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2024 MLA Spring Case Law Summary

ADMIRALTY JURISDICTION

***Doe v. Classica Cruise Operator Ltd.*, No. 24-CV-80738, 2024 WL 4198169 (S.D. Fla. Sept. 19, 2024) – no admiralty jurisdiction for sexual assault occurring at cruise port-of-call resort that was arranged by cruise operator**

This case arose from an alleged rape or sexual assault the plaintiff suffered when she was a guest at a Bahamian resort during a cruise stopover. The plaintiff brought claims in tort under U.S. general maritime law and Florida law and asserted diversity and admiralty jurisdiction. The defendant filed a motion to dismiss the complaint, arguing *forum non conveniens* and impermissible shotgun pleading.

The court, however, *sua sponte* inquired into its jurisdiction first, particularly with respect to whether admiralty jurisdiction was proper. The court started by recognizing the standard two-prong test, that (1) “the activity from which the claim arises must satisfy a condition of location—that is, the tort must have occurred on navigable water, or the injury suffered on land must have been caused by a vessel on navigable water”; and (2) that “the activity must have a sufficient connection with maritime activity, meaning that the general features of the incident involved have a potentially disruptive impact on maritime commerce and that the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity.”

The plaintiff had alleged that the cruise operator made shoreside hotel arrangements for the plaintiff. The plaintiff asserted that this satisfied the location test because the cruise operator owes obligations to its passengers with respect to scheduled ports of call, citing 11th Circuit precedent for the principal that “Where a passenger or cruise vessel puts into numerous ports in the course of a cruise, these stopovers are the *sine qua non* of the cruise.”

The court, however, characterized this precedent as limited to an extreme set of facts and representing the outer boundaries of admiralty jurisdiction. That precedent also involved a sexual assault that began and ended aboard the cruise

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ship. The court rejected application of this precedent to the case before it, expressing the concern that “virtually every activity in a port of call would easily qualify for admiralty jurisdiction” if it accepted the plaintiff’s position. Instead, the court characterized the underlying incident an assault committed at the resort, by a resort employee, while the plaintiff was staying as a guest at the resort. The court found no other reason to treat the ship and the port-of-call as the same, such as a connection between the assailant and the vessel or cruise or control exercised by the vessel over the resort or assailant. The court also refused to accept a broad reading of admiralty jurisdiction precedent that sometimes found jurisdiction appropriate in shore excursion cases simply because the excursion had been purchased on the ship. Accordingly, the court found it did not have admiralty jurisdiction.

Furthermore, the court also found that the plaintiff had not pled complete diversity because one defendant was a limited liability company and the plaintiff failed to allege the citizenship of each of that defendant’s members. Accordingly, the court ordered that the plaintiff’s complaint be dismissed, but the plaintiff was given the opportunity to amend her complaint to fix the jurisdictional defects.

***Diamond Servs. Corp. v. RLB Contracting, Inc.*, 113 F.4th 430 (5th Cir. 2024) – in the 5th Circuit, a case continues being an admiralty case even after the primary admiralty claims are dismissed for purposes of 28 U.S.C. § 1292(a)(3) and Rule 9(h)**

This case arose out of a dispute involving fulfillment of a dredging contract and unforeseen conditions arising at the dredging site. The plaintiff (a sub-subcontractor) filed suit against the subcontractor, general contractor, and bonding company due to costs associated with additional work it was required to perform due to those conditions. The plaintiff filed suit alleging exclusive jurisdiction under the Miller Act and supplemental jurisdiction over its other contract, implied contract, and quasi0contract claims. The plaintiff alternatively pled admiralty jurisdiction.

In response to motions to dismiss, the plaintiff filed an amended complaint repleading its original complaint in full but designating the claim as an admiralty claim under Rule 9(h).

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Further motions and pleading practice ensued. Eventually, the district court required the plaintiff to replead its complaint to show proper notice under the Miller Act. The plaintiff failed to do so in a timely manner. Some of the defendants had made jury demands in their answers and counterclaims, which the defendants then withdrew. The plaintiff filed a second answer to certain counterclaims and for the first time demanded a jury trial. The plaintiff also sought to withdraw its Rule 9(h) designation. The defendants moved to strike the plaintiff's jury demand.

The district court ultimately dismissed all of the plaintiff's claims through its rulings on various pending motions (primarily through summary judgment) and granted in part and denied in part the general contractor's motion for summary judgment on its counterclaims. The district court granted the motion to strike the jury demand, reasoning that it had admiralty jurisdiction over the case, despite the fact that the district court dismissed the plaintiff's admiralty claims.

The plaintiff sought an interlocutory appeal under 28 U.S.C. § 1292(a)(3). After finding part of the plaintiff's appeal barred as untimely, the Fifth Circuit examined its jurisdiction under § 1292(a)(3)'s three prerequisites: (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."

Analyzing the first prerequisite, the court determined that the contract at issue was a contract for dredging a navigable waterway, a traditional maritime activity. The court also noted that the plaintiff itself invoked the court's admiralty jurisdiction and originally did not demand a jury.

The court then answered a question previously unanswered in the Fifth Circuit: whether a maritime case ceases to become a maritime case after the principal maritime claims are dismissed. Recognizing competing instructions on how broadly § 1292(a)(3) is to be construed, the court nevertheless held that § 1292(a)(3) and Rule 9(h)(2) apply to admiralty cases, not claims. The court held that the case was an admiralty case on the basis of three factors: (i) Rule 9(h)'s

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plain text and broad purpose; (ii) the district court's construction of Diamond's remaining claims as maritime claims even after it dismissed Diamond's contractual and tug-expenses claims; and (iii) the fact that Diamond's remaining claims still arise from the underlying work it performed (i.e., dredging a navigable waterway), we construe Diamond's remaining claims as comprising a maritime case properly subject to interlocutory appeal under 28 U.S.C. § 1292(a).

Finally, the court determined that the final two factors were met because the case involved an interlocutory appeal from summary judgment granted against the plaintiff.

Ultimately, the 5th Circuit affirmed the other various orders of the district court, but the remainder of the opinion is beyond the scope of this summary.

Matter of Major Glen Corp., No. 22-CV-5852, 2024 WL 3650186 (N.D. Ill. Aug. 5, 2024) – no admiralty jurisdiction over torts claims relating to fire allegedly started on or around vessel being stored on land, but admiralty jurisdiction found for storage contract for the same vessel; privity of owner argument waived by failure to submit timely claim

The court's introduction summarizes the subject matter of the case eloquently:

“This case is about a flaming yacht. The *Patriyacht*, a 33-foot pleasure vessel, caught on fire. The boat went up in smoke, and down in flames. But the *Patriyacht* did not sink to Davey Jones's locker. In fact, at the time of the inferno, it was out of the water. The boat was living the high and dry life in a heated, indoor storage facility. It had resided inside for the last seven months, out of the blue waters of Lake Michigan. The *Patriyacht* burned and did not survive. And it wasn't alone. Other vessels in the same building were in the same (metaphorical) boat. They suffered damage from the conflagration. The storage facility was damaged, too. The owner of the boat, Major Glen Corporation, and two of its officers responded to the fire by coming to the federal courthouse. They invoked this Court's admiralty jurisdiction and sought to limit their liability under a federal statute that governs admiralty-related accidents.”

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The district court ordered a stay and, after the window to submit claims closed with no claims being filed, entered a final judgment limiting the owner's liability. A month later, the insurance carrier for the marina/storage facility appeared and filed a motion to vacate the judgment, alleging lack of adequate notice (despite the fact its insured received actual notice) and lack of subject matter jurisdiction.

Ultimately, the court determined that there was no admiralty jurisdiction over any tort-based claim but there was over any contract-based claim.

The contract at issue in the case was the owner's contract with Marine Services, the owner of a marina, for the storage and repair of the yacht. While the yacht was in storage at the marina, a fire broke out in the building in which the yacht was stored. It is unclear from the pleadings what caused the fire or where it came from. The yacht suffered a constructive total loss. Other vessels in the building and the building itself sustained damage as well. Afterwards, insurance carriers including the carrier for the marina began investigating the loss.

The court began its jurisdictional analysis by examining the Limitation Act in detail and noting that jurisdiction under the Limitation Act is coextensive with admiralty jurisdiction. Accordingly, the court set out to determine whether it had admiralty jurisdiction. Because the complaint used words implicating both tort and contract claims, the court considered whether Anit had jurisdiction under either set of claims.

The court determined that any tort claims in the action were outside of the court's admiralty jurisdiction. Applying the location/connection test, the court noted that the yacht was dry and on land when it caught fire.

Jurisdiction was found, however, to the extent the complaint sought limitation for any contract claim. Contracts for storage of vessels, including for the winter season, are generally deemed to be maritime contracts.

Turning to the Limitation Act itself, however, the court found the privity or knowledge of the yacht owner to be a more difficult calculation for the court. The court found that plaintiff had not met its burden to show a lack of privity or knowledge. Recognizing that shipowners cannot avoid liability under the Limitation Act for a personal contract, the court determined that the Limitation Act

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did not protect the owner at all. The court ultimately deemed this a merits, not jurisdictional, problem, dismissing case law to the contrary. Accordingly, the court found this argument to be waived because it was raised to late.

The court also found notice to be sufficient. The insured had actually received notice of the limitation action, and the court essentially determined that the insurer stepped into the shoes of its insured.

***Baltimore Gas & Elec. Co. v. Coastline Com. Contracting, Inc.*, 107 F.4th 264 (4th Cir. 2024) - admiralty jurisdiction proper in case of barge striking underwater electric cable in inlet surrounded primarily by residential properties**

The owners of real property on a tidal inlet off of a creek sought to extend their pier further into the inlet and hired a contractor for that purpose. The contractor owned and utilized a barge in furtherance of this work on the pier. While working, the barge struck a high-voltage electric cable, causing loss of electricity to the area and \$1.3 million in repairs. The electric company sued the contractor and the property owners in federal court, alleging negligence and invoking federal admiralty jurisdiction in the claim against the contractor and supplemental jurisdiction over the claims against the property owners. Both sets of defendants moved to dismiss for lack of admiralty jurisdiction, and the district court granted their motions, determining that the inlet was not part of navigable waters because it could not accommodate commercial navigation and was not susceptible to being used as a highway for commerce. The district court also found that no traditional maritime activity was involved because the barge was present simply to extend the pier at a private residence.

On de novo review, the Fourth Circuit reversed, holding that the district court applied the wrong standard. The circuit court recognized that tidal waters have long been recognized as navigable for the purpose of admiralty jurisdiction. The district court applied the wrong analysis in analyzing commercial navigation at the inlet; the inlet was lined with commercially built piers and the contractor was engaged in commercial activity at the time it struck the cable. The court also discussed other relevant (the ability to reach the Atlantic Ocean from the inlet and the electric company's permit categorizing the cable as being in navigable waters)

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and irrelevant (the presence of residential homes on the inlet) factors improperly disregarded or considered, respectively, by the district court. The location factor was thus satisfied.

The connection test was deemed satisfied as well. Categorizing the incident at issue as damage to an underwater cable by a barge, the court determined that the case was properly within the class of incidents posing more than a fanciful risk to commercial shipping. It did not matter that there was no actual adverse consequences to maritime commerce identified in the case.

Finally, the circuit court determined that the activity giving rise to the incident (the transportation of tools by barge) was the epitome of a traditional maritime activity.

***Thibodeaux v. Bernhard*, No. 23-30405, 2024 WL 3181458 (5th Cir. June 26, 2024) – waterbody that had only seasonal access to navigable river but that was historically used for commercial fishing deemed navigable for purposes of admiralty jurisdiction**

Two fishermen were attempting to harvest crawfish in Lost Lake, which connects to the Atchafalaya River around 30% of the year through a twenty-foot drainage canal and which sits atop private land. The owner of Lost Lake discovered that the fishermen were laying traps and allegedly harassed them, intercepted their skiff, and got a deputy involved. The fishermen sued the owner and others for loss of income and conversion in federal court, invoking admiralty jurisdiction. The defendants moved to dismiss the complaint for lack of jurisdiction on the grounds that Lost Lake is a private waterbody with no connection to traditional maritime activity.

The magistrate judge recommended dismissal, but the district court rejected that recommendation on de novo review, holding that the fishermen's claims established the requisite connection to maritime activity and remanded the case for an evidentiary hearing to determine Lost Lake's navigability and the location of the tort. The magistrate judge issued another R&R concluding that the court had federal question jurisdiction and punting the question of navigability. The district court accepted the R&R's factual findings, disagreed with the legal conclusions

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therein, and held that Lost Lake was navigable, meaning that admiralty jurisdiction was appropriate. The defendants appealed.

The defendants made no argument regarding the connection element of maritime jurisdiction, but the 5th Circuit addressed it anyway. It found that the defendants' alleged actions disrupted maritime commerce by preventing the fishermen from freely navigating their vessels, harvesting crawfish from their traps, and engaging in commercial fishing efforts. Furthermore, the general character of the defendants' activity in thwarting navigation and fishing efforts by accosting the fishermen and detaining the fishermen's vessel and traps constituted interference with traditional maritime-based activity (commercially fishing the country's waterways).

The location element was the most hotly contested aspect of the appeal. The court found Lost Lake to be navigable even though it was navigable for only part of the year, pointing to precedent that had also found navigability in similarly fluctuating bodies of water. Lost Lake was similarly connected to an interstate waterbody that was a large artery of commerce providing direct access to the Gulf of Mexico. Notably, Lost Lake's access to the Atchafalaya River coincided with the commercially relevant crawfish season. The court distinguished prior case law holding a waterbody on private land that was susceptible to flooding from the Mississippi River on the grounds that Lost Lake had direct, seasonal connection to the Atchafalaya River; that Lost Lake was a perched lake; and that (most crucially) Lost Lake has historically supported commercial fishing activities on its water bottoms. Also, that prior caselaw did not engage in any navigability analysis for purposes of establishing maritime jurisdiction.

Accordingly, the district court's ruling was affirmed.

RIGHT TO JURY TRIAL

Accelerant Specialty Ins. Co., v. KKS Marine II, LLC, No. 24-CV-00214-AJB-AHG, 2024 WL 4438919 (S.D. Cal. Oct. 7, 2024) – no independent basis for the court's jurisdiction and no right to jury trial where no independent basis is alleged in either the complaint or answer/counterclaims

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The plaintiff insurance company filed a declaratory judgment action pertaining to its denial of a claim that the insured's vessel's engine overheated. The action asserted various breaches of contract and a lack of coverage under the applicable policy. The vessel owner answered and filed counterclaims alleging improper denial of coverage. The owner admitted that maritime jurisdiction was appropriate and furthermore asserted that the court had supplemental jurisdiction over the owner's counterclaims. The vessel owner sought a jury trial, and the plaintiff filed a motion to strike the jury demand, arguing that because it proceeded in admiralty, there was no right to a jury trial. The owner contended that an independent, non-admiralty jurisdictional basis existed because its breach of contract action is one that could traditionally have been brought at common law and there was diversity jurisdiction, entitling the owner to a jury trial.

The court began by recognizing the three general options available to plaintiffs bringing *in personam* maritime claims: file a suit in federal court under federal admiralty jurisdiction, in federal court under diversity jurisdiction if the parties are diverse and the amount in controversy is satisfied, or in state court, with the greatest significance between the three options being there is no right to jury trial if general admiralty jurisdiction is invoked, while it is preserved for claims based in diversity or brought in state court. The court also recognized a lack of consensus as to whether compulsory legal counterclaims in response to an admiralty claim entitle defendants to jury trials. In the 9th Circuit, however, a right to jury trial exists where the federal court has an independent basis of jurisdiction over the case and where the suit is one that traditionally could have been brought at common law.

The plaintiff pled admiralty jurisdiction as the sole basis for the court's jurisdiction and made a Rule 9(h) election. The court further noted that the owner separately failed to assert diversity jurisdiction in asserted its counterclaims. Because neither party alleged an independent basis for jurisdiction, the court held there was no right to trial by jury.

The court, however, granted the owner leave to amend its answer and counterclaim to correct these defects.

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In re Lion Air Flight JT 610 Crash, 110 F.4th 1007 (7th Cir. 2024) – DOHSA preempts all wrongful death remedies, survivor actions, or claims for property lost in cases where it applies; DOHSA claims allowed to proceed only under admiralty jurisdiction with no right to a jury in federal court; defendants in DOHSA claims can extinguish a plaintiff’s right to jury trial by removing to federal court

On October 29, 2018, Lion Air Flight JT 610 took off from Jakarta, Indonesia, and crashed into the Java Sea with no survivors due to mechanical issues with the plane. The appeal was taken from two cases brought by families and representatives of the estates of two passengers who died in the crash.

One case (Chandra) was asserted by a representative of both Chandra’s estate and his heirs. Chandra asserted claims under DOHSA, the Suits in Admiralty Act, and Illinois State law; demanded a jury trial; and asserted jurisdiction under diversity, DOHSA, the Suits in Admiralty Act, and MMTJA.

The second case (Manfredi) was brought by family members and a representative of Manfredi’s estate. They asserted claims under state law under the Consumer Fraud and Abuse Act. They also demanded a jury trial and alleged jurisdiction under both diversity and the MMTJA.

Boeing filed motions in both cases asking the district court to rule that DOHSA applies, preempts all non-DOHSA claims, and mandates a bench trial. The district court granted these motions, and all plaintiffs sought and received permission to appeal on an interlocutory basis on the question of whether they were entitled to a jury trial under DOHSA.

The 7th Circuit took up the jury trial question and also the question of preemption even though the district court refused to certify that question for appeal because the issue was decided in the same order and would significantly influence the resolution of the jury question.

The circuit noted that there was authority that parties in admiralty cases could have a jury trial on claims that would be otherwise tried by the court if their claims arise out of the same set of facts as a claim that can be tried before a jury. Accordingly,

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the 7th Circuit framed the issue as follows: “if the plaintiffs have valid non-DOHSA claims, then the district court presumably should have allowed the plaintiffs to try those claims and their DOHSA claims before a jury. On the other hand, if DOHSA preempts the other claims, then the availability of a jury trial turns on whether DOHSA permits the plaintiffs to demand a jury trial. Accordingly, we will address both issues, starting with preemption.”

After reviewing the history and function of DOHSA, the court determined that DOHSA preempts all wrongful-death remedies, all survivor actions based on the same facts as the fatal accident, and all claims for property lost by the decedents in the underlying incident.

Having addressed the preemption issue, the court then turned to the jury trial question. The court reviewed the history and effect of the saving-to-suitors clause and Rule 9(h). Against this backdrop, the court considered the plaintiff’s assertion that their DOHSA claims could be brought as common-law claims if there is a non-admiralty source of jurisdiction (here, diversity and the MMTJA). The defendants asserted that DOHSA claims in federal court could only be asserted in admiralty without a jury trial. The 7th Circuit agreed with the defendants for several reasons, such as (1) the language in the first section of DOHSA referring to a civil action in admiralty, (2) precedent from other courts construing similar language not conferring the right to a trial by jury, and (3) older precedent from other courts requiring DOHSA cases in federal court to proceed without a jury trial.

In reaching this determination, the 7th Circuit recognized it was potentially allowing defendants to extinguish a plaintiff’s jury trial right by removing DOHSA claims to federal court.

***Clear Spring Prop. & Cas. Co. v. Arch Nemesis, LLC*, No. 22-2435-DDC-TJJ, 2024 WL 3511456 (D. Kan. July 23, 2024) – district court in 10th Circuit determines that counterclaims in declaratory judgment action may be basis for jury demand**

This was a declaratory judgment action filed by an insurer asking the court to determine the parties’ rights under a marine insurance policy covering a yacht. The insurer claimed that the owner breached various policy warranties as well as the

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uberrimae fidei doctrine, precluding coverage and making the policy void from its inception. The insurer specified the action as an admiralty case within the meaning of Rules 9(h) and 38(e).

The owner answered and alleged counterclaims for fraud, negligent misrepresentation, estoppel, breach of contract, breach of the implied duty of good faith and fair dealing, bad faith, and violations of various states' deceptive practices acts and insurance codes. **The owner pled diversity jurisdiction and explicitly asserted that it was not designating its counterclaims ad admiralty claims.** The owner also sought a jury trial.

The insurer moved to strike the jury demand, arguing it brought its claim and invoked admiralty jurisdiction first. The magistrate judge denied this motion, and the district court affirmed under the clear error standard of review applied to review of a magistrate judge's non-dispositive orders. The court recognized a split in opinions among the circuits and a dispute as to whether a plaintiff's admiralty election prevailed over a defendant's right to a jury trial on its counterclaims. Recognizing that the 10th Circuit has not yet weighed in, and that there was no binding precedent governing the magistrate court's decision, the district court found no clear error. Likewise, the magistrate judge's reliance on a non-admiralty case that other courts had determined to be inapplicable to Rule 9(h) elections was not novel and therefore was also not clear error.

The district court agreed that it might be problematic if this rule only applied to insurers bringing declaratory judgment actions against insureds, but determined that the magistrate judge's opinion did not go so far in its holding.

***Accelerant Specialty Ins. Co. v. Z & G Boat & Jet Ski Rentals, Inc.*, No. 8:23-CV-2148-KKM-CPT, 2024 WL 2939173 (M.D. Fla. June 11, 2024) – on the other hand, district court in 11th Circuit recognizing no right to jury trial based on counterclaims; no advisory jury where no unique or compelling circumstances are presented for such an advisory jury**

This court reached the opposite conclusion of the immediately preceding case under generally similar facts. 11th Circuit precedent explicitly prevents jury trials based on counterclaims in maritime declaratory judgment actions.

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Notably, the defendant also asked for an advisory jury under Rule 39(c). The court rejected this request, noting no unique or compelling circumstances necessitating an advisory jury.

APPELLATE PRACTICE

Matter of Energetic Tank, Inc., 110 F.4th 131 (2d Cir. 2024) – phase 1 liability determination in limitation action may be certified as partial final judgment for appealability purposes if damages are fixed in that order; dismissal of claims on sovereign immunity grounds was appealable on interlocutory basis under § 1293(a)(3); merger rule could not be used to appeal choice-of-law order where that order was not relevant to the issue certified by trial court and thus choice-of-law issue would have to wait for final appeal; collateral order doctrine not applicable to choice-of-law issue because it would be effectively reviewable at end of case

After the M/V Alnic collided with the U.S.S. JOHN S. MCCAIN, ALNIC's owner petitioned for exoneration or limitation of liability. Sailors and their representatives file claims for damages.

The district court determined that Singapore law governed liability and the calculation of damages. After a bench trial on liability, the district court denied the petition and allocated fault for the collision 80% to the U.S. and 20% to the owner. Before the damages phase of the trial, the district court dismissed the owner's claims for contribution or indemnity against the U.S. on sovereign immunity grounds.

The district court then certified its earlier decision in Phase 1 as final. Both the owner (regarding the sovereign immunity decision) and several sailor-claimants (regarding the application of Singapore law to damages) appealed.

The 2nd Circuit found no error and affirmed the judgment on the owner's appeal but dismissed the sailor-claimants' appeal for lack of jurisdiction.

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The court began by assessing its jurisdiction. The court determined that it needed to have jurisdiction under either 28 U.S.C. § 1291 (as implemented by Fed. R. Civ. P. 54(b) or the collateral-order doctrine) or under § 1292(a)(3). The district court's phase 1 order was deemed appealable under § 1291 and Rule 54(b) because the district court certified it. Even though phase 1 orders on liability in two-phase proceedings are generally not certifiable under Rule 54(b), the circuit court determined that there was no abuse of discretion because (in addition to determining liability) the order "fixed" damages in that the parties agreed upon the monetary damages to the vessels. Given these points and the fact that the circuit court had previously remanded for the purpose of certification, the circuit found the district court's limited explanation in its certification order to be adequate.

The circuit court also determined that the district court's order dismissing the owner's contribution and indemnification claims on sovereign immunity grounds was appealable under § 1293(a)(3). That order was neither final nor certified, but it met the requirements of § 1293(a)(3). Of particular significance, the court noted that it had previously held that dismissal of a cause of action on sovereign-immunity grounds was appealable under § 1293.

The circuit court, however, held the choice of law decision to be unappealable. The sailor-claimants argued that it was appealable under the merger rule, which provides that prior interlocutory orders merge with the final judgment in the case, and interlocutory orders (to the extent they affect the final judgment) may be reviewed on appeal from the final order. But because this was a partial final judgment, the court noted that the merger rule must be strictly construed. Because the phase 1 order was certified only as a final judgment regarding the U.S., the court determined that only orders affecting the U.S.'s liability would merge. Singapore law, however, was applied for purposes of calculating damages for the phase 2 portion of the trial.

The circuit court also refused to apply the collateral-order doctrine, determining that the order would be effectively reviewable on a final appeal of the case.

The circuit court then addressed the merits of the appeal, which are beyond the scope of this summary.

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RULE F LIMITATION ACTIONS

In re Live Life Bella Vita LLC, 115 F.4th 1188 (9th Cir. 2024) – third-party defendants actually or potentially bringing indemnity or contribution claims may count as claimants for purposes of limitation action’s single claimant exception to stays; parties bringing attorney’s fees claims are separate claimants for the same purposes; all such claimants must make requisite stipulations to break the stay

A maintenance diver suffered a severe injury while servicing a boat underwater. The owners filed a limitation action, and the district court enjoined all related suits pursuant to the Limitation Act. The diver subsequently filed a complaint in state court. He then filed counterclaims against the owners in the federal case and also a third-party complaint in the federal case, bringing in other third-party defendants. The owners filed their own third-party complaint against the third-party defendants for indemnification and contribution, alleging that they were solely responsible for the divers injuries.

The diver filed separate motions to dismiss the limitation action for lack of admiralty jurisdiction and to stay it. The stay motion contained stipulations recognizing the district court’s ultimate authority to limit the owners’ liability, notwithstanding the outcome of the state litigation.

The district court denied the motion to dismiss but granted the motion to stay on the basis that the diver was the sole claimant despite the existence of the third-party claims on the grounds that the damages would be solely determined by the diver’s economic and non-economic damages.

The owners filed an interlocutory appeal and an amended third-party complaint against the third-party defendants. One of the third-party defendants answered the complaint and countersued the owners for indemnity, contribution, declaratory relief, and costs and expenses.

The 9th Circuit reviewed for an abuse of discretion. The court first reviewed the history and purpose of the Limitation Act generally before addressing the single claimant exception specifically. Importantly, the court recognized that stipulations

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are necessary to trigger the single-claimant exception but also that these stipulations are not sufficient where there are multiple claimants to a fund that is inadequate to satisfy all claims.

The circuit court recognized a circuit split regarding whether parties seeking indemnity or contribution count as separate claimants. Starting from the obligation to ensure that the vessel owner's right to seek limitation is protected and citing Third Circuit precedent, the circuit court explained that allowing indemnity or contribution claims could thwart the goals of the Limitation Act because the third parties were not subject to any stipulations.

The Ninth Circuit held that in these situations a district court must consider actual and potential indemnity and contribution claims from named co-defendants before dissolving an injunction, asking whether a third-party has already asserted such claims as well as whether there is the possibility of any other such claim. In reaching this conclusion, the Ninth Circuit declined to join the Eighth and Sixth Circuits. **The Ninth Circuit also held that parties seeking attorney's fees are separate claimants, reasoning that such claims are separate claims for liability not derivative from any other claim.**

The circuit court still had to consider whether the stipulations were sufficient to protect the owners. Because the third-party claims could increase the owners' liability above the value of the limitation fund, the circuit court further held that each party (including the alleged joint tortfeasors) must make the requisite stipulations before proceeding in state court.

The district court's decision was vacated, the anti-suit injunction was reinstated, and the case was remanded for further proceedings.