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LIMITATION MUST BE A VESSEL OWNER'S FIRST THOUGHT

In *In re Marquette Transp. Co., LLC*, a vessel owner suffered severe consequences for failing to file for limitation within the statutorily required filing period. 2012 U.S. Dist. LEXIS 152747 (E.D. La. Oct. 24, 2012). The Limitation of Shipowners' Liability Act allows a vessel owner to limit its liability to the value of its vessel (and pending freight). 46 U.S.C. § 30505. To secure this statutory benefit, the Act requires that vessel owners file their petition to limit liability "within six months after a claimant gives the owner written notice of a claim." 46 U.S.C. § 30511(a). "The purpose of the six-month prescription on the limitation of liability petition is to require the shipowner to act promptly to gain the benefit of the statutory right to limit liability." *Exxon Shipping Co. v. Cailleateau*, 869 F.2d 843, 846 (5th Cir. 1989). The Act's six-month filing requirement is a mandatory, jurisdictional requirement; "[i]f the action is not filed within that six-month period, it is dismissed as untimely."

In the case, Great Lakes Dredge and Dock Company's dredge ran aground while under the tow of a Marquette tug. The dredge was out of commission for 17 days. A little less than a month after the grounding, Marquette's claim manager emailed Great Lakes, asking if Great Lakes "had an invoice from [the shipyard] or an estimated repair costs? Also, any estimate of other costs unrelated to repairs?" In its written reply, Great Lakes stated that it was the owner and operator of the dredge and that it "confirms its intention to hold Marquette Transportation responsible for not only the physical damages sustained by the [dredge], but also the consequential damages sustained by [Great Lakes] as a result of the accident."

Marquette and Great Lakes continued to communicate in an attempt to settle the matter without litigation. However, these negotiations eventually broke down and Marquette filed for exoneration from or limitation of liability. In response, Great Lakes requested dismissal of Marquette's limitation proceeding as untimely, thus challenging the Court's subject matter jurisdiction.

Despite the cordial and amicable tone of the post-grounding correspondence, Judge Feldman of the Eastern District of Louisiana held that the limitation proceeding was untimely. Judge Feldman cited Fifth Circuit jurisprudence and stated that "the Limitation Act's six-month timeline is triggered only if and when the written notice reveals a 'reasonable probability' that the claim will exceed the value of the vessel, and therefore that the vessel owner might benefit from the Limitation Act's protection." The Fifth Circuit has instructed that the "reasonable possibility" standard:

Is not toothless [but] it is also not particularly stringent. Once a reasonable possibility has been raised, it becomes the vessel owner's responsibility to initiate a prompt investigation and determine whether to file a limitation action. The Limitation Act provides generous statutory protection to the vessel owners who reap all of its benefits. When there is uncertainty as to whether a claim will exceed the vessel's value, the reasonable possibility standard places the risk and burdens associated with that risk on the owner. In other words, if doubt exists as to the total amount of the claims or as to whether they will exceed the value of the ship the owner will not be excused from satisfying the statutory time bar since he may institute a limitation proceeding even when the total amount claimed is uncertain.



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Ultimately, the Court found that the initial email correspondence between the two parties triggered the six-month deadline for filing a limitation action. Thus, the limitation action was untimely, and Marquette was unable to avail itself of the substantial protections that The Limitation of Shipowners' Liability Act provides a shipowner.

While the lesson is clear in hindsight, it is easy for a shipowner to delay filing for limitation when the incident involves a party with whom settlement is the primary objective. However, a shipowner must be aware that even basic correspondence with the other party may start the clock for filing for limitation.

– [Stephen H. Clement](#)

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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