Askew v. American Waterways Operators, Inc., Revisited

Nicholas Gentry

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COMMENT

EDITOR'S NOTE:

This article is a follow-up to a Comment which appeared in the October 1972 issue of the NATURAL RESOURCES JOURNAL. That comment, The Florida Oil Spill and Pollution Control Act: An Intrusion Into the Federal Maritime Domain, appeared subsequent to the lower federal court decision in American Waterways Operators, Inc. v. Askew, but prior to the Supreme Court's reversal of that decision. This article is designed to fill any voids which may have been created between the time of the appearance of the initial comment and the final disposition of the case.

Askew v. American Waterways Operators, Inc.,¹ Revisited

On December 10, 1971, a three judge federal court in the Fifth Circuit ruled that the Florida Oil Spill and Pollution Control Act² was unconstitutional. According to the opinion written by Judge Tjoflat, the Florida act was in direct conflict with the Water Quality Improvement Act (WQIA),³ a 1970 amendment to the Federal Water Pollution Control Act (FWPCA),⁴ and was thus an invalid intrusion into the federal maritime domain.

But, according to the Supreme Court decision of April 18, 1973, written by Justice Douglas,⁵ there was no apparent conflict between the state and the federal legislation.⁶ The Florida act was viewed as merely an exercise of Florida's police power over maritime matters and was considered a vital part of an integrated effort to control oil pollution. Thus, the lower court decision was reversed, and the Florida Oil Spill and Pollution Control Act was allowed to stand.

Judge Tjoflat's analysis of the applicable law in the admiralty area began with Article III, Section 2 of the Constitution⁷ which has long been interpreted as placing matters of admiralty law within the power of Congress. He also relied heavily on Southern Pacific Co. v.

¹. 335 F. Supp. 1241 (M.D. Fla. 1971).
⁷. "The judicial Power shall extend to all Cases . . . of admiralty and maritime Jurisdiction . . ."
Jensen, which held that a maritime worker on a vessel in navigable waters could not constitutionally receive an award under New York workmen's compensation law, because the remedy in admiralty was exclusive; and Knickerbocker Ice Co. v. Stewart, which involved a similar factual situation and stood for the principle that Congress is powerless to confer on the states authority to legislate within the admiralty jurisdiction. Lastly, Judge Tjoflat considered the Admiralty Extension Act, which states that:

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

With this legal framework in mind Judge Tjoflat then considered the provisions of the Florida act. His main objection was the imposition of much stricter standards of liability than were imposed by the WQIA. While the federal act subjected ship owners and terminal facilities to liability without fault up to $14 million and $8 million respectively for clean-up costs incurred by the federal government as a result of oil spills, the Florida act created unlimited liability without fault for both state clean-up costs and damages to private individuals. The Florida act also leaves the offender little chance of formulating a valid defense, while the WQIA would excuse shippers and owners of onshore and offshore facilities who prove by a preponderance of the evidence that spillage was caused by an act of God, an act of war, negligence on the part of the federal government, or the act of omission of a third party.

Such state legislation was viewed by the district court as not only dealing with maritime tort law which it considered under exclusive federal domain due to the Admiralty Extension Act, but also in direct conflict with federal legislation governing disposition of claims involving coastal oil pollution.

Justice Douglas' analysis reaches the opposite conclusion. He begins by considering whether or not there is in fact any conflict between the state and federal law. As he points out, the WQIA itself allows state regulation in this area as long as it is not in conflict with federal legislation. The sections on liability in the Florida act which

8. 244 U.S. 205 (1917).
12. See, The Florida Oil Spill and Pollution Control Act, supra note 1, at 621-22 for other differences between the state and federal legislation.
Judge Tjoflat found so objectionable, are viewed by Justice Douglas as supplementary to, not in conflict with, the WQIA. The federal act, as far as terms of liability are concerned, considers liability for clean-up costs incurred only by the federal government. Liability for state clean-up costs and for damages to private individuals is not included. On the other hand, the Florida act does create liability for state clean-up costs and damages to private individuals, matters separate from those considered by the WQIA. In Justice Douglas' opinion there is absolutely no conflict, the state is simply providing supplementary remedies and terms of liability which the federal act did not provide.

Secondly, Justice Douglas determines whether, when in the absence of federal pre-emption and statutory conflict, there is any reason why a state may not constitutionally exercise its policy power respecting maritime activities concurrently with the federal government. Initially he questions Judge Tjoflat's use of the two cases, *Southern Pacific Co. v. Jensen* and *Knickerbocker Ice Co. v. Stewart*. In Justice Douglas' opinion these decisions have been limited by subsequent holdings of the Supreme Court to their particular factual situations. According to Justice Frankfurter writing for the Supreme Court in *Romero v. International Terminal Operating Co.*, *Jensen* and its progeny concern only isolated circumstances where "state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system." These limitations still allow for a great deal of state action. In *Just v. Chambers* the Supreme Court approved the decision in *The City of Norwalk* which stated that a state may modify or supplement maritime law provided the state action is not hostile "to the characteristic features of the maritime law or inconsistent with federal legislation." The principle has been established that a state through the exercise of its police power, may legislate admiralty laws applicable within its territorial limits provided these rules do no contravene any federal laws nor work any prejudice to the characteristic features of the general maritime law, nor interfere with its harmony and uniformity in both its national and international aspects.

In contrast to the district court, Justice Douglas interprets the Admiralty Extension Act as not supplying the exclusive remedy for sea to shore torts. The act is viewed as merely extending the limits of federal admiralty jurisdiction, without at the same time excluding

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15. 312 U.S. 383 (1941).
16. 55 F. 98 (1893).
17. 312 U.S. 383, 388 (1941).
state action which complies with the principle laid down in *Just v. Chambers*.

Thus, where state legislation is supplementary to federal legislation in the maritime field, specifically sea to shore damages resulting from oil pollution, and is in no manner in conflict with federal legislation, it is constitutional. The Florida Oil Spill and Pollution Control Act lies within these restrictions and is not precluded by the Admiralty Extension Act.

This decision will have significant ramifications throughout the United States. Such states as Florida, Maine\(^1\) and California\(^2\) will not be forced to rely solely on the relatively ineffective provisions of the WQIA. Their coastal areas can now be protected by both the federal legislation and by state legislation which provides strict standards of liability.

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