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Riverway Harbor Service, St. Louis Inc. v. Bridge & Crane Inspection Inc. 263 F.3d 786 (C.A. 8 Mo. 2001)

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**THE TYPE OF STIPULATION REQUIRED TO PERMIT THE MODIFICATION OF A
RESTRAINING ORDER IN A LIMITATION OF LIABILITY PROCEEDING**

Due to a crane malfunction, claimant, Fredrick Webber, was struck and knocked into the water at Riverway Harbor Services, Inc. (“Riverway”) on May 19,1999. Subsequently, Riverway filed a complaint in Federal Court based upon 28 USC §1333(1), in which it sought to exonerate or limit its liability pursuant to the Limitation of Liability Act, 46 U.S.C. app. §183. In its decision, the District Court enjoined claimants from bringing any actions against Riverway outside of the limitation action.

Riverway Harbor Service, St. Louis Inc.

v. Bridge & Crane Inspection Inc.

263 F.3d 786 (C.A. 8 Mo. 2001)

Webber, along with another claimant, Cargo Carriers, filed claims in the district court as required. Webber also filed a complaint in the State court seeking damages for his injuries under the Jones Act. He then moved to dissolve the injunction in the limitation proceeding on August 30, 1999, stipulating that: 1) he would reserve the issue of limitation of liability to the district court; 2) he would waive “any claim respecting any res judicata effect on limitation of liability issues as might arise in the event the entry of judgment in the State court case”; 3) until the district court decided the limitation of liability issue, he would not enforce any judgment obtained from the State court; and 4) Cargo Carriers’ \$15,000 claim would have priority over his claim. 263 F.3d 786 at 789.

The district court denied the motion and held the stipulation inadequate because: 1) it did not concede as sufficient Riverways stipulated value of the vessels which Riverway stipulated, and 2) Webber failed to clearly state that he would not enforce any State court judgment in excess of the limitation fund. 263 F.3d 786 at 790.

Webber then filed an amended motion with a supplemental stipulation conforming to the district court’s order, but the motion was denied once again on December 29, 1999. The courts reasoning was that the injunction would not be dissolved unless Webber: 1) stipulated that he would waive all his res judicata rights, and 2) affirmatively acknowledged that the state courts

judgment would be valid unless a subsequent Limitation Act proceeding exonerated Riverway. 263 F.3d 786 at 790. The court further ordered that unless the order was complied with within 10 days, it would schedule a Rule 16 conference, and set a date for a jury trial of all issues in the federal district court.

Instead of complying with the order, Webber filed an appeal with the US Court of Appeals for the Eight Circuit on January 10, 2000. The appeal was postponed until the United States Supreme Court ruled on a similar case in *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438 (2001). Once the Supreme Court made a ruling on *Lewis*, the Court of Appeals reviewed Webber's case basing it on admiralty jurisdiction for abuse of discretion.

Webber argued that under the Saving to Suitors Clause, 28 USC §1333(1), he was entitled to a state court jury trial pursuant to the Jones Act, 46 USC App. §688(a). Webber went on to say that once he protected Riverway's Federal Limitation Action interest through his stipulations, the district court should have abstained from exercising jurisdiction. Riverway, on the other hand, relied on the Court of Appeal's decision in *Lewis* which would require Webber to make additional stipulations before being allowed to pursue a State court remedy.

Citing Fed.R.Civ.P. Supplemental Admiralty & Maritime Claims Rule F(3), the Court of Appeals said that the district court's decision to issue the injunction was proper. It went on to say that 28 USC §1331(1) grants exclusive federal jurisdiction over Limitation Act suits, but, it also "saves to suitors in all cases all other remedies to which they are entitled". The end result is a jurisdictional conflict where shipowners seek federal jurisdiction so that they may avoid a jury trial, while claimants seek "other remedies" like state court jury trials.

In situations of this type, federal courts normally allow claimants to use the "single-claimant exception". Claimants must stipulate that shipowner's limitation of liability claim will be determined in federal courts. In turn, claimant is allowed to have a state court jury trial determine shipowner's liability.

In the case at hand, by stipulating that Cargo Carriers' \$15,000 claim would take priority over his own, Webber was entitled to the aforementioned exception. The Court of Appeals, citing the decision of the Supreme Court in *Lewis*, held that since the federal courts do not have exclusive jurisdiction in cases other than limitation of liability, and, since Webber properly

executed the single-claimant exception to the Limitation Act, the district court should have dissolved the injunction against state court proceedings.

The Court of Appeals for the Eighth Circuit accordingly reversed the district court's order which was contrary to the subsequent Supreme Court's holding in *Lewis*. It also remanded the case to the district court to dissolve the injunction, and to permit further proceedings consistent with its opinion.

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WHOLLY MARITIME APPEALS TAKEN FROM AN ARMED SERVICES BOARD OF CONTRACT APPEALS

A shipping firm that had contracted with the Naval Military Sealift Command (MSC) to transport Army equipment "port-to-port" appealed after the Armed Services Board of Contract Appeals (ASBCA) denied its claim for liquidated damages. The Federal Circuit Court of Appeals for the District of Columbia dismissed and transferred the case to the Federal District Court for the District of Columbia, holding that the contract in question was wholly maritime and therefore within its admiralty jurisdiction.

Marine Logistics, Inc. v. England

265 F.3d 1322 (Fed. Cir. 2001)

(Decided September 12, 2001)

The Naval Military Sealift Command (MSC) contracted with the shipper Marine Logistics to transport cargo from Galveston Texas to Almirante, Panama. The contract provided that the U.S. Government would be responsible for all costs of loading the cargo on the vessels, while Marine Logistics would be responsible for all costs of discharging the cargo at destination. The contract also contained a liquidated damages clause, providing for detention fees of \$9650 per day, or part thereof, if the government caused unreasonable delay of a vessel.

Marine Logistics' barges arrived at Almirante on January 1 and 2, 1996. However, the government was not able to accept the cargo until January 7, and discharge of all barges was