UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 22-cv-23847-BLOOM/GOODMAN

ERIC WARD, *et al.*,

Plaintiffs,

v.

M/Y UTOPIA IV, Official No. 1305829, MMSI No.339328000, her engines, tackle, gear, appurtenances, etc., *in rem*, and UTOPIA YACHTING LLC, *in personam*,

Defendants.
_____/

REPORT AND RECOMMENDATIONS ON AMENDED[1]
MOTION FOR ATTORNEYS' FEES AND PREJUDGMENT INTEREST

Plaintiffs Eric Ward ("Ward"), Samuel Parrott ("Parrott"), and Fred Wennberg ("Wennberg") (collectively, "Plaintiffs") seek to recover $1,121,284.98 in attorneys' fees, plus prejudgment interest. [ECF No. 441]. Defendants M/Y UTOPIA ("Yacht") and its owner, Utopia Yachting LLC ("Utopia" and collectively "Defendants"), filed a response in opposition [ECF No. 446] and Plaintiffs filed an optional reply [ECF No. 448].

United States District Judge Beth Bloom referred the instant motion to the Undersigned for a Report and Recommendations. [ECF No. 427].

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[1] Plaintiffs filed an amended motion after the Undersigned pointed out deficiencies in the initial motion. *See* [ECF Nos. 425; 429; 432; 436; 441].

For the reasons stated below, the Undersigned **respectfully recommends** that the District Court **deny without prejudice** Plaintiffs' motion to the extent it now seeks *court*-calculated attorneys' fees and that it **empanel** a new jury for the receipt of attorneys' fees evidence and the calculation of a reasonable attorneys' fee amount. Additionally, the Court should **deny** Plaintiffs' request for prejudgment interest because they failed to provide the Court with a (reasonable) method for apportioning the awarded damages.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case concerns the December 23, 2021 collision of the Yacht with another vessel resulting in injuries to the Yacht's crew and damage to both her and the other vessel. [ECF Nos. 1; 41]. Ward, a seaman employed aboard the Yacht, sued Defendants for: one count of negligence under the Jones Act; one count of failure to provide maintenance and cure under admiralty law; and one count of unseaworthiness under admiralty law. [ECF No. 1]. Six other crew members, including Parrott and Wennberg,[2] joined the lawsuit, bringing their own claims against Defendants. [ECF Nos. 15; 16; 24; 31; 46; 54]. Four crew members settled their claims [ECF No. 247], and the case proceeded to an 11-day jury trial, beginning on March 31, 2025, on Plaintiffs' claims. [ECF Nos. 361; 365; 366; 368–70; 374; 378–82].

[2] Wennberg's claim included five incidents.

On April 17, 2025, the jury returned verdicts (mostly) in favor of Plaintiffs, including an award of punitive damages to Ward and Parrott. [ECF Nos. 384–86]. On April 23, 2025, the Court entered final judgments as to each Plaintiff. [ECF Nos. 390–92].[3]

Plaintiffs now seek to recover their attorneys' fees and prejudgment interest. [ECF No. 441].

II. ANALYSIS

Ordinarily, "[t]he prevailing party in an admiralty case is not entitled to recover its attorneys' fees as a matter of course." *Natco Ltd. P'ship v. Moran Towing of Fla., Inc.*, 267 F.3d 1190, 1193 (11th Cir. 2001). Nonetheless, attorneys' fees may be recoverable under certain circumstances. For instance, where: "(1) they are provided by the statute governing the claim, (2) the nonprevailing party acted in bad faith in the course of the litigation, or (3) there is a contract providing for the indemnification of attorneys' fees." *Id.*

Additionally, a seaman is entitled to reasonable attorney's fees where the shipowner's failure to pay maintenance and cure is "**willful and persistent**." *Vaughan v. Atkinson*, 369 U.S. 527, 530–31, 82 S. Ct. 997, 999, 8 L. Ed. 2d 88 (1962) (emphasis added); *Hurtado v. Balerno Int'l Ltd.*, 408 F. Supp. 3d 1315, 1333 (S.D. Fla. 2019) ("*Hurtado II*") ("Punitive damages and attorneys' fees may be awarded under general maritime law 'for

[3] Defendants have attacked Ward and Wennberg's judgments by filing a motion to amend the judgments [ECF No. 416] and a renewed motion for judgment as a matter of law [ECF No. 417]. Those matters are pending before Judge Bloom.

the **willful and wanton** disregard of the maintenance and cure obligation.'" (quoting *Atl. Sounding Co. v. Townsend*, 557 U.S. 404, 424, 129 S. Ct. 2561, 174 L. Ed. 2d 382 (2009) (emphasis added))).[4]

a. Entitlement

Plaintiffs move for court-awarded attorneys' fees based on "the jury's factual findings that [ ] Defendant Utopia 'willfully and arbitrarily failed to or delayed' in providing maintenance, cure and/or wages to each of the Plaintiffs." [ECF No. 441, p. 4]; *see also* [ECF Nos. 390–92].

Defendants contend that Plaintiffs are not entitled to attorneys' fees for two reasons: (1) there has been no finding by the [j]ury or the Court that Defendants acted willfully, arbitrarily, capriciously, or in callous disregard for Plaintiffs' rights as seamen" [ECF No. 446, p. 5 (citing *Manolache*, 2007 WL 9709711, at *3)]; and (2) "[b]ecause Plaintiffs failed to present evidence at trial to support entitlement to or the amount of attorney's fees[.]" *id.*[5]

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[4] *See also Manolache v. Int'l Cruise Servs., Inc.*, No. 07-20273-CIV, 2007 WL 9709711, at *3 (S.D. Fla. May 16, 2007) (in addressing a motion to dismiss, noting the "well-established admiralty law that a [p]laintiff is entitled to attorneys['] fees where [the] [d]efendant's failure to pay [the] [p]laintiff's entire maintenance and cure is **willful**, **arbitrary**, **capricious**, and in **callous disregard** for [the] [p]laintiffs rights as a seaman" (emphasis added)).

[5] The Undersigned is addressing these arguments in the reverse order in which they were raised in Defendants' response [ECF No. 446].

To the extent Defendants are seeking to relitigate the jury's findings in a response to a fees motion, that argument is not well-taken. For instance, the issue of whether "Defendants actively sought to pay and, ultimately did pay, Ward and Wennberg's medical expenses" [ECF No. 446, p. 1] cannot be revisited, at least not in the context of a response in opposition to a fees motion.

As noted above, Defendants have challenged Ward and Wennberg's (but not Parrott's) judgments by filing a motion to amend the judgments [ECF No. 416] and a renewed motion for judgment as a matter of law [ECF No. 417]. Whether they ultimately prevail on those motions is beyond the scope of this Report and Recommendations. For purposes of the instant motion, the Undersigned **rejects** Defendants' attempt to reopen the verdicts in the instant fee dispute.

The issue that is before the Undersigned is whether Plaintiffs are *entitled* to attorneys' fees. Here, the jury found that Utopia had "**willfully and arbitrarily** failed to or delayed providing [c]ure" to Ward in the amounts of $100,000.00 for the "**[w]illful** delay of nursing and medical expenses" and $345,000.00 for the "**[w]illful** delay of unpaid wages[.]" [ECF No. 384, p. 2 (emphasis added)].

It also found that Utopia had "**willfully and arbitrarily** failed to or delayed providing [c]ure up" to Parrott in the amounts of $50,000.00 for the **willful** delay of nursing and medical expenses and $132,000.00 for the "**willful** delay of unpaid wages." [ECF No. 385, p. 2 (emphasis added)]. In the case of Wennberg, the jury found that Utopia

willfully failed to pay $450,000.00 in cure as to incident 3 and **willfully** failed to pay $90,000.00 in nursing and medical expenses as to incident 5. [ECF No. 386, pp. 9; 15–16]. Thus, at the time of the verdict, the issue of *entitlement* to attorney's fees **had** been decided, **by the jury**.

The damages awarded by the jury -- medical expenses and unpaid wages -- are among the damages recoverable in maintenance and cure cases. As the Eleventh Circuit explained:

> The seaman's action for maintenance and cure may be seen as one designed to put the sailor in the same position he would have been had he continued to work: **the seaman receives a maintenance remedy**, because working seamen normally are housed and fed aboard ship; **he recovers payment for medical expenses** in the amount necessary to bring him to the maximum cure; and he receives an amount representing his **unearned wages** for the duration of his voyage or contract period.

Flores v. Carnival Cruise Lines, 47 F.3d 1120, 1127 (11th Cir. 1995) (emphasis added).

The Undersigned finds *Kloster Cruise Ltd. v. De Sousa*, 677 So. 2d 50 (Fla. 3d DCA 1996), a case cited favorably by Defendants [ECF No. 446, pp. 6–7], instructive on this issue. In *Kloster*, "**the jury determined that [the defendant] 'willfully and arbitrarily" failed to provide maintenance and cure to [the plaintiff]**. **As a result of that determination**, **[the plaintiff] was, at the time of the verdict [ ], entitled to recover** punitive damages and **attorneys' fees** in connection with his maintenance and cure claim." *Id.* (emphasis added).

Notably, at trial, the *Kloster* plaintiff "presented no evidence before the jury in support of the amount of attorneys' fees claimed" and the "[t]he jury verdict form requested only a determination of the amount of punitive damages to be awarded[.]" *Id.* at 51. Nonetheless, the state appellate court "reverse[d] the award of attorneys' fees and remanded the case for a ***jury* determination** of the **amount of attorneys' fees recoverable** by [the plaintiff] following presentation of evidence on this issue." *Id.* It did *not* need to instruct the trial court to re-submit the issue of *entitlement* to the jury because entitlement to attorneys' fees had already been determined by virtue of the punitive damages verdict.

Similarly here, the jury's finding of "**willful[ ] and arbitrar[y]**" violations as to at least *some* of Plaintiffs' maintenance and cure claims is sufficient to establish *entitlement* to reasonable attorneys' fees for those portions of Plaintiffs' claims. *See Vaughan*, 369 U.S. at 530–31 (reasonable attorneys' fees were available where the shipowner exhibited a "**willful and persistent**" failure to pay maintenance and cure (emphasis added)); *Hurtado II*, 408 F. Supp. 3d at 1333 (recognizing that attorney's fees could be awarded for the "**willful and wanton**" failure to pay maintenance and cure); *see also Int'l Ships Servs., Ltd. v. Canales*, 639 So. 2d 74, 75–76 (Fla. 3d DCA 1994) ("**In light of the jury's finding**, which is supported by the record, that International Ships **wilfully [sic] or arbitrarily failed to provide maintenance and cure, the trial court erred in denying Canales' motion for attorney's fees**." (emphasis added)). Thus, the issue of entitlement *was* determined by the

jury when it returned verdicts finding Utopia had willfully and arbitrarily failed to comply with its maintenance and cure obligations to Plaintiffs.

However, and as discussed in more detail below, the Undersigned agrees (in part)[6] with Defendants that the **amount** of reasonable attorneys' fees in willful-failure-to-pay-maintenance-and-cure cases is for the jury (not the Court) to determine. Moreover, because "[d]epriving [Plaintiffs] of *all* attorneys' fees under the circumstances here would be unjust and unnecessary[,]"[7] the Undersigned is also **recommending** that the District Court submit the fee request to a new jury to determine a reasonable amount.

b. The Fee Amount Should be Determined by the Jury

By filing the instant motion, Plaintiffs are asking the *Court* to determine a reasonable fee about. Defendants contend that "[t]he law is clear that the **jury** must decide whether the plaintiff is entitled to attorney's fees, **and**, if so, **the amount of the award**, in maintenance and cure cases tried before a jury." [ECF No. 446, p 6 (citing *Holmes v. J. Ray McDermott & Co.*, 734 F.2d 1110, 1120 (5th Cir. 1984), *overruled on other grounds by Guevara v. Mar. Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995) (emphasis added))].[8]

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[6] The Undersigned disagrees with Defendants' position that "the jury did not determine whether Plaintiffs are entitled to attorney's fees", [ECF No. 446, p. 7], because the jury's verdicts found willful and arbitrary violations of Utopia's maintenance and cure obligations.

[7] *Kloster Cruise Ltd. v. De Sousa*, 677 So. 2d 50, 51 (Fla. 3d DCA 1996).

[8] *Guevara* overruled *Holmes* to the extent that *Holmes* held that *punitive* damages were available for the willful nonpayment of maintenance and cure. 59 F.3d at 1513

Defendants contend (and Plaintiffs do not dispute) that there was no stipulation in the instant action that the fees issue would be decided by the Court. [ECF No. 446, p. 7].[9] Therefore, Defendants state that the issue of what constitutes a reasonable attorney's fee cannot be determined by the Court (and must be decided by a jury).

The cases cited by Plaintiffs [ECF Nos. 441, pp. 3–4; 448, pp. 1–2] are either in a different procedural posture from the instant case or do not address the issue of whether the Court or the jury should calculate the attorneys' fee amount. Plaintiffs state, for example, that "[t]he *Vaughan* Court . . . does not require that the issue of fees be presented to the jury during the prevailing party's case-in-chief for fees to ultimately be awarded." [ECF No. 448, p. 1]. But in *Vaughan*, the lower court denied the fees request. 369 U.S. at

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("[P]unitive damages should no longer be available in cases of willful nonpayment of maintenance and cure under the general maritime law."). Nonetheless, the *Guevara* Court "conclude[d] that *Vaughan* and *Miles* [*v. Apex Marine Corp.*, 498 U.S. 19, 111 S. Ct. 317, 112 L. Ed. 2d 275 (1990)] still permit the recovery of attorney's fees in maintenance and cure cases as long as the proper showing of egregious fault is made." 59 F.3d at 1513 (emphasis added).

Guevara itself was later abrogated by *Atl. Sounding Co. v. Townsend*, 557 U.S. 404, 129 S. Ct. 2561, 174 L. Ed. 2d 382 (2009). *Atl. Sounding Co.* held that **punitive damages** *were* available for a shipowner's willful and wanton disregard of its maintenance and cure obligation. In any event, *Guevara* and *Atl. Sounding Co.* do not address the issue presently before the Court, which concerns **attorneys' fees** (not punitive damages) in willful nonpayment of maintenance and cure cases.

[9] Neither party discussed if the issue of whether the fees amount should be determined by the jury was raised with the District Court, and there does not appear to be a transcript of the charge conference on the CM/ECF docket. The day 10 transcript excerpt ends just before the charge conference. [ECF No. 414, p. 65 ("And let us now at this time, since I have addressed the motions, proceed to a charge conference.")].

529 ("The [c]ourt of [a]ppeals denied counsel fees as damages, relying on the conventional rule that in suits for breach of contract the promisee is not allowed that item in computing the damages payable by the promisor."). Thus, the *Vaughan* Court did not have a reason to address the issue of *who* should determine the amount of reasonable attorneys' fees in cases involving the willful noncompliance with maintenance and cure obligations.

Plaintiffs also cite *Hines v. J.A. La Porte, Inc.*, 820 F.2d 1187, 1189 (11th Cir. 1987) (*per curiam*). "The central issue in [*Hines*] [was] whether a seaman may be awarded punitive damages ***in addition to*** reasonable attorney's fees for the arbitrary and willful withholding of maintenance and cure benefits." *Id.* at 1188 (emphasis added). That issue is not present here because the attorneys' fee amount was not submitted to the jury and there is yet to be a fees award.

Moreover, there is no mention of a jury in *Hines*. Given that the district court made factual findings,[10] it was likely a bench trial. In any event, *Hines* does not address the issue here: whether the Court can determine a proper fee to award Plaintiffs (as opposed to having the jury determine the fees amount).

Atl. Sounding Co. v. Townsend, 496 F.3d 1282, 1283 (11th Cir. 2007), is also not helpful to Plaintiffs. The issue decided in *Atl. Sounding Co.* was whether the district court

[10] *See Hines*, 820 F.2d at 1189 ("**The district court found** that Liberty Mutual terminated cure despite a lack of information concerning whether Hines had reached maximum medical cure."(emphasis)).

erred in denying a motion to strike or dismiss a punitive damages request from a counterclaim. There is nothing in *Atl. Sounding Co.* discussing *who* (the Court or the jury) should determine a reasonable fee amount.

The two *Hurtado* decisions also fail to address the issue before the Court. Plaintiffs cite *Hurtado v. Balerno Int'l*, No. 17-62200-CIV, 2018 U.S. Dist. LEXIS 235317 (S.D. Fla. Apr. 26, 2018) ("*Hurtado I*") for the proposition that "in admiralty law, an award for attorney's fees is not considered compensatory damages and so must be awarded separately by the judge, rather than the jury." [ECF No. 448, p. 2]. But the *Hurtado I* decision is on a motion for default judgment. Thus, the *Hurtado I* Court was not confronted with a post-jury trial fees motion.[11] Additionally, in deciding that attorneys' fees were not compensatory damages, the *Hurtado I* Court acknowledged "the lack of clarity" on the issue. *Id.* at *15.

[11] The issue of whether attorneys' fees were compensatory damages arose in a different context in *Hurtado I* than in the instant case. It arose because the Supreme Court in *Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008) "imposed a punitive-to-compensatory ratio of 1:1." 2018 U.S. Dist. LEXIS 235317, at *14. Thus, it was in the *plaintiff's* interest to argue that attorney's fees were part of compensatory damages (because it would increase the compensatory damages award and, by virtue of the 1:1 ratio, also the punitive damages award). But Plaintiffs here take the *opposite* position and argue that attorney's fees are not compensatory because they want the Court to determine the fees award. *See* [ECF No. 448, p. 2 (arguing that "in admiralty law, an award for attorney's fees is not considered compensatory damages and so must be awarded separately by the judge, rather than the jury")].

Moreover, the default judgment entered in *Hurtado I* was set aside months later in *Hurtado v. Balerno Int'l Ltd.*, No. 17-62200-CIV, 2018 WL 4053122, at *7 (S.D. Fla. Aug. 24, 2018).[12] Thus, the Undersigned questions the persuasive value of *Hurtado I*.

Plaintiffs also cite *Hurtado II*, 408 F. Supp. 3d at 1334. They include the following parenthetical with that citation: "awarding fees **after** a trial in which there was a willful failure to pay maintenance and cure finding[.]" [ECF No. 448, p. 2 (emphasis in reply)]. But Plaintiffs omit the fact that the trial at issue was a *bench* trial. Thus, in its findings of fact and conclusions of law, the *Court* determined both entitlement and the amount of reasonable attorneys' fees. *Hurtado II* says nothing about whether a jury should decide attorneys' fees in cases involving *jury* trials.

Lastly, Plaintiffs cites *Weeks Marine, Inc. v. Bowman*, No. 04-0009, 2006 U.S. Dist. LEXIS 53553 (E.D. La. July 28, 2006). But *Weeks* too was a bench trial. *Id.* at *1 ("This matter was **tried before the Court without a jury** on May 25, 2006[.]" (emphasis added)).

In short, none of Plaintiffs' cases address the issue before the Court: whether attorneys' fees can be awarded by the Court (as opposed to the jury) in a case involving the willful and arbitrary delay or denial of maintenance and cure.

Defendants cite a more procedurally analogous case, *Kloster*. [ECF No. 446, pp. 6–7]. The *Kloster* Court noted that:

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[12] Plaintiffs do not disclose that the *Hurtado I* decision was set aside in their motion or reply.

> The Fifth Circuit[13] has made it clear that **the recovery of attorneys' fees in these types of seamen's actions is "a non-severable part of the plaintiff's cause of action" and, as such, in addition to the proof of entitlement to the fees, the plaintiff must present its evidence relating to the appropriate amount of attorneys' fees to the jury**, unless the parties waive this right, **so that the jury may determine the amount** of the award if plaintiff is found entitled to attorneys' fees. *Holmes v. J. Ray McDermott & Co.*, 734 F.2d 1110, 1121 (5th Cir.1984), *overruled on other grounds, Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir.) (only insofar as *Holmes* addressed punitive damage awards), *cert. denied*, 516 U.S. 1046, 116 S .Ct. 706, 133 L.Ed.2d 662 (1996).

677 So. 2d at 51. (emphasis added).

The *Kloster* Court determined that since the plaintiff had "presented no evidence before the jury in support of the amount of attorneys' fees claimed" and "[t]he jury verdict form requested only a determination of the amount of punitive damages to be awarded[,]" **the trial court erred when ("without obtaining a formal stipulation from**

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[13] Although *Kloster* cites Fifth Circuit law, neither party has submitted on-point case law demonstrating that the law in the Eleventh Circuit would be different. Defendants cited *Kloster* favorably in their response, so presumably they believe the law on this issue in the Fifth and Eleventh Circuits would be the same.

Plaintiffs do not mention *Kloster* by name, but state that "Defendants rely solely on inapplicable Fifth Circuit and Florida 3rd DCA case law in their response, however in the Eleventh Circuit, [c]ourts are required to award attorney's fees and prejudgment interest where there is a ruling that the shipowner willfully failed to honor their maintenance and cure obligations." [ECF No. 448, p. 1]. But this conclusory statement -- devoid of any substantive discussion or real attempt to distinguish Defendants' case law, preferably with citations to on-point legal authority to the contrary -- is not convincing. S*ee United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) ("It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones."). Moreover, and as discussed below, the cases which Plaintiffs *do* cite are either procedurally distinguishable for the instant case or do not address the issue at hand.

the parties") it "took it upon itself to determine, *i.e.*, to 'sever', the issue of the amount of a 'reasonable' fee in posttrial proceedings[.]" *Id.* Thus, because there was no "stipulation to handle the issue otherwise, **the attorneys' fee claim [had to] be decided by the jury, on both entitlement and amount**." *Id.* (citing *Holmes*, 734 F.2d at 1121).

For this reason, the *Kloster* Court reversed the final judgment awarding attorneys' fees. Nonetheless, it "**remand[ed] the case for a jury determination of the amount of attorneys' fees recoverable by [the plaintiff] following presentation of evidence on this issue"** because "**[d]epriving [the plaintiff] of all attorneys' fees under the circumstances here would be unjust and unnecessary**." *Id.* (emphasis added).

The Undersigned finds the reasoning in *Kloster* persuasive and similarly concludes that depriving Plaintiffs of all their attorneys' fees simply because attorneys' fees evidence was never presented to the jury (which already determined that Utopia's willful and arbitrary violations of its maintenance and cure obligations were so egregious that it merited punitive damages against two of the three plaintiffs) would be unjust. *See also Spell v. Am. Oilfield Divers, Inc.*, 98-498 (La. App. 3 Cir. 12/9/98), 722 So. 2d 399, 405, *writ denied*, 99-0065 (La. 2/26/99), 738 So. 2d 587, *and writ denied*, 99-0074 (La. 2/26/99), 738 So. 2d 589 (citing *Kloster* and noting that "[o]nce a trier of fact determines that attorney's fees are appropriate, then the trier of fact can receive evidence as to the amount of attorney's fees and deliberate that issue separately. That was not done in this case, and **no evidence of attorney's fees was submitted. Depriving [the plaintiff] of all attorney's fees under**

the circumstances would be unfair. We will remand for that purpose. . . . [T]he case is remanded for the presentation of evidence and determination of appropriate attorney's fees." (emphasis added)).

Accordingly, the Undersigned **respectfully recommends** that the District Court **deny without prejudice** Plaintiffs' fees motion [ECF No. 441] and empanel a new jury to receive attorneys' fees evidence and determine a reasonable fees amount under the circumstances.

c. Prejudgment Interest

Plaintiffs also seek to recover prejudgment interest. [ECF No. 441, p. 12]. This Court has observed that:

> "**As a general rule, pre-judgment interest should be awarded in admiralty cases**." *St. Paul Fire & Marine Ins. Co. v. Lago Canyon, Inc.*, 561 F.3d 1181, 1191–92 (11th Cir. 2009) (internal quotation marks omitted). "Pre-judgment interest is not a penalty, but compensation to the plaintiff for the use of funds that were rightfully his." *Id.* "**A district court has discretion to deny prejudgment interest when there are peculiar circumstances that make it inequitable for the losing party to pay prejudgment interest**." *Id.* (internal quotation marks omitted).

Hurtado II, 408 F. Supp. 3d at 1334 (emphasis added).

Defendants argue that Plaintiffs are not entitled to prejudgment interest because they "failed to include any information through which this Court could determine which, if any, of their claims entitle them to collect prejudgment interest." [ECF No. 446, p. 23]. They note that:

> **The jury awarded Plaintiffs a combined $1,372,300[.00] under their Jones Act and unseaworthiness claims, which they are not entitled to prejudgment interest for**. It is well settled that **the recovery of prejudgment interest is not permitted when a Jones Act case is tried to a jury**. *Theriot v. J. Ray McDermott*, 742 F.2d 877 (5th Cir. 1984); *Petersen v. Chesapeake & Ohio Ry. Co.*, 784 F. 2d 732, 740 (6th Cir. 1986). Furthermore, **where Jones Act and unseaworthiness claims are decided by a jury, and the jury does not apportion the damages between the claims, prejudgment interest is not available**. *McPhillamy v. Brown & Root, Inc.*, 810 F. 2d 529, 531-32 (5th Cir. 1987); *Petersen v. Chesapeake & Ohio Ry. Co.*, 784 F. 2d 732, 740 (6th Cir. 1986).
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> **Here, the jury did not apportion its award as to the Jones Act claims and the unseaworthiness claims**. The jury verdict form asked whether the jury found from a preponderance of evidence[:] (1) "That the Defendant UTOPIA YACHTING LLC was negligent in the manner [Plaintiff] claimed, and that the negligence was a legal cause of damage to [Plaintiff]?" and (2) "That the vessel was unseaworthy in the manner [Plaintiff] claimed, and that the unseaworthiness was a legal cause of damage to [Plaintiff]?" [ECF 384, p. 3]. If the jury answered either of those questions affirmatively, the verdict form asked what sum of money they found to be the total amount of Plaintiff's damages. *Id.* at 4. **In answering that question, the jury did not differentiate between the damages they awarded for the Jones Act claim and the unseaworthiness claim.** *Id.* **Therefore, prejudgment interest is not available for any of Plaintiffs' Jones Act or unseaworthiness claims.**

Id. at 24 (some alterations in original; emphasis added).

Plaintiffs do not address Defendants' contention that "the jury did not apportion its award as to the Jones Act claims and the unseaworthiness claims." *Id.* Instead, Plaintiffs state that they "do in fact provide this Court precise, objective criteria for determining the prejudgment interest award, having explained in their [m]otion that

interest at the applicable rate from the date of incident, December 23, 2021,[14] through the date of judgment, April 23, 2025, shall be the basis and time frame for which the interest award shall be determined consistent with *St. Paul Fire* and *Hurtado* [*II*]." [ECF No. 448, p. 3 (footnote added)].

Once again, Plaintiffs' failure to grapple with the procedural differences between their cited cases and the instant case dooms their argument. In *St. Paul Fire & Marine Ins. Co.*, the court held a three-day bench trial. 561 F.3d at 1183. Therefore, the Eleventh Circuit had no reason to address the argument raised by Defendants here, that "where Jones Act and unseaworthiness claims are **decided by a jury**, **and the jury does not apportion the damages between the claims**, prejudgment interest is not available." [ECF No. 446, p. 24].

The other case cited by Plaintiffs is *Hurtado II*. [ECF No. 448, p. 3]. But, as noted above, *Hurtado II* was a *bench* trial and the Court's decision in *Hurtado II* are its findings of fact and conclusions of law following the **bench** trial. 408 F. Supp. at 1321 ("THIS CAUSE is before the Court following a nonjury trial that took place from May 28 to May 30, 2019." (capitalization in original)). Thus, in *Hurtado II*, the Court had no reason to address Defendants' argument that prejudgment interest is not available in Jones Act and

[14] "Pre-judgment interest begins to accrue from the date a plaintiff sustained his injury." *Hurtado II*, 408 F. Supp. 3d at 1334.

unseaworthiness claims decided by a jury, where the jury does not apportion the damages.

In response to Defendants' argument regarding "prejudgment interest [ ] not [being] permitted when a Jones Act case is tried to a jury" [ECF No. 446, p. 24], Plaintiffs state that:

> the cases Defendants cite to argue that prejudgment interest awards are disallowed in Jones Act cases are Fifth Circuit and Sixth Circuit cases, respectively. [ECF No. 446, p. 24]. **Defendants do not otherwise cite any applicable controlling authority from the Eleventh Circuit to that effect**, nor do they sufficiently argue why the cases they do cite should otherwise persuade this Court.

[ECF No. 448, p. 3 (emphasis added)].

But Plaintiffs also do not cite "any *applicable* controlling authority from the Eleventh Circuit" (emphasis supplied) because, as demonstrated above, the two cases they do cite (*St. Paul Fire* and *Hurtado II*) were bench trial cases and Defendants' point is that "where Jones Act and unseaworthiness claims are **decided by a jury, and the jury does not apportion the damages between the claims**, prejudgment interest is not available." [ECF No. 446, p. 24]. Because the *St. Paul Fire* and *Hurtado II* Courts had no reason to address Defendants' position concerning Jones Act and unseaworthiness claims **decided by a jury**, these cases are of little help to Plaintiffs in their attempt to distinguish Defendants' out-of-circuit case law.

In *Lebron v. Royal Caribbean Cruises, Ltd.*, the lower court denied a "request for prejudgment interest on a jury's lump sum damages award for pain and suffering in a

federal maritime case." No. 20-14449, 2021 WL 2917265, at *1 (11th Cir. July 12, 2021). The Eleventh Circuit noted that "[p]rejudgment interest [was] generally available for past pain-and-suffering damages, but unavailable for future pain-and-suffering damages." *Id.* It held that it was *not* abuse of discretion for the district court to deny prejudgment interest altogether where "[the plaintiff] did not request a jury instruction on pre-judgment interest[;]" "did [not] request an itemized verdict distinguishing between past and future damages[;]" and "failed to provide the district court with an objective method by which to determine which portion of the jury's award was attributable to past pain and suffering." *Id.* *1, 3.

Although the issue here is the failure to apportion damages between "the Jones Act claim and the unseaworthiness claim[,]" the Undersigned similarly concludes that prejudgment interest should be **denied**. To be sure, Plaintiffs have supplied the Court with a method for calculating prejudgment interest (by stating that the "interest [should be calculated] at the applicable rate from the date of incident, December 23, 2021, through the date of judgment, April 23, 2025"). [ECF No. 448, p. 3]. But they have **not** provided the Court with a method for *apportioning* the jury's award as to the Jones Act claims and the unseaworthiness claims.

Accordingly, the Undersigned **respectfully recommends** that the District Court **deny** Plaintiffs' prejudgment interest request.

[Unlike the attorneys' fees amount, evidence of which was never presented to the jury, the Undersigned is not recommending that the issue of prejudgment interest be submitted to the new jury, because the jury that heard evidence concerning Plaintiffs' Jones Act and unseaworthiness claims has been relieved of its duty. Thus, there is no way to reverse engineer the determination of which amounts were awarded for Jones Act claims and which amounts were awarded for the unseaworthiness claims, and Plaintiffs have not supplied an objective method for apportionment. For all practical purposes, a new jury would need to receive all the evidence from the 11-day trial in order to render a verdict on apportionment.

In the Undersigned's view, the prejudgment interest claim is in a significantly different posture than the attorneys' fees amount.].

III. CONCLUSION

For the reasons discussed above, the Undersigned **respectfully recommends** that the District Court: (1) **deny without prejudice** Plaintiffs' motion [ECF No. 441] to the extent it seeks an attorneys' fee award and empanel a jury to determine a reasonable fee amount; and (2) **deny** the motion as to prejudgment interest.

IV. OBJECTIONS

The parties will have 14 days from the date of being served with a copy of this Report and Recommendations within which to file written objections, if any, with the United States District Judge. Each party may file a response to the other party's objection

within 14 days of the objection. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY RECOMMENDED in Chambers, in Miami, Florida, on July 23, 2025.

Jonathan Goodman
CHIEF UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
The Honorable Beth Bloom
All Counsel of Record