

Multi-Circuit Split: Indemnification Claimants and the Multiple-Claimants-Inadequate-Fund Scenario Under the Limitation of Liability Act

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*Overview of the Issue*

The Limitation of Liability Act<sup>1</sup> (the “Limitation Act”) is increasingly controversial and increasingly significant to parties in maritime cases in the second decade of the twenty-first century. Notably, in what some refer to as the “post-COVID-19” era, jury verdict trends reflect awards higher than those pre-COVID-19.<sup>2</sup> Often at odds with the Limitation Act is the saving-to-suitors clause of the Judiciary Act of 1789.<sup>3</sup> When limitation petitioners file to limit their liability under the Limitation Act in federal court and claimants file suit in state court, courts must weigh the interest of the shipowners’ right to limit their liability with the claimants’ right to pursue their claims in state court. In balancing these interests, courts have established several doctrines.

One doctrine that arose under those considerations is the “single-claimant” exception, which courts apply when only one claimant responds to the shipowner’s Limitation Act petition. *In re Freedom Unlimited*, 440 F.Supp.3d 1332, 1336 (S.D. Fla. 2020). This doctrine permits the claimant to “try liability and damages issues in another forum (e.g. in state court) by filing stipulations that protect the shipowner’s right to have the admiralty court ultimately adjudicate its claim to limited liability.” *Id.* (quoting *In re Beiswenger Enterprises Corp.*, 86 F.3d 1032, 1037 (11th Cir. 1996)).

Another doctrine that arises in Limitation Act cases is the “functional equivalent” exception. In many cases, multiple claimants make claims against the limitation fund but the fund is inadequate to compensate the claimants for the combined amount of their claims as pleaded. *Id.*

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<sup>1</sup> 46 U.S.C. §§ 30501-12 (2018).

<sup>2</sup> For example, in a non-maritime case, a jury rendered a \$301 billion verdict (\$300 billion in punitive damages) in December 2021 in Nueces County, Texas. *Jury awards family of drunk driving victims more than \$301 billion after suspect was overserved at Corpus Christi Bar*, KIIITV.COM (Dec. 20, 2021), available at <https://www.kiiitv.com/article/news/local/beer-bellys-billion-dollar-verdict/503-ba953ae0-d674-429d-a7b1-f624fbe937da>.

In a Jones Act and unseaworthiness slip-and-fall case, a jury rendered a verdict of \$7.86 million in January 2022 in Harris County, Texas. *Doyle Dennis LLP Wins A \$7.86 Million Verdict*, DOYLE DENNIS LLP (last visited Mar. 1, 2022), available at <https://offshoreinjurytrialattorney.com/doyle-dennis-llp-wins-a-7-86-million-verdict/>. The author’s understanding is that the plaintiff in that case was in his sixties, and his most significant injury was a broken tailbone.

<sup>3</sup> 28 U.S.C. § 1333(1).

In these cases, the standard procedure is that the claimants' claims are tried at admiralty without the benefit of a jury. *Id.* (citing *Pershing Auto Rentals, Inc. v. Gaffney*, 279 F.2d 546, 549-50 (5th Cir. 1960)). If the claimants are successful in their tried causes, and the limitation petitioner is successful in limiting its liability, the court then distributes the limitation fund between the prevailing claimants. *Id.* However, the "functional equivalent" exception is employed where each of the claimants to the fund stipulates that they will not seek recovery in excess of the value of the limitation fund, thus making the proceeding a "functional equivalent" of a single claim against the limitation fund. *Id.* (citing *Beiswenger*, 86 F.3d at 1040)). When the functional equivalent exception applies, just like under the single-claimant exception, claimants can try their claims in state courts. *See id.*

However, complications arise where there are both indemnification claimants and damage claimants seeking limitation funds. In situations where indemnification claimants make claims against the limitation fund but do not stipulate under the "functional equivalent" exception, but all damage claimants do, courts are split on whether the proceeding may move forward under the "functional equivalent" exception or must be heard under the silver oar.

#### *The Split: Sixth & Eighth Circuits v. Second, Third, Fifth & Eleventh Circuits*

The United States Courts of Appeals for the Sixth and Eighth Circuits have held that indemnification claimants' declination to stipulate with damage claimants does not preclude courts from applying the functional equivalent exception. Those circuits reason that indemnification claims are derivative of the damage claims and are therefore one-and-the-same when addressing whether the stipulations create the functional equivalent of a single claim against the limitation fund. *S&E Shipping Corp. v. Chesapeake & O. Ry. Co.*, 678 F.2d 636, 645 (6th Cir. 1982); *Universal Towing Co. v. Barrale*, 595 F.2d 414, 419 (8th Cir. 1979).

Conversely, the United States Courts of Appeals for the Second, Third, Fifth, and Eleventh Circuits have held the opposite: where indemnification claimants do not stipulate along with the damage claimants not to seek recovery in excess of the limitation fund against the limitation petitioner, the functional equivalent exception cannot be applied. *In re Dammers & Vanderheide & Scheepvaart Maats Christina B.V.*, 836 F.2d 750, 759 (2d Cir. 1988); *Gorman v. Cerasia*, 2 F.3d 519, 527-28 (3d Cir. 1993); *In re Port Arthur Towing Co.*, 42 F.3d 312, 316 (5th Cir. 1995) ("[T]he court's primary concern is to protect the shipowner's absolute right to claim the Act's liability cap, and to reserve the adjudication of that right in the federal forum.") (quoting *Magnolia Marine Transp. Co. v. Laplace Towing Corp.*, 964 F.2d 1571, 1575 (5th Cir. 1992)); *Odeco Oil and Gas Co., Drilling Div. v. Bonnette*, 74 F.3d 671, 675 (5th Cir. 1996) ("[P]arties seeking indemnification and contribution from a shipowner must be considered claimants within the meaning of the Limitation Act."); *see Freedom Unlimited v. Taylor Lane Yacht and Ship, LLC*, No. 20-11102, 2021 WL 3629904 at \*4, \*6 (11th Cir. Aug. 17, 2021) (unpublished).

However, even between circuits that agree on the overall issue of whether the functional equivalent exception can be applied where there are non-stipulating indemnification claimants, there are additional nuances regarding whether a Limitation Act injunction over a state-court

proceeding may be lifted. The Fifth Circuit’s stance is that the stay may be lifted only if all claimants (indemnification and damages) stipulate to limit their collective recovery to the value of the limitation fund. *Odeco Oil and Gas Co.*, 74 F.3d at 675 (“The shipowner’s right to limitation takes precedence over the claimant’s rights to proceed in the forum of their choice.”). In the Second and Eleventh Circuits, by contrast, the state-court stay may be lifted where the damage claimants stipulate they will not seek to enforce any judgment in excess of the limitation fund against *not only* the limitation petitioner *but also* “any other liable parties who may cross-claim or claim over against” the limitation petitioner. *In re Dammers*, 836 F.2d at 759 (“As long as the admiralty court can effectively ensure that a shipowner will not face liability in excess of the limitation fund, it must take all steps necessary to assure that claimants are allowed to pursue their common law remedies in accordance with the ‘saving to suitors’ clause.”); *Freedom Unlimited*, No. 20-11102, 2021 WL 3629904 at \*6 (approving lift of limitation stay of state-court action where the damage claimant stipulated “not to enforce *any* judgment procured in any forum beyond the limitation fund”) (emphasis in original).

### *Conclusion*

Limitation litigation, with all of its nuances, is ripe for acceleration and development. On the claimants’ side, increased risk of large verdicts will raise pleaded claim amounts. On the shipowners’ side, modern shipbuilding has long trended toward larger ship sizes with increased cargo capacity. Inland ports are increasingly deepening and widening their channels to allow larger ships to berth. As ships become larger, the rate of human error (the most common causal factor of maritime accidents) per amount of cargo transported decreases because larger ship size generally does not mean larger crew size. However, when incidents do occur, larger ship size often leads to greater liability exposure. Not only do larger ships have the capacity to cause more damage in cases of collisions, allisions, surges, and wake cases, for example, but their increased cargo capacity means that ships’ cargo also has capacity to cause more damage in terms of pollution, improper storage, and other casualties.

### Carra Miller Bio

Carra Miller is a Partner of Schouest, Bamdas, Soshea, BenMaier & Eastham, PLLC, and is based in Corpus Christi, Texas. She has rarely lived far from the Gulf Coast, and her affinity for and knowledge of the region make her a natural to lead SBSB Eastham's Corpus Christi office. The native of Ocean Springs, Mississippi received an undergraduate degree in Maritime Administration from Texas A&M University and earned her law degree from Tulane before establishing her practice in Corpus Christi, where she now considers home. Despite other demands, she still tries to find time to enjoy the people, culture, and recreational opportunities of a place she truly loves.

Carra has experience in a broad range of maritime law issues in state and federal courts and appreciates the distinct and nuanced nature of each case, which she finds often rest on the confluence of more recent rulings with legal principles that may be thousands of years old. As a result, Carra takes a deep dive into the facts of every dispute to determine the best defense while anticipating the arguments of the opposition. Her clients prize her attention to detail and preparation, whether the matter involves a personal injury claim, cargo damage, a contract dispute, or other complex issue.

Carra's commitment to leadership is evident in her work on behalf of several bar associations. She fervently believes that such networks are where attorneys of every level of experience and area of expertise can both find support and serve as mentors to others.