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In re Savage Inland Marine: The United States District Court for the Eastern District of Texas Fails to Follow Recent Fifth Circuit Precedent Establishing an Eight Factor Agency Analysis for the Limitation of Liability Act

I. OVERVIEW

Justin Wood, a dock worker employed by Savage Inland Marine LLC (Savage), was injured when a mooring line released, hit him in the head, and caused him to lose consciousness.[1] The incident occurred during an operation directed by Captain Stewart Jackson of the *M/V Savage Sentinel*.[2] The vessels involved in the operation were the *Sentinel*, the *M/V Capt. Paul E. Lord* hired by Blessey Marine Services, Inc. (Blessey), and an Enterprise Marine Services (EMS) barge.[3] Mr. Wood had worked for Savage for thirty-one days and was not trained on open chock fittings despite their prevalence on EMS barges.[4] Since 2016, EMS barges and Savage vessels have frequently worked together making it inevitable that Mr. Wood would encounter an open chock fitting.[5] Jeremy Turner, a dock worker, and Captain Niles Shoemaker, the captain who piloted the *Lord*, helped with the operation.[6] Mr. Turner had worked for Blessey for six years and "was familiar" with open chock fittings.[7] Prior to departure,

1. *In re Savage Inland Marine*, 539 F. Supp. 3d 629, 635 (E.D. Tex. 2021).
2. *Id.* at 636.
3. *Id.*
4. *Id.* at 636, 648.
5. *Id.* at 643.
6. *Id.* at 635.
7. *Id.* at 636, 643.

Captain Shoemaker and Captain Jackson did not conduct a safety meeting with personnel involved in the operation.[8] When aligning the barges, Mr. Turner improperly placed a mooring line on an open chock.[9] While this operation was underway, Captain Shoemaker made a phone call from his personal cell phone, in violation of Blessey's company policy.[10] Captain Shoemaker ended his call when Mr. Turner radioed him to move the *Lord* forward.[11] Records indicate that Captain Shoemaker's call lasted for fourteen minutes and ended two minutes prior to the accident.[12] Unaware that the mooring line was improperly fitted, Captain Shoemaker moved the *Lord* forward, the force of which dislodged the mooring line and injured both Mr. Wood and Mr. Turner.[13]

Following the incident, Mr. Wood filed a personal injury suit against Savage and Blessey under the Jones Act and for negligence under general maritime law.[14] Immediately after Mr. Wood filed his suit, Blessey filed a limitation action pursuant to the Limitation of Liability Act (LLA).[15] Savage settled with Mr. Wood and, after a trial, the court found Blessey liable to Mr. Wood for negligence under general maritime law.[16]

The court analyzed Blessey's limitation of liability defense under the "privity or knowledge" standard.[17] The court found that the shore-based managing officials knew Blessey captains failed to follow the company's cell phone policy.[18] The United States District Court for the Eastern District of Texas *held* that Blessey was not eligible to limit liability because Blessey had knowledge of Captain Shoemaker's personal cell phone usage, which contributed to Mr. Wood's injury, and was therefore seventy percent at fault. *In re Savage Inland Marine*, 539 F. Supp. 3d 629 (E.D. Tex. 2021).

II. HISTORICAL BACKGROUND

The Limitation of Liability Act, 46 U.S.C. § 30505, allows for a vessel owner to limit liability to the "value of the vessel and pending

8. *Id.* at 639.
9. *Id.* at 643.
10. *Id.*
11. *See id.*
12. *Id.*
13. *Id.*
14. *Id.* at 635.
15. *Id.*
16. *Id.*
17. *Id.* at 646.
18. *Id.* at 645.

freight" under certain circumstances.[19] Vessel owners are generally entitled to limit liability if an accident or injury occurred "without privity or knowledge of the owner."[20]

The United States Court of Appeals for the Fifth Circuit uses a two-step analysis to determine if an owner qualifies for limitation.[21] First, the court must determine whether an act of negligence or condition of unseaworthiness caused the injury or damage.[22] Second, if the first criteria is met, a court must then determine whether the owner had privity or knowledge of the act of negligence or the condition of unseaworthiness.[23] While "privity or knowledge" is not defined by Congress in the statute, jurisprudence has defined the elements of privity and knowledge, specifically as the concept applies to a corporation.[24]

A. Development of Limited Liability Privity or Knowledge Standard

In the 1960s, the lower courts within the Fifth Circuit coined "privity or knowledge" as a term of art.[25] The term was generally interpreted to mean the vessel owner's "complicity in the fault that caused the accident."[26] This early interpretation led courts to presume that a vessel owner's negligence was synonymous with privity or knowledge.[27] For instance, in *Nuccio v. Royal Indemnity Co.*, the Fifth Circuit stated that "[w]here the [vessel] owner's negligent act caused the alleged injury . . . clearly all of the requirements of 'privity' are satisfied."[28] In *Nuccio*, the United States District Court for the Eastern District of Texas found that the owner's inability to operate the boat led to the crash.[29] Accordingly, the Fifth Circuit affirmed the district court's ruling on appeal holding that the owner had privity or knowledge of the accident.[30] The definition from *In re Read*, which developed from similar case law, led lower courts to find that privity or knowledge existed where the vessel owner had direct involvement in the act that caused the injury or damage.[31] Similarly, the

19. 46 U.S.C. § 30505.
20. *Id.*
21. *See* Farrell Lines v. Jones, 530 F.2d 8, 10, 1976 AMC 1639 (5th Cir. 1976).
22. *Id.*
23. *Id.*
24. *Id.*
25. *In re* Read, 224 F. Supp. 241, 251, 1967 AMC 645 (S.D. Fla. 1963).
26. Nuccio v. Royal Indem. Co., 415 F.2d 228, 229, 1969 AMC 1825 (5th Cir. 1969).
27. *See id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*

Fifth Circuit has held that an individual owner has privity or knowledge if "he personally participated in the negligent conduct or brought about the unseaworthy condition."[32]

While this definition was arguably sufficient for a period, an increase in corporations seeking to limit liability prompted an expansion of the definition of privity or knowledge. Previously, the courts generally focused on an individual's actual knowledge of the negligent conduct that led to the accident, typically as established by direct involvement.[33] However, when a corporation owned a vessel, the question of whether the corporation had knowledge became less straightforward.

Therefore, the Fifth Circuit expanded the definition of "privity or knowledge" to include what the vessel owner should have known, as well as the vessel owner's actual knowledge.[34] Specifically, in *In re Patton-Tully Transportation Co.*, the Fifth Circuit stated that "the question with regard to corporate owners is not what the corporation's officers and managers actually knew, but what they objectively ought to have known."[35] In *Pennzoil Producing Co. v. Offshore Exploration*, the Fifth Circuit stated that a corporation's knowledge consisted of "not only what the corporation's managing officers actually knew, but also by what they should have known with respect to conditions or actions likely to cause the loss."[36] This tests the corporation's knowledge through that which is actually, directly known, and that which would have resulted from a reasonable inspection by its managing officers, thereby creating a duty of reasonable diligence for corporate vessel owners.[37]

B. Addition of Agency to the Corporate Privity or Knowledge Standard

In addition to expanding a corporate vessel owner's "privity or knowledge" to include a duty of reasonable diligence, the Fifth Circuit needed to clarify the individuals whose personal knowledge could attribute knowledge to the corporation. Specifically, courts did not know which individuals within the corporate structure to consider when

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32. Penzoil Producing Co. v. Offshore Expl., Inc., 943 F.2d 1465, 1473, 1994 AMC 1034 (5th Cir. 1991).

33. *Id.*

34. *In re* Patton-Tully Transp. Co., 797 F.2d 208, 211 (5th Cir. 1986).

35. *Id.* (citing G. Gilmore & C. Black, THE LAW OF ADMIRALTY 886 (2nd ed. 1975)).

36. *Pennzoil Producing Co.*, 943 F.2d at 1473-74 (citing Verdin v. C & B Boat Co., 860 F.2d 150, 156 (5th Cir. (1988)).

37. China Union Lines v. A.O. Andersen & Co., 364 F.2d 769, 787, 1966 AMC 1653 (5th Cir. 1966).

determining knowledge of the negligent conduct. This proved to be particularly critical, as establishing a standard that was too narrow, such as only the chief executive officer's knowledge, or too broad, such as any employee's knowledge, would effectively defeat the purpose of the LLA.[38] These potential scenarios ran the risk of either allowing limitation in almost every instance or, alternatively, denying limitation in almost every instance.[39] Another challenge that the Fifth Circuit had to deal with was the fact that the titles, roles, and responsibilities of individual officers differ from corporation to corporation.[40]

In *China Union Lines v. A.O. Anderson & Co.*, the Fifth Circuit stated that the "[k]nowledge or privity of supervisory shore personnel is sufficient to charge a corporation," thereby expanding the category of employees whose knowledge is considered that of the corporation.[41] In *Continental Oil Co. v. Bonanza Corp.*, the Fifth Circuit refined the concept by holding that privity or knowledge must be held by the managing officer, "whose scope of authority includes supervision over the phase of the business out of which the loss or injury occurred."[42] In *In re Hellenic*, the Fifth Circuit further refined the definition of "managing officers" by setting forth a list of factors for lower courts to review with respect to an individual's authority.[43] These factors included: (1) the scope of an individual's authority "over day-to-day activity in the relevant field of operations;" (2) the significance of these operations to the corporation; (3) the individual's ability to make employment decisions such as hiring and firing; (4) the power to enter into contracts on behalf of the corporation; (5) the ability to set prices; and (6) the ability to pay expenses on behalf of the corporation and determine salaries.[44] Additionally, the span of the individual's authority, either "full-time or restricted to a specific shift," should factor into this analysis.[45] This list of factors relies on principles of agency and respondeat superior and helped courts examine an individual's role on a case-by-case basis to see if he or she

38. *In re* Hellenic, 252 F.3d 391, 395, 2001 AMC 1835 (5th Cir. 2001).
39. *See id.* at 395-96.
40. *Id.*
41. *China Union Lines*, 364 F.2d at 787.
42. Cont'l Oil Co. v. Bonanza Corp., 706 F.2d 1365, 1376, 1983 AMC 2059 (5th Cir. 1983) (quoting Coryell v. Phipps, 317 U.S. 406, 410-11 (1943)).
43. *In re* Hellenic, 252 F.3d 392, 396-97, 2001 AMC 1835 (5th Cir. 2001).
44. *Id.* at 397.
45. *Id.*

maintained the authority to be considered a "managing agent," regardless of job title.[46]

As the concept of agency evolved, the Fifth Circuit cautioned against merely relying upon job titles to find that an individual was a corporate managing official.[47] Rather, the inclusion of an in-depth analysis of an employee's role and authority within the corporation was required.[48] The Fifth Circuit's definition of privity or knowledge has guided lower courts in their decisions to extend or deny limitation to corporations depending on whether a managing officer, based on agency principles and jurisprudence, had knowledge of the negligent act or condition which contributed to an accident or injury.

III. THE COURT'S DECISION

In the noted case, following the Fifth Circuit's precedent, the U.S. District Court for the Eastern District of Texas found that Blessey failed to prove lack of privity or knowledge of Captain Shoemaker's negligent conduct that contributed to Mr. Wood's injury.[49] In order to determine if Blessey was entitled to limit its liability under the LLA, the court conducted a two-pronged analysis.[50] First, the court examined Mr. Wood's negligence claim against Blessey under general maritime law to determine if it was a valid claim.[51] Second, the court evaluated Blessey's limitation of liability claim to determine whether Blessey had privity or knowledge of the negligent conduct.[52]

With respect to the general maritime claim against Blessey, the court applied the principles of negligence.[53] The court concluded that Blessey owed Mr. Wood a duty of reasonable care, which it failed to meet.[54] Blessey assumed this duty by agreeing to aid Captain Jackson and Mr. Wood with the alignment operation.[55] The court further concluded that Blessey breached its duty of reasonable care to Mr. Wood in two instances.[56] First, Blessey failed to conduct a safety meeting with any

46. *Id.*
47. *See id.* at 396-97.
48. *Id.* at 397.
49. *In re Savage Inland Marine*, 539 F.Supp.3d 629, 656 (E.D. Tex. 2021).
50. *Id.* at 646.
51. *Id.* at 649-50.
52. *Id.* at 653-54.
53. *Id.* at 649.
54. *Id.*
55. *Id.* at 649-50.
56. *Id.* at 650.

"personnel" with which its vessel and employees worked.[57] Here, the "personnel" included the Savage employees involved in the job.[58] The failure to implement a pre-departure meeting was an omission by Blessey and its employees, which would have limited the risk of the accident.[59] Second, Blessey breached its duty when Captain Shoemaker violated Blessey's cellphone policy.[60] Captain Shoemaker's cellphone call distracted him and, therefore, he failed to notice Mr. Turner placing the mooring line on the open chock.[61] These actions were determined to be the proximate and legal cause of Mr. Wood's injuries.[62] Based on this reasoning, the court held that Blessey was negligent and, therefore, liable for Mr. Wood's injuries.[63]

Regarding its ability to limit liability, Blessey had the burden to prove that it lacked privity or knowledge of the "dangerous condition" that caused the injury.[64] The court stated that the definition of privity or knowledge was "complicity in the fault that caused the accident."[65] To determine the specifics of Blessey's complicity, the court looked to the facts as established by the record.[66] The Fifth Circuit's definition of "privity or knowledge" differs for individuals and corporations.[67] For an individual, privity is based on personal participation in the negligent conduct and, for a corporation, knowledge is defined by that of its managing officers.[68] In the noted case, Blessey fell under the definition for a corporation.[69] The court considered whether the negligent conduct would have been discovered by reasonable inspection or if Blessey had actual knowledge.[70] The court found that Blessey's "shore-based managing officials" knew that its employees breached its cellphone policy.[71]

The court then made a determination about whether knowledge on the part of shore-based management constituted knowledge on the part of

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57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.* at 653-54 (quoting Brister v. A.W.I., 946 F.2d 352, 355, 1993 AMC 1990 (5th Cir. 1991) (internal quotations omitted)).
65. *Id.*
66. *See Id.* at 654.
67. *Id.*
68. *Id.*
69. *Id.* at 654-55.
70. *Id.* at 654.
71. *Id.* at 655.

Blessey.[72] The court followed a Fifth Circuit precedent that found that "supervisory shore personnel are managing agents of the corporate vessel owner."[73] The court determined that Blessey met this criteria, noting that such supervising officials' knowledge of the breach of corporate policy qualified as Blessey having actual knowledge of the breach.[74] Thus, the court found that Blessey knew about Captain Shoemaker's regular breaching of the company cell phone policy, which was determined to have contributed to the accident.[75] Therefore, the court held that Blessey did not prove lack of "privity or knowledge of the negligent conditions that caused [Mr. Wood's] injuries."[76]

Finally, the court examined Mr. Turner's training to see if Blessey had privity or knowledge of his conduct.[77] Under the LLA, when a corporation hires a crewmember, the crewmember's actions do not bar limitation of liability if the corporation acted reasonably when hiring the crewmember.[78] Here, the court found that Blessey knew Mr. Turner was properly trained and had worked without incident for almost six years.[79] Based upon Mr. Turner's training and experience, Blessey did not know, nor should it have known, that Mr. Turner would improperly place the mooring line on the open chock, as it was an isolated incident.[80] Therefore, the District Court found Mr. Turner's conduct "was an isolated incident that cannot be imputed to Blessey for purposes of the Limitation Act."[81]

Ultimately, the court found that Blessey failed to meet its burden of proving a lack of privity or knowledge under the LLA and, therefore, denied Blessey limitation.[82] Blessey's final apportionment of fault was seventy percent.[83]

Despite the court's discussion of the shore-based officials' knowledge of the negligent conduct, the court skipped a critical step in its analysis, which was the failure to analyze the shore-based managing officials' agency power.

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72. *Id.* at 654.
73. *Id.* (quoting China Union Lines v. A.O. Andersen & Co., 364 F.2d 773, 787, 1966 AMC 1653 (5th Cir. 1966)).
74. *Id.* at 655.
75. *Id.*
76. *Id.* at 656.
77. *Id.* at 655.
78. *Id.* at 654-55.
79. *Id.* at 655.
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.* at 656.

IV. ANALYSIS

In determining if Blessey had privity or knowledge of the negligent conditions on the *Lord*, the U.S. District Court for the Eastern District of Texas failed to analyze the agency power of the shore-based managing officers as set forth in the most recent Fifth Circuit precedent.[84] It is unlikely that this departure affected the ultimate outcome of the case. However, the failure to perform the analysis in the noted case could have implications for establishing a limitation of liability claim in future maritime negligence cases. If district courts within the Fifth Circuit fail to apply these agency factors, appeals may increase, thereby decreasing judicial efficiency. In *In re Hellenic*, the Fifth Circuit established an eight-factor test to determine if an officer acted as an agent of the principal corporation.[85] If this test is satisfied, the agent's knowledge would be imputed to the corporation as well.[86] The Fifth Circuit's purpose for establishing this test was to set a standard for whom can be considered a "managing agent" of a corporation under the law.[87] In the noted case, the court failed to discuss any of these factors or give any indication of whether these factors were considered in reaching its conclusion.[88] This omission potentially has the effect of expanding the definition of knowledge by allowing a job title based analysis to determine privity or knowledge, which was one of the concerns that the Fifth Circuit attempted to address in *In re Hellenic*.[89]

In the noted case, the court relied on the holding from *Continental Oil Co.*, which found that on-shore managers were officers for the sake of the privity or knowledge standard.[90] The court reached its decision based on job title,[91] without an in-depth analysis of the duties and authority that the shore-based managers held.[92] This failure is in conflict with Fifth Circuit precedent.[93] The court should have applied the *In re Hellenic* factors to determine if the shore-based management acted as agents for Blessey.[94] After analyzing the factors set forth in *In re Hellenic*, the court

84. *See id.* at 654; *In re* Hellenic, 252 F.3d 392, 397, 2001 AMC 1835 (5th Cir. 2001).
85. *In re Hellenic*, 252 F.3d at 397.
86. *Id.*
87. *Id.*
88. *In re Savage Inland Marine*, 539 F. Supp. 3d at 654-55.
89. *In re Hellenic*, 252 F.3d at 395-96.
90. Cont'l Oil Co. v. Bonanza Corp., 706 F.2d 1366, 1367, 1983 AMC 2059 (5th Cir. 1983).
91. *In re Savage Inland Marine*, 539 F. Supp. 3d at 654.
92. *In re Hellenic*, 252 F.3d at 396-97.
93. *See id.*
94. *See id.* at 397; *In re Savage Inland Marine*, 539 F. Supp. 3d at 654-55.

could still have determined that Blessey was not able to limit liability.[95] Considering the facts of the noted case, the shore-based managers could have been determined to be agents of Blessey based on the scope of their authority.[96] Specifically, the shore-based managers oversaw the day-to-day activities of Blessey's captains and vessels.[97] Thus, the managers acted in the relevant field of operations.[98] However, the court should have made a factual finding as to the areas of authority that the managers possessed, which could have included one or more of the factors set forth in *In re Hellenic*.[99]

As stated in *In re Hellenic*, the expansion or contraction of agency within the LLA could have far reaching implications for both injured plaintiffs and vessel owners.[100] As in the noted case, by merely deciding if the privity or knowledge standard is met without performing the agency analysis, corporations may be denied a limitation of liability based solely on the knowledge of an employee who holds a similar title, but lacks the requisite scope of authority.[101] This could strip corporations of the ability to claim this defense in cases where the corporation or its agents did not have privity or knowledge.[102] These implications demonstrate the importance of lower courts following the Fifth Circuit's agency analysis when determining the privity or knowledge of a corporation.[103]

In the noted case, the court failed to follow recent Fifth Circuit precedent on the LLA.[104] Rather, the court followed *Continental Oil Co.*, relying on a less developed concept in the evolution of the privity or knowledge standard.[105] The Fifth Circuit expanded the privity or knowledge standard with *In re Hellenic* twenty years later to prohibit lower courts from granting or denying limitation of liability based on job title alone.[106] While the outcome of the noted case may not change, the failure to conduct the analysis set forth in *In re Hellenic* could change the

95. *See In re Savage Inland Marine*, 539 F. Supp. 3d at 655.
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.*
100. *In re* Hellenic, 252 F.3d 392, 395-96, 2001 AMC 1835 (5th Cir. 2001).
101. *Id.*
102. *Id.*
103. *See In re Savage Inland Marine*, 539 F. Supp. 3d at 654-55.
104. *Id.*
105. *Id.* at 654.
106. *In re* Hellenic, 252 F.3d 392, 395, 2001 AMC 1835 (5th Cir. 2001).

approach that the United States District Court for the Eastern District of Texas and/or other courts within the Fifth Circuit use in future cases.[107]

Additionally, the court did not discuss the importance of Blessey's cell phone policy in the accident.[108] In a maritime casualty such as this with a personal injury claim, the breach of company policy should be substantial and important to the injury. Here, the court acknowledges Captain Shoemaker was on his phone prior to the accident.[109] However, the opinion lacks a discussion regarding the importance and relevance of the cell phone usage policy that Captain Shoemaker breached.[110] While the court may have reached the correct conclusion in finding the breach was a cause of Mr. Wood's injuries, the lack of discussion could have significant implications for maritime practitioners.[111] Since a breach of policy was a critical element of establishing liability, the court should have concluded that the breach was substantial and important to the injury.[112] Without a clear analysis, companies might not be able to predict liability and monitor employee behavior efficiently.[113]

V. CONCLUSION

The court most likely reached the correct holding in the noted case. However, the court's failure to conduct an agency analysis may have broader implications for maritime practitioners and other courts within the Fifth Circuit. The noted case found that Blessey had "privity or knowledge" of the breach of its cell phone policy based on the job title of the employees (i.e. shore-based management) who had actual knowledge of the breach.[114] This is in direct conflict with Fifth Circuit precedent that provided a more reasoned analysis to determine agency.[115] Specifically, the Fifth Circuit's precedent designed the privity or knowledge test to address concerns that an overly broad or an overly narrow analysis, based on job title alone, could expand or contract the limitation of liability claim.[116] Rather, the U.S. District Court for the Eastern District of Texas

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107. *See In re Savage Inland Marine*, 539 F. Supp. 3d at 655; *In re Hellenic*, 252 F.3d at 396-97.
108. *In re Savage Inland Marine*, 539 F. Supp. 3d at 655.
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.*
113. *See In re* Hellenic, 252 F.3d 392, 395, 2001 AMC 1835 (5th Cir. 2001).
114. *In re Savage Inland Marine*, 539 F. Supp. 3d at 655-56.
115. *See In re Hellenic*, 252 F.3d at 395.
116. *Id.*

should have conducted an agency analysis of the shore-based managing officials. In the end, the court most likely reached the correct conclusion in finding that the shore-based management officials were agents of the corporation within the context of the LLA.[117] However, the completion of the agency analysis would promote the notions of predictability and reliability within the law that the Fifth Circuit sought to advance.

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117. *See In re Savage Inland Marine*, 539 F. Supp. 3d at 655.

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