

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 94-30004  
Summary Calendar

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SEACARRIERS MARITIME CO., LTD.  
and  
WESTWIND AFRICA LINE, LIMITED,

Plaintiffs-Appellants,

VERSUS

M/T STOLT JADE, her engines, tackle,  
apparel, furniture, etc., *in rem*,  
STOLT JADE, INC.  
and  
STOLT-NIELSEN, INC., *in personam*,

Defendants-Appellees.

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Appeal from the United States District Court  
For the Eastern District of Louisiana

(CA-92-832-A)

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(September 12, 1994)

Before REYNALDO G. GARZA, DUHÉ, and EMILIO M. GARZA, CIRCUIT  
JUDGES.

PER CURIAM:\*

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined

This case involves the collision of the M/V Gulfwind with a fixed platform. The issue before this Court is whether the M/V Stolt Jade crowded or embarrassed the Gulfwind, causing her to collide with the platform. For the reasons discussed below we AFFIRM the district court's judgment.

### I. Procedural History

These consolidated cases involve a collision in the Gulf of Mexico between the Gulfwind and the West Delta 109-A Oil and Gas Platform. The Gulfwind is owned by Seacarriers Maritime Co. (Seacarriers) and chartered by Westwind Africa Line Ltd. (Westwind); Texaco Exploration and Production, Inc. (Texaco) owns the platform. Seacarriers and Westwind filed suit against the Stolt Jade and Stolt Jade, Inc., claiming that the Stolt Jade crowded and embarrassed the Gulfwind, contributing to the collision. Texaco filed suit against the Gulfwind, Seacarriers, and Westwind for the damages to the platform. The cases were consolidated and the trial bifurcated between the issues of liability and damages.

On June 16, 1993, after a bench trial, the district court entered findings of fact and conclusions of law. The district court found the actions of the Gulfwind as the sole cause of the collision, absolving Texaco and the Stolt Jade from any liability. Accordingly, the district court dismissed Gulfwind's claims against the Stolt Jade and ordered judgment in favor of Texaco. Before the

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that this opinion should not be published.

scheduled trial on damages, Texaco and Gulfwind settled and the district court dismissed Texaco's claim. The district court entered final judgment, dismissing Gulfwind's claims on December 2, 1993. Gulfwind appeals this judgment.

## II. Facts

The Gulfwind<sup>1</sup> collided with the Texaco platform in the fairway below the Southwest Pass of the Mississippi River. The fairway is a two mile-wide route that provides secured passage to vessels traveling between the Southwest Pass of the Mississippi and the Gulf of Mexico. The fairway begins just south of Southwest Pass, demarcated by a sea buoy, and continues south for approximately three miles before forking into two legs. Forming an inverted "Y" the two legs extend to the southwest and the southeast.<sup>2</sup> The platform is located on the western edge of the southwest leg near the apex of the fork. The Gulfwind was traveling inbound on the southwest leg (in a northeasterly direction) when the collision occurred; the Stolt Jade<sup>3</sup> was traveling outbound.

On the day of the collision the weather reports indicated that scattered showers and thunderstorms were developing in the Gulf as

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<sup>1</sup>The Gulfwind is a Greek oceangoing bulk cargo vessel measuring 607 feet in length, 97 feet in breadth, and 23,646 gross tons.

<sup>2</sup>The southwest leg runs on a northeast axis of 217°/037° True, and the southeast leg runs on a northwest axis of 148°/328° True.

<sup>3</sup>The Stolt Jade is a Liberian parcel tanker measuring 580 feet in length, 105 in breadth, and 23,964 gross tons.

a low pressure system moved off the coast of Texas. Between 1900 and 2000 hours the weather progressively worsened. Over the next two hours the winds increased to 31.4 knots with gusts of up to 60 miles per hour. Visibility varied from zero to three miles due to the extreme rain.

Despite the weather reports the Gulfwind was left in light ballast with an exposed freeboard exceeding thirty feet. The Gulfwind failed to post a lookout to watch for oncoming traffic or structures. Furthermore, Captain Bazigos ordered the Gulfwind's Automatic Radar Plotting Aid (ARPA)<sup>4</sup> turned off despite the poor weather and the oncoming traffic indicated on their radar.

As the Gulfwind entered the fairway from the south the Stolt Jade was piloted through the Southwest Pass and onto the fairway from the north. The Stolt Jade then set a course of due south and continued slightly west of the center of the fairway at full ahead and heavily laden. The Stolt Jade displayed all of the customary navigation lights; contained two radios on the bridge monitoring channel 16 VHF;<sup>5</sup> and contained two radars, one set at three miles and the other at six. The Stolt Jade's ARPA was operational and set at 1.5 miles. A lookout was posted on the bridge.

The platform is outfitted with a "RACON" device, which broadcasts a signal read by ship's radar. The platform also

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<sup>4</sup>Simply put, an ARPA is a warning device. When a radar signature comes within the designated range of an operational ARPA an alarm will sound.

<sup>5</sup>Channel 16 VHF is reserved for ship to ship communications, whereas channel 9 VHF is reserved for pilot to ship communications.

contains a radar deflector, four double stacked white navigation lights at each corner, and at least three hundred other lights. At the time of the collision all navigational aides were fully operational.

At 2100 hours the Gulfwind was hit by a rain squall, which reduced visibility to zero. Second Officer Kiriakou fixed the Gulfwind's position by radar, indicating that the vessel was proceeding up the fairway on its western edge. In an attempt to bring his vessel to the center of the fairway, Captain Bazigos changed course and reduced speed. The Stolt Jade was recognized by radar as an outgoing vessel at a distance of 4.7 miles. At this point Captain Bazigos ordered his ARPA system turned off. The Gulfwind did not perform any other radar plotting of the Stolt Jade after the first radar sighting.

At 2108 Captain Bazigos again reduced speed due to bad weather, to pick up the pilot, and to determine if the engines were working properly. At 2110 the Gulfwind's radar indicated that the Stolt Jade was approximately one and a half miles from the Gulfwind. Concerned, Captain Bazigos changed course to bring the Gulfwind closer to the platform. Second Officer Kiriakou testified that he attempted to contact the Stolt Jade by radio but received no response. The record indicates that contact was not made because the signal was broadcast over a channel not designated for ship to ship communications.<sup>6</sup>

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<sup>6</sup>The evidence indicates that the transmission was sent via channel 9 VHF rather than channel 16 VHF.

At 2112 the Gulfwind made a visual sighting of the Stolt Jade at a distance of .8 miles. Unfortunately, Captain Bazigos had overcompensated in his effort to position the Gulfwind between the platform and the Stolt Jade. In an attempt to avoid collision with the platform, Captain Bazigos ordered emergency revolutions and the rudder to hard starboard. Because of the weather, Gulfwind's light ballast, and Gulfwind's overexposed freeboard progress was less than efficient. Realizing that a collision was imminent Captain Bazigos ordered the engines shut down. The Gulfwind collided with the platform.

Before the collision the Stolt Jade never spotted the Gulfwind on radar. The record indicates this was probably a product of two factors. First, the rain squall that engulfed the Gulfwind blinded the Stolt Jade's radar to any vessels within the squall. Second, the proximity of the Gulfwind to the platform resulted in one radar signature instead of two.

The Honorable Charles Schwartz, Jr. entered findings of fact and conclusions of law in favor of the Stolt Jade. The Gulfwind appeals these findings. We affirm the district court's judgment.

### III. Discussion

The central issue in this case is whether the Stolt Jade embarrassed the Gulfwind, causing or contributing to the collision. Appellant contends that the district court made numerous errors in both findings of fact and conclusions of law. For the reasons discussed below, we affirm the findings of the district court.

Pursuant to Federal Rule of Civil Procedure 52(a) this Court reviews findings of fact under the clearly erroneous standard. "A finding is clearly erroneous when although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been committed." United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948). Allocation of fault in vessel collision cases is within the purview of Fed. R. Civ. Pro. 52(a). See Inland Oil and Transport Co. v. Ark-White Towing, 696 F.2d 321, 325 (5th Cir. 1983); United Overseas Export Lines, Inc. v. Medluck Compania Maviera, 785 F.2d 1320, 1323 (5th Cir. 1986).

The clearly erroneous standard does not apply to conclusions of law. Pullman-Standard v. Swint, 456 U.S. 273, 287 (1982). Appellant argues that Pullman applies to the situation before us. Appellant contends that the district court misapplied the law and that this Court should therefore make an independent determination rather than reviewing the district court's judgment under the clearly erroneous standard. We disagree. The United States Supreme Court stated in Pullman that if a "district court's finding rest[s] on an erroneous view of the law, they may be set aside on that basis." Id. The district court did not base its findings on an erroneous view of the law.

The applicable law is the International Regulations for the Prevention of Collisions at Sea, 1972, 33 U.S.C. § 1602 (COLREGS). Specifically, Appellant points to Rules 15, 16, and 17 of the COLREGS, which govern vessels in a crossing situation. In

determining whether the crossing rules apply, we must look at their prerequisite. Section II of the COLREGS, under which Rule 15 and the other crossing rules are found, applies to vessels within sight of one another. Rule 3 provides that vessels are "within sight of each other" when one can be observed visually from the other. Whether the vessels are within visual sight of each other is a fact determination made by the district court after examining the evidence, hearing testimony of witnesses, determining their credibility, and reconciling any differences. Therefore, the crossing rules apply only if the district court finds that the vessels are in sight of each other.

The first visual sighting made by either vessel was at 2212 hours. The Gulfwind spotted the Stolt Jade approximately .8 miles away. Under these facts the crossing rules are applicable, if at all, from this point on and not before. Officer Kiriakou testified that he visually observed the Stolt Jade showing a green starboard light and crossing from the Gulfwind's port to starboard at a distance of .8 miles. Appellant contends that the vessels were within sight of each other at this point and the crossing rules therefore apply.<sup>7</sup> Rule 15 provides that "when two power-

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<sup>7</sup>See Hosei Kaiun Shoji Co., Ltd. v. Tug Seaspán Monarch, 1981 A.M.C. 2162, 2172 (D. Ore. 1980) (holding that the "in sight" determination is an objective test unaffected by the negligence of the vessel failing to make a sighting). The district court did not make an affirmative determination that the vessels were in sight of one another and instead found that the vessels were not in a crossing situation. We prefer to address the issues in their logical order: first, were the vessel in visual sight of each other; and second, if the vessels were in sight of each other, was there a crossing situation? However, because a finding that the vessels were or were not in sight of



driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel." (emphasis added). The district court determined that a crossing situation did not exist and this Court will not overturn this finding unless it is clearly erroneous. The evidence supports the district court's finding. The diagram prepared by the Gulfwind's captain and second officer shows that the Stolt Jade was not crossing from port to starboard at 2112 hours.<sup>8</sup> In fact Appellant's diagram shows the Stolt Jade clear to starboard and presenting its starboard side to the Gulfwind; the testimony of the independent pilots supports this evidence. The Stolt Jade and the Gulfwind were not in a crossing situation at 2112 hours or anytime thereafter. The crossing rules do not apply to the situation of vessels passing starboard to starboard because there is no risk of collision. See Mystic Steamship Corp. v M/S Antonio Ferraz, 498 F.2d 538, 543 (2d Cir. 1974). They have merely to hold their respective courses. Rules 16 and 17 are also inapplicable because the vessels were not in a crossing situation involving risk of collision.

Appellant alleges a cornucopia of additional errors. After reviewing the record and the briefs, we find sufficient evidence to

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each other does not affect the outcome of this case we defer to the district court's determination that the vessels were not in a crossing situation and do not reach the issue of whether the vessels were in sight of one another.

<sup>8</sup>Gulfwind Ex. 21.

support the district court's findings and find no error requiring reversal. The Stolt Jade did not embarrass or crowd the Gulfwind so as to contribute to the collision. The sole cause of the collision is attributed to the poor seamanship of the Gulfwind. For these reasons the judgment of the district court is AFFIRMED.