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Steering a Safe Course in Admiralty Removal Jurisdiction after the 2011 Federal Courts Jurisdiction and Venue Clarification Act Note

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Note

STEERING A SAFE COURSE IN ADMIRALTY REMOVAL JURISDICTION AFTER THE 2011 FEDERAL COURTS JURISDICTION AND VENUE CLARIFICATION ACT

CHARLES MODZELEWSKI

Federal jurisdiction over admiralty actions originates in the United States Constitution. Congress, in the admiralty jurisdiction statute, pursuant to what is commonly referred to as the saving to suitors clause, reserved to plaintiffs in admiralty actions the option of pursuing remedies in state court. However, in 2011, Congress enacted the Federal Courts Jurisdiction and Venue Clarification Act (JVCA), which changed key language in the federal removal statute. The JVCA amendment has been interpreted by certain courts in a manner that has allowed removal of general maritime actions from state court to federal court, which is contrary to admiralty jurisprudence. Not only is the removal of general maritime actions contrary to precedent, but the removal of general maritime claims to federal courts would eviscerate the saving to suitors clause, an action that would fundamentally alter admiralty jurisdiction. As the saving to suitors clause would be eviscerated, interpreting the 2011 Federal Courts Jurisdiction and Venue Clarification Act to allow the removal of general maritime actions from state court to federal court is erroneous.

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CHARLES MODZELEWSKI*

> "Maritime law is not a monistic system. The State and Federal Governments jointly exert regulatory powers today as they have played joint roles in the development of maritime law throughout our history."[1]

I. INTRODUCTION

Litigation is preferably avoided, but when litigation becomes inevitable, jurisdiction is one of the first and most important considerations when filing a lawsuit. Choosing between a state and federal forum has important ramifications for all parties involved, whether one is the plaintiff or the defendant. In certain circumstances the defendant may even play a role in choosing the litigation forum, through removing an action filed in state court to federal court. If jurisdictional law is unsettled or unclear, plaintiffs and defendants alike will be confused as to which fora are available, and whether they will be able to bring suit in the forum of their choice. A situation such as this can increase the cost of a lawsuit, by requiring motions and pleadings to simply establish the court in which the lawsuit will occur, while also decreasing judicial efficiency by requiring courts to attempt to clarify the jurisdictional law. Admiralty jurisdiction is currently facing such a situation due to the recent amendment to the federal removal statute. While jurisdiction is important in all lawsuits, jurisdiction is critically important in admiralty[2] actions because it is determinative of special rights, remedies, and procedures available to the parties involved. This Note aims to navigate through the confusion regarding the recent amendment to the removal statute, and demonstrate how only one interpretation of the federal removal statute is correct.

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* University of Connecticut, B.A. 2013, University of Connecticut School of Law, J.D. Candidate 2016. I would like to thank the editors of the *Connecticut Law Review* for all their effort and hard work in editing my Note. I would also like to thank Professor Robert Birmingham for suggesting this Note topic to me and for offering his advice. Additionally, I would like to thank my family for supporting me in all my endeavors.

[1] Romero v. Int'l Terminal Operating Co., 358 U.S. 354, 374 (1959) (Frankfurter, J.).

[2] For the purposes of this Note, I will use the term "admiralty" to refer to admiralty and maritime claims broadly unless specifically noted.

The United States Constitution provides that the federal courts will have jurisdiction over admiralty actions.[3] Congress has enlarged this original grant of constitutional power by enacting 28 U.S.C. § 1333.[4] Pursuant to the current language of this statute, Congress granted original jurisdiction to federal district courts of "[a]ny civil case of admiralty or maritime jurisdiction, *saving to suitors in all cases all other remedies to which they are otherwise entitled*."[5] The second half of this grant of power is commonly referred to as the saving to suitors clause or the savings clause.[6]

The saving to suitors clause saves to a plaintiff whatever non-admiralty remedies he has available.[7] The clause does not save a state remedy or a remedy in a state court, but saves to the plaintiff any common law remedy.[8] When a plaintiff seeks monetary damages in tort or contract actions that fall within admiralty, he usually has the choice of bringing suit in admiralty in federal court or bringing suit in state court.[9] Thus, in practice, the saving to suitors clause allows a plaintiff certain control in determining in which forum to bring his suit.

When a plaintiff brings a civil action in state court, the action may be removed to federal court by the defendant if specific statutory criteria are satisfied.[10] However, in *Romero v. International Terminal Operating Co.*,[11] the Supreme Court recognized an important exception to the removal of general maritime claims.[12] In *Romero*, the Court noted that when a suit is commenced in state court, and it could have been brought in federal court on the basis of jurisdiction pursuant only to 28 U.S.C. § 1333, the action may not be removed as it would undermine the purpose of the saving to

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[3] U.S. CONST. art. III, § 2, cl. 1 (granting admiralty jurisdiction to the federal courts).

[4] *See* 28 U.S.C. § 1333(1) (2012) (granting federal district courts original jurisdiction of "[a]ny civil case of admiralty or maritime jurisdiction").

[5] *Id.* (emphasis added).

[6] *See* GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY 21 (2d ed. 1975) ("Consideration of the so-called 'savings clause' . . . must be deferred until a little later along . . . ."); *see also* ROBERT FORCE, FED. JUD. CTR., ADMIRALTY & MARITIME LAW 19 (2nd ed. 2013) ("Section 1333 of title 28 not only confers admiralty jurisdiction in the federal courts, it also contains a provision characterized as the 'saving to suitors' clause.").

[7] GILMORE & BLACK, JR., *supra* note 6, at 37 ("[A] suitor who holds an *in personam* claim, which might be enforced by suit *in personam* in admiralty, may also bring suit, at his election, in the 'common law' court—that is, by ordinary civil action in state court . . . ."); ROBERT FORCE & MARTIN NORRIS, LAW OF SEAMAN § 1.7 (5th ed. 2014).

[8] The Moses Taylor, 71 U.S. (4 Wall.) 411, 431 (1866); FORCE & NORRIS, *supra* note 7, § 1.8.

[9] FORCE, *supra* note 6, at 19.

[10] *See* 28 U.S.C. § 1441 (2012) (providing the statutory criteria for the removal of actions).

[11] 358 U.S. 354 (1959).

[12] *See id.* at 363, 370–73 (noting that general maritime claims are not removable solely on the basis of admiralty jurisdiction); FORCE & NORRIS, *supra* note 7, § 1.11 (describing the *Romero* decision and the removability of general maritime claims).

suitors clause.[13] *Romero* does not preclude the removal of all admiralty actions; it only precludes the removal of actions that are based solely on 28 U.S.C. § 1333.[14] Therefore, admiralty actions may be removed only when there is an independent basis for removal, such as when diversity of citizenship is present.[15]

However, in 2011, Congress passed the Federal Courts Jurisdiction and Venue Clarification Act (JVCA), which became effective in 2012.[16] The JVCA, *inter alia*, changed the language of the federal removal statute, 28 U.S.C. § 1441.[17] The change of pertinent statutory language has led some courts and commentators to interpret the JVCA as relaxing the restriction on the removal of general maritime claims from state to federal court.[18] However, such an interpretation abrogates the saving to suitors clause by allowing a defendant to remove claims that have been properly brought by a plaintiff seeking common law remedies in state court. Thus, as this interpretation of the JVCA would eviscerate the saving to suitors clause and allow the removal of general maritime claims to federal court, this interpretation is erroneous.

This Note will proceed in five parts. Part II will describe admiralty jurisdiction before the 2011 JVCA amendment. Part III will detail the JVCA amendment. Part IV will highlight the differing interpretations of the JVCA amendment. Part V will identify how courts should apply the JVCA amendment.

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[13] *Romero*, 358 U.S. at 371–72; FORCE & NORRIS, *supra* note 7, § 1.11.

[14] *Romero*, 358 U.S. at 363, 370–73; FORCE & NORRIS, *supra* note 7, § 1.11.

[15] *See* FORCE & NORRIS, *supra* note 7, § 1.11 ("*Romero* does not preclude removal of a maritime case where there is an independent basis for federal jurisdiction, such as diversity . . . ." (quoting Camacho v. Cove Trader, Inc., 612 F. Supp. 1190, 1191 (E.D. Pa. 1985))); GILMORE & BLACK, JR., *supra* note 6, at 38 (citing *Romero*, 358 U.S. at 375) ("It has been decided by the Supreme Court that he may *not* sue in federal court, *absent* diversity, on the theory that a maritime claim 'arises under' the laws of the United States."); Rory Bahadur, *Maritime Removal: An Unlikely Heuristic for Anchoring Three Non-Textual Principles of Original Federal Jurisdiction*, 43 J. MAR. L. & COM. 195, 208 (2012) ("The result of this pronouncement is that general maritime law claims may not be removed from state court unless there is an independent basis of jurisdiction present other than admiralty and maritime jurisdiction." (citation omitted)).

[16] Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758 (codified as amended in scattered sections of 28 U.S.C.); *see* David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 37 TUL. MAR. L.J. 401, 407 (2013) (noting that the law was signed in December 2011 and took effect on January 6, 2012).

[17] Robertson & Sturley, *supra* note 16, at 407.

[18] *See, e.g.*, *id.* (noting that the JVCA amendment appears to have "eased" the removability of general maritime actions); *see also* Ryan v. Hercules Offshore, Inc., 945 F. Supp. 2d 772, 777–78 (S.D. Tex. 2013) (holding that the 2011 amendment to the removal statute now allows for the removal of general maritime claims).

II. ADMIRALTY JURISDICTION AND REMOVAL PRIOR TO THE FEDERAL COURTS JURISDICTION AND VENUE CLARIFICATION ACT OF 2011

Federal jurisdiction over admiralty claims originates in the United States Constitution, which grants federal courts jurisdiction over "all Cases of admiralty and maritime Jurisdiction."[19] Congress, in the Judiciary Act of 1789, conferred this constitutional grant of power onto the federal judiciary, which provided lower federal courts with both diversity and maritime jurisdiction.[20] The saving to suitors clause was included in the Judiciary Act of 1789 and qualified this grant of jurisdictional power by "saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it."[21] Congress codified the admiralty jurisdiction grant in 28 U.S.C. § 1333,[22] and while Congress has since changed the language of the saving to suitors clause, the substance of the clause has remained essentially unchanged since its enactment.[23] In its current language, 28 U.S.C. § 1333 provides that federal district courts shall have original jurisdiction exclusive of state courts of "[a]ny civil case of admiralty or maritime jurisdiction, *saving to suitors in all cases all other remedies to which they are otherwise entitled*."[24] Hence, federal courts are granted original jurisdiction over admiralty actions, with the exception of the saving to suitors clause, which saves to a plaintiff in admiralty actions any common law remedies available to him. However, in admiralty actions, the difference between in rem jurisdiction and in personam jurisdiction is critical to the correct application of jurisdictional power.

That is because in admiralty the difference is determinative of certain rights and procedures in regard to the saving to suitors clause.[25] The saving to suitors clause saves to a plaintiff the option of pursuing common law remedies in state court.[26] Thus, it appears that there is a conflict within 28

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[19] U.S. CONST. art. III, § 2, cl. 1.

[20] *See* Gregoire v. Enter. Marine Servs., LLC, 38 F. Supp. 3d 749, 755–56 (E.D. La. 2014) (discussing the foundation of admiralty jurisdiction); Kenneth G. Engerrand, *Admiralty Jury Trials Reconsidered*, 12 LOY. MAR. L.J. 73, 74–75 (2013) (discussing the Judiciary Act of 1789 and admiralty jurisdiction); *see also* Ventura Packers, Inc. v. F/V Jeanine Kathleen, 305 F.3d 913, 918 (9th Cir. 2002) ("The Judiciary Act of 1789 . . . conferred upon the federal district courts exclusive jurisdiction over all cases arising from seizures made on navigable waters . . . .").

[21] *Gregoire*, 38 F. Supp. 3d at 755..

[22] 28 U.S.C. § 1333 (2012).

[23] Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 443–44 (2001) ("In the intervening years, Congress has revised the language of the saving to suitors clause, but its substance has remained largely unchanged."); *Gregoire*, 38 F. Supp. 3d at 756 (quoting Lewis, 531 U.S. at 444). .

[24] 28 U.S.C. § 1333(1) (2012) (emphasis added).

[25] Engerrand, *supra* note 20, at 85.

[26] *Lewis*, 531 U.S. at 454–55 ("Tracing the development of the [saving to suitors] clause since the Judiciary Act of 1789, it appears that the clause was designed to protect remedies available at common law. We later explained that the clause extends to 'all means other than proceedings in admiralty which may be employed to enforce the right or to redress the injury involved.' Trial by jury is an obvious, but not exclusive, example of the remedies available to suitors." (internal citations omitted)).

U.S.C. § 1333, which provides original jurisdiction to federal courts, exclusive of state courts, in matters of admiralty jurisdiction.[27] However, the conflict is illusory because federal courts have exclusive jurisdiction only over in rem proceedings.[28]

In *Madruga v. Superior Court*,[29] the Supreme Court highlighted the difference between proceedings in rem and in personam.[30] In *Madruga*, eight individuals who owned eighty-five percent of a vessel brought suit in California state court against the owner of the remaining fifteen percent of the vessel, seeking to have it sold and partitioned pursuant to a California statute.[31] In distinguishing between in personam and in rem actions, the Court stated that "[a]dmiralty's jurisdiction is 'exclusive' only as to those maritime causes of action begun and carried on as proceedings *in rem*, that is, where a vessel or thing is itself treated as the offender and made the defendant by name or description to enforce a lien."[32] Further, the Court noted that state courts may adjudicate cases in personam, stating that "the jurisdictional act does leave state courts 'competent' to adjudicate maritime causes of action in proceedings '*in personam*,' that is, where the defendant is a person, not a ship or some other instrument of navigation."[33] The Court in *Madruga* held that the partition action was not an in rem action because the plaintiffs' claims were against their co-owner and not the ship, which rendered California common law competent to provide the partition remedy.[34] Federal courts retain exclusive original jurisdiction over admiralty in rem actions, but state courts—pursuant to the saving to suitors clause—may exercise jurisdiction over in personam proceedings.[35] Therefore, the saving to suitors clause provides plaintiffs three different alternatives:

> Since the enactment of the Judiciary Act of 1789, maritime suitors have had the option of bringing maritime claims

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[27] 28 U.S.C. § 1333.

[28] *Gregoire*, 38 F. Supp. 3d at 756; Engerrand, *supra* note 20, at 78.

[29] 346 U.S. 556 (1954).

[30] *Id.* at 560; *see* Engerrand, *supra* note 20, at 83–84 (discussing *Madruga* and the distinction between in personam and in rem actions in admiralty jurisdiction).

[31] *Madruga*, 346 U.S. at 557.

[32] *Id.* at 560.

[33] *Id.* at 560–61.

[34] *Id.* at 561.

[35] *See* Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 448, 452–55 (2001) (discussing the tension between the saving to suitors clause and Limitation Act proceedings, which have exclusive federal jurisdiction). The Court found an exception to the exclusive federal jurisdiction of Limitation Act proceedings, stating, "[i]n sum, this Court's case law makes clear that state courts, with all their remedies, may adjudicate claims like petitioner's against vessel owners so long as the vessel owner's right to seek limitation of liability is protected.". *Id.* at 455; *see also* Gabarick v. Laurin Mar. (Am.), Inc., No. 08-4007, 2014 WL 4794758, at *3 (E.D. La. Sept. 25, 2014) (discussing the implication of the limitation of liability actions and admiralty jurisdiction).

> (seeking remedies the common law is competent to give) in federal court under admiralty jurisdiction, in state court, or in federal court under an independent ground of jurisdiction such as diversity of citizenship.[36]

The concurrent jurisdiction between state and federal courts is important because depending on where the plaintiff initially files suit, different procedures and remedies are available to the plaintiff.[37]

While the saving to suitors clause preserves the concurrent jurisdiction of federal and state courts and allows a plaintiff to bring suit in either forum, the substantive law that is applied in the different fora is the same because substantive maritime law is applied regardless of where the suit is initially filed.[38] When discussing the law applicable in saving to suitors clause cases brought in state court, Grant Gilmore and Charles L. Black, Jr. state that "[t]he general answer might seem clear: The same substantive law ought to be applied as would have been applied had the suit been brought in admiralty. Specifically, the general maritime law, where applicable, ought to rule, even though suit is brought in state court."[39] The United States Supreme Court in *Carlisle Packing Co. v. Sandanger*[40] stated that "[t]he general rules of the maritime law apply whether the proceeding be instituted in an admiralty or common-law court."[41] Consequently, when a suit is brought in state court, the reverse-*Erie* doctrine applies.[42] The reverse-*Erie* doctrine requires state substantive remedies to conform to

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[36] Coronel v. AK Victory, 1 F. Supp. 3d 1175, 1182 (W.D. Wash. 2014) (citation omitted).

[37] *See Lewis*, 531 U.S. at 446 ("Admiralty and maritime law includes a host of special rights, duties, rules, and procedures.").

[38] Kossick v. United Fruit Co., 365 U.S. 731, 738–41 (1961); Carlisle Packing Co. v. Sandanger, 259 U.S. 255, 259 (1922); *In re* Amtrack "Sunset Ltd." Train Crash, 121 F.3d 1421, 1424–26 (11th Cir. 1997); Gregoire v. Enter. Marine Servs., LLC, 38 F. Supp. 3d 749, 756–57 (E.D. La. 2014) (quoting Carlisle Packing Co., 259 U.S. at 259); *Coronel*, 1 F. Supp. 3d at 1182; *see* GILMORE & BLACK, JR., *supra* note 6, at 45–47 (discussing substantive maritime law and its components); W. Cameron Beard, III, Comment, *General Agency Agreements and Admiralty Jurisdiction*, 17 CONN. L. REV. 595, 627 (1985) ("To do so undermines the *uniform* application of the rules governing the shipping industry and maritime commerce—*the very purpose for which admiralty jurisdiction was originally vested in the federal courts*." (emphasis added)), *cited in* Exxon Corp. v. Cent. Gulf Lines, 500 U.S. 603, 610 (1991). *But see* Yamaha Motor Corp., U.S.A. v. Calhoun, 516 U.S. 199, 202 (1996) ("We hold, in accord with the United States Court of Appeals for the Third Circuit, that state remedies remain applicable in such cases and have not been displaced by the federal maritime wrongful-death action . . . .").

[39] GILMORE & BLACK, JR., *supra* note 6, at 50–51.

[40] *Carlisle Packing Co.*, 259 U.S. at 259.

[41] *Id.* (citing Chelentis v. Lukenbach S.S. Co., 247 U.S. 372, 381 (1918)).

[42] Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 222–23 (1986) ("[T]he 'saving to suitors' clause allows state courts to entertain *in personam* maritime causes of action, but in such cases the extent to which state law may be used to remedy maritime injuries is constrained by a so-called 'reverse-*Erie*' doctrine which requires that the substantive remedies afforded by the States conform to governing federal maritime standards." (citations omitted)).

governing federal maritime standards.[43] "Thus, where the subject-matter falls within the admiralty jurisdiction, state law may 'supplement' federal law but may not directly contradict it."[44] Whichever forum a plaintiff chooses, the substantive law that is applied is general maritime law, unless the plaintiff is pursuing his claim under a statutory basis.[45] While the substantive law in the different fora may be the same, the procedures that are applied differ dramatically in certain circumstances.[46]

A plaintiff's decision of whether to bring his cause of action in federal court in admiralty or in state court has important ramifications for the procedures that are applied by the respective court. Admiralty law includes special rights, duties, and procedures, some of which are exclusive to admiralty, while other rights and procedures are available in suits at law.[47] One of the most important distinctions for a plaintiff in admiralty actions is that there is generally no right to a jury trial[48] because the Seventh Amendment does not include admiralty actions.[49] Thus, if a plaintiff wants to exercise his right to a jury trial, he must bring his case pursuant to the common law remedies that are saved to him by the saving to suitors clause.[50] This is indicative of the importance of the saving to suitors clause. If a plaintiff wishes to have his cause of action heard by a jury, he must bring his claim pursuant to the saving to suitors clause because an action brought in admiralty will not afford him the right to a jury trial.[51]

In the seminal case of *Romero v. International Terminal Operating Co.*,[52] a decision written by Justice Frankfurter, the Supreme Court recognized the importance of the saving to suitors clause in providing a

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[43] *Id.*

[44] Horsley v. Mobil Oil Corp., 825 F. Supp. 424, 427 (D. Mass. 1993) (citations omitted). *See* GILMORE & BLACK, JR., *supra* note 6, at 49–50 ("All that can be said in general is that the states may not flatly contradict established maritime law, but may 'supplement' it . . . .").

[45] *See* GILMORE & BLACK, JR., *supra* note 6, at 45–47 (discussing substantive maritime law, its components, and the influence of statutes on substantive maritime law).

[46] *See* Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 446 (2001) (describing the different rights, remedies, and procedures available in admiralty law).

[47] *See id*. ("Admiralty and maritime law includes a host of special rights, duties, rules, and procedures."); Coronel v. AK Victory, 1 F. Supp. 3d 1175, 1182 (W.D. Wash. 2014) (noting that admiralty law includes special rights and procedures).

[48] *See* Fitzgerald v. U.S. Lines Co., 374 U.S. 16, 20 (1963) ("While this Court has held that the Seventh Amendment does not require jury trials in admiralty cases, neither that Amendment nor any other provision of the Constitution forbids them."); *Coronel*, 1 F. Supp. 3d at 1183 (discussing how one of the major distinctions between admiralty claims and claims brought at law is the right to a jury trial).

[49] *Coronel*, 1 F. Supp. 3d at 1183.

[50] *See* Engerrand, *supra* note 20, at 78 (discussing the saving to suitors clause and the remedies saved to plaintiffs).

[51] *See Fitzgerald*, 374 U.S. at 20 ("While this Court has held that the Seventh Amendment does not require jury trials in admiralty cases, neither that Amendment nor any other provision of the Constitution forbids them."); *Coronel*, 1 F. Supp. 3d at 1183 (discussing how one of the major distinctions between admiralty claims and claims brought at law is the right to a jury trial).

[52] 358 U.S. 354 (1959).

plaintiff common law remedies.[53] In *Romero*, the plaintiff was a Spanish sailor who was seriously injured by a cable while working on a Spanish-flagged vessel in New York waters.[54] Romero alleged various causes of action including a Jones Act claim[55] and general maritime claims such as unseaworthiness, maintenance and cure, and a maritime tort.[56] The plaintiff brought his causes of action on the law side of the United States District Court for the Southern District of New York, asserting jurisdiction pursuant to the Jones Act and 28 U.S.C. §§ 1331 and 1332.[57] The District Court dismissed the complaint for lack of jurisdiction because the Jones Act did not provide a right of action in the circumstances presented. Further, the court also dismissed the general maritime claims due to a lack of diversity of citizenship and because 28 U.S.C. § 1331 did not confer jurisdiction over claims of federal admiralty law.[58] The Court of Appeals affirmed the dismissal of the complaint.[59]

The Supreme Court vacated and remanded the case after an extensive analysis of the jurisdictional boundaries of admiralty law.[60] The Court began its analysis with the origins of admiralty jurisdiction in the United States Constitution and the Judiciary Act of 1789,[61] noting that the Constitution and the Judiciary Act of 1789 were the initial grants of admiralty jurisdiction to the lower federal courts.[62] The Court held that the Judiciary Act of 1875—which extended jurisdiction of the lower federal courts to "all suits of a civil nature at common law or in equity arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority"[63]—did not include admiralty cases because the language and construction of the statute rejected the

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[53] *Id.* at 371–73.

[54] *Id.* at 355–56.

[55] The Jones Act is referenced frequently throughout this Note and therefore a brief explanation is required. *See* Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 441 (2001) ("A Jones Act claim is an *in personam* action for a seaman who suffers injury in the course of employment due to negligence of his employer, the vessel owner, or its crew members."); Matthew Ammerman, *The New Removal Regime*, 38 TUL. MAR. L.J. 389, 397 (2014) ("Jones Act claims are nonremovable pursuant to 28 U.S.C. § 1445(a). However, a fraudulently pleaded Jones Act claim does not bar removal."); *but see infra* notes 191–96 and accompanying text (discussing how Ammerman's conclusion regarding the JVCA is erroneous).

[56] *Romero*, 358 U.S. at 356.

[57] *Id.* at 357; *see* 28 U.S.C. § 1331 (2012) (providing the statutory criteria for federal question jurisdiction); 28 U.S.C. § 1332 (2012) (providing the statutory criteria for diversity of citizenship jurisdiction).

[58] *Romero*, 358 U.S. at 357–58.

[59] *Id.* at 358.

[60] *Id.* at 385.

[61] *Id.* at 360–61.

[62] *Id.* at 360.

[63] *Id.* at 363 (internal quotation marks omitted).

inclusion of admiralty into the Act.[64]

Moreover, the Court noted that the inclusion of general maritime jurisdiction would be contrary to the construction of the Judiciary Act of 1875, and that such an interpretation would have a negative impact on the traditional allocation of power of admiralty in the federal system, especially in regard to the saving to suitors clause.[65] An expansion of 28 U.S.C. § 1331 to include general maritime jurisdiction would annihilate the maritime plaintiff's traditional option of choosing his forum, either state or federal, contrary to the saving to suitors clause.[66] A maritime plaintiff's option to choose his forum would be destroyed because his action would be freely removable pursuant to 28 U.S.C. § 1441, which allows for the removal of any civil action over which the district courts have original jurisdiction arising under the Constitution or laws of the United States.[67] The Court, in part, rejected such an interpretation because "making maritime cases removable to the federal courts . . . would make considerable inroads into the traditionally exercised concurrent jurisdiction of the state courts in admiralty matters—a jurisdiction which it was the unquestioned aim of the savings clause of 1789 to preserve."[68] Thus, *Romero* stands for the proposition that admiralty cases are not considered federal questions pursuant to 28 U.S.C. § 1331,[69] and that the saving to suitors clause is an important part of admiralty jurisdiction that does not allow the removal of general maritime actions to federal court unless there is an independent basis for removal.[70]

Therefore, the precedent of *Romero v. International Terminal Operating Co.*, in addition to the saving to suitors clause of 28 U.S.C. § 1333, prevents the removal of general maritime claims properly brought in state court. However, Congress, with the enactment of the Federal Courts Jurisdiction and Venue Clarification Act of 2011, has created confusion as to whether general maritime claims are now removable pursuant to 28 U.S.C. § 1441.[71]

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[64] *Id.* at 368.

[65] *Id.* at 371–72.

[66] *Id.*

[67] 28 U.S.C. § 1441(a) (2012); *Romero*, 358 U.S. at 371–72.

[68] *Romero*, 358 U.S. at 372.

[69] *Id.* at 378.

[70] FORCE & NORRIS, *supra* note 7, § 1.11.

[71] Robertson & Sturley, *supra* note 16, at 407 (stating that the JVCA amendment has made some "potentially troublesome changes" to the removal statute).

III. THE FEDERAL COURTS JURISDICTION AND VENUE CLARIFICATION ACT OF 2011

The Federal Courts Jurisdiction and Venue Clarification Act (JVCA) was enacted in 2011.[72] The JVCA changed pertinent language in the federal removal statute, 28 U.S.C. § 1441.[73] The change in language has led courts to misconstrue the recent amendment to the removal statute to allow the removal of general maritime claims to federal court.[74] This interpretation is contrary to the precedent established by the Supreme Court in *Romero v. International Terminal Operating Co.* and to the saving to suitors clause of 28 U.S.C. § 1333.[75]

There are generally four ways for a defendant to remove a lawsuit from state to federal court.[76] This includes invoking a federal question, diversity of the parties, a statute that specifically permits removal, and alienage jurisdiction.[77] Additionally, as federal courts are courts of limited jurisdiction, removal statutes are construed in favor of remand and against removal.[78] Thus, the holding of *Romero v. International Terminal Operating Co.* is that general maritime claims do not constitute a federal question and therefore there needs to be another independent basis for removal, such as diversity jurisdiction.[79] Further, remand orders are generally not appealable, which may require a litigant to proceed in a forum that they did not choose if a judge issues a remand order that is not in their favor.[80] Therefore, the interpretation of the JVCA amendment to

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[72] Pub. L. No. 112-63, 125 Stat. 758 (2011) (codified as amended in scattered sections of 28 U.S.C. (2012)).

[73] *Compare* 28 U.S.C. § 1441 (2006) (providing the statutory criteria for removal prior to the JVCA), *with* 28 U.S.C. § 1441 (2012) (providing the amended language of the removal statute following the enactment of the JVCA).

[74] Robertson & Sturley, *supra* note 16, at 407.

[75] *See* 28 U.S.C. § 1333 (2012) (providing the saving to suitors clause); Romero v. Int'l Terminal Operating Co., 358 U.S. 354, 378–80 (1959) (noting that general maritime claims are not removable without an independent basis for removal).

[76] Ammerman, *supra* note 55, at 390–91.

[77] *See* 28 U.S.C. § 1441(a) (2012) (allowing for the removal of any civil action over which the federal district courts have original jurisdiction); 28 U.S.C. § 1441(b) (2012) (allowing for the removal of actions based on diversity jurisdiction); 28 U.S.C. § 1442(a)(1) (2012) (providing for the removal of any action brought against the United States or United States agency and any officer of such agency); 28 U.S.C. § 1332(a)(2) (2012) (stating that federal district courts have original jurisdiction over actions between citizens of a State and citizens or subjects of a foreign State, thus allowing for removal pursuant to 28 U.S.C. § 1441).

[78] *See Romero*, 358 U.S. at 379–80 (discussing the reluctance of the Supreme Court to expand federal jurisdiction); Coronel v. AK Victory, 1 F. Supp. 3d 1175, 1178 (W.D. Wash. 2014) (stating that courts must strictly construe the removal statute against removal and that statutes extending federal jurisdiction are to be narrowly construed).

[79] *Romero*, 358 U.S. at 378–80; *see* FORCE & NORRIS, *supra* note 7, § 1.11 (discussing *Romero* and the removability of admiralty actions).

[80] *See* 28 U.S.C. § 1447(d) (2012) (stating that remand orders are not appealable unless there is a statutory exception such as 28 U.S.C. § 1442 (2012)).

the removal statute is of critical importance to the removal of general maritime claims.

Prior to the JVCA amendment in 2011, the relevant portion of 28 U.S.C. § 1441 provided that "[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed."[81] The JVCA amendment did not change the relevant portion of subsection (a) of the removal statute.[82] The controversy arises in the JVCA's amendment to subsection (b) of the statute. Prior to 2011, 28 U.S.C. § 1441(b) provided:

> Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.[83]

The JVCA amendment to the removal statute in 2011 deleted key language from subsection (b). This subsection now provides that "[a] civil action otherwise removable solely on the basis of jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."[84]

While the JVCA was intended to clarify the law, the removal of the second sentence of 28 U.S.C. § 1441(b) has caused confusion in the lower courts. Some courts have interpreted the amendment to the removal statute to allow the removal of general maritime claims to federal court.[85] However, this interpretation misconstrues the precedent established in *Romero v. International Terminal Operating Co.* and by the saving to suitors clause. Interpreting the JVCA amendment to the removal statute to allow the removal of general maritime claims would render the saving to suitors clause useless, by permitting a defendant to remove actions that

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[81] 28 U.S.C. § 1441(a) (2006).

[82] David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 38 TUL. MAR. L.J. 419, 477 (2014).

[83] 28 U.S.C. § 1441(b) (2006).

[84] 28 U.S.C. § 1441(b)(2) (2012).

[85] *E.g.*, Ryan v. Hercules Offshore Inc., 945 F. Supp. 2d 772, 777–78 (S.D. Tex. 2013); *see* Coronel v. AK Victory, 1 F. Supp. 3d 1175, 1179 (W.D. Wash. 2014) (discussing different courts interpretations of the 2011 amendment to the removal statute); Ammerman, *supra* note 55, at 390–91 (discussing the implications of the 2011 amendment to the removal statute and the differing interpretations).

were properly brought by a plaintiff pursuing common law remedies in state court. Therefore, as this interpretation is contrary to the precedent established in *Romero*—which precludes the removal of general maritime claims without an independent basis of federal jurisdiction aside from 28 U.S.C. § 1333—and as it would make the saving to suitors clause irrelevant, this interpretation is erroneous.[86]

IV. CASES INTERPRETING THE FEDERAL COURTS JURISDICTION AND VENUE CLARIFICATION ACT OF 2011 AND THE SAVING TO SUITORS CLAUSE

The lower federal courts have interpreted the JVCA amendment to the removal statute in two primary ways. One interpretation of the JVCA amendment is that the jurisdictional boundaries of admiralty law have not been substantively changed and that the removal of general maritime claims is not permissible solely on the basis of admiralty jurisdiction.[87] This interpretation of the JVCA amendment is consistent with established precedent and the purpose of the saving to suitors clause.[88] The other interpretation of the JVCA amendment is that the deletion of the pertinent language in the removal statute now permits the removal of general maritime claims.[89] The leading case for the new interpretation of the removability of general maritime claims is *Ryan v. Hercules Offshore, Inc.*,[90] and the court's interpretation in that case will be referred to as the "*Ryan* interpretation" throughout the remainder of this Note.

A. *A Number of Courts Have Interpreted the JVCA Amendment as Allowing the Removal of General Maritime Claims*

In *Ryan v. Hercules Offshore, Inc.*, the estate of the decedent brought an action that asserted negligence and unseaworthiness claims pursuant to the Death on the High Seas Act and general maritime law.[91] The decedent was working for the defendant, Wild Well Control, Inc., on a Jack-Up

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[86] Romero v. Int'l Terminal Operating Co., 358 U.S. 354, 378–80 (1959).

[87] *See, e.g.*, Harrold v. Liberty Ins. Underwriters, Nos. 13-762, 13-831, slip op. at 3 (M.D. La. Nov. 7, 2014) (granting the plaintiffs' motion to remand their general maritime claim from federal to state court as removal would deprive the plaintiff of the right to a jury trial saved by the saving to suitors clause; and rejecting the interpretation of the 2011 amendment to the removal statute to allow the removal of general maritime claims).

[88] *See Romero*, 358 U.S. at 378–80 (stating general maritime claims are not removable solely on the basis of admiralty jurisdiction and discussing the importance of the saving to suitors clause).

[89] *See* Ammerman, *supra* note 55, at 407 (discussing *Ryan v. Hercules Offshore Inc*., and how the court in that case interpreted the 2011 amendment to the removal statute); Robertson & Sturley, *supra* note 16, at 477 (discussing the 2011 amendment to the removal statute and how courts have interpreted the amendment).

[90] 945 F. Supp. 2d 772 (S.D. Tex. 2013).

[91] *Id.* at 773.

vessel drilling a deviated relief well.[92] The decedent went into cardiac arrest and died.[93] The plaintiff brought suit in Texas state court, but the defendants removed the action to federal district court.[94] In response, the plaintiff moved to remand, asserting that traditionally, general maritime claims have not been removable.[95] The defendants' claimed that, pursuant to the plain language of the 2011 amendment to the removal statute, general maritime claims were no longer precluded from removal.[96]

The court in *Ryan* began its analysis by recognizing that historically, general maritime claims were precluded from removal.[97] The court asserted that the bar on removal of general maritime claims was not due to the saving to suitors clause because that clause only saved to a plaintiff the right to pursue non-admiralty remedies and did not guarantee a non-federal forum, nor prevent the removal by a defendant on a basis of federal jurisdiction other than admiralty.[98] Perhaps most significantly, the court asserted that the true preclusion of general maritime claims from removal was the language of 28 U.S.C. § 1441(b),[99] and that with the recent amendment to the removal statute, the language that had previously barred the removal of general maritime claims was deleted.[100] The language that the court referenced was the second sentence of 28 U.S.C. § 1441(b), which stated that "[a]ny other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."[101] This language was not included in the 2011 JVCA amendment to the removal statute.[102] The court reasoned that the language of the removal statute prior to the 2011 JVCA amendment was an Act of Congress precluding removal under 28 U.S.C. § 1441(a),[103] and that because this language was no longer included in the removal statute, there was no longer an "Act of Congress" that precluded the removal of general maritime claims.[104] This reasoning was based on a decision of the Fifth Circuit from the early 1990s, *In re Dutile*.[105]

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[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *Id.* at 774.
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Ryan*, 945 F. Supp. 2d at 777.
[100] *Id*.
[101] *Id.* at 775.
[102] *Id.* at 777.
[103] 28 U.S.C. § 1441(a) (2006).
[104] *Ryan*, 945 F. Supp. 2d at 777–78.
[105] *See In re* Dutile, 935 F.2d 61, 63 (5th Cir. 1991) (holding that general maritime claims are precluded from removal unless there is complete diversity among the parties involved as general

In *In re Dutile*, the Fifth Circuit held that the preclusion of removal of general maritime claims was due to the language of the removal statute, 28 U.S.C. § 1441(a), unless there was complete diversity of the parties involved.[106] This was because maritime actions, whether in personam or in rem, do not arise under the Constitution, treaties, or laws of the United States.[107] Therefore, maritime actions fell into the "any other" category of 28 U.S.C. § 1441(b), making them non-removable unless there was diversity among the parties.[108] Thus, the court noted that 28 U.S.C. § 1441(b) was an Act of Congress that prevented the removal of maritime actions unless there was an independent basis for federal jurisdiction, such as diversity jurisdiction.[109] This analysis is critical to the court's reasoning in *Ryan*, which relied on the fact that the language in 28 U.S.C. § 1441(b) was changed, removing the "any other" language that previously precluded removal of general maritime claims.[110] Thus, the court in *Ryan* held that there was no longer an Act of Congress that precluded the removal of general maritime claims, and therefore, that general maritime claims were now removable.[111] The holding by the court in *Ryan* has been cited by several other courts allowing the removal of general maritime claims.[112]

For example, in *Wells v. Abe's Boat Rental Inc.*,[113] the court granted in part and denied in part the plaintiff's motion to remand.[114] The court granted the motion to remand in regard to the plaintiff's Jones Act claims, but denied the motion to remand in regard to the plaintiff's negligence claim under general maritime law.[115] Citing the reasoning of the *Ryan* court, the *Wells* court held that general maritime claims are removable,[116] stating that "[e]ven assuming that general maritime law applies, under *Ryan* and the cases it cites this action is nonetheless removable, again with

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maritime claims fall into the "any other" category of 28 U.S.C. § 1441(b)); *see also Ryan*, 945 F. Supp. 2d at 775–76 (discussing the court's reasoning in *In re Dutile*).

[106] *In re Dutile*, 935 F.2d at 63.

[107] *Id.* at 62–63; *see* Romero v. Int'l. Terminal Operating Co., 358 U.S. 354, 367 (1959) (holding that general maritime claims do not arise under the Constitution or laws of the United States).

[108] *In re Dutile*, 935 F.2d at 63.

[109] *Id.*

[110] *Ryan*, 945 F. Supp. 2d at 777–78.

[111] *Id.*

[112] *See* Carrigan v. M/V AMC Ambassador, No. H-13-03208, slip op. at 6–7 (S.D. Tex. Jan. 31, 2014) (applying the reasoning of the *Ryan* court to allow for the removal of general maritime claims); Bridges v. Phillips 66 Co., No. 13-477-JJB-SCR, slip op. at 4–5 (M.D. La. Nov. 19, 2013) (citing *Ryan* and *Wells v. Abe's Boat Rentals Inc.* as persuasive authority in allowing for the removal of general maritime claims); Wells v. Abe's Boat Rentals Inc., No. H-13-112, slip op. at 2 (S.D. Tex. June 18, 2013) (agreeing with and applying the reasoning of *Ryan*).

[113] *Wells*, No. H-13-112, slip op. at 1.

[114] *Id.*

[115] *Id.* at 2–3.

[116] *Id.* at 3–5.

the proviso that the Jones Act claim . . . is severed and remanded to the state court."[117] Thus, the court in *Wells* endorsed and relied upon the reasoning of the court in *Ryan*.

Carrigan v. M/V AMC Ambassador[118] also cited the reasoning of *Ryan* in its decision to allow the removal of general maritime claims.[119] In *Carrigan*, the plaintiff alleged claims under the Jones Act, as well as claims under general maritime law, including negligence and unseaworthiness.[120] The court held that the plaintiff's Jones Act claims were fraudulently pled, and therefore did not bar removal.[121] Further, the court held "for the reasons well explained in *Ryan*, Plaintiff's maritime claims are removable, and Plaintiff's Motion to Remand is denied."[122] Thus, the court in *Carrigan* relied upon the reasoning applied by the court in *Ryan* to allow for the removal of general maritime claims.

In *Bridges v. Phillips 66 Co.*,[123] the court cited the reasoning in *Ryan* and *Wells* as persuasive authority in its holding that general maritime claims are removable.[124] The plaintiff in *Bridges* asserted claims under Louisiana state law, general maritime law, and the Jones Act.[125] The court acknowledged that the Fifth Circuit had historically not allowed the removal of general maritime claims saved to suitors, pursuant to 28 U.S.C. § 1441(b).[126] However, the court, citing *Ryan* and *Wells*, noted that the 2011 JVCA amendment deleted the language of the removal statute which had previously been interpreted as an Act of Congress preventing removal of general maritime claims, and with the deletion of this language, removal was no longer precluded.[127] Therefore, the court denied the plaintiff's motion to remand.[128]

The above-mentioned cases illustrate how the reasoning developed by the *Ryan* court has been applied to allow for the removal of general maritime claims. The reasoning of the court in *Ryan* can be summarized as follows:

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[117] *Id.* at 6.

[118] Carrigan v. M/V AMC Ambassador, No. H-13-03208, slip op. at 2 (S.D. Tex. Jan. 31, 2014).

[119] *Id.* at 6.

[120] *Id.* at 2.

[121] *Id.* at 6.

[122] *Id.*

[123] Bridges v. Phillips 66 Co., No. 13-477-JJB-SCR, slip op. at 1 (M.D. La. Nov. 19, 2013).

[124] *Id.* at 4–5.

[125] *Id.* at 1.

[126] *Id.* at 2.

[127] *Id.* at 4; *see* Provost v. Offshore Serv. Vessels, LLC, No. 14-89, slip op. at 3–4 (M.D. La. June 4, 2014) (applying the same reasoning as in *Bridges* and finding unpersuasive the argument that the saving to suitors clause prevents removal, as the plaintiff did not seek a jury trial that could not be pursued in a federal court sitting in admiralty); *see also* Garza v. Phillips 66 Co., No. 13-742, slip op. at 4–5 (M.D. La. Apr. 1, 2014) (applying the reasoning of the *Ryan* and *Wells* courts to deny the plaintiff's motion to remand).

[128] *Bridges*, No. 13-477, slip op. at 5.

> (1) [F]ederal courts have original jurisdiction over admiralty claims; (2) the saving to suitors clause does not preclude federal courts from exercising jurisdiction over admiralty claims originally brought in state court; (3) the old version of section 1441(b) was relied upon as the "Act of Congress" that precluded federal courts from exercising removal jurisdiction unless the requirements of section 1441(b) were met; and (4) admiralty cases do not arise under the Constitution, treaties or laws of the United States, so admiralty cases were considered "any other such actions" under the prior version of section 1441(b) and were thus removable only if none of the parties in interest properly joined and served as defendants was a citizen of the State in which the action was brought.[129]

Ryan represents one interpretation of the JVCA, and is arguably the minority view of how to interpret the recent amendment.[130] One aspect that is not discussed in depth in the aforementioned cases is the effect that the *Ryan* interpretation of the JVCA has on the saving to suitors clause. In contrast to *Ryan*, other courts have held that the recent JVCA amendment has had no effect on the ability to remove general maritime claims to federal court.[131]

B. *The JVCA Should be Interpreted as Having No Effect on the Ability of General Maritime Claims to be Removed to Federal Court*

The JVCA should not be interpreted to allow the removal of general maritime claims, as such an interpretation would eviscerate the saving to suitors clause of 28 U.S.C. § 1333.[132] The other main interpretation of the JVCA holds that the JVCA amendment has no substantial effect on the removability of general maritime claims. Thus, courts should follow the precedent of decisions such as *Gregoire v. Enterprise Marine Services, LLC*,[133] which have interpreted the JVCA as not affecting jurisprudence to allow for the removal of general maritime claims.[134]

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[129] Ryan v. Hercules Offshore, Inc., 945 F. Supp. 2d 772, 777 (S.D. Tex. 2013).

[130] *Id.*; *see* Harrold v. Liberty Ins. Underwriters, Nos. 13-762, 13-831, slip op. at 3 (M.D. La. Nov. 7, 2014) ("The Court believes that the correct view is also the majority view and that general maritime claims are not removable, despite the changes to 28 U.S.C. § 1441.").

[131] *Ryan*, 945 F. Supp. 2d at 777–78; *but see* Gregoire v. Enter. Marine Servs., LLC, 38 F. Supp. 3d 749, 754 (E.D. La. 2014) (holding that *Ryan* is an erroneous interpretation of the JVCA and that the JVCA has no substantial effect on the removability of general maritime claims); Cassidy v. Murray, 34 F. Supp. 3d 579, 583 (D. Md. 2014) (rejecting the reasoning in *Ryan*); Coronel v. AK Victory, 1 F. Supp. 3d 1175, 1179–80 (W.D. Wash. 2014) (rejecting the reasoning in *Ryan*).

[132] 28 U.S.C. § 1333 (2012).

[133] 38 F. Supp. 3d 749 (E.D. La. 2014).

[134] *Id.* at 754.

In *Gregoire*, the court rejected the interpretation of the JVCA of the court in *Ryan v. Hercules* and held that the JVCA did not allow for the removal of general maritime claims.[135] The plaintiff in *Gregoire* invoked the saving to suitors clause of 28 U.S.C. § 1333, alleging a Jones Act claim and general maritime claims in Louisiana state court for injuries sustained while working for the defendant.[136] The defendant timely removed from state court pursuant to 28 U.S.C. § 1441.[137] The plaintiff filed a motion to remand asserting that general maritime claims are not removable, without an independent basis because they are not within the original jurisdiction of the federal court when brought pursuant to the saving to suitors clause of 28 U.S.C. § 1333.[138] The defendant, in opposition to the motion, asserted that due to the 2011 JVCA amendment, 28 U.S.C. § 1441(b) no longer precluded the removal of general maritime claims, and that general maritime claims were now normally removable.[139]

The court stated that "[t]he issue in this case hinges upon the operation of the 'saving to suitors clause,' 28 U.S.C. § 1333, with respect to removal of maritime and admiralty claims under the removal statute."[140] The court explicitly declined to follow the interpretation of the JVCA by the court in *Ryan v. Hercules*;[141] instead, the court in *Gregoire* concluded that "'the statutory grant of admiralty jurisdiction, 28 U.S.C. § 1333, and more than 200 years of precedent interpreting this grant' rather than the 2011 amendment to the removal statute . . . determine the removability of Gregoire's claims."[142] Thus, the court noted that general maritime claims have historically never been removable and are not currently removable, unless there is an independent basis for federal jurisdiction aside from 28 U.S.C. § 1333.[143]

The court based its reasoning on the history of 28 U.S.C. § 1333 and how § 1333 provides exclusive jurisdiction to federal courts of in rem actions, but provides concurrent jurisdiction to state courts of in personam actions.[144] This superficially appears to place maritime actions within the original jurisdiction of 28 U.S.C. § 1441(a), thus allowing the removal of such claims.[145] However, the *Gregoire* court stated that Congress had carefully written 28 U.S.C. § 1333 to balance the interests of federalism,

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[135] *Id.*; *Ryan*, 945 F. Supp. 2d at 777–78.
[136] *Gregoire*, 38 F. Supp. 3d at 752.
[137] *Id.*
[138] *Id.*
[139] *Id.* at 753.
[140] *Id.*
[141] *Id.* at 754.
[142] *Id.* (quoting Coronel v. AK Victory, 1 F. Supp. 3d 1175, 1178 (W.D. Wash. 2014)).
[143] *Id.*
[144] *Id.* at 764.
[145] *Id.*

and that the inclusion of the saving to suitors clause was in recognition of the historical development of maritime actions in state courts.[146] The court noted that "[m]aritime claims initiated in state court are, by definition, brought at common law under the saving to suitors clause as an 'exception' to the original jurisdiction of the federal courts."[147] Thus, the change in language of the 2011 JVCA amendment "in no way modified the long-standing rule that general maritime law claims require some other non-admiralty source of jurisdiction to be removable."[148]

The court in *Coronel v. AK Victory*[149] also rejected the interpretation of the JVCA amendment allowing removal of general maritime claims.[150] The plaintiff in *Coronel* asserted claims of maintenance, cure, and lost wages under the general maritime law, as well as a Jones Act claim in Washington state court.[151] The defendant removed the claim to federal district court, and the plaintiff filed a motion to remand.[152] The parties in the action focused their arguments on the language of the removal statute, 28 U.S.C. § 1441, but the court focused its analysis on the "statutory grant of admiralty jurisdiction, 28 U.S.C. § 1333, and the more than 200 years of precedent interpreting this grant to determine the removability of the . . . claims."[153]

The court began by analyzing 28 U.S.C. § 1333, which provides exclusive jurisdiction of in rem admiralty actions to federal courts, and the saving to suitors clause, which preserves the concurrent jurisdiction of state courts over in personam admiralty actions.[154] The court, citing to a Ninth Circuit decision, noted that the saving to suitors clause provides litigants with three options for a plaintiff alleging admiralty claims. "'He may file suit in federal court under the federal court's admiralty jurisdiction, in federal court under diversity jurisdiction if the parties are diverse and the amount in controversy is satisfied, or in state court.'"[155] The court described how historically, saving to suitors clause claims could not be removed from state court absent another basis for federal jurisdiction, such as diversity jurisdiction or another maritime statute such as the Outer Continental Shelf Lands Act.[156] Another basis for jurisdiction

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[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] 1 F. Supp. 3d 1175 (W.D. Wash. 2014).

[150] *Id.* at 1180.

[151] *Id.* at 1177.

[152] *Id.*

[153] *Id.* at 1178.

[154] *Id.* at 1181.

[155] *Id.* at 1186 (quoting Ghotra v. Bandila Shipping, Inc., 115 F.3d 1050, 1054–55 (9th Cir. 1997)).

[156] *Id.*; *see* 43 U.S.C. § 1349(b)(1) (2012) ("[T]he district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with (A) any operation

is necessary, as 28 U.S.C. § 1333 does not provide subject matter jurisdiction to federal courts for maritime claims brought at law without an independent basis, and allowing removal of general maritime claims pursuant to 28 U.S.C. § 1441(a) without an independent jurisdictional basis would eviscerate the saving to suitors clause.[157] Thus, the court held that general maritime claims were not removable without an independent basis, due to federalism concerns and the balance of power between federal and state courts, in addition to the saving to suitors clause, and the established precedent of not allowing the removal of general maritime claims without an independent basis.[158]

In *Cassidy v. Murray*,[159] the court rejected the *Ryan v. Hercules* court's interpretation of the 2011 JVCA amendment.[160] In *Cassidy*, the plaintiffs alleged claims of negligence against the defendant, and initially brought suit in Maryland state court.[161] The defendant removed the action, and the plaintiffs filed a motion to remand.[162] The court in *Cassidy* focused its reasoning on the saving to suitors clause, and the effect the *Ryan* interpretation would have on 28 U.S.C. § 1333.[163] In rejecting the *Ryan* interpretation of the JVCA, the court stated:

> First, the removal of admiralty cases without an independent jurisdictional basis permits the very occurrence the Supreme Court attempted to avoid in *Romero*—the evisceration of the savings clause. The purpose of the clause is to preserve the traditional role of the states in the administration of the common-law remedies for maritime cases. Permitting defendants to remove these cases without an independent jurisdictional basis not only disrupts decades of maritime precedent but also renders the saving clause null and void.[164]

Further, the court noted that the saving to suitors clause illustrates the importance of preserving the plaintiff's choice of which forum to bring his cause of action.[165] The court was not willing to reject decades of jurisprudence to adopt an attempt to change removal procedures without

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conducted on the outer Continental Shelf which involves exploration, development, ….”); Barker v. Hercules Offshore Inc., 713 F.3d 208, 220 (5th Cir. 2013) (discussing the Outer Continental Shelf Lands Act and original federal jurisdiction).

[157] *Coronel*, 1 F. Supp. 3d at 1184–85.

[158] *Id.* at 1187–88.

[159] 34 F. Supp. 3d 579 (D. Md. 2014).

[160] *Id.* at 581; *see* Ryan v. Hercules Offshore Inc., 945 F. Supp. 2d 772, 777 (S.D. Tex. 2013) (holding that general maritime claims are now removable under the JVCA).

[161] *Cassidy*, 34 F. Supp. 3d at 580.

[162] *Id.*

[163] *Id.* at 581.

[164] *Id.* at 583 (citations omitted).

[165] *Id.* at 584.

clear precedential authority.[166] Thus, *Cassidy v. Murray* demonstrates a rejection of the *Ryan* court's interpretation of the JVCA with special emphasis placed on the adverse consequences to the saving to suitors clause.

In *Harrold v. Liberty Insurance Underwriters*,[167] a United States District Court for the Middle District of Louisiana decision, the plaintiff's right to a jury trial was a consideration in the court's rejection of the *Ryan* interpretation of the JVCA.[168] The plaintiff in *Harrold* asserted general maritime claims for negligence and a Jones Act claim.[169] These claims were brought in state court with a request for a jury trial.[170] The defendant removed the action and the plaintiff sought to have the action remanded to state court.[171] The court granted the plaintiff's motion to remand for three reasons.[172] The first reason was that the plaintiff had specifically requested a trial by jury, and allowing the defendant to remove the action would deprive the plaintiff of a jury trial.[173] The court noted how the saving to suitors clause prevents such outcomes, and ordered that the action must be remanded.[174] The court's second rationale was in regard to the Jones Act claim, but the third reason for granting the plaintiff's motion to remand was a rejection of the *Ryan* court's interpretation of the JVCA.[175] The court stated that "the correct view is also the majority view and that general maritime claims are not removable, despite the changes to 28 U.S.C. § 1441."[176]

In *Yavorsky v. Felice Navigation, Inc.*,[177] the United States District Court for the Eastern District of Louisiana rejected the reasoning of the *Ryan* interpretation of the 2011 JVCA amendment, and applied the reasoning that the court in *Gregoire* established.[178] Thus, the court held that the 2011 amendment to the removal statute, 28 U.S.C. § 1441, did not change the precedent that general maritime claims initially brought in state court are not removable absent an independent basis for jurisdiction in federal court.[179]

The aforementioned cases illustrate the correct interpretation of the

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[166] *Id.*
[167] Nos. 13-762, 13-831, slip op. at 1 (M.D. La. Nov. 7, 2014).
[168] *Id.* at 2.
[169] *Id.* at 1.
[170] *Id.*
[171] *Id*.
[172] *Id.* at 2.
[173] *Id.*
[174] *Id.*
[175] *Id.* at 2–3.
[176] *Id.* at 3.
[177] Yavorsky v. Felice Navigation, Inc., No. 14-2007, slip op. at 1 (E.D. La. Nov. 7, 2014).
[178] *Id.* at 4–5.
[179] *Id.* at 5.

2011 JVCA amendment. In addition to the cases detailed, a multitude of other courts have also interpreted the JVCA amendment as not changing the removability of general maritime claims.[180] Courts should continue to interpret the JVCA amendment as not changing the removal jurisdiction of general maritime claims to federal courts.

V. THE 2011 JVCA AMENDMENT SHOULD NOT BE INTERPRETED AS HAVING AN EFFECT ON THE REMOVABILITY OF GENERAL MARITIME CLAIMS

Courts should not interpret the JVCA amendment to allow for the removal of general maritime claims, contrary to the reasoning in *Ryan v. Hercules*,[181] as doing so would eviscerate the saving to suitors clause. Instead, courts should follow the precedent of cases such as *Gregoire v. Enterprise Marine Services, LLC,* and *Coronel v. AK Victory* in interpreting the JVCA amendment to have no material effect on the removability of general maritime claims.[182] Interpreting the JVCA amendment in a manner similar to *Gregoire* and *Coronel* recognizes the importance of the saving to suitors clause, and preserves the jurisdictional balance between federal and state courts, which the saving to suitors clause seeks to protect. Following the interpretation of the JVCA amendment, as interpreted by the courts in *Gregoire* and *Coronel*, would also be consistent with the seminal decision of *Romero v. International Terminal Operating Co.*, and the concerns the Court in *Romero* had with protecting the saving to suitors clause from being undermined.[183] Thus, courts should interpret the 2011 JVCA amendment to 28 U.S.C. § 1441 as having no significant effect on the ability of general maritime claims to be removed to federal court.

Courts have noted that there is a precedential history of more than two-hundred years that does not allow for the removal of general maritime

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[180] *See* Bartman v. Burrece, No. 3:14-CV-0080-RRB, 2014 WL 4096226, at *3 (D. Alaska Aug. 18, 2014) ("Notwithstanding recent amendments to the statute governing removal, the reservation of remedies at common law preserved in the statute granting the Court's original jurisdiction support remand of this matter back to state court."); Figueroa v. Marine Inspection Servs., LLC, 28 F. Supp. 3d 677, 680 (S.D. Tex. 2014) ("This Court disagrees with the holding in *Ryan*."); Gabriles v. Chevron USA, Inc., No. 2:14-00669, slip op. at 4 (W.D. La. June 6, 2014) ("The Court disagrees that the 2011 amendment altered the long-held understanding that admiralty claims brought at law in state court pursuant to the saving to suitors clause are not removable in the absence of an independent jurisdictional basis." (footnote omitted)).

[181] Ryan v. Hercules Offshore, Inc., 945 F. Supp. 2d 772, 777 (S.D. Tex. 2013).

[182] Gregoire v. Enter. Marine Servs., LLC, 38 F. Supp. 3d 749, 754 (E.D. La. 2014); Coronel v. AK Victory, 1 F. Supp. 3d 1175, 1180 (W.D. Wash. 2014).

[183] *See* Romero v. Int'l. Terminal Operating Co., 358 U.S. 354, 371–72 (1959) (discussing the importance of the saving to suitors clause and how the choice of a maritime plaintiff to bring suit in either state or federal court needs to be protected).

claims without an independent basis for federal jurisdiction.[184] Therefore, the *Ryan* interpretation of the 2011 JVCA amendment reverses over two-hundred years of precedent by allowing the removal of general maritime claims without an independent basis.[185] The *Ryan* decision is a drastic departure from established precedent and has caused confusion among courts in how to interpret the JVCA amendment.[186] Such a dramatic departure from precedent should not be undertaken on the basis of the deletion of one sentence from the federal removal statute, which is essentially the rationale behind the court's decision in *Ryan*.[187] The rationale used by the court in *Ryan* also fails to place sufficient weight upon the saving to suitors clause, and the effect that interpreting the JVCA amendment to allow removal of general maritime claims would have upon the saving to suitors clause and plaintiffs seeking to bring their causes of action in state court.[188]

The *Ryan* interpretation of the JVCA amendment would essentially abrogate the saving to suitors clause by allowing a defendant to freely remove general maritime claims brought by a plaintiff in state court seeking common law remedies. The saving to suitors clause is an important qualifier to the grant of original jurisdiction to the lower federal courts pursuant to 28 U.S.C. § 1333[189] and acts as an exception to the original jurisdiction of federal courts over admiralty actions.[190] Thus, significantly, the saving to suitors clause preserves the concurrent jurisdiction of state

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[184] *See Gregoire*, 38 F. Supp. 3d at 754 (quoting *Coronel* in regard to the history of the removal of general maritime claims); *Coronel*, 1 F. Supp. 3d at 1178 (discussing the precedential history of removal jurisdiction); *see also Romero*, 358 U.S. 354 at 363 n.16 ("The removal provisions of the original Judiciary Act of 1789, 1 Stat. 79, conferred a limited removal jurisdiction, not including cases of admiralty and maritime jurisdiction. In none of the statutes enacted since that time have saving-clause cases been made removable.").

[185] *See Ryan*, 945 F. Supp. 2d at 777–78 (discussing deletions to the statute that required cases to meet certain requirements for removal and the substantive congressional intent of those changes).

[186] *See, e.g.*, Cassidy v. Murray, 34 F. Supp. 3d 579, 583 (D. Md. 2014) (rejecting the reasoning in *Ryan*); Bridges v. Phillips 66 Co., No. 13-477-JJB-SCR, slip op. at 4–5 (M.D. La. Nov. 19, 2013) (citing *Ryan* as persuasive authority for allowing the removal of general maritime claims).

[187] *See Ryan*, 945 F. Supp. 2d at 777–78 (holding that there is no longer an Act of Congress that precludes the removal of general maritime claims due to the JVCA amendment deleting language in 28 U.S.C. § 1441(b)).

[188] *Id.* (discussing the saving to suitors clause, but not the effect that allowing the removal of general maritime claims would have upon the saving to suitors clause).

[189] *See* 28 U.S.C. § 1333(1) (2012) (providing the jurisdictional basis for federal admiralty jurisdiction including the saving to suitors clause).

[190] *See* Barker v. Hercules Offshore Inc., 713 F.3d 208, 222 (5th Cir. 2013) ("[A]dmiralty jurisdiction is not present in this suit because Barker filed in state court, therefore invoking the saving-to-suitors exception to original jurisdiction."); Gregoire v. Enter. Marine Servs., LLC, 38 F. Supp. 3d 749, 764 (E.D. La. 2014) (discussing the saving to suitors clause and how it operates as an exception to the original jurisdiction of federal courts when a claim is brought in state court).

courts over certain admiralty actions,[191] as exclusive original jurisdiction of the federal courts is limited to in rem actions, while in personam actions, pursuant to the saving to suitors clause, may be brought in either state or federal court.[192] The interpretation of the JVCA by the court in *Ryan* destroys these federalism ideals that the saving to suitors clause is intended to protect.[193]

The court's interpretation of the JVCA in *Ryan* annihilates the federalism principles that the saving to suitors clause intends to protect by allowing the removal of general maritime claims. This interpretation destroys the ability of a plaintiff to bring a general maritime action in state court because, once the action is initially filed in state court, the defendant could simply remove the action and the plaintiff would be forced to litigate in federal court, which functionally shifts the selection of the forum to the defendant. Thus, the concurrent jurisdiction preserved by the saving to suitors clause is eliminated and the federal court would, in practice, have exclusive original jurisdiction of not only in rem actions, but in personam actions as well. Providing federal courts with exclusive original jurisdiction over both in rem and in personam proceedings would be a significant break with established precedent that should not be considered lightly and is contrary to the original grant of admiralty jurisdiction in 28 U.S.C. § 1333.[194]

Interpreting the JVCA amendment to allow for the removal of general maritime claims brought in state court would also have important ramifications for the remedies that a plaintiff would be able to seek. The saving to suitors clause saves to a plaintiff common law remedies—most notably the ability to request a trial by jury.[195] When a suit is brought in admiralty, a jury trial is generally not an available remedy, as the Seventh

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[191] *See* Romero v. Int'l Terminal Operating Co., 358 U.S. 354, 372 (1959) ("By making maritime cases removable to the federal courts it would make considerable inroads into the traditionally exercised concurrent jurisdiction of the state courts in admiralty matters—a jurisdiction which it was the unquestioned aim of the saving clause of 1789 to preserve.").

[192] Madruga v. Superior Court, 346 U.S. 556, 560–61 (1954) (discussing the difference between in rem and in personam jurisdiction and over which proceedings federal courts have exclusive original jurisdiction).

[193] *See* Ryan v. Hercules Offshore, Inc., 945 F. Supp. 2d 772, 777–78 (S.D. Tex. 2013) (allowing for the removal of general maritime claims, which the saving to suitors clause intends to prevent by providing state courts concurrent jurisdiction).

[194] *See Romero*, 358 U.S. at 372 (discussing the concurrent jurisdiction of federal and state courts that the saving to suitors clause preserves); *Madruga*, 346 U.S. at 560–61 (stating that federal courts only have exclusive original jurisdiction of in rem proceedings).

[195] Coronel v. AK Victory, 1 F. Supp. 3d 1175, 1183 (W.D. Wash. 2014) ("Perhaps the most salient distinction persisting between maritime claims brought in admiralty and at law is the right to a jury trial."); *see also* Fitzgerald v. U.S. Lines Co., 374 U.S. 16, 20 (1963) ("While this Court has held that the Seventh Amendment does not require jury trials in admiralty cases, neither the Amendment nor any other provision of the Constitution forbids them.").

Amendment does not include admiralty actions.[196] Accordingly, when a plaintiff seeks a trial by jury, the saving to suitors clause allows the plaintiff the option of pursuing his claim in state court. If the JVCA amendment were to be interpreted to freely allow the removal of general maritime claims, the ability of a plaintiff to seek a trial by jury would be severely impeded. This interpretation would allow a defendant to remove a plaintiff's action from state court, where the plaintiff could seek a trial by jury, to federal court, where the plaintiff would lose his right to seek a jury trial. This possibility is illustrated in the case of *Harrold v. Liberty Insurance Underwriters Inc.*, in which the plaintiff sought a jury trial pursuant to the saving to suitors clause in state court and the defendant removed the action to federal court.[197] The court noted that the plaintiff would be denied his request to seek a trial by jury if the action was allowed to proceed in federal court, and that the saving to suitors clause prohibited such an outcome.[198] *Harrold* acts as a stark warning of the potential negative consequences that an interpretation of the JVCA allowing the removal of general maritime claims may have in depriving a plaintiff of the ability to seek a jury trial.

Further, a court that had previously agreed with the *Ryan* interpretation of the JVCA has called into question *Ryan*'s reasoning when applied to parties seeking jury trials.[199] In *Perise v. Eni Petroleum, U.S. L.L.C.*,[200] the court held that federal question jurisdiction was proper pursuant to a statutory basis aside from 28 U.S.C. § 1333.[201] However, the court discussed the recent JVCA amendment and its effect on removal of general maritime claims.[202] The magistrate judge noted that the district judge in the case agreed with the *Ryan* interpretation of the JVCA allowing for the removal of general maritime claims but had not considered the implication of the saving to suitors clause in barring the removal of general maritime claims.[203] The court stated "[i]f [the Outer Continental Shelf Lands Act] was not a basis for this court's jurisdiction, then Plaintiff's maritime claims may warrant remand under the 'savings to suitors' clause because of his jury demand."[204] This is noteworthy as it appears to be a retreat by a court that had previously held the *Ryan* interpretation of the JVCA to be correct

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[196] *Coronel*, 1 F. Supp. 3d at 1183.

[197] Harrold v. Liberty Ins. Underwriters, No. 13-762, slip op. at 1–2 (M.D. La. Nov. 7, 2014).

[198] *Id.* at 2.

[199] *See* Perise v. Eni Petroleum, U.S. L.L.C., No. 14-99-SDD-RLB, slip op. at 5 (M.D. La. Oct. 1, 2014) (stating that even though a district judge had previously agreed with the *Ryan* interpretation of the JVCA, this interpretation may be incorrect when a plaintiff requests a jury trial).

[200] *Id.* at 1.

[201] *Id.*

[202] *Id.* at 5.

[203] *Id.*

[204] *Id.*

and calls into question the viability of the removal of general maritime claims when a jury trial is sought by the plaintiff.[205] The court explicitly stated that it had not previously considered the consequence of the saving to suitors clause when agreeing with the *Ryan* interpretation of the JVCA.[206] Thus, when considering the damaging effect that the *Ryan* interpretation of the JVCA could have by denying a plaintiff the ability to seek a jury trial, under the saving to suitors clause, courts should reject the *Ryan* interpretation, and heed the concerns raised by the court in *Perise*.[207]

The court in *Ryan v. Hercules* relied extensively on the removal of key language in 28 U.S.C. § 1441(b), holding that this language was an Act of Congress that prohibited removal pursuant to 28 U.S.C. § 1441(a), and with the JVCA's change in language in 28 U.S.C. § 1441(b), there was no longer an Act of Congress barring removal under 28 U.S.C. § 1441(a).[208] However, this reasoning is flawed, as there is still an Act of Congress that bars the removal of general maritime claims.[209] That Act of Congress is 28 U.S.C. § 1333, which includes the saving to suitors clause, allowing a plaintiff the ability to bring his claims in state court, and barring the removal of such claims unless there is an independent basis for removal.[210] Pursuant to the current version of 28 U.S.C. § 1441(a), "[e]xcept as otherwise expressly provided by [an] Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed . . . ."[211] The JVCA changed the language of 28 U.S.C. § 1441, but the saving to suitors clause of 28 U.S.C. § 1333 has not been changed, and is still an Act of Congress which allows a plaintiff to bring general maritime claims in state court, unless there is an independent basis for removal.[212] Thus, 28 U.S.C. § 1333 is an Act of Congress that bars removal pursuant to 28 U.S.C. § 1441(a). Applying the reasoning of the *Ryan* court, the saving to suitors clause is an

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[205] *Id.*

[206] *Id.*

[207] *Id.*; *see* Ryan v. Hercules Offshore, Inc., 945 F. Supp. 2d 772, 777–78 (S.D. Tex. 2013) (holding that general maritime claims are removable under the JVCA amendment).

[208] *Ryan*, 945 F. Supp. 2d at 777; *see In re* Dutile, 935 F.2d 61, 63 (5th Cir. 1991) (holding that general maritime claims are not removable due to the language of the federal removal statute).

[209] *See* Robertson & Sturley, *supra* note 16, at 408 ("[I]t is black-letter law that the saving to suitors clause is an 'express[]' provision of Congress against the removability of state-court maritime cases." (internal citations omitted)); *but see* Ammerman, *supra* note 55, at 414 ("It is likely that federal appellate courts and perhaps eventually the Supreme Court will take up the issue of whether general maritime law claims are removable *as the plain language of § 1441(a) now indicates—despite the saving-to-suitors exception* . . . ." (emphasis added)).

[210] 28 U.S.C. § 1333 (2012).

[211] 28 U.S.C. § 1441(a) (2012).

[212] 28 U.S.C. § 1333; Coronel v. AK Victory, 1 F. Supp. 3d 1175, 1178 (W.D. Wash. 2014) ("[T]hroughout the history of federal admiralty jurisdiction—from the Judiciary Act of 1789 through *Romero* and up to the present—courts have given no indication that maritime claims are cognizable on the law side of the federal courts absent subject matter jurisdiction independent of 28 U.S.C. § 1333.").

Act of Congress that should prevent the removal of general maritime claims.[213]

It is interesting to note the location of the courts that agree with the *Ryan* interpretation of the JVCA as compared to the location of courts that reject the *Ryan* interpretation. District courts in the Fifth Circuit are currently split as to which interpretation of the JVCA is correct.[214] The Southern District of Texas continues to apply the reasoning of *Ryan*.[215] Another state in the Fifth Circuit, Louisiana, is split as to whether the *Ryan* interpretation of the JVCA is correct.[216] In *Gregoire*, the Eastern District of Louisiana held that the *Ryan* interpretation of the JVCA was erroneous and that the JVCA did not have a substantial effect on the removability of general maritime claims.[217] However, the Western and Middle Districts of Louisiana are split as to whether the *Ryan* or the *Gregoire* interpretation of the JVCA is correct.[218]

The rejection of the *Ryan* interpretation of the JVCA amendment is not limited to courts in the Fifth Circuit. District courts in two other circuits, the Fourth and Ninth Circuits, have also rejected the *Ryan* interpretation of the JVCA.[219] In *Cassidy v. Murray*,[220] the United States District Court for the District of Maryland explicitly rejected the *Ryan* interpretation of the JVCA.[221] Additionally, the United States District Court for the Western District of Washington has rejected the *Ryan* interpretation of the JVCA amendment.[222] These cases demonstrate that *Ryan* represents the minority

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[213] 28 U.S.C. § 1333; 28 U.S.C. § 1441 (2012); *see Ryan*, 945 F. Supp. 2d at 777 (stating that as there is no longer an Act of Congress precluding removal of general maritime claims, thus general maritime claims are now removable).

[214] *See Ryan*, 945 F. Supp. 2d at 777–78 (holding that general maritime claims are now removable under the JVCA). *But see* Gregoire v. Enter. Marine Servs., LLC, 38 F. Supp. 3d 749, 754 (E.D. La. 2014) (holding that the JVCA did not change the removability of general maritime claims).

[215] *See* Carrigan v. M/V AMC Ambassador, No. H-13-03208, slip op. at 2 (S.D. Tex. Jan. 31, 2014) (citing the reasoning in *Ryan* to allow for the removal of general maritime claims); *Ryan*, 945 F. Supp. 2d at 777–78 (allowing for the removability of general maritime claims); Wells v. Abe's Boat Rentals Inc., No. H-13-1112, slip op. at 3–4 (S.D. Tex. June 18, 2013) (agreeing with and applying *Ryan*'s reasoning).

[216] *See Gregoire*, 38 F. Supp. 3d at 754 (stating that the JVCA did not change the removability of general maritime claims). *But see* Bridges v. Phillips 66 Co., No. 13-477-JJB-SCR, slip op. at 4 (M.D. La. Nov. 19, 2013) (citing *Ryan* and *Wells* as persuasive authority in allowing for the removal of general maritime claims).

[217] *Gregoire*, 38 F. Supp. 3d at 754.

[218] *See* Provost v. Offshore Serv. Vessels, LLC, No. 14-89-SDD-SCR, slip op. at 3 (M.D. La. June 4, 2014) (allowing for the removal of general maritime claims under the JVCA amendment to the removal statute); *but see* Gabriles v. Chevron USA, Inc., No. 2:14-00669, slip op. at 4 (W.D. La. June 6, 2014) (disagreeing that the JVCA amendment allows for the removal of general maritime claims).

[219] Cassidy v. Murray, 34 F. Supp. 3d 579, 583 (D. Md. 2014); Coronel v. AK Victory, 1 F. Supp. 3d 1175, 1180 (W.D. Wash. 2014).

[220] *Cassidy*, 34 F. Supp. 3d at 580.

[221] *Id.* at 583.

[222] *Coronel*, 1 F. Supp. 3d at 1180.

view of the JVCA interpretation and should not be adopted in other circuits.[223]

In addition, the *Ryan* interpretation of the JVCA does not follow the principles established for determining when removal is appropriate. Federal courts are courts of limited jurisdiction and the federal removal statute is to be strictly construed against removal.[224] Further, federal jurisdiction "must be rejected if there is any doubt as to the right of removal in the first instance."[225] Removal is to be strictly construed due in part to federalism concerns because the removing court deprives a state court from properly hearing an action.[226] The court in *Ryan* did not follow these principles because it did not apply the well established precedent that the removal of general maritime claims is not allowed without an independent basis for federal jurisdiction.[227] In *Ryan*, the court did not reject the removal of the action even though there was a doubt that removal was improper. In its interpretation of the JVCA, the *Ryan* court did not strictly construe the removal statute, but interpreted the statute in a manner that enlarged federal removal jurisdiction on an unprecedented scale. Therefore, as the *Ryan* court interpreted the JVCA in a manner that is inconsistent with established removal principles, the interpretation is erroneous.

VI. CONCLUSION

The recent amendment to the federal removal statute has caused uncertainty in regard to the removability of general maritime claims without an independent jurisdictional basis aside from 28 U.S.C. § 1333.[228] However, when one considers the more than two-hundred years of precedent prohibiting the removal of general maritime claims without an independent basis for jurisdiction and the effect an interpretation allowing removal would have on the saving to suitors clause, it becomes readily apparent that there is only one correct interpretation of the JVCA amendment. The correct interpretation is that there has been no substantial change in the removability of general maritime claims and that a general

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[223] *See* Harrold v. Liberty Ins. Underwriters, Nos. 13-762, 13-831, slip op. at 3 (M.D. La. Nov. 7, 2014) (stating that the *Ryan* interpretation is the minority view for interpreting the JVCA).

[224] *See Coronel*, 1 F. Supp. 3d at 1178 (discussing the principles that courts apply to determine whether removal is appropriate).

[225] *Id.* (citations omitted).

[226] *See* Gregoire v. Enter. Marine Servs., LLC, 38 F. Supp. 3d 749, 753 (E.D. La. 2014) ("Additionally, because removal jurisdiction implicates important federalism concerns, the federal removal statute is subject to strict construction.").

[227] Ryan v. Hercules Offshore, Inc., 945 F. Supp. 2d 772, 777–78 (S.D. Tex. 2013) (allowing for the removal of general maritime claims).

[228] *Id. But see Gregoire*, 38 F. Supp. 3d at 754 (holding that general maritime claims are not removable and that the JVCA did not substantially change removal jurisdiction).

maritime claim can be removed only when there is an independent basis for federal jurisdiction.[229] This interpretation is consistent with precedent and also protects the saving to suitors clause from being eviscerated. Thus, as courts continue to chart their way through removal jurisdiction, they should interpret the JVCA as having no substantial effect on the removability of general maritime claims.[230]

[229] *See* Romero v. Int'l Terminal Operating Co., 358 U.S. 354, 372–75 (1959) (discussing how general maritime claims cannot be removed without an independent basis aside from 28 U.S.C. § 1333); *Gregoire*, 38 F. Supp. 3d at 754 (requiring an independent basis for the removal of general maritime claims).

[230] *Gregoire*, 38 F. Supp. 3d at 754 ("In short, general maritime law claims are not now removable—nor have they ever been—without an independent basis of jurisdiction other than 28 U.S.C. § 1333 . . . .").