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Comments

Salvaging the Term “Suitor”: How the Declaratory Judgment Act Has Commandeered Congressional Intent

Brett P. Hargaden*

“I consider [trial by jury] as the only anchor, ever yet imagined by man, by which a government can be held to the principles of [its] constitution.” – *Thomas Jefferson*¹

I. INTRODUCTION

Consider the following scenario. An experienced mariner captains a twenty-five-foot fishing vessel off the east coast of Florida for recreational fishing purposes. Hoping to catch a variety of pelagic species that are commonly found off the southeast coast of the continental United States, the captain must venture out beyond the sight of land to the bright blue waters of the Gulf Stream.² To protect his investment in the vessel, he purchases a

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1. Letter from Thomas Jefferson to Thomas Paine (July 11, 1789), *in* 15 THE PAPERS OF THOMAS JEFFERSON 266, 266–70 (Julian P. Boyd ed., 1958).

2. See *Offshore Fishing*, FLORIDA GO FISHING, <http://www.florida>

marine insurance policy. His policy is comprehensive, in that it covers the value of the vessel and any liability arising from its use.³ In order to offer affordable insurance rates to its customers, the insurance company includes specific provisions in the agreement that prohibit certain behavior, minimizing the chance of accidents or incidents that would result in an insurance claim.⁴ One of these provisions, generally called a “navigational warranty,” requires the captain to stay within a certain geographical area or else forfeit coverage.⁵ In this case, the captain is required to stay within thirty-five nautical miles of land at all times, which is acceptable to the angler because his normal grounds are only ten to twenty nautical miles offshore.⁶

One day, however, the captain is out thirty nautical miles chasing a large school of fish when the vessel’s entire electronic system fails. A large storm unexpectedly comes through the area; without any means of propulsion, the boat drifts offshore another fifteen to twenty nautical miles, going well beyond the geographical limit outlined in his insurance policy. Unfortunately, the vessel begins to take on water and eventually goes down. The captain is

gofishing.com/fishing-offshore.html (last visited Jan. 25, 2017). Target species include, but are not limited to, dolphin (mahi-mahi), tuna, wahoo, and sailfish. *See id.*

3. The portion of the insurance policy that covers damage to the vessel itself is called hull insurance. F.D. ROSE, MARINE INSURANCE: LAW AND PRACTICE 331 (2d ed. 2012). The portion that covers any liability resulting from an accident while the vessel is in use is called collision liability insurance or a “running down clause.” *See id.*

4. *See* BARIS SOYER, WARRANTIES IN MARINE INSURANCE 3 (2d ed. 2006) (“Accordingly, from the insurer’s point of view, the extent of the risk is crucial, as his liability will largely depend on it. The warranties incorporated into the contract play an essential role in assessing the risk. For example, a warranty to the effect that the insured vessel will not navigate in a certain area gives an idea to the insurer about the extent of the risk he has agreed to provide cover for.”).

5. *See id.* at 24–25 (“It is the general understanding of the assured and insurer that the ship may navigate in any navigable waters, unless there are contrary restrictions in the policy [A] navigation (locality) warrant[y] restrict[s] the movement and operation of the insured vessel [T]he assured undertakes either that the insured vessel will navigate within the confines of a specific area, or she will not navigate in specific waters or beyond a specific point.”).

6. “On salt water, distances are measured in *nautical miles*, a unit about 1/7th longer than the land or *statute* mile The international nautical mile is slightly more than 6076 feet; the statute mile used on shore and fresh water bodies is 5280 feet.” ELBERT S. MALONEY, CHAPMAN PILOTING: SEAMANSHIP AND SMALL BOAT HANDLING 11 (55th ed. 1981).

fortunate enough to transmit a distress signal, and the U.S. Coast Guard later rescues him.

Months later, the captain files a claim with his insurance company for the value of his vessel. After discovering where the vessel sank, the insurance company refuses to pay the claim, asserting that the breach of the navigational warranty voids the captain’s coverage.⁷ Before the captain’s attorney can file a complaint in state court, the insurance company files a declaratory judgment action in the U.S. District Court for the Southern District of Florida. The captain’s attorney explains to him that because this action is in federal court, he will not have the opportunity to argue his case in front of a jury of his peers as he had hoped. His attorney explains that, instead of a jury making the factual findings in the case, one federal judge will take on the role of the fact-finder and make all of the decisions in that regard. Can the captain’s attorney contest this trial format, and demand a trial by jury?

Marine insurance contracts undoubtedly fall within the jurisdiction of the federal district courts under Article III, Section II of the U.S. Constitution, as supplemented by the relevant statutory grant in 28 U.S.C. § 1333(1).⁸ These two provisions, taken together, have given rise to a unique and unsettled area of jurisdictional law. One difficult concept that constantly frustrates federal courts attempting to resolve these novel issues of maritime law is the relationship between other constitutional and statutory provisions of federal subject-matter jurisdiction, such as the Declaratory Judgment Act,⁹ and the effect these provisions might have on the practical procedural consequences of a case, such as the right to a jury trial, when cases can be heard both “in admiralty”

7. See SOYER, *supra* note 4, at 133 (“[E]xact compliance doctrine” requires that “the obligation undertaken by a marine warranty must be exactly complied with . . .”).

8. U.S. CONST. art. III, § 2, cl. 1 (“The judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction . . .”); 28 U.S.C.A. § 1333 (Westlaw through Pub. L. No. 114-254) (“The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction . . .”); *New England Mut. Marine Ins. Co. v. Dunham*, 78 U.S. 1, 26 (1870) (“[T]he true criterion is the nature and subject-matter of the contract, as whether it was a maritime contract, having reference to maritime service or maritime transactions.”); *Wilburn Boat Co. v. Fireman’s Fund Ins. Co.*, 348 U.S. 310, 313 (1955) (“Since the insurance policy here sued on is a maritime contract the Admiralty Clause of the Constitution brings it within federal jurisdiction.”).

9. 28 U.S.C.A. §§ 2201–2202 (Westlaw through Pub. L. No. 114-254).

and “at law.” This Comment will argue that, when an insurance company brings a declaratory judgment action against a client regarding the existence of coverage and the insured party demands a jury trial during the proceeding, the court should ultimately allow the insured party to have a jury trial on all factual issues of the case.

II. BACKGROUND INFORMATION

A. *Federal Subject-Matter Jurisdiction*

When the “admiralty and maritime” clause was included in Article III Section II of the U.S. Constitution, but prior to the enactment of the Judiciary Act of 1789, many believed that parties bringing an action involving admiralty and maritime claims would be subject to the exclusive jurisdiction of the federal judiciary.¹⁰ Stated another way, the only courts that could hear cases of this subject matter were federal admiralty courts. However, we know today that aggrieved parties that have claims satisfying the judicially created jurisdictional hurdles of 28 U.S.C. § 1333(1)¹¹ now

10. U.S. CONST. art. III, § 2, cl. 1; see Jonathan M. Gutoff, *Original Understandings and the Private Law Origins of the Federal Admiralty Jurisdiction: A Reply to Professor Casto*, 30 J. MAR. L. & COM. 361, 383-84 (1999) (“If the federal admiralty were not thought to have exclusive jurisdiction over certain private law admiralty matters, some parties should have continued to litigate admiralty disputes in the appropriate state courts. This did not happen.”); see *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 443 (2001) (“Article III, § 2, of the United States Constitution vests federal courts with jurisdiction over all cases of admiralty and maritime jurisdiction. Section 9 of the Judiciary Act of 1789 codified this grant of exclusive original jurisdiction, but ‘sav[ed] to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it’”) (citations omitted).

11. There are two jurisdictional hurdles for tort actions brought “in admiralty.” The first is the “locus” requirement. See 46 U.S.C.A. § 30101 (Westlaw through Pub. L. No. 114–254) (“The admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land.”). Section 30101 extends the traditional “rule of locality in cases of marine torts” described in *The Plymouth*, which held that “the wrong and injury complained of must have been committed wholly upon the high seas or navigable waters, or, at least, the substance and consummation of the same must have taken place upon these waters to be within the admiralty jurisdiction.” See *id.*; 70 U.S. 20, 34-35 (1865). Originally, courts had difficulty determining which waters were “navigable” under the locus requirement. See *The Daniel Ball*, 77 U.S. 557, 563 (1870) (“Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used,

have a variety of avenues when deciding where to bring their claims based on a particular provision of § 1333(1), famously titled the “Saving-to-Suitors” clause.¹²

The “Savings-to-Suitors” clause allows claimants to bring maritime actions in state courts, subject to certain exceptions.¹³ The clause also allows claimants to bring maritime actions “at law” in federal district courts under an alternative basis of federal subject-matter jurisdiction, typically § 1332 diversity jurisdiction¹⁴ or § 1331 federal question jurisdiction.¹⁵ However, if a claimant chooses to bring a maritime action in a federal district court under

or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.”). Likewise, courts have recently struggled to define the term “vessel” under the Act. *See* *Lozman v. City of Riviera Beach*, 133 S. Ct. 735, 741 (2013) (“[I]n our view a structure does not fall within the scope of [the] statutory phrase [defining a vessel] unless a reasonable observer, looking to the home’s physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.”). The second jurisdictional hurdle is the “nexus” requirement; however, it is still unclear if nexus is required in cases involving accidents on the “high seas.” *See* *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995) (“A court, first, must ‘assess the general features of the type of incident involved’ to determine whether the incident has ‘a potentially disruptive impact on maritime commerce. Second, a court must determine whether ‘the general character’ of the ‘activity giving rise to the incident’ shows a ‘substantial relationship to traditional maritime activity.’” (quoting *Sisson v. Ruby*, 497 U.S. 358, 363-65, 364 n.2 (1990))). There is only one test for maritime contract jurisdiction. *See, e.g., Dunham*, 78 U.S. at 26 (“[T]he true criterion is the nature and subject-matter of the contract, as whether it was a maritime contract, having reference to maritime service or maritime transactions.”).

12. 28 U.S.C.A. § 1333(1) (Westlaw through Pub. L. No. 114-254) (“[S]aving to suitors in all cases all other remedies to which they are otherwise entitled.”); *Romero v. Int’l Terminal Operating Co.*, 358 U.S. 354, 362 (1959). “What the drafters of the Judiciary Act intended in creating the saving to suitors clause is not entirely clear and has been the subject of some debate.” *Lewis*, 531 U.S. at 444 (citing Jonathan M. Guttoff, *Original Understandings and the Private Law Origins of the Federal Admiralty Jurisdiction: A Reply to Professor Casto*, 30 J. MAR. L. & COM. 361, 387-90 (1999)).

13. *See* *The Moses Taylor*, 71 U.S. at 431 (precluding California state court from allowing plaintiff to bring action *in rem* against vessel and having vessel arrested); *Phillips v. Sea Tow/Sea Spill of Savannah*, 578 S.E.2d 846, 851 (Ga. 2003) (precluding a claim for salvage even though the suit was *in personam* as opposed to *in rem*); *Lewis*, 531 U.S. at 453 (explaining that petitions for limitation of liability are reserved for federal district courts).

14. 28 U.S.C.A. § 1332 (Westlaw).

15. *Id.* § 1331; *see* *Garrett v. Moore-McCormack Co., Inc.*, 317 U.S. 239, 245-46 (1942).

a basis of federal subject-matter jurisdiction other than § 1333(1), then the plaintiff must satisfy the general requirements of that specific statutory provision. Examples of these statutory provisions include § 1332 diversity jurisdiction, which requires complete diversity among the parties and satisfaction of the amount in controversy requirement,¹⁶ § 1331 federal question jurisdiction, which requires a well-pleaded complaint.¹⁷

The “Saving-to-Suitors” clause of § 1333(1) provides concurrent jurisdiction between federal district courts sitting “in admiralty,” federal district courts “at law,” and state courts.¹⁸ That is, the clause allows a plaintiff to choose between three different forums when bringing a claim: a federal district court sitting “in admiralty,” a federal district court “at law,” or the general jurisdiction of any state court. There are many benefits and consequences for each choice of forum, and a plaintiff must consider those before making this decision.

B. “Hybrid Cases”

The “Saving-to-Suitors” clause routinely causes procedural conflicts among federal district courts in what have been described as “hybrid cases.”¹⁹ “Hybrid cases” are those where the plaintiff

16. See *Strawbridge v. Curtiss*, 7 U.S. 267, 267–68 (1806) (creating the “complete diversity rule”); 28 U.S.C.A. § 1332 (Westlaw) (“[W]here the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs . . .”).

17. *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908) (“[A] suit arises under the Constitution and laws of the United States only when the plaintiff’s statement of his own cause of action shows that it is based upon those laws or that Constitution. It is not enough that the plaintiff alleges some anticipated defense to his cause of action and asserts that the defense is invalidated by some provision of the Constitution of the United States.”).

18. See *Waring v. Clarke*, 46 U.S. 441, 441 (1847) (“[T]he courts of common law may have concurrent jurisdiction in a case with the admiralty.”). A case has “concurrent subject matter jurisdiction” when the case satisfies the subject matter jurisdiction of both the state and federal court. RICHARD D. FREER, *CIVIL PROCEDURE* 166 (3d ed. 2012).

19. See Lily Kurland, Note, *A Trying Balance: Determining the Trier of Fact in Hybrid Admiralty-Civil Cases*, 90 WASH. U. L. REV. 1293, 1320 (2013); see also *Reliance Nat. Ins. Co. (Eur.) v. Hanover*, 222 F. Supp. 2d 110, 115–16 (D. Mass. 2002) (“When a claim brought in admiralty triggers a compulsory counterclaim for which a defendant (plaintiff-in-counterclaim) requests a jury trial, the result is a ‘hybrid’ proceeding. While there is no uniform answer to the question as to how a court is to proceed in a hybrid case, it is *required to do its utmost to protect a party’s right to a jury trial.*”) (emphasis added) (citations omitted)).

has filed an action under the federal district court’s admiralty jurisdiction set out in § 1333(1) and has designated the case as an admiralty claim under Federal Rule of Civil Procedure 9(h).²⁰ After the plaintiff files a claim “in admiralty,” the named defendant in the action files a counterclaim. However, instead of invoking admiralty jurisdiction, the defendant invokes diversity jurisdiction or federal question jurisdiction as an independent basis of federal subject-matter jurisdiction. This decision allows the defendant in the action to demand a jury trial on the “legal” claim.²¹ The ultimate issue in these “hybrid cases” is how the district court should rule on the defendant’s demand for a jury trial on the “legal” counterclaims.²² The conflicting interests that the district court must consider are the defendant’s Seventh Amendment right to a jury trial²³ and the plaintiff’s preference for a bench trial, a preference that is consistent with a customary mode of trial procedure in admiralty law.²⁴

20. See FED. R. CIV. P. 9(h) (“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.”). This specific rule is a sub-section of Rule 9, which requires heightened specificity in pleadings for certain causes of action; its purpose is to identify claims that have multiple bases of federal subject-matter jurisdiction, described above as “hybrid cases.” See *id.*

21. See U.S. CONST. amend. VII (“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . .”); FED. R. CIV. P. 38(a) (“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.”).

22. Typically, the plaintiff in the case will move to strike the defendant’s jury demand.

23. U.S. CONST. amend. VII.

24. See *Waring v. Clarke*, 46 U.S. 441, 460 (1847) (holding that the Seventh Amendment does not apply to cases “in admiralty”); *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 153 (4th Cir. 1995) (“Traditionally . . . admiralty courts and courts of equity did not rely on juries.”); *Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil*, 704 F.2d 1038, 1041 (8th Cir. 1983) (“Ordinarily, admiralty claims are tried to the court.”); *but see Wilmington Trust v. U.S. Dist. Court for Dist. of Hawaii*, 934 F.2d 1026, 1031 (9th Cir. 1991) (“Regardless of whether a claim is cognizable in admiralty, the right to a jury trial on such claim is preserved despite plaintiff’s election to proceed in admiralty. This court has acknowledged that the non-jury component of admiralty jurisdiction must give way to the seventh amendment”).

A federal district court has three alternatives when the plaintiff moves to strike the defendant's demand for a jury trial in the above situation: (1) the court can designate the plaintiff's Rule 9(h) as covering the entire case and hold a bench trial on both claims; (2) the court can sever the claims, holding a bench trial for the plaintiff's "admiralty claim" and jury trial for the defendant's "legal claim"; or (3) the court can hold the defendant's Seventh Amendment right to a jury trial supersedes the Rule 9(h) designation and hold a jury trial on both claims. This Comment will go beyond the typical "hybrid case," analyzing a narrower and more specific class of cases that are a sub-category of the traditional "hybrid cases," and ultimately conclude that, in these specific procedural scenarios described below, a court should grant the defendant's jury demand on all relevant claims.

C. *Declaratory Judgment Actions*

The Seventh Amendment issue becomes even more complicated when the plaintiff's action is for declaratory relief, as opposed to actual damages. The prime example, which is the focus of this Comment, is that of an insurance company (plaintiff-insurer) suing one of its insured clients (defendant-insured). These cases involve mixed questions of law and fact and are usually brought to obtain a federal district court's declaration as to the insurance company's liability, define the scope of the policy in question, or both. Typically, a case such as this would begin with the insured filing a claim against their policy based upon an accident or issue that would ultimately invoke a federal district court's jurisdiction through § 1333(1) admiralty jurisdiction *and* § 1331 federal question or § 1332 diversity of citizenship jurisdiction.²⁵ After the insurer denies the insurance claim, the insured will prepare to file suit to challenge the insurance company's decision based on a breach of contract theory of liability. However, if the insurance company files a declaratory action in federal court under § 1333(1), seeking a determination of overall liability and/or the scope of

25. Under the hypothetical situation, the sinking of the recreational fishing vessel would be the accident invoking both § 1333(1) admiralty jurisdiction, as well as § 1332 diversity jurisdiction. It is not, however, required that another independent basis of federal subject matter jurisdiction, other than § 1333(1), exist for this situation to arise. The accident will almost always fall into the state's general jurisdiction, and is always an alternative avenue for the plaintiff.

coverage under the marine insurance contract, before the insured party can bring the breach of contract claim, the entire nature of the case is altered.

The purpose of this declaratory action is two-fold: first, the insurance company wants to quickly resolve this dispute; and second, if the insurance company sues “in admiralty,” it can elect to proceed without a jury trial.²⁶ After the plaintiff-insurer files suit, the defendant-insured is forced to file a compulsory counterclaim under Federal Rule of Civil Procedure 13(a).²⁷ The defendant-insured would then demand a jury trial on the compulsory counterclaim, asserting an independent basis of federal subject matter jurisdiction and the right to seek that remedy under the “Saving-to-Suitors” clause.²⁸

This Comment will argue that, where a plaintiff-insurer brings a declaratory judgment action in a federal district court under 28 U.S.C. § 1333(1)²⁹ and under Rule 9(h) of the Federal Rules of Civil Procedure³⁰ to determine the existence or scope of coverage under a policy of marine insurance, and the defendant-insured files a counterclaim directly related to the ultimate issue in the plaintiff’s initial action, *the defendant should have a right to a jury trial under the Seventh Amendment and the “Saving-to-Suitors” clause of § 1333(1).*

Part A of this Comment will provide a general overview of the relevant authority on this particular issue. Part B will discuss the procedural consequences following the enactment of the Declaratory Judgment Act and the device’s effect on admiralty law. Part C will focus on the intended purpose of the “Saving-to-Suitors” clause. Part D will examine how the doctrine of abstention influences the right to a jury trial in declaratory judgment cases.

26. FED. R. CIV. P. 9(h)(1) (“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 Rule[] . . . 38(e)”); FED. R. CIV. P. 38(e) (“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).”).

27. FED. R. CIV. P. 13(a) (“A pleading must state as a counterclaim any claim that—at the time of its service—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”).

28. See 28 U.S.C.A. § 1333(1) (Westlaw through Pub. L. No. 114-254).

29. *Id.*

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

Finally, Part E will explain the ramifications of precluding a jury trial in these cases and will argue the actual intent of insurance companies when moving to strike defendant-insureds' jury demands.

III. INSURED'S RIGHT TO A JURY TRIAL

A. *Circuit-Split Overview*

Only two circuits, the Eleventh Circuit and the Fourth Circuit, have directly addressed the issue of whether a defendant-insured has a right to a jury trial in a declaratory judgment action brought by a plaintiff-insurer. The United States Court of Appeals for the Eleventh Circuit in *St. Paul Fire & Marine Insurance Company v. Lago Canyon, Inc.* affirmed the United States District Court for the Southern District of Florida's decision to grant the plaintiff's motion to strike opposing counsel's demand for a jury trial.³¹ In this case, the defendant-insured owned a yacht that partially sank while undergoing engine repairs, causing damage to the vessel in excess of \$1.2 million.³² The defendant-insured subsequently filed a damage claim with the plaintiff-insurer under a marine insurance policy.³³ The plaintiff-insurer filed a declaratory judgment action, asserting that it was not liable for the damage because of a corroding part; corrosion was excluded under the policy if found to be the cause of the damage.³⁴ The district court granted the plaintiff-insurer's motion to strike the defendant-insured's jury demand.³⁵ The defendant-insured appealed to the United States Court of Appeals for the Eleventh Circuit, arguing, in part, that the district court erred in granting the plaintiff-insurer's motion to strike.³⁶

The Eleventh Circuit focused on Fifth Circuit precedent in *Harrison v. Flota Mercante Grancolombiana, S.A.*, where the court

31. 561 F.3d 1181, 1189 (11th Cir. 2009).

32. *Id.* at 1883.

33. *Id.*

34. *Id.* at 1183–84.

35. *Id.* at 1185 (“The district court concluded that St. Paul’s Rule 9(h) designation of its marine insurance claim as an admiralty claim trumped Lago Canyon’s jury-trial right on its breach-of-contract counterclaim where Lago Canyon’s counterclaim arose out of the same operative facts and same Marine Policy as St. Paul’s claim. The district court recognized that there was a split of authority on this issue but concluded the binding precedent . . . that both claims be tried by the court.”).

36. *Id.* at 1183.

held that in a “hybrid action” involving multiple jurisdictional bases, the defendant-insurer’s counterclaim “at law” cannot override the plaintiff-insured’s Rule 9(h) designation to proceed “in admiralty” without a jury trial when both parties file damages claims.³⁷ The Fifth Circuit properly concluded that in a single action, when two claims for damages are brought—one by the plaintiff-insurer invoking admiralty jurisdiction and the other by the defendant-insured invoking the court’s civil jurisdiction—the plaintiff-insurer’s choice to designate the claim “in admiralty” under Rule 9(h) without a jury trial prevails over the defendant-insured’s demand for a jury trial.³⁸ This conclusion, however, does not address a very different situation where there are not two claims brought for damages, but one claim brought for declaratory relief and one claim brought for damages.

In the former situation addressed in *Harrison*, the plaintiff-insurer has a legitimate claim for damages that can be brought without the use of a statutory vehicle.³⁹ In the latter situation, however, the plaintiff-insurer would have no claim against the defendant-insured without the statutory vehicle, and traditionally would have to wait for the defendant to bring the claim in the court of his or her choosing under the “Saving-to-Suitors” clause.⁴⁰ The defendant-insured in *St. Paul Fire & Marine Insurance Co.* raised this argument;⁴¹ but the court held that the difference in jurisdictional basis, as opposed to the distinction in the type of relief sought by the plaintiff, required the court to follow *Harrison* as opposed to other Supreme Court precedent addressing declaratory judgment actions.⁴² This distinction is the critical flaw in the court’s reasoning, as both parties in *Harrison* had a legitimate claim for damages against one another.⁴³ Where both parties have

37. See 577 F.2d 968, 986–88 (5th Cir. 1978).

38. See *id.* It is crucial to recognize that the Fifth Circuit’s conclusion should be strictly limited to those situations involving “hybrid cases,” as opposed to the situation presented in this Comment involving declaratory judgments.

39. See *id.*

40. Going back to the hypothetical posed, without the enactment of the Declaratory Judgment Act, the captain’s insurance company would have no claim against him until he filed a breach of contract claim.

41. See 561 F.3d at 1188 (“[Defendant-insured] contends that *Harrison* should not apply because [plaintiff-insurer] brought a declaratory judgment action, whereas the plaintiff in *Harrison* brought a suit for damages.”).

42. See *id.* at 1188–89.

43. See *Harrison*, 577 F.2d at 986–87.

a valid claim for damages, it is understandable why a district court would hold that the Rule 9(h) designation supersedes a demand for a jury trial, as both parties could be considered a “suitor” under the “Saving-to-Suitors” clause.⁴⁴ However, where only one party has a valid claim for damages, and the other party files a claim for a declaratory judgment action, it seems that only the party that has a valid claim for damages should be considered the “suitor” under the clause; it is that party’s choice that should supersede over the other party taking advantage of the statutory vehicle.

There are also many federal district courts that have directly addressed this issue, holding that the defendant-insured’s right to a jury trial is precluded in cases where the plaintiff-insurer brings a declaratory judgment action “in admiralty.”⁴⁵ These decisions are consistent with a traditional characteristic of admiralty law: the presiding judge is charged with making findings of fact and determinations of law, as opposed to a jury finding the facts of the case and limiting the judge’s role to making conclusions of law.⁴⁶ One such decision is *St. Paul Fire & Marine Insurance Company v. Holiday Fair, Inc.*, where the United States District Court for the Southern District of New York held that the defendant-insured does not have a right to a jury trial in a declaratory judgment action.⁴⁷ Interpreting Federal Rule of Civil Procedure 38(e)⁴⁸ and distinguishing prior United States Supreme Court precedent, the district court determined that the plaintiff-insurer’s “right” to a non-jury trial in admiralty cases outweighed the defendant-

44. See 28 U.S.C.A. § 1333(1) (Westlaw through Pub. L. No. 114-254).

45. See *Windsor Mount Joy Mut. Ins. Co. v. Johnson*, 264 F. Supp. 2d 158, 159 (D.N.J. 2003); *Jefferson Ins. Co. of N.Y. v. Me. Offshore Boats, Inc.*, No. 01-44-P-H, 2001 WL 484040 (D. Me. May 7, 2001); *Underwriters Subscribing to Certificate of Ins. No. 98B1/800 v. On the Loose Travel, Inc.*, No. 99-0200-Civ., 1999 WL 694212 (S.D. Fla. Mar. 23, 1999); *St. Paul Fire and Marine Ins. Co. v. Holiday Fair, Inc.*, No. 94 Civ. 5707 (TPG), 1996 WL 148350, at *1-2 (S.D.N.Y. Apr. 2, 1996); *Royal Ins. Co. of America v. Hansen*, 125 F.R.D. 5, 6-9 (D. Mass. 1988); *Zurich Ins. Co. v. Banana Services, Inc.*, No. 84-1508-Civ., 1984 WL 1888 (S.D. Fla. Nov. 26, 1984); *Arkwright-Boston Mfrs. Mut. Ins. Co. v. Bauer Dredging Co.*, 74 F.R.D. 461, 461-62 (S.D. Tex. 1977); *Ins. Co. of Pa. v. Amaral*, 44 F.R.D. 45, 47 (S.D. Tex. 1968).

46. See, e.g., *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 153 (4th Cir. 1995) (“Traditionally . . . admiralty courts and courts of equity did not rely on juries.”).

47. 1996 WL 148350, at *1-2.

48. “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).

insured's request for a jury trial.⁴⁹

The district court's reasoning seems to indicate that the proper analysis is based on a balancing of the parties' interests, specifically the plaintiff-insurer's preference for a bench trial and the defendant-insured's right to a jury trial. Although the Seventh Amendment is not directly implicated because the case technically arises "in admiralty," it can be argued that the defendant-insured's right to a jury trial should be given sufficient weight to tip the scales in favor of allowing a jury trial in these specific declaratory judgment actions. This argument also rests upon the notion that the traditional characteristic of admiralty law involving bench trials has no constitutional basis and should be limited as such when new circumstances arise.⁵⁰ Moreover, the district court also asserted that a marine insurance company's use of a declaratory judgment action was "not a mere race to the courthouse," but instead "is a normal and orderly procedure."⁵¹ Without any justification or reasoning following this statement, it is hard to determine why the court made this conclusion, for it seems the use of a declaratory judgment action in this situation is just that: a race to the courthouse in order to preclude the defendant-insured from obtaining a jury trial.⁵²

One federal appellate court and a number of federal district courts, however, have denied a plaintiff-insurer's motion to strike a defendant-insured's demand for a jury trial, concluding that the defendant-insured's Seventh Amendment right to a jury trial supersedes a customary feature of admiralty procedure.⁵³ The

49. *St. Paul Fire & Marine Ins.*, 1996 WL 148350, at *2 ("It would seem to be a reasonable application of these principles to hold that [the plaintiff-insurer's] right to a non-jury trial based on its admiralty claim outweighs [the defendant-insured's] request for a jury trial based on its counterclaim.").

50. *See Fitzgerald v. U.S. Lines Co.*, 374 U.S. 16, 20 (1963) ("While this Court has held that the Seventh Amendment does not require jury trials in admiralty cases, neither that Amendment nor any other provision of the Constitution forbids them." (footnotes omitted)).

51. *St. Paul Fire & Marine Ins.*, 1996 WL 148350, at *2.

52. *See Cont'l Ins. Co. v. Indus. Terminal & Salvage Co.*, No. 05CV1142, 2005 WL 2647950, at *2 (W.D. Pa. Oct. 17, 2005) ("If this Court were to strike [the defendant-insured's] jury demand based upon the fact that [the plaintiff-insurer] was the 'first to file' under this factual scenario, the Court would essentially be encouraging parties to engage in an inauspicious race to the courthouse.").

53. *See In re Lockheed Martin Corp.*, 503 F.3d 351, 358 (4th Cir. 2007); *Cont'l Ins. Co.*, 2005 WL 2647950, at *1 ("Ordinarily, the normal procedure in a case where an insurer has denied insurance coverage would be for the

United States Court of Appeals for the Fourth Circuit in *In re Lockheed Martin Corporation* held that the defendant-insured had a right to a jury trial, explaining that “the Seventh Amendment applies to admiralty claims that are tried ‘at law’ by way of the Saving-to-Suitors clause.”⁵⁴ In this case, the defendant-insured owned a vessel that was damaged at sea and submitted a claim with the plaintiff-insurer as a result of the significant damage.⁵⁵ The plaintiff-insurer filed a declaratory judgment action to determine whether the claim was time-barred under the marine insurance policy, and designated the claim as one “in admiralty” under Rule 9(h) to preclude a jury trial.⁵⁶ The defendant-insured filed a counterclaim seeking payment for damage to the ship, requesting a jury trial.⁵⁷

Overruling the judgment of the United States District Court for the District of Maryland, the Fourth Circuit focused on two provisions critical to the jury-trial determination: the Seventh Amendment and the “Saving-to-Suitors” clause.⁵⁸ The court noted that there is no constitutional prohibition of jury trials in cases

insured to file a breach of contract action, and thus, the insured would be the plaintiff in the action. In this case, the reverse has occurred. Nonetheless, this Court will take this opportunity to realign the parties and their respective claims in the interests of fairness and comprehensibility.”); *Reliance Nat. Ins. Co. (Eur.) v. Hanover*, 222 F. Supp. 2d 110, 115–16 (D. Mass. 2002) (“While there is no uniform answer to the question as to how a court is to proceed in a hybrid case, it is required to do its utmost to protect a party’s right to a jury trial.”); *Sphere Drake Ins. PLC v. J. Shree Corp.*, 184 F.R.D. 258, 261 (S.D.N.Y. 1999).

54. 503 F.3d at 356; *see also* *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 153 (4th Cir. 1995) (“While trials to different factfinders may be required in actions having law and equity components because of the jury’s inability to fashion equitable remedies, that result is not compelled when claims at law and in admiralty, arising out of a single accident, are combined in a single complaint for damages. To render the trial process in that particular circumstance less cumbersome, confusing, and time-consuming, the Supreme Court has adopted the pragmatic procedural rule that both the admiralty claim and the law claim be decided by the jury so that ‘[o]nly one trier of fact [is] used for the trial of what is essentially one lawsuit to settle one claim split conceptually into separate parts because of historical developments.’” (quoting *Fitzgerald v. U.S. Lines Co.*, 374 U.S. 16, 21 (1963)).

55. *In re Lockheed Martin*, 503 F.3d at 352. The policy claim exceeded \$2.6 million in damage. *Id.* at 353.

56. *Id.* (“On July 22, 2005, [plaintiff-insurer] *preemptively filed a declaratory judgment action* seeking a declaration that [defendant-insured’s] claims were time-barred under the policy.” (emphasis added)).

57. *Id.*

58. *See id.* at 354.

tried “in admiralty,” and further held that the Seventh Amendment right to a jury trial is not “inapplicable” to the determination of these cases.⁵⁹ The court reasoned that the “Seventh Amendment applies to admiralty claims that are tried ‘at law’ by way of the saving-to-suitors clause,”⁶⁰ and that to allow the plaintiff-insurer the ability to strip the defendant-insured of the right to a jury trial is “inconsistent with the Supreme Court’s admonition that the Seventh Amendment right to a jury trial must be preserved ‘wherever possible.’”⁶¹

The court made the proper inquiry when determining whether to strike the defendant-insured’s demand for a jury trial; it ignored the alignment of the parties under the declaratory judgment action and “instead look[ed] to how the action otherwise would have proceeded.”⁶² The court concluded that the defendant-insured would have had the right under the “Saving-to-Suitors” clause to proceed with the claim “at law” and successfully demand a jury trial under the Seventh Amendment.⁶³ It boldly but correctly asserted that “it is an oversimplification to say that the Seventh Amendment does not apply in admiralty.”⁶⁴ Finally, the court recognized that the Seventh Amendment does not apply to an “admiralty *claim*,” but could be applicable to certain circumstances where concurrent jurisdiction exists.⁶⁵ The plaintiff-insurer petitioned for Supreme Court review in this case, but the Supreme Court denied *certiorari*.⁶⁶

B. *The Declaratory Judgment Act and Subsequent Case-Law*

With the enactment of the Declaratory Judgment Act⁶⁷ came

59. *Id.* at 354, 356 (“The Seventh Amendment’s guarantee of a jury trial, however, applies only to cases at law, a category that does not include *maritime* cases If an admiralty claim is tried ‘at law,’ the claim nonetheless remains an admiralty claim, and substantive admiralty law governs the disposition of the claim. That such claims remain admiralty claims, however, does not mean that the Seventh Amendment is inapplicable.” (citations omitted)).

60. *Id.* at 356.

61. *Id.* at 358 (citations omitted).

62. *See id.* at 359.

63. *See id.*

64. *Id.*

65. *Id.*

66. *See* Petition for Writ of Certiorari, Nat’l Cas. Co. v. Lockheed Martin Corp., 553 U.S. 1017 (2008) (No. 07-948).

67. 28 U.S.C.A. § 2201 (Westlaw through Pub. L. No. 114-316) (“In a case of actual controversy within its jurisdiction . . . any court of the United States,

many questions regarding the procedural consequences it would have on cases, most notably the right to a jury trial. When interpreting the original version of the Act, many appellate courts had to decide how this new device would affect a party's constitutional right to a jury trial on legal claims, when the opposing party brought a declaratory action without a demand for a jury trial. The initial determination was that the declaratory action itself was neither legal nor equitable, and that by bringing this type of action the plaintiff could not preclude the defendant from obtaining a trial by jury.⁶⁸ In 1959, the United States Supreme Court solidified these lower-court decisions in *Beacon Theaters Inc. v. Westover*, where the Court held that the right to a jury trial in a declaratory judgment action depends on whether there would have been a right to a jury trial had the action proceeded without the declaratory judgment vehicle.⁶⁹ The Court concluded that the analysis should focus on whether or not the defendant in the declaratory judgment action would have a constitutional right to a jury trial on the counterclaim had the parties been properly aligned.⁷⁰ *Beacon Theaters* and its predecessors seemed to, at the very least, indicate that a declaratory judgment action by itself should not deprive a defendant-insured of his or her right to a jury trial.⁷¹

The critical question, which has been the subject of much legal

upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”)

68. See *Hargrove v. Am. Cent. Ins. Co.*, 125 F.2d 225, 228 (10th Cir. 1942) (“Whether the issues are tendered by suit under the Declaratory Judgment Act, or as a defense to an action to recover on the policies, the rights of the parties are the same and the rule with respect to trial by jury is the same.”).

69. 359 U.S. 500, 504 (1959).

70. See *id.* at 501 (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)) (“Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.”).

71. See *Johnson v. Fid. & Cas. Co. of N.Y.*, 238 F.2d 322, 325 (8th Cir. 1956); *Okla. Contracting Co. v. Magnolia Pipe Line Co.*, 195 F.2d 391, 396 (5th Cir. 1952); *Dickinson v. Gen. Accident Fire & Life Assur. Corp.*, 147 F.2d 396, 397 (9th Cir. 1945); (*Am.*) *Lumbermens Mut. Cas. Co. of Ill. v. Timms & Howard*, 108 F.2d 497, 499 (2d Cir. 1939); *U.S. Fid. & Guar. Co. v. Koch*, 102 F.2d 288, 295 (3d Cir. 1939); *Pac. Indem. Co. v. McDonald*, 107 F.2d 446, 449 (9th Cir. 1939).

scholarly debate in admiralty law, is whether the focus of the analysis should be centered on the subject-matter of the case (being a maritime cause of action versus a non-maritime cause of action), or whether it should revolve around the type of relief sought (action seeking declaratory relief as opposed to a traditional lawsuit seeking damages).⁷² In this respect, it is important to consider the distinction made earlier in this Comment⁷³ and note this author’s proposition: there could be a different outcome regarding the right to a jury trial in the broader category of cases described as “hybrid cases” than those where the plaintiff-insurer brings a declaratory judgment action. As mentioned earlier, “hybrid cases” are those where the plaintiff brings a traditional cause of action against the defendant invoking the federal court’s admiralty jurisdiction. The defendant then brings a counterclaim,⁷⁴ but wishes to invoke another basis of federal subject-matter jurisdiction so that the defendant can demand a jury trial for the “legal” counterclaim. The significance of the declaratory action is highlighted when you recognize the distinction between these two situations based on the alignment of the parties. Without the declaratory judgment vehicle, the alignment of the parties would be reversed; this reversal would have serious consequences on choice of forum,⁷⁵ choice of subject-matter jurisdiction in federal court,⁷⁶ and the

72. See generally Steven E. Goldman & Michael I. Goldman, *Is the Jury Still Out? The Controversy Over the Traditional Rule Requiring a Non-Jury Trial in Marine Insurance Declaratory Judgment Actions in Federal Court*, 41 J. MAR. L. & COM. 117 (2010) (discussing circuit split regarding whether a plaintiff-insurer’s decision to file an admiralty claim requires a bench trial for all claims in a case, and criticizing the Fourth Circuit’s decision in *Lockheed Martin*).

73. See *supra* Section II.C. (distinguishing “hybrid case,” where both plaintiff and defendant bring actions for damages, and a case where only the defendant-insured has claim for damages and the plaintiff-insurer brings a claim for declaratory relief; only permissible because of statute).

74. The legal counterclaim in the “hybrid case” scenario could be permissive under Federal Rule of Civil Procedure 13(b) or compulsory under Federal Rule of Civil Procedure 13(a). See FED. R. CIV. P. 13(a)–(b). However, this is not the case when the plaintiff-insurer seeks declaratory relief; the counterclaim for breach of contract is strictly compulsory because the claim “arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim.” FED. R. CIV. P. 13(a)(1)(A).

75. The defendant-insured would be the only party that could determine the choice of state or federal court, based on the “Saving-to-Suitors” clause. The plaintiff-insurer would have no claim against the defendant-insured.

76. The defendant-insured would be the only party that could choose between suing “at law,” 28 U.S.C.A. §§ 1331–1332 (Westlaw through Pub. L.

procedural consequences that follow these choices. Alternatively, in “hybrid cases” the party alignment remains the same, as the plaintiff is bringing an actual claim seeking damages or injunctive relief from the defendant as opposed to a mere declaration regarding a controversy.⁷⁷

In “hybrid cases,” the argument in favor of the defendant’s right to a jury trial is substantially weaker. In order to be successful, the individual demanding a jury trial would have to overcome a strong custom in admiralty law that factual determinations are to be made by the court instead of the jury.⁷⁸ In the case of a declaratory judgment claim, the plaintiff-insurer arguing against the defendant-insured’s right to a jury trial would have to overcome the essential purpose of the “Saving-to-Suitors” clause: the right of an aggrieved party to choose an alternative forum to resolve an admiralty claim.⁷⁹

C. *The Purpose of the “Saving-to-Suitors” Clause*

When drafting The Judiciary Act of 1789, the authors included this provision following a declaration of exclusive federal subject matter jurisdiction in cases of admiralty: “saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it”⁸⁰ By doing so, aggrieved parties now have the ability to bring their admiralty claim “at law” in federal court, or in state court, so long as the remedy sought is available in that forum.⁸¹ The legal analysis used to determine whether that remedy

No. 114–254), or “in admiralty,” *id.* § 1333, based on the “Saving-to-Suitors” clause.

77. In “hybrid cases,” both parties have a claim regardless of the Declaratory Judgment Act, so either party could make the above determinations.

78. See *Waring v. Clarke*, 46 U.S. 441, 460 (1847) (holding that Seventh Amendment does not apply to cases “in admiralty”); *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 153 (4th Cir. 1995) (“Traditionally . . . admiralty courts and courts of equity did not rely on juries.”); *Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil*, 704 F.2d 1038, 1041 (8th Cir. 1983) (“Ordinarily, admiralty claims are tried to the court.”).

79. See *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 454 (2001) (“Tracing the development of the clause since the Judiciary Act of 1789, it appears that the clause was designed to protect remedies available at common law.”).

80. Ch. 20, § 9, 1 Stat. 77 (current version at 28 U.S.C.A. § 1333).

81. *The Moses Taylor*, 71 U.S. 411, 431 (1866) (“[The Saving-to-Suitors] clause only saves to suitors ‘the right of a common-law remedy, where the common law is competent to give it.’ It is not a remedy in the common-law

is available under the "Saving-to-Suitors" clause is a historical test: whether that remedy was available in the common law courts at the time of enactment.⁸² This has excluded several types of cases from the "Saving-to-Suitors" clause, but the right to a jury trial is recognized as provided by the common law and available to plaintiffs today.⁸³ When deciding whether a defendant-insured is entitled to a jury trial in a declaratory action, it is important to ask for whom the "Saving-to-Suitors" clause was intended. That is, what was the authors' purpose for allowing suits to be brought outside the traditional admiralty courts and whom exactly would that benefit? Obviously, this provision was included well before the enactment of the Declaratory Judgment Act in 1934.⁸⁴

Before the enactment of the Declaratory Judgment Act, parties attempting to resolve a marine insurance dispute would always be properly aligned. The plaintiff would be the insured party suing the defendant insurance company for breach of contract or another relevant cause of action. The insurance company would have no claim against the insured party and the insurance company would have to wait for the insured party to sue in order to resolve the claim against the company. Because of this, only the insured party would have the choice of forum under § 1333(1) and therefore it would have ultimate control over certain procedural consequences.⁸⁵ When a declaratory judgment action is introduced into this scenario, the choice of forum and the resulting consequences following that decision are effectively stripped from the insured party, and the insurance company has the ability to control important aspects of the lawsuit.⁸⁶ When analyzing this

courts which is saved, but a common-law remedy." (quoting *id.*)).

82. *See id.*

83. *See* U.S. CONST. amend. VII.

84. Andrew Bradt, "*Much to Gain and Nothing to Lose*": *Implications of the History of the Declaratory Judgment for the (b)(2) Class Action*, 58 ARK. L. REV. 767, 771 (2006).

85. For example, the bench trial custom of admiralty law only applies to admiralty courts. *See, e.g.,* *Waring v. Clarke*, 46 U.S. 441, 460 (1847) ("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. We confess, then, we cannot see how they 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.").

86. These include aspects of the lawsuit that were originally designed to be provided to suitors/plaintiffs under the "Saving-to-Suitors" clause. *See*

factual situation and considering the ultimate purpose of the “Saving-to-Suitors” clause, it would seem that the intent of Congress in enacting the Judiciary Act of 1789 has been nullified and rendered useless to injured parties.

In 1847, the United States Supreme Court was tasked with determining whom in fact the word “suitors” applied when deciding *Waring v. Clark*.⁸⁷ The facts of this case closely resemble what has been subsequently described as a “hybrid case;”⁸⁸ and it is the absence of procedural methods to realign the parties that makes this decision so significant. In this case, the plaintiff brought a claim “in admiralty” against the defendant based on a collision between two vessels on the navigable waters of the Mississippi River, and the plaintiff requested a bench trial.⁸⁹ The defendant demanded a jury trial on all issues, asserting that his common law counterclaim required the Court to respect his Seventh Amendment right even though the plaintiff brought his claim “in admiralty.”⁹⁰ Deciding to the contrary, the Court concluded that “[the “Saving-to-Suitors” clause] certainly could not have been intended more for the benefit of the defendant than for the plaintiff, which would be the case if he could at his will force the plaintiff into a common law court”⁹¹ This holding essentially limited the defendant’s ability to remove a case brought “in admiralty” by a plaintiff to a state court or a federal court “at law,” simply because the defendant could have brought the counterclaim outside of admiralty jurisdiction.⁹² How does one reconcile the Court’s conclusion above with the procedural exception proposed in this Comment?

After *Waring*, it would seem as though the question regarding the right to a jury trial in “hybrid cases” had been answered: the defendant cannot nullify the plaintiff’s choice to sue in admiralty.⁹³ This quote from the opinion, however, has also been used to argue

Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 455 (2001).

87. 46 U.S. at 461 (“The saving is for the benefit of suitors, plaintiff and defendant, when the plaintiff in a case of concurrent jurisdiction chooses to sue in the common law courts, so giving to himself and the defendant all the advantages which such tribunals can give to suitors in them.”).

88. *See id.* (“[I]n cases of concurrent jurisdiction in admiralty and common law . . .”).

89. *Id.* at 451–52.

90. *Id.* at 451–53.

91. *Id.* at 461.

92. *See id.*

93. *See id.* at 460.

that the same conclusion must apply to defendant-insureds seeking a jury trial in a declaratory judgment action brought by an insurance company.⁹⁴ In order to analyze a case involving a declaratory judgment properly, it is important to carefully read Justice Wayne’s language and determine who the “defendant” is and who the “plaintiff” is for the purposes of this analysis.⁹⁵ Without the Declaratory Judgment Act, the alignment of the parties would be proper, making the “defendant” the insurance company and the “plaintiff” the insured party.⁹⁶ Arguably, this analysis is irrelevant, as the Act is good law and commonly used today.⁹⁷ However, if one continues to the next clause of Justice Wayne’s opinion, while hypothetically keeping the parties in their “proper” alignment,⁹⁸ one would realize who is *actually* being forced into the court not of their choice and stripped of the tactical benefit.⁹⁹

Previous courts addressing the “Saving-to-Suitors” clause have recognized that “[o]ne of the remedies saved to suitors is the right to a trial by jury.”¹⁰⁰ This remedy should not be stripped of aggrieved parties simply because of newly developed procedural devices created by subsequent legislation. Even if the Declaratory Judgment Act provides an avenue for plaintiff-insurers to get into federal court, future defendant-insureds should retain the fundamental procedural benefits they would have enjoyed absent a declaratory judgment action. It is important to point out once again that, without the Declaratory Judgment Act, this problem would not arise; the aggrieved party would have ultimate control over the forum and procedures as intended by Congress when enacting the “Saving-to-Suitors” clause. To protect defendant-insureds from the harsh consequences of this procedural anomaly, federal courts must step in and create the proposed exception.

94. See *e.g.*, Goldman & Goldman, *supra* note 72, at 120–23.

95. See *Waring*, 46 U.S. at 461.

96. See *id.*

97. See 28 U.S.C.A. § 2201 (Westlaw through Pub. L. No. 114-254).

98. By “proper,” the author means the way the parties would be aligned without the use of a declaratory judgment action.

99. See *Waring*, 46 U.S. at 461.

100. *Atl. & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 360, (1962) (“[T]rial by jury is part of the remedy.”); *In re Complaint of McAllister Towing of Va., Inc.*, 999 F. Supp. 797, 799 (E.D. Va. 1998) (“One of the remedies saved to suitors is the right to a trial by jury.”).

D. *The Principle of Abstention and Judicial Discretion in Declaratory Judgment Actions*

Another argument in favor of specific procedural exceptions for cases involving declaratory actions is the broad judicial discretion provided to judges when deciding to hear declaratory actions, as well as the principle of abstention from hearing cases in federal court in general. The majority of federal cases that address these principles involve parallel cases; parallel cases are those where a plaintiff files a state court action first, and then the defendant brings a separate action in a federal court,¹⁰¹ addressing the same underlying issue as the state court action. Although the factual scenario involving a plaintiff-insurer bringing a declaratory action against a defendant-insured does not usually involve another state court proceeding, the general principles apply because both situations involve the same choice of forum option that the defendant-insured wishes to protect.¹⁰²

An excellent example of the interaction between the principle of abstention and a declaratory judgment action, specifically in the maritime law context, is demonstrated in the following line of cases. In *Youell v. Exxon Corporation*, the United States District Court for the Southern District of New York dismissed the plaintiff-insurers' declaratory judgment action, invoking the principle of abstention.¹⁰³ In this case, the defendant-insured filed an action in a Texas state court based on losses resulting from the infamous grounding of the *Exxon Valdez* off the coast of Alaska in 1989.¹⁰⁴ The plaintiff-insurers simultaneously filed a declaratory judgment action in federal court arising from the same circumstances

101. The separate action brought by the defendant in federal court is usually a declaratory judgment action, as the plaintiff bringing a claim in state court is the party typically seeking damages. *See, e.g., In re Complaint of McAllister*, 999 F.Supp. at 798. Of course, there can be instances where the defendant filing an action in federal court has a valid claim for damages against the plaintiff who has filed a claim in state court.

102. Put another way, in both situations the main objective is to maintain the aggrieved party's ability to choose the forum. *See supra* text accompanying note 75. By "aggrieved party," the author again refers to the party bringing a claim for damages as opposed to declaratory relief.

103. No. 93 Civ. 6093, 1994 WL 376068, at *6 (S.D.N.Y. July 19, 1994) ("The Texas action—which will ultimately resolve all of the issues raised in the Underwriters' complaint—renders this suit wholly unnecessary.").

104. *Id.* at *1 ("As a result of the accident, Exxon incurred expenses and liabilities for, *inter alia*, cargo loss, clean up, and third-party claims.").

underlying the defendant-insured's state court claim, seeking an order to determine that they were not liable based on the policy.¹⁰⁵ The district court concluded that under the analysis laid out by the United States Supreme Court,¹⁰⁶ abstention from hearing the declaratory judgment action in this particular case was appropriate.¹⁰⁷ Although the district court may have relied on the parallel state proceeding as justification for its decision, it nonetheless held that "it is a 'misuse of the Declaratory Judgment Act' to employ it to 'gain a procedural advantage and preempt the forum choice of the plaintiff in [a] coercive action . . .'"¹⁰⁸ The right to a jury trial could have been one of the procedural advantages contemplated by the district court; therefore, the court suggested that any deprivation of this right should be carefully considered by a court before deciding to hear a declaratory judgment action. The United States Court of Appeals for the Second Circuit reversed the judgment of the district court below, focusing on the novel determination of federal law that was underlying the parties' controversy.¹⁰⁹

Following the Second Circuit's decision in *Youell*, the United States Supreme Court confirmed the principle of abstention in declaratory judgment actions in *Wilton v. Seven Falls Company*.¹¹⁰

105. *Id.* at *5 ("Looking to the potential for duplicative litigation, the Court notes initially that this action . . . presents the same issues and parties present in the Texas forum.").

106. The Supreme Court has identified six factors a district court should weigh in considering whether a defendant has established "exceptional circumstances" warranting abstention: (1) whether either the federal or state court has assumed jurisdiction over any 'res' or property; (2) inconvenience of the federal forum; (3) avoidance of piecemeal litigation; (4) the order in which jurisdiction was obtained; (5) whether state or federal law supplies the rule of decision; and (6) whether the state court proceeding will adequately protect the rights of the parties. *Youell*, 1994 WL 376068, at *3 (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 23–27 (1983); *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 818 (1976)).

107. *Youell*, 1994 WL 376068, at *7; see *Youell v. Exxon Corp.*, 48 F.3d 105, 107 (2d Cir. 1995) ("The district court concluded that abstention was appropriate because (1) a parallel action was already proceeding in Texas state court, (2) states have a strong interest in insurance regulation, and (3) the case was controlled predominantly by state law.").

108. *Youell*, 1994 WL 376068, at *6 (quoting *Great Am. Ins. Co. v. Houston Gen. Ins.*, 735 F. Supp. 581, 586 (S.D.N.Y. 1990)).

109. See *Youell*, 48 F.3d at 113 ("This is a novel issue of federal admiralty law, and a federal court should decide it.").

110. 515 U.S. 277, 288 (1995) ("Consistent with the nonobligatory nature of the remedy, a district court is authorized, in the sound exercise of its

The defendant in *Wilton* filed an action in a Texas state court, which immediately led the plaintiff to file a declaratory action in federal court based on the same factual circumstances.¹¹¹ The Court, relying on the abstention principle laid out in *Brillhart v. Excess Insurance Company of America*,¹¹² held that, “district courts possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act, even when the suit otherwise satisfies [federal] subject matter jurisdictional prerequisites.”¹¹³ The Court continued: “[t]here is . . . nothing automatic or obligatory about the assumption of ‘jurisdiction’ by a federal court’ to hear a declaratory judgment action [The Act] created an opportunity, rather than a duty, to grant a new form of relief to qualifying litigants.”¹¹⁴ By continuously reiterating the broad discretion afforded to district courts in this decision, the Court seemed to recognize the serious consequences that could arise from declaratory actions due to the inverse positioning of the parties.¹¹⁵ The United States Supreme Court vacated the judgment of the Second Circuit in *Youell* and remanded the case for further consideration in light of the Court’s decision in *Wilton*.¹¹⁶

An important aspect of abstention is the relationship between the federal and state interest being decided.¹¹⁷ If the legal issue being addressed is one of general maritime law, the need for uniformity in decision-making is a strong argument in favor of bench trials. Where state law decides the substantive issues of the case, however, the lack of consistency that *could* arise from jury trials does not pose a serious threat to the uniform nature of admiralty law because each jurisdiction could already have

discretion, to stay or to dismiss an action seeking a declaratory judgment before trial or after all arguments have drawn to a close.”).

111. *Id.* at 279–80.

112. 316 U.S. 491, 494 (1942) (“Although the District Court had jurisdiction of the suit under the Federal Declaratory Judgments Act, 28 U.S.C.A. § 400, it was under no compulsion to exercise that jurisdiction.”).

113. *Wilton*, 515 U.S. at 282.

114. *Id.* at 288 (citation omitted).

115. *Id.* at 286–90.

116. *Exxon Corp. v. Youell*, 516 U.S. 801 (1995). The Second Circuit, following remand from the Supreme Court, again reversed the district court’s decision to dismiss the declaratory judgment action. *See Youell v. Exxon Corp.*, 74 F.3d 373, 374 (2d Cir. 1996) (“Even when made under the more discretionary *Brillhart* doctrine, a decision to abstain in this case would constitute an abuse of discretion in light of the important federal question presented.”).

117. *See Youell v. Exxon Corp.*, 48 F.3d 105, 113 (2d Cir. 1995).

significantly different positions on certain issues. The typical argument raised by parties opposed to abstention is the novelty of a federal issue and the need for resolution of that issue by a federal court.¹¹⁸ If the question posed in the declaratory action does in fact raise a novel question of federal law, previous federal court decisions have declared that is, in itself, justifiable grounds for denying a request for abstention.¹¹⁹

Marine insurance, however, is one area of admiralty and maritime law that has been committed to the legislatures and courts of the individual states.¹²⁰ Because of this delegation of authority to the states over this specific area of maritime law, it would be very difficult for a party opposing abstention to argue that the declaratory action raises an issue that should or must be decided by a federal district court. Although abstention is probably not what the defendant-insured is seeking, as the party would probably bring the action “at law” in a federal district court anyway, the right to a jury trial in actions involving declaratory judgments is significantly advanced by the broad discretion federal courts have in denying to hear the case.

E. *Bench Trials v. Jury Trials: An Ulterior Motive and the Race to the Courthouse*

When moving to strike a defendant-insured’s demand for a jury trial, plaintiff-insurers typically argue that traditional admiralty customs should be adhered to, and that these customs prevail over Seventh Amendment assertions. It is worth questioning, however, what the underlying reason is behind the enormous amount of time and money spent by large insurance companies to have these cases tried by the bench. It could be argued that objective, neutral judges

118. *See id.* at 114.

119. *See id.* at 111–12 (“[A] federal question of first impression must all but demand that the federal court hear the case.”); *see also* *Colorado River Water Conservation Dist. v. United States*, 824 U.S. 800, 818 (1975) (“[T]he circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration are considerably more limited than the circumstances appropriate for abstention.”).

120. *See Wilburn Boat Co. v. Fireman’s Fund Ins. Co.*, 348 U.S. 310, 313, 321 (1954) (“In the field of maritime contracts as in that of maritime torts, the National Government has left much regulatory power in the States We, like Congress, leave the regulation of marine insurance where it has been—with the States.”).

are less likely to find liability on behalf of the insurance companies, whereas a jury is more likely to align themselves with the aggrieved plaintiff based on the factual circumstances of the case and rule in their favor. Moreover, once liability has been established, it could also be argued that juries are more likely to award a higher amount in damages based on emotion, compared to precise damages awarded by a more conservative bench. Arguably, it is for these collateral reasons that insurance companies have vigorously fought to defend their preference for bench trials in admiralty cases when using declaratory judgment actions.

If the United States Supreme Court does decide to take this issue up on appeal in a later case, and ultimately concludes that a defendant-insured does not have a Seventh Amendment right to a jury trial, the repercussions of such a ruling could significantly impact the secondary, or litigation related, conduct of the two parties. If the defendant-insured wishes to have a jury trial on a breach of contract claim against the plaintiff-insurer, the policyholder would have to file the cause of action immediately in order to prevent the insurance company from filing a declaratory action. Even if the insured party reaches the state court before the insurance company files a declaratory judgment action, the federal court hearing the declaratory action could decide the issue should be resolved by the federal court without a jury, and the federal court could stay the state court proceedings where the defendant-insured would have a right to a jury trial. The result of such a decision would be company guidelines among marine insurance firms to seek declaratory relief once notified that a potential claim exists. This “race to the courthouse” effect, inadequately dismissed by the court in *St. Paul Fire & Marine Insurance Company v. Holiday Fair, Inc.*, is a strong policy justification for permitting the use of a jury trial in declaratory actions brought “in admiralty.”¹²¹

IV. CONCLUSION

The founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary. Those who passionately advocated the right to a

121. No. 94 Civ. 5707 (TPG), 1996 WL 148350, at *2 (S.D.N.Y. Apr. 2, 1996).

civil jury trial did not do so because they considered the jury a familiar procedural device that should be continued; the concerns for the institution of jury trial that led to the passages of the Declaration of Independence and to the Seventh Amendment were not animated by a belief that use of juries would lead to more efficient judicial administration. Trial by a jury of laymen rather than by the sovereign's judges was important to the founders because juries represent the layman's common sense, the "passional elements in our nature," and thus keep the administration of law in accord with the wishes and feelings of the community.¹²²

It is worth noting two well-accepted and fundamental principles of admiralty subject-matter jurisdiction: there is no Seventh Amendment constitutional right to a jury trial in cases tried "in admiralty,"¹²³ and there is absolutely no constitutional prohibition *against* holding a jury trial in cases tried "in admiralty."¹²⁴ It is probably for this reason that this specific issue has developed into a controversial topic of procedural law. As mentioned earlier, the historical significance of bench trials in courts of admiralty cannot go unrecognized. Bench trials are essential to maintaining the uniformity of federal law, and they prevent uninformed juries from making decisions on complex and novel issues of maritime law.¹²⁵ The situation presented, however, is unique and includes issues that go well beyond the traditional cases tried in admiralty courts.

Once again, the two competing interests asserted are the defendant-insured's Seventh Amendment right to a jury trial and the plaintiff-insurer's preference for a bench trial. Although the defendant-insured, in this case the vessel owner, does not have grounds for asserting that there is a specific constitutional right in courts of admiralty,¹²⁶ courts must take into consideration that without the declaratory judgment vehicle, the parties in the hypothetical would be properly aligned and the insured party *would*

122. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 343–44 (1979) (Rehnquist, J., dissenting) (J. William H. Rehnquist stressing the significance of the civil jury trial) (citation omitted).

123. *See Waring v. Clarke*, 46 U.S. 441, 461 (1847).

124. *See Fitzgerald v. U.S. Lines Co.*, 374 U.S. 16, 20 (1963).

125. *See Goldman & Goldman*, *supra* note 72, at 139–40.

126. *See Waring*, 46 U.S. at 461.

have that Seventh Amendment right to a jury trial in a federal district court “at law.”¹²⁷ It has already been decided that the Declaratory Judgment Act *cannot* displace parties of their constitutional rights,¹²⁸ and courts must apply these historic cases in the admiralty context to prevent parties from continually being stripped of their right set forth in the “Saving-to-Suitors” clause of 28 U.S.C. § 1333(1).

In *Sphere Drake Insurance PLC v. J. Shree Corporation*, the United States District Court for the Southern District of New York perfectly described the significance of the right to a trial by jury when denying a plaintiff-insurer’s motion to strike the defendant-insured’s demand for a jury trial: “[t]here is, perhaps, no concept that is more fundamental to the American judicial system than the right to trial by jury.”¹²⁹ Courts addressing this particular issue¹³⁰ should follow the same lead, recognizing a narrow exception¹³¹ for cases brought by a plaintiff-insurer “in admiralty” under the Declaratory Judgment Act, ultimately granting a defendant-insured’s demand for a jury trial while allowing the case to proceed in a federal district court.

127. See U.S. CONST. amend. VII (“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . .”).

128. See *Aetna Cas. & Sur. Co. v. Quarles*, 92 F.2d 321, 325 (4th Cir. 1937) (“[I]t is clear that the right of jury trial in what is essentially an action at law may not be denied a litigant merely because his adversary has asked that the controversy be determined under the declaratory procedure.”).

129. 184 F.R.D. 258, 261 (S.D.N.Y. 1999).

130. This issue is limited to this proposed exception to declaratory judgment actions, not the broader “hybrid cases” that include multiple claims for damages with independent jurisdictional bases.

131. A broader exception would address the right to a jury trial in “hybrid cases,” and that issue does not have to be resolved in order to create the proposed exception set forth in this Comment.