ADMIRALTY

The concept of admiralty is related uniquely to the law of nations. It consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 257 (Chk. 1995).

Proceedings concerning the arrest or release of a vessel should take place in the civil action in which it is a defendant, not in a related criminal case. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 471, 474 n.4, 475 n.5 (App. 1996).

Whenever an asserted maritime counterclaim arises out of the same transaction or occurrence as the original maritime action, and the defendant or claimant in the original action has given security to respond in damages, any plaintiff for whose benefit such security has been given shall give security in the usual amount and form to respond in damages set forth in such counterclaim, unless the court, for cause shown, directs otherwise. Proceedings on the original claim shall be stayed until such security is given, unless the court otherwise directs. FSM v. Kana Maru No. 1, 14 FSM R. 365, 366-67 (Chk. 2006).

When the defendants have not yet given any security for the plaintiff=s benefit no countersecurity bond will be required for a fishing boat=s counterclaims because the defendants have not complied with Rule E(6)(d)=s prerequisite for countersecurity. Countersecurity will only be required of a plaintiff when there are counterclaims against any plaintiff for whose benefit security has been given. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

If there is a conflict between the Supplemental Admiralty and Maritime Rules and Title 24, then Title 24 must prevail because the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute and since Congress has the authority to amend or create procedural rules by statute (and when Congress has enacted a procedural rule, it is valid) and the Chief Justice does not have the authority to amend Congressionally-enacted statutes, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 n.1 (Chk. 2006).

The court will not direct that the government provide countersecurity under the admiralty rules for a defendant=s counterclaims in an fishing boat seizure case. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

In generally accepted admiralty practice, a letter of undertaking becomes the substitute *res* for a vessel in lieu of the vessel=s seizure, providing the court with *in rem* subject matter jurisdiction. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

Although Section 1306 of Title 19 of the FSM Code authorizes the Secretary of the Department of Transportation, Communication and Infrastructure to investigate violations, there is no provision in Title 19 that prescribes what action shall be taken if an investigation is not undertaken. As such, the requirement that an investigation be undertaken prior to the filing of

an information is not mandatory. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 2007).

A master of a vessel that is within FSM waters must render assistance to any person who is found at sea and in distress or in danger of being lost at sea if this assistance can be rendered without endangering the vessel, crew or passengers. FSM v. Zhang Xiaohui, 14 FSM R. 602, 614 (Pon. 2007).

When the unit of prosecution for 19 F.S.M.C. 425, as reflected in the legislative intent, is that there be a punishment for each violation of the law, as it relates to each person who is found at sea and who is in distress or capable of being lost at sea, but is denied assistance, the double jeopardy clause of the FSM Constitution, which parallels the double jeopardy clause of the United States Constitution, is not violated when a defendant, who commits the single act of failing to render assistance to a boat carrying four people – all of whom are purportedly in distress – is charged with four counts of violating the 19 F.S.M.C. 425. FSM v. Zhang Xiaohui, 14 FSM R. 602, 617 (Pon. 2007).

A proctor in admiralty is a lawyer engaged in admiralty practice. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 n.6 (Yap 2007).

Interlocutory appeals in civil admiralty and maritime cases may be made under Appellate Rule 4(a)(1)(D) but that rule does not apply in a criminal case. Zhang Xiaohui v. FSM, 15 FSM R. 162, 166 n.1 (App. 2007).

Although the court must first look to FSM sources of law rather than begin with a review of cases decided by other courts when the FSM Supreme Court has not previously construed an FSM Supplemental Admiralty and Maritime Rule which is identical or similar to a U.S. counterpart, the court may consult U.S. sources construing the U.S. rule. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 633, 635 n.1 (Yap 2009).

The Civil Rule 55(a) twenty-day time limit does not apply in an admiralty case where the court is able to exercise personal jurisdiction over the *in personam* defendants under the long-arm statute. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

The applicable time frame before a default can be entered in an admiralty case is the thirty-day time period to answer or otherwise defend found in 4 F.S.M.C. 204(3) and in Supplemental Admiralty and Maritime Rule B(2)(b). People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

When, because the thirty-day time period applies, the defendants still have time within which to respond to the plaintiffs= complaint, the plaintiffs= requests for entries of default will be denied, and since no default will be entered, the plaintiffs= motion for a default judgment must also be denied. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479-80 (Yap 2011).

It is the long-established rule in admiralty cases that omissions and deficiencies in pleadings may be supplied and errors and mistakes in practice in matters of substance, as well as of form may be corrected at any stage of the proceedings for the furtherance of justice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

Since the failure to verify a complaint is a technical defect that can be cured by amendment, it would not entitle the defendants to an immediate dismissal or to a summary judgment because the Civil Procedure Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. This same principle should hold for an in rem admiralty proceeding and the plaintiffs be given a reasonable time to amend their complaint by verifying it by affidavit. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288-89 (Yap 2012).

When an FSM court has not previously construed an FSM supplemental and maritime rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 n.5 (Yap 2012).

The FSM Rules of Civil Procedure apply in *in rem* admiralty cases except to the extent they are inconsistent with the FSM Supplemental Rules for Certain Admiralty and Maritime Claims, in which case the supplemental rules govern. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 464 n.2 (Yap 2012).

The international nature of admiralty and maritime law would necessitate that FSM statutory maritime law be applied uniformly throughout the FSM and not vary from island to island because the concept of admiralty law is related uniquely to the law of nations and it consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

If there is any conflict between Admiralty Rule F(1) and the limitation statute, then the statute must prevail since the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

Congress has the authority to amend or create procedural rules by statute (and when Congress enacts a procedural rule, it is valid) but the Chief Justice does not have the power to amend Congressionally-enacted statutes. Thus, if a statute applies and the statute and the admiralty rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

Complaints in Admiralty Rule B, C, and D actions must be verified upon oath or solemn affirmation by a party or by an authorized officer of a corporate party but complaints in other in personam admiralty actions against natural and juridical persons do not have to be verified. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 56 (Yap 2013).

While the court must first look to FSM sources of law and not begin with a review of other courts= cases when the court has not previously construed an FSM supplemental admiralty and maritime rule that is similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 n.2 (Yap 2013).

Since a plaintiff class is analogous to a corporate body and a class representative is analogous to a corporation=s officer or attorney and with due deference to the Constitution=s

Judicial Guidance Clause and the FSM=s geographical configuration, a class representative=s verification of the complaint was sufficient compliance with Supplemental Rule C=s requirement that the in rem complaint be verified even though he was not present when the incident occurred. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 (Yap 2013).

Lightering or lighterage is the loading and unloading of goods between a ship and a smaller vessel, called a lighter. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 n.3 (Yap 2013).

The statutory fines in 19 F.S.M.C. 908(2); 19 F.S.M.C. 912, do not state a claim for which private parties can be granted relief because those fines are payable only to the FSM national government and then only if imposed as part of a sentence after a conviction in a criminal case. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

Even though admiralty and maritime cases arrests are often made without an arrest warrant, the defendant is nonetheless entitled to a judicial determination as to whether there is probable cause to detain the accused. In this hearing, the government bears the burden of proving it had probable cause to seize the vessel. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

If the pleading shows that both admiralty and another basis of subject matter jurisdiction exist, the suit will be treated as an admiralty claim for purposes of the special admiralty procedures and remedies only if the pleading or count setting forth the matter contains a statement identifying the claim as an admiralty claim. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 227 (App. 2017).

The FSM Supreme Court must first look to FSM sources of law rather than other courts= cases, but when the court has not already construed an aspect of an FSM Supplemental Admiralty and Maritime Rule that is identical or similar to the U.S. rule, it may consult U.S. sources for guidance. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 312 n.1 (Pon. 2019).

Maritime law is uniquely related to the law of nations and consists of rules that in large part govern the conduct of nations in their shipping and commercial activities. Its origins lie in the codes of the world=s seafaring nations and is still a part of the law of nations. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 313 n.3 (Pon. 2019).

– Jurisdiction and Extent

At the time when the FSM Constitution was adopted there was uncertainty as to whether, to establish United States federal court admiralty jurisdiction over a tort case, it was necessary to establish not only that the wrong occurred in navigable waters, but also that there was a relationship between the wrong and a traditional maritime activity. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

When passengers purchase passage in an ocean-going vessel for transportation, there is an implied maritime contract for passage even in the absence of written document. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

Exact scope of admiralty jurisdiction is not defined in the FSM Constitution or legislative history, but United States Constitution has a similar provision, so it is reasonable to expect that words in both Constitutions have similar meaning and effect. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

A dispute arising out of injury sustained by a passenger on a vessel transporting passengers from Kosrae to Pohnpei, at a time when the vessel is 30 miles from Kosrae, falls within the exclusive admiralty jurisdiction of the FSM Supreme Court. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

The FSM Supreme Court=s grant of original and exclusive jurisdiction in admiralty and maritime cases implies the adoption of admiralty or maritime cases as of the drafting and adoption of the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 59 (Truk 1989).

The maritime jurisdiction conferred on the FSM Supreme Court by the Constitution is not to be decided with reference to the details of United States cases and statutes concerning admiralty jurisdiction but instead with reference to the general maritime law of seafaring nations of the world, and to the law of nations. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

The FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts and injuries. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

A maritime contract cannot be converted into a non-maritime one by stipulation of the parties so as to divest the court of its admiralty jurisdiction. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 4 (Pon. 1993).

A civil seizure and forfeiture action involving a commercial fishing vessel within FSM waters falls under the admiralty and maritime jurisdiction of the national courts. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 599 (Pon. 1994).

The grant of admiralty and maritime jurisdiction to the national courts was intended to assist in the development of a uniform body of maritime law. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 600 (Pon. 1994).

Where *in rem* jurisdiction over a vessel has not been established and its owner has not been made a party to the action an *in rem* action that includes a claim against the vessel=s owner may be dismissed without prejudice. In re Kuang Hsing No. 127, 7 FSM R. 81, 82 (Chk. 1995).

In an admiralty and maritime case for the *in rem* forfeiture of a vessel, jurisdiction and venue are so interrelated that the government, or its agents, may not move a defendant vessel from the state in which it was arrested where the FSM admiralty venue statute does not anticipate transfer even though the civil rules allow improper venue to be raised as a defense or to be waived. It is unclear what the result of such a move would be. FSM v. M.T. HL Achiever (I), 7 FSM R. 221, 222-23 (Chk. 1995).

The FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime cases. This grant of exclusive jurisdiction is not made dependent upon constitutional grants of powers to other branches of the national government. When the Supreme Court=s jurisdiction is exclusive it cannot abstain from deciding a case in favor of another court in the FSM because no other court in the country has jurisdiction. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459 (App. 1996).

Only the FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime and certain other cases under the Constitution. The other national courts authorized by the Constitution, but which Congress has never created, are only authorized to entertain cases of concurrent jurisdiction, and thus could never exercise jurisdiction over admiralty and maritime cases. Maritime jurisdiction can reside only in one national court – the Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 460 n.2 (App. 1996).

The hallmark of an *in rem* proceeding in admiralty is that it is an adjudication of all rights in the vessel, good against the world, not just of the rights of the parties to the action. An *in rem* proceeding against a vessel can only be had in the context of an admiralty or maritime case. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 461-62 (App. 1996).

The FSM Constitution, by its plain language, grants exclusive and original jurisdiction to the FSM Supreme Court trial division for admiralty and maritime cases. It makes no exceptions. Therefore all *in rem* actions against marine vessels, even those by a state seeking forfeiture for violation of its fishing laws, must proceed in the trial division of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 463 (App. 1996).

Actions to enforce *in personam* civil penalties for violations of state fishing laws are within the exclusive admiralty and maritime jurisdiction of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 464-65 (App. 1996).

Generally, to complete a court=s jurisdiction in an in rem action, the res must be seized and be under the court=s control. In other words, jurisdiction of the res is obtained by a seizure under process of the court, whereby it is held to abide such order as the court may make concerning it. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

When a vessel has not been seized and is not in the FSM, the court has not obtained jurisdiction over it and the complaint as to the vessel must be dismissed. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

When the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court=s *in rem* and *in personam* jurisdiction, plaintiffs= failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. The FSM Supreme Court may exercise *in rem* jurisdiction over a vessel for damage done by that vessel. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

In order for a court to exercise *in rem* jurisdiction, the thing (such as a vessel) over which

jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court=s control, whereby it is held to abide such order as the court may make concerning it. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

When a vessel was never seized and brought under the court=s jurisdiction and is no longer present in the jurisdiction, a court cannot exercise *in rem* jurisdiction over it and all such claims against the vessel will be dismissed without prejudice. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Dismissal of an *in rem* suit against a vessel does not act to dismiss the suit against its captain and crew as that is an action *in personam*, not *in rem*. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

Jurisdiction over admiralty and maritime cases resides exclusively with the FSM Supreme Court trial division. The language of the FSM Constitution is clear and unambiguous in this regard. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court appellate division has held that it does not have the power to abstain from admiralty and maritime cases. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

A motion to dismiss for lack of diversity jurisdiction will be denied when the plaintiff=s complaint does not plead diversity jurisdiction (found in section 6(b) of article XI of the Constitution), but clearly pleads that the court=s jurisdiction under section 6(a), and when a fair reading of the plaintiff=s claim is that it is based on the defendant=s alleged breach of a maritime contract – the plaintiff=s employment contract as a ship=s captain. This, coupled with the complaint=s allegation that the court has jurisdiction based on section 6(a), which provides for FSM Supreme Court exclusive jurisdiction over certain cases including admiralty and maritime cases, indicates that the plaintiff did not base his jurisdictional plea on the parties= citizenship, but upon the case=s alleged maritime nature. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

The FSM Supreme Court has exclusive and original subject matter jurisdiction over a case in admiralty. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

The FSM Supreme Court trial division has original and exclusive jurisdiction in admiralty or maritime cases but the exact scope of admiralty and maritime jurisdiction is not defined in the Constitution or elsewhere. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 507-08 (Pon. 2006).

The article XI, section 6(a) maritime jurisdiction extends to all cases which are maritime in nature. Since a maritime cause of action is one arising on the sea, ocean, great lakes, or navigable rivers, or from some act or contract concerning the commerce and navigation thereof, and when, although the plaintiffs attempt to characterize the issue as one of state law, they are essentially complaining about loss of business as a result of the penalties imposed by the port authority on the vessels resulting from the port authority's maritime-related activities, it is a maritime case and will not be remanded to state court. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 508 (Pon. 2006).

The Civil Rule 55(a) twenty-day time limit does not apply in an admiralty case where the court is able to exercise personal jurisdiction over the *in personam* defendants under the long-arm statute. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

With admiralty jurisdiction comes the application of substantive admiralty law. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

The FSM Supreme Court has personal jurisdiction, under 4 F.S.M.C. 204(1)(c), over a cause of action that arises from the operation of a vessel or craft within the FSM territorial waters. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 54 (Yap 2013).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court does not have the power to abstain from admiralty and maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

The FSM Supreme Court trial division has original and exclusive jurisdiction over admiralty and maritime cases. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

Two helicopter charter agreements can only be maritime contracts when the performance of those agreements (fish spotting and search and rescue) was to take place at sea, while operating from a vessel at sea, and directly related to that vessel=s use to catch fish. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

A maritime contract is a contract relating to a ship in its use as such, or to commerce or navigation on navigable waters, or to transportation by sea or to marine employment. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 n.8 (Pon. 2019).

A defendant=s alleged breach of a maritime contract falls within the FSM Supreme Court=s original and exclusive jurisdiction over admiralty and maritime cases. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

Conversion can be a maritime tort, and, when it is, it gives rise to a maritime lien. Admiralty jurisdiction over a conversion claim depends on whether the chattel was on navigable waters when the alleged wrongful exercise of dominion occurred. Maritime conversion is an intentional tort that gives rise to a preferred maritime lien. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

– Maritime Torts

In maritime law an allision is the sudden impact of a vessel with a stationary object such as an anchored vessel or a pier or a submerged reef. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 196 n.1 (Yap 2003).

An allision is the sudden impact of a vessel with a stationary object such as an anchored vessel, a pier, or a submerged reef. People of Weloy ex rel. Pong v. M/V Micronesian Heritage, 12 FSM R. 613, 616 n.1 (Yap 2004).

General maritime law has long recognized causes of action in maritime tort for damages

resulting from groundings and oil spills. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

A cause of action exists in admiralty and maritime law for recovery of damages for oil contamination of wildlife and other natural resources in the marine environment. The type of injury includes both physical loss or injury, such as due to the grounding on the reef, as well as loss of use, either because of a government ban or because there has been a diminution of the resources because of oil contamination. Maritime nations generally recognize that parties injured by an oil spill should recover their damages, as the polluter must pay. Such a cause of action is available under the general admiralty and maritime law of the Federated States of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

The elements of a maritime negligence cause of action are four: 1) existence of a duty requiring a person to conform to a certain standard of conduct in order to protect others against unreasonable risks; 2) breach of that duty by engaging in conduct that falls below the standard of conduct, which is usually called "negligence"; 3) a reasonably close causal connection between the unreasonable conduct and any resulting injury, often referred to as "proximate cause"; and 4) actual loss, injury or damage to another party. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

Causes of action for public and private nuisance are recognized in admiralty law, borrowing from traditional common law principles. Admiralty courts look to general sources of the common law for guidance, such as the Restatement (Second) of Torts. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

Causation in maritime tort law is similar to the common law causation principle. A defendant=s act or omission must be the proximate cause of the plaintiff=s injury. An injury is proximately caused by an act, or failure to act, whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

Injured parties in maritime tort cases are typically awarded prejudgment interest. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

FSM admiralty law recognizes a cause of action for damages to coral reefs and marine resources caused by marine vessels. The elements of maritime negligence are: 1) the existence of a duty requiring conformance to a certain standard of conduct in order to protect others against unreasonable risks; 2) a breach of that duty by engaging in conduct that falls below the standard of conduct (usually called "negligence"); 3) a reasonably close causal connection between the unreasonable conduct and any resulting injury (often called "proximate cause"); and 4) an actual loss or injury to another party. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174 (Yap 2012).

FSM admiralty law recognizes a cause of action for nuisance. The Yapese interest in exclusive use and exploitation of their submerged lands on and within the fringing reef is analogous to interests in dry land. A nuisance is a substantial interference with the use and

enjoyment of another=s land (either dry or submerged in Yap) resulting from intentional and unreasonable conduct or caused unintentionally by negligent or reckless conduct. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

The owners were liable under a nuisance cause of action when its vessels substantially interfered with the plaintiffs= use and enjoyment of the affected reef both when the vessels were present and afterward because of the resulting damage. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

When the nuisance damages are the same (or lesser portion of) those awarded for maritime negligence, no further damages will be awarded for the nuisance cause of action. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

Since injured parties in admiralty and maritime tort cases are typically awarded prejudgment interest, when the plaintiff pled a claim for prejudgment interest, the 9% statutory interest will start on the damages award on the day the vessel ran aground. The 9% statutory interest will start on the costs award on the day the amended judgment is entered. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

A maritime negligence cause of action=s elements are: 1) existence of a duty requiring persons to conform to a certain standard of conduct in order to protect others against unreasonable risks; 2) conduct that falls below that standard thus breaching that duty (usually called "negligence"); 3) a reasonably close causal connection between the unreasonable conduct and the resulting injury, (often called "proximate cause"); and 4) an actual loss, injury, or damage to another party. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 19 (Yap 2018).

A vessel, and the mariner commanding it, have a duty to navigate safely. They also have a duty not to cause any damage to the reef and marine resources in Yap waters. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 19 (Yap 2018).

General maritime law has long recognized causes of action in maritime tort for damages resulting from groundings. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 19 (Yap 2018).

Liability for collisions, allisions – a collision between a moving vessel and a stationary object, and other types of marine casualties is based upon a finding of fault that caused or contributed to the damage incurred. The standard of care against which fault is determined is derived from 1) general concepts of prudent seamanship and reasonable care; 2) statutory and regulatory rules governing the movement and management of vessels and other maritime structures; and 3) recognized customs and usages. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 19-20 & n.1 (Yap 2018).

A fundamental rule of collision law, long applied, is that to impose liability for a collision, the fault committed by the vessel must be a contributory cause of the collision. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

There are a number of presumptions in collision law that are directed to the issue of fault. When a vessel under its own power collides with an anchored vessel or a navigational structure,

the burden of proving absence of fault or inevitable accident rests with the moving vessel. The presumption also applies when an unmoored, drifting vessel hits an anchored vessel or structure. The presumption does not apply, however, in the case of an allision with a submerged hidden object. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

Since the presumption of fault does not apply to allisions with sunken or hidden objects, the party who is invoking the presumption has the burden of proving either that the object was visible or that the vessel otherwise possessed knowledge of the object=s location. While this presumption generally does not apply to allisions with sunken or hidden objects, knowledge of an otherwise nonvisible object warrants imposition of presumed negligence against those operating the vessel who possessed this knowledge because, if the submerged object=s presence is known, then the accident was neither fortuitous nor unavoidable. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

The *res ipsa loquitur* doctrine creates a rebuttable presumption of negligence on the part of a party who is in exclusive control of an instrumentality with regard to a mishap that ordinarily does not occur in the absence of negligence. It is primarily applicable in allision cases. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

When the vessel, while moving under its own power, struck a stationary object – the outer edge of a reef – and ran hard aground on it, causing damage; when the vessel=s captain knew that the reef=s outer edge was located off the vessel=s port side, although he was unsure of its exact location; when the vessel deliberately ran parallel to the reef while the captain looked for its outer edge with his own eyes; when the reef was submerged, but it was not hidden; and when the reef was visible when not staring directly into the sunlight=s glare, the allision presumption applies and none of the exceptions to that principle applies. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

When the vessel was running at 5 knots in an easterly direction toward the early morning sun; when the atoll and its reef were off the vessel=s port side; when if the vessel had wanted to avoid the reef, a turn to starboard, where there was plenty of sea room, no shipping, and no reef, would have sufficed; when even the use of the vessel=s sonar depth finders or the posting of lookouts should have prevented the allision, the court must discount the presence of inaccurate navigational charts on the vessel because, even if the vessel had been using the inaccurate charts to navigate when it grounded on the reef, that grounding would still have to be considered the result of maritime negligence because of the captain=s other failures. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20-21 (Yap 2018).

When the defendants are unable to overcome the allision presumption or show that an exception to it applies, the court will hold the vessel, its captain, and its owner liable for maritime negligence. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 21 (Yap 2018).

Since the Yap Constitution recognizes traditional rights and ownership of marine resources, a vessel=s unconsented grounding on Sorol reef constitutes a trespass, and since proof of damages is not necessary to prove trespass, both the grounding and the running of lines from the vessel to the reef are trespasses. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 21 (Yap 2018).

While negligent conduct can give rise to a nuisance claim when the conduct has caused substantial interference with the use and enjoyment of another=s property that causes substantial harm, when the amount of damage and whether there was substantial harm are genuine issues of material fact, summary judgment will be denied. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 21 (Yap 2018).

While it may be uncontested that the value of a reef on the main island of Yap is $600 per square meter, the court cannot presume, without evidence, that $600 a square meter is an accurate value for any particular Yap outer island reef, especially where on the outer island there may be more reef and fewer people who have the right to rely on or depend on the reef=s resources. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 22 (Yap 2018).

An appropriate measure of damages for a damaged coral reef may be the cost of restoration without grossly disproportionate expense. Or if the cost of restoration would not be an appropriate measure because it would entail a grossly disproportionate expense, damages could be measured by the economic value of the marine resources lost or diminished by the reef damage. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 22 (Yap 2018).

The FSM Supreme Court customarily awards injured parties prejudgment interest in maritime tort cases. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 313 (Pon. 2019).

For a conversion claim, a prejudgment interest award under maritime law does not differ from a common law award for conversion, because, under the common law, one whose property is converted is entitled to interest at the legal rate from the time of conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 n.4 (Pon. 2019).

Conversion can be a maritime tort, and, when it is, it gives rise to a maritime lien. Admiralty jurisdiction over a conversion claim depends on whether the chattel was on navigable waters when the alleged wrongful exercise of dominion occurred. Maritime conversion is an intentional tort that gives rise to a preferred maritime lien. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

Maritime torts, like all torts, occur when a defendant breaches a legal duty and proximately causes a plaintiff damage. Such a duty is imposed by law whether or not the parties have ever had any prior consensual contact. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

In the admiralty context, as elsewhere, conversion is simply an intentional and wrongful exercise of dominion or control over a chattel, which seriously interferes with the owner=s right in the chattel. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

The failure to return property, possession of which was acquired lawfully, when the owner is entitled to its return and makes demand therefor, is a tortious conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

When the alleged conversion of each helicopter took place while that helicopter was aboard the defendant vessel and thus on navigable waters, the plaintiff=s conversion claims allege maritime torts for which maritime liens on the offending vessel will arise. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

The measure of damages for conversion is the property=s market value at the time and place of conversion plus the legal rate of interest from the date of the conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

A conversion is complete when the defendant takes, detains, or disposes of the chattel. At that point, the plaintiff acquires the right to enforce a sale, and recover the property=s full value. The defendant cannot undo his wrong by forcing the goods back upon their owner, either as a bar to the action, or in mitigation of damages. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Regardless of how accurate a May 9, 2019 appraisal was, it cannot be used to establish conversion damages where no evidence relates that appraised value to the chattels= value eight to ten months earlier when the chattels were allegedly converted. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Even if the conversion occurs in good faith, the plaintiff may nonetheless recover damages beyond the converted property=s fair market value. Thus, damages for lost profits are allowed when, either from the article=s nature or the case=s peculiar circumstances, they might be reasonably supposed to follow from the conversion, even though this recovery of lost profits is above and beyond the chattels= market value. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

The general rule is that compensation for lost profits may be recovered in an action for conversion, when the loss is the proximate result of the defendant=s act and the loss can be shown with reasonable certainty. Thus, although the usual measure for conversion damages is the property=s value at the time and place of conversion, plus interest, and lost profits may also be recovered if they may reasonably be expected to follow from the conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Lost profit damages can be awarded for conversion when the plaintiff shows that, but for the conversion, a profit would have been realized from the items converted and shows the extent thereof with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Awards for lost business profits are appropriate damages in a conversion case when proved with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315-16 (Pon. 2019).

It would be improper to allow lost business profit damages in every case involving conversion. The damages would only be proper when the person whose property has been converted shows that the conversion has resulted in lost business profits and shows with reasonable certainty the amount of these lost profits. Lost profits is the proper measure of damages, as opposed to lost gross receipts, and this damages amount need only be shown with as much certainty as the tort=s nature and the case=s circumstances permit. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Recovery for lost rental income may be limited in time until when the plaintiff could have obtained a replacement for his rental business since, if a plaintiff could have avoided the loss by purchasing a substitute item, profits from that point on are not the measure of the plaintiff=s

recovery even if profits were in fact lost. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Conversion, when committed on navigable waters, is a maritime tort that creates a maritime lien. The measure of damages in a maritime conversion is the property=s market value at the time and place of its conversion plus the legal rate of interest from that date, and to these damages, the plaintiff=s lost profits can be added when that loss can reasonably be expected to follow from the conversion, or is the proximate result of the defendant=s conversion, and when the amount of that loss can be shown with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

– Salvage

Congress specifically exempted salvage claims from the statutory limitation of liability. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

The statute exempts from the limitation of liability all claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Salvage claims or claims for raising, removing, destroying, or rendering a vessel harmless are exempt from the statutory limitation of liability defense. Since it is an exempt claim, it is a claim that is not included in the limitation of liability fund and the claim is not payable out of the limitation of liability fund, and since any salvage reward or award for removing or rendering the vessel harmless is exempt from the limitation of liability and will be determined separately, the court cannot include an estimate of the salvage claims in the fund amount. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

The right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. Salvage operations undertaken within the FSM which have had a useful result create the right to reward, and the criteria for fixing a salvage reward amount includes the measure of success obtained by the salvor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

When a wrecked vessel is an obstruction or danger to commerce or shipping, the Receiver of Wreck may require any owner to raise, remove or destroy the vessel, and if the owner does not comply forthwith, the Receiver may raise, remove, destroy, sell, or otherwise deal with the wrecked vessel and any recovered property in such manner as he or she thinks fit. The Receiver deducts any and all expenses incurred from the sale of the wreck and pays the proceeds to the persons entitled to them. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

In the event of a forced sale of a stranded or sunken vessel following its removal by the Receiver in the interest of safe navigation or the protection of the marine environment, the costs

of such removal will be paid out of the sale proceeds, before all other claims secured by a maritime lien on the vessel. If the forced sale proceeds are inadequate, then the Receiver may recover from any owner of a wrecked vessel any and all expenses incurred in guarding, lighting, buoying, raising, removing, or destroying the vessel, which are not recovered from the sale proceeds. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

In order for the Receiver of Wreck, and thus the FSM, to recover salvage or rendering harmless damages, the FSM must have actually incurred those expenses. The damages that the FSM is entitled to because its Secretary of Transportation is the Receiver of Wreck are for results obtained after the Receiver has taken charge of a wreck. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

The salvage statute=s purpose is to reward those whose efforts preserve property or protect the marine environment or both. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 628 (Yap 2013).

The Receiver or the FSM has not attained the status of salvor when it has not yet salvaged anything or tried to salvage anything. A salvor is a person who saves a vessel and its cargo from danger or loss; a person entitled to salvage. Salvage, in this sense, is the compensation allowed to a person who, having no duty to do so, helps save a ship or its cargo. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 (Yap 2013).

The FSM Supreme Court has exclusive jurisdiction over admiralty and maritime matters, which include claims relating to salvage, claims for towage, and ancillary matters of admiralty and maritime jurisdiction. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

A contract to assist in salvage of a vessel is a salvage contract. More than one party can simultaneously engage in the salvage of the same vessel. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

In contract salvage, the salvor acts to save maritime property after entering into an agreement to use "best efforts" to do so. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

In a salvage contract case, the FSM statute concerning salvage contracts is applicable regardless of whether any party pled the statute because statutory FSM salvage contract law applies to all salvage contracts performed in the FSM. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

While foreign law is a fact which must be pled and proven, national (or state law) does not need to be expressly pled since the court may take judicial notice of any national (or state) law. Thus, the FSM salvage contract statute=s application cannot be avoided by trying to characterize a salvage contract as some other kind of contract. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

A contract was formed by a salvor=s June 16, 2007 e-mail offer and the insurer=s June 19, 2007 letter acceptance with offer of additional term of an invoice, with the salvor=s acceptance of the additional term by performance. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon.

2013).

There is no statute of frauds in the FSM Code. The relevant statutes do not require salvage contracts, or maritime contracts of any kind, to be in writing in order to be enforceable. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

It is generally true that salvage contracts may be oral. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 9 (Pon. 2013).

When the salvage contract between the salvor and the vessel owner did not require that an invoice be presented in order that the salvor be paid, but the contract between the salvor and the insurer, the party that everyone expected would make the actual payment, did require that an invoice be presented, payment was due after an invoice was presented. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

The salvor=s failure to obtain an oil/water separator and to use it to process the slops was a material breach of the salvage contract when the acquisition of an oil/water separator and its use to separate the oil from the slops and return it to the vessel was a matter of vital importance the went to the salvage contract=s essence; when an essential element of any modern salvage contract is the protection of the marine environment; and when the largest component of the contract price was for processing the slops. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

An essential element of any modern salvage contract is not only the rescue of maritime property in peril but also the protection of the marine environment. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 10 (Pon. 2013).

A salvage contract is, by its terms, divisible when the parties have apportioned the entire $325,000 contract price into various components and activities within the scope of work, each assigned a specific part of the overall contract price. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

When the only component of a salvage contract that the salvor did not satisfactorily complete was the slops processing, the salvor=s material breach of failing to obtain and use an oil/water separator does not excuse performance – payment – for the rest of the salvage contract components. Nor does it excuse performance (payment) for the work that the salvor was asked to do, and which it agreed to do, that was outside the salvage contract=s scope of work, but it does excuse payment for the storage of the slops since that storage would have been unnecessary if the salvor had obtained and used an oil/water separator. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

The applicable statute of limitations for a salvage contract bars any recovery after the two-year period statutory period. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

A cause of action on a salvage contract accrues and the statute of limitations period starts to run on the day on which the salvage operations are terminated or the vessel and any part of the cargo is delivered to a safe port. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

The two-year statute of limitations in 19 F.S.M.C. 928 applies only to salvage contracts and

does not apply to a contract between a salvor and the insurer that is not a salvage contract but is instead a contract of guaranty or a surety or to answer for the liability of another and which may be subject to the six-year statute of limitations for contracts in general. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

When there are two express written contracts in which the parties= obligations are clearly set out: 1) the salvage contract between the vessel owner and the salvor and 2) the contract between insurer and the salvor that the insurer would pay the salvor the amounts due under the salvage contract on the presentation of an invoice and when there are additional, probably oral contracts for the $26,607.50 preparation work the salvor agreed to do that was outside the salvage contract=s scope of work, the defendants are, with the exception of the $26,607.50 preparation work, entitled to summary judgment on the salvor=s quantum meruit claims. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

The FSM Secretary of Transportation and Communications is designated by statute as the Receiver of wreck and when any vessel is wrecked, stranded or in distress, the Receiver may take command of all persons present, assign duties, issue directions, requisition assistance, and demand the use of any nearby vehicle or equipment, if necessary to preserve the vessel, the cargo, and lives. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 57 (Yap 2013).

When the Receiver takes possession of wreck, he must cause a description of the wreck to be: 1) broadcast on at least one radio station in each state; 2) published in the local newspaper, if any; 3) posted by notice describing the wreck at the Department and in appropriate public places in each state capital. This is notice to the public or the world. Notice to the owner, captain, and crew is another matter. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

The defendant=s receipt of documents about the arrest of its vessel and its participation in the arrest proceedings before the court did not, regardless of the effect of those proceedings on the class plaintiffs= claims against certain defendants, constitute notice to anyone that the FSM Receiver had taken possession of the stranded vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

Even if the 19 F.S.M.C. 907 notice was never given to the public, actual notice to the owner is sufficient for a claim against the owner. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

When a party has had actual notice of the receivership it cannot complain that the notice is defective because it did not also get notice by publication or constructive notice that, if given, might still never come to the party=s attention. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

The $100,000 penalty in 19 F.S.M.C. 908(2) is a criminal penalty – punishment – that can be imposed only upon a criminal conviction and cannot be imposed in a civil case. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

Civil liability may be imposed under 19 F.S.M.C. 905 and the duty to deliver items removed from a wreck is imposed under 19 F.S.M.C. 903(3). It cannot be imposed under 19 F.S.M.C.

908(2) or 19 F.S.M.C. 912. Those are provisions for criminal liability and must be sought through a criminal prosecution. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 58 (Yap 2013).

When the defendants have had actual notice that the FSM is the Receiver of their stranded vessel notwithstanding the lack of statutory notice to the public that would be necessary to enforce the receivership against the general public; when the extent to which defendants may avoid civil liability because they did not have actual notice of the receivership until after the refloating attempts is question on the merits left for another day as is whether liability is avoided or lessened because material was removed, as part of the government permitted and supervised attempt to refloat and to make it easier to refloat the stranded vessel and to lessen the chance of pollution of the marine environment, the defendants= motion to dismiss will be denied. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 59 (Yap 2013).

Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred because the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. Salvage operations undertaken within the FSM which have had a useful result shall create the right to reward, and the criteria for fixing a salvage reward amount includes the measure of success obtained by the salvor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

When the plaintiff does not allege to have conducted any salvage operations or obtained any useful result, it would be futile for the plaintiff to amend its complaint to include a salvage claim because it would not state a claim for which the court could grant it relief. Futile amendments are not allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

The statutorily created Receiver of Wreck has certain powers and duties and the Receiver of Wreck may delegate all or any authority and responsibility as Receiver to the relevant state authority but class plaintiffs are not a relevant state authority. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

No statute authorizes the Secretary of Transportation and Communications to delegate his statutory duties as Receiver of Wreck to private persons, let alone named and unnamed persons in a plaintiff class. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

Since a statutory receiver or public officer cannot, even with a court=s approval, delegate his powers or duties, or surrender assets which the law compels him to administer and since the Receiver of Wreck is both a statutory receiver and a public officer (the Secretary of Transportation and Communications), the delegation of the Receiver=s duties to private persons (the class plaintiffs) would be unlawful because the statute only permits delegation to "relevant state authority" and cannot be approved as a class action settlement agreement. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232-33 (Yap 2013).

Salvage damages cannot be awarded when there has been no salvage or rendering

harmless operation and when no salvage costs have been incurred because the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

Salvage operations undertaken within the FSM which have had a useful result create the right to reward. The criteria for fixing a salvage reward amount includes the measure of success obtained by the salvor. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

When a plaintiff has not furnished any evidence that it has suffered any damages conducting salvage operations to a useful and beneficial result, no salvage damages can be awarded even though the defendants are in default. Pohnpei v. M/V Ping Da 7, 20 FSM R. 1, 3 (Pon. 2015).

FSM salvage contract law applies to all salvage contracts performed in the FSM regardless of whether any party pled the statute. This is because it is well established that with admiralty jurisdiction comes the application of substantive admiralty law. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

Substantive admiralty law, whether FSM statute or general maritime law, rewards a successful salvage, not a salvage that has not yet occurred. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

The court cannot award, disguised as costs, what are damages for an unsuccessful salvage contract cause of action that was neither pled nor tried. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

"Special compensation" may be paid to a salvor who has carried out salvage operations on a vessel which threatened damage to the environment in FSM waters. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325 (Yap 2017).

A salvor is entitled to an award for the salvor=s "out-of-pocket expenses reasonably incurred in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, and when the salvor by his salvage operations has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor may be increased up to a maximum of 30% of the salvor=s actual, audited expenses incurred. A claim for depreciation in value of a vessel that was engaged in the salvage operation will be disregard since salvage awards are based on actual expenses, and depreciation is not an actual expense. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325 (Yap 2017).

– Seamen

A seaman=s contract claim against the owner of the vessel upon which he served would be regarded as falling within the FSM Supreme Court=s exclusive admiralty and maritime jurisdiction. FSM Const. art. XI, ' 6(a). Lonno v. Trust Territory (I), 1 FSM R. 53, 68-71 (Kos. 1982).

The Seaman=s Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the

national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the FSM Supreme Court=s jurisdiction under article XI, section 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. Lonno v. Trust Territory (I), 1 FSM R. 53, 72 (Kos. 1982).

Cases involving claims for wages by seamen are maritime cases. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

A case involving the hazardous duty pay claims of fifty-eight port operators and seamen employed by the defendants on Federated States of Micronesia Class III vessels comes before the FSM Supreme Court on the court=s exclusive jurisdiction in admiralty and maritime cases. Zion v. Nakayama, 13 FSM R. 310, 312 (Chk. 2005).

The owner or master of a vessel must enter into a written employment agreement (called shipping articles) with each and every seaman employed on board. Gilmete v. Peckalibe, 20 FSM R. 444, 447 n.1 (Pon. 2016).

A seaman=s contract claim against the owner of the vessel on which he served falls within the FSM Supreme Court=s exclusive admiralty and maritime jurisdiction. Gilmete v. Peckalibe, 20 FSM R. 444, 448 & n.3 (Pon. 2016).

Cases involving claims for wages by seamen are maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

A seaman is a person (including the master and officers) engaged or employed in any capacity on board a vessel other than a pilot, supercargo, or a person temporarily employed on board the vessel while it is in port, and shipping articles are the written employment contract between a vessel=s owner or master and a seaman to be employed on board, setting forth the terms and conditions of employment. Gilmete v. Peckalibe, 20 FSM R. 444, 448-49 n.5 (Pon. 2016).

Under 19 F.S.M.C. 606(4), shipping articles are limited to a period of no longer than one year. Gilmete v. Peckalibe, 20 FSM R. 444, 449 (Pon. 2016).

Since the FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts, and injuries, it has jurisdiction over a seaman=s claims for breach of contract and negligence. Gilmete v. Peckalibe, 20 FSM R. 444, 449 (Pon. 2016).

When a person=s employment is established pursuant to shipping articles, which is a contract between the FSM national government and seamen, it is unlike employment positions protected under the Public Service System, since there is no continued expectation of employment because the shipping articles have a one-year duration, and may be renewed upon expiration. Gilmete v. Peckalibe, 20 FSM R. 444, 450 (Pon. 2016).

A seaman employed by the FSM is a contract employee and therefore does not fall under the purview of Title 52 and would not be required to have his grievance reviewed at the administrative level before filing suit in the FSM Supreme Court. Gilmete v. Peckalibe, 20 FSM R. 444, 450 (Pon. 2016).

Although an aggrieved seaman, employed by the FSM, may file a petition at the administrative level, he, as a contract employee not covered under the FSM Public Service System, is free instead, to file suit in the FSM Supreme Court, which has exclusive jurisdiction over admiralty and maritime claims. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

The regulations that cover termination of shipping articles, do not afford the seaman the right to an administrative hearing before termination. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

Because of the unique classification of seamen and their rights as employees, along with the limitations when it comes to the termination of their employment, and because this class of FSM national government employees is distinct, and in line with FSM Constitution Article XI, ' 6(a), the FSM Supreme Court should exercise its exclusive jurisdiction over the matter rather than confer authority to an administrative body. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

– Ships

The statutory scheme sets up a system for the registration of FSM vessels, the recordation of ownership interests in those vessels, the priority of liens and claims against those vessels, and the methods of enforcing those claims. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor=s and mortgagee=s names, the mortgage=s amount and date of maturity, and the time and date the mortgage was recorded. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

In an admiraltry case, the court must review the verified complaint and supporting papers to determine whether the conditions for an in rem action appear to exist. If the court finds a sufficient basis, it may then issue an order authorizing the clerk to issue an order authorizing the vessel=s arrest. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99 (Pon. 2007).

Title 19 does not permit any lien or authorize proceedings in rem against any government vessel engaged in noncommercial services. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 100 (Pon. 2007).

The Pohnpei Port Authority has the express statutory authority to set as a condition of a vessel=s use of port facilities that a vessel=s account for port charges is kept current. Pohnpei

Port Auth. v. Ehsa, 16 FSM R. 11, 13 (Pon. 2008).

Whenever process in rem is issued, the execution of such process shall be stayed, or the property released, on the giving of security. "On the giving of security" refers to the situation where the defendant has "given security to respond in damages," and refers to the bond or other security posted to obtain the release of the property in the first instance, not the property itself. The fact that the FSM is holding the seized vessel does not mean that security has been given within the meaning of Admiralty Rule E(6)(d). FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

The FSM National Police must arrange for adequate safekeeping, which may include placing keepers on or near the arrested vessel, and the FSM Police may procure insurance to protect itself from liability assumed in arresting and holding the vessel. Providing for the vessel=s adequate safekeeping is mandatory, while arranging to place keepers on board and for insurance is discretionary. FSM v. Koshin 31, 16 FSM R. 15, 21 (Pon. 2008).

Interlocutory sales of arrested vessels are allowed 1) if the property that has been attached is perishable or liable to injury by being detained in custody pending the action, or 2) if the expense of keeping the property is excessive or disproportionate, or 3) if there is unreasonable delay in securing the release of the property. The plaintiffs need only demonstrate that one of these three conditions is present to justify the vessels= interlocutory sale. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 633, 634-35 (Yap 2009).

Where there is no evidence that the vessels are currently deteriorating or liable to injury and where the defendants have unsuccessfully sought the vessels= release through a letter of undertaking and made a good faith attempt to modify the proposed letter to satisfy the plaintiffs= and the court=s concerns but were unable to, resulting in a court denial, the four months= delay in the vessels= release cannot yet be considered unreasonable, especially when the defendants, not the plaintiffs, are currently bearing the expenses of keeping the vessels. The request for an interlocutory sale of the arrested vessels will thus be denied without prejudice, but, if the vessels= release is not obtained, there will come a time when the delay will be considered unreasonable and the vessels= interlocutory sale could be ordered. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 633, 635-36 (Yap 2009).

The thirty-day time period to answer or otherwise defend before a default can be entered found in 4 F.S.M.C. 204(3) and in Supplemental Admiralty and Maritime Rule B(2)(b) is the applicable time frame in an admialty case. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 83 & n.2 (Yap 2010).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. A court cannot exercise *in personam* jurisdiction over a vessel, but can entertain an *in personam* suit against a vessel=s owner if the court has obtained personal jurisdiction over the owner. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When a vessel was never seized and brought under the court=s control and is not in, or is no longer in, the FSM, the court cannot exercise *in rem* jurisdiction over it and all claims against the vessel will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of the vessel=s seizure, thus permitting the court to exercise *in rem* jurisdiction. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM

R. 81, 84 (Yap 2010).

When two vessels were never arrested or seized in the FSM and no substitute *res*, a bond or letter of undertaking, has been provided to the court so that the court can exercise *in rem* jurisdiction through the substitute, the court lacks jurisdiction over the vessels regardless of the service on the vessels= agent, and no default can be entered against either vessel. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

Vessels are not subject to service of process under Rule 4(d)(3) (service on corporations), but must be proceeded against *in rem* because they are things, not corporations. This is unlike the vessels= owner, which is a corporation. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is in rem, and in order for a court to exercise in rem jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court=s control, whereby it is held to abide such order as the court may make concerning it. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

If a vessel was never seized and brought under the court=s control and is not in, or is no longer in, the FSM, the court has not acquired in rem jurisdiction over it and all claims against it will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of its seizure. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

When a tug is not present in the FSM and was not arrested when it was present and when no bond or letter of undertaking has been posted to provide a substitute res over which the court could exercise jurisdiction, the complaint against it must be dismissed without prejudice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

Service of process on a defendant vessel is usually effected by the vessel=s arrest unless a substitute security, such as a letter of undertaking, has been arranged. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

When a vessel has been abandoned and is situated such that the taking of actual possession is impracticable, the FSM national police must execute the process by affixing a copy thereof to the property in a conspicuous place and by leaving a copy of the complaint and process with the person having possession or the person=s agent. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 n.3 (Yap 2012).

The FSM Supreme Court cannot exercise jurisdiction over any vessel unless that *in rem* defendant has been validly arrested in the FSM and brought under the court=s actual control or under its constructive control through the provision of a substitute security. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

The court can exercise jurisdiction only over vessels that are present in the FSM and that have been brought into the court=s jurisdiction by arrest or over vessels for which an adequate substitute has been provided. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19

FSM R. 88, 94 (Yap 2013).

When a vessel has been arrested in rem in a parallel civil proceeding but is not restrained in the criminal matter, the government=s request that the vessel be seized as evidence in the criminal case, and not for forfeiture, is an unnecessary restriction to establish that the vessel was as an instrumentality used in a crime. FSM v. Kimura, 19 FSM R. 617, 620 (Pon. 2014).

Under the Supplemental Rules for Certain Admiralty and Maritime Claims, a prompt post seizure hearing may be requested by "any person" claiming an interest in the vessel. At this hearing the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with the rules, and the property must be released upon giving of a security and, if the parties are unable to stipulate to the amount and nature of the security, the court shall fix the principal sum. FSM v. Kimura, 19 FSM R. 617, 620 n.8 (Pon. 2014).

A Port Authority and a pilot are immune from any negligence claim for the pilot=s acts or omissions in berthing a vessel, but not from a gross negligence claim. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

There are a variety of circumstances in which a pilot=s navigating too fast combined with other circumstances have equaled gross negligence on the pilot=s part. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16-17 (Pon. 2015).

A person holding a current and valid foreign investment permit is qualified to register a vessel in the FSM, and qualified persons may register in the FSM any vessel they wholly own. An FSM-registered vessel must fly the FSM national flag. FSM v. Kimura, 20 FSM R. 297, 304-05 (Pon. 2016).

In an admiralty case, when the suit is against a vessel or other property, the proper venue is the state within which the ship, goods, or other thing involved can be seized. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. In order for a court to exercise *in rem* jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court=s control, whereby it is held to abide such order as the court may make concerning it. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

A bond for a barge cannot exceed the barge=s actual value. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 325-26 & n.7 (Yap 2017).

– Ships – Charter

The term "charter party" is used in maritime law to designate the specialized form of contract for the hire of an entire ship, specified by name. "Charter party" is used synonymously with "charter." Three principal types are recognized: 1) under a time charter, the charterer engages for a fixed period of time a vessel, which remains manned and navigated by the vessel owner, to carry cargo wherever the charter instructs; 2) under a voyage charter, the charterer

engages the vessel to carry goods only for a single voyage; and 3) under a demise, or bareboat charter, the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner. Yap v. M/V Cecilia I, 13 FSM R. 403, 408 (Yap 2005).

A requirement for a true bareboat charter is that the charterer selects his own master and crew. If the owner provides the master and crew, tendering them as the agents of the charterer, the charter is a demise, although not technically a "bareboat" charter. Of these three varieties of charter parties, the demise charter has unique characteristics. A demise is the transfer of full possession and control of the vessel for the period covered by the contract. The charterer obtains the right to run the vessel and carry whatever cargo he chooses. The ship is manned and supplied by the charterer as well. Yap v. M/V Cecilia I, 13 FSM R. 403, 408 (Yap 2005).

The legal test of a demise charter is whether the owner of the vessel completely and exclusively relinquished possession, command and navigation to the demisee. A demise is present where the provisions of the charter show that those in charge of the vessel are intended to be the agents and servants of the demisee, not the shipowner. For most purposes, the charterer in a demise is treated as an owner, termed *pro hac vice*. Yap v. M/V Cecilia I, 13 FSM R. 403, 408-09 (Yap 2005).

The owner=s fundamental obligation under the demise charter party is to provide a seaworthy vessel of the specified class and type at the beginning of the charter term. A warranty of seaworthiness of the vessel will be implied; it may, however, be qualified or even waived. The seaworthiness warranty extends only to the charter=s beginning; subsequent to delivery the vessel=s seaworthiness is the charterer=s responsibility unless otherwise stated. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

The demise charterer=s basic obligation is to pay the charter hire stipulated in the charter party. At the end of the charter term, the vessel must be returned in the same condition as received excepting ordinary wear and tear. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

The charterer under a demise is responsible for the proper performance of all agreements made with third parties in connection with the ship=s operation. The charterer, as owner *pro hac vice* is also potentially liable for collision, personal injuries to the master, crew, and third parties, pollution damages, and for loss or damage to the chartered vessel. The vessel owner normally has no personal liability, but the vessel may be liable *in rem*. The charterer, however, has an obligation to indemnify the vessel owner if the damage was incurred through the charterer=s negligence or fault. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

A claim for personal injuries against a charterer can be secured by a maritime lien on the vessel. Meninzor v. M/V Caroline Voyager, 15 FSM R. 540a, 540b (Pon. 2008).

– Ships – Liability

A vessel owner=s right to seek a limitation of its liability is created by an FSM statute, and as the vessel=s owner at the time of its grounding and thus the potentially liable party, a company has standing to raise this statute as a defense to limit its liability for the vessel=s grounding, regardless of any arguments that the FSM Secretary of Transportation and Communications, as the receiver of wrecked and abandoned vessels, may have current

ownership rights over the vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

One purpose of the limitation procedure is to avoid a multiplicity of law suits and have all claims against the vessel determined in a single action. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 n.3 (Yap 2012).

Although Supplemental Admiralty and Maritime Rule F(1) sets the limitation fund amount at "a sum equal to the amount or value of the owner=s interest in the vessel and pending freight," the FSM statute sets the amount as "the sum of such amounts set out in regulations as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund." The regulations referred to are those promulgated by the Secretary of the Department of Transportation and Communications implementing Title 19, chapter 11 and taking into account the provisions of the 1976 London Limitation of Liability Convention and the 1969 Tonnage Convention. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

If there is any conflict between Admiralty Rule F(1) and the limitation statute, then the statute must prevail since the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute and the Chief Justice does not have the authority to amend Congressionally-enacted statutes, if the statute applies and the statute and the rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312-13 n.4 (Yap 2012).

A vessel owner=s right to limitation may be asserted in either one of two ways – the owner can file a complaint for limitation as a new and independent action or the owner may raise and assert it as an affirmative defense in a suit against the owner or the vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

When a shipowner chooses to assert its limitation rights by a filing in a pending case, the court should consider it as the owner=s motion for leave to amend its answer so as to assert the affirmative defense of statutory limitation of liability because a thing is what it is regardless of what someone chooses to label its filing. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

Since any application to the court for an order is a motion, when a shipowner filed an application for the limitation of its liability in a pending case, it is a motion, which, unless lengthened or shortened by court order or rule, a party has ten days to respond to. Thus, when the other parties were not allowed the ten days to respond to shipowner=s limitation motion because the court granted the motion and issued the orders after only five or six days, they were not given the procedural due process afforded them by the civil procedure rules and for that reason alone, the orders should be considered voidable and vacated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

A limitation of liability defense can only be pled if a Limitation of Liability Fund is "constituted" by either by depositing the sum with the Supreme Court, or by lodging with the court an irrevocable letter of credit or other form of security acceptable to the court and it must

be freely transferrable. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 313 (Yap 2012).

The limitation of liability defense was enacted as a part of the National Maritime Act and under Congress=s powers to regulate shipping and navigation and foreign and interstate commerce. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Custom does not divest Congress of its power to regulate shipping and commerce or render the limitation of liability statute, 19 F.S.M.C. 1101-1108, unconstitutional. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Even in the absence of regulations, Congress=s intent in providing for a limitation of liability defense is clear – the Limitation of Liability Fund is to be calculated by the London Convention method and not based on the "value of the owner=s interest in the vessel and pending freight." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

"Pending freight" or "freight pending" is a term of art. "Freight" refers to the compensation paid to a carrier for transporting goods. The term "freight pending," for purposes of constituting a limitation of liability fund, means the total earnings of the vessel for the voyage, whether for carriage of passengers or goods. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 n.2 (Yap 2013).

When the rules provide that the limitation of liability fund must include in additional sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the statutes= provisions as amended, or together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the statutes= provisions as amended, the court does not have to decide whether the statute conflicts with the rule and will calculate the limitation of liability fund amount according to the London Convention method. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

A limitation of liability fund must be constituted before the limitation defense can be effective. The London Convention calculation should be used along with the interest mandated by statute, which will be computed at the legal 9% rate. Once this amount is deposited with the court in cash or an irrevocable letter of credit, the limitation of liability defense may then be asserted. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539-40 (Yap 2013).

A plaintiff=s=s claims as "fairly stated" are not a basis to calculate the amount at which a limitation of liability fund should be set. This should be obvious from the principle that the fund involves a limitation of liability while a plaintiff=s claim as "fairly stated" does not involve any limitation. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

In the trial of a limitation proceeding, the burden of proof is divided between the parties, and there is a two-step analysis. The claimants must prove that the destruction or loss was caused by negligence or the vessel=s unseaworthiness. The burden then shifts to the shipowner to demonstrate that he comes within the statutory limitation conditions: that there was no design, neglect, privity or knowledge on his part. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

The privity and knowledge issue is the favored method to deny the limitations defense. The determination of whether the shipowner has established a lack of privity and knowledge of the fault involves a delicately balanced inquiry. Privity and knowledge exist where the owner has actual knowledge, or could have or should have obtained the necessary information by reasonable inquiry or inspection. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

Plaintiffs must first prove that their loss was caused by negligence or the vessel=s unseaworthiness. Next, they have the opportunity to prove that their claims are not the sort of claim to which the limitation of liability defense can be applied. But even if their claims are subject to the limitation of liability defense, that still does not mean that the defense will succeed because the burden then shifts to the shipowner to demonstrate that there was no design, neglect, privity or knowledge on the shipowner=s part. If the shipowner cannot demonstrate that, then the limitation of liability defense will not be allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 540 (Yap 2013).

Regulations, even if promulgated by the Secretary, must not exceed or limit the statute=s reach. Thus, any promulgated regulation would have taken into account the provisions of the 1976 London Limitation of Liability Convention and the 1969 Tonnage Convention. The court will do likewise. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 626 (Yap 2013).

No statutory language can be interpreted to require or encourage the inclusion of cultural damages in the limitation of liability fund calculation. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Congress specifically exempted salvage claims from the statutory limitation of liability. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

The statute exempts from the limitation of liability all claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

Salvage claims or claims for raising, removing, destroying, or rendering a vessel harmless are exempt from the statutory limitation of liability defense. Since it is an exempt claim, it is a claim that is not included in the limitation of liability fund and the claim is not payable out of the limitation of liability fund, and since any salvage reward or award for removing or rendering the vessel harmless is exempt from the limitation of liability and will be determined separately, the court cannot include an estimate of the salvage claims in the fund amount. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 627 (Yap 2013).

When the FSM statute specifically defines the "Limitation of Liability Convention" as "the Convention on Limitation of Liability for Maritime Claims done at London on November 19, 1976 as modified by its protocols and as amended from time to time, " 19 F.S.M.C. 106(11), the statute specifically provides that later changes to the Liability Convention will be part of FSM law without further action by Congress. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 (Yap 2013).

For vessels under 2,000 gross tons the limitation of liability fund amount is 1,000,000 units of account. A unit of account is the Special Drawing Right as defined by the International Monetary Fund. This amount is expected to be raised to 1,510,000 units of account in June 2015. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 630 (Yap 2013).

When a limitation of liability fund has been constituted, any judgment covered by that fund would not include any further prejudgment interest because as a general rule, once the funds are paid into court, the only interest that the prevailing party is entitled to is the interest earned by the money in the court=s depository institution. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

– Ships – Maritime Liens

Supplies and service that are necessaries when provided to a vessel give rise to maritime liens. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

A general agent is not barred from obtaining a maritime lien. Obtaining the lien depends on whether the supplies and services furnished the vessel are necessaries, not on the contractual relation. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

Necessaries are defined as those things reasonably needed in the business of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

To be entitled to a maritime lien a provider of necessaries must rely on the credit of the vessel. General maritime law presumes that a provider of necessaries relies on the credit of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 3 (Pon. 1993).

A contract provision for a line of credit that was never filled in as to the amount and never funded cannot overcome the presumption that a supplier of necessaries relied on the credit of the vessel. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 4 (Pon. 1993).

The statutory scheme sets up a system for the registration of FSM vessels, the recordation of ownership interests in those vessels, the priority of liens and claims against those vessels, and the methods of enforcing those claims. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

A claim against the owner, demise charterer, manager or operator of a registered vessel in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel may be secured by a maritime lien on the vessel. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99 (Pon. 2007).

A registered vessel may be arrested in respect of default in payment on claims secured by maritime liens or mortgages against the vessel recorded in the register and when sufficient evidence is provided to the Supreme Court to warrant a registered vessel=s arrest, the court may issue an order for the vessel=s arrest. Thus a vessel may be arrested when sufficient evidence is provided to the court that there has been a default in payments secured by a maritime lien, but when there is no present obligation for payment, there can be no default.

Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99 (Pon. 2007).

When the statute provides that a vessel may be arrested for default in payment on claims secured by maritime liens or mortgages against the vessel recorded in the register and that the Registrar shall upon the request of any person record in the register notice of such person=s claim to a lien on a registered vessel, supported by credible documentary evidence and when the statute further provides that where a vessel has caused personal injury giving rise to a claim which creates a maritime lien against the vessel, the lien holder may require the Registrar to record the lien against the vessel in the Register. But when the plaintiffs have not shown that their maritime lien has been recorded, this is a ground for denying the request for an arrest warrant for the vessel. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 99-100 (Pon. 2007).

Title 19 does not permit any lien or authorize proceedings in rem against any government vessel engaged in noncommercial services. Meninzor v. M/V Caroline Voyager, 15 FSM R. 97, 100 (Pon. 2007).

A claim for personal injuries against a charterer can be secured by a maritime lien on the vessel. Meninzor v. M/V Caroline Voyager, 15 FSM R. 540a, 540b (Pon. 2008).

A registered vessel may be arrested for a default in payment of claims secured by the vessel=s maritime liens as recorded in the register. Meninzor v. M/V Caroline Voyager, 15 FSM R. 540a, 540b (Pon. 2008).

Title 19 does not permit any lien or authorize proceedings in rem against any government vessel engaged in non-commercial services. Meninzor v. M/V Caroline Voyager, 15 FSM R. 540a, 540c (Pon. 2008).

When a trip=s purpose was to provide support and humanitarian services to the FSM outer islands; when there were 28 government officials aboard the vessel; when this included doctors, who were on the trip to perform public health, and dental services, a weather station representative, two police officers who were seeking to arrest a suspect, and an official who was on the trip to inspect school and airport projects, and seven Pohnpei legislators; when private passengers were charged a nominal fare; when the vessel transported building materials to Sapwuafik for use in school construction and airport runway repairs; and when, although Pohnpei was the vessel=s charterer, it was not charged a fee for the charter, the trip was not one carried on for profit, but rather to benefit the outer islands= inhabitants by delivering public services to them consistent with Micronesia=s geographical configuration. The government vessel thus falls within the 19 F.S.M.C. 102(2) exception, and is not subject either to a maritime lien or to arrest as part of an in rem proceeding. Meninzor v. M/V Caroline Voyager, 15 FSM R. 540a, 540c & n.1 (Pon. 2008).

The courts broadly construe the term "necessaries" to mean any goods or services that are useful to the vessel to keep her out of danger, and enable her to perform her particular function. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199 (Pon. 2019).

The term "necessaries" does not mean absolutely indispensable; rather the term refers to what is reasonably needed in the ship=s business. The test to apply in deciding whether the subject matter of a contract is necessary to the operation, navigation, or management of a ship is a test of reasonableness, not of absolute necessity. Fishy Choppers, Inc. v. M/V Marita 88,

22 FSM R. 187, 199 (Pon. 2019).

Necessaries are the things a prudent owner would provide to enable a ship to perform well the functions for which she has been engaged. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199 (Pon. 2019).

While a fish-spotting helicopter is not an absolute necessity for a purse seiner, it does enable the vessel to perform well her particular function and the function for which she had been engaged – catching fish. A prudent owner would conclude it was reasonably needed in the vessel=s business. It is thus a necessary provided the vessel, and anyone who furnishes necessaries to any foreign or domestic vessel will have a maritime lien on the vessel. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199 (Pon. 2019).

Maritime lien enforcement is an in rem proceeding against a vessel and a court can only exercise in rem jurisdiction when the res (the vessel), or its substitute, is physically within the court=s territorial jurisdiction and under the court=s control. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199 n.7 (Pon. 2019).

Although a lien priority for creditors who provide necessaries (goods, materials, or services) to a vessel is absent from 19 F.S.M.C. 326(2), it is provided for elsewhere that a maritime lien for necessaries ranks after the maritime liens set out in section 326 and also after registered mortgages or charges recorded in accordance with the statute. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 199-200 (Pon. 2019).

The FSM Supreme Court has jurisdiction in rem over all vessels irrespective of their flag and all maritime claims wherever arising with respect to claims for goods, materials or services supplied to a vessel. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

Helicopter fish-spotting services provided to a fishing vessel are necessaries that can give rise to a maritime lien. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 310 (Pon. 2019).

Conversion can be a maritime tort, and, when it is, it gives rise to a maritime lien. Admiralty jurisdiction over a conversion claim depends on whether the chattel was on navigable waters when the alleged wrongful exercise of dominion occurred. Maritime conversion is an intentional tort that gives rise to a preferred maritime lien. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

– Ships – Maritime Liens – Security for

The release of vessels from arrest is governed by Supplemental Admiralty and Maritime Rule E(6), and if the parties are unable to stipulate to the amount and nature of the security, the court must fix the principal sum of the bond at an amount sufficient to cover the plaintiff=s claim fairly stated with accrued interest. If the plaintiffs= claim "fairly stated" exceeds the vessels= value, the amount of the bond needed to release the vessels would be limited to the vessels= value, and, if the vessels= value exceeds that of the plaintiffs= claim, the bond amount would be the amount of the plaintiffs= claim "fairly stated" with accrued interest. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 545 (Yap 2009).

For a court to determine the amount of a plaintiff=s claim "fairly stated," the court can

consider affidavits and look behind the complaint to ascertain the amount actually in controversy. For a plaintiff=s claim to be "fairly stated," it must only be arguable. This is because "any ultimate recovery against the *res* itself [the vessel] is limited to the amount of the bond; therefore it is prudent to err on the high side. Thus, in making a preliminary assessment of plaintiff=s damages claim, the court should be satisfied that the plaintiff=s claims are not frivolous, but it should not require the plaintiff to prove its damages with exactitude. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 545-46 (Yap 2009).

Factual disputes that a trial would resolve need not be resolved to set a bond for an arrested vessel; the court need only conclude that the plaintiffs= claims are not frivolous and are arguable. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

The FSM Rules of Evidence would appear to be inapplicable to proceedings with respect to release of an arrested vessel on bond. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

When, without prejudging who will ultimately prevail and to what extent, the plaintiffs= claim appears arguable; the amount is "fairly stated" for the purpose of setting a bond for an arrested vessel. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546, 546 (Yap 2009).

Whenever security is taken for the release of an arrested vessel, the court may, on motion and hearing, for good cause shown, increase or reduce the amount of security given. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 547 (Yap 2009).

Whenever security is taken for the release of an arrested vessel the court may, on motion and hearing and for good cause shown, increase or reduce the amount of security given. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 311 (Pon. 2019).

The court may reduce a stipulated bond amount, but the burden on a party seeking the reduction of a bond so established is considerably greater than when the bond amount is set by statute or is provided by rule. While the court may reduce the amount of stipulated security, this is justified only upon a showing that the bond amount is clearly excessive. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 311 (Pon. 2019).

In order to obtain a reduction of a stipulated bond amount, the movants must show that the current bond amount is clearly excessive. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 312 (Pon. 2019).

Whenever an asserted counterclaim arises out of the same transaction or occurrence as the original action, and the defendant has given security to respond in damages, any plaintiff for whose benefit such security has been given shall give security to respond in damages set forth in the counterclaim unless the court, for cause shown, directs otherwise. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 312 (Pon. 2019).

A defendant, that gave security to respond in damages to a maritime lien, cannot ask that the plaintiff be required to give security for a counterclaim it did not make or ask for a reduction in the security it provided to be based on another party=s counterclaims. Fishy Choppers, Inc.

v. M/V Marita 88, 22 FSM R. 305, 312 (Pon. 2019).

Rule E(6)(d) does not authorize the court to, and it cannot, reduce the amount a defendant posted for security because the defendant has a counterclaim, but, under that rule, the court can require the plaintiff to post security to answer the defendant=s counterclaim. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 312 (Pon. 2019).

Rule E(6)(a) clearly allows the maritime lien bond amount to include prejudgment interest. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 313 (Pon. 2019).

Under maritime law, a prejudgment interest award is the rule rather than the exception, and, in practice, is well-nigh automatic. This maritime law practice has been followed in the FSM. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 313 (Pon. 2019).

When the alleged conversion of each helicopter took place while that helicopter was aboard the defendant vessel and thus on navigable waters, the plaintiff=s conversion claims allege maritime torts for which maritime liens on the offending vessel will arise. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 314 (Pon. 2019).

Regardless of how accurate a May 9, 2019 appraisal was, it cannot be used to establish conversion damages where no evidence relates that appraised value to the chattels= value eight to ten months earlier when the chattels were allegedly converted. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Even if the conversion occurs in good faith, the plaintiff may nonetheless recover damages beyond the converted property=s fair market value. Thus, damages for lost profits are allowed when, either from the article=s nature or the case=s peculiar circumstances, they might be reasonably supposed to follow from the conversion, even though this recovery of lost profits is above and beyond the chattels= market value. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

The general rule is that compensation for lost profits may be recovered in an action for conversion, when the loss is the proximate result of the defendant=s act and the loss can be shown with reasonable certainty. Thus, although the usual measure for conversion damages is the property=s value at the time and place of conversion, plus interest, and lost profits may also be recovered if they may reasonably be expected to follow from the conversion. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Lost profit damages can be awarded for conversion when the plaintiff shows that, but for the conversion, a profit would have been realized from the items converted and shows the extent thereof with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315 (Pon. 2019).

Awards for lost business profits are appropriate damages in a conversion case when proved with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 315-16 (Pon. 2019).

It would be improper to allow lost business profit damages in every case involving conversion. The damages would only be proper when the person whose property has been

converted shows that the conversion has resulted in lost business profits and shows with reasonable certainty the amount of these lost profits. Lost profits is the proper measure of damages, as opposed to lost gross receipts, and this damages amount need only be shown with as much certainty as the tort=s nature and the case=s circumstances permit. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Recovery for lost rental income may be limited in time until when the plaintiff could have obtained a replacement for his rental business since, if a plaintiff could have avoided the loss by purchasing a substitute item, profits from that point on are not the measure of the plaintiff=s recovery even if profits were in fact lost. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

Conversion, when committed on navigable waters, is a maritime tort that creates a maritime lien. The measure of damages in a maritime conversion is the property=s market value at the time and place of its conversion plus the legal rate of interest from that date, and to these damages, the plaintiff=s lost profits can be added when that loss can reasonably be expected to follow from the conversion, or is the proximate result of the defendant=s conversion, and when the amount of that loss can be shown with reasonable certainty. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

The amount of the bond securing a vessel=s release can be based on the plaintiff=s conversion causes of action and on the lost profits and prejudgment interest claims related to those causes of action. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

The court cannot reduce a stipulated bond amount when, considering the nature and the breadth of the alleged maritime liens, it cannot say that the stipulated security bond amount was shown to be clearly excessive. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 305, 316 (Pon. 2019).

– Ships – Mortgages

United States statutes regarding ships= mortgages will not be adopted as the common law of the Federated States of Micronesia, because their purposes are not applicable to the FSM and because their changing nature and complexity are not conducive to forming the basis of the common law of this nation. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 59-60 (Truk 1989).

The enforcement of ships= mortgages does not come within the admiralty jurisdiction of the FSM Supreme Court. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 60 (Truk 1989).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under article XI, section 6(a) of the Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 376 (App. 1990).

The Secretary of the Department of Transportation and Communications, appoints a Registrar, who keeps a Register of FSM vessels and the instruments that must be deposited with the Registrar. A transfer of any interest, including a mortgage, in a registered vessel is not

valid with respect to that vessel against any person other than the grantor or mortgagor until the instrument evidencing such transaction is recorded in the Register. The Registrar is required to record the particulars in such instruments as soon as they are received, including the amount and date of maturity of any mortgage. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

Once an FSM ship is registered, the Registrar must issue a Certificate of Registry for it, and once a mortgage has been properly recorded with the Registrar, the Registrar must endorse on the Certificate of Registry the mortgagor=s and mortgagee=s names, the mortgage=s amount and date of maturity, and the time and date the mortgage was recorded. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

An earlier recorded mortgage has priority over one recorded later according to the time and date on which each mortgage was recorded in the Register and not according to the date of each mortgage itself. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

The question of mortgage priority is important because if a ship has to be sold either as forfeiture or to satisfy its or its owner=s debts, the mortgagees will be paid from the proceeds according to their priority. A mortgagee with a higher priority will thus be paid in full before a subsequent mortgagee with a lower priority is paid one cent. The priority of the mortgages should be immediately apparent because they will all be recorded on the same Certificate of Registry. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

No principle of law prohibits a lender from securing with a mortgage a sum less than the full amount of what it has lent. It merely does so at its own risk. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 332 (Pon. 2001).

To permit a registered ship mortgage to hold priority for an additional $100,000 over its registered amount would destroy the statutory scheme created by Congress and one of the goals of the ship registry system – that all ownership interests be recorded on the ship=s Certificate of Registry, and would also hinder another purpose and goal – enhancing the ability of ship owners to obtain needed financing. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 333-34 (Pon. 2001).

A mortgagee cannot assert that its registered mortgage has priority over a subsequent mortgagee for a principal amount greater than the principal amount registered. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 334 (Pon. 2001).

When there is more than one registered mortgagee of the same vessel, a subsequent mortgagee cannot apply to sell the vessel without the concurrence of every prior mortgagee, except under an order of the Supreme Court. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 334 (Pon. 2001).

If a judgment creditor were attempting to levy execution on an FSM-registered vessel, the competing priorities are regulated by statute based on whether, and when, the security interest had been properly recorded. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).