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THE SMALL PASSENGER VESSEL LIABILITY FAIRNESS ACT: A BRIEF LOOK AT THE CONGRESSIONAL REFORM OF 170-YEAR-OLD MARITIME DEFENSE STATUTE¹

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In General

The Small Passenger Vessel Liability Fairness Act, ultimately passed in December 2022 by Congress, fundamentally modifies maritime defenses previously available under the Limitation of Liability Act of 1851 (“LOLA”). Traditionally, when a maritime liability incident occurred, commercial and recreational vessel owners could proactively file for relief under the LOLA to limit their liability to the post-loss value of their vessel. However, the new reforms eliminate this option for small passenger vessels, stripping them of this critical defense and rendering small vessel owners potentially liable for all damages stemming from liability incidents.

Status of the New Reforms

The Small Passenger Vessel Liability Fairness Act was included in the National Defense Authorization Act for Fiscal Year 2023 (“FY 2023 NDAA”). The FY 2023 NDAA was passed in the U.S. Senate on Thursday, December 15, 2022, by an 83-11 vote. President Joe Biden signed the FY 2023 NDAA into law on December 23, 2022.

Why the Law Changed?

The first version of this maritime law reform was introduced by US Democratic Senator Dianne Feinstein (CA) and US Democratic Congressman Salud Carbajal (CA) in response to the 2019 *Conception* boat fire off the California coast that killed 34 people. Subsequent to the loss, the owner of the *Conception* filed a LOLA Petition to limit any liability as permitted by the Act.

Proponents of the bill contend that the Act affords too much protection for vessel owners in significant incidents. On the other side of the coin, the original Act is seen to acknowledge the hazards of seaborne activity which still exist today, and the national policy to encourage maritime commerce and recreation by shielding vessel owners from burden of significant liability. Not surprisingly, large incidents such as the *Conception*

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boat fire have historically been followed with attempts to reform to the Limitation of Liability Act.

The Limitation of Liability Act was originally created in 1851 to protect the United States shipping industry, and the most famous Limitation action involved the *Titanic*. The Act was first amended in 1936 after the passenger liner *Morrow Castle* caught fire and ran aground off the shore of New Jersey, causing 135 deaths. In response, the Act was amended to require shipowners to establish a passenger compensation fund based on the size of the vessel. Total repeal of the Act was later considered, but was ultimately rejected in 1965, when 90 souls perished aboard the passenger vessel *Yarmouth Castle* after it burned and sunk on its way to Nassau from Miami. In 2010, the Act again faced calls for total repeal in the wake of the *Deepwater Horizon* explosion, which killed 11 crewmembers and injured another 126. However, repeal of the Act never passed the Senate, despite widespread support in the House of Representatives.

How The Law Actually Changed

The new reforms to the Limitation of Liability Act, as found in chapter 305 of title 46 of the United States Code, amends §30502 to make “covered small passenger vessels” not applicable to the rest of the chapter. The reforms also restrict a covered small passenger vessel owner’s ability to contractually limit the time period to give notice of or file a civil action for personal injury or death under §30508. The revisions further extend the protected time of notice under §30508 for all vessel owners from six months to two years after the date of injury or death.

Under the new reforms, a “covered small passenger vessel” is defined as a small passenger vessel, as defined in U.S.C.A section 2101 that is—

- (i) not a wing-in-ground craft; and
- (ii) carrying –
 - a. not more than 49 passengers on an overnight domestic voyage, and
 - b. not more than 150 passengers on any voyage that is not an overnight domestic voyage.

A “covered small passenger vessel” also includes any wooden vessel constructed prior to March 11, 1996, carrying at least 1 passenger for hire.

How This Impacts Maritime Defense Litigation

Under a traditional Limitation of Liability Act action, a vessel owner has the option to file a Petition for Exoneration from or Limitation of Liability after an incident which resulted in a third-party property damage or personal injury claim that exceeded the post-loss value of the vessel. The Act would provide the vessel owner the opportunity to either be exonerated from liability, or to limit its liability to the post-loss value of the vessel, regardless of the actual value of the third-party claim damages. This right no longer exists for “small passenger vessels”.

Equally compelling from a defense perspective, the determination of Exoneration from and Limitation of Liability are made by a federal court judge sitting in Admiralty, and not a jury. Yet the new statute seeks to make owners of small passenger vessels (as defined by the amendment) subject to traditional tort litigation for personal injury or death claims, with none of the damage caps previously available in Limitation. These claims will also potentially lie in front of a state court jury, unless there is diversity or other independent federal statutory jurisdiction.

One of the big questions regarding the statute while it was still in consideration was whether language should be included to have the changes apply retroactively. Earlier versions of the Small Passenger Vessel Liability Fairness Act included provisions which would have applied the reforms retroactively. Ultimately, the retroactive language was removed by the Congressional committee before it was passed by the House of Representatives in March 2022. Several other attempts were made to move the effective date of the reforms to September 2, 2019, to give the victims of the *Conception* boat fire the ability to be compensated. In the end, however, no language in the Small Passenger Vessel Liability Fairness Act passed by the Senate and signed into law has any mention of the reforms acting retroactively to the December 23, 2022 date of passage.

Since this statute is hot off the press—essentially the last bill passed before the 2022 Holiday recess—widespread litigation and commentary has yet to unfold on how the amendments will be interpreted and applied. It should be interesting to where the legal seas take these changes in 2023.

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