SEMAPHORE
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Limiting Liability Arising from the Baltimore Bridge Collision Incident

Can the Singaporean owner and manager of a vessel (the Petitioners) that collided with a bridge in Baltimore limit their liability from the incident pursuant to the Limitation of Liability Act of 1851 46 USC §§ 30521–30530 (Liability Act)? On 1 April 2024, they sought to do just that by filing a petition in the District Court of Maryland, Baltimore for exoneration from or limitation of liability (Petition) as permitted by the Liability Act.

The Limitation Act provides that, for claims subject to limitation, “the liability of the owner of a vessel … shall not exceed the value of the vessel and pending freight”. Such a limitation would substantially limit the exposure of the owner and operator arising from the Baltimore Bridge incident which occurred on 26 March 2024 when the MV Dali (registered in Singapore and operated by the Singaporean Synergy Marine Pte Ltd) shortly after departing Baltimore Port lost power and propulsion and collided with the Francis Scott Key Bridge. The bridge collapsed into the harbour, killing six people. At least one other was injured. The Singaporean vessel, owned by Grace Ocean Private Ltd and its cargo, caried by the charterer, Maersk, were also damaged. The incident has caused widespread loss and damage.

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It is a federal statute enabling owners of seagoing vessels (as well as those used on lakes or rivers or in inland navigation) to limit liability to an amount “not exceed[ing] the value of the vessel and pending freight” in respect of “claims, debts, and liabilities subject to limitation … are those arising from any … loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, <u>done, occasioned, or incurred, without the privity or knowledge of the owner</u>” *(emphasis added)*.

The burden rests on the shipowner to prove lack of privity or knowledge. In the present case, the owner asserts that the incident occurred without fault, neglect, or want of care on the part of the petitioners such that there was no fault or negligence for the shipowner to be “privy” to or have “knowledge” of within the meaning of the statute, entitling them to be exonerated. In the alternative, if fault, neglect or want of care are found, it was without their privity or knowledge within the meaning of the Limitation Act. In response, in documents filed with the Maryland Court on 22 April 2024, the Mayor of Baltimore has alleged that the petitioners *were* negligent excluding limitation of liability under the Liability Act.

The underlying purpose of the Limitation Act is to limit the liability of a shipowner where they are remote from the damage caused. *First*, the Court will determine what acts of negligence or

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conditions of unseaworthiness caused the accident, if any. *Second*, the Court must determine whether the shipowner had knowledge or privity of those same acts of negligence or conditions of unseaworthiness. The phrase “privity or knowledge” is a term of art meaning complicity in the fault that caused the accident and has been construed to mean that a shipowner knew or should have known that a certain condition existed. Where the owner’s negligent act caused the alleged injury, all the requirements of privity are satisfied.

The exact meaning of “privity or knowledge” is somewhat elusive. In the past, 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. In the present case, the mayor of Baltimore alleges that even before leaving port, alarms showing an inconsistent power supply on the Dali had sounded. The Dali left port anyway, despite its clearly unseaworthy condition. The implication being that at least the master and crew would have known of the defective power supply. In total, the mayor alleges around 23 acts and omissions by the petitioners including provision of an incompetent crew and failure to maintain the vessel in a reasonable manner such that the petitioners were grossly or criminally negligent. As was found in *Hercules Carriers Inc v State of Florida* 768 F.2d 1558 (11th Cir. 1985), petitioners are not entitled to limitation if the ship was unseaworthy due to an incompetent crew or faulty equipment.

The matter is still before the Court. Cargo interests must file their claims against the petitioners by September 24, 2024, and all suits will be stayed while the Limitation Act proceeding is resolved. All current and prospective claimants must submit their claims exclusively in the limitation action (with some exceptions). 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.

Court documents assert that:

1. the sound value of the vessel at the time of the voyage did not exceed US$90,000,000;
2. repairs costs are estimated at US$28,000,000; and
3. salvage costs are estimated at US$19,500,000.

Such that the value of the vessel at the termination of the voyage is estimated to be around US$42,500,000 with impending freight estimated at US$1,170,000. On this basis, the petitioners offered to pay into Court US$43,670,000 (sound value of the vessel plus pending freight less repair costs and salvage costs), being the fund available in Court against which persons might make claims against the vessel. That is, if the petitioners are not exonerated from the claims, they seek to limit their liability to the monies paid into Court.

If the petitioners cannot limit their liability, the petitioners they will be exposed to various claims without limit. Reports have estimated these could amount to several billion dollars. The MV Dali, is insured for up to US$3.1 billion by the Britannia P&I Club.

In summary, the effect of the Limitation Act is to enable the vessel owner to limit its risk to the interest held in the ship (or an equivalent fund) in respect to all claims arising out of the conduct of the master and crew ... while leaving the owner still liable for its own fault [and] neglect. Thus, instead of being vicariously liable for the full extent of any injuries caused by the negligence of the captain or crew employed to operate the ship, the owner’s liability is limited.

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 US$420 times the tonnage of the vessel.

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A vessel's foreign flag status does not preclude the shipowner from availing itself of the Limitation Act's protection in United States Federal Courts.

The Limitation Act was enacted around 173 years ago to grant American shipowners similar advantages that British and other European countries granted their own vessel owners. International Conventions have largely normalised shipowners' limitation of liability when shipping internationally: See the International Convention Relating to the Limitation of Liability of Owners of Seagoing Ships, October 10, 1957; International Convention on Limitation of Liability for Maritime Claims, November 19, 1976; 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972. The United States is not currently a party to these conventions.

The Position in Australia

Australia introduced The Limitation of Liability for Maritime Claims Convention (LLMC) in via the Limitation of Liability for Maritime Claims Act 1989 (Cth) (Australian Act): See section 6. It provides an overall limit on the total liability arising from a single, distinct, occasion and allows shipowners to limit their liability to compensation for general ship-sourced damage. A shipowner is defined in the Australian Act to include the owner, charterer, manager and operator.

The LLMC applies to claims for loss of life and personal injury, as well as loss of or damage to property. It applies to damage caused by delay in the carriage by sea of cargo, passengers or their luggage. It also applies to pollution damage where no other convention applies. Liability is calculated with reference to units of account.

However, and similarly to the Liability Act, under the Australian Act, a person shall not be entitled to limit his or her liability if it is proved that the loss resulted from his or her personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

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