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Dilbert Ivan Calix-Chacon v. Global International Marine, Inc. United States Court of Appeals for the Fifth Circuit 493 F.3d 507 (Decided July 19, 2007)

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FORUM SELECTION CLAUSES IN MARITIME EMPLOYMENT CONTRACTS ARE TO BE ENFORCED UNLESS CONSIDERED FUNDAMENTALLY UNFAIR AND UNREASONABLE BASED ON *BREMEN* FACTORS.

The Court of Appeals for the Fifth Circuit vacated and remanded the district court's judgment that a forum selection clause in a seaman's employment contract was unenforceable on public policy grounds in favor of maintenance and cure reflected in the Shipowner's Liability Convention of 1936. The case was remanded to the district court to apply the *Bremen* factors to determine whether the clause was unreasonable and thus unenforceable.

Dilbert Ivan Calix-Chacon v. Global International Marine, Inc.
United States Court of Appeals for the Fifth Circuit
493 F.3d 507
(Decided July 19, 2007)

Dilbert Ivan Calix-Chacon ("Calix"), a Honduran native, was hired by Global International Marine Inc., ("Global), a United States corporation operating out of Houma, Louisiana, to work as a seaman on its ship, the M/V SAMSON. Despite speaking little English, Calix signed an employment contract written in English for a term beginning December 19, 2005 and ending March 19, 2006. The contract contained a choice of law clause providing that Honduran law would apply to actions arising out of the employment agreement, including those seeking recovery and compensation for injury, death or medical expenses. The contract also included a forum selection clause, which provided that any claim arising out of the employment agreement or arising out of injuries sustained by the employee would be brought exclusively in a court of competent jurisdiction in Honduras.

When Calix began working on the SAMSON, the vessel was in dry dock in Louisiana undergoing routine maintenance and inspections for U.S. certification. While performing such maintenance in January of 2006, Calix experienced severe stomach pains which resulted in the removal of his gall bladder at Terrebonne General Medical Center in Houma. After surgery, it was determined that he had an enlarged heart and was in need of an immediate heart transplant. Global paid for the gall bladder removal but refused to pay for the heart transplant.

Calix sued in district court seeking maintenance and cure, including the cost of a heart transplant and ancillary care. Global responded with a motion to dismiss under Federal Rule of Civil Procedure 12(b)(3), asking the court to enforce the forum selection clause in the employment contract. The motion was denied. The district court concluded that the forum selection clause was unenforceable based on the Supreme Court decision in *M/S Bremen v. Zapata Off Shore Co.*[1] If enforcement would contravene a strong public policy of the forum in which the suit is brought, whether declared by statute or judicial decision, the clause is unenforceable. The court found that under both the General Maritime Law and the Shipowner's Liability Convention of 1936, an international treaty ratified by the U.S., there is an expression of a strong public policy preventing the contractual abridgement of maintenance and cure liability. This convention codified pre-existing federal common law of American maintenance and cure as binding international law for those who ratified it. Thus, the court ruled that the clause was unreasonable and unenforceable since enforcement would contravene a strong public policy of the U.S. which favors a seaman's maintenance and cure remedy, as expressed in the Shipowner's Liability Convention. Since Calix's medical condition arose in the service of the vessel, Global was obligated to provide cure to Calix. Global appealed the judgment.

[1] 407 U.S. 1 (1972).

The issue on appeal was whether the forum selection clause in Calix's contract was unfair and unreasonable therefore making it unenforceable. The Court of Appeals rejected the district court's holding, which stated that the Shipowner's Convention prohibits a federal district court from refusing to entertain maintenance and cure claims brought by foreign seamen in a United States court. The court primarily relied on *Marinechance Shipping Ltd. v. Sebastian.*[2] In that forum selection case, two Philippine seamen working on an international vessel off the Mississippi River brought maintenance and cure claims asserted under General Maritime Law. The Louisiana state court held that a forum selection clause was valid and enforceable against all claims raised by the injured seamen. Another basis for vacating judgment was *In re McClelland Engineers Inc.*[3] In that case, the court rejected the seamen's argument that the forum selection clause did not apply to their tort actions against American defendants. It reversed the district court's decision, which stated that a court is precluded from choosing foreign law when it imposes a lower standard of relief than domestic law and that any foreign seaman injured on the high seas is entitled to access to United States courts.[4] Based on such precedent, the Court of Appeals held that the district court erred in rendering the forum selection clause unenforceable through its reliance on the Shipowner Convention's strong public policy favoring maintenance and cure remedies. The case was remanded to district court for further proceedings on the issue.

On remand, the burden of establishing unreasonableness was on the party seeking to set aside the provision (Calix). To determine whether the clause was unreasonable, the Circuit Court of Appeals agreed with the district court that the proper basis for analysis was the standard set forth in *Bremen.*[5] In *Bremen,* the Supreme Court held that, in maritime actions, forum selection clauses are presumptively valid unless the forum selection clause is fundamentally unfair and unreasonable. The Court established four bases for concluding that selection was unreasonable: (1) the incorporation of the forum selection clause into the agreement was the product of fraud or overreaching; (2) the party seeking to escape enforcement will be deprived of his day in court because of the grave inconvenience or unfairness of the selected forum; (3) the fundamental unfairness of the chosen law will deprive the plaintiff of a remedy; or (4) enforcement of the forum selection clause would contravene a strong public policy of the forum state.[6]

Focusing on the third Bremen factor, Calix argued that Honduran law would deprive him of a remedy. Honduran law would not provide sufficient funds to permit him to purchase the anti-rejection drug that he required to survive the heart transplant surgery. The Court of Appeals, therefore, advised the district court on remand to closely look into what remedies were available to Calix under Honduran law and whether such recovery would be adequate to avoid his body's rejection of the transplanted heart. The district court was advised that it should make factual findings on these and other issues presented by the parties related to whether the party will, for all practical purposes, be deprived of his day in court, or be deprived of a remedy, if the court were to enforce the forum selection clause.

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[2] 143 F.3d 216 (5th Cir. 2006).
[3] 742 F.2d. 837 (5th Cir.1984).
[4] *Id.* at 839.
[5] *Bremen,* 407 U.S. at 1.
[6] Haynsworth v. Corporation, 121 F.3d 956, 963 (5th Cir. 1997) (citing *Bremen*, 407 U.S. at 12).