

Legal Issues

Statutory Revision, Developments in Insurance and other Aspects
of Maritime Law

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Topics

- Goals of Statutory Revision
- Very Brief Developments in Insurance
- Legal Development – Return of the “*Sieracki Seaman*” as a potential source for liability and unpredictability



Statutory revision



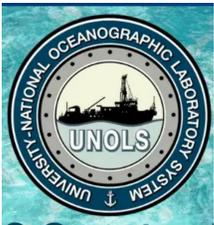
Some current issues with statutory and regulatory regimes.

- ARF vessels have been denied COA's because certain USCG offices claim they are “public vessels” for inspection purposes.
- ARF vessel have been subject to federal pilotage requirements.
- ARF vessels are being made subject to statutory requirements that are applicable to vessels in commercial service, as in USCG Policy Letter 24-01 (Mar. 6, 2024).



Reason for Undertaking Statutory Revision

- USDOJ taking a different position regarding whether ARF vessels are subject to the suits at admiralty act.
- 1990: USDOJ takes the position that the R/V ENDEVOR not subject to the Public Vessels Act as the operator (RI Board of Governors of Higher Ed. were not acting as agents of the United States)
- 1990-2023: U.S. fights finding that educational institutions operating US-owned vessels are agents of the United States.
- 2024: USDOJ the position that the in operating the R/V ROGER REVELLE, the Regents of the University of California are agents of the United States.
 - Contrary to position UNOLS had taken on inspection regime.



Need for Statutory Solution

- Contractual language subject to judicial interpretation and can't supersede statutory and regulatory directives.
- Regulatory rulings by the coast guard subject to changes in USCG administration at national and local level and cannot supersede statutory language.
- Some of what the ARF may want may be currently precluded by statute.
- Doubt about agency interpretations
 - Statutes that agency administer
 - Agency's own regulations



Immediate Prompt USDOJ's Change of Position Regarding Liability

- 1990: In *Rollins v. Rhode Island Board of Governors of Higher Education*, the USDOJ takes the position that the operator of R/V ENDEVOR is *not* an agent of the United States and the ENDEVOR is not subject to the Public Vessels Act.
- 1990-2023: Government takes position that vessels belonging to US by run by educational institutions are no subject to the Public Vessels Act.
- 2024: *Jurgens v. Regents of the University of California*, the USDOJ takes the position that the operator of R/V/ ROGER RAVELLE is an agent of the United States and the ENDEVOR is subject to the Public Vessels Act.



Differences, But not Legally Significant



Goals of Statutory Revision

- (1) Have vessels of the ARF to subject to the inspection regime administered by the USCG, of subtitle II of title 46 of the U.S. Code.
- (2) Exempt vessels of the ARF from the Federal pilotage requirements of 46 U.S.C. § 8502;
- (3) Ensure, to the extent possible, that vessels of the ARF are treated as public vessels for purposes of international law by the U.S. Department of State;
- (4) Ensure that vessels of the ARF are not considered to be in Commercial Service;
- (5) Allow vessels of the ARF, their operators, and their operators' employees and agents to take advantage of the protections of the Suits in Admiralty Act (SAA), 46 U.S.C. §§ 30901 –18, and the Public Vessels Act (PVA), 46 U.S.C. §§ 31101-13;
- (6) Ensure that members of a science party, without regard to their employment status on any Oceanographic Research Vessel are not able to seek the remedies provided to "seamen." under the Jones Act, and the judge-made general maritime law of the United States; and
- (7) Ensure that members of the science party, whatever their employment status, on any ORV are not considered "passengers".

Anything else operators UNOLS would like to achieve.

Individual Drafting Issues

- Defining the ARF Vessels for reference through out title 46 of the U.S Code.
- Amending the definition of “passenger” to ensure members and observers of the science party are excluded.
- Amending the definition of ”scientific personnel” to make sure they are not considered “seamen” for the purposes of remedies available to seamen.
- Treating ARF vessels as a public vessel for purposes of liability, sovereign immunity



Individual Drafting Issues, Cont'd.

- Subjecting ARF Vessels to inspection regime so that Certificate of Inspection available without special arrangements with the USCG
- Exempting ARF from federal pilotage requirements in the same manner as dredge vessels.
- Making it clear that operators of ARF Vessels are acting as agents of the United States, which would make government-owned ARF Vessels subject to the Public Vessels Act.



Extending Sovereign Immunity to the fullest extent possible for ARF vessels.

Individual Drafting Issues,

- Amending the definition explanation of “Oceanographic” research vessel to exclude ARF Vessels from “commercial service” as well as “trade or commerce,” to deal with the recent position of the USCG that an ARF vessel though not in “trade or commerce” may be in “commercial service.”



Insurance

Legal development in what law applies.

Rising rates as result of allision of M/V Dali.



New Legal Developments: Choice of Law Part of US Insurance Law

- Background:
 - traditional rule in insurance was one of “utmost good faith” – any breach in warranty, even if not related to a loss, would void the contract.
 - Change in many states and England, the center of marine insurance, for a breach of warranty to void an insurance policy the breach must be a cause of the loss.
 - Many U.S. marine insurers try to get around this change with a choice of law clause, choosing New York law (utmost good faith).

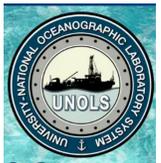


The Vessel that Helped Make Law



New Legal Developments: Choice of Law Part of US Insurance Law: *Great Lakes Insurance, SE v. Raiders Retreat Realty Co. LLC* (2024).

- Great Lake Insurance insures 70' Viking Cockpit owned by Raider's Retreat Realty, a Pennsylvania company.
- Vessel runs aground in ICC in Florida, suffering \$300k in damage.
- Vessel's firefighting equipment was out of date and uninspected, in breach of a warranty in the policy.
- Policy: NY law applies.
- Pennsylvania law: Raider's Retreat can recover. Faulty fire equipment not the cause of the grounding and choosing NY law not enforceable.



Supreme Court (9-0!): Choice of law clause in policy enforceable

M/V DALI Allision

Thoughts on potential cost.



M/V DALI



M/V Dali: Claims so far

- Salvage \$19.5m
- Repair \$28m
- City of Baltimore
 - Demolition and removal of old bridge.
 - Design and construction of new bridge
 - Clean up and remediation of waters
 - Lost revenue from Bridge (\$53m in 2023) and taxes from other businesses
- Class action of business owners
 - lost business revenue.

total estimate (Business Insider): \$1.5b



M/V DALI: Insurance

- Bridge: Chubb
- Dali: Britannia (International Group of P&I Clubs) and reinsurers.



New (Old) Legal Issue

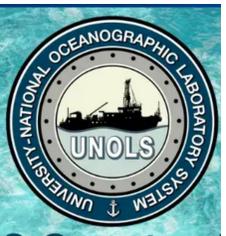
Sieracki Seamen and Members of the Science Party



Background (simplified): Maritime Remedies for Personal Injury

Mid-Twentieth Century

- Seamen
 - Wages for voyage
 - Maintenance and cure (medical care and room and board).
 - Warranty of seaworthiness (strict liability)
 - Jones Act (1920) (negligence with a slight burden of proof.
- Longshoremen's and Harbor Workers' Compensation Act (LHWCA) (1927) (not "master and members of the crew" of a vessel)
 - Federal Workers Compensation
 - Seaworthiness under *Seas Shipping Co. v. Sieracki* (1946) for seamen *pro hac vice*.



Changes Mid to Late Twentieth Century

- ORVA (1965): Scientific personnel not seamen for Jones Act Purposes.
- Amendments to the LHWCA (1972).
 - name changed to make it gender neutral
 - Recovery for seaworthiness eliminated for maritime employees
 - Substituted with limited negligence recovery explained in *Scindia Steam Nav. Co., Ltd. v. De Los Santos* (1981)
 - Turnover duty
 - Active control.
 - Duty to warn.
- *Chandris, Inc. v. Latsis* (1995)(new test for seaman status)
 - Whether the employee's duties "contribute to the function of the vessel or to the accomplishment of its mission"
 - Whether the employee has "a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and nature."



Revival of *Sieracki* Seamen: Increasing Attention from Plaintiffs' Lawyers

- Those doing work aboard a vessel without an employer – e.g., independent contractors – are not covered by the LHWCA 1972 amendments.
- If helping to accomplish the ships mission a court might consider those working on board as *Sieracki Seamen* and allow them to sue for breach of the warranty of seaworthiness.
- *Rivera v. Kirby Offshore Marine, L.L.C.* (2020). U.S. Court of Appeals for the Fifth Circuit (supervising federal trial courts in Texas, Louisiana and Mississippi): held that a pilot was able to recover a *Sieracki* seaman for breach of warranty of seaworthiness.
- Could be argued for members of science party without employers – e.g., graduate students and volunteers.
- Raised by the plaintiff in *Jurgens v. Regents of the University of California*
- A legislative solution would be best.

