
Bronx
Hell Gate
Queensboro Br.
East River
Williamsburg Bridge
Navy Yard
Manhattan Bridge
Brooklyn
Park
Manhattan
Brooklyn Bridge
Battery
Governors Island
Ellis I.
Bedloe I.
Statue of Liberty
New York Harbor
Upper Bay
St. George

ADMIRALTY LAW AND THE FEDERAL DISTRICT COURTS OF NEW YORK GO HAND IN HAND

GEORGE CHALOS

Borrowing from the remarks of Hon. Charles S. Haight Jr. at the 225th anniversary of the U.S. District Court for the Southern District of New York (SDNY), on Nov. 4, 2014: "The fascination of admiralty law has the power to attract previously untutored converts." Citing to an 1815 opinion by Justice Joseph Story, Judge Haight explained: "The admiralty is a court of very high antiquity, with a strong probability of its existence in the reign of Richard the First, since the Laws of Oleron, which were compiled and promulgated by him on his return from the Holy Land, have always been deemed the law of the admiralty."

History of Admiralty Law in New York City

There has been a court with admiralty jurisdiction in New York City almost continuously since Oct. 5, 1678, when Sir Edmund Ambrose, the then governor general, appointed Stephen Van Cortlandt, then mayor of New York, to be the judge of the Court of Admiralty of the Province of New York.

The Colonial Court of Vice-Admiralty came to an end on Dec. 19, 1775, when it was succeeded by the Admiralty Court of the State of New York, which lasted until the adoption of the U.S. Constitution. The mace of the Vice-Admiralty Court of the Province of New York was the Silver Oar, which today is in the possession of the district court for the Southern District of New York. The Vice-Admiralty Court adjudicated ordinary marine cases, predominantly concerning salvage and seamen's wages, but also prize and breaches of acts of trade and navigation.

In its first session following the adoption of the Constitution, Congress passed the Judiciary Act of 1789. This act created the U.S. Supreme Court, as well as the circuit and district courts. On Nov. 3, 1789, the first court organized pursuant to the Constitution convened. This was not the Supreme Court, but the District Court for the District of New York, located in Manhattan. Since that time, and in the nearly 230 years since, the SDNY district court has become one of the premiere admiralty venues in the world.

When the court first opened, it was largely limited in its jurisdiction to maritime cases. As the nation's maritime commerce increased, so did the business of the Port of New York. The court was one of the original 13 courts established by the Judiciary Act of 1789. It first sat at the Merchants Exchange on Broad Street in November 1789. In 1814, the District of New York was split into northern and southern districts and was later further subdivided with the creation of eastern district in 1865 and the western district in 1900.

The first case argued in the New York District Court (and future Southern District Court) was *United States of America v. Three Boxes of Ironmongery Etc.* The case concerned the issue of how much the federal government was legally permitted to collect

Vice-Admiralty Court of the Province of New York Silver Oar

through customs, which would be the question in almost 75 percent of these early cases. The admiralty suits before the court at this time were primarily used to perfect title when selling vessels. The number and variety of admiralty cases steadily increased, including cases ranging from prize, seamen's wages, salvage, customs regulation evasions, maritime contracts, piracies, and other maritime felonies, to cruel and unusual treatment of seamen, insubordination and mutiny, assault upon passengers of an immigrant ship for publicly objecting to short food allowance, and proceedings against individuals for cutting down trees reserved for masts of vessels of the Royal Navy.

The state of undeclared hostilities between the United States and France in the late 18th century brought forth an increase in admiralty litigation arising from the seizure of vessels, best exemplified by the case of the Amelia. In that case, a German vessel was seized by the French and then captured by the USS Constitution and brought into New York for condemnation, where it was claimed by her original German owners. The district court held that Capt. Silas Talbot, the captain of the USS Constitution, was entitled to salvage, a verdict ultimately upheld by the U.S. Supreme Court. With the opening of the Erie Canal in 1825, even more commerce came through New York City. This increase in trade led to an increase in litigation. Most of these disputes fell within the Southern District's admiralty jurisdiction.

The increase in the SDNY district court's admiralty work was presided over by Judge Samuel Rossiter Betts, who became a leading contributor to the field of admiralty law as he took conscious steps to record and modernize it.[1] In 1828, Judge Betts established rules for the "Prize Court," and a decade later, published the first work on American admiralty practice.[2] The Southern District's admiralty practice continued to grow during Judge Betts' 40-year tenure, covering "questions of prize, blockade and contraband, resulting mainly from captures of enemy property by United States vessels in the blockade of Confederate ports."[3] The prominence of the Southern District as the nation's premier admiralty court continued under Judges Samuel Blatchford, William Gardner Choate, and Addison Brown. Judge Brown reached great heights in the pursuit of admiralty law. Judge Charles Merrill Hough said of Judge Brown that "the growth of American admiralty law during the next 20 years was more largely due to Judge Brown than to any other man or court, not excluding the Supreme Court itself."[4]

Throughout the 19th century, the caseload of the Southern District was dominated by admiralty cases and then by a mix of admiralty and bankruptcy cases. In 1909, one of the most famous admiralty judges, District Judge Learned Hand, joined the court and remained until 1924. Today, every judge sitting in the Southern District of New York is an admiralty judge—or at least will become one when assigned a maritime matter; a task previously achieved through a spin of the assignment wheel but now accomplished through a random-assignment computer program.

Admiralty Law in New York City During the Modern Era

Cargo and passenger claims, charter-party disputes, collisions, allisions, groundings, and pollution incidents are but some of the traditional admiralty matters that SDNY judges routinely hear. Of course, ships and their cargoes have changed since the establishment of the court almost 230 years ago. Containerization has all but done away with break bulk cargo and automation continues to evolve. Modern engineering has allowed for the construction of huge

Judge Addison Brown

container vessels; some of which are too large to call at U.S. ports. Single hull tankers have been phased out with the goal of eliminating accidental pollution at sea, yet Department of Justice investigations of suspected criminal maritime incidents persist. Cruise ships carry thousands of passengers near and far, which gives rise to a litany of legal dilemmas. Safety and operational consciousness and both international and domestic regulatory schemes continue to expand, as do the legal issues arising in this complex industry that touches upon ports and waterways throughout the world each day.

Deciding which contracts are sufficiently "salty" to fall within the court's admiralty jurisdiction and those that are "too sandy" to qualify remains challenging, especially for those that may be "salty in flavor" but perhaps just not "salty enough." SDNY judges are called upon to enforce arbitration clauses when appropriate, yet many times oversee ancillary proceedings, usually aimed at obtaining prejudgment security for a claim. Our judges often must decide the rights and responsibilities of parties to commercial maritime contracts, as well as (often confusing) marine insurance policies.

Federal courts throughout the country routinely recognize SDNY as the pre-eminent venue for admiralty matters and regularly cite to its persuasive authority. The U.S. District Court for the Eastern District of Texas has relied on SDNY decisions on admiralty law, stating "the Southern District of New York is home to one of the largest ports in the world. Its courts are well versed in admiralty matters, so [its] decisions are persuasive."[5] The Eastern District of Michigan has also recognized the reputation of SDNY: "When New York emerged as the pre-eminent seaport and mercantile center for the nation, the Second Circuit, along with the District Court for the Southern District of New York, became the foremost American admiralty court."[6] The U.S. Court of Appeals for the Fifth Circuit has recognized SDNY decisions as highly persuasive authority, recognizing "the Eastern District of Louisiana and the Southern District of New York [are] two of the districts with the busiest admiralty dockets in the country."[7] A host of other federal courts regularly rely on the authority of the Southern District of New York in admiralty actions, including, *inter alia*, the Fifth Circuit Court of Appeals[8]; the Southern District of Texas[9]; the Northern, Middle, and Southern Districts of Florida[10]; the Southern District of Alabama[11]; and the Eastern District of Virginia.[12] As more and more admiralty actions are brought in the Southern District of New York, this is unlikely to change.

Significant Admiralty Cases in New York Federal Courts

Historically, the Southern, and later Eastern, Districts of New York have heard some of the highest-profile admiralty cases.

The General Slocum

On June 15, 1904, the PS General Slocum caught fire and sank in the East River of New York City. At the time of the accident, it was on a chartered run carrying members of St. Mark's Evangelical Lutheran Church to a church picnic. An estimated 1,021 of 1,342 people on board died. It was the worst disaster in the New York area until the Sept. 11, 2001, attacks. The Knickerbocker Steamboat Co., the owner of the General Slocum, filed a petition in the Southern District of New York to contest and limit its liability in relation to the accident.[13] Claimants appeared and answered the petition, alleging that the General Slocum was unseaworthy because she was not properly manned and equipped and did not have competent officers and crew. The claimants alleged that the vessel was not provided with "water tight bulkheads, or with lifeboats, or boat disengaging apparatus, or with proper fire extinguishing equipment and a well-drilled and efficient complement of men to operate the same in case of necessity."[14] Criminal actions were also brought against the vessel's master, owner, officers, and commodore.[15] The indictments against the defendants charged that the deaths were caused by unsafe and unserviceable life preservers, incomplete and unfit steam and hand pumps, and the captain's wrongful neglect in failing to discipline and train the crew.[16] The indictments were upheld by the Southern District of New York; however, only the captain of the vessel, Capt. William H. Van Schaick, was convicted. He was found guilty of criminal negligence for failing to maintain proper fire drills and fire extinguishers.

The Titanic

In the early hours of April 15, 1912, a British passenger liner sank after it collided with an iceberg during its maiden voyage from Southampton to New York City. There were an estimated 2,224 passengers and crew aboard, and more than 1,500 died. It was one of the deadliest commercial peacetime maritime disasters in modern history. The name of that vessel is the RMS Titanic, and it was the largest ship afloat at the time it entered service. After the vessel sank, its owner, Oceanic Steam Navigation Co. Ltd., filed a petition for limitation of liability in the Southern District of New York.[17] In its petition,

Artist's depiction of the General Slocum fire

"All the News That's Fit to Print."

The New York Times.

THE WEATHER.

TITANIC SINKS FOUR HOURS AFTER HITTING ICEBERG; 866 RESCUED BY CARPATHIA, PROBABLY 1250 PERISH; ISMAY SAFE, MRS. ASTOR MAYBE, NOTED NAMES MISSING

Col. Astor and Bride, Isidor Straus and Wife, and Maj. Butt Aboard.

"RULE OF SEA" FOLLOWED

Biggest Liner Plunges to the Bottom at 2:20 A.M.

RESCUERS THERE TOO LATE

WOMEN AND CHILDREN FIRST

SEA SEARCH FOR SURVIVORS

The New York Times, April 16, 1912.

Oceanic Steam Navigation Co. alleged "that 711 persons were saved in the boats; that her master, many of her officers and crew, and a large number of passengers, perished; that the vessel, her cargo, the personal effects of the passengers and crew, the mails, and everything connected with the vessel, except 14 lifeboats and their equipment, became a total loss; that the value of the lifeboats saved and of the pending freight and passage moneys did not exceed the sum of $91,805.54."[18] Several claimants filed proofs of claim against the owner of the Titanic, and many filed exceptions to the petition.[19] The claimants argued that the laws of the United States should not apply to a British vessel where the acts causing the damage were done outside the jurisdiction of the United States. The court decided that the law of the country to which the vessel belongs applies and dismissed the petition.[20]

The Lusitania

To complete the trifecta of early 20th century maritime tragedies, the District Court for the Southern District of New York heard cases related to the sinking of the RMS Lusitania. The Lusitania sank on May 7, 1915, during World War I as Germany waged submarine warfare against the United Kingdom. The sinking turned public opinion in many countries against Germany and directly contributed to the American entry into the war. Sixty-seven actions at law and suits in admiralty were instituted in the United States, most of which were brought in the Southern District of New York. Cunard S.S. Co. Ltd., the owners of the Lusitania, filed a petition in the Southern District to obtain an adjudication as to its liability.[21] The victims of the tragedy alleged that the steamship company was liable for the loss of life and cargo.[22] Cunard S.S. Co. sought to have the court determine its liability and, should the court find any liability, to limit said liability to Cunard S.S. Co.'s interest in the vessel and her pending freight.[23] The court found the Lusitania seaworthy at the time of the ill-fated voyage, and the crew competent and capable.[24] On Feb. 4, 1915, the Imperial German government had issued a proclamation that it would sink any British merchant vessels at sight in the waters surrounding Great Britain and Ireland, including the whole English Channel.[25] Judge Julius M. Mayer found that the captain of the Lusitania was not negligent and that "from every standpoint of international law had the right to expect a warning before its peaceful passengers were sent to their death. That the attack was deliberate, and long contemplated, and intended ruthlessly to destroy human life, as well as property, can no longer be open to doubt."[26] Judge Mayer further held that even if negligence is shown, "it cannot be the proximate

cause of the loss or damage, if an independent illegal act of a third party intervenes to cause the loss."[27] The court held the cause of the sinking of the Lusitania was the illegal act of the Imperial German government and not Cunard.

The Achille Lauro Hijacking

There have been many significant admiralty cases before the Southern District of New York throughout the 20th century. SDNY confronted the issue of international terrorism head on when it heard the case of *Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria*,[28] a lawsuit seeking damages from the hijacking of the MS Achille Lauro. The Achille Lauro was hijacked by four men representing the Palestine Liberation Front off the coast of Egypt on Oct. 7, 1985. A 69-year-old Jewish American man and native New Yorker, Leon Klinghoffer, was murdered by the hijackers and thrown overboard. Klinghoffer was confined to a wheelchair at the time and was shot in the head and again in the chest by one of the terrorists. The rest of the passengers were held hostage for a total of 51 hours. The passengers, or the personal representatives of passengers, sued in the Southern District of New York the owner and charterer of the Achille Lauro, travel agencies, and various other entities they claimed failed to take sufficient steps to prevent or warn of the risk of piracy.[29] The plaintiffs asserted that the seizure and murder were done by members of the Palestine Liberation Organization (PLO). The cruise line denied responsibility and claimed the attack was unforeseeable. The cruise line also impleaded the PLO for indemnification. The court determined that the PLO is present in New York, and that the court had subject matter and personal jurisdiction over the PLO.[30] The action was eventually settled just prior to trial when the PLO made a confidential financial settlement, which resulted in the creation of a nonprofit organization, the Leon and Marilyn Klinghoffer Memorial Foundation. This lawsuit spurred passage of the Antiterrorism Act of 1990, which made it easier for victims of terrorism to sue terrorists and collect civil damages for losses incurred.

The Staten Island Ferry Crash

The Eastern District of New York split off from the Southern District in 1865 when a bill was presented to the U.S. Senate to establish an additional district court to deal with admiralty litigation stemming from the Port of New York.[31] The Eastern District was faced with a multitude of maritime actions stemming from the Oct. 15, 2003, crash of the Staten Island ferry, the MV Andrew J. Barberi, into a pier at the St. George ferry terminal in Staten Island.[32] As a result of the crash, the edge of the pier sliced into the main passenger deck killing 11 passengers and injuring 70 others. At the time of the crash, the pilot was unconscious due to prescription drugs and painkillers he had taken for back pain. The passengers and surviving relatives brought wrongful death and personal injury claims against the city of New York.[33] The plaintiffs asserted that the city's negligence caused the crash because the director of ferry operations failed to enforce the rule requiring two pilots in the pilothouse at all times. The city objected and argued that the Limitation of Vessel Owner's Liability Act limited its liability to the value of the vessel as assessed after the collision. Judge Korman applied a formula articulated by Judge Hand in 1947, under which the duty of a ship owner to provide against resulting injuries is a function of three variables: (1) the probability that the ship will break away; (2) the gravity of the resulting injury, if it does; and (3) the burden of adequate precautions. Liability depends on whether the burden is less than the injury multiplied by the probability. Using this formula, Judge Korman determined the city did not act reasonably to avoid the risk to the passengers of the Staten Island ferry, holding that enforcing the two-pilot rule did not create an additional burden for the city as a second pilot was onboard at the time of the crash.[34] The court also ruled that the city could not limit its liability because the negligence was attributable to supervisory personnel.

Painting of the Lusitania by Norman Wilkinson.

Criminal charges were also brought against five individuals, including the pilot of the ferry, Richard Smith. Smith was charged with 11 counts of seaman's manslaughter. The Seaman's Manslaughter Statute, codified at 18 U.S.C. § 1115, criminalizes misconduct or negligence that result in deaths involving vessels on waters in the jurisdiction of the United States. The statute exposes three groups to criminal liability: ship's officers (captains, engineers, pilots); those having responsibility for the vessel's condition (owners, charterers, inspectors); and corporate management. No *mens rea* is required to prove seaman's manslaughter; instead the statute requires only simple negligence—a breach of duty to perform an act or omission in violation of a standard of care. Smith pleaded guilty to seaman's manslaughter and was sentenced to 18 months in prison.

Staten Island Ferry Crash

Rule B Attachments of Electronic Fund Transfers

Maritime actions came to the forefront in the Southern District of New York in the early years of the 21st century when numerous actions under Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure were commenced in the Southern District. The rise in Rule B actions came after the Second Circuit Court of Appeals decision in *Winter Storm Shipping v. TPI*,[35] holding that an electronic fund transfer that passes through intermediary banks in the Southern District of New York were subject to Rule B attachment. The Second Circuit found that due process was served even though the defendant was unaware of which bank would be targeted, the transfers constituted intangible property under the meaning of Rule B, and that federal law pre-empted New York state law prohibiting the attachment of an electronic funds transfer. Over the next several years, billions of dollars in electronic fund transfers were attached because pieces of electronic information representing those dollars passed through the Southern District. Over the next seven years, large New York banks received numerous attachment orders and more than 700 supplemental services of existing orders every day. At its height, Rule B maritime attachment requests comprised approximately one third of all cases filed in the Southern District of New York. In October 2009, the Second Circuit overruled the *Winter Storm* decision in *Shipping Corp. of India v. Jaldhi Overseas PTE Ltd.*[36] Overruling a case as recent as *Winter Storm* is generally not seen; however, none of the Second Circuit justices protested the result and *Winter Storm* was overruled.

Conclusion

The number and kinds of admiralty cases before the Southern and Eastern Districts of New York have changed throughout the centuries. The presence of a robust maritime bar and the preeminence of district judges in the district courts of New York in maritime law is unlikely to change. Throughout the years and facing maritime controversies, both ancient and novel, the judges of the Southern and Eastern Districts of New York have never failed to rise to the occasion. The perils of the sea are eternal and so, too, is the maritime lawyer who will take his or her case before the storied admiralty courts of New York. ⊙

George M. Chalos is the principal and founder of Chalos & Co. P.C.—International Law Firm, leading advocates in maritime, admiralty, and insurance litigation with offices located in NYC, Houston, and Miami. Chalos has been engaged in the practice of law for over 20 years. He is a member of the Federal Bar Association, Southern District of NY Chapter and serves as a director for the FBA Admiralty Section.

Endnotes

[1]Hough, *supra* note 7, at 24.
[2]Burak, *supra* note 4, at 5.
[3]*Id.* at 5.
[4]Hough, *supra* note 7, at 29.
[5]*Flame S.A. v. M/V Lynx*, 2010 U.S. Dist. LEXIS 145880 at *9 n.3 (E.D. Tex. 2010).
[6]*Price v. PBG Hourly Pension Plan*, 921 F. Supp. 2d 764, 771 n.1 (E.D. Mich. 2013) (quoting Irving R. Kaufman, *New Remedies for the Next Century of Judicial Reform: Time as the Greatest Innovator*, 57 Fordham L. Rev. 253, 254 (1988).
[7]*Cargill Ferrous Int'l v. Sea Phoenix MV*, 325 F.3d 695 (5th Cir. 2003).
[8]*See, e.g.*, *id.; Thyssen Steel Co. v. M/V Kavo Yerakas*, 50 F.3d 1349, 1354 (5th Cir. 1995) (citing to SDNY decisions related to the Carriage of Goods by Sea Act).
[9]*See, e.g.*, *GIC Servs. LLC v. Freightplus (USA) Inc.*, 2013 U.S. Dist. LEXIS 180142 (S.D. Tex. 20130) (referencing several SDNY decisions related to limitation of liability); *SLS Shipbuilding Co. v. Ionia Mgmt. S.A.*, 2011 U.S. Dist. LEXIS 72506, *4 (S.D. Tex. 2011) (citing to several SDNY decisions regarding the determination of the maritime nature of a *prima facie* claim when sustaining a Rule B attachment); *Barna Conshiping S.L. v. 8,000 Metric Tons*, 2010 U.S. Dist. LEXIS 117009, *13 (S.D. Tex. 2010) (citing to SDNY cases when determining whether a charter party is incorporated into a bill of lading).
[10]*See, e.g.*, *Blue Marine Shipping SA De CV v. Gulmar Offshore Middle East LLC*, 2010 U.S. Dist. LEXIS 49287 (N.D. Fla. 2010) (referencing SDNY decisions on the standard for determining whether a plaintiff asserted a *prima facie* admiralty claim); *Armco Chile Prodein v. M/V Norlandia*, 880 F. Supp. 781, 790 (M.D. Fla. 1995) (citing to SDNY authority related to the Carriage of Goods by Sea Act); *State Nat'l Ins. Co. v. Anzhela Explorer LLC*, 812 F. Supp. 2d 1326, 1371 (S.D. Fla. 2011) (citing *Fed. Ins. Co. v. PGG Realty LLC*, 538 F. Supp. 2d 680 (S.D.N.Y. 2008)).
[11]*See, e.g.*, *Barcliff LLC v. M/V Deep Blue*, 2016 U.S. Dist. LEXIS 133253, *52 (S.D. Ala. 2016) (citing *Aegean Bunkering (USA) LLC v. M/T AMAZON*, 2016 U.S. Dist. LEXIS 113623, *22 (S.D.N.Y. 2016))
[12]*See, e.g.*, *Fernandez v. Haynie*, 120 F. Supp. 2d 575, 581 (E.D. Va. 2000) (citing SDNY decisions regarding to admiralty jurisdiction over unpaid bills for marine fuel).
[13]*In re Knickerbocker S.B. Co.*, 136 F. 956 (S.D.N.Y. 1905).
[14]*Id.* at 956.
[15]*United States v. Van Schaick*, 134 F. 592 (S.D.N.Y. 1904).
[16]*See id.*
[17]*The Titanic*, 209 F. 501 (S.D.N.Y. 1913).
[18]*Id.* at 501-02.
[19]*Id.* at 502.
[20]*Id.* at 512.
[21]*The Lusitania*, 251 F. 715 (S.D.N.Y. 1918).
[22]*Id.*
[23]*Id.* at 717.
[24]*See id.* at 718.
[25]*Id.*
[26]*Id.* at 731-32.
[27]*Id.* at 732.
[28]*Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria*, 739 F. Supp. 854 (S.D.N.Y. 1990).
[29]*Id.* at 856.
[30]*Id.* at 867.
[31]Bernard A. Grossman, A History of the United States Court for the Eastern District of New York 7 (1965).
[32]*In re City of New York*, 475 F. Supp. 2d 235 (E.D.N.Y. 2007).
[33]*Id.* at 235.
[34]*Id.* at 243.
[35]*Winter Storm Shipping v. TPI*, 310 F.3d 263 (2d Cir. 2002).
[36]*Shipping Corp. of India v. Jaldhi Overseas PTE Ltd.*, 585 F.3d 58 (2d Cir. 2009).