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Admiralty -- Limitation on Sovereign Immunity -- Governmental Liability for Negligent Misrepresentation -- De Bardeleben Marine Corp. v. United States

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pelling" interest of protecting the union minority from being *required* to contribute to causes which they as individuals would not have supported. There is no valid justification for deterring the union members from freely associating for the furtherance of expressing their political preferences. Where the "compelling" interest upon which the regulation is supposedly justified lacks substantial foundation, the constitutionality of section 610 as interpreted and applied in *Pipefitters* is questionable.*

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Admiralty—Limitation on Sovereign Immunity—Governmental Liability for Negligent Misrepresentation—*De Bardeleben Marine Corp. v. United States.*[1]—Plaintiff tugboat owner was commissioned by Coyle Lines on February 8, 1964, to anchor two barges off a Tampa dock and to retrieve them the next day. In the process of removal, the anchor of one of the barges ruptured a submerged natural gas pipeline. The resulting fire and explosion caused damage to the tugboat and both barges and inflicted personal injuries on the crew. The presence of the pipeline was first noted in *Weekly Notice to Mariners* of March 16, 1963. Its location was then marked on the Coast and Geodetic Survey Chart issued September 16, 1963.[2] Notice of issuance of this corrected map was subsequently published in *Weekly Notice to Mariners* of October 19, 1963. None of these publications, however, was aboard the tug. The chart that was aboard, dated December 17, 1962, was officially stamped "Corrected through *Weekly Notice* of July 20, 1963." Though stamped as corrected, this chart did not include the location of the pipeline. The tugboat owner brought suit[3] under the Suits in Admiralty Act (SIA),[4] alleging that the issuance of the faulty chart constituted negligent misrepresentation and breach of warranty. In the district court, both parties were found negligent and the damages were apportioned.[5]

* Subsequent to submission of this article for publication, *Pipefitters* was reversed by the United States Supreme Court. United States v. Pipefitters Local 562, 40 U.S.L.W. 4781 (U.S. June 22, 1972). The Court held, *inter alia*, that 18 U.S.C. § 610 does not prohibit union contributions and expenditures from a political fund financed by voluntary donations of members. The Court also held that such a fund need not be separate from the union but must be strictly segregated from the union dues and assessments.

1 No. 29,360 (5th Cir., Sept. 8, 1971).

2 These notices are issued in accordance with 33 C.F.R. § 72.01-1 (1971), which states: "Through the means of Notices to Mariners, the Coast Guard disseminates information concerning establishments, changes, discontinuances, and certain deficiencies in operation of aides to navigation maintained by and under the authority of the Commandant." These regulations, issued pursuant to 33 U.S.C. §§ 883(a)-(d) (1970), authorize the collection and dissemination of maritime data for the purpose of alerting mariners to new hazards and changes in the navigable waters of the United States.

3 No. 29,360 (5th Cir., Sept. 8, 1971).

4 46 U.S.C. §§ 741-52 (1970).

5 No. 29,360 (5th Cir., Sept. 8, 1971). In applying a comparative theory of tort

The court did not reach the breach of warranty contentions. On the Government's appeal, the Fifth Circuit Court of Appeals HELD: the doctrine of sovereign immunity was not a bar to Governmental liability in actions under the SIA. The court went on, however, to hold that, as a matter of tort law, the Government's liability for the issuance of a faulty chart ceased after a period of time during which a reasonable mariner would have received a *Weekly Notice* advising him of the publication of a chart correctly placing the pipeline.[6]

The threshold and focal issue in the decision arose from the Government's defense of sovereign immunity.[7] The *De Bardeleben* court was confronted with the Government's contention that Congress had intended the exceptions to the Federal Tort Claim Act's (FTCA) waiver of sovereign immunity[8] to apply to all claims brought under the SIA as amended in 1960. Therefore, the Government argued, the court lacked the requisite jurisdiction to hear the merits of a negligent misrepresentation claim under the SIA. Conversely, the plaintiff contended that the limitations in causes of action of the FTCA were not to be construed as being applicable to the SIA. The court, in upholding the plaintiff's interpretation of the threshold jurisdictional question, relied on an analysis of the statutory language, the legislative history and the concomitant case law. This casenote will examine the court's logic in view of present trends of judicial liberality toward sovereign liability. It will also submit that this decision is consistent with those trends.

Before 1960 no statute provided plaintiffs with a remedy for misrepresentation by the federal government. The FTCA specifically excluded misrepresentation from those claims that could be made against

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liability, the court determined that De Bardeleben was liable for 75% of the damages and the Government was liable for 25%.

[6] No. 29,360 (5th Cir., Sept. 8, 1971).

[7] Once the court resolved the important question regarding the re-importation of the exceptions to the waiver of sovereign immunity of the FTCA into the SIA, it considered two other issues. First, it determined that the maritime questions were of a national rather than local nature, and therefore were to be governed by federal rather than state law. Second, it decided that federal law should impose a duty of care in the preparation and dissemination of charts and notices but that the duty should be imposed only for a period of time measured by a standard of reasonableness. Hence, after finding the facts in this case, the court held that plaintiff relied upon the governmental charts for longer than a reasonable time. Thus the Government was not legally responsible for reliance upon its charts beyond that period.

[8] 28 U.S.C. § 2680(h) (1970) provides that the United States is not liable for "any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." These exceptions considerably narrow what would otherwise be complete exposure to tort liability as given by the general waiver of sovereign immunity, which provides as follows:

> The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

28 U.S.C. § 2674 (1970).

the United States.[9] Similarly, the original SIA did not encompass many traditional actions in tort. It provided that, "In cases where if such vessels were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained . . . ,"[10] and thus its scope was restricted to actions wherein the immediate target of the claim was a ship or cargo. Thus, an action for misrepresentation could not be framed under the original Act because a "vessel" or "cargo" could not make a misrepresentation.

In 1960 the SIA was amended to read: "In cases where if such vessel were privately owned or possessed, *or if a private person or property* were involved, a proceeding in admiralty could be maintained . . . ."[11] The plaintiff's suit in *De Bardeleben* was initiated pursuant to this new statute and put clearly in issue the question whether the addition of the words "or if a private person or property were involved" substantively enlarged the scope of governmental liability. Under the old language, the Government's liability as defendant in admiralty was tantamount to that of a private defendant only in causes of action involving "cargo" or a "vessel." But under the language of the 1960 amendment, the plaintiff contended, the liability of the government in admiralty was expanded to include liability for any tort action that could be brought against private individuals. The Government, however, contended that even if the 1960 amendment could be so interpreted, the SIA was still subject to the jurisdictional limitations imposed by the FTCA. Specifically, the Government asserted that the FTCA provision excluding liability for misrepresentation[12] ruled out an interpretation of the 1960 amendment that would allow such liability in admiralty actions. Refuting these contentions, the *De Bardeleben* court interpreted the clause "or if a private person or property were involved" to include all actions against the United States that could be brought against a private individual.

There are two principal suppositions that buttress the court's position. The first is that the 1960 Amendment to the Suits and Admiralty Act *itself* was meant to limit waivers of sovereign immunity. The second is that the judicial trend is away from sovereign immunity and that, by analogy, sovereign immunity in this case should be restricted.

The court utilized the "plain meaning" technique of statutory construction. The terms of the SIA, the court concluded, when read by themselves, constitute an unambiguous waiver of sovereign immunity for all actions in admiralty. The court recognized that such a broad waiver is neither unprecedented, nor so unusual as to reject its obvious construction. The federal government has frequently waived the traditional immunity, the FTCA being an obvious example. The court indicated that the Government's attempt to alter the plain meaning of the

[9] 28 U.S.C. § 2680(h) (1970). The text of this section is quoted in pertinent part, in note 8 supra.

[10] 46 U.S.C. § 742 (1958).

[11] 46 U.S.C. § 742 (1970) (Emphasis added).

[12] See note 8 supra.

statute, by its contention that the FTCA exceptions were applicable by analogy to the amended SIA, bears a heavy burden of persuasion.[13] Thus, in ascertaining the scope of potential governmental liability, the court examined the legislative history and the circumstances surrounding the amendment to the SIA.

The *De Bardeleben* court noted that the basic purpose of the 1960 amendment, as evidenced by its legislative history, was to adjust the partial jurisdictional overlap of the SIA and the FTCA.[14] Because of confusing language in the original SIA, suits were often erroneously filed under one statute in either the Court of Claims or the District Court and subsequently dismissed on procedural grounds. It was then often too late to file the suit under the correct statute in the proper court.[15] In order to remedy the injustice of these dismissals, Congress passed the 1960 Amendment to the SIA. The first two sections permit the transfer of a case from either court to the other.[16] The third section substantively broadens the jurisdictional limits of the district courts to include actions against the United States involving "persons" or "property."[17] That claims such as the one at issue in *De Bardeleben* were to be

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[13] No. 29,360 (5th Cir., Sept. 8, 1971).

[14] Prior to amendment, the SIA provided that a "proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title. Such suits shall be brought in the district court of the United States . . . ." 46 U.S.C. § 742 (1958).

The FTCA provides that:

> [T]he district courts shall have original jurisdiction, concurrent with the Court of Claims, of: . . . (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1346(a)(2) (1970).

The partial overlap arose in cases where claims exceeded $10,000 and where there was uncertainty as to whether the nature of the case was in admiralty or in law. The initial pleadings were often instrumental in conferring exclusive jurisdiction on a particular court. Thus, if a claim exceeding $10,000 were framed in admiralty under the SIA, the district courts had exclusive jurisdiction; whereas, if the action were framed in law under the FTCA, the Court of Claims had exclusive jurisdiction. Unfortunately, since judges and lawyers frequently differed as to the applicability of the facts to the alternative statutory authorities, there was uncertainty as to whether a suit was properly brought under the SIA or the FTCA. Since cases were not transferable between the district courts and the Court of Claims, an inappropriate choice often resulted in a complete bar to the action if the statute of limitations had run on the claim.

[15] It should be noted that the statute of limitations provision of the FTCA is six years (28 U.S.C. § 2401(a) (1970)), while the statute of limitations of the SIA is only two years (46 U.S.C. § 745 (1970)).

[16] 28 U.S.C. § 1406 (1970) provides:

> If a case within the exclusive jurisdiction of the Court of Claims is filed in a district court, the district court shall, if it be in the interest of justice, transfer such cases to the Court of Claims, where the case shall proceed as if it had been filed in the Court of Claims on the date it was filed in the district court.

Similar statutory language allows the transfer of a cause of action from the Court of Claims to the district courts. 28 U.S.C. § 1506 (1970).

[17] 46 U.S.C. § 742 (1970), quoted in pertinent part at p. 1548 supra.

included, the court stated, is apparent from an excerpt from the Senate Report which stated:

> [t]he purpose of the amendment is to make certain as possible that suits brought against the United States for damages caused by vessels and employees of the United States through breach of contract or tort can be originally filed in the correct court so as to proceed to trial promptly on their merits.[18]

The court concluded that the intent behind the language was to include all actions under the SIA and not just those claims which previously fell within the overlapping jurisdiction of both statutes. If the latter were true, it is submitted that the legislature could have better achieved this result by delineating the type of claim permitted in each court. Therefore, it follows that the legislative intendment was to extend the Government's liability to include all possible actions under the SIA.

Since there is little direct congressional comment on the theory of incorporation of the FTCA exceptions into the SIA, the court turned to judicial determinations of questions analogous to the instant issue. For instance, there are a few decisions which have negated efforts to incorporate the FTCA exceptions into the admiralty side of the court. Some of the claims permitted in admiralty have included those arising in a foreign country,[19] and those arising out of slander, libel or false imprisonment.[20] Had the exceptions of the FTCA been held to apply to the SIA, these claims would have been specifically barred.

In support of its position that the sections of the FTCA are applicable in construing the scope of the SIA, the Government, in its brief to the *De Bardeleben* court, relied extensively on the Supreme Court decision in *Amell v. United States*.[21] In that case, governmental employees who were mariners brought suit under the SIA for back wages. The SIA has a two year statute of limitations. Non-maritime governmental employees were privilegd to bring suit for back wages under the FTCA since its statute of limitations period extends six years. The Supreme Court, in effect, held that the statute of limitations of the FTCA should be incorporated into the SIA so that the latter could accommodate the claims filed by governmental employees who were also mariners. Otherwise, the Court reasoned, the mariner employees would be discriminated against merely because they were mariners. The Court felt that compensation "should be fixed in a uniform manner for all government wage-board employees, whether seamen or not."[22] It is obvious that the Supreme Court was more concerned with establishing a uniform federal policy than with specifically incorporating provisions of the FTCA into the SIA. Thus, the result of the *Amell* case does not

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[18] S. Rep. No. 1894, 86th Cong., 2d Sess. 3583 (1960).
[19] United States v. Motor Ship Hoyanger, 265 F. Supp. 730 (W.D. Wash. 1967).
[20] Foster v. United States, 156 F. Supp. 421 (S.D.N.Y. 1957).
[21] 384 U.S. 158 (1966).
[22] Id. at 163.

compel *in toto* incorporation of the provisions and exceptions of the FTCA absent strong policy considerations. Indeed, the *De Bardeleben* court recognized that the *Amell* case was not controlling.[23]

It is helpful to note that the practice of construing waivers of sovereign immunity broadly has been used widely in other questions involving the interpretation of the FTCA exceptions. For example, the "discretionary function" exception of the FTCA[24] could potentially provide umbrella immunity to the Government for the acts of its agents. However, the courts have not been disposed to employ this section as a broad barrier to governmental liability. Indeed, in some cases the courts have flatly refused to read the "discretionary function" exception into the waiver of sovereign immunity. In *Jemison v. The Duplex*,[25] an action was brought by a wharf owner against the United States under the FTCA for negligent prepartion of a dredging chart by the United States Army Corps of Engineers. The Government argued that the chart was made at a discretionary level because it indicated government policy. In rejecting this argument and holding the Government liable, the court stated, "the United States Engineers were not given *carte blanche* to draft plans and specifications for the dredging operations in negligent disregard for the rights of property owners along the shore."[26] In other cases, the courts have avoided the application of the "discretionary function" exception by labeling many tasks as "operational" in nature, thus subjecting the Government to liability for their negligent performance. The test for distinguishing "discretionary" from "operational" negligence[27] has been stringently construed in favor of the latter, thereby exposing many phases of governmental activity to liability.[28]

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[23] No. 29,360 (5th Cir., Sept. 8, 1971).

[24] U.S.C. § 2680(a) (1970) states:

The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute, or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

[25] 163 F. Supp. 947 (S.D. Ala. 1958).

[26] Id. at 951.

[27] The test was clearly formulated in Dalehite v. United States, 346 U.S. 15 (1953). Therein, an action against the United States was commenced under the FTCA for a death resulting from an explosion of a chemical produced according to the specifications of the Government. The Court found that the accident occurred because of negligence on the part of the Government in adopting the particular chemical program. Therefore, it held that no liability could attach because of the discretionary function exception found in 28 U.S.C. § 2680(a) (1970). The test developed to distinguish between discretionary and operational functions is: "where there is room for policy judgment and decision there is discretion." Id. at 35.

[28] See Somerset Seafood Co. v. United States, 193 F.2d 631 (4th Cir. 1951) (marking wrecked vessels); Sullivan v. United States, 299 F. Supp. 621 (N.D. Ala. 1968) (issuing charts designating lighted airfields); Eastern Air Lines, Inc. v. Union Trust Co.,

Another illustration of the modern tendency of broadly interpreting waivers of immunity is the courts' treatment of the FTCA provision that, "The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a *private individual* under like circumstances."[29] Traditionally, sovereigns have escaped liability for a negligent act when that act was one that could be performed only by a sovereign and not by an individual.[30] However, in recent decisions the courts have avoided that narrow construction of the provision. It has been held that certain functions, even if "uniquely governmental" in nature, will impose liability on the government if negligently performed. For example, in *Indian Towing Co. v. United States*,[31] the Government was held liable for the negligent operation of a lighthouse. The Court reasoned that the governmental-nongovernmental distinction served no legitimate purpose in this context.[32] Rather, the statutory scheme was designed to compensate victims of negligence. Thus, it is clear from this case that the emphasis is on reaching equitable results for the injured and not on constricting the scope of governmental liability.

A very extreme example of liberal construction of a waiver of sovereign immunity is to be found in *United States v. Muniz*.[33] In that case, a federal prisoner was permitted to sue prison officials for negligently failing to provide enough guards to prevent an assault upon him. The Court held that the Government's liability was no longer restricted to circumstances in which Government bodies had been traditionally responsible for misconduct of their employees.[34] In so holding, the Court extended federal court jurisdiction to unprecedented cases. The implications of this decision for the case at bar are twofold. First, it demonstrates that waivers of sovereign immunity are liberally construed and, second, it sets a precedent for bringing new causes of action within the scope of the SIA where previously they had not been allowed.

Once it has been decided that the amendment to the SIA had been added to enlarge substantially the scope of the Government's liability and that it is not to be limited by the restriction of the FTCA, there remains another great conceptual difficulty. That difficulty is the determination of whether all maritime torts are to be included within the scope of the statute or whether it merely encompasses those torts traditionally related to admiralty—that is, causes of action relating only to "cargo" or "vessel" claims. If the latter interpretation were followed,

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221 F.2d 62 (D.C. Cir. 1955) (issuing information about flight patterns and operating control towers).

[29] 28 U.S.C. § 2674 (1970).

[30] E.g., in Harris v. District of Columbia, 256 U.S. 650 (1921), the Supreme Court held that a municipal corporation was not liable for negligently sprinkling its streets because the activity was a uniquely governmental function.

[31] 350 U.S. 61 (1955).

[32] Id. at 65.

[33] 374 U.S. 150 (1963).

[34] Id. at 159.

misrepresentation claims would remain barred by the provisions and exceptions found in the FTCA.

In considering this question, the *De Bardeleben* court found no uniform response in the case law. In *Utzinger v. United States*,[35] a federal district court decided that the waiver of immunity is broad enough to include the whole gamut of maritime torts. There, a private pleasure craft collided with a loading dock negligently abandoned by the United States Government. In holding that the case correctly fell within the jurisdiction of the SIA, the court stated that, "If the tort occurred on navigable waters, the claim is one that lies within the jurisdiction of admiralty; nothing more is required."[36]

Thus, the *Utzinger* court's sole concern in determining its jurisdiction was the situs of the tort rather than whether the particular action involved "cargo" or "vessels." It is clear that the 1960 amendment to the SIA broadened the jurisdiction of the district courts to hear claims involving maritime torts which previously had to be filed under the FTCA.[37] The policy of allowing new suits under the SIA or, alternately, of viewing the waiver of immunity as broader than that of the FTCA, is also recognized in opinions other than *Utzinger*.[38]

In contrast to the liberal definition of "maritime tort" adopted by the *Utzinger* court is the view espoused in *J.W. Peterson Coal & Oil Co.* v. *United States*.[39] In that case, the plaintiff dock owner filed suit against the United States for negligent dredging operations that resulted in the collapse of his dock. In overruling a Government motion that the suit had to be brought in admiralty, the federal district court reasoned that the Government's involvement as far as a "public vessel" or "cargo" was concerned was too uncertain to conclude that a remedy is provided under the SIA.[40] The suit had to be maintained under the FTCA. Thus the court restrictively interpreted the phrase "or if a private person or property were involved" as not constituting an enlargement of Government liability under the SIA. Rather, the *Peterson* court indicated that the addition of the phrase was intended to:

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35 246 F. Supp. 1022 (S.D. Ohio 1965).

36 Id. at 1023, quoting Weinstein v. Eastern Airlines, Inc., 316 F.2d 758, 761 (3rd Cir.), cert. denied 375 U.S. 940 (1963).

37 See Beeler v. United States, 256 F. Supp. 771 (W.D. Pa. 1966), in which plaintiff sued the United States for injuries incurred when her boat was swept over a dam. She claimed that the accident was caused by the negligence of the Corps of Engineers in locating signs warning of the hazard. The question at issue was whether the jurisdiction was under the FTCA or the SIA. The court held that since the 1960 amendment to the SIA, suits such as the one at bar, even though previously not permitted, are not maintainable under the SIA. Id. at 776.

38 E.g., in Aetna Casualty and Surety Co. v. United States (P.O.D.), 1948 A.M.C. 267 (E.D.N.Y. 1948) the court stated in general terms, "it seems . . . that the language of the Suits in Admiralty Act is much broader than that found in the Federal Tort Claims Act." Id. at 268-69. See also Gulf Oil Corp. v. Panama Canal Co., 407 F.2d 24 (5th Cir. 1969).

39 323 F. Supp. 1198 (N.D. Ill. 1970).

40 Id. at 1200.

> (1) avoid the technical distinction of when goods owned by the Government to be carried on a vessel have ceased to be 'merchandise' and have become 'cargo' . . .
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> (2) confirm that the Act was not limited to cases where prior to it the Government vessel could have been seized *in rem* but went farther and gave a remedy *in personam* against the United States both in cases where only the vessel would be liable and in those cases where the owner of the vessel, if privately owned, would be personally liable . . .
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> (3) lay to rest the notion that the Government's ownership of cargo must be directly connected with the Government's ownership and operation of a vessel. . . .[41]

Consequently, the court concluded that unless the vessel were owned or operated by or for the United States there would be no remedy available under the SIA.

Thus, there exists a fundamental conflict concerning the meaning of "maritime torts" within the SIA. It seems that in attempting to abolish the overlap of jurisdiction between the original SIA and FTCA, Congress has created another overlap between the amended SIA and Section 1346(b) of the FTCA.[42] That is, claims which, because of the controversy just discussed, cannot be definitely characterized as maritime or non-maritime can presumably be filed under either statute, depending upon the court's definition of "maritime tort." The choice of the proper act upon which to ground the claim is obviously critical, for an incorrect choice could lead to dismissal.[43] The *De Bardeleben* court, by permitting suit under the SIA, sanctioned the broader concept of "maritime torts." Indeed, it is the more logical decision in light of the liberal context in which waivers of sovereign immunity are construed.

If *De Bardeleben* had been decided to the contrary, the re-incorporation of the FTCA provisions and exceptions could, in some instances, have led to inconsistencies in the application of the SIA. Before 1960, virtually unlimited liability had been imposed upon the United States for torts in admiralty that would have fallen within the FTCA exception of "discretionary function." For example, the operation of a naval vessel in wartime, although quite discretionary, was included in ad-

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[41] Id. at 1204.

[42] 28 U.S.C. § 1346(b) (1970) states:

Subject to the provisions of chapter 171 of this title, the district courts together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

[43] See 2 F. Jayson, Handling Federal Tort Claims 257 (1964).

miralty.[44] As the *De Bardeleben* court emphasized, the policy behind these decisions was that congressional adoption of broad statutory language authorizing suit was deliberate and was not to be thwarted by unduly restrictive interpretation.[45] If, however, the discretionary exceptions were to be re-imported into the 1960 amendment this would mean that suits previously permitted would be barred. Such result was neither intended nor desired by the legislature.

On the other hand, it must be admitted that inconsistency in administrative accountability would result from a failure to re-import the exceptions into the SIA. For example, under the FTCA, governmental agencies would not be liable for misrepresentation, as long as it was not made in a maritime context.[46] Moreover, the same governmental agency involved in the *De Bardeleben* decision—the Coast and Geodetic Survey—would escape liability for a misrepresentation that resulted in a non-maritime accident.[47] It is arguable, then, that maritime and non-maritime misrepresentation should be treated consistently unless good reason exists for distinguishing the two. It is suggested that remedial legislation is necessary to resolve the inconsistencies in governmental liability for misrepresentation.

In conclusion, the result reached by the *De Bardeleben* court is highly tenable. The court employed an analysis of the language and the legislative history of the FTCA and the SIA. Additionally it examined the general trends in the law of sovereign immunity and drew consistent parallels thereto. The *De Bardeleben* court also considered the conceptual implications of the decision in terms of related problems such as a specific definition of "maritime tort." These considerations obviously were weighed against the alternative solutions discussed herein and it is submitted that the court made the most prudent decision in light of the relevant case law.

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[44] DeBardelbew Marine Corp. v. United States of America, No. 29,360 (5th Cir., Sept. 8, 1971) at 13 n.15 citing Canadian Aviator, Ltd. v. United States, 324 U.S. 215 (1945).

[45] Id. at 222.

[46] See Vaughn v. United States, 259 F. Supp. 286 (N.D. Miss. 1966) (unsuccessful suit against the United States for misrepresentation on government chart that caused explosion of pipeline under the earth).

[47] See Jones v. United States, 207 F.2d 563 (2d Cir. 1953), where the Government was held not liable for misrepresentation on a Coast and Geodetic Survey Chart that misstated the oil producing capacity of a certain tract of land and caused financial loss to those who relied thereon.