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Interest Analysis and Maritime Choice of Law: *Phillips v. Amoco Trinidad Oil Co.*

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NOTE
Interest Analysis and Maritime Choice of Law

Phillips v. Amoco Trinidad Oil Co.
632 F.2d 82 (9th Cir. 1980), *cert. denied*,
-U.S.-, 101 S.Ct. 1999 (1981)

Actions were brought to recover for wrongful death and injury as the result of an accident in Trinidadian waters which occurred during the course of exploratory drilling operations with the American registered drilling rig Mariner I. The suit was brought against the owners of the rig, Amoco Trinidad Oil Company and Santa Fe Drilling Company, both American corporations. The United States District Court for the Central District of California determined that the law of Trinidad and not the Jones Act applied to the case. The Ninth Circuit Court of Appeals *held*, affirmed: The law of the nation with the most substantial relationship to the seaman's claim applies to a maritime wrongful death action. *Phillips v. Amoco Trinidad Oil Co.*, 632 F.2d 82 (9th Cir. 1980), *cert. denied*, -U.S.-, 101 S.Ct. 1999 (1981).

The Mariner I was a submersible drilling vessel,¹ flying an American flag and engaged in permanent operation in Trinidadian territorial waters.² The accident giving rise to this litigation occurred on December 5, 1973, during the course of exploratory drilling operations. The Mariner I was drilling under contract to Amoco Trinidad,

1. To qualify as a plaintiff under the Jones Act, the injured party or his representative must be a member of a "crew" on a "vessel." *Senko v. Lacrosse Dredging Corp.*, 352 U.S. 370, 371 (1955). As to what constitutes a "vessel" is a consideration peculiarly relevant to the offshore oil industry. There seems to be no doubt that movable oil rigs qualify as vessels. *Cook v. Belden Concrete Products, Inc.*, 472 F.2d 999, 1001 (5th Cir.), *cert. denied*, 414 U.S. 868 (1973); *Offshore Oil Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959). However, the Supreme Court has maintained that no fixed installation is ever a vessel within the maritime jurisdiction. *Rodrigue v. Actna Cas. Co.*, 395 U.S. 352 (1969). Fixed installations off the United States coast are treated as land under the Outer Continental Shelf Lands Act. The Tidelands Act, 67 Stat. 462, 43 U.S.C. § 1331 *et seq.* (1953). The treatment of fixed installations off foreign shores has never been judicially decided. The *Phillips* decision seems to tend toward land-based liability provisions governing any injury occurring thereon.

2. The Mariner I was actually situated ten and one half miles off of the coast of Trinidad. Even though this is beyond the limits of the territorial sea recognized by the United States (the United States claims a three mile territorial sea), the rig was situated on Trinidad's continental shelf over which Trinidad has exclusive rights to explore and exploit. Convention of the Continental Shelf, Apr. 29, 1958, art. 2, 15 U.S.T. 471, T.I.A.S. 5578, 499 U.N.T.S. 311.

a Delaware corporation alleged by plaintiffs to be part owner of the rig. Amoco Trinidad had its principal place of business and made its operational decisions in Trinidad. The other owner, Santa Fe Drilling Company, was an American based corporation which also made its operational decisions from offices in Trinidad.

The eleven injured workers were all citizens and domiciliaries of Trinidad hired by Santa Fe pursuant to a collective bargaining agreement with the local Trinidad Oil Field Workers Union. The Trinidadian government controlled the number of work permits issued to non-Trinidadian nationals on the rig. Trinidad also licensed the rig to operate in Trinidadian waters. Plaintiffs brought the suit under the Jones Act despite a Trinidadian statute directing that Trinidadian civil law apply to any acts or omissions occurring in the course of the exploration or exploitation of its continental shelf.

The decision in this case is significant for two reasons. First, the *Mariner I* was a stationary oil rig. The vessels usually involved in maritime choice of law cases are sailing ships moving from one jurisdiction to another. Second, this case involved an American vessel owned by an American concern. Under traditional choice of law rules there would have been no doubt that the Jones Act would apply. However, in keeping with the present state of modern choice of law rules, the law of Trinidad was held to apply.

I. HISTORICAL-LEGAL BACKGROUND

In 1920, Congress enlarged the potential compensation attainable under section 20 of the Act of 1915 for injuries to seamen resulting from negligence of the ship's master.³ The 1920 Act, known as the Jones Act,⁴ abolished the established fellow-servant relationship

3. 38 Stat. 1164 (1915): "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion . . .; and to promote safety at sea."

4. 41 Stat. 1007 (1920) (current version at 46 U.S.C. § 688 (1964)):

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 the death of any 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.

between the seaman and his master.⁵ Under the language of the Jones Act, any seaman from any country suffering personal injury in the course of his employment could maintain an action for damages in United States federal district court.⁶ Armed with only the existing choice of law rules, the courts were left to decide which seamen would have the benefits of recovering under the Jones Act.⁷

A. Traditional Choice of Law

Before *Lauritzen v. Larsen*,⁸ there was little doubt that the law of the flag of the ship applied to affairs that did not breach the peace of the port.⁹ Thus, the Jones Act would apply only to those cases involving an American ship.¹⁰ In *Lauritzen*, the old dialogue that

5. Under the rule of *The Osceola*, 189 U.S. 158 (1903), a seaman could not recover damages for negligence of master or crew in the navigation or management of the ship. See C. BLACK, JR., G. GILMORE, *THE LAW OF ADMIRALTY* 325 (2d ed. 1975).

6. It is noteworthy that the 1915 statute was limited to "American seamen." This language was changed to "any seaman" in the Jones Act. The problem has been in applying the Act to foreign seamen. If recovery had been restricted to American residents only, economics would dictate the frequency of American seamen being hired. Under the jurisdiction of the Jones Act, the American seaman would potentially be able to obtain the highest recovery from his employer. See Note, 67 HARV. L. REV. 340 (1953).

7. See generally, Morrison, *The Foreign Seaman and the Jones Act*, 8 MIAMI L.Q. 16 (1953). See also Note, *Admiralty and the Choice of Law: Lauritzen v. Larsen Applied*, 47 VA. L. REV. 1400 (1961). Compare, e.g., *Sonneson v. Panama Transport Co.*, 298 N.Y. 262, 82 N.E.2d 569 (1948) (a Danish seaman signed on a Panamanian owned and registered ship in the United States, injured at sea; held: Jones Act inapplicable), with e.g., *Taylor v. Atlantic Maritime Co.*, 179 F.2d 597 (2d Cir. 1950), cert. denied, 341 U.S. 915 (1951) (a Panamanian seaman signed on a Panamanian owned and registered ship in the United States, injured at sea; held: Jones Act applicable).

8. *Lauritzen v. Larsen*, 345 U.S. 571 (1953).

9. See, e.g., *Bonsalem v. Byron S.S. Co., Ltd.*, 50 F.2d 114, 115 (2d Cir. 1931); *Cain v. Alpha S.S. Corp.*, 35 F.2d 717, 718 (2d Cir. 1929). See also, *Kyriakos v. Goulondris*, 151 F.2d 132, 139 (2d Cir. 1945) (Hand, J., dissenting); *RESTATEMENT OF CONFLICTS OF LAWS* §§ 405, 406 (1934). Application of the Jones Act to any seaman aboard a vessel flying an American flag was beyond doubt: "Yet could there be any doubt that if the ship flew the American flag, without more, the Jones Act would apply." *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 437, 440 (2d Cir.), cert. denied, 359 U.S. 1000 (1959). Some courts have stated that a defendant owning a vessel registered in the United States is estopped from claiming that United States law should not apply to its affairs. *Pedikouris v. S.S. Olympos*, 196 F.Supp. 849, 854 (E.D. Va. 1961). See also *Rainbow Line, Inc. v. M/V Tequila*, 480 F.2d 1024, 1027 (2d Cir. 1973).

10. The early cases reflect the traditional choice of law rules. The main concerns were ease of administration, uniformity of result, predictability, and the prevention of forum shopping. Applying the law of the flag provided for all of these concerns. See Goodrich, *Public Policy in the Law of Conflicts*, 36 W. VA. L.Q. 156, 165, 167 (1930).

attributed governance to the law of the flag gave way to a new concept of assessment of the relative interests of jurisdictions having contacts with the controversy and the parties. *Lauritzen* was the forerunner of a general reappraisal and revision of maritime choice of law rules.

B. The Center of Gravity Test

In *Lauritzen*, a Danish seaman signed an employment contract in New York to work on a Danish registered vessel. The seaman was injured in Cuban waters and sued the Danish corporate owner under the Jones Act. In denying relief, the Supreme Court set forth seven factors to determine whether the Jones Act or the law of the foreign nation was to apply to a given maritime tort: (1) the place of the wrongful act, (2) the law of the flag, (3) the allegiance or domicile of the injured party, (4) the allegiance of the defendant shipowner, (5) the place and terms of the contract, (6) the inaccessibility of the foreign forum and (7) the law of the forum.

These seven factors comprised the judicial guidelines for deciding which nation was the center of gravity of the dispute. Under this center of gravity test, the courts, instead of viewing the law of the flag as conclusive, laid emphasis upon the place which had the most significant contacts with the matter in dispute.¹¹ In a totally subjective manner, some contacts were deemed more significant than others.¹²

In *Lauritzen*, the court assigned each factor its respective significance. The law of the nation with the most significant contacts to the dispute was held to apply. The law of the flag was given very substantial weight; both tradition and necessity led the Court to conclude that the law of the flag "must prevail unless some heavy counterweight appears."¹³ In contrast, the place of the wrongful act was given very little significance "because of the varieties of legal authority over waters [the ship] may navigate."¹⁴

11. As general choice of law rules moved from the traditional to the center of gravity approach, so did the maritime choice of law rules. For an application of the center of gravity test in a maritime setting, see *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 437 (2d Cir. 1959). For a practical explanation of the center of gravity test as generally applied, see *Auten v. Auten*, 308 N.Y. 155, 124 N.E.2d 99 (1954).

12. "The contacts are totted up and a highly subjective fiat is issued to the effect that one group of contacts or the other is the more significant." Currie, *Conflict, Crisis and Confusion in New York*, 1963 DUKE L.J. 1, 40 (1963).

13. 345 U.S. at 584-85.

14. 345 U.S. at 583. However, the Court did note that since the injury occurred in Havana harbor, the "locality test" would not support the application of American

A factor of considerable significance was the allegiance of the shipowner.¹⁵ The Court pierced the "foreign veil" of American shipowners who registered their ships under flags of convenience solely to avoid the strict United States shipping laws.¹⁶ To protect the policies and interests of the United States, it became necessary to apply the Jones Act to such shipowners although quantitatively, the center of gravity test indicated that foreign law should apply.¹⁷ It became practice for the courts to relate the interests of each nation involved in the dispute, to the parties, the events and the litigation.

C. Interest Analysis

To determine whether the foreign flag was actually one of convenience, the courts looked to the economic ties of the shipowner. Something between minimal and preponderant contacts with the United States was necessary if the Jones Act were to apply.¹⁸ If the flag were one of convenience, the veil of foreign registry was pierced.¹⁹ American shipowners could no longer evade their obligations under the law by simply incorporating in a foreign country and registering their vessels under a foreign flag.

law. 345 U.S. at 583. The weight of the place of the wrongful act was found to be much more significant in *Phillips* because of the stationary nature of the oil rig. See note 32 *infra*.

15. 345 U.S. at 587.

16. Also found to be significant was the allegiance of the injured seaman. This challenged the long established rule that the nationality of the ship was attributed to its crew. See *In Ross*, 140 U.S. 453 (1890). The Court justified its new rule for the reason that each nation had an interest in protecting its citizens from harm. 345 U.S. at 586. The law of the forum and the inaccessibility of the foreign forum were given very little weight. 345 U.S. at 589-91.

17. The Court stated:

But it is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them.

Lauritzen v. Larsen, 345 U.S. at 587.

18. There was to be no weighing of one contact against another. Each contact was to be given separate consideration. If the existing contacts constituted the necessary substantiality, then the Jones Act would apply. *Bartholomew*, 263 F.2d at 441.

19. This was not the same as piercing the corporate veil; the corporate entity was not ignored. The true nature of the corporation determined its nationality: "... there can be little doubt that for Jones Act purposes plaintiff's actual 'resident' status is to be considered apart from the technical legality of such status." *Id.* at 442.

Even though protecting the United States' interests was of utmost concern, the interests of the foreign nation could not be ignored.²⁰ The issue to be resolved was which of the countries involved had a greater interest in the claim.²¹ The courts adopted the policy that choice of law rules should rationally advance the policies and interests of the nations of the world community.²² As stated by Professor Currie, "the question whether a particular contact is significant is meaningless unless significance is judged in terms of the policies and interests of the states involved."²³ If not considered in light of the nations' policies, the center of gravity test is nothing more than a mechanical counting of contacts.²⁴ Maritime choice of law cases began to exhibit this application of policy to the center of gravity test. In other words, the courts began to recognize and use interest analysis.²⁵

20. See *Carroll v. United States*, 133 F.2d 690 (2d Cir. 1943); *Gerradin v. United Fruit Co.*, 60 F.2d 927 (2d Cir. 1932); *Zielinski v. Empresa Hondurena*, 113 F.Supp. 93 (S.D.N.Y. 1953).

21. See *Southern Cross Steamship Co. v. Firipis*, 285 F.2d 651, 653 (4th Cir. 1960); *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d at 442. Professor Currie has stated:

That methodology permits, and requires a statement of the reasons why a state's relationship to the case is thought to be significant. The statement is sufficiently objective to be susceptible of objective criticism. It is explicitly an attempt to determine legislative purpose, and if that purpose is misinterpreted, legislative correction is invited. The process of "grouping contacts" has none of these features. It deals in broad generalities about the "interest" of a state in applying its law without an inquiry into how the contacts in question relate to the policies expressed in specific laws.

Currie, *Conflict, Crisis and Confusion in New York*, 1963 DUKE L.J. 1, 40 (1963).

22. In *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959), the Court stated, "the controlling considerations are the interacting interests of the United States and of foreign countries, and in assessing them we must move with the circumspection appropriate when this court is adjudicating issues inevitably entangled in the conduct of our international relations." 358 U.S. at 383.

23. Currie, *Comments on Babcock v. Jackson*, 63 COLUM. L. REV. 1212, 1235 (1963).

24. Ehrenzweig, *Comments on Babcock v. Jackson*, 63 COLUM. L. REV. 1212, 1244 (1963).

25. The process of interest analysis is a five step resolution of conflict of law questions:

1. Normally, even in cases involving foreign factors, a court should as a matter of course look to the law of the forum as the source of the rule of decision.

2. When it is suggested that the law of a foreign state, rather than the law of the forum, should furnish the rule of decision, the court should first of all determine the governmental policy—perhaps it is helpful to say the social, economic or administrative policy—which is expressed by the law of the forum. The court should then inquire whether the relationship of

In *Hellenic Lines, Ltd. v. Rhoditis*,²⁶ a Greek seaman signed an employment contract with the defendant shipowner in Greece which provided that Greek law would govern any claim arising out of his employment. While in an American port, the seaman was injured aboard a foreign registered vessel owned and controlled by a Greek corporation. The majority stockholder of the corporation was a Greek citizen who had been residing in the United States and controlled the vessel from the United States. The seaman successfully brought suit under the Jones Act.

Recognizing that the list of *Lauritzen* factors was not exhaustive, the Court added another factor of importance: the base of operations of the shipowner. Piercing the foreign registry was no longer limited to flags of convenience, but was extended to foreign shipowners operating from within the United States.²⁷ The *Lauritzen* factors were not rejected, but it was made quite clear that the base of operations

the forum state to the case at bar—that is, to the parties, to the transaction, to the subject matter, to the litigation— is such as to bring the case within the scope of the state's governmental concern, and to provide a legitimate basis for the assertion that the state has an interest in the application of that policy to the case at bar.

3. If necessary, the court should similarly determine the policy expressed in the proffered foreign law, and whether the foreign state has a legitimate interest in the application of that policy to the case at bar.

4. If the court should find that the forum state has no interest in the application of its law and policy, but that the foreign state has such an interest, it should apply the foreign law.

5. If the court should find that the forum state has an interest in the application of its law and policy, it should apply the law of the forum state even though the foreign state also has such an interest, and, *a fortiori*, it should apply the law of the forum if the foreign state has no such interest.

Currie, *The Constitution and the Choice of Law: Government Interests and the Judicial Function*, 26 U. CHI. L. REV. 9, 10 (1958) (accompanying footnotes omitted).

26. *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306 (1970).

27. This was made apparent when the Court stated:

We see no reason whatsoever to give the Jones Act a strained construction so that this alien owner, engaged in an extensive business operation in this country, may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibility of the "Jones Act employer." The flag . . . in the totality of the circumstances [is of] minor weight in the scales compared with the substantial and continuing contacts that this alien owner has with this country.

398 U.S. at 310. *Gambera v. Bergoty*, 132 F.2d 446 (2d Cir. 1947) established the principle that whether the plaintiff seaman was an American citizen or a foreign citizen with American residence, he would be treated as an American for maritime jurisdiction. *Rhoditis* applied this same principle to the defendant corporation.

could override any number of the other factors.²⁸ By focusing on the shipowner's base of operations, the Court's analysis was consistent with the liberal trend in the field of conflicts to inquire into the relevancy of the various contacts in the case and determine the proper result on the basis of the governmental policies underlying the respective maritime laws.²⁹

II. THE PHILLIPS OPINION

Upon consideration of the eight *Lauritzen-Rhoditis* factors, the *Phillips* court determined that relief should be denied under the Jones Act. The court was faced with facts different than those before the Supreme Court in either *Lauritzen* or *Rhoditis*; unlike the vessels in those cases, the *Mariner I* was immobile. Because of this variance, the court weighed the determining factors differently than the Supreme Court had done in *Lauritzen* and *Rhoditis*.³⁰

The law of the flag was completely rejected as a factor despite the traditional significance given to it:³¹

[The *Lauritzen* rationale] does not apply to a drilling vessel whose operations are at a fixed location. Here the locus is unchanging and the logic of local experience can profitably be applied to the claims of these Trinidad nationals. That these workers were injured immediately offshore of Trinidad is no fortuity unlike the place of injury on a commercial sailing vessel.³²

For the same reasoning, substantial weight was given to the place of the wrong, and the allegiance and domicile of the workers.³³

28. "The flag, the nationality of the seaman, the fact that his employment contract was Greek, and that he might be compensated there are [of minor significance.]" 398 U.S. at 310.

29. For a general discussion of modern choice of law rules, see Currie, *The Constitution and the Choice of Law: Governmental Interests and the Judicial Function*, 26 U. CHI. L. REV. 9 (1958); Traynor, *Is This Conflict Really Necessary?*, 37 TEX. L. REV. 657 (1959).

30. The factors are weighted differently depending on the totality of the circumstances. Bartholomew, 263 F.2d at 440.

31. Under the traditional approach, the law of the flag prevailed. "No one has ever doubted that seamen serving an American . . . registered ship are entitled to the benefits of American law." C. BLACK, JR., G. GILMORE, *THE LAW OF ADMIRALTY* 476 (2d ed. 1975); See also *Torgersen v. Hutton*, 267 N.Y. 535, 196 N.E. 566 (1935); Cosby, *Choice of Law and the Foreign Seaman Under the Jones Act*, 1967 U. ILL. L.F. 639 (1967).

32. 632 F.2d at 87.

33. "Where, as here, the enterprise giving rise to the liability is conducted solely within one jurisdiction, [these two contacts] should be given substantial weight . . . in making a choice of law decision." *Id.*

Under an interest analysis, these factors would have no meaning unless their significance was judged in terms of the policies of Trinidad and the United States. The court did make such an analysis and found that "[its] comparison of the points of contact between this transaction and the two nations [indicated] that the interests of the United States [were] weaker and less substantial than the interests of Trinidad."³⁴ The presence of significant contacts between the transaction and each respective nation is determinative of which law will apply. As the court stated, ". . . *Lauritzen* requires that we compare the substantiality of our interest in a given transaction with that of other nations When the links to the United States are weak and the interests of another sovereign are substantial, the Jones Act is not applicable."³⁵

It is indisputable that Trinidad had a substantial interest to protect.³⁶ As the *Lauritzen-Rhoditis* factors illustrate, the mishap on the *Mariner I* was truly an internal affair of Trinidad.³⁷ The oil rig was affixed to the continental shelf of Trinidad, and the injured workers were Trinidadian nationals whose employment never took them beyond its borders. The injured Santa Fe workers were hired through a local labor union which imposed regulations on the number of workers. The other workers were also Trinidadian nationals employed by a Panamanian corporation.³⁸ As previously noted, Trini-

34. 632 F.2d at 86.

35. *Id.* The *Phillips* court did not follow the substantial contacts test developed in *Bartholomew*. See note 18 *supra*. The court instead, made a comparison of American and Trinidad interests. "Substantiality is a relative term, and *Lauritzen* requires that we compare the substantiality of our interest in a given transaction with that of other nations." 632 F.2d at 86.

36. The *Lauritzen* court stated that "each nation has a legitimate interest that its permanent inhabitants be not maimed or disabled from self-support." 345 U.S. at 586.

37. The facts of *Phillips* are very similar to those of *de Alvarez v. Creole Petroleum Corp.*, 462 F. Supp. 782 (D. Del. 1978), *aff'd sub nom. Chirinos de Alvarez v. Creole Petroleum Corp.*, 613 F.2d 1240 (3d Cir. 1980), where Venezuelan nationals were injured on a crew launch transporting workers to a fixed platform in Lake Maracaibo. The court stated:

Where, as here, the enterprise giving rise to the liability is conducted solely within one jurisdiction, that interest should be given substantial weight . . . in making a choice of law decision. When one adds to this factor the fact that the plaintiff's decedents were Venezuelan nationals whose employment never took them beyond the Venezuelan territory and the fact of the bona fide Venezuelan registration of the vessel, it is apparent that the transaction allegedly giving rise to liability was a Venezuelan one in which Venezuela had the clearly predominant, if not exclusive, interest.

462 F. Supp. at 787 (footnotes omitted).

38. The fact that the Santa Fe employees had signed contracts of hire that stipulated that the law of Trinidad would apply to claims arising out of their

dad had a statute directing that Trinidadian civil law apply to any occurrences during operations such as those engaged in by the *Mariner I*.

The United States, on the other hand, had very little connection with the transaction. Although the rig flew an American flag, the court dismissed this contact as being insignificant in light of the fact that the rig was affixed within one jurisdiction outside of the United States.³⁹ While the law of the forum also favored the application of the Jones Act, this factor was given very little weight.⁴⁰ The final contact with the United States was the allegiance of the defendant owner of the *Mariner I*, but because of the inherent nature of the *Mariner I* accident as an internal affair of Trinidad,⁴¹ greater weight was placed on the allegiance of the injured workers, Trinidad, than on the allegiance of the defendant owner, the United States.⁴²

The defendant's base of operations was a factor which might have favored the application of American law, however, the court viewed this factor as favoring the application of Trinidadian law. In *Rhoditis*, the Court recognized the base of operations of the ship-

employment, was of considerable importance to the court. 632 F.2d at 87. That contract raised the expectation in the employees that Trinidad law would apply. The expectations of the parties to a contract are of primary concern in American choice of law problems. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 6(2)(d), 188, Comment on subsection 1 (1971).

39. See 632 F.2d at 87.

40. *Id.* at 85. The *Lauritzen* court indicated that the law of the forum was a fortuitous factor and the law applied to a maritime case should not be altered "just because local jurisdiction of the parties is obtainable." 345 U.S. at 591.

41. See note 37 *supra*.

42. 632 F.2d at 87. The United States' slight interest in this occurrence might hastily be viewed as rendering this choice of law problem a "false conflict." The result of a false conflict is simple: "when one of two states related to a case has a legitimate interest in the application of its law and policy and the other has none, there is no real problem; clearly the law of the interested state should be applied." Currie, *The Constitution and the Choice of Law: Governmental Interests and the Judicial Function*, 26 U. CHI. L. REV. 9, 10 (1958). In *Phillips*, the court did note that the United States had an interest in applying its law, despite its *de minimus* character. Its final decision was that Trinidad's interest was greater than that of the United States. There was no false conflict and properly, none was held to exist:

[Minimization of conflicts problems] will not be useful in cases where one state's contacts with a set of facts are few and relatively insignificant as compared with those of another state whose law is different; in that situation a choice of law still has to be made even though the choice may be a comparatively quick one. That is an easy conflicts case, not a false one.

Leflar, *Constitutional Limits on Free Choice of Law*, 28 LAW & CONTEMP. PROB. 706, 725 (1963).

owner. Corporate and economic ties were factors to be considered.⁴³ The base of operations considered in *Phillips* was not that of the shipowner, but that of the transaction. As stated by the court:

We conclude . . . that the more relevant and important base of operation for determining choice-of-law in this case is in Trinidad. We thus follow cases that have focused on the base of operations of the relevant business venture rather than of the corporate owner of the vessel.⁴⁴

In those jurisdictions that have viewed the base of operations of the transaction as the relevant base of operations, two factors have been taken into account to make the choice of law decision: 1) the source of the income derived from the vessel,⁴⁵ and 2) the place from where the operations of the vessel are controlled.⁴⁶ First, the *Mariner I* derived all of its income from within Trinidad's waters. Second, the daily operation of the *Mariner I* was controlled from offices within Trinidad. Thus, as the court correctly held, the base of operations of the transaction favored the application of Trinidadian law.

The court's distinction between the base of operations of the transaction and the base of operations of the shipowner was unneces-

43. The Court expressed that a foreign shipowner with strong corporate and economic ties with the United States should be governed by the same obligations and responsibilities as a shipowner whose ships are registered in the United States. 398 U.S. at 310.

44. 632 F.2d at 88. The reasoning of the Supreme Court in *Rhoditis* for selecting the base of operations of the shipowner was to prevent an alien owner, engaged in an extensive business operation in the United States, from having an advantage over citizens engaged in the same business by allowing him to escape the obligations of the Jones Act. 398 U.S. at 310. The *Phillips* court, however, chose to consider the base of operations of the transaction because of the immobile nature of the *Mariner I*. The day-to-day operation of the oil rig took place from offices within Trinidad and the entire transaction was substantially a permanent operation in Trinidad. These considerations, and the fact that the rig flew an American flag (unlike the foreign vessel contemplated in *Rhoditis*), led the court to consider the base of operations of the transaction for determining the choice of law rather than the base of operations of the shipowner.

45. See *Hazell v. Booth Steamship Co., Ltd.*, 444 F.Supp. 85, 87 (S.D.N.Y. 1977). In that case, 70 % of the vessel's total stops were in foreign ports. The plaintiff produced evidence as to the amount of freight collected during three stops in New York, however the court held this as an insufficient basis on which to conclude that trading with American ports produced "substantial income". The Jones Act was held not to apply.

46. See *Mattes v. National Hellenic American Line, S.A.*, 427 F.Supp. 619, 624-25 (S.D.N.Y. 1977). In that case, the court relied on its determination that the management and operation of the vessel, though divided among numerous nations and corporations entangled in a complicated corporate web, were centered in the United States.

sary and illustrates the uneasiness of the judiciary in applying interest analysis to maritime causes of action. The outcome of the case would have been no different had the base of operations of the shipowner been applied. At first glance the base of operations of the shipowner might seem to favor the application of the Jones Act. Santa Fe Drilling Company, the owner and operator of *Mariner I*, was an American-based corporation with headquarters in Orange, California. However, the base of operations, as does each factor, must be considered in relation to the policies of Trinidad and the United States.⁴⁷ The interests of the United States in applying the Jones Act to shipowners in relation to their base of operations are two-fold. First is the prevention of American shipowners from evading the obligations imposed by the Jones Act.⁴⁸ Second is the assurance that foreign shipowners residing in the United States operate under the Jones Act as do American shipowners.⁴⁹ In *Phillips*, neither interest was threatened by the application of Trinidadian law. The *Mariner I* flew an American flag (there was no flag of convenience) and, the owner of the rig was American (there was no danger of the shipowner intentionally evading the Jones Act). Thus, in relation to the base of operations of the shipowner, the United States had no interest in applying the Jones Act to this particular shipowner.⁵⁰ Either of the bases of operations would indicate that Trinidadian law should apply.

The paramount interest was Trinidad's. Trinidad, as each nation does, had a legitimate interest in regulating activities by its own citizens in its own territory.⁵¹ As evidenced by the eight *Lauritzen*-

47. In *Lauritzen* the Court stated, "The criteria, in general, appear to be arrived at from weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority." 345 U.S. at 582. It is noteworthy that in *Phillips*, the court rationalized its choice of the base of operations because of the Supreme Court's use of the word "transaction" in the above quoted sentence. 632 F.2d at 88.

48. 345 U.S. at 583.

49. 398 U.S. at 310.

50. The plaintiffs argued that the United States did have an interest in assuring that American registered ships complied with the safety requirements of the Coast Guard Certificate of Inspection. The court noted that this interest was no greater than Trinidad's since the *Mariner I* operated under license from the government of Trinidad. Moreover, Trinidad statutory law dictated that its own civil law applied to all accidents that occurred while exploiting its continental shelf. 632 F.2d at 88.

51. *Accord*, *Yarborough v. Yarborough*, 290 U.S. 202 (1933) (Stone, J., dissenting), recognizing that a state, as a matter of self-preservation, may secure adequate protection and maintenance of members of its own community. 290 U.S. at 227. In

Rhoditis factors, the links to the United States were weak and the interests of Trinidad substantial. The sole question before the court was whether the United States or Trinidad had the greater interest in having its legal standards applied to the facts. The court correctly found that Trinidad had the greater interest.

III. IMPLICATIONS OF PHILLIPS

The Supreme Court, progressing through *Lauritzen* and *Rhoditis*, has kept maritime choice of law in pace with general choice of law rules. *Rhoditis* represents the inception of the developing interest analysis in maritime cases. However, where the goal of interest analysis is stability and order throughout the international community, its application is tempered by two distinct legal standards: the due process clause of the fifth amendment and congressional intent.⁵²

In *Lauritzen*, the Supreme Court cautioned that the courts should not ascribe to Congress an intention to give extra-territorial effect to its acts where such effect would be contrary to the conventions of international law. Though the Jones Act is written in language so broad as to apply to any seaman on any vessel of any nation at any location in the world, the due process clause of the fifth amendment places bounds on congressional efforts to apply American rules of

Skiriotes v. Florida, 313 U.S. 69 (1941), the precise question was whether a State could prohibit by statute the use of diving equipment for the purpose of gathering deep sea sponges in waters within its territorial limits. The Court sustained the State's legislative jurisdiction to regulate the conduct of its own citizens. Thus the Court stated:

Even if it were assumed that the locus of the offense was outside the territorial waters of Florida, it would not follow that the State could not prohibit its own citizens from the use of the . . . diver's equipment at that place. No question as to the authority of the United States over these waters, or over the sponge fishery is here involved. No right of a citizen of another State is here asserted. The question is solely between appellant and his own State If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest

Skiriotes v. Florida, 313 U.S. at 76-77.

52. In *Lauritzen*, the Court stated, "We have held it a denial of due process of law when a state of the Union attempts to draw into control of its law otherwise foreign controversies, on slight connections, because it is a forum state." 345 U.S. at 590-91. Noteworthy is the Court's use of the word "connections". The distinction between contacts with a nation, and the interest of a nation is one of importance. It is possible that a party have numerous contacts with a nation, yet that nation have no interest in the litigation. *E.g.*, *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3d Cir. 1977), *cert. denied*, 435 U.S. 904 (1978).

decisions to transactions in which the United States has no sufficient interest.⁵³ Both the Second and Third Circuits have addressed the issue of Jones Act application; each has taken an opposing view as to the legal standard to be applied. Both Circuits have followed the landmark case of *Home Ins. Co. v. Dick*,⁵⁴ which established that at the very least, a due process threshold must be met before American law will be applied to any transaction.⁵⁵ However, it is the application of this threshold standard that distinguishes the Second Circuit from the Third Circuit.

The Third Circuit has taken a restrictive approach to the application of *Lauritzen* and *Rhoditis*. The seminal decision in that Circuit is *DeMateos v. Texaco, Inc.*⁵⁶ In that case, the only American contact was the ownership of the ship by Texpan, a Panamanian corporation, which in turn was owned by Texaco, Inc., a Delaware corporation. The court rejected application of the Jones Act for the reason that "[i]t would be an extreme suggestion . . . that American law could govern relations between Texpan and the employees in its Panamanian gasoline stations because its stock was owned by a multinational business enterprise in Delaware. [This] is a variety of social jingoism, which

53. Assuming that a nation may properly refuse to recognize foreign rights that violate its declared policy, or restrict the conduct of persons within its limits, this does not mean that it may abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them. There must be at least some minimal interest of a state in the regulated subject before it can, consistently with the requirements of due process, exercise legislative jurisdiction. *See, e.g.* *Home Ins. Co. v. Dick*, 281 U.S. 397 (1930); *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66 (1954).

54. *Home Ins. Co. v. Dick*, 281 U.S. at 410. That decision holds that federal constitutional grounds exist for reversing state court decisions for what are inappropriate choices of law.

55. This threshold is different than that employed in discerning jurisdiction. Thus a court may find that a party has sufficient contacts to be subject to the jurisdiction of the court, but those contacts may not constitute sufficient interest to apply the law of the nation in which the court is sitting. *But see* *Blackmer v. United States*, 284 U.S. 421, 438 (1932). (In that case, the Court stated that legislative jurisdiction of the United States over a citizen outside its borders is a jurisdiction *in personam*, as he is personally bound to take notice of the laws that are applicable to him). When a complaint asserts a substantial claim under the Jones Act, the court has jurisdiction to determine whether in fact the Act does provide the rights upon which the plaintiff relies. *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 359 (1959). The question before the court, therefore, is not one of jurisdiction. Rather, it is whether the plaintiff's cause of action is "well founded in law and fact." 345 U.S. at 575. The ultimate question is whether the Jones Act is applicable under the facts of the case.

56. *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3d Cir. 1977), *cert. denied*, 435 U.S. 904 (1978).

presumes that the "liberal purposes" of American law must be exported to wherever our multinational corporations are permitted to do business."⁵⁷

In the recent decision of *Chirinos de Alvarez v. Creole Petroleum Corp.*,⁵⁸ the Third Circuit reaffirmed the position taken in *DeMateos* holding the Jones Act inapplicable. It noted that the interest of the United States in the transaction which formed the subject of the lawsuit was inconsiderable. The accident occurred on vessels which never ventured beyond the boundaries of Venezuela. The decedents were Venezuelan nationals whose employment never took them outside Venezuela, and the oil production operation was entirely contained within Venezuela. Under those circumstances, the court concluded that the application of the Jones Act was not warranted.

It is apparent from the above decisions that the Third Circuit has been unwilling to extend American law to transactions involving foreign seamen in foreign waters unless the United States has substantial interest in the transaction. The Second Circuit has taken a different approach. While the opinions of that Circuit have recited the *Lauritzen* requirement that there be some significant connection between the shipping transaction being regulated and the national interest of the United States before the Jones Act may be properly applied, its more recent pronouncements have applied a standard which closely resembles the due process standard of "minimum contacts" applied in personal jurisdiction cases.

The seminal Second Circuit decision is *Bartholomew v. Universe Tankships, Inc.*⁵⁹ In that case, all of the defendant Liberian corporation's stock was owned by a Panamanian corporation, which in turn was wholly owned by American citizens. The court viewed piercing the corporate veil as "essential unless the purposes of the Jones Act [were] to be frustrated by American shipowners intent upon evading the obligations under the law by the simple expedient of incorporating in a foreign country. . . ." ⁶⁰ This case established that the Second Circuit requires nothing more than a minimal American interest (in

57. *Id.* at 902. The *DeMateos* court specifically noted its disapproval of the line of Second Circuit cases which utilize a more expansive approach to Jones Act application.

58. *de Alvarez v. Creole Petroleum Corp.*, 462 F. Supp. 782 (D. Del. 1978), *aff'd sub nom.* *Chirinos de Alvarez v. Creole Petroleum Corp.*, 613 F.2d 1240 (3d Cir. 1980).

59. *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 437 (2d Cir.), *cert. denied*, 359 U.S. 1000 (1959).

60. *Id.* at 442.

Bartholomew, that minimal interest arose through attenuated American ownership of the ship) for the application of the Jones Act. Two subsequent opinions from the Second Circuit have applied this expansive formulation.⁶¹

The Fifth Circuit has only recently spoken on the subject of Jones Act application. In 1980, the Fifth Circuit indicated that it had adopted the Third and Ninth Circuit line of cases and would follow a restrictive approach. In *Martyn v. Transworld Drilling Co.*,⁶² the only American contact with the transaction was the American ownership of a subsidiary corporation which owned an oil rig in the North Sea, upon which the plaintiff was injured. In affirming the district court without a written opinion, the circuit court held the Jones Act to be inapplicable.

Subsequently, in 1981, the Fifth Circuit firmly established that it had adopted the substantial interest standard for application of the Jones Act. In *Chiazor v. Transworld Drilling Co., Ltd.*,⁶³ a Nigerian citizen died as a result of injuries he received while working on a submersible drilling rig off the Nigerian coast. The only American contact with the transaction was the American ownership of a subsidiary corporation which owned the oil rig. Thus the only *Lauritzen-Rhoditis* factor favoring the application of American law was the base of operations of the shipowner. The Jones Act was held not to apply.

Unlike the *Phillips* court, the Fifth Circuit found it unnecessary to distinguish between the base of operations of the shipowner and the base of operations of the transaction.⁶⁴ The court assumed for the purposes of its decision that the base of operations (both that of the shipowner and the transaction) was in the United States.⁶⁵ Even though the base of operations, one of the most important *Lauritzen-Rhoditis* factors, favored application of American law,⁶⁶ the court required that there be a more substantial American interest before the Jones Act would apply.⁶⁷

61. *Antypas v. Cia. Maritima San Basilio, S.A.*, 541 F.2d 307 (2d Cir. 1976); *Moncada v. Lemuria Shipping Corp.*, 491 F.2d 470 (2d Cir. 1974).

62. 619 F.2d 82 (5th Cir. 1980).

63. 648 F.2d 1015 (5th Cir. 1981).

64. See text p. 10 *supra*.

65. It was specifically found that there was no purposeful evasion of American law. Thus there was no American interest to be protected by applying the Jones Act. 648 F.2d at 1018.

66. It is important to remember that the Supreme Court stated that the base of operations factor could override any number of factors. *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. at 310.

67. 648 F.2d at 1019.

In *Phillips*, the Ninth Circuit did not adhere to the Second Circuit minimal interest standard, but closely followed the Third Circuit substantial interest standard and the reasoning of *Lauritzen* which emphasized:

The virtue and utility of seaborne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea.⁶⁸

The Ninth Circuit took heed of this language and avoided the social jingoism decried in *DeMateos*. The *Mariner I* was owned by an American concern and registered in the United States. These are two very significant contacts which raise at least a minimal American interest,⁶⁹ yet the Jones Act was not applied. What was involved in *Phillips* was a Trinidadian oil production enterprise. While the United States undoubtedly had a legitimate interest in some activities of an American corporation doing business in Trinidad, it would not seem to have any substantial interest in dictating the legal responsibility of Santa Fe, in its capacity as a Trinidadian employer, to its Trinidadian employees.

By selecting the substantial interest standard, the *Phillips* court not only met the due process standard of minimal interest, but also preserved international relations concerning sea transportation. Substantial American interest does not arise when an injury occurs to a foreign national aboard an American owned and registered vessel engaged in permanent operations off foreign shores. The *Phillips* court, citing *Chirinos*, stated:

The *Lauritzen* case recognizes that the most commonly accepted basis in international law for selecting tort rules of decision is by reference to the place where the liability arose. This reflects the strong interest of a nation in the activity which goes on within its sovereign territory. [*Lauritzen*] noted, however, the impracticality of such a rule when applied "to an enterprise conducted under many territorial rules and under none," and observed that the

68. 345 U.S. at 928.

69. "There is little doubt that sufficient American interest in a particular transaction can rest on the presence of one or more important contacts between that transaction and this country." 632 F.2d at 86. Though it would seem that American registration and American ownership are the type of contacts contemplated by the court, the American interest raised by those contacts was not sufficient to apply the Jones Act.

"more constant law of the flag" is ordinarily applied to vessels which ply international waters from port to port. But such pragmatic considerations do not make the interest of a sovereign in activities occurring within its borders any less. Where, as here, the enterprise giving rise to the liability is conducted solely within one jurisdiction, that interest should be given substantial weight . . . in making a choice of law decision.⁷⁰

The court indicated that had the *Mariner I* been a sailing vessel, the Jones Act would have applied.⁷¹ Thus, due to the fact that the *Mariner I* was affixed outside the United States and within the jurisdiction of Trinidad, substantial American interest did not arise.⁷² The substantial interests of Trinidad subsumed any interest of the United States. The only connections between the workers' injuries and the United States were the American ownership and registration of the oil rig. The accident forming the subject matter of the suit occurred on a drilling rig manned by life-long Trinidadian nationals who never ventured from the waters off the coast of Trinidad. The contacts with the United States were no more than ephemeral. The only country with any real interest was Trinidad.

IV. CONCLUSION

In *Phillips*, the Jones Act was correctly held inapplicable in light of modern choice of law rules. Where as before it seemed well established that American ownership of sailing vessels, standing alone, was not sufficient to apply the Jones Act,⁷³ injured foreign workers stationed on American oil rigs in foreign waters will find it even more difficult to employ the Jones Act in their favor. This is the result of American jurisprudence which recognizes that because each nation has a legitimate interest in regulating activities by its citizens in its territory,⁷⁴ no less than substantial American interest will have to be shown before American law will apply to an occurrence involving a foreign person in a foreign territory.

Phillips is an indication that maritime choice of law has evolved to the stage of development reached by general choice of law, that is, a consideration of the interests and policies of each nation involved.

70. 632 F.2d at 87.

71. 632 F.2d at 86.

72. See note 69 *supra*.

73. See *Chirinos de Alvarez v. Creole Petroleum Corp.*, 613 F.2d 1240 (3d Cir. 1980); *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3d Cir. 1977).

74. See note 51 *supra*.

The minimal interest test rejected by *Phillips* is seemingly a less preferable test than the substantial interest test ultimately adopted. The latter not only meets and surpasses the due process standard, but also recognizes American respect for the relevant interests of foreign nations.⁷⁵

As the need for oil throughout the international community becomes more substantial, the number of offshore operations will increase worldwide. It will soon become necessary to establish a firm choice of law rule as to the application of American maritime law. The conflict between the Second and Third Circuits may be resolved either legislatively or judicially.

A bill was introduced in the House of Representatives in 1980 which adhered closely to the substantial interest approach,⁷⁶ however, opposition from the plaintiff's personal injury bar precluded the 96th Congress from scheduling further hearings.⁷⁷ The judiciary has also not seen fit to hand down a definitive answer: the United States Supreme Court denied certiorari in *Phillips*. Despite the silence of the "law-making" branches of government, the proposed bill and the emerging line of cases from the Third, Fifth and Ninth Circuits indicate that the restrictive application of the Jones Act will be established as law which both seamen and shipowners can rely on. Whether the substantial interest test or the minimal interest test is ultimately adopted, there seems to be no doubt that interest analysis has become doctrine in maritime choice of law.

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75. This should always be an important consideration when deciding an international choice of law. 632 F.2d at 85.

76. H.R. 6705, 96th Cong., 2d Sess., 126 CONG. REC. 35 (1980). The purpose of the bill was to amend the Jones Act to provide that actions may not be maintained under such Act for damages incurred by foreign persons or such persons' legal representatives when such persons are injured or killed outside the United States, the territorial waters of the United States, or the outer continental shelf of the United States, while employed on certain special-purpose vessels engaged in activities relating to offshore oil exploration, unless no remedy is available under the laws of the country asserting jurisdiction over the area in which the incident giving rise to the action occurred or in which the individual maintained citizenship or residency. Under this bill, the Jones Act would not apply to the *Phillips* plaintiffs.

77. Watson, *Applicable Law in Suits by Foreign Offshore Oil Workers*, 41 LA. L. REV. 827, 855 (1981).

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