



# Don't Gamble With a Riverboat Casino Injury Case: How Admiralty Law & Maritime Jurisdiction Play Into the Personal Injury Landscape in Illinois



by Daniel C. Fabbri & Britt M. Anderson

## I. Introduction

A potential client contacts you about a personal injury case where she was injured during a night out with friends. You listen to her story and get all the information you need about the injuries she suffered. As an experienced practitioner, you apply your wealth of knowledge to the facts to determine the multitude of strengths and weaknesses of the case, and if you should take it. Unfortunately, it does not occur to you until later that the analysis you applied, which seemed no different than the hundreds of other potential injury cases you have handled in the past, was off the mark. The reason: the injuries happened on a boat. What seemed like a simple slip and fall, premises liability, or basic negligence case, is anything but, and you learn that the applicable law may pull you into the area of maritime jurisdiction.

Admiralty law and maritime jurisdiction are things you might have learned about in law school, and quickly forgot by the time the bar exam rolled around. However, thanks to a political climate over the past few decades that has determined the navigable waterways of the Midwest can be a bastion for taxable activity, personal injury practitioners in Illinois need to be mindful of the role that admiralty / maritime law can play in a seemingly simple appearing personal injury case. Admiralty and maritime law are not just issues in coastal areas anymore, or reserved for passenger transportation vessels (such as the ferryboat that

crashed into a pier in New York City in January of this year, injuring dozens of passengers). More and more people in Illinois are spending time on commercial boats...some without even realizing it.

## II. Background Law

"Riverboat" casinos, which have become so prevalent over the past two decades, are, despite their appearance, actual boats and may be subject to maritime jurisdiction under admiralty law. The first riverboat casino licensed in Illinois was the Alton Belle Casino, which was opened for operation in September 1991.<sup>1</sup> Since then, aquatic-based gambling facilities have changed dramatically, not only in size and scope, but also operation. The boats contain gaming facilities, entertainment, as well as the service of food and drinks. This has created a quagmire in the application of the law related to non-employee injuries suffered on these vessels, and those like them. Article III, section 2, of the United States Constitution gives the federal court system exclusive jurisdiction over maritime issues.<sup>2</sup> This power has been codified at 28 U.S.C. §1331(1), which grants the federal district courts jurisdiction over civil cases of admiralty or maritime jurisdiction. Solving the admiralty/maritime quagmire has been an ongoing effort of the judicial system for decades. As the Supreme Court noted over 40 years ago, "admiralty law should be 'a system of law coextensive with, and operating uniformly in, the whole country.'"<sup>3</sup>

The terms "admiralty"

and "maritime" are used interchangeably in most situations involving this law, as the majority of precedents use both terms.<sup>4</sup> As the 7<sup>th</sup> Circuit adeptly noted in *Weaver v. Hollywood Casino-Aurora, Inc.*, "[i]nsofar as the reference is to substantive law, the terms 'admiralty' and 'maritime law' are virtually synonymous in this country today, though the first derives from the connection of our modern law with the system administered in a single English court, while the second makes a wider and more descriptive reference."<sup>5</sup>

## A. The "Locus Nexus" Test

The "locus nexus" test used to determine whether a case fell under the category of admiralty law was established by the Supreme Court in *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*.<sup>6</sup> The Supreme Court emphasized that traditional analysis as to whether a tort fell within the admiralty jurisdiction of the federal courts turned on the locality of the tort. If the tort occurred on navigable waters, admiralty jurisdiction was deemed to apply. Conversely, if the tort occurred on land, no admiralty jurisdiction applied.<sup>7</sup> The Court went on to reason that for the case of aviation torts in an aquatic setting, the locality test was not conclusive for determining admiralty jurisdiction, and held that admiralty law did not apply in this instance.<sup>8</sup>

Thus, developed the "nexus" aspect of the test, a requirement that the "wrong bear a significant relationship to traditional maritime activity."<sup>9</sup> This took into account

*don't gamble continued on page 34*



*don't gamble continued from page 32*

that just because the "locus" of an injury involved a waterway, the activity involved may not actually have anything to do with the waterway itself, which is where admiralty jurisdiction / maritime law has its roots. The Supreme Court expanded application of the "locus nexus" test beyond aviation torts to cover pleasure boats on navigable waters as well, in the second of the "locus nexus" trilogy of cases, *Foremost Ins. Co. v. Richardson*.<sup>10</sup> The Court there held that the activity at issue need not be explicitly commercial because the collision of any type of boat with another could have a potential impact on the federal interest in admiralty law, that being, maritime commerce.<sup>11</sup> The final case considered part of the Supreme Court trilogy on the "locus nexus" test is *Sisson v. Ruby*.<sup>12</sup> In *Sisson* the Court explained that the trial court must "assess the general feature of the type of incident involved to determine whether such an incident is likely to disrupt

commercial activity."<sup>13</sup>

The 7<sup>th</sup> Circuit's opinion in *Weaver v. Hollywood Casino-Aurora, Inc.*, showcased the application of the "locus nexus" test in today's modern riverboat casino setting here in the Midwest.<sup>14</sup> The court elaborated on the requirement that the tort occur on navigable waters, stating that in cases like these, the "rivers must be regarded as public navigable rivers in law which are navigable in fact."<sup>15</sup> Furthermore, navigability in fact deals with "the suitability of a river for interstate commerce."<sup>16</sup> The *Weaver* opinion narrowed the "locus" prong of the "locus nexus" test; the court held that while the river was generally navigable, the enclosed portion of the Fox River where the tort occurred was not navigable, and therefore, the navigable water requirement of the locality test was not fulfilled.<sup>17</sup> Despite its finding that the "locus" half of the "locus nexus" test was not likely met, the court went on to discuss the application of the "nexus" prong of the two-prong

test. The *Weaver* court broke the required connection to maritime activity into two parts. The first issue a court must assess is "whether the incident involved has 'a potentially disruptive effect on maritime commerce.'"<sup>18</sup> When deciding this issue, the court should look to the general character of the type of incident and not the specific facts of the case.<sup>19</sup> The second half of the analysis is an examination as to whether "'the general character' of the 'activity giving rise to the incident' shows a 'substantial relationship to traditional maritime activity.'"<sup>20</sup> The possibility that the incident could affect maritime commerce is more important than whether it actually did.<sup>21</sup>

## B. Extension of Admiralty Jurisdiction

Despite the extensive development of the body of law, the view of the 7<sup>th</sup> Circuit has recently moved away from the "locus nexus" test. In *Tagliere v. Harrah's Illinois Corp.*, an opinion authored by Judge Posner, the

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7<sup>th</sup> Circuit assessed a case where a casino boat patron was injured after the stool she was leaning on collapsed.<sup>22</sup> The court found that the patron's injury was caused by a vessel within the meaning of the Extension of Admiralty Jurisdiction Act, 46 U.S.C. App. §740, which "extend[s] admiralty jurisdiction to 'all cases of damage or injury, to person or property caused by a vessel on navigable water.'"<sup>23</sup> This implies that the "boat" itself need not be a navigable vessel to be subject to admiralty jurisdiction, but merely the fact that it is floating on a waterway that could be navigated, should someone choose to do so with any boat. This is very important to the present use of midwestern waterways for things such as gaming "boats," where the boat rarely leaves the moorings of its dock. The court explained that a 'vessel' has been interpreted by the Supreme Court to encompass the fixtures, furniture, and other appurtenances as well; therefore, an injury involving a stool on the ship was, in fact, an

injury caused by a vessel.<sup>24</sup>

### C. Permanently vs. Indefinitely Moored

The court in *Tagliere* remanded the case and stated that admiralty jurisdiction applied if, after an evaluation of the facts, it was found that the riverboat was indefinitely, rather than permanently, moored to the pier at the time of the fall.<sup>25</sup> This comports with a previous Supreme Court holding that a boat that "has been permanently moored or otherwise rendered practically incapable of transportation or movement" is not a "vessel" for purposes of admiralty jurisdiction.<sup>26</sup> *Tagliere* made clear that, "[h]ad the casino been located on the pier rather than in a boat moored to it, there would be no argument that the plaintiff's claim was an admiralty claim. Since the boat was moored indefinitely, it could be thought the equivalent of landfill, and an accident occurring on landfill adjacent to navigable waters is not within the admiralty jurisdiction."<sup>27</sup>

The court reasoned that using the Extension of Admiralty Jurisdiction Act provided a clearer rule to determine admiralty jurisdiction, as the "nexus" test is vague and is meant to prevent admiralty jurisdiction of 'freak cases,' such as in the *Executive Jet Aviation* case.<sup>28</sup>

The body of law illustrates that, in terms of determining what law applies to an injury suffered on such vessels, a very basic distinction often carries the day: how often does the vessel actually leave port? While early riverboat casinos were originally intended to be actual seafaring vessels, over the years, many have become floating buildings, no longer required to cruise,<sup>29</sup> essentially permanently moored to docks where the gaming activity occurs on the water. However, people come and go from that water at any point in time. So, the current state of the law shows that the test is not if the boat does navigate the waterways, but rather if the

*don't gamble continued on page 36*

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boat could travel on navigable waterways, should someone choose to do so. Or, as Judge Posner postulated in *Tagliere*, the question becomes whether or not the boat is "disabled from sailing."<sup>30</sup>

### III. So How Do Cases On The Water Proceed?

While admiralty law may apply in certain situations that does not mean state law can be ignored, as aspects of state law also apply to an injury case on a boat. For admiralty law claims, a claimant may sue either *in rem* or *in personam*.<sup>31</sup> Admiralty jurisdiction is exclusive only in maritime causes of action begun and carried on as proceedings *in rem*, that is, where a vessel or thing itself is treated as the offender and made defendant by name.<sup>32</sup> *In rem* proceedings are typical of situations where the vessel is treated as the offender for the purpose of enforcing a lien.<sup>33</sup> Moreover, the Federal Rules of Civil Procedure Supplemental Rules for

Certain Admiralty and Maritime Claims and Asset Forfeiture Actions Rule C(1)(a) and (b) state that *in rem* actions are available to (a) enforce any maritime lien, and (b) whenever a statute of the United States provides for a maritime action *in rem* or a proceeding analogous thereto.<sup>34</sup> Therefore, passenger plaintiffs, in general maritime tort actions generally sue *in personam*, not *in rem*. Thus, admiralty jurisdiction is rarely the exclusive jurisdiction in injury cases.

States can adjudicate maritime causes of action for proceedings *in personam*, which are against a traditional defendant.<sup>35</sup> The Savings to Suitors Clause of the Judiciary and Judicial Procedure Act<sup>36</sup> allows states to modify or supplant maritime law in cases of *in personam* jurisdiction as long as the state action is not hostile to maritime law.<sup>37</sup> This concurrent jurisdiction allows states to apply maritime law to cases within their own jurisdictions if they have personal jurisdiction over the parties and they do not

make new, inconsistent maritime law.<sup>38</sup>

Additionally, for state courts to hear a maritime case, the plaintiff must be seeking a common law remedy.<sup>39</sup> Obviously, in personal injury actions, this would be the norm. Generally, federal maritime law is the substantive law whether the plaintiff is in state court or federal court.<sup>40</sup> However, when admiralty courts are called upon to protect rights rooted in state law, they should attempt to resolve the issues in accordance with substantive state law.<sup>41</sup> Where admiralty courts are dealing with areas of federal admiralty law that are incomplete, "admiralty courts may apply state law by express or implied reference."<sup>42</sup> The application of state law in federal courts may not be used to eliminate or narrow any substantial admiralty rights of recovery.<sup>43</sup>

### IV. Practical Considerations In Personal Injury Cases

As should be obvious by now, there are important differences

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between admiralty law and state tort law to be aware of when pursuing personal injury claims. One of the most important differences which can affect whether a case is pursuable is the applicable statute of limitations. While Illinois generally places a two-year statute of limitations on personal injury claims,<sup>44</sup> maritime personal injury torts are governed by the statutory limitations period set forth in 46 U.S.C.App. §763a, which is three years from the date the action accrues.<sup>45</sup>

Choice of forum and law is also particularly relevant in personal injury cases because there is no right to a jury trial under federal maritime law.<sup>46</sup> However, when the action is brought in Illinois state court, "parties to a civil case are entitled to a jury trial when that right existed at common law."<sup>47</sup> General maritime law has adopted the fundamental principles of negligence law so much of the litigation will seem familiar to regular personal injury practitioners.<sup>48</sup> But, the duties owed by responsible parties to the

injured differ under maritime law, as a ship owner owes passengers a duty to exercise reasonable care under the circumstances,<sup>49</sup> regardless of their status, as maritime law does not distinguish between licensees and invitees.<sup>50</sup> Further, maritime law follows pure comparative negligence and not contributory negligence, nor Illinois' "modified comparative negligence" system<sup>51</sup>, and as a result a plaintiff's own fault, no matter how gross, is not a bar to recovery.<sup>52</sup> As with the more plaintiff-friendly statute of limitations period applicable under maritime law, this plaintiff friendly fault allocation can go a long way towards making an otherwise unpursuable case one that could, and sometimes should, be pursued.

Also key to consider, if the wrongdoer's conduct is egregious, the Supreme Court has recently made clear, "the common-law tradition of punitive damages extends to maritime claims" unless there is legislation to indicate otherwise.<sup>53</sup> Thus, it appears that

the punitive damages avenue is available to the plaintiff unless it is expressly prohibited, which, is the opposite of most personal injury law in Illinois. This can be strong leverage in a situation where the injured victim lost their life as the Supreme Court has recognized a right to recover for wrongful death under general maritime law.<sup>54</sup>

If some of the differences noted above can improve a victim's case, admiralty jurisdiction, and maritime law, may be a wise road to travel. If proceeding in this fashion, certain bases must be accounted for, and pleading properly becomes that much more important. For example, to invoke admiralty jurisdiction, the plaintiff must have a statement in their claim identifying the claim as an admiralty or maritime claim.<sup>55</sup> In addition, the procedural rules for admiralty law are governed by the Federal Rules of Civil Procedure and the Federal Rules of Civil Procedure Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.<sup>56</sup>

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### V. Conclusion

Admiralty jurisdiction and maritime law can be powerful tools in a personal injury case, given the right facts and circumstances. Further, it can be the 11<sup>th</sup> hour savior of an otherwise unpursuable injury case. A case that would be timebarred under Illinois tort law could be saved under admiralty law and a case where the victim's own mistakes would bar recovery under state law could be pursuable to recovery by invoking maritime jurisdiction. Thus it is imperative for an injury practitioner to be aware of this law and use it to his or her client's advantage whenever such a situation presents itself. At a minimum, it is something that any personal injury practitioner in the Chicagoland area needs to be aware of given the continuing growth of water-based recreation, especially that which does not traditionally have any connection to the water at all.

As of January, gambling

expansion legislation has passed both Houses of the Illinois legislature, which would allow for four additional riverboat casino licenses in Illinois.<sup>57</sup> While Governor Quinn is not expected to sign the present bill, the Illinois legislature is pushing hard for gambling expansion.<sup>58</sup> It appears inevitable that gambling in Illinois will continue to grow, and that will most likely take place in connection with some form of navigable waterway, leading to more injury cases subject to admiralty jurisdiction and maritime law.

### Endnotes

<sup>1</sup> World Casino Directory, Illinois Casino Information & Gambling Guide, (Jan. 08, 2013, 4:21PM), <http://www.worldcasinodirectory.com/illinois>.  
<sup>2</sup> U.S. Const. art III, §2.  
<sup>3</sup> *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 402 (1970), citing, *The Lottawanna*, 88 U.S. 558 (1874).  
<sup>4</sup> *Weaver v. Hollywood Casino-Aurora, Inc.*, 255 F.3d 379, 381 (7th

Cir. 2001).

<sup>5</sup> *Id.*, citing, *Grant Gilmore and Charles L. Black, Jr., The Law of Admiralty* § 1-1 (2d ed., 1975).

<sup>6</sup> *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 U.S. 249, 268 (1972).

<sup>7</sup> *Executive Jet Aviation*, 409 U.S. at 253.

<sup>8</sup> *Id.* at 268.

<sup>9</sup> *Id.*

<sup>10</sup> *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 674 (1982).

<sup>11</sup> *Foremost Ins. Co.*, 457 U.S. at 674-75.

<sup>12</sup> *Sisson v. Ruby*, 497 U.S. 358, 363 (1990).

<sup>13</sup> *Id.*

<sup>14</sup> *Weaver v. Hollywood Casino-Aurora, Inc.*, 255 F.3d 379 (7th Cir. 2001).

<sup>15</sup> *Weaver*, 255 F. 3d at 382.

<sup>16</sup> *Id.* at 383.

<sup>17</sup> *Id.* at 383-84.

<sup>18</sup> *Id.* at 382.

<sup>19</sup> *Id.* at 385.

<sup>20</sup> *Id.* at 382.

<sup>21</sup> *Id.* at 386.

<sup>22</sup> *Tagliere v. Harrah's Illinois Corp.*, 445 F. 3d 1012 (7th Cir. 2006).

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<sup>23</sup> *Tagliere* 445 F.3d. at 1013-14.  
<sup>24</sup> *Id.* at 1013.  
<sup>25</sup> *Id.* at 1013-14.  
<sup>26</sup> *Stewart v. Duta Construction Co.*, 543 U.S. 481, 494 (2005).  
<sup>27</sup> *Tagliere*, 445 F. 3d at 1013.  
<sup>28</sup> *Id.* at 1014.  
<sup>29</sup> 230 ILCS 10/11(1).  
<sup>30</sup> *Id.* at 1014.  
<sup>31</sup> *Madruga v. Superior Court of State of Cal. in and for San Diego County*, 346 U.S. 556 (1954).  
<sup>32</sup> *Madruga*, 346 U.S. at 560.  
<sup>33</sup> *Canino v. Londres*, 862 F. Supp. 685, 688 (D.N.H. 1994).  
<sup>34</sup> Fed. R. Civ. P., Supplemental Rules for Certain Admiralty and Maritime Claims, Rule C.  
<sup>35</sup> *Madruga*, 346 U.S. at 560-61.  
<sup>36</sup> 28 U.S.C.A. §1333(a).  
<sup>37</sup> *Zoccolo v. Hannah Marine Corp.*, 387 Ill. App. 3d 561 (1st Dist. 2008); see also Brian D. Wallace, Evan T. Caffrey, and Evans Martin McLeod. "Riverboat Casinos and Admiralty and Maritime Law: Place Your Bets!" 28 Tul. Mar. L. J. 315, 348. (2003-2004).  
<sup>38</sup> *Roseann M. Ziegler v. The State of Illinois*, 55 Ill. Ct. Cl. 405 (2002) at 2-3.  
<sup>39</sup> *Canino*, 862 F. Supp. 685 at 688.  
<sup>40</sup> *Stainless Steel & Metal Mfg. Corp. v. Sacal V.I., Inc.*, 452 F. Supp. 1073, 1077 (D.P.R. 1978).  
<sup>41</sup> *Hess v. U.S.*, 361 U.S. 314, 319 (1960).  
<sup>42</sup> *St. Hilaire Moye v. Henderson*, 496 F. 2d 973, 980 (8th Cir. 1974).  
<sup>43</sup> *Id.*  
<sup>44</sup> *Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan Dist.*, 238 Ill. 3d 262, 265 (2010); 735 ILCS 5/13-202 (West 2006).  
<sup>45</sup> *Ciers v. O.L. Schmidt Barge Lines, Inc.*, 285 Ill. App. 3d 1046, 1052 (1st Dist. 1996).  
<sup>46</sup> *Tagliere*, 445 F. 3d at 1015 (7th Cir. 2006).  
<sup>47</sup> *Bowman v. American River Transp. Co.*, 217 Ill. 2d 75, 95 (Ill. 2005).  
<sup>48</sup> *Kludt v. Majestic Star Casino, LLC*, 200 F. Supp. 2d 973, 980 (N.D. Ind. 2001).  
<sup>49</sup> *Mack v. Royal Caribbean Cruises, Ltd.*, 361 Ill. App. 3d 856,

864 (1st Dist. 2005); *Kermarec v. Compagnie*, 358 U.S. 625, 630 (1959).  
<sup>50</sup> *Kludt* at 980.  
<sup>51</sup> *West v. Boehne*, 229 Ill. App. 3d 1045, 1049 (2nd Dist. 1992).  
<sup>52</sup> *Callas' Estate v. U.S.*, 682 F.2d 613, 624 (7th Cir. 1982); see *Manning v. M/V Sea Road*, 358 F. 2d 615 (5th Cir. 1965); 735 ILCS 5/2-1116.  
<sup>53</sup> *Atlantic Sounding Co., Inc. v. Townsend*, 557 U.S. 404, 415 (2009).  
<sup>54</sup> *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, at 401 (1970).  
<sup>55</sup> *Fedorczyk v. Caribbean Cruise Lines, Ltd.*, 82 F.3d 69, 73 (3rd Cir. 1996); See also *Wingerter v. Chester Quarry Co.*, 185 F. 3d 657, 666 (7th Cir. 1998); Fed. R. Civ. P. 9(h).  
<sup>56</sup> Fed. R. Civ. P., Supplemental Rules for Certain Admiralty and Maritime Claims.  
<sup>57</sup> Bill Status: SB744 <http://www.ilga.gov/legislation/billstatus.asp?DocNum=744&GAID=11&GA=97&DocTypeID=SB&LegID=55573&SessionID=84>.  
<sup>58</sup> Dave McKinney, Chicago Sun-Times, "Gambling expansion bill sent to Quinn's desk after long time on hold," (Jan. 09, 2013, 1:38am), <http://www.suntimes.com/news/metro/17470308-418/gambling-expansion-bill-sent-to-quinns-desk-after-long-time-on-hold.html>.  
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