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Continuing Conflict between United States and English Admiralty Law on Limitation of Liability: Whose Privity Binds the Corporate Shipowner

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Continuing Conflict between United States and English Admiralty Law on Limitation of Liability: Whose Privity Binds the Corporate Shipowner

Richard J. Violino

Abstract

Part I of this Note examines the difference in respective emphasis placed by United States and English admiralty law upon responsibility of a corporate employee and the employee's position in the corporate hierarchy in determining the employer's right to limit liability. Part II analyzes the extent to which shipowners in England and the United States are allowed to delegate their responsibilities in ensuring the seaworthiness of their vessels. Part III of this Note argues that under English admiralty law, limitation of liability is granted where none is warranted. This Note concludes by recommending the United States standard for finding privity.

THE CONTINUING CONFLICT BETWEEN UNITED STATES AND ENGLISH ADMIRALTY LAW ON LIMITATION OF LIABILITY: WHOSE PRIVILEGE BINDS THE CORPORATE SHIPOWNER?

INTRODUCTION

Under both United States and English admiralty law, a shipowner remains liable under the doctrine of respondeat superior for the negligent acts of his employees that occur during the scope of their employment. If the casualty occurred without his privity or knowledge, however, the shipowner will not be fully liable for damages.¹ Since the advent of the corpora-

1. In the United States, a shipowner's ability to limit his liability is controlled by the Limitation Act of 1851, 9 Stat. 635 (codified at 46 U.S.C. §§ 181-189 (1982)) [hereinafter Limitation Act]. Section 183(a) of the Limitation Act states in relevant part:

The liability of the owner of any vessel . . . for any loss, damage, or injury by collision . . . occasioned . . . without the privity . . . of the owner . . . shall not . . . exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

Id.

While under United States law a shipowner's liability is limited to the value of his vessel after the casualty, in England a shipowner's liability is determined by the size of his vessel. Section 503 of the Merchant Shipping Act, 1894, 57 & 58 Vict., Ch. 60, 339, 519 provides as follows:

- (1) The owners of a ship, British or foreign, shall not, where . . . all or any [loss] . . . take[s] place without their actual fault or privity; . . . be liable to damages beyond the following amounts; . . .
 - (ii) an aggregate amount not exceeding eight pounds for each ton of their ship's tonnage.

The Merchant Shipping Act 1894 was amended by the Merchant Shipping (Liability of Shipowners and Others) Act, 1958, 6 & 7 Eliz. 2 Ch. 62 [hereinafter Merchant Shipping Act 1958]. While the "fault or privity" clause remains the same, section 71.1(1) of the 1958 Act changed the basis of calculation from the pound sterling to the gold franc.

The 1976 Intergovernmental Maritime Consultative Organization (IMCO) Convention on Limitation of Liability provides that a shipowner will not be entitled to limit his liability only if he intentionally or recklessly causes the casualty. See 6 A. JENNER, B. CHASE, J. LOO, *BENEDICT ON ADMIRALTY* 5-32.1-5-44.1 (M.M. Coen 7th ed. 1986) [hereinafter 6 *BENEDICT ON ADMIRALTY*]. The Merchant Shipping Act, 1979, Eliz. Ch. 39 was based upon the 1976 Convention, however, the 1979 Act has no statutory effect until it is ratified by the required minimum number of twelve states. C. HILL, *MARITIME LAW* 265 (1981). The Convention has been ratified by the required minimum number of nations, and came into force December 1, 1986. 6 *BENEDICT ON ADMIRALTY* § 5-44.1. The arguments presented in this note are still applicable, as the courts would be required to decide whose intent or recklessness will be imputed to the corporation.

tion as a vehicle for facilitating maritime affairs, the courts in England and the United States have applied various standards in ascertaining when a corporation is in privity with its employees' negligence in order to determine liability of the corporation.² Given that corporations operate through individuals, the privity or knowledge of individuals at a certain level of responsibility must be deemed the privity or knowledge of the corporation; otherwise, the corporation would always enjoy limited liability.³ It is the different interpretations of what constitutes privity and, thus, how liability will be determined, that has created a conflict between English and United States admiralty law. This disparity can result in significantly different awards to claimants. Where a choice of law issue exists it will be in the best interests of claimants to avoid application of English limitation law.⁴

Part I of this Note examines the difference in respective emphasis placed by United States and English admiralty law upon responsibility of a corporate employee and the employee's position in the corporate hierarchy in determining the employer's right to limit liability. Part II analyzes the extent to which shipowners in England and the United States are allowed to delegate their responsibilities in ensuring the seaworthiness of their vessels. Part III of this Note argues that under English admiralty law, limitation of liability is granted where none is warranted. This Note concludes by recommending the United States standard for finding privity.

2. See, e.g., *Spencer Kellogg & Sons, Inc. v. Hicks (The Linseed King)*, 285 U.S. 502 (1932); *Continental Oil v. Bonanza Corp.*, 706 F.2d 1365 (5th Cir. 1982); *Lenard's Carrying Co., Ltd. v. Asiatic Petroleum Co., Ltd.* 1915 A.C. 705 (H.L.); *Grand Champion Tankers Ltd. v. Norpipe A/S*, [1984] 2 W.L.R. 942 (H.L.), *The Marion*, [1983] 2 Lloyd's Rep. 156 (C.A.), [1982] 2 Lloyd's Rep. 52 (Q.B. Adm. Ct.).

The doctrine of limitation of liability for shipowners has in recent years been attacked by some members of the legal community as being unnecessary since it is no longer needed to encourage investment in maritime ventures because of the corporate form and insurance to insulate investors. It does not appear likely, however, that the legislative bodies of England and the United States will in the near future eliminate this protection given shipowners. See *infra* note 106 and accompanying text.

3. See *Coryell v. Phipps (The Seminole)*, 317 U.S. 406, 407-08 (1943).

4. It is problematic whether United States courts would hold that English limitation law is substantive or procedural. See *Oceanic Steam Nav. Co. v. Mellor (The Titanic)* 233 U.S. 718 (1914); see also *Black Diamond v. Stewart & Sons (The Norwalk Victory)* 336 U.S. 386 (1949); *Petition of Chadade S.S. Co., Inc. (The Yarmouth Castle)*, 1967 A.M.C. 1843; G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* § 10-4 (2d ed. 1975).

I. *TITLE VERSUS RESPONSIBILITY*

Both United States⁵ and English⁶ courts have used the term "alter ego" to describe the person whose privity will be imputed to the corporation. How that term is defined by the respective courts, however, greatly differs. Under English law the emphasis is placed upon a mechanical and formalistic identification of the employee's position in the corporate hierarchy; thus the title of the corporate employee is very important. In the United States, by contrast, the emphasis is placed upon effective control of the corporation's vessel at the time of the casualty.

A. *The Corporate Alter Ego*

1. The United States Standard.

In the United States the responsibility of an employee, not his title, determines whether limitation will be denied.⁷ The term managing officer⁸ is used to describe someone who has the requisite authority to bind the corporation. A managing officer is "not necessarily one of the executive officers, but is any one to whom the corporation has committed the general management or general superintendence of the whole or a particular part of its business."⁹ Privity or knowledge will be attributed to the corporation by the act of a managing officer "whose scope of authority includes supervision over the phase of the business out of which the loss or injury occurred."¹⁰ Thus, employees with discretionary powers, as distinguished from employees without managerial powers, bind a corporation by their privity or knowledge.¹¹ This standard is in direct

5. *The Silverpalm*, 94 F.2d 776 (9th Cir. 1937), *cert. denied*, 304 U.S. 576 (1938).

6. *See, e.g.*, *Northern Fishing Co. (Hull), Ltd. v. Eddam and Others*, (*The Norman*), [1960] 1 Lloyd's Rep. 1 (H.L.); *The Lady Gwendolen*, [1965] 1 Lloyd's Rep. 335 (C.A.).

7. *See In re P. Sanford Ross, Inc.* 204 F. 248, 251 (2d Cir. 1913). "[T]he . . . test is not as to their being [corporate] officers in a strict sense but as to the largeness of their authority." *Id.*

8. *See Craig v. Continental Ins. Co.*, 141 U.S. 638, 646 (1891); *Moore-McCormack Lines, Inc. v. Armco Steel Corp. (The Mormackite)*, 272 F.2d 873, 876 (2d Cir. 1959), *cert. denied*, 362 U.S. 990 (1960).

9. *The Erie Lighter* 108, 250 F. 490, 494 (D.N.J. 1918).

10. *Coryell v. Phipps (The Seminole)*, 317 U.S. 406, 410.

11. *See* 3 A. JENNER, B. CHASE, M. CHYNSKY & J.G. GRIEDER, *BENEDICT ON ADMIRALTY* 5-14 (7th ed. 1985) [hereinafter 3 *BENEDICT ON ADMIRALTY*].

contrast to that applied by the English courts.

2. The English Standard.

While the English courts have also used the term "alter ego" to describe an individual whose privity will be imputed to the corporation,¹² the English courts define that person more narrowly. In order for an individual to be the corporation's alter ego, that person must be a director of the corporation, or have powers coordinate with the board of directors as granted by the corporation's articles of association,¹³ relying on *Lennard's Carrying Co., Ltd. v. Asiatic Petroleum Co.*:¹⁴

[A corporation's] active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation . . .

It must be . . . that the fault or privity is the fault or privity of somebody who is not merely a servant or agent for whom the company is liable upon the footing respondeat superior, but somebody for whom the company is liable because his action is the very action of the company itself.¹⁵

Thus, such person is the "very ego and centre of the personality of the corporation" as follows:¹⁶

That person may be under the direction of the shareholders in general meeting, that person may be the board of directors itself, or it may be . . . that person has authority co-ordinate with the board of directors given to him under the articles of association, and is appointed by the general meeting of the company, and can only be removed by the general meeting of the company.¹⁷

Thus, for fault of the corporation there must be fault of a member of the board of directors, unless there is some other

12. *See, e.g.*, *Northern Fishing Co. (Hull), Ltd. v. Eddam & Others*, (*The Norman*), [1960] 1 Lloyd's Rep. 1, 10 (H.L.); *The Lady Gwendolen*, [1965] 1 Lloyd's Rep. 335, 336 (C.A.).

13. *See, e.g.*, *The Marion*, [1982] 2 Lloyd's Rep. 52, 71 (Q.B. Adm. Ct.); *The Garden City 2* [1982] 2 Lloyd's Rep. 382, 398 (Q.B. Adm. Ct.).

14. *Lennard's Carrying Co., Ltd. v. Asiatic Petroleum Co., Ltd.*, 1915 A.C. 705.

15. *Id.* at 713-14.

16. *Id.* at 713.

17. *Id.*

person who was appointed by general meeting¹⁸ of the company¹⁹ and who has authority, coordinate with that of the board of directors, granted to him by the corporation's articles of association.²⁰ In contrast to the United States law,²¹ English admiralty law regards a marine superintendent's²² knowledge or fault insufficient to charge the corporation with fault or privity.²³

B. *Effective Control: The Power to Exercise Authority.*

In the United States the leading case of *Spencer Kellogg & Sons v. Hicks (The Linseed King)*²⁴ sets standards for ascertaining when the privity or knowledge of a managing officer will be imputed to the corporation. Thus the managing officer must have authority over the phase of the business out of which the casualty occurred, and ability to exercise that authority.²⁵ That is, he must have effective control over that phase of the ship-owner's business.

In *The Linseed King*, a corporation operated a launch across the Hudson River between Manhattan and its New Jersey plant

18. The articles of association contain the internal regulations of the company and govern its administration, as well as the relations between the corporation and its shareholders, and among the shareholders themselves. S. SHAW & D. SMITH, *THE LAW OF MEETINGS: THEIR CONDUCT AND PROCEDURE* 67 (5th ed. 1979). Upon a company's incorporation, the articles of association must be registered with the Registrar of Companies for England and Wales. *Id.*

19. *The Marion*, [1982] 2 Lloyd's Rep. 52, 71 (Q.B. Adm. Ct.).

20. S. SHAW & D. SMITH, *supra*, note 18, at 130.

The expression 'general meeting' . . . [is] employed to describe any meeting which all those members [shareholders] of a company who have a right to vote are entitled to attend. It is thus opposed to a 'class meeting' to which only the holders of a certain class or classes of shares are summoned.

Id.

21. *See Sanbern v. Wright & Cobb Lighterage Co.*, 171 F. 449 (S.D.N.Y. 1909), *aff'd*, 179 F. 1021 (2d. Cir. 1910); *infra* notes 49-53 and accompanying text.

22. Under United States law, a marine superintendent would be considered a managing officer because he has discretionary powers. *See, e.g.*, *Northern Petroleum Tank S.S. Co. v. City of New York (The Dongan Hills)*, 282 F.2d 120 (2d. Cir. 1960); *Sanbern v. Wright & Cobb Lighterage Co.*, 171 F. 449 (S.D.N.Y. 1909), *aff'd*, 179 F. 1021 (2d. Cir. 1910); *Parsons v. Empire Trans. Co.*, 111 F. 202 (9th Cir. 1901), *cert. denied*, 183 U.S. 699 (1901). Hence, his actions or knowledge would be imputed to the corporation.

23. *Smitton v. Orient Nav. Co.*, [1907] 12 Com. Cas. 270.

24. *Spencer Kellogg & Sons v. Hicks (The Linseed King)*, 285 U.S. 502 (1932).

25. *Id.* at 511.

as a ferry for its employees.²⁶ Because the launch was unseaworthy in ice,²⁷ the corporation's headquarters told the plant manager not to operate the vessel when ice was on the river.²⁸ The ferry's master disobeyed the order with the result that the vessel struck ice and sank with great loss of life.²⁹ Although the master had acted in direct contravention of management's instructions, the Court held that the owners were not entitled to limit their liability,³⁰ since the opportunity existed to consult with the master about that day's operating conditions,³¹ in contrast to a ship on the high seas, where the owner must rely on the master's reasonable judgement in obeying orders. If the plant manager had used reasonable diligence the morning of the sinking he would have been aware of the icy condition of the river and been able to prevent the ferry's sailing.³² The Court stated that the negligence that caused the casualty was that of the plant manager in failing to prevent the master from operating the launch that morning,³³ emphasizing that the plant manager had not only the duty and authority to prevent river crossings in icy conditions, but also the power to exercise this authority, because the vessel was never far from his effective control.³⁴ The Court concluded that the scope of the plant manager's authority rendered his privity or knowledge that of the corporation.³⁵ Conversely, the English emphasis is on whether the individual was a director or had powers of a director granted him by the articles of association.³⁶

The United States emphasis on authority and effective control is reflected in a line of cases in which the privity or knowledge of a corporate representative has been attributed to the corporation when the employee had discretionary powers,

26. *Id.* at 506.

27. *Id.* at 510.

28. *Id.*

29. *Id.* at 507.

30. *Id.* at 512.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *See, e.g.,* *The Marion*, [1982] 2 Lloyd's Rep. 52, 71 (Q.B. Adm. Ct.), *The Garden City* [1982] 2 Lloyd's Rep. 382, 398 (Q.B. Adm. Ct.).

such as the power to maintain the vessel, hire crew members, settle claims against the vessel, and enter into contracts for the vessel.³⁷ For example, in *The Marguerite W.*,³⁸ the court denied limitation of liability when the shore captain,³⁹ who supervised the corporation's towing operations, was aware that the crew was negligently towing barges.⁴⁰ In England, however, as the captain was not a director, limitation might be granted as long as the directors were unaware of the negligent practices of the tugboat crews.

No United States court has denied a corporate shipowner limitation of liability for a master's navigational errors at sea when the owner exercised reasonable care in selecting the master.⁴¹ When loss has been due to an error in navigation, however, the shipowner must show that the navigators had the required licenses, and present evidence of justifiable belief that the navigators were competent and knowledgeable of their duties.⁴² The shipowner must have instructed his servants as to their duties⁴³ and ensure that the vessel was properly manned.⁴⁴

37. See, e.g., *Great Atl. & Pac. Tea Co. v. Lloyd Brasilerio*, 159 F.2d 661 (2d Cir. 1947) (traffic manager deputied supervision over condition and repair of vessels in foreign port), *cert. denied*, 331 U.S. 836 (1947); *American Agr. Chem. Co. v. O'Donnell Transp. Co. (The Hugh O'Donnell)*, 62 F. Supp. 239 (S.D.N.Y. 1945) (agent and dispatcher of barge line in charge of company operations in port where the casualty occurred).

38. 49 F. Supp. 929 (E.D. Wis. 1943), *aff'd sub nom. The Marguerite*, 140 F.2d 491 (7th Cir. 1944).

39. 49 F. Supp. at 931. The managing agent in *The Marguerite W.*, was Captain Shaw, who was in charge of the upkeep and operations of the corporation's vessels in Green Bay, Wisconsin. One year prior to the collision he was given the title of treasurer, although he had no authority to sign checks. He was given the title in order that he would be able to board vessels prior to the arrival of customs officers, as customs regulations prohibited that privilege to anyone but a vessel's master or an officer of the corporation. *Id.*

40. *Id.* at 931-32.

41. Cf. *Gertrude Parker, Inc. v. Abrams*, 178 F.2d 259 (1st Cir. 1949); *Harbor Towing Corp. v. Parker (The Ruth Conway)*, 75 F.Supp 514 (D.Md. 1947), *aff'd*, 171 F.2d 416 (4th Cir. 1948), *cert. denied*, 337 U.S. 907 (1949); *Jacobus Grauwiller Co. v. Reichert (The Mattie)*, 136 F.2d 904 (2d Cir. 1943).

42. See, e.g., *Hercules Carriers Lim. Prosc.*, 1983 A.M.C. 2409 (D.Fla. 1983).

43. See *Eastern S.S. Co. v. Great Lakes Dredge & Dock Co.*, 256 F. 497, 503-504 (1st Cir. 1919), *cert. dismissed*, 250 U.S. 676 (1919).

44. See *W.E. Valliant & Co. v. Rayonier, Inc. (The E. Madison Hall)*, 140 F.2d 589 (4th Cir. 1944), *cert. denied*, 322 U.S. 748 (1944).

II. DELEGATION OF THE SHIPOWNER'S RESPONSIBILITY

Shipowners may limit their liability if the owner's managerial employees do not have privity or knowledge⁴⁵ or the shipowner has engaged competent people to inspect and repair the vessel.⁴⁶ Case law, however, indicates that an owner cannot close his eyes to what prudent inspections would disclose.⁴⁷ Denial of limitation for improper delegation involves either a long-standing failure to inspect the vessel adequately or otherwise exercise control over activities in the home port.⁴⁸

In *Sanbern v. Wright & Cobb Lighterage Co.*,⁴⁹ the court found that a lighter sank because it was unseaworthy.⁵⁰ A general superintendent who had been responsible for seeing that the firm's barges were in good condition,⁵¹ performed this duty in a perfunctory manner, stating, "[I]f she wasn't leaking we didn't spend any money."⁵² The barges were allowed to decay until they developed obvious signs of weakness.⁵³ Consequently the court denied limitation.⁵⁴

An English court would probably not deny limitation under these circumstances as the maintenance of the barges had been delegated to a superintendent who was not a director. Even though the barges decayed over a long period of time, as long as the board of directors was unaware that the superintendent was not performing his duties, limitation would be granted.

45. See, e.g., *Waterman S.S. Corp. v. Gay Cottons*, 414 F.2d 724, 731 (9th Cir. 1969); *Moore-McCormack Lines v. Armco Steel Corp. (The Mormackite)*, 272 F.2d 873, 876-77 (2d Cir. 1959); *The South Coast*, 71 F.2d 891, 894 (9th Cir. 1934).

46. See, e.g., *Flat-top Fuel Co. v. Martin*, 85 F.2d 39, 42 (2d Cir. 1936), *cert. denied*, 299 U.S. 585 (1936); *Pockomoke Guano Co. v. Eastern Transp. Co.*, 285 F. 7 (4th Cir. 1922); *In re Webster (The Yungay)*, 58 F.2d 352, 355 (S.D.N.Y. 1931).

47. "If lack of actual knowledge were enough, imbecility, real or assumed, on the part of owners would be at a premium." *The Argent*, 1940 A.M.C. 508, 509 (S.D.N.Y. 1915); see, e.g., *In re P. Sanford Ross, Inc.*, 204 F. 248, 251 (2d Cir. 1913); *In re Myers Excursion & Navigation Co. (The Republic)* 61 F. 109, 112 (2d Cir. 1894).

48. See, e.g., *The New Berne*, 80 F.2d 244 (4th Cir. 1935); *The James Horan*, 78 F.2d 870 (3d Cir. 1934), *cert. denied*, 296 U.S. 621 (1935); *The Republic*, 61 F. 109 (2d Cir. 1894).

49. *Sanbern v. Wright & Cobb Lighterage Co.* 171 F. 449 (S.D.N.Y. 1909), *aff'd*, 179 F. 1021 (2d Cir. 1910).

50. *Id.* at 455.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

United States courts might grant limitation, however, when the vessel involved is an oceangoing ship and the negligent act did not take place at the vessel's home port.⁵⁵ In *The Mormackite*,⁵⁶ the court granted limitation finding that the corporate owner's managing officers had no notice of the improper stowage of ore, which occurred in South American ports in violation of the company's own rules.⁵⁷ Limitation might be granted in England as it is unlikely the board of directors would have had knowledge of the improper stowage if the managers had no knowledge of the violations.

Under United States law, the closer in time and space an operating vessel is to the corporate headquarters, the greater the degree of control the corporate owner will be required to exercise over the master, crew, and subordinate employees.⁵⁸ In other words, the owner's "duty to control increases with the possibility of control."⁵⁹ The English court does not consider the "ability to control" of an employee other than a director in deciding whether to grant limitation.

If the owner knows or should have known that the vessel was unseaworthy prior to breaking ground, however, limitation will be denied in the United States even if the ship is at sea or in a foreign port. In *The Pennsylvania*,⁶⁰ the port engineer who supervised the maintenance and repair of all the owner's ships knew that the vessel's hull was likely to crack in cold weather; nonetheless, he failed to tell the master.⁶¹ During a voyage through Alaskan waters, the vessel broke up and sank with a

55. See, e.g., *Petitions of Kinsman Transit Co. (The MacGilvray Shiras)*, 338 F.2d 708 (2d Cir. 1964) (negligent mooring in Buffalo, New York, of a steamer owned by a Cleveland, Ohio firm); *Moore-McCormack Lines v. Armco Steel Corp. (The Mormackite)*, 272 F.2d 873 (2d Cir. 1959) (negligent loading in foreign port); *American Tobacco v. The Katingo Hadjipatera*, 81 F. Supp. 438 (S.D.N.Y. 1948) (negligent loading in foreign port); *The Colima*, 82 F. 665, (S.D.N.Y. 1897) (negligent loading).

56. *The Mormackite*, 272 F.2d 873 (2d Cir. 1959).

57. *Id.* at 877. The court held: "As was obviously necessary in foreign ports, it was left to those in charge to follow these directions, and if they failed, their failure did not charge the owners with 'privity or knowledge.'" *Id.*

58. *Avera v. Florida Towing Co. (The Eileen Ross)*, 322 F.2d 155, 165 (5th Cir. 1963) (quoting G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* 704 (1st ed. 1947)).

59. *Id.*

60. *States S.S. Co. v. United States (The Pennsylvania)*, 259 F.2d 458 (9th Cir. 1957).

61. *Id.* at 468.

loss of all hands.⁶² Thus, privity or knowledge is deemed to exist when the owner has the means to learn of the unseaworthy condition, or when knowledge could have been obtained from reasonable inspection.⁶³

In sum, privity in the United States is attributed to the corporate shipowner when a managing officer personally participates in the fault causing the casualty, or has knowledge or the ability to know of the condition that led to the loss.

B. *English Law*

In the English case *The Anonity*,⁶⁴ the negligence of an employee, who left a galley stove burning while the vessel was alongside an oil jetty, caused the destruction of the jetty by fire.⁶⁵ The shipowner sought to limit liability, contending that the fire and damage occurred without his fault or privity, because a letter giving instructions regarding the extinction of galley fires upon arrival at oil jetties had been sent by the marine superintendent of the shipowner to all ships in the fleet, including *Anonity*.⁶⁶ Under the terms of the letter, the matter was left in the hands of each vessel's master.⁶⁷

The court denied limitation in that case, holding that the damage occurred because the shipowner failed to give proper notice prohibiting the use of galley fires at berths.⁶⁸ While the master acknowledged receipt of the letter⁶⁹ and admitted showing it to the second and third officers,⁷⁰ he did not show it to, nor did he inform, the ship's cook or crew.⁷¹ The court held that sending this letter was not enough to discharge the corporation of its duty,⁷² stating that some notice, permanently displayed near the stove, prohibiting the use of galley fires

62. *Id.* at 460, 464.

63. *Id.*; *see also* *China Union Lines, Ltd. v. A.O. Andersen & Co.*, 364 F.2d 769, 787 (5th Cir. 1966); *Matter of Thebes Shipping Co. (The Argo Merchant)*, 486 F.Supp. 436 (D.N.Y. 1980).

64. *F.T. Everard & Sons, Ltd. v. London and Thames Haven Oil Wharves, Ltd. (The Anonity)*, [1961] 2 Lloyd's Rep. 118 (C.A.).

65. *Id.*

66. *Id.* at 121.

67. *Id.*

68. *Id.* at 124.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

near oil berths, was necessary.⁷³

The court stated, however, "it may be that [the shipowner] could have avoided fault if he had delegated the urgent enforcement of it to Captain Wells [the marine superintendent], and if it had been through the negligence of Captain Wells that the urgency had lost its force."⁷⁴ Thus, in dicta, the court stated that if the directors had instructed the marine superintendent to require all masters to post notices of prohibition in the galley, and if the superintendent had failed to instruct masters in this regard, the court might have granted limitation. A United States court almost certainly would have denied limitation under such circumstances;⁷⁵ the privity or knowledge of a marine superintendant being sufficient to bind the corporation.⁷⁶

This suggests that *The Linseed King*,⁷⁷ might have been decided differently under English law. The master knew of the unseaworthy condition of the ferry and supervision of the vessel was delegated to a marine superintendent who was not the "directing mind and will" of the corporation under the holding of *Lennard's*, and in *Linseed King*.⁷⁸

Over the past twenty years, however, the English courts have restricted a corporate shipowner's ability to delegate his duties.⁷⁹ Nevertheless, a significant difference still exists since a superintendent's knowledge may not necessarily bind the corporation under English law.⁸⁰

Under modern English admiralty law, the restriction on the corporate shipowner's ability to delegate stems from the decision in *The Lady Gwendolen*.⁸¹

73. *Id.*

74. *Id.*

75. *See, e.g.*, *Spencer Kellogg & Sons, Inc. v. Hicks (The Linseed King)*, 285 U.S. 502 (1932).

76. *See Sanbern v. Wright & Cobb Lighterage Co.*, 171 F. 449, 455 (S.D.N.Y. 1909); *supra* notes 49-53 and accompanying text.

77. *The Linseed King*, 285 U.S. at 502.

78. *Id.* at 511.

79. *See The Marion*, [1983] 2 Lloyd's Rep. 156 (C.A.); *Rederij Erven H. Groen and Groen v. The "England" (Owners) and Others (The England)*, 1 [1973] Lloyd's Rep. 373 (C.A.); *The Dayspring*, [1968] 2 Lloyd's Rep. 204 (Q.B. Adm. Ct.); *The Lady Gwendolen*, [1965] Lloyd's Rep. 335 (C.A.).

80. *See, e.g.*, *The Garden City*, [1982] 2 Lloyd's Rep. (Q.B. Adm. Ct.); *Smitton v. Orient Nav. Co.*, [1907] 12 Com. Cas. 270.

81. *The Lady Gwendolen*, [1964] 2 Lloyd's Rep. 99 (Q.B. Adm. Ct.).

. . . if a set of circumstances exists of such high importance in the operation of ships that the owners ought by reasonable standards to give it their personal attention, they cannot divest themselves of that duty by delegation. They must see to it that they give instructions in that particular regard and see and ensure that these instructions are carried out.⁸²

In *The Lady Gwendolen* the defendant vessel collided with another vessel because the proper function and use of radar were never impressed upon her master, who believed that radar would enable him to continue to operate his vessel at full speed in fog.⁸³ In affirming the Admiralty, the Court of Appeal stated that insofar as high speed in fog was encouraged by radar, the installation of radar required particular vigilance of shipowners, through the person responsible, in the capacity of the owners, for the running of the ships.⁸⁴

*The Marion*⁸⁵ provides a recent example of differences between United States and English law on limitation of liability. In 1977 *Marion's* anchor fouled an underwater oil pipeline, severely damaging the pipeline.⁸⁶ The shipowner admitted that the damage was caused by the negligence of the ship's master, who was navigating with an outdated chart that did not note the presence of the pipeline.⁸⁷ Although the manager in charge of the day-to-day operation of the vessel knew of the unseaworthy condition aboard *Marion*, none of the firm's directors were informed of this condition.⁸⁸ The Admiralty granted limitation, holding that the assistant operations manager was not the directing mind of the corporation, and that no director was aware of the conditions aboard *Marion*.⁸⁹

82. *Id.* at 102.

83. *Id.* at 112. The court noted that at the time of the collision, radar was new to merchant vessels. For this reason it was unreasonable for the shipowner not to alert the master of the risks he was taking by operating his vessel, despite the use of radar, at full speed in fog. *Id.* at 111-12.

84. *The Lady Gwendolen*, [1965] 1 Lloyd's Rep. 335, 339 (C.A.).

85. *Grand Champion Tankers Ltd. v. Norpipe A/S*, [1984] 2 W.L.R. 942 (H.L.), *The Marion*, [1983] 2 Lloyd's Rep. 156 (C.A.), [1982] 2 Lloyd's Rep. 52 (Q.B. Adm. Ct.).

86. *The Marion*, [1983] 2 Lloyd's Rep. at 158.

87. *Id.*

88. *Id.*

89. *The Marion*, [1982] 2 Lloyd's Rep. at 71. Until the decision in this case it was believed in the United Kingdom that a prudent shipowner was entitled to regard the provision of charts as the responsibility of the master unless the shipowner had good

The owners of the pipeline appealed.⁹⁰ In accordance with *The Lady Gwendolen*,⁹¹ the Court of Appeal denied limitation.⁹² The court held that every shipowner has a duty to establish a system to detect a master's incompetence or to delegate to an employee the responsibility of establishing such a system.⁹³ When the shipowner has delegated the duty to establish a system to a subordinate, he must also ascertain what system the subordinate has implemented.⁹⁴

United States courts would probably have denied limitation in this case because the extent of an employee's responsibility, not his title, determines whether limitation is foreclosed.⁹⁵ In *The Marion*, the assistant operations manager was in charge of the day-to-day management of the vessel and was aware of the unseaworthy condition that existed aboard the

reason to think that the master was not carrying out his responsibility. *Id.* at 64. On February 5, 1976, the *Marion* was inspected by Liberian authorities as part of a system of annual safety inspections of vessels sailing under the Liberian flag. [1983] 2 Lloyd's L.R. at 161. The inspection report expressly noted that the vessel's charts had not been brought up to date. *Id.* As the corporate shipowner had no system for the distribution of correspondence, the Liberian report was not seen by the corporation's managing director, who was absent on another project eighty percent of the time. *Id.* at 161-62. The assistant operations manager who was in charge of the day-to-day management of the vessel, immediately sent a letter to the *Marion's* master instructing him to update the charts. *Id.* at 162. Following the dispatch of this letter, the shipowner received from the master two requisitions for charts. Although the assistant operations manager assumed that the orders contained in his letter were being complied with, no action in fact was taken by the master to correct the *Marion's* charts completely. Furthermore, no steps were taken to see what system for correction of charts was used by the master, who had been found wanting in this respect. When the assistant operations manager visited the vessel in Hamburg, Federal Republic of Germany, in February 1977, he made a cursory examination of the charts and no inquiry as to the system used to update the charts. Shortly after this visit, the casualty occurred. *Id.*

90. *The Marion*, [1983] 2 Lloyd's Rep. at 156.

91. *The Lady Gwendolen*, [1964] 2 Lloyd's Rep. 99 (Q.B. Adm. Ct.); [1965] 1 Lloyd's Rep. 335 (C.A.).

92. *The Marion*, [1983] 2 Lloyd's Rep. at 165 (C.A.).

93. *Id.* at 166-67.

[T]here is a residual responsibility in the owner or his alter ego either to establish a system which will provide some kind of managerial check to detect the incompetent master or alternatively to delegate to a responsible subordinate the establishing of that system and then subsequently to enquire as to the nature of the system to ensure that it will throw up random but serious failures on the part of those responsible.

Id.

94. *Id.*

95. *In re P. Sanford Ross, Inc.*, 204 F. 248, 251 (2d Cir. 1913).

vessel.⁹⁶ Under United States law, such knowledge and discretionary powers of the superintendant would be imputed to the corporation.⁹⁷

Although both United States and English courts would today deny limitation in a situation similar to that of *The Marion*,⁹⁸ they would do so for significantly different reasons. In England, if a shipowner delegates a duty such as the detection of navigational errors to a "qualified subordinate",⁹⁹ the shipowner could limit his liability, unless he knew before the casualty that the subordinate was incompetent.¹⁰⁰ Further, if the shipowner adopted a system that subsequently failed, English law would still permit limitation of liability, although the shipowner would then be required to correct the faults in the system.¹⁰¹

Thus, if *Marion's* manager was responsible for a system designed to ensure that *Marion* had updated charts, and if the manager failed to exercise this responsibility, *Marion's* owner would have been protected.¹⁰² In contrast, under United

96. See *supra* note 89.

97. *In re P. Sanford Ross, Inc.*, 204 F. at 251. In *The Marion*, counsel for the pipeline owners attempted to use United States law:

[W]here a person is entrusted with all the management of . . . a significant part of the company's business, his acts will be deemed to be the acts of the company [T]o constitute fault of the company the negligence must be that of an executive officer, manager or superintendent whose scope of authority includes independent discretion to supervise the phase of business out of which the loss or injury occurred.

[1982] 2 Lloyd's Rep. at 70 (Q.B. Adm. Ct.). The admiralty court rejected this argument as being "too broad." *Id.*

98. See *supra* notes 45-63 and 85-97 and accompanying text.

99. *The Marion*, [1983] 2 Lloyd's Rep. 156, 167 (C.A.). The *Marion* court does not define "qualified subordinate." It seems, however, that it is a relative term. For example, a marine engineer whose experience is in the engine room of seagoing vessels would not be qualified to establish and maintain a system designed to detect incompetent navigation. See *Id.*

100. *Id.* at 167. "The duty to supervise. . . can itself be delegated . . . to an appropriately qualified subordinate such as a marine superintendent. . . . Until something occurs which indicates that the superintendent is not competent, the owner should be protected." *Id.*

101. *Id.* at 169.

The primary duty of a shipowner is to have a proper system for managing his vessels. If he has such a system and things go awry, as they still can do for few reasonable systems are totally fool-proof and fail-safe, . . . he will certainly have to review his system in light of that experience.

Id.

102. See *supra* notes 99-101.

States law, the manager would have been defined as a managing officer of the corporate shipowner, and his knowledge would be deemed that of the corporation.¹⁰³ This distinction is significant, as the damages claimed by the pipeline owner and others who suffered consequential losses exceeded U.S.\$25,000,000.¹⁰⁴ If limitation was granted, however, the owners of *Marion* would have been able to limit their liability to U.S.\$982,292.06.¹⁰⁵

III. *THE CONTINUING CONFLICT*

The conflicting standards are so deeply ingrained within their respective legal systems that changes are unlikely.¹⁰⁶ A

103. *See, e.g., In re P. Sanford Ross, Inc.*, 204 F. 248 (2d Cir. 1913).

104. *The Marion*, [1983] 2 Lloyd's Rep. at 156.

105. *Id.*

106. It is unlikely that any nation will unilaterally repeal its limitation statute, because to do so would herald the demise of its merchant fleet. Elimination of the ability to limit liability would severely hinder the ability of a merchant fleet to compete in international commerce, in that it would result in higher operating costs because insurance premiums would soar dramatically. *See Note, Shipowner's Limited Liability*, 3 COLUM. J.L. & SOC. PROBS. 105, 114 (1967). The cost of basic liability insurance for shipowners (Protection and Indemnity Insurance) is determined by the ability of the owner to limit his liability. *Id.* "The standard Protection and Indemnity policy provides that the entire policy is subject to cancellation should there be any change in the law of limitation of liability." *Id.* In addition, the possibility of a shipowner limiting his liability causes many claimants to settle for amounts less than what might be received if limitation were denied. The loss of this bargaining tool would likewise cause an increase in premiums. *Id.* at 115. Another important benefit of limitation that would be lost is the forced adjudication of all claims in one court at one time. This is one of the chief economic benefits under the limitation statute. *Id.* at 115-16. Although the disadvantages caused domestic shipowners by the loss of a limitation statute might be reduced by the denial of limitation to foreign shipowners, foreign retaliation in the form of a denial of the benefits of foreign limitation laws could result. *See Note, Shipowners' Limitation of Liability-New Directions for an Old Doctrine*, 16 STAN. L. REV. 370, 390 (1964); G. GILMORE & C. BLACK, *supra* note 4, at 822. Critics of the limitation doctrine direct their hostility toward the limitation doctrine, not the shipping industry. *Id.* at 822. The United States and Great Britain realize the political and military value of their merchant fleets. For example, Great Britain could not have achieved its victory in the 1982 Falkland Islands War without the extensive use of requisitioned British merchant vessels, which comprised a significant number (54) of their South Atlantic Task Force. The majority were British flag vessels requisitioned by the Ministry of Defense. These vessels performed various functions including logistic support, use as hospital ships, minesweeping, and even as makeshift aircraft carriers. *See, e.g., M. HASTINGS & S. JENKINS, THE BATTLE FOR THE FALKLANDS 87-89 (1983)*. For a concise debate regarding the importance of a domestic merchant marine in time of war, *see C.H. WHITHURST JR., THE U.S. MERCHANT MARINE: IN SEARCH OF AN ENDURING MARITIME POLICY*, app. F. (critique of Office of Management

comparison of the two standards, however, reveals problems with the English standard that warrant a consideration for change. Until the early part of this century, United States courts almost uniformly granted limitation.¹⁰⁷ Limitation was favored in order to encourage investment in the United States merchant fleet.¹⁰⁸ Over the past fifty years, however, enthusiasm for the limitation doctrine has waned¹⁰⁹ within the legal community, especially in the courts, because the doctrine has outlived its purpose of providing an incentive for maritime investment¹¹⁰ since insurance and the corporate form protect the shipowner.¹¹¹

Obsolescence does not, however, empower the courts to disregard the statutes¹¹² of their nations,¹¹³ but it does affect how courts are likely to interpret these statutes.¹¹⁴ The "fault

and Budget (OMB) Memorandum on the National Security Justification for a United States-Flag Merchant Marine).

107. G. GILMORE & C. BLACK, *supra* note 4, at 821.

108. See *University of Tex. Medical Branch at Galveston v. United States*, 557 F.2d 438, 441 (5th Cir. 1977), *cert. denied*, 439 U.S. 820 (1978).

109. G. GILMORE & C. BLACK, *supra* note 4, at 821.

110. *Pettus v. Jones & Laughlin Steel Corp.*, 322 F. Supp. 1078, 1082 (W.D. Pa. 1971). "[T]he doctrine of limitation of liability is an anachronism in this present day and age." *Id.* at 1082.

"Many of the conditions in the shipping industry which induced the 1851 Congress to pass the Act no longer prevail. And later Congresses, when they wished to aid shipping, provided subsidies paid out of the public treasury rather than subsidies paid by injured persons." *Maryland Casualty Co. v. Cushing*, 347 U.S. 407, 437 (1954) (Black, J., dissenting).

111. *University of Tex. Medical Branch at Galveston*, 557 F.2d at 454.

In addition, the theoretical reason for the doctrine, that is the protection of owners who lack control over the vessel while it is at sea, no longer exists as radio communication has increased the owner's control over his vessel. *Waterman S.S. Corp. v. Gay Cottons*, 414 F.2d 724, 734 (9th Cir. 1969). The court went on, however, to state:

Although modern communication and transportation facilities make all acts performed in any foreign port within the potential control of the shipowner, we believe that an extension of the requirement of privity or knowledge to cover all such acts should only come from Congress. We are unwilling to impose on all shipowners the burden of maintaining at every port of call an agent with authority over maintenance and repair. We are equally unwilling to transmute the master into such an agent whenever the ship calls at a foreign port in which the owner does not have such an agent.

Id. (footnotes omitted).

112. Limitation Act, *supra* note 1; Merchant Shipping Act, *supra* note 1.

113. *Continental Oil Co. v. Bonanza Corp.*, 706 F.2d 1365, 1376 (5th Cir. 1983).

114. *Id.*

or privity" clause of the English statute¹¹⁵ might be interpreted more broadly, so that when an employee is entrusted with the management of a significant part of a corporation's business, his acts will be deemed to be those of the corporation.¹¹⁶ The present standard may be an unreasonable misinterpretation of *Lennard's*.¹¹⁷

English courts continue to interpret *Lennard's* as requiring that the fault or privity be that of a director.¹¹⁸ Thus, even when the negligence of a marine superintendent, who may exercise broad discretionary powers, causes damage or injury, the corporation will be able to limit its liability, if it had a "proper system to detect faults"¹¹⁹ and was unaware of the superintendent's errors or incompetence.¹²⁰

*Lennard's*¹²¹ may require that fault be ascribed to a director or someone with coordinate powers as granted by the articles of incorporation in order for limitation to be denied.¹²² *Lennard's* should not, however, be so limited by its own terms.

The *Lennard's* court stated that since a corporation is an abstraction and has no mind of its own, someone must be found who is the directing mind and will of the corporation to

115. See *supra* note 1 and accompanying text.

116. See *infra* notes 135-144 and accompanying text.

117. *Id.*

118. See, e.g., *The Marion*, [1982] 2 Lloyd's Rep. 52, 71 (Q.B. Adm. Ct.); *The Garden City*, [1982] 2 Lloyd's Rep. 382, 398 (Q.B. Adm. Ct.).

119. *The Marion*, [1983] 2 Lloyd's Rep. 156, 169 (C.A.).

120. *The Garden City*, [1982] 2 Lloyd's Rep. at 391. In *The Garden City*, limitation was granted under such circumstances, the collision of two ships in thick fog. *Id.* at 384. The owner of the vessel deemed at fault (a Polish corporation) was allowed to limit its liability because it took steps to ensure that its vessels were properly navigated in fog. *Id.* at 399-400. The corporate shipowner had instituted a system of inspection by which, after every voyage, the company's chief navigator or one of his staff would go on board every vessel of the company when it returned to a Polish port. *Id.* at 390. The court held that the failure of the chief navigator and his staff to detect all the instances of improper navigation by the master over the seven months immediately preceding the collision, and to take sterner measures to prevent a repetition, was the cause of the casualty. *Id.* at 391. Relying on the *Lennard's* decision, the court held that neither the chief navigator nor his staff was the directing mind and will of the company. *Id.* at 398-99. The court held that the cause of the collision was not the fault of the directors because there was a system for detection of faults (despite its subsequent failure) and the directors were unaware that the chief navigator had failed to detect instances of improper navigation. *Id.* at 392, 399-400. Thus, limitation was granted. *Id.* at 400.

121. See *supra* note 15 and accompanying text.

122. *Id.*

ascertain whether the corporation had privity or knowledge of the circumstances causing the casualty.¹²³ If that person was at fault or had knowledge of the circumstances, the corporation will be denied limitation because that individual's fault will be attributed to the corporation.¹²⁴ The court went on to state that the person *may* be under the direction of the shareholders; that person *may* be the board of directors; or that person *may* have authority co-ordinate with the board of directors given by the articles of association.¹²⁵ The House of Lords, however, never stated that the person *must* be one of the aforementioned individuals.¹²⁶

Limitation was denied because the individual whom the House of Lords determined was the directing mind and will of the corporation failed to take the stand and testify as to his knowledge of the conditions which lead to the casualty. The burden to rebut the presumption of liability falls upon the party raising the defense of lack of privity.¹²⁷ Because the individual never testified, the Lords were not certain as to his exact position in the corporate hierarchy.¹²⁸ The Lords held, however, that he was the directing mind and will of the corporation, as he managed the operations of the corporation's vessel.¹²⁹ The decision that his active management of the corporation's vessel deemed him the directing mind and will of the corporation parallels United States admiralty law in that responsibility, not title, determines whether an individual's fault is imputed to the corporation.

123. *Lennard's Carrying Co., Ltd. v. Asiatic Petroleum Co., Ltd.* 1915 A.C. 705, 713 (H.L.).

124. *Id.*

125. See *supra* notes 15-17 and accompanying text.

126. *Id.* Lord Justice Wilmer in his opinion in *The Lady Gwendolen*, [1965] 1 Lloyd's Rep. 335, 345 (C.A.), stated in dicta that the Lennard's opinion did not hold that the person whose fault would be the company's fault must be a director. He emphasized that the circumstances of each case must be examined before determining whether an individual's fault binds the corporation, and where an individual is responsible for the management of a corporation's vessels, his actions should be regarded as the actions of the corporation. *Id.*

127. *Lennard's Carrying Co., Ltd.*, 1915 A.C. at 714.

128. *Id.* at 713-14.

129. *Id.*

A. *The Marion: A Lost Opportunity for Resolution*

*The Marion*¹³⁰ provided an opportunity for a present resolution of the current conflict between United States and English admiralty law. The facts indicate that a supervisory employee in charge of the day-to-day operations of the vessel knew of the conditions aboard *Marion* which contributed to the accident.¹³¹ While the English admiralty court granted limitation, under United States law limitation would probably have been denied.¹³²

The Court of Appeal reversed the Admiralty Court decision in *The Marion* on different grounds and the House of Lords affirmed the reversal, stating that limitation would be denied because of the corporation's failure to have a system of managerial checks.¹³³ As a result, *The Marion* may divert attempts to adopt a broader standard.¹³⁴ However, as neither the Court of Appeal nor the House of Lords rejected arguments for adoption of a broader standard, both might still change their position.

Some person must be found whose fault or privity is that of the corporation, else the corporation could always limit its liability.¹³⁵ Both English and United States courts speak of this person whose acts or knowledge are imputed to the corporation as the "alter ego" of the corporation.¹³⁶

Corporations operate through a chain of command where authority, responsibility, and power are delegated, as it is impossible for any one person or even the entire board of directors to manage the daily transactions and operations of a modern corporation.¹³⁷ A board of directors is more likely to be involved with fiscal planning and ratification of management's plans than it is with the day-to-day operation of the corpora-

130. *The Marion*, [1982] 2 Lloyd's Rep. 52 (Q.B. Adm. Ct.), *rev'd*, [1983] 2 Lloyd's Rep. 156 (C.A.), *aff'd sub nom.*, *Grand Champion Tankers Ltd. v. Norpipe A/S*, [1984] 2 W.L.R. 942 (H.L.).

131. *The Marion*, [1983] 2 Lloyd's Rep. at 158 (C.A.).

132. *In re P. Sanford Ross, Inc.*, 204 F. 248, 251 (2d Cir. 1913).

133. *See supra* notes 92-94 and accompanying text.

134. *See supra* note 97 and accompanying text.

135. *Coryell v. Phipps (The Seminole)*, 317 U.S. 406, 410-11 (1913).

136. *See supra* notes 7-9 and accompanying text.

137. *See J. RIGGS, L. BETHEL, F. ATWATER, G. SMITH & H. STACKMAN, JR., INDUSTRIAL ORGANIZATION AND MANAGEMENT* 36 (6th ed. 1979) [hereinafter J. RIGGS].

tion.¹³⁸ Hence, in a shipowning corporation, for example, the board of directors may delegate discretionary management authority to supervisory personnel over property worth millions of dollars and capable of causing extensive property damage.¹³⁹ These individuals qualify as the "alter ego" of the corporation, for they are, in essence running the corporation.

The English standard requiring membership on the board¹⁴⁰ or powers co-ordinate with the board¹⁴¹ given by the articles of incorporation is impractical, as it ignores the management and organizational practices of corporations.¹⁴² Even with the requirement that the board establish a system of managerial checks¹⁴³ the standard is inadequate. It promotes ignorance on the part of the board of directors until a failed or faulty system is brought to the board's attention. Moreover, if supervisory personnel are at fault when the casualty occurs the English courts will grant limitation if the board is unaware of their fault.¹⁴⁴ Protecting the corporation from the acts of supervisory personnel grants the corporation too much protection from the consequences of carelessness.

CONCLUSION

Despite restrictions on delegating over the past twenty years, it is still easier for a shipowner to limit his liability under English admiralty law. Even if a supervisory employee knew of the condition which caused the casualty, limitation will be granted if the board of directors had a system for managerial checks in place. The differences in the damage award can be dramatic if a court allows the shipowner to delegate. A broader standard, similar to the standard applied in United States admiralty law, in determining which acts can be imputed to the corporation would fairly protect the interests of both the shipowner and the claimants.

138. See A. CHANDLER, JR., *THE UNITED STATES: SEEDBED OF MANAGERIAL CAPITALISM, MANAGERIAL HIERARCHIES: COMPARATIVE PERSPECTIVES ON THE RISE OF THE MODERN INDUSTRIAL ENTERPRISE* 14 (A. Chandler, Jr. & H. Daems eds. 1980); J. RIGGS, *supra* note 137, at 36.

139. See *supra* note 104 and accompanying text.

140. See *supra* note 20.

141. *Id.*

142. See *supra* notes 135-39 and accompanying text.

143. See *supra* notes 93-94 and accompanying text.

144. See *supra* notes 93-97 and accompanying text.

The doctrine of limiting the liability of the shipowner was created to protect the investment of shipowners in a trade fraught with peril. While a ship is at sea, it is at the mercy of nature's forces. It is assumed that no one would invest capital in such ventures, unless the right existed to limit liability due to losses incurred under the exigent circumstances of navigation on the high seas.

Furthermore, a careful reading of the *Lennard's* decision indicates that the individual in charge of the daily management of a vessel is the "alter ego" of a corporation and, therefore, the individual to look to in order to establish whether a casualty occurred with or without a corporation's fault or privity. Such a standard, enumerated by the House of Lords in *Lennard's*, reflects that of the United States courts even though it has not been so interpreted in England.

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