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Commercial and Passenger Vessel Safety: Challenges and Opportunities

Before the House Committee on Transportation and Infrastructure

Coast Guard and Maritime Transportation Subcommittee

United States House of Representatives

November 14, 2019

CHAIRMAN DEFAZIO AND MEMBERS OF THE SUBCOMMITTEE:

I am honored to testify today. Thank you for inviting me.[1]

I am Paul M. Sterbcow. I live in New Orleans, Louisiana with my wife, Laurie, and youngest child. I am the Managing Partner of the law firm of Lewis, Kullman, Sterbcow & Abramson, LLC in New Orleans. I received my Bachelor of Science in Political Science from Tulane University, and my law degree from Tulane Law School. I have represented injured individuals and the families of persons killed in maritime catastrophes for over thirty-two years. I practice primarily in federal court in New Orleans and other Gulf Coast cities. I have authored over forty-five continuing legal education papers and have been published in the Journal of Maritime Law and Commerce and the Loyola University New Orleans Maritime Law Journal. I was a member of the Plaintiff's Steering Committee and co-lead trial attorney in the liability trial arising out of the Deepwater Horizon explosion and subsequent largest oil spill in the history of the United States. The incident led to the largest civil litigation in United States History.

I have been asked to comment on three discreet areas: **(1)** the Death on the High Seas Act, 46 U.S.C. § 30301, *et. seq.* (DOHSA); **(2)** the Limitation of Liability Act, 46 U.S.C. § 30501, *et seq.* (LOLA); and **(3)** Forced Arbitration in cases falling within the Maritime Jurisdiction of the United States.

OVERVIEW

The founding fathers knew that the United States needed a uniform, distinct and strong body of national maritime law if the young democracy was to compete and prosper in maritime commerce. As a result, Article III of the U.S. Constitution extended the judicial power of the United States to "all cases of admiralty and maritime jurisdiction" in order to ensure that maritime law remained federal and consistent among the states.[2] In addition to federal statutes enacted by Congress as part of its legislative function, the federal courts have exercised this unique constitutional authority to create a body of common law applicable to cases within admiralty jurisdiction, generally referred to as the "general maritime law." Therefore, admiralty law, including maritime personal injury and death, is federal law over which Congress can and should exercise its legislative authority.[3]

Against this background, DOHSA, LOLA and Forced Arbitration have a common thread – they arbitrarily, unfairly and without cause deprive maritime personal injury and death victims of rights and remedies afforded other classes of tort victims. The inequity is compounded by the fact that by their very nature, maritime torts, which frequently involve unforgiving perils of the sea, typically have severe and long-lasting consequences for the victims. Given the significant advancements in marine safety systems, procedures and technology, combined with the steady and precipitous decline in U.S. commercial shipbuilding,[4] the damage limitations of DOHSA, LOLA

[1] Curriculum Vitae.

[2] U.S. Const. art. III, § 2, cl.1.

[3] U.S. Const. art. I, § 8, cl.18.

[4] In the 1950's, U.S. shipyards built most of the world's fleets. Today, America ranks nineteenth in the world in commercial shipbuilding, accounting for less than 1% of new construction. See: Klein, Aaron, Decline in U.S.

and forced arbitration are not justifiable. Indeed, DOHSA and LOLA stem from antiquated notions of having to protect otherwise "innocent" vessel owners from calamities at sea occurring out of their control and incentivizing shipbuilding. This rationale is demonstrably invalid today. Respectfully, these antiquated laws need to be updated to reflect the changes and progress in technology and society in our constitutional democracy.

THE DEATH ON THE HIGH SEAS ACT (DOHSA)

Congress passed DOHSA on March 30, 1920. DOHSA created a right to sue in court for the death of a spouse, parent, child or dependent relative.[5] The Act applies to a tort occurring on the high seas beyond a marine league (three nautical miles) from the shore of any state, or the District of Columbia, or the territories or dependencies of the United States.[6] The Federal Courts have defined "High Seas" as including territorial waters of another country as long as the disaster site is more than one marine league from United States waters.[7]

DOHSA specifies the remedies available to the survivor Plaintiffs. Recovery is limited to "… the pecuniary loss sustained by the individuals for whose benefit the action is brought …."[8] "Pecuniary loss" includes loss of economic support from the decedent and funeral and burial expenses.[9] The statute contemplates only the death of the family breadwinner. The statute as written does not provide compensation for the emotional loss of survivors with the one limited exception described below. When the decedent is a person not in the workforce, such as a retiree, a child or a stay-at-home parent, the statute's combination of only providing compensation for loss of economic support and not recognizing emotional loss is inadequate and unfair. Further, the statute does not provide for pre-death pain and suffering of the decedent, another unjustifiable inequity.

Congress has amended DOHSA only once since 1920. Following the crash of TWA Flight 800 in international waters off the New York coast on July 17, 1996, the victims of which included a number of high school students from Pennsylvania, the statute's unreasonable recovery limits understandably became a significant political issue. The families of those children correctly persuaded lawmakers that their losses should be accorded the same respect as those associated with accidents over land. As a result, Congress amended former Sections 761 and 762 of DOHSA to limit DOHSA coverage in commercial aviation disasters beyond twelve nautical miles from the shore and to add "… compensation for non-pecuniary damages for wrongful death of a decedent ….for death resulting "from a commercial aviation accident …." "Non-pecuniary damages" is statutorily defined as "damages for loss of care, comfort and companionship."[10] Therefore, the lone DOHSA amendment in the eighty-nine years of the statute's existence extends the jurisdictional line from three out to twelve nautical miles from shore and affords the survivors of commercial aviation accident victims damages for the wrongful death of their loved one, a remedy

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Shipbuilding Industry: A Cautionary Tale of Foreign Subsides Destroying U.S. Jobs, Emo Transportation Weekly, September 1, 2015.

[5] 46 U.S.C. § 30302 (formerly 46 U.S.C. § 761).

[6] *Id.*

[7] *Motts v. M/V Green Wave*, 210 F. 3d 565 (5th Cir. 2000).

[8] 46 U.S.C. § 330303 (formerly 46 U.S.C. § 762(a))

[9] *Lasky v. Royal Caribbean Cruises, Ltd.*, 850 F. Supp. 2d 1309 (S.D. Fla. 2012).

[10] 46 U.S.C. § 30307.

previously unavailable. However, damages for the pre-death pain and suffering of the deceased victim remain prohibited.[11]

Unfortunately, this limited exception does nothing to address the clear inequity caused by DOHSA's recovery limitations in the vast majority of deaths covered by DOHSA, those being non-commercial aviation accidents occurring on the high seas. I personally know of numerous examples of the injustice caused by DOHSA over the years. The following are some examples:

Example #1:

A current example is a July 4, 2019 helicopter crash in the Bahamas that took the life of a prominent West Virginia coal producer and six others, including his 25-year-old daughter and three of her 25-year-old friends. My firm is privileged to represent the families of two of the girls killed when the helicopter transporting them from the Bahamas to Florida crashed shortly after takeoff in the Atlantic Ocean. The families of these beautiful young ladies, one of whom had just earned her registered nurse license and the other had scored highly on her first MCAT medical school entrance examination, may be limited to recovering insured funeral and burial expenses if DOHSA's statutory limit on damages is held to control their claims. If so, the claims are worthless. If the same helicopter accident occurred on land, the families would be entitled to damages for the pre-death pain and suffering of their daughters, and loss of care, comfort and companionship for their daughters' wrongful deaths. The fortuity of the incident's location should not control the measure of damages and certainly should not cheapen the lives of these girls. DOHSA as presently written does just that.

Example #2:

Another example is the tragic August 21, 2017 collision between the ALNIC MC Liberian-flagged tanker and the U.S.S. John S. McCain in the Singapore Straights. The tanker negligently rammed into the destroyer and killed ten Navy sailors. While there is clear liability on ALNIC's part, DOHSA limits recovery to nothing more than funeral and burial expenses for the families of any unmarried sailors who were not supporting anyone financially. This is a travesty and horribly disrespectful to the sailors who gave their lives for their country.

Unfortunately, there are also numerous instances of otherwise meritorious cases that maritime attorneys refuse to accept due to DOHSA's injustice. Two examples are:

Example #1:

A 61-year-old cruise ship passenger became ill at sea. The medical center diagnosed stomach flu. Six days later, while still on the cruise, the passenger died of acute pyelonephritis[12] and urinary tract infection. The ship's physician missed the obvious diagnosis, and the lack of treatment allowed the infection to convert to sepsis. Timely

[11] *Id.*

[12] Pyelonephritis is an infection that generally begins in the urethra or bladder and spreads to one or both kidneys.

treatment would have resulted in a complete recovery. The passenger left behind a son with whom she had a very close and loving relationship, but who was not dependent on her financially. The case was not pursued because DOHSA limited the son's recovery to funeral and burial expenses for which his mother had a pre-paid plan.

Example #2:

A 70-year-old physically fit male cruise ship passenger went to the ship's doctor complaining of acute left shoulder pain. His blood pressure was extremely high. The passenger sat unattended in the ship's infirmary for approximately three hours before cardiac evaluation and appropriate care was instituted. Approximately one hour later, the passenger went into cardiac arrest and died on the vessel. Again, the case was rejected by the evaluating attorney because DOHSA limited the recovery of the decedent's spouse and daughter to funeral and burial expenses.

In summary, if the decedent is unmarried, a minor, a stay-at-home parent or a retired parent/grandparent or person who does not support others financially, then those left behind are constrained to sue for funeral and burial expenses, which in many cases are either pre-paid or insured. It is time for DOHSA to fully compensate the survivors for the pre-death pain and suffering of their lost loved ones, all economic losses resulting from the death, and their own lost care, comfort and companionship. Anything less is unjust.

Recommendation: Amend the Death on the High Seas Act so that all decedents have the same remedies, and personal injury and death victims on the high seas are treated the same as those on land. Such an amendment will necessarily include recovery for economic loss, loss of care, comfort and companionship of the survivors, and pre-death pain and suffering of the decedent.

THE LIMITATION OF LIABILITY ACT (LOLA)

In 1851, Congress enacted a law exonerating an owner of any vessel from liability to any person or any loss or damage caused by fire on board the vessel unless the fire was caused by the design or neglect of the vessel owner.[13]

In 1871, this vessel owner liability limitation was extended to owners and masters of vessels carrying valuable commodities such as precious metals, precious stones, jewelry, china, furs, etc. unless the cargo owner provided the master or vessel owner written notice of the "true character and value thereof" and entered the same information on the bill of lading.[14]

The purpose of these laws, which the courts held had to be liberally construed in the ship owner's favor, was to encourage ship building and protect an otherwise innocent ship owner from catastrophes at sea over which the ship owner had no control or ability to prevent. America was emerging as a leader in maritime commerce, the exclusive method for transporting goods to Europe, Africa, Asia and the Pacific. Although the use of iron instead of wood as the primary material of ships' hulls began in the 1830's, this advance was limited primarily to war ships.

[13] Formerly 46 U.S.C. § 182 (1851).
[14] Formerly 46 U.S.C. § 181 (1871).

Commercial vessels remained wooden and were therefore more vulnerable to fire, weather and cargo damage. Modern vessel design, safety and navigational systems, and storm warning systems were not imaginable. Congress decided that ship owners needed liability protection to ensure their profitability and encourage investment in maritime commerce.

In 1935, Congress expanded these liability limitations. The new law limited vessel owner liability in the case of "… any loss, damage, or injury by collision, or for any act, manner, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity of knowledge" of the vessel owner.[15] In such cases, vessel owner liability shall not exceed "the amount or value of the interest of such owner in such vessel, and her freight then pending."[16]

The Article III (federal) courts developed a procedure somewhat unique to maritime law to handle LOLA proceedings. The vessel owner files a lawsuit as the plaintiff alleging entitlement to exoneration or, alternatively, limitation of liability per LOLA. Any personal injury or death claims arising out of the catastrophe forming the basis of the LOLA proceeding must then be filed into the pending LOLA lawsuit, which actions are immediately stayed. This becomes a concursus[17] proceeding, whereby the federal judge having exclusive jurisdiction decides whether the vessel owner is exonerated (i.e., did not cause injury or death). If the court finds fault (i.e., denies exoneration), then the judge decides whether the owner can limit its liability to the value of the vessel and pending freight based on the privity or knowledge statutory test. If the incident occurred without the owner's privity or knowledge, then the owner's damages exposure is limited to the vessel's post-accident value, regardless of the severity of the catastrophe or the number of injuries or deaths involved. Like its predecessor limitation statutes, section 30505 was intended to encourage ship building and induce capital investment in the marine industry. As one court stated, the section, providing for limited liability of vessel owners, was designed to induce the heavy financial commitments the shipping industry requires by mitigating threat of a multitude of suits and hazards of vast unlimited liability as the result of maritime disaster.[18]

While requiring multiple claimants to file claims against a vessel owner for a marine disaster in one proceeding is laudable, the limitation of the vessel owner's liability to the value of the vessel and freight pending can no longer be justified. Encouragement of investment in ship building should no longer be accomplished on the backs of victims of maritime torts. In the age of international corporate vessel ownership, marine insurance, contractual claim limitation, and technology that provides ship owners the ability to retain complete operational control over vessels at sea, it is patently unfair to penalize those injured and the families of those killed in shipboard catastrophes. Every blue water commercial vessel operating in international waters can be tracked in real time.[19] Direct shore to ship communication is easy and occurs in real time. Navigational technology allows ship operation in virtually any environmental condition without the risk of encountering an unknown hazard or situation out of the vessel owner's control. There is no reason

[15] 46 U.S.C. § 30505 (formerly 46 U.S.C. § 183(a) (1935)).
[16] *Id.*
[17] Concursus is a procedural method staying legal proceedings in a LOLA action after the ship owner's limitation fund has been created. The primary purpose of the concursus is to avoid a multiplicity of suits and actions. It contemplates a proceeding leading to a single judgment that resolves all issues between all parties.
[18] *Petition of Wood*, 124 F. Supp. 540 (D.C.N.Y. 1954).
[19] GPS tracking systems allow vessel owners to track and control any vessel, regardless of size or geographical scope of navigation.

to allow the owner to limit its liability.

This is particularly true with respect to coastal trade and hydrocarbon exploration and production in the Gulf of Mexico. In Louisiana, the center of the offshore exploration and production industry, limitation of liability is regularly sought by owners of inland tugs, river push boats and oilfield supply boats that neither venture into open water nor travel more than 100 miles from the coast. It is even more ludicrous that the owners of pleasure boats and jet skis, both deemed vessels for purposes of LOLA, can attempt to limit their liability to the value of the boat or jet ski and force the victim to participate in the concursus proceeding with the potential of no recovery. The proceeding prevents the marine personal injury or death victim from pursuing a lawsuit in a court of competent jurisdiction until such time that the concursus is completed and the judge lifts the standard limitation stay order.[20] The delay is often lengthy and is unnecessary.

Moreover, because of draconian limitation periods built into the law, ship owners attempt to misuse the statute to deprive victims of remedies by defaulting them, without appropriate due process. If victims do not file claims within a short time period (ranging from 60 to 120 days), they could forever be barred from seeking any compensation – even if the LOLA action is frivolous and the owners have no factual basis to achieve limitation or exoneration. Often federal courts allow notice to victims, which is intended to inform victims of their rights and requirements to file a claim, to be posted in classified sections of obscure local newspapers. In instances of tragedies where families have lost loved ones to a maritime disaster (examples below), families often are in a state of shock and just beginning the mourning process in these early days. Yet, under the current law, they may lose all their rights and remedies if they do not take the necessary legal steps within a short period of time.

Some examples of maritime disasters that prompted ship owners to hastily seek protection under LOLA are:

Example #1:

A current and compelling example of the extreme injustice of LOLA is the disaster involving the 75-foot commercial diving vessel Conception. On September 2, 2019, at 3:14 a.m., the U.S. Coast Guard received a distress call from the vessel, anchored 215 nautical miles south-southwest of Santa Barbara, California. Thirty-nine people were on board for a three-day diving trip. A crew member awoke to a fire aboard the vessel. Although the crew saved themselves, thirty-three passengers burned to death because they were unable to escape. The vessel burned to the waterline and sank in sixty feet of water.

Three days later, while bodies were still being recovered by the Coast Guard, the owners of the Conception filed a Petition for Exoneration and/or Limitation under LOLA in federal court in the Central District of California.[21] The owner specifically pled the right

[20] In a single claimant limitation proceeding (i.e., when only one person is hurt or killed), the claimant is more apt to obtain a lift of the stay order early in the proceeding. However, if there are more than one claimant (including property damage and insurance indemnity claimants) then all must agree on a stipulation as a prerequisite to lift the stay order. This occurs very rarely.

[21] *In the Matter of the Complaint of Truth Aquatics, Inc.*, 2:19-cv-07693-PA-MRW (C.D. Ca. Sept. 5, 2019).

to be exonerated from all liability or, if they are found to be negligent, to limit their exposure to the value of the vessel after the casualty, which is $0.00. Now the families of the thirty-three victims must act hastily in order to deal with the limitation concursus and the owner's quest to limit its liability to nothing.

Example #2:

A second prominent example of LOLA's unfairness is the Missouri duck boat catastrophe. In July 2018, seventeen people were killed, including nine members of the same family, when a duck boat sank in bad weather on a lake near Branson, Missouri. The voyage should never have occurred, as the duck boat owner had ample warnings of approaching severe weather. Duck boats are not the safest means of maritime transport under the best of conditions. Here, the vessel was unable to handle the seas and quickly sank. Passengers might have survived, but they became entrapped in the duck boat's canopy, which the vessel owner had not removed in direct violation of an NTSB recommendation.

The duck boat owner's use of LOLA is a ridiculous contortion of the law that should not be allowed as a means to escape legal responsibility. This duck boat owner was in direct and constant communication with the crew operating this vessel. Anyone with an operating marine radio, television or even a cell phone could have obtained real time weather and lake conditions. The fact is this disaster was easily foreseeable and readily preventable. Yet, the vessel owner has used LOLA to try to limit its liability to the families of seventeen drowned passengers to $0.00.

Example #3:

The most notorious example of the inequity created by LOLA is the Deepwater Horizon disaster. On April 20, 2010, the Deepwater Horizon drilling vessel exploded in the Gulf of Mexico approximately fifty miles south of the mouth of the Mississippi River after the crew lost control of the well. The steady flow of hydrocarbons feeding the fire prevented it from being extinguished. This resulted in the vessel sinking 5,000 feet to the Gulf of Mexico floor two days after the explosion.[22] This catastrophe caused eleven deaths, numerous severe injuries to the rest of the 126 people aboard the vessel, and billions of dollars in environmental damage. Yet, Transocean, the owner of the drilling vessel, sought protection under LOLA by filing a complaint for exoneration for limitation in federal court in Houston, Texas. Transocean claimed that the catastrophe occurred without the privity or knowledge of Transocean management. As a result, it claimed entitlement to limit its liability for all legal claims arising out of the explosion, vessel sinking and subsequent massive oil spill to approximately $27 million, the calculated salvage value of the Deepwater Horizon and her pending freight as she sat at the bottom of the Gulf of Mexico.

The fact that the owners of the Conception, the duck boat, and Transocean as owner of the

[22] This incident resulted in the largest pollution event in the history of the United States. The owner of the well, BP, was found grossly negligent by the federal judge handling the multidistrict litigation and has paid over $60 billion in damages.

Deepwater Horizon were legally able to take this step is unconscionable. The limitation funds could not adequately compensate the families of the people killed (recall two of the three are $0.00), much less the hundreds of thousands of other claims for damages in the Deepwater Horizon disaster.

Ship owners will undoubtedly argue that elimination of their ability to pursue liability limitation will somehow put them out of business. There is no data or credible study to support this argument. Additionally, marine insurance is readily available. Indeed, LOLA is now being used to protect the marine insurance industry, not the ship owner, by allowing insurance companies to avoid their contractual responsibilities and risk. The truth is that a pre-Civil War law, designed to encourage shipbuilding in the United States, has turned into a tool to safeguard the bottom line of insurance companies at the expense of marine personal injury and death victims. This was never intended by Congress, nor should it be.

The concerns of the marine industry regarding multiple suits in multiple jurisdictions arising out of a marine accident are valid. LOLA can still be used as a jurisdictional vehicle to consolidate all potential claims in one place to allow the ship owner to fully assess the severity of the disaster and potential financial exposure. However, there is no longer any social or economic justification to limit a ship owner's liability. Ship owners have extensive means to monitor and control the condition of the vessel at the outset of the voyage as well as her movements and crew conduct throughout the voyage. The extent of recovery for injury and death in these situations should not be dependent on an owner's privity or knowledge and should not be more restrictive than recovery afforded for land-based personal injury and death. Persons injured or killed in a boat accident should not have a more limited recovery than persons injured or killed in a train or commercial trucking accident. There is no principled reason to treat marine personal injury and death victims differently, particularly when Congress' motive for enacting the laws in the 1800's and 1935 no longer exist.

Recommendation: Amend the Limitation of Liability Act to remove the vessel owner's ability to limit its liability to the vessel's value in cases of personal injury or death to passengers and crew.

FORCED ARBITRATION

The gross inequities of forced arbitration are well documented and publicized. Indeed, they were subject to much discussion and debate in the U.S. House of Representatives, which discussion resulted in passage of the Forced Arbitration Injustice Repeal Act ("FAIR Act"). Although passage of the FAIR Act by the House addresses arbitration clauses in employment agreements, until the bill is passed by the U.S. Senate, maritime employees and others continue to be subject to forced arbitration. Some recent examples of forced arbitration in the maritime context are:

Example #1:

An American crewmember was working aboard a foreign-flagged cruise ship. During a voyage, the crewmember fell down a flight of steps injuring her shoulders, neck and back. Despite having a broken shoulder as well as other serious injuries, she was

kept on the ship working for twenty-three days. After initially approving payment for her medical expenses, the cruise line mismanaged her benefits, which resulted in lengthy delays in her care and recommended surgeries. The delays resulted in her developing psychological issues, including documented anxiety and depression, due to the stress caused by her medical and financial issues. Her medical condition has continued to deteriorate, and she still has outstanding medical needs that require attention.

Her employment agreement with the cruise line incorporates a Collective Bargaining Agreement ("CBA") with the Norwegian Seaman's Union. She is not a member of this Union and has no voting or other rights provided to Union members. The CBA mandates binding arbitration in accordance with the laws of the Bahamas, "notwithstanding any statutory claims for negligence, unseaworthiness, maintenance, cure, failure to provide prompt proper or adequate medical care, personal injury, or property damages which might be available under the laws of any jurisdiction." Bahamian law does not provide the equivalent or anything close to the legal rights she would have under U.S. law. Expert testimony from Bahamian lawyers supports this conclusion. Moreover, the arbitration may take place overseas depending on whether the parties can agree on a location. As such, the U.S. crewmember is left at home to suffer while she undergoes a forced arbitration process, potentially on foreign soil, applying foreign law that deprives her of rights and remedies afforded a U.S. citizen. No U.S. citizen should be forced to suffer this type of mistreatment and humiliation without the protection of U.S. law, regardless of the circumstances of their employment.

Example #2:

A family traveled to the Gulf Coast for a beach vacation. They decided to go parasailing. The vessel owner required all parasailers to sign a "Release of Liability, Assumption of Risk, Waiver of Claims, Indemnification and Binding Arbitration Agreement" as a condition of boarding the vessel.

According to the Complaint filed on the family's behalf, at the end of the ride, the father, who is the family breadwinner, was pulled into a winch positioned on the vessel stern that is used to play out and reel in the parasail. He suffered a severe pelvic fracture that required hip replacement surgery. He has remained out of work since the incident and may be physically foreclosed from returning to his job with a local gas company.

If the binding arbitration language in the Release of Liability form is enforced, this family has no right to file a lawsuit against the vessel owner or obtain a trial by jury as is guaranteed by the 7th Amendment of the U.S. Constitution. As if this was not bad enough, the vessel owner in this case has also filed a Petition for Exoneration from or limitation of liability, claiming that its liability to this family should be limited to $86,000.[23]

Therefore, a person alleging severe injury through no fault of his own while on vacation at the beach is now subject to (1) forced secretive arbitration that deprives him of his right to seek redress in court; and (2) a LOLA concursus proceeding described herein and a potential recovery

[23] *In the matter of Fruisher, LLC, et. al.*, 1:19-cv-00618 (S.D. Ala. Sept. 6, 2019).

limit of $86,000 in a case that may reasonably be worth a far greater amount if justice is to be achieved.

Recommendation: Adopt a clear and concise statute ending forced arbitration for all maritime employees and vessel passengers who are U.S. citizens.

CONCLUSION

As has been shown, there has been no meaningful attempt to update federal statutory maritime law to ensure justice for passengers and crew members injured and killed on the high seas in a century. The last meaningful change to limitation of liability occurred in 1935, and it came to the detriment of those injured and killed in maritime catastrophes. The laws are antiquated. They do not promote accountability, which we know encourages safety and reduces injury and death. Further, commercial and recreational vessel owners now have insurance to adequately cover their risk, much of which further accountability will reduce or eliminate. Respectfully, Congress should act now to modernize DOHSA and LOLA and end the use of forced arbitration clauses in maritime recreational agreements and employment contracts. These steps will improve the current system, which arbitrarily, unfairly and without cause deprives maritime personal injury and death victims of rights and remedies afforded to other classes of tort victims.