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International Transportation Law

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International Transportation Law

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International Transportation Law

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This article updates selected international legal developments in 2019 in International Transportation Law.

I. Maritime Law

A. DEVELOPMENTS IN INTERNATIONAL SHIPPING LAW

1. *Punitive Damages*

With its long-awaited opinion in *Dutra v. Batterton*¹ the Supreme Court ruled that punitive damages are not available in causes of action based on unseaworthiness. This rule is in stark contrast with the contrary opinion in *Atlantic Sounding* which instead allowed punitive damages in maintenance and cure.² The *Dutra* Court did not dedicate special attention to the twelve amicus briefs from the industry, concerned about disastrous consequences for the shipping business, and paid lip service to the time-honored policy of special solicitude for seamen, which the Court declared as somehow downgraded in the present day.³

Alleging lack of historical precedents sufficient to justify allowance of punitive damages (as it did in *Atlantic Sounding*), the *Dutra* Court found the policy of solicitude to seamen not sufficient to outweigh the *Miles* uniformity principle, consisting of profiling punitive damages as non-pecuniary damages.⁴ The theory that non-pecuniary damages are banned from any maritime cause of action thus gains new strength, in spite of the contrary notion by the same Court in *Exxon v. Baker*.⁵ Now punitive damages are

* James Henry Bergeron, Attilio M. Costabel (Developments in International Shipping Law), James Border (Preferential Tax, Economic Substance and Shipping), Greg Maddaleni (New Drone Regulations in Canada, and Developments in Arbitrability – The Henry Schein Decision), Jay Choi (FDI Risk Management of Critical Infrastructures), Martin Abadi (Developments in Canadian Maritime Transportation Law, Developments in Canadian Aviation Law, Ground Transportation Developments in Canada).

1. *Dutra Grp. v. Batterton*, 139 S. Ct. 2275, 2278 (2019).

2. *Atl. Sounding Co. v. Townsend*, 557 U.S. 404, 408 (2009).

3. *Batterton*, 139 S. Ct. at 2287.

4. *Id.*

5. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 476 (2008); see also Attilio Costabel, *Punitive Damages in Unseaworthiness. The Lawmaker Giveth, The Lawmaker Taketh*, 50 J. MAR. L. & COM. 313, 320–21 (2019) (addressing the proposition that punitive damages are not damages due

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allowed in cases of marine pollution and maintenance and cure but not in unseaworthiness and possibly other causes of action to come.⁶

2. *Loss of Companionship and Mental Pain and Suffering*

In this regard, the Southern District of Florida recently ruled in *Kennedy v. Carnival* that punitive damages for the wrongful death of a cruise ship passenger in foreign territorial waters were barred as a matter of law under the Death on the High Seas Act, which limited damages to pecuniary losses.⁷ This federal court's opinion supplied almost a mini-treatise on non-pecuniary damages and also ruled that the Act excluded damages for loss of companionship and mental pain and suffering in wrongful death claims.⁸

3. *Loss of Consortium*

In *Eslinger v. Celebrity Cruises, Inc.*⁹ the plaintiff asserted a claim for "alleged deprivation of affection, solace, care, comfort, companionship, conjugal life, fellowship, society, and assistance of her husband that resulted from his injury." The Eleventh Circuit, per curiam, granted defendant's motion to dismiss on all counts, once again relying on *Miles v. Apex Marine Corp.*¹⁰

4. *Negligent Infliction of Emotional Distress (NIED)*

In two passengers' cases, the Southern District of Florida and the Eleventh Circuit issued two rulings on damages for negligent infliction of emotional distress, buttressing the "zone of danger" test that had been established by *Consol. Rail Corp. v. Gottshall*.¹¹

In *Twyman v. Carnival Corporation*,¹² while operating a Jet Ski, the decedent collided with a fellow passenger's Jet Ski and was thrown into the water. When the decedent remained non-responsive in the water, his father jumped off his own Jet Ski into the water, lifted the decedent onto the Jet Ski, and raced to the Cruise Center's beach.¹³ The decedent's mother, a registered nurse who witnessed the accident from the beach, rushed to the scene, and performed CPR on the decedent.¹⁴

under FELA, Jones Act, or any maritime cause of action, but are a punishment arising from a different cause, such as the outrageous behavior of the tortfeasor).

6. See *Baker*, 554 U.S. at 476; see also *Batterton*, 139 S. Ct. at 2278.

7. *Kennedy v. Carnival Corp.*, 385 F. Supp. 3d 1302, 1314 (S.D. Fla. 2019).

8. *Id.* at 1319.

9. *Eslinger v. Celebrity Cruises, Inc.*, 772 F.App'x 872, 872 (2019).

10. *Id.* at 872-73.

11. *Twyman v. Carnival Corp.*, 410 F. Supp. 3d 1311 (S.D. Fla. 2019); *Azzia v. Royal Caribbean Cruises, Ltd.*, 785 F.App'x 727 (11th Cir. 2019); *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 547-48 (1994).

12. *Twyman*, 410 F. Supp. 3d at 1316.

13. *Id.*

14. *Id.*

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The Southern District of Florida found a valid claim of NIED at the motion-to-dismiss stage because the father witnessed the decedent's accident and death; attempted to provide emergency medical assistance, feared immediate risk of drowning and an impending collision, and experienced various physical manifestations of his emotional distress as a result of Carnival's negligent conduct.¹⁵

The court, however, ruled that the mother

‘never entered the [water] during the drowning or resuscitation efforts and never needed medical attention;’ and thus, was neither in ‘immediate risk of physical harm based on [Carnival’s] failure to employ lifeguards’ nor in ‘fear for [her] safety as a result of the alleged negligence relating to the delayed and inadequate medical care provided.’¹⁶

As a result, the mother's claim was dismissed.¹⁷

In *Azzia v. Royal Caribbean Cruises*, on the first day of the cruise, a family lost sight of their four-year-old child in the children's pool area.¹⁸ The family then saw another passenger pull the son's body from the pool and witnessed two other passengers begin resuscitation efforts.¹⁹ Fortunately, the child survived.²⁰ The Eleventh Circuit found that the parents failed to show that they sustained physical impact or were placed in immediate risk of physical harm by Royal Caribbean's allegedly negligent conduct; thus, their claim for NIED was denied.²¹

5. *Cruise Claims – Duty to Warn*

In *K.T. v. Royal Caribbean Cruises, Ltd.*,²² a minor passenger on the first night of a cruise was in the company of a group of adult male passengers who plied her with enough alcohol that she became “‘highly intoxicated,’ ‘obviously drunk, disoriented, and unstable,’ and ‘obviously incapacitated.’” “The group of nearly a dozen men then steered her ‘to a cabin where they brutally assaulted and gang raped her.’”²³

The Eleventh Circuit found that the complaint had sufficiently alleged that because Royal Caribbean's crewmembers did nothing to prevent the large group of men from plying K.T. with enough alcohol to incapacitate her and did nothing to stop those men from leading her away to a private

15. *Id.* at 1325.

16. *Id.* at 1326.

17. *Id.*

18. *Azzia*, 785 F.App'x at 728.

19. *Id.*

20. *Id.*

21. *Id.*

22. *K.T. v. Royal Caribbean Cruises, Ltd.*, 931 F.3d 1041, 1043 (11th Cir. 2019).

23. *Id.*

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cabin, Royal Caribbean breached the duty of ordinary care it owed her and therefore was liable for its negligence and that of its crew.²⁴

The court then added that a cruise line's duty of "ordinary reasonable care under the circumstances" includes a 'duty to warn of known dangers beyond the point of debarkation in places where passengers are invited or reasonably expected to visit.'²⁵ Additionally, the court noted, "a cruise line certainly owes its passengers a 'duty to warn of known dangers aboard its ship.'²⁶

In the words of the court:

The allegations in the complaint demonstrate that Royal Caribbean must have known about the dangers of sexual assaults aboard its ships. They are that Royal Caribbean: "anticipated and foresaw that crimes would be perpetrated on passengers aboard its vessels;" "knew, or should have known, that the high risk to its passengers of crime and injury aboard the vessels was enhanced by [its] sale of copious quantities of alcohol on its vessels;" and "knew, or should have known of the need to prevent minors wrongfully being provided with or allowed to gain access to alcohol, both by crew and by other passengers." So Royal Caribbean allegedly had abundant notice and actual knowledge of the dangers that [the plaintiff] alleges resulted in the injuries she suffered during the cruise.²⁷

Finding that the plaintiff's allegations were plausible and raised a reasonable expectation that discovery could supply additional proof of Royal Caribbean's liability, the Eleventh Circuit held that the district court erred in dismissing the negligence claims and remanded.²⁸

6. *Rule B Attachment and Garnishment*

In *Doria v. Royal Caribbean Cruises, Ltd.*,²⁹ Royal Caribbean sold an all-terrain vehicle (ATV) excursion operated by a shore contractor to a passenger who subsequently suffered injuries when he crashed his ATV into a tree. The plaintiff argued that the contractor's staff failed to provide adequate direction to participants, and Royal Caribbean misrepresented that the excursion would occur on dirt roads when it actually took place over rough terrain.³⁰ The plaintiff also asked for a Rule B attachment against the shore contractor.³¹

24. *Id.* at 1045.

25. *Id.* at 1046 (citing *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012)).

26. *Id.* (citing *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989)).

27. *Id.* at 1046.

28. *Id.* at 1046–47.

29. *Doria v. Royal Caribbean Cruises, Ltd.*, 2019 U.S. Dist. LEXIS 154635, at *1–2 (S.D. Fla. Sept. 4, 2019).

30. *Id.* at *2.

31. *Id.* at *3.

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The court denied the Rule B motion for lack of Admiralty jurisdiction because the tort “did not occur on ‘navigable waters’ and [was] not committed by a ‘vessel on navigable water’ [and, therefore,] the locality test [was] not met.”³² The court distinguished *Doe v. Celebrity*³³ (which involved the rape of a passenger on shore while on her own, by a seaman of the same cruise while contemporaneously on shore leave) arguably because the seaman in *Doe* was a servant and the contractor was independent.

But the Supreme Court in *Norfolk Sothorn v Kirby*³⁴ applied Admiralty jurisdiction and law to a land carriage by a contractor performing the last leg of a combined service. Justice O’Connor ruled that the rail segment was part of a whole relation having an overall “salty flavor” from beginning to end.³⁵ Arguably, a shore excursion sold on board the cruise ship should qualify as a virtual part of the cruise, like the *Doe* court held for the passenger’s encounter on shore with her on-board waiter, thus qualifying for the “salty test” of Justice O’Connor.³⁶

B. PREFERENTIAL TAX, ECONOMIC SUBSTANCE, AND SHIPPING

Because business residence conveys substantial economic benefits to the hosting country, preferential tax regimes have been enacted for a variety of businesses, including shipping. Based on work initiated by the Organization for Economic Cooperation and Development (OECD), legislation requiring a substantial connection between an enterprise and a country in which it claims residence has been enacted.³⁷ These laws apply to shipping companies and other mobile businesses through corporate law.³⁸

The OECD work on potentially harmful regimes was consolidated in Action Item 5 of the OECD’s project on Base Erosion and Profit Shifting (BEPS) in 2015.³⁹ A subsequent progress report published by the OECD in 2019 identified the five characteristics of “harmful preferential tax regimes” as: (1) no or low effective tax rates; (2) “ring fencing” or isolation of a regime from the regular tax system; (3) lack of transparency; (4) lack of effective

32. *Id.* at *7 (citing *Jerome B. Grubart, Inc.*, 513 U.S. 527, 534 (1995); *Goodwin v. Rios Tropicales, S.A.*, 2006 U.S. Dist. LEXIS 102958, at *7 (Feb. 27, 2006)).

33. *See id.* at *6–*7 (citing *Goodwin*, 2006 U.S. Dist. LEXIS 102958, at *7); *see also Doe v. Celebrity Cruises, Inc.*, 394 F.3d 891, 893 (11th Cir. 2004).

34. *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14 (2004).

35. *Id.* at 22 (citing *Kossick v. United Fruit Co.*, 365 U.S. 731, 742 (1961)).

36. *Id.*

37. *See generally* Org. for Econ. Co-operation and Dev. [OECD], *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, at 3, 9 (2015), <https://www.oecd-ilibrary.org/docserver/9789264241190-en.pdf?expires=1585449537&id=id&accname=guest&checksum=D75B7F0465C7E282728BEE1D4627AA2E>.

38. *Id.* at 11, 39.

39. *Id.*

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exchange of information; and (5) lack of a requirement to conduct substantial activities locally.⁴⁰

A thematical grouping of potentially harmful regimes by the OECD identifies “[intellectual property] regimes, headquarters regimes, financing and leasing regimes, banking and insurance regimes, distribution and service center regimes, shipping regimes, holding company regimes, and miscellaneous [other] regimes” as potentially problematic.⁴¹ Even if the regime is not objectionable, as is the case for the reviewed shipping regimes, the enterprise must have a substantial connection to the jurisdiction to be eligible for its benefits.⁴²

The European Commission endorsed the OECD BEPS Action Plan,⁴³ which developed standards for evaluating jurisdictions under the OECD guidelines and a list of countries that were considered non-cooperative.⁴⁴ The EU originally published a blacklist on November 14, 2017, which now contains eight jurisdictions (Fiji, Oman, Samoa, Trinidad and Tobago, Vanuatu, American Samoa, Guam, and the U.S. Virgin Islands).⁴⁵ Countries that have enacted or are reported to have enacted remedial legislation include: Anguilla, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, Cayman Island, Curacao, Guernsey, Isle of Man, Jersey, Marshall Islands, Mauritius, Nevis, Saint Vincent & The Grenadines, and the UAE.⁴⁶ Other jurisdictions that have made commitments but have not yet fulfilled their obligations are relegated to a grey list currently containing approximately thirty countries.⁴⁷

The legislation enacted to satisfy the EU and OECD requirements contains four elements: first, there must be identification of an entity to which the legislation applies—residence and activity; second, for each activity, the core income-generating activities must be performed in the jurisdiction; third, there is a requirement to report details of those activities;

40. Org. for Econ. Co-operation and Dev. [OECD], *Harmful Tax Practices – 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, at 13 tbl. 1.1 (2019), <https://www.oecd-ilibrary.org/docserver/9789264311480-en.pdf?expires=1585451415&id=id&accname=guest&checksum=0E420A8B0C30CAF8BC4289C893F6E488>.

41. Org. for Econ. Co-operation and Dev. [OECD], *Harmful Tax Practices – 2017 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, at 13–14 (2017), <https://www.oecd-ilibrary.org/docserver/9789264283954-en.pdf?expires=1585517441&id=id&accname=guest&checksum=3E12D1B1736EA41090644412850CE257>.

42. *Harmful Tax Practices – 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, *supra* note 41, at 19 tbl. 2.3 & 30 tbl. 2.9.

43. *Communication from the commission to the European Parliament and the Council on an External Strategy for Effective Taxation*, at 3, COM (2016) 24 final (Jan. 28, 2016).

44. See Council Conclusions on the criteria for a process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes, 2016 O.J. (C 461/2).

45. The EU list of non-cooperative jurisdictions for tax purposes—Report by the Code of Conduct Group (Business Taxation) suggesting amendments to the Annexes of the Council conclusions of 12 March 2019, including the de-listing of one jurisdiction, 2019 O.J. (C386/2).

46. Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, 2020 O.J. (C. 64/08) 11.

47. *Id.*

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and fourth, there must be an enforcement mechanism.⁴⁸ Generally, economic substance legislation will apply to companies that are tax residents of the jurisdiction⁴⁹ or formed in the jurisdiction, unless the company is a tax resident elsewhere.⁵⁰ Conduct includes any of the potentially harmful regimes outlined by the OECD, including shipping.⁵¹

A shipping business is generally defined as the operation of ships and activities directly connected with, or ancillary to, such operation, including:

- Rental or charter of a ship;
- Sale of tickets or similar documents;
- Use, maintenance, or rental of containers used for sea transport;
- Management of the ship's crew; and
- Other activities.⁵²

What constitutes a “ship” varies by jurisdiction, but most enacted legislation applies to passenger and freight shipping as well as commercially leased yachts.⁵³

Common among all jurisdictions and applicable to all listed types of business are rules that require (1) an adequate number of meetings of the Board of Directors to be conducted in the jurisdiction with a quorum of directors physically present, (2) recording strategic decisions concerning the entity in the minutes that are kept in the jurisdiction, and (3) a Board of Directors with the necessary knowledge and expertise.⁵⁴

“The core income-generating activities of a shipping business [consistent with the OECD pronouncements] include crew management (including hiring, paying and overseeing crew), hauling and maintaining ships, overseeing and tracking deliveries . . .” and the provision on organization of voyages.⁵⁵ Where a core income-generating activity is outsourced, the party to which it is outsourced must perform the activities within the jurisdiction, and the included entity must have the resources necessary to adequately complete its performance.⁵⁶

48. Org. for Econ. Co-operation and Dev. [OECD], *Resumption of application of substantial activities factor to no or only nominal tax jurisdictions*, at 11–12 (2018), <http://www.oecd.org/tax/beps/resumption-of-application-of-substantial-activities-factor.pdf>.

49. *See, e.g.*, Income Tax (Substance Requirements) Order 2018, Income Tax Act 1970, Statutory Document No. 2018/0263 (Isle of Man).

50. *See, e.g.*, Economic Substance (Companies and Limited Partnerships) Act, 2018, Act No. 12 of 2018 (Virgin Is.).

51. *See, e.g., id.* at 8, § 6 (noting that within national legislation these are often referred to as “Relevant Activities”).

52. *Id.* at 6, § 2.

53. Income Tax (Substance Requirements) Order 2018, *supra* note 49, at 5.

54. *Id.* at 7, § 4.

55. *Harmful Tax Practices – 2017 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, *supra* note 41, at 41 app. D.

56. Economic Substance (Companies and Limited Partnerships) Act, 2018, *supra* note 50, at 11.

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To ensure compliance with the economic substance legislation, annual reporting may include the following:

- Relevant Activity;
- Amount and type of income in respect of the Relevant Activity;
- Whether any part of the Licensee's gross income in relation to the Relevant Activity is subject to tax in a jurisdiction outside of the State and additional information based on further guidance;
- Amount and type of operating expenses and assets in respect of the Relevant Activity;
- Location and place of business and, if applicable, plant property or equipment used for the Relevant Activity licensee in the State;
- The number of full-time employees with qualifications and the number of personnel who are responsible for carrying on the Licensee's Relevant Activity;
- Information showing the State Core Income-Generating in respect of the Relevant Activity that has been conducted; and
- Declaration as to whether the Licensee satisfies the Economic Substance Test.⁵⁷

Additional disclosures are required if the Relevant Activity is an intellectual property business or high-risk intellectual property business.⁵⁸

Where core income-generating activities are outsourced, disclosure of the activities conducted on behalf of the Relevant Entity, including the supervision provided to and the resources applied by the service provider, are required.⁵⁹ Failure to satisfy the economic substance test or provide the required information is generally met with a financial penalty and the possibility of involuntary dissolution of the entity throughout.⁶⁰ The actual financial penalties vary, but a typical scheme imposes a penalty of U.S. \$10,000 to \$50,000 in the first year of noncompliance and \$100,000 to \$400,000 or more in the second year.⁶¹ Noncompliance also results in an exchange of information with other countries for action in those jurisdictions. Noncompliance longer than two years generally results in automatic involuntary dissolution.

57. Resolution No. 31 of 2019 (Economic Substance Regulations), *Official Gazette*, 30 Apr. 2019, p. 14 (U.A.E.).

58. *Id.*

59. *See e.g., id.* at p. 15.

60. *See e.g.,* Economic Substance (Companies and Limited Partnerships) Act, 2018, *supra* note 50, § (12)(7)-(8).

61. *See e.g.,* Income Tax (Substance Requirements) Order 2018, *supra* note 49, § 80I(1) (providing a maximum penalties of \$50,000 in the first year for a high-risk intellectual property business and \$20,000 for all other businesses. In the second year, the penalties increase to \$400,000 and \$200,000, respectively).

C. DEVELOPMENTS IN CANADIAN MARITIME TRANSPORTATION
LAW

The Wrecked, Abandoned or Hazardous Vessels Act⁶² (WAHVA) became effective on February 28, 2019. WAHVA came into force to establish a comprehensive compliance and enforcement regime for wrecked, abandoned, and hazardous vessels, imposing higher responsibility and liability on vessel owners and affecting various vessel management practices, including a ban on vessel abandonment.⁶³ WAHVA also expanded the federal government powers to, among other things, take preventive measures with respect to hazardous vessels.⁶⁴

The Navigation Safety Regulations⁶⁵ were amended effective June 15, 2019. The consolidation expanded the carriage requirements of the following equipment: navigation safety and distress alerting equipment; Class A or Class B Automatic Identification System (AIS) for passenger vessels more than eight meters in length or carrying more than twelve passengers; and equipment to improve situational awareness of vessel operators.⁶⁶

II. Aviation Law

A. DEVELOPMENTS IN CANADIAN AVIATION LAW

Effective May 29, 2019, the Canadian Aviation Security Regulations 2012⁶⁷ (CASR) was amended⁶⁸ to, *inter alia*, (a) eliminate the distinction between passenger and all-cargo flights;⁶⁹ (b) introduce changes in respect to screening of mail by air carriers for threat items;⁷⁰ (c) clarify the distinction between the terms “threat” and “specific threat;”⁷¹ (d) address the retention period of training records for authorized cargo representatives;⁷² and (e) update the cargo tendering data elements,⁷³ all with a view to improving regulatory cooperation efforts relating to international standards and enhancing security controls.

Effective July 15, 2019, the Air Passenger Protection Regulations⁷⁴ came into force to clarify passenger rights and impose requirements on airlines, operating flights to, from, and within Canada. The new regulations include:

62. Wrecked, Abandoned or Hazardous Vessels Act, S.C. 2019, c 1 (Can.).

63. *Id.* § (c).

64. *Id.* § (f).

65. Navigation Safety Regulations, SOR/2005-134 (Can.).

66. *See id.*

67. Canadian Aviation Security Regulations, SOR/2019-149 (Can.).

68. *Id.*

69. *Id.* §§ 668–69.

70. *Id.* § 720.

71. *Id.* § 3 (stating different definitions for threat and specific list).

72. *Id.* § 384(3).

73. *Id.* §§ 545, 672, 683–84.

74. Air Passenger Protection Regulations, SOR/2019-150 (Can.).

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provisions related to airline obligations with respect to flight disruptions and lost baggage,⁷⁵ procedures for overbooked flights and denying boarding to passengers,⁷⁶ passenger rights during tarmac delays,⁷⁷ and imposing the same liability for lost baggage in domestic flights as in international flights.⁷⁸

A number of amendments were made to the Air Transportation Regulations (ATRs) culminating on July 15, 2019.⁷⁹ These include increasing the minimum air insurance requirements (coming into force on July 1, 2021);⁸⁰ consolidating the number of charter types from eight to four;⁸¹ eliminating restrictions on Canadian-originating charters including minimum advance booking and minimum price per seat;⁸² prohibiting one-way travel;⁸³ limiting the number of points served;⁸⁴ allowing goods charters to consolidate cargo shipments from several sources;⁸⁵ eliminating restrictions on minimum advance booking, return travel, and minimum period of stay in the foreign country;⁸⁶ clarifying code sharing and wet-leasing arrangements;⁸⁷ reducing the burden on licensed operators by removing the annual filing deceleration requirement;⁸⁸ eliminating the requirement for a domestic licensee to meet the ATRs financial requirements for holders of a license to operate a service using larger aircraft;⁸⁹ and removing advertising restrictions.⁹⁰

Starting August 1, 2019, Canadian Aviation Regulations (Parts I, V, and VI) were amended to require that Canadian aircrafts, except gliders, balloons, airships, ultra-light airplanes and gyroplanes, be equipped with a 406 MHz Emergency Locator Transmitter.⁹¹

B. NEW DRONE REGULATIONS IN CANADA

The drone industry in Canada and the United States is exploding.⁹² The number of drones has consistently doubled year over year for the past

75. *Id.* §§ 5, 10–11, 23.

76. *Id.* §§ 11–12, 15.

77. *Id.* §§ 8–9.

78. *Id.* § 23(2)(c).

79. Regulations Amending the Air Transportation Regulations and the Canadian Transportation Agency Designated Provisions Regulations, SOR/2019-176 (Can.).

80. *Id.* at 2969, § (3)(2).

81. *Id.* at 2968, § (1)(2).

82. *Id.* at 3001, § 2(b).

83. *Id.*

84. *Id.*

85. *Id.* at 2995, § 2(b)(i).

86. *Id.* at 3001, § 2(b).

87. *Id.* at 2996, § 3.

88. *Id.* at 2997, § 4.

89. *Id.* at 2996, § (2)(b)(iii).

90. *Id.* at 2998, § 4.

91. Canadian Aviation Regulations, SOR/96-433, § 605.38 (Can.).

92. Matt Clark, Christina Isnardi & Lisa Ellman, *Canada's New Drone Regulations Take Effect: How They Compare to the U.S. Regulations*, HOGAN LOVELLS (June 25, 2019), <https://www.hl>

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decade.⁹³ By 2024, the industry is expected to surpass \$7 billion.⁹⁴ With all of this growth and promulgation of drones, the question becomes ever more critical on how to maintain safety and security for the public.⁹⁵ In 2019, in Canada, new regulations were introduced in order to address this.⁹⁶

The regulations split drones into three categories based upon weight: drones under 250g (~0.5 lbs), 250g-25kg (0.5-55lbs) and over 25kg.⁹⁷ Drones in the lightest category are not subject to these regulations.⁹⁸ This category would presumably include many toy drones. Drones in the second category are “small drones” and fall under these regulations.⁹⁹ The third category of drones also fall under these regulations but also require that the pilot obtain a special flight operations certificate.¹⁰⁰

In Canada, the regulations do not focus on the differences between recreational and commercial usage, but rather basic operations and advanced operations.¹⁰¹ Basic operations are conducted outside of controlled airspace, more than thirty meters (100 feet) away horizontally from bystanders, and more than three nautical miles from an airport (or more than one mile of a heliport).¹⁰² To conduct these basic operations, a person must be at least fourteen years of age and hold a basic operations certificate.¹⁰³ Advanced operations are conducted within these physical parameters: (1) to conduct advanced operations, a person must be at least 16 years of age, (2) hold an advanced operations pilot certificate, (3) complete an online knowledge exam, and (4) complete a flight review with a Transport Canada-approved trainer.¹⁰⁴

Regulations of small drones in the United States and Canada have some key similarities: first, the definition of a small drone is essentially the same, between 250g and 25kg, second, the altitude limitation of small drones is the same at 400 feet (122 metres),¹⁰⁵ third, no liability insurance is required, and fourth, operation outside of a visual line of sight is prohibited without obtaining additional regulatory approvals.¹⁰⁶

Nevertheless, there are some key differences. To begin, Canada requires approval through an advanced operations certificate for a drone to fly over

dronedblog.com/2019/06/canadas-new-drone-regulations-take-effect-how-they-compare-to-the-u-s-regulations/.

93. *Id.*

94. *Id.*

95. *Id.*

96. Canadian Aviation Regulations, *supra* note 91, at 885.

97. *Id.* §§ 101.01, 400.01.1, 571.01, 700.01.1, 903.01.

98. *Id.* § 903.01.

99. *Id.* §§ 101.01.1, 700.01.1, 901.64, 901.83, 903.01.

100. *Id.*

101. Clark et al., *supra* note 92.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. Clark et al., *supra* note 92.

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people.¹⁰⁷ The United States requires a waiver, yet only thirty-three of these waivers have been administered.¹⁰⁸ There are proposed rule changes for this waiver requirement, but passage of these rules is not foreseen anytime soon.¹⁰⁹

Further, Canada does not distinguish between recreational and commercial usage like the United States, instead Canada distinguishes usage as basic versus advanced operations.¹¹⁰ And finally, commercial usage in the United States—the more advanced usage—only requires aeronautical knowledge.¹¹¹ Whereas in Canada, advanced usage requires some demonstration of actual flight proficiency.¹¹²

III. Land Transport Developments in Canada

A. COMMERCIAL MOTOR VEHICLES – FEDERAL

On June 12, 2019, the Commercial Vehicle Drivers Hours of Service Regulation¹¹³ was amended to add provisions to require installation of Electronic Logging Devices (ELDs), in line with the current regulations in the United States.¹¹⁴ There will be a twenty-four-month implementation period,¹¹⁵ which means all federally regulated commercial trucks that currently operate under the paper-based daily log system must have third-party certified ELDs installed by June 2021.

B. COMMERCIAL MOTOR VEHICLES – PROVINCIAL

1. *Alberta*

The Commercial Vehicle Dimension and Weight Regulation¹¹⁶ was amended on August 27, 2019, to modernize vehicle equipment configurations and modify weight/size requirements.¹¹⁷ The existing permit requirements will be eliminated for standard equipment—such as wildfire bumpers, aerodynamic devices and wide-load signs.¹¹⁸ Effective March 1, 2019, all new Class 1 and 2 commercial drivers are required to complete the standardized Mandatory Entry-Level Training (MELT) program.¹¹⁹ As part

107. Clark et al., *supra* note 92.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. Clark et al., *supra* note 92.

113. See Commercial Vehicle Drivers Hours of Service Regulation, SOR/2005-313 (Can.).

114. See Commercial Vehicle Drivers Hours of Service Regulation, SOR/2019-165 (Can.).

115. *Id.*

116. See Commercial Vehicle Dimension and Weight Regulation, Alta. Reg. 315/2002 (Can.).

117. See Commercial Vehicle Dimension and Weight Regulation, Alta. Reg. 147/2019 (Can.).

118. See *id.*

119. *Mandatory Entry-Level Training for Class 1 and 2 driver's licences*, GOV'T OF ALTA., <https://www.alberta.ca/mandatory-entry-level-training-for-class-1-and-2-drivers-licences.aspx> (last visited Mar. 25, 2020).

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of the MELT program, drivers seeking a Class 1 license must complete 113 hours of training.¹²⁰ Also effective March 1, 2019, carriers must complete a Safety Fitness Certificate application and complete a compliance review through a third party auditor.¹²¹ In addition, existing Carrier Safety Fitness Certificates with no expiration dates will be issued with an expiration date as they are currently done in other Canadian jurisdictions, such as Ontario.¹²² These certificates must be issued between 2019 and 2022, and temporary certificates will cease to be issued.¹²³

2. *British Columbia*

On July 1, 2019, the Container Trucking Regulation¹²⁴ (B.C. Reg. 248/2104) was amended to give the B.C. Container Trucking Commissioner the regulatory authority to set rates and fuel surcharges.¹²⁵ An adjusted rate structure was also introduced for drivers—which includes a two percent trip and hourly rate increase.

3. *Manitoba*

Effective September 1, 2019, commercial drivers must comply with mandatory training requirements. Under the new regulations, all new Class 1 drivers must complete 121.5 hours of training under the province's MELT program.¹²⁶ Starting February 15, 2019, the Classes of Highways Regulation was amended to eliminate the non-Road Transportation Association of Canada standard and provide for a single standard for vehicle weight and dimensions.¹²⁷

4. *Ontario*

Effective July 1, 2019, Vehicle Weights and Dimensions—for Safe, Productive and Infrastructure-Friendly Vehicles,¹²⁸ was amended to eliminate the special vehicle configuration permit.¹²⁹ Specifically, this amendment eliminated the special vehicle configuration permit required to operate long wheelbase tractor, longer saddle mounts, and trailers equipped

120. *Id.*

121. *Pre-entry requirements – Commercial carriers*, GOV'T OF ALTA., <https://www.alberta.ca/pre-entry-requirements-commercial-carriers.aspx> (last visited Mar. 25, 2020).

122. *Id.*

123. *Id.*

124. *See* Container Trucking Regulation, B.C. Reg. 248/2014 (Can.).

125. Rolando Hinojosa, *Trucking Industry Group Welcomes Rate-Setting Regulatory Amendments*, BIV (June 28, 2019, 1:25 PM), <https://biv.com/article/2019/06/trucking-industry-group-welcomes-rate-setting-regulatory-amendments>.

126. *Mandatory Entry-Level Training – Class 1 licence*, MAN. PUB. INS, <https://www.mpi.mb.ca/Pages/mandatory-entry-level-training.aspx> (last visited Mar. 25, 2020).

127. *Classes of Highway Regulation*, Man. Reg. 155/2018 (Can.).

128. *See* Vehicle Weights and Dimensions — For Safe, Productive And Infrastructure-Friendly Vehicles, Ont. Reg. 413/05 (Can.).

129. *See id.*

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with smart lift axles.¹³⁰ In addition, the amendment includes provisions which are aimed at enabling the use of new and existing technologies to improve operational efficiency.¹³¹

C. AUTONOMOUS VEHICLES

At the federal level, the Automated and Connected Vehicles Policy Framework for Canada (the “Policy Framework”) was released on January 21, 2019 by the Council of Ministers Responsible for Transportation and Highway Safety.¹³² The Policy Framework sets the general policy principles for Canadian jurisdictions to follow, provides guidance to trial organizations for safe testing and deployment of autonomous vehicles, and defines the regulatory and policy issues which need to be addressed before the widespread adoption of autonomous vehicles in Canada.

In Ontario, commencing January 1, 2019, the Pilot Project—Automated Vehicles¹³³ regulation was amended to encompass vehicles classified under the Society of Automobile Engineers (SAE) Level 3 technology.¹³⁴ In particular, the amendment allows Level 3 vehicles to be driven on Ontario roads by the public—if they are originally manufactured with a driving automation system and are eligible for sale in Canada.¹³⁵ Drivers of Level 3 vehicles will still need to take full care and control of the vehicles, and are subject to laws on distracted, careless, and impaired driving.¹³⁶ The 2019 amendments to the Pilot Program regulation also allow the testing of cooperative truck platoons as part of the pilot, but under specific conditions to ensure safety and allow the testing of driverless AVs (SAE Level 4 or 5) as part of the pilot.¹³⁷

Finally, on October 20, 2019, Toronto’s City Council approved the Automated Vehicles Tactical Plan which sets out the general steps towards widespread adoption of AVs.¹³⁸ The first phase of the Tactical Plan includes an automated shuttle trial in the West Rouge neighborhood of Toronto.¹³⁹

130. See Vehicle Weights and Dimensions — For Safe, Productive And Infrastructure-Friendly Vehicles, Ont. Reg. 228/19 (Can.).

131. See *id.*

132. See *Canada’s Safety Framework for Automated and Connected Vehicles*, DEP’T OF TRANSP. Feb. 2019, https://www.tc.gc.ca/en/services/road/documents/tc_safety_framework_for_acv-s.pdf.

133. See Pilot Project – Automated Vehicles, Ont. Reg. 306/15 (Can.).

134. *Id.*

135. *Id.*

136. *Automated Vehicle Pilot Program*, ONT. MINISTRY OF TRANSP., <http://www.mto.gov.on.ca/english/vehicles/automated-vehicles.shtml> (last modified Mar. 4, 2019).

137. *Ontario Cooperative Truck Platooning Pilot Program Conditions*, ONT. MINISTRY OF TRANSP., <http://www.mto.gov.on.ca/english/trucks/cooperative-truck-platooning-conditions.shtml> (last modified Dec. 31, 2018).

138. *Automated Vehicles Tactical Plan*, CITY OF TORONTO Oct. 29, 2019, https://www.toronto.ca/wp-content/uploads/2019/12/8c25-TS_AV-Tactical-Plan_Technical-Report.pdf.

139. *Automated Shuttle Trial Public Consultation Report*, CITY OF TORONTO Jan. 23, 2020, <https://www.toronto.ca/wp-content/uploads/2020/01/9698-AV-Shuttle-Trial-Consultation-Report-Phase-1-FINAL.pdf>.

IV. Developments in FDI Risk Management for U.S. Critical Transportation Infrastructure

Given two decades have passed since the beginning of 21st century, there is a question of what will change the future of U.S. transportation industry with a global impact. So far, one significant change has occurred in the past year. In 2019, the newly proposed U.S. Treasury regulation under 31 CFR 800 and 802, ended their comment periods on October 17, 2019. The regulation clarified how the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA)¹⁴⁰ would be implemented. It mandated an effective date on or before February 13, 2020.

A. WHAT'S FIRRMA?

FIRRMA is a supplemental enabling federal law that was enacted to address U.S. national security concerns arising from the inbound foreign direct investments into the United States (US FDI).

After World War II, when international trade became a key part of rebuilding the global economy, the U.S. Congress passed the Defense Production Act of 1950 (DPA).¹⁴¹ Subsequently, the DPA was amended by the Foreign Investment and National Security Act of 2007,¹⁴² and its implementing regulation became effective on November 14, 2008. Among other things, it codified and improved the process of a multi-federal-agency committee led by the U.S. Treasury Department known as the Committee on Foreign Investment in the United States (CFIUS)¹⁴³—the committee empowered to advise the office of the U.S. president on the national security concerns arising from US FDI.

B. WHY FIRRMA?

Prior to FIRRMA, the scope of CFIUS review under the section 721 of DPA authority was limited. The prior scope applied to the transactions mainly resulting in a foreign person controlling a U.S. business with potential national security consequences.¹⁴⁴ This narrow scope of the covered transactions excluded non-controlling minority interests, asset acquisition without a U.S. business and all startup U.S. businesses.¹⁴⁵

140. National Defense Authorization Act for Fiscal Year 2019, H.R. 5515, 115th Cong. §§ 1701-2003.

141. See Defense Production Act of 1950, Pub. L. No. 81-774, 123 Stat. 2006 (codified as amended at 50 U.S.C. § 2061 (2009)).

142. See Foreign Investment and National Security Act of 2007, Pub. L. No. 110-49, 121 Stat. 246 (2007).

143. *Id.*

144. See Provisions Pertaining to Certain Investments in the United States by Foreign Persons, 84 Fed. Reg. 185 (proposed Sept. 24, 2019) (to be codified at 31 C.F.R. pt. 800).

145. *Id.*

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Unfortunately, the pace of global commercial activities increased and robust cross-border transactions are no longer unusual. As a result, many cross-border business transactions no longer need to take a controlling interest in the U.S. businesses in order to influence the direction of the targeted enterprises.¹⁴⁶ CFIUS's limitations appear ineffective in protecting the United States' national security interest as originally intended.

In the last 50 years, the shift of the U.S. and European nation's global dominance of economic power to Asian nations was an influencing factor in U.S. trade policy decisions. Based on the annual CFIUS Report to the U.S. Congress on November 22, 2019, CFIUS investigated 143 deals involving Chinese investors during 2015 and 2017.¹⁴⁷ This is a significant percentage because CFIUS investigated less than 200 deals total per year. Further, during 2016, 2017, and 2018, there were three deals recommended to the office of the U.S. President for a national security decision regarding these US FDIs.¹⁴⁸ All three of these deals were blocked and two of these deals involved Chinese investors.

**C. WHAT ELEMENTS OF FIRRMA WOULD AFFECT THE U.S.
TRANSPORTATION INDUSTRY?**

FIRRMA expanded the scope of CFIUS's authority beyond any transactions resulting in a foreign person with a controlling interest of U.S. business.¹⁴⁹ In particular, FIRRMA expanded the scope of CFIUS's authority by adding the review of specific topical and functionality of US FDIs involving—(1) critical technologies; (2) critical infrastructures¹⁵⁰; and (3) sensitive personal data.

In the proposed regulation, U.S. airports and maritime ports are listed by the U.S. Department of Transportation as critical infrastructures in the appendix.¹⁵¹ The following real estate transactions involving—locations within the critical infrastructures, locations within one mile, 1 to 100 miles, missile fields, and offshore ranges—are considered the covered sites¹⁵² subject to CFIUS review.¹⁵³ CFIUS review is required because these locations could reasonably provide a foreign person with the ability to collect intelligence on conducted activities at the subject facility.¹⁵⁴ Additionally, any business owning, operating, manufacturing, supplying, or servicing the critical infrastructures across the transportation industry, as

146. JAMES K. JACKSON, CONG. RESEARCH SERV., RL33388, THE COMM. ON FOREIGN INV. IN THE U.S. (CFIUS) (2020).

147. *Id.* at 36.

148. *Id.* at Summary.

149. *Id.* at 16.

150. *Id.* at 2.

151. *Id.* at 18.

152. Jackson, *supra* note 146, at 18–19.

153. *Id.* at 18.

154. *Id.* at 21.

identified in subsection 2 of the critical infrastructure list are under the same scrutiny.¹⁵⁵

This expanded scope of review will reach most of the commercial entities involved in the aviation, shipping, and maritime industry, as well as any logistics facilities within the list of critical infrastructures in the United States. The U.S. critical infrastructures need improvements and rebuilding to meet the demands of the 21st century. The situation dictates an open flow of funding to meet the demand of capital expenditure, and US FDI is a critical source.

D. FIRRMA'S SAVING GRACE SECTIONS

The proposed regulation formally introduced the concepts of: (1) excepted investors¹⁵⁶; (2) excepted real estate investors; and (3) excepted foreign states.¹⁵⁷ The proposed regulation is a means to qualify the foreign investors based on known relationships to the United States and may exempt them from the statutory scrutiny.¹⁵⁸ In determining the eligibility of a foreign state for a foreign state status, CFIUS considers the following factors of—if a foreign state has an established process to analyze its foreign investments for national security risks, and if a foreign state has an established process to coordinate with the United States in regards to the investment security risk.¹⁵⁹

Subpart J of the regulation and its subsequent proposed list naming these excepted foreign investors, by the U.S. treasury department, should be able to expedite the CFIUS process for those to be named on the lists. The need for risk management for a sustainable growth in the Global marketplace necessitates the U.S. infrastructures to be updated to meet and exceed the 21st-century standards. FIRRMA just may be the tool to facilitate U.S. needs, and thus should welcome the new era with the new regulation from the U.S. Treasury in 2020.

V. Developments in Arbitration: The Henry Schein Decision

The U.S. Supreme Court handed down an important decision earlier this year with implications for international transportation contracts, as well as other types of business contracts.¹⁶⁰ This decision dealt with the issue of arbitrability, or more specifically, whether a dispute within a contract is subject to arbitration.¹⁶¹

155. *Id.* at 19.

156. *Id.* at 18.

157. *Id.* at 18–19.

158. *Id.* at 16.

159. *Id.* at 20.

160. *See* Henry Schein, Inc. v. Archer and White Sales, Inc., 139 S. Ct. 524 (2019).

161. *Id.* at 525.

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A. THE FACTS OF THE CASE

Archer & White Sales, Inc., a small distributor of dental equipment, contracted with Pelton and Crane for the distribution of dental equipment manufactured by Pelton and Crane.¹⁶² In the case, the contract included an arbitration clause which stated that everything was subject to arbitration except injunctive relief, and that the arbitration rules to be followed would be those established by the American Arbitration Association.¹⁶³

The relationship between the contracting parties soured, and Archer & White (A&W) accused Schein, Pelton and Crane's successor in interest, of not following the terms of the contract.¹⁶⁴ A&W sought both injunctive relief and damages in its claim.¹⁶⁵ In turn, Schein sought a determination by an arbitrator as to whether these claims were subject to arbitration. Schein reasoned that according to the contract, only half of the claim should result in damages because the other half of the claim was requesting injunctive relief.¹⁶⁶ A&W's response was to seek a court's intervention—based upon the “wholly groundless” doctrine—to avoid delays in imposing injunctive relief related to the time it would take an arbitrator to determine whether injunctive relief would be justified.¹⁶⁷

The Federal Arbitration Act (FAA) of 1925 legislates the arbitration process and determines appropriate outcomes are resulting from arbitration clauses.¹⁶⁸ Central to the FAA—and a key part of the Supreme Court's decision¹⁶⁹—is that arbitration is a matter of contract.¹⁷⁰ In other words, the language of the contract can determine what the rules and stipulations related to arbitration are.¹⁷¹ Included in these stipulations is the “gateway decision” which determines whether something is subject to arbitration itself.¹⁷²

This determination of whether something is arbitrable may be considered a “chicken or the egg” type of decision. But according to the *Schein* court, the FAA permits the question of whether an issue is arbitrable as part of the arbitration itself.¹⁷³ In short, the determination within the arbitration clause regarding whether a dispute is arbitrable is considered “an additional,

162. *Id.* at 528.

163. *Id.* at 526.

164. *Id.* at 528.

165. *Id.*

166. *Henry Schein*, 139 S. Ct. at 528 (2019).

167. *Id.*

168. See Federal Arbitration Act, 9 U.S.C. §§ 1–14 (1925).

169. See *Henry Schein*, 139 S. Ct. at 529.

170. Federal Arbitration Act § 2.

171. *Id.*

172. See *Henry Schein*, 139 S. Ct. at 529.

173. *Rent-A-Center, West Inc., v. Jackson*, 561 U.S. 63, 68–69 (2010).

antecedent agreement.”¹⁷⁴ In addition, the AAA rules include this determination of arbitrability via the arbitrator as part of their rules.¹⁷⁵

B. THE WHOLLY GROUNDLESS DOCTRINE REJECTED

Some federal courts follow the “wholly groundless” doctrine.¹⁷⁶ This doctrine specifies that when a question is presented by a party that is frivolous or obviously does not apply—for example, asking whether a dispute is subject to arbitration when it should not be—the court can step in and short-circuit this process to avoid needless delays.¹⁷⁷ This question, was at the heart of how this dispute made its way to the Supreme Court.¹⁷⁸ Both the district and appellate courts agreed that Shein’s question was “wholly groundless,” and was intended mainly to delay injunctive relief for A&W.¹⁷⁹

In its decision, the Supreme Court rejected the application of the “wholly groundless” doctrine when it comes to arbitrability.¹⁸⁰ A&W made four arguments in favor of the wholly groundless doctrine—all of which the court rejected.¹⁸¹

The first argument was that the clauses under section three and four of the FAA maintain the determination of arbitrability with the courts, based upon the language in the FAA.¹⁸² The Court rejected this by referencing prior decisions already arguing against this conclusion, so long as the parties agree to arbitrability determined by the arbitrator by “clear and mistakeable evidence.”¹⁸³

Second, A&W argued that section ten of the Act “provides for back end judicial review of an arbitrator’s decision if the arbitrator exceeded his or her powers.”¹⁸⁴ A&W argued that if the court has these powers on the back end, then as a practical matter, it should have these powers on the front end as well.¹⁸⁵ The Court’s response to that is that it is not in a position to effectively re-write the Act.¹⁸⁶

Third, as a “practical and policy matter, it would be a waste of parties’ time and money to send the arbitrability question to an arbitrator” when the arbitrator would inevitably conclude that the dispute is not arbitrable.¹⁸⁷

174. *Id.* at 70.

175. *Commercial Arbitration Rules and Mediation Practices, Rule 7*, AM. ARB. ASSOC. Oct. 1, 2013, https://www.adr.org/sites/default/files/CommercialRules_Web.pdf.

176. *Henry Schein*, 139 S. Ct. at 527–28.

177. *Id.*

178. *Id.*

179. *Id.* at 526.

180. *Id.* at 531.

181. *Id.*

182. *Henry Schein*, 139 S. Ct. at 530.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

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Once again the Court argued that it cannot rewrite the Act, and there still would be a risk of wasted time and resources from collateral litigation tied to shortcutting the process.¹⁸⁸

Finally, A&W asserts one final policy argument—that the “wholly groundless” exception is necessary to “deter frivolous motions to compel arbitration.”¹⁸⁹ Once again, the *Schein* court argues that it is not in a position to rewrite the text, and, in so many words—had the drafters intended the wholly groundless exception they would have included it within the act.¹⁹⁰

C. IMPLICATIONS

With the rejection of the “wholly groundless” doctrine, it becomes exceedingly difficult to avoid questions of arbitrability to be determined by an arbitrator. It would seem that, in order to avoid an arbitrator needing to answer this question, specific language would need to be placed in the contract for those types of disputes wishing to avoid arbitration. For example, concerns about injunctive relief should neither be questioned as to whether they are subject to arbitration, nor be determined by way of arbitration. Therefore, the language in the dispute itself would then need to mirror the contract language in order to avoid ever putting into question the determination of arbitrability.

188. *Henry Schein*, 139 S. Ct. at 531.

189. *Id.*

190. *Id.*