



DOES THE WINNER TAKE ALL? THE FIFTH CIRCUIT CLARIFIES WHO IS A PREVAILING PARTY IN MARITIME CONTRACT

In commercial maritime disputes, the potential award of attorney's fees under a fee-shifting clause can greatly impact resolution strategy. In *Genesis Marine LLC of Delaware v. Hornbeck Offshore Services LLC*,¹ the Fifth Circuit addressed the issue of “what constitutes a prevailing party in the context of a maritime contract dispute”² which will provide guidance to parties assessing risk of potential commercial marine claims.

¹ 19-30313 4 (5th Cir. 2020).

² *Id.* at 4.

In short, the Fifth Circuit held that in maritime contracts calling for the award of attorney's fees to a prevailing party where one party prevails, its attorney's fees are paid but when two parties prevail, no attorney's fees are paid.

Hornbeck Offshore Services ("Hornbeck") sold nine ships to Genesis Marine LLC ("Genesis"). At the time of the sale, Hornbeck had pre-existing charter agreements for the vessels with third-party customers. In order to continue providing charter services to existing third parties, Hornbeck and Genesis entered into a series of crew management, ship management, and back-to-back contracts. Under the "back-to-back" contracts, Hornbeck "agreed to continue honoring existing charters for its current customers and to provide either services until charterers could be assigned to Genesis or Genesis entered into new agreements altogether."³

The relevant "back-to-back" contract pertained to a charter agreement with Anadarko. Genesis sought to terminate all the ship management agreements, which sparked a suit. Genesis sued for breach of contract for the unpaid balance of \$722,346.36 on the Anadarko charter hire and Hornbeck asserted the affirmative defense of setoff and accord and satisfaction and claimed an outstanding balance of \$117,284.54.

Following a bench trial, the district court rendered a judgment in favor of Genesis for the unpaid charter hire and in favor of Hornbeck for the counterclaim. The general rule under the general maritime law is that a prevailing party in a suit involving

a maritime contract is not entitled to attorney's fee absent a specific contractual clause permitting a fee award. In this case, the contract did have a clause allowing the award of attorney's fees to the prevailing party. Both parties had asked for attorneys' fees pursuant to clauses in the respective contracts. The district court refused to award attorney's fees since both parties prevailed.

To resolve this issue, the Fifth Circuit first had to determine which party was the prevailing party. The court noted that in a non-maritime context "a plaintiff 'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behaviour in a way that directly benefits the plaintiff."⁴ The Fifth Circuit found no reason to apply a different definition in the maritime context.

Accordingly, the Fifth Circuit held that both Genesis and Hornbeck prevailed as they obtained a judgment against each other that materially altered the legal relationship with the other party. Hornbeck is in Genesis's debt and Genesis is forced to pay Hornbeck an amount of money that it would otherwise not pay. The Fifth Circuit reasoned that that two prevailing parties could not recover attorney's fees. Therefore, the district court did not abuse its discretion as neither party should have been awarded attorney's fees.

Considerations when contemplating suing on a maritime contract governed by the "American Rule"

The general American Rule is that attorney's fees are not recoverable in maritime actions. The Genesis

Marine decision reveals that in some instances there can be two "winners," with no one recovering what is often significant attorney's fees. Parties to maritime

contracts with mutual obligations and attorney fee clauses should well consider the amount at stake and the possibility of a counterclaim prior to engaging in a suit on a maritime contract with the expectation of recovering attorney's fees.

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³ *Id.* at 2.

⁴ *Id.* at 4.

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