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Without Limits? The M/V Dali Court Addresses the Potential Extension of the *Limitation of Liability Act* to Vessel Managers

US – February 2026

1. The Limitation Act in the context of modern commercial shipping practices

The March 26, 2024, collision between the M/V Dali (Dali) and the Francis Scott Key Bridge (Key Bridge) tragically resulted in the loss of life and reportedly billions of dollars of property damage and commercial losses. The Dali incident also put a little-known shipping law, the *Limitation of Liability Act of 1851* (Limitation Act), into focus. The Dali interests assert that, under the Limitation Act, any potential liability for claims arising out of the Key Bridge incident should be limited to US$44 million. A recent decision by the US District Court for the District of Maryland, the court overseeing the Dali claims, shed light on how the Limitation Act may apply down the chain of contracts that underpin modern commercial shipping practices.

Commercial vessel operations involve a web of contractual relationships. Often, the vessel will be owned by a special purpose vehicle (SPV), which is a single-purpose entity created wholly to own the vessel. The SPV will enter a charter with a bareboat (or demise) charterer, which takes possession and full responsibility for the vessel, acting as an owner *pro hac vice*. An owner *pro hac vice* will enter into ship management contract(s) with third parties, which will provide technical expertise, crewing or commercial management services. Depending on the trade, the chain of contracts will often include other agreements between the owner *pro hac vice* and third parties such as time charters, voyage charters or slot charters. These contracts often have overlapping indemnity, risk shifting and insurance requirements.

When a maritime casualty occurs, the vessel owner/owner *pro hac vice* may invoke the Limitation Act. Under the Limitation Act, a vessel owner/owner *pro hac vice* may limit liability for claims arising out of an incident to the value of the vessel at the time of the loss, plus pending freight, so long as the loss occurred without the owner's privity or knowledge.[1]

The potential successful application of the Limitation Act has a significant impact on the amount of potential compensation available for claimants. Vessel managers generally cannot invoke the Limitation Act to cap liability unless they exercise sufficient control to be considered an owner *pro hac vice* (i.e., an acting owner).

The Dali court recently denied a motion for summary judgment, holding that there were sufficient facts in dispute over whether Dali's manager exercised sufficient dominion and control over the vessel to qualify as a vessel owner/owner *pro hac vice* under the Limitation Act.

The claimants will have an opportunity to revisit the issue of whether Synergy Marine Pte Ltd (Synergy) has standing under the Limitation Act soon. The court set a sixteen-day "Phase 1"[2] bench trial set to start on June 1, 2026, solely on the application of the Limitation Act, which encompasses[3] (1) whether Grace Ocean Private Limited (Grace Ocean) and Synergy's negligence caused and/or contributed to the incident, (2) whether the Dali was unseaworthy,[4] and (3) whether the Key Bridge incident was within Grace Ocean's or Synergy's fault or privity. It is anticipated that the Phase 1 trial will be fact-intensive, involving highly technical expert testimony regarding the Dali's electrical and propulsion systems, and Grace Ocean/Synergy's maintenance program and crew training. While the court's Phase 1 opinion will likely be appealed, the court's ruling on the application of the Limitation Act will likely be very instructive on the application of the Limitation Act to future large casualties.

2. To determine "dominion and control," the Dali court applied a multifactor test that examined the totality of Synergy's role in the vessel's operations.

In the limitation proceeding, Grace Ocean and Synergy filed suit, seeking the protections of the Limitation Act. Claimants filed a motion for summary judgment that argued that the vessel manager, Synergy, was not entitled to the protections of the Limitations Act because Synergy was not an owner *pro hac vice* of the Dali.

To be considered the actual owner or owner *pro hac vice* of the vessel under the Limitation Act, a party must have the type of relationship to the vessel that could subject them to liability as a shipowner. An owner *pro hac vice* is synonymous with bareboat charterer (also called a demise charterer). A vessel manager may be entitled to owner *pro hac vice* status under the Limitation Act based on the "dominion and control" standard, which occurs where the management company exerts a high degree of control over the vessel.

1 46 U.S.C. §§ 30521-30; *Pickle v. Char Lee Seafood, Inc.,* 174 F.3d 444, 448 (4th Cir. 1999). In the context of a corporation, "privity or knowledge" means the privity or knowledge of a managing agent, officer or supervising employee, including shoreside personnel. *Hercules Carriers, Inc. v. Claimant, State of Florida,* 768 F.2d 1558 (11th Cir. 1985). Privity or knowledge "implies some sort of complicity in the fault that caused the accident." *Brister v. A.W.I., Inc.*, 946 F.2d 350, 355 (5th Cir. 1991).

2 Due to the number of claims and legal issues present, the court limited the initial phase of the Dali trial to issues relevant to the application of the Limitation Act. *See In the Matter of Grace Ocean Private Limited, et. al.* No. 24-0941-JKB, U.S. District Court for the District of Maryland at document Nos. 438 and 510 (order respectively entered on November 7, 2024 and May 2 2025, limiting Phase 1 to issues under the Limitation Act). It is reasonably anticipated that the Court will enter a new case management order following the conclusion of the Phase 1 trial.

3 Limitation of liability proceedings involve two steps: "First, the court must determine whether negligence or unseaworthiness caused the accident. Second, the court must determine whether the shipowner was privy to, or had knowledge of, the causative agent (whether negligence or unseaworthiness)." *Empresa Lineas Maritimas Argentinas S.A. v. United States,* 730 F.2d 153 (4th Cir. 1984).

4 A vessel must be reasonably fit at the inception of a voyage; this encompasses the vessel's gear, appurtenances and crew. If a defective condition contributes to an incident, the vessel may be found unseaworthy. *Villers Seafood Co. Inc. v. Vest*, 813 F.2d 339 (11th Cir. 1987).

There were three companies involved with the Dali's operations: (1) Grace Ocean, the owner, (2) Synergy, the manager, and (3) Maersk Line A/S, the time charterer.[5] The court focused on Synergy's role in the vessel's operations. To determine whether Synergy had sufficient dominion and control over the Dali to qualify as an owner *pro hac vice*, the court took a totality of the factors approach. The factors the court considered included:

1. Synergy's financial relationship to the operation of the vessel
2. Synergy's relationship to the vessel's crew
3. Synergy's rights/obligations to navigate and/or conduct vessel operations
4. Synergy's role in procuring insurance for the vessel
5. Synergy's potential exposure for claims arising out of vessel operations
6. Synergy's management of the vessel, which included responsibility for manning, supply, routine maintenance, repairs and drydocking

The court specifically noted that the document of compliance and the safety management certificate for the Dali submitted by Grace Ocean to the Maritime & Port Authority of Singapore (the Dali's flag state) identified as the vessel operator. Under the International Safety Management Code (ISM Code), these documents are issued to the party that assumes the responsibility for the operation of the ship from the owner of the ship and that has agreed to take over all the duties and responsibilities imposed by the ISM Code.[6] The Court held that there were significant facts in dispute as to whether Synergy had sufficient dominion and control over the vessel to fall within the definition of an owner *pro hac vice* under the Limitation Act. Accordingly, the court denied the motion for summary judgment. The claimants may still challenge Synergy's standing under the Limitation Act at trial.

The Dali court's ruling is consistent with other maritime decisions. Where a vessel manager takes on responsibility for the vessel's safety, navigation and crewing, the manager is more likely to be considered within the definition of owner or owner *pro hac vice* under the Limitation Act.[7] In contrast, the more limited or specialized a vessel manager role in the vessel's operations, the less likely a manager will be found to be an owner *pro hac vice*.

3. Living with the Limitation Act

The application of the Limitation Act can potentially foster harsh results based on how the liability cap is calculated. At the same time, the Limitation Act potentially caps exposure for ordinary claims, provides a base line upon which the marine insurance industry sets rates and influences freight rates.

The Limitation Act is not a unique feature of US law. The 1976 International Maritime Organization Convention of Liability for Maritime Claims (ILMC) has been adopted by numerous maritime states. The LLMC allows vessel owners to limit liability but uses a formula based on the vessel's tonnage and units of account. Units of account are tied to special drawing rights as defined by the International Monetary Fund, which allows for conversion to local currency. These provisions allow for a larger limitation fund than is potentially available under US law. US maritime law is therefore an outlier within the global body of maritime law.

The last time the Limitation Act was amended was in 2022 when the *Small Passenger Vessel Liability Fairness Act* (SPVA) was enacted after a tragic accident caught the public's attention. The SPVA was proposed following the death of 34 people on the P/V Conception, a dive boat that caught fire on September 2, 2019, off the coast of California. Among the revisions to the Limitation Act, the SPVA excluded certain small passenger vessels that would normally qualify as vessel under the Limitiation Act.

In August 2024, the *Justice for Victims of Foreign Vessel Accident Act* [8] was introduced in response to the Dali incident and would significantly increase the liability exposure for foreign vessels up to ten times the value of the vessel and cargo while maintaining current limits solely for US-flagged vessels. The *Justice for Victims of Foreign Vessel Accident Act* is currently pending consideration in the House Subcommittee on Coast Guard and Maritime Transportation.

4. Policy questions with potential legislative interest

The Dali limitation litigation highlights how the Limitation of Liability Act of 1851 operates within today's layered ownership, chartering and third-party management structures. In that setting, the case presents several policy questions that could prompt legislative interest.

a) Should vessel managers ever get the benefit of limitation – and if so, under what conditions? As described above, managers generally cannot invoke limitation unless they exercise sufficient control to be treated as an owner *pro hac vice*, and the court found disputed facts on whether the Dali's manager had that level of dominion and control. As a policy matter, this raises a question about incentives and accountability: where a manager has meaningful safety-critical responsibilities (*e.g.*, manning, maintenance, repairs or drydocking), should that manager be able to access a liability cap that can materially limit recovery in a major casualty, or should Congress set clearer boundaries to preserve strong safety-governance incentives in high-consequence incidents?

5 A time charterer directs the vessel's commercial operations and pays charter hire to the vessel owner or owner *pro hac vice*. The vessel owner or owner *pro hac vice* provides the vessel and crew, and navigates the vessel.

6 The ISM Code sets standards for the safe management, operation and pollution prevention from ships. The ISM Code requires vessels to have a safety management system to address various risks, such as environmental protection and emergency response, and was adopted under Chapter IX of the International Convention for the Safety of Life at Sea.

7 See *SCF Waxier Marine LLC v. M/VAris T*, 427 F. Supp. 3d 728 (E.D. La. 2019), aff'd 24 F.4th 458 (5th Cir. 2022).

8 See H.R.9348 – *Justice for Victims of Foreign Vessel Accidents Act,* 118th Congress (2023-2024).

b) Is the current dominion and control inquiry too fact-heavy and unpredictable for major casualties – and should Congress define "operator" or "owner *pro hac vice*" more clearly? As discussed above, the court in this case applied a totality-of-the-circumstances approach and assessed multiple indicia of operational responsibility, including relationships to crew, operational rights and obligations, insurance procurement and responsibility for key operational functions. The court also considered ISM Code compliance documents identifying the vessel operator. Together, these features highlight a policy question that Congress could address directly: whether the Limitation Act should provide clearer, more predictable statutory definitions that identify the operative operator (and when) for limitation purposes in today's multi-entity operating model.

c) Does the current cap produce acceptable results in "mega-casualty" events – and should it be recalibrated, at least in limited circumstances? Finally, as discussed above, limitation can produce harsh results because the fund is tied to vessel value plus pending freight, even where alleged losses are far larger; in the Dali matter, the asserted cap is US$44 million despite reported losses in the billions. The analysis also contrasts the US framework with the LLMC approach used by many maritime states, which can yield a larger fund through a tonnage-based formula tied to IMF special drawing rights, and it flags legislative interest specific to the Dali incident, including a proposal to materially increase exposure for foreign vessels while maintaining current limits for US-flag vessels. These features frame a straightforward legislative inquiry: whether the current limitation design still strikes the right balance between investment/insurability and compensation adequacy when rare catastrophic losses occur.

When enacted in 1851, the purpose of the Limitation Act was to encourage shipbuilding and investment in the maritime industry. One hundred seventy-five years later, the intent of the Limitation Act is reflected in the pending *SHIPS for America Act* and Executive Order No. 14269, *Restoring American's Maritime Dominance*. While the Limitation Act may be amended in the future, it is unlikely to be repealed.

While major casualties such as the Key Bridge incident are thankfully rare, maritime stakeholders should consider whether their current contractual risk shifiting, indemnity and insurance obligations are sufficient to adequately respond in a significant casualty, especially if additional parties could fall within the purview of the Limitation Act. Stakeholders should also pay attention to potential legislative changes that may impact the application of the Limitation Act in the future.

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