

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**IN THE MATTER OF
SANDBAR I, INC., ET AL.**

CIVIL ACTION

NO. 02-2251

SECTION "C" (4)

OPINION

This maritime case arose out of an accident which occurred on board Barge LF-136 on January 6, 2001. The Claimant, Mr. Kellup Street, (hereinafter "Mr. Street") an employee of Stevedore, Inc. (now P&O Ports Louisiana, Inc.), alleges that his leg was crushed between two steel coils when the M/V LADY LAURA jolted Barge LF-136 while he was aboard the Barge.

Mr. Street subsequently filed suits in the Civil District Court for the Parish of Orleans and the 24th Judicial District Court in Jefferson Parish, naming American Commercial Lines, LLC (the owner of Barge LF-136), P&O Ports Louisiana, Inc., the M/V LADY LAURA, F&L Marine Management, Inc. (the bareboat charterer operator of the M/V LADY LAURA) (hereinafter "F&L"), Lynchberg Shipyard, Inc. (the owner and operator of the M/V WANDA LEE), and Dixieland Towboat Management, Inc. (02-CV-1871, Rec. Doc. 1).

The M/V LADY LAURA and F&L Marine Management, Inc. removed both actions to the Eastern District of Louisiana (01-CV-1871 and 01-CV-1872). They were then consolidated

with a limitation of liability action filed by Lynchberg Shipyard (hereafter the “M/V WANDA LEE” action) before this Court (02-CV-1521). Pursuant to Rule E(8) of the Supplemental Rules of Certain Admiralty and Maritime Claims, Sandbar I, Inc. (hereinafter “Sandbar”) appeared in the consolidated federal action and asserted its right as the sole owner of the M/V LADY LAURA to defend the vessel in the actions before this Court. Both of these claims, 01-CV-1871 and 01-CV-1872, were remanded back to state court. (02-CV-1521, Rec. Doc. 33.)

Sandbar and F&L subsequently filed a second limitation of liability action in the Eastern District of Louisiana (02-CV-2251), which was transferred and consolidated with the M/V WANDA LEE action. In its limitation action, Sandbar and F&L Marine Management sought exoneration from all claims against them. The M/V LADY LAURA and F&L had previously denied responsibility and initiated a third party claim against American Commercial Lines and the other named defendants.

In a separate action, American Commercial Lines, as the owner of Barge LF-136, filed a third limitation of liability action (02-CV-3408), which was also consolidated with the M/V WANDA LEE action. Summary judgment was eventually granted in the M/V WANDA LEE action and all claims against Lynchberg Shipyard and Dixieland Towboat Management, Inc. were dismissed. (02-CV-1521, Rec. Docs. 52 and 53.) The limitation of liability actions filed by Sandbar (02-CV-2251) and American Commercial Lines (02-CV-3408) remained consolidated, with the Sandbar claim acting as the lead case. (02-CV-3408, Rec. Doc. 12.) American Commercial Lines next filed a motion for summary judgment seeking dismissal of all claims against it, which was granted. (02-CV-2251, Rec. Docs. 76 and 83.) Mr. Street then filed a motion for summary judgment against Sandbar, which was denied. (02-CV-2251, Rec. Docs. 84 and 97.) The case proceeded to trial before the Court without a jury on April 10-11, 2006. At

trial, Mr. Street testified, and then presented the testimony of Isaac Roberts (witness), Paul Dillon (witness), Ezell Amos (witness), Frank Lensmyer (owner of F&L), and James Call (expert witness as to proper piloting procedures). Petitioners presented the deposition testimony of David Scranton (expert witness as to proper way to chock coils), and the live testimony of Floyd Wilson (captain of M/V Lady Laura on Jan. 6, 2001), and Frank Lensmyer (owner of F&L).

Having considered the record, the memoranda of counsel, and the applicable law, this Court finds against the Claimant, Mr. Street, and in favor of the Petitioners, Sandbar and F&L, as to the January 6, 2001 accident, as follows.

Facts

At approximately 10:15-10:30 a.m. on January 6, 2001, Mr. Street was working as a longshoreman for P&O Ports Louisiana, Inc, as a part of a team of men offloading cargo of steel coils from the M/V ALAM SENANG,¹ which was anchored midstream in the Mississippi River, near Waggaman, Louisiana, onto various barges. In particular, Mr. Street was working in the hold of the Barge LF-136 as a chock man. As a chock man, it was Mr. Street's job to ensure that the steel coils, which weigh between 8-12 tons, were properly secured with six wooden chocks, or triangular pieces of wood, per coil. The wooden chocks are moved into place by a long, approximately 8 foot metal pole, called a chock stick, so that the chock man does not have to move in between the coils, into what is called a "pinch point." Mr. Street was working with Mr. Ezell Amos, who was handing chocks to Mr. Street, and Mr. Bobby Bennet, who was operating

¹The Court notes that the parties have spelled the name of the vessel M/V ALAM SENANG, as both M/V ALAM SANANG, and M/V ALAM SENANG. No official documentation exists in the record that provides the proper spelling of the name of the vessel. This Court will therefore use "M/V ALAM SENANG" to refer to the vessel.

the forklift that maneuvered the steel coils.

The Barge LF-136 was almost fully loaded with steel coils, and the three men were working in the center of the barge to secure the last few coils. Mr. Isaac Roberts was the foreman for the gang of three men, and he was located on the deck of the ship. Mr. Paul Dillon, another one of Mr. Street's coworkers, was clerking (counting the coils being unloaded) on the deck of the M/V ALAM SENANG, on the opposite side of the ship from where the Barge LF-136 was located.

The cause of the accident is disputed. At trial, Mr. Street testified that he had completed the bottom row of coils across the middle of the barge, and had placed one or two coils on the second tier, when he noticed that one of the chocks on the lower tier had come loose. Mr. Street testified that as he moved to replace the chocks on the loose coil, he felt a bump and heard a loud "metal on metal" scraping noise. He testified that he was standing about two feet in front of the coils and the bump caused him to fall forward between the coil he was chocking and another coil, and the coils moved together and crushed his right leg. Mr. Street admitted on cross examination that he testified differently at his deposition, but explained that he was taking medication at the time.

Mr. Amos, on the other hand, presented a different version of the events. He testified that the gang had placed 4 coils on the bottom row, and Mr. Street was finishing chocking the last coil, the second coil from the left. The third and fourth coils from the left had been fully chocked, and they had already placed a coil on the second tier above the third and fourth coils. At this point, Mr. Street was one or two feet in front of the coils. As Mr. Amos turned to get more chocks, he felt an impact, which moved him to his right. He then saw that Mr. Street's hard hat had fallen off and saw Mr. Street reaching in between the coils to get it. At that point, the

third coil from the left, which was previously chocked, shifted, crushing Mr. Street's leg, and the coil on the second tier fell to the floor of the barge. Mr. Amos testified that had the coil been properly chocked, it should not have moved. He also stated that he had been warned by his supervisors over the years never to stand in between the coils.

Everyone who testified agreed that the Barge LF-136 was bumped. Testimony at trial revealed that the Barge LF-136 was bumped by another barge, which was getting pulled alongside Barge LF-136 by the tugboat, the M/V LADY LAURA, so that the two loaded barges could be tied together and brought away from the M/V ALAM SENANG. The Captain of the M/V LADY LAURA, Mr. Floyd Wilson, testified at trial that he recalled the M/V LADY LAURA moving a barge into place alongside the Barge LF-136, and that the barge bumped the Barge LF-136. Captain Wilson testified that it was his normal practice to blow the tug's horn and for his deck hand to yell out before coming alongside another vessel, to provide those on the other vessel with a warning to steady themselves in preparation for the inevitable bump that occurs when the two vessels make contact. However, Captain Wilson could not recall blowing the horn that day. He further testified that if his deck hand had yelled out a warning, he would not have been able to hear it, because he was too far away.

No witnesses to the incident recalled hearing a horn blown or any warning yelled out that day before the M/V LADY LAURA brought another barge alongside the Barge LF-136. Mr. Roberts, who was on the deck of the Barge LF-136, stated that he did not hear anyone yell out a warning. Given the size of the barges and the noise on the river, it is unlikely that anyone besides Mr. Roberts would have been able to hear a deck hand on the second barge yell out a warning. In spite of this, and in spite of the fact that he saw the second barge approaching and steadied himself in preparation for the impact, Mr. Roberts did not yell out a warning to his gang in the

hold below.² Moreover, because P&O Ports was short staffed and Mr. Dillon was working as a clerk that day, instead of as the flag man (who directs cargo into the hold and provides a lookout), he did not provide a warning to the gang in the hold of the Barge LF-136.

Liability

The Court has jurisdiction over these matters under 28 U.S.C. § 1333, the General Maritime Law, and the Limitation of Liability Act, 46 U.S.C. 183 *et. seq.* Under the Limitation of Liability Act the Court must first determine whether or not acts of negligence of the M/V LADY LAURA caused the accident. *In re Farrell Lines, Inc.*, 530 F.2d 7, 10 (5th Cir. 1976).

The burden of proof in a limitation proceeding is divided between the parties and involves a two-step process. *Id.* The initial burden of proving negligence rests with the claimants. *Farrell Lines*, 530 F.2d at 10. If the claimants establish negligence, the burden then shifts to the vessel owner to prove the negligence was not within the owner's privity or knowledge and that the owner is entitled to limit its liability to the value of their vessel. *In re Hellenic Lines*, 252 F.3d 391, 394 (5th Cir. 2001); *Brister v. A.W.I, Inc.*, 946 F.2d 350, 355 (5th Cir. 1991).

To establish negligence, Mr. Street must prove four elements: that there was a duty owed to him, that there was a breach of the duty, and that the breach of the duty caused damages to Mr. Street. Mr. Street argues that it was Captain Wilson's duty to blow his horn before he

² He may not have yelled a warning to his gang in the hold below because he was in the process of drafting the barge (making sure the weight of the coils was evenly distributed across the barge). While the foreman is drafting the barge, Mr. Roberts testified that no one is supposed to be working on the barge. However, Mr. Amos testified that they are still allowed to chock the coils while the foreman is drafting. Presumably chocking coils is possible while drafting because the coils are already near the location where they will ultimately be stored. Thus, whether a coil is sitting still near where it will be chocked or being chocked should not affect whether the weight is evenly balanced across the barge.

brought another fully loaded barge alongside the almost completely loaded Barge LF-136, and that if Captain Wilson had blown his horn, Mr. Street would not have been anywhere near the coils at the time of the bump. Mr. Street also argues that F&L and Sandbar are not entitled to limit their liability because they were negligent in that they did not have a policy to compel its Captains to warn longshoremen of an impending impact.³ This Court disagrees that Captain Wilson's failure to blow the horn was the cause of the accident.

Based on the testimony, the Court finds that Captain Wilson did not blow the tug's horn before bringing the second barge alongside the Barge LF-136. However, regardless of whether Captain Wilson had a duty to blow his horn,⁴ his failure to blow the horn was not the cause of the

³ Mr. Street also argues that Sandbar was not the owner of the M/V LADY LAURA and that F&L did not have a bareboat charter. This contention was refuted through the testimony of Mr. Frank Lensmyer, the owner of F&L, and Exhibits 5-7, which documented the ownership of the M/V LADY LAURA. The Court finds that Sandbar was the owner of the M/V LADY LAURA, and that it granted a bareboat charter to F&L.

⁴ It does not appear, from the evidence presented, that it is required, or even customary, for a captain to blow his vessel's horn before approaching another vessel. Notably, neither the Deck hand's Safety Manual, or F&L's Safety Manual (Ex. 10), stated a requirement that a captain must blow his vessel's horn to warn others of an impending impact. Captain Wilson testified that it is his personal policy to blow the tug's horn, but that it is nowhere mandated that he must do so. At trial, Mr. Roberts stated that sometimes Captains blow their horns to warn of an impending impact, and sometimes they do not. Captain Wilson should have been able to rely on Mr. Roberts, who was the foreman of the men on the Barge LF-136, to exercise reasonable care by warning the men in the hold of the barge of the impending impact. *Cf. Polizzi v. M/V Zephyros II Monrovia*, 860 F.2d 147, 149 (5th Cir. 1988) (holding that a shipowner may rely on the premise that a stevedore is expert and experienced and will act with reasonable care; shipowner has no duty to anticipate inaction or action of a careless stevedore); *Casaceli v. Martech Intern., Inc.*, 774 F.2d 1322, 1326 (5th Cir. 1985) (holding that a shipowner may generally rely on a stevedore's exercise of reasonable care). According to standard safety procedure, Mr. Roberts should have warned them. Safety Rule 16 of the industry standard Deckhand's Manual (Ex. 9) states "'Watch the Bump', get down on your hands and knees and hold on to a timberhead or barge coaming. Pass the word, 'Watch the bump.'" (Ex 9, Deckhand's Manual at 20; Ex. 10, Safety Manual at 7.) Presumably this refers to the steps anyone should take when a "bump" between a vessel and another object, whatever the cause, is about to take place. Thus, regardless of whether the deck hand on the second barge yelled out a

accident.⁵ The impact caused by the second barge was not out of the ordinary and if Mr. Street had properly chocked the coils, they would not have shifted. Moreover, at the moment right after the impact and before the coils shifted, Mr. Street should not have placed himself in between the two coils to retrieve his hard hat.

The evidence presented at trial supports a finding that the impact caused by the second barge was not out of the ordinary. Mr. Roberts testified that there was definitely an impact and that he steadied himself, but that it was not unusual. Mr. Amos stated that he was knocked off balance by the impact and only moved a few feet to his right. Mr. Dillon testified that the noise he heard as a result of the impact was a little louder than the other noise on the river, but nothing so unusual that he paid any particular attention to the noise at the time. Mr. Dillon also did not feel any impact on the M/V ALAM SENANG, the ship right next to the Barge LF-136. Although Captain Call, Mr. Street's expert witness, testified that bringing a fully loaded barge alongside a not fully loaded barge is improper, because it leads to the weight of the impact being transferred to the other barge, the evidence presented indicates that the Barge LF-136 was almost completely loaded. Therefore, any extra force caused by the fact that the second barge was fully loaded, and the Barge LF-136 was not fully loaded, could not have been that great. The impact on the Barge LF-136 was not much more than an ordinary bump that occurs between two vessels of approximately equal weight when one moves alongside the other. Furthermore, in none of the

warning, it was then Mr. Robert's responsibility to warn the men in the hold of the barge, because he knew both that the barge and M/V LADY LAURA were approaching and that there were men in the hold of the barge.

⁵ It is also unclear whether, even if Captain Wilson had blown the horn, Mr. Street would have moved away from the coils. There is no way Mr. Street would have known whether a horn would have been coming from a vessel moving to the Barge LF-136, or to another barge, as there were four barges unloading coils from the M/V ALAM SENANG that day.

contemporaneous records made of the accident was there even a mention of a bump from another vessel as contributing to its cause.

Because the impact was not out of the ordinary, if Mr. Street had properly chocked the coils, they would not have moved when the barges came into contact with one another. Mr. Amos testified that the third coil from the left, which had been previously chocked by Mr. Street, was the coil that moved to crush his leg, and that the coil on the second tier fell to the floor. Mr. Amos testified that the coils should not have moved for any reason if they had been properly chocked. Captain David Scranton, an expert for the Petitioners, testified that it was inappropriate for the gang to place a coil on the second tier before all the coils on the bottom tier (including the second coil from the left that Mr. Street had not finished chocking), were fully chocked.⁶ Captain Scranton's deposition testimony revealed that the placement of coils on the second tier before the lower tier is fully chocked leads to instability. This Court finds that the reason the coils moved was because Mr. Street and his coworkers failed to properly chock the coils. If the coils had been properly chocked, they would not have moved when the second barge bumped alongside the Barge LF-136.

Finally, there was a moment between the impact and the movement of the coils, in which Mr. Street's hard hat fell off and he reached between the coils to retrieve it. When Mr. Street reached in between the coils to retrieve his hard hat, he placed himself in a position of danger, contributing to his injury.

While this Court feels sympathy for Mr. Street, and recognizes that his injuries are very serious, this Court cannot find that the Claimant has established by a preponderance of the

⁶ The Court has a copy of the video tape of Captain Scranton's deposition testimony.

evidence that the Petitioners were negligent with regard to causing Mr. Street's injuries.⁷

Accordingly,

IT IS ORDERED that judgment be entered in favor of the Petitioners, Sandbar I, Inc., and F&L Marine Management, Inc., and against Claimant Mr. Kellup Street.

New Orleans, Louisiana, this 18th day of April, 2006.

A handwritten signature in black ink, appearing to read "Helen G. Beigan". The signature is written in a cursive, flowing style.

Helen G. Beigan
United States District Judge

⁷ Thus this Court need not reach the issue of whether Sandbar and F&L are entitled to limit their liability. *In re Lynchburg Shipyard*, 2003 WL 22174379 (E.D. La. 2003).