

WARNING FOR SEAMEN - JUSTICE AT SEA

Ivica Colak, Dubrovnik - Croatia - Story about my wife and her injury on cruising ship.

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 7/29/04 - Colak v. Radisson Seven Seas, et al - Radisson Seven Seas Cruises, Inc, IN Personam - Seven Seas Navigator, IN Rem
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)

The Radisson Seven Seas Cruises, Inc., Corporation from US - accident happened on her ship M.S. Seven Seas Navigator under ownership Celtic Pacific UK, Ltd. flying Bahamian flag. Signed Special Agreement with Italian ITF - FIT/CISL Marittimi Roma, (Captain Remo di Fiore) seaman union. Radisson admits at court: "Radisson has a bareboat charter for the vessel". Radisson Seven Seas Cruises changed name in March 2006 to Regent Seven Seas Cruises.

1. I have been injured on board cruising ship m/v Seven Seas Navigator while on duty, because of faulty shower door in passenger's suite fell on my ankle - not my fault. It were third shower doors which fell. More shower doors fell in passenger's suites some on crew members some on passengers. I have witness statement of bedroom stewardess from the ship signed in front of Notary and translated in English by a sworn court interpreter: "Several stewardesses more were injured as well. Shower door fell onto me too. . .".

2. The ship's doctors did not send me to orthopaedist ashore after I repeatedly complained for pain. Neither gave me promised ointment for pain. I bought it myself in a pharmacy ashore. After three months at the end of contract I still felt pain, my husband informed ITF inspector and ship's officer's that inspector coming on the ship and I have been sent to orthopaedist last day of my contract? ITF inspector Barry Binski from San Francisco in telephone conversation asked my husband to request official Log book record about my injury. Mr. Binsky did not obtain Log book record himself when he has been on the ship, neither helped me to obtain same on second visit of the ship in San Francisco. I asked for help other ITF inspectors in other ports and from ITF world headquarter from London to obtain it - but in vain? The Company refused to give me mentioned document or other medlog documents from ship's hospital about other visits to ship's doctors, I've got only medlog from January 17 2000.

3. The Company sent me to orthopaedist Allan Konce in San Francisco whom I never seen in my life, nor I ever seen Doctor Smith A. Ketchum from Overseas Medical Center, San Francisco, - who "referred" me to orthopaedist. Craig Stewart Investigator - Medical Board of California - Enforcement Program wrote: Date: Fri, 30 March 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. . ." Medical Board of California after my complaint never punished Dr. Smith Ketchum who refused to send me requested refferal slip and breached California laws? I possess original Referral Ashore Form For OWNERS Crew Members from ship's doctor (at that time on the ship was employed doctor US citizen) who signed, stamped and referred me to Orthopedist surgeon in San Francisco on 5/26/00. Orthopaedist A. Konce gave false diagnosis and dates of injury under penalty of perjury. California Penal Code Section 118-129 - some articles, 126. Perjury is punishable by imprisonment in the state prison for two, three or four years, 123. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; . . 124. The making of deposition, affidavit or certificate is deemed to be complet, within the provision of this chapter,

from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

On the day of examination Lisa Few never gave original medical findings but photocopy few times recopied and changed to me, looks like bill of death? "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". from Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss (Court Document 13, Feb 25, 2002 US District Court Miami, FL.)

4. Company agent Inchcape Shipping Services from San Francisco refused to send me my medical record and breached California Insurance Health&Safety Code 791.08. Catharine Hooper of ISS: "For the final time, you are to contact your employer V.Ships of Monaco to receive your medical records. You need no longer contact Inchcape Shipping Services on this matter. Should you wish to continue to contact ISS the answer you will receive will remain the same, as per direction from your employer V.Ships Monaco".

5. On 18 October 2000 the ship's insurer P and I club - Assuranceforeningen Gard appointed own orthopaedist and occupational medicine doctor in Rijeka, Croatia - orthopaedist findings after examination: ". . . Injury to the left foot ankle on 17 Jan 2000 on board a ship/employed as a stewardess. Practically no treatment until 26 May 2000, when first examination was made by an orthopaedist in San Francisco. . . The injury resulted with reduction of the functional status of the left foot ankle in terminal phase and instability, of the ankle of the 1st degree. . . 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)". P and I ship's insurer Spec. for Occupational medicine report 31 Oct. 2000: "Working capacity has not been significantly affected and she is considered fit for service both as a land and ship stewardess, with the aid of elastic bandage, higher shoes, etc. On the ground of the above described, it is my standpoint that the injury of 17 January 2000 has caused Ms Ana Colak a 5% (five percent) imparity".

After delay VShips paid for travel and examination expenses \$1060 cash in hands without proper receipt I've got only photocopy not original? and sent cheque \$3000 for permanent disability of 5% I rejected it as my orthopaedist sent me for physical therapy on 17 October 2000, and because I never been paid sick wages etc. VShips answered: "Thank you for your e mail of 12th January 2001. 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. . ."

After physical therapy finished on 3 April 2001 Specialist for Occupational medicine Dr. Branko Dukic in Dubrovnik wrote: "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".

Diagnosis of Dr. A. Konce on 26 May 2000 - Left ankle sprain, uncomplicated and resolving. Few diferent orthopaedists in different cities examined me and gave their opinion.

Diagnosis 8 Jun 2000 in Dubrovnik - Somewhat swollen ankle with pain on palpation of ligament but also lat meleola. X-ray shows possible condition after infracton of maleolus fibulae. Diagnosis on Polyclinic "Dr. Obad" in Split on 13 Jun 2000 - Stp. infract. mall. fibulae. Stp. rupturam partilis sindesmosis tibiofibularis. Oedema perimall cr.gr.levioris. . . Diagnosis from Diagnostical and

Intervention Radiology Clinic - Medical University in Zagreb on 29 Jun 2000: "X-ray of the left talo crural joint, evident thornlike membrane inteross projections, also distinctive diastase. Fissure of the fibula malleous. . . Computerised tomography effected through talo crural joint and described fissure found in fibula malleous region with significant soft tissue swelling. . . ." On 4 Jul 2000 orthopedist in Zagreb diagnosis: Distorsio inveterata art. talocruralis. sin Polyclinic "Dr. Obad" in Split on 7 Jul 2000: Stp contusionem et distorsionem ATG. sin. a.m.v. Stp infrac. mall. fibulae. Stp. avulsionem partialis sindesmosis tibiofibularis. Polyclinic "Dr. Obad" in Split on 17 October 2000: Contractura gr. levioris ATC. MRI: avulsio proximalis ligamenti fibulotalare anter. ruptura subtotalis lig. fibulotalare poster. (Here taken new MRI films)

Dr. Allan Konce declare: "I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief. . ." - "The above-captioned patient was interviewed and examined by me in orthopaedic consultation", May 26 2000. I declared on 13 Jul 2003 in Miami in Deposition given under Oath for the Court in Miami that I never saw Dr. Allan Konce.

6. I asked help from Seaman Union ITF to obtain those important documents but Union rejected appeals for help. Strange, because the Union signed for the ship Collective Bargain Agreement and had right to inspect the ship anytime and obtain copies of any documents? and at that time was worldwide action against FOC (Flag of Convenience ships). ITF world headquarter from London promised me help on 5 October 2000: "If your claim is for sick wages, the Action Unit will be able to deal with that for you", m/s Seven Seas Navigator flying Bahamian flag, and also: "Let me first of all assure you that we exist to ensure that Seafarer are treated in accordance with their contracts of employment and will act when a seafarer demonstrates that there has been breach of agreement". ITF did not help and abandoned me.

7. I was with my wife at Bay Medical Center - San Francisco and we never saw doctor A. Konce and documents from Bay Medical Center are contradictory and with different dates of injury. Also, the ship's officers intentionally did not record or destroyed medical records or Log book and safety records about my injury. Company never gave me those documents to cover up Dr. Konce's false statements given under penalty of perjury. Diagnosis "uncomplicated left ankle sprain" was proved wrong as all other orthopedists in US and Croatia claim that it is permanent injury. Radisson in its court document EXPERT WITNESS DISCLOSURE dated 1 June 2004 say that it will use A. Konce finding for trial: "Although, not specially retained experts Defendant reserves the right to utilize the testimony of any of the Plaintiff's treating physicians or physician assistant whose reports have been provided in this case and/or who have been deposed, including but not limited to Doctor Allan Konce and Lisa Few PAC."? Dr. Allan Konce sworn Court Expert Witness what is recorded in NASJVP Directory, CA National association of state jury verdict publishers, have been punished from Medical Board of California on December 27, 2001 for "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. . . . The board is ordering you to cease and desist from preparing false medical reports. . .". Signed David. T. Thornton Chief of Enforcement Medical Board of California. In my documented case about wrong diagnosis and false dates, photocopied medical finding and complaint against Dr. A. Konce on August 27, 2001: "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 documented by 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". Signed Andrew Hegelein Supervising Investigator. I complained to President Ira Lubell of Medical Board but in vain. Also I complained to Attorney

General of California, he answered: "Attorney General. . . does not seek to impose own policy judgment or control the administration of the business of his client agencies". Medical Board also did not punish Dr. Ketchum who refused to send me referral slip? Radisson's court expert witness Dr. Mitchell S. Seavey claim on 7/14 2003: "Evidently for persistent pain and swelling about the left ankle, she pursued orthopaedic evaluation in San Francisco May 26, 2000. A brace was provided with some medication (though patient states she was seen by an assistant, not the doctor and never examined). . . I believe her function will optimize with further strengthening efforts directed at the peroneal muscles. Also, proprioceptive/balancing type exercises are considered quite beneficial for this injury to optimize function, . . . Ana Colak has sustained injuries as diagnosed above from the January 17, 2000 accident she is assigned a 1% (one percent) whole person impairment rating as determined from the Fifth Edition, Guides to the Evaluation of Permanent Impairment, of the American Medical Association". Defendant also mention doctor Lloyd A. Moriber, M.D., F.A.C.S. finding: "I have also suggested that she wear an elastic compressible removable foot and ankle support. She is wearing an ankle brace at this time but this does not seem adequate. . . and I feel that the patient may benefit from injection therapy into anterior ankle capsule with Xylocaine and Depo steroid. . . There is some discomfort on plantar flexion and on internal stress of the ankle and plantar flexion stress of the ankle. There is some sinovial thickening about the anterior ankle capsule. She should avoid climbing stairs and walking on uneven surfaces because this will exacerbate her symptoms". This is all after 3 years of initial injury? Dr Lloyd Moriber claim on 7/16/2003: "she will be probably left with with 5% residual to the left foot and ankle as result of the injury she sustained". Radisson also in document Defendants, Radisson Seven Seas Cruises Inc., S Motion for Partial Summary Judgement dated July 6 2004 under Undisputed Facts state: "Specifically, on October 31 2000, Dr. Milorad Stipanovic M.D., Occupational Medicine Specialist and Permanent Court Expert located in Croatia found: On the ground of the above described, it is my standpoint that injury of 17.01.2000 has caused Ms Ana Colak a 5% (five percent) imparity". This doctor has been appointed by ship's insurer P and I. In Croatia Pension Insurance Administration - government appointed commission expert wrote medical finding: "Pursuant to the request dated 13th June 2001 the procedure for fulfilment of the right to compensation for the physical damage has been initiated. During the procedure following has been ascertained - that according to the findings and opinion of an authorized expert a physical damage of 8th grade (30%) incurred as a consequence of injury. . . pursuant to para VII B item 15 of the List of Physical Damages (hereinafter: LTO) . . . Taking into consideration that in this particular case the physical damage was not incurred under valid insurance, (I had no insurance in Croatia) . . . II. She is not entitled to any compensation for the physical damage" (in Croatia). - During employment seaman is insured by shipping Company insurer.

8. Complaint against the Company have been filed at District court in Miami and warrant have been issued to arrest and sale the ship. The ship's insurer issued the Letter of undertaking guaranteeing payment of any judgment obtained by the crew member in the district court in consideration for her agreement not to arrest the vessel in the US. "In your case, a letter of undertaking was provided by the Defendant. The letter of undertaking guarantees that if a final judgement is entered against the vessel, Assuranceforeningen GARD agrees to pay and satisfy the judgement up to but not exceeding \$500,000". With this the insurer admitted jurisdiction over the case in US. And after this tried to deny jurisdiction in the US? and dismiss complaint but lost in all aspects. The Judge warned Defendants: "The Defendants misstated the law in this District and were cautioned that blatant misrepresentations of law are inexcusable and will not be tolerated in future pleadings". The Defendants did not appeal. After deposition, medical examination and mediation I did not accept settlement offer and returned back home. The lawyer tried to persuade me to accept higher offer which was far bellow even contractual obligation. I rejected it and my lawyer Lipcon Charles voluntarily withdrew. He refused to send me back my documents: witness statement etc. even when I presented that according Florida laws those documents are my own property, neither he sent it to my new lawyer? One lawyer answered me: "I'm sorry for you but Charles Lipcon (and myself)

happen to be the most respected admiralty lawyers in the country". Another lawyer answered me: "Mr. Lipcon is part of that group and is one of the "foxes" that is considered a leader in the area". Mr. Lipcon withdrew from my case I did not get even sick wages? I recommended Mr. Lipcon to injured seaman (spine operated interlaminectomy extirpation disci) case no. 13-2002-CA-026391-0000 in Miami Dade court filing 10/18/2002. He also did not accept settlement offer and he did not get anything?

9. Without any knowledge about US law my husband succeeded to extend time to answer to the court. From initial injury passed almost four years. Desperate search for new lawyer and few hours before case closed appeared new lawyer who accepted the case. . . . could I trust him? From MOTION AND MEMORANDUM TO RECONSIDER ORDER STRIKING PLAINTIFF'S PLEADINGS DISMISSING CASE, August 13, 2004 "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 my case from August 2004 to March 2005 it was 7 months? Radisson demanded jury: "The Defendant demands trial by jury of all issues triable right by jury" on 03/05/2003 and Radisson also oppose it? on August 27, 2004: "Defendant's Opposition to Plaintiff's Motion for Reconsideration of the Order Striking Plaintiff's Pleadings". Why Radisson changed own attitude, because was afraid of undisputable true facts. This process was about my injury and what Radisson did wrong and not my lawyer?

Is Radisson entitled to entry of summary judgement?

In document DEFENDANT, RADISSON SEVEN SEAS CRUISES INC,'S - MOTION FOR PARTIAL SUMMARY JUDGMENT, from Jul 06 2004 Radisson claim that "Assuming arguendo, that the Defendant Radisson, is found to be responsible to provide the Plaintiff with maintenance and cure, then RADISSON is still entitled to entry of summary judgment as all maintenance and cure has been paid by her employer, V Ship Leisure, (Monaco) Inc through point that the plaintiff reached MMI".

Here is not true that VShip Inc Monaco paid money. In original letter Receipt and release in English and Croatian received from VShips Inc Liberia? it is written: "confirm receipt of the sum of USA 3,000.00, from Messers V. Ships Leisure Inc Liberia, as manning agents for and on behalf of International Shipping Services Ltd, Owners of m/s Seven Seas Navigator which sum represents respective contractual compensation for assessed 5 percent of permanent consequences for the accident on work I suffered from employed as the stewardess on board mv "SEVEN SEAS NAVIGATOR" on 17 January 2000, and with receipt of this sum I confirm that I do not have further claims whatsoever on this ground". (I did not accept this money, did not sign letter and asked many times to be paid sick wages, etc. for which I am entitled by signed contract, and I did not sign "confirm that I do not have further claims whatsoever on this ground"). I never signed this Receipt and Release form and never accepted/encashed cheque for \$3000 it would prevent my further from orthopaedist prescribed treatment of injured painful ankle and would loose all rights from contract. The "pay to be paid" rule. This is stipulation of P and I clubs that they will only pay insured claims provided the shipowner has paid the claim first. In its own words. "Ultimate control of P&I Clubs (ship's insurers) is in the hands of the shipowner assureds through elected shipowner boards/committees which decide policies on eg. Scope of cover, claims payments, premium calling etc". "Quit Claims" - used to avoid paying a full award of compensation by forcing seafarers and

their next of kin to accept contractual levels of compensation in full and final settlement of all claims. This avoids the much potential liabilities under a negligence action. Claimants are pressurised to accept immediate minimum compensation on condition that they do not take their cases further". Company Conditions of Service - Medical Attention: "in the case of injury (other than self-inflicted injuries caused by wilful act of personnel concerned) medical attention and expenses will be paid by Owner". In the signed contract - which is printed on the back side of Letter of Appointment issued from VShips Monaco (not Liberia) and which I signed in Fort Lauderdale as contract for work on m/v Seven Seas Navigator is written for injury will pay Owner. Second thing VShips Monaco did not appoint own doctor when I arrived home it was done more than four months after on October 18 2000 after I complained to ITF World headquarter London and FIT/CISL ITF MARITTIMI ROMA on 28 August 2000 and requested revocation of BLUE CERTIFICATE and Blacklisting of the mv SEVEN SEAS NAVIGATOR and Company because of breach of signed Collective Bargain and contract of employment. Ship's insurer P and I lawyer correspondent from Croatia Miroljub Macesic write on 18 September 2000: "It is practice that all cases of body injuries supervise doctor appointed from Company who check and recommend treatment giving opinion of permanent consequences if any. . . In actual case shipowners form P and I make a payment for premiums to cover specified risks which cannot be in other way insured".

They can share profits but not responsibilities?

"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".

Here court case which entitled seaman his right to: Duration of Unearned Wages. Lundborg v. Keystone Shipping Co., Wn 2d (1999), recognized that unearned wages are due for the "contemplated period employment", including any "definite period of employment that extends beyond the end of each voyage".

Ship's insurer, Radisson or Vships did not pay my sick wages, lost unearned wages, during incapacity for work, neither ankle braces (\$500), physical therapy, permanent disability - I never received official ship's documents about my injury, Log Book, all medlog records from ships hospital. Injury is documented of permanent nature and is not my fault. I sent all my medical documents and MRI, x-ray and CT films to Radisson and when my second Lawyer requested above mentioned documents from the Radisson - the judge granted Protective order? 80 OBJECTIONS by Radisson Seven Seas to plaintiff's notice to produce documents (ra) [Entry date 06/16/04] - 83 ORDER granting by default [80-1] motion for protective order (Signed by Magistrate Judge Andrea M. Simonton) 07/06/2004. I am according General Maritime Law of US and international law entitled to receive those documents? With this the Judge also covered up Dr. A. Konce's false medical finding given under penalty of perjury. Documents from ship's hospital are different from what Dr. Konce wrote in his documents about my injury? and also different from form which I filed in at his Bay Medical Center. All written evidence is against A. Konce.

- When federal court issued Warrant to arrest ship Seven Seas Navigator Mr. Lipcon in lawsuit asked from court for: "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 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. 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. . . 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. 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. . . 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.

At age of 41 disable is very difficult to get job on cruising ships especially if you did not work for some time and if you sued shipping company and are on blacklist of manning agents. In my country is also difficult to find job (300 000 people are unemployed) at this age now I am 46 years old and I did not get job until now, I am unemployed. Money we need to sustain us in this life but justice and truth is more worth than money even if it brings hardships and suffering in life. Radisson claim its not my employer why than was offering me few times money to settle case? I worked 10 years on cruising ships.

"As in law so in war, the longest purse finally wins". Mahatma Gandhi (he was lawyer) and I can add another thing: "War does not determine who is right - only who is left". Bertrand Russell.

Case is over but truth is not.