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Limitation of Liability Act—Coverage of the Ship Owner

With a view to encouraging investment in the maritime industry,¹ Congress enacted laws² enabling the owner of a vessel to limit liability incurred through the operation of his ship to the value of his interest in the ship.³ Although the principles of limitation of the shipowner's liability are of ancient origin,⁴ the existing codification is often ambiguous and at times inconsistent.⁵ The apparent exactness of the statutory description of those entitled to limitation is deceiving. An analysis of the cases in which the issue of coverage has arisen is necessary for an understanding of the deception within the statute and of the solution that the courts have achieved.

RIGHT TO LIMITATION OF LIABILITY

The act providing limitation of liability clearly states that the liability "of the owner of any vessel" may be limited in appropriate proceedings.⁶ The deception in the simplicity of this phrase becomes apparent when thought is given to the variety of transactions affecting ownership which is common to the maritime industry. The purpose of the act is to encourage investment by exempting the investor from loss in excess of the fund he is willing to risk in the enterprise.⁷ As maintained by Justice Holmes, "owner" is an "untechnical word" which must be interpreted in the liberal way in which it was used.⁸ Although "owner" is not defined in the statute, the fact that a "charterer" under certain circumstances is also given the same protection⁹ demonstrates a

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3. See generally 3 BENEDICT, AMERICAN ADMIRALTY §§ 474-544 (6th ed. 1940); 1 EDEL- 
4. According to Justice Brown, in The Main v. Williams, there were provisions for the limitation of liability in the Consolato del Mare of the fifteenth century. 152 U.S. 122, 126 (1894).
5. See GILMORE & BLACK, ADMIRALTIES 664-65, 676-77 (1957). Enacted over a period of eighty-five years, the statutes in effect will be referred to as codified, in the singular.
7. Flink v. Paladini, 279 U.S. 59, 62 (1929). One-ship corporations operated by a holding company would achieve the same result. However, the corporation was not as prevalent a form of ownership when the statute was originally enacted as it is now. See Robinson, Ad- 
9. 9 Stat. 636 (1851), as amended, 46 U.S.C. § 186 (1958). "The charter of any vessel, in case he shall man, victual, and navigate such vessel at his own expense, or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this chapter relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof." The coverage of this section of the act is not within the scope of this paper.
congressional intent of wide application of the act's provisions.\textsuperscript{10} The words of the act must be taken in a broad and popular sense in order not to defeat the intent of Congress.\textsuperscript{11}

Adjudications under the act demonstrate that ownership has been ascertained neither by rigid inquiry respecting the muniments of title showing ownership to be absolute and unreserved, nor upon the mere forms of transactions involving an interest in a vessel.\textsuperscript{12} Rather, the issue of whether one is to be deemed an "owner" seems to depend largely upon the possibility that he may be subjected to a liability which is ordinarily assertable against one having dominion over the res.\textsuperscript{13} In other words, one can limit his liability as an "owner" if he is liable as an "owner." Analysis of the cases reveals that the courts, in their concern for effecting the intent of Congress, have expanded the meaning of "owner" far beyond that commonly given to the term. From their first encounter with the problem, courts, with one exception, have displayed a liberality that seems in each case to exceed its predecessor.

**Liability of the Owner**

The principle of basing the right to limitation of liability as an owner upon the presence of such a liability is clearly set forth by the Supreme Court in the case of Flink v. Paladini.\textsuperscript{14} In that case the ship was owned by a California corporation. Under the existing state law each stockholder was individually and personally liable for such proportion of the corporate debts and liabilities contracted during the time that he was a stockholder, as the amount of his stock bore to the whole. It was contended that the corporation, not the stockholders, was the "owner" of the ship, and that the stockholders were therefore not entitled to a limitation of their statutory liability. The Supreme Court, in light of the purpose of the act, declared that

\textbf{\ldots no rational distinction can be taken between several persons owning shares in a vessel directly and making the same division by putting the title in a corporation and distributing the corporate stock. The policy of the statutes must extend equally to both. In common speech the stockholders would be called owners, recognizing that their pecuniary interest [and liability] did not differ substantially from those who held shares in the ship.}\textsuperscript{16}

Justice Holmes added that the California law "\ldots leaves the members to a certain extent in the position of copartners. But that is the liability

\textsuperscript{10} The Milwaukee, 48 F.2d 842 (E.D. Wis. 1931).
\textsuperscript{11} Flink v. Paladini, 279 U.S. 59, 63 (1929).
\textsuperscript{12} The Milwaukee, 48 F.2d 842 (E.D. Wis. 1931).
\textsuperscript{13} \textit{Ibid.}
\textsuperscript{14} 279 U.S. 59 (1929).
\textsuperscript{15} \textit{Ibid.} at 62-63.
that the acts of Congress mean to limit. The fact that the individuals did not "own" the ship directly was not controlling because they had been subjected to potential liability as owners by the California statute.\textsuperscript{17} \textit{Flink v. Paladini}, the first Supreme Court case on this point, set a pattern of liberality in construing "owner" that is extant today. It negates the thought that "owner" of a vessel means the possessor of full title, interest, or dominion, and that nothing else is within the definition of the right or range of the statute.\textsuperscript{18}

Two years later a federal district court for Wisconsin, in \textit{The Milwaukee},\textsuperscript{19} relied heavily on the rationale of \textit{Flink v. Paladini}. In \textit{The Milwaukee} the court was confronted with a situation in which liability was incurred subsequent to the execution of a conditional contract of sale of a car ferry, but prior to its performance. The court granted the petition for limitation of liability because of the illogic in finding the petitioner-corporation liable on the basis of its ownership and then denying the right to limitation on the basis of lack of ownership.\textsuperscript{20}

\begin{quote}
[T]he petitioner has shown a relationship to the vessel and its operation which... furnishes ground for asserting either a qualified ownership, or some substantial legal interest, pending the consummation... [of the contract].\textsuperscript{21}
\end{quote}

The court in effect held that any interest in a vessel substantial enough to impose liability is sufficient to confer the right to limitation.

The \textit{Flink} case shows that lack of legal title need not prevent limitation as an owner, while, in contrast, \textit{American Car & Foundry Co. v. Brassert}\textsuperscript{22} shows that full legal title is not necessarily sufficient to entitle the holder to limitation as an owner. In the \textit{Brassert} case the petitioner for limitation was the corporate builder of the vessel, which had retained title to it under a contract of conditional sale. The buyer, who by contract had complete control of and responsibility for the vessel, was injured, probably due to a defect in the construction of the vessel. The builder, in an action for payments due on the sale price, sought to limit its

\begin{itemize}
\item \textsuperscript{16} Id. at 63.
\item \textsuperscript{17} The corporation itself was entitled to limit its liability to the value of its interest in the ship.
\item In contrast to the situation under the old California statute, the stockholder typically is not liable beyond his original capital contribution for the losses of the corporation. In \textit{The Cleveco} it was held that mere ownership of stock in the corporation owning the vessel did not create liability, and therefore the petition for limitation, as well as the claims against the stockholders, was dismissed. 59 F. Supp. 71, 77 (N.D. Ohio 1944), \textit{aff'd}, 154 F.2d 605 (6th Cir. 1946).
\item \textsuperscript{18} \textit{The Milwaukee}, 48 F.2d 842 (E.D. Wis. 1931).
\item \textsuperscript{19} \textit{Ibid.}
\item \textsuperscript{20} It is proper pleading in admiralty for a petitioner to allege that it is \textit{not} the owner of a vessel and alternatively that if proven to be the owner that it is then entitled to the protection of the act. \textit{Star Brick Corp. v. Johnson}, 262 F.2d 251 (2d Cir. 1959).
\item \textsuperscript{21} \textit{The Milwaukee}, 48 F.2d 842, 844 (E.D. Wis. 1931).
\item \textsuperscript{22} 289 U.S. 261 (1933).
\end{itemize}
liability for breach of warranty. The Supreme Court affirmed the denial of the petition for limitation, stating that "... mere ... naked legal title to the vessel ... unquestionably would not render ... [the vendors] liable as owners ... ."23 The builder was liable, if at all, for negligent manufacture, and not by reason of retaining legal title. Shipbuilding as a mere manufacturing enterprise is not a maritime industry in need of congressional encouragement and is not entitled to the protection of the limitation act. Because the petitioner was not liable as an owner, it could not limit its liability as an owner.

Since the legal relations which comprise ownership of a vessel can be split vertically so that several persons are owners, as in a partnership, and each is able to claim the protection of the statute, there seems to be little reason why the statute should not also apply where those same legal relations are split horizontally, as in the trustee-beneficiary situation.24 An example of the latter relationship is Petition of Colonial Trust Co.,25 a case in which a trustee held legal title and the registration to a pleasure yacht. The beneficiary of a life interest in the yacht had full and exclusive possession and control of the vessel and was responsible for its maintenance and operation. Both the legal and equitable titleholders were sued as owners. It was held that both were entitled to limitation of liability because each had sufficient legal standing to constitute what has been traditionally recognized in the law as title, either legal or equitable, with substantial rights and powers in dealing with the property, that is, something more than mere possession and control. Because both parties were subject to liability as owners, both were entitled to limitation of that liability.

**LIABILITY OF THE NON-OWNER**

The law as previously stated by the courts was considerably broadened in In re The Trojan.26 Prior cases had been concerned with limiting the liability of a person who was the owner of the vessel at the time that the alleged injury occurred. In this case the issue was whether a person, who

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23. Id. at 265.
at the time of the accident had neither legal nor equitable title, qualifies as an owner if the accident was proximately caused by such person’s conduct at a prior time when he unquestionably was the owner.

The United States government, at the time of its sale of The Trojan to a shipping company, separately sold a quantity of oil in its tanks. Instead of oil, as represented, the fluid was a volatile mixture, which after the sale caused an explosion resulting in extensive damage to the claimant. Although authorities were cited in which the courts had upheld petitions filed after the petitioners had disposed of their ownership in the vessels, in each of such cases the liability against which limitation was sought arose during the period of the petitioner’s ownership. In the Trojan case liability, if any, arose after the United States had disposed of all right, title, and interest in the vessel. The court, influenced by the design of Congress to encourage investment in the shipping industry, stated that the petition for limitation would not be dismissed, because the alleged liability arose as the result of negligent conduct occurring before sale and during ownership, at which time limitation would clearly have been available. The Trojan court summarily distinguished the Brassert case, which had denied limitation to a vendor liable for breach of warranty. The court stated that in the Brassert case the vendor’s liability was that of a manufacturer, while in the Trojan case it was that of an owner-vendor.

The Court of Appeals for the Ninth Circuit, in deciding Admiral Towing Co. v. Woolen, stressed the words of the Supreme Court in Flink that the act should be given a broad construction so as to achieve Congress’ purpose, rather than the Court’s indication in Brassert that a mortgagee not in possession was not an owner within the meaning of the statute. In the Admiral case the agent of the mortgagee had taken control of the mortgaged vessel to sail it to the mortgagee’s port so that the mortgagee would ultimately receive legal title. The court stated:

When ... a mortgagor ... comes into possession and control of a vessel as the first step in a process which is to culminate uninterruptedly in his becoming the holder of legal title to her, we think he becomes an owner for purposes of limiting his liability. ... For all intents and purposes, when ... [the mortgaged ship] was given over to ... [the mortgagee’s agent] by ... [the mortgagor] ownership of the vessel passed to ... [the mortgagee] despite the fact that technical legal title had not yet passed.

The court then returned to the test established in Flink:

27. The Milwaukee, 48 F.2d 842 (E.D. Wis. 1931); The Columbia, 37 F.2d 95 (2d Cir. 1930); The Giles Loring, 48 Fed. 463 (D. Me. 1890).
28. An additional ground for allowing limitation was that there was the possibility of other claims arising which would be clearly subject to limitation. 167 F. Supp. 576, 579 (N.D. Cal. 1958).
29. 290 F.2d 641 (9th Cir. 1961).
30. Id. at 645-46.
This [is] for the reason that his relationship to the vessel is such as 
might reasonably afford grounds upon which a claim of liability for 
damages might be asserted against him, a claim predicated on his status 
as the person perhaps ultimately responsible for the vessel's maintenance 
and operation and a claim which the Limitation Act is designed to fur-
nish protection.31

As pointed out by Benedict,32 a mortgagee out of possession and not ex-
cercising authority is not entitled to limitation of liability for the reason 
that, not being active in the operation of the vessel, he cannot be under 
a liability for the acts of those who have possession and actually operate 
er, beyond the value of the vessel in rem. Hence he merely does not 
need the protection of the statute.

Thus it is seen that congressional concern for the exigencies of the 
shipowner has been interpreted by the courts to include concern for those 
"owners" who do not hold title,33 those who split the legal and equitable 
title,34 those who have divested themselves of title,35 and those who will 
obtain title in the future.36 The sole element common to these "owners" 
is the possibility that they may be subjected to the liability which is ordi-
narily assertable against one having dominion over a ship. Apparently 
the common meaning of "owner" to be "the person in whom is vested 
the ownership, dominion, or title of property . . ."37 is not controlling.

LIABILITY OF THE CO-OWNERS

There are several methods by which title to a ship is held that re-
ceive the benefit of the limitation act because full title, interest, or domi-
ion is not a requisite of ownership.38 The title held by a group of 
individuals on shares39 or by a partnership40 is as much within the scope 
of the act as that held by an individual.41 The corporation is probably 
the most common type of owner of vessels;42 it is also entitled to the 
benefit of limitation of liability.43 In most situations the party that is 
the registered owner is entitled to petition for limitation of liability.44

31. Ibid.
32. 3 BENEDICT, AMERICAN ADMIRALTY 415 (6th ed. 1940).
36. Admiral Towing Co. v. Woolen, 290 F.2d 641 (9th Cir. 1961).
38. The Milwaukee, 48 F.2d 842 (E.D. Wis. 1931).
39. Christopher v. Grueby, 40 F.2d 8 (1st Cir. 1930).
40. See Flink v. Paladini, 279 U.S. 59, 63 (1929).
42. 3 BENEDICT, AMERICAN ADMIRALTY 414-15 (6th ed. 1940).
43. Standard Wholesale Phosphate & Acid Works, Inc. v. Chesapeake Lighterage & Towing 
Co., 16 F.2d 765, 766 (4th Cir. 1927); Pocomoke Guano Co. v. Eastern Transp. Co., 285 
Fed. 7, 9 (4th Cir. 1922).
44. See In re Great Lakes Transit Corp., 81 F.2d 441 (6th Cir. 1936); Petition of Martin,
Regardless of the form in which the ownership is cast and the number of persons within a given group, each person having a share of the vessel is considered separately in ascertaining whether he is entitled to limitation. In other words, some members of the group of owners may be entitled to limitation while others may be denied that protection, depending on whether the loss occurred with or without their privity or knowledge. The statute is intended to encourage investment in the maritime industry, but not to protect those investors who are in privity with the cause of the loss. For example, in *Cusumano v. The Curlew* it was held that a co-owner of a fishing vessel at fault in a collision, who was below deck and who did not participate in the navigation, was entitled to limit his liability. However, his co-owner, who was the vessel's captain and in charge of the navigation leading to the collision, could not limit his liability. The distinction in the extent of the liability of the co-owners lies in the difference in their roles at the time of the collision. One was passive, in effect only an investor. The other was active, and negligent, in the operation of the vessel. Similarly, in *Successors De Esmoris & Co. v. Whitney & Bodden Shipping Co.* one corporate part-owner of a vessel was entitled to limit its liability on a charter party that the other part-owner had negotiated. The court stated:

> [T]he joint owner should be no more liable where the contract is signed by another joint owner than if it was signed by the master or some other agent.

> To construe it otherwise seems to me would be to emasculate the statute, for its very purpose was to separate the liability of the various joint owners one from the other.

Moreover, if the part-owner is entitled to limitation, his liability is limited to the proportion of any debts and liabilities that his individual share in the vessel bears to the whole. In *Whitcomb v. Emerson* it was held that where repairs were ordered by a shipmaster, who was also one of

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45. See Christopher v. Grueby, 40 F.2d 8, 13-14 (1st Cir. 1930). It is clear that the use in §§ 183 and 185 of "owner" instead of the "owner or owners" of the earlier version does not exclude a limitation of the liability of a part-owner. Thommasen v. Whitwill, 12 Fed. 891, 903 (C.C.E.D.N.Y. 1882), aff'd, 118 U.S. 520 (1886).


47. Id. at 433.


49. Id. at 192-93. See Keene v. The Whistler, 14 Fed. Cas. 208 (No. 7645) (D. Cal. 1873).


51. 50 Fed. 128 (D. Mass. 1892).
three equal part-owners of a vessel, without the privity or knowledge of the other owners, he was primarily liable for the whole debt, and the other two owners were each primarily liable for one-third of it. The lack of privity of two of the co-owners limited their share in the liability to the same share that they had in the vessel. However, the privity of the shipmaster prevented limitation of his liability, and he was liable for the entire debt, not merely one-third of it. Thus liability beyond the limitation amount among those not entitled to limitation is not joint, but is several.

Neither the form nor the composition of the ownership unit is important in determining limitation vel non. The federal government, a division thereof such as the Director General of Railroads or the United States Shipping Board, or a government-owned corporation such as the Emergency Fleet Corporation may be an owner within the meaning of the act and therefore limit its liability. It seems clear that the owner is entitled to limitation whether he is American or foreign.

Although the act in its several sections speaks in general terms of "the owner of the vessel" as being entitled to limitation, the act is very specific in regard to the effect of the limitation provisions upon the master and seamen. It is clear that merely because one of the owners is also an officer or a crew member he is not denied the protection of the act. However, it is more likely that such a part-owner is chargeable with privity or knowledge of the unseaworthiness or negligence that results in the liability arising, which would place him beyond the protection of the act. The statute recognizes this probability and provides that nothing in the act be construed to affect the remedy to which any party may be entitled against the master, officers, and seamen in those capacities.

52. See also The Giles Loring, 48 Fed. 463 (D. Me. 1890).
54. See The Princess Anne, 5 F.2d 67 (2d Cir. 1925); Hines v. Butler, 278 Fed. 877 (4th Cir. 1921), cert. denied, 257 U.S. 659 (1922).
55. See The West Hartland, 295 Fed. 547 (W.D. Wash. 1923), aff'd, 2 F.2d 834 (9th Cir. 1924).
56. Ibid.
58. 9 Stat. 635 (1851), as amended, 46 U.S.C. § 183 (1958). See The Princess Sophia, 61 F.2d 339 (9th Cir. 1932), cert. denied, 288 U.S. 604 (1933). However, insofar as § 4 of the Death on the High Seas Act refers to foreign law, the present act is unavailable to foreign shippers. The Vestris, 53 F.2d 847, 852 (S.D.N.Y. 1931), aff'd, 57 F.2d 176 (2d Cir. 1932), limitation denied on rehearing, 60 F.2d 273 (S.D.N.Y. 1932).
60. 9 Stat. 636 (1851), as amended, 46 U.S.C. § 187 (1958). The section of the act limiting liability for loss of valuable objects to their stated value is for the benefit of "the master
CONCLUSION

The extensive use of the corporation as a form of ownership of ships, the prevalence of insurance, and the use of direct government subsidies to the maritime industry have resulted in a situation that differs greatly from that in which the concept of the limitation of liability developed. Because of this there is at least some reason to believe that the judicial attitude in the second half of the twentieth century will be, on the whole, hostile to the limitation idea, that the early cases will be whittled down if they are not flatly overruled, and that the statute, even without further limiting amendments, will be narrowly and not expansively construed. Moreover, there is every indication to believe that there will be extensive revision of the act in order to eliminate the ambiguities and to increase the amount available to injured claimants.

Despite this interest in restricting the limitation principle, it is submitted that the liberality of the courts in construing the word "owner" will continue and will not be affected by any amendment to the act. An equitable standard of "ownership" has been established, and as long as there is provision for limitation it is reasonable to assume that any stricture upon the concept will occur in the extent of limitation rather than in the extent of coverage. The general rule will remain that one can limit his liability as an owner if he is liable as an owner.

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and owner of such vessel." 9 Stat. 635 (1851), as amended, 46 U.S.C. § 181 (1958). The reason for this sole inclusion of the master is not apparent.


63. See Senate Comm. on Commerce, Limiting the Liability of Shipowners, S. REP. No. 1602, 87th Cong., 2d Sess. (1962). This report recommends passage of Senate Bill 2314, as amended. The bill would extend the privilege of limitation of liability to "...the charterer, manager, and operator of the ship, and to the pilot, and to the master, members of the crew, and other servants of the owner, charterer, manager, or operator acting in the course of their employment, and to their respective insurers as well as to the insurers of the ship or of the owner, in the same way as they apply to an owner himself ...." S. 2314, 87th Cong., 2d Sess. § 8(b) (1962). See also H.R. 7912, 87th Cong., 1st Sess. (1961).

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