

The March 26, 2024 collision between the M/V Dali (Dali) and the Francis Scott Key Bridge (Key Bridge) tragically resulted in the death of six construction workers and property losses that will reach billions of dollars. The Key Bridge incident garnered significant media and political attention.

The Dali-Key Bridge incident also put focus on a little-known shipping law, the Limitation of Liability Act of 1851 (Limitation Act) that could potentially allow the Dali's owners/operators to limit liability for claims arising out of the incident to approximately US\$44 million. In response to the Key Bridge incident, the "Justice for Victims of Foreign Vessel Accidents Act" (H.R.9348), was recently introduced in the US Congress, a piece of legislation which could radically alter the application of the Limitation Act to foreign vessel owners and operators.

The Key Bridge Incident

In the early hours of March 26, 2024, the container vessel Dali hit the southwest pier of the central truss arch span of the Key Bridge in Baltimore, Maryland while travelling at around eight knots. The vessel was leaving the Port of Baltimore bound for Colombo, Sri Lanka carrying some 4,700 containers. The collision resulted in the collapse of a section of the Key Bridge, part of which fell onto the ship's bow causing it to ground. The cause of the incident is still under investigation.

This disaster tragically resulted in the deaths of six construction workers who were on the bridge at the time. Media reports have stated that the losses, including replacing the Key Bridge, could range anywhere from US\$1 to US\$4 billion.

Following the casualty, the vessel owner, Grace Ocean Private Limited (Grace Ocean), and the vessel's managers, Synergy Marine Pte Ltd (Synergy Marine), both Singapore companies, filed an action in the US District Court for the District of Maryland seeking to limit liability for claims arising out of the Key Bridge incident to approximately US\$44 million under the Limitation Act. The Maryland litigation is ongoing, and the court has not ruled whether Grace Ocean or Synergy Marine may limit liability.

The Limitation Act permits vessel owners/operators to limit liability for claims arising out of a maritime casualty to the value of the vessel plus pending freight at the time of the loss.

The shipowner may limit its liability only if it demonstrates that the cause of the loss occurred without its "privity or knowledge." As a practical matter, a claimant will have to establish that the vessel's shoreside management knew or should have known of an unseaworthy condition or negligent act that caused or contributed to the loss. If a loss is within the owner/operator's privity or knowledge, there is no right to limit. For example, if a loss was caused by a simple operational error, the vessel owner would likely be entitled to limit liability. In contrast, if the vessel owner failed to hire a properly trained and/or competent crew, limitation would likely not be available.

If applicable, the Limitation Act can potentially have a harsh result. A vessel's value can be significantly decreased by any damage incurred in an incident, especially if the vessel is a total loss, making its value zero.

The Limitation of Liability Act was originally enacted in the very early days of the US shipping and shipbuilding industry to protect ship owners from financial ruin. The act was fashioned in a historical period where the shipping and maritime industries were exposed to much more risk than they are today.

To mitigate the risks shippers and ship owners faced, the Limitation of Liability Act was intended to limit the owner's total financial liability to the value of their ship and protected all its financial assets beyond that amount. At the time, it protected shippers, made international trade more profitable and less risky and ultimately helped America prosper and grow. However, in recent years the law has come up for criticism because it is said to protect large, extremely wealthy shipowners from being held accountable for their negligence. Moreover, the fact that the vast majority of ships serving US ports are foreign-flagged and foreign-owned means the Limitation Act is being used largely to protect foreign-owned and flagged vessels, as well as their foreign owners and operators.

The US is not alone in having a limitation act that applies to maritime claims. The 1976 International Maritime Organization Convention of Liability for Maritime Claims (LLMC) has been adopted by various countries, including Singapore. While the LLMC is similar in scope to the Limitation Act, a key difference is how the limitation amount is calculated.

The LLMC 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. There is also a distinction for limitation amounts for personal injury and property damages. Applying a calculation under the LLMC, and accounting for recent amendments to the LLMC, liability under the LLMC for the Key Bridge Incident could potentially be limited to approximately US\$57 million for property damage, and US\$114 million for personal injury and loss of life.

The “Justice for Victims of Foreign Vessel Accidents Act”

US Representative John Garamendi (Democrat, California) with US Representative Hank Johnson (Democratic, Georgia) introduced the “Justice for Victims of Foreign Vessel Accidents Act.” According to a press release, the “Justice for Victims of Foreign Vessel Accidents Act” would:

- Increase the liability for foreign-flagged vessels to up to 10 times the dollar value of the vessel and its cargo, minus expense
- Maintain the current liability threshold for US-flagged vessels, which unlike foreign-flagged vessels are subject to federal or state law and inspected regularly by the U.S. Coast Guard and state regulators
- Apply retroactively the new, higher liability level for damages by foreign-flagged vessels to March 25, 2024, the night before the Francis Scott Key Bridge’s collapse

Representative Garamendi and Johnson stated the following:

“If the foreign owners of the cargo vessel that took down the Francis Scott Key Bridge in Baltimore think they can leave American taxpayers holding the bag, I have a message for them: you broke it, you bought it. Access to America’s ports and our consumers is a privilege, not a right. If the foreign owners of the Dalia want to keep that privilege, they can break out their checkbooks, call their insurance company and pay their fair share of the bridge replacement costs and compensation to the families of the six workers who died tragically that day. In the meantime, I support the Maryland Delegation and President Biden’s ongoing work to rebuild the bridge with federal funding as quickly and safely as possible.” said Congressman John Garamendi.

“This is a crucial step toward ensuring accountability in maritime liability. By enhancing the financial responsibilities of foreign vessel owners, this bill provides essential support to victims and their families in reinforcing our resolve to uphold justice following tragic maritime incidents” said Rep. Johnson.

Conclusion

The Justice for Victims of Foreign Vessel Accidents Act was recently introduced and was referred to the House Committee on Transportation and Infrastructure and to the Committee on Judiciary.

Accordingly, it is somewhat early to predict how the bill will fare in an election year. It bears noting that the proposed legislation would not apply to US flagged vessels, which would include Jones Act qualified vessels.

The Limitation Act was last amended in 2022 when the Small Passenger Vessel Liability Fairness (SPVA) Act went into the law 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 carved out certain vessels that qualify as small passenger vessels from the purview of the Limitation Act.

The Limitation Act has been in force since 1851, with the purpose of fostering the development of the US merchant marine. While seldom amended, the SPVA reveals that a maritime casualty that garners enough attention could potentially result in a significant amendment to the Limitation Act.

Given the vast amount of maritime commerce carried to/from US ports by foreign-flagged vessel, the Justice for Victims of Foreign Vessel Accidents Act will certainly garner significant political and industry attention from diverse stakeholders. Interested stakeholders should carefully monitor developments.

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