

### **Alter Barge Line v. Consolidated Grain & Barge 272 F.3d 396 (7th Cir. 2001) (Decided Nov. 9, 2001)**

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## LEAVE TO FILE LATE CLAIM IN A LIMITATION OF LIABILITY PROCEEDING

**In an ongoing admiralty proceeding to limit a shipowner's liability, leave to file late claims will be freely granted when there will be no prejudice to the rights of other parties and the claimant can offer some explanation for his delay in filing. The claimant, Andy Pherigo suffered severe injuries while unloading cargo from one of Alter's barges. In a limitation proceeding before the United States District Court for the Southern District of Illinois, Alter attempted to invoke its' statutory right to limit liability under the Vessel Owner's Liability Act, 46 U.S.C. §§ 181-96, as well as Rule F of the Supplemental Rules Governing Certain Admiralty and Maritime Claims.**

*Alter Barge Line v. Consolidated Grain & Barge*

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In the limitation proceeding, the district court set a deadline for filing, which Pherigo missed. The district court denied permission to file a late claim, and on June 14, 2000 the court entered an order defaulting all unfiled claims.

Pherigo moved to set aside the default order and for a ruling on his motion for leave to file a late claim. The district court again denied both motions on the grounds that Pherigo failed to show "good cause" for his delay in filing.

Pherigo appealed the ruling, and on appeal, the Circuit Court for the 7<sup>th</sup> Circuit first noted that late claimants need not show good cause as the district court had required. *In re M.V. President Kennedy, Ltd.* No. 98 Civ. 8126 CSH, 2000 WL, at \*2 (S.D.N.Y. 2000). Rather, the circuit court held that claimants seeking leave to file late claims need only show "minimal cause," which it describes as an "explanation rather than a justification." *In re M.V. President Kennedy, Ltd.*, 2000 WL 351425, \*at 3 (claimant delayed in retaining counsel); *In re Vermillion Towing Corp.*, 227 F.Supp. 933, 934 (E.D.Va. 1964) (attorney unfamiliar with admiralty law); *Heier v. Panama Transp. Co. (In re United States)*, 172 F.2d 355 (2d Cir.1949) (foreign claimants "uninformed" about U.S. law). The court then indicated that Pherigo's explanation of attorney

error met “a minimal cause requirement.” *Alter Barge Line v. Consolidated Grain & Barge* 272 F.3d at 397 (7th Cir. 2001).

Once such cause has been shown, courts must “freely grant” permission to file late claims so long as prejudice to other parties will not result and the limitation proceeding is ongoing. *Amer. Comm. Lines, Inc. v. United States*, 746 F.2d 1351, 1353 (8th Cir.1984). The court held that these conditions were satisfied in the case of Pherigo. The court traced its power to allow a late filing when such conditions are met to the equitable nature of admiralty proceedings, in which “parties are to be given every opportunity to place their entire case before the court and to correct errors at any stage of the proceedings.” *Deupree v. Levinson*, 186 F.2d 297, 303 (6th Cir.1950). These powers extend even to the appellate level “so as to achieve substantial justice.” *Texas Gulf Sulphur Co. v. Blue Stack Towing Co.*, 313 F.2d 359 (5th Cir. 1963). Accordingly, the defaulting of unfiled claims was vacated and the case was remanded to the district court with directions that the court allow Pherigo to file his claims.

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