INTERLOCUTORY APPEALS IN ADMIRALTY: UNSETTLED WATERS SURROUNDING 28 USC § 1292(a)(3)

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I. Introduction

A vessel, confined within a cofferdam on navigable waters suffered an explosion below the waterline. The U.S. District Court for the District of South Carolina granted the shipowner's petition to limit its liability to the value of the vessel, pursuant to 46 U.S.C. §30503-30512.[1] Subsequently, the limitation claimants in the district court filed an interlocutory appeal pursuant to 28 U.S.C. § 1292(a)(3), arguing that the district court erred in holding that the Limitation Act confers an independent basis for admiralty jurisdiction. The appellees contended that the U.S. Court of Appeals for the Fourth Circuit lacked appellate jurisdiction, because a *de minimis* limitation fund does not determine the "rights and liabilities" of the parties as required by the statute. The Fourth Circuit agreed with the district court on the first issue, but dismissed the appeal for lack of appellate jurisdiction. The issue was granted a writ of certiorari by the United States Supreme Court.

At the 26th Annual Judge John R. Brown Admiralty Moot Court Competition,[2] Mr. Joseph B. Staph and I argued whether *Richardson v. Harmon*[3] leaves open the question as to whether the Limitation Act confers an independent basis of Admiralty jurisdiction in federal courts, and whether a minimal limitation fund effectively foreclosed an appellant's avenue of appeal under 28 U.S.C. 1292(a)(3). This submission will re-examine the circuit splits regarding the availability of interlocutory appeals in admiralty, and the practical outlook for appellants in similar contexts.

II. 28 U.S.C. 1292(a)(3)

In order to invoke interlocutory appellate jurisdiction under 1292(a)(3): (1) the underlying case must be an admiralty case in which appeals from final decrees are allowed; (2) the appeal must be from an interlocutory order or decree of the district court; and (3) the order or decree must have determined "the rights and liabilities of the parties." *Chem One, Ltd. v. M/V Rickmers Genoa*, 660 F.3d 626, 638 (2nd Cir. 2011) (quoting *Wingerter v. Chester Quarry Co.*, 185 F.3d 657, 663 (7th Cir. 1998). A district court order does not determine the rights and liabilities of the parties unless the order conclusively decided the merits of the controversy between the parties. In other words, a district court must conclusively determine if one party is liable to another in one or more of the claims presented. The statute provides:

> **(a)** Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

[1] Commonly known as The Shipowner's Limitation of Liability Act of 1851 or simply the "Limitation Act."
[2] Held in Charleston, SC between March 28-30, 2019.
[3] 222 U.S. 96 (1911).

> **(3)** Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

28 U.S.C. §1292(a)(3).

An appeal under 1292(a)(3) is an exception to the final judgment rule under 28 U.S.C 1291.[4] Historically, the exception to final judgment rule has its origins in the once common admiralty practice of referring the determination of damages to a master or commissioner after resolving the issue of liability. "It provides appellate jurisdiction when the court below, as is customary in admiralty has entered an interlocutory decree deciding the merits of the controversy between parties but has left unsettled the assessment of damages or other details required to be determined prior to entry of a final decree." *Rickmers Genoa*, 660 F.3d at 638. "The critical inquiry is whether the district court's judgment has determined the rights and liabilities of the parties, which means deciding the merits of the controversies between them." *Becker v. Poling Transp. Corp.*, 356 F.3d 381, 387-88 (2nd Cir. 2004).

A district court order does not determine the "rights and liabilities of the parties" if the "merits of the controversy" between the parties is not conclusively decided. *See SCF Waxler Marine, LLC v. ARIS T M/V*, 902 F.3d 461, 465 (5th Cir. 2018). Generally, a district court does not determine the merits of the controversy between the parties unless the order: (1) found a party liable; or (2) dismissed one or more claims on the merits. *See e.g.*, *Complaint of Patton-Tully Transp. Co.*, 715 F.2d 219 (5th Cir. 1983). However, in a circumstance in which a vessel owner is able to limit its liability to the value of the vessel, and that value is a number small enough to foreclose any practical avenue of appeal, have the rights and liabilities of the parties been determined?

III. Circuit Split

In *Schoenamsgruber v. Hamburg American Lines*, the Supreme Court adopted a narrow construction of 1292(a)(3). There, the Court remarked "Congress did not intend to make appealable any other interlocutory decrees in admiralty. Moreover, there is nothing to indicate that Congress intended to allow repeated appeals in the class of cases to which these belong. That would be contrary to its long-established policy." 294 U.S. 454, 458 (1935). In the wake of this holding, several circuit courts consistently maintained a narrow view of the statute. In *Hollywood Marine*, for example, the Fifth Circuit stated that jurisdiction does not exist over a district court order that an insurer could not deny coverage under its policy. *See* 744 F.2d 414, 416 (5th Cir. 1985). There, an insurer attempted to appeal the district court order under 1292(a)(3). On appeal, the Fifth Circuit explained:

> We have stated that 1292(a)(3) should be construed narrowly to achieve its original purpose of permitting appeals from orders finally determining one party's liability to another and referring the action for a computation of damages, for as Professors Wright, Miller, Cooper and Gressman observe, there is no apparent reason why

[4] "The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . ."

> admiralty cases as such should be accorded distinctively liberal rules of interlocutory appeals.

Id.

The U.S. Court of Appeals for the Ninth Circuit has taken a particularly expansive approach to the statutory construction. In *Wallis v. Princess Cruises, Inc.*, the Ninth Circuit held that a determination as to a party's actual liability is not required before an appeal can be taken. 306 F.3d 827, 833-34 (9th Cir. 2002). *Wallis* involved a dispute over a contractual limitation of liability. Princess Cruises, as defendant, moved for partial summary judgment limiting Princess' liability to approximately $60,000. Considering the plaintiff's claims included wrongful death under the Death on the High Seas Act, a maximum recover of $60,000 would practically foreclose any further litigation or ability to appeal. Princess Cruises argued that because the district court left for trial the issue of whether Princess Cruises was liable under DOHSA claims, the decision below did not determine the rights and liabilities of the parties, and, therefore, the district court's decision was not subject to interlocutory review under 1292(a)(3).

The Ninth Circuit concluded that there was appellate admiralty jurisdiction even though "only the validity and applicability of a contract provision limiting liability had been determined." *Id.* "[W]e have twice exercised jurisdiction to hear interlocutory appeals under this section when the district court has upheld the validity of a clause limiting the amount of liability but has not reached the question of whether the defendant was actually liable." *Id. at 832* citing *Carman Tool & Abrasives, Inc. v. Evergreen Lines*, 871 F.2d 897 (9th Cir. 1989); *Vision Air Flight Service, Inc. v. M/V National Pride*, 155 F.3d 1165 (9th Cir. 1988).

IV. Conclusion

The circuit split over the construction and application of appellate jurisdiction under 28 U.S.C. 1292(a)(3) remains in federal courts. Although the majority view seems to steer a narrow course, certain factual circumstances such as those presented in the 2019 Judge John R. Brown Admiralty Moot Court Competition may require courts of appeals to rethink their approach. Although it is clear that 1292(a)(3) provides a narrow exception to the final judgment rule, a *de minimis* fund of recovery may practically determine the rights and liabilities of the parties for purposes of interlocutory appeal.

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Mr. Karn was a member of the RWU Law Admiralty Moot Court team. In his 2L year, his team competed in Seattle, Washington, and in his 3L year, his team won the national championship in Charleston, SC. Mr. Karn won Best Oral Advocate in the Championship Round, and his team collectively won an award for Best Brief in the Competition. Nowadays, he focuses his practice on cargo subrogation, marine insurance defense, and mass maritime torts and contract issues.