

Can marina operators limit liability under s.191 Merchant Shipping Act? Holyhead Marina Ltd v Farrer &ors [2020] EWHC 1750 (Admlty)

[James Watthey](#) appeared in this case before the Admiralty Judge involving a very rare dispute on the right in principle to limit under s.191. The case provides the only authority for the timebeing in English law on the main point in dispute: whether a marina is (or can in certain circumstances be) a “dock” for limitation purposes.

The dispute arose out of the catastrophic destruction of Holyhead Marina and 89 vessels moored there, when Storm Emma brought north-easterly gales on 1 – 2 March 2018. The claims are put at over £5,000,000, but the marina operators brought a Limitation Claim, seeking a declaration of their right to limit liability at 500,000SDRs (about 10% of the full claim value). Importantly, Holyhead Marina was an arrangement of floating pontoons anchored to the seabed concrete blocks, was open to the sea rather than enclosed in a lock or tidal gate, and was designed for the mooring of relatively small leisure craft.

Under s.191, the right to limit liability under the Convention on Limitation of Liability for Maritime Claims 1976 was extended to the “owners of any dock”; while “dock” is statutorily defined as including “wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing places and jetties”. The quantum of the limitation sum is based upon the tonnage of the largest UK ship to have been within “within the area over which the authority or person discharges any functions” in the past 5 years. Meanwhile any right to limit will be lost under s.191(4) where the damage arises from the personal act or omission of the limiting party, done recklessly and with knowledge that such damage would probably result.

Following close of pleadings, the marina operators sought summary judgment. After a remote hearing via Skype for Business on 3 June 2020, Teare J reserved judgment in order to consider these important issues.

On the question of whether a marina (or at least Holyhead Marina) was a “dock”, his Lordship considered the historical context, the commercial purpose of the right to limit and the ordinary meaning of the statutory words. He accepted the submission that the marina was not a “dock” on any accepted ordinary meaning of the word, and he agreed with Willmer J in *The Humorist* that a “dock” was “an enclosed space with gates to allow the admission and retention of water”; this also accorded with the OED and specialist dictionary definitions of the word. However, he went on to find that Holyhead Marina’s pontoons came within the meaning of a “landing place” and thus within the extended statutory definition of “dock”. While the pontoons were mostly for mooring vessels rather than merely landing passengers, they served a dual purpose: “They are also places where those on board the small leisure craft, when they return from sea to the Marina, step ashore or ‘land’. In that sense they are a landing place, though that is not their sole purpose”.

As to quantum, Teare J also examined (for the first time in English law) the meaning of the “area over which the authority or person discharges any functions”. It having been submitted by the vessel owners that the marina operators were required under their lease to procure compliance by resident and visiting yachtsman with the Port of Holyhead Bye-laws, his Lordship nevertheless held that as no power was exerted beyond the scope of the marina itself, it could not be said

that any relevant *function* was exercised outside it either. In practical terms this was important: in the other parts of the Port of Holyhead there were some very large resident vessels, including the Holyhead-Dublin ferry so if limitation had been based on such vessels then the claim would have been effectively unlimited.

Thus, his Lordship ruled that Holyhead Marina Ltd was entitled in principle to limit liability to 500,000SDRs. However, as the allegations of recklessness in the operation of the marina were found to have a reasonable prospect of success, the vessel owners were permitted to continue with their defence of the claim.

James Watthey appeared as sole Counsel before the Admiralty Judge and was instructed by Keoghs LLP on behalf of the owners and insurers of most of the destroyed vessels.

The Admiralty Judge's judgment can be found on BAILII [here](#).