

STATEMENT FOR THE RECORD

OF

H. E. SHEAR
MARITIME ADMINISTRATOR

ON

BEHALF OF

THE

DEPARTMENT OF TRANSPORTATION

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE
MERCHANT MARINE AND FISHERIES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

ON

OVERSIGHT HEARINGS WITH RESPECT TO THE LAWS CONCERNING
THE LIMITATION OF A VESSEL OWNER'S LIABILITY.

NOVEMBER 9, 1983

STATEMENT FOR THE RECORD OF ADMIRAL HAROLD E. SHEAR, MARITIME ADMINISTRATOR, DEPARTMENT OF TRANSPORTATION, BEFORE THE SUB-COMMITTEE ON MERCHANT MARINE, HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE, ON OVERSIGHT HEARINGS WITH RESPECT TO THE LAWS CONCERNING THE LIMITATION OF A VESSEL OWNER'S LIABILITY.

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Mr. Chairman and Members of the Subcommittee, my name is Harold E. Shear, and I am the Maritime Administrator of the Department of Transportation.

It is a pleasure for me to present the views of the Department with respect to the legal principle that allows shipowners to limit liability for payments involving loss of life or bodily injury in cases not involving owner negligence. As this Subcommittee is well aware, this principle was first codified in U.S. law in 1851.

In that year, Congress enacted the Limitation of Liability Act (46 App. U.S.C. 181-189), which provides that the owner of a vessel, in the event of an accident, may restrict his liability to the value of the vessel, provided that the damage which occasions claims was incurred without his privity or knowledge. In 1871, the Supreme Court held that the value of the vessel for which limitation may be sought is the value of the vessel after the accident (Norwich Co. v. Wright, 80 U.S. 104). In 1936, following the MORRO CASTLE disaster, the statute was amended to require the owner of a vessel to pay \$60 per gross ton into a fund which is available for loss of life or bodily injury claims if the value of the vessel is insufficient to pay for such losses.

Attempts have been made to increase the limits of liability of a vessel owner for death and bodily injury. For example, in 1966, following the sinking of the YARMOUTH CASTLE, legislation was introduced in the Congress to repeal the limits of liability (S. 3251, 89th Cong., 2d Sess.). The measure failed of passage. Other such bills were introduced in 1968 (H.R. 17254, S. 3600, 90th Cong., 2d Sess.), but they met with a similar fate.

In addition to these attempts by the Congress to provide for an increase in the limits of liability of a vessel owner for death and bodily injury, international treaties which address the matter have been developed.

The first of these is the International Convention Relating to the Liability of Owners of Sea Going Ships, formulated at Brussels, October 10, 1957, and known as the 1957 Brussels Convention. Under the terms of the Convention, the vessel owner's limits of liability for death and bodily injury claims, as well as property damage claims, are based on the vessel's tonnage, i.e., the limit is \$207 per ton. Of this amount, \$140 is available for personal injury and death claims. The additional \$67 is available for all claims. Unlike U.S. law, the Convention includes no provision for the value of a vessel as an element in the determination of an owner's liability.

In a second convention known as the International Convention for the Unification of Certain Rules Relating to the Carriage of

Passengers by Sea, adopted at Brussels, April 19, 1961, the total limit of liability of a vessel owner is the same as that provided in the 1957 Brussels Convention, i.e., \$207 per ton, with the limit of recovery for each individual victim placed at \$16,600.

Under the terms of the International Convention on Limitation of Liability for Maritime Claims, formulated at London, November 19, 1976, the limit of liability in respect of claims for loss of life or personal injury is based on the tonnage of the vessel, using a sliding scale to determine the amount per ton.

The United States has not ratified these international treaties.

Mr. Chairman. The Maritime Administration of the Department of Transportation is the agency charged by the Congress with the promotion of the U.S. maritime industry, with particular emphasis on the U.S.-flag merchant marine. This involves a variety of functions, but the problems associated with the limitation of a shipowners liability are ordinarily not one of the things we get into on a day to day basis. We are, however, keenly interested, as I am convinced that the myriad problems associated with limitation of liability require a sweeping and searching examination that Congressional hearings are best able to provide.

Mr. Chairman, I have two fundamental concerns with existing law on the limitation of a vessel owner's liability:

First: With respect to the owner's "privity or knowledge" of a vessel casualty, I believe that recognition should be given to today's maritime communication capabilities, including maritime satellites.

Second: In view of the fact that the \$60 per ton limitation was established almost fifty years ago, an increase in the payment to the death and bodily injury fund might be a prudent path to provide financial protection for seafarers. Given the rate of inflation during this period, an increase in the fund contribution requirement may be reasonable.

In this regard, I am aware that last week the Merchant Marine and Fisheries Committee reported out H.R. 3486, the "Maritime Safety Act of 1983", with an amendment that would increase this amount from \$60 per ton to \$420 per ton. The Administration has not taken a position with respect to this amount, and believes that further study is necessary. In addition, we believe that the likely effects on the marine insurance market as well as the costs of the incremental insurance to the vessel owner should receive careful consideration.

Mr. Chairman. The comprehensive hearings on this subject that were held in the other body during the 89th Congress give ample evidence of the complexity of the issues surrounding limitation of an owner's liability. You and your colleagues are to be commended for undertaking this very worthwhile endeavor. Please be assured of the continued cooperation of the Department of Transportation.

Thank you.