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I. Prologue

John Carrere discredited the warranty on his goods through the use of "concealed papers, the artifice practised to prevent detection of them, the fictitious names used, and the mystery in which the whole are enveloped."[1] In 1806 Captain William Byam of the H.M.S. *Bermuda* seized the *Venus* and redirected John Carrere's cargo from Bordeaux to Halifax. The British Court of Vice Admiralty "adjudged and condemned [the French bound cargo] as lawful prize . . . pursuant to the acts of Parliament." [2] When John Carrere moved to collect on his marine insurance, the Union Insurance Company of Maryland refused to pay. Although Carrere had taken out an insurance policy "upon all kinds of lawful goods and merchandise, laden or to be laden, on board the schooner *Venus,*"[3] he allegedly lied concerning which goods and merchandise belonged to him. The Union Insurance Company of Maryland revealed documentation and correspondences which depicted an alternate ownership of the *Venus's* cargo. The British Court of Vice Admiralty in Halifax uncovered secret letters and documentation on board the *Venus* written at times with false names and in invisible ink. Among these letters for example, were the instructions that "in hogshead

[1] Carrere v. Union Ins. Co. of Md., 3 H. & J. 324 (1813).
[2] Allen Master. Promice of Nova Cotia Court of Vice Admiralty. 1806.
[3] Carrere. 3 H. & J. at 324.

No. 36, under the tail of the J, you will find in the head the authenticated copy of the discharge."[4] The Union Insurance Company revealed that Carrere had lied on his insurance policy and carried documentation hidden from the insurance agents. A further presentation by the Union Insurance Company revealed through a correspondence written in invisible ink that the *Venus* carried both French and U.S. goods owned only in part by Carrere. Furthermore, and providing greater example of the mystery surrounding Carrere's shipment, the *Venus* surreptitiously carried a correspondence, relating to a previous shipment which seemed to offer a waiver of fees in Bordeaux. This correspondence was found hidden in the aforementioned hogshead No. 36 and stated:

> "the officers set over the police of external commerce will allow to pass for Mr. *J. Ducorneau,* merchant, residing at *Bordeaux,* the goods hereafter mentioned bound to the Isle of *France,* or other *French*ports, and not elsewhere," and had been signed by the Receiver and the Director of Customs at *Bordeaux . . .* also by the Director of Customs at the Isle of *France . . .* and by the commissary of the commercial relations of France with Baltimore." [5]

Both the Baltimore County Court in 1809 and the Maryland Court of Appeals in 1813 found that John Carrere had made void his insurance policy through this use of artifice.

II. History of Marine Insurance and Maritime Trade

Marine Insurance allowed neutral American merchants to take advantage of the opportunities created by the Napoleonic Wars by pooling resources and reducing risk. Stepping back and understanding the role and practices of marine insurance allows for a

[4] Id. At 325.
[5] Id. At 326.

greater understanding of Carrere's actions concerning the *Venus.* The turmoil in Europe created great opportunity for neutral merchants, but left American shipping vessels open to repeated attack and capture by British, Spanish, French, Neapolins and Danes.[6] The industry of overseas shipping became a fountain of wealth within a "thorny bed of adversity and affliction," as the District of Colombia Daily Advertiser described the perils of shipping in 1801.[7] American industry responded to this international risk through the establishment of its own marine insurance. "The development of marine insurance companies became an indispensable infrastructural development in these years, one that enabled American merchants to prosper in overseas trade."[8]

Marine insurance came to the United States through English tradition. "Of the remote beginning of marine insurance as little is known as of the beginnings of most human arts, industries, and occupations;" however, most sources identify this practice as originating in the Italian peninsula.[9] Regardless of its point of origin, marine insurance, as it came to be known in the United States, developed and spread from London, England. British law dictated the acceptable practices of American insurance. Until the middle of the 18th century, Edward Lloyd's Coffee House in London was the center of the marine insurance market.[10] As such, British laws dominated the industry and guided the development of marine insurance in the American colonies and early United States. More specifically, American development followed the British tradition of liberal interpretation

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[6] Crothers, Glenn A. "Commercial Risk and Capital Formation in Early America: Virginia Merchants and the Rise of American Marine Insurance, 1750-1815." The Business History Review. Volume 78, Number 4. (Winter, 2004) P 608.
[7] District of Columbia Daily Advertiser. June 3, 1801.
[8] Crothers 609.
[9] Martin, Frederick. The History of Lloyd's and of Marine Insurance in Great Britain. MacMillan and Co. London. 1876. P 4.
[10] Crothers 608.

and deference to marine custom. As there "is no record of any trial affecting questions of marine insurance earlier than the end of the sixteenth century,"[11] the conclusion can be drawn that marine customs dictated the laws of insurance in England before the courts became involved. However, between the seventeenth and the nineteenth centuries, British Courts entered the realm of marine insurance and impacted its growth through judicial decision making. In particular, Blackstone noted in his commentaries that under the Chief Justice, Lord Mansfield, "the learning relating to marine insurance has of late years been greatly improved by a series of judicial decisions, which have now established the law in such a variety of cases that, if well and judiciously collected, they would form a very complete title in a code of commercial jurisprudence."[12] Lord Mansfield and the British judiciary developed an interpretation of the construction of the insurance document that carried into the development of colonial and early American doctrine.

As marine insurance companies spread across the Atlantic Ocean, this interpretation and analysis by the British judiciary greatly impacted the American markets. The English courts based their interpretation on the "usages and customs of the sea," that they had been wont to follow prior to end of the 16th century.[13] In other words, these courts established a judicial tradition based on "certain general principles, which compose the basis of marine jurisprudence, and regulate the affairs of commerce and navigation."[14] While a variety of British cases helped turn these marine principles into recorded law and tradition, specific leading principles were "laid down in two celebrated trials, which have

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[11] Martin 121.
[12] Martin 122.
[13] Weskett, John. A Complete Digest of the Theory, Laws, and Practice of Insurance. Frys, Couchman & Collier. London. P 560.
[14] Weskett 561.

remained leading cases" in marine insurance:[15] *Tierney v. Etherington*[16], and *Pelly v. Royal Exchange Assurance Corporation.*[17] *Tiernay* revolved around the idea of usage and determined that marine custom and the standard course of trade would be deferred to in the insurance document. This case specifically involved the loading and unloading procedures commonly practiced at the ports of Gibraltar. British captains in Gibraltar would commonly unload all goods onto a store-ship when no other British ships were present to reship the goods. Although this method of unloading practiced by the plaintiff was not within the policy itself, Chief Justice Lee determined that "the construction shall be according to the course of trade in this place."[18] Lee continued to explain that the ship's captain unloaded the defendant's cargo in the "usual mode of unloading and reshipping in [Gibraltar]," as such the insurance contract remained valid.[19] The underwriter defendants were not content with this decision and moved for a new trial. They feared "the far-bearing influence . . . of a liberal construction of the [insurance] policy.[20] The British Courts refused the new trial and the liberal interpretations began to take a strong foothold in British marine law.

Pelly v. Royal Exchange Assurance Corporation preserved the logic and reasoning of *Tierney* and determined that the insured is not at fault if a deviation from course is made according to marine custom. In *Pelly*, the *Onslow*, an East India ship arrived in the Canton River of China. By the order of the captain, the ship removed, in order to store, "the sail

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[15] Martin 125.
[16] Tierney v. Etherington. 250 Bur. 348 (1743).
[17] Pelly v. Royal Exchange Assurancec Corporation. 1 Marshall 250 (1757).
[18] Tierney. 240 Bur.
[19] Id.
[20] Martin 125.

yards, tackle, cables, rigging, apparel, and other furniture."[21] The captain took this opportunity in accordance with general custom in order to repair the ship and keep the materials dry and preserved until the ship was ready for departure.[22] All English ships practiced this repair in the Canton River, as did the ships of all European countries except for the Dutch merchants who were banned from trade by the Chinese.[23] During the repair of the *Onslow*, the storage facility caught flame resulting in great loss to the ship and an inability to travel until the ship could be entirely refitted. While the defendant insurance company argued that the *Onslow* had deviated from course and considerably increased its own risk by removing its sails and rigging for repair, the Court found that the act was "not only a prudent course, but for the common benefit of the insurers as well as the insured."[24] Chief Justice Lord Mansfield specifically championed this liberal interpretation and deference to custom by his statement that "what is usually done by such a ship, with such a cargo, in such a voyage is understood to be referred to by every policy, and to make a part of it as much as if it were expressed."[25]

The abovementioned cases in particular reveal the decision of the British judiciary: contracts of marine insurance will be liberally interpreted to include the traditional usages and customs of the sea. As early colonial and American courts began to review the contracts of early American insurance companies, the decisions of the British courts spread across the Atlantic. These American courts consistently adopted the liberal construction espoused by the British throughout the 19th century. The liberal examples set by *Tiernay*

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[21] Ruling Cases. Ed. Robert Campbell. Vol. XIV Insurance – Interpretation. Stevens and Sons, Limited. London. 1898. P 32.
[22] Ruling Cases. 33.
[23] Martin 126.
[24] Martin 126.
[25] Martin 127.

and *Pelly* were continued for example in the Supreme Court decisions of *Livingston and Gilchrist v. The Maryland Insurance Company*,[26] and *The Marine Insurance Company of Alexandria v. John and James H. Tucker.*[27]

Livingston demonstrated the liberal interpretation and deference to custom in marine insurance through the lens of capture during the Spanish and British conflicts at the turn of the nineteenth century. In *Livingston*, an American merchant and a Spanish merchant partnered in order to obtain two sets of papers in order to appease both of the belligerents currently waging war on the sea. The details of the American marine insurance contract provided evidence of the ships neutral nature, while a royal Spanish license offered protection against the Spanish fleet. The Maryland insurance company argued that the Spanish license violated the "warranty of neutrality."[28] However, the Supreme Court found otherwise and determined that consideration must be paid to "the usage and course of the trade insured."[29] This liberal interpretation recognized that "in general, concealment of papers amounts to a breach of warranty," but considered that when the customary course of trade involved "shall be so used as to protect the property," then this concealment of extra papers shall be found to be of little relevance.[30] A concurring opinion by Justice Story succinctly stated that "any acts done by the assured in the voyage according to the course and usage of the trade, although such acts may increase the risk, do not vitiate the policy."[31]

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[26] Livingston and Gilchrist v. The Maryland Insurance Company. 6 Cranch 274 (1810).
[27] The Marine Insurance Company of Alexandria v. John and James H. Tucker. 3 Cranch 357 (1806).
[28] Livingston. 6 Cranch.
[29] Id.
[30] Id.
[31] Id.

This practice of liberal interpretation was followed in all matters of marine insurance. *The Marine Insurance Company of Alexandria v. John and James H. Tucker* demonstrated a continuation of this British liberal policy in regard to deviation from course. Sailing from Kingston, Jamaica in 1801 the sloop *Eliza* was captured first by the Spanish and subsequently recaptured by the British in order to be returned to and salvaged at the port of Kingston. The plaintiffs had insured the *Eliza* for its trip from Kingston to Alexandria. However, upon receiving evidence that the *Eliza* had planned to deviate from course in order to stop in Baltimore, the Marine Insurance Company of Alexandria refused to honor the insurance policy for deviation from course. In continuance with the liberal British tradition, the Supreme Court determined that "the mere taking in goods from another port, does not of itself, make a deviation."[32] However, the Court explained that a deviation adding any material risk will constitute a deviation capable of voiding the insurance policy. When considering the facts specific to this case, the Spanish first captured the sloop *Eliza* far before any course change would have been made. At the time of capture the *Eliza* was on track for both Alexandria or Baltimore. As such the Supreme Court determined that the sloop made no material deviation and the Marine Insurance Company of Alexandria was bound by the insurance policy. The British tradition of liberal construction embodied three quarters of a century earlier and across the width of the Atlantic Ocean influenced the judicial decisions of the American courts as the United States developed its own customs and practices of Marine insurance.

As the 18th century progressed, American insurance companies played more prominent roles insuring American maritime cargos. Between 1721 and 1805 Historian

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[32] Alexandria. 3 Cranch.

Howard Gillingham identified twenty-two Philadelphia insurance brokers, and saw the development of New York's first office in 1759.[33] Although Lloyd's of London maintained a presence of underwriters in the American Colonies and even kept a small presence into early America,, "obtaining insurance from London . . . was not only tedious and troublesome, but even precarious."[34] American merchants recognized that "providing proof of loss and collecting claims made on foreign underwriters [was] difficult and time consuming."[35] The earliest American insurance agencies, though, followed the model used by Llloyd's of London. This model consisted of first establishing a policy that recorded the "vessel, captain, intended destination, and premium," and next various underwriters were "invited to subscribe for whatever portion of the policy they wished."[36] Only when the full amount of the policy had been underwritten by these individual underwriters would the policy be finally concluded.

By 1806, the year of the *Venus*' capture, the standards of marine insurance had developed into a tried and true system. An insurance policy consisted of ten key components: "the name of the assured or of his agent, the promise to insure, the name of the vessel to which the insurance relates, the voyage, or period of time covered by the policy, the subject-matter insured against, the premium, the subscriptions of the underwriters, with the date of execution of the policy, the place where the policy is made, and the stamp."[37]

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[33] Crothers. 612.
[34] Crothers 611.
[35] Crothers 611.
[36] Crothers 612.
[37] McArthur, Charles. The Contract of Marine Insurance. Stevens and Sons: London. 1885. P 35.

The initiation of war, whether as a belligerent nation or a neutral trading partner, resulted in a necessary change to the practices of marine insurance. "The aim of maritime warfare [was], in fact, to force the enemy to surrender by depriving him of the use of the sea."[38] In turn, this maritime warfare created an economic vacuum that the belligerent nation could no longer fill. Neutral American merchants took advantage of the European turmoil in order to profit through trade; however, for maritime warfare "to be effective, the interdiction of the use of the sea should not only affect the shipping and cargoes of the enemy, but also the neutral shipping and cargoes coming fromm or proceeding to the enemy's shores."[39] Accordingly the neutral United States risked capture from warring countries and therefore placed their cargo at higher risk. Marine insurance premiums showed remarkable fluctuations due "mainly to the heavy losses connected with the Napoleonic Wars."[40] This spike continued throughout the Napoleonic wars and gradually gave way to lower peace rates by 1820, nearly a half a decade after the cessation of widespread war.[41]

A second repercussion of war on marine insurance, beyond the aforementioned increased risk and cost of insurance, was a final severance from British underwriters in America. Despite the growth of American insurance corporations, British insurance underwriters maintained a presence in the United States.[42] For example in the late 1750's the extent of purchasing insurance from London had been "so established . . . that Virginia merchants . . . often had 'general orders' for insurance that only required the London

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[38] Dupuis, Charles. "National Maritime Rights and Responsibilities in Time of War." The North American Review. Volume 181. Number 585. (August 1905) P 176.
[39] Dupuis 177.
[40] Huebner, Solomon. "Development and Present Status of Marine Insurance in the United States." Annals of the American Academy of Political and Social Science. Volume 26. (September 1905) P 435.
[41] Huebner 437.
[42] Crothers 611.

merchant to be informed of a prospective voyage."[43] However during the Napoleonic wars at the turn of the century, Britain existed as a belligerent nation and made explicitly illegal the insurance of any cargo intended for an enemy nation. *Brandon v. Curling* made clear in 1803 that any insurance of enemy property is "contrary to the public interest and a loss occurring during the war cannot be recovered.[44] British Courts further determined in *Dyamit Actien-Gesellschaft v. Rio Tinto Co.* that insurance policies made with neutral nations before the start of a war could not be collected upon in England if the British fleet seized the cargo.[45] With these decisions in place, the American merchant fleet could not both take advantage of the wartime trade and seek insurance from British companies. As a result the British insurance industry lost their final footings in American trade during the early 19th century. By the time John Carrere entered into his contract with the Union Insurance Company of Maryland, the practice of insurance had reached the point of American companies selling to American merchants while following the example of British precedent.

III. British Capture of the American Merchant fleet

The H.M.S. *Bermuda* captured the *Venus* and seized all of John Carrere's goods in proper accordance with British law. The importance of marine insurance comes to light in context of Britain's self-declared authority to seize neutral merchant ships trading with a belligerent nation. As described over a century earlier by German philosopher Samuel Von Pufendorf: "the English and the Dutch were willing to leave to neutrals the commerce they

[43] Crothers 613.
[44] McNair, Arnold D. "The Effect of War Upon Contracts of Insurance of Property." Journal of Comparative Legislation and International Law. Third Series, Volume. 24. Number. 1. (1942) P 16.
[45] McNair 24.

were accustomed to carry on in time of peace, but were not willing to allow them to avail themselves of the war to augment it, to the prejudice of the English and the Dutch."[46] When war broke out between England and France in 1793, the British government needed new laws to deal with the growing neutral trade with France. "Scarcely . . . had the contest between British and French arms fairly begun when the merchants of leading neutrals – conspicuously Holland and the United States, - determined upon the practical exploitation of opportunities likely to be offered by a war."[47] The British responded to this American opportunistic trade with the 1793 Orders in Council. Contemporary scholars, however, regarded the 1793 Orders in Council as the heightened enforcement of the rule of 1756.[48] Accordingly understanding the role of the 1793 Orders in Council requires an analysis of the rule of 1756.

The British enacted the rule of 1756 at the onset of the Seven Years' War (1756-1763). Originally, this rule intended to "counteract the successful carriage of enemy colonial goods by neutral Dutch merchants."[49] War shattered the monopoly of French merchants over French trade. As did the American merchants in 1793, the Dutch sprung upon the opportunity presented by war in order to replace the French merchant fleet who "could no longer, by reason of British superiority at sea, themselves maintain this valuable colonial trade."[50] The presence of these Dutch merchants forced Britain into action. To allow this trade would cripple the rewards of the British marine superiority. By

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[46] Kent, James. Commentaries on American Law.(1826) P 78.
[47] Sherman, Gordon E. "Orders in Council and the Law of the Sea." The American Journal of International Law. Volume 16. Number 3. (July 1992). P 400.
[48] Carey, Matthew. The Olive Branch or Faults on Both Federal and Democratic. A serious Appeal on the Mutual Forgiveness and Harmony to Save our Common from Ruin. (1815).
[49] Sherman, Gordon. "Orders in Council and the Law of the Sea." The American Journal of International Law. Volume 17. Number 3. (July 1922) P 406.
[50] Sherman 406.

establishing the rule of 1756, Britain hoped to "make neutral ships carrying French colonial products liable to capture."[51] Under the theory stated within this rule, "a neutral has no right to deliver a belligerent from the pressure of his enemy's hostilities, by trading with his colonies in time of war in a way that was prohibited [by a nation's monopoly] in time of peace."[52]

Historians have summarized the rule of 1756 into four concise provisions regarding what Britain will consider illegal trade. Under this rule the following activities violate the law and the applicable cargo and vessels are subject to British seizure:

> "(1) The carrying on by the Neutral of the trade between the Belligerent Mother Country and the Colonies.
> (2) The carrying on the coastal trade of the Belligerent-such trade being confined in time of war to the Belligerent's subjects.
> (3) The carrying on the trade by a Neutral from a port in his own country to a port of the colony of the Belligerent.
> (4) The carrying on the trade by a Neutral between the ports of the Belligerent, but with a cargo from the Neutral's own country."[53]

Under the Rule of 1756, John Carrere violated both condition one and four through his trade with Bordeaux. Had Carrere been carrying only his own goods, as his insurance contract had suggested, he would only have violated the fourth condition. However, as Carrere carried not only his own cargo but, according to the findings of the court, he carried the cargo of French merchants as well, he made multiple violations of the Rule of 1756. Carrere's violation of the Rule of 1756 though is merely hypothetical as the British had adapted their policies in the half century between this rule and the capture of the *Venus.*

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[51] Forland, Tor Egil. "The History of Economic Warfare: International Law, Effectiveness, Strategies." Journal of Peace Research. Volume 30. Number 2. (May 1993) P 152.
[52] Forland 152.
[53] Phillimore, Comm. on International Law, Volume. 3. (1857) P 311.

The British took John Carrere's cargo in accordance not with the Rule of 1756, but rather with the 1793 Orders in Council and the subsequent statues following it.

Following the end of hostilities in the seven years, the Rule of 1756 waned in enforcement. The British no longer needed to seize merchants under this law and the prize courts "had never, of their own authority, revived the Rule [of 1756]."[54] However, upon the beginning of the Napoleonic Wars, the British resumed the seizure of merchant ships with the 1793 Orders in Council. Signed by Henry Dundas "by his majesty's command" on November 6, 1793, the Order instructs all British ships:

> "That they shall stop and detain all ships laden with goods, the produce of any colony belonging to France or carrying provisions or other supplies for the use of such colonies, and shall bring the same, with their cargoes, to legal adjudication in our courts of admiralty."[55]

Although the government in the "United States constantly and earnestly protested against the legality of the rule,"[56] the British continued to enforce the capture of Merchant vessels throughout the Napoleonic conflicts. The British made developments in the law until finally repealing the Orders in Council in 1812 as a result of the growing and finally climaxing anger by the United States, which concluded in the war of 1812.

The British developed particular criteria and clarifications in order to determine whether a merchant vessel could be captured. Recognizing the importance "in maritime war, to determine with precision what relations and circumstances will impress a hostile character upon persons and property," the British prize courts carefully determined when

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[54] Sherman 414.
[55] British Orders in Council of 1793.
[56] Kent, James. Commentaries on American law. (1826) P 79.

a merchant vessel could be seized without overexposing themselves to neutral hostility.[57] A key example, particularly in relation to John Carrere, was the British clarification that "if a person has a settlement in a hostile country by the maintenance of a commercial establishment there, he will be considered a hostile character, and a subject of the enemy's country, in regard to his commercial transactions connected with that establishment."[58] This rule plays a prominent part in explaining why the Union Insurance Company of Maryland treated John Carere's deception with the extreme measure of voiding his insurance contract. Carrere's cargo would have been seized regardless during this voyage because he was a neutral merchant who traded with a belligerent nation; however, had the H.M.S. *Bermuda* caught the *Venus* as it traded with another neutral country, the cargo and the vessel could have been seized according to British law if the goods on board belonged to French merchants. Under the abovementioned definition of a "hostile character," any American merchant still retaining commercial property in France would be considered a citizen of the belligerent nation and risk seizure by the British fleet.

This rule, determining the national characteristics of a merchant depending on his ownership of commercial property, stems from the English House of Lords in 1802.[59] The case of the *Danous*,[60] determined that a British born subject was "allowed the benefit of the Portuguese character, so far as to render his trade with Holland, then at war with England, not impeachable as an illegal trade."[61] The British courts then imbued this same principle upon all matters of commercial ownership and domicile of merchants.

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[57] Kent, James. Commentaries on American Law. (1826) P 69.
[58] Kent 70.
[59] Kent 71.
[60] *Danous*. 4 Rob. 255 (1802).
[61] Kent 71.

Captain William Henry Byam provided a representation of the British naval officers who were charged with the capture of merchants under the Orders in Council subsequent to 1793. Born in London on February 17, 1776, the young William Byam exhibited a strong desire to follow in the tradition of his father Lieutenant Edward Byam.[62] In September of 1789, the thirteen year old William Byam entered the naval academy at Portsmouth, and after three years served aboard his first ship: Commodore Ford's 50 gun *Europa*.[63] During this time aboard the *Europa*, William Byam saw the successful capture of Jeremie, Cape Nichola Mole and Port-au-Prince in Haiti. Upon leaving the *Europa*, William Byam, now a Lieutenant, served aboard the 74 gun *Irresistible* and the 74 gun *Vengeance*. He gained experience and reputation leading detachments of marines during the siege at St. Lucia, the capture of Trinidad, and the unsuccessful attack of Puerto Rico.[64] At the turn of the century, Lieutenant Byam served at the Leeward Islands with the responsibility of escorting and protecting merchant vessels from pirates and privateers alike.[65] In 1804, after reaching the rank of Captain, William Byam entered the Atlantic Ocean with orders to enforce the Rule of 1756 and the subsequent Orders in Council.[66]

William Henry Byam captained the 18 gun *Busy*, the 18 gun *Bermuda,* and the 10 gun *Opossum* during his tour raiding merchants in the Atlantic. Captain Byam raised himself to low levels of infamy from the American perspective during this time as a repeat offender of impressing U.S. citizens.[67] While captaining the 18 gun sloop-of-war *Busy*,

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[62] Marshall, John. Royal Naval Biography Supplement. Cambridge University Press. Cambridge: England. (1828) P 311.
[63] Marshall 312.
[64] Marshall 312.
[65] Marshall 313.
[66] Marshall 313.
[67] Steel, Anthony. "Anthony Merry and the Anglo-American Dispute about Impressment, 1803-6." Cambridge Historical Journal. Volume 9. Number 3. (1949) P 345.

Captain Byam impressed "the greater part of the crew of the ship *Manhattan of New York*," forcing a whole affair with "length and comparative acrimony" between the diplomats on either side of the Atlantic.[68] Captain Byam's career was not without fault. On April 22, 1808, the H.M.S. *Bermuda,* ran aground at Memory Rock on the Little Bahama Bank, losing the ship but not the crew.[69] The Royal Naval Biography suggests that "Byam never had the good fortune to meet with an hostile vessel of equal force to his own . . . [but] always cruised with considerable success against the enemy's privateers and merchantmen."[70] By this definition Captain Byam could competently handle his ship but never engaged in full scale battle with an equal opponent. Instead his career as a captain centered around his successful harassment of merchant ships in violation of British Law.

Captain William Byam left the Royal navy in 1811. He concluded his career by escorting home the British Jamaica Fleet.[71] Byam married his first cousin on October 11, 1813 and left behind a progeny of at least three sons.[72] While the actions of Captain William Henry Byam may have been authorized under British law, American resentment grew to a boiling point as a result of these marine intrusions. These British maritime laws and the enforcement by officers like Captain Byam created fierce resentment in the United States.

While the American Republicans and Federalists contended on a response to British seizure of ships, cargo, and men, they agreed on a need to act. The Republicans, as the

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[68] Steel 345.
[69] Marx 328.
[70] Marshall 313.
[71] Marshall 313.
[72] Debrett, John. Baronetage of England. Woodfall. London. (1824) P 490.

dominant party "carried the nation into war."[73] They favored a full scale conflict with Britain. On the other hand, the Federalist party planned their own course of action in challenging the British tyranny at sea. "They advocated outfitting and expanding the navy and authorizing merchantmen to arm for defense because they believed that a carefully limited, undeclared naval war was the best way to defend that nation's commerce."[74] No matter the political party, the heavy handed actions of Britain raised resentment in the United States. Americans grew angry at the seizure of merchant vessels, the impressment of their citizens, and even the formulation of British laws. Concerning the British revival of the Rule of 1756 for example, the United States government vehemently rejected this universal capture of goods for trading with a belligerent. The America government "constantly and earnestly protested against the legality of the rule, to the extent claimed by Great Britain; and they insisted, in their diplomatic intercourse, that the rule was an attempt to establish "a new principle of the law of nations," and one which subverted "many other principles of great importance, which have heretofore been held sacred among nations." [75] American statesmen argued that Britain had over extended their authority and sought to make international decisions on a unilateral basis. The United States government pushed Britain to reconsider and instead adopt a right of neutral trade "with the exceptions of blockades and contrabands, to and between all ports of the enemy."[76] Furthermore, in order to be captured, the American government argued that

[73] Hickey, Donald. "Federalists and the Coming of the War, 1811-1812." Indiana Magazine of History. Volume 75. Number 1. (March 1979) P 70.
[74] Hickey 71.
[75] Kent 79
[76] Kent 79.

"the trade must have a direct reference to the hostile efforts of the belligerents, like dealing in contraband, in order to render it a breach of neutrality."[77]

Formally beginning on June 18, 1812, the American government responded to the growing grievances against Britain with a declaration of war. While the practice of marine insurance had relieved some of the pressure from American merchants, the repeated capture of goods such as that suffered by John Carrere, and the British policies sanctioning the targeting of neutral merchants resulted in grievances that required American action. Coupled with a conglomeration of factors, this interference with maritime trade provided one of the catalysts for war. While the seizure of John Carrere's goods seems miniscule in history, the repeated offenses by the British fleet tolled American merchants and insurance companies; the violation of maritime customs resulted in war.

IV. Carrere v. The Union Insurance Company of Maryland

With this backdrop in mind of marine insurance and British policies, John Carrere's case can now be further analyzed. To recap the introductory prologue, Carrere invalidated his insurance contract with the Union Insurance Company of Maryland through the presence of "concealed papers, the artifice pratised to prevent detection of them, the fictitious names used, and the mystery in which the whole" situation was enveloped.[78] Carrere and the Union Insurance Company met the requirements of a binding insurance contract for the shipment of goods aboard the *Venus* from Baltimore to Bordeaux, France. Upon capture, the British Prize Courts in Nova Scotia revealed that Carrere had aboard the

[77] Kent 80.
[78] Carrere. 3 H. & J. at 329.

Venus secretive documentation unbeknownst to the Union Insurance Company. The Maryland Court of Appeals found that John Carrere had "contradict[ed] and discredit[ed] the legal documents" through his actions inconsistent with good faith.[79] These documents included a set of letters and a hidden manifest; yet, as John Carrere argued, and as evidence points to the likelihood of, not all of the secret documents belonged to Carrere as these documents referred to earlier voyages. For example, the following document discovered hidden among Carrere's goods after the capture of the *Venus* provides a waiver into the port of Bordeaux but refers to cargo and a ship inconsistent with that of Carrere, and granting passage instead:

> "upon the ship *Chesapeake* of *Baltimore,* Capt. *Lee,* where they were shipped, as appears by permits of books in this office, reported and clothed with the formalities of shipment, viz. 252 tons three hogsheads red wine; 16,870 gallons red wine in 670 boxes."[80]

While this evidence bodes well for John Carrere and demonstrated an implication of innocence, the captured *Venus* contained far more than just the abovementioned document. The most condemning evidence against Carrere came in the form of a letter written in "sympathetic ink," directing the intended recipient to find a "the authenticated copy of the discharge" hidden "in the hogshead No. 36, under the tail of the J.[81] This secret letter went on to describe the true owners of the cargo aboard the *Venus* and revealed that John Carrere misrepresented his ownership of the cargo to the Union Insurance Company of Maryland. The Court of Vice Admiralty in Halifax only discovered the content of this letter

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[79] *Id.*
[80] *Carrere.* 3 H. & J. at 326.
[81] *Id.*

after "the application of a chymical mixture to the paper" to reveal the hidden message.[82] This letter in sympathetic ink both revealed the true ownership of the goods and guided the reader to the aforementioned waiver of port fees in Bordeaux. John Carrere offered the explanation to the Court that the waiver of fees had been left from an earlier voyage of the *Venus* and that he only offered the deceit to the Union Insurance company regarding the ownership of the cargo because his deals collapsed at the last minute. The Maryland Court of Appeals found in favor of the defendant and concluded that John Carrere acted deceitfully. The historical context of this case in regard to the transatlantic trade and the barriers established by Britain and France offer an explanation of Carrere's motives and support the findings of the Maryland Court of Appeals.

The developing and successful transatlantic trade between America and Bordeaux illuminated why Carrere acted with such artifice. Shipping between Bordeaux and the United States had been minimal throughout the late eighteenth century. For example "throughout the 1780s thirty to forty U.S. ships entered Bordeaux each year and only a few Bordeaux vessels sailed to the United States."[83] Records show that even among these very few sailing to the United States, the majority of these merchants stopped primarily en route to the West Indies. However, war provided the catalyst required to jumpstart the transatlantic trade between America and Bordeaux, France. After the commencement of the European wars beginning in 1793, "more than 350 US sails arrived in Bordeaux in 1795."[84] The opportunity presented by this market caused the American merchant fleet to flock towards this trade "because it offered them interesting opportunities for chartering

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[82] Id.
[83] Marzagalli, Siliva. "Establishing Transatlantic Trade Networks in Time of War: Bordeaux and United States, 1793-1815." The Business History Review. Volume 79. Number 4. (Winter 2005) P 813.
[84] Marzagalli 813.

their vessels," and an equally appealing financial incentive.[85] However, the dangers of both privateers and the European marine powers plagued this wartime trade with Bordeaux that captivated John Carrere and so many others. Between Napoleon's blockade of the continent and the British Orders in Council of 1793, the transatlantic trade between America and Bordeaux became a voyage of high risk and high reward which "compelled merchants to adopt new patters of trade, as the policies of the belligerent parties increasingly determined the evolution of neutral shipping."[86] By 1807, one year after the capture of John Carrere's goods aboard the *Venus*, the maritime powers of Britain and France had succeeded so thoroughly in their oceanic warfare that nearly all neutral shipping between Bordeaux and America had been stopped.[87] This context reveals the motives behind John Carrere's deceit and begins to shed light on why he risked the invalidation of his insurance contract. The documents found by the Nova Scotia Court of Vice Admiralty reveal a joint ownership in the Cargo by both John Carrere and merchants of French origin.[88] Accordingly the conclusion can be drawn that John Carrere's deceit intended to establish protections against seizure in the transatlantic trade. While his plan may have prevented interruption from the French blockade, the British did not hesitate to seize the "American" goods of an American merchant for trading with a belligerent nation.

The role of the Nova Scotia Courts extended beyond the mere condemnation of the prize and went so far as to offer into evidence all relative detail required for Carrere's insurance claim. After being seized and taken to Nova Scotia as prize by the H.M.S. *Bermuda*, the Nova Scotia Court of Vice Admiralty condemned John Carrere's cargo. The

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[85] Marzagalli 826.
[86] Marzagalli 811.
[87] Marzagalli 813
[88] Carrere. 3 H. & J. at 327.

Court of Vice Admiralty determined that the *Venus* was lawful prize "pursuant to the acts of parliament."[89] This Court then made an appraisal of the Cargo aboard the *Venus* in order to provide the H.M.S. *Bermuda* its appropriate reward. In total, the H.M.S. *Bermuda* received a sum of 4302 pounds and 14 shillings for the capture of the *Venus.* However, going beyond this mere condemnation of cargo, the British court next offered into evidence the "original petition for allegations, claims, examinations, exhibits, decree, appeal, and appraisement in the case of the schooner *Venus*. . . captured by his Majesty's ship of war *Bermuda.*"[90] As both the British and the Americans shared a common tradition in the realm of marine insurance, the Courts of Nova Scotia recognized and respected the importance of this evidence in settling matters between John Carrere and the Union Insurance Company of Maryland. This open communication between the Nova Scotia Court of Vice Admiralty and both John Carrere and the Union Insurance company of Maryland [91] resulted in the revealing of John Carrere's deceit. The Court writes regarding the "papers so found concealed in a cask of sugar" and regarding the letters found about the *Venus*. This level and degree of communication between Nova Scotia and Maryland reveals the degree of interconnectivity between the British Prize courts and the marine insurance companies. Accordingly this connection demonstrates the level of interconnectivity between the capture and taking of prizes and the need for marine insurance.

The next part of understanding this case requires an understanding of John Carrere and the nature of this Baltimore Merchant. In the broadest terms, John Carrere immigrated to America from France and made a successful career as a Baltimore marine merchant. His

[89] Promise of Nova Scotia Court of Vice Admiralty Concerning John Carrere.
[90] Promise of Nova Scotia Court of Vice Admiralty Concerning John Carrere.
[91] Testimony by Nova Scotia Courts of Vice Admiralty Concerning John Carrere.

legacy was continued in the form of multiple children whose obituaries and marriages have been recorded in papers from Louisiana to Baltimore. The earliest American records of Carrere begin at his oath of allegiance to the United States in 1792 where:

> "[On] June 16th. John Carrere, merchant, son of John Carrere of the Department of Vela Gironve, in the town of Lisburn, in the Kingdom of France, physician, and Mary Silbelat, his wife, lately arrived in the city of Philadelphia, from Bordeaux, in France, via Virginia, took and subscribed the oath aforesaid."[92]

Carrere's relationship with Bordeaux and the related French merchants as seen in *Carrere v. The Union Insurance Company of Maryland*, can be explained in light of his French heritage. John Carrere's name next appears in 1793 in the Baltimore Evening Post advertising a sale of "excellent coffee, sugar, and cotton . . . on reasonable terms.[93] From 1793 until the early 1830s John Carrere consistently published advertisements of sale in the Baltimore newspapers, including the Baltimore Evening Post, the Federal Intelligencer, the Baltimore Gazette and Daily Advertiser, and the Baltimore Patriot. Carrere maintained his connections in Philadelphia during the early part of his career and continued to post advertisements in the Philadelphia newspapers throughout the end of the 18th century. However, by 1800 Carrere's focus centered solely around the Baltimore market and no more records exist of his advertisement outside of the city of Baltimore.

Beyond the realm of merchant trade John Carrere involved himself in religion and civic development. While no records evidence Carrere's specific place of worship in the city of Baltimore, a letter dated to John Carrere on November 23, 1818 plausibly

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[92] Pennsylvania Archives. "Names of Persons Who Took the Oath of Allegiance to the State of Pennsylvania Between the Years 1776 and 1794." 2 serial, Volume III. P 65.
[93] Baltimore Evening Post. Volume. II. Issue 316. (July 19 1793) P 1.

establishes this Baltimore Merchant as Catholic. A Catholic Cincinnati congregational committee wrote Carrere "for the speedy accomplishment of so desirable an objective" in the form of a new church. This Ohio congregation "respectfully, but earnestly solicit[ed Carrere's] aid and influence," citing to his "zeal and promptitude."[94] These implications of Catholicism when partnered with Carrere's French birth give rise to the conclusion of John Carrere being a French-Catholic. Beyond the Church however, Carrere involved himself in civic improvement and building projects. Carrere's name tops the Federal Gazette's list of donations given to the poor in 1800. Giving 50 percent more than the next highest donor, John Carrere gave 30 dollars to the poor by this account.[95] His name appears further, upon the list of "gentlemen [who] were this day elected for the ensuring year" to be managers of the Baltimore and Havre-de-Grace Turnpike Company.[96]

Carrere's place of habitation appears to have been in East Baltimore. The Baltimore Directory and Register for the year 1816 cites that John Carrere, a merchant lives "east, near Lemmon street."[97] Baltimore in the 21st century does not have a Lemmon street in East Baltimore, but rather a Lemmon street running parallel with and between Pratt and Lombard on the west side of the city. A comparison to Poppleton's map of Baltimore makes no reference to either the modern nor any historical location for Lemmon street. Accordingly the specific location of his dwelling place remains unknown. Carrere possessed a variety of houses though, beyond merely his own dwelling place. The Baltimore American in March 24, 1801 contains an advertisement placed by John Carrere

[94] The Catholic History Review. Volume. 5 Number. 4. (January 1920).
[95] Federal Gazette (Batimore). Volume. XIII. Issue 2125. (September 16, 1800) P 3.
[96] Baltimore Patriot. Volume XIX. Issue 4. (January 8, 1822) P 3.
[97] The Baltimore Directory and Regsiter, for the year 1816.

for the rental of townhomes.[98] The rental houses of John Carrere have been compared to other townhomes of relative similarity and were found to have been "further from the center of town, [and] slightly smaller than those" of his competitors. [99] Nonetheless, as a successful merchant and owner of rental property, John Carrere would likely not have lived in his smaller tenant housing. Regardless of his location, Carrere maintained a presence in the Baltimore area throughout his life, and overcame the loss of his cargo and insurance contract with the Union Insurance Company of Maryland.

In conclusion, the case of *Carrere v. The Union Insurance Company of Maryland*, provides a capsule of American history at the beginning of the 19th century. The settings reveal both the growth of a prominent American industry, and the collapse of an over bearing British maritime policy.

[98] Hayward, Marry Ellen and Charles Belfoure. Baltimore Rowhouse. Princeton Architectural Press. New York. (2001) P 18.
[99] Hayward and Belfoure 18.