

Nova Southeastern University

From the Selected Works of Robert M. Jarvis

July, 2019

Legal Aspects of Airboats

Robert M. Jarvis, *Nova Southeastern University - Shepard Broad College of Law*

NOVA SOUTHEASTERN
UNIVERSITY

robert_jarvis/64/

NSU
Florida

Available at: <https://works.bepress.com/>

Legal Aspects of Airboats

ROBERT M. JARVIS*

I INTRODUCTION

Although airboats have existed for more than a century,¹ and

*Professor of Law, Nova Southeastern University (jarvisb@nova.edu). Member of the Editorial Board of the *Journal of Maritime Law and Commerce*. I am indebted to my wife Judi, an admirer of airboats and the Florida Everglades, both for inspiring me to write this article and for making numerous suggestions that greatly improved the finished product.

¹Airboats also are known as “swamp boats.” See, e.g., Another Name for Airboat: Swamp Boat, at <https://www.evergladesholidaypark.com/Another-Name-for-Airboat-Swamp-Boat/>. See also *Angelle v. Taylor Oilfield*, 918 So. 2d 616, 621 (La. Ct. App. 2005).

Some commentators, however, prefer the term “blow boats” because of the way they “blow across the water.” See, e.g., Max Hunn, Florida’s Blow-Boat Derby, *POPULAR MECHANICS*, Aug. 1954, at 93. See also JACK MONTROSE, *TALES FROM A FLORIDA FISH CAMP—AND OTHER TIDBITS OF SWAMP RAT PHILOSOPHY* 21 (2003) (“Logically, the name blow boat is more appropriate than air-boat. This craft is not meant to become airborne. When one does, as occasionally happens, the operator may find himself in a world of hurt. Blowers they are, and they put those little, sissy, hand-held noisy leaf blowers to shame.”).

Still others favor “fan boats” due to the propeller that sits atop every airboat. See, e.g., ROBERT H.T.W. NIEDER, *EVERYTHING IS JUST YESTERDAY WITH LOTS OF TOMORROWS* 131 (2013) (“An old ten-foot fan boat with its loud buzz of whirling propeller and wheezing engine moved counter to *Miss Mabel* approaching from a distance. . . . As the two boats drew closer, Captain Isaac aimed his megaphone toward the airboat and let loose, ‘Hey there, Captain Charles, how’s the weather down river?’”). See also Fun Facts About Everglades Airboat Tours, at <https://www.evergladesholidaypark.com/fun-facts-airboat-tours/> (“Another name for an airboat is a fan boat.”).

Airboats also are called “plane boats” because they typically are constructed using airplane engines. See, e.g., Airboat, WIKIPEDIA: THE FREE ENCYCLOPEDIA, at <https://en.wikipedia.org/wiki/Airboat> [hereinafter Wikipedia Airboat Entry].

Initially, seaplanes were dubbed “airboats,” see *id.*, and this name sometimes is still used. See, e.g., *Hark v. Antilles Airboats, Inc.*, 355 F. Supp. 683, 1973 AMC 895 (D.V.I. 1973) (personal injury action arising from the crash of a seaplane); YURI DOLGOPOLOV, *A DICTIONARY OF CONFUSABLE PHRASES: MORE THAN 10,000 IDIOMS AND COLLOCATIONS* 13 (2010) (explaining that the term “air boat” can mean either “a seaplane with a boatlike fuselage” or “a shallow-draft boat driven by an airplane propeller.”).

Similarly, hovercrafts (vessels that ride on a cushion of air above the water) occasionally are referred to as airboats. See, e.g., *Rhoades, Inc. v. United Air Lines, Inc.*, 340 F.2d 481, 483 & n.1 (3d Cir. 1965). See also Oliver A. Houck, *The Reckoning: Oil*

now are a staple of American popular culture,² no study has been made of their legal aspects.³ This omission likely is attributable to

and Gas Development in the Louisiana Coastal Zone, 28 TUL. ENVTL. L.J. 185, 246 (2015) (reporting that Louisiana Senator Hank Lauricella once opened a legislative hearing on hovercrafts by asking, "Hovercraft? What is that, nothing but an airboat on an inner tube?").

²Airboats were "discovered" by Americans *en masse* in 1967, when CBS premiered *Gentle Ben*. Set in the Everglades and starring Dennis Weaver as Tom Wedlow, a hardworking wildlife officer, the weekly adventure series quickly became known for its signature plotline: "In nearly every episode, Weaver rides to the rescue in an airboat, the shallow bottomed, top-heavy, fan driven boats used to skim over the water and sawgrass of the Florida marshes." Richard K. Shull, "Gentle Ben" Doing Well, BALT. EVENING SUN, Mar. 4, 1968, at B7. The show became so popular that just before the start of its second season, its stars landed on the cover of TV Guide (Aug. 10-16, 1968), at the time the most read magazine in America. For a further discussion, see TIM BROOKS & EARLE F. MARSH, THE COMPLETE DIRECTORY TO PRIME TIME NETWORK AND CABLE TV SHOWS, 1946-PRESENT 525 (9th ed. 2009).

In the half-century since *Gentle Ben* left the airwaves, airboats have appeared in countless novels, movies, and television shows; been turned into toys by such companies as Lego and Mattel (which have paired them with such iconic figures as Batman and G.I. Joe); been depicted on everything from caps and t-shirts to Christmas ornaments and coffee mugs (often with such slogans as "I ♥ Airboats," "Keep Calm and Airboat," and "What Happens on the Airboat Stays on the Airboat"); and been fashioned into gold and silver charms and pendants. See Amazon and Google Images (using the search term "airboat"). There even is a specialty beer that was "born" on an airboat. See Laura McKnight, "Brew Dogs" Visit New Orleans to Resurrect a "Zombie Beer," NOLA.COM, Apr. 26, 2014, at https://www.nola.com/drink/2014/04/brew_dogs_visit_new_orleans_to.html.

In the award-winning 2004 video game *Half-Life 2*, scientist Gordon Freeman uses an airboat to reach Black Mesa East (the resistance's headquarters). See <https://www.youtube.com/watch?v=V8BcZIRpNYc>. More recently, in a 2015 informational FlexSeal Liquid Rubber used an airboat with a mesh bottom to demonstrate its ability to prevent leaks. See <https://www.youtube.com/watch?v=VikGZ5T-S7U> (starting at 1:03). In a 2016 commercial, Dos Equis relaunched its "Most Interesting Man in the World" campaign with an airboat race in the desert. See https://www.youtube.com/watch?v=6AHCW_khI-w (opening sequence). During the 2018 Florida gubernatorial race, Republican Ron DeSantis took an airboat ride to call attention to his environmental agenda. See <https://www.youtube.com/watch?v=NN93hfEaTWQ>. (In 2008, Republican presidential candidate John McCain took a similar ride. See <https://www.youtube.com/watch?v=du5WXVe1O3s>.) And to date, a 2018 YouTube video featuring Instagram personality Vicky Stark bowfishing from an airboat in central Florida has garnered 9.4 million views. See <https://www.youtube.com/watch?v=88dXhF5N1io>.

³A good example of how airboats have been overlooked by legal commentators can be seen by flipping through the pages of *The Florida Bar's desk manual, Florida Maritime Law and Practice* (5th ed. 2017). Although Florida is the "airboat capital of the world," see *infra* note 4, the manual mentions airboats in only two places. In § 13.4, it cites *In re Complaint of Bridges Enterprises*, 2003 WL 23305261, 2003 AMC 2811 (S.D. Fla. 2003). In *Bridges*, the court found that an airboat was not eligible for limitation because it had been operating on a land-locked part of the Everglades at the time of its accident. The manual fails to mention, however, the two cases that have distinguished

the fact that a handful of states—led by Florida—account for most of the airboats in the United States.⁴ As a result, few admiralty

Bridges. See *infra* notes 57–61 and accompanying text. The manual also references airboats in § 15.7, where it quotes Fla. Stat. § 327.02(43) (which defines “vessel” as “every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.”). [Just after the manual went to press, paragraph 43 was renumbered and now is paragraph 46. See Fla. Laws ch. 2017–163.]

⁴See Cynthia McFarland, *A Ride on the Wild Side*, *OCALA STYLE*, Oct. 2018, at 48, 50 (“Home to several large airboat manufacturers, Florida is easily the airboat capital of the world. As of December 2017, there were 12,164 airboats (1,025 of them for commercial use) in the state.”). See also Scott Maxwell, *Airboat Wars*, *ORLANDO SENTINEL*, Aug. 24, 2017, at B1 (“[N]o matter how much we talk about [Orlando] becoming a hub of high-tech jobs and pioneering medical research, [it] will also always be swamp boats and gator dens.”).

Florida’s preeminence is due to the Everglades, a sawgrass marsh that covers 4,300 square miles and, at less than a foot deep in most places, is ideal for airboating. See MICHAEL GRUNWALD, *THE SWAMP: THE EVERGLADES, FLORIDA, AND THE POLITICS OF PARADISE* (2006). As has been noted elsewhere:

Airboats opened the door to the wilderness treasures of the Everglades. Access to the interior [of Florida] prior to the advent of the airboats in the 1930s was strictly by poling either an Everglades skiff—sometimes called a push boat—or a Seminole dugout hewed from a single cypress tree. It was not a task for the delicate or the easily discouraged.

JIM HUFFSTODT, *EVERGLADES LAWYERS: TRUE STORIES OF GAME WARDENS IN THE GLADES* 71 (2000).

Today, local airboat societies can be found throughout Florida, including Fort Lauderdale (<https://browardairboat.org/>), Miami (<http://www.aaof.com/>), North Orlando (<http://www.lakeairboatclub.com/>), South Orlando (<https://osceolaairboatassociation.com/>), Vero Beach (<http://indianriverairboat.com/>), and West Palm Beach (<http://www.pbairboatclub.com/>). In addition, the Florida Airboat Association (<https://www.floridaairboat.org/>) acts as a statewide umbrella group for “airboat[-]related businesses, organizations, and clubs.” See, e.g., *Airboat Ass’n of Fla., Inc. v. Florida Game and Fresh Water Fish Com’n*, 498 So. 2d 629 (Fla. Dist. Ct. App. 1986) (multi-plaintiff action challenging state’s hunting rules in the Big Cypress wildlife management area).

Florida also is the home of *Airboating* magazine (<https://www.airboatingmagazine.com/>), a bi-monthly publication founded in 2007 “that promotes the recreational and commercial use of airboats around the world” and provides readers with “technical tips, product news, [and] vendor information.” (An earlier magazine called *Marsh Rider*, which billed itself as “The Voice of Airboating,” also was based in Florida.) The National Association of Airboat Drag Racing (<https://www.facebook.com/NAADRnews/>), which sanctions half a dozen airboat races a year, likewise is headquartered in Florida.

Louisiana, Nebraska, and Utah also have significant numbers of airboats. In Louisiana, airboats primarily are used for energy exploration and surveying. See Wynee Nolley, *Air-Apparent*, *INDEP.*, Aug. 29, 2011, at <http://theind.com/article-8642-air-apparent.html>; Kevin Spear, *Airboats Power into Markets Around World*, *ORLANDO SENTINEL*, July 8, 1996, at 12, 12 (Central Fla. Bus.) (“Most experts agree that Louisiana is the nation’s second-busiest airboat state, although much of its swamp has been fenced

off from recreational use, and most airboaters are oil field explorers.”). See also *Sinclair Oil & Gas Co. v. Delacroix Corp.*, 285 So. 2d 845, 851 (La. Ct. App. 1973) (“Further evidence was presented by the testimony of Mr. Aubry G. Burke, a surveyor, who surveyed the area extensively in 1952 for the dredging of a canal in order to explore for oil. He also testified that the only access into the area was by pirogue and by airboat, and that it was impossible to get any other type of craft in and through the area in order to perform the necessary work involved.”). In *Pipeline Fever*, a 2011 episode of the FX (now FXX) animated television series *Archer*, super spy Sterling Archer commandeers an airboat and uses it to reach a large natural gas pipeline near New Orleans that is being threatened by an eco-terrorist. See *Pipeline Fever*, at https://archer.fandom.com/wiki/Pipeline_Fever.

In contrast, airboats in Nebraska (on the Platte River) and Utah (at Great Salt Lake) are the province of outdoor enthusiasts. See Nebraska Airboaters Association (<http://airboatne.com/live/>) and Utah Airboat Association (<https://www.utahairboat.com/>). See also Katy Moore, *Airboating—The Nebraska Way*, *MIDWEST MESSENGER*, Oct. 6, 2017, at https://www.agupdate.com/midwestmessenger/airboating-the-nebraska-way/article_9f245e92-8110-545d-ae07-ce308f8bb92e.html, and Rob Dubuc, *Airboating on Great Salt Lake—Put it on Your Bucket List!*, *WRA*, May 28, 2015, at <https://westernresourceadvocates.org/blog/airboating-on-great-salt-lake-put-it-on-your-bucket-list/>.

Although Florida, Louisiana, Nebraska, and Utah lead the pack, airboats can be found in other parts of the United States, including, most notably, Alaska, Michigan, and Texas. See, e.g., *Regional Airboating*, *SOUTHERN AIRBOAT*, at <https://southernairboat.com/phpBB3/viewforum.php?f=97&sid=ce1c47f1cc91d53a567efc6298df7c72>; *Airboat Alaska*, at <https://airboatalaska.com/> (Juneau sightseeing company). See also *Alaska v. United States*, 2016 WL 1948801, at *7 (D. Alaska 2016) (“The United States does not dispute that riverboats, launches, scows, airboats, and canoes were [present on the Mosquito Fork of the Fortymile River] at the time of statehood, but disputes that they were used for commercial purposes.”); *Friends of Moon Creek v. Diamond Lake Improvement Ass’n, Inc.*, 2015 WL 2250463, at *2 (E.D. Wash. 2015) (“The herbicide was applied via airboat on July 6, 2012, by Lakeland Restoration Services. DLIA paid approximately \$3,488 for the herbicide application.”); *Smith v. The Abandoned Vessel*, 610 F. Supp. 2d 739, 2009 AMC 1413 (S.D. Tex. 2009) (airboat used to search for historic shipwreck in Texas waters); *State v. Thomas*, 438 A.2d 400, 401 (Vt. 1981) (“This [property boundary] dispute grows out of a duck hunting expedition which took place October 3, 1979, in which the three defendants went by airboat upon the waters of Lake Champlain and in particular an arm of the lake called Charcoal Creek.”); *Khachadourian v. State*, 31 N.Y.S.3d 921 (text at 2015 WL 9906077, at *1 n.2) (Ct. Cl. 2015) (“Defendant objected to the admission of one of claimant’s exhibits, a photograph of an airboat, marked as Claimant’s Exhibit 24. The Court reserved on the objection at trial; upon due consideration, the objection is sustained and the evidence will not be admitted.”).

practitioners will ever have an airboat case.⁵ Yet such disputes have generated more than their fair share of useful maritime precedents.⁶ This is particularly true in the areas of jurisdiction, limitation of liability, and personal injury and wrongful death.

⁵Some Florida lawyers, however, actively target airboat accident victims. See, e.g., Baker & Zimmerman (Fort Lauderdale), Airboat Accidents, at <https://bakerzimmerman.com/airboat-accidents/>; Bruce L. Scheiner & Associates (Fort Myers), Airboat Accidents, at <https://www.blslawyers.com/airboat-accidents.html>; Dolman Law Group (St. Petersburg), The Dangers of Airboat Accidents, at <https://www.dolmanlaw.com/dangers-airboat-accidents/>; Marianne Howanitz (Ocala), Florida Air Boat Accidents Claim Lives Each Year, at <https://www.ocalaaccidentlaw.com/florida-air-boat-accidents-claim-lives-each-year/>; Spencer Morgan Law (Miami), Who Is Liable When Someone is Injured in an Airboat Accident?, at <https://www.smorganlaw.com/who-is-liable-when-someone-is-injured-in-an-airboat-accident/>; Wagner McLaughlin (Tampa), Catching Air: Florida Airboat Accidents, at <https://www.wagnerlaw.com/catching-air-florida-airboat-accidents/>.

⁶They also have played a role in various non-maritime cases. See, e.g., *Progressive N. Ins. Co. v. Webb*, 2012 WL 2704883 (E.D. Okla. 2012) (insurance coverage dispute arising from the theft of a cargo trailer containing two airboats); *United States v. Dean*, 835 F. Supp. 1383, 1397 (M.D. Fla. 1993) (“Lester Clark Dean testified that he gave Leroy Burns \$10,000.00-\$12,000.00 for the purchase of an airboat for Dean. Evidence has shown that the boat cost \$7,200.00. What happened to the balance of the money?”); *MCI Commc’ns Servs., Inc. v. Hagan*, 74 So. 3d 1148 (La. 2011) (suit for damage to underwater cable severed by landowner using backhoe to clear driftwood blocking his airboat ramp); *Hoffman v. Life Ins. Co. of N. Am.*, 669 P.2d 410, 414 (Utah 1983) (accepting that a witness knew the decedent well enough to comment on his mental state because “Mohr [the witness] had hunted with Hoffman [the decedent] on several occasions and had bought an airboat from him.”); *Ayo v. BEO Contractors, Inc.*, 103 So. 3d 1251 (La. Ct. App. 2012) (carpenter who injured his back carrying door denied worker’s compensation benefits because of his pre-existing back pain, which was caused by driving an airboat); *Hansen v. Melia*, 2003 WL 21447557, at *5 (Neb. Ct. App. 2003) (attempt to prove adverse possession by, among other things, fact that plaintiff “drove [an] airboat around in the swamp portion of the disputed area for recreation in the summertime”); *Nickolls v. University of Fla.*, 606 So. 2d 410, 412 (Fla. Dist. Ct. App. 1992) (worker’s compensation benefits terminated because employee had regained his health as shown by, *inter alia*, a post-accident outing during which he was able to sit on an “airboat without any apparent difficulty” and, when it sank, was able to scramble on top of it and hold on for hours); *Shell Oil Co. v. Pitman*, 476 So. 2d 1031 (La. Ct. App. 1985) (inspection done by property surveyor from airboat was insufficient to overturn trial court’s resolution of competing mineral royalty claims). See also *Cox v. Cox*, 882 P.2d 909 (Alaska 1994), later proceedings at 931 P.2d 1041 (Alaska 1997) (dispute over whether former husband or former wife was entitled to airboat during division of marital assets); *Marshall v. Marshall*, 885 N.W.2d 742 (Neb. Ct. App. 2016), rev’d, 902 N.W.2d 223 (Neb. 2017) (same); *Azar v. Azar*, 2007 WL 1159996 (Mich. Ct. App.), appeal denied, 737 N.W.2d 700 (Mich. 2007) (same).



A touring airboat in the Florida Everglades (2014) (courtesy of Alamy Stock Photo)

II BACKGROUND

Florida law defines an “airboat” as “a vessel that is primarily designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders.”⁷ With no

⁷Fla. Stat. § 327.02(1). Other jurisdictions use similar language in their definitions of an airboat. See, e.g., 11 Alaska Admin. Code 20.990(1) (“a shallow draft boat driven by an airplane propeller and steered by a rudder”); Conn. Admin. Code § 15-121-A1(q) (“a vessel that is typically flat-bottomed and propelled by an aircraft-type propeller that is powered by an engine”); Ill. Comp. Stat. Ann. ch. 625 § 45/1-2 (“any boat . . . propelled by machinery applying force against the air rather than the water as a means of propulsion”); Mich. Admin. Code r. 281.700.2 (“a vessel . . . that makes use of [a] motor-powered propeller, air vane, or other aerostatic force to support or propel, or both to support and propel, the vessel on or over the surface of the water”); N.H. Rev. Stat. Ann. § 270-E:2(I) (“any shallow-draft vessel propelled by an airplane propeller and steered by an airplane rudder”); S.C. Code Ann. § 50-21-860 (“a watercraft propelled by air pressure caused by a motor mounted on the watercraft aboveboard”); Tex. Admin.

operating parts below the waterline, airboats “are a practical way to navigate shallow lakes, marshes and tidal flats where a water propeller might hit bottom or become tangled in vegetation.”⁸ Airboats also are highly maneuverable on frozen waterways.⁹

Code § 57.1011(1) (“a boat powered by a mechanical propulsion system that drives air, including, but not limited to a fan, propeller, or jet”); Utah Code Ann. § 73-18c-102(1) (“a vessel propelled by air pressure caused by an airplane type propeller mounted above the stern and driven by an internal combustion engine”); 12 V.I. R. & Regs. § 98-3 (“a vessel operated by means of a motor driven propeller that pushes air for momentum”). See also 15 C.F.R. § 922.162(a) (“a vessel operated by means of a motor driven propeller that pushes air for momentum”); 33 C.F.R. § 174.3 (“a vessel that is typically flat-bottomed and propelled by an aircraft-type propeller powered by an engine”); 36 C.F.R. § 1001.4 (“a vessel that is supported by the buoyancy of its hull and powered by a propeller or fan above the waterline”).

In the 2003 Randy Wayne White novel *Everglades*, the book’s hero (Doc Ford) describes an airboat as “a weird-looking craft common to the Everglades, though I have seen them in Australia, and in Africa, too. It is a pan-flat boat, stern-driven, powered by an airplane propeller, and can fly over water, grass, even rock.” *Id.* at 167.

⁸John-Thor Dahlburg, *Airboat Enthusiasts Feel a Chill*, L.A. TIMES, Sept. 14, 2005, at A11. See also Gary McLechnie, *Airboating: Flying Low Throughout Florida*, VISIT FLORIDA, at <https://www.visitflorida.com/en-us/things-to-do/florida-tours/airboat-tours-florida-4-unforgettable-rides.html> (“When you’re on an airboat, you’re on an extraordinary vehicle that can navigate places where normal watercraft can’t go. There is no engine dragging behind it, so you can race through fields of water hyacinths. It’s stealthy enough to creep into dense swamps, but powered by a massive propeller it can also fly flat out across wide-open lakes.”). See also *Kieff v. Louisiana Land and Exploration Co.*, 779 So. 2d 85, 91–92 (La. Ct. App. 2001) (“[The investigators] were in an eighteen-foot shallow draft (six inches) airboat, but still had some difficulty in approaching the site because they were kicking up mud, an indication of how shallow the water must have been.”).

It is not impossible, however, for an airboat to become trapped. In 1999, for example, U.S. District Judge William M. Hoeveler decided to conduct an inspection to see if Florida was living up to its obligations under a consent decree that had ended a lawsuit accusing it of having allowed pollution in the Everglades to go unchecked for decades. See *United States v. South Fla. Water Mgmt. Dist.*, 847 F. Supp. 1567 (S.D. Fla. 1992), *aff’d in part and rev’d in part*, 28 F.3d 1563 (11th Cir. 1994), *cert. denied sub nom. Western Palm Beach Cnty. Farm Bureau, Inc. v. United States*, 514 U.S. 1107 (1995). While doing so with the help of Florida International University ecologist Ron Jones, the pair’s “airboat got stuck in a 12-foot-high wall of cattails fed by phosphorus pollution.” Robert P. King, *Everglades Lesson*, PALM BEACH POST, Feb. 2, 1999, at 2B. When asked about the mishap, Jones explained that although he had been able to free the vessel “in about five minutes, I couldn’t have had a better object lesson if I tried [but] I didn’t do it on purpose.” *Id.*

⁹See, e.g., Paul A. Smith, *Guide Puts Airboat to Good Use*, MILWAUKEE J. SENTINEL, Dec. 30, 2018, at B7. In his article, Smith describes a winter outing on the WHY NOT, a Wisconsin airboat owned by fishing guide Zach Burgess:

Why Knot rumbled across the semi-frozen surface, ready for whatever ice or water conditions awaited.

As with most inventions, numerous individuals can claim to be the “father of the airboat:”

The first airboat was invented in 1905 in Nova Scotia, Canada by Alexander Graham Bell. The earliest airboats to see any kind of use date to 1915, when airboats [were used] by the British Army in . . . World War I. . . .

Glenn Curtiss is credited with building a type of airboat in 1920 to help facilitate his hobby of bow and arrow hunting in the Florida backwoods. The millionaire . . . combined his talents in the fields of aviation and design to facilitate his

The craft, an airboat, was the only powered device venturing onto the ice of Green Bay on this mild winter day.

The ice conditions near shore were too iffy for even an ATV or snowmobile. The water on the main bay was completely open.

Burgess piloted Why Knot over about 4 inches of ice toward a flat known to hold good numbers of yellow perch.

The boat moved about 15 mph, alternately bouncing like a carnival ride and gliding as smoothly as a car on new asphalt.

Then the hull dipped in a patch of weaker ice. For the next 300 yards the Why Knot was a square-fronted ice breaker plowing ahead at 5 mph. Sheets of ice crumbled and scattered to the sides.

Soon enough the bow climbed back up on stronger ice and Burgess increased the speed.

Wind whipped past as the boat skidded across the hard water.

Burgess, monitoring a digital sonar unit at his side that serves as GPS, depth indicator and speedometer, cut the engine at a waypoint north of the Cat Island chain.

Our air-powered chariot had delivered us to perch central.

“This time of year is the reason I have (the airboat),” Burgess said. “Today we wouldn’t have been able to get this many people and gear here by any other method.”

. . . .

Most Wisconsinites probably associate airboats with the Florida Everglades. The craft are actually quite versatile and are used even in northern climates.

A handful are found in Wisconsin, mostly for use by fire departments and other first responders or by salvage operators. . . .

On smooth ice, the [Why Not] glides so well that it can take 50 yards or more to stop.

Burgess has piloted the airboat as fast as 30 mph on open water and 55 mph on ice. . . .

It’s a temptation to call it an amphibious vehicle. But that’s probably too limiting. It can handle slush, open water, [and] thin or thick ice. . . .Id.

hobby, and the end result was *Scooter*, a 6-passenger, closed-cabin, propeller-driven boat powered by an aircraft engine that allowed it to slip through wetlands at 50 miles per hour. . . .

Airboats began to become popular in the United States in the 1930s, when they were independently invented and used by a number of Floridians, most living in or around the Everglades. [Among the] Floridians who invented their own airboats [were] frog hunter Johnny Lamb, who built a 75 horsepower airboat in 1933 he called the “whooshmobile[,]” and . . . Ernest and Willard Yates, who built an airboat in 1935 they steered via reins attached to a crude wooden rudder. [Willard] holds the ignominious honor of being the first person to die in an airboating accident [when] the engine dislodged and sent the spinning propeller into him.

An improved airboat was invented in Utah in 1943. . . . At the Bear River Migratory Bird Refuge . . . [Cecil] Williams and . . . [G. Hortin] Jensen sought a solution to the problem of conducting avian botulism studies in the shallow, marshy hinterlands. By installing a 40-horsepower Continental aircraft engine . . . on a flat-bottomed 12-foot long aluminum boat, they built one of the first modern airboats. Their airboat . . . had no seat, so the skipper was forced to kneel in the boat. [The] *Alligator I* . . . was the first to use an air rudder (a rudder directing the propeller exhaust rather than the water), a major improvement. . . .

Over the years, the standard design evolved through trial-and-error: an open, flat bottom boat with an engine mounted on the back, the driver sitting in an elevated position, and a cage to protect the propeller from objects flying into them.¹⁰

¹⁰Wikipedia Airboat Entry, *supra* note 1. For a further look at the invention of the airboat, see 1 STUART B. MCIVER, DREAMERS, SCHEMERS AND SCALAWAGS: THE FLORIDA CHRONICLES 205-08 (Ch. 28: “Who Invented the Airboat?”) (1994). For an interesting lawsuit involving ownership rights to a new type of articulating airboat boom, see *Mark’s Airboats, Inc. v. Thibodaux*, 2013 WL 6780529 (W.D. La. 2013) (refusing to dismiss plaintiffs’ action to have defendants’ provisional patents declared invalid), later proceedings at 2015 WL 1467097 (W.D. La. 2015) (denying Rule 11 sanctions).

Traditionally, airboats have been used by hunters,¹¹ scientists,¹² and tour guides,¹³ as well as by border patrol agents,¹⁴ law

¹¹A 1978 classified ad in *Field & Stream* magazine proclaimed: "Aircat airboats have been putting duck hunters and fisherman in game filled marshlands since 1947. Rush \$2.50 for big color catalogue. . . ." *Buy Sell Exchange*, *FIELD & STREAM*, Oct. 1978, at 197. See also *Dye v. Radcliff*, 174 F. App'x. 480, 481 (11th Cir. 2006) ("After hearing gunshots, [the wildlife officers] stopped Dye and his son . . . with two dead deer in their air boat. . . . Dye's son was cited for hunting without a license. . . ."); *Newsom v. B.B.*, 306 S.W.3d 910, 914 (Tex. Ct. App. 2010) ("Harold Newsom and his son operated neighboring wildlife ranches and both men conducted bowfishing expeditions on air boats."); Mark Curriden, *Goin' Gatoring*, *ABA J.*, Oct. 1994, at 96 (describing Sarasota tax lawyer C. Ted French's annual alligator hunts in the Everglades using an airboat).

¹²The U.S. Geological Survey, for example, makes extensive use of airboats. See <https://www.usgs.gov/science-explorer-results?es=airboat>. See also *St. Martin v. Mobil Exploration & Producing U.S.*, 2002 WL 1298763, at *4 (E.D. La.), reconsideration denied, 2002 WL 1933720 (E.D. La. 2002) (requesting reimbursement for the airboat used by the case's special master, a University of New Orleans geology professor appointed to assess the damage done to the plaintiff's marsh by the defendant's drilling operations).

¹³Enthralled by Florida's hidden natural beauty, Orlando attorney Ranier F. Munns started his own airboat tour business in 2014:

Ranier Munns is wearing a dress shirt and a red striped tie—not unusual attire for the Orlando attorney who since the '70s has run the prominent law firm Bogin Munns & Munns.

At the moment, though, he's in an airboat on Cypress Lake.

"I have loved being a lawyer, but can you see why I do this? I mean, this is incredible," he says, looking out at the water and cypress trees.

"This" would be Munns' latest venture: Wild Florida Airboats & Wildlife Park near St. Cloud.

Paul Brinkman, *Lawyer's Wild About Showing Real Florida*, *ORLANDO SENTINEL*, May 11, 2014, at A1.

Airboat tours began in Florida in 1945, when John Cooper started giving rides to tourists:

It was June 1945, just as World War II was winding down, when John Cooper arrived in Miami from his home in Missouri. It would be two more years before Everglades National Park was established.

Cooper and his two brothers, Charley and Jay, along with their families, set up housekeeping in tents at an old [Indian] camp. . . .

John Cooper came here to gig [i.e., catch] frogs, cruising across the sawgrass at night wearing a miner's helmet with headlamp, bagging the delicate-tasting amphibians with a lancelike gig.

In the daytime, tourists began stopping by to ask Cooper for air-boat rides. His boat only carried one person though.

"He got to thinking: 'If they want to pay me to ride in my boat, I'll build a bigger one,'" Sally [Kennon, a distant relative] says.

John Cooper put together a four-seater, the first airboat built to ferry tourists across the River of Grass. A 1950s Coopertown postcard shows a round-faced Cooper on a boat labeled “Glade Glider. Thrill Ride. \$1.00.”

Robert McClure, Coopertown’s 50th Anniversary, *S. FLA. SUN-SENTINEL*, June 17, 1995, at 1D. Cooper’s operation now is run by the Kennons, who have 10 airboats. See *The Original Coopertown Airboat*, at <http://coopertownairboats.com/>.

Over the years, Coopertown has acquired numerous competitors, both in Florida and throughout the Gulf Coast. For a partial list, see *Top USA Airboat Tours*, VIATOR, at <https://www.viator.com/USA-tours/Airboat-Tours/d77-g3-c26027>. In 2019, R.J. Molinere and his son Jay Paul, two of the stars of the History Channel’s hit television series *Swamp People*, began their own airboat tour company so that “fans [could] get up close and personal with the bayou experience they see on the show.” Scott Yoshonis, “Swamp People” Stars Offer Airboat Tours in Louisiana, *AKRON BEACON J.*, Apr. 7, 2019, at D6.

While serving as the dean of St. Thomas University law school in Miami, Daniel J. Morrissey was asked to greet a group of conference attendees. Morrissey closed his speech by suggesting that they take an airboat tour:

During the Christmas holidays I took my family to the Miccosukee festival in the Everglades that featured displays of Native American dance, history, and crafts. I particularly liked the alligator wrestling—it reminded me of a faculty meeting. If you have never been to the Everglades and taken an airboat ride out into that marvelous ecosystem, I highly recommend it.

Daniel Morrissey, Opening Remarks, 9 *ST. THOMAS L. REV.* 3, 4 (1996).

For a further look at airboat tours, see, e.g., Emma Shaw, *Living the Southern Dream: Airboating in Louisiana*, July 10, 2017, at <https://www.exploreshaw.com/living-southern-dream-airboating-in/> (visitor from Australia describes her New Orleans airboat tour experience); Miami, Florida—Everglades Airboat Ride HD (2016), at <https://www.youtube.com/watch?v=bI3xUpua6c0> (YouTube video taken during an airboat tour). See also *Luzardo v. State*, 147 So. 3d 1083 (Fla. Dist. Ct. App. 2014) (car accident at the entrance of Gator Park (<https://gatorpark.com/>), a longtime Everglades airboat tour facility); Steven Lemongello, *Boat Ramp Battle Could Drain Orange Watercraft Businesses*, *ORLANDO SENTINEL*, Aug. 19, 2017, at A1 (reporting that there are so many airboat tour companies in Orlando that the county’s 11 boat ramps are unable to handle the traffic they generate); *Earn Passive Income with an Airboat*, Mar. 26, 2012, at <http://creatingapassiveincome.com/2012/03/26/earn-passive-income-with-an-airboat/> (unsigned blog post suggesting that starting an airboat tour company is an easy way to earn extra income).

¹⁴After World War II, for example, airboats were deployed in Florida to prevent illegal immigration from Asia and Europe. See Verne O. Williams, *Saltwater Border Patrol*, *POPULAR MECHANICS*, Dec. 1949, at 119, 121 (“[T]he Border Patrol uses planes and swamp-gliding airboats to watch this region . . . [for] postwar smugglers . . . [and] . . . thousands [of] unwanted aliens. . .”).

Today, airboats are being used for the same purpose along the Texas-Mexico border. See David Long, *Patrolling the Rio Grande*, DHS-CBP, at <https://www.cbp.gov/frontline/frontline-riverine-feature> (“Below the dam on Lake Amistad, the Rio Grande River becomes shallow and irregular, depending on the amount of water released from the dam. Water depths in this part of the river can quickly vary from a few inches to 3 feet . . . Airboats are used exclusively on this part of the water border, carrying two to three agents, depending on the mission.”). See also Zolan Kanno-Youngs, *Death on Rio*

enforcement officers,¹⁵ and soldiers.¹⁶ In more recent times, they also have become popular with public safety departments, which use them for flood, shallow water, and ice rescue operations.¹⁷

Grande: A Perilous Migrant Route, *N.Y. TIMES*, June 8, 2019, at A1 (front page story underneath a four-column color photograph of a border patrol airboat).

In 2012, agents in an airboat on the Rio Grande River shot and killed Guillermo Arevalo Pedraza, who was standing on the Mexican side of the border. According to the agents, they opened fire after a group of 20 onlookers began throwing rocks at them as they tried to intercept a swimmer. Disputing the agents' account, in 2014 Arevalo's widow and minor children sued the government. See Brian Bennett & Joseph Tanfani, *A Deadly Family Outing*, *L.A. TIMES*, Oct. 19, 2014, at A1. Their lawsuit (*Gallegos v. United States*, No. 5:14-cv-00136 (S.D. Tex.)) has been stayed pending the outcome of *Hernandez v. Mesa*, 2019 WL 2257285 (U.S. 2019), a non-airboat case with similar facts. See Adam Liptak, *Justices to Hear Case About U.S. Agent Shooting Teenager Across Border*, *N.Y. TIMES*, May 29, 2019, at A12. The outcome in *Hernandez* (and, by extension, *Gallegos*) turns on whether federal agents can be sued for extraterritorial misconduct in the absence of an authorizing statute. Compare *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) (holding that when it comes to domestic misconduct, no statute is required because of the constitution).

¹⁵See, e.g., *Hatfield v. Commissioner of Inland Fisheries and Wildlife*, 566 A.2d 737, 738 (Me. 1989) ("Each checkpoint involved between six and ten law enforcement officers and one or two police dogs stationed at temporarily fixed sites on the riverbank east of the Route 5 bridge. All of the officers were armed, and the officers had the use of a privately-owned motorized airboat on each occasion.").

¹⁶Airboats were particularly important during the Viet Nam War, when U.S. Special Forces used them to traverse the Mekong Delta. See, e.g., JAMES PARKER WOLLNER, *THE BAMBOO SHOOT: THE STORY OF THE 2ND AIRBOAT PLATOON* (2007); Hurricane Aircat, WIKIPEDIA: THE FREE ENCYCLOPEDIA, at https://en.wikipedia.org/wiki/Hurricane_Aircat; Aircat Airboats in Vietnam War—January 31, 1967 Universal Newsreel, at <https://www.youtube.com/watch?v=eKhZzhge7Jk> (YouTube video). See also *Dynasciences Corp. v. United States*, 214 Ct. Cl. 643, 662 (1977) (excess profits action involving company with multiple government research and development contracts, including one for a "a jet-propelled swamp boat capable of skimming over rice paddies and marshes").

¹⁷See Robert Dummett, *The Use of Airboats in Ice and Water Rescue Emergencies*, *FIRE ENG'G*, Mar. 2004, at 113. See also *Robin v. United States*, 233 F. App'x 350, 351 (5th Cir. 2007) ("[T]he Louisiana Department of Wildlife and Fisheries (LDWF) mobilized a search and rescue operation. Pursuant to the request of the supervising LDWF Lieutenant, Special Agent Stephen Clark of the United States Fish and Wildlife Service (USFWS) assisted in the operation and contributed the use of a USFWS air boat."); *Estate of Romain v. City of Grosse Pointe Farms*, 2018 WL 1180892, at *5 (E.D. Mich.) ("Several pages of the Coast Guard's Search and Rescue . . . file reflect that it was contacted about a person in the water off Lake Shore by GPF [Grosse Pointe Farms] Lieutenant Rogers. . . . The Coast Guard's Situation Report . . . reflects that assistance was requested at 9:30 p.m., an airboat was launched at 9:38 p.m., and the airboat was on scene at 9:51 p.m."), reconsideration denied, 2018 WL 3100907 (E.D. Mich. 2018); *Vermont State Police Acquires New Airboats to Help with Rescues*, *VERMONT J.*, Feb. 3, 2019, at <https://vermontjournal.com/news/vermont-state-police-acquires-new-airboats-to-help-with-rescues/>; *Pikeville's Rescue Airboat* (2012), at

Due to their simple design, many airboats are home-built by amateurs.¹⁸ Such airboats tend to have room for one to three people

https://www.youtube.com/watch?v=RL_U9XgIciU (YouTube video about the Pikeville (Ky.) Fire Department's new airboat).

In 2016, the Poquoson Fire Department became the first one in Virginia to have its own airboat. Asked how it would improve rescue operations, Lieutenant Joe Breeden,

explained it using a hypothetical of a jet-skier who doesn't see a sandbar and goes down in the marshy areas by Messick Point.

A rescue attempt would require them to either deploy their main boat from the marina on Rens Road and skirt the coast, or haul one of their smaller boats down to the point, he said. And that still might require them to put firefighters in the water if sandbars block their passage to the person.

The airboat, on the other hand, can be deployed from virtually anywhere and can get right up to the person, he said. . . .

"There's virtually nowhere in the city we can't get to with this tool," Breeden said.

Tyler Bell, *New Boat Buoys Rescue Efforts*, DAILY PRESS (Newport News, VA), June 27, 2016, at A1, A6.

The life-saving capabilities of airboats made national headlines in 2005, when thousands of stranded New Orleans residents were rescued by them. See TRENT ANGERS, *AN AIRBOAT ON THE STREETS OF NEW ORLEANS: A CAJUN COUPLE LENDS A HAND AFTER HURRICANE KATRINA FLOODS THE CITY* (2008). See also *Hurricane Katrina Air Boat Rescues*, AP NEWS, Sept. 1, 2005, at <https://www.youtube.com/watch?v=GTQhE1vS2DQ> (YouTube video).

The same proved true after Hurricane Harvey devastated parts of Texas in 2017:

Two airboat clubs from the Fort Worth area gathered in a Wal-Mart parking lot where emergency helicopters were making quick landings. The men got out of their trucks and gathered around Port Arthur's deputy police chief, Maj. Cory Cole. They didn't just come to listen. They came to take orders.

Cole directed the boaters to where a large number of residents had been stranded. "It's just so crazy down there," he said. "We can't get the trucks to get 'em."

But now, Port Arthur had its own navy. . . .

The boaters fanned back out to their trucks. A bright yellow fan boat painted with the words "SHO NUF" took the lead, with the rest of the boaters forming a column in their trucks down the flooded highway. When they could go no farther, they began sliding their boats into the water. The big fan engines on the shallow-draft airboats made an enormous roar as they ignited, and the rain-soaked roads were transformed into canals. . . .

Matt Pearce, *The "Cajun Navy": As Harvey Moves Farther East, a Flotilla of Rescuers Descends on Flooded Port Arthur*, L.A. TIMES, Aug. 31, 2017, at A1.

In 2019, airboats again proved invaluable when the Midwest flooded. See, e.g., *Helicopters, Airboats Rescue People from Flood*, NETNEBRASKA, Mar. 15, 2019, at <http://netnebraska.org/article/news/1167168/helicopters-airboats-rescue-people-flood>.

¹⁸In his article, for example, Smith explained how Burgess built the WHY NOT:

and typically use car engines because they are easy to find and repair.¹⁹ In contrast, commercial airboats are manufactured by specialized companies, often can seat a dozen or more people, and use airplane motors (which, while more expensive, are both lighter and more powerful than car engines).²⁰ Depending on their intended use, airboat hulls are made out of either aluminum or

After a deal to purchase an airboat in Florida fell through last year, Burgess decided to build one himself.

He started in April and finished in September.

Burgess had no blueprints and no boat building experience. . . .

For the airboat project, it was essential he learn to weld.

The vessel started with a "sheet of aluminum and worked up to that," Burgess said, nodding at the 15-foot-long, 8-foot-wide craft.

The boat has 3/16" aluminum on the bottom and 1/8" aluminum on the sides. A 5/8" plastic sheet also covers the bottom to help the boat glide over whatever surface it may be on.

For power, Burgess re-purposed a 350 Chevy inboard from a power boat. He added an air-cooling system and exhaust.

After months of welding and wiring, in September Burgess took Why Knot for its maiden voyage on the Ahnapee River in Algoma.

A couple of rivets leaked, but the boat proved seaworthy.

Smith, *supra* note 9.

Some do-it-yourselfers prefer so-called "mini airboats," which typically are half the size of a regular airboat and often use lawn mower engines rather than airplane or car engines. For a further discussion, see the web site of the Mini Airboat Association (<http://miniairboatassoc.com/index.html>), which is based in Elizabethville, Pennsylvania. See also Andy Wilson, Mini Airboats, at <https://www.youtube.com/watch?v=2Lf-IWRp5xE> (YouTube video). Such airboats should not be confused with the miniature remote-controlled airboats operated by hobbyists. See Remote Control Airboats, SOUTHERN AIRBOAT, at <https://southernairboat.com/phpBB3/viewtopic.php?t=29764>. See also RC Air Boat, at https://www.youtube.com/watch?v=_pSibjuL-Uk (YouTube video of a remote-controlled airboat built out of a stop sign and a leaf blower).

¹⁹Wikipedia Airboat Entry, *supra* note 1.

²⁰*Id.* It is typical to use airplane motors that have reached their maximum flying time. See, e.g., *United States v. Good*, 2009 WL 175064, at *1 (10th Cir. 2009) ("Several of the engines contained parts that were marked 'not airworthy' or 'airboat use only.'").

Among the country's leading airboat manufacturers are Alumitech Airboats in Edgewood, Florida (<https://www.alumitech.net/>); American Airboat in Orange, Texas (<http://americanairboats.com/>); GTO Performance Airboats in Ocala, Florida (<http://gtoairboats.com/>); Hamant Airboats in Melbourne, Florida (<https://hamantboats.com/>); and Panther Airboats in Cocoa, Florida (<http://airboats.com/>). For a directory listing additional builders, see https://www.airboatdirectory.com/PhpLD/Airboat_Builders_A_to_Z/.

fiberglass.²¹ While home-built airboats can be cobbled together for less than \$10,000,²² professionally-assembled airboats can exceed \$100,000.²³

Most states have not enacted airboat-specific laws and instead treat them like any other type of vessel.²⁴ Those that have passed explicit laws have tended to focus on two discrete issues: 1) how much noise should airboats be allowed to make?²⁵ and, 2) where

²¹Wikipedia Airboat Entry, *supra* note 1 (explaining that “airboats intended for use in icy conditions will have sturdier polymer coated aluminum hulls while airboats intended for use in marshes will have lighter fiberglass hulls. . .”).

²²See Poll: How Much Did It Cost to Build Your Boat?, SOUTHERN AIRBOAT, Apr. 14, 2012, at <https://southernairboat.com/phpBB3/viewtopic.php?t=44842>. See also Harry Walton, Hitch Your Boat to an Air Prop, POPULAR SCI., May 1953, at 168 (advising that airboats could be built for \$200, the 2019 equivalent of \$2,000).

²³See How Much Does an Airboat Cost?, HOWMUCHISIT.ORG, Aug. 10, 2018, at <https://www.howmuchisit.org/how-much-does-an-airboat-cost/>. Generally speaking, however, a quality airboat can be had for under \$40,000. See Wikipedia Airboat Entry, *supra* note 1. See also Classified Ads, SOUTHERN AIRBOAT, at <https://southernairboat.com/southern-airboat-classifieds/browse-ads/6/airboats-priced-20000-and-above/>.

As airboats have gone “upscale,” so has their clientele. See, e.g., Tyler Gray, Airboats, Residents Battle Over Buzz, ORLANDO SENTINEL, May 10, 2000, at D3 (quoting Dave Johnson, an Orlando airboat dealer, as saying, “Airboats were owned by—you might say—rednecks, and there’s a few of them still around. But now I sell airboats to doctors, lawyers. They’re going right in line with the Harley-Davidson motorcycles.”). See also Mark Pino, Airboat Built Redneck-Tough Has its Appeal, ORLANDO SENTINEL, July 22, 2001, at 1 (Osceola) (newspaper reporter confesses to wanting to own an airboat because they are “cool”).

²⁴See, e.g., La. Admin. Code tit. 76, pt. XI, § 103C.1 (requiring all vessels, including airboats, to have “at least one readily accessible . . . wearable personal flotation device for each person on board.”); 163 Neb. Admin. Code ch. 3, § 003.03A (requiring all non-exempt vessels, including airboats, to carry fire extinguishers).

There are some exceptions. Alabama, for example, requires airboats to “display a flag 10 by 14 inches on a 12 foot mast.” See Ala. Code § 33-5-22(c). Florida has a similar, although more detailed, law. See § Fla. Stat. 327.391(3) (requiring airboats to be “equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the lowest portion of the vessel. The flag must be square or rectangular, at least 10 inches by 12 inches in size, international orange in color, and displayed so that the visibility of the flag is not obscured in any direction.”). In Utah, airboats operating “on the Great Salt Lake and adjacent refuges” must “have on board a compass and one of the following: approved flares, a strobe light, or other visual distress signal.” Utah Admin. Code r. 651-219-4.

²⁵Airboats always have been noisy. See, e.g., Rube Allyn, On the Waterfront, TAMPA BAY TIMES, Oct. 6, 1947, at 11 (“[T]he lakes of Florida are filling up with airboats. . . . More and more, the sound of a wailing motor and a drumming prop are becoming accepted noises of the wilderness.”). See also Aquiles Perez, Analysis of Factors Affecting the Sound Generated by Airboats (unpublished M.S. dissertation, Florida Atlantic University, 2006). However, as people have moved into once uninhabited areas,

should airboats be allowed to operate?²⁶ On July 1, 2019, Florida became the first state to require commercial airboat operators to

the issue of airboat noise has become increasingly heated. See, e.g., Wes Smith, *Airboat Wars*, *ORLANDO SENTINEL*, June 26, 2005, at A1, A18 (“Airboat-noise complaints . . . have followed population growth and the increased development in waterfront areas from South Florida up the peninsula into the center of the state[.]”).

A 2011 study conducted by the National Park Service found that airboats can generate sounds of up to 108 decibels. See *Everglades and Dry Tortugas National Parks Noise Source Measurement Summary Report*, available at <https://www.nps.gov/drto/learn/nature/upload/EVER-Noise-Source-Summary-Report-FINAL-2011-08-10a.pdf>. In comparison, normal human speech takes place at 60 decibels and prolonged exposure to noise above 85 decibels causes hearing loss. See JOS. J. EGGERMONT, *HEARING LOSS: CAUSES, PREVENTION, AND TREATMENT* (2017). As a result, nearly all professional (and some amateur) airboat operators wear earmuffs and ear plugs routinely are given to passengers taking airboat tours. See, e.g., Keith Walters, *To Air is Human, Especially for Florida Anglers*, *STAR-DEMOCRAT* (Easton, MD), Feb. 9, 2003, at 7B (“I met Clay and our guide, Lee Boyd, . . . just outside Naples. . . . We got aboard and Lee handed us sound-protective earmuffs before he started the engine. . . . The airboat ride was surprisingly smooth. . . . Engine noise was barely discernable through the earmuffs.”).

Florida requires all airboats to have mufflers, see Fla. Stat. § 327.391(1), and prohibits any airboat from being used while it lacks a muffler. See Fla. Stat. § 327.391(2). In addition, the muffler must be able “to effectively abate the sound of exhaust gases . . . and prevent excessive sound. . . .” See Fla. Stat. § 327.02(30). See also Fla. Stat. § 327.65 (further defining muffling devices). Because these provisions are both ambiguous and rarely enforced, airboat noise complaints remain an ongoing concern. See, e.g., Craig Garrett, *Lake Suzy’s Upset Neighbors*, *ARCADIAN* (Arcadia, FL), May 30, 2019, at https://www.yoursun.com/arcadia/news/lake-suzy-s-upset-neighbors/article_d541646e-822b-11e9-90dc-33e388bbce44.html; Ryan Gillespie, *Toho’s Homeowners Continue to Absorb Noise from Airboats*, *ORLANDO SENTINEL*, July 16, 2018, at A1.

At one time, airboats in Louisiana operating in the Maurepas Swamp wildlife management area were required to have mufflers, but this mandate was dropped as of August 1, 2019. See La. Rev. Stat. Ann. § 56:109.4(A)(1). In Michigan, “motor boats” must have mufflers. See Mich. Comp. Laws Ann. § 324.80156. According to an attorney general opinion, this law applies to the motors of airboats but not to their propellers. See Mich. Att’y Gen. Op. 7124 (Feb. 20, 2003), available at 2003 WL 465438.

Michigan also prohibits airboats from operating “within 450 feet of a residence between the hours of 11 p.m. and 6 a.m. at a speed in excess of the minimum speed required to maintain forward movement.” See Mich. Comp. Laws Ann. § 324.80108a(1). In New Hampshire, airboats may only “throttle up” to the extent necessary to “move at headway speed” whenever they are within 150 feet of shore. See N.H. Rev. Stat. Ann. § 270:25-a(I)(c).

²⁶For years, airboaters have insisted that their boats do less damage to the environment than other types of vessels. See, e.g., Spear, *supra* note 4, at 12 (“[A]irboat makers join forces in touting their product’s superiority over conventional watercraft. The question they often pose: What boat does the least environmental damage? Conventional boats use underwater propellers that can tear up aquatic plants and injure manatees. Many conventional boats also vent pollutants from their exhaust into the water. Airboats keep their exhaust and propellers clear of the water.”). Experts, however,

pointing to a lack of studies, argue that the amount of damage caused by airboats remains unknown:

Relative to other ORVs [off-road vehicles], airboats cause the least damage to soils and vegetation, but repeated use of the same trails results in uprooting vegetation and subsequent soil displacement, producing channels. . . . Some areas are strewn with such trails. . . . The hydrological and biological impacts of soil disturbance and altered flow patterns (reducing sheet flow) are not well understood. However, cattail establishment is commonly associated with areas of heavy airboat traffic, and cattails often invade abandoned trails, even those lightly traveled.

Airboat impacts on wildlife are also little studied, but airboat harassment is known to be problematic, with snail kites flushing at about 50-yard approaches by airboats, and many wading birds flushing at 100 yards or more. Noise effects would seem obvious, as most airboats are excessively loud. . . . Physical intrusion and noise combined are most damaging. Because airboats may travel up to 50 miles per hour, significant adverse wildlife impacts seem inevitable.

THOMAS E. LODGE, *THE EVERGLADES HANDBOOK: UNDERSTANDING THE ECOSYSTEM* 362 (4th ed. 2017). See also *Engine Mfrs. Ass'n v. U.S. Env'tl. Prot. Agency*, 88 F.3d 1075, 1102 (D.C. Cir. 1996) (Tatel, J., concurring in part and dissenting in part) (observing that airboat engines cause air pollution); *Port Acres Sportsman's Club v. Mann*, 541 S.W.2d 847, 849 (Tex. Ct. Civ. App. 1976) ("The submergence of the land in Section 295 now underlying Big Hill Bayou was caused . . . by the activities of men, namely the continued use of airboats through the marsh over a long period of time. This activity was participated in by members of plaintiff's organization as well as those of certain defendants. Witnesses on both sides testified to the long-continued use of such boats and the effect on the floor of the marsh.").

Due to such concerns, numerous jurisdictions have enacted airboat bans to protect sensitive waterways. See, e.g., Ala. Admin. Code r. 220-3-.51 (prohibiting airboats "on any of the public waters of this State subject to an ebb and flow of the tide of at least 2 inches, south of a line beginning at the Mississippi state line . . . to the Florida state line"); 5 Alaska Admin. Code 95.552(a)(3) (prohibiting airboats "within Izembek Lagoon"); Fla. Stat. §§ 258.501(15) (prohibiting airboats on the Myakka River) and 369.309(1) (prohibiting airboats on the Wekiva River System); Mich. Admin. Code r. 281.763.31 (prohibiting airboats on Wolverine Lake); La. Admin. Code. tit. 76, Pt III, § 323A.10 (prohibiting airboats in the State Wildlife and Paul J. Rainey Refuges); Minn. Stat. Ann. § 97A.101(4)(a) (prohibiting airboats "on lakes designated for wildlife management purposes"); Ohio Admin. Code 1501:47-7-10(F) (prohibiting airboats on Springfield Lake in Summit county), 1501:47-7-17(B)(1) (prohibiting airboats on the Lakengren lakes in Preble county), 1501:47-7-18(B)(5) (prohibiting airboats on Lake Buckhorn in Holmes county), and 1501:47-7-21(D) (prohibiting airboats in the waters of the Medina county park district); Okla. Admin. Code 630:15-1-16(2) (prohibiting airboats "on a scenic river"); Or. Admin. Code 250-020-0221(8) (prohibiting airboats in designated areas of the Fern Ridge Reservoir "where there is emergent vegetation present"); S.C. Code Ann. § 50-21-860 (prohibiting airboats "from the freshwater-saltwater dividing line . . . seaward" and restricting their use on the Black, Great Pee Dee, Little Pee Dee, Sampit, and Waccamaw rivers as well as Lake Marion and the Santee Swamp); Tenn. Comp. R. & Regs. 0400-02-03-.05(10) (prohibiting airboats in state parks and natural areas); Tex. Admin. Code § 57.1012(m) (prohibiting airboats in all coastal management areas); 12 V.I. R. & Regs. § 98-5(b)(4) (prohibiting airboats in the St. Croix East End Marine Park).

undergo training and testing.²⁷ Florida also is the only state to have promulgated an “Airboater’s Code of Ethics.”²⁸

Subject to certain “grandfather” exceptions (tied to proof of use as of January 1, 1989), airboats are banned in Everglades National Park. See 16 U.S.C. § 410r-7(c)-(d). See also Lizette Alvarez, *In a Corner of the Everglades, a Way of Life Ebbs*, N.Y. TIMES, June 12, 2016, at A16. An award-winning 2018 documentary (titled *Gladesmen: The Last of the Sawgrass Cowboys*) examines the closing of the Everglades to airboaters. See Phillip Valys, “Sticking Frogs” in the Sawgrass, S. FLA. SUN-SENTINEL, Mar. 9, 2018, at 4 (Showtime). The film can be watched on-line at <https://vimeo.com/ondemand/gladesmen>.

²⁷See Fla. Stat. § 327.391(5). See also Fla. Admin. Code r. 68D-35.001 (“Airboat Operator Course”), available at <https://www.flrules.org/gateway/ruleNo.asp?id=68D-35.001>.

Known as “Ellie’s Law,” the legislation was passed in response to the 2017 death of Elizabeth “Ellie” Goldenberg. See Skyler Swisher, *Law Creates Safety Rules for Airboat Operators*, S. FLA. SUN-SENTINEL, Apr. 1, 2018, at 1B. On the day after her graduation from the University of Miami, the aspiring actress drowned when the airboat she was riding in with her family overturned, pinning her under its engine. *Id.* Although the Goldenbergs accused Steve George Gagne, the airboat’s operator, of causing the accident by driving too fast, prosecutors declined to press charges due to a lack of evidence. See David Ovalle, *Airboat Skipper Smoked Weed Before Fatal Crash, Tests Show. But He Won’t Be Charged*, MIAMI HERALD, Mar. 1, 2018, at <https://www.miamiherald.com/news/local/community/miami-dade/article202864709.html>.

The new law requires operators to take courses in airboating safety, CPR, and first aid and makes the failure to do so a misdemeanor punishable by a \$500 fine. Many observers, however, believe that the law does not go far enough. See, e.g., Editorial, *Airboats Still a Risky Way to Visit Everglades*, S. FLA. SUN-SENTINEL, July 27, 2018, at 9A (“‘Ellie’s Law’ is a start, it just doesn’t go far enough. And absent strict enforcement, it will be too easy for drivers to ignore.”).

²⁸The code, which is non-binding, was produced in 2004 by the Florida Fish and Wildlife Conservation Commission’s Boating Advisory Council to foster “courteous and safe airboat operation.” In full, it reads as follows:

1. Respect the right of everyone to enjoy Florida’s waterways.
2. Learn and observe all State of Florida boating regulations, navigation rules, and vessel safety equipment requirements.
3. Recognize that the noise generated from an airboat propeller and engine exhaust system may annoy others.
4. Equip the airboat with a muffling device and operate it in a manner that will reduce engine exhaust sound levels.
5. Operate at a slow speed on or near boat ramps and move away an adequate distance before powering up; where possible, no power loading.
6. Use slow speed to reduce noise near residential and public use areas.
7. Be extra cautious to reduce sound levels during nighttime hours.
8. Understand that the public will judge all airboaters by the actions of one.

Protect natural resources and do not needlessly disturb wildlife.

As will be seen below, much of the case law surrounding airboats has involved personal injury and wrongful death claims arising from operator error. This is because piloting an airboat requires a great deal of skill.²⁹ Not only are airboats very fast,³⁰

See <http://mygovhelp.info/FLFWC/> (under “FAQs: Airboating Regulations”) (paragraph numbers inserted for improved readability).

²⁹See A. Lee Foote & Kathleen A. Reynolds, *Manual of Safe Airboat Operation* (1995), available at https://sites.ualberta.ca/~lfoote/writing_files/AIRBOATmanual.pdf. As these authors note, “There are inherent dangers in airboat operation that are capable of quickly magnifying small errors in operation or maintenance into life-threatening situations.” *Id.* at 4. See also WALT “BUTCH” HENDRICK & ANDREA ZAFERES, *SURFACE ICE RESCUE 76* (1999) (“Operators of these craft [airboats] require extensive training and continued practice.”).

In 2006, the Ecology Center of the University of Louisiana at Lafayette (“ULL”) began offering to the public a 16-hour course in airboat handling. See <https://ecology.louisiana.edu/education-outreach/airboat-training>. See also E-mail from Andre B. Daugereaux, Operations Manager, ULL Ecology Center, to the author, May 29, 2019, at 9:00 a.m. (copy on file with the author). In contrast, the National Association of State Boating Law Administrators (“NASBLA”) offers a 40-hour airboat operators course that is open only to law enforcement officers and emergency responders. See <https://www.nasbla.org/nasblamain/training/courses/airboat>.

In his 2012 novel *Chomp*, author Carl Hiassen mentions how difficult it is to learn to drive an airboat:

“Git up there and drive,” he told Wahoo. “Foot pedal is for gas. Stick is for steerin’.”

“Where’s the brakes?” asked Tuna.

“Ain’t no brakes,” Link said.

Until then, the fastest thing that Wahoo had ever driven was the creaky old golf cart that his father used for hauling supplies to the animal pens. An airboat was five times faster, louder and harder to handle. The rudder stick worked awkwardly compared to a steering wheel, and Wahoo struggled to master the feel.

...

Id. at 221.

³⁰In the novel *Everglades*, see *supra* note 7, Doc Ford describes what it is like to be on an airboat:

Riding in an airboat, when an accelerant G-force begins to roll your eyes back, causing facial flesh to flutter, your first sensory impression is that you are on a saucer, sliding out of control and destined for disaster. . . .

And not without reason. In a traditional boat, water is a built-in governor because you have to displace water to move. In a land vehicle, you roll along comfortably, reassured by the limitations of friction. But riding in an airboat is like being vaulted onto a plain of ice, an overpowered airplane propeller strapped to your butt.

It’s that kind of wild sensation.

Id. at 169–70.

Although standard airboats typically top out at 60–75 miles per hour, “Some [racing] airboats can reach speeds of more than 120 miles per hours (193 km/h).” WENDY HINOTE

they are relatively unstable, and therefore prone to capsizing and sinking, due to their top-heavy design.³¹ Other contributing factors are their noise (which makes communication while on them nearly impossible); their lack of brakes and inability to go backwards; and the failure of many passengers to use seat belts and wear life vests.³²

LANIER, *THE SCIENCE OF SPEED* 22 (2017). See also R.J. Roan, *Airboat Racing: Florida's Fastest Growing Motorsport*, NAPLES HERALD, Mar. 31, 2015, at <https://naplesherald.com/2015/03/29/airboat-racing-floridas-fastest-growing-motorsport/>; *Airboat Racing* 3/9/19, at <https://www.youtube.com/watch?v=AeagpfELzJo> (YouTube video).

Because of their speed and maneuverability, various movies have used airboats in their chase scenes. See, e.g., *Gone Fishin'* (Buena Vista Pictures, 1997) (starring Danny Glover and Joe Pesci); *Chain Reaction* (20th Century Fox, 1996) (Morgan Freeman and Keanu Reeves); *Police Academy 5: Assignment Miami Beach* (Warner Bros., 1988) (David Graf and Bubba Smith); *Soggy Bottom U.S.A.* (Gaylord Productions, 1981) (Ben Johnson and Dub Taylor); *Running Scared* (Thorn EMI, 1980) (Judge Reinhold and Ken Wahl). For a real-life case involving an airboat chase, see *Mazak v. Johnson*, 2008 WL 11434531 (M.D. Fla. 2008), later proceedings at 2009 WL 1393505 (M.D. Fla.), and 2009 WL 1849985 (M.D. Fla. 2009) (police officer was entitled to chase airboater who had interfered with officer's issuing of a citation to a jet skier).

³¹Wikipedia Airboat Entry, *supra* note 1. See also FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, *THE FLORIDA BOATERS GUIDE: A HANDBOOK OF BOATING LAWS AND RESPONSIBILITIES* ch. 2 [hereinafter *Florida Boaters Guide*] ("Boating Basics: Airboats"), available at <https://www.boat-ed.com/florida/handbook/page/12/Airboats/> ("Airboats are designed to operate well in shallow water and marshlands, but their high center of gravity and lack of flotation make them susceptible to capsizing and/or sinking."); *Airboat Capsized*, at <https://www.youtube.com/watch?v=9uhJMucct94> (YouTube video).

In Fred B. Mullins's 2015 novel *BAD BARRACUDAS: A JEB COLTON ADVENTURE*, one of the bad guys sinks his airboat when he goes too fast:

Jeb heard the engine of the other airboat as it climbed up the front side of the levee. The driver planned to pull off the same 360 degree turn that Jeb had done as he crested the levee. The aluminum hull was spinning expertly when halfway through the turn the edge of the hull caught on a buried rock that had three inches sticking up above the ground. The driver compensated somehow and kept the airboat from flipping; however, he found that the boat was sliding down the other side of the levee at a forty five degree angle. Knowing he had to hit the water straight on he turned his rudder and tapped the accelerator to turn the airboat for the proper entry angle. He did everything right except he now had too much speed; the airboat plunged into the water and a wave of water came around the grass rake and flooded the open hull of the airboat. He tried to accelerate out of his predicament but it was too late. The sound of the prop slapping water was music to Jeb's ears. He slowed and turned his airboat to get a glimpse of the sinking airboat before he sped his airboat away as fast as possible.

Id. at 101.

³²See Isabella Vi Gomes, *Florida Airboat Accidents Have Killed Seven and Injured Dozens in Recent Years*, MIAMI NEW TIMES, Dec. 12, 2017, at

<https://www.miaminewtimes.com/news/floridas-unregulated-airboat-industry-9903095>. See also FLORIDA BOATERS GUIDE, *supra* note 31, and the annual recreational boating statistics compiled by the U.S. Coast Guard, which provide further details regarding airboat accidents and casualties. The reports (going back to 2004) can be accessed at https://www.uscgboating.org/statistics/accident_statistics.php. Ironically, despite operating in shallow waters, most airboat deaths are caused by drowning. *Id.*

In its student and staff boating guide, Florida International University lists even more dangers:

Airboats lack a rudder in the water, they cannot be operated in reverse or slowed by reversing the motor, steering is dependent on passing an airstream over the ailerons by the rotating prop such that quick maneuvers require acceleration, and a large airplane propeller is spinning immediately behind the operator and passengers.

Operating an airboat is an inherently risky activity and exposes both the operator and passengers to a number of hazards . . . [including]: (1) high level of engine noise; (2) risk of collision with wildlife, trees, pinnacle rocks, and other airboats; (3) injury from flying objects, including loose bolts from airboat, propeller fragments, and improperly secured cargo; (4) being ejected from airboat because of a collision, sudden stop, or fast turn; (5) rapid submersion of a swamped airboat; (6) engine- and fuel-related fires and explosions; (7) lightning strikes; (8) being stranded in remote areas because of mechanical problems or becoming stuck in dry or muddy ground; (9) risk of heat-related health problems and dehydration while in the field; (10) encounters with potentially dangerous wildlife, including venomous reptiles and spiders, large-bodied predators (alligators, crocodiles, panthers, bears, pythons), and biting and stinging insects (e.g., hornets, ants, mosquitos); (11) operating under reduced visibility (e.g., fog, heavy rain, nighttime); and (12) becoming lost in the field.

Florida International University, Boating Safety Manual 24 (July 29, 2014), available at <http://research.fiu.edu/documents/boating-safety-committee/documents/boating-safety-manual-2014.pdf>.

III CASE LAW³³

A. Crimes

Criminal cases involving airboats run a wide gamut.³⁴ There are, for example, cases in which the defendant stole an airboat;³⁵ cases in which the defendant used an airboat to commit or further a crime;³⁶ and even a case in which a falling out between two brothers over the airboat business that had been left to them by their father resulted in one of them being sentenced to two years in prison for theft.³⁷

³³Cases disposed of without opinions have been omitted. See, e.g., *In re Forfeiture of 1994 Gilileo Airboat*, 740 So. 2d 540 (Fla. Dist. Ct. App. 1999) (penalty action filed by Polk County Sheriff's Office); *Bartlett v. Everglades Private Airboat Tours, Inc.*, 719 So. 2d 896 (Fla. Dist. Ct. App. 1998) (*pro se* appeal from state's unemployment commission).

³⁴None, however, involves murder, the subject of former University of Florida law professor Michael W. Gordon's 2015 novel *Deadly Airboats*. But see *State v. Mire*, 149 So. 3d 981, 985 (La. Ct. App. 2014) (airboat used to search for murder victim), writ granted, 177 So. 3d 1062 (La. 2015), rev'd, 2016 WL 314814 (La. 2016).

³⁵See, e.g., *Quigley v. State*, 620 So. 2d 1010 (Fla. Dist. Ct. App. 1992) (affirming restitution order, which had been imposed together with probation); *Lightsey v. State*, 350 So. 2d 824 (Fla. Dist. Ct. App. 1977) (defendant's conviction set aside because of prosecutorial malfeasance). See also *Gilileo v. State*, 923 So. 2d 612 (Fla. Dist. Ct. App. 2006) (defendant admitted stealing an airplane engine with plans to install it in an airboat); *Monk v. State*, 336 So. 2d 1284 (Fla. Dist. Ct. App. 1976) (defendant accused of knowingly concealing a stolen airboat).

³⁶See, e.g., *Wojcieszak v. United States*, 196 F. Supp. 3d 1319 (S.D. Fla. 2016) (defendant used an airboat to illegally hunt deer and hogs); *State v. Bell*, 873 So. 2d 476 (Fla. Dist. Ct. App. 2004) (defendant used an airboat to illegally harvest alligators); *State v. Pearce*, 318 So. 2d 455 (Fla. Dist. Ct. App. 1975), appeal after remand, 336 So. 2d 1274 (Fla. Dist. Ct. App. 1976) (same); *Richburg v. State*, 199 So. 2d 488 (Fla. Dist. Ct. App. 1967) (defendant used an airboat to steal hogs). See also *United States v. Harvey*, 560 F. Supp. 1040, 1069 (S.D. Fla. 1982) ("The concerned citizen also advised on October 14, 1980, that Harvey had sent an airboat into the Everglades to locate Cason and then had Cason taken to a location where he could hide from law enforcement."), *aff'd sub nom. United States v. Van Horn*, 789 F.2d 1492 (11th Cir.), cert. denied, 479 U.S. 854 & 855 (Harvey) & 886 (Sikes) (1986).

³⁷See *Commonwealth v. Eakin*, 2013 WL 9792584 (Pa. C.P. 2013), *aff'd*, 120 A.3d 1053 (text at 2015 WL 7432987) (Pa. Super. Ct.), appeal denied, 125 A.3d 1198 (Pa. 2015), post-conviction relief denied, 188 A.3d 584 (text at 2018 WL 1516584) (Pa. Super. Ct. 2018), appeal denied, 200 A.3d 4 (Pa. 2019).

By far, however, the most interesting case in this category is *State v. Stagno*.³⁸ To win a \$200 bar bet, Frank Stagno drove his airboat down an Anchorage highway. Unsurprisingly, he was arrested and found guilty of drunk driving. At sentencing, the state sought to forfeit his airboat and have his driver's license revoked. In refusing to impose either punishment, the Alaska Court of Appeals explained:

Reading all the statutes in context, we conclude that an airboat is not "a motor vehicle of a type for which a driver's license is required" and that the present offense does not arise "out of the operation of a motor vehicle for which a driver's license is required." It follows that AS 28.15.181(c) and AS 28.35.030, which provide for mandatory revocation of a driver's license if the person is convicted of DWI for operating a motor vehicle for which a driver's license is required, do not apply to Stagno. Neither does AS 28.35.036, which authorizes forfeiture of a motor vehicle "of a type for which a driver's license is required."³⁹

B. Insurance

1. Agents and Brokers

In *Panther Air Boat Corp. v. MacMillan-Buchanan & Kelly Ins. Agency*,⁴⁰ a customer's airboat caught fire while being water tested by the manufacturer (Panther). When its insurer successfully asserted that the policy did not cover such losses,⁴¹ Panther sued its insurance agent (MacMillan) for negligent procurement. The appellate court ruled that the action was time-barred by Florida's two-year statute of limitation for professional malpractice. On appeal, however, the Florida Supreme Court, adhering to its recent

³⁸739 P.2d 198 (Alaska Ct. App. 1987).

³⁹*Id.* at 201 (footnote omitted). For a further look at the case, see Dermot Cole, Bar Bet Produced Panic on Fairbanks Street When Airboat Pulled Up Behind Motorist, ANCHORAGE DAILY NEWS, Aug. 4, 2016, at <https://www.adn.com/opinions/2016/08/04/bar-bet-produced-panic-on-fairbanks-street-when-airboat-pulled-up-behind-motorist/>.

⁴⁰520 So. 2d 601 (Fla. Dist. Ct. App. 1987), decision quashed, 531 So. 2d 333 (Fla. 1988).

⁴¹See *Panther Air Boat Corp. v. Charter Oak Fire Ins. Co.*, 479 So. 2d 131 (Fla. Dist. Ct. App. 1985).

decision in *Pierce v. AALL Ins. Inc.*,⁴² held that insurance agents are not professionals for malpractice purposes. As a result, Panther's action against MacMillan was subject to Florida's four-year statute of limitation for general negligence and therefore was timely.

In *Deroche v. Blanchard*,⁴³ an insurance broker was deemed not liable for failing "to procure insurance covering risks to [an] airboat . . . while the airboat was being transported over land."⁴⁴ The court did not explain its reasoning, saying only: "Third party plaintiff, Teche Airboats, Inc., has failed to establish it will be able to satisfy its evidentiary burden of proving at trial that Ira Young & Associates, Inc., owed it a duty to procure insurance covering risks to the airboat under the circumstances presented. . . ."⁴⁵

2. Policy Interpretation

In *Macalusa v. Hartford Acc. and Indem. Co.*,⁴⁶ Michael Macalusa attempted to jump start his airboat's battery by hooking it up to his car's battery. This effort was successful, but caused the airboat to lurch forward. As it came towards him, Macalusa braced his right arm on his car and attempted to push the airboat away with his left arm. This effort was not successful and resulted in damage to both Macalusa's right arm and his car's hood.

When Macalusa sought compensation from his insurer (Hartford), it denied coverage on the ground that the policy only made it responsible for conventional car accidents. Although the trial court agreed, the Louisiana Court of Appeals did not:

The insurance policy provides coverage for "injury . . . caused by accident . . . (a) while occupying the owned automobile . . . or (c) through being struck by an automobile. . . ." The policy defines "occupying" to exclude its dictionary meaning of "using": "Occupying means in or upon or entering into or alighting from." Plaintiff argues that he was "occupying" by being "upon" his car, or was "struck by" his car.

Plaintiff was not struck by his car, any more than an out-of-

⁴²531 So. 2d 84 (Fla. 1988).

⁴³2018 WL 5919933 (La. Ct. App. 2018), writ denied, 264 So. 3d 1195 (La. 2019).

⁴⁴*Id.* at *1.

⁴⁵*Id.*

⁴⁶343 So. 2d 1217 (La. Ct. App. 1977).

control car is struck by a telephone post; rather, he struck his car. And he was not injured by being struck by (or by striking) the car. He was injured by being struck by the airboat propeller.

Plaintiff was, however, injured while “occupying,” i.e., being “upon” the car, when he placed his arm upon the car in his unsuccessful effort to brace the airboat motor to prevent its falling over upon himself (if a trier of fact believes him). Defendant argues that prior decisions have “extended” medical coverage only to situations closely related to normal car use, such as tire-changing.

We reason that coverage is not limited by the policy to typical automotive accidents. For example, one sitting stop his insured car watching a Mardi Gras parade is, within the express definition of the policy, “occupying” the car because “upon” it. He is therefore covered for accidental injury by a thrown trinket from the parade (or by a drunken reveler’s thrown bottle, or by a low-flying airplane). If the underwriter desires not to afford coverage for every accidental injury whatsoever while “upon” the car the policy should not promise coverage in those terms. . . . [O]ur view is that one who leans upon a car (for whatever purpose) is upon the car; we decline to rule, for example, that one’s center of gravity must be above and supported by the car for him to be upon it.⁴⁷

In *Bailsco Blades & Casting Inc. Employee Benefits Trust v. Fireman’s Fund Ins. Co.*,⁴⁸ various members of a private hunting club crashed a club-owned airboat into a tree while on their way to a duck blind. Due to the accident, James B. Haynes, one of the riders, required extensive medical treatment, most of which was paid for by his employer (Bailsco). To recover its costs, Bailsco sued J. Pat Beaird, the driver of the airboat; Beaird’s insurer (Fireman’s Fund); the club (Four Square Duck Club); and the club’s insurer (Scottsdale Insurance Company).

⁴⁷Id. at 1218–19.

⁴⁸737 So. 2d 164 (La. Ct. App. 1999).

After various stipulations and dismissals, the issue presented was whether Scottsdale had any liability. In finding that it did not, the appellate court relied on the following endorsement to Scottsdale's policy: "This insurance does not apply to any claim for Bodily Injury . . . by any member or members against another member or other members."⁴⁹ Although Fireman's insisted that this provision ran contrary to the rest of the policy, thereby creating an ambiguity that should be construed against Scottsdale, the court disagreed:

Scottsdale has a right to limit its liability toward Four Square and its members. Though the policy provides general coverage for bodily injury resulting from the use of watercraft, the endorsement, which is attached to the policy, amends the policy to deny coverage for bodily injury of one member as a result of the actions of another member. Neither the endorsement nor the policy is ambiguous, and the attachment, or endorsement controls. As such, since coverage is excluded by the endorsement, Scottsdale's policy does not cover Haynes's injuries.⁵⁰

In *Perez v. Dean Equipment, Inc.*,⁵¹ Antoine Perez was injured while working aboard an airboat owned by his employer (Dean Equipment). When Perez sued, Dean's insurer LIMIT, a Lloyd's of London syndicate, began providing a defense.

Nine months later, LIMIT denied coverage on the ground that Perez spent more than 25% of his time on "watercraft" and therefore, per the terms of the policy, was an excluded worker. The district court, however, held that LIMIT had waited too long to deny coverage. On appeal, the Fifth Circuit affirmed:

We agree with the district court that the Louisiana Supreme Court decision of *Steptore v. Masco Construction Co., Inc.*, 643 So.2d 1213 (La.1994), controls this case. In that case the Louisiana Supreme Court stated: "Accordingly, when an insurer, with knowledge of facts indicating noncoverage under

⁴⁹Id. at 167.

⁵⁰Id.

⁵¹2006 WL 2662999 (E.D. La. 2006), aff'd, 262 F. App'x 622 (5th Cir. 2008).

the insurance policy, assumes or continues the insured's defense without obtaining a nonwaiver agreement to serve its coverage defense, the insurer waives such policy defense." *Id.* at 1216.

The district court correctly granted summary judgment.⁵²

C. Limitation of Liability

Limitation actions involving airboats proceed in federal court the same as limitation actions involving other types of vessels.⁵³ Thus, an airboat owner must show that admiralty jurisdiction exists; prove that it had no knowledge of, or privity with, the accident; and establish a fund for claimants equal to the airboat's post-casualty value.⁵⁴

1. Jurisdiction

In *In re Complaint of Bridges Enterprises, Inc.*,⁵⁵ two airboats collided in the Everglades. When the owner of one of the airboats sought limitation, the other objected on the ground that subject matter jurisdiction was lacking. In agreeing with this argument, the court wrote:

The undisputed facts of the instant case clearly demonstrate that the accident occurred on a landlocked pathway of shallow water, navigable only by airboats. There is no access to any other body of water from this area, rendering interstate commerce impossible. Under such circumstances, a waterway is not navigable for purposes of admiralty jurisdiction. . . . Moreover, even if access to other bodies of water were possible, the fact that the waterway can only be used for airboat tours is insufficient to establish the requisite connection with interstate commerce. . . .

⁵²*Id.* at 623 (paragraphing altered for improved readability).

⁵³See, e.g., *In Matter of Complaint of Wild Florida Airboats, LLC*, 2017 WL 3891777 (M.D. Fla.), report and recommendation adopted, 2017 WL 3877598 (M.D. Fla. 2017) (defaulting non-complaining parties pursuant to Rule F of the Supplemental Admiralty Rules).

⁵⁴As "non-descript" vessels, see 46 U.S.C. § 30506(a), airboats are not subject to the Limitation Act's minimum liability requirements.

⁵⁵2003 WL 23305261, 2003 AMC 2811 (S.D. Fla. 2003).

In support of their argument that the locality test is satisfied, petitioners cite *Miami River Boat Yard, Inc. v. 60' Houseboat*, 390 F.2d 596 (5th Cir.1986) and *Kiesel v. State of Florida, Department of Natural Resources*, 479 F.2d 1261 (5th Cir.1973). However, neither case holds that any portion of the Everglades constitutes a “navigable waterway” for admiralty jurisdictional purposes. In fact, neither case even addressed this issue. Therefore, Petitioners have failed [to] meet their burden of demonstrating the existence of admiralty jurisdiction.⁵⁶

Bridges was distinguished in *In re Everglades Island Boat Tours, LLC*,⁵⁷ a case arising from an accident at a different location in the Everglades:

In *Bridges* . . . the accident occurred on a “landlocked pathway of shallow water, navigable only by airboats.” The court found that “[t]here is no access to any other body of water from this area, rendering interstate commerce impossible.” *Id.* The court concluded that even if access to other bodies [of water was possible], use by only airboats was insufficient to establish a connection with interstate commerce. *Id.* In this case, the Big Bay clearly connects to interstate waterways where area residents and other persons can navigate through to the Gulf of Mexico. . . . Therefore, the case is distinguishable.⁵⁸

The court also rejected the claimants’ contention that airboats are not vessels:

Claimants argue that an airboat does not qualify as a vessel under 46 U.S.C. App. § 183. Section 115 of Title 46 defines “vessel” as having the meaning provided by Section 3 of Title 1, which states that a vessel “includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.” 1 U.S.C. § 3. . . . An airboat easily qualifies within the broad statutory

⁵⁶*Id.* at *4.

⁵⁷484 F. Supp. 2d 1259, 2007 AMC 1440 (M.D. Fla. 2007).

⁵⁸*Id.* at 1263.

definition of “vessel.”⁵⁹

Bridges likewise was distinguished in *In re Complaint of Speedy’s Airboat Tours, Inc.*⁶⁰ Once again, the issue was whether the accident had taken place on a navigable part of the Everglades and, once again, the court found that it had:

The factual matters presented at this stage of the proceedings establish that the accident occurred in navigable waters. *See* Affidavit of Phillip T. Johnson, owner and President of Speedy’s Airboat Tours, Inc. (Doc. # 10-1.) Therein, he attests that during the voyage at issue, the airboat traveled from Speedy Boat’s dock “on the Barron River through various different waterways, channels and bodies of water to access Sally Slough.” (*Id.* at ¶ 9.) Johnson attests that the Sally Slough is connected to the Barron River, which connects directly to the Chokoloskee Bay and the Gulf of Mexico. Johnson attests that the Sally Slough is used by Speedy’s Airboats for sightseeing tours through the Everglades. Attached to his affidavit are two maps that demonstrate the approximate position of the incident. (Doc. # 10-2.) This case is thus factually dissimilar to *In re Complaint of Bridges Enterprises, Inc.*, No. 02-60270-CIV, 2003 WL 23305261 (S.D. Fla. Oct.14, 2003) Accordingly, the Court concludes that petitioner has established admiralty jurisdiction at this stage of the proceedings.⁶¹

In *Thommassie v. Antill Pipeline Construction Co., Inc.*,⁶² Rod D. Thommassie, Sr., a heavy equipment operator, slipped on some mud while standing on an airboat. As a result, he suffered injuries to his left arm and torso. Invoking the diversity jurisdiction afforded by 28 U.S.C. § 1332, he sued the airboat’s owners in Louisiana federal court. Subsequently, the plaintiff added a new party defendant, thereby causing complete diversity to be destroyed. In an effort to keep the case in federal court, the defendants argued that admiralty jurisdiction existed. The court disagreed:

⁵⁹*Id.* (footnote omitted).

⁶⁰2012 WL 764198 (M.D. Fla. 2012).

⁶¹*Id.* at *1.

⁶²2014 WL 2520051 (E.D. La.), reconsideration denied, 2014 WL 3734759, 2014 AMC 2300 (E.D. La. 2014).

Mr. Thommassie has not invoked admiralty jurisdiction in his original or amended complaint. . . . Further, his original and amended complaints do not identify or designate his claim as an admiralty claim. Even if there were some question as to whether an identification or designation had been made, the substance of his complaints do not appear to create any basis for admiralty jurisdiction. For instance, the “vessels” described in the complaint are those “used in marshland construction settings,” without reference to navigable waters. (Rec. Doc. 1 at 4). In sum, Mr. Thommassie has not elected to invoke admiralty jurisdiction, nor does it appear, on the face of the complaint, that such jurisdiction exists. . . .⁶³

2. *Privity or Knowledge*

In *In re McGee’s Landing Inc.*,⁶⁴ an airboat tour company was denied limitation due to its prior knowledge of the conditions giving rise to the accident:

It was common practice that [McGee’s] tours, after proceeding through Henderson swamp, would turn beneath Interstate Highway 10, Eastbound, between pilings that are twenty-one feet apart. There is a wide travel way between the east and westbound lanes of IH-10 that is commonly used by boat traffic, but that is not where [McGee’s] operated. Instead, McGee’s travels the narrow pathway between large concrete pillars because customers like the tunnel effect of being directly below the interstate and between the pilings. . . .

The subject allision occurred when [McGee’s’ captain] Perry Allemond attempted to turn approximately ninety degrees to the right to proceed beneath IH-10 eastbound. In the process of the turn, Mr. Allemond observed debris in his pathway, and attempted to steer back to the left to avoid the debris, but the rudder of the vessel stuck. Because the rudder stuck, Mr. Allemond had no control of the vessel and hit a concrete piling with the left bow, causing Mr. and Mrs. Denman to be ejected from their seats to the front of the boat, contacting metal portions of the all metal boat. . . . As a result of the allision, Mr.

⁶³Id. at *1–*3 (footnote omitted).

⁶⁴2015 WL 5056612 (W.D. La. 2015).

Denman suffered knee and back injuries. Mrs. Denman suffered a fractured coccyx, among other injuries.

Prior to the subject allision, Perry Allemond knew the rudder of the vessel would sometimes stick. . . .

Plaintiffs “seek summary judgment on [McGee’s] claim for limitation of liability . . . on the basis of [McGee’s] knowledge of negligent operation practices by its airboat operators. . . .” [Doc. 24-1, p. 7] In support, plaintiffs have submitted certain responses of McGee’s to plaintiffs’ requests for admissions, wherein McGee’s admits it was aware that it was customary for its boat captains “to operate airboats on tours between the concrete pillars supporting the East bound Interstate 10 highway. . . .” [Doc. 24-13]

Primarily through expert testimony, plaintiffs have shown it was negligent of McGee’s boat captain to operate a commercial airboat between two cement pilings spaced 21 feet apart, particularly when the captain was aware the vessel’s rudder system was malfunctioning, causing it to stick at times. Plaintiffs have further pointed to evidence showing McGee’s (through its sole shareholder and general manager, David Allemond) was aware its captains piloted passengers between the concrete pilings, and was aware there was a problem with the rudder system of the vessel upon which plaintiffs were injured. [Doc. 24-13; Doc. 24-12, pp. 7-9] Accordingly, the [plaintiffs’] motion . . . dismissing McGee’s claim for limitation of liability [is GRANTED].⁶⁵

3. Limitation Fund

In *In re Everglades Island Boat Tours, LLC*,⁶⁶ an airboat tour passenger named Dianne Sweeney was injured during a 2011 ride.⁶⁷ Two years later, the company filed a limitation petition and proposed a fund equal to the vessel’s appraised value (\$18,000) and

⁶⁵Id. at *2-*4 (footnote omitted).

⁶⁶2013 WL 315468 (M.D. Fla.), report and recommendation adopted, 2013 WL 315418 (M.D. Fla. 2013).

⁶⁷The case does not say how Sweeney was injured.

two years of interest at 6% (\$2,160). Finding this offer to be proper, the court, without elaboration, approved it.

4. “Single Claimant” Exception

In *Matter of Wild Thang Airboat Tours LLC*,⁶⁸ various passengers on an airboat tour were injured as the result of a collision. After the tour company filed a limitation petition in Florida federal court, some of the passengers sought to pursue their claims in Florida state court. In ruling that they could not because the “single claimant” exception was not satisfied, the court wrote:

To give effect to both the vessel owner’s right to bring a limitation action and the savings to suitors clause, courts have allowed claimants to try their liability and damages issues in state court, provided the vessel owner’s right to limitation is preserved, either because the limitation fund exceeds the aggregate amount of all possible claims or a single claimant stipulates to the vessel owner’s right to have the limitation claim adjudicated in federal court. . . . Where there are multiple claimants and the limitation fund is not adequate, as here, claimants are not allowed to litigate liability and damages in a forum of their own choosing, unless the case is transformed into “the functional equivalent of a single claim case through appropriate stipulations.” To do so, all claimants must agree to protective stipulations that ensure the vessel owner will retain the right to limit liability in the admiralty suit and guarantee that the vessel owner will not be exposed to competing judgments in excess of the limitation fund, “including stipulations that set the priority in which the multiple claims will be paid from the limitation fund.”

Presently, a total of 15 claimants, including the minor children, have appeared and asserted claims for damages—which includes not only those claimants referenced in the motion but also claimants Glenn Wright, Melissa Wright, Milton Lee Mills, Vanessa Mills, Halie Faye Mills, Aaron Mills, and Shelby Mills. Because these additional claimants are not referenced in the motion, and in fact . . . the Mills’s Answer was not filed until after the motion had

⁶⁸2018 WL 7291374 (N.D. Fla. 2018).

been filed, it is clear that not all claimants have joined the motion and stipulations. Moreover, as Petitioner contends, the stipulations are inadequate because they fail to set forth the priority of all claims. . . . Thus, the Petitioner's rights would not be adequately protected by lifting the injunction based on the stipulations presented.⁶⁹

In contrast, unopposed single claimant motions were granted in *Matter of Complaint of Marsh Transport, Inc.*⁷⁰ and *In re Everglades Airboat Management LLC*.⁷¹

D. Nuisance Abatement

As noted earlier in this article,⁷² airboaters repeatedly have squared off with environmentalists, government officials, homeowners, and the public over when and where airboats can be used. These clashes almost always have ended up going against the airboaters. In *Kissimmee River Valley Sportsman Association v. City of Lakeland*,⁷³ for example, the Eleventh Circuit, agreeing with the district court, held that the city's decision to ban airboats from its lakes did not give rise to a discrimination claim under 42 U.S.C. § 1983. Similarly, in *Interior Alaska Airboat Association, Inc. v. State, Board of Game*,⁷⁴ the Alaska Supreme Court upheld a state agency's decision to ban airboats from certain hunting areas by writing: "Our constitution states that only 'persons,' not nets or boats, are 'entitled to equal rights.'"⁷⁵

Other examples include *Game and Fresh Water Fish Commission v. Lake Islands, Ltd.*,⁷⁶ which held that except for riparian owners who needed them to reach their property, Florida could ban airboats from Lake Iamonia during duck hunting season;

⁶⁹Id. at *1-*2 (footnote omitted).

⁷⁰1996 WL 586399 (E.D. La. 1996).

⁷¹2014 WL 7375515 (M.D. Fla. 2014), report and recommendation approved, 2015 WL 307047 (M.D. Fla. 2015), related proceedings at 2014 WL 7385377 (M.D. Fla. 2014).

⁷²See supra notes 25–26 and accompanying text.

⁷³60 F. Supp. 2d 1289 (M.D. Fla. 1999), aff'd, 250 F.3d 1324 (11th Cir.), cert. denied, 534 U.S. 1040 (2001).

⁷⁴18 P.3d 686 (Alaska 2001).

⁷⁵Id. at 695 (quoting *State v. Hebert*, 803 P.2d 863, 865–66 (Alaska 1990)).

⁷⁶407 So. 2d 189 (Fla. 1981).

Lake Hamilton Lakeshore Owners Association, Inc. v. Neidlinger,⁷⁷ which permitted property owners to sue a Florida airboat tour company for being a nuisance even though it had complied with all applicable state laws and administrative regulations;⁷⁸ and a Florida attorney general's opinion that concluded that a county could impose a curfew on airboats without having to obtain state approval.⁷⁹

One case airboaters did win is *Fund for Animals, Inc. v. Florida Game and Fresh Water Fish Commission*.⁸⁰ When the government proposed a four-day hunt in the Everglades to thin out a herd of deer, a coalition of environmental groups sought to stop it. In allowing the hunt to proceed, the trial judge wrote:

[T]his Court holds that no "taking" of an endangered species has occurred as a result of the four extra days' use of airboats and other all-terrain vehicles in connection with the proposed deer hunt. Assuming that the Florida Panther, the Everglades Kite, and the Indigo Snake presently exist in Conservation Area 3A, there exists in the record an insufficient basis for a finding that use of airboats in this instance will "significantly disrupt normal behavior patterns of the endangered animal." 50 C.F.R. Section 17.3(c). As stated earlier, to the extent that noise from the airboat engine causes stress, it is very temporary and no more stressful than aircraft overhead, and flight is possible to two adjacent National Parks. To the extent that airboat paths created during the four-day period of this emergency hunt have the potential for disrupting normal behavior patterns or degrading the environment, this Court simply does not find it to be "significant" under the circumstances peculiar to this area, especially in light of the

⁷⁷182 So. 3d 738 (Fla. Dist. Ct. App. 2015), later proceedings at 198 So. 3d 736 (Fla. Dist. Ct. App. 2016), and 245 So. 3d 715 (Fla. Dist. Ct. App. 2018).

⁷⁸As has been explained elsewhere, the property owners ended their lawsuit after the company changed its operations. See John Chambliss, HOA Drops Lawsuit Against Lake Hamilton Airboat Company, LEDGER (Lakeland, FL), July 3, 2018, at <https://www.theledger.com/news/20180703/hoa-drops-lawsuit-against-lake-hamilton-airboat-company> (quoting Douglas A. Lockwood III, a lawyer for the property owners, as saying, "Primarily, it was not as big of an issue as previously. They've been a better neighbor.").

⁷⁹See Fla. Att'y Gen. Op. 2009-45 (Sept. 29, 2009), available at 2009 WL 3134868.

⁸⁰550 F. Supp. 1206 (S.D. Fla. 1982).

fact that this area is crisscrossed by airboats every year when this water conservation area becomes a public hunting ground.⁸¹

E. Personal Injury and Wrongful Death

Numerous airboat-related personal injury and wrongful death cases exist.⁸² As will be seen below, these cases have considered a broad range of procedural and substantive issues.⁸³

1. Foreseeability

In *Feagle v. Purvis*,⁸⁴ Chester A. Purvis, Jr. suffered a fatal heart attack while participating in an airboat race. As a result, his airboat smashed into a sandbar, where it caused grievous injuries to a spectator (John Feagle).

The trial court granted summary judgment to Purvis's estate, reasoning that Purvis was not responsible for his sudden loss of consciousness. On appeal, however, this decision was reversed:

At the time of his death, Mr. Purvis . . . was not in good health. He had endured at least one prior heart attack [and] suffered from angina over a long course of years. . . .

Mr. Purvis was most probably not aware of the full extent of his [heart] disease [because] of his refusal to have a diagnostic test that would have described it in substantial detail to his physicians. While he was certainly entitled to refuse the

⁸¹Id. at 1210.

⁸²The earliest one I have found is *Weed v. Bilbrey*, 201 So. 2d 771, 1967 AMC 2662 (Fla. Dist. Ct. App. 1967), quashed and remanded, 215 So. 2d 479, 1969 AMC 2390 (Fla. 1968), cert. denied, 394 U.S. 1018 (Fla.), reh'g denied, 395 U.S. 971 (1969) & 397 U.S. 930 & 400 U.S. 982 (1970). In it, the Florida Supreme Court held that contributory negligence, rather than comparative negligence, governed a collision between two airboats that left one of the operators dead. (Shortly after *Weed* was decided, Florida stopped recognizing contributory negligence as a defense. See *Hoffman v. Jones*, 280 So. 2d 431 (Fla. 1973).)

⁸³Omitted from this round-up is *Viator v. Dauterive Contractors, Inc.*, 831 So. 2d 407 (La. Ct. App. 2002), later proceedings at 974 So. 2d 102 (La. Ct. App. 2007), writ denied, 978 So. 2d 332 (La. 2008), a case in which a commercial airboat pilot injured himself while getting out of his employer-provided bunk on a barge.

⁸⁴891 So. 2d 1096 (Fla. Dist. Ct. App. 2004).

invasive procedure that was repeatedly suggested to him . . . this is unquestionably [a] matter that must be plugged into the foreseeability analysis for summary judgment purposes, particularly as it involves whether any loss of capacity was “unanticipatable.”

When [this fact is] measured against the admonition that summary judgment should only cautiously be granted in negligence cases, we conclude that the trial court erred in entering a summary judgment for the Estate. Whether Mr. Purvis’ loss of consciousness or capacity was neither foreseen, nor foreseeable, is a dispositive question that simply cannot be resolved by summary judgment based on the record before us.⁸⁵

2. *Maintenance and Cure*

In *Fairfield Industries, Inc. v. Guidry*,⁸⁶ a lineman named Yancy Gene Guidry suffered injuries to his neck and spine when two airboats chartered by his employer (Fairfield) collided. Although Fairfield paid Guidry maintenance and cure, it refused to pay for lumbar fusion surgery. Three doctors believed the operation would not help Guidry, while a fourth thought it might.

To resolve the dispute, Fairfield filed a declaratory judgment action in Louisiana federal court. In response, Guidry instituted a Louisiana state court action against Fairfield for compensatory and punitive damages. He then made a motion to have the federal action dismissed, which was granted for the following reasons:

First, the pending state court proceeding would dispose of all legal issues arising out of the August 4, 1991 accident, including the issue Fairfield has raised in this declaratory judgment action—whether Guidry needs the lumbar surgery for which Fairfield might be responsible to pay as part of cure. Guidry has a right to have his maintenance and cure rights determined together with his Jones Act suit. The federal suit will not resolve these issues, and it would be patently unfair to force Guidry to litigate this matter piecemeal in two courts.

⁸⁵Id. at 1101-02 (paragraphing altered for improved readability).

⁸⁶1992 WL 59374 (E.D. La. 1992).

Second, there is no evidence that the state court will not be able to adjudicate all outstanding issues or that necessary parties are any less amenable to process by state court as opposed to federal court. Thus, there is no reason not to allow the state court to dispose of the entire matter.

Finally, the inequity of piecemeal litigation of this matter is compounded by the fact that these dual proceedings are a waste of judicial resources. This court need not decide the propriety of lumbar surgery when the state court can adequately address that issue.⁸⁷

In *Hughes v. Shaw Environmental, Inc.*,⁸⁸ Scott J. Hughes injured his back while working as a seaman for the defendant. Hughes requested maintenance and cure, which Shaw denied on the ground that Hughes had intentionally concealed his past medical history. Hughes denied this allegation and accused Shaw of rushing him through the hiring process:

Plaintiff contends that, because of his prior experience as an airboat operator, and a former Shaw operator's leaving Shaw because of available British Petroleum *Deepwater Horizon* oil spill work, Pittmann and Lambou just wanted Plaintiff's paperwork completed as soon as possible so that he could "get in the field."⁸⁹

Finding the facts to be sufficiently unclear, the court rejected Shaw's motion for summary judgment.

In *Maddox v. Omni Drilling Corp.*,⁹⁰ the plaintiff, an injured airboat driver, collected worker's compensation benefits prior to trial. At trial, the jury decided that he was a seaman entitled to maintenance and cure. The trial court therefore granted the defendant-employer an offset, which the appeals court affirmed:

Maddox claims that he is owed \$5,775.00 in maintenance. The

⁸⁷Id. at *2.

⁸⁸2012 WL 729891 (E.D. La. 2012).

⁸⁹Id. at *4.

⁹⁰698 So. 2d 1022 (La. Ct. App. 1997), writ denied, 709 So. 2d 706 (La. 1998). This case is discussed further infra notes 121-24 and accompanying text.

evidence presented by Omni illustrates that it paid Maddox \$4,994.64 in weekly workers' compensation benefits from September 26, 1993 to March 10, 1994. We agree with the trial court that . . . it would be inequitable to allow him double recovery under both admiralty and workers' compensation.⁹¹

3. *Motion Practice*

In *Juarez v. Mouton*,⁹² the plaintiff (Jesus Juarez) was injured when an airboat being driven by Dave Mouton, an employee of Specialized Environmental Resources, hit a mud flat, flipped over, and crashed on shore. On July 5, 2007, Juarez gave Specialized written notice that he intended to sue. On December 3, 2007, Juarez filed suit in Louisiana state court. Service on Specialized was made on December 7, 2007. Service on Specialized's insurer (State National Insurance Company) was made on December 12, 2007.

On February 19, 2008, Specialized and State National removed the case to federal court. When Juarez objected on the ground that the 30-day deadline to do so had passed, the court agreed:

Specialized justifies its tardy removal based on the affidavit of its sole member, [Stephen Scott] Broussard, who states that he was quarantined by the Louisiana Department of Health and Hospitals for a possible tuberculosis infection from mid-December, 2007 until mid-January, 2008. Specialized does not explain why counsel could not have reached Broussard by another means such as telephone, facsimile, or email during this time period. . . .

Furthermore, the evidence offered by defendants themselves establishes that Specialized had employees other than the quarantined Broussard with knowledge about the work performed in the Sabine National Wildlife Refuge. . . .

Defendants also request the Court to apply the "exceptional circumstances doctrine" recognized in *Gillis v. State of Louisiana*, 294 F.3d 755 (5th Cir.2002). The "exceptional circumstances doctrine" recognized in *Gillis and Getty Oil v. Ins. Co. of N. Am.*, 841 F.2d 1254, 1263, n. 12 (5th Cir.1988),

⁹¹Maddox, 698 So. 2d at 1030.

⁹²2008 WL 2754756 (M.D. La. 2008).

applies to situations where removal is allowed although all defendants fail to properly file their consent to removal within the 30-day time period. This is not the situation in the instant matter, and, regardless, there are no exceptional circumstances here that would warrant a departure from the ordinary rules of removal.

The court does not reach the defendants' other arguments in light of the court's finding that the removal was not filed within 30 days of service of the initial state court petition.⁹³

In *Buchanan v. Captain Doug's Boat Tours, LLC*,⁹⁴ the plaintiffs were injured during an Everglades airboat tour. Fifteen months into the case, the defendant's law firm (McAlpin Conroy) moved to withdraw, claiming that it did not represent the defendant (Captain Doug's Boat Tours, LLC) but only its corporate owner (Everglades Airboat Resorts, LLC), which had not been named as a defendant. Expressing surprise (and a good deal of annoyance), the plaintiffs opposed McAlpin Conroy's motion, which was denied. The plaintiffs then moved for leave to add Everglades Airboat Resorts and two other businesses as defendants and to have their amended complaint relate back to the date of their original complaint (so as to avoid a potential statute of limitations problem). Finding good cause, the court granted the plaintiffs' first request but denied their second request without prejudice to give the new defendants time to decide whether they wished to oppose it.

In *Tobias v. Gator Park, Inc.*,⁹⁵ the plaintiff (Stewart W. Tobias) sought summary judgment. He had been injured while attempting to exit one of the defendant's airboats following a tour of the Everglades. In opposing the motion, Gator Park submitted an affidavit from its owner, Jon Weisberg, explaining its exiting procedures. Tobias sought to discredit Weisberg's affidavit by pointing out that Weisberg had not been present during the incident. This tactic, however, backfired:

The Plaintiff discounts the standard legal principle that "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury

⁹³Id. at *4–*5 (footnote omitted and paragraphing altered for improved readability).

⁹⁴2015 WL 9269396 (M.D. Fla. 2015).

⁹⁵2012 WL 4137296 (S.D. Fla. 2012).

functions, not those of a judge whether he is ruling on a motion for summary judgment or for a directed verdict.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Indeed, the Eleventh Circuit has recently analyzed this principle and arrived at precisely this conclusion. *Strickland v. Norfolk Southern Ry. Co.*, [692] F.3d [1151], 2012 WL 3640999 (11th Cir. August 27, 2012). . . .

Here, Tobias seeks credibility determinations regarding the weight assigned to the Defendant’s witness on how Tobias’ injury occurred. But “[w]here a fact-finder is required to weigh a deponent’s credibility, summary judgment is simply improper.” *Strickland*, at *8. . . . Furthermore, “[i]n this circuit, whether a party was negligent constitutes a question of fact.” *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1321 (11th Cir.1989). . . . Following the Eleventh Circuit, as this Court must, the facts must be decided by a jury.⁹⁶

4. *Res Ipsa Loquitur*

On February 27, 1987, Eddie Cormier and Freddie Lantier drowned in Louisiana’s Bayou Long when the airboat they were riding in suddenly took on water and sank. The airboat had been built and was being piloted by Glenn Webb, who, along with another passenger named Harold Stutes, managed to survive.

Cormier and Lantier’s widows sued Webb and his insurer (Aetna Casualty and Surety Company). Following a trial, the jury found that Webb was not responsible for the accident. The appellate court reversed and awarded \$139,857.26 to Lantier’s widow⁹⁷ and, in a companion opinion, \$105,000 to Cormier’s widow.⁹⁸ According to the court:

[W]e find that only Webb’s violation of the duty of ordinary care in the operation of the airboat under the particular circumstances of this case could have caused the boat to take on water and sink within seconds. This accident is one which does not ordinarily occur in the absence of negligence, and

⁹⁶*Id.* at *2.

⁹⁷See *Lantier v. Aetna Cas. & Sur. Co.*, 614 So. 2d 1346 (La. Ct. App. 1993).

⁹⁸See *Cormier v. Aetna Cas. & Sur. Co.*, 614 So. 2d 1359 (La. Ct. App. 1993).

additionally, the boat which caused the deaths by drowning was in Webb's exclusive control. Applying *res ipsa*, the evidence, as a whole, indicates that the most probable cause of the accident was Webb's negligence. We therefore conclude that Webb is liable to plaintiffs due to his negligent breach of duty which caused this accident.⁹⁹

In reaching its decision, the court considered it irrelevant that each of the men had taken off their life jackets before the accident, inasmuch as Louisiana law only required children under the age of 12 to keep such devices on at all times.¹⁰⁰ It also rejected Aetna's argument that it had no liability because of the watercraft exclusion in Webb's policy, due to the fact that the policy's reference to "inboard motor power" created an ambiguity regarding its applicability to airboats (which the court construed against Aetna).¹⁰¹

5. Seaman Status

In *Robinson v. Hill*,¹⁰² Judith Robinson worked as a restaurant manager at Loughman Lake Lodge ("LLL"). During Robinson's employment, LLL decided to integrate its operations with Anywhere Anytime Airboat Tours ("AAA"). LLL also decided to replace Robinson with a new manager named Randy Lee Hill, although it asked Robinson to stay on for three months to train Hill.

During the overlap period, Hill made frequent unwelcome sexual advances towards Robinson. Then, on August 31, 2016, shortly before the end of the overlap period, Hill ordered Robinson to join him on an AAA airboat and "show him where former airboat pilots had taken guests on tours."¹⁰³ While on this excursion, Hill sexually assaulted Robinson.

Robinson subsequently filed a multi-count complaint against Hill, LLL, and AAA, which they moved to dismiss. In Count I (against LLL and AAA for sexual harassment, assault, and battery), Robinson claimed she was a Jones Act seaman. In rejecting this contention, the court wrote:

⁹⁹Lantier, 614 So. 2d at 1353.

¹⁰⁰Id. at 1353-54. Louisiana now requires children 16 and younger to wear life jackets at all times. See La. Rev. Stat. Ann. § 34:851.24F(2).

¹⁰¹Lantier, 614 So. 2d at 1354-55.

¹⁰²2018 WL 962199 (M.D. Fla. 2018).

¹⁰³Id. at *1.

There are two essential requirements for seaman status under the Jones Act: (1) the employee must have duties that “contribute to the function of the vessel or the accomplishment of its mission,” and (2) the employee “must have a connection to a vessel in navigation . . . that is substantial in terms of both its duration and its nature.” *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995). . . .

The Plaintiff has sufficiently alleged that she had a duty that contributed to the accomplishment of the vessel’s mission: she went on the boat in order to show Hill locations for AAA airboat tours. However, the Plaintiff has not alleged that she had a connection to the vessel that was substantial in terms of both its duration and its nature. There is no indication that the Plaintiff’s connection to the vessel was such that it “regularly expose[d] [her] to the perils of sea.” *See Chandris, Inc.*, 515 U.S. at 368. Accordingly, Count I of the Amended Complaint will be dismissed.¹⁰⁴

In *Boutte v. GFS Co.*,¹⁰⁵ Janet R. Boutte was injured when the airboat she was on hit a well head. In finding that she was not a seaman, the court explained:

Plaintiff was hired as a “battery girl” on August 2, 1991, and worked exclusively on land in that capacity until September 4, 1991. Thereafter, plaintiff performed the same type of work on board air boats in the marsh for twelve days over the course of approximately three weeks, on the last day of which she was allegedly injured. These undisputed facts establish that plaintiff’s connection to the vessels was essentially transitory in nature. . . . Accordingly, the court finds that plaintiff does not qualify for seaman status as a matter of law with respect to the fleet of airboats working in the marsh.¹⁰⁶

Seaman status also was held to be absent in *In re Destiny Drilling (USA) Inc.*¹⁰⁷ Frank A. Haire, Jr. hurt his lower back when

¹⁰⁴Id. at *2 (paragraphing altered for improved readability).

¹⁰⁵1993 WL 205089 (E.D. La. 1993).

¹⁰⁶Id. at *1.

¹⁰⁷184 F.3d 816 (text at 1999 WL 499533) (5th Cir. 1999).

he tried to free his employer's airboat from an overgrowth of vegetation.¹⁰⁸ The trial court ruled that Haire was not a Jones Act seaman because the airboat had not been "in navigation" at the time of his injury. On appeal, the Fifth Circuit affirmed:

This court has previously refused to ascribe navigable water status to several bayous characterized as shallow (between seven and 18 inches deep), clogged, and terminating in marsh. *See Dardar v. LaFourche Realty Co.*, 55 F.3d 1082, 1085 (5th Cir.1995). The stipulated facts in this dispute describe the St. Mary Parish marsh as non-navigable, shallow, and vegetation-choked. Haire admits that an airboat is the only craft capable of traversing the marsh—other boats are incapable. Indeed, it would be strange to hold that a marsh constituted a "navigable" waterway when the area was so overgrown that Haire's craft became mired in vegetation. Admittedly, an airboat can operate in the shallows of navigable waters, but the ability to float and move across navigable waters is not determinative of vessel status. . . .

An airboat is constructed as a means of transportation across non-navigable waters. Haire has stipulated as much. Moreover, when Haire was injured, the airboat was being operated in a non-navigable marsh. Under these circumstances, the district court did not err in determining that the airboat was not a vessel in navigation over navigable waters for Jones Act purposes.¹⁰⁹

In *Welch v. Fugro Geosciences, Inc.*,¹¹⁰ the decedent (Byron Joseph Boswell) drowned while working on an airboat outfitted with "an environmental test drilling rig."¹¹¹ Both the trial court and the appellate court denied his family's request for punitive and non-pecuniary damages, holding that regardless of whether Welch was a Jones Act seaman or a longshoreman, such damages were unavailable under maritime law. On appeal, the Louisiana Supreme

¹⁰⁸According to the court, the vessel had become stuck due to a "[l]ack[] [of] sufficient lubricant on its hull." *Id.* at *1.

¹⁰⁹*Id.* at *1–*2 (footnote omitted).

¹¹⁰804 So. 2d 710 (La. Ct. App. 2001), writ granted, 813 So. 2d 414 (La. 2002).

¹¹¹*Id.* at 712.

Court found this procedure to be improper: "The trial court erred in granting summary judgment when no clear determination was made as to Mr. Boswell's status as a longshoreman or seaman. Accordingly, the case is remanded to the trial court for a determination of that issue."¹¹²

In *Simoneaux v. Star Enterprises*,¹¹³ seaman status was held to be a question of fact not resolvable on a motion for summary judgment. Similarly, in *Keller v. Dry Cypress Swamp Tours, LLC*,¹¹⁴ seaman status was held to be a question of fact not resolvable on a motion to dismiss. The court in *Norman v. Geco-Prakla, Inc.*¹¹⁵ likewise declined to determine seaman status on a motion to remand:

Defendant argues that plaintiff is not a seaman because (1) he was not assigned to a vessel or an identified fleet of vessels and (2) the airboat on which plaintiff was traveling at the time of his injury was not a vessel engaged in navigation or commerce. Although the affidavits submitted by defendant certainly cast doubt on plaintiff's status as a seaman, the Court is not persuaded that there is no possibility that plaintiff could prove he was a seaman. Although the fraudulent pleading inquiry is susceptible of summary determination, this Court may not resolve legitimate factual disputes.¹¹⁶

In *Collins v. GFS Co., Inc.*,¹¹⁷ Andrew Collins, a member of an oil exploration recording crew, was injured when the airboat he was riding in hit a mud embarkment. The trial court, on a motion for partial summary judgment, ruled that Collins was not a seaman because he spent 60% of his time on land. Although the appeals court affirmed, the Louisiana Supreme Court, in a one-sentence opinion, vacated the decision: "Partial summary judgment on [the] issue of Jones Act status was improper."¹¹⁸

¹¹²Welch, 813 So. 2d at 415.

¹¹³1994 WL 660443 (E.D. La. 1994). This lawsuit is discussed further infra notes 137-38 and accompanying text.

¹¹⁴2008 WL 4547197 (E.D. La. 2008).

¹¹⁵1995 WL 217471 (E.D. La. 1995).

¹¹⁶*Id.* at *1 (footnotes omitted).

¹¹⁷657 So. 2d 499 (La. Ct. App.), vacated, 661 So. 2d 456 (La. 1995).

¹¹⁸*Id.* at 456.

One month later, in *Coleman v. Robicheaux Air Boats, Inc.*,¹¹⁹ the Louisiana Supreme Court reversed a similar grant of partial summary judgment. In an opinion almost as terse as *Collins*, it wrote: “Summary judgment on the issue of seaman’s status is generally inappropriate.”¹²⁰

In *Maddox v. Omni Drilling Corp.*,¹²¹ the issue of seaman status was presented to the jury. While working as an airboat driver, Winston Maddox injured his back when he slipped and fell on the vessel’s bow. Based on extensive testimony, the jury found that Maddox was a seaman. In refusing to second-guess this decision, the appeals court wrote:

In its first assignment of error, Omni argues that the jury committed manifest error by finding that Maddox was a seaman because the air boat was not a vessel in navigation at the time of his injuries and that Maddox failed to prove that he had a connection to a vessel in navigation that was substantial in terms of duration and nature. . . .

Omni contends that the air boat was not a vessel in navigation because the area in which Maddox was hurt, the Refuge, was neither navigable nor subject to commerce. . . . However, the jury . . . heard testimony that could certainly form a reasonable basis for a finding of navigability. For instance, there was testimony that the waters of the Refuge are affected by the ebb and flow of the tide and that commercial activity, such as fishing, shrimping, and oil and gas exploration, have taken place in the Refuge for years. . . .

Concerning the issue of Maddox’s connection to a vessel . . . [t]he jury heard the testimony of Maddox as well as the testimony of Omni’s witnesses. Maddox testified that he worked in a marsh buggy crew when he first began working for Omni. However, on September 9, 1993, his assignment changed, and he began working in a drilling crew using air boats. He began this new assignment as a helper on a drill

¹¹⁹662 So. 2d 452 (La. 1995), reh’g denied, 666 So. 2d 308 (La. 1996), rev’g 657 So. 2d 1331 (La. Ct. App.), later proceedings at 658 So. 2d 807 (La. Ct. App. 1995).

¹²⁰*Coleman*, 662 So. 2d at 453.

¹²¹698 So. 2d 1022 (La. Ct. App. 1997), writ denied, 709 So. 2d 706 (La. 1998).

boat before assuming the duties as a support boat driver on September 21, 1993. Obviously the jury found Maddox's testimony more credible and relied on it in reaching their decision. . . .¹²²

6. *Seaworthiness*

The *Maddox* case discussed immediately above¹²³ presented a second jury question. According to Maddox, the airboat's bow was unreasonably slippery. The jury disagreed, and once again the appeals court refused to disturb its conclusion:

Michot [Omni's restorer] was not the only witness in the trial to testify that the boat had been completely refurbished, including the application of non-skid paint, in August 1993. Indeed, the fact that in August, when the job began, the boat was in excellent condition, including a non-skid surface on the bow, was established by every witness who testified on the subject and contradicted by none. . . .

Of course, the critical inquiry was not the condition of the boat when the job began, but the condition of the boat on September 23, 1993 when the accident happened. Michot gave no testimony at all about the condition of the boat on September 23, but there is plenty of evidence in the record on the subject. Maddox himself said that the non-skid material on the bow was "used real bad." Poppy, his best corroborating witness, said that all the bow had was just small tape strips and it did not have any non-skid paint and sand on it. Ducote, another witness for Maddox, testified that he believed that the non-skid paint gradually wore off as the job went on because the boat was out for a long time. . . .

Omni's [own] witness, Terrell Koch, also testified that the boats were not supplied with non-skid tape. . . .

[In addition, there were] allegations that Omni doctored evidence. As Maddox points out, the bottom half of the Immediate Supervisor's Accident Investigation Report was

¹²²Id. at 1025–26 (paragraphing altered for improved readability).

¹²³See supra notes 121–22 and accompanying text.

scissored off, and no Omni witness was able to give a satisfactory explanation of why the report was deliberately truncated. Maddox claims that had the report not been altered, it would have shown that the reason he slipped was the lack of an anti-skid surface. . . .

Obviously, the jury took [all] this testimony into account and [nevertheless] decided that Maddox did not prove that the condition of the boat was a cause of his accident. Mindful that credibility determinations by the trier of fact are subject to the strictest deference, we cannot find that this determination was manifestly erroneous. . . . Therefore, we affirm the jury's decision on this issue.¹²⁴

In *Buckley v. County of Suffolk*,¹²⁵ two police officers (Terrence Buckley and John Stanton) were injured while patrolling on a county airboat.¹²⁶ Prior to trial, they filed a motion for partial summary judgment, alleging that the vessel was unseaworthy due to its seating.¹²⁷ The county, already having instituted a lawsuit against the manufacturer (Wisconsin-based 1000 Island Airboats), did not oppose the motion and in fact agreed with the plaintiffs.¹²⁸ As a result, the court granted the motion.

In *Pettit v. Heebe*,¹²⁹ the court entered a partial default judgment of liability against a company that had made modifications to an airboat that contributed to the decedent's death:

¹²⁴Id. at 1028-29 (paragraphing altered for improved readability).

¹²⁵2013 WL 122972 (E.D.N.Y. 2013).

¹²⁶According to the court, "On approximately May 21, 2008, the New York State Office of Parks, Recreation and Historic Preservation and defendant entered into an Intergovernmental Agreement pursuant to which the State of New York gave defendant exclusive use of the 1000 Island Airboat for purposes of maritime law enforcement patrol." Id. at *1 n.3.

¹²⁷In its report, the plaintiffs' marine surveyor explained:

[T]he design and installation of the operator and passenger seats on the vessel . . . represents a substandard design and installation which did not meet minimum recommended safety standards as published by the American Boat and Yacht Council H-31 Seat Structures which was published on May 18, 1994.

The failure of the vessel manufacturer to adequately design and install the seats in the vessel results in the seats pulling loose from the plywood cockpit sole which resulted in injuries to the vessel[']s passengers.

Id. at *4.

¹²⁸Id. ("Defendant does not challenge any of these facts; to the contrary, defendant concedes that the vessel was unseaworthy.").

¹²⁹2016 WL 4130953 (E.D. La. 2016), earlier proceedings at 2016 WL 1089351 (E.D. La. 2016).

According to the facts alleged in the complaint, which are deemed admitted, Aftermarket [Marine Parts, Inc.] modified defendant Frederick Heebe's ("Heebe") airboat. Aftermarket's modifications added extra torque and weight to the engine that negatively affected the stability of the airboat, and also increased the airboat's horsepower far beyond what was appropriate for the airboat.

The modifications caused the airboat to overturn while being operated along the western edge of the Southwest Pass of the Mississippi River in October 2014. The passengers on the boat, Albert Ward, Paul Martin, and Foster Pettit ("Mr. Pettit"), were thrown overboard. The boat turned on its starboard side, leaving the starboard side hull of the vessel submerged and the port side hull exposed above the surface of the water. While awaiting rescue, the boat occupants took turns climbing on the port side hull of the vessel that was exposed above the water's surface.

Mr. Pettit, however, cut his right leg on the cage covering the airboat's fan blades when climbing out of the water. The cut then became infected with Vibro bacteria, which is common in salt water in October. Mr. Pettit died from the infection.

The Pettits subsequently sued Heebe, the airboat guide, and Heebe's insurer in state court. After removal, the Pettits amended their complaint to add claims against a number of entities, including Aftermarket, involved in the airboat's manufacture and modification.

Despite being timely served, as well as notified about the pending lawsuit by the Pettits' counsel, Aftermarket has not answered the complaint. The Pettits requested an entry of default, which the Clerk of Court granted. The Pettits now move for a partial default judgment of liability pursuant to Rule 55(b)(2) of the Federal Rule of Civil Procedure. . . .

The Pettits pursue a default judgment against Aftermarket based on multiple theories of tort liability: (1) defective design under the general maritime law and the Louisiana Products Liability Act, (2) defective construction under the general maritime law and the Louisiana Products Liability Act, and (3) failure to warn under the general maritime law and the

Louisiana Products Liability Act.

Upon review of the Pettits' complaint, the Court determines that the Pettits have pleaded sufficient facts establishing that the airboat was unreasonably overpowered for its normal use to set out a claim of defective design under either the general maritime law or the Louisiana Products Liability Act. . . . For many of the same reasons, the Pettits can also establish liability under a defective construction theory insofar as the complaint alleges that the modified airboat unreasonably fell short of the expected stability standards for the airboat. . . .

However, the Pettits' motion does not convince the Court that a partial default judgment of liability under a failure to warn theory is appropriate. Beyond stating the mere legal conclusion that the warnings provided by Aftermarket were insufficient, the Pettits pleaded no other facts that would allow the Court to determine whether Aftermarket's warnings were insufficient (or even what warnings were provided in the first place). Therefore, the Court rejects the Pettits' argument that a default judgment of liability under a failure to warn theory is appropriate at this time. . . .

The Court concludes that a default is appropriate notwithstanding the Fifth Circuit's strong policy in favor of decisions on the merits. . . . Not only does Aftermarket's seemingly willful failure to appear threaten the Pettits with an interminable delay in having their case heard, but it also threatens this Court's ability to efficiently manage this multiparty litigation for the benefit of all parties to the litigation. . . . To prevent such an outcome, the Court will enter a partial default judgment of liability against Aftermarket, and reserve the Rule 55(b)(2) hearing until trial.¹³⁰

¹³⁰Pettit, 2016 WL 4130953, at *1-*2 (footnotes omitted). For a further look at the case, see Ramon Antonio Vargas, New Orleans Landfill Magnate Fred Heebe, Family of Ex-Kentucky Mayor Settle Wrongful Death Suit, NEW ORLEANS ADVOCATE, Jan. 3, 2017, at https://www.theadvocate.com/new_orleans/news/courts/article_8172359a-d1f5-11e6-86c3-1f56505a03fa.html.

7. Settlements

In *Gasquet v. Commercial Union Ins. Co.*,¹³¹ James F. Gasquet, Jr., a duck hunter, was seriously injured when the airboat he was riding in struck a sandbar. After initiating litigation against the airboat's owner (H & B Construction Company) and its insurers, Gasquet settled with H & B and its primary insurer (Commercial Union) for \$200,000, even though the policy limit was \$300,000.

Gasquet then sought to continue the case against H & B's excess insurer (the aptly-named Stonewall Insurance Company), which had issued a \$1 million policy. Even though Gasquet was willing to give it a \$300,000 credit, Stonewall moved to have the case dismissed, arguing that its liability only began when the primary policy was exhausted, which, due to the settlement, would never occur. The trial court, agreeing with Gasquet, denied Stonewall's motion. A jury then found that Stonewall had no liability due to Gasquet's contributory negligence.

The appellate court reversed, concluding that the trial court had given improper jury instructions, and awarded Gasquet \$588,925 (which it reduced to \$288,925 due to the \$300,000 credit). It affirmed, however, the trial court's decision denying Stonewall's dismissal motion because "Louisiana jurisprudence supports the settlement made by plaintiff with his primary insurer."¹³²

Judges Gulotta and Samuel dissented. According to Judge Gulotta, there was sufficient evidence for the jury to find that despite being instructed by the airboat driver to "hold on" to the boat as they approached the sandbar, Gasquet had "had his hands in his pockets."¹³³ Judge Samuel, agreeing with this conclusion, added: "[A]n airboat is clearly and obviously a very dangerous means of transportation and plaintiff had to be aware of this [because he] had been a passenger in the airboat on three or four occasions prior to the accident in suit."¹³⁴

¹³¹391 So. 2d 466 (La. Ct. App. 1980), writ denied, 396 So. 2d 921 & 922 (La. 1981).

¹³²*Id.* at 471.

¹³³*Id.* at 484. (Gulotta, J., dissenting). The issue of whether the airboat driver gave such an instruction, whether Gasquet heard it, and whether Gasquet did try to hold on or instead kept his hands in his pockets because of the cold November weather, was sharply debated during the trial. See *id.* at 469–70.

¹³⁴*Id.* at 483 (Samuel, J., dissenting).

8. Venue

In *Velazquez v. Gator Park, Inc.*,¹³⁵ Jose Velazquez, an out-of-town tourist, was injured when he fell off an airboat while taking a tour of the Everglades. After returning home to Connecticut, he filed a lawsuit in state court. The tour boat company removed the case to Connecticut federal court and then sought to have it transferred to a Florida federal court. In granting the company's motion, the Connecticut federal court explained:

Specific jurisdiction is inapplicable here because Plaintiff was not injured in Connecticut and does not allege he took Gator Park's tour in response to a solicitation he received in Connecticut. . . .

General jurisdiction, in contrast, does not require a causal connection between the solicitation and the injury. . . . In order to satisfy general jurisdiction, the [plaintiff must show that the] defendant . . . specifically targeted Connecticut residents. . . .

Here, [however,] the Complaint merely alleges there existed a website with the capabilities of selling tickets online. *See* [Dkt. 1 ¶ 5]. There is no indication any Connecticut residents, including Plaintiff, received advertisements in Connecticut or were specifically targeted on the website. Therefore, because both the Complaint and the evidence are devoid of any facts establishing Defendant specifically solicited Connecticut residents, personal jurisdiction is not appropriate under [Connecticut's long-arm statute].¹³⁶

9. Worker's Compensation

In *Simoneaux v. Star Enterprises*,¹³⁷ Stoney Simoneaux was injured when the airboat he was riding in hit a submerged pipe. At the time of the accident, Simoneaux was employed as a surveyor by the Grant Tensor Geophysical Corporation, which was doing work for Texaco Exploration and Production Inc. ("TEPI"). When Simoneaux sought to sue TEPI, it claimed that Simoneaux was a

¹³⁵2018 WL 1015331 (D. Conn. 2018).

¹³⁶*Id.* at *3.

¹³⁷1993 WL 441872 (E.D. La. 1993).

“borrowed servant” and therefore limited under Louisiana law to worker’s compensation. The court agreed:

The test for determining whether a principal is a “statutory employer” of an injured party is whether the work being performed by that party is “integrally related” to the principal’s trade, business, or occupation. . . . Here, it is undisputed that Simoneaux was performing survey work pursuant to the agreement between TEPI and Grant Tensor, which survey work was for the purpose of identifying sites favorable to mineral production. It also appears to the Court that, despite plaintiffs’ contrary and unsupported assertions, surveys, such as those performed by Simoneaux, are in fact integrally related to TEPI’s business of mineral exploration, development and production. Indeed, the Fifth Circuit has affirmed summary judgment in favor of the principal on the issues of “integral relation” and tort immunity in a number of cases where the relationships between the contractors’ work and the principals’ businesses were more attenuated than here. . . .

Being that plaintiffs have not shown the existence of any material fact for trial, and being that Simoneaux’s survey work was integrally related to TEPI’s trade, business, or occupation, the Court finds that, as a matter of law, TEPI was Simoneaux’s statutory employer and as such is immune from the tort claims raised by plaintiffs in this action.¹³⁸

F. Sales

In *Long v. Panther Airboat Corp.*,¹³⁹ Glynn A. Long purchased an airboat and trailer from Panther. After experiencing repeated problems with the airboat, Long asked for his money back. When Panther turned him down, Long filed a lawsuit in Louisiana state court. The trial judge refused to rescind the sale but reduced the purchase price by \$1,528.50. He also awarded Long \$1,400 in attorneys’ fees, \$1,500 in expert witness fees, and court costs.

¹³⁸Id. at *3-*4.

¹³⁹453 So. 2d 304 (La. Ct. App. 1984).

After both sides unsuccessfully moved for a new trial, Long appealed. In finding no reversible error, the Louisiana Court of Appeals observed:

Plaintiff alleges that the trial court erred in finding only a partial failure of consideration and thus granting a reduction in price rather than rescission of the sale. . . . Plaintiff paid \$5,795.00 for the airboat and trailer. The maximum cost of repair . . . proved by plaintiff was less than one-fourth of the purchase price or \$1,400.00. The record does not reflect any damage to or defect in the hull or the trailer. Given these facts, we . . . find that the trial judge did not abuse his discretion.¹⁴⁰

Similarly, in *Causey v. American Airboat Corp.*,¹⁴¹ Cayce Causey sued American Airboat, claiming that an airboat he had purchased from it for use in his oilfield services business had a defective engine. In response, American impleaded Turn Key Powertrain, Inc. Before the court could rule, however, the parties reached a confidential settlement.

In *Levens v. Love*,¹⁴² Layne Levens paid Affliction Airboats, a Florida airboat manufacturer, \$55,299.64 for an airboat for its guide tour business. When Affliction failed to deliver the vessel, Levens filed a multi-count complaint in Texas federal court. Affliction, alleging a lack of personal jurisdiction, moved to dismiss but the court rejected its motion:

Defendants' *pro se* response to Plaintiff's complaint preserved the defense of lack of personal jurisdiction. Nevertheless, Plaintiff's allegations setting forth Defendants' misrepresentations, both before and after the execution of the contract, are sufficient to give rise to a claim of common-law fraud, which justifies the exercise of specific personal jurisdiction over said claim. Plaintiff's remaining claims for breach of contract, deceptive trade practice, and conspiracy arise from the same forum contacts, and therefore the exercise

¹⁴⁰Id. at 307.

¹⁴¹2018 WL 8059426 (Tex. Dist. Ct. 2018). The facts are adduced from Causey's complaint, available at 2016 WL 4149297, and American's third-party complaint, available at 2016 WL 11586079.

¹⁴²2017 WL 10924291 (S.D. Tex. 2017).

of specific personal jurisdiction over said claims is also justified. Defendants have failed to meet their burden to overcome specific personal jurisdiction.¹⁴³

In *Campbell v. Landings Association, Inc.*,¹⁴⁴ Frederick M. Campbell ordered a custom-built airboat for \$68,624.94. Campbell planned to store the vessel at his community's marina, but after it was delivered, the marina, having in the meantime heard from Campbell's neighbors, adopted a no-airboat rule and refused Campbell's request for a waiver. Campbell thereupon sued his homeowner's association, claiming that he had been promised storage space by the marina's manager and would not have gone ahead with the purchase without the manager's assurances. Finding these arguments to be baseless, the trial court granted summary judgment to the association but denied its request for attorneys' fees. In addition to approving these rulings, the appeals court fined Campbell and his lawyer \$1,000 for taking a frivolous appeal:

Under the circumstances and given the clear state of the law, Campbell's attorney could not reasonably have believed that this appeal would result in a reversal of the trial court's decision. Therefore, we grant [the association's] motion to assess damages for a frivolous appeal, and we impose a \$1,000 frivolous appeal penalty on Campbell and his attorney pursuant to Court of Appeals Rule 15(b).¹⁴⁵

G. Sovereign Immunity

In *Niederhouse v. Palmerton*,¹⁴⁶ an off-duty Roscommon County sheriff's deputy named A.J. Palmerton lost control of the airboat he was driving, thereby injuring a pedestrian named Conrad Niederhouse. The accident occurred during a winter festival at which the Sheriff's Office had been giving the public free airboat rides across a frozen lake. Because of a family commitment, Palmerton had not been scheduled to work at the festival. When his

¹⁴³Id. at *5. Although Affliction subsequently agreed to a settlement, it did not pay it and later went out of business. See Todd Ulrich, *A Small Local Company is in Trouble for Airboats They Haven't Delivered*, WFTV NEWS, Jan. 11, 2018, at <https://www.wftv.com/news/action-9/action-9-air-boat-hustle/681554170>.

¹⁴⁴716 S.E.2d 543 (Ga. Ct. App. 2011).

¹⁴⁵Id. at 549.

¹⁴⁶836 N.W.2d 176 (Mich. Ct. App. 2013).

plans fell through, Palmerton decided to go to the festival and while there volunteered to relieve deputy Jeff Grieser, the on-duty officer who had been giving the rides.

Niederhouse sued Palmerton, Sheriff Randall Stevenson, and Roscommon County. The trial court dismissed the suit against all three because of sovereign immunity. On appeal, Niederhouse acknowledged that Stevenson and the County were immune but insisted that Palmerton was not. In rejecting this contention, the Michigan Court of Appeals wrote:

We conclude that defendant was acting in the course of his employment at the time of the accident. . . . Although Winterfest was perhaps not within the typical “temporal and spatial boundaries” of Palmerton’s employment, it is undisputed that his employer requested that qualified deputies provide airboat rides to the public that day as part of the public relations activities of the sheriff’s department. . . .

[T]he record before this Court demonstrates that Palmerton undertook driving the airboat in furtherance of his employer’s purpose. Palmerton stated that he approached Grieser to see if he needed any assistance with the airboat rides and asked him if he needed help. Further, as a qualified airboat operator, Palmerton had previously been asked by his employer to assist with giving rides at the festival. In fact, Stevenson indicated that he would have preferred to use one of the off-duty deputies rather than Grieser, who was on duty. Additionally, Palmerton’s deposition testimony supports the inference that Grieser would have given the airboat ride had Palmerton not offered to do so.

We do not find it dispositive that Palmerton was not specifically instructed by his employer to provide airboat rides [on the] day [of the carnival]. Indeed, even if an act is *contrary* to an employer’s instructions, it may be within the course of employment. . . . Further, it is not dispositive that Palmerton was not compensated for his service, as an employee’s gratuitous work may still be within the course of his employment. . . .¹⁴⁷

¹⁴⁷Id. at 180–81.

IV CONCLUSION

As noted at the outset of this article, until now airboats have been overlooked by legal commentators. This raises two questions: 1) what other types of unusual vessels have gone unnoticed?; and, 2) what are their legal aspects?