Dead Ships

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I
INTRODUCTION

There in the awful tomb of ships,
I drove mine on to the rocks,
but alas, no tomb closed over me!\footnote{The Flying Dutchman, Act I (1843) (G. Morris trans. 1960).}

So says Wagner’s Flying Dutchman, no doubt anguished over the complexities of the doctrine of dead ships in admiralty. No such anguish has ever appeared in George Jay Joseph’s interest in admiralty law or in his support for the Journal of Maritime Law and Commerce. I have been privileged to know Mr. Joseph, or Mr. George as he is also known, in his work as a loyal and generous alumnus of the University of Virginia School of Law, where I teach. He is also a major supporter of Camp Holiday Trails, an important charity in our area. In contrast to my topic in this article, Mr. George has brought to these endeavors a lively interest and enthusiasm. With enviable charm, intelligence, and energy, he has inspired others to follow his example in all of these activities, and undoubtedly in more that I am not aware of. All of us have been made richer by our association with him.

II
BACKGROUND

Dead ships rest in an arcane corner of admiralty law, but one that illustrates the force and fascination of the many rules that determine the boundaries of the subject. These rules govern admiralty jurisdiction as well as the scope of substantive maritime law, and even within maritime law, the coverage of different statutes and judge-made legal doctrines. As so often in

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admiralty, issues of jurisdiction, scope, and coverage are determined by whether a vessel is involved in the events giving rise to the claim and these issues, once they are decided, often determine the outcome of the case.

Two questions dominate the law of dead ships. First, how is it related to the tests for admiralty jurisdiction and therefore the application of maritime law at all? And second, how is it related to the requirement that a vessel be “in navigation” in order to trigger coverage of the Jones Act? Judicial decisions, especially in recent years, have silently assumed the two questions to be identical, increasing the confusion surrounding the doctrine of dead ships. Indeed, the very terminology of “dead ships” reveals the underlying paradox: that dead ships are ships and therefore vessels within the boundaries of maritime law; and yet the very purpose of the doctrine is to deny vessel status to these ships and to remove them from the scope of admiralty.

Part III of this article takes up the jurisdictional aspects of dead ships and how jurisdiction is related to choice of maritime law. Part IV takes up the special case of coverage under the Jones Act and claims under the Longshore and Harbor Workers’ Compensation Act (LHWCA).

III
DEAD SHIPS, VESSELS, AND ADMIRALTY JURISDICTION

The significance of admiralty jurisdiction, of course, extends beyond jurisdiction itself. Getting a case into admiralty also results in the application of maritime law, on issues as various as standards of care, limitation of liability, the existence of maritime liens, and the remedies of arrest and maritime attachment. The status of an object as a vessel or as a dead ship can determine the answer to all of these questions.

In this respect, the category of dead ships is no different from the category of nonvessels generally. Stripped of all the accumulated doctrinal technicalities, dead ships are just one kind of nonvessel. Most nonvessels are objects that never were vessels, including the standard array of floating structures that seem to cluster along the shores of navigable waters, such as floating piers, platforms, bridges, and dry docks. The doctrine of dead ships is reserved for objects that fit the opposite description: they are indisputably vessels for most of their useful life, but thereafter they assume the status of

\[2\text{For a useful inventory, see T. Schoenbaum, Admiralty and Maritime Law 35–37 (2d ed. 1994 & Supp. 1995–96). Barges used as construction platforms are a difficult case. See infra note 58.}

\[2\text{Houseboats present another borderline case which has been resolved in favor of vessel status. See, e.g., Miami River Boat Yard, Inc. v. 60’ Houseboat, 390 F.2d 596, 597, 1968 AMC 336 (5th Cir. 1968); Hudson Harbor 79th Street Boat Basin, Inc. v. Sea Casa, 469 F. Supp. 987, 989, 1979 AMC 2401 (S.D.N.Y. 1979). A houseboat can become a dead ship, like any other vessel, only if it loses whatever degree of mobility it once had.}
nonvessels. In this respect, they resemble vessels under construction, the "mere congeries of wood and iron" that is celebrated in *Tucker v. Alexandroff*. Both before and after its life in admiralty, a vessel must settle for its fate as "an ordinary piece of personal property,—as distinctly a land structure as a house."

Just as there can be disputes over whether a vessel has been born, so too, there can be disputes over whether it has died. And, indeed, the two issues are closely related because in admiralty (as in certain horror movies) the dead can return to life. Several leading cases involve ships in the "moth ball" fleet that were in the process either of being deactivated or reactivated. The Second Circuit has even held that one and the same vessel might be found, in separate cases, to be both dead and alive. The possibility of a vessel being "born again" reveals the limitations of the metaphor inherent in the phrase "dead ships." A vessel is dead if it is taken out of service indefinitely; it need not be removed from service forever.

When the focus shifts from which vessels are dead, or when they have died, to the consequences of classifying them as dead, the safest course is the most cautious one. For dead ships, as for all structures that fail to achieve vessel status, the only sure implication is negative: the nature of the structure itself does not confer admiralty jurisdiction, but neither does it defeat every other possible basis for admiralty jurisdiction. This point complicates the process of defining what constitutes a dead ship. The definition is usually, but not always, decisive on the issue of jurisdiction.

With respect to contract claims, vessel status is sufficient to confer jurisdiction because it determines the subject-matter of the contract. The contract is in admiralty if it concerns a vessel and (with a few qualifications discussed later) outside of admiralty if it concerns a vessel under construction or a dead ship. To take the best known example, implicated earlier in the quotation from *Tucker v. Alexandroff*, contracts to build a vessel are outside

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3183 U.S. 424, 438 (1902).
4Id.
5See infra notes 46–49 and accompanying text.
6Compare Murray v. Schwartz, 175 F.2d 72, 72–73, 1949 AMC 1081 (2d Cir. 1949) (ship was dead) with Hanna v. The Meteor, 179 F.2d 957, 958 (2d Cir. 1950) (trial needed in separate case on whether ship was alive or dead).
7North Pac. S.S. Co. v. Hall Bros. Marine Ry. & Shipbuilding Co., 249 U.S. 119, 125 (1919) ("the true criterion being the nature of the contract, as to whether it have reference to maritime service or maritime transactions").
of admiralty. 8 And at the opposite extreme, contracts involving deactivated vessels also are outside of admiralty. 9

In between these extremes, of course, difficult cases can arise, concerned mainly with the issue of how long the vessel is expected to be out of service. In the leading case of North Pacific Steamship Co. v. Hall Brothers Marine Railway and Shipbuilding Co., the vessel in question, the Yucatan, “had been wrecked, and had remained submerged for a long time; ice floes had torn away the upper decks, and some of her bottom plates also needed to be replaced.” 10 If not dead, as the Supreme Court held by finding the contract for repairs to be in admiralty, the Yucatan certainly was on life support. The case demonstrates that even a vessel that has been sunk can still be alive. More generally, it shows that the same efforts at repair and improvement can be classified either as repairs of a living vessel, within admiralty, or as attempts to reactivate dead ships, outside of admiralty. Other contract claims share the same ambivalent character, such as contracts for wharfage. They are in admiralty if they are rendered to a vessel and outside of admiralty if they are rendered to a dead ship. 11

What appears to be decisive in distinguishing living vessels from dead ships is the owner’s decision to take the vessel out of service indefinitely. Severe damage to a vessel or the need for major repairs are not, by themselves, sufficient to kill a vessel off. 12 Both in contract and in tort cases, the test is “whether or not the object in question had or had not been withdrawn from navigation and maritime commerce.” 13 This common way of framing the issue, as we shall see, conflates the test for vessel status with


9Robert E. Blake Inc. v. Excel Envtl., 104 F.3d 1158, 1160–63, 1997 AMC 609 (9th Cir. 1997) (claim based on contract to reactivate vessel not in admiralty but tort claim for injury after sea trials completed was in admiralty); Murray v. Schwartz, 175 F.2d 72, 72–73, 1949 AMC 1081 (2d Cir. 1949) (contract for wharfage to dead ship not in admiralty).

10249 U.S. 119, 123 (1919).

11Compare Goodman v. 1973 26 Foot Trojan Vessel, 859 F.2d 71, 73 (8th Cir. 1988) (contract for wharfage of pleasure boat stored on dry land within admiralty) with Murray v. Schwartz, 175 F.2d 72, 72–73, 1949 AMC 1081 (2d Cir. 1949) (contract for wharfage of dead ship on water falls outside of admiralty).


the test for coverage under the Jones Act, whether a vessel is "in navigation." 14 In theory, these two issues are separate, although in practice, they tend to merge together. Like the Yucatan, many vessels may be temporarily taken out of navigation without falling into the category of dead ships. What constitutes a "dead ship" for purposes of admiralty jurisdiction is narrower than the category of vessels not "in navigation" for purposes of the Jones Act. The two issues are analogous, but they are not identical.

Some courts have recognized this distinction, but then taken it too far in the opposite direction. They have narrowed the definition of "dead ships" almost to the vanishing point, relying on the definition of "vessel" in the general provisions on rules of construction in Title 1 of the United States Code. Section 3 of that title provides that "[t]he word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 15 This inclusive definition, and particularly the phrase "capable of being used," has been invoked to justify a broad definition of "vessels" and a correspondingly narrow definition of "dead ships." A vessel need not be actually used to transport people or things by water, so long as it is "capable of being used" for this purpose. Thus, in McCarthy v. The Bark Peking, 16 the Second Circuit held that a ship currently in use as a maritime museum was a vessel, despite the fact that it had not been to sea under its own power for over 40 years. Although the court cited several decisions that supported this conclusion, 17 the statutory language in § 3 does not require it. The juxtaposition of "used" and "capable of being used" only raises the question of how far potential use must be from actual use; it does not resolve it.

In this respect, the issue of vessel status resembles the issue of navigability, where potential use of a body of water in interstate or international commerce is contrasted with actual use. 18 The fundamental inquiry in both areas should be the same: Is the likelihood of actual use great enough to engage the underlying purposes of admiralty jurisdiction and, in particular, the need for a uniform body of national law to allocate the risks of maritime commerce? Stated the other way around, the fundamental question is

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287 F.2d 783, 785, 1961 AMC 611 (4th Cir.), cert. denied, 366 U.S. 975 (1961) (test is whether vessel is "out of navigation").


151 U.S.C. § 3.


17Id. at 133–36. For a case that has gone even further, and completely rejected the doctrine of dead ships, see In re Queen, Ltd., 361 F. Supp. 1009, 1013, 1973 AMC 2510 (E.D. Pa. 1973).

whether excluding a potential use would compromise the purposes of admiralty jurisdiction.

Although framed in broad and therefore somewhat indefinite terms, this question raises great doubts about decisions like *The Bark Peking*. The vessel there could not easily have been returned to service, at least not without substantial repairs and reconditioning. It is difficult to see any loss to admiralty law in forsaking jurisdiction over a vessel so long in retirement and so far from actual use in maritime commerce. Just as dead men tell no tales, dead ships pose no threat to admiralty jurisdiction. This is true of the *Bark Peking*, as well as ships and barges that have been transformed into fixed extensions of the shore, for use as work platforms, restaurants, and in one particularly innovative case, a dance floor.\(^{19}\)

Exactly what constitutes a threat to admiralty jurisdiction, however, varies with the nature of the plaintiff’s claim. This is most obvious in cases under the Wreck Act.\(^{20}\) By definition, wrecks are not vessels and, if the terminology of dead ships is applied to them, they are plainly as dead as vessels can get. Yet claims for failure to mark or remove wrecks remain in admiralty because wrecks endanger other vessels in maritime commerce. Paradoxically, admiralty jurisdiction exists precisely because wrecks are dead ships. The same can be said of treasure salvage claims and even claims for contract salvage.\(^{21}\) An object can lose its status as a vessel and still remain the subject of a maritime claim. No doubt for this reason, the doctrine of dead ships is never mentioned in wreck removal and salvage cases. This tacit restriction on the doctrine’s scope illustrates its dependence on the ultimate purposes of admiralty law. Claims under the Wreck Act and for salvage lie at the heart of the purpose of admiralty law in protecting maritime commerce. Creating an exception for dead ships would entirely defeat the purpose of putting these claims in admiralty in the first place.

Cases of towage illustrate the same point, but with even more subtlety. Anything can be towed, provided that it can float. The fact that it is sufficiently seaworthy to be towed does not make it into a vessel. Objects that are regularly towed, such as barges, are vessels because their economic value depends upon their regular use in transportation. Thus, the existence of


\(^{20}\)33 U.S.C. § 408.

\(^{21}\)See *The Elfrieda*, 172 U.S. 186, 204–05 (1898) (describing the vessel subject to salvage as "the wreck" and applying admiralty law to a contract with the usual provision of "no cure, no pay").
a maritime lien on a towed object depends on whether it is a vessel. But the existence of admiralty jurisdiction does not depend at all on vessel status. Thus, in *Boston Metals Co. v. The Winding Gulf*, the Supreme Court applied maritime law to a contract for towage of an obsolete destroyer that was lacking both power and crew. Admiralty jurisdiction existed over the contract claim despite the status of the destroyer as a dead ship. The same conclusion follows even more obviously for tort claims. The risks created by a flotilla of tug and tow can easily endanger vessels outside the flotilla in maritime commerce.

All of this should go without saying, except that it illustrates two points, one specific and one general. The specific point is that a dead ship under tow is still a dead ship. The fact that it can be towed, despite some reasoning to the contrary in the opinions, does nothing to bring it back to life. The more general point is the one made earlier: Denying vessel status to an object defeats only one ground for admiralty jurisdiction; it does not defeat all grounds. A dead ship can still wander into admiralty. Again, just to take the most obvious example, the Admiralty Extension Act would support admiralty jurisdiction over a collision involving a dead ship that has been firmly affixed to the shore. Just like any other structure on the shore, whether it is a vessel or not, a dead ship can be involved in a maritime tort under the terms of the act.

This general point can be stated in terms of the tests for admiralty jurisdiction. For contract claims, the contract must “have reference to maritime service or maritime transactions.” The presence of a vessel necessarily satisfies this test, but the presence of a dead ship does not. Nevertheless, a dead ship may be involved in a contract with maritime subject matter, such as one for wreck removal, salvage, or towage. For tort claims, the role of vessel status is even more limited. It satisfies only one of the requirements for jurisdiction: whether there is “some relationship between the tort and traditional maritime activities, involving navigation or commerce on navigable waters.” The other requirement, location on

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22Amoco Oil v. M/V Montclair, 766 F.2d 473, 477–78, 1986 AMC 1420 (11th Cir. 1985), cert. denied, 475 U.S. 1121 (1986). This is not to say that vessel status alone is sufficient for liability, as opposed to jurisdiction. The liability of the towed object is a complicated question. Compare id. at 475–76 (liability for negligence of compulsory pilot) with United States v. Tug Parris Island, 215 F. Supp. 144, 147, 1963 AMC 643 (E.D.N.C. 1963) (no liability for negligence only of tug).
navigable waters, depends upon where the vessel is. If it is drawn up on land, jurisdiction generally will be absent, unless the Admiralty Extension Act applies. A dead ship, on the other hand, does not satisfy even the requirement of substantial relationship to traditional maritime activity. Nevertheless, it still might be involved in a tort, such as a collision on navigable waters, that satisfies both this requirement and the requirement of maritime location.

One particular kind of tort claim, however, makes vessel status crucial to the issue of jurisdiction, and therefore also to the application of maritime law. These are claims for injuries to maritime workers aboard ships that are undergoing repairs, reconditioning, conversions, or similar modifications. A finding that these ships are dead defeats the requirement of substantial connection to traditional maritime commerce and prevents it from being satisfied in any other way. Because the issue is so important for jurisdiction over personal injury claims by maritime workers, and because those claims can be so valuable today, most of the modern litigation over dead ships occurs in this context. It is the subject of the next section of this article.

IV
DEAD SHIPS AND PERSONAL INJURY CLAIMS

Admiralty jurisdiction almost invariably becomes a matter of dispute in personal injury cases, not because jurisdiction alone is so important, but because it determines what law applies to the underlying controversy. Litigation over dead ships is no exception. Passengers, recreational boaters, or casual visitors rarely have anything to do with dead ships. Only maritime workers are likely to be on or near a dead ship—or to be injured by one. Consequently, they are the only plaintiffs likely to bring personal injury claims in which the dead ship issue is likely to be raised, usually by defendants anxious to avoid the generous remedies available to maritime workers.

This pattern of litigation occurs repeatedly over a closely related issue: whether an injured plaintiff is a "seaman" entitled to recover under the Jones

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Nevertheless, in a rare case, personal injuries aboard a vessel might not have a sufficient connection to traditional maritime commerce. Schoenbaum, supra note 2, at 34 n.1.

This might describe claims by maritime workers exposed to asbestos during repairs of vessels still in use, but these claims seem to have been excluded from admiralty jurisdiction for pragmatic reasons unrelated to the doctrine of dead ships. See Comment, From the "Dead Ship" Doctrine to Vessels "In Navigation": One Changing Aspect in Determining Admiralty Jurisdiction and Available Maritime Remedies, 70 Tul. L. Rev. 717, 741–43 (1995) [hereinafter One Changing Aspect]; Comment, Jurisdiction in Section 905(b) Actions—Wrong Test Doomed to Wrong Results, 13 Tul. Mar. L.J. 121 (1988); Comment, Admiralty Jurisdiction Over Asbestos Torts: Unknotting the Tangled Fibers, 54 U. Chi. L. Rev. 312, 321–22 (1987).
Act and, in particular, whether the plaintiff is attached to a "vessel in navigation."28 On the most obvious interpretation of the phrase, "vessel in navigation" is narrower than the term "vessel" itself. The vessel must be actually used in navigation, instead of just having the potential for such use, as allowed by the statutory definition in § 3, quoted earlier.29 Since the definition of "vessel in navigation" is part of the definition of "seaman," the actual use of the vessel must be related to the plaintiff's employment. As the Supreme Court has recently made clear, the plaintiff need not aid in navigation of a vessel, but his employment must be connected to the vessel's ordinary use: "a necessary element of the connection is that a seaman perform the work of a vessel."30 Others who work on board the vessel, notably longshore and harbor workers, are excluded from this definition. They work on board the vessel, but not with the continuing connection that exposes them to the risks of working at sea.31

Section 905(b) creates a remedy for longshore workers and harbor workers injured "by the negligence of a vessel."32 This remedy replaced the claim for unseaworthiness available to longshore workers as shore-based seamen under *Seas Shipping Co. v. Sieracki.*33 The comprehensive revision of the LHWCA in 1972 eliminated the claim for unseaworthiness and substituted the claim for negligence, while at the same time insulating stevedoring companies from liability for indemnification by vessels held liable for negligence. At the same time, the scope of the LHWCA was extended inland to areas adjacent to navigable waters, such as piers, wharfs, and dry docks.34 So much of this history is familiar, but its consequences for the doctrine of dead ships is complicated.

On the one hand, § 905(b) extends liability to any "vessel," defined in the statute as "any vessel upon which or in connection with which any person entitled to benefits under this chapter suffers injury or death arising out of or

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31 "All who work at sea in the service of a ship face those particular perils to which the protection of maritime law, statutory as well as decisional, is directed." Id. at 354 (citing Robertson, A New Approach to Determining Seaman Status, 64 Tex. L. Rev. 79 (1985)).

32 33 U.S.C. § 905(b).


in the course of his employment."\textsuperscript{35} Because this definition itself uses the term "vessel," it depends upon the definition of the term in § 3. Read literally, § 905(b) extends the negligence remedy to any vessel within the geographic coverage of the LHWCA, including vessels both on navigable waters and on areas adjoining navigable waters. In particular, by this reasoning, § 905(b) should extend to any claim by longshore or harbor workers on vessels in areas, such as dry docks or marine railways, adjacent to navigable waters.

On the other hand, the negligence action under § 905(b) replaces an unseaworthiness claim that, like the Jones Act, is available only to seamen working on board vessels in navigation.\textsuperscript{36} Claims for unseaworthiness differ from claims under the Jones Act only in being a part of general maritime law and in imposing a form of strict liability.\textsuperscript{37} This has led some courts to offer the opinion that the negligence claims under § 905(b) should have the same scope as claims for unseaworthiness. As the Fifth Circuit has said, "in enacting § 905(b), Congress did not create a new or broader cause of action in admiralty."\textsuperscript{38} This reasoning has been used to justify an implied restriction on § 905(b) to claims that fall within the scope of admiralty jurisdiction.\textsuperscript{39} So far as this goes, this reasoning follows the text of § 905(b) and has been endorsed by every federal circuit to have considered the issue.\textsuperscript{40} Section 905(b) creates a claim "against such vessel," modeled on the traditional admiralty remedy of an action in rem.\textsuperscript{41} Even if "vessel" is more broadly defined in the LHWCA to include individuals and agents,\textsuperscript{42} it still encompasses a remedy against the vessel itself that is available only in admiralty.

This reasoning, however, should not be extended to require that the vessel

\textsuperscript{35} The full definition is in 33 U.S.C. § 902(21):

Unless the context requires otherwise, the term "vessel" means any vessel upon which or in connection with which any person entitled to benefits under this chapter suffers injury or death arising out of or in the course of his employment, and said vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member.

\textsuperscript{36} Seaman status also determines who is entitled to maintenance and cure. Schoenbaum, supra note 2, at 198.


\textsuperscript{39} Id. at 127 & n.6. This decision is often taken to stand for the broader proposition that claims under § 905(b) can only be made against a vessel in navigation, not just a vessel. R. Force & A. Yiannopoulos, Admiralty and Maritime Law: Cases, Notes and Text 4–49 (1998). This proposition is criticized in the text following this note.

\textsuperscript{40} Schoenbaum, supra note 2, at 379 & n.31. If claims under § 905(b) were extended inland to areas adjacent to navigable waters, it would increase the difficulty of ascertaining where admiralty law stopped and state tort law began in the "twilight zone" of coverage. Sun Ship, Inc. v. Pennsylvania, 447 U.S. 715, 725, 1980 AMC 1930 (1980).

\textsuperscript{41} 33 U.S.C. § 905(b).

\textsuperscript{42} 33 U.S.C. § 902(21). See supra note 35.
be “in navigation” as required by the Jones Act. Nothing in the LHWCA in its present form supports the conclusion that longshore and harbor workers must meet the definition of “seamen” under the Jones Act. Far from it. “Members of the crew” are explicitly excluded from coverage under the LHWCA\(^43\) and, as we now know, this phrase has precisely the same meaning as “seamen” under the Jones Act.\(^44\) Moreover, § 905(b) itself abolishes any claim for unseaworthiness by longshore and harbor workers.\(^45\) Yet the leading modern decisions on “dead ships” involve such claims of unseaworthiness.

Without even using the term “dead ship,” these decisions reach the common-sense conclusion that a deactivated vessel does not generate a warranty of seaworthiness. In *West v. United States*,\(^46\) the Supreme Court held that no such warranty applied to a Liberty Ship from World War II undergoing a complete overhaul to be reactivated from the “moth ball” fleet. The whole point of the overhaul was to make the vessel seaworthy, so that it would have been entirely premature to impose a warranty of seaworthiness before completion of the ongoing work.\(^47\) *Roper v. United States*\(^48\) concerned a vessel that had been more permanently removed from navigation and was used only to store grain. Again, the Supreme Court found no warranty of seaworthiness, drawing an analogy to the Jones Act, “where it has long been held that recovery is precluded if the ship involved is not a vessel in navigation.”\(^49\)

Because of statements by the Supreme Court such as this, courts sometimes equate “dead ships” with those not “in navigation” under the Jones Act.\(^50\) To do so, however, constricts admiralty jurisdiction to the coverage of the Jones Act and, as applied to § 905(b), constricts claims for “negligence of a vessel” to claims against a vessel “in navigation.” This is


\(^45\) 33 U.S.C. § 905(b).


\(^49\) Id. at 24 (footnote omitted). For other cases like *Roper*, see Hawn v. American S.S. Co., 107 F.2d 999, 1000–01, 1940 AMC 120 (2d Cir. 1939) (no claim for maintenance and cure); Kissinger v. United States, 176 F. Supp. 828, 831–32, 1960 AMC 1486 (E.D.N.Y. 1959) (no claim for unseaworthiness but claim for maritime tort).

contrary both to the literal terms of the statute and to its legislative history. Retaining a requirement that the vessel be "in navigation" makes sense only if seamen are covered by the LHWCA or claims for unseaworthiness can be brought by workers who are covered. But, as we have seen, seamen are explicitly excluded from coverage and claims for unseaworthiness are explicitly abolished by § 905(b). The whole point of the 1972 amendments to the LHWCA was to abolish claims for unseaworthiness under the act. It makes no sense to retain a remnant of seaman status in a statute that now excludes both seamen and their claims for unseaworthiness from its scope. All that should be required for coverage under § 905(b) is vessel status and admiralty jurisdiction.

What, then, is the continuing significance of cases like West and Roper? Both cases involved ships that were not just out of navigation, but that were no longer used as means of transportation at all. They were dead ships. Both ships required a complete overhaul before they could be used again in maritime commerce. The ship in West was undergoing such an overhaul at the time of the accident giving rise to the plaintiff's claim\textsuperscript{51} and the ship in Roper was used as a grain warehouse at the time of the plaintiff's injury.\textsuperscript{52} On this interpretation, the decisions stand for the unexceptional proposition that a dead ship is not a vessel in navigation because it is not a vessel at all. Nevertheless, the opinions are not entirely clear on this issue because both are premised on the existence of admiralty jurisdiction, yet neither discusses it.\textsuperscript{53} The explanation for this anomaly no doubt lies in the test of admiralty jurisdiction over tort cases at the time, which required only maritime location.\textsuperscript{54} Because both ships were docked on navigable waters, the question of vessel status made no difference to the existence of admiralty jurisdiction.

The ambiguity created by West and Roper has persisted in more recent decisions. Death, at least for ships, is not all-or-nothing, but a matter of degree. In its most recent discussion of the issue, Chandris, Inc. v. Latsis,\textsuperscript{55} the Supreme Court relied upon West in analyzing the question whether a ship undergoing repairs was "in navigation" under the Jones Act. The Court ultimately held that the question was close enough to be submitted to the jury as part of its determination whether the plaintiff was a seaman under the Jones Act. The ship in Chandris, however, had not been withdrawn from

\textsuperscript{51}361 U.S. at 120–21.
\textsuperscript{52}368 U.S. at 21.
\textsuperscript{53}In West, the claim was under the Public Vessels Act, which requires admiralty jurisdiction. 361 U.S. at 118, 122–24; 46 U.S.C. app. § 781. And in Roper, the claim was under the Suits in Admiralty Act, which also has the same requirement. 368 U.S. at 20; 46 U.S.C. app. § 742.
navigation indefinitely, as had the ship in *West*; it had only been placed in dry dock for repairs for six months. Quoting a decision of the Ninth Circuit, the Court said that "the prevailing view is that 'major renovations can take a ship out of navigation, even though its use before and after the work will be the same.'"\textsuperscript{56} In endorsing this statement, the Court could hardly have meant that ships in this situation were nonvessels for all purposes in admiralty law. Nothing in the opinion, for instance, questions the doctrine that contracts for repair, even for severely damaged vessels as in *North Pacific Steamship*, are subject to admiralty jurisdiction.

The metaphor latent in the term "dead ships" does little to illuminate the treatment of vessels in this intermediate category. Most frequently they are ships undergoing extensive repairs, like the ship in *Chandris*.\textsuperscript{57} These ships can become nonvessels if the owner removes them indefinitely from any use related to transportation, as in *West* and *Roper*; or they can remain vessels in navigation if the repairs are minor and routine. A sharp distinction between dead ships and live vessels does little to help in analyzing these cases. Another problematic case concerns construction barges, which sometimes are treated as nonvessels because they are fixed to the shore or to the bottom; sometimes as vessels not in navigation because they are moved only infrequently; and sometimes as vessels in navigation because, like ordinary barges, they are regularly used for transportation.\textsuperscript{58}

Wholly apart from the question whether the vessel is in navigation or not, vessel status does not completely resolve the question of coverage under § 905(b). Admiralty jurisdiction is also required and, as noted earlier, in tort cases it has two components: location on navigable waters and a substantial relationship to traditional maritime activities. Vessel status usually satisfies only the second of these requirements. Whether the first is satisfied depends on the location of the vessel. If it is still on navigable waters, then admiralty jurisdiction is available and the plaintiff's claim is governed by § 905(b). If, as sometimes happens during repairs, the vessel is drawn up onto land, then

\textsuperscript{56}Id. at 374 (quoting McKinley v. All Alaskan Seafoods, Inc., 980 F.2d 567, 570, 1993 AMC 305 (9th Cir. 1992)).

\textsuperscript{57}Many of the these cases are discussed in *Chandris*. Id. at 373–75; see Desper v. Starved Rock Ferry Co., 342 U.S. 187, 190–91, 1952 AMC 12 (1952) (vessel laid up for the winter not in navigation); Bull, supra note 29, at 583–84.

admiralty jurisdiction fails and the plaintiff's claim will be determined by state law.\textsuperscript{59}

Perhaps this result appears to be arbitrary because it makes the existence of a negligence claim under § 905(b) depend on where the vessel is located. But in this respect, such claims are no different from any other tort claim arising near, but not clearly on, navigable waters. The problem, if there is one, is with maritime location as a requirement of admiralty jurisdiction. It has nothing to do with the doctrine of dead ships.

V

CONCLUSION

What lessons can be drawn from this brief visit to the underworld of dead ships? Some courts and commentators have reached the agnostic conclusion that the doctrine of "dead ships" just means different things in different contexts.\textsuperscript{60} Although this is accurate as a cautionary statement about varying judicial usage, a few other lessons can be drawn from the cases. First, vessel status is usually sufficient for admiralty jurisdiction, but not necessary. A thoroughly dead ship, like a wreck, can still end up in admiralty. Second, "dead ships" are not the opposite of "vessels in navigation." A vessel can be out of navigation and still be a vessel. And last, but most important, the doctrine of dead ships works best, as do all admiralty doctrines, when it is most responsive to the basic purposes of admiralty law. In jurisdiction, this is the need for a uniform national law to govern maritime commerce. In personal injury cases, it is adjusting the scope of different remedies to the risks confronted by different types of maritime workers.

The interest of our subject, as a distinguished publisher and sponsor like George Jay Joseph has long recognized, is in seeing how the basic purposes of admiralty law work themselves out in even the most intricate facets of admiralty doctrine. Dead ships is a doctrine that yields, with only some difficulty, to such an analysis. A line, Justice Frankfurter once observed, is not the worse for being narrow. It is also not the worse for revealing the ultimate purposes that the law seeks to achieve.

\textsuperscript{59} Dry docks might be thought to be dry land, but the cases have held otherwise, so long as they border on navigable water. See, e.g., Gonsalves v. Morse Dry Dock & Repair Co., 266 U.S. 171, 172, 1924 AMC 1539 (1924); Sea Vessel, Inc. v. Reyes, 23 F.3d 345, 348–49, 1994 AMC 2736 (11th Cir. 1994). The tort must also occur on the vessel in the dry dock, not on the dry dock itself. Florio v. Olson, 129 F.3d 678, 680–81, 1998 AMC 588 (1st Cir. 1997).

\textsuperscript{60} Robert E. Blake Inc. v. Excel Envl., 104 F.3d 1160–61, 1997 AMC 609 (9th Cir. 1997); One Changing Aspect, supra note 27, at 743–44.