

Advances in Recovery for Wrongful Arrest of a Vessel

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I. FOREWORD

The law established in *Kenai Ironclad, Corp., v. C.P. Marine Services, LLC* wields the authority of the United States Court of Appeals for the Fifth Circuit. The case was affirmed and remanded in part by the Fifth Circuit in 2023.¹ The Fifth Circuit upheld the district court’s finding that C.P. Marine wrongfully seized and converted Kenai’s vessel in bad faith and with reckless disregard of Kenai’s rights.² Subsequently, the

1. *Kenai Ironclad, Corp. v. C.P. Marine Servs., LLC*, 84 F.4th 600 (5th Cir. 2023).

2. *Id.* at 10.

Fifth Circuit found an award of punitive damages to be appropriate³ and the 1:1 ratio limitation in *Exxon v. Baker* to be inapplicable to the award of punitive damages.⁴ The Fifth Circuit agrees with this case note's conclusion that attorney's fees may be awarded as compensatory damages,⁵ but found that the attorney's fees awarded in *Kenai* could "not properly be considered compensatory damages;"⁶ however, the Fifth Circuit does not address nor dispute the analysis used in this case note as to why the attorney's fees were intended to be compensatory in nature.⁷ The Fifth Circuit remanded the award of damages to the district court to clarify the amount and specify which parts of the award were intended to be compensatory.⁸ As such, all analysis within this case note has been affirmed or unaddressed by the Fifth Circuit.⁹

II. INTRODUCTION

A new case in the United States Fifth Circuit acts as a cautionary tale to maritime lien holders and as a significant advance in the law regarding the award of damages in a claim for wrongful arrest of a vessel. In the case presented, *Kenai Ironclad, Corp., v. C.P. Marine Servs., LLC*, plaintiff, Kenai Ironclad Corp. (Kenai) entered into an oral vessel repair contract with defendant, CP Marine Services, LLC, to convert the *M/V Iron Don* from a supply vessel to a salmon fishing vessel. The defendant began repair work on the *M/V Iron Don* in January 2019, but on Mardi Gras Day in 2019, the defendant detained the vessel without an authorized warrant for arrest. The lien supporting the detention was based on an alleged breach of the orally agreed-upon terms regarding method and timing of payment. Thus, whether Kenai was entitled to damages for wrongful arrest of a vessel was dependent on the existence and terms of the contract.

3. *Id.* at 11.

4. *Id.* at 16-17 (citing *Exxon Ship. Co. v. Baker*, 554 U.S. 471, 513, 2008 A.M.C. 1521 (2008)).

5. *Id.* at 18 ("Such awards are more properly categorized as compensatory damages only when they are incurred as 'collateral legal expenses'—defined as attorneys' fee outlays incurred in some way *other* than the proceeding in which the attorneys' fee award is being sought. . . [sic] (internal citation omitted) (emphasis added) However, many courts make such awards without drawing this distinction.") (citing David W. Robertson, *Court-Awarded Attorneys' Fees in Maritime Cases: The "American Rule" in Admiralty*, 27 J. MAR. L. & COM. 507, 511 (1996)).

6. *Id.* at 19.

7. *See id.* at 17-19 (Where the court fails to address the prejudgment interest awarded on the attorney's fees and how the district court distinguished the attorney's fees from the costs in its award).

8. *Id.* at 23.

9. *Id.* at 6-23.

The United States District Court for the Eastern District of Louisiana *held* that the defendant had no valid maritime lien and that the defendant wrongfully arrested Kenai's vessel. The court awarded punitive damages and attorney's fees for wrongful arrest of a vessel because the court found the plaintiff had not breached the terms of the oral contract and therefore the defendant had executed the arrest pursuant to an invalid maritime lien. *Kenai Ironclad, Corp., v. C.P. Marine Services, LLC*, 603 F. Supp. 3d 372 (E.D. La. 2022).

III. HISTORICAL BACKGROUND

Recognizing oral contracts as valid under maritime law is an ancient rule of respectability recognized by the Supreme Court of the United States.¹⁰ Furthermore, contracts for repair of a vessel are within the boundaries of maritime jurisdiction.¹¹ As such, an oral contract for repair is valid and enforceable under maritime law.¹² In the event a maritime contract for necessities¹³ is breached, whether written or oral, the wronged party may utilize a maritime lien as a form of recovery.¹⁴ Any person providing repairs, dry dock, or other necessities to a vessel upon the order of the vessel's owner will have a maritime lien on the vessel "which can be enforced by suit in rem."¹⁵

A. *Oral Contracts as a Basis for a Maritime Lien in Claims for Wrongful Arrest of a Vessel*

The terms of an oral contract are a question of law and, therefore, must be deduced by the court.¹⁶ Thus, whether there was a breach of contract is wholly dependent on what the court determines the terms to be. The court's interpretation is pivotal in finding wrongful arrest of a vessel since the court's interpretation of the terms, and subsequent determination of breach, can characterize bad faith and malice. The significance is illustrated in *Constructive Hands Inc. v. Baker*, where the United States District Court for the Northern District of New York found the lien to be valid under the deduced terms of the oral contract, but that

10. *Kossik v. United Fruit Co.*, 365 U.S. 731, 734, 1961 A.M.C. 833 (1961).

11. *Id.* at 735 (citing *Endner v. Greco*, 3 F. 411 (S.D.N.Y. 1880)).

12. *See id.* at 734-35.

13. 46 U.S.C. § 31301(4) ("‘necessaries’ includes repairs, supplies, towage, and the use of a dry dock or marine railway").

14. *In re Chester J. Marine LLC*, 636 B.R. 704, 719 (Bankr. E.D. La. 2021) ("A maritime lien is a form of recovery that parties may use in the event that a maritime contract is breached").

15. *Intl. Refugee Org. v. Maryland Drydock Co.*, 179 F.2d 284, 287, 1950 A.M.C. 436 (4th Cir. 1950).

16. *Barrios v. Centaur, L.L.C.*, 942 F.3d 670, 680 (5th Cir. 2019).

defendant's breach was not in bad faith.¹⁷ The pivotal issue was whether the unpaid invoice upholding the lien was for authorized work under the oral contract.¹⁸ The court concluded the invoiced work was authorized under the terms of the contract.¹⁹ The court considered trial testimony, evidence, pleadings, and drew inferences from the nature in which the parties interacted in executing the contract to determine the terms of the contract.²⁰ In *Constructive Hands*, the court found the defendant's actions to be more convincing than his testimony in characterizing the terms of the contract.²¹ The court reasoned the defendant, despite his testimony, was satisfied with the work plaintiff carried out because defendant did not conduct himself in a manner consistent with someone who is unhappy with the workmanship or business practices of another.²²

B. The Right to Recover Damages in a Claim for Wrongful Arrest of a Vessel

Whether the court finds bad faith, malice, or gross negligence on behalf of the offending party is critical since it is the gravamen of the wronged party's right to recover damages.²³ If a court finds a showing of bad faith or wanton and willful misconduct, they may award compensatory damages to cover the cost of "necessary expenses," such as attorney's fees and court costs,²⁴ as well as punitive damages.²⁵

The reasoning for awarding damages in a claim for wrongful arrest is analogous to that in a case of malicious prosecution, as established in

17. *Constructive Hands, Inc. v. Baker*, 446 F. Supp. 2d 88, 98 (N.D.N.Y. 2006).

18. *Id.* at 95. ("Defendant Baker complains that no bills, invoices, or receipts for material—in effect no writings—were produced by Plaintiff, and contends, therefore, that the Court should not allow the claimed costs as Plaintiff performed unauthorized work.").

19. *Id.* at 95-96.

20. *Id.*

21. *Id.*

22. *Id.* at 95 ("In reviewing the record and submissions, the Court finds that Defendant Baker's actions in early and mid-2002 [the actions being payment of invoices and a lack of dispute over the work performed] simply do not correspond with what one would expect of someone who is unhappy with work being performed on an expensive vessel, or of someone who is unhappy with the business practices of the person performing the work.").

23. *Frontera Fruit Co. v. Dowling*, 91 F.2d 293, 297, 1937 A.M.C. 1259 (5th Cir. 1937).

24. *Vaughan v. Atkinson*, 369 U.S. 527, 530, 1962 A.M.C. 1131 (1962) (citing *The Apollon*, 22 U.S. 362, 379, 2006 A.M.C. 1505 (1824)); *In re Chester J. Marine LLC*, 636 B.R. 704, 715 (Bankr. E.D. La. 2021) ("The relief sought in an action in admiralty for breach of a maritime contract typically includes compensatory damages.").

25. *Complaint of Merry Ship, Inc.*, 650 F.2d 622, 626, 1981 A.M.C. 2839 (5th Cir. 1981); *see also Atl. Sounding Co., Inc. v. Townsend*, 557 U.S. 404, 414, 2009 A.M.C. 1521 (2009) ("the common-law tradition of punitive damages extends to maritime claims.").

Frontera Fruit Co. Inc., v. Dowling.²⁶ The court explains that in claims for wrongful arrest of a vessel and claims of malicious prosecution,

The defendant is required to respond in damages for causing to be done through the process of the court that which would have been wrongful for him to do himself, having no legal justification therefor and acting in bad faith, with malice, or through a wanton disregard of the legal rights of his adversary.²⁷

However, it has long been held that advice of competent counsel is a complete defense to an action for malicious prosecution and thus is a complete defense to wrongful seizure of a vessel.²⁸ The United States Fifth Circuit Court of Appeals implemented this defense in *Frontera* and reversed the district court's award of damages because the appellant, *Frontera Fruit Co.*, had acted on the advice of its attorney, Stanford Morse.²⁹ The court concluded that because the appellant had acted on the advice of their counsel who honestly, and in good faith, believed *Frontera Fruit Co.* was entitled to a subrogation lien, the seizure of the vessel could not be in bad faith, and thus, the lower court had wrongfully awarded damages to appellee.³⁰

1. Compensatory Damages

Upon finding a showing of bad faith or wanton and willful misconduct on behalf of the offending party, the court must assess the costs the wronged party incurred as a direct result of the offending party's conduct.³¹ For example, the court can order an offending party to pay the cost the plaintiff incurred to secure the release of its vessel as the United States Fifth Circuit Court of Appeals did in *Domar Ocean Transp. v. Independent Refining Co.*, when it awarded \$8,621.60 in attorney's fees to plaintiff, *Domar*.³² The court reasoned such an award was appropriate because *Domar* incurred these expenses acting in compliance with its duty as a vessel owner to mitigate damages.³³ Additionally, lost profits may be awarded as compensatory damages if the amount of lost profits is proven with reasonable certainty.³⁴ The court denied the plaintiff lost profits in

26. *Frontera*, 91 F.2d at 297.

27. *Id.* at 297.

28. *Id.*

29. *Id.* at 296-97.

30. *Id.*

31. *See Domar Ocean Transportation, LTD. v. Indep. Refining Co.*, 783 F.2d 1185, 1191, 1987 A.M.C. 1448 (5th Cir. 1986).

32. *Id.* at 1191.

33. *Id.*

34. *Id.*

Domar because it could not prove there was a demand for its services during the time the vessel was detained or that the vessels' detention caused its inability to meet these demands.³⁵

2. Punitive Damages

The court may award punitive damages in cases of wrongful arrest of a vessel upon finding the offending party acted willfully and with gross disregard for plaintiff's legal rights;³⁶ however, the maximum award of punitive damages cannot exceed the value of compensatory damages unless the case involves exceptional blameworthiness—such as the malicious or intentional conduct required in a claim for wrongful arrest of a vessel.³⁷ The Supreme Court implemented this 1:1 ratio restriction in *Exxon Shipping Co. v. Baker* to prevent unpredictable damage awards in cases of wrongful arrest.³⁸

Sea Trade Mar. Corp. v. Coutsodontis is the only recorded case to discuss the contingency of punitive damages on the award of compensatory damages in a claim for wrongful arrest of a vessel.³⁹ In *Sea Trade*, contrary to the rule established in *Exxon*, the United States District Court for the Southern District of New York applied the 1:1 ratio rule and denied the plaintiff punitive and compensatory damages on the basis that the proposed compensatory damages were too speculative.⁴⁰ The court prematurely and baselessly determined punitive damages for the arrest could not be awarded under the 1:1 ratio rule and subsequently refused to analyze liability for wrongful arrest.⁴¹ The court reasoned it was unnecessary to analyze liability for wrongful arrest because, through its application of the 1:1 ratio rule, an absence of compensatory damages meant it was prevented from awarding punitive damages; thus, the court reasoned, even if it found liability, the finding would be futile because it could not award any punitive damages exceeding the \$0 value of compensatory damages.⁴² However, this is an erroneous premature

35. *Id.* at 1192.

36. *In re Chester J. Marine LLC*, 636 B.R. 704, 719 (Bankr. E.D. La. 2021).

37. *Exxon Ship. Co. v. Baker*, 554 U.S. 471, 513, 2008 A.M.C. 1521 (2008).

38. *Id.* at 513 (“in cases with no earmarks of exceptional blameworthiness within the punishable spectrum [cases like this one, without intentional or malicious conduct, and without behavior driven primarily by desire for gain . . .] . . . we consider that a 1:1 ratio, which is above the median award, is a fair upper limit in such maritime cases.”).

39. *Sea Trade Marine Corp. v. Coutsodontis*, 09 CIV. 488 (LGS), 2016 WL 11680976, at *11 (S.D.N.Y. Aug. 23, 2016), *overruled on other grounds by* *Sea Trade Marine Corp. v. Coutsodontis*, 744 F. App'x. 721 (2d Cir. 2018).

40. *Id.*

41. *Id.*

42. *Id.* at *12.

application of the 1:1 ratio because punitive damages are not limited to the value of compensatory damages in all cases.⁴³

Prior to applying the 1:1 ratio limitation, a court must first consider if there is exceptional blameworthiness on behalf of defendant; if the court finds exceptional blameworthiness, the 1:1 ratio limitation is inapplicable.⁴⁴ Thus, the court in *Sea Trade* acted prematurely when it decided to apply the 1:1 ratio limitation prior to analyzing whether there was liability or exceptional blameworthiness for wrongful arrest.⁴⁵

IV. COURT'S DECISION

In the noted case, the United States Civil District Court for the Eastern District of Louisiana held CP Marine detained Kenai's vessel in bad faith pursuant to an invalid maritime lien with wanton disregard for the rights of the plaintiff. Accordingly, the court awarded the plaintiff, Kenai, damages for the wrongful arrest of the *M/V Iron Don* ["*Iron Don*"]. "To succeed on a claim for wrongful arrest of a vessel, the claimant must establish that the seizure was (1) pursuant to an invalid maritime lien and (2) committed with bad faith, malice, or gross negligence."⁴⁶ To evaluate whether the seizure of the *Iron Don* meets these criteria, the court looked to the allegedly breached contract giving rise to the lien and the defendant's actions at the time of the seizure. Here, the breaches used to substantiate the lien are the partially processed payment of the February 27 invoice and the unpaid invoice for \$20,750.⁴⁷ The vessel was initially detained on March 5, 2019, with the defendant telling the plaintiff he could not retrieve the *Iron Don* until the check for the February 27 invoice had cleared.⁴⁸ The check satisfying the February 27 invoice for \$21,435 was deposited by CP Marine on that same day. On March 6, 2019, the defendant sent the plaintiff another invoice for \$20,750 for the cost of detaining the vessel on March 5.⁴⁹ Thus, the issue before the court was whether the payment was considered complete within the terms of the contract before the funds cleared the defendant's bank account.⁵⁰

43. *Exxon*, 554 U.S. at 513.

44. *See id.*

45. *Sea Trade Marine Corp.*, 2016 WL 11680976, at *11; *see Exxon*, 554 U.S. at 513.

46. *Kenai Ironclad, Corp., v. C.P. Marine Servs., LLC.*, 603 F. Supp. 3d 372, 384 (E.D. La. 2022) (citing *El Paso Prod. Gom, Inc. v. Smith*, 2009 A.M.C. 1733, 1733 [quote at *3] (E.D. La. 2009) (Vance, J.)).

47. *Kenai*, 603 F. Supp. 3d at 381, 384.

48. *Id.* at 381.

49. *Id.* at 382.

50. *Id.*

A. Terms of the Oral Contract

First, the court held the maritime lien justifying the seizure of the *Iron Don* to be invalid. Oral contracts for vessel repairs can give rise to a maritime lien; however, once the debt under the contract is paid, the lien is null.⁵¹ The court reviewed the invoices from CP Marine to deduce the terms of the oral contract. The court concluded Kenai contracted CP Marine to (1) perform a commercial sandblast, prime, and paint the hull, (2) install struts on the bottom of the vessel, (3) replace a portion of the hull's steel and repair hatch covers, and (4) install anodes on the vessel's hull.⁵²

1. Determining Breach of the Terms

The defendant, CP Marine, had the burden of proving it had a valid maritime lien due to an unpaid debt at the time it seized the vessel.⁵³ The defendant argued the validity of the lien was supported by the plaintiff's alleged violation of the terms regarding method and timing of payment because the payment was not considered complete under the terms of the contract until the payment had cleared the defendant's account. The defendant further asserted that payment of the invoices was due immediately upon receipt under the contract.⁵⁴ Thus, the defendant argues, the February 27 invoice was unpaid under the terms of the contract at the time of seizure.⁵⁵

Contrary to the defendant's assertions, the court found the contract only required payment to be issued within a reasonable amount of time and that payment was considered complete prior to the check clearing the defendant's account.⁵⁶ The court reasoned CP Marine acquiesced to these terms when, without complaint or objections, it accepted previous payments by check made within thirty days of issuing the invoice.⁵⁷ Furthermore, the court found the unpaid invoice from March 6 was not a debt owed within the terms of the contract, but was rather an intimidation tactic used by CP Marine services to threaten the plaintiff.⁵⁸ Accordingly, all debts were satisfied on February 27 under the contract on the day CP

51. *Id.* at 384.

52. *Id.* at 378.

53. *See id.* at 384.

54. *Id.* at 381-82.

55. *Id.*

56. *Id.* at 382.

57. *Id.*

58. *Id.*

Marine cashed the check of \$21,435.⁵⁹ Thus, CP Marine did not have a valid maritime lien when it detained the *Iron Don* on March 5, 2019.

B. The Nature of the Seizure of the Iron Don

Second, the court held the defendant's actions were in bad faith and with wanton disregard for the rights of the plaintiff.⁶⁰ In evaluating wrongful detention of the *Iron Don*, the court considered whether the seizure was "committed with bad faith, malice, or gross negligence."⁶¹ Prior to evaluating bad faith, the court examined whether the CP Marine could have acted in good faith when seizing the *Iron Don*. Good faith can be established if there was a genuine dispute over the validity of the maritime lien and if the parties honestly believed there was a legal basis for the lien.⁶² Here, because the court found there were no terms in the oral contract dictating method or timing of payment, there could be no genuine dispute over the validity of the debt supporting the lien and thus CP Marine did not act in good faith.⁶³

1. Damages for Wrongful Seizure of the Iron Don

In the Fifth Circuit, bad faith damages for the wrongful arrest of a vessel are "analogous to those in cases of malicious prosecution" which are awarded when defendant has "no legal justification . . . and act[s] in bad faith, with malice, or through a wanton disregard of the legal rights of his adversary."⁶⁴ Furthermore, the court may infer bad faith when a claim lacks probable cause.⁶⁵

When evaluating whether vessel seizure was in bad faith, the court examined the following factors: (1) CP Marine's probable cause for the lien and (2) the actions the defendant took around the time of the seizure. Good faith can only be found when a party acted with the legitimate and honest belief that the maritime lien would be held as valid.⁶⁶ Here, the defendant did not act in good faith because it could not have held a legitimate belief that a debt was owed when no terms of the contract

59. *Id.* at 381.

60. *Id.* at 385.

61. *Id.* at 384 (citing *El Paso Prod. Gom, Inc. v. Smith*, 2009 A.M.C. 1733, 1733 (E.D. La. 2009) (Vance, J.)).

62. *Id.* at 384-85. (citing *Cardinal Shipping Corp. v. M/S Seisho Maru*, 744 F.2d 461, 475, 1985 A.M.C. 2630 (5th Cir. 1984)).

63. *Id.* at 385.

64. *Id.* at 384. (citing *Frontera Fruit Co. v. Dowling*, 91 F.2d 293, 297, 1937 A.M.C. 1259 (5th Cir. 1937)).

65. *Id.*

66. *Id.* at 384-85 (citing *Cardinal Shipping Corp.*, 744 F.2d at 475).

characterized Kenai's payment as incomplete at the time of the seizure.⁶⁷ For the same reason CP Marine cannot establish good faith, the absence of any debt to support a lien, CP Marine cannot establish probable cause for placing the lien on the *Iron Don*.

The court reasoned bad faith and wanton disregard for the legal right of the plaintiff was substantiated by CP Marine's issuance of the March 6 invoice to intimidate the plaintiff, its callous disregard for the safety of people aboard the *Iron Don* when it rammed and detained the vessel, and by the defendant's failure to follow proper procedure to arrest the vessel despite being intimately familiar with the proper procedure.⁶⁸ Each act was committed pursuant to an invalid maritime lien and individually warrants a bad faith seizure of the vessel with wanton disregard to the legal rights of the plaintiff. Thus, CP Marine wrongfully detained the *Iron Don* on March 5.⁶⁹ Accordingly, the court held the plaintiff was entitled to damages from CP Marine for the wrongful detention of the *Iron Don*.⁷⁰

The court ordered CP Marine to pay Kenai reasonable attorney's fees, court costs, interest, expert fees, expenses and \$17,580.50 in punitive damages.⁷¹ Since CP Marine was found to have acted willfully and with gross disregard for Plaintiff's rights, punitive damages were awarded in lieu of lost profits.⁷² The court reasoned that it could not award lost profits because CP Marine's detention of the *Iron Don* did not cause her late arrival in Alaska, although it did delay the trip by five days.⁷³ However, the court calculated the punitive damages owed based on the net day rate for a salmon fishing charter over the course of five days, effectively compensating Kenai for the five days lost.⁷⁴

V. ANALYSIS

The court's decision in *Kenai* is a significant advance in the law in the Fifth Circuit. The court's holding advances the recovery for wrongful arrest of a vessel in three ways: (1) it is the first case in the Fifth Circuit where damages were awarded for the wrongful arrest of a vessel pursuant to finding an oral contract absent of breach; (2) the court is the first to correctly apply the 1:1 punitive damages ratio limitation to a claim for wrongful arrest of a vessel and therefore establishes precedent for

67. *Id.* at 385.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 385-86.

72. *Id.* at 385 (citing *Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977)).

73. *Id.*

74. *Id.* at 386.

awarding attorney's fees as compensatory damages in addition to authorizing punitive damages in the absence of compensatory damages; (3) the court used punitive damages to compensate the plaintiff for the profits lost for the duration of the seizure, thus bypassing the high burden of proof a plaintiff must meet to recover lost profits.

A. Wrongful Arrest of a Vessel Pursuant to an Oral Contract Absent of Breach

The holding in *Kenai* serves as a caution to those executing a maritime lien preceding a vessel arrest pursuant to a debt owed under an oral contract by illustrating the feeble nature of maritime liens based on oral contracts. Not only can a court's interpretation of the oral contract's terms lead a court to find a maritime lien invalid, but it can also characterize bad faith in a claim for wrongful arrest.⁷⁵ In *Kenai*, the court's interpretation of the contract alone satisfies *Kenai*'s claim for wrongful arrest because the absence of terms supporting a debt characterized bad faith in executing the invalid maritime lien.⁷⁶ Thus, a claim for wrongful arrest of a vessel can be entirely dependent on their court's interpretation of an oral contract. Accordingly, if a court finds a maritime lien to be invalid due to no debt owed under the terms of a contract, the only defense to a claim for wrongful arrest would be advice of competent counsel.⁷⁷

As seen in *Kenai*, it is crucial to not only consider the lien's support under a single party's understanding of the contract but also the likelihood of a debt being supported under a court's possible interpretation. Additionally, hiring and relying on competent counsel prior to initiating any proceedings in the arrest of a vessel preemptively serves as a defense to a claim for wrongful arrest. CP Marine's failure to preemptively hire competent counsel, initiate proper vessel arrest procedure, or foresee an absence of support for a lien under a plausible interpretation of the contract was detrimental to their defense for wrongful seizure.

B. Damages Awarded for Wrongful Arrest of a Vessel

CP Marine asserts in its post-trial memorandum and in its appeal to the Fifth Circuit that punitive damages cannot be awarded under *Exxon v. Baker* since such an award would exceed the 1:1 ratio with compensatory

75. See *id.* at 384. (citing *Stewart v. Sonneborn*, 98 U.S. 187, 196-97 (1878)).

76. *Id.* at 385.

77. See *Frontera Fruit Co. v. Dowling*, 91 F.2d 293, 297, 1937 A.M.C. 1259 (5th Cir. 1937).

damages.⁷⁸ This assertion is baseless for two reasons: (1) attorney's fees qualify as compensatory damages in this case,⁷⁹ and (2) regardless of whether compensatory damages were awarded, *Exxon* does not apply where there is intentional or malicious conduct.⁸⁰

1. Attorney's Fees as Compensatory Damages

Kenai is the first case to establish attorney's fees as an award of compensatory damages in a claim of wrongful arrest of a vessel. In *Kenai*, the United States District Court for the Eastern District of Louisiana illustrated its intent to award the attorney's fees as compensatory damages in both its award of prejudgment interest on the attorney's fees⁸¹ and in its order which distinguished the attorney's fees from the costs.⁸² The award of prejudgment interest on the attorney's fees is crucial since in Louisiana, prejudgment interest is considered compensatory in nature and thus only awarded on compensatory damages.⁸³ As such, the award of the prejudgment interest on attorney's fees clearly exhibits the court's classification of the attorney's fees as compensatory damages. The classification of attorney's fees as compensatory damages is further established in the court's order granting attorney's fees in the amount of \$38,831.40. Here, the court grants the motion for attorney's fees, but denies the plaintiff's request for costs—effectively partitioning the attorney's fees as damages separate from costs.⁸⁴

In effect, the court awarded *Kenai* \$38,831.40 in compensatory damages through its award of attorney's fees.⁸⁵ With an award of

78. *Exxon Ship. Co. v. Baker*, 554 U.S. 471, 513, 2008 A.M.C. 1521 (2008); Defendants' Post Trial Memorandum at 26, *Kenai Ironclad, Corp., v. C.P. Marine Servs., LLC*, 2022 WL 2048197 (E.D. La. 2022) (2:19-CV-02799); Brief of Appellants at 12, *Kenai Ironclad, Corp., v. C.P. Marine Servs., LLC*, 2022 WL 2048197 (E.D. La. 2022) (2:19-CV-02799), *appeal docketed*, No. 22-30311 (5th Cir. Sep. 28, 2022).

79. *Thomas v. A. Wilbert & Sons, LLC*, 217 So. 3d 368, 406 (La. App. 1st Cir. 2017).

80. *Exxon*, 554 U.S. at 513.

81. Motion to Dismiss Appeal for Want of Jurisdiction at 8, *Kenai Ironclad, Corp., v. C.P. Marine Servs., LLC*, 2022 WL 2048197 (E.D. La. 2022) (2:19-CV-02799), *appeal docketed*, No. 22-30311 (5th Cir. Sep. 13, 2022).

82. Motion to Dismiss Appeal—Exhibit “A,” *Kenai Ironclad, Corp., v. C.P. Marine Servs., LLC*, 2022 WL 2048197 (E.D. La. 2022) (2:19-CV-02799), *appeal docketed*, No. 22-30311 (5th Cir. Sep. 13, 2022).

83. *Thomas v. A. Wilbert & Sons, LLC*, 217 So. 3d 368, 406 (La. App. 1st Cir. 2017) (“Further, as noted, interest has been considered a mere extension of the compensatory damages necessary to make a plaintiff whole.”).

84. Motion to Dismiss Appeal—Exhibit “A,” *Kenai Ironclad*, 2022 WL 2048197.

85. *See id.*

\$17,580.50 in punitive damages,⁸⁶ the punitive to compensatory ratio is about 0.45:1. Thus, the defendant's assertion that the punitive damages exceed the 1:1 ratio limit established in *Exxon v. Baker* is unfounded.⁸⁷

2. The Intentional or Malicious Conduct Exception to the 1:1 Ratio Limit for Punitive Damages

Regardless of whether the attorney's fees are considered compensatory damages, the punitive damages awarded in *Kenai* are not subject to the 1:1 ratio limitation. The Supreme Court established a 1:1 punitive-to-compensatory ratio limitation in the awards of punitive damages in maritime cases, except where there is intentional or malicious conduct.⁸⁸ A successful claim for wrongful arrest of a vessel requires showing the vessel was detained with "bad faith, malice, or gross negligence."⁸⁹ Accordingly, whether the 1:1 ratio exception applies is contingent on the nature in which the court finds the vessel was detained.⁹⁰ Thus, an analysis of liability for wrongful arrest remains essential to determining whether the 1:1 ratio exception is appropriate.

Kenai is the only case to correctly apply the exception to the 1:1 ratio in a claim for wrongful arrest because the only previous application of this rule was in *Sea Trade Mar. Corp.*, where the court failed to analyze the claim for wrongful arrest and thus erroneously applied the 1:1 ratio limitation.⁹¹

Since a claim for wrongful arrest of a vessel can be pursuant to a grossly negligent detention, the 1:1 ratio exception will not apply to every case.⁹² However, the exception applies to the wrongful arrest in *Kenai* because the defendant intentionally avoided proper procedure to arrest the vessel and thus intentionally illicitly detained the vessel.⁹³ Accordingly, the court acted well within its power in awarding punitive damages,

86. *Kenai Ironclad, Corp., v. C.P. Marine Servs., LLC*, 603 F. Supp. 3d 372, 386 (E.D. La. 2022).

87. *Exxon Ship. Co. v. Baker*, 554 U.S. 471, 513, 2008 A.M.C. 1521 (2008); see Defendants' Post Trial Memorandum at 26, *Kenai Ironclad, Corp., v. C.P. Marine Servs., LLC*, 2022 WL 2048197 (E.D. La. 2022) (2:19-CV-02799).

88. *Exxon*, 554 U.S. at 513.

89. *Frontera Fruit Co. v. Dowling*, 91 F.2d 293, 297 (5th Cir. 1937).

90. See *Exxon*, 554 U.S. at 513; see also *Frontera*, 91 F.2d at 297.

91. See *Frontera*, 91 F.2d at 297.

92. *Id.* at 297; *Exxon*, 554 U.S. at 513.

93. *Kenai Ironclad, Corp., v. C.P. Marine Servs., LLC*, 603 F. Supp. 3d 372, 385 (E.D. La. 2022); see *Exxon*, 554 U.S. at 513; see Robert Force & Niels F. Johnsen, ADMIRALTY AND MARITIME LAW 32 (Kris Markarian ed., 2nd ed. 2013).

despite the alleged absence of compensatory damages,⁹⁴ as it was exempted from the 1:1 ratio limitation.⁹⁵

3. Using Punitive Damages to Bypass the High Burden of Proof for Lost Profits

The court established precedent in *Kenai* to use punitive damages as a mechanism for recovering lost profits in cases of wrongful arrest where defendant acts with a gross disregard for the rights of plaintiff.⁹⁶ Conforming with holdings in previous cases,⁹⁷ the court was unable to find grounds for awarding lost profits due to the high burden of proof the plaintiff must meet.⁹⁸ To recover lost profits, the plaintiff must prove lost profits were a result of defendant's wrongful conduct and the amount of damages with reasonable certainty.⁹⁹ In *Kenai*, although the court acknowledged the defendant's detention of the *Iron Don* delayed the plaintiff's trip by five days, the court found that a variety of outside factors contributed to the two-month delay in their late arrival to Alaska.¹⁰⁰ As such, lost profits could not be awarded. However, the plaintiff was ultimately still able to recover the value of lost profits for the five days the vessel was detained through the award of punitive damages.¹⁰¹

The court clearly intended punitive damages to act as lost profits since it calculated the value with the net day rate for a salmon fishing charter (\$3,516.10) and multiplied the value by the five days the vessel was wrongfully detained.¹⁰² This award effectively compensated *Kenai* for the profits lost during detention while relieving the burden of proving costs and causation. This establishes punitive damages as a mechanism for collecting a portion of lost profits in some cases of wrongful arrest where subsequent wrongdoings by third parties contribute to the total loss—thus preventing an individual wrongdoer from being held liable despite their contributory and wrongful conduct. A court can only use punitive damages to bypass a claim for lost profits where defendant “acted willfully and with gross disregard for Plaintiff's rights.”¹⁰³ Thus, the use

94. *Kenai*, 603 F. Supp. 3d at 386.

95. *See Exxon*, 554 U.S. at 513.

96. *See Kenai*, 603 F. Supp. 3d at 385.

97. *See Domar Ocean Transp., Ltd., Div. of Lee-Vac, Ltd. v. Indep. Refining Co.*, 783 F.2d 1185, 1191 (5th Cir. 1986).

98. *Kenai*, 603 F. Supp. 3d at 385; *see Domar Ocean*, 783 F.2d at 1191-92.

99. *See Domar Ocean*, 783 F.2d at 1191.

100. *Kenai*, 603 F. Supp. 3d at 385.

101. *Id.* at 385-86.

102. *Id.* at 386.

103. *Id.* at 385. (citing *In re Chester J. Marine LLC*, 636 B.R. 704, 719 (Bankr. E.D. La. 2021)).

of punitive damages to recover lost profits is restricted to other cases involving similar extreme conduct on behalf of defendant.

VI. CONCLUSION

The court's holding in *Kenai* highlights the risk oral contracts introduce to maritime liens and subsequently to the arrest of a vessel. Furthermore, the United States District Court for the Eastern District of Louisiana makes significant advances in the law through its refusal to apply the 1:1 limitation established in *Exxon* and its use of punitive damages to compensate for lost profits.¹⁰⁴ The court is the first to establish attorney's fees as compensatory damages and the first to correctly apply the 1:1 ratio limitation exception in a claim for wrongful arrest. This sets plaintiff-friendly precedent for future claims of wrongful arrest by expanding the means plaintiffs can use to satisfy a claim for punitive and compensatory damages pursuant to the wrongful arrest of a vessel.

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104. See *Exxon Ship. Co. v. Baker*, 554 U.S. 471, 513, 2008 A.M.C. 1521 (2008); see *Kenai*, 603 F. Supp. 3d at 385-86.

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