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A TRYING BALANCE: DETERMINING THE TRIER OF FACT IN HYBRID ADMIRALTY-CIVIL CASES

I. INTRODUCTION

Although admiralty is among the law's oldest practices, it continues to play a vital role in modern litigation—whether that be through the transportation of goods on rivers or people on cruise ships. Prior to 1966, a federal court exercising its admiralty jurisdiction relied on a different set of rules than when it acted in law or equity.¹ To accommodate this distinction, cases were placed on separate dockets based on the court's source of jurisdiction.² This system resulted in procedural differences that set admiralty claims apart from others.³ Admiralty cases were historically tried before the bench,⁴ while common law claims, as protected by the Seventh Amendment,⁵ were tried before a jury.⁶ In an effort to modernize admiralty law and prevent the dismissal of valid claims for procedural technicalities,⁷ the admiralty and civil dockets were unified in 1966.⁸ “The resulting joinder provisions of the Federal Rules of Civil Procedure apply to all cases and make it possible to join both admiralty and nonadmiralty claims in a single action.”⁹ These cases are treated as hybrid admiralty-civil cases. While the 1966 unification corrected many of the dual-docket difficulties, it created two new problems of its own.¹⁰ First, should a judge or jury determine the facts in a hybrid admiralty-civil case when each claim has an independent basis for federal jurisdiction?¹¹ Second, should the court undertake a separate analysis to determine the fact-finder in a hybrid case when the civil claim does *not* have an independent basis for federal jurisdiction? If so, what should this analysis look like and which

1. THOMAS J. SCHOENBAUM, *ADMIRALTY AND MARITIME LAW* 9–10 (4th ed. 2004).

2. FRANK L. MARAIST ET AL., *ADMIRALTY IN A NUTSHELL* 392 (6th ed. 2010).

3. *Id.*

4. *Id.*

5. *See infra* note 52.

6. MARAIST ET AL., *supra* note 2, at 392.

7. Brainerd Currie, *Unification of the Civil and Admiralty Rules: Why and How*, 17 *ME. L. REV.* 1, 13–14 (1965). Among these procedural technicalities was “dismissal of actions filed on the wrong ‘side’ of the court . . .” *Id.* at 14.

8. SCHOENBAUM, *supra* note 1, at 9–10.

9. Mark Thomas Mahfouz, *Whose Interests Are More Important: Should a Plaintiff’s Rule 9(h) Designation “Trump” a Counterclaimant’s Right to Jury Trial?*, 27 *TUL. MAR. L.J.* 277, 277 (2002).

10. *Id.*

11. *Id.* at 277–78.

trier of fact should determine the case outcome? The Supreme Court has failed to answer these questions,¹² leaving the circuits split.¹³

This Note analyzes and evaluates the conflict among courts for both of these questions. Part I introduces the current conflict among circuits. Part II presents a general history of admiralty courts and law with an emphasis on its international development as a separate body of courts and its procedure before and after the 1966 unification. Part III explores the three approaches adopted by courts in determining the trier of fact when both the admiralty and civil claims have independent bases for federal jurisdiction. Part IV examines the approaches adopted by courts in determining the trier of fact when the civil claim does not have an independent basis for federal jurisdiction. Part IV, utilizing the approach adopted by many courts, separates those claims involving limitation of liability proceedings¹⁴ from those without such an action. Part V analyzes the conflict among the courts and proposes an answer to each of the two questions above. When each claim comprising a hybrid admiralty-civil case has an independent basis for federal jurisdiction, the court should attempt to sever the claims so as to preserve the common law jury right *and* the admiralty bench trial. If the facts of the claims are so intertwined as to make severance impossible, the civil litigant's jury right must trump the traditional admiralty bench trial. When the civil claim in a hybrid case does not have an independent basis for federal jurisdiction, the traditional admiralty bench trial should be preserved in all but one situation—when the civil litigant is forced into federal court through the initiation of a limitation of liability proceeding.

II. HISTORY

A. *The Historical Development of Separate Admiralty Courts*

Admiralty law can be defined in both general and specific terms.¹⁵ Generally, admiralty is the body of law “which regulates the activity of carrying cargo and passengers over water.”¹⁶ Specifically, admiralty rules

12. *Id.* at 277.

13. *See, e.g., In re Lockheed Martin Corp.*, 503 F.3d 351 (4th Cir. 2007); *Wilmington Trust v. United States Dist. Court for Dist. of Hawaii*, 934 F.2d 1026 (9th Cir. 1991); *Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil*, 704 F.2d 1038 (8th Cir. 1983); *Harrison v. Flota Mercante Grancolombiana, S.A.*, 577 F.2d 968 (5th Cir. 1978).

14. *See infra* note 77 and accompanying text.

15. *See MARAIST ET AL.*, *supra* note 2, at 1.

16. *Id.*

“govern contract, tort, and worker compensation claims arising out of travel on or over water.”¹⁷ Maritime law¹⁸ first developed along the coast of the Mediterranean Sea¹⁹ as a separate system of courts established to resolve conflict among the trading countries.²⁰ These rules, which were eventually codified, served as the foundation for the development of European admiralty law.²¹ The “Mediterranean concept of maritime law” arrived in the United States through British colonialism.²²

In the American colonies, the English granted maritime jurisdiction to vice-admiralty courts.²³ After the American Revolution, the Articles of Confederation granted to state courts original jurisdiction over matters of “prizes and piracy.”²⁴ Congress had the authority to regulate these matters and establish an appeals court for “dealing with prizes and captures.”²⁵ The state-federal admiralty dichotomy caused multiple problems²⁶ and “undoubtedly prompted the inclusion in the United States Constitution of

17. *Id.*

18. For the purpose of this Note, I use the terms “maritime” and “admiralty” interchangeably.

19. MARAIST ET AL., *supra* note 2, at 1. The Mediterranean Sea served as the highway of trade for its surrounding countries. Resolving conflicts among these countries “presented jurisdictional and procedural problems not shared by controversies involving less transient parties.” *Id.*; see Dale Van Demark, Grubert v. Great Lakes Dredge & Dock Company: A Reasonable Conclusion to the Debate on Admiralty Tort Jurisdiction, 17 PACE L. REV. 553, 558 (1997).

20. MARAIST ET AL., *supra* note 2, at 2. These codes include the Tablets of Amalfi and the Rules of Oleron. *Id.* The individual codes were eventually unified into general maritime principles, but remained distinct from non-admiralty rules. *Id.*

21. England, among other European nations, adopted the Mediterranean maritime laws. “When the maritime courts in English ports were unable to make satisfactory disposition of piracy and spoil claims, they were replaced by courts under the jurisdiction of the Lord of the Admiralty.” *Id.* The British High Court of Admiralty’s early jurisdiction was very broad. Stanley Morrison, *The Remedial Powers of the Admiralty*, 43 YALE L.J. 1, 3 (1933). Its breadth, however, was significantly narrowed over the course of time by the courts of common law. *Id.* These courts were “jealous and distrustful of a tribunal which they regarded as alien [and] succeeded in reducing it to a position of comparative impotence. Their general point of view was that nothing should be left to the admiralty of which the common-law courts could conveniently take cognizance.” *Id.*

22. MARAIST ET AL., *supra* note 2, at 2.

23. *Id.* at 2. Scholars disagree, however, what the breadth of these courts’ jurisdiction actually was. Morrison, *supra* note 21, at 3. The commonly held view is that their jurisdiction was as broad as that of European maritime courts. *Id.* Other scholars argue that the vice-admiralty court’s jurisdiction was actually as narrow as the British High Court of Admiralty. *Id.* at n.4. The vice-admiralty courts maintained jurisdiction over maritime law until the American Revolution. MARAIST ET AL., *supra* note 2, at 2.

24. MARAIST ET AL., *supra* note 2, at 2.

25. *Id.*

26. The different states applied different substantive and procedural principles to their admiralty courts. *Id.* Some of these procedures were “foreign to admiralty” or prohibited appeals. *Id.* Other states “refused to comply with decrees of the federal appellate tribunal which reversed state court decisions.” *Id.*

federal power over admiralty and maritime matters.”²⁷ Like the system adopted in the Articles of Confederation, however, the Constitution continued to separate admiralty courts and rules from common law courts.²⁸

B. The Development of American Admiralty Law

The United States Constitution provides the federal courts with jurisdiction over six different types of controversies, treating admiralty law separately from other areas.²⁹ The Framers distinguished “all Cases, in Law and Equity, arising under this Constitution, the Laws of United States, and Treaties made, or which shall be made, under their Authority”³⁰ from “all Cases of admiralty and maritime Jurisdiction.”³¹ The entire body of American admiralty law has developed from this one statement.³² The Constitutional provision on admiralty, however, “defines only the judicial power of the Supreme Court.”³³

27. *Id.* at 2–3. The lack of debate among the Founders to include a clause on admiralty in the Constitution demonstrates that a strong “federal interest in maritime matters and shipping seems to have been taken for granted.” SCHOENBAUM, *supra* note 1, at 1.

28. U.S. CONST. art. III, § 2, cl. 1.

29. “The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.” *Id.*

30. *Id.*

31. *Id.* This is the only time the “Constitution delegates jurisdiction over an entire subject matter to the federal judiciary.” SCHOENBAUM, *supra* note 1, at 1.

32. *Id.* The placement of this clause “may have been intended only as a delegation to the federal sovereign of the power to prescribe the courts which could adjudicate cases involving maritime matters, and not a delegation to the federal courts of the power to develop substantive rules of decision in admiralty courts.” MARAIST ET AL., *supra* note 2, at 3. The Supreme Court has interpreted this clause of the Constitution as granting three powers. “(1) It empowered Congress to confer admiralty and maritime jurisdiction on the ‘Tribunals inferior to the Supreme Court’ which were authorized by Art. I, § 8, cl. 9. (2) It empowered the federal courts in their exercise of the admiralty and maritime jurisdiction which had been conferred on them, to draw on the substantive law ‘inherent in the admiralty and maritime jurisdiction,’ and to continue the development of this law within constitution limits. (3) It empowered Congress to revise and supplement the maritime law within the limits of the Constitution.” SCHOENBAUM, *supra* note 1, at 1–2 (quoting *Romero v. Int’l Terminal Operating Co.*, 358 U.S. 354, 360–61 (1959)). In *DeLovio v. Boit*, the Supreme Court expanded the scope of American admiralty law by declaring that it was not limited by English admiralty law. *Id.* at 2 (quoting *DeLovio v. Boit*, 7 Fed. Cas. 418, 443 (C.C.D. Mass. 1815)).

33. SCHOENBAUM, *supra* note 1, at 2.

In the First Judiciary Act, Congress granted federal district courts with the power to hear all maritime causes of action,³⁴ “yet saved to suitors in all cases ‘the right of the common-law remedy, where the common law is competent to give it.’”³⁵ The “saving to suitors” clause “reserves the right of a plaintiff to bring his claims in any competent forum he chooses, provided that the forum is authorized to enforce the right conferred by maritime law.”³⁶ This allows a party with a cause of action that may be brought in admiralty to bring a common law claim in state court or, if the claim has diversity of citizenship and the appropriate jurisdictional amount, in federal court without reference to admiralty.³⁷ However, by choosing to bring suit in a state common law court, the party forfeits the right to bring an admiralty cause of action.

The “modern statutory formulation of the grant of admiralty jurisdiction,”³⁸ codified in 28 U.S.C. § 1333, states:

The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled. (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.³⁹

This statute preserves both federal jurisdiction over claims brought “in admiralty” and the state court access of the “saving to suitors” provision of the First Judiciary Act.⁴⁰ There are still limited circumstances, however, where federal courts have *exclusive* jurisdiction over admiralty claims.⁴¹

34. *Id.*

35. Mahfouz, *supra* note 9, at 280 (quoting the Judiciary Act of 1789, ch. 20, § 9, 1 Stat. 73, 76 (codified as amended at 28 U.S.C. § 1333 (2006))).

36. Mahfouz, *supra* note 9, at 280. “This general rule applies where the right is of such a nature that adequate relief may be given in such an action at law.” *Id.*

37. *Id.*

38. SCHOENBAUM, *supra* note 1, at 5.

39. 28 U.S.C. § 1333 (2006).

40. *See supra* note 35.

41. Mahfouz, *supra* note 9, at 280.

Through statutes, Congress has provided for exclusive federal jurisdiction over several types of maritime actions, including actions under the Limitation of Liability Act, the Ship Mortgage Act, the Death on the High Seas Act, the Suits in Admiralty Act, and the Public Vessels Act. Further, federal courts have exclusive admiralty jurisdiction over in rem proceedings against a vessel or other maritime property, including the foreclosure of a preferred ship mortgage under the Ship Mortgage Act of 1920.

Id. at 281.

C. Procedural American Admiralty Law Prior to 1966

“In the early days of the federal judiciary,” one judge heard all admiralty, legal, and equitable claims even though the three areas were understood to have “separate courts.”⁴² As a result, “each federal court had three dockets or ‘sides.’”⁴³ If a litigant brought a claim under the court’s admiralty jurisdiction, “the case would be placed on the admiralty docket and would be processed through application of special admiralty rules.”⁴⁴ Suits brought under the court’s legal or equitable jurisdiction were placed on either the court’s legal or equitable docket.⁴⁵

The divided docket system resulted in the development of divided rules of procedure.⁴⁶ The development of such rules in admiralty has rested mostly with the federal courts.⁴⁷ Perhaps “[t]he most important distinction between the law and admiralty ‘sides’”⁴⁸ of the federal court is the trier of fact.⁴⁹ Historically, the court served as the trier of fact for suits in admiralty.⁵⁰ In *Waring v. Clarke*, the Supreme Court held that it was constitutionally permissible for the trial court to remain the trier of fact without violating the Constitution.⁵¹ The Seventh Amendment,⁵² the Court determined, does not guarantee a trial by jury for suits in admiralty.⁵³ The Court acknowledged that suits in admiralty are distinct from suits in common law,⁵⁴ and because the Seventh Amendment makes specific reference to “[s]uits in common law,”⁵⁵ it does not apply in admiralty.⁵⁶

42. MARAIST ET AL., *supra* note 2, at 392.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *See* *Fitzgerald v. United States*, 374 U.S. 16, 20–21 (1963) (“Article III of the Constitution vested in the federal courts jurisdiction over admiralty and maritime cases, and, since that time, the Congress has largely left to this Court the responsibility for fashioning the controlling rules of admiralty law. This Court has long recognized its power and responsibility in this area and has exercised that power where necessary to do so.”).

48. MARAIST ET AL., *supra* note 2, at 398.

49. *Id.*

50. *Id.* at 392. *See, e.g.,* *Waring v. Clarke*, 46 U.S. 441, 460 (1847); *Fitzgerald*, 374 U.S. at 20.

51. 46 U.S. 441, 460 (1847).

52. “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.” U.S. CONST. amend. VII.

53. *Waring*, 46 U.S. at 460 (“We confess, then, we cannot see how [suits in admiralty] are to be embraced in the seventh amendment of the constitution, providing that in suits at common law the trial by jury should be preserved.”).

54. *Id.* at 458.

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

Historically, the admiralty trier of fact caused problems even within the distinct admiralty docket of federal courts.⁵⁷ As suggested earlier,⁵⁸ federal courts have had broad discretion in shaping admiralty law. Congress, however, statutorily granted jury rights for specific admiralty claims.⁵⁹ For example, the Jones Act grants a seaman injured in the course of employment the right to a trial by jury.⁶⁰ In *Fitzgerald v. United States*,⁶¹ a seaman brought multiple admiralty claims against his employer, including a Jones Act claim. The Supreme Court weighed the Jones Act jury right against the historical use of bench trials in the other admiralty actions.⁶² The Court determined that when admiralty claims with a jury right are factually intertwined with admiralty claims without a jury right, the jury should decide the facts of the entire case.⁶³ In its analysis, the Court noted,

Where, as here, a particular mode of trial being used by many judges is so cumbersome, confusing, and time consuming that it places completely unnecessary obstacles in the paths of litigants seeking justice in our courts, we should not and do not hesitate to

56. *Waring*, 46 U.S. at 460. “But there is no provision, as the constitution originally was, from which it can be inferred that civil causes in admiralty were to be tried by a jury, contrary to what the framers of the constitution knew was the mode of trial of issues of fact in the admiralty.” *Id.*

57. *See supra* note 44 and accompanying text.

58. *See supra* note 47 and accompanying text.

59. *See supra* note 41. Among these statutes is the Great Lakes Act. Mahfouz, *supra* note 9, at 286. Under the law, “In any case of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons or upward, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between places in different states upon the lakes and navigable waters connecting said lakes, the trial of all issues of fact shall be by jury if either party demands it.” 28 U.S.C. § 1873 (2006).

60. “A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.” 46 U.S.C. § 30104 (2006).

61. 374 U.S. 16 (1963).

62. *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 17 (1963). The *Fitzgerald* plaintiff was a seaman who was injured upon his employer’s vessel. *Id.* He brought suit against his employer alleging three causes of action: (1) violation of the Jones Act, which carried a jury right; (2) unseaworthiness of the vessel; and (3) claims for failure to pay maintenance and cure. The last two claims both were historically tried by the bench. *Id.* The *Fitzgerald* plaintiff demanded a jury trial for the entire action. *Id.* The trial court denied this request and allowed only the Jones Act and unseaworthiness claims to be tried before a jury. *Id.* The United States Court of Appeals for the Second Circuit affirmed this holding. *Id.*

63. *Id.* at 21.

And since Congress in the Jones Act has declared that the negligence part of the claim shall be tried by a jury, we would not be free, even if we wished, to require submission of all the claims to the judge alone. Therefore, the jury, a time-honored institution in our jurisprudence, is the only tribunal competent under the present congressional enactments to try all the claims.

Id.

take action to correct the situation. Only one trier of fact should be used for the trial of what is essentially one lawsuit to settle one claim split conceptually into separate parts because of historical developments.⁶⁴

Many courts have cited this analysis when determining the trier of fact in hybrid admiralty-civil cases which do not involve the Jones Act.⁶⁵

The three-part federal docket system⁶⁶ was not changed until 1938, when the Federal Rules of Civil Procedure were adopted.⁶⁷ These rules unified the federal courts' law and equity dockets,⁶⁸ initially leaving admiralty alone in its separate docket.⁶⁹ In 1958, however, Congress took note of admiralty's isolation and charged "the Judicial Conference with the responsibility of aiding the [Supreme] Court in its rule-making functions"⁷⁰ Based on the recommendations of the Advisory Committees and scholars, who desired to modernize admiralty so that "all may know it"⁷¹ and to prevent the dismissal of suits "for being filed on the wrong 'side' of the court,"⁷² in 1966 the Federal Rules of Civil Procedure were merged with admiralty.⁷³

64. *Id.*

65. *See, e.g., In re Lockheed Martin Corp.*, 503 F.3d 351, 358 (4th Cir. 2007); *Wilmington Trust v. United States Dist. Court for Dist. of Hawaii*, 934 F.2d 1026, 1029 (9th Cir. 1991); *Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil*, 704 F.2d 1038, 1042 (8th Cir. 1983); *Harrison v. Flota Mercante Grancolombiana, S.A.*, 577 F.2d 968, 987–88 (5th Cir. 1978).

66. Suits in admiralty, law, and equity each had their own docket. *See supra* note 2 and accompanying text.

67. MARAIST ET AL., *supra* note 2, at 392.

68. *Id.*

69. *Id.* at 393. Adding to the separation was the terminology used in each docket. Under the admiralty rules, "[p]laintiffs were called 'libellants'; defendants were 'respondents'; complaints were 'libels'; and lawyers were 'proctors in admiralty.'" SCHOENBAUM, *supra* note 1, at 9.

70. Currie, *supra* note 7, at 5. The Conference then established the Committee on Rule of Practice and Procedure "and the several Advisory Committees, including the Advisory Committee on Admiralty Rules." *Id.* at 6. The Advisory Committee on Admiralty Rules then began a study of the possibility of unification between admiralty and civil procedure. *Id.* This study was divided into two questions: "whether unification was feasible and whether it was desirable." *Id.* at 7. The Advisory Committee study showed that "unification was feasible with a greater degree of uniformity than had previously been supposed. There were already large areas of agreement between the two sets of rules." *Id.* at 8.

71. *Id.* at 13.

72. *Id.* at 14. "Clearly, the admiralty practice needs to be modernized and to be stated so that all may know it; just as clearly, the modern rules that are needed are to be found in the Federal Rules of Civil Procedure. There can be no justification for non-functional procedural differences." *Id.* at 13–14.

73. SCHOENBAUM, *supra* note 1, at 9–10.

D. Procedural American Admiralty Law After 1966

While the merger of admiralty and civil law in 1966 allowed litigants to maintain hybrid admiralty-civil suits, it did not result in complete unification of the two systems.⁷⁴ Certain special rules remain which only apply to admiralty cases.⁷⁵ These rules are preserved either in the Supplemental Rules for Admiralty or Maritime Claims or are interspersed among the rest of the Federal Rules of Civil Procedure.⁷⁶ For example, Rule F, the Limitation of Liability provision of the Supplement Rules,⁷⁷ “allows a vessel owner to limit liability for damage or injury, occasioned without the owner’s privity or knowledge, to the value of the vessel or the owner’s interest in the vessel.”⁷⁸ Among the interspersed special admiralty rules in the Federal Rules of Civil Procedure are Rule 9(h)⁷⁹ and Rule 38(e).⁸⁰ Rule 9(h) has two purposes: first, it allows a litigant to designate his claim as one within the federal court’s admiralty jurisdiction when there are multiple bases of jurisdiction;⁸¹ second, it recognizes “that admiralty jurisdiction does not apply to an entire case, but claim by claim.”⁸² This designation “triggers the applicability of special procedures” for admiralty claims.⁸³

74. *Id.* at 10.

75. *Id.*

76. SCHOENBAUM, *supra* note 1, at 10.

77. This rule provides that, except in cases involving personal injury or death, “the liability of the owner of a vessel for any claim, debt, or liability described in subsection (b) shall not exceed the value of the vessel and pending freight. If the vessel has more than one owner, the proportionate share of the liability of any one owner shall not exceed that owner’s proportionate interest in the vessel and pending freight.” 46 U.S.C. § 30505(a) (2006). Subsection (b) includes cases, “arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.” 46 U.S.C. § 30505(b) (2006).

78. *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 446 (2001).

79.

If a claim for relief is within the admiralty or maritime jurisdiction and also within the court’s subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.

FED. R. CIV. P. 9(h).

80. “These rules do not create a right to a jury trial on issues in a claim that is an admiralty or maritime claim under Rule 9(h).” FED. R. CIV. P. 38(e).

81. SCHOENBAUM, *supra* note 1, at 10.

82. George Rutherglen, *The Federal Rules for Admiralty and Maritime Cases: A Verdict of Quiescent Years*, 27 J. MAR. L. & COM. 581, 589 (1996). Rule 9(h)’s language allows “a statement identifying the *claim* as an admiralty or maritime claim.’ The use of the word ‘claim’ makes a

A plaintiff's election to bring suit under the federal court's admiralty jurisdiction "carries with it significant consequences."⁸⁴ For example, under admiralty jurisdiction, a plaintiff may "arrest" and bring suit against property, most commonly a vessel, through an *in rem* proceeding.⁸⁵ A plaintiff may also "obtain[] *in personam* jurisdiction rather than by service of process (attachment or *quasi-in-rem* jurisdiction)."⁸⁶ Perhaps the most limiting of these consequences, however, is the admiralty plaintiff's general inability to have a trial by jury.⁸⁷ Rule 38(e) provides that the Federal Rules of Civil Procedure "do not create a right to a jury trial on issues in a claim that is an admiralty or maritime claim under 9(h)."⁸⁸

As a result of the 1966 unification, litigants can now join admiralty and non-admiralty claims into a single hybrid case.⁸⁹ This joinder has exacerbated the tension between common law and admiralty triers of fact,⁹⁰ and courts have struggled to determine which fact-finder should hear these hybrid cases.⁹¹ Admiralty and non-admiralty claims can be joined into a single federal action through one of two routes.⁹² First, admiralty claims can be joined to non-admiralty claims that have either diversity of citizenship⁹³ or address a federal question,⁹⁴ because these are independent bases for federal jurisdiction.⁹⁵ In utilizing this route, it is important to recognize that "maritime actions arising under the general maritime law are not claims that arise under the 'Constitution, treaties, or

difference precisely in those cases in which a single action contains claims both inside and outside of admiralty." *Id.*

83. SCHOENBAUM, *supra* note 1, at 10.

84. Mahfouz, *supra* note 9, at 285.

85. *Id.*

86. *Id.*

87. *Id.* Recall that some admiralty plaintiffs may have a statutorily created right to a trial by jury. *See supra* note 60 and accompanying text.

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

89. Mahfouz, *supra* note 9, at 277; FED. R. CIV. P. 18. For example, an insurance company may bring an admiralty action seeking a declaration that it is not obligated under the terms of a marine insurance policy to provide coverage for damage to a vessel. The vessel owner may file a compulsory breach of contract counterclaim under civil law. These two claims may be heard in court as one hybrid case. *See Progressive N. Ins. Co. v. Bachmann*, 314 F. Supp. 2d 820 (W.D. Wisc. 2004).

90. *See supra* note 49 and accompanying text.

91. *See, e.g., Hassinger v. Tideland Elec. Membership Corp.*, 627 F. Supp. 65, 75 (E.D.N.C. 1985).

92. *Adams v. James Transp., LLC*, No. 5:09-CV-00036-R, 2010 WL 4789290, at *2 (W.D. Ky. Nov. 17, 2010).

93. 28 U.S.C. § 1332 (2006).

94. 28 U.S.C. § 1331 (2006).

95. George K. Walker, *Supplemental, Pendent and Ancillary Jurisdiction in Admiralty and Maritime Cases: The ALI Federal Judicial Code Revision Project and Admiralty Practice*, 32 J. MAR. L. & COM. 567, 567 (2001).

laws of the United States' for purposes of invoking federal question jurisdiction."⁹⁶

Second, non-admiralty claims lacking an independent basis for federal jurisdiction can be joined to admiralty claims if they "form part of the same case or controversy under Article III of the United States Constitution."⁹⁷ The Supreme Court determined in *United Mine Workers v. Gibbs*⁹⁸ that to form the same case or controversy, the federal and non-federal claims must "derive from a common nucleus of operative fact."⁹⁹ This type of joinder fell under either the doctrine of ancillary or pendant jurisdiction.¹⁰⁰ In 1990, however, Congress codified the two doctrines "under the heading of supplemental jurisdiction."¹⁰¹ Federal courts now exercise supplemental jurisdiction over these non-federal claims.¹⁰² In determining whether the court or jury should serve as the fact-finder in hybrid admiralty-civil cases, courts use separate analyses based on which joinder route—*independent* or *supplemental*—created the hybrid case.¹⁰³

III. JURY RIGHT WHEN AN INDEPENDENT BASIS FOR FEDERAL JURISDICTION EXISTS

The greatest tension between admiralty bench trials and common law jury trials exists when litigants join admiralty and non-admiralty claims

96. SCHOENBAUM, *supra* note 1, at 102. This principle was established in *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959). In *Romero*, the plaintiff seaman brought suit against four corporate defendants. *Id.* at 356. The seaman asserted liability under the Jones Act for personal injuries in addition to liability under general maritime law for unseaworthiness of the vessel, maintenance and cure, and a maritime tort. *Id.* He asserted federal jurisdiction under the Jones Act, 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1332 (diversity of citizenship). *Id.* at 357. The district court dismissed all of the seaman's claims, holding that it did not have subject-matter jurisdiction. *Id.* at 357–58. Although the Court recognized that "all cases to which 'judicial power' extends 'arise,' in a comprehensive, non-judicial sense of the term, 'under this Constitution,'" it still determined that admiralty cases are not "Cases, in Law and Equity, arising under the Constitution, the Laws of the United States." *Id.* at 368. In support of this conclusion, the Court noted that "[n]ot only does language and construction point to the rejection of any infusion of general maritime jurisdiction into the Act of 1875," which outlined judicial power, "but history and reason powerfully support that rejection." *Id.*

97. 28 U.S.C. § 1367(a) (2006).

98. 383 U.S. 715 (1966).

99. *Id.* at 725.

100. Rutherglen, *supra* note 82, at 587.

101. *Id.*

102. 28 U.S.C. § 1367 (2006).

103. *Adams v. James Transp. LLC*, No. 5:09-CV-00036-R, 2010 WL 4789290, at *2 (W.D. Ky. Nov. 17, 2010). Compare *Harrison v. Flota Mercante Grancolombiana, S.A.*, 577 F.2d 968 (5th Cir. 1978), with *Tallentire v. Offshore Logistics, Inc.*, 754 F.2d 1274 (5th Cir. 1985), *rev'd on other grounds*, 477 U.S. 207.

through the first route, an independent basis for federal jurisdiction.¹⁰⁴ This scenario arises often when a plaintiff files suit under the federal court's admiralty jurisdiction¹⁰⁵ and the defendant responds by filing a compulsory counterclaim outside of admiralty jurisdiction.¹⁰⁶ Under Rule 13(a) of the Federal Rules of Civil Procedure,

A pleading must state as a counterclaim any claim that . . . the pleader has against an opposing party if the claim; (A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and (B) does not require adding another party over whom the court cannot acquire jurisdiction.¹⁰⁷

104. See, e.g., Harrison, 577 F.2d 968; Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil, 704 F.2d 1038 (8th Cir. 1983); Wilmington Trust v. United States Dist. Court for Dist. of Hawaii, 934 F.2d 1026 (9th Cir. 1991); *In re Lockheed Martin Corp.*, 503 F.3d 351 (4th Cir. 2007).

105. The easiest way for the plaintiff to do this is by designating the suit under Rule 9(h). While Rule 9(h) does not actually require such an identifying statement in the complaint, if a plaintiff fails to include such a statement,

two default rules come into play. If the claim can only be brought in federal court based on admiralty jurisdiction—either because it can never be brought under the savings clause or because on its facts it cannot be brought under any other heading of federal jurisdiction—then it is treated as an admiralty claim. If, on the other hand, the claim can be brought in federal court on some other basis, then it is treated as a claim outside of admiralty unless the complaint contains a statement identifying it as an admiralty claim. Such a statement can be added to the complaint under the general provisions for liberal amendment in Rule 15.

Rutherglen, *supra* note 82, at 589.

These default rules cause the greatest problems when the case starts in state court and the defendant attempts to remove it to federal court. The possibility of admiralty jurisdiction on removal was created by an amendment to the general removal statute allowing removal of claims exclusively within the jurisdiction of the federal courts. The new provision, section 1441(e), overrule[d] the traditional rule barring removal of admiralty claims. Congress enacted this provision apparently without considering its implications for admiralty practice. Nevertheless, the literal terms of section 1441(a) plainly embrace admiralty claims as 'any civil action brought in a State court of which the district courts of the United States have original jurisdiction.' When admiralty claims fall within the exclusive jurisdiction of the federal courts, section 1441(e) allows removal even if it simply relieves the plaintiff of a mistake in filing the action in state court in the first place. Indeed, the whole point of the amendment is to relieve plaintiffs of the consequences of precisely this mistake. The congressional judgment favoring these erring plaintiffs might be doubted on grounds of policy, but it has as much force within admiralty as it has outside it.

Id. at 589–90 (footnotes omitted).

106. See *Windsor Mount Joy Mut. Ins. Co. v. Johnson*, 264 F. Supp. 2d 158 (D.N.J. 2003).

107. FED. R. CIV. P. 13 (a).

Under the broad test for Rule 13(a) counterclaims adopted by the United States Court of Appeals for the Fifth Circuit a counterclaim is compulsory when there is any 'logical relationship' between the claim and the counterclaim. A 'logical relationship' exists if 'the same operative facts serve[] as the basis of both claims or the aggregate core of facts upon which the claim rests activates additional legal rights, otherwise dormant, in the defendant.' Because the plaintiff's claims, and the defendant's counterclaims, present related questions of

The presence of such counterclaims has raised debate among the circuits as to “whether a defendant’s joined counterclaims [should] be tried to the bench along with the plaintiff’s Rule 9(h) election to proceed in admiralty or tried to a jury in accordance with the defendant’s right to a jury trial when based on non[-]admiralty jurisdictional grounds.”¹⁰⁸

In analyzing this question, the circuits have adopted one of three approaches. The first approach, which the majority of courts accept,¹⁰⁹ prioritizes a plaintiff’s election to bring an action under Rule 9(h) by preserving a bench trial for the entire case.¹¹⁰ The second approach recognizes the authority of both parties’ competing interests and looks to sever the two claims when possible.¹¹¹ The third approach prioritizes the defendant’s Seventh Amendment right by trying the entire case before a jury.¹¹²

A. Majority Approach

In 1978, the Court of Appeals for the Fifth Circuit articulated the majority approach in *Harrison v. Flota Mercante Grancolombiana, S.A.*¹¹³

law and fact, judicial economy is best served by hearing all of the parties’ claims in a single proceeding.

Mahfouz, *supra* note 9, at 291 (footnotes omitted).

108. Mahfouz, *supra* note 9, at 292.

109. *Adams v. James Transp., LLC*, No. 5:09-CV-00036-R, 2010 WL 4789290, at *2 (W.D. Ky. Nov. 17, 2010). The Fifth Circuit and Eleventh Circuit have adopted this view. *Id.*

110. *See, e.g.*, *Harrison v. Flota Mercante Grancolombiana, S.A.*, 577 F.2d 968 (5th Cir. 1978); *St. Paul Fire and Marine Ins. Co. v. Lago Canyon, Inc.*, 561 F.3d 1181 (11th Cir. 2009); *Windsor v. Mount Joy Mut. Ins. Co. v. Johnson*, 264 F. Supp. 2d 158 (D.N.J. 2003).

111. *See Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil*, 704 F.2d 1038 (8th Cir. 1983).

112. *See, e.g.*, *In re Lockheed Martin Corp.*, 503 F.3d 351 (4th Cir. 2007); *Wilmington Trust v. United States Dist. Court for the Dist. of Hawaii*, 934 F.2d 1026 (9th Cir. 1991); *Canal Barge Co. v. Commonwealth Edison Co.*, No. 98 C 0509, 2002 WL 206054 (N.D. Ill. 2002).

113. 577 F.2d 968 (5th Cir. 1978). Prior to *Harrison*, the United States District Court for the Northern District of California addressed the issue in *Alaska Barite Co. v. Freighters Inc.*, 54 F.R.D. 192 (N.D. Cal. 1972). In *Alaska Barite*, the plaintiff filed suit for breach of an alleged contract of affreightment identifying the action as an admiralty claim under Rule 9(h). Thereafter, the defendant filed a counterclaim requesting a jury and charging the plaintiff with violation of antitrust laws. Explaining that the purpose of the Rule 9(h) designation is to allow the moving party who could either bring suit under admiralty or civil law to elect which form of proceeding he chooses, the district court held that the plaintiff had a right to a nonjury trial. The court further held, that the rights invoked by making an election under Rule 9(h) were not meant to be negated whenever a defendant makes a counterclaim outside of admiralty.

In 1977, the United States District Court for the Southern District of Texas confronted the issue in *Arkwright-Boston Manufacturers Mutual Insurance Co. v. Bauer Dredging Co.*, 74 F.R.D. 461 (S.D. Tex. 1977). In *Arkwright-Boston*, the plaintiff, a secondary insurance carrier, sought a declaration that it was not liable on a marine insurance policy because the defendant had breached one of the policy’s covenants. The defendant counterclaimed, seeking damages from the insurer, and demanded a jury trial. Stating that “[t]he sole question here is

In *Harrison*, a longshoreman working aboard a vessel was injured when three barrels containing a liquid chemical were damaged.¹¹⁴ After the longshoreman developed diffuse pulmonary fibrosis and emphysema from the accident, he brought suit in federal court against the vessel owner for negligence and unseaworthiness.¹¹⁵ The longshoreman identified his suit as within the court's admiralty jurisdiction under Rule 9(h).¹¹⁶ The vessel owner then impleaded the longshoreman's employer, "alleging the unseaworthiness of the vessel, if any, was due to the employer's negligence."¹¹⁷ The employer responded by filing a fourth-party complaint against the shipper of the liquid chemical under the court's diversity of citizenship jurisdiction.¹¹⁸ The shipper asserted a jury trial right on the employer's claim.¹¹⁹ The vessel owner and longshoreman both responded by asserting claims against the shipper.¹²⁰ Again, the longshoreman asserted the court's admiralty jurisdiction under Rule 9(h) over all of his claims.¹²¹ The trial court rejected the shipper's jury request and tried the entire case before the bench.¹²² The court awarded judgment solely against the shipper.¹²³

On appeal, the Fifth Circuit affirmed the trial court's jury trial rejection.¹²⁴ The court began its analysis by tracing the circuit's historical adoption of the principle that the plaintiff's authority to determine procedural consequences must be respected.¹²⁵ The court cited *Romero v. Bethlehem Steel Corp.*¹²⁶ for support, determining that *Romero*

which party has the right to characterize this action," the district court held that the plaintiff's Rule 9(h) designation of the action as an admiralty and maritime claim precluded the jury trial demanded by the defendant. The court went on to state that there was "no compelling reason to hold otherwise," and "[i]f a defendant in an admiralty action . . . could so easily defeat the court's admiralty jurisdiction, it would destroy the use of such relief in maritime cases by making a mockery of the plaintiff's right to designate his action as a Rule 9(h) claim."

Mahfouz, *supra* note 9, at 297-98 (footnotes omitted).

114. *Harrison*, 577 F.2d at 972.

115. *Id.* at 973.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* at 985.

120. *Id.* at 973.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* at 974.

125. *Id.* at 986.

126. 515 F.2d 1249 (5th Cir. 1975). In *Romero*, an injured employee brought suit against his employer and vessel owner for unseaworthiness and other claims. *Romero*, 515 F.2d at 1251. The plaintiff employee alleged federal jurisdiction under both Rule 9(h) and diversity of citizenship. *Id.* at 1252. In determining that the plaintiff employee was not entitled to a jury trial, the Court stated,

demonstrated that “by electing to proceed under [Rule] 9(h) rather than by invoking diversity jurisdiction, the plaintiff may preclude the defendant from invoking the right to trial by jury which may otherwise exist.”¹²⁷ This right, the court concluded, was not intended to be changed when the admiralty and civil rules were merged in 1966.¹²⁸ The court cited the Advisory Committee’s Notes to Rule 9(h) to support this conclusion.¹²⁹ The court also noted that because the fourth-party complaint was based “upon the same set of operative facts which gave rise to the first complaint,” the admiralty trier of fact should be preserved.¹³⁰ Finally, the court distinguished its decision from the Supreme Court’s decision in *Fitzgerald*¹³¹ because the fairness and judicial economy concerns in that case were based on a plaintiff’s, not a defendant’s, jury trial request.¹³²

Romero could have obtained a jury trial on all claims simply by omitting or withdrawing the 9(h) designation in his complaint and bringing his entire suit as a civil action. Yet, he persistently refused to seek an amendment aimed at withdrawing the admiralty identification. We can find no logical purpose for this refusal in the face of his repeatedly professed desire for a jury. The effect of appellant’s inaction, however, was to leave the jury issue in doubt right up to the day of trial. In these circumstances the trial judge would have correctly exercised his discretion in refusing to empanel a jury. Therefore, whatever appellant’s theory, this case was properly tried without a jury.

Id. at 1254 (citation omitted) (footnote omitted).

127. *Harrison*, 577 F.2d at 986.

128. *Id.*

129. *Id.*

Many claims, however, are cognizable by the district courts whether asserted in admiralty or in a civil action, assuming the existence of a non[-]maritime ground of jurisdiction. Thus at present the pleader has [the] power to determine procedural consequences by the way in which he exercises the classic privilege given by the saving-to-suitors clause (28 U.S.C. § 1333) or by equivalent statutory provisions. For example, a longshoreman’s claim for personal injuries suffered by reason of the unseaworthiness of a vessel may be asserted in a suit in admiralty or, if diversity of citizenship exists, in a civil action. One of the important procedural consequences is that in the civil action either party may demand a jury trial, while in the suit in admiralty there is no right to jury trial except as provided by statute. . . . The unified rules must therefore provide some device for preserving the present power of the pleader to determine whether these historically maritime procedures shall be applicable to his claim or not; the pleader must be afforded some means of designating his claim as the counterpart of the present suit in admiralty, where its character as such is not clear. . . . Other methods of solving the problem were carefully explored, but the Advisory Committee concluded that the preferable solution is to allow the pleader who now has power to determine procedural consequences by filing a suit in admiralty to exercise that power under unification, for the limited instances in which procedural differences will remain, by a simple statement in his pleading to the effect that the claim is an admiralty or maritime claim.

FED. R. CIV. P. 9(h), Advisory Committee Note.

130. *Harrison*, 577 F.2d at 987.

131. *See supra* note 63 and accompanying text.

132. *Harrison*, 577 F.2d at 987.

B. *Minority Approaches*

The minority of courts have adopted one of the two remaining approaches¹³³ when determining whether a judge or a jury should decide the facts in a hybrid admiralty-civil case.¹³⁴ The first approach uses severability to preserve both litigants' fact-finder rights, while the second approach requires a uniform trial by jury.

1. *Severability Approach*

The first minority approach holds that, if possible, courts should sever admiralty claims from non-admiralty claims. This approach was articulated in *Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil*.¹³⁵ In *Koch*, an oil company sought out a barge company to ship its oil.¹³⁶ After the two companies allegedly reached an agreement, the barge company took possession of the oil.¹³⁷ Communication between the companies, however, broke down before the oil could be shipped to its final destination. When the barge company refused to return the oil, the oil company brought an *in rem* action for possession of the oil cargo under Rule 9(h).¹³⁸ The barge owner "intervened, filed a claim to the cargo, and filed a counterclaim against [the oil company] . . . for breach of the charter agreement."¹³⁹ The claim for breach of agreement was not brought under Rule 9(h), so the trial court severed it and ordered it be tried by a jury, while the *in rem* proceeding was tried before the court.¹⁴⁰

The Court of Appeals for the Eighth Circuit affirmed the severance on appeal.¹⁴¹ In so doing, the court noted two significant Federal Rules of Civil Procedure: Rule 9(h) and Rule 42(b).¹⁴² Similarly to the Fifth Circuit's opinion in *Harrison*,¹⁴³ the Eighth Circuit determined that when a plaintiff identifies his or her suit under Rule 9(h), "[g]enerally, such an

133. *Supra* notes 111–12.

134. *See, e.g., In re Lockheed Martin Corp.*, 503 F.3d 351 (4th Cir. 2007); *Wilmington Trust v. United States Dist. Court for Dist. of Hawaii*, 934 F.2d 1026 (9th Cir. 1991); *Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil*, 704 F.2d 1038 (8th Cir. 1983).

135. 704 F.2d 1038 (8th Cir. 1983).

136. *Koch*, 704 F.2d at 1039.

137. *Id.* at 1040.

138. *Id.* at 1039–40.

139. *Id.* at 1039.

140. *Id.*

141. *Id.* at 1044.

142. *Id.* at 1041–42.

143. *See supra* note 124.

election precludes a jury trial.”¹⁴⁴ Unlike *Harrison*, however, the Eighth Circuit’s analysis continued beyond Rule 9(h). The court sought direction from Rule 42(b), which allows for the separation of trials in furtherance of, *inter alia*, “preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution.”¹⁴⁵ To balance the competing interests of Rule 9(h) and Rule 42(b), the court looked to the facts underpinning each of the two claims.¹⁴⁶ The barge owner’s claim for breach of contract relied on the existence of a charter agreement.¹⁴⁷ The oil company claimed, however, that “whether or not a charter agreement existed, [the barge owner] wrongfully converted cargo belonging to [the oil company].”¹⁴⁸

These factual distinctions allowed the court to reach a conclusion different from the Supreme Court in *Fitzgerald*.¹⁴⁹ The Eighth Circuit opined that the Court in *Fitzgerald* could “achieve[] each of the ends of economy, clarity, and preserving the right to a jury trial,”¹⁵⁰ by having one trier of fact because the claims were “essentially one lawsuit . . . split conceptually into separate parts because of historical developments.”¹⁵¹ The “instant case, however differ[ed] . . . in that it involve[d] more than ‘essentially one lawsuit to settle one claim.’”¹⁵² In these situations, “[w]here . . . both parties, using different triers of fact, could prevail on their respective claims without prejudicing the other party or arriving at inconsistent results, a trial judge may separate the claims in the interests of preserving constitutional rights, clarity, or judicial economy.”¹⁵³ In *Koch*, the court chose to prioritize the jury right over clarity and judicial economy.¹⁵⁴ The Eighth Circuit failed, however, to address who should serve as the fact-finder when the hybrid case cannot be severed.

144. *Koch*, 704 F.2d at 1041. The court cited the same language from the Advisory Committee Notes as the Court of Appeals for the Fifth Circuit did in *Harrison*, *supra* note 129.

145. *Koch*, 704 F.2d at 1042 (citing FED. R. CIV. P. 42(b)).

146. *Id.* at 1042.

147. *Id.*

148. *Id.*

149. *See supra* note 63.

150. *Koch*, 704 F.2d at 1042.

151. *Id.* (quoting *Fitzgerald v. United States*, 374 U.S. 16, 21 (1963)).

152. *Id.*

153. *Id.* (emphasis added).

154. *Id.*

2. *Uniform Jury Trial Approach*

The second of the two minority approaches, which holds that the Seventh Amendment right to a trial by jury should be preserved at the expense of an admiralty claimant's historical bench trial, was articulated in *In re Lockheed Martin Corp.*¹⁵⁵ The dispute in *Lockheed Martin* stemmed from a vessel accident.¹⁵⁶ The vessel owner submitted a claim for coverage to its maritime insurance provider nearly four years after the accident.¹⁵⁷ Upon receiving the claim, the insurance provider filed two declaratory actions in federal court under the court's admiralty jurisdiction.¹⁵⁸ The insurance provider claimed in its first declaratory action that the vessel owner was time-barred from submitting a coverage claim.¹⁵⁹ In the second declaratory action, the insurance provider requested that in the alternative, the court determine the vessel owner's amount of loss.¹⁶⁰ In its answer, the vessel owner counterclaimed with a breach of contract claim against the insurance provider.¹⁶¹ The vessel owner asserted federal jurisdiction over its counterclaim under diversity of citizenship¹⁶² and requested a jury trial. When the district court determined that the vessel owner did not have a jury trial right,¹⁶³ the vessel owner filed a petition for a writ of mandamus¹⁶⁴ with the Court of Appeals for the Fourth Circuit.¹⁶⁵

155. 503 F.3d 351 (4th Cir. 2007).

156. *Id.* at 353.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* The second declaratory action was added when the insurance provider amended its complaint. *Id.*

161. *Id.*

162. *See supra* note 93.

163. After answering, the vessel owner filed a motion for judgment on the pleadings. *Lockheed Martin*, 503 F.3d at 353. It argued that the insurance provider's first declaratory action should be dismissed because under the policy, the vessel owner had six years to file a coverage claim. *Id.* It then argued that the district court should use its discretion to dismiss the second declaratory action so that the vessel owner's counterclaim, which raised the same issues, could be tried before a jury. *Id.* The district court dismissed the insurance provider's first declaratory action after it determined that the policy had a six year limitation period, but refused to accept that the vessel owner had a jury trial right, thereby not dismissing the insurance provider's second declaratory action. *Id.*

164. A writ of mandamus is "a writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body, usually to correct a prior action or failure to act." BLACK'S LAW DICTIONARY 1046-47 (9th ed. 2009). The vessel owner claimed in its petition that the district court's ruling deprived it of its Seventh Amendment right to a jury trial. *Lockheed Martin*, 503 F.3d at 353. Before addressing the vessel owner's jury trial demand, the Fourth Circuit first held that the writ of mandamus was properly sought, because while the "mandamus is a drastic remedy that should only be used in extraordinary circumstances and may not be used as a substitute for appeal . . . [it] is the proper way to challenge the denial of a jury trial." *Id.*

165. *Id.*

The Fourth Circuit granted the vessel owner's petition and directed the district court to try the case before a jury.¹⁶⁶ In coming to this conclusion, the court relied heavily on the relationship between the "saving to suitors" clause¹⁶⁷ and the Seventh Amendment.¹⁶⁸ The court determined that when a litigant pursues a maritime claim in federal court as a common law action under the "saving to suitors" clause, the claim is treated substantively as an admiralty action and procedurally as a common law action, thereby requiring the application of the Seventh Amendment.¹⁶⁹ The vessel owner's counterclaim, the court concluded, therefore carried with it the right to a jury.¹⁷⁰

In balancing the insurance provider's election to proceed in admiralty with the vessel owner's common law counterclaim, the Fourth Circuit directly opposed the Fifth Circuit's opinion in *Harrison*.¹⁷¹ The Fourth Circuit determined that if either party elected to pursue a maritime claim at common law, the Seventh Amendment must apply to the entire case.¹⁷² To do otherwise, the court held, would "permit the plaintiff's choice of a customary but not constitutionally required mode of trial to prevent a defendant from taking advantage of his constitutionally guaranteed mode of trial."¹⁷³ Such an action would be "inconsistent with the Supreme Court's admonition that the Seventh Amendment right to a jury trial must be preserved 'wherever possible.'"¹⁷⁴

IV. JURY RIGHT WHEN NO INDEPENDENT BASIS FOR FEDERAL JURISDICTION EXISTS

The second route for joining admiralty and non-admiralty claims, supplemental jurisdiction, has undergone far less analysis by courts than the first route. When examining jury rights under this second route, courts have often ignored the approaches used in the first route and adopted new paths for analysis.¹⁷⁵ Courts encountering claims lacking independent

166. *Id.* at 360.

167. *See supra* note 36 and accompanying text.

168. *Lockheed Martin*, 503 F.3d at 354.

169. *Id.* "An admiralty plaintiff who chooses to proceed 'at law,' whether in state or federal court, thus has the right under the saving-to-suitors clause to demand a jury trial." *Id.*

170. *Id.* at 357.

171. *Id.*

172. *Id.*

173. *Id.* at 358.

174. *Id.* (quoting *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510 (1959)).

175. *See, e.g., Adams v. James Transp. Inc.*, No. 5:09-CV-00036-R, 2010 WL 4789290, at *2 (W.D. Ky. Nov. 17, 2010); *In re Poling Transp. Corp.*, 776 F. Supp. 779, 784 (S.D.N.Y. 1991).

bases for federal jurisdiction begin their analysis by separating cases involving limitation of liability proceedings,¹⁷⁶ an admiralty proceeding which allows a vessel owner without privity or knowledge of wrongful acts to limit his or her liability to the value of the vessel after such acts, from those which do not involve such a proceeding.¹⁷⁷ This separation occurs because the federal courts have exclusive jurisdiction over limitation of liability proceedings.¹⁷⁸ If a plaintiff elects to bring his or her claim in state court,¹⁷⁹ the defendant may remove the case to federal court by initiating a limitation of liability proceeding.¹⁸⁰

A. *Non-Limitation of Liability Proceedings*

Within cases excluding limitation of liability proceedings, courts have adopted minority and majority approaches.¹⁸¹ The difference between the two approaches revolves around the relative impact of the nature of the supplemental claim.

1. *Minority Approach*

When admiralty is the sole basis for federal jurisdiction in non-limitation of liability proceedings, the minority of courts have adopted the approach that no matter the circumstances, a supplemental jury right should not trump the traditional admiralty bench trial.¹⁸² The Court of Appeals for the Fifth Circuit articulated this approach in *Tallentire v. Offshore Logistics, Inc.*¹⁸³ In *Tallentire*, representatives of workers killed in a helicopter crash off the shores of Louisiana brought suit against the helicopter owner and operator.¹⁸⁴ The suit included claims under the federal Death on the High Seas Act (DOHSA) and Louisiana law.¹⁸⁵ The

176. See *supra* note 77. The Limitation of Liability Act “was designed to encourage investment and protect vessel owners from unlimited exposure to liability.” *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 453 (2001).

177. See, e.g., *Tallentire v. Offshore Logistics, Inc.*, 754 F.2d 1274 (5th Cir. 1985) *rev’d on other grounds*, 477 U.S. 207; *Churchill v. F/V Fjord*, 892 F.2d 763 (9th Cir. 1988). The distinction between cases with and without limitation of liability proceedings is made because federal courts have exclusive jurisdiction over limitation of liability proceedings. *Mahfouz*, *supra* note 9, at 281.

178. *Id.*

179. Such an action almost always makes the right to trial by jury available.

180. *Mahfouz*, *supra* note 9, at 282. Jury trial rights are much more available in state court.

181. See *In re Poling Transp. Corp.*, 776 F. Supp. 779, 784 (S.D.N.Y. 1991).

182. See, e.g., *Tallentire*, 754 F.2d at 1287; *Ashland Oil, Inc. v. Third National Bank of Ashland, Ky.*, 557 F. Supp. 862, 872 (E.D. Ky. 1983).

183. 754 F.2d 1274 (5th Cir. 1985), *rev’d on other grounds*, 477 U.S. 207.

184. 754 F.2d at 1276.

185. *Id.*

representatives requested a jury trial for their Louisiana claims, but the case was tried before the bench.¹⁸⁶ On appeal, the Fifth Circuit determined that the representatives did not have a right to a trial by jury in federal court.¹⁸⁷ In its analysis, the court relied on both the traditional trial of admiralty claims before the bench¹⁸⁸ and the limited exception recognized in *Fitzgerald*¹⁸⁹ for a jury trial when an independent basis for federal jurisdiction exists.¹⁹⁰ The court rationalized that because the representatives' state law claims could only be heard in federal court through either admiralty or supplemental jurisdiction, they did not require an exception to the traditional bench trial.¹⁹¹ The court's opinion concluded without an analysis of the nature of the supplemental claims.

2. *Majority Approach*

When admiralty is the sole basis for federal jurisdiction in non-limitation of liability proceedings, the majority of courts have adopted the approach that the supplemental claim's jury right should be preserved when the injury asserted is physical damage or death.¹⁹² This approach was articulated in *Weeks v. Reliance Insurance Co. of New York*.¹⁹³ In *Weeks*, a vessel owner brought suit against its insurance provider for breach of contract after the provider denied the owner coverage for damage done to the vessel in a storm.¹⁹⁴ The vessel owner also brought suit against the insurance broker for negligent failure to procure insurance, in the event the insurance provider's denial of coverage was upheld.¹⁹⁵ The suit against the insurance provider was heard under the federal court's admiralty jurisdiction while the suit against the insurance broker was heard under the federal court's supplemental jurisdiction.¹⁹⁶ When the

186. *Id.* at 1286. In a pretrial ruling, the district court concluded that DOHSA provided the exclusive remedy for the representatives and dismissed the Louisiana state claims. *Id.* at 1277. On appeal, the Fifth Circuit Court of Appeals first determined that the Louisiana state claims were wrongfully dismissed. *Id.* at 1282.

187. *Id.* at 1287.

188. *See supra* note 50 and accompanying text.

189. *See supra* note 63.

190. 754 F.2d at 1287 (citing *Green v. Ross*, 481 F.2d 102 (5th Cir. 1973)).

191. *Id.*

192. *See Weeks v. Reliance Ins. Co. of N.Y.*, No. 81 Civ. 3479-CSH, 1985 WL 462 (S.D.N.Y. Mar. 28, 1985).

193. *Id.*

194. *Id.* at *1.

195. *Id.*

196. *Id.*

insurance broker requested a jury trial,¹⁹⁷ the court denied the request and tried both claims before the bench.¹⁹⁸

In its denial, the court took the *Tallentire* analysis¹⁹⁹ a step further by considering the nature of the supplemental claim after acknowledging the traditional role of bench trials in admiralty.²⁰⁰ The court cited authority²⁰¹ for the principle that *Fitzgerald* provided support for an exception to the traditional admiralty bench trial when a personal injury or death supplemental claim is joined to an admiralty claim.²⁰² The court determined that these types of cases had historically received treatment different than other admiralty claims,²⁰³ so judges may use their discretion to break with the traditional bench trial.²⁰⁴ The court noted, however, that the current case did not involve either personal injury or death, making a jury trial inappropriate.²⁰⁵

B. Limitation of Liability Proceedings

When admiralty is the sole basis for federal jurisdiction in cases involving limitation of liability proceedings, courts have determined the trier of fact based on the location of the plaintiff's original suit.²⁰⁶ Procedurally, a vessel owner may bring a limitation of liability proceeding only after a plaintiff has filed suit against him or her.²⁰⁷ Thus, if a plaintiff

197. *Id.*

198. *Id.*

199. *See supra* note 190 and accompanying text.

200. *Weeks*, 1985 WL 462 at *2.

201. *See Red Star Towing & Transp. Co., Inc. v. "Ming Giant"*, 552 F. Supp. 367 (S.D.N.Y. 1982). While the *Weeks* court relied on the legal theories pronounced in *Ming Giant*, the two cases are factually very distinguishable. In *Ming Giant*, a widow brought suit in state court against two vessel owners after her husband was killed in a collision of the vessels. 552 F. Supp. at 370. The vessel owners instituted a limitation of liability proceeding and removed the entire case to federal court. *Id.* The federal court empanelled a jury after the widow requested a jury trial for her state claims. *Id.* The jury's "verdict could be treated as binding, advisory, or surplusage, depending on the eventual resolution of the issue." *Id.* In the end, the court decided to treat the jury's finding as binding because of the "relative weight and importance of the death claim as compared to other claims at issue in the limitation proceeding." *Id.* at 371.

202. *Weeks*, 1985 WL 462 at *3.

203. One example included Congress's adoption of the Jones Act. *See supra* note 60.

204. *Weeks*, 1985 WL 462 at *3.

205. *Id.*

206. *See In re Poling Transp. Corp.*, 776 F. Supp. 779 (S.D.N.Y. 1991).

207. FED. R. CIV. P. F.

Not later than six months after receipt of a claim in writing, any vessel owner may file a complaint in the appropriate district court, as provided in subdivision (9) of this rule, for limitation of liability pursuant to statute. The owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the owner's interest in the vessel and pending freight, or approved security therefor, and in addition such sums, or approved

initiates suit in federal court, the filing of a limitation of liability proceeding does not require a change of forum.²⁰⁸ On the other hand, if a plaintiff initiates suit in state court, the limitation of liability proceeding removes the entire case to federal court.²⁰⁹ Only in the second of these situations have courts honored the movant's jury right on the supplemental claim.²¹⁰ The Southern District Court of New York articulated this principle in *Complaint of Poling Transportation Corp.*²¹¹

In *Poling Transportation*, an explosion resulted after a shore tank receiving gasoline from a vessel overflowed.²¹² The explosion damaged nearby property and caused personal injuries to those near the shore tank.²¹³ The property owners and injured persons filed suit against the vessel owner and operator in state court for "injuries, economic loss and loss of services allegedly sustained due to the fire."²¹⁴ The vessel owner responded to the suit by filing a limitation of liability proceeding in federal court.²¹⁵ The property owners and injured persons requested a trial by jury for their state claims.²¹⁶ In granting the property owners' and injured

security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended; or (b) at the owner's option shall transfer to a trustee to be appointed by the court, for the benefit of claimants, the owner's interest in the vessel and pending freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended. The plaintiff shall also give security for costs and, if the plaintiff elects to give security, for interest at the rate of 6 percent per annum from the date of the security.

Id.

208. See *Churchill v. F/V Fjord*, 892 F.2d 763 (9th Cir. 1988).

209. See *supra* notes 177–80 and accompanying text.

210. See *Poling Transp.*, 776 F. Supp. 779; *Churchill*, 892 F.2d 763.

211. 776 F. Supp. 779.

212. *Poling Transp.*, 776 F. Supp. at 780.

213. *Id.*

214. *Id.*

215. *Id.* at 781. As is usual, the district court put a stay "enjoining the commencement or prosecution of any actions or proceedings against the [vessel owner] or their property for any loss or damage resulting from the fire and explosion pending the resolution of the limitation proceeding." *Id.* at 780.

216. *Id.* To ensure the preservation of the jury right associated with their state law claims, the property owners and injured persons requested that the "court should try the issues raised by the [vessel owner's] petition for limitation of liability without a jury, following which the court should lift the stay so that the remaining issues can be decided in state court, presumably with a jury." *Id.* at 781. The property owners and injured persons first argued that this approach was proper because they believed the state claims were not properly within the supplemental jurisdiction of the federal court. *Id.* Alternatively, if the court did have proper jurisdiction over the state claims, the property owners and injured persons claimed that the court "adjudicate this case in a manner that preserves their right to jury trial on the common law claims, that is, that it must empanel a jury in the limitation proceedings." *Id.* In its holding, the court first determined that supplemental jurisdiction was proper because limitation of liability proceedings have admiralty federal jurisdiction. *Id.*

persons' jury request,²¹⁷ the court balanced three interests implicated in the case: "(1) the admiralty tradition disfavoring the use of a jury in limitation proceedings; (2) the preservation of the [property owners' and injured persons'] right to a jury trial of their common law claims, as embodied in the 'saving to suitors' clause of § 1333; and (3) judicial economy."²¹⁸

Without definitively answering whether a supplemental common law claim automatically has a jury trial right when paired with admiralty claims, the court concluded that there "is no reason to believe that the purposes of the Limitation Act include enabling a vessel owner to take a tort victim's case away from a jury. As one court has noted, '[t]he Limitation Act was fashioned by Congress as a shield rather than a sword.'"²¹⁹ Because the property owners and injured persons were forced into federal court by the limitation of liability proceeding,²²⁰ the court determined that their jury right must be preserved.²²¹

217. *Poling Transp.*, 776 F. Supp. at 787.

218. *Id.* at 785.

219. *Id.* at 786 (quoting *In re Complaint of Cameron Boat Rental, Inc.*, 683 F. Supp. 577, 582 n.6 (W.D. La. 1988)).

220. Three years earlier, the Ninth Circuit Court of Appeals determined that the presence of a limitation of liability proceeding does not automatically preserve a supplemental claim's jury right. *Churchill v. F/V Fjord*, 892 F.2d 763 (9th Cir. 1988). In *Churchill*, the collision of two skiffs resulted in the death of one skiff passenger and serious injury to another passenger. *Id.* at 766. After one of the skiff operators was found to be intoxicated and high on marijuana, the injured passenger and representatives of the killed passenger filed an *in personam* suit against the vessel owner and an *in rem* suit against the vessel in federal court. *Id.* at 766–67. They also attached state wrongful death claims, which carried a jury right, to their case. *Id.* at 768. The injured passenger and representatives requested that the trial be heard by a jury. *Id.* at 769. The district court rejected this request, citing *Tallentire* for support. *Id.*

On appeal, the Ninth Circuit recognized that while the *Tallentire* general dismissal of supplemental jury rights might seem harsh, "to hold otherwise would contravene the manifest purpose of Federal Rule of Civil Procedure 38(e) by allowing jury trials in admiralty cases in which plaintiffs allege a pendent state law claim." *Id.* The court also, however, agreed with the injured passenger's and representatives' argument that when a limitation of liability proceeding forces a litigant into federal court, judges should recognize an exception to the *Tallentire* general rule. *Id.* In this case, however, the injured passenger and representatives initiated their suit in federal court. *Id.* The presence of the limitation of liability proceeding did not force them into a new forum, thereby eliminating the forum-selection concerns present in *Poling Transportation*. The Ninth Circuit affirmed the district court's rejection of a jury trial. *Id.*

221. *Poling Transp.*, 776 F. Supp. at 786. The court determined that because the facts of the limitation proceeding and state claims were so intertwined,

the proper approach here is to empanel a jury at the outset and allow trial to proceed on issues pertaining both to limitation and the common law claims. At the close of the evidence, the court will determine the admiralty issues, including any preclusive effect to be given to that resolution. The remaining issues on the state law claims, if any, will be submitted to the jury.

Id.

V. ANALYSIS

The unification of the admiralty and civil sides of the federal court system in 1966 called the sanctity of the traditional admiralty bench trial into question.²²² Litigants' ability to join common law and maritime claims now requires courts to balance two competing interests: the traditional admiralty bench trial and the Seventh Amendment guarantee of common law trials by jury. The weight given by the court to each of these interests, however, should vary based on whether the civil claim has a basis for federal jurisdiction independent of admiralty.

A. *Independent Basis for Federal Jurisdiction Exists*

When an independent basis for federal jurisdiction over the common law claim exists, courts should undertake a two-step balancing act which reflects both of the minority approaches.²²³ First, courts should follow the *Koch* approach and look to sever factually distinguishable admiralty and common law claims.²²⁴ This approach acknowledges the authority supporting either trier of fact. For the preservation of a bench trial, this authority respects tradition and a plaintiff's right to choose the procedural outcome of his or her case. The admiralty bench trial was originally adopted based on the "theory that maritime questions were so complex and specialized as to call for determination by a judge presumed to possess particular expertise in the field."²²⁵ This principle is so deeply rooted in maritime law that it was preserved during the 1966 unification through Rule 38(e), which provides that the unification will not compel a trial by jury for admiralty claims.²²⁶ As evidenced by the Supreme Court's decision in *Romero*²²⁷ and the majority approach of the circuits, the plaintiff's power to shape his or her trial by electing to proceed in admiralty should not be easily compromised. For the preservation of a jury trial, the authority is the constitutional guarantee of the Seventh Amendment for common law claims.²²⁸ Courts can mitigate these concerns, however, by severing factually distinguishable claims whenever possible, as was done in *Koch*. The prevention of compromising either the

222. See *supra* note 50 and accompanying text.

223. See *supra* notes 111–12.

224. See *supra* note 111 and accompanying text.

225. *Gyorfi v. Partrederiet Atomena*, 58 F.R.D. 112, 114 (N.D. Ohio 1973).

226. See *supra* note 80.

227. See *supra* note 126 and accompanying text.

228. See *supra* note 52.

admiralty litigant's bench trial or common law litigant's jury trial outweighs concerns of inefficiency in having two trials with the same parties.

If, on the other hand, the admiralty and common law claims are so factually intertwined as to make severance impossible, courts should adopt the *Lockheed Martin* minority approach and try the entire case before a jury.²²⁹ The Constitution must outweigh tradition for two reasons. First, the traditional use of a bench trial is not a right to *not* have a trial by jury.²³⁰ Only the common law litigant has a constitutionally protected right. As articulated in *Fitzgerald*,²³¹ while “the Seventh Amendment does not require jury trials in admiralty, neither the Amendment nor any other provision of the Constitution forbids them.”²³² An admiralty jury trial violates tradition, while a common law bench trial violates the Constitution.

Second, the jury is “a time-honored institution in our jurisprudence.”²³³ The drafters of the unified Federal Rules of Civil Procedure recognized and honored this principle by including Rule 38(a), which states that the “right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.”²³⁴ While the Supreme Court has not answered which trier of fact should be used in hybrid admiralty-civil cases, it has analyzed a similar situation with hybrid equity-legal cases in *Beacon Theatres, Inc. v. Westover*.²³⁵ In *Beacon Theatres*, the Court determined that the legal jury right could not be lost by the mere presence of equitable claims,²³⁶ because “the right to [a] jury trial is a constitutional one . . . while no similar requirement protects trials by the court . . . [The court's discretion] wherever possible, [must] be exercised to preserve [a] jury trial.”²³⁷ The

229. See *supra* note 112.

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

231. *Id.*

232. *Id.* at 20.

233. *Id.* at 21.

234. FED. R. CIV. P. 38(a).

235. 359 U.S. 500 (1959).

236. The Seventh Amendment jury right does not extend to suits in equity. See *Dairy Queen v. Wood*, 369 U.S. 469 (1962).

237. *Beacon Theatres Inc. v. Westover*, 359 U.S. 500, 510 (1959). The *Beacon Theatres* opinion also specifically addressed the role of juries in declaratory actions. In *Beacon Theatres*, Fox West Coast Theatres, Inc. brought a declaratory action against Beacon Theatres, Inc. alleging controversy under the Sherman Antitrust Act. *Id.* at 502. Beacon Theatres responded by filing a counterclaim at law and requesting a trial by jury. *Id.* at 503. The district court dismissed the jury request, stating that the question between the two theaters was essentially equitable and did not afford either party a jury right. *Id.* The Ninth Circuit Court of Appeals affirmed the lower court, holding “[a] party who is

Court's decision in *Beacon Theatres* should serve as strong guidance for how it would analyze the trier of fact in hybrid admiralty-civil cases.

B. No Independent Basis for Federal Jurisdiction Exists

When an independent basis for federal jurisdiction over the civil claim does not exist, courts should give more weight to the traditional admiralty bench trial. By its definition, supplemental (including pendent and ancillary) jurisdiction allows a court “to hear and determine a claim over which it would not otherwise have jurisdiction”²³⁸ If a federal court would not have had jurisdiction over the common law claim without the presence of an admiralty claim, admiralty law should be applied both substantively and procedurally. Again, while the Supreme Court has not addressed this exact issue, in determining jury rights with hybrid equity-legal cases, the Court has only noted that “a jury right may not be preempted through procedural tactics”²³⁹ when analyzing claims with independent bases for federal jurisdiction.²⁴⁰ The lack of law analyzing supplemental jury rights suggests that this right does not carry the same weight as an admiralty litigant's traditional bench trial.

The general rule of no jury trial when an independent basis for federal jurisdiction does not exist should, however, have one exception: when a state litigant is forced into federal court because of the initiation of a limitation of liability proceeding. As documented by the majority of courts²⁴¹ that believe an admiralty bench trial trumps a jury right even when an independent basis for federal jurisdiction exists, the plaintiff's power to determine the procedural outcome of his or her case is a well-respected principle. The initiation of a limitation of liability proceeding already removes some of the plaintiff's power by requiring that substantive general maritime law be applied.²⁴² Fairness requires that a

entitled to maintain a suit in equity for an injunction . . . may have all the issues in his suit determined by the judge without a jury regardless of whether legal rights are involved.” *Id.* at 505.

The Supreme Court, however, disagreed. The Court determined that Fox's action in beating Beacon Theatres to the courthouse by filing an equitable declaratory action before Beacon Theatres could file a suit at law, did not destroy Beacon Theatre's jury right. *Id.* at 504. “[I]f Beacon would have been entitled to a jury trial in a [suit at law] against Fox it cannot be deprived of that right merely because Fox took advantage of the availability of declaratory relief to sue Beacon first.” *Id.*

238. BLACK'S LAW DICTIONARY 931 (9th ed. 2009).

239. *In re Poling Transp. Corp.*, 776 F. Supp. 779, 786 (S.D.N.Y. 1991).

240. *See Dairy Queen v. Wood*, 369 U.S. 469 (1962).

241. *See, e.g., Harrison v. Flota Mercante Grancolobiana, S.A.*, 577 F.2d 968 (5th Cir. 1978); *St. Paul Fire and Marine Ins. Co. v. Lago Canyon, Inc.*, 561 F.3d 1181 (11th Cir. 2009); *Windsor v. Mount Joy Mut. Ins. Co. v. Johnson*, 264 F. Supp. 2d 158 (D.N.J. 2003).

242. *Mahfouz, supra* note 9, at 281.

plaintiff maintain procedural guarantees originally available to him or her. If, however, a plaintiff initiates a hybrid admiralty-civil claim in federal court, the existence of a limitation of liability proceeding should not provide the plaintiff with a jury right.²⁴³ The plaintiff exerted control over the case when she chose to file suit in federal court. She should not have any more rights than the plaintiff with a hybrid case not involving a limitation of liability proceeding.

VI. CONCLUSION

The 1966 unification of the admiralty and civil federal dockets allows litigants to bring hybrid admiralty-civil cases before the court. These cases are created in one of two ways: when each claim has an independent basis for federal jurisdiction or when a civil claim with supplemental federal jurisdiction is joined to an admiralty claim. In the process of streamlining the procedure for suing in federal court, the unification failed to answer whether the court, the traditional admiralty trier of fact, or jury, the civil trier of fact guaranteed by the Seventh Amendment, should serve as fact-finder in hybrid admiralty-civil cases. Left without guidance from the Supreme Court, the circuits have developed competing solutions for each of the two types of hybrid admiralty-civil cases. When an independent basis for federal jurisdiction over the civil claim exists, courts should undertake a two-step balancing act—first looking to sever the two claims and then trying the entire case before a jury when such severance is impossible. When an independent basis for federal jurisdiction over the civil claim does not exist, courts should prioritize the traditional admiralty bench trial in all cases except those where a plaintiff is forced into federal court through the initiation of a limitation of liability proceeding. While neither of these solutions is without flaw, each attempts to best balance the admiralty and civil litigants' competing interests—a truly trying act.

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243. See *Churchill v. F/V Fjord*, 892 F.2d 763 (9th Cir. 1988).

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