

1. Any liability including liability for clean-up costs must be based on negligence, namely an admission or on a finding of fault;

2. The principles of limitation of shipowners' liability upon proper proof of the right by law to claim limitation of liability must be preserved for the well-being of the maritime industry which in turn is essential for the interest of domestic and foreign commerce and for the economy of this nation. However, we do assert that it is time for the United States to increase the limits of liability upon reasonable and realistic terms as provided by the principles of the "International Convention on the Limitation of Shipowners' Liability", written at the Diplomatic Conference on Maritime Law, Brussels, September 30–October 10, 1957, (the "Brussels Convention, 1957").

3. The bill as presently written is probably not insurable. If insurable the premiums would doubtless be exorbitant.

4. Compulsory insurance should not be required for any law on this subject.

5. Penalties against a person's professional license or document should only be imposed on proof of negligence—so also, the other penalties proposed in the present bill except where the unlawful act of omission is willful.

I. LIABILITY IN CONNECTION WITH OIL POLLUTION SHOULD ONLY BE IMPOSED UPON A FINDING OF A FAULT

Section 19(e) of the Bill imposes upon shipowners liability to the United States, for the full cost of removal of oil in addition to the other penalties provided under the bill. The only exception under subsection (e) is a discharge due to an Act of God. Thus, irrespective of fault, shipowners would be compelled to bear the cost of clean-up in all cases except an Act of God.

The imposition of liability irrespective of fault is unquestionably contrary to every well-settled principle of our law, the general maritime law and the laws of practically every maritime nation. Before any person may be held liable under the proposed statute it should be required that his legal responsibility for the occurrence and damages be established, and that such liability be based upon an admission of or finding of negligence or willful violation of the statute. Under the proposed bill a completely innocent shipowner would be subject to the severe civil and penal burdens of the bill even though responsibility should have been properly imposed *prima facie* or on proper proof on another. To punish for wanton, willful or even negligent dumping of oil is one thing; to impose total and excessively costly liability in the absence of fault or even knowledge is another thing altogether.

Assume that a vessel, proceeding on her proper course, overruns an unmarked sunken wreck, or a vessel moored to a wharf comes to rest on a sunken obstruction with the ebb of the tide, as a result of which the vessel's tanks are breached and oil leaks onto the water. Under H.R. 1400 the shipowner would be liable for the clean-up or otherwise responsible to the United States Government for the cost of clean-up, and his vessel would be subject to *in rem* liability and a \$10,000 penalty even in the absence of fault and notwithstanding that responsibility may properly rest with the United States for failure to take appropriate action with respect to the sunken wreck or that liability may ultimately be properly imposed on the wharf owner for failure to provide a safe berth.

Obviously, the penal provision of subsection (d) should not apply to accidental discharges of oil. Such a penalty if necessary, should at most apply to negligent discharges. But, even more important, in view of the substantial costs of clean-up which may be involved, an innocent shipowner should never be subjected to such expense in the absence of wrong doing on his part. Such imposition of liability is not only out of harmony with economic realities but is also contrary to settled principles of responsibility under maritime law.

Subsection (i), without regard to willful acts, but upon mere violation of the provisions of the bill, provides for the arrest and taking into custody of alleged violators, with or without process. Further, under subsection (g), also without regard to volitional acts, the licenses of the master and officers of an allegedly offending vessel are subject to suspension or revocation. In effect the bill establishes an oil pollution police department authorized to place persons under arrest without process. What will be the effect of such legislation on foreign mariners and their governments? It is foreseeable that legislation by other