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ADMIRALTY LAW

Expert Analysis

In the Wake of 'The TITANIC': An Unsinkable Law

This month marks the 100th anniversary of the sinking of the cruise ship, Titanic, with the loss of 1,517 lives (April 15, 2012). Apart from the memory of a high-seas disaster, what remains forever steadfast is the law that surfaced from the casualty.

By
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The Unthinkable Happens

The majestic British steamship, hailed as 'unsinkable' by its owners, sailed from Southampton, England, on her maiden voyage bound for New York. The ship collided with a massive iceberg in the North Atlantic and sank on April 15, 1912, with many lives of passengers, crew and cargo lost. Everything disappeared under the surface except 14 lifeboats.

There has been great fanfare, such as a Broadway play, a children's book, cruises to the site, and a blockbuster 3D movie. There was also a 1914 U.S. Supreme Court case that made admiralty law that continues to resurface.[1]

Numerous lawsuits to recover for loss of life and personal injury were filed against the shipowner, White Star Line, in federal and state courts in New York. What the plaintiffs did not see lurking on the horizon was a petition filed by the foreign vessel owner in the U.S. District Court for the Southern District of New York to limit its liability under U.S. law.

Limited Liability

To encourage investments in ships and promote a healthy U.S. Merchant Marine, a limitation of liability law was enacted in the United States in 1851 similar to limited liability laws in other seafaring nations (46 U.S.C. §30501 et seq.). The "great object of the law was to encourage ship-building and to induce capitalists to invest money in this branch of the industry."[2] There are significant benefits to the Limitation Act. Its procedural rules give a vessel owner wide latitude to select a federal forum. In addition, all claims must then be brought in that one federal forum (a 'concursus') while at the same time, the law allows the vessel owner to attempt to limit liability to the 'post-casualty' value of its asset, akin to a corporate shield.[3]

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Under the Limitation Act, a vessel owner can limit liability if it can prove that the loss was occasioned without its 'privity' or 'knowledge' such as an error in navigation that the owner had nothing to do with. 46 U.S.C. §30505(b). Here, the owner alleged in the petition that the collision with the iceberg in darkness was due to an inevitable accident and not caused by any fault of the vessel owner.[4]

Because the Titanic sank after striking the iceberg, the lifeboats were the owner's only remaining asset. Thus, under the U.S. Limitation Act, the owner sought to limit any recoveries to the meager value of the 14 lifeboats and freight money earned which totaled less than $92,000.[5] This was a chilling thought to the 711 injured survivors as well as the families of the 1,517 deceased passengers and crew.

The plaintiffs swiftly countered with a motion to dismiss the owner's limitation petition. The plaintiffs argued that a foreign corporation could not seek protection behind a purely American liability limiting statute for a casualty having no connection with U.S. territory. The only tenuous contact was that another ship, S.S. Carpathia, returned the survivors to the Port of New York.

Plaintiffs' position was that no wording in the Limitation Act made it applicable to a foreign corporation. However, the statutory language did broadly apply the defense to the "owner of any vessel." Generally, in international law, the laws of one country will not have 'extraterritorial' effect outside its own borders.[6]

This creates a presumption that general expressions in a statute which might seem to include all mankind are in actuality restricted to the citizens of the government that enacts the law.[7] Here, the Titanic was a British ship, owned by a British company, that sank in mid-ocean from a collision with an iceberg. On this reasoning and perhaps having no inclination to cause further heartache to the families, the Southern District decided that the foreign shipowner could not maintain a limitation proceeding here under U.S. law and dismissed the owner's petition.[8]

On Course to Supreme Court

On appeal, the U.S. Court of Appeals for the Second Circuit acknowledged the importance of this novel issue and that it required a speedy resolution in the interest of justice for the victims. In fact, during oral argument, the Second Circuit determined that this unresolved proposition of law warranted immediate U.S. Supreme Court attention and thus certified the issues full steam ahead to the high court.[9]

The Second Circuit framed the main issues as (i) 'whether in the case of a disaster upon the high seas, where a vessel of foreign country

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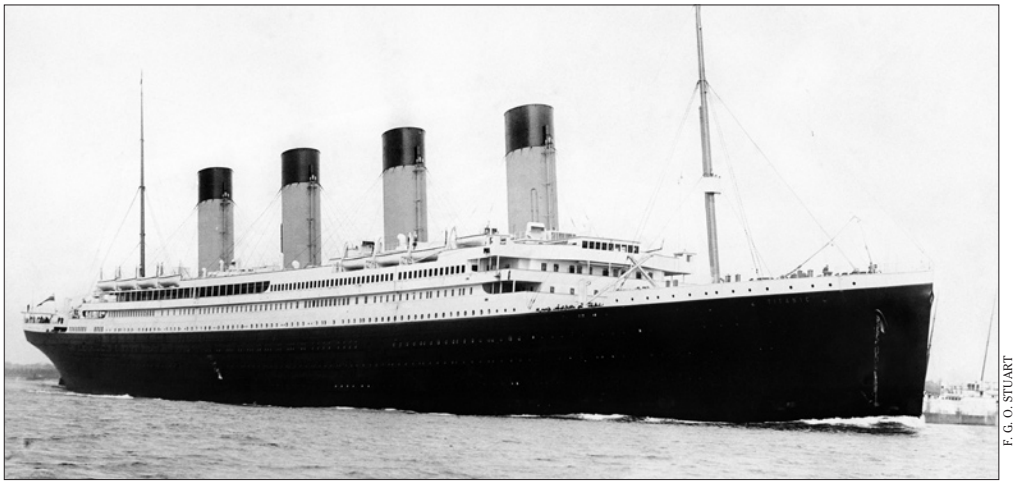
is concerned with claimants of many different nationalities, such owner can maintain a limitation of liability proceeding here under United States law and (ii) will the courts of the United States in such proceeding enforce U.S. law or the laws of the foreign country in respect to the amount of the owner's liability?'[10]

The Supreme Court took the challenge and basically decided that those who wish to sue a foreign corporation here, must take the good with the bad: rights, benefits and remedies on one hand, and defenses under U.S. law on the other hand (i.e., what's good for the goose is good for the gander). Finding that the law of limited liability is "the rule by which, through the Act of Congress, we have announced that we propose to administer justice in maritime cases," the Supreme Court determined that in the case of a disaster upon the high seas with claimants of many different nationalities pursuing remedies here, the foreign owner may indeed pursue a limitation of liability proceeding under U.S. admiralty law.[11] Had the decision gone the other way (i.e., no U.S. limitation defense available to a foreign shipowner), the vessel owner could have been exposed to unlimited liability here for the injuries, deaths and cargo loss.

However, *The Titanic* plaintiffs would not come up short again. Faced with potential minimal recovery, due to the U.S. limited liability laws (post-casualty value of the shipwreck), the plaintiffs this time moved to dismiss their own claims in the Southern District, presumably to re-file in England where limitation of liability laws existed but were far more generous to plaintiffs. A brilliant strategy from a tactical point of view because the 'limitation fund' in England would be much higher than the post-casualty value of the owner's asset. At the time of the loss of the Titanic, the right of an owner to limit liability in England was governed by Section 503 of the British Merchant Shipping Act of 1894, namely, 15 pounds sterling per registered tonnage of the vessel. Therefore, at nearly 22,000 tons, the *Titanic* limitation fund available to claimants there was significantly more valuable than that allowed in the U.S. based on the value of the remains of the shipwrecked vessel.

Interestingly, in light of the Supreme Court's decision, White Star Line actually preferred that all suits against it be litigated here where its exposure could be minimal. But, it was the Second Circuit that had the final word and subsequently approved plaintiffs' strategy to withdraw the claims they filed in the owner's limitation proceeding. The owner's argument seeking to prohibit this move did not hold water and plaintiffs were at liberty to withdraw their claims and seek justice elsewhere.[12]



F. G. O. STUART

THE R.M.S. TITANIC departing Southampton in April 1912.

White Star Line had argued that since it was the 'petitioner' who initiated the limitation action, the claimants were in the position of 'defendants' and therefore could not withdraw their claims.

The Second Circuit disagreed stating that 'facts, not theories, should determine the issue' and the facts were that the claimants were endeavoring to collect damages against the shipowner by reason of its alleged negligence. Thus, they were claimants, not defendants "that hold the affirmative and, no matter what name may be given them, are entitled to withdraw the claims if they see fit to do so."[13] This is an issue that still arises today in admiralty limitation actions in the context of who has the initial burden of proof of liability… the claimant, or the vessel owner who initiates the limitation action. The above-quoted statement by the Second Circuit should have put the question to rest long ago.

Tragedy Brings Change

There was public outcry over the meager liability limits available to shipowners in the United States based on post-casualty value of a vessel's remains, particularly in major tragedies such as The Titanic and the 1934 M.V. Morro Castle casualty.[14] As a result, amendments to the law adopted a 'tonnage' based limitation fund similar to England in loss of life and bodily injury cases to $60 per ton of the vessel in 1935 and in 1984 to $420 per ton. 46 U.S.C. App. §30506(b).

The Second Circuit has since indicated that *THE TITANIC* decision remains good law,[15] and it is often cited in many jurisdictions and treatises.

On this 100th anniversary of a sea tragedy, we also mark the commissioning of a notable U.S. law, which in instances such as this, reaches extraterritorially to apply to all shipowners, foreign and domestic. It is also noteworthy that no matter what happens, or how much time elapses, the only 'unsinkable' part of Titanic lore is the 1914 U.S. Supreme Court law; now referred to simply as THE TITANIC…still seaworthy after all these years!

1. *Ocean Steam Navigation Co. v. Mellor*, 233 U.S. 718, 34 S.Ct. 754, 58 L.Ed. 1171 (1914).
2. *Norwich Co. v. Wright*, 80 U.S. 104, 121 (1871).
3. "Stretching the Boom? Limiting Liability for Offshore Disasters," Richard O. Farrell, 22 Westlaw Journal Environmental 1 (2010); see also *The MSC Carla*, 1999 WL 6364*3 (S.D.N.Y. 1999).
4. *THE TITANIC*, 209 F. 513 (2d Cir. 1913).
5. *THE TITANIC*, 209 F. 501, 502 (S.D.N.Y. 1913).
6. Id. at 510.
7. *THE TITANIC*, 209 F. 501, 510 (S.D.N.Y. 1913).
8. *THE TITANIC*, 209 F. 501, 512 (S.D.N.Y. 1913).
9. *THE TITANIC*, 209 F. 513 (2d. Cir. 1913).
10. Id. at 514.
11. *Ocean Steam Navigation Co. v. Mellor*, 233 U.S. 718 (1914).
12. *In re: Ocean Steam Nav. Co.*, 255 F. 747 (2d Cir. 1915).
13. Id. at 748.
14. *United States v. Abbott*, 89 F.2d 166 (2d Cir. 1937).
15. See *Kloeckner Reederei and Kohlenhandel v. A/S Hakedal*, 210 F.2d 754, 756 (2d Cir. 1954), appeal dismissed, 348 U.S. 801 (1955).