

Limitations of Liability in the Marine Liability Act Exclude Costs and Interest

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It was a long time coming, but there is finally clarity regarding whether the monetary limitations of liability contained in the *Marine Liability Act* S.C. 2001 (the “*MLA*”) as amended are inclusive or exclusive of costs and interest.

In *Algra v. Comrie Estate*, 2023 ONCA 811, the Ontario Court of Appeal upheld the decision of Munroe, J. in the lower court finding that prejudgment interest and costs are properly calculated in addition to the limitations of liability imposed under the *MLA*.

Facts and the Original Rule 21 Motion Ruling

A fatal boat accident occurred on Lake Erie in 2011. A power boat struck a breakwater near the harbour at Leamington, Ontario. There were three fatalities and two passengers were injured. Several legal actions were commenced naming, as defendants, the owner and operator of the power boat and all levels of government. The actions included claims for damages, costs and prejudgment interest.

The parties brought various Rule 21 motions (*1). Rule 21 of the Ontario *Rules of Civil Procedure* provides for the determination of a question of law before trial. Specifically, the parties bringing the Rule 21 motions asked for a determination of the meaning of S. 29(a) of the *MLA*; that is, was the statutorily provided monetary limitation on certain maritime claims inclusive or exclusive of costs and prejudgment interest?

All the parties to the Rule 21 motion not only agreed that S. 29(a) of the *MLA* applied but also agreed that the claims as made in the legal actions in total exceeded the statutory limitation of liability available (or \$1,000,000), pursuant to that section, which reads as follows:

The maximum liability for maritime claims that arise on any distinct occasion involving a ship of less than 300 gross tonnage, other than claims referred to in section 28, is

(a) \$1,000,000 in respect of claims for loss of life or personal injury; and

(b) \$500,000 in respect of any other claims.

Munroe J. reviewed the law on statutory interpretation finding that the preferred approach involves the significant role of context when construing written words of a statute. Quoting Watt J.A. in *R. v. Stipo*, 2019 ONCA 3, His Honour stated, “To discover what Parliament intended, we look at the words of the provision, informed by its history, context and purpose: *R. v. Mabior*, 2012 SCC 47, [2012] 2 S.C.R. 584, at para. 20.”

The defendants took the position that the limitation of liability was a statutory hard cap and inclusive of interest and costs. The words “maximum liability” were not ambiguous and thereby included all possible relief. Further, there were other unrelated Articles in Schedule 2 of the *MLA* which specifically provided that interest and costs were excluded from calculation in those sections. Therefore, it was argued, Parliament made a specific intentional omission. Lastly, the object of the associated international treaty was said to create certainty across the world regarding liability in maritime accidents so interpreting S. 29(a) to exclude prejudgment interest and costs would destroy that central objective of certainty.

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The plaintiffs argued that claims of prejudgment interest and costs were incentives for resolution and expeditious handling. Removing reasonable indemnification of successful plaintiffs also were said to create an access to justice issue. The plaintiffs countered the defendants' argument that an expansive reading of the limitation would destroy the "certainty" objective of the international treaty by pointing to the unrelated section later in the *MLA* that specifically excludes interest and costs from another limitation of liability cap.

The Court noted that S. 29 (a) is silent on costs and interest. His Honour looked at the words of the statute in the context of the provisions. The words in the section are: "The maximum liability for maritime claims ... is ... \$1,000,000 in respect of claims for loss of life or personal injury" The "maximum liability" statutory cap is for the maritime claims for loss of life or personal injury.

His Honour stated at paragraph 26, "In my view, a claim for costs and a claim for prejudgment interest each serve a different purpose and seek to protect a different interest than a claim for loss of life or personal injury." This included indemnification of successful parties but also costs could also sanction or penalize a party for unreasonable behaviour. Costs also ensure that litigation is conducted in a fair, efficient and just manner. Further, costs could promote early settlements and could compensate for large expenses spent to vindicate a party's rights.

Munroe J. stated, at paragraph 29, that claims for prejudgment interest also compensated for loss of use of the monies sought from the date of the injury to the date of judgment to fairly compensate an injured party and to restore them as much as possible. This was especially true because the court system cannot render judgment immediately after the date of the injury.

The Court found:

[30] In my view, the contextual reading of the words of the statute together with an understanding of the function and purposes of costs and interest resolve the interpretation issue. By their very nature and function, claims for costs and interest clearly are not claims for loss of life or personal injury. As I have stated, they each have a different objective and serve to protect different interests. As such, inclusion of costs and interest into the liability limitation of s.29(a) of the *MLA* is an incorrect interpretation of it.

The Appeal

The Ontario Court of Appeal heard various appeals and cross appeals in this matter arising out of the summary judgment motion on liability but also on the Rule 21 motions including the motion regarding the interpretation of S. 29(a) of the *MLA*, as noted above.

Hourigan J.A. speaking for the Court, agreed with Munroe J.'s "careful review" and finding that Parliament did not intend to include claims for costs and interest in the monetary cap given the different purposes of each and not as part of claims for "loss of life or personal injury." Hourigan J.A. confirmed that costs are to ensure litigation is conducted in an efficient, fair and just manner and that prejudgment interest is levied to account for delay between injury and judgment.

Finally

Therefore, the Section 29 limitation of liability in the *MLA* is calculated as the amount of the cap *plus* prejudgment interest and costs on top (*2). Accordingly, unless there are specific provisions stating otherwise, limitations of liability in the *MLA* for maritime claims of loss of life or personal injury exclude costs and interest. A PDF version is available for download [here](#).

Endnotes

(*1) 2022 ONSC 4637. There was more than one Rule 21 motion but only the motion regarding costs and interest is reviewed here. The governmental entities were not involved in the Rule 21 motions as Munroe J. had, in an earlier summary judgment motion, dismissed all claims against the government defendants. This finding was also upheld on appeal.

(*2) There was no attempt to obtain leave to appeal to the Supreme Court of Canada.

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Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

Author



Kim E. Stoll

Partner

416.203.9509

kstoll@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com