



## If in Doubt, File the Complaint for Limitation of Liability

By [James D. Bercau](#) on February 23rd, 2012

One of the recurring issues in handling maritime wrongful death and personal injury claims is determining what information is sufficient to start the vessel owner's six-month deadline to file a complaint seeking exoneration or limitation of liability under the Shipowners' Limitation of Liability Act, 46 U.S.C. § 30501 et seq. from that claim. It is clear that a written demand for payment/settlement before suit is filed which exceeds the value of the vessel will start the running of the six-month period. Additionally, when the petition alleges recovery of damages in excess of the value of the vessel, the vessel owner's receipt of that petition will start the clock. However, it is less certain when the written notice of the claim is via service of a state court petition in which the plaintiff has not alleged a specific damages amount, as is generally the case in Louisiana and Texas state courts, but thereafter makes an initial settlement demand that exceeds the vessel's value.

The U.S. Fifth Circuit, in [In re Eckstein Marine Service L.L.C.](#), No. 10 – 20600 (Feb. 22, 2012), recently examined this issue. Jackson, a Jones Act seaman employed by Eckstein, filed suit in Texas state court. Eight months after it was served with Jackson's state court suit, Eckstein filed a limitation proceeding in Texas federal court. The Fifth Circuit affirmed the federal court's judgment dismissing Eckstein's limitation proceeding for lack of subject matter jurisdiction, concluding that the limitation proceeding had been filed too late. Although Jackson's state court petition was silent on the quantum of damages, the Fifth Circuit concluded that pleading revealed a reasonable possibility that Jackson's claim would exceed the value of Eckstein's vessel, and therefore the clock started running for Eckstein to file a limitation suit upon its receipt of service of the state court petition.

Jackson's state court petition had alleged that on February 28, 2009, Jackson had sustained serious and debilitating injuries on Eckstein's M/V ST. ANDREW when his left leg became entangled in a line and was thereafter pulled into a mooring bit, causing him to suffer serious and debilitating injuries of a permanent nature. The petition also alleged the standard laundry list of damages categories: past loss of earnings, future loss of earnings capacity, past and future disability, past and future disfigurement, past and future medical and hospital expenses, past and future pain and mental anguish and maintenance and cure. Moreover, as part of Eckstein's cure obligation, it monitored Jackson's medical treatment, which revealed multiple surgeries during Jackson's initial two-week hospitalization to insert hardware to treat his bone fractures, as well as to perform debridement and skin graft procedures. Based on the foregoing information, the Fifth Circuit concluded that the service of Jackson's petition on April 28, 2009 started the six-month period for Eckstein to file its limitation complaint.



Eckstein, who filed the limitation complaint on January 18, 2010, argued that the six-month period should have started on December 2, 2009, when Jackson made his initial settlement demand for \$3 million. Under that theory, Eckstein's limitation complaint clearly would have been timely.

The Fifth Circuit affirmed the federal district court, concluding that service of the Texas state court complaint on April 28, 2009, coupled with Eckstein's knowledge of Jackson's initial two – week medical treatment, raised a "reasonable possibility" that Jackson's damages would exceed the value of the M/V ST. ANDREW. As the Fifth Circuit explained:

Once a reasonable possibility has been raised, it becomes the vessel owner's responsibility to initiate a prompt investigation and determine whether to file a limitation action. The Limitation Act provides generous statutory protections to the vessel owners who reap all of its benefits. When there is uncertainty as to whether a claim will exceed the vessel's value, the reasonable possibility standard places the risk and the burdens associated with that risk on the owner. In other words, if doubt exists as to the total amount of the claims or as to whether they will exceed the value of the ship the owner will not be excused from satisfying the statutory time bar since he may institute a limitation proceeding even when the total amount claimed is uncertain.

Id. at p. 9. Accordingly, the Fifth Circuit concluded Eckstein's limitation complaint should have been filed by October 28, 2009 and not on January 18, 2010.

Vessel owners – as the title suggests, when in doubt, file the limitation complaint.

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