Statistical Analysis of Limitation of Liability Cases
1997-2019[1]

Beginning in 1953, the Maritime Law Association of the United States began publishing statistical reports tracking trends as they relate to the Shipowner's Limitation of Liability Act. In total, the Maritime Law Association has published three reports for the following time periods: 1953-1976, 1976-1981, and 1982-1996.[2] This paper continues where the last report left off, and tracks all limitation cases under the Limitation of Liability Act where the right of a shipowner to limit their liability was decided on the merits.

In keeping with the spirit of the original reports, "each case is one where liability was found and damages exceeded the limitation fund, thus requiring a decision on the right to limit."[3] Additionally, "[c]ases involving only procedural questions—venue, persons entitled to limit (including insurers), claims subject to limitation, etc.—are not included."[4] As done in prior reports, "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."[5] The time period covered is from the cases reported in the 1997 American Maritime Cases to the final volume of the American Maritime Cases published in 2019. As was done previously, "[a] number of appellate cases are not reported at the lower court level, and the lower court decision is not counted."[6] Additionally, in situations where both the district court and the appellate court cases were reported, both decisions are counted.

The paper begins with a background of the relevant procedure under the Limitation of Liability Act. Following an explanation of the law is a discussion on each case that has been

[1] Written by Elena Mihos as an Admiralty & Maritime Law LL.M. Candidate at Tulane University Law School (Spring 2021).
[2] *See MLA Document No. 600, 640, and "1996 Report."*
[3] *MLA Document No. 600*
[4] *Id.*
[5] *Id.*
[6] *Id.*

recorded and the reasoning of the court for either granting or denying limitation. The cases are broken up into sets of years, with the letters J, K, L, M, and N representing each time period. Finally, this paper takes a look at the outcome of the research and discusses the limitation statistics as they relate to the attached statistical tables, which include all of the findings since 1953.

I. Historical Background and Procedure

The Limitation Act was enacted in 1851, at a time when investing in American shipbuilding and competing with the naval fleet of Great Britain was one of our nation's top priorities. The original purpose of the Act was to encourage the development of American merchant shipping, and the operation of the Act allows an owner to limit their liability for losses incurred to the vessel and the pending freight."[7] Because Congress wanted to promote the development of the American merchant marine and make American shipowners competitive with the rest of the commercial maritime world, the Limitation Act applies to "seagoing vessels and . . . all vessels used on lakes or rivers or in inland navigation."[8]

In order to invoke the protections of the Limitation Act, a vessel owner must bring a civil action in federal district court by filing a complaint seeking exoneration and/or limitation of liability within 6 months after a claimant gives the owner written notice of a claim.[9] The term "owner" includes a charterer that mans, supplies, and navigates a vessel at the charter's own expense or by the charterer's own procurement.[10] Venue is proper in any district where the vessel has been attached or arrested, or if there has been no attachment or arrest, in the district where the vessel owner has been sued. Alternatively, if a claimant has not yet brought suit against the

[7] 46 U.S.C. § 30505(a)
[8] 46 U.S.C. § 30502
[9] 46 U.S.C. §30511(a)
[10] 46 U.S.C. §30501

vessel owner, the Limitation complaint may be filed in any district where the vessel is physically present.[11]

After filing the complaint, the vessel owner must also deposit with the district court, for the benefit of claimants, a sum equal to the amount or value of her interest in the vessel and pending freight, or approved security therefor, and in addition such sums, or approved security thereof, as the court may from time to time fix as necessary[12]; this is what is known as the "limitation fund". Once the security is deposited, the district court will enter an injunction staying the further prosecution of any action or proceeding brought against the vessel owners with respect to any claim subject to limitation in the action.[13]

The burden of proof in a Limitation action is a two-step inquiry that is divided between the vessel owner and the claimants. The claimants bear the initial burden and are required to show that the personal injury, destruction, or loss was caused either by negligence or conditions of vessel unseaworthiness.[14] In other words, the claimant must establish liability of the shipowner to him. If the claimants are unable to meet this initial burden, the vessel owner will be exonerated from liability. However, if the claimants are able to meet their burden, the burden then shifts to the vessel owner to prove a lack of privity or knowledge of the negligence or unseaworthy condition that caused the accident.[15] "When a corporation owns the vessel, the test is whether culpable participation or neglect of duty can be attributed to an officer, managing agent, supervisor, or other high-level employee of the corporation."[16]

[11] Fed.R.Civ.P.Supp. F(9), Supp. Adm. R.
[12] Fed.R.Civ.P.Supp. F(1).
[13] Fed.R.Civ.P.Supp. F(3).
[14] *Complaint of Port Arthur Towing Co. on Behalf of M/V Miss Carolyn*, 42 F.3d 312 (5th Cir. 1995).
[15] Coryell v. Phipps, 317 U.S. 406, 409 (1943)
[16] *Carr v. PMS Fishing Corp.*, 191 F.3d 1, 4, 1999 AMC 2958 (1st Cir. 1999).

If the Limitation action is granted and the court determines that the act of negligence or unseaworthy condition, which caused the underlying loss, was not within the vessel owner's privity or knowledge, the court will then distribute the limitation fund to the affected claimant(s). If the claims together exceed the limitation fund, the court must provide for the distribution of the funds "pro rata subject to all relevant provisions of law, among the several claimants in proportion to the amounts of their respective claims, duly proved, saving, however, to all parties any priorities to which they may be legally entitled."[17]

II. Case Discussions

i. 1997 – 2001 (J)

Gary Moeller, et al. v. Mark Mulvey, et al.
United States District Court, District of Minnesota

Brought on a motion for summary judgment, the court decided whether the Petitioner, Dan Hall, was entitled to limit liability when the boat in which he was a joint owner collided with another vessel while being operated by the co-owner and where Hall was not present.[18]

Hall and Moeller were the joint owners of a fishing boat, which was purchased for $12,500; both men owned an equal interest in the boat—$6,250.[19] On October 15, 1994, Moeller, an employee of Ballard's Resort, took two guests out on the boat on a duck-hunting venture; Hall was not present.[20] While traveling on a navigable waterway, the fishing boat collided with a

[17] Fed.R.Civ.P.Supp. F(8).
[18] *Gary Moeller, et al. v. Mark Mulvey, et al.*, 1997 AMC 2486, 959 F. Supp. 1103 (D.Minn. 1996).
[19] *Id.* at 2487
[20] *Id*. at 2487

watercraft owned by Mulvey.[21] As a result of the collision, one of the guests was killed and the second was injured.[22]

Hall filed a Petition for Limitation of Liability and sought summary judgment seeking to limit his liability to $6,250—the value of his ownership interest in the fishing boat.[23] The court discussed three elements that Hall was required to satisfy in order to succeed on his motion for summary judgment: (1) that the collision occurred on a "navigable waterway"; (2) that the collision occurred without his "privity or knowledge"; and (3) that the fishing boat was a "vessel" within the meaning of the Limitation Act.[24]

With respect to the first issue, "navigable waterway," the parties stipulated that the collision occurred on a "navigable waterway," and the court concurred.[25] In regards to the second issue, "privity or knowledge" the court found that Hall was without "privity or knowledge," as he had no foreknowledge or involvement with the duck hunting adventure, the fishing boat was found to be seaworthy and properly equipped prior to the accident, and the Respondents offered no evidence to rebut either finding.[26] Finally, the court found that the fishing boat was a "vessel" within the meaning of the Act, citing the Supreme Court decisions in *Coryell v. Phipps* (applying the Limitation Act to a thirty-three foot cruiser); *Just v. Chambers* (pleasure yacht); and *Spencer Kellogg v. Hicks* (motor launch).[27]

Accordingly, the court held that Hall, "having satisfied his burden, and having demonstrated that he [was] qualified to receive the protections afforded to 'innocent' vessel

[21] *Id.* at 2488
[22] *Id.* at 2488
[23] *Id.* at 2488
[24] *Id.* at 2490
[25] *Id.* at 2491
[26] *Id.* at 2491
[27] *Id.* at 2492

owners, under the Limitation Act,…[was] entitled to summary judgment…."[28] Hall's financial liability arising from the collision was limited to $6,250—his one half interest.[29]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—personal injury; type of vessel—pleasure craft; type of claimant—personal injury/death.

Gautreaux v. Scurlock Marine
United States Court of Appeals for the Fifth Circuit

Brought on appeal from the United States District Court for the Eastern District of Louisiana, appellant, Scurlock Marine ("Scurlock"), sought reversal of the district court's denial of his petition for limitation of liability.[30]

This action arose out of an accident occurring on the BROOKE LYNN, an inland pushboat.[31] Charles Gautreaux, the vessel's relief captain, sued his employer, Scurlock, after sustaining injuries while attempting to relieve tension in the boat's tow wires by unwinding them from the winches.[32] As the electric winch would not work, Gautreaux attached the manual crank handle to the winch motor, and while simultaneously pressing the electric ignition switch, began turning the handle.[33] When the motor started, the manual crank handle flew off and struck him on the right side of his face, crushing his right eye and inflicting other severe lacerations and fractures.[34] Gautreaux alleged negligence and unseaworthiness, claiming that Scurlock "failed to

[28] *Id.* at 2496
[29] *Id.* at 2496
[30] *Gautreaux v. Scurlock Marine,* 84 F.3d 776, 1997 AMC 1534 (5th Cir. 1996).
[31] *Id.* at 778
[32] *Id.* at 779
[33] *Id.* at 779
[34] *Id.* at 779

properly train him in the use and operation of the electric towing winch and its manual crank handle, thereby not providing him a safe place to work."[35]

After a jury trial, which returned a verdict in favor of Gautreaux on his Jones Act negligence claim, but found the BROOKE LYNN seaworthy, the district court denied Scurlock's petition for limitation of liability.[36] The denial was based on a finding that the evidence established that Scurlock negligently failed to train Gautreaux in the proper operation of the electric winch, and, as such, partly caused his injuries.[37] Additionally, the district court found that Scurlock was accountable for the actions of its managing officer and owner, Archie Scurlock, who failed to properly train Gautreaux.[38]

Noting that "the district court's findings about negligence, unseaworthiness, privity, and knowledge are considered on appeal to be factual findings subject to review under the clearly erroneous standard[,]"[39] the Fifth Circuit held that the district court did not err in finding privity or knowledge on the part of Scurlock and denying its petition for limitation of liability. This is because "a corporate vessel owner is charged with the privity or knowledge of its managing officers whose scope of authority includes supervision of that part of the business out of which the loss occurred."[40]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—tug/barge; type of claimant—personal injury/death; reason for denying limitation—failure of evidence to prove no privity and knowledge.

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[35] *Id.* at 779
[36] *Id.* at 779
[37] *Id.* at 783
[38] *Id.* at 783
[39] *Id.* at 784
[40] *Id.* at 784

Warrior & Gulf Navigation Co.
United States District Court for the Southern District of Alabama, Southern Division

Heard before the court on a bench trial, Henry Marine Services, Inc., a tow company, sought limitation of liability after losing four barges and coal cargo while in tow during inclement weather.[41]

This action arose out of an incident occurring during the performance of a contract of affreightment between Warrior & Gulf Navigation Company ("WGN") and Henry Marine to provide towing services for coal on WGN barges.[42] In February of 1994, the coal was loaded onto four barges, and the M/V MARY SUE, a tugboat owned and operated by Henry Marine, took the four barges on a voyage from Mobile, Alabama to Pensacola, Florida.[43] Due to severe weather, the vessel and barges were held up at the Big Lagoon, west of the Pensacola Pass—the most treacherous part of the voyage.[44] One member of the crew, pilot David Blakeny, contacted Allen Henry, president and sole shareholder of Henry Marine, for navigational advice.[45] Henry offered no such advice, and left the decision of whether to negotiate the Pensacola Pass in the face of severe weather conditions solely to the discretion of Blakeny.[46]

In an effort to determine the conditions of the sea in the Pensacola Pass, Blakeny maneuvered into the Land Cut and, after deciding the conditions were too rough to traverse through the Pensacola Pass, he unsuccessfully attempted to reverse the forward movement of the fleet back into the Big Lagoon due to the strong current, and the tow grounded.[47] The court found that during this time the captain was in the galley eating dinner, and although aware of the

[41] *Warrior & Gulf Navigation Co.*, 1996 U.S. Dist. LEXIS 19592, 1997 AMC 1432 (S.D. Ala. 1996).
[42] *Id*. at 6
[43] *Id*. at 6
[44] *Id*. at 9
[45] *Id*. at 10
[46] *Id*. at 10
[47] *Id*. at 10

severe weather conditions, never bothered to monitor them on the radio.[48] Additionally, the captain never left the galley to discuss the situation with Blakeny, who was less experienced, nor did he ever attempt to take control of the vessel.[49]

After the tow had been grounded for an hour, Blakeny was able to free the MARY SUE from the stern barge and then went to the lead barge to ultimately work the tow off the ground.[50] Not having enough power to reverse back into the Big Lagoon, Blakeny decided to attempt to cross the Pensacola Pass, despite the severe weather, because he, admittedly, did not want to have to report the grounding to the U.S. Coast Guard.[51] Predictably, upon entering the Pensacola Pass, the tide swept the barges and tow out towards the Gulf of Mexico where the barges were broken apart by the rough seas.[52] Subsequent to being cut lose in order to save the MARY SUE, four barges sank near the entrance to the Pensacola Pass.[53]

The court held that Henry Marine was not entitled to either exoneration or limitation of liability under the Limitation Act.[54] "Because the shipowner has a non-delegable duty to provide a competent master and crew, unseaworthiness can be caused by insufficient manning of the vessel or an incompetent crew."[55] Many factors went into the court's determination, including Blakeny's incompetent decision making under the circumstances of severe weather; incompetent and inexperienced deckhands who were unable to assist the vessel; the incompetence of the captain who did not monitored the weather, did not stop eating his dinner in order to render aid, and did not order a lookout.[56] Ultimately, the court found "that the entire crew of the MARY

[48] *Id*. at 11
[49] *Id*. at 11
[50] *Id*. at 11
[51] *Id*. at 11
[52] *Id*. at 11
[53] *Id*. at 12
[54] *Id*. at 13
[55] *Id*. at 15
[56] *Id*. at 17-19

SUE was so incompetent that the MARY SUE was an unseaworthy vessel."[57] Furthermore, "a key contributing factor to the crew's incompetence and hence the vessel's unseaworthiness [was] the absence of any meaningful training or the implementation of proper procedures for the safe navigation of the vessel."[58] "Such a lack of training by Henry Marine clearly contributed to the unseaworthiness of the vessel."[59]

After establishing that the vessel was unseaworthy, the court next turned to the inquiry of weather Henry Marine was in privity or knowledge of the conditions that led to the loss of the barges.[60] Reasoning "when a shipowner neglects to provide adequate training [] it is in privity and knowledge of the crew's negligence and the vessel's unseaworthiness,"[61] the court found that because the crew was not adequately trained, Henry Marine had contributed to the loss of the barges.[62] Additionally, Henry Marine was found to have privity and knowledge of the weather and water conditions that contributed to the sinking of the barges as well as privity and knowledge through its failure to exercise due diligence in selecting a competent crew and failure to train in adequate safety and navigational procedures.[63] Accordingly, Henry Marine's petition for limitation of liability was denied.[64]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—sinking; type of vessel—tug/barge; type of claimant—cargo; reason for denying limitation— failure to provide or insure adequate & proper operations, equipment, or crew.

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[57] *Id*. at 22
[58] *Id*. at 23
[59] *Id*. at 24
[60] *Id*. at 27
[61] *Id*. at 28
[62] *Id*. at 28
[63] *Id*. at 29
[64] *Id*. at 36

Howell v. American Casualty Co.
Court of Appeal of Louisiana, Fourth Circuit

Brought on appeal, Chevron U.S.A., Inc. ("Chevron"), owner of the self-propelled barge M/V BIG JIM, sought to raise limitation as a defense in a state court action absent a concursus limitation proceeding in federal admiralty court.[65]

This case arose out of a maritime personal injury action, where plaintiff, Finley Richard Howell, employee of Tilden J. Elliott Contractors, Inc. ("Elliott") and the crane operator for the M/V BIG JIM, suffered a back injury while placing a hatch cover on one of Chevron's platforms on April 20, 1988.[66] Following the injury, Howell suffered extreme back pain and underwent spinal surgery, ultimately finding himself out of work with Elliott and no longer receiving maintenance and cure payments.[67] After seeking reinstatement of maintenance and cure, a request that was refused, Howell filed suit against Elliott and their insurers as well as Chevron.[68] Chevron denied status as a Jones Act employer, denied vicarious liability, and sought to limit its liability to the value of the BIG JIM through an affirmative defense, but did not file a concursus limitation proceeding in federal court.[69]

After a bench trial, the trial court found in favor of Howell and against all of the defendants.[70] The court found Chevron to be a "borrowing employer" of Elliott's employees and therefore a Jones Act employer.[71] Additionally, the trial court held that it lack jurisdiction to consider Chevron's limitation of liability defense.[72]

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[65] *Howell v. American Cas. Co.*, 691 So. 2d 715, 1997 AMC 1739 (4th Cir. 1997).
[66] *Id*. at 719
[67] *Id*. at 720
[68] *Id*. at 720
[69] *Id*. at 720
[70] *Id*. at 720
[71] *Id*. at 720
[72] *Id*. at 720

On appeal, the court affirmed the trial court's holding that Chevron was a "borrowing employer" of Howell; however, the appellate court also held that "state courts do have jurisdiction to consider a defense of limitation of liability…even absent a federal court limitation concursus proceeding."[73] Because no party argued that the accident occurred with Chevron's privity or knowledge, indeed no Chevron representative was on board at the time of the accident, Chevron's liability was limited to the value of the BIG JIM at the time of the incident—$125,000.[74]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—personal injury; type of vessel—tug/barge; type of claimant—personal injury/death.

Silver Fox, Inc., et al. Limitation Proceedings, Silver Fox II
United States District Court, District of Alaska

Brought on a motion for summary judgment, plaintiffs Peter and Linda Udelhoven ("the Udelhovens"), 50 percent owners of Silver Fox Inc., sought exoneration or limitation of liability for claims or damages arising from the voyage of the *Silver Fox II*—a thirty-foot fiberglass-plastic vessel.[75]

On May 1, 1995, the Udelhovens demise chartered the *Silver Fox II* to Silver Fox, Inc. for a one-year period.[76] In late June of the same year, the *Silver Fox II* departed from Homer, Alaska to embark on a sport fishing voyage.[77] Two of the passengers on the trip, Jim and George Masten ("the Mastens") filed suit against the Udelhovens, individually and d/b/a/ Silver Fox Charters, alleging injuries during the voyage aboard the *Silver Fox II* when the vessel's captain,

[73] *Id*. at 720-721
[74] *Id*. at 721
[75] *Silver Fox Inc., et al. Limitation Proceedings, Silver Fox II*, 1998 AMC 2623 (D. Alaska 1998).
[76] *Id*. at 2623
[77] *Id*. at 2624

Dennis Findlayson, steered the *Silver Fox II* through a rip.[78] While in the rip, the Mastens hit the ceiling of the vessel's cabin when the *Silver Fox II* "went up the sloped front-side of a two-to three-foot wave that had no slope on the back side…[and] dropped vertically down the back-side of the wave."[79]

The court began by analyzing the cause of the accident—alleged negligence on the part of Captain Findlayson—including "moving at an unsafe speed, failing to warn of an approaching backless wave, and deciding to cross rough seas."[80] Next, the court inquired into weather Silver Fox, Inc. had "privity or knowledge" of the cause.[81] Determining that Captain Findlayson clearing had privity and knowledge of the negligent acts he committed, the discussion turned to whether this privity and knowledge was imputed to Silver Fox, Inc.[82]

> [T]he requisite privity of knowledge can be attributed to the owner only by the acts of its employees. The significant classification, therefore, is between those employees with sufficient managerial authority to bind the corporation, . . . as distinguished from those employees having no general powers of superintendence over the whole or a particular part of the business. In short, the inquiry must focus on whether the negligence is that of "managing officers" or, more properly, "supervisory employees." The title or rank of these employees is, by itself, of limited value in determining on which side of the line a particular case falls. While this may be one factor, "the real test is not as to their being officers in a strict sense but as to the largeness of their authority."[83]

When looking to the "managerial authority" of Captain Findlayson, the court noted that "[h]e was not in charge of recruiting or booking passengers, scheduling charters, or any financial aspect of the business."[84] Furthermore, he neither hired nor surpervised other Silver Fox, Inc.

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[78] *Id*. at 2629
[79] *Id*. at 2629
[80] *Id*. at 2631
[81] *Id*. at 2631
[82] *Id*. at 2632
[83] *Id*. at 2632
[84] *Id*. at 2632

employees.[85] Although he was engaged in operational decisions, he did not make managerial decisions.[86] Because the purpose of the Limitation Act is to protect "the physically remote owner, who after the ship breaks ground has no effective control over his waterborne servants,"[87] the court found that Captain Findlayson's privity and knowledge was not imputed to Silver Fox, Inc.[88] Additionally, the court found Captain Findlayson to be a competent and adequate master, and despite his negligence, Silver Fox, Inc. was entitled to rely on his judgment.[89] Accordingly, the motion to limit liability was granted.[90]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—personal injury; type of vessel—passenger vessel-small; type of claimant—personal injury/death.

Palmer Johnson Savannah, Inc. Limitation Proceedings
United States District Court for the Southern District of Georgia, Savannah Division

Petitioner, owner of the Palmer Johnson boat basin repair facility, sought relief on a motion for summary judgment for exoneration or limitation of liability for damages arising out of an accident occurring when a tugboat broke away from the dock and rammed into three luxury yachts.[91]

On April 5, 1996, Roger Morton, an employee of the Petitioner, secured the tugboat PALMER JOHNSON to a dock with three lines and left the vessel's engine running and propeller turning during the process of agitation dredging.[92] After leaving the tugboat

[85] *Id*. at 2632
[86] *Id*. at 2632
[87] *Id*. at 2633
[88] *Id*. at 2633
[89] *Id*. at 2633
[90] *Id*. at 2637
[91] *Palmer Johnson Savannah, Inc.*, 1 F. Supp. 2d 1377, 1998 AMC 386 (S.D. Ga. 1997).
[92] *Id*. at 1380

unattended, the lines that had the vessel secured to the dock snapped, causing the vessel to break free from the dock and crash, unmanned, into three luxury yachts, which were moored to Petitioner's dock with his consent.[93]

Beginning with whether the "acts of negligence or conditions of unseaworthiness caused the accident,"[94] the court quickly dispensed of this question in the affirmative, determining that Petitioner "admitted that Morton's negligence (leaving the PALMER JOHNSON running and unattended) caused the damage to the vessels owned by Claimants."[95] Additionally, the court found that the lines used to moor the tugboat were unseaworthy, as demonstrated by their failure, because "[i]f a ship's equipment breaks under normal use, the logical inference that follows is that the equipment was defective."[96]

After having established negligence, the court turned to whether the Petitioner had privity or knowledge of such negligence.[97] Concluding that the benefits of the Limitation Act were unavailable to Petitioner, the court reasoned that "a shipowner may not limit his liability under the [L]imitation [A]ct if his ship is unseaworthy due to equipment which was defective at the start of the voyage. He is charged with knowledge of the existence of that condition."[98] In any event, the court also noted that even if the tugboat was seaworthy, Morton's privity or knowledge could be imputed to Petitioner because Morton was a "supervising authority" of the corporation.[99] Furthermore, the court found that Petitioner "failed to properly trained Morton on how to perform the agitation dredging," and that this was not the first time Morton, or other

[93] *Id*. at 1380
[94] *Id*. at 1383
[95] *Id*. at 1383
[96] *Id*. at 1383
[97] *Id*. at 1384
[98] *Id*. at 1384
[99] *Id*. at 1384

employees, had left a moored tug unmanned during agitation dredging.[100] As such, Petitioner's motion for exoneration or limitation of liability was denied.[101]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—property damage; reason for denying limitation—failure to provide or insure adequate & proper operations, equipment, or crew; improper operation of vessel by owner or knowledge of; and failure of evidence to prove no privity and knowledge.

Carr v. PMS Fishing Corporation
United States Court of Appeals for the First Circuit

This case was brought on appeal by Patrick Carr, a commercial fisherman who was injured when the F/V JANE & URSULA, a wooden-hulled scalloper, began to sink and he was struck by a rescue basket suspended from a Coast Guard helicopter that snapped from its cable.[102] The parties stipulated that the vessel was unseaworthy when it sank; the trial court determined that this unseaworthiness was the proximate cause of Carr's injuries, and that his employer, PMS Fishing Corporation ("PMS") was liable.[103]

Carr's claim was that the district court misapplied the law when it did not require PMS to prove that it lacked privity or knowledge of the unseaworthiness.[104] Here, the vessel sank due to a leak thought to have occurred in the engine room, but the exact location could not be determined with certainty.[105] Thus, the lower court found that general cause of the sinking was the unseaworthiness of the vessel, without any more specific details.[106] As such, the trial court

[100] *Id*. at 1385
[101] *Id*. at 1385
[102] *Carr v. PMS Fishing Corp.*, 191 F.3d 1, 1999 AMC 2958 (1st Cir. 1999).
[103] *Id*. at 3
[104] *Id*. at 5
[105] *Id*. at 6
[106] *Id*. at 6

asked whether lacked any knowledge—actual or constructive—of the vessel's generic unseaworthiness, and determined the answer in the affirmative.[107] The First Circuit agreed with the reasoning that PMS was not required to show "that it lacked knowledge as to any and all possible causes of the sinking,"[108] because "the specificity of the claimant's proof in the first stage of the LOL proceeding determines the level of specificity at which the defendant's second-stage proof must operate."[109] Accordingly, the judgment granting PMS' limitation of liability was affirmed.[110]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—personal injury; type of vessel—fishing vessel; type of claimant—personal injury/death.

In re TT Boat Corporation Limitation Proceedings
United States District Court for the Eastern District of Louisiana

Liability defendant, TT Boat Corporation and Tidewater Marine, Inc. (together, "Tidewater"), owners of the tug GULF CAJUN, filed a petition for exoneration or limitation of liability after the barge that the GULF CAJUN was pushing collided with plaintiff's, Walter Oil & Gas ("Walter"), fixed offshore oil platform.[111] Due to the allision, the platform caught fire and persons aboard the barge and the platform were injured.[112]

Testimony from the crew about the weather was conflicting—some accounts recalling thick fog and poor vision, while others recalled it being clear early on and low visibility occurring later in the day.[113] This was an important fact for the court because First Mate Winston

[107] *Id*. at 6
[108] *Id*. at 6
[109] *Id*. at 6
[110] *Id*. at 7-8
[111] *In re TT Boat Corp.*, 1999 U.S. Dist. LEXIS 5627, 1999 AMC 2776 (E.D. La 1999).
[112] *Id*. at 5
[113] *Id*. at 5

Carter alleged that about a half hour before the accident he experienced radar clutter.[114] Because of the problems with the radar, Carter testified that he was distracted and veered off course.[115] Once he realized that he was off course, Carter did not stop the tow, but instead continued onward despite company policy that, "captains and mates should not proceed in zero visibility, but rather should stop the boat or reduce the speed to bare steerage."[116] The court found that had Carter stopped or slowed the vessel, the allision would not have occurred.[117] Additionally, the court also found that the vessel did not have up to date nautical charts and that Tidewater management did not have a system in place to inspect the charts on its vessels.[118] This made the vessel unseaworthy, which was a cause of the allision.[119]

Because the allision was caused in part by the negligent acts of its employees, Tidewater was not entitled to exoneration.[120] Furthermore, the court held that Tidewater had privity and knowledge of the unseaworthiness of the Gulf Cajun and was thus not entitled to limit its liability.[121] The court found that the captain of the tug knew that updated charts were not on board when the voyage began, and this knowledge was imputed to Tidewater.[122] However, regardless of the captain's personal knowledge the court stated that, "[t]he duty of an owner to make its vessel seaworthy is nondelegable, and the fact that the crew is aware of the defects does not transform unseaworthiness into bad seamanship."[123] Furthermore, "[t]he nondelegable duty to provide a vessel with updated charts requires an owner to 'periodically check to see' if the

[114] *Id*. at 7
[115] *Id*. at 9
[116] *Id*. at 10
[117] *Id*. at 11
[118] *Id*. at 11-12
[119] *Id*. at 17
[120] *Id*. at 25
[121] *Id*. at 33
[122] *Id*. at 36
[123] *Id*. at 41

system in place to update the charts is "functioning properly."[124] Accordingly, limitation was denied.[125]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—cargo and/or property damage and personal injury; reason for denying limitation— failure to provide or insure adequate & proper operations, equipment, or crew; and failure of evidence to prove no privity and knowledge.

Karim v. Finch Shipping Company
United States District Court for the Eastern District of Louisiana

Liability defendant vessel owner, Finch Shipping Company ("Finch"), filed a petition for exoneration or limitation of liability from damages sustained by plaintiff seaman, Fazal Karim, when he was injured while working aboard the foreign flagged bulk cargo vessel M/V LOUSIO.[126]

On August 17, 1995, Karim suffered a fall when he proceeded down a ladder, which was covered in wet coal dust from other crew members, to reenter the hold, and his foot slipped while making the transition from the sloped sheet to the pigeon hole ladder.[127] Falling twenty to thirty feet to the bottom of the hold, Karim "fractured his lumbar vertebrae and hip, pelvis, leg, ankle, heel, and wrist on his left side. Additionally, [he] suffered several herniated discs in his back and neck as well as a detached retina in his right eye."[128] Unable to be transported off the vessel to a hospital by helicopter due to an impending tropical storm, the captain sailed for nine days from

[124] *Id*. at 41
[125] *Id*. at 43
[126] *Karim v. Finch Shipping Co.*, 94 F. Supp. 2d 727, 2000 AMC 1617 (E.D. La 2000).
[127] *Id*. at 731
[128] *Id*. at 731

Bermuda to New Orleans while Karim was in excruciating pain.[129] Upon arrival, he was transported off the vessel by helicopter and able to receive medical treatment at a hospital.[130] In November, Karim brought suit against Finch in the Civil District Court for the Parish of Orleans.[131] Finch then filed a petition for limitation.[132]

First, the court determined what acts of negligence or unseaworthiness caused the accident.[133] The court found that the slippery conditions of the ladder steps was the proximate cause of the fall, a condition that "resulted from the negligent actions of fellow crew members in tracking coal dust onto the rungs of the ladder or failing to remove it."[134] This rendered the ladder unseaworthy.[135]

Next, the court determined whether the unseaworthy condition was without Finch's privity or knowledge.[136] The court quickly found that Finch did not have privity or knowledge of the ladder's unseaworthy condition.[137] Thus, Finch was entitled to limit its liability.[138]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—personal injury; type of vessel—ocean cargo vessel; type of claimant—personal injury/death; nationality of vessel—foreign; nationality of claimant—foreign.

Birmingham Southeast v. M/V Merchant Patriot
United States District Court for the Southern District of Georgia, Savannah Division

Before the court on a bench trial, Cenargo Navigation Ltd ("Cenargo") owner of the M/V MERCHANT PATRIOT, a general cargo vessel, sought limitation of liability after cargo was

[129] *Id*. at 732
[130] *Id*. at 732
[131] *Id*. at 732
[132] *Id*. at 732
[133] *Id*. at 734
[134] *Id*. at 735
[135] *Id*. at 735
[136] *Id*. at 735
[137] *Id*. at 735
[138] *Id*. at 735

lost overboard or damaged when a failed pipe in the seawater circulating system caused the engine room to flood.[139]

The court found that the failed pipe was both externally and internally corroded, wasted, and holed in numerous locations.[140] The corrosion did not arise during the voyage in question, but rather, occurred over a long period of time.[141] Cenargo stated that they were not aware of the pipe's condition, but had they been, the pipe should have been renewed before the commencement of the voyage.[142] The court also found that the poor condition of the pipe would have been identified, and appropriate action could have been taken, if due diligence had been exercised to make the vessel seaworthy prior to the start of the voyage.[143] Because no such action was taken, the vessel was unseaworthy at the commencement of the voyage.[144]

> The unseaworthy condition of the M/V MERCHANT PATRIOT, i.e., the deteriorated and wasted condition of certain pipes in the seawater circulating system, caused the flooding of the engine room and the contamination of the lube oil. This resulted in the shutdown of the main engine, which then resulted in the abandonment of the ship, loss of deck cargo and damage to deck cargo.[145]

Cenargo was found to have privity of the conditions that caused the casualty because: "there was no effective system for creating an historical record of critical information about the seawater piping and ensuring that the information was provided to those who were assigned the responsibility of overseeing vessel maintenance"[146]; "there was no planned system in effect for

[139] *Birmingham Southeast v. M/V Merch. Patriot*, 124 F. Supp. 2d 1327, 2000 AMC 1015 (S.D. Ga. 2000).
[140] *Id*. at 1334
[141] *Id*. at 1335
[142] *Id*. at 1335
[143] *Id*. at 1335
[144] *Id*. at 1335
[145] *Id*. at 1335
[146] *Id*. at 1335

the inspection and maintenance of the seawater piping system"[147]; "there was a failure to exercise reasonable oversight"[148]; a "corrosion report put the petitioners on notice that galvanic corrosion is a significant problem with regard to seawater piping"[149]; "the type of inspection that the petitioners employed was insufficient and unreasonable"[150]; and "[n]othing was done to impede the progress of corrosion."[151]

Because the unseaworthiness of the vessel was partially responsible for the damaged cargo, and because Cenargo admitted that the failed pipe was a contributing cause, the petitioners failed to meet their burden to prove lack of privity or knowledge and limitation of liability was denied.[152]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—cargo damage; type of vessel—ocean cargo vessel; type of claimant—cargo; nationality of vessel—foreign; nationality of claimant—combined/unknown; reason for denying limitation—failure of evidence to prove no privity and knowledge.

In re National Shipping Company of Saudi Arabia
United States District Court for the Eastern District of Virginia, Norfolk Division

The National Shipping Company of Saudi Arabia ("NSCSA"), owner of the M/V SAUDI RIYADH, commenced a limitation proceeding after two vessels collided on a clear night in the open ocean.[153]

On February 4, 1999, the U.S.S. ARTHUR W. RADFORD, a U.S. Navy destroyer, and the M/V SAUDI RIYADH collided off the coast of Virginia after the SAUDI RIYADH

[147] *Id*. at 1335
[148] *Id*. at 1336
[149] *Id*. at 1336
[150] *Id*. at 1336
[151] *Id*. at 1337
[152] *Id*. at 1337
[153] *In re National Shipping Co. of Saudi Arabia*, 147 F. Supp. 2d 425, 2001 AMC 235 (E.D. Va. 2000).

negligently failed to comply with COLREGS Rules 8 and 16.[154] "As the give-way vessel in a crossing situation, the SAUDI RIYADH was obligated by Rule 16…to take 'early and substantial action' to keep well clear of the RADFORD."[155] Rule 8 obligated the SAUDI RIYADH to alter course and/or speed in ample time and in such a way that is readily apparent and results in passing at a safe distance.[156] Because the SAUDI RIYADH did not reduce its speed and did not maneuver in a way that was readily apparent, but instead made short alterations in violation of the COLREGS, the court found the vessel's failure to comply with its obligations a substantial and proximate cause of the collision.[157]

The court also found that the RADFORD substantially contributed to the collision when it failed to maintain a proper lookout as required by Rule 5 and failed to take action to avoid the collision when it became apparent that the give-way vessel, the SAUDI RIYADH, was not taking the appropriate action, as required by Rule 17(b).[158] However, because the SAUDI RIYADH was the give-way vessel, and was aware of the circumstances giving rise to the danger, the court found it to be primarily responsible and found it to be 65% at fault.[159]

The ability of the NSCSA to limit liability turned on whether they "took appropriate steps to ensure, and reasonably believed that the SAUDI RIYADH was well-manned with a competent third-mate."[160] While it was argued that the crewing agent hired by NSCSA was negligent in recommending a low scoring third mate, the court found that NSCSA "exercised due care in the selection of [the third mate] and did not have reason to believe that [he] would commit the

[154] *Id*. at 430
[155] *Id*. at 436
[156] *Id*. at 437
[157] *Id*. at 438
[158] *Id*. at 439
[159] *Id*. at 440
[160] *Id*. at 445

navigational errors that gave rise to the collision with the RADFORD."[161] Accordingly, limitation was granted.[162]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—allision/collision; type of vessel—miscellaneous; type of claimant—property damage.

Hellenic Inc. v. Bridgeline Gas Distribution LLC
United States Court of Appeals for the Fifth Circuit

Appellant, Hellenic, Inc., appealed a denial of its petition for limitation of liability from the district court for damage caused to a submerged pipeline by one of its employees, arguing that the company lacked "privity and knowledge."[163]

This case arose out of an incident occurring on February 7, 1997, when a "spud barge" owned by a division of Hellenic Inc. struck and ruptured a natural gas pipeline owned by Bridgeline Gas Distribution LLC.[164] The event took place after a construction superintendent made the decision to leave the barge unmanned.[165] Following a bench trial, the district court denied Hellenic's petition for limitation of liability.[166]

The Fifth Circuit undertook a "without privity or knowledge" analysis of the facts, noting that "if the shipowner is a corporation, 'knowledge is judged by what the corporation's managing agents knew or should have knows with respect to the conditions or actions likely to cause the loss.'"[167] The dispositive question was whether the construction superintendent's position in the

[161] *Id*. at 446
[162] *Id*. at 446
[163] *Hellenic Inc. v. Bridgeline Gas Distrib. LLC*, 252 F.3d 391, 2001 AMC 1835 (5th Cir. 2001).
[164] *Id*. at 393
[165] *Id*. at 393
[166] *Id*. at 394
[167] *Id*. at 394

corporate hierarchy was sufficiently elevated to impute privity and knowledge.[168] As seen in other cases, the court inquired into his "managing authority" to determine if his held status as a "managing agent."[169] Ultimately, the Fifth Circuit found that "although he may have possessed significant power of the management of an individual job, [he] could not make 'basic business decisions'…Because he lacked this broader authority over business decisions undertaken by the corporation, [he] did not possess managing authority over 'the field of operations in which the negligence occurred.'"[170] Accordingly, the court found the district court's ruling to be clearly erroneous and reversed the denial of limitation.[171]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—property damage.

In re Bay Runner Rentals, Inc.
United States District Court for the District of Maryland

Bay Runner, a personal watercraft ("PWC") rental company, sought exoneration or limitation of liability after a customer collided into a bulkhead when the PWC would not steer due to the throttle being released.[172]

The dispositive issue in this case is whether Bay Runner was negligent in failing to warn PWC renter, Mr. Goldberg, that the watercraft would not steer if the throttle was released; a fact within Bay Runner's privity and knowledge, and thus a bar to limitation.[173] In making its determination, the court found that the PWC manual clearly stated that, "[c]ompletely releasing

[168] *Id*. at 396
[169] *Id*. at 396
[170] *Id*. at 398
[171] *Id*. at 398
[172] *In re Bay Runner Rentals, Inc.*, 113 F. Supp. 2d 795, 2001 AMC 894 (D. Md. 2000).
[173] *Id*. at 797

the throttle control lever returns the engine to idle and eliminates all steering capabilities. WARNING: If the engine is not running or the throttle control lever is released, steering is impossible."[174]

Additionally, Arctic Cat, the manufacturer, "provided Bay Runner with a seven-minute video entitled 'Play It Safe' that among other things demonstrated the lack of steering capabilities when the throttle control lever was released."[175] However, Bay Runner did not show this video to their customers.[176] Furthermore, the employees that Bay Runner relied upon to provide safety information to customers "ranged in ages from sixteen to twenty-two years old."[177]

Ultimately, the court found that Bay Runner's failure to provide adequate instructions regarding the proper use of the PWC and their deficient program for instructing renters were the negligent acts that proximately caused the accident.[178] Because they relied upon a sixteen-year-old dock boy to convey safety instructions and lacked a system of relaying safety protocols, Bay Runner could not prove that it was without privity or knowledge.[179] Accordingly, limitation was denied.[180]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—pleasure craft; type of claimant—personal injury/death; reason for denying limitation—failure of evidence to prove no privity and knowledge.

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[174] *Id*. at 799
[175] *Id*. at 799
[176] *Id*. at 799
[177] *Id*. at 800
[178] *Id*. at 805
[179] *Id*. at 806
[180] *Id*. at 808

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Cape Fear, Inc. v. Martin
United States Court of Appeals for the First Circuit

The owner of the F/V Cape Fear, a clamming vessel, appeals the ruling of the United States District Court for the District of Massachusetts denying his petition for limitation and finding that his vessel was unseaworthy, which caused the sinking that led to the death of two crewmembers.[181]

In January of 1999, the F/V CAPE FEAR was on a routine clamming trip when it encountered a storm on its was back to port.[182] The vessel began to take on water, and crewmembers proceeded to abandon ship.[183] Two members of the crew died—one whose body was never discovered.[184] The district court found that the CAPE FEAR "was unseaworthy because [it was] substantially overloaded with claims in cages, a practice that had become common…."[185] Ultimately, it concluded that, "the heavy load, which weighed the boat down and risked its stability, was the primary reason the boat capsized in the rough conditions it encountered on its last voyage." [186] As such, the owner was strictly liable for the casualties.[187]

The First Circuit began its analysis by nothing that "[a] ship owner has an absolute duty to provide a seaworthy vessel, and this duty extends beyond the physical integrity of the vessel and its equipment to such other circumstances as the procedures crewmembers are instructed to use for assigned tasks."[188] The ship owner conceded that if the vessel were overloaded, the court

[181] *Cape Fear, Inc. v. Martin*, 312 F.3d 496, 2002 AMC 2733 (1st Cir. 2002).
[182] *Id*. at 497
[183] *Id*. at 498
[184] *Id*. at 498
[185] *Id*. at 498
[186] *Id*. at 498
[187] *Id*. at 498
[188] *Id*. at 500

could properly find that it breached its duty of seaworthiness; however, the owner argued that the boat was not in fact overloaded.[189]

After a review of the expert testimony at trial, the First Circuit found no clear error in the district court's holding, and found that there was ample support for the conclusion in the record.[190] Additionally, the First Circuit determined that because Cape Fear Inc.'s principal officer approved the amount of cages loaded onto the boat, a lack of privity or knowledge could not be found.[191] Accordingly, the district court's denial of limitation was affirmed.[192]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—fishing vessel; type of claimant—personal injury/death; reason for denying limitation—failure of evidence to prove no privity and knowledge.

In re Western Pioneer, Inc.
United States District Court for the Western District of Washington, Seattle Division

Western Pioneer, Inc., owner of the BOWFIN, a yard oiler, sought to limit its liability after the BOWFIN collided with the LUCKY BUCK, a fish-processing barge being towed by the NORMA JEAN in Puget Sound.[193]

Although the weather was clear, the master of the BOWFIN "made no effort to locate—visually, on radar, or otherwise—the tug and tows.[194] As a result [the master] never comprehended that the BOWFIN was on a collision course with the LUCKY BUCK.[195] [The

[189] *Id*. at 500
[190] *Id*. at 502
[191] *Id*. at 503
[192] *Id*. at 503
[193] *In re Western Pioneer, Inc.*, 2002 U.S. Dist. LEXIS 20242, 2002 AMC 1743 (W.D. Wash. 2002).
[194] *Id*. at 6
[195] *Id*. at 6

master] never altered the BOWFIN's course to avoid the collision."[196] The court found that if the master had either visually checked his location, or properly used his radar, he would have recognized that he was on a collision course.[197]

The court determined the issue of limitation by analyzing whether "the negligent acts or unseaworthy conditions that proximately caused the damage to the LUCKY BUCK were [] within [Western Pioneer's] privity or knowledge."[198] Noting that, "[i]f a master's or crew's spontaneous negligent navigational error causes a collision, the vessel owner lacks privity or knowledge of this negligence because the owner cannot control the vessel at sea."[199] What is dispositive for purposes of determining a lack of privity or knowledge is whether the owner hired a competent master.[200] Here, the court found that the master was competent; "[h]e was properly licensed, adequately trained and instructed, familiar with the waters of Puget Sound, and had a good safety record."[201]

Because the sole cause of the collision was "the spontaneous negligent navigational errors" of an otherwise competent master, Western Pioneer was found to have a lack of privity or knowledge.[202] Accordingly, limitation was granted.[203]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—property damage.

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[196] *Id*. at 6
[197] *Id*. at 6
[198] *Id*. at 7
[199] *Id*. at 10
[200] *Id*. at 10
[201] *Id*. at 11
[202] *Id*. at 12
[203] *Id*. at 12

In re American Milling Company
United States District Court for the Eastern District of Missouri

Limitation petitioners, American Milling Company and Winterville Marine Services ("Winterville"), sought exoneration or limitation of liability after barges being pulled by an inland river towboat allided with a bridge abutment.[204] As a result of this allision, several barges broke free and allided with a moored vessel, which situated a gambling casino.[205]

On April 4, 1998, the M/V ANNE HOLLY allided with the Eads Bridge, and her tow subsequently allided with the ADMIRAL; several individuals onboard the ADMIRAL alleged personal injuries and several of the barges alleged property and cargo damage.[206] Winterville was the marine service company that provided the crewing services for American Milling.[207] The captain of the M/V ANNE HOLLY, John Johnson ("Captain Johnson"), was an experienced pilot of thirty-years.[208] The accident occurred while Captain Johnson was navigating through the St. Louis Harbor.[209]

> As the third tier of barges proceeded through the Eads Bridge, the tow of the M/V ANNE HOLLY "stalled out". With the forward momentum of the tow stopped, combined with the strength of the current along the starboard side of the tow, the tow began to move toward the right descending (Missouri) pier of the Eads Bridge. Capt. Johnson pulled back the throttles, knocked the boat out of gear, tried to radio the ADMIRAL of his situation (failed to get an immediate response), and finally, attempted to land the tow on the Missouri pier of the Eads Bridge as "gently" as possible.[210]

[204] *In re Am. Milling Co.*, 270 F. Supp. 2d 1068, 2003 AMC 2645 (E.D. Mo. 2003).
[205] *Id*. at 1072
[206] *Id*. at 1072
[207] *Id*. at 1072
[208] *Id*. at 1077
[209] *Id*. at 1085
[210] *Id*. at 1085

The Coast Guard charged Captain Johnson with negligence for "failing to take adequate precautions to prevent an allision of subject vessel's tow [M/V ANNE HOLLY] with the Eads Bridge…."[211]

The court began the limitation analysis with a discussion of the Oregon rule, which creates a rebuttable presumption that a moving vessel, which collides with a stationary object, is at fault.[212] Although American Milling argued "inevitable accident," the court found that other tows with barges navigated that area of the river, in the same conditions and around the same time, without incident.[213] Because of these findings, the court concluded that American Milling failed to rebut the Oregon rule's presumption of negligence—a bar to exoneration, but not limitation.[214]

The court next turned to whether the claimants met their burden of proving negligence or unseaworthiness.[215] President Casino, owner of the ADMIRAL, argued that the M/V ANNE HOLLY was unseaworthy because Captain Johnson was incompetent, and the vessel lacked the proper horsepower to transit the Eads Bridge.[216] Noting that the "test and standard for a finding of negligence is reasonable care under the circumstances," the court determined that "…although negligent, Captain Johnson was not incompetent to pilot the M/V ANNE HOLLY….[,]" and "[a]fter listening to the experts on all sides…the M/V ANNE HOLLY was equipped to navigate…through the St. Louis Harbor."[217]

Having found that American Milling and Winterville supplied a seaworthy vessel and a competent crew, the court turned to whether the negligent acts of Captain Johnson rose to the

[211] *Id*. at 1086
[212] *Id*. at 1088
[213] *Id*. at 1091
[214] *Id*. at 1091
[215] *Id*. at 1091
[216] *Id*. at 1092
[217] *Id*. at 1094

level of incompetence such that it was within their privity or knowledge.[218] The court determined that "American Milling was reasonably prudent in hiring Winterville to employ the crew aboard the M/V ANNE HOLLY," and that "there was no showing that inadequate training directly contributed to the navigational errors committed by Captain Johnson…"[219] Because Captain Johnson was found to be a competent pilot, American Milling and Winterville were entitled to rely on his skill and experience.[220] Accordingly, both companies lacked the requisite privity or knowledge and were entitled to limit their liability.[221]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—cargo and/or property damage and personal injury. These entries will be recorded twice—once for American Milling Company and once for Winterville.

Trico Marine Assets Inc. v. Diamond B Marine
United States Court of Appeals for the Fifth Circuit

This case presents the appeal of Diamond B Marine's ("Diamond B") denial of exoneration and/or limitation of liability petition by the district court.[222]

On March 25, 1999, two vessels collided in the Mississippi River during foggy conditions—the C/B MISS BERNICE, owned by Diamond B and the O.S.V. CANE RIVER, owned by Trico.[223] The captain of the MISS BERNICE, knowing that visibility was extremely restricted, left from Venice, where the vessel was docked, without a lookout and without turning on his running lights.[224] Additionally, he had not been trained in using the vessel's radar unit,

[218] *Id*. at 1102
[219] *Id*. at 1103
[220] *Id*. at 1105
[221] *Id*. at 1106
[222] *Trico Marine Assets Inc v. Diamond B Marine Servs.*, 332 F.3d 779, 2003 AMC 1355 (5th Cir. 2003).
[223] *Id*. at 783
[224] *Id*. at 783

failed to check the vessel's navigation equipment, and ran at full speed without fog signals—impairing the ability of other vessels to hear.[225] Because the captain was not trained in using the radar device, as he was headed northbound, he failed to realize that the CANE RIVER, which was moving at a slow speed, was headed southbound.[226] Instead, he wrongly thought that the vessel was also headed northbound and that he was in an overtaking situation.[227] In fact, the MISS BERNICE and the CANE RIVER were on a collision course.[228]

Despite the CANE RIVER having a lookout and sounding fog signals, no one in the crew saw the MISS BERNICE approaching.[229] With neither vessel aware of the other, a bow-to-bow collision occurred, resulting in damage to both vessels and personal injury claims from the crew.[230] Finding that Diamond B had privity and knowledge of the captain's negligence, the district court entered judgment in favor of Trico and denied Diamond B's petition for exoneration and/or limitation.[231]

On appeal, Diamond B argued that the district court erred by not allowing it to limit its liability to the value of the MISS BERNICE.[232] Diamond B's claim was centered around the argument that "even though there were navigational errors made, all errors that led to the collision were simply due to their 'hands-off' approach to management."[233] The Fifth Circuit affirmed the findings that Diamond B failed to: (1) provide a lookout; (2) train the captain to use the radar; (3) evaluate the MISS BERNICE's seaworthiness or the captain's competence; (4)

[225] *Id*. at 783-784
[226] *Id*. at 784
[227] *Id*. at 784
[228] *Id*. at 784
[229] *Id*. at 785
[230] *Id*. at 785
[231] *Id*. at 785
[232] *Id*. at 789
[233] *Id*. at 789

inspect the vessel logs; (5) employ a safety manager; and (6) provide safety training or manuals.[234]

Additionally, the Fifth Circuit noted that despite precedent that does not hold a vessel owner liable for mere errors in navigation, this case "presents far more than mere navigational errors."[235] Because Diamond B either knew or should have known that the MISS BERNICE was unseaworthy and the captain was not properly trained, the denial of limitation was affirmed.[236]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—property damage; type of vessel—miscellaneous; type of claimant—cargo and/or property damage and personal injury; reason for denying limitation—failure to provide or insure adequate & proper operations, equipment, or crew; improper operation of vessel by owner or knowledge of; and failure of evidence to prove no privity and knowledge.

Western Pioneer, Inc. v. Int'l Specialty, Inc. (In re Bowfin M/V)
United States Court of Appeals for the Ninth Circuit

International Specialty, Inc. appealed the decision of the district court granting Western Pioneer's (owner of the tug the BOWFIN) petition for limitation of liability following a collision in the Puget Sound between the tug and a barge.[237]

International Specialty argued that, "by admitting that its master was at fault, Western Pioneer assumed the burden of negating its privity or knowledge of other acts by its master."[238] The Ninth Circuit disagreed, stating that, "the claimant retains the burden of proving what act

[234] *Id*. at 790
[235] *Id*. at 790
[236] *Id*. at 790
[237] *Western Pioneer, Inc. v. Int'l Specialty, Inc.* 339 F.3d 1137, 2003 AMC 2272 (9th Cir. 2003).
[238] *Id*. at 1138

caused the loss even if the shipowner concedes that its crew was negligent."[239] Accordingly, the judgment granting limitation to Western Pioneer was affirmed.[240]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—cargo and property damage.

Lawrenson v. Belterra Resort Ind., LLC (In re MO Barge Lines, Inc.)
United States Court of Appeals for the Eighth Circuit

Belterra appeals the decision of the district court granting limitation of liability to Missouri Barge Lines, Inc. ("Missouri Barge"), for damages caused to its casino vessel, the MISS BELTERRA, sustained in a collision with Missouri Barge's towboat, the ELIZABETH ANN, on the Mississippi River.[241]

On July 31, 2000, the MISS BELTERRA collided with the ELIZABETH ANN, who was pushing concrete barges down the Mississippi River.[242] The accident arose after much confusion during communications of a passing arrangement. Belterra alleged "…that the ELIZABETH ANN's negligence and failure to adhere to a passing agreement caused the collision and resulting damage to the MISS BELTERRA."[243] The district court apportioned ninety percent of the fault to Missouri Barge and ten percent to Belterra, and limited Missouri Barge's liability finding a lack of privity and knowledge of the captain's negligent piloting.[244]

The Eighth Circuit affirmed the decision of the district court, stating that, "the record supports the district court's finding that Missouri Barge hired a licensed, competent operator to

[239] *Id*. at 1138
[240] *Id*. at 1138
[241] *Lawrenson v. Belterra Resort Ind., LLC*, 360 F.3d 885, 2004 AMC 693 (8th Cir. 2004).
[242] *Id*. at 888
[243] *Id*. at 888
[244] *Id*. at 889

navigate its vessel on the Mississippi River."[245] As such, Missouri Barge lacked privity and knowledge of any negligent navigational errors.[246]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—property damage.

In re American Milling Company
United States Court of Appeals for the Eighth Circuit

This case presents the appeal of the grant of limitation in favor of American Milling Company and Winterville as discussed in the above district court case.[247]

Specifically at issue is the ownership status of Winterville, the company hired to provide crewing services aboard the vessel.[248] At trial, Winterville asserted that they were owners *pro hac vice*, and thus entitled to limitation.[249] "The district court determined that Winterville was an owner due to the level of control that the Winterville crew exercised over the M/V ANNE HOLLY."[250]

The Limitation of Liability Act allows for the "owner" of a vessel, who lacks privity or knowledge of the negligent acts that caused damage, to limit their liability.[251] The Act also allows the same for a charterer who "shall man, victual, and navigate such vessel at his own expense, of by his own procurement."[252] The Eighth Circuit noted, however, that Section 187 of

[245] *Id*. at 891
[246] *Id*. at 891
[247] *In re Am. Milling Co.*, 409 F.3d 1005, 2005 AMC 1217 (8th Cir. 2005).
[248] *Id*. at 1007
[249] *Id*. at 1011
[250] *Id*. at 1012
[251] *Id*. at 1013, citing 46 App. U.S.C. § 183.
[252] *Id*. at 1014, citing 46 App. U.S.C. § 186.

the Act "specifically excludes from coverage a ship's crew and master, even if the crew or master happens to also be an owner."[253]

> Nothing in sections . . . 183 . . . and 186 of this title shall be construed to take away or affect the remedy to which any party may be entitled, against the master, officers, or seamen, for or on account of . . . any negligence . . . or other malversation of such master, officers, or seamen . . . nor to lessen or take away any responsibility to which any master or seaman of any vessel may by law be liable, notwithstanding such master or seaman may be an owner or part owner of the vessel.[254]

The court concluded that Winterville was not an owner under the Act.[255] "Winterville's role under the crewing agreement was limited and kept in check by American Milling's retention of substantial control over decisions related to the operation and control of the vessel, selection of the crew, and maintenance of the vessel."[256] Because Winterville "did not have an investment in the ship…[and] contractually limited its obligations regarding the ship…American Milling simply did not relinquish sufficient control to Winterville to impart owner status."[257] Accordingly, the judgment granting Winterville limitation was reversed, and all other judgments, including American Milling Company's right to limit, were affirmed.[258]

For purposes of the statistical tables, the following entries will be recorded for Winterville: granted—no; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—cargo and/or property damage and personal injury. Additionally, the following entries will be recorded representing the affirmed judgment for American Milling Company: granted—

[253] *Id*. at 1014
[254] *Id*. at 1014
[255] *Id*. at 1016
[256] *Id*. at 1016
[257] *Id*. at 1017
[258] *Id*. at 1022

yes; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—cargo and/or property damage and personal injury.

Szollosy v. Hyatt Corporation
United States District Court for the District of Connecticut

Brought on a motion for summary judgment, plaintiff, Linda Szollosy, asserts that Red Sail is not entitled to limit its liability for damages caused when her son, Dean, was seriously injured by a rental wave runner because the injuries were within Red Sail's privity or knowledge.[259]

In September of 1998, the Szollosy family took a vacation to the Cayman Islands.[260] On September 7, Charles Szollosy took his four-year-old son, Dean, into the water, and over to where defendant, Red Sail, kept their wave runners moored.[261] Upon placing Dean to sit on one of the wave runners, the engine started and the watercraft began moving, transporting Dean across the harbor and crashing into a stone jetty.[262] Dean was thrown over the wave runner and sustained serious injuries, including a coma and brain hemorrhage.[263]

When assessing Szollosy's claim, the district court noted that, "[a]ll that is needed to deny limitation is that the shipowner, 'by prior action or inactions sets into motion a chain of circumstances which may be a contributing cause even though not the immediate or proximate cause of a casualty….'"[264] The crux of Szollosy's argument was that "…Red Sail's decision to moor its wave runners with their fuel cocks in the 'on' position and with the lock plates plugged

[259] *Szollosy v. Hyatt Corp.*, 396 F. Supp. 2d 147, 2005 AMC 2501 (D. Conn. 2005).
[260] *Id*. at 149
[261] *Id*. at 150
[262] *Id*. at 150
[263] *Id*. at 150
[264] *Id*. at 158

in, in contravention of the warnings in Yamaha's owners' manuals for the wave runners, creates sufficient privity or knowledge to defeat the limitation of liability defense."[265]

Red Sail conceded that they did not follow the instructions of the Yamaha manual, but argued, "that any inactions of its staff should not be imputed" to them.[266] The court determined that "Red Sail's admission that its personnel failed to abide by the Yamaha safety procedures is sufficient to establish 'inaction' within its 'privity or knowledge' for purposes of defeating the limitation of liability defense.[267] As such, Red Sail was denied limitation.[268]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—pleasure craft; type of claimant—personal injury/death; reason for denying limitation—failure of evidence to prove no privity and knowledge.

In re Clinton River Cruise Company
United States District Court for the Eastern District of Michigan, Southern Division

Brought on a motion for summary judgment, petitioner, Clinton River Cruise Company ("Clinton") owner of the M/V Clinton Friendship, a river cruise boat, sought exoneration from or limitation of liability after a passenger drowned when he jumped off the cruise boat.[269]

On June 3, 2002, decedent DeLaCruz was a passenger on the Clinton Friendship when he jumped off the vessel and into the water during a dinner cruise.[270] Clinton argued that the incident occurred through no fault of their own, while the claimant, DeLaCruz's personal representative, alleged that Clinton was negligent.[271] Specifically, Claimant argued that,

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[265] *Id*. at 158
[266] *Id*. at 159
[267] *Id*. at 159
[268] *Id*. at 159
[269] *In re Clinton River Cruise Co.*, 2005 U.S. Dist. LEXIS 25680, 2005 AMC 2728 (E.D. Mich. 2005).
[270] *Id*. at 2
[271] *Id*. at 3

"Petitioner's failure to provide the requisite number of deckhands on board the boat…was negligence per se."[272] Clinton took the position that "the decedent's act of jumping off…[the] vessel and attempting to swim to shore was so unreasonable that no liability may be imposed on [them]."[273]

The district court found that the Certificate of Inspection for the Clinton Friendship required that it have two deckhands and, because it only had one at the time of the incident, invoked the Pennsylvania doctrine stating, "…when a statutory rule intended to prevent an admiralty accident exists…and a party violates the statute injuring the party whom the statute was created to protect, the violating party, to avoid liability, must show that its violation could not have been the cause of the accident."[274] The court found that a second deckhand would have been instrumental in the prevention of the decedent jumping overboard and that Clinton did not meet its burden of proving that it was not the cause of the decedent's death.[275]

After determining that Clinton's violation of the manning statute was the proximate cause of DeLaCruz's death, the court turned to the assessment of privity or knowledge and found that "Petitioner had knowledge of the negligence of employing only one deckhand."[276] Accordingly, Clinton's petition for limitation of liability was denied.[277]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—passenger vessel--small; type of claimant—personal injury/death; reason for denying limitation—failure to provide or insure adequate &

[272] *Id*. at 3
[273] *Id*. at 4
[274] *Id*. at 14
[275] *Id*. at 23
[276] *Id*. at 24
[277] *Id*. at 25

proper operations, equipment, or crew; and failure of evidence to prove no privity and knowledge.

In re Mobro Marine, Inc.
United States District Court for the Middle District of Florida, Jacksonville Division

Superior Construction Company, Inc. ("Superior"), brought an action asserting exoneration from or limitation of liability as a defense after a collision between claimant Charles Brock's twenty-five foot Bilinear pleasure craft and a stationary barge and tug used by Superior; other claimants were passengers aboard Brock's pleasure boat who suffered personal injuries.[278]

The complaint was filed against Superior for negligence, alleging "that the barge and tug 'failed to display the proper lights required under the circumstances,' that Superior knew the barge and tug were 'improperly lighted,' and that it 'failed to observe the rules with regard to proper lighting.'"[279] Additionally, it was alleged that the barge and tug were obstructing navigable channels in an improper manner.[280] Superior denied all allegations and argued that Brock's negligence caused the accident.[281]

The district court found that Brock met its burden of proving that "the collision was caused by negligence, unseaworthiness or statutory violations attributable to Superior."[282] This was due in part to the fact that the barge was placed under a bridge, and "Richard Hamilton, the on-site superintendent for Superior and person in charge of the Tug that pushed and placed the Barge's platform for work on the bridge, never check to see what the Barge looked like at night from the water."[283] Indeed, "the Barge was in the shadow if the bridge and visually disappeared

[278] *In re Mobro Marine, Inc.*, 2004 U.S. Dist. LEXIS 27561, 2005 AMC 527 (M.D. Fla 2004).
[279] *Id*. at 4
[280] *Id*. at 5
[281] *Id*. at 5
[282] *Id*. at 5-6
[283] *Id*. at 14

into the darkness below the bridge line."[284] This occurred despite it being known that boats passed the bridge "at speeds of 70 mph day and night."[285]

The court also found that the barge was neither lit in accordance with the Inland Rules nor in accordance with Hamilton's own lighting plan.[286] In addition to the lack of lights and proper display, it was determined that the location of the barge and tug caused the collision.[287] "[T]he Barge unexpectedly blocked two of the three spans used by boaters, thus significantly interfering with, and impeding navigation under the bridge."[288]

After determining Superior to be negligent per se and the sole cause of the accident, the court found that Superior did not meet its burden of proving a lack of privity or knowledge of negligence regarding the improper lighting and location of the barge and tug.[289] This is because both the superintendent and the project coordinator "had personal knowledge of the inadequacy of the lights on the Barge and the Tug and of the Barge's negligent obstruction of navigation."[290] This knowledge was imputed to Superior, and thus, limitation of liability was denied.[291]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—cargo and/or property damage and personal injury; reason for denying limitation—improper operation of vessel by owner or knowledge of; and failure of evidence to prove no privity and knowledge.

[284] *Id*. at 14
[285] *Id*. at 14
[286] *Id*. at 18
[287] *Id*. at 41
[288] *Id*. at 41-42
[289] *Id*. at 77
[290] *Id*. at 77
[291] *Id*. at 77

Washington v. Sea Coast Towing, Inc.
United States District Court for the Western District of Washington

The State of Washington Department of Transportation ("WSDOT") brought suit against Sea Coast Towing Incorporated ("Sea Coast"), charterer of the tug the CHINOOK, after the master of the vessel, Captain Kjos, fell asleep at the wheel and stuck a bridge.[292]

On July 29, 2000, the CHINOOK left Kenmore, Washington, pushing a barge on Lake Washington.[293] About an hour after departure, Captain Kjos fell asleep, resulting in a missed turn and an allision with the SR 520 Bridge, which caused damage to the bridge and traffic closures for two weeks.[294] The court found Captain Kjos' falling asleep to be the proximate cause of the accident and that Sea Coast "failed to exercise reasonable diligence to ensure compliance with the 12-hour work limitation" as mandated by 46 U.S.C. § 8104(h) because the vessel's logs were inadequate as they "…did not record who was on watch at any given time."[295]

Despite the logs being improperly maintained, the court found that WSDOT did not meet its burden of proving that "Captain Kjos violated the 12-hour work limitation in the 48 hours preceding the allision."[296] However, it did find that Captain Kjos was negligent in maintaining a proper watch, which is a violation of Rule 5 of the COLREGS and triggers application of the Pennsylvania rule.[297] Sea Coast could not meet its burden of showing that the Rule 5 violation could not have been the cause of the accident.[298]

As such, the court turned to whether Sea Coast could meet its burden of establishing a lack of privity or knowledge.[299] The court found that "Sea Coast did not have actual or

[292] *Washington v. Sea Coast Towing, Inc.*, 2004 U.S. Dist. LEXIS 29619, 2006 AMC 572 (W.D. Wash. 2004).
[293] *Id*. at 3
[294] *Id*. at 4
[295] *Id*. at 7-8
[296] *Id*. at 9
[297] *Id*. at 14
[298] *Id*. at 14
[299] *Id*. at 15

constructive knowledge of Captain Kjos' failure to maintain a proper lookout."[300] Furthermore, "…if a negligent navigational error of a master or crewmember causes a collision or allision, the vessel owner lacks privity or knowledge of the negligence because the owner cannot control the vessel at sea."[301] Because Captain Kjos was determined to be a competent master—he was properly licensed, properly trained, and had a good safety record—Sea Coast was entitled to rely on his competence and was not found to have privity or knowledge of his negligent act.[302] Accordingly, limitation was granted.[303]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—property damage.

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Broussard v. Stolt Offshore, Inc.
United States District Court for the Eastern District of Louisiana

Plaintiff, Nolan J. Broussard, Jr. ("Broussard"), sued employer Stolt Offshore, Inc. ("Stolt") based on the negligence of a fellow crewmember while he was injured while moving a 79-pound fuel transfer hose to a bunkering station located aft on the main deck on the vessel *Seaway Rover*.[304]

In April of 2000, Broussard sustained a back injury while moving a fuel transfer hose with another crewmember.[305] "The aft rudder compartment was located below the main deck, requiring the fuels transfer hose to be lifted through a hatch to reach the deck."[306] This created a

[300] *Id*. at 16
[301] *Id*. at 16
[302] *Id*. at 17
[303] *Id*. at 18
[304] *Broussard v. Stolt Offshore, Inc.*, 467 F. Supp. 2d 668, 2007 AMC 1423 (E.D. La. 2006).
[305] *Id*. at 671
[306] *Id*. at 671

practice among the crew whereby one "would place the coiled hose on his shoulder and push it up as he climbed the ladder, while another crewmember would stand on the main deck and pull on a rope tied to the hose."[307]

The unsafe practice was found to be the cause of Broussard's injuries as it was testified by an expert at trial that, "if it was possible to store the hose on the main deck, a mechanical device should have been used to lift it from the aft rudder compartment."[308] Moreover, "the procedure instituted aboard the *Seaway Rover* for lifting its fuel transfer hose to the main deck was unsafe, rendering the vessel unseaworthy under general maritime law."[309] Captain Lohmeyer, the master of the vessel, testified that, "he was familiar with the unsafe procedure regularly used to lift the fuel transfer hose to the main deck."[310] The court found that the captain's "actual knowledge of this unsafe procedure is conclusively deemed to be that of Stolt."[311] Additionally, Stolt failed to exercise reasonable diligence and, "a corporate shipowner 'may be deemed to have constructive knowledge if the unseaworthy or negligent condition could have been discovered through the exercise of reasonable diligence."[312] As such, Stolt failed to meet its burden of proving a lack of privity or knowledge and limitation was denied.[313]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—miscellaneous; type of claimant—personal injury/death; reason for denying limitation—improper operation of vessel by owner or knowledge of; and failure of evidence to prove no privity and knowledge.

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[307] *Id*. at 671
[308] *Id*. at 672
[309] *Id*. at 674
[310] *Id*. at 675
[311] *Id*. at 675
[312] *Id*. at 675
[313] *Id*. at 676

In re City of New York
United States District Court for the Eastern District of New York

Plaintiff passengers brought suit against the City of New York following an allision with a maintenance pier when the captain of the Staten Island Ferry *Andrew J. Barberi* lost consciousness due to fatigue, resulting in numerous death and serious injuries.[314]

The violation by the *Barberi* arose out of a New York City rule, which "required that the captain and the assistant captain both be in the pilothouse at all times while the Ferry was underway."[315] Although this rule could have easily been complied with, the court found that the assistant captain was not in the pilothouse, but in the aft.[316] Additionally, the court found that "the internal rules were neither well understood nor effectively enforced," due to a lack of formal management system aboard the vessel.[317] Ultimately, the court concluded that the failure to enforce the City's own rule constituted negligence because "the risks associated with having only one captain on duty were both foreseeable and actively addressed by another large-scale ferry system."[318] Accordingly, limitation of liability was denied.[319]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—passenger vessel--small; type of claimant—personal injury/death; reason for denying limitation—improper operation of vessel by owner or knowledge of.

[314] *In re City of New York*, 475 F. Supp. 2d 235, 2007 AMC 702 (E.D.N.Y. 2007).
[315] *Id*. at 238
[316] *Id*. at 238
[317] *Id*. at 238
[318] *Id*. at 245
[319] *Id*. at 250

Lockheed Martin Corporation. v. Unknown Respondents
United States District Court for the Northern District of New York

Plaintiff Lockheed Martin Corporation ("Lockheed"), owner of the *Little Toot II*, filed a petition for limitation of liability after an employee fell overboard the vessel and drowned.[320]

The decedent in this case met an untimely death when he fell overboard when a wave hit the boat while he was helping the captain undock from a moored barged during icy and windy weather conditions.[321] Upon falling into the water, the captain tried to lift the decedent up, but could not reach him.[322] The captain then attempted to use two different ladders; the first ladder was too short and by the time he retrieved a second, longer, ladder, the decedent had lost his strength and drowned.[323]

The court found that "Lockheed's stated policy was that the operator of the *Little Toot II* was required to take a safe boating course, but Lockheed never confirmed and has no record that [the captain] ever took such a course."[324] Additionally, the captain failed to throw the decedent a life ring, although one was mounted on the cabin, and failed to recognize the rough weather conditions, in which the vessel should not have been operating.[325] Moreover, the vessel lacked proper water rescue equipment, marine weather operational guidelines, and was in disrepair and unfit for the weather conditions.[326] The court determined that all of "the actions and/or inactions of Lockheed's employees caused on contributed to the accident which claimed the life of [the] decedent."[327]

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[320] *Lockheed Martin Corp. v. Unknown Respondents*, 2007 U.S. Dist. LEXIS 23663, 2007 AMC 1338 N.D.N.Y. 2007).
[321] *Id*. at 19
[322] *Id*. at 19
[323] *Id*. at 20
[324] *Id*. at 21
[325] *Id*. at 22
[326] *Id*. at 23-25
[327] *Id*. at 31

Because the court concluded that managerial employees of the company knew about the safety issues on the vessel, their privity and knowledge was imputed to Lockheed.[328] As such, limitation was denied.[329]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—miscellaneous; type of claimant—personal injury/death; reason for denying limitation—failure to provide or insure adequate & proper operations, equipment, or crew; and failure of evidence to prove no privity and knowledge.

Otal Investments Limited v. M/V Clary
United States District Court for the Southern District of New York

Heard on remand from the Second Circuit, the district court determined whether the *Clary* and the *Tricolor* could limit their liability following a collision in the English Channel.[330]

On the night of December 14, 2002, in conditions of thick fog and low visibility, the *Kariba*, the *Clary*, and the *Tricolor* were involved in a collision in the English Channel when the *Kariba's* bow struck the *Tricolor* broadside, causing the latter to capsize and sink.[331] Otal Investments Ltd. ("Otal"), owner of the *Kariba*, filed a petition for exoneration or limitation of liability with regard to the claims that arose from its collision with the *Tricolor*.[332] In response to the claims for damages for loss of cargo filed against it by the cargo interests of the *Tricolor*, the *Kariba* impleaded the *Clary* and the *Tricolor* as third-party defendants.[333]

With respect to the *Tricolor*, the district court found that it violated Rules 13 and 16 of the COLREGS—the rules for overtaking and safe speed.[334] When *Tricolor's* captain became

[328] *Id*. at 31-32
[329] *Id*. at 32
[330] *Otal Invs. Ltd. v. M/V Clary*, 2008 U.S. Dist. LEXIS 40815, 2008 AMC 1561 (S.D.N.Y 2008).
[331] *Id*. at 10
[332] *Id*. at 11
[333] *Id*. at 11
[334] *Id*. at 15

aware that he was beginning to overtake the *Kariba*, he did not slow down, but rather, "attempted to overtake the *Kariba* in fog, at 17.9 knots, in a heavily trafficked TSS, with the knowledge the *Kariba* was on a collision course with…the *Clary*."[335] The court concluded that, "each of *Tricolor's* unsafe acts was a cause of the collision."[336]

With respect to the *Clary*, the Second Circuit held that the *Clary* violated Rules 2, 5 and 19 of the COLREGS—failure to keep a proper lookout and failure to take avoiding actions promptly.[337] These inactions were found to be both but-for and proximate causes of the collision.[338] "The *Clary's* negligent acts created a risk of harm that the COLREGS are designed to prevent."[339]

Testimony at trial revealed that, "the standard practice…was for lookouts to work all day and then be put on standby for a call up to the bridge if there was trouble."[340] Additionally, it was shown by the cargo claimants that "[i]f a lookout worked at night, he would be paid overtime.[341] …[T]hus…the *Clary's* shoreside owners would have been aware of whether overtime was being logged and paid for lookout duty on a regular nightly basis."[342] Because the cargo claimants were able to show that the *Clary*'s owners should have known about the failure to keep a proper lookout, privity or knowledge was imputed and limitation was denied.[343]

With respect to *Tricolor's* limitation, its owner's argued that the violations were navigational errors of which they could not have known.[344] The district court agreed, finding that "*Tricolor's* owners did not known and were not privy to the *Tricolor's* navigational errors,

[335] *Id*. at 15
[336] *Id*. at 25
[337] *Id*. at 25
[338] *Id*. at 29
[339] *Id*. at 29
[340] *Id*. at 48
[341] *Id*. at 49
[342] *Id*. at 49
[343] *Id*. at 49-50
[344] *Id*. at 51

unsafe overtaking and unsafe speed.[345] The *Tricolor's* crew was well-trained and qualified."[346] Accordingly, *Tricolor* was granted limitation.[347]

For purposes of the statistical tables, the following entries will be recorded for the *Clary*: granted—no; type of casualty—allision/collision; type of vessel—ocean cargo vessel; type of claimant—cargo; nationality of vessel—foreign; nationality of claimants—combined/unknown; reason for denying limitation—improper operation of vessel by owner or knowledge of; and failure of evidence to prove no privity and knowledge.

For purposes of the statistical tables, the following entries will be recorded for the *Tricolor*: granted—yes; type of casualty—stranding/capsizing; type of vessel—ocean cargo vessel; type of claimant—cargo; nationality of vessel—foreign; nationality of claimants—combined/unknown.

Matheny v. TVA
United States District Court for the Middle District of Tennessee, Nashville Division

Plaintiff, Becky Matheny, brought an action against the Tennessee Valley Authority ("TVA") after her husband died when the small boat he was fishing in capsized because of a wake created by a tugboat owned by TVA.[348]

The evidence at trial showed that prior to the accident, the captain was aware that the fishing boat was positioned in between two groups of barges.[349] Although the exact speed of the tug could not be determined, the court found that "the wake was large enough to cause [the] fishing boat to capsize and throw…Mr. Matheny into the water."[350] Additionally, the court found

[345] *Id*. at 55
[346] *Id*. at 55
[347] *Id*. at 56
[348] *Matheny v. TVA*, 523 F. Supp. 2d 697, 2008 AMC 725 (M.D. Tenn. 2007).
[349] *Id*. at 703
[350] *Id*. at 703

that the tug "was capable of traveling at a high enough speed to create an unsafe wake for fishing boats and that, in this instance, it was doing so."[351] It was this high speed that created an excessive wake, which overwhelmed the fishing boat.[352]

Notably, the court did not classify these causes as navigational errors for purposes of looking at TVA's privity or knowledge. Instead, the court formed a narrow inquiry, asking, "…whether the defendant had privity or knowledge of the risks posed by tugboats being operated too fast, creating potentially dangerous wakes for nearby fishing boats."[353] The court concluded that TVA did not show that it lacked this knowledge and did not take any steps to reduce the risk, such as "informing its tugboat captains not to operate at a little to no wake speed when in the presence of fishing boats…."[354] Accordingly, limitation was denied.[355]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—tug/barge; type of claimant—personal injury/death; reason for denying limitation—failure of evidence to prove no privity and knowledge.

Agni v. Wenshall (In re City of New York)
United States Court of Appeals for the Second Circuit

This case presents the City of New York's appeal of a judgment denying limitation of liability for damages sustained after the captain of the *Andrew J. Barberi* became incapacitated and allided into a maintenance pier, resulting in numerous passenger injuries and deaths.[356]

[351] *Id*. at 705
[352] *Id*. at 706
[353] *Id*. at 722
[354] *Id*. at 722
[355] *Id*. at 722
[356] *Agni v. Wenshall (In re City of New York)*, 522 F.3d 279, 2008 AMC 1389 (2nd Cir. 2008).

The City of New York challenged the district court's finding that allowing the ferry to be operated with only a single pilot in the pilothouse, contrary to City policy, necessarily met the standard of reasonable care as a matter of law.[357] The Second Circuit ultimately held that "the standard of care embodied in the pilothouse watch regulation requires that, in addition to the pilot, at least one other person in or near the pilothouse be paying attention to the navigational situation of the ship, thereby being ready to render or summon assistance…."[358] Reasoning that because "the Coast Guard has determined that it is appropriate for ships of the *Barberi's* size and passenger capacity to adopt such safety precautions…reasonable care would require the Staten Island Ferry to adopt them as well."[359] Accordingly, the district court's denial of limitation was affirmed.[360]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—passenger vessel--small; type of claimant—personal injury/death; reason for denying limitation—improper operation of vessel by owner or knowledge of.

In re Sea Wolf Marine Towing & Transportation Inc.
United States District Court for the Southern District of New York

Petitioner, Sea Wolf Marine Towing and Transportation, Inc. ("Sea Wolf Marine"), moved for partial summary judgment seeking limitation of liability after its tug veered off course and allided with a bridge.[361]

On February 6, 2003, Sea Wolf Marine's tug was assigned to transport an empty stone barge from two points in New York.[362] During transit, the tug and barge veered off course and

[357] *Id*. at 280
[358] *Id*. at 287
[359] *Id*. at 287
[360] *Id*. at 288
[361] *In re Sea Wolf Marine Towing & Transp., Inc.*, 2007 U.S. Dist. LEXIS 82565, 2008 AMC 131 (S.D.N.Y. 2007).

allided with a bridge, causing damage to the structure.[363] Sea Wolf asserted that the tug was seaworthy and that it lacked either privity or knowledge of the captain's negligence and should thus be entitled to limitation.[364] The court found that the tug was seaworthy because the captain was a licensed, competent master and because it was inspected daily, maintained regularly, and had no mechanical failures.[365]

Because no issue regarding seaworthy existed, the court then inquired into Sea Wolf Marine's privity or knowledge of the captain's negligence.[366] Finding no evidence of Sea Wolf Marine having any privity or knowledge of negligent behavior, the court granted limitation.[367]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—property damage.

In re Via Sales & Leasing, Inc.
United States District Court for the Eastern District of Michigan, Southern Division

Brought on a motion for summary judgment, petitioners J. Murray Troup and Via Sales & Leasing, Inc., owners of a forty-three-foot Wellcraft Cruiser, sought limitation of liability after their vessel collided with a Sea Ray Runabout owned by one of the claimants, Audrey Marie Kenney, resulting in injuries to the Sea Ray's passengers.[368]

The collision occurred on September 11, 2005, when the Wellcraft Cruiser, traveling at a high speed, hit the Sea Ray Runabout as the Wellcraft was passing it in the same direction.[369] Witnesses in a nearby sailboat testified that, "Troup did not sound a warning horn or slow down

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[362] *Id*. at 3
[363] *Id*. at 3
[364] *Id*. at 5
[365] *Id*. at 8
[366] *Id*. at 8
[367] *Id*. at 18
[368] *In re Via Sales & Leasing, Inc.*, 499 F. Supp. 2d 887, 2008 AMC 438 (E.D. Mich. 2007).
[369] *Id*. at 888

before plowing into Kenney's boat."[370] Kenney alleged that, "Troup was negligent in that he failed to maintain a proper look-out on his boat, traveled at an unsafe speed, did not act to avoid the collision, and did not keep out of the way of the boat he was overtaking."[371]

The court first inquired into Troup's negligence or unseaworthiness and found that he failed to maintain a proper lookout, noting that, "[a]n unexplained failure to see what out to be seen is evidence of a faulty lookout."[372] Because the rule requiring a lookout was intended to prevent collisions, and while in violation of this rule a collision occurred, the court required Troup to show that the accident would have occurred despite the lack of a proper lookout.[373] Troup was unable to provide any such evidence, and the court found him negligent as a matter of law.[374]

Regarding the second inquiry, privity or knowledge, the court determined that "Troup was driving the boat at the time of the collision, so the failure to maintain a proper lookout was his responsibility."[375] Because he failed to demonstrate a lack of privity or knowledge of the negligence that caused the collision, the court denied limitation.[376]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—allision/collision; type of vessel—pleasure craft; type of claimant—personal injury/death; reason for denying limitation—failure of evidence to prove no privity and knowledge.

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[370] *Id*. at 889
[371] *Id*. at 889
[372] *Id*. at 890
[373] *Id*. at 891
[374] *Id*. at 891
[375] *Id*. at 891
[376] *Id*. at 891

Matheny v. TVA
United States Court of Appeals for the Sixth Circuit

This case presents the unsurprising appeal of the United States District Court for the Middle District of Tennessee's denial of limitation to the Tennessee Valley Authority ("TVA") for damages resulting from the death of a man in a fishing boat caused by the negligent operation of TVA's tugboat.[377]

The accident occurred after the captain of the tug created an excessive wake, which capsized the small fishing boat.[378] The district court found that the captain of the tug was experienced, but violated the COLREGS when he operated the tug at an excessive speed while passing the fishing boat.[379] Furthermore, the district court strangely concluded that, "because TVA had privity or knowledge of the risks posed by [the] captain's negligent operation of the [tug] at an excessive speed," they were not entitled to limitation.[380]

The only issue on appeal was whether TVA had privity or knowledge of the captain's negligent act.[381] The Sixth Circuit noted that, "[t]he district court misreads the Limitation of Liability Act, which speaks in terms of *acts*, not *risks*."[382] "It is indisputable that all vessel owners know that if a competent captain commits a negligent act, there is a risk of harm."[383] As such, the proper question to ask focuses not on the risk of harm, but on "the specific negligent acts or unseaworthy conditions that actually caused or contributed to the accident."[384]

[377] *Matheny v. TVA*, 557 F.3d 311, 2009 AMC 492 (6th Cir. 2009).
[378] *Id*. at 313
[379] *Id*. at 314
[380] *Id*. at 314
[381] *Id*. at 315
[382] *Id*. at 316
[383] *Id*. at 316
[384] *Id*. at 316

The court concluded that there was no evidence that would justify imputing privity or knowledge to TVA about the specific conditions—excessive speed—that led to the accident.[385] TVA was entitled to rely on the captain's expertise, and the accident was caused by his navigational errors.[386] Accordingly, limitation should have been granted, and the judgment of the district court was reversed.[387]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—personal injury; type of vessel—tug/barge; type of claimant—personal injury/death.

Omega Protein v. Samson Contour Energy E&P LLC (In re Omega Protein)
United States Court of Appeals for the Fifth Circuit

This is an appeal from the district court allowing Plaintiff-Appellant Omega Protein, Inc. ("Omega") to limit liability for damages arising out of an accident occurring when Omega's vessel struck an oil platform owned by Defendant-Appellee Samson Contour Energy E&P LLC ("Samson").[388]

Omega's vessel, the F/V GULF SHORE, was on its way to fishing grounds at Freshwater Bayou, Louisiana, when the chief engineer informed the captain that a component of the vessel's refrigeration system had malfunctioned.[389] Upon hearing this news, the captain turned on the wheelhouse lights to examine the part and used his cell phone to make calls in hopes of arranging a replacement part.[390] While the captain was on the phone, the GULF SHORE struck an oil platform, owned by Samson.[391]

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[385] *Id*. at 320
[386] *Id*. at 320
[387] *Id*. at 320
[388] *Omega Protein v. Samson Contour Energy E&P LLC*, 548 F.3d 361, 2009 AMC 245 (5th Cir. 2008).
[389] *Id*. at 365
[390] *Id*. at 365
[391] *Id*. at 365

Testimony at trial revealed that the platform lacked both functioning lights and a foghorn.[392] The district court "found that Samson had committed a statutory violation by failing to have operable lights on a fixed structure."[393] As a result, the GULF SHORE "was not presumed to be at fault for the allision, and the burden remained on Samson to prove negligence."[394] Because Samson was able to prove that the captain of the GULF SHORE violated the COLREGS by failing to maintain a proper lookout and failing to use the vessel's radar to asses the risk of a collision, the burden shifted to Omega to prove a lack of privity or knowledge.[395] Classifying the cause of the allision as a "mistake of navigation," the district court asked whether Omega "exercised reasonable care in selecting a qualified and competent master."[396] Determining the answer in the affirmative, the district court held that Omega lacked the requisite privity or knowledge of the captain's negligence and was entitled to limitation.[397] Finding no error in the district court's legal findings, the Fifth Circuit affirmed the grant of limitation of liability to Omega.[398]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—allision/collision; type of vessel—fishing vessel; type of claimant—property damage.

[392] *Id*. at 365
[393] *Id*. at 366
[394] *Id*. at 366
[395] *Id*. at 367
[396] *Id*. at 372
[397] *Id*. at 374
[398] *Id*. at 374

Signal International LLC v. Mississippi Department of Transportation
United States Court of Appeals for the Fifth Circuit

This is an appeal of a district court decision granting limitation to Signal International after two of their barges broke free of their moorings during Hurricane Katrina and allided with a bridge that the Mississippi Department of Transportation ("MDOT") had to repair.[399]

The district court found that "Signal's negligence, in employing an improvised, untested method of securing the [barges] using nylon ropes, caused the allision."[400] Because Signal's managing agent "had no knowledge concerning the condition of the spud motor or the mooring arrangement and plan used prior to the storm," Signal was able to show a lack of privity or knowledge and was thus entitled to limitation.[401]

MDOT argued that the district court erred in this determination because Signal's managing agent did have privity or knowledge of the negligent mooring through his approval of the hurricane plan.[402] The Fifth Circuit found this argument to be misplaced, as the basis of the negligence finding was not the managing agent's approval of the hurricane plan, which "permit[ed] other suitable moorings, with the rigging crew to determine the suitability of alternative arrangements….[,]"[403] but rather, "the untested method and negligent execution of the alternative arrangement."[404] The court held that the "approval of this plan in no way imputed…knowledge of the negligent nylon rope moorings…[that were] employ[ed]."[405] Accordingly, the district court did not err and the grant of limitation was affirmed.[406]

[399] *Signal Int'l LLC v. Miss. DOT.*, 579 F.3d 478, 2009 AMC 2177 (5th Cir. 2009).
[400] *Id*. at 486-487
[401] *Id*. at 487
[402] *Id*. at 497
[403] *Id*. at 497
[404] *Id*. at 497
[405] *Id*. at 497
[406] *Id*. at 501

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—property damage.

In re S.D.S. Lumber Company
United States District Court for the District of Oregon

Plaintiff S.D.S. Lumber Co. ("SDS") raised a limitation of liability defense when American West Steamboat Company, LLC ("American West") filed suit after its cruise ship, the Empress of the North ("Empress") ran aground to avoid a collision with a tugboat and its tows, owned by SDS.[407]

Five months prior to this incident, Captain Bellus, master of the tug, was involved in a similar incident.[408] On that occasion, a tugboat with four empty barges "elected to run aground to avoid collision" with Captain Bellus' tug after he failed to communicate a change in the passing arrangement.[409] Following this accident, SDS's Marine Superintendent failed to properly investigate the incident, "quickly decided that Bellus did nothing wrong, and failed to implement policies to prevent a similar situation from happening in the future."[410]

On March 24, 2006, Captain Bellus was at the helm of his tug, headed upbound on the Columbia River, pushing two empty barges arranged in a flotilla.[411] The *Empress* was downbound, approaching a series of turns.[412] The two captains arranged for a port-to-port passing.[413] As Captain Bellus turned upward, a wind caused the flotilla to drift and block the channel, leaving no room for the port-to-port passing arrangement and causing the risk of

[407] *In re S.D.S. Lumber Co.*, 567 F. Supp. 2d 1302, 2009 AMC 1899 (D. Or. 2008).
[408] *Id*. at 1304
[409] *Id*. at 1304-1305
[410] *Id*. at 1305
[411] *Id*. at 1305
[412] *Id*. at 1305
[413] *Id*. at 1305

imminent collision.[414] "Although the flotilla was blocking the channel, Bellus did not call the *Empress* to warn it of the problem."[415] As a result, the captain of the *Empress* ran aground to avoid a collision.[416]

The court found that Captain Bellus "was negligent by failing to ask the Empress to hold up, by failing to specify the point of passing, and by failing to communicate to the *Empress* that the [tug] was going to get set across the channel, once it became clear that was going to happen."[417] Because this incident was once again caused by Captain Bellus' lack of communication, and not a navigational error, the court determined the negligence that caused the grounding of the *Empress* was within SDS' privity and knowledge.[418] Accordingly, limitation was denied.[419]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—stranding/capsizing; type of vessel—tug/barge; type of claimant—property damage; reason for denying limitation—failure of evidence to prove no privity and knowledge.

In re Vulcan Materials Company
United States District Court for the Eastern District of Virginia, Norfolk Division

Vulcan Materials Company ("Vulcan"), owner of the tug WILLIAM E. POLLE, sought exoneration from or limitation of liability after a U.S. Navy serviceman was killed when the inflatable boat he was travelling on collided with a tug.[420]

The accident occurred on October 11, 2007, when nineteen-year-old Freddie N. Porter, Jr. and other fellow Navy personnel left from the United States Navy's Little Creek Amphibious

[414] *Id*. at 1305
[415] *Id*. at 1305
[416] *Id*. at 1305
[417] *Id*. at 1307
[418] *Id*. at 1308
[419] *Id*. at 1308
[420] *In re Vulcan Materials Co.*, 674 F. Supp. 2d 756, 2010 AMC 1251 (E.D. Va. 2009).

Base in five rigid-hull inflatable boats ("RHIBs") for a navigation training exercise on the James River.[421] On the same day, Captain Rondy Wooldridge was at the helm of his tug, the WILLIAM E. POOLE, pushing a six-barge flotilla.[422] Because the barges were empty, a portion of the view in the wheelhouse was blocked, creating a blind spot "that extended approximately six hundred feet forward of the flotilla's bow at water level."[423] As a consequence of this obstructed view, "Captain Wooldridge and his deckhand could not see the river—or an object on the river, depending on its height for some distance in front of the flotilla."[424]

As it proceeding up the river, the POOLE added an additional two barges to its flotilla, creating a second blind spot, whereby "the lights could not be seen from someone on or in the water.[425] This second blind spot extended approximately ninety feet forward of the bow of the flotilla at water level."[426] As the POOLE transited upriver, and the RHIBs were proceeding downriver, one of the crew on the RHIB noticed, but could not identify, a white light, which was the POOLE's spotlight.[427] After confusion surrounding the use of the radar and conversation on the radio, the POOLE's flotilla suddenly emerged on the port side of one of the RHIBs, striking it, and killing Porter.[428]

The district court first determined what acts of negligence by the POOLE proximately caused the collision.[429] Finding that Captain Wooldridge failed to post a proper forward lookout when the barges created a blind spot forward of the tug, the court found Vulcan to be 20% at

[421] *Id*. at 759
[422] *Id*. at 760
[423] *Id*. at 760
[424] *Id*. at 760
[425] *Id*. at 761
[426] *Id*. at 761
[427] *Id*. at 761
[428] *Id*. at 761-762
[429] *Id*. at 762-763

fault.[430] Privity or knowledge was then imputed to Vulcan because it "should have known that a flotilla traveling on the James River, under the circumstances that prevailed on October 11, 2007, would need a lookout on the bow of the forward barge,"[431] and it was their responsibility to provide one.[432] Accordingly, limitation was denied.[433]

Notably, the majority of the fault was found to be on the United States for manning a vessel with an incompetent crew, resulting in its unseaworthiness.[434] However, Vulcan's claim for contribution against the United States was barred by sovereign immunity.[435]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—personal injury/death; reason for denying limitation—failure to provide or insure adequate & proper operations, equipment, or crew.

Posavina Shipping Company v. Alex C Corporation (In re Alex C Corp.)
United States District Court for the District of Massachusetts

Liability defendants Bay State Towing Company, Inc. ("Bay State") and Alex C Corp, owners of the tugboats the LITTLE JOE and the ALEX C, sought limitation of liability after the ALEX C allided with a tanker vessel, the M/T POSAVINA, it was meant to be undocking, causing an oil spill in Boston Harbor.[436]

On June 8, 2000, Bay State arranged for three tugs to undock the POSAVINA after she discharged her cargo of aviation fuel: the LITTLE JOE, the ALEX C, and the QUENAMES.[437] Because the captain of the LITTLE JOE was running late, Captain Duarte, Vice President of

[430] *Id*. at 764
[431] *Id*. at 764-765
[432] *Id*. at 765
[433] *Id*. at 772
[434] *Id*. at 769
[435] *Id*. at 769
[436] *Posavina Shipping Co. v. Alex C Corp.*, 2010 U.S. Dist. LEXIS 116381, 2011 AMC 157 (D. Mass. 2010).
[437] *Id*. at 3

Operations for Bay State and the docking master, asked the Captain of the QUENAMES to bring the LITTLE JOE to the terminal, leaving a first mate to skipper the QUENAMES.[438] After positioning the LITTLE JOE, the Captain of the QUENAMES returned to his tug, leaving an unlicensed deckhand and engineer solely aboard the LITTLE JOE.[439]

After experiencing problems with the LITTLE JOE, the Captain of the ALEX C attempted to take his tug to the LITTLE JOE.[440] While doing so, he had problems maneuvering his tug and hit the hull of the POSAVINA.[441] "The fender of the ALEX C made metal on metal contact with the tanker in the flared area of her hull, puncturing the M/T POSAVINA, and causing oil to spill into Chelsea Creek.[442]

The district court first found that the unlicensed deckhand aboard the LITTLE JOE "…was not competent to handle [the tug]…and that his lack of competence in handling the LITTLE JOE was a substantial contributing cause of the puncture of the hull of the M/T POSAVINA and the resulting oil spill."[443] Next, the court found that the captain of the ALEX C was negligent in his operation and such negligence "was a substantial contributory cause of the puncture of the hull of the M/T POSAVINA and the resulting oil spill."[444]

After determining that the LITTLE JOE and ALEX C were operating negligently, the court applied the Oregon presumption of fault to the defendants—a burden they could not meet.[445] Additionally, the court found both tugs to be unseaworthy due to a damaged fender system in the ALEX C and the incompetent deckhand on the LITTLE JOE.[446]

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[438] *Id*. at 3-6
[439] *Id*. at 3-6
[440] *Id*. at 10
[441] *Id*. at 12
[442] *Id*. at 12
[443] *Id*. at 20
[444] *Id*. at 21
[445] *Id*. at 30
[446] *Id*. at 37-38

With respect to the LITTLE JOE, the court imputed the knowledge of Captain Duarte, and his instructions allowing the deckhand to be in charge of the tug, to Bay State.[447] As such, Bay State was denied limitation.[448]

With respect to the ALEX C, the court concluded that, "the negligent operation of the ALEX C by…an employee of Bay State, and the unseaworthiness of the tug due to its damaged fender system, which was known by Bay State, are attributable to Alex C Corp., and neither Alex C Corp. nor Bay State are entitled to limitation."[449]

For purposes of the statistical tables, the following entries will be recorded for the LITTLE JOE: granted—no; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—property damage; reason for denying limitation—improper operation of vessel by owner or knowledge of.

For purposes of the statistical tables, the following entries will be recorded for the ALEX C: granted—no; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—property damage; reason for denying limitation—failure to detect and/or correct defects; and improper operation of vessel by owner or knowledge of.

iv. 2012 – 2016 (M)

In re Nicholls
United States District Court for the Southern District of Texas, Houston Division

Petitioners, J.R. Nicholls, Inc. ("Nicholls") and KM Ship Channel Services LLC, owner and operator of a push boat, the J.R. NICHOLLS, sought exoneration from or limitation of liability after the vessel sank, resulting in one fatality.[450]

[447] *Id*. at 40
[448] *Id*. at 40
[449] *Id*. at 42
[450] *In re Nicholls*, 2012 U.S. Dist. LEXIS 68910, 2012 AMC 1770 (S.D. Tex. 2012).

On February 10, 2010, the J.R. NICHOLLS was passing astern of two harbor tugs in the Houston Ship Channel when she encountered the wheel wash of one of the tugs.[451] The J.R. NICHOLLS took an abrupt turn, flooded, and sank, causing the death of one of the crewmembers.[452] In the month leading up to the incident, the J.R. NICHOLLS spent a considerable amount of time in the shipyard.[453] In fact, earlier, on the day of the casualty, crewmembers pumped water out of the vessel.[454] Additionally, the frame on the starboard engine room watertight door was bent and not in working condition.[455] "At the time of the incident, the J.R. NICHOLLS was unstable due to a combination of excessive free surface effect and improper operation in a 'down by the head' fashion."[456] The court found that the "rapidity with which the [push boat] capsized is evidence that's its stability was severely compromised at the time of the casualty."[457] Furthermore, petitioners had a policy of allowing the vessel to operate with watertight doors open while underway in the Houston Ship Channel.[458]

The court concluded that the J.R. NICHOLLS "likely would not have sunk after encountering the prop wash of the [tug] had its watertight doors been closed, even in light of its severely compromised stability."[459] The vessel was unseaworthy at the time of the incident, and the managing agents were aware of the unseaworthy conditions, which caused the sinking.[460] As such, petitioners were denied limitation.[461]

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[451] *Id*. at 3
[452] *Id*. at 3
[453] *Id*. at 4
[454] *Id*. at 4
[455] *Id*. at 4-5
[456] *Id*. at 7
[457] *Id*. at 7
[458] *Id*. at 7
[459] *Id*. at 12
[460] *Id*. at 12
[461] *Id*. at 14

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—stranding/capsizing; type of vessel—tug/barge; type of claimant—personal injury/death; reason for denying limitation—failure to detect and/or correct defects.

In Re Dieber
United States District Court for the Southern District of New York

Petitioner, Frank J. Dieber ("Dieber"), owner of a 20-foot Formula SR1 Vessel, sought exoneration from or limitation of liability after the vessel was involved in a collision with another vessel while being operated by his son, Frank Dieber, Jr. ("Dieber, Jr."), resulting in injuries to a passenger in the other boat.[462]

On June 29, 2007, Dieber, Jr. took his father's boat, which was located on a trailer in the driveway of his father's house, covered with a tarp, out on Greenwood Lake, where he operated the vessel while intoxicated, causing a collision.[463] The court found that Dieber, Jr. frequently consumed alcohol before operating the Formula SR1 and while actually operating the vessel.[464] Dieber, Jr. was known for operating the vessel in a reckless manner, "including performing 'donuts' on Greenwood Lake and accelerating rapidly toward other vessels before veering to the side."[465]

The court determined that Dieber, Jr.'s history of operating the boat while intoxicated and in a reckless manner made him an incompetent operator, and thus, rendered the vessel unseaworthy.[466] "[A] reasonable shipowner in Dieber's position would have been aware that Dieber, Jr. was not a competent boat operator."[467] Because Dieber knew that his son regularly

[462] *In re Dieber*, 793 F. Supp. 2d 632, 2012 AMC 178 (S.D.N.Y. 2011).
[463] *Id*. at 634
[464] *Id*. at 634
[465] *Id*. at 634
[466] *Id*. at 636
[467] *Id*. at 636

operated the Formula SR1 in a reckless manner, although unaware on this particular day, he failed to meet his burden of proving a lack of privity or knowledge of the negligence and unseaworthiness that caused the incident.[468] As such, limitation was denied.[469]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—pleasure craft; type of claimant—personal injury/death; reason for denying limitation—failure of evidence to prove no privity and knowledge.

Leo LLC v. Flora
United States District Court for the Western District of Washington

Petitioner Leo, LLC sought exoneration from or limitation of liability after seaman Matthew Flora was injured on the M/V LEO, a seventy-six foot ex-United States military landing and recovery craft.[470]

Upon purchase of the M/V LEO, Leo, LLC installed two cranes on the vessel as part of the ship's permanent equipment.[471] On June 12, 2009, the vessel was operating as an undocumented fish tender vessel.[472] Flora was working on the deck when a halibut catcher vessel came alongside the ship's port side.[473] The port side crane was lowered to the halibut catcher vessel so bring on a load of halibut.[474] The crane did not have a safety latch and, as a result, the scale and brailer came out of the crane and struck Flora in the head, knocking him unconscious.[475] As a result of the accident, Flora suffered permanent brain injury.[476]

[468] *Id*. at 636-637
[469] *Id*. at 637
[470] *Leo, LLC v. Flora*, 2011 U.S. Dist. LEXIS 128726, 2012 AMC 471 (W.D. Wash. 2011).
[471] *Id*. at 3
[472] *Id*. at 4
[473] *Id*. at 4
[474] *Id*. at 4
[475] *Id*. at 4
[476] *Id*. at 4-5

The court found that "[a] safety latch would have kept the load in LEO's port side crane hook. Claimant would not have been injured in the crane hook had a safety latch."[477] Because the crane hook was not reasonably fit for its intended purposes, the vessel was unseaworthy at the time of the incident.[478] The court also found that the vessel's manager as well as the captain knew that the crane hook did not have a safety latch, as they operated with it in that manner for seven month's before Flora's injury.[479] Because the manager had actual knowledge of the unseaworthy condition, privity or knowledge was imputed to the owner and limitation was denied.[480]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—personal injury; type of vessel—ocean cargo vessel; type of claimant—personal injury/death; nationality of vessel—United States; nationality of claimant—United States; reason for denying limitation—failure to provide or insure adequate & proper operations, equipment, or crew.

In re Anderson
United States District Court for the Western District of Washington

Plaintiff, James T. Anderson ("Anderson") sought exoneration from or limitation of liability after his catamaran, the CATSHOT, was lost at sea, resulting in the presumable deaths of the three sailors aboard and a wrongful death suit by one of the widows.[481]

In December 2006, the CATSHOT was lost off the coast of Oregon during a severe storm.[482] The vessel was making its way from a South African build yard to a port in

[477] *Id*. at 10
[478] *Id*. at 14
[479] *Id*. at 14-15
[480] *Id*. at 15
[481] *In re Anderson*, 2012 U.S. Dist. LEXIS 53176, 2013 AMC 1369 (W.D. Wash. 2012).
[482] *Id*. at 3

Washington.[483] "Per South African law, [Anderson] took title to the CATSHOT prior to departure.[484] The voyage was less than smooth sailing: the vessel encountered rough weather conditions, which delayed it in Aruba for several weeks, and two of the three crew members "jumped ship" in Trinidad.[485] After findings replacement crew, they too left the vessel in California.[486] Ultimately, the CATSHOT was caught in a severe storm, with winds in excess of 100 mph, off the coast of Oregon.[487] It is believed that the catamaran capsized, and everyone onboard died.[488]

The claimant asserted a myriad of unseaworthy and negligent conditions, including: the failure to provide life vests; a malfunctioning vessel tracking system; an inexperienced master; knowledge of unsafe weather conditions, and more.[489] The court did not find merit to any of the allegations and stated that, "she has failed to satisfy her burden of establishing that 'unseaworthiness caused the accident,' i.e., the decedent's death, and those conditions cannot preclude limitation."[490] Additionally, with respect to the route the vessel took the court "[found] no negligence, and certainly no causation."[491]

Interestingly, although the court appears to have gone through an analysis that should result in exoneration, finding no negligence or unseaworthiness, the court granted limitation and found that Anderson "was entitled to limit his liability to the value of the CATSHOT as of the end of the voyage"[492]—presumably, zero dollars.

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[483] *Id*. at 3
[484] *Id*. at 4
[485] *Id*. at 4
[486] *Id*. at 4
[487] *Id*. at 5
[488] *Id*. at 5
[489] *Id*. at 16-17
[490] *Id*. at 21
[491] *Id*. at 22
[492] *Id*. at 23

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—stranding/capsizing; type of vessel—pleasure craft; type of claimant—personal injury/death.

McAllister Towing of Virginia, Inc. v. United States
United States District Court for the Eastern District of Virginia, Norfolk Division

McAllister Towing of Virginia Inc. ("McAllister"), owner and operator of the tug KATIE G. MCALLISTER ("KATIE G."), sought exoneration from or limitation of liability for damage to U.S. Navy's Degaussing Range cables due to the tug's release of excess tow wires.[493]

On July 13, 2010 the KATIE G. and her tow moved away from the Degaussing Range and caused damage when, "after the tug's tow wire was lengthened, the tug's wire dragged an object through the array…."[494] The court found that McAllister did not provide specific guidance on the proper procedures for lengthening tow wire in their manuals, but rather, relied on the expertise of the captain, who was in sole command of the vessel.[495] Captain Richard Hinson, the master of the KATIE G., had over thirty years of experience; the rest of the crewmembers were likewise competent and experienced.[496]

The court concluded that the KATIE G. crew was negligent in its release of at least 1,3000 feet of tow wire as the tug approached the Degaussing Range, and that the "negligent lengthening of the tow wire was the sole proximate cause of the damage…."[497] Because the court found the captain and crew to be competent, and that the failure of McAllister to provide written instructions on the proper procedures for lengthening tow wire did not amount to negligence, this

[493] *McAllister Towing of Va., Inc. v. United States*, 2012 U.S. Dist. LEXIS 47776, 2013 AMC 428 (E.D. Va. 2012).
[494] *Id*. at 3
[495] *Id*. at 5
[496] *Id*. at 6-7
[497] *Id*. at 25

"one time error" did not amount to privity and knowledge.[498] Accordingly, limitation was granted.[499]

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—allision/collision; type of vessel—tug/barge; type of claimant—property damage.

In re Oil Spill (The Deepwater Horizon)
United States District Court for the Eastern District of Louisiana

Transocean, owner of the DEEPWATER HORIZON, asserted a limitation of liability defense after the oil-drilling rig exploded and sank, resulting in numerous casualties and the largest oil spill in U.S. history.[500]

On April 20, 2010, an explosion occurred on the DEEPWATER HORIZON as it was in the process of temporarily abandoning a well it had drilled on the Outer Continental Shelf off the coast of Louisiana.[501] "The explosions and/or fire should have triggered the automatic function on the HORIZON's BOP, but that function either failed to activate the BOP or the BOP otherwise failed to shut in the well."[502] The court found that "the drill crew's failure to divert the flow overboard constituted a proximate cause of the explosion, fire, and oil spill…"[503] Moreover, "the failure to line up the diverter to discharge overboard prior to the critical operation of displacing the well was…negligence…"[504] In additional to both of these acts of negligence, "failing to line up the diverter to discharge overboard created an unseaworthy condition…"[505]

[498] *Id*. at 67
[499] *Id*. at 67
[500] *In re Oil Spill*, 21 F. Supp. 3d 657, 2014 AMC 2113 (E.D. La. 2014).
[501] *Id*. at 666
[502] *Id*. at 667
[503] *Id*. at 753
[504] *Id*. at 753
[505] *Id*. at 753

The court concluded that all of the proximate causes of the explosion were within Transocean's privity and knowledge because "…Transocean was aware that its crews lacked training about the proper use of diverters…."[506] Accordingly, limitation was denied.[507]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—fire/explosion; type of vessel—miscellaneous; type of claimant—cargo and/or property damage and personal injury/death; reason for denying limitation—failure to provide or insure adequate & proper operations, equipment, or crew; and failure of evidence to prove no privity and knowledge.

In re Bald Head Island Transportation Inc.
United States District Court for the Eastern District of North Carolina, Southern Division

Bald Head Island Transportation Inc. ("BHIT"), owner of the M/V ADVENTURE, sought exoneration from or limitation of liability after its passenger ferry ran aground on a sandbar.[508]

On December 17, 2013, Captain Melton was at the helm of the ferry with fifty-three passengers on board when it ran aground, resulting in numerous injuries.[509] The court found that the ADVENTURE was "purposefully operated outside of a marked navigation channel and grounded on a charted obstruction."[510] Additionally, BHIT was "negligent in employing a chronically inattentive captain who had a documented history of failing to maintain situational awareness, not keeping his eyes on the road and not keeping a proper lookout."[511] Finally, BHIT

[506] *Id*. at 753
[507] *Id*. at 754
[508] *In re Bald Head Island Transp. Inc.*, 124 F. Supp. 3d 658, 2015 AMC 2339 (E.D.N.C. 2015).
[509] *Id*. at 661
[510] *Id*. at 670
[511] *Id*. at 670

allowed the ferry to operate "with its grounding avoidance equipment either turned off, malfunctioning or out of date."[512]

BHIT was found to have privity or knowledge of the negligent acts that caused the grounding because the captain's history of chronic inattentiveness was documented in his performance reports; BHIT gave permission for the ferry to operate outside of a marked navigation channel; BHIT failed to provide a proper lookout when they knew the vessel would be operating outside the marked channel; BHIT failed to ensure the captain was competent in radar usage; and BHIT knew the vessel was operating with its grounding avoidance equipment turned off, malfunctioning or out of date.[513] Accordingly, limitation was denied.[514]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—stranding/capsizing; type of vessel—passenger vessel-small; type of claimant—personal injury/death; reason for denying limitation—failure to provide or insure adequate & proper operations, equipment, or crew; improper operation of vessel by owner and knowledge of; and failure of evidence to prove no privity and knowledge.

In re Treanor
United States District Court for the Eastern District of New York

Petitioner, Kevin Treanor, owner of the KANDI WON, sought exoneration from or limitation of liability after his recreational vessel capsized, resulting in passenger injuries and deaths.[515]

On July 4, 2012, Treanor, his family, and others, boarded the KANDI WON to watch a fireworks display in Oyster Bay Harbor.[516] There were twenty-seven passengers on board in

[512] *Id*. at 670
[513] *Id*. at 671-675
[514] *Id*. at 678
[515] *In re Treanor,* 144 F. Supp. 3d 381, 2015 AMC (E.D.N.Y. 2015).

total, weighing approximately three thousand five hundred and twenty pounds.[517] After the fireworks concluded, the KANDI WON proceeded to leave the area and shortly thereafter overturned and capsized.[518] The Nassau County District Attorney's Investigative Report "concluded that the KANDI WON capsized as a result of being 'overloaded' with, and having 'apparently encountered a 90 [degree] wave."[519] "The combination of the weight, its distribution and the angle of the incoming wave each contributed to making the capsizing of the KANDI WON inevitable."[520]

When discussing negligence, the court noted that, "Petitioner, as the owner of the KANDI WON, owed a duty to his passengers to avoid rending it unseaworthy by overloading it."[521] The overloading of passengers created a foreseeable risk that the vessel would capsize.[522] Although Treanor argued that he was not aware of the vessel's capacity limit, the court faulted him for not taking the steps to become informed of the passenger capacity.[523] Because Treanor "…personally participated in the negligent act of overloading the vessel by inviting or allowing the twenty-seven passengers….[,]"[524] and because he did not act with reasonable diligence, the court found him to have privity and knowledge of the negligent act that caused the capsizing.[525] Accordingly, limitation was denied.[526]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—stranding/capsizing; type of vessel—pleasure craft; type of claimant—personal

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[516] *Id*. at 384
[517] *Id*. at 384
[518] *Id*. at 385-386
[519] *Id*. at 387
[520] *Id*. at 387
[521] *Id*. at 389
[522] *Id*. at 390
[523] *Id*. at 390
[524] *Id*. at 391
[525] *Id*. at 391
[526] *Id*. at 391

injury/death; reason for denying limitation—improper operation of vessel by owner or knowledge of.

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Holzhauer v. Golden Gate Bridge Highway & Transportation District
United States District Court for the Northern District of California

Liability defendant Gold Gate Bridge Highway & Transportation District ("District") sought limitation of liability for damages arising from a collision between a ferry, the SAN FRANSICO, and a speedboat, where the driver of the speedboat was killed and his passenger seriously injured.[527]

The accident occurred on February 16, 2013, on the San Francisco Bay.[528] Evidence at trial showed that the captain of the SAN FRANCISCO was on his cell phone right before the collision and did not see the speedboat.[529] The District argued that they lack privity or knowledge of the captain's negligent act.[530]

The court found that the District "had no policy regarding the use of personal cell phones by its captains."[531] Furthermore, they "knew that [their] captains carried personal cell phones while operating the District's ferries, and permitted their use."[532] Because the District had actual knowledge of their captains using their cell phones while operating the ferries, they failed to meet their burden of proving a lack of privity or knowledge.[533] Accordingly, limitation was denied.[534]

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[527] *Holzhauer v. Golden Gate Bridge Highway & Transp. Dist.*, 2016 U.S. Dist. LEXIS 173732, 2017 AMC 125 (N.D. Cal. 2016).
[528] *Id*. at 2
[529] *Id*. at 3
[530] *Id*. at 4
[531] *Id*. at 10
[532] *Id*. at 10
[533] *Id*. at 10-11
[534] *Id*. at 11

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—allision/collision; type of vessel—passenger vessel--small; type of claimant—personal injury/death; reason for denying limitation—failure of evidence to prove no privity and knowledge.

In re Manhattan by Sail, Inc.
United States District Court for the Southern District of New York

On remand from the Second Circuit, Manhattan by Sail, Inc. and Shearwater Holdings, Ltd. ("Petitioners") argued that they are entitled to limitation of liability because they lacked privity or knowledge of a crewmember's negligence that caused injury to a passenger on their sailboat.[535]

The incident occurred on April 30, 2011, when Charis Tagle was a passenger aboard the Petitioner's sailboat, which took pleasure cruises around New York Harbor.[536] Tagle was struck in the face when "a deckhand raising the vessel's forestaysail lost control of the halyard, allowing the halyard to swing….[,]"[537] striking Tagle and causing a cut on her face.[538] The Second Circuit determined that the deckhand "lost control of the halyard because of 'his failure to use due care and skill.'"[539]

The district court found that the Petitioners lacked privity or knowledge because the incident was akin "to a spontaneous navigational error not caused by a lapse in hiring, equipment or procedures."[540] The deckhand was competent, properly trained, and no such similar event had occurred in the past.[541] Accordingly, limitation was granted.[542]

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[535] *In re Manhattan by Sail, Inc.*, 2018 U.S. Dist. LEXIS 157262, 2018 AMC 2642 (S.D.N.Y. 2018).
[536] *Id*. at 1
[537] *Id*. at 2
[538] *Id*. at 2
[539] *Id*. at 7
[540] *Id*. at 10
[541] *Id*. at 8-9

For purposes of the statistical tables, the following entries will be recorded: granted—yes; type of casualty—personal injury; type of vessel—miscellaneous; type of claimant—personal injury/death.

In re Fire Island Ferries, Inc.
United States District Court for the Eastern District of New York

Petitioner, Fire Island Ferries, Inc. ("FIF") sought exoneration from or limitation of liability after a collision between their water taxi and a pleasure craft.[543]

The collision occurred on July 10, 2011 on the Great South Bay when the captain of the water taxi was districted while sending a personal text message on his cell phone.[544] The court concluded that this was the proximate cause of the accident, stating, "[h]ad the Captain…not been texting it is likely he would have seen the [pleasure craft] either visually or on radar earlier than he did thereby lessening, if not avoiding the resulting collision and damages."[545]

Although FIF argued that they had an oral policy "sufficiently broad to preclude texting….[,]"[546] the court did not find the position convincing. "Petitioner's reliance on their 'one size fits all' distracted operation policy is found to be insufficient to insulate FIF from potential liability in excess of the [water taxi's] value."[547] Accordingly, limitation was denied.[548]

For purposes of the statistical tables, the following entries will be recorded: granted—no; type of casualty—allision/collision; type of vessel—passenger vessel--small; type of claimant—cargo and/or property damage and personal injury; reason for denying limitation—failure of evidence to prove no privity and knowledge.

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[542] *Id*. at 12-13
[543] *In re Fire Island Ferries, Inc.*, 2018 U.S. Dist. LEXIS 18599, 2018 AMC 395 (E.D.N.Y. 2018).
[544] *Id*. at 13-14
[545] *Id*. at 18
[546] *Id*. at 27
[547] *Id*. at 31
[548] *Id*. at 34

III. Statistical Tables

Table I

Table I is an overall summary by the indicted year periods of cases where limitation was granted or denied. Generally, the periods correspond to AMC Digest periods. The periods shown parenthetically as (A), (B), (C), (D), (E), (F), (G), (H) and (I) are from the 1996 studies. These designations are used to show time periods in succeeding tables. The periods shown as (J), (K), (L), (M) and (N) represents the current study.

ALL CASES WHERE LIMITATION ISSUE DECIDED

		Granted	
Period		Yes	No
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
1976-1981 (F)	…….	11	17
1983-1987 (G)	…….	5	6
1988-1992 (H)	…….	6	10
1993-1996 (I)	…….	6	4
1997-2001 (J)	…….	7	6
2002-2006 (K)	…….	7	6
2007-2011 (L)	…….	5	11
2012-2016 (M)	…….	2	6
2017-2019 (N)	…….	1	2
Total	……	85	134

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 type described.

TYPES OF CASUALTIES

	A		B		C		D		E		F		G		H		I		J		K		L		M		N		Total for All Periods	
Type of Casualty	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Fire/Explosion	0	1	4	4	1	1	0	1	1	6	0	0	1	2	2	0	1	1	0	0	0	0	0	0	0	1	0	0	10	17
Allision/Collision	3	1	8	5	1	6	3	5	2	4	8	6	2	2	1	3	3	0	2	2	7	3	3	5	1	0	0	2	44	44
Stranding/Capsizing	0	0	1	1	1	1	0	3	0	3	2	5	1	0	0	0	0	1	0	0	0	0	1	1	1	3	0	0	7	18
Cargo Damage	0	0	1	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	2	2
Sinking	0	3	2	7	3	4	0	4	1	1	1	4	0	1	0	0	1	0	0	1	0	0	0	0	0	0	0	0	8	25
Oil Spill	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Personal Injury	1	0	0	0	1	2	0	1	0	0	0	2	1	1	3	6	1	2	5	2	0	3	1	5	0	2	1	0	14	26

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 tonnage 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.

TYPES OF VESSELS

	A		B		C		D		E		F		G		H		I		J		K		L		M		N		Total for All Periods	
Type of Vessel	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	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	4	9	1	4	1	2	1	1	1	1	0	0	1	1	0	1	0	0	19	39
Tug/Barge	3	1	5	6	3	8	1	5	1	5	5	5	4	0	1	0	4	1	2	4	7	2	3	5	1	1	0	0	40	43
Fishing Vessel	2	0	1	3	0	1	0	2	0	0	0	1	0	0	0	0	0	0	1	0	0	1	1	0	0	0	0	0	5	8
Pleasure Craft	0	1	4	3	1	1	0	2	1	2	1	0	0	1	3	5	0	0	1	1	0	1	0	1	1	2	0	0	12	20
Passenger Vessel-Small	0	1	0	1	0	1	0	0	0	1	0	2	0	0	0	0	0	1	1	0	0	1	0	2	0	1	0	2	1	13
Passenger Vessel-Large	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	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	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	1
Miscellaneous	0	0	0	1	0	0	1	0	0	0	0	0	0	1	1	3	1	1	1	0	0	1	0	2	0	1	1	0	5	10

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 property other 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

	A		B		C		D		E		F		G		H		I		J		K		L		M		N		Total for All Periods	
Type of Claimant	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	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	1	4	1	2	4	7	3	2	5	2	0	3	1	7	1	5	1	1	26	48
Cargo (C)	0	3	1	3	1	3	0	3	0	4	1	4	1	0	0	0	1	0	0	2	0	0	1	1	0	0	0	0	6	23
Property Damage (P.D.)	2	0	5	4	1	4	1	4	1	3	4	3	4	2	1	4	2	2	2	1	3	0	3	3	1	0	0	0	30	30
C. and/or P.D. and P.I.	2	1	6	5	1	3	0	3	1	4	3	4	0	1	1	0	0	0	0	1	3	3	0	0	0	1	0	1	17	27
C. and P.D.	0	0	1	1	2	0	1	1	0	2	2	2	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	7	6

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

	A		B		C		D		E		F		G		H		I		J		K		L		M		N		Total for All Periods	
Type of Ocean Cargo Vessel	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
United States	0	2	4	2	1	1	1	3	1	0	1	3	1	3	1	1	0	1	0	0	0	0	0	0	0	1	0	0	10	17
Foreign	0	0	2	2	1	2	0	2	0	6	3	6	0	0	1	1	0	0	1	1	0	0	1	1	0	0	0	0	9	21

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 results 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

	A		B		C		D		E		F		G		H		I		J		K		L		M		N		Total for All Periods	
Type	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
United States	0	2	4	2	1	1	1	3	1	4	1	4	0	1	0	0	1	0	0	0	0	0	0	0	0	1	0	0	9	18
Foreign	0	0	0	1	1	1	0	2	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	3	4
Combined/ Unknown	0	0	2	1	0	1	0	0	0	2	3	5	1	0	0	0	0	0	0	1	0	0	1	1	0	0	0	0	7	11

Table VII

Table VII is a subjective classification of the reasons for denying limitation in cases where it was denied. 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 1976 convention.

REASONS FOR DENYING LIMITATION

Reason	**A**	**B**	**C**	**D**	**E**	**F**	**G**	**H**	**I**	**J**	**K**	**L**	**M**	**N**	**Total for All Periods**
Failure to provide or insure adequate & proper operations, equipment, or crew	0	4	4	8	4	6	2*	1	2	3*	2*	3*	3*	0	42
Failure to detect and/or correct defects	1	7	6	2	5	7	0	1	0	0	0	1	1	0	31
Orders by owner to vessel that proved improper	0	1	0	0	0	1	0	0	0	0	0	0	0	0	2
Improper operation of vessel by owner or knowledge of	3	3	4	2	5*	1	5*	7	1	1*	2*	5	2*	0	41
Personal contract	1	2	0	0	1*	0	0	0	0	0	0	0	0	0	4
Improper stowage or other operational act by sufficiently high person	0	1	0	1	0	1	0	0	1	0	0	0	0	0	4
Failure of evidence to prove no privity and knowledge	0	0	0	1	1	1	0	0	0	5*	5*	6*	3*	2	24

* dual reasons

IV. Statistical Results

For all reported cases from 1953-2019, the results show that limitation was granted 85 times and denied 134 times. This results in a 38.8% grant of limitation and a 61.1% denial of limitation, showing that more often than not, a court will deny limitation of liability. Additionally, the average number of cases per year for the entire sixty-six-year period of recorded cases is 3.3.

These numbers show a strikingly consistent trend. For the years 1953-1981, limitation was granted for 35.7% of cases and denied for 64.3% of cases. When adding an additional fifteen-year period, 1953-1996, limitation was granted for 38.0% of cases and denied for 62.1% of cases. From 1997-2019 limitation was granted 41.5% of the time and denied 58.5% of the time, but when adding this to the entire recorded period, the result, as mentioned above, is granted at a rate of 38.8% and denied at a rate 61.1%–a marginal difference.

By far, the most common type of casualty over all periods is an allision or collision. Interestingly, these types of casualties result in a grant of limitation 50% of the time and a denial of limitation 50% of the time. Personal injury is the second most common type of casualty, gaining a significant presence in the time period from 1988-1992 and increasing through the present day.

Owners of tugs and barges seek limitation of liability at the highest rate. Similar to the most common type of casualty, the most common type of vessel is granted limitation 48.2% of the time and denied limitation 51.8% of the time. The second most common type of vessel to seek limitation is the ocean cargo vessel; however, after the 1980s, the presence of this type of vessel significantly declines. Vessels flagged in the United States were granted limitation 37% of the time and denied limitation 63% of the time. Foreign flagged vessels fared only slightly worse with a 30% grant of limitation and a 70% denial of limitation.

Due to the rise in personal injury accidents since the late 1980s, the most common type of claimant is personal injury or death. Fortunately for these claimants, in all personal injury or death cases, a shipowner has been found entitled to limit their liability only 35.1% of the time and is denied the right to limitation 64.9% of the time—relatively consistent with the statistics for overall cases.

The most common reasons for denying a shipowner limitation of liability, at almost exactly the same rate, are failure to provide or insure adequate and proper operations, equipment, or crew, and improper operations of vessel by owner or knowledge thereof. These results show that shipowners are still responsible for ensuring the maintenance of seaworthy vessels as well as employing competent crewmembers, who have been adequately trained in the navigation of the ship and in the handling of its equipment. Overall, while limitation is often denied, the results show that it remains a viable tool for shipowners. Despite its controversial effects in the twenty-first century, it will likely remain a powerful liability shield for decades to come, unless Congress says otherwise.

V. Case Log

i. Limitation Granted

Gary Moeller, et al. v. Mark Mulvey, et al., 1997 AMC 2486, 959 F. Supp. 1103 (D.Minn. 1996).

Howell v. American Cas. Co., 691 So. 2d 715, 1997 AMC 1739 (4th Cir. 1997).

Silver Fox Inc., et al. Limitation Proceedings, Silver Fox II, 1998 AMC 2623 (D. Alaska 1998).

Carr v. PMS Fishing Corp., 191 F.3d 1, 1999 AMC 2958 (1st Cir. 1999).

Karim v. Finch Shipping Co., 94 F. Supp. 2d 727, 2000 AMC 1617 (E.D. La 2000).

In re National Shipping Co. of Saudi Arabia, 147 F. Supp. 2d 425, 2001 AMC 235 (E.D. Va. 2000).

Hellenic Inc. v. Bridgeline Gas Distrib. LLC, 252 F.3d 391, 2001 AMC 1835 (5th Cir. 2001).

In re Western Pioneer, Inc., 2002 U.S. Dist. LEXIS 20242, 2002 AMC 1743 (W.D. Wash. 2002).

In re Am. Milling Co., 270 F. Supp. 2d 1068, 2003 AMC 2645 (E.D. Mo. 2003).

Western Pioneer, Inc. v. Int'l Specialty, Inc. 339 F.3d 1137, 2003 AMC 2272 (9th Cir. 2003).

Lawrenson v. Belterra Resort Ind., LLC, 360 F.3d 885, 2004 AMC 693 (8th Cir. 2004).

In re Am. Milling Co., 409 F.3d 1005, 2005 AMC 1217 (8th Cir. 2005).

Washington v. Sea Coast Towing, Inc., 2004 U.S. Dist. LEXIS 29619, 2006 AMC 572 (W.D. Wash. 2004).

Otal Invs. Ltd. v. M/V Clary, 2008 U.S. Dist. LEXIS 40815, 2008 AMC 1561 (S.D.N.Y 2008).

In re Sea Wolf Marine Towing & Transp., Inc., 2007 U.S. Dist. LEXIS 82565, 2008 AMC 131 (S.D.N.Y. 2007).

Matheny v. TVA, 557 F.3d 311, 2009 AMC 492 (6th Cir. 2009).

Omega Protein v. Samson Contour Energy E&P LLC, 548 F.3d 361, 2009 AMC 245 (5th Cir. 2008).

Signal Int'l LLC v. Miss. DOT., 579 F.3d 478, 2009 AMC 2177 (5th Cir. 2009).

In re Anderson, 2012 U.S. Dist. LEXIS 53176, 2013 AMC 1369 (W.D. Wash. 2012).

McAllister Towing of Va., Inc. v. United States, 2012 U.S. Dist. LEXIS 47776, 2013 AMC 428 (E.D. Va. 2012).

In re Manhattan by Sail, Inc., 2018 U.S. Dist. LEXIS 157262, 2018 AMC 2642 (S.D.N.Y. 2018).

ii. Limitation Denied

Gautreaux v. Scurlock Marine, 84 F.3d 776, 1997 AMC 1534 (5th Cir. 1996).

Warrior & Gulf Navigation Co., 1996 U.S. Dist. LEXIS 19592, 1997 AMC 1432 (S.D. Ala. 1996).

Palmer Johnson Savannah, Inc., 1 F. Supp. 2d 1377, 1998 AMC 386 (S.D. Ga. 1997).

In re TT Boat Corp., 1999 U.S. Dist. LEXIS 5627, 1999 AMC 2776 (E.D. La 1999).

Birmingham Southeast v. M/V Merch. Patriot, 124 F. Supp. 2d 1327, 2000 AMC 1015 (S.D. Ga.

2000).

In re Bay Runner Rentals, Inc., 113 F. Supp. 2d 795, 2001 AMC 894 (D. Md. 2000).

Cape Fear, Inc. v. Martin, 312 F.3d 496, 2002 AMC 2733 (1st Cir. 2002).

Trico Marine Assets Inc v. Diamond B Marine Servs., 332 F.3d 779, 2003 AMC 1355 (5th Cir. 2003).

Szollosy v. Hyatt Corp., 396 F. Supp. 2d 147, 2005 AMC 2501 (D. Conn. 2005).

In re Clinton River Cruise Co., 2005 U.S. Dist. LEXIS 25680, 2005 AMC 2728 (E.D. Mich. 2005).

Ed. Note (DJF) add *In re Rhoten*, 397 F. Supp. 2d 151 (D. Mass. 2005).

In re Mobro Marine, Inc., 2004 U.S. Dist. LEXIS 27561, 2005 AMC 527 (M.D. Fla 2004).

Broussard v. Stolt Offshore, Inc., 467 F. Supp. 2d 668, 2007 AMC 1423 (E.D. La. 2006).

In re City of New York, 475 F. Supp. 2d 235, 2007 AMC 702 (E.D.N.Y. 2007).

Lockheed Martin Corp. v. Unknown Respondents, 2007 U.S. Dist. LEXIS 23663, 2007 AMC 1338 N.D.N.Y. 2007).

Otal Invs. Ltd. v. M/V Clary, 2008 U.S. Dist. LEXIS 40815, 2008 AMC 1561 (S.D.N.Y 2008).

Matheny v. TVA, 523 F. Supp. 2d 697, 2008 AMC 725 (M.D. Tenn. 2007).

Agni v. Wenshall (In re City of New York), 522 F.3d 279, 2008 AMC 1389 (2nd Cir. 2008).

In re Via Sales & Leasing, Inc., 499 F. Supp. 2d 887, 2008 AMC 438 (E.D. Mich. 2007).

In re S.D.S. Lumber Co., 567 F. Supp. 2d 1302, 2009 AMC 1899 (D. Or. 2008).

In re Vulcan Materials Co., 674 F. Supp. 2d 756, 2010 AMC 1251 (E.D. Va. 2009).

Posavina Shipping Co. v. Alex C Corp., 2010 U.S. Dist. LEXIS 116381, 2011 AMC 157 (D. Mass. 2010).

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