

# Douglas Theriot v. C&E Boat Rentals, et al. United States District Court, Eastern District of Louisiana, 10 January 1991 Civ. A. No. 89-4955

Katherine Vasilopolous '92

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### Recommended Citation

Katherine Vasilopolous '92 (1991) "Douglas Theriot v. C&E Boat Rentals, et al. United States District Court, Eastern District of Louisiana, 10 January 1991 Civ. A. No. 89-4955," *Admiralty Practicum*: Vol. 1991 : Iss. 1 , Article 2.

Available at: [https://scholarship.law.stjohns.edu/admiralty\\_practicum/vol1991/iss1/2](https://scholarship.law.stjohns.edu/admiralty_practicum/vol1991/iss1/2)

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ST. JOHN'S UNIVERSITY — SCHOOL OF LAW

Admiralty Law Society

## Recent Admiralty Cases

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VOLUME 12, No. 2

SPRING 1991

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Published by the Admiralty Law Society of St. John's University School of Law to bring to the attention of practitioners, public officials and public interest attorneys the highlights of current court decisions in the field. This issue prepared under the supervision of Alex Barnett, Director of Publications.

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**DOUGLAS THERIOT v. C & E BOAT RENTALS, et al.**

United States District Court, Eastern District of Louisiana, 10 January 1991

Civ. A. No. 89-4955

**A seaman who is injured on a vessel is not entitled to maintenance and cure payments from the vessel owner if he personally incurs no expenses in connection therewith.**

**FACTS:** In 1989 plaintiff Douglas Theriot (Theriot) was employed as a seaman aboard the Eymar J. Eymard, a vessel owned and operated by defendant, C & E Boat Rentals (C & E). On March 3, 1989, the vessel collided with a flare platform owned by Chevron, also a defendant in this action. As a result of the collision, Theriot struck his head on a forward bulkhead and was rendered unconscious. He was later removed from the vessel and sent by the vessel owner to Dr. Kinnard for treatment.

On March 22, plaintiff was called to the shipyard by one of C & E's principals, where he met with an insurance investigator and signed a release in return for a single cash payment of one hundred and fifty dollars. Theriot, who is illiterate and allegedly borderline mentally retarded, was not represented by counsel at this meeting.

Subsequently, plaintiff began experiencing blackouts and pain in his back, neck and shoulders. He was not allowed to return to his previous employment as a seaman, and in June 1989 he was arrested for disturbing the peace and resisting arrest. Because he was in violation of his parole, he was incarcerated at the Lafourche Parish Detention Center. While in the detention center Theriot's pain worsened. Since there were no medical facilities at the center, Dr. Kinnard was summoned to treat him.

The defendants refused to pay any medical expenses or maintenance benefits to the plaintiff, who alleges he is responsible for Dr. Kinnard's bill. Plaintiff brought this action for maintenance and cure and for punitive damages for refusal to pay maintenance and cure against the defendants C & E and Chevron. The defendants filed motion for summary judgment and plaintiff opposes this motion.

**ISSUES:** Is plaintiff Theriot, who was injured while employed as a seaman on defendants C & E's vessel, entitled to maintenance

and cure benefits even though he has been provided food and lodging in a detention center since his disability?

**ANALYSIS:** The shipowner's duty to provide maintenance and cure benefits to a seaman injured aboard his vessel until maximum medical improvement is reached is one of the most pervasive of all duties. Any ambiguities or doubts in determining a seaman's right to maintenance and cure are to be resolved in his favor. *Vaughn v. Atkinson*, 369 U.S. 527, 82 S.Ct. 994 (1962), rehearing denied 380 U.S. 965, 82 S.Ct. 1578 (1962). The plaintiff seaman must prove his actual medical and living expenses. If he has incurred no expense or liability for his care and support, he is not entitled to maintenance and cure. *Johnson v. United States*, 333 U.S. 46, 68 S.Ct. 391 (1948).

Plaintiff's disability began after he was incarcerated, and any expenses he may have incurred would be from the date of his incarceration to the present. Because plaintiff has not contested the fact that he has been provided food and lodging since his incarceration, he is not entitled to maintenance benefits until he is released. The court granted defendant's motion for summary judgment as to maintenance benefits. However, Dr. Kinnard was summoned to treat Theriot while he was in the detention center, and neither defendant C & E nor the center has paid Dr. Kinnard for his services. The condition from which plaintiff is suffering may reasonably be proven to have originated while he was in the service of the vessel, in which case defendants would be liable for any medical expenses incurred by Theriot. Since there is a material issue of fact which precluded summary judgment, defendant's motion for summary judgment as to cure was denied by the court. The punitive damages claim was voluntarily dismissed by the plaintiff without prejudice.

Katherine Vasilopolous '92