

Maritime Cases Roundup

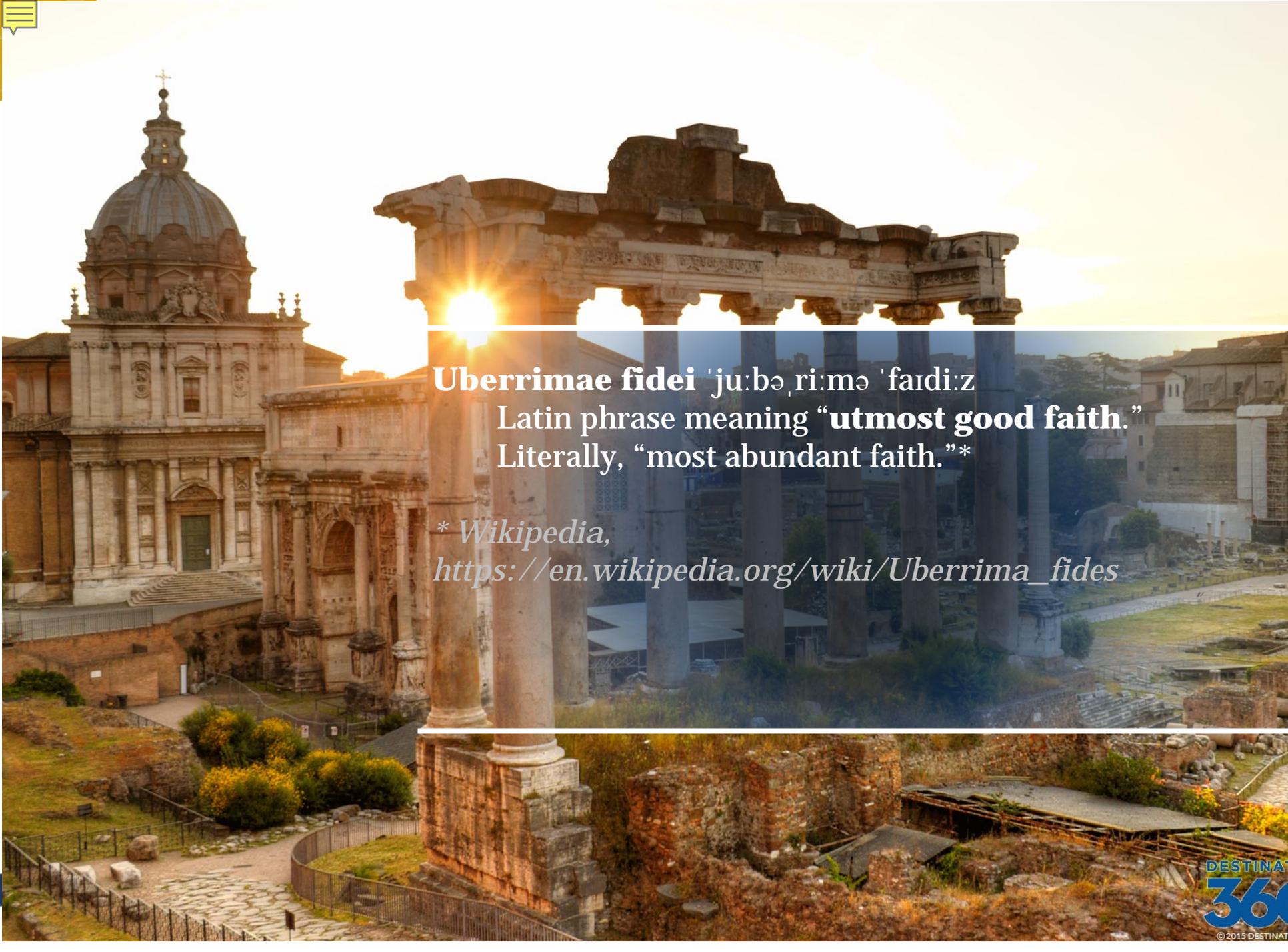
Board of Marine Underwriters of San Francisco

Marilyn Raia, Bullivant Houser Bailey PC

Jennifer Tomlin Sanchez, Gibson Robb & Lindh LLP

An underwater photograph showing two divers in a deep blue environment. The diver in the foreground is wearing a black wetsuit and blue fins, swimming towards the left. The diver in the background is further away, also swimming. The water is filled with many small fish, and the seabed is visible at the bottom, covered in coral and rocks. The overall scene is serene and captures the beauty of deep-sea diving.

Deep Dives



Uberrimae fidei 'ju:bə,ri:mə 'faidi:z
Latin phrase meaning “**utmost good faith.**”
Literally, “most abundant faith.”*

* *Wikipedia,*
https://en.wikipedia.org/wiki/Uberrima_fides



St. Paul Fire & Marine Ins. Co. v. Abhe & Svoboda, Inc.
798 F.3d 715 (8th Cir 2015)



Fireman's Fund Ins Co. v. Great American Ins. Co. of New York,
822 F.3d 620 (2d. Cir. 2016)



Great Lakes Reinsurance (UK) PLC v. Amaro
2016 AMC 2250 (S.D. Fla. 2016)

Atlantic
Ocean

North
Sea

Irish Sea

Celtic Sea

English Channel

Shetland Islands

Lerwick

Orkney Islands

Kirkwall

Wick

Inverness

Aberdeen

UNITED

Perth Dundee

Glasgow Edinburgh

Ayr

Dumfries

Newcastle

Londonderry

Lisburn

Belfast

Isle of Man

Middlesbrough

Scarborough

Blackpool

Liverpool

Manchester

Leeds

York

Kingston upon Hull

Stoke

Nottingham

Birmingham

Peterborough

Norwich

Coventry

Cambridge

Oxford

Luton

Ipswich

Cardiff

Bath

London

Exeter

Portsmouth

Penzance

Plymouth

Dover

NETHERLANDS

Amsterdam

The Hague

GERMANY

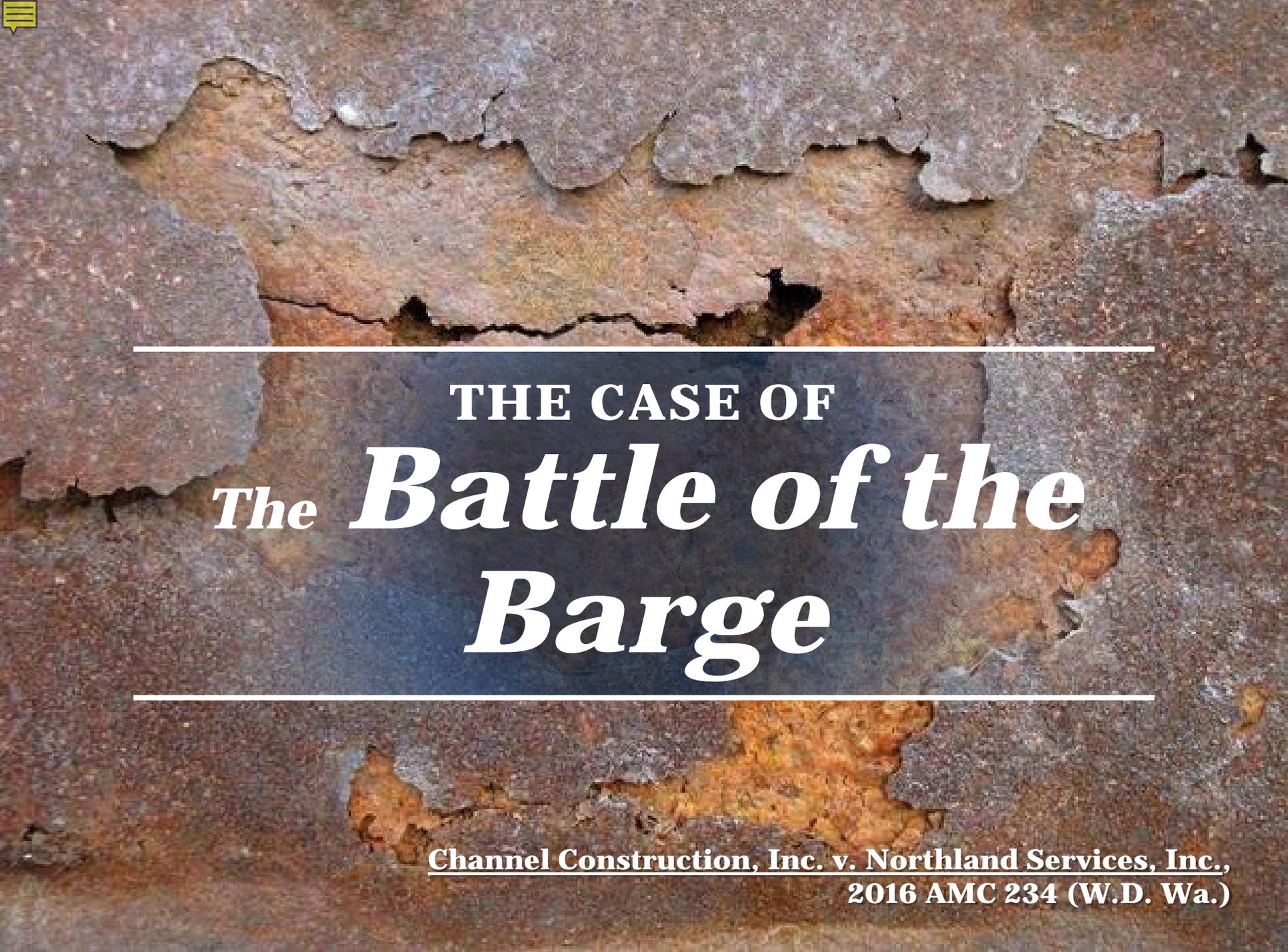
FRANCE

QBE Seguros v. Morales- Vasquez
260 F.Supp.2d 148 (D.P.R. 2016)

Bergen

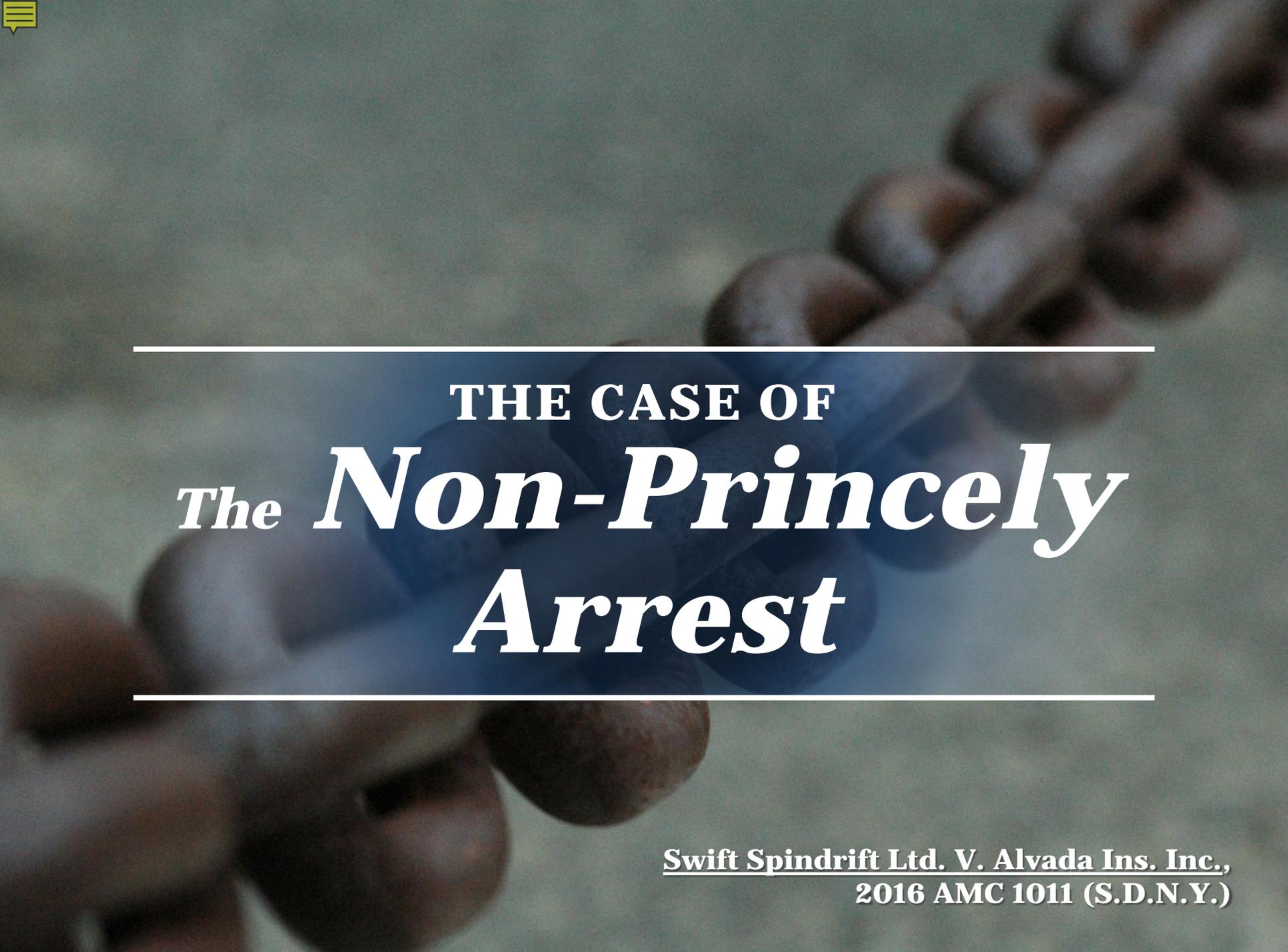
NORWAY

Kris



THE CASE OF
*The Battle of the
Barge*

Channel Construction, Inc. v. Northland Services, Inc.,
2016 AMC 234 (W.D. Wa.)



THE CASE OF
*The Non-Princely
Arrest*

Swift Spindrift Ltd. V. Alvada Ins. Inc.,
2016 AMC 1011 (S.D.N.Y.)

An aerial photograph of a marina where a white boat named "Polar Bear" is engulfed in a large fire. Thick black smoke billows from the boat, rising into the sky. The boat is docked at a pier, and several fire trucks are visible nearby. The scene is set against a clear blue sky and a body of water in the background.

THE CASE OF
*The Melted Polar
Bear*

Certain Interested Underwriters at Lloyd's, London v Bear, LLC,
2017 AMC 1765 (S.D. Cal)



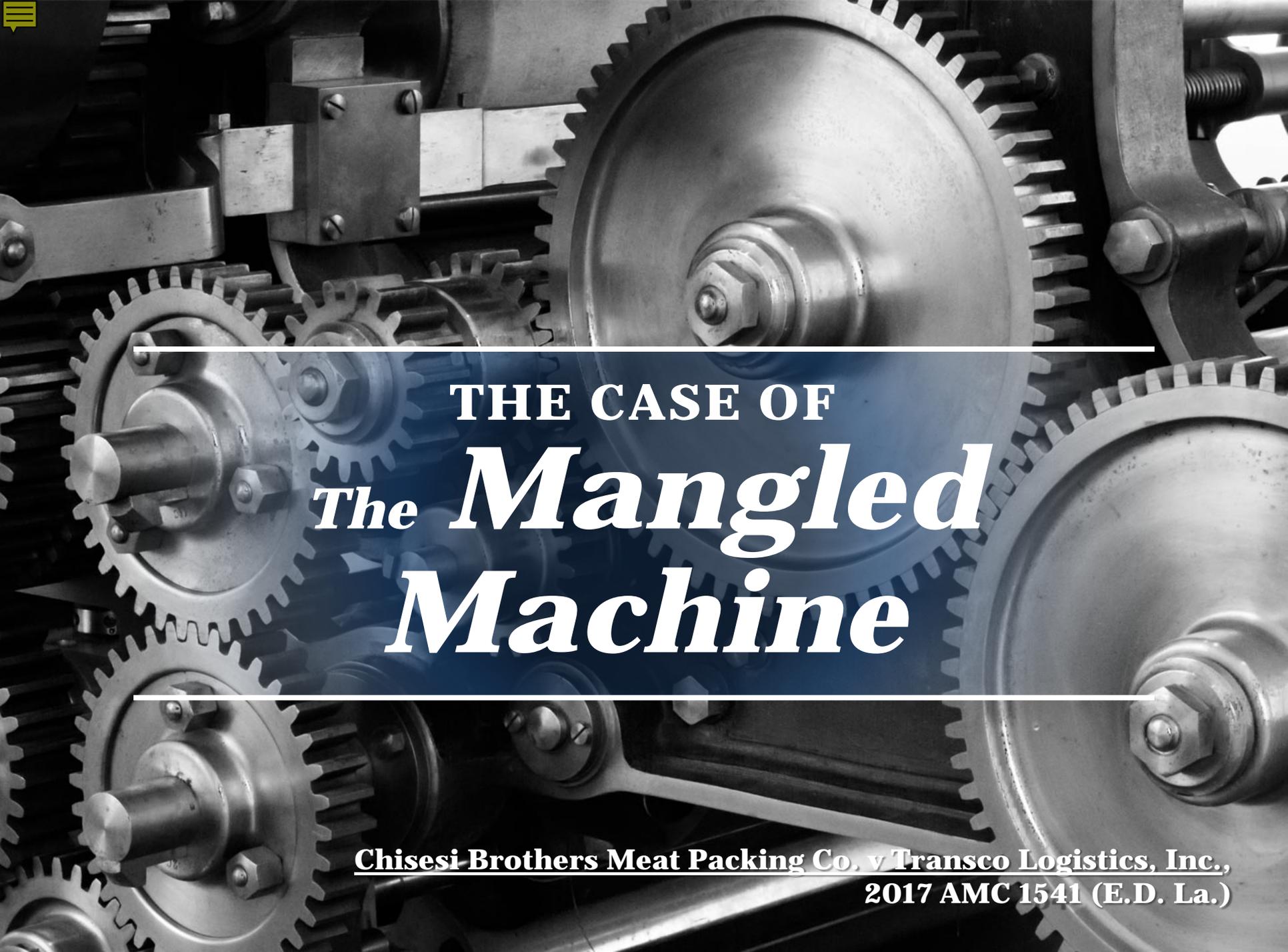
Well, darn...

**In Re Crescent Energy Services LLC,
2017 AMC 1670 (E.D. La.)**



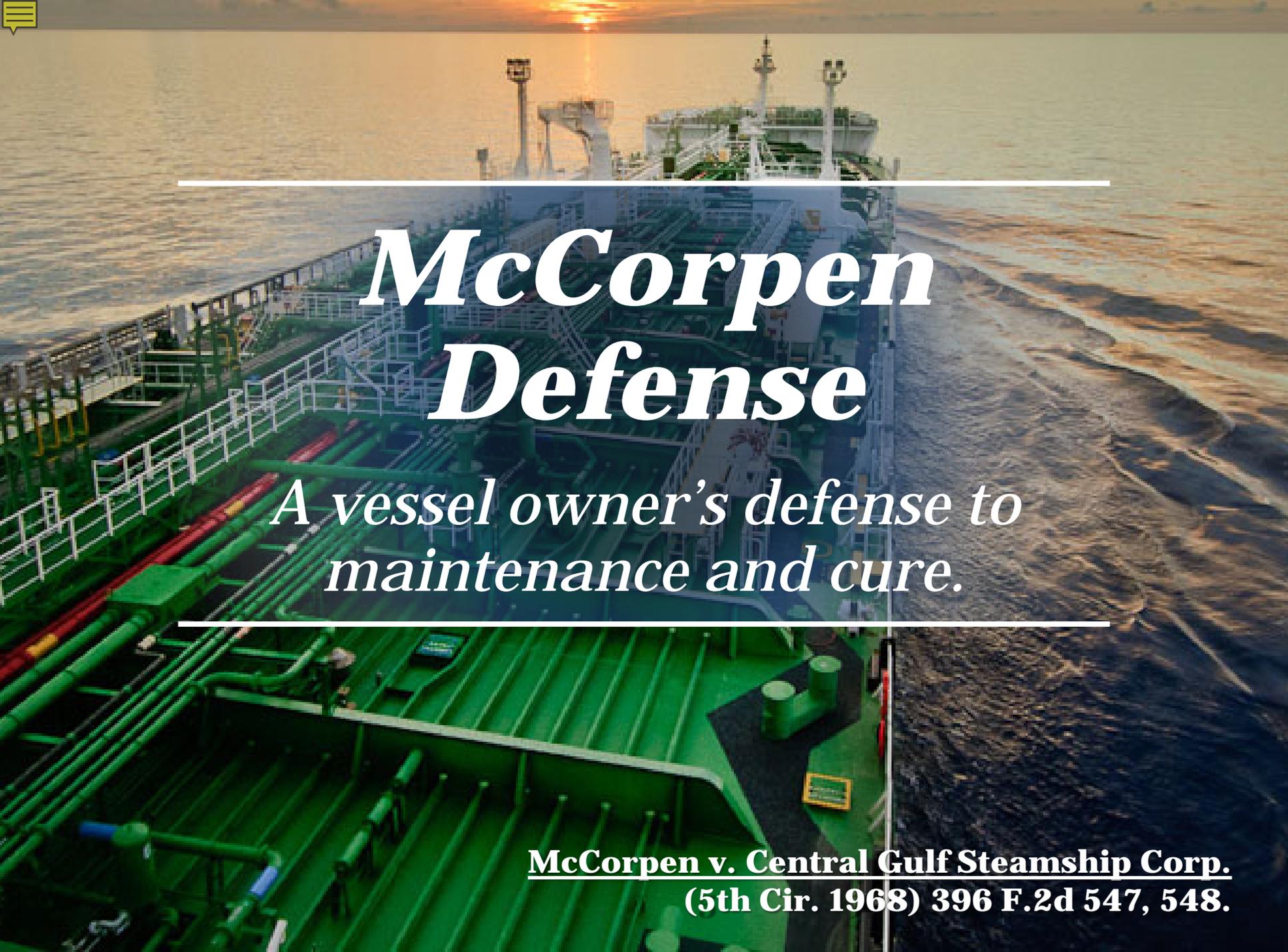
***Crime Pays
(the Victim!)***

**AGCS Marine Ins. Co. v. World Fuel Services, Inc.,
187 F. Supp. 3d 428, 2016 AMC 2487 (S.D.N.Y.)**



THE CASE OF
*The Mangled
Machine*

Chisesi Brothers Meat Packing Co. v Transco Logistics, Inc.,
2017 AMC 1541 (E.D. La.)



McCorpen Defense

*A vessel owner's defense to
maintenance and cure.*

McCorpen v. Central Gulf Steamship Corp.
(5th Cir. 1968) 396 F.2d 547, 548.

MAINTENANCE AND CURE ELEMENTS OF CAUSE OF ACTION

1.

• Seaman

2.

• Must suffer injury or become ill

3.

• While in the service of the vessel



If a seaman concealed a medical condition from the employer when he or she was hired, an employer may have a *McCorpen* defense.





LeBlanc v LA Carriers,
2016 AMC 1622 (ED La)

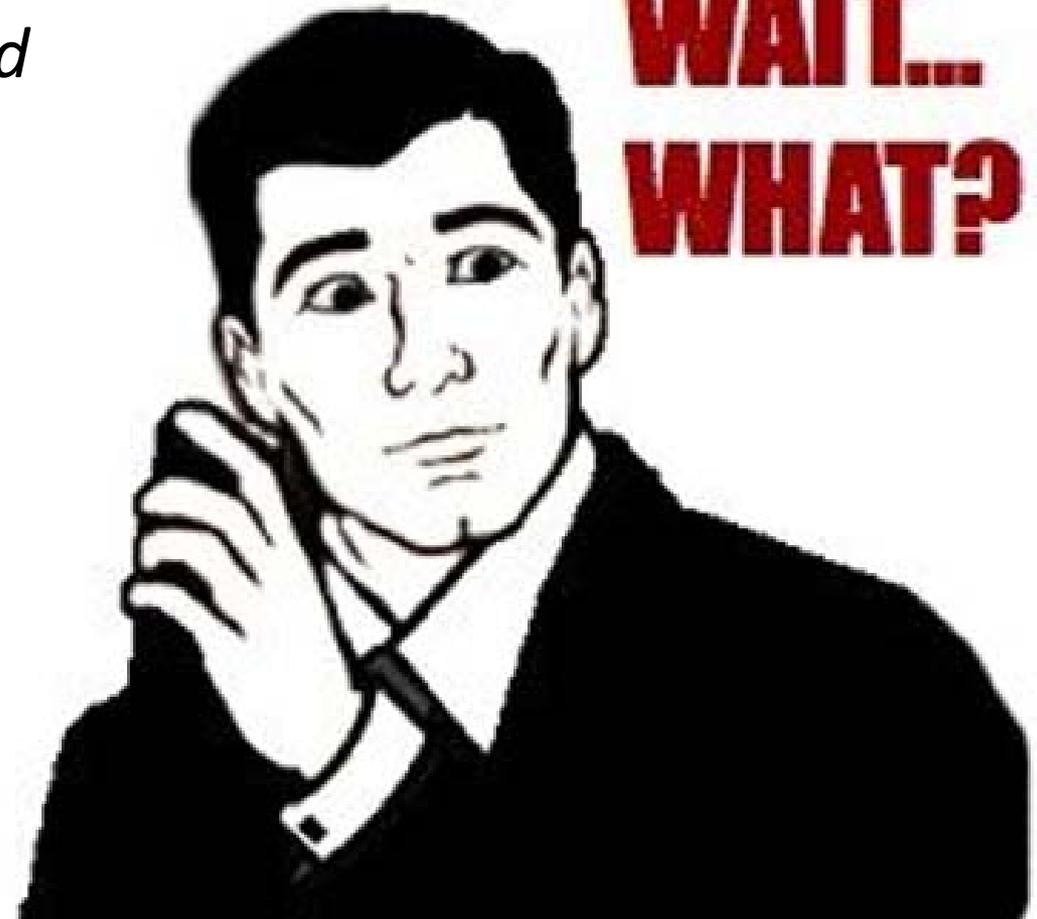


Coastal Villages Pollock, LLC v. Naufahu,
2016 U.S. App. LEXIS 18194 (9th Cir.) (unpublished). Trial court
decision **2014** WL 1053126 (W.D. Wash. Mar. 19, 2014).



Personal Injury Damages

*Punitive Damages and
Marriage*





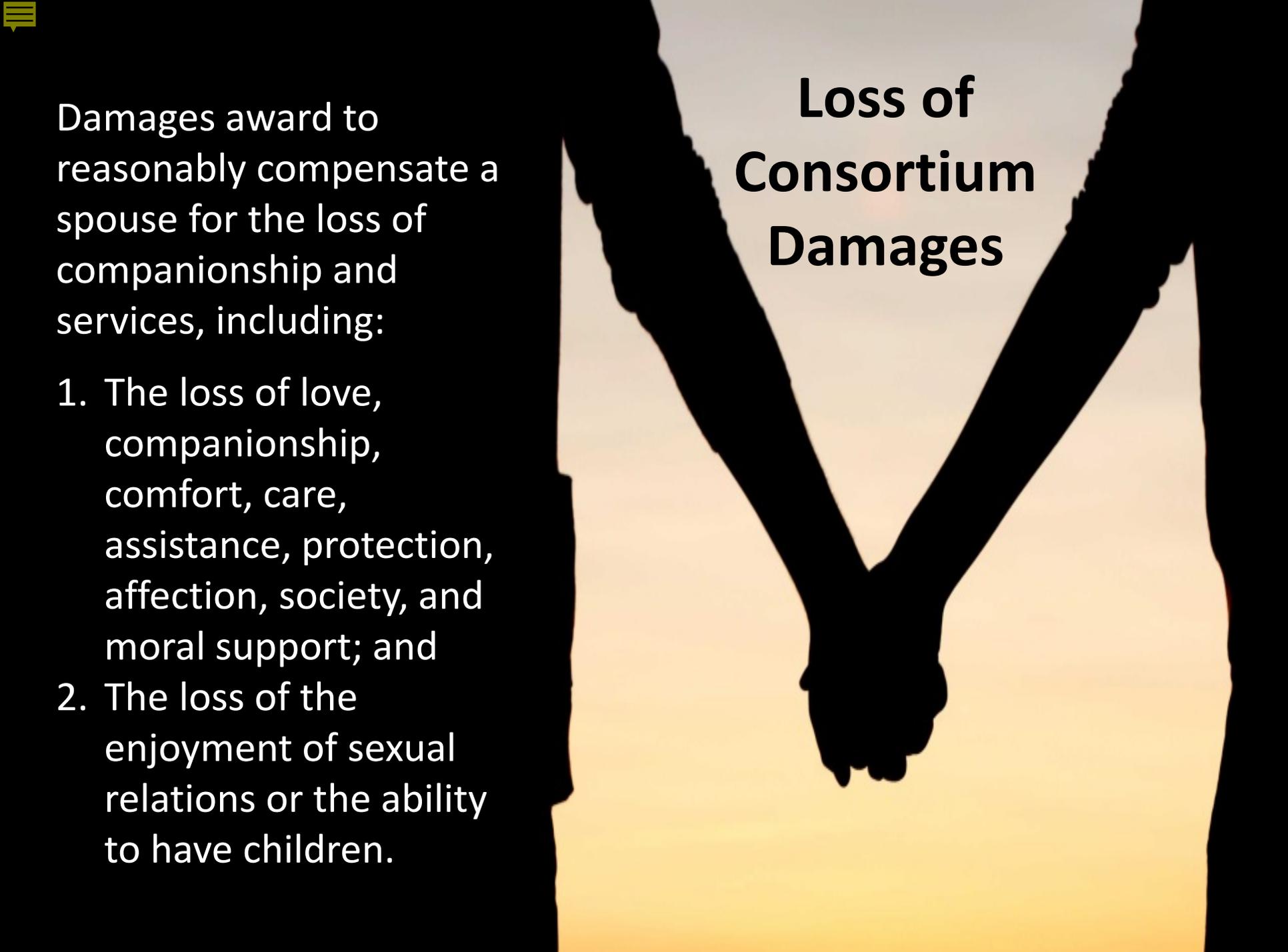
Personal Injury Damages

Punitive Damages and Loss of Consortium

A wooden gavel with a dark, polished finish is positioned diagonally across the frame. The head of the gavel is on the left, and the handle extends towards the bottom right. It rests on a surface covered with several US dollar bills, including a prominent \$100 bill. The background is a soft-focus view of more currency, creating a sense of wealth and legal consequence.

Punitive Damages

The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future. Damages may be awarded if the plaintiff proves by clear and convincing evidence that the defendant engaged in that conduct with malice, oppression, or fraud.

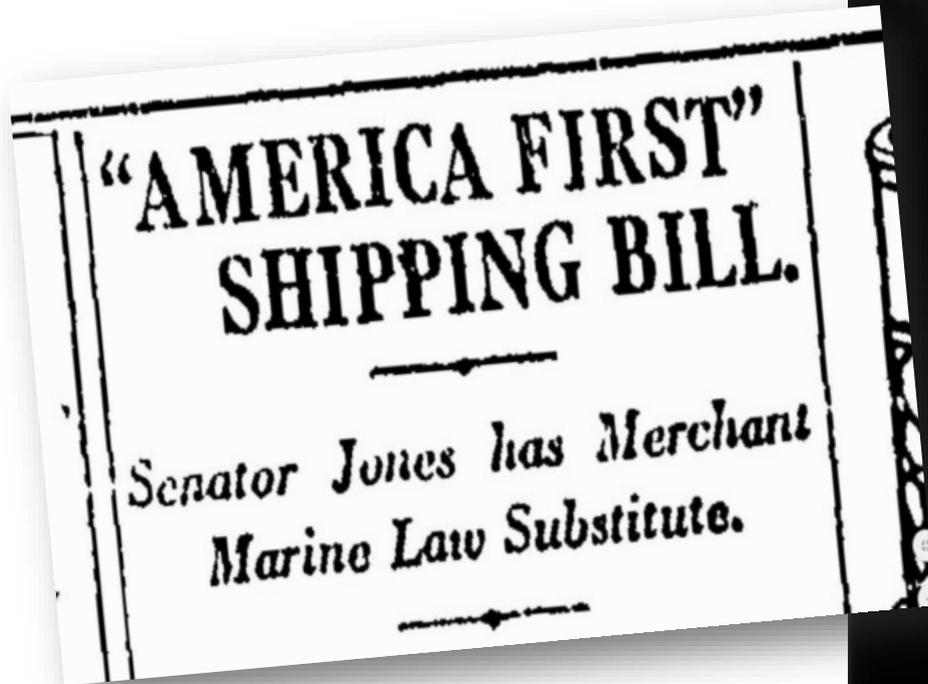
The background of the slide features a silhouette of two people holding hands, set against a warm, golden sunset sky. The figures are dark against the bright, glowing background, creating a poignant visual metaphor for companionship and loss.

Damages award to reasonably compensate a spouse for the loss of companionship and services, including:

1. The loss of love, companionship, comfort, care, assistance, protection, affection, society, and moral support; and
2. The loss of the enjoyment of sexual relations or the ability to have children.

Loss of Consortium Damages

The Jones Act



Passed in 1920 to provide a cause of action in negligence for a seaman injured "in the course of his employment"

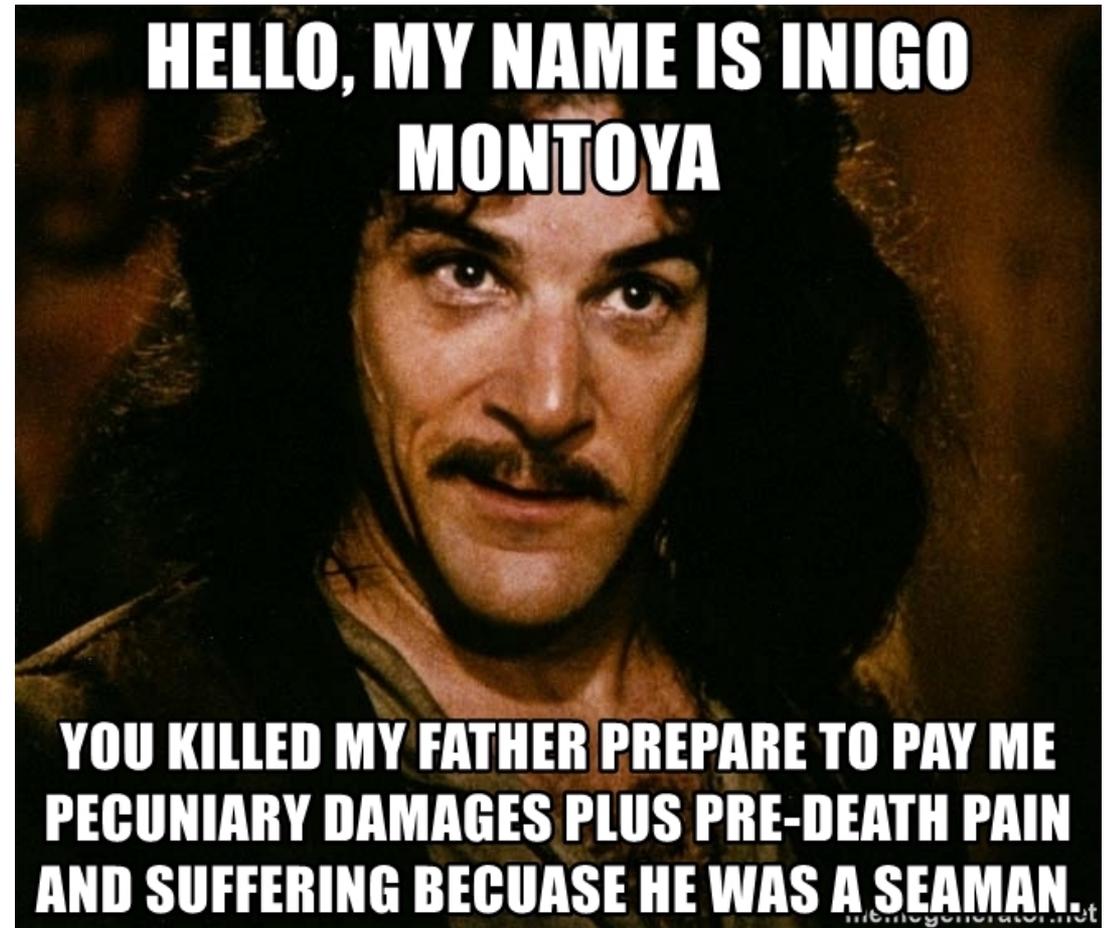
Seaman had – and still have – a cause of action for unseaworthiness





The Jones Act only allows pecuniary damages.

Pecuniary damages are an element of compensation that include ascertainable monetary amounts such as medical bills and lost wages, and also include damages to compensate for pain and suffering.





Jones Act

The Jones Act does not allow non-pecuniary damages:

Loss of consortium

Punitive damages

Miles v. Apex Marine Corp. (1990) 498 U.S. 19:
Wrongful death case involving Jones Act seaman
do not include loss of society (consortium).

Atlantic Sounding Co., Inc. v. Townsend (2009)
557 U.S. 404: a seaman can claim punitive
damages in a Jones Act case for failure to pay
maintenance and cure.





McBride v. Estis Well Service
(2014) 768 F.3d 382 (5th Cir.
2014): no punitive damages for
unseaworthiness if also a Jones
Act case. Based on holding
Jones Act limits damages to
pecuniary damages.





STOP MAKING SENSE



Kabasinskas v. Maersk Line, Ltd. , 2016 AMC 27

Trial court in Alameda County allowed plaintiff's wife **and children** to pursue loss of consortium in a Jones Act seaman's personal injury case based on unseaworthiness

Tabingo v. American Triumph LLC (2017) 188 Wash.2d 41

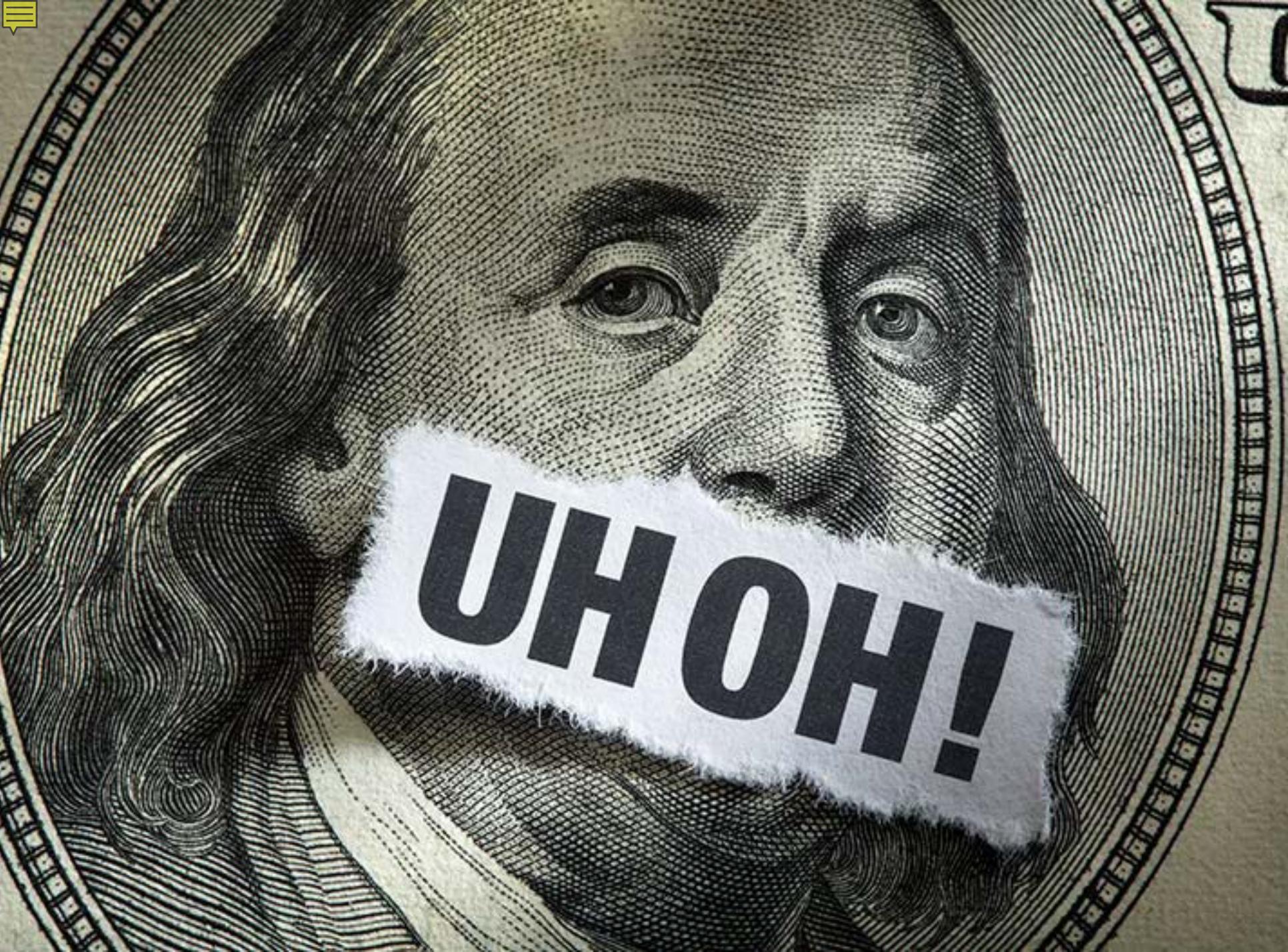
Washington State Supreme Court held punitive damages were available to a Jones Act seaman for an unseaworthiness cause of action



Batterton v. The Dutra Group
(2018 9th Cir.) 880 F.3d 1089

Punitive damages are available to a Jones Act seaman in a general maritime law unseaworthiness claim

The 9th Circuit disagreed with Judge Clement's concurring opinion in *McBride* that punitive damages were not available for unseaworthiness when The Jones Act was enacted.



UH OH!



JURISDICTION	DIRECTLY ASSESSED PUNITIVE DAMAGES	VICARIOUSLY ASSESSED PUNITIVE DAMAGES ¹
ALABAMA	Insurable	Insurable
ALASKA	Insurable	Insurable
ARIZONA	Insurable	Insurable
ARKANSAS	Insurable*	Insurable
CALIFORNIA	Not Insurable	Insurable
COLORADO	Not Insurable	Undecided
CONNECTICUT	Not Insurable	Insurable
DELAWARE	Insurable	Insurable
DISTRICT OF COLUMBIA	Undecided	Undecided
FLORIDA	Not Insurable	Insurable
GEORGIA	Insurable	Insurable
HAWAII	Insurable	Insurable
IDAHO	Insurable	Insurable
ILLINOIS	Not Insurable	Insurable
INDIANA	Not Insurable	Insurable
IOWA	Insurable	Insurable
KANSAS	Not Insurable	Insurable
KENTUCKY	Insurable*	Insurable
LOUISIANA	Insurable*	Insurable
MAINE	Not Insurable	Undecided
MARYLAND	Insurable	Insurable
MASSACHUSETTS	Not Insurable	Undecided
MICHIGAN	Insurable	Insurable
MINNESOTA	Not Insurable	Insurable
MISSISSIPPI	Insurable	Insurable
MISSOURI	Insurable	Insurable
MONTANA	Insurable*	Insurable
NEBRASKA ²	Not Applicable	Not Applicable
NEVADA	Insurable*	Insurable
NEW HAMPSHIRE	Insurable	Insurable
NEW JERSEY	Not Insurable	Insurable
NEW MEXICO	Insurable	Insurable
NEW YORK	Not Insurable	Not Insurable
NORTH CAROLINA	Insurable	Insurable
NORTH DAKOTA	Insurable*	Insurable
OHIO	Insurable	Insurable
OKLAHOMA	Not Insurable	Insurable
OREGON	Insurable*	Insurable
PENNSYLVANIA	Not Insurable	Insurable
RHODE ISLAND	Not Insurable	Undecided
SOUTH CAROLINA	Insurable	Insurable
SOUTH DAKOTA	Undecided	Undecided
TENNESSEE	Insurable*	Insurable
TEXAS	Undecided	Insurable
UTAH	Not Insurable	Not Insurable
VERMONT	Insurable	Insurable
VIRGINIA ³	Insurable*	Not Applicable
WASHINGTON	Insurable	Insurable
WEST VIRGINIA	Insurable	Insurable
WISCONSIN	Insurable	Insurable
WYOMING	Insurable	Insurable





Cameroon

Nigeria

Lake Chad

Chad

C.A.R

Douala

★ Yaounde

Gulf of Guinea

Eq. Guinea

Gabon

Congo

Flying trash



Hargus v. Ferocious and Impetuous, LLC (3d Cir) (also 840 F.3d 133) 2017 AMC 57



***Burned Out
Again***

**In re Pennypacker (D. Md.)
2016 AMC 2130**



OOPS!



Look out!

Manhattan by Sail, Inc. v. Tagle
(2d Cir. 2017) 873 F.3d 177



Hausman v. Holland America Line-USA
U.S. District Court, W.D. Washington



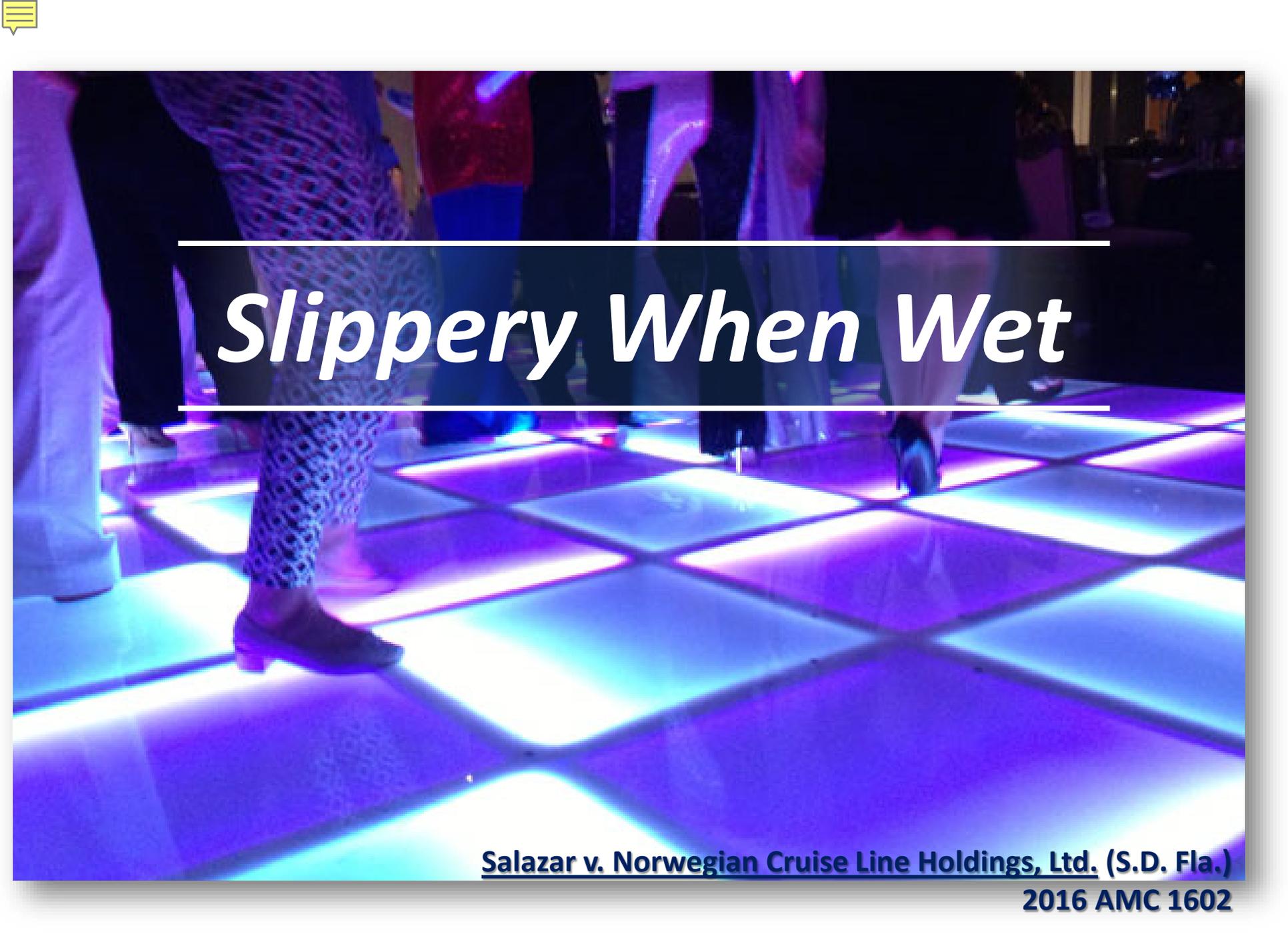
Specker v. Kazma
2016 AMC 2073 (S.D. Ca.)



© Elke Specker / Barcroft USA



© Elke Specker / Barcroft USA

A photograph of a dance floor at night. The floor is composed of large, square tiles that are illuminated from below with a vibrant blue and purple light. Several people are visible, mostly from the waist down, wearing various styles of shoes and clothing. The scene is dimly lit, with the primary light source being the glowing floor tiles.

Slippery When Wet

Salazar v. Norwegian Cruise Line Holdings, Ltd. (S.D. Fla.)

2016 AMC 1602

A photograph of a child's feet on a sandy surface. One foot is holding a waffle cone, and the other foot has a puddle of multi-colored ice cream on it. The scene is used as a metaphor for a legal case.

***Don't Cry Over
Spilled Ice Cream***

Buehler Seadrill Americas, Inc. (E.D. La.)
2016 AMC 1056