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Sosa v. MN Lago Izabal: A Foreign Seaman's Right to American L aw

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COMMENT

Sosa v. M/V *Lago Izabal*: A Foreign Seaman's Right to American Law

On January 21, 1980, a fire erupted aboard the vessel M/V *Lago Izabal* while it was attempting to dock at Adams Terminal in Houston, Texas.[1] Gonzalo Sosa, a Mexican seaman who was trapped inside the engine room where the fire had begun, sustained burns over eighty percent of his body.[2] Sosa had contracted for his employment in Mexico. Although a Cayman Island corporation owned the vessel, U.S. citizens held over ninety percent of the corporation's stock.[3] In addition, the vessel conducted most of its operations out of Houston, Texas.[4]

Sosa filed suit against his employer and its vessel in the United States District Court for the Southern District of Texas, alleging that the vessel was in an unseaworthy condition. The district court entered judgment for Sosa, holding that the vessel's unseaworthiness was the proximate cause of his damages.[5] The shipowner appealed, contending, *inter alia*, that the district court erred in finding that both the place of the wrong and the base of the ship's operations were in the United States.[6] He argued the court should have dismissed Sosa's claim for lack of subject matter jurisdiction.[7] On appeal, the United States Court of Appeals for the Fifth Circuit *held*, affirmed: the lower court had correctly applied American law to plaintiff's claim for unseaworthiness, where (1) the United States was both the place of the wrongful act and the base of operations for the vessel,[8] and (2) U.S. citizens owned over ninety percent of the shipowner's corporate stock.[9] *Sosa v. M/*

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1. Sosa v. M/V Lago Izabal, 736 F.2d 1028 (5th Cir. 1984).
2. *Id.* at 1030.
3. *Id.* at 1032.
4. *Id.*
5. *Id.* at 1030.
6. *Id.* at 1031.
7. *Id.*
8. *Id.*
9. *Id.* at 1032.

V Laga Izabal, 736 F.2d 1028 (5th Cir. 1984).

This Note will examine whether a U.S. district court may afford a foreign seaman the powerful remedies available under American maritime law, where his only contact with the United States is that his vessel conducted its day-to-day operating activities in the United States. The disposition of this issue has a serious economic impact on foreign vessel owners. By affording foreign seamen such powerful remedies, courts substantially increase the vessel owner's cost of operation. Applying American law, however, ensures that foreign shipowners who engage in active trade to or from American ports will not be at a competitive advantage vis-a-vis American shipowners who have to operate under the significantly higher costs imposed by American law.

The *Sosa* court applied an eight factor choice-of-law test in reaching its decision.[10] The factors the *Sosa* court considered are: (1) *place of the wrong* (*lex loci deliciti commissi*); (2) *law of the flag*; (3) *domicile of the injured seaman*; (4) *allegiance of shipowner*; (5) *place of contract*; (6) *accessibility of foreign forum*; (7) *law of the forum*; and (8) *base of operations*.

Place of the wrong is the traditional test for deciding a choice-of-law issue in tort actions.[11] This test, however, has limited application to cases in maritime tort, because of the varieties of legal authority that exist over international waters. The doctrine has a territorial effect which cannot easily be applied to vessels that often travel through several jurisdictions in a single voyage.[12]

The *law of the flag* has long been recognized as the universal rule for determining which law to apply. Each country determines the conditions for granting its flag to a ship, thereby accepting responsibility for what transpires on the ship.[13] In *Wildenhus' Case*[14] a Belgian seaman from a Belgian ship was held in an American prison for a crime he had committed while aboard his vessel while in U.S. territorial waters. The Supreme Court, applied the *law of*

10. A seven-factor test originated in Lauritzen v. Larsen, 345 U.S. 571 (1953). The eighth factor, *base of operations*, was later added in Hellenic Lines Limited v. Rhoditis, 398 U.S. 306 (1970).

11. *See, e.g.*, New York Central Railroad Co. v. Chisholm, 268 U.S. 29 (1925); Slater v. Mexican Nat'l. Railroad Co., 194 U.S. 120 (1904).

12. Lauritzen v. Larsen, 345 U.S. 571, 583 (1953).

13. Wildenhus' Case, 120 U.S. 1 (1887); Brown v. Duchesne, 19 How. 183, 15 L.Ed. 595 (1857).

14. 120 U.S. 1 (1887).

the flag test, and held that all matters occurring on board and affecting only the vessel should be left to the vessel's government. The *Wildenhus* doctrine has been expanded to cover events which affect the peace and tranquility of the port of call. The fiction that a vessel belongs to the nation of its flag,[15] remains a strong factor and supercedes the *place of the wrong* in determining choice-of-law.[16]

Under both the *allegiance* or *domicile of the injured* test, the nationality of a vessel, for jurisdictional purposes, is given to her crew, regardless of their national origins.[17] *In re Ross*[18] involved a British seaman, who, while employed on an American vessel, was given the status of an American citizen. The Court held that "[w]hen a foreigner enters the mercantile marine of a nation, and becomes one of the crew of a merchant vessel bearing its flag, he assumes a temporary allegiance to the flag, and, in return for the protection afforded him, becomes subject to the laws by which that nation governs its vessels and seamen." The doctrine is premised on the strong policy consideration that the United States has a duty to protect foreign seamen from wrongful injury incurred while in the service of vessels registered in the United States.[19] This factor generally carries little weight unless it conflicts with the closely related factors of *law of the flag* and *allegiance of the shipowner.* In *Sosa,* such a conflict does exist because the seaman was domiciled in the United States and the vessel was of foreign registry. Therefore, the factor may have played a greater role.

It is seldom necessary to look to the nationality of the shipowner, because it is usually the same as the ship's flag.[20] During the past century in the United States, however, the *allegiance of the defendant shipowner* is not so easily determinable, because of attempts by U.S. shipowners to use "flags of convenience" to avoid stringent U.S. shipping labor and social welfare laws by registering under a foreign flag.[21] The courts of the United States have a legit-

15. *See* A. HIGGINS & C. CALOMBOS, INTERNATIONAL LAW OF THE SEA 288-293 (6th ed. 1967).

16. *Lauritzen,* 345 U.S. at 584.

17. In re Ross, 140 U.S. 453, 472 (1891).

18. *Id.* at 453.

19. *Lauritzen,* 345 U.S. at 586.

20. It is a statutory requirement that a U.S. registered vessel be either wholly or predominantly owned by a U.S. citizen. 46 U.S.C. § 808 (1982).

21. *See* W. MCFEE, THE LAW OF THE SEA, 152-154 (1951); *see also* Merchant Marine Study and Investigation (Transfer of American Ships to Foreign Registry). Hearings before the Senate Interstate and Foreign Commerce Committee, S. Doc. No. 6857, 81st Cong., lst

imate interest in applying powerful American remedies against predominantly American shipowners, who seek to evade U.S. law.

The *place of contract* is a significant factor in choice-of-law questions raised in contract cases. Looking to the *place of contract* is usually fortuitous, because it is believed that "[a] seaman takes his employment, like his fun, where he finds it; a ship takes on crew in any port where it needs them."[22] Seamen's claims under the Jones Act,[23] which provides a statutory right of action in personal injury claims, and the unseaworthiness doctrine,[24] however,

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Sess.(1949). Congress attempted to resolve this problem by simplifying and clarifying the laws relating to vessel documentation. *See* VESSEL DOCUMENTATION ACT, U.S. CODE CONGRESSIONAL & ADMINISTRATIVE NEWS, 96th Cong., 2nd Session, 7162 (1980). Congress hoped that the Act would "facilitate trade and commerce by classifying vessels for regulation, safety, pilotage, fee assessment, and taxation purposes. *Id.* at 7165.

22. *Lauritzen*, 345 U.S. at 588.

23. 46 U.S.C. § 688 (1982). The Act reads, in its entirety, as follows:

§ 688. RECOVERY FOR INJURY TO OR DEATH OF SEAMAN

(a) Application of railway employee statutes; jurisdiction

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

(b) Limitation for certain aliens; applicability in lieu of other remedy

(1) No action may be maintained under subsection (a) of this section or under any other maritime law of the United States for maintenance and care for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action if the incident occurred

(A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of off-shore mineral or energy resources—including but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment, or personnel, but not including transporting those resources by (a) vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and

(B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term "continental shelf" has the meaning stated in Article I of the 1958 Convention on the Continental Shelf.

(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred, or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

24. This discussion is limited to those claims that a seaman may bring against his em-

sound in tort. Thus, the factor has little application in such actions.[25]

Inaccessibility of foreign forum becomes relevant where justice requires the adjudication of a seaman's claim in an American court in order to save him the time and expense of returning to a foreign forum. This factor, however, is not pertinent to the conflicts-of-law issue of this note. Although it may be valuable in determining which court hears the case, it does not assist in determining what law is to be applied.

It may be unreasonable to apply the *law of the forum* on the grounds that defendant has slight contacts with the forum, even though a court has perfected jurisdiction over the parties. The doctrine of *forum non conveniens* contemplates the discretionary declination of jurisdiction where pursuing the action in the forum would be "unduly vexatious or burdensome to the defendant."[26] In *Sosa*, the court was able to obtain jurisdiction over the shipper, because the company had maintained certain minimum contacts with the particular forum. One question that may arise in similar factual contexts is whether the minimum contact of "doing business" in the United States warrants the application of American law. In *Sosa*, the tort involved was arguably of a local nature. Additional contacts, such as the existence of American stockholders, helped tie the case to American law. When a case is tried in a particular forum, procedure does not require that the law of that forum be applied. To do so would be to undermine the very purpose of the conflict-of-laws doctrine; namely, to ensure that every case be treated in the same way with the appropriate law applied.[27]

The *base of operations* factor was first applied in *Hellenic Lines Limited v. Rhoditis*,[28] and gradually has become the major, if not deciding, factor in choice-of-law cases.[29] This factor is premised on strong policy considerations that require foreign ship-

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ployer for maintenance and cure and unseaworthiness.

25. Even though a seaman's claim for unseaworthiness is created out of the fiction that he has impliedly contracted with the shipowner for a "seaworthy" vessel, principles of tort are looked to when assessing shipowner's liability. E. BENEDICT, BENEDICT ON ADMIRALTY, § 23 at 51-58 (7th ed. 1984).

26. Mowrey v. Johnson & Johnson, 524 F. Supp. 771, 774 (W.D. Penn. 1981).

27. *Id.* at 591.

28. 398 U.S. 306 (1970). While the factor appears as dictum in *Lauritzen*, it was only first incorporated as part of the test in *Rhoditis*.

29. Since *Rhoditis*, the test has been incorporated into § 688 of the Jones Act. 46 U.S.C. § 688 (1982).

owners to carry the same obligations and responsibilities as U.S. employers/shipowners if they conduct a majority of their business in the United States. A foreign shipper should not be allowed to reap profits from business in the United States, yet escape the costs that U.S. shippers must assume for engaging in extensive business operations in the United States.[30] To do otherwise would be to give foreign shippers a substantial competitive edge over their American counterparts.

The conflicting ownership/registration dilemma was precisely the situation with which the *Sosa* court had to contend. The defendant vessel was registered to a foreign corporation, but owned almost entirely by U.S. citizens. Moreover, the vessel had a *base of operations* in Houston, Texas, which was also where the injury occurred. The court had no doubt that these particular vessel owners should be burdened with the same protections extended to injured seamen of U.S. registered vessels.

I. Introduction to the Maritime Choice-of-Law "Problem"

Congress empowered the U.S. district courts with original jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction."[31] This sweeping language indicates that the federal courts have broad authority to adjudicate all cases in admiralty, even when such cases may involve the rights of foreign nationals. Whether the involvement of foreign seamen in admiralty suits has the effect of limiting this grant of admiralty jurisdiction has long been an issue before the federal courts.[32] The courts have a history of vacillating between a policy of promoting the liberal powers of American admiralty remedies on the one hand, and of deferring to the laws of foreign sovereigns on the other. This choice-of-law issue can be divided into two categories: (1) those cases where the choice-of-law question is resolved unilaterally by a statute which declares American law applicable, and (2) those cases where the choice-of-law problem is left for judicial determination.

This comment analyzes the jurisdictional development of the latter category, whereby choice-of-law is determined by judicial fiat. The Jones Act, a maritime law statute mandating a cause of

30. *Rhoditis*, 398 U.S. at 310.

31. 28 U.S.C. § 1333 (1976).

32. *See generally* Robol, *Admiralty's Adjudicatory Jurisdiction over Alien Defendants: A Functional Analysis*, 11 J. Mar. L. & Com. 395, 402-406 (1980).

action for injured seamen, fails to expressly define its transnational reach.[33] In *Lauritzen v. Larsen*,[34] the U.S. Supreme Court adopted a seven factor choice-of-law test[35] thereby limiting the application of the Jones Act in actions brought by foreign seamen. In *Lauritzen*, a Danish seaman sought damages for injuries he suffered while on board a Danish-owned vessel sailing in Cuban territorial waters. The seaman's only connection with the United States was that his employment contract was signed and executed in the United States. The contract, however, was written in Danish and stipulated the application of Danish law.[36] The Supreme Court held the Jones Act inapplicable to the Danish seaman's cause of action. The Court noted that it was barred, under the comity of nations doctrine, from exercising jurisdiction over "matters of discipline, and all things done on board, which affected only the vessel."[37] The Court further noted that this limitation would persist absent explicit congressional intent behind the language of the Jones Act.[38] Justice Jackson, writing for the majority, stated that the judiciary attempted "to avoid or resolve conflicts between competing laws by ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved."[39] He then proceeded to list and weigh the seven choice-of-law factors affecting maritime tort claims. Of the seven factors, Jackson stated that the *law of the flag* remained "the most venerable and universal" maritime choice-of-law rule.[40] Although Jackson noted that the *place of the wrong* traditionally governed the law to be applied in tort actions, he recognized that the mobility of vessels and the international character of their commerce warranted making the *law of the flag*, rather than, *place of the wrong*, the stronger factor.[41]

Jackson listed only two factors that could supercede the presumptive reference to the *law of the flag*: the *allegiance or domicile of the injured seaman* and the *allegiance of the defendant shipowner*.[42] The other factors were considered relatively unimpor-

33. *See supra* note 22 for the Jones Act in its entirety.
34. 345 U.S. 571 (1953).
35. *See supra* notes 10-20 and accompanying text.
36. *Lauritzen*, 345 U.S. at 588.
37. *Id.* at 585, (quoting Cunard S.S. Co. v. Wellon, 362 U.S. 100, 123 (1923)).
38. *Lauritzen*, 345 U.S. at 578, 585-86.
39. *Id.* at 582.
40. *Id.* at 584.
41. *Id.* at 583-84.
42. *Id.* at 586-87. For more information on the subject, *see generally* Comment, *A New*

tant when determining the applicability of the Jones Act.[43] In *Lauritzen*, the three primary factors, *law of the flag*, *allegiance of the injured seaman*, and *allegiance of the shipowner*, supported the application of Danish law. The seaman's only contact with the United States was his signing of an employment contract in the United States, a factor that the court discounted as insignificant in tort actions.[44] Consequently, the Court held that choice-of-law principles barred application of the Jones Act to the seaman's claim.

II. Application of the Lauritzen Test to General Maritime Claims

The *Lauritzen* Court neglected to indicate the proper judicial recourse when choice-of-law principles barred the application of a U.S. statute to a foreign seaman's claim.[45] This omission created a technical controversy that has frequently been at issue in similar cases. Some courts have taken the view that if a foreign seaman is barred from relying on the Jones Act for recovery, the court lacks subject matter jurisdiction over the claim.[46] A more popular view advanced by the courts in recent jurisprudence has been to employ *forum non conveniens* in both Jones Act and general maritime claims when application of the *Lauritzen* factors bars recovery under American law.[47]

In *Romero v. International Terminal Operating Co.*,[48] the Supreme Court applied the *Lauritzen* test to both the general maritime claim, and the Jones Act claims. The *Romero* opinion defined the effect of a dismissal on a seaman's remedy in an alternative forum. In *Romero*, a Spanish seaman brought suit against a Spanish shipowner for injuries suffered aboard a Spanish-flag vessel

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Look at Lauritzen v. Larsen, Choiceof Law and Forum Non Conveniens, 38 La. L. Rev. 957 (1978).

43. 345 U.S. at 588-91. This is not to suggest that they would not carry more weight in other cases of general maritime tort, such as a seaman's claim for unseaworthiness. Romero v. International Terminal Op. Co., 358 U.S. 354 (1959).

44. *Id.* at 588-89.

45. *Id.* at 593. The Court merely reversed and remanded the case to the district court for disposition consistent with the Court's findings.

46. The Osceola, 189 U.S. 158, 175 (1903); Gomez v. Karavias U.S.A. Inc., 401 F. Supp. 104, 106 (S.D.N.Y. 1975).

47. *See*, De Mateos v. Texaco Pan., Inc., 417 F. Supp. 411 (E.D. Pa. 1976) *aff'd sub nom.* De Mateos v. Texaco, Inc., 562 F.2d 895, (3d Cir. 1977), *cert. denied*, 435 U.S. 904 (1978); *see also* Fisher v. Agios Nicholaos V, 628 F.2d 308, 315 (5th Cir. 1980).

48. 358 U.S. 354 (1959).

while in American waters. *Romero* differed from *Lauritzen* in three distinct ways. First, the action in *Romero* was brought not only under the Jones Act, but also under general maritime law - unseaworthiness and maintenance and cure. The Supreme Court held that the *Lauritzen* test applied to the seaman's general maritime claims as well as to his Jones Act claim because, "the similarity in purpose and function of the Jones Act and the general maritime principles of compensation for personal injury, admit of no rational differentiation. . . ."[49] Second, unlike the injury in *Lauritzen*, the injury in *Romero* occurred in American waters. Third, in addition to the Spanish shipowner, three American corporations, engaged in stevedoring and related operations aboard the ship, were joined as co-defendants in *Romero*. These facts prompted the Court in *Romero* to define the proper judicial recourse when choice-of-law principles barred the application of a U.S. statute to a foreign seaman's claim.

The district court in *Romero* applied *Lauritzen* and dismissed the seaman's Jones Act and general maritime claims against the employer for lack of subject matter jurisdiction. On appeal, the Supreme Court agreed with the lower court's application of the *Lauritzen* test, barring recovery under the Jones Act.[50] The Court, however, held that the district court erred in dismissing for lack of subject matter jurisdiction, stating that the lower court did have jurisdiction to determine whether the claim was cognizable under the law.[51] The Supreme Court noted that if the lower court had found *Lauritzen* to prohibit plaintiff's claim under the Jones Act, then the proper procedure would have been to dismiss the case for failure to state a legal claim.[52]

It has often been held that the federal courts have jurisdiction to hear general maritime claims by foreigners, but that they may decline such jurisdiction at their discretion.[53] This discretion to decline jurisdiction is exercised under the doctrine of *forum non conveniens*.[54] In effect, *Romero* broadened the choice-of-law test of *Lauritzen* into one of *forum non conveniens* by incorporating the discretionary jurisdiction notion of general maritime law.

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49. *Romero*, 358 U.S. at 382.

50. *Id.* at 359.

51. *Id.*

52. *Id.*

53. The Belgenland, 114 U.S. 355, 356-66 (1885); Canada Malting Co. v. Paterson S.S., Ltd., 285 U.S. 413, 421 (1932).

54. *See* G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY § 1-19, at 52 (2d ed. 1975).

It is also important to note the effect of the *Romero* decision on the *Lauritzen* test. Dismissal for *forum non conveniens* is premised on the notion that plaintiff has access to an alternative forum, whereas dismissal for lack of subject matter jurisdiction is not predicated on the availability of another forum. It would be inconsistent for a court to dismiss a seaman's Jones Act claim for lack of subject matter jurisdiction while only conditionally dismissing his general maritime claim upon his submission to the jurisdiction of another forum. *Romero* requires, therefore, the use of *forum non conveniens* in both Jones Act and general maritime claims when *Lauritzen* contacts enjoin recovery under American law. This holding is consistent with *Lauritzen* because it is patterned after *Lauritzen*'s sixth factor, the *inaccessibility of a foreign forum.*

III. Two Interpretations of Lauritzen: The Liberal and Restrictive Views

Subsequent lower court interpretations of the *Lauritzen* test evidence a split in application among the circuits. Some jurisdictions have interpreted *Lauritzen* liberally, favoring the quality of the contacts between foreign seamen and the American forum rather than the quantity of such contacts. This view was supported by the Supreme Court decision in *Hellenic Lines v. Rhoditis.*[55] Other jurisdictions have taken a restrictive view, favoring a policy of comity with foreign sovereigns.

Bartholomew v. Universe Tankships Inc.[56] was the first case to construe the application of the *Lauritzen* test in a controversy where individual factors yielded conflicting results. In *Bartholomew*, a British West Indies seaman brought an action for Jones Act, unseaworthiness, and maintenance and cure claims against a Liberian vessel. The Liberian corporation that owned the vessel was held by a larger Panamanian corporation, whose stock was owned by U.S. citizens. In *Bartholomew*, the *law of the flag* supported the application of foreign law,[57] while the *allegiance or domicile of the injured seaman*[58] and the *allegiance of the defendant shipowner* supported jurisdiction under the Jones Act.[59] The

55. 398 U.S. 306 (1970).

56. 263 F.2d 437 (2d Cir. 1953), cert. denied., 359 U.S. 1000 (1959).

57. *Id.* at 438.

58. The plaintiff was a citizen of the British West Indies but held to be a resident and domiciliary of the United States for purposes of the Jones Act. *Id.* at 442.

59. *Id.* at 441-42.

Court of Appeals for the Second Circuit interpreted *Lauritzen* and held that rather than consider and weigh factors that had no relationship to the United States, the court would look to those factors that did implicate the United States, and would determine if they were "substantial."[60] This "substantial contacts" test stipulates that Jones Act jurisdiction depends on the quality of the American contacts. Therefore a lone contact could create Jones Act jurisdiction if it were qualitatively substantial. The three factors held to be most important in *Lauritzen* (*law of the flag, allegiance or domicile of the injured seaman,* and the *allegiance of the shipowner)* have become the crucial contacts courts evaluate when applying the "substantial contacts" test.[61] *Hellenic Lines v. Rhoditis*,[62] is the most recent case decided by the Supreme Court to have an effect on the *Lauritzen* choice-of-law test. In *Rhoditis*, a Greek seaman filed suit against a Greek shipowner for injuries suffered aboard a Greek-flag vessel while in the port of New Orleans.[63] The facts in *Rhoditis* are almost identical to those in *Romero*. If the Supreme Court had not expanded the *Lauritzen* test, the case would have been dismissed as in *Romero*. In *Rhoditis*, Justice Douglas, writing for the majority, stated: "The *Lauritzen* test. . .is not a mechanical one. . . . The significance of one or more factors must be considered in light of the national interest served by the assertion of Jones Act jurisdiction."[64] The opinion further stated that the objective was "to effectuate the liberal purposes of the Jones Act" and, "the list of seven factors in *Lauritzen* was not intended as exhaustive. . . . [T]he shipowner's *base of operations* is another factor of importance in determining whether the Jones Act is applicable; and there well may be others."[65] The *Rhoditis* Court specifically adopted the *Bartholomew* "substantial contacts" test. The Court liberally construed the test by holding that if it could be shown that the shipowner's base of operations was in the United States, he would be held accountable to the obligations and responsibilities of a Jones Act employer even though there were no recognized contacts with the United States.[66]

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60. *Id.* at 441.

61. Dutta v. M/V Clan Graham, 528 F.2d 1258 (4th cir. 1975).

62. 398 U.S. 306 (1970).

63. *Id.* at 307-308.

64. *Id.* at 308-309.

65. *Id.* at 309.

66. *Id.* at 310. The shipowner, though a Greek citizen, had been a permanent resident of the U.S. for 25 years and had managed the corporation out of offices in New York and New Orleans. In addition, the entire income of the ship on which the plaintiff was injured

The most important contribution *Rhoditis* provided to the choice-of-law test was the addition of an eighth factor, the vessel's *base of operations*. The base of a vessel's operations carries greater weight than the locus of the injury or the forum of a vessel's flag in determining what law to apply. This modern approach to the issue closely parallels the "liberal" view of the *Lauritzen* test and the doctrine chosen by the court in *Sosa*.

The restrictive view of the *Lauritzen* test was developed by the dissent in *Rhoditis*. The dissent's argument was premised on the contention that the underlying purpose behind *Lauritzen* was to defer to the "relevant interests of foreign nations in the regulation of maritime commerce."[67] Justice Harlan, writing for the dissent, believed that the majority's holding would threaten the delicate balance existing between the liberal reach of the Jones Act and the doctrine of comity with the laws of foreign nations.[68]

The restrictive view reappeared in *De Mateas v. Texaco Inc.*,[69] where Jones Act and general maritime claims were dismissed on grounds of *forum non conveniens*. In *De Mateas*, the only contact that existed with the United States was the ownership and management of the vessel by foreign subsidiaries of an American multinational oil corporation.[70] The Court of Appeals for the Third Circuit in rejecting the Second Circuit precedent and reverting to the *Lauritzen* policy of deferring to the laws of foreign nations, asserted that "[I]t would be an extreme suggestion. . . that American law could govern relations between [the Panamanian subsidiary of an American corporation] and the employees in its Panamanian business enterprise incorporated in Delaware."[71]

The *De Mateas* holding was subsequently affirmed and elaborated upon in *Chirinos de Alvarez v. Creole Petroleum Corp.*[72] In *Chirinos*, four Venezuelan employees were killed while working on a drilling rig in Lake Maracaibo, Venezuela. As in prior cases, the only contact with the United States was the fact the defendant was a Delaware corporation owned by Exxon Corporation. Despite this contact, and despite the fact that the defendant frequently collab-

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was derived from voyages to or from American ports.

67. 398 U.S. at 312 (Harlan, J., dissenting) (quoting Romero v. International Terminal Op. Co., 358 U.S. 354, 383 (1959)).

68. *Id.* at 318.

69. 562 F.2d 895 (3d Cir. 1977), *cert. denied*, 435 U.S. 904 (1978).

70. *Id.* at 898, 902.

71. *Id.* at 902.

72. 613 F.2d 1240 (3d Cir. 1980).

orated with Exxon,[73] the third circuit affirmed the lower court's dismissal of plaintiff's Jones Act and general maritime claims on grounds of *forum non conveniens*. The court placed great weight on the fact the injury occurred on Venezuelan inland waters. It reasoned that defendant's business with Exxon was insufficient to fall within the *base of operations* rule.[74] The *Chirinos* court applied what amounted to a territorial rule. Rather than apply the old standard of *place of the wrong*, the court looked to the location of the base of operations relative to the venture.[75]

While some courts have narrowly interpreted the *Rhoditis*[76] holding, others have expanded the notion of *base of operations*.[77] These courts have broadened the reach of American maritime law by finding such a base of operations on a showing of fewer American connections than was shown in *Rhoditis*. A recent and controversial decision using this reasoning was the Fifth Circuit's holding in *Fisher v. The Agios Nicolaas V*.[78] Like *Rhoditis*, *Fisher* involved a suit brought by the personal representatives of a Greek seaman to recover damages for fatal injuries received aboard a Greek-flag vessel within United States territorial waters. Unlike *Rhoditis*, the defendant corporation in *Fisher* was neither controlled by American stockholders, nor managed from American soil. In *Fisher*, the court found that the vessel's entire business activity prior to the accident had been in the United States, and that "its entire revenues therefore to be earned"[79] were derived from American trade. Thus, the Court of Appeals for the Fifth Circuit affirmed the lower court finding that the defendant had an American base of operations justifying the application of American law.[80] This liberal application of the *base of operations* test is the proper one for the courts to follow. The remedies offered under American maritime law are among the most powerful seamen's remedies found in any jurisdiction. It is, therefore, more consistent and even-handed for

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73. *Id.* at 1243.

74. *Id.* at 1247.

75. Phillips v. Amoco Trinidad Oil Co., 632 F.2d (9th Cir. 1980) 82, 88; *see also* Chirinos de Alvarez v. Creole Petroleum Corp., 462 F. Supp. 782, 786 n.11 (D. Del. 1978), *aff'd on other grounds*, 613 F.2d 1240 (3d Cir. 1980).

76. *See Chirinos*, 613 F.2d 1240.

77. *See* De Oliverira v. Delta Marine Drilling Co., 684 F.2d 337 (5th Cir. 1982); Chiazor v. Transworld Drilling Co., 648 F.2d 1015 (5th Cir. 1981), *cert. denied* 455 U.S. 1019 (1982).

78. 628 F.2d 308 (5th Cir. 1980), *reh'g en banc denied*, 636 F.2d 1107, *cert. denied*, 454 U.S. 816 (1981).

79. 628 F.2d at 317-18.

80. *Id.* at 317.

U.S. courts to apply American law to all vessels that derive a benefit from the use of American ports and territorial waters.

IV. CONCLUSION

Sosa v. M/V Lago Izabal[81] presents the most troublesome controversy of maritime conflicts: cases involving injuries to foreign seamen occurring within U.S. territorial waters, aboard foreign-flag vessels not expressly owned by Americans, but, nevertheless, having American bases of operations. It has been argued that the application of the Jones Act and American general maritime law to these cases is appropriate because it promotes the general deterrent and compensatory policies of the laws. The promotion of safety in American waters and the regulation of the social and economic loss from accidents within American waters can be effected more efficiently and equitably if all distinctions between American and foreign vessels, shipowners, or seamen are eliminated. The outdated fiction of "the floating island"[82] simply is not a reason to shield foreign shipowners from responsibility for the losses they cause. Nor is it a reason to treat foreign seamen less generously if they are employed by foreign, rather than American shipowners. Applying American law to these cases will also ensure that foreign shipowners who engage in active trade to or from American ports will not be at a competitive advantage vis-a-vis American shipowners who have to operate under the significantly higher costs imposed by American law.

The current trend, which follows the "open door" left by *Rhoditis*, is to apply the *base of operations* test when determining whether to allow a cause of action under the Jones Act and American general maritime law. This trend follows the Supreme Court's intent in *Lauritzen* not to create an all-inclusive list of determining factors. Even the restrictive view of *Lauritzen* accepts the *base of operations* test as a proper yardstick for determining the applicability of American law, and only differs from the liberal view in the standard to be applied for satisfaction of the test. The *Sosa* court endorsed the test when it looked through the "facade of for-

81. 736 F.2d 1028 (5th Cir. 1984).

82. The "floating island" concept was best described in United States v. Flore, 289 U.S. 137 (1933) where it was held that a merchant ship "is deemed to be a port of the territory of that sovereignty [whose flag it flies], and not to lose that character when in navigable waters within the territorial limits of another sovereignty." *Id.* at 155-59. From this arose the fiction that a vessel was a floating part of the flagstate.

eign incorporation"[83] and found a shipowner who was benefiting from substantial relations with the United States. Hence, the shipowner was charged by the court with the correlative responsibility that the Supreme Court had previously determined such a beneficiary will carry. The *Sosa* decision is therefore a prime example of how U.S. courts are making it difficult for shipowners to hide behind their foreign registry in an attempt to avoid the burden of the powerful seaman's remedies available under American law.

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83. *Sosa*, 736 F.2d at 1032.