



SEMAPHORE

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Disney Cruise Worker Wins Partial Statute of Limitations Appeal

A former Disney Cruise Line worker's claim for maintenance and cure damages related to an injury incurred while working onboard the Disney Wonder in late 2011 is not time-barred, the District Court of Appeal of the State of Florida has ruled.

A custodial hostess on Disney's cruise ships from October 2011 through until January 2015, Onica Grazette felt a "pop" in her lower back when bending over to lift heavy luggage two months into her first contract with line.

Having received continuous medical treatment following the incident, in January 2015 she underwent an MRI which revealed an L5-S1 disc herniation. Ms Grazette was then medically debarked and referred to a neurosurgeon.

However, with Ms Grazette having not achieved maximum medical improvement (MMI) by October 2016 – two months prior to her final visit with the neurosurgeon – she filed a four-count complaint against Disney, asserting:

1. Jones Act negligence
2. unseaworthiness
3. failure to provide maintenance and cure
4. failure to provide prompt, proper and adequate medical treatment

As Ms Grazette alleged that her injuries accrued while she was working on the Disney Wonder, but the complaint was not filed until October 2016, Disney argued that all four claims were thus time-barred by maritime tort law's three-year statute of limitations. The trial court granted Disney's motion for summary judgment.

In her October 11 ruling this year, District Court of Appeal Associate Judge HL Higbee affirmed that Judge TB Rainwater's original decision to grant summary judgment was "proper" on three of the claims.

"Because she was aware in 2011 of both the injury and the cause, the causes of action accrued under the time of event rule in 2011 when the injury occurred," stated Associate Judge Higbee.

"Therefore, her claims for negligence under the Jones Act, unseaworthiness and failure to provide prompt, proper and adequate medical treatment are time-barred as she did not file her complaint until 2016, two years after the statute of limitations had run."

However, Associate Judge Higbee reversed the decision as to Ms Grazette's claim for maintenance and cure damages.

"Under general maritime law, a seaman has the right to receive compensation for food, lodging and medical services resulting from illnesses or injuries suffered while working aboard a ship,' *Gabriel*, 93 So. 3d at 1123.

“The duty to provide said compensation, ie, maintenance and cure, continues during a seaman’s recuperative period until maximum medical recovery, or MMI, is reached,’ *Id.*

“Claims for maintenance and cure are deemed to have accrued when the seaman becomes incapacitated to do a seaman’s work, *Spencer v. Grand River Navigation Co*, 644 F. App’x 559, 565 (6th Cir. 2016), and continues until the seaman reaches MMI, *Vaughan v. Atkinson*, 369 U.S. 527, 531 (1962).

“Here, there is an issue of fact as to when Grazette became incapacitated to do seaman’s work since she was medically debarked on two separate occasions. After the first disembarkment, which occurred shortly after she sustained the back injury in 2011, her contract terminated, she was sent home to Trinidad for treatment and she received maintenance and cure payments from Disney, but she ultimately returned to do seaman’s work several months later.

“After the second disembarkment in 2015, she was deemed unfit and unable to physically do seaman’s work. Because there is a dispute of material fact as to when Grazette became incapacitated, we reverse only as to that claim.”

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