Admiralty

Robert M. Jarvis*
Admiralty

Robert M. Jarvis

Abstract

This survey collects and discusses admiralty cases reported in Florida between October 1, 1988, and September 30, 1989.

KEYWORDS: goods, passengers, seamen
Survey Part II

Admiralty

Robert M. Jarvis*

Table of Contents

I. Introduction ............................................ 995
II. Carriage of Goods ..................................... 998
III. Charterparties ........................................ 1006
IV. Collisions .............................................. 1007
V. Criminal Offenses ...................................... 1010
VI. Insurance ............................................... 1012
VII. Limitation of Liability ............................... 1014
VIII. Personal Injury and Death ......................... 1019
A. Longshore and Harbor Workers .................... 1019
B. Passengers .............................................. 1022
C. Seamen .................................................. 1024
IX. Pilots .................................................... 1028
X. Salvage .................................................. 1030
XI. Conclusion .............................................. 1032

I. Introduction

This survey collects and discusses admiralty cases reported in Florida between October 1, 1988, and September 30, 1989. Although the

* Assistant Professor of Law, Nova University Shepard Broad Law Center, B.A., Northwestern University; J.D., University of Pennsylvania; L.L.M., New York University. The preparation of this survey benefitted greatly from the research assistance of Lynne G. Mercure, a member of the Shepard Broad Law Center Nova University Class of 1991.

1 Not included in this survey are cases that touch only incidentally on admiralty law. See, e.g., United States v. Holland, 874 F.2d 1470 (11th Cir. 1989) (contractor previously found guilty of violating marine pollution laws held to have violated the terms of his probation); Florida Fuels, Inc. v. Belcher Oil Co., 717 F. Supp. 1328 (S.D. Published by NSUWorks, 1990
year generated dozens of opinions, the most important one, strangely enough, turned out to be a patent case entitled *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*

In September 1976, Bonito Boats, Inc. (Bonito), developed a hull design for a fiberglass recreational boat that it marketed under the trade name Bonito Boat Model 5VBR. The manufacturing process involved creating a hardwood mold that was sprayed with fiberglass to create a mold. The mold then served to produce finished fiberglass boats for sale. Although Bonito’s creation represented a substantial advance over previous designs, Bonito did not seek a patent to protect its

Fla. 1989) (plaintiff’s anti-trust suit against a competitor in the heavy marine fuel oil business dismissed with respect to competitor’s storage tanks); Bateman v. Gardner, 716 F. Supp. 595, 1990 AMC 303 (S.D. Fla. 1989) (Florida shrimpimg law found to be unconstitutional); Easton v. Appler, 548 So. 2d 691 (Fla. 3d Dist. Ct. App. 1989) (further proceedings ordered in homeowners’ suit against yacht club seeking exclusive right to use turning basin and dock slips); Stuart Sportfishing, Inc. v. Kehoe, 541 So. 2d 169 (Fla. 4th Dist. Ct. App. 1989) (settlement agreement barred marina owner from building a restaurant and raw bar on its property); Decarion v. Martinez, 537 So. 2d 1083 (Fla. 1st Dist. Ct. App. 1989) (developer entitled to further consideration of its request for permission to build a docking facility on submerged state lands); and Picciotto v. Jones, 534 So. 2d 875 (Fla. 3d Dist. Ct. App. 1988), rev. denied, 544 So. 2d 200 (Fla.), cert. denied, 110 S. Ct. 144 (1989) (owners of lake access channel permitted to enjoin use of channel by neighbors).

Also not included in this survey are cases involving disputes arising out of contracts to build or purchase new vessels, since such cases are not cognizable in admiralty under the rule announced in People’s Ferry Co. v. Beers, 61 U.S. (20 How.) 393 (1858). The survey year produced a number of such cases. See, e.g., Kringel v. Yacht Brokerage, Inc., 704 F. Supp. 223 (S.D. Fla. 1989) (ship buyer’s claim against company that had issued hull warranty certificate was separate and independent from buyer’s negligent construction and fraudulent representation claims against builder and seller and as was removable on the basis of diversity); Cummins Alabama, Inc. v. Allbritton, 548 So. 2d 259 (Fla. 1st Dist. Ct. App.), rev. denied, 553 So. 2d 1164 (Fla. 1989) (order granting new trial reversed and case remanded with instructions to enter final judgment in favor of manufacturer of boat engine in accordance with jury verdict that exonerated manufacturer); Cooperstein v. Mutual Fed. Sav. & Loan Ass’n, 543 So. 2d 444 (Fla. 3d Dist. Ct. App. 1989) (vacation of default judgment entered against purchasers of boat on consumer loan affirmed on the basis that court lacked jurisdiction over the purchasers); Tuppens, Inc. v. Bayliner Marine Corp., 541 So. 2d 1281 (Fla. 4th Dist. Ct. App. 1989) (boat owner held entitled to attorneys’ fees following his successful suit against boat manufacturer for latter’s refusal to accept redelivery of a new boat found to contain numerous defects); and Williams v. Kloeppel, 537 So. 2d 1033 (Fla. 1st Dist. Ct. App. 1989), rev. denied, 545 So. 2d 1367 (Fla. 1989) (secured creditor’s statement of estimated value of vessel in reprieve-in-complaint did not estop him from later asserting that the actual value was less than that amount).

design.

In May 1983, the Florida Legislature, concerned that quality boat manufacturers like Bonito had no incentive to improve their designs because of the ease with which competitors could copy them, enacted a statute that prohibited the use of a direct molding process to duplicate unpatented boat hulls and components. The statute also prohibited the knowing sale of such hulls and components. Violation of the statute entitled the injured party to bring suit in circuit court for injunctive relief, damages, costs, and attorneys’ fees.

On December 21, 1984, Bonito filed suit against Thunder Craft Boats, Inc. (Thunder Craft), in circuit court in Orange County. Bonito alleged that Thunder Craft had violated the statute by duplicating and selling Bonito Boat hulls and components. In response, Thunder Craft moved to have the suit dismissed on the ground that the Florida statute conflicted with the federal patent laws and was therefore invalid. The circuit court agreed and dismissed the suit. On appeal, the Fifth District Court of Appeal affirmed the dismissal, as did a sharply divided Florida Supreme Court.

Bonito then petitioned the United States Supreme Court. Recognizing that a split of authority had developed, the Court granted certiorari. On February 21, 1989, in an unanimous opinion authored by Justice O’Connor, the Court found that the statute was invalid. Justice O’Connor explained the Court’s conclusion by writing in part:

It is for Congress to determine if the present system of design and utility patents is ineffectual in promoting the useful arts in the con-
year generated dozens of opinions, the most important one, strangely enough, turned out to be a patent case entitled Bonito Boats, Inc. v. Thunder Craft Boats, Inc. In September 1976, Bonito Boats, Inc. (Bonito), developed a hull design for a fiberglass recreational boat that it marketed under the trade name Bonito Boat Model SVBR. The manufacturing process involved creating a hardwood model that was sprayed with fiberglass to create a mold. The mold then served to produce finished fiberglass boats for sale. Although Bonito's creation represented a substantial advance over previous designs, Bonito did not seek a patent to protect its design.

Fla. 1989 (plaintiff's anti-trust suit against a competitor in the heavy marine fuel oil business dismissed with respect to competitor's storage tanks); Bateman v. Gardner, 716 F. Supp. 595, 1990 AMC 303 (S.D. Fla. 1989) (Florida shrimping law found to be unconstitutional); Easton v. Appler, 548 So. 2d 691 (Fla. 3d Dist. Ct. App. 1989) (further proceedings ordered in homeowners' suit against yacht club seeking exclusive right to use turning basin and dock slips); Stuart Sportfishing, Inc. v. Kehoe, 541 So. 2d 169 (Fla. 4th Dist. Ct. App. 1989) (settlement agreement barred marina owner from building a restaurant and raw bar on its property); Decarion v. Martinez, 537 So. 2d 1083 (Fla. 1st Dist. Ct. App. 1989) (developer entitled to further consideration of its request for permission to build a docking facility on submerged state lands); and Piccolo v. Jones, 534 So. 2d 875 (Fla. 3d Dist. Ct. App. 1988), rev. denied, 544 So. 2d 200 (Fla.), cert. denied, 110 S. Ct. 144 (1989) (owners of lake access channel permitted to enjoin use of channel by neighbors).

Also not included in this survey are cases involving disputes arising out of contracts to build or purchase new vessels, since such cases are not cognizable in admiralty under the rule announced in People's Ferry Co. v. Beers, 61 U.S. (20 How.) 393 (1858). The survey year produced a number of such cases. See, e.g., Kroening v. Saly Bros., Inc., 704 F. Supp. 223 (S.D. Fla. 1989) (ship buyer's claim against company that had issued hull construction certificate was separate and independent from buyer's negligent construction and fraudulent misrepresentation claims against builder and seller and as such was removable on the basis of diversity); Cummins Alabama, Inc. v. Albritten, 548 So. 2d 258 (Fla. 1st Dist. Ct. App.), rev. denied, 553 So. 2d 1164 (Fla. 1989) (order granting new trial reversed and case remanded with instructions to enter final judgment in favor of manufacturer of boat engine in accordance with jury verdict that exonerated manufacturer); Cooperstein v. Mutual Fed. Sav. & Loan Ass'n, 543 So. 2d 444 (Fla. 3d Dist. Ct. App. 1989) (vacation of default judgment entered against purchasers of boat on consumer loan affirmed on the basis that court lacked jurisdiction over the purchasers); Tuppens, Inc. v. Bayliner Marine Corp., 541 So. 2d 1281 (Fla. 4th Dist. Ct. App. 1989) (boat owner held entitled to attorneys' fees following his successful suit against boat manufacturer for latter's refusal to accept redelivery of a new boat found to contain numerous defects); and Williams v. Kloppe, 537 So. 2d 1033 (Fla. 1st Dist. Ct. App. 1988), rev. denied, 545 So. 2d 1367 (Fla. 1989) (secured creditor's statement of estimated value of vessel in replevin complaint did not estop him from later asserting that the actual value was less than that amount).

3. Id. at 974. It is unclear from the opinions exactly why Bonito did not apply for patent protection.

4. Id. at 981.


10. 515 So. 2d 220 (Fla. 1987).

11. In Interpart Corp. v. Italia, 777 F.2d 678 (Fed. Cir. 1985), the Court of Appeals for the Federal Circuit, faced with a California statute almost identical to the federal patent laws, concluded that the California law posed no threat to the federal patent laws. Relying on Interpart, the three dissenters on the Florida Supreme Court argued that the Florida statute was constitutional.


Published by NSUWorks, 1990
II. Carriage of Goods

There were six cases during the survey period involving the carriage of goods. As might be expected, most of these cases arose under the Carriage of Goods by Sea Act (COGSA). In Associated Metals and Minerals Corp. v. Etelae Suomin Laiva, the plaintiff, Associated Metals and Mineral Corp. (Associated), brought suit against the defendant, Etelae Suomin Laiva (Etelae), for rust damage to and partial nondelivery of a cargo of steel. The steel had been shipped from Helsinki and Rauma, Finland to Jacksonville, Florida, and Houston, Texas, aboard Etelae's ship the M/V ARKADIA. Following a bench trial, the district court found in favor of Etelae. It concluded that although Associated had proved that the cargo had been delivered to the ARKADIA in good condition, it had failed to prove that the cargo was damaged at the time of its delivery in the United States. The district court further found that even if Associated had met its burden of proof, Etelae would still have prevailed because the damage to the steel had been caused by factors for which Etelae was not responsible: inherent vice and perils of the sea.

On appeal, the Eleventh Circuit affirmed the trial court's decision. In a per curiam opinion joined in by Circuit Judges Tjoflat, Vance, and Cox, the panel held that the district court had been correct in finding that Associated had failed to prove that the cargo discharged in Jacksonville had been damaged while under the control of Etelae.

20. Id.
21. Sweating occurs when steel being transported from a cold climate to a warmer climate undergoes a rapid change in temperature, thereby causing a buildup of water condensation, or "sweat." Because sweating is a well-known phenomenon, the shipowner is expected to take steps to avoid it. Id. (citing Compagnie De Navigation v. Mondial United Corp., 316 F.2d 163, 169 (5th Cir. 1963)).
22. In particular, the panel was impressed by the fact that although sweating usually can be prevented through proper ventilation, in the present case ventilation was not only not possible but "might have exacerbated the problem by precipitating saltwater rust damage." Id.
24. As noted by the appellate court, "the frozen meat in container 336 had thawed and deteriorated, and the produce in container 337 had frozen solid. . . . After a determination that the cargo had no salvage value, it was dumped." Id. at 1067.
25. Id. at 1068.
II. Carriage of Goods

There were six cases during the survey period involving the carriage of goods. As might be expected, most of these cases arose under the Carriage of Goods by Sea Act (COGSA). In Associated Metals and Minerals Corp. v. Etelae Suomin Laiva, the plaintiff, Associated Metals and Mineral Corp. (Associated), brought suit against the defendant, Etelae Suomin Laiva (Etelae), for rust damage to and partial nondelivery of a cargo of steel. The steel had been shipped from Helsinki and Raase, Finland to Jacksonville, Florida, and Houston, Texas, aboard Etelae's ship the M/V ARKADIA. Following a bench trial, the district court found in favor of Etelae. It concluded that although Associated had proved that the cargo had been delivered to the ARKADIA in good condition, it had failed to prove that the cargo was damaged at the time of its delivery in the United States. The district court further found that even if Associated had met its burden of proof, Etelae would still have prevailed because the damage to the steel had been caused by factors for which Etelae was not responsible: inherent vice and perils of the sea.

On appeal, the Eleventh Circuit affirmed the trial court's decision. In a per curiam opinion joined in by Circuit Judges Tjoflat, Vance, and Cox, the panel held that the district court had been correct in finding that Associated had failed to prove that the cargo discharged in Jacksonville had been damaged while under the control of Etelae.

Having disposed of the Jacksonville cargo, the panel next turned to the Houston cargo. Here the panel disagreed with the trial judge, finding that Associated had shown clearly that the damage to the steel had occurred during the ocean voyage. Yet the panel affirmed the trial court. Finding that the damage had been caused by "sweating," an acknowledged peril of the sea, the panel concluded that Etelae was not responsible for the cargo damage, especially since it had done everything it could to avoid the sweating.

In Florida East Coast RY, Co. v. Beaver Street Fisheries, Inc., two containers of frozen meat and vegetables were carried by rail from Jacksonville, Florida, to Fort Lauderdale, Florida, by the Florida East Coast Railway Company (FEC). The containers had been stuffed by the Beaver Street Fisheries, Inc. (BSF), and were destined for delivery to Club Med at Providenciales in the British West Indies. Upon arriving in Fort Lauderdale, the containers were transferred from FEC's railroad cars to a barge owned by Bermuda Atlantic Lines, Ltd. (BALS). When the containers subsequently reached Providenciales, it was discovered that their contents had become totally spoiled through improper refrigeration. Upon learning of this fact, Club Med was left with no choice but to have BSF charter a jet and fly in a replacement shipment. Had it not taken this action, Club Med might have had no food for its 600 guests.

Following a bench trial in which BSF sued both FEC and BALS, FEC alone was found liable. As a result, it was ordered to pay BSF $87,651.90, representing the replacement cost of the damaged shipment, the ocean freight charges, and the cost of flying in the replace-

---

14. Id. at 986.
15. 46 U.S.C. §§ 1300-15 (1982). Under COGSA, carriers are excused from liability if goods in their possession are damaged through certain specified causes. See also F. MARAIS, AD Miralty LAW IN A NUTSHELL 63 (2d ed. 1988).
16. 858 F.2d 678, 1989 AMC 677 (11th Cir. 1988).
18. Both inherent vice and perils of the sea are excepted by COGSA. See 46 U.S.C. §§ 1304(2)(c) and 1304(2)(m) (1982).
19. Associated, 858 F.2d at 678, 1989 AMC at 682.
20. Id.
21. Sweating occurs when steel is transported from a cold climate to a warmer climate and undergoes a rapid change in temperature, thereby causing a buildup of water condensation, or "sweat." Because sweating is a well-known phenomenon, the shipowner is expected to take steps to avoid it. Id. (citing Compagnie De Navigation v. Mondial United Corp., 316 F.2d 163, 169 (5th Cir. 1963)).
22. In particular, the panel was impressed by the fact that although sweating usually can be prevented through proper ventilation, in the present case ventilation was not only not possible but "might have exacerbated the problem by precipitating saltwater rust damage." Id.
24. As noted by the appellate court, "the frozen meat in container 336 had thawed and deteriorated, and the produce in container 337 had frozen solid. . . . After a determination that the cargo had no salvage value, it was dumped." Id. at 1067.
ment shipment.\textsuperscript{26}

On appeal, FEC raised three points. First, it argued that it should not have been held liable for the emergency reshipment. Second, it sought to shift blame for the spoilage to BAL. Third, it contended that it had not altered the temperature settings on the containers.

With respect to the first of these arguments, the appellate court, speaking through Judge Joanos, agreed and reversed the trial court. It wrote:

Under the rule articulated in \textit{Hadley v. Baxendale}, 9 Ex. 341, 156 Eng. Rep. 145 (1854), . . . FEC was without knowledge that loss or damage to the shipment would mean that Club Med would be completely without food for its six hundred guests. Thus, there is no competent substantial evidence to support a finding of FEC liability for the special damages associated with the replacement shipment by jet charter.\textsuperscript{27}

The appellate court came to a similar conclusion with respect to the second issue. Noting that both FEC and BAL were responsible for the proper delivery of the containers, the panel found that “[t]he judgment in this case contains no findings of fact, and [thus we are] unable to discern from the record the basis for the trial court’s determination that FEC bears sole responsibility for the entire loss.”\textsuperscript{28} As a consequence, the panel reversed the trial court and remanded the case to it for a determination of whether BAL should also be held liable.

With respect to the third issue, however, the panel ruled against FEC and affirmed the trial court. Noting that FEC had introduced expert evidence to prove that it had not tampered with the temperature settings, the panel concluded that the trial court was free to disbelieve the expert’s testimony and to instead adopt the testimony of several lay witnesses who had experience working with refrigerated cargoes.\textsuperscript{29} The panel explained its conclusion by stating that such matters were “within the ordinary experience of . . . the trial court sitting as trier of fact. Consequently, the trial court was not bound by the expert’s opinion in this case.”\textsuperscript{30}

The next cargo case of the survey period was \textit{Banana Services}.

\begin{flushright}
\textsuperscript{26} Id.
\textsuperscript{27} Id. at 1068-69.
\textsuperscript{28} \textit{Florida East Coast Ry. Co.}, 537 So. 2d at 1069.
\textsuperscript{29} Id. at 1070.
\textsuperscript{30} Id.
\end{flushright}

\textbf{Inc. v. \textit{M/Y FLEETWAVE}.\textsuperscript{31}} Banana Services, Inc. (\textit{Banana Services}), arranged to charter from United Brands Company (\textit{United Brands}) the \textit{M/Y FLEETWAVE}, a fully refrigerated vessel, to carry a cargo of bananas and plantains from Turbo, Colombia, to Port Manatee, Florida. At the time, \textit{United Brands} was the bareboat charterer of the \textit{FLEETWAVE}.

Pursuant to the charterparty, the \textit{FLEETWAVE} sailed to the Port of Turbo and there loaded plantains from approximately 110 different farms. After being harvested, the plantains had been transported by truck from the farms to packing houses and then on to the port. After arriving at the port, the plantains were placed on barges and towed out to the \textit{FLEETWAVE}, a three hour voyage.

Although the plantains were delivered to the \textit{FLEETWAVE} in good condition, upon arrival in Florida they were discovered to be partially damaged. As a result, \textit{Banana Services} filed suit against both \textit{United Brands} and the \textit{FLEETWAVE}.\textsuperscript{32}

Following a bench trial, Judge Newcomer found in favor of the defendants. Although agreeing that \textit{Banana Services} had met its initial burden of showing that the plantains had been delivered in good condition, Judge Newcomer found that \textit{United Brands} was not responsible for the damage. Noting that a shipowner is not liable for inherent defects of the cargo it is asked to carry,\textsuperscript{33} he wrote:

\begin{flushright}
Defendant’s expert . . . testified that, in light of proper handling of the plantains aboard the \textit{Fleetwave}, the damage must have been caused by an inherent vice. The weight of the credible evidence supports this conclusion . . . . [Once] the defendant has met its burden, the burden then shifts to plaintiff to show that the carrier’s negligence contributed to the damage. Plaintiff has not proved such negligence.\textsuperscript{44}
\end{flushright}

\textbf{In \textit{Barber Blue Sea} v. \textit{Trailer Marine Corp.}.\textsuperscript{34}} the plaintiff, Bar-

\begin{flushright}
32. Although the plantains were carried under a charterparty, the claim for their damage arose under COGSA because of the incorporation of a bill of lading into the charterparty. \textit{Id.} at 1374, 1378.
33. \textit{Id.} at 1378. Under 46 U.S.C. § 1304(2)(m) (1982), shippers are excused from liability if the cargo damage "arises from inherent defect, quality or vice of the goods."
34. \textit{Banana Services}, 1989 AMC at 1379-80.
\end{flushright}
ment shipment. On appeal, FEC raised three points. First, it argued that it should not have been held liable for the emergency reshipment. Second, it sought to shift blame for the spoilage to BAL. Third, it contended that it had not altered the temperature settings on the containers.

With respect to the first of these arguments, the appellate court, speaking through Judge Joanos, agreed and reversed the trial court. It wrote:

Under the rule articulated in Hadley v. Baxendale, 9 Ex. 341, 156 Eng. Rep. 145 (1854), . . . FEC was without knowledge that loss or damage to the shipment would mean that Club Med would be completely without food for its six hundred guests. Thus, there is no competent substantial evidence to support a finding of FEC liability for the special damages associated with the replacement shipment by jet charter.

The appellate court came to a similar conclusion with respect to the second issue. Noting that both FEC and BAL were responsible for the proper delivery of the containers, the panel found that "[t]he judgment in this case contains no findings of fact, and [thus we are] unable to discern from the record the basis for the trial court's determination that FEC bears sole responsibility for the entire loss." As a consequence, the panel reversed the trial court and remanded the case to it for a determination of whether BAL should also be held liable.

With respect to the third issue, however, the panel ruled against FEC and affirmed the trial court. Noting that FEC had introduced expert evidence to prove that it had not tampered with the temperature settings, the panel concluded that the trial court was free to disbelieve the expert's testimony and to instead adopt the testimony of several lay witnesses who had experience working with refrigerated cargoes. The panel explained its conclusion by stating that such matters were "within the ordinary experience of . . . the trial court sitting as trier of fact. Consequently, the trial court was not bound by the expert's opinion in this case."

The next cargo case of the survey period was Banana Services, Inc. v. M/V FLEETWAVE. Banana Services, Inc. (Banana Services), arranged to charter from United Brands Company (United Brands) the M/V FLEETWAVE, a fully refrigerated vessel, to carry a cargo of bananas and plantains from Turbo, Colombia, to Port Manatee, Florida. At the time, United Brands was the bareboat charterer of the FLEETWAVE.

Pursuant to the charterparty, the FLEETWAVE sailed to the Port of Turbo and there loaded plantains from approximately 110 different farms. After being harvested, the plantains had been transported by truck from the farms to packing houses and then on to the port. After arriving at the port, the plantains were placed on barges and towed out to the FLEETWAVE, a three hour voyage.

Although the plantains were delivered to the FLEETWAVE in good condition, upon arrival in Florida they were discovered to be partially damaged. As a result, Banana Services filed suit against both United Brands and the FLEETWAVE.

Following a bench trial, Judge Newcomer found in favor of the defendants. Although agreeing that Banana Services had met its initial burden of showing that the plantains had been delivered in good condition, Judge Newcomer found that United Brands was not responsible for the damage. Noting that a shipowner is not liable for inherent defects of the cargo it is asked to carry, he wrote:

Defendant's expert . . . testified that, in light of proper handling of the plantains aboard the FLEETWAVE, the damage must have been caused by an inherent vice. The weight of the credible evidence supports this conclusion . . . . [Once] the defendant has met its burden, the burden then shifts to plaintiff to show that the carrier's negligence contributed to the damage. Plaintiff has not proved such negligence.

In Barber Blue Sea v. Trailer Marine Corp., the plaintiff, Bar-

26. Id.
27. Id. at 1068-69.
28. Florida East Coast Ry. Co., 537 So. 2d at 1069.
29. Id. at 1070.
30. Id.
32. Although the plantains were carried under a charterparty, the claim for their damage arose under COGSA because of the incorporation of a bill of lading into the charterparty. Id. at 1374, 1378.
33. Id. at 1378. Under 46 U.S.C. § 1304(2)(c) (1982), shipowners are excused from liability if the cargo damage "aris[es] from inherent defect, quality or vice of the goods."
34. Banana Services, 1989 AMC 1378-80.
ber Blue Sea (Barber), entered into a contract of carriage with a company known as China Rising Development, Ltd. (China Rising). Under the contract, Barber agreed to transport merchandise for China Rising from Hong Kong to Antigua. Because Barber did not have any ships sailing to Antigua, it entered into a contract with the defendant, Trailer Marine Transport Corporation (Trailer Marine), under which Barber agreed to deliver the merchandise to Miami and there turn it over to Trailer Marine for carriage by Trailer Marine to Antigua.

Following the signing of the two contracts, Barber picked up China Rising’s merchandise in Hong Kong and transferred it to Trailer Marine at the Port of Miami. Trailer Marine then delivered the cargo to Antigua where it released the cargo to the consignee, Trans-Caribbean Industries (Trans-Caribbean). Unfortunately, Trans-Caribbean had not paid China Rising for the goods and therefore had not received the original bills of lading from China Rising. Nevertheless, Trailer Marine released the goods to Trans-Caribbean.

Upon learning of the foregoing, Barber filed a suit against Trailer Marine seeking indemnity and contribution from Trailer Marine on the ground that a claim for misdelivery had been filed against Barber by China Rising. In response, Trailer Marine contended that China Rising had not made any such claim.

Subsequently, Barber and Trailer Marine reached a settlement of their dispute as to all issues except for the matter of attorneys’ fees. While Barber contended that the indemnification clause of its contract with Trailer Marine included such fees, Trailer Marine argued that it did not. In fact, the contract provided that Trailer Marine would “in-demnify and hold Barber Blue Sea harmless from all expenses and liabilities it may incur which in any way may be from or be connected with any loss, damage, delay or misdelivery of cargo while in the possession or custody of Trailer Marine Transport Corporation.”

In a careful and well-reasoned opinion, Judge Hoeveler framed the issue as “whether the term ‘expenses’ as used in the contract includes attorney fees.” Noting that the contract did not specifically refer to attorneys’ fees, Judge Hoeveler divided the inquiry into two parts. He first held that Barber could not recover attorneys’ fees for establishing its right to indemnity in the “absence of a specific contract clause providing for such . . . .” He next held that Barber could recover any attorneys’ fees it had expended defending itself from suit due to Trailer Marine’s failure to live up to the contract: “Attorneys fees in an indemnity action are recoverable from the indemnitor if the indemnitor is defending a claim by a third party for which the indemnitor is ultimately liable.”

Having thus laid out his test, Judge Hoeveler turned to the facts and found that Barber was not entitled to any attorneys’ fees:

Barber Blue claims that it retained an attorney to defend a claim made by China Rising and that responsibility belonged to Trailer Marine under the terms of the agreement. If, in fact, litigation was instituted by China Rising against Barber Blue, Trailer Marine should defend and would be liable. Barber Blue has not established that an action by China Rising was brought against it. The suit currently before this court involves the determination of indemnification rights between two contracting parties, Barber Blue and Trailer Marine. Because the request for attorneys fees concerns fees incurred in this action, the request must be denied.

The next cargo case of the survey period was Motors Insurance Corp. v. Heavy Lift Services, Inc. Following payment to various car dealerships for the loss of a large number of automobiles, the plaintiff, Motors Insurance Corporation (Motors), became subrogated to the claims of its insureds. Subsequently, Motors determined that the losses were caused by Gustaf and Siegfried Amian. To carry out their thefts, the Amians had shipped the automobiles out of the United States through a company called Samba Shipping Lines (Samba). Prior to being placed on outbound ships, the cars were stored at the port by a company known as Heavy Lift Services, Inc. (Heavy Lift).

Upon obtaining this information, Motors brought suit against the Amians, Samba, and Heavy Lift. While admitting that Heavy Lift did not know that the cars were stolen, Motors alleged that Heavy Lift, which had acted as an agent for both the Amians and Samba, was guilty of violating a Florida law that makes it illegal for anyone to

36. Id. at 1221, 1989 AMC at 1758.
37. Id., 1989 AMC at 1759.
38. Id. at 1221, 1989 AMC at 1758.
39. Id.
40. Barber Blue Sea, 725 F. Supp. at 1222, 1989 AMC at 1760.
41. 545 So. 2d 389 (Fla. 3d Dist. Ct. App. 1989).
42. Id. at 391.
43. Fla. Stat. § 319.36 (1983). Although the statute is criminal in nature, it has been held to provide a civil remedy. See Stephen v. L.P. Evan Motors, 417 So. 2d 778, 779 (Fla. 3d Dist. Ct. App. 1982).
ber Blue Sea (Barber), entered into a contract of carriage with a company known as China Rising Development, Ltd. (China Rising). Under the contract, Barber agreed to transport merchandize for China Rising from Hong Kong to Antigua. Because Barber did not have any ships sailing to Antigua, it entered into a contract with the defendant, Trailer Marine Transport Corporation (Trailer Marine), under which Barber agreed to deliver the merchandize to Miami and there turn it over to Trailer Marine for carriage by Trailer Marine to Antigua.

Following the signing of the two contracts, Barber picked up China Rising's merchandize in Hong Kong and transferred it to Trailer Marine at the Port of Miami. Trailer Marine then delivered the cargo to Antigua where it released the cargo to the consignee, Trans-Caribbean Industries (Trans-Caribbean). Unfortunately, Trans-Caribbean had not paid China Rising for the goods and therefore had not received the original bills of lading from China Rising. Nevertheless, Trailer Marine released the goods to Trans-Caribbean.

Upon learning of the foregoing, Barber filed a suit against Trailer Marine seeking indemnity and contribution from Trailer Marine on the ground that a claim for misdelivery had been filed against Barber by China Rising. In response, Trailer Marine contended that China Rising had not made any such claim.

Subsequently, Barber and Trailer Marine reached a settlement of their dispute as to all issues except for the matter of attorneys' fees. While Barber contended that the indemnification clause of its contract with Trailer Marine included such fees, Trailer marine argued that it did not. In fact, the contract provided that Trailer Marine would "indemnify and hold Barber Blue Sea harmless from all expenses and liabilities it may incur which in any way may be from or be connected with any loss, damage, delay or misdelivery of cargo while in the possession or custody of Trailer Marine Transport Corporation." 36

In a careful and well-reasoned opinion, Judge Hoefeler framed the issue as "whether the term 'expenses' as used in the contract includes attorney fees." 37 Noting that the contract did not specifically refer to attorneys' fees, Judge Hoefeler divided the inquiry into two parts. He first held that Barber could not recover attorneys' fees for establishing its right to indemnity in the "absence of a specific contract clause providing for such . . . ." 38 He next held that Barber could recover any attorneys' fees it had expended defending itself from suit due to Trailer Marine's failure to live up to the contract: "Attorneys fees in an indemnity action are recoverable from the indemnitee if the indemnitee is defending a claim by a third party for which the indemnitee is ultimately liable." 39

Having thus laid out his test, Judge Hoefeler turned to the facts and found that Barber was not entitled to any attorneys' fees:

Barber Blue claims that it retained an attorney to defend a claim made by China Rising and that responsibility belonged to Trailer Marine under the terms of the agreement. If, in fact, litigation was instituted by China Rising against Barber Blue, Trailer Marine should defend and would be liable. Barber Blue has not established that an action by China Rising was brought against it. The suit currently before this court involves the determination of indemnification rights between two contracting parties, Barber Blue and Trailer Marine. Because the request for attorneys fees concerns fees incurred in this action, the request must be denied. 40

The next cargo case of the survey period was Motors Insurance Corp. v. Heavy Lift Services, Inc. 41 Following payment to various car dealerships for the loss of a large number of automobiles, the plaintiff, Motors Insurance Corporation (Motors), became subrogated to the claims of its insureds. Subsequently, Motors determined that the losses were caused by Gustaaf and Siegfried Amian. To carry out their thefts, the Amians had shipped the automobiles out of the United States through a company called Samba Shipping Lines (Samba). 42 Prior to being placed on outbound ships, the cars were stored at the port by a company known as Heavy Lift Services, Inc. (Heavy Lift).

Upon obtaining this information, Motors brought suit against the Amians, Samba, and Heavy Lift. While admitting that Heavy Lift did not know that the cars were stolen, Motors alleged that Heavy Lift, which had acted as an agent for both the Amians and Samba, was guilty of violating a Florida law 43 that makes it illegal for anyone to

36. Id. at 1221, 1989 AMC at 1758.
37. Id., 1989 AMC at 1759.
38. Id.
39. Id.
40. Barber Blue Sea, 725 F. Supp. at 1222, 1989 AMC at 1760.
41. 545 So. 2d 389 (Fla. 3d Dist. Cl. App. 1988).
42. Id. at 391.
43. Fla. Stat. § 319.36 (1983). Although the statute is criminal in nature, it has been held to provide a civil remedy. See Stephen v. L.P. Evans Motors, 417 So. 2d 778, Pub. Int. Fla. 1985-86 (Fla. Dist. Cl. App. 1982).
transport a motor vehicle outside the United States without first obtaining a "right-of-possession certificate" from the owner.44 In response, Heavy Lift sought and received a dismissal of the complaint on the ground that the statute did not apply to it.45

On appeal, Judge Cope, writing for a unanimous panel, agreed with the trial court. Noting that the statute was intended to apply to persons who "caused" vehicles to be transported, Judge Cope wrote:

In the present context, we think "cause to be transported" was intended to require active participation by a "person" in arranging or procuring the transportation of the vehicles from the Florida port. Ancillary conduct which is not an effective or procuring cause of the transportation is not, we think, addressed by the statute.

With that interpretation, we conclude the trial court was correct in dismissing the appellant's amended complaint ... The amended complaint contended that Heavy Lift aided in the transportation of the stolen vehicles "by its failure to demand proof that its shipper ... had the required Certificate of Right of Possession." There is no allegation that in any active sense Heavy Lift arranged or procured the transportation of the vehicles from the Florida port.46

Nevertheless, Judge Cope remanded the case to the trial court. Finding a "dearth of authority" surrounding the proper interpretation to be given to the statute, Judge Cope reasoned that Motors "should have another opportunity to amend in light of the statutory construction set forth in this opinion."47

The final cargo case of the period was Hiram Walker & Sons, Inc. v. Kirk Line.48 In that case, the plaintiff, Hiram Walker & Sons, Inc. (Hiram Walker), arranged to have 5,000 gallons of Tia Maria liqueur shipped from Kingston, Jamaica, to Miami, Florida, and then transported by truck from Miami to New Jersey. The liqueur was placed in a twenty-three-ton holding tank and loaded aboard the M/V MORANT BAY—a vessel owned by Jamaica Merchant Marine Atlantic Line, Ltd. (Jamaica Line), and chartered by R.B. Kirkconnel &

44. Under the statute, a right-of-possession certificate can only be procured by the vehicle owner from the Department of Highway Safety and Motor Vehicles. See Fla. Stat. § 319.364(4) (1983).
45. Motors Ins. Corp., 545 So. 2d at 390.
46. Id. at 391.
47. Id. at 392.
48. 877 F.2d 1508 (11th Cir. 1989).
transport a motor vehicle outside the United States without first obtaining a "right-of-possession certificate" from the owner. In response, Heavy Lift sought and received a dismissal of the complaint on the ground that the statute did not apply to it. On appeal, Judge Cope, writing for a unanimous panel, agreed with the trial court. Noting that the statute was intended to apply to persons who “caused” vehicles to be transported, Judge Cope wrote:

In the present context, we think “cause to be transported” was intended to require active participation by a “person” in arranging or procuring the transportation of the vehicles from the Florida port. Ancillary conduct which is not an effective or procuring cause of the transportation is not, we think, addressed by the statute.

With that interpretation, we conclude the trial court was correct in dismissing the appellant’s amended complaint. ... The amended complaint contended that Heavy Lift aided in the transportation of the stolen vehicles “by its failure to demand proof that its shipper ... had the required Certificate of Right of Possession.” There is no allegation that in any active sense Heavy Lift arranged or procured the transportation of the vehicles from the Florida port.

Nevertheless, Judge Cope remanded the case to the trial court. Finding a “dearth of authority” surrounding the proper interpretation to be given to the statute, Judge Cope reasoned that Motors “should have another opportunity to amend in light of the statutory construction set forth in this opinion.”

The final cargo case of the period was Hiram Walker & Sons, Inc. v. Kirk Line. In that case, the plaintiff, Hiram Walker & Sons, Inc. (Hiram Walker), arranged to have 5,000 gallons of Tia Maria liqueur shipped from Kingston, Jamaica, to Miami, Florida, and then transported by truck from Miami to New Jersey. The liqueur was placed in a twenty-three ton holding tank and loaded aboard the M/V MORANT BAY—a vessel owned by Jamaica Merchant Marine Atlantic Line, Ltd. (Jamaica Line), and chartered by R.B. Kirkconnell &

44. Under the statute, a right-of-possession certificate can only be procured by the vehicle owner from the Department of Highway Safety and Motor Vehicles. See Fla. Stat. § 319.36(4) (1983).
45. Motors Ins. Corp., 345 So. 2d at 390.
46. Id. at 391.
47. Id. at 392.
48. 877 F.2d 1508 (11th Cir. 1989).

Bro., Ltd. (Kirk Line)—and delivered without incident to Miami. Once in Miami, Kirk Line hired Eller & Company, Inc. (Eller), to unload the liqueur from the MORANT BAY and store it on the dock. Subsequently, Hiram Walker arranged to have Indian River Transport, Inc. (Indian River), pick up the liqueur and truck it to New Jersey.

Pursuant to plan, Jones, an employee of Indian River, travelled to the port and sought to transfer the liqueur from its holding tank into an Indian River trailer truck. An Eller employee removed the tank from storage and aligned it with the trailer. When Jones tried to connect the tank to the trailer, however, he discovered that a fitting needed to connect the hoses was missing. Since pumping the liqueur into the truck was now impossible, Jones decided to pour the liqueur from the tank to the trailer by elevating the tank above the trailer. To do so, he asked Marshall and Wright, two Eller employees, to help him.

Unfortunately, the three men failed to properly secure the tank before placing it on a forklift and raising it over the trailer. As a result, the tank fell off the forklift and eighty-five percent of the Tia Maria spilled out; the remainder was contaminated during the ensuing cleanup operation when several fire-engine companies covered the affected area with anti-explosive foam.

Following the accident, Hiram Walker instituted suit in federal court in Manhattan against Indian River, Eller, Kirk Line, and Jamaica Line. Upon Eller’s motion, however, the case was transferred to the Southern District of Florida; all parties then moved for summary judgment. The trial court dismissed Kirk Line and Jamaica Line but granted Hiram Walker’s motion against Indian River and Eller on the question of liability. Although both Indian River and Eller filled interlocutory appeals, these appeals were never perfected. The district court then held a bench trial to determine the amount of damages. After setting Hiram Walker’s damages, the court adjourned Indian River and Eller equally responsible for the loss.

49. Id. at 1510.
50. Id.
51. Id. at 1511.
52. By this time, Hiram Walker had been fully compensated for its loss by Aetna, its insurer. Although Aetna became the real party in interest and took over prosecution of the case, the case name was not changed due to an oversight. Although both the district court and the appellate court noted the mistake, neither found it significant in the circumstances. Id. at 1510 n.1.
53. The appeals remained unperfected due to a “jurisdictional problem.” Id. at 1510.

Published by NSUWorks, 1990
Following the trial, Hiram Walker, Indian River, and Eller each filed an appeal. In a lengthy opinion written by Circuit Judge Kravitch, the Eleventh Circuit reversed and remanded the case. Although much of Judge Kravitch's opinion focused on whether federal court jurisdiction existed under the Carmack Amendment, the final part of her opinion focused on whether Eller was entitled to the protection of the “Himalaya” clause contained in Kirk Line's bill of lading.

The trial court had concluded that Eller was not covered by the clause because, by the time Marshall and Wright agreed to help Jones, Eller's stevedoring responsibilities to Kirk Line had come to an end. Judge Kravitch, however, found that the record on this point was unclear and required further testimony:

Neither party's proffer demonstrates as a matter of law or undisputed fact at what point discharge of Kirk Line's responsibility under the bill of lading occurred. . . . The district court should determine after trial whether Kirk Line's obligation had completely terminated by the time of the spill, but its conclusion on summary judgment was in error.

III. Charterparties

There was only one charterparty case during the year under review. In Naviera Blancamar, S.A. v. Boucher, the plaintiffs brought suit in Miami against Naviera Blancamar, S.A. (Naviera Blancamar), the owner of M/V CORAIN 2, and Lines Agromar, S.A. (Lines Agromar), the charterer of the CORAIN 2. In order to serve Naviera Blancamar, the plaintiffs served Delmar Steamship Agency, Inc. (Delmar), the local agent for Lines Agromar.

Upon receiving the complaint, Naviera Blancamar moved to be dismissed from the lawsuit for insufficient process. When the trial court refused to do so, Naviera Blancamar appealed.

On appeal, Chief Judge Schwartz and Judges Nesbitt and Cope issued a brief per curiam opinion reversing the trial court. The panel found that not only had the plaintiffs failed to prove that there was a relationship between Naviera Blancamar and Delmar, they had failed to cast doubt on the competing evidence submitted by Naviera Blancamar.

IV. Collisions

There were two collision cases during the survey period. In the first, Rich Ocean Car Carriers, S.A. v. M/V Sanko Diamond, the court was called upon to apportion fault in a collision between the M/V SANKO DIAMOND and the M/V GLOBE R. WORLD. The two ships collided on the afternoon of August 13, 1985, in the Gulf of Mexico while the weather was good and the visibility unrestricted. At the time of the mishap, the SANKO DIAMOND, a 22,009 gross ton bulk cargo carrier, was proceeding from Tampa, Florida, to the Panama Canal while the GLOBE R. WORLD, a 14,273 gross ton chemical tanker, was travelling from the Florida Straits to New Orleans, Louisiana. Both ships agreed that the respective courses of the ships placed them in a crossing situation in which the SANKO DIAMOND was the “stand on” vessel and the GLOBE R. WORLD was the “give way” vessel.

Pursuant to a request by the owners of the GLOBE R. WORLD,
Following the trial, Hiram Walker, Indian River, and Eller each filed an appeal. In a lengthy opinion written by Circuit Judge Kravitch, the Eleventh Circuit reversed and remanded the case. Although much of Judge Kravitch's opinion focused on whether federal court jurisdiction existed under the Carmack Amendment, the final part of her opinion focused on whether Eller was entitled to the protection of the "Himalaya" clause contained in Kirk Line's bill of lading.

The trial court had concluded that Eller was not covered by the clause because, by the time Marshall and Wright agreed to help Jones, Eller's stevedoring responsibilities to Kirk Line had come to an end. Judge Kravitch, however, found that the record on this point was unclear and required further testimony:

Neither party's proffer demonstrates as a matter of law or undisputed fact at what point discharge of Kirk Line's responsibility under the bill of lading occurred. . . . The district court should determine after trial whether Kirk Line's obligation had completely terminated by the time of the spill, but its conclusion on summary judgment was in error.

III. Charterparties

There was only one charterparty case during the year under review. In *Naviera Blan camar, S.A. v. Boucher,* the plaintiffs brought suit in Miami against Naviera Blan camar, S.A. (Naviera Blan camar).

54. 49 U.S.C. § 11707 (1982). The Carmack Amendment requires common carriers, such as Indian River, to issue bills of lading and to deliver any property entrusted to them in the same condition as they receive it. The district court did not consider the Carmack Amendment or any other basis of jurisdiction because it concluded the liability of Indian River and Eller under maritime tort law. The appellate court, noting that the "accident in question did not occur at a maritime situs," concluded that "admiralty jurisdiction would not support the claims against these two defendants." *Hiram Walker, 877 F.2d at 1511.*

55. A Himalaya clause, so-named for the ship in the famous English case of Adler v. Dickson, 1 Q.B. 158 (1957), extends the protection of COGSA to any independent contractor who is hired by the shipowner to perform necessary services. *Hiram Walker, 877 F.2d at 1516 n.9. See also T. Schoenbaum, Admiralty and Maritime Law § 9-20, at 331-32 (1987).* If Eller was entitled to use Kirk Line's Himalaya clause, its liability to Hiram Walker could not exceed $500. *Hiram Walker, 877 F.2d at 1516.*

56. *Hiram Walker, 877 F.2d at 1517.*

57. 547 So. 2d 1034 (Fla. 3d Dist. Ct. App. 1989).

58. *Id.*

59. *Id.*

60. *Id. at 1034-35.* The panel remanded the case, however, so that the trial court could hear the plaintiff's argument that their inability to proffer sufficient evidence was caused by Naviera Blan camar's refusal to engage in discovery. *Id.*


62. Under the International Navigation Rules, a stand on, or "privileged," vessel is the ship that has the right-of-way when two ships meet and are preparing to cross paths. The right-of-way of "burdened," vessel is the one that must yield in a crossing situation. *Id. at 224.*
the action was bifurcated and a three-day bench trial was held to establish liability. After a careful review of the events leading up to the collision, including widely conflicting accounts of the events that took place immediately before the collision, Judge Carr found that most of the fault lay with the GLOBE R. WORLD:

The Globe's lookout was inattentive and the Globe's violations forced the Sanko to react to avoid the collision. The fact that the Sanko's reaction was insufficient does not relieve the Globe of the liability for creating the risk in the first place. Upon due consideration, the Court finds that the Globe was 85% (eighty-five percent) at fault and the Sanko was 15% (fifteen percent) at fault for the accident.

Having decided the issue of liability, the Court directs the parties to meet and discuss the possibility of settling the damage issues in this case.64

The other collision case of the year was In re Williams.65 On April 10, 1983, a twenty-four foot Donzi fishing boat, owned and operated by Anthony A. Williams, collided with a nineteen foot Fiberskiff owned and operated by George Radivoj. The head-on collision took place shortly after 9:00 p.m. at the intersection of the Intracoastal Waterway and the Dania Cutoff Canal in Hollywood, Florida. As a result of the accident, Mr. Radivoj and Viorel Cinc, a passenger in Mr. Radivoj's boat, were killed.

Immediately after the accident, Mr. Williams was requested by the authorities to take a blood alcohol test. Although he refused to submit to such a test, he admitted later that he had been drinking beer and liquor prior to the crash and that he had consumed four or more drinks during the evening.66

Three months later, Florica Radivoj, Mr. Radivoj's widow, filed suit against Mr. Williams in Broward County Circuit Court.67 In April 1984, with the suit still pending, Mr. Williams incorporated his business and named his wife as sole director and officer. This turned out to be a wise move, for in July 1986, Mrs. Radivoj won her suit against Mr. Williams and received a $2.1 million judgment. Shortly thereafter, in a further attempt to thwart Mrs. Radivoj, Mr. Williams declared voluntary Chapter 7 bankruptcy.68

Subsequently, Mrs. Radivoj filed a complaint in Mr. Williams' bankruptcy proceeding and asked the court not to discharge her judgment. Citing a provision in the Bankruptcy Code that excepts from discharge any judgment "incurred by the debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated,"69 Mrs. Radivoj argued that the statute should be read to include motor boats. In response, Mr. Williams admitted that he was the operator of the boat and had caused the accident, but denied that he was legally intoxicated.70

After a review of the evidence, Judge Cristol disagreed with Mr. Williams and refused to discharge the debt. While recognizing that the lack of a breath alcohol test made it more difficult to determine Mr. Williams' level of intoxication, Judge Cristol found it sufficient that everyone who had had contact with Mr. Williams after the accident considered him impaired: "Although no chemical analysis of the debtor's blood, urine, or breath was performed, there was ample opinion testimony/evidence as to Williams' intoxication... This type of evidence is sufficient to establish that the debtor was legally intoxicated."71

63. Although both crews testified as to how the collision was allowed to occur, the court found the version put forth by the SANKO DIAMOND crew to be the more reasonable one. The court wrote in part:

It is clear from the record that Mr. Joong, the Globe's sole lookout, was grossly inattentive. He did not spot the Sanko until it was 1.5 miles away.

Then, having spotted the Sanko so close to his ship, he turned away and took no notice of the Sanko until it was about to hit the Globe. The other crew members were working to complete the tank cleaning operation before they reached New Orleans. Again, no one noticed the Sanko until it was only 1.5 miles away and then only casually.

64. Id. at 227-28.


66. Exactly how much liquor Mr. Williams consumed is unclear. As noted by the court: "Williams' story was different in each statement and deposition as to exactly what and how much he drank that evening." Id. at 357-58, 1989 AMC 2650.

67. In addition to Mrs. Radivoj, Mr. Williams was sued by the estate of Mr. Cinc and by the four passengers in Mr. Radivoj's boat who survived the collision. See Cinc v. Williams, 101 Bankr. 356, 1989 AMC 2644 (S.D. Fla. 1989).

68. Williams, 101 Bankr. at 357, 1989 AMC at 2651.


70. Mr. Williams also argued that § 523(a)(9) did not apply to motor boats.

71. Id. at 259, 1989 AMC at 2652-53 (citing Matter of Brunson, 82 Bankr. 634 (S.D. Ga. 1988)).
the action was bifurcated and a three-day bench trial was held to establish liability. After a careful review of the events leading up to the collision, including widely conflicting accounts of the events that took place immediately before the collision, Judge Carr found that most of the fault lay with the GLOBE R. WORLD:

The Globe's lookout was inattentive and the Globe's violations forced the Sanko to react to avoid the collision. The fact that the Sanko's reaction was insufficient does not relieve the Globe of the liability for creating the risk in the first place. Upon due consideration, the Court finds that the Globe was 85% (eighty-five percent) at fault and the Sanko was 15% (fifteen percent) at fault for the accident.

Having decided the issue of liability, the Court directs the parties to meet and discuss the possibility of settling the damage issues in this case.***

The other collision case of the year was *In re Williams.* On April 10, 1983, a twenty-four foot Donzi fishing boat, owned and operated by Anthony Williams, collided with a nineteen foot Fiberskiff owned and operated by George Radivoj. The head-on collision took place shortly after 9:00 p.m. at the intersection of the Intracoastal Waterway and the Dania Cutoff Canal in Hollywood, Florida. As a result of the accident, Mr. Radivoj and Viorel Cinc, a passenger in Mr. Radivoj's boat, were killed.

Immediately after the accident, Mr. Williams was requested by the authorities to take a blood alcohol test. Although he refused to submit to such a test, he admitted later that he had been drinking beer and liquor prior to the crash and that he had consumed four or more drinks during the evening.**

Three months later, Florica Radivoj, Mr. Radivoj's widow, filed suit against Mr. Williams in Broward County Circuit Court. In April 1984, with the suit still pending, Mr. Williams incorporated his business and named his wife as sole director and officer. This turned out to be a wise move, for in July 1986, Mrs. Radivoj won her suit against Mr. Williams and received a $2.1 million judgment. Shortly thereafter, in a further attempt to thwart Mrs. Radivoj, Mr. Williams declared voluntary Chapter 7 bankruptcy.

Subsequently, Mrs. Radivoj filed a complaint in Mr. Williams' bankruptcy proceeding and asked the court not to discharge her judgment. Citing a provision in the Bankruptcy Code that excepts from discharge any judgment "incurred by the debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated," Mrs. Radivoj argued that the statute should be read to include motor boats. In response, Mr. Williams admitted that he was the operator of the boat and had caused the accident, but denied that he was legally intoxicated.70

After a review of the evidence, Judge Cristol disagreed with Mr. Williams and refused to discharge the debt. While recognizing that the lack of a breath alcohol test made it more difficult to determine Mr. Williams' level of intoxication, Judge Cristol found it sufficient that everyone who had had contact with Mr. Williams after the accident considered him impaired: "Although no chemical analysis of the debtor's blood, urine, or breath was performed, there was ample opinion testimony/evidence as to Williams' intoxication . . . . This type of evidence is sufficient to establish that the debtor was legally intoxicated."71

63. Although both crews testified as to how the collision was allowed to occur, the court found the version put forth by the SANKO DIAMOND crew to be the more reasonable one. The court wrote in part:

It is clear from the record that Mr. Joong, the Globe's sole lookout, was grossly inattentive. He did not spot the Sanko until it was 1.5 miles away. Then, having spotted the Sanko so close to his ship, he turned away and took no notice of the Sanko until it was about to hit the Globe. The other crewmembers were working to complete the tank cleaning operation before they reached New Orleans. Again, no one noticed the Sanko until it was only 1.5 miles away and then only casually.

64. Id. at 227-28.
67. Mr. Williams also argued that § 523(a)(9) did not apply to motor boats. Williams, 101 Bankr. at 358-59, 1989 AMC at 2653. The court made short work of this argument, as did the district court on appeal.
68. Id. at 359, 1989 AMC at 2652-53 (citing Matter of Brunson, 82 Bankr. 634 (S.D. Ga. 1988)).
V. Criminal Offenses

There were two criminal cases of note during the year. In the first, United States v. Gossett, the criminal convictions of William Rector and Billy Eugene Gossett were upheld by the Eleventh Circuit in one of the few cases of mutiny ever heard by an American court.

In July 1987, a commercial shrimpming vessel known as the LESLIE RAE left port in Tampa, Florida, for a fishing expedition in the Atlantic Ocean north of the Florida Keys. The crew consisted of five persons: Captain Phillip Roush; First Mate Willie Charpentier; Maria Barnes, who was hired to work in the kitchen; Rector; and Gossett. Two days out of the port, while the LESLIE RAE was anchored approximately twenty-four miles off the coast of Cape Canaveral in 150 feet of water, Roush and Charpentier were mending their shrimp nets when Rector and Gossett came up from behind them and attacked. Gossett, using a ballpeen hammer, hit Roush over the head; Rector, using a steel pbybar, did the same to Charpentier. Surviving the attack, Charpentier jumped overboard into shark-infected waters. Roush, however, was not so lucky; after being killed by Rector and Gossett his body was dumped into the ocean. Gossett and Rector then took command of the $250,000 vessel and its $3,000 cargo of shrimp.

Twelve hours later, Charpentier was rescued by the Coast Guard.

Upon hearing his story the Coast Guard intercepted the LESLIE RAE and took Gossett and Rector into custody. They subsequently were tried and found guilty of first-degree murder, felony murder, conspiracy, mutiny, and assault. Based on these findings, Gossett and Rector both received two concurrent life sentences for the first-degree murder and felony murder charges and an additional twenty years imprisonment for the conspiracy, mutiny, and assault charges.

Rector and Gossett appealed their convictions on a number of grounds. They argued that they had not received adequate funds with which to prepare their defense, that their request for a severance of their trial should not have been denied, that their request for a continuance should have been granted, and that the trial judge wrongfully excluded certain testimony, and that the jury was improperly instructed regarding the felony murder charge.

In a lengthy per curiam opinion, retired Associate Justice Lewis F. Powell, Jr., Chief Judge Roney, and Circuit Judge Hill affirmed the convictions in all respects. Finding that the trial judge had acted well within the scope of his discretion and had correctly applied the rules of evidence, the panel found that the defendants' numerous objections were "meritorious."

The other criminal case of the period concerned the smuggling of drugs into the United States by ship. In United States v. One (1) 1981 65' Skokum Motor Sailor Ketch Named "Silurian," the S/K SILURIAN was forfeited to the United States following the discovery by the Coast Guard of 676 pounds of marijuana hidden in a secret compartment of the ship's fuel tanks while she was on the high seas. The forfeiture was stayed, however, when an appeal to the Eleventh Circuit resulted in a remand of the case for further findings of fact.

On remand, Judge Spellman made such additional findings and again

78. Id. at 906-07.
79. Id. at 907-08.
80. Gossett, 877 F.2d at 908.
81. There actually were a number of such cases during the survey period, although they tended to raise questions of constitutional criminal law rather than maritime law. See, e.g., United States v. Fuentes, 877 F.2d 895 (11th Cir.), cert. denied sub nom., Marquez-Rodriguez v. United States, 110 S. Ct. 347 (1989) (defendants' conviction for marijuana smuggling affirmed as being in accordance with the Maritime Drug Law Enforcement Act); Harrell v. United States, 875 F.2d 828 (11th Cir. 1989) (criminal suit brought against the federal government and a Coast Guard officer by plaintiffs suspected of smuggling marijuana dismissed on finding that the officer was entitled to qualified immunity); United States v. Abumado-Avendano, 872 F.2d 367 (11th Cir.), cert. denied sub nom., Taylor-Walton v. United States, 110 S. Ct. 100 (1989) (defendants' conviction for marijuana smuggling upheld under the Maritime Drug Law Enforcement Act); United States v. Roy, 869 F.2d 1427 (11th Cir.), cert. denied, 110 S. Ct. 72 (1989) (second boarding and search of a vessel for marijuana was supported by probable cause despite the fact that the first search had failed to discover contraband); United States v. Cariballo-Tamayo, 865 F.2d 1179 (11th Cir. 1989) (Customs Service held authorized to board and search the defendants' vessel for cocaine); and United States v. Mena, 863 F.2d 1522 (11th Cir.), cert. denied, 110 S. Ct. 110 (1989) (defendants' conviction for attempting to import marijuana upheld in the face of a challenge to the Maritime Drug Law Enforcement Act).
84. Id. at 1547-48, 1990 AMC at 263-64.
V. Criminal Offenses

There were two criminal cases of note during the year. In the first, United States v. Gossett,\textsuperscript{72} the criminal convictions of William Rector and Billy Eugene Gossett were upheld by the Eleventh Circuit in one of the few cases of mutiny ever heard by an American court.

In July 1987, a commercial shrimping vessel known as the LESLIE RAE left port in Tampa, Florida, for a fishing expedition in the Atlantic Ocean north of the Florida Keys. The crew consisted of five persons: Captain Phillip Roush; First Mate Willie Charpentier; Maria Barnes, who was hired to work in the kitchen; Rector; and Gossett.\textsuperscript{73}

Two days out of the port, while the LESLIE RAE was anchored approximately twenty-four miles off the coast of Cape Canaveral in 150 feet of water, Roush and Charpentier were mending their shrimp nets when Rector and Gossett came up from behind them and attacked. Gossett, using a ballpeen hammer, hit Roush over the head; Rector, using a steel prybar, did the same to Charpentier. Surviving the attack, Charpentier jumped overboard into shark-infected waters. Roush, however, was not so lucky; after being killed by Rector and Gossett his body was dumped into the ocean. Gossett and Rector then took command of the $250,000 vessel and its $3,000 cargo of shrimp.

Twelve hours later, Charpentier was rescued by the Coast Guard. Upon hearing his story the Coast Guard intercepted the LESLIE RAE and took Gossett and Rector into custody. They subsequently were tried and found guilty of first-degree murder, felony murder, conspiracy, mutiny, and assault.\textsuperscript{74} Based on these findings, Gossett and Rector both received two concurrent life sentences for the first-degree murder and felony murder charges and an additional twenty years imprisonment for the conspiracy, mutiny, and assault charges.

Rector and Gossett appealed their convictions on a number of grounds. They argued that they had not received adequate funds with which to prepare their defense,\textsuperscript{75} that their request for a severance of their trial should not have been denied,\textsuperscript{76} that their request for a continuance should have been granted,\textsuperscript{77} that the trial judge wrongly

excluded certain testimony,\textsuperscript{78} and that the jury was improperly instructed regarding the felony murder charge.\textsuperscript{79}

In a lengthy per curiam opinion, retired Associate Justice Lewis F. Powell, Jr., Chief Judge Roney, and Circuit Judge Hill affirmed the convictions in all respects. Finding that the trial judge had acted well within the scope of his discretion and had correctly applied the rules of evidence, the panel found that the defendants' numerous objections were meritless.\textsuperscript{80}

The other criminal case of the period concerned the smuggling of drugs into the United States by ship.\textsuperscript{81} In United States v. One (1) 1981 65' Skokum Motor Sailor Ketch Named "Silurian,"\textsuperscript{82} the S/K SILURIAN was forfeited to the United States following the discovery by the Coast Guard of 676 pounds of marijuana hidden in a secret compartment of the ship's fuel tanks while she was on the high seas.\textsuperscript{83} The forfeiture was stayed, however, when an appeal to the Eleventh Circuit resulted in a remand of the case for further findings of fact.\textsuperscript{84}

On remand, Judge Spellman made such additional findings and again

72. Id. at 906-07.
73. Id. at 907-08.
74. Gossett, 877 F.2d at 908.
75. There actually were a number of such cases during the survey period, although they tended to raise questions of constitutional criminal law rather than maritime law. See, e.g., United States v. Fuentes, 877 F.2d 895 (11th Cir.), cert. denied sub nom., Marquez-Rodriguez v. United States, 110 S. Ct. 347 (1989) (defendants' conviction for marijuana smuggling affirmed as being in accordance with the Maritime Drug Law Enforcement Act); Harrell v. United States, 875 F.2d 828 (11th Cir. 1989) (civil suit brought against the federal government and a Coast Guard officer by plaintiffs suspected of smuggling marijuana dismissed on finding that the officer was entitled to qualified immunity); United States v. Ahumado-Avendano, 872 F.2d 367 (11th Cir.), cert. denied sub nom., Taylor-Walten v. United States, 110 S. Ct. 100 (1989) (defendants' conviction for marijuana smuggling upheld under the Maritime Drug Law Enforcement Act); United States v. Roy, 864 F.2d 1427 (11th Cir., cert. denied, 110 S. Ct. 73 (1989) (second boarding and search of a vessel for marijuana was supported by probable cause despite the fact that the first search had failed to discover contraband); United States v. Carillo-Tamayo, 864 F.2d 1179 (11th Cir. 1988) (Customs Service held authorized to board and search the defendants' vessel for cocaine); and United States v. Mena, 863 F.2d 1522 (11th Cir., cert. denied, 110 S. Ct. 110 (1989) (defendants' conviction for attempting to import marijuana upheld in the face of a challenge to the Maritime Drug Law Enforcement Act).
78. Id. at 1547-48, 1990 AMC at 263-64.
forfeited the vessel.

In particular, Judge Spellman considered whether James Maxwell, the owner of the SILURIAN and a sister ship, was an innocent owner who was not responsible for the SILURIAN’S employment in the drug trade. After hearing testimony on the circumstances by which Mr. Maxwell came to own the vessels, Judge Spellman found that Mr. Maxwell had not proved that he was an innocent owner. In particular, Judge Spellman found that:

The facts surrounding Maxwell's purchase of the two vessels are simply incredulous. First, Maxwell's poverty level income cannot be reconciled with his ownership of two luxury yachts. Second, the suspicious circumstances regarding the purchase of the vessel Silurian, i.e., the unsecured, interest-free loan from Mr. Raiston, creates suspicion which must be dispelled through the introduction of hard evidence, and not merely through the testimony of the Claimant alone.

VI. Insurance

The survey period generated two marine insurance cases. In Reliance Insurance Co. v. Royal Motorcar Corp., Ronald Lyss sued to recover damages he sustained when a boat being piloted by the brother of Richard L. Walters, president of Royal Motorcar Corporation (Royal), ran Lyss down. The boat had been borrowed by Walters for his personal use from Marine Consulting, Inc. (Marine). At the time of the accident, Royal was insured by the Reliance Insurance Company (Reliance).

Lyss sued Royal, Marine, Reliance, and Walters, among others, but settled his claim during the ensuing litigation. Following the settlement, Royal sought to recover from Reliance the costs it had incurred in defending and then settling the case. Although Royal had tended the defense to Reliance at the outset of the case, Reliance had declined to defend the suit on the ground that the policy contained a watercraft exclusion clause.

Following a judgment in favor of Royal, Reliance took an appeal. In a short per curiam opinion, Chief Judge Hersey and Judges Downey and William C. Owen, Jr., reversed and remanded to the trial court. Pointing out that an insurer’s duty to defend is measured by the allegations contained in the complaint, the panel found that Lyss’s claim, “as pled, never fell within the policy coverage because [it was] expressly excluded.”

In the other insurance case of the period, Tillery v. Hull & Co., the plaintiff, Jack Tillery, was the owner of a vessel known as the TEXAS PRIDE. He obtained a $150,000 insurance policy from the defendant, Hull & Company, Inc. (Hull & Company). The policy included a bartrary clause and a Free of Capture and Seizure clause, and a constructive total loss clause.

In March 1983, the plaintiff chartered the TEXAS PRIDE to Captain Paul Miller. The contract prohibited Captain Miller from fishing more than 200 miles from shore and prohibited him from carrying illegal substances aboard the vessel. Shortly after the agreement was signed, however, Captain Miller sailed the boat to Jamaica to pick up a shipment of marijuana. When Captain Miller’s plan was discovered,

85. The “innocent owner” defense requires an owner to prove three things: (1) that he was not involved in the wrongful activity; (2) that he was not aware of the wrongful activity; and (3) that he had done all that he could reasonably be expected to do to prevent the wrongful use of his property. Id. at 5550, 1990 AMC at 268 (citing Calero-Toledo v. Pearson Yacht Leasing, 416 U.S. 663 (1974)).
86. Id. at 1552 n.13, 1990 AMC at 270 n.13.
88. Id. at 923.
forfeited the vessel.

In particular, Judge Spellman considered whether James Maxwell, the owner of the SILURIAN and a sister ship, was an innocent owner who was not responsible for the SILURIAN’s employment in the drug trade. After hearing testimony on the circumstances by which Mr. Maxwell came to own the vessels, Judge Spellman found that Mr. Maxwell had not proved that he was an innocent owner. In particular, Judge Spellman found that:

The facts surrounding Maxwell’s purchase of the two vessels are simply incredulous. First, Maxwell’s poverty level income cannot be reconciled with his ownership of two luxury yachts. Second, the suspicious circumstances regarding the purchase of the vessel Siluri-an, i.e., the unsecured, interest-free loan from Mr. Ralston, creates suspicion which must be dispelled through the introduction of hard evidence, and not merely through the testimony of the Claimant alone.

VI. Insurance

The survey period generated two marine insurance cases. In Reliance Insurance Co. v. Royal Motorcar Corp., Ronald Lyss sued to recover damages he sustained when a boat being piloted by the brother of Richard L. Walters, president of Royal Motorcar Corporation (Royal), ran Lyss down. The boat had been borrowed by Walters for his personal use from Marine Consulting, Inc. (Marine). At the time of the accident, Royal was insured by the Reliance Insurance Company (Reliance).

Lyss sued Royal, Marine, Reliance, and Walters, among others, but settled his claim during the ensuing litigation. Following the settlement, Royal sought to recover from Reliance the costs it had incurred in defending and then settling the case. Although Royal had

85. The “innocent owner” defense requires an owner to prove three things: (1) that he was not involved in the wrongful activity; (2) that he was not aware of the wrongful activity; and (3) that he had done all that he could reasonably be expected to do to prevent the wrongful use of his property. Id. at 1550, 1990 AMC at 268 (citing Calero-Toledo v. Pearson Yacht Leasing, 416 U.S. 663 (1974)).
86. Id. at 1552 n.13, 1990 AMC at 270 n.13.
88. Id. at 923.

tendered the defense to Reliance at the outset of the case. Reliance had declined to defend the suit on the ground that the policy contained a watercraft exclusion clause.

Following a judgment in favor of Royal, Reliance took an appeal. In a short per curiam opinion, Chief Judge Hersey and Judges Downey and William C. Owen, Jr., reversed and remanded to the trial court. Pointing out that an insurer’s duty to defend is measured by the allegations contained in the complaint, the panel found that Lyss’ claim, “as pled, never fell within the policy coverage because [it was] expressly excluded.”

In the other insurance case of the period, Tillery v. Hull & Co., the plaintiff, Jack Tillery, was the owner of a vessel known as the TEXAS PRIDE. He obtained a $150,000 insurance policy from the defendant, Hull & Company, Inc. (Hull & Company). The policy included a barratry clause, a Free of Capture and Seizure clause, and a constructive total loss clause.

In March 1983, the plaintiff chartered the TEXAS PRIDE to Captain Paul Miller. The contract prohibited Captain Miller from fishing more than 200 miles from shore and prohibited him from carrying illegal substances aboard the vessel. Shortly after the agreement was signed, however, Captain Miller sailed the boat to Jamaica to pick up a shipment of marijuana. When Captain Miller’s plan was discovered,
the TEXAS PRIDE was seized by Jamaican authorities, stripped of its
gear and equipment, and forfeited to the Jamaican government.

Subsequently, Hull & Company paid $30,000 to the Jamaican
government to secure the release of the vessel. The plaintiff then had
his son Rip fly to Jamaica and inspect the TEXAS PRIDE. Based on
his report, the plaintiff declared her a total loss and sued Hull & Company
to recover the full face value of the insurance policy. When the
trial court found in favor of Hull & Company,97 the plaintiff appealed.

On appeal, a unanimous panel affirmed the trial court.98 Speaking
through Senior District Judge Atkins, the panel found that the dam-
ages suffered by the TEXAS PRIDE were caused not by Captain
Miller’s improper decision to go to Jamaica, but by the acts of the
Jamaican authorities. Since the insurance policy specifically excluded
coverage for acts incident to capture and seizure, the panel found that
Hull & Company had no liability for the plaintiff’s loss.99 The panel
also concluded that the vessel was not a total loss, as contended by plaintiff,100
and agreed with the trial court’s conclusion that the plaintiff
was only entitled to $8,891.07 in damages with respect to the
barratry.101

VII. Limitation of Liability

The past year produced five limitation of liability cases that, taken
together, make it clear that the Limitation of Liability Act102 remains
alive and well, at least in Florida.103

In In the Matter of Modern Fleet, Inc.104 the shrimp trawler
MISS LANITA was attacked by five pirates just as she was about to
dock at Georgetown, Guyana, on May 7-8, 1984. As a result of the

98. Tillery, 876 F.2d at 1221.
99. Id. at 1520.
100. Id.
101. Id.
103. The Act, which dates back to 1851, allows a shipowner to file a complaint
exonerating it from liability or, in the alternative, limiting its liability, for injuries and
damage caused by its vessel. During the past forty years, there have been repeated calls
to repeal the Act on the grounds that it permits the shipowner to escape its legitimate
responsibilities to third parties. See, e.g., G. Gilmore & C. Black, THE LAW OF AB-
MIRABILITY § 10-4(a), at 822-23 (2d ed. 1975) (describing the Limitation Act as
anachronistic).

105. The attackers subsequently were caught, tried, and convicted of murder in
Guyana. Id. at 1271.
106. According to the magistrate: “The discovery which has taken place in this
case has not established any incident of piracy such as the one which resulted in the
claims before this court prior to May 7, 1984.” Id. at 1272.
107. Id. at 1275. Prior to the magistrate’s decision, but after a pre-trial confer-
ence, the claimants, recognizing that they had failed to meet their evidentiary burden,
changed their position and began to argue that Modern Fleet ought to be held liable
because the attack was “part of an ongoing scheme by vessel’s management to siphon
shrimp from the ultimate owner’s profits.” Id. at 1274. The magistrate found this alle-
gation to have even less factual support than the claimants’ original theory: “[There is
not even a shred of evidence which remotely tends to support the allegation.” Id. at
1275.
108. Modern Fleet, 1989 AMC at 1276. Chief Judge Hodges refused, however,
to grant Modern Fleet’s request that sanctions be imposed on the claimants pursuant to
Rule 11. Id. The magistrate had declined to rule on the issue of sanctions, choosing
instead to reserve the question for the court. Id. at 1269 n.2.
110. Chief Judge King found that the following cases skirted around the issue of
whether the Act applies to pleasure crafts: Corvell v. Phipps, 317 U.S. 406 (1943); Just
v. Chambers, 312 U.S. 383 (1941); In re Petition of M/V Sunshine II, 808 F.2d 762
(11th Cir. 1987); Tittle v. Aldacoosta, 544 F.2d 752 (5th Cir. 1977); and Gisboney v.
Wright, 517 F.2d 1054 (5th Cir. 1975).
the TEXAS PRIDE was seized by Jamaican authorities, stripped of its gear and equipment, and forfeited to the Jamaican government.

Subsequently, Hull & Company paid $30,000 to the Jamaican government to secure the release of the vessel. The plaintiff then had his son Rip fly to Jamaica and inspect the TEXAS PRIDE. Based on his report, the plaintiff declared her a total loss and sued Hull & Company to recover the full face value of the insurance policy. When the trial court found in favor of Hull & Company, the plaintiff appealed.

On appeal, a unanimous panel affirmed the trial court. Speaking through Senior District Judge Atkins, the panel found that the damages suffered by the TEXAS PRIDE were caused not by Captain Miller’s improper decision to go to Jamaica, but by the acts of the Jamaican authorities. Since the insurance policy specifically excluded coverage for acts incident to capture and seizure, the panel found that Hull & Company had no liability for the plaintiff’s loss. The panel also concluded that the vessel was not a total loss, as contended by plaintiff, and agreed with the trial court’s conclusion that the plaintiff was only entitled to $8,891.07 in damages with respect to the barratry.

VII. Limitation of Liability

The past year produced five limitation of liability cases that, taken together, make it clear that the Limitation of Liability Act remains alive and well, at least in Florida.

In *In the Matter of Modern Fleet, Inc.*, the shrimp trawler MISS LANITA was attacked by five pirates just as she was about to dock at Georgetown, Guyana, on May 7-8, 1984. As a result of the attack, three crewmembers were killed and the ship’s captain was injured. Following the attack, the three crewmembers’ estates and the captain filed claims against Modern Fleet, Inc. (Modern Fleet), the owner of the MISS LANITA. In response, Modern Fleet filed a complaint for exoneration from or limitation of liability.

After the taking of discovery, Modern Fleet moved for summary judgment on the ground that the claimants had been unable to prove that Modern Fleet either knew or should have known of the possibility of a pirate attack. Agreeing with Modern Fleet, the magistrate assigned to the case recommended that the motion be granted. Finding this recommendation to be well-supported, Chief Judge Hodges dismissed the claims.

In *In the Matter of the Complaint of Keys Jet Ski, Inc.*, Chief Judge King was asked to permit the Limitation of Liability Act to be applied to a Kawasaki jet ski. In a terse opinion, he declined the invitation. Recognizing the lack of clear precedent from the United States Supreme Court, the Eleventh Circuit, and the old Fifth Circuit, he concluded: “[T]he limitation statute was not intended to apply to pleasure boats. Quite simply, the Act merely intended to make the United States Merchant Marine competitive in commercial shipping. The ex

---

98. *Tillery*, 876 F.2d at 1521.
99. *Id.* at 1520.
100. *Id.*
101. *Id.*
103. The Act, which dates back to 1851, allows a shipowner to file a complaint exonerating it from liability or, in the alternative, limiting its liability, for injuries and damage caused by its vessel. During the past forty years, there have been repeated calls to repeal the Act on the ground that it permits the shipowner to escape its legitimate responsibilities to third parties. See, e.g., G. GILMORE & C. BLACK, THE LAW OF ADMIRALTIES §§ 10-4a, at 822-23 (2d ed. 1975) (describing the Limitation Act as anachronistic).
tension of the Act to pleasure craft, such as jet skis, contravenes congresional intent and unjustly affects injured litigants. 111

Chief Judge King also decided the next limitation case of the survey period. In In the Matter of the Complaint of Sheen,118 the 41-foot Morgan sloop MLanje collided with the 40-foot sailing ketch Winstar while the MLanje was being towed to sea. The collision occurred on January 31, 1987, in Key West Harbor, Florida, on a relatively clear day with a stiff wind. As a result of the mishap, Dr. Maxwell Simpkin, a passenger aboard the Winstar who had attempted to prevent the accident, suffered a crushed finger.

Five months later, on June 26, 1987, Dr. Sidney Michael Sheen, the owner of the MLanje, sold her for $63,900.119 One month later, on July 31, 1987, Dr. Sheen filed a complaint seeking exoneraton from or limitation of liability in connection with the collision between the MLanje and the Winstar.124 In response, Dr. Simpkin answered the complaint, prayed for a denial of both the exoneraton and the limitation, and requested permission to pursue a personal injury action against Dr. Sheen in state court.125

After considering the facts, Chief Judge King found that the collision had been caused by the negligence of the captain and the crew employed by Dr. Sheen to pilot the vessel.128 But he also found that the negligence could not be imputed to Dr. Sheen, who was not aboard the sloop at the time of the collision, and that the accident was caused at least in part, by Dr. Simpkin’s irrational decision to try to push away the MLanje, a 27,000 pound vessel, with his bare hands.127 Based on these findings, Chief Judge King concluded that Dr. Sheen, while not free from blame and thus not entitled to exonation, was entitled to limit his liability to $69,310, the value of the vessel immediately after the accident.118

Another unusual limitation issue was raised in Lewis Charters, Inc. v. Huckins Yacht Corp.128 Due to a fire aboard the S/Y SERENITY while she was docked in a wet berth awaiting repair, a substantial portion of a marina owned by Huckins Yacht Corporation (Huckins Yacht) was destroyed by fire.129 Contending that the fire was caused by the negligence of the agents of Lewis Charters, Inc. (Lewis Charters), the owner of the SERENITY,131 Huckins Yacht filed a diversity suit in federal court against Lewis Charters. In response, Lewis Charters counterclaimed for negligence and breach of bailment. Subsequently, however, Lewis Charters filed a complaint for exonation from or limitation of liability, alleging the existence of admiralty jurisdiction.132

Florida Yacht Charters and Sales, Inc. (Florida Yacht), to run the MLanje for him. At the time of the collision, the MLanje was under the command of Captain Benjamin C. Grehan, an independent captain hired by Florida Yacht to bring the MLanje to Miami for repairs. Id. at 1127, 1989 AMC at 1348.

117. Chief Judge King explained, "Because Dr. Simpkin acted contrary to regular maritime practice, he acted negligently. Moreover, because Dr. Simpkin would not be injured but for his negligent action, his imputative behavior must be a proximate cause of his own injury." Sheen, 709 F. Supp. at 1131, 1989 AMC at 1356.

118. Id. at 1136, 1989 AMC at 1363 (citing Norwich & N.Y. Trans. Co. v. Wright, 80 U.S. (13 Wall.) 104 (1871)). In so holding, Chief Judge King rejected the figures suggested by both Drs. Simpkin and Sheen. While Dr. Simpkin had argued that the sloop's value was $100,000 (the amount that Dr. Sheen had insured the MLanje for in October 1986), Dr. Sheen had contended that the sloop was worth $53,900 (the amount he sold her for in June 1987). In arriving at his compromise figure, Chief Judge King found that the MLanje’s value was its purchase price less depreciation through time of the accident. Id., 1989 AMC at 1364.

119. 871 F.2d 1046, 1989 AMC 1521 (11th Cir. 1989).

120. At the time of the fire, the SERENITY was inside a paint building in a slip that was in water. Another boat, owned by a third party, was stored near the SERENITY in a spraypaint room. No one was on board either vessel, and no time during the fire was any other vessel threatened. Id. at 1051, 1989 AMC at 1522.

121. The cause of the fire had not been conclusively determined by the time the case reached the Eleventh Circuit. Id. at 1047, 1989 AMC at 1522.

122. Id. at 1048, 1989 AMC at 1523.
tension of the Act to please craft, such as jet skis, contravenes congressional intent and unjustly affects injured litigants.”

Chief Judge King also decided the next limitation case of the survey period. In *In the Matter of the Complaint of Sheen*, the 41-foot Morgan sloop MLANJE collided with the 40-foot sailing ketch WINDSTAR while the MLANJE was being towed to sea. The collision occurred on January 31, 1987, in Key West Harbor, Florida, on a relatively clear day with a stiff wind. As a result of the mishap, Dr. Maxwell Simpkin, a passenger aboard the WINDSTAR who had attempted to prevent the accident, suffered a crushed finger.

Five months later, on June 26, 1987, Dr. Sidney Michael Sheen, the owner of the MLANJE, sold her for $63,900.118 One month later, on July 31, 1987, Dr. Sheen filed a complaint seeking exoneration from or limitation of liability in connection with the collision between the MLANJE and the WINDSTAR.119 In response, Dr. Simpkin answered the complaint, prayed for a denial of both the exoneration and the limitation, and requested permission to pursue a personal injury action against Dr. Sheen in state court.118

After considering the facts, Chief Judge King found that the collision had been caused by the negligence of the captain and the crew employed by Dr. Sheen to pilot the vessel.118 But he also found that the negligence could not be imputed to Dr. Sheen, who was not aboard the sloop at the time of the collision, and that the accident was caused, at least in part, by Dr. Simpkin’s irrational decision to try to push away the MLANJE, a 27,000-pound vessel, with his bare hands.118 Based on these findings, Chief Judge King concluded that Dr. Sheen, while not free from blame and thus not entitled to exoneration, was entitled to limit his liability to $69,310, the value of the vessel immediately after the accident.118

Another unusual limitation issue was raised in *Lewis Charters, Inc. v. Huckins Yacht Corp.*118 Due to a fire aboard the S/Y SERENITY while she was docked in a wet berth awaiting repair, a substantial portion of a marina owned by Huckins Yacht Corporation (Huckins Yacht) was destroyed by fire.118 Contending that the fire was caused by the negligence of the agents of Lewis Charters, Inc. (Lewis Charters), the owner of the SERENITY,118 Huckins Yacht filed a diversity suit in federal court against Lewis Charters. In response, Lewis Charters counterclaimed for neglience and breach of bailment. Subsequently, however, Lewis Charters filed a complaint for exoneration from or limitation of liability, alleging the existence of admiralty jurisdiction.119

Florida Yacht Charters and Sales, Inc. (Florida Yacht), to run the MLANJE for him. At the time of the collision, the MLANJE was under the command of Captain Benjamin M. Grehan, an independent captain hired by Florida Yacht to bring the MLANJE to Miami for repairs. Id. at 1127, 1989 AMC at 1348.

Chief Judge King explained: “Because Dr. Simpkin acted contrary to regular maritime practice, he acted negligently. Moreover, because Dr. Simpkin would not be injured but for his negligent action, his imprudent behavior must be a proximate cause of his own injury.” *Sheen*, 709 F. Supp. at 1131, 1989 AMC at 1356.

117. *Id.* at 1136, 1989 AMC at 1363 (citing *Norwich v. Yacht Co.* v. Wright, 80 U.S. (13 Wall.) 104 (1871)). In so holding, Chief Judge King rejected the figures suggested by both Drs. Simpkin and Sheen. While Dr. Simpkin had argued that the sloop’s value was $100,000 (the amount that Dr. Sheen had insured the MLANJE for in October 1986), Dr. Sheen had contended that the sloop was worth $63,900 (the amount he sold her for in June 1987). In arriving at his compromise figure, Chief Judge King found that the MLANJE’s value was its purchase price less depreciation through the time of the accident. *Id.*, 1989 AMC at 1364.

118. 871 F.2d 1046, 1989 AMC 1521 (11th Cir. 1989).

119. At the time of the fire, the SERENITY was inside a paint building in a slip that was in dry dock. Another boat, owned by a third party, was stored near the SERENITY in a spraypaint room. No one was on board either vessel, and at no time during the fire was any other vessel threatened. Id. at 1051, 1989 AMC at 1522.

120. The cause of the fire had not been conclusively determined by the time the case reached the Eleventh Circuit. *Id.*, 1989 AMC at 1522.

121. *Id.* at 1048, 1989 AMC at 1523.
Pursuant to a stipulation between the parties, the two cases were consolidated for trial. Shortly before the trial was to begin, however, Huckins Yacht moved to dismiss the limitation complaint on the ground that the court lacked admiralty jurisdiction. When the magistrate assigned to the case agreed and dismissed the complaint, Lewis Charters filed an appeal.

After first finding that the panel had jurisdiction to hear the appeal, Senior Circuit Judge Tuttle affirmed the dismissal on two separate grounds. Not only did Judge Tuttle determine that Lewis Charters' complaint did not bear a significant relationship to traditional maritime activity, he held, in a case of first impression for the Eleventh Circuit, that the Limitation of Liability Act does not provide an independent basis of admiralty jurisdiction where the underlying tort is non-maritime.

The final limitation case of the survey period was In the Matter of the Complaint of Boca Grande Club, Inc., decided by Judge Kovachevich. Like Keys Jet Ski, decided by Chief Judge King, the question posed was whether the Limitation Act applies to pleasure boats. Unlike Keys Jet Ski, however, the court reached the conclusion that the act did apply.

Robert Polakwich and Jonathan Richards rented a 16-foot catamaran from the Boca Grande Club, Inc. (Boca Grande). While using the catamaran, they were blown into a set of power lines and were electrocuted. Upon learning of the tragedy, Boca Grande filed a limitation complaint. In response, the personal representatives of Messrs. Polakwich and Richards asserted that the protections of the Limitation Act did not apply to the owners of pleasure crafts. Judge Kovachevich disagreed.

Although citing the same cases as had Chief Judge King in Keys Jet Ski, Judge Kovachevich read them differently. In particular, she

123. Finding that the lower court had dismissed the case for lack of subject matter jurisdiction, the panel concluded that it had jurisdiction to hear the appeal pursuant to 28 U.S.C. § 1291 (1982).

124. Lewis Charters, 871 F.2d at 1049-52, 1989 AMC at 1525-30 (relying on Kelly v. Smith, 485 F.2d 520 (5th Cir. 1973), cert. denied, 416 U.S. 969 (1974)).

125. Id. at 1052-54, 1989 AMC at 1530-33 (citing In re of Sisson, 867 F.2d 341 (7th Cir. 1989), and George v. Beavark, Inc., 402 F.2d 977 (8th Cir. 1968)).


127. See supra notes 109-11 and accompanying text.

128. See supra notes 110-11. 129. 808 F.2d 762 (11th Cir. 1987).

130. See supra note 110.

131. See supra notes 119-25.

132. In particular, Judge Kovachevich relied on the following sentence in Lewis Charters: "We do not disagree with Gibboney v. Wright, 417 F.2d 1054 (5th Cir. 1970), that in that event ownership vessels may limit their liability under the Limitation Act, while we recognize, as did the Gibboney court, that there is little reason for such a rule. (emphasis added)" Boca Grande Club, 715 F. Supp. at 342, 1989 AMC at 2323.


134. 857 F.2d 1575 (11th Cir. 1988).

135. In addition to suing Carras Helias, Mrs. Roach also sued the AQUA GRACE; the company that had carried out the cleaning; the president of the cleaning company; the lessor of the dock where the cleaning took place; and the insurers of the company. The state court dismissed the claim against the tortfeasor company by motion, Mrs. Roach settled with the dock lessor and its insurers. Although the AQUA GRACE was never arrested, the district court never acquired jurisdiction over the claim against it.

1990] Jarvis

VIII. Personal Injury and Death

A. Longshore and Harbor Workers

There were three cases during the survey year involving the Longshore and Harbor Workers' Compensation Act (LHWCA). In Roach v. M/V Aqua Grace, Irene C. Roach sued to recover damages after her son, Daniel C. Roach, died cleaning the hull of the AQUA GRACE. Despite being an inexperienced and uncertified diver, Daniel Roach had been hired sight-unseen after a brief telephone interview. While diving under the AQUA GRACE to scrape barnacles off her hull, he became trapped in mud Seventeen feet under water and died when his tank ran out of oxygen.

Although Mrs. Roach sued numerous entities, a complex array of stipulations, motions, and settlements resulted in Carras Helias, Ltd. (Carras Helias), the owner of the AQUA GRACE, being the only defendant to be taken to trial by Mrs. Roach. Prior to the start of the trial, however, the district court quashed the complaint on the
Pursuant to a stipulation between the parties, the two cases were consolidated for trial. Shortly before the trial was to begin, however, Huckins Yacht moved to dismiss the limitation complaint on the ground that the court lacked admiralty jurisdiction. When the magistrate assigned to the case agreed and dismissed the complaint, Lewis Charters filed an appeal.

After first finding that the panel had jurisdiction to hear the appeal,124 Senior Circuit Judge Tuttle affirmed the dismissal on two separate grounds. Not only did Judge Tuttle determine that Lewis Charters’ complaint did not bear a significant relationship to traditional maritime activity,125 he held, in a case of first impression for the Eleventh Circuit, that the Limitation of Liability Act does not provide an independent basis of admiralty jurisdiction where the underlying tort is non-maritime.126

The final limitation case of the survey period was In the Matter of the Complaint of Boca Grande Club, Inc.,127 decided by Judge Kovachevich. Like Keys Jet Ski, decided by Chief Judge King,128 the question posed was whether the Limitation Act applies to pleasure boats. Unlike Keys Jet Ski, however, the court reached the conclusion that the act did apply.

Robert Polackwich and Jonathan Richards rented a 16-foot catamaran from the Boca Grande Club, Inc. (Boca Grande). While using the catamaran, they were blown into a set of power lines and were electrocuted. Upon learning of the tragedy, Boca Grande filed a limitation complaint. In response, the personal representatives of Mesers Polackwich and Richards asserted that the protections of the Limitation Act did not apply to the owners of pleasure crafts. Judge Kovachevich disagreed.

Although citing the same cases as had Chief Judge King in Keys Jet Ski,129 Judge Kovachevich read them differently. In particular, she

123. Finding that the lower court had dismissed the case for lack of subject matter jurisdiction, the panel concluded that it had jurisdiction to hear the appeal pursuant to 28 U.S.C. § 1291 (1982).
124. Lewis Charters, 871 F.2d at 1049-52, 1989 AMC at 1525-30 (relying on Kelly v. Smith, 485 F.2d 520 (5th Cir. 1973), cert. denied, 416 U.S. 969 (1974)).
125. Id. at 1052-54, 1989 AMC at 1530-33 (citing In re of Sisson, 867 F.2d 341 (7th Cir. 1989), and George v. Beavark, Inc., 402 F.2d 977 (8th Cir. 1968)).
127. See supra notes 109-11 and accompanying text.
128. See supra notes 110-11.


 VIII. Personal Injury and Death

A. Longshores and Harbor Workers

There were three cases during the survey year involving the Longshore and Harbor Workers Compensation Act (LHWCA).130 In Roach v. M/V Aqua Grace,131 Irene C. Roach sued to recover damages after her son, Daniel C. Roach, died cleaning the hull of the AQUA GRACE. Despite being an inexperienced and uncertified diver, Daniel Roach had been hired sight-unseen after a brief telephone interview. While diving under the AQUA GRACE to scrape barnacles off her hull, he became trapped in mud seventeen feet under water and died when his tank ran out of oxygen.

Although Mrs. Roach sued numerous entities, a complex array of stipulations, motions, and settlements resulted in Carras Hellas, Ltd. (Carras Hellas), the owner of the AQUA GRACE, being the only defendant to be taken to trial by Mrs. Roach.132 Prior to the start of the trial, however, Carras Hellas moved for summary judgment on the

129. 808 F.2d 762 (11th Cir. 1987).
130. See supra note 110.
131. See supra notes 119-25.
132. In particular, Judge Kovachevich relied on the following sentence in Lewis Charters: “We do not agree with Gibbon v. Wright, 517 F.2d 1054 (5th Cir. 1975), in that owners of pleasure vessels may limit their liability under the Limitation Act, while we recognize, as did the Gibbon court, that there is little reason for such a rule. (emphasis added)” Boca Grande Club, 715 F. Supp. at 342, 1989 AMC at 2323.
134. 857 F.2d 1573 (11th Cir. 1988).
135. In addition to suing Carras Hellas, Mrs. Roach also sued the AQUA GRACE; the company that had carried out the cleaning; the president of the cleaning company; the lessee of the dock where the cleaning took place; and the insurers of the lessee. After the cleaning company was dismissed by stipulation and its president dismissed by motion, Mrs. Roach settled with the dock lessee and its insurers. Because the AQUA GRACE was never arrested, the district court never acquired jurisdiction over the claim against it.
ground that since it had not employed Daniel Roach, it was not liable for his death. When the district court agreed and granted the motion, Mrs. Roach appealed.

On appeal, a unanimous panel of the Eleventh Circuit, speaking through District Judge Aronovitz, agreed. Finding that Mrs. Roach had abandoned her argument that her son had been employed by Carras Hellas, Judge Aronovitz turned to her contention that Carras Hellas was liable under the LHWCA.

Specifically, Mrs. Roach contended that Carras Hellas knew or should have known that Sea Scrub Systems, Inc. (Sea Scrub), the company hired by Carras Hellas to clean the AQUA GRACE, was incompetent and through its incompetence had exposed Daniel Roach to working conditions that were dangerous. In response, Carras Hellas argued that even if Sea Scrub had been incompetent, Carras Hellas had no reason to know of Sea Scrub’s incompetence and therefore had no duty to protect Daniel Roach.

After considering both arguments, Judge Aronovitz sided with Carras Hellas. Finding himself controlled by the Supreme Court’s decision in Scindia Steam Navigation Co. v. De Los Santos, Judge Aronovitz concluded that: “Carras Hellas had no reason to suspect the incompetence of Sea Scrub. . . . In the absence of affirmative evidence to the contrary, an owner is entitled to rely on the representation of a marine contractor [like Sea Scrub] that it is qualified to execute the task for which it is engaged.”

The next LHWCA case of the period was Grantham v. Eastern Marine, Inc. The plaintiffs, Calvin and Gina Grantham, together with four others, were injured while employed by Eastern Marine, Inc. (Eastern Marine). Following their injuries, they applied to Gray & Company, Inc. (Gray & Company), for compensation under the LHWCA. At the time, Gray & Company was serving as the administrator of Eastern Marine’s self-insurance plan, as permitted by the

136. Roach, 857 F.2d at 1578 n.1 (citing Harris v. Plastics Mfg. Co., 617 F.2d 438, 440 (5th Cir. 1980)).
137. Id. at 1583.
138. 451 U.S. 156 (1981). In Scindia, the Supreme Court held that a shipowner owes no duty to a longshoreman except where it becomes aware that its ship poses a danger to the longshoreman and also is aware that the longshoreman's employer is not taking steps to protect the longshoreman. Id. at 178.
139. Roach, 857 F.2d at 1583.
140. 93 Bankr. 752 (N.D. Fla. 1988).
141. LHWCA.
142. Before the plaintiffs' claims could be paid by Gray & Company, Eastern Marine filed for bankruptcy. During the ensuing reorganization proceedings, Gray & Company paid the plaintiffs in full. When Bay Bank & Trust Company (Bay Bank), a secured creditor of Eastern Marine, learned of the payments, it sought to have them rescinded. In response, the plaintiffs and Gray Company argued that the payments were proper as administrative expenses.
143. After considering the arguments of the parties, Judge Killian found in favor of the Bay Bank and held that the plaintiffs' claims could not be treated as administrative expenses. He explained his decision by writing:

The Court . . . must find the funds expended conferred an "actual, concrete benefit to the estate" to be allowed as an administrative expense. . . . Gray & Company advanced funds on behalf of Eastern Marine, but those funds did not benefit all creditors of the estate . . .

While the classification of LSHWCA [sic] payments as administrative expenses has some superficial appeal, equitable considerations cannot be relied upon to vary statutory provisions of the Bankruptcy Code . . . While the Plaintiffs certainly have valid claims for payment by Eastern Marine, there is no legal basis for changing the order of priority established by the Bankruptcy Code.

The final LHWCA case of the year was Kirby v. OMI Corp.
ground that since it had not employed Daniel Roach, it was not liable for his death. When the district court agreed and granted the motion, Mrs. Roach appealed.

On appeal, a unanimous panel of the Eleventh Circuit, speaking through District Judge Aronovitz, agreed. Finding that Mrs. Roach had abandoned her argument that her son had been employed by Carras Hellas, Judge Aronovitz turned to her contention that Carras Hellas was liable under the LHWA.

Specifically, Mrs. Roach contended that Carras Hellas knew or should have known that Sea Scrub Systems, Inc. (Sea Scrub), the company hired by Carras Hellas to clean the AQUA GRACE, was incompetent and through its incompetence had exposed Daniel Roach to working conditions that were dangerous. In response, Carras Hellas argued that even if Sea Scrub had been incompetent, Carras Hellas had no reason to know of Sea Scrub's incompetence and therefore had no duty to protect Daniel Roach.

After considering both arguments, Judge Aronovitz sided with Carras Hellas. Finding himself controlled by the Supreme Court's decision in *Scindia Steam Navigation Co. v. De Los Santos*, Judge Aronovitz concluded that: "Carras Hellas had no reason to suspect the incompetence of Sea Scrub. . . . In the absence of affirmative evidence to the contrary, an owner is entitled to rely on the representation of a marine contractor [like Sea Scrub] that it is qualified to execute the task for which it is engaged." The next LHWA case of the period was *Grantham v. Eastern Marine, Inc.* The plaintiffs, Calvin and Gina Grantham, together with four others, were injured while employed by Eastern Marine, Inc. (Eastern Marine). Following their injuries, they applied to Gray & Company, Inc. (Gray & Company), for compensation under the LHWA. At the time, Gray & Company was serving as the administrator of Eastern Marine's self-insurance plan, as permitted by the

136. Roach, 857 F.2d at 1578 n.1 (citing Harris v. Plastics Mfg. Co., 617 F.2d 438, 440 (5th Cir. 1980)).
137. Id. at 1583.
138. 451 U.S. 156 (1981). In *Scindia*, the Supreme Court held that a shipowner owes no duty to a longshoreman except where it becomes aware that its ship poses a danger to the longshoreman and is also aware that the longshoreman's employer is not taking steps to protect the longshoreman. Id. at 178.
139. Roach, 857 F.2d at 1583.
140. 93 Bankr. 752 (N.D. Fla. 1988).

LHWA.141

Before the plaintiffs' claims could be paid by Gray & Company, Eastern Marine filed for bankruptcy. During the ensuing reorganization proceedings, Gray & Company paid the plaintiffs in full.142 When Bay Bank & Trust Company (Bay Bank), a secured creditor of Eastern Marine, learned of the payments, it sought to have them rescinded. In response, the plaintiffs and Gray Company argued that the payments were proper as administrative expenses.143

After considering the arguments of the parties, Judge Killian found in favor of the Bay Bank and held that the plaintiffs' claims could not be treated as administrative expenses. He explained his decision by writing:

The Court . . . must find the funds expended conferred an "actual, concrete benefit to the estate" to be allowed as an administrative expense. . . . Gray & Company advanced funds on behalf of Eastern Marine, but those funds did not benefit all creditors of the estate.

While the classification of LSHWCA [sic] payments as administrative expenses has some superficial appeal, equitable considerations cannot be relied upon to vary statutory provisions of the Bankruptcy Code . . . While the Plaintiffs certainly have valid claims for payment by Eastern Marine, there is no legal basis for changing the order of priority established by the Bankruptcy Code.144

The final LHWA case of the year was *Kirby v. OMI Corp.*145

141. An employer subject to the LHWA must either procure insurance or provide self-insurance to cover claims arising under the LHWA. Id. at 753.
142. In all, Gray & Company paid the plaintiffs $182,289.19. Id. It is not entirely clear why Gray & Company paid the plaintiffs' claims. As the court noted: "Gray & Company, without prior court approval, continued to make benefit payments and advance funds necessary to make those payments, even after the bankruptcy petition was filed." Id.
143. Under 11 U.S.C. § 503 (1982), necessary expenses of the estate, including those needed to preserve the estate, may be paid as administrative expenses ahead of the claims of the debtor's creditors. Id.
144. Grantham, 93 Bankr. at 754-55. In rejecting the idea that LHWA payments are to be treated as administrative expenses, Judge Killian noted that the only case to treat LHWA payments as administrative expenses did so based on a provision of the LHWA that was repealed in 1938. Id. at 754 (citing In re Charles Nelson Co., 29 F. Supp. 56 (N.D. Cal. 1939)).
Kirby raised the same issue as had Roach.\textsuperscript{144} As in Roach, the court in Kirby found the shipowner blameless.

Roy Alan Kirby, Sr., was killed on January 15, 1986, as he was hanging pipe aboard the M/V OMI WABASH. At the time, the OMI WABASH was undergoing repairs at a shipyard in Jacksonville.\textsuperscript{147}

While Mr. Kirby worked on the pipe, Oland Cutchin, another employee of the shipyard, ordered a hydrostatic test to be run on the pipe. As water was forced through the pipe, the pipe’s bellmouth assembly struck and killed Roy Kirby.

Following the accident, Gloria E. Kirby brought suit against OMI Corporation (OMI), the owner of the OMI WABASH. A jury subsequently found OMI liable to Gloria Kirby in the amount of $503,250.\textsuperscript{148}

After the entry of the jury’s verdict, OMI renewed its motion for a directed verdict.\textsuperscript{149} OMI argued that there was insufficient evidence to hold it liable for the death. In particular, OMI contended that it had no way of preventing Mr. Cutchin’s ill-timed order. After considering the facts adduced at trial and the applicable law, Judge Tygart granted OMI’s motion: “[OMI] could not know that the shipyard was not adequately protecting Mr. Kirby from a dangerous condition about which it had no knowledge in the first place. Thus, the court concludes as a matter of law that the shipowner breached no duty that it owed to the plaintiff’s decedent.”\textsuperscript{150}

B. Passengers

As usual, the past year produced a number of decisions involving passengers injured aboard cruise ships. Only one, however, was noteworthy.\textsuperscript{151}

\textsuperscript{144} See supra notes 134-39 and accompanying text.

\textsuperscript{147} The primary purpose of the repairs was to install a segregated ballast system. Kirby, 1989 AMC at 1080.

\textsuperscript{148} After concluding that the total damages in the case were $671,000, the jury found that OMI was seventy-five percent liable for the accident and that Mr. Kirby was 25 percent liable. Thus, the total amount due to Mrs. Kirby came to $503,250. Id. at 1079.

\textsuperscript{149} OMI originally made its motion at the close of the plaintiff’s case and renewed it at the close of all evidence. Id. at 1079-80.

\textsuperscript{150} Id. at 1086-87.

\textsuperscript{151} The other passenger cases of the period resulted in evidentiary and procedural rulings of limited interest. See, e.g., Katz v. Costa Armatori, S.P.A., 718 F.

\url{https://nsuworks.nova.edu/nlr/vol14/iss3/12}
Kirby raised the same issue as had Roach.\textsuperscript{146} As in Roach, the court in Kirby found the shipowner blameless.

Roy Alan Kirby, Sr., was killed on January 15, 1986, as he was hanging pipe aboard the M/V OMI WABASH. At the time, the OMI WABASH was undergoing repairs at a shipyard in Jacksonville.\textsuperscript{147} While Mr. Kirby worked on the pipe, Oland Cutchin, another employee of the shipyard, ordered a hydrostatic test to be run on the pipe. As water was forced through the pipe, the pipe's bellmouth assembly struck and killed Roy Kirby.

Following the accident, Gloria E. Kirby brought suit against OMI Corporation (OMI), the owner of the OMI WABASH. A jury subsequently found OMI liable to Gloria Kirby in the amount of $503,250.\textsuperscript{148}

After the entry of the jury's verdict, OMI renewed its motion for a directed verdict.\textsuperscript{149} OMI argued that there was insufficient evidence to hold it liable for the death. In particular, OMI contended that it had no way of preventing Mr. Cutchin's ill-timed order. After considering the facts adduced at trial and the applicable law, Judge Tygart granted OMI's motion: "[OMI] could not know that the shipyard was not adequately protecting Mr. Kirby from a dangerous condition about which it had no knowledge in the first place. Thus, the court concludes as a matter of law that the shipowner breached no duty that it owed to the plaintiff's decedent."\textsuperscript{150}

B. Passengers

As usual, the past year produced a number of decisions involving passengers injured aboard cruise ships. Only one, however, was noteworthy.\textsuperscript{151}

\textsuperscript{146} See supra notes 134-39 and accompanying text.

\textsuperscript{147} The primary purpose of the repairs was to install a segregated ballast system. Kirby, 1989 AMC at 1080.

\textsuperscript{148} After concluding that the total damages in the case were $671,000, the jury found that OMI was seventy-five percent liable for the accident and that Mr. Kirby was 25 percent liable. Thus, the total amount due to Mrs. Kirby came to $503,250. Id. at 1079.

\textsuperscript{149} OMI originally made its motion at the close of the plaintiff's case and renewed it at the close of all evidence. Id. at 1079-80.

\textsuperscript{150} Id. at 1086-87.

\textsuperscript{151} The other passenger cases of the period resulted in evidentiary and procedural rulings of limited interest. See, e.g., Katz v. Costa Armatori, S.p.A., 718 F.
In a short opinion, Chief Judge King agreed with Costa Crociere and the Fifth Circuit and granted the motion. Although invited by the Mascolos to fashion a new rule, Chief Judge King stated that considerations of stare decisis prevented him from doing so:

"[T]he plaintiffs . . . argue . . . [that] the existing rule of law needs to be changed . . . . The mere fact that the controlling principles of law have been in existence for over a century is an indication that the rule is a sound one. The plaintiff's argument that the rule is unduly harsh and not contemporary is a mere house of cards. Under the doctrine of stare decisis we will not and cannot abolish a century-old rule of law."

C. Seamen

There were five cases during the year under review involving the Jones Act and suits for injuries to or the death of seamen.

In Royal Caribbean Cruise Lines A/S v. Caproli, Sesto Caproli was injured while working as a seaman aboard the defendants' vessel. He brought a Jones Act suit and, pursuant to a jury verdict, the trial court entered judgment in favor of the plaintiff. Subsequently, the trial court also awarded prejudgment interest to the plaintiff on the ground that counsel for both parties had stated in open court that the trial court "has discretion to make such awards." A short time later, however, the defendants began to dispute the stipulation and the court's discretion to make such an award in a motion to vacate the order. When the trial court refused to change its decision, the defendants appealed.

On appeal, Judges Barkdull, Baskin, and Jorgenson issued a very brief per curiam opinion in which they affirmed the trial court by writing: "Because the record reflects that appellants agreed to the judg-

157. 46 U.S.C. § 688 (1982). The Jones Act, which was enacted in 1920, reversed traditional maritime law by giving seamen the right to sue their employers for negligence.
158. 534 So. 2d 913 (Fla. 3d Dist. Ct. App. 1988).
159. This decision was affirmed by the Third District in Royal Caribbean Cruise Lines, A/S v. Caproli, 492 So. 2d 376 (Fla. 3d Dist. Ct. App. 1986).
160. Royal Caribbean, 534 So. 2d at 913.
161. Id. (citing Cannon Sand & Rock, Inc. v. Maulde Indus., Inc., 203 So. 2d 636, 638 (Fla. 3d Dist. Ct. App. 1967)).
162. 546 So. 2d 6 (Fla. 3d Dist. Ct. App.), rev. dismissed, 553 So. 2d 1167 (Fla. 1989).
163. This was Mr. Gomez's second visit to the hospital while in port. On both occasions he was admitted and treated for "an ulcer in the digestive system." Id. at 9.
164. Mrs. Gomez sued three different defendants using four separate theories of liability, including Jones Act negligence and unseaworthiness. Id.
165. Id.
166. Id. at 8 (citing Bury v. Marietta Dodge, 692 F.2d 1335, 1338 (11th Cir. 1982)).
167. Id. at 10 (citing Fla. STAT § 90.902 (1987)).
168. Judge Barkdull also argued that the judgment should be reversed and the
In a short opinion, Chief Judge King agreed with Costa Crociere and the Fifth Circuit and granted the motion. Although invited by the Mascolos to fashion a new rule, Chief Judge King stated that considerations of *stare decisis* prevented him from doing so:

> [The plaintiffs . . . argue . . . [that] the existing rule of law needs to be changed . . . .

The mere fact that the controlling principles of law have been in existence for over a century is an indication that the rule is a sound one. The plaintiff’s argument that the rule is unduly harsh and not contemporary is a mere house of cards. Under the doctrine of *stare decisis* we will not and cannot abolish a century-old rule of law.\(^{166}\)

C. Seamen

There were five cases during the year under review involving the Jones Act\(^{187}\) and suits for injuries to or the death of seamen.

In *Royal Caribbean Cruise Lines A/S v. Caprilli*,\(^{188}\) Sexto Caprilli was injured while working as a seaman aboard the defendants’ vessel. He brought a Jones Act suit and, pursuant to a jury verdict, the trial court entered judgment in favor of the plaintiff.\(^{189}\) Subsequently, the trial court also prejudgment interest to the plaintiff on the ground that counsel for both parties had stated in open court that the trial court “has discretion to make such awards.”\(^{189}\) A short time later, however, the defendants began to dispute the stipulation and the court’s discretion to make such an award in a motion to vacate the order. When the trial court refused to change its decision, the defendants appealed.

On appeal, Judges Barkdull, Baskin, and Jorgenson issued a very brief *per curiam* opinion in which they affirmed the trial court by writing: “Because the record reflects that appellants agreed to the judgment, they are not entitled to review.”\(^{188}\)

In *Sunnyvale Maritime Co. v. Gomez*,\(^{164}\) Jose Luis Gomez-Duarte was killed while serving as a seaman on a cargo vessel known as the MV *ANADRIA*. On May 15, 1982, the ANADRIA was in the Port of Puerto Cabello, Venezuela. Granted liberty, he went on shore, became drunk, and engaged in homosexual acts which resulted in a foreign object being inserted in his rectum. Eight days later, he died while undergoing an operation at the Dr. Adolfo Prince Lara Hospital in Puerto Cabello.\(^{165}\)

When she learned of her husband’s death, Elsa Delfina Montoya Gomez proceeded to trial against various parties.\(^{164}\) Prior to putting on her first witness, Mrs. Gomez proffered her husband’s medical records from Prince Lara Hospital.\(^{168}\) In response, the defense objected to the admission of the records on the ground that the copies had not been properly authenticated. The trial court, however, held that the records were proper and ordered the trial to proceed. Following the entry of a jury verdict in favor of Mrs. Gomez, one of the defendants renewed its objection to the admissibility of the hospital records.

On appeal, a divided panel affirmed the admission of the records. Writing for himself and Judge Ferguson, Judge Pearson found that there had been sufficient grounds for the trial court to admit the records.\(^{168}\) Judge Barkdull, however, disagreed. Noting that Mrs. Gomez’s attorney had gotten the records admitted as public documents, Judge Barkdull found that the records did not qualify as public documents because they had not been certified by a diplomatic or consular official as required by statute.\(^{168}\) As such, Judge Barkdull argued that the records could not come in regardless of any testimony introduced at trial.\(^{168}\)

157. 46 U.S.C. § 688 (1982). The Jones Act, which was enacted in 1920, reversed traditional maritime law by giving seamen the right to sue their employers for negligence.

158. 534 So. 2d 913 (Fla. 3d Dist. Ct. App. 1988). This decision was affirmed by the Third District in *Royal Caribbean Cruise Lines, A/S v. Caprilli*, 492 So. 2d 376 (Fla. 3d Dist. Ct. App. 1986).

159. *Royal Caribbean*, 534 So. 2d at 913.
In Garay v. Carnival Cruise Lines, Inc., Balbino Garay sued Carnival Cruise Lines, Inc. (Carnival), for injuries he sustained when he slipped and fell down a flight of stairs while working as a seaman aboard the M/V TROPICALE. At trial, the jury found against Garay on four of his claims because Carnival proved that Garay had been intoxicated at the time of his accident. The jury did find in favor of Garay, however, on his claim that Carnival had failed to provide him with sufficient medical treatment following the accident, and awarded him $275,000. Following the verdict, both sides moved for judgment notwithstanding the verdict.

After reviewing all facets of the trial, Judge Ryskamp had no trouble granting Carnival’s motion in a brief opinion. Explaining his decision, Judge Ryskamp wrote: “Plaintiff may not recover on a failure to treat claim, where there is no underlying finding of negligence or breach of duty . . . .”

Ali v. Moonglow Trawler Co. involved a very different set of facts. Farhad Ali was injured while working aboard a shrimp boat as it fished in the territorial waters of Guyana. Following his accident he sued the company that owned the vessel. He also sued three other companies that were affiliated with the owning company. In response, the defendants moved to have the affiliated companies dropped from the suit, the plaintiff’s service quashed, and the suit dismissed on the ground of forum non conveniens. In a well-reasoned opinion, Judge Spicola denied all three requests.

Turning first to the question of who was a proper defendant, Judge Spicola found that neither side had established indisputably who Ali’s employer was at the time of his accident. In particular, Judge Spicola was troubled that none of the parties had addressed such fundamental questions “as who hired Ali, who set his hours, who paid his wages, who decided which boat he worked on, and who had the authority to terminate his employment.” Accordingly, Judge Spicola refused to grant the affiliated companies’ request that they be let out of the suit.

Judge Spicola next considered the service of process issue. Here he had no trouble refusing the defendants’ request. He found that the defendants had been properly served and, although two of the companies were incorporated in the Cayman Islands, all of the defendants were present in Florida either directly or through an agent.

Finally, Judge Spicola addressed the issue of forum non conveniens. After first ruling that American law applied to the case because the vessel’s flag, the plaintiff’s preferred forum, and the defendants’ allegiances and bases of operations were American, Judge Spicola specifically refused to grant the defendants’ request because:

Defendants in the instant suit have not made any showing that Ali has an alternate and more convenient forum. Nor have they shown what type of relief could be obtained in the supposedly more convenient court. . . . As this action now stands, the court can only speculate what witnesses and documents might be material and where they might be located. In addition, there is nothing to show that Ali has an adequate remedy if he is sent to the courts of Grand Cayman or Guyana.

Because of the lack of competent evidence concerning an alternate forum, and because two of the parties to this action are Florida corporations, there is no basis on which to grant a motion for dismissal based on FNC.

The final Jones Act case of the period also raised choice-of-forum questions. In Rojas v. Kloster Cruise, A/S, Francisco Sergio Quiroga Rojas, a Chilean national, was injured on November 8, 1986, while serving aboard the Norwegian cruise ship M/V SOUTHWARD. At the time, the SOUTHWARD was docked in Nassau, Bahamas, while on a voyage from the Port of Miami. Upon returning to Florida, Rojas sued Kloster Cruise, A/S (Kloster), the Norwegian owner of the SOUTHWARD. In response, Kloster moved to have the case dismissed. The trial judge, agreeing with Kloster’s argument that the case bore no substantial relationship to the United States, granted the motion.

On appeal, a unanimous panel, speaking through Chief Judge Schwartz, reversed the trial court. Although admitting that the case was one between two foreigners arising out of an accident that occurred
In *Garay v. Carnival Cruise Lines, Inc.*,168 Balbino Garay sued Carnival Cruise Lines, Inc. (Carnival), for injuries he sustained when he slipped and fell down a flight of stairs while working as a seaman aboard the M/V TROPICALE. At trial, the jury found against Garay on four of his claims because Carnival proved that Garay had been intoxicated at the time of his accident. The jury did find in favor of Garay, however, on his claim that Carnival had failed to provide him with sufficient medical treatment following the accident, and awarded him $275,000.169 Following the verdict, both sides moved for judgment notwithstanding the verdict.

After reviewing all facets of the trial, Judge Ryskamp had no trouble granting Carnival’s motion in a brief opinion. Explaining his decision, Judge Ryskamp wrote: “Plaintiff may not recover on a failure to treat claim, where there is no underlying finding of negligence or breach of duty . . . ”170

*Ali v. Moonglow Trawler Co.*,171 involved a very different set of facts. Farhad Ali was injured while working aboard a shrimp boat as it fished in the territorial waters of Guyana. Following his accident he sued the company that owned the vessel. He also sued three other companies that were affiliated with the owning company. In response, the defendants moved to have the affiliated companies dropped from the suit, the plaintiff’s service quashed, and the suit dismissed on the ground of *forum non conveniens*. In a well-reasoned opinion, Judge Spicola denied all three requests.172

Turning first to the question of who was a proper defendant, Judge Spicola found that neither side had established indisputably who Ali’s employer was at the time of his accident. In particular, Judge Spicola was troubled that none of the parties had addressed such fundamental questions “as who hired Ali, who set his hours, who paid his wages, who decided which boat he worked on, and who had the authority to terminate his employment.”173 Accordingly, Judge Spicola refused to grant the affiliated companies’ request that they be let out of the suit.

Judge Spicola next considered the service of process issue. Here he

---

168. *Id.* at 1422, 1989 AMC 1204 (S.D. Fla. 1989).
169. *Id.* at 1422, 1989 AMC 1204.
170. *Id.* at 1424-25, 1989 AMC at 1209 (citing *Nettles v. Electrolux Motor AB*, 784 F.2d 1574 (11th Cir. 1986)).
171. *Id.* at 105 (Fla. 13th Cir. Ct. 1989).
172. *Id.*
173. *Id.*
174. *Id.* at 107.
in foreign waters, Chief Judge Schwartz found that "the overwhelming economic and commercial contacts between the vessel owner and the United States . . . require the application of our law."179

IX. Pilots

The past year generated two pilotage cases. In Florida Department of Professional Regulation v. Baggett,180 the Department of Professional Regulation (Department) appealed a final order of the Board of Pilot Commissioners (Board) rejecting a hearing officer’s recommendation that Captain Thomas A. Baggett be found guilty of negligence in piloting the M/V SCANDINAVIAN STAR.181 In an extremely brief opinion, Judge Barfield agreed with the Department, reversed the Board’s decision, and remanded the case to the Board with instructions to adopt the hearing officer’s recommendation.182 In an extremely terse explanation of his decision, Judge Barfield wrote: "We hold that the Board improperly substituted its own judgment for that of the hearing officer’s contrary to section 120.57(1)(b)(10), Florida Statutes (1987)."

The other pilotage case of the year was Chevron U.S.A., Inc. v. Vessel J. Louis.183 On the evening of November 6, 1985, the M/V J. LOUIS was preparing to enter Tampa Bay and put in at the National Gypsum dock in Port Tampa. At approximately 8:50 p.m., Harry J. Williams, a State-licensed pilot,184 boarded the J. LOUIS as she neared the sea buoy, took command of the ship, and without checking the ship’s speed data ordered “full sea speed.”185

179. Id. at 60-61, 1990 AMC 702-03 (relying on Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 (1970)). Chief Judge Schwartz found it particularly significant that the United States was the exclusive source of Kloster’s income and the sole point of embarkation and disembarkation for Kloster’s ships.


181. The court’s opinion does not detail the exact circumstances of Captain Baggett’s negligence.

182. Baggett, 355 So. 2d at 319-20 (citing Tuveson v. Florida Governor’s Council on Indian Affairs, 495 So. 2d 790 (Fla. 1st Dist. Ct. App. 1986)).

183. Id. at 319.


185. In addition to being licensed by the State of Florida, Captain Williams was an active member of the Tampa Bay Pilots and had helped draft the Pilots’ “Recommendations for Vessel Movement.” Id. at 888.

186. According to Captain Williams, he did not check the speed data of the J. LOUIS because the wheelhouse was dark. Id. Similarly, he did not check the vessel’s anchors because he assumed that they were both ready to be dropped. In fact, only the port anchor was so positioned. Id.

187. The grounding took place at the west end of the G-cut channel. Id.


Beginning at 11:35 p.m., Captain Williams slowed the J. LOUIS to half ahead and then to slow speed in order to meet the tugs YVONNE and PALMETTO. It had been agreed earlier that the two tugs would help the J. LOUIS on her final approach to the dock. At 11:45 p.m., the YVONNE and PALMETTO moved alongside the J. LOUIS.

Ten minutes later, disaster struck as the J. LOUIS ran aground.187 After reviewing the situation, Captain Williams requested that the tug TAMPA, the most powerful and maneuverable tug on Tampa Bay, take the place of the YVONNE, and help the J. LOUIS get off the strand. This proved to be a wise decision, for within ten minutes of arriving the TAMPA was able to free the J. LOUIS. By now, it was 2:35 a.m. and the J. LOUIS was nearly two hours behind schedule.

Resuming its trip into the dock, the next fifty-five minutes of the trip proved uneventful. But at 3:30 a.m., disaster struck again. Moving at a speed too fast for the TAMPA and the PALMETTO to provide any assistance, the J. LOUIS lost her bearings and crashed into a dock owned by Chevron U.S.A., Inc. (Chevron). Subsequently, Chevron filed a suit against numerous parties, including Captain Williams, the J. LOUIS, and the three tugs.

Following a three day bench trial, Judge Kovachevich entered judgment in favor of Chevron. In doing so, however, she found that none of the tugs were liable for Chevron’s damages. Placing the blame for the allision squarely on the shoulders of Captain Williams and Captain Yung Peng Tiao, the master of the J. LOUIS, Judge Kovachevich wrote:

The Court finds the casualty was attributable to the negligence of the pilot and vessel master in navigating the vessel at an excessive rate of speed so that she ran aground, missed high water slack, and then tried to compensate for the delay by proceeding too fast and too far north as she entered the port. The situation was exacerbated by the failure of the ship’s officers to take any steps to correct the excessive speed ordered by the pilot, failure and inability to drop the starboard anchor, and failure to communicate between themselves as the situation developed.186

1902
in foreign waters, Chief Judge Schwartz found that "the overwhelming economic and commercial contacts between the vessel owner and the United States . . . require the application of our law."179

IX. Pilots

The past year generated two piloting cases. In Florida Department of Professional Regulation v. Baggett,180 the Department of Professional Regulation (Department) appealed a final order of the Board of Pilot Commissioners (Board) rejecting a hearing officer's recommendation that Captain Thomas A. Baggett be found guilty of negligence in piloting the M/V SCANDINAVIAN STAR.181 In an extremely brief opinion, Judge Barfield agreed with the Department, reversed the Board's decision, and remanded the case to the Board with instructions to adopt the hearing officer's recommendation.182 In an extremely terse explanation of his decision, Judge Barfield wrote: "We hold that the Board improperly substituted its own judgment for that of the hearing officer's contrary to section 120.57(1)(b)(10), Florida Statutes (1987)."183

The other piloting case of the year was Chevron U.S.A., Inc. v. Vessel J. Louis.184 On the evening of November 6, 1985, the M/V J. LOUIS was preparing to enter Tampa Bay and put in at the National Gypsum dock in Port Tampa. At approximately 8:50 p.m., Harry J. Williams, a State-licensed pilot,185 boarded the J. LOUIS as she neared the sea buoy, took command of the ship, and without checking the ship's speed data ordered "full sea speed."186

179. Id. at 60-61, 1990 AMC 702-03 (relying on Hellenic Lines Ltd. v. Rhodos. 398 U.S. 306 (1970)). Chief Judge Schwartz found it particularly significant that the United States was the exclusive source of Kloster's income and the sole point of embarkation and disembarkation for Kloster's ships.


181. The court's opinion does not detail the exact circumstances of Captain Baggett's negligence.

182. Baggett, 555 So. 2d at 319-20 (citing Tuveson v. Florida Governor's Council on Indian Affairs, 495 So. 2d 790 (Fla. 1st Dist. Ct. App. 1986)).

183. Id. at 319.


185. In addition to being licensed by the State of Florida, Captain Williams was an active member of the Tampa Bay Pilots and had helped draft the Pilots' "Recommendations for Vessel Movement." Id. at 888.

186. According to Captain Williams, he did not check the speed data of the J. LOUIS because the wheelhouse was dark. Id. Similarly, he did not check the vessel's

Beginning at 11:35 p.m., Captain Williams slowed the J. LOUIS to half ahead and then to slow speed in order to meet the tugs YVONNE and PALMETTO. It had been agreed earlier that the two tugs would help the J. LOUIS on her final approach to the dock. At 11:45 p.m., the YVONNE and PALMETTO moved alongside the J. LOUIS.

Ten minutes later, disaster struck as the J. LOUIS ran aground.187 After reviewing the situation, Captain Williams requested that the tug TAMPA, the most powerful and maneuverable tug on Tampa Bay, take the place of the YVONNE, and help the J. LOUIS get off the strand. This proved to be a wise decision, for within ten minutes of arriving the TAMPA was able to free the J. LOUIS. By now, it was 2:35 a.m. and the J. LOUIS was nearly two hours behind schedule.

Resuming its trip into the dock, the next fifty-five minutes of the trip proved uneventful. But at 3:30 a.m., disaster struck again. Moving at a speed too fast for the TAMPA and the PALMETTO to provide any assistance, the J. LOUIS lost her bearings and crashed into a dock owned by Chevron U.S.A., Inc. (Chevron). Subsequently, Chevron filed a suit against numerous parties, including Captain Williams, the J. LOUIS, and the three tugs.

Following a three day bench trial, Judge Kovachevich entered judgment in favor of Chevron. In doing so, however, she found that none of the tugs were liable for Chevron's damages. Placing the blame for the allision squarely on the shoulders of Captain Williams and Captain Yung Peng Tiao, the master of the J. LOUIS, Judge Kovachevich wrote:

The Court finds the casualty was attributable to the negligence of the pilot and vessel master in navigating the vessel at an excessive rate of speed so that she ran aground, missed high water slack, and then tried to compensate for the delay by proceeding too fast and too far north as she entered the port. The situation was exacerbated by the failure of the ship's officers to take any steps to correct the excessive speed ordered by the pilot, failure and inability to drop the starboard anchor, and failure to communicate between themselves as the situation developed.188


Published by NSUWorks, 1990
X. Salvage

There were two salvage cases during the past year. 189 In Treasure Salvors, Inc. v. Tilley, 190 Melvin A. Fisher, the intrepid underwater explorer, was back in court. Fisher's company, Armada Research, Inc. (Armada), had entered into a written contract with Louis and Madeleine P. Tilley. Pursuant to the contract, the Tilleys had invested $12,500 in Armada in return for a 0.25% interest in all of the treasure recovered by Armada from the "Atocha" and the "Margarita." 191

Under paragraph 3 of the contract, Armada agreed to pursue salvage operations until January 1, 1975, or until the "operations [were] no longer profitable." 192 Subsequently, a dispute arose between Armada and the Tilleys. According to Armada, the parties had mutually agreed in writing to extend the termination date to January 1, 1979, as permitted by paragraph 9 of the contract. The Tilleys, however, argued that there had been no such extension and, as a result, the contract had come to an end on January 1, 1975. 193

Following a bench trial, the trial court found in favor of the Tilleys, concluding that the contract was ambiguous and as such had to be resolved against Armada, the drafter of the agreement. In response, Armada filed a timely appeal.

On appeal, the trial court's judgment was reversed. Finding the contract to be clear on its face, Judge Schoonover, speaking for a unanimous panel, ruled that the contract had been properly extended and therefore had continued until January 1, 1979. As such, he remanded the case to the trial court with directions that it enter judgment for Armada. 194

189. Although both cases were treated as salvage cases by the parties and the courts, they appear to actually have arisen under the law of finds and derelicts, a distinct branch of admiralty law. See generally Morse, Salvage, in The Florida Bar Maritime Law and Practice § 5.7, at 227-28 (2d ed. 1987).

190. 534 So. 2d 834 (Fla. 2d Dist. Ct. App. 1988).

191. The ATOCHA and the MARGARITA are ancient Spanish galleons that sank in heavy storms off the Marquesas Key while returning from the New World loaded with treasure. Id. at 835.

192. Id.

193. It is unclear from the court's statement of the facts whether there was in fact a written agreement to extend the contract and, if there was, what the extension said.

194. According to Judge Schoonover:
If we were to interpret paragraph three as extending the contract beyond January 1, 1975, until salvage operations were no longer profitable, the
X. Salvage

There were two salvage cases during the past year. In *Treasure Salvors, Inc. v. Tilley*, Melvin A. Fisher, the intrepid underwater explorer, was back in court. Fisher's company, Armada Research, Inc. (Armada), had entered into a written contract with Louis P. Tilley. Pursuant to the contract, the Tilleys had invested $12,500 in Armada in return for a 0.25% interest in all of the treasure recovered by Armada from the "Atocha" and the "Margarita." Under paragraph 3 of the contract, Armada agreed to pursue salvage operations until January 1, 1975, or until the "operations were no longer profitable." Subsequently, a dispute arose between Armada and the Tilleys. According to Armada, the parties had mutually agreed in writing to extend the termination date to January 1, 1979, as permitted by paragraph 9 of the contract. The Tilleys, however, argued that there had been no such extension and, as a result, the contract had come to an end on January 1, 1975.

Following a bench trial, the trial court found in favor of the Tilleys, concluding that the contract was ambiguous and as such had to be resolved against Armada, the drafter of the agreement. In response, Armada filed a timely appeal.

On appeal, the trial court's judgment was reversed. Finding the contract to be clear on its face, Judge Schoonover, speaking for a unanimous panel, ruled that the contract had been properly extended and therefore had continued until January 1, 1979. As such, he remanded the case to the trial court with directions that it enter judgment for Armada.

---

189. Although both cases were treated as salvage cases by the parties and the courts, they appear to actually have arisen under the law of finds and derelicts, a distinct branch of admiralty law. See generally Morse, *Salvage* in *The Florida Bar Maritime Law and Practice* § 5.7, at 227-28 (2d ed. 1987).

190. 534 So. 2d 834 (Fla. 2d Dist. Ct. App. 1988).

191. The *Atocha* and the *Margarita* are ancient Spanish galleons that sank in heavy storms off the Marquesas Key while returning from the New World loaded with treasure. *Id.* at 835.

192. *Id.*

193. It is unclear from the court's statement of the facts whether there was in fact a written agreement to extend the contract and, if there was, what the extension said.

194. According to Judge Schoonover:

If we were to interpret paragraph three as extending the contract beyond January 1, 1975, until salvage operations were no longer profitable, the specific date in paragraph three and all of paragraph nine would be meaningless. On the other hand, by giving meaning to both provisions, and adopting a reasonable interpretation, it becomes clear that the contract was to remain in force until January 1, 1975, unless salvage operations become unprofitable prior to that date. By allowing the specific date mentioned in both paragraph to control the general language, the provisions are reconciled and both given effect.

195. 874 F.2d 1550 (11th Cir. 1989).

196. Under the insurance policy taken out by A & S, Albany would have had to pay $250,000 to A & S if the *Billfisher* had remained lost. *Id.* at 1551. According to the court, the *Billfisher* had become lost after being abandoned by her crew following an unexplained peril. *Id.* at 1550.

197. Albany's position was based on Fla. Stat. § 637.7262 (1987), which states in relevant part: "It shall be a condition precedent to the . . . maintenance of a cause of action against a liability insurer by a . . . third party . . . that such person shall first obtain a judgment against . . . [the insured]." *Cresci*, 874 F.2d at 1551 n.1.
ance law, the panel concluded that the statutory bar pled by Albany was "not applicable."198

XI. Conclusion

With the exception of the Supreme Court’s decision in Bonito Boats,199 the surveyed period was a rather quiet and routine one. It produced no landmark opinions and no groundbreaking precedents. In addition, the year failed to resolve such key issues as whether the Limitation of Liability Act applies to pleasure boats200 and passed up the opportunity to take a fresh look at certain longstanding problems, such as the inability of cruise passengers to recover for the negligence of shipboard physicians.201 Nevertheless, the year produced its fair share of well reasoned and carefully crafted opinions. In particular, Judge A. Jay Cristol is to be commended for his decision to make Anthony Williams face the tragic consequences of his indefensible decision to drink while operating a boat.202 It is to be hoped that Judge Cristol’s opinion will, in the months to come, receive careful attention from all boaters and their attorneys.

198. Cresci, 874 F.2d at 1551.
199. See supra notes 2-14 and accompanying text.
200. See supra notes 109-11 and 126-32 and accompanying text. Shortly after the survey period ended, however, the matter was resolved when the Eleventh Circuit reversed Chief Judge King and held, in an opinion by Judge Hatchett, that the act does apply to pleasure boats. See Keys Jet Ski, Inc. v. Kays, 893 F.2d 1225, 1990 AMC 609 (11th Cir. 1990).
201. See supra notes 152-56 and accompanying text.
202. See supra notes 65-71 and accompanying text.

The PRUCOL Proviso in Public Benefits Law: Alien Eligibility for Public Benefits

Sharon F. Carton*

I. Introduction

Alien eligibility for public benefits is a legal morass marked by wide inconsistency and topical controversy. As a general rule, entitlement has varied depending on two sets of criteria relating to alienage: first, the immigration status of the alien; and second, the specific program involved. Each classification of alien, based on immigration status, has enjoyed different success in the effort to secure entitlement to benefits. An alien’s eligibility for benefits varies with the specific nature of the program.

Persons deemed to satisfy the requirement of “permanently residing in the United States under color of law” (hereinafter PRUCOL) have generally been held to be eligible for the major federal public benefit programs.1 That standard, however, has been interpreted differently for different programs, and has been the subject of extensive legislation and litigation within the past two decades.

* Professor, Nova University Shepard Broad Law Center, LL.M. in International and Comparative Law, George Washington University National Law Center, Feb. 1986; J.D. Hofstra University School of Law, May 1979.

The author gives special thanks to Valory Greenfield and Paulette Etting, Staff Attorneys with Legal Services of Greater Miami, Inc., for their priceless assistance, in the form of both extensive research and insightful suggestions. The author also extends gratitude and appreciation to research assistant Seth Labin for his invaluable contributions.

1. Although Medicare and Food Stamps are major federal public benefit programs, PRUCOL is not used as a criterion for alien eligibility for those programs. For Medicare, aliens are eligible to receive hospitalization benefits regardless of their immigration status, as long as they meet the aged or disabled definitional requirements, and have worked in covered employment under a valid Social Security account. C. Wheeler, Alien Eligibility for Public Benefits: Part I at 8 (Immigration Briefings No. 88-11, 1988).

For Food Stamps, the government has tried to avoid the vague “color of law” language. Alien eligibility for food stamps is limited to LPR’s, registry applicants; refugees; asylees; aliens granted withholding of deportation; parolees; and conditional entrants. Id. at 17.