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Of Saving to Suitors, Limitation of Shipowners' Liability, and the Inherent Conflict Between

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Of Saving to Suitors, Limitation of Shipowners' Liability, and the Inherent Conflict Between

Lewis v. Lewis & Clark Marine, Inc.[1]

I. INTRODUCTION

The federal courts have often been faced with the "recurring and inherent conflict" between the Limitation of Liability Act and the saving to suitors clause.[2] The Limitation of Liability Act allows a shipowner to absolutely limit its liability, for collisions and other losses which take place without the owner's privity or knowledge, to the value of the ship and its freight then pending. The Act also provides for exclusive federal admiralty jurisdiction to determine whether an owner is entitled to limitation of its liability. The saving to suitors clause, on the other hand, which is included in the statutory grant of exclusive admiralty jurisdiction to the federal courts, gives claimants the right to pursue common law remedies in maritime causes of action in state court. One statute provides for a federal court, the other permits state court actions. The inherent contradiction of these statutory provisions has produced an ongoing conflict that courts have struggled to deal with for decades. In *Lewis v. Lewis & Clark Marine, Inc.*, the Supreme Court reiterated that a claimant should be allowed to pursue an action in state court so long as the shipowner's right to limitation of liability is protected by a federal court. The Court's decision protects both shipowners' right to limitation and claimants' right to pursue claims in state court, although, given the inherent conflict between the saving to suitors clause and the Limitation Act, it is hardly likely to settle the conflict entirely.

II. FACTS AND HOLDING

Lewis & Clark Marine, Inc. ("Lewis & Clark") operates tugs and fleets on the Mississippi River in the Saint Louis Harbor.[3] On March 17, 1998, James Lewis, an employee of Lewis & Clark, was working as a deckhand aboard Lewis & Clark's ship the M/V *Karen Michelle* when he allegedly tripped over a wire and injured his lower back.[4]

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1. 531 U.S. 438 (2001).

2. *In re* Dammers, 836 F.2d 750, 754 (2d Cir. 1988).

3. Brief for Respondent at 4, Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438 (2001) (No. 99-1331).

4. *Lewis*, 531 U.S. at 440.

Anticipating suit by Lewis, one week after the alleged injury Lewis & Clark filed a complaint for exoneration from, or limitation of, liability in the United States District Court for the Eastern District of Missouri, pursuant to the Limitation of Liability Act.[5] Filed with the complaint was an affidavit of value prepared by a marine surveyor attesting that, on the day of Lewis' alleged injury, the value of the *Karen Michelle* was $450,000.[6] Lewis & Clark filed a surety bond representing Lewis & Clark's interest in the *Karen Michelle* for that amount and motioned the district court to approve the security for value.[7] Following the procedure prescribed in Supplemental Admiralty and Maritime Rule F,[8] on May 8, 1998, the district court entered an order approving the surety bond and ordering any person with a claim arising from the events of March 17, 1998 to file a claim with the court by June 12, 1998.[9] The court also enjoined the prosecution of any other suits against Lewis & Clark related to the events of March 17, 1998.[10]

Prior to the district court's order, and allegedly unaware of Lewis & Clark's pending limitation proceeding, Lewis filed an action in state court.[11] Lewis filed suit against Lewis & Clark in the Circuit Court of Madison County, Illinois on April 2, 1998.[12] Lewis' claims were based on negligence under the Jones Act,[13]

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5. 46 U.S.C. app. §§ 181-189 (2000). The general effect of the Act is to limit the shipowner's liability, in cases where the owner was without privity or knowledge, to the value of the owner's interest in the vessel and its pending freight. *Id.* § 183. For a more in depth discussion of the Act, *see infra* notes 71-156 and accompanying text.

6. Brief for Respondent at 5, *Lewis* (No. 99-1331).

7. Brief for Petitioner at 4, *Lewis* (No. 99-1331).

8. FED. R. CIV. P. Supp. Admiralty Rule F.

9. Brief for Petitioner at 4, *Lewis* (No. 99-1331).

10. Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 441 (2001).

11. Brief for Petitioner at 4-5, *Lewis* (No. 99-1331).

12. *Id.*

13. 46 U.S.C. app. § 688 (2000). The Jones Act, enacted in 1920, gives to a seaman injured in the course of his employment a cause of action for negligence against his employer. THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW 262 (3d ed. 2001). A Jones Act claim is an *in personam* action rather than one *in rem*. Plamals v. The Pinar Del Rio, 277 U.S. 151, 156 (1928). For the importance of this distinction, *see infra* notes 43-53 and accompanying text.

unseaworthiness,[14] and maintenance and cure.[15] Lewis waived his right to a jury trial of these claims.[16]

On June 9, 1998, Lewis answered Lewis & Clark's complaint in federal district court and filed a claim for damages in excess of the $450,000 limitation fund represented by Lewis & Clark's surety bond.[17] On the same day, in an effort to pursue his action in state court, Lewis filed a motion to dissolve the district court's restraining order that enjoined the prosecution of other suits.[18] Lewis' motion claimed that he was entitled to dissolution of the restraining order because he was the only claimant seeking damages from the incident aboard the *Karen Michelle* on March 17, 1998.[19] Lewis also entered stipulations that (1) he waived any claim of res judicata concerning the issue of limited liability that would arise from the state court action and that (2) Lewis & Clark could relitigate in federal district court any issues relating to limitation of liability.[20] Lewis later entered another stipulation, that his claim was for less than $400,000, recanting his earlier claim in excess of the value of the limitation fund.[21]

In reaching its decision to dissolve the restraining order, the district court noted the conflict between its exclusive admiralty jurisdiction to determine Lewis & Clark's right to limited liability and the saving to suitors clause in 28 U.S.C. § 1333(1),[22] which saves "common law rights and remedies, including

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14. An unseaworthiness claim is based on the shipowner's duty to ensure that the vessel is fit for its intended purpose. SCHOENBAUM, *supra* note 13, at 163. The duty is absolute and its breach does not depend upon negligence by the shipowner. Mitchell v. Trawler Racer, Inc., 362 U.S. 539, 547-48 (1960).

15. *Lewis*, 531 U.S. at 441. Maintenance and cure is an ancient obligation of the shipowner to provide food, lodging, and medical services to a seaman who becomes ill or is injured while in the service of the ship. The Osceola, 189 U.S. 158, 175 (1903). The duty continues for some period beyond the end of the voyage but is not indefinite. Calmar S.S. Corp. v. Taylor, 303 U.S. 525, 529-30 (1938).

16. *Lewis*, 531 U.S. at 441.

17. *In re* Lewis & Clark Marine, Inc., 31 F. Supp. 2d 1164, 1166 (E.D. Mo. 1998), *rev'd*, 196 F.3d 900 (8th Cir. 1999), *rev'd*, 531 U.S. 438 (2001).

18. *Id.*

19. *Lewis*, 531 U.S. at 441.

20. *Id.* at 441-42.

21. In re *Lewis & Clark Marine, Inc.*, 31 F. Supp. 2d at 1166. It seems obvious that this was done in order to make the claim an amount less than the limitation fund, and, thus, create an adequate fund case. One might question the propriety of such an action, as Justice Harlan appeared to do in *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152-53 (1957) (J. Harlan, dissenting); *see* text accompanying note 189.

22. 28 U.S.C. § 1333 provides: "The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

the right to a jury trial, in the forum of the claimant's choice."[23] So, while the Limitation of Liability Act gives the shipowner the right to have limitation considered in federal district court, the district court found that the saving to suitors clause gives the claimant the right to pursue an action in state court. The district court noted two exceptions to the exclusive jurisdiction of the federal courts that are used "to reconcile the 'recurring and inherent conflict'" between the two statutes and that allow a claimant to pursue an action in state court. The first exception arises when the value of the limitation fund exceeds all claims against it, and the second exception arises when a single claimant seeks damages in excess of the limitation fund.[24] Finding that the first exception, and probably the second as well, applied in the case before it, the district court dissolved the injunction.[25]

On appeal, the Eighth Circuit Court of Appeals reversed the district court's decision, holding that the district court had abused its discretion in dissolving the injunction.[26] The Eighth Circuit, while agreeing that there was potential for conflict between the Limitation of Liability Act and the saving to suitors clause, concluded that there was no conflict in the instant case.[27] Explaining that it had considered whether the shipowner was entitled to remain in federal court and whether the claimant was pursuing a saved remedy in another forum, the court concluded that Lewis & Clark was entitled to seek exoneration of liability, not just limitation, and that Lewis, because he had waived a jury trial, did not have a saved remedy in state court.[28]

In a unanimous opinion, the Supreme Court reversed the Eighth Circuit's decision.[29] The Court rejected the Eighth Circuit's conclusion that the Limitation of Liability Act gave Lewis & Clark the absolute right to seek exoneration from liability in federal court.[30] The Court also disagreed with the Eighth Circuit's conclusion that Lewis did not have a "saved" remedy because he was not seeking a jury trial in his state court action.[31] The Court held that "state courts, with all their remedies, may adjudicate claims like [Lewis'] against vessel owners so long as the vessel owner's right to seek limitation of liability is protected."[32]

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23. In re *Lewis & Clark Marine, Inc.*, 31 F. Supp. 2d at 1167-68.

24. *Id.* at 1168.

25. *Id.* at 1169.

26. Lewis & Clark Marine, Inc. v. Lewis, 196 F.3d 900, 910 (8th Cir. 1999), *rev'd*, 531 U.S. 438 (2001).

27. *Id.*

28. Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 443 (2001).

29. *Id.* at 440.

30. *Id.* at 453.

31. *Id.* at 454.

32. *Id.* at 455.

III. LEGAL BACKGROUND

A. The Saving to Suitors Clause

The foundation for the development of all admiralty law in the United States is Article III, section 2 of the United States Constitution, which provides that "[t]he judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction."[33] This exclusive jurisdiction granted to the federal courts was formulated in the Judiciary Act of 1789, but the Act saved "to suitors, in all cases, the right of a common law remedy where the common law is competent to give it."[34] Presently, the jurisdictional grant is in 28 U.S.C. § 1333, which provides:

> The district courts shall have original jurisdiction exclusive of the courts of the States, of; (1) Any civil case of admiralty or maritime jurisdiction, *saving to suitors in all cases all other remedies to which they are otherwise entitled.* (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.[35]

The result has been what the Supreme Court has described as a "highly intricate interplay of the States and the National Government in their regulation of maritime commerce."[36]

What was originally intended by the saving to suitors clause is the subject of some debate.[37] The common law courts had always had jurisdiction to hear tort and contract actions against shipowners when the actions were brought *in*

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33. U.S. CONST. art. III, § 2, cl. 1. For a general discussion of admiralty jurisdiction, *see* SCHOENBAUM, *supra* note 13, ch. 1. Admiralty *criminal* jurisdiction is provided for in Article I, section 8, conferring power on Congress "[t]o define and Punish Piracies and Felonies committed on the high Seas." U.S. CONST. art. I, § 8, cl. 10.

34. Judiciary Act of 1789, ch. 20, § 9, 1 Stat. 23, 77 (codified as amended at 28 U.S.C. § 1331 (2000)).

35. 28 U.S.C. § 1333 (2000) (emphasis added).

36. Romero v. Int'l Terminal Operating Co., 358 U.S. 354, 373 (1959).

37. *Compare* William R. Casto, *The Origins of Federal Admiralty Jurisdiction in an Age of Privateers, Smugglers, and Pirates*, 37 AM. J. LEGAL HIST. 117, 139-49 (1993) *with* Jonathan M. Gutoff, *Original Understandings and the Private Law Origins of the Federal Admiralty Jurisdiction: A Reply to Professor Casto*, 30 J. MAR. L. & COM. 361, 387-90 (1999).

personam.[38] In *New Jersey Steam Navigation Co. v. Merchant's Bank of Boston*,[39] the Court explained:

> The [state] courts exercise a concurrent jurisdiction in nearly all the cases of admiralty cognizance, whether of tort or contract (with the exception of proceedings *in rem*) .... The saving clause was inserted, probably, from abundant caution, lest the exclusive terms in which the power is conferred on the District Courts might be deemed to have taken away the concurrent remedy which had before existed. This leaves the concurrent power where it stood at common law.[40]

Thus, state courts remained competent to give common law remedies in civil actions to enforce a right granted by maritime law.[41] The saving clause does not itself affirmatively grant jurisdiction on state courts; rather, it is an exception to the federal courts' exclusive admiralty or maritime jurisdiction.[42] The savings clause protects the right to proceed in state court concerning maritime torts and contracts, and, unlike admiralty courts, which are exclusively bench trials, a jury trial is usually available to claimants in a state court action.[43]

As already suggested, the most important distinction affecting whether a claim falls within and is saved by the "saving clause" is whether the suit is *in personam* or *in rem*. Federal admiralty jurisdiction is exclusive in maritime causes of action carried on as proceedings *in rem*, but the saving clause protects the right to bring *in personam* actions in state court.[44] An *in personam* action is one "against the person," such as against a shipowner as an individual.[45] An *in rem* action, on the other hand, is a unique American admiralty procedure against a ship or other maritime property.[46] *In rem* actions are based on the personification of a vessel.[47] Because a vessel is given the legal status of a

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38. 1-VIII BENEDICT ON ADMIRALTY § 121 (2001).
39. 47 U.S. 344 (1848).
40. *Id.* at 390.
41. SCHOENBAUM, *supra* note 13, at 99.
42. 2 AM. JUR. 2D *Admiralty* § 121 (1964).
43. 1-VIII BENEDICT ON ADMIRALTY § 123 (2001).
44. Madruga v. Superior Court, 346 U.S. 556, 560 (1954).
45. BLACK'S LAW DICTIONARY 795 (7th ed. 1999).
46. SCHOENBAUM, supra note 13, at 995.
47. Martin Davies, *In Defense of Unpopular Virtues: Personification and Ratification*, 75 TUL. L. REV. 337, 339 (2000). Personification has a long history; it was applied by the English admiralty courts as early as the 1500s. *Id.* at 341. The doctrine considers "a ship as having rights and obligations separate from those of its owner. *Id.* at 338. Personification is a legal fiction similar to the treatment of a corporation as a "person." Although few would seriously question the legal fiction of corporations, the

person, it can be sued, and itself may sue, in its own name.[48] Personification recognizes the ship as the offending thing rather than its owner, and an *in personam* judgment against the owner will not necessarily bar a later action against the ship *in rem*.[49] Situations where the ship may be liable *in rem* while the owner is not liable *in personam* include damage from a collision while the ship was in the hands of a compulsory pilot or where damage is caused by the master or crew of a ship under bareboat charter.[50] *In rem* actions also carry with them the strong tool of maritime arrest which allows a plaintiff to seek the arrest of the offending vessel, typically without notice to the shipowner.[51]

An *in rem* action against a ship is not an action "at common law."[52] Thus, the Supreme Court determined from an early date that the saving to suitors clause and its protection of common law remedies does not permit state courts to entertain *in rem* proceedings; those are reserved exclusively for the federal district courts.[53] Rather, what the saving clause did was grant *in personam* jurisdiction to the state courts, concurrent with the federal district courts, in maritime causes of action.[54]

The Court has also explained the difference between rights and remedies:[55] "A right is a well founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury."[56] The effect of the saving clause is to allow a *right* created by maritime law to be enforced by a common law *remedy*.[57] Thus, while the remedy is one of common law, the rights of the parties are still determined by maritime law.[58] As an example, a claimant might

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personification of vessels has been frequently attacked, and the United States is almost alone in its continued use of the doctrine. *Id.* at 339-41. As one author has noted however, "[i]f anything, the fiction that a corporation somehow has a metaphysical identity separate from the people who own and work for it is even less grounded in reality than the fiction that a ship, a tangible object, can have rights and obligations independent of those of its owners. The question should be not whether the personification doctrine is a fiction—it plainly is—but whether it is a useful fiction." *Id.* at 340.

48. *See generally* Davies, supra note 47.

49. SCHOENBAUM, supra note 13, at 995-96.

50. SCHOENBAUM, supra note 13, at 995-96.

51. *See* SCHOENBAUM, supra note 13, at 996.

52. The Hine, 71 U.S. 555, 571 (1866).

53. *Id.* at 571-72.

54. Red Cross Line v. Atl. Fruit Co., 264 U.S. 109, 123 (1924).

55. *See* Chelentis v. Luckenbach S.S. Co., 247 U.S. 372 (1918).

56. *Id.* at 384.

57. *Id.*

58. *Id.* The Supreme Court has made clear that admiralty claims are not federal question claims. Romero v. Int'l. Terminal Operating Co., 358 U.S. 354, 371-72 (1959).

bring an action in state court against a shipowner for unseaworthiness. Substantive maritime law will govern the rights of the parties, but the remedy would be a judgment given by the state court, which, unlike an admiralty court, may sit with a jury.[59]

In sum, the effect of the saving clause is that it permits an *in personam* action to be brought as an ordinary civil action in state court, or, when an independent basis for federal jurisdiction exists, in federal court not sitting in admiralty.[60] On the other hand, an *in rem* action is only cognizable in federal district court, by reference to admiralty jurisdiction.[61]

Prior to the Eighth Circuit's *Lewis & Clark*[62] opinion, one other circuit had considered whether a non-jury trial of maritime claims in state court was a "saved" remedy under the saving to suitors clause. *Linton v. Great Lakes Dredge & Dock Co.*,[63] a case from the Fifth Circuit, involved a Louisiana statute providing that, when an admiralty or general maritime claim under federal law was brought in Louisiana state court under the saving to suitors clause and the claim was designated as an admiralty or general maritime claim, a jury trial was not available.[64] Linton, the plaintiff, argued that a designation under the statute was merely procedural, allowing the case to be tried to a judge rather than a jury.[65] Great Lakes, however, argued that such a designation operated the same way as a Rule 9(h) designation under the Federal Rules of Civil Procedure, thus, invoking exclusive federal admiralty jurisdiction and withdrawing Linton's claims "at law" under the saving to suitors clause.[66]

The Fifth Circuit disagreed with Great Lakes' argument. The court noted that the original language of the saving to suitors clause, saving "the right of a common law remedy, where the common law is competent to give it," had been changed, and the clause now saved "all other remedies to which [suitors] are otherwise entitled."[67] Thus, the court concluded the clause no longer saved only "common law remedies."[68] Quoting from *Red Cross Line v. Atlantic Fruit Co.*,[69] the court stated:

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59. *See, e.g.*, *Chelentis*, 247 U.S. at 384.

60. GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY 37 (2d ed. 1975).

61. *Id.* at 38.

62. 196 F.3d 900 (8th Cir. 1999), *rev'd*, 531 U.S. 438 (2001).

63. 964 F.2d 1480 (5th Cir. 1992), *cert. denied*, 506 U.S. 975 (1992).

64. *Id.* at 1482 (citing LA. CODE CIV. PROC. ANN. art. 1732(6) (West 1990)).

65. *Id.*

66. *Id.*

67. *Id.* at 1484.

68. *Id.* at 1486.

69. 264 U.S. 109, 124 (1924).

> The "right of a common law remedy," so saved to suitors, does . . . not include attempted changes by the states in the substantive admiralty law, but it does include *all other means other than proceedings in admiralty* which may be employed to enforce the right or redress the injury involved. It includes remedies in pais, as well as proceedings in court; judicial remedies conferred by statute, as well as those enforceable at the common law; remedies in equity, as well as those enforceable in a court of law.[70]

Thus, the court concluded that a jury trial is not a required element of a saving to suitors remedy and a maritime non-jury action was not necessarily outside the saving to suitors clause.[71]

B. The Limitation of Shipowners' Liability Act[72]

Limitation of shipowner's liability, a feature of the maritime law of many nations, has a very long history, the origins of which are not clear.[73] Oliver Wendell Holmes traced it to *noxae deditio*, a Roman legal principle whereby an owner could discharge liability for damage caused to another by his property by delivering that property to the injured party.[74] Most scholars give little credit to this theory.[75] Instead, most scholars point to examples of a right to limitation that are found in the Consulato del Mare of Barcelona, an early code that had a persuasive effect on the law of other European nations.[76] The risks of transport on the seas, still risky today and especially hazardous in the days of wooden sailing ships, made a shipowner subject to the possibility of great liability. Limitation was a way to encourage investment in maritime ventures by limiting

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70. *Linton*, 946 F.2d at 1486 (emphasis added).

71. *Id.* at 1491. In its *Lewis & Clark* decision, the Eighth Circuit distinguished *Linton* on the grounds that *Linton* was not a case involving the Limitation of Liability Act. *See* Lewis & Clark Marine, Inc. v. Lewis, 196 F.3d 900, 910 (1999), *rev'd*, 531 U.S. 438 (2001). To the extent that *Linton* stands for the proposition that a non-jury trial *is* a remedy saved by the saving to suitors clause, it is not apparent how the *Linton* holding is distinguishable from the issue before the Eighth Circuit.

72. Limitation of shipowner's liability is a fundamental and complex area of admiralty law. This Note can do no more than provide a very broad overview.

73. The Main v. Williams, 152 U.S. 122, 126 (1894).

74. James J. Donovan, *The Origins and Development of Limitation of Shipowners' Liability*, 53 TUL. L. REV. 999, 1000 (1979).

75. *Id.*

76. Dennis J. Stone, *The Limitation of Liability Act: Time to Abandon Ship?*, 32 J. MAR. L. & COM. 317, 318-19 (2001).

investors' personal liability.[77] As increased commerce made its way throughout Europe, so did the concept of limited liability.[78] Provisions for limitation are found in the Hanseatic ordinances, the Maritime Codes of Charles II of Sweden, and a Rotterdam ordinance.[79] All of these provided that the shipowner would not be subject to liability greater than the value of his ship. The French Ordinance of 1681, upon which many maritime codes were founded, also provided for limitation of shipowners' liability.[80]

At the same time, however, England was still without a limitation law.[81] English shipowners called on Parliament to give them some sort of protection after a 1734 case in which shipowners were found liable for an entire cargo of bullion, loaded in Portugal, that was stolen by the ship's master.[82] The English limitation act,[83] passed in 1734, provided that shipowners were not liable, in excess of the value of the ship and its freight due or coming due for the voyage, for losses occasioned by embezzlement by the ship's master or mariners, or for any damage they caused, without the privity or knowledge of the shipowner.[84] The scope of the English statute's protection was expanded in 1786 and again in 1814.[85]

The first limitation statutes passed in the United States were in Massachusetts (1818) and Maine (1831).[86] Both statutes, like the English statute, valued the ship at the beginning of the voyage rather than after the occurrence of the loss in question.[87] Both statutes were later amended, however, to follow the continental limitation laws which valued the ship "post-casualty."[88] A call for a national limitation law in the United States followed in the wake of *New Jersey Steam Navigation Co. v. Merchants' Bank of Boston*,[89] in which the

77. SCHOENBAUM, *supra* note 13, at 808.

78. Stone, *supra* note 76, at 318.

79. Donovan, *supra* note 74, at 1003-04.

80. The Main v. Williams, 152 U.S. 122, 126 (1894).

81. *Id.* at 127.

82. Stone, *supra* note 76, at 321.

83. 7 Geo. 2, ch. 13 (1734).

84. *The Main*, 152 U.S. at 127.

85. 3-I BENEDICT ON ADMIRALTY § 4 (2001).

86. *The Main*, 152 U.S. at 128.

87. Carter T. Gunn, *Limitation of Liability: United States and Convention Jurisdictions*, 8 MAR. LAW. 29, 30-31 (1983).

88. *Id.* at 31. In effect, this allows the shipowner to be free of further obligation by surrendering the ship, be it damaged beyond repair or even sunk, after the casualty in question. The implications of this are evident in In re *Barracuda Tanker Corp.* (The Torrey Canyon), 281 F. Supp. 228 (1968), discussed *infra* notes 117-24 and accompanying text.

89. 47 U.S. 344 (1848).

defendant-shipowner was held liable for $18,000 in specie which, after the disastrous conclusion of the voyage, lay at the bottom of Long Island Sound.[90] The specie was loaded onto the steamboat *Lexington* in a wooden crate by William F. Harnden, who had collected the money in New York for Merchants' Bank and was sending it to Boston.[91] Shortly after the *Lexington* sailed from New York, a fire broke out on board the ship and eventually consumed it. The cause of the fire was apparently a number of bales of cotton stowed next to the ship's steam-chimney.[92] Finding gross negligence, the shipowner was held liable for the specie despite a contractual agreement between Harnden and New Jersey Steam that New Jersey Steam would not be liable for any loss of the contents of Harnden's crate.[93]

The outcry following *New Jersey Navigation* led to the passage of the Limitation of Liability Act[94] in 1851.[95] The Act passed without debate in the House of Representatives and less than a full day's debate in the Senate.[96] The key provision of the Act is found in Section 183(a). This section limits a vessel owner's liability for any losses that occur without the owner's privity or knowledge to the value of the owner's interest in the vessel and the freight then pending.[97]

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90. *Id.* at 378-79. In addition to the loss of property, there was a considerable loss of life, a disturbing example of which was included in a narrative, made part of the Court's opinion, by one of the survivors. Stephen Manchester, the pilot of the boat, managed to climb aboard a floating bale of cotton, on which a man named McKinney was already aboard. *Id.* at 349. Manchester had to pull McKinney out of the water after another survivor tried unsuccessfully to jump onto the bale. *Id.* According to Manchester, "McKinney froze to death about daylight the next morning, and fell off the bale." *Id.*

91. *Id.* at 379.

92. *Id.* at 384.

93. *Id.* at 344-45.

94. 9 Stat. 635 (1851) (codified at 46 U.S.C. app. §§ 181-89 (2000)).

95. Norwich Co. v. Wright, 80 U.S. 104, 108-09 (1871). The *Norwich* opinion refers primarily to the loss of another ship, the *Henry Clay*, as the impetus for the Limitation Act. The literature generally does not reflect this.

96. GILMORE & BLACK, *supra* note 60, at 819.

97. 46 U.S.C. app. § 183(a) (2000). Section 183(a) provides:

> The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

Who qualifies as an "owner" under the Act was considered in *Flink v. Paladini (The Henrietta)*.[98] In *Flink*, the Court concluded that the term should be construed liberally in a "broad and popular sense" in order to give effect to the Act's intent.[99] While the "owner" will typically be the person or other entity[100] holding title to the vessel, title is not always dispositive.[101] A life tenant and trustee holding the remainder in a vessel have been found to be "owners" within the Act.[102] The United States government can also limit its liability under the Act,[103] as can a foreign shipowner sued in the United States.[104] On the other hand, a bailee is not entitled to limitation,[105] nor is someone who holds title to the ship simply as security.[106] Insurers of a ship are also not its "owners," but insurers will be considered owners if the ship is abandoned to the insurance underwriters as a total loss.[107] Finally, a separate provision of the Act provides that a charterer who "man[s], victual[s], and navigate[s]" a vessel is an owner under the Act.[108]

The Act also defines "vessel" broadly, extending the right to limitation to any "seagoing vessels, and . . . all vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters."[109] To fall within the Act, a vessel must be a structure capable of being a means of transportation.[110] Although controversial, the law is well settled that pleasure craft (private, non-

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Id.

98. 279 U.S. 59 (1929).

99. *Id.* at 63.

100. Such entities would include a corporation or partnership.

101. *In re* Nobles, 842 F. Supp. 1430, 1437 (N.D. Fla. 1993).

102. *In re* Colonial Trust Co., 124 F. Supp. 73, 76 (D. Conn. 1954).

103. *See* Empresa Lineas Maritimas Argentinas S.A. v. United States, 730 F.2d 153, 155 (4th Cir. 1984).

104. Oceanic Steam Navigation Co. v. Mellor, 233 U.S. 718, 732-33 (1914). This case involved the tragic sinking of the *Titanic*, the subject of numerous books and several movies. Despite the fact that the *Titanic* had not sailed from the United States and never reached the United States, the Court determined that, when a claimant sued in a United States court, the shipowner could claim the benefit of limited liability there. *Id.*

105. The Severance, 152 F.2d 916, 921 (4th Cir. 1946), *cert. denied*, 328 U.S. 853 (1946).

106. Am. Car & Foundry Co. v. Brassert, 289 U.S. 261, 264-66 (1933).

107. Gunn, *supra* note 87, at 34-35.

108. 46 U.S.C. app. § 186 (2000). This has been interpreted to qualify demise and bareboat charterers, but not voyage or time charterers, as "owners" under the Act. SCHOENBAUM, *supra* note 13, at 810-11. For an explanation of the various forms of charter, *see* SCHOENBAUM, *supra* note 13, ch. 9.

109. 46 U.S.C. app. § 188 (2000).

110. Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co., 271 U.S. 19, 20-22 (1926).

commercial boats) qualify as "vessels" eligible for limitation.[111] Thus, owners of yachts, motorboats, and personal watercraft have all been afforded the protections of the Act.[112]

Limitation under the Act is conditioned on the owner's lack of "privity or knowledge" of the acts of negligence or unseaworthiness that caused the injury in question.[113] The "privity or knowledge" condition has been frequently described, quoting language from *Lord v. Goodall, Etc., Steamship Co.*,[114] as requiring "some personal concurrence, or some fault or negligence on the part of the owner himself, or in which he personally participates."[115] The vessel owner has the burden of affirmatively proving lack of privity or knowledge.[116]

The value of the vessel, which, along with the pending freight, establishes the value of the limitation fund, is determined at the end of the voyage during which the loss or collision occurred.[117] The Supreme Court, considering the Limitation Act for the first time in *Norwich Co. v. Wright*, chose this approach,

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111. *See, e.g.*, Keys Jet Ski, Inc. v. Kays, 893 F.2d 1225, 1229 (11th Cir. 1990); *In re* Young, 872 F.2d 176, 177 (6th Cir. 1989), *cert. denied*, 497 U.S. 1024 (1990); Hechinger v. Caskie, 890 F.2d 202, 206 (9th Cir. 1989), *cert. denied*, 498 U.S. 848 (1990). While the courts of appeals considering the issue are unanimous, several district courts have held that pleasure boat owners cannot limit. *See, e.g.*, Estate of Lewis, 683 F. Supp. 217, 220 (N.D. Cal. 1987); *In re* Sisson, 668 F. Supp. 1196, 1198 (N.D. Ill. 1987). Courts holding that pleasure boats are not covered by the Act generally justify their decision on the ground that the purpose of the Limitation Act was to encourage commercial activity and does not extend to recreational boating. *See, e.g.*, *Estate of Lewis*, 683 F. Supp. at 220 (using particularly strong langauge, saying that "we can perceive no reason to extend that protection to the relatively affluent owners of pleasure boats and their insurers at the expense of those injured or killed and their families"). While one can very well question granting the right to limit to pleasure boat owners, limitation of liability is of ancient vintage and continues to be an important aspect of maritime commerce. The United States is not alone in maintaining some form of limitation of liability. Many European nations still allow for the limitation of liability, although not to the extent of the United States' limitation act. In those nations adhering to the 1957 or 1976 Limitation Conventions, the value of the limitation fund is based on the vessel's tonnage, not on the value of the vessel after the incident in question. SCHOENBAUM, *supra* note 13, at 809 n.7. This results in a substantially larger limitation fund than that which may occur under the U.S. limitation act. *Id.* On the other hand, those conventions allow limitation to a larger class of parties and the standard for defeating limitation is higher than in the U.S. *Id. See also* Carter T. Gunn, *Limitation of Liability: United States and Convention Jurisdictions*, 8 MAR. LAW. 29, 53 (1983).

112. Stone, *supra* note 76, at 332.

113. SCHOENBAUM, *supra* note 13, at 823.

114. 15 F. Cas. 884 (C.C.D. Cal. 1887) (No. 8,506).

115. *Id.* at 887.

116. 3-V BENEDICT ON ADMIRALTY § 41 (2001).

117. Norwich Co. v. Wright, 80 U.S. 104, 126 (1871).

followed by continental Europe, rather than the English approach, which valued the ship prior to the collision or loss.[118] Thus, a shipowner is relieved of any liability by surrendering the ship, whatever its value. As the Court recognized in *Norwich*, that value will be nothing if the ship is a total loss.[119] Perhaps the most notorious example of the possible implication of this approach to valuing the owner's interest in the ship arose in *Barracuda Tanker Corp.*[120] The *Torrey Canyon*, a tanker carrying 119,328 tons of crude oil, was stranded off the southwest coast of England.[121] Oil from the ship heavily polluted both sides of the English Channel, and the ship was eventually bombed and sunk by the Royal Air Force.[122] Barracuda Tanker, the owner of the *Torrey Canyon*, filed a complaint for limitation of liability in federal district court.[123] The ship itself a total loss, the district court approved a stipulated value of Barracuda's interest in the ship of fifty dollars, the value of a single lifeboat salvaged from the wreck.[124]

Unique valuation issues arise where one vessel is tugging or towing other vessels, a familiar situation on inland waterways where tugs and barges are present. The issue is, which vessel determines the limitation fund?

> As a general rule, where one vessel is the active instrumentality and the other vessels are only passive instruments of navigation, the only vessel included in the limitation fund will be the vessel actively involved in the harm. The tows or other passive vessels are not included because they are helpless and under the control of the actively responsible vessel. If, in contrast, the vessels are subject to common ownership, engaged in a single enterprise, and under common control at the time of the casualty, they are considered to be a flotilla, and all must be surrendered in limitation.[125]

Along with the vessel or its value, the shipowner must surrender the vessel's "freight then pending."[126] In maritime law, "freight" refers not to the

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118. *Id.* at 126-27.

119. *Id.* at 127.

120. Barracuda Tanker Corp. (The Torrey Canyon), 281 F. Supp. 228 (S.D.N.Y. 1968).

121. *Id.* at 229.

122. *Id.*

123. *Id.* at 229-30.

124. *Id.* at 230. The case was eventually settled for £3,000,000, divided equally between France and the United Kingdom. GILMORE & BLACK, *supra* note 60, at 824 n.13*l*.

125. SCHOENBAUM, *supra* note 13, at 827.

126. 46 U.S.C. app. § 183(a) (2000).

thing carried but the compensation due for carrying it.[127] Freight includes money for transporting passengers, unless the passenger's ticket provides that its cost will be refunded if the transportation is not carried through.[128] A shipowner claiming the protection of the Limitation Act can enter a stipulation as to the value of the freight, pay that amount to the court, or transfer the shipowner's interest in the freight to a trustee.[129] The shipowner must attempt to collect the freight, but she is only required to collect that which can be collected "with proper effort," and may assign the rest.[130]

Two further provisions of the Act pertain to particular situations. Section 181 fully exonerates a shipowner for the value of certain enumerated articles, for the most part characterized by their high value, when the party shipping them does not advise the shipowner in writing "of the true character and value thereof" and enter that information on the bill of lading.[131] The items enumerated include, among other things, gold or silver, diamonds or other precious stones, glass, china and silks.[132] Section 183(b), originally added to the Act in 1935, requires that, in cases of death or bodily injury, when the claims for such injuries cannot be satisfied in full, the portion of the fund available for those claims must be increased to an amount of $60 per ton of the vessel's tonnage.[133] The amount was increased to $420 per ton in 1984.[134]

Although the Limitation of Liability Act was passed in 1851, it did not come before the Supreme Court until 1871, when the Court decided *Norwich Co. v. Wright*.[135] As the Court's opinion in this case makes clear, the Court found itself faced with a statute creating a right but that was completely inadequate in explaining the proceedings by which that right was to be enforced.[136] For

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127. The Main v. Williams, 152 U.S. 122, 129 (1894).

128. 3-VII BENEDICT ON ADMIRALTY § 65 (2001).

129. *Id.*

130. *Id.*

131. 46 U.S.C. app. § 181 (2000). Presumably, had the Limitation Act existed at the time of the disaster in *New Jersey Navigation Co.*, the owner would have been exonerated of liability for the contents of Harnden's crate, given that the contents were kept secret and not listed on the bill of lading. *See* N.J. Steam Navigation Co. v. Merchant's Bank of Boston, 47 U.S. 344, 364 (1848).

132. 46 U.S.C. app. § 181 (2000).

133. *Id.* § 183(b). The impetus for this amendment was the terrible disaster aboard the passenger ship *Morrow Castle* which burned, killing 135 people. Gunn, *supra* note 87, at 32-33.

134. 46 U.S.C. app. § 183(b) (2000).

135. 80 U.S. 104 (1871).

136. *See id.* at 122-28. Thomas J. Schoenbaum, an important scholar and author in the area of admiralty law, has written that "[the] 1851 Act, badly drafted even by the standards of the time, continues in effect today." SCHOENBAUM, *supra* note 13, at 809.

instance, the Court noted that "[t]he act does not state what court shall be resorted to, nor what proceedings shall be taken."[137] Faced with a difficult situation, the Court stated that "[t]he proper course of proceeding for obtaining the benefit of the act would seem to be this . . ." and, sua sponte, set about creating its own rules of procedure to implement Congress' act.[138] The Court formally issued its rules a year later, revising them periodically in the years that followed.[139] The first guidance from Congress as to the procedure to be followed came in its 1936 amendments to the Act.[140] Following the merger of the federal civil and admiralty procedural rules in 1966,[141] the procedure is now provided for in the Act itself (via the 1936 amendments) and in Supplemental Admiralty Rule F of the Federal Rules of Civil Procedure.[142]

The basic procedure is as follows: When a shipowner is faced with a claim or expects to be faced with a claim, the owner files a complaint (also referred to as a petition) for exoneration from or limitation of liability in federal district court sitting in admiralty jurisdiction.[143] The owner has six months from the time the owner receives written notice of a claim to file this complaint,[144] or, in the alternative, an owner may plead limitation as a defense without regard to the six-month time limit.[145] Venue is proper in any district in which the vessel has been attached or arrested, or, if it has not been attached or arrested, in any district in which the owner has been sued regarding the claim.[146] If the vessel has not been attached or arrested, and suit has not been initiated, venue is proper in the district

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The Supreme Court quoted this language in its *Lewis* opinion. Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 447 (2001)

137. *Norwich Co.*, 80 U.S. at 123.

138. *Id.* at 125.

139. 80 U.S. xii-xiv (1872).

140. Amendments to the Limitation of Liability Act, ch. 531, § 1, 49 Stat. 1479 (1936) (codified as amended at 46 U.S.C. app. § 183 (2000)), GILMORE & BLACK, *supra* note 60, at 839.

141. Prior to 1966, federal courts used one set of rules when sitting in admiralty jurisdiction, and another when sitting as courts of law and equity. GILMORE & BLACK, *supra* note 60, ch. 1, § 1-1. The older cases reflect the terms used under the admiralty rules: plaintiffs were "libellants," defendants "respondents," a complaint was a "libel," and the lawyers "proctors in admiralty" or "proctors." *See* SCHOENBAUM, *supra* note 13, at 9.

142. *See* FED. R. CIV. P. Supp. Adm. Rule F.

143. FED. R. CIV. P. Supp. Adm. Rule F(1). In contrast to the original English limitation act, the shipowner has never been required to admit liability to gain the benefit of limited liability.

144. FED. R. CIV. P. Supp. Adm. Rule F(1). As noted, if the owner *anticipates* a claim, the owner may file a complaint before actually receiving notice of any claim.

145. Langnes v. Green, 282 U.S. 531, 543 (1931).

146. FED. R. CIV. P. Supp. Adm. Rule F(9).

in which the vessel is located, or, if the vessel is not located in any district (the vessel is out of the country for instance) then venue is proper in any district.[147] In addition to the complaint, the shipowner must deposit with the court an amount equal to the owner's interest in the vessel and pending freight, or security for that amount, along with "such sums . . . as the court may from time to time fix as necessary."[148] In the alternative, the owner may transfer his interest in the vessel to a trustee appointed by the court.[149]

If the preceding requirements are met, a district court will issue an injunction staying all other proceedings against the shipowner or the owner's property.[150] The court will also issue a "monition" to all other claimants that requires them to file their claims with the court clerk within a certain period, not less than thirty days from the date of issuance.[151] The purpose of this procedure is to create a "concursus"of claims so that all claims arising from the casualty in question are considered in a single proceeding in the district court. This is necessary because, where the limitation fund is not adequate to satisfy all claims against the shipowner, the court must divide the fund amongst the claimants pro rata.[152] This allows the court to accomplish the primary purpose of the Act, which is "to provide a marshaling of assets [and] the distribution pro rata of an inadequate fund among claimants, none of whom can be paid in full."[153]

A limitation proceeding in a district court involves several steps. Sitting in admiralty without a jury, the court first determines whether the injury

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147. FED. R. CIV. P. Supp. Adm. Rule F(9).

148. FED. R. CIV. P. Supp. Adm. Rule F(1). While the Act, as originally drafted, provided only for transferring the ship to a trustee, posting security for the ship rather than transferring it has been allowed since the Supreme Court first considered the Act in *Norwich*. GILMORE & BLACK, *supra* note 60, at 838; *see also* Norwich Co. v. Wright, 80 U.S 104, 125 (1871). This alternative was never questioned, and was eventually written into the Act itself. *See* 46 U.S.C. app. § 185 (2000). If a claimant believes that the funds deposited with the court are less than the owner's interest in the vessel and pending freight, the claimant may motion the court and the court will order an appraisal, ordering an increase in the funds if necessary. FED. R. CIV. P. Supp. Adm. Rule F(7).

149. FED. R. CIV. P. Supp. Adm. Rule F(1).

150. FED. R. CIV. P. Supp. Adm. Rule F(3). In certain situations, however, a claimant will be allowed to pursue an action in state court. *See infra* notes 159-243 and accompanying text.

151. FED. R. CIV. P. Supp. Adm. Rule F(4).

152. 46 U.S.C. app. § 184 (2000). Because the limitation proceeding is by its nature equitable, the court may modify the pro rata distribution. Hartford Accident & Indem. Co. v. S. Pac. Co., 273 U.S. 207, 219 (1927).

153. *In re* Lewis & Clark Marine, Inc., 31 F. Supp. 2d 1164, 1167 (E.D. Mo. 1998) (quoting *In re* Moran Transp. Corp., 185 F.2d 386, 389 (2d Cir. 1950)), *rev'd*, 196 F.3d 900 (8th Cir. 1999), *rev'd*, 531 U.S. 438 (2001)) (internal quotations marks omitted).

complained of was the result of negligence or unseaworthiness.[154] The burden of proof to show negligence or unseaworthiness is on the claimant.[155] The burden is then on the shipowner to prove the lack of privity or knowledge that would entitle the owner to limitation under the statute.[156] If limitation is denied, the court may go on to decide the case on the merits.[157] Thus, there are three possible outcomes of the limitation proceeding.[158] First, the shipowner may be exonerated from all liability, in which case the payment, security, or ship is returned to the owner. Second, the owner could be found liable, but because he lacked privity or knowledge, the owner is entitled to limitation. In such a case, the claimants are paid from the limitation fund and the shipowner is granted a permanent injunction against further claims or suits. The third possibility is that the shipowner is found to be liable and not entitled to limitation because of the owner's privity or knowledge.

C. Conflict Between Saving to Suitors and Limitation of Liability

The procedure outlined above takes place exclusively in federal court, sitting in admiralty, without a jury. Normally, in these cases the court will decide both the owner's right to limitation of liability as well as the merits of the plaintiff's claims. There are situations, however, where the courts have determined that, in light of the rights created by the saving to suitors clause, a claimant must be permitted to pursue claims in state court, while the limitation issues are still decided in federal court. Those exceptions are where there is only a single claimant against the fund[159] and where the claims of multiple claimants do not exceed the value of the limitation fund.[160]

1. The Single Claimant Exception

The single claimant exception was approved by the Supreme Court in *Langnes v. Green*,[161] a case involving a fisherman's loss of an eye from a fish hook while working aboard the defendant's fishing vessel.[162] The fisherman

154. Farrell Lines Inc. v. Jones, 530 F.2d 7, 10 (5th Cir. 1976).

155. Coleman v. Jahncke Serv., Inc., 341 F.2d 956, 958 (5th Cir. 1965), *cert. denied*, 382 U.S. 974 (1996).

156. *Id.*

157. GILMORE & BLACK, *supra* note 60, at 863.

158. 3-II BENEDICT ON ADMIRALTY § 12 (2001).

159. *See* Langnes v. Green, 282 U.S. 531 (1931).

160. *See* Lake Tankers Corp. v. Henn, 354 U.S. 147 (1957).

161. 282 U.S. 531 (1931).

162. The Aloha, 35 F.2d 447, 448 (9th Cir. 1929), *rev'd sub nom.* Langnes v.

filed an action in state court, and, two days before the trial date, the shipowner filed for limitation in federal district court, after which the district court enjoined the state court action.[163] On appeal, the plaintiff claimed that because he was the sole claimant and there was only one shipowner, the shipowner should have plead limitation in state court.[164] The Ninth Circuit disagreed but was reversed by the Supreme Court.[165] The Supreme Court noted that the saving to suitors clause made the state court a legitimate forum for the plaintiff's claim, while the Limitation of Liability Act made the federal district court the legitimate forum for the shipowner's right to limit liability.[166] The Court noted that the district court was presented with two choices: maintaining the action, which would preserve the right of the shipowner but destroy the right of the claimant to a common law remedy in state court; or allowing the state court action to go forward while retaining the limitation petition in the event that the state court action threatened the shipowner's right to limitation, which would preserve the rights of both parties.[167] The Supreme Court found that the district court had improperly chosen the former.[168] The Supreme Court, however, noted that whether to dissolve an injunction against proceedings in other courts in each individual case was a matter reserved to the district courts' discretion, which in this case the Court found to have been abused.[169]

Subsequent cases have explained the four conditions to which a single claimant must agree in order to pursue an action in state court.[170] These conditions require a claimant to:

> a) file his claim in the limitation proceeding;
> b) where a stipulation for value has been filed in lieu of the transfer of the ship to a trustee, concede the sufficiency in amount of the stipulation;
> c) consent to waive any claim of *res judicata* relevant to the issue of limited liability based on any judgment obtained in the state court; [and]

Green, 282 U.S. 531 (1931).

163. *Langnes*, 282 U.S. at 532-33.
164. *Id.* at 534.
165. *Id.* at 544.
166. *Id.* at 539.
167. *Id.* at 541.
168. *Id.*
169. *Id.* at 544.
170. These cases reference GILMORE & BLACK, *supra* note 60, at 871.

> d) concede [the] petitioner shipowner's right to litigate all issues relating to limitation in the limitation proceeding.[171]

Because a major purpose of the concursus of claims in federal court—to distribute an inadequate limitation fund amongst the claimants—is not implicated where there is only a single claimant, the single claimant should be allowed to litigate liability and damage issues in state court, if she complies with the necessary stipulations.[172] If the state court (or a federal court sitting in law rather than admiralty) finds a shipowner liable for damages in excess of the limitation fund, however, the claimant and shipowner must return to the admiralty court for a determination of the shipowner's privity or knowledge.[173]

Courts have even extended the "single claimant" exception to "multiple claimant-inadequate fund" cases, as long as the stipulations necessary to protect the shipowner's right to limitation are present. *Beiswenger Enterprises Corp. v. Carletta*[174] is an example. This case arose from an accident that occurred while George Myers and his fiancee Kathleen Carletta were parasailing from the defendant's boat.[175] Myers was killed in a bizarre accident.[176] Carletta, Myers' estate, and Myers' children eventually filed claims in the limitation proceeding initiated by Beiswenger Enterprises ("BEC").[177] The Eleventh Circuit decided that Carletta and Myers' estate would be allowed to pursue their later-filed action in Florida state court if they entered the necessary stipulations to protect BEC's right to limitation.[178] According to the court, the stipulations would have to: protect the shipowner's right to litigate the issue of limited liability exclusively in admiralty court, protect the shipowner from being required to pay damages in excess of the limitation fund ("unless and until the admiralty court denie[d] limited liability"), and protect the vessel owner from litigation by the claimants "in *any* forum outside the limitation proceeding."[179]

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171. Jefferson Barracks Marine Serv., Inc. v. Casey, 763 F.2d 1007, 1010 (8th Cir. 1985).

172. Beiswenger Enter. Corp. v. Carletta, 86 F.3d 1032, 1037 (11th Cir. 1996).

173. *Id.* at 1038.

174. 86 F.3d 1032 (11th Cir. 1996).

175. *Id.* at 1034.

176. *Id.* A parasailor is pulled by a boat, suspended from an airborne parachute. In an attempt to retrieve Myers and Carletta, the boat operator cut the line to the parachute, causing Myers and Carletta to descend to the water. *Id.* The parachute was blown back into the air, however, pulling Myers, whose ankle had become entangled in the line, along with it. *Id.* The parachute blew toward land and Myers, hanging upside down from it, "slammed into several shoreside objects," sustaining terminal injuries. *Id.*

177. *Id.*

178. *Id.* at 1039.

179. *Id.* at 1044.

2. The Adequate Fund Exception

The second circumstance in which the courts have determined that a state court action should be permitted despite a shipowner's right to limit in federal court is where the total of all claims against the shipowner does not exceed the value of the limitation fund. The Supreme Court addressed this issue in *Lake Tankers Corp. v. Henn.*[180] *Lake Tankers* arose from a collision between a tug pushing a barge and the *Blackstone*, a yacht, which sank, killing plaintiff Henn's husband.[181] Henn and others filed claims in New York state court, after which Lake Tankers filed a petition for limitation in federal district court.[182] Answering the limitation petition, the claimants relinquished a right to damages in excess of the limitation fund.[183] Henn filed stipulations agreeing not to increase her claims and waiving any right to res judicata arising from the state action as to Lake Tankers' right to limit liability.[184] The district court dissolved its injunction against the state court proceedings, and the Second Circuit affirmed.[185] After reviewing the Limitation Act's history and purpose, the Supreme Court stated that it was "crystal clear that the operation of the Act is directed at misfortunes at sea where the losses incurred exceed the value of the vessel and the pending freight."[186] The Court noted that bringing all claims together in a limitation proceeding (creating a concursus) allowed a court to distribute a fund that was inadequate to fully meet all the claims against it, but "where the value of the vessel and the pending freight . . . exceeds the claims made against it, there is no necessity for the maintenance of the concourse."[187] The Court then stated:

> For [the Court] to expand the jurisdictional provisions of the Act to prevent respondent from now proceeding in her state case would transform the Act from a protective instrument to an offensive weapon by which the shipowner could deprive suitors of their common-law rights, even where the limitation fund is known to be more than adequate to satisfy all demands upon it. The shipowner's right to limit liability is not so boundless. The Act is not one of immunity from liability but of limitation of it and we read no other privilege for the

180. 354 U.S. 147 (1957).
181. *Id.* at 148.
182. *Id.* at 148-49.
183. *Id.* at 149.
184. *Id.*
185. *Id.* at 149-50.
186. *Id.* at 151.
187. *Id.* at 152.

> shipowner into its language over and above that granting him limited liability.[188]

In a dissenting opinion, however, Justice Harlan argued that allowing claimants to limit their recovery "should no more be allowed to defeat or impair the full effectiveness of the limitation proceeding than would a subsequent reduction in the amount involved be permitted to defeat a diversity jurisdiction which had initially been properly invoked."[189]

Kreta Shipping S.A. v. Preussag International Steel Corp.[190] involved an adequate fund case. Kreta's ship, the *Amphion*, was carrying a cargo of steel coils and steel plates when it was caught in a violent winter storm.[191] Several parties sued in United States district court for the resulting damage to the steel, and Kreta responded by filing a limitation action.[192] Nordstern, one of the claimants, filed actions against Kreta in Sweden and later in Belgium.[193] Then, Nordstern and the other claimants moved the district court to lift its injunction against other actions, filing a stipulation that the aggregate of the claims against Kreta did not exceed the limitation fund.[194]

In determining that the district court did not err when it lifted the injunction, the Second Circuit noted that it would not decide whether the saving to suitors clause protected only common law actions. Rather, the court suggested that "other remedies to which they are otherwise entitled" in 28 U.S.C. § 1333 might also protect a "non-common-law" action in a foreign country.[195] In any case, the court stated that it read *Lake Tankers* to hold that when the limitation fund is adequate to satisfy all claims against it, the injunction against other actions should be lifted regardless of whether the claimants are pursuing remedies saved by the saving to suitors clause or otherwise.[196] The court stated:

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188. *Id.* at 152-53.

189. *Id.* at 155 (Harlan, J., dissenting) (citing St. Paul Indem. Co. v. Red Cab Co., 303 U.S. 283 (1938)).

190. 192 F.3d 41 (2d Cir. 1999).

191. *Id.* at 43. The court noted that "[n]ineteen ninety-six was not a good year for the M/V AMPHION." On its way from Europe to the United States, the ship encountered a winter storm so severe that her crew abandoned her, and she had to be recovered by salvors. *Id.* Less than four months later, the ship ran aground in India and was declared a total loss. *Id.* at 44.

192. *Id.* at 44.

193. *Id.* at 45-46.

194. *Id.* at 46.

195. *Id.* at 49.

196. *Id.* at 48.

> When the Supreme Court opined that "where the value of the vessel and the pending freight . . . exceeds the claims made against it, there is no necessity for the maintenance of the concourse" . . . it reached that conclusion without reference to where or how the claimants sought to pursue their claims outside the limitation proceeding. . . . It did not suggest that the shipowner is nonetheless privileged to insist on being sued only in courts in the United States.[197]

IV. INSTANT DECISION

In *Lewis v. Lewis & Clark Marine, Inc.*,[198] Justice O'Connor delivered the opinion of a unanimous Supreme Court.[199] The Court began by stating that the case "concern[ed] a seaman's ability to sue a vessel owner in state court for personal injuries sustained aboard a vessel."[200] After reviewing the procedural history of the case, the Court stated that it granted certiorari to settle a conflict between the Eighth Circuit's decision and the decisions of the other courts of appeals.[201]

The Court first discussed the saving to suitors clause. The Court noted the constitutional grant of admiralty and maritime jurisdiction to the federal courts and discussed the Judiciary Act of 1789 which codified that grant but "sav[ed] to suitors in all cases, the right of a common law remedy, where the common law is competent to give it."[202] The Court then noted the uncertainty and ongoing debate as to what was originally intended by the saving clause, and quoted its opinion in *New Jersey Steam Navigation Co. v. Merchants' Bank of Boston*,[203] in which the Court had conjectured that the drafters added the saving to suitors clause out of concern that the exclusive terms of the jurisdictional grant to the federal district courts might be misconstrued to mean that state courts no longer had concurrent powers.[204] The Court next briefly reviewed its prior decisions

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197. *Id.* at 48-49 (quoting Lake Tankers Corp. v. Henn, 354 U.S. 147, 152 (1957)) (citations omitted).

198. 531 U.S. 438 (2001).

199. *Id.* at 440.

200. *Id.*

201. *Id.* at 443 (citing *Kreta Shipping*, 192 F.3d 41; Beiswenger Enter. Corp. v. Carletta, 86 F.3d 1032 (11th Cir. 1996); Linton v. Great Lakes Dredge & Dock Co., 964 F.2d 1480 (5th Cir. 1992)).

202. *Id.* at 443 (quoting Judiciary Act of 1789, ch. 20, § 9, 1 Stat. 77 (codified as amended at 28 U.S.C. § 1331 (2000)) (internal quotation marks omitted) (alteration in original).

203. 47 U.S. 344 (1848).

204. *Lewis*, 531 U.S. at 444 (referencing *New Jersey Steam Navigation Co. v. Merchants' Bank of Boston*, 47 U.S. 344, 390 (1848)).

considering the saving clause, noting that only proceedings *in personam* were saved by the clause and that *in rem* proceedings were not cognizable in state courts because *in rem* actions were not a remedy at common law.[205] The Court further noted the distinction drawn between rights and remedies, explaining that "the saving to suitors clause preserves remedies and the concurrent jurisdiction of state courts over some admiralty and maritime claims."[206]

The Court then turned to the Limitation of Liability Act, stating that it is one of the "host of special rights, duties, rules, and procedures" included in admiralty and maritime law, and was intended to put American shipping on an equal footing with shipping of other nations that had limitation acts.[207] The purpose of the Act, the Court noted, was to encourage investment in American shipping and to put American shipping on the same footing as other maritime nations that had their own acts limiting shipowners' liability.[208] The Court also remarked on the poor drafting of the Act, which required the courts to sua sponte create their own procedures to give the Act effect.[209]

The Court noted the potential conflict between the saving clause and the Limitation of Liability Act, explaining that "[o]ne statute gives suitors the right to a choice of remedies, and the other statute gives vessel owners the right to seek limitation of liability in federal court."[210] The Court discussed two earlier cases where it had need to reconcile that conflict:[211] *Langnes v. Green*,[212] which involved a single claimant, and *Lake Tankers Corp. v. Henn*,[213] a case involving multiple claimants against an adequate fund. Looking at these cases, the Court said it found the "crystal clear" purpose of the Act to be directed at instances where the value of the vessel and its freight were less than the value of the claims against its owner.[214] When the value of the vessel and freight exceeded the claims, however, the federal court action was not necessary, assuming the proper stipulations were entered by the claimants, to preserve the vessel owner's right to limited liability.[215] The Court quoted a portion of its *Lake Tankers* decision, stating that expanding the scope of exclusive federal jurisdiction "would transform the Act from a protective instrument to an offensive weapon

205. *Id.*
206. *Id.* at 445.
207. *Id.* at 446 (quoting *The Main v. Williams*, 152 U.S. 122, 128 (1894)).
208. *Id.* at 446-47.
209. *Id.* at 447.
210. *Id.* at 448.
211. *Id.* at 448-51.
212. 282 U.S. 531 (1931).
213. 354 U.S. 147 (1957).
214. *Id.*
215. *Id.*

by which the shipowner could deprive suitors of their common law rights."[216] The Act limits liability, rather than immunizing against it, and the Court found "no other privilege for the shipowner . . . over and above that granting him limited liability."[217] The Court stated that since *Langnes* and *Lake Tankers*, the courts of appeals had generally allowed state court actions where there was either only a single claimant or where the limitation fund exceeded the value of all claims against it.[218]

Turning to the case at hand, the Court concluded that the district court correctly dissolved the injunction against Lewis' state court action in an attempt to reconcile Lewis' right to his remedy as granted by the saving to suitors clause and Lewis & Clark's right to limited liability under the Act.[219] The Court determined that Lewis & Clark's right to limited liability was sufficiently protected by Lewis' stipulation regarding the value of his claim, his waiver of res judicata regarding limitation of liability, and the district court's maintenance of the Limitation Act action pending the outcome of the state court action.[220]

The Court went on to explain that the Eighth Circuit's conclusion that the district court erred in dissolving the injunction was premised on the erroneous conclusion that Lewis & Clark was entitled to seek exoneration from liability in federal court and Lewis had no saved remedy under the saving to suitors clause, and, therefore, there was no conflict between the saving clause and the Limitation of Liability Act.[221] The Supreme Court, however, concluded that there was a conflict.[222] The Court pointed out that Lewis sued in state court which, under the savings clause, had jurisdiction to consider Lewis' claims, while Lewis & Clark filed a petition for limitation of liability in federal court, which had jurisdiction to hear that matter.[223] Thus, "[b]oth parties selected legitimate forums for their claims, and therein lies the conflict."[224] By way of example, the Court noted that had Lewis tried to initiate an *in rem* action in state court, the state court would have been without jurisdiction because the saving to suitors clause does not save an action *in rem*.[225] Likewise, had Lewis & Clark tried to limit liability for payment of wages in federal court, the federal court would have been without jurisdiction because the Limitation Act does not cover

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216. *Id.* at 451.
217. *Id.*
218. *Id.*
219. *Id.*
220. *Id.* at 451-52.
221. *Id.* at 452.
222. *Id.*
223. *Id.*
224. *Id.*
225. *Id.*

claims for wages.[226] In the present case, though, both parties were pursuing their actions in a legitimate forum, and the only complication was the other party's action.[227]

The Court then considered the two "flawed premises" the Eighth Circuit relied on in reaching its decision. The first flawed premise discussed by the Court was that the Limitation Act gives a shipowner the right to seek exoneration from liability in federal court even when limitation is not at issue.[228] In reasoning against this idea, the Supreme Court stated that the right created by the Limitation Act *limited* liability, but did not grant immunity from liability.[229] While the Court agreed with Lewis & Clark that a party seeking limitation is not required to admit liability to receive the benefit of limitation of liability, it stated that the Act and the rules promulgated to give it effect did not create a "freestanding" right to exoneration from liability where liability was not an issue.[230] In the present case, Lewis' stipulation that his claims did not exceed the value of the vessel and waiver of any defense of res judicata, along with the district court's stay of the limitation proceeding, protected Lewis & Clark's rights to try to obtain limitation of any liability it might have.[231] The Court noted that the decision to stay or dismiss a limitation action in order to allow a claimant to pursue a state court action is within the district court's discretion and that, in cases where the district court does not believe that the shipowner's right to limitation will be satisfactorily protected, a district court may maintain the whole of the case and try it on the merits, both as to issues of liability and limitation.[232] The district court in the present case, however, because it was convinced that the shipowner's right to seek limited ability was protected, was "well within" its discretion in dissolving the injunction to allow Lewis' state court action.[233]

The second flawed premise the Supreme Court found that the Eighth Circuit had relied on was that Lewis had no saved remedy because he had waived his right to a jury trial in his state court action.[234] This premise was flawed, according to the Court, because the saving to suitors clause preserves for claimants "all other remedies to which they are otherwise entitled."[235] The Court stated that jury trial "is an obvious, but not exclusive, example of the remedies

226. *Id.*
227. *Id.*
228. *Id.* at 452-53.
229. *Id.* at 453.
230. *Id.*
231. *Id.* at 453-54.
232. *Id.* at 454.
233. *Id.*
234. *Id.*
235. *Id.* (quoting 28 U.S.C. § 1333(1) (2000)) (internal quotation marks omitted).

available to suitors."[236] The Eighth Circuit had concluded that forum choice was not a saved remedy because the claimant's action could be removed to federal court by the vessel owner.[237] The Supreme Court, however, stated that the possibility that an action might be removed did not limit a claimant's forum choice under the saving to suitors clause any more than other claimants' forum choices might be limited.[238] The Court explained that it had previously rejected the notion that admiralty jurisdiction was equivalent to federal question jurisdiction because it wanted to avoid saving to suitors actions in state courts being removed to federal court to deny the claimant's forum choice.[239] Defining admiralty jurisdiction as federal question jurisdiction would, in the Court's opinion, be a "destructive oversimplification of the highly intricate interplay of the States and the National Government in their regulation of maritime commerce."[240] The Court refused to "limit or enumerate" the saved remedies under the savings clause, recognizing both federal and state courts as proper forums for considering claims such as Lewis'.[241] The Court held that state courts, with all their remedies, should be allowed to hear claims, so long as the shipowner's right to limitation of liability was protected, as the Court found it was in the present case.[242]

V. COMMENT

Lewis v. Lewis & Clark was yet another case involving the conflict between a jurisdictional grant some two centuries old and a limitation act more than a century and a half old. Neither has been changed in a significant manner since its creation. In light of the policies and reasoning expressed in the Court's *Langnes* and *Lake Tankers* decisions, the decision reached by the Court in the instant case breaks no new ground. Rather than breaking new ground, the Court has simply towed a drifting Eighth Circuit back into line. Once again, the Supreme Court has reiterated that courts should strongly favor allowing a claimant to pursue claims outside the limitation proceeding whenever the shipowner's right to limitation of liability is protected. As the Court stated some forty years before the Eighth Circuit's decision in the present case, "[t]he Act is

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236. *Id.* at 454-55.

237. *Id.* The Eighth Circuit concluded that Lewis' claims could be removed to federal court by the shipowner if there was an independent basis for jurisdiction in federal court or transferred by the court under the doctrine of forum non conveniens. Lewis & Clark Marine, Inc. v. Lewis, 196 F.3d 900 (1999), *rev'd*, 531 U.S. 438 (2001).

238. *Lewis*, 531 U.S. at 455.

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

not one of immunity from liability but of limitation of it and we read no other privilege for the shipowner into its language over and above that granting him limited liability."[243] The Eighth Circuit's conclusion that shipowners are entitled in *all* instances to seek *exoneration* from liability (i.e., trying the case on its merits) in federal court[244] runs directly contrary to the Supreme Court's directive and the many cases allowing suitors to pursue their claims outside the limitation proceeding.[245]

The Eighth Circuit's conclusion was based on two questionable grounds. Neither reason is persuasive. The first was that "[b]efore a federal admiralty court can even address the limitation question in a Limitation Act proceeding, the court must first determine whether the shipowner is entitled to complete exoneration . . . ."[246] The court cited *Universal Towing Co. v. Barrale*[247] for this proposition. That case, however, merely states that, in hearing a limitation case, a district court determines "if a loss occurred; whether there was negligence; if there was negligence, whether it was without the privity and knowledge of the owner; and if limitation is granted, how the fund should be distributed."[248] That portion of *Universal Towing* did not stand for the idea that a district court must decide a limitation case on the merits. Rather, the opinion was briefly explaining how a limitation proceeding works. While it is certainly true that a court will decide in the first instance whether the shipowner is liable at all, that decision need not always be made in federal court. *Universal Towing*, in which the claimant was allowed to pursue her state court action under the "single claimant" exception, illustrates the point.

The second source used by the Eighth Circuit to support its decision was Supplemental Admiralty Rule F. This rule states that a limitation petitioner "may demand exoneration from as well as limitation of liability."[249] As the Supreme Court noted in its opinion, however, this was not intended to create a "freestanding right to exoneration . . . where limitation of liability is not at issue."[250] The Court explained that it determined long ago that a shipowner could contest liability at the same time that he was seeking limitation of

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243. Lake Tankers Corp. v. Henn, 354 U.S. 147, 152-53 (1957).

244. *See* Lewis & Clark Marine, Inc. v. Lewis, 196 F.3d 900, 907-08 (8th Cir. 1999), *rev'd*, 531 U.S. 438 (2001).

245. The Court noted in *Lewis & Clark* that requiring in all cases the adjudication of liability in the first instance in federal court, as the Eighth Circuit's opinion held, would "expand the scope of the Act." *Lewis*, 531 U.S. at 453.

246. *Lewis*, 196 F.3d at 907.

247. 595 F.2d 414, 417 (8th Cir. 1979).

248. *Lewis*, 196 F.3d at 907 (quoting Universal Towing Co. v. Barrale, 595 F.2d 414, 417 (8th Cir. 1979)) (internal quotation marks omitted).

249. *Lewis*, 196 F.3d at 908.

250. *Lewis*, 531 U.S. at 453.

liability.[251] This is contrary to the English practice requiring a shipowner to confess to liability before seeking limitation. The Court's *Lake Tankers* decision, in which the Court noted that in adequate fund cases the need for a limitation proceeding was completely obviated, exemplifies that where limitation is not at issue there is no need for the limitation proceeding, including any determination of exoneration from liability.

What seems to have been clear to the courts before *Lewis & Clark*, and what should be abundantly clear now, is that the Limitation of Liability Act is a cap on a remedy and nothing more. So long as a shipowner is not held liable, in cases where the owner was lacking privity or knowledge, in excess of the value of his ship, the purpose of the Act is fulfilled whether a state or federal court hears the claims at issue. Under the saving to suitors clause, a state court is a proper forum for *in personam* maritime claims. When a claimant wishes to pursue an action in state court, and the shipowner's right to limitation is protected, there is little reason not to allow the state court action to proceed.

It should be noted, however, that shipowners might often have good reason for preferring to have claims against them adjudicated by a federal court. In 1996, maritime cases comprised only 0.045 percent of the federal docket.[252]

> Of the ninety-four judicial districts of the United States, nineteen had no admiralty filings in 1996, thirty-three had ten or fewer, and only ten had more than a hundred. Admiralty people like to think of the federal district courts as the nation's admiralty courts .... But it appears that there may be only about ten real admiralty trial courts, and part-time ones at that.[253]

The expertise, or lack thereof, of the courts in considering admiralty cases has been the subject of some question.[254] Given the relative infrequency with which many *federal* judges consider maritime issues, which are in an area traditionally within their purview, one must wonder whether *state* judges are even less well-versed in this area.

Those concerns aside, following *Lewis*, the relation of the Limitation of Liability Act to the saving to suitors clause should be clear: When a limitation act is pending in federal court, and a claimant wishes to pursue an action in state court, so long as the claimant submits to the necessary stipulations to preserve

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251. *Id.*

252. David W. Robertson, *Summertime Sailing and the U.S. Supreme Court: The Need for a National Admiralty Court*, 29 J. MAR. L. & COM. 275, 276 n.3 (1998).

253. *Id.* at 276 (footnotes omitted).

254. *See e.g.*, Robertson, *supra* note 252, suggesting the creation of a national admiralty court.

the rights granted to the shipowner by the Limitation of Liability Act, the claimant should be allowed to pursue the state court action under the saving to suitors clause.

VI. CONCLUSION

In *Lewis v. Lewis & Clark Marine*, the Supreme Court once again made clear that, under the saving to suitors clause, a claimant should be allowed to pursue an action in state court so long as the shipowner's right to limit liability under the Limitation of Liability Act is adequately protected by the federal court. As the Court has noted, such an outcome protects the rights of both parties. The Court's ruling breaks no new ground; rather, it reiterates what the Court has been saying for years. Given the inherent contradictions at work, however, it remains to be seen whether the longstanding conflict between the saving to suitors clause and the Limitation of Liability Act is truly settled.

B. MATTHEW STRUBLE