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**Updates and Application of the 2022  
Amendments to the Limitation of Liability Act  
46 U.S.C. § § 30501, *et seq.***



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# Background on Amendment

- **CONCEPTION casualty September 2, 2019**
  - Loss of thirty-three passengers and one crewmember in vessel fire
- **Small Passenger Vessel Liability Fairness Act of 2021**
  - Senator Dianne Feinstein (D-CA) and Representative Salud Carbajal (CA-24)
- **James M. Inhofe National Defense Authorization Act for Fiscal Year 2023**
  - (11) Division K - “Don Young Coast Guard Authorization Act of 2022” Title CXV – Maritime, Subtitle A- Vessel Safety
    - Sec. 11503. Exoneration and limitation of liability for small passenger vessels
- **Signed by President Biden on December 23, 2022**

Former Section Number	Topic	Amended?	New Section Number
<b>Subchapter I – General Provisions</b>			
30501	<b>Definitions</b>	<b>Substantive Changes</b>	
30502	<b>Application</b>	<b>Substantive Changes</b>	
<b>Subchapter II – Exoneration and Limitation of Liability</b>			
30503	Declaration of nature and value of goods	No change	30521
30504	Loss by fire	No change	30522
30505	General limit of liability	No substantive change	30523
30506	Limit of liability for personal injury or death	No substantive change	30524
30507	Apportionment of losses	No substantive change	30525
30508	<b>Provisions requiring notice of claim or limiting time for bringing action</b>	<b>Substantive changes</b>	30526
30509	Provisions limiting liability for personal injury or death	No change	30527
30510	Vicarious liability for medical malpractice with regard to crew	No change	30528
30511	Action by owner for limitation	No change	30529
30512	Liability as master, officer, or seaman not affected	No change	30530

# 46 U.S.C. § 30501 Definitions “Covered Small Passenger Vessel”

In this chapter:

**(1) Covered small passenger vessel.**--The term “covered small passenger vessel”--

**(A)** means a small passenger vessel, as defined in section 2101, that is--

**(i)** not a wing-in-ground craft; and

**(ii)** carrying--

**(I)** not more than 49 passengers on an overnight domestic voyage; and

**(II)** not more than 150 passengers on any voyage that is not an overnight domestic voyage; and

**(B)** includes any wooden vessel constructed prior to March 11, 1996, carrying at least 1 passenger for hire.

# 46 U.S.C. § 30502 Application

(a) In general.--Except as otherwise provided, this chapter (except section 30521) applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

**(b) Exception.--This chapter (except for section 30526) shall not apply to covered small passenger vessels.**

## 46 U.S.C. §§ 30501-30502

- The amendment defines and then excludes a “Covered Small Passenger Vessel” from the application of the Limitation Act
- What is a “Covered Small Passenger Vessel?”

# Definition of a “Covered Small Passenger Vessel”

(A) means a **small passenger vessel, as defined in section 2101**, that is-

(ii) not a wing-in-ground-craft; **and**

(ii) **carrying—**

(I) ~~not more than~~ 49 [or less] passengers on an overnight domestic voyage; and

(II) ~~not more than~~ 150 [or less] passengers on any voyage that is not an overnight domestic voyage; and

(B) includes any wooden vessel constructed prior to March 11, 1996, carrying at least 1 passenger for hire.

# “small passenger vessel, as defined in section 2101”

**(47) “small passenger vessel” means** a wing-in-ground craft, regardless of tonnage, carrying at least one passenger for hire, and **a vessel of less than 100 gross tons** as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title--

**(A)** carrying more than 6 passengers, including at least one passenger for hire;

**(B)** that is chartered with the crew provided or specified by the owner or the owner's representative and carrying more than 6 passengers;

**(C)** that is chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers;

**(D)** that is a submersible vessel carrying at least one passenger for hire; or

**(E)** that is a ferry carrying more than 6 passengers.



# Identifying a “Covered Small Passenger Vessel”

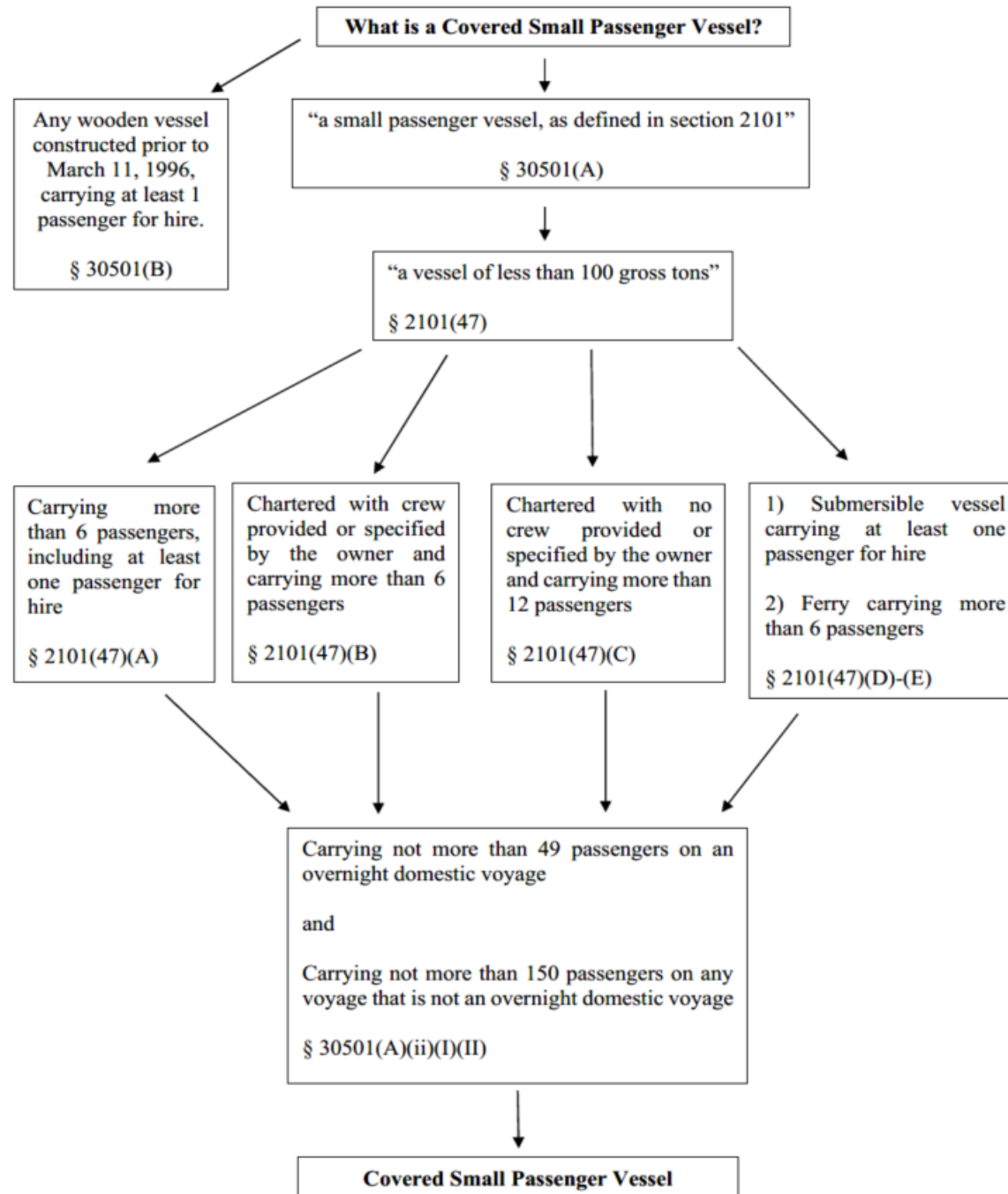
## General Categories:

- Vessel under 100 tons
- Carrying 49 or less passengers on an overnight domestic voyage
- Carrying 150 or less passengers on any voyage that is not an overnight domestic voyage

# Identifying a “Covered Small Passenger Vessel”

## Specific Categories:

- Carrying more than 6 passengers, including 1 for hire
- Chartered with crew provided or specified by owner and more than 6 passengers
- Chartered with no crew, provided or specified with more than 12 passengers
- Submersible with at least 1 for hire
- Ferry with more than 6 passengers



# Identifying a “Covered Small Passenger Vessel”

## Hypothetical sub-100-ton vessels:

- Charter fishing boat with 6 passengers
- Tour boat with 50 passengers on daytime cruise
- Bareboat chartered pontoon boat with 8 passengers
- Parasailing boat with 8 passengers aboard
- Submersible
- Ferry with 3 passengers



# In Re Freedom Marine Sales, 2024 WL 2874817 (M.D. Fla. 2024)

- Procedural Issue of whether a right to proceed under LOLA existed and pleading facts required by Rule F
- Petition/complaint said nothing about the weight of the boat, whether it was a wing-in-ground craft, the number of passengers or the nature of the passengers
- Declined to consider evidence that it was a covered small passenger vessel as an SJ issue
- Supplemental Rule F(2) controls the pleading standard, not FRCP 8

# Post-Amendment Practices

- Set out application of LOLA Act in initial pleadings
- Address “Covered Small Passenger Vessel” definition early and often
- Declaratory relief
- Not “carrying passengers” as that term is contemplated by LOLA
- Declarations from owners

# Limits on Contract Terms

## 46 U.S.C. § 30526 (formerly § 30508)

- Amendment now adds “covered small passenger vessels” to time limit definitions – 46 U.S.C. § 30526 (formerly § 30508).
- Passengers aboard covered small passenger vessels must have no less than two years to provide notice or bring an action after injury or death.
- The amendment does not reference or address its impact or relationship to 46 U.S.C. § 30106, and its three-year time limit for bringing maritime tort claims for injury or death.



# Limits on Contract Terms

## 46 U.S.C. § 30526 (formerly § 30508)

~~46 U.S.C.A. § 30508~~ 46 USCA § 30526

(a) Application.--This section applies only to seagoing vessels, but does not apply to pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels, fish tender vessels, canal boats, scows, car floats, barges, lighters, or nondescript vessels.

(b) Minimum time limits.--The owner, master, manager, or agent of a vessel transporting passengers or property between ports in the United States, or between a port in the United States and a port in a foreign country, may not limit by regulation, contract, or otherwise the period for--

- (1) giving notice of, or filing a claim for, personal injury or death “, in the case of seagoing vessels,” to less than 6 months after the date of the injury or death “or in the case of covered small passenger vessels, to less than two years after the date of the injury or death”; or
- (2) bringing a civil action for personal injury or death “, in the case of seagoing vessels,” to less than one year after the date of the injury or death “, or in the case of covered small passenger vessels, to less than two years after the date of the injury or death”.

# Post-Amendment Case Law

## Limits on Contract Terms

- *Ehart v. Lahaina Divers, Inc., et al.*, 92 F.4th 844 (9th Cir. 2024)
  - District Court granted motion to strike affirmative defenses of waiver and release
  - Decision refers to everything under the newly numbered statute
  - Ninth Circuit reverses District Court and remands

# Post-Amendment

- General impacts on views towards the LOLA
- Further erosion of LOLA outside of blue water context
- Uncertainty with the law regarding contractual time limits
- Impacts on insurance coverage
- Broker liability
- Status of law on contractual time limits
- Alternative mechanisms – state or federal interpleader procedure

# Post-Amendment Case Law

- Threshold/preliminary challenges to the application of LOLA by claimants
  - Arguing subject vessels are excluded “Covered Small Passenger Vessel”
  - Lack of analysis of complete definition under both § 30501(A) and 2101(47)
    - 2024: SD ALA; MD FLA; ED LA
    - No Circuit Court opinions
- No apparent challenges to “Covered Small Passenger Vessel” definition by vessel owners to date

# Closing

- Questions