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Court – dual-listed company not subject to suit; and
Taiwan Strait – joint SAR drill.

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Bryant's Maritime News

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Note: This newsletter is one section of the [Bryant's Maritime Consulting](http://brymar-consulting.com) website. Visit the site for more extensive maritime regulatory information. Individual concerns may be addressed by retaining [Dennis Bryant](mailto:dennis.l.bryant@gmail.com) directly. Much of the highlighted text in this newsletter constitutes links to Internet sites providing more detailed information. Links on this page may be in PDF format, requiring use of Adobe Acrobat Reader. Comments on these postings are encouraged and may be made by email to the editor or by going to the blog page on the website and clicking the envelope that appears at the end of each posting. Be aware that the daily newsletter is a single posting, even though it contains a number of individual items. The search for intelligent life on the third planet continues.

Lower Mississippi River – multiple vessel incident



The US Coast Guard issued a [news release](#) stating that the cargo vessel Flag Gangos lost power and steering at Mile Marker 97.4 on the Lower Mississippi River near Gretna. It allided with the vessel Pamisos and the barge Web 235, both moored at the International Matex Tank Terminals conducting transfer operations. There have no reports of injury. The vessels and barge have sustained damage. The quantity of oil spilled has not been determined. Response efforts are underway. One-way traffic has been implemented in the vicinity. The incident is under investigation. (8/13/14).

USCG – suspension & revocation decision on appeal



The USCG Vice Commandant, in a decision on appeal, ruled that, in an action by the Coast Guard to suspend or revoke a merchant mariner's credential for drug use, a prima facie case requires proof of compliance with the applicable regulations, including the reason that the drug test was conducted. In the instant case, a merchant mariner tested positive for cocaine metabolites during a drug test. The testing procedures complied with the regulations, but there was no evidence in the record indicting why the test was conducted by the mariner's employer. The Coast Guard contended that the reason for the test was not an element of offense and evidence on that was not required. The decision on appeal found that a drug test under the regulations constitutes a search and seizure under the Fourth Amendment and thus must be done in a reasonable manner. Evidence from a drug test that has not been properly ordered cannot form the basis for a suspension and revocation proceeding. [USCG v. Franks](#), No. 2704 (CDOA, July 30, 2014).

SHC – meeting



The Shipping Coordinating Committee (SHC), sponsored by the Department of State (DOS), will meet in Washington, DC on 9 September to prepare for the upcoming session of the IMO Facilitation Committee (FC 39). Topics on the agenda include e-business possibilities, ship/port interface, and minimum training and education for mooring personnel. [79 Fed. Reg. 47513](#) (August 13, 2014).

UFAC – teleconference meeting



The Airport and Seaport User Fee Advisory Committee (UFAC), sponsored by the US Customs and Border Protection (CBP), will conduct a teleconference meeting on 29 August. [79 Fed. Reg. 47474](#) (August 13, 2014).

USACE – EIS termination for wind farm



The US Army Corps of Engineers (USACE) issued a notice stating that it has terminated the process to develop an environmental impact statement (EIS) for the proposed Baryonyx Corporation offshore wind farm to be located in state waters of the Gulf of Mexico offshore Willacy and Cameron Counties, Texas at the request of the applicant. [79 Fed. Reg. 47442](#) (August 13, 2014).

NOAA – marine debris economics study



The National Oceanic and Atmospheric Administration (NOAA) issued a [news release](#) stating that its [Marine Debris Economics Study](#) shows that Southern California residents lose millions of dollars each year avoiding littered local beaches in favor of cleaner beaches that are further away and may cost more to reach. (8/12/14).

Senate – bill introduced re ocean research for renewable energy



Senator Begich (D-AK) introduced the [Renewable Energy Environmental Research Act of 2014](#) (S. 2705) to establish, within the National Oceanic and Atmospheric Administration, an integrated and comprehensive ocean, coastal, Great Lakes, and atmospheric research and environmental information sharing program to support renewable energy, and for other purposes. Senator Begich issued a [press release](#) explaining the measure. (7/30/14).

House – bill introduced re tsunami warning



Representative Bonamici (D-OR) introduced the [Tsunami Warning, Education, and Research Act of 2014](#) (H.R. 5309) to authorize and strengthen the tsunami detection, forecast, warning, research, and mitigation program of the National Oceanic and Atmospheric Administration, and for other purposes. Representative Bonamici issued a [press release](#) explaining the measure. (7/31/14).

Court – Carmack Amendment and true conversion



The US Court of Appeals for the Third Circuit ruled that an allegation of “true conversion” by a carrier does not preemptive effect of the Carmack Amendment to proceedings under state law for losses occurring in interstate shipments. In the instant case, plaintiffs’ insured shipped goods via defendant motor carrier. The goods did not arrive and the insured suspected that the goods were possibly stolen by the carrier (“true conversion”) or by its employees. Plaintiffs brought action in federal court in a diversity action grounded in part on the state law concept of true conversion, making defendant fully liable for the loss. Defendant moved to dismiss, contending that any action based on state law was preempted by the Carmack Amendment. The district court and the appellate court agreed with the defendant that Congress in adopting the Carmack Amendment intended to fully preempt actions for interstate carrier liability based

on state law. **Certain Underwriters v. United Parcel Service**, No. 13-4515 (3rd Cir., August 12, 2014). *Note: Although this is not a maritime case, the principles addressed here equally apply in the maritime sphere.*

Court – dual-listed company not subject to suit



The US Court of Appeals for the Eleventh Circuit ruled that a dual-listed company (DLC), such as Carnival Corporation & Carnival PLC, is not subject to federal court jurisdiction in a class action for maintenance and cure brought by foreign seafarers employed on cruise ships homeported in Florida. Plaintiff seafarers elected to bring suit against the DLC rather than against the entity with which they had employment contracts, hoping to attract more class members. In dismissing their suit, the appellate court held that the DLC is not incorporated (and thus not a corporation); that the DLC is not estopped from denying that it is a corporation because it induced no one to believe that it was; and it is not suable as a joint venture because a joint venture is also not subject to suit. **Sabo v. Carnival Corporation**, No. 13-11765 (11th Cir., August 12, 2014).

Taiwan Strait – joint SAR drill



The Maritime Safety Administration of the People's Republic of China issued a **news release** stating that a joint search and rescue (SAR) drill was conducted in the Taiwan Strait with personnel from Taiwan. (8/12/14).

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