IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| INTERNATIONAL CRUISE SHOPS, LTD | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| MCI EXPRESS, INC. | : | NO. 06-0403 |

MEMORANDUM AND ORDER

Plaintiff, International Cruise Shops, Ltd. ("ICS"), the operator of a gift shop on board a cruise ship, brings this action against the defendant, AJT Trucking doing business as MCI Express ("AJT").[1] ICS claims indemnity under admiralty jurisdiction for maintenance and cure payments made to its injured employee. AJT filed a motion to dismiss asserting there is no maritime claim and therefore no admiralty jurisdiction because the injury occurred on land and was not caused by the ship. For the reasons that follow, I will grant AJT's motion as to the application of admiralty jurisdiction, 28 U.S.C. § 1333, and allow the case to proceed under diversity jurisdiction, 28 U.S.C. § 1332.

## I. LEGAL STANDARD

This motion addresses the court's subject matter jurisdiction and is therefore reviewed under Fed. R. Civ. P. 12(b)(1). A Rule 12(b)(1) motion regarding the application of admiralty jurisdiction is a factual attack on the court's jurisdiction. *Hedges v. United States*, No. 2000/0003, 2003 U.S. Dist. LEXIS 23383, at *4 (D.V.I. June 30, 2003). When considering a 12(b)(1) motion, "no presumptive truthfulness attaches to plaintiff's allegations, and the

[1]The Defendant is improperly designated MCI Express and is actually AJT Trucking doing business as MCI Express. I therefore refer to the defendant as "AJT."

existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Moreover, the plaintiff will have the burden of proof that jurisdiction does in fact exist." *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977).[2]

## II. FACTUAL BACKGROUND

ICS operates a gift shop aboard the *M/V Enchantment of the Seas* and employed seaman Carlo Assumption to work in that shop. When AJT delivered stock for the shop to the ship, which was docked in Philadelphia, Assumption disembarked to assist AJT's driver in backing the truck for unloading, a task he had performed in the past without incident. On this day, however, AJT's truck inexplicably backed into Assumption and pinned him against a concrete barrier. Assumption was severely injured, as ICS has claimed its maintenance and cure obligation has already approached or exceeded $900,000 and maximum cure has not yet been reached. ICS seeks indemnity for these payments alleging that AJT's negligence was the sole cause of the injuries to Assumption.

## III. DISCUSSION

ICS asserts that because it is obligated to pay Assumption maintenance and cure under

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[2] Defendant's motion was filed pursuant to Rule 12(b)(6) as well as Rule 12(b)(1). Although I have considered this motion under Rule 12(b)(1), the same analysis and result is reached under the more stringent Rule (12)(b)(6) requirements of limiting the review to the complaint, accepting the pleaded facts as true, and construing all inferences in favor of the plaintiff. *Breyer v. Meissner*, 214 F.3d 416, 421 (3d Cir. 2000) (holding that even under a 12(b)(6) analysis, the Court is not required to accept as true legal conclusions in the complaint)

admiralty law,[3] its indemnity claim against AJT for those payments is also governed by admiralty law. I disagree and hold that for there to be admiralty jurisdiction in an indemnity action by a shipowner against a non-maritime third party tortfeasor, the shipowner must establish that the underlying injury occurred on navigable waters or was caused by the ship. Because Assumption was injured on land by AJT's truck, ICS has no independent basis for admiralty jurisdiction and its claim can only proceed as one for indemnity under diversity jurisdiction.

This ruling follows the law of the Third Circuit established sixty years ago in *Jones v. Waterman S.S. Corp.*, 155 F. 2d 992, 997 (3d Cir. 1946). In that case, Jones, a seaman, worked for Waterman and was injured on a pier when the lights were shut off and he fell into an open ditch on land owned and operated by Reading Company. Jones sued Waterman for maintenance and cure and Waterman impleaded Reading as a third party defendant. *Id.* at 994-995. At issue in the case was whether Waterman was entitled to indemnity from Reading if Reading's negligence was found to have caused the seaman's injuries.

The court held that such an indemnity action was possible,[4] but noted that "the suit at bar is not in admiralty though Jones' rights against Waterman are governed by the general maritime

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[3]Assumption's maintenance and cure claim is clearly governed by admiralty law even though he was injured on land. Under general maritime law, a shipowner is liable to a seaman for maintenance and cure until maximum cure is reached, regardless of whether the shipowner has breached any duty to the seaman. *O'Connell v. Interocean Mgmt. Corp.*, 90 F.3d 82, 84 (3d Cir. 1996); *Aguilar v. Standard Oil Co.*, 318 U.S. 724, 730 (1943). "The employer's responsibility for maintenance and cure extends beyond injuries sustained on board ship or during working hours to any injuries incurred in any place while the seaman is subject to the call of duty." *Barnes v. Andover Co., L.P.*,900 F.2d 630, 633 (3d Cir. 1990).

[4] The holding in *Jones* that a shipowner is entitled to indemnity from a third party tortfeasor has been challenged by some courts which have instead followed the Second Circuit's opposite holding in *The Federal No. 2*, 21 F.2d 313 (2d Cir. 1927). *The Federal No. 2* has been rejected by the vast majority of courts, including the Second Circuit itself in *Black v. Red Star Towing & Transp. Co., Inc.*, 860 F.2d 30, 34 (2d Cir. 1988) (unanimously holding en banc "after sailing in Second Circuit waters for six decades, *The Federal No. 2* formally is abandoned"). Jones has never been overruled in this jurisdiction and remains good law. *See e.g. Gooden v. Sinclair*, 378 F.2d 576, 580 (3d Cir. 1967), cited by the plaintiff, which discussed *Jones*, upheld the rejection of *The Federal No. 2*, and applied the equitable principle of assigning liability without regard to the manner in which the seaman chooses to pursue recovery.

law." *Id.* at 997. Importantly, the Court held that "[i]f Waterman can recover from Reading it can do so because a cause of action arises under the law of Pennsylvania where the operative facts occurred." *Id.* The court explained its application of Pennsylvania law by way of two footnotes: One noted that diversity was met and that the court was bound by the *Erie* rule, and the other referenced sections 128 and 128a of *Benedict on Admiralty*, which discusses the jurisdiction of tort claims. The treatise states in part that "American courts have drawn [a] dividing line according to the locality where the substance and consummation of the injury has occurred." Erastus C. Benedict, *Law of American Admiralty* § 128, at 353 (6th ed. 1940). The treatise then discusses a number of tort cases where injuries occurred on land, including piers, and noted that these cases were not within the jurisdiction of admiralty. *Id.* §§ 128-128a.[5]

*Jones* therefore stands for the proposition that a court must look to the place of the underlying tort to determine proper jurisdiction over an indemnity action for maintenance and cure. "[T]o invoke federal admiralty jurisdiction . . . over a tort claim [a party] must satisfy conditions both of location and of connection with maritime activity. A court applying the location test must determine whether the tort occurred on navigable water or whether injury suffered on land was caused by a vessel on navigable water." *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (U.S. 1995).

Because Assumption was injured on land, and not on navigable waters, and the loading of the ship was clearly a maritime activity, I discuss only the question of location. The Supreme Court addressed the locality requirement in greater detail in *Victory Carriers Inc. v. Law*, 404

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[5] Both the *Jones* decision and the treatise cited preceded the Admiralty Extension Act of 1948, 46 U.S.C. App. § 740, which expands admiralty jurisdiction to all damage or injury cases "caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." However, the Extension Act would not have applied in *Jones* because the seaman was injured on a pier and his injury was not caused by the vessel.

U.S. 200, 204 (1971), *reh'g denied* 404 U.S. 1064 (1972), where it held that state law and not federal maritime law governed a tort claim regarding an injury to a longshoreman which occurred on a dock. In reaching its holding, the Court noted that

> [I]n the present case, however, the typical elements of a maritime cause of action are particularly attenuated: respondent Law was not injured by equipment that was part of the ship's usual gear or that was stored on board, the equipment that injured him was in no way attached to the ship, the forklift was not under the control of the ship or its crew, and the accident did not occur aboard ship or on the gangplank.

*Id.* at 214.

The circumstances are similar here. Assumption was injured by a truck owned and operated by AJT which was not under the control of the ship or its crew and the accident occurred on the dock and not on navigable waters. Because Assumption was on firm ground at the time of his injury, ICS lacks an independent basis for admiralty jurisdiction in its claim against AJT.

ICS cites two cases, *Gooden v. Sinclair Refining Co.*, 378 F.2d 576 (3d Cir. 1967), and *Gore v. Clearwater Shipping Corp.*, 378 F.2d 584 (3d Cir. 1967), to support its argument for admiralty jurisdiction, but neither applies to the facts at hand. First, ICS misstates the holdings when it cites *Gooden* and *Gore* for the proposition that admiralty jurisdiction extends to indemnity actions involving injuries occurring on shore, as the seamen-plaintiffs in both cases were injured while *on board* ship. *Gooden*, 378 F.2d at 578; *Gore*, 378 F.2d at 585. Further, in both cases the defendants were shipowners who paid maintenance and cure and sought indemnity from *other shipowners* who employed the seamen at the time of their injuries. *Gooden*, 378 F. 2d at 578; *Gore*, 378 F.2d at 586.

A number of recent cases which have followed *Jones* and assessed admiralty jurisdiction

in indemnity claims by looking to the location of the underlying injury support my decision. For example, the Fifth Circuit followed *Jones*, holding that where a seaman is injured on land as a result of the negligence of a third party, the shipowner's right to indemnification for maintenance and cure is governed by the law of the state where the operative facts occurred, not by admiralty. *Gauthier v. Crosby Marine Serv., Inc.*, 752 F.2d 1085, 1090 (5th Cir. 1985). In *Gauthier*, the seaman was injured while on a dock as he attempted to pick up a piece of heavy equipment to be loaded onto his ship. Holding that Louisiana law governed, the Court reasoned that "by delivery of equipment to a dock for eventual loading onto a vessel, one does not submit oneself to maritime law." *Id.* at 1091. *See also, Diamond Blue Charter, Inc. v. Wolfin*, 518 So. 2d 467, 468 (4th Cir. 1988) (holding maritime law did not apply to an indemnity action by a shipowner against tortfeasors because the injury, caused by a car accident on land, was nonmaritime); *Saint Paul Fire & Marine Ins., Co. v. United States*, 28 F. Supp. 2d 472, 477 (E.D. Tn. 1998) ( holding no admiralty jurisdiction over shipowner's indemnity claim where seaman was injured on land); *Bradford v. Ind. & Mich. Elec. Co.*, 588 F. Supp. 708, 710 (S.D.W. Va. 1984) (holding a shipowner in an indemnity action must establish independent admiralty jurisdiction over the underlying tort and cannot invoke admiralty simply because the maintenance and cure claim is maritime).

## IV. CONCLUSION

A shipowner may assert a claim of indemnity against a third party for maintenance and cure payments made to its seaman injured as a result of the third party's negligence. However, although the seaman's claim for maintenance and cure against the shipowner is based in

admiralty, the shipowner's indemnity claim will fall under admiralty only where the underlying injury occurred aboard ship or was caused by the ship. I therefore hold that ICS's claim for indemnity against AJT is outside of admiralty jurisdiction because the incident occurred on a dock, not on navigable waters, and was not caused by a ship.

Federal subject matter jurisdiction is nonetheless proper in this case based on diversity, 28 U.S.C. § 1332. ICS is incorporated and has its principal place of business in the Cayman Islands and alleges damages in excess of $900,000. AJT is incorporated and has its principal place of business in Florida. Therefore, the case may proceed in diversity even though admiralty jurisdiction is lacking.

An appropriate order follows.

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| MCI EXPRESS, INC. | : | NO. 06-0403 |

ORDER

AND NOW, this 5th day of October, 2006, it is hereby ORDERED that:

This court lacks subject matter jurisdiction in admiralty under 28 U.S.C. § 1333 but this case may proceed under diversity jurisdiction, 28 U.S.C. § 1332.

BY THE COURT:

/s/ J. William Ditter, Jr.
J. WILLIAM DITTER, JR., S.J.