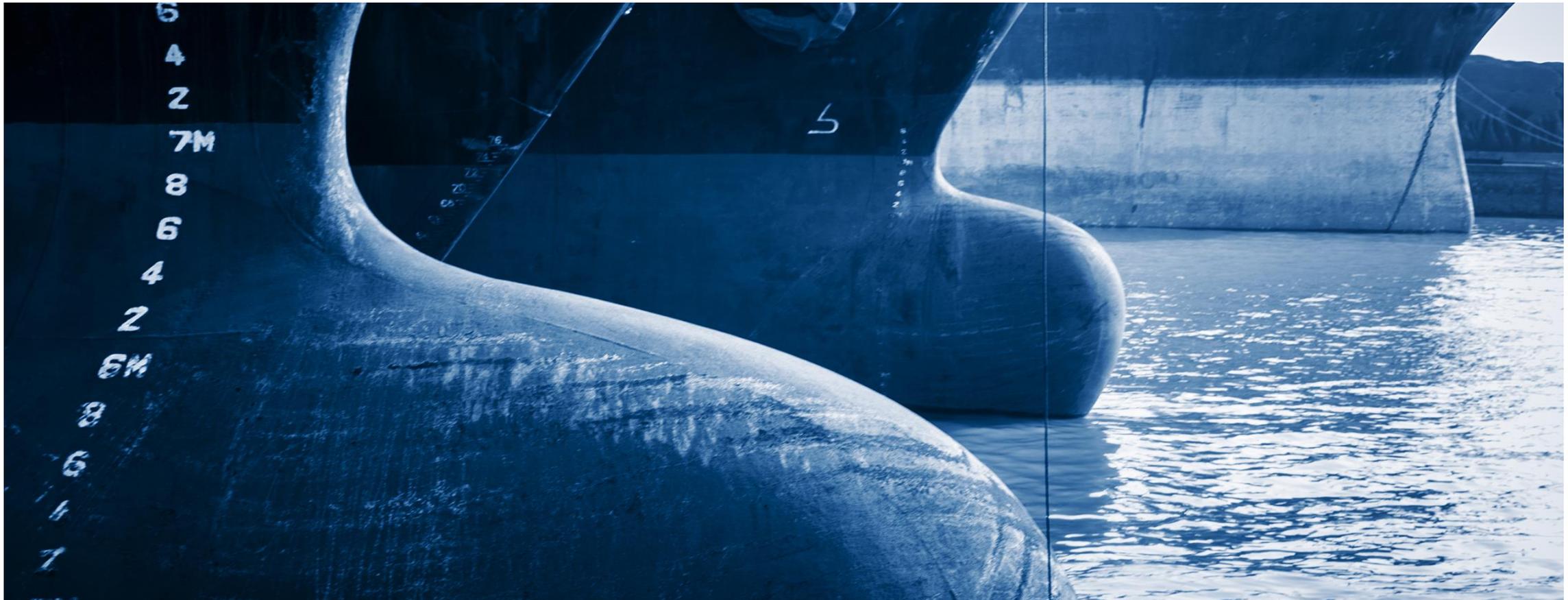


# Mainbrace Live: All Aboard! Webinar Series: [Part IV]

The Gateway to Federal Court:

A Discussion of Admiralty Jurisdiction and Limitation of Liability





# The Gateway to Federal Court: A Discussion of Admiralty Jurisdiction and Limitation of Liability

## **Moderated By:**

William R. Bennett III, Partner and Co-Chair,  
Maritime & International Trade Practice Group

## **Presenters:**

Noe S. Hamra, Associate, Maritime Practice  
Zachary R. Cain, Associate, Maritime Practice

Mainbrace Live: All Aboard!  
Webinar Series  
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# Today's Presenters



## **William R. Bennett III**

Partner, New York, NY

Maritime and International Trade

## **CO-CHAIR, MARITIME & INTERNATIONAL TRADE PRACTICE GROUP**

- Bill's clients are predominantly in the global shipping, trade, and energy markets. He has spent his career providing legal assistance on a broad range of international matters. Bill handles contentious and non-contentious matters for a large global client base. He has arbitrated and litigated many significant marine and shore-based disputes, including:
  - Complex shipping and international trade disputes
  - Large casualties resulting in wrongful death and personal injury
  - Collisions, allisions, groundings, and sinkings
  - Fire damage
  - Insurance coverage disputes
- Bill has also served as arbitrator and mediator for marine personal injury and contract disputes.



# Today's Presenters



## **Noe S. Hamra**

Associate, New York, NY

Maritime and International Trade

- Noe concentrates his practice on international commercial and insurance litigation and arbitration, with particular emphasis on the maritime industry. He also focuses on maritime insurance claims and cases for FD&D and P&I clubs. Noe has been involved in a variety of domestic and international maritime, commercial, and insurance matters, including:
  - Marine casualty and collision cases and vessel limitation of liability actions
  - Marine insurance coverage disputes, including protection and indemnity, general commercial liability, marine liability, hull and machinery and cargo insurance coverage issues
  - International and domestic commercial contract disputes, including arbitrations under SMA and ad hoc arbitration terms
  - Charterparty disputes
  - COGSA and multi-modal cargo damage claims, offshore pipeline installation and construction projects and related insurance issues
  - Maritime attachment (Rule B) and vessel arrest (Rule C) actions recognition and enforcement of foreign arbitration awards and judgments

# Today's Presenters



**Zachary R. Cain**

Associate, Houston, TX

Maritime and International Trade

- Zach concentrates his practice on international and maritime law, and represents clients in a wide variety of domestic and international maritime, commercial, insurance, and regulatory matters, including:
  - Maritime attachment (Rule B) and vessel arrest (Rule C) actions
  - Defense of Jones Act and LHWCA personal injury claims
  - International and domestic commercial and maritime contract disputes under SMA and ad hoc arbitration terms
  - Maritime casualties, including ship collisions, allisions, explosions, and fires
  - COGSA and multi-modal cargo damage claims
- Zach has significant briefing and appellate experience and is equally comfortable responding to and investigating shipboard and marine-adjacent accidents and incidents.

# Admiralty Jurisdiction & Comparing State and Federal Courts

Noe S. Hamra



# What is Admiralty Jurisdiction?

- Admiralty jurisdiction generally refers to the authority of a court to hear certain types of cases arising from actions that occur on the high seas or other navigable waters.
- When we speak of "jurisdiction" in this context we are not talking about jurisdiction over a person or thing. The topic is subject matter jurisdiction; i.e., the power of the court to hear and decide a particular case.
- In some admiralty cases, federal jurisdiction is exclusive. In others, there is concurrent jurisdiction between federal and state courts.

# Sources of Federal Court Admiralty Jurisdiction

- It is basic to American jurisprudence that the federal district courts are courts of limited jurisdiction. This stands in contrast to virtually all state court systems which generally provide a forum for any and all civil cases of whatever type.
- Such power as the federal courts have to decide cases derives either from the Constitution or federal laws.
- The sources of federal admiralty jurisdiction are Art. III, Sec. 2 of the Constitution and the Judiciary Act of 1789, the current version of which is 28 USC § 1333.

# The United States Constitution- Article III, Section 2

“The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States . . . to all cases of admiralty and maritime jurisdiction.”

# The Judiciary Act of 1789, codified at 28 U.S.C. § 1333

- Congress implemented Art. 3, Sec. 2 and vested in the district courts "exclusive original cognizance of all civil cases of admiralty and maritime jurisdiction."
- In practice today, we look to 28 U.S.C. 1333(1) which gives federal district courts jurisdiction over "any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."
- The last part generally is referred to as the savings to suitors clause.

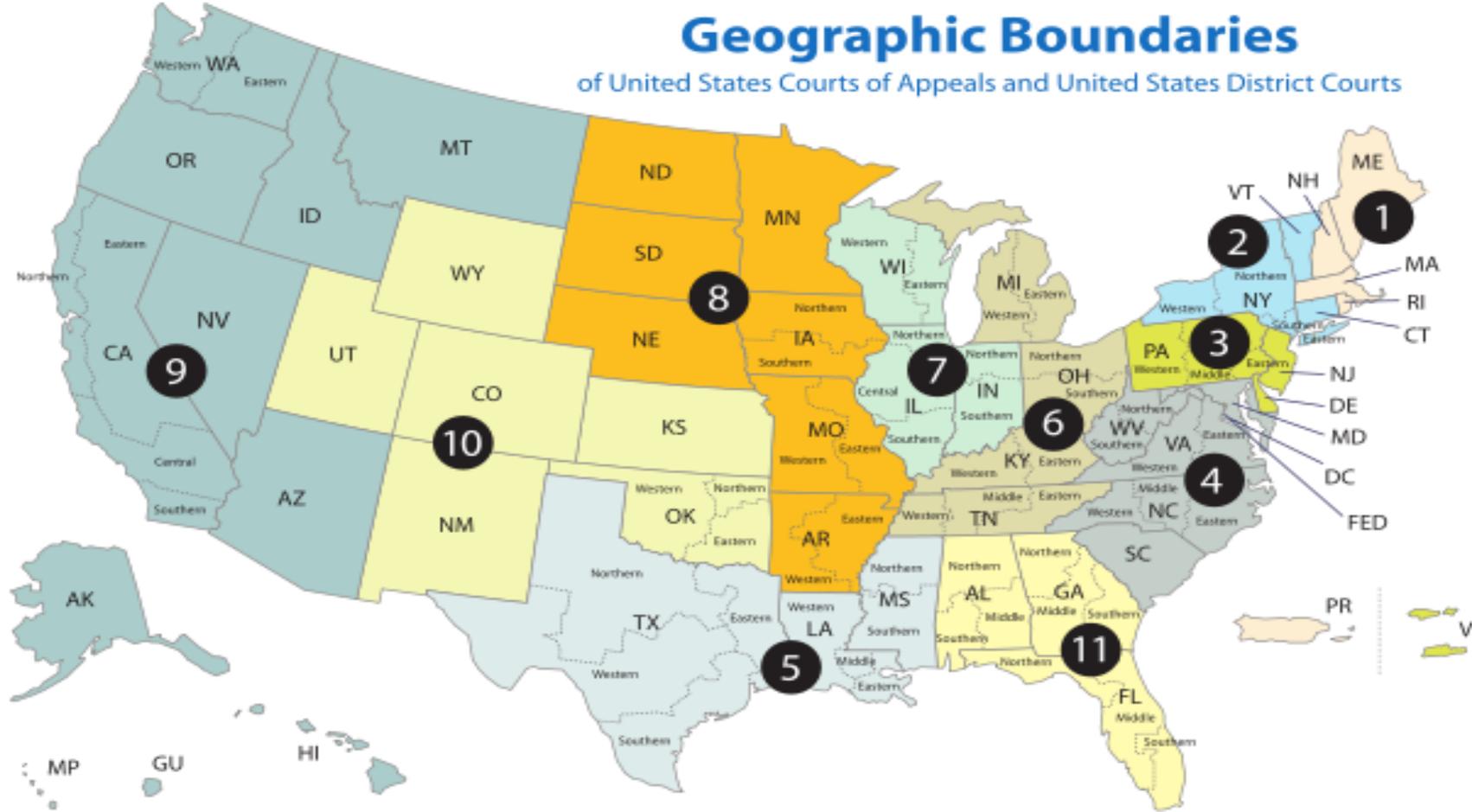
# Concurrent Jurisdiction Between Federal and State Courts

- In some admiralty cases, federal jurisdiction is exclusive. E.g., for special maritime procedures like arrest or maritime attachment, the federal court has exclusive jurisdiction (in rem, petitory, possessory, partition cases, limitation of liability, Public Vessels Act, and prize cases).
- In others, there is concurrent jurisdiction between federal and state courts; i.e., most other cases can be brought at the plaintiff's choice either as a federal admiralty case or in state court or as a diversity case in federal court if diversity exists.

# Removal of Cases from State to Federal Courts

- Although Congress has long “saved to suitors” their right to bring maritime cases in state courts, Congress has also long empowered defendants in certain circumstances to “remove” a case filed in state court so that it can instead be resolved in federal court. See 28 U.S.C. § 1441.
- Do defendants need an independent basis of jurisdiction such as diversity of citizenship or federal question jurisdiction to remove maritime cases?
- Split within District Courts.

# Geographic Boundaries of United States Courts of Appeals and District Courts



# United States District Courts

- The United States district courts are the general trial courts of the United States federal court system. Both civil and criminal cases are filed in the district court, which is a court of law, equity, and admiralty.
- The power of federal courts to hear cases and controversies is strictly limited. The district courts exercise original jurisdiction the following types of cases:
  1. Civil actions arising under the Constitution, laws, and treaties of the United States;
  2. Certain civil actions between citizens of different states;
  3. Civil actions within the admiralty or maritime jurisdiction of the United States;
  4. Criminal prosecutions brought by the United States;
  5. Civil actions in which the United States is a party.

# United States Courts of Appeals

- A final ruling by a district court in either a civil or a criminal case can be appealed to the United States court of appeals in the federal judicial circuit in which the district court is located.
- There currently are thirteen United States courts of appeals. The eleven numbered circuits and the D.C. Circuit are geographically defined. The thirteenth court of appeals is the United States Court of Appeals for the Federal Circuit, which has nationwide jurisdiction over certain appeals based on their subject matter.
- Court of appeals decisions, unlike those of the lower federal courts, establish binding precedents. This means other federal courts in that circuit must, from that point forward, follow the appeals court's guidance in similar cases, regardless of whether the trial judge thinks that the case should be decided differently.

# United States Supreme Court

- Article III, Section II of the U.S. Constitution establishes the jurisdiction of the United States Supreme Court.
- The Supreme Court has original jurisdiction over certain cases, e.g., suits between two or more states and/or cases involving ambassadors and other public ministers.
- The Supreme Court has appellate jurisdiction on almost any other case that involves a point of constitutional and/or federal law, e.g., cases to which the United States is a party, cases involving Treaties, and cases involving ships on the high seas and navigable waterways.

# Jury Trials

- In federal courts in the United States, there is generally no right to a jury trial in admiralty cases.
- However, Congress has created some limited rights of jury trial in seamen's personal injury actions brought under the Merchant Marine Act of 1920 (the "Jones Act") where a jury trial is otherwise permitted.
- In state courts, the right to trial by jury is determined by the law of the state where the case is brought. Consequently, admiralty cases brought in state courts can be tried before a jury.

# Admiralty Jurisdiction – Torts vs. Contracts

- Most claims sound in either contract or tort, and under U.S. law, there are separate tests for determining whether a tort or contract claim sounds in admiralty for purposes of federal admiralty jurisdiction.
- For tort claims, courts generally apply a “locality plus” test, where the party seeking to invoke federal admiralty jurisdiction must demonstrate that the tort occurred on navigable waters and bore some relationship to traditional maritime activity.
- This second part of the test requires an examination of whether the incident has a potentially disruptive impact on maritime commerce and also on whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity

# Admiralty Jurisdiction – Torts vs. Contracts (continue)

- For contract claims, courts “look to the subject matter of the ... contract and determine whether the services performed under the contract are maritime in nature.”
- The court must assess "whether [the contract at issue] has reference to maritime service or maritime transactions," and not "simply [whether] the place of the contract's formation or performance" is on land or sea.
- Mixed contracts, that is, contracts with distinctly maritime and non-maritime components – multimodal bills of lading calling for both land and sea transportation, for example – will be considered maritime contracts if their sea component is not “insubstantial.”

# Remedies Within the Exclusive Admiralty Subject Jurisdiction of the Federal Courts

- the right to assert a cause of action directly against a vessel *in rem* for certain tort claims and contractual liens;
- the right to pursue a *quasi in rem* action against a vessel owner, and obtain pre-judgment security, by “attaching” the vessel when the owner is “not found” in the district and the federal court does not have personal jurisdiction; and
- the right of a vessel owner to petition the federal court for exoneration or limitation of liability under the Limitation of Liability Act.

# Thank you.



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# Limitation of Liability

Zachary R. Cain



# Origin of the Shipowner's Limitation of Liability Act

- In the 1700s, most seafaring European nations had statutes in place limiting shipowner's liability to the value of the vessel.
- The *Lexington* fire – In 1848, SCOTUS holds that contract shielding the shipowner from liability was invalid; affirms award of \$22,224 for loss of gold and silver coins (about \$800K adjusted for inflation)
- In 1851, the U.S. enacted the Limitation Act to make U.S. shipowners more competitive with their foreign competitors.

# What is Limitation of Liability?

- Codified at 46 U.S.C. § 30501, *et. Seq.*
- A vessel owner is potentially able to limit its liability after a maritime incident or casualty to the post casualty value of the vessel and the pending freight.
- The Limitation Act applies to all “seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.”

# Who Can Limit Liability?

- The “owner of a vessel” – see § 30511(a).
- Has been interpreted to include:
  - Registered owners with legal title to the vessel;
  - Officers and shareholders of vessel owning company;
  - Former owners of vessels sold after casualty;
  - Owners *pro hac vice* (i.e., demise and bareboat charters)
- P&I Clubs? Not really, but can rely on shipowner’s ability to limit (if provided for in the Club rules)

# Why Commence a Limitation Action?

- The scope of the act is broad, and limitation potentially applies to any claim “arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.” § 30505(b)
- If potential claims *could* exceed the value of the vessel and pending freight, seeking limitation should be considered.

# Claims *NOT* Subject to Limitation

- Seaman wage claims.
- Seaman maintenance and cure claims.
- Cargo damage resulting from improper vessel deviation.
- Claims for the return of unearned freight paid in advance.
- Preferred Ship Mortgages.
- Environmental claims under the Oil Pollution Act of 1990 and the Clean Water Act.

# How to Invoke the Limitation Act's Protections

Vessel owners have two options in seeking to limit their liability:

1. File an action in federal district court, or
2. Raise Limitation Act as a defense in answer to a lawsuit brought against the shipowner in either state or federal court.

Benefits of initiating a federal action:

- Single venue for resolution of all claims
- Other actions against shipowner are stayed/enjoined
- Case proceeds in admiralty = no right to jury trial

# Where to File a Federal Limitation Action

Supplemental Admiralty Rule F(9) addresses venue:

- If already a pending suit against the shipowner, then in the same federal district;
- If the vessel has been arrested/attached, then the district where the arrest/attachment is pending;
- If neither of the above, then any district where the vessel is located at the time of filing;
- If none of the above and the vessel is in foreign waters or the high sea, then any federal district is OK.

# Mechanics of a Federal Limitation Proceeding

- Deadline – Must file within 6 months of written notice of claim.
- The Complaint must state:
  - Facts about the voyage at issue, what happened, and why the shipowner should be entitled to limitation (or exoneration);
  - What demands have been made and/or lawsuits exist relating to the casualty;
  - Whether the vessel was damaged or lost; and,
  - The value of the vessel (including pending freight) or, if wrecked, the ship's salvage value.

# Mechanics -- *continued*

- Once the complaint is filed, the Court:
  - Issues a stay of other proceedings;
  - Sets a deadline for claimants to bring their claims in the limitation;
  - Directs shipowner to arrange for publication providing notice of the action.

The court's order requires ***all claimants to litigate*** their claims arising out of the casualty to be filed and determined ***in a single proceeding*** by the limitation court – i.e., a “concurus of claims.”

If limitation fund is insufficient to cover all claims, funds are distributed on a pro rata basis.

# Establishing the Limitation Fund

Shipowners are required to provide security equal to:

- Value of the vessel (get an appraisal), and
- Value of pending freight / hire

Claimants can contest the value of the fund.

Options for security:

- Cash
- Bond
- LOU
- Vessel

# Challenging the Stay/Concurus

- Multiple claimants / Adequate fund
- Single claimant / Inadequate fund
- Multiple claimants / Inadequate fund\*

Stipulations needed to proceed outside Limitation Action:

1. Waive *res judicata* and issue preclusion
2. No enforcement of judgment until limitation proceedings end
3. Concede federal court has exclusive jurisdiction over limitation issues
4. Establish priority of competing claims\*
5. Be joined by all potential claimants\*

# Shifting Burdens of Proof

“The determination of whether a shipowner is entitled to limitation employs a two-step process. First, the court must determine what acts of negligence or conditions of unseaworthiness caused the accident. Second, the court must determine whether the shipowner had knowledge or privity of those same acts of negligence or conditions of unseaworthiness... And, although the petitioner in limitation bears the burden of proving lack of privity or knowledge, the initial burden of proving negligence or unseaworthiness rests with the libellants.”

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

# “Privity and Knowledge”

Not defined by the Limitation Act.

Interpreted to mean the shipowner’s personal participation in, or actual knowledge of, the specific acts of negligence or conditions or unseaworthiness which caused or contributed to the casualty.

Failure to reasonably inspect / investigate conditions is no defense.

# Privity and Knowledge -- *continued*

## Examples of privity and knowledge:

- Negligent entrustment of vessel
- Insufficient navigational gear
- Inadequate maintenance procedures
- No procedures for adverse weather
- Failure to provide competent crew
- Unseaworthy conditions at beginning of voyage

Simple navigational errors generally not within owners' privity or knowledge.

# Thank you.



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# Questions?

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