

RECENT DEVELOPMENTS IN THE LIMITATION OF LIABILITY ACT IN THE FIFTH CIRCUIT

Presented by: Gregory Burts, Esq.

*Brown Sims, P.C.
365 Canal Street, Suite 2900
New Orleans, Louisiana 70130
Tel: (504) 569-1007*

MARITIME LAW ASSOCIATION OF THE UNITED STATES
Offshore Industries Committee

Practice and Procedure Under the Act

General Rules

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- ▶ Governed by Rule F of the Admiralty Rules.
- ▶ Can be raised as a defense to a complaint, or as a separate proceeding in admiralty.
- ▶ Must be filed within 6-months of written notice of a claim subject to limitation.
- ▶ Venue: Any district court where the vessel is present, or any district court if vessel is lost or in foreign country.

What Claims are Subject to Limitation?

- ▶ **Most types of casualty loss claims involving a vessel are subject to limitation, including:**
 - ▶ Collision/Allision Losses and Damage
 - ▶ Cargo Losses
 - ▶ Personal Injury and Death Claims
 - ▶ Salvage Claims
- ▶ **Certain exceptions apply to cargo losses and personal injury claims**

What is and isn't "Written Notice"

- ▶ **Doxsee test:**

- ▶ Written notice is sufficient if it informs the vessel owner of an actual or potential claim subject to limitation which may exceed the value of the vessel.

- ▶ **McCarthy test:**

- ▶ Like *Doxsee*, but notice must reveal "reasonable possibility" that claim is subject to limitation.
 - ▶ Based on 5th Circuit's analysis *In Re Tom Mac*.

- ▶ **Moreira test:**

- ▶ Notice must (1) demand a right; (2) blame vessel owner for damage; and (3) "call upon vessel owner for anything due."
 - ▶ Not widely used.

What isn't Written Notice

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- ▶ **Letter seeking LHWCA benefits is not written notice.**
 - ▶ *In re Complaint of Franz*, 7 F. Supp. 3d 238 (N.D. NY Mar. 17, 2014)
 - ▶ See also *In re Prosper Operators, Inc.*, 2017 U.S. Dist. LEXIS 129522 (W.D. La. Aug. 14, 2017)
- ▶ **Letter to claims administrator explaining incident and injury was not written notice.**
 - ▶ *In re United Marine Offshore, LLC*, 2019 U.S. Dist. LEXIS 85936 (W.D. La. Apr. 22, 2019)
- ▶ **Letter of representation and request for disclosure of insurance was not written notice.**
 - ▶ *Int'l Ship Repair & Marine Servs.*, 2010 U.S. Dist. LEXIS 2219 (M.D. Fla. Jan. 12, 2010)
- ▶ **“Investigatory” letter by attorney to shipowner was not written notice.**
 - ▶ *In re Capital Marine Supply*, 1995 U.S. Dist. LEXIS 13558 (E.D. La. Sept. 13, 1995)

What is Written Notice

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- ▶ **Preservation of evidence letter constituted written notice.**
 - ▶ *In re Fish N Dive, LLC*, 2020 U.S. Dist. LEXIS 207942 (D. Haw. 2020)
- ▶ **Letter blaming vessel owner for lack of safe ingress to vessel was written notice.**
 - ▶ *In re Specialty Marine Servs., Inc.*, 1999 U.S. Dist. LEXIS 3219 (E.D. La. Mar. 15, 1999)
- ▶ **A “bundle” of letters and emails constituted aggregate written notice.**
 - ▶ *RLB Contr. Inc. v. Butler*, 773 F.3d 596 (5th Cir. 2014)
 - ▶ Not first court to consider this.
- ▶ **Filing lawsuit against vessel owner constituted written notice, *if* such lawsuit raises the reasonable possibility of a claim subject to limitation.**
 - ▶ *In re Eckstein*, 672 F.3d 310 (5th Cir. 2012)

Is 46 U.S.C. § 30501 an Independent Basis for Admiralty Jurisdiction?

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- ▶ **Historically, the Act was considered a basis for federal jurisdiction.**
 - ▶ *See Richardson v. Harmon*, 222 U.S. 96 (1911)
- ▶ **Most courts today do not consider the Act as an independent basis for federal or admiralty jurisdiction.**
 - ▶ *See Seven Resorts, Inc. v. Cantlen*, 57 F.3d 771 (9th Cir. 1995); *See Vessel, Inc. v. Reyes*, 23 F.3d 345 (11th Cir. 1994); *Guillory v. Outboard Motor Corp.*, 956 F.2d 114 (5th Cir. 1992)
- ▶ **At best, “the Act’s reach is only coextensive with that of admiralty jurisdiction.”**
 - ▶ *Three Buoys Houseboat Vacations, Ltd. v. Morts*, 971 F.2d 775 (8th Cir. 1989)

The Circuit Split

Is § 30511(a) a jurisdictional deadline or a
“mandatory claims-processing rule?”

Why Is the Split Important?

- ▶ **If § 30511(a) is not jurisdictional:**
 - ▶ FRCP 12(b)(6) applies
 - ▶ Does equitable tolling apply?
- ▶ **If § 30511(a) is jurisdictional:**
 - ▶ FRCP 12(b)(1) applies
- ▶ **Different standards of dismissal:**
 - ▶ Plaintiff bears burden under 12(b)(1)
 - ▶ Defendant bears burden under 12(b)(6)
 - ▶ 12(b)(1) can be raised at any time, 12(b)(6) is waived if not raised at proper time
 - ▶ 12(b)(6) is claim-preclusive, 12(b)(1) is not

History of the Split

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- ▶ **§ 30511(a) has been jurisdictional in the Sixth Circuit since 1976.**
 - ▶ *Cincinnati Gas & Elec. Co. v. Abel*, 533 F.2d 1001 (6th Cir. 1976)
- ▶ **11th Circuit held § 30511(a) was a “mandatory claims-processing rule” on March 20, 2019.**
 - ▶ *Orion Marine Constr., Inc. v. Carroll*, 918 F.3d 1323 (11th Cir. 2019)
- ▶ **Before December 2, 2021, § 30511(a) was jurisdictional in the Fifth Circuit.**
 - ▶ See *In Re Eckstein*, 672 F.3d 310 (5th Cir. 2012)
 - ▶ Overruled by *In re Bonvillian Marine Serv., Inc.*, 2021 U.S. App. LEXIS 35665

In re Eckstein Marine Servs., 672 F.3d 310 (5th Cir. 2012)

- ▶ Plaintiff injured after becoming entangled in mooring lines on tug boat.
- ▶ Defendant filed limitation 8-months after Plaintiff filed suit.
 - ▶ Argued it did not have notice until after Plaintiff submitted settlement demand in excess of vessel value.
 - ▶ Court disagreed.
 - ▶ Plaintiff's catastrophic injury raised "reasonable possibility" that claim could exceed value of vessel – Defendant should have investigated incident and filed claim within 6-month deadline.
- ▶ **While many . . . deadlines are not jurisdictional, we have long held that some are."**
 - ▶ **Held: § 30511(a) is jurisdictional**

Origin of the *Eckstein* Rule

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- ▶ ***In re FEMA Trailer*, 646 F.3d 185 (5th Cir. 2011)**
 - ▶ FTCA claim alleging injury caused by formaldehyde in FEMA trailer.
 - ▶ Claim accrued in May 2006, yet wasn't filed until July 2008.
 - ▶ Gov't filed Rule 12(b)(1) motion to dismiss.
 - ▶ Trial court dismissed claim as time-barred under 28 U.S.C. 2401 (b).
 - ▶ Two-year statute of limitation
 - ▶ Affirmed on appeal.
- ▶ **FTCA statute of limitations is jurisdictional, and courts cannot construe such deadlines beyond what Congress intended.**

Non-Jurisdictional Time Bars Pre- *Eckstein*

- ▶ **Deadline to file EEOC claim under Title VII is not jurisdictional.**
 - ▶ *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385 (1982)
- ▶ **Time bar to object to discharge of debtor under FRBP 4004 is not jurisdictional.**
 - ▶ *Kontrick v. Ryan*, 540 U.S. 443 (2004)
- ▶ **120-day deadline to file notice of appeal to Veterans Court under 38 U.S.C. § 7266 is not jurisdictional.**
 - ▶ *Henderson v. Shinseki*, 562 U.S. 428 (2011)

Relevant SCOTUS Precedent

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- ▶ **Jurisdictional vs. procedural distinction is not “merely semantic.”**
 - ▶ *Henderson*, 562 U.S. at 434
- ▶ **A rule should not be considered jurisdictional unless it governs a court’s “adjudicatory capacity.”**
 - ▶ *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010)
- ▶ **“[T]ools of statutory construction . . [must] plainly show that Congress imbued a procedural bar with jurisdictional consequences.”**
 - ▶ See also *Kwai Fun Wong v. U.S.*, 135 S.Ct. 1625, 1632 (2015)
- ▶ **“The Court has emphasized repeatedly that statutory limitation periods . . . ‘ordinarily are not jurisdictional . . .’”**
 - ▶ *Musacchio v. U.S.*, 136 S.Ct. 709, 716-17 (2016)

The 11th Circuit Rocks the Boat

ORION MARINE CONSTR. INC. V. CARROL, 918 F.3D
1323 (11TH CIR. 2019)

Orion Marine Constr. Inc.

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- ▶ “[N]on-jurisdictional character” of 6-month window indicated by its location within Act.
- ▶ It “reads like an ordinary . . . statute of limitations . . .”
- ▶ No evidence of Congressional intent to “imbue” deadline with “jurisdictional consequences.”
- ▶ No “textual indication” statute was intended to limit a court’s jurisdiction.
- ▶ **Held: 6-month time bar in § 30511(a) is a “quintessential claims-processing rule.”**

In re Bonvillian Marine Serv., Inc.

19 F.4th 787 (5th Cir. 2021)

- ▶ Defendant's vessel allided with crew boat docked in Mississippi River, damaging boat and causing personal injury.
 - ▶ Suit filed on 8/23/2019, limitation action filed on 12/16/2019.
- ▶ Plaintiffs moved to dismiss under 12(b)(1) for lack of SMJ due to untimeliness.
- ▶ Dist. Ct. applied *Eckstein*, granted dismissal.
- ▶ 5th Circuit reversed on appeal:
 - ▶ "Our rule has fallen out of step with the Supreme Court's most recent jurisprudence . . . on statutory procedural rules like § 30511(a)'s time bar."

Where Does This Leave Us Procedurally?

IMPLICATIONS OF POST-BONVILLIAN LITIGATION

In re Chem. Carriers Towing, LLC, 2022 U.S. Dist. LEXIS 72930 (E.D. La. 4/20/22)

- ▶ Crewman injured onboard M/V SAM L. HAYS. Plaintiff sued vessel owner on 11/10/20, seeking maintenance & cure, and Jones Act and GML damages.
- ▶ Defendant served on 12/2/20, filed LOL complaint on 5/27/21.
- ▶ Plaintiff argued LOL complaint was untimely, therefore no SMJ.
- ▶ Defendant argued that pre-suit correspondence did not establish reasonable possibility of a claim in excess of the value of the vessel.
- ▶ Court held under *Bonvillian*, that even if Complaint was untimely, it still had SMJ, and a genuine issue of material fact existed as to when Defendant had written notice of a claim.