

**D'Amico Dry Limited v. Primera Maritime (Hellas) Limited 756 F.3d  
151 United States Court of Appeals for the Second Circuit  
(Decided June 12, 2014)**

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**28 U.S.C. § 1333 GRANTS U.S. COURTS JURISDICTION TO ENFORCE A JUDGMENT OF  
A FOREIGN NON-ADMIRALTY COURT, IF THE UNDERLYING CLAIM WOULD BE  
DEEMED MARITIME UNDER UNITED STATES LAW**

D'Amico Dry Limited v. Primera Maritime (Hellas) Limited  
756 F.3d 151  
United States Court of Appeals for the Second Circuit  
(Decided June 12, 2014)

**Court of Appeals for the Second Circuit held that federal admiralty jurisdiction extended to a suit to enforce a judgment from an English commercial court because United States law would classify the underlying breach of a forward freight agreement as a maritime claim.**

D'Amico Dry Limited (“D’Amico”) and Primera Maritime (Hellas) Limited (“Primera”) executed a forward freight agreement (“FFA”), which is a derivative contract under which value is taken from freight rates for specific types of vessels on specified voyage routes, as reported on the Baltic Exchange.<sup>1</sup> The contract was contingent upon the parties’ accurately predicting future market rates for the shipment of goods.<sup>2</sup> Under the FFA, Primera was obligated to pay D’Amico for rates that were lower than the rates projected in the FFA and failed to do so.<sup>3</sup> D’Amico filed suit in the Commercial Court of the Queen’s Bench Division of the English High Court of Justice, which rendered a judgment against Primera in the amount of \$1,766,278.54.<sup>4</sup>

When Primera failed to pay the English judgment, D’Amico filed suit to enforce the judgment in New York federal court under its admiralty jurisdiction.<sup>5</sup> The district court granted Primera’s motion to dismiss for lack of subject matter jurisdiction.<sup>6</sup> The court reasoned that the English judgment was made by a Commercial Court, and English law did not consider D’Amico’s claim as to be a maritime claim, thus the court lacked jurisdiction to enforce the English judgment.<sup>7</sup>

On appeal, the Second Circuit concluded that the proper inquiry in an enforcement action brought under the district court’s admiralty jurisdiction was whether the underlying claim on which the judgment was based was a maritime claim under U.S. law.<sup>8</sup> The court’s use of federal admiralty rules to enforce a foreign judgment illuminates the usefulness and applications of the *Penhallow* rule.<sup>9</sup> The rule promotes the use of admiralty courts because of their knowledge of the sea and ship culture, their uniformity in matters of international trade, the promotion of foreign judgment recognition and endorses the “distribution of power between state and federal courts, which offers a forum for international disputes, which is – at least theoretically - less likely to be influenced by local bias.”<sup>10</sup> These policies promote a more efficient international maritime commerce system and protection of “vulnerable parties such as foreign litigants and seamen.”<sup>11</sup> The court recognized that many foreign tribunals do not have specific admiralty courts

<sup>1</sup> *D’Amico Dry Ltd. v. Primera Mar. (Hellas) Ltd.*, 756 F.3d 151, 153 (2d Cir. 2014).

<sup>2</sup> *Id.* at 154.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 154-55.

<sup>6</sup> *Id.* at 155.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 158.

<sup>9</sup> *Id.* at 157 (see *Penhallow v. Doane’s Adm’rs*, 3 U.S. (3 Dall.) 54, 97, 1 L.Ed. 507 (1795)).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

even though the foreign tribunals adjudicate maritime claims.<sup>12</sup> However, the lack of admiralty distinction “should not frustrate the policy of U.S. law to place maritime disputes in federal courts.”<sup>13</sup>

The Second Circuit reversed the lower court’s ruling, finding that it erred in analyzing its subject matter jurisdiction with reference to English law.<sup>14</sup> The court stated that U.S. law controlled the case.<sup>15</sup> Article III of the U.S. Constitution provides that the judicial Power extends to “all Cases of admiralty and maritime Jurisdiction.”<sup>16</sup> The court also pointed to the long history of U.S. policy in placing maritime matters in the federal courts.<sup>17</sup> Such a policy is strong enough to make §1333 federal court jurisdiction exclusive.<sup>18</sup>

The court discussed the existence of a general worldwide consensus of which cases are Maritime and which are not.<sup>19</sup> However, a country may define its own maritime jurisdiction more broadly, or more narrowly, than the U.S.<sup>20</sup> Therefore, the court found that, “it seems reasonable to assume that the Framers of the Constitution and Congress wanted to ensure that matters deemed maritime *under our laws* have access to our federal courts.”<sup>21</sup> The court believed that the founders would include matters of U.S. law that are considered maritime in admiralty jurisdiction, even if another country did not.<sup>22</sup>

It is of no consequence whether the English judgment was issued by an Admiralty or Commercial court or if the English law deemed the underlying claim to be “maritime.” In determining the federal court’s subject matter jurisdiction, the underlying claim need only be a maritime claim under U.S. law for the claim to be within jurisdiction of a U.S. federal court.

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<sup>12</sup> *Id.* at 161.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 158.

<sup>15</sup> *Id.* at 160.

<sup>16</sup> U.S. Const. art. III, § 2.

<sup>17</sup> *D’Amico Dry Ltd.*, 756 F.3d at 160.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*