

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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IN THE MATTER OF :

THE PETITION OF GERALD A. MEIER,  
AS THE OWNER OF A 1999 20 FOOT  
CROWNLIN VESSEL FOR EXONERATION  
FROM OF LIMITATION OF LIABILITY,

OPINION AND ORDER  
04-C-0124-C

Petitioner.  
- - - - -

This is a civil action in which petitioner Gerald A. Meier, owner of a 1999 twenty-foot Crownline vessel, has filed a petition under the Limitation of Vessel Owner's Liability Act, 46 U.S.C. App §183(a). Petitioner's boat was involved in a collision resulting in the death of Robert Acker. Petitioner seeks to exonerate or limit his liability to \$31,000, the declared value of the vessel. The case is before the court on a motion to dismiss for lack of subject matter jurisdiction in admiralty brought by claimants Diane Acker, the Estate of Robert Acker, Michael Getchell and State Farm Fire & Casualty Company.

Because petitioner has not adduced evidence showing the exact location of the collision on the Rock River, I will stay a decision on the claimants' motion to dismiss.

## ALLEGATIONS OF FACT

Petitioner is a citizen of the state of Wisconsin and a resident of Edgerton, Wisconsin. He was the owner of a 1999 twenty-foot Crownline vessel which collided with another vessel owned and operated by Michael Getchell. As a result of the collision, Robert A. Acker, a passenger aboard petitioner's vessel, was thrown overboard and drowned. The collision occurred on a stretch of the Rock River, which lies completely within the boundaries of the state of Wisconsin.

Petitioner seeks to invoke the admiralty jurisdiction of this court under 28 U.S.C. § 1333 and exonerate or limit his liability under the Limitation of Liability Act, 46 U.S.C. § 183. In response, three of the potential claimants against petitioner, Diane Acker (personally and as representative of the Estate of Robert Acker), Michael Getchell and the State Farm Fire & Casualty Company filed motions to dismiss for lack of subject matter jurisdiction under admiralty because the collision did not occur on navigable waters. In the alternative the claimants moved to dismiss on the ground that petitioner cannot invoke the Limitation of Liability Act because he had both privity and knowledge of the collision. Because establishing subject matter jurisdiction is a prerequisite to any disposition on the merits, I will begin with the issue of navigability.

## DISCUSSION

According to 28 U.S.C. § 1333, the federal district courts have subject matter jurisdiction over all cases in admiralty. Subject matter jurisdiction for an admiralty case requires that: (1) the incident took place in navigable waters; (2) the incident posed a potential threat to maritime commerce; and (3) the activity engaged in was substantially related to traditional maritime activity. Great Lakes Dredge & Dock Co. v. City of Chicago, 3 F.3d 225, 227 (7th Cir. 1993). If the court determines that any of these requirements is absent, it must dismiss the case.

For the purposes of subject matter jurisdiction, the issue of navigability is a question of fact. Weaver v. Hollywood Casino-Aurora, 255 F.3d 379 (7th Cir. 2001). Waterways are navigable in fact when “they are used or susceptible of being used, in their ordinary condition, as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.” Id. at 382 (quoting The Daniel Ball, 77 U.S. 557, 19 L. Ed. 999 (1870)); See also Jerome B. Grubart, Inc. v. Great Lakes Dredge and Dock Co., 513 U.S. 527, 530 (1995). Requiring commercial activity as a condition of navigability acknowledges the essential purpose of admiralty jurisdiction, which is “the protection and promotion of the maritime shipping industry through the development and application, by neutral federal courts, of a uniform and specialized body of federal law.” Weaver, 255 F.3d at 383 (quoting Chapman v. United States, 575 F.2d 147, 149 (7th Cir. 1978)). “[T]he key to determining whether there are navigable waters is the river’s present

navigability where the injury transpired.” Id. A court must know the exact location of the occurrence of the injury along the waterway to determine navigability.

Petitioner asserts that the waters on which the collision occurred are navigable. He bases this assertion on nothing more than his allegation that the collision occurred “along a stretch of the Rock River, within the boundaries of Wisconsin,” Pet.’s Br., dkt. #21, at 1, and a 1975 determination by the United States Army Corps of Engineers that the Rock River is a navigable waterway of the United States. Id.

In opposition, claimants allege that the collision actually occurred on the Rock River between the Indianford and Jefferson dams, which do not have locks to permit through traffic on the water, making the waters non-navigable. Getchell Br., dkt. #29, at 3. In both Chapman, 575 F.2d 147, and Weaver, 255 F.3d 379, the Court of Appeals for the Seventh Circuit found that dammed and otherwise obstructed waterways defeat navigability even when they sustained commerce in the past and even when passage through them is theoretically possible. See Chapman, 575 F.2d at 149; Weaver, 255 F.3d at 384. According to claimants Diane Acker, Getchell and State Farm, because the waters where the collision occurred are non-navigable in fact, the admiralty jurisdiction of this court fails as a matter of law. Claimants attach a map produced by the United State Geological Survey that depicts the Rock River from the Indianford dam to the Jefferson dam. Acker Br., dkt. #12, Exhs. Nos. 1-5. Claimants request that I take judicial notice of the maps for the purpose of

determining both the place of the accident and the location of the dams. In addition, claimants state that the court need not reach the question of navigability on its own because, according to United States v. Davis, 339 F.3d. 1223, 1227 (10th Cir. 2003), the party asserting navigability of a particular body of water bears the burden of proof. Claimants assert that because petitioner has not alleged with sufficient specificity the location of the collision on the Rock River in relation to the two dams, petitioner has not met his burden of proof and I should dismiss the case.

The navigability of a body of water for the purposes of admiralty jurisdiction in a tort claim depends on the location of the injury on the water. The issue of the navigability of a waterway can turn on the placement of obstructions on the waterway. Weaver, 255 F.3d at 383. The same waterway can be navigable in one location, and non-navigable in another, depending on the placement of dams, bridges, waterfalls or other natural or artificial obstructions. Id. at 384. I can take judicial notice of the placement of the Indianford and Jefferson dams along the Rock River and that these dams have no locks. However, I cannot find that the collision occurred between these two dams because petitioner has not submitted any admissible evidence as to the exact location of the collision. Until he does so, I cannot determine the navigability of the Rock River. If it is proved, however, that the collision occurred between the Indianford and Jefferson dams, I will find as a matter of law that this segment of the Rock River is not navigable and will dismiss this case for lack of

subject matter jurisdiction in admiralty. If petitioner fails to submit the necessary evidence showing jurisdiction, I will dismiss this case.

ORDER

IT IS ORDERED THAT

1. Claimants' motion to dismiss is STAYED pending submission of affidavits by petitioner regarding the exact location of the collision along the Rock River; and
2. If petitioner fails to submit evidence showing jurisdiction by July 9, 2004, the clerk is directed to close this case for lack of subject matter jurisdiction.

Entered this 23rd day of June, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge