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Common Law Jurisprudence on Public Vessel Status in the United States: Annotated Cases

Prepared By Erika Wheat, Rhode Island Sea Grant Law Fellow
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This document provides an overview of the facts and disposition of federal cases interpreting whether vessels are “public vessels” under U.S. admiralty law. This document is a supplement to *Status of the U.S. Academic Research Fleet as Public Vessels under U.S. and International Law*, which discusses these cases and other legal authorities relevant to a determination of whether U.S. academic research fleet vessels are public vessels. The cases in this document are arranged by circuit and type of court and are presented in reverse chronological order within each court. This document is to be used for research purposes only and is not legal advice.

Supreme Court

[U.S. v. United Continental Tuna Corp.](#), 425 U.S. 164 (1976).

United Continental Tuna Corporation (“UCTC”), a Philippine corporation largely owned by Americans, owned a fishing vessel, *MV Orient*, which was involved in a collision with a U.S. Navy destroyer. The *MV Orient* later sank due to the damage from the collision.¹ UCTC sued the United States for damages sustained from the sinking of its vessel.²

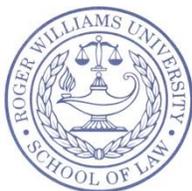
The issue posed to the Supreme Court was to determine Congress’s intention when it deleted the phrase “employed as a merchant vessel” from the SAA in 1960 and whether the deletion affected restrictions on liability under the PVA.³ Congress enacted the PVA to allow liability in cases involving public vessels, including claims by foreign entities where the foreign country allows such suits in its own courts.⁴ The Court determined that deletion of the “employed as a merchant vessel” from the SAA did not extend liability in cases involving a public vessel and a foreign entity where there was no reciprocity. The Court

¹ 425 U.S. 164, 165-66 (1976).

² *Id.*

³ *Id.* at 659.

⁴ *Id.* at 660.



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held that “claims within the scope of the [PVA] remain subject to its terms after the 1960 amendment to the [SAA].”⁵

[Calmar S.S. Corp. v. United States, 345 U.S. 446 \(1953\)](#)

Calmar S.S. Corp. owned the *SS Portmar* and operated it under a charter agreement with the United States.⁶ The *SS Portmar* was lost as a result of war bombing.⁷ The Court held that under the SAA, a privately owned vessel operated under the command of its owner was a merchant vessel despite carrying war-related cargo, and therefore was not covered by the SAA prior to the 1960 amendments. The charter agreement provided that the owner was responsible for all of the ship maintenance and operations,⁸ and the nature of the cargo did not factor into determining whether the *SS Portmar* was a public vessel.⁹ The Supreme Court held that the *SS Portmar* was “employed as a merchant vessel” even though it was “operated for the government.”¹⁰

First Circuit

[Smith v. MAR, Inc., 877 F. Supp. 62 \(D.R.I. 1994\)](#).

Stephen Smith served as a chief engineer on the *TWR-841*. He sustained injuries and sought recovery via the Jones Act and under general maritime law.¹¹ The *TWR-841* was owned by the United States Navy and operated by MAR; MAR employed Smith.¹² The contract between the United States and MAR provided “the contractor shall perform . . . operation and maintenance of vessels and service craft which support the [Naval Underwater Systems Center] and other RDT&E projects.”¹³ The court held *TWR-841* was owned by the United States and used to support naval projects.¹⁴ The court’s holding is consistent with the definition provided by the PVA, which stipulates that “a public vessel is one that is owned by the government and used for a public purpose by a private party.”¹⁵

⁵ *Id.* at 666.

⁶ 345 U.S. 446, 447-48 (1953).

⁷ *Id.*

⁸ *Id.* at 451-452.

⁹ *Id.* at 455.

¹⁰ *Id.* at 456.

¹¹ 877 F. Supp. 62, 63 (D. R.I. 1994).

¹² *Id.*

¹³ *Id.* at 65.

¹⁴ *Id.*

¹⁵ 46 U.S.C. §§ 30901-30909.

Second Circuit

Blanco v. United States, 775 F.2d 53 (2d Cir. 1985).

Blanco filed a wrongful death action on behalf of his father who served as a seaman on the *Sealift Atlantic*.¹⁶ Blanco's father became mentally unstable during his service on the *Sealift Atlantic* and was admitted to the hospital on the vessel. Due to inadequate supervision, Blanco's father was able to leave the hospital and fell overboard.¹⁷

Sealift Atlantic was one of nine Sealift-class tankers¹⁸ privately owned by Marine Transport Lines, Inc. (MTL) and under bareboat charter to the United States for a five year term, with renewal options.¹⁹ The vessels operated under the direction of the Department of the Navy; crew was hired by MTL under the direction of the Navy. The court held that the *Sealift Atlantic* was a public vessel because the bareboat charter agreement with the Navy made the *Sealift Atlantic* effectively a "vessel in the naval service."²⁰ "Vessel in the naval service" is defined by statute as "any vessel of the Navy, manned by the Navy or chartered on bareboat charter to the Navy."²¹

Padro v. Vessel Charters, Inc., 731 F. Supp. 145 (S.D.N.Y. 1990).

Vessel Charters, Inc. ("VCI"), a private company, entered into a time-charter agreement with the United States Navy ("USN") for *SS Santa Adela*, owned by VCI. The time-charter agreement stipulated that the manning of the vessel with crew, navigation, care and custody of the vessel and daily operations remained with VCI.²² USN's responsibility fell to designating what cargo the vessel would carry and what ports were to be visited.²³ In April 1988, Gumersindo Padro, an employee of VCI, became injured when one of the mooring lines snapped and wrapped around his leg, resulting in a severe fracture of his leg. Padro initiated suit against VCI for his injuries under the SAA.²⁴

The court held that the *SS Santa Adela* was a public vessel because the vessel was "operated by or for the United States."²⁵ The *Padro* court utilized the *J.W. Petersen* court's analysis (infra) regarding this issue, which provided that a "reasonable interpretation for the plain

¹⁶ 775 F.2d 53, 54 (2d Cir. 1985).

¹⁷ *Id.*

¹⁸ *Id.* at 55.

¹⁹ *Id.* at 54, 56.

²⁰ *Id.* at 58-59.

²¹ 775 F.2d at 59, quoting 10 U.S.C. § 7721(b)(1).

²² 731 F. Supp. 145, 146 (S.D.N.Y. 1990).

²³ *Id.* at 146.

²⁴ *Id.*

²⁵ *Id.* at 147.

language of the statute requires application to a privately-owned ship operated for the benefit of the United States.”²⁶ The court looked at the time-charter agreement provisions between VCI and USN to determine whether the private ship owner was immune from maritime liability due to the SAA’s exclusivity provision.²⁷ Articles 22(a) and 31 of the time-charter agreement between VCI and USN indicate that “VCI retained liability for the negligence of its crew and the unseaworthiness of the SS SANTA ADELA.”²⁸ As a result, the court held that VCI was subject to liability and the exclusivity provision did not apply.

[Geo. W. Rogers Constr. Corp. v. U.S., 118 F. Supp. 927 \(S.D.N.Y. 1954\).](#)

The *Cayuse* collided with *Whirley No. 32*; *Whirley* then struck a bridge.²⁹ At the time of the collision, the *Cayuse* was owned by the United States and operated through its agent, Keystone Shipping Company, according to a service agreement.³⁰ The court held the *Cayuse* was a public vessel because it was owned and operated by the United States, and it was carrying cargo for the United States Navy.³¹

[Roeper v. U.S., 85 F. Supp. 864 \(E.D.N.Y. 1949\).](#)

Roeper was injured while aboard the *SS Carl Schurz*, which was a converted troop transport.³² Roeper was injured during passage through a troop bunk area on his way to his assigned civilian bunk, and sued for compensation due to lost employment.³³ The court held the vessel was a public vessel under the PVA because it was carrying soldiers and military supplies.³⁴

Third Circuit

[Petition of United States, 367 F.2d 505 \(3d Cir. 1966\).](#)

Mathiasen, a private corporation, was under a contractual agreement with the United States Navy to operate *Mission San Francisco*, an undocumented tanker owned by the United States, when the vessel collided with the *Elna II*, resulting in numerous deaths and personal injury claims.³⁵ Mathiasen supplied a crew and operational equipment for the

²⁶ *Id.*

²⁷ *Id.* at 148.

²⁸ *Id.* at 148.

²⁹ 118 F. Supp. 927, 928 (S.D.N.Y. 1954).

³⁰ *Id.*

³¹ *Id.* at 934.

³² 85 F. Supp. 864, 867 (E.D.N.Y. 1949).

³³ *Id.* at 867.

³⁴ *Id.* at 866.

³⁵ *In re Tiedemann*, 367 F.2d 498 (3d Cir. 1966), *supp. op.* 367 F.2d 505, 507-08 (3d Cir. 1966).

Mission San Francisco which was to be used only for governmental business, i.e., delivering cargo for the Navy.³⁶

In this supplementary opinion on the case, the court held the *Mission San Francisco* was a public vessel because “government ownership and use as directed by the government exclusively for a public purpose suffice without more to make a ship a public vessel.”³⁷ The court utilized the *Restatement (Second) of Agency* to hold that Mathiasen was an agent of the United States:³⁸ “[A]gent of the United States is an appropriate characterization of such a contract operator of a public vessel as Mathiasen . . . it is arguable that Mathiasen’s day to day working of the ship was not subject to government control.”³⁹ The government determined destinations and what cargo the *Mission San Francisco* would carry; manning, navigating, food provisions and operation was the responsibility of Mathiasen.⁴⁰

Fifth Circuit

Williams v. Central Gulf Lines, 874 F.2d 1058 (5th Cir. 1989).

Central Gulf Lines (“CGL”) employed Ballard Williams (“Williams”) as a seaman on the *S/S Bay*, which was owned by CGL and time-chartered to the United States Navy.⁴¹ Williams fell ill and died while in service on the vessel, and his estate brought suit against CGL.⁴² The court reviewed the time-charter agreement to determine whether CGL was liable or immune because the *S/S Bay* was a public vessel. The court found that Article 22 of the time-charter agreement provided that CGL’s responsibility was to man the vessel, navigate the vessel, take care and custody of the vessel and care of the cargo (these are considered day-to-day operations).⁴³ USN’s responsibility was to provide destinations and the cargo.⁴⁴ Article 31 provided that CGL “retain[ed] complete and exclusive possess and control of the vessel and its navigation.”⁴⁵

The court instituted a two-part inquiry which would provide if Williams had a remedy under the SAA. The first prong provides a “jurisdictional hook” – “in view of the 1960 amendment [of the SAA], if a proceeding in admiralty could be asserted against a private person in the Government’s position, then the [SAA] will provide a jurisdictional hook on

³⁶ 367 F.2d 505, 508 (3d Cir. 1966).

³⁷ 376 F.2d at 509.

³⁸ RESTATEMENT (AGENCY) 2d §§ 2, 14.

³⁹ *Id.*

⁴⁰ 376 F.2d at 509-510.

⁴¹ *Id.*

⁴² 874 F.2d 1058, 1059 (5th Cir. 1989).

⁴³ 874 F.2d at 1060.

⁴⁴ *Id.*

⁴⁵ *Id.*

which to hang a claim against the Government.”⁴⁶ Here, the court concluded the USN consented to suit as if it were a private person.⁴⁷ The second prong determines whether the claim satisfies the “traditional admiralty claim.”⁴⁸ The court’s general rule is that a “time charterer ‘who has no control over the vessel, assumes no liability for negligence of the crew or unseaworthiness of the vessel absent a showing that the parties to the charter intended otherwise.”⁴⁹ Here, the court determined the USN failed this prong because the charter specifically provided that the USN acquired no operational control. As such, even though the charter provides that the USN “shall bear certain costs, responsibility for costs ‘in and of itself does not transfer operational responsibility from the owner.’”⁵⁰ In conclusion, the court found because both prongs were not met, the exclusivity provision in the SAA does not exclude CGL from liability.⁵¹

[Trautman v. Buck Steber, Inc., 692 F.2d 440 \(5th Cir. 1982\).](#)

Trautman appealed from a district court decision finding the United States not liable for Trautman’s injuries because the United States did not assert operational control over the barge on which Trautman worked, nor was the barge “operated by or for” the United States within the scope of the Suits in Admiralty Act.⁵²

Trautman served as a salvage diver employed by Buck Steber, Inc. (Steber), which was subcontracted by Murphy Marine Salvage Company (Murphy) in 1974 to clear the Suez Canal of sunken vessels. This agreement stemmed from a written agreement between the United States and Egypt after the 1967 war between Egypt and Israel.⁵³ The agreement between the United States and Murphy provided for the use of two Yard Heavy Lift Craft (YHLC) that were owned by the United States.⁵⁴ Per the agreement, Murphy was responsible for manned and operating the YHLC.⁵⁵ Murphy contracted with Steber for the necessary diving services in order to retrieve the sunken vessels. The United States was not involved in this agreement, nor was it involved in day to day activities on the craft.⁵⁶

⁴⁶ 874 F.2d at 1062.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* The term “control” used by the 5th Circuit refers to the operational control of the vessel, not the ultimate control of its destination or cargoes. 874 F.2d at 1062.

⁵⁰ 874 F.2d at 1063.

⁵¹ *Id.*

⁵² 692 F.2d 440, 442 (5th Cir. 1982).

⁵³ *Id.* at 441-442.

⁵⁴ *Id.* at 442.

⁵⁵ *Id.*

⁵⁶ *Id.*

Effectively, the diving barges utilized by Steber were acquired by Murphy from the Suez Canal Authority.⁵⁷

The court affirmed the district court decision that the United States did not assert operational control over the diving barge, and thus that liability to the United States did not attach via the SAA.⁵⁸ “[C]ontrol by the United States is the crucial element in determining whether a case falls within the jurisdiction of the SAA.”⁵⁹ Additionally, the court held that Steber was not an agent of the United States because the United States’ only role was to monitor progress of the salvage of the sunken vessel.⁶⁰ The United States was not placed under a duty to determine whether the safe diving procedures utilized by Steber were practiced.⁶¹ The contract renegotiation that took place between Murphy and the United States only impacted the work to be done on the sunken vessel; in no way did the renegotiation assert that Steber was an agent of the United States.⁶² The court upheld the district court’s ruling that the United States was not liable for Trautman’s injuries and that the United States did not “operate” the diving barge, respectively.⁶³

[Doyle v. Bethlehem Steel Corp., 504 F.2d 911 \(5th Cir. 1974\).](#)

Bethlehem Steel Corporation (“BSC”) employed Alivn Doyle as a shipyard worker. He was injured while working on the *USNS Yukon*,⁶⁴ a federally-owned vessel operated by the Military Sea Transportation Service of the Department of the Navy through a contract with Mathiasen’s Tanker Industries (“MTI”).⁶⁵ MTI conducted and managed the business of the Navy tanker on behalf of the United States government.⁶⁶ The court determined that the *USNS Yukon* was a public vessel because it was owned by the United States Navy and that Mathiasen operated *USNS Yukon* for the United States Navy, making Mathiasen an agent of the United States.⁶⁷

[Tarver v. U.S., 785 F. Supp. 607 \(S.D. Miss. 1991\).](#)

Anthony Tarver was an employee of Pan Am as a seaman aboard the *M/V Clermont II*, a barge owned by the United States.⁶⁸ The United States contracted with Pan Am to operate

⁵⁷ 692 F.2d at 443.

⁵⁸ *Id.* at 443-44.

⁵⁹ *Id.* at 444.

⁶⁰ *Id.* at 445-46.

⁶¹ *Id.*

⁶² *Id.*

⁶³ 692 F.2d at 446.

⁶⁴ 504 F.2d 911, 912 (5th Cir. 1974).

⁶⁵ *Id.* at 912.

⁶⁶ *Id.*

⁶⁷ *Id.* at 913-14.

⁶⁸ 785 F. Supp. 607, 609 (S.D. Miss. 1991).

the *M/V Clermont II* to transport rocket fuel between various sites of the National Aeronautics and Space Administration located in Bay St. Louis, Mississippi.⁶⁹ Under this contract, Pan Am was to provide the operational aspects of the project, including providing a crew for the barge.⁷⁰ Tarver was on the *M/V Clermont II* when he sustained his injuries.⁷¹

The court found no question that *M/V Clermont II* was a public vessel within the purview of the Public Vessels Act because it was used for the sole benefit of the Space Center.⁷² In addition, the court found that Pan Am was the agent of the United States because “[i]n operating the *M/V Clermont II*, Pan Am agreed to act in accordance with the direction and orders issued by the United States . . . the vessel’s business was to be conducted solely for the United States, in accordance with directions, orders and regulations as promulgated by the United States.”⁷³

[Stubblefield v. Vickers Towing Co., 674 F. Supp. 566 \(N.D. Miss. 1987\).](#)

Thomas Stubblefield was a seaman employed by Vickers Towing as a member of the crew of the *M/V Terri*.⁷⁴ Stubblefield sought recovery under the Jones Act and general maritime law for injuries he sustained while aboard the *M/V Terri*. The *M/V Terri* was one of two vessels time chartered to the Department of the Army by Vickers Towing.⁷⁵ The charter agreement stipulated Army was to use the vessels, including the *M/V Terri*, for construction and maintenance of channel improvement works.⁷⁶

The PVA provides that a public vessel includes a vessel owned by the government and used for a public purpose by a private party.⁷⁷ Here, the court held that the *M/V Terri* was not a public vessel because Vickers Towing, a private company, owned and operated the vessels and the Army used the vessel under a time charter agreement.⁷⁸ However, the court determined that the vessel was “operated by or for the United States” under the SAA, and therefore that Stubblefield could recover exclusively against the United States and not against Vickers Towing.⁷⁹ “The element of control necessary to create liability in the United States is not detailed supervision of the minutia of the vessel’s operations but rather a shifting of financial risk by assigning the ability to exclusively control when the vessel will

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² 785 F. Supp. at 611.

⁷³ *Id.* at 612.

⁷⁴ 674 F. Supp. 566, 567 (N.D. Miss. 1987).

⁷⁵ *Id.* at 568.

⁷⁶ *Id.*

⁷⁷ 46 U.S.C. § 30901.

⁷⁸ 674 F. Supp. at 568.

⁷⁹ *Id.*

sail. . . .”⁸⁰ Here, the United States controlled the *M/V Terri* under the charter because the charter agreement provided that the Army maintained the operation of the crew and vessel.⁸¹

Santos v. RCA Serv. Co., 603 F. Supp. 943 (E.D. La. 1985).

Manuel Santos sought recovery for injuries he sustained while employed by RCA Service Company as a seaman and crew member on a group of military support vessels.⁸² At the time of his injuries, RCA was under contract with the United States Navy to provide support for testing and evaluation of weapons.⁸³ The United States Navy owned all but one of the support vessels operated by RCA; the other vessel was owned by RCA but leased to the Navy for the duration of the exercises.⁸⁴ The contract terms for the Navy-owned ships stipulated that RCA “mans, operates, maintains and repairs the group of support vessels.”⁸⁵

The *Santos* court applied the PVA and held that “the support vessels operated by RCA on which Santos claims to have been injured were public vessels within the meaning of the Public Vessels Act.”⁸⁶ “In this case the primary function of the vessels was to launch targets for Naval ships to fire upon, and then to retrieve the targets. For such activity to be successful, direction of the vessel’s overall function by the Navy would be necessary.”⁸⁷

Trautman v. Buck Steber, Inc., 513 F. Supp. 171 (E.D. La. 1981).

The facts of the case are identical to those discussed for the appeal of this case (*supra*). At the district court, Trautman alleged the diving barge on which he was injured was “operated by or for” the United States, and he therefore sought remedy under the SAA. The court held that “[t]he only connection the United States had with the vessel was to assist through the efforts . . . in having the Suez Canal Authority make the vessel available to Murphy, and its subcontractor Steber. The United States at no time exercised any authority or control over the use.”⁸⁸

Additionally, the court held that Trautman failed to show that the United States caused or allowed unsafe diving practices which were the cause of Trautman’s injuries.⁸⁹ “All the evidence showed that the United States exercised no operational control over the work of

⁸⁰ *Id.* at 569.

⁸¹ *Id.* at 569-570.

⁸² 603 F. Supp. 943, 944 (E.D. La. 1985).

⁸³ *Id.* at 945.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 946.

⁸⁷ 603 F. Supp. at 947.

⁸⁸ 513 F. Supp. 171, 178 (E.D. La. 1981).

⁸⁹ *Id.*

Murphy or Steber personnel.”⁹⁰ Any unsafe diving practices were attributed to Steber’s negligence. As a result, the district court dismissed Trautman’s complaint against the United States.⁹¹

Saffrhan v. Buck Steber, Inc., 433 F. Supp. 129 (E.D. La. 1977).

Raymond Saffrhan was a diver employed by Buck Steber (“Steber”) to clear sunken vessels in the Suez Canal from two Yard Heavy Lift Craft (“YHLC”) provided by the United States to Murphy Pacific Marine Salvage Co. (“Murphy”).⁹² The YHLCs were manned and operated by Murphy, which subcontracted with Steber for diving services.⁹³ Saffrhan was injured during an operation to raise an anchor under the direction of the U.S. Navy Captain in charge of the military personnel for the project.⁹⁴ To determine which remedies and parties were applicable to Saffrhan’s suit, the court reviewed whether Murphy and Steber were agents of the United States. The court held that “when a public vessel is operated by a private corporation under contract with the United States, the private operator becomes the agent of the United States.”⁹⁵ As a result, the United States was liable for Saffrhan’s injury.

Seventh Circuit

J.W. Petersen Coal & Oil Co. v. U.S., 323 F. Supp. 1198 (N.D. Ill. 1970).

J.W. Petersen Coal & Oil Co (“Petersen”) owned real estate along and under the North Branch Canal of the Chicago River; Petersen built and maintained a wooden dock for coal transportation.⁹⁶ In June 1966, Dunbar & Sullivan Dredging Company (“Dunbar”) was awarded a contract by the United States Army Corps of Engineers for dredging operations in the Chicago River and North Branch Canal.⁹⁷ Petersen brought suit against the United States and Dunbar under the SAA, alleging the dredging operations caused soil under the dock to move, resulting in damage to the entire dock.⁹⁸ The court held that “extensive operation or direction of the vessel by government personnel would be required to make the vessel operated ‘by the United States’ and something closer to a time charter where the Government directs the vessel’s overall functions even though the owner may control the operation of the vessel’s personnel and equipment rather than a single purpose contract

⁹⁰ *Id.*

⁹¹ *Id.* at 179.

⁹² 433 F. Supp. 129, 130 (E.D. La. 1977).

⁹³ *Id.* at 130.

⁹⁴ *Id.* at 130-31.

⁹⁵ *Id.* at 133.

⁹⁶ 323 F. Supp. 1198, 1200 (N.D. Ill. 1970).

⁹⁷ *Id.*

⁹⁸ *Id.* at 1200, 1205.

entered into with an independent contractor would be required to make the vessel 'operated for the United States.'"⁹⁹

Ninth Circuit

Dearborn v. Mar Ship Op., 113 F.3d 995 (9th Cir. 1997).

Dearborn sought recovery for injuries sustained while employed as a seaman by Bay Ship on the United States Naval Ship *Kane*.¹⁰⁰ At the time of Dearborn's injuries, the *Kane* was owned by the United States Navy, but chartered to Bay Ship under a charter agreement titled "Performance Work Statement-Military Sealift Command-Special Mission Oceanographic and Hydrographic Survey Ships."¹⁰¹

The court needed to determine whether Bay Ship was an agent of the United States. For analysis, the court looked to the *Restatement (Second) of Agency* § 1(1) and to *Petition of United States* (supra).¹⁰² It found that two characteristics appear most often to be dispositive under the opinions that have directly confronted the question of whether a private entity under contract with the United States to operate a public vessel is an agent of the United States: in order to find that a character is an agent of the United States, 1) the United States must exercise significant control over the charterer's activities – either day to day control or overall control and direction of the mission, and 2) the charterer must be engaged in conducting the business of the United States.¹⁰³

Bay Ship operated the *Kane* on the government's behalf and subject to the government's overall control per the charter agreement.¹⁰⁴ In addition, the *Kane* was specifically utilized to "support the Navy's oceanographic survey programs which are conducted by [Naval Oceanographic Office] personnel aboard ship."¹⁰⁵ The court therefore held that Bay Ship was an agent of the United States: "Bay ship was employed to operate the *Kane* in the business of the United States, and, although it did not reserve the right to hire or fire individual crew members, the United States retained significant overall direction and control over the operation of the vessel."¹⁰⁶

⁹⁹ *Id.* at 1205-1206.

¹⁰⁰ 113 F.3d 995, 996 (9th Cir. 1997).

¹⁰¹ *Id.*

¹⁰² *Id.* at 997, *citing* *Petition of U.S.*, 367 F.2d 505 (3d Cir. 1966).

¹⁰³ *Id.* at 997-998.

¹⁰⁴ *Id.*

¹⁰⁵ 113 F.3d at 998.

¹⁰⁶ *Id.* at 998-99.

[Port of Portland v. Water Quality Ins. Syndicate, 796 F.2d 1188 \(9th Cir. 1986\).](#)

The Port of Portland (Port) brought an action against St. Paul Fire and Marine Insurance Company and the Water Quality Insurance Syndicate, two of the Port's insurance carriers.¹⁰⁷ The *Oregon*, the Port's dredge, sank at its mooring in the Port's harbor.¹⁰⁸ The court determined the *Oregon* was not a public vessel because even though the dredging tasks were completed under contract with the Army Corps of Engineers, "a city's dredging operations have been held not to be a 'governmental function.'"¹⁰⁹ Under Oregon state law, the Port was authorized to "engage in certain commercial activities," such as dredging.¹¹⁰

The court also considered the public policy purpose of the Federal Water Pollution Control Act of 1982, which excludes public vessels from liability unless they are "engaged in commerce."¹¹¹ The Act does not define "engaged in commerce,"¹¹² but the court determined that dredging is commercial activity within the meaning of the statute.

[Nelsen v. Research Corporation of the University of Hawaii, 805 F. Supp. 837 \(D. Haw. 1992\).](#)

The facts in this case are identical to the prior decision in the same litigation. In this holding, the court surfaced the agency issue briefly discussed in prior litigation.¹¹³ The Suits in Admiralty Act (SAA) provides an exclusive remedy when an action is "against an agent or employee of the United States or of any incorporated or incorporated agency thereof whose act or omission gave rise to the claim."¹¹⁴ Here, "the agency relationship between the United States Navy and RCUH is their bareboat charter agreement, which must be reviewed to determine what extent, if any, (1) the government consented to allow RCUH to act on its behalf and (2) RCUH was subject to the government's control."¹¹⁵ The court found that the charter agreement between the United States and RCUH "required RCUH to maintain the *Kila* in good repair, maintain liability insurance on the vessel and hold the United States harmless from third party claims,"¹¹⁶ but the Government did not consent to allow RCUH to act on its behalf. The *Kila* was not operated for the United States or subject to its control. No one outside of the University of Hawaii ever gave directions or orders concerning either the day-to-day or overall operation, maintenance, or manning of the *Kila*. If anyone wished to use the vessel, they had to get permission from RCUH, not the United

¹⁰⁷ 796 F.2d 1188, 1190 (9th Cir. 1986).

¹⁰⁸ *Id.* at 1190.

¹⁰⁹ *Id.* at 1191.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² 796 F.2d at 1191.

¹¹³ *See* Nelsen v. Research Corp of University of Hawaii, 752 F. Supp. 350, 356 (D. Haw. 1990).

¹¹⁴ 805 F. Supp. 837, 846 (D. Haw. 1992).

¹¹⁵ *Id.* at 847.

¹¹⁶ *Id.* at 847.

States. Looking at both the agreement and the venture as a whole, the court therefore held that RCUH was not an agent of the United States.¹¹⁷

Nelsen v. Research Corporation of the University of Hawaii, 752 F. Supp. 350 (D. Haw., 1990).

Captain Robert Nelsen of the *Kila*, an oceanographic research vessel owned by the United States Navy but bareboat chartered to the Research Corporation of the University of Hawaii (“RCUH”), sued RCUH to recover damages as a result of suffering emotional and psychological injuries brought on by the University of Hawaii’s alleged negligent maintenance of the *Kila*.¹¹⁸ Nelsen sought recovery under the Jones Act and the Public Vessels Act (“PVA”).¹¹⁹

The court held that the *Kila* was a public vessel owned by the United States because the United States Navy owned the *Kila* and the University of Hawaii had restricted use of the vessel, i.e., “performance of oceanographic research for the Government,” per the charter agreement.¹²⁰ While the court did not completely address the agency issue, the court touched on agency by stating “a contract operator of a public vessel owned by the United States may be an ‘agent’, even though its day to day operation of the vessel is not subject to government control.”¹²¹

Eleventh Circuit

Uralde v. United States, 614 F.3d 1282 (11th Cir. 2010).

Augustin Uralde, his wife, and several other Cuban nationals were aboard the *Carrera*, a speedboat that entered United States waters after leaving Cuba.¹²² The United States Coast Guard (“USCG”) sought to intercept the *Carrera*, resulting in a high-speed chase.¹²³ The USCG ended the chase after firing several shotgun rounds into the *Carrera*’s engine. The speedboat came to a halt, resulting in Uralde’s wife fatally striking her head.¹²⁴ Uralde sought suit against the United States under the SAA and PVA, alleging the United States was negligent in failing to provide adequate medical attention to his wife.

¹¹⁷ *Id.* at 848.

¹¹⁸ 752 F. Supp. 350, 352 (D. Haw. 1990).

¹¹⁹ *Id.*

¹²⁰ 752 F. Supp. at 354.

¹²¹ 752 F. Supp. at 356; *see also id.* at 357 n.9 (“the fact that defendant manned, equipped, and maintained the KILA does not alter the conclusion that it used the KILA as a public vessel to conduct oceanographic research as contemplated by the charter agreement.”).

¹²² 614 F.3d 1282, 1284 (11th Cir. 2010).

¹²³ *Id.*

¹²⁴ *Id.*

The court determined the SAA provided the proper remedy because the *Carrera* was not a public vessel under the PVA.¹²⁵ “The SAA covers . . . admiralty claims, including those ‘simply involving public vessels’ . . . [a]ccordingly, when Coast Guard personnel are negligent in performing functions other than those ‘in the operation of’ public vessels, the claims arising from those acts fall under the SAA.”¹²⁶ The SAA provided subject-matter jurisdiction in the district court for Uralde’s claims to be heard.¹²⁷

¹²⁵ *Id.* at 1288.

¹²⁶ *Id.* at 1286.

¹²⁷ 614 F.3d at 1288.