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The Show Must Go On: The United States District Court for The Southern District of Florida Considers if the Americans with Disability Act Deserves Extraterritoriality Exemptions

I. INTRODUCTION

After surviving the interview and audition process, Samuel Schultz happily accepted an offer to perform as an opera singer on Royal Caribbean's *Azamara Journey* cruise ship.[1] To prepare for the fourteen-week cruise, Schultz moved from Wisconsin to Florida to complete a week-long rehearsal and a pre-employment medical examination.[2] Before Schultz could set sail, Royal Caribbean suddenly and inexplicitly rescinded their offer of employment based on Schultz's history of depression and anxiety.[3] Thirty-three-year-old Schultz had been in remission for the last seven years and followed a stable treatment method of psychotherapy and medication.[4] Furthermore, his former psychiatrist, Dr. Bernard Gerber ("Dr. Gerber"), reported that there was little to no risk of harm to Schultz or others or of reemergence of suicidal ideation.[5] However, Royal Caribbean's chief medical consultant, Dr. Benjamin Shore ("Dr. Shore"), concluded that Schultz's history of mental illness rendered him unfit for duty at sea based on the guidelines from the

1. Schultz v. Royal Caribbean Cruises, Ltd., No. 18-cv-24023, 2020 WL 3035233, at *2-3 (S.D. Fla. June 5, 2020).

2. *Id.* at *2.

3. *Id.* at *3, *27. This issue was heavily contested at trial. The defendant argued that the plaintiff suffered from episodes of depression and claimed that suicidal ideations could resurface while he is on board. Schultz disagreed, claiming that he is mentally fit and there is little to no risk of reemergence of suicidal thoughts. One wonders if this public investigation, sparked by the defendant's precaution for Schultz's mental health, ultimately could have harmed Schulz more.

4. *Id.* at *3, *27. His mental illness was first noted when he was nine years old.

5. *Id.* at *3. Schultz had attempted suicide in the past at an unknown age.

International Labour Organization. Abruptly before the date of departure, Dr. Shore instructed Royal Caribbean to withdraw their offer of employment because the vessel would not have the proper medical services onboard to assist Schultz in the unlikely event of a relapse.[6]

Schultz filed a claim alleging that Royal Caribbean violated Title I of the Americans with Disabilities Act (ADA) by firing him for his prior history of mental illness.[7] Arguing that the ADA was applicable, Schultz claimed that there was no issue of extraterritoriality here because every workplace interaction, including the dismissal in violation his rights, occurred on U.S. soil instead of federal waters.[8] Royal Caribbean asserted that law of the flag state, Malta, must govern the internal affairs of the foreign-flagged vessel because Congress had not issued a decree mandating that the ADA to apply extraterritorially, thus barring the plaintiff from relief.[9] Furthermore, Royal Caribbean argued that the foreign law exception should apply because Malta's anti-discrimination law, the Equal Treatment Regulations (ETR) conflicts with the ADA.[10] Both parties moved for summary judgement.[11] The United States District Court for the Southern District of Florida *held* that extraterritorial application of the ADA cannot apply here because the conduct in question occurred on U.S. soil and that the foreign law exception also does not apply because the ADA is entirely consistent with Malta's anti-discrimination law, thus allowing the Plaintiff to assert a claim of disability discrimination. Schultz v. Royal Caribbean Cruises, Ltd., No. 18-cv-24023, 2020 WL 3035233, at *2-3, 17 (S.D. Fla. June 5, 2020).

II. BACKGROUND

A quintessential foundation of admiralty law is the nation's interest in uniformity of the law to facilitate trade and support economic prosperity.[12] Maritime legal scholars have long debated the choice of law question to determine which law should apply in disputes among shipowners and merchants from different countries, for variation from port to port would create chaos and burden among actors in international

6. *Id.*
7. *Id.*
8. *Id.* at *5.
9. *Id.* at *4, 6.
10. *Id.* at *17-18.
11. *Id.* at *4.
12. *Id.* at *1.

maritime commerce.[13] As the United States grew into a formidable trading partner, the policy of promoting uniformity in law remained paramount to both facilitate economic success and to preserve affirmative relations with foreign nations by preventing trivial maritime disputes from escalating into avoidable international incidents.[14] Therefore, the old notion that a ship is a floating piece of the flag-state's territory and extraterritorial application could have dominated the court's decision if the court had focused only on the economic policy ramifications of applying the ADA to foreign entitles.[15] However, the court recognized another quintessential American ideal at play in this dispute—that all men and women are created equal and the courts must enforce the laws that are designed to protect Americans from discrimination, like the ADA.[16] Therefore, a court had to weigh these legislatively enacted values embodied in American law against admiralty law's longstanding commitment to respect foreign trade partners when conducting its analysis.[17]

A. Extraterritorial Application of the ADA

To protect against international scuffles, American statutes can only be applied to foreign-flagged vessels if Congress has made a clear expression of legislative intent for the specific statute.[18] Thus, the first question to determine is whether the ADA overrides the law of the flag state that governs the *Azamara Journey*.[19] It is a longstanding principle that absent a clear expression of legislative intent, American laws do not apply to the internal management and affairs of a foreign vessel.[20] This

13. *Id.*; *see also* Robert Force, *Admiralty Law Institute Symposium: A Sea Chest for Sea Lawyers: Choice of Law in Admiralty Cases "National Interests" and the Admiralty Clause*, 75 TUL. L. REV. 1421, 1482 (2001) (discussing the clearly identifiable national interest in formulating federal rules to govern maritime disputes in a uniform fashion), *see also* Symeon C. Symeonides, *Cruising in American Waters: Spector, Maritime Conflicts, and the Choice of Law*, 37 J. MAR. L. & COM. 491, 492-93 (2006) (referring to the clear statement presumption that preserves the old notion that a vessel is essentially a piece of the floating flag state and is free from American legal mandates if those mandates govern the internal affairs of the ship).

14. *Schultz*, 2020 WL 3035233 at *1.

15. *Id.*; *see also* Symeonides, *supra* note 13, at 492-93.

16. *Schultz*, 2020 WL 3035233 at *1.

17. *Id.*; *see also* Symeonides, *supra* note 13, at 517 (referring to the choice-of-law question).

18. *Schultz*, 2020 WL 3035233 at *7, Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119, 131, 2005 AMC 1521 (2005).

19. *Schultz*, 2020 WL 3035233 at *7.

20. *Id.* at *4; *see also* McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10, 20-21, 1963 AMC 283 (1963) (holding that NLRA does not extend to foreign crews working aboard foreign ships because such an application would interfere with the "internal management and affairs" of the ship).

presumption "rests on the perception that Congress ordinarily legislates with respect to domestic, not foreign matters" and thus must consider the potential for crudely overstepping into the affairs of another country.[21] However, if the incident in question affects the "peace, dignity, or tranquility of port," courts have historically allowed American law to govern the dispute.[22]

To determine if Congress has given the ADA extraterritorial effect, the court must consider the text of the statute, the structure, the legislative history, and any other policy rationales.[23] Looking at the legislative history of the ADA, it is clear that Congress intended to provide broad protection to shield American workers against discrimination in the workplace.[24] On its face, one could argue that the statute should apply because an ADA dispute involves the interests of the United States and its citizens. On the other hand, one could argue the statute would not apply because the it intrudes into the internal order and discipline of the vessel's management.[25] Similar examples include the Labor Management Reform Act (LMRA) and the National Labor Relations Act (NLRA), which appellate courts have declined to apply to a foreign-flagged vessel in wage disputes claims.[26] Courts cited the importance of employer autonomy in operating their vessels to make day-to-day decisions without any undue interference from illegitimately applied domestic laws.[27] Opposingly, the Supreme Court has upheld enforcement of the ADA against a foreign-flagged vessel that operated in domestic waters and conducted most of its business in the United States.[28] In *Spector v. Norwegian Cruise Line Ltd.*, the Supreme Court carved out an exception from the internal affairs

21. *Schultz*, 2020 WL 3035233 at *5 (citing Smith v. United States, 507 U.S. 197, 204 n.5 (1993)); *see also* Kiobel v. Royal Dutch Petroleum, 569 U.S. 108, 115 (2013).

22. *Schultz*, 2020 WL 3035233 at *5; *see* Mali v. Keeper of the Common Jail, 120 U.S. 1, 7 (1887).

23. *Schultz*, 2020 WL 3035233 at *5; *see* Sale v. Haitian Centers Council Inc., 509 U.S. 155, 177 (1993).

24. *Schultz*, 2020 WL 3035233 at *10; Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119, 119-21, 2005 AMC 1521 (2005).

25. *Schultz*, 2020 WL 3035233 at *6; *Spector* 545 U.S. at 130.

26. *Schultz*, 2020 WL 3035233 at *6; *see also* Lobo v. Celebrity Cruises Inc., 704 F.3d 882, 888, 2007 AMC 1521 (11th Cir. 2013) (quoting Benz v. Compania Naviera Hildalgo, S.A., 353 U.S. 138, 143-44 (1957) (holding that Congress did not intend for the LMRA to resolve labor disputes between nationals of other countries operating ships under foreign laws, only American employers and employees)).

27. *Schultz*, 2020 WL 3035233 at *9; *Lobo*, 704 F.3d at 890 (affirming that that the concern for international relations in these cases is general in nature and should not be determined by a case-by-case, effects-oriented inquiry).

28. *Schultz*, 2020 WL 3035233 at *9.

doctrine to hold that the public accommodation provisions of Title III of the ADA applied to foreign-flagged cruise ship operating in U.S. waters.[29] Here, the Court reasoned that the ADA is a general statute that is presumed to apply to conduct that takes place in U.S. waters if "the interests of the United States or its citizens, rather than interests internal to the ship, are at stake."[30] Thus, the American citizens who had purchased tickets for a cruise beginning and ending in American ports had an interest to board a ship with reasonable modifications to accommodate disabled passengers because of the interest in promoting peace and dignity between contracting parties in American ports.[31]

Before adhering to *Spector*, the court must determine if the location of the plaintiff's employment is foreign or domestic-based.[32] If employment is based domestically, then an employer has availed itself of United States law and must comply with the ADA.[33] If employment is foreign based, then the court must determine if the ADA has extraterritorial application onto this foreign-flag vessel.[34] In *Shekoyan v. Sibley Int'l Corp.*, the court applied the primary workstation test to determine location of employment.[35] Courts have consistently held that an individual, whose primary workstation is abroad, cannot characterize otherwise extraterritorial employment as domestic solely because employment decisions were made and the training occurred for such jobs in the United States.[36] However, other courts have criticized this test for being confusing, vague, and overly simplistic.[37] The more frequently used test is the center of gravity test, formulated in *Torrico v. Int'l Bus.*

29. *Schultz*, 2020 WL 3035233 at *10; Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119, 130 (2005).

30. *Schultz*, 2020 WL 3035233 at *10 (quoting *Spector* 545 U.S. at 130).

31. *Spector*, 545 U.S. at 130; *see also* Symeonides, *supra* note 13, at 495.

32. *Schultz*, 2020 WL 3035233 at *12.

33. *Id.*

34. *Id.*

35. 217 F. Supp. 2d 59, 64 (D.D.C. 2002).

36. *Id.*; *Schultz*, 2020 WL 3035233 at *12; Denty v. SmithKline Beecham Corp., 109 F.3d 147, 150 (3rd. Cir. 1997) (holding that the work site was abroad although employment decisions were made within the United States); Pfieffer v. Wm. Wrigley Jr. Co., 755 F.2d 554, 555 (7th Cir. 1985) (holding that since plaintiff was company's director abroad, his place of employment was abroad); Hu v. Skadden, Arps, Slate, Meagher & Flom LLP, 76 F. Supp. 2d 476, 477 (S.D.N.Y.1999) (holding that just because the defendant conducted interviews and may have made hiring decisions in United States does not mean location of employment is in United States because the work non-citizen plaintiff would do if hired would be performed abroad).

37. *Schultz*, 2020 WL 3035233 at *13; Gomez v. Honeywell Int'l, 510 F. Supp. 2d 417, 421-23 (W.D. Tex. 2007) (holding that this test makes an invalid assumption that an employee has a primary workstation given the nature of the global economy and can have counterintuitive outcomes).

Machines Corp.[38] This test is comprised of a compressive list of factors, such as the site of creation of employment relationship including where the terms of employment were negotiated, the intent of the parties concerning the location of the employment, the locations of the reporting relationship for the position at issue, the actual locations where the employee performed duties and received benefits as well as the relative amount of time the employee spent at each of these sites and the location of the employee domicile.[39]

Finally, the court must consider the foreign law exception of the ADA.[40] This allows an entity to act in compliance with the laws of their foreign country, even if doing so conflicts with part of the ADA, to avoid violating the foreign law they operate under.[41] If a party claims the exception, they must provide enough evidence for the court to reasonably determine if a conflict of law exists and how to then apply the legal principles of the foreign state.[42]

B. Application of the ADA

Upon determination that the domestic law applies, a plaintiff must establish the prima facie elements of their claim to receive redress.[43] The ADA forbids employers from discriminating against a qualified individual on the basis of their disability in regard to job application procedures, such as the hiring, advancement, or discharge of employees.[44] To establish a prima facie case, a plaintiff must show that (1) he was disabled, (2) he was qualified to perform the job, and (3) he was subjected to an adverse employment action because of his disability.[45] In establishing their case, a plaintiff can rely on either direct or circumstantial evidence, which require different evidentiary burdens. Thus, the party must specify which type of evidence they are relying on before they establish their prima facie case of discrimination.[46]

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38. 213 F. Supp. 2d 390, 401 (S.D.N.Y. 2002); *Schultz*, 2020 WL 3035233 at *13.

39. *Schultz*, 2020 WL 3035233 at *13-15; *see also Torrico*, 213 F. Supp. 2d at 401, *Gomez*, 510 F. Supp. 2d at 423.

40. *Schultz*, 2020 WL 3035233 at *17; 42 U.S.C. 12112(c)(1).

41. *Schultz*, 2020 WL 3035233 at *17; 42 U.S.C. 12112(c)(1).

42. *Schultz*, 2020 WL 3035233 at *18; Beaman v. Maco Caribe Inc., 790 F. Supp. 2d 1371, 1380 (S.D. Fla. 2011) (holding that the Court would rely on expert testimony and evidence concerning the substance of the foreign law).

43. *Schultz*, 2020 WL 3035233 at *17.

44. *Schultz*, 2020 WL 3035233 at *19; 42 U.S.C. 1211(a).

45. Ward v. United Parcel Service, 540 F. App'x 735, 740 (11th Cir. 2014) (citing Cleveland Home Shopping Network, Inc., 369 F.3d 1189, 1193 (11th Cir. 2004)).

46. *Schultz*, 2020 WL 3035233 at *19.

In a direct evidence case, the plaintiff alleges that an unlawful motive was a determinative factor in the employment decision.[47] If they met this burden, the defendant must prove by a preponderance of the evidence that the same employment decision would have been reached if the discriminatory animus was not involved.[48] For example, evidence that merely suggests discrimination or is subject to multiple interpretations would not constitute direct evidence, but blatantly discriminatory remarks toward a protected basis would.[49] Circumstantial evidence requires the plaintiff to establish the prima facie case of disability discrimination by a preponderance of the evidence.[50] Once this is established, the defendant can rebut the claim with a legitimate, nondiscriminatory reason for the challenged employment decision by a light burden of production, not persuasion.[51] No matter which form of evidence the plaintiff uses to establish their prima facie case, the plaintiff will always have the burden to demonstrate that it is more probable than not that the defendant took an adverse employment action against them on the basis of a protected characteristic.[52]

Finally, the court must determine whether the plaintiff is proceeding under the theory of disparate impact or disparate treatment.[53] The central difference between the two theories is that disparate treatment requires a showing of discriminatory intent, while disparate impact does not.[54] Disparate impact is designed to redress facially neutral policies or practices that have a disproportionate effect on groups protected under Title VII, for example if a company refuses to hire a female in a role in a predominantly male field.[55] Disparate treatment occurs anytime that the

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47. *Schultz*, 2020 WL 3035233 at *19; *see also* Loperna v. Scott, 2009 WL 1066253, *9 (M.D. Fla. April 21, 2009).

48. *Schultz*, 2020 WL 3035233 at *19; *see also* Farley v. Nationwide Mut. Ins., 197 F.3d 1322, 1335 (11th Cir. 1999); E.E.O.C. v. Joe's Stone Crab Inc., 220 F.3d 1263, 1283 (11th Cir. 2000).

49. *Schultz*, 2020 WL 3035233 at *19; *see also* Rojas v. Florida, 285 F.3d 1339, 1342 n.2 (11th Cir. 2002); Harris v. Shelby County Bd. of Educ., 99 F.3d 1078, 1083 n.2 (11th Cir. 1996); Earley v. Champion Intern. Corp., 907 F.2d 1007, 1081-82 (11th Cir. 1990).

50. *Schultz*, 2020 WL 3035233 at *20; *see also* McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-803 (1973).

51. *Schultz*, 2020 WL 3035233 at *20; *see also* Ward v. United Parcel Service, 540 F. App'x 735, 740 (11th Cir. 2014); Quick v, Tripp, Scott, Conklin and Smith, PA, 3 F. Supp. 2d 1357, 1364 (S.D. Fla. 1999).

52. *Schultz*, 2020 WL 3035233 at *22; *see also* Wright v. Southland Corp., 187 F.3d 1287, 1292 (11th Cir. 1999).

53. *Schultz*, 2020 WL 3035233 at *23; *see also* Raytheon Co. v. Hernandez, 540 U.S. 44, 53 (2003).

54. *See* E.E.O.C. v. Joe's Stone Crab Inc., 220 F.3d 1263, 1278 (11th Cir. 2000).

55. Griggs v. Duke Power Co., 401 U.S. 424, 430 (1971).

employer treats a person less favorably than others because of their race, color, religion, sex, or national origin, for example if an employer hires a younger applicant instead of an older applicant because they think the younger applicant will be better with technology.[56]

III. COURT'S DECISION

In the noted case, the United States District Court for the Southern District of Florida analyzed two major issues, one of international admiralty law and the other of domestic anti-discrimination law.[57] First, the court analyzed the plaintiff's employment conditions to determine if rescinding the offer of employment involved matters of the internal order of the vessel.[58] Next, the court conducted an employment discrimination analysis to determine if the plaintiff was discriminated against based on his history of mental illness.[59]

The court began by explaining that the extraterritoriality is governed by case law that reaffirms Congress's intent for American statues to apply to foreign entities that operate in U.S. territories.[60] Outposts of foreign entities operating on U.S. soil, including the defendant, willingly expose themselves to domestic anti-discrimination laws such as the ADA.[61] Thwarting this clear-cut job decision, the defendant argued that the job would take place solely on international waters, thus triggering location of employment analysis.[62]

The court rejected the defendant's plea for the primary workstation test, stating that the test failed to guide the court since the plaintiff was trained in the United States but never boarded or worked on the foreign-flagged vessel.[63] Instead, the court applied the center of gravity of test and considered the entire employment relationship between the plaintiff and

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56. Int'l Brotherhood. of Teamsters v. United States, 431 U.S. 324, 325 (1977). [BBT6, 2021 ed. rule change does not include Brotherhood]

57. *Schultz*, 2020 WL 3035233 at *4.

58. *Id.* at *4, 7.

59. *Id.* at *19.

60. *Schultz*, 2020 WL 3035233 at *8; *see also* Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119, 132, 2005 AMC 1521 (2005); *see also* Morelli v. Cedel,141 F.3d 39, 43 (2d Cir. 1998) (finding that the ADA, Title VII, and the Age Discrimination in Employment Act apply to a foreign company's domestic operations).

61. *Schultz*, 2020 WL 3035233 at *11 (noting that there is a compelling policy argument in that applying the ADA would prevent foreign entities from having any control in their relationship with employees).

62. *Id.*

63. *Id.* at *15.

employer.[64] The court decided that plaintiff's employment location is in the United States because the employment relationship began in Florida after the conditional job offer, the contractual agreement labeled the plaintiff as an employee, compensated him for rehearsal times, housed him in employer-owned living facilities in Florida, the plaintiff performed these employment duties and received benefits in the United States, the plaintiff is domiciled in the United States, and the plaintiff's allegations involve the defendant's employment practices that occurred on U.S. soil while the plaintiff never set foot on the foreign vessel.[65] Additionally, the defendant's failure to demonstrate that the denial of the plaintiff's employment interfered with matters that concern with the vessel's internal operations. Therefore, the court decided that there is no need to decide the extraterritorial application of the ADA and it is not foreclosed as a matter of law from applying to the facts of this case.[66]

Next, the court addressed the defendant's claim that the foreign law exception precluded the ADA.[67] The plaintiff certified that the ADA is entirely consistent with Malta's own anti-discrimination law, the Equal Treatment Regulations, which safeguards employment rights for people with disabilities.[68] The plaintiff provided expert witnesses to testify that the defendant incorrectly applied or mistook ILO guidelines to be the only applicable law of Malta, when the ILO guidelines are designed to serve as a tool to assist in the examination of seafarers.[69] Therefore, the court found that the defendant had attempted to avail itself of the foreign law exception to their own benefit by making an inference based on speculation and conjecture. Further, the defendant failed to present an example of Maltese law in conflict with the ADA or bring in an expert witness to testify to the conflict.[70] Thus, the application of the foreign law exception was unreasonable and the court granted the plaintiff's motion for summary judgement as to the application of the ADA.[71]

To resolve the ADA claim, the court first determined whether this case involved direct or circumstantial evidence.[72] The plaintiff argued that

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64. *Id.* at *13.
65. *Id.*
66. *Schultz*, 2020 WL 3035233 at *16-17, *see also* Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119, 121, 2005 AMC 1521 (2005),
67. *Schultz*, 2020 WL 3035233 at *17; *see* 42 U.S.C. 12112(c)(1).
68. *Schultz*, 2020 WL 3035233 at *17.
69. *Id.*
70. *Id.*
71. *Id.* at *18-19.
72. *Id.*

Dr. Shore's email containing the written medical evaluation that deemed the plaintiff unfit for shipboard duty constituted direct evidence of disability discrimination.[73] The court disagreed, holding that the plaintiff drew an "errant conclusion" in suggesting that this constitutes a blatant discriminatory animus.[74] Instead, the court interpreted Dr. Shore's suggestion of denying the plaintiff employment as an attempt to exercise reasonable care, to protect the vessel's employees, and to ensure compliance with ILO guidelines.[75] Thus, the plaintiff did not prove the existence of discrimination based on disability without inference or presumption and instead must rely on circumstantial evidence to prove that it is more probable than not that the defendant rescinded the offer of employment based on the plaintiff's history of mental illness.[76] Furthermore, this is a disparate treatment case because there is no neutral policy that disproportionately affects people with a history of mental illness.[77]

Next, the court worked through the prima facie elements of the plaintiff's ADA claim.[78] First, the plaintiff demonstrated that the defendant perceived him to possess a disability that could end his own life and thus justified a withdrawal of the employment offer.[79] The second element required the plaintiff to bear the burden of proving that he is a qualified individual who can perform the essential functions of the job.[80] To determine this, the court first considered whether the plaintiff satisfied the position's prerequisites, including sufficient experience and skills, adequate education background, or appropriate licenses for the job.[81] Then, the court analyzed whether the plaintiff could perform the essential functions of the job.[82] The court noted that the defendant's argument that the plaintiff's history of severe depression requiring psychotherapy to be available on board renders the plaintiff unqualified for duty at sea failed

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73. *Id.* at *19.

74. *Id.* at *20; *see* Chambers v. Walt Disney World Co., 132 F. Supp. 2d 1356, 1364 (M.D. Fla. 2001).

75. *Schultz*, 2020 WL 3035233 at *21; *see* Burrell v. Bd. of Trs. of Ga. Mil. Coll., 125 F.3d 1390, 1393 (11th Cir. 1997).

76. *Schultz*, 2020 WL 3035233 at *20-22; Wright v. Southland Corp., 187 F.3d 1287, 1291 (11th Cir. 1999).

77. *Id.* at *24.

78. *Schultz*, 2020 WL 3035233 at *24.

79. *Id.* at *25; *see e.g.* Lewis v. Union City, Ga., 934 F.3d 1169, 1181 (11th Cir. 2019).

80. *Schultz*, 2020 WL 3035233 at *26; Cleveland v. Pol'y Mgmt. Sys. Corp., 526 U.S. 795, 806 (1999).

81. *Schultz*, 2020 WL 3035233 at *26; *Pol'y Mgmt. Sys. Corp.*, 526 U.S. at 806.

82. *Id.*

because the defendant did not specify which essential element cannot be performed.[83] Underwhelmed, the court held that there was a genuine issue of material fact requiting a jury, thus allowing the plaintiff to meet the second element.[84] The third element questioned whether the plaintiff had suffered an adverse employment action that impacts the terms, conditions, or privileges of a plaintiff's job in a real or demonstrable way, as a result of the defendant's decision to withdraw his offer of employment.[85] The adverse employment action here was the withdrawal of the employment offer because it precluded future employment opportunities and performances onboard defendant's vessels.[86]

Once the plaintiff met *McDonnell Douglas* burden to prove the prima facie case, the court looked to see if the defendant could provide a legitimate, non-discriminatory reason for the adverse employment action.[87] This burden was easily met by the defendant because there is sufficient evidence that the employment offer was revoked when the Plaintiff did not meet ILO guidelines for fitness at sea.[88] Thus, the burden swung back to plaintiff to demonstrate that the legitimate, non-discriminatory reason for the adverse employment action is pretext, or a cover-up, for a discriminatory decision.[89] The court decided that it is a question for the jury if it was more probable than not that the plaintiff was subjected to an adverse employment action on the basis of a protected characteristic.[90] Thus, the court leaves the jury to balance the importance of protecting American workers from discrimination against the commitment of maritime law to preserve uniformity and positive foreign relations.

IV. ANALYSIS

Although this decision seemingly protects Mr. Schultz from losing his job based on his history of mental illness, the final determination was left to the jury. While the court correctly determined that a fair decision required analysis by the factfinder, the jury's decision will have broad

83. *Schultz*, 2020 WL 3035233 at *27.
84. *Id.*
85. *Id.*; Davis v. Town of Lake Park, 245 F.3d 1232, 1239 (11th Cir. 2001).
86. *Schultz*, 2020 WL 3035233 at *28; Fortner v. Kansas, 934 F. Supp 1252, 1266 (D. Kan. 1996).
87. *Schultz*, 2020 WL 3035233 at *28; McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973).
88. *Schultz*, 2020 WL 3035233 at *28.
89. *Id.*, *McDonnell Douglas*, 411 U.S. at 805.
90. *Id.* at *29-30.

reaching implications as to what protections are in place for employees and which employees will benefit from them. The international trading system of globalization is cemented into our economy and will continue to expand, creating more opportunities for American laborers to work for foreign owned countries in foreign locations. Discrimination is pervasive, and their decision could leave thousands of American workers without protection against it. Additionally, the jury's decision affirms the lengths of protection the ADA can provide for workers with mental disabilities. While society might assume that the ADA protects both of these with physical and mental disabilities equally, there is actually an enormous gap between what mental disability law seems to cover and what it actually does.[91] Imagine two workers: one with a history of physical disability and one with a history of mental disability. It is objectively clear that an employer could not to rescind an employment offer from worker A who manages their physical disability of asthma with medication because they could suffer a coughing attack while on board. Thus, why should the same treatment not be given to worker B with a mental disability of depression because they could suffer from a bout of depression while on board?[92] The severity or type of disability should not impact whether a worker is safeguarded against discrimination: all workers should be protected. Considering that Americans with mental illness are consistently stigmatized, stereotyped, and discriminated against without full protection from the ADA, this case has the potential to reinforce the importance of anti-discrimination law.

It is clear that the domestic issue at bar is crucial to the wellbeing of the nation: if workers are being discriminated against without protection, they could leave to find work overseas, they could lose their income and resort to illegal means for income, or a multitude of other undesirable outcomes. However, the court does not forget the longstanding admiralty law precedent to analyze whether a broad expansion of domestic law would interfere into matters of foreign nations. From an economic standpoint, extraterritoriality is critical to preserve harmony in interstate and international maritime law. Foreign companies will not want to trade with the United States if their workers are arbitrarily forced to comply with our laws while at American ports. Thus, Congress's policy protects the United States economy by preserving positive relations with trading partners. However, the ADA and other laws protect those who keep the

91. Jane Byeff Korn, *Crazy (Mental Illness Under the ADA)*, 36 U. Mich. J.L. Reform 585, 589 (2003).

92. *Schultz*, 2020 WL 3035233 at *1.

United States' economy running: the workers. Shouldn't these domestic laws that aim to ensure fair employment practices be applied because they fall in line with the same guiding argument that favors the economy? And will the jury even consider the bigger picture of how this judicial decision could impact international trade? Or will they be swayed by the silenced opera singer?

United States Magistrate Judge Edwin G. Torres began his opinion by advocating for an all-out ban against applying any law generally governing employment discrimination to foreign-flagged vessels absent an international treaty or a congressional mandate.[93] Although this would remove protections for workers against discriminating treatment by denying legal remedies through the court system, it would theoretically lead citizens to demand action from their elected representatives. By denying relief in this case, the court would essentially force Congress to do their job and give a clear mandate that would resolve the confusion around this topic.[94] The decision is now for the jury, who again could ignore the underlying issues at play here.

V. CONCLUSION

The plaintiff met his prima facie burden for establishing an ADA claim but now must meet the ultimate burden of showing that it is more probable than not that he suffered an adverse action. The court left this issue to be determined by a jury, and thus leaving the matter unresolved. The defendant met its burden of presenting a legitimate non-discriminatory reason for the adverse employment action that the plaintiff alleged occurred when the defendant rescinded the offer of employment after learning about the plaintiff's history of depression. Thus, the plaintiff has to demonstrate that this reason given by the defendant is pretext for disability discrimination and the employer's proffered reasons were illegitimate and disguising discrimination against the plaintiff.

Kathryn Rose McCarty*

93. *Id.* at *1.
94. *Id.* at *2.

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