UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

32nd Annual David W. Robertson Admiralty and Maritime Law Conference

February 2, 2024
Houston, TX

What's New in Limitation Cases

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I. WHO MAY LIMIT LIABILITY

A. A liability insurance carrier subject to a direct-action could benefit from its insured's right to limit liability.

Castillo v. Guardian Ins. Co., No. 20-1262 (DRD), 2023 U.S. Dist. LEXIS 16687 (D.P.R. 2023).

A 33' Boston Whaler ran aground under the navigation of one of its owners. Two tort suits were filed before the owners initiated their limitation of liability action. The claimants pursued a direct action against the carrier pursuant to Puerto Rico's direct-action statute, which created a separate action against the carrier even if the shipowner pursues limitation of liability. The claimants argued that the owners' insurer should not be entitled to limit its liability as it was subject to an independent cause of action and did not have a proprietary interest in the vessel. The insurer's watercraft liability coverage obliged it to pay damages the insured was legally obligated to pay, and it contained a condition of coverage providing the insurer with "the right to assert all defenses provided by the Limitation of Liability Act of 1851 … as such defenses will … limit our liability as well as that of the owner of the insured watercraft." The court held that the policy terms made the insurer "eligible to benefit from any limitation afforded to the owner" and tied the insurer's liability to that of the owners. *See Crown Zellerbach Corp. v. Ingram Indus., Inc.*, 783 F.2d 1296 (5th Cir. 1986) (en banc) (an insurer's coverage may be contractually confined to the liability of its insured notwithstanding Louisiana's direct-action statute).

B. Vessel ownership could be resolved in the Rule F action along with the right to limit liability.

Opaskar v. 33' 1987 Chris-Craft Amerosport Motor Vessel, No. 1:21-CV-01710, 2023 U.S. Dist. LEXIS 102960 (N.D. Ohio 2023).

An engine exhaust malfunction resulted in three deaths aboard a vessel subject to a trade-in agreement. The nominal owners and the marina accepting the trade-in disagreed about whether title to the vessel transferred at the time of death. Both parties sought exoneration/limitation of liability, and the nominal owner initiated a petitory action under Rule D. However, the court held the nominal owner's effort to *disclaim ownership* under Rule D was not an action to try title appropriate under that rule but was, instead, an effort to argue over the terms of the non-maritime vessel sale agreement over which it had no jurisdiction. The court dismissed the petitory action and held that ownership would be resolved in the limitation of liability action. "It will simply be a different judge who decides whether the parties' efforts to disclaim ownership of The Third Lady or to limit their liability can float."

C. A vessel operator was an owner for the purpose of the Limitation of Liability Act despite undisputed evidence he did not hold title.

In re Demore's Mont. LLC, No. CV-21-00730-PHX-DJH, 2023 U.S. Dist. LEXIS 220688 (D. Ariz. 2023).

Two boats collided on Lake Havasu, and the owner of one vessel pursued limitation of liability. At the time of the collision, the owner of the petitioner's vessel was asleep while it was in operation by another man who allegedly violated navigational rules. The customary stay was entered, and thereafter several claimants filed California state court actions against the vessel operator. The claimants argued that the operator was not the owner of the petitioner's vessel, that he had no right to limit his liability, and that the stay was therefore inapplicable. The court disagreed. Relying on *In re Lava Ocean Tours Inc.*,

No. 19-00023 LEK-RLP, 2019 U.S. Dist. LEXIS 91948, at *6 (D. Haw. 2019), the court explained that a vessel operator is an "owner" for the purposes of the Act when "his relationship to the vessel is such as might reasonably afford grounds upon which a claim of liability for damages might be asserted against him." The operator did not hold title to the boat, but the evidence established that he was a frequent permissive user, he was the sole operator on the date of injury, he was insured, and he assisted with the vessel's design and purchase. The operator had the status of an owner under the Act, and the state actions against him accordingly violated the stay.

II. JURISDICTION: VESSEL STATUS

A. An issue of material fact regarding the vessel status of long moored barges precluded summary judgment that would resolve the owner's limitation of liability action.

In re Am. Commer. Barge Line, LLC, No. 22-502, 2023 U.S. Dist. LEXIS 56042 (E.D. La. 2023).

Several barges were combined to form a "wash dock" on the Mississippi River. The barges broke from their moorings in a hurricane, contacting other vessels and property. The owner filed a limitation of liability action. Several claimants moved to dismiss the action and for summary judgment on the basis that the barges were not vessels. They argued that the complaint stated the barges were permanently moored to fixed dolphins, the complaint never alleged they were used for the carriage of people or goods, and other evidence showed the barges were secured in place since 1999, were used as a cleaning and repair facility, and contained a modular office building. The court held that the right to limit liability was sufficiently pleaded and declined summary judgment as premature in the absence of discovery and with the owner's allegation the barges could be detached and moved.

III. JURISDICTION: LOCATION & CONNECTION

A. An injury to a passenger aboard a vessel docked at a marina was subject to admiralty jurisdiction; the incident was likely to disrupt maritime commerce.

In re Klassen, No. 3:22-cv-01056, 2023 U.S. Dist. LEXIS 80967 (M.D. Tenn. 2023)

A passenger was injured when she fell on the stairway of a boat docked at a marina on the Cumberland River. The vessel owners sought limitation of liability, and the court applied the *Grubart* analysis to determine its subject matter jurisdiction. It found the location element was satisfied as the river was previously found to be a navigable waterway. Directing its attention to whether the incident was of the type likely to result in the disruption of maritime commerce, the court accepted the proffered general description of the incident as "an injury sustained by a passenger aboard a docked vessel." It found that an incident of this nature was likely to involve rescue personnel in and around the waterway, impacting maritime commerce.

B. There was admiralty jurisdiction to support a limitation of liability action when a vessel pulled from the water for repairs allegedly caused damage by virtue of its unseaworthy condition.

In re Silver, Civil Action No. 1:22-cv-11833-IT, 2023 U.S. Dist. LEXIS 156216 (D. Mass. 2023)

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First appeared as part of the conference materials for the
32nd Annual David W. Robertson Admiralty and Maritime Law Conference session
"What's New in Limitation Cases"