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MARINE BULLETIN

DECISION OF INTEREST **(Fatality, Vessel Owner's Limitation Action)**

Personal injury plaintiff's bid to dismiss a vessel owner's petition for exoneration from or limitation of liability has been denied in its entirety by a federal Judge.

The vessel owner went boating with a friend onboard his 30 foot Luhrs in the Great South Bay, NY. He anchored the vessel, and he and his guest jumped into the water for a swim. The swift current swept the two men a half mile away, and they were unable to make it back to the boat. A passing boater scooped the two from the water, and brought them to shore. Many hours later, the guest had a fatal heart attack while taking a nap at home. His estate filed a claim against the vessel owner, arguing that the guest's heart attack resulted from strenuous swimming earlier that day. The estate moved to dismiss the vessel owner's petition for exoneration from or limitation of liability ("Limitation Action"), arguing that, simply because he owned and operated the vessel on the day of the incident, the vessel owner had 'privity' or 'knowledge' of alleged negligence sufficient to defeat its limitation of liability defense.

Federal Judge Arthur D. Spatt in the Eastern District of New York denied the estate's motion, and held that the owner's petition states a valid basis for exoneration from or limitation of liability under 46 U.S.C. §30501. The Court reasoned: "*The petitioner alleges that [claimant] left the vessel and entered the navigable waters, thereby suffering his injuries as a result of swimming in the open navigable waters, not due to any fault, neglect, or want of care on the part of the petitioner, and without the petitioner's privity or knowledge. These facts set forth enough detail to provide the claimant notice of the petitioner's basis for seeking limitation of liability.*" The version of events set forth in the estate's motion to dismiss relied on theories and arguments outside the record. Thus, the Judge ruled the parties must engage in full discovery prior to any determination on the merits. The Court agreed with petitioner's statement of the law that it is the claimant's burden (not the vessel owner's) to prove negligence prior to the vessel owner having any burden of proof on the issues of his lack of 'privity or knowledge'.

The vessel owner is represented by James E. Mercante and Kristin E. Poling of Rubin, Fiorella, Friedman & Mercante LLP.

For a copy of the Decision, please reply to this email with request.