]

The appeals court noted that from the record it was disputed, indeed appeared unlikely, that the public was

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10) What suggestions do you have for improving WATER LOG?

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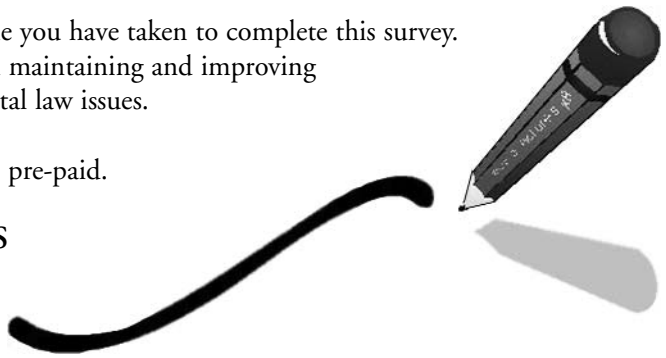

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A Synopsis of Supplemental Rules B, C and D for Admiralty or Maritime Claims

*J. Ralph White**

This paper was originally included in the written materials for the National Sea Grant Law Center's Admiralty and Maritime Law Update, held on September 14, 2007 at the University of Mississippi.

Introduction

The purpose of this paper is to highlight the special remedies that may be sought in certain admiralty and maritime causes of action pursuant to the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, Federal Rules of Civil Procedure. A party may gain some extremely powerful remedies through the use of Supplemental Rules B, C, and D. Each of these rules provides for judicial seizure of some form of the defendant's property until the controversy has been adjudicated. The property may in some cases be sold to satisfy a judgment against its owner, or an *in rem* judgment against a vessel or other property. This paper presents a "nuts and bolts" overview and is not, and was not intended to be, a comprehensive treatment of the subject of the Supplemental Admiralty Rules.

Ways In Which Admiralty Jurisdiction Arises

Admiralty jurisdiction usually arises from two types of actions: actions dealing with contracts and actions dealing with torts.

For admiralty jurisdiction to exist in suits involving contracts, the contract (and hence the transaction it pertains to) itself must be maritime in nature. *Insurance Co. v. Dunham*, 78 U.S. 1 (1870). This raises the question: what does the subject matter of the contract have to be for it to be maritime in nature? The U.S. Supreme Court has held that a contract to repair a vessel is maritime in nature. *North Pacific Steamship Co. v. Hall Bros. Marine Railway & Shipbuilding Co.*, 249 U.S. 119 (1919). In *Hall Brothers* the Court was faced with the question of whether a maritime contract exists when a ship is taken out of waters for a lengthy period to conduct extensive repairs. *Id.* at 123, 124. The Court held that a maritime contract did exist even though the ship was removed from the water, noting that the contract was for the repair of the vessel (as opposed to a contract for the construction of a ship which is not maritime in nature). *Id.* at 128, 129.

Courts have held that if the subject matter of a contract "relates to a ship in its use as such, or to commerce or to navigation on navigable waters, or to transportation by sea or to maritime employment it is fairly said to constitute a maritime contract." *Maritima Petroleo E Engenharia LTDA v. Ocean Rig 1 AS*, 78 F.Supp. 162 (S.D.N.Y. 1999). Two notable exceptions to this rule are that neither a contract to build a vessel nor a contract to supply material for the construction of a ship are maritime in nature. *People's Ferry Co. v. Beers*, 61 U.S. 393 (1857).

For admiralty jurisdiction to exist in a suit involving a tort, the test has traditionally been "locality plus." If a claim arises on a vessel on the high seas or on navigable water, and it has what Professor Frank L. Maraist at Louisiana State University calls "salty flavor," then it is a maritime tort. The Admiralty Extension Act extended this to "all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage be done or consummated on land." *Norfolk Southern Railway v. Kirby*, 543 U.S. 14, 23-24 (2004). With regards to the "plus" part of the test, the Supreme Court has held that the activity that caused the tort has to have a potentially disruptive effect on maritime commerce, and the general character of the activity that gave rise to the incident must show a significant relationship to traditional maritime activity. *Sisson v. Ruby*, 497 U.S. 358, 363-64 (1990). That is "salty flavor." This part of the test is commonly referred to as having a maritime nexus.

An example of the existence of a maritime nexus can be found in the case of *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 530 (1995). In that case a dredge was driving pilings in the Chicago River and caused a leak in a tunnel underneath the riverbed. The Court reasoned that this tort (damage caused by a vessel to an underwater structure) could potentially disrupt maritime commerce in that the damage actually altered the flow of the river itself. The Court explained that this altered waterway could result in a disruption of the navigational use of the river while the damage was repaired. *Id.* at 538, 539. The Court then determined that the activity was substantially related to a traditional maritime activity.

Pleading Rules B, C, and D

A party that wishes to bring a claim that is maritime in nature may be allowed to benefit from certain rules found within the Federal Rules of Civil Procedure (Supplemental

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Rules for Certain Admiralty and Maritime Claims), which specifically govern admiralty and maritime claims. However, in order to be able to access these special rules, the claim itself must be identified as being an admiralty claim. The proper way to identify a claim as such is through the use of Rule 9(h) of the Federal Rules of Civil Procedure (FRCP) thereby triggering the Supplemental Admiralty Rules. Thomas J. Schoenbaum, *Admiralty and Maritime Law: Practitioner Treatise Series Volume 1* 386 (4th ed. 2003). It is important to note that Rule 9(h) is not needed to identify an admiralty claim when it can only be considered as such; in such a case the Supplemental Rules will automatically be applicable. *Id.* at 387.

The proper way to use Rule 9(h) to identify an admiralty claim in a pleading is to state that admiralty jurisdiction exists. However if there are other jurisdictional bases for the claim, then the pleader must also list within the pleading an identifying statement to the effect of: "this is an admiralty or maritime claim within the meaning of Rule 9(h)." Schoenbaum at 387, 388. If the previous statement (or something to that effect) is not made then the plaintiff's claim may be treated as being non-maritime. *Smith v. Pinell*, 597 F.2d 994 (5th Cir. 1979); *T.N.T. Marine Servs., Inc. v. Weaver Shipyards and Dry Docks, Inc.*, 702 F.2d 585 (5th Cir. 1983).

By bringing an admiralty case under Rule 9(h) the plaintiff will be able to seek special remedies that would not otherwise be available. These remedies include: Rule B, attachment, and Rule C, arrest. These remedies can be used to enforce a variety of claims, some of which are: cargo claims, mortgage foreclosures, claims for seamen's wages, collision damage, supplies, repairs, pilotage, salvage, towage, wharfage, stevedoring, breach of charter party, unseaworthiness, and maintenance and cure. Schoenbaum at 389.

Rule B* "In personam *Actions: Attachment and Garnishment"

Rule B – "*In personam* Actions: Attachment and Garnishment," allows a plaintiff to gain personal jurisdiction over a defendant who cannot be found within a particular federal district through the attachment of his property or garnishment of a debt owed to him. *Stevedoring Serv. of America v. Ancora Transp., N.V.*, 941 F.2d 1378, 1381 (9th Cir. 1991). In 1825 The Supreme Court approved of the practice of maritime attachment. *Manro v. Almeida*, 23 U.S. 473 (1825). Recovery is limited to the value of the vessel or property attached in the suit. *Orbis Marine Enterprises, Inc. v. TEC Marine Lines, Ltd.*, 692 F.Supp. 280, 284 (S.D.N.Y. 1988).

Maritime attachment serves two purposes: it allows the plaintiff to obtain personal jurisdiction over the defendant through his property; and it guarantees the satisfaction of claims, at least up to the value of the property. *Western Bulk Carriers (Australia) v. P.S. Intl., Ltd.*, 762 F.Supp. 1302, 1306 (S.D. Ohio 1991). In *Western* the court laid out four pre-requisites that must be satisfied in order for the plaintiff to obtain a writ of maritime attachment. These four pre-requisites are: "(1) the plaintiff has an *in personam* claim against the defendant which is cognizable in admiralty; (2) the defendant cannot be found within the district in which the action is commenced; (3) property belonging to the defendant is present or will soon be present in the district; and (4) there is no statutory or general maritime law prohibition to the attachment." *Id.*

Attachment of property in the hands of a garnishee will only pertain to those assets that are in the possession of the garnishee at the time of service; and it will not apply to any property acquired after that date. *Union Planters Natl. Bank v. World Energy Sys. Assoc.*, 816 F.2d 1092, 1098 (6th Cir. 1987).

The plaintiff must adhere to the following process in order to invoke Rule B: first he must file a verified complaint which shows that the plaintiff has a prima facie case against the defendant which is maritime in nature. Second, the plaintiff must show (via affidavit) that the defendant cannot be found within the district. Schoenbaum at 393. The complaint, affidavits, and any documents filed with the complaint must be reviewed by a District Judge, who, if the pleading and affidavit are in order, will direct the clerk to issue the writ of attachment.

"The order will issue when the plaintiff makes a *prima facie* showing that he has a maritime claim against the defendant in the amount sued for, and the defendant is not present in the district." Schoenbaum at 395. Once the clerk delivers this order and process to the U.S. Marshal it will be served along with copies of the complaint and affidavit. *Id.* at 396.

Both Rules B and C to allow the plaintiff to by-pass the pre-seizure judicial review by a District Judge if he files a "Certification of Exigent Circumstances." In such cases, the Clerk of Court shall conduct the review and issue the order in the place of a District Judge. *Id.* at 394. Two examples of exigent circumstances are that no judge is available for the review, or the ship is about to leave the jurisdiction of the court. 15 Journal of Maritime Law and Commerce No. 3 (July 1984). "This exception is intended to be very rare…every effort to secure judicial review, including conducting a hearing by telephone, should be

pursued before resorting to the exigent circumstances procedure." *Id*.

At times it may be necessary for the Clerk of Court to issue supplemental process to enforce the court's attachment order. The reason for this is that additional time may be needed to properly identify the garnishee (which may be difficult in cases involving intangible property). Schoenbaum at 396.

Rule B is only applicable in the event that the plaintiff is unable to locate the defendant within the district. In order to determine whether the defendant is within the district the courts have created a two prong test. Schoenbaum at 397. According to the Fifth Circuit, the defendant must be found within the district in terms of both jurisdiction and service of process. *LaBanca v. Ostermunchner*, 664 F.2d 65 (5th Cir. 1981). The first prong of this test is the standard minimum contacts test that the Supreme Court handed down in *International Shoe v. Washington*, 26 U.S. 310 (1945). The second and more crucial prong is that the defendant (or his agent) must be present within the district for the purposes of receiving service of process. If both prongs of this test are satisfied then attachment under Rule B is improper and would be invalid. *LaBanca* at 67, 68. Should the defendant decide to try and avoid having his property attached, he may enter a special appearance before the court and argue that he has satisfied the two prong test found in *LaBanca*. *Bonite Offshore II v. Italmare, S.P.A.*, 1983 AMC 538 (E.D.Va. 1982). Alternatively, it seems the defendant can defeat the attachment by waiving service of process and entering an *in personam* appearance. Schoenbaum at 398. The attachment will only reach the defendant's property in the hands of a garnishee at the time of the attachment. *Reiber Int'l Ltd. v. Cargo Carrier (Kacz-Co.) Ltd.*, 759 F.2d 262 (2nd Cir. 1985).

According to Schoenbaum various types of property can be attached. Among these types of property are: "goods, chattels, or credits and effects in the possession of the garnishees." Schoenbaum at 399. The property can be either tangible or intangible. Rule B(1)(a); *Winter Storm Shipping, Ltd. v. TPI*, 310 F.3d 263 (2nd Cir. 2002). A vessel itself can be attached under Rule B, as ships are considered "effects" and a lien against them is not required for attachment. *Frontier Acceptance Corp. v. United Freight Forwarding Co.*, 286 F.Supp. 367 (D.N.J. 1968). "Rule B also specifically preserves a plaintiff's right to use state property seizure procedures. State law may be used cumulatively with maritime attachment or alternatively." Schoenbaum at 399. Rule B(1)(e); Rule 64, FRCP; see also *Cordoba Shipping Co., Ltd. v. Maro Shipping Ltd.*, 494 F.Supp. 183 (D.Conn. 1980).

Rule C "In rem Actions: Special Provisions"

By bringing a maritime claim under Rule 9(h) the claimant gains the benefit of an extremely powerful remedy in the form of Supplemental Rule C – "*In rem* Actions: Special Provisions." By seeking this remedy the claimant will have to bring an action *in rem* against a vessel or other maritime property. Schoenbaum at 400. This type of action involves the plaintiff naming the vessel herself as a defendant, and subsequently seizing the vessel to satisfy his claim. According to Schoenbaum, "an *in rem* action may be brought only by a plaintiff who possesses a maritime lien; thus, *in rem* process may be asserted only against the specific property that is the subject of the lien." *Id*. at 401. Furthermore, since this is an *in rem* action it may only be brought in a federal court. *Madruga v. Superior Court*, 346 U.S. 556 (1954).

There are a number of different claims that may give rise to a lien against the vessel herself. Some of these claims are: "supplies ordered by a charterer; collision damage by a vessel under the control of a compulsory pilot; or damage caused by the master or crew of a vessel under bareboat charter." Schoenbaum at 401.

In order for a plaintiff to gain access to such a powerful remedy he must show the court that he has a maritime lien against the vessel. Once this has been accomplished the court will issue a warrant to arrest the vessel and foreclose (execute) on the lien. *GEA Power Cooling Sys., Inc. v. M/V Nurnberg Atlantic*, 748 F.Supp. 303, 304 (E.D.Pa. 1990). "The *in rem* process may be used to foreclose a maritime lien arising under a statute, such as the Ship Mortgage Act (46 U.S.C. § 911 *et seq.*) or the Federal Maritime Lien Act (46 U.S.C. § 971 *et seq.*), as well as arising under the general maritime law." Schoenbaum at 406.

The U.S. is probably the only nation that requires the existence of a maritime lien in order for a vessel to be arrested. *Id*. at 401. When a vessel is arrested for an *in rem* action the vessel itself is often the only contact that the ship owner has with the jurisdiction. *Id*. at 402. "Notice in an *in rem* action must be reasonably carried out to alert any known competing claimant." *Ehorn v. Sunken Vessel Known as "Rosinco"*, 294 F.3d 856, 859 (7th Cir. 2002).

Schoenbaum outlines the process for using Rule C to arrest a vessel. The first thing that the plaintiff must file is a complaint and affidavit with the federal district court where the vessel is located or will be found during the course of the action. The affidavit must state that the plaintiff has a valid lien against the vessel. It is not necessary to provide the ship owner with notice of the impending seizure of the vessel. The only expense that is usually incurred by the plaintiff in having the vessel arrested is

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that he will usually be required to advance costs to the U.S. Marshal's office to cover the Marshal's costs of seizing and maintaining the vessel. It is important to consult the local rules of the district court where the suit will be filed in this regard. It may also be necessary or helpful to call the Marshal's office for their assistance before filing suit. Of course, the plaintiffs must also pay the federal court filing fee. Schoenbaum § 21-3.

One of the greatest benefits (for the plaintiff) of arresting a ship is that the ship owner will have to post bond to obtain her release unless the plaintiff consents to the ship's release. *Id*. Should a ship owner wish to recover its expenses in regaining its property as a result of a wrongful arrest he must show that the plaintiff acted in bad faith or with malice. *Ocean Ship Supply, Ltd. v. MV Leah*, 729 F.2d 971, 974 (4th Cir. 1984).

The *in rem* complaint must "describe the property which is the subject of the action; allege that a maritime lien exists and the grounds therefor; state the circumstances giving rise to the claim with such particularity that a *prima facie* case of liability is evident; and state that the property is within the jurisdiction of the court." Schoenbaum at 408. Upon receiving the complaint and affidavit a District Judge must review the complaint and affidavit and "[i]f the conditions for an *in rem* action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property…" Rule C (3)(9)(i) FRCP. In the event that the ship owner does not post bond or fails to appear in court to contest the seizure, judgment may be entered against the vessel and she may be sold at auction. Auctioning off a vessel under Rule C is the process by which the plaintiff executes the maritime lien that he has against the vessel. By executing his lien, the plaintiff has effectively extinguished all other existing liens against the vessel "regardless of whether the other lien holders had actual notice of the admiralty proceedings." *Tamblyn v. River Bend Marine, Inc.*, 837 F.2d 447, 448 (11th Cir. 1988).

In order to protect against an inadequate judgment, a plaintiff may simultaneously bring actions against both the vessel (*in rem*) and vessel owner (*in personam*) unless prohibited by law. By pursuing this course of action a plaintiff can obtain a deficiency judgment against the ship owner for the amount of damages that were not covered by the sale of the vessel. This assumes, of course, that the vessel owner is subject to *in personam* jurisdiction in the venue where the vessel is seized. *Bollinger & Boyd Barge Service, Inc. v. Motor Vessel, Captain Claude Bass*, 576 F.2d 595, 598 (5th Cir. 1978).

Rule D "Possessory, Petitory, and Partition Actions"

The Special Rules for Admiralty Claims afford a certain level of protection for the interests of the defendant (as well as an important remedy for the plaintiff) in actions governed by Rule D, which provides a possessory action, and serves the plaintiff in much the same way as the common law remedy of replevin. A plaintiff seeking to assert a legal title to the vessel may do so through the application of a petitory suit under Rule D. "A petitory suit is defined as one seeking to try title to a vessel independently of possession." *Silver v. Sloop Silver Cloud*, 259 F.Supp. 187, 191 (S.D.N.Y. 1966). However, the court went on to say that it would be insufficient for the plaintiff to merely assert an equitable interest in the *res*. *Id*.

Sloop Silver Cloud describes a petitory action for possession (under Rule D) as "A possessory action … where a party entitled to possession of a vessel seeks to recover that vessel. It is brought to reinstate an owner of a vessel who alleges wrongful deprivation of property." *Id*. Another way in which a Rule D possessory action can be brought, is by a charterer of a vessel who seeks to have the owner of same redeliver the vessel. *The Nellie T.*, 235 Fed. 117 (C.A.2 1916).

Rule D can be employed to partition a vessel. This is sometimes necessary when two or more co-owners of a vessel can neither decide on how to use it nor reach an equitable sales agreement over the vessel. Schoenbaum at 412. The Supreme Court has stated that courts do have the power to use Rule D for purpose of partitioning a vessel. *Madruga v. Superior Court*, 346 U.S. 556, 561 (1954).

A Rule D action is commenced by a complaint and warrant of arrest of the vessel and notice to adverse parties. After Rule D has been utilized to bring the vessel into the custody of the court, release of the vessel may be obtained only by order of the court upon giving such security as the court may require. Rule E(5)(d). Furthermore, should the district court elect to release the vessel or other property, it does not lose jurisdiction over it if it leaves the district. *Eliot v. M/V Lois B.*, 980 F.2d 1001, 1004-05 (5th Cir. 1993).

Maritime Liens

As stated earlier, in order for the plaintiff to utilize Rule C, he must show the court that he has a valid lien against the vessel. "A true maritime lien may be defined as (a) a privileged claim, (b) upon maritime property, (c) for services rendered to it or damage caused by it, (d) accruing from the moment when the claim attaches, (e) traveling with the property unconditionally, and (f) enforced by means of an action *in rem*." Alex L. Parks & Edward V. Cattrell, Jr., *The Law of Tug, Tow, and Pilotage* 785 (3d ed. 1994).

It is important to note that a vessel owner may not be held to be personally liable for a debt that was incurred by the vessel; the reason for this is that the courts consider the vessel to be a "juristic person" that is held liable *in rem*. *The China*, 74 U.S. 53 (1868).

The Supreme Court has stated that the vessel is liable *in rem* for the negligent acts of anyone who is lawfully in possession of her, whether that person is acting in the capacity as owner or charterer. *The Barnstable*, 181 U.S. 464 (1901). A maritime lien can attach only when proper services have been rendered to the vessel while she is in the lawful possession and control of anyone operating her. Yet any services rendered to the vessel while held by a U.S. Marshal will not give rise to a maritime lien. Parks at 786, 787.

Also, it should be noted that under the Federal Maritime Lien Act, public vessels are not subject to maritime liens. 46 U.S.C. § 31342(b). The Eleventh Circuit upheld this statute in the case of *Bonnani Ship Supply v. U.S.*, 959 F.2d 1558 (11th Cir. 1992). However, the plaintiff may still proceed with an *in personam* action against the government. Parks at 787. Foreign governments that own vessels, have similar protection arising under the Foreign Sovereign Immunities Act. 28 U.S.C. § 1605.

There are many different types of liens, which may provide for the arrest of the vessel. Either maritime contracts or maritime torts can give rise to a maritime lien against a vessel. Some of the various maritime contracts that can give rise to a maritime lien are contracts for "seamen's wages, supplies, repairs, or the furnishing of other necessities such as towage, pilotage, wharfage, and steverdore services, charter parties, contracts of affreightment, and salvage." Parks at 789. "Maritime liens are not limited to vessels alone, but also apply to cargo being carried as well. Charter parties and contracts of affreightment, salvage, general average, and claims for unpaid freight all give rise to liens against the cargo of a vessel in appropriate circumstances." *Id.* at 793.

The seamen's wage lien is considered sacred by the Supreme Court, which stated, "so long as a plank of the ship remains, the sailor is entitled, against all other persons, to the proceeds as security for his wages." *The John G. Stevens*, 170 U.S. 113 (1898). However, a seaman does not have a lien against the vessel if a person who was not lawfully in possession of the vessel hired him. *The Gen. McPherson*, 100 F. 860 (D. Wash. 1900).

The Fifth Circuit has held that a person who advances money to pay seamen's wages is entitled to a maritime lien of the same rank as a wage claim. *Bank of New Orleans v. Tracy Marie*, 580 F.2d 808 (5th Cir. 1978). However, for this to be the case several qualifications must be fulfilled. First, the person who advances the payment to the seaman must show that he has advanced the payment to the specified seaman and in the specified amount. *In re Good Ship Appledore*, 122 B.R. 821 (Bankr. D.Me. 1991). Next, the person who has advanced the payment must show the court that he has an agency relationship with the vessel owner. Finally, the one who has advanced the payment must show that the expected profits will come from the vessel herself and not from some other agreement with the owner. *First Natl. Bank v. Lightning Power*, 851 F.2d 1543 (5th Cir. 1988).

With regards to supplies, repairs, and other general necessaries that a vessel may need, Parks states that "the present state of the law is not far from the point where any service which is 'convenient, useful and at times necessary' may qualify as a lien under the Federal Maritime Lien Act and its re-codification." Parks at 805 (paraphrasing Grant Gilmore and Charles L. Black, *The Law of Admiralty* 685 (2d ed. 1975)). Some examples of what the court has deemed as "services" that will give rise to a lien are as follows: supplying radar equipment to a vessel, *Layton Indus v. Gladiator*, 263 F.Supp. 356 (D. Mass. 1967); repairs, materials, and dockage given to a vessel, *Miami River Boat Yard v. 60 Ft. Houseboat*, 390 F.2d 596 (5th Cir. 1968); and furnishing necessaries to a space charterer of a vessel by a stevedore (where the owner was aware that the services were being rendered and did not object), *Jan C. Uiterwyk v. Mare Arabico*, 459 F. Supp. 1325 (D. Md. 1978).

Among the items that courts have deemed as "necessaries" that will give rise to a lien are fuel and oil supplied to a vessel. *Gerard Const. v. Virginia*, 480 F.Supp. 488 (W.D. Pa. 1979). Containers that are leased to a carrier are held to be necessaries from which a lien may arise. *Farrell Ocean Services, Inc. v. Cosmos*, 1983 AMC 1483 (S.D.N.Y. 1983). Interestingly, if a plaintiff decides to release a defendant's vessel from attachment, the courts will consider this to be a necessary, due to the fact that it allows the vessel to continue engaging in business. *Chi Shun Hua Steel Co. v. Crest Tankers, Inc.*, 708 F.Supp. 18 (D.N.H. 1989).

Seamen may also bring a maritime lien against a vessel or cargo on a vessel in the event that they have been injured due to the vessel being unseaworthy. The courts have stated without doubt that a seaman may exert a maritime lien against a vessel for indemnity suffered through the unseaworthiness of the vessel. *The Imperator*, 288 F. 372 (C.A. 5 1923). The courts have said that "the scope of the ancient maritime lien was unquestionably broadened when liability to seamen for injuries arising on account of unseaworthiness…was recognized." *Bess v. Agromar Line*,

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518 F.2d 738, 741 (C.A.S.C. 1975). As to what unseaworthy means, the court has sometimes described it as a place on the ship where it is considered unsafe to work. *Id.* (citing *Venable v. A/S Det Forenede Dampskibsselskab*, 399 F.2d 347, 353 (4th Cir. 1968)).

An additional type of lien that is extremely important in the realm of admiralty law is that of the ship mortgage. Congress passed the Ship Mortgage Act with the purpose of giving the holders of ship mortgages precedence in the lien process over all but preferred maritime liens. 46 U.S.C. §§ 911 – 984. Section 953(b) of Title 46 reads as follows: "[u]pon the sale of any mortgaged vessel by order of a district court of the United States in any suit *in rem* in admiralty for the enforcement of a preferred mortgage lien thereon, all preexisting claims in the vessel, including any possessory common-law lien of which a lienor is deprived under the provisions of subsection L [§ 952 of this title] shall be held terminated and shall thereafter attach, in like amount and in accordance with their respective priorities, to the proceeds of the sale; except that the preferred mortgage lien shall have priority over all claims against the vessel, except (1) preferred maritime liens, and (2) expenses and fees allowed and costs taxed, by the court."

For a discussion of the priority of maritime liens and ship mortgage liens, please review Schoenbaum, §§ 9-5 and 9-6.

Conclusion

This paper is intended only to present an overview of the topics covered. Anyone attempting to seize his or her first vessel is cautioned to do his or her "homework" first, and review the Federal Rules and cases and statutory law and the local rules carefully. Please note the Rule E applies generally to *in rem* and quasi *in rem* actions. Rule A defines the scope of the admiralty rules. Rule F pertains to limitation of liability actions, and Rule G pertains to forfeiture actions. Good luck!

** Founding partner, White Law Firm, New Orleans, Louisiana and Oxford, Mississippi. Mr. White extends special thanks to Mark A. DeVrient, 3L, University of Mississippi School of Law, who spent many hours assisting in the preparation of this paper.*

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continuously driving on the part of the beach at issue prior to 1999, or that the public's use was adverse. The court thus concluded that genuine issues of material fact precluded the trial court's judgment in favor of the county on the theory of prescription.

Dedication

The public may acquire a right to use upland property by implied dedication, and the dispositive issue in determining whether or not property has been dedicated appears to be whether the private property owner has expressed "a present intention to appropriate his lands to public use."[5] Furthermore,

> mere uses by the public although long continued, should be regarded as a license only, recoverable at the pleasure of the owner, where it does not appear that any public or private interests have been acquired upon the faith of the supposed dedication, which would be materially impaired if the dedication were revoked.[6]

The burden is on the government to prove dedication. Further compounding the issue, this court added that in an earlier case the "proof required of the intention to dedicate is 'clear and unequivocal,' and the burden of proof is on the party asserting the existence of the dedication."[7]

The plaintiffs contended that a review of the plat by which they gained title to their properties showed that there was no such dedication. In support of their argument they cited an affidavit from an attorney, William E. Loucks, which stated that he found no evidence that any owner of any portion of the lands had dedicated those lands to the public for use as a roadway or parking area.

The county argued that the intent to dedicate the sandy portion of the beach was clear because in two of the plats the sandy beach is separated from the upland lots by a boardwalk. In addition, the county pointed out that the sand is dedicated as "Atlantic Ocean Beach."

The court ultimately agreed with the plaintiffs that there was no indication in the plats that the developer had intended a dedication of any portion of the owner's platted lots or the Boardwalk. Thus, the court found that the trial court erred in finding that the public had a right to use the plaintiffs' private property on the grounds that their platted lots were dedicated.

Custom

The Florida Supreme Court first recognized the public's customary right to the use of privately-owned dry sand beach in the *Tona-Rama* decision. The *Tona-Rama* court recognized that the public may acquire a right to use the sandy area adjacent to the mean high tide line by custom when "the recreational use of the sandy area . . . has been

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Mississippi's Public Waters – A Sportsman's View[1]

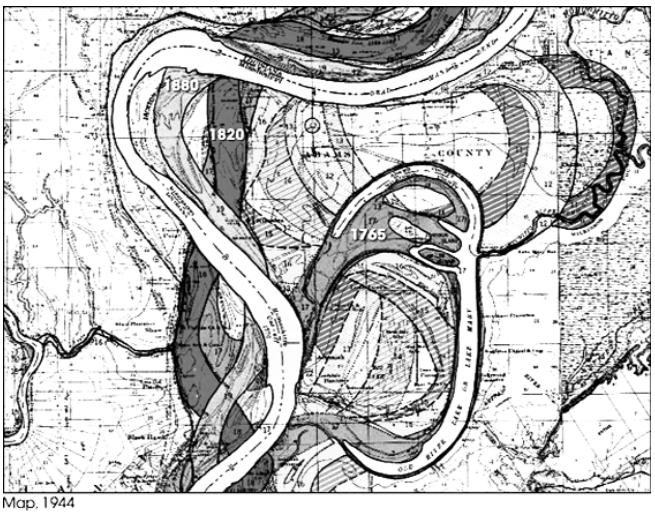
Rob Heflin

Each year I am pelted with a variety of questions about public water in Mississippi. The questions come from duck hunters wanting to know how far they can boat into flooded timber, fishermen wanting to know if certain lakes are public, and landowners wanting to know where their property starts and where the public water stops. All are good questions.

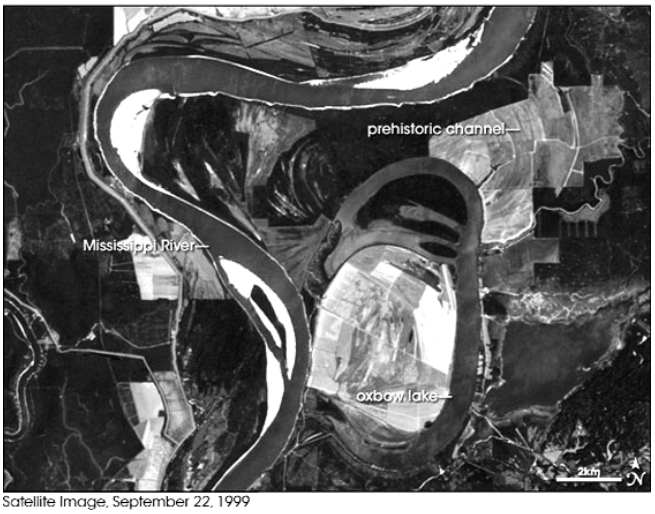
So how much of the river water can you legally hunt or fish? What about oxbows along the river? What about oxbows that are no longer connected to the river? The problem is that few people know what they are legally entitled to use when it comes to hunting and fishing on Mississippi's public waterways.

First let's iron out a few legal details. Miss. Code § 51-1-4 says: "[s]uch portions of all natural flowing streams in this state having a mean annual flow of not less than one hundred (100) cubic feet per second, as determined and designated on appropriate maps by the [Miss. Dept. of Environmental Quality (MDEQ)], shall be public waterways of the state." Using these guidelines, most rivers and many streams in the state are considered public. The Pearl, Pascagoula, Big Black, Yazoo, Sunflower and Mississippi obviously fall under this category, as well as many other "lesser" streams, creeks and bayous. But neither the MDEQ list nor state statute addresses other water bodies. Tunica Lake, DeSoto Lake, Lake Ferguson, Eagle Lake and Lake Mary are all oxbow lakes created by or still connected to the Mississippi River, but you won't find them listed on the MDEQ list. Neither are the hundreds of other smaller oxbows, like Bee Lake and Wolf Lake. Why? Because MDEQ only has the authority to list as public those streams that meet the flow requirements listed under state statute.

Historic and modern maps of an oxbow courtesy of the NASA Earth Observatory.



Map, 1944



Satellite Image, September 22, 1999

So now you may be wondering, "what is an oxbow?" I'm glad you asked. In nature, nothing stays unchanged. About the time Noah was getting off of the ark, the rivers in the Delta followed a different path than they do today. As rivers flow, they naturally change course to follow the path of least resistance. Erosion in beds comprised of soft soils also causes alterations in course. The earth on the outside of a river bend is constantly eroded by rapidly moving currents while slower moving water on the inside of the bend deposits silt taken from a bend upstream. As the river twists and turns, or meanders, outside bends are eaten away while inside bends are built up. Eventually, erosion in a loop in the stream causes a shortcut, or cutoff. This shortcut is created slowly over time as two bends in the course inch toward each other, but when the river breaks through the meander "neck" the change is sudden and explosive. This sudden change in course, when a new channel is made and the old loop is forgotten, is called an avulsion. Avulsions can leave behind small sections of river or bends many miles in length.

Remnants of abandoned meander bends left after an avulsion takes place are commonly called oxbow lakes because they resemble the U-shaped yokes once used to harness oxen together. Oxbows don't necessarily have to be U-shaped, but can take many forms as annual floods fill in certain areas with silt over hundreds and thousands of years. If you've ever seen the silt left behind on a Delta river ramp after a spring flood, you will quickly realize

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that siltation on a large scale can dump several feet of "new" earth each year. Such was the case after the catastrophic Mississippi River flood in 1927, when several feet of silt was dumped all across the Delta by floodwaters that broke through the levee north of Greenville. Compound this over hundreds and thousands of years and you can understand why the topsoil in the Delta is hundreds of feet thick in places and why old channels are filled in.

Have you ever wondered why the Mississippi-Arkansas and Mississippi-Louisiana state lines go from one side of the River to the other on the map? Because when Mississippi was granted statehood in 1817, the state lines followed the existing river channel. Look at those state lines. You will see that some of them run down the middle of certain lakes, but go off across woods and farmland in other places. Where the state line is located now used to be the main channel of the Mississippi River. Since then, the river has changed course, created new channels, filled in old channels and left oxbow lakes on either side of the 1817 channel.

Okay, enough of Geology 101. What does this have to do with public water? Well, just as a current river channel is considered public water, so are old, abandoned channels, or oxbows. According to Josh Clemons of the Mississippi-Alabama Sea Grant Legal Program, the Mississippi Supreme Court ruled in 1900 that "[a]ll navigable waters are for the use of all the citizens, and there cannot lawfully be any exclusive private appropriation of any portion of them."[2] Almost a century later, in a case involving Lake Beulah in Bolivar County, the court ruled that "the public right to waters formed by an avulsion is as great as any other public waters" and suggested that all oxbows are public waters.[3] That same year the court decided that a water body is "navigable in fact" if it can be navigated by "loggers, fishermen and pleasure boaters."[4] The court ruled that the definition of navigability as found in Miss. Code § 51-1-1, which refers to a "steamboat carrying 200 bales of cotton," was too restrictive and obsolete. Clemons says "[t]he court indicates that lakes, as well as streams, can be navigable waters under the law. Waters that are navigable in fact are subject to public use under the Equal Footing and Public Trust doctrines."[5]

"Under the Equal Footing Doctrine, the title to the beds and banks of navigable streams passed to newly-formed states at statehood" says Clemons. "States may, with some restrictions, pass title to these lands to private landowners, but the public retains the right to use the navigable waters for commerce, fishing, and boating under the Public Trust Doctrine. The *Ryals* court observed that this public right cannot be withdrawn 'by legislative enactment or judicial decree.' In other words, the legislature can sell or give away the land under navigable waters but it cannot sell or give away the public's right to use those waters." He notes that "[n]one of these cases explicitly decided the public/private status of an oxbow lake. However, when these cases are read together the reasoning suggests very strongly that the Mississippi Supreme Court would consider oxbow lakes to be public waters. This view seems to be shared by the Mississippi Attorney General's office, which has issued several opinion letters on the subject. In a 1993 letter to Dr. Sam Polles of [MDWFP] the Attorney General quoted with approval the language in *Dycus* that indicates that all oxbow lakes are public. In separate opinions to the Mississippi Gaming Commission, the Attorney General declared that oxbow lakes are navigable. These letters provide additional strong support for the position that oxbow lakes are public waterways."

In a 1996 letter to Sen. Robert Huggins, Attorney General Mike Moore said "[t]his Office has previously issued opinions to the effect that the term 'water sports' includes hunting, and thus Section 51-1-4 gives the public a right to the use of public waterways for hunting."[6] Moore also said

> nowhere does it state that public waterways as defined in Section 51-1-4 are the only public waters where the public can exercise the right to fish and engage in water sports. Although Mississippi follows the common law rule that riparian owners own the beds of navigable freshwaters to the center of the stream, navigable freshwaters have historically been available to the public for a variety of recreational uses. We find no distinction between public waterways and other public bodies of water when it comes to the public's right to hunt. We therefore conclude that the public does have the right to hunt on navigable public waters covering private lands.[7]

Mr. Clemons adds that "[t]he relevant law strongly indicates that oxbow lakes that were formed by navigable waters or public waterways are public waters. Therefore, a member of the public has a right to use them for, at the very least, boating and fishing, provided he or she does not have to trespass across private land to get there." Miss. Code § 51-1-4(3) provides that

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ancient, reasonable, without interruption and free from dispute."[8] The recognition of a right through custom means that the owner cannot use his property in a way that is inconsistent with the public's customary use or "calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational adjunct of the wet sand or foreshore area."[9]

The appeal required the court to confront several questions relating to the law of custom that had not been directly confronted before. Among these were: did *Tona-Rama* announce, as a matter of law, a right by custom for the public to use the entire dry sand beach of the *entire* coast of Florida? Moreover, if *Tona-Rama* did not establish such a universal right, how is the right established in an individual case? Finally, what is the effect of the inland migration of the beach on the public's right of customary use?

In *Tona-Rama* the Florida Supreme Court wrote: "[t]he general public may continue to use the dry sandy area for their usual recreational activities . . . because of a right gained through custom to use *this particular area of the beach* as they have without dispute and without interruption for many years."[10] The appeals court in this case concluded that the intent of the higher court was to declare the right of customary use in the public only for the area of beach at issue in that case. The appeals court further concluded that the higher court did not intend to announce a right by custom for public use of the entire sandy beach area of the entire state of Florida.

The plaintiffs asserted that under *Tona-Rama* several issues of fact had to be resolved before a determination could be made as to whether or not the public has a customary right to drive and park on the plaintiffs' property. Among these questions are whether such use is ancient, reasonable, without interruption and free from dispute. The plaintiffs urged that each of the test's components requires facts specific to a given use and to a given property.

The court ultimately agreed, stating that the acquisition of a right to use private property by custom is "intensely local." The court went on to find that the specific customary use of the beach in any particular area may vary, but proof is required to establish the elements of a customary right. The court then restated the *Tona-Rama* test for establishing a right under custom: does evidence establish the existence of the public's right to access and use a particular area of privately owned beach?

The plaintiffs had urged that driving and parking on the beach are not properly a customary right because the practice of driving and parking on the beach was not ancient or reasonable and because there was no evidence that driving or parking was ever a public use made of the area of the beach where the plaintiffs' property was located. The court agreed that it was not enough to show that driving and parking were a customary use of *some* of the county's beaches; the county had to show that driving and parking were a customary use of this part of this area of this beach. The county failed to do this. The record showed that there were parts of the beach in Volusia County where driving and parking were not allowed at all or during certain periods. Thus, the appeals court found that driving and parking on the plaintiffs' part of the beach had not been established through custom.

Additional Issues

The appeals court also had to decide whether the public's right of use (if it existed) moved with the rise and fall of ocean levels. In *Siesta Props. Inc. v. Hart* the court explained how title was affected by accretion, erosion, and avulsion:

> [t]he rule we think should govern in such a situation is set forth in *In re City of Buffalo*, 206 N.Y. 319, 99 N.E. 850, 852, wherein it is stated: 'When land bordering a body of water is increased by accretion . . . the new land thus formed belongs to the upland to which it attaches. By the same reason the rule is that, when the sea, lake, or navigable stream gradually and imperceptibly encroaches upon the land, the loss falls upon the owner, and the land thus lost by erosion returns to the ownership of the state. This is not the rule where the loss of the land occurs by avulsion, defined as the sudden or violent action of the elements, the effect and extent

Beach scene courtesy of ©Nova Development Corp.

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> of which is perceptible while it is in progress. In such cases the boundaries do not change.'[11]

The county's position was that not only can *title* change because of the movements of the tide lines, but also the location and extent of easements or *right of use along waterways* moves with these changes. According to the county, if the daily ebb and flow of the sea affect ownership, the public's right of use must move with it, otherwise the public would be cut off from its right to access navigable water.

The appeals court found that there was no doubt that if the mean high water line moves onto private property, the right of the public up to the mean high water line does migrate because of the public trust doctrine. However, the court stated that the right to use privately-owned land based on custom is on an entirely different footing. If the county could show that, by custom, actual use of the beach by the public as a thoroughfare has moved landward onto the plaintiffs' property with the movement of the mean high water line, then that public right is inviolate. However, the court stated that it is *not* evident that if customary use of a beach is made impossible by the landward shift of the mean high water line, then *the areas subject to the public right by custom* would move landward with it to preserve public use on private property that previously was not subject to the public's customary right of use.

The court recognized that a question as important as the meaning and scope of *Tona-Rama* and the migration of the public's customary right to use of the beach will ultimately have to be determined by the Florida Supreme Court, but that such a case should not go to the high court until the evidentiary issues have been developed in the trial court. In the appeals court's view, the migration of the public's customary use of the beach must be proven. Accordingly, the court concluded that genuine issues of material fact do remain to be determined with regard to the theory of custom and thus reversed the summary judgment in favor of the county.

Photograph of beachfront houses courtesy of NOAA's Photo Library.

The plaintiffs also raised a takings issue at trial. The appeals court agreed with the trial court's analysis of the takings issue. If the law recognizes that the public has a customary right to drive and park on the plaintiffs' property as an adjunct of its right to other recreational uses of that property, as recognized in *Tona-Rama*, then no takings claim can be made.

Holding

The appeals court affirmed in part, agreeing with the trial court's analysis of the takings issue.

The appeals court also reversed in part, concluding that genuine issues of material fact precluded the trial court's judgment in favor of the county on the theory of prescription; finding that the trial court erred in finding that the public had a right to use the plaintiffs' private property on the grounds that their platted lots were dedicated; and concluding that genuine issues of material fact remained to be determined with regard to the theory of custom. The court thus reversed the summary judgment in favor of the county and remanded the case to the trial court for further proceedings consistent with their opinion.

Endnotes

1. Mr. Miller is a J.D. candidate and participant in the Conservation Clinic at the University of Florida's Levin College of Law.
2. A purpresture is "an encroachment upon public rights and easements by appropriation to private use of that which belongs to the public." Black's Law Dictionary (8th ed. 2004).
3. *Downing v. Bird*, 100 So.2d 57, 64 (Fla. 1958).
4. *Id* at 64-65 (internal quotes and citations omitted).
5. *City of Palmetto v. Katsch*, 98 So. 352 (1923).
6. *Hollywood, Inc. v. Zinkil*, 403 So.2d 528, 533 (Fla. Dist. App. 1981).
7. *Brevard County v. Blasky*, 875 So.2d 6, 11 (Fla. Dist. App. 2004).
8. 294 So.2d at 78.
9. *Id.*
10. *Id.* (emphasis added).
11. 122 So.2d 218, 223-24 (Fla. Dist. App. 1960).

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> [n]othing contained in this section shall authorize any person utilizing those public waterways, under the authority granted by this section, to disturb the banks or beds of such waterways or the discharge of any object or substance into such waters or upon or across any lands adjacent thereto or to hunt or fish or go on or across any adjacent lands under floodwaters beyond the natural banks of the bed of the public waterway. Floodwater which has overflowed the banks of a public waterway is not a part of the public waterway.

What about other activities that are normally associated with hunting or fishing, such as wading when duck hunting or crappie fishing, tying trotlines to a bush on the bank, dropping anchor or tying a boat to a tree?

In a 1976 opinion addressing hunting public waters, the Attorney General stated that "the statute does not limit the hunting to hunting from boats" and that "wading by a hunter is permissible."[8] In a 1993 opinion the Attorney General declared that "[t]he applicable case law and statutory law would allow someone utilizing public waters to tie to a tree or drop an anchor since this is the normal use by those engaged in fishing or other water sports."[9] He concluded that "a waterfowl hunter has the right to utilize the water surface on any public waterway. This would include the right to float freely on and anchor to the beds of the waterway in order to carry out this sport."[10] He reiterated that wading is a normal part of hunting and fishing and its legality had been addressed in the 1976 opinion.

Okay, wake up if you fell asleep during that lecture. What you really want to know is where you can go on a public waterway and legally hunt and fish, right? Well, here's my summary, based on the opinions of the Mississippi Attorney General and the Supreme Court decisions:

> 1. The public has a right to use the water in a public waterway in Mississippi for hunting, fishing, trapping, boating, etc.
> 2. The public cannot trespass across private land to get to the water but once you gain legal access to the water of a public waterway, you can legally use the entire waterway. Even though twenty landowners may own land around and under a public waterway, permission from one (or via public ramp) to access the water would give you legal access to the entire waterway.
> 3. The public's right to the waterway only applies to water between the natural banks. The public cannot legally step out of the boat and onto the dry bank or bed of a public waterway without landowner permission. If the water has flooded beyond the natural banks, that is not public water.
> 4. Members of the public can wade, tie off to a tree, drop anchor, drop decoy weights, etc., as long as they are in the water between the natural banks.

If you are considering hunting or fishing the public waters in Mississippi and want to know exactly where you can and can't go, I suggest getting a good topographic map and/or software, a GPS unit, and a compass. Do your homework! Don't wait until the opening day of duck season when the river is above flood stage to locate the natural banks of a public waterway. If you study the materials and do some groundwork, you will be better able to stay within the limits of the law. There has been much confusion on the matter between both landowner and the public and it's the responsibility of both to know what is legal and what is not. Being armed with the correct information before you go afield is both morally and legally the right thing to do. So be careful, be respectful of other people in the great outdoors and don't put off taking those kids hunting and fishing with you. Enjoy your time spent in the outdoors and don't forget to thank God for blessing us with so many places to enjoy His creation in the Magnolia State!

Endnotes

1. This article will also be published, in slightly different form, in *Mississippi Sportsman* magazine. The views expressed are solely those of the author and do not necessarily reflect the policy of any government entity.
2. *Pascagoula Boom Co. v. Dickson*, 77 Miss. 587 (Miss. 1900).
3. *Dycus v. Sillers*, 557 So.2d 486, 500 (Miss. 1990).
4. *Ryals v. Pigott*, 580 So.2d 1140, 1152 (Miss. 1990).
5. Quotes from Mr. Clemons are taken from a June 13, 2005 letter to Dennis Riecke of MDWFP, available at <http://www.olemiss.edu/orgs/SGLC/MS-AL/ - OxbowLakes.pdf>.
6. Miss. Atty. Gen. Op. 96-0537 (Aug. 30, 1996).
7. *Id*. (internal citations omitted).
8. Miss. Atty. Gen. Op. (unnumbered) (Dec. 3, 1976).
9. Miss. Atty. Gen. Op. 93-0836 (Dec. 6, 1993).

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Alaska Young Fishermen's Summit
January 25–26, 2008, Anchorage, AK
http://seagrant.uaf.edu/map/workshops/2007/ayfs/index.html

•FEBRUARY 2008 •

Aquaculture America
February 9-12, 2009, Lake Buena Vista, FL
http://seagrant.uaf.edu/map/workshops/2007/ayfs/index.html

•MARCH 2008 •

AEHS's 18th Annual West Coast Conference on Soils, Sediments and Water
March 10, 2008, San Diego, CA
http://m1e.net/c?28856145-JMfSSJ.CQ23D6@ - 2459011-ZtUmC04S4d0vs

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