Rights, Remedies and Damages in a Marine Disaster Syllabus

I. What is a “right”?
   A. What is a legal right? How is it created?
   B. Who has the legal right to exercise?
   C. Extinction of legal rights

II. What is A Remedy as distinguished from a legal right?
   A. Seaman’s Claims
   B. Jones Act
   C. Non seamen
   D. Other parties

III. Damages
   A. Types of Damages in a Maritime Disaster
   B. Pecuniary vs. Non Pecuniary
      C. Special and General Damages
      D. Punitive/Exemplary Damages
      E. Hedonic Damages
      F. Liquidated Damages/Damages to Property and Vessel; Environmental Damages; Contract
      G. Offsets to Damages
      H. Restituto in Integrum
II. Personal Injury and Death

A. Seaman (46 U.S.C. Sec. 30014 et seq. formerly 688)

1. Rights of Injured Seamen prior to 1915

   a. The Osceola, 189 U.S. 158, 23 S.Ct. 483 (1903)
      1. The vessel and her owners are liable in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure and to his wages, at least so long as the voyage is continued;
      2. The vessel and her owner, both by English an American law, are liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship;
      3. All the members of the crew, except perhaps the master, are, as between themselves, fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure;
      4. The seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident.

2. La Follette Seamen’s Act of 1915

   a. Section 20: In any suit to recover damages for any injury sustained on board a vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority.

         a. Recognized the right of a seaman to bring an action in state court under the savings to suitor’s clause

            i. The savings to suitor’s clause “saves to suitors ‘the right of a common-law remedy, where the common law is competent to give it.’…It is not a remedy in the common-law courts which is saved, but a common-law remedy. A proceeding in rem, as used in the admiralty courts, is not a remedy afforded by the common law; it is a proceeding under the civil law.” (38 S.Ct. at 503)
ii. “The distinction between rights and remedies is fundamental. A right is a well founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury. Plainly, we think, under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law; but we find nothing therein which reveals an intention to give the complaining party an election to determine whether the defendant’s liability shall be measured by common law standards rather than those of the maritime law. Under the circumstances here presented, without regard to the court where he might ask relief, petitioner’s rights were those recognized by the law of the sea.” (38 S.Ct. at 504)

b. The abolition of the fellow servant rule created a right but lacked a remedy to enforce the right

i. After quoting Section 20 of the Act, “…full effect must be given this whenever the relationship between such parties becomes important. But, the maritime law imposes upon a shipower liability to a member of the crew injured at sea by reason of another member’s negligence without regard to their relationship: it was of no consequence therefore to petitioner whether or not the alleged negligent order came from a fellow servant; the statute is irrelevant. The language of the section discloses no intention to impose upon shipowners the same measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect to their employees on shore.” (38 S.Ct.at 504)

2. 1920 Congress enacts Section 33 of the Merchant Marine Act (the Jones Act) and incorporates by reference the provisions of FELA (45 U.S.C. Sec. 51 et seq.)

a. Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right to trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.
b. Amended and re-enacted in 2006, Public Law 109-304, Sec. 6(c), 120 Stat. 1510, 46 U.S.C. Sec. 30104
1. Cause of Action – A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.
2. Venue – An action under this section shall be brought in the judicial district in which the employer resides or the employer’s principal office is located.

c. FELA - Personal Injury — employer is liable “in damages to any person suffering injury while he is employed by such carrier in such commerce” (45 U.S.C. Sec. 51)

d. FELA - Death — employer is liable in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and if none, then of such employee’s parents; and if none, then of the next of kin dependent on such employee for such injury or death….
4. Funeral expenses are not recovered under this statute (Heffner v. Pennsylvania R.Co., 81 F.2d 28 (2d Cir. 1936); L.&W.R. Co. v. Hughes, 240 F. 941 (2d Cir. 1917)); but see Mobil Oil v. Higginbotham, 436 U.S. 618; 98 S. Ct. 2010, at 2015 note 20); 56 L. Ed. 2d 581; 1978 U.S. LEXIS 32 (1978)
5. Adult children though not dependent on parent but who might reasonably expect to receive financial benefits may recover even for occasional gifts and advice can recover. (Kozar v. Chesapeake & O.Ry. Co., 449 F.2d 1238 (6th Cir. 1971); see also Thompson v. Camp, 163 F. 2d 396 (6th Cir. 1947), writ denied, 333 U.S. 831, 68 S.Ct. 458 (1947); but see, Gulf C.&S.F. Ry. Co., 228 U.S. 173, 33 S.Ct. 426 (1913)
6. Widow or widower may recover not only financial support but value of services, advice, savings, Louisville & N.R. Co. v. Holloway, 246 U.S. 525, 38 S.Ct. 379 (1918) “the pecuniary benefit which the
jury was entitled to consider in estimating the widow's damages was not merely what she would have spent for maintenance and support, but what she would otherwise have received from her husband.” (246 U.S. at 529)

3. Comparative Fault and Assumption of Risk
   a. Contributory negligence an employee under this section in the case of injury or death “shall be diminished by the jury in proportion to the amount of negligence attributable to such employee.” (45 U.S.C. Sec. 53)
   b. Assumption of risk barred as a defense (45 U.S.C. Sec. 54)
   c. No offset for employee fault or assumption of risk where the employer violates “any statute enacted for the safety of employees which contributed to the injury or death.”

   a. “Any right of action given by this chapter to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and if none, then of such employee’s parents; and if none, then of the next of kin dependent upon such employee….”

5. Personal Injury Damages
   a. Pecuniary Damages
      3. Wage earning capacity (Jones & Laughlin Steel Corp. v. Pfeifer, 103 S.Ct. 2541 (1983))
         a. Demotion considered in wage earning capacity (Gautreaux v. Insurance Co. Of North America, 811 F.2d 908 (5th Cir. 1987))
b. Earned vacation; pension; 401 k contributions by employer and employee; health, vision, dental and other benefits

c. Present value of future earning capacity to age 65 (Culver v. Slater Boat Co., 722 F.2d 114 (5th Cir. 1983); (Toddy v. Arkansas Valley Dredging Co., 470 F.Supp. 692 (E.D. Ark. 1979))

d. Past wages are net after taxes (Varlack v. SWC Caribbean, mc, 550 F.2d 171 (3d Cir. 1977))


4. Collateral sources

a. Applicable to Jones Act (Phillips v. Western Co. of North America, 953 F.2d 923 (5th Cir. 1992))

b. Employee benefits package is a collateral source and is not offset (Bourque v. Diamond M. Drilling Co., 623 F.2d 351 (5th Cir. 1980); Davis v., ODEDO, Inc., 18 F.3d 1237; 1994 U.S. App. LEXIS 6418 (5th Cir. 1994);Johnson v. Cenac Towing, Inc., 544 F.3d 296 (5th Cir. 2008)); but see Baum v. Transworld Drilling Co., 612 F.Supp. 1555 (W.D. La. 1985)

c. Voluntary payments by employer to medical or other plans may not be offset (Falconer v. Penn Maritime, Inc., 397 F.Supp. 144 (D. Me. 2005))


f. Medicare/Medicaid Set off: (Annual Longshore Conference: Medicare Set-Asides and
Protecting the Parties’ Interests in Longshore Claims, 31 Loy. L. Rev. 11 (2004))

b. Medical Expenses/Maintenance/Cure/Found

1. Evidence must be sufficient that future medical care is needed as a result of the injury (Johnson v. Cenac Towing, Inc., 544 F.3d 296 (5th Cir. 2008))

2. Maintenance and cure is limited to the amount the seaman actually expended or is liable to pay. (Gosnell v. Sea-Land Service, Inc., 782 F.2d 464(3rd Cir. 1986); Shaw v. Ohio River Co., 526 F.2d 193 (3rd Cir. 1975); see also Toups v. Du-Mar Marine Contractors, Inc. 644 F.Supp. 475 (E.D. La. 1985)); Gauthier v. Crosby Marine Service, Inc. 499 F. Supp. 295 (E.D. La. 1980), on reconsideration, 536 F.2d 269, affirmed, 752 F.2d 1084 (5 Cir. 1980); see also Brown v. Aggie & Millie, Inc. 48SF. 2d 1293 (5th Cir. 1973))

3. Maintenance is not recovered if already included in a damage award for medical expenses. (Petition of Oskar Tiedemann & So., 367 F. 2d 498 (3rd Cir. 1966), supplemented 367 F. 2d 905 (31 Cir. 1966); cert. denied 386 U.S. 932, 87 S.Ct. 953 (1966))

4. Maintenance can be separated from damage award. If seaman wants the jury to consider the value of lodging and board as a part of earnings, it is reduced by his comparative fault. (Lazarowitz v. American Export Lines, 87 F. Supp. 197 (E.D. Pa. 1949); see also Alvarez v. J. Ray McDermott & Co., Inc. 674 F.2d 1037 (5th Cir. 1982))

5. Value of maintenance is reasonable cost of meals and lodging ashore of a type the seaman would normally require. (Hudspeth v. Atlantic & Gulf Stevedores, Inc., 266 F. Supp. (E.D. La. 1967); see also Gillikin v. U.S., 764 F.Sup. (E.D. N.Y. 1991) where the court considered cost of heat, electricity, insurance, and taxes for the home and attributed 50% to seaman to determine rate of maintenance and not on a marginal cost basis.

6. Maintenance and cure are due to the point of maximum possible cure even if he returns to work. (Fitzgerald v. U.S. Lines Co., (374 U.S. 16, 8e S.Ct. 1646 (1963); Lirette v. K & B Boat Rentals, Inc. 579 F.2d 968 (5th Cir. 1978); Parker v. Texaco, Inc., 549 F.Sup. 71 (E.D. La. 1982); Holmes v. J. Ray McDermott & Co., 734 F. 2d 1110 (5th Cir. 1984)
7. Only past maintenance and cure can be awarded in a lump sum; court can order future maintenance and cure to continue in the future until maximum medical cure. (Smith v. Dale Hart, Inc., 313 F.Supp. 1164 (W.D. La. 1970)


9. Employer may be liable for additional damages for arbitrary and capricious refusal to provide maintenance and cure. (Harrell v. Dixon Bay Transp. Co., 718 F.2d 123 (5th Cir. 1983)


   b. Additional pain, suffering, disability or prolonged recovery period where failure to provide cure contributed to the aggravation. (Stevens v. Seacoast Co., 414 F.2d 1032 (5th Cir. 1969)

10. Accumulated leave time is not credited against maintenance obligation absent an explicit agreement between the employer and employee (Shaw v. Ohio River Co., 526 F.2d 193 (3d Cir. 1975; see also Reardon v. California Tanker Co., 260 F.2d 369 (2d Cir. 1958), cert. denied, 359 U.S. 926, 79 S.Ct. 609 (1958)

   b. Punitive Damages (Atlantic sounding Co., Inc v. Townsend, 129 S.Ct. 2561, 2009 U.S. Lexis 4732 (2009); 496 F.3d 1282, 2007 U.S. App. LEXIS 20078 (11th Cir. 2007) (Alleged facts: According to Defendant, Plaintiffs advised him that they would not provide him with maintenance and cure, which covers medical care, a living allowance, and wages for seamen who become ill or are injured while serving aboard a vessel. Plaintiffs then filed this suit for declaratory relief on the question of their obligations in this matter.); Hines v. J.A. La Porte, Inc. 820 F.2d 1187 (11th Cir. 1987); Guevara v. Maritime Overseas Corp., 59 F. 3d 1495 (5th Cir. 1995); Glynn v. Roy Al Boat Management Corp., 57F.3d 1495 (9thCir. 1995)

   1. Wanton, willful, or outrageous conduct – an element of bad faith (Harper v. Zapata
Off-Shore Co., 741 F.2d 87, 90 (5th Cir. 1984)


b. Non Pecuniary/General Damages


   a. Not discounted to present value (Oliveri v. Delta S.S. Lines, Inc., 849 F.2d 742 (2d Cir. 1988))

3. Emotional Distress/Mental Anguish


   a. Included in pain and suffering

   b. Separate Award
4. Other Hedonic Damages

5. Death of a Seaman

1. No remedy for wrongful death in admiralty in the absence of an applicable state or federal statute (The Harrisburg, 119 U.S. 199, 7 S.Ct. 140 (1970))

   a. Created a remedy for wrongful death not a survivor’s action
   b. Based on a violation of maritime duties and negligence (Norfolk Shipbuilding & Drydock Corp. v. Garris (532 U.S. 811, 121 S.Ct. 1927 (2001))

1. Beneficiaries
   a. Surviving Spouse (Sennett v. Shell Oil Co., 335 F.Supp 1 (E.D.La. 1975)
      2. Same Sex Spouse
         a. Effect of federal Defense of Marriage Act
         1. Adopted Children
2. Adopted Children of a Same Sex Couple

c. Parents (Sistrunk v. Circle Bar Drilling Co., 770 F.2d 455 (5th Cir. 1985))

d. Other Dependent Relatives (Smith v. Allstate Yacht Rentals, Ltd., 293 A.2d 805 (Del. Super. 1972))


e. No recovery for decedent’s pain and suffering prior to death under Moragne

f. No recovery for loss of society (Miles v. Apex Marine Corp. 498 U.S. 12, 111 S.Ct. 317 (1990))

g. Loss of Support, loss of services, loss of nurture and funeral expenses not for mental anguish and grief (Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573, 94 S.Ct 806 (1974))

3. Death on the High Seas Act (46 USC Sec. 30301 et seq.)


1. Limited Gaudet to non-seaman in territorial waters

2. Limited recovery to pecuniary damages only

b. Kernan v. American Dredging Co., 355 U.S. 426, 78 S. Ct. 394, 397 (n. 4) (1958); Bodden v. American Offshore, Inc., 691 F.2d 319 (5th Cir. 1982) - unseaworthiness is included in any “wrongful act, neglect or default”
B. Maritime workers/longshoremen

1. Territorial Waters (Sea-Land Services v. Gaudet, supra)
   a. Pecuniary Damages
   b. Non pecuniary Damages (American Export Lines v. Alvez, supra)
   c. Funeral Expenses
   d. Punitive Damages

2. High Seas
   a. Higganbotham limits damages for non-seaman to pecuniary damages only

3. Offshore Workers
   a. OCSLA 43 U.S.C. Sec. 1333 and 1341; 33 U.S.C. Sec. 905(b); Demette v. Falcon Drilling Co., 280 F.3d 492 (5th Cir. 2002)

C. Non-Seamen/non maritime workers

1. Territorial Waters

       1. Non seaman and non maritime workers killed in state territorial waters can supplement maritime remedies by state law remedies
2. Federal choice of law rules govern the issue of what state law shall apply (Calhoun v. Yamaha Motor Corp. (216 F.2d 338 (3rd Cir. 1997) on remand from the Supreme Court)

3. Law of the situs of the accident should apply with respect to punitive damages (in this case Puerto Rico)

4. Law of the residence of the plaintiffs should apply to determine compensatory damages

5. Federal maritime law not state law determines the liability in state waters due to uniformity

2. High Seas (Beyond 3 nautical miles from the shore of the United States (46 U.S.C. Sec. 30302)

   a. Higginbotham limits recovery to pecuniary damages only

   b. Aviation exceptions (see no. 5 below)

3. Foreign cause of action (46 U.S.C. Sec. 30306)

   a. Civil action in admiralty may be brought in a U.S. Court when a cause of action under foreign law exists for death on the high seas and based on the foreign cause of action


         a. Foreign prescriptive period or statute of limitations may apply (The Vestris, 53 F.2d 847 (D.C. N.Y. 1951)

      2. Action brought for death under the Jones Act does not preclude action based on application for death on the high seas under the laws of Japan where two parties in the action were not identical (McLaughlin v. Blidberg Rothchild Co., 156 F.Supp. 379 (S.D. N.Y. 1957); see also McLaughlin v.
3. No election of remedies is required prior to trial (Tsangarakis v. Panama S.S. Co., 197 F.Supp. 704 (E.D. Pa. 1961))


5. Commercial Aviation Accidents (46 U.S.C. Sec. 30307)
   a. High Seas vs. State Territorial Waters
   b. Nonpecuniary damages defined to include loss of care, comfort, and companionship if it occurs beyond 12 nautical miles from the shore of the U.S. (1 nautical mile = 1,852 meters (approximately 6,076 feet)) on the high seas nonpecuniary damages may be recovered. Punitive damages are expressly not recovered.
   c. Within 12 nautical miles or less then this chapter (DOHSA) does not apply
      1. Zone between 3 nautical miles and 12 nautical miles otherwise DOHSA would apply but excluded under this amendment passed as a result of a plane explosion within this zone (In re Air Crash near Nantucket Island, Massachusetts, 307 F.Supp.2d 465 (E.D. N.Y. 1999)
         a. What are high seas vs. territorial waters of the U.S.
            1. In re: Air Cash off Long Island, New York, 209 F.3d 200 (2d Cir. 2000)
            2. Helman v. Alcoa Global Fasteners, Inc. 637 F.3d 986 (9th Cir. 2011)
      2. Beyond 12 nautical miles of the shore of the U.S. encompasses foreign territorial waters
d. Commercial Aviation  
2. Helman v. Alcoa Global Fasteners, Inc. 637 F.3d 986 (9th Cir. 2011)

C. Bystander Claims

III. Damages to Property


1. Bright Line Rule (Barber Lines A/S v. M/V Donau Maru,764 F.2d 50 (1st Cir. 1985); Federal Commerce & Navigation v. M/V Marathanian, 528 F.2d 907 (2d Cir. 1975); Kaiser Aluminum & Chemical Corp. v. Marsland Dredging, 455 F.2d 957 (5th Cir. 1972)

2. Extended Useful Life v. Straightline Depreciation - Freeport Sulphur v. S/S Hermosa, 526 F.2d. 300 (5th Cir. 1976); Brunett v. United Gas Pipeline Co., 15 F.3d 500 (5th Cir. 1994)


4. Straight line Depreciation - Canal Barge Co., Inc. v. Griffith, 480 F.2d 11(5th Cir. 1973)

5. Lost or deferred Production - Continental Oil Co. v. SS ELECTRA, 431 F.2d 391 (5th Cir. 1970), cert. denied 401 U.S. 937 (1971); also Diamond Shamrock Expl. Co. v. Hodie, 853 F.2d 1159 (5th Cir 1988) for a definition of what constitutes production; see also Delayed Offshore Production, 28 J.Mar.L.& Comm. 323 (1997); Necco Oil & Gas, inc. v Otto Candies, Inc., 74 F.3d 667 (5th Cir. 1996)

6. Restituto in Integrum - The Baltimore, 75 U.S.(8 Wall.) 377 (1869); The POTOMAC, 105 U.S. 630 (1882)

B. Economic Loss without physical Damage
1. State of Louisiana v. M/N TESTBANK, 752 F.2d 1019 (5th Cir. 1985); In re: Complaint of TAIIRA LYNN MARINE LIMITED NUMBER 5, LLC v. Jays Seafood, Inc. 444 F.3d 371 (5th Cir. 2006); see also Comment: Robins Dry Dock Versus State Laws Governing Liability for Pure Economic Loss: How the Maritime Circuit Should Resolve the Preemption Conflict (51 Loy. L. Rev. 165 (2005))

2. Clean Water Act (33 U.S.C. Sec. 1321 et seq.)
      2. Punitive Damages - rules and limits
         a. Cases with no earmarks of exceptional blameworthiness
         b. What then are the earmarks of exceptional blameworthiness and the measure of recovery?
         c. Whose acts are necessary to prove to be legally liable for punitive damages?
      3. Oil Pollution Act of 1990 (33 U.S.C. Sec. 2701)
         a. Responsible Party
         b. Elements of Liability
         c. Damages - natural resources, real or personal property, subsistence use, revenues, profits and earning capacity, public services. See South Port Marine LLC v. Gulf Oil Limited Partnership, 234 F.3d 58 (1st Cir. 2000)
         d. Defenses
         e. Limitations on Liability; effect of Exoneration

2. OCSLA, 43 U.S.C. Sec. 813(b)(3); Clean Water Act, 33 U.S.C. Sec. 1321(0(4); Deep Water Port Act, 33 U.S.C. Sec. 15 17(d); Trans Alaska pipeline Act, 43 U.S.C. Sec. 1653(a)(1), (c)(1); CERCLA, 42 U.S.C. Sec. 9607(f)

f. Punitive Damages (Exxon Shipping Company v. Baker, supra); Steuart Transportation Co. v. Allied Towing Corp., 596 F.2d 609 (4th Cir. 1979)

g. States have right to claim damages to natural resources under state statutes and parens patriae (Puerto Rico v. The S.S. Zoe Colocotroni, 628 F.2d 652 (1st Cir. 1980)

h. International Conventions and damages caused by pollution from U.S. waters into foreign waters, e.g., production from a platform or drilling well on OCS and pollution affecting Mexican waters

3. Damage to Vessels

   a. Total Loss/Constructive Total Loss (See O’Brien Bros. v. The Helen B. Moran, 160 F.2d 502 (2d Cir. 1947) for a definition of constructive total loss)

      1. Market values plus interest and freight pending less salvage - The Umbria, 166 U.S. 404 (1897)

      a. Market value determined by an arm’s length sale of the same or similar vessel - King Fisher Marine Service, Inc., v. NP Sunbonnet, 724 F2d 1181 (5thCir. 1981)


b. Repairable Damage

   a. Repairs need not be made - United Overseas Exp. Lines v. Medluck Compania Maviera, 785 F.2d 1320 (5th Cir. 1986)

2. Joint Survey - Delta Marine Drilling Co. v. MN Baroid Rander, 454 F.2d 128 (5th Cir. 1972)

   a. Exception is if there is extended useful life - Creole Shipping, Ltd. v. Diamandis Pateras, Ltd, 410 F.Supp. 313 (S.D. Ala. 1976), affirmed 554 F.2d 1348 (5th Cir. 1977)

4. Additional expenses include removal of wreck, oil spill removal and
containment, salvage, removal of cargo, wharfage, drydocking, general average expenses, crew expenses and caring for the damaged vessel

c. Loss of Use of Vessel

   a. Recovered only if the damages to the vessel can be repaired

   b. If vessel is total loss or constructive total loss

      1. Lost profits are limited to the voyage – The Umbria, 166 U.S. 404, 17 SQ. 610 (1987); see also In re: P&E Boat Rentals, Inc., 872 F.2d 642 (5th Cir. 1989); but see also Barger v. Hanson, 426 F.2d 640 (9th Cir. 1970); Comment, Loss of Use as an Item of Damages in Admiralty Collision Cases, 12 U. of San Francisco L.Rev. 311 (1978)

2. Proof of loss of use

   a. Charter hire for the voyage if on charter

   b. If not on charter

      1. Vessel earnings before the casualty and after repairs - Moore-McCormack Lines, Inc., v. The Esso Camden, 244 F.2d 198 (2d Cir. 1957)

      2. Average use rates - Todd Shipyards Corp. v. Turbine Service, Inc., 674 F.2d 401 (5th Cir. 1982)

      3. Common carriage - daily average profit before, during the collision voyage and after repairs - The Esso Camden, supra
c. Declining or increasing market - The Fylfe v. The Trujillo, 209 F.2d 386 (2d Cir. 1954)

d. Pleasure Craft - no recovery for loss of use - The Conqueror, 166 U.S. 110, 17 S.Ct. 510 (1897)


IV. Economic Losses/ Wrongful Interference with Contract

A. Proximate Cause - a tortfeasor is responsible only for the indirect injuries reasonably foreseeable and determined in a case by case basis

1. Extra expenses incurred by a company as a result of a river casualty - Kinsman II, 338 F.2d 821 (2d Cir. 1968)

2. Indirect personal injuries - Brown v. Channel Fueling Services, Inc., 594 F. Supp. 666 (E.D. La. 1983) where a claimant slipped and fell as a result of a spill miles away and denied recovery

B. Proprietary Interest/ Physical Damage to Property

1. Robns Dry Dock, supra; but see Norsk Pacific Steamship Co., Ltd. v. Canadian National Railway Co., 1992 A.M.C. 1910 (Canada, Supreme Court, 1992)


3. Lessee - Vicksburg Towing Co. v. Mississippi Marine Transport Co, 609 F.2d 176 (5th Cir. 1980); Domar Ocean Transportation, Ltd. v.MIV Andrew Martine, 754 F.2d 616 (5th Cir. 1985)

4. Commercial Fishermen - Union Oil Co. v. Oppen, 501 F.2d 558 (9th Cir. 1974); MN Testbank, supra.

   a. State law claims may be joined with maritime claims - Pruitt v. Allied Chemical Corp., 523 F. Supp. 975
V. Pre-Judgment Interest

A. Rule in maritime claims absent exceptional circumstances (Corpus Christi Oil & Gas Co. v. Zapata Gulf Marine Corp., 71 F.3d 198 (5th Cir. 1995))

1. Exceptional Circumstances - payment by another - In re: Matter of the Complaint of Signal International LLC v. Mississippi Department of Transportation, No. 08-60696 (5th Cir. Aug, 12, 2009) where the federal government’s payment to the MDOT was deemed to be the end of prejudgment interest

B. Past Lost Wages/Medical Expenses

1. Jones Act

2. General Maritime Law

C. Future Losses

VI. Hedonic Damages

A. Definition - enjoyment of life

1. The value of life

2. The value of leisure and life’s pleasures