

PRESENTED AT

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

February 2, 2024
Houston, TX

What's New in Limitation Cases

Allen D. Hemphill

Author Contact Information:

Allen Hemphill
Brown Sims
Houston, TX

ahemphill@brownsims.com
713.629.1580

TABLE OF CONTENTS

	PAGE
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.	1
B. Vessel ownership could be resolved in the Rule F action along with the right to limit liability.	1
C. A vessel operator was an owner for the purpose of the Limitation of Liability Act despite undisputed evidence he did not hold title.	1
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.	2
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.	2
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.	3
C. There was admiralty jurisdiction to support a limitation of liability action when two vessels collide in a navigable waterway.	3
D. The deaths of two sleeping passengers in a docked boat were not within admiralty jurisdiction because incidents of this nature were unlikely to disrupt maritime commerce.	3
IV. JURISDICTION: OVER CLAIMS	
A. There was no jurisdiction over tort claims against third parties who did not file claims in the limitation of liability action.	4
V. PRIVILEGE OR KNOWLEDGE	
A. Before resolving issues of liability, it was premature to determine whether a sleeping owner-on-board lacked privilege or knowledge.	5
B. The owner-at-the-helm doctrine was insufficient to establish privilege or knowledge when there was a genuine dispute over whether the vessel was operated negligently.	5
C. Limitation of liability depended on whether the shoreside managing agent committed negligent acts or participated in the crew's fault at sea.	6

D.	Privity or knowledge of the master, the owner’s superintendent, or the vessel’s managing agent at or before the beginning of the seagoing vessel’s voyage is imputed to the owner.	6
E.	Summary judgment was due when the claimants could not establish that the mechanical failure causing the incident was attributable to the owner’s fault.	6
F.	The knowledge of a captain of a non-seagoing vessel might be imputed on the vessel’s owner if the captain is sufficiently high-ranking within the owner’s corporate ladder.	7
G.	To meet its burden to show lack of privity or knowledge, an owner must show its crew was prepared to work safely and that it monitored and enforced safety policies the crew violated.	7
H.	When the owner disputed whether it had privity or knowledge of a boat operator’s habitual neglect, evidence that the operator temporarily improved his performance following complaints created a narrow fact issue precluding summary judgment.	8
I.	Evidence of adequate preparedness for a storm and passage of Coast Guard inspections did not dispose of fact issues warranting summary judgment.	8
J.	A court need not reach the issue of privity or knowledge when the vessel’s owner has been exonerated from liability.	9
VI.	INESCAPABLE PRIVITY OR KNOWLEDGE	
A.	When limitation of liability was impossible, a claim to “exoneration” did not require the court to resolve all arguments that might dispose of claims. ...	9
B.	The court had subject matter jurisdiction notwithstanding the argument that negligent entrustment claims were incompatible with any scenario where the owner’s lacked privity or knowledge.	10
C.	No jurisdiction when the petitioner offers no plausible allegation that it lacked privity or knowledge.	10
D.	The limitation of liability action was dismissed when there was no chance the owner at the helm could demonstrate the absence of privity or knowledge.	11
VII.	CONTRIBUTION & INDEMNITY	
A.	Indemnity and contribution rights may accrue against a party on which an injured plaintiff places no blame.	11
VIII.	SIX MONTH DEADLINE	
A.	A letter announced the <i>reasonable possibility</i> of a claim exceeding the value of the vessel when it announced legal representation, suggested fault of the owner, and requested insurance information as well as the preservation of evidence.	12

B.	A limitation action filed more than two and a half years after an injury was timely; the petitioner closely monitored two years of progressing medical treatment and received sufficient written notice only after the claimant announced her intent to undergo surgery.	13
IX.	SECURITY	
A.	The right to pursue limitation of liability requires the petitioner to provide security and information on potential claims.	14
B.	The security requirement of Rule F requires more than a promise of a later letter of undertaking or bond.	14
C.	Ad interim stipulation was deficient without specific security for costs and without adequate identification of guarantor.	14
D.	An ad interim stipulation with the promise of security “on demand” was insufficient.	15
X.	CONSOLIDATION	
A.	Consolidation of two limitation actions was appropriate after all potential claims in one action were resolved by settlement.	15
XI.	BIFURCATION	
A.	Personal injury damages may be bifurcated in uncomplicated cases; apportionment of fault must be decided in the first phase with liability, unseaworthiness, and privity.	15
B.	Bifurcation of damages from the issues of liability, limitation, and apportionment of fault was appropriate.	16
C.	Bifurcation of damages from the issues of liability, limitation, and apportionment of fault was appropriate.	16

XII. DEFAULT

- A. There was good cause to permit amendment of pleadings after the deadline when a claimant could only bring its new allegations in good faith after learning liability facts following the answer to a Rule 14(c) tender. 17
- B. The court required written notice to “all known potential claimants,” exceeding the requirements of Supplemental Rule F, as a condition to the default of non-filing claimants. 17
- C. Default was proper against a claimant filing an answer without a claim. ...18
- D. Complicated proceedings resulted in setting aside the default of non-filing claimants and permitting overdue claims. 18
- E. Default was set aside when the owner did not mail notice to known claimants; prior text exchanges with a crew member were sufficient to make minor children “known claimants” under Rule F and minor children may not be defaulted before their guardians appear. 19
- F. Setting aside a default after more than one year requires a violation of due process rights not implicated by the fact of ongoing settlement negotiations making the owner aware of the claim to recovery. 20

XIII. SINGLE CLAIMANT EXCEPTION

- A. After successfully invoking the single claimant exception, new claims against the owner in the state action resulted in a multiple claimant situation requiring a new stay. 20
- B. Single claimant stipulations did not support lifting the stay when the claimant did not stipulate there would be no recovery in the event of exoneration. 21
- C. A single claimant’s stipulations sufficiently protected the owner’s rights under the Limitation Act. 21
- D. The stay could not be lifted to address state court venue defects without appropriate stipulations to protect the owner’s right to limit liability. 22
- E. A single claimant seeking recovery for injuries could not enter stipulations necessary to lift the stay unless those stipulations were joined by parties seeking indemnity and contribution. 22
- F. Stipulation language contemplating crossclaims against the owners did not amount to crossclaims against the owners and did not create a multiple claimant situation. 22
- G. When the multiple claimant situations were resolved by an enforceable settlement agreement, the resulting single claimant situation permitted stipulations supporting dissolution of the injunction even though the settling claimant acquired an interest in the plaintiff’s recovery. 23
- H. When a single claimant entered stipulations to permit state court proceedings and the state court dismissed the claimant’s case, the owners were entitled to exoneration. 24

I.	Stay lifted by a claimant’s stipulations in a consolidated limitation of liability action despite pending contribution and indemnity claims against a settling owner.	24
J.	When an owner removed a state court action by a single claimant citing admiralty jurisdiction before also pursuing limitation of liability in federal court, the single claimant could enter stipulations to permit the negligence action to proceed, but remand required that the defect to removal be timely raised.	25
K.	A single claimant asserting individual, next friend, and estate representative claims entered stipulations sufficient to invoke the single claimant exception.	25
L.	The court lifted the stay to permit claimants to proceed in state court, but it stayed entry of the judgment by the state court to protect the owners’ right to limit liability from a potential state court contribution claim not subject to the claimants’ lift-stay concessions.	26
M.	The single claimant exception was not invoked when a representative filed a single claim for an injured child while pursuing her individual state court suit for lost consortium.	26
N.	The sole claimant in a limitation action could enter stipulations to dissolve the injunction and to add the vessel owner to a state court suit where the claimant previously elected to sue only the vessel’s captain.	27
O.	Stipulations by a single claimant were sufficient to lift the stay despite expected but unasserted claims.	27
P.	A potential but never asserted claim did not prevent lifting the stay one month before trial in a limitation action.	27
XIV.	RECOVERABLE DAMAGES	
A.	<i>Robins Dry Dock</i> prevented recovery of economic losses by affiliates of the company with a proprietary interest in the damaged property.	28

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)

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: What's New in Limitation Cases

Also available as part of the eCourse

[What's New in Limitation Cases](#)

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"