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Federal Bar Association

ADMIRALTY LAW SECTION
ADMIRALITAS

In This Issue

Introduction

Welcome to another issue of *Admiralitas*! Thanks to Theron Korsak for preparing this issue's featured interview of Professor Martin Davies, from Tulane Law School. Thank you also to our other contributors for providing Circuit-wide summaries of recent maritime case law.

It is my pleasure to introduce each of you to Adam Cooke, who has graciously volunteered to lead the charge in future issues of Admiralitas. Adam Cooke is an AV Rated Florida Board Certified Admiralty and Maritime Attorney whose practice primarily involves representing marine lenders in mortgage foreclosures and commercial yacht disputes. Adam Cooke grew up the son of a submarine officer, spent most of his early years living in Mystic, CT, and has been a recreational boater since a very young age. It is with this background that Adam developed an interest in maritime law. I appreciate Adam's willingness to take over as Editor of Admiralitas as I take on new duties as Chair of the Admiralty Law Committee.

If you are interested in contributing to a future issue, whether through providing case law summaries, preparing a featured article, or identifying maritime practitioners, professors, or judges for potential future member spotlights, please let Adam know. We are always looking for more contributors!

Enjoy!

Eric S. Daniel, Outgoing Editor, FBA Admiralty Law Section Board Member

Adam B. Cooke, Incoming Editor, FBA Admiralty Law Section Board Member

Profile Spotlight: Federal Bar Association Admiralty Section

This issue's profile spotlight's **Martin Davies**, professor at the Tulane University Law School and the Director of the Tulane's Maritime Law Center. He joined the Tulane Law School faculty in 2000 after a visiting appointment in 1999.

Professor Davies studied law at the University of Oxford where he obtained his Bachelor of Arts degree with first class honors in 1978, his Bachelor of Civil Law degree with first class honors in 1979 and his Master of Arts in 1983. He also obtained his Master of Laws degree in 1980 at Harvard University.

Professor Davies is an international authority on admiralty law who has taught in Australia, China, England, Italy, Singapore and the United States. During his tenure at Tulane he received the Felix Frankfurter Distinguished Teaching Award from the Law School graduating class in 2003 and 2011. In 2012, he was chosen for a Tulane University President's Award for Excellence in Teaching.

Professor Davies has authored (or co-authored) seven books on international trade law, shipping law (Australian and American), torts and conflict of laws and has worked as a consultant to Australian law firms for 30 years. Additionally, he serves on the Editorial Board of Lloyd's Maritime and Commercial Law Quarterly and the Melbourne Journal of International Law. In 2019, Professor Davies was elected to the prestigious Comité Maritime International (CMI) as a Titulary Member for his significant contributions to the field.

Martin, please share with us a little about what first interested you in a legal career.

I'm not sure exactly what first interested me in a legal career; however, I do remember when I was in high school, my mother worked at a law office. I recall that the work that the lawyer did, or as in England, it would be called the work that the solicitor did, perked my interest. However, I didn't give law much thought until I finished high school. In fact, I applied to Oxford to pursue a degree in pure mathematics, not law.

Shortly after I was admitted into the mathematics program, I inquired whether I could change to law. When I made a request to change majors I was asked "why?" I can remember telling the school that I really enjoyed all the time I spent alone working on equations; however, math reminded me of other things I really enjoyed doing alone; but, like math, in my opinion, it didn't amount to much, nor did it help anyone. Fortunately, my request to change my major to law was approved. So, at the age of 17, I ceased to be a mathematician.

Please share with the readers some of your Oxford law school experiences.

In England, law is an undergraduate degree. The program consists mostly of basic law subjects. As a student I had some degree of choice of courses; however, not much. I completed the basic law degree in three years. I then stayed on at Oxford to complete a Bachelor of civil law, or "BCL." Although the BCL program is referred to as a "bachelor's degree," it really is the equivalent of a master of laws ("LLM") degree.

In the BCL program, I first had an opportunity to take more than the introductory law courses. The course that I remember most from the experience was a course in Conflict of Laws. Ironically, this is an area of law that I've never really stopped practicing. During the BCL program, I did not take any course in maritime law.

Please describe how your Oxford Law experience compares to an American law school, such as Tulane?

The Oxford experience is very different from the American law school experience. Oxford is a "college based" system where university faculty would give lectures on specific parts of the subjects; for example, contract damages. As a student I wasn't required to go to these lectures, but I could, if I so chose to do so.

The majority of my undergraduate law program consisted of small group "tutorials" with a professor, or "fellow." Once a week, I would have a session with a fellow from a particular college. Sometimes I had one or two other students with me. The fellow would provide us a reading list, and from it we each wrote an essay on the subject. At the end of the week we'd talk about the readings and the essays. What I learned, and what I was tested on, all stemmed from these tutorials.

American law schools employ, to a degree, elements of the Oxford model. For example, I often use the Socratic method of teaching at Tulane, but the opportunity to do so is usually limited. In a large classroom there may be 50 students. Unless a student is called upon, he or she may come to class unprepared and elect to not actively participate. At Oxford? The small group tutorials did not afford such an opportunity. There was nowhere to hide. If I didn't complete the work, and prepare for the lecture, there was no need to show up as doing so was merely wasting the fellow's time.

Was Admiralty and Maritime law your first interest?

No, admiralty and maritime law was not my first interest. As mentioned, conflict of laws was of interest to me, not maritime law. That said, many of the cases assigned employed maritime issues to illustrate, for example, basic contract principles. I do remember that when reading these cases I was thinking, "Who are all these people? Why are they carrying cargo? Why are there so many different charterers? Why are these contract questions coming about in a maritime context?" Not until I became an academic did I start exploring the maritime issues in more depth.

How did you become a law professor?

When I finished my BCL I was offered a job teaching law at the University of Nottingham. However, before starting the job, I applied to a scholarship offered

at Harvard. As luck would have it, I was selected for the scholarship. I sent Nottingham notice that I was not going to take the job, but instead I was heading to Harvard. They informed me they would keep my job open until I finished my studies. So, off to America I went.

Harvard was an extraordinary intellectual experience, very different than Oxford. For me it was an absolutely fascinating time. At Harvard, the norm was history and theoretical thinking; whereas, Oxford was very focused on doctrinal legal analysis. After Harvard, I went back to Nottingham to teach. In my first year I taught 1L students. I quickly realized that my heart was not into the task. After four grueling years at Oxford, followed by a year at Harvard, I decided that I needed to "move on." I quit teaching at the end of the year. In retrospect, probably not the best career move, in fact, practically academia career suicide; however, leaving Nottingham was something that I felt that I needed to do.

What did you do after leaving your first teaching job?

As mentioned, I really needed to get out from academia and do something different. For the next two years I worked as a professional stage actor, earning my "equity card." I worked all over the UK. I even did one touring show in Belgium; however, after a while I decided that I had enough.

Did your acting career prepare you in any way for your law career?

I often get asked this question, but "no, not really," acting did not prepare me for a legal career. In fact, I never saw much connection between the two careers. Before acting I could always project my voice to the back of the room, and I was never one to get stage fright.

What did you do after your acting career?

After acting I went back to teaching law. Knowing that Nottingham wasn't likely to welcome me, I looked elsewhere. At the time I was looking for work, the academic recruiting season in Australia was underway. So, I applied for a job in Australia fully thinking I'd never get hired, but I did. I was hired to teach law at the University of Western Australia.

Before arriving in Australia, I was thinking that I'd stay for a few years then go back to a position in the UK. After three weeks in Perth I decided I was never going back. Perth was paradise compared to the UK. In total, I spent 17 years in Australia. Six years at University of Western Australia, then 11 years in Melbourne. I first taught at Monash University. After a few years I took a job with Melbourne University. Up until 2020, I generally traveled back to Australia every year to teach an accelerated course on international trade law.

In addition to law, I understand that you are a consultant to an Australian law firm. Could you please share your experience?

When I moved to Melbourne, I started working one day a week as a consultant to a group of maritime attorneys. If they had difficult legal questions, they would save them for me. I would research and answer the questions. I stayed with this maritime group for several years. In fact, when the maritime group changed law firms, I went with them. For the last twenty years I've continued with them, despite the group changing law firms twice during that time. When offered the position at Tulane my relationship continued with the firm – I now answer their questions by email, of course.

Please share with the readers how you came to your current position at Tulane?

In 1988, I had a semester off from the University of Western Australia. I spent my sabbatical at Tulane while I worked on a new edition of my Australian shipping law book. In 1999, Tulane had inquired if I were interested in eventually becoming the Director of the Maritime Law Center. I came to New Orleans that year for a "look-see" visit, essentially an opportunity for both the university and I to determine if Tulane would be a good fit. The intention of the visit was to hire me if the year worked out, which it did, and I was hired. I've been at Tulane ever since.

Have you ever thought about leaving Tulane for another institution?

Over the years I've been approached with job offers; however, I've turned them all down. I love what I do at Tulane. As a maritime law academic, I can't think of a better place to be. The only time I even considered moving from Tulane was after Hurricane Katrina.

After the storm, the campus was devastated. The university cancelled the fall 2005 semester. For a brief moment there was some talk that the university may not survive. The university remained closed for four months. Fortunately, the university did not close. Tulane University reopened its doors to students in January of 2006, due in large part to the combined efforts of the university leadership and those that stayed in New Orleans after the storm, I am very happy that I stayed. I love this place, and I love my job.

In the spring of 2020, Tulane cancelled "in person" learning due to COVID. How did the 2020 closure of the campus compare to the 2005 closure?

In 2005, the fall semester did not happen. Technology for remote learning was not in-place. But more importantly, Katrina affected just New Orleans, not the whole country. Those of us that remained were very committed to the University and its success. After the storm the faculty and students came together to bring the university back. We all became close.

In 2020, the situation was somewhat different. The pandemic affected all universities throughout the country, not just Tulane. Fortunately, technology, and "post-Katrina" improvements to the buildings allowed for learning to continue even after the closure of the campus.

What effect, if any, stemmed from the 2020 campus closure? Is business conducted the same in a virtual world?

In the COVID environment everyone has learned when to "value" in-person face-to-face contact, and when it may not be necessary. Today, we can do a lot of the things we used to do without traveling. For example, I used to go to China every year to make presentations. With technology, I am able to keep in touch with my international network.

The net effect, COVID has provided legal profession an opportunity to reassess how we used to do business. Post COVID, the practice of law, and law school education, will be forever changed. Whether-or-not all the changes are positive is yet to be seen. Time will tell. Ideally, post COVID, all students will return to campus – a majority of them already have at Tulane.

Physically being "on campus" is a great benefit to both faculty and students.

Autonomous vessels are bound to change the way the international shipping is conducted. Do you see necessary changes in the law in order to conduct trade between nations with these vessels?

Technology is way ahead of the law. To the extent that the law is catching up to the technology it is currently being addressed on the international level. Today, the International Maritime Organization ("IMO") is well underway reviewing the international conventions and what may or may not need to change for autonomous vessels to efficiently and safely operate. For example, the IMO has been conducting a scoping exercise for the safety conventions, and it has a good handle on issues such as who counts as "crew." All laudable efforts. However, the area that has yet to be addressed relates to "pilotage." These laws may be a considerable legal obstacle to operation of autonomous vessels, at least within the United States.

In the United States, pilotage concerns are "local" in nature; for example, federal and state licensing, "who is allowed" to bring the vessels into and out of port, and knowledge of local water conditions. In some other countries, pilotage concerns are a "national issue," and more readily solved. Regardless, in order for autonomous vessels to conduct trade they will need to be able to leave one country and then arrive in another country without incident. If this issue is ignored, and change does not occur within the U.S. and other countries, the differences between regulatory regimes relating to the pilotage of autonomous ships will likely prove to be an obstacle.

The United States maritime industry is heavily regulated. Is there anything the Biden administration could do, or should do, to make the United States more competitive in the global shipping market?

To a large extent, the business of international shipping takes place outside of the United States, effectively leaving the country as a "consumer" of shipping services. With the exception of limited coastwise trade, the United States is no longer a "shipping nation," nor is it a provider of shipping services; in fact, it hasn't been such for decades. Most of the goods coming into and out of this country are carried by international carriers.

Protectionist U.S. laws, such as the Jones Act, have turned U.S. coastwise shipping into essentially a "niche" industry limited to internal waters. There isn't much the Biden administration, or any other administration, can do to propel the United States back into the "provider" side of the shipping business given the country's current regulatory regime. The more important issue for the United States then becomes, "does it have enough 'clout' to dictate the terms of international shipping?"

Within the Biden administration there appears to be a conflict between support to the maritime industry and protection of the environment. To achieve meaningful results for either, changes to law and/or policy will need to occur at a very high level. For example, reduction of greenhouse gas production and easing the strain on the country's transportation infrastructure can be obtained by increased coastwise shipping. Maybe the Biden administration will arrive at some solution? It is way too early to tell. The Jones Act lobby is very powerful and any meaningful change from the status quo is unlikely.

Are you aware of any IMO initiative to reduce carbon from ships? If so, what impact, if any, will the efforts have on international shipping?

The "business of shipping" is rapidly changing, particularly, with respect to the environment. At present, "decarbonization" of ships is one of the most consuming issues for the shipping industry, and likely the most important issue on the horizon, in both the United States and the world. Initiatives are underway that will undoubtedly have an impact on the manner in which goods are moved around the globe. Therefore, ship owners must anticipate the rule changes as they will undoubtedly shape operations over the next twenty years.

The IMO first addressed air pollution regulations in 2005, and later amended them in 2010. In January 2020, IMO's air pollution rules were significantly strengthened. These rules addressed sulfur dioxide, nitrogen dioxide, and particulate matters; often referred to as "SOx, NOx, and PM." This first set of air pollution rules, however, did not address greenhouse gases ("GHG"). Since then, the IMO has taken a surprising number of very concrete steps to reduce the production of carbon emissions from ships.

Last November, the IMO drafted decarbonization/GHG regulations. In June 2021 the decarbonization/GHG rules will be made formal; and, will come into force on the 1st day of January 2023. These new decarbonization/GHG regulations will be placed alongside existing air pollution requirements in Annex VI of the International Convention of the Prevention of Pollution from Ships (MARPOL).

The industry is already preparing for the changes that will come into force in 2023, even though the rule changes have not yet actually been made. The rule changes will have "performance-based limits." They will not dictate how vessel owners achieve GHG compliance, but rather that the vessels are compliant by 2023.

A vessel may achieve compliance by some fairly simple measures such as reducing the power of its engine, reducing speed, by increasing its dead weight tonnage (the formulae work on the basis of the amount of carbon emissions per deadweight tonne-mile). If these efforts don't work, a vessel may require significant modifications, such as installation of a carbon capture device. Regardless of the method employed to become compliant, under the proposed IMO rules, a vessel will be evaluated by its classification society and receive a letter grade every year, A, B, C, D, or E. Owners failing to comply with IMO's decarbonization/GHG requirement risk losing their vessel's classification society certification or may find that their vessel is not allowed to enter into a port.

If you don't mind, in the time we have left, may I ask you about what event, person, or thing most shaped or influenced your career?

I wouldn't say there is really any one event, person, or thing that most shaped or influenced my career, but rather, my career has been shaped by working as a consultant in legal practice for the last 30 years. During these years I've never been employed fulltime as a consultant; however, I estimate I dedicated approximately 20 percent of my time to consulting work in practice, touching on hundreds of cases.

When I arrived in Melbourne, I was hired to work with a law firm, and I have been with most of the same maritime group ever since. The consulting experience has been an endlessly interesting variety of cases. It helps me to stay on top of important industry issues and allows me to do things such as teaching law to people in the business, non-lawyers. The questions they ask, the feedback they provide, and the problems they experience is invaluable. It allows me to stay in tune with matters such as decarbonization. Maritime law is both a commercial and a practical subject. To try and get your head around it, without actually being involved in doing it, would be very difficult.

Before a lawyer considers a career in the maritime field, what should he or she consider? Any advice before entering the maritime industry?

As long as there are ships carrying cargo, there will be maritime law, and there will be a need for maritime lawyers. Advances in technology continue to change the shipping business. The type of work maritime lawyers do may change. For example, issues from fifty or one hundred years ago are different from the issues today. The practice of law evolves and will change, as the industry changes, but I can't see it going away.

Today, the number of attorneys practicing maritime law fulltime is diminishing; however, what I say to prospective students is the maritime practice is steady because international trade is essential to our way of life. International trade is not going away. Contrary to what others may think, maritime law is not a narrow niche, it is broad. It offers different types of practice opportunities.

What advice would you give to anyone considering teaching maritime law?

Anyone considering teaching should know it is a great job. The problem for those wanting to teach the issue is there are not many jobs and it's very competitive to get them. The brilliant thing about teaching law is that I get to choose what I want to do. For academics there are very few external imperatives. I get to choose what I write about, and, within parameters, what I teach. The freedom of being self-directed is something that I just can't achieve in a firm setting. Those people running their own business may have some freedom, but that freedom comes with risk. As an academic, I don't carry the same risk.

Additionally, as an academic and as a consultant, I am able to concentrate on legal matters, instead of things such as gathering facts, preparing filings, discovery, and other requirements. In comparison, as a practicing lawyer I would be required to do "something else, for someone else." The practice of law at a firm comes with external imperatives that must be considered; billing, client management, and other demands are just to name a few. I don't have those, but I still get to work on interesting cases.

Martin, thank you for your insight and time.

Submitted by Theron Korsak.

Case Summaries:

1st Circuit

Standing – Shipper's §1983 Claims Against Puerto Rico Ports Authority: On December 17, 2009, the Puerto Rico Ports Authority ("PRPA") contracted with Rapiscan Systems, Inc. ("Rapiscan") to provide scanning services for inbound cargo arriving at the port of San Juan pursuant to Act No. 12 of 2008 which called for improved safety procedures at ports within the territory. Rapiscan assigned its rights and obligations under the contract to Rapiscan's wholly-owned subsidiary, S2 Services Puerto Rico LLC ("S2"). On September 2, 2011, PRPA approved Regulation 8067 which allowed PRPA to implement a fast-track method to inspect inbound cargo and undisclosed taxable goods. The regulation also established a system of Enhanced Security Fees ("ESFs") which were assessed on inbound freight carriers or their agents. Regulation 8067 expired on June 30, 2014, but PRPA continued to implement the scanning program after its expiration without any attempt by PRPA to extend, modify, or amend.

On April 5, 2017, Dantzler, a class of marine shippers, filed a lawsuit against PRPA, Rapiscan, and S2 (collectively "Defendants") pursuant to 42 U.S.C. §1983 and alleged that Defendants violated Dantzler's constitutional rights under the Fifth Amendment, Fourteenth Amendment, and the Commerce Clause for the unlawful collection of fees under the scanning program. Dantzler later amended the complaint to assert additional causes of action against Defendants for unjust enrichment and restitution. Rapiscan and S2 moved to dismiss the amended complaint and argued that (1) Dantzler lacked standing; (2) the amended complaint failed to state a claim under section 1983; (3) Rapiscan and S2 were entitled to qualified immunity as former and current government contractors; and (4) the amended complaint failed to state a claim for unjust enrichment and undue collection. PRPA filed a separate motion to dismiss the amended complaint for (1) lack of subject matter jurisdiction; (2) failure to state a claim; and (3) failure to join a necessary party. The district court partially granted the motions and dismissed Dantzler's Fifth Amendment and Fourteenth Amendment claims under section 1983. The district court denied Defendants' standing arguments and concluded that Dantzler met the constitutional requirements for standing. The district court also found that PRPA was not entitled to sovereign immunity and Rapiscan and S2 were not entitled to qualified immunity. Defendants appealed the district court's partial denial.

The United States Court of Appeals for the First Circuit vacated the district court's order and remanded the case for dismissal on jurisdictional grounds. The First Circuit concluded that Dantzler failed to satisfy the constitutional standing requirements for its claims against PRPA. Likewise, the First Circuit held that Dantzler failed to set forth allegations that Dantzler had Article III standing to sue Rapiscan and S2. *Dantzler, Inc. v. Empresas Berríos Inventory and Operations, Inc.*, 958 F.3d 38 (1st. Cir. 2020).

Submitted by George M. Chalos, Chalos & Co., P.C.

2nd Circuit

Economic Losses in Unintentional Maritime Accidents – Proprietary Interest: Plaintiffs-Appellees Bouchard Transportation Co., Inc., Motor Ellen S. Bouchard Inc., as owner of the Tug Ellen S. Bouchard, and B. No. 280 Corporation, as owner of Barge B. No. 280 (collectively "Plaintiffs") filed suit in the United States District Court for the Southern District of New York against Defendant-Appellant The Long Island Lighting Company d/b/a LIPA ("LIPA") to limit Plaintiffs' liability in connection with damage to an underwater electrical transmission cable system. Defendant LIPA alleged damages for the supply of power to customers while the cable was offline for repairs. Bouchard moved for summary judgment against Defendant and argued that Defendant neither owned nor bore responsibility to repair the infrastructure and lacked interest to recover damages for its purely economic loss. The district court granted summary judgment in favor of Plaintiff and held that Defendant was collaterally estopped from arguing it had a proprietary interest as that issue had been previously litigated in prior proceedings in Texas.

In a summary opinion, the United States Court of Appeals for the Second Circuit affirmed the judgment of the district court that Defendant was collaterally estopped. The Court concluded that Defendant's contention that there was a circuit split on the application of *Robins Dry Dock* between the Fifth Circuit and Second Circuit was illusory. Specifically, LIPA argued that the Fifth Circuit required a plaintiff to establish "actual possession or control" to demonstrate proprietary interest, and that such a broad application of Robins Dry Dock was in conflict with the Second Circuit's decision in *In re Kinsman Transit Co*, 388 F. 2d 821 (2d Cir. 1968). The Second Circuit rejected the argument and held that the Second Circuit has routinely applied the doctrine broadly and even used the Fifth Circuit's definition for proprietary interest. The Second Circuit also rejected all of the other arguments that the prior decision was not precluded by collateral estoppel which were raised by LIPA. *Bouchard Transp. Co. v. Long Island Lighting Co.*, 807 Fed. Appx. 40 (2d Cir. 2020).

Admiralty recognizes Foreign Judgment as Collateral Estoppel to Arbitration: China Shipping Container Lines Co. ("CSCL") is the owner of the M/V XIN CHANG SHU and contracted with OW Bunker China Limited ("OWB China") for the supply of bunkers to the vessel at the port of Kavkaz, Russia. OWB China

contracted with OW Bunker Far East (Singapore) Pte Ltd. ("OWB Far East") to arrange for the supply of bunkers to the vessel. Thereafter, OWB Far East entered into a bunker supply contract with Big Port Service DMCC ("Big Port") to supply bunkers to the vessel. On or about November 7, 2014, OW Bunker Trading A/S, the parent company of OWB China, filed for bankruptcy shortly after the bunkers were delivered to the vessel. Big Port contacted CSCL to request payment for the bunkers supplied to the vessel.

On November 19, 2014, Big Port commenced an action in Singapore and arrested the vessel as a result of nonpayment for the bunkers supplied to the vessel. CSCL posted security for the release of the vessel from arrest in the amount of USD 2,600,000. Thereafter, Big Port sought to stay the proceedings in Singapore and demanded that the parties proceed to arbitration in New York. The Singapore High Court refused to enter a stay and dismissed the action. The Singapore High Court ordered that security be returned to CSCL. The court held that Big Port failed to demonstrate that CSCL was a party to the contract and to the arbitration agreement. On appeal, the Singapore court affirmed the dismissal of the action and refusal to stay the matter pending arbitration.

On March 17, 2015 CSCL filed a petition in the United States District Court for the Southern District of New York and sought injunctive relief, declaratory judgment, and damages against Big Port. The district court relied on the Singapore judgement and enjoined Big Port from pursuing arbitration in New York. The Second Circuit affirmed the judgment, holding that the district court did not err in recognizing the Singapore judgment because the court in Singapore adequately addressed the lack of existence of an arbitration agreement between CSCL and Big Port. The Second Circuit further held that the Singapore judgment precluded Big Port from relitigating the existence of an arbitration agreement and the district court had authority to permanently enjoin the arbitration proceeding. *China Shipping Container Lines Co. v. Big Port Serv. DMCC*, 803 Fed. Appx. 481 (2d Cir. 2020).

Jones Act State Court Action Stayed by Limitation of Liability Proceeding: Edward Safer, Jr. ("Safer") was the captain of the tugboat, *Lucie Joe* owned by D'Onofrio General Contractor Corp. ("D'Onofrio"). Safer sued D'Onofrio and Avitus, a professional employer organization, in state court and alleged claims for negligence under the Jones Act, unseaworthiness, and maintenance and cure as a result of the alleged injuries he sustained on board the Lucie Joe. D'Onofrio petitioned the United States District Court for the Eastern District of New York pursuant to the Limitation of Liability Act of 1851 for exoneration from and limitation of liability for Safer's claims. The district court enjoined the further prosecution of all suits arising from Safer's injuries on board the *Lucie Joe* and ordered Safer, D'Onofrio, and Avitus to present their claims in the limitation proceedings. Safer answered D'Onofrio's petition with his personal injury claims and Avitus answered by filing a claim against D'Onofrio for indemnification

Safer moved to lift the stay to continue pursuit of the state court action against D'Onofrio and Avitus but the district court denied the motion and the subsequent motion for reconsideration. Safer appealed the district court's order to the United States Court of Appeals for the Second Circuit and argued that the district court erred in declining to lift the stay because as a "lone claimant," Safer was entitled to pursue his claims in state court since the claims asserted by Avitus were not subject to the limitation proceeding. The Second Circuit affirmed the order of the district court and held that the district court did not abuse its discretion in denying Safer's motion to lift the stay. The Second Circuit further held that the court lacked jurisdiction to consider Safer's claims with regard to Avitus' claims against *D'Onofrio. D'Onofio Gen. Contr. Corp. v. Safer*, No. 19-4029, 2020 U.S. App. LEXIS 34889 (2d Cir. 2020).

Seaman Status / LHWCA Liability: Brian Doty ("Doty") was hired by Tappan Zee Constructors ("TZC") as a night-shift mechanic to assist in the maintenance and repair of material barges, tug boats, work boats, and cranes barges for the construction of the Governor Mario M. Cuomo Bridge. Doty sustained injuries to his vertebrae when he slipped and fell while repairing a crane owned by TZC. He sued TZC in the United States District Court for the Southern District of New York for damages under the Jones Act and the Longshore and Harbor Workers' Compensation Act. Doty sought damaged for TZC's alleged negligence for TZC's failure to provide a safe workplace and an unseaworthy vessel. TZC moved to dismiss the action. The district court granted TZC's motion for summary judgment and dismissed Doty's claims under the Jones Act and the Longshore and Harbor Workers' Compensation Act. The district court concluded that Doty was not a seaman within the meaning of the Jones Act. The district court further concluded that Doty's negligence claim under the Longshore and Harbor Workers' Compensation Act was without merit.

Doty appealed the district court's order to the United States Court of Appeals for the Second Circuit. The Second Circuit affirmed the judgment of the district court. The Court held that Doty was not a seaman within the meaning of the Jones Act because (1) Doty performed work on stationary vessels; (2) Doty did not operate or assist with the navigation of any vessel; (3) Doty held no maritime license; and (4) returned home at the end of his shift and never slept on board a vessel. The Second Circuit further held that the district court did not err in dismissing the negligence claim under the Longshore and Harbor Workers' Compensation Act because Doty was engaged in inspection and repair work at the time of his injury. Although TZC was an employer and a vessel owner, any negligent act of TZC was committed while TZC acted as a construction company and not as a vessel owner. *Doty v. Tappan Zee Constructors, LLC*, No. 20-36-cv, 2020 U.S. App. LEXIS 33541 (2d Cir. 2020).

Constitutionality of Maritime Drug Law Enforcement Act: In 2015, the Department of Homeland Security was investigating a suspicious money transfer from a Columbian drug cartel to a bank account in New York. Defendants Carlos Alberto Salinas Diaz and Daniel German Alacron Sanchez worked with the Columbian cartel to source a shipment from Columbia to Australia. At the direction of the Department of Homeland Security, a cooperating source agreed

to arrange for two speedboats to bring the narcotics where it would be loaded onto the source's vessel for shipment to Australia. On April 14, 2015, the U.S. Navy spotted one of the speedboats, the *El Vacan*, off the coast of Costa Rica and observed bales being thrown overboard by the vessel's crew. U.S. Navy and U.S. Coast Guard personnel boarded the boat but could not determine the boat's flag registration; however, there was a small Ecuadorian flag posted near the engine.

The U.S. government concluded that the vessel was without nationality and subject to the Maritime Drug Law Enforcement Act ("MDLEA") after the Ecuadorian Coast Guard could not affirm or deny the boat's nationality. Defendants Alacron Sanchez and Salinas Diaz were charged with violating and conspiring to violate the narcotics trafficking provisions of the MDLEA. Defendants moved to dismiss the superseding indictment on the grounds that the MDLEA's jurisdiction over land-based conspirators violated the Constitution and that the *El Vacan* was not a stateless vessel. The United States District Court for the Southern District of New York denied the motions and Defendants pled guilty to the charges. Thereafter, Defendants appealed their guilty pleas on the ground that the government failed to comply with the MDLEA's jurisdictional provision which required that the vessel be stateless.

The United States Court of Appeals for the Second Circuit affirmed the district court's judgment. The Second Circuit held that the government met its burden under the MDLEA's jurisdictional provision that the *El Vacan* was a stateless vessel and subject to the jurisdiction of the United States. The Court further held that the MDLEA applied to the conduct of land-based conspirators which Congress is authorized to proscribe under the Necessary and Proper Clause. Lastly, the Second Circuit held that Congress did not exceed its legislative authority in enacting the MDLEA to punish specified drug-trafficking activity on the high seas. *United States v. Alarcon Sanchez*, 972 F.3d 156 (2d Cir. 2020).

Submitted by George M. Chalos, Chalos & Co., P.C.

3rd Circuit

Longshore & Harbor Workers Compensation Act, Bridge Worker Injury was on Navigable Waters: Petitioner sustained permanent hearing loss while working on a marine construction project and sought benefits under the LHWCA. He was employed as a marine construction worker on the New Jersey Route 3 bridge replacement project which spans the Lower Passaic River. The claim was denied by the Administrative Law Judge (ALJ), and the denial affirmed by the Benefits Review Board (Board), on the ground petitioner was not injured on navigable waters. The United States Court of Appeals for the Third Circuit reversed. In reviewing eligibility for LHWCA coverage, the court first noted the worker is required to show he or she is "engaged in maritime employment" (status), and the injury occurred on "navigable waters of the United States" (situs). The court rejected petitioner's claim that the situs requirement is presumed pursuant to Section 920(a), holding the situs requirement is a condition precedent to the operation of the statutory scheme with claimant bearing the burden of establishing it. The court next analyzed whether the site of the accident was in navigable waters. Agreeing with petitioner, the court held that both the ALJ and Board misconstrued the definition of navigable waters as applied to LHWCA claims. The court noted the definition of navigability varies depending on the legal context, and because the LHWCA is a federal maritime law, the definition used for demarcating Article III admiralty jurisdiction must be applied. Applying the "navigable-in-fact" standard used by the ALJ and Board, the court explained the standard requires the body of water, by itself or by uniting with other waterways, to form a continuous highway capable of sustaining interstate or foreign commerce. The ALJ and Board narrowly construed the standard to require the waterway to sustain "commonly-used large commercial ship" or "present commercial use." The proper test, however, is whether the waterway is "capable of sustaining any type of interstate or foreign commerce" and demonstrating present use is only one way that a claimant may use to establish navigability. The record showed that commercial vessels operating on the River were able to transit even in a very shallow four-foot-deep channel and therefore the River was navigable in fact. The court thus reversed and remanded the matter back to the Board for determination of benefits. *Wilson v. Dir., Office of Workers' Comp. Programs*, No. 19-3542, 984 F.3d 265, 2020 WL 7776475 (3d Cir. Dec. 31, 2020).

Seaman's Asbestos Personal Injury Claim Appeal Untimely: Seaman sued multiple shipowners in the Eastern District of Michigan for exposure to asbestos in 1988. Two years later, he died from mesothelioma. In 2010, the claims by his estate were transferred to the Eastern District of Pennsylvania after a Multidistrict Litigation (MDL) consolidating all federal asbestos personal injury cases was created in 1991. The same year, the court administrating the MDL dismissed the case along with many others in an *en masse* order. After the dismissal, the parties continued litigating the case as though it remained pending. In 2014, the court mistakenly believing the case was one of many previously pending in the Northern District of Ohio, dismissed the case for lack of personal jurisdiction over the shipowners in that court. The estate appealed from the 2014 order. The United States Court of Appeals for the Third Circuit determined it has no jurisdiction over the appeal. The 2010 order dismissing seaman's estate's claims was valid. Accordingly, the court had no further jurisdiction over the case when it dismissed certain shipowners in 2014 from which appeal was taken, and the time to appeal the 2010 dismissal has long passed. The estate argued the 2010 dismissal was ineffective because it was accidental. The appellate court rejected the argument as plaintiff's counsel failed to timely appeal the dismissal or move for relief under Rule 59(e). The court further rejected the argument that the parties, and the court were unaware of the mistaken dismissal and continued litigating the case, noting plaintiff's counsel had the duty to notice developments in his case, even if the dismissal came in one case of thousands filed by the law firm. The appeal was dismissed for lack of jurisdiction. *In re Asbestos Prod. Liab. Litig.*, 806 F. App'x 106 (3d Cir. 2020).

Insured Bears Burden of Showing Fortuitous Loss in All Risks Policy: Yacht owners docked their vessel behind a part time residence in Florida. While owners were at their home in New Jersey, they were informed the vessel partially sunk and sustained serious damage. Owners made a claim under their all-risk policy. A claim specialist surveyed the damage and found standing water, a hole in the hull and extensive defects in the yacht's power sources which prevented the bilge pumps from functioning. Insurer filed a complaint for declaratory judgment in light of the state of disrepair of the vessel and for rescission of insurance contract due to material misrepresentations. At issue in the District Court was whether the vessel's partial submersion was covered as a fortuitous loss, defined as a loss that is unexplained or dependent on chance. Insurer filed a summary judgment which was essentially unopposed by owners' failure to respond to insurer's separate statement of undisputed facts. The motion was granted, and vessel owners appealed. On appeal, the court addressed the sole issue of who bears the burden of proving a fortuitous loss. Finding that every Circuit Court has determined that the insured bears the burden, the court likewise agreed and affirmed the lower court's order. The court held that while an insured need not show the precise cause of a loss to demonstrate fortuity, the insured must do more than just prove there was a loss and show the loss was in fact fortuitous or occurred by chance. *Chartis Prop. Cas. Co. v. Inganamort*, 953 F.3d 231 (3d Cir. 2020).

Submitted by Aksana Coone, Law Offices of Aksana M. Coone

4th Circuit

Fourth Circuit Confirms No Sovereign Immunity for Municipalities; District Court Establishes Qualified Immunity Standard for Maritime Torts: Two employees of a ship repair facility were injured when a Norfolk, Virginia, police officer capsized a small vessel during a sea trial. In a suit against the officer and the city, the Eastern District of Virginia considered how to apply the qualified immunity doctrine to the officer when he was acting within the scope of his duties and whether the City could assert sovereign immunity.

The court acknowledged that other courts, including the Southern District of Florida and the Eastern District of Virginia itself, had previously followed the typical framework from 42 USC §1983 cases. The framework requires a constitutional or statutory violation to hold a government employee individually liable. Finding that "positive federal rights" were at issue in maritime tort claims and that the ordinary federalism concerns that arise in a § 1983 claim were absent, the Court concluded that a "common law approach to governmental immunity" was appropriate rather than the § 1983 framework. The Court found that qualified immunity was available for any conduct that was discretionary in nature. As the parties acknowledged that the officer was exercising discretion at the time the vessel was capsized, the court granted the officer immunity.

The court, however, denied the City of Norfolk's claims for sovereign immunity. Finding that the Supreme Court held in *Workman v. New York City*, 179 U.S. 552 (1900) that municipalities could generally not assert sovereign immunity in admiralty proceedings, the Court denied that defense and ordered the case to trial.

In an interlocutory appeal of the sovereign immunity decision, the Fourth Circuit confirmed *Workman* remains controlling law despite its age and the City's arguments as to why it should be overruled or limited. *Glover v. Hryniewich*, 438 F. Supp. 3d 625, 628 (E.D. Va. 2020); *Glover v. City of Norfolk*, No. 20-1169, 2020 U.S. App. LEXIS 36230, at *2, __ Fed. Appx. __, (4th Cir. Nov. 18, 2020).

Submitted by Dustin Paul, Vandeventer Black LLP

5th Circuit

Fifth Circuit *En Banc* to Reconsider Jones Act Seaman Status of Jack-Up Vessel Worker: The Fifth Circuit has set up a showdown as to whether land-based workers who spend 70% of their work time on jack-up rigs, which are still considered to be vessels even when jacked up, should continue to be Jones Act seamen under the Fifth Circuit's long-standing precedents, or if the seaman status of such workers should be reconsidered and scrutinized under the United States Supreme Court cases of *Wilander*, *Chandris* and *Papai* requiring that the nature of a worker's duties "take him to sea" and subject him "to the perils of the sea." The original panel decision had affirmed the District Court's determination that the worker was not a seaman despite the Fifth Circuit precedent to the contrary. That opinion was withdrawn and a second panel opinion was issued on August 14, 2020 reversing the District Court's finding and holding that the worker was a seaman based on the clear Fifth Circuit precedent. However, in a concurring opinion authored by long-time maritime jurist Judge Eugene Davis and joined in by the other panel judges, the panel suggested that a rehearing en banc be granted to "bring our jurisprudence in line with Supreme Court caselaw." By Order dated October 30, 2020, the Fifth Circuit vacated the August 14, 2020 panel opinion and ordered the case to be reheard *en banc*, which *en banc* hearing is scheduled for January 20, 2021. *Sanchez v. Smart Fabricators of Texas, LLC*, 978 F.3d 976 (5th Cir. 2020)(October 30, 2020), Panel Final Opinion 970 F.3d 550 (August 14, 2020), Panel Withdrawn Opinion 952 F.3d 620 (March 11, 2020).

Definition of "Prevailing Party" in Maritime Contract: In a case of first impression, the Fifth Circuit agrees with the District Court that the definition of "prevailing party" found under 42 U.S.C. §1988 in non-maritime contexts applies to maritime contracts where the parties agreed by contract to alter the general rule in admiralty that attorney's fees are not recoverable by the prevailing party. Under §1988 definition, a party "prevails" when the actual relief on the merits of its claim materially alters the legal relationship between the parties by modifying the other party's behavior in a way that directly benefits the prevailing party. However, in this breach of the maritime contract suit and counterclaim, since both parties "prevailed" under that definition (each recovering something from the other in the claims and counterclaims), the Fifth Circuit affirmed the District Court's decision that neither should be awarded attorney's fees. *Genesis Marine, LLC v. Hornbeck Offshore Services, LLC*, 951 F.3d 629 (5th Cir. 2020).

Bunker Supplier Has No Maritime Lien: The Fifth Circuit affirmed the District Court's summary judgment that a subcontractor bunker supplier had no maritime lien because it had failed to show it supplied the fuel to the vessel on the order of someone with authority to procure necessaries on behalf of the vessel. This is another in the line of cases arising out of the collapse of O.W. Bunker, once the world's largest supplier of fuel. The only question contested under the Maritime Liens Act (CIMLA - 46 U.S.C. §31341 *et. seq.*) was whether the fuel supplier furnished the fuel "on the order of the owner or person authorized by the owner" under the Act. The provisions of the Maritime Lien Act are applied *stricti juris* and as with similar cases involving contractual chains created by the bunker programs, the Fifth Circuit affirmed the District Court's determination that the physical fuel supplier was acting as a subcontractor to general contractor and could not establish that an entity authorized to bind the vessel controlled the selection of the subcontractor or its performance. Despite language in the contract between the general contractor and the fuel supplier "reserving a right to a maritime lien" or insisting that the general contractor "warranted" that it had vessel owner's permission to purchase bunkers from the subcontractor, the Fifth Circuit noted that the subcontractor could not "reverse-engineer CIMLA's required authorization" without establishing that the vessel owner had directed the general contractor to specifically use the subcontractor to supply the fuel. *ING Bank N.V. v. Bomin Bunker Oil Corp.*, 953 F.3d 390 (5th Cir. 2020).

Fuel Supplier with No Maritime Lien: In a bit of a twist again involving the collapse of O.W. Bunker, a fuel supplier sued three support vessels *in rem* for maritime liens under the Maritime Liens Act (CIMLA - 46 U.S.C. §31341 et. seq.) in regards to unpaid-for fuel loaded into the support vessels' cargo tanks which was then used to refuel three other offshore vessels performing work off the Louisiana coast. While the District Court held that maritime liens existed, the Fifth Circuit reversed, holding that the fuel supplier had no maritime liens on the support vessels because the cargo fuel did not constitute "necessaries" under the Maritime Liens Act as that fuel was not "necessary" to the support vessels since it did not serve as fuel for the support vessel but was only for refueling *other* vessels. The Fifth Circuit further disagreed that the cargo fuel was "necessary" to the support vessel to perform their function of being "floating gas stations" to the refueled offshore vessels. *Martin Energy Services, LLC v. Bourbon Petrel*, 962 F.3d 827 (5th Cir. 2020).

Electrical Technician Injured on A Tension-Leg Platform Under Construction and Floating at Shipyard is a Longshoreman: In a case interpreting the Supreme Court's *Perini* decision, the Fifth Circuit affirmed that an electrical technician, who was injured while working on the construction of the "Big Foot" tension-leg platform (which was later to be installed on the Outer Continental Shelf) while the structure was moored at a shipyard and was floating in Corpus Christi Bay, was "injured on navigable waters" and thus entitled to LHWCA benefits. The Fifth Circuit noted that the platform under construction was never "permanently attached to land" but only temporarily attached and was floating in the bay while under construction, so "situs" under the LHWCA was met. Since the electrician had performed his work for several months while Big Foot was floating on navigable waters in front of the shipyard, he met the "status" test of being an employee where his employer had "at least one employee engaged in maritime employment" - him. The employer had also argued that the 1995 United States Supreme Court case of *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, which concerned the maritime jurisdictional test for maritime tort cases, abrogated the 1983 *Perini* case since *Perini* extended the LHWCA beyond the constitutional limits of federal maritime jurisdiction. The Fifth Circuit held that nothing in *Grubart* sought to abrogate Perini or limit admiralty jurisdiction under the LHWCA, stating that "[A]bsent clear language abrogating *Perini*, we are bound by the [Supreme] Court's understanding of maritime jurisdiction in that case." *MMR Constructors, Inc. v. OWCP*, 954 F.3d 259 (5th 2020).

Offshore Platform Worker Found to be Borrowed Employee of Platform Owner under LHWCA Exclusive Remedy Which Bars Tort Recovery: The Fifth Circuit affirmed the District Court's holding that a subcontractor mechanic was the "borrowed employee" of the offshore platform owner and operator, providing the platform owner with tort immunity for its 50% fault in causing the injury to the mechanic. After a jury trial, the District Court used the jury's factual findings as to the nine factors articulated in the Fifth Circuit cases of *Ruiz v. Shell Oil* and *Melancon v. Amoco Prod. Co.* to make its legal conclusion that the mechanic was the "borrowed employee" of the platform owner. After weighing all nine of the factors again, the Fifth Circuit affirmed. As a matter of law, the Fifth Circuit further held that the platform owner "secured payment of compensation" under the LHWCA by proving that it had purchased LHWCA insurance, even though the platform owner's LHWCA insurer had not actually paid the benefits directly to the employee. The Fifth Circuit held that it was enough that there was evidence that the platform owner had LHWCA insurance at the time of the employee's injury "to invoke the LHWCA's exclusive-recovery provisions." *Raicevic v. Fieldwood Energy, LLC*, 979 F.3d 1027 (5th Cir. 2020).

In Fifth Circuit, Seaman Recovery for Unseaworthiness Only Reduced by Comparative Negligence - Not Barred by Primary-Duty Rule: The Fifth Circuit again confirmed that the Primary-Duty Rule of the Second Circuit case of *Walker v. Lykes Bros.* has not been adopted in the Fifth Circuit, noting that even if an employee's injury occurs in part due to thee seaman's own comparative negligence (in this case 20%) in failing to carry out his duties to correct an unseaworthy condition, such negligence only serves to reduce and does not bar his recovery so long as the employer was also negligent (in this case 80%). *Luwisch v. American Marine Corp*, 956 F.3d 320 (5th Cir. 2020).

While Jones Act Seaman May Not Be Found Contributorily Negligent For Carrying Out Specific Order From Superior Resulting in Seaman's Injury, Such Does Not Apply to a General Order: A split panel of the Fifth Circuit thoroughly reviewed the case law surrounding the dictum in the 1974 Fifth Circuit case of *Williams v. Brasea* concerning the statement that "a seaman may not be contributorily negligent for carrying out orders that result in his own injuries, even if he recognizes possible danger." The majority concluded from their survey of the case law that the *Williams* statement "at most, stands for the proposition that a seaman may not be found contributorily negligent for carrying out a **specific order** from his superior that results in the seaman's injury." (emphasis added). The Court went one to explain that a "specific" rather a "general" order is "one that must be accomplished using a specific manner and method and leaving the seaman with no reasonable alternative to complete the assigned task." Finding that the seaman was only given a general order to perform the general task, the majority concluded that *Williams' dictum* was not triggered. However, the panel held that the finding by the District Court of 50% contributory negligence was clearly erroneous due to the absence of evidence in the record for part of the District Court's finding of the seaman's fault, and remanded the case for the District Court to find the percentage of contributory negligence based on the evidence in the record. A dissenting opinion states that the *Williams* precedent should be followed and the District Court should not hold the seaman contributorily negligent. *Knight v. Kirby Offshore Marine Pacific LLC*, --- F.3d--- (5th Cir. 2020) 2020 WL 7393534 (December 17, 2020).

In a Collision on the Mississippi River, the Inland Navigational Rule 14(d) Does Not Place Affirmative Duty on Downbound Vessel to Propose the Manner of Passage: The Fifth Circuit affirmed the District Court's apportionment of fault between the captains of two tugs who failed to clearly communicate the planned maneuvers of their vessels in the Mississippi River, which resulted in a collision of their tows. However, the District Court found that the downbound vessel's captain was only 30% at fault and the other vessel's captain was 70% at fault by moving "into the channel in front of downstream traffic without taking due care." The 70% fault vessel company claimed that the District Court ignored Inland Navigation Rule 14(d) in finding the downbound vessel less at fault, arguing that Rule 14(d) created an "affirmative duty" on the downbound vessel to clearly and adequately "propose the manner of passage," which was not done due to the confusing nature of the radio communications between the vessels prior to the collision. The Fifth Circuit rejected the argument that Rule 14(d) imposed on the downbound vessel a "mandatory duty to propose safe passage" because the actual text of the Rule states that the downbound vessel need only to propose the manner of passage "as appropriate." Therefore, the Fifth Circuit affirmed the District Court's apportionment of less fault on the downbound vessel which had the right-of-way under the circumstances. *Deloach Marine Services, LLC v. Marquette Transportation Company, LLC*, 974 F.3d 601 (5th Cir. 2020).

Limitation of Liability Action Dismissed for Vessel Owner's Failure to Comply with Rule F(4) and the Court Order Requiring Newspaper Publication of Notice of Limitation Action: The Fifth Circuit affirms the District Court's dismissal of a Limitation Action filed by Vessel Owner, whose motion to extend the time to publish notice in the newspaper under Supplemental Rule F(4) and the Court's Order two years after time limit for publication had expired, was opposed by the only claimant who actually received timely notice of the Limitation Action. Initially, the Magistrate Judge had granted such extension of time to publish, but the District Judge vacated the extension order and granted claimant's motion to dismiss the Limitation Action so that the claimant could pursue his state court action against the vessel owner. The Fifth Circuit noted that "Caselaw dealing with the circumstances, here, where the vessel owner seeks extension is scarce." However, the Fifth Circuit found no abuse of discretion by the District Court under either Rule 12(b)(5) (insufficient service of process) or Rule 41(b) (failure to comply with a court order), noting that the Court has "sanctioned, and even encouraged, dismissing cases in pursuit of judicial economy" when a vessel owner fails to post bonds or comply with Supplemental Rule F. The Fifth Circuit commented it was not holding that dismissal of a Limitation Action was always appropriate whenever a vessel owner fails to comply with Supplemental Rule F(4), but that dismissal of this case was within the "equitable latitude" of the Admiralty Court because of the inexcusable failure of the vessel owner to comply with court orders for two years which had delayed the claimant's state court action by years and because the vessel owner could still pursue its limitation as a defense in that state court action. *In Re Prosper Operators, Inc.*, 813 Fed.Appx. 955 (5th Cir. June 4, 2020). (This case was not selected for publication by the Court in West's Federal Reporter.)

Limitation of Liability Action Bars Untimely Filed Maritime Personal Injury Lawsuits: The Fifth Circuit affirmed the dismissal of two separate maritime personal injury lawsuits against a vessel owner as untimely since none of the plaintiffs in the two new lawsuits had timely filed claims in the Limitation Action which had been filed by the vessel owner following a collision two years before. The Court noted that the personal injury lawsuits were filed only after the vessel owner had moved in the Limitation Action for a notice of default for all unfiled claims and had received an order from the District Court that any future litigants would be "barred from filing any claims and answers in this or any other proceeding" related to the Limitation Action. It was further noted by the Court that new lawsuits were filed only after the vessel owner had settled with all known claimants and had closed the Limitation Action. The evidence presented to the District Court was that the vessel owner had mailed a copy of notice of the Limitation Action to "every person known to have made any claim against the vessel" and had published a notice to all prospective claimants in a newspaper every week for four weeks as required by Supplemental Rule F(4). The Fifth Circuit held that the plaintiffs had failed to demonstrate that they were "known

claimants" deserving of mailed notice of the Limitation Action simply because they were listed as witnesses in the Limitation Action by other claimants, and further that the plaintiffs had failed to prove "actual failure to receive notice by publication." *Payne v. Double J. Marine LLC*, 828 Fed. Appx. 222 (5th Cir. November 3, 2020) and *Collins v. Double J. Marine LLC*, 802 Fed. Appx. 843 (5th Cir. April 27, 2020) (Neither case was selected for publication by the Court in West's Federal Reporter.)

Limitation Action Dismissed on Rule 12(b)(1) for Lack of Admiralty Jurisdiction Based on Finding of Dead Ship Status: A Limitation Action was filed by vessel owner related to a death and injuries to workers following an explosion that occurred while its vessel was being dismantled at shipyard where it had been taken for shipbreaking. The claimants filed a motion to dismiss under Rule 12(b)(1) for lack of admiralty jurisdiction arguing that the vessel was no longer a "vessel" and instead had been rendered a "dead ship" by the time of the explosion. The Fifth Circuit affirmed the District Court's dismissal of the Limitation Action for lack of jurisdiction, noting that the "rule is that courts may resolve disputed jurisdictional facts to decide a 12(b)(1) motion." The Fifth Circuit further held that judicial economy would best be served if the jurisdictional issue presented in the Limitation Action, i.e., is the structure a vessel, were treated as an antecedent question, and therefore, be extricated from the merits of the claims. The Fifth Circuit further affirmed the District Court's resolution of the factual disputes about the physical characteristics of the structure in question at the time of the accident without any evidentiary hearing. The Fifth Circuit commented that the photographs submitted by the parties on the Rule 12(b)(1) motion, clearly depicted that the structure had "a gaping hole open to the sea down to or below [the vessel's] waterline" as well as holes cut in its cargo tanks and a large portion of the bow having been already removed, such that as of the time of the accident, "a reasonable observer would not see a vessel ready to transport persons or cargo, but a dead ship in the process of being scrapped." Since it was the burden of the vessel owner as plaintiff in a Limitation Action to prove jurisdiction, the vessel owner "should be ready to present some amount of basic jurisdictional evidence, or at least raise an inference that further discovery will uncover such evidence, from the outset of litigation." The Fifth Circuit thereafter affirmed The District Court's finding that the vessel owner/plaintiff had failed to demonstrate that based on the physical characteristics of the vessel at the time of the accident that the vessel had not been removed from navigation and therefore, it was a dead ship, such that the Limitation Action was properly dismissed for lack of subjection matter jurisdiction. *In Re. Southern Recycling*, --- F.3d--- (5th Cir. 2020) 2020 WL 7135141 (December 7, 2020).

Maritime Law Governs Enforceability of Commercial Diver's Oral Settlement with Non-Employer: A commercial diver was injured while working on a dam project and sued a subcontractor for negligence under maritime law, but did not sue his employer. A settlement was reached before trial between the parties and the District Court dismissed the case "but retained jurisdiction to enforce the settlement agreement." Subsequently, the commercial diver refused to sign the settlement documents which released both the subcontractor and his employer, claiming that the correspondence confirming settlement to that effect was not a binding settlement agreement under Louisiana law. The defendant moved to enforce the settlement before the District Court. The Fifth Circuit affirmed the District Court's ruling that the settlement's enforceability would be assessed under maritime law, and not Louisiana law, since the diver sued under general maritime law. The Fifth Circuit further affirmed the District Court's holding that an oral settlement agreement was enforceable under maritime law "even when a party later refuses to sign the memorializing documents." *Perrin v. Hayward Baker, Inc.*, --- Fed.Appx. --- (5th Cir. December 10, 2020). (This case was not selected for publication by the Court in West's Federal Reporter.)

Harbor Pilot entitled to Sieracki Unseaworthiness Claim against Vessel Owner: A harbor pilot injured his ankle when he tripped going through a poorly lit and unmarked hatch access door wearing sunglasses on his way to the wheelhouse. The Fifth Circuit affirmed the District Court's finding of unseaworthiness, non-contributory negligence and significant damages for loss of income under the "clearly erroneous standard." The Court held that the harbor pilot was "an independent contractor rather than someone's employee and he is thus not covered by the LHWCA." Also, since neither party claimed that the harbor pilot was a Jones Act seaman, under the caselaw the harbor pilot was entitled to proceed on his unseaworthiness claim as a Sieracki seaman. *Rivera v. Kirby Offshore Marine LLC*, --- F.3d--- (5th Cir. 2020) 2020 WL 7586508(December 22, 2020).

Submitted by Douglas W. Truxillo, Onebane Law Firm

6th Circuit

Through Bill of Lading Exempted Rail Carrier Liability: Rail logistics coordinator, and seller and manufacturer of two electrical transformers brought actions, which were consolidated, against rail carrier, seeking to recover for damage sustained by one of transformers during inland rail leg of their transport from Germany to Kentucky. The United States District Court for the Eastern District of Kentucky entered summary judgment for carrier. Seller appealed.

The Court of Appeals held that under terms of contract, seller and manufacturer agreed not to bring any claims or allegations against any subcontractor and, thus, rail carrier was exempt from liability for damage sustained by one of transformers; a bill of lading constituted "through bill of lading," as required for carrier to be insulated from liability for damage sustained by transformer; and the bill of lading included "Himalaya Clause," as required for carrier to be insulated from liability for damage sustained by transformer. Affirmed. *Progressive Rail Inc. v. CSX Transportation, Inc.*, 2020 WL 7050527 (6th Cir. Dec. 2, 2020).

Seaman Lacked Personal Jurisdiction over Cruise Line in Tennessee: Seaman, who had been employed as a photographer aboard a cruise ship, brought claims for negligence, unseaworthiness, and failure to pay maintenance and cure under general maritime law and the Jones Act against cruise ship line arising from incidents wherein seaman fell and sustained injuries to her lower back, leg, and ankle, and sustained other injuries to her foot while working long hours on cruise ship, which resulted in seaman being declared medically unfit for duty and being sent home to Tennessee for medical treatment. Cruise ship line moved to dismiss for lack of jurisdiction.

The District Court held the Court lacked general personal jurisdiction over cruise ship line in Tennessee; the Court lacked specific personal jurisdiction over cruise ship line for purposes of negligence and unseaworthiness claims; the Court lacked specific personal jurisdiction over cruise ship line for purposes of maintenance and cure claims; and the Court would transfer action to Western District of Washington. Action transferred. *Branstetter v. Holland Am. Line N.V.*, 430 F. Supp. 3d 364 (W.D. Tenn. 2019).

Bill of Lading Forum Selection Clause: Ingram Barge (carrier) filed complaint against Bunge North America (shipper), alleging breach of contract, unjust enrichment, and claim for declaratory judgment seeking a declaration that bills of lading ("BOL") and separate terms formed a valid and enforceable contract between carrier and shipper. Shipper filed motion to dismiss and/or to transfer venue.

The District Court held that shipper consented to personal jurisdiction ("P/JDX") in Middle District of Tennessee ("M.D. Tenn.") under forum selection clause incorporated in BOL for shipments arranged by shipper's exclusive provider of barge freight; carrier did not carry its burden of establishing that shipper consented to P/JDX of M.D. Tenn. pursuant to forum selection clause in BOL associated with shipments not involving shipper's exclusive provider; District Court did not have pendent P/JDX over claims regarding shipments not involving shipper's exclusive provider; District Court had pendent P/JDX over carrier's claims against shipper regarding initial shipment involving shipper's exclusive provider; public-interest factors did not justify disregarding forum selection clause and transferring case to shipper's preferred jurisdiction; carrier failed to state a claim for unjust enrichment in its action against shipper; and District Court would dismiss without prejudice rather than transfer carrier's claims against shipper for which it lacked P/JDX. Motion granted in part and denied in part. *Ingram Barge Co., LLC v. Bunge N. Am., Inc.*, 455 F. Supp. 3d 558 (M.D. Tenn. 2020).

Plaintiff Ship Owner Not Entitled to Preliminary Injunction Barring Maintenance and Cure: Plaintiff argued that Defendant is not entitled to maintenance and cure benefits because her injury did not arise while she was in the service of her vessel and also because she concealed material information—her previous injury and the motor vehicle accident—from her pre-employment medical screening questionnaire. Defendant filed a counterclaim against Plaintiff for negligence, alleging she was injured on board the ship when a 20-pound frozen corned beef brisket fell on her. Plaintiff requested that the Court enter a preliminary injunction declaring that Defendant is not entitled to maintenance and cure benefits under the general maritime law of the United States. Plaintiff averred that injunctive relief is necessary "to avoid the irreparable harm presented by providing [Defendant] with maintenance and cure benefits to which she is not legally entitled" and "to avoid the specter of punitive damages arising from [Plaintiff] not paying maintenance and cure benefits."

The court found that Plaintiff did not meet its burden of proving it is entitled to the extraordinary remedy of a preliminary injunction. A preliminary injunction is not necessary to prevent Plaintiff from undergoing irreparable injury before a decision on the merits can be rendered because Plaintiff is no longer paying Defendant benefits. For the same reason, the public interest does not weigh in favor of granting Plaintiff's motion. Nor is the possibility that Defendant may be awarded punitive damages in the future a sufficient basis for granting Plaintiff the relief. A preliminary injunction "is not a preliminary adjudication on the merits but rather a device for preserving the status quo and preventing the irreparable loss of rights before judgment." *Armstrong Steamship Co. v. Batain*, 2020 WL 6867621 (E.D. Mich. Nov. 23, 2020).

State Court Erroneously Applied State Law to Maritime Claims: Seaman brought action against employer for asbestos-related personal injury, products liability, intentional tort, loss of consortium, and claims under the Jones Act. The appellant filed a motion for reconsideration arguing that the trial court improperly granted summary judgment on grounds not argued by the vessel owner and the trial court incorrectly applied state law to federal claims. Vessel owner opposed the motion for reconsideration arguing that the appellant had a meaningful opportunity to respond. The trial court denied the motion for reconsideration. The Court of Common Pleas, Lorain County, granted summary judgment in favor of employer/vessel owner and denied seaman's motion for reconsideration. Seaman appealed.

The Ohio Ninth District Court of Appeals held the state trial court incorrectly concluded that Ohio substantive law applied and is controlling as to the federal maritime claims of unseaworthiness and the Jones Act; the trial court erred in granting appellee's motion for summary judgment on a basis not advanced by the appellee; and finally, the trial court erred in granting appellee's motion for summary judgment as to appellant's unseaworthiness claim, applying the wrong causation standard (state vs general maritime law). Reversed and remanded. *Shaffer v. A.W. Chesterton Co.*, 150 N.E.3d 463 (Ohio Ct. App. 2019).

Submitted by Theron Korsak

7th Circuit

No Cases

8th Circuit

No Cases

9th Circuit

Waters Between Two Dams Are Not Navigable for Determining Admiralty Jurisdiction: The Ninth Circuit found there was no admiralty tort jurisdiction over a claim for exoneration from limitation of liability under the Limitation of Liability Act, 46 U.S.C. §§ 30501 et seq. The claim concerned a boating accident that occurred on a stretch of the Missouri River in Montana between two dams. The court found that the dams precluded that stretch "from serving as an artery of interstate commerce." Therefore, the stretch was not navigable and the accident failed the location portion of the test for admiralty tort jurisdiction. In a footnote, the court pointed out that the U.S. Coast Guard's determination that the stretch was navigable for regulatory purposes did not make it navigable for the purpose of determining admiralty tort jurisdiction. *In re Garrett*, 981 F.3d 739 (9th Cir. 2020).

Settlement of an Estate's Third Party Longshore Claims Does Not Preclude Widows from Collecting Death Benefits: When personal representatives settle third-party claims for less than the amount or compensation employees were entitled to under the Longshore and Harbor Workers Compensation Act, the employees' estates forfeit further longshore compensation unless the employers approve the settlements. 33 U.S.C. § 933(g). The Ninth Circuit determined that such settlements do not, however, forfeit widows' rights to collect death benefits if the widows did not participate in the settlements, even if a settlement purports to release the employer from liability to all heirs. The court reasoned that the plain language of the forfeiture provision only refers to deceased employees' third-party claims settled by their personal representatives, not the benefits due to their spouses. *Hale v. Bae Sys. San Francisco Ship Repair, Inc.*, 801 Fed. Appx. 600 (9th Cir. 2020).

Pain Can Constitute a Disability Under the Longshore Act Even if the Employee Can Still Perform His or Her Past Work: In another case regarding the Longshore Act, the Ninth Circuit issued an opinion specifically "to set forth the standards for evaluating pain under the Act." The court determined that to be disabling "the level of pain must be sufficiently severe, persistent, and prolonged to significantly interfere with the claimant's ability to do his or her past work." The court stated that standard includes not only pain so severe that it makes it impossible or excruciating for the employee to work, but also pain that "impact[s] the employee's ability to perform the activity over a full workday" or "that would make a reasonable employee stop doing the activity." Therefore, the court held "that credible complaints of severe, persistent, and prolonged pain can establish a prima facie case of disability, even if the claimant can literally perform his or her past work." *Jordan v. SSA Terminals, LLC*, 973 F.3d 930 (9th Cir. 2020).

Submitted by Art Severence

10th Circuit

No Cases

11th Circuit

***Uberrimae Fidei* Voids Policy *Ab Initio* on Misrepresentation that Insured was In Possession of Vessel:** Marine insurance contracts are governed by federal maritime law. It is well-settled that the marine insurance doctrine of *uberrimae fidei* is the controlling law of the Eleventh Circuit and is the controlling federal rule even in the face of contrary state authority. Accordingly, the trial court's grant of summary judgment to the insurance company was affirmed. The insured's misrepresentation that he was in possession of the boat voided his policy *ab initio*. The statements were material as no prudent and intelligent insurer would accept the risk of insuring stolen property that was no longer in the insured's possession. *Quintero v. Geico Marine Ins. Co.*, 2020 U.S. App. LEXIS 40091, 2020 WL 7585629 (11th Cir. December 22, 2020).

Trial Court Erred in Granting Summary Judgment Sua Sponte Without Notice under Fed.R.Civ.P. 56(f): In this passenger slip and fall negligence action against the cruise line, summary judgment was properly granted, in part, because there was no genuine dispute of material fact as to whether the ship was on constructive notice of the presence of the slip hazard that caused the fall (a small piece of watermelon). There was no way of knowing when it fell to the floor, and even the passenger herself, though walking carefully and looking for fruit, did not see the watermelon before she fell. Nonetheless, the district court erred in granting summary judgment *sua sponte* and without notice under Fed. R. Civ. P. 56(f) on theories of negligent design and negligent maintenance because there was no indication that the magistrate judge gave notice about his intention to rule on all of the passenger's theories of negligence. *Francis v. MSC Cruises, S.A.*, 2020 U.S. App. LEXIS 36538 (11th Cir. November 20, 2020)

Genuine Issues of Material Fact on Constructive or Actual Notice of Dangerous Condition Preclude Summary Judgment: The district court erred in granting summary judgment to the vessel owner on a passenger's negligence claim based on failure to warn and failure to remedy because there was a genuine issue of material fact about the owner having actual or constructive notice of the dangerous condition and also about whether any danger was open and obvious. There was an issue of fact as to whether the owner corrected a problem at Deck 10 thresholds that was similar to the problem at the aerobics room threshold on Deck 11, where the passenger fell, because the owner placed warning signs and striped tape at the Deck 10 thresholds. Evidence that a ship owner took corrective action could establish notice of a dangerous or defective condition. *Bunch v. Carnival Corp.*, 825 Fed. Appx. 713 (11th Cir. Sept. 10, 2020).

District Court's Dismissal for One Year Contractual Limitation Period Was Error Where Analysis of Being Meaningfully Informed Requires Matters Outside the Pleadings: Cruise ship passenger was injured when she slipped and fell on the ship. The district court improperly considered matters outside the complaint without converting the cruise company's motion to dismiss into a motion for summary judgment.

While the passenger did not dispute the authenticity of the ticket contract, she contended that the one-year contractual limitations period set under 46 U.S.C.S. § 30508(b)(2) was not enforceable because it had not been reasonably communicated to her; that issue could not be resolved on the face of the ticket contract alone, because the reasonable communicativeness test depended not only on the contract itself but also on extrinsic factors relating to the subjective circumstances attending a particular plaintiff's opportunity to review the ticket terms before embarkation. *Roberts v. Carnival Corp.*, 824 Fed. Appx. 825 (11th Circ. Aug. 24, 2020).

Admiralty Jurisdiction over Passenger Claim: Because the passenger's claim was capable of being pleaded to satisfy federal jurisdiction, the claim must proceed in federal court. The district court had admiralty jurisdiction over the passenger's negligence claim because he suffered his injury while participating as a passenger on a cruise, which was a traditional maritime activity.

The district court enjoyed admiralty jurisdiction because it was the only basis for federal jurisdiction under the facts and substance of the passenger's complaint. The passenger could not escape admiralty jurisdiction by simply labeling his claims "at law," rather than "in admiralty." *Appleby v. NCL (Bah.), Ltd.*, 823 Fed. Appx. 833 (11th Cir. Aug. 14, 2020).

Medical Damages "Reasonableness" Test: The district court improperly reduced appellant's damages by applying a bright-line rule that would categorically limit medical damages to the amount actually paid by an insurer. The district court's reduction of the medical damages award was vacated and remanded for entry of judgment in the amount the jury found to be reasonable. *Higgs v. Costa Crociere S.P.A. Co.*, 969 F.3d 1295 (11th Cir. Aug. 14, 2020).

Admiralty Jurisdiction – Slip and Fall: Slipping on wet stairs on board a vessel was connected with maritime activity and was sufficient to allow for admiralty jurisdiction. The district court had admiralty jurisdiction over the passenger's claim regardless of how he classified it. *Siliakus v. Carnival Corp.*, 819 Fed. Appx. 883 (11th Cir. Aug. 4, 2020).

No Notice of Dangerous Condition / No Spoilation in Absence of Bad Faith: Cruise line passenger sued for personal injuries incurred when the vanity chair in her ship cabin collapsed when she sat on it. She alleged that the cruise line failed to inspect and maintain the cabin furniture. Judgment in favor of the cruise line was upheld because there was no evidence that the cruise line had notice that the chair was dangerous. The district court also properly declined to impose spoliation sanctions against the cruise line for its failure to preserve the chair because, even though the district court erred in finding that the cruise ship did not anticipate this litigation. There was no showing of bad faith on the part of the cruise line, and even if the chair had been preserved, it was not clear what evidence of the cruise line's notice of the chair's condition could have been deduced from the already-broken piece of furniture. *Tesoriero v. Carnival Corp.*, 965 F.3d 1170 (11th Cir. July 14, 2020).

Savings to Suitors / Forum Selection Clause: Passenger injured on a cruise ship sued the ship owner in both state and federal court attempting to plead her federal case to avoid invoking federal jurisdiction so she could permissibly proceed with the state suit under a forum-selection clause. The Passenger could not avoid the admiralty jurisdiction of the federal court and was required to litigate her claim there. The saving-to-suitors clause in 28 U.S.C.S. § 1333 allowed the passenger to choose to file her claim exclusively in state court, but she did not. The passenger voluntarily filed in federal court and alleged sufficient facts to satisfy admiralty jurisdiction. Accordingly, her case could not be dismissed from federal district court for lack of subject-matter jurisdiction. The forum selection clause also required suit in the Southern District of Florida when claims were amenable to federal jurisdiction. *Deroy v. Carnival Corp.*, 963 F.3d 1302 (11th Cir. June 26, 2020).

Evidence of Constructive Notice of Dangerous Condition on Cruise Ship Ice Rink: A passenger's negligence action against the cruise line stemmed from a fall and broken ankle suffered while ice skating aboard the ship. The district court erred in holding that the passenger presented insufficient evidence for a reasonable jury to find the cruise line had constructive notice of the gouges in the ice because testimony from its expert and employee as to the importance of maintaining and resurfacing established the cruise line's general knowledge of the unsafe condition at issue, a witness testified that gouges were visible 10-15 minutes prior to the passenger's, and employees testified that there were three crewmembers stationed in the immediate vicinity of the ice, one of whom was specifically tasked with "watching the ice." *Lebron v. Royal Caribbean Cruises, Ltd.*, 818 Fed. Appx. 918 (11th Cir. June 19, 2020).

Disputed Facts Preclude Summary Judgment on Dangerous Condition and Failure to Warn of Guard Rail on Board Cruise Ship: In a maritime-negligence case arising out of an accident on a cruise ship where a three-year-old child climbed and fell over or through a guard rail onto a lower deck and suffered head injuries, summary judgment was not warranted because there were disputed material facts on plaintiff's claims of negligent creation and maintenance of the guard rail and failure to warn of the danger posed by the guard rail. The district court erred when it concluded that there was no genuine issue of material fact as to the ship's notice of the alleged risk-creating condition because it failed to view the evidence in a light most favorable to the plaintiff and to draw reasonable inferences in her favor. The district court also erred when it resolved the failure-to-warn claim on a basis that the ship did not raise without providing plaintiff notice or an opportunity to respond. *Amy v. Carnival Corp.*, 961 F.3d 1303 (11th Cir. June 16, 2020).

Disputed Fact Issue of Whether Chair Leg Was Open and Obvious in Cruise Trip and Fall: Where a cruise ship passenger tripped over the leg of

a lounge chair while she was walking through a narrow pathway on a cruise ship, there was a disputed issue of material fact as to whether the danger associated with the walkway was open and obvious such that summary judgment in favor of the cruise ship was not warranted. *Carroll v. Carnival Corp.*, 955 F.3d 1260 (11th Cir. Apr 15, 2020).

Plaintiff Must Plead Physical and Emotional Harms and Not Bare Allegations: Passengers' complaint failed to state a claim for relief. The passengers failed to specify their individual physical and emotional harms. While each passenger alleged that the cruise line's delay caused them physical and emotional damage, that bare allegation did not suffice without additional factual allegations in support. While a combined paragraph listed what seems to be every possible injury imaginable, the passengers still failed to identify which passenger suffered which injury. While their allegations of financial harm had factual support, those claims were barred under the maritime economic-loss rule, and, even if the economic-loss rule did not bar their claims for financial injury, their financial injuries still could not support their claims for negligent infliction of emotional distress. *Heinen v. Royal Caribbean Cruises Ltd.*, 806 Fed. Appx. 847 (11th Cir. March 30, 2020).

Ship Owner Not Liable to Stevedore Where Hazard of Lack of Safety Chains on Equipment was Open and Obvious and Could Have Been Avoided: A stevedore suffered injuries while working as a longshoreman aboard a cargo ship and alleged negligence under § 905(b) of the LHWCA. The district court properly granted summary judgment to the ship owner on the basis that it did not violate any of the duties owed by vessels under the LHWCA. No material question of fact remained as to whether the ship owner breached its turnover duty of safe condition with its equipment because the hazard from the equipment was open and obvious and could have been avoided by a reasonably competent stevedore. Prior to commencement of the work, the lack of safety chains on the equipment was noted by the parties and the hazard could have been avoided by using other equipment. *Washington v. Nat'l Shipping Co.*, 2020 U.S. App. LEXIS 39658, 2020 WL 7396562 (11th Cir. December 17, 2020).

Ship Owner Not Liable to Stevedore Where Hazard of Exposed Walkway was Open and Obvious and Could Have Been Avoided: The district court properly dismissed the longshoreman's claim for negligence under the Longshore and Harbor Workers' Compensation Act. A shipowner does not breach the duty to turn over a vessel in safe condition when the injurious hazard was open and obvious and could have been avoided by a reasonably competent stevedore. The exposed walkway was an open and obvious hazard that the longshoreman could have avoided with the exercise of reasonable care. *Troutman v. Seaboard Atl. Ltd.*, 958 F.3d 1143 (11th Cir. May 13, 2020).

DOHSA Applies to Claim Against Contractor for Failure to Service and Maintain F-16 Which Crashed in Gulf of Mexico: Where plaintiff alleged that defendant government contractor failed to properly service and maintain the F-16 that her husband was flying when it crashed into the Gulf of Mexico, the Death on the High Seas Act (DOHSA), 46 U.S.C.S. §§ 30301-08, applied because DOHSA a death occurred on the high seas, even if the alleged negligence occurred on land. The district court was correct to conclude that DOHSA foreclosed plaintiff's breach-of-warranty and breach-of-contract claims because, where DOHSA applied, it preempted all other wrongful-death claims under state or general maritime law. *LaCourse v. PAE Worldwide Inc.*, 980 F.3d 1350 (11th Cir. Nov. 17, 2020).

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About the Contributors

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