Flagging the Floating Turbine Unit: Navigating Towards a Registerable, First-Ranking Security Interest in Floating Wind Turbines

Alexander Severance and Martin Sandgren | Article

This Article explores the possibility of applying existing traditional international and domestic admiralty law to provide an internationally recognized first-ranking security interest in Floating Turbine Units ("FTUs"). If FTUs could be documented and registered as vessels or ships under the maritime laws of a country (flag state), as a general rule, it also should be possible to obtain a ship mortgage over the registered FTU in that flag state–"the law of the flag will invariably govern the mortgage[,] which will be a fundamental part of the lender's security." Read more…

Defending Arctic Drilling Operations Against Environmentalist Pirates

James C. Winton and Justin T. Scott | Article

This Article addresses the rights of a vessel owner/operator and an oil company engaged in exploration activities in remote Arctic ocean regions to protect its operations against those who would interfere with the vessels being used. It first addresses the scope of duties owed to those who are on board a vessel with the express or implied permission of the owner/operator, stowaways, and those aboard for purposes adverse to the interests of the owner/operator. It then discusses the traditional rights and remedies available to vessel owners/operators and to the lease operator oil companies to protect drilling operations from environmental activists who threaten to disrupt operations in the Arctic seas. Finally, based on recent case law, we suggest new theories and methodologies to protect operations, utilizing 200-year-old doctrines and procedures to stop such interference before it occurs. Read more…

The CMI and the Panacea of Uniformity – An Elusive Dream?

Stuart Hetherington | Essay

This Article aims to explain the history that led to the formation of the (Comité Maritime International) CMI and to describe the work of the CMI–from which you can draw your own conclusions as to whether it has achieved its founders' objectives. It will also refer to some of the work in which the CMI is currently engaged, as well as identify areas of possible further involvement by the CMI. Read more…

PRC Shipbuilding Disputes in London Arbitration: The Threat of Parallel Proceedings in China and

THE CONSEQUENCES AND POSSIBLE ALTERNATIVES

PETER MURRAY AND LIN JIANG | ESSAY

Much is written about the legal system in China and how on the one hand it is biased in favour of local parties and on the other hand it is no more than a tool of the state. Recent cases in the maritime courts in China may give some support to the first view. This Article will review how those cases have arisen and explore the reasons why they have come about. However, this review is only half the story because very recent developments suggest that the court system is self-regulating to prevent this occurrence. This Article will also consider whether the self-regulation is a welcome move and indeed whether it might be considered as an example of the legal system being a tool of the state. Read more…

REGAL-BELOIT REVISITED IN THE REVERSE

YAAKOV U. ADLER | ESSAY

In its landmark 2010 decision in *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, the United States Supreme Court held that the Carriage of Goods by Sea Act (COGSA or Act), and not the Carmack Amendment (Carmack or Amendment), governed the inland rail segment of an inbound (overseas import) multimodal shipment under a through bill of lading. In the opinion drafted by Justice Kennedy, the Court expressly declined (parenthetically) to answer the question of what happens in the reverse context, that is, where cargo is lost or damaged on the inland rail segment of an outbound (overseas export) multimodal shipment under a through bill of lading. Read more…

TAXATION OF MARINE SHIPPING INCOME: A CRITIQUE OF U.S. TAX LAWS IN THE ENERGY TRANSPORT INDUSTRY

ALBERT D. FARR | COMMENT

As a converted World War II Liberty freighter, the METHANE PIONEER, with her balsa wood supports and plywood insulation, made a courageous transatlantic voyage in 1959 from Lake Charles, Louisiana, to Canvey Island, United Kingdom, to deliver the world's first shipment of liquefied natural gas (LNG). This successful crossing helped the maritime practice strengthen its image in the oil and natural gas industry and reassured the global marketplace that LNG tankers would play a vital role in the commodity's international transportation. Fifty years later, innovative natural gas extraction methods in the U.S. Barnett, Eagle Ford, and Marcellus shale fields have revolutionized the production process and created an oversupply of the commodity.Read more…

THE POTENTIAL APPLICATION OF 18 U.S.C. § 1115 TO OFFSHORE DRILLING DISASTERS: A REQUIEM FOR THE SEAMAN'S MANSLAUGHTER ACT?

ALLISON FISH | COMMENT

Section 1115 of United States Code Title 18, colloquially referred to as the Seaman's Manslaughter Act, provides, "Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed . . . shall be fined under this title or imprisoned not more than ten years, or both." Although a seemingly straightforward statute, significant changes in the maritime industry since its inception have rendered modern application of the statute a considerably difficult task. Read more…

A COURT FOR ICARUS: DEFINING MARITIME TORT JURISDICTION IN AIRCRAFT CRASH CASES

DAVID A. FREEDMAN | COMMENT

When aircraft crash into navigable waters, a myriad of legal issues arise. Before any can be adjudicated, an admiralty court must first ascertain whether it has jurisdiction. Practitioners should be aware of the procedural and substantive rules inherent in admiralty before choosing where to bring suit. These rules can be quite different from their state or common law counterparts. For example, while the United States Constitution guarantees the right to a trial by jury under certain circumstances, there is no corresponding right in admiralty. Prejudgment interest, which is often recoverable in admiralty, may not be recoverable if the claim is brought under federal question jurisdiction. Different statutes of limitations may apply. This nonexhaustive list highlights the significance in the choice of where to bring suit. Read more…

WIDENING GYRE: THE SEAMAN'S EXPANDING RIGHT TO UNEARNED WAGES

BRYAN J. KITZ | COMMENT

Seafarers who become ill or injured during their service of a vessel have long been entitled to maintenance and cure. This ancient remedy, however, does not obligate employers to provide seamen with only maintenance and cure. Ill or injured seafarers are also entitled to unearned wages, which have developed into a fundamental component of the maintenance and cure remedy. Read more…

THE SAFE-BERTH WARRANTY AND ITS CRITICS

DAVID R. MAASS | COMMENT

This Comment defends the safe-berth warranty from its critics and argues that the Fifth Circuit should reverse course and adopt the safe-berth warranty. Part II provides an overview of the safe-berth warranty, unpacking the definition of a safe port and cataloging the defenses and mitigating doctrines that may allow the charterer to escape liability. Part III discusses how courts in England and the United States have applied the safe-berth warranty in a

variety of situations that highlight different aspects of the warranty. Part IV surveys criticisms of the safe-berth warranty and explains why the Fifth Circuit rejected the warranty. Finally, Part V argues that the criticisms leveled against the safe-berth warranty fail and urges the Fifth Circuit to restore uniformity by adopting the safe-berth warranty. Read more…

The Problem's in the Proof: How Public Companies Can Prove Compliance with the Jones Act Vessel Citizenship Requirements for Eligibility in U.S. Coastwise Trade

Katherine Wiarda | Comment

In order to engage in U.S. coastwise trade, a vessel must, among other things, be owned by a U.S. citizen. The Jones Act sets forth the requirements that must be satisfied in order for a person or entity to be deemed a "citizen" of the United States. While the statute deals with several categories of citizens, of particular importance for coastwise trade are corporations. Under the Jones Act, a corporation is deemed a "citizen" of the United States, and therefore eligible to engage in coastwise trade, if (1) "it is incorporated under the laws of the United States," (2) the chairman of the board of directors and CEO are U.S. citizens, (3) no more than a minority of the number of directors necessary to constitute a quorum are noncitizens, and (4) at least 75% of the shares of the corporation are owned by U.S. citizens. In addition, where title to a vessel is held, in whole or in part, by other entities, each entity contributing to the ownership interest must itself be eligible to document vessels with a coastwise endorsement. Although the first three of these requirements are fairly straightforward, fulfilling the final obligation–the 75% ownership interest requirement–has become an increasing source of concern for publicly traded corporations. Over the years, establishing how publicly traded corporations can comply with the Jones Act requirements to own and operate a vessel in coastwise trade has become an increasing source of debate. Read more…

The "Perils of the Sea"-man Status Question: The Fifth Circuit Falls Behind FELA's Advancements in Remedies in Favor of the Continued Confusion Surrounding the Seaman Definition

L. Taylor Coley | Note

Larry Naquin worked four years for Elevating Boats, L.L.C. (EBI), as a vessel repair supervisor on a fleet of lifeboat vessels, spending 70% of his time inspecting, cleaning, painting, performing engine repairs, and replacing damaged parts. These vessels were usually jacked up, docked, or moored, but two or three days a week, he would do his work while the boats were moving to a different part of the canal. Occasionally, Naquin was dispatched to work on vessels in open water. He spent the other 30% of his employment working in the shipyard's fabrication shop or operating its land-based crane. On November 17, 2009, the shipyard crane he was operating suddenly failed, causing the crane to topple onto a nearby building. Naquin was able to jump from the free-falling crane house but sustained a broken left foot, a crushed right foot, and a lower abdominal hernia. His cousin's husband,

another EBI employee, was crushed to death by the crane. In November 2010, Naquin filed a Jones Act suit, alleging that EBI was negligent in its construction and/or maintenance of the shipyard crane. Read more…