

## New compensation possibilities for defective vessels and repairs?

A recent case decided by the Chief Justice of Queensland, [Pix v Suncoast Marine Pty Ltd](#), may have opened up a new head of damages in cases where defects at the time of sale, or defective repairs, make a vessel unavailable for use (including making the vessel unavailable while repairs are undertaken).

In this case the vessel, Jalun, is a 65-foot luxury sailing catamaran, which was sold in 2007 by its builders on an as-new, under-survey basis. The preparation and painting of the hull of the vessel was defective, with the result that after a couple of years' operation, blistering and delamination became apparent.

Most of the case centred on Suncoast Marine's liability for the damage claimed, and the calculation of those damages. However perhaps the most important aspect of the decision was the claim by the plaintiff that he should be compensated for his inability to use the vessel during the period of repairs (230 days).

One argument was that as the plaintiff was unable to show any specific loss of profit as a result of the vessel's unavailability, damages for the loss of the vessel's use should be nominal, if they were available at all. The counterargument was simply that the vessel had value to Mr Pix as a sailing vessel, but much less value as a damaged, unusable sailing vessel, and that he should be compensated for this diminution of value.

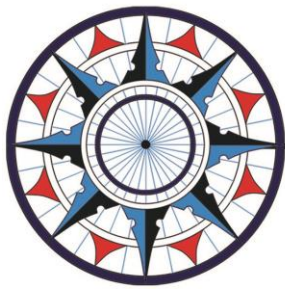
The Chief Justice applied a century-old English case, which, as we can tell, has never before been applied in Queensland in a maritime case. The case, [Owners of Steamship "Mediana" v Owners of Steamship "Comet" \[1900\] AC 113](#), focused on damages claimed by Mersey Harbour Board when a lightship was damaged and unable to be used during its period of repair.

In that case, Lord Justice Devlin said that the owner of the damaged vessel should receive

*... substantial, and not merely nominal, damages notwithstanding that he cannot show any loss of profit. He has lost the use of his vessel and whether he would have used her for pleasure or business or some other form of service, such a dredging, he is entitled for compensation for the loss of use."*

Applying that principle to the current case, Her Honour calculated the depreciation in value of the vessel from the date of its purchase until the date its repairs were concluded, and then applied the statutory interest rate of 10 percent to that value for the period of 230 days. In this case, that came to some \$126,000 - real money.





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This case raises the rather exciting prospect that vessel owners, whose vessels are off the water as a result of either defective quality at the time of sale, or defective repairs after sale, might now be able to claim damages for the loss of the use of their vessel during the period when those defects are repaired.

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