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**Sexual Abuse at Sea:**

**The $71 Million Verdict**

On February 25, 2015, Samantha Baca was violently sexually assaulted for over one hour by another employee, Rafal Dowgwillowicz-Nowicki, while working as a full-time crew member living aboard the 156-foot Motor Yacht Endless Summer, owned by Island Girl, Ltd. (“Defendant”). At all times during Samantha’s employment, the Endless Summer was “berthed” in “navigable waters” at the Universal Marine Center in Fort Lauderdale, Florida. Recognizing the heinous nature of the crime committed against Samantha and the devastating nature of her injuries, Defendant attempted to defend the case solely on legal issues by arguing that the large yacht was not a “vessel,” that Samantha Baca was not a “crew member,” and that even if the yacht was a vessel, it was not “in navigation.”

Defendant’s first argument was that Samantha was not a “crew member” despite the fact that she was hired as a full-time stewardess who was required to live on the vessel and perform the traditional duties of a stewardess including cleaning, cooking, laundry, interior maintenance, and tending to the vessel’s owner. Samantha had specialized training from the Maritime Professional Academy where she was educated on basic marine protocols, interior yacht management, and other yacht services skills. Samantha was required to wear a uniform while carrying out her duties, and she spent nearly twenty-four hours a day on the vessel. She was paid a monthly salary, and she was hired to stay aboard as a crew member for an indefinite period of time. It was clear that Samantha was a crew member aboard the Endless Summer.

Defendant next argued that the Endless Summer was not a “vessel” at the time of the sexual assault. In fact, they went through great lengths attempting to twist the facts to have the Court believe that the vessel miraculously converted at some point from a pleasure yacht into some other unidentifiable floating structure. This argument was laughable and not worth much explanation. Finally, the vessel in which Ms. Baca was a crew member was “in navigation” at the time of the sexual assault. The Endless Summer was in the “exclusive control” of the owner while “berthed” in “navigable waters” at a marina with full time crew living aboard to carry out the traditional functions performed by such individuals.

Many of these terms seem pretty self-explanatory. A vessel is a boat, a crew member is a person with a job on a boat, and a boat is in navigation when it is floating on the water. Not so fast. Courts have spent the better part of the last two centuries intricately defining each of these terms and transforming them from plain language into relatively confusing terms of art. “Whatever may have been the original intention of Congress, Courts have given an extremely liberal interpretation to the terms ‘seaman’ and ‘member of a crew of any vessel’ without provoking any congressional amendments restricting the coverage of the act. Terms such as ‘seaman’, ‘vessel’, and ‘member of a crew’ have such a wide range of meaning, under the Jones Act as interpreted in the Courts, that, exceptin rare cases, only a jury or trier of facts can determine their application in the circumstances of a particular case.”*Offshore Co. v. Robinson*, 266 F.2d 769 (5th Circuit 1959). The world of maritime law doesn’t stop there, though. Before even beginning this analysis, you have to begin with whether or not maritime law even applies to the assault in the first place. This paper is intended to provide an overview of the case law applicable to sexual assaults at sea.

1. **GENERAL MARITIME LAW APPLIES TO SEXUAL ASSAULTS ABOARD A VESSEL IN NAVIGABLE WATERS.**

Admiralty jurisdiction exists when the tort occurs on navigable waters and the tort bears a significant relationship to traditional maritime activity. *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982). To obtain admiralty jurisdiction, a party must satisfy both a “locality test” and a “nexus test.” *Sea Vessel, Inc. v. Reyes,* 23 F.3d 345, 348 (11th Cir.1994). The locality test examines whether the tort occurred on navigable waters. *Id.*  “Under the nexus test, a party invoking admiralty jurisdiction must demonstrate (1) that the tort has a “potentially disruptive impact on maritime commerce” and (2) that a “substantial relationship” exists “between the activity giving rise to the incident and traditional maritime activity.” *Sisson v. Ruby,* 497 U.S. 358, 362, 364 (1990).

The locality test is one of the few terms in maritime law that happened to be self-explanatory in this particular case as the Endless Summer was literally in the water when the sexual assault occured. With regards to the nexus test, “[A]n onboard injury which occurred during the maintenance of a vessel” potentially disrupts maritime commerce.” *Alderman v. Pac. N. Victor, Inc.* 95 F.3d 1061, 1064 (11th Cir. 1996). Importantly, the “substantial relationship” component of the nexus test considers the Defendant's, rather than the Plaintiff's, behavior. *Parker v. Darby*, 109 F.Supp.3d 1347 (M.D. Fla. 2015) (citing *Jerome B. Grubart, Inc.,* 513 U.S. at 539, 115 S.Ct. 1043. In *Darby*, the Defendant’s conduct, which includes storing his boat on a boat lift, substantially relates to traditional maritime activity. *Id.* (citing *Hupp v. Danielson,* 2013 WL 3208588, at \*4; *see also Sisson v. Ruby,* 497 U.S. at 365, 110 S.Ct. 2892 (holding that storing a boat at a marina on navigable water substantially relates to traditional maritime activity)). Furthermore, the Defendant in *Darby*’smaintenance of his boat substantially relates to traditional maritime activity. *Id.* (citing *Sisson v. Ruby,* 497 U.S. at 365, 110 S.Ct. 2892 (“[M]aintenance of a vessel ... on navigable waters is substantially related to ‘traditional maritime activity.’”); *Sea Vessel, Inc.,* 23 F.3d at 351 (“[R]outine repair of a vessel in a dry dock on navigable waters bears a significant relationship to a traditional maritime activity such that admiralty jurisdiction attaches.”).

Pertinently, in *Russo v. APL Marine Services, Ltd.,* the Court held that sexual battery aboard a cargo vessel certainly has a potentially disruptive impact on maritime commerce. 2014 WL 3506009 (C.D. CA 2014). The Court cited to the Eleventh Circuit opinion in *Doe v. Celebrity Cruises, Inc.,* wherein the Plaintiff passenger was sexually assaulted by Defendant's crewmember offshore. The Court found that the crewmember's sexual assault of a passenger “obviously ha[d] a potentially disruptive impact on maritime commerce,” because “if rape or other forms of sexual battery became a concern of passengers, cruise-ship business would necessarily suffer.” *Celebrity Cruises,* 394 F.3d at 900. The Court in *Russo* acknowledged the difference between a crew on passenger assault and a crew on crew assault holding that, “[a]lthough the cargo industry is less public than the cruise line industry, a captain's battery of a subordinate crewmember could still result in a similar decline in business.” *Russo*, 2014 WL 3506009 (S.D. CA 2014).

Taking their holding even further, the Court found that, “actions that have a direct effect on seaman's health, lives, and ability to perform their duties are generally found to have a sufficient potential impact on maritime commerce.” *Russo*, 2014 WL 3506009 (S.D. CA 2014) (citing *Coats v. Penrod Drilling Corp.,* 61 F.3d 1113, 1119 (5th Cir.1995) (“Without a doubt, worker injuries ... can have a disruptive impact on maritime commerce by stalling or delaying the primary activity of the vessel.”)). In light of the record, it could not plausibly be disputed that the brutal sexual assault committed against Samantha Baca by another crewmember had a direct effect on her health, life, and ability to perform her duties. Moreover, this savage attack occurred while Defendant was conducting maintenance of the vessel as it was located at a marina on navigable waters. For those reasons, the Judge agreed that general maritime law applied in this case, which got us out of the starting gate.

1. **A PLAINTIFF MUST BE A CREWMEMBER ON A VESSEL IN NAVIGATION AT THE TIME OF THE SEXUAL ASSAULT FOR MARITIME LAW TO APPLY.**
2. **What is a vessel?**

Throughout every deposition in the case, each witness consistently referred to Endless Summer as a vessel. There was absolutely no testimony or evidence in the record that could lead any reasonable person to think that Endless Summer was anything other than a vessel at the time of the assault.

The word “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. 1 U.S.C.A. § 3. In deciding whether a watercraft is a vessel, “the focus ... is the craft's capability, not its present use or station.”  *Crimson Yachts v. Betty Lyn II Motor Yacht,* 603 F.3d 864, 872 (11th Cir. 2010).The dispositive question is “whether the watercraft's use as a means of transportation on water is a practical possibility or merely a theoretical one.” *Id.* (citing *Holmes v. Atlantic Sounding Co.*, 437 F.3d 441,448 (5th Cir. 2006) (“Under § 3, a ‘vessel’ is *any* watercraft practically capable of maritime transportation, regardless of its primary purpose or state of transit at a particular moment.”).

The Eleventh Circuit in *Crimson Yachts* evaluated *N. Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbuilding Co.*, 249 U.S. 119 (1919), wherein “[t]he Supreme Court made clear that a ship towed into port for extensive repairs may remain a vessel subject to admiralty jurisdiction during the overhaul.” *Id.* at 873. The Court in *Crimson Yachts* noted that the steamship in question in *Hall Brothers* “had been wrecked and had remained submerged for a long time; ice floes had torn away the upper decks, and some of her bottom plates also needed to be replaced.” *Id.* That ship was towed to a shipyard and then placed in drydock to undergo extensive repairs. *Id.* The Supreme Court ultimately held “that the steamship, despite its dilapidated state and extensive overhaul, remained subject to admiralty jurisdiction during the repair period.” *Id.*

Furthermore, a vessel only ceases to be a vessel in rare circumstances. *See Stewart v. Dutra Construction Co.,* 543 U.S. 481 (2005) (citing *Pavone v. Mississippi Riverboat Amusement Corp.,* 52 F.3d 560, 570 (C.A.5 1995) (floating casino was no longer a vessel where it was moored to the shore in an indefinite manner); *Kathriner v. UNISEA, Inc.,* 975 F.2d 657, 660 (C.A.9 1992) (floating processing plant was no longer a vessel where a “large opening [had been] cut into her hull,” rendering her incapable of moving over the water).

At the time that Ms. Baca was viciously sexually assaulted, Endless Summer was floating in the water and was certainly capable of maritime transportation. In fact, it was undisputed that the vessel was berthed in navigable waters and that it was actually tugged between marinas.

Almost comically, Defendant placed a substantial amount of weight on the case *Lozman v. City of Riviera Beach, Fla.*,568 U.S. 115 (2013). The case stands for the proposition that a structure does not qualify as a vessel unless a reasonable observer, “looking to [the] structure’s physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.” *Id.*  As a testament to the total inapplicability, the houseboat at issue in *Lozman* was described by the Court as a “home consist[ing] of a house-like plywood structure with French doors on three sides,” with “small rooms look[ing] like ordinary non-maritime living quarters. And inside those rooms looked out upon the world, not through watertight portholes, but through French doors or ordinary windows.” *Id.* at 122. The jury could not have been impressed by the need to try and convince them that this large luxury yacht was not even a vessel.

1. **What is a seaman?**

The record was likewise clear that Samantha Baca was a seaman. Case law firmly establishes that the issue of seaman status is ordinarily a jury question, even when the claim to seaman status is marginal. *White v. Valley Line Co.*, 736 F.2d 304 (5th Cir. 1984). In fact, “the question of seaman status should only be removed from the trier of fact (by summary judgment or directed verdict) in rare circumstances and that even marginal Jones Act claims should be submitted to the jury is well established.”  *Hurst v. Pilings & Structures, Inc.,* 896 F.2d 504, 506 (11th Cir. 1990).In *White*, the Court established that a decision as a matter of law should only occur “where the underlying facts are undisputed and the record reveals no evidence from which reasonable persons might draw conflicting inferences about these facts.” *Id.*The connection requirement “is meant to deny seaman's status to those who come aboard a vessel for an isolated piece of work, not to deprive a person whose duties are truly navigational of Jones Act rights merely because he serves aboard a vessel for a relatively short period of time.” *Id.*  Whether a person is a seaman depends largely on the facts of a particular case, or as stated, on the totality of circumstances.*Bodden v. Coordinated Caribbean Transp., Inc.,* 369 F.2d 273, 276 (5th Cir. 1966).It would be the rare factual situation where the question could be resolved as a matter of law. *Id.* As demonstrated below, this is most certainly not one of those rare cases that would be resolved in favor of Defendant.

In determining whether a worker is entitled to seaman status for purposes of the Jones Act, courts consider the following three factors: (1) that she is assigned permanently to, or performs a substantial part of her work on, (2) a vessel in navigation, and (3) that the capacity in which she is employed, or the duty which she performs, contributes to the function of the vessel or the accomplishment of its mission. *Juneau Tanker Corp. v. Sims*, 627 So. 2d 1230, 1230–31 (Fla. 2d DCA 1993); *McDermott International, Inc. v. Wilander,* 498 U.S. 337 (1991) (approving *Robison* test adopted by Fifth Circuit).

Samantha Baca received training in STCW, interior yacht management, bartending, and wine 101 from Maritime Professional Training prior to being hired by Endless Summer. Upon completion of her training, Samantha interviewed with an Endless Summer Representative for a full-time position on Endless Summer. During the interview, the representative informed Ms. Baca that she was interviewing for a full-time, liveaboard position wherein she would be paid a monthly salary of $1,500.

Samantha interviewed to be a stewardess, and she was hired to be a stewardess. As a stewardess on Endless Summer, Samantha was required to wear a uniform consisting of khaki pants and a colored polo t-shirt. In the course of her employment as a stewardess on Endless Summer, Samantha would begin working at 8:00 am and would immediately start cleaning. She would do laundry, clean walls, vacuum, and tend to the owner when he was on board. According to Captain Bill Brice, Samantha was hired for every day maintenance and cleaning of the interior. It is clear that there is record evidence to establish that Samantha Baca was permanently assigned as a stewardess aboard Endless Summer who performed all of her work in furtherance of the function of the vessel and the accomplishment of its mission.

It is well settled that, “[a] cook and steward are seamen in the sense of the maritime law, although they have peculiar duties assigned them. So a pilot, a surgeon, a ship-carpenter, and a boatswain, are deemed seamen, entitled to sue in the admiralty.”*McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 338 (1991). The Supreme Court of the United States precedent has made clear that a vessel owner cannot “escape liability by delegating to others work traditionally done by members of the crew.” *United New York & New Jersey Sandy Hook Pilots Ass'n v. Halecki,* 358 U.S. 613, 617 (1959). The Court further explained that, “[w]hether their calling be labeled ‘stevedore,’ ‘carpenter,’ or something else, those who did the ‘type of work’ traditionally done by seamen, were thus related to the ship in the same way as seamen ‘who had been or who were about to go on a voyage,’ were entitled to a seaworthy ship.” *Id.*

In *Pope & Talbot v. Hawn*, 346 U.S. 406, 409 (1953), the Supreme Court of the United States was called upon to evaluate their decision in *Seas Shipping Co. v. Sieracki,* 328 U.S. 85, 87, (1946)). In *Sieracki*, the Plaintiff was a stevedore,[[2]](#footnote-2) while thePlaintiff in *Hawn* was not a stevedore, as he was not loading the vessel. *Hawn*, 346 U.S. at 412.Thus, the Court in *Hawn* was asked to deny Hawn the legal protection that they afforded to the Plaintiff in *Sieracki*. *Id.* The *Hawn* Court found that Plaintiff’s“legal protection was not based on the name ‘stevedore,’ but on the type of work he did and its relationship to the ship and to the historic doctrine of seaworthiness.” *Id.* at 413. Hawn’s “need for protection was neither more nor less than that of the stevedores working with him on the ship *or of seamen who had been or were about to go on a voyage*. All were subjected to the same danger. All were entitled to like treatment under law.” *Pope & Talbot v. Hawn*, 346 U.S. 406, 409 (1953) (emphasis added).

Throughout the litigation, Defendant thematically argued that Samantha Baca was a day laborer rather than an actual stewardess. Defendant even argues in its motion that Samantha “was a *day laborer* who vacuumed, dusted and polished the interior of a disabled yacht,” yet Kurt Tomececk stated, “[s]he was hired to, you know, do general cleanup, *stewardess work*, vacuuming, dusting, polishing.” This example highlights the legal insignificance of Defendant’s attempt to avoid liability by misbranding the Plaintiff’s job title. The legal fallacy in this meritless defense was further highlighted during trial when Island Girl Representative Mike Poole testified that he did not learn of any re-labeling of Samantha as a day worker rather than a crewmember until two years after the incident in 2017. Regardless of the label that Defendant wishes to place on Samantha Baca, the record evidence indicates that she was engaging in the type of work traditionally done by seamen, and was thus related to Endless Summer vessel in the same way as a seaman who had been or was about to go on a voyage.

Defendant further contended that only the labor performed by Plaintiff at the time of the incident is relevant. However, the test of whether a given individual is or is not a seaman is characterized as whether she is employed on a vessel and is performing duties traditionally performed by seamen. *Potashnick-Badgett Dredging Inc. v. Whitfield*, 269 So. 2d 36, 41 (Fla. 4th DCA 1972). In *Whitfield*, the Court found that the trial court’s action in directing a verdict in favor of Plaintiff on the issue of seaman status was not erroneous wherethe Plaintiff barge worker had only been working for Defendant for thirteen days prior to his injury. *Id.* Moreover, as a general rule, an employee “who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman.” *Clark v. Am. Marine & Salvage, LLC*, 494 F. App'x 32, 34 (11th Cir. 2012).Said differently, the jury should be permitted to determine whether an employee who spends more than 30 percent of her time in the service of a vessel qualifies as a seaman. *See id.*

Samantha Baca was hired to be a full-time crew member of Endless Summer in a role that she planned to have for at least a year. Samantha was not given an option in regards to living aboard the vessel as it was a requirement of her employment. In fact, during the entirety of her employment, Samantha never spent a single night off the vessel as that was not something that she was permitted to do. Captain Brice himself confirmed that during the course of her employment, Samantha was always living aboard Endless Summer. Samantha would work until 6:00 pm each day, but after hours, one of the crew members was still required to be on board the yacht at all times. For the duration of her employment, Samantha Baca was on Endless Summer for basically twenty-four hours a day. Of course she spent more than thirty percent of her time in the service of Endless Summer, the vessel that she had spent nearly twenty four hours on every single day for fifteen days prior to the savage attack.

The record was clear that Samantha: (1) interviewed to be a stewardess, (2) was hired to be a stewardess, (3) had specialized maritime training, (4) performed stewardess activities, (5) was a full time employee, (6) was a salaried employee, and (7) was hired to work as long as she wanted. Furthermore, Samantha was required to live aboard the vessel, she spent every single night of her employment aboard the vessel, and she was on the vessel nearly twenty-four hours per day, engaged in traditional maritime activities while subjected to the seas perils.

1. **What does it mean to be “in navigation?”**

The Fifth Circuit has held that a precise definition of the phrase ‘in navigation’ is impossible. *Delome v. Union Barge Line Co.*, 444 F.2d 225, 231–32 (5th Cir. 1971); *Johnson v. Oil Transport Co*., 440 F.2d at 115. Whether a ship is “in navigation” is a question of fact for determination by the fact finder. *Waganer v. Sea-Land Serv., Inc.*, 486 F.2d 955, 958 (5th Cir. 1973); *Roper v. United States*, 1961, 368 U.S. 20 (1961). Consequently, as held in *Robinson*, “even where the facts are largely undisputed, the question at issue is not solely a question of law when a trial judge cannot state an unvarying rule of law that fits the facts, because conflicting inferences may lead to different conclusions among reasonable men.” *Offshore Co. v. Robinson*, 266 F.2d 769 (5th Circuit 1959). As stated above, the question of seaman status, including that of in navigation, should only be removed from the trier of fact by directed verdict in rare circumstances, and even marginal Jones Act claims should be submitted to the jury. *Hurst,* 896 F.2d at 506.While this was not even a marginal Jones Act claim in the sense that Plaintiff should—and did—prevail, it is certainly a claim ripe for presentation to the jury by Plaintiff, and not a claim that Defendant could plausibly win as a matter of law.

That a vessel be “in navigation” means only that it be actively performing a water-based marine function at the pertinent time. *Brown v. Stanwick Int'l, Inc.*, 367 So. 2d 241 (Fla. 3d DCA 1979). It is likewise clear that in order to be considered in navigation, a vessel need not be in motion at the time in question, as long as it is performing its particular function in waters that are navigable. *Potashnick-Badgett Dredging Inc. v. Whitfield*, 269 So. 2d 36, 41 (Fla. 4th DCA 1972) (citing *McKie v. Diamond Marine Co.*, 204 F.2d 132 (5th Cir. 1953)) (concluding “it is inescapable that the trial court’s action in directing a verdict in favor of Plaintiff on the issue of Plaintiff’s status as a seaman has not been shown to be erroneous” where the vessel in question had no motive power of its own, and no facilities for sleeping or eating.).

It was undisputed that Endless Summer was berthed in navigable waters at a marina from the time that it was purchased through the time of the incident. In fact, Endless Summer remained in the water until sometime in late 2016 or early 2017, nearly two years after the incident. It is also undisputed that the vessel was in the control of Island Girl at all times and was never turned over to the ship yard, marina, or any independent contractor. Furthermore, while Samantha was on board, the showers, electric, light, and toilets were all functioning and working properly. When reviewing Defendant’s own summary of “undisputed” record evidence to establish that Endless Summer underwent a major overhaul extensive enough to take the vessel out of navigation, Defendant clearly misunderstands the legal framework of the analysis and highlights a plethora of minor repairs and cosmetic upgrades including room renovations that do not remove a vessel from navigation as a matter of law.

When time is spent dissecting the record as it relates to this renovation, it becomes clear that Endless Summer was in navigation at the time Samantha was sexually attacked. After weeding through the various minor repairs and the vast number of cosmetic upgrades, the more apparently substantive repairs consisted of the replacement of parts and work done to the sea chest wherein welders removed metal piping and welded a patch to the bottom of the vessel in order to keep the sea chest from flooding the vessel. [1/24/2018 Trial Trans. 74:6-11]. Fortunately, precedent exists dictating that repairs of this nature do not take the vessel out of navigation as a matter of law.

In *Brown v. Stanwick Int'l, Inc.*, 367 So. 2d 241 (Fla. 3d DCA 1979), the vessel’s “boiler room was inoperative so that it could not get under way on its own power and was capable only of being towed from place to place. While moored to the dock, it secured its power by a connection, the permanence of which was in dispute, with a shore-based electrical power source.” *Id.* at 242. Like Endless Summer, the vessel in *Brown* was “tied up just like any conventional ship would be.” *Id.* The Court indicated that the real bone of contention in the *Brown* case was whether the vessel was in navigation. The Court held that “since a ‘vessel in navigation’ need have no power of its own to begin with, it can hardly be decisive that the vessel’s formerly operable boilers were no longer operating.” *Id.* (internal citations omitted). The Court found that, “while the vessel was attached to a power source on the shore, this fact could not serve, as a matter of law, to turn it magically from what looked and acted simply like a ship moored to a wharf into a floating drydock or its equivalent. Only a jury could say whether a transmogrification had taken place.” *Id.* at 244. Perhaps most importantly, in evaluating the precedent cited by the defendant in the *Brown* case, the Court held that all of these cases “are decisively distinguishable from this one. In each of them, the ship in question, unlike the Chah Bahar, had been totally removed from its water-based function.” *Id.* at 243.Likewise, in Samantha Baca’s case, Endless Summer was not removed from its water-based function at any time relevant hereto, as evidenced by the fact that this very attack was committed onboard the vessel against a full-time crew member who was living in the crew quarters, by another full-time crew member who was also living on board, while the vessel was berthed in navigable waters.

Repairs and updates on vessels are commonplace and do not automatically take a vessel out of “navigation” unless the renovations are so extensive such as in the case of a “mothballed” boat, one in drydock undergoing massive overhaul, or one being converted or transformed entirely. In *Rogers v. United States*, 452 F.2d 1149, 1151 (5th Cir. 1971), the vessel in question underwent reparations including, “cleaning, painting, part replacement, polishing the propeller, and the addition of a new seat chest. To install the new sea chest, a hole 18# x 21# had to be cut into the hull below the water line and piping was added to carry the sea water coolant back to the Auxiliary Machine Room (AMR).” The ship was even placed in drydock to perform some of the work before it was placed back into the water and tied to a pier at the shipyard. *Id.* The boilers and generator had been shut down and the ship utilized shore-based power. *Id.*

To determine whether a vessel is in navigation, the Court must focus on “the status of the ship, the pattern of repairs, and the extensive nature of the work contracted to be done.” *Id.* at 1152 (citing *West v. United States*, 361 U.S. 118, 122 (1959) (finding that a “mothballed” vessel undergoing renovation to make her seaworthy again was not in navigation because of the magnitude of the undertaking and the fact that the contractor had complete control of the ship.”). Similar to Endless Summer, most of the work to the vessel in *Rogers* “was replacing and cleaning parts and equipment. One of the more extensive items was the installation of a new sea chest, *but even this cannot be considered a major repair or a structural change in the ship*.” *Id.* (emphasis added).The Court held that the repairs were “not sufficient, in legal contemplation, to take the ship out of navigation.” *Id.* In fact, “[t]he status of the ship test also encompasses the question of the control of the ship.” *Id.* (citing *Watz v. Zapata Off-Shore Co.*, 431 F.2d 100, 108 (5th Cir. 1970) (holding that the vessel was not in navigation where the vessel was to be converted from a drill tender barge to an over-the-side drilling barge at a shipyard). Similar to Samantha Baca’s case, the crew in *Rogers* were on board performing their normal duties and the owner remained in general control of the vessel. *Id.* at 1152. These factors are dispositive insofar as they distinguish Samantha Baca’s case from those cited by the Defendant. Like the vessel in *Rogers*, Endless Summer was in navigation while its crew lived aboard and while Island Girl, Ltd. remained in control of the vessel. Thus, Endless Summer was in navigation, even as a matter of law, at the time of this incident.

1. **THE JURY’S RESPONSE TO A CASE TRIED SOLELY ON LEGAL ISSUES**

While the world of maritime law can be tricky for Plaintiff’s to navigate, the case law dating back to the 1800’s provides plenty of material to work with. Fortunately, the Judge ultimately denied all legal motions filed by the Defendant on maritime related issues. Unfortunately for the Defendant, the jury must not have appreciated the purely legal approach because they returned a verdict of $70,560,050 in favor of Samantha awarding: a) $70,000 in net lost wages and earnings to the date of trial, b) $4.2 million in net lost wages and earnings in the future, c) $3,550 in medical and hospital expenses, incurred in the past, d) $286,500 in medical and hospital expenses incurred in the future, e) $6,000,000 in physical pain and suffering, mental or emotional anguish, inconvenience, discomfort, and loss of the capacity for the enjoyment of life in the past, and f) $60,000,000 for physical pain and suffering, mental or emotional anguish, inconvenience, discomfort, and loss of the capacity for the enjoyment of life in the future.

1. Brad and Brittany represent crime victims focusing their efforts on survivors of sexual abuse. They have represented crime victims in state and federal courts, in nearly every type of case imaginable, including civil actions arising out of shootings, stabbings, sexual abuse; transmission of STDs; and complicated schemes to defraud. Their offices are located in Fort Lauderdale, Florida and New York City, New York. [↑](#footnote-ref-1)
2. Merriam-Webster Dictionary defines stevedore as “one who works at or is responsible for loading and unloading ships in port.” [↑](#footnote-ref-2)