Navigating the Shallows

A Primer to Product Liability Claims in the General Maritime Law

By Carlos A. Benach and Christopher Whelen

When product liability intersects with maritime law, attorneys must understand admiralty jurisdiction to be sure their defense is seaworthy.

■ Carlos A. Benach is an associate at Irwin Fritchie Urquhart & Moore who works with various product manufacturers, including major pharmaceutical, medical device, and industrial clients on individual and mass-tort actions. He works in all phases of the litigation process, including discovery, expert workup, trial preparation, trial, and appeals. Christopher Whelen, an associate at Irwin Fritchie Urquhart & Moore, represents clients in an array of civil litigation matters in both state and federal court. He defends claims asserted against public entities, businesses, and their insurers, including workers' compensation, personal injury, insurance, employment, toxic tort, and asbestos claims. He has worked with clients in all phases of litigation including, discovery, motion practice, depositions, trial preparation, trial, and appeals.

Admiralty jurisdiction has long presented difficulties to those unfamiliar with its nuances. This is especially true when it comes to product liability claims within general maritime law, which were only formally adopted by the United States Supreme Court in 1986. Although this area of law can be complex, a basic understanding of maritime law can help product liability attorneys navigate these claims and develop defenses. This article provides a high-level review of admiralty jurisdiction and substantive product liability claims under general maritime law. It also addresses subtleties of these claims that those practicing in product liability should consider in their defense. All of the following, however, is offered with the caveat that they should be cross-referenced with the precedent within the circuit and district courts in a practitioner's jurisdiction.

Does the General Maritime Law Apply to This Claim?

Perhaps the first challenge for a product liability lawyer is recognizing when maritime law may apply to a claim. Substantive maritime law applies to all actions where the test for admiralty jurisdiction is satisfied. *E. River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 864–65 (1986); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 628 (1959). Therefore, to determine whether maritime product liability law applies to a case, a party must first answer whether the case fits within the scope of admiralty jurisdiction.

The United States Constitution grants federal courts jurisdiction over "all Cases of admiralty and maritime Jurisdiction…." U.S. Const. art. III, §2, cl. 1. Pursuant to this constitutional grant, Congress has conferred original jurisdiction on federal district courts to hear "[a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. §1333(1) (West 2021). From these two sources of authority, the United States Supreme Court has fashioned two different tests for admiralty jurisdiction, one applying to tort claims and one applying to contract claims. Both tests are relevant in product liability cases.

For torts, the Supreme Court has developed a two-part test. First, the tort must have a maritime locality, meaning that: 1) the tort either occurred on a navigable water; or 2) under the Extension of Admiralty Jurisdiction Act, a vessel on navigable water committed a tort-causing injury on land. *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995). Second, the tort must have a "significant connection with a traditional maritime activity." *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 674 (1982). When conducting the connection inquiry:

> A court, first, must "assess the general features of the type of incident involved," to determine whether the incident has "a potentially disruptive impact on maritime commerce." Second, a court must determine whether "the general character" of the "activity giving rise to the incident" shows a "substantial relationship to traditional maritime activity."

Grubart, 513 U.S. at 534 (internal citations omitted). In the absence of a statutory grant, admiralty jurisdiction over a tort is only present if both the locality and connection tests are satisfied. *Id.*; *see also Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 U.S. 249, 274 n. 26 (1972) (pointing to the Death on the High Seas Act, 46 U.S.C. §30302, as an example of statutory authority allowing a plaintiff to invoke admiralty jurisdiction based on locality alone). For example, admiralty tort jurisdiction existed over a product liability

action filed by a vessel owner against an engine manufacturer after the engine allegedly malfunctioned, causing a fuel leak and subsequent fire while the vessel was operating in the Gulf of Mexico. *See Boat Serv. of Galveston, Inc. v. NRE Power Sys., Inc.*, 429 F. Supp. 3d 261, 277 (E.D. La. 2019).

For contract cases, the Supreme Court holds that the boundaries of admiralty jurisdiction are "conceptual rather than spatial." *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 23 (2004) (quoting *Kossick v. United Fruit Co.*, 365 U.S. 731, 735 (1961)). Jurisdiction over contract claims does not depend upon where the contract was formed or on the location of the agreed-upon performance. *See id.* at 23–24. Instead, the Supreme Court holds that jurisdiction depends upon the subject matter of the contract—its "nature and character"—and whether the contract has "reference to maritime service or maritime transactions." *Id.* at 24 (citations omitted); *see also Gulf Coast Shell & Aggregate LP v. Newlin*, 623 F.3d 235, 240 (5th Cir. 2010) ("A maritime contract is one 'relating to a ship in its use as such, or to commerce or navigation on navigable waters, or to transportation by sea or to maritime employment.'"). This is necessarily a fact-specific inquiry in which courts are guided by "precedent and usage," *Kossick v. United Fruit Co.*, 365 U.S. at 735, as well as the fundamental interest underlying admiralty jurisdiction—the protection of maritime commerce. *Norfolk S. Ry. Co.,* 543 U.S. at 25. In *Berge Helene, Ltd. v. GE Oil & Gas, Inc.*, 896 F.Supp.2d 582, 595 (S.D. Tex. 2012), the court found admiralty contract jurisdiction and applied maritime law to breach of warranty claims arising from alleged defects in gas compressors because the compressors were installed during the conversion of a vessel.

The jurisdictional tests for both torts and contracts are relevant in product liability actions to determine if the claim will be governed by the substantive maritime law. While the United States Supreme Court holds that negligence and strict product liability claims sound in tort, warranty claims sound in contract. *E. River S.S. Corp.,* 476 U.S. at 867–68. The type of claim asserted, tort or contract, determines the applicable jurisdictional test to decide whether substantive maritime law applies. *Id.* at 872, n. 7; *PHI, Inc. v. Rolls-Royce Corp.*, No. CIV.A. 08-1406, 2010 WL 883794, at n. *4 (W.D. La. Mar. 9, 2010) (applying both tests to determine whether maritime law or state law governed claims for strict product liability and breach of warranty).

Substantive Product Liability Law in Admiralty

Once admiralty jurisdiction is established, substantive and procedural issues should be considered in evaluating your product liability claim. This includes an understanding of the sources, substance, and nuances of product liability claims under general maritime law.

General Maritime Law and Product Liability

If admiralty jurisdiction of a claim exists, maritime law, rather than state law, will govern. In such cases, federal statutes take precedence. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 27 (1990) ("Congress retains superior authority in these matters, and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit our actions."). However, "Congress has largely left to this Court the responsibility for fashioning the controlling rules of admiralty law." *Fitzgerald v. U. S. Lines Co.*, 374 U.S. 16, 20 (1963). Thus, in the absence of a controlling federal statute, federal courts fashion the general maritime law, which is "'an amalgam of traditional common law rules, modifications of those rules, and newly created rules' drawn from state and federal sources." *One Beacon Ins. Co. v. Crowley Marine Servs., Inc.*, 648 F.3d 258, 262 (5th Cir. 2011) (quoting *East River S.S. Corp.,* 476 U.S. at 864–65).

In 1986, after various appellate courts acknowledged product liability tort claims within general maritime law, the Supreme Court incorporated "product liability into maritime law." *E. River,* 476 U.S. at 864–65. A plaintiff can pursue a product liability claim under both strict liability and general negligence theories. *Id.* at 865–66. Following the *East River* decision, the various appellate courts have stated that Section 402A of the Restatement (Second) of Torts ("Section 402A") is the "best expression" of the law of product liability under general maritime law. *Vickers v. Chiles Drilling Co.*, 822 F.2d 535, 537 (5th Cir. 1987); *Ocean Barge Transp. Co. v. Hess Oil Virgin Islands Corp.*, 726 F.2d 121, 123 (3d Cir. 1984); *Pan-Alaska Fisheries, Inc. v. Marine Const. & Design Co.*, 565 F.2d 1129, 1134 (9th Cir. 1977); *McKee v. Brunswick Corp.*, 354 F.2d 577, 584 (7th Cir. 1965);

To prevail on a strict product liability claim, a plaintiff must establish that 1) the defendant sold the products, 2) the products were unreasonably dangerous or defective when they left their control, 3) those defects caused the claimant's injury, and 4) damages. Thomas J. Schoenbaum, Admiralty & Mar. Law §5.13 (6th ed. 2019) (citing Restatement (Second) of Torts §402A); *see also* Restatement (Third) of Torts: Prod. Liab. §2 (1998). Available theories under a strict product liability claim are defective design, manufacturing composition, or failure to warn. Restatement (Second) of Torts §402A.; *see also E. River S. S. Corp.,* 476 U.S. at 865; *Hagans v. Oliver Machinery Co.*, 576 F.2d 97, 99 (5th Cir.1978). Similarly, under a negligence theory of recovery, manufacturers have a general duty to warn when they know or have reason to know that their product "is or is likely to be dangerous for the use for which it is supplied," and the manufacturer "has no reasons to believe" that the user will realize that danger. Restatement (Second) of Torts §388, p. 301 (1963–1964). Unlike strict liability, which focuses on defective conditions with the products, negligence claims focus on establishing a manufacturer's duty to the claimant, a breach thereof, and causal connection to a claimant's injuries. *See Canal Barge Co. v. Torco Oil Co.*, 220 F.3d 370, 376 (5th Cir. 2000). These negligence claims are presented as "failure to warn" claims but can be molded to encompass issues related, but not limited, to the design and manufacture of a product. *See, e.g., Air & Liquid Sys. Corp. v. DeVries,* 139 S. Ct. 986, 993, 203 L. Ed. 2d 373 (2019); *Evergreen Int'l, S.A. v. Norfolk Dredging Co.*, 531 F.3d 302, 308 (4th Cir. 2008); *Lanzi v. Yamaha Motor Corp.*, No. 8:17-CV-2020-T-36AEP, 2019 WL 10984163, at 5 (M.D. Fla. Oct. 8, 2019) (discussing maritime negligence claims based on the design and manufacture of a jet ski.); *Dandridge v. Crane Co.*, No. 2:12-CV-00484-DCN, 2016 WL 319938, at *2 (D.S.C. Jan. 27, 2016) (discussing strict

liability and negligence product liability claims under maritime law).

Under a strict liability theory, a plaintiff may meet its burden of proving that a product was defective by either "pointing to some specific dereliction by the manufacturer in constructing or designing the product" or by "circumstantial evidence." *Ocean Barge Transp. Co. v. Hess Oil Virgin Islands Corp.*, 726 F.2d 121, 124 (3d Cir. 1984). The claimant need not prove a specific defect because "[he/she] may discharge [his/her] burden by showing an unexplained occurrence and eliminating all reasonable explanations for the occurrence other than the existence of a defect." *Id.* Thus, a claimant must be able to present evidence that there was some defect, or eliminate any other reasonable cause except a defect, and that the alleged defect was the cause of the damages.

East River, Tort Limitation, and Economic Loss: "Product Itself" vs. "Other Property"

As mentioned earlier, the Supreme Court's *East River* decision not only formally integrated common law product liability principles into general maritime law, this decision also created a subtle, yet important, nuance in distinguishing warranty or contract claims from tort claims against a manufacturer of an alleged defective product. The *East River* court contemplated a simple question: Can a commercial product owner collect against a manufacturer for economic damages stemming from a product's damage to itself in tort (strict liability or negligence), or are they limited to manufacturer warranties (contract law)? After a lengthy review of the underlying policy considerations related to both strict product liability and warranty, the Court concluded that "no products-liability claim lies in admiralty when a commercial party alleges injury only to the product itself resulting in purely economic loss." *E. River*, 476 U.S. at 858. The Court explained that "damage to a product itself has certain attributes of a product-liability claim. But the injury suffered—the failure of the product to function properly—is the essence of a warranty action, through which a contracting party can seek to recoup the benefit of its bargain." *Id.* at 867–68. Thus, under general maritime law, injury to a defective product itself, even though physical, was a kind of "economic loss" for which tort law did not provide relief.

Determining the "product itself" in an *East River* analysis can be complicated considering "all but the very simplest of machines have component parts," each of which can be regarded as independent products themselves. *E. River*, 476 U.S. at 867. This is where the distinction between the "product itself" and "other property" becomes important because if every product were dismantled into its components, then virtually every product that damaged itself would also result in damage to "other property." *Id.*; *see also Northern Power & Engineering Corp. v. Caterpillar Tractor Co.,* 623 P.2d 324, 330 (Alaska 1981*)*. However, the Supreme Court resolved this issue in *Saratoga Fishing Co. v. J.M. Martinez & Co.*, by explaining that:

> When a Manufacturer places an item in the stream of commerce by selling it to an Initial User, that item is the "product itself" under *East River*. Items added to the product by the Initial User are therefore "other property," and the Initial User's sale of the product to a Subsequent User does not change these characterizations.

520 U.S. 875, 879 (1997). Another way of identifying the "product itself" is by applying contract principles and asking, "[W]hat is the object of the contract or bargain that governs the rights of the parties?" *See King v. Hilton–Davis*, 855 F.2d 1047, 1051 (3d Cir. 1988); *see also Petroleum Helicopters, Inc. v. Avco Corp.*, 930 F.2d 389, 392 n.9 (5th Cir. 1991); *Shipco 2295, Inc. v. Avondale Shipyards, Inc.,* 825 F.2d 925, 928 (5th Cir. 1987). The object of the parties' contract constitutes the "product" under *East River. See id.* Some courts have extended the scope of the "product itself" to include those spare and replacement parts that the purchaser knew would be needed, even if temporally removed from the initial purchase, but this practice is not uniform. *See, e.g., McDermott, Inc. v. Clyde Iron,* 979 F.2d 1068, 1070 (5th Cir. 1992) *reversed on other grounds*, 511 U.S. 202 (1994); *Exxon Shipping Co. v. Pac. Res., Inc.,* 835 F. Supp. 1195, 1201 (D. Haw. 1993) *compare with Ins. Co. of N. Am. v. Man Engines & Components, Inc.*, No. 05-60699-CIV, 2006 WL 8432178 (S.D. Fla. June 27, 2006). Thus, in assessing a client-manufacturer's potential defenses and scope of liability in an admiralty action, a close examination of the alleged defective product and damages should be considered carefully considering *East River* and its progeny.

Second vs. Third Restatement of Torts: Beginnings of a Shift?

The Supreme Court has clearly stated and affirmed that general maritime law adopts the Restatement (Second) of Torts for strict product liability actions. *See E. River*, 476 US at 864–65; *Saratoga Fishing Co.*; 520 U.S. at 979. Yet, appellate and district courts are now turning to the Third Restatement for guidance in deciding product liability and negligence law in admiralty. In fact, some federal appellate courts have acknowledged that the Restatement (Third) of Torts has superseded the Second Restatement. *See Oswalt v. Resolute Indus., Inc.*, 642 F.3d 856, 860 (9th Cir. 2011); *St. Paul Fire & Marine Ins. Co. v. Lago Canyon, Inc.*, 561 F.3d 1181, 1190 n. 18 (11th Cir. 2009); *Krummel v. Bombardier Corp.*, 206 F.3d 548, 552 (5th Cir. 2000); *All Alaskan Seafoods, Inc. v. Raychem Corp.*, 197 F.3d 992, 995 (9th Cir. 1999); *Isham v. Padi Worldwide Corp.*, Nos. 06-382, 06-386, 2007 WL 2460776, at *6 (D. Haw. Aug. 23, 2007). Although the Third Restatement has not been formally adopted by the Supreme Court, the high court has referenced with respect to general maritime product liability. *See Saratoga Fishing Co.*, 520 U.S. at 879; *see also Air & Liquid Sys. Corp. v. DeVries,* 139 S. Ct. 986, 993, 203 L. Ed. 2d 373 (2019) (discussing Third Restatement in failure to warn negligence claims against manufacturer).

The adoption of the Third Restatement in general maritime product liability claims is far from unanimous, but its potential use in cases does present some interesting questions for general maritime product liability claims moving forward. One notable distinction was recently highlighted in the United States Fifth Circuit Court of Appeals decision *Ortega v. United States*, 2021 WL 164828 (5th Cir. Jan. 19, 2021). In that case, a plaintiff appealed dismissal of claims against the U.S. Coast Guard, arguing, in pertinent part, that the district court erred in dismissing the plaintiff's design defect claim based on lack of standing. *Id.* at *10. The court compared and analyzed the distinction between a

proper product liability plaintiff under the Second Restatement versus the Third Restatement. *Id*. Under the Second Restatement, the "ultimate user or consumer" who is harmed by an allegedly defective product can bring a claim against a manufacturer. Restatement (Second) of Torts, Sec. 402A. Yet, the Third Restatement modified this language to "persons," a much broader class of claimant. Restatement (Third) of Torts, Sec. 1. The plaintiff argued that the change between the Restatements allowed for the inclusion of claims by bystanders, and would align itself with contemporary state law product liability law—namely, Texas law. *Ortega*, 2021 WL 164828 at *10.

Although the court in *Ortega* declined to follow the Third Restatement and affirmed the district court's dismissal, the plaintiff's argument previewed the potential for expanding the scope of potential product liability claims under general maritime law: namely, allowing for plaintiffs that are neither "ultimate users" nor "consumers" to bring product liability claims. Moreover, considering maritime law's policy of uniformity throughout the country and its interrelationship with state substantive law, these comparisons will likely become more frequent and challenging. Accordingly, product practitioners in a maritime case should familiarize themselves with the Second and Third Restatement for all types of tort claims under general maritime law. The distinction between "ultimate users or consumers" and an expanded class of plaintiffs in standing for product liability claims, as highlighted in *Ortega*, is an important potential change that attorneys should consider as they prepare the defense of their client-manufacturers.

Scope of Failure to Warn in General Maritime Law—*Air & Liquid Sys. Corp. v. DeVries*

The strict product liability theory of "failure to warn" can also be pursued as a negligence claim in general maritime law. The Second Restatement explains that a product manufacturer owes a duty to warn when it knows or has reason to know that the product is likely to be dangerous for its intended use and the manufacturer has no reason to believe that the user will realize the danger. Restatement (Second) of Torts §388, p. 301 (1963–1964). Furthermore, general maritime law requires manufacturers to warn of known defects not only in products they manufactured, but also those manufactured by others that will necessarily be incorporated into the products. The Supreme Court examined the scope of the manufacturer's duty in these circumstances in *Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986, 993 (2019). In *DeVries*, the Court concluded that a manufacturer has a duty to warn "when its product *requires* incorporation of a part and the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses." *Id.* at 993–94 (emphasis added). Furthermore, the Court adopted state court precedent considering the "certain related situation" standard, including when "a manufacturer directs that the part be incorporated, a manufacturer itself makes the product with a part that the manufacturer knows will require replacement with a similar part, or a product would be useless without the part." *Id*. at 995–96 (internal citation omitted).

The critical word in the *DeVries* ruling is "requires" because it promotes a device-specific inquiry, and proof of knowledge that the device would be used with another product, thereby making it dangerous. This new "duty to warn" was criticized by the *DeVries* dissenters for several reasons, including lack of foundation in common law, upsetting the balance between the shared knowledge between manufacturers and users, and—most notably—creating a vague standard that would be difficult to apply in a uniform manner. *DeVries*, 139 S. Ct. 986, 998 (2019) (Gorsuch J. dissenting). In particular, the dissenters noted "equality of treatment" becomes harder to ensure across cases; "predictability is destroyed" for innovators, investors, and consumers alike; and "judicial courage is impaired" as the ability (and temptation) to fit the law to the case, rather than the case to the law, grows. *Id*.

The case also raises concerns about the context within which it was decided: asbestos litigation. The *DeVries* decision effectively expanded the general scope of a manufacturer's duty to warn, even though asbestos is a known toxic substance, and, as such, may not have been the optimal case to expand a general duty to warn. The question raised by this standard is "How much knowledge will be *required* of manufacturers in warning their users of dangers regarding the use of their product with other devices?" This new "duty to warn" will likely require extensive factual investigation and expert assistance to develop defense theories to combat this new nuance in maritime product liability.

Asserting Claims under Admiralty and State Law—Can It Be Done?

Admiralty law, whether statutory or judicially created, preempts state law under the Supremacy Clause of the United States Constitution. *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 314 (1955). However, courts may apply state law to admiralty cases where the general maritime law is silent on an issue. *Coastal Iron Works, Inc. v. Petty Ray Geophysical, Div. of Geosource, Inc.*, 783 F.2d 577, 582 (5th Cir. 1986). Under these circumstances, state law can apply as a supplement to the general maritime law to fill a gap therein. *Parekh v. Argonautica Shipping Investments B.V.*, No. CV 16-13731, 2017 WL 3456300, at *2 (E.D. La. Aug. 11, 2017) (citing *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996)). However, state law can only supplement the general maritime law if: "(1) it does not conflict with an applicable act of Congress; (2) it does not work material prejudice to a characteristic feature of general maritime law; or (3) it does not interfere with the proper harmony and uniformity of the general maritime law in its international and interstate relations." *In re Antill Pipeline Const. Co., Inc.*, 866 F. Supp. 2d 563, 567–68 (E.D. La. 2011) (citing *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917)).

While the general maritime law will permit the application of state law in some circumstances, product liability cases do not fall into that category. Courts have found that there is no "gap" for state law to fill because the applicable version of the Restatement is the "best expression" of product liability law. *Parekh,* 2017 WL 3456300, at *2; *Matter of Am. River Transportation, Co., LLC*, No. CV 18-2186, 2019 WL 2847702, at *3–4 (E.D. La. July 2, 2019). Therefore, the Restatement should provide the substantive law governing general maritime product liability claims to

the exclusion of state law. *But see Yamaha Motor Corp.,* 516 U.S. at 215 (permitting state law to supplement available damages in a wrongful death action brought by survivors of a non-seafarer killed in state territorial waters).

Other Issues

Other miscellaneous issues that practitioners defending maritime product liability actions should be aware of are discussed in this section.

Comparative Fault

Like many states, the general maritime law is a "pure" comparative fault regime; liability must be apportioned to each party in proportion to its fault. *Avondale Indus., Inc. v. Int'l Marine Carriers, Inc.*, 15 F.3d 489, 495 (5th Cir. 1994) (citing *United States v. Reliable Transfer Company, Inc.*, 421 U.S. 397, 409–11 (1975)). Comparative fault is an integral, essential feature of the general maritime law. *Lewis v. Timco, Inc.*, 716 F.2d 1425, 1433 (5th Cir. 1983) (*en banc*); *In re Antill Pipeline Const. Co., Inc.*, 866 F. Supp. 2d at 569 (E.D. La. 2011). The factfinder assigns fault after "analyzing all the evidence presented, it comes to a conclusion based upon the number and quality of the faults of each party, and the part they played in causing the casualty." *In re Marquette Transportation Co., LLC*, 292 F. Supp. 3d 719, 734 (E.D. La. 2018) These comparative fault principles apply in all cases, including product liability cases. *Lewis v. Timco, Inc.*, 716 F.2d at 1428; *see also Pan-Alaska Fisheries, Inc. v. Marine Const. & Design Co.*, 565 F.2d 1129, 1138 (9th Cir. 1977).

However, unlike many states, the general maritime law also recognizes joint and several liability. *Coats v. Penrod Drilling Corp.*, 61 F.3d 1113, 1139 (5th Cir. 1995) (*en banc*). This doctrine permits a plaintiff to obtain full legal redress from any defendant, even if that defendant's actions were not solely responsible for the plaintiff's injuries. *Hardy v. Gulf Oil Corp.*, 949 F.2d 826, 829 (5th Cir. 1992). The general maritime law deals with a defendant paying more than its proportionate share of damages through contribution. *Horizon Navigation Ltd. v. Progressive Barge Line, Inc.*, No. CV 18-4497, 2019 WL 1299711, at *5 (E.D. La. Mar. 21, 2019). However, where the injured plaintiff could not sue a party due to immunity, the defendant cast in damages is similarly prevented from seeking contribution from that party. *Stencel Aero Eng'g Corp. v. U.S.*, 431 U.S. 666, 673–74 (1977) (*Feres* doctrine, which bars military serviceman from suing United States for injuries sustained during active duty, also bars manufacturer's contribution claim); *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256 (1979) (no contribution action against a stevedoring company that was immune from the plaintiff's claims under LHWCA). Therefore, a manufacturer bearing relatively little fault may nevertheless be forced to satisfy the entire judgment under the general maritime law. The manufacturer would then be forced to seek contribution from other liable defendants for their portions of the judgment.

Juries

The availability of jury trials in admiralty cases can be a complex issue. Generally, there is no right to a jury trial when a case is brought under 28 U.S.C. §1333. *See* Fed. R. Civ. Proc. 38(e); *In re Lockheed Martin Corp.*, 503 F.3d 351, 354–55 (4th Cir. 2007). However, Congress, through the "savings to suitors" clause, allowed plaintiffs with admiralty claims to obtain juries by filing their actions in either state court or, if diversity jurisdiction is present, in federal district court. *Luera v. M/V Alberta*, 635 F.3d 181, 188 (5th Cir. 2011); (citing *Atl. & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 359–60 (1962)). This is true even where traditional admiralty claims are joined with common-law claims. *Id.* at 191. Even in these circumstances, however, the plaintiff can designate the claim as an admiralty or maritime claim, which prevents both the plaintiff and defendant from seeking a jury trial. Fed. R. Civ. Proc. 9(h); *T.N.T. Marine Serv., Inc. v. Weaver Shipyards & Dry Docks, Inc.*, 702 F.2d 585, 587 (5th Cir. 1983).

Although there is no right to a jury trial in admiralty, there is also no constitutional provision or statute that specifically prevents jury trials. *Fitzgerald v. U. S. Lines Co.*, 374 U.S. 16, 20 (1963). Therefore, in addition to the "savings to suitors" circumstance discussed above, there are federal statutes affording jury trials in certain maritime claims. *See, e.g.*, 46 U.S.C. §30104 (Jones Act).

Punitive Damages

Entire articles have been, and can be, written regarding the availability of punitive damages under the general maritime law. The topic has generated conflicting decisions from the United States Supreme Court in recent years. *Compare The Dutra Grp. v. Batterton*, 139 S. Ct. 2275 (2019), *with Atl. Sounding Co. v. Townsend*, 557 U.S. 404 (2009); *see also* Michael F. Sturley & Matthew H. Ammerman, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 44 Tul. Mar. L.J. 513, 518–24 (2020). Under *Dutra Group*, which is the Supreme Court's latest punitive damages pronouncement, a plaintiff seeking punitive damages must show that the remedy was historically allowed for the type of claim the plaintiff brings, which was unseaworthiness in that case. *The Dutra Grp.,* 139 S. Ct. at 2283–84. Because the plaintiff could not demonstrate that punitive damages were historically available in unseaworthiness actions, the Supreme Court held he could not recover punitive damages. *Id.* at 2287. Given the limited decisions by the Supreme Court about product liability claims under general maritime law, the current formulation of the test would seem to preclude punitive damages. However, prior to *Dutra Group*, several courts found that punitive damages were available in product liability actions. *Morgan v. Almars Outboards, Inc.*, 316 F. Supp. 3d 828, 841 (D. Del. 2018); *Lobegeiger v. Celebrity Cruises, Inc.*, No. 11-21620-CIV, 2011 WL 3703329, at *7 (S.D. Fla. Aug. 23, 2011) *Szollosy v. Hyatt Corp.*, 396 F. Supp. 2d 159, 166 (D. Conn. 2005); *Jurgensen v. Albin Marine, Inc.*, 214 F. Supp. 2d 504, 509 (D. Md. 2002). The viability of these decisions remains to be seen.

Conclusion

The overview provided by this article highlights some of the basic and nuanced issues that should be considered when evaluating a product liability claim under general maritime law. An understanding of maritime product liability claims allows for practitioners to navigate the substantive and procedural issues unique to this area. This introduction should be supplemented by applicable circuit and district court decisions in a practitioner's jurisdiction to enhance the defense of these types of claims further. FD