

# The Newsletter<sup>®</sup>

A newsletter by the Law Offices of J. Michael Hayes devoted to relevant issues of negligence and insurance law.  
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BOATING ACCIDENTS

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## LIMITATION OF LIABILITY

Often, claims for personal injuries while on a boat may be limited to the "value of the vessel" after the accident. 46 U.S.C. 188. This is a Federal law that pre-empts State law. The limitation of liability is available to **owners** of "all seagoing vessels, and also to vessels used on lakes and rivers or in inland navigation." It is clear that the statute includes pleasure boats within its considerations.

## HISTORY

The history of this archaic rule is believed to have been first applied in 454 AD. It is known to have been used in Italy in the 11<sup>th</sup> Century. It was codified in England in 1734. The United States Congress in 1851 passed the Limitation of Liability Act.

The United States Supreme Court in 1872 concluded that investors did not need the additional risk of facing potential indefinite liabilities beyond their investments. *Norwich & New York Trans. Co. v. Wright*, 80 U.S. (13 Wall.) 104 (1872). The rationale was that since other corporate institutions are allowed to protect investors from personal liability, the shipping industry should have the same benefits.

## THE FEDERAL STATUTE

The substantive portion of the act provides:

"The liability of the *owner* of any vessel, whether American or foreign, for any ...loss, damage, or injury by collision, or for any act, shall not... exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."

46 U.S.C. 183(a)

## OWNER NOTICE REQUIREMENTS

A vessel owner may limit its liability to the extent of its interest in the **post-accident value** of the vessel. In an unusual provision, the owner of the vessel is permitted to file for a limitation of liability within six months of receiving notice in writing of a claim. Notice of the filing must be given to known claimants and be published.

The owner must also either turn the ship over to the court or the equivalent value. This can be accomplished by filing a bond with the Court for the post accident value of the boat. If, after a crash, a boat is valued at only \$5,000, personal injury liability can be limited to that amount.

Interestingly, if the owner has "hull insurance", that insurance that only covers the vessel itself, the owner may recover the full proceeds of that insurance while the claimants are limited to the "recovery" value of the vessel.

The term vessel has a broad meaning. Where two Jet Skiers collided, liability was limited to the value of the Jet Skis - \$7,200. In *Re Royal Caribbean Cruises, Ltd.*, 55 F Supp. 2d 1367 (SD Fla 1999).

## EXCEPTIONS

The important factor in our locality is that **the limitation of liability does not apply to negligence of an operator as opposed to the owner**. Also, if the owner knows of the purported negligence of their employees, such as permitting intoxicated passengers to operate pleasure boat, the limitation of liability might not apply to the owner. In a like manner, an owner and his liability carrier might be held fully accountable where he "negligently entrusted" a dangerous instrument – a boat- to an infant or someone who was not qualified to operate the vessel. *Kelly v Di Cerbo*, 21 AD3d 1082, 811 NYS2d 530(4<sup>th</sup> Dept., 2006)

## CONCLUSION

This is a difficult area of the law that requires special expertise and, even with such, an injured claimant may find himself limited in his recovery prospects.

This newsletter does not offer specific legal advice. It may be considered an ATTORNEY ADVERTISEMENT. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. If you have any questions or would like a specific topic covered in the newsletter, please contact J. Michael Hayes, Esq. at 69 Delaware Avenue, suite 1111, Buffalo, NY 14202, telephone (716) 852-1111 or e-mail [jmh@jmichaelhayes.com](mailto:jmh@jmichaelhayes.com). Newsletter available by e-mail if you so request.