RECENT DEVELOPMENTS IN ADMIRALTY AND MARITIME LAW

Jeanne L. Amy, Michael T. Amy, Attilio Costabel, Sarah Yantakosol Gayer, Audrey E. Gitz, Megen Madison Gold, Chase Alexandra Jansson, Sara B. Kuebel, Donald A. Mau, Matthew A. Moeller, Kelly E. Mulrane, Allison N. Skopec, Kat Statman, and W. Benjamin Woody

Jeanne L. Amy (jamy@joneswalker.com) is an associate at Jones Walker LLP in New Orleans, LA; Michael T. Amy (mamy@deutschkerrigan.com) is a partner at Deutsch Kerrigan LLP in New Orleans, LA; Attilio Costabel (costabelpa@bellsouth.net) is a solo practitioner specializing in maritime law and is a professor at St. Thomas University School of Law; Sarah Yantakosol Gayer (sgayer@thompsonbowie.com) is an attorney at Thompson Bowie & Hatch LLC in Portland, ME; Audrey E. Gitz (agitz@deutschkerrigan.com) is an associate at Deutsch Kerrigan LLP in New Orleans, LA; Megen Madison Gold (Megen.M.Gold@uscg.mil) is a staff attorney with the U.S. Coast Guard Judge Advocate General in Washington, D.C.; Chase Alexandra Jansson (chase@CJCLaw.com) is an associate at Campbell Johnston Clark in Miami, FL; Sara B. Kuebel (skuebel@joneswalker.com) is an associate at Jones Walker LLP in New Orleans, LA; Donald A. Mau (dmau@meliaslaw.com) is an associate at Miguel A. Elias Law in Kenner, LA; Matthew A. Moeller (matthew@moellerfirm.com) is the principal of The Moeller Firm LLC in New Orleans, LA; Kelly E. Mulrane (kmulrane@beneschlaw.com) is an associate at Benesch, Friedlander, Coplan & Aronoff LLP, in Columbus, OH; Allison N. Skopec (askopec@winston.com) is an associate at Winston & Strawn LLP in New York, NY; Kat Statman (kstatman@bakerdonelson.com) is an associate at Baker Donelson in Houston, TX; W. Benjamin Woody (bwoody@hccw.com) is an associate at Harman, Claytor, Corrigan & Wellman, P.C., in Alexandria, VA.

I. INTRODUCTION

This article discusses noteworthy admiralty and maritime decisions involving seamen, longshoremen, passengers, maritime liens and attachments, oil pollution, salvage, marine insurance, marine contracts, and other issues that arise in the practice of maritime law. The survey period includes opinions issued by federal and state courts in the United States between October 1, 2018, and September 30, 2019.

II. SEAMAN'S CLAIMS

A. *Jones Act and Unseaworthiness*

In 2019, the United States Supreme Court in *Dutra Group v. Batterton*[1] held that "a plaintiff may not recover punitive damages on a claim of unseaworthiness."[2] This decision resolved the split between the Fifth Circuit holding in *McBride v. Estis Well Services, LLC*[3] that punitive damages could not be recovered in cases of wrongful death or personal injury caused by unseaworthiness and the Ninth Circuit holding in *Batterton v. Dutra Group*[4] that punitive damages were available under general maritime law for claims of unseaworthiness.

Christopher Batterton was a deckhand on a vessel owned and operated by Dutra Group. While Batterton was working on the vessel in navigable waters, a hatch cover blew open and crushed his left hand. Pressurized air was being pumped into a compartment below the hatch cover, and the vessel lacked an exhaust mechanism to relieve the pressure when it got too high. The lack of a mechanism for exhausting the pressurized air made the vessel unseaworthy and caused permanent disability and other damages to Batterton.

The Supreme Court granted certiorari to address the question of whether punitive damages may be awarded to a Jones Act seaman in a personal injury suit alleging a breach of the general maritime duty to provide a seaworthy vessel. The Court held: "Here, because there is no historical basis for allowing punitive damages in unseaworthiness actions, and in order to promote uniformity with the way courts have applied parallel statutory causes of action, we hold that punitive damages remain unavailable in unseaworthiness actions."[5]

1. Dutra Grp. v. Batterton, No. 18-266, 2019 U.S. LEXIS 4202 (June 24, 2019).
2. *Id.* at *26.
3. 768 F.3d 382 (5th Cir. 2014), *cert. denied*, 135 S. Ct. 2310 (2015).
4. Batterton v. Dutra Grp., 880 F.3d 1089 (9th Cir. 2018).
5. *Dutra Grp.*, 2019 U.S. LEXIS 4202, at *6 (June 24, 2019).

The Court's decision was governed by its decisions in *Miles* and *Atlantic Sounding*. *Miles* established that the Court should look primarily to legislative enactments for policy guidance, while recognizing that the Court may supplement these statutory remedies where doing so would achieve the uniform vindication of the policies served by the relevant statutes.[6] In *Atlantic Sounding*, the Court allowed recovery of punitive damages, but justified the departure from the statutory remedial scheme based on the established history of awarding punitive damages for certain maritime torts, including maintenance and cure.[7] The Court stated that "for claims of unseaworthiness, the overwhelming historical evidence suggests that punitive damages are not available."[8]

The Court stated that it could not sanction a novel remedy here unless it was required to maintain uniformity with Congress's clearly expressed policies. The Court considered the remedies typically recognized for Jones Act claims, noting that the Jones Act adopted the remedial provisions of FELA, that early decisions held that FELA damages were strictly compensatory, and that Federal Courts of Appeals had unanimously held that punitive damages are not available under FELA.[9] The Jones Act followed the same practices as FELA, the Jones Act "limits recovery to pecuniary loss,"[10]and the lower courts uniformly held that punitive damages are not available under the Jones Act.[11,12] The position of those courts conforms with the discussion and holding in *Miles*.

The Court was unpersuaded that policy grounds required allowing punitive damages for unseaworthiness claims because (1) it was the Court's overriding objective "to pursue the policy expressed in congressional enactments, and because unseaworthiness in its current strict-liability form is our own invention and came after passage of the Jones Act, it would exceed our current role to introduce novel remedies contradictory to those Congress has provided in similar areas"; (2) the Court was wary to depart from the practice under the Jones Act because a claim of unseaworthiness serves as a duplicate and substitute for a Jones Act claim; (3) allowing punitive

6. Miles v. Apex Marine Corp., 498 U.S. 19, 27 (1990).
7. Atl. Sounding Co. v. Townsend, 557 U.S. 404, 411–14 (2009).
8. *Dutra Grp.*, 2019 U.S. LEXIS 4202, at *16.
9. Miller v. Am. President Lines, Ltd., 989 F.2d 1450, 1457 (6th Cir. 1993); Wildman v. Burlington N. R. Co., 825 F.2d 1392, 1395 (9th Cir. 1987); Kozar v. Chesapeake & Ohio R. Co., 449 F.2d 1238, 1243 (6th Cir. 1971).
10. *Miles*, 498 U.S. at 32.
11. *McBride*, 768 F.3d, at 388 ("[N]o cases have awarded punitive damages under the Jones Act"); Guevara v. Maritime Overseas Corp., 59 F.3d 1496, 1507 n.9 (5th Cir. 1995) (en banc); *Horsley*, 15 F.3d, at 203; *Miller*, 989 F.2d at 1457 ("Punitive damages are not . . . recoverable under the Jones Act"); Kopczynski v. *The Jacqueline*, 742 F.2d 555, 560 (9th Cir. 1984).
12. *Dutra Grp.*, 2019 U.S. LEXIS 4202, at *20.

damages on unseaworthiness claims would also create bizarre disparities in the law; and (4) allowing punitive damages would place American shippers at a significant competitive disadvantage and frustrate the fundamental interest served by federal maritime jurisdiction: "the protection of maritime commerce."[13]

In *Stein v. County of Nassau*,[14] Plaintiff, Stein, was injured when a rung of a wooden ladder broke, which caused him to fall into the water between the dock and bulkhead.[15] Plaintiff commenced this action against the County of Nassau, pursuant to the Jones Act, 46 U.S.C. § 30104, general maritime law, and N.Y. Gen. Mun. Law § 205-e, seeking to recover for personal injuries he allegedly sustained as a result of the unseaworthiness of defendant's vessel and/or defendant's negligence.[16] The court denied plaintiff's motion for partial summary judgment on the issue of liability on his Jones Act and unseaworthiness and granted defendant's application to dismiss under N.Y. Gen. Mun. Law § 205-e because plaintiff did not allege, much less establish, that defendant violated any statute or ordinance.[17]

In *Walker III v. Blackmer Pump Co.*,[18] the executor of the estate of the decedent who died from lung cancer brought an action in state court against the manufacturers of pumps used aboard the vessels on which the decedent worked, alleging that asbestos exposure caused the decedent's cancer.[19] The action was removed to federal court and the district court denied defendants' motions for summary judgment.[20] The district court determined that its maritime law jurisdiction could be invoked because the locality test was satisfied, given that the decedent worked as an electrician aboard the vessel while serving in the Navy and aboard various other Naval vessels in the Philadelphia Naval Shipyard.[21] Furthermore, the connection test was satisfied because (1) the asbestos exposure had a potentially disruptive impact on maritime commerce; and (2) the defective products bore a substantial relationship to traditional maritime activity.[22]

13. *Id.* at *25–26.
14. Stein v. County of Nassau, 17-CV-6055 (SJF) (ARL), 2019 WL 4918103 (E.D.N.Y. 2019).
15. *Id.* at *1.
16. *Id.*
17. *Id.* at *9.
18. Walker III v. Blackmer Pump Co., 367 F. Supp. 3d 360 (E.D. Pa. Feb. 14, 2019).
19. *Id.* at 362–63.
20. *Id.* at 363. See *Jones v. United States*, 936 F.3d 318 (5th Cir. 2019) for an example of a grant of summary judgment including discussion of summary judgment burdens of proof on a seaman's Jones Act negligence and unseaworthiness claims as well as the district court's discretion in ruling on same.
21. *Id.* at 374–75.
22. *Id.* at 375.

B. *Maintenance and Cure*

In *In re 4-K Marine, L.L.C.*, a crew member was injured during an allision between two vessels, and the court was presented with the question whether "the owner of the stationary, 'innocent' vessel must be reimbursed for the medical expenses of an employee who fraudulently claimed his preexisting injuries had resulted from the allision."[23] The court upheld the district court's opinion finding that the owner of the stationary vessel is not entitled to reimbursement.[24] In this case, the M/V TOMMY, owned and operated by Enterprise Marine Services, LLC, was pushing a flotilla of barges in the Mississippi River, and the lead barge made contact with the M/V MISS ELIZABETH that was stationary on the river's bank.[25] On appeal, the issue became whether Enterprise Marine was required to reimburse the owner of the M/V MISS ELIZABETH for back surgery on behalf of one of the injured crew members.[26] Because the district court determined that the back injury was not a result of the allision, the owner of the MISS ELIZABETH would not be responsible for any maintenance and cure payments related to the back injury and therefore could not receive a reimbursement from Enterprise Marine.[27]

In *Knudson, v. M/V AMERICAN SPIRIT*,[28] a non-union seaman worked under a contract that included a maintenance rate of $8 per day. After receiving $8 a day for two years, plaintiff supplied defendants with evidence showing that his living expenses were $45 per day.[29] Plaintiff also offered the testimony of defendants who agreed that a person could not secure room and board for $8 per day.[30] Under general maritime law, the parties may agree to a rate of maintenance, but that rate must be reasonable.[31] The court found that plaintiff met his burden of proving his prima facie case that $8 per day is an unreasonable rate of maintenance and that $45 per day was reasonable, therefore that the $8 per day maintenance rate stated in the Terms & Conditions of Employment was unenforceable.[32]

Adams v. Liberty Maritime Corp.[33] involved a plaintiff's claim against his employer for failure to provide adequate medical treatment to a seaman

23. *In re* 4-K Marine, L.L.C., 914 F.3d 934, 936 (5th Cir. 2019).
24. *Id.*
25. *Id.*
26. *Id.*at 937.
27. *Id.*
28. Knudson, v. *M/V AMERICAN SPIRIT*, No. 14-cv-14854, 2019 U.S. Dist. LEXIS 8329, at *1 (E.D. Mich. Jan. 17, 2019).
29. *Id.* at *4.
30. *Id.* at *5.
31. *Id.* at *7.
32. *Id.* at *13–14.
33. Adams v. Liberty Maritime Corp., 2019 WL 4345996 (E.D.N.Y. Sept. 12, 2019).

on its vessel.[34] The plaintiff claimed that serious medical symptoms and ailments suffered were ignored by the captain and misreported to the representatives of a medical care service, and the medical records were improperly recorded in the ship's records.[35] Defendants moved to preclude expert testimony by plaintiff's treating physicians.[36] The district court (1) granted summary judgment to the medical consultation company for the actions of independent contractor physicians; (2) did not exclude expert medical testimony in non-jury case for failure to comply with discovery obligations; (3) declined to apply the collateral source rule to the maintenance and cure claim; and (4) declined to decide whether the conduct of master would bind the owner for punitive damages in the maintenance and cure claim.[37]

C. *Other Issues Affecting Jones Act Seamen*

In both *Scandies Rose Fishing Co., LLC v. Pagh*[38] and *Glacier Fish Co., LLC v. Becerra-Valverde*,[39] the U.S. District Court for the Western District of Washington provided clarification as to the propriety of a Jones Act employer's declaratory judgment action. In *Scandies Rose*, a seaman suffered two injuries while working aboard a vessel owned by his Jones Act employer. The Jones Act employer and the seaman disagreed as to the rate of maintenance owed. In response, the Jones Act employer filed a declaratory action seeking a determination of its maintenance and cure obligations. One month later, the seaman filed a parallel suit in state court asserting the typical tripartite causes of action available to a seaman: negligence, unseaworthiness, and maintenance and cure.[40] The seaman contended that the employer's declaratory judgment action was filed solely as a litigation strategy, and, thus he sought to dismiss the federal action arguing that General Maritime Law entitled the seaman to a jury trial on his maintenance and cure claim, because he asserted it in conjunction with his Jones Act negligence and unseaworthiness claims.[41] The district court agreed and stayed the Jones Act employer's declaratory action pending the resolution of the seaman's state court action.[42] However, in *Glacier Fish*, the district court found just the opposite and allowed a Jones Act employer's declaratory action to proceed.[43] In *Glacier Fish*, unlike *Scandies Rose*, the Jones Act seaman did not file

34. *Id.* at *1.
35. *Id.* at *3.
36. *Id.* at *4.
37. *Id.* at *11.
38. C.A. No. C18-672, 2018 WL 5276587, 2018 AMC 2775 (W.D. Wash. 2018).
39. 345 F. Supp. 3d 1340 (W.D. Wash 2018).
40. *Scandies Rose*, 2018 WL 5276587, at *2.
41. *Id.* at *4 (citing Fitzgerald v. U.S. Lines Co., 374 U.S. 16 (1963)).
42. *Id.* at *6.
43. *Glacier Fish*, 345 F. Supp. 3d at 1348.

his state court suit until almost a full year after the Jones Act employer filed its declaratory judgment action. Considering this fact along with other relevant factors, such as avoiding duplicative litigation or piecemeal resolution of disputes, the district court distinguished *Scandies Rose* and declined to stay or dismiss the Jones Act employer's declaratory judgment action.[44]

III. LONGSHOREMEN CLAIMS

Manson Gulf, L.L.C. v. La Fleur involved a wrongful death action arising from an offshore worker's fall through an open hole in the grating of an offshore platform that was decommissioned and being deconstructed.[45] On appeal, the Fifth Circuit was specifically tasked with addressing whether Manson Gulf's expert witness who offered testimony that LaFleur should have discovered the hole in the platform should have been excluded; (2) whether the evidence was sufficient to conclude that Manson was liable to the La Fleur family; (3) whether the district court erroneously excluded personal consumption from future earnings in its damage calculations; and (4) whether the district court erred in awarding prejudgment interest on future damages.[46] The court affirmed issues 1–3 and vacated and remanded on issue 4.[47] Of particular note in this opinion, in light of the litigation history where the case has been before the Fifth Circuit on a prior occasion, is that the district court was previously reversed on many of these issues and then upon a bench trial of the case, found no fault on the part of La Fleur.[48]

At issue in *Iopa v. Saltchuk-Young Brothers, Ltd.* was what standard the Ninth Circuit should apply when striking an untimely petition for attorney's fees under the Longshore and Harbor Workers' Compensation Act ("LHWCA").[49] Considering the applicable law, the Ninth Circuit held that the proper analysis standard would be excusable neglect.

In *Iopa*, a longshoreman successfully litigated claims for temporary disability benefits under the LHWCA, and the administrative law judge ("ALJ") held that the longshoreman was entitled to attorney's fees and costs. The longshoreman's attorney improperly filed a fee petition for work done with the wrong office and, then months later, filed a corrected petition with the correct office. The ALJ issued an order striking the first

44. *Id.*

45. Manson Gulf, L.L.C. v. La Fleur, 2019 WL 4124431, at *1 (5th Cir. Aug. 29, 2019). See *Mayes v. Selvick Marine Towing Corp.*, 2019 U.S. Dist. LEXIS 126643, at *1, 2019 WL 3457694 (E.D. Wis. July 30, 2019), for a discussion of the classification of employee as Jones Act seaman versus LHWCA worker and the claims available to each.

46. *Id.* at *2.

47. *Id.*

48. *See* Manson Gulf, L.LC. v. Modern Am. Recycling Serv. Inc., 878 F.3d 130, 133 (5th Cir. 2017).

49. 916 F.3d 1298, 2019 AMC 926 (9th Cir. 2019).

petition due to his lack of authority and also struck the second petition based on a finding of untimeliness without excusable neglect.[50] On appeal, the longshoreman's counsel argued that the ALJ did not apply the proper standard in evaluating the circumstances for the untimely fee petition.

Relying upon the revisions to the Rules of Practice and Procedure for Administrative Hearings, the Ninth Circuit held that, in evaluating an untimely petition, the court would utilize the "excusable neglect" standard.[51] In determining whether circumstances constitute excusable neglect, courts rely upon a four-factor test enunciated in *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*.[52] The factors include: "[1] the danger of prejudice to the debtor, [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith."[53] Evaluating the facts in light of these factors, the Ninth Circuit did not find excusable neglect and affirmed the ALJ's prior order.

IV. PASSENGER CLAIMS

In *Guevara v. NCL (Bahamas) Ltd.*,[54] the United States Court of Appeals for the Eleventh Circuit held that a warning sign advising passengers to "hold the handrail" and "watch your step" that had been permanently affixed to its ship for years was sufficient evidence the cruise line had notice of the dangerous condition to trigger its duty to warn passengers thereof.[55] However, its decision also clarified that the existence of a warning sign did not result in automatic liability for failure-to-warn where the carrier could show the sign itself was an adequate warning in order to defeat the claim.[56]

In *K.T. v. Royal Caribbean Cruises, Ltd.*,[57] the Eleventh Circuit reversed and remanded the dismissal of a minor passenger's negligence claim for the cruise ship operator's failure to warn her or her custodians about the dangers of sexual assaults aboard its ships enhanced by minors wrongfully being provided with or allowed to gain access to alcohol by crew or other passengers.[58] The court held that her Complaint, alleging that Royal Caribbean had abundant notice and actual knowledge of the dangers that resulted in her sexual assault on the cruise and that the carrier's failure to

50. *Id.* at 1300.
51. *Id.* at 1301.
52. 507 U.S. 380, 395 (1993).
53. *Id.*
54. Guevara v. NCL (Bahamas) Ltd., 920 F.3d 710 (11th Cir. 2019).
55. *Id.* at 722.
56. *Id.*
57. K.T. v. Royal Caribbean Cruises, Ltd., 931 F.3d 1041 (11th Cir. 2019).
58. *Id.*

warn her or her custodians was a but-for cause of that harm, stated plausible negligence claim based on the cruise line's failure to warn of such danger.[59]

The Eleventh Circuit also ruled on a trio of cases involving notice to passengers on the abbreviated timeframe in which they may file suit against a cruise line based on the limitations noted on the cruise ticket.[60] In the Eleventh Circuit, it has long been established that a limitation on the time for filing suit contained within a cruise ticket contract will be enforced "if the passenger had reasonably adequate notice that the limit existed and formed part of the passenger contract."[61] Over the course of the last year, the Eleventh Circuit has repeatedly affirmed lower court decisions upholding cruise ship ticket provisions contractually shortening the time limitation for bringing personal injury actions against the cruise line, despite the general three-year statutory limitations period on all maritime tort claims.[62]

In *DannaMarie Provost v. Hall*, the Eleventh Circuit rejected the Plaintiff's contention that they did not have adequate notice of the ticket's time limitation "because the typeface used for that provision was not bold, highlighted, or printed in a contrasting color."[63] In *Caron v. NCL (Bahamas) Ltd.*, the Eleventh Circuit enforced a one-year limitations period for bringing personal-injury suits in a cruise ticket contract despite appellant's argument that the word "suit" was ambiguous.[64] Finally, in *Baer v. Silversea Cruises Ltd*., the Eleventh Circuit held that a passenger's negligence claims against the cruise line that largely arose from subpar medical treatment at an on-shore hospital (where cruise line sent him) were covered by the

59. *Id.* at 1045.

60. DannaMarie Provost v. Hall, 757 F. App'x 871 (11th Cir. 2018), *cert. denied sub nom.* Miorelli v. Royal Caribbean Cruise Lines, Ltd., 139 S. Ct. 2616 (2019); Caron v. NCL (Bahamas), Ltd., 910 F.3d 1359, 2019 AMC 30 (11th Cir. 2018); Baer v. Silversea Cruises Ltd., 752 F. App'x 861 (11th Cir. 2018).

61. Nash v. Kloster Cruise A/S, 901 F.2d 1565; 1990 AMC 2744 (11th Cir. 1990).

62. DannaMarie Provost v. Hall, 757 F. App'x 871 (11th Cir. 2018), *cert. denied sub nom.* Miorelli v. Royal Caribbean Cruise Lines, Ltd., 139 S. Ct. 2616 (2019); Caron v. NCL (Bahamas), Ltd., 910 F.3d 1359; 2019 AMC 30 (11th Cir. 2018); Baer v. Silversea Cruises Ltd., 752 F. App'x 861 (11th Cir. 2018).

63. *DannaMarie Provost*, 757 F. App'x at 876 (holding that "cruise ticket contracts printed in a similar size and typeface were sufficient 'as a matter of physical presentation' to provide reasonable notice to passengers where, as here, the relevant provision was clearly labeled and an additional notice in a prominent location (such as the cover of the ticket booklet) directed ticket-holders to the contract section of the booklet").

64. Caron v. NCL (Bahamas), Ltd., 910 F.3d 1359 (11th Cir. 2018) (rejecting the argument that the word "suit" in the ticket contract was ambiguous unless it was "construed to permit claims first mentioned in an amended complaint more than one year after the incident, as long as the initial complaint is filed within the year" because when read in context, the provision unambiguously bars a passenger from raising new claims in an amended complaint more than a year after an incident).

one-year limitation period established in the ticket contract and, therefore, time-barred.[65]

In *Sugamele v. Town of Hempstead*,[66] passengers on a speedboat, who were injured when the speedboat allided with marshy body of land located off the coast of Long Island, and estates of passengers, who were killed as result of this accident, brought an action against the Town of Hempstead ("Town") to recover damages for personal injuries and wrongful death.[67] The plaintiffs alleged that the Town was negligent in its installation and placement of buoys marking a channel around a marshy body of land in the town.[68]

The Supreme Court of Nassau County granted the Town's motion for summary judgment, and the passengers and passengers' estates appealed.[69] The Supreme Court, Appellate Division, Second Department reversed, holding that the issue of fact regarding the Town's comparative fault based on its placement and maintenance of buoys marking a channel around marshy body of land precluded grant of summary judgment to town.[70] The court found that maritime law was applicable in this case, and it recognized a general theory of liability for negligence.[71] Therefore, the town failed to establish its prima facie entitlement to judgment as a matter of law. Although the Town submitted evidence suggesting that the accident may have been at least partly caused by negligence on the part of the boat's operator, the Town failed to meet its prima facie burden of demonstrating the lack of any triable issues of fact regarding the Town's comparative fault based on its placement and maintenance of the buoys.[72]

V. CONTRACT

In *D'Amico Dry Ltd. v. Primera Maritime (Hellas) Limited*, 886 F.3d 216 (2d Cir. 2018), a judgment creditor, d'Amico, brought an action under federal admiralty jurisdiction against a judgment debtor and its alleged alter egos to enforce an English court's judgment on freight forward agreement (FFA) concerning future ocean freight rates.[73] The district court dismissed for lack of subject matter jurisdiction, saying that a FFA was not a maritime contract, and denied reconsideration, which the judgment creditor

65. Baer v. Silversea Cruises Ltd., 752 F. App'x 861 (11th Cir. 2018).
66. Sugamele v. Town of Hempstead, 169 A.D.2d 852, 2019 AMC 684 (N.Y. App. Div. 2019).
67. 169 A.D.2d 852.
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.* at 853.
72. *Id.*
73. *Id.* at 216.

appealed.[74] The Second Circuit vacated and remanded. After bench trial on remand, the U.S. District Court for the Southern District of New York dismissed, and the judgment creditor appealed, while the judgment debtor moved for sanctions.

On appeal, the judgment creditor argued that the FFA was a maritime contract because, on the facts found by the district court at trial, the agreement with judgment debtor was a hedge against another risk: d'Amico's exposure to shifts in the market price for shipping on certain routes.[75] The Second Circuit vacated and remanded, holding the FFA was a maritime contract and the judgment creditor's appeal was not frivolous.[76]

In *Blank River Services, Inc. v. Towline River Service, Inc.*,[77] Plaintiff brought suit against Defendant, asserting that it charted a towboat to Defendant and that Defendant returned the towboat in an unacceptable condition, with several pieces of equipment missing, broken, or damaged.[78] Plaintiff sought damages based on a breach of a maritime contract—the charter agreement.[79] Defendant filed a declaratory judgment action in Pennsylvania state court and, in the instant action, sought the District Court to abstain from hearing the case because the state court proceedings were parallel and extraordinary circumstances that merited abstention under the *Colorado River*[80] abstention analysis.[81]

The Court assumed for purposes of the Defendant's motion that the proceedings were parallel because they presented "substantially identical claims, raising nearly identical allegations and issues."[82] However, the Court determined that no extraordinary circumstances existed justifying abstention because the factors articulated by the Third Circuit Court of Appeals[83] did not favor abstention: (1) this was not an *in rem* action; (2) the federal forum was not inconvenient for the parties; (3) no federal policy existed that the claims should be tried in the state court, and Congress specifically stated that maritime cases should be tried in federal court, so no issue of piecemeal litigation existed; (4) although Defendant filed its declaratory judgment action in state court prior to Plaintiff filing the pres-

74. *Id.*
75. *Id.* at 218.
76. *Id.* at 229.
77. Blank River Services, Inc. v. Towline River Service, Inc., No. 2:19-CV-00418, 2019 WL 3940837 (W.D. Pa. Aug. 21, 2019).
78. *Id.* at *1.
79. *Id.*
80. Colo. River Water Conservation Dist. v. United States, 424 U.S. 800 (1976).
81. *Id.* at *2–3.
82. *Id.* at *4.
83. Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc., 571 F.3d 299, 307–08 (3d Cir. 2009).

ent action, the timing of when jurisdiction was obtained in each court was not dispositive; (5) federal law controlled this dispute; and (6) whether the state court was capable of adequately protecting the parties' interests was immaterial for Defendant's argument.[84] Thus, the Court denied Defendant's motion.[85]

VI. MARINE INSURANCE

In *Chartis Property Casualty Co. v. Inganamort*,[86] Plaintiff issued an insurance policy to Defendants, insuring Defendants' sixty-five-foot yacht, *Three Times A Lady*, which was berthed in Boca Raton, Florida.[87] The yacht suffered a partial sinking while docked in Florida, and Plaintiff claimed that a hole in the boat brought about by years of lack of upkeep caused the partial sinking.[88] Plaintiff sought a declaratory judgment that insurance coverage for the loss was barred and/or limited, and Defendants moved to dismiss the complaint.[89] Plaintiff asserted that the insurance policy did not cover the damage because the policy was an "all-risk" policy that only covered fortuitous losses.[90] Defendants asserted that federal law did not apply and that, under Florida law, the burden to prove that an exception to coverage existed rested with Plaintiff.[91]

The District Court held that federal admiralty law applied and that the fortuitous loss rule was an entrenched federal rule, stating that "all-risk policies in marine insurance contracts only cover losses caused by fortuitous events."[92] As such, the Defendants had the burden of proof.[93] Defendants contended that the partial sinking of their boat arose from heavy rainfall; however, the expert reports submitted by Defendants did not state a clear case for rainfall as a cause for the partial flooding, and Defendants did not provide sufficient evidence of heavy rain in the area during the applicable time period.[94] Thus, the Court determined that Defendants failed to meet their burden and, as such, were not entitled to insurance coverage.[95]

84. *Id.* at *5–8.
85. *Id.* at *11.
86. Chartis Prop. Cas. Co. v. Inganamort, No. 12-04075, 2019 WL 1277518 (D.N.J. Mar. 20, 2019).
87. *Id.* at *1.
88. *Id.*
89. *Id.*
90. *Id.* at *2.
91. *Id.*
92. *Id.* at *2–3.
93. *Id.* at *3.
94. *Id.* at *3–4.
95. *Id.* at *5.

VII. CARGO

The Sixth Circuit grappled with whether the Carriage of Goods by Sea Act (COGSA) controlled in *Dimond Rigging Co. v. BDP International, Inc.*[96] There, a Chinese auto manufacturer contracted with Dimond, an American company, to rig, dismantle, and ship used automotive assembly-line equipment to China.[97] Dimond hired BDP, a freight forwarder to perform the work, which, without seeking approval from Dimond, hired another freight forwarder, Logitrans, to perform some of the work.[98] BDP and Logitrans failed to appear at a pre-loading inspection meeting, causing delays, higher costs, and partial short shipment.[99] Dimond then sued BDP and Logitrans in the Northern District of Ohio for breach of fiduciary duty, unjust enrichment, and fraud.[100] At issue was whether COGSA controlled the bill of lading.[101] COGSA has a one-year statute of limitation so that if COGSA applies, Dimond must have filed its claim within one year of delivery of the cargo.[102] Because the bill of lading was issued for transport goods in foreign trade from a United States port to a foreign port, COGSA applied, and Dimond failed to timely file its claim against the freight forwarders.[103]

In re M/V Flaminia involved a limitation action following an explosion and fire on board a ship transporting hazardous cargo.[104] In 2012, the M/V MSC FLAMINIA was crossing the Atlantic Ocean bound for Antwerp, Belgium. The vessel had departed from New Orleans, Louisiana, fourteen days earlier.[105] On July 14, 2012, alarms sounded, a smoke cloud rose from one of the holds, and an explosion followed thereafter.[106] As a result of the explosion and a fire, three members of the crew were killed, thousands of cargo containers were destroyed, and the vessel was seriously damaged. MSC brought an action seeking exoneration from, or, alternatively, limitation of liability, related to an explosion and fire caused by hazardous chemicals. The Court divided the trial into two phases: a "Phase I" trial that determined the cause of the explosion; and a "Phase II" trial to establish responsibilities.[107]

96. Dimond Rigging Co. v. BDP Int'l, Inc., 914 F.3d 435 (6th Cir. 2019).
97. *Id.* at 438.
98. *Id.* at 439.
99. *Id.* at 440.
100. *Id.*
101. *Id.* at 441–42.
102. *Id.* at 441.
103. *Id.* at 442.
104. *In re M/V Flaminia*, 339 F. Supp. 3d 185, 2019 AMC 2113 (S.D.N.Y. 2018).
105. *Id.* at 191.
106. *Id.*
107. *Id.*

In Phase I, the Court found that divinylbenze ("DVB"), a chemical contained in a container aboard the FLAMINIA ignited by a spark, caused the explosion and fire.[108] In Phase II, the NVOCC shipper of the cargo and company that arranged for transportation of DVB cargo brought third-party action against company that processed the ocean bill of lading for DVB cargo, alleging it failed to ensure proper stowage instructions for DVB.[109] The court held that MSC and the manager/operator were not liable for maritime-based negligence and were entitled to full indemnification from the manufacturer and the NVOCC, and the carrier was not liable for maritime-based negligence.[110] Finally, the court found that the manufacturer of DVB and the NVOCC were strictly liable under COGSA for losses arising from the explosion.[111] This case is currently in a "Phase III" to determine damages.

VIII. MARITIME LIENS, ATTACHMENT, AND SHIP MORTGAGE ACT

A. *Maritime Liens*

In *Bunkers Holdings, Ltd. v. Yang Mingo Liber. Corp.*, the Ninth Circuit Court of Appeals considered whether a supplier provided bunkers "on the order of the owner" and therefore, could claim a maritime lien.[112] The plaintiff-supplier provided bunkers to a vessel while the ship docked in Russia. The vessel owner had ordered the bunkers from a fuel broker and did not direct the broker to select any particular supplier. In turn, the fuel broker entered into a separate contract with the plaintiff-supplier to procure the bunkers. Shortly thereafter, the fuel broker filed for bankruptcy, thereby forcing the plaintiff-supplier to pursue payment through an action *in rem* against the vessel. Assuming that United States law applied, the court analyzed whether the supplier "provid[ed] necessaries to a vessel on the order of the owner or a person authorized by the owner."[113]

Analyzing the facts, the Ninth Circuit found that the plaintiff-supplier was not entitled to a maritime lien. The supplier clearly did not provide the bunkers by order of the owner, because it did not contract with the vessel owner. Likewise, the court found that the fuel broker was not a person authorized by the owner. Specifically, the fuel broker was neither the owner, the master, nor an entity entrusted with the management of the vessel. Moreover, the court noted that the plaintiff-supplier failed to submit any evidence that the fuel broker acted as an agent for the vessel owner.

108. *Id.*
109. *Id.* at 194.
110. *Id.* at 244.
111. *Id.* at 185.
112. 906 F.3d 843, 845–46, 2018 AMC 2484 (9th Cir. 2018).
113. *Id.* at 845 (quoting 46 U.S.C. § 31342(a)).

Rather, because the fuel broker entered into a separate contract with the supplier, the supplier could not claim a maritime lien.[114] Accordingly, the Ninth Circuit held that the supplier could not maintain a maritime lien against the vessel owner.

In *SPM Management, LLC v. M/Y Sea Ayre V*, the Fourth Circuit affirmed the imposition of a maritime lien against a yacht for unpaid wharfage.[115] The vessel owners contended that no implied dockage contract had been established due to the insufficient evidence to establish the management company's interest in the area where the vessel was tied to the floating pier.[116] However, the panel affirmed the finding of the recording plat, which state law recognized as sufficient, "to 'locate the land in dispute within the clear description of the deed.'"[117] The vessel owners further contended that the management company could not claim ownership over the dock because "the Commonwealth of Virginia's sovereign ownership of subaqueous lands" meant that no party could assert an ownership over that land."[118] The panel noted that even though the Commonwealth of Virginia did own the subaqueous lands, the subaqueous bed of the waterway was not implicated "but rather the water area above it."[119] The vessel owners put on no evidence to contest the management company's claim to title, and the panel recognized this silence as deafening.[120]

At issue in *Barnes v. Sea Hawaii Rafting, LLC* was whether a vessel's trailer should be considered an appurtenance of the vessel.[121] The plaintiff, a seaman, suffered an injury while in the service of the vessel and asserted a maritime lien against the vessel as a result of the vessel owner's failure to pay maintenance and cure and arrested the vessel.[122] The seaman's substitute custodian agreed to serve in that capacity only if the vessel was arrested along with the trailer upon which it had been secured, in order to allow the substitute custodian to easily transport the vessel if necessary. Thus, the court had to determine whether the trailer constituted an appurtenance of the vessel and, thus, extended the seaman's maritime lien to encompass the trailer. The court answered affirmatively and noted that the trailer is necessary to (1) maintain and supply the vessel after each trip; (2) assist in storage of the vessel after a trip; and (3) launch the vessel into the water and retrieve the same at the end of each trip.[123] Moreover, the district court

114. *Id.*
115. 756 F. App'x 304, 2019 AMC 210 (4th Cir. 2018)
116. *Id.* at 306.
117. *Id.* (quoting Smith v. Bailey, 127 S.E. 89, 92 (Va. 1925)).
118. *Id.* at 307.
119. *Id.* (citing Va. Code §§ 28.2-1200, -1203, -1204, -1205 (2016)).
120. *Id.*
121. 358 F. Supp. 3d 1083, 1085, 2019 AMC 424 (D. Haw. 2018).
122. *Id.* at 1086.
123. *Id.* at 1091.

also noted that the trailer provides a "necessary" to the vessel in the way of towage. In fact, the court analogized the trailer's function to that of a tug towing a barge.[124]

B. *Attachment*

In *Hays Tug & Launch Services, Inc. v. Draw Events, LLC*, Plaintiffs, Hays Tug & Launch Services, Inc., Pollution Solutions of New Jersey, LLC d/b/a River Service, McAllister Towing of Philadelphia, Inc. and General Marine & Industrial Services, Inc., provided services during the 2015 Tall Ship Challenge, which was organized and managed by Defendants.[125] Defendants were under contract with the event hosts, Cooper's Ferry Partnership, the Adventure Aquarium, the Delaware River Waterfront Corporation (DRWC), and the Independence Seaport Museum.[126] Defendant subcontracted with Hays Tug to provide barge and towing services, McAllister Towing to provide towing services to move vessels in the Delaware River, River Services to provide barge, towing and repair services and supplies to maintain the barges, and to assist in the emergency recover, transportation and repair of "Big Mama Duck," which was a large floating rubber duck that deflated in the water during the Tall Ship Challenge. General Marine provided crane and labor to transport, recover, and repair Big Mama Duck.[127] Draw Events brought suit in the Eastern District Court of Pennsylvania against Cooper's Ferry, DRWC, Adventure Aquarium and Independence Seaport Museum due to unpaid invoices.[128] Plaintiffs sought to intervene but the Court denied their motion.[129] The Court dismissed the action following a settlement between the parties.[130]

Plaintiffs then filed suit against Draw Events and its sole member, Craig Samborski, and served Cooper's Ferry and Adventure Aquarium with writs of attachment and garnishment.[131] Plaintiffs asserted that the writ of attachment garnished the $50,000 settlement check prepared by Cooper's Ferry on behalf of all of the defendants for Draw Events, because "(1) it was still in the hands of Cooper's Ferry—the garnishee—by way of its attorney, when it was served, and (2) the funds did not transfer from Cooper's Ferry's possession until Draw Events deposited it several days after and the check subsequently cleared."[132] Draw Events, and garnishees Cooper's Ferry and Adventure Aquarium, argued that the writs of attachment did not garnish

124. *Id.* at 1093–94.
125. 364 F. Supp. 3d 365 (D.N.J. Jan. 25, 2019).
126. *Id.* at 367.
127. *Id.*
128. *Id.*
129. *Id.*
130. *Id.*
131. *Id.* at 367–68.
132. *Id.* at 368.

the $50,000 because it was not in the garnishees' possession when they were served with Plaintiffs' writs.[133] Defendants additionally argued that the dispute was contractual rather than maritime in nature.[134] The Court held that Plaintiffs adequately secured a writ of attachment because (1) Plaintiffs have asserted *in personam* claims against Defendants; (2) Defendants did not contend that they were amenable to service in the District of New Jersey; (3) Defendants did not meet their burden of showing that the garnishees were not in possession of the settlement check at the time Plaintiffs' writs were served; (4) Plaintiffs' services of "chartering and towing of barges, services to repair or maintain barges, towing and services of vessel, the rental and servicing of docks, and the use of a crane to retrieve a deflated vessel" were all activities that were maritime in nature.[135] Therefore, the District Court did not vacate Plaintiffs' writs of attachment.[136]

C. *Ship Mortgage Act*

In *Bank v. M/V "MOTHERSHIP,"* Howard Bank filed an *in rem* proceeding seeking to foreclose on a preferred ship mortgage owned by an individual who, after the filing of the complaint in admiralty and an order appointing the U.S. marshal as substitute trustee, filed a bankruptcy petition in the Maryland bankruptcy court.[137] In addition to the *in rem* claims, Bank also filed an *in personam* claim against the debtor and the debtor's husband for breach of contract.[138]The bankruptcy court decided that, even though the debtor should have the first opportunity to sell the vessel, it was unable to authorize the sale of the vessel, given that the district court had assumed jurisdiction over it.[139] In determining whether to authorize the marshal to sell the vessel or to permit the bankruptcy court to provide the debtors with the first opportunity to sell the vessel, the district court followed the courses charted by the other courts and authorized the latter.[140] The district court reasoned that the bankruptcy court was best equipped to resolve whether the creditor or the debtor was in the better position to sell the vessel.[141] The district court issued a stay of the *in rem* and *in personam* claims to permit the bankruptcy court to allow for the disposition of the vessel.[142]

133. *Id.*
134. *Id.* at 368.
135. *Id.* at 369–74.
136. *Id.* at 374.
137. Bank v. *M/V "MOTHERSHIP,"* 387 F. Supp. 3d 629, 630 (D. Md.); *appeal filed*, Howard Bank v. Moran (4th Cir. Sept. 26, 2019).
138. *Id.*
139. *Id.* at 631.
140. *Id.* at 632 (citing Adams v. *M/V Tenacious*, 203 B.R. 297 (D. Alaska 1996); *O'Hara Corp. v. F/V N. Star*, 212 B.R. 1 (D. Me. 1997)).
141. *Id.* at 633.
142. *Id.*

IX. CRIMINAL

The First Circuit vacated defendant's sentence of seventy-seven months' imprisonment and remanded this case for revised sentencing in *United States v. Reyes-Rivas*.[143] The First Circuit held that, under the Jones Act, the district court impermissibly considered an untranslated Spanish-language document at the defendant's sentencing.[144] The presentence report determined that defendant qualified as a "career offender" because he had two prior convictions for "crimes of violence."[145] To support the assertion that defendant's prior conviction for aggravated battery was a crime of violence, the government attached a Spanish-language copy of a Puerto Rico judgment of conviction.[146] The district court ruled that defendant's aggravated battery conviction qualified as a crime of violence and that defendant was a career offender.[147] The First Circuit vacated and remanded the sentence. The court held that the Jones Act required that the court set aside the untranslated document concerning defendant's judgment of conviction.[148] Thus, the court had no basis to conclude that the district court permissibly found that defendant's conviction was for aggravated battery in the fourth degree.[149]

In *United States v. Aybar-Ulloa*, the First Circuit affirmed defendant's convictions of two counts of drug trafficking in international waters while aboard a stateless vessel in violation of the Maritime Drug Law Enforcement Act (MDLEA).[150] The court held that defendant's challenges to his convictions failed, but that the district court erred in denying defendant a minor participant reduction under Section 3B1.2(b) of the sentencing guidelines.[151] Specifically, the court reasoned that in light of prior precedent concerning defendant's assertion about the content of international law, the court must reject defendant's constitutional contention regarding the scope of Congress's power to criminalize his conduct.[152] The court also reasoned that because Amendment 794 to the Sentencing Guidelines, which added five factors to the application note, applies retroactively, this case must be remanded for resentencing so that the district court can have an opportunity to apply the new factors.[153]

143. United States v. Reyes-Rivas, 909 F.3d 466, 466–67 (1st Cir. 2018).
144. *Id.*
145. *Id.* at 467.
146. 909 F.3d at 468.
147. *Id.* at 469.
148. *Id.* at 471.
149. *Id.*
150. United States v. Aybar-Ulloa, 913 F.3d 47, 49 (1st Cir. 2019).
151. *Id.*
152. *Id.*
153. *Id.* at 47.

In *United States v. Prado*, three defendants, who were arrested on a go-fast boat in international waters, brought a motion to dismiss their charges under the MDLEA for conspiracy to possess with intent to distribute and possession with intent to distribute cocaine.[154] The district court denied the motion; the defendants entered guilty pleas and appealed on the basis that the government failed to show that the go-fast boat was stateless and subject to the jurisdiction of the United States as required by 46 U.S.C. S 80503(e)(1).[155]

The Second Circuit agreed with the defendants and vacated the judgments of conviction, holding that (1) even if defendants had every reasonable opportunity, and every good reason, to make an oral claim of nationality or registration for the boat without being asked by Coast Guard officers to make such a claim, their failure to do so, by itself, did not establish statelessness, for purposes of showing the boat was subject to the jurisdiction of the United States as a vessel without nationality; (2) the government's failure to establish that the boat was without nationality did not mean that the district court was without subject matter jurisdiction; and (3) defects in plea colloquy were not harmless error.[156] Therefore, the indictment was dismissed, and the judgments of conviction were vacated.[157]

X. LIMITATION OF LIABILITY

Shell Offshore, Inc. v. Tesla Offshore, LLC, involved a multi-party lawsuit arising out of an incident in which a sonar towfish severed a mooring line of Shell's semi-submersible drilling rig in the Gulf of Mexico.[158] The allision lead to a shutdown of drilling operations that resulted in significant property losses and consequential damages.[159] International Offshore Services, LLC, the owner/operator of the vessel pulling the towfish, claimed limited liability. At trial, a jury awarded a verdict in favor of Shell Offshore and notably denied International's limitation of liability defense.[160] International appealed the verdict, arguing that the court's instruction that the vessel was a towing vessel led the jury to improperly reject its liability defense because the captain of the M/V THUNDER did not hold a towing license.[161]

154. United States v. Prado, 933 F.3d 121 (2d Cir. 2019).
155. *Id.*
156. *Id.* at 154.
157. *Id.*
158. Shell Offshore, Inc. v. Tesla Offshore, LLC, 905 F.3d 915 (5th Cir. 2018).
159. *Id.* at 919–20.
160. *Id.*
161. *Id.* at 920.

On appeal, the Fifth Circuit affirmed the district court's determination that the M/V THUNDER was a towing vessel.[162] In so holding, the court sought, in a unique procedure, the opinion of the United States Solicitor General on whether the dragging of the towfish was towing under the applicable statutes and regulations.[163] The Solicitor General agreed with the conclusion of the district court and wholly rejected the arguments made by International that the statute defining "towing vessel" should be read narrowly. *Id.* Based on this rejection of International's argument that the vessel was not a towing vessel, the court affirmed the district court's finding such that International could not limit its liability due to International's "privity and knowledge" that arose from the improperly licensed captain, a regulatory violation.[164]

Another Fifth Circuit Case, *SCF Waxler Marine v. M/V ARIS*, arose from an allision on the Mississippi River involving a bulk carrier, a tank vessel, and two shoreside facilities.[165] After litigation commenced, Aris T filed a limitation complaint in an attempt to limit its liability. *Id.* Similarly the owner of the *Loretta G. Cenac* (one of the vessels involved in the accident), sought to limit its liability, and the two actions were consolidated. Under the Louisiana Direct Action Statute, Valero, Shell, and Motiva brought claims directly against the excess insurers of the vessel owners. Whether the primary insurance policies at issue contained the required *Crown Zellerbach* clauses to allow the excess insurers to limit their liability was at issue.[166] The district court found that the policies' language complied with the requirements of *Crown Zellerbach*, and subsequently Valero, Motiva, and Shell appealed.

The issue on appeal was whether the Fifth Circuit had appellate jurisdiction over the determination of the insurers' contractual rights to limited liability. The court ultimately agreed with the excess insurers, finding that there was no jurisdiction because there was not an appeal from an interlocutory decree determining the rights and liabilities of the parties to admiralty cases."[167]

In *In re Great Lakes Dredge & Dock Company*, the U.S. District Court for the Eastern District of Virginia denied a personal injury claimant's motion to dissolve a *concursus* entered incident to a limitation proceeding.[168] There were two issues: (1) whether a co-defendant that alleges only a claim for

162. *Id.* at 920–23.
163. *Id.* at 920.
164. *Id.* at 922–23.
165. SCF Waxler Marine v. *M/V Aris*, 902 F.3d 461 (5th Cir. 2018).
166. *Id.* at 463–64.
167. *Id.* at 465–68.
168. Matter of Great Lakes Dredge and Dock Co., Civ. Action No. 2:18-cv-676, 2019 WL 2358929, at *1, 2019 AMC 1577 (E.D. Va. June 4, 2019).

contribution is considered a "claimant" for purposes of staying a limitation act; and (2) whether a unilateral stipulation is sufficient to lift a *concursus* under *Lewis v. Lewis & Clark, Inc.*[169] The court relied on the significant majority of federal opinions ruling that a contribution claim mixed with a direct personal injury liability claim renders a lawsuit a "multiple claimant" situation under *Lewis*, because a contribution claim is a liability for which a shipowner may be accountable.[170] The court dispensed with the apparently "attractive" rationale in the outlier case that held that a contribution claim is purely derivative of an original claim, recognizing that joint and several liability against a shipowner and joint tortfeasor could possibly lead to a total sum in excess of the limitation fund, even if the claimant could only recover to the fullest extension of the limitation fund from the shipowner.[171] The court further held that a unilateral stipulation was insufficient to protect the limitation fund as the contribution claimant in this case had refused to waive a claim of res judicata.[172] Therefore, since there were multiple claimants and not all protective stipulations in the shipowner's favor had been agreed to, the court could not lift the *concursus*.[173]

In *Orion Marine Construction, Inc. v. Carroll*, the Eleventh Circuit clarified two aspects of the "written notice of a claim" requirement under the Shipowner's Limitation of Liability Act.[174] The court evaluated the merits of two "*similar*" but competing tests for sufficiency of "written notice of a claim" under the Limitation of Liability Act, the Moreira test, and the Doxsee/McCarthy test.[175] The Eleventh Circuit adopted the latter as the controlling standard for written notice under the Act, which has also been adopted by the Second, Fifth, and Seventh Circuits.[176] The Doxsee/

169. *Id.*, 2019 WL 2358929, at *2 (citing Lewis v. Lewis & Clark, Inc., 531 U.S. 438, 445 (2001)).

170. *Id.* at *4 (citing *In re* Complaint of Holly Marine Towing, Inc., 270 F.3d 1086, 1090 (7th Cir. 2010); Beiswenger Enters. Corp. v. Carletta, 86 F.3d 1032, 1036 (11th Cir. 1996); Odeco Oil & Gas Co. Drilling Div. v. Bonnette, 74 F.3d 671, 675 (5th Cir. 1996); Gorman v. Cerasia, 2 F.3d 519, 527 (3d Cir. 1993); Complaint of Dammers & Vanderheide & Cheepvaart Maats Christina B.V., 836 F.2d 750, 757 (2d Cir. 1988)).

171. *Id.* (citing Universal Towing v. Barrale, 595 F.2d 414, 420 (8th Cir. 1979)).

172. *Id.*

173. See *Sullivan. v. Bay Point Resort Operations LLC, et al.*, 2019 WL 134382 (USDC, N.D. Ohio 2019), for discussion of the single-claimant exception where a sole claimant was permitted to pursue his claims against the vessel owner in state court; see *In re* Weeks Marine, Inc., No. 18-16702, 2019 WL 2315391 (D.N.J. May 31, 2019) for a discussion of a multiple-claimant limitation action where universal stipulations by all claimants allowed the district court to lift the limitation stay order.

174. Orion Marine Constr., Inc. v. Carroll, 918 F.3d 1323 (11th Cir. 2019).

175. Doxsee Sea Clam Co. v. Brown, 13 F.3d 550, 1994 AMC 305 (2d Cir. 1994); Complaint of McCarthy Bros. Co./Clark Bridge, 83 F.3d 821, 1996 AMC 2153 (7th Cir. 1996); Rodriguez Morira v. Lemay, 659 F. Supp. 89 (S.D. Fla. 1987), *abrogated by* Orion Marine Constr., Inc. v. Carroll, 918 F.3d 1323 (11th Cir. 2019).

176. *In re* Eckstein Marine Serv. L.L.C., 672 F.3d 310, 317, 2012 AMC 305 (5th Cir. 2012); Paradise Divers, Inc. v. Upmal, 402 F.3d 1087, 1089, 2005 AMC 1063 (11th Cir. 2005).

McCarthy test provides that notice will be sufficient if it informs the vessel owner of an actual or potential claim that may exceed the value of the vessel and is subject to limitation.[177]

XI. ADMIRALTY JURISDICTION

In *Eddystone Rail Company LLC v. Rios*,[178] Bridger Transfer Services (BTS) entered into a Rail Services Agreement (RSA) with Plaintiff. Plaintiff agreed to construct and operate a facility for the purpose of transloading crude oil from railcars to barges to carry oil down the river.[179] Under the RSA, BTS agreed to purchase a minimum volume of rail-to-barge crude oil capacity for a period of five years. BTS provided that capacity to its affiliates so they could supply the crude oil to a refinery. BTS defaulted on the RSA following Bridger Logistics—BTS's parent company—being purchased by Ferrellgas Partners, L.P. and Ferrellgas, L.P. Ferrellgas credited the revenue associated with BTS's transloading capacity to Bridger Rail Shipping, LLC and causing Bridger Rail Shipping to cover the RSA payments. Ferrellgas caused BTS to transfer the remainder of its assets to Bridger Logistics' affiliates. Jamex Marketing renamed BTS as Jamex Transfer Services, LLC (JTS). Plaintiff initiated arbitration against JTS before the Society of Maritime Arbitrators (SMA).[180] The SMA issued its award, holding JTS liable for its obligations under the RSA, and Plaintiff filed a petition to confirm the award in the U.S. District Court for the Southern District of New York, alleging that the court possessed admiralty jurisdiction. The Southern District court stayed the action pending the instant action.[181]

Plaintiff filed suit, alleging alter ego liability based on a breach of the RSA, intentional and constructive fraudulent transfer, and breach of fiduciary duties.[182] Defendants moved to dismiss Plaintiff's complaint for lack of subject matter jurisdiction, alleging the RSA was not a maritime contract.[183] The Eastern District explained that the primary objective of the RSA was to trainload oil from railcars onto barges, and, thus, the nature of the RSA was to facilitate maritime commerce through the shipment of oil

177. Orion Marine Constr., Inc., 918 F.3d at 1331 (11th Cir. 2019). For additional discussion on the requirements of providing "written notice" of a claim sufficient to trigger the six-month period within which a limitation action must be filed see *In re* Complaint of Vulcan Const. Materials, *LLC*, Civil No. 2:18-cv-668, 2019 WL 2016706, 2019 AMC 1393 (E.D. Va. May 7, 2019); *In re* Brown, 766 F. App'x 30 (5th Cir. 2019).

178. Eddystone Rail Company LLC v. Rios, No. 17-495, 2019 WL 1356022 (E.D. Pa. Mar. 26, 2019).

179. *Id.* at *1.

180. *Id.* at *2.

181. *Id.*

182. *Id.*

183. *Id.* at *3.

by barge down the Delaware River.[184] Furthermore, BTS agreed to contract with barge operators directly and to arrange for barges to arrive at the Transloading Facility so that the barges could be loaded by Plaintiff with crude oil that arrived by rail.[185] The parties agreed to procedures for berthing and loading oil onto barges, including procedures for responding to discharges of oil. The RSA recognized its maritime nature by stating that Plaintiff "shall have all remedies available to it at law, in equity or under maritime law" and by electing to submit their disputes to the SMA.[186] The Eastern District determined that "the RSA's direct connection with the traditional maritime activity of loading a barge makes it akin to a stevedoring contract" and that admiralty jurisdiction was properly invoked.[187]

In *State v. Branson Duck Vehicles LLC*,[188] defendants sought to remove a lawsuit filed by the state of Missouri under the Missouri Merchandising Practices Act arising out of the deaths of seventeen people on a duck boat in Table Rock Lake. The Defendants argued that the federal court had original jurisdiction because the State's claims presented a substantial federal question as (a) the vessels at issue fall under the Coast Guard's exclusive authority to prescribe necessary regulations and the State's Petition alleges violations of those regulations, and (b) the National Safety Board and Coast Guard have initiated comprehensive investigations into the accident and the ongoing federal investigations bring the claims into the exclusive jurisdiction of federal courts.[189]

The court rejected the argument, finding that complete pre-emption of state-law claims was a rare doctrine that effectively means that the plaintiff brought a mislabeled federal claim that may be asserted through some federal statute.[190] Furthermore, while the Defendants may be correct that the ongoing federal investigations by the NTSB and Coast Guard may render the State action arguably unnecessary, inefficient, and duplicative, "the federal investigations do not prevent the State from seeking remedies under state law if that is the course state officials wish to pursue." [191]

XII. PRACTICE, PROCEDURE, AND UNIFORMITY

In *Complaint of Borghese Lane, LLC*,[192] barge owners, Ingram Barge Company, Heartland Barge Management, LLC and Crounse Corporation, filed

184. *Id.* at *5.
185. *Id.* at *6.
186. *Id.*
187. *Id.* at *8, *10.
188. State v. Branson Duck Vehicles, LLC, 2019 WL 320597 (W.D. Mo. Jan. 24, 2019).
189. *Id.* at *3–4.
190. *Id.* at *7 (citing Johnson v. MFA Petroleum Co., 701 F.3d 243, 247 (8th Cir. 2012)).
191. *Id.*
192. Complaint of Borghese Lane, *LLC*, No. 2:18-CV-00533-MJH, 2019 WL 699141 (W.D. Pa. Feb. 20, 2019).

lawsuits against Borghese Lane, LLC, McKees Rocks Harbor Services, LLC and Industry Terminal & Salvage Company, following the breakaway of twenty-four barges that were moored at Jacks Run Fleet. The United States filed claims against Borghese and McKees Rocks, seeking to recover damages to the Emsworth Lock and Dam and two workboats owned and operated by the Army Corps of Engineers.[193] The United States additionally asserted a cross-claim against American River Transportation Co., LLC (ARTCO), seeking damage resulting from ARTCO's barge.[194] ARTCO alleged that one of its unmanned barges sustained damages in the breakaway and, as such, was entitled to indemnification from Borghese and McKees Rocks for any claims asserted against ARTCO by the United States or the Army Corps of Engineers.[195] Borghese and McKees Rocks sought to dismiss ARTCO's third-party complaint.[196]

The district court denied Borghese's and McKees Rocks' motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) because their arguments did not relate to the claims asserted in ARTCO's third-party complaint as a matter of law but concerned assertions of improper procedure.[197] ARTCO contended that it filed the third-party complaint under Federal Rule of Civil Procedure 14(c), tendering the United States' claim directly to Borghese and McKees Rocks to protect ARTCO's interest and, thus, should be treated as an amendment to its timely filed claim.[198] The court held that it was clear that ARTCO attempted to assert a straightforward Rule 14(c) tender and that Borghese and McKees understood ARTCO's intent but did not attempt to avoid obligations that would arise from a Rule 14(c) tender.[199] Accordingly, the court determined that ARTCO could amend its answer to the United States cross-claim to include the Rule 14(c) tender.[200]

In *Sawyer Brothers, Inc. v. Island Transporter, L.L.C.*,[201] the First Circuit affirmed the district court's award of damages in favor of Sawyer Brothers, Inc. and its owners, including damages for its claim for negligent infliction of emotional distress ("NIED") to the owners. The court held that the Sawyers could recover for such a claim under applicable maritime law because it was in the "zone of danger."[202] The First Circuit's decision was an expansion of the NIED theory of recovery as it answered the question

193. *Id.* at *1.
194. *Id.*
195. *Id.* at *2.
196. *Id.*
197. *Id.*
198. *Id.*
199. *Id.* at *3.
200. *Id.*
201. Sawyer Bros., Inc. v. Island Transp., L.L.C., 887 F.3d 23, 27 (1st Cir. 2018).
202. *Id.*

affirmatively that such damages are available even where a plaintiff does not suffer a contemporaneous physical injury.[203] The First Circuit joined the Ninth and Eleventh Circuits in recognizing that a plaintiff in the zone of danger may recover for NIED under general maritime law, harmonizing the law in this area among the circuits.[204]

In *Perez-Kudzma v. United States*,[205] the First Circuit vacated the decision of the district court dismissing a suit challenging the federal government's decision not to waive the cabotage provision of the Jones Act for Puerto Rico following Hurricane Maria. The court held that plaintiffs lacked standing, and dismissal was required.[206] Plaintiffs challenged the provision of the Jones Act, which prohibits foreign-flag vessels from transporting merchandise between United States' coastwise points.[207] The district court granted defendants' motion to dismiss for failure to state a claim.[208] The First Circuit held that the plaintiffs failed to set forth allegations in their complaint that were sufficient to establish standing, and the court vacated and remanded the case.[209]

In *Dakota, Minnesota & Eastern Railroad Corp. v. Ingram Barge Co.*, the Eighth Circuit affirmed a district court ruling that, in an admiralty action resulting from allision between a barge and a bridge, the Coast Guard's 1996 order to alter did not, as a matter of law, rebut the *Oregon* presumption through operation of the *Pennsylvania* rule.[210] The Coast Guard's order to alter, made pursuant to the Truman-Hobbs Act, declared the bridge to be an "unreasonable obstruction to the free navigation of the Upper Mississippi River" and directed the owner to reconstruct the bridge and to expand the horizontal clearance.[211] However, neither its current owner nor any prior owner ever took any such action to reconstruct the bridge.[212]

XIII. ARBITRATION

In *Daggett v. Waterfront Commission of New York Harbor*,[213] the International Longshoremen's Association (ILA) represented employees working at the

203. *Id.* at 37.
204. *Id.* at 38.
205. Perez-Kudzma v. United States, 940 F.3d 142, 143 (1st Cir. 2019).
206. *Id.*
207. *Id.*
208. *Id.*
209. 940 F.3d at 143.
210. Dakota, Minn. & Eastern R.R. Corp. v. Ingram Barge Co., 918 F.3d 967 (8th Cir. 2019).
211. *Id.* at 970.
212. *Id.*
213. Daggett. v. Waterfront Comm'n of N.Y. Harbor, 774 F. App'x 761 (3d Cir. 2019).

Port of New York and New Jersey.[214] The employees stopped for an unspecified reason, and an emergency arbitration was scheduled.[215] The arbitrator found that the work stoppage violated the no-strike provision of the collective bargaining agreement between the ILA and the New York Shipping Association (NYSA).[216] Following the arbitration, the Waterfront Commission of New York Harbor issued subpoenas to rank-and-file employees to determine who ordered the stoppage and why.[217] The ILA sued the Waterfront Commission, asserting that subpoenas issued by the Waterfront Commission infringed workers' rights to engage in concerted activities under the National Labor Relations Act (NLRA) and the employees' right to strike under the compact.[218] The suit was removed to federal court, and the Waterfront Commission moved to dismiss the action.[219]

The district court dismissed the complaint, and the Third Circuit Court of Appeals affirmed.[220] Plaintiffs argued that unauthorized strikes were only unprotected under the NLRA when the strike was meant to "usurp the union's role as bargaining representative."[221] However, the Third Circuit referred to its decision in *Food Fair Stores, Inc. v. NLRB*, in which the Court decided that "while 'in some situations unauthorized activity by employees might enhance the authority of the union and aid the collective bargaining process,' only unusual cases would result in unauthorized activity being protected."[222] In the present case, the Third Circuit found that Plaintiffs did not allege sufficient facts to fall within the exception in *Food Fair*.[223] Plaintiffs additionally argued that the Waterfront Commission's issuance of the subpoenas and characterization of the strike as illegal, limited the employees' right to strike.[224] The Third Circuit agreed with the district court that the language from the company that "nothing contained in this company shall be construed to limit in any way the right of employees to strike" was not absolute and that the collective bargaining rights could not supersede the Waterfront Commission's supervisory role relating to the practices that might lead to corruption.[225] As such, a no-strike provision in the collective bargaining agreement was not subject to the company

214. *Id.*
215. *Id.* at 762–63.
216. *Id.* at 763.
217. *Id.*
218. *Id.*
219. *Id.* at 762.
220. *Id.*
221. *Id.* at 764.
222. *Id.* (citing Food Fair Stores, Inc. v. NLRB, 491 F.2d 388 (3d Cir. 1974)).
223. *Id.*
224. *Id.* at 765.
225. *Id.*

provision because it was not "contained in this compact."[226] Accordingly, the Third Circuit affirmed the dismissal by the district court.[227]

In *Lucina v. Carnival PLC*,[228] plaintiff and a group of similarly situated employees of defendants, Carnival PLC and its subsidiary Fleet Maritime Services International, Ltd., who worked aboard the Queen Mary 2 ocean liner filed this action, alleging that defendants failed to pay wages due in violation of the Seamen's Wage Act, 46 U.S.C. § 10313, and New York Labor Law §§ 2, 190(2), 193, 196-d, and 651(5).[229] Over the course of their employment, plaintiffs entered into a series of "similarly-worded Seafarer's Employment Agreements with Defendant Fleet Maritime Services" for periods of eight-to-ten months at a time, also called "POEA and SEA contracts."[230] Each plaintiff signed an identical boilerplate declaration stating that these contracts were never explained to them, that they were not permitted to negotiate the terms, and that their principal reason for signing the contracts was to ensure that they could provide for their families.[231] The court concluded that the arbitration clauses were incorporated into the contracts, so it granted the defendant's motion to compel arbitration.[232]

There are two circuit court cases on the enforceability of foreign arbitral awards of note. In *Castro v. Tri Marine Fish Co., LLC*, the Ninth Circuit held that an "order" dismissing a claim and acknowledging a settlement signed by an arbitrator in the Philippines did not constitute an arbitral award under the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[233] Specifically, the court found that the order was not entitled to enforcement under the U.N. Convention because (1) there was no dispute to arbitrate; (2) the parties had fully settled their claims before even approaching an arbitrator; (3) the purported "arbitration" consisted of an impromptu meeting in a building lobby; and (4) the "proceedings" disregarded the terms of the three arbitration agreements between the parties and the issuing forum's arbitral rules.[234] In *Cvoro v. Carnival Corp.*, the Eleventh Circuit concluded that a foreign arbitral award denying a seafarer any remedy for the vicarious liability of her U.S. shore-side physician's negligence pursuant to an arbitral clause in her employment

226. *Id.*
227. *Id.*
228. Lucina v. Carnival PLC, 2019 WL 1317471, 2019 AMC 1135 (E.D.N.Y. Mar. 22, 2019).
229. *Id.* at *1.
230. *Id.*
231. *Id.*
232. *Id.* at *8. For another recent case on a similar issue, see *Moskalenko v. Carnival PLC*, 2019 WL 1441127 (E.D.N.Y. Mar. 29, 2019) (compelling arbitration of plaintiff's wage dispute holding that the prospective waiver defense did not apply to invalidate an arbitration clause).
233. Castro v. Tri Marine Fish Co., LLC, 921 F.3d 766, 771 (9th Cir. 2019).
234. *Id.* at 774–77.

contract did not violate public policy under the New York Convention.[235] The Eleventh Circuit reasoned that the arbitrator's refusal to consider the seafarer's Jones Act claim pursuant to a valid choice-of-law provision in a valid agreement to arbitrate did not violate U.S. public policy where it was not fundamentally unfair or violate the nation's "most basic notions of morality and justice."[236]

XIV. REGULATIONS UPDATE

A. *Revisions to Civil Penalty Amounts- 46 CFR Part 221 (July 31, 2019)*

The Department of Transportation (DOT) amended the civil penalty amounts that can be imposed for violating specific rules and regulations. These amendments were made in response to and are in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.[237] Specifically, the Maritime Administration (MARAD) may now impose a general penalty of not more than $21,038 for each violation of chapter 313 or 46 U.S.C. subtitle III.[238] Still, if a person improperly sells a court ordered sale of a vessel in violation of 46 U.S.C. § 31329, the MARAD may only impose a penalty of not more than $52,596 for each violation.[239] Further, if one violates 46 U.S.C. § 56101(e) by improperly chartering, selling, transferring, or mortgaging a vessel to a non-citizen, MARAD may impose a penalty of not more than $21,134 for each violation.[240]

B. *Mallows Bay-Potomac River National Marine Sanctuary Designation (July 8, 2019)*

The Mallows Bay-Potomac River National Marine Sanctuary (MPNMS) was designated a sanctuary pursuant to the National Marine Sanctuaries Act (NMSA).[241] This protected area is eighteen square miles of waters and submerged lands that surround the Potomac River.[242] Within the MPNMS are historically significant maritime resources, such as historic wooden steamships known as the "Ghost Fleet," certain Native American sites, remains of historic fisheries operations, and Revolutionary War and Civil War battlescapes.[243] To implement the sanctuary designation and protect

235. Cvoro v. Carnival Corp., No. 18-11815, 2019 WL 5257962 (11th Cir. Oct. 17, 2019).
236. *Id.* at 496; *see also* Lindo v. NCL (Bahamas), Ltd., 652 F.3d 1257, 1283 (11th Cir. 2011).
237. The revisions update statutory and regulatory provisions to reflect changes in inflation. Revisions to Civil Penalty Amounts, 84 Fed. Reg. 37059-02.
238. *Id.*
239. *Id.*
240. *Id.*
241. The National Marine Sanctuaries Act is laid out in 16 U.S.C. § 1431 *et seq*. Mallows Bay-Potomac River National Marine Sanctuary Designation, 84 Fed. Reg. 32586-01.
242. 84 Fed. Reg. 32586-01.
243. *Id.*

these historical resources, the National Oceanic and Atmospheric Administration (NOAA) issued certain regulations now codified in 15 C.F.R. § 922.200–.206.[244]

C. *Revisions to Civil Penalty Amounts—33 CFR Part 27 (Apr. 5, 2019)*

The Department of Homeland Security (DHS) amended the civil penalty amounts that can be imposed for violating specific rules and regulations. These amendments were made in response to and are in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.[245] Specifically, the Coast Guard may now impose a penalty of $21,039 for each violation of 46 U.S.C. §§ 31309 and 31330(a)(2).[246] Additionally, if one violates 46 U.S.C. § 31330(b)(2), the penalty will now be $52,596.[247] The Maritime Drug Law Enforcement rules regulated by 46 U.S.C. § 70506(c) now carry a penalty of $5,781.[248]

D. *Amendments to the Marine Radar Observer Refresher Training Regulations—46 CFR Parts 10, 11, and 15 (June 7, 2019)*

The Coast Guard revised merchant mariner credentialing regulations by removing outdated portions of the radar observer requirements and harmonizing the radar observer endorsement with the merchant mariner credential.[249] These revisions were made to lessen the unnecessary financial burden on mariners required to hold a radar observer endorsement.[250] Mariners who have served on radar-equipped vessels, in a position that routinely uses radar for one year in the previous five years for navigation and collision avoidance purposes, and mariners who have taught a Coast Guard-approved or accepted radar course at least twice within the past five years are no longer required to complete a Coast Guard-approved or -accepted radar refresher or recertification course in order to renew radar observer endorsements.[251] The existing requirements for mariners seeking an original radar observer endorsement and for mariners who do not have one year of routine relevant sea service on board radar-equipped vessels in the previous five years or have not taught a Coast Guard-approved or accepted radar course at least twice within the past five years are still in effect.[252]

244. *Id.*
245. The revisions update statutory and regulatory provisions to reflect changes in inflation. Revisions to Civil Penalty Amounts, 84 Fed. Reg. 13499-01.
246. These statutes regulate commercial instruments and maritime liens.
247. This regulation penalizes a person for violating § 31329. *Id.*
248. *Id.*
249. Amendments to the Marine Radar Observer Refresher Training Regulations, 84 Fed. Reg. 26580-02.
250. *Id.*
251. *Id.*
252. *Id.*

E. *Seafarers' Access to Maritime Facilities—33 CFR 105 (Apr. 1, 2019)*

To ensure that no facility owner or operator denies or makes it impractical for seafarers or other individuals to transit through the facility, the Coast Guard issued this rule containing a congressional mandate.[253] Every owner or operator of a maritime facility regulated by the Coast Guard is now required to implement a system providing seafarers, pilots, and representatives of seamen's welfare and labor organizations access between vessels moored at the facility and the facility gate.[254] These measures must be implemented in a timely manner and at no cost to the seafarer or other individuals.[255] The access procedures must be documented in every facility's Security Plan and must be approved by the local captain of the port.[256]

F. *Great Lakes Pilotage Rates—2019 Annual Review and Revisions to Methodology (May 10, 2019)*

The Coast Guard established new base pilotage rates and surcharges for the 2019 shipping season.[257] This rule impacts U.S. Great Lakes pilots, the three pilot associations of registered pilots on the Great Lakes, and the owners and operators of oceangoing vessels that transit the Great Lakes annually.[258] Pilotage rates were adjusted to account for a rolling ten-year average for traffic.[259] Pilot rates were increased because of inflation adjustments, changes in operating expenses, surcharges for applicants, and an addition of two pilots.[260]

G. *Tankers—Automatic Pilot Systems (Nov. 5, 2018)*

The Coast Guard issued this rule to permit tankers equipped with automatic pilot systems that meet International Electrotechnical Commission (IEC) standards to operate using those systems in shipping safety fairways or traffic separation schemes (TSS).[261] This rule removes previous regulatory restrictions, updates technical requirements, and promotes the Coast Guard's maritime environmental protection missions by improving maritime safety.[262]

253. Seafarers' Access to Maritime Facilities, 84 Fed. Reg. 12102-01.
254. *Id.*
255. *Id.*
256. *Id.*
257. Great Lakes Pilotage Rates—2019 Annual Review and Revisions to Methodology, 84 Fed. Reg. 20551-01.
258. *Id.*
259. *Id.*
260. *Id.*
261. This rule is intended to relieve the regulatory burden that prohibits use of these autopilot systems in fairway and TSS waters so that tanker owners and operators no longer have to apply for deviations. Tankers— Automatic Pilot Systems, 83 Fed. Reg. 55272-01.
262. *Id.*

H. *Anchorage Grounds; Baltimore Harbor, Baltimore, MD (Apr. 23, 2019)*

The Coast Guard amended its Baltimore Harbor anchorage grounds regulation. The general anchorages were reduced in size, one new general anchorage was created, two existing general anchorages were renamed, and the duration that a vessel may remain within an anchorage was changed for two existing general anchorages.[263] This rule ensures that Coast Guard regulations are consistent with civil works projects and that anchorage locations are accurately depicted.[264] The changes support port activity related to post-Panamax commercial cargo vessel safety, and remove current Baltimore Harbor vessel security provisions.[265]

I. *1998 Biennial Regulatory Review—Withdrawal of the Commission as an Accounting Authority in the Maritime Mobile and Maritime Mobile-Satellite Radio Services (Mar. 13, 2019)*

This rule instructed the Federal Communications Commission (FCC) staff to work with federal stakeholders, the Coast Guard, and service providers to finalize and announce a transition plan within 120 days.[266] The plan will transition the FCC's functions and duties as an accounting authority for maritime mobile and maritime mobile-satellite radio service customers that have not yet designated an accounting authority.[267] Once the plan is announced, there will be a substantial transition period of up to one year to ensure an orderly transfer of the FCC's accounting authority duties to private authorities.[268]

J. *Delegations to Bureau of Enforcement and Enforcement Procedures—46 CFR Parts 501 and 502 (Oct. 9, 2019)*

The Federal Maritime Commission (FMC) amended its delegations to the Bureau of Enforcement (BOE).[269] Specifically, the BOE's procedures for initiating enforcement action has been revised to allow for increased oversight by the FMC.[270] Now, the BOE must (1) provide notice to the subjects

263. Anchorage Grounds; Baltimore Harbor, Baltimore, MD, 84 Fed. Reg. 16778-01.

264. This, in turn, provides a higher degree of safety to property, people, and the environment.

265. *Id.*

266. Pursuant to this rule, the transition plan was to be announced 120 days from April 12, 2019. 1998 Biennial Regulatory Review—Withdrawal of the Commission as an Accounting Authority in the Maritime Mobile and Maritime Mobile-Satellite Radio Services, 84 Fed. Reg. 8994-01.

267. The purpose of this transition is that the FCC believes the public interest would be better served by relying upon private accounting authorities to perform the accounting authority function rather than the FCC.

268. *Id.*

269. Delegations to Bureau of Enforcement and Enforcement Procedures, 84 Fed. Reg. 54037-01.

270. *Id.*

of its investigations that BOE intends to recommend enforcement proceedings against and allow them an opportunity to respond before those recommendations are submitted; (2) obtain FMC approval before formal or informal enforcement action is taken; and (3) obtain FMC approval for any proposed compromise agreements.[271]

K. *Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels, Deepwater Ports and Onshore Facilities (Aug. 13, 2019)*

The Coast Guard issued this rule to adjust the limits of liability for vessels, deepwater ports, and onshore facilities under the Oil Pollution Act of 1990 (OPA 90).[272] These adjustments reflect increases in the Consumer Price Index since it was last adjusted in 2015.[273] These limitations of liability are required by OPA 90 and help preserve the deterrent effect and "polluter pays" principle.[274] This rule also promotes the Coast Guard's environmental protection missions.[275]

L. *Interpretive Rule, Shipping Act of 1984—46 CFR Part 545 (Dec. 17, 2018)*

The Federal Maritime Commission (FMC) has amended its interpretation of the Shipping Act's prohibition against failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.[276] Specifically, the FMC clarified that the proper scope and conduct covered by the prohibition is guided by earlier FMC interpretations and precedents from several FMC cases.[277] These articulations require that a regulated entity engage in a practice or regulation on a normal, customary, and continuous basis and that such practice or regulation be unjust or unreasonable in order to violate that section of the Shipping Act.[278]

M. *Common Carriers—46 U.S.C. § 41104 (Dec. 4, 2018)*

Congress implemented minor changes to the statute on Common Carriers under the Regulation of Ocean Shipping.[279] It moved the statute to a different section (formerly cited as 46 App. USCA § 1709), and it added some

271. *Id.*
272. Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels, Deepwater Ports and Onshore Facilities, 84 Fed. Reg. 39970-02.
273. *Id.*
274. The "polluter pays" principle means the responsible parties bear the costs of removal costs and damages and the liability risk is not shifted to the public or the Oil Spill Liability Trust Fund.
275. Interpretive Rule, Shipping Act of 1984, 83 Fed. Reg. 64478-01.
276. *Id.*
277. *Id.*
278. *Id.*
279. 2018 Acts, Pub. L. 115-282, tit. VII, § 708(b), Dec. 4, 2018, 132 Stat. 4296.

clarifying language in the provision.[280] It also added new sections related to "Rules of Construction" of the statute as well as "Violations."[281]

N. *Guidance and Guidelines for IMO Sulphur Fuel Regulation 2020*

In 2016, the International Maritime Organization (IMO) implemented a new regulation that reduces the maximum amount of sulfur content (by percent weight) in marine fuels used on the open seas from 3.5% to 0.5% by January 1, 2020.[282] Under the new regulation, only ships fitted with sulfur-cleaning devices known as scrubbers will be allowed to continue burning high-sulfur fuel.[283] In 2019, the Marine Environment Protection Committee (MEPC) approved various guidance and guidelines to help parties prepare for the new regulation.[284]

On October 26, 2018, the MEPC adopted Resolution MEPC.305(73) aiming to support consistent implementation of the 0.5% limit in sulphur in ship fuel oil coming into force under the IMO's MARPOL treaty.

280. *Id.*

281. *Id.*

282. Resolution MEPC.280(70) (adopted on Oct. 28, 2016) (effective date of implementation of the fuel oil standard in Regulation 14.1.3 of MARPOL Annex VI).

283. *Id.*

284. *See* Resolution MEPC.320(74), 2019 Guidelines for Consistent Implementation of the 0.50% Sulphur Limit Under Marpol Annex VI, http://www.imo.org/en/OurWork/Environment/PollutionPrevention/Documents/Resolution%20MEPC.320%2874%29.pdf (last visited Jan. 15, 2020); *see also* Int'l Marine Organization, Sulphur 2020—Cutting Sulphur Oxide Emissions (2020), http://www.imo.org/en/MediaCentre/HotTopics/Pages/Sulphur-2020.aspx.