No. 18-266

IN THE SUPREME COURT OF THE UNITED STATES

FRANCIS & MARY MARION, CHARLES & MARY PINCKNEY, JOHN & ELIZABETH RUTLEDGE, JAMES S. THURMOND, AND ESSIE MAE WASHINGTON-WILLIAMS,

Petitioners,

v.

SALLY'S SEAFOOD SHACK, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT

Brief N
Attorneys for Respondent
Oral Argument Requested

QUESTIONS PRESENTED

I. Whether the Limitation Act, 46 U.S.C. §§ 30501-12, provides an independent basis for admiralty jurisdiction where a vessel sinks at its anchorage and the vessel's owner was in no way the cause of the claimants' injuries?

II. Under 28 U.S.C. 1292(a)(3), should a district court's judgment provide appellate jurisdiction when the court determined a party can limit their liability under the Limitation Act but did not determine whether they are liable?

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David W. Robertson & Michael F. Sturley, *Vessel Status in Maritime Law: Does Lozman Set A New Course?*, 44 J. Mar. L. & Com. 393 (2013) 14, 18

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OPINIONS BELOW

The United States District Court for the District of South Carolina granted Sally's Seafood Shack, Inc.'s ("Seafood Shack") petition under Supplemental Rule F of the Federal Rules of Civil Procedure to limit its liability pursuant to the Limitation Act, 46 U.S.C. §§ 30501-12. App. at 9a. The court bifurcated the trial, and in completing phase one found that Seafood Shack is entitled to limit its liability under the Limitation Act. App. at 9a. The court found that the Limitation Act provides an independent basis for admiralty jurisdiction and that Seafood Shack is entitled to limit its liability under the Act. App. at 13a. Claimants appealed. App. at 1a.

The United States Court of Appeals for the Fourth Circuit dismissed the claimants' appeal after oral argument for lack of interlocutory jurisdiction under 28 U.S.C. § 1292(a)(3). App. at 1a. The Fourth Circuit held that the Limitation Act provided an independent basis for admiralty jurisdiction. App. at 4a. The Fourth Circuit, however, held that 28 U.S.C. § 1292(a)(3) did not provide grounds for interlocutory appeal and dismissed the appeal. App. at 6a.

The United States Court of Appeals for the Fourth Circuit denied the claimants' subsequent petition for rehearing. App. at 7a.

JURISDICTIONAL STATEMENT

Petitioners' filed a petition for writ of certiorari on September 4, 2018, and this Court granted the petition for certiorari on December 3, 2018. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. art. III, § 2, cl. 1

28 U.S.C. § 1291

28 U.S.C. § 1292(a)(3)

28 U.S.C. § 1333(1)

46 U.S.C. § 30502

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46 U.S.C. § 30511

STATEMENT OF THE CASE

Sally's Seafood Shack, Inc. ("Seafood Shack") operates a floating restaurant on the *F/V Flamingo*, a converted fishing vessel. App. at 2a. The *F/V Flamingo* was moored on the banks of the Cooper River in Charleston, South Carolina, until an unfortunate event occurred on Friday, July 17, 2015. App. at 10a.

John Calhoun, an employee of Seafood Shack, and a member of the crew aboard the *F/V Flamingo* worked in the galley. App. at 10a. Mr. Calhoun was responsible for washing dishes, cleaning the space, and assisting the chef. App. at 10a. On the day of the accident, Mr. Calhoun was instructed to light the gas range and began the process before getting distracted by a phone call. App. at 14a. Mr. Calhoun was properly trained in how to light the gas range, and the vessel was properly equipped to enable him to carry out the task. App. at 14a. Notwithstanding, on July 17, 2015, Mr. Calhoun failed to complete his task before carelessly stepping out to take the phone call. App. at 14a. The unlit gas range caused gas to accumulate within the galley until an unknown trigger, likely the pilot light on another range, triggered an explosion. App. at 14a.

The explosion ripped a hole in the *F/V Flamingo*'s hull beneath the waterline and the vessel quickly sank at its anchorage. App. at 10a. Eight people were injured during the incident. App. at 10a. Three couples, Francis and Mary Marion, Charles and Mary Pinkney, and John and Elizabeth Rutledge, were having dinner at two of the tables in the dining room. App. at 10a. While Mr. James T. Thurmond was dining with his Daughter, Essie Mae Washington-Williams at a third table. App. 10a.

The *F/V Flamingo* was employed as a fishing vessel for twenty years prior to Seafood Shack's purchase of the vessel in 2008. App. at 10a. During its tenure as a dedicated fishing vessel it made hundreds of ocean voyages in the North Atlantic pursuing its catch. App. at 10a. Since the *F/V Flamingo*'s conversion to a restaurant the vessel has been indefinitely moored on the banks of the Cooper River in Charleston, South Carolina. App. at 10a. The specific portion of the river that the *F/V Flamingo* was moored is surrounded by a cofferdam. App. at 10a. The cofferdam protected the *F/V Flamingo* but prevented the vessel from reaching the main portion of the river if it became detached from its moorings. App. at 10a.

The post-incident value of the *F/V Flamingo* was less than one-thousand dollars ($1000) and there was no "pending freight." App. at 2a. Therefore, Seafood Shack satisfied the requirements of 46 U.S.C. § 30511(b)(1)(A) in triggering the district court's admiralty jurisdiction by agreeing to make $1000 available to pay claims. App. at 10a.

The United States District Court for the District of South Carolina granted Seafood Shack's petition to limit its liability under the Limitation Act, 46 U.S.C. §§ 30501-12, and subsequently held it was entitled to limit its liability. App. at 14a. On appeal, the United States Court of Appeals for the Fourth Circuit dismissed by published opinion finding that the Limitation Act provided an independent basis for admiralty jurisdiction, but ultimately that the court lacked interlocutory appellate jurisdiction under 28 U.S.C. § 1292(a)(3). App. at 6a.

SUMMARY OF THE ARGUMENT

This court should affirm the Fourth Circuit Court of Appeals and hold that the Limitation Act provides an independent basis for admiralty jurisdiction. The framers of the United States Constitution saw the necessity of the federal government having original jurisdiction over admiralty matters and granted original jurisdiction to federal courts in Article III, § 2, cl. 1 of the Constitution. Accordingly, the law of admiralty in the United States is intended to provide a uniform and harmonious body of law for vessels, crews, and masters passing in and out of various interstate and international jurisdictions.

This Court's precedent has consistently supported finding that admiralty jurisdiction lies within Article III courts, and Congress has done its part in passing legislation to fill in the gaps. Congress saw the importance of limiting a ship owner's liability for actions that were affected through their agents and sought to encourage investment in maritime commerce through the implementation of the Limitation Act, 46 U.S.C. §§ 30501–12. Accordingly, the Limitation Act provides protection against liabilities for investors looking to enter the maritime trades through shipbuilding or ship ownership.

Seafood Shack enjoys the protection of the Limitation Act because the *F/V Flamingo* is a vessel within the meaning of the statute. Furthermore, Seafood Shack meets all the requirements of the Limitation Act because Seafood Shack deposited a sum of $1000 with the court to pay claims. The value of the vessel and pending freight was less than $1000 and Seafood Shack complied with the statute by depositing such a sum. Moreover, Seafood Shack falls directly in line with the stated purpose of the Limitation Act. Mr. Calhoun, an agent of Seafood Shack, was negligent cause of the explosion causing the petitioners' injuries. Therefore, Seafood Shack, the owners of the *F/V Flamingo* are the intended target for protection by the Limitation Act. To hold that the Limitation Act provides an independent basis for jurisdiction here will uphold this nations policy of promoting harmony and uniformity in admiralty law and ring true to congressional intent.

The Fourth Circuit properly dismissed the interlocutory appeal under 28 U.S.C § 1292(a)(3) because the district court's order did not determine the rights and liabilities of the parties. The district court only determined that Seafood Shack's liability, if any, is limited under the Limitation Act. The district court did not determine whether Seafood Shack is liable to the petitioners.

Since the enactment of the section 1292(a)(3), circuit courts have come to different conclusions on what consists a district court's determination of rights and liabilities. It is time for this Court to seek uniformity in the judicial system. Congress enacted section 1292(a)(3) to only apply to a certain situation – allowing interlocutory appeal only after liability has been determined but before the damages hearing. This case does not present that circumstance.

The Court should not expand section 1292(a)(3) to situations where congress did not intend for it to apply. Additionally, allowing interlocutory appeal under these circumstances will create uncertainty and inefficiency among the judicial system. Adhering to congressional intent allows there to be certainty along with creating the most efficient way for cases to proceed in the judicial system.

ARGUMENT

This Court should review the United States Court of Appeals for the Fourth Circuit's dismissal of claimants' appeal under admiralty jurisdiction, *de novo*. *Langnes v. Green*, 282 U.S. 531, 537, 1931 AMC 511 (1931) ("… in admiralty, cases are tried *de novo* on appeal.").

The limitation of liability has long proliferated the United States' jurisprudence regarding admiralty and maritime actions. Congress passed the Limitation Act in 1851 with the intention of encouraging investment in maritime trade and shipbuilding. 46 U.S.C. §§ 30501-12. The purpose of the Limitation Act, not often disputed, is to limit a shipowner's liability to the value of the vessel and pending freight where the owner lacks privity or knowledge with regard to an incident giving rise to a claim. 46 U.S.C. §§ 30505(a-b).

This case implicates Article III Courts' authority over cases of admiralty and maritime jurisdiction. U.S. Const. art. III, § 2. cl. 1. Therefore, Sally's Seafood Shack, Inc., the respondent, asks this Court to affirm the Fourth Circuit Court of Appeals by holding that the Limitation Act provides an independent basis for admiralty jurisdiction and interlocutory appeal is inappropriate under 28 U.S.C. § 1292(a)(3) where the rights and liabilities of the parties have yet to be determined.

I. Seafood Shack's petition to limit liability under the Limitation Act is properly granted because the Act provides an independent basis for admiralty jurisdiction.

This court should affirm the Fourth Circuit Court of Appeals because the Limitation Act provides an independent basis for admiralty jurisdiction. *Lewis v. Lewis & Clark Marine, Inc.,* 531 U.S. 438, 452, 2001 AMC 913 (2001). Thus, claimants' remedy on appeal will be subject to the Limitation Act's limitation provision within Section 30505(a). 46 U.S.C. § 30505(a).

Federal courts have jurisdiction over admiralty and maritime claims by grant of the United States Constitution. U.S. Const. art III, § 2, cl. 1. Therefore, where a statute sets out to define a claim as activating admiralty or maritime jurisdiction the federal courts can remove a claim from a state court under Supplemental Rule F of the Federal Rules of Civil Procedure. FRCP SUPP AMC Rule F. The district court and Fourth Circuit Court of Appeals correctly held that the Limitation Act provided an independent ground for admiralty jurisdiction. App. at 4a; App. at 13a. Accordingly, Seafood Shack appropriately employed Supplemental Rule F and the Limitation Act section 30511(c) to stay the state court proceedings, bring the claim before an Article III court, and limit Seafood Shack's liability. 46 U.S.C. § 30511(c); App. at 9a.

A. The Limitation Act has historically been recognized as an independent basis for admiralty jurisdiction.

The Limitation Act provided an independent basis for a finding of admiralty jurisdiction without question until this Court incidentally opened the door for confusion within a footnote in *Sisson v. Ruby*. 497 U.S. 358, 359 n. 1, 1990 AMC

1801 (1990); Amie L. Medley, *A Sea of Confusion: The Shipowner's Limitation of Liability Act As an Independent Basis for Admiralty Jurisdiction*, 108 Mich. L. Rev. 229, 243 (2009)(noting that the Supreme Court's refusal to address the Limitation Act's independent basis for establishing admiralty jurisdiction seemed to suggest the issue was an "open question rather than a previously decided question the Court had specifically declined to *revisit*…").

In *Sisson*, the petitioner, Mr. Sisson was the owner of a 56-foot pleasure yacht, "the *Ultorian*," that caught fire and destroyed several neighboring vessels and the adjacent marina. *Sisson*, 497 U.S. at 360, 1990 AMC at 1803. Mr. Sisson subsequently sought the benefits of the Limitation Act by invoking admiralty jurisdiction under 28 U.S.C. § 1333(1), but his claims were denied by the district court for lack of subject-matter jurisdiction. *Id.;* 28 U.S.C. 1333(1) (granting original jurisdiction in the district courts, exclusive of the courts of the States, for "any civil case of admiralty or maritime jurisdiction"). On appeal, the Seventh Circuit Court of Appeals similarly held that neither 28 U.S.C. § 1333 (1) nor the Limitation Act provided an independent basis for finding admiralty jurisdiction within a federal court with regard to Mr. Sisson's claims for limitation. *Id.*

This Court on certiorari addressed whether Mr. Sisson could invoke admiralty jurisdiction under 28 U.S.C. § 1333(1) and found that section 1333(1) alone was sufficient to establish admiralty jurisdiction. *Id.* at 367, 1990 AMC at 1810. The Court, however, explicitly refused to address whether the Limitation Act alone would be sufficient to provide a basis for the action. *Id.* at 359 n. 1., 1990 AMC at 1802 n. 1. In doing so, the Court's language "…were we to agree that the Limited Liability Act does not independently provide a basis for this action," opened the door for confusion. *Id.* The Court's suggestion that it was open to questioning the Limitation Act's ability to independently provide a basis for admiralty jurisdiction has led to uncertainty. Such uncertainty, however, is unfounded because before this infamous footnote the Court for over seventy years found that the Limitation Act provided an independent basis for admiralty jurisdiction. *See Richardson v. Harmon*, 222 U.S. 96, 105–07, 2000 AMC 1207, 1214–16 (1911); *see also Just v. Chambers*, 312 U.S. 383, 386, 1941 AMC 430, 433 (1941).

1. Admiralty Jurisdiction exists under the Limitation Act whether there is a maritime or non-maritime tort.

The Limitation Act, 46 U.S.C. §§ 30501-12, provides for admiralty jurisdiction regardless of whether the underlying tort sounds in maritime or non-maritime. *Richardson*, 222 U.S. at 106, 2000 AMC at 1217. This Court's recognition of the Limitation Act's broad grant of jurisdiction for a court sitting in admiralty, as part of a limitation proceeding, is directly in line with the circumstances of the current dispute.

In *Richardson*, the steam barge "Crete" collided with a railway draw-bridge while traversing the Maumee River near Lake Erie. *Id.* at 99–100, 2000 AMC at 1210–11. The owners of the steam barge petitioned the court for limitation under the Limitation Act, and the court granted their petition. *Id.* at 100, 2000 AMC at 1211. Mr. Harmon, however, on behalf of the Toledo Terminal Railway Company, owner of the bridge, excepted to the applicability of the Limitation Act. *Id.* at 101, 2000 AMC at 1212. The collision resulted in nearly $35,000 of damage, but the Limitation Act was going to limit the recovery to $4,471.50 (the value of "Crete" and pending freight). *Id.* at 100, 2000 AMC at 1211.

Mr. Harmon argued that the court could not exercise admiralty jurisdiction, because the underlying tort was non-maritime in nature. *Id.* at 101, 2000 AMC at 1212. The Ohio common-law court agreed and held that the collision was non-maritime and therefore not cognizable in a court of admiralty. *Id.* On appeal, this Court explicitly overturned the Ohio common-law court holding instead that the Limitation Act provides jurisdiction to a court sitting in admiralty consistent with congressional policy to limit an owner's liability with "…respect [to] all claims arising out of the conduct of the master and crew, whether the liability be strictly maritime or from a tort non-maritime…." *Id.* at 106, 2000 AMC at 1217.

This Court's holding in *Richardson* redefined the applicability of the Limitation Act and affirmed its independent basis for admiralty jurisdiction. The Court in holding that the Limitation Act applied to non-maritime torts directly overturned its former holding in *Phenix*. *Ex parte Phenix Ins. Co.*, 118 U.S. 610, 616, 2001 AMC 595 (1886). In *Phenix*, the Court held that Limitation Act did not grant admiralty jurisdiction to a court addressing a non-maritime tort. *Id.* Similar to *Richardson*, the vessel in *Phenix* caused an injury to property attached to land when a spark from her smoke-stack started a fire that ultimately destroyed sixty-seven buildings and caused over $100,000 worth of damage. *Id.* at 611, 2001 AMC at 596. The Court in *Phenix*, held that the Limitation Act did not extend to land-based non-maritime torts; therefore, the owner could not employ the Act to provide admiralty jurisdiction. *Id.* at 615, 2001 AMC at 560.

Conversely, in *Richardson*, this Court reasoned that the Limitation Act's language had been amended by Congress, post-*Phenix*, to extend admiralty jurisdiction to include "liabilities," formerly not included among the statute's language "any and all debts." *Richardson*, 222 U.S. at 102–04, 2000 AMC at 1213–15. The Court, therefore, explicitly held that the Limitation Act provides an independent basis for admiralty jurisdiction where a claim arises in relation to a "liability" incurred by the vessel's master and crew, absent the privity or knowledge of the owner, whether it sounds in maritime or non-maritime. 46 U.S.C. §§ 30505-06.

This Court has not directly addressed the specific question of whether the Limitation Act can act as an independent basis for admiralty jurisdiction since *Richardson*. Moreover, this Court explicitly refused to address the issue in *Sisson*, simply dismissing the issue within a footnote. *Sisson*, 497 U.S. at 359 n. 1, 1990 AMC at 1802 n.1. Therefore, here, the Limitation Act continues to provide an independent basis for admiralty jurisdiction. The petitioners' claims sound in tort and arise from the conduct of Mr. Calhoun on the Seafood Shack's vessel the *F/V Flamingo*. App. at 9a–10a. Thus, to hold that the Limitation Act provides an independent basis for admiralty jurisdiction is not only consistent with this Court's precedent but also with congressional policy regardless of petitioners' claims being maritime or non-maritime. *Richardson*, 222 U.S. at 104, 2000 AMC at 1215.

2. Congress intended to make limitation claims under the Limitation Act the subject of Admiralty Courts.

This Court should hold that the Limitation Act continues to act as an independent basis for admiralty jurisdiction to maintain harmony and uniformity of admiralty law. The stated purpose of the Limitation Act is to encourage investment in ship-building and maritime trade. *Norwich Co. v. Wright*, 80 U.S. (13 Wall.) 104, 121, 1998 AMC 2061, 2078 (1871). Congress recognized that "capitalists" would be encouraged to build ships and invest in maritime commerce if they were provided the protection of limited liability where their vessels were operated by agents. *Id.* Therefore, Congress passed the Limitation Act to limit an owner's liability for liabilities incurred by agents the owners were inherently "obliged to employ." *Id.* at 122, 1998 AMC at 2079.

Admiralty jurisdiction and the function of admiralty and maritime Law is directly and correctly within the province of Federal Courts. U.S. Const. Art. III, § 2, cl. 1. Accordingly, Congress has codified various laws overtime to ensure that actions arising under admiralty and maritime circumstances find their way before a court sitting in admiralty. *See e.g.*, 46 U.S.C. §§ 30501–12 (Limitation Act), *see also* 28 U.S.C. § 1333(1) (Admiralty, maritime and prize cases).

The codification of acts giving rise to admiralty jurisdiction reflect congressional policy to ensure that maritime law is harmonious and uniform in its "international and interstate relations." *Just*, 312 U.S. at 389, 1941 AMC at 433. The unique characteristics of admiralty and maritime law require that the controlling law be uniform in application; however, such a policy doesn't restrict states from augmenting maritime law where it does not contradict federal law. *Id.*

This Court in *Just v. Chambers* held that state law allowing for recovery in a wrongful death action was not superseded by the fact the court was sitting in admiralty. *Id.* at 392, 1941 AMC at 436. In *Just*, Mr. Yesier's yacht flooded with carbon monoxide gas while cruising in the territorial waters of Florida. *Id.* at 384, 1941 AMC at 431. Mr. Yesier and several guests were injured and ultimately died as a result of carbon monoxide poisoning. *Id.* The executrix for Mr. Yesier petitioned for a limitation proceeding under the Limitation Act but was ultimately denied limitation because Mr. Yesier was responsible for the actions resulting in the injury and eventual death of his passengers. *Id.* This Court, however, held that

> "[w]hen the jurisdiction of the court in admiralty has attached through a petition for limitation, the jurisdiction to determine claims is not lost merely because the shipowner fails to establish his right to limitation." *Id.* at 386, 1941 AMC at 433.

The Court's holding and rationale in *Just*, therefore, directly indicates that the Limitation Act provides an independent basis for admiralty jurisdiction, even going so far as to extend the jurisdiction over claims after the right to limitation has been dismissed. *Id.* The Court based it's holding on the principle that maritime law should be harmonious and uniform in its application. *Id.* at 389, 1941 AMC at 436. Ultimately, the court held that state law could be applied in *Just* to allow for the recovery of wrongful death claims, because it did not conflict with the uniformity of admiralty law, and the Limitation Act was inapplicable. *Id.* at 392, 1941 AMC at 439.

Here, unlike in *Just*, Mr. Calhoun caused the explosion through his own negligence, and Seafood Shack lacked knowledge or privity of the occasion for injury. *Id.* at 384, 1941 AMC at 431; App. at 14a. Mr. Yesier, on the other hand, was on the yacht when the carbon monoxide gas infiltrated the cabin causing harm and eventual death of some of his passengers. *Id.* Furthermore, even though Mr. Yesier was ultimately unable to limit liability according to the Limitation Act, the Court still maintained admiralty jurisdiction over his claims. *Id.* at 386, 1941 AMC at 433. Therefore, it follows that this Court's holding in *Just* confers admiralty jurisdiction in the present case because Seafood Shack has appropriately employed the Limitation Act and, hence, is entitled to limit its liability. App. at 9a.

Here, the Limitation Act not only provides an independent basis for admiralty jurisdiction as recognized in *Just*, but the actions giving rise to the claimants' claims were the result of an agent's actions (Mr. Calhoun). App. at 14a. Accordingly, this Court should hold that the Limitation Act continues to provide an independent basis for admiralty jurisdiction consistent with congressional intent.

B. Seafood Shack satisfies the requirements of the Limitation Act for recognition of admiralty jurisdiction and a grant of limitation on liabilities.

The fact that the Limitation Act provides an independent basis for admiralty jurisdiction is evidenced in this Court's precedent and this Court's interpretation of congressional intent and policy. However, to enjoy the benefits of the Limitation Act, 46 U.S.C. §§ 30501-12, Seafood Shack must satisfy the Act's requirements to confer admiralty jurisdiction.

The Limitation Act applies to vessels that are "seagoing vessels" or "vessels used on lakes or rivers or in inland navigation…" 46 U.S.C. § 30502. Furthermore, the Limitation Act's limit on an owner's liability requires that the action causing injury to the claimant occur without the "privity or knowledge of the owner." 46 U.S.C. § 30505(b). If limitation under the Act applies, then the liability of the owner "shall not exceed the value of the vessel and pending freight." 46 U.S.C. §30505(a).

Seafood Shack wants to limit its liability under section 30505(a) to the value of the vessel and pending freight. App. at 9a. Therefore, Seafood Shack must establish that the *F/V Flamingo* is a vessel within the contemplation of the Act and that Mr. Calhoun's actions giving rise to the explosion were not due to Seafood Shack's direct negligence or knowledge. 46 U.S.C. §§ 30502, 30505.

1. **The *F/V Flamingo* is a "vessel" as required by the Limitation Act.**

The existence of a "vessel" is foundational to conferring admiralty jurisdiction upon a court under maritime law. David W. Robertson & Michael F. Sturley, *Vessel Status in Maritime Law: Does Lozman Set A New Course?*, 44 J. Mar. L. & Com. 393 (2013) (recognizing vessel status as a "key-criterion" for finding jurisdiction under the Limitation Act, Jones Act, Maritime Lien Act, and many others; and that the vessel-status issue has been "continually important and continually litigated throughout the entire history of maritime law," in the United States).

The petitioners, here, argue that the *F/V Flamingo* lost its vessel status because it has been indefinitely moored to the shore and converted into a restaurant. App. at 13a. However, the petitioner's argument is too narrow on its face to be controlling; this Court held in *Lozman* that determining vessel status requires a purely objective analysis concerning whether the alleged vessel is "… *capable* of being used… as a means of *transportation* on water." *Lozman v. City of Riviera Beach*, 568 U.S. 115, 121, 2013 AMC 1, 6 (2013).

This Court addressed the vessel-status issue in *Lozman* and defined what an alleged vessels *capability* to *transport* goods or people over water from "one place to another" requires to satisfy vessel-status under the statutory definition. *Id.* (*citing* 18 Oxford English Dictionary 424 (2d ed. 1989)). The *Lozman* Court established a new standard for determining vessel-status holding that a vessel is sufficient where "… a reasonable observer, looking to the [alleged vessel's] physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water." *Id.*

In *Lozman*, Mr. Lozman argued that the court lacked admiralty jurisdiction because the alleged vessel, Mr. Lozman's house barge, was not a vessel within the statutory definition. *Id.* at 119, 2013 AMC at 7. The City of Riviera Beach, however, argued that the house barge was a vessel within the statutory definition because it satisfied the "anything that floats" approach adopted by several courts of appeals. *Id.* at 120, 2013 AMC at 8 (*citing Burks v. American Transp. Co.*, 679 F.2d 69, 75 (5th Cir. 1982) ("No doubt the three men in a tub would also fit within our definition, and one probably could make a convincing case for Jonah inside the whale.")). This Court did not buy the city's argument though, instead the Court reasoned that the determination of vessel-status must revolve around what is "practical" not merely "theoretical." *Id.* at 121, 2013 AMC at 9. Simply put, the anything that floats approach was too broad. *Id.* at 129, 2013 AMC at 17.

The Court instead held that Mr. Lozman's house barge was not a vessel sufficient to confer admiralty jurisdiction. *Id.* at 122, 2013 AMC at 10. The Court reasoned that Mr. Lozman's house barge was not a vessel because it was incapable of self-propulsion, had no rudder or other steering mechanisms, and was incapable of generating or storing electricity. *Id.* Furthermore, the Court could not find anything "about the [house barge] that would lead a reasonable observer to consider it designed to a practical degree for 'transportation on water.'" *Id.* In Contrast, here the *F/V Flamingo* is clearly designed to transport people and things over water. App. at 10a. This Court need not question the practical capability of the *F/V Flamingo*'s ability to transport people or things over water, it was used to that effect for over twenty years prior to its conversion into a restaurant. App. at 10a. The *F/V Flamingo* made hundreds of independent ocean voyages in the North Atlantic pursuing its catch, unlike Mr. Lozman's house barge which required a tow to be transported over water. App. at 10a; *Lozman*, 568 U.S. at 118, 2013 AMC at 4.

This Court's vessel-status standard established in *Lozman* looks only to whether the "reasonable observer" would consider the vessel to be "designed to a practical degree for carrying people or things over water." *Lozman*, 568 U.S. at 121, 2013 AMC at 7. Here, the *F/V Flamingo* is still a fishing vessel that has been retrofitted to allow Seafood Shack to open a restaurant on the vessel. App. at 9a. The overall design of the vessel still resembles a fishing vessel, and therefore a "reasonable observer" would consider it "designed to a practical degree for carrying people or things over water." App. at 9a-10a; *Lozman*, 568 U.S. at 121, 2013 AMC at 7. Accordingly, the *F/V Flamingo* satisfies this Court's standard and is a "vessel" within the contemplation of the Limitation Act.

2. The *F/V Flamingo*'s identity as a vessel is not changed by its use as a restaurant.

The petitioners' argument against vessel-status, however, relies on this Court's dicta in *Lozman*, that an owner could change vessel-status by permanently connecting it to land. App. at 13a. The petitioners' point to the fact that the *F/V Flamingo*, was indefinitely moored and surrounded by a cofferdam that separated it from the main body of water of the Cooper River. App. at 13a. This argument, once again, is too narrow in its premise. This Court explicitly pointed out that an owner's subjective intent to never sail again carries no weight under the standard established in *Lozman*. *Lozman*, 568 U.S. at 128, 2013 AMC at 14. Instead, this Court held that the view of a "reasonable observer" is controlling, and the correct analysis is whether or not the "physical attributes and behavior" of the vessel indicate its capability to transport people and things over water. *Id.*

Furthermore, although the *Lozman* dissent argued that the existence of a cofferdam acts to remove "vessel" status because an alleged-vessel is "rendered practically incapable of transportation or movement," such an argument is not applicable here. *Id.* at 136, 2013 AMC at 22 (Sotomayor, J. dissenting). In fact, this Court indicated by its vacation and remand of *Lemelle,* post-*Lozman*, that the failure to move a vessel for an extended period of time is not controlling in the determination of vessel status. *Lemelle v. St. Charles Gaming Co.*, 568 U.S. 1141 (2013). In *Lemelle*, this Court remanded the lower court's finding that a Riverboat Casino was not a vessel in contemplation of the statute because it was indefinitely moored to the shore. *Lemelle v. St. Charles Gaming Co., Inc.*, 118 So. 3d 1, 5 (La. App. 3d Cir. 2012), *writ denied,* 86 So. 3d 627 (La. 2012), and *cert. granted, judgment vacated,* 568 U.S. 1141 (2013). The vacation and remand by this Court indicates that the lower court was incorrect in finding that the Riverboat Casino was not sufficiently a vessel. David W. Robertson & Michael F. Sturley, *Vessel Status in Maritime Law: Does Lozman Set A New Course?*, 44 J. Mar. L. & Com. 393 (2013) (arguing that this Court likely vacated and remanded the lower ruling for relying too heavily on the owner's subjective intent not to sail again rather than an objective observer's reasonable belief that the vessel was designed to transport people or things over water).

Additionally, the petitioners' argument fails to recognize that the Limitation Act's definition of a vessel does not include the "navigable waters" requirement contemplated within the context of the courts' analysis of the *Grubart* test for maritime tort jurisdiction and other admiralty statutes. *Jerome B. Grubart v. Great Lakes Dredge & Dock Co.*,513 U.S. 527, 534, 1995 AMC 913, 918 (1995); Amie L. Medley, *A Sea of Confusion: The Shipowner's Limitation of Liability Act As an Independent Basis for Admiralty Jurisdiction*, 108 Mich. L. Rev. 229, 248 (2009) ("Unlike the Limitation Act, other statutes that act as a basis for admiralty jurisdiction specifically include a requirement of navigation…. the Limitation Act is silent on the issue of navigability and, as such, importing the standard of navigation…is unnecessary.").

Section 30502 of the Limitation Act explicitly excludes any mention of the word "navigation." 46 U.S.C. § 30502. To read "navigation" into the statute would be to render the express language ineffective. Consequently, although the *F/V Flamingo* is surrounded by a cofferdam, it is still a vessel used on a "river." *Id.*; App. at 10a. Furthermore, the cofferdam merely prevents the *F/V Flamingo* from drifting away if detached from its moorings, the boat was still floating on and attached to the waters of the Cooper River at the time of the incident. App. at 10a. The Limitation Act does not require that the water be immediately navigable. 46 U.S.C. § 30502. Therefore, the existence of the cofferdam does not negate the vessel-status of the *F/V Flamingo*, and it is sufficiently a vessel to satisfy the requirements of the Limitation Act.

3. Mr. Calhoun's actions giving rise to the explosion were not a result of Seafood Shack's direct negligence or knowledge.

Finally, the Limitation Act requires the owner to be innocent of blame for the actions giving rise to a claimant's claim. 46 U.S.C. §§ 30504, 30505. The statute precludes limitation where an action giving rise to liability is committed within privity or knowledge of the owner. 46 U.S.C. § 30505. Moreover, where a fire (here an explosion) causes damage, the owner of the vessel is not liable for loss or damage "unless the fire resulted from the design or neglect of the owner." 46 U.S.C. § 30504; App. at 10a.

The stated purpose of the Limitation Act is to protect an owner from liability where an occurrence giving rise to liability was the result of an owner's agent's actions. *Norwich*, 80 U.S. (13 Wall.) at 122, 1998 AMC at 2079. This principle was adhered to by this Court in *Richardson*, where the court limited the liability of the shipowner for damage to the Toledo Terminal Railway Company's bridge. *Richardson*, 222 U.S. at 106–07, 2000 AMC at 1216. In *Richardson*, the shipowners were not present on the vessel at the time of the collision, and the accident was directly attributable to the master and crew employed by the ship's owners. *Id.* Therefore, the Limitation Act's limit on liability was applicable. *Id.*

Here, similar to the *Richardson* case the owner of the *F/V Flamingo* was not responsible for the actions giving rise to the petitioners' claims. App. at 14a. The district court found that Mr. Calhoun was solely responsible for failing to complete his task of lighting the gas range, which ultimately led to the explosion that sank the *F/V Flamingo*. App. at 14a. Section 30504 of the Limitation Act provides an exception to an owner's ability to limit liability if a "fire resulted from the design or neglect of the owner." 46 U.S.C. § 30504. However, here the district court similarly found that Mr. Calhoun's negligence alone caused the fire. App. at 14a. Therefore, no design or neglect of Seafood Shack can be attributed to skirt the limitation of liability imposed by section 30505 of the Limitation Act. 46 U.S.C. § 30505. Seafood Shack, thus, satisfies the Limitation Act's requirements to confer admiralty jurisdiction.

In sum, this Court's precedent, as well as this Court's interpretation of congressional intent and policy, indicates that the Limitation Act provides an independent basis for admiralty jurisdiction. Therefore, this Court should affirm the Fourth Circuit Court of Appeals' holding because the Fourth Circuit correctly held that Seafood Shack is entitled to limit its liability under the Limitation Act.

II. The Fourth Circuit's dismissal of petitioners' appeal is appropriate because the district court's order did not determine the rights and liabilities of the parties.

In analyzing its appellate jurisdiction, an appellate court looks first to the final judgment rule. *Cunningham v. Hamilton Cty.*, 527 U.S. 198, 203 (1999). The final judgment rule embodied in 28 U.S.C. § 1292(a)(3) is the baseline principle for appealability. *Id*. The final judgment rule provides that a court of appeals "shall have jurisdiction of appeals from all final decisions of the district courts of the United States." 28 U.S.C. § 1291. Petitioners agree that the district court's order was not a final decision. App. at 3a. Therefore, petitioners' sole argument in support of appellate jurisdiction is under section 1292(a)(3). App. at 3a.

Section 1292(a)(3) is an exception to the finality requirement for appellate courts to have jurisdiction where liability has been determined but before a damage hearing. *Evergreen Int'l Corp. v. Std. Warehouse*, 33 F.3d 420, 424, 1995 AMC 635, 639 (4th Cir. 1994). Congress enacted the statute in 1926, with this specific set of circumstances animating Congress's concern to provide an interlocutory appeal. *Id.* The statute provides that appellate courts may entertain appeals from a district court's interlocutory decrees determining the rights and liabilities of the parties to admiralty cases. 28 U.S.C. § 1292(a)(3). Therefore, there are three requirements that have to be met: (1) it must be an interlocutory decree, (2) it must be an admiralty case, and (3) the district court's order must have determined the rights and liabilities of the parties. Seafood Shack does not contend that this is not an interlocutory decree or an admiralty case. Rather, Seafood Shack's argument is that the third requirement of section 1292(a)(3) is not met. Specifically, the district court's order did not determine the "rights and liabilities" of the parties.

As mentioned previously, section 1292(a)(3) only provides appellate jurisdiction when the district court has determined the rights and liabilities of the parties but before the damages hearing. 28 U.S.C. § 1292(a)(3). The district court has not determined the rights and liabilities concerning the petitioners or Seafood Shack. The district court only determined that Seafood Shack is entitled to limit their liability under the Limitation Act, 46 U.S.C. §§ 30501-12. App. at 13a. Therefore, the Fourth Circuit dismissed the interlocutory appeal holding that the district court's order that the Limitation Act applied did not reach nor determine the *rights and liabilities* of the parties. App. at 6a. This decision is consistent with the purpose behind section 1292(a)(3) and is the most efficient policy for the judicial system. Therefore, this Court should affirm the Fourth Circuit's decision to dismiss the appeal.

A. The reasoning and history behind 28 U.S.C. § 1292(a)(3) does not suggest that the rule allows a party to appeal every district court's determination.

To understand why Congress enacted section 1292(a)(3) it is important to know how courts process admiralty cases. Understanding congressional intent sheds light on why the narrow approach, only allowing jurisdiction when the district court has determined the rights and liabilities of the parties, is appropriate.

In admiralty, trials were traditionally bifurcated. *Evergreen Int'l Corp.*, 33 F.3d at 424, 1995 AMC at 639. First, there would be a trial before the court on the issue of liability. *Id*. Then, if there was a finding of liability, there would be a separate hearing before a special master to ascertain damages. *Id*. These damages hearings were often both lengthy and costly. *Id*. Congress intended section 1292(a)(3) to permit parties to appeal the finding of liability on the merits, before undergoing the long, burdensome, and perhaps unnecessary damages proceeding. *Id*. Section 1292(a)(3) was not intended to clutter the federal docket with interlocutory odds and ends. *Id*. Now, section 1292(a)(3) is primarily intended to avoid the expense and lengthy hearing to compute damages, since it is always possible that the libelant may later turn out to have no right to recover at all. *Id*.

The only thing the district court determined in this dispute is that the Limitation Act applies. App. at 13a. In fact, petitioners admit that the district court has not yet resolved whether Seafood Shack is liable at all for the damages the petitioners suffered. App. at 3a. Instead, the petitioners are trying to fit the decision of the district court's order within the scope of section 1292(a)(3). The petitioners seek to do something outside the intended purpose of section 1292(a)(3). To allow an interlocutory appeal where the district court has only determined that Seafood Shack can limit their liability, but not whether they are liable, is inconsistent with congressional intent. Section 1292(a)(3) is a narrow exception to the final judgment rule, and the Court's decision should stay within the reasoning behind why Congress enacted the statute.

B. Despite clear congressional intent on why Congress enacted section 1292(a)(3), circuit court opinions deciding what "rights and liabilities" mean have been far from clear.

Over time, the narrow scenario that justified the initial enactment of the provision has fallen into desuetude. *Evergreen Int'l Corp.*, 33 F.3d at 424, 1995 AMC at 639. Now, many parties attempt to use the provision to support interlocutory appeals in many situations that do not supply the same logical justification for an exception to the finality rule. *Id*. Many circuit courts, however, have read the provision narrowly and have found no jurisdiction. *See Id*. at 425, 1995 AMC at 640 (construing this exceptive statute narrowly, and thus limit the statute's special treatment to the special circumstances that justified its inception). These courts interpret the phrase, "rights and liabilities" to require a decision on the merits of the claims underlying the dispute before invoking appellate jurisdiction under section 1292(a)(3). *City of Fort Madison v. Emerald Lady*, 990 F.2d 1086, 1089, 1993 AMC 2091, 2094 (8th Cir.1993).

On the other hand, a few circuit courts have read the statute more broadly and found jurisdiction in situations far different from those giving rise to the enactment of the provision in the first place. In fact, there are a select few circuit courts that have construed section 1292(a)(3) broadly and allow appellate jurisdiction when a district court makes any decision in the case. *All Alaskan Seafoods v. M/V Sea Producer*, 882 F.2d 425, 1989 AMC 2935 (9th Cir. 1989).

The Fourth Circuit below dismissed this appeal relying on a decision the court had previously handed down. App. at 6a. In *Evergreen Int'l Corp.*, the Fourth Circuit noted that the better course for interpreting when section 1292(a)(3) applies is to hold closely to the procedural structure that justified the statutes creation. *Evergreen Int'l Corp.*, 33 F.3d at 425, 1995 AMC at 639. The Fourth Circuit held that the district court's order, that one of the parties could not rely on an arbitration agreement, did not determine the rights and liabilities of the parties. *Id*. Therefore, the Fourth Circuit dismissed the appeal holding section 1292(a)(3) did not provide the court with jurisdiction. *Id.* It is true that, here, the Fourth Circuit, agreeing with the Ninth Circuit, noted that if the court could answer the question afresh it might find section 1292(a)(3) to provide jurisdiction. App. at 5a. However, the decisions of the Ninth Circuit to continually apply the broad interpretation of section 1292(a)(3) have been inconsistent and have failed to provide reasoning.

The Ninth Circuit has adopted an overly broad interpretation of section 1292(a)(3) without explaining in its opinion the reason for doing so. *See Carman Tool & Abrasives, Inc. v. Evergreen Lines*, 871 F.2d 897, 1989 AMC 913 (9th Cir. 1989). In *Carman Tool & Abrasives, Inc.,* the Ninth Circuit allowed jurisdiction under section 1292(a)(3) when the district court ruled a party's liability was limited by the Carriage of Goods by Sea Act (COGSA). *Id*. Although inverse, just like the decision of the Fourth Circuit in this case, the decisions that now come from the Ninth Circuit are constrained by the precedent of the decision reached in *Carman Tool & Abrasives, Inc.*. Those decisions, however, rely on an opinion that did not explain anything regarding the court finding jurisdiction under section 1292(a)(3). Also, the court failed to cite any jurisdictional authority in the opinion. *Id.*

Furthermore, the Ninth Circuit has been inconsistent with the approach the circuit takes in applying section 1292(a)(3). As previously discussed, the Ninth Circuit has found jurisdiction at times under section 1292(a)(3). Then at times, the Ninth Circuit has held for a narrow interpretation of section 1292(a)(3) even though the district court's order is indistinguishable from the previous cases. *Seattle First Nat'l Bank v. Bluewater P'ship*, 772 F.2d 565, 1986 AMC 1296 (9th Cir. 1985). In *Seattle First Nat'l Bank,* the Ninth Circuit dismissed the appeal for lack of jurisdiction under section 1292(a)(3) when the district court issued a partial summary judgment towards one of the parties. *Id.* The disarray concerning the application of section 1292(a)(3) does not stop at the Ninth Circuit. Many other circuit courts have been inconsistent with their approach as well. However, many of the circuit courts rule that a decision of a district court holding that a party could limit their liability is not within the scope of "rights and liabilities."

The Fifth Circuit at times has held for a broad reading of section 1292(a)(3) allowing jurisdiction when a district court denied the plaintiff's argument that an insurance policy did not cover the boat. *O'Donnell v. Latham*, 525 F.2d 650, 1976

AMC 61 (5th Cir. 1976). In a later opinion, the Fifth Circuit applied section 1292(a)(3) narrowly not allowing jurisdiction when the district court ruled a party could limit its liability due to the Carriage of Goods by Sea Act. *Bucher-Guyer AG v. M/V Incotrans Spirit*, 868 F.2d 734, 735 (5th Cir. 1989). The Fifth Circuit ruled that a decision applying COGSA's $500 liability limitation was not a district court's decision determining the "rights and liabilities" of the parties. *Id*. In a more recent opinion, the Fifth Circuit dismissed an appeal in an identical case to the one here. See *SCF Waxler Marine, L.L.C. v. Aris T*, 902 F.3d 461, 467, 2018 AMC 2420, 2426 (5th Cir. 2018) (holding that a district court order entitling one party to limit their liability under the Limitation Act does not determine the rights and liabilities of the parties).

The Third Circuit has been consistent in applying section 1292(a)(3) narrowly. See *Estate of Hager v. Laurelton Welding Serv*., Inc., 124 F. App'x 104, 106-07, 2005 AMC 906, 907-09 (3d Cir. 2005) (holding that the district court's decision that the Death on the High Seas Act limited the party's damages was not a decision concerning the rights and liabilities of the parties and therefore the court dismissed the appeal); *Burgbacher v. University of Pittsburgh*, 860 F.2d 87, 88, 1989 AMC 149, 150 (3d Cir. 1988) (holding that section 1293 (a)(3) is an exception to the final judgment rule and has traditionally been narrowly construed to allow interlocutory appeals only after the district court has determined liability but before the damages phase).

The Second, Seventh, and Eleventh Circuits have also held for a strict interpretation of section 1292(a)(3). *See Ibeto Petrochemical Indus. Ltd. v. M/T Beffen*, 475 F.3d 56, 62 n.1, 2007 AMC 213, 218 n.1 (2d Cir. 2007) (concluding that section 1292(a)(3) only applies where the court's order determines the merits of the controversy but leaves only the question of damages or other details open for decision); *Wingerter v. Chester Quarry Co.*, 185 F.3d 657, 670-71, 2000 AMC 1596, 1612-13 (7th Cir. 1999) (holding that no appellate jurisdiction existed because the granting of a motion resulting in a bench trial rather than a jury trial was not a determination of rights and liabilities); *Sea Lane Bah. Ltd. v. Europa Cruises Corp.*, 188 F.3d 1317, 1322, 2000 AMC 66, 71 (11th Cir. 1999) (holding that notwithstanding any incongruity, the greater weight of authority supports a narrow construction).

The circuit courts, to say the least, have varied in their approach on what constitutes a ruling on the rights and liabilities of the parties by a district court. Few circuit courts have found jurisdiction under section 1292(a)(3) in circumstances far from what Congress intended the statute to accomplish. However, even though the circuit courts seem to disagree on exactly how narrow, a common denominator in all circuit opinions is that section 1292(a)(3) should be applied narrowly. This case gives the Court an opportunity to settle the disparity and seek uniformity among the circuit courts.

C. Allowing appellate jurisdiction under section 1292(a)(3) in situations as presented in this case is not the most efficient policy for the courts.

Interlocutory appeals are the exception, not the rule. *Ingram Towing Co. v. Adnac, Inc.*, 59 F.3d 513, 515, 1995 AMC 2441, 2443 (5th Cir. 1995). The general policy of judicial efficiency disfavors interlocutory appeal because repeated, piecemeal appeals are inefficient for litigants as well as the judicial system as a whole. § 3927 Admiralty Appeals, 16 Fed. Prac. & Proc. Juris. § 3927 (2d ed. 1996). Allowing an appeal here would expand the existing jurisprudence on interlocutory appeals and would likely invite other challenges surrounding the application of section 1292(a)(3). *Estate of Hager*, 124 F. App'x at 107, 2005 AMC at 909.

The petitioners may argue it would be efficient to grant the appeal in the circumstances that this case presents. The Fourth Circuit even concludes if the appellate court were to hear their appeal and affirm the district court's decision to grant limitation, the decision would effectively end the case. App. at 5a. The court further reasons that the cost of a trial would far exceed any possible recovery, and both parties would have every incentive to settle. App. at 5a.

The petitioners' argument may seem logical at first. However, there is no significant gain to the efficient handling of litigation by allowing an appeal at this stage. *Estate of Hager*, 124 F. App'x at 107, 2005 AMC at 909. If the Supreme Court allows interlocutory appeal in this situation, where is the line drawn? This Court would be inviting litigants and their clients to immediately appeal any decision of the district court. This approach threatens to drag out litigation. Not only is this approach inefficient, it is inconsistent with the congressional intent of the statute.

This case gives this Court the opportunity to provide certainty along with efficiency regarding section 1292(a)(3). As it exists today, there is no certainty and litigants and their clients are having to guess whether the appellate court will grant an interlocutory appeal. The best way to achieve certainty is to have a bright-line rule – allowing jurisdiction under section 1292(a)(3) only when the district court has already determined liability. This approach is consistent with how Congress intended this statute to be applied. No rule can address every situation, but this is a small price to pay for having overall certainty and efficiency in the judicial system. This approach is common sense supported by congressional intent.

Following this approach, the Fourth Circuit correctly dismissed the appeal for lack of jurisdiction. The district court's order only allowed the Limitation Act to apply. There has been no determination on liability. Therefore, this Court should affirm the Fourth Circuit decision dismissing the appeal for lack of jurisdiction under section 1292(a)(3).

CONCLUSION

For these reasons this Court should affirm the Fourth Circuit Court of Appeals and hold that the Limitation Act, 46 U.S.C. §§ 30501-12, provides an independent basis for admiralty jurisdiction and that interlocutory appellate jurisdiction does not exist under 28 U.S.C. § 1292(a)(3).

APPENDIX A

U.S. Const. art. III, § 2, cl. 1

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--*to all cases of admiralty and maritime jurisdiction*;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

APPENDIX B

28 U.S.C. §1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title [28 USCS §§ 1292(c) and (d) and 1295]

APPENDIX C

28 U.S.C. § 1292(a)(3)

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

> (1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;
>
> (2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;
>
> (3) *Interlocutory 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.*

APPENDIX D

28 U.S.C. 1333(1)

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

> (1) *Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.*
>
> (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

APPENDIX E

46 U.S.C. § 30502

Except as otherwise provided, this chapter (except section 30503) applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

APPENDIX F

46 U.S.C. § 30504

The owner of a vessel is not liable for loss or damage to merchandise on the vessel caused by a fire on the vessel unless the fire resulted from the design or neglect of the owner.

APPENDIX G

46 U.S.C. § 30505

(a) **In general.**--Except as provided in section 30506 of this title, the liability of the owner of a vessel for any claim, debt, or liability described in subsection (b) shall not exceed the value of the vessel and pending freight. If the vessel has more than one owner, the proportionate share of the liability of any one owner shall not exceed that owner's proportionate interest in the vessel and pending freight.

(b) **Claims subject to limitation.**--Unless otherwise excluded by law, claims, debts, and liabilities subject to limitation under subsection (a) are those arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.

(c) **Wages.**--Subsection (a) does not apply to a claim for wages.

APPENDIX H

46 U.S.C. § 30506

(a) **Application.**--This section applies only to seagoing vessels, but does not apply to pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels, fish tender vessels, canal boats, scows, car floats, barges, lighters, or nondescript vessels.

(b) **Minimum liability.**--If the amount of the vessel owner's liability determined under section 30505 of this title is insufficient to pay all losses in full, and the portion available to pay claims for personal injury or death is less than $420 times the tonnage of the vessel, that portion shall be increased to $420 times the tonnage of the vessel. That portion may be used only to pay claims for personal injury or death.

(c) **Calculation of tonnage.**--Under subsection (b), the tonnage of a self-propelled vessel is the gross tonnage without deduction for engine room, and the tonnage of a sailing vessel is the tonnage for documentation. However, space for the use of seamen is excluded.

(d) **Claims arising on distinct occasions.**--Separate limits of liability apply to claims for personal injury or death arising on distinct occasions.

(e) **Privity or knowledge.**--In a claim for personal injury or death, the privity or knowledge of the master or the owner's superintendent or managing agent, at or before the beginning of each voyage, is imputed to the owner.

APPENDIX I

46 U.S.C. § 30511

(a) **In general.**--The owner of a vessel may bring a civil action in a district court of the United States for limitation of liability under this chapter. The action must be brought within 6 months after a claimant gives the owner written notice of a claim.

(b) **Creation of fund.**--When the action is brought, the owner (at the owner's option) shall—

(1) deposit with the court, for the benefit of claimants—

(A) an amount equal to the value of the owner's interest in the vessel and pending freight, or approved security; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter; or

(2) transfer to a trustee appointed by the court, for the benefit of claimants—

(A) the owner's interest in the vessel and pending freight; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter.

(c) **Cessation of other actions.**--When an action has been brought under this section and the owner has complied with subsection (b), all claims and proceedings against the owner related to the matter in question shall cease.