



Seastead Strategies for Preventing Litigation in the United States

Robert Mongole¹

August 26, 2012

*Our Mission: To further the establishment and growth of permanent, autonomous ocean communities,
enabling innovation with new political and social systems.*

¹ Candidate for *Juris Doctor* and Doctor of Civil Law at the Louisiana State University Paul M. Hebert Law Center.

Introduction

Article III Section 2 of the United States Constitution grants broad powers for federal courts to hear maritime claims. This power has been used in the past to allow foreigners to bring suits in United States Courts for claims arising on the high seas and within the territorial waters of another nation. This paper will examine whether contractual devices can be used to prevent lawsuits in American admiralty jurisdiction, and how they might be applied to protect seasteeds from lawsuits in the United States. It will also examine the court's power of *forum non conveniens*, and how the factors used to analyze the "convenience of the forum" could weigh towards American courts retaining jurisdiction, at least in seasteeds' early days.

Bringing suit in the United States offers plaintiffs many advantages. When the plaintiff is an American citizen it naturally makes sense from a convenience standpoint, but foreigners often bring suit in American courts, even when they live on a different continent, half a world away. An English judge, Lord Denning, best summarized what draws foreigners into American courts: "As a moth is drawn to the light, so is a litigant drawn to the United States. If he can only get his case into their courts, he stands to win a fortune."¹ American courts generally offer advantages such as strict liability, jury trials and contingent attorney's fees, no taxing of losing parties with opponent's attorney's fees, and more extensive discovery than in foreign courts.²

The courts attempt to weigh the needs and interests of parties of different nationalities and federal courts have traditionally relied on the idea of comity. Comity is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws."³ While the United States exercises broad maritime powers, it also must give foreign nations due deference when acting within their genuine powers.⁴ There are limits to how far a nation can extend its laws, since conflicting or overlapping jurisdictions would unnecessarily burden maritime activities.⁵ The doctrine of comity is not absolute and it is sometimes ignored. This is often the case with actions arising under the Jones Act. The Jones Act is used only when a seaman is injured during employment or dies from an injury suffered during employment.

The Jones Act qualification standards can be a complicated matter, far too lengthy to discuss in this paper. Essentially, to qualify for Jones Act status, a seaman must perform a duty that contributes to the function of his vessel or the accomplishment of its mission, and he must

¹ *Smith Kline & French Lab. Ltd. vs. Bloch*, 1 W.L.R. 730 (C.A. 1983) (Eng.) (Lord Denning, Master of the Rolls).

² *Piper Aircraft Co. vs. Reyno*, 454 U.S. 235, 255 (1981).

³ *Hilton v. Guyot*, 159 U.S. 113, 164, 16 S. Ct. 139, 143, 40 L. Ed. 95 (1895)

⁴ *Id.*

⁵ *Lauritzen v. Larsen*, 345 U.S. 571, 581 (1953).

have a substantial connection to the vessel in navigation.⁶ Without delving into excessive detail, this also prompts the question of what a vessel is. In 2005 the Supreme Court defined a vessel as “any watercraft practically capable of maritime transportation.”⁷ This is a relatively broad definition, which requires its own paper to fully analyze, but as long as something is capable of transportation, even if it essentially lacks self-propulsion, it will be considered a vessel.⁸ Seasteads in various mobile configurations are likely to be classified as vessels and can therefore fall under the Jones Act. The Jones Act only applies to seamen who are suing their employers and not to general maritime claims. Additionally, the Jones Act was amended to bar foreign citizens from bringing suit in American courts when their injuries occurred outside of U.S. waters, while they were “engaged in the exploration, development, or production of offshore mineral energy resources--included but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment or personnel.” The only exception to this is if the foreign seaman can prove he has no remedy under the laws of his native country or the nation’s laws under whose flag the injury occurred. This amendment may play an important limiting role for seasteads engaged in the mineral industry, because it will bar foreigners from bringing suit in American courts.

A seastead is likely to employ and have as guests both American and non-American citizens. Both employees and guests may want to utilize the advantages of American courts. This could jeopardize The Seasteading Institute’s goal of enabling pioneers to test new ideas for government.⁹ Being drawn into American courts could hamper development of this and other goals. The Jones Act and general maritime law pose particular threats because they allow certain claims arising in foreign waters or the high seas to be brought to American court, even by foreign plaintiffs. A seastead will therefore want to limit where it can be sued, so it does not find itself defending lawsuits in multiple courts within the United States or around the world.

Seasteads should be able to take advantage of contractual clauses to prevent certain lawsuits in American courts. In a world of frequent frivolous lawsuits, businesses simply cannot afford to defend themselves in all corners of the world. By limiting litigation to one location, businesses can save money on attorneys and specialize in compliance with one country or court’s interpretation of the law. Seasteads should be able to do this by incorporating contractual clauses into employment agreements and any tickets or boarding passes it issues to guests and residents.

The following suggestions come from an analysis of legal precedent, and do not cover every measure a seastead can take to protect itself. They do, however, give potential seasteading entrepreneurs an outline for the challenges they can expect, and allow them to prepare their own

⁶ See *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995); see also *McDermott Int’l, Inc. v. Wilander*, 498 U.S. 337, 355 (1991).

⁷ *Stewart v. Dutra Construction Co.*, 543 U.S. 481, 497, 2005 AMC 609, 620 (2005) (applying 1 U.S.C. § 3 (2000)).

⁸ *Stewart*, 543 U.S. at 484-85.

⁹ The Seasteading Institute, *Vision/Strategy*, <http://www.seasteading.org/about/visionstrategy/> (last visited July, 29, 2012).

defense accordingly. Of course the best strategy will be to avoid the kinds of conflicts that might lead a seastead to be sued, but given many people's litigious instincts, a back-up plan is always wise.

An Introduction to Forum and Venue Selection Clauses

Before examining if forum and venue selection clauses apply under different laws, an understanding of these terms' meaning is required. The terms are often confused. A contractual device limiting the places where suits are brought is often referred to as a "forum selection clause." This is true whether the place represents a forum, venue or both. Any well-drafted contract will specify both a forum and a venue. In places outside of a federal system like the United States, where a country might only have one judicial body, forum and venue might be one and the same.

The definition of forum is a "court or other judicial body; a place of jurisdiction," while venue is "[t]he territory, such as a country or other political subdivision, over which a trial court has jurisdiction."¹⁰ Put into plain English, this means a forum selection clause chooses the court in which the trial will occur and a venue selection clause chooses the geographic location of the trial.

Early seasteams will likely use open registry flags. Panama, Liberia, the Bahamas, Bermuda, Cyprus, and the Marshall Islands have all been listed as possibilities.¹¹ An open registry nation offers its flag and legal framework to ships with foreign owners. This practice is often used to reduce operating costs or avoid regulations of the owner's domicile. In contrast, a closed registry nation only allows its flag to be flown on ships that are owned and at least partially crewed by its citizens.

For reasons of simplicity, it makes sense that a seastead might want all claims against it to be heard in the country of its flag, but a seastead does not need to have all claims default to the courts of the flag country. It will still be free to choose a separate country via a selection clause placed in its contracts. Doing so may require a seastead to examine the national laws of the flag it flies to ensure that selection clauses will be enforced if it chooses litigation in a separate country and forum. Not every country will enforce selection clauses. A seastead might employ a venue selection clause, which further limits the geographic area within one of the countries, preventing inconveniences resulting from multiple trials in different parts of the same country.

¹⁰ Black's Law Dictionary 725, 1695 (9th ed. 2009).

¹¹ The Seasteading Institute, *Flagging Options for Early Seasteading Ventures*, <http://www.seasteading.org/2012/01/seasteading-engineering-intern-report-floating-breakwater-and-wave-power-generators/> (last visited on July 29, 2012).

Additionally, a seastead might want to limit its suits to a particular court to avoid having different local laws applied to multiple suits¹² using a forum selection clause. A seastead might combine the two of these and limit suits. For example, a clause stating a claimant must bring his suit in the First Circuit in the Province of Panama is both a forum and venue selection clause, because it limits the claimant's choice of both geographic location and adjudicative body.¹³ If a clause only specified the suit be brought in a Panama federal court, this would be an example of forum selection clause. If it only chose a specific city, and not which court within the city, this would be an example of a venue selection clause.

WHAT IF NO FORUM OR VENUE SELECTION CLAUSE IS IN PLACE?

If there is no selection clause in place, the first step an American court will take is to determine if the plaintiff is suing his employer or a third party.¹⁴ For claims against an employer or the vessel on which the seaman was employed, the next step is determining what laws apply. If foreign law applies, and not American law, the court may dismiss the suit when there is another more convenient forum.¹⁵ To determine whether foreign or domestic law applies, a choice of law test is run, applying the factors from the Supreme Court decisions in *Lauritzen v. Larsen*¹⁶ and *Hellenic Lines v. Rhoditis*.¹⁷

In *Hellenic Lines*, the owner of the vessel was a Greek corporation with its largest office in New York and a second office in New Orleans. The manager owned 95% of the corporation's stock and was a Greek citizen but also a lawful resident-alien living in Connecticut.¹⁸ The injured Greek seaman brought suit in the United States even though he entered into his contract in Greece and the contract forced all litigation in Greece.¹⁹ The Supreme Court upheld the Greek citizen's choice to bring suit in the United States.²⁰

In *Lauritzen v. Larsen*, a Danish seaman, while temporarily in New York, joined the crew of a Danish vessel owned by a Danish citizen. The contract provided that the seaman would be

¹² This assumes at least one of the above mentioned countries has a federal level and a local court level which operates similar to a state court within the United States, meaning the local court applies its own law rather than federal law.

¹³ I do not know whether it is even possible for a seastead to bring suit in this circuit. It only serves as an example of limiting both forum and venue.

¹⁴ *Liaw Su Teng v. Skaarup Shipping Corp.*, 743 F.2d 1140, 1145 (5th Cir. 1984) overruled by *In re Air Crash Disaster Near New Orleans, La.* on July 9, 1982, 821 F.2d 1147 (5th Cir. 1987). (While overruled, the principles concerning *forum non conveniens* in this case remain intact and the case offers an excellent analysis of *forum non conveniens* and related concepts.)

¹⁵ *Fisher v. Agios Nicolaos V*, 628 F.2d 308, 315 (5th Cir.1980), cert. denied, 454 U.S. 816, 102 S.Ct. 92, 70 L.Ed.2d 84 (1981); *De Oliveira v. Delta Marine Drilling Co.*, 707 F.2d 843 (5th Cir.1983).

¹⁶ 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953).

¹⁷ 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970).

¹⁸ *Hellenic Lines Ltd*, 398 U.S. at 307.

¹⁹ *Id.*, at 308.

²⁰ *Id.*, at 318.

covered by Danish law. The seaman filed suit in New York after being injured in Cuba.²¹ The Supreme Court ruled that Danish law should apply.²²

The pair of cases gives us eight factors: the place of the wrongful act; the place of contract; the inaccessibility of the foreign forum; the law of the forum; the law of the flag; the allegiance of the defendant shipowner; the allegiance or domicile of the injured worker; and the base of operations.²³

THE LAURITZEN-RHODITIS FACTORS

Each of these factors is assigned a varying degree of weight. In *Rhoditis*, Justice Douglas, writing for the majority, observes that “the *Lauritzen* test is not a mechanical one. . . . The significance of one or more factors must be considered in light of the national interest served by the assertion of Jones Act jurisdiction.”²⁴

Generally, party allegiance is assigned an intermediate level of importance.²⁵ The place of the wrongful act and place of contract carry little authoritative weight.²⁶ The inaccessibility of a foreign forum is only significant if the alternative forum were to “necessitate delayed, prolonged, expensive and uncertain litigation” and otherwise carries little weight.²⁷ It should be stressed that no one factor is determinative.

The Place of the Wrongful Act and the Place of Contract

The place of the wrongful act is important for land torts but “is of limited application to shipboard torts, because of the varieties of legal authority over waters she may navigate.”²⁸ Similarly, the place of contract is also given little weight because “a seaman takes his employment, like his fun, where he finds it; a ship takes on crew in any port where it needs them.”²⁹

Both of these factors should continue to play little to no role when the *Lauritzen-Rhoditis* test is applied to a seastead-based suit. Seastead employment is likely to be globe-based rather than from a singular nation or region, but this might become a heavier factor if a seastead is exclusively hiring employees from one country. The place of the wrongful act should remain a non-factor as long as seasteeds intend to float outside of any nation’s waters.

²¹ *Lauritzen*, 345 U.S. at 573.

²² *Id.*, at 593.

²³ See generally *Hellenic Lines Ltd*, 398 U.S. at 310 and *Lauritzen*, 345 U.S. at 583-91.

²⁴ *Hellenic Lines Ltd*, 398 U.S. at 308.

²⁵ *Lauritzen*, 345 U.S. at 583 and 588.

²⁶ *Id.*, at 583.

²⁷ *Id.*, at 590.

²⁸ *Id.*, at 583.

²⁹ *Id.*, at 588.

The Law of the Flag and the Allegiance of the Defendant Shipowner

The law of the flag places a vessel under the authority of the country whose flag it is flying, and it is deemed to be part of the territory of that sovereignty.³⁰ The flag registration cannot be questioned by the United States and can be questioned only by the registry state.³¹ Great weight is given to the law of the flag, because the laws a ship is under “cannot change at every change of waters.”³²

Unfortunately for seasteads, courts become wary of owners whose nationality does not match the ship’s flag. *Lauritzen* is silent on non-American shipowners flying flags from open registries, but seasteads owned by Americans flying a foreign flag might have reason for concern. Courts have ignored the law of the flag on occasion and forced U.S. laws on American shipowners flying foreign flags. American ownership in a seastead can undermine the alleged benefits of flying a foreign flag if the court merely views it as a way of escaping the obligations of American law. While a court could view a seastead as attempting to escape American law, American courts have stressed that a ship carries the nationality of the state to which it is registered. In order to properly register a ship and authorize it to fly the state's flag, there must be a genuine link between the state and the ship (i.e., the state must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag).³³ Courts have been hesitant to ignore the law of the flag and apply American law, but it has been done on occasion. The more common case is that of *William Brooks v. Hess Oil Virgin Islands*. In *William Brooks*, the court found no reason to conclude that an arbitrary number of American contacts would outweigh the "internal order and economy" provided by the law of the flag, Liberian law in the case at hand. American courts are hesitant to ignore the law of the flag to apply American law.

The Allegiance or Domicile of the Injured Worker

The nationality of the injured worker is not determinative of what law applies. While every nation has an interest in protecting its citizens and permanent residents, service under a foreign flag also owes some duty of allegiance.³⁴ The pair seem conflicting, but *Lauritzen* stresses that “[w]e need not, however, weight the seaman’s nationality against that of the ship, for here the two coincide without resort to fiction.”³⁵

In *Lauritzen*, a Danish seaman working on a ship flying the Danish flag was injured in Cuba and brought suit in the United States under the Jones Act. The seaman’s domicile was

³⁰ *Id.*, at 584-85.

³¹ *Id.*, at 584.

³² *Id.*, at 585.

³³ See the United Nations Convention on Conditions for Registration of Ships and the 1958 Geneva Convention on the High Seas.

³⁴ *Lauritzen*, 345 U.S. at 586.

³⁵ *Id.*

considered an important factor, but it was not stressed as heavily as the law of the flag.³⁶ The law of the flag will likely be a more important factor, as workers will be from multiple nations, but vessels will fly only one flag.

The Inaccessibility of the Foreign Forum

The court will ask if the seaman will be disadvantaged in obtaining his remedy under foreign law in U.S. courts or the foreign court.³⁷ To determine this, the *Lauritzen* court examined whether the foreign court has delayed, prolonged, expensive or uncertain litigation.³⁸ The court also noted that in the case at hand, claims could be made through the Danish Consulate so the seaman did not have to leave New York.³⁹

Seasteads should therefore examine the accessibility of a foreign nation before flying their flag. If the nation's courts have delayed, prolonged, expensive or uncertain litigation this opens the door for litigation in the United States, partially defeating the purpose of flying an open registry flag.

The Law of the Forum

Past plaintiffs have urged American courts to apply United States law to cases simply because the defendant has regular contact with the United States. *Lauritzen* rejects this notion, writing, “[j]urisdiction of maritime cases in all countries is so wide and the nature of its subject matter so far-flung that there would be no justification for altering the law of a controversy just because local jurisdiction of the parties is obtainable.”⁴⁰ The *Lauritzen* court notes that a “conflict of laws” doctrine assures that a case will be treated in the same way under the correct law regardless of the incidental circumstances which can determine the forum.⁴¹ It is a denial of due process for a state to force its law on a foreign controversy simply because it is the forum state.⁴²

The Base of Operations

In *Rhoditis*, the court noted that a Greek vessel's base of operations was in New York and many of its sister ships were “earning income from cargo originating and terminating” in New York.⁴³ The other factors were considered minor in comparison to the substantial and continuous contacts the alien owner had with the United States.⁴⁴ The court found no reason not to draw the

³⁶ *Id.*, at 585.

³⁷ *Id.*, at 590.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*, at 591.

⁴¹ *Id.*

⁴² *Id.*, at 590-91.

⁴³ *Hellenic Lines Ltd*, 398 U.S. at 310.

⁴⁴ *Id.*

vessel into American court under the Jones Act, because not doing so would give him an advantage over American vessels. Similarly, if a seastead has a headquarters of some sort in the United States, or has other substantial contact with the United States, it could find itself drawn into American courts on similar grounds.

FORUM AND VENUE SELECTION CLAUSES UNDER GENERAL MARITIME LAW

When parties enter into a contractual relationship, they may attempt to select the forum and venue where a dispute arising under the contract will be brought. American maritime law, and not state law, governs the validity of the forum and venue selection clauses in maritime contracts.⁴⁵ Absent a clear demonstration that enforcement of these clauses would be unreasonable or unjust, American courts will uphold a forum and venue selection clause.⁴⁶

In *M/S Bremen v. Zapata Off-Shore Company*, a maritime towing contract specified that all litigation would go before the London Court of Justice (both a forum and venue selection clause). The contract also contained two clauses that purported to exculpate the tugboat (M/S Bremen) from liability for damages to the towed barge (Zapata).⁴⁷ The Bremen left Louisiana, bound for Italy.⁴⁸ In the international waters of the Gulf of Mexico, the Bremen hit a rough storm. The vessel it was towing was seriously damaged and had to be towed to Tampa, Florida, the closest port available.⁴⁹ The plaintiff (and barge owner) Zapata ignored the selection clauses and brought suit in admiralty in the U.S. District Court in Tampa.⁵⁰ Both the District Court and the Court of Appeals applied a *forum non conveniens* analysis and agreed with Zapata, concluding that a forum selection clause “will not be enforced unless the selected state would provide a more convenient forum than the state in which suit is brought.”⁵¹ When applying a *forum non conveniens* analysis, the court noted that nearly everything having to do with the suit was located in the United States, including witnesses and evidence.⁵² The Court of Appeals majority also noted that Zapata was an American citizen, that exculpatory clauses are contrary to public policy in American courts⁵³, and that English courts were likely to enforce the exculpatory clauses.⁵⁴

⁴⁵ *Milanovich v. Costa Crociere, S.p.A.*, 954 F.2d 763 (D.C. Cir. 1992)

⁴⁶ See *M/S Bremen v. Zapata Off-Shore Company*, 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972); see also *Lejano v. K.S. Bandak*, 705 So.2d 158 (La. 1997).

⁴⁷ *Bremen*, 407 U.S. at 2.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*, at 6-7.

⁵² *Id.*, at 7.

⁵³ See Daniel B. Shilliday et. al., *Contractual Risk-Shifting in Offshore Energy Operations*, 81 Tul. L. Rev. 1579, 1632 (2007) (General maritime law requires that a limitation of liability clause (or red letter clause) prohibiting consequential damages (1) be clear and unequivocal, (2) not overreach due to unequal bargaining power, and (3) be conspicuous. Federal Courts have also refused to enforce exculpatory clauses in cases of gross negligence)

⁵⁴ *Bremen*, 407 U.S. at 7.

While the lower courts were ultimately reversed by the Supreme Court, their decisions are a useful guide for analyzing selection clauses. Forum and venue selection clauses appear to lie outside of a *forum non conveniens* analysis and should be examined separately. This was the mistake of the lower courts. They incorrectly factored in the selection clauses with their *forum non conveniens* analysis. The Supreme Court reviewed and found that “far too little weight and effect were given to the forum selection clause in resolving this controversy,” but that “[a]bsent a contract forum, the considerations relied on by the Court of Appeals would be persuasive reasons for holding an American forum convenient.”⁵⁵ This demonstrates that a seastead seemingly can avoid a *forum non conveniens* challenge by using selection clauses in their contracts.

The *Bremen* Court suggests that selection clauses are an indispensable element within contracts with international flavor. The Court writes:

The elimination of all such uncertainties by agreeing in advance on a forum acceptable to both parties is an indispensable element in international trade, commerce, and contracting. There is strong evidence that the forum clause was a vital part of the agreement, and it would be unrealistic to think that the parties did not conduct their negotiations, including fixing the monetary terms, with the consequences of the forum clause figuring prominently in their calculations.⁵⁶

The Court is saying that the amount paid to tow the vessel might have been different if there was no selection clause in place. The idea that forum and venue selection clauses affect prices will be examined again later in this paper.

Forum and venue selection clauses should be considered *prima facie* valid (i.e., appearing self-evident from the facts) and be enforced unless the resisting party can show the enforcement is unreasonable under the circumstances.⁵⁷ A distant and unrelated forum might be suggestive of a contract of adhesion, which would be grounds to invalidate the clause.⁵⁸ An adhesion contract is a “standard-form contract prepared by one party, to be signed by another party in a weaker position, usually a consumer, who adheres to the contract with little choice about the terms.”⁵⁹ While the burden is on the resisting party to show the selection clauses are invalid, *Bremen* suggests that clauses requiring litigation in distant and unrelated forums will be scrutinized to a higher degree than if litigation was required in a related forum.⁶⁰

Bremen marks a change in court opinion. Before it, forum selection clauses were said to go against public policy and were generally not enforced.⁶¹ The *Bremen* standard, that forum

⁵⁵ *Id.*, at 8-9.

⁵⁶ *Id.*, at 13-14.

⁵⁷ *Id.*, at 10.

⁵⁸ *Id.*, at 16.

⁵⁹ Black’s Law Dictionary 366, 1695 (9th ed. 2009).

⁶⁰ *Id.*, at 17.

⁶¹ *Id.*, at 9.

selection clauses should be considered prima facie valid, remains the standard today.⁶² In cases that followed, courts upheld selection clauses even when enforcing them would require the plaintiffs to give up remedies available to them in American courts, but not in the agreed upon courts.⁶³

Just because American law applies, retention of jurisdiction does not automatically follow. In *M/V Tel Aviv*, the court declined to retain jurisdiction over a case where the sole jurisdictional basis was *in rem* (the seizure of the vessel in an American port).⁶⁴ But the dismissal of the suit was conditioned on the defendant submitting to jurisdiction of a foreign forum and the defendant posting an equivalent security in that forum.⁶⁵ Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.⁶⁶ The court might decline jurisdiction to prevent misuse of a litigant's ability to seek a favorable forum.⁶⁷ If the litigant's choice of forum is not being abused, the court should consider the following factors in deciding: access to sources of proof⁶⁸; the relative ease of service of process⁶⁹; the availability of compulsory process to obtain the attendance of witnesses⁷⁰; the possibility of viewing the vessel⁷¹; the enforceability of the judgment⁷²; the ability of a party to impeach other parties⁷³; and the public interests underlying the relationship between the forum and the dispute and the familiarity of the forum with the relevant law.⁷⁴ Limitations on damages imposed by foreign law do not render a foreign forum inadequate.⁷⁵

FORUM AND VENUE SELECTION CLAUSES UNDER JONES ACT CLAIMS

History of the Jones Act

The Jones Act was copied nearly word for word from the Federal Employers' Liability Act of 1907 (FELA.) This makes it difficult to discuss the Jones Act without implicating FELA.

⁶² *Id.*, at 10.

⁶³ See, e.g., *Calix-Chacon v. Global International Marine, Inc.*, 493 F.3d 507 (5th Cir. 2007). (Where the court enforced forum and venue selection clauses providing for Honduran law and forum to a maintenance and cure claim by a Honduran seaman sustaining illness which required a heart transplant on an American flagged vessel in an American port. The court pointed to the strong presumption of the selection clauses and rejected the argument it was unenforceable because enforcement would be contrary to U.S. public policy favoring a seaman's maintenance and cure remedy.)

⁶⁴ *Perusahaan Umum Listrik Negara Pusat v. M/V Tel Aviv*, 711 F.2d 1231, 1234 (5th Cir. 1983).

⁶⁵ *Id.*

⁶⁶ *M/V Tel Aviv*, 711 F.2d at 1233.

⁶⁷ *Id.* at 1242.

⁶⁸ *Id.* at 1235.

⁶⁹ *Id.* at 1245.

⁷⁰ *Id.* at 1240.

⁷¹ *Id.* at 1238.

⁷² *Id.* at 1235.

⁷³ *Id.*

⁷⁴ *Id.* at 1238.

⁷⁵ *Id.* at 1233.

FELA was a congressional effort to improve workplace safety in the railroad industry and to give interstate railroad workers access to a remedy for employment-related injuries.⁷⁶ It provides a liberal remedy for injuries caused by the negligence of their employer.⁷⁷ Shortly after it was passed, FELA was amended to include a specific venue provision that provided railroad workers with a broader choice of venue than would have otherwise been available in federal courts.⁷⁸ It provides that “any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this Act, shall to that extent be void.”⁷⁹

This amended section was tested in *Boyd v. Grand Trunk Western Railroad*.⁸⁰ In *Boyd*, a railroad worker argued that a contractual clause that limited his choice of venue in a FELA claim was void.⁸¹ The Supreme Court agreed and held that “[t]he right to select the forum granted in § 6 is a substantial right,” which could not be defeated by a venue selection clause.⁸² Note that even the Supreme Court uses venue and forum in a confusing and interchangeable fashion. The Court correctly notes that this is a venue selection clause,⁸³ but in the same sentence refers to the right to select the “forum.”⁸⁴ This could suggest that the difference is not truly significant for our analysis. Later cases have consistently held that contractual devices limiting a FELA employee’s right to bring suit in any eligible forum are void and unenforceable.⁸⁵

The Jones Act was created for similar reasons as FELA. Seamen suffered a high rate of injury in a transportation industry and had limited protections and remedies.⁸⁶ Rather than writing a new statute for seamen, Congress extended the rights available to railroad workers under FELA to seamen. The judicially developed law interpreting FELA was also incorporated into the Jones Act.⁸⁷ It would appear that forum and venue selection clauses under the Jones Act should be held invalid, but the Jones Act had what the Supreme Court called in *Panama*

⁷⁶ See Victor E. Schwartz & Liberty Mahshigian, *The Federal Employers’ Liability Act, a Bane for Workers, a Bust for Railroads, a Boon for Lawyers*, 23 San Diego L. Rev. 1, 3-4 (1986).

⁷⁷ Employers’ Liability Act, Pub. L. No. 60-100, ch. 149, § 1, 35 Stat. 65 (1908) (codified as amended at 45 U.S.C. § 51 (2006).

⁷⁸ Act of Apr. 5, 1910, Pub. L. No. 61-117, ch. 143, 36 Stat. 291 (1910) (codified as amended at 45 U.S.C. § 56).

⁷⁹ Employers’ Liability Act § 5

⁸⁰ 338 U.S. 263, 1950 AMC 26 (1949)(per curiam).

⁸¹ *Id.*, at 264

⁸² *Id.*, at 266

⁸³ Since the clause limits suit to either the county or district where the employee resided or the injury was sustained it is a venue selection clause.

⁸⁴ *Id.*, at 266

⁸⁵ See *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15, 1972 AMC 1407, 1418 (1972).

⁸⁶ See generally Peter Beer, *Keeping up with the Jones Act*, 61 Tul. L. Rev. 379 (1986) (Beer discusses the factors influencing the development of the Jones Act).

⁸⁷ See *Kernan v. Am. Dredging Co.*, 355 U.S. 426, 439, 1958 AMC 251, 262 (1958) (“We find no difficulty in applying these principles, developed under the FELA, to the present action under the Jones Act, for the latter Act expressly provides for seamen the cause of action--and consequently the entire judicially developed doctrine of liability-granted to railroad workers by the FELA.”).

Railroad a venue provision specific to the Jones Act.⁸⁸ In 2006, the Jones Act was rewritten to conform with the *Panama Railroad* decision, but was quickly amended again.⁸⁹ In the amended Jones Act, Congress removed the new venue subsection to “make clearer that the prior law regarding venue, including the holding of *Pure Oil Co. v. Suarez*⁹⁰ and cases following it, remain in effect, so that the action may be brought wherever the seaman’s employer does business.”⁹¹

Additionally, the Jones Act was amended to bar foreign citizens from bringing suit in American courts when their injuries occurred outside of American waters while they were “engaged in the exploration, development, or production of offshore mineral energy resources— included but not limited to drilling, mapping, surveying, diving, pipe-laying, maintaining, repairing, constructing, or transporting supplies, equipment or personnel.” The only exception to this is if the foreign seaman can prove he has no remedy under the laws of the seaman’s own country or under the nation under whose jurisdiction the injury occurred.

Despite the transformation the statute has undergone, courts have viewed the changes as not bringing about any substantive change in the law.⁹² So while the Jones Act no longer contains a specific venue provision, it is still applied as if the venue provision had remained in place. Neither Congress nor the Supreme Court has explained whether the Jones Act incorporates the FELA venue provision, and the lower courts have struggled and reached contradictory conclusions on this. Whether venue and forum selection clauses are enforceable in Jones Act claims comes down to the court’s statutory interpretation.

A FORK IN THE ROAD: VARYING STATUTORY INTERPRETATIONS ON THE JONES ACT

Fork A: Forum and Selection Clauses are Invalid and Unenforceable

The *Boutte* court held that forum and venue selection clauses should not be enforced because the Jones Act extends to seamen the same protections given to railroad workers under FELA.⁹³ The *Boutte* approach incorporates *Boyd* because the Jones Act incorporates the “entire judicially developed doctrine of liability” given to FELA railway workers.⁹⁴ Since *Boyd* holds

⁸⁸ *Panama R. Co. v. Johnson*, 264 U.S. at 384-85, 1924 AMC at 553-54.

⁸⁹ See H.R. Rep. No. 109-170, at 40 (2005) (“In subsection (b), the words ‘An action under this section shall be brought’ are substituted for ‘Jurisdiction in such actions shall be under’ because [this provision of the Jones Act] provides for venue, not jurisdiction.”).

⁹⁰ 384 U.S. 202, 203, 86 S. Ct. 1394, 1395 (1966). (“It is conceded that as enacted and originally interpreted the statute would not authorize Florida venue in this instance, for corporate residence traditionally meant place of incorporation, in this case Ohio, and Pure Oil’s principal office is in Illinois. The Court of Appeals held, however, that residence had been redefined by the expanded general venue statute”).

⁹¹ H.R. Rep. No. 110-437, at 5 (2007) (citation omitted).

⁹² See, e.g., *Vesuna v. C.S.C.S. Int’l, N.V.*, No. 09-20286-CIV, 2009 WL 4543319, at *2 (S.D. Fla. Nov. 30, 2009); *Popescu v. CMA CGM*, No. 09-20860-CIV, 2009 WL 5606131, at *10 (S.D. Fla. Nov. 5, 2009).

⁹³ *Boutte v. Cenac Towing, Inc.*, 346 F. Supp. 2d 922, 927-28 (S.D. Tex. 2004).

⁹⁴ *Id.* at 931 (quoting *Kernan v. Am. Dredging Co.*, 355 U.S. 426, 439, 1958 AMC 251, 262 (1958)).

that any contractual device limiting a railroad worker's choice of forum or venue is void under FELA, *Boutte* assumes that any contractual device limiting a seaman's choice of forum or venue is also invalid.⁹⁵

While *Boutte* uses *Boyd* to hold forum and venue selection clauses invalid, it also acknowledges *Bremen*, which presumes that forum and venue selection clauses in maritime contracts are valid. It particularly notes that *Bremen* cites *Boyd* in its analysis as an example of a public policy that mandates not enforcing forum selection clauses.⁹⁶ Once the Jones Act comes into effect along with judicially developed FELA law, the forum and venue selection clauses become contrary to public policy and overrule the general maritime law.⁹⁷

Ultimately, the *Boutte* approach provides an incomplete analysis as it never considers the different treatment of venue under the Jones Act and FELA. It relies heavily on the *Nunez* case, where the Supreme Court of Alaska held that the Jones Act "effectively places an injured seaman ... in the shoes of an injured FELA railway worker."⁹⁸ It uses *Nunez* to conclude that a seaman is entitled to identical protections as a railroad worker.⁹⁹ There is support for this viewpoint¹⁰⁰, but *Nunez* fails to consider the different treatment of venue under the Jones Act and FELA and *Boutte* incorporates this oversight.

Interestingly, the *Boutte* court only holds forum and venue selection clauses invalid for purely American conflicts, writing, "[t]herefore, in light of *Boyd*, this Court holds that choice of forum agreements in employment contracts *between American seaman and American companies* are unenforceable in Jones Act claims" (emphasis added).¹⁰¹ It notes numerous cases involving foreign seamen that enforced forum selection clauses.¹⁰² *Damigos v. Flanders Compania*

⁹⁵ *Id.* at 931-32.

⁹⁶ *Id.*

⁹⁷ *Id.* ("Provisions of general maritime law which conflict with the Jones Act must yield to it.")

⁹⁸ *Nunez v. American Seafoods*, 52 P.3d 720, 722, 2002 AMC 1841, 1844 (Alaska 2002).

⁹⁹ See *Boutte*, 346 F. Supp. 2d at 931-32.

¹⁰⁰ See, e.g., 1 Thomas J. Schoenbaum, Admiralty & Maritime Law *supra* note 42, §6-21, at 322 ("[T]he Jones Act grants seamen ... the right to seek damages ... in the same manner as [FELA] allows claims by railroad employees.").

¹⁰¹ *Boutte*, 346 F. Supp. 2d at 932.

¹⁰² *Id.* at 931. ("Other cases enforcing forum selection clauses in Jones Act claims all involve foreign seamen. See *Sabocuhan v. Geco-Prakla*, 78 F.Supp.2d 603 (S.D.Tex.1999) (dismissing Jones Act claim of Filipino seaman on basis of POEA-approved forum selection clause); *Valle v. Chios Venture Shipping*, No. Civ. 98-0748, 1999 WL 76429 (E.D.La. Feb.8, 1999) (dismissing Jones Act claim of Nicaraguan seaman because valid forum-selection clause specified Greece as the proper forum); *Damigos v. Flanders Compania Naviera, S.A.-Panama*, 716 F.Supp. 104 (S.D.N.Y.1989) (dismissing Jones Act claims under doctrine of *forum non conveniens* where seamen were Greek, vessel bore flag of Greece, seamen's collective bargaining agreement contained enforceable forum selection clause designating Greece as the appropriate venue, and incident giving rise to claim occurred off the coast of Nigeria); *Lejano v. K.S. Bandak*, 705 So.2d 158 (La.1997) (dismissing Filipino seaman's Jones Act claim on basis of POEA-approved forum selection clause); *Sanchez v. Commodore Cruise Lines, Ltd.*, 713 So.2d 572 (La.Ct.App.1998) (dismissing Honduran seaman's Jones Act claim on basis of valid forum selection clause)").

*Naviera, S.A. Panama*¹⁰³ involves Greek seamen and their wives bringing suit against a Greek-flagged vessel and its operating agents who were located in the United States, and against Greece for an incident occurring in Nigeria under the Jones Act and general maritime law. The forum selection clause required action to be brought in Greek court.¹⁰⁴ The court granted the defendant's motion to dismiss, writing:

Plaintiffs claim to be entitled to relief under the Jones Act. They argue that they may lose their Jones Act claims if forced to litigate in Greece. The Court of Appeals for the Second Circuit has expressly ruled that district courts need not exercise their power to adjudicate Jones Act claims when they find that the doctrine of *forum non conveniens* is applicable. It is not the proper function of the choice of forum doctrine to assure the plaintiff access to whatever forum accords him the most favorable legal rules. ... Thus, the seamen's hope to gain the benefits of the Jones Act is not a strong factor weighing against dismissal (internal citations omitted).¹⁰⁵

This suggests that a Jones Act claim by a foreigner against a foreign company is only a factor to be added to the *forum non conveniens* analysis. The court noted that nearly all of the non-party witnesses were Greek residents, the expert witnesses were all likely Greek, and continued through a *forum non conveniens* analysis before dismissing the case.¹⁰⁶ Whereas a Jones Act claim by an American will not enforce forum and venue selection clauses in Jones Act claims under the *Boutte* approach.

Fork B: Forum and Selection Clauses are Presumed Valid and Enforceable

Unlike the *Boutte* approach, this second approach does not incorporate all of FELA into the Jones Act. It finds that since the Jones Act treats venue differently than FELA, FELA's venue provision and case law like *Boyd* that accompany it do not apply to Jones Act claims.¹⁰⁷ The Jones Act amendments that removed the specific venue provision have not altered this view.¹⁰⁸ This second approach has been dubbed the *Larrisquitu* approach and courts that follow it find that there is no strong public policy that is disregarded by enforcing a venue or forum selection clause.¹⁰⁹

¹⁰³ 716 F. Supp. 104 (S.D.N.Y. 1989).

¹⁰⁴ *Id.* at 106

¹⁰⁵ *Id.* at 108-09.

¹⁰⁶ *Id.* at 107.

¹⁰⁷ See, e.g., *Great Lakes Dredge & Dock Co. v. Larrisquitu*, No. H-06-3489, 2007 WL 2330187, at *20, 2007 AMC 2141, 2167 (S.D. Tex. Aug. 15, 2007); see also *Strickland v. Tyson Seafood Grp.*, 1999 AMC 2191, 2193-94 (Mich. Cir. Ct. 1999) (employing similar reasoning).

¹⁰⁸ See *Utoafili v. Trident Seafoods Corp.*, No. 09-2575 SC, 2009 WL 4545175, at *1, 2010 AMC 90, 91 (N.D. Cal. Nov. 30, 2009) (referencing an unpublished order rejecting the argument that Jones Act amendments were intended to void forum selection clauses in the employment contracts of seamen); see also footnote 86.

¹⁰⁹ *Larrisquitu*, 2007 WL 2330187, at *23, 2007 AMC at 2172.

The *Larrisquitu* approach borrows heavily from *Terrebonne v. K-Sea Transportation Corp*, which deals with an arbitration clause in a Jones Act case but has a favorable analysis for seasteads.¹¹⁰ Finding that the venue provision of FELA and Boyd do not control, the court noted that basic statutory interpretation requires that the “specific provisions of a statute control exclusively over the broader and more general provisions of another statute which may relate to the same subject matter in the absence of a clear manifestation to the contrary by the legislature.”¹¹¹ Therefore, if the Jones Act is silent or addresses an issue generally, then FELA controls, but if the Jones Act deals with an issue specifically, then it trumps a more general statute such as FELA.¹¹² *Larrisquitu* recognizes this proposition, writing, “*Terrebonne* eliminates the statutory basis for the result in *Boutte* and *Nunez*--that the FELA venue provisions are incorporated into the Jones Act and make forum-selection clauses in Jones Act cases unenforceable.”¹¹³ Rather than using FELA, it uses the general maritime law and presumes forum and venue selection clauses valid.¹¹⁴

RECONCILING THE TWO APPROACHES AND WHAT IT MEANS FOR SEASTEADS

While both of these approaches allow forum and venue selection clauses for foreigners, they both make the error of using venue and forum interchangeably. A third approach recognizes this and incorporates relevant FELA provisions to forum and not venue, holding that venue selection clauses are presumably valid but forum selection clauses are not.¹¹⁵ No other cases have picked up on this hybrid approach and it likely holds little to no persuasiveness and will not be discussed further.

The *Larrisquitu* approach allows for forum and venue selection clauses under the Jones Act. Under the *Boutte* approach reaching a definite conclusion on enforceability is more difficult. Under *Boutte*, American seamen are able to void forum and venue selection clauses when bringing a case under the Jones Act, but foreign seamen will not be offered the same protection. Foreign seamen will need to pass a *forum non conveniens* analysis by the court, but the Jones Act claim will be weighed in it.¹¹⁶

Seasteads hoping to avoid litigation in U.S. courts will therefore have to be wary when hiring American seamen. The *Larrisquitu* approach is clearly the most favorable to seasteads, but it would be foolish to make contracts assuming that is the approach the courts will always take. If the court takes the *Boutte* approach, a seastead could be sued in American courts under American law. Seasteads could find themselves defending multiple claims in both state and federal courts

¹¹⁰ 477 F.3d 271 (5th Cir. 2007).

¹¹¹ *Id.* at 281-82.

¹¹² *Id.*

¹¹³ *Larrisquitu*, 2007 WL 2330187, at *20, 2007 AMC at 2167.

¹¹⁴ *Id.* at *23, AMC at 2172.

¹¹⁵ See *Edah v. Trident Seafoods Corp.*, No. 2:06-cv-554, 2007 WL 781899, at *2-3 (S.D. Ohio Jan. 24, 2007), *aff'd*, 282 F. App'x 431 (6th Cir. 2008).

¹¹⁶ *Damigos*, 716 F. Supp at 109.

all across the country. The best a seastead can hope for is another amendment to the Jones Act clarifying this area or one dominant interpretation of the Jones Act to emerge in the court system.

FORUM AND VENUE SELECTION CLAUSES FOR NON-EMPLOYEES

Carnival Cruise is a maritime case where a selection clause was placed on the back of the cruise ticket, limiting suit to Florida courts.¹¹⁷ The Supreme Court simply applied the *Bremen* ruling that forum selection clauses are presumed valid and extended it to an adhesion contract on the back of the cruise ticket.¹¹⁸ The Court articulated three reasons for using forum selection clauses in this case. First, cruise ships carry passengers from many different locations and a cruise ship has an interest in limiting where it can be sued.¹¹⁹ Next, by agreeing on the forum in advance, the clause limits the waste of judicial resources.¹²⁰ Finally, the passengers likely paid less for their tickets because of the selection clause, which is a desirable market allocation.¹²¹

There are a number of similarities between seasteams and cruise ships, and some early seastead options even involve using retrofitted cruise ships.¹²² Like cruise ships, seasteams are likely to both employ and have guests from multiple countries and geographic jurisdictions within countries. Seasteams, like cruise ships, will have an interest in deciding any and all cases in one place to lessen the burden of defending themselves in many different locations. A selection clause will also limit the waste of judicial resources. Whether guests are charged admission or tickets are free will depend on the seastead, but it is easy to see a larger ocean community wanting to attract tourists to vacation on it. Courts should use similar logic to allow selection clauses to be placed on the back of any tickets or paperwork allowing guests on board.

The core decision in *Carnival Cruise*, that forum selection clauses are presumed valid despite unequal bargaining power, has been applied to maritime and non-maritime cases.¹²³

¹¹⁷ *Carnival Cruise Lines, Inc. v. Shute*, 111 S. Ct. 1522, 1524 (1991).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² The Economist, *Seasteading: Cities on the Ocean*, <http://www.economist.com/node/21540395> (last visited July 29, 2012).

¹²³ See *Petrey v. Cunard Line, Ltd.*, No. 93-1640, 1993 U.S. App. LEXIS 29733, at *1 (4th Cir. Nov. 16, 1993) (enforcing a forum selection clause in a passenger's cruise ticket contract); *Lambert v. Kysar*, 983 F.2d 1110, 1121 (1st Cir. 1993) (upholding a forum selection clause applied to contract-related tort claims); *Riley v. Kingsley Underwriting Agencies, Ltd.*, 969 F.2d 953, 954 (10th Cir.), (upholding a forum selection clause between foreign underwriting group and American agent), cert. denied, 113 S. Ct. 698 (1992); *Dempsey v. Norwegian Cruise Line*, 972 F.2d 998, 1000 (9th Cir. 1992) (upholding a statute of limitations clause in a passenger's cruise ticket contract); *Milanovich v. Costa Crociere, S.p.A.*, 954 F.2d 763, 769 (D.C. Cir. 1992) (enforcing a choice of law provision in a passenger's cruise ticket contract); *Bear, Stearns & Co., Inc. v. Bennett, Jr.*, 938 F.2d 31, 32 (2nd Cir. 1991) (upholding an arbitration forum selection clause of a brokerage agreement); *General Elec. Co. v. G. Siempelkamp GmbH & Co.*, 809 F. Supp. 1306, 1314 (S.D. Ohio 1993) (enforcing a forum selection clause between a foreign and a domestic corporation in a products liability and breach of warranty claim); *Calais v. B.S.L. Cruise, Inc.*, No. 92 Civ. 0370, 1992 U.S. Dist. LEXIS 9623 (D. S.D.N.Y. June 29, 1992); *Goldburg v. Cunard Line Ltd.*, 1992 AMC 1461, 1465 (D. S.D.Fla. 1992) (enforcing a forum selection clause in a passenger's cruise ticket contract); *Generale Bank v.*

Though selection clauses are presumed valid, if they cannot withstand judicial scrutiny for “fundamental fairness” this presumption will be overturned.¹²⁴ *Carnival Cruise* considers four fundamental fairness factors: notice, inconvenience, bad faith, and fraud and overreaching.¹²⁵ Bad faith and fraud are not examined in this paper. The Seasteading Institute works to promote “political and industry diplomacy and building a community of aspiring seasteaders” and bad faith and fraud work against these goals.¹²⁶

Notice was not at issue in *Carnival Cruise*, but other courts have required forum selection clauses in cruise ticket contracts to be reasonably communicated. The reasonably communicated standard is a two-part analysis. The first part is examining the text to see if it is “clear and conspicuous” and then examining the circumstances around the receipt of the ticket to determine the likelihood that the passenger had the opportunity to be informed.¹²⁷ The court has declined to enforce a forum selection clause when a passenger must buy a non-refundable ticket before receiving notice of the forum selection clause.¹²⁸ If a passenger simply ignores a contract, this does not constitute a lack of notice.¹²⁹

Inconvenience requires the party opposing the clause to “show that the trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court.”¹³⁰ Forcing Americans to settle foreign disputes in a remote forum is not considered an inconvenience.¹³¹ An exception has been made when neither of the parties nor the action had any contact with the selected forum.¹³²

WRAPPING IT ALL UP: WHAT IT MEANS FOR SEASTEADS

The United States Constitution gives courts broad powers in deciding maritime claims. Seasteads will want to limit this power whenever possible. American courts offer plaintiffs many advantages that other courts do not offer, but the biggest attraction for bringing suit in America is the large awards American courts often grant in comparison to other nations. Without a selection clause in place that forces litigation elsewhere, seasteads can unnecessarily expose themselves to the broad powers and generous awards of American courts.

Choudhury, 779 F. Supp 303, 306 (D. S.D.N.Y. 1991) (upholding a non-negotiated forum selection clause in a promissory note).

¹²⁴ *Carnival*, 111 S. Ct. at 1528.

¹²⁵ *Id.*, at 1526-28.

¹²⁶ The Seasteading Institute, *Vision/Strategy*, <http://www.seasteading.org/about/visionstrategy/> (last visited July, 29, 2012).

¹²⁷ *Corna v. American Hawaii Cruises, Inc.*, 794 F. Supp. 1005, 1008 (D. Haw. 1992).

¹²⁸ *Id.*, at 1011.

¹²⁹ *Id.*, at 1009.

¹³⁰ *Bremen*, 407 US at 18.

¹³¹ See *Pauly v. Biotronik, GmbH*, 738 F. Supp. 1332, 1335 (D. Or. 1990). See also *Hodes v. S.N.C. Achille Lauro ed Altri-Gestione*, 858 F.2d 905 (3d Cir. 1988).

¹³² *Vignolo v. Chandris, Inc.*, No. 89-0186-Z, 1990 U.S. Dist. LEXIS 139, *7 (D.Mass. Jan. 3, 1990).

Whether or not selection clauses apply to claims brought under the Jones Act remains an open question. Whether an American court finds a selection clause valid or invalid under the Jones Act, it is in a seastead's best interest to include a selection clause in all employment-related contracts. Under the *Larrisquitu* approach, both forum and venue selection clauses will be allowed under the Jones Act. The *Boutte* approach is more complicated, but seems to suggest the Jones Act will not give foreign seamen the same protection as American seamen, but that selection clauses may not be enforceable against Americans. Seasteads should therefore include a selection clause in all employment contracts. A seastead should have a strong case upon appealing the decision if the court declines to enforce the clause and hears the case. A seastead might consider not hiring American workers if it wishes to avoid being drawn into court under the *Boutte* approach.

A seastead should be able to avoid having non-employment claims heard in American courts by incorporating a ticket-based agreement system for all guests onboard a seastead. The ticket should include a selection clause similar to *Carnival Cruise* and it should be issued as early as possible to avoid any issues of notice. These selection clauses are presumed valid and it will be difficult to overturn this presumption.

Seasteads, before flying a foreign flag, must examine the accessibility of that foreign nation's court system. For all claims brought against a seastead, inconvenience could be an issue. It is highly unlikely that a plaintiff will successfully use inconvenience to overturn a selection clause, because this requires the plaintiff to show that a trial in the selected forum would be so difficult that for all practical purposes he will be deprived his day in court. Simply forcing an American to settle a dispute abroad is not in itself enough to qualify as inconvenience.