

264 F.Supp.2d 265, 2003 A.M.C. 2227

Motions, Pleadings and Filings

American Maritime Cases

**NORFOLK DREDGING COMPANY**

v.  
M/V

**A. V. KASTNER**

United States District Court, District of Maryland  
February 10, 2003

No. Civ. A. WMN-02-662

**LIMITATION OF SHIPOWNER'S LIABILITY - 113. Persons Qualified to Limit.**

Unless petitioner can allege further facts as to the responsibilities, its bare description of itself as "technical manager" of a vessel is insufficient to enable it to seek limitation of liability as a shipowner.

***Norfolk Dredging Co. v. M/V A.V. Kastner***

Reported also at 264 F.Supp.2d 265

David W. Skeen (Wright, Constable and Skeen) and David H. Sump (Crenshaw, Ware & Martin)

*for Norfolk Dredging*

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*for Cober*

J. Stephen Simms and W. Charles Bailey, Jr. (Greber, Simms & Showers), John T. Ward (Ward Kershaw) and Patrick M. Brogan and R. Arthur Jett, Jr. (Davey & Brogan)

*for Buchanan Marine and the Buchanan Trust*

Robert M. Schwartzman (Lord & Whip), C. Arthur Rutter, III and Deborah C. Waters (Rutter, Walsh, Mills & Rutter, LLP) and A. Davis Bugg, Jr. (Rumsey & Bugg)

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*for Slaton*

Thomas B. Shuttleworth and Lisa P. O'Donnell (Shuttleworth, Ruloff, Giordano & Swain, P.C.), Johnnie L. Cochran and J. Farrest Taylor (Cochran, Cherry, Givens & Smith) and Peter Ayers Wimbrow, III

*for the Estate of Justin Bryant*

Paul D. Bekman (Israelson, Salsbury, Clements & Bekman) and Ralph Rabinowitz (Rabinowitz, Swartz, Taliaferro, Lewis, Swartz & Goodove, P.C.)

for *Wallace and Link*

Robert M. Schwartzman (Lord & Whip), C. Arthur Rutter, III and Deborah C. Waters (Rutter, Walsh, Mills & Rutter, LLP), **John Hughes Cooper** and Cain Denny

for *McConnell*

Robert M. Schwartzman (Lord & Whip), C. Arthur Rutter, III and Deborah C. Waters (Rutter, Walsh, Mills & Rutter, LLP) and Peter G. Decker, Jr. (Decker, Cardon, Thomas, Neskis)

for the *Estate of William Bryant*

William M. Nickerson, Senior D.J.:

Before the Court is Plaintiff Norfolk Dredging Company's Motion to Dismiss Beltship Management, Ltd. as a Limitation Plaintiff. The motion has been fully briefed and is ripe for decision. Upon review of the pleadings and applicable case law, the Court determines that no hearing is necessary (Local Rule 105.6), and that Plaintiff's motion will be granted.

This action arises out of a collision which occurred on the Elk River on February 25, 2002. On that day, the Motor Vessel *A.V. Kastner*, (*Kastner*) was proceeding westbound on the Elk River. Defendant Gypsum Transportation, Limited (Gypsum) is the registered owner of the *Kastner*. Defendant Beltship Management, Limited (Beltship) is the technical manager of the *Kastner*. At or about that same time, a convoy of vessels and floating equipment, including the Tug *Buchanan 14*, the Tug *Swift*, and the Barge *RC-811*, along with other vessels and equipment, was proceeding eastbound on the river. Although the two groups were aware of each other's presence, a collision occurred. The *Kastner* struck or was struck by one or more of the vessels in the convoy. As a result of this collision, the Tug *Swift* and the Barge *RC-811* sank; the *Kastner* suffered significant property damage; other vessels in the convoy suffered property damage; and persons on board one or more of the vessels died or were injured.

Norfolk Dredging Company, owner of the Tug *Swift*, the Barge *RC-811*, and other vessels in the convoy, sued Gypsum in this Court. Buchanan Marine, L.P. and the Buchanan Trust, Owners, and Charterer of the Tug *Buchanan 14* have also filed suit against Gypsum in this Court. Four members of the crew of the Tug *Swift* lost their lives, and claims have AMC 2228

been brought against Gypsum on behalf of those crew members' estates. Other persons aboard the vessels in the convoy sustained personal injuries as a result of the collision and have sued Gypsum for those injuries.

The Limitation of Liability Act of 1851, 46 U.S.C. app. 183-189, allows the owner of a vessel to limit its liability for a marine casualty to the amount or value of the interest such owner possesses in the vessel and freight then pending. Actual owners or owners *pro hac vice* can invoke the benefits of the Act. Limitation actions have been filed by: Norfolk Dredging, Buchanan Marine, L.P. and A.P. Franz, Trustee of the Buchanan Trust (the Buchanan interests); Gypsum Transportation Limited; and in the Amended Limitation Complaint, Beltship Management Limited. Gypsum and Beltship have filed claims against Norfolk Dredging and against the Buchanan interests in their respective limitation proceedings. Plaintiff Norfolk Dredging now moves to dismiss Beltship as a petitioner in limitation, arguing that Beltship does not qualify as an owner *pro hac vice* of the *Kastner*.

To invoke the benefits of the Limitation of Liability Act of 1851, an entity must be either an actual owner or owner *pro hac vice* of the vessel at issue, in this case the *Kastner*. *In Re: Complaint of Chesapeake Shipping, Inc. and Gleneagle Ship Management Co., Inc.*, 1993 AMC 691, 694 - 5, 803 F.Supp. 872, 874 (S.D.N.Y. 1992) (citing *In Re: Petition of the United States*, 1959 AMC 982, 985 - 6, 259 F.2d 608, 610 (3 Cir. 1958)). One seeking to invoke the limitation of liability statute bears the burden of pleading facts establishing entitlement to do so. *E.I. Du Pont de Nemours v. Bentley*, 1927 AMC 468, 470, 18 F.2d 782, 783 (1926). Cases which have found managing agents to be entitled to owner *pro hac vice* status have done so where the management company has responsibilities including:

Manning the vessels; victualing the vessels, providing for navigation, which involved procuring and providing deck, engine and cabin stores; maintenance and repairs for hull and machinery; providing spare parts, maintenance and repairs for communication and navigation equipment., and communicating with [the owner] and the vessels' time charterers.

*Chesapeake Shipping*, 1993 AMC at 694, 803 F.Supp. at 873-74. Additionally, courts look to the degree of autonomy from the actual owners the managers exercise. *Birmingham Southeast LLC, et al. v. M/V Merchant Patriot, etc., et al.*, 2000 AMC 1015, 124 F.Supp.2d 1327 (S.D. Ga. 2000).

In the instant action, Beltship's status is described only as that of the "technical manager" for the vessel. The Amended Complaint does not AMC 2229

contain any other details about Beltship's responsibilities or duties with respect to Gypsum, the owner. The Court concludes that because Beltship's only allegation is that it is the technical manager of the *Kastner*, the Complaint does not sufficiently allege circumstances entitling Beltship to the standing of owner of the *Kastner* for limitation of liability purposes. The Complaint "falls short of alleging that variety of responsibilities sufficient to confer upon [Beltship]. [a] limitation of liability." *McHugh v. Gleneagle Ship Management Co., Inc.*, 1992 AMC 769, 775, 778 F.Supp. 153, 157 (S.D.N.Y. 1991). But the Court also concludes that the pleading does not exclude the possibility that an agreement existed between Gypsum and Beltship pursuant to which Beltship exercised enough authority to be considered owner *pro hac vice*. As such, the Court will grant Norfolk's motion to dismiss Beltship as a limitation plaintiff but will allow Beltship leave to file amended pleadings setting forth, if it can do so consistent with Fed. R. Civ. P. 11, circumstances sufficient to bring it within 46 U.S.C. app. 183, 1992 AMC at 776, 778 F.Supp. at 158. Beltship may file and serve such amended pleadings within thirty days of the date of this Memorandum and Order.

A separate order consistent with this memorandum will issue.





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D.Md., 2003

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