

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3
4
5 August Term, 2012

6
7 (Argued: September 21, 2012

Decided: June 12, 2014)

8
9
10 Docket No. 11-3473-cv

11
12
13 -----X
14
15 D'AMICO DRY LIMITED,
16 *Plaintiff-Appellant,*

17
18 v.

19
20 PRIMERA MARITIME (HELLAS) LIMITED, AKA PRIMERA MARITIME
21 LIMITED, SONIC FINANCE INC., MIRAGE FINANCE INC., NIKKA FINANCE
22 INC., HANDY FINANCE INC., PASHA FINANCE INC., MOVIDA FINANCE
23 INC., ELEMENT FINANCE INC., CALDERA MARINE CO. LTD., ADALIA
24 MARINE CO. LTD., SEASATIN NAVIGATION INC., ANNAMAR
25 NAVIGATION INC., SEASAFE NAVIGATION INC., CHEMNAV INC., PAUL
26 CORONIS, NIKOLAOS CORONIS, AKA NICHOLAS CORONIS, PRIMEBULK
27 SHIPMANAGEMENT LTD., PRIMERA OCEAN SERVICES S.A., BULKNAV
28 INC., J.P.C. INVESTMENTS S.A., AKA JPC INVESTMENTS S.A., CHEMNAV
29 SHIPMANAGEMENT LTD.,
30 *Defendant-Appellees.*

31
32 ----- X

1 Before: KATZMANN, *Chief Judge*, LEVAL, CABRANES, *Circuit Judges*.

2
3 Plaintiff appeals from the judgment of the United States District Court for
4 the Southern District of New York (Koeltl, J.) dismissing for lack of subject matter
5 jurisdiction the suit to enforce an English court's judgment on a derivative
6 contract for future ocean freight rates. The district court concluded that the suit
7 did not come within federal admiralty jurisdiction, 28 U.S.C. § 1333, because the
8 English judgment was not rendered in an English admiralty court and the claim
9 was not maritime under English law. The district court rejected the plaintiff's
10 argument that the maritime character of the underlying claim should be
11 appraised under U.S. law. The Court of Appeals (Leval, J.) concludes that federal
12 courts have jurisdiction under 28 U.S.C. § 1333 to enforce a judgment of a foreign
13 non-admiralty court if the claim underlying that judgment is maritime under the
14 standards of U.S. law. The judgment of the district court is **VACATED**, and the
15 case is **REMANDED** for further proceedings.

16
17 For Plaintiff-Appellant: THOMAS L. TISDALE (Lauren C.
18 Davies, *on the brief*), Tisdale Law
19 Offices, LLC, New York, NY.

20
21 For Defendant-Appellee Primera Maritime: ALAN HEBLACK, (Samuel Spital, *on*
22 *the brief*), Squire Sanders (US) LLP,
23 New York, NY.

24
25 For other Defendant-Appellees: GEORGE M. CHALOS (Katherine N.
26 Christodoulatos, *on the brief*), Chalos
27 & Co P.C. International Law Firm,
28 Oyster Bay, NY.

1 Leval, *Circuit Judge*:

2 Plaintiff D'Amico Dry Limited ("D'Amico") appeals from the judgment of
3 the United States District Court for the Southern District of New York (Koeltl, J.)
4 dismissing its complaint for lack of subject matter jurisdiction. D'Amico brought
5 this suit to enforce an English court's judgment on a forward freight agreement
6 ("FFA") between D'Amico and Defendant Primera Maritime (Hellas) Limited
7 ("Primera").¹ Under this contract, Primera was obligated to pay D'Amico if the
8 market freight rates for a specified shipping route on agreed future dates were
9 lower than the price specified in the contract. At the agreed future dates, the rates
10 were indeed lower, which obligated Primera to pay D'Amico. Primera refused to
11 pay. D'Amico sued Primera in an English court, which ruled for D'Amico,
12 rendering judgment in its favor. The suit was heard in the commercial division,
13 not the admiralty division, of the English court.

14 D'Amico then brought this suit in the United States district court to enforce
15 the English judgment, asserting entitlement to federal jurisdiction under 28 U.S.C.

¹ The remaining Defendants are alleged to be alter egos of Primera.

1 § 1333, which provides the maritime jurisdiction of the federal courts. Primera
2 moved to dismiss for lack of subject matter jurisdiction. The district court granted
3 Primera's motion to dismiss, holding that the suit did not fall under the federal
4 courts' admiralty jurisdiction because the English judgment was not rendered by
5 an admiralty court and the claim underlying the judgment was not deemed to be
6 maritime under English law.

7 D'Amico moved for reconsideration, arguing that enforcement of the
8 English judgment lies within the federal court's admiralty jurisdiction because the
9 claim on which the judgment was rendered would have come within federal
10 admiralty jurisdiction if brought in the United States courts. The district court
11 rejected the contention that the maritime classification of the claim under U.S. law
12 is pertinent to the question whether the suit may be brought in the admiralty
13 jurisdiction of the federal courts. The court therefore denied D'Amico's motion
14 for relief from the judgment. D'Amico now appeals from the denial of the Rule
15 60(b) motion, as well as from the judgment dismissing the complaint.

16 We conclude that, under § 1333, United States courts have jurisdiction to
17 enforce a judgment of a foreign non-admiralty court if the claim underlying that

1 judgment would be deemed maritime under the standards of U.S. law. We
2 therefore vacate the judgment and remand.

3 **BACKGROUND**

4 **A. The Forward Freight Agreement**

5 D'Amico operates Panamax dry bulk cargo vessels, among others, in the
6 business of carriage of goods by sea. A major risk of an ocean carrier's business is
7 that a slowdown in worldwide commercial activity will lead to diminution in
8 shipments of cargo, causing vessels to make expensive voyages partially empty
9 or, in more extreme circumstances, to lay idle. The rates carriers charge for
10 carriage of goods fall during such slowdowns. The cost of maintaining one of
11 D'Amico's Panamax dry bulk cargo vessels in an unemployed, idle state is
12 roughly \$12,000 per day on average. As a way of offsetting losses from its vessels
13 being underemployed or idle during such a slowdown, D'Amico enters into
14 futures contracts on international shipping rates. These contracts, sometimes
15 called "forward freight agreements" or "FFAs," specify a base rate (the "contract
16 rate") for a hypothetical shipment of specified goods over specified routes and
17 future dates for comparison of the contract rate with the market rates on such

1 future dates. If on a specified future date the market rate is above the contract
2 rate, then the party that took the downside of the agreement must pay the other
3 party the difference. If on the future date the market rate is below the contract
4 rate, the party that took the upside of the contract must pay the other party the
5 difference. Profits realized from such contracts as rates fall will increase
6 D'Amico's revenues when demand is low, counteracting its losses from
7 underemployment. Conversely, the losses on such contracts will decrease
8 D'Amico's net revenues when demand is high and rates rise.

9 At the beginning of September 2008, Luciano Bonaso, D'Amico's Chief
10 Executive Officer, ascertained that for the first quarter of 2009, 280 vessel days
11 remained unchartered. Believing, based on market projections, that D'Amico
12 would be unable to book cargo filling those days, Bonaso decided that D'Amico
13 should hedge against the underemployment by entering into an FFA, taking the
14 downside. On September 2, 2008, through the service of broker IFCHOR, S.A.,
15 D'Amico entered into an FFA with Primera, taking the downside of freight rates
16 for forty-five Panamax vessel days over four "Baltic Exchange" charter routes.
17 The FFA used a contract rate of \$55,750 per day to be compared to market rates

1 for the Baltic Panamax Index (“BPI”), as published by the Baltic Exchange, at
2 specified dates during the first quarter of 2009. Under the FFA contract, Primera
3 was to pay D’Amico if the market rates published in the BPI for the later dates
4 were below the contract rate, and D’Amico to pay Primera if the market rates on
5 the later dates were higher. The FFA provided that all disputes arising under it
6 would be submitted to the English High Court of Justice. By early 2009, as
7 D’Amico had predicted, the market rate had declined significantly, so that
8 Primera was obligated by the FFA to pay the difference. On January 30, 2009,
9 D’Amico invoiced Primera for \$795,963.20 under the terms of the FFA. Primera
10 failed to pay.

11 **B. The Prior Proceedings**

12 D’Amico brought suit in England at the High Court of Justice, Queen’s
13 Bench Division, to enforce the agreement. The Queen’s Bench Division of the
14 High Court of Justice is subdivided into multiple divisions, including the
15 Admiralty Court and the Commercial Court. The case was heard by the
16 Commercial Court, and not the Admiralty Court. The English court entered a
17 judgment in D’Amico’s favor in the amount of \$1,766,278.54, including, in

1 addition to D'Amico's contract entitlement, interest and other components.

2 Primera did not pay the judgment.

3 It appears that FFAs are not considered to be maritime contracts under
4 English law because they involve a theoretical, rather than an actual shipment of
5 goods by sea. *See* Senior Courts Act, 1981, c. 54 § 20(2)(h) (vesting English courts
6 with admiralty jurisdiction over "any claim arising out of any agreement relating
7 to the carriage of goods in a ship or to the use or hire of a ship"); *The Sandrina*,
8 [1985] A.C. 255 (H.L.) 271 (appeal taken from Scot.) (interpreting the phrase
9 "arising out of" in the identically worded Scottish equivalent of § 20(2)(h) to
10 require a "reasonably direct connection" with the carriage of goods or hire of a
11 ship, and holding that a claim on a shipping insurance contract did not qualify);
12 *The "Lloyd Pacifico"*, [1995] 1 Lloyd's Rep. 54 (Q.B.) 57 (holding that for admiralty
13 jurisdiction to apply, a claim must relate to an identifiable ship).

14 D'Amico then brought this action in the U.S. district court to enforce the
15 English judgment, asserting federal subject matter jurisdiction under § 1333. That
16 statute gives the federal district courts exclusive jurisdiction to hear "[a]ny civil
17 case of admiralty or maritime jurisdiction." Primera moved to dismiss for lack of

1 subject matter jurisdiction. The district court granted Primera's motion to dismiss,
2 concluding that it lacked admiralty jurisdiction to enforce the English court's
3 judgment because the English judgment was not rendered by an admiralty court
4 and the claim underlying the judgment was not deemed maritime in English law.
5 D'Amico then moved for reconsideration pursuant to Rules 59(e) and 60(b) of the
6 Federal Rules of Civil Procedure, arguing that a suit to enforce a foreign judgment
7 falls under federal admiralty jurisdiction if the underlying claim would be
8 maritime under U.S. law, irrespective of whether the foreign court that entered
9 the judgment was sitting in admiralty. The district court rejected this argument
10 and denied D'Amico's motion for reconsideration. D'Amico now appeals from
11 both the judgment of dismissal and the denial of the post-judgment motion.

1 courts of the States, of . . . [a]ny civil case of admiralty or maritime jurisdiction,
2 saving to suitors in all cases all other remedies to which they are otherwise
3 entitled." 28 U.S.C. § 1333.

4 It is well established that the law governing federal jurisdiction under
5 § 1333 to enforce admiralty judgments of foreign courts differs substantially from
6 the law governing jurisdiction to enforce judgments rendered by federal courts
7 exercising federal question jurisdiction under 28 U.S.C. § 1331. A suit to enforce a
8 judgment rendered by a federal court exercising federal question jurisdiction may
9 not be brought in federal court unless the enforcement suit has a basis of federal
10 jurisdiction independent of the fact that the original suit was on a federal
11 question. *See Stiller v. Hardman*, 324 F.2d 626, 628 (2d Cir. 1963) ("[A] suit on a
12 judgment [rendered by a federal court exercising federal question jurisdiction]
13 does not involve a federal question, however important federal questions may
14 have been to the resolution of the original controversy."). In contrast, some
15 judgments of foreign admiralty courts are enforceable in the admiralty or
16 maritime jurisdiction of the United States courts. *See Penhallow v. Doane's Adm'rs*, 3
17 U.S. (3 Dall.) 54, 97 (1795) (opinion of Iredell, J.); *Victrix S.S. Co. v. Salen Dry Cargo*

1 A.B., 825 F.2d 709, 713 (2d Cir. 1987); *Int'l Sea Food Ltd. v. M/V Campeche*, 566 F.2d
2 482 (5th Cir. 1978).

3 The rule providing federal admiralty jurisdiction for suits to enforce
4 judgments of foreign admiralty courts has been recognized since the birth of the
5 Nation. In *Penhallow v. Doane's Administrators*, 3 U.S. (3 Dall.) 54 (1795), Supreme
6 Court Justice Iredell declared that "a Court of Admiralty in one nation, can carry
7 into effect the determination of the Court of Admiralty of another." *Id.* at 97.
8 Justice Cushing wrote separately that it "seems to be settled law and usage" that
9 "courts of Admiralty can carry into execution decrees of foreign Admiralties." *Id.*
10 at 118. This principle has been reaffirmed many times in the subsequent decades.
11 *See Hilton v. Guyot*, 159 U.S. 113, 186 (1895) ("The respect which is due to
12 judgments, sentences, and decrees of courts in a foreign state, by the law of
13 nations, seems to be the same which is due to those of our own courts. Hence the
14 decree of an admiralty court abroad is equally conclusive with decrees of our
15 admiralty courts. Indeed, both courts proceed by the same rule, are governed by
16 the same law — the maritime law of nations, which is the universal law of nations,
17 except where treaties alter it." (citation and internal quotation marks omitted));

1 *Int'l Sea Food*, 566 F.2d at 484 (affirming “the existence of a general principle that
2 admiralty courts of this nation are empowered to carry into effect the maritime
3 decrees of foreign admiralty courts”); *Penn. R.R. Co. v. Gilhooley*, 9 F. 618, 619 (E.D.
4 Pa. 1881) (stating, in the context of an action to enforce a judgment of another
5 district court, that the court “had a general jurisdiction which would enable it in
6 its discretion to enforce the decree of a foreign admiralty court”); *Otis v. The Rio*
7 *Grande*, 18 F. Cas. 902, 903 (C.C.D. La. 1872) (No. 10,613) (“This court is in duty
8 bound to carry into effect the sentences and decrees, not only of other federal
9 courts, but even of the admiralty courts of foreign countries”), *aff'd*, 90 U.S.
10 458 (1874); *The Jerusalem*, 13 F. Cas. 559, 563 (C.C.D. Mass. 1814) (Story, J.) (No.
11 7,293) (stating in dicta that an admiralty court “will enforce a foreign maritime
12 judgment between foreigners, where either the property or the person is within
13 its jurisdiction”).

14 **A. Admiralty Jurisdiction Extends to Suits to Enforce Foreign**
15 **Judgments on Maritime Claims, Even if Those Judgments Were**
16 **Not Rendered by Specialized Admiralty Courts.**

17 In addition to the narrowest conception of the *Penhallow* rule opening the
18 federal admiralty jurisdiction to suits to enforce judgments of foreign admiralty

1 courts, there is some recent, but scant, precedent supporting a related proposition
2 that the federal admiralty jurisdiction provided by § 1333 should also
3 accommodate suits to enforce foreign judgments based on claims of maritime
4 character. In *Victrix*, we said in dictum that “an admiralty court has jurisdiction of
5 a claim to enforce a foreign judgment that is itself based on a maritime claim.”
6 *Victrix*, 825 F.2d at 713. And in *Vitol, S.A. v. Primerose Shipping Co.*, 708 F.3d 527
7 (4th Cir. 2013), the Fourth Circuit approvingly construed the *Victrix* dictum as
8 meaning that “the dispositive question is not whether the English Judgment
9 issued from an ‘admiralty court,’ but rather, whether the claim itself is maritime
10 in nature.” *Id.* at 535; *see also* Harold K. Watson, *Transnational Maritime Litigation:
11 Selected Problems*, 8 Mar. Law. 87, 104 n.102 (1983) (arguing that whether there is
12 jurisdiction to recognize foreign judgments per *International Sea Food* should turn
13 on the substantive nature of the foreign case, and not on whether the foreign court
14 “was an ‘admiralty court’ in the sense of a specialized court”).

15 Extending federal admiralty jurisdiction to suits to enforce foreign
16 judgments adjudicating maritime claims undoubtedly serves the purposes
17 intended by the *Penhallow* rule. That rule reflects numerous related policies that

1 shape admiralty jurisdiction in the United States. First, the rule reflects a
2 preference for specialized admiralty courts for the resolution of maritime disputes
3 because of their expertise in the arcane rules, nomenclatures, and traditions of the
4 sea. Second, it promotes a desirable uniformity in matters of international trade.
5 Third, it promotes international comity by facilitating the recognition of foreign
6 judgments. Fourth, it reflects a constitutionally endorsed distribution of power
7 between state and federal courts, which offers a forum for international disputes,
8 which is — at least theoretically — less likely to be influenced by local bias. *See*
9 *Wythe Holt, “To Establish Justice”: Politics, the Judiciary Act of 1789, and the Invention*
10 *of Federal Courts*, 1989 DUKE L.J. 1421, 1427-30 (describing the problem of local bias
11 in state court admiralty proceedings in the 1770s). In combination, these policies
12 all tend to promote international maritime commerce by facilitating the
13 enforcement of the law of the sea — simplifying the enforcement of judgments
14 (including enforcement of in rem jurisdiction against vessels), and protecting
15 vulnerable parties such as foreign litigants and seamen (who are considered the
16 “wards of admiralty,” entitled to special solicitude because of the daily hazards of
17 their work, *see Truehart v. Blandon*, 672 F. Supp. 929, 937 (E.D. La. 1987)).

1 These policies all relate far more to the maritime character of the
2 underlying dispute than to the classification of the court that rendered the
3 judgment. Thus, take for example, British and French seamen who suffer injury
4 by reason of the unseaworthiness of a Greek vessel and obtain judgments against
5 the vessel owner in their local courts. If the seamen subsequently sue in the
6 United States to enforce their judgments, the policies underlying *Penhallow* argue
7 in favor of allowing both of them to bring their suit in federal court under § 1333,
8 rather than admitting the British plaintiff because the judgment in his favor was
9 rendered by an admiralty tribunal while excluding the French plaintiff because
10 his judgment was rendered by a court not specialized in maritime matters.³ We
11 accordingly have no hesitation in reaffirming the proposition of the *Victrix* dictum
12 that federal admiralty jurisdiction extends to suits to enforce the judgments of

³ Indeed, the *Vitol* court faced a similar situation, where the English Commercial Court and Admiralty Court had concurrent jurisdiction over the claim underlying the judgment that the plaintiff sought to enforce in federal court. *Vitol*, 708 F.3d at 531-32. The Fourth Circuit reasonably concluded that making federal subject matter jurisdiction turn on the happenstance of whether the parties had asked the English court to exercise its admiralty or commercial jurisdiction to adjudicate the concededly maritime claim would elevate form over substance. *See id.* at 535.

1 foreign courts deciding maritime claims, regardless of whether the judgments
2 were rendered by specialized admiralty courts.

3 **B. U.S. Law Appropriately Determines Whether a Foreign Judgment**
4 **Was Rendered on an Admiralty Claim.**

5 The district court accepted the view that federal admiralty jurisdiction
6 applies to suits to enforce foreign judgments, not only when the judgment was
7 rendered by an admiralty court, but also when the claim upon which the
8 judgment was rendered was maritime. The district court construed our *Victrix*
9 dictum as meaning that the maritime nature of the claim must be determined by
10 reference to the law of the nation that rendered the judgment. *See D'Amico Dry*
11 *Ltd. v. Primera Maritime (Hellas) Ltd.*, No. 09 Civ. 7840, 2011 WL 1239861, at *3
12 (S.D.N.Y. Mar. 28, 2011) (“The question, then, is whether the English judgment
13 was rendered in an exercise of the admiralty jurisdiction of the English court —
14 that is, whether the claim adjudicated was, under English law, maritime in nature.
15 As the Second Circuit Court of Appeals described in dicta in *Victrix S.S. Co., S.A.*
16 *v. Salen Dry Cargo A.B.*, ‘an admiralty court has jurisdiction of a claim to enforce a
17 foreign judgment that is itself based on a maritime claim.’”). The court rejected

1 the plaintiff's contention that federal admiralty jurisdiction encompasses suits to
2 enforce foreign judgments when the claim recognized in the foreign judgment
3 would have been deemed an admiralty claim under U.S. law. The court said:

4 D'Amico argues, in essence, that a district court has admiralty
5 jurisdiction to enforce a foreign judgment where the court
6 would have had admiralty jurisdiction over the subject matter
7 of the foreign dispute. That is not the case. An action to enforce
8 a foreign judgment is a separate civil action imposing its own
9 jurisdictional requirements, and a suit to enforce a judgment
10 rendered on a maritime claim is not itself maritime in nature.

11
12 *D'Amico Dry Ltd. v. Primera Maritime (Hellas) Ltd.*, No. 09 Civ. 7840, 2011 WL
13 3273208, at *4 (S.D.N.Y. Aug. 1, 2011). The district court assumed that, because the
14 claim was not maritime under English law, it was not maritime for purposes of
15 determining admiralty jurisdiction.

16 We respectfully disagree. As noted above, had the district court been
17 speaking of federal question jurisdiction under 28 U.S.C. § 1331, the court would
18 undoubtedly have been correct. *See Stiller*, 324 F.2d at 628. But *Penhallow* imported
19 different considerations for determining whether a suit to enforce a foreign
20 judgment may be brought within the admiralty jurisdiction of the federal courts.
21 As these issues have arisen infrequently in cases where the foreign judgment was

1 *not* rendered by specialized admiralty court, there is no governing authority on
2 whether the maritime nature of the underlying claim is more appropriately
3 determined under the standards of U.S. or foreign law. We believe there are
4 compelling reasons to find federal admiralty jurisdiction if a claim is maritime
5 under the standards of U.S. law. We first address the issue of existing authority
6 on the question.

7 While the District Court read our dictum in *Victrix* to mean that the
8 maritime or non-maritime nature of the claim must be determined under the
9 standards of the laws of the nation that rendered the judgment, as we read *Victrix*,
10 it did not address which nation's law should be consulted to decide whether the
11 claim underlying the foreign judgment of a non-admiralty court should be
12 deemed maritime, and thus whether a suit to enforce that judgment lies within
13 the federal admiralty jurisdiction. While arguments may be advanced on both
14 sides as to the meaning of the opaque statement in *Victrix* that "an admiralty court
15 has jurisdiction of a claim to enforce a foreign judgment that is itself based on a
16 maritime claim," it certainly does not constitute precedential authority that the
17 standards of U.S. law are *not* pertinent to the inquiry.

1 In contrast, when the Fourth Circuit considered this issue in *Vitol*, it was
2 clear the court looked to the maritime characterization of the claim under foreign
3 law. Nonetheless, the *Vitol* decision did not constitute a precedent on the question
4 whether the maritime character of the claim under U.S. law is pertinent, both
5 because the *Vitol* court never considered the question whether U.S. law should be
6 consulted, and because the answer would have been the same under either British
7 or U.S. law, as the underlying claim (breach of the warranty of seaworthiness) is
8 maritime in both nations. *Vitol* never considered whether the maritime character
9 of the underlying claim under U.S. law standards justifies the exercise of federal
10 admiralty jurisdiction.⁴

11 We know of no other appellate level precedents addressing the question of
12 the pertinence of U.S. law in deciding whether the claim underlying the foreign
13 judgment is of maritime nature, so as to justify the exercise of federal admiralty

⁴ A district court in the Fourth Circuit, when confronted with a substantially similar question to the one we face here, construed *Vitol* (as do we) to have not addressed the question and concluded that U.S. rather than foreign law should determine whether the claim underlying a foreign judgment is maritime. *See Flame S.A. v. Indus. Carriers, Inc.*, No. 2:13-cv-658, 2014 WL 108897, at *3 (E.D. Va. Jan. 10, 2014).

1 jurisdiction over a suit to enforce the foreign judgment.

2 In rejecting the pertinence of U.S. law, the district court relied on two other
3 strands of authority, which we do not believe are apposite. The court relied in
4 part on an unpublished opinion of the United States District Court for the
5 Western District of Washington, ruling that it lacked subject matter jurisdiction to
6 enforce an English judgment on a contract of charter because the suit to enforce
7 the judgment needed to satisfy federal jurisdictional requirements and was
8 “untouched” by the substantive law supporting the judgment. *Bergen Indus. &*
9 *Fishing Corp. v. Joint Stock Holding Co.*, No. 01-cv-1994, 2002 WL 1587179, at *1
10 (W.D. Wash. Feb. 25, 2002). However the *Bergen* court relied for this proposition
11 on a misinterpretation of the Restatement (Third) of Foreign Relations § 481 cmts.
12 g, h (1987). The Restatement commentary cited by the *Bergen* court focuses on the
13 issue of personal jurisdiction “over the judgment debtor or his property.” It does
14 not address the separate issue whether a federal court has subject matter
15 jurisdiction over the suit.

16 The district court also relied on cases holding that an action to enforce a
17 *settlement agreement* cannot be heard in admiralty even where the underlying

1 dispute was brought in admiralty. See *Fednav, Ltd. v. Isoramar, S.A.*, 925 F.2d 599,
2 601 (2d Cir. 1991); *Pac. Sur. Co. v. Leatham & Smith Towing & Wrecking Co.*, 151 F.
3 440, 443 (7th Cir. 1907) (cited in dicta in *Kossick v. United Fruit Co.*, 365 U.S. 731, 735
4 (1961)). The reasoning of this line of cases is that *an agreement* to pay damages
5 “neither involves maritime service nor maritime transactions.” *Pacific Sur. Co.*, 151
6 F. at 443. Thus an agreement to pay to resolve a maritime claim is not itself a
7 maritime contract and does not confer admiralty jurisdiction over a subsequent
8 suit on that agreement to resolve the underlying maritime claim.

9 The considerations are different, in our view, when a court has adjudicated
10 the underlying claim in the plaintiff’s favor. In the settlement context, agreement
11 between the parties does not legitimate the original maritime claim. There is no
12 telling whether the defendant who agrees to pay money in settlement of the claim
13 is in any way by doing so acknowledging validity of the claim, or in contrast is
14 continuing to deny it categorically while agreeing to pay some money to avoid
15 the inconvenience, expense, and risk of further litigation. The settlement
16 extinguishes that claim through private contract without validating it. In contrast,
17 where a court has rendered a final judgment on the claim, the claim has been

1 validated. If that claim was of maritime nature, the maritime nature of the claim
2 has been validated, furnishing good reason for the dispute over the enforceability
3 of the judgment to be heard as a maritime matter in the admiralty jurisdiction of
4 the federal court.

5 Further, the district court's reasoning with respect to its analogy to
6 settlement agreements is in conflict with the *Penhallow* rule. *Penhallow* posits that
7 the question of the enforceability of the judgment of a foreign maritime court is
8 itself a maritime matter to be heard in the admiralty jurisdiction of United States
9 courts, like a suit on a maritime claim. The district court accepted that the
10 *Penhallow* principle should extend not only to the judgments of foreign admiralty
11 courts but also to the judgments of foreign courts enforcing claims deemed
12 maritime under the law of that nation. We do not see how that principle is
13 compatible with the district court's reasoning that suits to enforce foreign
14 judgments may not be brought in federal courts absent a separate source of
15 federal jurisdiction. The question at issue is the proper scope of the *Penhallow* rule.

16 Accordingly we do not agree with the district court's conclusion that
17 existing precedent — although authorizing suits to enforce foreign judgments of

1 non-admiralty courts if the underlying claim was maritime under the law of the
2 nation that rendered the judgment — does not authorize extending admiralty
3 jurisdiction to such suits when the claim was maritime according to U.S. law
4 standards. We know no precedent for that proposition.

5 Finally, if the principle is to be extended, as we stated in *Victrix*, to open
6 federal admiralty jurisdiction not only to suits to enforce the judgments of foreign
7 admiralty courts, but also to suits to enforce the judgments of foreign
8 non-admiralty courts when the underlying claim validated by the judgment was
9 maritime, we think that there are strong theoretical and practical reasons for
10 assessing the maritime nature of the claim under U.S. admiralty standards. The
11 reasons are numerous.

12 Of the theoretical reasons, the first is a principal enshrined in the
13 Constitution that the jurisdiction of the federal courts should extend to maritime
14 matters. Thus, Article III provides that “[t]he judicial Power shall extend . . . to all
15 Cases of admiralty and maritime Jurisdiction.” U.S. Const. art. III, § 2. And the
16 policy of the United States to place maritime matters in the federal courts is so
17 strong that § 1333 makes federal court jurisdiction exclusive. Although, as a

1 general proposition, there is widespread agreement throughout the world which
2 kinds of matters are maritime and which are not, there is no assurance that some
3 other nation might not define its own maritime jurisdiction more broadly, or
4 more narrowly, than we do. It seems reasonable to assume that the Framers of the
5 Constitution and Congress wanted to ensure that matters deemed maritime *under*
6 *our laws* have access to our federal courts. There is no reason to suppose that the
7 Founders or Congress would have wished to exclude from the admiralty
8 jurisdiction matters that U.S. law deems maritime, merely because another nation
9 does not consider them maritime. The fact that some nation, unlike ours, does not
10 reserve a special jurisdiction for maritime matters, or classify maritime matters as
11 subject to a discrete body of laws, does not derogate from the policies of our law
12 to provide for the adjudication of matters we regard as maritime in our federal
13 courts.

14 Second, choice of law principles support using U.S. law's characterization.
15 The question whether a claim belongs in one or another court is jurisdictional and
16 procedural. Under choice of law principles, the law of the forum state is used for
17 such a question. *See* Restatement (Second) of Conflict of Laws § 123 (1971) ("Each

1 state determines which of its courts or systems of courts, if any, are competent to
2 hear a particular case over which the state has judicial jurisdiction. So it is for each
3 state to decide whether an action on a given claim shall be brought in a court of
4 law, of equity, of probate or of admiralty.”).⁵

5 Third, international comity favors allowing federal jurisdiction over suits to
6 enforce foreign maritime judgments to the extent that we would wish for
7 reciprocal enforcement of U.S. judgments in foreign courts. The concern for the
8 enforceability of the foreign judgment is of far greater importance to international
9 comity than whether the U.S. court agrees with the foreign nation as to the

⁵ This analysis is supported by our recent analogous discussion in *Blue Whale Corp. v. Grand China Shipping Development Co.*, 722 F.3d 488 (2d Cir. 2013). There, we faced the question which nation’s law should apply when deciding whether a plaintiff “has a valid prima facie admiralty claim” for purposes of attachments under Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims. *See id.* at 493 (quoting *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434, 445 (2d Cir. 2006), *overruled on other grounds by Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58 (2d Cir. 2009)). In deciding the choice of law issue, we noted: “[W]hat is clear is that federal law controls the procedural inquiry, namely, whether a plaintiff’s claim sounds in admiralty. This question is inherently procedural by virtue of its relationship to the courts’ subject matter jurisdiction and, thus, is controlled by federal maritime law.” *Id.* at 494 (citation omitted).

1 maritime nature of the claim. Foreign interests seeking to enforce a foreign
2 judgment, who are denied access to federal court will not take comfort in (or
3 believe that comity has been served by) the fact that the U.S. court followed their
4 nation's law to determine whether the claim was maritime.

5 Finally, some nations neither have specialized admiralty courts nor classify
6 maritime matters as distinct from other areas of commerce. The fact that a foreign
7 nation does not recognize in its laws a categorical distinction which U.S. law
8 deems so important should not frustrate the policy of U.S. law to place maritime
9 disputes in federal courts.

10 There are also *practical* reasons that strongly favor using U.S. law to
11 determine whether the claim underlying a foreign judgment was maritime, so
12 that the suit to enforce the judgment should be allowed within the federal
13 admiralty jurisdiction.

14 First, questions of subject matter jurisdiction should be amenable to quick
15 and relatively certain resolution. If the characterization of the claim under foreign
16 law is controlling, the parties will be compelled in many cases to carry on an
17 expensive, cumbersome litigation involving dueling experts on foreign law,

1 merely to determine whether the suit belongs in federal or state court.

2 Federal courts have a duty to inquire into their subject matter jurisdiction
3 sua sponte, even when the parties do not contest the issue. Especially as the
4 foreign law may be in a foreign language, it is not clear how a federal court would
5 go about determining whether it has jurisdiction. If federal subject matter
6 jurisdiction is not raised until the appeal, it is unclear how the court of appeals
7 would deal with the question (foreign law being a question of fact) without
8 remanding to the district court. Moreover, because subject matter jurisdiction
9 cannot be waived, if a defect in the court's subject matter jurisdiction becomes
10 apparent only after the litigation, that defect will render the prior litigation
11 useless. The need for certainty is all the greater here, as § 1333 vests admiralty
12 jurisdiction *exclusively* in the federal courts. 28 U.S.C. § 1333. Thus, parties
13 concerned about uncertain federal jurisdiction cannot, as is generally the case,
14 avoid the problem by bringing suit in a state court of concurrent (and
15 unquestionable) jurisdiction. Regardless whether the litigation is conducted in
16 federal or state court, the losing party would be able to attack the judgment after

1 the fact merely by offering expert evidence that the claim was or was not deemed
2 maritime under the foreign law.⁶

3 We therefore conclude that a suit to enforce a foreign judgment may be
4 heard in the federal admiralty jurisdiction under § 1333 if the claim underlying
5 the judgment would be deemed maritime under U.S. law.⁷ Accordingly, this suit

⁶ Enforcing foreign judgments rendered on claims considered maritime under U.S. law has the additional salutary effect of clearly establishing federal jurisdiction as a matter of law where complicated factfinding might otherwise be necessary, even under the literal terms of *Penhallow's* rule of enforcing the judgments of foreign admiralty courts. Thus, for example, a foreign court might have jurisdiction over maritime and other non-maritime commercial claims. Or it might have jurisdiction over personal injuries suffered by workers employed in motor, air, rail, and sea transportation. Whether such a court is a foreign admiralty court may not be obvious. But if the foreign court renders a judgment on a claim for personal injury suffered by a seaman as a result of the unseaworthiness of a vessel, the use of U.S. law to conclude that the claim is maritime obviates the need under *Penhallow* (or otherwise) to inquire into the intricacies of the foreign judicial system.

⁷ We have outlined reasons why we believe that admiralty jurisdiction under § 1333 includes the authority to enforce foreign judgments on claims that would be considered maritime under U.S. law. We have no reason in this case to decide whether the maritime nature of the claim under the law of the nation that rendered the judgment would also suffice to bring a suit on the judgment within the jurisdiction established by § 1333. Our ruling today would remain the same regardless of whether the maritime classification of the underlying claim under the foreign substantive law is sufficient to bring the suit within § 1333 jurisdiction.

1 to enforce an English judgment comes within the admiralty jurisdiction of § 1333
2 if the underlying claim on the FFA is deemed maritime under the standards of
3 U.S. law. Because the district court did not consider that question below, we
4 remand to the district court to make that determination in the first instance.⁸

5 **CONCLUSION**

6 For the above reasons, the judgment of the district court is VACATED, and
7 the case is REMANDED.

⁸ We note that Primera also contends that D'Amico forfeited the argument that U.S. law should determine the maritime nature of the claim. We disagree. We believe this was adequately raised by D'Amico in the proceedings prior to the entry of judgment. *See* Pl.'s Mem. Opp'n Def.'s Mot. Dismiss 6-13, Nov. 20, 2009, S.D.N.Y. ECF No. 16 (arguing that the district court had admiralty jurisdiction because FFAs are maritime under both U.S. and English law).