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With the Exception of Handling Concursus Proceedings, State Courts Should Be Deemed to Have Jurisdiction to Adjudicate All Limitation of Liability Issues Under the Shipowner's Limitation of Liability Act

By Gustavo A. Martinez-Tristani*

I. Introduction

In this paper, we argue that the right to limitation of liability pursuant to the Shipowner's Limitation of Liability Act, 46 U.S.C., § 30501 et seq., (hereinafter "the Limitation Act") should not be deemed lost in a single claimant case, or in a case filed by multiple claimants joining together as co-plaintiffs in the same state court action, or federal action under diversity jurisdiction, merely because a petition for limitation of liability was not timely filed in an admiralty court, within the six-months period after the petitioner vessel owner received notice of a written claim.

We argue that a state court or a federal court sitting under diversity jurisdiction has the jurisdiction to adjudicate all issues regarding the defense of limitation of liability, provided same is timely raised in any such actions, even after the six-month period has lapsed from the time the defending vessel owner received notice of a written claim.

II. The Limitation Act's Overview

The Limitation Act was originally enacted in 1851, and it is currently codified at 46 U.S.C. §§ 30501 et seq. "Congress passed the [Limitation Act] to 'encourage ship building and to induce capitalists to invest money

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Managing Editor's Introductory Note

In this edition, we first present an excellent article by Gustavo A. Martinez-Tristani on the Limitation of Liability Act in which Gustavo argues that state courts and federal courts sitting under diversity jurisdiction should have jurisdiction to decide all issues under the Act even if a petition for limitation of liability has not been timely filed in an admiralty court within the six-months period after the petitioner vessel owner received notice of a written claim. Gustavo first gives a detailed analysis of the Act and caselaw on the history of the six month limitation period. He concludes "The right to limitation should not be lost because a petition is not timely filed within the six-month period. The only right that should be deemed lost when a petition for limitation is not timely filed in federal admiralty court is the right to force a concursus proceeding of all potential claims… state courts (and federal courts sitting under diversity jurisdiction) should be recognized to have the authority to resolve all issues pertaining to limitation of liability, including liability questions, the amount of the limitation fund, and whether the vessel owner has the right to limit its liability in the manner prescribed by the Limitation Act."

We follow with a review by Rowen Fricker Asprodites of recent decisions on seaman and vessel status. On seaman status, Rowan points out that "The key inquiries remain whether workers spent at least 30% of their time in the service of a vessel or identifiable fleet of vessels, whether the workers report to land-based employers, whether the job task was discrete and temporary, and whether the workers were on vessels connected to shore." As to vessel status, Rowan reports on several interesting vessel-status decisions addressing whether vessels removed from navigation maintain their status."

We next present Bryant Gardner's column "Window on Washington." Here, Bryant reports on Trump's flurry of executive orders in the first 100 days of his second term, focusing on those that seek to enact a shipbuilding program and U.S.-flag fleet promotional program by executive order that is very similar to the SHIPS act. He reports that "Given the confluence of the draft executive order, building support for the SHIPS act, and the U.S. Trade Representative Section 301 tariffs action, the U.S. maritime industry is hopeful for generational changes putting the United States back among maritime nations with a significant U.S.-flag fleet and shipbuilding industrial base."

We next present an article by George P. Shalloway on GPS spoofing and cybersecurity on vessels. He points out that "[c]yberattacks on cargo ships are important because it is believed that 87% of cargo ships utilize Global Navigation Satellite Systems ("GNNS") which are prone to cyberattacks because they are not on a network with encryption." After a thorough discussion of the issues, he concludes "[m]aking sure that vessels, crews, and the maritime industry as a whole are up to date with cybersecurity best practices is paramount to keep the supply chain strong and limit the risk of a cyberattack."

We conclude with the Recent Development case summaries. We are grateful to all those who take the time and effort to bring us these summaries of developments in maritime law.

We urge our readers who may have summer associates or interns from law schools working for them to encourage them to submit articles for publication.

As always, we hope you find this edition interesting and informative, and ask you to consider contributing an article or note for publication to educate, enlighten, and entertain us.

Robert J. Zapf

With the Exception of Handling Concursus Proceedings, State Courts Should Be Deemed to Have Jurisdiction to Adjudicate All Limitation of Liability Issues Under the Shipowner's Limitation of Liability Act

By Gustavo A. Martinez-Tristani

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in this branch of industry.'" *In re Key W. Jetski, Inc*., 619 F. Supp. 3d 1216, 1218 (S.D. Fla. 2022) citing *In re Beiswenger Enters. Corp. v. Carletta*, 86 F.3d 1032, 1036 (11th Cir. 1996). The Limitation Act "seeks to limit the liability of 'innocent shipowners' beyond the amount of their interest in the vessel." *Id*.

Claims subject to limitation "are those arising from any embezzlement, 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, done, occasioned, or incurred, without the privity or knowledge of the owner." 46 U.S.C.A. § 30523(b).[1]

The Act applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters, but it does not apply to "small passenger vessels," as defined by the Act. 46 U.S.C. § 30502.[2]

Section 30523(a) is the main substantive provision of the Limitation Act, providing in pertinent part that "the liability of the owner of a vessel for any claim, debt, or liability … shall not exceed the value of the vessel and pending freight." *Id.; Howell v. Am. Cas. Co. of Reading, Pennsylvania*, 96-0694 (La. App. 4th Cir. 3/19/97), 691 So. 2d 715, 731, *writs denied*, 97–1329, 1379, and 1426 (La.9/5/97), 700 So.2d 512, 515, and 518. However, in the case of seagoing vessels, "[i]f the amount of the vessel owner's liability determined under section 30523 … is insufficient to pay all losses in full, and the portion available to pay claims for personal injury or death is less than $420 times the tonnage of the vessel, that portion shall be increased to $420 times the tonnage of the vessel. That portion may be used only to pay claims for personal injury or death." 46 U.S.C. § 30524(b).[3]

Of less relevance to this paper, the Limitation Act contains a limitation of liability provision in cases involving medical malpractice. It provides that in a civil action against a vessel owner for vicarious liability for the medical malpractice of a shoreside doctor or medical facility employed by the vessel owner, the vessel owner shall be entitled to rely on any statutory limitations of liability applicable to the doctor or medical facility in the State of the United States in which the shoreside medical care was provided. 46 U.S.C. § 30528.

The so-called Fire Statute is also part of the Limitation Act. Section 30522 provides that "[t]he owner of a vessel is not liable for loss or damage to merchandise on the vessel caused by a fire on the vessel unless the fire resulted from the design or neglect of the owner." 46 U.S.C. § 30522.[4] There has been some disagreement among the Courts of Appeals regarding what a carrier must show under these statutes to assert the fire defense after a shipper has made a *prima facia* case of damage or loss. The United States Court of Appeals for the Ninth Circuit has held that the carrier cannot assert the fire defense unless it carries the burden of proving due diligence to make the vessel seaworthy and properly man, equip, and supply the vessel, *Nissan Fire & Marine Ins. Co. v. M/V Hyundai Explorer*, 93 F.3d 641, 645 (9th Cir. 1996). However, the United States Courts

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1 Formerly part of and cited as 46 USCA § 183(a), and later as 46 USCA § 30505(b).

2 The Act defines "covered small passenger vessel" as "a small passenger vessel, as defined in 46 USCS § 2101, that is not a wing-in-ground craft; and carrying not more than 49 passengers on an overnight domestic voyage; and not more than 150 passengers on any voyage that is not an overnight domestic voyage; and includes any wooden vessel constructed prior to March 11, 1996, carrying at least 1 passenger for hire.

3 Formerly codified as 46 U.S.C. § 183(b).

4 Formerly codified as 46 U.S.C. § 30505. It has long been held that the COGSA fire exemption, codified in 46 U.S.C. § 1304(2)(b), and the Fire Statute exemption are the same, except that COGSA extends to "carriers," not just the "owners" as in the Fire Statute. *Westinghouse Elec. Corp. v. M/V "Leslie Lykes"*, 734 F.2d 199, 205 n.3 (5th Cir. 1984).

of Appeals for the Fifth, Second, and Eleventh Circuits have taken the position that the carrier need only show that the loss resulted from fire, and the burden then shifts back to the shipper to show that the fire was caused by the design or neglect of the shipowner. *Westinghouse Elec. Corp. v. M/V "Leslie Lykes,"* 734 F. 2d at 206; *In re Complaint of Ta Chi Navigation (Panama) Corp., S. A.*, 677 F.2d 225, 229 (2d Cir. 1982); *Banana Servs. v. M/V Tasman Star*, 68 F.3d 418, 421 (11th Cir. 1995).

Aside from section 30523, section 30529 of the Limitation Act[5] "provides for a procedure known as a 'concursus,' whereby the vessel owner can file a petition in federal court evoking the limitation of liability provision of [§30523]." *Howell v. Am. Cas. Co. of Reading, Pennsylvania, supra*. "The purpose behind a Section [30529] proceeding in federal court is to permit all actions against the vessel owner to be consolidated in a single case which will then dispose of all claims simultaneously." *Id*., citing *Complaint of Caldas*, 1973 AMC 1243, 1255–56, 350 F. Supp. 566, 575 (E.D. Pa. 1972), aff'd 485 F.2d 678, 679 (3rd Cir.1973). "Congress established the Section [30529] concursus procedure because maritime casualties often involve interstate commerce with injuries to multiple parties with diverse domiciles. As a result, a ship owner can be subject to multiple suits by multiple parties in multiple forums." *Id*.

Rule F of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions sets forth the procedures applicable to concursus proceedings. Pursuant to Rule F, not later than six months after receipt of a written claim, the vessel owner may file a complaint in the appropriate district court for limitation of liability. The vessel owner deposits the value of the owner's interest in the vessel and pending freight with the court.[6] The court then marshals all claims against the vessel owner by enjoining the prosecution of other actions relating to the accident and requiring all claimants to file their claims in the limitation action. The court then, sitting without a jury, determines whether the vessel owner is liable, i.e., whether the shipowner was negligent or whether conditions of unseaworthiness caused the accident. If the claimants prove that the shipowner is liable, the burden shifts to the shipowner to show that its liability should be limited to the value of the vessel. *Hercules Carriers, Inc. v. Claimant State of Fla., Dep't of Transp*., 768 F.2d 1558, 1564 (11th Cir. 1985). "This burden is not met by simply proving a lack of actual knowledge, for privity and knowledge is established where the means of obtaining knowledge exist, or where reasonable inspection would have led to the requisite knowledge. Thus, knowledge is not only what the shipowner knows but what he is charged with discovering in order to apprise himself of conditions likely to produce or contribute to a loss." *Id*. (internal citations omitted). If the court concludes that liability is limited, the court distributes the limited fund among the claimants in proportion to the amounts of their respective claims. Rule F of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ; *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 448, 121 S. Ct. 993, 148 L.Ed.2d 931 (2001).

Over the years numerous courts have held that 46 U.S.C. § 30523 permits a vessel owner to assert limitation of liability as an affirmative defense in federal or state court without being subject to the six-month time limitation that section 30529 imposes on offensive limitation proceedings. *See*, *The Scotland*, 105 U.S. 24, 33-34 (1882) (noting that the rules adopted to invoke the right to limitation of liability "were not intended to restrict parties claiming the benefit of the law, but to aid them[,]" and further expounding that "they were not intended to prevent them from availing themselves of any other remedy or process which the law itself might entitle them to adopt. They were not intended to prevent a defense by way of answer to a libel, or plea to an action, if the ship-owners should deem such a mode of pleading adequate to their protection."); *Signal Oil & Gas. Co. v. The Barge W-701*, 654 F. 2d 1164, 1173 (5th Cir. 1981) ("A vessel owner may petition the district court, pursuant to [46 U.S.C. § 30529] for limitation of liability within six months of written notification to it of a possible claim; under section 185, the owner's petition in a particular case may well be the first filing in court. Section [30523], which established the substantive right of a vessel owner to limitation, also allows limitation to be pled as a defense in answer to an earlier filed damage suit. Williams took this route"); *Deep Sea Tankers v. The Long Branch*, 258 F. 2d 757 (2d Cir. 1958); *The Chickie*, 141 F. 2d 80, 85 (3d Cir. 1944); *Van Le v. Five Fathoms, Inc.*, 1993 AMC 598 (D.N.J. 1992); *In re Complaint of United States Lines, Inc.*, 616 F. Supp. 315, 316 (S.D.N.Y. 1985); *Howell v. American Casualty Co.*, supra.

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[5] Formerly codified as 46 App. USCA § 185, and later as 46 USCA § 30511.

[6] Given the costs and impracticalities associated with the placing of a vessel under the custody and care of the United States Marshall or designated trustee for the benefit of all potential claimants, the filing of a bond or letter of undertaking (LU) is the most common form used by practitioners to satisfy this requirement.

"Thus, the rule is that the vessel owner may raise the Section [30523] limitation defense in its answer in state court brought by the injured party under the saving to suitors clause of [28 U.S.C. § 1333], as well as in a concursus proceeding brought in federal court by the vessel owner under Section [30529]." *Howell v. Am. Cas. Co. of Reading, Pennsylvania,* supra, citing *Langne v. Green*, 282 U.S. 531, 540–41, 51 S. Ct. 243, 246–47 (1931); *Signal Oil & Gas Co. v. Barge W–701*, supra; *The Chickie*, 141 F.2d at 84.

One purpose of the concursus proceeding, if not the main one, is to ease the handling of multiple claims arising from the same incident and to avoid inconsistent results and repetitive litigation. *Complaint of Paradise Holdings, Inc*., 795 F.2d 756, 761 (9th Cir. 1986). The fact that this concursus proceeding is within the exclusive jurisdiction of the federal court is apparent from the wording of section 30529, which specifically requires the action to be filed in federal district court. 46 U.S.C. § 30529(a). Courts have recognized that no concursus proceeding is needed and, thus, claimants may proceed outside the exclusive jurisdiction of the federal admiralty court, in two situations. The first is when the value of the vessel and its cargo exceeds the aggregate of the total number of claims filed against the owner. *See Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152 (1957). In such a case, "a *concursus* is unnecessary because the claimants need not compete among themselves for larger portions of a limited fund." *In re Midland Enters. Inc*., 886 F.2d 812, 814 (6th Cir. 1989) (citation omitted). The second is when only a single claimant brings an action against the shipowner seeking damages in excess of the value of the vessel. In that case, a concursus is unnecessary because there are no additional claimants competing for portions of the limitation fund. *See S & E Shipping Corp. v. Chesapeake & O. Ry. Co*., 678 F.2d 636, 643 (6th Cir. 1982).

III. The Restricted or Traditional Jurisdictional View

Courts have recognized the inherent conflict between a plaintiff's right to sue in state court under the savings to suitors clause, 28 U.S.C. § 1333, and a vessel owner's right to seek limited liability in a federal district court under section 30529 and Supplemental Rule F. Courts have typically spoken of the dilemma as a "'recurring and inherent conflict between the saving to suitors clause … with its 'presumption in favor of jury trials and common law remedies,' and the 'apparent exclusive jurisdiction' vested in admiralty courts by the Act." *Magnolia Marine Transp. Co. v. Laplace Towing Corp*., 964 F. 2d 1571, 1574 (5th Cir. 1992).

When the first case under the Act worked its way through the courts in 1872, the Supreme Court observed that the Act did not designate which courts had jurisdiction over limitation rights nor specify the procedure for vessel owners to avail themselves of the statutory limits of liability. See *Norwich Co., v. Wright*, 80 U.S. (13 Wall) 104 (1871). Upon consideration of the matter, the Court held that "we have no doubt that the District Courts, as courts of admiralty and maritime jurisdiction, have jurisdiction of the matter …" *Id*., at 124.

After the *Norwich* decision, the general consensus by courts and practitioners has been that the United States district courts, sitting in admiralty, have exclusive jurisdiction to determine limitation rights. *See, Vatican Shrimp Co., Inc., Solis*, 820 F.2d 674, 678-79, 1987 AMC 2426 (5th Cir. 1987); *Cincinnati Gas & Elec. Co. v. Abel*, 533 F.2d 1001, 1005 (6th Cir. 1976).

In *Vatican Shrimp*, for instance, an injured seaman sued the vessel owner in a Texas state court, alleging negligence and unseaworthiness. *Vatican Shrimp*, 1987 AMC at 2427. In its answer to the complaint, the vessel owner raised the defense of exoneration from, or limitation of, liability. *Id*. A year and a half later, while the state court action was still pending, the owner petitioned the federal district court for limitation of liability. *Id*. The federal court dismissed Vatican Shrimp's section 185 petition as untimely, and an appeal was then taken. *Id*. The United States Court of Appeals for the Fifth Circuit rejected the notion that the defensive pleading of limitation in state court tolled the six-month time limit under section 185, further asserting that such a pleading did not provide the federal court with jurisdiction to hear the limitation action. *Id*., at 2432. This conclusion was no doubt correct, but the appellate court went further and, relying on the so-called *Green* cases, *infra*, held that the *only* way a shipowner can invoke the protection of the Limitation of Liability Act is to bring a section 185 petition in federal court within six months of receipt of a written notice of claim.

On this issue, the court held:

> [W]e recognize that shipowners may choose to set up the defense of limitation of liability under either method: by pleading the substantive provisions of section 183 in a properly filed answer in any court, or by filing a section 185 petition in a federal district court. However, if a shipowner is sued in state court, the owner's failure to file a section 185 petition in a federal district court within six months after receiving written notice of the claim will result in forfeiture of the right to limit liability should the claimant contest the limitation defense. This is so

> because solely filing in the state court an answer in which limitation is pled obviously does not provide a federal court with jurisdiction to act. In contrast, defensive pleading under section 183 in a federal district court answer does not present the same jurisdictional problems. The district court, having jurisdiction to hear the entire case initially filed with it, can adjudicate and rule on a limited liability issue that is raised in a properly filed answer.
>
> In sum, once written notice of a claim is received, unless that notice is a complaint filed in federal court, the prudent shipowner would file a timely section 185 petition in district court and move to stay the federal proceedings on the limitation petition until such time as limited liability is contested. This practice will ensure that a federal court may exercise its exclusive jurisdiction to hear the limitation issue even if the claimant eventually files suit in a state court and contests limitation more than six months after giving written notice of the claim. 1987 AMC 2426, 2431-2432.

Thus, to avoid leaving their vessel owner clients exposed to unlimited liability in cases involving personal or property damage, most practitioners will recommend that their clients file limitation of liability actions in federal admiralty court even in single claimant's cases.

This practice followed the Supreme Court's 1931 and 1932 decisions in a single-claim case brought pursuant to the saving to suitors clause in *Langnes v. Green*, 282 U.S. 531 (1931), later re-decided and renamed *Ex Parte Green*, 286 U.S. 437 (1932). Green, a seaman was injured while working on board a fishing vessel. Green sued his employer and vessel owner, Langnes, in state court under the saving to suitors clause, 282 U.S. at 532-33. Prior to trial, Langnes filed a complaint in federal court under former section 185 (now recodified as section 30529), seeking to limit his liability to the vessel's $5,000 post-accident value. *Id*., at 533. The federal court issued an injunction to bar the prosecution of any claims arising out of the accident in any forum, which enjoined Green's state court action. *Id*. Green sought dissolution of the injunction, arguing that the state court had jurisdiction, that a concursus was not needed in a single claimant case, and that Langnes could still benefit from the Limitation Act by properly pleading the right to limitation in the state court. *Id*., at 533-34. The district court denied Green's motion, tried the case and found Langnes not liable to Green. *Id*., at 534.

Green ultimately appealed the case to the United States Supreme Court and asked it to decide the effect of a federal limitation petition on a single-claim case brought in state court. *Id*., at 539-40. Green contended the district court's injunction should be lifted to let him proceed with his lawsuit in state court. *Id*., at 533-34. Langnes, on the other hand, contended that the Limitation Act gave him the option to invoke the right to limitation of liability in federal district court, and that the district court had exclusive jurisdiction to decide all issues regarding limitation of liability. *Id*., at 540-42.

The Supreme Court first held:

> That the action brought in the state court was authorized by the first of the statutes referred to is plain. That the petition of the owner in the present case was properly brought, and that the federal court had jurisdiction to entertain it, whether there was a plurality of claims or only one, is equally clear. The situation, then, is that one statute gave respondent the right to a common law remedy, which he properly sought in the state court; and another statute gave petitioner the right to seek a limitation of liability in the federal district court. **Needless to say that if the case for a limitation of liability assumes such a form that only a federal court is competent to afford relief, the jurisdiction of that court is exclusive and must be exerted to dispose of the entire cause; and the action in the state court may not be further prosecuted**. *Id*., at 539-40 (internal citations omitted) (emphasis added).

However, the Court also stated that:

> [T]his court has accepted the view that, "In a state court, when there is only one possible claimant and one owner, the advantage of this section [§ 4283] may be obtained by proper pleading. **Upon the present record, the necessary result of this holding is that the state court, in the action there pending and in the due course of the exercise of its common law powers, was competent to entertain a claim of the ship owner for a limitation of liability and afford him appropriate relief under the statute dealing with that subject**. Notwithstanding this, however, the ship owner was free to invoke the jurisdiction of the federal district court and, that having been done, the question which arose was not one of jurisdiction, but, as will later more fully appear, was whether as a matter of discretion that jurisdiction should be exercised to dispose of the cause." *Id*., at 540-41 (internal citations omitted) (emphasis added).

After the Supreme Court's decision in the *Green* cases and based on those decisions, courts adopted the rule that,

if certain stipulations are made by a claimant in a single-claimant case or by all claimants in a multiple claimants case, after a vessel owner commences a limitation of liability proceeding in federal court, the claimant has the right to have liability and damage issues resolved in the state court action. *Texaco, Inc. v. Williams*, 47 F.3d 765, 770 (5th Cir. 1995), cert. denied, 133 L. Ed. 2d 196, 116 S. Ct. 275 (1995); *Magnolia Marine Transport Co. v. Laplace Towing Corp*., 964 F.2d 1571, 1575 (5th Cir. 1992) citing *Langnes*, 282 U.S. at 540-41 and *In Re Two "R" Drilling Co.*, 943 F.2d 576, 578 (5th Cir. 1991). The claimant must stipulate (1) that the federal admiralty court reserves exclusive jurisdiction over the vessel owner's right to limit liability; (2) that no judgment that exceeds the limitation fund will be executed against the vessel owner; and (3) that the claimant waives any *res judicata* claims relevant to limitation of liability issues. *Id*.: *In re M/V Miss Robbie*, 968 F. Supp. 305, 307 (E.D. La. 1997) citing *In the Matter of Falcon Drilling Co., Inc.*, 1996 U.S. Dist. LEXIS 6271, 1996 WL 240005 *2 (E.D. La. May 9, 1996).

Presently, when a vessel owner files a complaint for limitation in federal district court in a single-claim case, the district court must stay the section 30529 proceeding and lift the injunction when the stipulations have been made. *Magnolia*, 964 F.2d at 1575; *In re M/V Miss Robbie*, 968 F. Supp., at 306. This allows the state court action on liability and damages to proceed while the limitation proceeding in the federal district court is stayed. *Langnes*, 282 U.S. at 543. This procedure allows the plaintiff the benefit of a jury trial in state court for liability and damages while also preserving the vessel owner's right to seek limitation of liability in a federal forum. *Id*., at 541-42. The vessel owner's right is preserved because if the judgment from the state court exceeds the limitation fund, the limitation issue will be heard in federal court because the claimant who wants to proceed in state court has already stipulated to the federal court's exclusive jurisdiction over the vessel owner's claim to limitation of liability. The federal district court, acting without a jury, will then decide whether the vessel owner is entitled to limitation and what funds will be distributed.

Because of the required stipulations derived from Green in the single-claim case, admiralty courts and practitioners have assumed that only federal courts have jurisdiction to consider the right to *limitation of liability* under section 30529, *see generally Vatican Shrimp Co*., 820 F.2d at 674; *Cincinnati Gas*, 533 F.2d at 1001; *In re Double D Dredging Co*., 467 F.2d 468 (5th Cir. 1972); *In re Red Star Barge Line*, 160 F.2d 436 (2nd Cir. 1947), while state courts only have the power to decide whether the vessel owner is liable, and the extent of damages suffered by the claimant. *Langnes*, 282 U.S. at 544.

IV. The Broad Jurisdictional Trend

The fact that state courts could decide all limitation issues (i.e., vessel owner's liability, amount of limitation fund, and vessel owner's right to limitation of liability) was made clear by the Supreme Court of Pennsylvania in *Loughin v. McCaulley*, 186 Pa. 517, 40 A. 1020 (1898). In that case, a jury rendered a verdict for the plaintiff, a widow, in a wrongful death action in which the widow claimed the vessel owners' negligent operation of their vessel caused her husband's death. The vessel owners contended that they had the right to have their liability limited to the value of their respective interests in the vessel. The trial court rejected the vessel owners' contention, and on appeal, the widow argued that the limitation defense could not be administered in a state court action. *Id*., at 521. The Supreme Court of Pennsylvania rejected the widow's argument, holding that "[w]e are of the opinion that appellant's right to make this defense [in state court] is clear, and we see no difficulty in enforcing it in this action." *Id*., at pg. 522-23.

The Court further held,

> There is nothing in [Section 4 of the Act of Congress of March 3, 1851][7] which in any way changes the positive character of the limitation. The provisions are manifestly in furtherance, not in restriction, of the vessel owner's right, and are directory only, in the sense that they point out a method by which his right may be enforced, but are not exclusive of other methods which may be found effective for the same purpose. …The primary enactment in [Section 30523(a)][8] is that the liability of the owner for any loss or damage shall in no case exceed the amount of value of his interest in the vessel and her freight then pending. Two modes for carrying out this law are then prescribed, one in [Section

[7] Now codified at 46 U.S.C. section 30525(1), and section 30529(b)(2) and (c).

[8] Former section 4283(a), which was then recodified as section 183(a), and later as 46 USCA § 30505.

30525(1)][9] and the other in [Section 30529(a)][10].' … [T]hese modes are in aid and not in restriction of the owner's right to limit his liability, and are not therefore exclusive, but the defense may be made in any form that the nature of the case and the procedure of the court will permit. … The very point of the admissibility of this defense in an action in a state court was decided in the case of *The Rosa*, 53 Fed. Rep. 132, where a petition by the vessel owner for establishment of limited liability and for prohibition of further proceedings by a plaintiff in a state court was dismissed by the district court of the United States on the ground that the defense could be adequately made in the state court. It is true that this conclusion has been dissented from in *Quinlan v. Pew*, 56 Fed. Rep. 111, 121, but apparently on the ground that the vessel owner's privilege, not only to have the value of the vessel appraised and his liability limited to that, but also to have all parties compelled to come into the admiralty court with their claims, was absolute under the statute and could not be refused in view of the want of power of the state court to enforce the latter branch of the remedy. **But even this case does not sustain the contention that the vessel owner may not make his defense in the state court if he so chooses**.

We are of opinion that appellants' right to make this defense is clear, and we see no difficulty in enforcing it in this action. They should have been permitted to show the value of the tug, and their respective proportions of ownership in it. **The most convenient practice then would be, after appropriate instructions to the jury, to direct them if they found for the plaintiff to find specially in addition the value of the tug, and the proportionate ownership of the several defendants.** With these facts specifically found, the verdict could be moulded by the court into proper form with less danger of mistake than if the whole were left in a lump to the jury." *Id*., at 521-23 (emphasis added).

[9] ("If the amounts determined under sections 30523 and 30524 of this title [46 USCS §§ 30523 and 30524] are insufficient to pay all claims— (1) all claimants shall be paid in proportion to their respective losses out of the amount determined under section 30523 of this title [46 USCS § 30523]"). Former section 4284.

[10] ("The owner of a vessel may bring a civil action in a district court of the United States for limitation of liability under this chapter [46 USCS §§ 30501 et seq.]. The action must be brought within 6 months after a claimant gives the owner written notice of a claim."). Former section 4285.

The Pennsylvania Supreme Court reaffirmed this holding in *Amos v. Delaware River Ferry Co*., 228 Pa. 362, 77 A. 12 (1910), in which the plaintiff brought suit in state court after injury on the defendant's ship. The court stated: "The [*Loughin*] case is express authority for these several propositions: (1) where the case involves a common-law right, the jurisdiction of the federal and state courts is concurrent; (2) a vessel owner may make his defense of limited liability in a state court if he so chooses." *Id*., at 370.

In *Mapco Petroleum, Inc. v. Memphis Barge Line, Inc*., 849 S.W. 2d 312, 316-18 (Tenn. 1993), cert. denied, 510 U.S. 815, 114 S. Ct. 64, 126 L.Ed.2d 33 (1993), the Supreme Court of Tennessee addressed an issue it considered to be of first impression: "*whether courts of that state had subject matter jurisdiction to adjudicate an affirmative defense asserted under the Limitation Act*." *Id*., at 313. Mapco, a dock owner, filed suit against a barge owner, Memphis Barge, in state court claiming that the damage to its dock was caused by the negligence of Memphis Barge. *Id*., at 314. In its answer, Memphis Barge raised the limitation of liability defense pursuant to former 46 U.S.C. § 183 (now section 30523) seeking to limit its liability to the value of the barge and its freight. *Id*. Mapco moved to strike the affirmative defense, claiming that the court lacked subject matter jurisdiction to consider it. *Id*. The trial court agreed and ordered the defense stricken. Thereafter, the parties stipulated that Mapco was entitled to recover damages, and the trial court entered judgment in accordance with this stipulation. *Id*. Memphis Barge then appealed. The Court of Appeals held that the state court lacked jurisdiction to determine if Memphis Barge was entitled to limitation of liability under the Limitation Act. *Id*., However, the Court remanded the case for a determination of whether Mapco had a non-frivolous basis to challenge the limitation defense on the merits. *Id*. Both parties then appealed to the Supreme Court. *Id*.

The Tennessee Supreme Court first recognized that, although Article III, section 2, of the United States Constitution vests admiralty and maritime jurisdiction in the federal courts, which Congress implemented pursuant to 28 U.S.C. § 1333, the savings to suitor clause in the same section gives a party injured on the navigable waters of the United States the option of filing a claim in a state court instead of a federal court whenever the injured party is seeking a common law remedy (i.e., money damages). *Id*.

The Court then noted that,

> Aside from [Section 30523, Section 30529] of the Act provides for a procedure known as a 'concursus,'

> whereby the vessel owner can file a petition in federal court evoking the limitation of liability provision of [Section 30523]. The purpose behind a [Section 30529] proceeding in federal court is to permit all actions against the vessel owner to be consolidated in a single case which will then dispose of all claims simultaneously. Congress established the [Section 30529] concursus procedure because maritime casualties often involve interstate commerce with injuries to multiple parties with diverse domiciles. As a result, a ship owner can be subject to multiple suits by multiple parties in multiples forums. For whatever reason, perhaps because of the lack of the threat of multiple suits, Memphis Barge did not file a [Section 30529] limitation of liability proceeding in federal court.
>
> Although the Act specifically provides a procedure for limiting liability through the filing of a [Section 30529] petition in federal court, the U.S. Supreme Court has long recognized that this is not the exclusive means by which a vessel owner may assert the limitation defense under [Section 30523]. **The benefits of [Section 30523] can also be obtained by raising the limitation by way of answer to a suit commenced in state court against the vessel or its owner. Thus, the rule is that the vessel owner may raise the [Section 30523] limitation defense in its answer in state court brought by the injured party under the savings to suitors clause of Section 1333, as well as in a concursus proceeding brought in federal court by the vessel owner under [Section 30529]. Accordingly, state courts have adjudicated the right of vessel owners to limit their liability under [Section 30523].**" *Id*., at 315. (internal citations omitted) (emphasis added).

The court also considered arguments from Mapco who, based on the decisions of *Vatican Shrimp Co*., *supra*, and *Cincinnati Gas*, *supra*, argued that the former section183 limitation defense can be asserted as an affirmative defense in a state court action, but the state court loses subject matter jurisdiction to consider the defense if the plaintiff contests the vessel owner's right to limit liability. *Id*., at 315. The court distinguished both cases and noted that in those cases the injured party filed suit in state court and the vessel owner pled the limitation defense under what is now section 30523. Thereafter, the vessel owners commenced section 185 (now section 30529) proceedings in federal court but did so after the six-month time period contained in section 185 had expired. *Id*. Thus, the narrow issue presented in both cases was whether a vessel owner, by raising the section 183 limitation defense as an affirmative defense in a state court action, tolled the time bar for section 185 limitation proceeding in federal court. *Id*.

The *Mapco* court noted that, in both cases, the court concluded that the section 185 proceedings were not timely filed and dismissed the limitation petitions. *Id*. The *Mapco* court further noted that *Vatican Shrimp* and *Cincinnati Gas* were unlike the *Mapco* case where the vessel owner, Memphis Barge, elected to plead its section 183 defense in the state court proceeding instead of a section 185 petition in federal court. *Id*., at 317. In other words, neither *Vatican Shrimp* nor *Cincinnati Gas* addressed the precise issue before the court, which was "whether a state court has jurisdiction to hear a Section 183 limitation defense when the vessel owner, instead of filing a Section 185 petition in federal court, elects to have the defense heard in state court by affirmatively pleading it." *Id*.

The court in *Mapco* further examined the *Langnes* and *Ex Parte Green* opinions and noted that those opinions needed to be viewed in a procedural posture distinct from the *Mapco* case. *Id*. The United States Supreme Court in *Langnes* and *Ex Parte Green* "observed that had the vessel owner elected to do so, he could have pleaded the section 183 limitation defense in the state court action and obtained a complete resolution of that defense there." *Id*., at 316.

The Court in *Mapco* then held:

> Based upon the foregoing discussion, we hold that a state court is empowered to decide the applicability and merits of a Section 183 limitation defense when it is raised by way of answer and there is no companion Section 185 proceeding in federal court. This necessarily means that a state court would not have **jurisdiction** when the vessel owner elects to assert its Section 183 limitation defense in a timely filed Section 185 petition. Memphis Barge has not filed a Section 185 petition and thus its Section 183 right of limitation has not been made subject to exclusive federal subject matter jurisdiction. This holding is consistent with the U.S. Supreme Court's observation in *Langnes* that 'the advantage of [Section 183] may be obtained by proper pleading' when there is one claimant and one owner and that the 'state court, in the action there pending and in the due course of the exercise of its common law powers, was competent to entertain a claim of the ship owner for a limitation of liability and afford him appropriate relief under the statute dealing with that subject.' We thus construe *Langnes* and *Ex Parte Green* to recognize that a state court is fully competent to hear and

> decide the merits of a limitation defense, provided the vessel owner does not invoke the exclusive jurisdiction of the federal courts by filing a Section 185 concursus petition. *Id*., at 318.

State courts in other jurisdictions also have adopted a broad jurisdictional view in terms of the state court's authority to decide limitation of liability issues under the Limitation Act. For instance, in *DePinto v. O'Donnell*, 293 N.Y. 32, 1944 A.M.C. 1437 (1944), a New York trial court tried the negligence issues to a jury and the privity and knowledge issues to the court. The court held that the six-months limitation applied only to the filing of a petition under section 185, and not to raising limitation in the answer. The court went on to deny limitation based on a finding of privity and knowledge, trying the entire issue. On appeal, the appellate division reversed and held that the amendment of the answer also had to be brought within six months. *See*, 45 N.Y.S. 2d 414, 1944 A.M.C. 539 (N.Y. App. Div. 1943). The appellate court was reversed by the Court of Appeals, New York's highest court, which held that the six-months limit did not apply to raising limitation by answer. The case was remanded for determination of whether limitation should have been granted. Thus, New York's highest court implicitly held that the state court could consider all limitation issues.

In *The Golden Touch*, 1967 A.M.C. 353 (R.I. Super. Ct. 1966), a Rhode Island trial court held that it could decide all issues, including contested privity and knowledge, following *Loughin*, *supra*. In *Fishboats, Inc. v. Welzbacher*, 413 So. 2d 710 (Miss. 1982), the Mississippi Supreme Court affirmed a denial of limitation to the vessel owner in a Jones Act case in which limitation was raised as a defense in the answer; the contested issues of the value of the vessel and privity and knowledge were tried to the court out of the hearing of the jury.

In *Graham v. Offshore Specialty Fabricators, Inc*., 37 So. 3d 1002 (La. App. 1st Cir. 1/8/10), the Louisiana First Circuit Court of Appeal implicitly approved a state court jury's ability to decide whether a vessel owner was entitled to limit its liability. In that case, a tugboat deckhand filed Jones Act and unseaworthiness claims against his employer, and general maritime negligence and unseaworthiness claims against the owner of a dredge barge, to recover for injuries sustained when he fell into an unmarked hole on the deck of the barge. *Id*., at 1007. In the state trial court proceedings, the jury applied the Limitation Act to determine whether the barge owner was entitled to limitation of liability and found that it was. *Id*., at 1008. Although the court of appeal ultimately held that the vessel owner was not entitled to limit its liability, the court did not question whether the jury had the proper authority to make such a determination in the lower court. *Id*., at 1014.

In fact, as early as 1892, a federal district court in *The Rosa*, 53 F. 132 (S.D.N.Y. 1892), cited in Loughin, had dismissed a limitation petition that sought to restrain an action filed in state court. The court held that under the saving to suitors clause, a plaintiff was entitled to a jury trial at common law, and that right ought not to be abridged where the common-law court could offer relief. *Id*., at 135. The court, considering the language of the Limitation Act, which refers to claims and claimants (both plural), saw no reason why the common-law court could not give relief under the Limitation Act in a single-claim case, since a special admiralty proceeding to provide a concursus of claims or a distribution of the fund pro rata to multiple claimants, which was a remedy unknown at common law, was not required in a single-claim case. *Id*. Thus, it appeared clear, despite the dictum in *Norwich*, that the right to limitation under the Limitation Act could be raised in a single-claim case by way of answer, and that either an admiralty or a law court could grant that relief.

The state supreme courts in *Loughin* and *Mapco* made it clear that, at least in single-claim cases, state courts have the requisite subject matter jurisdiction to decide all questions pertaining to the Limitation Act, and *Mapco* in particular found that the Supreme Court's decision in *Langnes* supported this conclusion.

However, our research has found no court case addressing the question of the state court's jurisdiction in a different context.

Assume a vessel owner raises the limitation defense in a state court action but then files a petition for limitation of liability in an admiralty court, which later gets dismissed for being untimely filed. Should the vessel owner still be allowed to pursue their limitation defense in the state court action? We submit the vessel owner should be allowed to pursue their defense even if the petition for limitation of liability is dismissed for being untimely filed. In such a scenario, the federal court has not addressed the limitation defense on the merits and the only decision the court has made is whether the vessel owner timely invoked the right to a **concursus** proceeding. Of course, if the admiralty court decides the petition has been timely filed, the admiralty court will have exclusive jurisdiction to resolve the limitation issue in the context of that concursus proceeding. But in the absence of such a proceeding going forward,

there is no legitimate reason why a state court should not be deemed to have the jurisdiction to adjudicate all limitation issues in connection with any pending action before the court. The authority to make all such decisions is certainly consistent with the courts' decisions in *Langnes*, *Laughin*, and *Mapco*. It is also consistent with the United States Supreme Court's decision in *The Scotland*, where the court held that the rules adopted to invoke the right to limitation of liability, "were not intended to restrict parties claiming the benefit of the law, but to aid them" and "they were not intended to prevent them from availing themselves of any other remedy or process which the law itself might entitle them to adopt." 105 U.S. at 33-34.

V. The Limitation Fund in Proceedings Outside Section 30529 Proceedings

When multiple claimants have joined in a state court action, an additional issue for the state court to address is whether a limitation fund should be set for each claimant in the case, or whether one limitation fund should be distributed among all claimants. It is submitted that, although there are different views on this issue, the best approach is to maintain a single limitation fund for all claimants in the action. This was demonstrated by the court in *Blunk v. Wilson Line of Washington, Inc*., 341 F. Supp. 1345 (N.D. Ohio 1972).

In *Blunk*, minor school children were on board a vessel on April 23, 1970, when the vessel ran aground at approximately midnight. *Id*., at 1345. On April 22, 1971, the children filed 40 separate complaints in federal court seeking recovery for physical and psychic injuries arising from the incident. *Id*., at 1346. On October 6, 1971, the United States District Court for the Northern District of Ohio granted a motion to consolidate the said actions. *Id*. Defendant vessel owner thereafter filed a single answer to all complaints. In that answer, the defendant raised the limitation of liability provisions of 46 U.S.C. §§ 183-189 as a defense. *Id*. The plaintiffs moved to strike this defense contending that the defendant may set up one limitation amount for all plaintiffs only by petition to the court of admiralty pursuant to 46 U.S.C. § 185 within six months of notice of claim, and not by a single answer to multiple complaints. *Id*.

The vessel owner disagreed, arguing that under proper interpretation and application of 46 U.S.C. § 183, it was entitled to limitation of liability as against all the claims arising from the single occurrence beyond the six-month period proscribed by 46 U.S.C. § 185. *Id*. It further argued that the assertion of such right in a single pleading was procedurally appropriate when all claimants were before the court in a consolidated proceeding. *Id*.

The Court first noted that Congress originally enacted the Limitation Act in 1851 with the purpose of encouraging investments in American shipping. *Id*., at 1347. It also noted that the amendments to the Act in 1935 and 1936 did not change the original purpose of the Act, to encourage investments in American shipping. *Id*., at 1348.

The Court then held that:

> It is the opinion of this Court that the amendments to present Sections 183(b)[11] and 185[12] of the Limitation of Liability Act did **not** change the rule of *The Scotland*. That is, the Act still contains two distinct provisions for limitation of liability. One is contained in Section 183 and deals with the limitation amount, while the other is contained in Section 185 and deals with the method by which a ship owner may petition a court for a limitation proceeding, thus halting any proceedings on claims asserted against it. **Waiver of the right to petition for a limitation proceeding does not waive the right of a ship owner to raise Section 183 in an answer to a pleading and thereby avail himself of the full protection of the Limitation of Liability Act**.
>
> It is obvious that in a case, like the **present**, where all parties injured are represented . . ., an answer setting up the defense of limited [liability], is fully adequate to give the ship-owners all the protection which they need.
>
> This view is further substantiated by decisions stating that Section 185 is merely a procedural device for marshalling all of the claims against a ship owner into one proceeding. It therefore follows that the defendant herein is entitled to maintain a single fund for limitations of liability as to all the claims asserted against it in these actions. *Id., at 1349-50*. (emphasis added) (internal citations omitted). *See also, Signal Oil & Gas. Co. v. The Barge W-701*, 468 F. Supp. 802, 814 (E.D. La. 1979), rev'd on other grounds, 654 F. 2d 1164 (5th Cir. 1981).

The *Blunk* case was a federal case, but there is no reason why the same result should not apply to state court proceedings. Because the Limitation Act's purpose is "to promote American merchant marine trade and put

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[11] Now codified as 46 U.S.C. § 30524(b).

[12] See footnote 4, *supra*.

American vessel owners on equal footing with their foreign competitors[,]" *Mapco*, 849 S.W. 2d at 314, note 1, to accomplish that beneficent purpose, it must be liberally construed. *Signal Oil & Gas. Co., supra, at* 1174. Accordingly, when the limitation defense is timely raised in a state court action involving multiple claimants, and no timely concursus proceeding is filed, not only should the court be allowed to resolve all limitation issues, but the vessel owner should only be required to create one limitation fund to be distributed among all claimants.

VI. Conclusion

The right to limitation should not be lost because a petition is not timely filed within the six-month period. The only right that should be deemed lost when a petition for limitation is not timely filed in federal admiralty court is the right to force a concursus proceeding of all potential claims. With the exception of the concursus proceeding, which can only be administered by an admiralty court pursuant to 46 U.S.C., § 30529, state courts (and federal courts sitting under diversity jurisdiction) should be recognized to have the authority to resolve all issues pertaining to limitation of liability, including liability questions, the amount of the limitation fund, and whether the vessel owner has the right to limit its liability in the manner prescribed by the Limitation Act. If multiple claimants join together in one lawsuit, a vessel owner should be allowed to raise the limitation defense against all such claims, even if no petition for limitation of liability under 46 U.S.C. § 30529 is separately filed, and the vessel owner is entitled to maintain a single fund for limitation purposes against all the claims asserted in the lawsuit.