

ADMIRALTY & MARITIME LAW COMMITTEE

Is Florida's Offer of Judgment Statute, FS 768.79, Applicable to Maritime Cases?



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In *Nicoll v. Magical Cruise Company, Limited*, WL 1007679, March 15, 2013, a slip and fall personal injury action against the cruise line, the Fifth District Court of Appeal of Florida held the Offer of Judgment Statute, FS 768.79, is not applicable to maritime cases.

In its *Nicoll* decision, the Fifth DCA reasoned, "Because this case is a maritime case, federal law governs substantive issues. Entitlement to attorney fees ... pursuant to section 768.79, Florida Statutes (2012)....is a substantive right. See *Floating Docks, Inc. v. Auto Owners Ins. Co.*, 82 So.3d 73, 80 (Fla. 2012). ... Under federal admiralty law, the prevailing party is not entitled to attorney fees absent circumstances not applicable here, even when a state statute establishes an entitlement to fees. *Misener Marine Constr., Inc. v. Norfolk Dredging Co.*, 594 F.3d 832, 841 (11th Cir.), *cert. denied*, 130 S.Ct. 3505 (2010); *Texas A & M Research Found. v. Magna Transp. Inc.*, 338 F.3d 394, 405 (5th Cir. 2003); *Am. Nat § 1 Fire Ins. Co. v. Keneally*, 72 F.3d 264, 270 (2nd Cir. 1995); *Southworth Mach. Co. v. F/V Corey Pride*, 994 F.2d 37, 41 (1st Cir. 1993); *Su v. M/V S. Aster*, 978 F.2d 462, 475 (9th Cir. 1992); *Sosebee v. Rath*, 893 F.2d 54, 56-57 (3rd Cir. 1990)."

In its ruling in *Nicoll*, the 5th DCA acknowledged conflict with the 3rd DCA's decision in *Royal Caribbean Corp. V. Modesto*, 614 So.2d 517 (Fla. 3rd DCA 1992). The 5th DCA also noted that a panel of the Third District, in a nonfinal opinion, called the decision in *Modesto* into question. See *Royal Caribbean Cruises, Ltd. V. Cox*, 37 Fla. L. Weekly D2029 (Fla. 3rd DCA Aug. 22, 2012).

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