

1851 maritime law complicates litigation from deadly boat fire

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Days after a tragic boat fire killed 34 people near Santa Cruz Island in Ventura County, owners of the ill-fated vessel filed a lawsuit for exoneration from or limitation of liability, as many maritime legal experts predicted would happen, but not this quickly.

Conception, owned by Santa Barbara-based Truth Aquatics, caught fire and sank around 3:30 Monday morning while anchored off Santa Cruz Island. Five crew members on the upper deck were the only survivors. They narrowly escaped by jumping into the ocean and swimming away. Passengers asleep down below died.

Conception had been chartered for a diving trip by Worldwide Diving Adventures.

Truth Aquatics, with Glen Richard Fritzler and Dana Jeanne Fritzler, trustees of the Fritzler family as owners of Conception, filed the lawsuit Thursday seeking exoneration from or limitation of liability under the federal shipowner's Limitation of Liability Act of 1851.

Truth Aquatics is represented by Gordon Rees Scully Mansukhani LLP.

A representative for Truth Aquatics declined to comment on the incident. Russell P. Brown, partner at Gordon Rees and head of the firm's National Maritime Practice Group, could not be reached for comment Thursday.

The lawsuit requests a monition to be advertised, instructing potential claimants the cut-off date by which they must bring claims, and a request for an order restraining any suits from commencing or continuing against Truth Aquatics. It also seeks to contest liability for any alleged losses or damages arising from the event and to be completely exonerated from liability arising from the fire.

Since the vessel had no value at the conclusion of the fire, plaintiffs are not required to post a security deposit in the amount of the owners' interest in the vessel and pending freight, as required by federal maritime law, the lawsuit states.

The case will be heard in the Central District of California no matter where claimants might have wanted to bring lawsuits, according to Martin Davies, admiralty law institute professor of maritime law at Tulane University Law School in New Orleans.

"The only thing that surprises me about this is how quickly it was done," Davies said Thursday.

The lawsuit maintains the fire and alleged damages occurred without the privity or knowledge on the part of Truth Aquatics.

Maritime lawyers offered differing opinions as to how Conceptions' charterers, insurers and owners could use to their advantage the century-old federal statute that limits potential liability in cases arising from maritime casualties, including personal injury. *In the matter of the Complaint of Truth Aquatics, Inc. et al.*, 2:19-CV-07693 (C.D. Cal., filed Sept. 5, 2019)

According to Gordon T. Carey, partner at Anderson Carey Williams & Nedizwski PLLC, Truth Aquatics' latest move to rid itself of liability is a federal advantage designed to protect the company from paying beyond its minimum insurance policy.

The liability limitation law was enacted in 1851 to protect the economics of the shipping business. Every country has adopted some form of the law, according to Davies.

"The limitation liability act is theoretically available for shipowners, but you can't hide behind it if you were the cause of the casualty in some way," said Carey, adding shipowners would have a tough time limiting liability due to the way the Conception was designed.

Insurers will try to limit the value of recovery to the value of the ship, but that's only permitted if they can show the owner wasn't actively at fault, said Carey.

It would be difficult to show they weren't negligent or contributed to a cause, especially given the design and configuration of the boat that somehow hindered escape for passengers below deck, said Carey.

The statute's requirement that the owner prove he wasn't at fault is applied rather broadly, said Carey, adding that even if the owner isn't actively at fault but knew about the design of the ship or its maintenance that would be enough to prove privity.

"Under these circumstances, I think there's almost no chance for the owner to invoke limitation liability," said Carey. "In the future, someone will try and figure out how to recover money from owners, individuals who control the operations and Truth Aquatics."

It's no surprise Truth wasted no time to file its limitation suit, as it gives insurance companies protection, said Carey.

Truth Aquatics' move will now result in the establishment of a fund equal to the amount in which they're entitled to limited liability. Then, Truth Aquatics must give notice to any potential claimant who, in this case, would be the next of kin of those that died, said Davies.

"It's really ugly especially in personal injury cases," he said. "If any next of kin already brought a suit somewhere else in state court, the federal court will stay those proceedings and say everyone must file a claim against that fund."

The court will then inform claimants there is a maximum amount of liability they must claim against that fund.

Davies pointed to the Table Rock Lake duck boat disaster that killed 17 people in July 2018 in Missouri. The vessel owners in that case also filed a liability limitation suit that is currently being challenged on the basis that the event occurred in a lake and not at sea.

"But because this boat fire happened at sea, the federal act does apply, so that's the next step for vessel owners," Davies said.

The shipowner statute has been criticized by federal lawmakers in the past and some bills have been drafted in an attempt to repeal the limitation of liability, said Davies, but it's unlike any policy would change.

"The statute is about protecting cargo and international trade, but it has ugly effects when it involves people's lives," said Davies. "But the only conceivable policy that could change is if Congress decides to remove the application for passengers. It's a possibility someone could introduce a bill repealing the portion about passengers for limited liability."

Carey agreed lawmakers could limit the liability act to loss of cargo.

Questions also remain as to whether federal or state laws would apply in the future civil cases.

Federal laws would apply in potential suits against ship owners because the incident occurred at sea, but things get complex since there are overlapping federal statutory laws that could apply, especially if passengers sue vessels themselves.

"Although this was really close to shore, it's on navigable waters. The island was part of the state of California so it's going to be federal law that governs the civil aspects of any lawsuit that arises," said Davies.

The claims likely fall in the admiralty jurisdiction meaning actions could be taken in federal court, said Daryl G. Parker of Pachulski Stang Ziehl & Jones.

"Then again, state courts are better for personal injury cases than federal, and plaintiff lawyers would probably prefer to file in state court," said Parker. Parker said he doubted the vessel owners could claim limited liability because the event happened in U.S. territory, not on the high seas, which is subject to federal regulations.

It's also unclear whether there will be potential criminal charges, as there is a requirement for crew members to exercise the minimum duty to take reasonable care of passengers and the vessel, said Davies.

"The roles of the ship crew and captain are quite simple. In vague terms, their obligations is to take reasonable care in all circumstances," said Davies. "So it depends on how fast the fire started, how fast it spread and whether they could've been expected to have done anything."

While it looks bad that the crew members jumped into the water and swam away, it might have been the best thing they could do in those circumstances, especially because they sought help immediately.

While there is an old adage that maintains a captain must go down with his ship, "there is no actual law that requires him to do so," he added.

"I knew there was bound to be lawsuits due to the magnitude of this event and the death toll, but we still don't know if any crime occurred," said Davies. "There'll be tens of millions of dollars in liability unless [insurers] limit liability, which they will."

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