BULLIVANTHOUSER

Marilyn Raia
San Francisco,
Shareholder

Direct Dial: 415.352.2721
Fax: 415.352.2701
Email Attorney

# Maritime Law, Quirky Or Not?

By Marilyn Raia

Many non-admiralty lawyers and judges have characterized maritime law as "quirky". On the surface, it may appear that way. But if the truth be known, maritime law makes perfect sense. This column explains a few of its many so-called "quirky" aspects.

**Cargo loss and damage**

The law relating to cargo loss or damage during ocean carriage may sometimes seem illogical. In an action for cargo loss or damage, it is the ocean carrier defendant, not the plaintiff owner of the lost or damaged cargo, who has the more difficult burden of proof. When a cargo owner sues an ocean carrier, it must prove three things, which are usually easy to prove: 1) it gave the shipment to the ocean carrier in good order, condition, and quantity for transportation; 2) the ocean carrier failed to deliver the shipment in the same good order, condition, and quantity as when shipped; and 3) the amount of the damage suffered. The proof of those three things is called a prima facie case of carrier liability. Contrary to what might be expected, the cargo owner does not have to prove how the loss or damage occurred. This is quite logical because the cargo owner does not ride with the cargo on the vessel, and usually has no way of directly knowing what happened during the voyage.

After the cargo owner proves a prima facie case of carrier liability, the burden of proof shifts to the ocean carrier. The ocean carrier can rebut the cargo owner's prima facie case by showing the shipment was not in good order, condition, and quantity when shipped, and/or was not damaged when delivered at destination. The ocean carrier can also prove the loss or damage was caused by one or more of the perils for which it is statutorily exempted from liability. Under the United States Carriage of Goods by Sea Act, ocean carriers are not liable for loss of or damage to cargo caused by a variety of perils, mostly events over which they have no control such as an act of God, an act of war, a latent defect in the cargo, or a peril of the sea. Some of the excepted perils cannot be asserted as a defense unless the ocean carrier first proves it exercised due diligence to make the carrying vessel seaworthy.

What some find quite curious is the statutory exemption from liability for cargo loss or damage caused by an error in the navigation or management of the carrying vessel. The defense is based on the theory that when the vessel is at sea, the carrier itself no longer has control over what happens. For example, in Folger Coffee Company v. ***Olivebank***, et al., 201 F.3d 632 (5th Cir. 2000), the vessel's crew made a decision to not close a skylight and exhaust vent covers on the vessel. Seawater entered the vessel through them and caused a power failure, which eventually resulted in cargo damage. The court held the carrier was not liable for the cargo damage because there was an error in the management of the vessel while at sea.

**Limitation of Liability**

The Limitation of Liability Act, a federal statute enacted in 1851, allows vessel owners under certain circumstances to limit their liability for damages arising out of a casualty. If a casualty arises from a cause that was not within a vessel owner's knowledge or privity, the vessel owner may be able to limit its liability to the value of the vessel and her pending freight at the end of the voyage after the casualty. In some cases that value can be zero.

The statute was enacted to protect ship owners who, at the time of enactment, would have had limited, if any, contact with their vessels while at sea and therefore no control over the vessel operations once the vessel left port. Of course, modern communication technology has

changed that. Nonetheless, the ability of a vessel owner to limit its liability remains a well-entrenched part of American maritime law despite calls for its abandonment. Many lawyers representing injured parties find this remedy to be illogical and unfair because it can leave an injured party with little or no compensation.

Customarily, the party who has suffered damages brings the lawsuit against the party causing the damages. In a limitation proceeding, the roles are reversed. When limitation of liability is sought, the potential defendant vessel owner files a petition in federal court seeking a judgment that its liability should be limited, and deposits into the court's registry an amount representing the value of the vessel, if any, at the end of the voyage. The injured party or parties must then file an answer to the petition. The injured party or parties have the initial burden of proving the vessel owner was at fault. The burden then shifts to the vessel owner to prove the cause of the casualty was not within its privity and knowledge.

The Limitation of Liability Act was invoked by the owner of the ***Titanic*** after the vessel's tragic sinking in 1912. Faced with claims exceeding $16 million, the vessel owner filed a limitation petition in the United States District Court for the Southern District of New York, seeking to limit its liability to approximately $92,000, representing the value of the fourteen remaining lifeboats and pending freight. Although the owner of the Titanic was not an American company, the United States Supreme Court allowed it to seek the benefit of the Limitation of Liability Act in an American court. The matter eventually settled for $664,000 with the parties agreeing that what caused the sinking of the Titanic was not within the vessel owner's privity or knowledge.

**Duty of Care**

Most states have adopted laws requiring common carriers to exercise a high degree of care toward the passengers they carry. For example, California Civil Code §2100 provides that a common carrier owes its passengers a duty of "utmost care and diligence for safe carriage." However, maritime law has a different rule, which many believe to be counterintuitive. Under maritime law, carriers are required to exercise a high degree of care toward the vessel's crew, but only reasonable care under the circumstances toward the passengers.

In 1959, the United States Supreme Court in Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959) decided the high degree of care toward passengers required by common law standards did not always apply in maritime cases. Instead, the court held a vessel owner owes a duty of exercising "reasonable care under the circumstances of each case." As a result, the courts look at the facts of each case to determine whether liability should be imposed on the vessel owner for a passenger injury.

On the other hand, under maritime law, a vessel owner owes a high degree of care to crewmembers and must provide them with a seaworthy vessel, i.e. one that is reasonably fit for its intended purpose. The higher degree of care is based on the traditional belief that seamen need special protection because they work under difficult and dangerous conditions at sea, and endure long stays away from home.

Two cases arising from collapsed chairs illustrate the different standards. In Adams v. Carnival Corporation, 2009 AMC 2588 (S.D.Fla 2009), the district court granted summary judgment to Carnival on a passenger's claim for personal injuries resulting from the collapse of a deck chair. Adams, who weighted 340 lbs., contended Carnival failed to take reasonable steps to detect defects in the chair and warn him about them. The district court held a reasonable jury could have found the chair defective because it was tested to 400 lbs. but failed to support Adams's

weight of only 340 lbs. Nonetheless, the district court entered summary judgment for Carnival holding there was a lack of evidence Carnival knew of a defect or that a defect existed over a sufficient period of time to allow detection and correction.

In Daigle v. L & L Marine Trans Co., 322 F.Supp.2d 717 (E.D. La. 2004), the captain's chair on a tug collapsed when Daigle, the captain, leaned back on it, causing him to fall and suffer serious injuries. The chair collapsed because of a design defect in connection with the leveling mount and leveling screw used to attach the footpad to the chair's pedestal. The district court held, among other things, Daigle proved his unseaworthiness claim against the vessel owner because when put to its normal and intended use, the captain's chair collapsed resulting in an injury to him. The district court also held Daigle established the vessel owner had either actual or constructive notice of the defect in the chair because the chair had been adjusted after installation on the vessel by a crew member who should have noted the defect and corrected it. The district court also held the vessel owner could not limit its liability to Daigle under the Limitation of Liability Act because it failed to show the defect in the chair was not within its privity and knowledge.

Maritime law is not necessarily what some non-maritime lawyers and judges might expect it to be. However, it would be unfair to call it "quirky". A sound and often historic basis can be found for today's maritime law principles.

*Marilyn Raia is of counsel in the San Francisco office of Bullivant Houser Bailey. She has been certified by the State Bar of California as a specialist in admiralty-maritime law and can be contacted at marilyn.raia@bullivant.com.*