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Maritime Law Association – Fall Meeting
Continuing Legal Education Program – Committee on Uniformity of U.S. Maritime Law
Conflicts Regarding Availability of Jury Trials under the Death on the High Seas Act
Proposed Length: 30 minutes
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I. Introduction

There currently exists differing authority regarding the availability of a jury trial under the Death on the High Seas Act ("DOHSA"), 46 U.S.C. §§30301-08. The Northern District of Illinois, in *In re Lion Air Flight JT 610 Crash*, 2023 WL 3653218 (N.D. Ill. May 25, 2023) recently held that the plaintiffs in that action were not entitled to a jury, as DOHSA preempted plaintiffs' survival actions and the "Saving to Suitors" clauses of 28 U.S.C. §1331(1) and existence of diversity did not preserve a right to a jury trial for DOHSA claims. An interlocutory appeal of the District Court's ruling is currently pending in the United States Court of Appeal for the Seventh Circuit.

The issue presented in *Lion Air* is whether a plaintiff in federal court is entitled to a jury trial under the Seventh Amendment when the plaintiff's sole claim arises under DOHSA and the plaintiff has a concurrent basis for common law jurisdiction, such as diversity. The Court in *Lion Air* relied on case law from numerous other jurisdictions in finding that no such right is available.

However, there exists significant authority suggesting that admiralty jurisdiction under DOHSA is concurrent and not exclusive, as the plain language of DOHSA indicates that a plaintiff may elect to proceed on the "law" side of federal court under the Federal Rules of Civil Procedure, including Rule 38(a), guaranteeing a right to a jury trial. Indeed, the weight of scholarly authority addressing the issue tends to support the existence of a right to a jury under DOHSA.

Accordingly, resolution of this conflict is particularly meaningful, as the general question of availability of jury trials in admiralty has been historically exceptionally complex and has produced a myriad of inconsistent and disorienting decisions.

II. Authority Suggesting No Right to a Jury Trial Exists under DOHSA

In addition to *Lion Air,* other Courts have similarly held that that Congress, in enacting DOHSA, intended to grant "exclusive" jurisdiction to federal courts sitting in admiralty over DOHSA claims. See *Tallentire v. Offshore Logistics, Inc*., 800 F.2d 1390, 1391 (5th Cir. 1986) (citing *Curry v. Chevron, U.S.A.*, 779 F.2d 272, 274 n.1 (5th Cir. 1985) ("Thus, [Plaintiff's] action under DOHSA is cognizable only in admiralty and she is not entitled to a jury trial."). Further, the District Court in *Lion Air* relied on *Lasky v. Royal Caribbean Cruises*, *Ltd*., 850 F.Supp.2d 1309 (S.D. Fl. 2012) in which a passenger who asserted a wrongful death claim under DOHSA against a cruise line was not entitled to a jury trial, as she failed to assert (1) an independent basis for diversity jurisdiction or (2) alternatively, a concurrent claim that entitled her to a jury trial. Further, the Southern District of New York in *Fieldman v. Mitsubishi Aircraft Intern, Inc.*, 678 F. Supp.

1064 (S.D.N.Y. 1988) similarly held that where a plaintiff has asserted a claim under DOHSA and diversity jurisdiction exists, a plaintiff is nonetheless precluded from requesting trial by jury, noting "[t]he existence of an additional jurisdictional predicate in this case, *i.e.*, diversity of citizenship, can lead to no different result. Diversity of citizenship creates only an additional basis for federal jurisdiction; it does not enlarge the parameters of the substantive remedy upon which a claim is based." 678 F. Supp. at 1066 n.5

III. Authority Suggesting a Plaintiff's Right to a Jury is Preserved in a DOHSA Case

Nevertheless, there exists significant authority suggesting that the DOHSA claims are not subject to exclusive admiralty jurisdiction, such that a Plaintiff may preserve his/her right to a jury even when plaintiff's claims arise under DOHSA, so long as there exists another basis for federal jurisdiction. Specifically, the statutory language of DOHSA suggests that admiralty jurisdiction under DOHSA is concurrent, not exclusive, as it contains a "saving clause" that provides "[t]his chapter does not affect the law of a State regulating the right to recover for death." 46 U.S.C. § 30308(a). The Supreme Court has held that this saving clause is a jurisdictional saving clause with the same effect as the saving-to-suitors clause in 28 U.S.C. §1333. *See Offshore Logistics, Inc. v. Tallentire,* 477 U.S. 207, 221-25 (1986).

Further, Congress created only four statutes which have been interpreted to create exclusive admiralty jurisdiction in federal court. Thomas J. Schoenbaum, ADMIRALTY AND MARITIME LAW §4:4, pp. 239-40 (5th ed. 2011); *see also Thomas J. Schoenbaum*, ADMIRALTY AND MARITIME LAW §4:2, pp. 258-59 (6th ed. 2018), These statutes are Limitation of Shipowners' Liability Act, the Ship Mortgage Act, the Suits in Admiralty Act, and the Public Vessels Act, and for actions to foreclose preferred ship mortgages. Outside of cases arising under these statutes, admiralty courts generally share concurrent jurisdiction with other courts of competent jurisdiction for the vast majority of maritime claims under the saving-to-suitors clause of 28 U.S.C. §1333. DOHSA's plain language suggests a Congressional intent that admiralty jurisdiction over DOHSA claims be concurrent, not exclusive, as the statute provides, ""[w]hen the death of an individual is caused by wrongful act, neglect, or default occurring on the high seas[,] ... the personal representative of the decedent ***may*** bring a civil action in admiralty against the person or vessel responsible." 46 U.S.C. § 30302 (emphasis added). By using the word "may" rather than "must," Congress signaled its intent to permit maritime plaintiffs to bring their DOHSA claims as admiralty actions or as *in personam* actions in courts of competent jurisdiction.

Further, the U.S. Supreme Court in *Tallentire*, in recognizing the savings clause in DOHSA §7 (now codified as 46 U.S.C. §300308(a)), further supports that admiralty jurisdiction over DOHSA claims is concurrent, not exclusive, in finding that, in contrast with the four statutory claims requiring exclusive admiralty jurisdiction, "the resolution of DOHSA claims does not normally require the expertise that admiralty courts bring to bear." *Tallentire*, 477 U.S. at 323.

IV. Conflict

The bulk of decisions concluding that DOHSA's admiralty jurisdiction is exclusive, not concurrent, conflicts with the savings clause contained in DOHSA §7, and appear to pre-date the Supreme Court's decision in *Tallentire* recognizing the savings clause. Accordingly, resolution of

these two conflicting theories relative to the availability of jury trials in DOHSA cases should be a of particular interest to practitioners and jurists alike.

CONCLUSION

For the reasons aforestated, both the Manfredis and Chandras are entitled the right to a jury trial pursuant to the Seventh Amendment, as admiralty jurisdiction under DOHSA is concurrent (and not exclusive). In the *Boeing* case at hand, both plaintiffs brought several claims in addition to their wrongful death actions that are entitled the right to a jury trial (e.g., negligent infliction of emotional distress, violations of several fraud statutes); accordingly, these issues are to be tried concurrently before a jury. Further, although the lower court relied on Lasky in its analysis, it failed to distinguish two key differences: (1) in *Lasky*, plaintiff did not assert diversity jurisdiction, and (2) further in *Lasky*, plaintiff only brought one claim, which was a wrongful death claim under DOHSA. Therefore, the plaintiff in *Lasky* was not entitled to a jury trial, as her only claim arose under admiralty law. Here, however, plaintiffs bring multiple claims that entitle them to a jury trial, as DOHSA does not expressly grant exclusive admiralty jurisdiction.

Kristin K. Robbins Bio

Kristin K. Robbins is an experienced maritime attorney with a practice addressing a variety of brown and blue water maritime issues. She frequently represents clients in defense of Jones Act and maintenance and cure claims, § 905(b) Longshore claims, wrongful death claims, Limitations of Liability, vessel arrests and attachments, enforcement of maritime liens, and offshore platform injuries, as well as marine insurance coverage issues. She also regularly advises clients on complex defense and indemnity issues and is experienced in negotiation and drafting of vessel charters and master service agreements within the offshore oil and gas service industry.

Kristin joined Eckland and Blando, LLP as a partner in 2022. Prior to her joining the firm, she was a partner at a New Orleans-based maritime firm. She also practiced maritime law at a boutique admiralty firm in the New York metropolitan area for several years. She is an active member of the Maritime Law Association of the United States and the Women's International Shipping and Trading Associations (WISTA) and is licensed to practice in Louisiana, New York, New Jersey, and Nebraska.

Kristin received her J.D. from Tulane Law School in 2007, where she served as managing editor for the Tulane Journal of Technology and Intellectual Property. Prior to law school, she graduated *summa cum laude* from the University of Arizona in 2004, where she was a member of Phi Beta Kappa.

Kristin lives in New Orleans, Louisiana, with her husband, Jason, and sons, Will and Bram. In her spare time, she enjoys yoga, running, and sampling local New Orleans cuisine.