Admiralty and Maritime Law

2026 Update

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Chapter 1: Jurisdiction and Procedure in Admiralty and Maritime Cases

Admiralty Jurisdiction in Tort Cases — Maritime Locus (p. 6)

1. In *Baltimore Gas & Electric v. Coastline Commercial Contracting, Inc.*,[1] the Fourth Circuit reversed the district court and held that a cove with a depth of five feet was navigable. The ruling aligned the Fourth Circuit with the First, Second, and Fifth Circuits, in which potential commercial activity may suffice to make waters navigable, versus the Seventh, Eighth, and Ninth, which tend to look to whether actual commercial activity exists or is likely to exist.
2. The more restrictive approach to navigability is illustrated by *United States v. McKee*.[2] In that case the court determined that Table Rock Lake (a reservoir that connects two states) is not navigable in fact because it sustains mostly recreational rather than commercial activity.
3. As noted in the text at Footnote 24, some courts have recognized seasonal navigability. A recent notable case is *Thibodeaux v. Bernhard*,[3] where the court found admiralty jurisdiction over an inland floodplain that is only navigable part of the year. The only commercial activity in the area was crayfishing with small watercraft.
4. In a Limitation Act case over a recreational boat accident, the Ninth Circuit affirmed the district court holding that a lake that was part of Missouri river segment between two dams in Montana was not navigable in fact. The court dismissed the owner's argument that the lake was designated as a navigable waterway for the purposes of Coast Guard regulatory jurisdiction. *In re* Garrett, 981 F.3d 739 (9th Cir. 2020).

This document provides supplemental entries to the Federal Judicial Center's publication Admiralty and Maritime Law, Second Edition (2013), https://www.fjc.gov/content/admiralty-and-maritime-law-second-edition.

1. 107 F.4th 265 (4th Cir. 2024).
2. 68 F.4th 1100 (8th Cir. 2023).
3. No. 23-30405, 2024 WL 3181458 (5th Cir. June 26, 2024).

Admiralty Jurisdiction in Tort Cases — Maritime Nexus (p. 7)

In *Baltimore Gas & Electric*,[4] the court held that damaging an underwater electrical cable has the "potential to disrupt maritime commerce" for the purposes of the nexus test. The court explained the test depends on the potential to disrupt commerce, not necessarily the actual effects. The court followed *Grubart* in posing the question of whether there "is more than a fanciful risk to commercial shipping."

Admiralty Jurisdiction in Contract Cases (p. 10)

1. Forward Freight Agreements: Forward freight swap agreements can be maritime contracts under *Kirby*, according to *Flame S.A. v. Freight Bulk Pte. Ltd*.[5] This was the first appellate case to hold a forward freight swap agreement to be a maritime contract. The case left for future decision whether all such agreements are maritime contracts. The case was followed by the Second Circuit in *d'Amico Dry Ltd. v. Primera Maritime (Hellas) Ltd*.[6]
2. The Fifth Circuit created a new approach to determine whether oil and gas contracts are maritime in the case of *In re Larry Doiron, Inc*.[7] There, the court replaced the previous six-factor test from *Davis & Sons, Inc. v. Gulf Oil Corp.*[8] with a new test more aligned with the Supreme Court's *Kirby* decision. The test was extended to apply to all maritime contracts (not just oil-and-gas contracts) in *Barrios v. Centaur, L.L.C.*[9] The test was there articulated as "To be maritime, a contract (1) must be for services to facilitate activity on navigable waters and (2) must provide, or the parties must expect, that a vessel will play a substantial role in the completion of the contract." The test was further refined in *Earnest v. Palfinger Marine U S A, Inc.*[10] where the court emphasized the second prong of the test is not so much how a vessel is physically "used" but whether the contract has a "substantial role" for the vessel, not just an incidental one.

4. 107 F.4th at 270 (citing Jerome P. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 538 (1995)).
5. 762 F.3d 352 (4th Cir. 2014) (citing generally Norfolk S. Ry. v. Kirby, 543 U.S. 14 (2004)).
6. 886 F.3d 216 (2d Cir. 2018).
7. 879 F.3d 568 (5th Cir. 2019) (en banc).
8. 919 F.2d 313, 316 (5th Cir. 1990).
9. 942 F.3d 670, 680 (5th Cir. 2019)
10. 90 F.4th 804, 2024 AMC 2 (5th Cir. 2024).

3. Dredging contract is a maritime contract. J-Way S., Inc. v. U.S. Army Corps of Eng'rs, 34 F.4th 40, 46 (1st Cir. 2022).
4. Contract with the U.S. government for posting a bond for release of a vessel under investigation is a maritime contract. Nederland Shipping Corp. v. United States, 18 F.4th 115 (3d Cir. 2021).

The Saving to Suitors Clause — Removal (p. 21)

The longstanding rule has been that there is "no removal into admiralty," meaning that state law claims brought under the saving-to-suitors clause may not be removed to federal court on the basis of admiralty jurisdiction alone. That longstanding rule has been questioned in some cases based on the 2011 amendments to 28 U.S.C. § 1441(b). *See, e.g.*, Lu Junhong v. Boeing Co., 792 F.3d 805 (7th Cir. 2015); Sangha v. Navig8 ShipManagement Priv. Ltd., 882 F.3d 96, 100 (5th Cir. 2018).

Sources of Admiralty and Maritime Law — Choice of Law: U.S. or Foreign (p. 23)

The most important choice-of-law case in the last decade or more is likely *Great Lakes Insurance SE v. Raiders Retreat Realty Co.*[11] The case arose in the context of marine insurance choice-of-law clauses in the shadow of the *Wilburn Boat* decision (see Chapter 10 below). However, the decision is properly read as a strong endorsement of party autonomy in maritime contracts in general. The opinion instructed that "choice-of-law provisions in maritime contracts are presumptively enforceable as a matter of federal maritime law" with "certain narrow exceptions." The Court rejected the application of the Restatement (Second) of Conflict of Laws § 187(2)(b) as a basis for invalidating choice-of-law provisions, explaining that the Restatement provisions arise out of interstate cases and is a "poor fit for maritime cases." The case can be read along with the *Bremen* and *Shute* decisions[12] as a strong general endorsement of party autonomy in maritime law, not merely limited to the insurance context.

11. 601 U.S. 65 (2024).
12. M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972); Carnival Cruise Lines v. Shute, 499 U.S. 585 (1991).

Interlocutory Appeals (new)

Admiralty allows a special interlocutory appeal in 28 U.S.C. § 1292(a)(3), which permits appeal of "[i]nterlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed." There is considerable uncertainty about the outer boundaries of this section. For a recent and illustrative case, see the majority and dissenting opinions in *Ehart v. Lahaina Divers, Inc.*[13]

Chapter 2: Commercial Law

Charter Parties — Typical Areas of Dispute (p. 46)

Safe Port and Safe Berth Provisions (p. 50)

In *Citgo Asphalt Refining Co. v. Frescati Shipping Co.*,[14] the Supreme Court held that a safe berth clause that was not qualified by due diligence would be read as an absolute obligation or warranty. These common provisions in charter party forms, but parties are free to contract around this result. The Court thereby sided with the Second and Third Circuits, which say the charter warrants the safety of the berth in the safe berth clause.

Arbitration Clauses (p. 53)

After Footnote 193 and 244: These provisions will not always bind consignees, however. *See, e.g.*, Thyssenkrupp Materials NA, Inc. v. Pegasus Denizcilik A.S., No. 1:23-cv-03086, 2024 WL 2248675 (N.D. Ill. May 17, 2024).

13. 92 F.4th 844 (9th Cir. 2024).
14. 589 U.S. 348 (2020).

Carriage of Goods by Sea Act (COGSA) — Parties to the Contract of Carriage: The COGSA Carrier (p. 64)

In *Ingram Barge Co., LLC v. Zen-Noh Grain Corp.*,[15] the court dealt with the situation where personal jurisdiction over a consignee relies on a forum selection clause in a bill of lading. The court held that where the consignee is a mere third-party beneficiary, there is no personal jurisdiction over consignee unless the consignee consents by (1) filing suit, (2) course of conduct, or (3) accepting through an agent. Absent these, a third-party beneficiary consignee is not bound to the bill of lading.

Chapter 3: Personal Injury and Death

Damages (p. 88)

The lengthy saga on punitive damages in admiralty law reached another milestone in *Dutra Group v. Batterton*.[16] The Supreme Court resolved a circuit split between the Fifth Circuit[17] and the Ninth Circuit[18] on whether punitive damages were available in an unseaworthiness action. Siding with the Fifth Circuit, and in line with *Miles v. Apex Marine Corp.*,[19] the Court concluded punitive damages are not available for unseaworthiness. The case is another volley in the back-and-forth between *Atlantic Sounding Co. v. Townsend*[20] (generally favorable to plaintiffs) and *Miles v. Apex*, which favors looking to legislation to develop the maritime law (generally favorable to defendants). In this case, the broader interpretation of the *Miles* approach prevailed, signaling the Court may look primarily to legislative enactments for guidance in open areas.

15. 3 F.4th 275 (6th Cir. 2021).
16. 588 U.S. 358, 2019 AMC 1521 (2019).
17. McBride v. Estis Well Serv., L.L.C., 768 F.3d 382 (5th Cir. 2014).
18. Batterton v. Dutra Group, 880 F.3d 1089 (9th Cir. 2018).
19. 498 U.S. 19 (1990).
20. 557 U.S. 404 (2009).

Statute of Limitations (p. 89)

The statute for wrongful death begins to run at death, not at earlier time of injury or illness. Deem v. William Powell Co., 33 F.4th 554, 557, 565 (9th Cir. 2022).

Seamen's Remedies — Maintenance and Cure (p. 91)

Third paragraph: *Adkins v. Marathon Petroleum Co.*, 105 F.4th 841 (6th Cir. 2024), explains that in addition to maintenance and cure not being a fault-based remedy, the seaman need not prove that employment caused the injury or illness.

Seamen's Remedies — Negligence: The Jones Act (p. 95)

Seaman Status (p. 96)

1. 2022 Amendments excluding "aquaculture workers" from the definition of seamen.
2. Possibly include: Edwards v. InterMoor, Inc., No. 23-30727, 2024 WL 3983332, 2024 AMC 442 (5th Cir. Aug. 29, 2024).
3. The seaman status inquiry was shifted significantly when the en banc Fifth Circuit developed new three-part test for seaman status *in Sanchez v. Smart Fabricators of Texas, L.L.C.*[21] The Fifth Circuit added three factors to the Supreme Court's *Chandris* test,[22] focusing on: (1) the plaintiff's allegiance to its land-based employer or the vessel; (2) whether the plaintiff's work is sea-based; and (3) whether the plaintiff's assignment is limited to performance of a discrete task. The test was seen as narrowing the definition of a seaman relative to the precedent the court overruled, *Naquin v. Elevating Boats, L.L.C.*, 744 F.3d 927, 932 (5th Cir. 2014). *Sanchez* held that *Naquin*'s focus on "perils of the sea" was insufficient to establish seaman status, requiring allegiance to a vessel, sea-based or seagoing work, and more than transient connection. The new test may result in workers formerly classified as seamen as falling in the category of *Sieracki* seamen or longshoremen.[23]

21. 997 F.3d 564, 2021 AMC 217 (5th Cir. 2021).
22. Chandris, Inc. v. Latsis, 515 U.S. 347 (1995).
23. *See* note 552, Chapter 3 of original text (discussing Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946)).

4. The Fifth Circuit applied the three new *Sanchez* factors in *Santee v. Oceaneering International, Inc.*[24] The court concluded that the three factors weighed against seaman status for the plaintiff who worked as a ROV technician on a drillship.

Vessel in Navigation (p. 98)

1. A cleaning barge that was semi-permanently moored was not a "vessel" under *Lozman* and *Stewart*.[25] In re Ingram Barge Co., L.L.C., No. 22-30577, 2023 WL 6123107 (5th Cir. Sept. 19, 2023).
2. At Footnote 453: A vessel in a shipyard for two years was not a "vessel in navigation." Jarvis v. Hines Furlong Line, Inc., No. 21-5937, 2022 WL 1929364, at *4 (6th Cir. June 6, 2022).
3. Just as seaman status is not available for workers on "dead ships," the Limitation Act also is not available to dead ship. Dead ships are generally defined as those that have been "withdrawn from navigation." The Fifth Circuit had an opportunity in a Limitation Act proceeding to determine whether a ship was a dead ship, even though it still floated. The court concluded this was the case when the bow of a barge had been removed, the cargo tanks inoperable, and the owner unable to allege people or things the vessel is capable of moving, in *In re Southern Recycling, L.L.C.*[26] The court did, however, caution that mere intention to withdraw a ship from navigation is not sufficient to deem it a dead ship.

Seamen's Remedies — Unseaworthiness (p. 103)

1. The Supreme Court ruled in *Dutra Group v. Batterton* that punitive damages are not available in unseaworthiness actions. *See* updates to Chapter 3 — Damages *infra*.
2. The *Sieracki* seaman category of unseaworthiness plaintiff[27] is relatively uncommon today, but it still lives on for some categories of worker such as harbor pilots. A *Sieracki* seaman unseaworthiness claim was successful for a harbor pilot in *Rivera v. Kirby Offshore Marine, L.L.C.*[28] As is common for harbor pilots, the plaintiff there was not an

24. 110 F.4th 800, 2024 AMC 414 (5th Cir. 2024).
25. Lozman v. City of Riviera Beach, 568 U.S. 115 (2013); Stewart v. Dutra Constr. Co., 543 U.S. 481 (2005).
26. 982 F.3d 374 (5th Cir. 2020).
27. *See supra* note 23.
28. 983 F.3d 811 (5th Cir. 2020).

employee of any entity and therefore not covered by the Longshore and Harbor Workers' Compensation Act (LHWCA). As a result of not being covered by LHWCA, he was still eligible to bring a seaworthiness claim under *Sieracki*.

Maritime Workers' Remedies — Remedies Under the LHWCA (p. 111)

1. Two illustrative cases show how the "open and obvious" defense has applied in the context of the turnover duty. First, the court applied the "open and obvious" defense for negligence claims under the turnover duty in *Washington v. National Shipping Co. of Saudi Arabia*.[29] Second, the Fifth Circuit found summary judgment for the defense inappropriate on the "open and obvious" defense when a worker fell through a large, unmarked hole in *Manson Gulf L.L.C. v. Modern American Recycling Service, Inc.*[30]
2. The Supreme Court determined that the average weekly wage under the LHWCA is determined in the year in which the employee was disabled, not when a compensation order was issued. Roberts v. Sea-Land Servs., Inc., 566 U.S. 93 (2012).

Offshore Workers' Remedies — The Outer Continental Shelf Lands Act (p. 117)

1. The Supreme Court in *Parker Drilling Management Services, Ltd. v. Newton*, 587 U.S. 601 (2019), resolved a circuit split between the Ninth Circuit and the Fifth Circuit in favor of the Fifth Circuit's approach. State law can only fill gaps on the Outer Continental Shelf (OCS). Where federal law addresses the relevant issue, state law is not adopted as surrogate federal law on the OCS.
2. State labor laws will not apply on OCS under the Outer Continental Shelf Lands Act (OCSLA) when federal law addresses the issue. In *Mauia v. Petrochem Insulation, Inc.*,[31] the court held California's laws dealing with meal and rest breaks did not apply on the OCS because the FLSA addressed these issues. The court emphasized that the test is "whether federal law addresses the relevant issue, not whether federal law addresses it in the same way."

29. 836 F. App'x 846 (11th Cir. 2020).
30. 878 F.3d 130, 2018 AMC 248 (5th Cir. 2017).
31. 5 F.4th 1068, 1075 (9th Cir. 2021).

3. In *Rhode Island v. Shell Oil Products Co.*,[32] the court determined that energy companies could not remove state climate-change litigation on the basis of OCSLA because the state claims were not "arising out of " or sufficiently "in connection with" operations on the OCS.

Status and Situs Requirements (p. 118)

The "substantial nexus" to an employee's injury required by *Valladolid*[33] may be established not only by operations by the employee's direct employer but OCS operations by other entities. Mays v. Chevron Pipe Line Co., 968 F.3d 442 (5th Cir. 2020).

Remedies of Nonmaritime Persons — Passengers and Others Lawfully Aboard a Ship (p. 120)

At Footnote 593: As described in the text, Fifth Circuit precedent in the case *Barbetta v. Steamship Bermuda Star*[34] had held there was no vicarious liability of a ship for negligent medical services to a passenger. However, the Eleventh Circuit has overturned this rule in *Franza v. Royal Caribbean Cruises, Ltd.*,[35] providing for such vicarious liability of a cruise line. This is significant for the cruise industry because so many forum selection provisions channel cruise cases into the Southern District of Florida.

Contractual Limitation of Shipowner's Liability (p. 121)

1. The section § 30509 referenced that says carrier may not "contract out" of its liability for negligent acts that result in personal injury or death of a passenger" is now 46 U.S.C. § 30527 pursuant to a 2022 recodification.
2. That provision applies to the transportation of passengers "between ports in the United States, or between a port in the United States and a port in a foreign country." The Ninth Circuit held in *Ehart v. Lahaina Divers, Inc.*, 92 F.4th 844 (9th Cir. 2024), that the statute doesn't apply to a voyage that leaves and returns to the same port in the United States without visiting other ports.

32. 35 F.4th 44, 49 (2022).
33. Pacific Operators Offshore, LLP v. Valladolid, 565 U.S. 207 (2012).
34. 848 F.2d 1364 (5th Cir. 1988).
35. 772 F.3d 1225 (11th Cir. 2014).

3. Cruise lines often use cruise tickets to shorten the normal three-year statute of limitations, and courts have routinely upheld such provisions as long as the passenger has adequate notice. DannaMarie Provost v. Hall, 757 F. App'x 871 (11th Cir. 2018), *cert. denied sub nom.* Miorelli v Royal Caribbean Cruise Lines, Ltd., 587 U.S. 1015 (2019); Caron v. NCL (Bahamas), Ltd., 910 F.3d 1359; 2019 A1C 30 (11th Cir. 2018); Baer v. Silversea Cruises Ltd., 752 F. App'x 861 (11th Cir. 2018).

Maritime Products Liability (p. 123)

The products liability case law in admiralty continued to evolve with the Supreme Court's decision in *Air and Liquid Systems Corp. v. DeVries*.[36] In this asbestos-related case, the Court dealt with the liability of a manufacturer of "bare metal" equipment—in other words, equipment sold without the asbestos that would need to be added by a third party. The manufacturer defended against a duty to warn on the theory of "bare metal defense." The Court endorsed a duty to warn in this context, rejecting the bare metal defense and adopting a test for third-party parts that imposes a duty to warn on a manufacturer when: (i) its product requires incorporation of a part; (ii) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses; and (iii) the manufacturer has no reason to believe that the product's users will realize that danger. The Court emphasized that the case was limited to the maritime context and based in part on special "solicitude for sailors."

Remedies for Wrongful Death (p. 123)

Introduction (p. 123)

Exclusivity of admiralty in federal court: In *In re Lion Air Flight JT 610 Crash*, 110 F.4th 1007 (7th Cir. 2024), the court held that even though DOHSA claims can be heard in state court, if they are heard in federal court admiralty has exclusive jurisdiction to the exclusion of law. As a result, the Seventh Amendment jury right does not apply.

36. 586 U.S. 446, 2019 AMC 631 (2019).

Wrongful Death Under the General Maritime Law (p. 127)

Yamaha Motor Corp., U.S.A. v. Calhoun[37] allowed state law to supplement federal maritime law for a death of a non-seafarer in state territorial waters but did not fully address how to analyze the resulting choice-of-law questions. The Eleventh Circuit addressed this in *Goodloe v. Royal Caribbean Cruises, Ltd*.[38] In the case the alleged wrongful death occurred in Florida, while Wisconsin was the domicile of the deceased. The court applied a modified version of *Lauritzen*[39] to choose which state's law should apply to a death in state territorial waters.

Chapter 4: Collision and Other Accidents

Pilots (p. 140)

For a recent case applying the rule that collisions caused by compulsory pilots create in rem but not in personam liability, thereby allowing the owner to limit liability, see *SCF Waxler Marine, LLC v. Aris T M/V*, 24 F.4th 458 (5th Cir. 2022).

Place of Suit and Choice of Law (p. 140)

The question of personal jurisdiction over collisions in foreign territorial waters and the high seas arose in *Douglass v. Nippon Yusen Kabushiki Kaisha*.[40] In this collision in Japanese territorial waters, the court addressed the open question whether the Fifth Amendment due process test for personal jurisdiction is the same as the Fourteenth. The court answered that in the affirmative and concluded there was no special exception for admiralty cases. As a result, absent minimum contacts there was no personal jurisdiction over the foreign corporation for a collision in Japanese territorial waters.

37. 516 U.S. 199 (1996).
38. 1 F.4th 1289 (11th Cir. 2021).
39. Lauritzen v. Larsen, 345 U.S. 571 (1953).
40. 46 F.4th 226 (5th Cir. 2022).

Chapter 5: Limitation of Liability

Practice and Procedure (p. 143)

1. In *In re Williams Sports Rentals, Inc.*, 90 F.4th 1032, 1038 (9th Cir. 2024), the Ninth Circuit declined to take a position on whether parties seeking indemnity or contribution are separate parties for limitation actions. Shortly thereafter, however, in *In re Live Life Bella Vita LLC*, 115 F.4th 1188 (9th Cir. 2024), the Ninth Circuit joined the majority of circuits in finding that parties seeking indemnity or contribution are separate parties for the purpose of limitation actions, so that the "single claimant" approach to lifting the stay does not apply. There is a circuit split on this issue, however.
2. After Footnote 715: In *Matter of G&J Fisheries, Inc.*, 67 F.4th 20, 28 (1st Cir. 2023), an answer filed by a claimant in response to a complaint seeking exoneration did not constitute a "claim," for the purposes of Rule F(4) and (5).
3. There is a circuit split as to whether 46 U.S.C. § 30511(a) is jurisdictional. *Martz v. Horazdovsky*, 33 F.4th 1157, 1160 (9th Cir. 2022), joined one side of the split in holding it is jurisdictional.
4. After Footnote 708: The "written notice of claim" that starts the clock, "'reasonable possibility' of a claim or a 'potential claim' is not enough. Rather, the writing must convey to the vessel owner the claimant's actual intent to initiate a claim." It has to contain at least one claim reasonably likely to exceed the value of vessel and pending freight. *Martz*, 33 F.4th at 1160. The Fifth Circuit concluded it was not jurisdictional. *In re* Bonvillian Marine Serv., Inc., 19 F.4th 787 (5th Cir. 2021).
5. At Footnote 720: For an application of this rule that the shipowner cannot force federal adjudication, see *Roen Salvage Co. v. Sarter*,[41] where the state court adjudication could proceed without a stipulation that a federal court would decide on exoneration.
6. *Twombly* and *Iqbal*[42] apply to limitation petitions. Bensch v. Estate of Umar, 2 F.4th 70, 72–73 (2d Cir. 2021).
7. The requirement to publish notice to claimants is not a "technicality," and failure to comply can cause dismissal of the limitation proceeding. *In re* Prosper Operators, Inc., 813 F. App'x 955, 956 (5th Cir. 2020).

41. 17 F.4th 761 (7th Cir. 2021).
42. Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007); Ashcroft v. Iqbal, 556 U.S. 662 (2009).

8. The Limitation Act has a six-month period for the shipowner to file a complaint. Is this time limit jurisdictional? This question was addressed in a pair of Fifth Circuit cases, pointing in different directions. In *In re Eckstein Marine Service L.L.C.*,[43] the Fifth Circuit concluded that beyond the deadline the court lacked subject matter jurisdiction. However, the later Fifth Circuit decision in *In re Bonvillian Marine Service, Inc.*[44] concluded *Eckstein* was no longer good law on the basis of the 2015 Supreme Court case of *United States v. Wong*[45] (which dealt with a similar issue under the Federal Tort Claims Act).

Parties and Vessels Entitled to Limit (p. 148)

1. 2022 Amendments: In the wake of the 2019 Conception disaster, Congress passed legislation[46] to provide that covered small passenger vessels were no longer entitled to limitation of liability. Signed into law on December 23, 2022, the bill amended the Limitation Act to exempt "covered small passenger vessels" from the protection of the Act. In general, the "covered small passenger vessels" are those that carry fewer 49 or fewer passengers on overnight domestic voyages or 150 or fewer passengers not on an overnight domestic voyage.
2. Dead ships. *In re* S. Recycling, L.L.C., 982 F.3d 374 (5th Cir. 2020).

Grounds for Denying Limitation: Privity or Knowledge (p. 149)

The requirement that the owner be without privity or knowledge in order to limit liability extends to knowledge of negligence and unseaworthiness. Furthermore, knowledge for this purpose includes not merely actual knowledge but also constructive knowledge, such as an unseaworthy condition that could have been discovered through diligence. This unseaworthiness can be the result of insufficient equipment or an insufficiently competent and trained crew. SCF Waxler Marine, LLC v. Aris T M/V, 24 F.4th 458 (5th Cir. 2022).

43. 672 F.3d 310 (5th Cir. 2012).
44. 19 F.4th 787 (5th Cir. 2021).
45. 575 U.S. 402 (2015).
46. James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, 136 Stat. 2395.

Chapter 6: Towage

In re Complaint of Moran Philadelphia, 175 F. Supp. 3d 508 (E.D. Pa. 2016) (oral towage contract incorporated by reference terms on website because of course of dealing).

Chapter 7: Pilotage

Introduction (p. 159)

For a recent case examining the complexities of liability when compulsory pilot is aboard, see SCF Waxler Marine, LLC v. Aris T M/V.[47] In this case, the court found that a ship's negligence was solely the result of the compulsory pilot's actions and limited the owner's liability accordingly.

Chapter 8: Salvage

Salvage and Finds Distinguished (p. 166)

1. A contractor that provided maps and software to hunt for sunken treasure could intervene in a salvage case to attempt to assert a maritime lien over artifacts. Salvors, Inc. v. Unidentified Wrecked & Abandoned Vessel, 861 F.3d 1278 (11th Cir. 2017).
2. The Abandoned Shipwreck Act also applies in inland waters, such as Lake Erie, as applied in *Northeast Research, LLC v. One Shipwrecked Vessel*, 729 F.3d 197 (2d Cir. 2013).
3. The Sunken Military Craft Act[48] also applies to many of these historic shipwrecks. For an application of this Act, see *Global Marine Exploration, Inc. v. Republic of France*, 33 F.4th 1312 (11th Cir. 2022) (applying commercial activity exception to Foreign Sovereign Immunity Act) and *Global Marine Exploration, Inc. v. Republic of France*, 151 F.4th 1296 (11th Cir. 2025) (on the Sunken Military Craft Act).

47. 24 F.4th 458 (5th Cir. 2022).
48. Pub. L. No. 108-375, § 1406, 118 Stat. 1811, 2097 (2004).

Chapter 9: Maritime Liens and Mortgages

Categories of Maritime Liens — Liens for Necessaries (p. 179)

1. A lien can arise not under FMLA withstanding a no-lien clause the chief engineer placed on the bunker delivery note when the provider did not have timely notice. World Fuel Services Trading, DMCC v. Hebei Prince Shipping Co., 783 F.3d 507 (4th Cir. 2015).
2. Although fuel is normally a "necessary," there are exceptions. One court held fuel is not a "necessary" and therefore no lien on vessels to which fuel was delivered when fuel would be redelivered to other vessels, not burned. Martin Energy Servs., L.L.C. v. Bourbon Petrel M/V, 962 F.3d 827 (5th Cir. 2020).
3. The collapse of OW Bunker in 2014 gave rise to a series of cases over which party is entitled to a maritime lien when necessaries are supplied through intermediaries and subcontractors. In these situations, bunkers were supplied through intermediaries (or chains of intermediaries), with various parties seeking maritime liens under the Commercial Instruments and Maritime Liens Act (CIMLA). The main issue centered on whether physical suppliers or other intermediaries provided necessaries "on the order of the owner or a person authorized by the owner," as CIMLA provides.[49] The courts have generally denied maritime liens to the physical suppliers acting strictly as subcontractors on the theory that they did not provide necessaries "on the order of the owner or a person authorized by the owner."
    a. Background. Two cases are foundational to the subsequent issue.
        i. The first is *Lake Charles Stevedores, Inc. v. Professor Vladimir Popov MV*,[50] which set forth the general contractor/subcontractor framework that would guide most of the subsequent cases. A general contractor will typically have a lien because it provided necessaries on the order of an authorized person. However, the general contractor usually is not authorized to bind a vessel to a downstream subcontractor, so that subcontractor would not have a maritime lien. The exception is when the entity authorized to bind the ship controls the selection or performance of the subcontractor, in which case the general contractor serves as a form of an agent.

49. 46 U.S.C. § 31342(a).
50. 199 F.3d 220 (5th Cir. 1999).

ii. The second is *Marine Fuel Supply & Towing, Inc. v. M/V Ken Lucky*,[51] which established the "middle-man" or "principal-agent" theory of maritime liens, where a downstream physical supplier can have a lien if the order originated from an authorized person.

b. One of the most significant early OW Bunker cases was *ING Bank N.V. v. M/V Temara*.[52] In that case, the court there held a physical supplier was not entitled to a maritime lien because it did not provide the bunkers on the order of an entity specified in CIMLA. The implication is that the contract supplier alone is entitled to a maritime lien when it contracts with an entity specified in the statute for the delivery of necessaries and those necessaries are delivered pursuant to that arrangement, even if by a subcontractor (in this case, the physical supplier). So the contract supplier "provided" the bunkers within the meaning of the statute, even though a subcontractor delivered them and the contract provider took no title or risk related to them.

c. Although the contractor/subcontractor approach governed most of these lien cases, the line of cases related to *Ken Lucky* never completely died out. For example, in *Valero Marketing & Supply Co. v. M/V Almi Sun*,[53] the Fifth Circuit recognized the validity of *Ken Lucky* in that Circuit but found it not applicable.

d. In *Bunker Holdings Ltd. v. Yang Ming Liberia Corp.*,[54] the court ruled a subcontractor was not entitled to maritime lien because it had a relationship only with the general contractor, and the general contractor was not authorized to bind the vessel. The court was viewed as narrowing *Ken Lucky* to the specific fact pattern of the case where there was an "critical factual admission" by the defendant that the subcharterer (who is authorized to bind the vessel under CIMLA) ordered fuel from the physical supplier. Thus narrowed, *Ken Lucky* only stood for the unremarkable proposition that a maritime lien arises for a physical supplier when a subcharterer orders fuel directly from a physical supplier. This case was viewed as bringing the Ninth Circuit more or less in line with the Fifth and Eleventh.

e. The Fourth Circuit denied a lien where there was a "glaring absence of proof" of authority to bind the vessel. Sing Fuels Pte Ltd. v. M/V Lila Shanghai, 39 F.4th 263 (4th Cir. 2022).

51. 869 F.2d 473 (9th Cir. 1988).
52. 892 F.3d 511 (2d Cir. 2018).
53. 893 F.3d 290 (5th Cir. 2018).
54. 906 F.3d 843 (9th Cir. 2018).

f. The *Ken Lucky* approach was finally applied in the Fifth Circuit in *Three Fifty Markets, Ltd. v. Argos M M/V*.[55]

Conflicts of Laws (p. 185)

1. In the years since the OW Bunker collapse, bunker suppliers have increasingly attempted to contractually choose U.S. law in supply contracts, especially as regards the existence of a maritime lien.
2. In terms of general approach to choice of law in necessaries contracts, if there is no choice-of-law clause, federal courts will apply the *Lauritzen/Rhoditis*[56] approach. If there is a choice-of-law clause, courts will generally respect the parties' choice of law. Triton Marine Fuels v. M/V Chukotka, 575 F.3d 409, 413 (4th Cir. 2009).
3. There is, however, an undercurrent of caselaw suspicious of choice-of-law provisions for maritime liens based on *Rainbow Line, Inc. v. M/V Tequila*.[57] The theory of this objection is that contractually selecting U.S. law is tantamount to contractually providing for a lien, which these cases argue is invalid.
4. In addition to the increase of U.S. choice of law in general for bunker supply contracts, many contracts governed by other law have chosen U.S. law to govern the existence of a maritime lien. This was the case in the recent *Three Fifty Mkts., Ltd. v. Argos M M/V*.[58]

Chapter 10: Marine Insurance

Introduction: Federal or State Law (p. 191)

1. The federal-versus-state-law issue in marine insurance was before the Supreme Court in *Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC*.[59] In this case the Supreme Court confronted the perceived conflict between the *Wilburn Boat* case[60] and choice-of-law provisions in a marine insurance contract. The Court concluded that "choice-of-law

55. 166 F.4th 462 (5th Cir. 2026).
56. Lauritzen v. Larsen, 345 U.S. 571 (1953); Hellenic Lines, Ltd. v. Rhoditis, 398 U.S. 306 (1970).
57. 480 F.2d 1024 (2d Cir. 1973).
58. 166 F.4th 462 (5th Cir. 2026).
59. 601 U.S. 65 (2024).
60. Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310 (1955).

provisions in maritime contracts are presumptively enforceable as a matter of federal maritime law," with "certain narrow exceptions." The Court's decision that *Wilburn Boat* did not apply to choice-of-law provisions allowed the Court to read *Wilburn Boat* narrowly without overturning it.

2. Not all rules regarding express warranties are considered entrenched rules of admiralty, so state law could apply to questions regarding express warranties. It depends on the nature of the warranty at issue. Travelers Prop. Cas. Co. of Am. v. Ocean Reef Charters LLC, 996 F.3d 1161 (11th Cir. 2021).

Types of Insurance (p. 195)

The Hull Policy — Uberrimae Fidei (p. 195)

Uberrimae fidei is the law in the majority of circuits. The First Circuit has strongly affirmed the doctrine in a series of cases, such as *Catlin (Syndicate 2003) at Lloyd's v. San Juan Towing & Marine Services, Inc.*[61] This is true notwithstanding its abandonment in England. QBE Seguros v. Morales-Vázquez, 986 F.3d 1 (1st Cir. 2021), *cert. denied sub nom.* Morales-Vázquez v. Óptima Seguros, 142 S. Ct. 424 (2021).

All Risk Policies and Fortuitous Loss (new)

All risk coverage generally covers all losses (other than those specifically exempted), provided that the losses are "fortuitous." In *Chartis Property Casualty Co. v. Inganamort*,[62] the Third Circuit followed the First, Second, Fifth, and Eleventh Circuits by deciding that in an all-risk policy the insured has the burden of proving that a loss is "fortuitous." The insured had argued it only had the burden of showing that a loss occurred, not that it was fortuitous. The Third Circuit disagreed, putting the initial burden on the insured to show a fortuitous loss.

61. 778 F.3d 69 (1st Cir. 2015).
62. 953 F.3d 231, 234 (3d Cir. 2020).

Chapter 11: Government Liability and Immunity

The Federal Government — The Suits in Admiralty Act (p. 201)

In *Savage Services Corp. v. United States*,[63] the court held that the Oil Pollution Act of 1990[64] preempts the Suits in Admiralty Act[65] sovereign immunity waiver of the United States. The court reasoned that the Oil Pollution Act is a comprehensive remedial scheme and that admiralty claims cannot be used to circumvent that scheme.

63. 25 F.4th 925 (11th Cir. 2022).
64. Pub. L. No. 101-380, 104 Stat. 484, 33 U.S.C. §§ 2701 et seq.
65. Pub. L. No. 109-304, § 6(c), 120 Stat. 1517.