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Legal Sidebar

The Baltimore Bridge Collapse and the Limitation of Liability Act of 1851

April 24, 2024

On March 26, 2024, the *Dali*—a 985-foot container ship—struck a support structure of the Francis Scott Key Bridge in Baltimore, causing the bridge to collapse. As of the time of writing, four people are confirmed to have died in the collapse; two remain missing and are presumed dead.

Although the investigation into the events surrounding the bridge collapse and the efforts to locate all the victims are ongoing, discussion has turned to who may be liable for the collision. On April 1, 2024, the *Dali*'s owner filed a petition in federal district court under the Limitation of Liability Act (Limitation Act or Act) of 1851, 46 U.S.C. §§ 30521–30530, asking the court either to exonerate the owner from liability for the collision or to restrict the owner's potential financial liability to approximately $43 million. This Legal Sidebar explains the Limitation Act's substantive requirements and potential effect on liability assessments, examines the significant procedural impact of a shipowner filing a petition under the Act, and discusses considerations for Congress.

Substantive Requirements Under the Act

The Limitation Act's main provision generally permits a shipowner to cap its total liability for losses or injury resulting from a maritime accident that occurs "without the privity or knowledge of the owner." This liability limitation applies to "seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters," but it excludes certain "small passenger vessels." The Supreme Court has also ruled that a vessel's foreign-flag status does not preclude the shipowner from availing itself of the Limitation Act's protection in U.S. federal courts.

Lack of "Privity or Knowledge"

To limit their liability, shipowners bear the burden of proving that they lacked "privity or knowledge" of the negligence or fault that caused the accident. Courts applying the privity or knowledge standard have generally focused on the shipowner's complicity or personal participation. Courts have also observed that the meaning of "privity or knowledge" for purposes of the statute is "somewhat elusive" and "difficult to apply."

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LSB11155

Courts have thus looked to the underlying purposes of the Limitation Act in assessing the privity or knowledge standard. As one court has explained, the "Limitation Act was designed to encourage investment in the shipping industry by limiting the physically remote shipowner's vicarious liability for the negligence of his or her water-borne servants." The Limitation Act thus "loosens the normal rules of *respondeat superior* in admiralty cases by allowing shipowners to insulate their personal assets (beyond the value of the ship) in cases where any negligence is committed without the owner's privity or knowledge."

Although an owner's privity or knowledge is dependent on the specific facts of the case, courts have held that this standard generally requires shipowners to select a competent crew and to remedy defects in the vessel that are discoverable through reasonable diligence. Mere navigation mistakes caused by an otherwise competent crew typically are not deemed to be within the shipowner's privity or knowledge.

For corporate shipowners, courts generally impute to the corporation the "privity or knowledge" of individuals "sufficiently high on the corporate ladder." The Supreme Court has also explained that a corporate shipowner may not limit liability under the Limitation Act "where the negligence is that of an executive officer, manager or superintendent whose scope of authority includes supervision over the phase of the business out of which the loss or injury occurred." Additionally, for claims of personal injury or death involving certain types of vessels, the Limitation Act provides that "the privity or knowledge of the master or the owner's superintendent or managing agent, at or before the beginning of each voyage, is imputed to the owner."

Shipowners have in some cases successfully established a lack of privity or knowledge for incidents in which their vessels crashed into stationary objects. In *In re Omega Protein, Inc.*, for example, a federal court of appeals upheld a trial court's ruling that the owner of a 396-ton fishing vessel lacked privity or knowledge of the captain's negligent actions that contributed to the vessel crashing into an oil platform. The trial court determined the captain had "a spotless record" at the time of the incident, but that he negligently "failed to maintain a proper lookout and failed to make effective use of the radar." Still, the trial court ultimately concluded that the captain's negligence amounted to "mistakes of navigation" for which the owner lacked privity or knowledge.

In affirming that ruling, the appellate court observed that the owner "did not do everything within its power to ensure that [the captain] knew the full capabilities of the vessel's radar, nor did it have a protocol in place dictating when features such as the anti-collision alarm were to be used." Nonetheless, the appellate court reasoned that "the 'privity or knowledge' standard does not require a vessel owner to take every possible precaution; it only obliges the owner to select a competent master and remedy deficiencies which he can discover through reasonable diligence."

In other cases, courts have held that shipowners did have privity or knowledge of the negligence or fault that caused their vessels to collide with stationary objects. In *Hercules Carriers, Inc. v. State of Florida*, for example, a federal court of appeals held that the owner of the cargo vessel that crashed into the Sunshine Skyway Bridge in Tampa Bay, Florida—destroying 1,200 feet of the bridge and killing thirty-five people—had "privity or knowledge" of the causes of the accident. In that case, the court determined that multiple negligent acts of the crew, such as excessive speed during a storm, caused the crash, and that the vessel was unseaworthy due to the incompetence of the crew, some of whom held invalid licenses for their positions. The court provided several reasons for concluding that the shipowner had privity or knowledge of the negligence of the crew and unseaworthiness of the vessel. Among those reasons were that the owner had an unwritten policy directing the crew to disobey certain maritime regulations, and that the owner failed "to exercise due diligence in selecting, training and maintaining a competent crew."

Financial Liability Limits

When a court concludes that a shipowner is entitled to limitation, the Limitation Act restricts the total liability the owner may face for certain claims, such as for "loss, damage, or injury by collision." In the case of property damage, the shipowner's liability is limited to the "pending freight" and "the value of the ship *after* the voyage on which the incident occurred." The term "pending freight" refers to the amount earned from the vessel's voyage, including all "rewards, hire, or compensation, paid for the use of ships." The Limitation Act provides an alternative minimum liability amount for personal injury and wrongful death claims where the value of the vessel and pending freight is insufficient to cover the total amount of all claims. In such cases, it establishes a separate fund to cover the outstanding personal injury and wrongful death claims and sets the minimum liability limit at a minimum of $420 times the tonnage of the vessel. The statute also includes criteria for calculating the tonnage for purposes of this provision.

Procedural Implications

Cessation

When an owner files a petition in federal court under the Limitation Act, all related actions must cease immediately and all current and prospective claimants must submit their claims exclusively in the limitation action. These requirements are codified at 46 U.S.C. § 30529(c) and effectuated by Supplemental Rule F of the Federal Rules of Civil Procedure, which applies to admiralty or maritime claims and asset forfeiture actions. Subject to two exceptions that do not appear relevant here, it is only upon the denial of the petition for limitation that claimants may resume their original suits or commence a new one in other venues.

Exoneration

Under Supplemental Rule F, a shipowner's petition may "demand exoneration from as well as limitation of liability" (as the owner of the *Dali* has done in its petition). Courts typically conduct a two-step inquiry in resolving such petitions. First, the court determines whether acts of negligence or conditions of unseaworthiness caused the incident. Parties asserting claims against the owner bear the burden of proof in establishing such negligence or unseaworthiness. If the court determines the incident was not caused by negligence or unseaworthiness, then it may rule that the shipowner is exonerated from liability. When a court determines that a shipowner is exonerated, it does not need to reach the question of "privity or knowledge," because "[i]f there was no fault or negligence for the shipowner to be 'privy' to or have 'knowledge' of within the meaning of the [Limitation Act], there is no liability to be limited." If the court determines that negligent acts or unseaworthy conditions caused the incident, however, then the court will determine whether the shipowner had privity or knowledge of those acts or conditions. The burden of proof then shifts to the shipowner to establish a lack of privity or knowledge.

While courts typically decide whether to grant exoneration prior to deciding whether to limit liability, courts sometimes decline to address exoneration and instead rule only on limitation of liability, such as where it is "impossible under any set of circumstances for the vessel owner to demonstrate the absence of privity or knowledge."

Petition Requirements and Liability Fund

Rule F requires that a shipowner seeking to limit its liability or exonerate itself therefrom file a petition under the Act in federal court no later than six months following receipt of a claim in writing. Following filing, the owner must deposit with the court or a court-appointed trustee "a sum equal to the amount or

value of the owner's interest in the vessel and its pending freight, or an approved security therefor. . . ." The owner must also "give security for costs and, if [the owner] elects to give security, for interest at the rate of 6 percent per annum from the date of the security." The petition seeking limitation of or exoneration from liability must also identify certain facts supporting the petition.

Rule F further requires the court to serve notice on claimants of the petition and provide a date for filing their claims no earlier than thirty days following issuance of the notice. In addition to their claims for damages, claimants may file an answer contesting the shipowner's petition for a limitation of or exoneration from liability.

Claimants may seek to increase the amount provided for in the liability fund if they believe it is less than the true value of the shipowner's interest in the vessel and pending freight. Upon such a demand, the court must have an appraisal conducted. Claimants may also move to increase the amount of the liability fund if they deem the fund insufficient to cover claims arising with respect to bodily injury or loss of life, which may have a higher liability ceiling, as discussed above. Upon a final determination of liability, the fund is divided pro rata among the several claimants in proportion to the amounts of their respective claims as allowed by law and without waiving any priority to which any party may be legally entitled.

Considerations for Congress

As Congress contemplates possible legislative responses in the wake of the bridge collapse, it may wish to consider the Limitation Act's potential to limit damages that injured parties may collect from the *Dali*'s owner if the owner is determined to be liable. As discussed above, the investigation into the cause(s) of the *Dali*'s crash is ongoing. The court's determination whether the *Dali*'s owner can limit any potential liability will depend on the particular facts that emerge during the investigation. Notices of claims against the *Dali*'s owner are required to be filed with the court no later than September 24, 2024. The Mayor and City Council of Baltimore filed an answer and the first claim in response to the petition on April 22, 2024.

On one hand, some courts have criticized the Limitation Act as an "anachronistic" law whose protections for the shipping industry are no longer "warranted [or] consistent with current reality." Another federal appellate court recently reiterated its characterization of the Act as something that was once "a creative way to limit liability 'in an era before the corporation, with its limited shareholder liability, had become the standard form of business organization and before the present range of insurance protection was available.'"

On the other hand, some legal commentators have asserted that the law still serves important purposes. For example, one has stated that "most, if not all, of the world's shipping nations have some sort of Limitation Act" and that repealing the law would "make American law radically different from that of its trading partners," placing U.S. shipowners at a competitive disadvantage. The commentator further asserted that repealing the Limitation Act would "cause a substantial increase" in shipowners' insurance premiums, because marine insurance policies currently "are written with the understanding that shipowners will have the right to limit their liability."

Congress has considered legislation to repeal the Act. In 2010, the House passed the Securing Protections for the Injured from Limitations on Liability Act, H.R. 5503, 111th Cong., which would have repealed the core provisions of the Act providing for limitation of liability. It was then referred to the Senate Committee on Commerce, Science, and Transportation, without further action. Although Congress has not enacted legislation repealing the Act's general limitation provisions, it did recently amend the law to exclude certain small passenger vessels following the 2019 fire aboard the *Conception* that killed thirty-four individuals.

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