Journal of Air Law and Commerce

Volume 77 | Issue 1 Article 7

2012

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DEATH ON THE HIGH SEAS ACT—DEFINING DOHSA'S APPLICABILITY TO NONCOMMERCIAL AIRCRAFT ACCIDENTS

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IN *HELMAN v. Alcoa Global Fasteners, Inc.*, the Ninth Circuit faced an issue of first impression—whether the Death on the High Seas Act (DOHSA) applies to an aviation accident occurring between three and twelve nautical miles from the U.S. shore.[1] This case exemplifies how an ambiguous statute can create inconsistencies between courts attempting to determine congressional intent. Here, the court looked to a Second Circuit holding, the statute's plain meaning, legislative history, statutory amendments, and even a presidential proclamation to determine the statute's meaning.[2] In doing so, the court found DOHSA applies to noncommercial aviation accidents occurring more than three nautical miles from the U.S. shore.[3]

In 2007, while performing military helicopter training exercises off the coast of Catalina Island, California, the helicopter crashed into the Pacific Ocean, killing three U.S. Navy crewmen.[4] The crash occurred 9.5 nautical miles from the island's coast.[5] Subsequently, the crewmen's personal representatives and successors in interest filed suit in the Superior Court of California in Los Angeles County against Alcoa Global Fasteners, Inc., Sikorsky Aircraft Corporation (Sikorsky), and other helicopter and component manufacturers.[6] The complaint alleged

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1 Helman v. Alcoa Global Fasteners, Inc., 637 F.3d 986, 989, 993 (9th Cir. 2011).

2 *See generally id.*

3 *Id.* at 993.

4 *Id.* at 988.

5 *Id.*

6 *Id.*

"defects in the helicopter and its component parts caused the accident."[7] Furthermore, the plaintiffs asserted claims for "products liability, negligence, failure to warn, breach of warranty, and wrongful death and survival under California law and general maritime law."[8] Although the facts of the case appear straightforward, the legal issue before the court is complex; and if followed by other courts, it will potentially impact future litigants attempting to recover from an aviation accident occurring between three and twelve nautical miles from the U.S. shore because DOHSA would "preempt all other remedies for wrongful death."[9]

Subsequently, the case was removed to the U.S. District Court in the Central District of California pursuant to federal subject matter jurisdiction under 28 U.S.C. § 1442(a)(1) because Sikorsky "was acting under an officer of the United States under color of such office at the time of the accident."[10] Once removed to district court, Sikorsky argued that DOHSA preempted the plaintiffs' state-law claims and filed a Rule 12(c) motion for judgment on the pleadings.[11] Following this motion, the remaining defendants filed a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief could be granted based on the same preemption argument.[12] The district court ruled on these motions and held that "in the case of a non-commercial aircraft accident, DOHSA becomes applicable beyond three nautical miles from shore," and granted the defendants' motions to dismiss.[13] The plaintiffs immediately requested an interlocutory order of appeal, which the Ninth Circuit granted.[14]

The sole issue on appeal is whether the statutory remedy provided by DOHSA applies to noncommercial accidents occurring between three and twelve nautical miles from the U.S. shore.[15] The Ninth Circuit held DOHSA applies to the area between three and twelve nautical miles off the U.S. shore, and thus DOHSA governs recovery.[16] The court primarily relied on the

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7 *Id.*

8 *Id.*

9 *Id.* at 989.

10 Helman v. Alcoa Global Fasteners Inc., No. CV 09-1353 SVW (FFMx), 2009 WL 2058541, at *1 (C.D. Cal. June 16, 2009).

11 *Helman*, 637 F.3d at 988.

12 *Id.*

13 *Helman*, 2009 WL 2058541, at *1.

14 *Helman*, 637 F.3d at 988.

15 *Id.* at 989, 993.

16 *Id.* at 993.

plain meaning of DOHSA, which "provides a federal statutory remedy for wrongful death occurring at sea,"[17] in pertinent part:

> When the death of an individual is caused by wrongful act, neglect, or default *occurring on the high seas beyond 3 nautical miles from the shore of the United States,* the personal representative of the decedent may bring a civil action in admiralty against the person or vessel responsible. The action shall be for the exclusive benefit of the decedent's spouse, parent, child, or dependent relative.[18]

In determining whether DOHSA applies to the area between three and twelve nautical miles, the court first looked at *In re Air Crash off Long Island, New York, on July 17, 1996 (TWA Flight 800)*—the only circuit court case addressing DOHSA's applicability to this area—but, after analyzing the plain language of the statute and subsequent amendments, the court reached the opposite conclusion from the Second Circuit.[19]

The Second Circuit case concerned a 1996 commercial flight crash occurring eight nautical miles off the coast of Long Island, New York, killing all 230 passengers.[20] Estate representatives of the deceased sued Trans World Airlines and Boeing Company for wrongful death.[21] The defendants claimed DOHSA applied and limited recovery to pecuniary damages.[22] Whereas the plaintiffs, relying on DOHSA, which read at the time, "occurring on the high seas beyond a marine league from the shore," argued DOHSA applied to waters beyond twelve nautical miles from the shore and did not limit recovery.[23] The Second Circuit found the term "high seas" to mean international waters beyond twelve nautical miles from the U.S. shore in accordance with President Ronald Reagan's 1988 Presidential Proclamation Number 5928, which extended U.S. territorial waters to twelve nautical miles from shore.[24] However, then Circuit Judge Sotomayor wrote an extensive dissent as to why Congress did not intend "high seas" to mean international waters, and that "beyond a marine league" clarifies where "high seas" begins geographically.[25] Sotomayor also argued strongly that a presidential

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[17] *Id.* at 989, 991.

[18] 46 U.S.C. § 30302 (2006) (emphasis added).

[19] *See Helman*, 637 F.3d at 989–93; *In re* Air Crash off Long Island, N.Y., on July 17, 1996, 209 F.3d 200, 215 (2d Cir. 2000).

[20] *In re Air Crash off Long Island, N.Y.*, 209 F.3d at 201.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 202.

[24] *Id.* at 212–13, 215.

[25] *Id.* at 223 (Sotomayor, J., dissenting).

proclamation could not extend the boundaries Congress statutorily defined, especially when the proclamation extended the territorial waters for the "*limited purpose*" of international law and "*limit[ed] its application,*" so as to not alter existing federal or state law.[26]

In *Helman*, the Ninth Circuit relied on Sotomayor's legal reasoning as opposed to the majority holding. The Ninth Circuit considered the plain reading and statutory construction of DOHSA.[27] Courts often adhere to the statutory construction principle that "'no clause, sentence, or word shall be superfluous, void, or insignificant.'"[28] As such, the plaintiffs argued that the terms "high seas" and "beyond a marine league" must be interpreted independently, and "high seas" cannot be ignored as superfluous.[29] However, the court found no need to read these terms independently and believed to do so would produce an illogical conclusion.[30] If "high seas" were considered "international waters," which tends to be a "fluid political concept" that President Reagan altered to twelve nautical miles merely by a proclamation and President Clinton later shifted to twenty-four nautical miles, Congress would simply allow the President to alter the meaning of its statutes and have no need to include the specific length, "beyond a marine league," in the original text.[31] Instead of allowing this flexibility, which Congress would likely not intend when it provided a specific distance, the court reasoned the enacting "Congress understood 'beyond a marine league' and 'high seas' to be functionally equivalent."[32] Therefore, the court concluded "beyond a marine league" is the only specific geographic boundary, and "high seas" is used merely in conjunction.[33]

The court also considered the impact of the 2000 and 2006 congressional amendments to DOHSA, and the relevance of legislative history as an interpretive tool. In 2000, during the *TWA Flight 800* litigation, Congress proposed and subsequently passed an amendment exempting "commercial aviation accident[s] oc-

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[26] *Id.* at 217.

[27] Helman v. Alcoa Global Fasteners, Inc., 637 F.3d 986, 990 (9th Cir. 2011).

[28] *Id.* at 991 (quoting TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001)).

[29] *Id.*

[30] *Id.* at 992.

[31] *Id.* at 990–93; Helman v. Alcoa Global Fasteners Inc., No. CV 09-1353 SVW (FFMx), 2009 WL 2058541, at *4 (C.D. Cal. June 16, 2009).

[32] *Helman*, 637 F.3d at 991–92.

[33] *Id.* at 992.

curring on the high seas 12 nautical miles or less from the shore of the United States," which Congress applied retroactively to the day prior to the TWA 800 crash.[34] In light of this amendment, the court reasoned "high seas" under DOHSA must include the area "twelve nautical miles or less" from shore, otherwise a commercial airline exception would be unnecessary.[35] The fact that Congress made this amendment retroactive to the day before the crash is not coincidental, but illustrates Congress's ability to clarify and direct courts' interpretation of legislation. In 2006, Congress amended DOHSA, altering "beyond a marine league" to "beyond three nautical miles," which the court interpreted as a clarification of the term "marine league."[36] Congress had the opportunity to align the high seas language with that of President Reagan's twelve nautical miles proclamation, but rather chose to clarify the meaning of "marine league."[37] In disagreeing with the Second Circuit, the Ninth Circuit distinguished that decision on the basis that it was made prior to the 2000 and 2006 amendments clarifying the language.[38] The court also contemplated legislative history, which was the primary consideration in *TWA Flight 800*, but concluded the amendments render the statute unambiguous and analyzing legislative history would be wholly unnecessary in light of a plain reading of the statute.[39]

Finally, the court carefully considered President Reagan's proclamation and the impact, if any, it would have on DOHSA. In 1988, Reagan's Proclamation Number 5928 declared "[t]he territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law."[40] In *TWA Flight 800*, the Second Circuit majority found this proclamation to alter DOHSA's scope from three nautical miles to twelve nautical miles,[41] on which the *Helman* plaintiffs relied.[42] The Second Circuit reasoned that when DOHSA was passed, the Supreme Court continually referred to "high seas" as international waters, and

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[34] 46 U.S.C. § 30307 (2006); *Helman*, 637 F.3d at 991.

[35] *Helman*, 637 F.3d at 991.

[36] *Id.*

[37] *Id.*

[38] *Id.* at 992.

[39] *Id.*

[40] Proclamation No. 5928, 54 Fed. Reg. 777 (Dec. 27, 1988).

[41] *In re* Air Crash off Long Island, N.Y., on July 17, 1996, 209 F.3d 200, 213 (2d Cir. 2000)

[42] *Helman*, 637 F.3d at 992.

DOHSA cannot be interpreted without an understanding of its application and tie to international law.[43] However, the Proclamation explicitly states that "[n]othing in this Proclamation . . . extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom."[44] Moreover, the Department of Justice Office of Legal Counsel published an opinion in conjunction with the Proclamation that states that statutes defining the term "territorial sea" as "three miles seaward from the coast of the United States" were not affected by the Proclamation.[45] The Ninth Circuit relied on this reasoning and Congress's choice to amend DOHSA to three nautical miles after the *TWA Flight 800* decision to conclude that the Proclamation did not alter DOHSA.[46]

This case illustrates the challenges courts face when interpreting the intent of another branch of government when the language is less than clear and other courts and the Executive Branch have offered conflicting interpretations. The Ninth Circuit in *Helman* appropriately considered the plain reading, statutory construction, recent congressional amendments, the Presidential Proclamation, and a contrary Second Circuit opinion. Furthermore, the Ninth Circuit properly ignored legislative history in making the ruling. Courts avoid interpreting legislative history when the "'history is more conflicting than the text is ambiguous,'"[47] and the Supreme Court has stated that judicial reliance on such history can provide legislators with "the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text."[48] In *TWA Flight 800*, both the majority and dissent relied heavily on legislative history to support their conclusions.[49] The Ninth Circuit avoided such analysis since any ambiguity was clarified by subsequent congressional amendments.[50] This case illustrates an ongoing dialogue between the branches of government when the courts interpret

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[43] *In re Air Crash off Long Island, N.Y.*, 209 F.3d at 214–15.

[44] Proclamation No. 5928, 54 Fed. Reg. at 777.

[45] *Helman*, 637 F.3d at 992.

[46] *Id.* at 992–93.

[47] Milner v. Dep't of the Navy, 131 S. Ct. 1259, 1267 (2011) (quoting Wong Yang Sung v. McGrath, 339 U.S. 33, 49 (1950)).

[48] Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 568 (2005).

[49] *In re* Air Crash off Long Island, N.Y., on July 17, 1996, 209 F.3d 200, 213, 221–24 (2d Cir. 2000).

[50] *Helman*, 637 F.3d at 992.

legislation to mean one thing and Congress then passes a law to clarify its intent.

In *Helman*, the Ninth Circuit effectively clarified a point of law concerning DOHSA that will greatly impact damages for personal representatives and aviation industry companies when a wrongful death occurs beyond three nautical miles from the U.S. shore. DOHSA limits recovery to "a fair compensation for the *pecuniary loss* sustained by the individuals for whose benefit the action is brought," as opposed to additional recovery for nonpecuniary loss.[51] Notably, Congress created a commercial aviation exception, which does not apply here, but explicitly allows additional compensation for nonpecuniary damages, meaning "damages for loss of care, comfort, and companionship."[52] While *Helman* does not necessarily make it harder for a plaintiff to recover, it does reduce the amount of damages available to a plaintiff of a noncommercial accident. Prior to the commercial exception, the Supreme Court held "'[w]here DOHSA applies, neither state law . . . nor general maritime law . . . can provide a basis for recovery of loss-of-society damages,'" or for a "decedent's pre-death pain and suffering."[53] Had California law been applicable in *Helman*, plaintiffs could have sought recovery for "loss of the society, comfort, care[,] and protection afforded by the decedent."[54]

Although a circuit split exists between the Second and Ninth Circuits as to the geographical meaning of "high seas," it seems unlikely the Supreme Court would need to rule on the issue due to the intervening congressional amendments in 2000 and 2006 clarifying the statutory language.[55] If another case presents the issue for Supreme Court review, the fact that current Supreme Court Justice Sotomayor wrote the Second Circuit dissent arguably elevates the credibility of her opinion. Another point of consideration, which the Ninth Circuit declined to rule on but noted, is the possible constitutional problems that could arise if an Executive Branch proclamation could dictate the meaning of a congressional statute.[56] Constitutionally, the President has au-

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[51] 46 U.S.C. § 30303 (2006) (emphasis added).

[52] 46 U.S.C. § 30307 (2006).

[53] Dooley v. Korean Air Lines Co., 524 U.S. 116, 120, 123 (1998).

[54] *See* Krouse v. Graham, 562 P.2d 1022, 1025 (Cal. 1977).

[55] *See* SUP. CT. R. 13 (limiting the parties' opportunity to appeal for a writ of certiorari to ninety days after the court of appeals enters a judgment, which has expired for *Helman*).

[56] Helman v. Alcoa Global Fasteners, Inc., 637 F.3d 986, 993 (9th Cir. 2011).

thority over foreign relations, whereas Congress holds authority over federal statutory remedies for wrongful deaths.[57] An attempt by the Executive Branch to take on a legislative role likely violates the separation of powers.[58]

In light of the plain meaning, statutory construction, intervening congressional amendments, and constitutional considerations, the Ninth Circuit correctly decided DOHSA's application to waters beyond three nautical miles from the shore, despite the presidential extension of territorial waters. *Helman* will likely impact attempts to recover for wrongful death resulting from a noncommercial accident occurring beyond three nautical miles from the U.S. shore. The court applied sound reasoning to interpret statutory language consistent with congressional intent, and avoided delving into murky legislative history where past statutory ambiguity was resolved by subsequent amendments. This ruling, if followed in other jurisdictions, will limit recovery to compensation for pecuniary loss and preempt other potentially more generous recovery under state or general maritime law.

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[57] *Id.*

[58] *See id.*