

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 01-7765-CIV-LENARD/SIMONTON

ANA COLAK, Plaintiff, vs. RADISSON SEVEN SEAS CRUISES,
INC., in personam; and SEVEN SEAS
NAVIGATOR, in rem,

- Florida Southern US District Court - Judge Joan A. Lenard - Case No. 01-7765-CIV -
Date Filed: 11/19/2001 - Case closed 02/06/2002 - Case reopened 02/14/2002 - Case
closed 7/29/2004 – Colak v. Radisson Seven Seas, et al - Radisson Seven Seas Cruises,
Inc, IN Personam - Seven Seas Navigator, IN Rem - - *“The Navigator has issued a Letter
of Undertaking from its Insurance carrier guaranteeing payment of any judgment obtained
by the Colak in this district court in consideration for Colak’s agreement not to arrest the
vessel in Fort Lauderdale.” 2001 from US District Court Miami*

- First lawyer - Lipcon, Margulies, Alsina - withdrew from case 09/18/2003

40 ORDER Adopting Joint Scheduling Report setting Jury trial set for 9:00 9/20/04
Calendar call set for 2:30 9/14/04 Discovery cutoff 5/1/04 Pretrial conference for 2:30
9/9/04 (Signed by Judge Joan A. Lenard on 5/19/03)

- Second lawyer John Kevin Griffin - case closed 03/2005 after appeal.

- The Radisson Seven Seas Cruises, Inc., Corporation from Fort Lauderdale - USA –
accident happened on ship m/v Seven Seas Navigator under ownership Celtic Pacific UK,
Ltd. Southampton, flying Bahamian flag. Signed Special Agreement with Italian ITF -
FIT/CISL Marittimi Roma, (Captain Remo Di Fiore) seaman union, on 1 Jan 2000.
Radisson admits at court: "Radisson has a bareboat charter for the vessel".

Radisson’s lawyers McIntosh Sawran Peltz Cartaya-Petrucelli

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11. SEAMAN'S VERIFIED ACTION IN REM AND IN PERSONAM COMPLAINT
AND REQUEST FOR TRIAL BY JURY

12. US District Court - Miami - docket No. 01cv7765 - Colak v. Radisson Seven Seas

WARNING FOR SEAMEN - JUSTICE AT SEA - Ivica Colak - Dubrovnik - Croatia -
Story about my wife and her injury on cruising ship - www.warningforseamen.info

This story contain 86 pages (A4 size page) all facts-evidence and information for seamen

Every story has three sides. Yours, mine and the facts. Foster M. Russell

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-7765-CIV-LENARD/SIMONTON

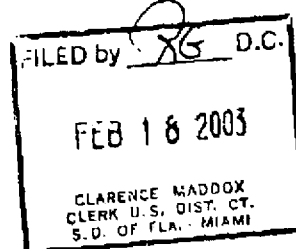
ANA COLAK,

Plaintiff,

vs.

RADISSON SEVEN SEAS CRUISES,
INC., in personam; and SEVEN SEAS
NAVIGATOR, in rem,

Defendants,



ORDER DENYING MOTION TO DISMISS COMPLAINT

THIS CAUSE is before the Court on a Motion to Dismiss Complaint (D.E. 4), filed on December 17, 2001, by Defendants Radisson Seven Seas Cruises, Inc., in personam, and Seven Seas Navigator, in rem. Plaintiff Ana Colak responded to Defendants' Motion to Dismiss (D.E. 13) on February 6, 2002. Defendants filed a Reply (D.E. 18) on March 6, 2002. Having reviewed the Motion, the Response, the Reply, and the record, the Court finds as follows.

I. Introduction

This is an action for damages alleging negligence, unseaworthiness and failure to provide maintenance and cure pursuant to the Jones Act, 46 U.S.C. § 688, and the general maritime law of the United States. Plaintiff Ana Colak, a Croatian national, worked as a

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room steward aboard the Seven Seas Navigator (hereinafter "Navigator"), a ship owned, at least in part, by Radisson Seven Seas Cruises, Inc. (hereinafter "Radisson"). (Mot. to Dismiss at 2.) As room steward, one of her duties was to clean passenger cabins on the ship. In the Complaint, Colak claims that on or about January 17, 2000, she was injured when a shower door in one of the passenger cabins fell and struck her. (Complaint ¶ 10.) Colak alleges that after her injury, the ship's doctor administered pain killers and then sent her back to work. Id. ¶ 11. In her Memorandum of Law in Opposition to Defendants' Motion, Colak further alleges that on May 26, 2000, while the Navigator was in United States' territorial waters, either in port or approaching the Port of San Francisco, Colak injured her ankle a second time while performing her duties aboard the ship. (Response at 2.) Colak asserts that after her second injury, the ship's doctor sent her to see Dr. Konce, an Orthopedic Surgeon at Bay Medical Center in San Francisco, who diagnosed her injury as a sprained ankle, prescribed pain killers, and sent Colak back to work. Id. Colak claims that her injury did not improve. Colak alleges that when she returned to Croatia, she visited her own doctors, and was then diagnosed with extensive ligament damage. Id.

On November 19, 2001, Plaintiff filed a Complaint against Radisson Seven Seas Cruises, Inc., in personam, and Seven Seas Navigator, in rem. On December 17, 2001, Defendants filed the Motion to Dismiss Complaint (D.E. 4) that is now before the Court.

II. Standard for Granting a Rule 12(b)(6) Motion to dismiss

Pursuant to Federal Rule of Civil Procedure 12(b), a defendant may move for

dismissal of a claim based on one or more of seven specific defenses: (1) lack of subject matter jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) insufficiency of process; (5) insufficiency of service of process; (6) failure to state a claim upon which relief can be granted; and (7) failure to join a party under Rule 19. The Eleventh Circuit clearly articulated the standard of review for a Rule 12(b) motion to dismiss in Harper v. Blockbuster Entertainment Corp., 139 F.3d 1385, 1387 (11th Cir.), cert. denied, 525 U.S. 1000 (1998).

“The standard of review for a motion to dismiss is the same for the appellate court as it is for the trial court.” Stephens v. Dep’t of Health and Human Servs., 901 F.2d 1571, 1573 (11th Cir. 1990). A motion to dismiss is only granted when the movant demonstrates “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

“On a motion to dismiss, the facts stated in appellant’s complaint and all reasonable inferences therefrom are taken as true.” Stephens, 901 F.2d at 1573.

Where a motion to dismiss is made on the basis of lack of subject-matter jurisdiction pursuant to Rule 12(b)(1), subject matter jurisdiction may be attacked either facially or factually. Lawrence v. Dunbar, 919 F.2d 1525, 1528-29 (11th Cir.1990). A court treats a facial attack on the Complaint like all other Rule 12(b) motions to dismiss, looking to see whether a plaintiff has sufficiently alleged a basis for subject matter jurisdiction, were the allegations in the Complaint taken as true. Id.; Menchaca v. Chrysler Credit Corp., 613 F.2d 507, 511 (5th Cir.), cert. denied, 449 U.S. 953 (1980). A factual attack, however, challenges “the existence of subject matter jurisdiction in fact,” and requires that the Court examine

materials outside of the pleadings, such as testimony and affidavits. Id. Thus, where a defendant factually attacks the existence of subject matter jurisdiction, the Court may look beyond the Complaint to determine whether such jurisdiction exists.

II. Defendants' Motion to Dismiss

Defendants move to dismiss the Complaint in this case on several grounds. First, Defendants assert that the action in rem should be dismissed because Plaintiff is not entitled to seek this type of relief. Second, Defendants argue that Plaintiffs cannot establish subject matter jurisdiction under the Lauritzen/Rhoditis choice-of-law analysis and that the doctrine of forum non conveniens mandates dismissal of the action. Finally, Defendants claim that Plaintiff has failed to state a claim upon which relief can be granted.

III. Analysis

A. Defendant as "Employer" under the Jones Act

In their Motion to Dismiss, Defendant Radisson Seven Seas Cruises, Inc. ("Radisson"), premises several of its arguments for dismissal on its assertion that Radisson should not be considered Plaintiff's employer under the Jones Act and general maritime law. Thus, the Court will begin its analysis of Defendants' Motion by addressing this issue.

In their Motion, Defendants not only deny that they are Plaintiff's employer, they claim they have identified Plaintiff's true employer as V. Ships Leisure, Inc., a Monaco corporation. (Mot. to Dismiss at 2-3.) The question of whether Defendants may be considered Plaintiff's employer under the Jones Act is relevant to the outcome of this action

and is examined by the Court below. However, the Court does not consider relevant and shall not entertain Plaintiff's arguments relating to the status and location of V. Ships, a third party entity that has not been joined in this action.

Proof of an "employer-employee relationship is essential to recovery" under the Jones Act. Spinks v. Chevron Oil Co., 507 F.2d 216, 224 (5th Cir. 1975).¹ In Cosmopolitan Shipping Co. v. McAllister, 337 U.S. 783 (1949), the Supreme Court explained the method by which a court should identify the "employer" of a seaman under the Jones Act. "No single phrase can be said to determine the employer. One must look at the venture as a whole. Whose orders controlled the master and the crew? Whose money paid their wages? Who hired the crew? Whose initiative and judgment chose the route and the ports?" Id. at 795.

In the instant case, Plaintiff has alleged that she was employed by Defendants at the time of her injury.² Plaintiff's allegation must be taken as true by the Court on a Rule 12(b)(6) Motion to Dismiss. Thus, Plaintiff's allegation alone is sufficient to allow her to state a claim against Defendants under the Jones Act. Even if this were not the case, Defendants have offered the Court nothing more than their denial of Plaintiff's allegation.

¹ The United States Court of Appeals for the Eleventh Circuit has adopted as binding precedent all decisions rendered by the former Fifth Circuit prior to October 1, 1981. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981).

² In paragraph six of her Complaint, Plaintiff alleges that "[a]t all times material hereto, Plaintiff's employer was an agent of the shipowner and/or ship operator." (Complaint ¶ 6.) In paragraph eight, Plaintiff further alleges that on the date of her injury "[she] was employed by Defendant Radisson as a seaman." Id. ¶ 8.

They have not provided any information about the operations of the ship or the venture as a whole that would enable the Court to answer the questions posed by the Supreme Court in Cosmopolitan Shipping, and determine the issue at this time. Thus, Defendants claim that they are not Plaintiff's employer does not provide a basis for dismissal of this action.

B. In Rem Action

In the Motion to Dismiss, Defendants argue that Plaintiff is not entitled to bring her claims of Jones Act negligence, maintenance and cure and failure to treat as part of an in rem action. (Mot. to Dismiss Compl. at 1-2.) Defendants claim that suits for damages under the Jones Act are only available in personam and cannot be brought in rem against a ship. Id. Defendants further assert that Jones Act claims, as well as claims for maintenance and cure, are only available in personam against the injured seaman's employer and not against a ship owner. Id. So, while Defendants concede that Plaintiff is entitled to bring a claim for unseaworthiness in rem, they argue that all the other claims must be dismissed. Id. In her Response, Plaintiff asserts that since Defendants have admitted that the Navigator is a proper in rem defendant to the unseaworthiness claim, the motion to dismiss the in rem action should be denied. (Pla.'s Resp. at 13.) The Court agrees.

It is well settled that there are several types of actions that are available to "seamen" who have been injured while employed on a ship. Seamen may bring suit for their injuries and subsequent treatment under the Jones Act for negligence, unseaworthiness, and maintenance and cure. McAllister v. Magnolia Petroleum Co., 357 U.S. 221, 224 (1958).

“Without elaborating on the nature of these three actions, it is sufficient to say that they are so varied in their elements of proof, type of defenses, and extent of recovery that a seaman will rarely forego his right to sue for all three.” *Id.* Of these, the admiralty claims of unseaworthiness and maintenance and cure may be brought in rem against the ship, but, as admiralty claims, are not eligible for trial by jury. Baker v. Raymond International, Inc., 656 F.2d 173, 181, 185 (5th Cir. 1981)³; Gonzalez v. M/V Destiny Panama, 203 F.R.D. 673, 675-76 (S.D.Fla. 2001). However, where a seaman is claiming unseaworthiness and maintenance and cure in admiralty as well as asserting a civil negligence claim under the Jones Act, his claims must be joined in a single proceeding. McAllister, 357 U.S. at 225; Baltimore S.S. Co. v. Phillips, 274 U.S. 316 (1927). Furthermore, such a proceeding may be brought in rem, based on the inclusion of the admiralty in rem claim, and may be tried by a jury, based on the presence of the Jones Act claim. See Gonzalez, 203 F.R.D. at 675-76.

In the instant case, Plaintiff has alleged Jones Act negligence (Count I), unseaworthiness (Count II), failure to provide maintenance and cure (Count III), and failure to treat (Count IV), based on “both in personam and in rem principles.” (Verified Compl. ¶ 1.) Since the unseaworthiness count and the maintenance and cure count are both admiralty in rem claims, the Court finds nothing improper about Plaintiff bringing her action in rem against the Navigator as well as in personam against Radisson Seven Seas Cruises, Inc.

³ The United States Court of Appeals for the Eleventh Circuit has adopted as binding precedent all decisions rendered by the former Fifth Circuit prior to October 1, 1981. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981).

C. Subject Matter Jurisdiction and Forum Non Conveniens

In its Motion, Defendants claim that the doctrine of forum non conveniens mandates dismissal of the case in favor of a more convenient alternative forum. (Mot. to Dismiss at 5.) Plaintiff argues that because United States law governs this action, the case cannot be dismissed based on forum non conveniens. (Resp. at 4.) The Court agrees.

The Eleventh Circuit has clearly established that if U.S. law is found to be applicable, a case may not be dismissed on forum non conveniens grounds. See Szumlicz v. Norwegian America Line, 698 F.2d 1192, 1195 (11th Cir. 1983). Plaintiff brings her suit under United States general maritime law and pursuant to the statutory framework of the Jones Act. 46 U.S.C. §688. The Jones Act states, in pertinent part, that:

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 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 of trial by jury . . . 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."

46 App. U.S.C. §688 (1982). The Broad language of the Act suggests that it might apply to protect all seamen injured anywhere in the world. See De Mateos v. Texaco, Inc., 562 F.2d 895, 900 (3rd Cir. 1977). However, the Supreme Court significantly limited the reach of the Jones Act in Lauritzen v. Larsen, 345 U.S. 571 (1953), when it held that the applicability of

U.S. law depends on seven choice-of-law factors. These include: (1) the place of the wrongful act, (2) the law of the ship's flag, (3) the allegiance or domicile of the injured seamen, (4) the allegiance of the shipowner, (5) the place where the shipping articles were signed, (6) the accessibility of the foreign forum, and (7) the law of the forum. Lauritzen, 345 U.S. at 583-591. In Romero v. International Terminal Operating, 358 U.S. 354, 382 (1959), the Supreme Court extended these seven factors to govern the application of maritime law generally. In that case, the court stated that, "the similarity in purpose and function of the Jones Act and the general maritime principles of compensation for personal injury, admit of no rational differentiation of treatment for choice of law purposes." Id. Thus, the same choice-of-law analysis that applies to actions brought under the Jones Act, applies to actions under general maritime law as well. See Szumlicz, 698 F.2d at 1195 (applying the Lauritzen/Rhoditis analysis in a case involving both a Jones Act claim and a claim of unseaworthiness under general maritime law).

In Hellenic Lines v. Rhoditis, 398 U.S. 306, 310 (1970), the Supreme Court revisited the analytic framework it had established in Lauritzen. In Rhoditis, the Court added another important criteria, the "base of operations" factor. Id. The Court held that the existence of a U.S. base of operations required the applicability of the Jones Act in that case. The Court made this ruling even though almost all of the other Lauritzen factors favored dismissal. See Rhoditis, 398 U.S. at 310. These factors, the Court held, are not to be applied "mechanical[ly]" but rather in light of the totality of the circumstances. Id. at 308.

Relying on Rhoditis, the Eleventh Circuit held in Szumlicz that the substantial use of a United States “base of operations” by the vessel’s owner, along with any other U.S. contacts, justified the application of the Jones Act and, thus, precluded dismissal on the basis of forum non conveniens. Szumlicz, 698 F.2d at 1195. As in Rhoditis, the Szumlicz court reached this conclusion even though almost all of the other Lauritzen factors favored the defendant. Szumlicz, 698 F.2d at 1196. Thus, the Eleventh Circuit has placed significant weight on the Rhoditis base of operations test where, despite the facade of foreign management, the ship and the shipowner have close operational contacts with the United States.

If it is determined that U.S. law applies, a district court in this Circuit is precluded under Lauritzen, Rhoditis, and Szumlicz from dismissing the case on the basis of forum non conveniens. If, however, the court finds that U.S. law does not apply, it must then analyze the appropriateness of the United States as a forum under the forum non conveniens factors established by Piper Aircraft v. Reyno, 454 U.S. 235 (1981) and Gulf Oil v. Gilbert, 330 U.S. 501 (1947).

D. Application of the Choice of Law Analysis

Upon application of each of the seven Lauritzen factors and the Rhoditis gloss on those factors to the facts of this case, the Court finds that U.S. law does apply to this cause of action.

1. The Place of the Wrongful Act

In the instant case, the Defendants claim that the incident Plaintiff complains of took place on the high seas and not in U.S. territorial waters. (Mot. to Dismiss at 4.) However, in her Response, Plaintiff concedes that the initial injury took place on the high seas, but argues that a second incident occurred “either in the Port of San Francisco, or as the ship approached that city in U.S. territorial waters.” (Pla.’s Response at 5.) In their Reply, Defendants assert that Plaintiff’s allegation of a second incident may not be considered by the Court in deciding its Motion to Dismiss, since it is not contained within the four corners of the Complaint. (Def.’s Reply at 3.)

Plaintiff has submitted several exhibits that support her claim that she was injured a second time on May 26, 2000, including a progress note and letter from the physician who examined her ankle following the re-injury. (Notice of Filing, Ex. B, C.) As stated earlier in this opinion, where a motion to dismiss attacks the factual basis of subject-matter jurisdiction pursuant to Rule 12(b)(1), the Court may look beyond the Complaint to determine whether such jurisdiction exists. Lawrence, 919 F.2d at 1528-29. In the instant Motion, Defendant is attacking the factual basis for Plaintiff’s assertion of subject-matter jurisdiction under general maritime law and the Jones Act. (Mot. to Dismiss at 1.) Thus, the Court may consider matters outside of the pleadings, including Plaintiff’s alleged re-injury.

However, in order to determine the “the place of the wrongful act” for the purposes of the Lauritzen/Rhoditis analysis, the Court must first identify the “act” to be examined.

Logic mandates that the act or acts which produced the injury complained of by Plaintiff should be considered the wrongful act(s) for the purpose of this analysis. In the instant case, the Complaint describes Plaintiff's injury as follows: "shower door falling and striking plaintiff...[i]n addition, plaintiff was sent back to work on pain killers by the ship's doctor which caused her injury to be aggravated and made worse." (Compl. ¶ 18a.) Plaintiff concedes in her Response that this first incident, during which a shower door fell off its moorings and injured her ankle, occurred on the high seas. (Response at 5.) It is likely that Plaintiff's visit to the ship's doctor after her injury also occurred on the high seas. Plaintiff has not alleged a second accident in her Complaint, nor has she requested relief for any additional injuries incurred on May 26, 2000. Thus, the location of a second accident is irrelevant to a determination of "the place of the wrongful act." The Court finds that the wrongful act for choice-of-law purposes is the injury to Plaintiff's ankle alleged in the Complaint, which Plaintiff concedes took place on the high seas.

This factor favors Defendants' argument that United States law does not apply in this case. However, it should be noted that the Supreme Court has acknowledged the limited significance of this particular factor in the overall choice-of-law analysis. Lauritzen, 345 U.S. at 583 ("The test of location of wrongful act or omission, however sufficient for torts ashore, is of limited application to shipboard torts").

2. The Law of the Ship's Flag

The flag of the ship is Bahamian.

3. The Allegiance or Domicile of the Injured Seamen

There is no dispute that Plaintiff is a citizen of Croatia.

4. The Allegiance of the Shipowner

Plaintiff contends that Defendants own the Navigator. (Response at 6.) Defendants concede that they are partial owners of the Navigator, but they contend that they own the Navigator as part of a joint venture with V. Ships, a Monaco corporation. (Mot. to Dismiss at 2.) Plaintiff has submitted, as an exhibit, a printed copy of Defendants' promotional internet page touting the Navigator as a part of the Radisson Seven Seas Cruises fleet, without mention of additional owners. (Notice of Filing, Ex. D.) Defendants have not provided any information to the Court disproving their ownership of the Navigator or proving the existence of any joint ownership arrangements. Although the Court cannot determine the precise nature and significance of Defendants' ownership interest in the Navigator, it notes that they have admitted at least partial ownership of the ship. (Mot. to Dismiss at 2.) They have also admitted to being an American corporation headquartered in Fort Lauderdale, Florida. Id. at 4. Thus, the shipowner's ties to the United States are significant.

5. The Place of the Contract

In Lauritzen, the Court placed minimal emphasis on the place of the contract, noting that with regard to sailor's contracts:

the place of contracting ... as is usual to such contracts [is] fortuitous. A seaman takes his employment, like his fun, where he finds it; a ship takes on

crew in any port where it needs them. The practical effect of making the lex loci contractus [the law of the place of the contract] govern all tort claims during the service would be to subject a ship to a multitude of systems of law, to put some of the crew in a more advantageous position than others, and not unlikely in the long run to diminish hirings in ports of countries that take best care of their seamen. But if contract law is nonetheless to be considered ... the tendency of the law is to apply in contract matters the law which the parties intended to apply.

Lauritzen, 345 U.S. 588-589. Lauritzen, thus, places greater emphasis on the intent of the parties than on the actual place of the contract.

The “place of the contract” in this instance is unclear. Defendants argue that “the contract” is the Collective Bargaining Agreement entered into between the Norwegian Seaman’s Union and V. Ships, a Monaco corporation.⁴ (Mot. to Dismiss at 4.) Plaintiff contends that the Appointment Letter she signed, agreeing to work on the Navigator for a six month period, should be considered “the contract” for the purposes of the choice-of-law analysis. (Resp. at 6-7; Notice of Filing, Ex. A.) She argues that it is unclear where the Collective Bargaining agreement was executed, but that she signed the Appointment letter in Fort Lauderdale, Florida.

In the instant case, as in Lauritzen, the Court holds that the “place of the contract” is

⁴ Defendant also asserts that the Collective Bargaining Agreement calls for the application of Bahamian law. (Mot. to Dismiss at 4.) However, Defendants have neglected to substantiate their claims by submitting a copy of that agreement with its Motion. In addition, beyond making the above observation, Defendants do not argue anywhere in their pleadings that Bahamian law should apply to this dispute, nor do they focus on the Bahamas as an alternative forum in their forum non conveniens arguments. (See Mot. to Dismiss at 5 (Defendant argues for Monaco as an alternative forum); Def’s Reply at 6 (Defendant argues for Croatia as an alternative forum).)

not entitled to significant weight in this analysis. Regardless of whether the Court considers the contract to be the Collective Bargaining Agreement or the Appointment Letter, the place of contracting in this case was certainly “fortuitous.” Lauritzen, 345 U.S. at 588. Thus, this factor favors neither party.

6. The Accessibility of the Foreign Forum

Defendants argue that Monaco is an accessible and convenient forum for Plaintiff’s action. (Mot. to Dismiss at 4.) In a footnote, Defendants also state that Croatia and the Bahamas are accessible forums. Id. at 4 n.4. Plaintiff claims that of the forums named by Defendants, only Croatia presents a viable alternative forum for this action. (Response at 7.) Plaintiff contends that Monaco has no ties to the case, other than being the “nominal home of a corporation that [Plaintiff] has not sued.” Id. at 7 n.3. The Court agrees.⁵ Plaintiff further argues that the Bahamas is simply a flag-of-convenience country. As Defendant has not contradicted this assertion nor noted any additional connection between this action and the Bahamas, the Court agrees with Plaintiff that the Bahamas should not be considered as an alternative forum for the purposes of forum non conveniens. Thus, the Court evaluates only Defendants’ arguments naming Croatia as an alternative forum. (Def.’s Reply at 6-8.)

In order to show that an alternative forum exists for the purposes of forum non conveniens, the Supreme Court has explained that a Defendant need only demonstrate that

⁵ As the Court previously stated in section III(A) of this Order, arguments relating to the status and location of a non-party will not be considered.

it is “amenable to process in the other jurisdiction.” Piper, 454 U.S. at 254 n.22 (quoting Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 507 (1947)). Defendants in the instant case have failed to make this threshold showing. They have not established for the Court whether this action would be cognizable at all in a Croatian court, nor have they attempted to explain whether and under what legal authority they would be subject to service of process in Croatia. Thus, the Court finds that Defendants’ have failed to demonstrate that an accessible forum, other than the United States, exists for the purposes of the choice-of-law analysis.⁶

7. The Law of the Forum

The “law of the forum” refers to the applicable law within the United States. In Re: Fantome, S.A., 2002 WL 31261556 (S.D.Fla. 2002). If the Court finds jurisdiction over this action, the Jones Act and federal maritime law would apply.

8. The Rhoditis Base of Operations Factor

The lawsuit in Rhoditis was brought under the Jones Act by a Greek seaman injured on board a Greek ship docked at the Port of New Orleans. Rhoditis, 398 U.S. at 310. The vessel was owned by a Greek corporation, whose owner was a Greek citizen, residing in the United States. Id. The ship sailed under a Greek flag, and the injured seaman’s contract, which was signed in Greece, provided that Greek law apply to disputes between the seaman

⁶ The arguments Defendants’ have made in their pleadings relate to the adequacy rather than the availability of Croatia as an alternative forum for this dispute. (See Def.’s Reply at 6-8.) The Court declines to evaluate these arguments where the threshold availability of Croatia as a forum has not been established.

and the employer. Id. The contract also provided that any such disputes were to be adjudicated in a Greek court. Id.

Despite this panoply of factors favoring dismissal under Lauritzen, the Rhoditis Court held that the list in Lauritzen was “not exhaustive” and added another factor “of importance,” the ship’s U.S. base of operations. Id. at 309. The Court further held that the “base of operations” was, in fact, in the United States on the grounds that (1) the owner, who held ninety-five percent of the stock, was a U.S. domiciliary and (2) the ship was not a “casual visitor” to New York but rather earned “income from cargo originating or terminating here.” Id. at 310. As the Rhoditis court explained,

The flag, the nationality of the seaman, the fact that his employment contract was Greek, and that he might be compensated there are in the totality of the circumstances of this case minor weights in the scales compared with the substantial and continuing contacts that this alien owner has with this country. . . [T]he facade of the operation must be considered minor, compared with the real nature of the operation and a cold objective look at the actual operational contacts that this ship and this owner have with the United States.

Id.

As stated in section III(D)(4) of this Order, the shipowners’ ties to the United States are very strong. In addition, the ship has strong operational contacts with the United States and specifically with the Southern District of Florida. Judging from the Cruise Calendar obtained from Defendants’ website, the Navigator docked in Fort Lauderdale fourteen times

in 2001. (Notice of Filing, Ex. E.) In addition, the Navigator frequently visited Los Angeles and San Francisco, California. Id. As was the case in Rhoditis, the Navigator “was not a causal visitor” to the United States. Thus, the Court finds that the “base of operations” factor clearly favors the application of U.S. law to this action.

In sum, the Court finds on these facts that the Lauritzen-Rhoditis analysis militates in favor of the application of U.S. law. As noted above, a couple of these eight factors are not entitled to significant weight, including the place of the wrongful act and the place of the contract. Among the remaining factors, the Court finds that the allegiance of the shipowner, the accessibility of the foreign forum, the law of the forum, and the base of operations factor all favor the application of U.S. law. These combine to create a stronger connection between this dispute and the United States than existed in Rhoditis. Thus, the Court finds that U.S. law applies to the facts of this case. Based on the Eleventh Circuit decision in Szumlicz, 698 F.2d at 1196, which indicates that where United States law is found to apply, a case should not be dismissed on forum non conveniens grounds, the Court finds that this action is not subject to dismissal on this basis.

E. Motion for Failure to State a Claim Under Rule 12(b)(6)

1. Jones Act Claims

Defendants argue for the dismissal of Plaintiff’s Jones Act claims on the basis that (1) Plaintiff has not sufficiently alleged a causal relationship between Defendants’ alleged negligence and the injury, and (2) overwork does not create liability under the Jones Act.

(Mot. to Dismiss at 9.)

Plaintiff correctly asserts that in order to survive a motion to dismiss for failure to state a claim her Complaint need only meet notice-pleading requirements, as set forth in Federal Rule of Civil Procedure 8(a)(2). (Response at 14.) Defendants contend that additionally Plaintiff is required to aver facts that establish the existence of a causal relationship between Plaintiff's injury and the negligence alleged. (Mot. to Dismiss at 9.) However, Defendants have misstated the law in this District.⁷ There is no such pleading requirement in the Eleventh Circuit for claims brought under the Jones Act. In fact, the Fifth Circuit has observed that the burden of proof placed on a plaintiff under the Jones Act and general maritime law to prove proximate cause at trial is very light, noting that most commentators have called it "featherweight." Landry v. Two R. Drilling Company, 511 F.2d 138, 142 (5th Cir. 1975)⁸ (citing Gilmore & Black, Admiralty (1957), s 6--36, p. 311). Thus, the Court finds that Plaintiff's allegation that her injuries "are due to the fault and negligence

⁷ Defendants rely on directly quoted language that they attribute to "this District Court." (Mot. to Dismiss at 9.) However, this quote does not appear in the case cited, nor does it appear in any case published by this Court or any court in the Southern District of Florida. Upon further investigation, the Court has located the quoted language in a Seventh Circuit case referring specifically to the substantive law of the State of Indiana. See Mitchell v. White Consolidated, Inc., 177 F.2d 500, 503 (7th Cir. 1949) ("the existence of a causal relationship between the negligence charged and the damage alleged must be shown by averments of fact before the complaint can be said to state a good cause of action"). Defendants are hereby cautioned that such blatant misrepresentations of law are inexcusable and will not be tolerated in future pleadings.

⁸ The United States Court of Appeals for the Eleventh Circuit has adopted as binding precedent all decisions rendered by the former Fifth Circuit prior to October 1, 1981. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981).

of Defendant, and/or its agents, servants, and/or employees," is sufficient to meet the pleading requirements set forth in the Federal Rules of Civil Procedure.

Defendants further argue that Plaintiff may not recover for an injury caused by "hard work or overwork" under the Jones Act. (Mot. to Dismiss at 9.) Plaintiff is correct in pointing out that the only binding precedent that Defendants have cited is the Supreme Court's decision in Consolidated Rail Corp. V. Gotshall, 512 U.S. 532, 556-58 (1956). Again, Defendants have misrepresented the legal rule stated by that case. In Gotshall, the Supreme Court held that a plaintiff may not recover for a negligently inflicted emotional injury under the Federal Employers' Liability Act ("FELA")⁹ unless that injury would be compensable under the common law zone of danger test. Id. The Court held that a claim of "work related stress" made by one of the plaintiffs in that case did not fall within the common-law zone of danger, and was not cognizable under FELA. Id. at 2411-12. In the instant case, Plaintiff alleges an actual physical injury rather than an emotional injury. Thus, the Court finds that the Gotshall holding does not apply to the facts of this case, and the dismissal of Plaintiff's claims based on "hard work or overwork" is not warranted.

2. Unseaworthiness

Defendants also argue that Plaintiff has failed to properly plead her claim of unseaworthiness. (Mot. to Dismiss at 10.) Plaintiff asserts that her claim of unseaworthiness

⁹ In Miles v. Apex Marine Corp., 489 U.S. 19 (1990), the Supreme Court held that cases interpreting FELA are also applicable to actions brought under the Jones Act.

is properly pled. The Court agrees.

The Supreme Court has recognized that unseaworthiness is “a remedy separate from, independent of, and additional to other claims against the shipowner...[and] wholly distinct from liability based upon negligence.” Usner v. Luckenbach Overseas Corp., 400 U.S. 494, 498 (1971). It is well-settled that “[i]n order to state a cause of action for unseaworthiness a plaintiff must allege his injury was caused by a defective condition of the ship, its equipment or appurtenances.” 1 Admiralty & Mar. Law § 6-25 (3d Ed.) In Usner, the Supreme Court explained that,

A vessel’s condition of unseaworthiness might arise from any number circumstances. Her gear might be defective, [citation omitted] her appurtenances in disrepair, [citation omitted] her crew unfit. [citation omitted] The number of men assigned to perform a shipboard task might be insufficient. [citation omitted] The method of loading her cargo, or the manner of its stowage, might be improper. For any of these reasons, or others, a vessel might not be reasonably fit for her intended service.

Id. at 499.

In the instant case, Plaintiff has alleged that the Navigator was not fit for its intended purpose due to a laundry list of conditions, including many of those listed by the Supreme Court in Usner. (Complaint ¶ 18.) She further alleges that the unseaworthiness of the vessel was a legal cause of injury and damage to Plaintiff. Id. The Court finds that Plaintiff has pled a legally sufficient claim of unseaworthiness.

3. Maintenance and Cure

Defendants argue that Plaintiff is not entitled to claim attorney’s fees based on her

allegation that Defendants unreasonably refused to provide maintenance and cure. (Mot. to Dismiss at 11.) Plaintiff argues that a claim for attorney's fees is entirely proper and sufficiently pled in the Complaint. (Response at 16-18.) The Court agrees.

The Eleventh Circuit has recognized that attorney's fees are available to a plaintiff "when the defendant refuses to provide maintenance and cure in bad faith, callously, or unreasonably." Nichols v. Barwick, 792 F.2d 1520, 1524 (11th Cir. 1986) (citing Vaughan v. Atkinson, 369 U.S. 527, 530-31 (1962); Mort v. Weyerhaeuser Co., 55 C.R. Musser, 294 F.Supp. 936 (S.D.N.Y. 1968)). In her Complaint, Plaintiff has alleged that "Defendant willfully and callously delayed, failed and refused to pay Plaintiff's entire maintenance and cure....Defendant's failure to pay Plaintiff's entire maintenance and cure is willful, arbitrary, capricious, and in callous disregard for Plaintiff's rights as a seaman." (Complaint ¶ 23, 24.) The Court finds that Plaintiff has adequately stated a claim for attorney's fees.

Defendants further assert that in order to state a cause of action for maintenance and cure, a more specific explanation of the benefits owed is required. However, Defendants cite no case law for this assertion other than the case they misquoted in an earlier section of their pleading. Absent any relevant authority, the Court finds no merit to Defendants' argument.

4. Failure to Treat

Defendants argue that Plaintiff has failed to state a claim for failure to treat. (Mot. to

Dismiss at 12.)¹⁰ Plaintiff asserts that her claim of “failure to treat” is distinct from her claim of maintenance and cure. She contends that her claim of failure to treat allows her to recover damages resulting from additional injuries incurred as a result of Defendants’ alleged failure to provide “prompt, proper and adequate medical care.” (Complaint ¶ 27.) The Court agrees.

In Picou v. American Offshore Fleet, Inc., 576 F.2d 585, 587 (5th Cir. 1978),¹¹ the Fifth Circuit recognized the availability of a separate cause of action seeking damages for the negligent refusal of an employer to provide maintenance and cure, in addition to the traditional action for maintenance and cure. In that case, the Fifth Circuit relied on the Supreme Court decision in Cortes v. Baltimore Insular Line, 287 U.S. 367 (1932), holding that “if the failure to give maintenance or cure has caused or aggravated an illness, the

¹⁰ In addition, Defendants argue that the availability of a separate action for “failure to treat” was eliminated by the Fifth Circuit decision in Guevara v. Maritime Overseas Corporation, 59 F.3d 1496 (5th Cir. 1995). (Mot. at 14.) In that case, the Fifth Circuit analyzed the law of maintenance and cure in light of the “uniform rule” established by the Supreme Court in Miles v. Apex Maritime Corporation, 498 U.S. 19 (1990), and concluded that because the Jones Act does not provide for punitive damages in an action for willful nonpayment of maintenance and cure, punitive damages cannot be awarded in the same cause of action under general maritime law. Id. at 1506, 1512. Thus, the Fifth Circuit in that case did not eliminate a cause of action, it merely limited the available damages. Since Plaintiff does not specify the damages she is requesting under Count IV of her Complaint, the Court fails to see the relevance of the holding in Guevara to Defendants’ arguments in their Motion to Dismiss. In addition, Plaintiff correctly points out in her Response that the holding of Guevara is not controlling in the Eleventh Circuit. (Resp. at 19.) In fact, the rule in the Eleventh Circuit remains that “both reasonable attorney’s fees and punitive damages may be legally awarded in a proper case” for the willful and arbitrary refusal to pay maintenance and cure. Kasprik v. United States, 87 F.3d 462, 464 (11th Cir. 1995); quoting Hines v. J.A. Laporte, Inc., 820 F.2d 1187, 1189 (11th Cir. 1987).

¹¹ The United States Court of Appeals for the Eleventh Circuit has adopted as binding precedent all decisions rendered by the former Fifth Circuit prior to October 1, 1981. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981).

seaman has his right of action for the injury thus done to him.” Picou, 576 F.2d at 587. In Garay v. Carnival Cruise Lines, Inc., 716 F.Supp. 1421, 1423-24 (S.D.Fla. 1989), rev'd on unrelated grounds 904 F.2d 1527 (11th Cir. 1990), U.S. District Court Judge Ryskamp characterized such an action for breach of the traditional duty of maintenance and cure as a claim for “failure to treat.” In that case, Judge Ryskamp observed that a claim of failure to treat entitles a seaman to recover “for any additional injuries caused by the shipowner’s unreasonable failure to treat or to provide prompt medical care.” Id., citing Joyce v. Atlantic Richfield Co., 651 F.2d 676, 685 (10th Cir. 1981). Thus, the Court finds that Plaintiff’s claim of “failure to treat” is distinct from her claim for maintenance and cure, and is cognizable by this Court.

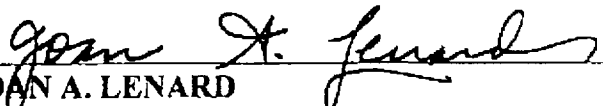
IV. Conclusion

Based on the foregoing analysis, the Court finds that Defendants have failed to establish a basis for dismissal of Plaintiff’s claims, either on forum non conveniens grounds or based on Plaintiff’s failure to state a claim.

Accordingly, it is

ORDERED AND ADJUDGED that the Motion to Dismiss Complaint (D.E. 4), filed on December 17, 2001, by Defendants Radisson Seven Seas Cruises, Inc., in personam, and Seven Seas Navigator, in rem, is **DENIED** consistent with this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 18 day of February,
2003.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

cc: U.S. Magistrate Judge Andrea M. Simonton

All Counsel of Record

Case No. 01-7765-CIV-LENARD/SIMONTON

UNITED STATES DISTRICT COURT ^{FILED BY} D.C.
SOUTHERN DISTRICT OF FLORIDA

IN ADMIRALTY

CASE NO. 01-7765-CIV-LENARD

ANA COLAK,

Plaintiff,

v.

RADISSON SEVEN SEAS CRUISES, INC.,
in personam,
and SEVEN SEAS NAVIGATOR, *in rem*,

Defendant.

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS**

Plaintiff Ana Colak ["Colak"] files his response to Defendants Radisson Seven Seas Cruises, Inc. ["Radisson"] and Seven Seas Navigator's ["Navigator"] Motion to Dismiss. This Court should deny the motion to dismiss for the reasons stated herein.

INTRODUCTION

The Incident. Colak joined Radisson's Navigator in Fort Lauderdale, Florida as a cabin steward on December 17, 1999. (*See Appointment Letter*, attached as Exhibit A). She signed on for a six-month tour of duty. One of her jobs was to clean the passenger cabins of the ship. While she was performing her duties on the Navigator, she was injured when a defective shower door fell from its mounting and struck her left ankle. In tremendous pain, Colak immediately saw the ship's doctor. He, however, brushed off Colak's request for medical attention and

treatment, instead offering her only an ankle brace and sending her back to work (*See Attending Physician's Progress Note*, attached as Exhibit B). Colak continued to experience pain.

On May 26, 2000, while the navigator was either in port in San Francisco, California or while the ship was approaching San Francisco in the territorial waters of the United States, Colak again injured the same ankle. Again, she was injured while performing her duties on the Navigator. That same day, Colak went to the office of Dr. Allan Konce for medical treatment of her injury. *See Letter* attached as Exhibit C. She was sent to Dr. Konce by the ship's physician, Dr. Smith Ketchum. Dr. Konce is customarily hired by the defendants to examine injured seamen, prescribe treatment, and determine whether the injured seaman is physically able to return to work at that time. *Id.* Once again, defendants' physician ignored Colak's complaint. In fact, Dr. Konce never personally examined or even saw Colak while she was in his office. The "examination" was conducted entirely by a physician's assistant, Lisa Few. Dr. Konce, without ever seeing Colak, diagnosed her injury as an "uncomplicated left ankle sprain." Instead of treating her injury, Dr. Konce's office prescribed pain killers and sent her back to work.

Ms. Colak's ankle injury did not improve, and, in fact, got worse. She returned to her native Croatia, and visited her own doctors. She was then diagnosed with extensive ligament damage, as a result of her injuries and improper treatment occurring, in part, in United States territorial waters and on United States soil.

About Radisson and the Navigator. Radisson is the owner of the Navigator. It's headquarters are in Fort Lauderdale, Florida. Radisson's principle place of business is Fort Lauderdale, Florida. In fact, Radisson's "principle worldwide headquarters" for all of its global operations is in Fort Lauderdale, Florida. (*See "About RSSC,"* attached as Exhibit D).

Radisson's primary law firm and all of that firm's lawyers are based in Miami, Florida.

Contrary to defendants' assertion, Radisson was Colak's employer. Radisson, as the owner of the navigator, employs seaman like Colak through its managing agent, V. Ships Leisure, Inc. ["Leisure"]. This employment and agency relationship is admitted in the collective bargaining agreement entered into between Colak's union and Leisure.¹ (See Exhibit H). That agreement states that the employer is "V. Ships Leisure, Inc. [the Agents] **acting as managers or agents on behalf of International Shipping Services, Ltd. in turn acting for Owners [the Owners] of the Ship(s) [the Ship or the Ships] on which Personnel are engaged for service...**" (Brackets in original). The agreement goes on to state that "Every Personnel shall sign an individual appointment letter issued by the Agent [V. Ships Leisure, Inc.] on behalf of the Owners" setting forth the terms of the seaman's employment aboard the ship. Colak executed such an appointment letter in Fort Lauderdale, Florida before joining the Navigator's crew.

Radisson's Navigator sails from Fort Lauderdale, Florida continually throughout the year. (See *Cruise Calendar*, attached as Exhibit E). She takes on her crew in Fort Lauderdale. Her crew ends their service in Fort Lauderdale. The Navigator's primary law firm and all of that firm's lawyers are based in Miami, Florida. (See Exhibit F).

Finally, in consideration for Ms. Colak's agreement not to arrest the Navigator *in rem*, the Navigator issued a Letter of Undertaking from Miami, Florida. By the terms of that Letter of Undertaking, **the Navigator's insurer selected the forum of the Southern District of Florida**

¹ Colak is forced to accept, for the moment, defendants' assertion that the agreement filed by them with the court, and attached here as Exhibit F, is the operative agreement and that its terms apply to Colak. This document's authenticity is unclear, however, as Colak has not yet completed discovery and the contract filed by defendants is unexecuted.

for this dispute. Additionally, the Letter of Undertaking is only enforceable against a judgment rendered by this Court. See Exhibit G.

ARGUMENT

I. The Southern District of Florida Is The Proper Forum.

Radisson moves to dismiss Colak's complaint based upon the federal doctrine of *forum non conveniens*. Under the *Lauritzen-Rhoditis* analysis set forth by the United States Supreme Court, however, such a dismissal would be reversible as an abuse of discretion.

Before a federal court can dismiss a case pursuant to the doctrine of *forum non conveniens*, it must first determine if United States law applies under choice of law principles. *Szumlicz v. Norwegian Am. Line, Inc.*, 698 F.2d 1192, 1196 (11th Cir. 1983). If United States law applies, the case should not be dismissed for *forum non conveniens*. If United States law does not apply, only then should the court examine the traditional considerations of *forum non conveniens* to determine whether it should exercise jurisdiction. *Id.*

A. United States Law Governs.

In *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921 (1953) and *Hellenic Lines v. Rhoditis*, 398 U.S. 306, 308-09, 90 S.Ct. 1731, 1734-35 (1970), the Supreme Court established eight criteria for determining whether United States law applies to a maritime cause of action. They are: (1) Place of injury; (2) Flag of the vessel; (3) Domicile of the Plaintiff; (4) Domicile of the Defendant; (5) Place of the contract and contractual choice of law provisions; (6) Accessibility of forum; (7) Law of forum; and (8) Defendant's base of operations. These factors are not intended as exhaustive, and the test is "not a mechanical one." *Rhoditis*, 398 U.S. at 306, 90 S.Ct. at 1731. Moreover, each of the factors may be substantial in one context but insignificant in another.

Chiazor v. Transworld Drilling Co., 648 F.2d 1015, 1018 (5th Cir. 1981).

(1) Location of the accident

Ms. Colak was the victim of two maritime accidents during her service aboard the Navigator. The first, which involved a shower door falling off of its moorings and damaging her ankle, occurred on the high seas while not in the territorial waters of any nation.

The second accident, however, which independently injured Colak's ankle and aggravated her existing ankle injury, occurred either in the Port of San Francisco, or as the ship approached that city while in the territorial waters of the United States.

Because the only nation where Colak's injuries were inflicted is the United States, this factor favors the application of United States law.

(2) Flag of the Ship

The flag of the ship is Bahamian. It is, however, evident that this designation is a matter of convenience chosen by Radisson to avoid the requirements of United States law. It is undisputed that Radisson, the owner of the Navigator, is American in domicile and nationality. Radisson's headquarters are in Fort Lauderdale, Florida. Radisson's principle place of business is Fort Lauderdale, Florida. In fact, Radisson's "principle worldwide headquarters" for all of its global operations is in Fort Lauderdale, Florida. (See "About RSSC," attached as Exhibit D). Where the owner of the ship is American and headquartered in the United States, a flag of convenience will be ignored. *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 437 (2d Cir. 1959).

Radisson also argues that the Bahamian choice-of-law provision in the collective bargaining agreement between V. Ships (on behalf of Radisson) and Colak's union supports a

finding that Bahamian law governs this dispute. In *Sablic v. Armada Shipping APS*, 973 F. Supp. 745 (S.D.Tex. 1997), the court rejected this proposition, finding that the choice-of-law and venue selection clauses in a collective agreement between Croatian seafarers' union and crewing agency, which was incorporated in Croatian seaman's employment contract with crewing agency, would not be applied in seaman's personal injury suit against owners and operators of vessel, considering that suit did not arise under contract, parties to agreement were not parties to litigation, seaman was not presented with copy of agreement when he signed contract, and traditional inequality of bargaining power between seamen and their employers.

Based upon these same considerations, the Court should decline to enforce the Bahamian choice-of-law provision here. Because Radisson is headquartered in the United States, this factor favors the application of United States law here.

(3) Plaintiff's allegiance

Ms. Colak is a Croatian national. Her foreign allegiance does not, however, favor application of Croatian law because it is not at all clear that seaman such as Colak have any remedy pursuant to the laws of that country.

(4) Shipowner's allegiance

Radisson is an American corporation with its national headquarters in Fort Lauderdale, Florida. This factor clearly favors the application of American law.

(5) Place of the Contract

Colak's contract was entered into in Fort Lauderdale, Florida. See Appointment Letter,

attached as Exhibit A.² This factor favors the application of American law.

(6) Accessibility of alternate forum

The only alternative forum that Radisson urges to litigate this dispute is Croatia.³ As discussed below, courts that have addressed the question have decided that Croatia does not offer a viable alternative forum because of political unrest and court backlogs. *Sablic v. Armada Shipping APS*, 973 F. Supp. 745 (S.D.Tex. 1997); *Vidovec v. Losinjska Plovidba OOUR Brodarstvo*, 868 F. Supp. 695 (E.D.Pa. 1994).

Additionally, the Navigator has issued a Letter of Undertaking from its insurance carrier guaranteeing payment of any judgment obtained by Colak in this district court in consideration for Colak's agreement not to arrest the vessel in Fort Lauderdale. A judgment in any other forum would not be enforceable against that letter, rendering any other forum inadequate. *Perez & Compania, S.A. v. M/V Mexico I*, 826 F.2d 1449 (5th Cir. 1987); *Bhatnagar v. Surrendra Overseas, Ltd.*, 52 F.3d 1220 (3d Cir. 1995).

² It is unclear where the collective bargaining agreement executed by Colak's union was executed. It is clear, however, that Colak signed an individual agreement in Fort Lauderdale, Florida. In any case, the U.S. Supreme Court has stated that place of contract is a minor factor in tort actions. *See Lauritzen*, 345 U.S. at 587, 73 S.Ct. at 930 (noting that while place of contract often has significance in choice of law in contract action, it is less important where action sounds in tort).

³ Radisson also suggests Monaco and the Bahamas as alternative forums. These nations, however, hold absolutely no interest in the case. The Bahamas is simply the flag-of-convenience country used by Radisson in a brazen attempt to avoid United States law. Monaco has not ties to this case at all except that it is the nominal home of a corporation that Colak has not sued.

It is plain from the alternative forums suggested by defendant that convenience is not the motivation behind their motion, but, instead, simply a desire to move the case to any nation on earth except this one.

(7) Law of the forum

Because this Court has jurisdiction over this action, the Jones Act and federal maritime law would apply.

(8) Base of operations

Courts have placed great weight on where the defendant's base of operations is located in determining what law to apply. *See, e.g., Rhoditis*, 398 U.S. at 308, 90 S.Ct. at 1733 (noting that the other factors were "minor weights in the scales compared with the substantial and continuing contacts" foreign shipowner had with United States). In doing so, courts are required to look beyond the "facade of the operation" to the "actual operational contacts" that the ship and shipowner have with the United States. *Zacaria v. Gulf King 35, Inc.*, 31 F. Supp.2d 560 (S.D. Tex. 1999). Determining the base of operations of a shipping enterprise is a question of fact. *Szumlicz v. Norwegian Am. Line, Inc.*, 698 F.2d 1192, 1196 (11th Cir. 1983).

Radisson does not dispute that it is headquartered in the United States. Its base of operations is in Fort Lauderdale, Florida. It does all of its business from that city. Its conduct should be measured by application of United States law.

All of the *Lauritzen-Rhoditis* factors favor the application of United States law to this controversy. Therefore, the Court must deny Radisson's motion to dismiss based upon the doctrine of *forum non conveniens*. *Szumlicz v. Norwegian Am. Line, Inc.*, 698 F.2d 1192, 1196 (11th Cir. 1983).

B. Even If American Law Does Not Govern Here, No Adequate Alternative Forum Exists.

Before a court can dismiss a lawsuit based upon the doctrine of *forum non conveniens*,

the defendant must demonstrate that an adequate alternative forum is available. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 S.Ct. 839, 843 91 L.Ed. 1055 (1946). The only foreign forum with any arguable interest whatever in this dispute is Croatia.⁴ Every single United States Court that has addressed the issue has, however, determined that Croatia does not offer an adequate alternative forum.

One such case was *Sablic v. Armada Shipping APS*, 973 F. Supp. 745 (S.D.Tex. 1997). There, a Croatian seaman who was injured unloading cargo in a Colombian port brought suit against the Panamanian owner of the vessel, other foreign parties, and the American agent of the owner. The defendants moved to dismiss based upon *forum non conveniens*, and urged the Court to accept Croatia as an adequate alternative forum. The federal district court rejected defendants' position. The court found that Croatia was experiencing significant administrative difficulties, and that a seaman plaintiff could expect to wait many years before his case would be heard by any tribunal. The court also found that it would be unfair to burden the court and jury in Croatia that had no tie or interest in the dispute outside the fact that the seaman was from that nation. Finally, the court recognized that long periods of civil war and the resulting political instability made it inconvenient and even dangerous for the parties and their lawyers to travel to Croatia to litigate the case. In light of these findings, the court retained jurisdiction over the case.

This Court should follow the holding of the federal district court in *Sablic*. Here, the only interest Croatia may have in this case is that a Croatian citizen has been injured. The injuries occurred elsewhere, while employed in or near the United States. The negligent treatment

⁴ See Note 3, *infra*.

occurred in the United States. No defendant's conduct in Croatia is at issue.

Additionally, all of the impediments to litigating a lawsuit raised by the civil war in Croatia still exist today. Defendant has presented absolutely no evidence to show that the parties or counsel would be safe in Croatia or that it would be convenient to go there for a trial. Defendant has presented no evidence that a trial could even take place in Croatia during the lifetimes of any party, witness, or counsel.

Additionally, enforceability of a judgment for the plaintiff is highly relevant to the *forum non conveniens* analysis. The Navigator has issued a Letter of Undertaking from its insurance carrier guaranteeing payment of any judgment obtained by Colak in this district court in consideration for Colak's agreement not to arrest the vessel in Fort Lauderdale. A judgment in any other forum would not be enforceable against that letter, rendering any other forum inadequate. *Perez & Compania, S.A. v. M/V Mexico I*, 826 F.2d 1449 (5th Cir. 1987); *Bhatnagar v. Surrendra Overseas, Ltd.*, 52 F.3d 1220 (3d Cir. 1995).

Radisson has not borne its burden of showing the availability of an adequate alternative forum for Colak to litigate her claim, so the motion to dismiss based on *forum non conveniens* ground should be denied.

C. Even if An Adequate Alternative Forum Exists, Public and Private Interests Favor Litigation of the Case in the United States.

If the Court determines that some other nation's law governs this dispute, the Court must then apply the traditional *forum non conveniens* balancing of public and private interests. *Id.* Here, those interests favor litigation of the case in the plaintiff's choice of forum.

1. Private interest factors do not weigh in favor of dismissal.

In order for a trial court to grant a motion to dismiss on grounds of forum non conveniens, the private interests of the parties must be substantially in balance in either forum. *equipoise. Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 S.Ct. 839, 843 91 L.Ed. 1055 (1946).

The term private interests encompasses four broad concerns: (1) adequate access to evidence and relevant sites; (2) adequate access to witnesses; (3) adequate enforcement of judgments; and (4) the practicalities and expenses associated with the litigation. *Id.* at 91. A strong presumption favors the plaintiff's choice of forum, and the presumption can only be defeated if the relative disadvantages to the defendant's private interests are of sufficient weight to overcome the presumption. *Id.*

The private factors in this case clearly weigh in favor of litigation in the United States. A significant part of Colak's case concerns the nature and extent of her injuries and the negligent treatment she received for them while on the ship and while under the care of Radisson's doctor here in the United States. All of the witnesses concerning these issues, and all of the medical records documenting it, are located in this country. Additionally, most, if not all, of the records concerning the corporate liability portion of the case are located here in Florida, where Radisson is based.

Radisson erroneously claims that most of the significant liability witnesses reside in other countries. In fact, most of the fact witnesses reside on board Radisson's Navigator, which was located near the United States shoreline at the time of the accident. To suggest that Croatia would be a more convenient forum for these witnesses, many of whom hail from other countries, is simply not true. To require Colak to try this case in Croatia given the number of American and American company employed witnesses would be extremely costly and impractical, both

from a document and witness standpoint. Given Radisson's overwhelming corporate presence in Florida and the proximity of the vessel to the United States at the time of the accident, the private factors clearly militate in favor of trying this case in Florida. *See Chiquita*, 690 So.2d at 628 (trial court abused its discretion in dismissing an action against a multinational company with a "significant corporate presence" in Florida where the bulk of the witnesses and documents were located in Florida; *Pafco General Ins. Co. V. Wah-Wai Furniture Co.*, 701 So.2d 902 (Fla. 3rd DCA 1997)(trial court improperly dismissed claim on forum non conveniens ground against foreign furniture manufacturer who sold 50,000 office chairs for roughly one million dollars to distributor located in Miami).

Additionally, the accident site is onboard the Navigator. Of all the forums bandied about by the defendants, the only district in the world where the judge or jury could view the conditions of that ship to measure its seaworthiness and safety is the Southern District of Florida.

2. The public interest factors do not weigh in favor of dismissal.

Nor do the public interest factors weigh in favor of dismissal on *forum non conveniens* grounds. Despite Radisson's attempts to portray this incident as a "foreign" problem involving a "foreign" corporation, there is a substantial nexus between the cruise line industry in general -- and Radisson in particular -- and the state of Florida. Florida's economy is heavily dependent upon the tourist industry, a significant part of which involves passenger cruises. To the extent that those cruise ships depend upon a substantial number of foreign workers for their operation and profits, the care and treatment of those workers is of great concern to Florida. Moreover, in this particular case, the injury at issue did not occur in a foreign locality, but rather on board one

of Radisson's vessels, which customarily takes on passengers and employees here. Finally, federal maritime law issues are routinely addressed in the federal district, so this Court is in the best position to apply that law here.

II Colak Properly States Cognizable Claims.

A. This Court Has Subject Matter Over This Dispute.

Radisson argues that this Court does not have subject matter jurisdiction over this dispute because, it argues, foreign law should govern. Radisson is wrong.

In *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921 (1953), the Supreme Court squarely addressed this question and summarily dispatched it:

As frequently happens, a contention that there is some barrier to granting plaintiff's claim is cast in terms of an exception to jurisdiction of subject matter. A cause of action under our law was asserted here, and the court had power to determine whether it was or was not well founded in law and in fact. *Cf. Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 249, 71 S.Ct. 692, 694, 95 L.Ed. 912.

This Court has subject matter jurisdiction over this case.

B. Colak Properly States An *In Rem* Claim Against The Navigator.

Radisson admits that the Navigator is a proper *in rem* defendant to Colak's unseaworthiness claim. The motion to dismiss the Navigator from this lawsuit, therefore, should be denied.

C. Colak States A Claim For Jones Act Negligence, Maintenance And Cure, And Attorney's Fees

Radisson first argues that most of Colak's claims do not state a cause of action against Radisson because, it alleges, Radisson was not Colak's employer. Radisson is wrong. Radisson

admits that it is one of the owners of the Navigator. Colak's putative employer, Leisure, employed Colak as the "manager or agent" of Radisson. (*See Exhibit H*). In *Archer v. Trans/American Services, Ltd.*, 834 F.2d 1570 (11th Cir. 1988), the court of appeal addressed an analogous argument. There, the employer argued that its contract with the shipowner to employ seaman and provide catering services onboard did not make it the shipowners agent. Therefore, it argued, it could not be held liable for damages awardable against the shipowner. The Court rejected this argument, holding that the employer was liable as the shipowner's agent for the condition of the vessel. Here, the same result is warranted. Leisure employed Colak in its role as managing agent for Radisson; Radisson is, therefore, liable under all causes of action attributable to a seaman's employer.

Radisson also argues that Colak fails to state a claim for Jones Act negligence because she does not allege in her complaint what tools would have made her job safer or how shorter hours would have made her injury less likely to occur. They further argue that overwork does not state a cause of action under the Jones Act. Radisson is wrong on both counts.

It is well-settled that federal court embrace notice pleading. The complaint must only state the nature of the claims against the defendants and allow them to frame discovery in order to prepare their defense. Fed.R.Civ.P. 8(a)(2). There is absolutely no obligation on the part of a plaintiff to set forth the type of specific factual allegations that the defendants suggest here.

The Eleventh Circuit has held::

Before a court may dismiss a claim under Rule 12(b)(6), it must appear "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Neither 'notice pleading' requirements (Fed.R.Civ.P. 8(a)(2)) nor the standards which govern dismissals under Rule 12(b)(6) require a

claimant to set out in detail the facts upon which he bases his claim. *Williams v. United Credit Plan of Chalmette, Inc.*, 526 F.2d 713, 714 (5th Cir.1976) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)).

Radisson also incorrectly asserts that Colak cannot assert a cause of action based upon overwork and under staffing. This is simply not the law in the Eleventh Circuit. The cases cited by Radisson are all from other jurisdictions, with the exception of the Supreme Court case of *Consolidated Rail Corp. v. Gotshall*, 512 U.S. 532 (1994), which did not address the question of whether a plaintiff could state a cause of action for overwork pursuant to the Jones Act or FELA.

The only binding decision providing authority to this court has held that a plaintiff can state a cause of action for overwork pursuant to FELA.⁵ *Yawn v. Southern Railway Co.*, 591 F.2d 312 (5th Cir. 1979).⁶

Colak does state a cause of action for Jones Act negligence.

D. Colak Properly Pleads Unseaworthiness.

Radisson asserts that Colak's unseaworthiness count should be dismissed for failing to identify the specific condition on the vessel rendering it unseaworthy and that this condition caused Colak's injury. Radisson is wrong.

Colak's complaint specifically alleges that "The vessel was unsafe and unfit due to the conditions created by the defendant as follows: 1. Shower door falling and striking the plaintiff...causing her injury.... See Complaint ¶18(a). A door falling off of its hinges renders a

⁵ The Jones Act incorporates the terms of the Federal Employers' Liability Act.

⁶ The Eleventh Circuit, in an *en banc* decision, *Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11th Cir.1981), adopted as binding precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

vessel unseaworthy. *Gibbs v. Kiesel*, 382 F.2d 917, 919 (5th Cir. 1967).

Colak's complaint goes on to allege several other grounds for unseaworthiness such as lack of training of the crew, failure to properly equip the crew, and failure to supervise the crew. Each of these grounds is a proper basis for finding a ship to be unseaworthy. *See Bonura v. Sea Land Services, Inc.*, 505 F.2d 665, 667 (5th Cir. 1974)(failure to equip renders vessel unseaworthy); *In re Complaint of Hercules Carriers, Inc.*, 768 F.2d 1558, 1576-77 (11th Cir.1985) (failure of carrier to train crew on how to carry out duty as lookout directly attributable to carrier).⁷

E. Colak Properly States a Claim for Maintenance and Cure and Bad-Faith Failure To Pay Maintenance and Cure.

Attorney's fees are available to a plaintiff when the defendant refuses to provide maintenance and cure in bad faith, callously, or unreasonably. *Vaughan v. Atkinson*, 369 U.S. 527, 82 S.Ct. 997, 8 L.Ed.2d 88 (1962); *Mort v. Weyerhaeuser Co.*, 55 C.R. Musser, 294 F. Supp. 936 (S.D.N.Y.1968).

It is well-settled that federal court embrace notice pleading. The complaint must only state the nature of the claims against the defendants and allow them to frame discovery in order to prepare their defense. Fed.R.Civ.P. 8(a)(2). There is absolutely no obligation on the part of a plaintiff to set forth any more specific factual allegations than those she has alleged.

⁷ It is well known that one creates an unseaworthy vessel by utilizing an understaffed or ill-trained crew. *American President Lines Limited v. Welch*, 377 F.2d 501 (9th Cir.1967), *cert. denied* 389 U.S. 940, 88 S.Ct. 294, 19 L.Ed.2d 202 (1967); *Voisin v. O.D.E.C.O. Drilling, Inc.*, 557 F.Supp. 715 (E.D.TX, 1982) *reversed on other grounds*, 774 F.2d 1174 (5th Cir.1984), *cert. denied sub nom.*; *Rig Hammers, Inc. v. Odeco Drilling Co.*, --- U.S. ----, 105 S.Ct. 1757, 84 L.Ed.2d 820 (1985).

Colak has alleged in her complaint that she was injured when a shower door fell upon her while she performed her duties aboard the Navigator. She further alleges that Radisson's conduct exacerbated and aggravated her injury by failing to provide her proper medical treatment, instead forcing her to return to work on pain killers. *See Complaint* ¶11(d). Colak goes on to demand attorney's fees for this bad-faith failure to provide maintenance and cure, stating:

Defendant willfully and callously delayed, failed and refused to pay Plaintiff's entire maintenance and cure so that Plaintiff has become obligated to pay the undersigned a reasonable attorney's fee....

Defendant's failure to pay Plaintiff's entire maintenance and cure is willful, capricious, and in callous disregard for Plaintiff's rights as a seaman. As such, Plaintiff would be entitled to attorney's fees under the general Maritime law of the United States. Further, Defendant unreasonably failed to pay or provide Plaintiff with maintenance and cure which aggravated her condition and caused Plaintiff to suffer additional compensatory damages including but not limited to the aggravation of Plaintiff's physical condition, disability, pain and suffering, mental anguish, loss of enjoyment of life, feelings of economic insecurity as well as lost earnings or earning capacity, and medical and hospital expenses in the past and into the future.

WHEREFORE, Plaintiff demands...attorney's fees....

Nothing more is required to state a claim for attorney's fees in federal court.

Similarly, Colak's complaint fully appraises Radisson of Colak's claim for maintenance and cure benefits. There is absolutely no requirement in any rule, statute, or court decision that a plaintiff set forth in her complaint the specific benefits that the plaintiff is due. Radisson's argument virtually concedes this point; it does not cite to any authority whatsoever to support this novel defense. In fact, Radisson admits that it has been fully informed through the discovery process of exactly what medical attention Colak has had to provide for herself. Radisson's own

motion addressed here lists all of Colak's medical providers. An explanation of damages sought is a standard interrogatory. Radisson's defense on this ground is, therefore, specious.

F. Colak States A Claim for Failure to Treat.

A claim for failure to treat also arises from the traditional duty of a shipowner to care for his crew. A plaintiff may recover for any additional injuries caused by the shipowner's unreasonable failure to treat or to provide prompt medical care. *Joyce v. Atlantic Richfield Co.*, 651 F.2d 676, 685 (10th Cir.1981). This basic responsibility is separate from a duty of maintenance and cure and should attach regardless of the seaman's negligence or misbehavior. "It would be inhumane to leave a helpless man without succor." *The Quaker City*, 1 F.Supp. 840 (E.D.Penn.1931).

Negligent failure to provide prompt medical attention to a seriously injured seaman gives rise to a separate claim for relief. See e. g. *Jewell v. The Ohio River Co.*, 1967 A.M.C. 1724 (W.D.Pa.1966), *aff'd per curiam*, 431 F.2d 691 (3rd Cir. 1970) (plaintiff, who had recovered Jones Act damages for original injuries, allowed to bring second Jones Act claim for aggravation of original injuries); *Ladjini v. Pacific Far East Line, Inc.*, 97 F.Supp. 174 (N.D.Cal.1951) (awarding separate damages for aggravation of original injuries). In these claims, plaintiff's recovery is limited to punitive damages and damages for the aggravation in plaintiff's condition caused by defendant's failure to treat. *Garay v. Carnival Cruise Lines, Inc.*, 716 F.Supp. 1421, 1423-1424 (S.D. Fla. 1989)(*rev'd on other grounds*). See also *Joyce v. Atlantic Richfield Co.*, 651 F.2d 676, 685 (10th Cir. 1981).

These cases make clear that Radisson owed to Colak a duty to provide here adequate

emergency medical care for her injury suffered while in service of the Navigator, even if no negligence or unseaworthiness was alleged. Here, Colak has alleged that she was injured on the Navigator due to the negligence of its owners and the unseaworthy condition of the vessel. This triggered a duty on the part of Radisson to provide her with immediate and adequate medical attention. Colak has alleged that her treatment was not adequate, and that she was sent back to work on painkillers when Radisson's doctors should have performed more comprehensive testing and treatment of her injury. Their failure to do so aggravated her original condition and gave rise to additional damages and a claim for punitive damages.

Radisson's cases do not support its position. Radisson relies principally upon the Fifth Circuit case *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (1995) for the proposition that failure to treat does not give rise to an independent claim for separate damages. *Guevara* simply does not so hold. As a preliminary matter, *Guevara* is not the law in the Eleventh Circuit; therefore, the decision is not binding upon this Court. Also, *Guevara* relies upon the United States Supreme Court decision in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990) in holding that punitive damages are not available in that Circuit for a defendant shipowner's willful refusal to pay maintenance and cure benefits. The basis of that decision rested upon the fact that the Jones Act encompassed a claim for failing to pay money for maintenance and cure. Here, Colak's maintenance and cure claim includes her demand for punitive damages for Radisson's willful failure to pay for her cure expense. Her failure to treat claim, however, is a wholly separate cause of action arising out of Radisson's failure to take immediate steps to provide her adequate medical attention independent of any obligation to pay for long-term treatment until

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S.

Mail on this 1st day of February, 2002 to: Robert D. Peltz, Esq., Biscayne Building,
Suite 920 19 West Flagler Street Miami, FL 33130.



Robert F. Rosenwald, Jr., Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 01-7765-CIV-LENARD/TURNOFF

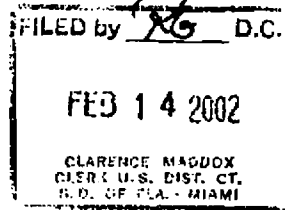
ANA COLAK,

Plaintiff(s),

vs.

RADISSON SEVEN SEAS CRUISES, INC., in
personam; and SEVEN SEAS NAVIGATOR,
in rem,

Defendant(s).

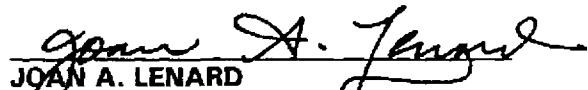


ORDER VACATING ORDER GRANTING MOTION TO DISMISS BY DEFAULT

THIS MATTER is before the court upon Plaintiff's Agreed Motion to Vacate Order Granting Motion to Dismiss by Default (D.E. #17) filed February 11, 2002. After review of the record and the response, and being fully advised in the premises, it is hereby

ORDERED AND ADJUDGED the Court's February 6, 2002 Order Granting by Default Motion to Dismiss (D.E. #14) is hereby **VACATED**. **THE CLERK IS INSTRUCTED TO REOPEN THIS CASE.** The Defendant's Motion to Dismiss (D.E. #4) is reinstated and remains pending.

DONE AND ORDERED in Chambers at Miami, Florida this 14 day of February, 2002.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Magistrate Judge William C. Turnoff

Charles R. Lopcon, Esq.
Law Offices of Charles R. Lipcon
Suite 2480, One Biscayne Tower
Miami, FL 33131

Robert D. Peltz, Esq.
Macintosh, Sawran, Peltz & Cartaya, P.A.
Biscayne Building, Suite 920
19 West Flagler Street
Miami, FL 33130

18/02

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY

CASE NO. 01-7765 CIV-LENARD

ANA COLAK,

Plaintiff,

vs.

RADISSON SEVEN SEAS CRUISES, INC.,
in personam; and SEVEN SEAS NAVIGATOR,
in rem

Defendant.

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CERTIFICATE OF INTERESTED PARTIES

COMES NOW, Defendants, by and through their undersigned counsel, in compliance with this Honorable Court's December 21, 2001 order, and submits the following list of parties that have a financial interest in the outcome of this case:

1. Radisson Seven Seas Cruises, Inc.
2. V-Ships Leisure
3. M.S. Seven Seas Navigator
4. Golden Ocean
5. Carlson Cruises World Wide
6. Assuranceforeningen GARD

10/102

McINTOSH, SAWYER, PELTZ & CARTAYA, P.A.

ATTORNEYS AT LAW

18 WEST FLAGLER STREET, SUITE 920

MIAMI, FL 33130-4410

TELEPHONE (305) 381-8922

FACSIMILE (305) 381-8889

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail upon Charles R. Lipcon, Esquire, Law Offices of Charles R. Lipcon, Suite 2480, One Biscayne Tower, Miami, Florida 33131 on January 10, 2002.

McINTOSH, SAWRAN, PELTZ
& CARTAYA, P.A.
Attorneys for Defendant
Biscayne Building, Suite 920
19 West Flagler Street
Miami, Florida 33130
Tel: (305) 381-8922
Fax: (305) 381-6889

By: 

ROBERT D. PELTZ
F.B.N. 220418

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Law Offices

**LIPCON, MARGULIES
& ALSINA, P.A.**

One Biscayne Tower, Suite 2480
Two South Biscayne Boulevard
Miami, Florida 33131

TEL 305-373-3016
800-838-2759
FAX 305-373-6204
WEB www.lipcon.com

Ricardo V. Alsina
Daniel A. Garcia
Charles R. Lipcon
Jason R. Margulies

March 12, 2003

Ana Colak
Kralja Tomislava 8
20 000 Dubrovnik
Croatia

RE: Colak vs. Radisson Seven Seas Cruises, Inc. et al

Dear Ms. Colak:

Enclosed is a copy of the Judge's order denying the defendant's motion to dismiss your complaint. We won on all aspects of the motion. Your case will now proceed in this court.

However, you should be aware that the defendants can take an appeal. However, I think the judge's order is very well written and would not be reversed on appeal.

Very truly yours,



CHARLES R. LIPCON
CRL:mn\enclosure

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY

CASE NO. 01-7765 CIV-LENARD

ANA COLAK,

Plaintiff,

vs.

RADISSON SEVEN SEAS CRUISES, INC.,
in personam; and SEVEN SEAS NAVIGATOR,
in rem

Defendant.

AFFIDAVIT OF GAIR O'NEILL

STATE OF FLORIDA)

COUNTY OF BROWARD)

BEFORE ME, appeared **GAIR O'NEILL**, who after being duly sworn, deposes and states:

1. I am the Guest Relations Manager of Radisson Seven Seas Cruises, Inc., and I have personal knowledge of the matters set forth herein.

2. The SEVEN SEAS NAVIGATOR is registered in and is a Bahamian flagged vessel.

3. V. Ships Leisure Inc. is a Monaco corporation and is the employer of the seamen onboard the SEVEN SEAS NAVIGATOR, including the Plaintiff herein.

4. The Plaintiff is a Croatian national who was employed as a room steward by V. Ships Leisure Inc.

5. Radisson Seven Seas Cruises, Inc. does not operate the SEVEN SEAS NAVIGATOR, nor does it act in any way as the employer of the seamen onboard.

6. The identity and nationality of the witnesses presently known in this case are as follows: Housekeeper Martina Flatterer (Germany); Staff Captain Fausto Mazda (Italy); Doctor Andres Helmersson (Sweden); Doctor B^o Lindquist (California); Doctor Obad (Croatia); Dr. Zeljko Cesarec (Croatia); Dr. Milorad Stipanovic (Croatia); Dr. Elizabeth Fischl (England); Dr. Jadranko

Madanovia (Croatia) and General Hospital Dubrounik (Croatia).

7. The employment contract under which the Plaintiff was working is a collective bargaining agreement entered into between the Norwegian Seaman's Union, located in Oslo, Norway and V. Ships Leisure Inc., a Monaco corporation, and calls for the application of Bahamian law in resolving all disputes under it. See, copy of Conditions of Service - Cruise Ship TCC Agreement For Catering Personnel, attached hereto as Exhibit "1".

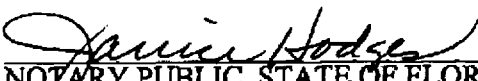
8. Other than one, single examination in San Francisco, the Plaintiff has received no treatment whatsoever in the United States, and clearly none in Florida.

FURTHER AFFIANT SAYETH NAUGHT.


GAIR O'NEILL
RADISSON SEVEN SEAS CRUISES, INC.

STATE OF FLORIDA)
 SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 18th day of Dec., 2001, by Gair O'Neill who is personally known to me or who has produced _____ (type of identification/drivers license) as identification and who being duly sworn, deposes and says that the foregoing is true and correct.


NOTARY PUBLIC, STATE OF FLORIDA

JANICE HODGES
(Print Name)

Commission no. and expires:

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1. The Plaintiff was guilty of comparative negligence, which was a proximate cause of her alleged injuries and any recovery by the Plaintiff must be reduced accordingly.

2. The Plaintiff's alleged injuries, damages and resulting disabilities, in whole or in part, are the result of the actions of a third party(ies)over whom the Defendant had no control or responsibility and accordingly, the Defendant is not responsible for said injuries, damages and disabilities. Since the Defendant is not legally responsible for the actions of said other parties, pursuant to the provisions of maritime law and/or Florida Statutes §768.81(3) at the time of trial the names of the Plaintiff and the other parties and persons must appear on the verdict form so that a jury can apportion liability as required by said statute and maritime law.

3. The Defendant is entitled to a set off, offset, credit or reduction for the payment of any benefits or collateral sources, both paid and payable, pursuant to maintenance and cure, any applicable collective bargaining agreement, any applicable private insurance coverage, any national or governmental insurance plan or from any other collateral source.

4. The Defendant affirmatively alleges that the Plaintiff's injuries alleged in part, where the result of a pre-existing injury or condition, which was not aggravated by the alleged accident claimed herein. Alternatively, if any pre-existing injury or condition was aggravated by any alleged injuries herein, the Plaintiff is only entitled to reimbursement for the degree of aggravation, and any recovery obtained

herein must be reduced to the percentage of the aggravation which he suffered as a result of this alleged accident.

5. The Plaintiff is barred from recovery, or in the alternative, any damages to which the Plaintiff would otherwise be entitled, must be reduced by virtue of the Plaintiff's failure to attempt to mitigate her damages.

6. The Plaintiff is barred from recovery for medical bills and/or treatment, in both the past and the future, which have either been paid or are payable through maintenance and cure.

7. The Plaintiff and her attorneys may not increase the expenses for medical, hospital, nursing and rehabilitative care which the Defendants would otherwise be obligated to pay under the doctrine of maintenance and cure by refusing to accept the medical care provided by the Defendants and accordingly, the Defendants are not responsible for any such additional medical, hospital, nursing, or rehabilitation expenses under either the doctrine of maintenance and cure or under the Plaintiff's Jones act and/or unseaworthiness claims.

8. The Defendants are not legally responsible for any medical negligence, complications or adverse affects resulting from the medical care provided by the healthcare providers selected by the Plaintiff and/or her attorneys to treat the Plaintiff following the refusal to accept the medical care provided by the Defendant.

9. The Plaintiff is not entitled to recover for any medical, hospital, nursing or rehabilitation expenses on the grounds that she and/or her attorneys have refused

to cooperate with the Defendant in the course of their investigation into the plaintiff's requests for treatment, thereby forfeiting any further rights to the recovery of such expenses.

10. Any delays in the payment of maintenance and cure benefits to the Plaintiff that may have been caused by the Defendants in conducting a reasonable investigation into such claims, as it is entitled to do under the applicable law, and/or the Plaintiff's failure to co-operate with said investigation and accordingly, such delays may not legally form the basis for any additional claimed damages by the Plaintiff and/or in the alternative, any such delays were caused by the failure of Plaintiff and/or her attorneys to comply with her obligation to reasonably document his requests for maintenance and cure and to assist the Defendant in the performance of its reasonable investigation.

11. The Defendant would state that delays, if any, in the payment of maintenance and cure benefits to the Plaintiff were caused by the Plaintiff's failure to co-operate with said investigation and accordingly, such delays may not legally form the basis for any additional claimed damages by the Plaintiff.

12. This Court lacks subject matter jurisdiction over this cause as United States law is not applicable to the present case under the *Lauritzen-Larsen* choice of law analysis as set forth in more detail in the Defendants' motion to dismiss the Plaintiff's complaint, which is incorporated herein by reference.

13. This cause should be dismissed on the grounds of forum non convenience for the reasons set forth in the Defendants' motion to dismiss, which is incorporate herein by reference.

14. The Plaintiff's claims under the Jones Act, for maintenance and cure and for so-called "failure to treat," do not lie against either of the Defendants herein and may only be asserted against the Plaintiff's employer, V Ship's Leisure, Inc.

15. The Plaintiff's claims under the Jones Act for alleged failure to pay maintenance and cure and for a so-called "failure to treat" may not be asserted in an in rem claim against the SEVEN SEAS NAVIGATOR.

16. The Plaintiff's so-called claim for "failure to treat" fails to state a legally recognizable claim as such claims must be asserted under the Jones Act and require the Plaintiff to both plead and prove that the Defendants were themselves negligent in the provision of medical care or vicariously liable for the negligent care of some physician or health care provider.

17. The Plaintiff's claim for attorney's fees fails to state a legally recognizable claim under maritime law.

Trial by Jury

The Defendant demands trial by jury of all issues triable right by a jury.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed and faxed upon: **Charles R. Lipcon, Esquire, Law Offices of Charles R. Lipcon, Suite 2480, One Biscayne Tower, Miami, Florida 33131** and **Robert F. Rosenwald, Jr., Esquire, Law Offices of David H. Pollack, Esquire, The Ingraham Building, Suite 1020, 25 S.E. 2nd Avenue Miami, Florida 33131** on **March 3, 2003**.

McINTOSH, SAWRAN, PELTZ,
CARTAYA & PETRUCCELLI, P.A.
Biscayne Building, Suite 520
19 West Flagler Street
Miami, Florida 33130-4410
(305) 381-8922 Dade
(305) 381-6889 Facsimile

By 
ROBERT D. PELTZ
Florida Bar No. 220418

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 01-7765-CIV-LENARD/SIMONTON

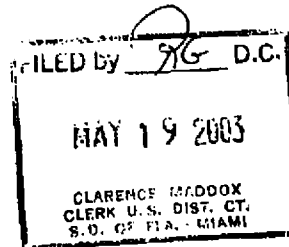
ANA COLAK,

Plaintiff(s),

vs.

RADISSON SEVEN SEAS CRUISES, INC., in
personam; and SEVEN SEAS NAVIGATOR,
in rem,

Defendant(s).



**ORDER OF REFERRAL TO MEDIATION AND DIRECTING PLAINTIFF'S
COUNSEL TO SUBMIT (WITHIN FIFTEEN DAYS)
PROPOSED ORDER SCHEDULING MEDIATION**

Trial having been set in this matter under separate order of the Court, and pursuant to Federal Rule of Civil Procedure 16(c)(9) and Southern District of Florida Local Rule 16.2, it is hereby

ORDERED as follows:

1. All parties are required to participate in mediation. The mediation shall be completed no later than July 1, 2004. The parties are encouraged to schedule mediation earlier than this date, for example as soon as the key discovery is completed, to avoid incurring unnecessary costs and fees.
2. Plaintiff's counsel, or another attorney agreed upon by all counsel of record and any unrepresented parties, shall be responsible for scheduling the mediation conference. The parties shall agree upon a mediator within 15 days from the date of this Order. If there is no agreement, lead counsel shall notify the Clerk, in pleading form, within 15 days from the date of this Order and the Clerk shall designate a mediator from the List of Certified Mediators, based on a blind rotation.
3. A place, date, and time for mediation convenient to the mediator, counsel of record,

3/10/03

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 01-7765-CIV-LENARD/SIMONTON

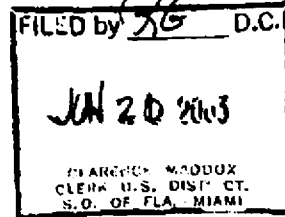
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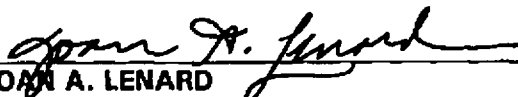


ORDER SCHEDULING MEDIATION

THE MEDIATION CONFERENCE in this matter shall be held with Thomas E. Backmeyer, Esq. Of Florida Mediation Group, 44 West Flagler Street, 19th Floor, Miami, FL on July 17, 2003 at 3:30 p.m. This date has been agreed to by the Mediator and the Parties and shall not be rescheduled without leave of Court.

Within five (5) days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settled (in full or in part), was continued with the consent of the parties, or whether the mediator declared an impasse.

DONE AND ORDERED in Chambers at Miami, Florida this 20 day of June, 2003.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

Copies furnished to: Magistrate Judge Andrea M. Simonton
counsel of record



and unrepresented parties shall be established. **Plaintiff's counsel shall complete the form order attached and submit it to the Clerk's office within 15 days from the date of this Order.**

A Notice of Selection of Mediator will not be considered compliant with this Order.

4. Except as provided under Southern District of Florida Local Rule 16.2(E) for public-sector entities, the appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. Appearance shall be in person; telephonic appearance is prohibited. If insurance is involved, an adjustor with authority up to the policy limits or the most recent demand, whichever is lower, shall attend.

5. All discussions, representations and statements made at the mediation conference shall be confidential and privileged.

6. At least ten days prior to the mediation date, all parties shall present to the mediator a brief written summary of the case identifying issues to be resolved. Copies of these summaries shall be served on all other parties.

7. The Court may impose sanctions against parties and/or counsel who do not comply with the attendance or settlement authority requirements herein or who otherwise violate the terms of this Order. The mediator shall report non-attendance and may recommend imposition of sanctions by the Court for non-attendance.

8. The mediator shall be compensated in accordance with the standing Order of the Court entered pursuant to Rule 16.2(B)(6), or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise ordered by the Court. All payments shall be remitted to the mediator within 30 days of the date of the bill. Notice to the mediator of cancellation or settlement prior to the scheduled mediation conference must be given at least two (2) full business days in advance.

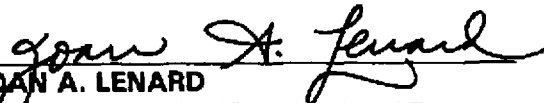
Failure to do so will result in imposition of a fee for one hour.

9. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Southern District of Florida Local Rule 16.2.(f), by the filing of a notice of settlement signed by counsel of record within 10 days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case. The case will remain on the trial calendar until an order dismissing the action is entered by the Court.

10. Within five (5) days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settled (in full or in part), was continued with the consent of the parties, or whether the mediator declared an impasse.

11. If mediation is not conducted, the case may be stricken from the trial calendar, the pleadings may be stricken and default entered and/or other sanctions imposed.

DONE AND ORDERED in Chambers at Miami, Florida this 19 day of May, 2003.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

Copies furnished to: Magistrate Judge Andrea M. Simonton

Charles R. Lopcon, Esq.
Law Offices of Charles R. Lipcon
Suite 2480, One Biscayne Tower
Miami, FL 33131

Robert D. Peltz, Esq.
Macintosh, Sawran, Peltz & Cartaya, P.A.
Biscayne Building, Suite 920
19 West Flagler Street
Miami, FL 33130

UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF FLORIDA

CASE NO. : 01-7765-CIV-SIMONTON

ANA COLAK

NOTICE OF MEDIATION CONFERENCE DATE

Plaintiff(s),

vs.

RADISSON 7 SEAS CRUISES INC.

Defendant(s).

DATE AND TIME: 07/17/2003 Thursday 3:30 P.M.*

LOCATION: Florida Mediation Group
44 West Flagler Street, 19th Floor
Miami, Florida 33130
305-579-9990

MEDIATOR: Certified Mediator / Florida Mediation Group, Inc.
Thomas E. Backmeyer, Esq.
The mediator is a neutral and may not act as an
advocate for any party.

FEES: FINAL PAYMENT DUE WITH IN 10 DAYS OF THE MEDIATION:
SEE ATTACHED

SUMMARY: The parties are requested to present a SUMMARY of
facts and issues to the Mediator five days prior to
the scheduled Mediation Conference.

NOTICE: Please notify Florida Mediation Group immediately
of any scheduling problems and copy the Mediator
on any pleadings which may impact or affect the
mediation.

*2 HOURS HAVE BEEN RESERVED FOR THE MEDIATION. IF YOU
THINK YOU WILL NEED MORE TIME, PLEASE CALL US IMMEDIATELY.

Allen Nicholson for MR
FLORIDA MEDIATION GROUP, INC.
44 West Flagler Street
19th Floor
Miami, Florida 33130
(305) 579-9990 Fax 579-9991
FMG File No.: 0-53879

FILED BY D.C.
2003 JUN -2 PM 4:03
DEAN L. JOE HADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA - MIA

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WC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. : 01-7765-CIV-SIMONTON
JUDGE : ANDREA M. SIMONTON
TRIAL DATE:

ANA COLAK

Plaintiff(s),
vs.

MEDIATORS REPORT

RADISSON 7 SEAS CRUISES INC.

Defendant(s).

COMES NOW Thomas E. Backmeyer, Esq., the undersigned certified Mediator, from FLORIDA MEDIATION GROUP and reports to this Honorable Court:

The Mediation was held on: 07-18-2003 15:00.

AN AGREEMENT WAS REACHED.

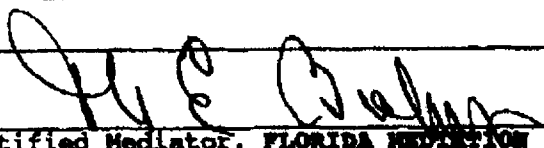
Mediation Agreement attached, with the parties consent.

✓ No Agreement was reached; Impasse.

The parties wish to continue settlement negotiations and may reconvene for a Continuation of the Mediation. Notice of the date, time and place shall be furnished to the parties and filed with the court. If no Notice of Mediation Agreement or Post-Mediation Agreement is filed on or before ____/____/____ this matter shall be considered at an Impasse.

A Post-Mediation Settlement was reached, as per information received on ____/____/____, from _____.

Other: _____


Certified Mediator, FLORIDA MEDIATION GROUP - FMG# 0-53879

44 W. Flagler St.
19th Floor
Miami, FL. 33130
(305) 579-9990

()
110 SE Sixth Street
Ground Floor
Ft. Lauderdale, FL. 33301
(954) 522-9991

Copies to:
Clerk of Court
Counsel of record
Parties, (if unrepresented)
07/21/03
medrept.fed



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

IN ADMIRALTY

CASE NO. 01-7765 CIV-SIMONTON

Lenora

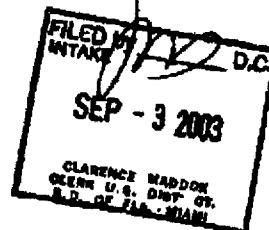
ANA COLAK,

Plaintiff,

vs.

RADISSON SEVEN SEAS CRUISES,
INC.,

Defendant. _____/



PLAINTIFF'S COUNSEL MOTION TO WITHDRAW

Plaintiff's counsel, Lipcon, Margulies & Alsina, by and through undersigned counsel hereby move the Court for an order allowing them to withdraw as Plaintiff's counsel in this matter and, as grounds therefore state that irreconcilable differences have arisen between the Plaintiff and Plaintiff's counsel.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been mailed to Robert D. Peltz, Esquire, McIntosh, Sawran, Peltz, Cartaya & Pertruccelli, P.A., 19 West Flagler Street, Suite 520, Miami, Florida 33130-4410 and to Ana Colak, Kralja Tomislava 8, 20 000 Dubrovnik, Croatia, on this September 3, 2003

LIPCON, MARGULIES & ALSINA, P.A.
Attorney for Plaintiff
One Biscayne Tower, Suite 2480
2 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 373-3016

By _____

JASON R. MARGULIES
FLORIDA BAR NO.: 057916

47/ax

Law Offices

**LIPCON, MARGULIES
& ALSINA, P.A.**

One Biscayne Tower, Suite 2480
Two South Biscayne Boulevard
Miami, Florida 33131

TEL 305-373-3016
800-838-2759
FAX 305-373-6204
WEB www.lipcon.com

Ricardo V. Alsina
Daniel A. Garcia
Charles R. Lipcon
Jason R. Margulies

September 19, 2003

Ana Colak
Kralja Tomislava 8
20 000 Dubrovnik
Croatia

RE: Ana Colak v. Radisson Seven Seas Cruises, Inc.

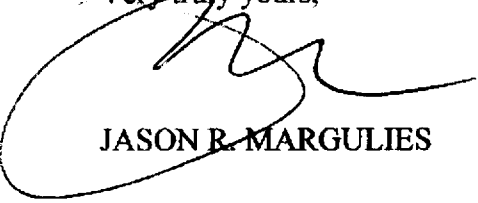
Dear Ms. Colak:

Please find enclosed the Court's September 18, 2003 Order allowing us to withdraw as your attorneys. Accordingly, we no longer represent you.

You have until October 6, 2003 to notify the Court that you have either obtained new counsel or you wish to represent yourself (pro se).

We wish you the best of luck.

Very truly yours,



JASON R. MARGULIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-7765-CIV-LENARD/SIMONTON

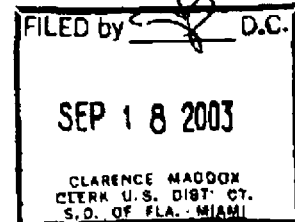
ANA COLAK,

Plaintiff,

vs.

RADISSON SEVEN SEAS CRUISES,
INC., in personam; and SEVEN SEAS
NAVIGATOR, in rem,

Defendants,



ORDER GRANTING PLAINTIFF'S COUNSEL MOTION TO WITHDRAW

THIS MATTER is before the Court on Plaintiff's Counsel Motion to Withdraw (D.E. 47) filed September 3, 2003. Defendants responded on September 15, 2003. (D.E. 48.) After review of the record, the motion, and the response, and being fully advised in the premises, it is

ORDERED AND ADJUDGED the Motion is GRANTED. Plaintiff's counsel Lipcon, Margulies & Alsina, P.A. is hereby directed to immediately serve Plaintiff Ana Colak with a copy of this Order. It is further

ORDERED AND ADJUDGED that Plaintiff's counsel Lipcon, Margulies & Alsina, P.A. is relieved of all further duties and responsibilities as attorney for Plaintiff Ana Colak

ORDERED AND ADJUDGED that Plaintiff Ana Colak shall have up to and including October 6, 2003, within which to notify the Court she has retained new counsel or wishes to proceed pro se.

49
[Signature]

DONE AND ORDERED in Chambers at Miami, Florida this 18th day of September,
2003.



JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Andrea M. Simonton
All Counsel of Record

F A X

Contain 1 (one) page

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

**Joan A. Lenard
U.S. DISTRICT JUDGE
Fax: 00 1 305 523 5509**

**Ana Colak
Kralja Tomislava 8
20 000 DUBROVNIK
CROATIA
Fax: ++ 385 411 284
Email: nana_333@yahoo.com**

September 29, 2003

CASE NO. 01-7765-CIV-LENARD/SIMONTON

COLAK

Plaintiff,

vs.

**RADISSON SEVEN SEAS CRUISES,
INC., in personam; and SEVEN SEAS NAVIGATOR, in rem,**

Defendants

I, Ana Colak informing Clerk of U.S. District Court S.D. of FLA- Miami and the Judge Joan A. Lenard, that today September 29, 2003 I received from my Counsel Lipcon, Margulies & Alsina, P.A. ORDER GRANTING PLAINTIFF'S COUNSEL MOTION TO WITDHRAW. I don't know why my Counsel decided to withdraw?

I am not acquainted with the Court procedure how to notify the Court, my lawyer did not advice me and there is not enough time that you receive my letter from Croatia, until October 6, 2003. I am requesting that the Court take this into consideration and extend time for responding to above mentioned Court Order for 30 (thirty days).

ANA COLAK

Ana Colak

**UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION - Fax: 00 1 305 523 5509**

**F A X - Contain 2 (two) pages -
Monday, November 3, 2003**

Ana Colak - Kralja Tomislava 8 - 20 000 Dubrovnik, CROATIA

To: Joan A. Lenard - U.S. DISTRICT JUDGE

**CASE NO. 01-7765- CIV- LENARD/SIMONTON
COLAK, Plaintiff vs. RADISSON SEVEN SEAS CRUISES, INC., in personam;
and SEVEN SEAS NAVIGATOR, in rem, Defendants**

PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO NOTIFY THE COURT

Plaintiff, ANA COLAK files Motion for Extension of Time in which to obtain new counsel to represent her in the above matter.

1. On September 3, 2003 this Court entered its Order allowing the Law Offices of Lipcon, Margulies & Alsina to withdraw as counsel for Plaintiff and further Ordered Plaintiff to obtain new counsel by October 6, 2003.

2. This Court allowed Plaintiff to extend time to respond up to and including November 5, 2003, within which to notify the Court that she has retained new counsel or wishes to proceed pro se.

3. Plaintiff, ANA COLAK living in Croatia and have difficulty to obtain new counsel and provide relevant documents to new counsel which, she did not obtain from Defendants neither from Law Offices of Lipcon, Margulies & Alsina as they refused to provide requested documents.

4. Plaintiff is in the process of seeking new counsel to represent her and requires an additional thirty (30) days in which to provide all the relevant case documents which she will request again from Law Offices of Lipcon, Margulies & Alsina and Defendants and interview prospective new counsel.

5. Defendants will not be prejudiced by Plaintiff's request of an extension of thirty (30) days in which to respond.

6. Plaintiff confirm this Request for Extension of Time is not being made for purposes of causing unnecessary delays.

By: Ana Colak, *pro se*

Ana Colak

Ana Colak

1. First, thank you for extension time to respond to the Court. As I see the Court heard only Defendants and my former counsel Lipcon, Margulies & Alsina story. I feel that I have to explain "irreconcilable differences which have arisen between the Plaintiff and Plaintiff's counsel",
I never seen in my life Orthopaedist Allan Konce to whom Defendants sent me for examination in San Francisco. All written evidence confirm it and he prepared false statement with wrong diagnosis in his evaluation under penalty of perjury. He breached California penal code 118-129. Nor I ever saw in my life Dr. Smith Ketchum from Ovearses Medical Center, San Francisco who "referred" me to Dr. A. Konce. Medical Board of California (MBC) investigator Craig Steward wrote on Fri, 23 Mar 2001: "Regarding Dr. Ketchum, the record indicates that he had not seen you, he only referred you to Dr. Konce on behalf of the shipping agent. There are no records in his possession other than the referral slip, a copy of which I have". This referral slip I never got even after I complained to MBC and they promised me that I will get referral slip, "Health and Safety Code Sec. 123110 (enclosed) entitles you to obtain copies of your medical reports"?
2. The ship intentionally did not record or destroyed medical records or Logbook and safety records about my injury. I asked from my Lawyer to obtain for me those documents as the Judge can issue Order Compel to Answer. All must be recorded according international and US laws. Defendants P&I Lawyer wrote: "How you submitted request for specified payments, then is normal that from you are requested documents which confirm validity for those payments. I believe that you will understand that there are seafarers who submit unjustified requests, and even ascribe to events onboard a ship old injuries or injuries which happened after disembarkation, and for that reason each case must be carefully established and documented. . . As you know on a passenger ship it is obligatory to record different documentation". As part of Court process - Discovery I gave to Defendants all my medical records and MRI, CT, X-ray films, and never received my medical records from the ship's hospital and that is so essential as evidence against Defendants (I am entitled to those documents according law even without court process) and their orthopaedist who gave false diagnosis: "Left ankle sprain, uncomplicated and resolving". He already before my case got Citation for False Statement in Document? All others even Defendants appointed orthopaedists concluded that my injury is permanent disability. There are ample documents. Ship's documents and witness statement given in front of Notary and translated in English by a sworn court interpreter confirm many things.
3. It is strange that according ITF Special Agreement (presented to the Court), US and Florida Law as well as international Maritime Law I have right to be paid for sick wages, maintenance and cure, expenses and Defendants wrote to me on 11/21/00: "Sick wages are not due under the contract because you have not suffered an injury that affects your work ability . . . This is confirmed by the doctor in San Francisco who saw you at the time you signed off". Written evidence confirm that I never seen that doctor. The ship's P and I insurer appointed own orthopaedist who wrote on 10/18/00: ". . . the remaining consequences are permanent. It is suggested to use orthopaedic devices, baths, shoes with higher boot-leg. A reconstruction surgery might eventually be considered with dubious result (time elapsed from the injury)". Also another letter on 1/18/2001 (injury happened on 1/17/2000): "We note your comment that you are still under medical treatment but would respectfully point out that any costs you incur will not be refunded as treatment has not been authorised by the Company P and I representative in Croatia . . .".
4. At mediation in Miami my lawyer went into another room with Defendant's lawyer and talked without me about offer. I did not hear what amount of offer Defendants offered? My lawyer told me it? They could mediate without me! Again after I returned home to Croatia I got offer through my Lawyer that I will get more money but he refused to answer me how much have been offered in total? I refused to settle and my Lawyer voluntarily withdrew? I think that refusal to settle by a client can never be sufficient grounds to constitute 'good cause' for an attorney to withdraw especially if it materially impairs the client's interests. Offer was as my case is at Small Claim Court even according my contract of employment amount should be much higher. Without justice Defendants will never offer me for what I am entitled according my contract of employment and law. My Lawyer withdrew and I requested my own documents, own property two CD's, original translation statement of my witness, few medical findings, Interrogatories which I sent to my Lawyer but he refused to send it back? Where my documents finished? Defendants claim, certify that they sent Defendants' Response to Plaintiff's Counsel Motion to Withdraw to me on 9/11/03 but I never received it? Order Denying the Defendant's Motion to Dismiss Complaint has been won on all aspects. Defendants have been cautioned for inexcusable blatant misrepresentation of law? Who will now pay for my physical therapy, sick wages, two ankle braces (each costs more than \$200) and loss of profession, lost wages etc? After physical therapy finished Specialist for Occupational Medicine wrote on April 3, 2001: "The stated diagnosis represents permanent obstacle for future employment on board a ship. General work ability significantly reduced. . . I suggest re-training into even. office worker". I worked 8 years on cruising ships. Croatian government commission expert ascertained disability 6/13/01: "incurred as a consequence of an injury: 8th grade (30%) pursuant to para VII B item 15 of the List of Physical Damages (hereinafter: LTO)". If my case close I will lose all rights from contractual obligations from my ex-Company? What is Justice? My former-Lawyer lost some money from this case, but he cannot lose how much I've lost.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 01-7765-CIV-LENARD/SIMONTON

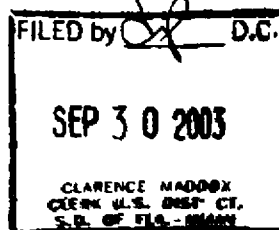
ANA COLAK,

Plaintiff,

VS.

RADISSON SEVEN SEAS CRUISES,
INC., in personam; and SEVEN SEAS
NAVIGATOR, in rem,

Defendants,



**ORDER GRANTING PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO
NOTIFY THE COURT WHETHER SHE HAS RETAINED NEW COUNSEL OR
WISHES TO PROCEED PRO SE**

THIS MATTER is before the Court on Plaintiff's letter requesting an additional thirty (30) days to notify the Court whether she has retained new counsel or wishes to proceed pro se, filed on September 29, 2003, and construed by the Court as a Motion for Extension of Time. After review of the Motion and the record, and being fully advised in the premises, it is

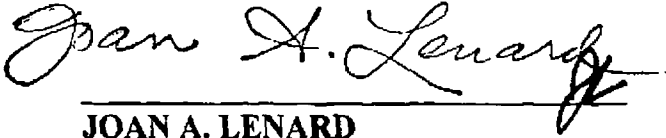
ORDERED AND ADJUDGED that:

1. The Plaintiff's Motion for Extension of Time, filed on September 29, 2003, is **GRANTED**.
2. Plaintiff Ana Colak shall have **up to and including November 5, 2003**, within which to notify the Court she has retained new counsel or wishes to proceed pro se.

50/BA

DONE AND ORDERED in Chambers at Miami, Florida this ^{30th}~~30~~ day of September,

2003.

A handwritten signature in cursive script, reading "Joan A. Lenard", with a stylized flourish at the end.

JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Andrea M. Simonton

Ana Colak
Kralja Tomislava 8
20 000 DUBROVNIK
CROATIA
Fax: ++ 385 411 284

All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY

CASE NO. 0:01cv7765 Lenard

Ana Colak

Plaintiff,

v.

Radisson Seven Seas, et al

Defendants.

NOTICE OF APPEARANCE

OF PLAINTIFF*S COUNSEL

The undersigned attorney and member of the bar, hereby files his appearance in the above styled cause on behalf of the Plaintiff, ANA COLAK, and requests the clerk and all parties to forward all correspondence, pleadings, and direct all communication to the address and telephone numbers of the undersigned attorney.

John Kevin Griffin

FBN 850179

133 South Second Street, Suite 202

Fort Pierce, FL 34950

(772) 489-7776

FAX (468) 7742

Attorney for Plaintiff/Seaman

Certificate of Service

I HEREBY CERTIFY that I have furnished to defendant*s counsel, a copy of the undersigned Appearance via fax and by placing a copy in the U.S. Mail on November 5, 2003, addressed to Robert D Peltz, of McIntosh Sawran Peltz Cartaya & Petruccelli 19 West Flagler Street, Suite 520 Miami , FL 33130-4410.

JOHN KEVIN GRIFFIN

Florida Bar No.: 850179

JOHN KEVIN GRIFFIN, ESQUIRE
AVIATION & MARITIME PERSONAL INJURY LAW

www.Towboatinjury.com

133 South 2nd Street, Suite 202

Fort Pierce, FL 34982

FLORIDA BAR 1990 772 489-7776

**MARINE CORPS OFFICER & COMBAT HELICOPTER PILOT FAX 772-
468-7742**

November 5, 2003

Clerk U.S. District Court

Federal Courthouse Square

301 N. Miami Ave.

Miami, FL 33128-7788

Re: Filing Appearance of Plaintiff's Counsel

Dear Clerk:

**Please find enclosed for filing Notice of Appearance of Plaintiff's Counsel and
accompanying certificate of service.**

Very respectfully yours,

John Kevin Griffin

c Defense counsel

enclosures

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY

CASE NO. 01-7765 CIV-SIMONTON

ANA COLAK,

Plaintiff,

vs.

RADISSON SEVEN SEAS CRUISES, INC.,
in personam; and SEVEN SEAS NAVIGATOR,
in rem

2003 JUL 10 AM 8:33
CLERK OF FLA. - MIA
S.D. OF FLA. - MIA

NOTICE OF INDEPENDENT MEDICAL EXAMINATION

COMES NOW, the Defendant, **RADISSON SEVEN SEAS CRUISES, INC.**,
by and through its undersigned attorneys, and pursuant to F.R.C.P. 35 (a) hereby
gives notice to the Plaintiff, **ANA COLAK** that:

1. An orthopedic examination has been scheduled with **Mitchell Seavey, M.D.** on **July 14, 2003 at 2:00 p.m.** at Lake Estates Medical Plaza, 5700 North Federal Highway, Suite 2, Fort Lauderdale, Florida. Dr. Seavey will conduct a complete orthopedic examination, including the performance of any tests which the nature of the injury or the results of the examination indicates are necessary to arrive at a complete diagnosis and/or opinion.

2. Defendant requests copies of all similar and like reports of the Plaintiff should the Plaintiff herein request a copy of the report to be rendered after the aforementioned examination.

3. Defendant certifies that it has good cause to request this examination.

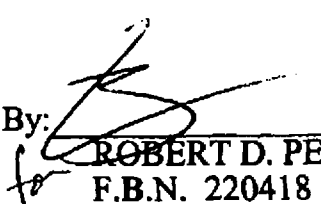
[Handwritten signature]

4. That Plaintiff or his counsel should advise the Defendant if an interpreter is necessary.
5. That the undersigned has provided the extent of his relevant medical file on the Plaintiff to Dr. Seavey.
6. Should the Plaintiff want Dr. Seavey to consider any medical records, then copies should be forwarded to the undersigned on a timely basis so same can be forwarded to Dr. Seavey.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed and faxed upon: Charles R. Lipcon, Esquire, Law Offices of Charles R. Lipcon, Suite 2480, One Biscayne Tower, Miami, Florida 33131 and David H. Pollack, Esquire, Law Offices of David H. Pollack, Esquire, The Ingraham Building, Suite 1020, 25 S.E. 2nd Avenue Miami, Florida 33131 on July 7, 2003.

McINTOSH, SAWRAN, PELTZ
CARTAYA & PETRUCCELLI, P.A.
Attorneys for Defendant
Biscayne Building, Suite 520
19 West Flagler Street
Miami, Florida 33130
Tel: (305) 381-8922
Fax: (305) 381-6889

By: 

ROBERT D. PELTZ

F.B.N. 220418

CRISTIAN D. VALOIS

F.B.N. 277230

Barry A. Pollack

174742

03/24/2005 - 97 ORDER denying [95-1] motion for reconsideration of [94-1] order (Signed by Judge Joan A. Lenard on 03/24/05) [EOD Date: 3/25/05] (ra) [Entry date 03/25/05]

MOTION AND MEMORANDUM TO RECONSIDER ORDER STRIKING PLAINTIFF'S PLEADINGS DISMISSING CASE, August 13, 2004

1. Ana Colak's general maritime claims for maintenance and cure, and damages for unseaworthiness constitute a case under the admiralty jurisdiction of this Court. On July 28, 2004, this Court ordered the plaintiff's pleadings stricken and dismissed her case upon recommendation and report of the Magistrate. . . .

2. The Plaintiff, Ana Colak, is recognized by this Court as a seaman and therefore she is its ward. Seamen are traditionally wards of the courts of admiralty jurisdiction. . . .

4. Under similar circumstances the ultimate sanctions of striking pleadings is justified, however the ultimate sanction is not justified here, because the plaintiff, Ana Colak, is ward of this court and therefore blameless. The undersigned attorney bears the responsibility and blame for the Order issued by this Court. Monetary sanctions imposed by the Court on the undersigned attorney are just but striking the pleadings of a ward of the Court is contrary to and a deviation from the general maritime law. Chief Justice Rhenquist acknowledged the principle of admiralty that seamen are wards of the court in the case *Vaughan v. Atkinson*, 369 U.S. 527 (1968). A seaman is no less ward of the court when in sickness, than when in health. In fact, his need for equity's assistance is usually greater in the first case than in the second *Fredelos v. Merritt-Chapman & Scott Corporation* 447 F. 2d 435,440 (5th Cir 1971) LEXIS 9353 (seaman's maintenance and cure claim ranks first in priority of maritime liens) Ana Colak's for this Court's assistance under circumstances here are great and due to her status as ward of the Court it should set aside that portion of its July 28, 2004 Order Striking her pleadings and dismissing her case.

5. It is a matter of record that in September 2003 she faced dismissal as a result of her first attorney withdrawing from the case. . . .

"8. Pleadings of a seaman ward of the Court should never be stricken for the conduct of her attorney. Her maritime claim should be seen on its merit. The Court has the power to deal with the undersigned attorney's failure to comply with its rules and orders without issuing ultimate sanctions upon its ward, Ana Colak. Monetary sanctions, suspension from practice, conditions of practice before the Court, are all within the Court's discretion and authority as sanctions against the undersigned attorney for his failings in this instance. . . WHEREFORE, the undersigned requests the Court set aside that portion of its July 28, Order striking the Plaintiff's pleadings dismissing this seaman's case and reset the case on its trial docket". signed John Kevin Griffin.

The Judge waited so long time to make decision to deny motion for reconsideration to reopen the case from August 2004 to March 2005 it was 7 months? Case closed?

US District Court in Miami - 12/21/2001 - 6 - ORDER REFERRING DISCOVERY MATTERS to Magistrate Judge Turnoff; Order directing parties to file Certificate of Interested Parties and Joint Scheduling Report (Signed by Judge Joan A. Lenard on 12/21/01) CCAP [EOD Date: 12/26/01] - COMES NOW, Defendants and . . . submits the following list of parties that have a financial interest in the outcome of this case: 1. Radisson Seven Seas Cruises, Inc., 2. V-Ships Leisure., 3. M. S. Seven Seas Navigator., 4. Golden Ocean., 5. Carlson Cruises World Wide., 6. Assuranceforeningen Gard". - Ship's insurer, Radisson or V.Ships and parties that have a financial interest in this case did not pay my physical therapy (4 months, 5 days a week), ankle braces (\$400-prescribed by my doctor, first on 22 02 2001 and second different brace on 29 07 2003 and confirmed from The Croatian Health Insurance Administration doctors-commission), permanent disability, sick wages, lost unearned wages during incapacity for work. - Our ship's crew are our greatest asset for exploitation - I never received official ship's documents about my injury, ship's Log Book, all medlog records from ship's hospital, etc. Injury is documented of permanent nature and is not my fault. The judge J. A. Lenard issued for Radisson - Protective Order - not to produce ship's documents about my injury? . . . Injury is not my fault, ship's doctors did not treat me at time of injury, neither any doctor appointed from Defendant after my disembarkation from the ship m/s Seven Seas Navigator. I've lost profession at sea and land.

"seaman's maintenance and cure claim ranks first in priority of maritime liens"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
IN ADMIRALTY

CASE NO.

FLORIDA BAR #137942

ANA COLAK,

Plaintiff,
vs.

RADISSON SEVEN SEAS CRUISES, INC.,
in personam; and SEVEN SEAS NAVIGATOR,
in rem

SEAMAN'S VERIFIED ACTION
IN REM AND IN PERSONAM COMPLAINT
AND REQUEST FOR TRIAL BY JURY

Plaintiff sues Defendants and allege:

1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears. This is an admiralty or maritime claim within the meaning of Rule 9(h). Plaintiff is a seaman within the meaning of 28 U.S.C. 1916. Relief is being sought on both in personam and in rem principles.

2. Defendant Radisson, at all times material hereto, personally or through an agent;

a. Operated, conducted, engaged in or carried on a business venture in this state and maintained its base of operations for the vessel in Fort Lauderdale, Florida;

b. Were engaged in substantial activity within this state;

c. Operated vessels in the waters of this state;

d. Committed one or more of the acts stated in Florida Statutes, Sections 48.081, 48.181 or 48.193;

e. The acts of Defendant set out in this Complaint occurred in whole or in part in this county and/or state.

3. Defendants are subject to the jurisdiction of the Courts of this state. The vessel Seven Seas Navigator is scheduled to be sailing out of Ft. Lauderdale, Florida in December 2001.

4. The causes of action asserted in this Complaint arise under the Jones Act, 46 U.S.C. Section 688, and the General Maritime Law of the United States.

5. At all times material hereto, Defendant Radisson owned, operated, managed, maintained and/or controlled the vessel Seven Seas Navigator. This vessel was registered in a flag of convenience country.

6. At all times material hereto, Plaintiff's employer was an agent of the shipowner and/or ship operator.

COUNT I
JONES ACT NEGLIGENCE

7. Plaintiff realleges, incorporates by reference, and adopts paragraphs one through six as though they were originally alleged herein.

8. On or about January 17, 2000, Plaintiff was employed by Defendant Radisson as a seaman and was a member of the vessel's crew. The vessel was in navigable waters.

9. It was the duty of Defendant to provide Plaintiff with a safe place to work.

10. On or about the above referenced date, Plaintiff was injured while aboard the vessel as follows: shower door in passenger cabin fell and struck the plaintiff.

11. Plaintiff's injuries are due to the fault and negligence of Defendant, and/or its agents, servants, and/or employees as follows:

a. Failure to use reasonable care to provide and maintain a safe place to work for Plaintiff, fit with proper and adequate machinery, crew and equipment;

b. Failure to use reasonable care to provide Plaintiff a safe place to work;

c. Failure to promulgate and enforce reasonable rules and regulations to insure the safety and health of the employees and more particularly the Plaintiff, while engaged in the course of his employment on said vessel.

d. Failure to use reasonable care to provide Plaintiff a safe place to work due to: 1. Shower door falling and striking the plaintiff; and/or 2. Failure to properly inspect and maintain the shower door so that it would not fall; and/or 3. Failure to warn plaintiff of the danger of the shower door falling; and/or 4. Failure to provide plaintiff with proper safety equipment in the event a shower door fell onto her, all of which caused the plaintiff to be injured. 5. In addition, plaintiff was sent back to work on pain killers by the ship's doctor which caused her injury to be aggravated and made worse.

e. Failure to provide adequate instruction, and supervision to crew members and Plaintiff;

f. Failure to provide prompt, proper, and adequate medical care which aggravated Plaintiff's injuries and caused her additional pain and disability;

g. Failure to provide Plaintiff and other crew members reasonable hours of employment so as to not overwork them to the point of not being physically fit to carry out their duties. Defendant's employees are overworked to the point of fatigue.

h. Defendant has failed to learn and apply the common and well known principles of industrial ergonomics on board the vessel;

i. Defendant used outmoded work methods and procedures and neglected modern material handling techniques;

j. Defendant failed to train workers properly, such as Plaintiff or provide proper mechanical aids and the work crews are undersized. As a result Defendant(s) are having small work crews doing jobs traditionally handled by larger crews;

k. Defendant failed to provide Plaintiff with mechanized aids commonly available in other heavy industries.

l. Failure to ascertain the cause of prior similar accidents so as to take measures to prevent their re-occurrence, and more particularly Plaintiff's accident;

m. Failure to follow sound management practices with the goal of providing Plaintiff a safe place to work.

n. Prior to Plaintiff's accident Defendant failed to investigate the hazards to Plaintiff and then take the necessary steps to eliminate the hazards, minimize the hazard or warn Plaintiff of the danger from the hazard.

o. Defendant failed to adhere to the Seafarers' Hours of Work and the Manning of Ships Convention, 1996: with respect to the hours of work and rest as well as other standards such as ILO 147.

p. Defendant failed to select and utilize competent, skilled and properly trained medical care providers with proper and adequate medical equipment with respect to the Plaintiff's medical care.

q. Defendants failed to provide plaintiff with enough sleeping time so as to cause plaintiff and the other crew members

on the vessel the same physical and mental impairments as being drunk. These type of impairments have been documented in the Journal of Occupational and Enviromental Medicine; 57:649-655 (October 2000).

r. Defendants failed to properly medically manage plaintiff's medical care after plaintiff was injured.

12. Defendant knew of the foregoing conditions causing Plaintiff's accident and did not correct them, or the conditions existed for a sufficient length of time so that Defendants in the exercise of reasonable care should have learned of them and corrected them.

13. As a result of the negligence of Defendant, the Plaintiff was injured about her body and extremities, suffered physical pain and suffering, mental anguish, loss of enjoyment of life, physical disability, impairment, inconvenience on the normal pursuits and pleasures of life, feelings of economic insecurity caused by disability, disfigurement, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of her injuries, suffered physical handicap, lost wages, income lost in the past, and her working ability and earning capacity has been impaired. The injuries and damages are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

WHEREFORE, Plaintiff demands all damages entitled by law and demands jury trial of all issues so triable.

COUNT II
UNSEAWORTHINESS

14. Plaintiff realleges, incorporates by reference and adopts

paragraphs one through six as though they were originally alleged herein.

15. On or about the previously stated date, Plaintiff was a seaman and a member of the crew of Defendant,s vessel, which was in navigable waters.

16. At all times material hereto, the vessel was owned, managed, operated and/or controlled by Defendant Radisson.

17. Defendant had the absolute nondelegable duty to provide Plaintiff with a seaworthy vessel.

18. On or about the previously stated date the unseaworthiness of Defendants' vessel was a legal cause of injury and damage to Plaintiff by reason of the following:

a. The vessel was unsafe and unfit due to the conditions created by Defendant as follows: 1. Shower door falling and striking the plaintiff; and/or 2. Failure to properly inspect and maintain the shower door so that it would not fall; and/or 3. Failure to warn plaintiff of the danger of the shower door falling; and/or 4. Failure to provide plaintiff with proper safety equipment in the event a shower door fell onto her, all of which caused the plaintiff to be injured. 5. In addition, plaintiff was sent back to work on pain killers by the ship's doctor which caused her injury to be aggravated and made worse.

b. The vessel was not reasonably fit for its intended purpose;

c. The vessel's crew was not properly trained, instructed or supervised;

d. The vessel did not have a fit crew;

e. The vessel did not have adequate manpower for the task

being performed;

f. The crew and Plaintiff were overworked to the point of being exhausted and not physically fit to carry out their duties.

19. As a result of the unseaworthiness of the vessel, the Plaintiff was injured about her body and extremities, suffered physical pain and suffering, mental anguish, loss of enjoyment of life, physical disability, impairment, inconvenience on the normal pursuits and pleasures of life, feelings of economic insecurity caused by disability, disfigurement, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of her injuries, suffered physical handicap, lost wages, income lost in the past, and his working ability and earning capacity has been impaired. The injuries and damages are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future. In addition plaintiff in the past and in the future has lost the fringe benefits that come with his job, including but not limited to found, free food, free shelter, free medical care, free uniforms, vacation, and free air line ticket home and back.

WHEREFORE, Plaintiff demands all damages entitled by law and demands jury trial of all issues so triable.

COUNT III
FAILURE TO PROVIDE MAINTENANCE AND CURE

20. Plaintiff realleges, incorporates by reference, and adopts paragraphs one through six as though they were originally alleged herein.

21. On or about the previously stated date, Plaintiff while in the service of the vessel as a crew member was injured.

22. Under the General Maritime Law, Plaintiff, as a seaman, is entitled to recover maintenance and cure from Defendant, until she is declared to have reached maximum possible cure. This includes unearned wages (regular wages, overtime, vacation pay and tips), which are reasonably anticipated to the end of the contract or voyage which ever is longer.

23. Defendant willfully and callously delayed, failed and refused to pay Plaintiff's entire maintenance and cure so that Plaintiff has become obligated to pay the undersigned a reasonable attorney's fee. In addition Defendant is late in paying the maintenance and cure.

24. Defendant's failure to pay Plaintiff's entire maintenance and cure is willful, arbitrary, capricious, and in callous disregard for Plaintiff's rights as a seaman. As such, Plaintiff would be entitled to attorney's fee under the General Maritime Law of the United States. Further Defendant unreasonably failed to pay or provide Plaintiff with maintenance and cure which aggravated her condition and caused Plaintiff to suffer additional compensatory damages including but not limited to the aggravation of Plaintiff's physical condition, disability, pain and suffering, mental anguish, loss of enjoyment of life, feelings of economic insecurity as well as lost earnings or earning capacity, and medical and hospital expenses in the past and into the future..

WHEREFORE, Plaintiff demands all damages entitled by law, punitive damages, attorneys fees and demands jury trial of all issues so triable.

COUNT IV
FAILURE TO TREAT

25. Plaintiff realleges, incorporates by reference and adopts paragraphs one through six as though originally alleged herein.

26. On or about the previously stated date, Plaintiff was employed by Defendant Radisson as a seaman and was a member of the vessel's crew. The vessel was in navigable waters.

27. It was the duty of Defendant to provide Plaintiff with prompt, proper and adequate medical care.

28. Defendant through the ship's physicians and nurses negligently failed to promptly provide Plaintiff with prompt, proper, adequate, and complete medical care. This conduct includes, but is not limited to: sending plaintiff back to work on pain killers which caused plaintiff's injury from the accident to become worse.

a. Defendant not giving Plaintiff medical care in a timely manner after his initial injury; and/or

b. Defendant sending Plaintiff back to work on pain killers after she became injured which aggravated his injuries and made them worse.

29. As a direct and proximate result of Defendant's failure, Plaintiff suffered additional pain, disability and/or Plaintiff's recovery was prolonged. In addition, the Plaintiff was injured about her body and extremities, suffered physical pain and suffering, mental anguish, loss of enjoyment of life, physical disability, impairment, inconvenience on the normal pursuits and pleasures of life, feelings of economic insecurity caused by disability, disfigurement, aggravation of any previously existing conditions therefrom, incurred additional medical expenses in the care and treatment of his injuries, suffered physical handicap,

lost wages, income lost in the past, and her working ability and earning capacity has been impaired. The injuries and damages are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

30. This Count is alleged separately from Jones Act Negligence pursuant to Joyce v. Atlantic Richfield Company, 651 F.2d 676 (10th Cir. 1981) which states, in part, "Negligent failure to provide prompt medical attention to a seriously injured seaman gives rise to a separate claim for relief [for which separate damages are awardable]."

WHEREFORE, Plaintiff demands all damages entitled by law and demands jury trial of all issues so triable.

COUNT V

IN REM ACTION AGAINST DEFENDANT VESSEL

Plaintiffs incorporate allegations 1 through 30 and in addition alleges:

31. This is an action to enforce the named plaintiff's maritime liens for her damages, injuries, wages, overtime and penalty wages against the vessel. According to Lloyd's Maritime directory, the vessel, Seven Seas Navigator flies the flag of The Bahamas. The vessel's description is length 164.4 meters, beam 24 meters, draft 6.6 meters.

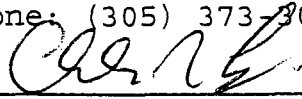
32. The vessel is presently located or will be located at the Port Everglades, Ft. Lauderdale, Florida.

Wherefore plaintiffs demand judgement in rem against the vessel M/S Seven Seas Navigator for damages and costs as allowed by law. Further plaintiff demands that the vessel be condemned and sold and that the proceeds of the sale be distributed according to

law.

LAW OFFICES OF CHARLES R. LIPCON
Attorneys for Plaintiff
Suite 2480, One Biscayne Tower
Miami, Florida 33131
Telephone: (305) 373-3016

By



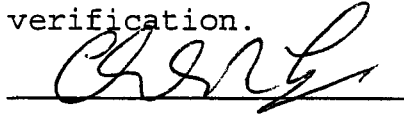
CHARLES R. LIPCON

VERIFICATION

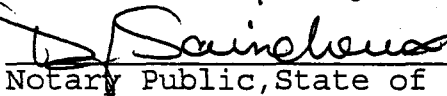
STATE OF FLORIDA)
COUNTY OF MIAMI DADE) SS

BEFORE ME, the undersigned authority, personally appeared
Charles R. Lipcon who being duly sworn says:

I know the contents of the foregoing complaint and swear that
the same is true to the best of my knowledge, information and
belief. The source of this information is the plaintiff who is
currently not in the United States and who has authorized Charles
R. Lipcon to make this verification.

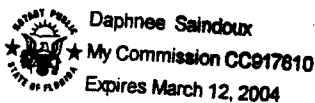


Sworn to and Subscribed before me at Miami, Dade County,
Florida, this 19th day of November, 2001



Notary Public, State of Florida at Large

My Commission Expires:



Florida Southern US District Court - Miami

Your case details are listed below.

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docket No. 01cv7765 (Colak v. Radisson Seven Seas)

0:01cv7765

Colak v. Radisson Seven Seas, et al

This case was retrieved from the court on Monday, May 09, 2005

Date Filed: 11/19/2001	Class Code: AMS CLOSED
Assigned To: Judge Joan A Lenard	SEAMAN AMS
Referred To:	Closed: yes
Nature of	Statute: 28:1333
suit: Marine (340)	Jury Demand: Both
Cause: Admiralty - Seaman	Demand Amount: \$0
Complaint	NOS
Lead Docket: None	Description: Marine
Other Docket: None	
Jurisdiction: Federal Question	

Litigants

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IN Personam
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Seven Seas Navigator, IN Rem
Defendant

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FTS 381-6889

Date	#	Proceeding Text
11/19/2001	1	COMPLAINT filed; FILING FEE WAIVED; A-7; Magistrate Judge William C. Turnoff (ls) [Entry date 11/20/01]
11/19/2001	2	SUMMONS(ES) issued for Radisson Seven Seas (ls) [Entry date 11/20/01]
11/19/2001	--	**Set SEAMAN'S COMPLAINT Case flag.** (ls) [Entry date 11/20/01]
12/03/2001	3	RETURN OF SERVICE executed for Radisson Seven Seas on 11/27/01 Answer due on 12/17/01 for Radisson Seven Seas

(rn) [Entry date 12/04/01]

12/17/2001 4 MOTION by Radisson Seven Seas, Seven Seas Navigator to dismiss complaint (rn) [Entry date 12/18/01]

12/19/2001 5 NOTICE of filing original affidavit of Gair O'Neill (attached) by Radisson Seven Seas (sn) [Entry date 12/20/01]

12/21/2001 6 ORDER REFERRING DISCOVERY MATTERS to Magistrate Judge Turnoff; Order directing parties to file Certificate of Interested Parties and Joint Scheduling Report (Signed by Judge Joan A. Lenard on 12/21/01) CCAP [EOD Date: 12/26/01] (rn) [Entry date 12/26/01]

12/26/2001 7 Certificate of Interested Parties by Ana Colak (rn) [Entry date 12/27/01]

01/04/2002 8 MOTION by Ana Colak to extend time to respond to motion to dismiss complaint (rn) [Entry date 01/07/02]

01/14/2002 9 JOINT MOTION by Ana Colak, Radisson Seven Seas, Seven Seas Navigator to defer filing of scheduling report (rn) [Entry date 01/15/02]

01/15/2002 10 Certificate of Interested Parties by Radisson Seven Seas, Seven Seas Navigator (rn) [Entry date 01/16/02]

01/17/2002 11 ORDER granting [8-1] motion to extend time to respond to motion to dismiss complaint Response to motion reset to 2/4/02 for [4-1] motion to dismiss complaint (Signed by Judge Joan A. Lenard on 1/17/02) [EOD Date: 1/18/02] (rn) [Entry date 01/18/02]

01/17/2002 12 ORDER granting [9-1] joint motion to defer filing of scheduling report (Signed by Judge Joan A. Lenard on 1/17/02) [EOD Date: 1/18/02] (rn) [Entry date 01/18/02]

02/06/2002 13 MEMORANDUM by Ana Colak in opposition to [4-1] motion to dismiss complaint (rn) [Entry date 02/07/02]

02/06/2002 14 ORDER granting by default [4-1] motion to dismiss complaint (Signed by Judge Joan A. Lenard on 2/6/02) [EOD Date: 2/8/02] (rn) [Entry date 02/08/02]

02/06/2002 -- CASE CLOSED. Case and Motions no longer referred to Magistrate. (rn) [Entry date 02/08/02]

02/07/2002 15 NOTICE of Filing exhibits A through H in support of memorandum in opposition to defendants' motion to dismiss by Ana Colak (rn) [Entry date 02/08/02]

02/08/2002 16 UNOPPOSED MOTION by Radisson Seven Seas, Seven Seas Navigator to extend time to file reply (ls) [Entry date 02/11/02]

02/11/2002 17 MOTION with memorandum in support by Ana Colak to vacate [14-1] order granting motion to dismiss by default (rn) [Entry date 02/12/02]

02/14/2002 18 ORDER granting [17-1] motion to vacate [14-1] order granting motion to dismiss by default; vacating [14-1] order; the Clerk is instructed to REOPEN this case (Signed by Judge Joan A. Lenard on 2/14/02) [EOD Date: 2/15/02] (rn) [Entry date 02/15/02]

02/14/2002 -- Case reopened as per [18-1] order (rn) [Entry date 02/15/02]

02/15/2002 19 ORDER granting [16-1] motion to extend time to file reply until 3/4/02 (Signed by Judge Joan A. Lenard on 2/15/02) [EOD Date: 2/19/02] (rn) [Entry date 02/19/02]

02/15/2002 20 RENEWED MOTION by Radisson Seven Seas, Seven Seas Navigator to extend time to file reply to plaintiff's response to motion to dismiss (rn) [Entry date 02/19/02]

02/21/2002 21 ORDER granting [20-1] motion to extend time to file reply to plaintiff's response to motion to dismiss until 3/6/02 (Signed by Judge Joan A. Lenard on 2/21/02) [EOD Date: 2/22/02] (rn) [Entry date 02/22/02]

03/06/2002 22 REPLY by Radisson Seven Seas, Seven Seas Navigator to response to [4-1] motion to dismiss complaint (rn) [Entry date 03/07/02]

04/02/2002 23 CERTIFICATION REGARDING REFERRED CASES/ORDER (Signed by Magistrate Judge William C. Turnoff on 4/2/02) [EOD 4/3/02] (ls) [Entry date 04/03/02] [Edit date 04/09/02]

04/02/2002 -- Magistrate identification: Magistrate Judge Andrea M. Simonton (ls) [Entry date 04/03/02]

04/05/2002 24 Order reassigning case to Magistrate Judge Simonton(Signed by Judge Joan A. Lenard on 4/5/02) [EOD Date: 4/8/02] (ls) [Entry date 04/08/02]

06/06/2002 25 ORDER requiring completion of form consenting to jurisdiction by a Magistrate Judge for final disposition (Signed by Judge Joan A. Lenard on 6/6/02) [EOD Date: 6/7/02] (rn) [Entry date 06/07/02]

06/24/2002 26 Consent to Jurisdiction by a Magistrate Judge by Radisson Seven Seas, Seven Seas Navigator (rn)

06/26/2002 27 Consent to Jurisdiction by a magistrate judge to decide motions for discovery, costs by Ana Colak (rn) [Entry date 06/27/02]

08/20/2002 28 NOTICE of Change of Address of attorney by Radisson Seven Seas (rn) [Entry date 08/21/02]

09/13/2002 29 NOTICE OF FILING SUPPLEMENTAL AUTHORITY by Ana Colak in opposition to defendant's motion to dismiss (rn) [Entry date 09/16/02]

09/16/2002 30 NOTICE of Change of firm name by Radisson Seven Seas (rn) [Entry date 09/17/02]

09/16/2002 31 NOTICE OF FILING SUPPLEMENTAL AUTHORITY in support of defendant's motion to dismiss by Radisson Seven Seas, Seven Seas Navigator (rn) [Entry date 09/17/02]

10/01/2002 32 NOTICE OF FILING SUPPLEMENTAL AUTHORITY in support of motion to dismiss by Radisson Seven Seas, Seven Seas Navigator (rn) [Entry date 10/02/02]

01/06/2003 33 NOTICE of Unavailability by David Pollack for dates of: 1/27/03-1/31/03 (rn) [Entry date 01/07/03]

02/13/2003 34 NOTICE of Unavailability by Ana Colak for dates of:
2/24/03-2/28/03 (rn) [Entry date 02/14/03]

02/18/2003 35 ORDER denying [4-1] motion to dismiss complaint (Signed
by Judge Joan A. Lenard on 2/18/03) [EOD Date: 2/19/03]
(rn) [Entry date 02/19/03]

03/05/2003 36 Answer and affirmative defenses by Radisson Seven Seas,
Seven Seas Navigator; jury demand (rn) [Entry date
03/06/03]

04/07/2003 37 ORDER Directing Parties to file Joint Scheduling Report
(Signed by Judge Joan A. Lenard on 4/7/03) [EOD Date:
4/8/03] (rn) [Entry date 04/08/03]

04/28/2003 38 Joint case management scheduling conference report by
Ana Colak, Radisson Seven Seas, Seven Seas Navigator
(rn) [Entry date 04/29/03]

05/19/2003 39 ORDER referring case to mediation. 15 days to appoint
mediator (Signed by Judge Joan A. Lenard on 5/19/03)
[EOD Date: 5/20/03] (rn) [Entry date 05/20/03]

05/19/2003 40 ORDER Adopting Joint Scheduling Report setting Jury
trial set for 9:00 9/20/04 Calendar call set for 2:30
9/14/04 Discovery cutoff 5/1/04 Pretrial conference for
2:30 9/9/04 (Signed by Judge A. Lenard on 5/19/03) [EOD
Date: 5/20/03] (rn) [Entry date 05/20/03]

05/27/2003 41 NOTICE by Radisson Seven Seas, Seven Seas Navigator to
take deposition of Ana Colak 7/16/03 at 10:30am (wc)
[Entry date 05/28/03]

06/02/2003 42 NOTICE of Mediation Hearing on 7/17/03 at 3:30pm Thomas
E. Backmeyer added as mediator (wc) [Entry date
06/03/03]

06/20/2003 43 ORDER SCHEDULING MEDIATION for 7/17/03 at 3:30 (Signed
by Judge Joan A. Lenard on 6/20/03) [EOD Date: 6/23/03]
(rn) [Entry date 06/23/03]

07/10/2003 44 NOTICE of Independent medical examination by Radisson
Seven Seas (rn) [Entry date 07/11/03]

07/22/2003 45 NOTICE of Change of Address of party by Ana Colak (rn)
[Entry date 07/23/03]

07/22/2003 46 FINAL report of Mediator. Disposition: Impasse (rn)
[Entry date 07/23/03]

09/03/2003 47 MOTION by Ana Colak for Charles Lipcon to withdraw as
attorney (ra) [Entry date 09/04/03]

09/15/2003 48 RESPONSE by Radisson Seven Seas, Seven Seas Navigator
to [47-1] motion for Charles Lipcon to withdraw as
attorney (ra) [Entry date 09/16/03]

09/18/2003 49 ORDER granting [47-1] motion for Charles Lipcon to
withdraw as attorney (Signed by Judge Joan A. Lenard
on 09/18/03) [EOD Date: 9/19/03] (ra) [Entry date
09/19/03]

09/30/2003 50 ORDER granting plaintiff's motion for extension of time
to notify the Court whether she has retained new
counsel of wishes to proceed Pro Se (Signed by Judge

Joan A. Lenard on 09/30/03) [EOD Date: 10/1/03] (ra)
[Entry date 10/01/03]

- 09/30/2003 51 Letter MOTION by Ana Colak to extend time to comply with order granting [47-1] motion for Charles Lipcon to withdraw as attorney (ra) [Entry date 10/02/03]
- 11/06/2003 52 MOTION by Ana Colak to extend time to notify the court (tb) [Entry date 11/07/03]
- 11/07/2003 53 NOTICE of attorney appearance for Ana Colak by John Kevin Griffin (ra) [Entry date 11/10/03]
- 11/07/2003 54 RESPONSE by Radisson Seven Seas, Seven Seas Navigator to [52-1] motion to extend time to notify the court (ra) [Entry date 11/10/03]
- 11/13/2003 55 ORDER denying as moot [52-1] motion to extend time to notify the court (Signed by Judge Joan A. Lenard on 11/13/03) [EOD Date: 11/14/03] (wc) [Entry date 11/14/03]
- 02/19/2004 56 ORDER Setting Motion hearing on motion to compel discovery and sanctions before Magistrate Judge Andrea M. Simonton (Signed by Magistrate Judge Andrea M. Simonton 02/19/04) [EOD Date: 2/20/04] (ra) [Entry date 02/20/04]
- 02/23/2004 57 AMENDED MOTION with memorandum in support by Radisson Seven Seas to compel Discovery, and for sanctions (ra) [Entry date 02/24/04]
- 02/24/2004 58 ORDER mooting [57-1] motion to compel Discovery, mooting [57-2] motion for sanctions (Signed by Magistrate Judge Andrea M. Simonton on 2/23/04) [EOD Date: 2/25/04] (tb) [Entry date 02/25/04]
- 03/11/2004 59 AGREED MOTION by Ana Colak to extend time to disclose expert witnesses and furnish written reports (ra)
- 04/05/2004 60 MOTION by Radisson Seven Seas, Seven Seas Navigator for extension of time, and to continue trial date (ra) [Entry date 04/06/04]
- 04/14/2004 61 Expert Witness Disclosure by Radisson Seven Seas (ra) [Entry date 04/15/04]
- 04/14/2004 62 MOTION with memorandum in support by Radisson Seven Seas to compel discovery and for sanctions (ra) [Entry date 04/15/04]
- 04/15/2004 63 ORDER granting [59-1] motion to extend time to disclose expert witnesses and furnish written reports granting in part [60-1] motion for extension of time, granting in part [60-2] motion to continue trial date Reset discovery deadline for 6/1/04, Reset motion filing deadline for 6/21/04 (Signed by Judge Joan A. Lenard on 04/15/04) [EOD Date: 4/16/04] (ra) [Entry date 04/16/04]
- 04/22/2004 64 NOTICE by Radisson Seven Seas, Seven Seas Navigator to take video deposition of Staff Captain Mazza 4/27/04 at 10:30 (gp) [Entry date 04/23/04]

04/22/2004 65 NOTICE by Radisson Seven Seas, Seven Seas Navigator to take video deposition of Stewardness Martina Fletterer 5/4/04 at 10:30 (gp) [Entry date 04/23/04]

05/03/2004 66 AMENDED NOTICE by Radisson Seven Seas, Seven Seas Navigator to take deposition of Stewardness Martina Fletterer 5/4/04 at 10:30 (tb) [Entry date 05/04/04]

05/03/2004 67 SECOND MOTION by Ana Colak (Attorney) to extend time to disclose expert witnesses and furnish written reports (ct) [Entry date 05/05/04]

05/10/2004 68 ORDER granting in part by default [62-1] motion to compel discovery, granting [62-2] motion for sanctions (Signed by Magistrate Judge Andrea M. Simonton on 5/10/04) [EOD Date: 5/11/04] (dg) [Entry date 05/11/04]

05/10/2004 69 RESPONSE by All Defendants to [67-1] motion to extend time to disclose expert witnesses and furnish written reports (dg) [Entry date 05/11/04]

05/21/2004 70 MOTION by Ana Colak to extend time for both parties to disclose their expert witnesses for trial and furnish written reports (dg) [Entry date 05/24/04]

05/25/2004 71 RESPONSE by All Defendants to [70-1] motion to extend time for both parties to disclose their expert witnesses for trial and furnish written reports (dg) [Entry date 05/26/04]

06/02/2004 72 MOTION with memorandum in support by Radisson Seven Seas for sanctions, and to strike pleadings (gp) [Entry date 06/03/04]

06/02/2004 73 MOTION by Radisson Seven Seas to establish amount of Award pursuant to Court Order dated 5/10/04 (gp) [Entry date 06/03/04]

06/02/2004 74 Expert Witness Disclosure by Radisson Seven Seas (gp) [Entry date 06/03/04]

06/02/2004 75 ORDER denying [67-1] motion to extend time to disclose expert witnesses and furnish written reports, denying [70-1] motion to extend time for both parties to disclose their expert witnesses for trial and furnish written reports (Signed by Judge Joan A. Lenard on 06/02/04) [EOD Date: 6/3/04] (ra) [Entry date 06/03/04]

06/03/2004 76 NOTICE by Radisson Seven Seas, Seven Seas Navigator to take deposition of Ivica Colak 6/14/04 at 1:00 (ra) [Entry date 06/04/04]

06/03/2004 77 NOTICE by Radisson Seven Seas, Seven Seas Navigator to take deposition of Ana Colak 6/14/04 at 10:00 (ra) [Entry date 06/04/04]

06/08/2004 78 AMENDED NOTICE by Radisson Seven Seas, Seven Seas Navigator to take deposition of Ivica Colak 6/14/04 at 1:00 (ra) [Entry date 06/09/04]

06/08/2004 79 AMENDED NOTICE by Radisson Seven Seas, Seven Seas Navigator to take deposition of Ana Colak 6/14/04 at 10:00 (ra) [Entry date 06/09/04]

06/15/2004 80 MOTION with memorandum in support by Radisson Seven Seas for protective order (ra) [Entry date 06/16/04]

06/15/2004 80 OBJECTIONS by Radisson Seven Seas to plaintiff's notice to produce documents (ra) [Entry date 06/16/04]

07/06/2004 81 REPORT AND RECOMMENDATIONS of Magistrate Judge Andrea M. Simonton recommending that [73-1] motion to establish amount of Award pursuant to Court Order dated 5/10/04 be GRANTED. Motion no longer referred. Signed on: 07/02/04 Objections to R and R due by 7/16/04 CCAP (ra) [Entry date 07/07/04]

07/06/2004 82 REPORT AND RECOMMENDATIONS of Magistrate Judge Andrea M. Simonton recommending that [72-1] motion for sanctions and [72-2] motion to strike pleadings be GRANTED. Motion no longer referred. Signed on: 07/02/04 Objections to R and R due by 7/16/04 CCAP (ra) [Entry date 07/07/04]

07/06/2004 83 ORDER granting by default [80-1] motion for protective order (Signed by Magistrate Judge Andrea M. Simonton on 07/06/04) [EOD Date: 7/7/04] (ra) [Entry date 07/07/04]

07/06/2004 84 MOTION with memorandum in support by Radisson Seven Seas for partial summary judgment (ra) [Entry date 07/07/04]

07/07/2004 85 MOTION by Radisson Seven Seas to take judicial notice (bb) [Entry date 07/08/04]

07/12/2004 86 ORDER/TWENTY-ONE DAY NOTICE OF CONSIDERATION OF MOTION FOR SUMMARY JUDGMENT (Signed by Judge Cecilia M. Altonaga on 07/09/04) [EOD Date: 7/13/04] (ra) [Entry date 07/13/04]

07/12/2004 87 SUPPLEMENT by Radisson Seven Seas to: [74-1] witness list (cp) [Entry date 07/14/04]

07/19/2004 88 GENERAL MOTION by Radisson Seven Seas in limine for the exclusion of certain materials at trial (wc) [Entry date 07/20/04]

07/21/2004 89 NOTICE of filing errata sheet of Gair O'Neill by Radisson Seven Seas (sp) [Entry date 07/22/04]

07/21/2004 90 Errata sheet deposition of Gair O'Neill by Radisson Seven Seas (sp) [Entry date 07/22/04]

07/22/2004 91 MOTION by Radisson Seven Seas, Seven Seas Navigator for order allowing multimedia presentation at trial (nt) [Entry date 07/23/04]

07/23/2004 92 MOTION by Radisson Seven Seas, Seven Seas Navigator (Attorney) for entry of a scheduling order for rulings on objections to depositions (ct) [Entry date 07/26/04]

07/28/2004 93 ORDER adopting [81-1] report and recommendations granting [73-1] motion to establish amount of Award pursuant to Court Order dated 5/10/04 (Signed by Judge Joan A. Lenard on 07/28/04) [EOD Date: 7/29/04] CCAP (ra) [Entry date 07/29/04]

07/28/2004 94 ORDER adopting [82-1] report and recommendations AND

CLOSING THE CASE granting [72-1] motion for sanctions,
granting [72-2] motion to strike pleadings (Signed by
Judge Joan A. Lenard on 07/28/04) [EOD Date: 7/29/04]
CCAP (ra) [Entry date 07/29/04]

07/28/2004 -- CASE CLOSED. Case and Motions no longer referred to
Magistrate. (ra) [Entry date 07/29/04]
08/13/2004 95 MOTION with memorandum in support by Ana Colak for
reconsideration of [94-1] order (ra) [Entry date
08/16/04]
08/27/2004 96 OPPOSITION by Radisson Seven Seas, Seven Seas Navigator
to [95-1] motion for reconsideration of [94-1] order
(ra) [Entry date 08/30/04]
03/24/2005 97 ORDER denying [95-1] motion for reconsideration of [94-
1] order (Signed by Judge Joan A. Lenard on 03/24/05)
[EOD Date: 3/25/05] (ra) [Entry date 03/25/05]

**"... let not the judge meet the cause half way, nor give occasion to the party, to say his counsel or
proofs were not heard." Francis Bacon 1561-1626**

**Take all the robes of all the good judges that have ever lived on the face of the earth, and they
would not be large enough to cover the iniquity of one corrupt judge.**

Henry Ward Beecher - Liberal US Congregational minister, 1813-1887

**"Every court should watch with jealousy an encroachment upon the rights of seamen because they
are unprotected and need counsel...." Justice story, 1823**

"It would be inhumane to leave a helpless man without succor."

The Quaker City, 1F. Supp. 840 (E.D. Penn. 1931).

Laws grind the poor, and rich men rule the law. Oliver Goldsmith

This is a court of law, young man, not a court of justice. Oliver Wendell Holmes, Jr.

**The judge J. A. Lenard issued for Radisson - Protective Order - not to produce ship's documents
about my injury? Protective order not to produce documents could be hidden breach of law - and
law hiding unlawfulness, it means law is against law. Human justice? Plaintiff must produce
documents Defendant get protective order? - "Justice is impartiality". George Bernard Shaw**

Law and justice are not always the same. Gloria Steinem

As in law so in war, the longest purse finally wins. Mahatma Gandhi 1869-1948

**In law a man is guilty when he violates the rights of others. In ethics he is guilty if he only thinks of
doing so. Immanuel Kant 1724-1804**

**"There is so-called legal justice which is totally different from actual justice." "... But the fact
remains that there is terrible injustice in the world." J. Krishnamurti 1895-1986**

**Man, when perfected, is the best of animals, but when separated from law and justice, he is the
worst of all. Aristotle**

**It is responsibility, law, and also the law of the sea
to provide assistance to injured seaman.**



MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
ENFORCEMENT PROGRAM
1426 HOWE AVENUE, SUITE #93
SACRAMENTO, CA 95825
(916) 263-2524
www.medbd.ca.gov

DAVID T. THORNTON
Chief of Enforcement

CITATION ORDER

December 27, 2001

Allan Anthony Konce, M.D.
2 Connecticut Street
San Francisco, CA 94107

Citation No: 20-2001-125290

CITATION AGAINST: Allen Anthony Konce, M.D.
LICENSE NUMBER: G-21789
VIOLATION: 2261 Business and Professions Code - Making False Statements
in Documents

An investigation or inquiry has been conducted by the Medical Board of California. As a result, David T. Thornton issues this citation in his official capacity as Chief of Enforcement of the Medical Board of California (hereinafter referred to as the "Board").

Citation

An administrative citation is hereby issued to you in accordance with Business and Professions Code section 125.9 for violation of section 2261 of the Business and Professions Code.

License

License #G-21789 was issued to you on December 9, 1971, and expires February 29, 2004.

Cause for Citation

On February 20, 2000, you prepared a "Permanent Treating Physicians Permanent and Stationary Report" which indicated that the patient had been under your care since October 26, 1999, when in fact the patient was never treated or evaluated by you.

Order of Abatement

The Board is ordering you to cease and desist from preparing false medical reports.

Allan Anthony Konce, M.D.
December 27, 2001
Page Two

Fine

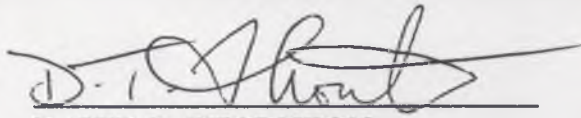
WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS CITATION, YOU ARE REQUIRED TO PAY AN ADMINISTRATIVE FINE IN THE AMOUNT OF \$600.00 AS PROVIDED BY TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS SECTIONS 1364.10 AND 1364.11 FOR VIOLATION OF SECTION 2261 OF THE BUSINESS AND PROFESSIONS CODE.

Payment of the administrative fine should be sent, in the form of check or money order made payable to the Medical Board of California, to the following address: **Medical Board of California, Enforcement Program, Attn: Pamila Baldo, P. O. Box 255729, Sacramento, CA 95865-5729.**

If you appeal this citation, the days given for compliance will be held in abeyance only for the violation(s) you contest. The time to correct all uncontested violations must be adhered to as given.

If you fail to notify the Board within the allotted time that you intend to appeal the citation, it shall be deemed a final order and shall not be subject to further administrative review. Any questions or concerns should be directed to Pamila Baldo, Associate Analyst, at (916) 263-2524.

FAILURE TO COMPLY WITH THIS CITATION WILL RESULT IN DISCIPLINARY ACTION AGAINST YOUR LICENSE.



DAVID T. THORNTON
Chief of Enforcement
Medical Board of California

12/27/01
DATE

Attachments: Sections 125.9 and 2261, Business and Professions Code
Sections 1364.10 - 1364.15, Title 16, California Code of Regulations
Appeal Process and Information Sheet
Request for Informal Conference



MEDICAL BOARD OF CALIFORNIA
ENFORCEMENT PROGRAM
1735 Technology Drive, Suite 800
San Jose, CA 95110-1313
(408) 437-3688 / Fax (408) 437-3693



August 27, 2001

Ms. Ana Colak
Kralja Tomislava 8
20 000 Dubrovnik
Croatia

Subject: Medical Board Investigation Case #:03 2000 113027

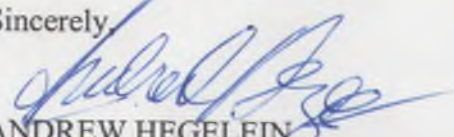
Dear Ms. Colak:

The Medical Board of California has concluded its investigation into your allegation that on 05/26/00, Dr. Allan Konce, M.D., failed to correctly diagnose an injury to your ankle. Further, that Dr. Konce falsely signed a statement that he had personally physically examined her when he had not.

It has been determined by the facts and evidence of this case that there is not sufficient cause to warrant pursuing an administrative action against the licensee.

Thank you for bringing this matter to our attention and aiding the Medical Board in its mission to protect the public.

Sincerely,


ANDREW HEGELEIN
Supervising Investigator

Read all facts about Dr. Konce in story Warning for Seamen - Justice at sea

- I sent to MBC translated in English and signed by sworn court interpreter medical records about permanent injury - how they can say that dr. Konce gave correct diagnosis - can those doctors read it? First - I never seen in my life dr. Allan Konce in San Francisco. Second - he gave false diagnosis - "Left ankle sprain, uncomplicated and resolving. . . Patient was returned to full, unrestricted duty as of that same date 5/26/00. " Appointed doctor from ship's P&I insurer claim that my injury is permanent. "The condition may be considered as definite - the remaining consequences are permanent. . . A reconstruction surgery might eventually be considered with "dubious" result (time elapsed from the injury)." Also US. Doctors Lloyd A. Moriber, M.D., F.A.C.S. and Mitchell S. Seavey claim it is permanent injury. And MRI films showing it clearly. - "The stated diagnosis represents permanent obstacle for future employment on board a ship. General work ability significantly reduced, especially for work requesting larger physical effort, longer periods of standing, work in strained position. I suggest re-training into eventual office worker."