



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## Conception Incident Highlights Legislation Outdated

An Act originally designed to help build the United States maritime industry has “outlived its purpose”, as illustrated by its invocation following the fatal Conception incident in 2019.

Such is the view of the Limitation of Liability Act of 1851 asserted by Houston (Texas)-based legal firm, Arnold & Itkin, in a column featured by [\*gCaptain\*](#).

The firm acknowledged the Act had once been a “cornerstone of maritime law in the United States”.

“When it initially passed, its primary goal was to promote the growth of the maritime industry by protecting American shipowners from being held liable for factors outside their control,” stated the firm.

“The Act encouraged investment in shipbuilding and maritime ventures by allowing vessel owners to limit their financial risk and liability in cases where damages were incurred ‘without the privity or knowledge of the owner’.

“This aspect of the Act was particularly significant because it distinguished between incidents caused by the shipowner’s negligence and those out of their hands. At a time when unpredictable weather and piracy were significant threats to maritime commerce, the Limitation of Liability Act made sense.”

However, Arnold & Itkin decried it being invoked following the fatal incident onboard the scuba dive boat Conception, which was engulfed in fire near the shore in Santa Cruz, claiming the lives of 34 of the 38 people onboard.

“The loss of the Conception’s 33 passengers and one crew member marked the incident as one of the deadliest maritime disasters in United States history.

“Though no cause of the fire has been officially stated, a confidential report referenced in a [\*NY Times\* article](#) linked it to a plastic trash can on the main deck. A [report](#) by the National Transportation Safety Board concluded that the failure to post a roving patrol on the vessel contributed to high fatalities.

“All crew members were asleep when the fire broke out – had a night watchman been patrolling the vessel – as codified by United States law for nearly 150 years – there would likely have been time to fight the fire and save the passengers below deck.

“This Act, originally designed to promote the maritime industry by capping a shipowner’s liability to the vessel’s value after an incident, allowed the owners to file a limitation action in the United States District Court for the Central District of California. By invoking this Act, they aimed to limit their liability to the value of the vessel – which was, in this case, rendered to zero.”

Arnold & Itkin observed that while legally permissible, the move “sparked a heated debate and led to calls for changes in maritime law”, particularly regarding the safety and accountability of small passenger vessels.

“This culminated with the introduction of the Small Passenger Vessel Liability Fairness Act of 2021. After several iterations, the final language was included in HR 7776, which was enacted on December 23, 2022.”

The amendment – only the third in the Act’s 170-year history – has excluded small passenger vessels from the legislation.

“Owners of these vessels are no longer allowed to limit their liability to the value of the vessel in the event of a maritime casualty. They are also prohibited from contractually limiting the time for notice of filing of personal injury or wrongful death claims, granting claimants two years to take legal action.”

However, while praising the amendment for seeking to “balance the interests of vessel owners and operators with greater accountability and protection for passengers and crew”, the firm maintain reservations.

“The implementation of the Small Passenger Vessel Liability Fairness Act of 2021 is poised to have far-reaching implications, particularly for small passenger vessels operating in areas like the Mississippi River or the Gulf of Mexico. It also raises questions about how the amendment will interact with existing maritime laws and procedures, especially in complex situations involving multiple vessels.”

March 2024

