

Making Waves: Penalties, Verdicts, Lost Submersibles and More! – Examining Significant Developments in Maritime Law in the First Half of 2023



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July 26, 2023

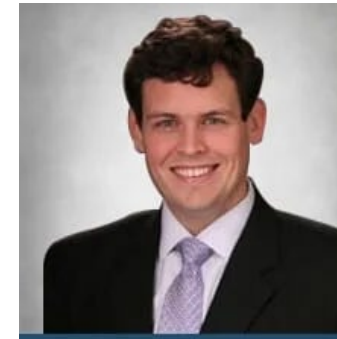
Moderator and Panelists



Jessica Link Martyn
Link Martyn



Matthew Moeller
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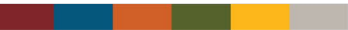
Corey Parenton
**Staines, Eppling
& Kenney**



Emily McCulloch
**West of England
P&I Club**



Eric Denley
The Hornblower Group



Issues to be Covered

- **Ocean Shipping – Significant FMC Activity and awards**
- **Continuing Evolution of Vessel and Seaman Status and Maritime Personal Injury**
- **Passenger Vessel Industry Developments and Potential Issues arising from the Titan Submersible Tragedy**
- **P&I Club Perspective on Recent Verdicts from the Routine to the Extreme**



Ocean Shipping – FMC Activity



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Ocean Shipping Reform Act of 2022

Transparency and Insight



vs.

**Administrative Burden and
Redundancy**



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Ocean Shipping Reform Act of 2022



- **Proposed rulemakings**
- **Refunds, waivers, penalties**



Implementation and Complaints! Charges Waived and Refunded

- **Simplified expedited process for shippers, consignees, truckers and third parties**
- **As of May 1, 2023, just over \$1,000,000 in disputed charges waived or refunded through the charge complaint process**
- **Complaints about reasonableness of detention and demurrage are the most common**



Civil Penalties



- **Two major ocean carriers agreed to pay a combined \$2.65 million in civil penalties to resolve allegations of misconduct by the FMC**
- **At issue - the assessment of detention charges when appointments were unavailable during allocated free time to return equipment**
- **At issue – failure to observe and enforce reasonable and just practices regarding charges related to empty container returns**

Vessel and Seaman Status



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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)



- After finding vessel status and Jones Act seaman status as to the plaintiff, 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

Writ Denied!

- **On February 14, 2023, The Louisiana Supreme Court denied the plaintiff's writ application**
- **Leaves in place a very comprehensive and thorough state court analysis of the issues of vessel and Jones Act seaman status**
- **Most would likely agree that this decision accurately reflects the intent of *Sanchez***



Johnson v. Cooper T. Smith Stevedoring Company, Inc. (5th Cir. July 14, 2023)



- **Plaintiff as a long-time longshoreman for Cooper who was injured while attempting to exit a front-end loader on Cooper's midstream weigh station the America**
- **Not a vessel crewmember nor did operate the vessel, fuel it, clean it, maintain it or perform any crew-like jobs**
- **Files a Jones Act suit and alternatively alleges vessel negligence under Section 905 (b) of the LHWCA**

Johnson v. Cooper T. Smith Stevedoring Company, Inc. (5th Cir. July 14, 2023)

- **District Court grants summary judgment on both the seaman status and 905 (b) claims, and the Fifth Circuit affirms**
- **The Court explains that Johnson put forth no evidence to infer and create an issue of material fact regarding the duration of his alleged connection the America; the court does not even proceed to consider the nature of his alleged connection**
- **Decision appears consistent with the intent of *Sanchez***



The Passenger Vessel Industry – What about Submersibles?



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Legal Issues in Dealing with Submersible Tragedies like the *Titan*

- **Passenger Vessel Safety Act?** – Since operating in international waters, not subject to U.S. Law, so no PVSA applicability
- **Any Regulatory Oversight?** – submersibles like the *Titan* are largely unregulated and are not required to be registered
- **Jurisdiction** – Underneath International Waters, which is a confused jurisdictional space and certain rules and operations may not apply



A Lawsuit?



- **All Passengers executed comprehensive waivers releasing OceanGate even in the case of death**
- **However, OceanGate could be liable for any misrepresentations regarding the safety of its submersible, and gross negligence and recklessness are generally not waivable**
- **The reputational impact could lead to financial demise and moot the possibility of a lawsuit – No reason to sue a defendant with no resources**

Insurance Anyone?

What about a Limitation Action?

- **OceanGate presumably had liability insurance, but very little is known at this point as to any specific policies and coverages that may have been in place**
- **Any lawsuit would almost certainly be met with an action by OceanGate to limit its liability**
- **Would the Small Passenger Vessel Act Apply?**



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**



P& I Club Perspective



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Warner et al. v. Talos, ERT, et al (WDLA – February 2, 2023)

Interrogatory No. 6:

What sum of money, if paid now in cash, do you find by a preponderance by the evidence would fairly and reasonably compensate Plaintiff Anika Warner on behalf of her minor son Yanni Jackson for the damages, if any, that he incurred?

Answer in dollars and cents for the following items and none other:

Loss of Past Financial Support	\$ 40,000
Loss of Future Financial Support to the age of 18	\$ 80,000
Loss of Love, Affection, and Companionship	\$ 10 million
Past mental anguish	\$ 5 million
Future Mental Anguish	\$ 5 million

Interrogatory No. 7:

What sum of money, if paid now in cash, do you find by a preponderance by the evidence would fairly and reasonably compensate Plaintiff Vantrece Jackson, as surviving spouse of Walter Jackson, for the damages, if any, that she incurred?

Answer in dollars and cents for the following items and none other:

Loss of Past Wages	\$ 186,407.00
Loss of Future Wages	\$ 568,266.00
Loss of Household Services	\$ 233,257.00
Loss of Love, Affection, and Companionship	\$ 4 million
Past mental anguish	\$ 1.5 million
Future Mental Anguish	\$ 1.1 million

- **Jury Verdict in a Wrongful Death Action in the Lake Charles Division of the Western District of Louisiana**
- **Decedent employed as a rigger by DLS on a production platform owned and operated by Talos**
- **Non maritime case but certainly instructive as to potential exposure for a vessel owner/operator**

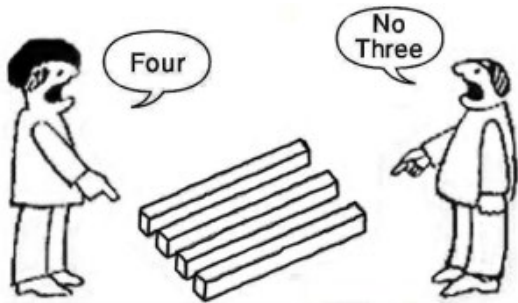


Vaughn v. American Commercial Barge Line, LLC (EDLA – June 22, 2023)

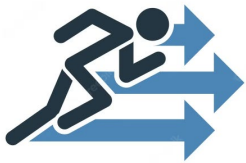
- **Plaintiff was employed as a deckhand on an ACBL vessel and allegedly injured his head, neck, back and shoulder**
- **Two shoulder surgeries, a neck surgery, and 100 physical therapy visits**
- **The parties stipulated to liability and tried the case on damages**
- **Judge Barbier awarded \$1.9 million and 5% pre-judgment interest**



P&I Club Perspective on Recent Verdicts

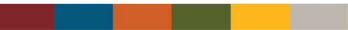


- **Concerns about the so-called “Nuclear Verdicts”**
- **Concerns about the escalation of awards in cases of the more routine, non-life-threatening injuries**
- **Club actions to combat potential exposures of both nuclear verdicts and a stream of higher verdicts in other cases**



ACTION

Questions or Comments?

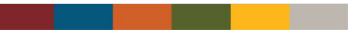




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