

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATESSTATISTICAL ANALYSIS OF
LIMITATION OF LIABILITY CASES

1953–October, 1976

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Comments on Study and Explanation of Tables

One of the more active admiralty Circuit Courts of Appeal has had occasion to say that "in the vast majority of cases limitation is denied for one reason or another." *Olympic Towing Corp. v. Nebel Towing Co.*, 419 F.2d 230, 235, 1969 AMC 1571, 1578 (5th Cir. 1969), *cert. den.*, 397 U.S. 989 (1970). This offhand statement was made in the context of deciding a major attack made on whether, because limitation of liability might affect insurance premiums, the direct action cases against insurers, without benefit of limitation, should be denied. A divided court held against the insurers.

Most admiralty lawyers would probably agree with the statement of the Fifth Circuit. Perhaps the tide against limitation began with, or was certainly advanced by, *Maryland Casualty Co. v. Cushing*, 347 U.S. 409, 1954 AMC 837 (1954). There, as part of the 4-1-4 decision (or lack of decision), Mr. Justice Black suggested that, if Congress wished to subsidize shipowners, the subsidy should be done more directly than by limitation of liability at the expense of injured seamen. Despite the apparent current trend, a member of the insurance industry stated in a letter to the President of our Association: "My personal experience is that limitation is regularly granted when it is to the detriment of my interest. No one has any facts to back their opinion."

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The subject of limitation of liability is timely. A Diplomatic Conference is to be convened in London on November 1, 1976, to consider a Convention on Limitation of Liability for Maritime Claims. A draft convention has been prepared by IMCO. The CMI draft as submitted to IMCO was approved by the Maritime Law Association of the United States on May 7, 1976, without any limitation amount specified. The draft contains a two tier set of funds, one for personal injury and death claims and the second for all other claims. The amount of each fund would generally be based on vessel tonnage. Questions involved in the convention include whether or not to exclude certain types of vessels (for example, tugs and fishing vessels) and leave coverage to national legislation.

Article 4 of the Convention deals with the basis on which limitation can be defeated. The intent of the drafters seems to make denial of limitation more difficult, but in exchange for higher limits for the benefit of claimants. Limitation is deemed if the loss:

“resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result [or from his own gross negligence].”

The foregoing language can be read as providing two methods by which limitation can be defeated:

(a) “ * * * personal act or omission, committed with the intent to cause such loss, * * * ”, or

(b) “ * * * recklessly and with knowledge that such loss would probably result * * * ”.

The Limitation Act (46 U.S.C. §183) contains the phrase “without the privity or knowledge . . . ”.

If the Courts interpret “intent” to require separate and specific proof of “intent” apart from proof of the act or omission, breaking the right to limit will probably be more difficult. However, if the Courts presume the intent from the act or omission, there might be little change in the elements of proof required to break limitation.

The same reasoning applies to "knowledge" under alternative (b) above. Thus, if the vessel owner knows or is constructively held to know of a condition causing a loss, the right to limit is lost even under the convention language and in circumstances not materially different from the present U.S. law.

The Fire Act (46 U.S.C. §182) uses the expression "caused by the design or neglect of such owner."

COGSA (46 U.S.C. §1304 (b)) sets forth the fire defense with the language "caused by the actual fault or privity of the carrier."

The IMCO draft further expressly gives the benefit of limitation to an insurer. It is designed to provide limits that are commercially insurable, yet adequate to safeguard the rights of harmed parties.

The United States is presently not a party to the existing Limitation Convention of 1957. The United States will be represented at the coming London Diplomatic Conference to consider the convention now on the agenda. The limitation statutes of this country would be materially changed by adherence to the draft convention. We can expect that the whole subject of limitation will be debated and considered in the near future. This study was undertaken to assist in the consideration of the Convention.

The following tables represent a statistical summary of reported cases in which the question of limitation of liability was decided on the merits. Each case is one where liability was found and damages exceeded the limitation fund, thus requiring a decision on the right to limit. Cases involving only procedural questions—venue, persons entitled to limit (including insurers), claims subject to limitation, etc.—are not included. However, each case indexed was examined to determine that what may have been indexed for a procedural point did not actually include a decision on the merits. The time period covered was from cases reported in 1953 AMC to the current volumes of AMC (1976, No. 4), 539 F.2d (No. 1) and 416 F. Supp. (No. 3). Of course, the results are no doubt merely the tip of the iceberg because cases that were settled or unreported are not included. A number of appellate cases are not reported at the

lower court level, and the lower court decision is not counted. In four cases, both the lower and appellate opinions are reported; and each opinion is counted in the study. A very few Canadian cases reported in AMC are included.

Table I

Table I is an overall summary by five year periods of cases where limitation was granted or denied. The five year periods correspond to AMC Digest periods. The periods are shown parenthetically as (A), (B), (C), (D) and (E), and these designations are used to show time periods in succeeding tables. The results bear out the conclusion that the chances of obtaining limitation have become increasingly small since the *Maryland Casualty* case in 1954.

TABLE I

ALL CASES WHERE LIMITATION ISSUE DECIDED

<u>Period</u>	<u>Granted</u>	
	<u>Yes</u>	<u>No</u>
1953-1957 (A) _____	5	5
1958-1962 (B) _____	16	18
1963-1967 (C) _____	7	14
1968-1972 (D) _____	3	14
1973-1976 (E) _____	4	15
Total _____	35	66

Table II

Table II shows the results for different types of casualties. They are generally self-explanatory. The categories "oil spill," "cargo damage," and "personal injury" represent cases where only the particular type of claim was made without a casualty of the other types described.

TYPES OF CASUALTIES

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Type of Casualty	A		B		Period C		D		E		Total for All Periods	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Fire/Explosion	0	1	4	4	1	1	0	1	1	6	6	13
Allision/Collision	3	1	8	5	1	6	3	5	2	4	17	21
Stranding/Capsizing	0	0	1	1	1	1	0	3	0	3	2	8
Cargo Damage	0	0	1	1	0	0	0	0	0	1	1	2
Sinking	0	3	2	7	3	4	0	4	1	1	6	19
Oil Spill	1	0	0	0	0	0	0	0	0	0	1	0
Personal Injury	1	0	0	0	1	2	0	1	0	0	2	3

Table III

Table III shows the results in cases involving different types of vessels. "Ocean going cargo vessels" includes tankers, and all vessels so described are of fairly substantial tonnage. The reports of the cases are not complete enough to permit a meaningful analysis of the exact tonnages of all vessels. Likewise, the exact amounts of the limitation funds available or the total amounts of claims were not sufficiently described to permit meaningful analysis. Where more than one vessel was involved, as in a collision, the table shows the results for the vessel seeking limitation. If more than one vessel sought limitation in the same case, the result for each is counted.

Type of Vessel	TYPES OF VESSELS										Total for All Periods	
	A		B		C		D		E			
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Ocean Cargo Vessel _____	0	2	6	4	2	3	1	5	1	6	10	20
Tug/Barge _____	3	1	5	6	3	8	1	5	1	5	13	25
Fishing Vessel _____	2	0	1	3	0	1	0	2	0	0	3	6
Pleasure Craft _____	0	1	4	3	1	1	0	2	1	2	6	9
Passenger Vessel, Small ____	0	1	0	1	0	1	0	0	0	1	0	4
Passenger Vessel, Large ____	0	0	0	0	0	0	0	0	0	0	0	0
U. S. Government Vessel ..	0	0	0	0	1	0	0	0	1	1	2	1
Miscellaneous _____	0	0	0	1	0	0	1	0	0	0	1	1

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Table IV

Table IV shows the results in cases involving different types of claimants. "Property damage" includes damage to other ships, to shore structures or any other property than cargo. In the relatively few cases where limitation was granted to cargo or property damage claims, but denied to personal injury or death claims, the result is shown as a "no" case. In general, cargo and property damage claims represent subrogated insurers proceeding against the shipowner.

TYPES OF CLAIMANTS

	Period										Total for All Periods	
	A		B		C		D		E		Yes	No
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No		
Personal Injury & Death (P.I.) _____	1	1	3	5	2	4	1	3	2	2	9	15
Cargo (C.) _____	0	3	1	3	1	3	0	3	0	4	2	16
Property Damage (P.D.) _	2	0	5	4	1	4	1	4	1	3	10	15
C. and/or P.D. and P.I. ___	2	1	6	5	1	3	0	3	1	4	10	16
C. and P.D. _____	0	0	1	1	2	0	1	1	0	2	4	4

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Table V

Table V shows the results in cases of ocean going cargo vessels of United States and foreign registry. It may be assumed that all other types of cases involved only United States vessels and claimants. United States vessels have fared better than foreign vessels.

NATIONALITY OF VESSELS IN OCEAN VESSEL CASES

Type of Ocean Cargo Vessel	Period												Total for All Periods	
	A		B		C		D		E		Yes	No		
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No				
United States	0	2	4	2	1	1	1	3	1	0	7	8		
Foreign	0	0	2	2	1	2	0	2	0	6	3	12		

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Table VI

Table VI shows the results in cases of ocean going cargo vessels by nationality of claimants. The results show no significant difference in result based on nationality. Some guesswork is involved in the preparation of this table because the nationality of claimants, particularly cargo, is not frequently stated.

NATIONALITY OF CLAIMANTS IN OCEAN VESSEL CASES

Type	Period										Total for All Periods	
	A		B		C		D		E		Yes	No
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No		
United States	0	2	4	2	1	1	1	3	1	4	7	12
Foreign	0	0	0	1	1	1	0	2	0	0	1	4
Combined/Unknown	0	0	2	1	0	1	0	0	0	2	2	4

Table VII

Table VII is a subjective classification of the reasons for denying limitation in cases where it was denied. Rather than showing anything meaningful about reasons for denial, it probably simply supports the Fifth Circuit's statement that limitation is denied "for one reason or another." Although it was not a part of the analysis undertaken in this study, it appears that in few, if any, cases would limitation have been denied under the standard proposed in the IMCO convention.

REASONS FOR DENYING LIMITATION

Reason	Period					Total
	A	B	C	D	E	
Failure to provide or insure adequate & proper operations, equipment or crew _____	0	4	4	8	4	20
Failure to detect and/or correct defects _____	1	7	6	2	5	21
Orders by owner to vessel that proved improper _____	0	1	0	0	0	1
Improper operation of vessel by owner or knowledge of _____	3	3	4	2	5*	17
Personal contract _____	1	2	0	0	1*	4
Improper stowage or other operational act by sufficiently high person _____	0	1	0	1	0	2
Failure of evidence to prove no privity and knowledge _____	0	0	0	1	1	2

* dual reasons

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