



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## 169-Year-Old Maritime Law Cited in Collision Case

Counsel for the owners of the 183.1-metre Bow Fortune have cited the United States Limitation of Liability Act of 1851 while seeking exoneration from all financial liability associated with the chemical tanker's recent involvement in a fatal collision.

It is understood that the Odfjell-owned tanker made contact with the fishing boat Pappy's Pride in Galveston Bay entrance around 4pm on January 14 this year. The Norwegian-flagged vessel had sailed from Lake Charles (Louisiana) and was inbound under pilotage as the first in a convoy at the time of the incident. Heavy fog had been reported in the area.



*The Bow Fortune*

It was later confirmed that three of the four crew members onboard the fishing boat lost their lives – including the captain, Raymond Herrera – with the other reported injured. The crew on the 23,230-GT Bow Fortune was reported safe, with the tanker's integrity said to be intact as it moored in Galveston.

In an online statement, Odfjell said it was “deeply saddened” by events.

“Our sincere condolences go to their families, friends and colleagues,” it stated.

“The cause of the collision is under investigation and we are fully supporting and contributing to the efforts of the United States Coast Guard and National Transportation Safety Board to establish the course of events that led to this terrible incident.

“Odfjell takes this matter very seriously. Together with the P&I club Gard, we [will] co-operate fully with United States authorities to ensure that we initiate all necessary actions.”

### **Filings**

Subsequently, Eastham, Watson, Dale & Forney LLP partner Robert Klawetter petitioned the Galveston County District Court for the Southern District of Texas on behalf of Odfjell with a [Verified Complaint for Exoneration From or Limitation of Liability](#) on January 17.

Describing the Pappy's Pride as having collided with the tanker, the document stated that the incident and any damages claimed as a result thereof “were in no way caused or contributed to by any fault, neglect or want of due care on the part of [the] Petitioners”.

Although the Bow Fortune was not under seizure as a result of any claims or demands at the time the petition was filed, it was noted that counsel for the owner of the Pappy's Pride had requested security.

“Petitioners desire to contest their liability and the liability of the M/T Bow Fortune for any claims made and/or that may be made against them as they have valid defenses in fact and in law thereto,” stated the document.

“Petitioners further claim the benefits of the Limitation of Liability Act, 46 USC §§ 30501, *et seq* and Rule F of the Supplemental Rules for Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, any and all Acts of the Congress of the United States amendatory thereof or supplementary thereto, and the rules of practice of this Court and the Supreme Court of the United States.”

Three days later, Arnold & Itkin LLP founding partner Jason Itkin responded with an Answer and Claims on behalf of the family of Mr Herrera.

“The Limitation of Liability Act, 46 USC § 30501 *et seq*, is unconstitutional in that it deprives Claimants of property rights without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and does not provide for equal protection of the laws pursuant to the Fifth and Fourteenth Amendments to the United States Constitution,” was one of defences stated.

“The Limitation of Liability Act is not applicable to the instant case because at all times pertinent herein, the M/T Bow Fortune and/or other vessels contained within the flotilla were operated in a wilful, wanton and reckless manner or, in the alternative, the conduct and actions which lead to Claimants’ injuries took place with the privity and knowledge of the owners, managing owners, owners *pro hac vice*, and/or operators of the vessels involved,” was another.

According to reportage by the *gCaptain* E-publication, the Limitation of Liability Act was originally intended to protect American shipping in an age of wooden sailing vessels when insurance was virtually impossible to come by.

“In the 21st Century, technology allows shipping companies to stay in frequent contact with their vessels, and companies carry plentiful insurance,” it reported on January 22.

“This antiquated law actually puts shipping companies in a position where they can collect insurance funds for damages they incur from a disaster while denying victims of the same disaster an opportunity to recoup their losses.”

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