

RECENT DEVELOPMENTS IN ADMIRALTY AND MARITIME LAW

Aaron B. Greenbaum, Attilio M. Costabel, Mark DiCicco, Sarah Yantakosol Gayer, Alan K. Goldstein, Kelly Haas, Christopher F. Hamilton, Marissa M. Henderson, Jessica Link Martyn, Jedd S. Malish, Donald A. Mau, Ryan M. McCarthy, and Scott Richards

I. Introduction.....	186
II. Seamen's Claims.....	186
A. Jones Act and Seaman Status.....	186
B. Maintenance and Cure.....	188
C. <i>McCorpen</i> Defense	190
III. Cruise Lines	190
IV. Limitation of Liability	192
V. Marine Insurance.....	195
VI. Cargo	197
VII. Maritime Liens	198
VIII. Salvage and Treasure	199
IX. Piracy	201
X. Criminal.....	202
XI. Admiralty Jurisdiction.....	202
XII. Practice, Procedure, and Uniformity	205

Aaron B. Greenbaum is a partner with Pusateri, Barrios, Guillot & Greenbaum, LLC in New Orleans. Attilio M. Costabel is the principal of Attilio M. Costabel, P.A. in Miami. Mark DiCicco is with Chartwell Law Offices LLP in Miami. Sarah Yantakosol Gayer is an associate with Thompson & Bowie, LLP in Portland, Maine. Alan K. Goldstein is a partner with Goldstein and Price, L.C. in St. Louis. Kelly Haas is a partner with Royston Rayzor in Galveston. Christopher F. Hamilton is with Shutts & Bowen LLP in Tampa. Marissa M. Henderson is a partner with Ventker Warman Henderson, PLLC in Norfolk. Jessica Link Martyn is of counsel with Palmer Biezap Henderson LLP in Philadelphia. Jedd S. Malish is with Baldwin Haspel Burke & Mayer, LLC in New Orleans. Donald A. Mau is an attorney in New Orleans. Ryan M. McCarthy is with Horr, Novak & Skipp, P.A. in Miami. Scott Richards is with Buchanan Ingersoll & Rooney PC in Tampa.

I. INTRODUCTION

This article discusses noteworthy admiralty and maritime decisions issued by federal and state courts between October 1, 2014, and September 30, 2015. The selection of cases included in this survey reflects trends in the law, such as examination of the marine insurance doctrine of uberrimae fidei; the awarding of punitive damages in maintenance and cure decisions post-*Townsend*; and developments regarding cruise related torts, maritime liens, piracy, salvage, and Limitation of Liability actions.

II. SEAMEN'S CLAIMS

A. *Jones Act and Seaman Status*

Since the U.S. Supreme Court's holding in *Atlantic Sounding Co. v. Townsend*,¹ allowing punitive damages in a seaman's action against an employer for failure to pay maintenance and cure, courts have been called upon to determine whether punitive damages are available under the Jones Act and general maritime law. In *re Brennan Marine, Inc.* addressed whether punitive and other non-pecuniary damages were available in a wrongful death and survival action brought under the Jones Act.² Noting that "no court has ever awarded punitive damages under the Jones Act," the court declined to be the first.³ Likewise, in *Miles v. Apex Marine Corp.*, the court did not allow punitive damages in a survival action under the general maritime law.⁴ The *Miles* court determined that, because the general maritime law survival action (like the wrongful death action in *Miles*) is "a no-fault unseaworthiness claim created by the judiciary after passage of the Jones Act," then "[i]t, too, cannot result in a broader recovery than a survival action under the Jones Act."⁵

A similar issue was addressed in *Butler v. Ingram Barge Co.*⁶ The sole issue before the court was "whether a wife may attach a loss of consortium claim to her husband's negligence claims arising under the Jones Act and general maritime law."⁷ Relying on *Miles*, the court ruled that non-pecuniary damages, such as loss of consortium, are unavailable under either the Jones Act or general maritime law.⁸

1. 557 U.S. 404 (2009).

2. 2015 WL 4992321, at *1 (D. Minn. Aug. 20, 2015) (Brennan Marine was represented on appeal by one of the authors' firms, Goldstein and Price, L.C.).

3. *Id.* at *7.

4. *Id.* at *7-8 (citing *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990)).

5. *Id.* at *8.

6. 2015 WL 1517438, at *1 (W.D. Ky. Apr. 1, 2015).

7. *Id.* *1.

8. *Id.* at *2-3 (citing *Miles*, 498 U.S. at 32-33).

In *Newill v. Campbell Transportation Co.*, the defendant-employer sought a jury instruction on the primary duty rule, but the court declined to include such an instruction, reasoning that the Third Circuit has never adopted the primary duty rule, which has come under significant criticism.⁹ The primary duty rule generally holds that where an employee breaches a duty owed to his or her employer, that employee cannot recover from the employer.¹⁰ “[T]he First, Fifth, Sixth, Seventh Circuits [] have held that the primary duty rule applies only when the plaintiff’s damages are *solely caused* by a breach of his employment duty; if the defendant shares any fault, recovery is not barred.”¹¹ Therefore, “the primary duty rule is on its last legs, if not completely obsolete already.”¹²

In *Johnson v. GlobalSantaFe Offshore Services Inc.*, while aboard a drilling rig off the coast of Nigeria, a superintendent was shot and injured by a Nigerian gunman who invaded the rig. The superintendent sought to hold GlobalSantaFe (GSF) vicariously liable for the alleged negligence of other rig hands.¹³ The Fifth Circuit considered the relationship between GSF and the rig hands, addressing whether the rig hands were borrowed employees of GSF. The court held that the record was devoid of any evidence that would support a finding of an employment relationship: there was no evidence that GSF “had the right to direct the rig hands or to control the details of their work,” “hired or had the right to fire the rig hands,” and “furnished the rig or the equipment used on the rig.”¹⁴ GSF paid the rig hands and was listed as rig hands’ employer on their W-2 tax forms, but there was otherwise no “employment relationship that would support vicarious liability.”¹⁵ Therefore, the court affirmed the district court’s grant of summary judgment in favor of GSF.¹⁶

In *Ali v. Rogers*, the court held that seamen who served aboard a tanker ship owned by the U.S. Maritime Administration could not bring a suit for violations of civil rights against the captain of the vessel and its director of human resources.¹⁷ Notably, the Maritime Administration is an agency within the U.S. Department of Transportation, but it is operated by a private company under contract. The seamen commenced an action against their employer’s director of human resources and captain of the vessel, alleging violation of civil rights based on claims of wrongful

9. 87 F. Supp. 3d 766, 767–68 (W.D. Pa. 2015).

10. *Id.* at 767.

11. *Id.* at 768 (internal quotations and external citations omitted).

12. *Id.* at 769.

13. 799 F.3d 317, 319 (5th Cir. 2015).

14. *Id.* at 323–24.

15. *Id.*

16. *Id.* at 327.

17. 780 F.3d 1229, 1231 (9th Cir. 2015).

termination, discrimination in contracting, and discrimination in hiring.¹⁸ The court held that the seamen's claims alleging violation of civil rights based on claims of wrongful termination could be characterized as in personam civil actions in admiralty because the harm took place on navigable waters, and crewing a ship is one of most basic traditional maritime activities.¹⁹ Accordingly, the claims should have been brought under either the Public Vessels Act or the Suits in Admiralty Act, rather than against the captain of the vessel and its director of human resources.²⁰

The Fifth Circuit recently addressed seaman status for transitory workers in *Wilcox v. Wild Well Control, Inc.*²¹ The *Wilcox* plaintiff brought a maritime personal injury action under the Jones Act for injuries he sustained while welding on an offshore platform.²² The plaintiff sued his employer, a company for which he was working as a borrowed servant, as well as a subsidiary of that company.²³ *Wilcox* conceded "that during his entire employment, he spent less than thirty percent of his time in service of any one vessel or group of vessels."²⁴ The Fifth Circuit rejected the plaintiff's argument that he had been permanently reassigned to a particular job or vessel that would qualify him as a seaman under the *Barrett* reassignment exception.²⁵ He "worked for 34 different customers on 191 different jobs, both offshore and onshore."²⁶ The plaintiff had been "assigned to work for Wild Well on the [vessel at issue] for one specific project, which had a clear end date only two months after it began."²⁷ Focusing on the "essence of what it means to be a seaman," the court held that the plaintiff was not a seaman as a matter of law.²⁸

B. *Maintenance and Cure*

In *Hicks v. Tug Patriot*, the Second Circuit affirmed a decision that a shipowner was liable for punitive damages when it prematurely terminated maintenance and cure benefits.²⁹ The *Hicks* plaintiff injured his shoulder in the service of the vessel and subsequently underwent surgery.³⁰ The shipowner hired a private investigator, who videotaped the plaintiff plant-

18. *Id.* at 1232.

19. *Id.* at 1235–37.

20. *Id.* at 1236–37.

21. 794 F.3d 531, 534 (5th Cir. 2015).

22. *Id.*

23. *Id.* at 534–35.

24. *Id.* at 534.

25. *Id.* at 537–38 (citing *Barrett v. Chevron U.S.A., Inc.*, 781 F.2d 1067 (5th Cir. 1986) (en banc)).

26. *Id.* at 538.

27. *Id.* at 538–39.

28. *Id.* at 539 (quoting *Chandris, Inc. v. Latsis*, 515 U.S. 347, 369 (1995)).

29. 783 F.3d 939, 941 (2d Cir. 2015).

30. *Id.*

ing a small tree and playing with his grandson.³¹ When the plaintiff's doctor requested authorization for an additional MRI scan, he was shown this footage along with a document detailing the purported physical requirements of the plaintiff's job.³² Based on this video and the false suggestion by the shipowner that the plaintiff's job required only light lifting, the doctor determined that the plaintiff was fit for duty.³³ The shipowner then terminated his maintenance and cure benefits.³⁴

Several months later, a second doctor diagnosed the plaintiff with a recurrent rotator cuff tear.³⁵ The second doctor recommended another surgery and six months of rehabilitation to repair the plaintiff's shoulder.³⁶ At trial, the jury awarded \$123,000 in punitive damages for the "unreasonable and willful" failure of the shipowner to pay maintenance and cure.³⁷ Upon a motion under Federal Rule of Civil Procedure 54(d), the district court found the defendants' cessation of maintenance and cure to be willful and granted attorney fees to the plaintiff.³⁸ The Second Circuit affirmed the decision, diverging from prior precedent within the circuit and holding that the amount of recoverable punitive damages is *not* limited to the amount of reasonable attorney fees, which are available when the refusal to pay maintenance is "willful."³⁹

Following a bench trial, the court in *Jefferson v. Baywater Drilling, LLC* also awarded punitive damages where the defendant had performed an unreasonable and inadequate maintenance and cure investigation prior to denying benefits.⁴⁰ The plaintiff had developed a disabling skin condition while working as a seaman aboard the defendant's vessel.⁴¹ The maintenance and cure investigation consisted of speaking with the plaintiff's co-workers and reviewing incident reports.⁴² The shipowner ultimately "concluded that [p]laintiff's injuries were caused by a pre-existing condition related to herpes or a reaction to the medicine he allegedly brought aboard the [vessel]."⁴³ There was no further investigation of the plaintiff's claims. The shipowner did not review the plaintiff's medical records, nor did the shipowner request that the plaintiff be tested for herpes or that any

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 943–45 (overruling *McMillan v. Tug Jane A. Bouchard*, 885 F. Supp. 452, 466 (E.D.N.Y. 1995); *Kraljic v. Berman Enter., Inc.*, 575 F.2d 412, 415–16 (2d Cir. 1978)).

40. 2015 WL 365526, at *6–7 (E.D. La. Jan. 27, 2015).

41. *Id.* at *1.

42. *Id.* at *3–4.

43. *Id.* at *3.

tests be done to establish a connection between the plaintiff's skin condition and the medication he allegedly brought to work.⁴⁴ Consequently, the court found the maintenance and cure investigation was "impermissibly lax."⁴⁵ The denial of maintenance and cure was "arbitrary and capricious" and the plaintiff was entitled to compensatory damages, punitive damages, and attorney fees.⁴⁶

C. *McCorpen* Defense

In *Meche v. Doucet*, the Fifth Circuit reversed the district court's denial of the *McCorpen* defense⁴⁷ and vacated the award of punitive damages for failure to pay maintenance and cure.⁴⁸ The plaintiff aggravated a pre-existing condition in his lumbar spine while in the service of the vessel, but had concealed the condition during the pre-employment process.⁴⁹ Although the plaintiff's current employer (Key Energy Services) did not subject him to a pre-employment examination or interview, its predecessor did.⁵⁰ The Fifth Circuit ruled that Key was entitled to rely on the plaintiff's representations to his prior employer.⁵¹ The court further held that that

if a seaman intentionally provides false information on a pre-employment medical questionnaire and certifies that the information therein is true and correct, that seaman may not later argue that his concealment was not intentional based on his statement, which the employer disputes, that he verbally disclosed medical information that contradicted the written questionnaire.⁵²

III. CRUISE LINES

For twenty-six years, courts routinely followed *Barbetta v. S/S Bermuda Star*,⁵³ granting Rule 12(b)(6) motions to dismiss passengers' medical malpractice claims against cruise lines. Then the Eleventh Circuit in *Franza v. Royal Caribbean Cruises, Ltd.* held that there was no sound reason to carve out an exception to a cruise line's actual or apparent agency for shipboard medical malpractice.⁵⁴ Franza's father had died a week after

44. *Id.* at *5.

45. *Id.*

46. *Id.* at *6.

47. *McCorpen v. Cent. Gulf Steamship Corp.*, 396 F.2d 547, 548 (5th Cir. 1968) (holding that, when certain conditions are met, the vessel owner is not required to provide compensation and medical care to an injured seaman if the seaman knowingly concealed a pre-existing condition when hired).

48. 777 F.3d 237, 249 (5th Cir. 2015).

49. *Id.* at 241.

50. *Id.* at 245-46.

51. *Id.* at 246.

52. *Id.* at 248.

53. 848 F.2d 1364 (5th Cir. 1988).

54. 772 F.3d 1225, 1228 (11th Cir. 2014).

suffering head trauma and negligent medical care from a nurse and doctor onboard a Royal Caribbean vessel.⁵⁵

In a lengthy opinion, the Eleventh Circuit found that agency is a question of fact under the general maritime law⁵⁶ and there was no basis for excepting medical malpractice claims from maritime agency principles.⁵⁷ Thus, the court found that the plaintiff had pleaded sufficient facts of both actual and apparent agency to withstand dismissal under *Barbetta* as a matter of law.⁵⁸ The *Barbetta* rule is dead in the Eleventh Circuit; the potential impact of the *Franza* decision is enormous because a number of cruise lines are headquartered in Florida with Florida forum selection clauses in their tickets.

In comparison, in *Casorio v. Princess Cruise Lines, Ltd.*, while on the island of St. Maarten, a cruise line passenger tripped and fell, striking his head against a wall.⁵⁹ The passenger was advised by the ship doctor to seek treatment at a local hospital on the island, but the passenger declined, stating his preference not to be treated on a foreign island.⁶⁰ The passenger's condition eventually worsened, and he was declared brain dead upon reaching a Florida hospital, eventually dying when care was withdrawn.⁶¹ The passenger's widow brought suit under the Death on the High Seas Act (DOHSA) as well as claims for infliction of emotional distress, wrongful death, and a survival action.⁶² The court dismissed the wrongful death and negligent infliction of emotional distress claims under state law and DOHSA because under California law, a carrier does not have a duty to provide transportation to a particular hospital.⁶³ The cruise line fulfilled its duty by offering to provide treatment at the island's hospital.⁶⁴

In *Santos v. America Cruise Ferries, Inc.*, the court refused to recognize a federal survival action rooted in general maritime law.⁶⁵ The decedent was a passenger on a cruise ship during Hurricane Isaac. The decedent hit his head onboard during the storm, sustaining serious head injuries.⁶⁶ He died several months later and his widow brought suit, alleging pecuniary and non-pecuniary damages, including survival damages.⁶⁷ The court held that it was unclear whether the DOHSA governed the claim,

55. *Id.* at 1227–28.

56. *Id.* at 1235–36.

57. *Id.* at 1238.

58. *Id.* at 1254.

59. 2015 WL 4594169, at *1 (C.D. Cal. July 30, 2015).

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at *5.

64. *Id.*

65. 100 F. Supp. 3d 96, 111 (D.P.R. 2015).

66. *Id.* at 99–100.

67. *Id.*

due to questions of fact as to whether the decedent's high seas injury was the cause of his death.⁶⁸ Thus, the court turned to the applicability of the general maritime law.⁶⁹ Conducting an extensive analysis, the court held that survival and non-pecuniary damages were not recoverable under the general maritime law.⁷⁰

Unlike *Franza*, the *Tarasewicz v. Royal Caribbean Cruises Ltd.* decision is not groundbreaking; however, it provides an excellent survey of current Eleventh Circuit choice-of-law analysis and law pertaining to dismissal for forum non conveniens and federal courts' personal jurisdiction under Florida's long-arm statute.⁷¹ The *Tarasewicz* court noted that there are two steps in dismissal for forum non conveniens: (1) if U.S. law applies after choice-of-law analysis, the court should keep the case;⁷² and (2) if foreign law applies, the court should engage in forum non conveniens analysis.⁷³ The court based its choice-of-law analysis on the factors set forth in *Lauritzen v. Larsen* and *Hellenic Lines Ltd. v. Rhoditis*.⁷⁴ Because those factors pointed to foreign law, the court turned to forum non conveniens analysis.⁷⁵

In *Tarasewicz*, the plaintiff was a Polish citizen.⁷⁶ Analyzing the factors set forth in *Gulf Oil Corp. v. Gilbert*,⁷⁷ the court concluded that dismissal based on forum non conveniens was appropriate.⁷⁸ The court then looked to Florida's two-part test for personal jurisdiction over the non-resident Norwegian defendants: (1) whether Florida's long-arm statute was satisfied, and (2) whether the defendants had sufficient minimum contacts with the state so that exercising personal jurisdiction would not offend traditional notions of fair play and substantial justice.⁷⁹ In addition to finding dismissal proper on the basis of forum non conveniens, the court also concluded that it lacked personal jurisdiction based on this test.⁸⁰

IV. LIMITATION OF LIABILITY

Courts have been particularly active during this survey period in addressing several aspects of proceedings addressing the Limitation of Liability

68. *Id.* at 104–05.

69. *Id.* at 106.

70. *Id.* at 111.

71. 2015 WL 3970546 (S.D. Fla. June 30, 2015).

72. *Id.* at *3.

73. *Id.* at *4.

74. *Id.* (citing 345 U.S. 571 (1953); 398 U.S. 306 (1970)).

75. *Id.* at *11.

76. *Id.* at *2.

77. 330 U.S. 501 (1947).

78. *Tarasewicz*, 2015 WL 3970546, at *14–16.

79. *Id.* at *19 (citations omitted).

80. *Id.* at *24.

Act.⁸¹ In *In re Rainy Lake Houseboats, Inc.*, the court addressed the time requirement for bringing a limitation proceeding under Rule F.⁸² A wrongful death action was filed in state court.⁸³ The owner of the houseboat subsequently filed suit seeking limitation of liability in federal district court, and the bareboat charterer filed an answer to the owner's petition together with its own claim for limitation.⁸⁴ A limitation proceeding must be commenced "within 6 months after a claimant gives the owner written notice of a claim."⁸⁵

The court held that a letter sent from counsel for the decedent's parents constituted "sufficient written notice of the claim" because it informed both the owner and the bareboat charterer of "the possibility that [they] would be held liable for Decedent's death," and, as "[t]he details of [the] incident were already known to [both parties], the notice need not repeat that which was already known. . . ."⁸⁶ Further, although the letter "did not specify the amount of damages sought," the court held that entities seeking limitation had the "burden of investigating further whether the amount of the claim could exceed the value of the vessel."⁸⁷ Because the bareboat charterer's claim for limitation was not filed within six months of the letter, the court dismissed the limitation of liability action as untimely as to that party.⁸⁸

The Fifth Circuit addressed the same six-month time bar in *In re RLB Contracting, Inc.* in a limitation action stemming from a fatal allision between a fishing boat and the pipe of a dredge vessel.⁸⁹ The claimants filed a motion to dismiss the limitation action, arguing that the petitioner had received written notice of the claim more than six months prior to the time it filed the limitation action.⁹⁰ Specifically, their counsel had sent several emails to the petitioner, each of which addressed the claimants' pending claims in Texas state court.⁹¹ The Fifth Circuit explicitly held that a written communication may serve as notice under the Limitation of Liability Act in lieu of a filed complaint if it reveals the "reasonable possibility of a claim which may exceed the value of the vessel."⁹²

81. 46 U.S.C. §§ 30501–30512 (2012).

82. 2015 WL 3795786, at *7–10 (D. Minn. June 18, 2015).

83. *Id.* at *4.

84. *Id.* at *3.

85. *Id.* at *7 (citing 46 U.S.C. § 30511(a), FED. R. CIV. P. Supp. R. F(1)).

86. *Id.* at *9–10.

87. *Id.* at *10.

88. *Id.*

89. 773 F. 3d 596, 599 (5th Cir. 2014).

90. *Id.*

91. *Id.* at 599–601.

92. *Id.* at 602 (quoting *In re Eckstein Marine Serv. LLC*, 672 F.3d 310, 317 (5th Cir. 2012)).

The Eighth Circuit addressed whether a petitioner may limit its liability when the claimant is the United States in *In re American River Transportation Co.*⁹³ American River Transportation (ARTCO) filed a Rule F limitation of liability proceeding after barges in its tow allided with a U.S.-owned lock and dam.⁹⁴ The government did not file a claim in the limitation proceeding and instead moved to dismiss ARTCO's complaint, contending that the government's § 408 claim under the Rivers and Harbors Act was not subject to limitation of liability such that it was not required to be litigated in the limitation proceeding.⁹⁵ Finding no "irreconcilable conflict" between the Limitation of Liability Act and the Rivers and Harbors Act, the court ruled that the U.S. government's claim was subject to the Limitation Act (such that it was required to be litigated in the Rule F proceeding).⁹⁶

In re Foss Maritime Co. involved a counterclaim by a petitioner-in-limitation, arising out of an allision causing damage to a bridge owned by the Kentucky Transportation Cabinet (KTC).⁹⁷ The vessel owner filed a limitation action, and the KTC filed a claim for the cost and expense of replacing the demolished span.⁹⁸ In response, the vessel owner filed a counterclaim against KTC and subsequently moved for summary judgment, asserting that KTC and its agents were negligent in failing to keep functional navigational lights on the bridge as required by a U.S. Coast Guard bridge permit.⁹⁹ Finding that KTC bore the duty to comply with the U.S. Coast Guard's requirements for bridge lighting on navigable waters and that the lighting scheme was designed to avert the very harm that resulted, the court held that application of the *Pennsylvania* rule was appropriate.¹⁰⁰ The court clarified that "the *Pennsylvania* rule does not establish fault, but merely shifts the burdens of proof to KTC."¹⁰¹

In *Great Lakes Dredge & Dock Co., LLC v. Puerto Rico Electricity Power Authority*, the court addressed what constitutes "pending freight" under the Limitation of Liability Act.¹⁰² A dredging contractor and vessel owner filed a limitation action after its vessel, operating under a dredging contract, severed an underwater auxiliary power line of Puerto Rico's power authority.¹⁰³ The value of the vessel was alleged to be \$4,775,000 and the owner

93. 800 F.3d 428 (8th Cir. 2015) (American River Transportation was represented by one of the authors' firms, Goldstein and Price, L.C.).

94. *Id.* at 431.

95. *Id.*

96. *Id.* at 438.

97. 2015 WL 4348290, at *1 (W.D. Ky. July 15, 2015).

98. *Id.* at *1.

99. *Id.* at *1-2.

100. *Id.* at *3-4.

101. *Id.* at *4.

102. 2015 WL 3796068, at *3 (D. Md. June 16, 2015).

103. *Id.* at *1-2.

provided three Letters of Undertaking as security in a total amount of \$4,798,080.¹⁰⁴ The power authority moved to enlarge the limitation fund to \$10 million, arguing the \$7.8 million dredging contract was the vessel's "pending freight" under the Limitation Act.¹⁰⁵ The vessel owner argued the contract was severable; the phase of the contract being undertaken at the time was a relatively minor modification of the dredging contract encompassing approximately \$32,000 in labor to remove underwater debris, and it was the only part of the contract that counted as "pending freight."¹⁰⁶ The court rejected this argument, holding the "pending freight" clause applied to the entire non-severable dredge contract price, as well as the value of additional labor to remove the debris.¹⁰⁷ The court increased the security required to be posted to \$10 million.¹⁰⁸

V. MARINE INSURANCE

Several federal appellate courts have recently examined the doctrine of uberrimae fidei (utmost good faith). In *Catlin (Syndicate 2003) at Lloyd's v. San Juan Towing & Marine Services, Inc.*, the First Circuit formally recognized the doctrine of uberrimae fidei as an established admiralty rule.¹⁰⁹ Under the doctrine, "an insured in a maritime insurance contract is required 'to disclose to the insurer all known circumstances that materially affect the insurer's risk, the default of which . . . renders the insurance contract voidable by the insurer.'"¹¹⁰ In *San Juan Towing & Marine Services*, a ship repair yard's floating drydock sank and the repair yard subsequently made a claim for the loss up to the limit of its hull policy.¹¹¹ The court held that the insured's failure to disclose to its insurer the true value of its floating drydock, the purchase price of the drydock, and the drydock's pre-existing level of deterioration were all material facts, the non-disclosure of which violated uberrimae fidei.¹¹² The insurer was entitled to void the insurance policy and deny the claimed loss regarding the floating drydock. Notably, the court held the policy was not void ab initio, however.¹¹³

104. *Id.* at *2.

105. *Id.* at *3.

106. *Id.* at *4.

107. *Id.* at *4-5.

108. *Id.* at *5.

109. 778 F.3d 69, 80-81 (1st Cir. 2015).

110. *Id.* at 71 n.2 (citing *Windsor Mount Joy Mut. Ins. Co. v. Giragosian*, 57 F.3d 50, 54 (1st Cir. 1995)).

111. *Id.* at 72-73.

112. *Id.* at 82.

113. *Id.* at 83 (citing *Windsor*, 57 F.3d at 54-55).

The Eighth Circuit examined the doctrine of *uberrimae fidei* in *St. Paul Fire & Marine Insurance Co. v. Abbe & Svoboda Inc.*¹¹⁴ Under the doctrine, “parties to a marine insurance policy must accord each other the highest degree of good faith.”¹¹⁵ The insured chartered a barge, which subsequently sank during a storm.¹¹⁶ The insurer sought to void the protection and indemnity policy under the doctrine of *uberrimae fidei* and avoid indemnifying the insured for wreckage removal costs, alleging that the insured had failed to provide it with a previous survey of the barge indicating several defects in its deck and tanks.¹¹⁷ In a case of first impression for the Eighth Circuit, the court held that “actual reliance” and “objective materiality” are two elements of the defense that an insurer must prove to void the policy.¹¹⁸ For “actual reliance,” the insurer is required to show causation between the insured’s omission and the issuing of the policy.¹¹⁹ To satisfy the “objective materiality” prong, the insurer must prove that “had the undisclosed fact been known, it is reasonable to believe that a prudent underwriter would not have accepted the proposal as made.”¹²⁰ The court held that there were genuine issues of fact that existed for both elements.¹²¹ Therefore, it reversed the district court’s decision to grant summary judgment in favor of the insurer and remanded the matter.¹²²

In *AIG Centennial Insurance Co. v. O’Neill*, AIG sought declaratory judgment that a policy was void *ab initio* because the policyholder made material misrepresentations on the application for insurance as to the purchase price of the vessel, the vessel’s true owner, and the owner’s loss history.¹²³ Additionally, AIG denied Bank of America’s claim for protection under a mortgagee’s interest clause that would have protected the bank in case of problems with the insurance policy.¹²⁴ Emphasizing the “age-old federal marine insurance doctrine of *uberrimae fidei*” as a well-entrenched precedent in the circuit,¹²⁵ the Eleventh Circuit ruled that the insurance policy was void *ab initio* because of the material misrepresentations.¹²⁶ Concerning the bank’s claim, the court then turned to Pennsylvania law regarding

114. 798 F.3d 715 (8th Cir. 2015).

115. *Id.* at 716.

116. *Id.* at 717.

117. *Id.* at 717–18.

118. *Id.* at 722.

119. *Id.* at 720 (citing 27 WILLISTON ON CONTRACTS § 69:32 (4th ed. 2014)).

120. *Id.* at 722 (citing *Sun Mut. Ins. Co. v. Ocean Ins. Co.*, 107 U.S. 485, 509–10 (1883)) (internal quotations omitted).

121. *Id.* at 722–23.

122. *Id.*

123. 782 F.3d 1296, 1300 (11th Cir. 2015).

124. *Id.* at 1301–02.

125. *Id.* at 1302–03.

126. *Id.* at 1305.

contract formation because no valid federal admiralty principal applied to a mortgagee's interest clause.¹²⁷ Because the owner of the vessel was misnamed on the insurance application, the court ruled that a valid mortgagee's interest clause never came into effect to protect the bank from the owner's misrepresentations.¹²⁸ Thus, because the policyholder did not disclose the true owner of the vessel, the insurer was not required to pay either the policyholder or the bank as mortgagee.¹²⁹

VI. CARGO

In *G&P Trucking Co. v. Zurich American Insurance Co.*, a trucking company involved in an accident that damaged cargo shipped from overseas sought a declaration that its liability for the cargo damage was limited under the package limitation of the Carriage of Goods by Sea Act (COGSA).¹³⁰ The trucker also disputed that the Carmack Amendment applied to the loss.¹³¹ The question presented was whether the bill of lading was a through bill of lading covering both ocean and inland transportation in one document to a final destination in the United States. The "Ocean or Combined Transport Waybill" did not list the final destination, but it did list the port of destination (Savannah) and the consignee's address in Tennessee.¹³² The court held that since the consignee's address was considered the final destination and the transport was door-to-door (Spain to Tennessee), it was a through bill.¹³³ It also noted that no separate bill of lading was issued for the inland transportation leg.¹³⁴ Therefore, the court held that the Himalaya Clause in the through bill of lading extended COGSA to this domestic inland portion of the shipment.¹³⁵

In *Industria y Distribucion de Alimentos v. Suarez & Co.*, Puerto Rico required shipping operators to pay a fee to conduct business out of the Port of San Juan.¹³⁶ The Commonwealth supplied each company with cargo-scanning technology, required them to scan all of their inbound cargo, and charged each company an additional fee.¹³⁷ The question on appeal was whether the dormant Commerce Clause barred Puerto Rico from

127. *Id.* at 1306 (citing *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 320–21 (1955)).

128. *Id.* at 1309–10.

129. *Id.* at 1310.

130. 2015 WL 5008734, at *1 (D.S.C. Aug. 19, 2015).

131. *Id.* (citing 49 U.S.C. § 14706 (2012)).

132. *Id.* at *1, *3.

133. *Id.* at *4–6.

134. *Id.* at *4.

135. *Id.* at *5–6.

136. 797 F.3d 141, 143 (1st Cir. 2015).

137. *Id.*

charging the additional fee to defray the costs of the scanning.¹³⁸ The First Circuit held that the operators had failed to establish that the additional fee violated the Commerce Clause.¹³⁹

VII. MARITIME LIENS

The Fourth Circuit addressed whether a bunkers supplier had actual notice that a vessel charterer did not have authority to bind the vessel to maritime liens arising from the procurement of necessities.¹⁴⁰ The Federal Maritime Lien Act (FMLA) “creates a presumption that charterers . . . have such ‘authority to procure necessities for’ the Vessel,” and, under the FMLA, any provider of necessities has a maritime lien on the vessel.¹⁴¹ The court found a “no lien” provision in the charter party did not rebut FMLA’s statutory presumption that charterers have authority to procure necessities where, as here, the bunker supplier did not have actual knowledge of such a clause in advance of the transaction.¹⁴² Furthermore, the court found a “no lien” stamp on the charterer’s delivery receipt for this transaction was too late to give the supplier such notice.¹⁴³ The court also held that two prior delivery receipts with “no lien” stamps received when the charterer was operating under prior charter parties did not give the supplier actual notice of the “no lien” clause in the vessel’s charter party at the time of the bunker sale.¹⁴⁴

Green River Marina, LLC v. Meredith addressed priority of liens.¹⁴⁵ Specifically, a marina argued that its lien over a vessel for unpaid moorage fees outranked a first preferred ship mortgage. The court disagreed, holding that the bank’s mortgage fulfilled the three criteria for a preferred mortgage under the FMLA and was properly registered.¹⁴⁶ “[A] preferred mortgage has priority over all claims ‘except for expense and fees allowed by the court, costs imposed by the court, and preferred maritime liens.’”¹⁴⁷ The court reasoned that a “preferred maritime lien does not include maritime liens arising from non-payment of necessary expenses” and held that

138. *Id.* at 144.

139. *Id.* at 148.

140. *World Fuel Servs. Trading, DMCC v. Hebei Prince Shipping Co., Ltd.*, 783 F.3d 507, 511 (4th Cir. 2015).

141. *Id.* at 521 (quoting 46 U.S.C. § 31341(a)(4)(B) (2012)).

142. *Id.* at 522.

143. *Id.* at 523.

144. *Id.* at 522.

145. 2015 WL 1273887, at *1 (W.D. Ky. Mar. 18, 2015).

146. *Id.* at *2 (citing 46 U.S.C. §§ 31321, 31322 (2012)).

147. *Id.* (quoting 46 U.S.C. § 31326(b)(1) (2012)).

the marina's non-preferred maritime lien for necessities arising after a preferred mortgage was inferior to the bank's preferred mortgage.¹⁴⁸

A seaman may hold a maritime lien for wrongful termination in certain circumstances. In *Spooner v. Multi Hull Foiling AC45 Vessel "4 Oracle Team USA,"* the plaintiff was a sailor for defendant Oracle Racing and its predecessor organizations, which at times competed for the America's Cup.¹⁴⁹ Following the 34th America's Cup, when the plaintiff's employer did not renew his contract, he brought an admiralty action for wrongful termination of a "maritime services contract," both in personam and in rem against *4 Oracle Team USA*, a hydrofoiling AC45-class racing catamaran.¹⁵⁰ Under Ninth Circuit precedent, "wrongful termination of a seaman's employment contract can support a maritime lien."¹⁵¹ However, the employment contract at issue did not specify a particular vessel the plaintiff was to serve aboard.¹⁵² The plaintiff's expected future compensation thus could not be considered as the debt of a single vessel, which would support an in rem maritime lien. The court therefore vacated the Rule C arrest warrant.¹⁵³

VIII. SALVAGE AND TREASURE

In *Fuller Marine Services v. F/V WESTWARD*, the issue was whether fishing licenses were appurtenances of a vessel, part of the value of the ship, and subject to a salvage lien.¹⁵⁴ The court relied on the First Circuit's holding in *Gowen v. F/V Quality One* that "a vessel's fishing permits were appurtenances to the vessel and therefore subject to a lien on the vessel."¹⁵⁵ The court reasoned that excluding the fishing permits would impair the policy of encouraging salvors.¹⁵⁶ The court held that there was "no reason to carve out a 'salvage lien' exception to the traditional rule that maritime liens attach not only to the vessel but to any appurtenance which is essential to the vessel's mission."¹⁵⁷ Thus, the salvage lien did attach to the vessel's fishing permits.¹⁵⁸

148. *Id.*; see also 46 U.S.C. § 31326(b)(1); *Midlantic Nat'l Bank v. Sheldon*, 751 F. Supp. 26, 28–29 (E.D.N.Y. 1990).

149. 2015 WL 1262909, at *1 (N.D. Cal. Mar. 18, 2015). Oracle Racing was the defending America's Cup champion after winning the 34th America's Cup on San Francisco Bay in 2013. *Id.*

150. *Id.* at *1.

151. *Id.* at *8 (citing *Putnam v. Lower*, 236 F.2d 561 (9th Cir. 1956)).

152. *Id.* at *9.

153. *Id.* at *11.

154. 2015 WL 5674828, at *2 (D. Me. Sept. 24, 2015).

155. *Id.* (citing *Gowen v. F/V Quality One*, 244 F.3d 64, 67–70 (1st Cir. 2001)).

156. *Id.* (quoting *Gowen*, 244 F.3d at 68–69).

157. *Id.* (quoting *Gowen*, 244 F.3d at 67).

158. *Id.* at *3.

In *Recovery Ltd. Partnership v. Wrecked and Abandoned Vessel, S.S. Central America*, the current salvor in possession, Recovery Limited Partnership (RLP), of a sunken treasure ship, the S.S. *Central America*, sought to use the common law of “finds” to obtain immediate title to certain artifacts it recovered, rather than seek a salvage award.¹⁵⁹ Importantly, the court held that under Fourth Circuit precedent, the law of salvage, not the law of finds, applies to historic wrecks, and RLP was required to seek a salvage award.¹⁶⁰ The court noted that RLP could not be a salvor-in-possession and also apply the law of “finds” to recovered artifacts from this historic wreck.¹⁶¹

A salvage contract procured by fraud is unenforceable. In *St. Clair Marine Salvage, Inc. v. Bulgarelli*, a pleasure boat ran aground, prompting the owner to contact a tower, which dispatched a salvage vessel to assist.¹⁶² The parties subsequently disputed not only the salvage price, but also whether the terms of the salvage contract had been unilaterally modified by the salvor.¹⁶³ The district court agreed with the owner as to the quoted price and found that the salvor had unilaterally altered the written agreement after it was executed.¹⁶⁴ The Sixth Circuit affirmed, holding that there is a long history of “protecting mariners from unscrupulous and dishonest salvors” and that the law takes “a dim view of salvors who engage in ‘dishonesty, corruption, fraud, or falsehood during towing or salvage operations.’”¹⁶⁵ Having never articulated its own rule, the Sixth Circuit referred to Fifth Circuit precedent to conclude that the district court properly voided the salvage contract.¹⁶⁶

In *Farnsworth v. Towboat Nantucket Sound, Inc.*, the parties submitted to arbitration pursuant to a binding arbitration clause in their salvage contract.¹⁶⁷ After the arbitration commenced, the vessel owner filed suit, asserting that the salvage contract was unenforceable because he had entered into it under duress.¹⁶⁸ The case implicated the severability doctrine because the issue before the court was “the contract’s validity, not its formation.”¹⁶⁹ The First Circuit held that “a party must claim

159. 2015 WL 4757606, at * 1 (E.D. Va. Aug. 10, 2015).

160. *Id.* at *5–6.

161. *Id.* at *6.

162. 796 F.3d 569, 571 (6th Cir. 2015).

163. *Id.* at 572.

164. *Id.*

165. *Id.* at 575 (quoting *Jackson Marine Corp. v. Blue Fox*, 845 F.2d 1307, 1309 (5th Cir. 1988)).

166. *Id.* at 575–76 (citing *Black Gold Marine, Inc. v. Jackson Marine Co.*, 759 F.2d 466, 470 (5th Cir. 1985) (setting forth five elements required to establish that a contract was fraudulently procured)).

167. 790 F.3d 90 (1st Cir. 2015).

168. *Id.* at 92.

169. *Id.* at 97.

that the arbitration clause itself is invalid in order to obtain court resolution of the duress issue.”¹⁷⁰ It held that the vessel owner’s general claim of duress “was not used to support a direct challenge to the arbitration provision and so was not specific enough to permit court adjudication of the duress as to [his] arbitration clause claim.”¹⁷¹

IX. PIRACY

There have been several piracy-related decisions in the past year during this survey period. In one case, a Taiwanese master of a fishing vessel that had been overtaken by pirates was killed during U.S. Navy operations in international waters as part of NATO antipiracy operations.¹⁷² The fishing vessel had been used as a mobile base or mothership by the pirates for a year.¹⁷³ After firing on the fishing vessel and the pirates’ surrender, Navy personnel boarded the vessel, took possession of it, and found the master dead.¹⁷⁴ As part of its military operation, the Navy then sunk the fishing vessel and with it the body of the master. The Fourth Circuit held that the master’s widow could not recover under the Suits in Admiralty Act¹⁷⁵ or the Public Vessels Act¹⁷⁶ because of the political question doctrine.¹⁷⁷ The court noted that the “case presents a textbook example of a situation in which courts should not interfere.”¹⁷⁸ Furthermore, the operations at issue would fall under the implied discretionary function exception to those statutes.¹⁷⁹

In another case, three pirates were captured thirty to forty nautical miles off the coast of Somalia, after hijacking a yacht and killing four Americans. The pirates were tried and convicted in Virginia for murder and firearms violations.¹⁸⁰ One pirate appealed his conviction on jurisdictional grounds, arguing that he was not captured on the high seas, but rather in Somali waters.¹⁸¹ He contended that Somali territorial waters extended to the 200 nautical mile exclusive economic zone (EEZ) recognized by the United Nations Convention on the Law of the Sea

170. *Id.* at 98.

171. *Id.*

172. *Wu Tien Li-Shou v. United States*, 777 F.3d 175, 179 (4th Cir.), *cert. denied*, 136 S. Ct. 139 (2015).

173. *Id.*

174. *Id.*

175. 46 U.S.C. §§ 30901–30918.

176. 46 U.S.C. §§ 31101–31113.

177. *Wu Tien Li-Shou*, 777 F.3d at 180–83.

178. *Id.* at 180.

179. *Id.* at 185–86.

180. *United States v. Beyle*, 782 F.3d 159 (4th Cir. 2015).

181. *Id.* at 161.

(UNCLOS).¹⁸² The Fourth Circuit disagreed, noting international law as stated in UNCLOS and by circuit precedent recognized only twelve nautical miles of territorial sea.¹⁸³ The court noted that the EEZ extends a country's special economic rights and jurisdiction only.¹⁸⁴ Therefore, the court ruled that the pirate was captured on the "high seas" for purposes of U.S. enforcement of antipiracy laws.¹⁸⁵

X. CRIMINAL

The U.S. Supreme Court ruled that the Sarbanes-Oxley Act,¹⁸⁶ intended to prevent corporate cover-ups in the wake of the Enron debacle, could not be used to prosecute a commercial fisherman accused of throwing undersized fish overboard.¹⁸⁷ The issue was whether a fish is a "tangible object" under Section 1519 of the Sarbanes-Oxley Act.¹⁸⁸ Yates, a commercial fisherman, allegedly destroyed undersized fish after a law enforcement officer boarded his vessel and before arriving at the dock. The Court, in a five-to-four split, largely agreed with Yates's arguments that a fish is not the type of "tangible object" Sarbanes-Oxley was intended to protect from tampering or destruction.¹⁸⁹ Justice Ginsburg's plurality opinion reasoned "it would cut § 1519 from its financial fraud mooring to hold that it encompasses any and all objects" and held that a tangible object under Sarbanes-Oxley "must be one used to record or preserve information."¹⁹⁰

XI. ADMIRALTY JURISDICTION

The Seventh Circuit tackled the issue of whether admiralty jurisdiction existed over an aviation disaster in *Lu Junhong v. Boeing Co.*¹⁹¹ Some passengers of Asiana flight 214 filed suit in state court for injuries sustained when the flight crashed into the seawall at San Francisco International Airport.¹⁹² Boeing moved to remove these cases to federal court on the basis of both admiralty jurisdiction¹⁹³ and federal officer jurisdiction.¹⁹⁴

182. *Id.* at 166 (citing United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397).

183. *Id.* at 167–69.

184. *Id.* at 167.

185. *Id.* at 169.

186. 18 U.S.C. § 1519 (2012).

187. *Yates v. United States*, 135 S. Ct. 1074, 1081 (2015).

188. *Id.*

189. *Id.* at 1079.

190. *Id.*

191. 792 F.3d 805, 807 (7th Cir. 2015).

192. *Id.* at 807–08.

193. 28 U.S.C. § 1333.

194. 28 U.S.C. § 1442.

The district court denied Boeing's motion, finding that "admiralty jurisdiction is available only when an accident becomes inevitable while the plane is over water."¹⁹⁵

The Seventh Circuit rejected the district court's "inevitability standard."¹⁹⁶ The court noted that the district court's decision came before the National Transportation Safety Board (NTSB) issued its report.¹⁹⁷ The NTSB concluded that ten seconds before the plane crashed into the seawall at the end of the runway, while over San Francisco Bay (part of the Pacific Ocean), the auto throttle system disengaged, thus making an accident inevitable.¹⁹⁸ The court found that admiralty jurisdiction is available when an "'injury suffered on land was caused by a vessel in navigable water' if the cause bears a 'substantial relationship to traditional maritime activity.'"¹⁹⁹ The court reasoned that it made no difference that the "vessel" in question was an aircraft.²⁰⁰ Finally, the Seventh Circuit concluded that the accident had a significant relationship to traditional maritime activity because this "was a trans-ocean flight, a substitute for an ocean-going vessel. . . ."²⁰¹ Finding admiralty jurisdiction existed, the Seventh Circuit reversed the ruling of the district court and found Boeing entitled to removal.²⁰²

The issue in *Ficarra v. Germain* was whether a recreational swimming accident met the test for admiralty tort jurisdiction.²⁰³ While the defendant's recreational boat was anchored in shallow water on Oneida Lake (a navigable waterway in upstate New York connected to the Erie Canal System), the plaintiff "dove off [defendant's] boat, struck his head on the lake bottom, and was severely injured."²⁰⁴ The plaintiff alleged that the defendant was negligent in failing to warn him that the anchorage was too shallow and unsafe for diving.²⁰⁵ The court denied the defendant's motion to remove the matter to federal court on the basis of admiralty jurisdiction. The court also denied the defendant's petition for limitation of liability because the admiralty tort jurisdiction test was lacking.²⁰⁶ The parties agreed that the first prong, the location test, was met, but the court held the second prong, the connection test, was not

195. *Lu Junbong*, 792 F.3d at 814.

196. *Id.* at 814–15.

197. *Id.* at 814.

198. *Id.*

199. *Id.* (quoting *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995)).

200. *Id.*

201. *Id.* at 816.

202. *Id.* at 818.

203. 91 F. Supp. 3d 309 (N.D.N.Y. 2015).

204. *Id.* at 312–13.

205. *Id.*

206. *Id.* at 317.

met to establish admiralty tort jurisdiction.²⁰⁷ With regard to the second prong, the defendant argued that the “rescue” of the plaintiff was the type of action that could disrupt maritime commerce. The court held that while a “potential rescue” may provide a basis for admiralty tort jurisdiction in situations at sea or far from shore, the “rescue doctrine” was inapplicable to shallow waters.²⁰⁸ The threat to maritime commerce was minimal and furthermore, a diving accident on a pleasure vessel was not the type of traditional maritime activity to which “special admiralty rules would apply.”²⁰⁹

The court in *Adamson v. Port of Bellingham* held that a personal injury on a gangway affixed to a pier does not give rise to a maritime tort against the dock owner.²¹⁰ The plaintiff argued “the gangway should be considered part of the ship while it [was] being used in preparation for a passenger-loading operation, and that the tort [was] therefore maritime in nature.”²¹¹ The court rejected this argument, holding that “[p]iers and docks are deemed extensions of the land, and injuries upon them do not give rise to maritime torts.”²¹² The court acknowledged that in some cases claims have been brought against the vessel based on a vessel’s duty to provide a safe means of entering and exiting the ship, but in those cases claims were brought against the vessel and not solely against the dock owner.²¹³ In *Adamson*, however, the plaintiff brought the action solely against the dock owner.²¹⁴ The court also held that the Admiralty Extension Act,²¹⁵ a jurisdictional statute, does not affect the maritime character of torts brought pursuant to diversity jurisdiction.²¹⁶

In *Ferguson v. Horizon Lines, LLC*, a port security guard at a terminal booth brought suit against a shipowner, alleging that she was sexually harassed by a drunk crewmember returning from shore leave.²¹⁷ The plaintiff brought claims against the shipowner for negligent hiring and unseaworthiness, and a claim that the shipowner was vicariously liable for torts of assault, battery, and false imprisonment.²¹⁸ The Ninth Circuit held that California law, rather than general maritime law, applied to the plain-

207. *Id.*

208. *Id.* at 315.

209. *Id.* at 316 (quoting *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 539 (1995)).

210. 2015 WL 4716421, at *1, *4 (W.D. Wash. Aug. 6, 2015).

211. *Id.* at *1.

212. *Id.* at *3 (internal quotation omitted).

213. *Id.*

214. *Id.* at *4.

215. 46 U.S.C. § 30101.

216. *Adamson*, 2015 WL 4716421, at *4–5.

217. 602 F. App’x 664, 665 (9th Cir. 2015).

218. *Id.* at 666.

tiff's claims because the assault took place at the gate of the terminal, which was considered an extension of land.²¹⁹

Higginbotham v. Drake Towing, LLC involved the interplay of vessel status and admiralty jurisdiction.²²⁰ The plaintiff was injured when he fell off a well while working a plug and abandonment operation and subsequently filed suit in federal court.²²¹ During the operation, the plaintiff worked, slept, and ate aboard the spud barge IMIV.²²² He alleged that the IMIV's owner was negligent in not providing a safe means of egress and ingress between the IMIV barge and the well, resulting in the incident.²²³ The barge owner filed a motion to dismiss for lack of admiralty jurisdiction, arguing that the plaintiff had fallen off a fixed platform and that no vessel was involved in the incident.²²⁴ The court agreed, finding that the IMIV barge was not a "vessel."²²⁵ The IMIV did not have engines, required towage to be moved, lowered its spuds to secure itself to the riverbed, and served as "dormitory" for the workers.²²⁶ There was "no evidence demonstrating that the IMIV was designed to a practical degree for transporting people or cargo over water, or that it was 'used in a transportation function' as plaintiff argued."²²⁷ The court therefore granted the defendant's motion to dismiss for lack of subject matter jurisdiction.²²⁸

XII. PRACTICE, PROCEDURE, AND UNIFORMITY

The Fifth Circuit recently added a new wrinkle to the debate over removal based solely on maritime jurisdiction in *Riverside Construction Co. v. Entergy Mississippi, Inc.*²²⁹ Riverside Construction brought suit in Mississippi state court against Entergy Mississippi, seeking payment under a contract for repairs made to the dolphin fender system on Entergy's fuel dock after it was damaged in an allision with a barge.²³⁰ Entergy removed the case, invoking the court's maritime jurisdiction because it involved a federal maritime contract.²³¹ The district court disagreed, found that

219. *Id.* at 665–66.

220. 2015 WL 5682628, at *2 (E.D. La. Sept. 25, 2015).

221. *Id.* at *1.

222. *Id.*

223. *Id.*

224. *Id.* at *2.

225. *Id.* at *4 (referring to the barge considered in *Holmes v. Atl. Sounding Co., Inc.*, 437 F.3d 441 (5th Cir. 2006)).

226. *Id.*

227. *Id.* (citations omitted).

228. *Id.*

229. 2015 WL 5451433 (5th Cir. Oct. 16, 2015).

230. *Id.* at *1.

231. *Id.*

the contract at issue was not a maritime contract, and remanded the case to state court.²³² “The district court also held that even if the suit did implicate federal maritime jurisdiction, the ‘saving to suitors’ clause of 28 U.S.C. § 1333(1) necessitated remand.”²³³ The district court denied Riverside’s motion for attorney fees and costs for improper removal under 28 U.S.C. § 1447(c), “concluding that although removal was ultimately improper, Entergy had an objectively reasonable belief that it was proper and removed the suit in good faith.”²³⁴ The Fifth Circuit affirmed, stating that “[t]here is disagreement among district courts in this circuit . . . regarding whether general maritime claims are removable, even absent an independent basis for jurisdiction, in light of Congress’s December 2011 amendment to 28 U.S.C. § 1441(b).”²³⁵

A state law cap on pain and suffering (non-economic) damages does not apply to a longshore worker’s claim under § 905(b) of the Longshore and Harbor Workers’ Compensation Act.²³⁶ In *Price v. Atlantic Ro-Ro Carriers*, the court conducted a *Yamaha* analysis to determine whether state law could apply and supplement federal maritime law.²³⁷ The court found the state law damages cap materially prejudices the application of federal maritime law so it may not apply to § 905(b) claims.²³⁸ Furthermore, the court reasoned that the state law interfered with the uniform application of federal maritime law and should not apply to this case.²³⁹

Armstrong v. National Shipping Co. of Saudi Arabia addressed the extent to which a stevedoring company is subject to personal jurisdiction in another state.²⁴⁰ A longshore worker was injured while unloading a forklift from a vessel at the destination port in Baltimore.²⁴¹ The plaintiff asserted negligence and other claims against several third parties, including the stevedore company that loaded the forklift onto the vessel in Texas.²⁴² The court held that the plaintiff had not made a prima facie showing that the court had personal jurisdiction over the out-of-state stevedore

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.* at *3.

236. *Price v. Atl. Ro-Ro Carriers*, 45 F. Supp. 3d 494, 504 (D. Md. 2014); 33 U.S.C. § 901–951. Section 905(b) of the LHWCA recognizes a covered worker’s remedy against a vessel for injuries caused by the vessel’s negligence.

237. *Price*, 45 F. Supp. 3d at 501 (analyzing *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199 (1996), which acknowledged the gap-filling role of state law in maritime suits in the absence of an established rule of maritime law).

238. *Id.* at 503–04.

239. *Id.* at 504–05.

240. 2015 WL 751344, at *2–3 (D. Md. 2015).

241. *Id.* at *1.

242. *Id.* at *2.

company.²⁴³ The court held that merely loading cargo headed for a particular state, as identified on the bill of lading, is insufficient to allow the destination state to assert personal jurisdiction over a stevedore from the originating state.²⁴⁴

The district court in *M-I Drilling Fluids UK Ltd. v. Dynamic Air Inc.* addressed the interesting issue of whether the U.S. Patent Act applied to U.S. flagged vessels in international waters.²⁴⁵ The plaintiff alleged patent infringement in connection with pneumatic conveyance systems, which Dynamic Air had installed on two U.S.-flagged ships located in international waters.²⁴⁶ The court examined the language of the Patent Act of 1952, which expressly extends the geographic limits of its protection, by virtue of its broad definition of the “United States,” to include “the United States of America, its territories and possessions.”²⁴⁷ The court next turned to the law of the flag doctrine, which “traditionally states that ‘a merchant ship is part of the territory of the country whose flag she flies, and that actions aboard that ship are subject to the laws of the flag state.’”²⁴⁸ The court further examined analogous legislative history of the 1990 passage of the Inventions in Outer Space Act. The court interpreted that legislative history “not as a repudiation of the application of the Patent Act to U.S.-flagged ships, but rather an extension of the coverage of U.S.-flagged ships to spacecraft as well.”²⁴⁹ Because the U.S. Patent Act extends patent rights to U.S. territories and the law of the flag doctrine considers ships to be the territory of the country where they are registered, the court extended Patent Act protection to the technology aboard two U.S.-flagged ships in international waters.²⁵⁰

243. *Id.* at *13.

244. *Id.* The court subsequently granted the plaintiff’s motion to transfer venue to the Southern District of Texas. *Armstrong v. Nat’l Shipping Co. of Saudi Arabia*, 2015 WL 1525981 (D. Md. Apr. 1, 2015).

245. 99 F. Supp. 3d 969, 970 (D. Minn. 2015).

246. *Id.*

247. *Id.* at 974 (quoting 35 U.S.C. § 100(c)).

248. *Id.* (quoting *United States v. Kun Yun Jho*, 534 F.3d 398, 405 (5th Cir. 2008)).

249. *Id.* at 976.

250. *Id.* at 978.

