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# Admiralty Law

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# Admiralty Law: 1997 Survey of Florida Law

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## I. INTRODUCTION

This article surveys opinions in maritime cases decided by the United States Supreme Court, the United States Court of Appeals for the Eleventh Circuit, and state and federal courts in Florida. This survey covers the period from July 1996 through July 1997.

## II. UNITED STATES SUPREME COURT DECISIONS

### A. *Seaman Status*

A frequently asked question, one that is not often addressed consistently by the lower courts, is whether a maritime employee, who is a Jones Act seaman,[1] is entitled to an action against his or her employer/shipowners. In *Harbor Tug & Barge Co. v. Papai*,[2] the Supreme Court granted certiorari to provide clarification and to resolve the conflict existing in the courts of appeal with regard to the application of the test to determine seamen status which was set forth in *Chandris, Inc. v. Latsis*[3] to determine seamen status.[4]

In *Harbor Tug*, a maritime worker was injured while painting the housing structure of a docked tug, a one-day job that he had obtained through a union hiring hall.[5] The worker brought suit against the tug owner claiming negligence under the Jones Act and unseaworthiness based upon general maritime law. The district court denied seaman status in reliance on a test, that has been since superseded, holding that the "'[plaintiff] did not have a 'more or less permanent connection' with the vessel on which he was injured nor did he

1. 46 U.S.C. app. § 688(a) (1994).
2. 117 S. Ct. 1535 (1997).
3. 515 U.S. 347 (1995).
4. *Harbor Tug*, 117 S. Ct. at 1538.
5. *Id.* at 1537.

perform substantial work on the vessel sufficient for seaman status.'"[6] The Ninth Circuit Court of Appeals reversed and in reliance on *Chandris*, held that the relevant inquiry was "'not whether plaintiff had a permanent connection with the vessel [but] whether plaintiff's relationship with a vessel (or a group of vessels) was substantial in terms of duration and nature.'"[7] The majority reasoned that if the type of work performed would customarily entitle a maritime worker to seaman status if performed for a single employer, "the worker should not be deprived of that status simply because the industry operates under a daily assignment rather than a permanent employment system."[8]

The Supreme Court reiterated the test set forth in *Chandris* for determining seaman status under the Jones Act[9] as follows: First, "'an employee's duties must contribut[e] to the function of the vessel or to the accomplishment of its mission,'"[10] and second, an employee "must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature."[11] Applying the test to the facts of this case, the Court ruled that although the plaintiff's performance on board the vessel contributed to its function or purpose, the plaintiff failed to establish a substantial connection to the vessel or to an identifiable group of vessels.[12] The Court held that the fact that the plaintiff had done similar maritime work on other vessels not owned by the defendant, did not satisfy the substantial connection test.[13] Rather, the vessels must be "subject to common ownership or control."[14] Further, the Court ruled that the focus of the substantial connection requirement is "whether the employee's duties take him to sea," which the plaintiff's job did not.[15] In this case, the Supreme Court sufficiently narrowed the instances in which a worker can establish seaman status under the Jones Act.[16] This is an important decision for employers/shipowners.

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6. *Id.* at 1539 (quoting App. to Pet. for Cert. 27a).
7. *Id.* (quoting Papai v. Harbor Tug & Barge Co., 67 F.3d 203, 206 (9th Cir. 1995)).
8. *Id.*
9. 46 U.S.C. app. § 688(a) (1994).
10. Chandris, Inc. v. Latsis, 515 U.S. 347, 368 (1995) (citation omitted).
11. *Harbor Tug*, 117 S. Ct. at 1540 (citing Chandris, Inc. v. Latsis, 515 U.S. 347, 368 (1995)).
12. *Id.*
13. *Id.* at 1542.
14. *Id.* at 1541.
15. *Id.* at 1540.
16. *Harbor Tug*, 117 S. Ct. at 1543.

B. *Products Liability*

According to United States Supreme Court precedent,[17] "an admiralty tort plaintiff cannot recover for the physical damage a defective product causes to the 'product itself,' but can recover for physical damage the product causes to 'other property.'"[18] In *Saratoga Fishing Co. v. J.M. Martinac & Co.*,[19] the Court was asked to determine whether equipment added to a product by the initial owner/user prior to the sale of the product to a subsequent owner/user is considered part of the "product itself" or "other property."[20] The Ninth Circuit Court of Appeals ruled that the added equipment was part of the "product itself" since when sold to the subsequent owner/user "the added equipment was part of the defective product."[21] Thus, the court held that the subsequent owner/user was not entitled to recover in tort for damage to the added equipment, but rather was limited to principles of warranty and contract law.[22] The Supreme Court granted certiorari.[23]

The Supreme Court reversed the Ninth Circuit Court of Appeals, holding that items added to a product by the initial user are not part of the "product itself" but are "other property," and the character of the product as sold to the initial user is not changed by the initial user's sale of the product.[24] The Court reasoned that had the product "remained in the hands of the [i]nitial [u]ser," the loss of the added equipment could have been recovered in tort.[25] To allow a different rule with the subsequent sale of the product would compromise the incentive of the law of products liability, which is to encourage the manufacture of safer products.

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17. *See* East River S.S. Corp. v. Transamerica Delaval Inc., 476 U.S. 858 (1986).

18. Saratoga Fishing Co. v. J.M. Martinac & Co., 117 S. Ct. 1783, 1784 (1997) (citation omitted).

19. *Id.* at 1783.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Saratoga*, 117 S. Ct. at 1786.

24. *Id.* at 1789.

25. *Id.* at 1788.

## III. OPINIONS OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

### A. *Limitation of Liability Act*

The Limitation of Vessel Owner's Liability Act,[26] ("The Limitation Act"), allows a vessel owner to bring suit in a court of admiralty to limit its "liability for any damages arising from a maritime accident to the value of the vessel and its freight, provided that the accident occurred without the owner's 'privity or knowledge.'"[27]

In *Suzuki of Orange Park, Inc. v. Schubert*,[28] the plaintiff brought suit against a corporate vessel owner for personal injury sustained when he was thrown from a recreational watercraft operated by the vessel owner's employee.[29] The vessel owner filed an action under The Limitation Act to limit its liability. Plaintiff argued that since the operator of the vessel was the corporation's president, his actions were attributable to the corporation; therefore, the vessel owner could not prove absence of privity or knowledge. Plaintiff argued that under the circumstances, his actions should not be limited to the admiralty court, which sits without a jury, but should be allowed to proceed in state court. The district court agreed and denied the vessel owner's limitation petition.[30] The vessel owner appealed.[31]

On appeal, the Eleventh Circuit agreed with the district court that it would be impossible for the corporate vessel owner to prove lack of privity or knowledge based on its president's actions.[32] However, based upon the facts of the case, the court found that it was possible that the corporate owner could also be vicariously liable for the acts of others even though it lacked privity or knowledge.[33] Thus, the Eleventh Circuit held that the vessel owner should not be denied his limitation action.[34] Accordingly, the district court's decision was reversed, and the case was remanded for fashioning of the proper relief.[35]

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26. 46 U.S.C. app. §§ 181–196 (1994).
27. Suzuki of Orange Park, Inc. v. Schubert, 86 F.3d 1060, 1062 (11th Cir. 1996).
28. *Id.* at 1060.
29. *Id.* at 1062.
30. *Id.* at 1061.
31. *Id.*
32. *Suzuki of Orange Park*, 86 F.3d at 1065–66.
33. *Id.* at 1066.
34. *Id.*
35. *Id.* at 1066–67.

B. *Jurisdiction*

In *Ambassador Factors v. Rhein-, Maas-, Und See- Schiffahrtskontor GMBH (VORMALS SANARA REEDEREIKONTOR GMBH)*,[36] the Eleventh Circuit had little difficulty determining that a maritime contract assigned to another may be enforced by an assignee in admiralty.[37] The court, relying on Supreme Court and Eleventh Circuit precedent, reasoned that "the nature of the disputed contract, not the status or alignment of parties, is the crucial inquiry in determining whether a contract is in admiralty."[38] Thus, the Eleventh Circuit held that as long as the assignment is valid, the assigned contract pertains directly to it, and is "'necessary for commerce or navigation upon navigable waters,'"[39] the assignee may enforce the assigned contract.[40] This rule applies even if the assignment contract itself is not within the federal court's admiralty jurisdiction.[41]

In *Hutchins v. Tennessee Valley Authority*,[42] the plaintiff brought a wrongful death action under the Jones Act against the Tennessee Valley Authority ("TVA") for the drowning death of her husband, a deckhand at a TVA plant in Alabama.[43] The district court dismissed the action, holding that it was barred by the exclusivity provision of the Federal Employees Compensation Act ("FECA"),[44] which provides that the exclusive remedy is against the United States with respect to the injury or death of an employee.[45] The plaintiff appealed the district court's dismissal order and urged the court to find, contrary to existing precedent, that a plain reading of FECA and the Jones Act mandates that federally employed seamen are not bound by FECA and may bring suit against the TVA under the Jones Act.[46] The Eleventh Circuit affirmed the district court's dismissal of the plaintiff's claim, holding that it was compelled to follow prior case law which limits a federally employed seaman to the exclusive remedy of FECA.[47] Although the Eleventh Circuit was apparently not persuaded by the plaintiff's argument that

36. 105 F.3d 1397 (11th Cir. 1997).
37. *Id.* at 1400.
38. *Id.* at 1398.
39. *Id.* at 1399 (quoting Nehring v. Steamship M/V Point Vail, 901 F.2d 1044, 1048 (11th Cir. 1990)).
40. *Id.* at 1400.
41. *Ambassador Factors*, 105 F.3d at 1400.
42. 98 F.3d 602 (11th Cir. 1996).
43. *Id.* at 602–03.
44. 5 U.S.C. § 8116 (1994).
45. *Hutchins*, 98 F.3d at 603 (citing 5 U.S.C. § 8116(c) (1994)).
46. *Id.*
47. *Id.* at 603–04.

the court should overturn existing precedent, the court contended that even if it were so inclined, such a decision would require an en banc decision.[48]

In *Alderman v. Pacific Northern Victor, Inc.*,[49] the plaintiff slipped and fell on an oil drilling vessel that was being converted into a fish processing vessel.[50] At the time of the accident, the vessel was docked on navigable waters in Florida. More than three years after the accident, the plaintiff filed suit for personal injury under Florida law against the vessel's interests in Florida state court.[51] Due to the defending vessel's interests, the case was removed to federal court based on diversity and admiralty jurisdiction.[52] The defendants moved for summary judgment, asserting that the plaintiff's action was within admiralty jurisdiction[53] and was therefore, untimely under the three year limitations period for maritime torts.[54] The District Court for the Northern District of Florida granted the motion, and the plaintiff appealed.[55]

On appeal, the parties agreed that if the tort were governed by maritime law, instead of Florida law, the plaintiff's action would have been deemed untimely.[56] In determining the choice of law problem, the United States Court of Appeals for the Eleventh Circuit relied on the Supreme Court's decision in *Grubart Inc. v. Great Lakes Dredge & Dock Co.*[57] The Eleventh Circuit held that according to *Grubart*, the test for determining whether a tort action falls within admiralty jurisdiction requires satisfaction of the following requisites: First, the tort must occur on navigable waters, or the injury suffered on land must have been caused by a vessel on navigable waters; and second, the claim needs to have a sufficient connection with traditional maritime activity.[58] In determining the second prong of the test, the court must consider "whether the incident has a 'potentially disruptive impact on maritime commerce,'" and "whether the 'general character' of the 'activity giving rise to the incident' shows a 'substantial relationship to traditional maritime activity.'"[59]

Plaintiff argued that although the incident occurred on navigable waters, the claim did not fall within admiralty jurisdiction because the incident did not

48. *Id.* at 603.
49. 95 F.3d 1061 (11th Cir. 1996).
50. *Id.* at 1063.
51. *Id.*
52. *Id.*
53. *See* 46 U.S.C. app. § 763(a) (1994).
54. *Alderman*, 95 F.3d at 1063.
55. *Id.*
56. *Id.*
57. 513 U.S. 527 (1995).
58. *Alderman*, 95 F.3d at 1063–64.
59. *Id.* at 1064 (citations omitted).

cause any actual impact on maritime commerce.[60] Further, it did not bear a substantial relationship to traditional maritime activity.[61] In addressing the plaintiff's first contention, that his accident caused no actual impact on maritime commerce, the court held that the "focus is not on what *actually* happened, but upon the *potential* effects of what could happen."[62] The Eleventh Circuit concluded that "[u]nsafe working conditions aboard a vessel under repairs, maintenance, or conversion . . . pose a potentially disruptive impact upon maritime commerce."[63]

With respect to the plaintiff's second contention, namely, that the activity giving rise to the incident bears no substantial relationship to traditional maritime activity, the court ruled that the focus is not on the plaintiff's characterization of his job description as a land based "construction worker."[64] Rather, the focus is on the activity of the vessel's interests as putative tortfeasors.[65] Since the vessel's interests of converting, repairing, or maintaining a vessel in navigable waters is substantially related to traditional maritime activity, the court held that substantive admiralty law applied.[66] Accordingly, the Eleventh Circuit held that the three year statute of limitation for personal injury actions brought in admiralty barred the plaintiff's claims.[67]

In *Isbrandtsen Marine Services, Inc. v. M/V INAGUA TANIA*,[68] seamen employed aboard a vessel attempted to intervene as claimants against the vessel on the date of its sale.[69] The United States District Court for the Southern District of Florida rejected the intervening seamen's application on the grounds that it was not in compliance with the local rules governing such requests.[70] After the sale of the vessel, the seamen filed a motion to set aside the sale, "and for emergency interim relief allowing it to file" a claim against the vessel "as priority creditors."[71] The seamen argued that they had not received proper notice of the sale; nonetheless, the court denied their application as untimely, and/or that the remedy requested at such a late date "would not be equitable to the interest of all parties."[72] The seamen appealed.[73]

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60. *Id.*
61. *Id.*
62. *Id.*
63. *Alderman*, 95 F.3d at 1064.
64. *Id.* at 1065.
65. *Id.*
66. *Id.* at 1065–66.
67. *Id.* at 1066.
68. 93 F.3d 728 (11th Cir. 1996).
69. *Id.* at 730.
70. *Id.* at 731.
71. *Id.* at 732.
72. *Id.*

On appeal, the plaintiffs argued that the intervening seamens' claim was invalid since the vessel had already been sold. The Eleventh Circuit agreed with the plaintiff that an "*in rem* proceeding clears a vessel of all maritime liens and that the purchaser gained good title against the world."[74] However, the court reasoned that "since the proceeds of the sale remain[ed] in the [c]ourt's registry in "lieu of the *res*," the court retained jurisdiction.[75] Having jumped the initial hurdle of jurisdiction, the court then analyzed whether the seamen were entitled to intervene.[76]

The Eleventh Circuit agreed with the district court that the seamen's action was untimely, and thus "they had no automatic right to intervene."[77] However, the Eleventh Circuit recognized that the local rules permit district court discretion in allowing a seaman's late claim "'under such conditions and terms as are equitable.'"[78] The Eleventh Circuit concluded that since seamen are "wards of admiralty whose rights federal courts are duty-bound to jealously protect," the district court abused its discretion in failing to aid the crew, by not allowing them to correct deficiencies in their motion to intervene and their complaint.[79] Thus, the Eleventh Circuit vacated and remanded the case to the district court "with instructions that the crew be permitted to amend their complaint and motion to intervene."[80]

### C. *Settling Multi-Party Maritime Actions*

In 1994, the United States Supreme Court decided *McDermott, Inc. v. AmClyde*[81] and *Boca Grande Club, Inc. v. Florida Power & Light Co.*,[82] two decisions having a significant impact upon settlements made in multiparty maritime actions. In *McDermott*, the Court adopted the proportionate share approach for settling multiparty maritime actions, which reduces the award against a nonsettling tortfeasor by the percentage of fault assigned to a settling joint tortfeasor.[83] In *Boca Grande*, the Court held that the adoption of the proportionate share approach in *McDermott* extinguished an action for

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73. *Isbrandtsen*, 93 F.3d at 732.
74. *Id.*
75. *Id.* at 733.
76. *Id.*
77. *Id.*
78. *Isbrandtsen*, 93 F.3d at 733 (quoting S.D. FLA. ADMIRALTY AND MARITIME R. E(2)(b)).
79. *Id.* at 733–34.
80. *Id.* at 735.
81. 511 U.S. 202 (1994).
82. 511 U.S. 222 (1994).
83. *McDermott*, 511 U.S. at 204.

contribution against a settling defendant.[84] Based on the decisions in *McDermott* and *Boca Grande*, the district court in *Great Lakes Dredge & Dock Co. v. Tanker Robert Watt Miller*,[85] dismissed contribution claims brought by a nonsettling party against another settling party.[86] The nonsettling party appealed, arguing that even if its general contribution claims were precluded, its claims for maintenance and cure expenses should survive.[87]

The Eleventh Circuit Court of Appeals agreed with the district court's conclusion that the nonsettling party's general contribution claims were precluded by *McDermott* and *Boca Grande*.[88] However, it disagreed with the district court's conclusion that *McDermott* and *Boca Grande* required the same result with respect to claims based on maintenance and cure.[89] The Eleventh Circuit found that, unlike a nonsettling joint tortfeasor, a shipowner is obligated to provide maintenance and cure regardless of fault; therefore, the proportionate share approach will never benefit the shipowner.[90] The only means by which maintenance and cure expenses can be apportioned among all tortfeasors responsible for harm to seamen is to allow claims for contribution.[91] The Eleventh Circuit concluded that *McDermott* and *Boca Grande* leave binding precedent intact with respect to maintenance and cure expenses, and that the settling party should be allowed to proceed against the nonsettling party for contribution for such expenses.[92]

D. *Immunity*

In *Kasprik v. United States*,[93] a case of first impression, the Eleventh Circuit Court of Appeals considered whether the Suits in Admiralty Act ("SAA")[94] bars an injured seaman employed aboard a United States owned vessel from bringing an action against the operator of the vessel, an agent for the United States, for punitive damages for the arbitrary and willful denial of maintenance and cure.[95] On appeal, the Eleventh Circuit agreed with the district court that pursuant to the SAA, a seaman employed aboard a United

84. *Boca Grande*, 511 U.S. at 223.
85. 92 F.3d 1102 (11th Cir. 1996).
86. *Id.* at 1103.
87. *Id.* at 1105.
88. *Id.* at 1106.
89. *Id.*
90. *Great Lakes*, 92 F.3d at 1107.
91. *Id.*
92. *Id.*
93. 87 F.3d 462 (11th Cir. 1996).
94. 46 U.S.C. app. § 745 (1994).
95. *Kasprik*, 87 F.3d at 464.

States vessel is barred from bringing suit "by reason of the same subject matter against an agent or employee of the United States."[96] Although the Eleventh Circuit believed that precedent allowed an action for punitive damages against the United States, the Eleventh Circuit failed to extend the seaman's entitlement against an agent of the United States.[97] Instead, the court opined that the exclusivity provision of the SAA effectively abolished such a claim.[98]

## IV. DECISIONS BY THE UNITED STATES DISTRICT COURTS IN FLORIDA

### A. *Maritime Liens*

In *Villaflores v. Royal Venture Cruise Lines, Ltd.*,[99] the defendant entered into extended negotiations for the purchase of a vessel, at which time the owner of the vessel agreed that the defendant could begin repairs and refurbishing to the vessel prior to its purchase.[100] As security, the defendant had the plaintiff post an irrevocable letter of credit to the owner of the vessel on its behalf, so that any debts incurred due to repairs and other work, would be paid and would not become maritime liens. When the sale transaction did not close, the owner of the vessel had to draw down on the full amount of the letter of credit to pay the debts incurred by the defendant for work performed on the vessel. The plaintiff filed a claim for a maritime lien against the vessel on the grounds that the vessel owner's drawing down of the letter of credit was an advance of funds to pay off "necessaries."[101]

Although it is generally recognized that a person advancing funds for the purpose of acquiring "necessaries" has a maritime lien against the vessel, the court found that under the facts presented that was not the case.[102] Rather, the repairs had already been performed on the vessel when the letter of credit was drawn down.[103] Further, the court recognized that the Federal Maritime Lien Act[104] defines "necessaries" as "'the things that a prudent owner would provide to enable a ship to perform well the functions for which she has been engaged.'"[105] Since the repairs were performed by the defendant, a non-owner,

96. *Id.* at 465 (citing 46 U.S.C. app. § 745 (1994)).
97. *Id.* at 466.
98. *Id.*
99. 10 Fla. L. Weekly Fed. D631 (M.D. Mar. 31, 1997).
100. *Id.* at D631.
101. *Id.*
102. *Id.*
103. *Id.*
104. 46 U.S.C. § 31301 (1994).
105. *Villaflores*, 10 Fla. L. Weekly Fed. at D631 (quoting Espirito Santo Bank of Fla v. M/V Tropicana, 1992 AMC 1672 (S.D. Fla. May 29, 1990)).

and were not necessary for sale of the vessel, the repairs did not constitute "necessaries."[106]

In conclusion, the court held that the letter of credit was not to provide repairs to the vessel, but was to provide security in order to facilitate the sale of the vessel.[107] Contracts for sale of a vessel are not maritime in nature.[108] Therefore, the court did not have jurisdiction.[109]

B. *Rule B Attachment*

Rule B(1) of the *Supplemental Rules for Certain Admiralty and Maritime Claims* "provides a vehicle for serving process and obtaining 'quasi in rem' jurisdiction over a defendant" that cannot be found in the district by attaching the defendant's "goods and chattels, or credits and effects in the hands of garnishees."[110] In the case of *Oceanfocus Shipping Ltd. v. Naviera Humboldt, S.A.*,[111] the plaintiff utilized this rule to attach a secured letter of credit and assets pledged by third parties as security for the letter of credit maintained at a local bank on behalf of the defendant, a party not found within the district.[112] The defendant moved to quash service of process and dismiss the complaint for lack of *quasi in rem* jurisdiction on the grounds that a line of credit "is not a good, chattel, credit or effect of the [d]efendant within the meaning of the Rule."[113]

The court observed that "many [other] courts have recognized that funds available to a defendant under a letter of credit issued by a third party are not subject to attachment as property of the defendant."[114] The court, agreeing with this rationale, determined that the funds available under a "line of credit" did not belong to the defendant, but were "essentially loan proceeds that eventually must be repaid."[115] The court reasoned that a line of credit "is nothing more than a privilege to incur a debt; and . . . cannot be considered a 'good, chattel,

106. *Id.*
107. *Id.*
108. *Id.*
109. *Id.*
110. Oceanfocus Shipping Ltd. v. Naviera Humboldt, S.A., 962 F. Supp. 1481, 1483 (S.D. Fla. 1996) (citing SUPP. R. FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS OF FED. R. CIV. P. B(1)).
111. *Id.* at 1481.
112. *Id.* at 1483.
113. *Id.*
114. *Id.* at 1484. *See, e.g.*, Union Planters Nat'l Bank v. World Energy Sys. Assoc., 816 F.2d 1092 (6th Cir. 1987); Diakan Love, S.A. v. Al-Haddad Bros. Enter., Inc., 584 F. Supp. 782, 784 (S.D.N.Y. 1984).
115. *Oceanfocus*, 962 F. Supp. at 1485.

credit or effect' within the meaning of Rule B."[116] Further, the court found that the relationship between the defendant and the assets pledged in support of the line of credit were too attenuated and were intended to protect the bank, not the defendant's creditors.[117] Based on the aforementioned, the court granted defendant's motion to quash and dismissed the action for lack of jurisdiction.[118]

### C. *In Rem Claims*

In admiralty, it is not uncommon for a plaintiff to sue a vessel *in rem*, as the offending object, pursuant to the *Supplemental Rules for Certain Admiralty and Maritime Claims*.[119] The suit is brought in the district in which the vessel is located under admiralty jurisdiction.[120] However, in *Shaffer v. Tiffany Yachts, Inc.*,[121] "in a novel attempt to establish *in rem* jurisdiction," an action was brought on behalf of the vessel against the defendant for breach of contract.[122] The court refused to apply *in rem* jurisdiction on the grounds that an admiralty proceeding *in rem* is one brought *against* a vessel, not by a vessel.[123] The court held that in order for the vessel to establish jurisdiction over the defendant, it must establish *in personam* jurisdiction.[124]

### D. *Maritime Contracts*

There is a constant battle in cases involving admiralty and maritime matters with respect to what law should apply. Clearly, if there is an established rule in admiralty, it should apply irrespective of a contrary state law. However, often times the query is whether there actually exists a rule in admiralty and whether it is clearly established. The United States District Court for the Southern District of Florida was confronted with this issue in *ABB Power T & D Co., Inc. v. Gothaer Versicherungsbank VVAG*.[125]

In *ABB Power*, pursuant to a sales contract, a seller agreed to deliver a transformer to the buyer.[126] The seller then contracted with another for the

116. *Id.*
117. *Id.* at 1488.
118. *Id.*
119. SUPP. R. FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS OF FED. R. CIV. P. B(1).
120. *Id.*
121. No. 96–1463, 1996 WL 870734, at *1 (S.D. Fla. Oct. 31, 1996).
122. *Id.* at *1.
123. *Id.* (emphasis added).
124. *Id.* at *2.
125. 939 F. Supp. 1568 (S.D. Fla. 1996).
126. *Id.* at 1569.

manufacture and delivery of the transformer to the buyer. During transport, the transformer was destroyed. Although the seller obtained marine insurance to cover the transformer during transport, the insurer refused coverage on the grounds that neither the seller nor the manufacturer possessed insurable interests and thus lacked standing to bring suit against the insurer. The court denied the insurer's motion for summary judgment; and the insurer moved to have the court reconsider its decision arguing, among other things, that the court erroneously failed to follow Fifth Circuit precedent.[127] In support of its motion to reconsider, the insurer made the same arguments, produced the same cases, and raised the same discussions as in its earlier motion for summary judgment.[128]

The court, as a preliminary matter, admonished the insurer for improper use of the rules of procedure.[129] The court held that a motion to reconsider "'should not be used as a vehicle to present authorities available at the time of the first decision *or to reiterate arguments previously made*' . . . [or] to ask the Court to rethink what [it] . . . already thought through."[130] Rather, its purpose is to share newly discovered evidence or to clarify an issue that the court may have misunderstood.[131] Obviously offended by the insurer's suggestion that it did not know its place in the judicial system with respect to following precedent, the court explained that contrary to the insurer's belief, it had not ignored or disregarded otherwise binding and valid precedent.[132] Further, the court found that there was binding precedent more directly on point than that cited by the insurer, which required the court to reject the insurer's position.[133]

The court determined that United States Supreme Court precedent requires that firmly entrenched rules of admiralty law, governing the interpretation of marine insurance contracts, "reign[] supreme over contrary state law provisions."[134] Applying the most recent and binding panel's test for determining whether admiralty or state law applies, the court found that the issue of whether certain parties are insurable interests under a marine contract is a firmly entrenched principle of federal admiralty law.[135] Finding that entrenched federal admiralty law defines an "insurable interest" as "any

127. *Id.* at 1571.

128. *Id.* at 1572.

129. *Id.* (citing Z.K. Marine, Inc. v. M/V Archigetis, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992)).

130. *ABB Power*, 939 F. Supp. at 1572 (citations omitted).

131. *Id.*

132. *Id.* at 1574.

133. *Id.* at 1575.

134. *Id.* (citing Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 312 (1955)).

135. *ABB Power*, 939 F. Supp. at 1580.

pecuniary interest," the court affirmed its earlier decision denying the insurer's motion for summary judgment and held that contrary to the insured's assertion, conflicting state law was effectively preempted.[136]

E. *Maintenance and Cure*

In *Aksoy v. Apollo Ship Chandlers, Inc.*,[137] the United States District Court for the Southern District of Florida, in response to a class action, addressed the issue of whether a crewmember's unearned sick wages should include tips.[138] The issue arose when the plaintiff commenced a class action against the defendants seeking "reasonably anticipated tips or, alternatively, monthly guaranteed tips as part of" the maintenance and cure owed to crew members who became ill or injured.[139] The defendants moved for summary judgment on the basis that the plaintiff had been paid his guaranteed minimum tips as part of his unearned sick wages, and therefore he had no standing. The plaintiff retorted that he was owed his actual anticipated wages, an amount exceeding the guaranteed amount. Relying on *Flores v. Carnival Cruise Lines*,[140] the plaintiff argued that precedent required the court to calculate tips by determining the amount of tips plaintiff would have earned had he remained on the ship.[141]

The court disagreed and held that *Flores* was distinguishable from the instant case in that in *Flores* there was no employment contract setting forth the method of calculating tips.[142] In this case, the plaintiff was guaranteed a minimum amount of tips under the crew agreement. Since the defendants had paid the plaintiff the guaranteed minimum amount as set forth in the crew agreement, the court granted the defendants' motion for summary judgment.[143]

In *Costa Crociere, S.p.A. v. Rose*,[144] the United States District Court for the Southern District of Florida was given another interesting issue for determination with respect to maintenance and cure.[145] Specifically, the court was asked to address whether a ship owner was obligated to continue paying

136. *Id.* at 1581.
137. No. 94–632, 1996 WL 764115, at *1 (S.D. Fla. Aug. 13, 1996).
138. *Id.* at *1.
139. *Id.*
140. 47 F.3d 1120 (11th Cir. 1995).
141. *Aksoy*, 1996 WL 764115, at *2.
142. *Id.*
143. *Id.* at *3.
144. 939 F. Supp. 1538 (S.D. Fla. 1996).
145. *Id.* at 1539.

maintenance and cure to a seaman who had been diagnosed with an incurable disease.[146]

The case arose when a seaman on board the M/V American Adventure fell ill with IgA nephropathy, an incurable kidney disease that progressively results in the eventual loss of kidney function.[147] The cause of this disease was unknown. The seaman was evacuated from the ship, brought to a hospital, and immediately placed on kidney dialysis, without which, absent a kidney transplant, he would die. The shipowner, and the corporation which employed the seaman, filed a complaint seeking a declaration that their obligation to provide maintenance and cure to the seaman ended when the seaman became stabilized on dialysis after being transferred from the ship to a hospital on shore. The plaintiff argued that once the seaman became stabilized, he reached the point of maximum medical improvement, and therefore, the plaintiff had no continuing obligation to provide him with maintenance and cure.[148]

The court appeared to have no easy task in addressing this issue. However, the court agreed with the plaintiff that a seaman's entitlement to maintenance and cure continues to the point of maximum medical improvement.[149] Additionally, the court recognized that the point at which a seaman is determined to have reached maximum medical improvement is a question that is not easily answered.[150]

After reviewing a number of opinions regarding the termination of maintenance and cure benefits, the court determined that the main concern is for the seaman's overall medical condition.[151] In determining whether a seaman has reached maximum medical improvement, the pertinent test in the Second Circuit is whether there is a possibility of a betterment in the seaman's "condition."[152] The court held that the term "condition" should be defined broadly and not be limited to whether a disease has been deemed incurable.[153] The court based its decision on the fact that the admiralty courts have always been liberal in interpreting the doctrine of maintenance and cure for the benefit and the protection of seamen.[154] Additionally, the court found that ambiguities or doubts in the application of the law of maintenance and cure are resolved in favor of the seamen.[155]

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146. *Id.*
147. *Id.* at 1540.
148. *Id.* at 1548.
149. *Costa Crociere*, 939 F. Supp. at 1549.
150. *Id.*
151. *Id.* at 1550.
152. *Id.* (citing Pelotto v. L&N Towing Co., 604 F.2d 396, 400 (5th Cir. 1979)).
153. *Id.* at 1550.
154. *Costa Crociere*, 939 F. Supp. at 1558.
155. *Id.*

The court held that the record makes it clear that treatment in the form of dialysis or a transplant will unquestionably result in a betterment of the seaman's condition.[156] The proposed treatment differs from other treatments that merely treat pain and suffering without enhancing bodily function, in that the proposed treatment represents the difference between life at a reasonable level of functioning for an indefinite period of time and immediate death. Accordingly, the court concluded that the seaman had not yet reached the point of maximum medical improvement.[157]

Having concluded that the duty of maintenance and cure continued as to the subject seaman, a new issue then reared its ugly head; namely, whether the shipowner/employer became obliged under the law of maintenance and cure to provide the seaman with a kidney transplant in lieu of, or in addition to, kidney dialysis.[158] The plaintiff argued that statistically, a kidney transplant is unlikely to be successful, it is costly, and it is unusual treatment beyond the scope of maintenance and cure. Further, the plaintiff argued that even if the transplant was successful, it would do no more than enhance the quality of the seaman's life.[159]

The court disagreed and held that the record indicated that the seaman has a reasonable probability of survival with a transplant; a successful transplant will better the seaman's condition to a greater extent than chronic dialysis; and, although not determinative, a successful transplant, with time, ends up considerably less expensive than chronic dialysis for three years.[160] The court ruled that the probability of an improvement in the seaman's condition was sufficient to bring treatment within the obligation of maintenance and cure.[161]

In conclusion, the court found that the obligation of maintenance and cure is not finite, and there need not be a definite and absolute ending point.[162] The shipowner's obligation may continue for the life of the seaman.[163] As one can imagine, this case raises significant monetary concerns for the employers of seamen.

F. *Admiralty Contract Jurisdiction*

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156. *Id.*
157. *Id.* at 1559.
158. *Id.* at 1555.
159. *Costa Crociere*, 939 F. Supp. at 1555.
160. *Id.*
161. *Id.* at 1556.
162. *Id.*
163. *Id.* at 1557.

In *Terra Nova Insurance Co., v. Acer Latin America, Inc.*,[164] the plaintiffs, foreign insurance underwriters, filed a complaint under the Declaratory Judgment Act[165] seeking declaration of no coverage under a marine cargo insurance policy issued to the defendant, a Florida corporation.[166] The defendant counterclaimed against the underwriters and their insurance agent, also a Florida corporation, alleging diversity as the basis for jurisdiction. The underwriters' insurance agent moved to dismiss the counterclaim on the grounds that complete diversity was lacking since both it and the counterclaimant were Florida corporations. The counterclaimant argued that the court had supplemental jurisdiction[167] over its compulsory counterclaim and thus, the court retained subject matter jurisdiction despite the nondiversity of the parties.[168]

In the first instance, the court seemed to battle with whether to entertain the action for declaratory relief.[169] The court recognized that the decision of whether to entertain an action for declaratory relief is within the discretion of the court.[170] However, one of the factors for consideration in determining whether to entertain such an action is whether the action is brought for the purpose of "procedural fencing," a situation in which a party seeks declaratory relief in order to accomplish something it could not do through removal.[171]

In the instant case, the court found that had the defendant/counterclaimant brought suit in the first instance, the presence of the nondiverse underwriters' agent would have precluded removal absent admiralty jurisdiction.[172] Thus, the court held that in order for the declaratory action to be proper, admiralty jurisdiction must exist.[173] The plaintiffs argued that the policy at issue is a maritime insurance contract, and, thus, is within the ambit of the court's admiralty jurisdiction.[174] In response, the defendants argued that although the policy was "captioned a 'marine cargo' policy[,] [i]t cover[ed] conveyances 'per land, water or air.'"[175] Since the suit centered around theft of property on

164. 931 F. Supp. 852 (S.D. Fla. 1996).
165. 28 U.S.C. § 2201 (1994).
166. *Terra Nova*, 931 F. Supp. at 854.
167. 28 U.S.C. § 1367 (1994) (providing the basis for supplemental jurisdiction).
168. *Terra Nova*, 931 F. Supp. at 854.
169. *Id.* at 854–55.
170. *Id.* at 854. *See* Casualty Indem. Exch. v. High Croft Enter., Inc., 714 F. Supp. 1190, 1193 (S.D. Fla. 1989).
171. *Terra Nova*, 931 F. Supp. at 854.
172. *Id.* at 855.
173. *Id.*
174. *Id.*
175. *Id.* at 855–56.

land, the plaintiffs argued that the policy should not be considered a maritime contract.[176]

The court considered both parties' arguments and determined that the policy covered both maritime and nonmaritime obligations.[177] Based on existing law, the court held that in order for the policy to fall within admiralty jurisdiction, the nonmaritime obligations had to be "'incidental' in an otherwise maritime contract."[178] The court concluded that in this case, the policy's nonmaritime elements were not "incidental" to the contract as a whole.[179] The policy applied regardless of where the loss occurred, and in this case, the loss occurred on land.[180] Thus, the court found that there was no admiralty jurisdiction over the subject matter, and it dismissed the case without prejudice to be filed in state court.[181]

## H. *Duty of Shipper*

In *Narcissus Shipping Corp. v. Armada Reefers, Ltd.*,[182] a bareboat charterer brought suit against the time charterer and shipper/consignee to recover damages it suffered as a result of a deviated voyage which resulted from cargo shifting and the vessel taking on a severe list that could not be corrected at sea.[183] The bareboat charterer alleged an action against the time charterer for unpaid charter hire and breach of the duty to "load, trim, and stow" the cargo as required by the charter party.[184] The bareboat charterer alleged an action against the shipper/consignee for negligence in failing to warn interested parties of prior shifting problems with respect to their product. In response, the defendants filed counterclaims against the bareboat charterer and cross-claims against each other.[185]

According to the facts of this case, the shipper/consignee contracted with the time charterer for the shipment of juice products from Florida to the Netherlands. Prior to contracting with the time charterer for the subject

176. *Terra Nova*, 931 F. Supp. at 855.

177. *Id.* at 856.

178. *Id.* (quoting Atlantic Mutual Ins. Co. v. Balfour Maclaine Int'l, 968 F.2d 196, 199 (2d Cir. 1992)).

179. *Id.*

180. *Id.* at 855–56.

181. *Terra Nova*, 931 F. Supp. at 856.

182. 950 F. Supp. 1129 (M.D. Fla. 1997).

183. *Id.* at 1131. The court found that the shipper and consignee were closely related companies that did not act without the consent of the other. *Id.* at 1132 n.1. Thus, for all practical matters, the court considered them as one and the same. *Id.*

184. *Id.* at 1138.

185. *Narcissus*, 950 F. Supp. at 1139–41.

voyage, the shipper/consignee, in an effort to reduce costs, experimented with transporting its product in plastic containers break bulk, rather than in refrigerated containers. The shipper/consignee attempted to utilize this method on thirteen voyages, each resulting in a shifting of cargo and a dangerous resulting list.[186] Despite the numerous problems encountered by the ship's transportation of the shipper/consignee's product in this manner, and recommendations made to the shipper/consignee for resolving these problems, the shipper/consignee failed to advise the time charterer of the risk or to alter its method of transporting its product.[187]

Before sailing, the shipper/consignee and its stevedore submitted a load plan to the master of the vessel. After reviewing the load plan, the master decided to erect side boards and to screw dunnage to the deck grating of the vessel's holds to better secure the cargo. The master and his crew supervised as the cargo was loaded.[188]

Once at sea, the vessel began to roll port-side. Despite efforts to secure the cargo, it shifted, causing the side boards to collapse and the vessel to experience a severe list. As a result of the list, the master deviated from the ship's intended route and sought refuge at a nearby port. Although the master probably had good intentions, the port was not equipped to handle the discharge, cold storage, and restow of the cargo. Consequently, the ship was forced to return to its port of departure.[189]

After hearing counsels' arguments and reviewing all the evidence of record, the court concluded that the shipper/consignee was forty percent at fault for failing to provide adequate securing materials, and for failing to warn other parties of the numerous problematic voyages on which their cargo was carried.[190] In finding that the remaining sixty percent was attributable to the time charterer, the court focused on the master's decisions: To erect side boards in order to restrain the drums (which had exacerbated the list when it was destroyed); and to seek refuge in a port ill-equipped to store the cargo during the required restow.[191]

With respect to actions between the bareboat charterer and the time charterer, the court found that the incident constituted an "'accident to her cargo.'"[192] Pursuant to the charter party, "'any detention or expenses related to the accident to cargo are for the account of the charterer,'" unless the accident

186. *Id.* at 1132–33.

187. *Id.* at 1133.

188. *Id.* at 1135–36. A stevedore is "[a] person employed in loading and unloading vessels." BLACK'S LAW DICTIONARY 1414 (6th ed. 1990).

189. *Narcissus*, 950 F. Supp. at 1136.

190. *Id.* at 1137.

191. *Id.*

192. *Id.* at 1138 (quoting clause 11(B) of the contract).

is caused or contributed to by the negligence of the bareboat charterer.[193] The court determined that the master's negligence, which contributed significantly to the subject incident and to the unseaworthiness of the vessel, was attributable to the bareboat charterer.[194] Thus, the court denied the bareboat charterer's action against the time charterer for unpaid charter hire.[195]

However, the court found in favor of the bareboat charterer with respect to its claim against the time charterer for breach of the charter party for failure to "load, trim, and stow the cargo."[196] The court determined that the master's supervision of the loading, stowing, and discharging of the subject cargo did not relieve the time charterer of financial responsibility for such actions.[197] Therefore, the court found the time charterer liable to the owner for breach of contract.[198]

As to the bareboat charterer's claim against the shipper/consignee for failure to warn the parties of the previous shifting problems, the court concluded that since the propensities of the cargo were dangerous and not open and obvious, the shipper/consignee did indeed owe a duty to inform the other interested parties to the maritime venture.[199] The court concluded that the shipper/consignee breached its duty to warn the other interested parties of its prior problematic voyages, and, as such, the court held it liable to the other parties of the venture.[200]

As to the time charterer's counterclaim against the bareboat charterer for the master's failure to adequately supervise the loading, stowing, and discharging of cargo, the court concluded that the clause requiring the master to supervise the loading, stowing, and discharging of cargo merely reiterated what is always implicitly true, i.e., that the master retains the right "to supervise any operations aboard the vessel to ensure that the same do not adversely affect the seaworthiness of the vessel."[201] Since the time charterer remained under a duty to the charter party with the responsibility to load, stow, and discharge the cargo, the master had no viable counterclaim.[202]

The court addressed the time charterer's and shipper/consignee's counterclaims against the bareboat charterer for failure to exercise due

193. *Id.*
194. *Narcissus*, 950 F. Supp. at 1138.
195. *Id.*
196. *Id.* 1138–39.
197. *Id.*
198. *Id.* at 1139.
199. *Narcissus*, 950 F. Supp. at 1139.
200. *Id.*
201. *Id.* at 1140.
202. *Id.*

diligence in providing a seaworthy vessel.[203] The court concluded that since the duty of providing a seaworthy ship requires an owner to exercise due care, not only in providing a seaworthy vessel, but also in ensuring the adequacy of the ship's equipment, the bareboat charter breached its duty.[204] The court determined that the problematic equipment was the ship's sideboards, which the master installed to retain the cargo.[205] The vessel was deemed unseaworthy because of its inadequate equipment.[206] Therefore, the court concluded that the bareboat charterer was liable to both the time charterer and the shipper/consignee for unseaworthiness.[207]

The time charterer and shipper/consignee cross-claimed against each other for breach of the contract of affreightment.[208] The shipper/consignee argued that the time charterer was liable for contribution/indemnity pursuant to the contract provision which held that the time charterer was "'responsible for . . . delay in delivery of the goods only in case the . . . delay has been caused by the improper or negligent stowage of the goods.'"[209] The court disagreed, and held that the time charterer's agreement, pursuant to contract, to bring cargo "'into the holds, loaded, stowed, and/or trimmed and taken from the holds and discharged . . . free of any risk, liability, and expense whatsoever to the owners [time charterer],'" insulated time charterer from liability for stowage problems.[210] As a result, the court discarded the shipper/consignee's cross-claim against time charterer.[211]

Further, the court rejected time charterer's cross-claim against the shipper/consignee for breach of the contract of affreightment for failure to adequately pack the cargo.[212] The court found no evidence indicating that the cargo was inadequately packaged and held that the lack of damage to cargo supported the conclusion.[213] However, the district court did find value in the time charterer's cross-claim against the shipper/consignee for breach of its duty, under the general maritime law, to warn the time charterer of the

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203. *Id.*

204. *Narcissus*, 950 F. Supp. at 1140.

205. *Id.*

206. *Id.*

207. *Id.* at 1140–41.

208. *Id.* at 1141. A contract of affreightment is "a contract with a ship-owner to hire his ship, or part of it, for the carriage of goods . . . [s]uch a contract generally takes the form either of a charter-party or of a bill of lading." BLACK'S LAW DICTIONARY 60 (6th ed. 1990) (citation omitted).

209. *Narcissus*, 950 F. Supp. at 1142 (quoting clause 5(b) of the contract).

210. *Id.* at 1142.

211. *Id.*

212. *Id.*

213. *Id.*

potential dangerous nature of the drummed cargo as evidenced by the shipper/consignee's prior problematic voyages.[214]

Additionally, the district court determined that "[u]nder the general maritime law, cargo owners and shippers each have a duty to warn other interested parties in the maritime venture of any inherent dangers in the cargo of which they know or should know and which the others could not reasonably be expected to know."[215] The shipper/consignee knew of the dangers associated with the shipment of the drums which were not patently dangerous and thereby breached its duty by failing to warn other parties.[216] Therefore, the district court ruled in favor of the time charterer's claim against the shipper/consignee.[217]

## V. FLORIDA DECISIONS

### A. *Punitive Damages*

In *Langmead v. Admiral Cruises, Inc.*,[218] an entertainer employed by a cruise ship injured herself while exercising in the ship's gym when an elastic band she was using snapped and hit her in the eye.[219] The entertainer sued the cruise line for Jones Act negligence, unseaworthiness, maintenance and cure, and punitive damages. The trial court directed a verdict for the cruise line on the issues of maintenance and cure and punitive damages, but submitted the negligence and unseaworthiness claims to a jury for determination.[220] At trial, the jury denied the entertainer's claim for unseaworthiness.[221] However, the jury award for $50,000 on the claim for negligence was reduced to $5000 upon finding that the entertainer was ninety percent comparatively negligent.[222] The entertainer appealed the judgment.[223]

The Third District Court of Appeal of Florida affirmed the jury's verdict, holding that the comparative negligence issue was properly submitted to the jury.[224] However, it reversed and remanded the directed verdict, holding that

214. *Narcissus*, 950 F. Supp. at 1142.
215. *Id.* at 1143.
216. *Id.*
217. *Id.*
218. 696 So. 2d 1189 (Fla. 3d Dist. Ct. App. 1997).
219. *Id.* at 1190.
220. *Id.*
221. *Id.*
222. *Id.*
223. *Langmead*, 696 So. 2d at 1190.
224. *Id.*

the determination as to when the entertainer reached "'maximum medical cure'" should have been submitted to the jury.[225]

On remand, the trial court considered the following issues: 1) whether certain visits made by the entertainer to a physician were "cure" and should have been paid for; 2) whether the cruise line owed the entertainer two weeks worth of lost wages; and 3) whether the cruise line's failure to pay the entertainer warranted punitive damages.[226] The entertainer was denied her maintenance claim on directed verdict, but was awarded cure for medical visits that remained unpaid ($235), two weeks lost wages ($730), and punitive damages ($3.5 million).[227]

The trial court granted the cruise line's motion for a new trial, holding that the "jury verdict was contrary to the manifest weight of the evidence and was influenced by prejudicial matters."[228] The entertainer appealed, and the third district appeared to have no difficulty in holding that the trial court abused its discretion in granting the cruise line a new trial on the issue of liability and actual damages because the record fully supported the jury's verdict.[229] However, the third district recognized that the more difficult issue was the issue of punitive damages.[230]

The cruise line argued that the punitive damage award was so excessive that it violated the Substantive Due Process Clause of the United States and Florida Constitutions. Citing the United States Supreme Court case, *BMW of North America v. Gore*,[231] the third district set forth three criteria for analysis in determining the excessiveness of a punitive damage award: "1) the degree of reprehensibility of the defendant's conduct; 2) the ratio of the punitive damage award to the actual harm inflicted on the plaintiff; and 3) the comparison between the punitive damage award and the civil or criminal penalties that could be imposed for comparable misconduct."[232] Applying these three criteria, the third district found no reprehensible conduct on behalf of the cruise line; a ratio of 3626 to one with respect to the amount of punitive damages awarded in comparison to the actual harm inflicted; and that the cruise line was not guilty of any misconduct.[233]

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225. *Id.* at 1190–91 (quoting Langmead v. Admiral Cruises, Inc., 610 So. 2d 565 (Fla. 3d Dist. Ct. App. 1997)).

226. *Id.* at 1191.

227. *Id.*

228. *Langmead*, 696 So. 2d at 1191.

229. *Id.*

230. *Id.*

231. 116 S. Ct. 1589 (1996).

232. *Langmead*, 696 So. 2d at 1192.

233. *Id.* at 1193–94.

In support of its determination that the cruise line was not guilty of reprehensible conduct, the third district noted: 1) the cruise line provided medical attention to the entertainer immediately upon learning of her injury; 2) it referred the employee to a specialist within two days of her injury in order to ensure that she received the best possible treatment; 3) it continued to pay her for three days following her injury when she did not work; 4) it paid for her hotel stay and food expenses for a week while she was treated by a specialist ashore; 5) it flew her from Mexico to California for treatment; and 6) it paid all medical bills submitted by doctors not retained by the entertainer's lawyer.[234] Further, it found that consistent with its finding of no reprehensible conduct on the part of the cruise line, the cruise line was not guilty of "callous," "recalcitrant," "arbitrary," or "capricious" conduct in failing to pay the entertainer for maintenance and cure and thus, was not liable for punitive damages.[235]

Deciding in favor of the cruise line, the third district held that the award of punitive damages was contrary to the manifest weight of the evidence.[236] Additionally, the court held that the award was "so grossly excessive as to shock the judicial conscience;" it bore no relationship to the entertainer's harm and the cruise line's culpability; and it violated the cruise line's rights to substantive due process under the United States and Florida Constitutions.[237] Accordingly, it remanded the case with instructions to grant the cruise line's motion for directed verdict as to punitive damages.[238]

In *Kloster Cruise Ltd. v. De Sousa*,[239] the trial judge awarded the plaintiff attorneys' fees following a plaintiff's verdict in an admiralty case seeking an award for maintenance and cure, punitive damages, and attorneys' fees and costs.[240] The post-trial judgment was based on the jury's finding that the defendant "'willfully and arbitrarily' failed to provide maintenance and cure."[241]

The defendant appealed and the Third District Court of Appeal held that the recovery of attorneys' fees in a suit for willful failure to pay maintenance and cure is nonseverable from the cause of action.[242] Additionally, the third district held that absent waiver of the parties, the jury is to determine not only

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234. *Id.* at 1192–93.
235. *Id.* at 1194.
236. *Id.*
237. *Langmead*, 696 So. 2d at 1194.
238. *Id.*
239. 677 So. 2d 50 (Fla. 3d Dist. Ct. App. 1996).
240. *Id.* at 50.
241. *Id.*
242. *Id.* at 51.

the plaintiff's entitlement to fees, but also the appropriate amount to award.[243] The third district found that in the instant case, the trial court, without stipulation of the parties and notwithstanding defendant's objection, severed the issue of the amount of fees to be awarded from the entitlement issue.[244] The third district reversed the trial court's judgment for attorneys' fees and remanded for further proceedings.[245] Before concluding, the third district suggested that should the trial court find it impractical to present the issue of fee amount to a jury in the same sitting as other issues, it can have the jury arrive at its verdict, and then receive evidence as to the amount of fees to be awarded.[246]

In *Kloster Cruise Ltd. v. Segui*,[247] the plaintiff, while employed as a cabin steward aboard a cruise line, was diagnosed with a degenerative hip condition requiring him to have his hip replaced.[248] The plaintiff brought suit against the employer cruise line for "negligence, unseaworthiness, failure to treat, and failure to provide maintenance and cure."[249] He alleged that the cruise line "failed to respond promptly and properly to [his] complaints of pain" causing his medical condition to become aggravated and requiring hip replacement instead of a "less intrusive" treatment.[250] Four days before trial, the plaintiff returned to the United States alleging that the surgery was negligently performed in the Phillipines causing his right leg to measure "three-fourths of an inch shorter than the left leg."[251] The cruise line moved for a continuance of trial on the grounds "that it could not reasonably be expected to defend against the newly discovered claim" of medical malpractice on such short notice.[252] The trial court denied the cruise line's motion, and the case proceeded to trial.[253] The plaintiff prevailed, and the cruise line appealed.[254]

On appeal, the cruise line argued that the judgment should be reversed based on the fact that the trial court wrongfully refused to grant its motion for continuance. It further argued that in light of the recent decision by the United States Court of Appeals for the Fifth Circuit in *Guevara v. Maritime Overseas*

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243. *Id.*
244. *DeSousa*, 677 So. 2d at 51.
245. *Id.*
246. *Id.*
247. 679 So. 2d 10 (Fla. 3d Dist. Ct. App. 1996).
248. *Id.* at 11.
249. *Id.*
250. *Id.*
251. *Id.*
252. *Kloster*, 679 So. 2d at 11.
253. *Id.*
254. *Id.*

*Corp.*,[255] punitive damages are no longer available for willful failure to provide a seaman maintenance and cure.[256] The third district reversed judgment on the ground that the cruise line's motion to continue should have been granted.[257] However, the third district ruled that binding precedent prevented the court from ruling that punitive damages are no longer available for willful failure to provide maintenance and cure.[258]

## B. *Coverage*

In *Florida Marine Towing, Inc. v. United National Insurance Co.*,[259] the seller sold a tugboat to buyer/owner who made a down payment and was obligated to pay the balance in installments over two years.[260] The seller was considered a lender and was added as an additional assured on the marine hull insurance policy issued by the insurer. Although the policy contained a navigational warranty, which confined the tugboat's use to inland waters in Florida, the tugboat failed to restrict itself to Florida inland waters and sank in the Atlantic Ocean. The insurer denied the seller's claim under the insurance policy on the premise that the tugboat violated the navigational warranty. The seller sued, arguing that "inland waters" includes anything within Florida's three mile limit or, alternatively, that the seller lacked control over the tugboat's navigation, and thus the seller could not be held attributable for the navigational warranty's breach. The trial court granted summary judgment in favor of the insurer, and the seller appealed.[261]

The Third District Court of Appeal determined that since the contract at issue was for marine insurance, federal maritime law governed the interpretation of the navigational warranty.[262] Finding that the federal maritime law requires strict construction of a navigational warranty, and that such a warranty can release an insurer even if compliance with the warranty would not have avoided the loss, the third district focused on defining "inland waters."[263]

Finding a plethora of United States Supreme Court cases defining "inland waters," the third district determined that under the general maritime law, "inland waters" is generally understood to mean waters on the landward side

255. 59 F.3d 1496 (5th Cir. 1995) (en banc), *cert. denied*, 116 S. Ct. 706 (1996).
256. *Kloster*, 679 So. 2d at 12.
257. *Id.*
258. *Id.*
259. 686 So. 2d 711 (Fla. 3d Dist. Ct. App. 1997).
260. *Id.* at 712.
261. *Id.*
262. *Id.*
263. *Id.* at 713.

of the coastline, such as rivers, harbors, and canals.[264] Since the tugboat sank in the Atlantic Ocean, seaward of the coastline, it was not in inland waters. As such, the third district found that the seller breached the policy's navigational warranty.[265]

Despite the fact that the seller breached its navigational warranty, the third district held that its lack of control over the tugboat's navigation precluded the insurer from denying it coverage.[266] Additionally, the third district held that since the seller was not merely a loss payee, but was an additional assured, its coverage could not be adversely affected by the mortgagor's wrongful acts.[267] In conclusion, the third district reversed the summary judgment and remanded the cause for further proceedings.[268]

## VI. CONCLUSION

The summary of cases provided run wide in range with respect to issues that may arise in admiralty and should give any novice a general understanding of admiralty law.

264. *Florida Marine*, 686 So. 2d at 714.
265. *Id.*
266. *Id.* at 714–15.
267. *Id.* at 715.
268. *Id.*