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Fifth Circuit Clarifies What Constitutes Notice of a Claim under Limitation of Liability Act

In our April 2013 edition of the Admiralty & Maritime E*lert, we published a summary of *In re Marquette Transp. Co., LLC,* 2012 U.S. Dist. LEXIS 152747 (E.D. La. Oct. 24, 2012), which held that even amicable post-incident communications with another party may be enough to trigger the six-month deadline to file for limitation of liability. Recently, the Fifth Circuit further clarified what is "notice" with regards to the Limitation of Liability Act.

In *RLB Contr., Inc. v. Butler (In re RLB Contr., Inc.)*, RLB Contracting, Inc., was engaged in dredging operations off the coast of Texas when a fishing boat carrying Mark Butler and his family collided with a floating dredge pipe associated with RLB's vessel. 773 F.3d 596 (5th Cir. Tex. 2014). All occupants of the fishing boat were thrown overboard, suffering various physical injuries, and Butler's 12-year-old daughter was killed. The Butlers filed suit on June 14, 2012, contending that the dredge pipe was inadequately marked and that RLB had negligently failed to post warnings of its dredging operations. RLB was served with the lawsuit on July 2, 2012. On December 28, 2012, RLB filed a Petition under the Limitation of Liability Act seeking to limit its liability to $750,000, the value of its vessel. The Butlers filed a motion to dismiss the limitation action as untimely, contending that RLB had received written notice of the claim more than six months prior to the time of filing the limitation action.

At issue in the case was whether pre-suit emails and letters beginning within weeks of the accident between RLB's lawyers and the Butlers' lawyer were sufficient to give notice of the Butlers' potential claim. These emails were primarily concerned with RLB's interest in pre-suit mediation and instructions to RLB not to alter or destroy any evidence. On June 8, 2012, the Butlers' attorney emailed RLB's attorneys, advising them that the Butlers intended to file suit and a courtesy copy of the suit would be forthcoming. Thereafter, RLB was served with the suit on July 2, 2012.

Summarizing the applicable law, the Fifth Circuit applied the "reasonable possibility test" to determine if written notice was properly given. The court held that the "reasonable possibility test" evokes two independent inquiries: (1) whether the writing communicates the *reasonable possibility* of a claim, and (2) whether it communicates the *reasonable possibility* of damages in excess of the vessel's value. Once a reasonable possibility has been raised, the court held that it becomes the vessel owner's responsibility to initiate a prompt investigation and determine whether to file a limitation action: "The standard is a reasonable possibility, not a reasonable probability. Although this standard is not toothless, it is also not particularly stringent."

In this case, the Butlers urged the court to consider their lawyer's multiple emails and letters to RLB as "bundled together" sufficient to communicate the reasonable possibility of a claim. Agreeing with this argument, the Fifth Circuit held:

> In situations like this one, in which the vessel owner and the putative claimant corresponded over time, it is natural for individual letters to focus narrowly on specific subjects and for later letters to assume knowledge of the contents of previous letters. Considering the correspondence as a whole better approximates what the vessel owner, as the recipient of all of the writings, should have thought was a "reasonable possibility" of a potential claim and its value.

To determine whether or not the actual content of the "bundled letters" indicated the reasonable possibility of a claim, the Court rejected RLB's argument that a "demand of a right, specific blame for damage, or call upon something due" must be included in the correspondence. Instead, the Court held that rule does not require "exacting specificity in a notice of claim to a vessel owner. Rather, the court uses a broad and flexible standard of review—reading letters of notice in their entirety and considering their 'whole tenor'—when determining if sufficient notice was given." The Butlers' multiple letters and emails, when analyzed together, gave such notice.

Finally, the Court reviewed the Butlers' "bundled" emails and letters to determine if the correspondence gave notice of a reasonable possibility that the claim would exceed the value of RLB's vessel. The court held that the pre-suit correspondence was sufficient despite the fact that a specific settlement demand was never conveyed. Instead, the Court stated that "in light of the severity of the injuries, [RLB] should have realized the potential for damages in excess of its vessel's value, and that any uncertainty was [RLB's] burden to resolve. That is the reason for a six-month grace period." In other words, RLB should have realized that an action involving the death of a child would easily exceed $750,000 in potential damages.

With this case, the Fifth Circuit construed ambiguities and doubt in favor of the allegedly injured parties and against potentially liable vessel owners. As such, it is critically important for vessel owners to keep track of any and all post-incident written correspondence and to note when such correspondence is received. As soon as there is a reasonable possibility that a suit in excess of the value of the involved vessel may be filed, the six-month clock to file for limitation starts. The correspondence does not need to include a specific demand and may be read collectively (i.e., "bundled") in order to create the reasonable possibility.

As always, Jones Walker will continue to monitor this issue, as well as other maritime developments, and will relay such developments in future editions of the firm's Admiralty & Maritime E*lert.

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