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Note

*217 YACHT RACERS CONTRACT OUT OF COLREGS: JUNO SRL v. S/V ENDEAVOUR

G. Hans Sperling

On October 3, 1992, the sailing yachts Charles Jourdan and Endeavour collided while racing in the La Nioulargue Regatta off the southern coast of France. [FN1] The Charles Jourdan filed a protest against the Endeavour under the International Yacht Racing Rules (IYR Rules) and the Regatta's Sailing Instructions. [FN2] In accordance with the yacht racing rules, an International Jury convened and found the Endeavour entirely at fault for having violated the IYR Rules. [FN3] Approximately one year later in Maine, the owners of the Charles Jourdan arrested the Endeavour and filed suit in federal district court seeking as damages the cost of repair to the Charles Jourdan and lost charter income. [FN4] In a bench trial, the district court ignored the finding of the International Jury and instead applied the International Regulations for Preventing Collisions at Sea (COLREGS). [FN5] It found the Charles Jourdan sixty-percent at fault and the Endeavour forty-percent at fault. [FN6] The United States Court of Appeals for the First *218 Circuit reviewed the case de novo, [FN7] reversing the district court's allocation of fault. [FN8] Applying the IYR Rules, the court reinstated the finding of the International Jury that Endeavour was solely at fault for the collision. [FN9] The court of appeals held that the Charles Jourdan and the Endeavour were contractually bound to race by the IYR Rules, and therefore any issues of fault for collisions must be resolved according to those rules. [FN10]Juno SRL v. S/V Endeavour, 58 F.3d 1, 1995 AMC 2678 (1st Cir. 1995).

International regulations governing the lighting and movement of vessels operating on the high seas and connecting waters have existed for approximately 100 years and are periodically updated. [FN11] The COLREGS are the latest version of these rules, [FN12] having been developed over a four-year period by the Intergovernmental Maritime Consultative Organization (IMCO). [FN13] The COLREGS were adopted at the international level at a conference in London in 1972 [FN14] as the Convention on the International Regulations for Preventing Collisions at Sea (the Convention). [FN15] They superseded the 1960 regulations, which had been approved by the International Conference on Safety of Life at Sea. [FN16] In 1975, the United States Senate unanimously consented to the ratification of the Convention. [FN17] A year later, the United States deposited the instrument of accession with the IMCO, [FN18] and a year after that began implementing the COLREGS through federal legislation and administrative regulations. [FN19]

Yacht racing has its own traditions and rules. One observer, writing over a century ago, commented that, "[f]or a long time yacht *219 racing was conducted without any central authority or court of appeal." [FN20] England's Yacht Racing Association was founded in 1875, and came to be "acknowledged by clubs and owners alike as the ruler of the sport." [FN21] Although the early yacht racing rules were criticized as unorganized and confusing, [FN22] they dealt with a broad range of issues in considerable detail. They covered both private and open matches and defined the duties of the yacht designers and owners, the yacht club, the race officials, and the sailing master. [FN23] From these beginnings came modern yacht racing rules, with provisions for protesting a yacht's infringement of the rules, notification of the yacht against whom the protest is lodged, conduct of hearings and issuance of decisions, implementation of remedies and penalties, hearing of appeals, and even issuance of written appellate

decisions forming a body of jurisprudence. [FN24] The rules include sophisticated quasi-legal notions corresponding to the legal concepts of standing, conflicts of interest, and burdens of proof. [FN25]

De Sole v. United States [FN26] involved a collision on Chesapeake Bay between the plaintiff De Sole's yacht Ciro and the Cinnabar. [FN27] At a protest hearing five days after the collision, the Race Committee absolved the Ciro of any fault and disqualified Cinnabar for violating an anti-collision rule common to both the yacht racing rules and the COLREGS. [FN28] While the issue of whether the yacht racing rules or the ***220** maritime rules would apply was a secondary issue in De Sole, [FN29] the court's decision has been interpreted as "assum[ing] the applicability of the [IYR Rules] to race participants and the authority of the protest committee to determine fault." [FN30]

In Sletten v. Hawaii Yacht Club, [FN31] a dispute arose out of a collision between the Actuation and the leialoha during a race in Honolulu Harbor. [FN32] As in De Sole, the issue of whether to apply the IYR Rules or the COLREGS was of secondary importance. [FN33] The Sletten court dispensed with the question summarily: "[The IYR R]ules do not preempt the applicable statutory provision . . .." [FN34] The court did not cite any authority, nor did it explain its reasoning on the issue. [FN35]

In the 1897 case of Clark v. Thayer, [FN36] Charles Clark brought an action in New York state court against Bayard Thayer to recover damages resulting from a collision during a race in Newport Harbor. [FN37] The trial court instructed the jury that, "while the navigation laws of the United States were imperative, they could be waived by persons who were willing to waive them." [FN38] Finding that the participants had waived such laws, the court applied only the yacht club's rules. [FN39] The appellate court affirmed on this point. [FN40]

In Meggeson v. Burns, [FN41] a 1971 English case, the court found the Shewitch liable for damages sustained by the Suzalah as a result of the defendant's breach of the yacht racing rules during a race from Yarmouth, Isle of Wight, to Hamble. [FN42] As in Clark v. Thayer, the court enforced the parties' agreement to abide by the yachting racing rules and procedures. [FN43] The Meggeson court relied on the findings of fact of the ***221** yacht club protest committee [FN44] and applied the yacht racing rules. [FN45] The court held that "[i]t is clear that the parties had agreed to be bound by the I.Y.R.U. rules and the committee's findings of fact, as far as they go, are final." [FN46] Neither party protested the application of the yachting rules in favor of maritime rules. [FN47]

In Salvesen v. Young, [FN48] a 1965 Scottish case, a controversy arose when the yachts Tinto and Namhara collided during a race on the Firth of Clyde. [FN49] The club's protest committee found that the Tinto had breached the IYR Rules, and that the breach caused the collision and the damage to the Namhara. [FN50] When the Namhara brought an action in the Sheriff Court of Lanark seeking reparation, counsel for the Tinto argued that she was not bound by the finding of the committee. [FN51] The court held that by agreeing to be bound by the yacht racing rules, the parties relinquished their right to bring such a dispute before the courts. [FN52] Specifically, the court stated that "[t]he provisions of the rules can, I think, be likened to an arbitration clause in a contract, which also has the effect of excluding the jurisdiction of the court." [FN53]

In The Satanita, [FN54] the yacht Valkyrie brought an action in Britain's Admiralty Division for damages sustained when the two yachts collided in a 1894 regatta on the Clyde in Scotland. [FN55] The court found that the Satanita violated the yachting rules, causing the Valkyrie to sink. [FN56] The trial court applied the Merchant Shipping Act, which limited the Satanita's liability. [FN57] Under yacht club sailing rules, however, the vessel would have been liable for all damages. [FN58] The appellate court reversed, [FN59] a decision upheld by the House of Lords. [FN60] Lord Halsbury wrote that "the substance of it is that the persons who are ***222** going to race agree to race upon these terms with each other. That being so, the whole question turns upon what is the contract." [FN61] Having identified the issue as one of contract, Lord Halsbury concluded that the intention of the parties in contracting was "not to be bound by the limitation of the Merchant Shipping Act, but that all damages are to be paid by the person disobeying the rules." [FN62]

In the noted case, the United States Court of Appeals for the First Circuit faced an issue of first impression in

the circuit: what weight should be accorded private rules and dispute resolution procedures in determining liability and damages arising out of a collision between two vessels engaged in a yacht race? [FN63] The Court of Appeals, reviewing de novo, reversed the district court's finding that the IYR Rules "do not and cannot preempt the application of the COLREGS." [FN64] The court also reversed the district court's finding that the yacht Endeavour was forty-percent at fault, and that the Charles Jourdan was sixty-percent at fault. [FN65] It deferred instead to the International Jury finding that the Endeavour was entirely at fault. [FN66] The Court of Appeals upheld the trial court's determination of damages in the amount of $10,000. [FN67]

The court expressed surprise that it could find no cases on point within the circuit. [FN68] Even outside the First Circuit, the court found "a dearth of applicable jurisprudence." [FN69] Relying on a handful of British and American cases dating as far back as 1896, [FN70] the court held that by entering a regatta with unambiguous, special rules, the parties waived the conflicting COLREGS, and the IYR Rules would therefore apply. [FN71]

***223** The First Circuit found that the COLREGS were enacted to provide rules of the road to govern maritime traffic throughout the world; [FN72] their purposes did not encompass application to yacht race collisions. [FN73] The court found "nothing in their history, or in the public policy issues that led to their enactment, indicat[ing] that they were meant to regulate voluntary private sports activity in which the participants have waived their application . . . ." [FN74]

The court also relied on public policy favoring the settlement of disputes through arbitration and other nonjudicial fora. [FN75] Specifically, the First Circuit reasoned that its decision comported with the Federal Arbitration Act, [FN76] which provides that a "'written provision in any maritime transaction . . . to settle by arbitration a controversy arising out of such . . . transaction . .. shall be valid, irrevocable, and enforceable.'" [FN77] The court concluded that "[t]hese conditions exist here." [FN78]

The Juno decision puts yacht racers in the First Circuit on notice that the courts are uninterested in reopening disputes already decided by the yacht racing authorities. Courts in the First Circuit will enforce yacht racing committees' decisions based on the yacht racing rules; they will not insist on applying the COLREGS to yacht race collisions.

Each of the British cases--The Satanita, Salvesen v. Young, and Meggeson v. Burns--applied the yachting rules over the maritime rules, and each did so under a contract theory, holding that the parties had agreed to be bound by the yachting rules. [FN79] The same is true of the New York appellate court in Clark v. Thayer. [FN80] These cases are consistent in ***224** their holdings. They span two continents and a century of jurisprudence. Regardless of geographic origin or age, these cases provide persuasive authority, given the absence of any contrary rules.

The American federal cases are somewhat less helpful. The Juno court says of De Sole, "the court assumed the applicability of the [IYR Rules] to race participants and the authority of the protest committee to determine fault." [FN81] However, the De Sole court emphasized in its opinion that the yacht racing and maritime rules in question were substantially similar. [FN82] This possibly suggests that the De Sole court might defer to the yacht racing rules only to the extent that they were in harmony with maritime law regarding culpability. In fact, De Sole tempered any deference it may have had toward the yacht racing authorities, stating, "we should hesitate before concluding that fact finding and decisions by the yacht racing committees are altogether preclusive of any questions related to disputes." [FN83] Thus, De Sole can hardly be said to establish a rule favoring deference to the yacht racing rules and procedures.

The contrary statement of the court in Sletten v. Hawaii Yacht Club [FN84] that "[the IYR R]ules do not preempt the applicable statutory provision . . ." [FN85] further clouds the issue. The conclusory statement is dicta, [FN86] is unexplained, and is unsupported by precedential authority. [FN87] Because of the court's cursory handling of the issue, and the fact that Sletten is an unreported district court case, its value as persuasive authority is greatly diminished.

Clearly, the cases that have primarily addressed the issue strongly favor the application of the privately agreed-upon yachting racing rules over the maritime rules. Courts have consistently applied yacht racing rules. It is only in cases where courts have touched upon the question in passing, as a secondary issue, that confusion has ensued. The Juno court's holding thus comports well with the relevant jurisprudence.

***225** The court's second argument goes to the purposes underlying the COLREGS. The COLREGS were developed by the IMCO, [FN88] an organization whose primary declared purpose is to facilitate cooperation among governments "in the field of governmental regulation and practices . . . affecting shipping engaged in international trade . . . ." [FN89] Forty-six governments were represented at the international conference at which the text of the COLREGS was agreed upon. [FN90] Five other nations, Hong Kong, and nine intergovernmental organizations also were present as observers. [FN91] The magnitude of the international coordination regarding the Convention is more consistent with the purpose of standardizing rules governing merchant marine vessels than with the purpose of regulating yacht racing. Furthermore, Article IV(1)(a) of the Convention provides that it will enter into force a year after "the date on which at least [fifteen] States, the aggregate of whose merchant fleets constitutes not less than [sixty-five] per cent . . . of the world fleet of vessels of 100 gross tons and over have become Parties to it . . . ." [FN92] The fact that the Convention's entry into force of law is linked to merchant shipping suggests that the Convention is intended primarily to regulate those fleets. [FN93] The Convention does deal with "sailing vessels," [FN94] but not with yacht racing specifically; those provisions deal with circumstances that would arise in the course of normal navigation, not those that might arise under racing conditions. [FN95]

As Congress debated the COLREGS, recreational boating interests voiced concern over potential impacts on the boating industry in the event that the regulations were rigidly enforced against small boats. [FN96]***226** In an effort to allay these concerns, it was pointed out that the COLREGS "were developed basically as a set of rules for large commercial vessels." [FN97] The Committee on Merchant Marine and Fisheries recognized the unreasonableness of automatically applying all of the COLREGS' requirements to small boats. [FN98] In response, the Coast Guard committed to interpret and apply the COLREGS in such a way as to avoid any unreasonable impact on the small boating activities. [FN99] Although the specific regulations in question deal with lighting requirements, and not with navigational rules, which have been at issue in the yacht race collision cases, the legislative history nevertheless indicates that Congress intended the COLREGS to be applied flexibly to small boats. [FN100] A closer look at the purpose underlying the regulations thus confirms the Juno court's conclusion that the COLREGS are "simply not applicable to private yacht racing." [FN101]

The court's third argument is based on the public policy favoring the private resolution of disputes, with particular reference to arbitration. [FN102] Arbitration is seen as a comparatively fast and inexpensive alternative to litigation. [FN103] By resolving disputes privately, arbitration benefits the judicial system by helping to reduce docket congestion. [FN104]***227** The decisions of arbitrators also tend to be more consistent with the practices of the activities in which the disputes arise. [FN105] For the parties to a dispute, therefore, arbitration can provide more satisfying results.

Deference by the courts to the rules and procedures of the yacht racing authorities, like deference to an arbitration panel, will help relieve overburdened court dockets. The best evidence of this is the past success of the yacht racing rules in resolving conflicts before they spill over into the courts. The dissent in De Sole points out that the yacht racing rules "provided an 'expeditious and uncomplicated' procedure which could 'be likened to an arbitration clause in a contract, which also has the effect of excluding the jurisdiction of the court.' The rule, therefore, has resulted in few cases involving damages from a yacht race reaching the courts." [FN106] On the other hand, a decision that allows the courts to second guess the decisions of the yachting authorities would aggravate docket congestion, inviting "the intervention of the courts of admiralty for every stay or other bit of rigging broken during a race which can be blamed on another participant." [FN107]

Additionally, yacht racing protest committees will likely be better able than the courts to make decisions that are appropriate to the sport, just as arbitrators experienced in a particular industry might be better able than the courts to decide a dispute arising within that industry. [FN108] In De Sole, the Chesapeake Bay Yacht Racing Association

and the United States Yacht Racing Union complained that "'[t]he court below, without any knowledge or understanding of the sport upon which it cavalierly ***228** passed judgment . . . issued a decision which, without exaggeration, carries real potential to rip the sport of sailboat racing asunder.'" [FN109] No such criticism can be leveled at the Juno court. The International Jury was composed of yacht racing judges from France, Belgium, Andorra, Switzerland, Italy, and the United Kingdom. [FN110] All had been certified by the International Yacht Racing Union. [FN111] The Juno court described the International Jury as a "panel of experts who are fully versed in the niceties of the activity in question." [FN112] Such an expert panel, like an arbitration panel, is undoubtedly more knowledgeable of the rules and practices of yacht racing. It follows that the courts should defer to the findings of yacht racing protest committees as they would to those of arbitrators.

The Juno court wisely exercised restraint in deferring to the findings of the International Jury. The court's decision comports with the traditional rule for dealing with such cases, with the purpose underlying the relevant legislation, and with the policy favoring private dispute resolution. The Juno court also exercised common sense in considering the practical implications of its decision. "Insistence on blind application of COLREGS to the facts of this case . . . would turn on its head and render rife with uncertainty the thousands of private yacht races that take place throughout the United States and worldwide . . . ." [FN113] It foresaw problems arising in such international races as the America's Cup and the yachting events of the Olympic Games. [FN114] Teams could protest to yachting authorities under the IYR Rules and then relitigate unfavorable decisions in the courts under the COLREGS. [FN115] In Juno, the First Circuit acted to avoid "[s]uch absurdity;" [FN116] the other circuits would do well to follow its lead.

[FN1]. See Juno SRL v. S/V Endeavour, 58 F.3d 1, 2-3, 1995 AMC 2678, 2679-80 (1st Cir. 1995).

[FN2]. See id. at 3, 1995 AMC at 2680. "[T]he Sailing Instructions established the conditions by which race participants agreed to be bound. One of these was that '[t]he event [would be] governed by the International Yacht Racing Rules of the IYRU (1989)....' [T]hese rules set out a detailed mechanism for determining who among competing yachts has infringed these rules of conduct." Id. at 5-6, 1995 AMC at 2684-85 (citing the IYR Rules).

[FN3]. See id. at 3, 1995 AMC at 2680.

[FN4]. See id., 1995 AMC at 2681.

[FN5]. See id. at 3-4, 1995 AMC at 2681; see also 33 U.S.C. s 1601-1608; 33 C.F.R. s 81, app. A. Rule 13 of the COLREGS provides in relevant part: "any vessel overtaking any other shall keep out of the way of the vessel being overtaken," and a "vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam ...." 33 C.F.R. s 81, app. A, Rule 13; Juno, 58 F.3d at 3 n.4, 1995 AMC at 2681 n.4. Rule 37.1 of the IYR Rules provides that a "windward yacht shall keep clear of a leeward yacht." Juno, 58 F.3d at 2 n.1, 1995 AMC at 2679 n.1. Given the physical situation of the yachts just prior to the collision, application of Rule 13 of the COLREGS puts CHARLES JOURDAN at fault. See Juno v. S/Y Endeavour, 865 F. Supp. 13, 17, 1995 AMC 2111 (D. Me. 1994), aff'd in part and rev'd in part, 58 F.3d 1, 1995 AMC 2678 (1st Cir. 1995). Application of IYR Rules would put the ENDEAVOUR at fault. See Juno, 58 F.3d at 3, 1995 AMC at 2680.

[FN6]. See Juno, 58 F.3d at 2, 1995 AMC at 2679. The International Jury found ENDEAVOUR to be entirely at fault. See id. at 3 n.3, 1995 AMC at 2680 n.3 (quoting the decision of the International Jury). However, the district court allocated fault between the two yachts and held that CHARLES JOURDAN had violated the COLREGS, and thus was presumed at fault under the "Pennsylvania Rule." See id. at 4, 1995 AMC at 2681-82;Juno, 865 F. Supp. at 18, 1995 AMC at 2111 (citing The Pennsylvania, 86 U.S. (19 Wall.) 125 (1873); Continental Grain Co. v. Puerto Rico Maritime Shipping Authority, 972 F.2d 426, 436-37, 1993 AMC 1578, 1593-94 (1st Cir. 1992) (applying the "Pennsylvania Rule")). The ENDEAVOUR was also at fault for violating Rule 8 of the COLREGS, which imposes a general duty of good seamanship. Juno, 865 F. Supp. at 18, 1995 AMC at 2111.

[FN7]. See Juno SRL v. S/V Endeavour, 58 F.3d 1, 4, 1995 AMC 2678, 2682 (1st Cir. 1995).

[FN8]. See id. at 7, 1995 AMC at 2687.

[FN9]. See id.

[FN10]. See id. at 6, 1995 AMC at 2685.

[FN11]. See H.R. Rep. No. 447, 95th Cong., 1st Sess. 1 (1977).

[FN12]. See 33 U.S.C. ss 1601-1608; 33 C.F.R. s 81, app. A.

[FN13]. See H.R. Rep. No. 447, supra note 11, at 2. In 1982, the IMCO's name was changed to the International Maritime Organization (IMO). See 1985/86 Y.B. Int'l Orgs. (Union of International Associations) B1117g.

[FN14]. See H.R. Rep. No. 447, supra note 11, at 2.

[FN15]. International Regulations for Preventing Collisions at Sea, Oct. 20, 1972, 28 U.S.T. 3459, 1050 U.N.T.S. 16. See also H.R. Rep. No. 447, supra note 11, at 12-47.

[FN16]. See H.R. Rep. No. 447, supra note 11, at 2.

[FN17]. See id.

[FN18]. See id.

[FN19]. See id.; see also 33 U.S.C. ss 1601-1608; 33 C.F.R s 81, app. A.

[FN20]. 1 Sir Edward Sullivan et al., Yachting 146 (The Duke of Beaufort, K.G., ed., 1894).

[FN21]. Id.

[FN22]. See id. at 150. "The rules, being numerous and complex, must always be difficult to follow; but this difficulty is increased tenfold by unmethodical arrangement, and by the absence of any code whereby the law-making decisions of the Council can be discovered and kept in view by racing owners, by 'sailing' committees, and by the Council itself." Id. at 150.

[FN23]. See id. at 146-67. A second set of rules dealt with yacht specifications. See id. at 167-86.

[FN24]. See generally Thomas J. McDermott, Sailboat Racing Rules, The Law of Yacht Racing 134-54, 178-80 (1973) (explaining the 1973 version of the rules and presenting them in outline form).

[FN25]. See id. at 134-54.

[FN26]. 947 F.2d 1169, 1992 AMC 242 (4th Cir. 1991).

[FN27]. See id. at 1170, 1992 AMC at 242-43.

[FN28]. See id. at 1171, 1992 AMC at 242-43. "IYRR 37.2 requires that '[a] yacht clear astern shall keep clear of a yacht clear ahead.' ... It is virtually identical to Rule 13 of the Road as found in 33 U.S.C. s 2013 that 'any vessel overtaking any other shall keep out of the way of the vessel being overtaken.'" Id. at 1180 n.4, 1992 AMC at 257 n.4 (Widener, J., dissenting) (quoting the IYR Rules and the COLREGS). The court described the rule "granting absolute preference to the vessel ahead" as "universally well established and observed ...." See id. at 1174, 1992 AMC at 249; see also id. at 1176 n.11, 1992 AMC at 252 n.11 ("the requirement to give way to the ship ahead was an ordinary navigation rule as well as a sailing rule of the association involved").

[FN29]. See id.; see also Juno SRL v. S/V Endeavor, 58 F.3d 1, 5, 1995 AMC 2678, 2684 (1st Cir. 1995).

[FN30]. Juno, 58 F.3d at 5, 1995 AMC at 2684.

[FN31]. 1993 WL 643379, 1993 AMC 2863 (D. Haw. 1993).

[FN32]. See id. at *1, 1993 AMC at 2863.

[FN33]. See id. at *4, 1993 AMC at 2867.

[FN34]. Id.

[FN35]. See id., 1993 AMC at 2867; see also Juno SRL v. S/V Endeavor, 58 F.3d 1, 5, 1995 AMC 2678, 2684 (1st Cir. 1995).

[FN36]. 43 N.Y.S. 897 (N.Y. App. Div. 1897).

[FN37]. See id. at 897.

[FN38]. Id. at 898.

[FN39]. See id.

[FN40]. See id. at 898-99. The court concluded, "We think this was a perfectly fair and entirely accurate statement of the law applicable to the subject." Id.

[FN41]. 1 Lloyd's Rep. 223 (1972).

[FN42]. See id. at 224.

[FN43]. See id. at 226.

[FN44]. See id. at 225-26.

[FN45]. See id. at 226.

[FN46]. Id.

[FN47]. See id.

[FN48]. 1966 S.L.T. (Sh. Ct.) 81.

[FN49]. See id. at 81.

[FN50]. See id. at 81-82.

[FN51]. See id. at 82.

[FN52]. See id. at 83.

[FN53]. Id.

[FN54]. 1897 App. Cas. 59.

[FN55]. See id. at 59-60.

[FN56]. See id. at 60.

[FN57]. See id. at 59-60.

[FN58]. See id. at 59.

[FN59]. See id. at 60.

[FN60]. See id. at 68.

[FN61]. Id. at 62.

[FN62]. Id. at 63.

[FN63]. See Juno SRL v. S/V Endeavor, 58 F.3d 1, 2, 1995 AMC 2678, 2679 (1st Cir. 1995).

[FN64]. Juno v. S/Y Endeavour, 865 F. Supp. 13, 17, 1995 AMC 2111 (D. Me. 1994), aff'd in part and rev'd in part, 58 F.3d 1, 1995 AMC 2678 (1st Cir. 1995).

[FN65]. See Juno, 58 F.3d at 2, 7, 1995 AMC at 2679, 2687.

[FN66]. See id. at 7, 1995 AMC at 2687.

[FN67]. See id. at 7-8, 1995 AMC at 2688. The yachting rules included no provisions for the assessment of damages, nor did the International Jury attempt such an assessment. See id., 1995 AMC at 2687.

[FN68]. See id. at 5, 1995 AMC at 2683.

[FN69]. Id.

[FN70]. See id.; see also De Sole v. United States, 947 F.2d 1169, 1992 AMC 242 (4th Cir. 1991); Sletten v. Hawaii Yacht Club, 1993 WL 643379, 1993 AMC 2863 (D. Haw. 1993); Clark v. Thayer, 43 N.Y. 897 (N.Y. App. Div. 1897); Meggeson v. Burns, 1 Lloyd's Rep. 223 (1971); Salveson v. Young, 1966 S.L.T. 81 (Sh. Ct. 1965); Clarke v. Earl of Dunraven, The Santanita, 1897 App. Cas. 59 (H.L. 1896).

[FN71]. See Juno SRL v. S/V Endeavor, 58 F.3d 1, 4-5, 1995 AMC 2678, 2683 (1st Cir. 1995).

[FN72]. See id. at 4, 1995 AMC at 2683.

[FN73]. See id. at 4-5, 1995 AMC at 2683.

[FN74]. Id.

[FN75]. See id. at 5, 1995 AMC at 2683.

[FN76]. 9 U.S.C. s 2.

[FN77]. Juno SRL v. S/V Endeavor, 58 F.3d 1, 6, 1995 AMC 2678, 2686 (1st Cir. 1995) (citing 9 U.S.C. s 2).

[FN78]. Juno, 58 F.3d at 6, 1995 AMC at 2686.

[FN79]. See The Satanita, 1897 App. Cas. 59, 63 ("[T]he parties must be taken to have contracted that a breach of any of these rules would render the party guilty of that breach liable."). Cf. Salvesen v. Young, 1966 S.L.T. (Sh. Ct.) 81, 83 ("[B]y agreeing to be bound by [the] rules, as competitors admittedly do when they sign the entry form, contestants are also agreeing to depart from their right to bring their dispute before the courts of the land."); Meggeson v. Burns, 1 Lloyd's Rep. 223, 226 (1972) ("It is clear that the parties had agreed to be bound by the I.Y.R.U. rules and the committee's findings of fact, as far as they go, are final.").

[FN80]. See 43 N.Y.S. 897 (N.Y. App. Div. 1897). Therein, the court stated, "The learned trial court charged the jury that, while the navigation laws of the United States were imperative, they could be waived by persons who were willing to waive them, and therefore that the rule of the yacht club, as to its members, governed." Id. at 898.

[FN81]. Juno, 58 F.3d at 5, 1995 AMC at 2684.

[FN82]. See generally De Sole v. United States, 947 F.2d 1169, 1992 AMC 242 (4th Cir. 1991) (holding that the rule in question grants absolute preference to the vessel ahead); see also supra note 28 and accompanying text.

[FN83]. Id. at 1178 n.15, 1992 AMC at 255 n.15.

[FN84]. 1993 WL 643379, 1993 AMC 2863 (D. Haw. 1993).

[FN85]. Id. at *4, 1993 AMC at 2867.

[FN86]. See id. ("[T]he [IYR R]ules do not change the conclusion that there was no harm resulting from a breach of duty regardless of whether the duty was imposed by the statute or the rules.").

[FN87]. See Juno SRL v. S/V Endeavor, 58 F.3d 1, 5, 1995 AMC 2678, 2684 (1st Cir. 1995) (discussing Sletten v. Hawaii Yacht Club, 1993 WL 643379, *4, 1993 AMC 2863, 2867 (D. Haw. 1993)).

[FN88]. See H.R. Rep. No. 447, supra note 11, at 2.

[FN89]. Convention of the Intergovernmental Maritime Consultative Organization, Mar. 6, 1948, art. 1, 9 U.S.T. 621, 623, 289 U.N.T.S. 3, 48 (emphasis added).

[FN90]. See H.R. Rep. No. 447, supra note 11, at 2.

[FN91]. See id.

[FN92]. Id. at 9, International Regulations for Preventing Collisions at Sea, Oct. 20, 1972, 28 U.S.T. 3459, 3463, 1050 U.N.T.S. 16, 19 (emphasis added).

[FN93]. See International Regulations for Preventing Collisions at Sea, supra note 92, 28 U.S.T. at 3463, 1050 U.N.T.S. at 19.

[FN94]. See id.; see also 33 C.F.R. s 81, app. A, Rules 3(c), 12, 25 (1995).

[FN95]. COLREGS Rule 12 applies when two sailing vessels are approaching one another. See C.F.R. s 81, app. A, Rule 12. Rule 25 applies to a vessel's lights. See C.F.R. s 81, app. A, Rule 25. In contrast, Rule 41.2 of the yacht racing rules prohibits a yacht trying to gain the right of way from tacking or jibing too close to a yacht on a tack. See 1993-96 International Yacht Racing Rules as Adopted by the United States Sailing Association 28 (1993). Rule 42.1 deals with the respective rights of overlapped yachts rounding a racing mark or other obstruction. See id. at 30. Rule 43.3(a) deals with yachts' respective rights of way at the starting mark. See id. at 32.

[FN96]. See H.R. Rep. No. 447, supra note 11, at 6.

[FN97]. Id.

[FN98]. See id.

[FN99]. See id. at 6-8.

[FN100]. See id. at 6-7.

[FN101]. Juno SRL v. S/V Endeavor, 58 F.3d 1, 7, 1995 AMC 2678, 2687 (1st Cir. 1995).

[FN102]. See id.; see generally Alison Brooke Overby, Arbitrability of Disputes Under the Federal Arbitration Act, 71 Iowa L. Rev. 1137, 1139-42 (1986); Barrentine v. Arkansas-Best Freight System, Inc., 450 U.S. 728, 753 (1981) (Burger, C.J., dissenting); U.S. Bulk Carriers, Inc. v. Arguelles, 400 U.S. 351, 371-73, 1971 AMC 286, 301-303 (1971) (White, J., dissenting). Interestingly, eleven months before deciding Juno, the First Circuit enforced a foreign arbitration clause in a maritime bill of lading, citing a "strong, well-established, and widely recognized federal policy in favor of arbitration." Vimar Seguros Y Reaseguros v. M/V Sky Reefer, 29 F.3d 727, 730-31, 1994 AMC 2513, 2519 (1st Cir. 1994), aff'd, 115 S. Ct. 2322, 1995 AMC 1817 (1995). Only ten days after the First Circuit decided Juno, the Supreme Court affirmed Sky Reefer also citing the public policy favoring arbitration. Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer, 115 S. Ct. 2322, 2328-29, 1995 AMC 1817, 1824-25 (1995).

[FN103]. See 68 Cong. Rec. 11,081 (June 6, 1924) (statement of Mr. Dyer regarding the Federal Arbitration Act then under consideration: "The result of such a bill will be to do away with a lot of expensive litigation.") Id.

[FN104]. United States Supreme Court Chief Justices Burger and Rehnquist have endorsed arbitration as a way to elevate pressure on overburdened courts. See Barrentine v. Arkansas-Best Freight System, Inc., 450 U.S. 728, 753 (1981) (Burger, C.J., dissenting) ("This Court ought not be oblivious to desperately needed changes to keep the federal courts from being inundated with disputes of a kind that can be handled more swiftly and more cheaply by other methods."); see also David Margolick, Chief Justice Proposes Arbitration to Stem 'Avalanche of Lawsuits',

N.Y. Times (Late City Final Edition), Jan. 25, 1982, at 19; Warren E. Burger, Isn't There a Better Way?, 68 A.B.A. J. 274, 276-77 (1982); William Rehnquist, A Jurist's View of Arbitration, 32 Arb. J., 1, 2 (1977).

[FN105]. See Anthony J. Basincki, Comment, Commercial Arbitration Under the Federal Act: Expanding the Scope of Judicial Review, 35 U. Pitt. L. Rev. 799, 800 (1974) (citing Soia Mentschikoff, The Significance of Arbitration--A Preliminary Inquiry, 17 Law & Contemp. Probs. 698, 703-07 (1952)).

[FN106]. De Sole v. United States, 947 F.2d 1169, 1182, 1992 AMC 242, 260-61 (4th Cir. 1991) (Widener, J. dissenting) (citing Salvesen v. Young, 1966 S.L.T. (Sh. Ct.) 81, 83); see also The Cestrian, 30 Lloyd's Rep. 240, 241 (1928) ("We do not often have a yachting case in these courts and in fact it is the first I have tried, but I dare say that most of such cases arising are dealt with under their own rules and by reference to their own people ...."). The court in The Cestrian appears to apply the yacht racing rules over the collision regulations, though it does not say so explicitly nor does it explain its reasoning for doing so. See id. at 241-42.

[FN107]. De Sole, 947 F.2d at 1185, 1992 AMC at 266.

[FN108]. See United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581-83 (1960) (enforcing an arbitration clause in a collective bargaining agreement). "The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed." Id. at 582. See also U.S. Bulk Carriers, Inc. v. Arguelles, 400 U.S. 351, 371-73, 1971 AMC 286, 301-303 (1971) (White, J., dissenting).

[FN109]. De Sole, 947 F.2d at 1171, 1992 AMC at 243 (quoting Amici Curiae Brief of the Chesapeake Bay Yacht Racing Association, Inc., and the United States Yacht Racing Union, Inc., at 21, De Sole (No. 89-2471)). The Amici Curiae were referring to the district court's application of the assumption of risk doctrine to bar recovery. Id. at 1171-72, 1992 AMC at 244.

[FN110]. See Juno SRL v. S/V Endeavor, 58 F.3d 1, 3 n.2, 1995 AMC 2678, 2680 n.2 (1st Cir. 1995).

[FN111]. See id., 1995 AMC at 2680 n.2.

[FN112]. Id. at 7, 1995 AMC at 2686.

[FN113]. Id., 1995 AMC at 2686.

[FN114]. See id., 1995 AMC at 2686.

[FN115]. See id., 1995 AMC at 2686-87.

[FN116]. Id., 1995 AMC at 2687.

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