Article

Crude Conversion: The Tort of Maritime Conversion in Context

Bryan J. Kitz*

* J.D. 2015, Tulane University Law School; B.A. 2009, University of Virginia. The author is a member of the state bar of Texas and the Charleston County Bar Association of South Carolina. The author would like to thank Professor Martin J. Davies of Tulane University Law School for his guidance during the initial drafting of this Article.

I. Introduction: A Case of Maritime Conversion in the Gulf?

On July 23, 2014, the UNITED KALAVRVTA, a Greek-flagged oil tanker, entered the Gulf of Mexico bound for the port at Galveston, Texas.[1] The tanker's cargo, roughly one million barrels of crude oil, was not itself unique. On average seven million barrels of foreign crude oil are imported to the United States every day.[2] However, the source of the crude oil aboard the UNITED KALAVRVTA was unique. The Kurdistan Regional Government (Kurdistan) had drilled the oil from wells within the semiautonomous region of the Republic of Iraq (Iraq) that it governed.[3] Further, Kurdistan had sanctioned the transport and sale of the oil without consultation or authorization from the Iraqi government.[4] A dispute ensued between Kurdistan and Iraq about ownership of the oil aboard the UNITED KALAVRVTA.[5] This controversy predictably implicated certain foreign policy channels of the U.S. government.[6] However, the dispute also played out in another much less expected setting—a Texas courthouse.

In the summer of 2014, Kurdistan began pumping crude oil, drilled within its borders, to the port at Ceyhan, Turkey.[7] The oil was then loaded aboard tankers and discreetly shipped to various markets throughout the world.[8] The UNITED KALAVRVTA's cargo of crude oil was transferred to the vessel according to this procedure.[9] Kurdistan claimed that these actions were valid, asserting an independent right to produce, transport, and sell oil without oversight or regulation from the Iraqi government; Iraq disagreed.[10] It contended that Kurdistan's actions violated the Iraqi constitution, which required that all oil produced in Iraq be sold

1. Matthew Phillips, *A Ghost in the Gulf*, Bloomberg Businessweek, Oct. 27, 2014, at 70, 72.

2. *See Weekly U.S. Imports of Crude Oil*, U.S. Energy Info. Admin., http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=WCRIMUS2&f=W (last visited January 23, 2016).

3. Phillips, *supra* note 1, at 72.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* at 73.

8. *Id.*

9. *Id.*

10. *Id.* at 72.

through the Ministry of Oil.[11]

As the UNITED KALAVRVTA approached Galveston, Iraq brought suit in the United States District Court for the Southern District of Texas. The ensuing litigation resulted in two noteworthy decisions from the district court. In the first decision, *Ministry of Oil of the Republic of Iraq v. 1,032,212 Barrels of Crude Oil Aboard the United Kalavrvta* (hereinafter *Ministry of Oil I*), Iraq named Kurdistan as an in personam defendant, the UNITED KALAVRVTA as an in rem defendant, and the cargo of crude oil as an in rem defendant.[12] In the second decision, also entitled *Ministry of Oil of the Republic of Iraq v. 1,032,212 Barrels of Crude Oil Aboard the United Kalavrvta* (hereinafter *Ministry of Oil II*), Iraq named John Doe Buyer, the unknown intended purchaser of the oil, as another in personam defendant.[13]

Iraq brought suit in admiralty, alleging that the defendants converted the crude oil aboard the UNITED KALAVRVTA.[14] Specifically, Iraq claimed that Kurdistan engaged in conversion when it caused the oil to be loaded aboard the vessel[15] and that John Doe Buyer engaged in conversion when it received title to the oil.[16] Pursuant to Rule C of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure ("Rule C"),[17] Iraq also brought an in rem claim against the vessel for conversion.[18] Finally, pursuant to Rule D of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure ("Rule D"),[19] Iraq brought an in rem claim against the UNITED KALAVRVTA's cargo of crude oil.[20] Iraq sought to have a United States Marshal seize and store the oil pending resolution of the dispute, but because the UNITED KALAVRVTA was located outside of U.S. territorial waters, neither the vessel nor her cargo were subject to seizure.[21] Adding to the intrigue of this emerging geopolitical dispute, the UNITED KALAVRVTA "went dark" when litigation was initiated, turning off her transponder and ceasing communications with other ships.[22] The vessel also lingered off the Texas coast—always remaining just

11. *Id.*
12. No. G-14-249, 2014 WL 4215357, at *1, *1-3 (S.D. Tex. Aug. 25, 2014).
13. No. G-14-249, 2015 WL 93900, at *1, *11 (S.D. Tex. Jan. 7, 2015).
14. *Ministry of Oil I*, 2014 WL 4215357, at *2.
15. *Id.*
16. *Ministry of Oil II*, 2015 WL 93900, at *11.
17. FED. R. CIV. P. SUPP. R. ADM. MAR. CLAIMS C.
18. *Ministry of Oil I*, 2014 WL 4215357, at *3.
19. FED. R. CIV. P. SUPP. R. ADM. MAR. CLAIMS D.
20. *Ministry of Oil I*, 2014 WL 4215357, at *3.
21. *Id.* at *2-3.
22. Phillips, *supra* note 1, at 72.

outside of U.S. territorial waters—until late January, nearly five months after she arrived.[23]

The standoff between Kurdistan and Iraq had substantial foreign policy implications for the United States.[24] The litigation between the parties also gave rise to significant legal issues that are outside the scope of this Article.[25] However, the twin decisions of the Southern District of Texas in *Ministry of Oil I* and *Ministry of Oil II* are particularly notable for the light that they have shed on a rarely discussed or litigated admiralty cause of action: the tort of maritime conversion. This Article will delineate the legal elements and jurisdictional requirements of maritime conversion. It also will explore strategic and legal benefits that can be derived from pleading a claim for maritime conversion within a court's admiralty jurisdiction. Finally, this Article will compare *Ministry of Oil I* and *Ministry of Oil II* to prior maritime conversion jurisprudence.

II. Maritime Conversion: Legal Elements and Jurisdictional Requirements

Courts in the United States have long recognized conversion as a maritime tort cognizable within their admiralty jurisdiction.[26] Nonetheless, it has been a relatively "dormant" facet of U.S. general maritime law.[27] Maritime conversion is not a commonly litigated maritime tort, and the existing body of case law is not particularly well developed. To prevail on a claim for maritime conversion, a plaintiff must overcome two distinct legal barriers. First, like all torts, the plaintiff must prove that the

23. *See* Nick Roumpas, *Kalavryta Leaves US*, Tradewinds (Jan. 27, 2015, 16:35 GMT), http://www.tradewindsnews.com/tankers/353187/Kalavryta-leaves-US.

24. *See, e.g.*, Suzanne S. Kimble, Ministry of Oil of the Republic of Iraq v. 1,032,212 Barrels of Crude Oil Aboard the United Kalavrvta: *Is the United Kalavrvta's Oil Cargo a Slippery Slope for U.S. Courts?*, 23 Tul. J. Int'l & Comp. L. 623, 632 (2015) ("[*Ministry of Oil I*] has a narrow holding yet it has broad foreign policy implications."); Phillips, *supra* note 1, at 72 ("This poses a dilemma for the Obama administration, which is deeply invested in preserving Iraq's unity."); Rhiannon Myers, *Tanker Carrying Kurdish Crude in Legal Limbo Off Galveston*, Hous. Chron. (July 29, 2014), http://www.houstonchronicle.com/business/energy/article/Tanker-carrying-disputed-Kurdish-crude-trapped-in-5655448.php ("The U.S. government, which backs a unified, central government in Iraq, discourages companies from buying crude from the Kurdish Regional Government [b]ut . . . has not intervened in the United Kalavryta case.").

25. Specifically, Kurdistan asserted defenses under the political question doctrine, the Foreign Sovereign Immunities Act, and the act of state doctrine. *See generally* Ministry of Oil II, 2015 WL 93900, at *2-10, *12 (S.D. Tex. Jan. 7, 2015).

26. Michael H. Bagot & Dana A. Henderson, *Seize and Desist: Damages for Wrongful Maritime Seizure*, 25 Tul. Mar. L.J. 117, 125 (2000); *see also* The Escanaba, 96 F. 252, 252 (N.D. Ill. 1899) (enforcing a maritime lien created by the master's conversion of goods aboard a vessel); Hawkins v. the Hattie Palmer, 63 F. 1015, 1016 (S.D.N.Y. 1894) (adjudicating an in rem admiralty claim against a vessel for conversion of cargo).

27. David A. Marcello, Comment, *Developments in the Law of Maritime Liens*, 45 Tul. L. Rev. 574, 593 (1971).

tortfeasor's conduct satisfies the basic elements of conversion.[28] Second, the plaintiff must establish that the claim satisfies the locus and nexus requirements for admiralty jurisdiction over maritime torts.[29] This dual threshold for admiralty tort jurisdiction has proven difficult to fulfill and is likely responsible for the relative dearth of maritime conversion jurisprudence.

A. Legal Elements of Conversion

The tort of conversion evolved from the common law action of trover, which emerged in England in the fifteenth century.[30] English courts first recognized a specific cause of action for conversion in 1841 in *Fouldes v. Willoughby*.[31] There, the Exchequer Court articulated the oft-cited definition of conversion as "a taking with the intent of exercising over the chattel an ownership inconsistent with the real owner's right of possession."[32]

The modern definition has not deviated significantly, but contemporary courts and commentators have tended to include a severity element. The *Restatement (Second) of Torts* defines conversion as "an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel."[33] Thus, under this view, the essential elements of conversion are: (1) the plaintiff's ownership or right to possession of the property at the time of the conversion, (2) the defendant's conversion by a wrongful act or disposition of the plaintiff's property, (3) interference with the plaintiff's ownership or right to possession of the converted property that is sufficiently serious, and (4) damages. This formulation—or one substantially similar—has become black letter law,[34] and courts routinely invoke the *Restatement's* definition of conversion.[35]

---

28. *See* discussion *infra* Section II.A.

29. *See* discussion *infra* Section II.B.

30. Prosser and Keeton on the Law of Torts 89 (W. Page Keeton et al. eds., 5th ed. 1984).

31. *Id.* at 90.

32. Fouldes v. Willoughby, 151 Eng. Rep. 1153, 1157 (Exch. 1841).

33. Restatement (Second) of Torts § 222A(1) (Am. Law Inst. 1965).

34. *See* Courtney W. Franks, Comment, *Analyzing the Urge to Merge: Conversion of Intangible Property and the Merger Doctrine in the Wake of* Kremev v. Cohen, 42 Hous. L. Rev. 489, 497 (2005).

35. *See, e.g.*, People v. Weschler, 854 P.2d 217, 220 n.2 (Colo. 1993) (quoting the *Restatement* definition of conversion in full); Gissel v. State, 727 P.2d 1153, 1155 (Idaho 1986) (holding that the state's misappropriation of the plaintiffs' property constituted conversion under the *Restatement* definition); Edwards v. Emperor's Garden Rest., 130 P.3d 1280, 1287 (Nev. 2006) (applying the severity element of the *Restatement* definition of conversion).

Conversion is an intentional tort.[36] Specifically, the tortfeasor must intend to exercise dominion or control over another's property.[37] Negligent interference with another's property, therefore, does not constitute conversion.[38] However, conversion does not have a good faith or bad faith requirement.[39] Accordingly, a tortfeasor's motive for intentionally affecting another's property is irrelevant.[40]

Importantly, the elements of maritime conversion are identical to those of traditional, common law conversion.[41] Some courts presiding over maritime conversion actions have directly applied state conversion law. For example, in *Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil*, the United States Court of Appeals for the Eighth Circuit applied Illinois law in a maritime conversion claim.[42] There, Koch Fuels, Inc. ("Koch") chartered a tanker barge to carry a cargo of oil to its terminal in Chicago.[43] After the oil was loaded aboard the barge, the relationship between Koch and the barge owner broke down.[44] The barge owner refused to discharge the oil, and Koch brought suit in admiralty for maritime conversion.[45] The Eighth Circuit affirmed the lower court's holding that the barge owner engaged in conversion under Illinois law and therefore was liable for maritime conversion.[46] Other courts, ostensibly applying general maritime law, have made clear that the elements of maritime conversion are indistinguishable from those of common law conversion. In *Goodpasture, Inc. v. M/V Pollux*, a shipper brought an in rem claim for maritime conversion against the M/V POLLUX.[47] The shipper asserted that the carrier refused to discharge a cargo of wheat that it owned.[48]

36. 1 DAN B. DOBBS, THE LAW OF TORTS 128 (2001); PROSSER AND KEETON ON THE LAW OF TORTS, *supra* note 30, at 92.

37. DOBBS, *supra* note 36, § 62, at 128.

38. PROSSER AND KEETON ON THE LAW OF TORTS, *supra* note 30, at 92.

39. DOBBS, *supra* note 36, § 62, at 129.

40. *Id.*

41. *See* Middleton v. M/V Glory Sky I, 567 F. App'x 811, 813 n.4 (11th Cir. 2014) (per curiam) ("[A]dmiralty law occasionally . . . refers to principles of state law, and the parties have not indicated, nor are we aware of, any differences between federal law and Florida law that bear on the outcome of this [maritime conversion] appeal." (citation omitted)); Evergreen Marine Corp. v. Six Consignments of Frozen Scallops, 4 F.3d 90, 93 (1st Cir. 1993) ("The parties have identified no material difference between maritime law and Massachusetts law governing these conversion claims."); Thyssen, Inc. v. S.S. Rio Capaya, Nos. 86-35-Civ-J-14, 86-46-Civ-J-14, 86-102-Civ-J-14, 86-131-Civ-J-14, 1988 WL 114535, at *2 n.1 (M.D. Fla. Feb. 17, 1988) ("The parties apparently agree that the elements of the tort of conversion under either general maritime law or under the laws of the state of Florida are identical.").

42. 704 F.2d 1038, 1042-44 (8th Cir. 1983).

43. *Id.* at 1040.

44. *Id.*

45. *Id.* at 1040-41.

46. *Id.* at 1040-41, 43.

47. 602 F.2d 84, 86 (5th Cir. 1979).

48. *Id.*

The United States Court of Appeals for the Fifth Circuit held that the carrier converted the cargo.[49] It found that the carrier's "actions . . . were sufficiently at variance with the right to possession of the wheat by its owner . . . to constitute conversion, which we have defined in a landside context as 'the unlawful and wrongful exercise of dominion, ownership or control over the property of another, to the exclusion of the same rights by the owner.'"[50] Accordingly, when determining a defendant's liability for maritime conversion, it should make no difference whether a court nominally relies on state law or general maritime law. The elements of maritime conversion parallel those of common law conversion and should be applied against potential tortfeasors in the same manner.

B. Locus and Nexus Requirements for Admiralty Tort Jurisdiction

To bring a tort claim before a court sitting in admiralty, a plaintiff's cause of action must satisfy the locus and nexus requirements for admiralty jurisdiction over maritime torts.[51] The locus requirement necessitates that the tort occur on navigable waters.[52] The nexus requirement necessitates that the tort involve traditional maritime activity.[53] If this dual jurisdictional threshold is not met, a claimant still may have a viable cause of action against a tortfeasor, but admiralty jurisdiction will not lie and the substantive body of general maritime law will not apply.

The locus criterion for admiralty tort jurisdiction simply requires that the tortious conduct or loss occur on navigable waters. However, the contours of the waterway navigability requirement necessitate further clarification.[54] Early U.S. courts applied the English ebb-tide rule, which limited admiralty jurisdiction to waters that rose and fell with the tide.[55]

---

49. *Id.* at 87.

50. *Id.* (quoting Bankers Life Ins. Co. v. Scurlock Oil Co., 447 F.2d 997, 1004 (5th Cir. 1971)); *see also* Cargill v. Esal (Commodities) Ltd., No. 84 Civ. 0841 (WK), 1984 WL 1424, at *1, 1985 (S.D.N.Y. Apr. 6, 1984) ("Defendant . . . wrongfully exercised dominion and control over plaintiff's cargo and effected [a] conversion. . . . Such conduct is a maritime tort and falls within our admiralty jurisdiction.").

51. *E.g.*, Taghadomi v. U.S., 401 F.3d 1080, 1084 (9th Cir. 2005).

52. *See* Bryan J. Kitz, Note, *Salvaging Federal Admiralty Jurisdiction: The Eleventh Circuit Advances a Modern Test for Waterway Navigability in* Aqua Log, Inc. v. Lost & Abandoned Pre-Cut Logs & Rafts of Logs, 38 Tul. Mar. L. J. 301, 302-05 (2013).

53. *See* Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534, 541 (1995).

54. For a thorough analysis of the history and application of the waterway navigability requirement for admiralty tort jurisdiction, *see* David J. Bederman, *Admiralty Jurisdiction*, 31 J. Mar. L. & Com. 189 (2000).

55. 1 Thomas J. Schoenbaum, Admiralty and Maritime Law 111-12 (5th ed., 2011); *see also* The Steam-Boat Thomas Jefferson, 23 U.S. (10 Wheat.) 428, 429-30 (1825) (adhering to the English ebb-tide rule), *overruled in part by* The Propeller Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 443 (1851).

In the landmark decision *The Propeller Genesee Chief v. Fitzhugh*, the United States Supreme Court charted its own course. The Court expressly overruled prior decisions that applied the ebb-tide rule and adopted the navigable waterway requirement for admiralty jurisdiction.[56] Subsequent case law has produced a clear standard for waterway navigability: "[Waterways] are navigable in fact when they are used, 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."[57] Under this formulation, a tortious event will satisfy the locus requirement if the waterway on which it occurs is (1) used or capable of being used (2) as a highway for waterborne commerce (3) by transporting goods or passengers (4) in interstate or foreign commerce.

In 1948, the United States Congress enacted the Admiralty Extension Act (the "Act"),[58] which amended the traditional rule that claims for harm suffered on land were not cognizable in admiralty.[59] The Act extended the admiralty jurisdiction of U.S. courts to include "cases of injury or damage, to person[s] or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land."[60] The purpose of the Act was to extend admiralty tort jurisdiction to shoreside parties that suffered a loss for which a vessel on navigable waters was at fault.[61] Admiralty jurisdiction is a requisite for arresting a vessel pursuant to an in rem action against the ship.[62] Thus, prior to the passage of the Admiralty Extension Act, land-based plaintiffs would not have had an in rem claim against the vessel and may have been left without a viable remedy. The Act is regularly applied in ship-to-shore allision scenarios.[63] However, it also has been invoked in claims arising from shoreside damage caused by the negligent packaging, stowage, or han-

56. *The Propeller Genesee Chief*, 53 U.S. (12 How.) at 457-60.

57. The Daniel Ball, 77 U.S. (10 Wall) 557, 563 (1870).

58. Ch. 526, 60 Stat. 496 (1948) (current version at 46 U.S.C. § 30101 (2015)).

59. 1 BENEDICT ON ADMIRALTY §173, at 11-41 (Joshua S. Force ed., 7th ed. rev. 2015).

60. 46 U.S.C. § 30101(a).

61. H.R. REP. NO. 80-1523, at 1-2 (1948); *see also* Victory Carriers, Inc. v. Law, 404 U.S. 202, 209 n.8 (1971) ("[T]he Act was . . . passed to remedy the 'inequities' of cases . . . which had held there was no admiralty jurisdiction to provide a remedy for damage done by ships on navigable water to land structures." (citations omitted)).

62. *See, e.g.*, *In re* Millenium Seacarriers, Inc., 419 F.3d 83, 92-93 (2d Cir. 2005) ("[A]n *in rem* suit against a vessel to quiet title by expunging its liens is 'distinctively an admiralty proceeding, and is hence within the exclusive province of the federal courts' sitting in admiralty." (quoting Am. Dredging Co. v. Miller, 510 U.S. 443, 447 (1994)).

63. *See, e.g.*, Louisville & Nashville R.R. Co. v. M/V Bayou Lacombe, 597 F.2d 469, 472 (5th Cir. 1979) (applying the Act in a claim arising out of a tug's allision with a bridge); *In re* N.Y. Trap Rock Corp. v. Red Star Towing & Transp. Co., 172 F. Supp. 638, 644-46 (S.D.N.Y. 1959) (applying the Act in an action arising out of a scow's allision with a pier).

dling of a ship's cargo by its crew.[64]

The nexus requirement for admiralty jurisdiction over maritime torts is of recent vintage compared to the locus requirement. In four cases decided between 1972 and 1994, the Supreme Court adopted and refined the nexus criterion, which requires a connection between the conduct involved in a maritime tort and traditional maritime activity.[65] *Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, the last of these decisions, is the lead nexus case.[66] While repairing bridge pilings, crewmen aboard a barge damaged the foundation of an underwater tunnel in the Chicago River.[67] Several months later, the tunnel collapsed as a result of its weakened foundation, causing significant flooding to inland property in downtown Chicago.[68] The property owners brought suit against the barge owner but contended that their tort claims did not sound in admiralty because the nexus requirement was not satisfied.[69]

The Court disagreed and, in doing so, articulated the modern formulation of the nexus criterion. It held that a maritime tort must arise out of traditional maritime activity, which requires (1) that the tort has a potentially disruptive effect on maritime commerce and (2) that the tortfeasor's activity is closely related to traditional maritime activity.[70] The Court further indicated that facts should be applied to the first factor "at an intermediate level of possible generality," meaning generally and not in a literal or case-specific manner.[71] It also specified that the second factor should be met if the tortfeasor's activity is closely related to activity that

64. *See, e.g., In re* Cook Transp. Sys., Inc., 431 F. Supp. 437, 441-42 (W.D. Tenn. 1976) (finding admiralty jurisdiction when a cargo of soybeans that barge crewmen had negligently stowed exploded after discharge onto shore); Pine Street Trading Corp. v. Farrell Lines, Inc., 364 A.2d 1103, 1115-18 (Md. 1976) (finding admiralty jurisdiction when a vessel's crew left an improperly contained cargo of antimony ore on a pier where it damaged the plaintiff's cargo of sugar).

65. The Court issued the first iteration of the nexus requirement in Exec. Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249 (1972). There, it held that admiralty jurisdiction did not lie for claims resulting from a plane crash on Lake Erie because the underlying incident bore no relationship to traditional maritime activity. *Id.* at 272-74. Ten years later, in Foremost Ins. Co. v. Richardson, the Court made clear that a relation to traditional maritime activity was a necessary jurisdictional element for all maritime torts, not just aviation incidents. 457 U.S. 668, 673-77 (1982). In Sisson v. Ruby, the Court further refined the nexus requirement, holding that a vessel need not be actively engaged in navigation to be liable for a maritime tort. 497 U.S. 358, 365-67 (1990). For a detailed analysis of the Supreme Court's reasoning in these three cases, *see* John O. Pieksen, Jr., Note, *Much Ado About Nothing, or Step-By-Step Determinations of Admiralty Tort Jurisdiction*: Sisson v. Ruby, 15 TUL. MAR. L.J. 439 (1991).

66. 513 U.S. 527 (1995).

67. *Id.* at 530.

68. *Id.*

69. *Id.* at 530-31, 535-36.

70. *Id.* at 534.

71. *Id.* at 538.

is traditionally subject to admiralty jurisdiction.[72] Thus, the nexus requirement is now a two-part analysis requiring that the conduct involved in a maritime tort has both a disruptive impact on maritime commerce and a close relationship with traditional maritime activities.

As a species of tort, a claim for maritime conversion also must satisfy the locus and nexus requirements for admiralty tort jurisdiction. These jurisdictional constraints have had a more preclusive effect on maritime conversion actions than the elements of conversion itself. In most cases, the viability of a maritime conversion claim rises or falls on the existence of admiralty jurisdiction (and not the claimant's proof that an act of conversion occurred).[73] The remainder of this section will discuss the application of the locus and nexus requirements in the context of maritime conversion.

1. Maritime Conversion and the Locus Requirement

Maritime conversion case law has mostly involved the tort's interplay with the locus requirement. Courts applying the locus requirement appear to have developed a general standard for maritime conversion actions: a claim for maritime conversion will only satisfy the locus requirement if the tortfeasor initiated the act of conversion when the chattel was aboard a vessel on navigable waters. Thus, a claimant may not have a cause of action for maritime conversion if the chattel was first converted on land and then loaded onto a ship. Whether the Admiralty Extension Act alters this formula is less clear. Because misappropriation of cargo and other property often occurs before or after it is loaded on a vessel, many claims for maritime conversion have failed because the locus requirement for admiralty tort jurisdiction was not satisfied.[74]

The Lydia, a 1924 decision of the United States Court of Appeals for the Second Circuit, is a foundational maritime conversion case that established the principle that a chattel must be converted on navigable waters for admiralty jurisdiction to lie.[75] Hugh D. MacKenzie Company ("MacKenzie"), the shipper, contracted to ship coal from Nova Scotia to a con-

72. *Id.* at 539-40.

73. *See, e.g.*, Middleton v. M/V Glory Sky I, 567 F. App'x 811 (11th Cir. 2014) (per curium) (rejecting a maritime conversion claim because it failed the locus requirement for admiralty tort jurisdiction); Metro. Wholesale Supply, Inc. v. M/V Royal Rainbow, 12 F.3d 58 (5th Cir. 1994) (same); Evergreen Marine Corp. v. Six Consignments of Frozen Scallops, 4 F.3d 90 (1st Cir. 1993) (same); Schoening v. 102 Jute Bags of Standard Canadian 3R Asbestos Spinning Fibre, 132 F. Supp. 561 (E.D. Pa. 1955) (same); *see also* Gulf Coast Shell & Aggregate LP v. Newlin, 623 F.3d 235 (5th Cir. 2010) (rejecting a maritime conversion claim because it failed the nexus requirement for admiralty tort jurisdiction).

74. *See* discussion *infra* pp. 203-05.

75. 1 F.2d 18, 23 (2d Cir. 1924).

signee in Europe.[76] Pursuant to this agreement, the steamship LYDIA was to take a cargo of coal at Port Hastings and issue a bill of lading.[77] However after the coal was loaded, the LYDIA's master refused to issue a bill of lading and sailed the ship, along with the cargo of coal, to New York.[78] As a result, MacKenzie brought an in rem action against the LYDIA for conversion.[79] The Second Circuit held that the LYDIA converted the coal and that its exercise of admiralty jurisdiction was proper.[80] The court plainly explained: "The reason for the exercise of admiralty jurisdiction is that conversion is a tort, . . . and *if that tort is committed on navigable waters*, admiralty has jurisdiction."[81] This holding—that an act of conversion begun when a chattel is on navigable waters establishes admiralty tort jurisdiction—has enjoyed significant influence in subsequent maritime conversion jurisprudence.[82]

Although the court in *The Lydia* found that the claim properly invoked its admiralty jurisdiction, the holding from this decision is more frequently used to deny admiralty jurisdiction. For example, in *Evergreen Marine Corp. v. Six Consignments of Frozen Scallops*, the United States Court of Appeals for the First Circuit held that an ocean carrier did not have a cause of action for maritime conversion.[83] Evergreen Marine Corporation ("Evergreen"), the carrier, contracted to carry a consignment of frozen scallops from Japan to New Jersey.[84] Evergreen discharged the scallops to Gloucester Corporation ("Gloucester") without a bill of lading after Gloucester executed guarantee and indemnity agreements in its favor.[85] Gloucester then removed the scallops to its warehouse in Massachusetts.[86] Shortly thereafter, two banks seized the scallops when Gloucester defaulted on a security agreement, and then a third bank came forward as the true holder of the bill of lading for the scallops.[87] Facing liability to the third bank, Evergreen brought suit in admiralty

76. *Id.* at 19.

77. *Id.*

78. *Id.*

79. *Id.* at 23.

80. *Id.*

81. *Id.* (emphasis added).

82. *See, e.g.*, Goodpasture, Inc. v. M/V Pollux, 602 F.2d 84, 87 (5th Cir. 1979) (finding the M/V POLLUX liable for maritime conversion when her master refused to release the shipper's cargo of wheat after it was loaded aboard the vessel (citing *The Lydia*, 1 F.2d 18)); Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil, 530 F. Supp. 1074, 1080-81 (E.D. Mo. 1981) (holding a barge operator liable for maritime conversion when it refused to discharge a cargo of oil upon the owner's request (citing *The Lydia*, 1 F.2d 18)), *aff'd*, 704 F.2d 1038 (8th Cir. 1983).

83. 4 F.3d 90, 94 (1st Cir. 1993).

84. *Id.* at 92.

85. *Id.*

86. *Id.* at 92-93

87. *Id.* at 93.

against the other banks for converting the scallops.[88] Citing among others *The Lydia*, the court asserted, "Admiralty jurisdiction over a conversion claim . . . depends on whether the chattel was on navigable waters at the time of the alleged wrongful exercise of dominion."[89] Finding that the banks took possession of the scallops well after they had been discharged from the ship onto land, the First Circuit concluded that Evergreen's maritime conversion claim did not satisfy the locus requirement for admiralty tort jurisdiction.[90]

Similarly, in *Middleton v. M/V Glory Sky I*, the United States Court of Appeals for the Eleventh Circuit held that it did not have admiralty jurisdiction over an in rem claim against a vessel for maritime conversion.[91] The plaintiff, the owner of 5,500 bags of black beans, arranged for storage of the beans in a South Florida warehouse.[92] After several authorized shipments, the warehouse owner, without the plaintiff's consent, had 3,800 bags of beans loaded aboard the cargo vessel GLORY SKY I, shipped to Haiti, and sold to a third party.[93] The plaintiff sued the GLORY SKY I for maritime conversion.[94] However, the court held that it lacked admiralty jurisdiction because the locus requirement was not satisfied.[95] It found that the locus criterion was not met because the act of conversion began in the warehouse and not on navigable waters.[96] It reasoned that the warehouse owner "converted the beans when he removed them from the warehouse" and that their subsequent transfer to the GLORY SKY I and his refusal to return them "was merely a reassertion of his already-completed conversion."[97] The court also dismissed the plaintiff's contention that loading the beans aboard the ship constituted a second act of conversion, concluding:

> Under [the plaintiff's] view, conversions invariably give rise to admiralty jurisdiction if the tortfeasor ever loads the converted property onto a ship he controls, even if this occurs long after and far removed from the actual conversion of the property. This result undermines the [locus] prong of the test for admiralty jurisdiction and uses the fictional separateness of a ship in admiralty to expand the reach of admiralty jurisdiction to torts that are otherwise entirely land based.[98]

88. *Id.*
89. *Id.* at 94.
90. *Id.*
91. 567 F. App'x 811, 815 (11th Cir. 2014) (per curiam).
92. *Id.* at 812.
93. *Id.*
94. *Id.*
95. *Id.* at 815.
96. *Id.* at 814.
97. *Id.*
98. *Id.* at 815 n.6.

Accordingly, the court dismissed the plaintiff's maritime conversion claim for want of admiralty jurisdiction.

The First and Eleventh Circuit's respective decisions in *Evergreen Marine* and *Middleton* are not anomalous. Instead, courts applying the locus requirement to maritime conversion claims generally have required that the tortfeasor's act of conversion begin while the chattel was on navigable waters. This strict application of the locus criterion has resulted in the dismissal of many maritime conversion actions for lack of admiralty jurisdiction.[99]

Only one court has considered whether the Admiralty Extension Act preserves admiralty tort jurisdiction for maritime conversion claims when the converted chattel is located on land. In *Thyssen, Inc. v. S.S. Rio Capaya*, the United States District Court for the Middle District of Florida indicated that the Act could preserve admiralty jurisdiction when the alleged conversion took place after a vessel had discharged the chattel onto land.[100] There, the plaintiff leased shipping containers for use aboard the cargo vessel RIO CAPAYA.[101] The plaintiff alleged that the RIO CAPAYA continued carrying some containers after the lease expired and that her crew discharged other containers prior to the lease's expiration so that they would not be aboard if the ship was arrested.[102] The court held that if proven, both actions would constitute maritime conversion.[103] It concluded that under the Admiralty Extension Act, "It [wa]s immaterial that some of the containers were physically located on land, so long as the ship caused the conversion while on navigable waters."[104] Thus, even though the containers were discharged onto land before the lease expired, the court reasoned that the RIO CAPAYA could be liable for maritime conversion if her crew was at fault for the containers' displacement at the time of expiration.[105]

With regard to the locus requirement for admiralty tort jurisdiction, the general legal principle derived from existing maritime conversion case law is simple. Most likely, to satisfy the locus requirement, the tortfeasor

99. *See, e.g.*, Metro. Wholesale Supply, Inc. v. M/V Royal Rainbow, 12 F.3d 58, 61 (5th Cir. 1994) (holding that a claim for conversion did not sound in admiralty because the cargo of nails had been discharged from the vessel when the alleged tort occurred); Schoening v. 102 Jute Bags (100 lbs. Each) of Standard Canadian 3R Asbestos Spinning Fibre, 132 F. Supp. 561, 562-63 (E.D. Pa. 1955) (finding that it lacked admiralty jurisdiction because the tortfeasor's conversion began in a shoreside warehouse before the chattel was loaded aboard a vessel).

100. Nos. 86-35-Civ-J-14, 86-46-Civ-J-14, 86-102-Civ-J-14, 86-131-Civ-J-14, 1988 WL 114535, at *3 (M.D. Fla. Feb. 17, 1988).

101. *Id.* at *1.

102. *Id.* at *3.

103. *Id.*

104. *Id.*

105. *Id.*

must initiate an act of conversion when the chattel is located aboard a vessel on navigable waters. In certain circumstances, this literal application of the locus criterion may produce incongruent results. For example, a claimant whose property is converted aboard a berthed vessel and then moved to the dock may have a cause of action for maritime conversion, while a claimant whose property is converted on the dock and then moved aboard a berthed vessel may not. Nevertheless, the precedent that the *Middleton*, *Evergreen Marine*, and *The Lydia* courts have established is appropriate. Given the purely spatial nature of the locus criterion,[106] a conversion claim *should* only satisfy this requirement for admiralty tort jurisdiction if the tortfeasor's act of conversion took place on navigable waters.

This line of decisions also leaves an important question unanswered: If a tortfeasor converts a chattel on land and then causes it to be loaded aboard a vessel owned or operated by a third party, can the vessel or the third party be liable for maritime conversion? Put another way, if a vessel sails away with a chattel that was previously converted by another party, has the ship committed a second act of conversion? Unfortunately, the facts of these three cases do not suggest an answer. In *Middleton*, the land-based tortfeasor also owned and operated the vessel on which the beans were loaded.[107] In *Evergreen Marine*, no alleged act of conversion took place until after the scallops had been discharged from the vessel.[108] In *The Lydia*, the only act of conversion took place after the coal had been loaded aboard the ship.[109] Accordingly, a significant gap remains within the existing body of maritime conversion jurisprudence.

Finally, the *Thyssen* court's holding that the Admiralty Extension Act can preserve admiralty jurisdiction over acts of conversion that ostensibly occur on land appears misguided. The court's reasoning relies on the dubious proposition that a vessel, having previously discharged containers onto land, later can be liable in tort when those containers go unreturned to the lessor upon expiration of the lease.[110] A possible cause

106. *Cf.* Sisson v. Ruby, 497 U.S. 358, 360 (1990) ("Until recently [admiralty] jurisdiction over tort actions was determined largely by the application of a 'locality' test."); Exec. Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249, 253 (1972) ("Determination of the question whether a tort is 'maritime' and thus within the admiralty jurisdiction of the federal courts has traditionally depended upon the locality of the wrong.").

107. 567 F. App'x 811, 814-15 (11th Cir. 2014) (per curiam) ("The GLORY SKY, though a separate legal entity under maritime law. . .could only act *through Destin* [the owner]. As a consequence, it could not re-appropriate the beans for its own purposes and thereby commit a new conversion separate from Destin's.")

108. 4 F.3d 90, 94 (1st Cir. 1993).

109. *See* 1 F.2d 18, 23 (2d Cir. 1924).

110. While the lessor likely would have had a viable claim in admiralty for breach of maritime contract, that remedy is outside the scope of this Article.

of action for conversion did not accrue until the lease expired, at which time the containers had already been discharged onto land and the ship had left the port. The Admiralty Extension Act should not be contorted to create admiralty jurisdiction when the allegedly converted chattel is on land and the offending vessel is absent at the place and time of the conversion. The court's application of the Act also appears inconsistent with congressional intent. Congress plainly indicated that the Act was intended to extend admiralty jurisdiction to those harmed in ship-to-shore allision incidents.[111] Maritime conversion scenarios in which the offending vessel is not even present when and where the tort occurs are not the type of conduct that Congress sought to render cognizable in admiralty. Accordingly, the *Thyssen* decision is of questionable precedential value.

2. *Maritime Conversion and the Nexus Requirement*

Likely owing to the relative dearth of maritime conversion jurisprudence and the recent advent of the nexus requirement, there is limited case law discussing the tort's relationship with this criterion for admiralty tort jurisdiction. In fact, no court has given significant treatment to maritime conversion's satisfaction of the first prong of the nexus requirement (disruption to maritime commerce). Nevertheless, as is the case for most maritime torts, this element will most likely be satisfied easily. The first prong of the nexus requirement should be met as long as the alleged act of conversion, construed generally, could have a disruptive impact on maritime commerce. With regard to the second prong of the nexus requirement (relation to traditional maritime activity), existing case law suggests that the character of the alleged conversion is dispositive. Specifically, a claimant must show that the nature of the tortfeasor's act of conversion—and not that of the converted chattel—is a type of conduct traditionally subject to admiralty jurisdiction.

Gulf Coast Shell & Aggregate LP v. Newlin, a 2010 Fifth Circuit decision, is the only pre-*Ministry of Oil I/II* case to consider whether a maritime conversion claim satisfied the nexus requirement's traditional-maritime-activity prong.[112] There, a dispute arose about an alleged conversion of a dredge effected by transfer of title.[113] Three individuals, including the defendant Charles Newlin ("Newlin"), formed a venture to

111. The United States House of Representatives Report clearly states, "[I]f a bridge or pier, or any person or property situated thereon, is injured by a vessel, the admiralty courts of the United State do not entertain the claim for the damages thus caused. The bill under consideration would provide for the exercise of admiralty and maritime jurisdiction in all cases of the type above indicated." H.R. REP. NO. 80-1523, at 1 (1948) (citations omitted).

112. 623 F.3d 235, 240 (5th Cir. 2010).

113. *Id.* at 237.

dredge oyster shells on coastal waters in Mexico.[114] Two individuals other than Newlin formed Gulf Coast Shell and Aggregate LP ("Gulf Coast") to distribute oyster shells acquired from the venture in the United States.[115] Gulf Coast paid for the dredge, LA CONCHA, but all three individuals orally agreed that title to the vessel temporarily would remain with a Mexican entity that Newlin controlled.[116] After a disagreement about payment for repairs to the dredge, Newlin transferred title to the LA CONCHA to a different entity that he controlled without the consent of the other individuals.[117] Gulf Coast sued Newlin in admiralty for maritime conversion, alleging that his transfer of title to the LA CONCHA constituted a conversion of the dredge.[118]

The Fifth Circuit held that it did not have admiralty jurisdiction because Gulf Coast's maritime conversion claim did not satisfy the nexus requirement.[119] It found that Newlin's transfer of title to the LA CONCHA did not have a significant relationship to traditional maritime activity and therefore did not meet the second prong of the nexus criterion.[120] The court reasoned that the transfer of title "relate[d] merely to possession and ownership of the dredge, not to the vessel in its use as such."[121] Thus, in determining whether the underlying actions had a significant relationship to traditional maritime activity, the Fifth Circuit fixed the scope of its analysis on the nature of the tortfeasor's alleged act of conversion and not on the nature of the converted chattel.

The *Gulf Coast Shell* court properly focused its analysis on the character of the tortfeasor's alleged act of conversion.[122] The Supreme Court plainly indicated in *Grubart* that the traditional-maritime-activity prong of the nexus requirement should be satisfied if a "tortfeasor's activity . . . is so closely related to activity traditionally subject to admiralty law that the reasons for applying special admiralty rules would apply."[123] Accordingly, in considering the means by which Newlin allegedly converted the dredge (and not the character of the dredge itself), the Fifth Circuit appropriately fixed the scope of its analysis on the tortfeasor's activity. Be-

114. *Id.* at 237-38.

115. *Id.* at 238.

116. *Id.*

117. *Id.*

118. *Id.* at 237.

119. *Id.* at 240. The court also summarily held that because the title transfer did not occur on navigable waters, the claim did not satisfy the locus requirement. *Id.*

120. *Id.*

121. *Id.*

122. The court did not discuss the disruption-to-maritime-commerce prong of the nexus requirement. However, it seems clear that the conversion of a vessel via wrongful title transfer could have a deleterious impact on maritime commerce.

123. 513 U.S. 527, 539 (1995).

cause Newlin asserted dominion over the dredge via a basic, terrestrial transfer of title, his conduct did not constitute an activity to which admiralty law has traditionally applied.

The holding in *Gulf Coast Shell* may always preclude a conversion effected by land-based title transfer from sounding in admiralty. Indeed, a land-based transfer of title to a chattel would never seem to have a significant connection with traditional maritime activity. However, acts of conversion in which the chattel is physically converted might. A physical misappropriation of a vessel, cargo, or other property at sea is substantially similar to, *inter alia*, piracy and trover, actions historically subject to admiralty jurisdiction. Accordingly, such conduct may satisfy the nexus requirement for admiralty jurisdiction over maritime torts and thus give rise to a viable claim for maritime conversion.

III. Benefits of Maritime Conversion: Maritime Liens and Rule D

Although satisfying the jurisdictional requirements for maritime conversion can be difficult, the claim has certain benefits. Tortious conduct that constitutes maritime conversion may give rise to other causes of action. For example, misappropriation of property leased to a vessel may create a claim for breach of maritime contract. Claims arising out of cargo loss or damage are usually pleaded under the Carriage of Goods by Sea Act[124] or as a breach of the contract of affreightment.[125] Litigants may also have the option of bringing a common law claim for conversion before a nonadmiralty court.[126] However, pleading a claim for maritime conversion may afford a claimant additional benefits that these remedies do not. Specifically, maritime conversion will often establish both an in rem cause of action against the vessel and an in rem cause of action against the converted chattel.

It is black letter law that commission of a maritime tort creates a maritime lien on the offending vessel.[127] A claimant enforces a maritime lien by asserting an in rem claim against the ship pursuant to Rule C.[128] Tortious conduct by a ship's master or crew will give rise to in rem vessel liability.[129] The Supreme Court has also made clear that a vessel may be

124. 46 U.S.C. § 30701 note (2012).

125. Norman B. Richards, *Maritime Liens in Tort, General Average, and Salvage*, 47 Tul. L. Rev. 569, 580 (1973).

126. For example, in Evergreen Marine Corp. v. Six Consignments of Frozen Scallops, the plaintiff prevailed in a common law conversion claim, even though the court found that it lacked admiralty jurisdiction over the maritime conversion claim. 4 F.3d 90, 98 (1st Cir. 1993).

127. *E.g.*, 1 Schoenbaum, *supra* note 55, § 9-1, at 686-88; Grant Gilmore & Charles L. Black, The Law of Admiralty § 9-2, at 587 (2d ed. 1979).

128. *See* Fed. R. Civ. P. Supp. R. Adm. Mar. Claims C.

129. 1 Benedict on Admiralty, *supra* note 59, §176, at 11-53; *see also* Harmony v. United

liable in rem even when the shipowner is not personally liable or subject to suit in personam.[130] Further, maritime liens created as a result of a maritime tort are distinguishable from most other maritime liens. The Ship Mortgage Act[131] designates tort-based maritime liens as preferred maritime liens.[132] Preferred maritime liens have priority over preferred ship mortgages and nonpreferred maritime liens.[133] Preferred maritime lien status, therefore, can be advantageous in priority dispute and foreclosure scenarios.

Unlike Rule C, litigants have not frequently utilized Rule D.[134] In relevant part, Rule D provides: "In all actions for possession, partition, and to try title maintainable according to the course of the admiralty practice with respect to a vessel [and] in all actions so maintainable with respect to the possession of cargo or other maritime property, . . . the process shall be by a warrant of arrest of the vessel, cargo, or other property. . . ."[135] Rule D offers a procedural mechanism by which a plaintiff can assert at least three distinct types of claims: (1) a possessory action to acquire possession of a vessel, cargo, or maritime property, (2) a petitory action to try title to a vessel, cargo, or maritime property, and (3) a partition action by a part owner of a vessel to obtain security for the return of the ship from a voyage undertaken without consent or to obtain possession of the ship for any voyage upon giving security for her safe return.[136] These causes of action are advanced in rem against the vessel, cargo, or maritime property. Any party that claims a superior right to possession or title can bring a claim under Rule D.[137] However, in a Rule D action to acquire possession of or title to cargo or maritime property other than a vessel, a claimant must assert an independent basis in support of admiralty jurisdiction.[138] Thus, a possessory or petitory action over cargo or maritime property is only viable if the claimant pleads a valid maritime contract or tort claim. If a claimant can satisfy this requirement, Rule D

States (The Malek Adhel), 43 U.S. 210, 234 (1844) ("The ship is also by the general maritime law held responsible for the torts and misconduct of the master and crew thereof.").

130. *See, e.g.,* The Barnstable, 181 U.S. 464, 467 (1901) (enforcing a maritime lien on a vessel when the charterer was at fault for a collision and the owner was not liable in personam); The China, 74 U.S. (7 Wall.) 53, 63-64 (1864) (finding the vessel subject to a maritime lien for a collision even though the pilot was at fault and the shipowner was not liable in personam).

131. 46 U.S.C. §§ 31301-31343 (2012).

132. *Id.* § 31301(5)(B).

133. *Id.* § 31326(b)(1).

134. Gina M. Venezia, *The B, C, D's of the Admiralty Rules: Obtaining Security for Your Claims*, 27 U.S.F. MAR. L.J. 241, 258 (2015) ("Rule D has, historically, been the least utilized of the Supplemental Admiralty Rules.").

135. FED. R. CIV. P. SUPP. R. ADM. MAR. CLAIMS D.

136. Venezia, *supra* note 134, at 258.

137. 2 THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW 547 (5th ed., 2011).

138. Venezia, *supra* note 134, at 259.

provides a feasible, if rarely utilized, means of enforcing property rights in cargo and other maritime property before an admiralty court.

Unlike other causes of action arising from a tortfeasor's misappropriation of a chattel, maritime conversion will often allow for both an in rem claim against the vessel and an in rem claim against the converted chattel. An act of maritime conversion creates a maritime lien on the offending vessel, which a claimant can enforce in rem against the ship under Rule C.[139] Also, because such conduct is a maritime tort, the resultant maritime lien constitutes a preferred maritime lien under the Ship Mortgage Act, which has priority over preferred ship mortgages and non-preferred maritime liens.[140] Finally, because maritime conversion usually involves interference with cargo or maritime property, a claimant can often bring an in rem suit against the converted chattel to acquire possession or title under Rule D.[141] The remainder of this section will discuss the case law and legal benefits of in rem vessel liability under Rule C, preferred maritime liens, and in rem chattel liability under Rule D as they relate to maritime conversion.

A. In Rem Liability and Preferred Maritime Liens

Some commentators have questioned the logic of in rem vessel liability for intentional torts, such as maritime conversion.[142] Nonetheless, there is broad consensus that maritime conversion is a maritime tort like any other and creates a maritime lien on the offending vessel.[143] Maritime conversion therefore affords a claimant not only an in personam cause of action against the tortfeasor but also an independent in rem cause of action against the vessel. In *The Atlanta*, for example, one of the plaintiffs brought an in rem action against a vessel for a maritime conversion committed by her crew.[144] Without consent or authorization, the ATLANTA's crew loaded drums of oil aboard the plaintiff's lighter.[145] They ultimately overloaded the lighter, causing her loss.[146] In response to the plaintiff's in rem claim against the ATLANTA, the court asserted, "Admiralty courts have jurisdiction of suits in rem for conversion of property on navigable waters. A maritime lien exists for such tortious

139. *See* discussion *infra* Section III.A.

140. *See* discussion *infra* Section III.A.

141. *See* discussion *infra* Section III.B.

142. *See, e.g.*, Richards, *supra* note 125, at 582 ("It is difficult, even assuming the personification of the vessel, to see how an inanimate object could be guilty of an intentional tort.").

143. 8 Benedict on Admiralty § 7.01, at 7-27 (Joshua S. Force ed., 7th ed. rev. 2015); William Tetley, Maritime Liens and Claims 721 (2d ed. 1998); Richards, *supra* note 125, at 582.

144. 82 F. Supp. 218 (S.D. Ga. 1948).

145. *Id.* at 237.

146. *Id.* at 221.

damages."[147] Thus, like other maritime torts, an act of maritime conversion by a vessel's crew will give rise to an in rem claim against the ship.

Further, because it is a species of maritime tort, maritime liens created from an act of maritime conversion constitute preferred maritime liens under the Ship Mortgage Act.[148] The Act subordinates most liens and mortgages on vessels to preferred maritime liens.[149] Preferred maritime liens, therefore, can be beneficial when there are rival creditors or lienors. *Port Welcome Cruises, Inc. v. S.S. Bay Belle* evidences the advantage that maritime conversion claimants can derive from preferred maritime lien status.[150] Santel Linen Service (Santel) leased uniforms and linens for use aboard the JOHN A. MESECK.[151] When some of the linens and uniforms were not returned upon the lease's expiration, intervener Santel perfected its maritime lien via an in rem claim against the vessel for maritime conversion.[152] However, the shipowner had also defaulted on a promissory note secured by a preferred ship mortgage on the JOHN A. MESECK, and the mortgagee brought suit to foreclose its mortgage.[153] If the mortgagee's preferred ship mortgage had priority over Santel's maritime lien, there would have been insufficient funds to satisfy a judgment in Santel's favor. Nevertheless, the court made clear that because Santel's lien was derived from a maritime tort (specifically, maritime conversion), it was a preferred maritime lien and thus primed the preferred ship mortgage.[154] Accordingly, in priority dispute scenarios with rival mortgagees or lienors, pleading a claim for maritime conversion has the obvious benefit of granting the claimant a preferred maritime lien.

In sum, in rem vessel liability under Rule C is a distinct advantage that can be obtained from pleading a claim for maritime conversion. In rem vessel liability effectively creates another defendant—the ship—that a claimant can sue. This option is particularly useful when a claimant cannot obtain personal jurisdiction over an in personam defendant or a tortfeasor is otherwise not amenable for suit. Also, because an encum-

147. *Id.* at 237 (citation omitted); *see also* California v. S.S. Bournemouth, 307 F. Supp. 922, 928 (C.D. Cal. 1969) ("It is the view of this court that the general maritime law has consistently provided in rem relief to the owner of property tortiously damaged by conversion.").

148. 46 U.S.C. § 31301(5)(B) (2012) (designating maritime liens "for damage arising out of maritime tort" as preferred maritime liens).

149. Specifically, § 31326 of the Act affords priority to preferred ship mortgages over all claims "*except . . . preferred maritime liens.*" *Id.* § 31326(b)(1) (emphasis added).

150. 215 F. Supp. 72 (D. Md. 1963).

151. *Id.* at 86.

152. *Id.*

153. *Id.* at 74.

154. *Id.* at 86; *cf.* The Escanaba, 96 F. 252, 252 (N.D. Ill. 1899) ("[T]he interveners, whose goods were tortiously converted by the master, should have their claims for the goods thus converted given preference over liens for supplies furnished prior to the tort.").

bered vessel may be sold at judicial auction to fulfill a judgment, bringing a maritime conversion claim against the offending vessel improves the likelihood that a claimant can recover. In rem vessel liability under Rule C, with these associated benefits, is therefore a unique advantage that pleading a claim for maritime conversion affords, but common law conversion does not.

Additionally, because the lien created by an act of maritime conversion is a preferred maritime lien, the claim has an advantage over other remedies in priority disputes. The plaintiff in *Port Welcome Cruises* likely had a viable cause of action for breach of maritime contract and common law conversion. However, neither would have given rise to a preferred maritime lien. Pleading a claim for common law conversion would not have created a maritime lien at all. Pleading a claim for breach of maritime contract would only have created a non-preferred maritime lien because the rival creditor's preferred ship mortgage predated the contract breach. Only by bringing suit for maritime conversion, a maritime tort, did the plaintiff acquire a preferred maritime lien and prime the rival preferred ship mortgage. Thus, the preferred maritime lien obtained from pleading a claim for maritime conversion can be particularly beneficial in priority dispute scenarios.

B. Rule D Claim Against Converted Chattels

Under Rule D, a claimant can bring an in rem action against "cargo or other maritime property" to acquire possession of or title to the res.[155] However, a Rule D action over cargo or maritime property necessitates that a claimant assert an underlying basis in support of the court's admiralty jurisdiction.[156] A properly pleaded claim for maritime conversion should satisfy this requirement for two reasons. First, like a possessory or petitory action under Rule D, maritime conversion usually involves a misappropriation of cargo or maritime property.[157] Second, as a maritime tort, a claim for maritime conversion will necessarily support a court's admiralty jurisdiction, thereby providing the jurisdictional foundation for a claimant to bring a Rule D action against the converted chattel. For this reason, maritime conversion claims are sometimes joined with Rule D actions.[158] Conversely, in the absence of another basis for admiralty

155. Fed. R. Civ. P. Supp. R. Adm. Mar. Claims D.

156. *See* Venezia, *supra* note 134, at 259.

157. *E.g.*, Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil, 704 F.2d 1038 (8th Cir. 1983) (maritime conversion of a tanker barge's cargo of oil); Goodpasture, Inc. v. M/V Pollux, 602 F.2d 84 (5th Cir. 1979) (maritime conversion of a vessel's bulk cargo of wheat); The Lydia, 1 F.2d 18 (2d Cir. 1924) (maritime conversion of a ship's cargo of coal).

158. *See, e.g.*, Gulf Coast Shell & Aggregate LP v. Newlin, 623 F.3d 235 (5th Cir. 2010); Evergreen Marine Corp. v. Six Consignments of Frozen Scallops, 4 F.3d 90, 93 n.4 (1st Cir.

jurisdiction, an improperly pleaded cause of action for maritime conversion that fails the locus or nexus requirement for admiralty tort jurisdiction will likely not support a Rule D action.

The court's decision in *Gulf Coast Shell* is illustrative. There, in addition to a maritime conversion claim, the plaintiffs brought a Rule D action to acquire possession of or title to the dredge.[159] As discussed *supra* Section II.B.2, the Fifth Circuit held that the plaintiffs' maritime conversion claim failed the nexus requirement for admiralty tort jurisdiction. As a result, it also dismissed the plaintiffs' Rule D action because they did not establish an alternative basis for admiralty jurisdiction.[160] Similarly, in *Hunt v. Cargo of Petroleum Products Laden on the Steam Tanker Hilda*, the court dismissed the claimants' Rule D action.[161] The two plaintiffs asserted possessory and petitory rights in petroleum, which they alleged had been wrongfully seized from a Libyan oilfield and loaded aboard the oil tanker HILDA.[162] They also claimed that this wrongful possession and transport of the cargo on navigable waters constituted a maritime tort.[163] The court disagreed, finding that the plaintiffs did not plead a valid maritime tort claim.[164] Having found admiralty tort jurisdiction lacking, the court concluded that "questions concerning title or possession of cargo not based on a maritime contract or tort do not bear a significant relationship to maritime commerce" and therefore do not provide for a Rule D action before an admiralty court.[165] Accordingly, the court dismissed the claims for lack of admiralty jurisdiction. If the plaintiffs in either case were able to plead a valid maritime conversion claim, they likely would have had a viable Rule D action as well because they would have established an independent basis for admiralty jurisdiction.

To conclude, assuming that an allegedly converted chattel constitutes "cargo or other maritime property,"[166] a claim for maritime conversion should also support an in rem Rule D action against the chattel. A plaintiff bringing a maritime conversion claim will have established an independent basis for admiralty jurisdiction, thus satisfying a necessary condition for asserting a Rule D action over cargo or maritime property.

1993); Ministry of Oil I, No. G-14-249, 2014 WL 4215357 (S.D. Tex. Aug. 25, 2014); Gonzalez-Santini v. Lucke, No. 13-1375 (FAB), 2013 WL 3712343 (D. P.R. July 12, 2013).

159. *Gulf Coast Shell*, 623 F.3d at 237.

160. *Id.* at 240-41. The court also held that the plaintiffs failed to plead a valid maritime contract claim that would have supported admiralty jurisdiction. *Id.* at 241.

161. 378 F. Supp. 701, 704 (E.D. Pa. 1974), *aff'd*, 515 F.2d 506 (3d Cir. 1975).

162. *Id.*

163. *Id.*

164. *Id.* at 704.

165. *Id.*

166. Notably, neither Rule D nor the limited case law on the subject has supplied a definition or standard for "cargo or other maritime property."

The option of bringing a Rule D claim is particularly useful for claimants more interested in acquiring possession of or title to a converted chattel, rather than damages. Accordingly, the availability of an in rem cause of action under Rule D is another benefit that maritime conversion affords, which common law conversion does not.

IV. Return to the Gulf: The Case of the KALAVRVTA in Context

In *Ministry of Oil I*, the Southern District of Texas considered whether Iraq's maritime conversion claim against Kurdistan satisfied the locus requirement for admiralty tort jurisdiction.[167] In *Ministry of Oil II*, the court considered whether Iraq's maritime conversion claim against John Doe Buyer satisfied the nexus requirement for admiralty tort jurisdiction.[168] It ultimately held that neither claim satisfied these respective jurisdictional criterion.[169] With respect to the locus requirement, the court's holding in *Ministry of Oil I* comports with prior maritime conversion case law. However, the decision leaves open the question, also undressed in earlier cases, whether a vessel can be liable in rem for carrying cargo that was initially converted on land by another party. In *Ministry of Oil II*, the court appears to have misapplied the traditional-maritime-activity prong of the nexus requirement.

A. Iraq's Claim Fails the Locus Requirement

In *Ministry of Oil I*, the Southern District of Texas restricted its analysis to the locus requirement.[170] The court held that Iraq's maritime conversion claim against Kurdistan did not satisfy the locus requirement because the tortious conduct began on land.[171] It found that Kurdistan initiated the alleged act of conversion when the crude oil was severed and exported from within its borders and not when the oil was loaded aboard the UNITED KALAVRVTA.[172] The essence of this holding—that a claim for maritime conversion can only meet the locus requirement if the chattel was located on navigable waters when it was converted—conforms with prior maritime conversion jurisprudence. However, because the UNITED KALAVRVTA did not enter U.S. territorial waters and was not subject to arrest, the decision also fails to address whether loading the crude oil aboard the vessel and carrying it to the United States

167. No. G-14-249, 2014 WL 4215357, *3, *4 (S.D. Tex. Aug. 25, 2014).
168. No. G-14-249, 2015 WL 93900, *11 (S.D. Tex. Jan. 7, 2015).
169. *Ministry of Oil I*, 2014 WL 4215357 at *7; *Ministry of Oil II*, 2015 WL 93900 at *11.
170. 2014 WL 4215357 at *4-6.
171. *Id.* at *6.
172. *Id.* at *5.

constituted a separate act of conversion for which the ship could have been liable in rem.

The court first outlined the elements of maritime conversion by asserting, "Under general common-law principles, conversion 'occurs when, wrongfully and without authorization, one assumes and exercises control and dominion over the . . . property of another, either inconsistently with or to the exclusion of the owner's rights.'"[173] The court also cited the *Restatement (Second) of Torts* definition of conversion.[174] In framing maritime conversion in a common law context, the court left little doubt that the essential elements of maritime conversion are no different from traditional, terrestrial conversion.

Next, the court discussed certain legal principles of conversion that, applied in oil and gas law, were relevant to Iraq's claim against Kurdistan.[175] It noted that oil and natural gas, *in situ*, is considered part of the realty and is not subject to a conversion claim.[176] Once extracted, however, oil and gas becomes personal property and can be subject to a conversion claim.[177] Thus, a cause of action for conversion arises when a tortfeasor asserts dominion over extracted oil and gas in a manner that is adverse to another's rights. Importantly, the court explained that this "rule fixes accrual upon the tortfeasor's initial assertion of unlawful ownership or control, regardless of future acts during the pendency of its claim."[178] This general principle figured heavily in the court's determination that Kurdistan's alleged conversion did not occur on navigable waters.[179]

Having laid a jurisprudential framework for the tort of conversion in the common law and oil and gas contexts, the court then considered Iraq's assertion that Kurdistan engaged in maritime conversion by causing the crude oil to be loaded and shipped aboard the UNITED KALAVRVTA.[180] It rejected this argument, finding that the locus requirement for admiralty tort jurisdiction was not satisfied.[181] The court

173. *Id.* (quoting United States v. Boardwalk Motor Sports, Ltd., 692 F.3d 378, 381 (5th Cir. 2012)).

174. *Id.* (citing RESTATEMENT (SECOND) OF TORTS § 222A(1) (AM. LAW INST. 1965)).

175. *Id.* at *4.

176. *Id.*

177. *Id.*

178. *Id.* at *5.

179. *See, e.g.*, *id.* ("[T]he Kurds' unauthorized, land-based export of oil . . . constituted a completed act of conversion."); *id.* at *6 ("[T]he alleged tort accrued either upon extraction of the minerals or their export to Turkey, seven months or more before the cargo was loaded onto the vessel."); *id.* ("Iraq has pled facts showing that its claim for conversion accrued on land, when Kurdistan allegedly first exercised dominion over the crude without Iraq's authorization or consent.").

180. *Id.*

181. *Id.* at *6.

held that the alleged act of conversion occurred when Kurdistan extracted and exported the oil from within its borders without authorization from the Iraqi Ministry of Oil.[182] It found that this conduct was inherently land-based.[183] The court further reasoned that Kurdistan's subsequent actions—specifically, having the oil loaded aboard the UNITED KALAVRVTA and carried to Texas—were simply evidence of its initial conversion of the crude oil.[184] Accordingly, the court tersely concluded, "Kurdistan's offshore conduct merely strengthens Iraq's claim of a terrestrial tort. It does not create a maritime one."[185]

Finally, the Southern District of Texas averred that its holding was consistent with prior jurisprudence, and favorably cited the Fifth Circuit's decision in *Adams v. Unione Mediterranea di Sicurta*.[186] There, the plaintiff, the owner of a cargo of steel that had sunk in the Mississippi River, brought suit for conversion against the salvor and third party purchaser of the steel.[187] During the salvage operation, the salvor negotiated to sell the steel to the purchaser.[188] The two parties executed the sale while the steel was being salvaged.[189] The Fifth Circuit held that these actions constituted conversion because the salvor did not have title to or ownership of the steel and the sale therefore interfered with the plaintiff-owner's rights.[190] The *Ministry of Oil I* court summarized the Fifth Circuit's holding, asserting that the third-party purchaser's subsequent "consumption of the steel did not create a second conversion claim; rather, it provided more evidence" of the initial conversion.[191] Thus, even though Iraq had cited *Adams* in favor of its maritime conversion claim, the court concluded that the case was "consistent" with its conclusion that Kurdistan's alleged conversion accrued on land when it first exercised dominion over the crude oil.[192]

The court also distinguished its holding from the Eleventh Circuit's decision in *Doe v. Celebrity Cruises, Inc.*[193] In *Doe*, a cruise ship worker sexually assaulted the plaintiff during a scheduled port call in Bermuda.[194] Even though the tortious conduct occurred on land, the court

182. *Id.*
183. *Id.* at *5-6.
184. *Id.* at *5.
185. *Id.*
186. *Id.* (citing Adams v. Unione Mediterranea di Sicurta, 220 F.3d 659 (5th Cir. 2000)).
187. *Adams*, 220 F.3d at 664.
188. *Id.* at 665.
189. *Id.*
190. *Id.* at 665, 673.
191. Ministry of Oil I, No. G-14-249, 2014 WL 4215357, at *5 (S.D. Tex. Aug. 25, 2014).
192. *Id.*
193. *Id.* at *6 (citing Doe v. Celebrity Cruises, Inc., 394 F.3d 891 (11th Cir. 2004)).
194. *Doe*, 394 F.3d at 897-98.

held that the plaintiff's claim against the cruise line satisfied the locus requirement for admiralty tort jurisdiction.[195] It reasoned that the following factors supported this conclusion: (1) the assault took place during a port call that was a planned and integral part of the cruise experience, (2) the tort occurred close to the vessel in an area where passengers and crew congregated, (3) the plaintiff previously interacted with the tortfeasor while on board the ship, and (4) the uniform body of admiralty law should be applied in the intentional tort scenario at issue.[196] The court in *Ministry of Oil I* found that the Eleventh Circuit's reasoning did not justify extending admiralty jurisdiction to include Kurdistan's alleged land-based conversion.[197] It noted that the facts of Iraq's conversion claim were temporally and spatially distinct from the facts in *Doe*.[198] Kurdistan's alleged conversion occurred in land-locked Iraq, hundreds of miles from navigable waters.[199] Also, the crude oil was not loaded aboard the UNITED KALAVRVTA until seven months after it had been exported to Turkey.[200] Thus, the court held that *Doe* did not support Iraq's claim.[201]

Having found that Kurdistan's alleged conversion of the crude oil occurred on land and that there was no reason to extend admiralty jurisdiction to include terrestrial torts of this nature, the court concluded that Iraq's claim did not satisfy the locus requirement.[202] Accordingly, it dismissed Iraq's maritime conversion claim against Kurdistan for lack of jurisdiction.[203]

The court's holding in *Ministry of Oil I*—that a converted chattel must be located on navigable waters when the tortfeasor begins an act of conversion in order to satisfy the locus requirement for admiralty tort

195. *Id.* at 901.
196. *Id.* at 901-02.
197. *Ministry of Oil I*, 2014 WL 4215357, at *6.
198. *Id.*
199. *Id.*
200. *Id.*
201. *Id.*
202. *Id.*
203. *Id.* In a footnote, the court also made clear that Rule D actions against cargo or maritime property require an underlying basis for admiralty jurisdiction. *Id.* at *4, n. 7 (citing Hunt v. A Cargo of Petroleum Prods. Laden on the Steam Tanker Hilda, 378 F.Supp. 701, 703–04 (E.D.Pa. 1974), *aff'd*, 515 F.2d 506 (3d Cir.1975). It acknowledged certain Fifth Circuit precedent that appears to allow a Rule D action by the owner of a vessel to acquire possession of or title to the ship, even in the absence of admiralty jurisdiction. *Id.* (citing Gallagher v. Unenrolled Motor Vessel River Queen, 475 F.2d 117, 119 (5th Cir. 1973)). The court distinguished that case law from the facts of Ministry of Oil I, reasoning that "issues relating to the title and possession of a seagoing vessel necessarily implicate maritime law and the court's admiralty jurisdiction, as opposed to cases in which cargo or other moveable property is merely found on a ship." *Id.* Without a claim to support the court's admiralty jurisdiction, Iraq's Rule D action also failed. *Id.* at *6.

jurisdiction—comports with both prior maritime conversion cases and basic tort law. Most courts that have adjudicated maritime conversion claims have restricted admiralty jurisdiction to circumstances in which the chattel was on navigable waters at the time of the conversion.[204] So, as other commentators have noted, *Ministry of Oil I* is representative of the status quo and does not entail a deviation with regard to maritime conversion's interplay with the locus requirement.[205] Further, it is black letter law that a claimant's cause of action in tort accrues when the tort occurs.[206] Accordingly, the court's determination that Iraq's claim did not satisfy the locus requirement because Kurdistan initiated its conversion on land is in line with both precedent and basic tort law.

Unfortunately, the UNITED KALAVRVTA did not enter U.S. territorial waters.[207] The vessel, therefore, was not subject to arrest, and the court did not address the plausibility of Iraq's in rem claim against the ship. In this respect, *Ministry of Oil I* is somewhat analogous to the Eleventh Circuit's decision in *Middleton.* There, the court held that it did not have jurisdiction over the plaintiff's in rem claim for maritime conversion against a vessel because the defendant converted the plaintiff's cargo of beans on land and later moved the beans aboard a ship that it owned.[208] However, the *Middleton* court did not indicate whether this result would have been different if an unrelated third party owned the vessel and sailed away with the cargo. Thus, both *Middleton* and *Ministry of Oil I* leave open the question whether a vessel can be liable in rem for carrying cargo that another party previously converted on land.

Although no courts have directly addressed the issue, vessels should be liable in rem for carrying cargo or other chattels that were previously converted on land by another party. It is a fundamental tenet of U.S. general maritime law that vessels are liable in rem for the tortious conduct of their owners and crew.[209] The law of conversion also militates in

204. *E.g.*, Middleton v. M/V Glory Sky, 567 F. App'x 811, 815 (11th Cir. 2014) (per curiam); Evergreen Marine Corp. v. Six Consignments of Frozen Scallops, 4 F.3d 90, 94 (1st Cir. 1993); The Lydia, 1 F.2d 18, 23 (2d Cir. 1924).

205. *See* Kimble, *supra* note 24, at 632 ("The court's holding that it did not have admiralty jurisdiction is consistent with prior jurisprudence.").

206. *E.g.*, 51 AM. JUR. 2D *Limitation of Actions* § 146, Westlaw (database updated Feb. 2016); 86 C.J.S. *Torts* § 101, Westlaw (database updated Dec. 2015).

207. *See* Ministry of Oil I, No. G-14-249, 2014 WL 4215357, at *2 (S.D. Tex. Aug. 25, 2014) (stating that the UNITED KALAVRVTA remained outside of U.S. territorial waters).

208. *Middleton*, 567 F. App'x at 815.

209. *See, e.g.*, The Barnstable, 181 U.S. 464, 467 (1901) ("[T]he law in this country is entirely well settled that the ship itself is to be treated in some sense as a principal, and as personally liable for the negligence of anyone who is lawfully in possession of her, whether as owner or charterer."); The Brig Malek Adhel, 43 U.S. (2 How.) 210, 234 (1844) ("The ship is also by the general maritime law held responsible for the torts and misconduct of the master and crew thereof, whether arising from negligence or a willful disregard of duty . . . .").

favor of an in rem cause of action for maritime conversion in this factual scenario. Notably, conversion does not require bad faith,[210] so a shipowner's ignorance that it is loading and carrying a converted chattel should be irrelevant. Further, although conversion is an intentional tort, it requires only that tortfeasors intend to assert control over a converted chattel.[211] In this context, as long as a vessel's owner or master knowingly consents to the chattel being loaded, this element of conversion should be satisfied. Accordingly, under the basic tenets of both admiralty and tort law, in rem vessel liability should extend to ships that carry cargo or other chattels that were previously converted on land.

This outcome may broaden the scope of in rem vessel liability. However, shipowners should be able to shield themselves from liability for a shipper's land-based conversion. A properly worded indemnity clause in a bill of lading or charterparty would compel a shipper to indemnify a carrier for any maritime conversion liability incurred as a result of the shipper's actions. So, while vessels should be liable in rem for carrying previously converted cargo or other chattels, there are also measures that carriers can take to shield themselves from increased liability for maritime conversion.

B. Iraq's Claim Fails the Nexus Requirement

In *Ministry of Oil II*, the Southern District of Texas applied the nexus requirement to Iraq's maritime conversion claim against John Doe Buyer, the unknown purchaser of the crude oil aboard the UNITED KALAVRVTA.[212] Assuming, *arguendo*, that title to the oil transferred to John Doe Buyer while the ship was at sea thereby satisfying the locus requirement, the court nevertheless held that Iraq's claim did not satisfy the nexus requirement.[213] If the Fifth Circuit's opinion in *Gulf Coast Shell* is construed broadly, the court's holding appears to adhere to the precedent established in that case. However, in light of the Supreme Court's instructions in *Grubart*, the court may have misapplied the traditional-maritime-activity prong of locus requirement for admiralty tort jurisdiction.

The court held that Iraq's maritime conversion claim against John Doe Buyer failed the nexus requirement because the character of the activity involved in the incident did not have a substantial relationship to traditional maritime activity.[214] It framed the relevant activity as the al-

210. Dobbs, *supra* note 36, § 62, at 129.

211. *Id.* § 62, at 128.

212. Ministry of Oil II, No. G-14-249, 2015 WL 93900, at *10-11 (S.D. Tex. Jan. 7, 2015).

213. *Id.*

214. *Id.* at *11 (citing Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995)).

leged conversion of crude oil effected when John Doe Buyer contracted to purchase the UNITED KALAVRVTA's cargo.[215] The court concluded that this underlying activity did not have a relationship with traditional maritime activity because "[t]he sale and conversion of oil . . . can occur anywhere and occurs regularly all over the world [and] does not traditionally occur only on the water."[216] The court also found that the Fifth Circuit's decision in *Gulf Coast Shell* supported its reasoning. It noted that in *Gulf Coast Shell*, as in Iraq's claim against John Doe Buyer, the "the wrongful conversion claim centered around the transfer of title, because it was the activity giving rise to the incident."[217] It reasoned that if conversion of a vessel intended for use on navigable waters via title transfer did not have a substantial relationship to traditional maritime activity, then a title transfer of oil that was fortuitously carried aboard a ship also should not have a relationship to traditional maritime activity.[218] Accordingly, the court held that Iraq's maritime conversion claim against John Doe Buyer did not satisfy the locus requirement and dismissed it for lack of admiralty jurisdiction.[219]

The precedent that the Fifth Circuit established in *Gulf Coast Shell* may have necessitated the court's conclusion in *Ministry of Oil II*. In *Gulf Coast Shell*, the court held that the defendant's unauthorized transfer of title to a dredge, which was laid up in a shipyard, implicated only legal ownership of the vessel and did not bear a relationship to traditional maritime activity.[220] Construed broadly, this holding may always preclude a claim alleging maritime conversion via title transfer from satisfying the nexus requirement. Conveying ownership of cargo by title transfer would usually seem to implicate basic notions of legal ownership more than a specific maritime activity. If this reading of *Gulf Coast Shell* is correct, the court in *Ministry of Oil II* properly adhered to Fifth Circuit precedent.

Yet the Supreme Court's instructions in *Grubart* for applying the traditional-maritime-activity prong of the nexus requirement suggest that the court in *Ministry of Oil II* may have misapplied the scope of this jurisdictional criterion. In *Grubart*, the Court indicated that activity giving rise to a maritime tort will have a significant connection to maritime activity if the activity was traditionally subject to admiralty jurisdiction.[221]

215. *Id.*

216. *Id.*

217. *Id.* (citing Gulf Coast Shell & Aggregate LP v. Newlin, 623 F.3d 235, 240 (5th Cir. 2010)).

218. *Id.*

219. *Id.*

220. 623 F.3d at 240.

221. 513 U.S. 527, 539-40 (1995).

By framing John Doe Buyer's alleged conversion simply as an unauthorized transfer of title, the *Ministry of Oil II* court appears to have overgeneralized and thereby overlooked an essential connection between the underlying tortious conduct and traditional maritime activity.

In the shipping context, a transfer of title to cargo or other property transported by vessel has historically been effected by exchange of a bill or lading between shipper and consignee or under a contract of affreightment. Bills of lading and contracts of affreightment are sophisticated shipping documents and have long been considered maritime contracts under U.S. general maritime law.[222] Conversely, with respect to the transfer of title to the dredge, the court in *Gulf Coast Shell* held that "[n]either the contract nor its breach are maritime in nature."[223] Thus, a transfer of title by bill of lading or contract of affreightment is distinguishable from the fundamentally nonmaritime transfer of title in *Gulf Coast Shell.* The court in *Ministry of Oil II* overlooked this difference. Construing John Doe Buyer's act of conversion simply as a transfer of title is overly broad and ignores the essentially maritime character of the underlying transaction. Assuming that title to the UNITED KALAVRVTA's cargo of crude oil transferred to John Doe Buyer via bill of lading, contract of affreightment, or other maritime contract, the claim should have satisfied the traditional-maritime-activity prong of the locus requirement.

V. Conclusion

Not long after *Ministry of Oil II* was decided, the UNITED KALAVRVTA ended her nearly five-month sojourn off the Texas coast.[224] The ship's management indicated that the vessel departed the Gulf of Mexico for Europe so that she could be surveyed to maintain class certification.[225] The ship also discharged her cargo of crude oil in Israel in late February or early March 2015.[226] Additionally, at the end of 2014, Iraq and Kurdistan ratified a new revenue-sharing agreement to

222. *See, e.g.,* Norfolk S. Ry. Co. v. Kirby, 543 U.S. 14, 27 (2004) ("[S]o long as a bill of lading requires substantial carriage of goods by sea, its purpose is to effectuate maritime commerce — and thus it is a maritime contract."); Thypin Steel Co. v. Asoma Corp., 215 F.3d 273, 277 (2d Cir. 1999) ("A bill of lading for ocean carriage is a maritime contract."); The Pacific Cedar, 61 F.2d 187, 189 (9th Cir. 1932), ("The contract of affreightment is as definitely determined to be a maritime contract as is a charter party."), *rev'd on other grounds*, 290 U.S. 117 (1933); Luckenbach S.S. Co. v. Coast Mfg. & Sup. Co., 185 F. Supp. 910, 915-16 (E.D.N.Y. 1960) ("A contract for ocean transportation of cargo such as set forth in the bill of lading herein, is a classical example of a maritime contract.").

223. 623 F.3d at 240.

224. *See* Roumpas, *supra* note 23.

225. *Id.*

226. Nick Roumpas, *Kalavryta Offloads*, Tradewinds (Mar. 3, 2015, 12:04 GMT), http://www.tradewindsnews.com/tankers/355309/kalavryta-offloads.

govern future sales of Kurdistani oil.[227] Although the UNITED KALAVRVTA and her disputed cargo left the Gulf in early 2015, the litigation between Iraq and Kurdistan lingered for several months.[228] The Fifth Circuit finally put an end to the lawsuit in September 2015, dismissing the case as moot because the crude oil aboard the UNITED KALAVRVTA had been discharged and sold.[229]

Although Iraq eventually abandoned its maritime conversion claims, the twin decisions by the Southern District of Texas in *Ministry of Oil I* and *Ministry of Oil II* have nonetheless shed light on this rarely litigated admiralty tort. In sum, the essential elements of maritime conversion are the same as traditional common law conversion. Like its terrestrial counterpart, maritime conversion entails "an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel."[230] However, a claim for maritime conversion must also satisfy the locus and nexus requirements for admiralty tort jurisdiction. These jurisdictional barriers often have a preclusive effect on maritime conversion actions. In particular, the locus criterion requires that the tortfeasor initiate the act of conversion while the chattel is located aboard a vessel on navigable waters. Case law involving maritime conversion and the nexus criterion is less developed, but requires at least that the character of the tortfeasor's act of conversion involve conduct traditionally subject to admiralty jurisdiction.

When a claimant can satisfy the locus and nexus requirements, pleading a claim for maritime conversion affords certain benefits that other causes of action do not. Because maritime conversion is a species of maritime tort, a claimant will have a preferred maritime lien on the offending vessel. A viable maritime conversion claim is also likely to support an in rem action against the converted chattel under Rule D. Therefore, while *Ministry of Oil I* and *Ministry of Oil II* may have had only a small impact on the limited body of maritime conversion case law, the decisions should remind plaintiffs and defendants alike that the cause of action may arise whenever property is misappropriated at sea.

227. Matt Bradley, Sarah Kent, & Ghassan Adnan, *Iraq and Kurdistan Agree on Oil Deal*, WALL ST. J. (Dec. 2, 2014, 4:38 PM), http://www.wsj.com/articles/iraq-agrees-kurdistan-oil-deal-1417513949.

228. *See* Ministry of Oil of the Republic of Iraq v. Kurdistan Region of Iraq, No. 15-40062, 2015 WL 5530272, at *2558-59 (5th Cir. Sept. 21, 2015) (per curiam).

229. *Id.* at *2564.

230. RESTATEMENT (SECOND) OF TORTS § 222A(1) (AM. LAW INST. 1965).