Time and Demurrage and the Case for Uniformity

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INTRODUCTION

In the business of oceangoing shipping, delay is a fact of life. In addition, where there is delay, there are also demurrage charges that, in the event of litigation, become an element of a damage claim. Determining the status of repose of those claims is an important factor not only of litigation strategy, but also of settlement negotiations. Unfortunately, given the complex interaction of statutory and common law in the transportation sector, repose is not always easy to determine. There have been two recent cases relating to the proper limitations period for bringing claims for demurrage arising from oceanic shipping. In 2000, the First Circuit issued the *TAG/ICIB Services, Inc. v. Pan American Grain Co., Inc.*,[1] decision, and subsequently, the Eleventh Circuit issued the *Venus Lines Agency, Inc. v. CVG International America, Inc.*[2] decision. Although the time period of allowable demurrage claims in *Venus* comported with the outcome in *TAG*,[3] the reasoning process and the differences in the respective benchmark statutes has created an unnecessary element of confusion in this field. The authors of this article seek to

1. TAG/ICIB Services, Inc. v. Pan American Grain Co., Inc., 215 F.3d 172 (1st Cir. 2000).

2. Venus Lines Agency, Inc. v. CVG International America, Inc., 234 F.3d 1225 (11th Cir. 2000).

3. The TAG court's holding for post 1996 charges was for an eighteen month statute of limitations and the Venus court found under equitable principles that only one year of charges was not barred. However, the TAG court did not have the application of the equitable principles before it.

restore the wholeness previously existing in this area by arguing that all future cases should be resolved under the reasoning of the *TAG* court.

Both of the above courts utilized the laches doctrine to determine whether a claim for demurrage was time barred. Laches has always been applied generally in admiralty cases, and also maritime cases featuring demurrage claims decided by the application of admiralty law principles.[4] The dangerous difference between the two recent cases involves the statute chosen by each court to be the benchmark for the application of the laches analysis. In the *TAG* case, the First Circuit ruled specifically that the limitations periods of the Interstate Commerce Act[5] and its successor statute, the Interstate Commerce Termination Act,[6] should be used as the analogous statute for applying the laches doctrine.[7] Their reasoning extended a long line of cases on this issue to encompass the changes in the law effective in 1996.[8] Then, the Eleventh Circuit issued its *Venus* decision, interjecting doubt and confusion in this apparently settled area by incorporating a state statute of limitations as the analogous statute in its ruling on the ability of equitable issues to bar otherwise timely filed actions under laches[9]. However, based on the circumstances of the case itself, and its posture on appeal, it appears that this anomalous result was an unintentional departure from the general jurisprudence in this area that should not and will not become binding precedent. This article will look at the historical posture of maritime demurrage limitations and demonstrate why the *TAG* ruling is more in line with that result.

Early American case law recognized demurrage as "merely an allowance or compensation for the delay or detention of a vessel."[10] Demurrage was usually a matter of contract, but could sound in tort as well.[11] The term "demurrage charges" now encompasses the penalty charged to the shipper, or third party, by a carrier or other logistics supplier for holding over equipment, including that shipped by rail, ship, or container or dormant in warehouse space.[12] This article will limit itself to examining maritime demurrage claims.

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4. Moragne v. States Marine Lines, 398 U.S. 375, 406 (1956); Ariel Maritime Group, Inc. v. Mistral, Inc., 1989 WL 165875 (S.D.N.Y. 1989).

5. Formerly found at 49 U.S.C. §§ 1 et seq.

6. Public Law 104-88, Dec. 29, 1995, 109 Stat. 803, 49 U.S.C. § 10101 et seq.

7. 215 F.3d at 176.

8. 1996 was the effective year for the Interstate Commerce Commission Termination Act; the Interstate Commerce Act was repealed effective in January of that year; most of the Shipping Act and all of the Intercoastal Shipping Act were repealed effective September 30, 1996.

9. 234 F.3d at 1230.

10. The Appollon, 22 U.S. 362, 377-8 (1824).

11. Id.

12. The term for a similar holding over penalty involving trucks and trailers is detention. However, that issue is well outside the scope of this article

Claims for demurrage, including maritime demurrage, expanded from a common law tort or contract claim into a federal statutory cause of action with the federal regulation of interstate and international commerce. Federal commerce-related statutes, such as the Shipping Act,[13] the Intercoastal Shipping Act[14] (collectively "the Shipping Acts"), and the Interstate Commerce Act[15]("ICA"), now replaced in whole or part by the Interstate Commerce Commission Termination Act, ("ICCTA")[16], prescribed rules for filing transportation rates with federal agencies (among numerous other provisions). Once an agency approved those rates, the courts enforced them as statutory causes of action.[17] Those tariffs included not only the basic rates, but all other accessory rates and terms of transit. The ICA gave carriers the right to recover the lawful charges specified in the tariffs.[18] Although not specifically referenced, the courts have uniformly found that the "charges" in Section 16(3)(a) of that act included demurrage.[19] The United States Supreme Court in *Turner, Dennis & Lowery Lumber Co. v. Chicago, M. & St. P. Ry.*,[20] made clear that the lawful charges that could be recovered in an action under the ICA included demurrage. However, the regulatory system did not cover all types of carriers or shipping situations. Common law maritime principles continued to govern demurrage claims brought in admiralty.

MARITIME DEMURRAGE COVERED BY STATUTE

The federal courts have jurisdiction over actions "arising under any Act of Congress regulating commerce."[21] Regulation of the collection of demurrage charges that are ancillary to regulatory statutes has been determined to be within Congress's commerce powers.[22] Maritime demurrage rates also fell into the category of tariffs filed with the appropriate

13. 46 U.S.C. §§ 801 et seq.

14. Formerly 46 U.S.C. §§ 843 et seq.

15. Formerly 49 U.S.C. §§ 11 et seq.

16. Public Law 104-88, Dec. 29, 1995, 109 Stat. 803, 49 U.S.C. § 10101 et seq.

17. *See* Texas & P.R. Co. v. Mugg, 202 U.S. 242 (1906); Kansas City Southern R. Co. v. Carl, 227 U.S. 639, 653 (1913).

18. Louisville & N. R.R. v. Maxwell, 237 U.S. 94, 97-98 (1915).

19. Baker v. Chamberlain Manufacturing Corp., 356 F.Supp. 1314, 1315 (N.D. Ill. 1973) and cases cited therein.

20. 271 U.S. 259, 262-263 (1926). Justice Brandeis rules that the action for demurrage charges previously existing under common law is now a right of recovery under the ICC's rate enforcement authority.

21. 28 U.S.C. § 1337.

22. *See* Tuner, Dennis & Lowery Lumber Co. v. Chicago, M. & St. P. Ry., 271 U.S. 259, 262-3 (1926). Justice Brandeis rules that the action for demurrage charges previously existing under common law is now a right of recovery under the ICC's rate enforcement authority. *See also*, Baker v. Chamberlain Manufacturing Corp., 356 F.Supp. 1314, 1315 (N.D. Ill. 1973).

agency.[23] Before 1995, an action to recover demurrage charges related to water-based shipping arose under the tariff provisions of the Shipping Act,[24] which required certain ocean carriers to file tariffs with the Federal Maritime Commission.[25] The Intercoastal Shipping Act was similar to the Shipping Act in its requirements. The Intercoastal Shipping Act required carriers in intercoastal commerce to file rate schedules with the commission, and required them to abide by the schedules they filed.[26] Relying on the reasoning in *Louisville & N. R.R. v. Maxwell*, and *Turner,* in *Dennis & Lowery Lumber Co. v. Chicago, M. & St. P. Ry.*,[27] the First Circuit held that because the Shipping Act was enacted for a parallel purpose,[28] recovering demurrage charges was also a right under the Shipping Act.[29] By the same analogy, such charges would have been recoverable under the Intercoastal Shipping Act.

Neither shipping act contained a statute of limitations. As is often the case, when Congress does not provide a specific statute of limitations, the courts borrow a limitations period from an appropriate statute. In this search for the appropriate limitations period, there are many reasons for looking first to federal statutes in certain contexts. First, borrowing state statutes' limitations periods for federal statutes that lack one may be inconsistent with the underlying policies of the federal statute.[30] The Supreme Court has noted that "state legislatures do not devise their limitations periods with national interests in mind, and it is the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies."[31]

For suits filed under the Shipping Acts for collection of demurrage, the importance of uniformity in the regulation of commerce has led courts to look first to other analogous federal statute of limitations.[32] The court in *Puerto Rico Marine Management, Inc. v. Molac Imports,*

23. *See* Maritime Service Corp, v. Sweet Brokerage De Puerto Rico, 537 F.2d 560 (1st Cir. 1976)

24. After 1940, related provisions of the ICA also applied.

25. 537 F.2d at 561 and cases cited therein recognizing a right of action by carriers to collect tariffs under the Shipping Act as well as in admiralty.

26. Former 46 U.S.C. § 844.

27. 271 U.S. at 262-3.

28. *See* Prince Line v. American Paper Exports, 55 F.2d 1053, 1056 (2nd Cir. 1932), in which Judge Learned Hand held "Within its own ambit, the same remedies attend a violation of the Shipping Act, as have been accorded under the Interstate Commerce Act. . . ."

29. 537 F.2d at 562.

30. Occidental Life Ins. Co. of California v. Equal Employment Opportunity Comm'n, 432 U.S. 355, 367 (1977).

31. Id.

32. *See* Puerto Rico Marine Management, Inc. v. Molac Imports, Inc., 594 F.Supp. 648, 651 (D.P.R. 1984).

Inc.,[33] a suit brought under the Shipping Act, looked at two potentially appropriate federal statutes of limitations that could be borrowed.[34] First, they looked at the two-year time limit for filing a complaint with the Federal Maritime Commission contained in the Shipping Act.[35] Second, the court noted that they could also use the three-year statute of limitations contained in the ICA.[36] The defendant in this case argued that a local statute with a six-month period should be borrowed as the action at bar was a mere collection action.[37] *The court dismissed this argument on the basis that Puerto Rico Marine Management's right of action arose from a federal commerce statute.* The Court instead ruled that a shorter local statute of limitations should not be used to hobble federal policy when that policy clearly dictated a longer period.[38] Since the claim was brought within the shorter of the two analogous federal limitations periods, the court did not address which specific federal period was preferable.[39]

Courts that have addressed which statute is the most analogous federal statute have selected the former three-year statute of limitations contained in the (now repealed) Interstate Commerce Act as the most analogous statute under the Shipping Acts.[40] In their reasoning, courts have noted that the Shipping Acts were modeled on the ICA.[41] In its discussion of this issue, the United States Supreme Court specifically stated, "Congress intended that the two acts, each in its own field, should have like interpretation, application and effect."[42] Hence, by applying the ICA's limitations period to the Shipping Acts, courts are keeping with the spirit and purpose of those acts.

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33. *Id.*

34. Id.

35. The Shipping Act was amended in 1984, extending the two-year period to three-years for administrative proceedings.

36. 594 F. Supp. at 651. The Interstate Commerce Act ("ICA"), provided, "All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after." 49 U.S.C. § 16(3)(a).

37. 594 F. Supp. at 651.

38. Id. at 651-52.

39. Id. at 652.

40. Ariel Mar. Group, Inc. v. Mistral, Inc., No. 88 Civ. 1625 (JMW), 1989 WL 165875, at *2 (S.D.N.Y. Sept. 29, 1989); Interlink Sys. Inc. v. Ajinomoto U.S.A. Inc., No. 88 Civ. 2308 (SCH), 1990 WL 160906, at *2 (S.D.N.Y. Oct. 12, 1990); Mar. Inspection Services, Inc. v. Thermo-Valves Corp., No. 90 Civ. 7286 (CSH), 1992 WL 42238, at *2 (S.D.N.Y. Feb. 25, 1992); Puerto Rico Marine Mgmt., Inc. v. El Verde Poultry Farms, Inc., 590 F. Supp. 1174, 1176 (D.P.R. 1984); Puerto Marine Mgmt., Inc. v. Molac Imports, Inc., 594 F. Supp. 648, 651- 52 (D.P.R. 1984).

41. Mar. Serv. Corp. v. Sweet Brokerage De Puerto Rico, Inc., 537 F.2d 560, 562 (1st Cir. 1976).

42. U.S. Navigation Co., Inc. v. Cunard S.S. Co., Ltd., 284 U.S. 474, 481 (1932).

THE INTERSTATE COMMERCE COMMISSION TERMINATION ACT

In January 1996 the Interstate Commerce Commission Termination Act (ICCTA) replaced all provisions of the ICA, as well as repealing the remaining rate-filing provisions of the Shipping Act and the entirety of the Intercoastal Shipping Act, with those changes becoming effective September 30, 1996.[43] The ICCTA still contains some tariff requirements similar to those of the ICA and the Shipping Acts, but those tariffs are filed with the Surface Transportation Board ("STB") rather than with the ICC.[44] Unlike the Shipping Acts, the ICCTA prescribes a statute of limitations for actions relating to transportation services including water-based carriage. It provides:

(a) IN GENERAL. - A carrier providing transportation or service subject to jurisdiction under chapter 135 must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.[45]

Jurisdiction under chapter 135 includes transportation by the following applicable water carriers:

(1) by water carrier between a place in a State and a place in another State, even if part of the transportation is outside the United States;
(2) by water carrier and motor carrier from a place in a State to a place in another State; except that if part of the transportation is outside the United States, the Secretary only has jurisdiction over that part of the transportation provided—
  (A) by motor carrier that is in the United States; and
  (B) by water carrier that is from a place in the United States to another place in the United States; and
(3) by water carrier or by water carrier and motor carrier between a place in the United States and place outside the United States, to the extent that—
  (A) when the transportation is by motor carrier, the transportation is provided in the United States;
  (B) when the transportation is by water carrier to a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States before transshipment from a place in the United States to a place outside the United States; and
  (C) when the transportation is by water carrier from a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States after transshipment to a place in the United States from a place outside the United States.[46]

43. See 49 U.S.C. § 10101 et seq. (2000).
44. See 49 U.S.C. § 13702 (2000).
45. 49 U.S.C. § 14705 (2000).
46. 49 U.S.C. § 13521(a) (2000).

Because demurrage charges are charges for transportation or service, the ICCTA creates a cause of action to collect demurrage, and this statute governs such a claim for most categories of domestic shipping. As such, actions to collect demurrage under the ICCTA are subject to an eighteen-month statute of limitation contained in the Act.

MARITIME DEMURRAGE CASES BROUGHT UNDER ADMIRALTY

Maritime demurrage claims also continued to be brought into admiralty courts after the enactment of the Shipping Acts.[47] Federal courts have original jurisdiction of suits in admiralty.[48] Federal courts and federal law govern admiralty suits because the Supreme Court has recognized an interest in uniformity in admiralty law.[49] The states cannot properly legislate for the high seas.[50] An action to collect freight and demurrage can be brought by an ocean carrier as an action in admiralty regardless of the existence of any other statutory basis for suit.[51] Under admiralty jurisdiction, federal courts apply maritime common law, including the doctrine of laches.[52]

Laches is the equitable doctrine that determines whether a party's delay in bringing a claim should bar the suit.[53] A laches analysis contains three factors: (1) the limitations period established by an analogous statute; (2) plaintiff's excuse for delay in suing; and (3) the prejudice to the defendant resulting from the delay.[54] This analysis concerns only the first factor—the analogous statute's limitation period.

Employing laches in a case under maritime law requires the court to examine the limitations period contained in the most analogous statute as a benchmark.[55] The plaintiff's compliance or lack of compliance with that statute determines where the burden of proof will lie for the remain-

47. Admiralty jurisdiction applies to any claim that is merely incident to a maritime contract in that it "relates to a ship in its use as such, or to commerce or to navigation on navigable waters, or to transportation by sea or to maritime employment." Orient Atl. Parco, Inc. v. Maersk Lines, 740 F. Supp. 1002, 1006 (S.D.N.Y. 1990) (quoting Ingersoll Milling Mach. Co. v. M/V Bodena, 829 F.2d 293, 302 (2d Cir. 1987), cert. denied, 484 U.S. 1042 (1988) (quoting CTI-Container Leasing Corp. v. Oceanic Operations Corp., 682 F.2d 377, 379 (2d Cir. 1982) (quoting 1 BENEDICT ON ADMIRALTY § 182, at 12-4 (7th ed. 1988)))).

48. 28 U.S.C. § 1333 (2000).

49. Moragne v. States Marine Lines, Inc., 398 U.S. 375, 397 (1970).

50. Id.

51. *See* Mar. Serv. Corp. v. Sweet Brokerage De Puerto Rico, Inc., 537 F.2d 560, 561-62 (1st Cir. 1976).

52. Public Adm'r of N.Y. v. Angela Compania Naviera, S.A., 592 F.2d 58, 62 (2d Cir. 1979).

53. Czaplicki v. Hoegh Silvercloud, 351 U.S. 525, 533 (1956).

54. Puerto Rico Marine Mgmt., Inc. v. El Verde Poultry Farms, Inc., 590 F. Supp. 1174, 1176 (D.P.R. 1984).

55. TAG/ICIB Services, Inc. v. Pan Am. Grain Co., Inc., 215 F.3d 172, 175 (1st Cir. 2000).

ing elements. Determining the correct analogous statute can be pivotal in a case with relatively balanced equities.

Courts have frequently utilized the limitations period of the ICA, the predecessor statute to the ICCTA,[56] for the laches analysis in admiralty actions to collect demurrage charges.[57] For example In *Puerto Rico Marine Management, Inc. v. El Verde Poultry Farms, Inc.*, which occurred before the enactment of the ICCTA, the District Court employed the three-year time period in the ICA for its laches analysis.[58] Citing cases which held that the Shipping Act had a similar purpose to the ICA, that court found the ICA's statute of limitations as the most suitable to use for an analogous statute in its laches analysis for demurrage cases.[59]

There should be no question that the ICCTA, successor to the ICA, is now the most analogous statute for laches purposes in regard to maritime demurrage. Like the ICA, the ICCTA already sets the limitations period for suits for the collection of demurrage and detention in rail or motor carrier cases. Unlike its predecessors, the Shipping Acts, the ICCTA also includes a statute of limitations to be used for a water carrier demurrage action if a claimant chooses to proceed under statute rather than general admiralty jurisdiction. Further, the ICCTA is a federal statute, so application is uniform. If limitations periods from state statutes were applied, parties to an admiralty suit could be subject to many different limitations periods. Hence, the eighteen-month statute of limitations in the ICCTA should be the analogous time period used in the laches analysis for an admiralty claim for demurrage.

Subjecting demurrage charges to different limitations periods "[w]ould undermine the uniformity Congress intended, as well as the policy against discriminatory rates[60] especially in fora having short limitations periods."[61]

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56. The Interstate Commerce Act, the Shipping Act and the Intercoastal Shipping Act.

57. *See* Puerto Rico Marine Mgmt., 590 F. Supp. at 1176; *see* Interlink Sys. Inc. v. Ajinomoto U.S.A. Inc., No. 88 Civ. 2308 (SCH), 1990 WL 160906, at *2 (S.D.N.Y. Oct. 12, 1990); see Mar. Inspection Services, Inc. v. Thermo-Valves Corp., No. 90 Civ. 7286 (CSH), 1992 WL 42238, at *2 (S.D.N.Y. Feb. 25, 1992).

58. *Puerto Rico Marine Mgmt., Inc.*, 590 F. Supp. at 1176.

59. Id. (citing Mar. Serv. Corp. v. Sweet Brokerage De Puerto Rico, Inc., 537 F.2d 560, 562 (1st Cir. 1976) (quoting U.S. Navigation Co, v. Cunard S.S. Co., Ltd., 284 U.S. 474, 481 (1932) (quoted in Inter-Island Steam Navigation Co. v. Territory of Hawaii, 305 U.S. 306, 311 n. 9 (1938)))).

60. Congress asserted that one of the main policies behind the ICCTA was to guard against discriminatory rates in transportation charges. 49 U.S.C. §§ 10101(12), 13101(a)(1)(D) (2000).

61. TAG/ICIB Services, Inc. v. Pan Am. Grain Co., Inc., 215 F.3d 172, 177 (1st Cir. 2000) (original spelling maintained) (citing Puerto Rico Marine Mgmt., Inc. v. Molac Imports, Inc., 594 F. Supp. 648, 651-52 (D.P.R. 1984)).

V. *TAG* RULING

The above jurisprudential history summarizes the line of cases and reasoning followed by the *TAG* court in its well-reasoned opinion specifically analyzing the issue of whether a state or federal statute was more appropriate in an admiralty action for demurrage. In *TAG/ICIB Services, Inc. v. Pan American Grain Co., Inc.*,[62] the court addressed as a primary issue what the correct analogous statute choice is when applying the laches theory in maritime law to a demurrage case. Under the facts of that case, demurrage charges were incurred both before and after the effective date of the ICCTA. The First Circuit held:

> [T]he ICA's three-year statute of limitations, which was imported into the Shipping Act, supplies the benchmark limitations period during the time when the Shipping Act governed TAG/ICB's demurrage claims; and that thereafter, the eighteen-month statute of limitations contained in the ICCTA is the presumptive benchmark for the claims.[63]

This ruling is clearly in line with the prior law. A court sitting in admiralty jurisdiction must apply federal maritime rules that directly address the issues at hand.[64] The ICCTA directly addresses transportation charges, which include demurrage. Thus, the ICCTA, not an analogous state statute, should apply to a laches analysis to collect demurrage charges. Further the ICCTA is the natural successor statute to the ICA, the statute that most commonly set the limitations period for admiralty cases before 1995. This is the best position to both uphold precedent and to ensure the policy needs behind admiralty jurisdiction. It was clear and settled law before the *Venus* case.

VENUS HOLDING

The *Venus* case brought the demurrage issue into court as a collateral damage question in a suit to establish the existence of an oral contract. *Venus Lines Agency, Inc. v. CVG International America, Inc.*[65] was a breach of oral contract claim brought in federal court under diversity jurisdiction. The case also included a damage element for demurrage claims covering three years. The primary issue of the existence of an oral contract would have been purely a creature of state law. The state's oral-contract statute of limitations governed the time period for bringing that claim. The demurrage claims were, however, federal in character. The court recognized that character by choosing to apply the laches analysis

62. TAG/ICIB Services, Inc. v. Pan Am. Grain Co., Inc., 215 F.3d 172, 175 (1st Cir. 2000).
63. Id. at 177.
64. Greenly v. Mariner Mgmt. Group, Inc., 192 F.3d 22, 25-6 (1st Cir. 1999).
65. Venus Lines Agency, Inc. v. CVG Int'l Am., Inc., 234 F.3d 1225, 1228 (11th Cir. 2000).

required by admiralty to determine which claims were barred.[66] The court and parties then lost focus on that issue when they apparently, by dicta, extended the state statute of limitations from the primary issue to the laches analysis without considering its lack of relation to the federal maritime demurrage claims. As this article has demonstrated, utilizing a state statute as a benchmark for the laches analysis of a maritime demurrage claim was contrary to established jurisprudence.

After balancing the equities, the lower court found that, although allowed under the state statute used as a benchmark, two years of demurrage were barred because the claimant had been dilatory in presenting the claim to the shipper, and therefore cut-off certain shipper remedies. The court did find the shipper liable for one year of demurrage claims.

On appeal, the Eleventh Circuit reviewed this subsidiary claim for demurrage charges as well as the original contract issue. However the issue appealed regarding the demurrage claims *was not* whether the lower court had used the appropriate statute of limitations, *but rather*, whether the equitable considerations of laches could bar a claim that had been brought within the agreed analogous statute.[67] The parties and court layered their arguments about the application of laches on top of the *assumption* that the four-year state oral contract statute was the analogous statute to use as a benchmark to determine where the burden of proof lay in regard to the equitable principles.[68] Before addressing the inexcusable and dilatory nature of the claimant's delay, the court itself said, "*assuming, then* [emphasis added], that the analogous limitations period is four years. . ."[69] Therefore, the issue of whether a federal or state statute is the proper statute to use as an analogous statute in maritime related laches analysis was never directly addressed by either of the courts in this case.

In considering the amount of the demurrage claim, the court noted that Venus filed its tariff rates and terms for the service with the Federal Maritime Commission.[70] Because the rates were filed with the commission, Venus could also have brought its claim for demurrage under the ICCTA. That act would have required the use of its own eighteen-month statute of limitations. Alternatively, Venus, as the owner/operator of an ocean-going vessel could have made a claim for demurrage under general maritime law in the admiralty courts. In that case, the court would have looked to the arguments in the *TAG/ICIB* case discussed above and certainly applied the eighteen-month statute from the ICCTA as the analogous statute. Unfortunately, considering the confusion created by this

66. *See supra* note 45.
67. *See Venus Lines Agency, Inc.*, 234 F.3d at 1230.
68. Id.
69. Id.
70. Id. at 1231.

case, *Venus* was neither pled nor argued with this insight.[71]

Under the particular facts of the case, the outcome would most likely not have been different had the ICCTA statute been applied, given the ultimate balancing of the equities by the trial and appellate courts. The only demurrage charges for which the shipper was found liable were 1997 charges, which would have fallen within the eighteen-month ICCTA statute. However, even though a similar result was achieved, it is hard to believe that if the parties had raised the issue as to the appropriate analogous statute, the federal courts would not have applied a federal statute. It would be unjust and inappropriate to allow a claimant to circumvent the congressional intent embodied in its eighteen-month ICCTA limitations period by choosing to file a maritime demurrage claim as part of a contract dispute brought to the federal courts on diversity grounds. The lack of uniformity created by such a precedent would be a radical departure from past practice and interject unnecessary uncertainty and discrimination into interstate commerce. Even with the same outcome (the only demurrage charges allowed were those within the eighteen month limitations period), without the recognition of distinctions herein, the dicta alone could confuse this issue.

CONCLUSIONS

Uniformity in the realm of interstate and international commerce is a prime goal of all federal legislation on commerce. The need for uniformity, providing confidence to all participants in the marketplace, and improving efficiency in the process, is the reason that courts have generally supported the commerce clause powers of the federal government. That uniformity and predictability is particularly important in statutes of repose. Therefore, courts should, when the issue is raised, work toward a uniform statute of repose for maritime demurrage charges regardless of the theory under which the claim is raised.

Prior to 1995, the three-year ICA limitations period was the most likely statute to be used, either by direct analogy in Shipping Act cases, or as a benchmark in conjunction with a laches analysis in admiralty cases. By enacting the ICCTA, which contains an eighteen-month statute of limitations, Congress has indicated that this shorter time period is the appro-

71. It is worthy of note that in its brief on appeal CVG International America, Inc.,(CVGIA) never contradicted the trial court's use of the Florida 4-year statute as a benchmark. Even in its argument that the 1997 demurrage claims should be barred, it only looked at the equitable issues in laches. In its reply, Venus does allude to the existence of a 3-year federal limitations statute for maritime personal injury claims, but only as support for the use of what it then mistakenly characterizes as the "3-year" Florida statute (everywhere else it is described as a 4-year statute). Again in its Cross-Appellant Reply brief, CVGIA makes no demur to the use of the state statute.

priate limitation for bringing claims related to interstate commerce. When Congress gives a cause of action a specific statute of limitation, their intention is that when the time has run, the claim and corresponding liability has ended.[72] Courts should not, and usually do not, substitute their views for those expressed by Congress in a duly enacted statute.[73] By allowing maritime demurrage claims that are brought as damage items under a different cause of action to proceed with a different time limitation than Congress expressly provided for in the ICCTA, a court would be substituting its own views for those enacted by Congress.

Therefore, the authors of this article believe that the *Venus* case represents an aberration because the appropriateness of the statute being utilized as analogous was not raised or directly decided. The only proper analogous statute for the courts to apply in a laches analysis concerning maritime demurrage cases is the ICCTA. The authors believe that courts will find the reasoning in *TAG* to be persuasive on this point, as summarized:

In the admiralty and maritime context laches is used to determine timeliness of claims;

Laches looks to the most analogous statute for a benchmark;

State statutes should not be used as analogous statutes when they are antithetical to federal purposes;

The Shipping Acts were modeled on the ICA and for a similar purpose so that where the Shipping Acts did not provide a statute of limitations, the ICA statute should have been used as a benchmark;

The ICCTA replaces the ICA and the Shipping Acts and is designed to protect the interests of shipping, navigation and commerce in a similar manner; and

Therefore, the ICCTA should be used as the proper benchmark statute for maritime demurrage claims.[74]

Thus, the *TAG* case settles for all time the appropriate analogous statute to be used as a benchmark for laches analysis in demurrage claims not brought directly under the ICCTA.

72. *See* Midstate Horticultural Co., Inc. v. Pennsylvania R.R. Co., 320 U.S. 356, 364 (1943).
73. Public Adm'r of N.Y. v. Angela Compania Naviera, S.A., 592 F.2d 58, 63 (2d Cir. 1979).
74. TAG/ICIB Services, Inc. v. Pan Am. Grain Co. Inc., 215 F.3d 172, 175-78 (1st Cir. 2000).