

COMMITTEE NEWS



Admiralty and Maritime Law

Cruise Ship Injuries: Making Way Through Uncharted Waters

If you spent anytime overseas in the military during the 1980's, you'll recall that there was only one TV channel – the Armed Forces Network. I can still recall walking through our living room on Clark Air Force Base in the Philippines and being drawn to and enchanted by overhead helicopter footage of a magnificent maritime masterpiece – a pearly white alabaster cruise ship, the *Pacific Princess*, effortlessly piercing its way through the deep blue sea. There's not much else I remember about "The Love Boat" (other than the theme song), but it remains my first introduction to the mystical charm of a pleasure cruise.

In the time since, I've worked aboard merchant fleets ranging from the Staten Island Ferry in New York Harbor to Offshore Supply Vessels (OSV) and Offshore Drilling Rigs in the Gulf of Mexico. For that reason, ships have become an environment commanding a heightened sense of awareness rather than one for leisure and loosening of inhibitions. In terms of vacation options, what was once child-like fascination has become adult-like trepidation of onboard emergency scenarios.

Read more on page 15



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Chair Message

I am honored to serve as your AMLC Chair for the 2021-2022 year. This Committee thrives because of the values, commitment, and energy of the members. As we enter our third year of global pandemic, we hope to offer additional educational programs, social events, and networking opportunities, both virtually and in-person.

Beginning in March of this year, while largely confined to our homes and offices, we have provided monthly learning sessions through our ongoing presentation of the book *Damages Recoverable in Maritime Matters* (2nd Edition), published in January 2020. This publication was the product of tireless work by dozens of Committee members, as guided by Former-Chair Robert Gardana, Miami, FL. To assist AMLC members to remain up to date on key issues of maritime law, we open each monthly meeting by featuring the authors of one or two chapters. This effort is spearheaded by our Chair-elect, Doug Truxillo, Lafayette, LA. Each presentation provides a convenient opportunity for ongoing learning and discussion by AMLC members.

In addition to our virtual offerings, AMCL is cautiously planning in-person activities. Ever optimistic, we are looking forward to hosting and/or gathering at the following events in 2022 as follows:

- **Jones Act/Regulatory /FLSA Seminar** – Houston, TX–January 2022 (*Philip C. Brickman, Degan, Blanchard & Nash, New Orleans, LA and Matthew Moeller, The Moeller Firm, New Orleans*)
- **ABA Mid-Year Meeting** – Seattle, WA –February 2022
- **Plaintiff’s Lawyers Event** – New Orleans, LA – TBA 2022 (*Jessica Ibert, Lewis, Kullman, Sterbcow & Abramson, LLC*)
- **MARAD/U.S. Coast Guard Event** – Washington, D.C. – Spring 2022 (*Sean Pribyl, Holland & Knight, Washington, D.C.*)
- **29th Biennial Admiralty Law Institute: Jones Act after 100 Years** - New Orleans, LA - March 30-April 1, 2022
- **Joint Longshoremen/Workers’ Compensation CLE Event** – Philadelphia, PA - Winter 2022 (*Aaron Greenbaum, Pusateri, Johnston, Guillot & Greenbaum, LLC, New Orleans, Louisiana*)
- **Advanced Maritime Civil Procedure CLE** – New York, NY – TBD 2022 (*Aaron Greenbaum, Pusateri, Johnston, Guillot & Greenbaum, LLC, New Orleans, and Chris Nolan, Holland & Knight, New York, New York*)
- **ABA Spring Meeting** - Baltimore, MD April 2022



Juliette McCullough
Peacock Piper




We invite anyone interested in planning or attending one of these events to join our next monthly meeting to learn more and get involved!

Looking farther ahead, we will begin to plan for our next multi-day **Admiralty Disruption Seminar**, which will take place in New Orleans in March of 2023. After the extremely successful Inaugural Admiralty Disruption Seminar in 2019, and the well-attended Virtual Admiralty Disruption Seminar in 2021, we are eager to host the next Admiralty Disruption in 2023 in person in New Orleans, LA. We will be looking for panel moderators and speakers, as well as sponsors. AMLC's Admiralty Disruption Seminar provides a fantastic opportunity to present in front of a large audience of industry members.

Despite the upending by the pandemic, three things have remained constant:

- (1) **This Committee has a true commitment to diversity, equity, and inclusion.** We warmly welcome new lawyers and fresh faces and seek to promote people from diverse backgrounds.
- (2) **This Committee rewards those who are willing to work hard and contribute to the mission.** Young lawyers are routinely offered opportunities to take charge of educational programming and lead events.
- (3) **AMLC members provide a network of colleagues who regularly refer work, collaborate, and offer friendship.**

We invite you to add our monthly meetings to your calendar (the third Thursday of each month at 12:00 p.m. EST/11:00 am CST/9:00 a.m. PST, unless otherwise noted) and join us to hear about the AMLC's projects and upcoming events. We welcome all AMLC members to actively participate in the Committee and contribute to its continued success.

As your Chair, I am eager to hear from you with ideas for programming or events this year or beyond. I hope to see each of you at an event in person soon, and, at the latest, in Baltimore for the TIPS Section Conference in April 2022! 



Editors Message

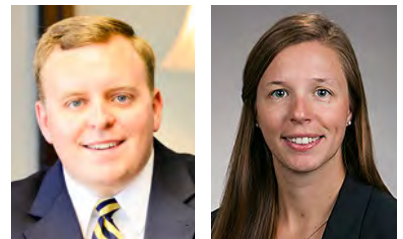
It is our pleasure to present the TIPS AMLC Fall/Winter 2021-2022 Newsletter. Topical as ever, our lead article explores cruise ship injuries, followed by pieces addressing critical Coast Guard and supply chain ensnarement considerations impacting damages. Our Trade Talk piece features Matthew Poole at Steamship Mutual, across the pond, addressing a wide ranging discussion.

We are currently looking for submissions for the next newsletter, and encourage committee members and non-members alike to submit article proposals directly to us at chris.nolan@hklaw.com; CHamilton@shutts.com; and Laura B. Knoll LKnoll@amrl.com. Thank you to the authors who have contributed to this newsletter, and to the section members for their ongoing efforts in supporting this publication. ➤



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TRADE TALK

Our quarterly Trade Talk piece features *Matthew Poole, Steamship Mutual.*

Q. Matthew, tell us what prompted you to get into the maritime legal industry?

R My path to Steamship was a classic case of trying something new! I had reached a crossroads in my prior job working in the public sector. Stuck at a certain level with limited prospects for advancement I felt the time was nigh to look elsewhere. The elsewhere came about as a good friend, who seemed to spend more time in Miami than London with his job at Steamship, suggested I apply for an interview. Steamship had recently expanded its North American portfolio and were recruiting so I thought why not give it a go and see what happens. Thankfully my interview was a success and a job offer was forthcoming.

Q. Can you describe your experience of working at Steamship Mutual?

R I can 100% say making the move was the best thing I have ever done work wise. As alluded to above I came to the job with limited experience hence it was a steep learning curve for sure in terms of learning all things nautical and legal. Coming from a job where I rarely saw anyone face to face into an environment where the interaction and building of relationships is so important was also a huge change.



Each and every person I have worked with has assisted me in some way and I am extremely grateful to all of them for their time, expertise and probably most importantly their patience.

From relatively routine passenger slip and fall cases at the outset to a case load which can involve a med-evac off a fishing vessel in the Bering Sea, to a fuel contamination claim or a dock being hit in some far-flung corner of the world it's fair to say

you can pretty much see it all on a daily basis. With such a diverse Club Membership spread across the US I feel very lucky to be able to see such a varied case load which of course means things are always interesting.

With such a diverse "play book" of claims it also means there is always something new to learn and I feel I am constantly expanding my knowledge and gaining experience of new scenarios or claims.

Handling the claims on a daily basis is clearly the crux of the job but equally as important in many ways is the "people" side of the role. Meeting people and building those relationships is so important so our Members have confidence in our abilities to handle their claims to achieve the best outcomes possible.



The bonus part of the job is the ability to travel and I have been lucky enough to visit Seattle on several different occasions. Meeting our Members in their own backyard and seeing the pride they take in their operations certainly gives me the sense that what I do back in London assists in some way, however small. I am hoping to work my way down the West Coast, then across to Florida and back up the East Coast once the world opens up post COVID!

Q. *What are your views on hiring outside counsel?*

R When considering outside Counsel there are a couple of important areas we look at. The knowledge/experience of the lawyer is clearly one factor we seek to apply to the specific case in question but equally important is the ethos that the claims handling process is team effort between Club, Member and lawyer. From our perspective it is a key part of the process that all buy into this approach from the outset.

The Club takes a very hands on and pro-active role in its approach to claims handling thus the importance of timely reporting cannot be over emphasised. The impact of COVID has in some ways proved a watershed in how we communicate and the use of Microsoft Teams or Zoom calls is now very much the norm which results in much more frequent and accessible methods of getting all parties together in the same “virtual” room.

One thing that has evolved in my experience has been the ability to recognise a bad set of facts early and deal with it accordingly. If liability is going to be found on the part of the shipowner then, in all likelihood, no amount of discovery is going to make a case defensible. Expert opinion can certainly help to mitigate exposure but we are always open to being told a case should be settled as soon as feasibly possible if the facts dictate this is the best course of action.

An example of this involved a vessel collision which resulted in the deaths of two individuals and injuries to several others. It was clear from the outset this was a bad case, with the potential for high exposure, thus with Counsel's assistance and willingness to move forwards quickly all the claims were settled short of any lawsuits being filed. Approaches were made to the attorneys representing the claimants early in the process, mediations were arranged and the claims were successfully resolved short of litigation.

Q. *What legal issues are coming across your desk with some frequency these days?*

R A recurring theme since day one has been the amount of queries generated by the obligation to provide maintenance and cure. It seems the grey areas are getting



ever greyer and the lines are becoming ever more blurred. The concept of when cure becomes palliative is certainly high on the Club's radar as we are frequently seeing cases where doctors appear to be administering treatment which is just dealing with the relief of pain yet are reluctant to make a decision that such treatment has crossed into the realms of being palliative.

We are also seeing the addition of PTSD or psychological issues being attached to relatively routine personal injury cases. It seems the ability to draw out treatment, of any kind, is one way of attempting to exert a degree of leverage over the shipowner.

Given the current climate it would also be remiss to ignore the impact of COVID on the Club. From a maintenance & cure perspective we are seeing crewmembers refusing to attend medical appointments citing a fear of catching COVID thus opening up questions as to whether this equates to a failure to seek treatment on the crewmember's part, such which might justify a suspension of m&c benefits.

In a broader sense the advent of COVID has also brought with it questions of how this interacts with the traditional notions of Club cover and the Club Rules. As with most things to do with P&I there is not a one size fits all answer thus the ability to be adaptable and to think outside the box is important.

Q. For our practitioners, which industry organization(s) do you get the most out of?

R I have yet to attend a specific event as such in the US but have had the opportunity to attend a couple of Occupational Disease Seminars run by the International Group. These seminars, whilst held in London, focused on the long running MARDOC litigation and other trends in occupational disease claims. The speakers from various laws firms in the US were excellent and the seminars proved a great introduction to the nuances of these types of claims.

The "P&I Week" type events run by a number of law firms are also a great opportunity to attend seminars, talks and workshops.

Q. In addition to the AMLC newsletter, of course, which industry publication do you find most useful?

R I am very much of the opinion that one can never have too much information thus I am an avid reader of the newsletters regularly circulated by a number of law firms across the US. Invariably these newsletters focus on industry trends or recent important legal decisions and as such become a really useful resource.



In the pre COVID world when travel was less of an issue lawyers from the US were regular visitors to Steamship for both informal visits or to present on a particular subject. Attending the visits was always helpful and any free advice gained during such visits is always appreciated (you know who you are!)

The post COVID world has seen such events conducted virtually and with the use of technology we are still very much able to attend the numerous seminars, webinars or Q & A sessions which are held. In short we can continue to benefit from such events, even if the way in which we do has changed.

Q. Thank you for taking time to speak with us today. As a final question, what do you really think of US Football compared to English Football, especially now that the lines have been blurred by Ted Lasso!

R A great question to end. Ted Lasso would be a welcome addition to my English football team that is for sure. As a long suffering Ipswich Town fan I am more than happy to say I am huge fan of the NFL but then as an even longer suffering Miami Dolphins fan I'm not sure the US version of football is going to give me much joy any sooner than the English version!

If I could change two things about the NFL it would be to bring Dan Marino circa 1985 back to the Dolphins and secondly thank the Detroit Lions for their time but ask someone else to play on Thanksgiving (it was a painful watch!). ➤

Benefits of AMLC Membership

Opportunities To Become Involved

- Publication in the AMLC Newsletter or TIPS Law Journal
- Networking Opportunities
- CLE and Webinar Opportunities
- Leadership Positions
- Mentoring Relationships
- Young Lawyers and Law Student Writing Competition

Additional Information

For more information regarding the benefits that membership in the AMLC can provide to you, check out our webpage at <http://ambar.org/tipsadmiralty> and join our group on LinkedIn. The Committee is open to all, including non-lawyer maritime professionals, law students and lawyers in every practice area who want to keep abreast of developments in the field.



Coast Guard Joins the Charter Chain Delay Fray and Faces Damage Claims with Genuinely Salty Flavor

They say that time and tide wait for no one, and the U.S. Coast Guard may prove that true the hard way. Vessel delays have ensnarled U.S. ports for the past few years and spurred countless charter chain claims, and the Coast Guard has now joined the fray. In a recent U.S. Court of Appeals for the Third Circuit case, *Nederland Shipping Corp. v. United States*, the Court found that Coast Guard investigation delays are particularly relevant when the delays are ensnarled in the charter chain, and, as in charter party disputes, unreasonable Coast Guard investigations can have consequences on supply chain delays.¹

M/V Nederland Reefer

In 2019, the M/V Nederland Reefer arrived in Delaware carrying a cargo of perishable fruit. The vessel was detained due to evidence of an illegal discharge of bilge water. The shipowner entered into a Security Agreement with the Coast Guard, along with a security bond, to allow the vessel to be released. Even so, she was detained for an additional two weeks. The shipowner filed suit for declaratory relief, sought damages for breach of maritime contract, and asserted a statutory cause of action under the Act to Prevent Pollution from Ships (APPS). The government moved to dismiss, arguing that the APPS claim should have been brought in the U.S. Court of Federal Claims, the district court lacked admiralty jurisdiction, and that APPS does not waive sovereign immunity. The district court ruled in favor of the government, and the shipowner appealed to the U.S. Court of Appeals for the Third Circuit. Ultimately, the Third Circuit found that the contract was a maritime contract invoking admiralty jurisdiction. Now on remand, the Coast Guard finds itself entrenched in a potential cargo damage claim based on its unreasonable delay in releasing the vessel, all of which could have ripple effects along the charter chain.

U.S. Coast Guard Authority Under APPS

The Coast Guard is tasked with protection of the marine environment. To accomplish this, it relies on its broad authority to board vessels and conduct examinations, inspections and review a ship's documents. But such authority is not limitless.

[Read more on page 18](#)



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¹ *Nederland Shipping Corp. v. United States*, 18 F.4th 115 (3d Cir. 2021).



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Little Known Coverage Could Help Ease Continued Supply Chain Woes

News of the recently identified Omicron variant of the SARS-CoV-2 virus is likely eliciting a collective groan from companies already dealing with the vast supply chain disruptions caused around the world by the ongoing pandemic. A confluence of manufacturing shutdowns, unanticipated surge in consumer demand for goods, and mounting backlogs at the nation's ports have sent governments, shippers, logistics companies, and carriers scrambling for solutions to severe supply chain disruptions that have led to spiking transportation costs and long shipping delays. With the holiday season looming, companies engaged in the import and export of goods and materials likely are wondering what can be done to alleviate these issues and stabilize their respective businesses. A recent case in the U.S. District Court for the Central District of California highlights a little-known type of business interruption insurance coverage applicable to supply chain disruptions that may warrant a review of relevant insurance policies.

In *J-M Manufacturing Co., Inc. v. Affiliated FM Insurance Co.*,¹ the court considered cross-motions for summary judgment in a case involving claims for coverage by a manufacturing business affected by supply chain issues. The event in question was the impact and aftermath of Hurricane Harvey in Texas and Louisiana. The plaintiff was involved in the business of manufacturing PVC and related piping. Harvey and the subsequent overtopping of the Colorado River caused seven of the plaintiff's key raw materials suppliers to shut down, severely impacting the plaintiff's business. Among other coverage issues, the court was confronted with the question of whether a supply chain endorsement in the plaintiff's commercial property policy offered coverage for the effects of the supplier shutdowns, and what types of caps and limitations potentially applied to such coverage. Ultimately, on the limited pre-discovery summary judgment record, the court concluded that it was premature to determine whether the specific suppliers had been physically damaged as a result of the alleged events so as to require coverage under the policy.

While *J-M Manufacturing* did not arise in the COVID context, the case highlights a little-known form of business interruption coverage potentially available to businesses facing pandemic related supply chain disruptions—the supply chain endorsement. Importantly, while the policy at issue in *J-M Manufacturing* offered supply chain



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¹ *J-M Mfg. Co. v. Affiliated FM Ins. Co.*, No. 219CV05550JWHSKX, 2021 WL 4891826 (C.D. Cal. July 6, 2021).



coverage only in the event of physical damage to relevant suppliers, the physical damage element is not a universal requirement for such coverage, which instead depends on the specific wording of applicable policies.

Businesses currently facing, or likely to face, supply chain disruptions should consider reviewing their applicable commercial property, general liability, and all-risks policies, among others, for supply chain coverage. This coverage, where available, often is found under any relevant business interruption endorsement. In particular, companies should evaluate: (1) whether supply chain coverage exists, (2) whether it requires a physical loss component, and (3) what limits and deductibles apply. Most insurance policies require prompt notice to the insurer and may require that the insured take certain actions to mitigate loss. Companies who believe coverage may exist to alleviate their supply chain woes may wish to consult counsel with supply chain, logistics, and insurance coverage experience to evaluate the merits of a potential claim for coverage. Additionally, companies reviewing their applicable policies as part of routine business hygiene may wish to evaluate adding supply chain coverage in light of the new COVID-19 reality and no clear end in sight to global supply chain issues. ➤

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Cruise Ship.. continued from page 1

In the last decade we have witnessed notable calamities in which pleasure cruises have turned from dream to nightmare. In 2012 the Costa Concordia ran aground off the coast of Tuscany, causing the vessel to rollover or “list” flat on its starboard side, injuring 64 passengers and sending 32 to an early demise. A year later, the Carnival Triumph suffered an engine fire that killed the power onboard, taking the air conditioning and septic systems down with it and giving an entirely new connotation to the nautical term “poop deck”.

There are numerous other newsworthy incidents that have birthed litigation, but the most riveting, relevant and recent among them are the wave of lawsuits filed against cruise operators for deaths and illness from COVID-19. In April of 2020, Juishan Hsu, individually and on behalf of her husband Chung Chen, filed a lawsuit against Princess Cruise lines for gross negligence in the Central District of U.S. US District Court of California, *Juishan Hsu et al v. Princess Cruise Lines Ltd.*, 2:20CV03488. The lawsuit alleges that despite three major outbreaks on their ships in February, Princess Cruises continued sailing at various ports of call. One of those ships was the Ruby Princess, which had experienced an outbreak on the sailing just prior to the voyage on which the Plaintiffs sailed in March.

On the same day that case was filed, Susan Dorety filed a similar lawsuit against Princess Cruise lines related to the second of two February voyages on the Grand Princess where outbreaks occurred, *Susan Dorety v. Princess Cruise Lines Ltd.*, 2:20CV03507.

In that case it is alleged that Susan and Michael, her retired firefighter husband from Crowley, Texas, boarded the vessel to celebrate their 40th anniversary after the California-based cruise operator had just disembarked symptomatic passengers from the previous sailing and left another 60 exposed passengers on board. The lawsuit further alleges that while the company emailed the passengers who had already disembarked to alert them of their exposure, they did not alert the new passengers - even after a symptomatic crew member departed the vessel mid-voyage. Chung Chen and Michael Dorety each eventually succumbed to COVID-19 and passed away shortly after disembarking their cruises.

Since then, Carnival, parent company of Princess Cruise Lines, has been hit with a proposed class action for negligence and negligent infliction of emotional distress and has joined Norwegian Cruise Lines in being sued by their individual investors for concealing infections, downplaying the gravity of the pandemic, and spreading the virus at various ports around the world - all while various individual personal injury lawsuits around the country have trickled in. The legal challenges the personal injury cases will have to overcome are significant.



The “reasonable care” standard for all who are on board for purposes not adverse to the shipowner’s legitimate interests was set forth by the Supreme Court in [Kermarec v. Compagnie Gen. Transatlantique.](#), 355 U.S. 902, 78 S. Ct. 335, 2 L. Ed. 2d 259 (1957).

Beyond that are the ancient Limitation of Liability Act of 1851, Mar. 3, 1851, ch. 43, 9 Stat. 635, and the Death on the High Seas Act, [Pub.L. 109–304, § 6\(c\)](#), Oct. 6, 2006, 120 Stat. 1511 which, interestingly enough, was promulgated the same year of the [Jones Act](#), June 5, 1920, ch. 250, 41 Stat. 988, and precisely 100 years before the 2020 pandemic.

While being permitted to refile in September of 2021, three lawsuits stemming from the Ruby Princess incident were thrown out this past August for 1) failing to allege the amount of time between the alleged exposure and the date their COVID-19 symptoms began or received a positive test result, 2) failing to show that Plaintiffs had actually contracted the virus onboard, and 3) in the Cheng case, failure to show that the spouse had been appointed the personal representative of the estate of her late husband.

The unprecedented public health challenge the pandemic presents has leaked into nearly every crevice of the global economy and could potentially alter seascape of the general maritime law as it relates to passenger safety aboard cruise vessels. The three major North American brands, Carnival, Princess, and Holland America Line, plan to have at least 50% of their fleets sailing in October, increasing through the end of the year. Following close behind will be Europe and Asia. Notwithstanding the CDC’s admonishment that high-risk travelers should avoid cruise ship travel whether unvaccinated or not, passengers and cruise operators alike, “soon will be making another run”.

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Coast Guard... continued from page 11

The prevailing federal law over shipboard environmental violations is APPS, a federal statute passed to implement various environmental obligations that the U.S. undertook when it entered into the International Convention for the Prevention of Pollution from Ships (MARPOL) aimed at eliminating the intentional pollution of the oceans by oil and other harmful substances.

In practical terms, APPS violations are usually prosecuted as *presentation* of a falsified Oil Record Book (ORB) to a Coast Guard boarding officer or inspector in violation of [18 U.S.C.A. § 1001 \(West\)](#), even if the overboard discharges and false entries occurred beyond U.S. waters. Indeed, the violation is usually not the pollution or act of making the relevant false entry in the ORB. Rather, the illegal act is presentment of the ORB with false entries in a U.S. port.

Inspection and Detention Authority

In a typical APPS prosecution, the Coast Guard conducts the initial vessel inspection and may consider an expanded MARPOL examination if there is probable cause of a potential APPS violation, and it also may refer the case to the U.S. Department of Justice (DOJ) for further criminal investigation. DOJ would then carefully evaluate each case and aim for a timely exercise of prosecutorial discretion. Although the Coast Guard is authorized to hold a ship in port until legal proceedings are completed, they generally take into consideration factors such as minimizing disruption to the vessel's schedule, treating seafarer witnesses fairly and allowing the ship to depart in order to continue earning freight. They can also place conditions on the vessel to ensure that civil or criminal proceedings are not jeopardized if the vessel is granted departure clearance.

General authority to grant departure clearance to foreign flag ships generally resides under U.S. Customs and Border Protection (CBP). However, concomitant with the Coast Guard's implementing regulations under APPS is the authority to impose conditions for release of a vessel through acceptance of a bond and by requesting that CBP withhold clearance as described in APPS "... if reasonable cause exists to believe that the ship ... may be subject to a fine or civil penalty ... Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary [of DHS]." [33 U.S.C.A. § 1908\(e\) \(West\)](#). Release of a detained vessel is commonly accomplished through both a "Security Agreement" and security, such as posting a bond.

APPS precedent has made clear that the Coast Guard has broad, unreviewable discretion to establish both financial and non-financial conditions for granting departure clearance for detained foreign-flagged vessels suspected of APPS




violations. While the Coast Guard is not required to accept a bond, when it does, additional obligations are triggered, including those to protect against inequitable, unreasonable and unjustifiable delay.

Here, Nederland executed a Security Agreement with the United States on March 8, 2019, and agreed to post a surety bond of \$1 million as security. On March 11, 2019, all replacement crewmembers were on board, but the vessel did not receive a departure clearance. On March 28, 2019, the vessel was finally permitted to leave port, although by then, the vessel expected to incur economic losses due to the delay, including the costs associated with making alternative arrangements for its perishable cargoes and missing its next commercial commitment. Due to the unreasonable nature of the delay, Nederland sought damages under [33 U.S.C.A. § 1904\(h\) \(West\)](#).

The Maritime Contract

Notably, shipowners claimed damages under a maritime contract. The Third Circuit considered that the primary interest of maritime jurisdiction is the protection of maritime commerce and opined that the contract here had a “genuinely salty flavor.” Ultimately, the Court found the contract was a maritime contract invoking admiralty jurisdiction since the primary objective of the instant Security Agreement was to provide sufficient security to obtain the vessel’s departure clearance so it could continue its trade. Indeed, Congress intended to make the United States liable when a vessel is unreasonably detained and allow shipowners to seek compensation for any loss or damage suffered in such cases.

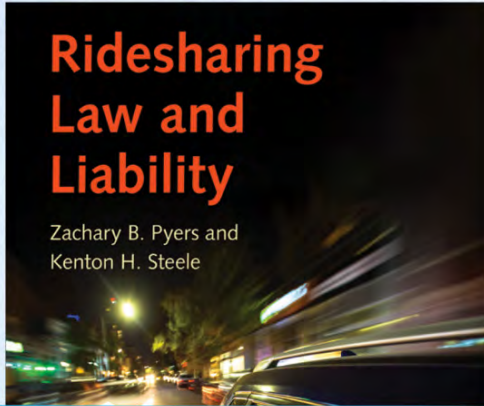
Next Steps

Although the case is on remand for consideration of Nederland’s claims, the Third Circuit made clear that the Coast Guard’s authority in detaining vessels suspected of APPS violations is not limitless. Moreover, the case could offer useful guideposts as to the scope of compensation available for loss or damages due to unreasonable delay against the U.S., and notably, how such unreasonably delays could be interpreted under respective charterparties. Regardless, the U.S. will be embroiled in a potential cargo claim that started as an environmental case, a not-too-common scenario, and developments are worth tracking for cargo and charterer interests alike. 

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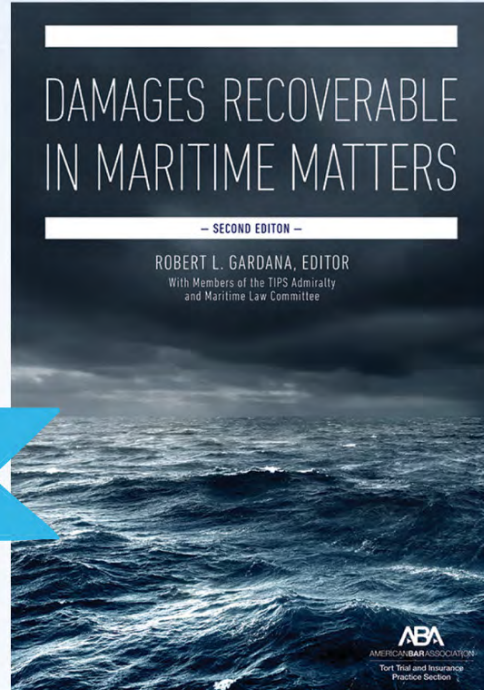
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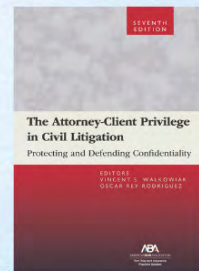
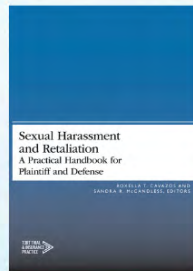
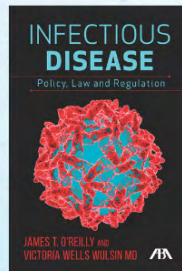
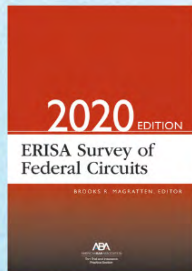
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