MLA COMMITTEE ON RECREATIONAL BOATING
CLE Material: Limitation of Liability Issues Involving Recreational Vessels
May 3, 2018

Limitation of Liability Act of 1851, 46 U.S.C. § 30511

- Petitioner files complaint within six months of receiving written notice of a claim **exceeding owner's interest in the value of the vessel**, posts security equal to the value of the vessel at the end of the voyage and gives notice of same.
- Claimants file answers **and** claims.
- Claimants have initial burden of proving negligence (including proximate cause) or other basis of liability of the owner.
- **If liability is found**, the burden shifts to the owner to prove a **lack** of privity or knowledge of the condition of negligence.
- If successful, owner will be entitled to exoneration from liability (if none proved by claimants) or a limitation of liability to the value of the vessel at the end of the voyage (plus any freight then pending).

See Otal Investments Ltd. v. M/V Clary, 673 F.3d 108, 2012 AMC 913 (2d Cir. 2012).

Commercial Recreation – The Great Ocean Race of 1866 – *Fleetwing*, *Henrietta* and *Vesta*. Recreational sailing with commercial purpose for a prize with professional crew (only *Henrietta* had her owner aboard). Started off Sandy Hook, NJ (without harbor pilots) on December 11, 1866 in a strong westerly. *Fleetwing* did not heave-to like the others, shipped a wave and lost six. Rescue, futile. *Henrietta*, first to finish at the Needles on the Isle of Wight on Christmas Day and claimed a $60,000 prize. (Each yacht was then worth about $40,000.)

Act Applies to Recreational Vessels – Courts of Appeals have consistently held that recreational vessels are within the Act, provided there is admiralty jurisdiction. Matter of Guglielmo, 897 F.2d 58, 60, 1990 AMC 1191 (2d Cir. 1990) ("every court of appeals that has explicitly addressed the issue has applied the Act to pleasure craft"). For a good synopsis of admiralty jurisdiction in tort, see James Mercante's recent article in the *New York Law Journal*, distributed with committee materials.

Survey: How many members have been through a trial on limitation issues?

Challenges:

1. Proving an owner/operator's lack of privity or knowledge
   For Petitioner: difficult when owner intimate
   For Claimants: burdened to prove liability first; concursus
2. Notice develops with inexperienced adjuster/claims handler
   For Petitioner: notice filtered through insurer
   For Claimants: settling without prompting a limitation action
3. The Concursus
   For Petitioner: keeping concursus and jury with single claimant
   For Claimants: filing stipulations to get a state court jury

Proving an Owner/Operator's Lack of Privity or Knowledge

- Claimants' dispositive motions when owner aboard
- Petitioner/Owner need not prove a lack of privity or knowledge until claimants have proven petitioner's liability. If none, petitioner/owner is exonerated.
- Negligent entrustment cases

> It is the law of this Circuit that the mere presence on board of an owner does not constitute such privity as will preclude limitation of the owner's liability. To deny limitation to an owner, his "privity or knowledge must be actual and not merely constructive. . . There must be some fault or negligence on his part or in which he in some way participates." If the owner "is free from fault his actual knowledge of the facts of the accident does not prevent limitation."

In re Interstate Towing Co., 717 F.2d 752, 754, 1983 AMC 2971 (2d Cir. 1983) (internal citation omitted).

> In the case of individual owners, it has been commonly held or declared that privity as used in the statute means some personal participation of the owner in the fault or negligence which caused or contributed to the loss or injury.

In re Complaint of Messina, 574 F.3d 119, 126 (2d Cir. 2009)

The "In Sight of Home Port Doctrine"

Will this "doctrine" gain traction?

> The nature of the vessel's voyages—providing taxi service over the New York ports' waterways—suggests the opportunity for more detailed control by the owner and responsibility of its executives, who were virtually on the scene, to supervise the vessel's ongoing seaworthiness more closely than if the vessel were on the high seas. The underlying theory of limited liability as a policy to encourage investment in risky, long sea voyages has little relevance to the Marguerite's meanderings within New York harbor, in sight of its home port. Limitation of liability has not been established.

Haney v. Miller's Launch, Inc., 773 F. Supp. 2d 280, 289–90 (E.D.N.Y. 2010)

When Notice Develops with Inexperienced Adjuster/claims Handler

Notice of a claim is sufficient to trigger the start of the six-month statutory period if the writing informs the vessel owner of an actual or potential claim, which may exceed the value of the vessel. In re Complaint of Beesley's Point Sea-Doo, Inc., 956 F.Supp. 538, 540 (D.N.J. 1997) citing Doxsee Sea Clam Co. v. Brown, 13 F.3d 550, 554 (2d Cir. 1994); see In re Henry Marine Service, Inc., 2015 A.M.C. 2742, 2750 (E.D.N.Y. 2015).

Petitioners' counsel should educate claims handlers and owners, while claimants' counsel balance settling against triggering a limitation action.

The Concursus

Concursus brings order for the petitioner, especially for discovery purposes, but usually leaves claimants without the jury to which they may have otherwise been entitled in a different forum.

Survey: Any other issues unique to recreational limitation actions?
Piercing corporate veil where yachts owned by LLC?

Survey: Is the Act promoting the marine industry?

Speaker's Biography

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