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## **Frazer v. City of New York & Circle Line Sightseeing Yachts Inc., 659 N.Y.S.2d 23 (A.D. 1 Dept. 1997) (Decided June 24, 1997)**

Christopher R. Bryant, Class of 2000

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risk during the transfer. The defendant, therefore, was found fully liable for the damages sustained by the plaintiffs thereby abrogating its \$500 liability limitation in the contract of carriage

On appeal, defendant contested the district court's finding that the transfer at Lisbon constituted an unreasonable deviation. The United States Court of Appeals will review a district court's findings for clear error and will reverse only when left with a "firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L.Ed. 746 (1948). In light of this, the court first examined general maritime law where a vessel is said to "deviate" when it leaves its planned or customary course or itinerary. The district court found that Sea-Land had indeed deviated from its course because Lisbon was not a customary port for its vessels. On appeal, the defendant did not challenge this finding but instead contended that its deviation was reasonable. The Court of Appeals agreed.

It is well settled that courts will deprive a carrier of the benefit of contractual limitation of liability for damage to goods only when a vessel unreasonably deviates from the terms of the contract. *Italia Di Navigazione, S.P.A. v. M.V. Hermes I*, 724 F.2d 21, 22 (2nd Cir 1983) In *General Elec. Co. Int'l Sales Div. v. S.S. Nancy Lykes*, 706 F.2d 80, 86 (2nd Cir 1983), it was held that a "deviation is unreasonable...when, in the absence of significant countervailing factors, the deviation substantially increases the exposure of cargo to foreseeable dangers that would have been avoided had no deviation occurred."

Holding that the deviation was in fact reasonable, the Court of Appeals reversed the district court's decision. The court concluded that the evidence did not support the finding that the yacht was placed in foreseeable and avoidable danger by its being transferred at Lisbon instead of at Algeciras. The court reasoned that the testimony given by Fitzgibbon explained why Sea-Land did not use Lisbon as a regular port rather than that the Lisbon port lacked competence to unload cargo. As such, the Court of Appeals found that the evidence which the district court relied on did not support the finding that the transfer at Lisbon placed the cargo at undue risk nor that the deviation to Lisbon was unreasonable.

Effy Belessis, Class of 1998

## **PUNITIVE DAMAGES UNDER MARITIME LAW (Two Cases)**

### **I. Punitive damages are not available to non-seamen/non-seafarers under maritime law.**

*Frazer v. City of New York & Circle Line Sightseeing Yachts, Inc.*, 659 N.Y.S.2d 23  
(A.D. 1 Dept. 1997)  
(Decided June 24, 1997)

On May 25, 1986 a Circle Line sightseeing boat collided while on the Harlem River in New York with the Willis Avenue Bridge, allegedly causing injury to plaintiffs. Plaintiffs brought suit against both Circle Line and the City of New York for compensatory and punitive damages. Defendant's motion to dismiss the punitive damages claim was denied by the Supreme Court,

Bronx County, and defendants appealed. On appeal the Appellate Division unanimously reversed on the grounds that punitive damages are not available under general maritime law despite plaintiffs being mere passengers and not seamen or seafarers.

Plaintiffs argued that their status as passengers exempted them from the bar on recovery of punitive damages under maritime law. However, the court stated that even though the U.S. Supreme Court in *Miles v. Apex Maritime Corp.*, 498 U.S. 19, 111 S.Ct. 317 (1990), only prohibited such recovery in the case of the wrongful death of a seaman, both *Public Administrator v. Frota Oceanica Brasileira*, 222 A.D.2d 32, 635 N.Y.S.2d 606 (A.D. 1 Dept. 1995) and *Wahlstrom v. Kawasaki Heavy Industries Ltd.*, 4 F.3d 1084 (2nd Cir. 1993) upheld the principle that punitive damages are *never* available under general maritime law.

In addition, the Appellate Division cited *Cochran v. A/H Battery Assoc.*, 909 F.Supp. 911, 922 (S.D.N.Y. 1995) where the Supreme Court's decision in *Miles* was interpreted to mean that when Congress has passed legislation in a particular area of maritime law courts must conform with such legislation in fashioning remedies. Therefore, to permit a "punitive damage claim would be to expand maritime jurisprudence beyond Congress' intention." Further, the court noted that in *Preston v. Frantz*, 11 F.3d 357 (2nd Cir. 1993), the Second Circuit said that even if *Miles* did not apply to non-seaman, its decision in *Wahlstrom* acknowledged a "special regard accorded by admiralty to seaman." The Second Circuit, therefore, recognized that an unacceptable anomaly would be created if non-seaman could recover punitive damages under admiralty when seaman were barred from the same recovery by *Miles*.

Relying on the above, the court held that punitive damages are not available under general maritime law, regardless of whether the plaintiff is a non-seaman/non-seafarer, and reversed.

Christopher R. Bryant, Class of 2000

## **II. Punitive damages not available in maintenance and cure cases.**

*S.M. Pires v. Frota Oceania Brasileira*, 659 N.Y.S.2d 25 (A.D. 1 Dept. 1997)  
(Decided June 24, 1997)

The Supreme Court, New York County, entered judgment on a jury verdict awarding plaintiff with \$4 million consequential, \$16 million punitive and \$1 million loss of consortium damages, plus interest and costs. Defendant appealed and the Appellate Division affirmed but modified the award to dismiss claims for punitive and loss of consortium damages and to dispense with the awarding of costs. The court also remanded the case to the supreme court for it to consider awarding attorney's fees to plaintiffs in light of the dismissal of punitive damages.

The court stated that the strong concern for uniformity in maritime law which was expressed in *Miles v. Apex Mar. Corp.*, 498 U.S. 19, 111 S.Ct. 317 (1990), bars a plaintiff in a maintenance and cure case from being awarded punitive or loss of consortium damages. Further, the court noted that in *Public Administrator v. Frota Oceanica Brasileira*, 222 A.D.2d 332, 635 N.Y.S.2d 606 (A.D. 1 Dept. 1995) it was held that damages for nonpecuniary loss, including