LEON L. GIORGIO, JR.	*	**NO. 2003-CA-1832**
VERSUS	*	**COURT OF APPEAL**
ALLIANCE OPERATING CORPORATION, GULFSTREAM RESOURCES, INC., BURLINGTON RESOURCES, ET AL., CHEVRON USA, INC., SUPERIOR OILFIELD SERVICES, INC., STATE OF LOUISIANA, THROUGH ITS DEPARTMENT OF NATURAL RESOURCES, LLOYDS UNDERWRITERS AT LLOYDS, ET AL.	* * * * * * * *	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

CONSOLIDATED WITH:	**CONSOLIDATED WITH:**
JACQUES A. SANBORN	**NO. 2003-CA-1834**
VERSUS	
ALLIANCE OPERATING CORPORATION, GULFSTREAM RESOURCES, INC., BURLINGTON RESOURCES, ET AL., CHEVRON USA, INC., SUPERIOR OILFIELD SERVICES, INC., STATE OF LOUISIANA, THROUGH ITS DEPARTMENT OF NATURAL RESOURCES, LLOYDS UNDERWRITERS AT LLOYDS, ET AL.	

APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NOS. 44-386 C/W 44-387, DIVISION "B"
HONORABLE WILLIAM A. ROE, JUDGE
* * * * * *

JAMES F. MCKAY III
JUDGE
* * * * * *

(Court composed of Judge James F. McKay III, Judge Terri F. Love, Judge Max N. Tobias, Jr.)

TOBIAS, J., DISSENTS AND ASSIGNS REASONS.

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AFFIRMED

The defendant, the State of Louisiana, through the Department of Natural Resources, appeals a trial court judgment in favor of the plaintiffs, Leon Giorgio and Jacques Sanborn. We affirm.

FACTS AND PROCEDURAL HISTORY

On the afternoon of March 14, 1998, the "Jo-Le," a thirty-eight foot Bertram sport fishing boat, left dock at Chalmette and headed for the waters of Breton Sound via the Mississippi River Gulf Outlet. Aboard the vessel were one of its owners, Leon Giorgio, his good friend, Jacques Sanborn, and Sanborn's fourteen-year old son, Brett. The group's itinerary was to do some fishing and then meet Giorgio's business partner and co-owner of the vessel at a restaurant in Venice.

After some fishing, with darkness approaching, the group decided to head towards Venice. The "Jo-Le" was on course to Breton Island when she violently crashed into a set of pilings adjacent to a large, unlit oil production platform. At the time of the accident, Giorgio had a visual fix on the lighted Kerr-McGee tower located on Breton Island and had just adjusted the vessel's radar from short range (1/4 to ½ miles) to long range (24 miles) to

get a fix on his destination.

The site of the accident was originally a construction put on State lease 8342, granted to Gulf Oil Company in 1979. Gulf Oil received a permit from the United States Army Corps of Engineers and the Louisiana State Department of Conservation to drill three wells and erect a production platform. The wells were drilled in 1981, and the platform was installed in 1982 by Chevron Oil Company, Gulf Oil's successor in title to the lease. In 1988, the lease was sold to Alliance Oil Company, which in turn sold the lease to Superior Oil Company in 1992. The lease expired on July 30, 1993 and the State Mineral Board authorized the release of the lease on December 8, 1993. The release in favor of the State of Louisiana was executed by Superior Oil Company on April 28, 1994 and recorded on May 3, 1994. The release provided that Superior release, relinquish, surrender and quit claim to the State Mineral Board any and all right, title and interest whatsoever presently owned by Superior in and to State Lease 8342. Lease 8342 was declared orphaned in January 1995, but there was no order to plug and abandon the site before the accident and it was not until 1999 that the State finally declared the site a hazard to navigation.

As a result of the allision, Giorgio and Sanborn were seriously injured and the "Jo-Le" was taking on water and sinking. Giorgio sent a "mayday" signal over his VHS radio to which the "Massive Runner," a 152-foot crew boat responded. The injured men were rushed to Venice, from where they were transported by ambulance to Meadowcrest Hospital for treatment. The "Jo-Le" ultimately sank and was declared a total loss by the marine surveyor assigned by the insurer of the vessel.

Giorgio and Sanborn filed petitions for damages against several defendants that had at one time owned, operated or were otherwise responsible for the abandoned drilling structure into which the plaintiffs ran the "Jo-Le." All of the defendants except the State of Louisiana, Department of Natural Resources, were dismissed as a result of settlements before trial. Trial commenced on August 19, 2002. During trial, Gary Ross, a representative of the Louisiana Department of Conservation, testified that once the site was orphaned in 1995 and it was understood that neither Alliance nor Superior was exercising responsibility for the structure, **it was the State's responsibility to determine whether it needed to be removed.** After three days of testimony and receiving evidence, the trial court took the

matter under advisement.

On January 28, 2003, the trial court rendered judgment in favor of the plaintiffs and against the State. The trial court awarded Sanborn: $100,000.00 for past physical pain, suffering and mental anguish; $125,000.00 for future physical pain, suffering, mental anguish and permanent disability; $10,414.72 for past medical expenses; $70,000.00 for future medical expenses; and $125,000.00 for property damage. The trial court awarded Giorgio: $75,000.00 for past physical pain, suffering and mental anguish; $100,000.00 for future physical pain, suffering, mental anguish and permanent disability; and $3,851.50 for past medical expenses. In addition the plaintiffs were awarded legal interest from the date of judicial demand until paid for all past damages awarded, and interest from the date of judgment on all future damages awarded, plus all costs of the proceedings. The State now appeals the trial court's judgment.

DISCUSSION

On appeal, the State raises the following assignments of error: 1) it was legal error to not apply general maritime law to litigation arising out of the collision between a 38-foot yacht and a production barge in the

navigable waters of Breton Sound, in which the essence of plaintiffs' claim was that the barge did not display navigation lights to alert mariners to its presence at night; 2) on the record before the district court, it was consequential error to not affix sole collision fault on the owner/operator of the modern radar-equipped yacht which struck an unlit production barge, whose precise location was depicted on the official nautical chart of the area; 3) it was legal error to cast the Department of Natural Resources in judgment for not lighting the barge when DNR had no ownership nor operating interest in the production barge, particularly where the evidence was undisputed that other parties had the legal duty under general maritime law to maintain its lighting and were, in fact, fulfilling that function; and 4) it was error to award damages of $125,000.00 to Jacques Sanborn for the total loss of the yacht when he was only a passenger thereon, and had no ownership interest whatsoever.

The State's first assignment of error involves the trial court's alleged failure to apply the general maritime law rather than Louisiana state law. Beginning with Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972), the State, in its brief, cites a

whole litany of cases for the proposition that the general maritime law should apply in the instant case. In Executive Jet, the United States Supreme Court states:

> The law of admiralty has evolved over many centuries, designed and molded to handle problems of vessels relegated to ply the waterways of the world, beyond whose shores they cannot go. That law deals with navigational rules – rules that govern the manner and direction those vessels may rightly move upon the waters. When a collision occurs or a ship founders at sea, the law of admiralty looks to those rules to determine fault, liability, and all other questions that may arise from such a catastrophe. Through long experience, the law of the sea knows how to determine whether a particular ship is seaworthy, and it knows the nature of maintenance and cure. 409 U.S. at 269-70, 93 S.Ct. at 505.

However, it is also well settled that by virtue of the savings clause "a state, 'having concurrent jurisdiction, is free to adopt such remedies, and to attach to them such incidents as it sees fit' so long as it does not attempt to make changes in the substantive maritime law." Offshore Logistics v. Tallentire, 477 U.S. 207, 106 S.Ct. 2485, 91 L.Ed.2d 174 (1986). Furthermore, in Green v. Industrial Helicopters, Inc., 593 So.2d 634 (La. 1992), the Louisiana Supreme Court found that the general maritime law authorized the application of state law as a supplement to the general maritime law unless there is some federal impediment to the application of that law in federal legislation or a clearly applicable rule in the general

maritime law. In the instant case, there was no election by the trial court to apply state law over the general maritime law. Therefore, the State has failed to show how any principals of state law cited in the trial court's reasons for judgment in any way conflict with the general maritime law. Accordingly, the State's first assignment of error is without merit.

In its second assignment of error, the State contends that the trial court erred in not affixing sole fault for the allision to Giorgio. Although Giorgio admitted that he was not aware that he was legally obligated to follow the inland rules of navigation set forth by the Inland Navigation Rules Act of 1980, 33 U.S.C. §§ 2001-2038, the defendant has failed to show how any violations of these rules was a proximate cause of the accident. The fact remains that the cluster of pilings adjacent to the abandoned unlit structure located in Breton Sound was the cause in fact of the accident. Accordingly, we find nothing manifestly erroneous with this factual finding of the trial court.

In its third assignment of error, the State contends that it was legal error to cast the DNR in judgment for not lighting the barge when DNR had no ownership, nor operating interest in the production barge and where there was evidence that other parties had the legal duty under general maritime

law to maintain lighting and were fulfilling that function. In its reasons for judgment, the trial court stated: "By virtue of the release of the original lease by which these State water bottoms was [sic] encumbered, and the declaration of the site as orphaned by the State, the responsibility for the platform and the injuries suffered by the Plaintiffs is established." In support of its position imposing liability upon the State, the trial court cites two recent cases from this Court, Anderson v. Tenneco Oil Co., 2001-0295 (La.App. 4 Cir. 5/24/02), 826 So.2d 1143, writ denied, 2002-2035 (La.App. 11/1/02), 828 So.2d 585 and Melerine v. State, 2000-0162 (La.App. 4 Cir. 11/14/00), 773 So.2d 831.

In Melerine, a fisherman whose boat struck an abandoned oil well casing brought an action against the State and the well driller to recover damages for personal injuries and property damage. The trial court entered judgment for the fisherman and on appeal this Court held that that the abandoned oil well casing was under the sole ownership and custody of the State and the evidence supported a finding that the State was liable under negligence and strict liability theories. Id. at 840 – 843. In reaching this conclusion, the Court relied upon La. C.C. art. 493 for the proposition that

the State, which owns the water bottoms on which the casings were located, became the owner of the abandoned oil well casings when they were not removed within 90 days after the lease was terminated. The Court relied upon La. C.C. art. 2317 for the proposition that the State is liable for the damage caused by the abandoned structure located on its property.

In Anderson, shrimpers sued the State for injuries they received when their boat struck an unmarked piling at night. The trial court entered judgment for the shrimpers. On appeal, this Court held among other things that the State owned and had garde over the wood pilings around the casing of an abandoned oil well and the State had actual and constructive notice of the wood pilings. Id. at 1148 – 1154. In holding that the State owned and had garde over the pilings, this Court relied upon La. C.C. art. 493 as it did in Melerine. With regards to its holding that the State had actual and constructive knowledge of the wood pilings, this Court relied upon the fact that Tenneco had filed its plug and abandonment report with the State and the report clearly indicated that no well casing was pulled.

On April 28, 1994, Superior released all rights under State lease 8342; therefore, under La. C.C. art 493 and the rationale employed by this Court in

both Melerine and Anderson, the State bears responsibility for the abandoned structure located on former State lease 8342. Furthermore, the State had actual knowledge of the dangerous condition of the structure in question. On December 16, 1997, a lawsuit involving the same structure on State lease 8342 was filed in the 25th Judicial District Court for the Parish of Plaquemines for an allision that occurred on December 16, 1996.

The State contends that Shofstahl v. Board of Commissioners of the Orleans Levee District, 2002-0018 (La.App. 4 Cir. 1/15/03), 841 So.2d 1 exonerates it from liability in this case. Shofstahl, however, can be distinguished from the instant case. In Shofstahl, the plaintiffs ran their boat into an unlit pier near the shore of Lake Pontchartrain. This Court found that although the condition in which the defendants maintained the pier was a cause in fact of the accident, the plaintiffs were the sole proximate and superseding cause of their accident. In large part this Court's finding was based upon the fact that the owner and lessee of the pier had a permit stating pier lighting would be required if the United States Coast Guard prescribed lighting and there was no evidence that the Coast Guard did in fact prescribe lighting.

In the instant case, we are dealing not with a functioning pier, but a set of pilings adjacent to an abandoned oil production platform. The Department of Natural Resources, not the United States Coast Guard was the party responsible for determining whether or not the structure in question presented an unreasonable risk to public safety. The State of Louisiana, through its police power, has a significant interest in seeing to it that structures such as the one involved in the instant case are maintained in a safe condition. This interest was recognized by the legislature when it created the Louisiana Underwater Obstruction Removal Program. The purpose of this program was "to provide for the proper and timely identification, inventory, and removal of underwater obstructions which are a hazard to navigation and commercial fishing in the state." La. R.S. 30:101.2. Clearly, the instant case is more similar to Anderson and Melerine than it is to Shofstahl.

Based on the law and the record before this Court, we agree with the trial court that the State had custody of and responsibility for the accident site and the abandoned unlit structure presented an unreasonably dangerous hazard to navigation.

In its fourth assignment of error, the State challenges the trial court's award of property damage for the total loss of the "Jo-Le" to Sanborn when he had no ownership interest in the vessel. This assignment of error is without merit. The record clearly establishes that by virtue of a settlement of Sanborn's personal injury claim against 38BLLC (the boat's owner) and London Underwriters (the boat's insurer), and London Underwriters' settlement with Chevron, London Underwriters assigned its property damage rights against the State to Sanborn.

CONCLUSION

For the foregoing reasons, we affirm the trial court's findings of fact as well as the personal injury, medical expenses, and property damage awards made to Giorgio and Sanborn.

AFFIRMED