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# The 1920 Death on the High Seas Act: *A Remedy Whose Time Has Gone*

by Michael D. Eriksen

*"[C]ertainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules."*[1]

Maritime law is one of the most complex areas of American law. No aspect is more tangled than the remedies for maritime wrongful deaths of "nonseafarers," *i.e.*, those who are not seamen or longshore workers.

Depending on the fortuity of where a nonseafarer's fatal injury occurs on the world's navigable waters, survivors who sue in courts in the United States either may be able to invoke modern maritime choice of law rules to access economic *and noneconomic* damages under state wrongful death laws or they may be limited to their "pecuniary" losses (*i.e.*, economic damages) by the 1920 Death on the High Seas Act (DOHSA).

In 1920, state wrongful death laws generally provided only economic damages, like DOHSA. As time passed, however, most states added *noneconomic* compensatory wrongful death elements of damage to recognize that human beings are more than economic assets to their families.[2] Additionally, the Supreme Court has acknowledged that general maritime common law allows nonpecuniary *punitive* damages in tort cases.[3] DOHSA has not kept pace with these developments. As a result, the pecuniary damages allowed by DOHSA have become a shield for marine tortfeasors rather than the claimants' sword they once were.

This article puts DOHSA in historical context, and argues for parity between federal maritime wrongful death elements of damage and those prevailing in the states. That was the situation when DOHSA was passed in 1920, but is not now.

DOHSA, as recodified (*i.e.*, renumbered) by Congress in 2006, reads (emphasis added):

TITLE 46 - SHIPPING
Subtitle III - Maritime Liability
CHAPTER 303 - DEATH ON THE HIGH SEAS
Sec. 30302. Cause of action

When the death of an individual is caused by *wrongful act, neglect, or default occurring on the high seas beyond three nautical miles from the shore of the United States*, the personal representative of the decedent may bring a civil action in admiralty against the person or vessel responsible. The action shall be for the exclusive benefit of the decedent's spouse, parent, child, or dependent relative.

Sec. 30303. Amount and apportionment of recovery

The recovery in an action under this chapter shall be *a fair compensation for the pecuniary loss* sustained by the individuals for whose benefit the action is brought. The court shall apportion the recovery among those individuals in proportion to the loss each has sustained.

Sec. 30304. Contributory negligence

In an action under this chapter, contributory negligence of the decedent is not a bar to recovery. The court shall consider the degree of negligence of the decedent and reduce the recovery accordingly.

Sec. 30305. Death of plaintiff in pending action

If a civil action in admiralty is pending in a court of the United States to recover for personal injury caused by wrongful act, neglect, or default described in section 30302 of this title, and the individual dies during the action as a result of the wrongful act, neglect, or default, the personal representative of the decedent may be substituted as the plaintiff and the action may proceed under this chapter for the recovery authorized by this chapter.

Sec. 30306. Foreign cause of action

When a cause of action exists under the law of a foreign country for death by wrongful act, neglect, or default on the high seas, a civil action in admiralty may be brought in a court of the United States based on the foreign cause of action, without abatement of the amount for which recovery is authorized.

Sec. 30307. Commercial aviation accidents

(a) Definition. In this section, the term "nonpecuniary damages" means damages for loss of care, comfort, and companionship.

(b) Beyond 12 Nautical Miles. In an action under this chapter, if the death resulted from a commercial aviation accident occurring on the high seas beyond 12 nautical miles from the shore of the

United States, additional compensation is recoverable for nonpecuniary damages, but punitive damages are not recoverable.

(c) Within 12 Nautical Miles. This chapter does not apply if the death resulted from a commercial aviation accident occurring on the high seas 12 nautical miles or less from the shore of the United States.

Sec. 30308. Nonapplication

(a) State Law. This chapter does not affect the law of a State regulating the right to recover for death.

(b) Internal Waters. This chapter does not apply to the Great Lakes or waters within the territorial limits of a State.

DOHSA claims are subject to the three-year federal maritime tort statute of limitations, 46 U.S.C. §30106 (unless a contract, such as a cruise ticket, specifies a shorter time). DOHSA suits may be dismissed for forum non conveniens or for lack of personal jurisdiction, which is determined under applicable long-arm and federal due process requirements.[4]

### The *Calhoun* Case

In 1989, a 12-year-old Pennsylvania girl, Natalie Calhoun, was killed in a jet ski accident in the territorial waters of Puerto Rico, while vacationing at a resort there. Natalie's parents sued the jet ski manufacturer for product liability in federal court in Pennsylvania, which had long-arm jurisdiction over the defendant. DOHSA did not apply because the incident occurred within three nautical miles of the shoreline of a U.S. state or territory.

Because the incident occurred in navigable waters, however, general maritime subject matter jurisdiction existed. Accordingly, in *Calhoun v. Yamaha,* 216 F.3d 338 (3d Cir. 2000) (*Calhoun II*), the Third Circuit U.S. Court of Appeals turned to modern federal maritime common law choice of law rules, including the doctrine of depecage. Depecage is the application of the laws of different sovereigns to separate issues in a legal dispute, *i.e.*, "choice of law on an issue-by-issue basis."[5]

The Third Circuit decided that the basic, underlying liability issues would be governed by substantive general federal maritime law to maintain uniform national standards of maritime behavior. The court held that Puerto Rico, where the incident occurred, had the greatest interest in having its law apply to the punitive damages claim. However, because Natalie's survivors would experience their personal harms where they lived, the court decided that compensatory damages would be determined under Pennsylvania's wrongful death law, which included certain noneconomic damage elements. The Supreme Court had previously held in *Yamaha v. Calhoun,* 516 U.S. 199, 210-11, 213 (1996) (*Calhoun I*), that the national maritime uniformity principle is *not* offended if damages vary depending on which state's wrongful death act is invoked.

Had DOHSA applied, Natalie Calhoun's life would have had little legal value because she was not a wage earner and noneconomic damages would not have been allowed.

### TWA Flight 800

On July 17, 1996, TWA Flight 800 crashed into the Atlantic Ocean, killing all on board. Because the plane went down approximately nine miles offshore of Long Island, NY, DOHSA applied. That made the lives of 16 teenaged victims from Pennsylvania nearly worthless from a legal standpoint. To change that outcome, congressional representatives from Pennsylvania introduced DOHSA §30307, which retroactively allowed compensatory noneconomic damages for "commercial aviation accidents."[6] However, DOHSA's original noneconomic damage prohibition was left intact for all other maritime fatalities, due to intense lobbying by shipping interests.

### The *Deepwater Horizon*

On April 20, 2010, the contemporary relative harshness of DOHSA's pecuniary damages regime was once again brought into stark relief. The *Deepwater Horizon* floating oil platform exploded more than 200 miles offshore of the United States, killing 11 workers and spewing oil into the Gulf of Mexico. Long-arm jurisdiction over the tortfeasors was possible in U.S. states that provide noneconomic wrongful death damages to decedents' survivors. However, DOHSA potentially stood in the way. To add insult to injury, the owner of the *Deepwater Horizon* was expected to petition a federal district court sitting in admiralty to limit its liability to the vessel's *post-casualty* value (like the owner of the *Titanic* did a century ago). An outraged U.S. House of Representatives quickly passed H.R. 5503, which retroactively expanded DOHSA damages and repealed the current Limitation of Liability Act. These measures died in the U.S. Senate after July 15, 2010, when the oil stopped flowing (and in the face of another powerful lobby by shipping interests).

### General Maritime Jurisdiction and DOHSA Jurisdiction — An Incomplete Overlap

Historically, the basic building blocks for a successful tort action have remained constant, wrongful death and maritime cases being no exception. The court must have jurisdiction over the subject matter. There must be a choice of substantive law that recognizes a cause of action and elements of damage. There must be jurisdiction over the defendant or res, and there must be a reasonable likelihood that any judgment be collectible.

Article III, §2 of the U.S. Constitution extends federal admiralty judicial power to "all cases of admiralty and maritime jurisdiction." The Judiciary Act of 1789, Ch. 20, 1 Stat. 73, conferred original maritime subject matter jurisdiction on federal courts. In the same law, Congress "saved to suitors" the traditional right to pursue in personam maritime tort and contract actions in state court. Thus, in personam maritime tort claimants may choose a state or federal forum. Actions in rem against vessels, however, may be brought only in a federal district court sitting in admiralty. Maritime tort suits filed in state court, including DOHSA claims, are not removable to federal court except on diversity grounds.[7]

"The fundamental interest giving rise to [general] maritime [subject matter] jurisdiction is 'the protection of maritime commerce.'"[8] Therefore, the traditional locality test for such jurisdiction has given way to a test which focuses on both location and connection with maritime activity.[9] The location part of the test requires

a court to determine whether the tort occurred on navigable waters or was caused by a vessel on navigable water. The connection part of the test raises two issues. The first issue is whether the incident has "a potentially disruptive impact on maritime commerce." The second issue is whether "the general character" of the activity giving rise to the incident shows a "substantial relationship to traditional maritime activity." The collision of two pleasure boats, for example, may satisfy these requirements.[10]

Substantive maritime law is an amalgamation of federal maritime legislation and general maritime common law (including choice of law rules). The application of this law to a state or federal tort claim is required, and is allowed only, when the tort is maritime in nature.[11]

"The shore is now an artificial place to draw a line. Maritime commerce has evolved along with the nature of transportation and is often inseparable from some land-based obligations."[12] Therefore, certain land activities, such as cruise shore excursions, are now subject to maritime subject matter jurisdiction and law.[13]

DOHSA, on the other hand, applies only if certain events occur on the high seas (*e.g.*, a "wrongful act, neglect, or default" resulting in death or fatal injury).[14] Location is the sole DOHSA jurisdictional inquiry.

## Early Claims for Maritime Wrongful Death

Historically, there was no common law right of action for wrongful death in either British or U.S. courts. Such claims were considered to be personal to the decedent rather than to the survivors, and were, therefore, extinguished by death. That situation was remedied in Britain by the passage of Lord Campbell's Act in 1846.[15] That statute removed common law barriers to the decedents' survivors recovering their pecuniary (*i.e.,* economic) losses caused by a wrongful death. Lord Campbell's Act did not extend to in rem actions, however, limiting the act's usefulness regarding vessel-related maritime deaths.

By the late 1800s, many U.S. states had passed versions of Lord Campbell's Act that allowed only economic damages. However, the early state statutes were inconsistent.[16] At least one required a criminal conviction of the tortfeasor as a condition precedent to civil liability. Some were expressly limited to deaths occurring in the state's own territory. Others excluded in rem actions altogether.

By contrast, the modern wrongful death acts of U.S. states generally are not so limited; and, as previously mentioned, most (but not all) now provide noneconomic compensatory damage elements that recognize human beings as more than economic assets.

In the late 1800s, as now, the high seas were viewed as part of the global commons, *i.e.*, an area outside the control of any sovereign.[17] Nevertheless, state and federal courts sometimes applied early state wrongful death laws to high seas fatalities.[18] That result would most often occur when the vessels were connected to the states in question, or when the owners submitted themselves and their vessels to federal admiralty court to limit liability for a marine casualty under the federal Shipowners Limitation of Liability Act of 1851.

### *The Harrisburg*

*The Harrisburg*, 119 U.S. 199 (1886), exposed a so-called void in available maritime death remedies in U.S. courts. The plaintiff's husband was killed when the *M/S Harrisburg*, a steamer from Philadelphia, collided with the decedent's schooner in Massachusetts waters. The plaintiff was time-barred from suing the at-fault vessel operator in personam under the Massachusetts or Pennsylvania wrongful death statutes. Therefore, she sued and arrested the vessel in rem in federal admiralty court. The Supreme Court held that there was no distinct general maritime right of action for wrongful death to propel the plaintiff's in rem action.[19]

The void, if any, was a byproduct of the era's prevailing common law choice of law rule, lex loci delicti. Under that rigid rule, "the law of the place where the tort was committed" was the only choice. However, the high seas lacked a sovereign to provide law for courts to choose. Enacting a federal maritime wrongful death statute for use in U.S. courts came to be seen as a way to create the necessary lex loci.

Ultimately, the archaic lex loci deliciti rule was abandoned for most maritime tort purposes in *Lauritzen v. Larsen,* 345 U.S. 571 (1953). The flexible *Lauritzen* maritime choice of law approach analyzes which sovereigns or states have the most significant relationships to the incident and parties, and the dominant interests in having their law applied. This "most significant relationship" standard (which was applied by the court in *Calhoun II*) has replaced lex loci delicti in most other jurisdictions in the United States.[20]

Had the *Lauritzen* choice of law rule been in place before 1920, with situs no longer being dispositive, maritime claimants and courts could have more easily invoked the wrongful death acts of states having an interest. That choice would have significantly reduced the need, if any, for a dedicated federal maritime wrongful death statute.

## Other Practical Limits on Tort Claims in the Late 1800s

The broad extraterritorial long-arm jurisdiction we have today was essentially nonexistent at the time of *The Harrisburg,* and thereafter.[21] In that era, the defendant, or res, in dispute in U.S. civil proceedings usually had to be physically served with process in the state where the court sat. That process was commonly referred to as "tag jurisdiction."

Adequate sources of financial indemnity for marine tort liabilities were also far less prevalent than today. A properly arrested vessel could provide both jurisdiction over the res and a guarantee of some judgment collectibility. Thus, actions in rem against vessels were then a much more valuable and frequently used legal tool in maritime tort cases than now. *The Harrisburg* upset the system in 1886 more than it ever could or would have today.

## The Enactment of a Federal Maritime Wrongful Death Statute (1903-1920)

In retrospect, *The Harrisburg* seems more about the consequences of miss-

ing a statute of limitation regarding an existing state remedy, rather than demonstrating a need for a new federal remedy. Nevertheless, in 1903, the Maritime Law Association of the United States (MLAUS) — then a group of leading commercial maritime lawyers — began to propose specific bills to Congress to create federal maritime wrongful death lex loci for use in courts in the United States.[22]

Against this backdrop, the *RMS Titanic* foundered in the North Atlantic on April 15, 1912. More than 1,500 people perished. The British owner was ultimately able to petition a federal court in the United States to limit its liability (to the value of the fares and lifeboats) under the federal Shipowner's Limitation of Liability Act of 1851.[23] The decedents' survivors were denied an adequate remedy, which provided additional impetus for the passage of a federal maritime wrongful death statute.[24]

The congressional debate on DOHSA centered on whether such a federal statute would and should displace otherwise available state wrongful death acts — a classic federal power versus states' rights struggle. At the end, the states' rights advocates prevailed. The final DOHSA in 1920 included the last-minute Mann Amendment, which struck out language expressly limiting state wrongful death statutes to "causes of action accruing within the territorial limits of any [s]tate."[25] The Mann Amendment was intended to allow survivors of high seas decedents to elect between DOHSA and state wrongful death laws.

In *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986), however, the Court voted 5-4 to disregard the Mann Amendment for the sake of national maritime uniformity. The majority simply declared that DOHSA preempts the field of remedies for fatal high seas events.[26] After *Tallentire,* where DOHSA applies (*i.e.*, in its locus) it applies absolutely. In such cases, DOHSA's pecuniary damages elements may not be "supplemented" by either state or foreign noneconomic elements, if any.[27]

## What Are the "High Seas"?

"Congress confined DOHSA to the high seas."[28] However, the term "high seas" in DOHSA is not formally defined, and the Supreme Court has not yet decided if the sovereign waters of foreign countries are included. This is important, because if the relevant fatal events occur entirely outside of DOHSA's locus (*i.e.,* the high seas), but general maritime subject matter jurisdiction otherwise exists, then state wrongful death damages should be accessible as in *Calhoun II*.

• *"High Seas" in International Law* — Before 1492, the high seas were *not* universally recognized to have the same type of geopolitical boundary all the way around. For example, some Europeans reportedly believed that the Atlantic Ocean dropped off the face of the earth west of Portugal.

Pre-DOHSA courts in the United States, on the other hand, distinguished the nonsovereign high seas from the sovereign territorial seas of the (round) world's maritime countries.[29]

The "high seas" are defined in the 1958 Convention on the High Seas as "all parts of the sea that are not included in the *territorial sea* or in the *internal waters* of a [s]tate."[30] A maritime country's "territorial seas" are defined in the 1958 Convention on the Territorial Sea and the Contiguous Zone as "a belt of sea adjacent to its coast."[31] "Waters on the landward side of the baseline of the territorial sea form part of the *internal waters* of the [s]tate."[32] Both treaties were ratified by the U.S. Senate.

When such a term has been left undefined in a domestic federal statute, as in DOHSA, the Supreme Court has readily borrowed the term's formal definition in a Senate-ratified treaty, even one arising after the statute in question. For example, in 1965, the Court did so regarding the undefined key term "internal waters" in the 1953 Submerged Lands Act.[33] The Court rejected concerns that co-opting such a treaty definition into a domestic statute would impart an "ambulatory quality" to the term, based upon "future changes in international law or practice."

• *"High Seas" in DOHSA's Legislative History* — Throughout the ongoing DOHSA hearings and debates, the term "high seas" was repeatedly given its international, nonsovereign meaning. For instance, in 1912 an MLAUS lawyer stated at a House hearing, "We leave out the territorial waters of foreign countries."[34]

In 1916, the phrase "beyond a marine league [*i.e.,* three nautical miles] from the shore of any [s]tate…" was added after "on the high seas" to emphasize that the territorial seas and navigable internal waters of the U.S. were excluded.

DOHSA's title from 1912 until shortly before enactment in 1920 was "[a] Bill relating to the maintenance of actions for death on the high seas *and other navigable waters*." At the end, however, the title was narrowed to cover only "death on the high seas," a strong indicator of DOHSA's limited geographical reach.

• *"High Seas" in Case Law* — In *United States v. Louisiana*, 394 U.S. 11, 22 (1969) (emphasis added), the Court recognized:

> Nearest to the nation's shores are its *inland* or *internal waters*. These are subject to the complete sovereignty of the nation, as much as if they were a part of its land territory, and the coastal nation has the privilege even to exclude foreign vessels altogether. Beyond the inland waters, and measured from their seaward edge, is a belt known as the marginal or *territorial sea*. Within it the coastal nation may exercise extensive control but cannot deny the right of innocent passage to foreign nations. *Outside the territorial sea are the high seas, which are in international waters not subject to the dominion of any single nation.*

In 2000, the Second Circuit U.S. Court of Appeals affirmed a district court's conclusion that the DOHSA phrases "on the high seas" and "beyond three nautical miles from the shore of the United States" do not mean the same thing:

> The most natural reading of this text is that a death must occur both on the high seas *and* beyond a marine league from the shore for DOHSA to apply. If a death occurred (1) neither on the high seas nor beyond a marine league; (2) on the high seas but not beyond a marine league; *or (3) beyond a marine league, but not on the high seas,* then DOHSA does not apply.[35]

The court believed that depriving "high seas" of its own distinct meaning in DOHSA would violate familiar rules of statutory interpretation.

Nevertheless, some Florida U.S. district courts and the Ninth Cir-

cuit U.S. Court of Appeals have envisioned a high seas for DOHSA purposes that has only a single boundary (the one closest to home) and that, at its other *unlimited* extremes, may even encompass navigable lakes, rivers, and creeks *within the land-mass of other sovereign countries*.

These courts were all influenced heavily by *Sanchez v. Loffland Brothers Co*., 626 F.2d 1228 (5th Cir. 1980), which involved the death of a seaman on navigable Lake Maracaibo in Venezuela.[36] The only issue decided in *Sanchez,* however, was that all of the decedent's survivors' potential death remedies (which possibly included DOHSA) were time-barred. A single footnote in *Sanchez* observes in passing that a few courts had applied DOHSA to "foreign territorial waters." The issues presented in this article, such as the Senate-ratified treaty definition of "high seas," were not engaged in *Sanchez* because there was no reason to do so.

Three years later, in *Chick Kam Koo v. Exxon Corp*., 699 F.2d 693, 694-95 (5th Cir. 1983), the Fifth Circuit determined that a district court's finding, "that DOHSA 'by its title and by its terms' applied only to accidents occurring 'on the high seas' and not to deaths that 'occurred in [the] territorial waters of Singapore,'" did not *"overlook controlling statute or case law"* (emphasis added).

With great respect, courts that have over-read *Sanchez* should bravely admit the error, correct it, and move on. Other courts should not compound the error. As the Supreme Court has aptly observed, "[t]he demand for tidy rules can go too far."[37]

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## DOHSA Going Forward

Had modern, expanded state wrongful death acts, maritime choice of law rules, and long-arm provisions been in place before 1920, DOHSA probably would not have been needed. Additionally, in 1970 the Supreme Court fashioned a general maritime common law right of action for wrongful death, overruling *The Harrisburg* (an original catalyst for DOHSA).[38]

DOHSA is obsolete.

DOHSA today is invoked mostly by marine tortfeasors, as a convenient escape hatch from any responsibility for the severe emotional pain and suffering their victims' survivors almost invariably suffer. This is ironic, because DOHSA was enacted to create a remedy, not block them.

• *Congress Should Fix DOHSA* — DOHSA should be amended 1) to allow the possibility of nonpecuniary compensatory and punitive damages in all high seas death cases, and/or 2) to overrule *Tallentire* by reaffirming Congress' intention, expressed in the 1920 Mann Amendment to DOHSA, to allow survivors of high seas decedents to elect more generous state wrongful death remedies in lieu of DOHSA.

Fixing DOHSA is urgent, given the high numbers of U.S. nonseafarers who perish annually on non-U.S. navigable waters during vacations, cruises, other trips, or while working. The repair need not wait until the next catastrophic disaster, such as *Deepwater Horizon* or *Costa Concordia,* occurs just outside our three-mile limit.

Alternatively, DOHSA could simply be repealed. Removing DOHSA as a preempting obstacle in courts in the United States would unleash practical and more complete contemporary remedies for maritime wrongful death.

In short (and to paraphrase a salty Marine gunnery sergeant), Congress needs to "lead, follow [the states], or get [DOHSA] the hell out of the way" now.

• *In the Meantime, Courts Can and Should Limit DOHSA's Geographic Application* — DOHSA, despite its preemptive quality after *Tallentire*, was never intended to apply everywhere. The high seas do not include non-navigable waters or the sovereign territorial seas and navigable internal waters of the United States and foreign countries.

This conclusion is supported by DOHSA's legislative history, by applicable statutory interpretation canons, by formal definitions of relevant terms in subsequent Senate-ratified treaties, and by official U.S. State Department pronouncements recognizing the internationally accepted outer boundaries of the territorial seas of the world's maritime countries.[39]

As the Court observed in *Lauritzen v. Larsen*, 345 U.S. 571, 577 (1953) (emphasis added):

The shipping laws of the United States, set forth in *Title 46* of the United States

Code, comprise a patchwork of separate enactments, some tracing far back in our history and many designed for particular emergencies. While some have been specific in application to foreign shipping and others have been confined to American shipping, many give no evidence that Congress addressed itself to their foreign application and are in general terms which leave their application to be judicially determined from context and circumstance. *By usage as old as the Nation, such statutes have been construed to apply only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law.*

Where DOHSA does not apply, but maritime subject matter jurisdiction and general maritime law do apply, modern common law choice of law rules and depecage may be invoked. These rules offer U.S. survivors of nonseafaring maritime decedents a proven route to state wrongful death acts, including any noneconomic elements of damage.[40]

The Supreme Court has repeatedly acknowledged that variations in wrongful death damages elements (depending on which sovereign's law is applied) do not per se offend the national maritime uniformity principle, which focuses instead on rules of maritime behavior.[41]

Besides, what could be *more* uniform than the term "high seas" having the same meaning throughout the law of the land, particularly in all national statutes and treaties?❑

[1] *The Sea Gull*, 21 F. Cas. 909, 910 (C.C. Md. 1865) (Chase, C.J.).

[2] Carney & Schap, *Recoverable Damages for Wrongful Death in the States: A Decennial View,* J. OF BUS. VALUATION AND ECON. LOSS ANALYSIS 1-9 (2008).

[3] *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404, 411-12 (2009).

[4] *See, e.g., Loya v. Starwood Hotels & Resorts Worldwide, Inc*., 583 F.3d 656 (9th Cir. 2009) (dismissing DOHSA claim for forum non conveniens); and *Fraser v. Smith*, 594 F.3d 842 (11th Cir. 2010) (dismissing DOHSA claim for lack of personal jurisdiction under Florida Long-arm Act).

[5] BLACK'S LAW DICTIONARY 503 (9th ed. 2009).

[6] Cong. Rec., Vol. 143, No. 87, E1282 (June 20, 1997).

[7] *Romero v. International Terminal Operating Co.,* 358 U.S. 354, 371 (1959); *see, e.g., Argandona v. Lloyd's Registry of Shipping,* 804 F. Supp. 326 (S.D. Fla. 1992) (DOHSA claims filed in state court not removable under federal question jurisdiction).

[8] *Norfolk So. Ry. Co. v. Kirby,* 543 U.S. 14, 25 (2004).

[9] *Executive Jet Aviation, Inc. v. City of Cleveland,* 409 U.S. 249 (1972); *Sisson v. Ruby,* 497 U.S. 358 (1990); *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.,* 513 U.S. 527 (1995).

[10] *See Foremost Ins. Co. v. Richardson,* 457 U.S. 668 (1982).

[11] *Doe v. Celebrity Cruises, Inc.,* 394 F.3d 891, 899-900 (11th Cir. 2004). The author filed an amicus brief in this case.

[12] *Norfolk So. Ry. Co. v. Kirby,* 543 U.S. 14, 25 (2004); *see also*, generally, the Extension of Admiralty Jurisdiction Act of 1948, 46 U.S.C. §30101.

[13] *See, e.g., Gentry v. Carnival Corp.,* 2011 WL 4737062 (S.D. Fla., Oct. 5, 2011) (cruise excursion).

[14] *See Motts v. M/V Green Wave,* 210 F.3d 565, 571 (5th Cir. 2000).

[15] *The Vera Cruz*, 10 App. Cas. 59 (House of Lords, 1884).

[16] H. Rep. No. 1419, *Actions for Death on the High Seas,* 64th Cong., 2d Sess., 3 (1917); *see also, e.g., The Alaska,* 130 U.S. 201, 209 (1889) (no in rem remedy under New York death act).

[17] *See, e.g., The Scotia,* 81 U.S. 170, 187 (1871) (The high seas are a place where "no statute of one or two nations can create obligations for the world."); *The Scotland,* 105 U.S. 24, 29 (1881) (same); *The Belgenland,* 114 U.S. 355, 369 (1885) (same).

[18] *See The Hamilton,* 207 U.S. 398 (1907).

[19] *The Harrisburg,* 199 U.S. at 219.

[20] *See, e.g.*, *Piamba Cortez v. American Airlines, Inc.*, 177 F.3d 1272 (11th Cir. 1999) (Florida death act applied to Columbia plane crash, under Florida choice of law rules and depecage).

[21] *See Pennoyer v. Neff*, 95 U.S. 714 (1878).

[22] Whitelock, *A New Development in the Application of Extra-territorial Law to Extra-Territorial Marine Torts,* 23 HARV. L. REV. 403, 416 (1909).

[23] *See Oceanic Steam Nav. Co. v. Mellor,* 233 U.S. 718 (1914); and EATON & HAAS, TITANIC: TRIUMPH AND TRAGEDY, 297-310 (3d ed. 2011).

[24] 51 Cong. Rec. H1928 (1914).

[25] 66 Cong. Rec. H4482-87 (1920); *see* 46 U.S.C.A. §30308(a) (2006 recodification of DOHSA section which incorporates the Mann Amendment).

[26] *Tallentire*, 477 U.S. at 227.

[27] *See, e.g.*, *Dooley v. Korean Air Lines Co., Ltd.*, 117 F.3d 1477 (D.C. Cir. 1997), *aff'd*, 524 U.S. 11 (1998) (Korean damages could not supplement DOHSA damages); *cf.*, *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978) ("Congress did not limit DOHSA beneficiaries to recovery of their pecuniary losses in order to encourage the creation of non-pecuniary supplements.").

[28] *Higginbotham,* 436 U.S. at 622.

[29] *See* note 17.

[30] 1958 Convention on the High Seas, art. I, Apr. 29, 1958, 13 U.S.T. 2312 (emphasis added).

[31] 1958 Convention on the Territorial Sea and the Contigous Zone, art. I, Apr. 29, 1958, 15 U.S.T. 1607.

[32] *Id.* at art. V (emphasis added).

[33] *United States v. California,* 381 U.S. 139, 166 (1965); *cf.*, *In re Air Crash Off Long Island, New York on July 17, 1996*, 1998 WL 292333 *7 (S.D.N.Y. June 2, 1998).

[34] *Actions for Death on the High Seas* at 10, House Jud. Cmte. Hearing, August 6, 1912.

[35] *In re Air Crash Off Long Island, New York, on July 17, 1996*, 1998 WL 292333 *3 (S.D.N.Y. June 2, 1998), *aff'd*, 209 F.2d 200 (2d Cir. 2000) (emphasis added).

[36] *See, e.g., Howard v. Crystal Cruises, Inc.,* 41 F.3d 527, 529 (9th Cir. 1994) (citing *Sanchez* for proposition that DOHSA covers foreign "territorial waters"); and *Moyer v. Rederi,* 645 F. Supp. 620, 623-24 (S.D. Fla. 1986) (same); *accord, Motts v. M/V Green Wave,* 210 F.3d 565, 571 (5th Cir. 2000).

[37] *Sisson v. Ruby,* 497 U.S. 358, 364, n. 2 (1990).

[38] *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970).

[39] *See* Office of Ocean Affairs, U.S. Department of State, *Limits in the Seas*, *available at* http://www.state.gov/e/oes/ocns/opa/c16065.htm.

[40] *See, e.g., Calhoun v. Yamaha Motor Corp.,* 216 F.3d 338 (3d Cir. 2000) (applying modern maritime choice of law rules and depecage); and *In re Air Crash at Belle Harbor, New York on Nov. 12, 2001,* 2006 WL 1288298 (S.D.N.Y. May 9, 2001) (same; *and adopting the most generous available remedy*); *cf.*, *e.g.*, *Piamba Cortez v. American Airlines, Inc.*, 177 F.3d 1272 (11th Cir. 1999) (Florida death act and noneconomic damages applied to Columbia plane crash, under Florida choice of law rules and depecage).

[41] *See Sea-Land Services, Inc. v. Gaudet,* 414 U.S. 573, 588 n. 22 (1974) ("Congress [in excluding state waters from DOHSA] was not concerned that there be a uniform measure of damages for wrongful deaths occurring within admiralty's jurisdiction."); *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 624 (1978) (same); *Yamaha Motor Corp. v. Calhoun,* 516 U.S. 199, 210-11, 213 (1996) (variations in damages, depending on which state's wrongful death act is applied, do not disturb uniformity of national maritime law).

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