



# BENEDICT'S MARITIME BULLETIN

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Joshua S. Force, Editor-in-Chief  
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## **RIDING THE WAIVE: HOW AUSTRALIAN CONSUMER LAW AND CLASS ACTION WAIVERS IN MARITIME CONTRACTS LEADS TO FORUM SHOPPING AND FRACTURED JUDGMENTS IN THE U.S. AND BEYOND**

By Hailey Dennis\*

At the heart of every cruise ship passenger claim is a singular document: the passage contract. Fundamentally a maritime contract, inextricably intertwined with consumer law, and rich with terms, conditions, rights, and remedies that most cruise ship passengers will probably never lay eyes on, the passage contract (or ticket contract) may seem like a standard form contract, the contents of which have no chance of ever substantively impacting the seascape of maritime law. Although cruise ships represent less than 1% of the global commercial fleet,<sup>1</sup> cruise line passage contracts and their contents play a monumental role in shaping transnational maritime regulations and policies, forging avenues to foreign courts, and addressing challenges related to jurisdiction, venue, and forum shopping.

\* Hailey Dennis is a maritime attorney based in Miami, Florida. Prior to becoming an attorney, she spent several years working shipboard for a major cruise line, inspiring her passion for the industry. Hailey received her J.D. from Tulane Law School, and is admitted to practice in Florida and California.

<sup>1</sup> As of January 2026, the Cruise Line International Association (CLIA) recognizes 310 cruise ships across 58 different cruise lines. CLIA CRUISE LINES, <https://cruising.org/CLIA-cruise-lines>, (last visited Jan. 13, 2026).

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**RECENT  
DEVELOPMENTS  
CONTRIBUTORS**

**Carson Elaine Proctor**  
**Camille Zuber**  
**Deniz Perkowski**  
**Joni Alexis Poitier**  
**Kevin McGlone**  
**Shea Michael Moser**

**COLUMNIST**

**Bryant E. Gardner**

**EDITORIAL STAFF**

**Warren Naicker**  
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*Legal Editor*

**A NOTE ON CITATION:**

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## MANAGING EDITOR'S INTRODUCTORY NOTE

In this edition, we present an article by Hailey Dennis on Australian consumer law and class action waivers in maritime contracts. Hailey gives a detailed analysis of the impact of such clauses in passenger ship contracts under U.S. and Australian law, and how it can lead to forum shopping. Under Australian High Court rulings a U.S. passenger may not be barred from being a party to a class action in Australia if the cruise has some connection with that continent. She concludes that “[n]ot only does the ACL [the Australian Consumer Law] and the changing landscape of class action litigation have major implications for travel and tourism worldwide, it has the potential to directly affect consumers in Australia and the United States, and to make waves across the wider maritime industry.”

Bryant Gardner follows with his “Window on Washington” column. In this edition, Bryant outlines the significant maritime legislation which is part of the National Defense Authorization Act (NDAA), particularly as it relates to the Coast Guard and Maritime Administration reauthorization provisions.

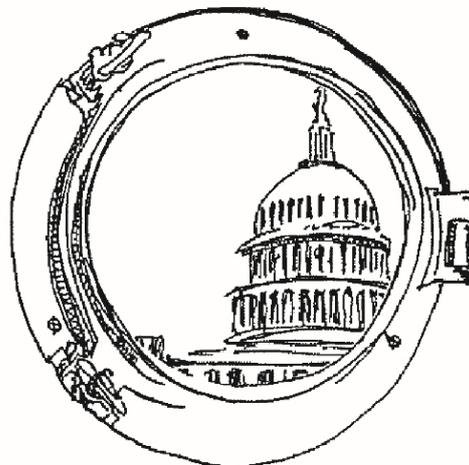
We conclude with the Recent Development case summaries. We are grateful to all those who take the time and effort to bring us these summaries of developments in maritime law.

We urge our readers who may have summer associates or interns from law schools working for them to encourage them to submit articles for publication.

As always, we hope you find this edition interesting and informative, and ask you to consider contributing an article or note for publication to educate, enlighten, and entertain us.

Robert J. Zapf  
Managing Editor

## WINDOW ON WASHINGTON



### *Old Faithful*

By Bryant E. Gardner\*

Long-suffering readers of *Window on Washington* will recall that this quarter's edition regularly covers the year's significant maritime legislation, which in recent years passes as part of the National Defense Authorization Act (NDAA), the "old faithful" legislative vehicle that has passed Congress sixty-four consecutive fiscal years. This year's legislation<sup>1</sup> includes the Coast Guard<sup>2</sup> and Maritime Administration<sup>3</sup> reauthorization provisions that tweak laws impactful to the maritime industry.

Following controversy surrounding Coast Guard plans to remove numerous navigational buoys from New England waters in 2025 in favor of electronic aids in a time of limited resources, the NDAA establishes new restrictions on the Coast Guard's removal of aids to navigation, requiring a formalized process designed with input from local stakeholders, including harbor masters, boaters, ferry operators, coastal residents, and local governments, which process shall include public notice of any proposed removal.<sup>4</sup>

In the wake of the M/V DALI tragedy in Baltimore, the law establishes new penalties for the grossly negligent operation of a vessel, making such conduct a class E

felony with a potential civil penalty of \$35,000 where such conduct results in serious bodily injury.<sup>5</sup>

Moreover, the NDAA sets up a new performance-driven tank vessel examination schedule.<sup>6</sup> Frequency of examinations is to be driven by the relevant factors, including a history of violations, incidents, or detentions. To address the shortage of Coast Guard marine inspectors, the law also authorizes incentive pay for those service members and other service members serving in billets that are difficult to fill because of geographic location or otherwise.<sup>7</sup>

The measure also adds a provision to the Oil Pollution Act of 1990 prohibiting challenges to the decisions of the on-scene coordinator prior to the date of completion of the removal action.<sup>8</sup>

The shortage of U.S. mariners has come to the forefront of the industry in recent years, and provisions of the NDAA found in the Coast Guard Authorization Act seek to streamline and facilitate the mariner-qualification pipeline. Mariners will be able to qualify for mariner's documents and credentials with decreased sea service

<sup>1</sup> National Defense Authorization Act for Fiscal Year 2026, Pub. L. No. 119-60 (Dec. 7, 2025) (the "NDAA").

<sup>2</sup> NDAA div. G.

<sup>3</sup> *Id.* div. C, tit. XXXV.

<sup>4</sup> *Id.* § 7264.

<sup>5</sup> *Id.* § 7311.

<sup>6</sup> *Id.* § 7312.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* § 7403.

time.<sup>9</sup> The new rules will also allow the counting of some nautical-school instruction time for sea service time at an accelerated rate; e.g., each full-mission-simulator training day may be counted for six days of sea service time. The NDAA also looks to streamline the mariner-credentialing process through an electronic mariner-credentialing system.

Addressing reports of sexual assault and sexual harassment that have plagued King's Point, U.S.-flagged vessels hosting midshipmen, and now the Coast Guard Academy, the law includes new provisions targeting such misconduct at the Coast Guard Academy, spanning nearly twenty pages of text.<sup>10</sup> The measure directs the Coast Guard to assess the effectiveness of existing prevention programs and collect extensive data on alleged misconduct to be reported to Congress in a manner that protects victim confidentiality. Additionally, it requires the establishment of a process for accommodating victim requests to transfer to another service-academy or higher-education institution with a Reserve Officers' Training Corps program, or a cadet room reassignment, and directs the Commandant to establish a public hazing-prevention policy. Lastly, the Academy must install automatic-accommodation privacy locks within two years.

In addition, the NDAA sets forth broad reforms for the handling of sexual assault and sexual harassment in the Coast Guard more generally, this text spanning 100 pages.<sup>11</sup> The legislation calls for implementation of third-party independent recommendations, development of new prevention policies, victim care and protection policies including expedited transfers, new recordkeeping and reporting requirements, additional transparency and training requirements, and whistleblower prevention requirements. Although the measure requires ongoing reporting to Congress, the Coast Guard is largely left to design its own framework for the prevention of sexual assault and sexual harassment.

The NDAA also changes the composition of the Coast Guard Academy Board of Visitors by adding appointees who are members of the House and Senate Appropriations Committees to the Board, making the chair and ranking members appointees in the event of a vacancy.<sup>12</sup> Additionally, the legislation requires Board meetings not less than annually.

The law requires yet another update on the planning and timeline to acquire additional Polar Security Cutters and Great Lakes icebreaking capability, reflecting long-standing congressional dissatisfaction (shared by President Trump) with America's lagging Arctic and icebreaking capabilities.<sup>13</sup>

Although the White House is acutely focused on restoring U.S. shipbuilding and the U.S.-flag fleet,<sup>14</sup> the U.S. Maritime Administration (MARAD) and U.S. Transportation Command (TRANSCOM) are looking at ways to recapitalize the "mothball" Ready Reserve Fleet, which provides surge sealift capacity to the Department of Defense. Traditionally, such vessels must be built in U.S. yards,<sup>15</sup> but in recent years the law has been amended to permit the administration to purchase a limited number of foreign-built vessels, provided that any upfitting to meet class and flag requirements is performed in U.S. yards. The NDAA increases the number of foreign-built-vessel purchases from ten to twelve.<sup>16</sup> On the other hand, the measure calls for the Secretary of the Navy to develop and implement a strategy for investing in and supporting the maritime industrial base to address cost and schedule challenges for shipbuilding programs.<sup>17</sup> The House bill would have permitted purchases of foreign-built vessels for the fleet in excess of ten only where matched by double the number of U.S.-built vessels.<sup>18</sup>

The law provides for increases in authorized funding for King's Point and, more so, the state maritime academies.<sup>19</sup> MARAD's popular Port Infrastructure Development Program (PIDP) received a 10% increase in authorized funding.<sup>20</sup> However, the law includes a provision that prohibits use of funds for the purchase of fully automated cargo-handling equipment that is remotely operated or monitored without the exercise of human control if the Secretary of Transportation determines that such equipment would result in a loss of port jobs.<sup>21</sup> The small shipyard grant program received a significant bump in authorized funds, from \$35 million to \$105 million.<sup>22</sup>

<sup>9</sup> *Id.* § 7301.

<sup>10</sup> *Id.* § 7241.

<sup>11</sup> *Id.* §§ 7501–7530.

<sup>12</sup> *Id.* § 7242.

<sup>13</sup> *Id.* §§ 7117, 7215.

<sup>14</sup> Restoring America's Maritime Dominance, Exec. Order No. 14,269 (Apr. 9, 2025).

<sup>15</sup> 10 U.S.C. § 2218(f).

<sup>16</sup> NDAA § 1022.

<sup>17</sup> *Id.* § 1019.

<sup>18</sup> H. Comm. on Armed Servs., NDAA Joint Explanatory Statement 216, [https://armedservices.house.gov/uploadedfiles/fy26\\_ndaa\\_joint\\_explanatory\\_statement.pdf](https://armedservices.house.gov/uploadedfiles/fy26_ndaa_joint_explanatory_statement.pdf) ("JES").

<sup>19</sup> NDAA § 3501.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Numerous proposals were included in the House bill but dropped following conference with the Senate. The House included language clarifying that PIDP funds can be used to remove Chinese cranes, and extending the eligibility of cruise vessels to fund shore-power projects under PIDP.<sup>23</sup> Traditionally, deepwater ports have been licensed jointly by MARAD and the Coast Guard, with the Coast Guard handling the thornier technical elements required by the National Environmental Policy Act of 1969 (NEPA).<sup>24</sup> The House bill would have made MARAD the lead agency for NEPA compliance.<sup>25</sup> Additionally, the House bill had a provision sponsored by Congressman Salud Carbajal (D-CA) that would have required the Department of Transportation to comply with a 100% U.S.-flag cargo-preference requirement, which was again stripped in conference.<sup>26</sup> Also stripped was a House proposal to make the Louisiana Maritime Academy a “State Maritime Academy” with the attendant federal funding and support.<sup>27</sup> Lastly, the Senate rejected the House proposal to add the Commandant of the Coast Guard to the Joint Chiefs of Staff.<sup>28</sup>

In recent years the Federal Maritime Commission (FMC) reauthorization bill was attached to the NDAA along with the Coast Guard and MARAD bills. Not so this year, although as of writing, the House version of the FMC reauthorization has passed the House and been referred to the Senate.<sup>29</sup> The measure was introduced by Rep. Dusty Johnson (R-SD) and cosponsored by Reps. John Garamendi (R-CA), Mike Ezell (R-MS), and Salud Carbajal (D-CA).

In addition to extending the FMC’s reauthorization, the legislation would make several noteworthy changes. Currently, the FMC has significant tools for regulating

“controlled carriers.”<sup>30</sup> The current definition of “controlled carrier” focuses on a direct or indirect ownership or control of an ocean carrier by a foreign government. Under the new definition, a “controlled carrier” would also include any carrier “owned or controlled by, a subsidiary of, or otherwise related legally or financially (other than a minority relationship or investment) to a corporation based in, headquartered in, or otherwise significantly related to a country” that is, to put it simply, on America’s “naughty” list for being a “nonmarket economy country” as identified in the Tariff Act of 1930.<sup>31</sup> The House report accompanying the legislation indicates the legislation is intended to address state interference in ocean shipping and supply chains, specifically identifying Chinese influence.<sup>32</sup> The legislation also strengthens the FMC’s authority to oversee shipping exchanges—digital matchmaking platforms for shippers and carriers—again expressing concerns over Chinese market manipulation.<sup>33</sup> Lastly, the FMC bill establishes National Port and Ocean Carrier Advisory Committees to help advise the FMC, similar to the successful National Shipper Advisory Committee.<sup>34</sup>

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<sup>23</sup> JES at 442–43, [https://armedservices.house.gov/uploadedfiles/fy26\\_ndaa\\_joint\\_explanatory\\_statement.pdf](https://armedservices.house.gov/uploadedfiles/fy26_ndaa_joint_explanatory_statement.pdf).

<sup>24</sup> 42 U.S.C. § 4321 et seq. (such is the language).

<sup>25</sup> JES at 442.

<sup>26</sup> *Id.* at 444.

<sup>27</sup> *Id.* at 445.

<sup>28</sup> *Id.* at 206.

<sup>29</sup> Federal Maritime Commission Reauthorization Act of 2025, H.R. 4183, 119th Cong.

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<sup>30</sup> 46 U.S.C. ch. 407.

<sup>31</sup> H.R. 4183 § 5(a).

<sup>32</sup> H. Rep. No. 119-401, at 7–8, Dec. 12, 2025.

<sup>33</sup> H.R. 4183 § 6; H. Rep. No. 119-401, at 8.

<sup>34</sup> H.R. 4183 § 11.

**Contributors**

CEP	Carson Elaine Proctor Moseley, Prichard, Parrish, Knight & Jones CProctor@mppkj.com
CZ	Camille Zuber Nicoll Black Altenbrun & Feig CZuber@nicollblack.com
DP	Deniz Perkowski Nicoll Black Altenbrun & Feig DPerkowski@nicollblack.com
JAP	Joni Alexis Poitier Moseley, Prichard, Parrish, Knight & Jones JPoitier@mppkj.com
KMM	Kevin McGlone Lugenbuhl Law Firm KMcGlone@lawla.com
SMM	Shea Michael Moser Gray Robinson, P.A. Shea.Moser@gray-robinson.com

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**BENEDICT'S MARITIME BULLETIN EDITORIAL BOARD**

## Contact Information

Joshua S. Force  
(Editor-in-Chief)  
Sher Garner Cahill Richter Klein & Hilbert, L.L.C.  
New Orleans, LA  
jforce@SHERGARNER.com

Robert J. Zapf  
(Managing Editor)  
Rancho Mirage, CA  
RJZapf1@verizon.net

Bruce A. King  
(Past Chairperson Marine  
Financing Committee)  
Maritime Law Association  
bkingseattle@msn.com

Dr. James C. Kraska  
Howard S. Levie Professor of International Law  
The Stockton Center for the Study of International Law  
United States Naval War College  
686 Cushing Road  
Newport, Rhode Island 02841-1207  
James.Kraska@usnwc.edu

Dr. Norman A. Martinez-Gutiérrez  
(International Maritime Law; Scholarly Notes and Papers)  
IMO International Maritime Law Institute  
P.O. Box 31, Msida MSD 01 MALTA  
Norman.Martinez@imli.org

Francis X. Nolan, III  
(Former President, Maritime Law Association)  
Vedder Price P.C.  
1633 Broadway, 47<sup>th</sup> Floor  
New York, NY 10019  
fnolan@vedderprice.com

Anthony J. Pruzinsky  
Hill Rivkins LLP  
45 Broadway, Suite 1500  
New York, NY 10006-3793  
APruzinsky@hillrivkins.com

**CONTRIBUTING AUTHORS TO THIS ISSUE**

**Contact Information**

*Pamela L. Schultz  
Kennedys CMK LLP  
San Francisco, CA  
Pamela.Schultz@kennedyslaw.com*

*Cameron Cushner  
Kennedys CMK LLP  
San Francisco, CA  
Cameron.Cushner@kennedyslaw.com*

**Window on Washington**

*Bryant E. Gardner  
Winston & Strawn LLP  
Washington, DC  
bgardner@winston.com*

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If you are interested in writing for the BULLETIN, please contact Warren Naicker at [warren.naicker@lexisnexis.co.za](mailto:warren.naicker@lexisnexis.co.za).

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