IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

JANTRAN, INC. AND COMMERCIAL
UNION ASSURANCE CO.,

Plaintiffs,

v. NO. 4:90CV201-S-O

M/V SANDRA W, IN REM, AND
TAYLOR FARMS TRUCKING CO.,

Defendants.

OPINION

This cause came before the court for a nonjury trial on November 16, 1994. Having carefully considered the evidence, the argument of counsel, and the applicable case law, the court is now prepared to render its decision.

FINDINGS OF FACT

1. At all pertinent times, the in rem defendant, M/V SANDRA W, was owned and operated by the co-defendant, Taylor Farms Trucking Company, Inc., an Arkansas corporation. The primary business of the SANDRA W was to deliver loaded grain barges from Riceland Foods in Pendleton, Arkansas, to a fleet operated by the plaintiff, Jantran, Inc., on the Mississippi River and then to return empty barges to Riceland Foods for reloading.

2. Jantran is a Mississippi corporation with its principal place of business in Rosedale, Mississippi. It is the owner and

operator of a fleeting facility on the Mississippi River and is engaged in the business of fleeting loaded and unloaded barges for various companies, including Riceland Foods. In other words, Jantran operates as a parking lot for barges and charges barge owners a daily fee for fleeting barges in its fleet. According to Mr. Janoush, once a barge is logged into the fleet, Jantran, pursuant to its policy, begins charging for its services.

3. In this case, only Jantran's "600 Fleet," operated at approximately mile 600 on the river, is at issue. That fleet is governed by a United States Corps of Engineers permit. Barges moored in the 600 fleet are routinely maintained in "tiers." The inside barges in such tiers, i.e., the barges moored closest to the shore, are moored to the bank by steel cables attached to "deadmen" located on the bank itself. Additional barges are then routinely secured outboard, i.e., to the river side, of such inside barges by rope lines.

4. Jantran operates an "open fleet," as opposed to a "closed fleet," i.e., it allows outside vessels, such as the SANDRA W, to drop and pick up barges from its fleet. However, Jantran reserved the right to direct where accepted barges would be moored.

5. On September 21, 1989, the SANDRA W was manned by Captain Gibbs Kennedy and deckhands John Sherman and Leon Kennedy, each of whom was employed by Taylor Farms. Both Capt. Kennedy and John Sherman were highly experienced seamen.

6. On that date, the SANDRA W picked up barge RW-239 at the Riceland Foods facilities at approximately 9:00 a.m. and proceeded down river to the Jantran fleeting facility. The RW-239 was a covered hopper barge with a rake bow and was owned by Riverway Corporation; the cargo in the barge was owned by Riceland Foods.

7. It was Jantran's policy to try to have at least one fleet boat in the 600 fleet at all times. On September 21 and 22, 1989, Jantran utilized the M/V RIVERTON, the M/V LOG LOADER, and the M/V ROSEDALE as fleet boats. Neither the ROSEDALE nor the LOG LOADER was equipped with radar. According to Jantran's president, Joseph Janoush, these vessels and their crews were responsible for the care, custody, and control of barges delivered to and moored in Jantran's fleet. The M/V VICTORIA, a Jantran line boat, was also physically present in the Jantran 600 fleet between 8:20 p.m. and 10:00 p.m. on September 21. Other line boats were in and out of the 600 fleet on September 22.

8. Terry Wayne "Bubba" Kurts was the pilot of the M/V RIVERTON and was working the day watch from 6:00 a.m. to 6:00 p.m. on September 21.

9. When Capt. Kennedy reached the Jantran fleeting facility at approximately 12:50 p.m., he called Jantran to advise that the SANDRA W was coming into the fleeting area with one loaded barge, the RW-239. Capt. Kurts then made a circle through the 600 fleet and saw that there was a single barge, the ART-476, on the Arkansas

side, or right descending bank, of the river. Capt. Kurts instructed Capt. Kennedy to secure the RW-239 alongside and outboard of the ART barge. Capt. Kurts told Capt. Kennedy "to tie [the barge] off good," and Capt. Kennedy replied that he "would put two good lines on it." At the time of these conversations, the RIVERTON was working the 600 fleet and building a northbound tow for the SANDRA W.

10. The evidence showed that the ART-476 was tied to the shore at a point where an eddy was working. An eddy is a current condition where current flow within the eddy is in an upstream direction to the point where that flow intersects downstream current flow. A barge moored in an eddy continuously surges upriver and downriver.

11. Capt. Kurts was familiar with Capt. Kennedy and did not have any complaints about the manner in which he and his crew had previously moored barges in the Jantran fleet.

12. The crew of the SANDRA W secured the RW-239 outboard of the ART-476 with two lines, one forward and one stern, with the bow of the RW-239 facing upriver. John Sherman tied the upriver head or bow line; Leon Kennedy secured the stern line. Capt. Kennedy visually checked the mooring lines of the RW-239 and the ART-476 from his wheelhouse and did not see anything that concerned him; otherwise, he would have gone over to correct the problem.

13. Capt. Kurts observed Sherman tie off the RW-239 from the wheelhouse of the RIVERTON approximately fifty to sixty feet away, and although he could determine only that the barges were moored together, when he checked the moorings between the RW-239 and the ART-476 from that advantage, the lines looked fine to him.

14. When the RW-239 was secured to the ART barge, Capt. Kurts expressly acknowledged by radio that Jantran had accepted delivery of the RW-239 into its fleet. Under Jantran's acknowledged policy and per Mr. Janoush's testimony, Jantran became, at that point, responsible for the care, custody, and control of the RW-239.

15. Defendants have attempted to show that the breakaway of the RW-239 was the result of the negligence of the crew of the SANDRA W in failing to properly secure the RW-239 to the ART-476. The court finds that they have failed in that attempt. Instead, the court credits the testimony of Capt. Kennedy, the captain of the SANDRA W, and John Sherman, the deckhand who tied the bow line, denying that the "tiger line" admitted as P-5 was the same line employed by Sherman on September 21 to moor the bow of the RW-239 to the ART barge. Both men testified unequivocally that Sherman, an experienced deckhand, <u>never</u> used a "bowline," such as found on P-5, to secure the eye of a line; rather, he always used a "woven eye." Defendants' attempts to cast doubt on that testimony via, for example, a telephone statement given by Capt. Kennedy a few days after the accident, fall short of convincing this court

otherwise. Even David Pascoe, the marine surveyor and insurance adjuster hired to investigate the breakaway of the RW-239, testified that when he talked to Capt. Kennedy on September 28, 1989, about the mooring procedures used by his crew, the captain stated that "[h]e didn't think those were the lines that were used to secure--that he and his crew had used to secure the 239."

16. The SANDRA W completed its mooring maneuvers at 1:20 p.m. and then crossed to the Mississippi side of the 600 fleet and, with the aid of the Jantran fleet boats, began making up its northbound tow. The crew of the SANDRA W was not aboard the RW-239 after that time, and at 8:40 p.m., the SANDRA W departed the 600 fleet for its return trip to Pendleton, Arkansas. During the time the SANDRA W crew members were directly across the river, they did not observe any change in the position of the RW-239. To this court, the fact that the RW-239 had not changed position in nearly eight hours is additional strong evidence that the crew of the SANDRA W properly moored the RW-239 to the ART-476.

17. Before Capt. Kurts went off watch that day, he visually checked, from the wheelhouse of the RIVERTON, the lines mooring the RW-239 and the ART-476 and did not see anything that concerned him; if he had, he would have gone over to correct any problems.

18. It was Jantran's policy, custom, and practice for its fleet tug employees independently to inspect the lines securing barges delivered to its fleet by outside boats, such as the SANDRA

W, to insure that the moorings were proper. This procedure was to be followed as often as practicable.

19. Furthermore, it was Jantran's customary procedure to place fleet lights on the outriver barges in the fleet before dark each night. To accomplish this task, the deckhands of the fleet boats would physically board the barges to position the lights. It was also customary for those deckhands visually to check the mooring lines of the barges in the fleet after the lights were positioned. If the mooring lines were observed to be inadequate or to need adjusting or replacing, Jantran's crew would do whatever was needed to correct any deficiencies. The same procedure was to be followed after the crew change each morning, when the lights were removed.

20. Mike Pearson was the captain of the LOG LOADER from 10:40 p.m. until 6:00 a.m. on September 21 and 22. Capt. Pearson testified that while he was at the controls of the LOG LOADER, he made a "ride by" inspection of the 600 fleet at 4:20 on the morning of September 22 and did not see anything unusual in the fleet and did not notice any missing or unilluminated fleet lights; if he had noticed anything unusual, he would have corrected it. The LOG LOADER continued to stand by the fleet on the left descending bank for the remainder of Capt. Pearson's shift.

21. The RW-239 was not known to be missing until she was seen stranded on a dike below the 600 fleeting area at approximately

9:15 a.m. on September 22, 1989. Until that time, none of Jantran's fleet boat personnel had noticed anything out of the ordinary or unusual in the 600 fleet and, in particular, had not seen the RW-239 change position with respect to the ART barge, break away from its moorings, or drift downriver. After the casualty, a broken stern line was found on the starboard stern quarter of the RW-239.

22. Jantran and its co-plaintiff, Commercial Union Assurance Co., paid $310,435.51 to Riceland Foods, denying any liability and reserving their rights to seek indemnity and/or contribution from the SANDRA W and Taylor Farms. The fair and reasonable damages sustained by Jantran and Commercial Union as a result of the breakaway of the RW-239 is $300,000.00.

CONCLUSIONS OF LAW

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1333. This court has jurisdiction to hear and decide this case between these parties.

2. Plaintiffs demand reimbursement and indemnity from defendants for the amount paid Riceland Foods for the damage to the cargo of rice aboard the RW-239.

3. In delivering the RW-239 to Jantran's 600 fleet, the SANDRA W was under a duty to adequately moor and properly secure that barge to the ART-476. E. I. DuPont de Nemours & Co. v.

Riverway Harbor Service St. Louis, Inc., 639 F.2d 404, 408 (8th Cir. 1981); see also The Norwich Victory, 77 F. Supp. 264, 268 (E.D. Pa. 1948), aff'd, 175 F.2d 556 (3d Cir.), cert. denied, 338 U.S. 871 (1949).

4. Because the SANDRA W moored the RW-239 at Jantran's direction, it is "relieved of its duty to determine whether or not the berth was safe." Roah Hook Brick Co. v. Erie Railroad Co., 179 F.2d 601, 604 (2d Cir. 1950).

5. In mooring the RW-239 to the ART-476, the crew of the SANDRA W was under a duty to use "such reasonable care and maritime skill as prudent navigators employ in performing similar services." Tug "Sea Hawk" v. Sococo, Ltd., 707 F. Supp. 1306, 1315 (S.D. Fla. 1988), aff'd, 894 F.2d 411 (11th Cir. 1990).

6. The delivery of the RW-239 to the custody and control of Jantran at 1:20 p.m. on September 21, 1989, established a bailment relationship. United Barge Co. v. Notre Dame Fleeting & Towing Service, Inc., 568 F.2d 599, 601 (8th Cir. 1978). The defendants' responsibility for the RW-239 ceased upon the proper mooring of the barge at the Jantran facility. Lancaster v. Ohio River Co., 446 F. Supp. 199, 202-03 (N.D. Ill. 1978).

7. This bailment relationship imposed upon Jantran, as the fleet operator and bailee for hire, a duty of ordinary care, Stegemann v. Miami Beach Boat Slips, Inc., 213 F.2d 561, 564 (5th Cir. 1954); see also United Barge, 568 F.2d at 602 n.5., meaning

that it was to "exercise the same degree of care that a man of ordinary prudence would exercise under similar circumstances...." Orrell v. Wilmington Iron Works, Inc., 185 F.2d 181, 183 (4th Cir. 1950).

8. Its duties included:

(A) "see[ing] to it that barges entrusted it its care are adequately moored at all times," Federal Barge Lines, Inc. v. Star Towing Co., 263 F. Supp. 981, 984 (E.D. La. 1967); see also Dow Chemical Co. v. Barge UM-23B, 424 F.2d 307, 311 (5th Cir. 1970);

(B) being "physically able to keep a constant check on the mooring lines in the fleet," Federal Barge Lines, 263 F. Supp. at 984; and

(C) remooring barges properly and maintaining proper mooring on the barges thereafter. John I. Hay Co. v. The Allen B. Wood, 121 F. Supp. 704, 708 (E.D. La. 1954), aff'd, 219 F.2d 237 (5th Cir. 1955).

9. In short, Jantran, as a fleeting operator, had a "basic responsibility to care for the barges in its custody." United Barge, 568 F.2d at 603; see also Monsanto Co. v. Edwards Towing Corp., 318 F. Supp. 13, 15 (E.D. Mo. 1969); John I. Hay, 121 F. Supp. at 708.

10. "[T]he law presumes a fleet breakaway results from the negligence of the fleeter." Columbia Marine Service, Inc. v. Dravo Mechling Corp., 655 F. Supp. 689, 690-91 (S.D. Ohio 1987). As the bailment relationship was established, Jantran, the fleeting operator, is liable for the damage to the RW-239 unless it "comes forward with evidence that the damage resulted from causes or

circumstances other than from its own negligence." United Barge, 568 F.2d at 602 n.5.

11. Jantran can rebut this presumption of negligence by showing

> either how the disaster in fact occurred and that this was in no way attributable to [its] negligence, or that [it] exercised the requisite care in all that [it] did with respect to the bailed article so that regardless of how the accident in fact transpired, it could not have been caused by any negligence on [its] part.

Richmond Sand & Gravel Corp. v. Tidewater Construction Corp., 170 F.2d 392, 393-94 (4th Cir. 1948) (citations omitted).

12. The court is of the opinion that plaintiffs have failed in both regards. They have not persuaded the court, by a preponderance of the evidence, that the RW-239 broke away because of the negligence of the crew of the SANDRA W, nor have they affirmatively proved that Jantran exercised the necessary degree of care required by the bailment relationship. See Orrell, 185 F.2d at 183. Rather, there is convincing evidence that Jantran directed that the barge be moored in an eddy, that it did not fulfill its duty to see that the barge was adequately moored at all times, and that it did not keep a close watch over its fleet. If Jantran's employees had followed that company's acknowledged custom, policy, and procedure of rechecking mooring lines at various intervals and had kept a proper lookout for this barge--a duty which plaintiffs' own expert, Douglas Halsey, admitted Jantran breached--either the

breakaway would not have occurred or the barge would have been captured.

13. Defendants' reliance on case law which holds a mooring vessel presumptively liable for a "drifting which occurs within a short time [after mooring]," Pasco Marketing, Inc. v. Taylor Towing Service, Inc., 554 F.2d 808, 811 (8th Cir. 1977); see also Norwich Victory, 77 F. Supp. at 269, is misplaced as those cases did not involve a fleeting operation such as that at issue here.

14. In sum, the defendants surrendered the care, custody, and control of the RW-239 to the fleet operator, Jantran, which, in turn, "breached its duty...by negligently allowing the barge[] to go adrift...." Dow Chemical, 424 F.2d at 311. The court therefore finds for the defendants.

An appropriate final judgment as to issues in the complaint shall issue.

This _____ day of December, 1994.

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CHIEF JUDGE