PRACTICE AND PROCEDURE
CASE SUMMARY
2019-2020

Philip Thompson
Ellis, Painter, Ratterree & Adams LLP

SUPREME COURT DECISIONS

Dutra Grp. v. Batterton, 139 S. Ct. 2275 (June 24, 2019). The Supreme Court held that punitive damages could not be recovered in unseaworthiness actions.

Plaintiff Christopher Batterton was working on a vessel owned by petitioner Dutra Group when a hatch blew open and caught his hand against a bulkhead. He asserted a variety of claims, including unseaworthiness, and sought general and punitive damages. Dutra moved to dismiss the punitive damages claim. The district court denied the motion, the Ninth Circuit affirmed, and the Supreme Court reversed.

The Court began by noting that the Constitution, by granting federal courts jurisdiction over maritime and admiralty cases, implicitly directs federal courts sitting in admiralty to proceed in the manner of a common law court. Thus, federal courts must develop the amalgam of traditional common-law rules, modifications of those rules, and newly created rules that form the general maritime law. But Congress and the states have now legislative extensively in the area of maritime law, and admiralty courts should look primarily to these legislative enactments for policy guidance. Federal courts may depart from the policies in the statutory scheme in discrete instances based on history, but must do so cautiously and be mindful of Congress's persistent pursuit of uniformity in the exercise of admiralty jurisdiction.

Justice Alito reviewed the history of the unseaworthiness cause of action, recognizing its origin in admiralty court decisions of the 19th century and their endeavors to improve the lives of seamen and protect their interests against the effects of superior skill and shrewdness of masters and owners of ships, through the present. The majority opinion discussed the genesis of the unseaworthiness claim as being unrelated to personal injury (it began as a sailors' right to collect wages even if they had refused to board an unsafe vessel after discovering its condition, a defense to a criminal charge for refusing to obey a master's orders, a shipper's right to recover damages, or an insurer's right to deny coverage based on the ship's poor condition). The claim began evolving in the latter years of the 20th century, expanding cases about refusals to serve to allow recovery for mariners who were injured because of unseaworthy conditions. Typically, these early cases only allowed recovery when a vessel's owner failed to exercise due diligence to ensure that the ship left port in a seaworthy condition.

The basis of the personal injury unseaworthiness claim was buttressed in 1903, when the Supreme Court in dicta noted that "the vessel and her owner are . . . liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship." (Osceola). The Court still sought to make sure that the claim was strictly cabined, primarily through the importation of limitations on recovery from the common law (such as the fellow servant

doctrine). The passage of the Jones Act and its incorporation of the rights provided to railway workers under FELA became the vehicle for almost all seaman personal injuries and claims upon its passage in 1920. Afterwards, however, the Supreme Court issued the *Mahnich* and *Sieracki* opinions, which turned unseaworthiness into a strict liability claim and held that the fellow servant doctrine no longer provided a defense. These decisions established the unseaworthiness claim as separate and a completely independent duty from the duty of reasonable care set forth in the Jones Act.

The Court determined that the case was covered by two prior cases: *Miles v. Apex Marine Corp.* and *Atl. Sounding Co. v. Townsend*. *Miles*, in which the Court held that recovery in a maritime wrongful death claim was limited to pecuniary damages (no loss of society), established that the Court should look primarily to legislative enactments for policy guidance when exercising inherent common-law authority over maritime and admiralty cases, while recognizing that such statutory remedies may be supplemented to achieve the uniform vindication of the policies served by the relevant statutes. In *Atlantic Sounding*, the Court allowed recovery of punitive damages but justified that departure from the statutory remedial scheme based on the established history of awarding punitive damages for certain maritime torts, including maintenance and cure. The Court determined that the overwhelming historical evidence suggests that punitive damages are not available for unseaworthiness claims. The Court found the lack of punitive damages in traditional maritime law cases to be "practically dispositive."

The Court recognized that it could not sanction a novel remedy unless required to maintain uniformity with Congress's clearly expressed policies, particularly those in the Jones Act, which codified the rights of injured mariners by incorporating rights provided to railway workers under the FELA. Courts have unanimously held that punitive damages are not available under FELA. Lower courts have uniformly held that punitive damages are unavailable under the Jones Act as well. Adopting punitive damages would be contrary to the command in *Miles* that federal courts should seek to promote a uniform rule applicable to all actions for the same injury, particularly where unseaworthiness in its current strict liability form was an invention of the Court after the passage of the Jones Act (*Mahnich* and *Sieracki*).

Batterton argued that he should be allowed to recover punitive damages on policy grounds or as a regulatory measure, but the Court disagreed, determining that allowing such a recovery would create bizarre disparities in the law. First, due to *Miles*'s holding, which limited recovery to compensatory damages in wrongful-death actions, a mariner could make a claim for punitive damages if he was injured onboard a ship, but his estate would lose the right to seek punitive damages if he died from his injuries. Second, because unseaworthiness claims run against the owner of the vessel, the owner could be liable for punitive damages while the ship's master or operator—who could be more culpable—would not be liable for such damages under the Jones Act. Finally, allowing punitive damages would place American shippers at a significant competitive disadvantage and discourage foreign-owned vessels from employing American seamen.

Justice Ginsberg dissented, with Justices Breyer and Sotomayor joining. Ginsberg wrote that *Atlantic Sounding* controlled, and that it actually recognized the generally applicable common law rule allowing punitive damages and determined that it should not be displaced. The absence of evidence that punitive damages were unavailable in unseaworthiness cases should be understood as requiring a default to the general common law rule that punitive damages are available, not a reason to forbid their recovery. The Jones act was intended to enlarge the protection afforded to seaman, not to limit it simply because the Jones Act did not provide for punitive damages, particularly because the concepts of unseaworthiness and negligence are discrete concepts supporting discrete claims. Finally, Justice Ginsberg recognized the role of punitive damages in punishing and deterring "lawless misconduct" and a "heightened threat of harm."

CITGO Asphalt Ref. Co. v. Frescati Shipping Co., 140 S. Ct. 1081 (2020) – The safe berth clause at issue was determined by the supreme court to be a warranty of safety, imposing liability for an unsafe berth regardless of the charterer's diligence in selecting the berth.

This case arises out of an oil spill in the Delaware River from the M/T Athos I, a single-hulled oil tanker, after it struck a submerged abandoned anchor a mere 900 feet from its destination after a 1900 mile journey. Cleanup efforts began almost immediately and were ultimately successful, but took months to complete and efforts of thousands of workers at the cost of $143 million. The offending anchor was discovered weeks after the collision.

Litigation began in January 2005, when the owner and manager (collectively, "Frescati") filed a limitation of liability action. CITGO and others filed claims for damages associated with the spill, and Frescati filed a counterclaim against CITGO for damages. The United States (which had reimbursed Frescati for some of its cleanup expenses under the Oil Pollution Act of 1990) also filed suit against CITGO as a partial subrogee. All of the claims were consolidated, forming this action.

The case was first tried in a forty-one day bench trial, where the court found CITGO to be not liable for the casualty in contract, tort, or otherwise. Frescati and the US appealed, where the case was affirmed in part, vacated in part, and remanded because the district court had failed to make appropriate findings of fact and conclusions of law. The 3rd Circuit on the first appeal determined, among other things, that Frescati was a 3rd party beneficiary of CITGO's safe berth warranty, and the allision occurred in the approach to CITGO's terminal, meaning that CITGO had a duty of care to Frescati in tort. The circuit remanded to determine whether Frescati met the conditions for the warranty to apply and, if necessary, for the court to determine the appropriate duty of care and whether it was breached by CITGO.

On remand, the district court found that CITGO was liable to Frescati (and the U.S. as subrogee) for breach of the safe berth warranty, which (for purposes of the subsequent appeal) warrantied that CITGO's berth would be safe for the Athos 1 as long as the vessel had a draft of 37 ft or less and Frescati did not cause the allision. The court found that the vessel had a draft of 36'7" at the time of the allision, exercised good navigation and seamanship, and yet still hit an anchor within the geographic area covered by the warranty. The court also found that CITGO

was liable in tort to Frescati because it had a duty, as operator of the berth, to search for obstructions in the approach to the berth. Specifically, it had the duty to "use side-scan sonar to search for unknown obstructions to navigation in the approach to its berth, and to remove any such obstructions or warn invited ships—like the Athos I—of their presence. Because CARCO had not taken any action to search for obstructions, the District Court held [CITGO] liable in tort—for the same amount for which it was liable in contract."

In a motion for partial summary judgment, CITGO asked the Court to limit its liability, but the court found the defense to have been waived (it wasn't raised until after first trial and appeal, almost a decade into litigation). A second appeal (this case) followed.

The 3rd circuit affirmed in part, vacated in part, and reversed in part the order of the district court. Of particular interest is the 3rd Circuit's treatment of the safe berth warranty. The Court recognized that "[t]he safe berth warranty is an express assurance made without regard to the amount of diligence taken by the charterer" and that "[s]uch a promise provides, among other things, 'protection against damages to a ship incurred in an unsafe port to which the warranty applies.'" The court further noted that

> A port is deemed safe where the particular chartered vessel can proceed to it, use it, and depart from it without, in the absence of abnormal weather or other occurrences, being exposed to dangers which cannot be avoided by good navigation and seamanship. Whether a port is safe refers to the particular ship at issue, and goes beyond the immediate area of the port itself to the adjacent areas the vessel must traverse to either enter or leave. In other words, a port is unsafe—and in violation of the safe berth warranty—where the named ship cannot reach it without harm (absent abnormal conditions or those not avoidable by adequate navigation and seamanship).

The court noted that the particular issues before it concerned the actual draft of the Athos 1 at the time of allision and whether the warranty was negated by bad navigation or negligent seamanship. As to the first question, the circuit court found that there was ample evidence for the district court to find that the Athos 1 had a 36'7" draft before the allision. With regard to the second issue, CITGO asserted that Frescati had violated various regulations by failing to adequately plan the Athos 1's passage, to estimate Athos 1's underkeel clearance, and to ensure that an adequate master-pilot exchange occurred. The court found these contentions to be meritless, because the evidence showed that Frescati had provided written underkeel clearance guidance, had appropriately considered factors such as sea state and tidal condition and discussed these condition with the river pilot, had appropriately estimated the Athos 1's clearance, and that the Athos 1's master adequately discussed all relevant factors in the master-pilot exchange.

CITGO ultimately petitioned for certiorari, presenting this particular question: "Whether under federal maritime law a safe berth clause in a voyage charter contract is a guarantee of a ship's safety, as the Third Circuit below and the Second Circuit have held, or a duty of due diligence, as the Fifth Circuit has held." The Supreme Court granted that petition.

The Supreme Court affirmed 7-2 (with Justices Thomas and Alito dissenting) on March 30, 2020, and held that the clause at issue established a warranty of safety, imposing liability for unsafe berth regardless of the charterer's diligence in selecting the berth. The majority noted that statements of material fact in a charter party are warranties, and the statement regarding the condition of the berth selected by the charterer qualified as such a material fact. Tort concepts like "due diligence" have no place in the analysis of the warranty, which presented questions of contract interpretation. The language in the charter party was unqualified and thus so was the duty. General principles of contract law establish that a party is liable for breach even if he is without fault, and contract liability is strict liability.

The dissent argued that there was a lack of language expressly creating a warranty (particularly the word "warrants," which was used elsewhere in the charter party repeatedly) despite the use of the language elsewhere in the contract. The charter party merely gave COSCO as the charterer the duty to "designate" a berth; it did not guarantee the outcome of a safe berth. The approach used by the majority creates competing warranties: the charter's warranty of designating a safe berth and the master's warranty loading/discharging at a safe berth. The dissent also criticized the "material fact" reasoning, arguing that the majority was making an inference that it was without authority to make. Essentially, additional factual determinations should be made by the trial court on questions of materiality and party intent.

JURISDICTION

In re: Asbestos Products Liability Litigation (No. 6), 921 F.3d 98, 2019 AMC 1482 (3d Cir. Apr. 9, 2019) – This case involved maritime asbestos injury cases that began in the Northern District of Ohio and ended up in the Eastern District of Pennsylvania, which by that time was where nationwide asbestos products multidistrict litigation was proceeding. Decades after the cases were originally filed, the Pennsylvania Court dismissed claims against numerous defendants on the ground of personal jurisdiction. This decision was applied to thousands of claims, prompting multiple appeals, including 2 prior to the 3rd Circuit.

In the mid-1980s, merchant mariners filed thousands of lawsuits in the N.D. Ohio against shipowners, alleging that they had been injured due to exposure to asbestos aboard ships. When filed, the merchant mariners relied on a theory of nationwide personal jurisdiction for maritime cases. In 1989, the shipowners filed motions to dismiss for lack of personal jurisdiction, insisting that they did not have sufficient ties to Ohio to justify the exercise of personal jurisdiction against them. In October 1989, the Ohio Judge (Judge Lambros) issued an oral ruling rejecting the mariners' theory of jurisdiction and ruled that the court lacked jurisdiction as to a number of shipowners. Instead of granting the dismissal, he indicated he would enter an order transferring the cases instead. Counsel for shipowners suggested that his clients might want to waive the defense and stay in Ohio and indicated he would consult with them.

The next month the Court held a hearing to follow up on the issue. Defense counsel said he had no answer because his clients wanted to know how the Judge would rule on various issue prior to deciding whether they would consent to jurisdiction. The judge directed the shipowners to file answers by the answer deadline if they intended to waive, and defense counsel accepted

that procedure. The judge issued orders reiterating this procedure after the hearing. Around the same time after the hearing, the shipowner defendants filed a motion for interlocutory appeal and stay to challenge the authority of the N.D. Ohio court to transfer the case instead of dismissing. Before the N.D. Ohio could rule on this motion, the shipowners involved in this particular appeal filed answers in compliance with the Judge's deadline. All shipowners asserted in their answers that they were filing under protest and continued to assert personal jurisdiction defenses. The court proceeded as if the parties had waived their personal jurisdiction defenses and never ruled on the motion for interlocutory appeal. The cases progressed for over a year, with no additional motions practice seeking transfer.

Later that year in 1991, authority over maritime asbestos cases was transferred to the MDL in the Eastern District of Pennsylvania. Defendants opposed the transfer to this court but did not raise personal jurisdiction in their opposition papers. They, however, consistently attempted to raise personal jurisdiction defenses in compliance with MDL timelines. The cases were stayed for about 20 years and reopened in 2011. In 2013-14, the E.D. Pa. issued two memorandum opinions concluding the shipowners were not subject to personal jurisdiction in Ohio and had not waived the defense. The court thus dismissed the claims against those particular defendants.

On appeal, the Third Circuit reversed. The court recognized that the actions of a defendant may amount to a legal submission to the jurisdiction of the court, even where a defendant has raised the defense and has met the technical requirements of Rule 12(h), (which sets forth the minimum steps a party must take to preserve the defense). Ultimately, the court determined that the shipowners' actions of requesting additional time to choose whether to assent to transfer or waive their jurisdiction objections, their subsequent equivocations and requests that the judge make additional rulings before decided whether they would waive, by opting to file an answer pursuant to the procedure laid out by the N.D. Ohio, and failing to diligently pursue their personal jurisdiction defense in the Ohio court amounted to a waiver. The court was not impressed by the argument that defendants faced a choice of filing an answer or assenting to transfer, noting that defendants in the equivalent situation elsewhere always face that choice.

Interestingly, some of the cases ended up in the 6th Circuit instead of the 3rd, and the 6th Circuit affirmed instead of reversing. The 6th Circuit concluded that Judge Lambros did not have the authority to institute a procedure whereby filing an answer would constitute waiver of the personal jurisdiction defense. The third circuit did not find this argument persuasive.

SUPPLEMENTAL RULES

Rule B

Second Circuit

Psara Energy Ltd. v. Space Shipping Ltd., 771 F. App'x 45 (2d Cir. 2019) - No Rule B attachment can be ordered against a debt that has been distributed pursuant to another court's order, thus the appeal was determined to be moot. Psara Energy Ltd. commenced a Rule B action against Space Shipping Ltd., seeking to obtain security for claims of over $19.6 million by

garnishing an award owed to Space from ST Shipping & Transport Pte. Ltd. The district court issued an order of attachment but subsequently vacated the order after it concluded that the debt was not located in the district. Psara appealed. As that claim was being litigated, ST Shipping initiated a stakeholder proceeding before the English High Court of Justice to resolve Psara's and Space's competing claims to the award. The English High Court ruled a portion of the award in an amount that Space conceded was owed to Psara should be paid from the award to Psara, with the balance going to Space. ST Shipping then moved to dismiss the appeal as moot given that the debt had been liquidated. The Second Circuit granted the motion and dismissed the appeal on the grounds that the award no longer existed as a discrete *res* in ST Shipping's possession. The court noted it could not order the attachment of a *res* no longer within the ownership of the garnishee. As a matter of comity, the Second Circuit would not order Space to restore the *res* to ST Shipping. There was no attachment order pending when the English High Court rendered its decision, and the English High Court's decision was accordingly not in conflict with an existing order of a U.S. court.

WAG SPV I, LLC v. Fortune Glob. Shipping & Logistics, LTD., 2020 U.S. Dist. LEXIS 53864 (S.D.N.Y. Mar. 26, 2020) - The plaintiff sought and obtained a Rule B attachment against the property of a Nigerian company, a related entity in the U.S., and an individual defendant alleging that the defendants wrongfully repeatedly arrested its vessel in Ghana and failed to post any security for one of arrests despite court order. The defendants moved to vacate the attachment pursuant to Rule E or, in the alternative, to transfer the case to the Southern District of Texas. The court granted the motion to vacate and denied the motion to transfer as moot. Rule B attachment is a remedy, not a claim, and a Rule B proceeding must be supported by an underlying substantive claim. The plaintiff sought to justify its Rule B attachment under a wrongful arrest claim brought under an alter ego theory. The court noted that alter ego liability is not a claim in and of itself; it simply allows piercing of the corporate veil. After determining that federal common law applies due to the location of the property and parties involved, the court determined that the corporate veil could not be pierced due merely to shared ownership, shared online presence, and occasional cooperation between the entities. The court vacated the attachment on the ground that the defendants' assets, money in Wells Fargo accounts, actually belonged to branches located in Texas and were not considered located in the district pursuant to New York's separate entity rule, which it determined had been reaffirmed by recent New York case law. The court also determined that equitable vacatur was appropriate because the defendants would have been subject to suit in the Southern District of Texas, where the U.S. company and individual defendants were located (and where the plaintiff had a suit pending against the defendants prior to filing this action). The court recognized that the case did not fit neatly into either the two usual instances in which the equitable vacatur doctrine applies ("convenient adjacent jurisdiction" or plaintiff is located in a district where it could obtain personal jurisdiction over the defendant), the plaintiff's alter ego argument established either that it could have obtained personal jurisdiction over all defendants there or it had failed to allege a prima facie admiralty claim. Accordingly, vacatur was appropriate.

Commodities & Minerals Enter. v. CVG Ferrominera Orinoco, C.A., No. 1:16-cv-00861 (ALC), 2019 U.S. Dist. LEXIS 160111 (S.D.N.Y. Sep. 18, 2019) - The plaintiff brought a Rule B action

seeking attachment of funds belonging to the corporate defendant, which was an agency or instrumentality of Venezuela. The court issued a writ of attachment and garnishment, and the defendant's bank account was attached. The defendant moved to dismiss the complaint and/or to vacate the order of attachment on the grounds that it was immune to attachment under the Foreign Sovereign Immunities Act ("FSIA") due to its Venezuelan ties. The court agreed that the defendant qualified for protection under the act and asked the plaintiff to brief whether the defendant was subject to an exception. The plaintiff argued the exception set forth in 28 U.S.C. § 1610(d) applied. The defendant never replied. The plaintiff subsequently brought an arbitration proceeding against the defendant, obtained a stay in the New York action, obtained a partial final award, had the award confirmed and enforced in the Southern District of Florida, and sought to have the New York court order that the attached funds be turned over. The court first rejected concerns raised by the non-party garnishee regarding Venezuelan sanctions, finding that executive orders setting forth the sanctions were not applicable to either the defendant or the contracts in dispute. Treating the request for transfer of funds as unopposed due to the defendant's failure to brief the issue, the court determined that the plaintiff was entitled to a transfer because the defendant was the owner of the account at issue and plaintiff was entitled to possession of the funds therein and/or had a right to the funds superior to that of the defendant. The court's jurisdiction over the defendant was sustained by the findings of jurisdiction in the Southern District of Florida case for purposes of collection. Finally, the court determined that the defendant was not immune under the FSIA because the defendant's property was located in the U.S., the subject account was used for commercial activity, the attachment was pursuant to an arbitral award, and a reasonable amount of time had passed following the entry of the Florida judgment and the giving of notice to the defendant. Accordingly, the plaintiff's motion to life the stay and transfer the funds was granted.

Advantage Sky Shipping LLC v. Icon Equip. & Corp. Infrastructure Fund Fourteen Liquidating Tr., No. 19-CV-5065 (JMF), 2019 U.S. Dist. LEXIS 100184 (S.D.N.Y. June 14, 2019)- this action arose out of a vessel arrest in South Africa where the court permitted the arresting parties (subsidiaries of a the defendant trust) to rely on a letter of undertaking from the trust in lieu of posting security. The plaintiffs subsequently brought this Rule B action against trust in N.Y. The court granted the plaintiff's application, and the defendant subsequently moved to dismiss on the grounds of abstention, lack of maritime jurisdiction because the letter of undertaking was not a maritime contract, ripeness because the obligation under the letter of undertaking had not arisen, and that the plaintiffs failed to establish that the trust was not located in the district. The court agreed that maritime jurisdiction was lacking because the letter of undertaking was similar to "an agreement to pay damages for another's breach of a maritime charter" and an "agreement . . . to contribute to a settlement agreement arising out of a breach of" a maritime contract, neither of which themselves are maritime contracts. Because the covenant set forth in the letter of undertaking involved no maritime right, obligation, good, or service, there was no maritime contract and thus no jurisdiction. The court also agreed that the trust was found in the district because it was subject to service (and was actually served) in the Southern District and the trust was subject to personal jurisdiction in N.Y. The trust conducted all of its operations through its managing trustee in N.Y. Accordingly, the court dismissed the case. Despite questioning the

care and candor of the plaintiffs' counsel, the court declined sanctioning the plaintiffs, noting a distinction between meritless arguments and sanctionable arguments.

Fourth Circuit

Tango Marine S.A. v. Elephant Grp., Ltd., Civil Action No. 4:19-cv-119, 2020 U.S. Dist. LEXIS 1911, at *8 (E.D. Va. Jan. 6, 2020) A - motion for Rule B attachment was denied where the plaintiff only alleged "upon information and belief" that the garnishee held property in which the defendant had an interest and that the defendant was believed to have or would have property in the district. The court found the verified complaint was improperly pled under a *Twombly*/*Iqbal* standard and noted that an even more stringent pleading standard may be required under Rule E. A supplemental memorandum was insufficient to cure the defects in the verified complaint because it was not itself verified pleading and it failed to explain defendant's interest in property held by the garnishee. Accordingly, the plaintiff's motion for attachment was denied with leave to re-file.

E.N. Bisso & Son, Inc. v. Bouchard Transp. Co., No. SAG-19-3629, 2019 U.S. Dist. LEXIS 220997, at *7 (D. Md. Dec. 26, 2019) - this case likewise involved the denial of a motion for attachment and garnishment on pleading grounds. In this case, the court applied the *Twombly*/*Iqbal* standard without reference to whether a more stringent standard applies under Rule E. The plaintiff made only conclusory allegations as to the property at issue and the interest allegedly held by the defendant in the property sought to be attached and/or garnished. Accordingly, the motions at issue were denied without prejudice.

Fifth Circuit

Knox v. Hornbeck Offshore Servs., LLC, No. 3:19-CV-00181, 2019 U.S. Dist. LEXIS 117959 (S.D. Tex. July 16, 2019) - This suit concerned a motion for equitable vacatur of a Rule B attachment that had been granted in a Jones Act case. The defendant argued that it and other related entities had filed a declaratory judgment action regarding plaintiff's entitlement to maintenance and cure in the Eastern District of Louisiana, where the plaintiff resided and the defendant conducted business. Noting the lack of Supreme Court or Fifth Circuit guidance on the test to use in these circumstances, the court used the equitable vacatur test set out by the Second Circuit, noting its approval by many courts within and without the Fifth Circuit. The defendant sought vacatur on both the grounds that the defendant was subject to suit in a convenient adjacent jurisdiction and that the plaintiff could obtain *in personam* jurisdiction over the defendant in the district where the plaintiff was located. The court, relying on its determination that the purpose of Rule B actions (securing a plaintiff against shipowner flight) was not implicated, granted the vacatur. The court relied on the Second Circuit's admonition that "[a] maritime attachment would likewise be properly vacated if the plaintiff and defendant are both present in the same district and would be subject to jurisdiction there, but the plaintiff goes to another district to attach the defendant's assets."

Seventh Circuit

Armada (Singapore) PTE Ltd. v. Amcol Int'l Corp., 414 F. Supp. 3d 1115 (N.D. Ill. 2019) - This case concerned alleged fraud in prior Rule B proceedings committed by the defendants, "orchestrat[ed] a complex series of corporate transactions among related entities, the purpose of which was to shield additional assets belonging to [Ashapura Minechem Limited, which owed a debt to the plaintiff] from turnover." The court had dismissed RICO and State law claims, but permitted the plaintiff's maritime fraudulent transfer claim to proceed. The defendants moved for summary judgment on the grounds that the plaintiff failed to put forward evidence that the assets involved actually belonged to the debtor defendant, that the other defendants controlled these assets, or that they were located in the district. The motion was granted except as to one defendant, which was the parent company of a group of related entities. Several of the entities were involved in a series of transactions that allegedly created an intangible asset belonging to Ashapura, but controlled by the parent company defendant (credit). The court found sufficient evidence such that a jury could conclude that the parent company defendant had extended a loan through an intermediary to fund a joint venture engaged in by Ashapura. The loan proceeds were then disbursed to the joint venture, such that a fact-finder could conclude that Ashapura owed an obligation to repay the loan. The court found additional evidence that the parent company defended was blurring the distinctions between the various entities, including Ashapura. Accordingly, the court found that the fraudulent transfer claim could proceed against that defendant.

Eleventh Circuit

Doria v. Royal Caribbean Cruises, Ltd., No. 1:19-cv-20179-KMW, 2019 U.S. Dist. LEXIS 154635 (S.D. Fla. Sep. 4, 2019) – The alleged tort here related to an ATV crash occurring on an excursion. The incident failed the locality test for jurisdiction, such that no maritime tort occurred. The motion for Rule B attachment was denied.

Goodwin v. Rios Tropicales, S.A., No. 04-22707-CIV-JORDAN, 2006 U.S. Dist. LEXIS 102958 (S.D. Fla. Feb. 24, 2006) - An excursion contract for white water rafting is not a maritime contract, as it does not pertain to the operation, navigation, or management of a ship, and extending admiralty jurisdiction over such a contract does not take into account the shipping industry's needs. In the contract analysis, the subject matter of the contract controls, not the locus and nexus criteria as it does in tort cases. Furthermore, there was no maritime tort, because the river was not considered a navigable water. It was used merely for recreational activities, and the test of navigability requires that a waterway be used in commerce, particularly for the business of shipping. The river was approximately 10 inches deep, very rocky, had a constant gradient of 50 ft. per mile, contained several dams and drops, and was impassible to motorized boats. The mere fact that someone derived a profit from the river (such as through white water rafting tours) did not render it navigable. Finally, the tort could not be considered to have taken place on board the cruise ships, because there was no evidence that the cruise ship's crew members were agents of the company that operated the excursion. As to another defendant, writs to alleged garnishees were properly quashed because no garnishees answered that they were indebted to that defendant.

d'Amico Dry d.a.c. v. Nikka Fin., Inc., No. 1:18-00284-KD-MU, 2019 U.S. Dist. LEXIS 33986 (S.D. Ala. Mar. 1, 2019) - This case is an offshoot of a case that had been vigorously litigated in the Second Circuit. The plaintiff initiated an action alleging alter ego liability, a request for attachment of the defendant's vessel as security for the litigation pending in New York, and a Rule B attachment and alter ego determination in the event the N.Y. district court determined it lacked personal jurisdiction over the defendant. The court held a bench trial, the result of which was that the defendant was determined to be alter ego of a company against which the plaintiff had obtained a judgment from the English High Court of Justice based on breach of a forward freight agreement. The debtor company was a corporate guarantor under the facility agreement through which the construction of the defendant's lone vessel was financed. Additionally, company representatives of the debtor corporation provided limited personal guarantees of the same agreement. The debtor company was the managing agent for the defendant's vessel until it commenced dissolution and liquidation proceedings. In its order, the court first dispensed with the defendant's argument that the action was untimely pursuant to the English Limitation Act 1980 on the grounds that the case was not brought to enforce an English judgment; instead, it was an attempt to obtain security in the event the defendant was found to be liable for the debtor company's debts under alter ego liability. The court sanctioned the defendant for failure to comply with previous court orders commanding it to obtain certain bank records and thus assumed any missing bank records regarding the defendant's reimbursement of funds expended by the debtor company as the managing agent for the vessel would be adverse to the defendant. The court next rejected the defendant's claim that it lacked admiralty jurisdiction. The defendant claimed that the action was a simple post-judgment enforcement action, but the court determined that a claim for enforcement of a foreign judgment that is itself based on an admiralty claim is an admiralty claim. Rule B attachment is the proper mechanism through which to establish jurisdiction over an alleged alter ego for adjudication of the alter ego dispute. The court analyzed various factors in determining that the defendant was an alter ego, with particular emphasis on a finding of fraud. The court found fraud based entirely on an adverse inference from the defendant's failure to comply with the court's discovery orders and to produce bank records. Additionally, the court applied twelve factors set forth by the Eleventh Circuit for conducting the alter ego analysis and determined that several of those factors weighed in favor of its finding, including an overlap in ownership (mainly through one family's ownership of 100% of the debtor company and 60% of the defendant, management (through one common director), business departments/offices (through the defendant's use of the debtor company's business departments or its equipment/address), inter-financing (through the debtor company's guaranteeing the defendant's debt), payment of the other's salaries (through the court's adverse inference with respect to the defendant's bank records), use of the other's property as its own (through the defendant's use of the debtor company's assets to conduct business), the failure to keep the corporations' business separate (through the defendant's use of the debtor company's business departments or its equipment/address), and the defendant's failure to observe corporate formalities. The court found this sufficient to determine an alter ego relationship to exist by a preponderance of the evidence. Accordingly, the defendant was held liable for the English judgment.

Rule C

First Circuit

IK Yacht Design, Inc. v. M/V Almost There (O.N. 1252895) (HIN: HATDH521A898), No. 2:19-cv-00394-LEW, 2019 U.S. Dist. LEXIS 198565 (D. Me. Nov. 15, 2019) - This order involved a motion to dismiss or transfer to the Southern District of Florida in a Rule C matter brought against a yacht for debts, interest, and penalties arising out of work performed on it. The court first noted that a transfer would be possible despite the yacht's presence outside of Florida because the presence of the *res* is not a jurisdictional prerequisite to transfer of an *in rem* action. The court found that all of the physical evidence, underlying contracts, companies involved, home port, witnesses, and parties all resided, were performed, existed, did business, and/or were located in Florida. This was sufficient to override the plaintiff's choice of venue, and the plaintiff could not identify any substantial costs incurred due to transfer. Accordingly, transfer of venue was appropriate.

Fifth Circuit

New Pelican Charters, LLC v. Unknown, No. 2:18-CV-00086, 2019 U.S. Dist. LEXIS 164094 (S.D. Tex. Sep. 25, 2019) & 2019 U.S. Dist. LEXIS 109046 (S.D. Tex. Mar. 27, 2019) – These orders involved a motion to dismiss or for summary judgment in a Rule C action for claims arising out of an allision with a shrimping vessel on an offshore fishing trip and allegations of negligence on the part of a fishing charter. The court first addressed the effect of a waiver form the claimants signed before voiding the vessel and determined that it did not effect a waiver of their negligence claim because it did not expressly provide a waiver for the charterer's own negligence, the language the parties used did not provide evidence of any intent to do so, and the waiver failed to identify the party whose negligence the claimants would be required to indemnify. Following prior precedent, the court determined that contractual language requiring indemnification for "all" injuries was insufficient. "Any problem" does not necessarily mean "any cause." Summary judgment was properly denied on this ground.

Gulf Copper & Mfg. Corp. v. M/V Lewek Express, No. 3:19-CV-00034, 2019 U.S. Dist. LEXIS 97549 (S.D. Tex. June 11, 2019) - At issue here was a request for pro-rata apportionment of *custodia legis* expenses to intervening parties. The court, recognizing that this was a matter of court discretion, determined that the expenses should be shared from the date of the vessel's arrest, particularly given that the intervenors benefitted from the arrest. The court next determined that the split should be pro rata as opposed to per capita on fairness grounds (consistent with the general rules). The court then found the docking fee identified by the arresting party to be reasonable. Finally, the court determined that immediate reimbursement was appropriate given the significant burden the arresting party (which also had the smallest claim) had borne to that point and the possibility that the sale of the vessel would not be sufficient to cover all amounts due. The request was granted.

Eleventh Circuit

Moore v. M/V Sunny USA, No. 18-cv-81181, 2019 U.S. Dist. LEXIS 41024 (S.D. Fla. Mar. 14, 2019) - Numerous motions were resolved in this order issued in a Rule C action. The vessel was a yacht that was arrested under claims of foreclosure of a maritime lien for necessities and for negligence. An individual claiming to be the owner of the vessel pro se attempted to make numerous filings resisting the plaintiff's efforts to have the vessel sold but was found to lack standing due to his failure to file a verified statement of right or interest. Ultimately, after default was entered against the vessel and the individual, the plaintiff moved for default judgment against the vessel. The purported owner finally filed a statement of interest and a motion for reconsideration of an order denying his earlier motion to dismiss, arguing that he had standing originally because his motion to dismiss should have been construed as a statement of interest and because he filed a post-default statement of interest. He also filed a motion to stay pending the resolution of an ongoing criminal proceeding; a notice of appeal of the court's orders on his motion to dismiss, the plaintiff's motion for interlocutory sale, and plaintiff's motion to strike the owner's statement of interest; and a motion to stay the interlocutory sale pending appeal and a motion to set bond and for release of the vessel.

The court granted the motion for reconsideration to prevent manifest injustice on the grounds that the owner had filed his motion to dismiss purporting to be "the undersigned owner of the vessel" and declared his ownership of the vessel in his statement of interest. In the interest of fairness, the court reinstated the motion to dismiss, but found that it failed to raise a valid argument and instead improperly accused the plaintiff of bringing fraudulent claims that were part of an extortion scheme. The court thus denied the motion to dismiss. The court also granted the motion to set bond and release the vessel because the plaintiff's claim was easily calculable, and the security was set at a figure higher than the damages the plaintiff claimed in the action, less attorney's fees. The court acted on authority that it should "err on the high side." The motion to stay pending the criminal case was denied for lack of authority, and the motion to stay the sale was denied because the owner was adequately protected and had adequate recourse, particularly in the event he posted security. Finally, the court denied all of plaintiff's remaining motions on the grounds that the owner was permitted to make an appearance in the case on behalf of the vessel.

Rule D

Eleventh Circuit

Turner v. One 2019 76 Foot Sunseeker Sport Yacht, No. 19-62670-CIV-ALTONAGA, 2020 U.S. Dist. LEXIS 26092 (S.D. Fla. Feb. 13, 2020) - This was a Rule D in rem possessory and petitory action. The plaintiffs alleged that they paid for a yacht that was not delivered to them but was instead allegedly being held as security or leverage by the manufacturer or its U.S. subsidiary against the local dealer. The subsidiary insisted that title had never passed to the local dealer and thus never to the plaintiffs on account of the local dealer's failure to comply with the dealer agreement. The subsidiary filed a motion to vacate the arrest and dismiss the verified complaint. After hearing evidence, the court found in favor of the subsidiary and granted its

motion. The court noted that Rule D does not create jurisdiction, but instead provides a remedy if a case is otherwise subject to admiralty jurisdiction. Contracts for the sale of a ship are not maritime contracts, and the plaintiffs could not show that they had legal title or that they ever had possession of the yacht for purposes of a petitory suit or a possessory action, respectively. The plaintiffs had already filed a state court action for breach of contract against the dealer, and that action showed that the matter was a simple commercial dispute. Florida law provided plaintiffs no purchase, as it operated to give a purchaser of goods only that title which his or her transferor had power to transfer, and the local dealer never possessed title. Furthermore, the yacht was neither existing nor identified at the time the purchase agreement was entered. Thus, the court was without jurisdiction to proceed, but reserved jurisdiction to entertain the subsidiary's requests for sanctions and damages against the plaintiffs after the prior-pending state case was resolved.

Allvette LLC v. Arete Automobili SP.Z.O.O., No. CV 2:18-129, 2019 U.S. Dist. LEXIS 39668 (S.D. Ga. Mar. 12, 2019) - Even though the only contract at issue was probably not maritime in nature, the court determined that the allegedly improper withholding of a bill of lading was sufficient to create subject matter jurisdiction pursuant to Rule D.

Rule E

United States v. $4,480,466.16 in funds seized from Bank of Am. account ending in 2653, 942 F.3d 655, 659 (5th Cir. 2019) - In a non-maritime matter, the Fifth Circuit relied on Rule E to hold that claimants with interest in property subject to non-maritime *in rem* actions may file counterclaims under certain circumstances. The court noted that to hold otherwise would conflict with well-established practice in admiralty cases. The court rejected First Circuit precedent suggesting no counterclaims could be asserted in these circumstances.

Rule F

Second Circuit

In re Felgate, No. 3:18-cv-910 (VLB), 2020 U.S. Dist. LEXIS 55320 (D. Conn. Mar. 30, 2020) – This was a limitation of liability action brought by a sailing club, its founder, and a founding board member to limit liability to $1,000 (sailboat) against claims for tort where a boom hit the claimant, knocking her unconscious and into the water. Petitioners moved for summary judgment, and the claimants moved to dismiss for lack of subject matter jurisdiction. The court determined that it had jurisdiction because the tort occurred on navigable waters (Clinton Harbor), involved a maritime emergency (injuries to a sailing student), and implicated a traditional maritime activity (sailboat racing). Because there were multiple claimants and the potential liability was greater than the petitioners' interest in the vessel, the court determined that there were no problems with the savings-to-suitors clause. The court next determined that there was a genuine issue of fact as to whether the individual petitioners were owners *pro hac vice* of the vessel at issue, despite not being title owners. The court noted that "owner" is an untechnical word to be interpreted in a liberal manner and recognized that the term included a charterer that "mans, supplies, and navigates a vessel at the charterer's own expense or by the charterer's own procurement." The level of autonomy exercised by the non-title owner over the vessel is the test.

The court reasoned that board members should be treated similarly to stockholders and noted that the sailing club acted in pertinent respects through the individual claimants. As to the merits of the limitation action, the court first noted that the petitioners had not admitted negligence by failing to file an answer to the claimants' claim, because Rule F does not require petitioners to answer the claim. Similarly, affirmative defenses could be asserted at trial despite not having been pled in an answer because no answer was required. The court also found sufficient evidence of negligence to create a fact question because the club never instructed its students how to handle the mainsheet between themselves and allowed the victim to pilot the sailboat in rough weather with only a less experienced student on the vessel with her. The court denied summary judgment on the ground of waiver pursuant to a release signed prior to the accident because the release contained a mandatory forum selection clause that deprived the court of proper venue to consider the defense. The court also found a question of fact as to petitioners' knowledge or privity of the negligence at issue due to the court's determination on the negligence question. The case was thus permitted to proceed.

Estate of Umar v. Bensch, No. 18-CV-01414-JLS-JJM, 2020 U.S. Dist. LEXIS 4699 (W.D.N.Y. Jan. 9, 2020) - This case concerned both the removal of a simple maritime tort boating accident case to federal court and two limitation actions filed by the defendants. The removal was improper pursuant to 28 U.S.C. § 1333 and entitled the plaintiff not only to a remand but also to costs and attorney's fees necessitated by the removal. As to the limitation action, the allegation that "[a]ny claim or claims, injuries, losses, damages or expenses arising from the accident were not due to any fault, neglect, or want of care of Petitioner and occurred without Petitioner's privity or knowledge" was determined to be a legal conclusion insufficient to support a limitation action. Accordingly, the R&R recommended that the limitation complaints, which contained virtually identical allegations, be dismissed. One of the defendants sought leave to amend, but the proposed amendments failed to cure these defects. Accordingly, the R&R recommended this motion be denied as well.

In re Fire Island Ferries, Inc., No. 11-cv-3475 (DRH)(ARL), 2019 U.S. Dist. LEXIS 210760 (E.D.N.Y. Dec. 6, 2019) - Three days before trial was too late for a plaintiff to attempt to proceed in state court after he had already elected to proceed in federal court following the denial of the limitation of liability.

In re Harten, No. 19-cv-454 (NG)(SMG), 2019 U.S. Dist. LEXIS 93443 (E.D.N.Y. June 3, 2019) - Letters asking petitioners to notify their insurance carriers of a boating accident, which mentioned "a claim for personal injuries" and asked petitioners have their insurers contact respondents' counsel directly, were deemed insufficient to trigger the six-months' notice period within which to file a limitation action. Petitioners, however, failed to set forth any substantive facts about the boating incident itself in their complaint, which contained the general allegations that "[a]ny claims for loss, damage and/or injury arising from the vessel collision were not due to any fault, neglect, or want of care on the part of petitioners" and that "[i]f any fault caused or contributed to the claims for loss . . . such fault, neglect, or want of care was occasioned and occurred without petitioners' privity or knowledge." These were again deemed insufficient. The court also noted that the complaint failed to identify the date and place of the termination of the

voyage, the location of the vessel, and in whose possession the vessel may be found. Accordingly, the complaint was dismissed without prejudice with leave to file an amended complaint.

In re Complaint of Bouchard Transp. Co., 2019 U.S. Dist. LEXIS 52204 (S.D.N.Y. Mar. 27, 2019)- This matter involved a limitation action brought by a tug, two barges, and a corporation due to their striking an underwater electrical cable with an anchor. The cable interests moved for summary judgment on the grounds that the petitioners had privity or knowledge of the negligence at issue. The court found that an issue of material fact existed due to the scope of the negligence at issue. The petitioners argued that the negligence was the captain's narrow decision to anchor in the cable area. The cable interests argued that the negligent act was the decision to anchor in Hempstead Harbor at all. The court noted inconsistent evidence as to whether anchoring in Hempstead Harbor was per se negligent and thus denied the cable interests motion for partial summary judgment. The petitioners were not entitled to spoliation sanctions against the cable interests because the cable interests turned over evidence as ordered and there was nothing suggesting that evidence was destroyed. Finally, *Robins Dry Dock* prevented a lighting company that had no proprietary interest in the damaged cable. Another case involving damage to the same cable generated a finding that the company had no proprietary interest in that line. Collateral estoppel thus applied.

Third Circuit

In re Complaint of Bouchard Transp. Co., 2019 U.S. Dist. LEXIS 52204 (S.D.N.Y. Mar. 27, 2019) - An injury that occurred as the claimant was leaving the top step of stairs from the dock onto the cap rail of the vessel Fish Stix occurred on navigable water. Additionally, the court noted that unsafe conditions while docking have a potential to disrupt maritime commerce, and boarding a vessel shows a substantial relationship to a traditional maritime activity. Accordingly, the court had subject matter jurisdiction. The claimant's motion for summary judgment was denied due to claimant's failure to provide a statement of undisputed material facts.

Garb v. Garb, Civil Action No. 18-11769(FLW), 2019 U.S. Dist. LEXIS 218134 (D.N.J. Dec. 19, 2019) - The owner/operator of a pleasure craft aboard and operating his vessel at the time of a loss is entitled to assert a limitation action, notwithstanding his privity/knowledge with respect to the operation of the vessel, because a claimant first has the burden of establishing negligence. The burden then shifts to the petitioner to establish lack of privity/knowledge. It is particularly inappropriate to dismiss a limitation action at the pleading stage due simply to the sole owner's operation of the vessel. Limitation actions are not only intended to apply to capital investors, but also have been applied on many occasions to pleasure boats. Finally, the petitioner adequately alleged privity or knowledge by including allegations in his second amended complaint that he took all reasonable care in operating the vessel, the vessel was seaworthy, the petitioner exercised the vessel in good weather conditions, the cause of the negligence was the actions of a third party, and the petitioner was acting with reasonable care in preventing his vessel from being capsized or overtaken by wake at the time of the incident.

Fourth Circuit

In re Complaint of Great Lakes Dredge & Dock Co., L.L.C., No. 2:18-cv-676, 2019 U.S. Dist. LEXIS 93903 (E.D. Va. June 4, 2019) - The court followed the majority view in determining that claims of indemnification or contribution are sufficient to create a multiple-claim situation, such that all claimants must agree to a stipulation before the claim may proceed in state court. Thus, one claimant, despite being the only claimant to assert a non-derivative claim, could not unilaterally protect the petitioner's limitation rights to a stipulation.

Fifth Circuit

In re Complaint of Great Lakes Dredge & Dock Co., L.L.C., No. 2:18-cv-676, 2019 U.S. Dist. LEXIS 93903 (E.D. Va. June 4, 2019) - This limitation action was improperly filed as to a vessel that was not involved in the underlying tort matter. The case arose from an explosion on an oil and gas platform. The only connection between the vessel that was the subject of the suit and the underlying matter was that it was a crew boat that the victim would use in performance of his duties. Counsel for petitioner admitted that the vessel was not involved. Petitioner then sought to amend its petition to make the subject of the suit the platform itself, but it was undisputed as well that the platform was not a vessel. The court noted that "[d]etermining the parties' positions has been akin to nailing Jell-O to a wall" and dismissed the limitation action.

In re Prosper Operators, No. 2:16-CV-01363, 2019 U.S. Dist. LEXIS 151917 (W.D. La. Sep. 5, 2019) & 2019 U.S. Dist. LEXIS 125268 (W.D. La. July 26, 2019) - The petitioner's failure to publish notice to potential claimants in a local newspaper, even where he gave notice to the tort victim claimant directly by letter was fatal to the petitioner's limitation action, particularly where the tort victim claimant's state court action had been stayed for nearly three years due to the pendency of the limitation action. The petitioner failed to comply with Rule F's notice procedures, and thus the court dismissed the petition.

In re Marquette Transp. Co., No. 18-9749, 2019 U.S. Dist. LEXIS 39346, at *3 (E.D. La. Mar. 12, 2019) - It was proper for the magistrate judge to deny the right of litigants to intervene in a limitation action. The magistrate judge relied on Eighth Circuit precedent holding that Rule F creates statutory standing requirements for challenging limitation actions. The district court found no Fifth Circuit precedent on the issue and thus determined the magistrate judge's order not to be clearly erroneous or contrary to law. Accordingly, the claimants were required to follow Rule F to contest the limitation.

Sixth Circuit

In re Complaint of Vulcan Constr. Materials, LLC, No. 2:18cv668, 2019 U.S. Dist. LEXIS 77365 (E.D. Va. May 7, 2019) - Plaintiff, who was neither a seaman nor an employee of Vulcan, was injured while assisting with the mooring of barges. A captain employee of Vulcan caused his vessel to impact a barge unexpectedly during mooring, which caused the barge to strike another barge on which the plaintiff was standing. Plaintiff lost his balance and fell from the deck of the barge he was on to the deck of the adjacent barge, causing the plaintiff to sustain left leg fractures that required amputation of his left leg. Plaintiff's leg was amputated between

February and April 2018. Subsequently, on April 19, 2018, a note was hand-delivered to Vulcan's Registered Agent. The letter, titled a "Notice of Claim," stated "Please be advised that we represent Robert Dervishian, Jr., in connection with serious personal injuries he sustained on February 22, 2018 at the Shirley Plantation Dock due to the alleged negligence of the employee of Vulcan Construction Materials, L.L.C., Kim Todd, while Mr. Todd was operating the Jeanie Clay tugboat. A claim may be filed." Just over six months after delivering such note, the plaintiff filed a complaint state court asserting a personal injury cause of action against Vulcan and Captain Todd, seeking $45,000,000.00. Vulcan answered and filed a limitation action on December 17, 2018. The plaintiff filed his claim and asserted that the suit was untimely. Vulcan responded, claiming the note was insufficient notice and that the true notice of the claim was the filing of the state court action.

The court determined that the letter did not constitute sufficient notice. It noted several factors in so holding. First, it criticized the style of the letter, noting that it contained no letterhead, the lack of a "re:" line, and failed to identify the representing law firm. The court then moved onto the substance, noted its tentativeness and failed to inform the shipowner of a demand. Most importantly, the letter failed to quantify defendant's claim. It also failed to give any indication of the scope of plaintiff's injuries. The district court surveyed the applicable law filling the hole left in the statute, recognizing that a letter may constitute notice of a claim, but that a vague letter would not do it and that a claimant must state his intentions clearly. The Court noted the two tests typically applied by courts in determining whether sufficient notice is given:

The first test asks whether the letter (1) informs the vessel owner of claimant's demand of a right or supposed right, (2) blames the vessel owner for any damage or loss, or (3) calls upon the vessel owner for something due claimant. Under the second test, courts place heavy emphasis on whether the letter indicates a reasonable possibility that the claim may exceed the value of the ship. The court further recognized that most courts have utilized a variation of the above tests in conducting a holistic, fact-intensive approach to determining whether a letter is sufficient.

Ninth Circuit

In re Lava Ocean Tours Inc., No. 19-00023 LEK-RLP, 2019 U.S. Dist. LEXIS 91948 (D. Haw. May 31, 2019) – The limitation plaintiff filed a motion to enforce the court's restraining order against other lawsuits because the claimants were pursuing state court litigation against a third party, who was the sole corporate officer and sole shareholder in the limitation plaintiff. At issue was whether the third party qualified as an owner entitled to the protection of a limitation action. Noting that limitation actions are equitable proceedings, The court held that he was an owner for several reasons, including the third party's control over the vessel on the date of the incident, the fact that the claims exceeded the value of the limitation fund, the presence of a third-party claim in the limitation action in addition to the state court action, the failure of the claimants' veil piercing argument in the event the third party was considered an owner, the potential that the injunction in the limitation action would be rendered moot, and the ability of the district court to stay state actions or otherwise shape limitation proceedings to serve the purposes of the limitation procedure generally. Accordingly, the motion was granted, but no civil contempt sanctions were imposed against the claimants.

Eleventh Circuit

In re Complaint of Freedom Unlimited, No. 19-61655-CIV, 2019 U.S. Dist. LEXIS 218776 (S.D. Fla. Dec. 19, 2019) - It is not necessary for a limitation plaintiff to join in the claimant's stipulations in order to have the injunction against other suits lifted.