



**The Fifth Circuit Court of Appeals holds the Jones Act allows a general maritime negligence and indemnity claim by a shipowner-employer against its seaman-employee for property damage.**

Jeffrey Withhart was employed by Sea Mar as a mate aboard the *M/V Cape Hateras*, a vessel owned and operated by his employer. He filed a lawsuit against Sea Mar alleging personal injuries as a result of a December 3, 2001 collision between the *Cape Hateras* and the *M/V Kelly Candies*, a vessel owned and operated by defendant, Otto Candies. Following Withhart's institution of suit, Candies filed a third party complaint against Sea Mar demanding defense, indemnification, contribution and/or recovery on the basis that the *Cape Hateras* was fully responsible for the collision. Pursuant to Candies' demand, Sea Mar paid over \$26,000 for property damage to the *Kelly Candies*.

Plaintiff eventually amended his complaint to add Sea Mar and others as defendants. Sea Mar brought a negligence counterclaim against Withhart for property damage to the *Cape Hateras* and an indemnity counterclaim for the damages paid to Candies for the *Kelly Candies*. Sea Mar alleged that Withhart, who was acting as Mate/Second Captain aboard the *Cape Hateras*, was on watch and in command of the vessel. The collision occurred when he negligently left the wheelhouse in congested waters to attend to personal business. Withhart moved to dismiss the counterclaims under FRCP 12(B)(6). The district court dismissed the counterclaims but certified its judgment allowing for an immediate appeal.

In a matter of first impression in the federal circuit courts, the Fifth Circuit undertook a detailed analysis of the history of negligence/indemnity counterclaims by Jones Act shipowner-employers. The court looked to some of the earliest cases on the maritime tort of negligence. *See Leathers v. Blessing*, 105 U.S. (15 Otto) 626 (1882). Noting that the general maritime law is almost completely void of property damage actions by shipowner-employers against their seamen-employees, the court, nevertheless, concluded Sea Mar's claims were consistent with the general maritime law. In dicta, the court noted that the comparative fault regime set forth by the Supreme Court in *Reliable Transfer* would govern Sea Mar's counterclaims.



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The Court then looked to FELA to see whether an employer had a common law right to sue its employees for property damage. While recognizing contrary authority existed, the Fifth Circuit cited with authority decisions by First, Fourth and Eighth circuits holding that FELA contained no prohibition against a railroad's suit against its employee for property damage caused by the negligent actions of that employee. Consequently, the Jones Act (which incorporates FELA) contains no prohibition against a general maritime negligence or indemnity claim by a shipowner-employer against its seaman employee for property damage. Accordingly, shipowner-employers now appear to have a new arrow in their quiver to use against their own employees who, by their negligence, cause property damage to vessels/structures. *Withhart v. Otto Candies LLC, et al.*, Cause No. 04-31267 (5<sup>th</sup> Cir. December 2, 2005).

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