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ADMIRALTY LAW

QUASI-CONTRACT RECOVERY PERMITTED FOR SERVICES RENDERED IN NONSALVAGE EMERGENCY

Peninsular & Oriental Steam Navigation Co. v. Overseas Oil Carriers, Inc.

At common law, one who voluntarily confers a benefit upon another is not entitled to restitution for the value of that benefit.¹ As an exception to this well-established principle, recovery will be permitted when a volunteer, qualified to do so by the nature of his profession or otherwise, provides emergency services to a third person in performance of another's duty, with intent to charge therefor.² In such a situation, the volunteer possesses a cause of action in quasi-contract against the person in whose stead the duty has been performed for the value of the services rendered.³ Unrelated

¹ See Hope, *Officiousness* (pts. 1 & 2), 15 CORNELL L.Q. 25, 205 (1929) [hereinafter cited as Hope]; cf. Dawson, *Negotiorum Gestio: The Altruistic Intermeddler*, 74 HARV. L. REV. 817 (1961) (under the civil law, one who altruistically bestows a benefit on a friend may be entitled to restitution); Lorenzen, *The Negotiorum Gestio in Roman and Modern Civil Law*, 13 CORNELL L.Q. 190 (1927) (restitution granted to altruistic volunteers in civil law countries). Several exceptions to the volunteer rule have been recognized. Thus, restitution may be obtained where the claimant acted through a reasonable mistake, see, e.g., *Norfolk & Dedham Fire Ins. Co. v. Aetna Cas. & Sur. Co.*, 132 Vt. 341, 318 A.2d 659 (1974), or where the conduct of the recipient was in some way blameworthy, cf. *Wyandotte Transp. Co. v. United States*, 389 U.S. 191 (1967) (right of government to obtain restitution for removal from harbor of shipowner's negligently sunk vessel). See generally RESTATEMENT OF RESTITUTION §§ 2, 3, 6, 70 (1937).

² See, e.g., *Robbins v. Town of Homer*, 95 Minn. 201, 103 N.W. 1023 (1904); *Gleason v. Warner*, 78 Minn. 405, 81 N.W. 206 (1899); *Rundell v. Bentley*, 53 Hun. 272, 6 N.Y.S. 609 (Sup. Ct. Gen. T. 3d Dep't 1889).

³ See *Board of Comm'rs v. Greensburg Times*, 215 Ind. 471, 20 N.E.2d 647 (1939). Quasi-contract is a fiction whereby the law imposes an obligation upon an individual to pay for a benefit he has received and for which he is not otherwise obligated to pay. See *Thomas v. Matthiessen*, 232 U.S. 221, 225 (1913). A succinct explanation of this principle is contained in *Miller v. Schloss*, 218 N.Y. 400, 113 N.E. 337 (1916):

A quasi or constructive contract rests upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. In truth it is not a contract or promise at all. It is an obligation which the law creates, in the absence of any agreement, when and because the acts of the parties or others have placed in the possession of one person money, or its equivalent, under such circumstances that in equity and good conscience he ought not to retain it, and which *ex aequo et bono* belongs to another. Duty, and not a promise or agreement or intention of the person sought to be charged, defines it. It is fictitiously deemed contractual, in order to fit the cause of action to the contractual remedy.

Id. at 407, 113 N.E. at 339 (citations omitted). This principle found early application in instances where the defendant had committed a tortious act; in such a case, the plaintiff was permitted to waive the tort and sue in contract. See D. DOBBS, *HANDBOOK ON THE LAW OF REMEDIES* § 4.2, at 238 (1973) [hereinafter cited as DOBBS] (citing *Lamine v. Dorrell*, 92 Eng.

to the law of restitution, the traditional rules of maritime salvage allow volunteers who preserve property from maritime peril to recover for their services,⁴ while denying rescuers of human life a similar award.⁵ Against this background, the Second Circuit, in

Rep. 303 (K.B. 1706)). See generally W. KEENER, *THE LAW OF QUASI-CONTRACTS* 15 (1893). Gradually, the scope of the action was broadened to encompass other, nontortious situations. See, e.g., *Bradkin v. Leverton*, 26 N.Y.2d 192, 257 N.E.2d 643, 309 N.Y.S.2d 192 (1970).

It is widely accepted that unjust enrichment does not necessarily imply that the defendant has obtained an advantage through wrongful or unlawful conduct. *Lengel v. Lengel*, 86 Misc. 2d 460, 465, 382 N.Y.S.2d 678, 681 (Sup. Ct. Nassau County 1976), but merely that he has received a benefit which in good conscience he should return, *Champaign County v. Hanks*, 41 Ill. App. 3d 679, 353 N.E. 2d 405 (1976). The plaintiff must demonstrate that there has been an enrichment and that injustice would result if recovery were denied. See *Belmont Indus., Inc. v. Bechtel Corp.*, 425 F. Supp. 524, 526 n.3 (E.D. Pa. 1976); *RESTATEMENT OF RESTITUTION* § 1, Comment a (1937). It has been held that the plaintiff's loss need not correspond to the gain received by the defendant. See *Saunders v. Kline*, 55 App. Div. 887, 888, 391 N.Y.S.2d 1, 2 (1st Dep't 1977).

⁴ See *Legnos v. M/V Olga Jacob*, 498 F.2d 666, 669 (5th Cir. 1974); *In re Sun Oil Co.*, 342 F. Supp. 976, 981 (S.D.N.Y. 1972), *aff'd per curiam*, 474 F.2d 1048 (2d Cir. 1973). Salvage has been defined as a legal liability created by the rescue of property from perils of the sea. G. CANFIELD & G. DALZEL, *THE LAW OF THE SEA* 180 (1937). A salvor is one who "without any particular relation to a ship or property in distress, performs useful service, and gives it as a volunteer without any pre-existing contract that connected him with the duty of employing himself for the preservation of the ship or property." M. NORRIS, *THE LAW OF SALVAGE* § 4 (1958). See, e.g., *Shorts v. Dravo Constr. Co.*, 1938 A.M.C. 57 (E.D. Pa. 1937). The judgment awarding salvage, which runs in rem against the property involved, is computed with reference to the value of the rescued property and the salvaging vessel, the dangers involved, as well as the skill and success of the salvor and his losses, and may include a bonus. See *Nicastro v. The Gas Screw Peggy B.*, 173 F. Supp. 61, 63 (D. Mass. 1959). The notion that salvage is premised on an implied contract between the parties has been rejected. In *The Cargo ex Port Victor*, [1901] P. 243 (C.A.), the court stated that "[t]o rest the jurisdiction of the admiralty court upon . . . an implied contract between the salvors and owner with the relinquishment of the res for consideration is . . . to confuse two different systems of law and to resort to a misleading analogy." *Id.* at 249. Additionally, the court noted that admiralty law imposes a duty upon the owner to pay the salvor, "simply because in the view of that system of law it is just as he should." *Id.*

Contract salvage, on the other hand, is a service rendered a ship owner by a salvor pursuant to an agreement fixing the amount of compensation. The distinction between salvage and contract salvage is crucial, since a salvor's lien is superior to and of a higher priority than that of a contractor or materialman. See, e.g., *Hempstead v. The Escapade*, 173 F. Supp. 833 (S.D. Fla. 1959), *aff'd sub nom. Reliance Ins. Co. v. The Escapade*, 280 F.2d 482 (5th Cir. 1960).

⁵ A salvor historically could obtain an award for saving human life only when he also saved property in conjunction therewith. G. ROBINSON, *HANDBOOK OF ADMIRALTY LAW* 709 (1939). An individual was deemed under a moral obligation to save human life; hence, "pure" life salvage did not entitle the salvor to an award. G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* § 8-1, at 532 (2d ed. 1975). A more practically sound explanation for the traditional disallowance of "pure" life salvage recovery is the lack of a res against which an in rem judgment might be granted. *The Renpor*, 8 P.D. 115, 117 (C.A. 1883). See generally *Bockrath, The American Law of Life Salvage*, 7 J. MAR. L. & COM. 207, 210 n.3 (1975); *Jarrett, The Life Salvor Problem in Admiralty*, 63 YALE L.J. 779, 781 (1954).

The United States and Great Britain have enacted legislation mitigating the effects of

Peninsular & Oriental Steam Navigation Co. v. Overseas Oil Carriers, Inc.,⁶ addressed the question whether a shipowner may recover for fuel costs caused by the diversion of its vessel to aid a stricken seaman aboard the defendant's seaworthy vessel in the mid-Atlantic.⁷ Finding the traditional "life-salvage" rule inapplicable, the court granted recovery based upon quasi-contract principles.⁸

The *Canberra*, a vessel owned by the plaintiff, Peninsular & Oriental Steam Navigation Company (P&O), received a radio message hailing all ships with doctors aboard.⁹ A swift passenger liner that carried a trained medical staff with complete operating facilities, the *Canberra*, was the nearest vessel to respond to the distress signal.¹⁰ The ship was requested to rendezvous with the *Overseas Progress*, a vessel owned by the defendant, in order to provide emergency medical treatment for an ailing seaman,¹¹ Fireman William Turpin.¹² The captain of the *Canberra*, having notified the *Overseas Progress* that reimbursement for expenses might be sought, altered the ship's course and increased her speed to intercept the *Overseas Progress*, a slow tanker already traveling at her maximum speed.¹³

the life salvage rule. Under the British Merchant Marine Act, 1894, 57 & 58 Vict., c. 60 §§ 544-546, life salvors are entitled to a fair share of the award granted to property salvors. In addition, under the Mercantile Marine Fund Act, 1894, 57 & 58 Vict., c. 60 § 677(e), salvors who rescue human life in British waters may be awarded a sum in satisfaction of their claim by the Board of Trade in situations where the vessel or cargo involved has been destroyed or where the value thereof is insufficient to cover salvage claims. In contrast, legislation in the United States, § 3 of the Salvage Act of 1912, 46 U.S.C. § 729 (1970), provides that "[s]alvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo, and accessories." Courts have tended to construe the Salvage Act narrowly. *See, e.g., St. Paul Marine Transp. Corp. v. Cerro Sales Corp.*, 313 F. Supp. 377 (D. Hawaii 1970); *In re Yamashita—Shinnihon Kisen*, 305 F. Supp. 796 (D. Ore. 1969) (mem.). *But see The Shreveport*, 42 F.2d 524 (E.D.S.C. 1930).

⁶ 553 F.2d 830 (2d Cir.), *cert. denied*, 98 S. Ct. 183 (1977), *rev'g* 418 F. Supp. 656 (S.D.N.Y. 1976).

⁷ 553 F.2d at 832.

⁸ *Id.* at 835.

⁹ *Id.* at 832.

¹⁰ *Id.* Vessels carrying in excess of 50 passengers are required to carry on board a qualified surgeon and a full complement of surgical instruments, medicines and other medical supplies. *See* 46 U.S.C. § 155 (1970).

¹¹ Ships that carry no more than 50 passengers, such as the *Overseas Progress*, are not required to have a physician or medical staff on board. *See* 46 U.S.C. § 155 (1970).

¹² 553 F.2d at 832. Fireman Turpin was stricken with severe chest pains on the day prior to the occurrence of the events at issue. Believing that Turpin had suffered a heart attack, the ship's officers, aided by medical books and advice received by radio from the Public Health Service, administered morphine and glycerine nitrate to the victim. Without a doctor on board to treat him, however, Turpin deteriorated to the extent that he suffered another heart attack on the following day. *Id.*

¹³ *Id.* The *Canberra* was capable of traveling at almost 29 knots, while the maximum speed of the *Overseas Progress* was less than 14 knots. *Id.* At the latter rate of speed, it would

Upon effecting the rendezvous, the Canberra's captain presented a letter reiterating that reimbursement for expenses might be sought from the owner of the Overseas Progress.¹⁴ After the letter was countersigned by the captain of the Overseas Progress, Turpin was transferred to the Canberra where he received emergency medical treatment. By maintaining an increased rate of speed, the Canberra arrived in New York only shortly behind schedule. Upon disembarkation, Turpin was rushed by ambulance to a shore hospital where he eventually recovered.¹⁵

P&O requested reimbursement from the owners of the Overseas Progress for the extra fuel consumed by the Canberra as a result of the diversion and the increased speed, as well as for nursing services rendered and accommodations furnished Turpin.¹⁶ When this request was refused, P&O commenced an action in the District Court for the Southern District of New York. The court denied the plaintiff recovery in quasi-contract for fuel expended in the rescue effort but awarded \$500 for Turpin's nursing and accommodation expenses.¹⁷

have taken the Overseas Progress 57 hours to reach the nearest shore hospital. *Id.* at 833. The rendezvous with the Canberra, in contrast, was effected within 7 hours. *Id.*

¹⁴ *Id.* The parties stipulated that the letter served neither as a demand for reimbursement nor as a promise to pay. Rather, the ships' captains intended to leave the question of reimbursement to their superiors. *Id.*

¹⁵ *Id.* American seamen are entitled to receive medical care and to be hospitalized at United States Public Health Service Hospitals. See 42 U.S.C. § 249 (1970); 42 C.F.R. § 32.6(a)(1) (1976). If such facilities are not available, treatment may be obtained at another hospital at the expense of the Service. *Id.* § 32.11-12. Seamen who elect to receive treatment from private physicians or who otherwise refuse treatment at the marine hospital are not reimbursed for medical expenses. See *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525 (1938). Exceptions are made for seamen who require emergency treatment at private facilities or who cannot be properly treated at the marine facility. See *Robinson v. Pocahontas, Inc.*, 477 F.2d 1048 (1st Cir. 1973); *Kaiser v. American Pres. Lines, Ltd.*, 385 F. Supp. 554 (S.D.N.Y. 1974); *George v. Chesapeake & O. Ry.*, 348 F. Supp. 283 (E.D. Va. 1972).

¹⁶ 553 F.2d at 833. The defendant, Overseas Oil Carriers, had paid to the Canberra's surgeon a sum of money in satisfaction of medical expenses. *Id.*

¹⁷ 418 F. Supp. at 659. In rejecting plaintiff's claim for diversion expenses, the district court stated that since no misconduct or fault on the part of the defendant was shown, recovery would not be awarded. *Id.*; accord, *F.E. Grauwiller Transp. Co. v. King*, 131 F. Supp. 630, 634 (E.D.N.Y. 1955), *aff'd sub nom. F.E. Grauwiller Transp. Co. v. The Jeanne*, 229 F.2d 153 (2d Cir. 1956) (per curiam); *New York Tel. Co. v. Teichner*, 69 Misc. 2d 135, 329 N.Y.S.2d 689 (Dist. Ct. Suffolk County 1972). But see *Kane v. M/V Leda*, 355 F. Supp. 796, 801 (E.D. La. 1972), *aff'd*, 491 F.2d 899 (5th Cir.) (per curiam), *cert. denied*, 419 U.S. 865 (1974). In disposing of plaintiff's claim for expenses incurred in furnishing nursing and accommodations, however, the *Peninsular* district court did not find the absence of fault on the part of the defendant to be controlling. The court noted that "[h]ad the defendant's ship been in port it would have been required to pay such expenses for its crew member Moreover, these costs accrued after the transfer ('rescue') was effected and were part of custodial treatment and care." 418 F. Supp. at 659-60. Therefore, it was concluded that there was "one aspect of unjust enrichment present here." *Id.* at 659.

On appeal, the Second Circuit reversed the lower court's denial of fuel expenses.¹⁸ As a threshold question, Chief Judge Kaufman, writing for a unanimous panel,¹⁹ considered whether the federal courts may properly exercise jurisdiction over quasi-contractual claims in admiralty. Citing *Archawski v. Hanioti*²⁰ as controlling, the *Peninsular* court ruled that P&O's claim for restitution was cognizable in admiralty, since it arose from an "inherently maritime transaction."²¹ Turning to the merits, the Second Circuit found that the Canberra, in acceding to the request for aid by the Overseas Progress, had earned the right to recover the fair value of the costs incurred.²² When Turpin fell ill, Judge Kaufman observed, his captain became obligated, pursuant to the traditional maritime principle of "maintenance and cure,"²³ to provide medical care swiftly.²⁴

¹⁸ 553 F.2d at 833.

¹⁹ The panel consisted of Chief Judge Kaufman and Circuit Judges Lumbard and Van Graafeiland.

²⁰ 350 U.S. 532 (1956).

²¹ 553 F.2d at 835. The court stated that "[i]t is difficult to imagine a transaction more maritime in nature than the one presented here . . ." *Id.* In earlier decisions, quasi-contractual claims were not considered cognizable in admiralty. See notes 35-44 and accompanying text *infra*. A thesis expounded in support of this view held that since a quasi-contract is an implied agreement collateral to any contract, claims based upon such a theory are not inherently maritime in nature. See, e.g., *Israel v. Moore & McCormack, Inc.*, 295 F. 919 (2d Cir. 1920), *cert. denied*, 257 U.S. 668 (1922). See generally Chandler, *Quasi Contractual Relief in Admiralty*, 27 MICH. L. REV. 23 (1928).

²² 553 F.2d at 832.

²³ Under the doctrine of "maintenance and cure," a seaman who suffers illness or injury during his employment is entitled to a living allowance and medical treatment at the expense of the owner of the vessel on which the seaman served. Additionally, the disabled seaman is entitled to the recovery of the salary he would have earned had he the opportunity to complete the contractual term of his employment or the particular voyage on which he became disabled. See H. BAER, *ADMIRALTY LAW OF THE SUPREME COURT 1* (2d ed. 1957) [hereinafter cited as BAER]. See generally I. HALL, H. SANN & S. BELLMAN, 1B *BENEDICT ON ADMIRALTY* § 41 (7th ed. 1976) [hereinafter cited as *BENEDICT*]. The seaman is entitled to these benefits until he has reached the point of his "maximum cure." See *Salem v. United States Lines Co.*, 370 U.S. 31 (1962); *Farrell v. United States*, 336 U.S. 511 (1949). He is not, however, entitled to maintenance and cure if his condition is not subject to improvement. See *Fitzgerald v. United States Lines Co.*, 374 U.S. 16 (1963); *cf. Vella v. Ford Motor Co.*, 421 U.S. 1 (1975) (obligation to furnish maintenance and cure continues until permanent injury is diagnosed).

Maintenance and cure is recoverable without regard to the negligence of the seaman or the owner; the gross misconduct of the seaman, however, may preclude recovery. See, e.g., *Ressler v. States Marine Lines, Inc.*, 517 F.2d 579 (2d Cir.), *cert. denied*, 423 U.S. 894 (1975); *Matthews v. Gulf & S. Am. S.S. Co.*, 339 F.2d 702 (5th Cir. 1964) (*per curiam*).

Failure to disclose an existing condition does not result in the denial of maintenance and cure where such failure was in good faith. See, e.g., *Sammon v. Central Gulf S.S. Corp.*, 442 F.2d 1028 (2d Cir.), *cert. denied*, 404 U.S. 881 (1971); *Burkert v. Weyerhaeuser S.S. Co.*, 350 F.2d 826 (9th Cir. 1965). Compare *McCorpen v. Central Gulf S.S. Corp.*, 396 F.2d 547 (5th Cir.), *cert. denied*, 393 U.S. 894 (1968) (any concealment of existing condition precludes award) with *Evans v. Blidberg Rothchild Co.*, 382 F.2d 637 (4th Cir. 1967) (fraudulent misrepresentation bars recovery) and *Bluin v. American Export Isbrandtsen Lines, Inc.*, 319 F.

Since the vessel did not carry a medical staff, the captain's obligation included having Fireman Turpin transported to the nearest medical facility.²⁵ According to the Second Circuit, this duty was undertaken and performed by the Canberra at the request of the Overseas Progress.²⁶ In so doing, the Canberra had incurred considerable costs which otherwise would have been borne by the Overseas Progress.²⁷ In support of its position, the *Peninsular* court pointed to a line of decisions in which a good samaritan, acting in an emergency, had voluntarily intervened to perform a duty owed by a third party and had been permitted to recover the reasonable value of his services.²⁸ Noting that the actors in those cases had intended to charge for their services,²⁹ Judge Kaufman found such intent evidenced in the instant case by the countersigned letter from the

Supp. 1150 (S.D.N.Y. 1970) (mem.) (only fraudulent concealment bars recovery).

Traditionally available only to seamen in a ship's company, maintenance and cure is currently available to anyone who is a seaman within the meaning of the Jones Act, 46 U.S.C. § 688 (1970). See, e.g., *Mahramas v. American Export Isbrandtsen Lines, Inc.*, 475 F.2d 165 (2d Cir. 1973) (hairdresser); *Vincent v. Harvey Well Serv.*, 441 F.2d 146 (5th Cir. 1971) (employees on offshore oil drilling platforms); *George v. Chesapeake & O. Ry.*, 348 F. Supp. 283 (E.D. Va. 1972) (tug pilot living ashore); *Richardson v. St. Charles-St. John the Baptist Bridge & Ferry Auth.*, 284 F. Supp. 709 (E.D. La. 1968) (commuting deckhand on ferry); *Hudspeth v. Atlantic & Gulf Stevedores, Inc.*, 266 F. Supp. 937 (E.D. La. 1967) (commuting deckhand on tug); M. NORRIS, *THE LAW OF SEAMEN* § 553 (3d ed. 1970).

²⁵ 553 F.2d at 834.

²⁶ *Id.*; accord, *The Iroquois*, 194 U.S. 240 (1904) (captain bound to put into port when sailor stricken, unless cargo would be seriously injured by delay); *Media v. Erickson*, 226 F.2d 475 (9th Cir. 1955), cert. denied, 351 U.S. 912 (1956) (duty to return to port depends upon seriousness of illness); cf. *Pappas v. The Eurymond*, 1964 A.M.C. 1860 (E.D. Va. 1963), aff'd, 339 F.2d 805 (4th Cir. 1964) (per curiam) (dangerous climate conditions may justify captain's refusal to change itinerary).

²⁷ 553 F.2d at 834.

²⁸ *Id.* at 834-35 & 835 n.4. P&O had originally requested a sum totaling \$12,108.95 for accommodation and nursing, diversion expenses and additional fuel consumed by virtue of the increased speed of the vessel. *Id.* at 833. Overseas refused to concede that the rendezvous proximately caused the fuel expenses claimed, however, and the Second Circuit requested both parties to attempt to reach an agreement concerning the actual expenses involved in seaman Turpin's rescue. *Id.* at 837 n.7. Accordingly, the parties stipulated that \$6,294.30 of the additional fuel expenses were attributable to the "rescue" and \$2,205.70 attributable to the Canberra's diversion. *Id.*

²⁹ *Id.* at 834 (citing *Greenspan v. Slate*, 12 N.J. 426, 97 A.2d 390 (1953)). While the *Peninsular* district court had found that the Canberra was not a mere volunteer, it noted that the liner, a foreign flag vessel operating in international waters, was under no statutory duty to aid Turpin. 418 F. Supp. at 660. Section 2 of the Salvage Act of 1912, 46 U.S.C. § 728 (1970), which applies only to vessels of United States registry, provides:

The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, crew, or passengers, render assistance to every person who is found at sea in danger of being lost; and if he fails to do so, he shall, upon conviction, be liable to a penalty of not exceeding \$1,000 or imprisonment for a term not exceeding two years, or both.

²⁹ 553 F.2d at 834 (citing *Greenspan v. Slate*, 12 N.J. 426, 443, 97 A.2d 390, 399 (1953)).

captain of the Canberra indicating that reimbursement for expenses might be sought.³⁰

Dismissing the traditional life salvage rule as irrelevant, since the case did not involve a "daring rescue at sea,"³¹ the Second Circuit was of the opinion that the case merely involved the transfer of an ailing seaman from one seaworthy vessel to another.³² On a policy level, Judge Kaufman rejected the contention that permitting recovery would render small ship captains reluctant to request assistance, pointing out that ships' masters are legally bound "to make reasonable efforts to secure medical care for their stricken crewmen."³³ The court noted, moreover, that its decision should allay any fear on the part of larger craft that unreasonable expenses will be incurred in the performance of emergency services for smaller vessels and thereby encourage the rendering of such assistance.³⁴

Modern admiralty courts have been reluctant to entertain quasi-contract claims.³⁵ Indeed, according to one noted authority, the scope of quasi-contractual relief available in admiralty was uncertain as late as 1975.³⁶ Although in *Archawski v. Hanioti*,³⁷ an action for the recovery of money paid for a voyage subsequently cancelled, the Supreme Court permitted recovery based upon quasi-contract theory, it limited such recovery to claims arising out of underlying maritime agreements.³⁸ The Second Circuit, however, in *Sword Line, Inc. v. United States*,³⁹ apparently expanding admiralty jurisdiction beyond the parameters established by the Supreme Court, stated that claims in quasi-contract are cognizable in admiralty if such claims arise from maritime transactions, even

³⁰ 553 F.2d at 835. The court stated that the letter handed to the captain of the Overseas Progress "was sufficient to put Overseas on notice that the services were not intended as a gratuity." *Id.* at 835 n.4.

³¹ *Id.* at 836.

³² *Id.*

³³ *Id.* (emphasis omitted).

³⁴ *Id.*

³⁵ See BAER, *supra* note 23, at 365-67; 1 BENEDICT, *supra* note 23, at § 191.

³⁶ G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* 27 (2d ed. 1975). See 7A MOORE'S FEDERAL PRACTICE ¶ .275[1], at 3175 (2d ed. 1976) [hereinafter cited as MOORE].

³⁷ 350 U.S. 532 (1956).

³⁸ In permitting recovery in quasi-contract, the *Archawski* Court stated:

How far the concept of quasi-contracts may be applied in admiralty it is unnecessary to decide. It is sufficient this day to hold that admiralty has jurisdiction, even where the libel reads like *indebitatus assumpsit* at common law, provided that the unjust enrichment arose as a result of the breach of a maritime agreement.

Id. at 536.

³⁹ 230 F.2d 75 (2d Cir.), *aff'd*, 351 U.S. 976 (1956) (per curiam).

though there exists no contract at the core of the controversy.⁴⁰ Affirming the decision of the Second Circuit in an opinion limited to the jurisdictional issue, the Supreme Court concluded that "the libel alleg[ed] unjust enrichment from a maritime contract."⁴¹

It would thus appear that the Second Circuit has indicated its willingness to deviate from the Supreme Court's requirement that quasi-contractual claims in admiralty be premised upon an underlying maritime contract. In so doing, it is submitted, the Second Circuit has opted for a desirable and rational approach.⁴² Since

⁴⁰ Judge Clark, writing for the *Sword Line* majority, examined prior decisions holding quasi-contractual claims cognizable in admiralty and rejected the notion that a maritime contract must serve as the underpinning of a quasi-contractual claim:

In all these cases it may be broadly true that the original admiralty charter was at the base of the case. But from the standpoint of recovery, the action is not for its breach, but for a debt, i.e., the refund due in good conscience We think it sounder, and more in accordance with the nature of admiralty, to rest upon the inherent maritime character of the underlying transaction, rather than upon an attempt to force this claim into the mold of breach of contract.

230 F.2d at 77.

⁴¹ 351 U.S. at 969 (emphasis added).

⁴² One noted commentator has stated that the recognition of a distinction between quasi-contracts arising from an underlying agreement and claims in quasi-contract having no agreement at the core "would unduly and unnecessarily complicate an area which the Supreme Court seems to have clarified in *Archawski v. Hanioti*." MOORE, *supra* note 36, at 3175. That author went on to note that "[a]ll that is necessary to invoke the jurisdiction of the admiralty is that the action quasi ex contractu appertain to navigation or commerce upon navigable waters. No further requirements or refinements need, nor should, be sought." *Id.* at 3176; accord, *Banta v. McNeil*, 2 F. Cas. 764 (E.D.N.Y. 1871).

That which constitutes a maritime transaction is not always easily determined. In *Kossick v. United Fruit Co.*, 365 U.S. 731 (1961), for example, the plaintiff became ill while in the service of his vessel. The defendant, United Fruit, insisted that he accept treatment at a Public Health Service Hospital, promising to assume responsibility for any inadequate or improper treatment the hospital might render. Pursuant to this oral agreement, Kossick entered the public hospital and allegedly received injuries as a result of the hospital's negligence. The plaintiff brought an action against United Fruit on the oral contract. A unanimous Second Circuit panel dismissed the suit, explaining that "[t]he contract sued on is not a maritime contract, since it was merely a promise to pay money, on land" 275 F.2d 500, 502 (2d Cir. 1960). The Supreme Court reversed. Justice Harlan, writing for the majority, stated that the boundaries of contract jurisdiction in admiralty were "conceptual rather than spatial." 365 U.S. at 735. The oral agreement, according to the Court, "related to and stood in place of a duty [of maintenance and cure] created by and known only in admiralty as a kind of fringe benefit to the maritime contract of hire." *Id.* at 736. By focusing on the inherently maritime flavor of the agreement, the *Kossick* Court opted for an approach that diverges from the traditional English rule. See generally MOORE, *supra* note 36, at 2701-02 (only contracts "made and done" on the sea were considered maritime in nature).

Application of the Supreme Court's flexible approach, however, has proven problematic. As Professor Moore has stated:

[C]ontracts to build vessels are today universally deemed non-maritime, while contracts to repair vessels are maritime. Contracts to procure a policy of marine insurance are outside the jurisdiction of admiralty, even though the policies of insurance themselves are within the maritime jurisdiction. Contracts to purchase

admiralty courts are empowered to entertain claims sounding in unjust enrichment, as the Supreme Court has ruled, it would seem unsound to limit this power to situations involving a maritime contract;⁴³ in fact, the availability of quasi-contractual relief would appear equally, if not more, necessary in instances where a contract was not entered into by the parties.⁴⁴

The *Peninsular* court's application of quasi-contract principles to the instant situation, however, appears somewhat questionable. For policy reasons, restitution usually has been awarded to a qualified intervenor who performs the duty of another in an emergency situation and intends to charge for his services.⁴⁵ This rule mitigates the harshness of the traditional common law reluctance to remunerate volunteers for services rendered to nonacquiescent recipients. Recovery generally has been permitted, however, only in situations where emergency services are performed either by a professional without the request or knowledge of the obligor,⁴⁶ or by a parent for his child in satisfaction of a statutory duty neglected by a governmental unit.⁴⁷ In the often-cited case of *Greenspan v. Slate*,⁴⁸ for

vessels are generally deemed non-maritime, notwithstanding that contracts to charter vessels are universally recognized as being within the admiralty and maritime jurisdiction of the district courts. And it is doubtful whether actions taken against sureties of maritime ventures can be brought within the maritime jurisdiction, notwithstanding that actions against guarantors and indemnitors of such ventures have been permitted in admiralty.

Id. at 2712.

⁴³ See *Sword Lines, Inc. v. United States*, 230 F.2d 75, 77 (2d Cir.), *aff'd*, 351 U.S. 976 (1956) (per curiam); note 42 *supra*.

⁴⁴ One commentator, describing the evolution of quasi-contractual relief at common law, called it a "detached system of awarding restitution in cases where neither tort nor contract necessarily existed." DOBBS, *supra* note 3, § 4.2, at 235.

⁴⁵ See, e.g., *Robbins v. Town of Homer*, 95 Minn. 201, 103 N.W. 1023 (1905); *Gleason v. Warner*, 78 Minn. 405, 81 N.W. 206 (1889); *Rundell v. Bentley*, 53 Hun. 272, 6 N.Y.S. 609 (Sup. Ct. Gen. T. 3d Dep't 1889). RESTATEMENT OF RESTITUTION § 114 (1937). The Restatement provides:

A person who has performed the duty of another by supplying a third person with necessaries, although acting without the other's knowledge or consent, is entitled to restitution therefor if

- (a) he acted unofficiously and with intent to charge therefor, and
- (b) the things or services were immediately necessary to prevent serious bodily harm to or suffering by such third person.

Id.

⁴⁶ See notes 48-52 and accompanying text *infra*.

⁴⁷ See, e.g., *Sommers v. Putnam County Bd. of Educ.*, 113 Ohio St. 177, 148 N.E. 682 (1925) (quasi-contractual recovery allowed for transportation costs incurred by parents); *Rysdam v. School Dist. No. 67*, 154 Or. 347, 58 P.2d 614 (1936) (failure of school district to provide transportation to school children permits recovery by parents). Compare *Watkins v. Medical & Dental Fin. Bureau*, 101 Ariz. 580, 422 P.2d 696 (1967) (en banc) (only in the face of manifest dereliction of duty by parent will volunteer be entitled to remuneration) *with*

instance, a physician was awarded quasi-contractual recovery for treating a minor's fractured foot. Finding the requisite elements of duty, justification, intent to charge, and exigency satisfied,⁴⁹ the *Greenspan* court allowed the physician to recover the fair market value of his services.⁵⁰ While it may be presumed that physicians intend to charge for their professional services,⁵¹ it does not appear that any such presumption operates in favor of ships at sea performing emergency lifesaving acts.⁵² Indeed, in such a situation it would seem that the emergency transportation service provided by the vessel should be presumed gratuitous.⁵³ In the absence of evidence to rebut this presumption, therefore, the owners of the *Canberra* would not be entitled to restitution. Unfortunately, neither the Second Circuit nor the district court in *Peninsular* discussed the presumption of gratuity.⁵⁴ Thus, neither tribunal reached the question whether the presumption was overcome in this instance. Without such a finding, it is difficult to reconcile the *Peninsular* result with

State Div. of Family Serv. v. Clark, 554 P.2d 1310 (Utah 1976) (parent liable to third party for necessities furnished a child).

⁴⁹ 12 N.J. 426, 97 A.2d 390 (1953).

⁵⁰ *Id.* at 443, 97 A.2d at 399. The *Greenspan* court purportedly applied the rule enunciated in the RESTATEMENT OF RESTITUTION § 114 (1937), quoted in note 45 *supra*.

⁵¹ 12 N.J. at 443, 97 A.2d at 399.

⁵² *Id.*; RESTATEMENT OF RESTITUTION § 114, Comment c (1937). The presumption of gratuity normally appertaining to life saving services of non-professionals is not applicable to physicians. It has been said that "[s]ince it is their business to save life, health, and limb, the presumption is that they intend to charge, and that those treated by them expect to pay." Hope, *supra* note 1, at 235-36, wherein the question whether a physician acting in an emergency can ever be officious is discussed at length and answered in the negative. *Id.* at 236-38. See also *Cotnam v. Wisdom*, 83 Ark. 601, 104 S.W. 164 (1907) (physician allowed recovery for treating an unconscious patient).

⁵³ Professor Hope distinguished between a volunteer and an officious intermeddler. A volunteer, he explained, "would properly be one who acts for another without being requested and without being induced to do so by mistake or compulsion of any sort." Hope, *supra* note 1, at 28. Officiousness, on the other hand, implies that the benefit conferred was "unrequested, forced, unbeneficial, [and] unnecessary." *Id.* at 27 (emphasis in original). In the latter case, Professor Hope noted, an award is never granted. *Id.* Contrasting the treatment of a volunteer by common law and admiralty courts, Professor Hope noted that no presumption of gratuity is attached to the maritime volunteer who renders emergency aid to save the property of another. "In principle and logic," opined Professor Hope, "it is impossible to make the common law distinction between property in danger of destruction on the sea and property so threatened on land." *Id.* at 36. Professor Hope advocated that "reasonable action by A in saving B's property [on land or on the sea] should be encouraged and suitably rewarded." *Id.*

⁵⁴ One who acts to preserve another's life in an emergency is not adjudicated officious. Hope, *supra* note 1, at 38. Such situations, however, present courts with the greatest opportunity to indulge in the presumption that the service was intended as a "gift." *Id.* Thus, in those situations where the endangered individual most requires aid, the rescuer "must expect to give it for nothing." *Id.* at 39.

⁵⁴ See 553 F.2d at 834-35; 418 F. Supp. at 659.

general quasi-contract principles.

In addition to its problematic application of the law of restitution, the *Peninsular* court apparently overlooked a line of admiralty decisions denying a plaintiff compensation for performance of the maintenance and cure duty owned by the defendant.⁵⁵ For example, in *Rey v. Penn Shipping Co.*,⁵⁶ the plaintiff furnished lodging and nursing, on a deferred payment basis, to a disabled seaman. After the seaman failed to make payment, Rey commenced an action against the employer. The district court ruled that the plaintiff was not entitled to compensation from the owner of the vessel.⁵⁷ Finding that no theory, including quasi-contract, provided a basis for the plaintiff's action against the owners of the vessel, the Second Circuit affirmed.⁵⁸ The court explained that quasi-contractual relief was not available, as the owner of the vessel had not been unjustly enriched; the latter would be liable to the seaman, the Second Circuit stated, if the seaman were held liable to the plaintiff.⁵⁹ Although it did not expressly so state, perhaps the *Rey* court was indicating that maintenance and cure is not the type of duty which, when performed by a third party, gives rise to an action in quasi-contract against the original obligor.⁶⁰ In any event, the *Rey* line of decisions, it is submitted, points to a result contrary to that reached by the Second Circuit in *Peninsular*.⁶¹ Under *Rey*, the plaintiff should have been

⁵⁵ See text accompanying notes 56 & 60 *infra*.

⁵⁶ 1960 A.M.C. 2330 (S.D.N.Y. 1959), *aff'd*, 277 F.2d 905 (2d Cir.), *cert. denied*, 364 U.S. 829 (1960).

⁵⁷ 1960 A.M.C. at 2330.

⁵⁸ 277 F.2d at 906.

⁵⁹ *Id.* Judge Friendly stated that "a purveyor of goods or services to a seaman entitled to maintenance and cure may not himself sue the ship or her owner. . . ." *Id.* Judge Friendly added that he saw "no basis for permitting [maintenance and cure] to be enforced by a person who has supplied the seaman with services or supplies on credit that might properly figure in the seaman's own recovery." *Id.*

⁶⁰ See cases cited in note 47 *supra*.

⁶¹ See *The Federal No. 2*, 21 F.2d 313 (2d Cir. 1927) (maintenance and cure paid to injured seaman may not be recovered by owner in suit against tortfeasor); *Hegstead v. Standard Transp. Co.*, 1934 A.M.C. 190 (S.D.N.Y. 1934) (parent-landlord of seaman not entitled to subrogation of maintenance and cure claim); *Cheng v. Ellerman Lines, Ltd.*, 1926 A.M.C. 1038 (E.D.N.Y. 1926) (treating physician may not be subrogated to rights of seaman to maintenance and cure); *cf. Jones v. Waterman S.S. Corp.*, 155 F.2d 992 (3d Cir. 1946) (release of third party tortfeasor by seaman does not preclude seaman's receipt of maintenance and cure). *But see Methodist Episcopal Hosp. v. Pacific Transp. Co.*, 3 F.2d 508 (N.D. Cal. 1920) (hospital subrogated to seaman's rights).

Furthermore, the Restatement of Restitution, relied upon by the *Peninsular* court, provides in § 114 for recovery where the duty performed by the intervenor is imposed on the obligor by law, as in the parent-child relationship, or by contract. RESTATEMENT OF RESTITUTION § 114, Comment c (1937). The obligation to pay maintenance and cure, however, has been labeled as quasi-contractual in nature. See *Aguiar v. Standard Oil Co.*, 318 U.S.

denied direct relief against the employer and relegated to its remedy against the seaman who received the services.⁶²

Commenting upon the injustice which stems from application of the life-salvage rule, the *Peninsular* court characterized that maritime doctrine as "hoary, and almost universally condemned."⁶³ Thus, dissatisfaction with the salvage principle apparently was a factor contributing to the *Peninsular* result. Considerations of fairness may well militate in favor of its holding, but the *Peninsular* court's analysis nonetheless seems to depart from prior decisional law. It is suggested, therefore, that a final resolution of the dilemma which confronted the Second Circuit may only be effected by legislative action.

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724, 730 (1943); *Crooks v. United States*, 459 F.2d 631, 632 (9th Cir. 1972). The section, therefore, appears inapplicable to the *Peninsular* situation.

⁶² 227 F.2d at 907. The *Rey* court stated that there is no legal theory to support a right of direct action by a third party against a shipowner for maintenance and cure. *Id.* It is submitted that the *Peninsular* court, by permitting P&O to base its claim in quasi-contract on the underlying maintenance and cure obligation, has permitted such a direct action.

⁶³ 553 F.2d at 836.