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NOVA SCARRED:
THE IMPLICATIONS OF AN INTERNATIONAL FERRY'S FLOATING JURISDICTION
ON THE LAW OF THE SEA, THE LANDS, AND THE FLAG

*Stephen Koerting**

I. INTRODUCTION

On May 15, 2014, Canadians, Mainers, and tourists were once again able to step on-board a ship and be in a new country when the boat next docked.¹ Passengers are able to set sail from Portland, Maine to Yarmouth, Nova Scotia, and vice versa, either to return home, set off for a one-day excursion, or to begin a longer vacation in a new land.² More than four years after its predecessor shut down its operations, this service route returned under new management in the form of the Nova Star.³ Labeled as both a “ferry” as well as a “cruise ship,” the Nova Star operated a seasonal daily “cruise ferry service” making roundtrip crossings between Nova Scotia and Maine.⁴

Despite a welcomed return and strong passenger reviews⁵, many questions remain for the cruise ferry service. The ferry was able to return to service after the Nova Scotia provincial government gave a significant subsidy prior to – and during – the 2014 maiden season.⁶ However, the Nova Scotia government has since looked to Maine’s government to contribute to the service as well and there is no guarantee that the Canadian subsidy will remain when the ferry looks to

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¹ *Nova Star Arrives in North America to Hundreds Cheering from Shore!*, NOVA STAR CRUISES (Apr. 15, 2014), <http://novastarcruises.com/news/nova-star-arrives-in-north-america-to-hundreds-cheering-from-shore/> [hereinafter *Nova Star Cruises*, *Nova Star Arrives*].

² Jayne Clark, *Ferry Tale: Savor Summer in Nova Scotia*, USA TODAY, Jul. 18, 2014, <http://www.usatoday.com/story/travel/destinations/2014/07/17/nova-star-ferry-maine-nova-scotia/12782937/> [hereinafter *Clark*, *Ferry Tale*].

³ Darren Fishell, *Nova Scotia Official Seeks Meeting with LePage over \$5 Million Line of Credit for Nova Scotia Cruises Ferry Services*, BANGOR DAILY NEWS, Aug. 22, 2014, <http://bangordailynews.com/2014/08/22/news/portland/nova-scotia-official-seeks-meeting-with-lepage-over-5-million-line-of-credit-for-ferry/?ref=search> [hereinafter *Fishell*, *Official Seeks Meeting*].

⁴ *It's Official*, NOVA STAR CRUISES (Nov. 12, 2013), <http://novastarcruises.com/news/its-official/> [hereinafter *Nova Star Cruises*, *It's Official*].

⁵ *Nova Star Cruises Shows Continued Growth from Strong Passenger Reviews*, NOVA STAR CRUISES (Aug. 15, 2014), <http://novastarcruises.com/news/nova-star-cruises-shows-continued-growth-from-strong-passenger-reviews/>.

⁶ Darren Fishell, *Portland-Nova Scotia Ferry Cuts its First Season Short by 3 Weeks, Runs to Stop Oct. 13*, BANGOR DAILY NEWS, Sep. 8, 2014, <http://bangordailynews.com/2014/09/08/business/portland-nova-scotia-ferry-cuts-its-first-season-short-by-3-weeks-runs-to-stop-oct-13/?ref=search> [hereinafter *Fishell*, *Ferry Cuts its First Season Short*]; *Fishell*, *Official Seeks Meeting*, *supra* note 3.

return each season.⁷ If this were to be the case, then the Nova Star could possibly collapse just as its predecessor did in 2009.⁸

Regardless of whether the Nova Star is labeled as a “ferry” or “cruise” or a hybrid of the two, legal questions remain concerning application of law and jurisdiction to a foreign vessel traveling daily between two foreign ports during the summer months. The law forming the backdrop to possible legal claims is shaped by general maritime law, the laws of a vessel’s origin, state regulations, and a United States federal statute originating in 1920. The Merchant Marine Act of 1920, better known as the Jones Act, regulates maritime law and commerce in United States ports and between United States and foreign ports, and further provides legal claims for workers at sea.⁹ As will be discussed further, the law that an employee or passenger falls under changes fluidly with uncertainty based upon several factors, including their role on the vessel, the location of circumstance that gave rise to their claim, and the origin of the vessel. These sometimes overlapping and sometimes conflicting laws already have an impact on how vessels like the Nova Star operate and could have an even further impact on the pending life of the Nova Star, including implications on wages, on-board injury, and liability.

This comment will address the struggles facing an international ferry in northeast North America, the issue of legal application of jurisdictional law touched by an international ferry, and the ferry’s likelihood of success. Part II will provide a background of international ferries, particularly those that have serviced the coastline between Canada and Maine. It will then discuss the revival of the Nova Star and its current state, and the international relations between the United States and Canada as well as Maine and Nova Scotia. Part III will delve deeper into the current state of the law surrounding a round-trip maritime route between Canadian and U.S. ports and the legal remedies available for those aboard the ferry. Part III will further analyze the factor determination employed by the courts and discuss whether the remedies would be available for a ferry cruise service like the Nova Star, given the competing laws at hand. Part IV will conclude with a recommendation for clearer and more consistent application of maritime choice of law determinations to those employed on international ferries, made available through either judicial or legislative action.

II. INTERNATIONAL FERRIES

One way to travel from one country to another, provided that both the point of origin and destination have access to ports, is by boat. Traveling internationally by ferry may take more time, but it allows the traveler to bring a vehicle with them, without actually driving. It can also provide for a more relaxing and enjoyable trip, except for those without sea legs or a stomach for the waves.

⁷ Darren Fishell, *Nova Scotia Commits Another \$5 Million to Nova Star Ferry Service as LePage Promises Aid Bill*, BANGOR DAILY NEWS, Oct. 15, 2014, <http://bangordailynews.com/2014/10/15/business/nova-scotia-commits-another-5-million-to-nova-star-ferry-service-as-lepage-promises-aid-bill/?ref=search> [hereinafter Fishell, *Nova Scotia Commits Another \$5 Million*].

⁸ Tom Bell, *Nova Star Ferry Finds Route for Service This Winter, Then Will Return for Second Season*, PORTLAND PRESS HERALD, Sep. 12, 2014, <http://www.pressherald.com/2014/09/11/nova-star-ferry-set-for-second-season-after-running-winter-route/> [hereinafter Bell, *Nova Star Ferry Finds Route*].

⁹ Merchant Marine Act of 1920 (Jones Act), 46 U.S.C. § 50101 et seq. (2006).

More modern ferries provide passengers with on-board dining, drinks, entertainment, amenities, and cabins to retire to for solidarity or at the end of the day. Several international ferry routes exist in the United States providing trips to and from Canada, including routes in the Pacific Northwest, across the Great Lakes, and traveling the Atlantic Ocean across the Gulf of Maine.¹⁰

A. *Maine-Canada Corridor*

One of the traditionally more active international ferry routes from U.S. ports involves travel to and from Maine, United States and Nova Scotia, Canada. Ferries have serviced the two countries through the Gulf of Maine since the late 19th century.¹¹ Although the corridor has seen ferries pass through between Maine and Nova Scotia for the majority of this time, the ferries themselves have lacked longevity and consistency.¹² Over the past century, several ferries have linked New England and Nova Scotia from both Bar Harbor and Portland in Maine to Yarmouth, Nova Scotia.¹³ At times, ferries ran to both Maine ports simultaneously.¹⁴ Ferry routes were managed by the Canadian National Railroad and Lion Ferry in the second half of the 20th century.¹⁵ Lion Ferry's service was sold and renamed twice – first to Prince of Fundy Cruises in 1982 and then to Scotia Prince Cruises in 2000.¹⁶ Canadian National Railroad's service was also sold or renamed several times – first to Canadian National Marine in 1977, then to Marine Atlantic in 1997, and finally to Bay Ferries in 1997.¹⁷ Scotia Prince Cruises closed operations completely after the 2004 season when mold was discovered in Portland's International Marine Terminal and its lease was not renewed.¹⁸ Bay Ferries operated The Cat until it ended all ferry operations between the Gulf of Maine ports in 2009 after its subsidy from the Nova Scotian government that had been in effect for four years was discontinued.¹⁹ No ferry serviced the ports between Maine and Canada from 2009 to 2014.²⁰

B. *Nova Star Revival*

¹⁰ INTERNATIONAL FERRIES, http://www.travellerspoint.com/guide/International_ferries/ (last visited Apr. 18, 2015).

¹¹ BLUENOSE FERRY – A CHRONOLOGICAL HISTORY OF EVENTS, <http://yarmouthshipping.com/index.html> (last visited Oct. 18, 2015) [hereinafter BLUENOSE FERRY].

¹² MV NOVA STAR, http://en.wikipedia.org/wiki/MV_Nova_Star (last visited Apr. 16, 2015) [hereinafter MV NOVA STAR].

¹³ BLUENOSE FERRY, *supra* note 11.

¹⁴ *Id.*

¹⁵ MV NOVA STAR, *supra* note 12.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Bill Trotter, *Bay Ferries Ltd. Ends Cat Service to Maine*, BANGOR DAILY NEWS, Jan. 30, 2011, <http://bangordailynews.com/2009/12/18/business/bay-ferries-ltd-ends-cat-service-to-maine/>.

²⁰ Bell, *Nova Star Ferry Finds Route*, *supra* note 8.

On May 15, 2014, a ferry finally returned to service between Nova Scotia and Maine in the form of the Nova Star.²¹ The vessel was advertised as a “brand new, state-of-the-art cruise ferry vessel [that] will accommodate 1,200 passengers and provide a unique and entertaining travel experience.”²² The classic capabilities common with ferry services are present on the Nova Star, allowing passengers to walk on and off, bring a car, motorcycle, bus, or other vehicle, and take the whole family for the trip, including a pet.²³ The cruise amenities of the trip are present in the vessel’s 162 private cabins, full-service spa, casino, live entertainment, buffet dining, gym, bars, and art gallery.²⁴ Passengers can treat the ferry service as a 10-hour one-way voyage or a 22-hour “mini-cruise.”²⁵

Despite all it has to offer, the Nova Star had a difficult maiden season, ending the sailing season three weeks early due to a lack of ticket sales.²⁶ Additionally, the cruise ferry company spent the entire \$21 million subsidy from the Nova Scotian government just two months into the first season – the amount had originally been committed over seven years.²⁷

Sensing a revitalized Gulf of Maine ferry market, Nova Star may also begin to feel pressure from competition in the form of an alternative ferry service along the same route.²⁸ The new venture would use an old vessel that holds about 700 passengers and would be nearly half the price of the Nova Star.²⁹ In October 2015, a Federal Magistrate Judge ordered a warrant for the seizure of the Nova Star for not paying nearly \$200,000 to Portland Pilots Inc.³⁰

C. *International Relations and Complications*

Despite the cruise ferry’s route between just the two ports, the international reach of the Nova Star is far beyond North America. The vessel was built in Singapore³¹ and Nova Star Cruises

²¹ Nova Star Cruises, *Nova Star Arrives*, *supra* note 1, ABOUT NOVA STAR CRUISES.

²² *Id.*

²³ Judith Fein, *Brand-new Ride on Nova Scotia Route*, BOSTON GLOBE, May 3, 2014, <http://www.bostonglobe.com/lifestyle/travel/2014/05/03/nova-star-time-shine/vnntPGHXrl8bZgbkSB2ceL/story.html>.

²⁴ *Id.*

²⁵ Clark, *Ferry Tale*, *supra* note 2.

²⁶ Aly Thomson, *Nova Scotia-Maine Ferry Service to End Nearly Three Weeks Earlier Than Planned; Nova Scotia-Maine Ferry Service to End Early*, THE CANADIAN PRESS, Sep. 8, 2014. (“Last November, the company said it had hoped to reach 100,000 passengers by the end of this season. The total number for the season is currently at about 45,000.”).

²⁷ *Id.*

²⁸ Tom Bell, *Group Secures Ship for Alternative Portland-Nova Scotia Ferry*, PORTLAND PRESS HERALD, Nov. 7, 2014, <http://www.pressherald.com/2014/11/07/group-secures-ship-for-alternative-portland-nova-scotia-ferry/>.

²⁹ Darren Fishell, *Ferry Operator Resurrects Proposal to Challenge Nova Star for Maine-Nova Scotia Route*, BANGOR DAILY NEWS, Oct. 20, 2014, <http://bangordailynews.com/2014/10/20/business/ferry-operator-resurrects-proposal-to-challenge-nova-star-for-maine-nova-scotia-route/?ref=search>.

³⁰ Stephen Betts, *Court Orders Seizure of Nova Star Ferry*, BANGOR DAILY NEWS, Oct. 31, 2015, <http://bangordailynews.com/2015/10/31/news/portland/court-orders-seizure-of-nova-star-ferry/>.

³¹ Nova Star Cruises, *Nova Star Arrives*, *supra* note 1.

is still leasing the ship from Singapore Technologies Marine Ltd.³² Furthermore, the Nova Star sails under the flag of the Bahamas.³³

As to the two nations with daily contact with the Nova Star, both the United States and Canada have high hopes about the partnership created by the ferry route. The Nova Scotian Minister of Economic and Rural Development and Tourism stated, “Our government promised we’d do all we could to get a ferry service back in Yarmouth knowing it would create opportunity for our province. Once again, Yarmouth will become a gateway for tourists, and the ferry will bring together people from our two nations.”³⁴ From the Canadian province’s point of view, the ferry service is considered “an important investment for reviving the tourism industry in southwest Nova Scotia.”³⁵ The ferry cruise also brings several economic benefits to the Maine port city in the form of tourism and supply purchases.³⁶

However, the international relationship has not been entirely positive. Although communication between the countries has been frequent, cooperation has been less frequent. One area where the governments of the two international states and provinces have been greatly involved with each other is the consideration of government subsidies. When the Nova Star’s arrival was first announced, Nova Scotia had agreed to provide Nova Star Cruises with up to \$21 million of financial support to be paid over seven years to assist in re-establishment of the ferry line.³⁷ However, the entire \$21 million was provided to Nova Star Cruises, and spent, in just the maiden year of the ferry’s operations.³⁸ Nova Scotia then provided another \$5 million before the second season of sailing had even begun.³⁹ This left the cruise line and the Nova Scotian government looking to Maine for additional financial assistance.⁴⁰ Maine Governor Paul LePage stated that he would assist Nova Star in securing a \$5 million line of credit from a United States institution,⁴¹ and further assured that he would draft legislation to provide the \$5 million line of credit to the ferry service.⁴² Neither was completed.⁴³ Without assistance or legislation from both

³² Bell, *Nova Star Ferry Finds Route*, *supra* note 8.

³³ Darren Fishell, *Is the Nova Star Ferry Sailing South for the Winter?*, BANGOR DAILY NEWS, Oct. 24, 2014, <http://bangordailynews.com/2014/10/15/the-point/is-the-nova-star-ferry-sailing-south-for-the-winter/?ref=search> [hereinafter Fishell, *Sailing South for the Winter?*]. (Most ships operating in the United States are flagged in foreign countries to allow the ship to fall under that country’s less demanding regulations. The Bahamas is popular for registering cruise ships.)

³⁴ Nova Star Cruises, *Nova Star Arrives*, *supra* note 1.

³⁵ Bell, *Nova Star Ferry Finds Route*, *supra* note 8.

³⁶ *Id.* (“[I]t also helps the Portland area because the ferry’s passengers spend money in the city’s restaurants and hotels, and most of its supplies, such as food, fuel and linen services, are purchased in Portland.”).

³⁷ Nova Star Cruises, *It’s Official*, *supra* note 4.

³⁸ Bell, *Nova Star Ferry Finds Route*, *supra* note 8.

³⁹ Fishell, *Nova Scotia Commits Another \$5 Million*, *supra* note 7.

⁴⁰ *Id.*; Bell, *Nova Star Ferry Finds Route*, *supra* note 8.

⁴¹ Fishell, *Ferry Cuts its First Season Short*, *supra* note 6; Fishell, *Official Seeks Meeting*, *supra* note 3.

⁴² Fishell, *Nova Scotia Commits Another \$5 Million*, *supra* note 7.

⁴³ Darren Fishell, *Winter Plans for Nova Star Change as Ferry Staying in Nova Scotia, Not Heading to Florida*, Bangor Daily News, Nov. 14, 2014, <http://bangordailynews.com/2014/11/14/business/winter-plans-for-nova-star-change-ferry-shipping-out-to-nova-scotia-not-florida/> [hereinafter Fishell, *Winter Plans for Nova Star Change*].

governments, international relations could falter and the Nova Star could have the same fate as its predecessor, the Cat, which was forced to cancel its service after the Nova Scotian subsidy was canceled.⁴⁴ If the Nova Star is to stay afloat, interesting questions of law and jurisdiction apply to its service.

III. CURRENT STATE OF THE LAW

With a cruise ferry that is constantly transporting passengers on the sea between Nova Scotia and Maine, porting in each for two hours in between, what legal actions and remedies are available to those on-board? If a remedy is available, we then must answer what law (federal or state, American or Canadian, or other maritime law) should control.

A. Available Remedies

If one is harmed on an international ferry, such as the Nova Star, they may be entitled to a claim and relief under general maritime law. For maritime law to be available to a claimant, the wrong must occur on or over navigable waters and the harm must “bear a significant relationship to traditional maritime activity.”⁴⁵ The traditional remedies available to seamen under general maritime law are maintenance and cure and damages for a vessel’s unseaworthiness.⁴⁶ Seamen are also afforded a cause of action for negligence under the Jones Act.⁴⁷ Issues have also arisen in cases regarding worker’s compensation and wage rates for seamen. We shall take each of these remedies in turn.

Maintenance and cure is a claim concerning “the vessel owner’s obligation to provide food, lodging, and medical services to a seaman injured while serving the ship.”⁴⁸ This claim functions similarly to that of workers’ compensation, but is “superior to most workers’ compensation regimes because of its lack of limitations.”⁴⁹ Maintenance and cure is a preferred claim “in that the employer funds the injured seaman’s recovery, without the seaman having to prove fault.”⁵⁰ Further, the amount of compensation owed to a seaman plaintiff is not fixed, and the employer’s payment duties may continue for the “lifetime of the injured seaman.”⁵¹

Unseaworthiness is a claim “based on the vessel owner’s duty to ensure that the vessel is reasonably fit to be at sea.”⁵² The United States Supreme Court defined “unseaworthiness” as a

⁴⁴ See Bell, *Nova Star Ferry Finds Route*, *supra* note 8.

⁴⁵ *Executive Jet Aviation, Inc. vs. City of Cleveland*, 409 U.S. 249, 268 (1972).

⁴⁶ Shailendra U. Kulkarni, Comment, *The Seaman Status Situation: Historical Perspectives and Modern Movements in the U.S. Remedial Regime*, 31 TUL. MAR. L. J. 121, 122 (2006) [hereinafter Kulkarni].

⁴⁷ *Id.*; 46 U.S.C. §30104 (2006 & Supp. II 2008).

⁴⁸ *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 441 (2001).

⁴⁹ Kulkarni, *supra* note 46, at 123.

⁵⁰ Timothy E. Steigelman, *The Jones Act Fish Farmer*, 33 HAWAII L. REV. 223, 231 n. 64 (2010). [hereinafter Steigelman]; see also *Napier v. F/V Deesie, Inc.*, 454 F.3d 61, 64 n.1 (1st Cir. 2006).

⁵¹ Kulkarni, *supra* note 46, at 123 (quoting Michael A. Orlando, *Supreme Court Rules a Dredge Is a Jones Act Vessel*, Int’l Risk Mgmt. Inst., Mar 2005, <http://www.irmi.com/articles/expert-commentary/supreme-court-rules-a-dredge-is-a-jones-act-vessel>).

⁵² *Lewis*, 531 U.S. at 441.

separate cause of action and unique from a claim under the Jones Act.⁵³ The maritime claim puts an absolute duty upon ship-owners to furnish a "seaworthy" ship and compensate seamen for injuries caused by any defect in a vessel or her appurtenant appliances or equipment.⁵⁴ Furnishing a seaworthy ship does not require a ship-owner to provide an accident-free ship, but rather the duty is "to furnish a vessel and appurtenances reasonably fit for their intended use."⁵⁵ The ship-owner's duty extends to all situations aboard the ship, whether transient or permanent, developing before the ship leaves her home port or at sea.⁵⁶ The absolute duty is such that even a "temporary and unforeseeable malfunction or failure of a piece of equipment . . . is sufficient to establish an unseaworthy condition."⁵⁷ Unseaworthiness is a preferred claim "because it provides compensation without requiring a plaintiff to prove negligence."⁵⁸ For liability to exist, a plaintiff must instead establish the existence of an unseaworthy condition on board the vessel and then demonstrate the unseaworthy condition to be the proximate cause of his injury.⁵⁹

A Jones Act claim is an *in personam* action for a seaman who suffers injury in the course of employment due to negligence of his employer, the vessel owner, or crew members.⁶⁰ The claim provides seamen with a cause of action against employers when "an employer's failure to exercise reasonable care causes a subsequent injury even where the employer's negligence did not render the ship unseaworthy."⁶¹ The Jones Act was enacted by Congress in 1920 and is part of the "coastwise laws."⁶² The purpose of these laws is to "protect the American shipping industry already engaged in the coastwise trade, to provide work for American shipyards, and to improve and enhance the American Merchant Marine."⁶³ The coastwise laws are comprised of several statutes, codified in Chapter 551 of Title 46 of the United States Code, that provide legislation on various subjects relating to transportation, shipping, and dredging at sea.⁶⁴ The specific statutes relevant to international ferry cruises, such as the *Nova Star*, are the Transportation of Passengers

⁵³ *Ferrara v. A. & V. Fishing, Inc.*, 99 F.3d 449 at 452 (1st Cir. 1996) (quoting *Usner v. Luckenbach Overseas Corp.*, 400 U.S. 494, 498 (1971)).

⁵⁴ *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 548-49 (1960); *Hubbard v. Faros Fisheries, Inc.*, 626 F.2d 196, 199 (1st Cir. 1980).

⁵⁵ *Mitchell*, 362 U.S. at 550.

⁵⁶ *Id.* at 549-50.

⁵⁷ *Ferrara*, 99 F.3d at 453 (quoting *Hubbard*, 626 F.2d at 199).

⁵⁸ *Steigelman*, *supra* note 50; *see also Napier v. F/V Deesie, Inc.*, 454 F.3d 61, 64 n.1 (1st Cir. 2006) (finding that *Napier* presented no evidence to suggest that the presence of aspirin could make a vessel unseaworthy).

⁵⁹ *Ferrara*, 99 F.3d at 453. (Proximate cause requires that the unseaworthy condition is the "cause which in the natural and continuous sequence, unbroken by any efficient intervening cause, produces the results complained of, and without which it would not have occurred."); *Napier*, 454 F.3d at 61 (quoting *Brophy v. Lavigne*, 801 F.2d 521, 524 (1st Cir. 1986)).

⁶⁰ *Ferrara*, 99 F.3d at 453.

⁶¹ *Id.* (citing *Toucet v. Maritime Overseas Corp.*, 991 F.2d 5, 10 (1st Cir. 1993)).

⁶² The "Coastwise Laws" are a collection of statutes that govern trade and navigation in U.S. coastal waters and require that trade between U.S. ports be conducted by U.S.-built and U.S.-owned vessels. *Furie Operating Alaska, LLC v. U.S. Dep't of Homeland Sec.*, 2014 U.S. Dist. LEXIS 40916, at *10 (D. Alaska 2014).

⁶³ *Marine Carriers Corp. v. Fowler*, 429 F.2d 702, 708 (2d Cir. 1970).

⁶⁴ *Furie Operating Alaska, LLC*, 2014 U.S. Dist. LEXIS 40916, at *10-12.

in Foreign Vessels Act⁶⁵ and the Jones Act.⁶⁶ For the purposes of this section, we shall continue to examine the Jones Act, which provides in part:

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.⁶⁷

B. Application of the Law

With a cruise ferry traveling through several jurisdictions while sailing on the high seas daily, the issue arises of which law applies and which is controlling. Will a passenger or employee aboard the *Nova Star* qualify for treatment under general maritime law remedies of the Jones Act or will state or federal law of the port land (for lack of a better term) control? Will American or Canadian regulations even apply or will the law of some other jurisdiction while at sea have power over any claim?

If possible, one will find several significant advantages from claims arising under the Jones Act.⁶⁸ First, plaintiffs under the Jones Act have remedial recourse for “injuries incurred in the course of their employment aboard a vessel due to the negligence of their employers.”⁶⁹ Under the Jones Act, this negligence may be however slight if it played a part in producing the plaintiff’s injury.⁷⁰ “The burden of proving causation under the Jones Act is simpler for the plaintiff and has been referred to as ‘very light’ or ‘featherweight.’”⁷¹ Second, qualification under the Jones Act also triggers the availability of general maritime law remedies discussed above in unseaworthiness and maintenance and cure.⁷² Liability under a claim of unseaworthiness is advantageous because it is strict and non-delegable.⁷³ A claim for maintenance and cure is superior to its land-based analogous remedy of worker’s compensation because of its lack of limitations.⁷⁴ The remedy available for a successful maintenance and cure claim is an obligatory amount which is not fixed and can, in theory, continue for the lifetime of the injured plaintiff.⁷⁵ Third, plaintiffs with

⁶⁵ The Transportation of Passengers in Foreign Vessels Act requires passengers sailing between United States ports to be carried in American vessels. 46 U.S.C. § 55103 (2013). A violation of the Act may result in a \$300 penalty per passenger transported and landed. *Id.* § 55103(b).

⁶⁶ *Furie Operating Alaska, LLC.*, 2014 U.S. Dist. LEXIS 40916, at *12.

⁶⁷ 46 U.S.C. § 688 (2006).

⁶⁸ Kulkarni, *supra* note 46, at 122-123.

⁶⁹ Michael A. Orlando, *Supreme Court Rules a Dredge Is a Jones Act Vessel*, INTERNATIONAL RISK MANAGEMENT INST. (2005), <http://www.irmi.com/Expert/Articles/2005/Orlando03.aspx> (last visited November 29, 2014) [hereinafter Orlando].

⁷⁰ *Zapata Haynie Corp. v Arthur*, 980 F.2d 287, 289 (5th Cir. 1992).

⁷¹ *Id.*

⁷² Orlando, *supra* note 69.

⁷³ *Id.*

⁷⁴ Kulkarni, *supra* note 46, at 123.

⁷⁵ Orlando, *supra* note 69.

qualifying Jones Act claims are given the opportunity for a jury trial.⁷⁶ Jones Act plaintiffs may find jury trials beneficial due to the possibility of large jury verdicts for damages, although punitive damages are not available.⁷⁷

If the Jones Act were not to apply for one onboard a ferry cruise like the *Nova Star*, then what other law could possibly control a plaintiff's claim? One possibility is state law – particularly that of Maine in the case of the *Nova Star*. However, similar to Congressional legislation, there exists a presumption against the extraterritorial application of a state's statutes unless the legislation in question has explicitly expressed in its language an unambiguous intention to apply in such a way.⁷⁸ The issue is further complicated by a jurisdictional overlap applying to remedies available to injured workers known as the “twilight zone” where state and federal laws each seem to apply and must be determined on a case-by-case basis.⁷⁹ Another possibility of controlling law is a maritime concept known as “the law of the flag.”⁸⁰ This theory “holds that a ship is constructively a floating part of the flag-state, that it is deemed to be part of the territory whose flag it flies and that the state has jurisdiction over offenses committed aboard the ship.”⁸¹ A relatively recent First Circuit case originating in Maine interestingly held that the law of the flag, rather than state law, governed an employee's wage issue.⁸² The vessel in that case – the *Scotia Prince*, a predecessor to the *Nova Star* – was “at all relevant times . . . registered in Panama.”⁸³

1. Jones Act Claimant

Two preliminary requirements must be met to qualify as a Jones Act claimant: the claimant must be a “seaman,”⁸⁴ and there must be an “employment-related connection to a vessel in navigation.”⁸⁵ The same requirements are necessary for a claimant to proceed with a maritime

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *See, e.g.,* *McCulloch v. Sociedad Nacional*, 372 U.S. 10, 21-22 (1963) (noting that “for us to sanction the exercise of local sovereignty under such conditions in this delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed”); *Union Underwear Co. v. Barnhart*, 50 S.W.3d 188, 190 (Ky. 2001) (“We begin our analysis with the well-established presumption against extraterritorial operation of statutes. That is, unless a contrary intent appears within the language of the statute, we presume that the statute is meant to apply only within the territorial boundaries of the [relevant state].”).

⁷⁹ *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 718 (1980) (quoting *Davis v. Dep't of Labor*, 317 U.S. 249, 256 (1942)).

⁸⁰ *See McCulloch*, 372 U.S. at 21. (The Law of the flag has been described by the United States Supreme Court as a “well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship.”)

⁸¹ *U.S. v. Hayes*, 653 F.2d 8, 15 (1st Cir. 1981).

⁸² *Rathje v. Scotia Prince Cruises*, Civil No. 01-123-P-DMC, 2001 U.S. Dist. LEXIS 21266, at *28 (D. Me. Dec. 20, 2001) (holding that work performed by “foreign seamen employed by a foreign employer to staff a foreign-flag ship that happens to be operated, at least in part, from that state's ports” could not be subject to Maine wage law since they did not work in Maine).

⁸³ *Id.* at 8.

⁸⁴ 46 U.S.C. § 30104 (2006 & Supp. II 2008).

⁸⁵ *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 355 (1991).

action of unseaworthiness or maintenance and cure.⁸⁶ What each of these terms and phrases means requires a closer examination.

a. "Seaman"

First, "seaman" status is defined separately in the United States Code as a "master or member of a crew of any vessel."⁸⁷ To attain seaman status, an employee's duties must "contribute to the function of the vessel or to the accomplishment of its mission."⁸⁸ The key to seaman status is therefore an employment-related connection to a vessel in navigation.⁸⁹ "It is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, but a seaman must be doing the ship's work."⁹⁰ This preliminary requirement has been determined by the Supreme Court to be quite broad, allowing "[a]ll who work at sea in the service of a ship" to be eligible for seaman status.⁹¹ This broad language seems to use a wide brush to touch all on-board employees of the *Nova Star*, regardless of whether they are the captain, a worker in the engine room, a chef in the restaurant, or a dealer in the casino. One final requirement demands that the employee must spend about 30 percent of his or her time or more in the service of a vessel in navigation.⁹² So long as the claimant is on the ship for even half of the voyages between Nova Scotia and Maine, they will likely have no problem meeting this prerequisite.

b. "Employment-related connection to a vessel in navigation"

Second, to fall under the Jones Act, the seaman must have an employment-related connection to a vessel in navigation.⁹³ This second requirement contains within it two further conditions: (1) "a vessel," and (2) "in navigation."

"Vessel" is defined in 1 U.S.C.S. § 3 as including "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water."⁹⁴ When the purpose for which a watercraft is constructed is evaluated, several factors are considered.⁹⁵ These factors, outlined in *Holmes v. Atl. Sounding Co.*, include:

- (1) whether the owner assembled or constructed the craft to transport passengers, cargo, or equipment across navigable waters;
- (2) whether the craft is engaged in that service;
- (3) whether the owner intended to move the craft on a regular basis;
- (4) the length of time that the craft has remained stationary; and
- (5) the existence of other "objective vessel features," such as: (a) navigational aids; (b) lifeboats and

⁸⁶ Steigelman, *supra* note 50, at 232.

⁸⁷ 33 U.S.C. § 902(3)(G) (2006 & Supp. III 2009).

⁸⁸ *Wilander*, 498 U.S. at 355 (quoting *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959)).

⁸⁹ *Id.* (holding that "a necessary element of the connection is that a seaman perform the work of a vessel").

⁹⁰ *Id.*

⁹¹ *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995) (quoting *Wilander*, 498 U.S. at 354).

⁹² *Id.* at 371.

⁹³ *Wilander*, 498 U.S. at 355.

⁹⁴ 1 U.S.C.S. § 3 (2006).

⁹⁵ *Holmes v. Atl. Sounding Co.*, 437 F.3d 441, 446 (5th Cir. 2006).

other life-saving equipment; (c) a raked bow; (d) bilge pumps; (e) crew quarters; and (f) registration with the Coast Guard as a vessel.⁹⁶

The *Nova Star*, or a similar cruise ferry, easily meets the vessel requirement without evaluation of the *Holmes* factors outline above.

As we move further, “the definition of ‘vessel *in navigation*’ under the Jones Act is not as expansive as the general definition of ‘vessel’” under § 3.⁹⁷ Section 3 does not require that a watercraft be used primarily for the purpose of transportation on water, but just that the watercraft be used, or be capable of being used for such a purpose.⁹⁸ The use of all watercrafts must, thus, have a practical possibility of transportation on water, and not merely a theoretical use.⁹⁹ Not only does a cruise ferry like the *Nova Star* have a practical possibility of transportation on water, but its primary purpose is for the purpose as a means of transportation on water. In fact, if it were unable to do so, it would not be a cruise nor a ferry, but just a floating hotel, restaurant, spa, and casino. But, if a vessel must be “in navigation,” what happens each night when the vessel is docked in port? *Stewart v. Dutra Constr. Co.* provides a precise answer on that point: “[j]ust as a worker does not ‘oscillate back and forth between Jones Act coverage and other remedies depending on the activity in which the worker was engaged while injured,’ neither does a watercraft pass in and out of Jones Act coverage depending on whether it was moving at the time of the accident.”¹⁰⁰ Therefore, the *Nova Star* would qualify as a vessel under Jones Act reach throughout all times of its voyage season between the American and Canadian ports. Combining this requirement with the first criterion of seaman status, all employees aboard a cruise ship such as the *Nova Star* could qualify as Jones Act claimants preliminarily during the voyage season between Maine and Nova Scotia, regardless of whether the vessel is traveling between the ports at the time or docked in one of the two ports.

2. United States Application – The Eight Factors

For the Jones Act to further apply on the *Nova Star*, United States law must have controlling jurisdiction and application of the specific claim. If United States law has application over a claim, then the plaintiff seamen would likely be able to successfully bring a Jones Act claim. The United States Supreme Court has distinguished eight factors that must be considered in determining whether United States law should apply.¹⁰¹ The eight factors are: (1) the place of the wrongful act; (2) the law of the flag; (3) the allegiance or domicile of the injured seaman; (4) the allegiance of the defendant ship-owner or charterer; (5) the place where the contract of employment was made; (6) the inaccessibility of a foreign forum; (7) the law of the forum; and (8) the ship-owner's or charterer's base of operations.¹⁰² These factors apply to both the Jones Act and

⁹⁶ *Id.*

⁹⁷ *United States v. Templeton*, 378 F.3d 845, 851 (8th Cir. 2004) (emphasis added); *see also Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 496 (2005) (“[A] ‘vessel’ for purposes of § 3 might nevertheless not be a ‘vessel in navigation’ for purposes of the Jones Act. . . .”).

⁹⁸ *Stewart*, 543 U.S. 481, 495 (2005).

⁹⁹ *Id.* at 496.

¹⁰⁰ *Id.* at 495-496 (quoting *Chandris, Inc. v. Latsis*, 515 U.S. 347, 363 (1995)).

¹⁰¹ *Walters v. Prince of Fundy Cruises, Ltd.*, 781 F. Supp. 811, 814 (D. Me. 1991).

¹⁰² *Id.*

United States maritime law generally.¹⁰³ Additionally, the factors apply to state law, when applicable, to the “state with the most substantial contacts giving rise to the claim”¹⁰⁴ The eight factors vary in importance from case to case “depending on the totality of the circumstances.”¹⁰⁵ We will explore each of these factors in more depth and apply them to the case of an employee on an international cruise ferry such as the *Nova Star*.

The United States District Court for the District of Maine has had the opportunity to previously visit these factors in a similar context in *Walters v. Prince of Fundy Cruises, Ltd.*¹⁰⁶ The Supreme Judicial Court of Maine, sitting as the Law Court, did the same seven years later in *Cacho v. Prince of Fundy Cruises, Ltd.*¹⁰⁷ Both *Walters* and *Cacho* involved a predecessor to the *Nova Star*, the *M/S Scotia Prince*.¹⁰⁸ In *Walters*, a Jamaican citizen and resident seriously injured his back while working as a deckhand on the vessel.¹⁰⁹ *Walters* sustained the injury while the ferry was docked in Yarmouth, Nova Scotia.¹¹⁰ In *Cacho*, a Honduran citizen also suffered injuries while working as a deckhand and crew member on the vessel.¹¹¹ *Cacho* sustained his injury while the ferry was docked in Portland, Maine.¹¹² In both cases, the *Scotia Prince* was owned by a Panamanian corporation and was registered in Panama.¹¹³ The plaintiff in *Walters* brought claims in federal court based on a Jones Act violation and general maritime law.¹¹⁴ There, the United States District Court for the District of Maine ruled that, in the totality of the circumstances, American law did not apply to *Walters*' claims, and therefore granted *Prince of Fundy Cruises, Ltd.*'s motion for summary judgment.¹¹⁵ The plaintiff in *Cacho* brought claims in state Superior Court based on a Jones Act violation and general maritime law, and also for failure to provide maintenance and cure.¹¹⁶ Again, the Superior Court (Cumberland County, Cole, J.) ruled that American law did not apply to *Cacho*'s claims, and therefore granted *Prince of Fundy Cruises, Ltd.*'s motion for summary judgment.¹¹⁷ However, on appeal, the Supreme Judicial Court of Maine, sitting as the Law Court, vacated the judgment, ruling that, in the totality of the circumstances, the factors favored the application of United States law.¹¹⁸ The reasoning of both the District of Maine court and the Law Court will be considered in the factor application that follows.

a. Place of the Wrongful Act

¹⁰³ *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 382 (1959).

¹⁰⁴ *Carbotrade S.p.A. v. Bureau Veritas*, 99 F.3d 86, 90-91 (2d. Cir. 1996).

¹⁰⁵ *Id.*

¹⁰⁶ *Walters v. Prince of Fundy Cruises, Ltd.*, 781 F. Supp. 811 (D. Me. 1991).

¹⁰⁷ *Cacho v. Prince of Fundy Cruises, Ltd.*, 1998 ME 249, 722 A.2d 349.

¹⁰⁸ *Walters*, 781 F. Supp. at 813; *Cacho*, 1998 ME 249, ¶ 2, 722 A.2d 349.

¹⁰⁹ *Walters*, 781 F. Supp. at 813.

¹¹⁰ *Id.*

¹¹¹ *Cacho*, 1998 ME 249, ¶¶ 2, 7, 722 A.2d 349.

¹¹² *Id.* ¶ 7.

¹¹³ *Walters*, 781 F. Supp. at 813; *Cacho*, 1998 ME 249, ¶ 2, 722 A.2d 349.

¹¹⁴ *Walters*, 781 F. Supp. at 816.

¹¹⁵ *Id.*

¹¹⁶ *Cacho*, 1998 ME 249, ¶ 7, 722 A.2d 349.

¹¹⁷ *Id.*

¹¹⁸ *Id.* ¶ 26.

The first factor is the place of the wrongful act. This factor depends on the circumstances of the act,¹¹⁹ but is generally of little significance.¹²⁰ This factor is often of “minimal importance” where courts consider the “place of the wrongful act fortuitous.”¹²¹ This is considered the case where a vessel sails the world’s seas and stops at many different ports in conducting traditional shipping activities.¹²² This has similarly been found to be the case when injury is sustained aboard a cruise ship.¹²³ On the other hand, the place of the wrongful act may have more significance in the eyes of the court where the vessel is not partaking “in traditional international shipping activity”¹²⁴ or where a wrongful act occurs in the same place where a seaman was hired to perform work.¹²⁵ This was considered to be the case in offshore drilling contexts¹²⁶ and also where a vessel sailed in specific waters only for the purpose of conducting scuba diving expeditions.¹²⁷

The circumstance of an international ferry cruise ship seems to fall between the context of a cruise ship traveling from port to port and a vessel sailing to specific waters for scuba expeditions. International ferry cruise ships, like the *Nova Star*, travel to specific waters when sailing from the Canadian port to the United States port and back, and are not quite participating in traditional shipping activities when transporting passengers and their vehicles between the ports. On the other hand, the *Nova Star* and vessels similar to it are operating as a quasi-cruise ship when sailing the world’s seas, and also often find seasonal work in more traditional areas of international shipping activity.¹²⁸

Walters and *Cacho* both dealt with a vessel that sailed the same ferry route as the *Nova Star* between international ports in Nova Scotia and Maine.¹²⁹ *Walters* was injured while the *Scotia Prince* was docked in Nova Scotia,¹³⁰ whereas *Cacho* was injured while the *Scotia Prince* was docked in Maine.¹³¹ However, the two courts accorded significantly different weight to the first factor. *Walters* accorded “little significance” to the site of the wrongful act where the deckhand was injured while the *Scotia Prince* was docked in Nova Scotia.¹³² The Law Court in *Cacho*, on the other hand, was “compel[led] . . . to place greater significance on the place of injury” because of the *Scotia Prince*’s limited travel between just two ports.¹³³ *Cacho*’s injury in Portland – one of

¹¹⁹ *Id.* ¶ 12; *Neely v. Club Med Management Servs., Inc.*, 63 F.3d 166, 190 (3rd Cir. 1995).

¹²⁰ *Kukias v. Chandris Lines, Inc.*, 839 F.2d 860, 862 (1st Cir. 1988) (citing *Romero*, 358 U.S. at 384 (“The amount and type of recovery which a foreign seaman may receive from his foreign employer while sailing on a foreign ship should not depend on the wholly fortuitous circumstance of the place of injury.”)).

¹²¹ *Cacho*, 1998 ME 249, ¶ 12, 722 A.2d 349.

¹²² *Id.*

¹²³ *Kukias*, 839 F.2d at 862.

¹²⁴ *Neely*, 63 F.3d at 190; *see also* *Marriott v. Sedco Forex Int’l Resources, Ltd.*, 827 F. Supp. 59, 64 (D. Mass. 1993).

¹²⁵ *Garcia v. M/V Kubbar*, 4 F. Supp. 2d 99, 105 (N.D.N.Y. 1998).

¹²⁶ *Marriott v. Sedco Forex Int’l Resources, Ltd.*, 827 F. Supp. 59, 64 (D. Mass. 1993).

¹²⁷ *Neely*, 63 F.3d at 190.

¹²⁸ *Fishell, Winter Plans for Nova Star Change*, *supra* note 43.

¹²⁹ *Walters*, 781 F. Supp. at 813; *Cacho*, 1998 ME 249, ¶ 3, 722 A.2d 349.

¹³⁰ *Walters*, 781 F. Supp. at 813.

¹³¹ *Cacho*, 1998 ME 249, ¶ 7, 722 A.2d 349.

¹³² *Walters*, 781 F. Supp. at 814 (quoting *Kukias*, 839 F.2d at 862).

¹³³ *Cacho*, 1998 ME 249, ¶¶ 12-13, 722 A.2d 349.

the two ports of travel – was therefore “not fortuitous.”¹³⁴ The Law Court accordingly found that the place of the wrongful act was not of “little significance,” but rather weighed in favor of applying United States law.¹³⁵

The variability of the Nova Star international ferry cruise ship, along with the contrasting applications in *Walters* and *Cacho* leave the application of the first factor in a difficult position. A modern-day case involving the Nova Star would depend on the location of injury. An injury in Nova Scotia may lead a court to follow the United State District Court in *Walters*, while an injury in Maine may lead a court to follow the Law Court in *Cacho*. Either way, more than “little significance” should be given to the weight of the wrongful act location because the place will not be “fortuitous” so long as it is occurring between the two ports. Although *great* significance need not be given to this factor, something *greater* than little significance should be considered by a court where the injury occurs on a repeating predictable route of a ferry between American and Canadian ports.

b. Law of the Flag

The second factor considered is the law of the flag. Courts have generally considered this factor to be of “‘cardinal importance’ in determining the choice of law in maritime cases.”¹³⁶ The United State Supreme Court has even gone so far to state that, at times, “the flag that a ship flies may . . . alone be sufficient.”¹³⁷

In both *Walters* and *Cacho*, the vessel flew the flag of Panama.¹³⁸ The two cases indicated that the law of the flag factor therefore weighs in favor of the application of Panamanian law, but declined to acknowledge how much weight they would give to this factor.¹³⁹

Most ships operating in the United States are flagged in foreign countries.¹⁴⁰ The Nova Star is no different than most ships or its predecessors. The Nova Star flies the flag of the Bahamas.¹⁴¹ Given the application of *Walters* and *Cacho*, what is clear is that this factor will also weigh in favor of the application of Bahamian law. What is not so clear is how much weight a court would give this fact, or whether this fact would “alone be sufficient.”¹⁴² The court would likely have to revisit the weight of this factor in the totality of the circumstances to see if the flag of the ship arose in any of the other seven factors, but it is likely that this fact alone would not be dispositive in light of *Cacho*’s holding in favoring the application of United States law. Given a vessel’s flag’s often solitary relation to that nation,¹⁴³ this factor should be given significant weight, especially

¹³⁴ *Id.* ¶ 13.

¹³⁵ *Id.*

¹³⁶ *Kukias*, 839 F.2d at 862 (quoting *Lauritzen v. Larsen*, 345 U.S. 571, 584 (1953)).

¹³⁷ *Rhoditis*, 398 U.S. at 308 (citing *Lauritzen*, 345 U.S. at 585-86).

¹³⁸ *Walters*, 781 F. Supp. at 814; *Cacho*, 1998 ME 249, ¶ 14, 722 A.2d 349.

¹³⁹ *Walters*, 781 F. Supp. at 814; *Cacho*, 1998 ME 249, ¶ 14, 722 A.2d 349.

¹⁴⁰ Fishell, *Sailing South for the Winter?*, *supra* note 33. (Operation of a ship “flagged in foreign countries . . . allow[s] the ship to fall under that country’s less demanding regulations.”)

¹⁴¹ *Id.*; MARINE TRAFFIC - NOVA STAR, http://www.marinetraffic.com/en/ais/details/ships/311000199/vessel:NOVA_STAR (last visited Mar. 13, 2015).

¹⁴² *Rhoditis*, 398 U.S. at 308.

¹⁴³ Fishell, *Sailing South for the Winter?*, *supra* note 33.

where the relation to the flag nation finds support in another of the seven factors, but should not be sufficient standing alone.

c. Allegiance or Domicile of Claimant

The court next examines the allegiance or domicile of the injured claimant. The limited analysis on this factor is provided by the First Circuit, stating only that the allegiance or domicile of the injured claimant is “another significant factor” in determining the choice of law.¹⁴⁴

Walters involved a plaintiff that was a resident and citizen of Jamaica,¹⁴⁵ whereas *Cacho* involved a plaintiff that was a citizen of Honduras.¹⁴⁶ Both cases accorded “significant” weight to the respective allegiances of their plaintiffs.¹⁴⁷

A court would likely follow suit and accord the same “significant” weight to the allegiance or domicile of its injured claimant. This factor’s impact on the overall choice of law may have more of an impact if the citizenship or residence of the claimant is the same as the place of the injury (United States or Canada), the Nova Star’s Flag (Bahamas), or another of the five factors that follow.

d. Allegiance of Defendant Ship-owner or Charterer

The allegiance of the Defendant ship-owner or charterer is the fourth factor reviewed by a court. This factor is also considered to be “significant” in the court’s choice of law consideration.¹⁴⁸ This factor is also frequently considered to be “misleading.”¹⁴⁹ Therefore, in examining the corporate makeup of the defendant ship-owner or charterer and “[i]n determining the allegiances of these corporations, [a] court must ‘look through the façade of foreign registration and incorporation to find the true ownership of the vessel’ and its operator.”¹⁵⁰

In *Walters*, the ship-owner, Transworld, was incorporated in Panama.¹⁵¹ The charterer, Prince of Fundy Cruises, Ltd., was incorporated in Bermuda.¹⁵² Only the president of the Defendant charterer was a resident of the United States.¹⁵³ The District Court for the District of Maine found it important that no other officer, director, or shareholder of either Transworld or

¹⁴⁴ *Kukias v. Chandris Lines, Inc.*, 839 F.2d 860, 862 (1st Cir. 1988).

¹⁴⁵ *Walters v. Prince of Fundy Cruises, Ltd.*, 781 F. Supp. 811, 814 (D. Me. 1991).

¹⁴⁶ *Cacho v. Prince of Fundy Cruises, Ltd.*, 1998 ME 249, ¶ 15, 722 A.2d 349.

¹⁴⁷ *Walters*, 781 F. Supp. at 814; *Cacho*, 1998 ME 249, ¶ 15, 722 A.2d 349 (both citing *Kukias*, 839 F.2d at 862).

¹⁴⁸ *Walters*, 781 F. Supp. at 814.

¹⁴⁹ *Kukias*, 839 F.2d at 862.

¹⁵⁰ *Id.* (quoting *Villar v. Crowley Maritime Corp.*, 782 F.2d 1478, 1481 (9th Cir. 1986)); *see also Cacho* 1998 ME 249, ¶ 17, 722 A.2d 349 (quoting *Lauritzen v. Larsen*, 345 U.S. 571, 587 (1953)). (“Such scrutiny is necessary because ‘a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries.’”).

¹⁵¹ *Walters*, 781 F. Supp. at 815.

¹⁵² *Id.*

¹⁵³ *Id.*

Prince of Fundy Cruises was a citizen or resident of the United States.¹⁵⁴ Therefore, the *Walters* court found that the allegiance of the defendants ship-owner and charterer were Panama and Bermuda, respectively.¹⁵⁵ In *Cacho*, defendant charterer, Prince of Fundy Cruises, maintained a base of operations in Maine.¹⁵⁶ However, Prince of Fundy Cruises remained incorporated in Bermuda.¹⁵⁷ The Law Court determined that Prince of Fundy Cruises was “a ‘foreign shell created . . . to avoid the requirements of American law’” and that the true ownership was not established to lie with American interests.¹⁵⁸ The Court then weighed the factor “significant[ly]” in favor of applying the law of Bermuda.¹⁵⁹

The Nova Star was originally built and is owned by a Singapore corporation, ST Marine Ltd.¹⁶⁰ Nova Star Cruises is leasing the ship for several years before it has the option to purchase the ship outright.¹⁶¹ Nova Star Cruises, Ltd. is incorporated in Canada.¹⁶² Nova Star Cruises’ President and Chief Executive Officer Mark Amundsen is a resident of Maine.¹⁶³ Similar to the Scotia Prince cases, Nova Star Cruises has a base of operation in Maine.¹⁶⁴ Applying the *Villar* test and the application in *Walters* and *Cacho*, it is likely that a court would look beyond Amundsen’s domicile and the Cruises’ base of operation in Maine. Rather, the court would likely rule similar to *Walters* and *Cacho* in finding foreign allegiances of Defendants ship-owner and charterer in Singapore and Canada, respectively. The application of the *Villar* “façade test” makes sense where, as in the case of international vessels, American ship-owners seek foreign registration to side-step more stringent restrictions and costs. It follows that ships with “true ownership” in foreign nations should not be so readily susceptible to American laws and remedies.

e. Place of Employment Contract

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Cacho v. Prince of Fundy Cruises, Ltd.*, 1998 ME 249, ¶ 18, 722 A.2d 349.

¹⁵⁷ *Id.* ¶ 16.

¹⁵⁸ *Id.* ¶ 18 (quoting *Kukias v. Chandris Lines, Inc.*, 839 F.2d 860, 862 (1st Cir. 1988)).

¹⁵⁹ *Id.* ¶¶ 16, 18.

¹⁶⁰ SHIP SPECIFICATIONS, <http://novastarcruises.com/on-board/ship-specifications/> (last visited Mar. 13, 2015); Tom Bell, *Nova Scotia Lawmaker Calls Government’s Silence on Nova Star Audit a Sign of Trouble*, PORTLAND PRESS HERALD, Jan. 9, 2015, <http://www.pressherald.com/2015/01/08/nova-scotia-in-talks-with-nova-star-about-continued-ferry-service/> [hereinafter Bell, *Nova Scotian Lawmaker*].

¹⁶¹ Deborah McDermott, *Local Man Bringing Ferry Service Back to Maine*, SEACOAST ONLINE, Dec. 8, 2013, <http://www.seacoastonline.com/article/20131208/News/312080345> [hereinafter McDermott, *Local Man Bringing Ferry Service Back to Maine*].

¹⁶² COMPANY OVERVIEW OF NOVA STAR CRUISES LTD., Bloomberg Business, <http://host.businessweek.com/research/stocks/private/snapshot.asp?privcapId=269154813> (last visited Mar. 15, 2015).

¹⁶³ McDermott, *Local Man Bringing Ferry Service Back to Maine*, *supra* note 161; Bell, *Nova Scotian Lawmaker*, *supra* note 160.

¹⁶⁴ NOVA STAR CRUISES LTD. PRIVACY POLICY, <http://novastarcruises.com/privacy-policy/> (last visited Mar. 15, 2015).

The fifth factor to apply to a possible Jones Act claim is the place where the parties signed the contract of employment. Courts usually give “little weight” to this factor due to the often fortuitous nature of an employment contract’s place of execution in the maritime context.¹⁶⁵ Courts have further expressed that the “choice of law expressed in the contract may be much more important” than the place where the contract was executed.¹⁶⁶ This may not be the case where the bargaining power is so dissimilar between the employer and the seaman.¹⁶⁷

In *Walters*, the Plaintiff signed his employment contract in Nova Scotia.¹⁶⁸ In *Cacho*, the Plaintiff signed his employment contract while aboard the vessel in Portland, Maine.¹⁶⁹ In both Scotia Prince cases, the contract required the application of Panamanian law to disputes arising from the employment relationship as the flag of the vessel.¹⁷⁰ Although both recognized the location of the contract execution, *Walters* gave significantly more weight to the choice of law expressed in the contract (and significantly less weight to the place of employment contract) than did *Cacho*.¹⁷¹ The Law Court in *Cacho* gave the place of employment contract more than “little weight” because of the vessel’s limited travels between just two ports.¹⁷² Similar to the Court’s reasoning in the first factor of place of wrongful act, “the limited nature of the Scotia Prince’s travel renders the place of contract less fortuitous and more worthy of weight by this Court.”¹⁷³

The Nova Star passenger ticket contract specifies that any disputes will be commenced, filed, and litigated in the United States District Court for the District of Maine located in Portland, or in the Cumberland County Superior Court located in Portland, Maine if the United States District Court does not have jurisdiction.¹⁷⁴ If the employment contract includes similar terms of forum selection, absent any public policy rationale (i.e. disparate bargaining power), then significant weight would be given in favor of application of American law. This would be considered in conjunction with the place of execution of employment contract, which would likely

¹⁶⁵ *Kukias v. Chandris Lines, Inc.*, 839 F.2d 860, 862 (1st Cir. 1988); *see also* *Lauritzen v. Larsen*, 345 U.S. 571, 588 (1953).

¹⁶⁶ *Kukias*, 839 F.2d at 862 (quoting *Villar v. Crowley Maritime Corp.*, 782 F.2d 1478, 1481 (9th Cir. 1986)).); *see also* *Lauritzen*, 345 U.S. at 588-89 (“Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply.”).

¹⁶⁷ *See* *Fisher v. Agios Nicolaos V*, 628 F.2d 308, 316 n.13 (5th Cir. 1980) (in such cases, “American courts have generally accorded little determinative weight to such contractual choice of law provisions.”).

¹⁶⁸ *Walters*, 781 F. Supp. at 815.

¹⁶⁹ *Cacho v. Prince of Fundy Cruises, Ltd.*, 1998 ME 249, ¶ 19, 722 A.2d 349.

¹⁷⁰ *Walters*, 781 F. Supp. at 815; *Cacho*, 1998 ME 249, ¶ 21, 722 A.2d 349.

¹⁷¹ *Walters*, 781 F. Supp. at 815 (“Although *Walters* executed his employment contract in Nova Scotia, the terms of the contract stipulate that the laws of the country in which the vessel is registered are applicable – in this case Panamanian law.”); *cf* *Cacho*, 1998 ME 249, ¶ 21, 722 A.2d 349 (“Although we find that find that the choice of law provision weighs in favor of applying Panamanian law, we do not discount the fact that the parties signed the contract in Portland.”).

¹⁷² *Cacho*, 1998 ME 249, ¶ 20, 722 A.2d 349.

¹⁷³ *Id.* (reasoning that the employer was “unlikely to take on crew members at random ports.”)

¹⁷⁴ NOVA STAR CRUISES TICKET CONTRACT, http://novastarcruises.com/files/8714/0381/9815/NSC_PASSENGER_TICKET_CONTRACT_062614.pdf. (last visited Mar. 15, 2015) [hereinafter TICKET CONTRACT].

be either Nova Scotia or Maine. A court probably would not discount any weight from applying American law if the contract were executed in Nova Scotia, but may afford substantial weight in favor of American law if that was where both the contract was executed and where the choice of law was agreed upon. The Law Court in *Cacho* had a better application of the two pieces of the fifth factor in considering both pieces, rather than masking place of execution where choice of law is expressed, especially where the vessel route boomerangs between just two ports. In this case, the rationale of fortuitous place of employment contract does not apply, so something more than “little weight” should be given.

f. Inaccessibility of Foreign Forum

A court would then consider the inaccessibility of a foreign forum as the sixth factor. This factor is rarely disputed or argued and, thus, rarely analyzed or ruled on.¹⁷⁵ The inaccessibility of a foreign forum was not ascertainable on the records in both Scotia Prince cases.¹⁷⁶ Other cases have held that the fact that adjudication under American law might save a seaman expense and time in returning to a foreign forum is not a persuasive factor in the choice of law analysis.¹⁷⁷

Applying the lack of substantial argument and analysis on this factor to an employment-related dispute on the *Nova Star*, it is unlikely that this factor would be a contested issue. Even if it were, it seems like the court would be likely to hold, as in *Lauritzen*, that it was not persuasive in the choice of law analysis, absent some material remedial deficiency in a foreign forum under a similar claim. Absent such a deficiency, the current judicial application of this factor seems equitable and appropriate.

g. Law of the Forum

The seventh factor applied by a court is the law of the forum. Courts have accorded little weight to this factor in circumstances where the defendant is “involuntarily made a party.”¹⁷⁸ This was the case in *Walters*, and the seventh factor was thus given little value by the United States District Court.¹⁷⁹ Little weight was also given in *Cacho*, despite Plaintiff’s argument that Prince

¹⁷⁵ See *Walters*, 781 F. Supp. at 815; *Cacho* 1998 ME 249, ¶ 22, 722 A.2d 349; *Kukias v. Chandris Lines, Inc.*, 839 F.2d 860, 863 (1st Cir. 1988).

¹⁷⁶ See *Walters*, 781 F. Supp. at 815; *Cacho* 1998 ME 249, ¶ 22, 722 A.2d 349.

¹⁷⁷ See *Lauritzen v. Larsen*, 345 U.S. 571, 589-90 (1953) (reasoning that the Danish Plaintiff was not disadvantaged in obtaining his remedy under Danish law because: “[t]he Danish compensation system necessitate delayed, prolonged, expensive, and uncertain litigation[;]” the seaman did not have to travel to Denmark to obtain the relief he was entitled to; and because Plaintiff “was offered and declined free transportation to Denmark[.]”).

¹⁷⁸ *Kukias*, 839 F.2d at 863 (citing *Sosa v. M/V Lago Izabal*, 736 F.2d 1028, 1031 (5th Cir. 1984)); see also *Lauritzen*, 345 U.S. at 591-92 (“Because a law of the forum is applied to plaintiffs who voluntarily submit themselves to it is no argument for imposing the law of the forum upon those who do not.”).

¹⁷⁹ *Walters*, 781 F. Supp. at 815.

of Fundy Cruises “requires all passengers injured upon the Scotia Prince to seek redress in a court in the State of Maine.”¹⁸⁰

A similar requirement that all Nova Star passengers commence, file, and litigate actions against the ferry cruise in either the United States District Court for the District of Maine or a Superior Court in Maine exists here as it did in *Cacho*.¹⁸¹ A court is likely to also recognize that this undermines Nova Star not submitting to jurisdiction voluntarily, favoring application of American law but similarly giving little weight to this factor. Although this seems somewhat contradictory, according minimal weight to the law of the forum seems like the most equitable application of the factors.

h. Base of Operations

Finally, the court examines the base of operations. The United States Supreme Court made clear in *Hellenic, Ltd. v. Rhoditis* that the original seven factors expressed in *Lauritzen* were not meant to be exhaustive.¹⁸² In *Rhoditis*, the Court included “the shipowner’s *base of operations* [a]s another factor of importance in determining whether the Jones Act is applicable.”¹⁸³ The shipowner’s base of operations is not a dispositive factor,¹⁸⁴ but it is a significant factor in the choice of law analysis.¹⁸⁵ To determine whether a vessel or the ship-owner has a base of operations in the United States, a court must examine “the substantial and continuing contacts that th[e] alien owner has within this country.”¹⁸⁶ “To effectuate the liberal purposes of the Jones Act, ‘the façade of the operation must be considered as minor, compared with the real nature of the operation and a cold objective look at the actual operational contacts that [the] ship and [the] owner have with the United States.’”¹⁸⁷ The fact that a vessel generates revenue from American sources and travels regularly to United States ports does not necessarily establish a base of operations in the United States.¹⁸⁸ “An amalgam of information may indicate whether the shipowner or operator is ‘engaged

¹⁸⁰ *Cacho*, 1998 ME 249, ¶ 23, 722 A.2d 349 (“Although this undermines POFC’s argument that it is not submitting to this forum, we do not accord significant weight to this factor favoring the application of United States law.”).

¹⁸¹ TICKET CONTRACT, *supra* note 173.

¹⁸² *Hellenic, Ltd. v. Rhoditis*, 398 U.S. 306, 309 (1970).

¹⁸³ *Id.* (emphasis in original).

¹⁸⁴ *Kukias v. Chandris Lines, Inc.*, 839 F.2d 860, 864 (1st Cir. 1988). (“The *post-Rhoditis* decisions continue to consider the full range of factors relevant to a choice-of-law determination, and, in appropriate cases, have declined to apply the Jones Act despite a finding that the shipowner had substantial domestic contacts.”); *see also* *Villar v. Crowley Maritime Corp.*, 782 F.2d 1478, 1482 (9th Cir. 1986) (“even assuming that [defendant’s] base of operations is in the United States, under these facts that alone is not a sufficient basis to apply the Jones Act.”).

¹⁸⁵ *Kukias*, 839 F.2d at 864; *see Rhoditis*, 398 U.S. at 310 (“The flag, the nationality of the seaman, the fact that his employment contract was Greek, and that he might be compensated there are in the totality of the circumstances of this case minor weights in the scales compared with the substantial and continuing contacts that this alien owner has with this country.”).

¹⁸⁶ *Kukias*, 839 F.2d at 864 (quoting *Rhoditis*, 398 U.S. at 310).

¹⁸⁷ *Cacho*, 1998 ME 249, ¶ 24, 722 A.2d 349 (quoting *Rhoditis*, 398 U.S. at 310).

¹⁸⁸ *Kukias*, 839 F.2d at 864.

in an extensive business operation in this country,' or is merely a 'casual visitor.'"¹⁸⁹ The Supreme Court in *Rhoditis* found that a close array of connections from the amalgam of information existed between the defendant and the United States, as to establish an engagement in extensive business operation in America.¹⁹⁰ Conversely, the First Circuit in *Kukias* found that the employer did not have a base of operations in the United States in spite of the evidence: the employer's vessel seasonally departed on weekly cruises from American ports; the employer earned substantial revenue from American sources via the operation of the vessel, which was then collected by an American corporation; the employer's vessel was supplied with food and other resources in American ports; and the employer spent significant money on American advertising for its vessel service.¹⁹¹

The plaintiff in *Walters* was unable to prove to the District Court for the District of Maine that Prince Fundy Cruises' Maine office was its principal place of business.¹⁹² Nor did Walters prove that any contacts existed between the defendant ship-owner, Transworld, and the United States.¹⁹³ The only contact between the defendant ship-owners and charterer to the United States was an office maintained by the charterer in Maine, seasonal travel between Maine and Nova Scotia, and Prince Fundy Cruises' president's domicile in Maine.¹⁹⁴ The court found the same contacts to exist with Nova Scotia, along with the additional connection that the vessel often remained in Nova Scotia during the ferry cruise's offseason.¹⁹⁵ The court also felt that the record was lacking as to Prince Fundy Cruises' sources of income and operational principal base.¹⁹⁶ This led the United States District Court to conclude that the close connections between defendants and the United States found in *Rhoditis* were not present here.¹⁹⁷ Alternatively in *Cacho*, the Law Court found a more complete record on the Prince of Fundy Cruises' principal operational base, enough so to affirm the trial court's finding that the defendant employer's base of operations was in Portland, Maine.¹⁹⁸ The Law Court found relevant evidence to include: Prince of Fundy Cruise's President's admission that the direct and actual operation was conducted in Portland; officers (including the marketing director, the treasurer, and director of operations and maintenance) and reservations departments were based in Portland; the majority of defendant's full-time employees

¹⁸⁹ *Walters v. Prince of Fundy Cruises, Ltd.*, 781 F. Supp. 811, 815 (D. Me. 1991) (quoting *Rhoditis*, 398 U.S. at 310).

¹⁹⁰ *See Rhoditis*, 398 U.S. at 309-10 (the ship was not a "casual visitor" because it was earning income from cargo that originated or terminated in the United States, the ship-owner defendant had been a lawful permanent resident alien, and the ship-owner defendant's base of operations was found to be in New York.).

¹⁹¹ *Kukias*, 839 F.2d at 864. ("[T]he management and ownership of the [vessel] rest exclusively in the hands of Greeks who do not conduct their activities within the United States" because defendants were foreign corporations controlled by Greek domiciliaries, maintained no offices in the United States, made no management decisions in the United States, and the vessel cruised exclusively in European ports for portions of the year.)

¹⁹² *Walters*, F. Supp. at 815.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 815-16.

¹⁹⁷ *Id.* at 815.

¹⁹⁸ *Cacho v. Prince of Fundy Cruises, Ltd.*, 1998 ME 249, ¶ 25, 722 A.2d 349.

worked in Portland; more than half of the vessel's supplies were purchased in Maine; and crew members were paid from a Portland bank account.¹⁹⁹

The Nova Star, and Nova Star Cruises, Ltd., would likely fall somewhere between the United States District Court assessment in *Walters* and the Law Court's assessment in *Cacho*, depending on the totality of the record. Like in *Walters*, a claimant against the Nova Star would probably struggle to prove that any connection existed between the ship-owner Singapore Technologies Marine Ltd. and the United States. A claimant would also have trouble with the similar contacts to Nova Scotia, and (at least temporary) berthing of the vessel there during the offseason. Like Prince Fundy Cruises in *Walters*, the Nova Star has offices located in Portland, Maine, and its president is domiciled in the State of Maine. However, would a claimant be able to establish more of a complete record as to the operation of the Nova Star beyond those facts that were not enough to establish a base of operations in Maine in *Walters*? If a plaintiff could establish some of the facts highlighted by the Law Court in *Cacho*, mentioned above, then they would likely be able to prove that the Nova Star's base of operations is in fact in Maine. If the record lacked anything more than what was present in *Walters*, the base of operations would not be weighed in favor of application of United States law.

A claimant could rely on the original expression of the eighth factor in *Rhoditis* in establishing that the ship-owner or operator is "engaged in an extensive business operation in this country," and not merely a "casual visitor."²⁰⁰ Although *Rhoditis* further necessitates a "cold objective look at the actual operational contacts that [the] ship and [the] owner have with the United States[,]"²⁰¹ the aforementioned initial inquiry should be kept in mind. In the case of the Nova Star, the vessel originates and terminates its income earning in Maine every day during the sailing season when it sets sail from Portland with its paying passengers and when it docks in Portland with further paying passengers on its return trip. It cannot be said that the ship operator is a "casual visitor" in the United States when he has such close ties to the State of Maine. Further, the vessel's route and income sources for the Nova Star are so closely related to the route to and from Portland, the citizens of Maine, and the financial and supplies resources coming from Maine.

i. Conclusion – Totality of Circumstances

After examining all eight factors as they apply to the facts of the specific case, the court will weigh all of the factors and decide whether a claim lies under United States law. With regard to the case of an international ferry cruise like the Nova Star: (1) the place of the wrongful act (whether in Maine, Nova Scotia, or en route) will depend on the factual circumstance, but will likely have greater significance than "little" because the narrow route of the vessel would limit the fortuitousness of the place of injury; (2) the flag of the ship would weigh toward application of Bahamian law, and would be accorded significant weight; (3) the allegiance or domicile of the injured claimant would also depend on the factual circumstances that were to arise, but will be given significant weight; (4) the allegiance of the ship-owner and charterer would lean toward application of Singapore and Canadian law, respectively, and would again be given significant weight; (5) the location of the contract would likely either be Nova Scotia or Maine, and may be given more than little weight because the location would not be as fortuitous due to the narrow

¹⁹⁹ *Id.*

²⁰⁰ *Hellenic, Ltd. v. Rhoditis*, 398 U.S. 306, 310 (1970).

²⁰¹ *Id.*

route between the two ports, but the more important factor would be the choice of law, if any, agreed upon in the employment contract; (6) the inaccessibility of a foreign forum probably would not have an impact on a court's choice of law analysis, because of either lack of dispute or lack of persuasiveness; (7) the law of the forum would lean toward application of American law, but would be given "little weight"; and (8) the significant weight given to the base of operation would likely depend on the totality of the record established by the plaintiff as to the Nova Star's extensive operation of business in America, in shifting the parallels between the Nova Star and *Walters* (base of operation not in America), and between the Nova Star and *Cachos* (base of operation in America).

In reviewing all eight factors, one is likely to not have an impact, one significant factor points in favor of the law of the Bahamas, one significant factor leans toward application of the law of Singapore or Canada, one factor of little weight favors application of United States law, and the remaining four depend on the factual circumstances. If two or three of these factors favor application of American law, then the totality of the circumstances would likely follow. However, if only one or none of the remaining factors lean toward American law, a court would likely lean further away from American law in its overall choice of law analysis.

IV. RECOMMENDATIONS

A. *Standard Application*

As comfortable as the legal community has become with factor approaches and totality of the circumstance analysis, standard application would allow for much more certainty. As it stands, injured employees will not know if they are covered under the American maritime law when they begin employment, will remain unsure of their remedies after injury or harm, and yet still may not know where they fall until after a judgment by an appellate court. Similarly, ship-owners and charterers will be unaware of what laws they fall under and what specifically they may be liable to employees for. Further, judges will lack clear guidance and may not know how to rule properly on a plaintiff seaman that is seeking justice in their court.

A standard application with clearer guidelines of jurisdictional control for seamen, their employers, and courts would be considerably more ideal. This can be accomplished in the United States federal and state courts that interpret these laws and precedents. Alternatively, clearer guidance can be put forth in the form of legislation. These recommendations will explore the options and abilities of each.

B. *Judicial*

The only guidance given at this point as to the jurisdictional application has come from the courts in factor weight dicta case-by-case application. However, these have done little to provide certainty or consistency.

Where courts have suggested weights to be given to each factor, the specific weight for each has been vague.²⁰² Further, these weights can be changed in certain circumstances.²⁰³ Even when courts assign the correct weight to the correct jurisdiction for each factor, it is unclear how those weights add up and how those considerations create a court's maritime choice-of-law determination. There is not one dispositive factor considered in the court's decision. The only factor's weight that has been considered to be "cardinal" and sufficient alone at this time is the law of the flag.²⁰⁴ Yet, courts have not said when it may be sufficient and have not yet decided a case on the law of the flag alone. Moreover, the courts have said that this eight-factor list is not exhaustive.²⁰⁵

Where courts rely on precedents to find guidance in the case-by-case approach, they remain left without clear answers. Because it is unlikely to find a case directly on point with the facts before a court, the best approach is to apply case law from each of the factors to the case at hand. Even if a court properly assigns the correct jurisdiction and weight to each of the factors from an inspection of precedents, it is still left without an answer as to how to piecemeal the application from as many as eight different precedents together to come to an overall maritime choice-of-law ruling in the totality of the circumstances final step. Moreover, even where two cases have nearly the same facts, as they did in *Walters* and *Cacho*, two different courts can still come to two completely different decisions.²⁰⁶ Relying on these precedents, if a future case were to arise from similar incidents aboard a ferry like the *Nova Star*, a court might be split with which precedents to follow or how to decide on the choice of law determination.

To remedy these issues in the judicial context, courts can assist themselves by better explaining their analysis in the choice-of-law, totality of the circumstances, factorial approach. Courts can be clearer with the weight given to certain factors. They can more explicitly eliminate certain factors from consideration in certain circumstances or explicitly affirm the cardinal importance of other factors in other circumstances. In a court's totality of the circumstances application, judges can better articulate why certain factors were more important than others and how they arrived precisely where they did. Whatever can be done to eliminate the ambiguity and provide explicit structure for claimants, defendants, attorneys, and judges should be done, and it can start simply with the courts that are making the maritime choice-of-law determinations when writing their opinions.

C. Legislative

²⁰² *Kukias v. Chandris Lines, Inc.*, 839 F.2d 860, 862-63 (1st Cir. 1988) (attributing little weight to the law of the forum); *Walters*, 781 F. Supp. at 814-815 (assigning "significant" weight to citizenship, domicile, or allegiance of the parties); *Lauritzen v. Larsen*, 345 U.S. 571, 588 (1953) (giving "little weight" location of contract)).

²⁰³ *Neely v. Club Med Management Servs., Inc.*, 63 F.3d 166, 190 (3rd Cir. 1995) (attributing different significance depending on the circumstances).

²⁰⁴ *Lauritzen*, 345 U.S. at 584-86.

²⁰⁵ *Rhoditis*, 398 U.S. at 308-09.

²⁰⁶ *Walters*, 781 F. Supp. at 816 (granting Defendant employer's Motion for Summary Judgment); cf *Cacho v. Prince of Fundy Cruises, Ltd.*, 1998 ME 249, ¶ 26, 722 A.2d 349 (vacating the trial court's granting of Defendant employer's Motion for Summary Judgment).

Alternatively, Congress can give guidance as to which plaintiffs were intended to fall within the coverage of the maritime cause of action. To do this, Congress can create further legislation within the Jones Act or at least codify the maritime choice-of-law factors into the Jones Act. If they choose to do so, they can provide courts with significant direction as to which seamen should be permitted to bring a Jones Act claim and which ship-owners and charterers are meant to have liability under the Act. Although courts would likely still have to resort to case law to apply the factors properly to their particular case, legislation would create more structure and clarity, and lead to much more consistency.

V. CONCLUSION

International ferries and cruises are modern day luxuries that are bloodlines to sovereign tourism and economy, and of significant importance to international relations. The revitalization of Gulf of Maine ferry service in 2014 in the form of the *Nova Star* sparks concern over governmental relations, government subsidies, and maritime law. Though the Maine-Nova Scotia corridor had been vacant since 2009, the maritime law and concerns that controlled the *Nova Star*'s predecessor have not been resolved in the time since. As a vessel in navigation, the *Nova Star*'s seamen would likely qualify as Jones Act claimants. However, as a ship that is owned by a different country, that sails under the flag of a different nation, to a different nation each day, through international waters, with foreign employees, when exactly would a *Nova Star* employee have a remedy under the United States maritime law? As this comment has made clear, the answer is anything but clear. Although different circumstances would certainly allow for recovery under the Jones Act, the general case law and court-made factorial, totality of the circumstances approach lead to unpredictable and inconsistent results. This leaves workers at sea unsure of their remedies, their employers unsure of their liabilities, and courts unsure of their jurisdictional reach. Something must be done to fix the maritime choice-of-law determination, either through clearer legislation by Congress under the Jones Act to codify or explain the factors and intended reach of the 1920 maritime cause of action, or through more explicit and consistent judicial opinions, analysis, and approaches. Until that time, the success of a Jones Act claimant aboard the *Nova Star* or a North American international ferry like it will remain as up in the air as the success of the ferry cruise itself.