MAY 2022
VOL. 22-5

PRATT'S

ENERGY LAW REPORT

LexisNexis

Pratt's Energy Law Report

VOLUME 22 **NUMBER 5** **May 2022**

LexisNexis®

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please email:
Jessica Carnevale, Esq. at ..... (212) 229-4942
Email: ..... jessica.carnevale@lexisnexis.com
Outside the United States and Canada, please call . . . . . (973) 820-2000

For assistance with replacement pages, shipments, billing or other customer service matters, please call:
Customer Services Department at . . . . . (800) 833-9844
Outside the United States and Canada, please call . . . . . (518) 487-3385
Fax Number . . . . . (800) 828-8341
Customer Service Website . . . . . http://www.lexisnexis.com/custserv/

For information on other Matthew Bender publications, please call
Your account manager or . . . . . (800) 223-1940
Outside the United States and Canada, please call . . . . . (937) 247-0293

ISBN: 978-1-6328-0836-3 (print)
ISBN: 978-1-6328-0837-0 (ebook)
ISSN: 2374-3395 (print)
ISSN: 2374-3409 (online)

Cite this publication as:

[author name], [*article title*], [vol. no.] PRATT'S ENERGY LAW REPORT [page number] (LexisNexis A.S. Pratt);
Ian Coles, *Rare Earth Elements: Deep Sea Mining and the Law of the Sea*, 14 PRATT'S ENERGY LAW REPORT 4 (LexisNexis A.S. Pratt)

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW BENDER

(2022–Pub.1898)

Editor-in-Chief, Editor & Board of Editors

Hydraulic Fracturing Developments
Eric Rothenberg
Partner, O'Melveny & Myers LLP

Pratt's Energy Law Report is published 10 times a year by Matthew Bender & Company, Inc.

POSTMASTER: Send address changes to *Pratt's Energy Law Report*, LexisNexis Matthew Bender, 230 Park Ave. 7th Floor, New York NY 10169.

Maritime Law
The Gateway to Federal Court: Admiralty Jurisdiction and Limitation of Liability

By Noe S. Hamra and Zachary R. Cain*

The authors review federal court jurisdiction in maritime cases, including the circumstances under which shipowners in the United States may be entitled to limit their liability in respect of a maritime casualty.

In the United States, state and federal courts operate on a dual track, with the difference that state courts are courts of "general jurisdiction" (hearing all cases not specifically reserved to federal courts), while federal courts are courts of "limited subject matter jurisdiction" (hearing cases involving "diversity of citizenship," raising a "federal question," or "sounding in admiralty").

ADMIRALTY AND MARITIME SUBJECT MATTER JURISDICTION

As it relates to admiralty and maritime subject matter jurisdiction, the U.S. Constitution states in Article III, Section 2 that "[t]he judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction. . . ."

The first statute defining the boundaries of admiralty jurisdiction was enacted in 1789 and was known as the First Judiciary Act.[1]

The current statutory grant of admiralty jurisdiction, however, can be found at 28 U.S.C. § 1333(1), which gives federal district courts original jurisdiction over "any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

Some kinds of maritime cases—typically those involving in rem remedies against a vessel or cargo—are subject to the exclusive jurisdiction of the federal courts. Under the "savings to suitors" clause, on the other hand, state courts have concurrent jurisdiction over admiralty claims when a state court is competent to grant relief, which is in most instances where in personam jurisdiction may be had in a state court.

In connection with this grant of jurisdiction, suits may be filed in personam against a specific party or in rem against certain inanimate objects (such as

---

* Noe S. Hamra, an associate in the New York office of Blank Rome LLP, concentrates his practice on international commercial and insurance litigation and arbitration, with particular emphasis on the maritime industry. Zachary R. Cain, an associate in the firm's office in Houston, concentrates his practice in the areas of admiralty and maritime law and commercial litigation for clients in the maritime shipping and energy industries. The authors may be contacted at noe.hamra@blankrome.com and zachary.cain@blankrome.com, respectively.

[1] Chapter 20, Section 9, 1 Stat. 73.

vessels or cargo) if various legal predicates are met and the causes of action are "maritime claims." In turn, U.S. maritime jurisdiction encompasses a wide variety of such claims, particularly with respect to tort actions and commercial disputes.

To determine whether a federal court has admiralty subject matter jurisdiction over a particular tort claim, U.S. courts apply a two-part test requiring a party to satisfy conditions of both maritime location and also a connection with maritime activity.[2]

The "location" portion focuses on whether the tort at issue occurred on navigable waters or, alternatively, whether an injury suffered on land was caused by a vessel on navigable waters.

The "connection" inquiry further requires the court to address whether (1) the incident at issue has a potentially disruptive impact on maritime commerce, and (2) whether the general character of the activity giving rise to the incident shows a substantial relationship to a traditional maritime activity. Both the location and connection tests must be met for a U.S. court to have admiralty tort jurisdiction.

Admiralty contract jurisdiction is perhaps even more nuanced. In general, a contract relating to a ship in its use as such, or to commerce or navigation on navigable waters, or to transportation by sea or to maritime employment, is subject to maritime law and the case is one of admiralty jurisdiction, whether the contract is to be performed on land or water.

However, a contract is not considered maritime merely because the services to be performed under the contract have reference to a ship or to its business, or because the ship is the object of such services or that it has reference to navigable waters. In order to be considered maritime, there must be a direct and substantial link between the contract and the operation of the ship, its navigation, or its management afloat, taking into account the needs of the shipping industry.

The analysis is not always subject to simple logic. For example, contracts for towage and salvage have been deemed to be maritime contracts within the scope of admiralty jurisdiction, and a contract to repair or insure a ship is considered maritime; on the other hand, a contract to build a ship is not. Similarly, contracts for the sale of vessels are not subject to admiralty jurisdiction, but charter parties are considered "quintessential maritime contracts."

---

[2] *See Grubart v. Great Lakes Dredge & Dock Co.,* 513 U.S. 527 (1995).

JURISDICTION IN MARITIME CASES

As a general proposition, a court can exercise three types of jurisdiction over a party in maritime cases: in personam, in rem, and quasi-in rem. In personam jurisdiction is jurisdiction over the person or entity itself, and is predicated on that party's contacts with the forum.[3] In rem jurisdiction is jurisdiction over the object in controversy, typically to enforce a maritime lien, and arises when the property can be arrested in the district. Quasi-in rem jurisdiction is jurisdiction over the person or entity through the attachment of its property found within the district, but only to the extent of the value of property attached.

The Federal Rules of Civil Procedure, as interpreted by the U.S. Supreme Court through case law, require a court to have at least one type of jurisdiction over a defendant before adjudicating a case. In addition to the Federal Rules, the Supplemental Rules for Certain Admiralty and Maritime Claims ("Supplemental Rules"), which are found after the numbered Federal Rules, provide specific procedures for obtaining jurisdiction over defendants in cases sounding in admiralty and maritime law as defined by Rule 9(h) of the Federal Rules of Civil Procedure.

SHIPOWNER'S LIMITATION OF LIABILITY

Similar to other seafaring nations, shipowners in the United States are, under certain circumstances, entitled to limit their liability in respect of a maritime casualty. Under the governing U.S. statute, the right to limit is based on the post-casualty value of the vessel plus then-pending freight. While vessel owners can elect to raise a limitation defense in answer to a state or federal lawsuit brought against them, shipowners also have the option to initiate a limitation action in federal court, with that action taking precedence over competing suits against the vessel owner. The procedures for a limitation proceeding are governed by the Limitation Act itself[4] and Supplemental Rule F.

The Limitation Act applies to all "seagoing vessels and vessels used on lakes or rivers or in inland navigation. . . ." In addition to commercial vessels, owners of pleasure craft may be permitted to limit liability, provided that the vessel was located on "navigable" waters. Navigable waters are those that are capable of use in commerce between states or nations. As such, landlocked lakes within a single state, lakes and rivers whose navigability is interrupted by impassible dams, and shallow rivers and streams are generally not considered navigable.

---

[3] The extent of a court's in personam jurisdiction is a subject unto itself and is beyond the scope of this column.

[4] 46 U.S.C. § 30501 et seq.

While the Act applies to vessel "owners," that term has been interpreted to include not only the registered owner of a vessel, but also shareholders of vessel-owning companies and demise and bareboat charterers. On the other hand, time- and voyage-charterers may not take advantage of the Act.

Almost every type of loss claim against a vessel owner will be subject to the Limitation Act, provided that the act was "done, occasioned, or incurred, without the privity or knowledge of the owner." However, certain seaman's claims are not subject to limitation, nor are claims related to personal contracts involving the shipowner or those arising under the Oil Pollution Act of 1990 and the Clean Water Act.

The "privity and knowledge" qualifier has been interpreted to mean that a shipowner may limit liability in instances where the owner lacked both awareness of the casualty-causing act of negligence/unseaworthy condition and privity with anyone who did have knowledge. Generally, a master or crew's navigational errors are not attributable to the owner. Privity and knowledge has been found to exist, on the other hand, where, for instance, the vessel was negligently entrusted to an incompetent operator, where the owner failed to provide adequate navigational charts and equipment, or where there were inadequate maintenance procedures.

In a Limitation proceeding, there is a shifting burden of proof: the claimant has the initial burden of proving liability of the owner, and, if liability is found, the owner then has the burden of proving its lack of privity or knowledge of the condition or negligence responsible for the loss.

With respect to the process of bringing a Limitation Action, a vessel owner has a six-month deadline from when it receives written notice from a claimant of a claim arising from the casualty to file the action. In a multi-claimant situation, the six-month period begins to run from the date of the first notice of a claim to the owner.

A Limitation Action must be brought in the same district where the vessel has been arrested or attached or, if the vessel has not been seized, in any district where the shipowner has already been sued. If there is no prior lawsuit against the vessel or shipowner, the action may be filed in whatever district the vessel is located at the time of filing or, if the vessel is at sea or in foreign waters, in any federal district that the shipowner wishes.

A shipowner must provide security (the Limitation fund) equal to the value of the vessel and its pending freight at the end of the voyage at issue. All other lawsuits against the vessel owner are stayed in favor of the limitation proceeding, and all claimants are required to assert their claims against the vessel owner in the Limitation Action (i.e., a "concursus" of claims).

However, recognizing the tension between the concursus requirement of the Limitation Act and the "savings to suitors" clause referenced above, claimants may be able to return to prior state or federal actions if certain conditions are met. For example, claimants may be relieved from the limitation injunction where the limitation fund that is more than adequate to cover all claims brought against the owner. In such case, to obtain relief from the injunction, all claimants may be required to enter certain stipulations:

- Waiving res judicata and issue preclusion defenses;
- Agreeing to stay enforcement of a judgment until the conclusion of the Limitation Action; and
- Reserving all issues related to limitation issues to the exclusive jurisdiction of the federal court presiding over the Limitation Action.

If there are multiple claimants, they must also stipulate to a priority of competing claims.

CONCLUSION

In sum, the Limitation Act provides a valuable defense to shipowners, and can be raised in either state or federal court.

However, the benefits of a federal limitation action are more robust than invocation of the Limitation Act as a defense in a plaintiff-initiated action.

Accordingly, shipowners should be mindful of the Act's statute of limitation, and timely consider whether to initiate a Limitation Action following a maritime casualty.