RECENT DEVELOPMENTS OF CIRCUITS AND SUPREME COURT OPINIONS

Edwin Barnes, Alex D’Amico, and Imran Shaukat

[SUPREME COURT OF THE UNITED STATES 4](#_Toc22040792)

[The Dutra Group v. Batterton, 139 S. Ct. 2275 (2019) 4](#_Toc22040793)

[Parker Drilling Management Services, Ltd. v. Newton, 139 S. Ct. 1881 (2019) 5](#_Toc22040794)

[FIRST CIRCUIT 6](#_Toc22040795)

[Dillon v. United States, 357 F. Supp. 3d 49 (D. Mass. 2019) 6](#_Toc22040796)

[Iturrino Carrillo v. Marina Puerto del Rey Operations, LLC, 2019 WL 3385173 (D.P.R. July 26, 2019) 7](#_Toc22040797)

[Luis Sanchez Betances & Antillana, LLC v. Aspen Am. Ins. Co. & Osvaldo Carlo Linares, 2019 WL 1224660 (D.P.R. Jan. 24, 2019), report and recommendation adopted sub nom. Sanchez Betances v. Aspen Am. Ins. Co., 2019 WL 1224686 (D.P.R. Mar. 14, 2019) 8](#_Toc22040798)

[Maine Mar. Acad. v. Fitch, 2019 WL 4318668 (1st Cir. June 17, 2019) 9](#_Toc22040799)

[Prospero Tire Exp., Inc. v. Maersk Line A/S, 2019 WL 4166356 (D.P.R. Aug. 30, 2019) 11](#_Toc22040800)

[SECOND CIRCUIT 11](#_Toc22040801)

[Advantage Sky Shipping LLC v. ICON Equip. & Corp. Infrastructure Fund Fourteen Liquidating Tr., 2019 A.M.C. 1742 (S.D.N.Y. June 14, 2019) 11](#_Toc22040802)

[D'Amico Dry D.A.C. v. Primera Mar. (Hellas) Ltd., 348 F. Supp. 3d 365 (S.D.N.Y. 2018), reconsideration denied 2019 WL 1294283 (S.D.N.Y. Mar. 20, 2019) 12](#_Toc22040803)

[Denali Shipping, L.P. v. Van Oil Petroleum Ltd., 2019 WL 919588 (D. Conn. Feb. 25, 2019) 13](#_Toc22040804)

[Matter of Fire Island Ferries, Inc., 2019 A.M.C. 561 (E.D.N.Y. Jan. 7, 2019) 14](#_Toc22040805)

[Travelers Prop. Cas. Co. of Am. v. Ocean Reef Charters LLC, 324 F. Supp. 3d 366 (W.D.N.Y. 2018) 14](#_Toc22040806)

[U.S. Oil Trading LLC v. M/V VIENNA EXPRESS, 911 F.3d 652 (2d Cir. 2018) 15](#_Toc22040807)

[THIRD CIRCUIT 16](#_Toc22040808)

[Chartis Property Casualty Co. v. Inganamort, 2019 WL 1277518 (D.N.J. Mar. 20, 2019) 16](#_Toc22040809)

[Eddystone Rail Co., LLC v. Rios, 2019 WL 1356022 (E.D. Pa. Mar. 26, 2019) 17](#_Toc22040810)

[Haigh v. Chojnacki, 2019 WL 692952 (D.N.J. Feb. 15, 2019) 18](#_Toc22040811)

[Herod's Stone Design v. Mediterranean Shipping Co. S.A., 2018 A.M.C. 2963 (D.N.J. June 20, 2018), reconsideration denied 2018 A.M.C. 2971 (D.N.J. Nov. 28, 2018) 19](#_Toc22040812)

[FOURTH CIRCUIT 19](#_Toc22040813)

[Complaint of Bellaire Vessel Mgmt., LLC, 2019 WL 1179401 (N.D.W. Va. Mar. 13, 2019) 19](#_Toc22040814)

[Gilfillan v. Cheely, 2018 A.M.C. 2941 (E.D. Va. Oct. 18, 2018), report and recommendation adopted 2018 WL 6072002 (E.D. Va. Nov. 20, 2018) 20](#_Toc22040815)

[Sea King Corp. v. Eimskip Logistics, Inc. 367 F. Supp. 529 (E.D. Va. 2019) 21](#_Toc22040816)

[FIFTH CIRCUIT 22](#_Toc22040817)

[Carmona v. Leo Ship Management, Inc., 924 F.3d 190 (5th Cir. 2019) 22](#_Toc22040818)

[Stemcor USA Inc. v. CIA Siderurgica do Para Cosipar, 927 F.3d 906 (5th Cir. 2019) 23](#_Toc22040819)

[SIXTH CIRCUIT 25](#_Toc22040820)

[No update. 25](#_Toc22040821)

[SEVENTH CIRCUIT 25](#_Toc22040822)

[SelectSun GmbH v. Porter, Inc., 928 F.3d 550 (7th Cir. 2019) 25](#_Toc22040823)

[EIGHTH CIRCUIT 26](#_Toc22040824)

[Dakota, Mennesota & Eastern Railroad Corporation v. Ingram Barge Company, 918 F.3d 967 (8th Cir. 2019) 26](#_Toc22040825)

[NINTH CIRCUIT 26](#_Toc22040826)

[Bond v. Cruiseport Curacao, C.V., 2018 WL 6413193 (W.D. Wa. Dec. 4, 2018) 26](#_Toc22040827)

[Bunker Holdings Ltd v. Yang Ming Liberia Corp., 906 F.3d 843 (9th Cir. 2018) 27](#_Toc22040828)

[Castro v. Tri Marine Fish Company, LLC, 921 F.3d 766 (9th Cir 2019) 27](#_Toc22040829)

[Cruz v. National Steel and Shipbuilding Company, 910 F.3d 1263 (9th Cir. 2018) 28](#_Toc22040830)

[G.O. America Shipping Company, Inc. v. China COSCO Shipping Corporation Limited, 764 Fed. Appx. 629 (9th Cir. 2019) 29](#_Toc22040831)

[Grimm v. Vortex Marine Construction, 921 F.3d 845 (9th Cir. 2019) 29](#_Toc22040832)

[Stroud v. Scuba Mania, Inc., No. BC691641 (Ca. Sup. Jan. 8, 2019) 30](#_Toc22040833)

[Surf City Steel, Inc. v. International Longshore and Warehouse Union, 2019 WL 2897512 (9th Cir. July 5, 2019) 30](#_Toc22040834)

[TENTH CIRCUIT 31](#_Toc22040835)

[No update. 31](#_Toc22040836)

[ELEVENTH CIRCUIT 31](#_Toc22040837)

[Azzia v. Royal Caribbean Cruises, Ltd., 2019 WL 4072012 (11th Cir. Aug. 29 2019) 31](#_Toc22040838)

[Caron v. NCL (Bahamas), Ltd., 910 F.3d 1359 (11th Cir. 2018) 32](#_Toc22040839)

[D'Antonio v. Royal Caribbean Cruise Line, Ltd, 2019 WL 4695888(11th Cir. Sep. 26, 2019) 35](#_Toc22040843)

[Dannamarie Provost v. Hall, 757 Fed. Appx. 871 (11th Cir. 2018) 35](#_Toc22040844)

[Eslinger v. Celebrity Cruises, Inc., 772 Fed. Appx. 872 (11th Cir. 2019) 35](#_Toc22040845)

[Guevara v. NCL (Bahamas), Ltd., 920 F.3d 710 (11th Cir. 2019) 36](#_Toc22040846)

[Jupiter Wreck, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel, 762 Fed. Appx. 852 (11th Cir. 2019) 37](#_Toc22040847)

[K.T. v. Royal Caribbean Cruises, Ltd., 931 F.3d 1041 (11th Cir. 2019) 37](#_Toc22040848)

[Kol B'Seder, Inc. v. Certain Underwriters at lloyd's of London Subscribing to Certificate No. 154766 under Contract No. B0621MASRWV15BND, 766 Fed. Appx. 795 (11th Cir. 2019) 38](#_Toc22040849)

[Orion Marine Construction, Inc. v. Carroll, 918 F.3d 1323 (11th Cir. 2019) 38](#_Toc22040850)

[Sutton v. Royal Caribbean Cruises, Ltd., 774 Fed. Appx. 508 (11th Cir. 2019) 39](#_Toc22040851)

[United States v. Garcia Lopez, 2019 WL 3451736 (11th Cir. July 31, 2019) 40](#_Toc22040852)

[United States v. Garcia-Solar, 775 Fed. Appx. 523 (11th Cir. 2019) 41](#_Toc22040853)

[United States v. Jaramillo Baque, 754 Fed. Appx. 911 (11th Cir. 2018) 41](#_Toc22040854)

[United States v. Jimenez, 765 Fed. Appx.993 (11th Cir. 2018) 42](#_Toc22040855)

[United States v. Mastarreno, 748 Fed. Appx. 291 (11th Cir. 2019) 43](#_Toc22040858)

[United States v. Quijije-Napa, 776 Fed. Appx. 583 (11th Cir. 2019) 44](#_Toc22040859)

[United States v. Valois, 915 F.3d 717 (Feb. 12, 2019) Certiori Docketed Diego Portocarrero Valencia v. United States (11th Cir. 2019) 44](#_Toc22040860)

[United States v. Vargas, 2019 WL 2577420 (11th Cir. June 24, 2019) 44](#_Toc22040861)

# SUPREME COURT OF THE UNITED STATES

## *The Dutra Group v. Batterton*, 139 S. Ct. 2275 (2019)

Plaintiff Christopher Batterton worked as a deckhand and crew member aboard vessels owned and operated by the Dutra Group (“Dutra”). While working on a scow near Newport Beach, California, Batterton allegedly was injured when his hand was caught between a bulkhead and a hatch that blew open due to unventilated air accumulating and pressurizing within the compartment. Batterton asserted several claims, including negligence, maintenance and cure, and unseaworthiness, and sought general and punitive damages. The district court denied Dutra’s motion to strike the claim for punitive damages. The appellate court affirmed, citing Ninth Circuit precedent, while acknowledging the existence of a circuit split as to whether punitive damages are recoverable on a claim of unseaworthiness. Characterizing an unseaworthiness claim as essentially parallel to a Jones Act claim, the Supreme Court concluded that remedies under a common law unseaworthiness claim should not be permitted to exceed those available pursuant to the similar claim provided by Congress. The Court also cited three additional reasons for its decision: 1) due to the decision in *Miles v. Apex Marine Corp*, 498 U.S. 19 (1990), which limited recovery to compensatory damages in a wrongful death action, allowing Batterton to pursue punitive damages would have created an illogical dynamic where punitive damages are recoverable only where the seaman survives; 2) because unseaworthiness claims are asserted against the vessel owner, the owner could be liable for punitive damages while the operator or master, who may well be more directly culpable, would not face punitive damages under the Jones Act; and 3) “the protection of maritime commerce” is a “fundamental interest” served by federal maritime jurisdiction, and allowing punitive damages for an unseaworthiness claim would put American shippers at a significant competitive disadvantage relative to their peers internationally and would discourage foreign-owned vessels from employing American seamen.

## *Parker Drilling Management Services, Ltd. v. Newton*, 139 S. Ct. 1881 (2019)

Plaintiff Brian Newton worked for Defendant Parker Drilling Management Services, Ltd. (“Parker”) on drilling platforms on the Outer Continental Shelf (OCS) off the California coast. Newton’s job involved 14-day shifts. Every day, Newton had 12 hours on duty and 12 unpaid hours on standby, during which time he could not leave the platform. Newton filed a class action lawsuit alleging violations of California’s wage and hour laws, and arguing that Parker had to compensate him for standby time. The parties agreed that the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1331 *et seq.*, applied. Under OCSLA, state law applies if “applicable and not inconsistent” with existing federal law. The district court granted Parker’s motion for a judgment on the pleadings, interpreting this provision of the OCSLA to mean that state law only applies if necessary to fill a significant gap in federal law. Given that the Fair Labor Standards Act (FLSA) establishes a federal wage and hour framework, the district court concluded that no such gap exists here. The Ninth Circuit vacated and remanded, holding that state law is “applicable” under the OCSLA whenever it is relevant, and deeming the California wage and hour laws not inconsistent with federal law because the FLSA explicitly permits more protective wage and hour laws.

A unanimous Court vacated and remanded, concluding that pursuant to the OCSLA, California wage and hour laws do not apply on the OCS. Adhering to the statutory interpretation principle of giving every word and clause effect, the Court reasoned that the Ninth Circuit’s definition of “applicable” as “relevant” would make the language of the OCSLA unnecessary, as it is common sense that a law would only be applicable if relevant. The Court stated that all law on the OCS is federal, and state law merely serves a subordinate role, to be adopted only where there is a gap in federal law.

# FIRST CIRCUIT

## *Dillon v. United States*, 357 F. Supp. 3d 49 (D. Mass. 2019)

Plaintiff, a Massachusetts resident, sustained injury to his back injury while employed by Maersk Line, Limited (“Maersk”) as a Qualified Member of the Engine Department on a government-owned vessel stationed in the Indian Ocean. *Id.* at 53-54. Plaintiff had a long history of back problems prior to his employment with Maersk. However, in the course of his pre-employment medical screening required by Maersk, Plaintiff did not disclose the full extent of those previous back problems. The United States District Court for the District of Massachusetts found that Plaintiff “was aware of his chronic back pain and knew that it, and his generally unstable medical condition, affected his ability to lift on board the vessel, an important duty as part of his employment.” *Id.* at 64. Moreover, the court found that Plaintiff “should have known — and indeed did know — that the shipowner would have considered the non-disclosure to be a matter of importance.” *Id.* at 65. Accordingly, because Dillon was aware of the chronic back pain, and because Dillon knew that Maersk would have considered the non-disclosure to be a matter of importance, Dillon's course of conduct barred his claims for unearned overtime wages.

## *Iturrino Carrillo v. Marina Puerto del Rey Operations*, LLC, 2019 WL 3385173 (D.P.R. July 26, 2019)

Plaintiffs, Carlos Iturrino-Carrillo and Isabel Garcia Alanes (“Plaintiffs”), originally filed their Complaint for property and emotional damages in the Puerto Rico Court of First Instance against Marina Puerto del Rey Operations, LLC (the “Marina” or “PDR”) and its security company, St. James Security, Inc. (“St. James”) to recover both property and emotional damages. In accordance with a Vessel Space License Agreement between Mr. Iturrino and PDR, Plaintiffs' vessel remained under the custody and care of the Marina for a monthly fee of $294.60. Plaintiffs allege that the vessel sank “due to inadequate care and security” of the Defendants.

PDR filed a Notice of Removal to the United States District Court for the District of Puerto Rico, arguing that although Plaintiffs' Complaint did not refer to any federal statute, the facts described a maritime contract dispute and the sinking of a vessel in navigable waters and therefore the federal court had “original jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1333 and could be removed to the federal District Court.” *Id.* Plaintiffs moved to remand, affirming that the “saving-to-suitors” clause of 28 U.S.C. § 1333’s “affords a plaintiff the right to file *in personam* maritime claims, that are not exclusively in admiralty, in state courts.” *Id.*

In recognizing that *Ryan v. Hercules Offshore, Inc.*, 945 F.Supp.2d 772 (S.D. Tex. 2013) has “not been adopted, or even cited, by the First Circuit or the District Court of Puerto Rico,” and that the District of Puerto Rico “ has expressed that as the masters of their complaint, plaintiffs may select the state court, instead of the district court, as the forum to present *in personam* claims consisting of breach of marine contract and torts,” Plaintiffs' *in personam* state law claims could not be removed without an independent basis of federal jurisdiction. *Id.* at \*3, \*4. Accordingly, the United States District Court for the District of Puerto Rico granted Plaintiffs’ motion to remand a lawsuit to state court.

## *Luis Sanchez Betances & Antillana, LLC v. Aspen Am. Ins. Co. & Osvaldo Carlo Linares*, 2019 WL 1224660 (D.P.R. Jan. 24, 2019), report and recommendation adopted sub nom. S*anchez Betances v. Aspen Am. Ins. Co.*, 2019 WL 1224686 (D.P.R. Mar. 14, 2019)

Antillana, LLC (“Antillana”) and its sole owner and shareholder, Luis Sánchez Betances (“Sánchez”) (collectively “Plaintiffs”) owned the M/V ANTILLANA, a fifty foot

fiberglass motor vessel (the “Vessel”). The Vessel was docked at Puerto del Rey Marina (“PDRM”) in Fajardo, Puerto Rico when Hurricane Maria reached PDRM in the on September 20, 2017. Sánchez secured the Vessel in preparation for Hurricane Maria. Plaintiffs alleged that the forty-foot fiberglass motor vessel that was docked to the Vessel’s starboard side, the M/V LINKSA, was not prepared for the storm and repeatedly hit the Vessel on its starboard side during the storm.

Plaintiffs filed suit for negligence under federal maritime law, seeking, *inter alia,* the cost of repair, loss of enjoyment, and loss of market value or depreciation pursuant to Article 1802 of the Puerto Rico Civil Code. Defendants, the owner and insurer of the M/V LINKSA, moved to dismiss the claims brought under Puerto Rico law. Specifically, the defendants moved to dismiss the loss of enjoyment and loss of market value claims, arguing that “neither cause of action is recognized under federal admiralty law.” *Id.* at \*3. Plaintiffs conceded that claims “for loss of the use of a pleasure boat and loss of market value are based not on maritime law but solely on [Puerto Rico law],” and further requested that the court consider the state law claims as separate questions. *Id.*

Recognizing that “maritime law expressly considers and rejects damages for loss of pleasure use of a pleasure vessel,” United States District Court for the District of Puerto Rico Magistrate Judge McGiverin concluded that maritime law “should govern this claim.” *Id.* at \*5. Accordingly, Magistrate Judge McGiverin recommended that the defendants’ motion to partially dismiss the Plaintiffs’ state-law claims be granted*. Id.*

## *Maine Mar. Acad. v. Fitch,* 2019 WL 4318668 (1st Cir. June 17, 2019)

The United States Court of Appeals for the First Circuit dismissed an interlocutory appeal by Maine Maritime Academy (“MMA”) from the United States District Court for the District of Maine’s denial of MMA's motion to dismiss a counterclaim for Jones Act negligence, unseaworthiness, and maintenance and cure filed by the lead cook aboard the Maritime Administration (“MARAD”) Training Ship STATE OF MAINE (the “Vessel”) for lack of jurisdiction.

At the district court level, MMA filed suit seeking a declaration that it was not required to pay “maintenance and cure” to Janis Fitch (“Fitch”), the lead cook aboard the Vessel. Fitch was the immediate employee of a company that provided food services for MMA. Fitch filed a counterclaim against MMA, alleging Jones Act negligence, unseaworthiness, and maintenance and cure. Fitch alleged that she slipped and fell due to inadequate drainage systems aboard the Vessel, and that her fall caused her to shatter her left tibia and fibula while she was preparing breakfast in the galley of the Vessel during a summer cruise.

The issue presented to the district court was whether MMA acted as an agent of the United States for purposes of exclusivity provision of the Suits in Admiralty Act (“SIAA”), which provides that when a plaintiff sues the United States under the SIAA she cannot also bring an “action arising out of the same subject matter against the officer, employee, or agent of the United States.” 46 U.S.C. § 30904.

MMA argued that it was an agent of the United States, first because the United States owned the Vessel, and second because the United States retained “overall direction and control” of the Vessel. The United States and Fitch argued, on the other hand, that the U.S.’s “ownership” of the Vessel does not necessarily mean that MMA is an agent of the U.S. Fitch and the U.S. further contended that MMA was not an agent of the U.S. because “(1) MARAD did not consent for MMA to act as its agent; (2) MARAD did not exercise sufficient control over MMA's operation of the Training Ship, and (3) MMA uses the Training Ship for its sole benefit.”

The district court first concluded that there were “no cases that address whether state maritime academies operating a training ship owned by the United States are agents of the United States.” However, the district court found that, in the Memorandum of Understanding between MARAD and MMA, MARAD did not consent to having MMA act as its agent., and further found that MMA retained considerable control over the operation of the Vessel. Accordingly, the district court denied MMA’s motion to dismiss, concluding that the relationship between the parties did not support a finding that MMA was an agent of the U.S. for purposes of the SIAA.

MMA filed an interlocutory appeal in the United States Court of Appeals for the First Circuit from the denial of its motion to dismiss, invoking 28 U.S.C. § 1292(a)(3). In dismissing the interlocutory appeal for lack of jurisdiction, the Court of Appeals concluded that because “the district court has not yet resolved all of the claims before it ...[,] the order appealed from is not a final order of the type reviewable by courts of appeals under 28 U.S.C. § 1291.”

## *Prospero Tire Exp., Inc. v. Maersk Line A/S,* 2019 WL 4166356 (D.P.R. Aug. 30, 2019)

The United States District Court for the District of Puerto Rico granted Maersk Line A/S’s Motion to Transfer Venue, thereby transferring the litigation to the United States District Court for the Southern District of New York. Plaintiffs filed suit relating to the export of 150 containers bearing recycled tires from the Port of San Juan. Plaintiffs entered into verbal freight brokerage agreements with Cybercam and Westside, who subsequently contracted with Maersk Line A/S “to perform the actual carriage by sea of the goods to foreign ports.” *Id.* A dispute arose relating to the delivery of the containers to consignees in foreign ports, and Plaintiffs filed suit in the District of Puerto Rico seeking damages from Maersk. *Id.*

Maersk moved to transfer the case to the United States District Court for the Southern District of New York pursuant to the exclusive New York forum selection clause in its standard Terms and Conditions of Carriage. The District of Puerto Rico held that the forum selection clause “indicates a broad forum selection clause which encompasses both contract and tort claims, and further that there was “no public policy that would require keeping the case in the District of Puerto Rico.” *Id.* at \*5, \*7. Accordingly, the case was transferred to the U.S. District Court for the Southern District of New York.

# SECOND CIRCUIT

## *Advantage Sky Shipping LLC v. ICON Equip. & Corp. Infrastructure Fund Fourteen Liquidating Tr.,* 2019 A.M.C. 1742 (S.D.N.Y. June 14, 2019)

Subsidiaries of ICON Equipment and Corporate Infrastructure Fund Fourteen Liquidating Trust (the “Trust”) caused the Advantage Sky (the “Vessel”) to be arrested in South African waters. Advantage Sky and its corporate owner, Advantage Sky Shipping (hereinafter “Plaintiffs”) counterclaimed the subsidiaries in South Africa for wrongful arrest, demanding over $10 million and also seeking security from the subsidiaries with respect to that claim. *Id.* at 1743. Plaintiffs sought a Rule B maritime attachment directed at funds allegedly held by the Trust in the Southern District of New York. In granting the Trust’s motion to vacate the maritime attachment pursuant to Supplemental Rule E(4)(f), the Southern District of New York concluded that Plaintiffs’ claim did not trigger the court’s admiralty or maritime jurisdiction because Plaintiffs sought to secure the Trust’s performance of a Letter of Undertaking in which the Trust agreed to guarantee its subsidiaries potential liability in the South African litigation, and that such Letter of Undertaking was not itself a maritime contract. *Id.* at 1744. The district court granted the Trust’s motion on the additional ground that there was no dispute that the Trust was subject to service in the Southern District of New York, and therefore the Trust’s Rule B application failed on the merits because the Trust was “found” in the Southern District of New York.

## *D'Amico Dry D.A.C. v. Primera Mar. (Hellas) Ltd.*, 348 F. Supp. 3d 365 (S.D.N.Y. 2018), reconsideration denied 2019 WL 1294283 (S.D.N.Y. Mar. 20, 2019)

Plaintiff, d'Amico Dry d.a.c. (“Plaintiff”) obtained a judgment in the English High Court of Justice for breach of a Forward Freight Agreement (“FFA”) between it and Primera Maritime (Hellas) Limited (“Primera”). Plaintiff subsequently commenced action in the United States District Court for the Southern District of New York, seeking to collect on the English court’s judgment. Approximately three years after filing its answer to Plaintiff’s Amended Complaint, Defendant raised the issue, for the first time, of whether the district court lacked personal jurisdiction over it pursuant to the United States Supreme Court's decision in *Daimler AG v. Bauman*, 571 U.S. 117 (2014). The United States District Court for the Southern District of New York concluded that because Primera waited about three years to pursue the personal jurisdiction defense, after having litigated two motions to dismiss and participating in a four-day bench trial, Primera forfeited its personal jurisdiction defense and was subject to this Court's jurisdiction.

## *Denali Shipping, L.P. v. Van Oil Petroleum Ltd.*, 2019 WL 919588 (D. Conn. Feb. 25, 2019)

Plaintiff Denali Shipping, L.P. (“Denali”), the owner of the M/V Denali (the “Vessel”), entered into an agreement with Oldendorff Carriers GmbH & Co. KG (“Oldendorff”) wherein Oldendorff chartered the Vessel from Denali for four to six months (hereinafter, the “Charter Agreement”). Pursuant to the Charter Agreement, Oldendorff was not required to owe payment to Denali if the Vessel was either arrested during the charter, or if the Vessel “was off-hire for more than 30 days.” *Id.* A month after the Vessel was delivered to Oldendorff, Van Oil Petroleum Ltd. (“Van Oil”) arrested the Vessel in India for alleged nonpayment of marine fuel supplied to a previous charterer.

Denali filed a verified complaint against Van Oil and its sole director, manager, and owner, Alvaro Sousa (“Sousa”) (collectively, “Defendants”), alleging wrongful arrest of the Vessel. Denali sought an *ex parte* order for process of maritime attachment against property held by nine (9) garnishees within the District of Connecticut.

The United States District Court for the District of Connecticut granted Denali’s request for an *ex parte* order, but narrowed the requested garnishees “due to Denali’s failure to adequately identify their connection to the [D]efendants or the [D]fendants’ property.” *Id.* at \*4. Specifically, the United States District Court for the District of Connecticut concluded that Denali failed to plead sufficient facts to render certain garnishees’ “possessions of identifiable property of the [D]efendants plausible, and so the Court denies without prejudice Denali’s request for an *ex parte* order of attachment” with respect to five of the nine garnishees. *Id.*

## *Matter of Fire Island Ferries, Inc.*, 2019 A.M.C. 561 (E.D.N.Y. Jan. 7, 2019)

Petitioner, Fire Island Ferries, Inc., brought filed suit pursuant to 46 U.S.C. § 30501 et seq., and Supplemental Rule F, seeking exoneration from and limitation of liability related to a ferry accident that occurred on July 10, 2011. The United States District Court for the Eastern District of New York held a bench trial on the issue of limitation of liability in March 2017, and issued its Findings of Fact and Conclusions of Law on February 5, 2018. Pursuant to the Court’s request, Claimants and the Petitioner filed pretrial memoranda concerning the contested issue of whether the trial on damages should proceed before a jury. Because Claimants conceded that “there is no Jones Act claim,” that there was no “independent basis for jurisdiction,” that the case “clearly has no connection to the Great Lakes,” and that the “savings to suitors clause has no bearing on this case because this was brought as a suit in admiralty and *in rem*,” the Claimants' request for a jury trial was denied and the outstanding issue of damages was ordered to proceed by bench trial. *Id.* at 562-65.

## *Travelers Prop. Cas. Co. of Am. v. Ocean Reef Charters LLC*, 324 F. Supp. 3d 366 (W.D.N.Y. 2018)

Travelers Property Casualty Company of America (“Plaintiff”) filed a declaratory judgment action in the United States District Court for the Western District of New York, against Ocean Reef Charters LLC (“Ocean Reef”) and Stonegate Bank (the “Bank”) (“Defendants”) regarding the parties' rights and obligations under a maritime insurance policy (the “Policy”) covering a 1998 92-foot Hatteras yacht (“Vessel”) that was damaged in Florida during Hurricane Irma. The Defendants moved to transfer the litigation to the United States District Court for the Southern District of Florida. *Id.* at 370. All parties agreed that the Southern District of Florida would have personal jurisdiction over all parties. *Id.* at 374. The United States District Court for the Western District of New York concluded that because New York had only “a tangential relation to the facts of this case,” *id.* at 381, transfer to the Southern District of Florida was appropriate.

## *U.S. Oil Trading LLC v. M/V VIENNA EXPRESS*, 911 F.3d 652 (2d Cir. 2018)

U.S. Oil Trading LLC (“USOT”) challenged orders entered by the United States District Court for the Southern District of New York denying USOT's motions for summary judgment on its claims of entitlement to maritime liens for supplying bunkers to vessels owned or chartered by Hapag-Lloyd Aktiengesellschaft (“Hapag”), as well as a partial final dismissing USOT's maritime-lien claims pursuant to the Commercial Instruments and Maritime Liens Act (“CIMLA”), 46 U.S.C. § 31301 et seq. The district court denied USOT's entered partial judgments dismissing USOT's claims for liens, concluding that USOT did not provide bunkers to the vessels at the order of the owner or a person authorized by the owner to place such an order, as is required under CIMLA.

On appeal, USOT argued that the district court erred in finding that USOT was not entitled to a maritime lien, contending that it was entitled to the liens because “Hapag's purchase orders specified that the physical supplier of the fuel was to be USOT.” *Id.* at 656. The United States Court of Appeals for the Second Circuit concluded that “purchase orders and admissions by Hapag . . . permit a finding that Hapag directed that USOT be the subcontractor to supply the fuel, thereby bringing USOT within an established exception that allows maritime liens to be asserted by subcontractors whose selection was controlled or directed by the vessel's owner/charterer or authorized agent.” *Id.* at 656. Accordingly, the Second Circuit vacated the judgment of the District Court and remanded to the Southern District of New York “for trial on the issue of whether Hapag directed that USOT be the physical supplier.” *Id.* at 656.

# THIRD CIRCUIT

## *Chartis Property Casualty Co. v. Inganamort*, 2019 WL 1277518 (D.N.J. Mar. 20, 2019)

Chartis Property Casualty Company (“Chartis”) insured a 65-foot 1996 Sportfish vessel (the “Vessel”) owned by John and Joan Inganamort (“Defendants”). In September 2011, the Vessel partially sunk while docked in Florida. *Id.* at 784. Defendants alleged that heavy rainstorms caused the Vessel to sink, whereas Chartis maintained that a hole in the Vessel caused the casualty. *Id.*

Chartis filed a declaratory judgment action, maintaining that the insurance policy at issue, an “all-risk” policy, only covered losses that the policyholders could prove were “fortuitious,” and that Defendants proffered no evidence to demonstrate a fortuitous loss. *Id.* at 786. Defendants argued that Florida state law applied rather than admiralty law, and that under Florida law Chartis possessed “the burden of proof that there is an exception to coverage.” *Id*.

The United States District Court for the District of New Jersey concluded that federal admiralty law controlled the analysis of the dispute, finding that the fortuitous loss rule was “an entrenched federal rule” and therefore state law did not apply. *Id.* at 787. Ultimately, the court concluded that Defendants presented no evidence demonstrating that the partial sinking of the vessel was caused by fortuituous events, and therefore Chartis motion for summary judgment was granted.

## *Eddystone Rail Co., LLC v. Rios,* 2019 WL 1356022 (E.D. Pa. Mar. 26, 2019)

Bridger Transfer Services, LLC (“BTS”) entered into a Rail Services Agreement (“RSA”) with Eddystone Rail Company LLC (“Eddystone”), under which Eddystone would construct and operate a facility on the Delaware River in Eddystone, Pennsylvania (the “Transloading Facility”) for purposes of transferring crude oil from railcars to barges. The barges would then carry the oil down the river to Philadelphia-area refineries. *Id.* at \*1. BTS’s parent, Bridger Logistics, LLC (“BL”) negotiated the RSA on behalf of BTS. Under the RSA, BTS agreed to purchase a minimum volume of rail-to-barge crude oil over the course of five years. BL was subsequently purchased. Eddystone alleged that the purchasers of BL caused BL to default on the RSA. *Id.* Eddystone filed suit in the United States District Court for the Eastern District of Pennsylvania, asserting that the RSA was a maritime contract which invoked the district court’s admiralty jurisdiction. *Id.* at \*2. Defendants moved to dismiss Eddystone’s Complaint for lack of subject-matter jurisdiction on the ground that admiralty jurisdiction did not exist because the RSA was not a maritime contract.

The United States District Court for the Eastern District of Pennsylvania concluded that the RSA was a maritime contract because the primary objective of the RSA was to transload oil from railcars onto barges. Accordingly, because the court found that the nature of the RSA was to facilitate maritime commerce through the shipment of oil by barge down the Delaware River, the defendants’ motion to dismiss for lack of subject-matter jurisdiction was denied.

## *Haigh v. Chojnacki*, 2019 WL 692952 (D.N.J. Feb. 15, 2019)

Plaintiff filed suit against four teenagers and each of their respective parents (collectively, the “Defendants”) arising from the alleged arson of Plaintiff’s vessel. Plaintiff alleged that two of the teenagers stole flare guns, flares, night vision goggles, and binoculars from the Plaintiff’s vessel, which was moored offshore of the Navesink River. Two weeks after the theft, New Jersey State Police were notified that Plaintiff’s vessel was on fire on the Navesink River. Three of the defendant-teenagers denied any involvement with the February fire, whereas the fourth teenager provided inconsistent statements regarding the fire, originally admitting on a Facebook chat to being “present when his friend set the boat on fire,” but later denying involvement *Id.* at \*4.

The Defendants filed motions for summary judgment, arguing that “there is no evidence in the record that supports that they had any involvement with the boat fire, that there are no viable claims for negligent supervision, and Plaintiff’s damages should be limited to diminution of value.” *Id.* at \*3. The United States District Court for the District of New Jersey concluded that, with regard to the defendant-teenager who provided inconsistent statements, a “jury must decide the credibility” of the witness, and therefore summary judgment as to the negligent damage to the vessel allegedly caused by that teenager, as well as summary judgment regarding New Jersey state law claims of negligent supervision against the parents/guardians of the teenage, were denied. *Id.* at \*6. With regard to the remaining defendant-teenagers and their parents, the court granted those defendants’ motions for summary judgment, concluding that there was no credible evidence in the record to find that those defendants were liable to Plaintiff. *Id.* at \*5-6.

## *Herod's Stone Design v. Mediterranean Shipping Co. S.A.*, 2018 A.M.C. 2963 (D.N.J. June 20, 2018), reconsideration denied 2018 A.M.C. 2971 (D.N.J. Nov. 28, 2018)

Plaintiff, a supplier and installer of marble, tile, and stone located in New Jersey, contracted with shipping agent Parisi Grand Logistics Ltd. (“Parisi”) to hire Defendant Mediterranean Shipping Company S.A. (“MSC”) to deliver Plaintiff’s cargo from China to New York. MSC moved to transfer the litigation to the United States District Court for the Southern District of New York, on the grounds that MSC’s Sea Waybill contained a forum selection clause providing that “where the contract for the carriage of goods is either to or from the United States, ‘suit shall be filed exclusively in the United States District Court, for the Southern District of New York.’” *Id.* at \*3. The United States District Court for the District for New Jersey granted MSC’s motion, concluding that the forum selection clause in the MSC Sea Waybill was valid and that Plaintiff “raised no public interest factors that might militate against a transfer of this matter to the Southern District of New York.” *Id.*

# FOURTH CIRCUIT

## *Complaint of Bellaire Vessel Mgmt., LLC*, 2019 WL 1179401 (N.D.W. Va. Mar. 13, 2019)

The owners of vessels that damaged property upon breaking away from a vessel fleeting facility on the Ohio River filed a Complaint for exoneration from or limitation of liability pursuant to 46 U.S.C. §§ 30501-30512. Limitation-plaintiffs subsequently filed a motion for entry of order of the court noting default as to any potential claimants that had failed to assert claims or answer within the monition period. Upon limitation-plaintiffs’ filing of a request for default, various respondents filed motions for leave to file answers and claims out of time, attaching to their motion proposed answers and claims in the limitation action. Limitation-plaintiffs opposed the respondents’ request and filed a motion to strike the untimely claims. The United States District Court for the Northern District of West Virginia granted the claimants leave to file the untimely claims, as “[g]ranting permission to file [the] late claims [would] not unfairly prejudice the parties involved as this limitation proceeding remains pending and undetermined.” *Id.* at 4.

## *Gilfillan v. Cheely*, 2018 A.M.C. 2941 (E.D. Va. Oct. 18, 2018), report and recommendation adopted 2018 WL 6072002 (E.D. Va. Nov. 20, 2018)

Plaintiff sought damages due to Defendants’ alleged negligent repair of the starboard engine of Plaintiff’s 53’ motor vessel.  Defendants moved to dismiss on the grounds that Plaintiff failed to establish a tort claim upon which relief could be granted.  The United States District Court for the Eastern District of Virginia denied Defendants’ motion to dismiss, concluding that Plaintiff stated a plausible claim for breach of contract “as the pleadings plausibly allege the parties formed a valid oral contract for repair of the [v]essel.” *Id.* at 2946.  The court next held that Plaintiff stated a plausible claim for breach of the implied warranty of workmanlike performance, “[b]ecause the complaint plausibly alleges that Defendants breached this warranty when their repairs failed to remedy the starboard engine problems (and may in fact have exacerbated the damage).”  *Id.* at 2947. Finally, the court concluded that Plaintiff stated a plausible claim for maritime negligence, as “Plaintiff’s allegations permit the reasonable inference that Defendants’ negligent installation of a faulty rocker arm set in the starboard engine caused even greater damage than was originally present.”  *Id.* at 2949.

## *Sea King Corp. v. Eimskip Logistics, Inc.* 367 F. Supp. 529 (E.D. Va. 2019)

Sea King Corporation (“Sea King”) contacted with Eimskip Logistics Inc. (“Eimskip”), to arrange for the transportation of frozen conch meat from Sea King’s facility in Virginia to Hong Kong. Eimskip subsequently made a “web booking” with CMA CGM (America) for the carriage of the conch meat; the booking indicated that the cargo was “frozen seafood” and was to be shipped in a vents-closed refrigerated container at -20 degrees Celsius. *Id.* at 532. Sea King entered into a written contract with Eimskip, paying for ocean freight in a 40-foot refrigerated container, pre-carriage transportation, and insurance. The shipment was to be shipped from Virginia International Gateway (“VIG”) terminal, operated by Virginia International Terminals (“VIT”).

In preparation for the shipment, CMA submitted an email order to Marine Repair Services of Virginia (“MRS”) for MRS to prepare a refrigerated container for release. MRS “pre-tripped” a container that was leased by CMA, stored it at MRS’s Chesapeake, Virginia depot, and confirmed that the container’s refrigeration system was operating properly. Pursuant to the general course of dealings between CMA and MRS, MRS agreed to (1) pre-trip CMA’s containers as needed and (2) monitor CMA’s export containers two times a day at the VIG terminal to ensure that temperature stayed within the designated range. If MRS identified a discrepancy between the booking and actual temperatures, then MRS would immediately notify CMA “as a failsafe against cargo damage.” *Id.* at 533.

On the morning that the container was delivered to Sea King’s facility, a CMA employee manually inputted the booking data into VIT’s system; however, the employee “failed to reflect a temperature requirement” for the container. CMA alleged that MRS breached its contract with CMA, and that MRS was liable to indemnify CMA for the settlement that it paid to Plaintiffs. The question presented to the Eastern District of Virginia was whether the maritime warranty of workmanlike performance applied between CMA and MRS.

The United States District Court for the Eastern District of Virginia held that, under Fourth Circuit precedent, “the implied warranty of workmanlike performance does not implicate the right to indemnity when the claimed breach results in cargo damage, prior to delivery to a stevedore, that was allegedly caused by a company that services and provides shore-based monitoring of refrigerated cargo containers.” *Id.* at 540. The district court further concluded that “even if Fourth Circuit law recognizes a carrier’s right to indemnity from a container company in such circumstances . . . CMA fails to demonstrate either that MRS had ‘custody’ over the Container such that the warranty of workmanlike performance (and the associated right to indemnity) ‘attached,’ or that MRS violated its established course of dealing and/or violated the warranty by failing to perform its task with ‘reasonable care, skill, and diligence.’” *Id.* at 549 (citations omitted). Accordingly, summary judgment was entered in favor of MRS on CMA’s claim for indemnity.

# FIFTH CIRCUIT

## *Carmona v. Leo Ship Management, Inc*., 924 F.3d 190 (5th Cir. 2019)

Plaintiff Jose Carmona is a stevedore that sought damages arising from an incident that allegedly occurred while he was rigging a bundle of pipes in the hold of a vessel managed by Leo Ship Management, Inc. (“LSM”), a Philippine corporation, when the pipes fell, causing injuries. Carmona brought negligence claims in Texas state court, arguing that LSM breached multiple duties, including to stow the pipes properly and minimize hazards associated with falling pipes. The case was removed to federal court, and upon LSM’s motion, was dismissed for lack of personal jurisdiction because LSM did not “purposely avail itself” of the benefits and protections of Texas. On Carmona’s appeal, the Fifth Circuit vacated most of the lower court’s decision. While LSM did not control the vessel’s course (the owner did), the contract provided that LSM would receive advance notice of the ship’s schedule, and indeed, LSM received actual notice that the vessel would depart for Texas. Emphasizing that the contract was freely terminable with two months’ notice yet LSM deliberately chose to keep its employees aboard the vessel bound for Texas, the Fifth Circuit concluded that LSM purposely availed itself of the benefits and protections of Texas. However, the appellate court only recognized jurisdiction over the claims regarding tortious conduct within the forum state. Because the pipes were stowed while the vessel was out of state, the Fifth Circuit held that Texas did not have jurisdiction over the claim based on LSM’s alleged failure to load the pipes properly, and the dismissal as to that claim was affirmed. The dismissal of all other claims for lack of jurisdiction was vacated and remanded.

## *Stemcor USA Inc. v. CIA Siderurgica do Para Cosipar*, 927 F.3d 906 (5th Cir. 2019)

This matter is a dispute between two creditors, both of which attached the same pig iron owned by debtor American Metals Trading L.L.P. (“AMT”). One creditor, Plaintiff-Appellant Daewoo International Corp. (“Daewoo”) sued AMT in the Eastern District of Louisiana to compel arbitration and obtain an attachment of the pig iron on board a ship anchored in New Orleans. The district court granted the attachment pursuant to both maritime attachment and the Louisiana non-resident attachment statute, which allows attachments in aid of any “action for a money judgment.” Later, Thyssenkrupp Mannex GmbH (“TKM”) attached the same pig iron in Louisiana state court and intervened in Daewoo’s federal action, arguing that maritime jurisdiction was improper and Louisiana’s non-resident statute did not apply. The district court agreed with TKM and vacated Daewoo’s attachment on the grounds that Daewoo’s underlying suit was to compel arbitration, not an “action for a money judgment.” After Daewoo’s writ of attachment was dissolved, TKM’s attachment became first in time. Daewoo appealed. The Fifth Circuit certified to the Louisiana Supreme Court the question of whether a suit seeking to compel arbitration is an “action for money judgment” under Louisiana’s non-resident attachment statute. The Louisiana Supreme Court answered in the affirmative if the underlying arbitration is one pursuing money damages. Thus, the Fifth Circuit concluded that the Louisiana non-resident attachment statute did indeed apply. Additionally, the appellate court found federal subject matter jurisdiction under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”). The Fifth Circuit so concluded because the arbitration agreement was covered by the Convention and the lawsuit is related to the arbitration agreement because the attachment sought would facilitate the arbitration and increase Daewoo’s chances of recovering on any award.

# SIXTH CIRCUIT

## No update.

# SEVENTH CIRCUIT

## *SelectSun GmbH v. Porter, Inc.*, 928 F.3d 550 (7th Cir. 2019)

Plaintiff SelectSun GmbH (“SelectSun”) purchased a yacht manufactured by Porter, Inc. (“Porter”) for $1 million from Poker-Run-Boats, one of Porter’s international dealers. Porter was not a party to the contract between Poker-Run-Boats and SelectSun. The contract required the yacht to be “CE certified,” or authorized for operation in the European Union. A Florida-based dealer, International Nautic, received the order with Poker-Run Boats and transmitted it to Porter for manufacture. During the manufacturing process, Porter advised International Nautic that the yacht’s exhaust system as designed was not compliant with EU regulations and therefore could not be CE certified. Thereafter, SelectSun allegedly identified several issues with the yacht and returned it to Poker-Run Boats for resale. When the yacht did not resell, SelectSun resorted to litigation. International Nautic and Poker-Run-Boats ceased operations. SelectSun sued Porter under a theory of apparent authority, but that argument was rejected by the district court. On appeal, the Seventh Circuit affirmed on different grounds, ruling that SelectSun’s breach of contract claim failed because it did not establish damages. In this regard, SelectSun sought the full $1 million purchase price of the yacht, and introduced no evidence of the cost of bringing the vessel into compliance with EU regulations. By contrast, Porter did introduce evidence that it would cost $2,000 to bring the vessel into compliance. Notwithstanding Porter’s evidence, due to SelectSun’s complete failure to introduce evidence of damages, it did not meet its burden on the damages element. Accordingly, SelectSun’s contract claim failed.

# EIGHTH CIRCUIT

## *Dakota, Mennesota & Eastern Railroad Corporation v. Ingram Barge Company,* 918 F.3d 967 (8th Cir. 2019)

A panel of the Eighth Circuit (Benton, Mellow, Kelly) vacated and remanded a district court's entry of judgment in favor of Plaintiff, owner of railroad bridge, against towboat owner to recover damages caused when barges that the towboat was pushing struck the bridge.

After considering the *Oregon* rule (vessels do not ordinarily strike stationary objects if handled properly) and the *Pennsylvania* rule (a violation of a statute designed to prevent collision flips the burden), the panel held that a 1996 Order to Alter by the Coast Guard to modify the bridge that had not been complied with, was insufficient to invoke the *Pennsylvania* rule because the Order to Alter was part of a Truman Hobbs Act (which purpose was funding, not to maintain maritime safety). However, the panel vacated the decision, because the Order to Alter was nonetheless relevant to rebutting the *Oregon* rule presumption, which is relevant to the burden of proof, but not ultimate liability and comparative fault.

# NINTH CIRCUIT

## *Bond v. Cruiseport Curacao, C.V.*, 2018 WL 6413193 (W.D. Wa. Dec. 4, 2018)

The district court denied defendants motion to dismiss a loss of consortium claim and enforce the Athens Convention. Following her earlier decision *Barette v. Jubilee Fisheries, Inc.*, Case No. 10-1206-MJP, Judge Pechman held that *Atlantic Sounding* permitted a loss of consortium claim attached to a passenger's injury. Judge Pechman also held the Athens Convention could not apply if the facts did not trigger the contractual requirements of the ticket.

## *Bunker Holdings Ltd v. Yang Ming Liberia Corp.*, 906 F.3d 843 (9th Cir. 2018)

 A panel of the Ninth Circuit (Smith, Watford, Rayes) affirmed in part and reversed in part a district court decision denying a maritime lien to a bunker supplier, Bunker Holdings.

 In this *in rem* action for a maritime lien from by a bunker supplier against the container Ship *M/V YM Success* for bunkers supplied in Nakhodka, Russia. The *YM Success* had agreed purchase bunkers from Yang Ming Liberia Corp. Yang Ming purchased bunkers from OWB Far East, a fuel broker. OWB Far East purchased bunkers from Bunker Holdings who delivered the bunkers to the *YM Success.* Shortly thereafter, and before making payment to Bunker Holdings, OWB Far East declared bankruptcy. Thus, Bunkers Holdings did not provide bunkers to the *YM Success* on the order of the owner of the vessel and the panel affirmed.

Although the panel was troubled by the result and called for Congressional action, the panel vacated the award of costs for the premium paid on the  *in rem* bond of the vessel owner as it was not authorized marshal's expenses. The panel noted that posting substitute security to allege for the vessel's release avoids those expenses, often at a lower cost and that accordingly court's should be given the discretion to award those costs as well.

## *Castro v. Tri Marine Fish Company, LLC*, 921 F.3d 766 (9th Cir 2019)

 A panel of the Ninth Circuit (McKeown, Friedland, Bolton) reversed in part, vacated in part, and remanded a district court's confirmation of an Arbitral Award and dismissal of a case.

An employee who sustained a severe knee injury while working as a deck hand on a fishing vessel negotiated settlement of his disability claims, which was recognized by an accredited maritime voluntary arbitrator in the Philippines. After later discovering he would need more surgery, employee sued employers in state court to recover additional expenses. Employer removed to confirm the arbitral award pursuant to the New York Convention.

The panel found that although the order from the voluntary arbitrator resembled a arbitral award in a superficial sense, it was in essence a recording of settlement. As the New York Convention only applies to disputes with "differences" between the parties, the order was not subject to the New York Convention. Accordingly the panel remanded to the district court to consider the issues summarily disposed of by application of the New York Convention.

## *Cruz v. National Steel and Shipbuilding Company*, 910 F.3d 1263 (9th Cir. 2018)

A panel of the Ninth Circuit (Wardlaw, Bybee, Ikuta) affirmed a district's court's entry of summary decision in favor of contractor and subcontractor against allegedly injured worker. As a matter of first impression the panel determined that a injured worker who recovers under a workers' compensation policy, may not further recover against a so-called borrowing employer joining the Third, Fourth, Fifth, and Eleventh Circuits.

Nassco is a shipbuilding company that, among other activities, contracts with the United States to build and repair Navy vessels. It contracts with labor brokers, such as Tradesman International, Inc. for temporary personnel. Nassco exercises significant control over these temporary employees, but Tradesman pays the employees and provides Longshore coverage. Cruz was one of these employees and worked solely for Nassco from March 2008 through 2016.

She was injured while conducting repair work aboard the *USS Makin Island* on February 20, 2013 when she fell through an access hole in tank while descending a latter sustaining rib fractures and a collapsed lung. She collected Longshore benefits and sued Nassco for negligence. The district court held that Nassco was legally Cruz's employer at this time under the borrowed employment doctrine and thus was entitled to assert the defense of LHWCA immunity under the borrowed employee doctrine. The panel agreed holding a borrowed employee who has been fully compensated under the LHWCA by any party has no further remedy for the same injury against her borrowing employer.

## *G.O. America Shipping Company, Inc. v. China COSCO Shipping Corporation Limited*, 764 Fed. Appx. 629 (9th Cir. 2019)

A panel of the Ninth Circuit (Fletcher, Callahan, Christen) affirmed a district's court dismissal but vacated the award of costs in this ship repair matter. G.O. owns a vessel than needed repairs. In February 2016 the vessel docked in Shanghai, China with China Shipping Industry ("CSI"). CSI has raised the price and refused to release the vessel. G.O. filed this action for an *in rem* attachment against three COSCO vessel. The panel affirmed the holding that G.O. could not pierce the corporate veil under and alter ego to attach COSCO vessels for other China state-owned enterprises activities. However, following *Bunker Holdings*, the panel vacated the award of costs.

## *Grimm v. Vortex Marine Construction*, 921 F.3d 845 (9th Cir. 2019)

A Panel of the Ninth Circuit (Fletcher, Watford, Hurwitz) affirmed a district court's dismissal of a complaint to recover double damages under the Medicare Secondary Payer Act stemming from a Longshore claim.

Grimm filed a claim against Vortex seeking compensation and medical benefits under the LHWCA. An Administrative Law Judge ordered Vortex to pay for all medical expenses arising from the work-related injuries and to provide treatment going forward. Thereafter, Grimm alleged Vortex refused to pay for required medical treatment, which forced him to rely on Medicare. He then filed this Complaint seeking double damages under the MSPA. 42 U.S.C. § 1395(b).

The panel affirmed the district court's finding that the ALJ order was not final because it was not an order with a monetary variable that could not be disputed and therefore the court lacked jurisdiction under section 21(d) of the LHWCA. *See* 33 U.S.C. 921(d).

## *Stroud v. Scuba Mania, Inc.*, No. BC691641 (Ca. Sup. Jan. 8, 2019)

The Superior Court of California for Los Angeles found that Plaintiff who allegedly sustained injures while diving of Casino Point in Catalina failed to plead facts to implicate admiralty jurisdiction. Specifically, the trial court found that Plaintiffs failed to allege facts relating to recreational diving that established a substantial relationship to traditional maritime activity or that could substantially disrupt maritime commerce.

## *Surf City Steel, Inc. v. International Longshore and Warehouse Union*, 2019 WL 2897512 (9th Cir. July 5, 2019)

A panel of the Ninth Circuit (Watford, Owens, Zipps) affirmed a district court's dismissal of labor union claims under the NLRA, antitrust law, and breach of contract for failure to state a claim. The dispute stemmed from work assignment provisions in the Pacific Coast Longshore and Clerk's Agreement ("CBA") entered into the Pacific Maritime Association and the International Longshore and Warehouse Union. Plaintiffs brought suit arguing the CBA violated antitrust laws and labor laws because it prevented them from competing for and performing certain crane work at West Coast ports, and the Iron Workers Union also alleged the ILWU's conduct breached the AFL-CIO Constitution.

With respect to the NLRA claims, the panel affirmed noting that the claims, which were predicated on violations for activities which have a secondary, as opposed to primary purpose, must be dismissed with prejudice because the CBA was concededly primarily to benefit the employees of the bargaining unit represented by the union.

With respect to the antitrust dismissal, the panel affirmed, but on alternative grounds. The panel noted that labor agreements in restraint of trade are shielded by a non-statutory exemption if the restraint primarily effects the parties t the agreement and no one else; the agreement concerns wages, hours, and conditions of employment; and the agreement is produced from bona fide collecting bargaining. Accordingly, the panel held the CBA as exempt from antitrust law.

Finally, with respect to the contract claim, the Iron Workers Union repeatedly failed to amend to state a particular plant or worksite that was affected by the CBA, and accordingly the dismissal was made with prejudice.

# TENTH CIRCUIT

## No update.

# ELEVENTH CIRCUIT

## *Azzia v. Royal Caribbean Cruises, Ltd.*, 2019 WL 4072012 (11th Cir. Aug. 29 2019)

In this Per Curiam decision, an Eleventh Circuit panel (Wilson, Branch, Carnes) affirmed the district grant of partial summary judgment on a negligent infliction of emotional distress claim brought by parents of a four-year-old child who lost sight of their children, but witnessed another passenger pull their child's body from the pool and witnessed resuscitation in the pool area of the ship, *Oasis of the Seas*, in favor of Royal Caribbean. After affirming that the "zone of danger" applies in the context of general maritime law, *citing Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337-38 (11th Cir. 2012), the panel affirmed the grant of summary judgment as the witness parents failed to show they sustained physical impact or were placed in immediate risk of physical harm by Royal Caribbean's allegedly negligent conduct.

## *Caron v. NCL (Bahamas), Ltd.*, 910 F.3d 1359 (11th Cir. 2018)

This case resulted from a drunken tumble down an escape hatch on a cruise ship. Caron, a Canadian citizen, was injured while a passenger on the *Star*, a vessel owned and operated by NCL. On the second day of his Baltic cruise Caron purchased an all-inclusive package, which alleged him unlimited beer and wine on the cruise, and proceeded to drink beer late into the night. After leaving the bar, instead of returning to his room, Caron entered an area clearly marked with signs reading "CREW ONLY" and "RESTRICTED, CREW ACCESS ONLY." Pressing on, Caron entered an area clearly marked with signs reading "CAUTION Only authorized crew beyond this sign," and fell several feet through an emergency-exit hatch, causing injury.

Caron filed suit claiming on two theories of negligence: (1) allowing him to fall down the hole (21 separate allegations of negligence) and (2) over-service, and the district judge dismissed both claims. A panel of the Eleventh Circuit Court of Appeals (Tjoflat, Martin, Pryor) affirmed after considering subject matter jurisdiction, contractual waiver of negligent over-service, and the maritime law of negligence.

* + 1. Subject Matter Jurisdiction
			1. Although the District Court Lacked Alienage Diversity Jurisdiction, the District Court Had Admiralty Jurisdiction over Injuries that Occurred on Navigable Water in Connection with Maritime Activity

NCL contested the Court's jurisdiction under both alien-diversity and admiralty. As a matter of first impression, the Eleventh Circuit followed the Second Circuit, Fourth Circuit, Fifth Circuit, Sixth Circuit in determining that so-called "dual-citizen" corporation, incorporated under the laws of a foreign state but with their principal place of business in a U.S. State, count as aliens for the purposes of jurisdiction. Accordingly as Caron was a Canadian citizen and as NCL was a Bermuda company, both were aliens and 28 U.S.C. § 1331(a)(2) did not provide for jurisdiction.

* + - 1. Where Admiralty is the Only Source of Jurisdiction, Caron Was Not Required to Make an Election under Federal Rule of Civil Procedure

As Caron sought to recover for a personal injury he suffered at sea, the panel had no difficulty in finding admiralty jurisdiction. As there was no other source of jurisdiction there was no need for Caron to have made a Rule 9(h) election and as the claims were disposed of at the pleading stage there was no need for vacatur and remand.

* + 1. Contractual Waiver of Over-Service Negligence Claim and Relation Back

Caron's ticket contained a one-year limitations period. Although the original complaint was filed within the period, the over-service claim was not added until after the period ran. After determining that the passenger's waiver of the right to sue had been reasonably communicated to Caron, *see Nash v. Kloster Cruise A/S*, 901 F.2d 1565, 1567 (11th Cir. 1990), the panel determined that the over-service claim did not relate back to the original complaint under Rule 15 of the Federal Rules of Civil Procedure. Specifically, because the original complaint made no mention of alcohol, and instead focused on physical conditions of the ship, the original complaints did nothing to put NCL on notice of the over-service complaint.

* + 1. Failure to State a Claim under Maritime Law of Negligence

Caron included twenty-one separate allegation of negligence in his amended complaint revolving around the allegedly dangerous condition of the escape hatch he fell through, access to the area, and failure to warn of an unsafe condition.

* + - 1. No Dangerous Condition

The panel held that Caron could not show that the hatch he fell down was unreasonably dangerous on the grounds that Caron had to pass through two clearly marked doors, which indicated CREW ONLY and CAUTION. It rejected Caron's contention that evidence about the doors locking mechanisms (or lack thereof) had any connection to whether the emergency hatch was itself dangerous. Moreover, the panel noted that even had the claim survived the pleading stage, that summary judgment would have been appropriate as it was uncontroverted that NCL was not on notice of the dangerous condition.

* + - 1. No Unreasonable Behavior by NCL's Crew

The panel held that Caron could not recover even though he alleged crewmembers acted unreasonably after encountering him in the crew-only area by failing to escort him hack to his cabin, by losing track of him, and by calling of the search for him while he remained in the hatch. The panel reasoned that the standard of care is not so high as to overcome the undisputed allegation that Caron ran away that when crewmembers confronted him and attempted to call security (i.e. that the crewmembers acted reasonably as a matter of law).

## *D'Antonio v. Royal Caribbean Cruise Line, Ltd,* 2019 WL 4695888 (11th Cir. Sep. 26, 2019)

In this Per Curiam decision, a panel of the Eleventh Circuit (Martin, Rosenbaum, Newsom) vacated and remanded a district courts grant of summary judgment to Royal Caribbean against a passenger who tripped and fell while on a walkway in the casino area of the *Freedom of the Seas*. Although a close call, the panel held that a jury could conclude based on the video of the incident that Plaintiff tripped on a chair at casino table that had not been tucked in properly and that a jury could find the operator could have had constructive notice of such tripping hazard.

## *Dannamarie Provost v. Hall*, 757 Fed. Appx. 871 (11th Cir. 2018)

In this Per Curiam decision, a panel of the Eleventh Circuit (Pryor, Grant, Hull) upheld a district court's grant of summary judgment in favor of Royal Caribbean based on a contractual limitations provision in the cruise ticket contract. Although Plaintiff put Royal Caribbean on timely notice of the intent to file the claims, and although the parties were engaged in settlement discussions prior to the expiration of the limitations period, Plaintiff did not file suit until approximately eight months after the period ran and accordingly the claim was barred.

## *Eslinger v. Celebrity Cruises, Inc.,* 772 Fed. Appx. 872 (11th Cir. 2019)

In this Per Curiam decision, an Eleventh Circuit panel (Marina, Newsom, Dubina) upheld the district court's dismissal of a spouse's claim for loss of consortium resulting from an injury sustained by her spouse onboard the *Equinox* pleasure cruise ship for failure to state a claim. Consistent with other Eleventh Circuit holdings, the panel held that nothing in *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009) recognizes a loss of consortium claim. *Citing Petersen v. NCL (Bahamas) Ltd.*, 748 Fed.Appx. 246, 251-52 (11th Cir. 2018).

## *Guevara v. NCL (Bahamas), Ltd.*, 920 F.3d 710 (11th Cir. 2019)

In this decision a partially divided panel of the Eleventh Circuit (Wilson, Pryor, Sutton) affirmed in part, reversed in part, and remanded this negligence suit brought by a cruise ship passenger who broke his arm after he slipped and fell from a landing on the outer deck of a cruise ship against its operator after the district court granted summary judgment in favor of the operator. Plaintiff alleged that NCL failed to adequately warn him of a step down and failed to maintain and inspect the lighting in the area of the step.

At 11:30 p.m., while aboard the Norwegian *Spirit*, Guevara was searching for the ship's cigar lounge. He walked up three steps to a landing, but then missed a step down, causing him to fall, have his arm trapped and broken under a railing. After he fell he noticed a "sheen" of water on the floor, that a light bulb was un-illuminated at the top of the steps, and that beneath the un-illuminated light bulb there was a sign that read: "ATTENTION! FOR YOUR OWN SAFETY PLEASE USE TE HANDRAIL. WATCH YOUR STEP."

The panel reversed the grant of summary judgment in favor of the operator. First, the panel held "a cruise ship operator has notice of a condition – and thus the duty to warn – if a sign is posted on a ship warning about the condition," and therefore the issue at trial should be whether the cruise ship met its duty to warn by posting the sign. Second, the panel upheld the dismissal of the failure to maintain the light bulb claim because NCL had no actual or constructive knowledge that the light bulb was out the night he fell.

## *Jupiter Wreck, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 762 Fed. Appx. 852 (11th Cir. 2019)

A panel of the Eleventh Circuit (Wilson, Pryor, Sutton) affirmed a district court's order distributing salvage over the salvor's appeal and objections.

A Spanish Galleon sunk off the coast of Florida in the late seventeenth century and currently lies about 100 yards offshore in the Jupiter Inlet. In 1987 Jupiter Wreck filed an *in rem* action to acquire title to the vessel. The injunction was granted except as to Florida who enjoys Eleventh Amendment immunity from suit. Jupiter Wreck sought a distribution, and the district court ordered Florida to respond. Florida made a limited appearance to oppose. The district court and the panel held that Florida could make a limited appearance without consenting to suit.

## *K.T. v. Royal Caribbean Cruises, Ltd.,* 931 F.3d 1041 (11th Cir. 2019)

A panel of the Eleventh Circuit (Carnes, Rosenbaum, Hull) reversed a remanded a district court's dismissal of a minor passenger's negligence claim against a cruise line on the theory that the operator was negligent in failing to warn her of the danger of sexual assault on a cruise ship and negligent in failing to take action to prevent the physical sexual assault she suffered.

K.T. was a 15-17 year-old minor when she embarked on a seven-day cruise with her two sisters and grandparents. She went to a public lounge where a group of nearly a dozen adult male passengers bought her multiple alcoholic beverages until she became highly intoxicated, obviously drunk, disoriented, unstable, and obviously incapacitated. The group of one dozen men steered her "to a cabin where the brutally assaulted and ganged raped her."

The district court dismissed her negligence claims for failing to state a claim even though all of the events (except for the assault and gang rape) occurred in the view of multiple Royal Caribbean crewmembers, including those responsible for monitoring the ship's security cameras. The panel reversed, explaining Royal Caribbean "allegedly knew a lot" about the dangers, specifically of sexual assault of minors who had been provided alcoholic beverages, and accordingly had actual and constructive knowledge and duty to safeguard K.T.

## *Kol B'Seder, Inc. v. Certain Underwriters at lloyd's of London Subscribing to Certificate No. 154766 under Contract No. B0621MASRWV15BND,* 766 Fed.Appx. 795 (11th Cir. 2019)

In this Per Curiam decision, a panel of the Eleventh Circuit (Marcus, Rosenbaum, Pryor) affirmed a district's court's grant of summary judgment of an insurer and boat yard against a yacht owner who brought an action for breach of contract, breach of warranty, and negligence after the yacht became partially submerged while awaiting haul out for maintenance and repair work. First the panel agreed that the insurer could not have breached it's contract to cover accidental losses because there was no dispute that design and installation defects coupled with a failure to maintain the vessel properly which caused its submersion. Second, the panel agreed that there was no contract between the boatyard and the vessel, but only a contemplated contract and therefore there were no duties of owed. Finally, the panel agreed that the Plaintiff owed the salvor for rescue and storage after the submersion, and granted summary judgment against Plaintiff.

## *Orion Marine Construction, Inc. v. Carroll,* 918 F.3d 1323 (11th Cir. 2019)

A panel of the Eleventh Circuit (Marcus, Newsom, Anderson) reversed and remanded a district court's dismissal of a Shipowner's Limitation of Liability Act claim arising out of liability to homeworkers for damages allegedly caused by vibrations create by its barges' pile-driving activities during a bridge construction project. The panel held: (1) the six-month filing requirement was not jurisdictional; (2) oral notice does not satisfy the written notice requirement; written notice to third party claims administrator satisfied the notice requirement, and notice to the state agency did not satisfy the written notice requirement; (3) homeowners' claims did not trigger the Act's six-month filing requirement.

This decision is notable in that it splits from the Fifth and Sixth Circuit's holding that the six month time bar is jurisdictional. *See In re Eckstein Marine Serv., LLC*, 672 F.3d 310, 315 (5th Cir. 2012) & *Cincinnati Gas & Elec. Co. v. Abel*, 533 F.2d 1001, 1003 (6th Cir. 1976).

## *Sutton v. Royal Caribbean Cruises, Ltd*., 774 Fed. Appx. 508 (11th Cir. 2019)

In this Per Curiam decision, a panel of the Eleventh Circuit (Wilson, Pryor, Thapar) upheld a district court's grant of summary decision to Royal Caribbean in a negligence suit brought by a passenger aboard the *Independence of the Seas* after a mirror from a Martin MX-10 Extreme Lighting machine above the dance floor at the Labyrinth Night Club fell from a light fixture striking her head.

The *Independence of the Seas* MX-10 flashed colored light at varying angles across Labyrinth Night Club using a rotating oval mirror for a disco ball-like effect. A metal bracket is affixed to the back of the mirror, which is attached by two, three millimeter bolts to a rotating shaft below the mirror. Its user manual notes that an MX-10 requires regular maintenance, but that a specific schedule was dependent on its use and environment (dust, grease, smoke, etc). In regards to the mirror, the manual only notes that no adjustment of the mirror is required once installed. It was regularly inspected by Royal Caribbean's sound and light technicians and its maintenance logs never reflected any issues (nor were any issues ever documented at any other Royal Caribbean *Freedom* class vessel night club, lounge, or theater).

Despite the dancing Plaintiff's expert's opinion that the accident was caused by the bolts loosening over time which should have been detected during the regular inspections, the panel upheld summary judgment in favor of cruise line because it lacked actual or constructive notice based on the lack of previous incidents and the manual's notation that the mirror did not need adjustment. *See Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989); *see also Guevara v. NCL (Bahamas) Ltd*., 920 F.3d 710, 720(11th Cir. 2019). The panel also rejected Plaintiff's *res ipsa loquitor* argument given that the mirror could have fallen due to a design defect or because the bolts may have loosened undetectably.

## *United States v. Garcia Lopez*, 2019 WL 3451736 (11th Cir. July 31, 2019)

In this Per Curiam decision, a panel of the Eleventh Circuit (Pryor, Branch, Grant) affirmed a district court's 135 month sentence (15 months more than the mandatory minimum) for intent to distribute and conspiracy to possess with the intent to with the intent to distribute five kilograms or more of cocaine under the Maritime Drug Law Enforcement Act. 46 U.S.C. §§ 70501-70508.

On February 28, 2018 a U.S. Coast Guard helicopter patrolling the Pacific Ocean saw a suspicious go-fast vessel, loaded with parcels traveling north in the high seas southwest of Mexico. The vessel began jettisoning electronics and other items and the helicopter disabled the vessel. The Coast Guard boarded the vessel and identified the six men on board. The Captain did not claim a nationality for the vessel, so the Coast Guard treated it as stateless. The Coast Guard inspected the vessel and discovered 1,675 kilograms of cocaine in 67 bales. The Coast Guard then seized the cocaine and detained the six crew members, including Garcia Lopez.

The panel affirmed the higher sentence than the "normal" minimum mandatory 120 months for such offenses, noting that Garcia Lopez was involved in 1,675 kilograms.

## *United States v. Garcia-Solar*, 775 Fed. Appx. 523 (11th Cir. 2019)

In this Per Curiam decision a panel of the Eleventh Circuit (Tjoflat, Jordan, Anderson) affirmed a district court's convictions and sentencing for conspiracy to distribute five kilograms or more of cocaine and possession with intent to distribute cocaine. The panel held: (1) there was evidence to support the conviction; (2) defendants failed to establish the government possessed clearly exculpatory evidence for a *Brady* claim; and (3) defendants failed to show the government destroyed evidence in bad faith.

## *United States v. Jaramillo Baque*, 754 Fed. Appx. 911 (11th Cir. 2018)

In this Per Curiam decision a panel of the Eleventh Circuit (Wilson, Martin, Hull) upheld a district's court's denial of a motion to suppress evidence. The panel held that Coast Guard officers had reasonable suspicion of illegal activity sufficient to support their warrantless stop and boarding of a vessel whose design and structural modifications match the profile of drug-smuggling vessels. The vessel was a 30-foot "go-fast vessel" in international waters approximately 300 miles south of the Mexico/Guatemala border, without any signs of nationality, two engines with a large quantity of fuel, a tarp concealing its contents, and was travelling unusually fast on a known drug-smuggling route.

## *United States v. Jimenez*, 765 Fed. Appx.993 (11th Cir. 2018)

In this Per Curiam decision, an Eleventh Circuit Panel (Pryor, Jordan, Fay) affirmed a district court denial of a Defendant's motion to dismiss his indictment under the Maritime Drug Law Enforcement Act after a delay of forty months following his conditional guilty plea to possession with intent to distribute five kilograms or more of cocaine on board a vessel subject to the jurisdiction of the United States.

The DEA, in connection with Colombian law enforcement, learned that Jimenez constructed self-propelled semisubmersible submarines for the Renteria Granados organization to transport large quantities of cocaine to Central America. The international task force interrupted these semisubmersible submarines three times.

* In March 2012, an United States Marine Corps aircraft discovery a submarine in Honduran waters and "rescued" the four-man crew after they scuttled the ship;
* In July 2012 members of the Renteria Grandos organization burned a submarine stored in a remote jungle location as Colombian law enforcement was closing in (Jimenez was recorded bemoaning "more bad luck than who knows what" regarding this incident); and
* In December 2012 a third submarine was scuttled by its crew in Panamanian waters when trapped by agents of the United States, Costa Rica, and Panama.

Jimenez was indicted by a federal grand jury on October 17, 2013 along with four cohorts for conspiring to engage in maritime drug trafficking between February 1, and December 31, 2013. The government sealed the indictment to protect witnesses, prevent flight, and safeguard the ongoing investigation. The investigation proved fruitful, leading to the seizure of a Renteria Grandos submarine on August 13, 2014 constructed to transport multiple tons of cocaine from Guyana to Europe and interdiction of plans to build a replacement for one of the three lost.

On March 10, 2015 the government un-sealed the indictments and arranged for Jimenez arrest and extradition to the United States on February 27, 2017 when he was arraigned and entered a plea of not guilty. On March 27, 2017 Jimenez moved to dismiss his indictment based on a delay and arguing that the Maritime Drug Law Enforcement Act violated both the Fifth and Sixth Amendments. After denying his motion, Jimenez pleaded guilty to conspiring to engage in maritime drug trafficking reserving the right to appeal the motion to dismiss. The Court of Appeals affirmed.

* + 1. Right to a Speedy Trial

The Sixth Amendment provides, in pertinent part, the right to a speedy trial. U.S. Const. amend. VI. Whether this has been violated is determined by weighing the conduct of the government against the conduct of the defendant. Finding that the forty month delay was reasonable (protecting maritime drug trafficking informants, preserving amity with Colombian authorities, and arresting and extraditing Jimenez) and finding that Jimenez offered no evidence of prejudice to Jimenez, the panel affirmed the denial of the motion to dismiss.

* + 1. Jurisdiction of the Felonies Clause

The panel rejected Jimenez's contention that the power of Congress to punish maritime felonies is limited by a nexus to the United States as Congress has the authority under the Felonies Clause to proscribe drug trafficking on the high seas.

## *United States v. Mastarreno*, 748 Fed. Appx. 291 (11th Cir. 2019)

In this Per Curiam decision, a panel of the Eleventh Circuit (Carnes, Marcus, Rosenbaum) upheld a district court's 120-month sentence under the Maritime Drug Law Enforcement Act for conspiracy with intent to distribute five or more kilograms of cocaine. Following its precedent in *United v. Castillo*, 899 F.3d 1208, 1212 (11th Cir. 2018), the panel held that safety valve relief is not available for Maritime Drug Law Enforcement Act violation.

## *United States v. Quijije-Napa*, 776 Fed. Appx. 583 (11th Cir. 2019)

 In this Per Curiam decision, a panel of the Eleventh Circuit (Wilson, Pryor, Hull) upheld a mandatory minimum sentence of 120 months for a one count of conspiracy to possess with intent to distribute five or more kilograms of cocaine in violation of the Maritime Drug Law Enforcement Act. 46 U.S.C. §§ 70501-70508. Recognizing that the D.C. Court of Appeals splits from the Eleventh Circuit, the panel followed the Eleventh Circuit and held (1) there was no safety-valve eligibility; and (2) that the harsher maritime penalty did not violate the equal protection clause.

## *United States v. Valois*, 915 F.3d 717 (Feb. 12, 2019) Certiori Docketed *Diego Portocarrero Valencia v. United States* (11th Cir. 2019)

A panel of the Eleventh Circuit (Jordan, Grant, Hull) affirmed convictions and sentencing for tracking cocaine in international waters in violation of the Maritime Drug Law Enforcement Act. The panel held (1) convictions did not violate defendants' due process rights even though the offenses lacked any nexus to the United States; (2) there were no conflicts or interest or prosecutorial misconduct; and (3) that the mandatory minimum sentences were appropriate.

## *United States v. Vargas*, 2019 WL 2577420 (11th Cir. June 24, 2019)

In this Per Curiam decision, a panel of the Eleventh Circuit (Tjoflat, Pryor, Anderson) affirmed a district court's 120-month sentence under the Maritime Drug Law Enforcement Act for conspiracy with intent to distribute five or more kilograms of cocaine. Vargas challenged the 120-month mandatory minimum sentence under the safety valve theory and that the vessel was covered.

The United States Coast Guard detained Vargas, a 19-year-old Colombian national, while he was aboard a go-fast vessel traveling in international waters about 205 nautical miles southwest of the border between Costa Rica and Panama. In his factual proffer in support of his guilty plea, Vargas admitted after the Coast Guard disabled the vessel's engines, he and the crew jettisoned cocaine into the ocean. Neither the proffer nor the plea provided any facts demonstrating Vargas had a plan to bring the cocaine to the United States. He was held at sea for 17 days before entering the United States.

Before the plea, the government moved for a pretrial determination of jurisdiction from the United States Secretary of State's designee. The certification stated that the Coast Guard asked the government of Colombia whether the vessel was registered in Colombia and that Colombia responded it could neither confirm nor deny its registration (Under 46 U.S.C. § 70502(d)(1)(C) a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality qualifies as a vessel without nationality). Vargas admitted the vessel was without nationality.

After a thoughtful mention of Article I's Piracies and Felonies Clause and the scholarship of Eugene Kontorovich (*see The "Define and Punish" Clause and the Limits of Universal Jurisdiction*, 103 Nw. U.L. Rev. 149, 152, 163-164, 167 (2009)), the panel did not consider whether the Maritime Drug Law Enforcement Act came under the Piracies Clause because it is within the Felonies Clause. Further, consistent with established law, the panel held there need not be a nexus to the United States under the Felonies Clause. Finally, as the Maritime Drug Law Enforcement Act was only added to the safety valve statue for minimum sentencing after his sentencing, the panel held it could not apply.

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