

Stern to Bow: A Look Back to Significant Maritime Issues of 2022 and a Look Ahead to Emerging Issues in 2023 and Beyond



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January 11, 2023

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Issues to be Covered

- **Ocean Shipping**
- **Vessel and Seaman Status and Maritime Personal Injury**
- **Passenger Vessel Industry Developments**
- **P&I Club Perspective**



Ocean Shipping



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Ocean Shipping Reform Act of 2022

I. Background and Stakeholder interests

- **Common carriers**
- **Marine terminal operators**
- **Ocean transportation intermediaries**

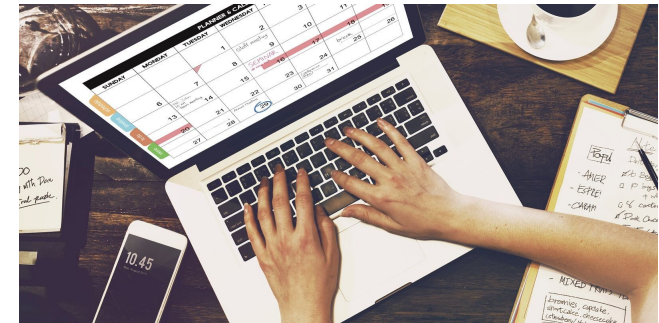


Ocean Shipping Reform Act of 2022

Transparency and Insight



vs.



**Administrative Burden and
Redundancy**



Ocean Shipping Reform Act of 2022



II. Implementation

- **Compliance**
- **Complaints**



Vessel and Seaman Status and Maritime Personal Injury



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Vessel and Seaman Status and Maritime Personal Injury

Jackson v. Chem Carriers, LLC, et al (La. First Circuit, November 4, 2022)

- Plaintiff tripped on a welding lead on a barge secured to the Plaquemine Point Shipyard, a floating ship repair and cleaning facility that included barges that secured to the bank of the MS River
- Plaintiff was employed by PPS as a welding foreman and not a captain, deckhand, or engineer on any vessels, and drove home every night
- After a bench trial, court finds that the PPS and other vessels owned and controlled by PPS all were an identifiable fleet and that PPS was negligent under the Jones Act. Court awarded \$1,000,000 in damages



Vessel and Seaman Status and Maritime Personal Injury

Jackson v. Chem Carriers, LLC, et al (La. First Circuit, November 4, 2022)



- On appeal, La First Circuit, conducts an in-depth of the vessel status of the PPS under *Lozman* and Seaman Status under *Sanchez*
- Court relies on *Lozman* and a line of Fifth Circuit jurisprudence to determine that work platforms such as the PPS, although afloat and capable or moving across water, are not vessels
- On Seaman status, court looks to the SCOTUS history of *Chandris*, *Wilander*, *Papai* and the Fifth Circuit's *Sanchez* decision and determines as to nature: (1) no seagoing activity; (2) no sailing with a PPS vessel; and as to duration, there was insufficient evidence to satisfy that requirement

Seaman Status and Maritime Personal Injury

Kiwia v. Bulkship Management, A.S., et al (5th Cir. July 28, 2022)

- Plaintiff, a stevedore, lost three fingers as the result of the closing of a hatch cover
- Sued the vessel owner for negligence under Section 905 (b) of the LHWCA and was awarded \$1,076,873 in damages
- District court found the vessel owner and employer each 50% at fault for breach of the active control duty
- Court found the vessel crew failed to survey the area and warn the stevedoring crew about the cover closing



Seaman Status and Maritime Personal Injury

Kiwia v. Bulkship Management, A.S., et al (5th Cir. July 28, 2022)



- **Arguments on appeal** – no breach; no causation; plaintiff should bear some or employer should bear all the fault; and excessive damages
- **Findings of Fact Reviewed for Clear Error** – while defendants cite evidence that contradicts the breach finding, the court cannot find clear error; causation is a close question, but no conviction that a mistake was made; plaintiff was not negligent; and the case supporting the high damages award was similar enough

Maritime Personal Injury

The Confusion over Non-Pecuniary Damages

- In the Matter of Adriatic Marine, (ED La. April 27, 2022) - dismissal of claims for non-pecuniary damages which implicitly included **loss of enjoyment of life** and **mental anguish**
- In *Aadland vs. Boat Santa Rita II, Inc., et al* (1st Cir. July 28, 2022) sought recovery for mental anguish, issue not addressed
- Trial court awarded \$100,000 for loss of enjoyment of life in *Jackson*



The Passenger Vessel Industry



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The Passenger Vessel Industry

Legislative and Regulatory Issues

Exoneration and Limitation of Liability For Small Passenger Vessels

- **Sec 306 of the Don Young Coast Guard Authorization Act of 2022**
- **This bill revises maritime law regarding the liability of owners of certain small passenger vessels for violations of safety rules resulting in accidents on such vessels. Under current law, owners may avoid liability in some cases depending on the value of their vessels after accidents.**
- **Applies to owners, operators and certain charterers of small passenger vessels.**



The Passenger Vessel Industry

Legislative and Regulatory Issues

Exemptions For Certain Passenger Vessels – CVSSA



- **Sec 11510 of the James M. Inhofe National Defense Authorization Act for 2023**
- **Exempts passenger vessels carrying more than 250 passenger on the inland waters from the two specific provisions of the Cruise Vessel Safety and Security Act if the operators or charterers are in operations prior to January 1, 2024**

The Passenger Vessel Industry

Legislative and Regulatory Issues

Federal Maritime Commission Action

- **On March 17, 2022, FMC published final rule and required compliance on June 18, 2022**
- **The new regs provide the following rules for Passenger Vessel Operators:**
 - ❑ **New definition of Unearned Passenger Revenue became effective on April 18, 2022, applies to all applicable companies with the exception of “small businesses” as defined by the rule**
 - ❑ **Defines the “Nonperformance of Transportation”**
 - ❑ **Establishes rules for how passengers must make claims against financial responsibility instruments for nonperformance of transportation**
 - ❑ **Passenger Vessel Operators are required to have clear instructions on their webpage for requesting a refund due to the nonperformance of transportation**



P& I Club Perspective

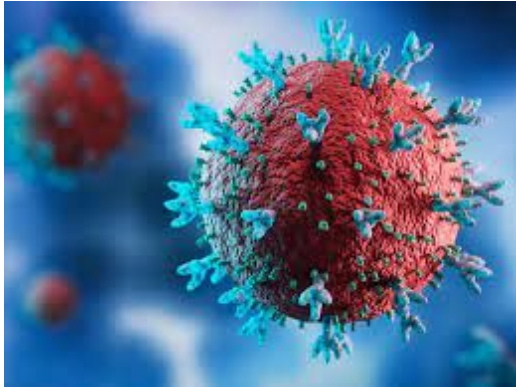


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P&I Club Perspective



- **Residual effects of Covid-19**
- **Russia/Ukraine Conflict**
- **Nuclear Jury Verdicts**
- **Looking Ahead to 2023: ESG!**



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