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Ancillary Jurisdiction in Admiralty: Smooth Sailing for Impleading of Non-Maritime Causes of Action

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COMMENT

ANCILLARY JURISDICTION IN ADMIRALTY: SMOOTH SAILING FOR IMPLEADING OF NON-MARITIME CAUSES OF ACTION*

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I. INTRODUCTION

The legitimacy of the practice of impleading non-maritime causes of action in admiralty cases has ridden both peaks and

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troughs on the waves of maritime legal history. The recently renewed acceptability of this concept of law is anchored in now-ancient admiralty case law that is at the root of all modern American third-party practice, both civil and admiralty.¹

The first court to hand down a reported opinion on the subject held that a defending party in an admiralty action was able to implead a third party where his claim against that party was based on a common law cause of action.² The court's rationale for the acceptance of this practice finds its parallel in the modern concept commonly expressed by the phrase "in the interest of judicial economy."³

The practice was soon discarded for reasons which could only be explained in terms of an attempt on the part of the admiralty courts to maintain the exclusivity of the admiralty jurisdiction. The merger of the Federal Rules of Civil Procedure with the Admiralty Rules in 1966 served as the catalyst which brought about the eventual change in the law. Legal precedent re-established a defendant's right to implead additional parties into an admiralty action, whether or not those parties' liabilities were based upon a maritime claim.⁴ While some early post-merger cases attempted to maintain the old concept of separate jurisdiction, these opinions were criticized in dicta and finally discredited in 1982.⁵

This Comment attempts to track the historical development of third-party practice in admiralty, including early acceptance and the later rejection of jurisdiction over impleaded non-maritime claims. It then traces modern legal precedent including the early post-merger decisions which rejected this form of ancillary jurisdiction. It concludes with an analysis of *Joiner v. Diamond M. Drilling Co.*,⁶ which once again established the legitimacy of the practice. The intent of this Comment is to update the reader on the current status of the law and to acquaint the reader with its legal evolution since the subject was last treated in the law reviews, no less than a dozen years ago.⁷

1. *The Hudson*, 15 F. 162 (S.D.N.Y. 1883).

2. *Evans v. New York & P.S.S. Co.*, 163 F. 405 (S.D.N.Y. 1906).

3. *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966); *Joiner v. Diamond M. Drilling Co.*, 677 F.2d 1035, 1040 (5th Cir. 1982).

4. *Joiner v. Diamond M. Drilling Co.*, 688 F.2d 256 (5th Cir. 1982).

5. *Leather's Best, Inc. v. S.S. Mormaclynx*, 451 F.2d 800, 810-11 (2d Cir. 1971).

6. 688 F.2d 256 (5th Cir. 1982).

7. Landers, *By Sleight of Rule: Admiralty Unification and Ancillary and Pendent Jurisdiction*, 51 Tex. L. Rev. 50 (1972); Black, *Admiralty Jurisdiction: Critique and Sugges-*

II. HISTORY

A. *Early History*

The origins of admiralty impleader lie in the case of *The Hudson*.⁸ The *Hudson* court, "in the interest of expediency, directness, and effectualness,"⁹ permitted the libellee in a collision case to serve process upon a vessel which might have been equally as liable to the libellant as the libellee was himself. The court reasoned that collision cases were *sui generis*, where the question of liability was best determined in a single action in which testimony could be taken from witnesses on both vessels. Because no rule of procedure expressly allowed impleader of third parties at the time of *The Hudson*, the court fashioned its own rule. It relied on a rule of admiralty procedure which recognized the power of the court to regulate its practice "in such manner as it shall deem most expedient for the due administration of justice."¹⁰

The seeds for such a ruling had been sown by the Supreme Court of the United States six years earlier in a decision which stated that a libellant could recover *all* his collision damages from a single offending vessel.¹¹ The *Hudson* court recognized the harshness of a rule which imposed liability on a single vessel, where sometimes another was equally or more at fault. The court fashioned a novel and equitable solution to the problems of this rule.

It is generally acknowledged that ancient Admiralty Rule 59, predecessor of old Admiralty Rule 56 and also modern Rule 14 of the Federal Rules of Civil Procedure, grew out of the decision in *The Hudson*.¹² This conclusion is supported by the fact that when Admiralty Rule 59 was first codified in 1889, the rule was made applicable only to *collision* cases.¹³ By the time the rule was officially adopted, its application was expanded to include impleader in contract cases.¹⁴ The expansion was carried out by the courts

tions, 50 COLUM. L. REV. 259 (1950); Note, *Admiralty Practice After Unification: Barnacles on the Procedural Hull*, 81 YALE L. J. 1154 (1972).

8. 15 F. 162 (S.D.N.Y. 1883).

9. *Id.* at 176.

10. *Id.*

11. The "Atlas", 93 U.S. 302 (1876).

12. Fifty-ninth rule in Admiralty, 29 S.Ct. XLVI; also see generally C. WRIGHT & A. MILLER, *FEDERAL PRACTICE AND PROCEDURE*: § 1465 (1971).

13. *Id.*

14. The Alert, 40 F. 836 (S.D.N.Y. 1889).

"in the interest of speedy, complete, and convenient administration of justice".¹⁵

The first successful attempt to implead an additional party based on a *non-maritime* claim in an admiralty action occurred in 1906, in the case of *Evans v. New York & P.S.S. Co.*¹⁶ The libellant had shipped rubber on a vessel whose owners had leased a dock-side warehouse for storage purposes from a third party. The rubber was stolen from this warehouse before the shipper's agent had arranged for pick-up. Consequently, the shipper libelled the carrier in admiralty based upon its maritime contract of carriage. Subsequently, the carrier impleaded the warehouseman for indemnity.

The court held that the libellee could implead the third party warehouseman even though his status was only that of a common law bailee for hire. Neither of the original parties to the libel could have maintained an original action against the warehouseman in admiralty, because neither a maritime contract nor a maritime tort was involved. The court permitted the impleader "in order to prevent circuity of action and multiplicity of suits" and to do complete justice in the manner of equity courts.¹⁷

The *Evans* decision was followed in several subsequent cases. The decision, however, was then criticized twelve years later by the Second Circuit Court of Appeals in *The Ada*.¹⁸ The Second Circuit's disapproval was based on its belief in the separateness of the civil and maritime jurisdictions of the federal courts. Judge Hough, who authored the opinion in *Evans*, dissented from *The Ada* court's treatment of *Evans*, which implied that admiralty had no power to implead a non-maritime surety or party *responsible-over* "under the equity of the fifty-ninth rule."¹⁹

Two years after *The Ada*, the United States Supreme Court proposed Admiralty Rule 56 as a replacement for Rule 59.²⁰ Since the time of its adoption, Rule 59 had been liberally expanded to encompass not only collision cases, but *all* cases in admiralty. Proposed Rule 56 was an effort to codify this extended use of impleader. The new rule allowed the defending party to implead any third party liable to him for all or any portion of the claimant's

15. *Id.*

16. 163 F. 405 (S.D.N.Y. 1906).

17. *Id.* at 407.

18. 250 F. 194 (2d Cir. 1918).

19. *Id.* at 198, 199.

20. See generally C. WRIGHT & A. MILLER, *supra* note 12, at 339-52.

claim. In addition, the rule provided for substitution of defendants who were directly liable to the claimant.²¹

This rule, adopted in March of 1921, became the subject of dicta in two cases decided by the Second Circuit in 1922. Judge Ward's opinion in *The Goyaz*²² reiterated his reasons for disapproval of the *Evans* doctrine as expressed in *The Ada*.²³ After giving proper regard to *stare decisis* by citing *The Ada's* rejection of impleader of non-maritime claims in admiralty, *The Goyaz* court constructed a constitutional argument for rejecting the *Evans* doctrine.²⁴ The court first stated that Congress, by way of the Act of August 23, 1842, gave the Supreme Court authority to *merely regulate* practice in the federal courts. No authority was granted to enact substantive law.²⁵ The Supreme Court did not intend to en-

21. Admiralty Rule 56 provided:

In any suit, whether in rem or in personam, the claimant or respondent (as the case may be) shall be entitled to bring in any other vessel or person (individual or corporation) who may be partly or wholly liable either to the libellant or to such claimant or respondent by way of remedy over, contribution or otherwise, growing out of the same matter. This shall be done by petition, on oath, presented before or the time of answering the libel, or at any later time during the progress of the cause that the court may allow. Such petition shall contain suitable allegations showing such liability, and the particulars thereof, and that such other vessel, or person ought to be proceeded against in the same suit for such damage, and shall pray that process be issued against such vessel or person to that end. Thereupon such process shall issue, and if duly served, such suit shall proceed as if such vessel or person had been originally proceeded against; the other parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation, with sufficient sureties, or an approved corporate surety, to pay the libellant and to any claimant or any new party brought in by virtue of such process, all such costs, damages, and expenses as shall be awarded against the petitioner by the court on the final decree, whether rendered in the original or appellate court; and any such claimant or new party shall give the same bonds or stipulations which are required in the like cases from parties brought in under process issued on the prayer of a libellant.

22. 281 F. 259 (S.D.N.Y. 1922).

23. 250 F. 194 (2d Cir. 1918).

24. The argument was based upon the deprivation of an impleaded third party's right to a jury trial guaranteed by the seventh amendment of the U.S. Constitution. U.S. CONST. amend. VII.

25. Act of August 23, 1842, Sess. II CH. 188, § 6, 5 Stat. 518 stated:

And be it further enacted, That the Supreme Court shall have full power and authority, from time to time, to prescribe, and regulate, and alter, the forms of writs and other process to be used and issued in the district and circuit courts of the United States, and the forms and modes of framing and filing libels, bills, answers, and other proceedings and pleadings, in suits at common law or in admiralty and in equity pending in the said courts, and also the forms and modes

act substantive law in the newly enacted Admiralty Rule 56.²⁶ Furthermore, the court stated in dicta that any construction of the new Rule 56, enacting substantive law, would have two ramifications that were beyond the power of the Supreme Court to effect: First, it would extend the jurisdiction of the district courts;²⁷ second, it would deprive an impleaded third party of his constitutionally-guaranteed right to a jury trial.²⁸ At the time, the right to a jury trial was totally nonexistent on the "Admiralty Side".

The Second Circuit in *Aktieselskabet Fido v. Lloyd Brasileiro*²⁹ rubber stamped Judge Ward's opinion in *The Goyaz*.³⁰ During the next forty-four years it remained settled law that, under Rule 56, the parties to a libel in admiralty enjoyed liberal impleader in an admiralty cause of action. The same third party could not be brought in at common law, civil, equitable, or statutory causes of action.

In 1966, unification of the Civil and Admiralty Rules drastically changed the face of the issues decided in the early part of the century. A court dealing with those issues for the first time, would confront, on the civil side, the modern concepts of ancillary jurisdiction and third-party practice and, on the admiralty side, the extensive inroads into the long standing tradition of jury-less trials. After unification, the federal courts were armed with Rule 14 of

of taking and obtaining evidence, and of obtaining discovery, and generally the forms and drawing up, entering, and enrolling decrees, and the forms and modes of proceeding before trustees appointed by the court, and generally to regulate the whole practice of the said courts, so as to prevent delays, and to promote brevity and succinctness in all pleadings and proceedings therein, and to abolish all unnecessary costs and expenses in any suit therein.

26. Admiralty Rule 59 provided in pertinent part:

In a suit for damage by collision, if the claimant of any vessel proceeded against, or any respondent proceeded against in personam, shall, by petition, on oath, presented before or at the time of answering the libel, or within such further time as the court may allow and containing suitable allegations showing fault or negligence in any other vessel contributing to the same collision, and the particulars thereof, and that such other vessel or any other party ought to be proceeded against in the same suit for such damage, pray that such process be issued against such vessel or party to that end, such process may be issued, and, if duly served, such suit shall proceed as if such vessel or party had been originally proceeded against; the other parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. . . .

27. *The Goyaz*, 281 F. at 261.

28. *Id.*

29. 283 F. 62 (2d Cir. 1922).

30. 281 F. 259 (S.D.N.Y. 1922).

the Federal Rules of Civil Procedure.³¹ Rule 14 retained the third-party practice of the civil side and added a subsection to encompass the broad third party practice of the admiralty side.³² This was the state of the law when the first post-unification case to con-

31. FED. R. CIV. P. 14 provides:

(a) *When Defendant May Bring in Third Party.* At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant. The third-party complaint, if within the admiralty and maritime jurisdiction, may be in rem against a vessel, cargo, or other property subject to admiralty or maritime process in rem, in which case references in this rule to the summons include the warrant of arrest, and references to the third-party plaintiff or defendant include, where appropriate, the claimant of the property arrested.

(b) *When Plaintiff May Bring in Third Party.* When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) *Admiralty and Maritime Claims.* When a plaintiff asserts an admiralty or maritime claim within the meaning of Rule 9(h) the defendant or claimant, as a third-party plaintiff, may bring in a third-party defendant who may be wholly or partly liable, either to the plaintiff or to the third-party plaintiff, by way of remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences. In such a case the third-party plaintiff may also demand judgment against the third-party defendant in favor of the plaintiff, in which event the third-party defendant shall make his defenses to the claim of the plaintiff as well as to that of the third-party plaintiff in the manner provided in Rule 12 and the action shall proceed as if the plaintiff had commenced it against the third-party defendant as well as the third-party plaintiff.

32. See *id.* FED. R. CIV. P. 14(c).

front the issue, *McCann v. Falgout Boat Co.*,³³ was decided in the Southern District of Texas.

B. *Post-Unification History*

1. *McCann v. Falgout Boat*

In *McCann v. Falgout Boat Co.*,³⁴ a seaman brought suit to recover damages for injuries sustained while aboard a vessel on which he was employed. The seaman fractured his right hand while the ship was in a Japanese port. After receiving initial treatment for the injury from a Japanese doctor, the seaman, McCann, a citizen of Texas, was sent home to San Antonio, where a local doctor continued to treat him over the next five months. The seaman brought suit against the operator of the vessel, alleging negligence and/or unseaworthiness, and identifying his claim as arising under the admiralty jurisdiction of the federal courts, pursuant to Rule 9(b)³⁵ of the recently merged Federal Rules of Civil Procedure. He alleged a loss of earning capacity and claimed damages for pain, suffering, and mental anguish.

The defendant vessel operator, Falgout Boat Company, filed a third-party complaint against the local doctor, Dr. Metzner alleging that the doctor's medical malpractice was to blame for any residual disability suffered by the seaman. Pursuant to Rule 14,³⁶ the vessel operator claimed that the doctor was directly liable to the seaman. In addition, the operator claimed that if Falgout Boat was found to be liable to the plaintiff,³⁷ then the boat company was entitled to indemnification and/or contribution from the doctor. Falgout Boat did not allege any independent basis of federal subject matter jurisdiction in the third party complaint, admiralty or otherwise.³⁸ Instead, the operator relied upon the district court's ability to decide the issues raised by the third-party complaint under principles of ancillary jurisdiction.³⁹

33. 44 F.R.D. 34 (S.D. Tex. 1968).

34. *Id.*

35. FED. R. CIV. P. 9(b).

36. *See supra* note 31.

37. FED. R. CIV. P. 14(a)-(c).

38. No jurisdictional allegations were made by Falgout Boat in the third-party complaint to establish: a) federal question jurisdiction under 28 U.S.C. § 1331; b) diversity jurisdiction under 28 U.S.C. § 1332; nor, c) admiralty jurisdiction under 28 U.S.C. § 1333.

39. For a discussion of the concept of ancillary jurisdiction see C. WRIGHT, *LAW OF FEDERAL COURTS* § 9, at 28-32 (4th ed. 1983).

The *McCann* court held that there could be no impleader of non-maritime causes of action where the original claim was brought under admiralty jurisdiction.⁴¹ The court determined that the recent merger of the Federal Rules of Civil Procedure with the Admiralty Rules was not a complete merger, and that a part of the historical division between admiralty and civil practice was meant to be retained.⁴¹

In *McCann*, Judge Noel advanced two lines of reasoning in support of his decision not to allow the exercise of ancillary jurisdiction over the non-maritime cause of action. The court's first line of reasoning was composed of several factors: a) The actual language adopted and incorporated into the rule governing third-party practice in the admiralty courts; b) historical pre-merger interpretations of the rule; c) Supreme Court sanctioned rules of construction; and d) the silence of the Federal Rules Advisory Committee with regard to matters affecting jurisdiction.⁴² The court's second argument served to buttress the first. This argument was based upon the court's conviction that an impleaded third party brought into an admiralty case under a non-maritime claim would be deprived of his constitutional right to a jury trial.⁴³ The court proceeded to make assumptions in support of these lines of reasoning.

(a) *The Court's Perceived Limits of Rule 14.* Under its first line of reasoning, the court assumed that third-party practice in admiralty cases was governed by subsection (c) of Rule 14, to the exclusion of the other subsections of the rule.⁴⁴ Prior to the merger of the rules, third-party practice on the civil side of the federal courts was governed by subsections (a) and (b) of Rule 14, which allowed impleader of persons liable to defending parties for the claims against them.

For years the civil side of the federal courts had exercised ancillary jurisdiction over third-party claims where there was no independent form of federal subject matter jurisdiction.⁴⁵ Third-

40. The opinion contained an extended discussion of the court's understanding of constitutional principles, statutory language, Supreme Court interpretations, historical precedents, Federal Rules, and Advisory Committee notes and intentions.

41. *McCann*, 44 F.R.D. at 38.

42. *Id.*

43. *Id.*

44. See *supra* note 31.

45. The concept has its origins in the case of *Moore v. New York Cotton Exchange*, 270 U.S. 593 (1926); see Note, *The Ancillary Concept and the Federal Rules*, 64 HARV. L. REV.

party practice in the federal courts is one of the justifications for the existence of the concept of ancillary jurisdiction.⁴⁶ The *McCann* court would not exercise ancillary jurisdiction over the common law third-party claim when federal jurisdiction was established "in admiralty."⁴⁷

Judge Noel's assumption that Rule 14(c) was the exclusive regulator of third-party practice in admiralty cases resulted in his reasoning that history and the conventional wisdom of statutory construction necessitated the incorporation of pre-merger admiralty practice into post-merger federal practice.⁴⁸ The court reasoned that Rule 14(c) was patterned after pre-merger Admiralty Rule 56,⁴⁹ which a majority of admiralty courts interpreted as permitting impleader of *only* maritime causes of action where the main claim was brought "in admiralty."⁵⁰ This restriction was understandable within the context of the separate "sides" of the pre-merger federal courts. The admiralty side was kept separate for the purpose of maintaining a court system which would sustain the uniformity of maritime law throughout the world.⁵¹ The restriction, however, makes little sense in a merged court system. Commentators have since stated that Rule 14(c) was actually added to the Federal Rules in order to preserve the broadness of admiralty impleader under the former Admiralty Rule 56, with its provisions for substituting defendants, and should not be interpreted so narrowly as to restrict impleader.⁵²

The final element of the first line of reasoning was the court's view that the shift away from a pre-merger construction of Rule 56 served as an expansion of the jurisdiction of the district courts.

968, 969-71 (1951).

46. Additionally, ancillary jurisdiction can be invoked to support counterclaims and cross-claims under FED. R. CIV. P. 13 where subject matter jurisdiction is otherwise not in the federal courts.

47. *McCann*, 44 F.R.D. at 44.

48. *Id.* at 40-41.

49. J. Noel felt it proper to construe Rule 14(c) in light of the case law interpreting former Admiralty Rule 56. He noted that the Advisory Committee on the unification had never expressed any desire to change the practice and, in addition, that the Supreme Court had stated many times that a prior interpretation of a statute was deemed to have legislative approval if the statutory provision was reenacted without material change. The court assumed that the same standard would apply in the construction of a federal rule.

50. Compare Admiralty Rule 56, *supra* note 21, with FED. R. CIV. P. 14(c), *supra* note 31, § (c).

51. See generally G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* §§ 1-5, at 1-14 (2d ed. 1975).

52. C. WRIGHT & A. MILLER, *supra* note 12.

Rule 82 of the Federal Rules of Civil Procedure stated expressly that the rules should not be construed to extend such jurisdiction.⁵³ Consistent within the framework of this view, the court found that the broader construction of jurisdiction would violate Rule 82 and would extend beyond the limitations placed upon that jurisdiction by the United States Constitution.⁵⁴

(b) *The Jury Issue.* The *McCann* court's second line of reasoning was the court's objection to the fact that a third party, impleaded into an admiralty action on a state common law or statutory claim, would be denied their constitutional right to trial by jury.⁵⁵ This conclusion was based on the court's assumption that the non-maritime character of a third-party claim was swallowed-up by the maritime nature of the main claim.⁵⁶ Therefore, both the maritime and non-maritime claim would become cognizable as admiralty or maritime claims under Rule 9(h).⁵⁷

Judge Noel looked to both the Constitution and the Judiciary Act of 1789 to support the conclusion that federal admiralty jurisdiction was meant to function without a jury.⁵⁸ The opinion stated that most courts continued to follow the tradition of disallowing juries in admiralty cases. The court found little value in a five year old Supreme Court pronouncement, that neither the Constitution, statutes, nor Civil or Admiralty Rules of Procedure forbade jury trials.⁵⁹ This reasoning was the basis for the Supreme Court's holding in *Fitzgerald v. United States Lines Co.* that in maritime

53. FED. R. CIV. P. 82 provides:

These rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein. An admiralty or maritime claim within the meaning of Rule 9(h) shall not be treated as a civil action for the purposes of Title 28, U.S.C. §§ 1391-93.

54. *McCann*, at 44 F.R.D. at 41.

55. U.S. CONST. amend. VII.

56. See *McCann*, 44 F.R.D. at 42.

57. FED. R. CIV. P. 9(h) provides:

A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c), 38(e), 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15. The reference in Title 28, U.S.C. § 1292(a)(3), to admiralty cases shall be construed to mean admiralty and maritime claims within the meaning of this subdivision (h).

58. Judiciary Act of 1789, ch. 20, § 9; U.S. CONST. amend. VII.

59. *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 20 (1963).

cases, where the traditional maintenance and cure⁶⁰ cause of action of a seaman was joined with Jones Act⁶¹ and unseaworthiness⁶² counts, all counts, including the one for maintenance and cure, would go to the jury.⁶³

The *McCann* court was convinced that the Supreme Court acquiesced to the tradition of disallowing a demand for a jury trial in admiralty cases.⁶⁴ The *McCann* opinion cited the *Fitzgerald* Court's failure to adopt any special provisions to allow jury trials in admiralty cases at unification of the Admiralty and Civil Rules.⁶⁵ Indeed, Federal Rule 38(e), promulgated by the Supreme Court, stated: "These rules shall not be construed to create a right to trial by jury of the issues in an admiralty and maritime claim within the meaning of Rule 9(h)."⁶⁶ The *McCann* court's conclusion that the federal courts could not exercise ancillary jurisdiction over non-maritime causes of action was based upon the following assumptions: a) The character change of the claim from non-maritime to maritime under Rule 9(h), coupled with; b) the prohibition in Rule 38(e) against any construction creating a right to trial by jury. The court refused to "deny" an impleaded third party's right to a jury trial, stating: "The right of a party to trial by jury, where permitted, is sacrosanct."⁶⁷

Commentators, writing retrospectively, have noted that the dilemma over the jury question would have been the same whether jurisdiction over the third-party claim was obtained under any form of federal non-admiralty jurisdiction or ancillary jurisdiction.⁶⁸ They have also stated that *Fitzgerald v. United States Lines*⁶⁹ could be viewed as having created a right to trial by jury in admiralty cases prior to the unification of the rules.⁷⁰ As such, no violation of Rule 38(e) occurred where the right to jury trial pre-existed the rule.

60. See generally G. GILMORE & C. BLACK, *supra* note 51, § 6-6.

61. 46 U.S.C. § 688 (1982).

62. See *supra* note 60, §§ 9-18(a).

63. The unseaworthiness counts were already triable to a jury. See *Fitzgerald*, 374 U.S. at 20.

64. *McCann*, 44 F.R.D. at 43-44.

65. *Id.*

66. FED. R. CIV. P. 38(e).

67. *McCann*, 44 F.R.D. at 44.

68. C. WRIGHT & A. MILLER, *supra* note 12.

69. 374 U.S. 16 (1963) (extending the right to a jury trial to a maintenance and cure claim).

70. C. WRIGHT & A. MILLER, *supra* note 12.

2. *Leather's Best v. S.S. Mormaclynx*

Three years later, the *McCann* decision was challenged by the Court of Appeals for the Second Circuit in *Leather's Best, Inc. v. S.S. Mormaclynx*.⁷¹ In *Leather's Best* none of the parties argued jurisdictional questions to the court, yet, sua sponte, the court brought the jurisdictional issues to the forefront of its opinion. The court used the opportunity to define the future of both pendent and ancillary jurisdiction in admiralty based on the court's own philosophy of the issues. Only the issues relating to pendent jurisdiction were decided in the case, however, because the question of ancillary jurisdiction was not properly before the court at the time.⁷²

In *Leather's Best*, a company shipping eleven tons of leather brought suit against a shipper and its agents to recover the value of shipment which the carrier brought from Germany and delivered to its subsidiary terminal operator. The container in which the leather was shipped and stored disappeared from the terminal. It was later found empty twenty-five miles away from the terminal. The court held that there was no admiralty jurisdiction over the plaintiff's claim against the terminal operator because that operator was not a party to the maritime contract of carriage. State law claims against the terminal operator, however, could be heard by the federal court under a theory of pendent jurisdiction.⁷³

The court's opinion later served as the basis for accepting ancillary jurisdiction over state law claims in admiralty. The following case notation greatly influenced future court decisions on this question, and caused a dramatic turnaround of the original direction taken by the courts.

The effect of merger upon the former admiralty requirement of independent jurisdiction for impleader has not yet been conclusively resolved. . . . But if we were presented with the question, it would be only with the greatest reluctance that we would conclude that under the merged rules the doctrine of ancillary jurisdiction did not extend to admiralty as well as civil impleader. . . . Certainly the practical considerations which support the doctrine of ancillary jurisdiction in the context of civil

71. 451 F.2d 800 (2d Cir. 1971).

72. *Leather's Best* remains the leading case in the maritime field, standing for the proposition that pendent jurisdiction is cognizable in maritime litigation.

73. See C. WRIGHT, *supra* note 39, § 19.

impleader are equally persuasive on the admiralty side. . . . In any event, we do not perceive the requirement of independent jurisdiction in pre-merger admiralty impleader to have had constitutional underpinnings. Rather it reflected a judicial conception of the limited nature of Admiralty Rule 56 and the appropriate reach of the then distinct admiralty jurisdiction. . . .⁷⁴

III. THE MOVE TOWARD RECOGNITION OF THE JURISDICTION

In 1973, almost two years after the *Leather's Best* decision, Judge Noel addressed the same issue in *Stinson v. McKay*⁷⁵ that he had addressed in *McCann v. Falgout Boat*.⁷⁶ The judge held steadfastly to his opinions in *McCann*, and barely gave recognition to the criticism leveled by the court in *Leather's Best*.⁷⁷ Judge Noel dismissed the third-party complaint for lack of federal admiralty jurisdiction, while relying on his holding in *McCann* for the denial of ancillary jurisdiction.⁷⁸

Practically, the court never needed to reach a decision on the last point, because Rule 14(c) of the Federal Rules of Civil Procedure provides the authority to grant the dismissal.⁷⁹ The two distinct and unrelated events⁸⁰ which formed the bases of the main claim and third-party claims, occurred fifteen months apart from each other. They did not arise out of the same transaction or occurrences as required for proper joinder under Rule 14(c).⁸¹ Impleader of those causes of action would have been improper even without the court's reference to the issue of ancillary jurisdiction. The court viewed this case as an opportunity to revisit and rebut some of the criticism of the *McCann* decision.

During the period of 1974 through 1976, the Courts of Appeal for the Third and Fifth Circuits pondered the question of whether the federal courts could exercise ancillary jurisdiction over third-party state law claims in admiralty.⁸² The courts addressed the

74. *Leather's Best*, 451 F.2d at 810-11 n.12.

75. 360 F. Supp. 674 (S.D. Tex. 1973).

76. 44 F.R.D. 34.

77. *Stinson*, 360 F. Supp. at 675-76 (Judge Noel noted that *McCann* had "caused considerable comment").

78. *Id.* at 676.

79. See *supra* note 31, § (c).

80. The events were: (1) an accident on board which caused physical injuries; (2) a prior accident which resulted in neurosis.

81. See *supra* note 31.

82. *Gypsum Carrier, Inc. v. Union Comp. Corporation*, 489 F.2d 152 (5th Cir. 1974),

question, but failed to resolve it because, for various reasons, the cases never properly framed the issue.

In the first of the cases,⁸³ the Fifth Circuit was presented with a situation involving a ship's collision with a railroad bridge that spanned a channel of water. The collision occurred due to the crew's loss of visibility caused by smoke emanating from the smokestacks of a pulp and paper mill located on a bank of the channel. The district court denied both ancillary and independent admiralty jurisdiction over the ship's third-party complaint against the paper mill. The court based its decision on *Executive Jet Aviation, Inc. v. City of Cleveland*⁸⁴ and *Pentayvin v. GEICO*.⁸⁵ The Court of Appeals treated the question of ancillary jurisdiction as a secondary issue to its decision in the case. A decision on ancillary jurisdiction would be rendered by the court only if it could affirm the trial court's finding of no independent basis that admiralty jurisdiction existed over such claims.

The court never reached the jurisdictional question. The court held not only that the cited cases failed to support the district court's conclusion that no admiralty jurisdiction existed, but, to the contrary, it found that the cases actually sustained the jurisdiction.⁸⁶ The non-maritime nature of the agency that obstructed navigation in the channel was irrelevant and the maritime nature of the tort undeniable. The court of appeals' finding of admiralty jurisdiction over the ship's third-party complaint against the mill dispensed with the need to decide the ancillary jurisdiction question.⁸⁷

In 1976, the Court of Appeals for the Third Circuit addressed the existing treatments of the issue. This court was presented also with a case in which it could not resolve the same issue of jurisdiction.⁸⁸ In the case of *Rosario v. American Export-Isbrandtsen Lines, Inc.*, the jurisdictional question arose in a claim concerning

cert. denied, 417 U.S. 931 (1974); *Rosario v. American Export-Isbrandtsen Lines, Inc.*, 531 F.2d 1227 (3d Cir. 1976), *cert. denied*, 429 U.S. 857 (1976).

83. *Gypsum Carrier*, 489 F.2d at 152.

84. 409 U.S. 249 (1972) (holding that, for purposes of invoking admiralty jurisdiction, a maritime tort must have occurred in relation to a "traditional maritime activity").

85. 453 F.2d 1121 (5th Cir. 1972).

86. *Gypsum Carrier*, 489 F.2d at 154.

87. This resolution of the case was consistent with the court's contention that ancillary jurisdiction was secondary to a primary independent basis of federal jurisdiction, as is admiralty.

88. *Rosario*, 531 F.2d at 1227.

a seaman's injury. The plaintiff sued his employer under the Jones Act⁸⁹ and for maintenance and cure.⁹⁰ The employer, in turn, sought indemnity under the Federal Tort Claims Act (FTCA) from the United States for inadequate medical treatment of the seaman provided by a facility of the United States Public Health Service.⁹¹ Once the United States was impleaded by the defendant/third-party plaintiff, as a third-party defendant, the plaintiff/seaman filed a direct claim under the FTCA against the United States.⁹²

The court's decision that the seaman's claim was original, and not a third-party action, once again made it unnecessary for the court to rule on the matter. Although no ruling was made, the court recognized well-established contentions of both commentators and district courts that the doctrine of ancillary jurisdiction could apply to state law claims in admiralty cases. Courts of appeal, however, had not adopted the ancillary jurisdiction argument.⁹³

The diversity jurisdiction of federal courts also served to relieve at least one court from deciding the jurisdictional issue.⁹⁴ In *Oroco Marine, Inc. v. Nat'l Marine Services, Inc.*, the court found diversity and referred to the doctrine of ancillary jurisdiction as a "special 'back-up' jurisdictional theory (which) is not necessary if the court determines that a primary jurisdictional base exists. . . ."⁹⁵

*Morse Electro Products Corp. v. S.S. Great Peace*⁹⁶ was the first modern published opinion in which the ancillary jurisdiction was specifically found to exist. The district court dismissed the jurisdictional claim, reasoning that because diversity was not alleged in the complaint, the court was barred from "considering the propriety of exercising diversity jurisdiction."⁹⁷ The court proceeded to decide the case without diversity by relying strictly upon the admiralty jurisdiction of the district court.

In *Morse*, cartons of 8-track tapes were misdelivered into the

89. 46 U.S.C. § 688 (1982).

90. G. GILMORE & C. BLACK, *supra* note 51, § 6-6.

91. 28 U.S.C. § 1346 (1970).

92. This direct claim under the FTCA was captioned as a third-party claim.

93. *Rosario*, 531 F.2d at 1228 n.17.

94. *Oroco Marine, Inc. v. National Marine Service, Inc.*, 71 F.R.D. 220 (S.D. Tex. 1976).

95. *Id.* at 223.

96. 437 F. Supp. 474 (D.N.J. 1977).

97. See *Leather's Best*, 451 F.2d at 809 n.10.

hands of thieves who falsified documents obtained from the plaintiff/shipper's customs broker. Admiralty jurisdiction over the original claim existed based on the bill of lading, a maritime contract, issued by the carrier to the plaintiff. All other claims between various parties, including original claims for indemnification, cross-claims, and third-party claims, were founded upon state tort and contract law. Consequently, the district court had to answer questions regarding the existence of both pendent and ancillary jurisdiction over non-maritime causes of action in admiralty. It answered both questions in the affirmative. Legal precedent at the appellate level for pendent jurisdiction had existed for six years,⁹⁸ but no such precedent existed with regard to ancillary jurisdiction.

The *Morse* court was the first district court to find ancillary jurisdiction over non-maritime claims in an admiralty suit. It did so, however, without considering the constitutional right to trial by jury. Because the parties failed to make a demand for a jury trial, the issue concerning the deprivation of a right guaranteed by the seventh amendment became a moot question.⁹⁹

By 1978, ancillary jurisdiction was completely legitimized in the district courts. In *Tatlow and Pledger v. Hermann Forwarding Company*,¹⁰⁰ citing to *Leather's Best, Inc.*, the court claimed "jurisdiction by virtue of the admiralty and maritime laws, as well as by reason of Ancillary Jurisdiction,"¹⁰¹ and proceeded to decide the case on its merits. In a 1980 opinion,¹⁰² a Louisiana District Court, after recognizing that the Fifth Circuit did not resolve the problem, ruled in favor of allowing ancillary jurisdiction. The court stated:

I feel compelled to add my weight to the growing body of judicial authority allowing a cause of action lacking independent grounds of jurisdiction to be appended under Rule 14(c) to an admiralty claim, as long as it passes the traditional "same claim" test used for ancillary jurisdiction under Rule 14(a) impleader.¹⁰³

Once again, the court found the jury trial issue to be irrelevant. The basis of such a finding was not because the parties failed to

98. *Id.*

99. 437 F. Supp. 474 (D.N.J. 1977).

100. 456 F. Supp. 351 (S.D.N.Y. 1978).

101. *Id.* at 353.

102. *Gauthier v. Crosby Marine Service*, 87 F.R.D. 353 (E.D. La. 1980).

103. *Id.* at 355.

demand a jury, but rather because the case included a claim under the Jones Act and, therefore, all claims would be tried before a jury.

The issue of whether an impleaded party's right to a jury trial on a civil claim would prevent the third-party claim from being brought in a maritime action, was resolved on the district court level in 1977 in *Fawcett v. Pacific Far East Lines, Inc.*¹⁰⁴ The court held that a legal claim¹⁰⁵ could be impleaded into a maritime action without hindering the third-party defendant's right to a jury trial. The court reasoned that such a claim retained its civil nature and carried with it the right to a jury trial, even if it was impleaded as part of a maritime cause of action. Persuaded by the logic of the commentators,¹⁰⁶ the court stated:

After careful consideration of the conflicting authorities on this issue, the Court concludes that the better view is that espoused by Messrs. Wright and Miller and, apparently, the Courts of Appeal for the Second and Ninth Circuits, i.e., that such claims are cognizable under the doctrine of Ancillary Jurisdiction and that they are not thereby transformed into claims in Admiralty, but retain their legal character and the accompanying procedural incidents.¹⁰⁷

The resolution of the jury trial question at the district court level removed the last of the underlying objections to the cognizability of impleader of non-maritime causes of action in admiralty. Any additional legitimizing of ancillary jurisdiction would need to come from a court of appeals.

IV. ANCILLARY JURISDICTION FINALLY RECOGNIZED: *Joiner v. Diamond M. Drilling Company*

The issue concerning ancillary jurisdiction over third-party claims was squarely before the United States Court of Appeals for the Fifth Circuit in 1982, when the court decided the case of *Joiner v. Diamond M. Drilling Co.*,¹⁰⁸ which is factually similar to the controversial *McCann* decision.¹⁰⁹ In *Joiner*, the widow of a

104. 76 F.R.D. 519 (N.D. Cal. 1977).

105. A claim in law as opposed to an admiralty claim.

106. C. WRIGHT & A. MILLER, *supra* note 12.

107. *Fawcett*, 76 F.R.D. at 521.

108. 677 F.2d 1035 (5th Cir. 1982).

109. 44 F.R.D. 34 (S.D. Tex. 1968).

deceased seaman brought suit against the decedent's maritime employer and also against the manufacturer of the defective ship-board equipment involved in the accident that killed the seaman. Each of the defendants impleaded a Louisiana physician whose medical malpractice was alleged to have caused the death of the decedent.¹¹⁰ The case came before the court of appeals after the lower court granted summary judgment in favor of the third-party defendant.¹¹¹

Although the district court reached the merits of the third-party claims, the appellate court reviewed the threshold issue of federal subject matter jurisdiction. The court scrutinized every possible form of subject matter jurisdiction which could have been exercised over the third-party claims. Because it had taken many years for the right case to reach a court of appeals, the opinion evidences the deliberateness of the court in its intent to be crystal clear in its holding.¹¹²

The court first rejected appellants' argument that the third-party claims could be heard independently under the federal court's admiralty jurisdiction. Appellants argued that an *implied* maritime contract was entered into when the impleaded doctor treated the injured seaman on their behalf. The physician's alleged malpractice constituted a breach of this implied contract, similar to a breach of an implied warranty for workmanlike performance. The court, in refusing to adopt this argument, adhered to prior precedent which held that a private, land-locked physician who treats a patient injured at sea, does not thereby enter into an implied maritime contract.¹¹³ The district court's (independent) admiralty jurisdiction over the third party claim was thus foreclosed.

The court ruled also that diversity jurisdiction was precluded.

110. The decedent's employer filed its third-party complaint against the doctor before the plaintiff amended her complaint to add the mud tank manufacturer as a defendant. Both defendants then settled their claims with Joiner's estate prior to the trial. While it was not until after the resolution of these claims that the mud tank manufacturer filed its third-party claim against the doctor, the district court continued to exercise jurisdiction over both third-party claims. The physician responded to these claims with a motion to dismiss. The district court entertained the motion for summary judgment and held for the doctor on the merits applying Louisiana state law.

111. *Joiner*, 677 F.2d at 1037.

112. For instance, at the beginning of the opinion the court is careful to identify who the "maritime" parties are in the case. The court then deals with each individual form of original federal subject matter jurisdiction that the parties contend is cognizable on the third-party claim, eliminating each, to arrive at ancillary jurisdiction.

113. *Penn Tanker v. United States*, 409 F.2d 514, 517-18 (5th Cir. 1969).

The district court could not exercise diversity jurisdiction over the third-party claims because the appellants failed to make sufficient jurisdictional allegations in their complaints.

Next, the court considered the question of whether the district court had ancillary jurisdiction over the third-party claims. The court's analysis of this issue is awkward because the court attempted to use this particular case to rule on a point which it considered to be important, even though the facts did not fit the holding. The court divided the ancillary jurisdiction issue into two questions. The first question was whether the doctrine of ancillary jurisdiction was *applicable* in the context of admiralty impleader. The second question was whether the district court should have retained ancillary jurisdiction over the third-party state law claims where the primary federal claims had been settled prior to trial.¹¹⁴

The court found it necessary to break down the issue of ancillary jurisdiction, because the facts of the case indicated that the principal admiralty claims upon which federal subject matter jurisdiction was founded were resolved prior to trial. In addition, one of the third-party claims was filed four days after the settlement of those admiralty claims.

The court held that the doctrine of ancillary jurisdiction was applicable in the contexts of both civil and admiralty impleader. It found also that the district court erred in continuing to exercise ancillary jurisdiction over the third-party state law claims, where such claims were filed after the federal claims were dismissed or settled, or where no special circumstances existed which justified the retention of the lingering claims.¹¹⁵

The crucial language of the opinion reads as follows:

We believe that the considerations of judicial economy which provide the principal justification for the exercise of Ancillary Jurisdiction in civil cases apply with equal force in the context of Admiralty impleader. Now that the rules of Admiralty and Civil Procedure have been merged, we see no statutory or consti-

114. If the court had not dissected the question, its decision could conceivably have been interpreted as deciding that a federal court continues to have jurisdiction over state law claims when the main federal claims have been settled, a holding with troublesome, or awkward potential if not reversed.

115. *Joiner* has become a leading case in this area of federal jurisdiction. See *Am. Nat'l Bank and Trust Co. v. Bailey*, 750 F.2d 577, 581 (7th Cir. 1984); *Bernstein v. Lind-Waldock & Co.*, 738 F.2d 179, 187 (7th Cir. 1984); *Waste Systems, Inc. v. Clean Land Air Corp.*, 683 F.2d 927, 930 (5th Cir. 1982).

tutional impediment to the exercise of Ancillary Jurisdiction over state law claims appended to Admiralty actions. . . . Therefore we hold that a third party claim lacking independent grounds of jurisdiction may be appended to an Admiralty action and is cognizable in Federal Court under the doctrine of Ancillary Jurisdiction so long as the ancillary claim arises out of the same core of operative facts as the main Admiralty action.¹¹⁶

To date, only one citation to *Joiner* within the context of this Comment has been noted in reported appellate opinions.¹¹⁷ *Joiner* is cited primarily in the area of retention of jurisdiction by federal courts over pendent claims and parties where federal subject matter jurisdiction ceases to exist.¹¹⁸ In addition, it is cited for the retention of federal jurisdiction over claims that would be barred by statutes of limitation should they need to be refiled in state court.¹¹⁹

Nevertheless, from the single mention that the case received from a court of appeals within the context of ancillary jurisdiction, it appears that the principles which *Joiner* has outlined for admiralty impleader have been judicially accepted. In that case, *In re: Oil Spill by Amoco Cadiz*, the Seventh Circuit reaffirmed its own rejection of pendent party jurisdiction where a party is impleaded into a diversity action and the third-party claim does not meet the minimum jurisdictional amount under 28 U.S.C. §1332.¹²⁰ The court stated that "the admiralty setting is distinguishable. The tradition of liberal joinder, reflected in Rule 14(c), illustrates the strong admiralty policy in favor of providing efficient procedures for resolving maritime disputes."¹²¹ Ancillary jurisdiction over non-maritime causes of action in admiralty seems to be evolving toward settled law.

V. CONCLUSION

The modern federal court system is engaged on a course of increasing the efficiency and cost effectiveness of the judicial process. Judicial economy and the avoidance of circuity of actions are

116. *Joiner*, 677 F.2d at 1040-41.

117. *In re: Oil Spill by Amoco Cadiz*, 699 F.2d 909, 913 (7th Cir. 1983).

118. *See supra* note 115.

119. *El Shawawy v. Harrison*, 755 F.2d 1432 (11th Cir. 1985).

120. 28 U.S.C. § 1332(a) provides that the minimum jurisdictional amount in a diversity action is \$10,000.

121. *In re: Oil Spill by Amoco Cadiz*, 699 F.2d at 914.

at the heart of modern rules of procedure which facilitate the resolution of numerous disputes among several related parties in a single judicial proceeding. Ancillary jurisdiction in the federal courts is one of the tools available for the purpose of achieving judicial economy in the system.

Judge Hough's efforts in the 1906 case of *Evans v. New York & P.S.S. Co.*¹²² were suppressed by a court system that was inclined toward preserving the purity of separate legal systems, rather than achieving the efficiency that is so desirable by modern standards. The purists' notions may have been correct in light of a court system that functioned under the separate sides of civil and admiralty jurisdiction. Unification of the Civil and Admiralty Rules in 1966, however, mooted the desires of the purists, as now every federal judge hears and decides both civil and admiralty cases.

The most dramatic consequence of this evolution is the final vindication of Judge Hough and the *Evans* doctrine. After seventy years of disapproval, impleader of non-maritime causes of action is once again possible in admiralty "in order to prevent circuitry of action and multiplicity of suits."¹²³

Ernesto J. de la Fé

122. *Evans* 163 F. at 408.

123. *Id.* at 407.