

Salty traffic laws: from counting whistles to hugging narrow-channel banks

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The day-to-day issues most maritime law practitioners face deal not with legislation, agency rule making, and the battle against terrorism, but with mishaps and misunderstandings that plague an industry whose very nature is – lets face it – often dangerous and commercially unpredictable. Accidents happen, parties to contracts have divergent interpretations of their business deals, folks get hurt, and regs get violated.

Navigable waters, to which admiralty law is subject, isn't just a wet highway when it comes to the law. You can't just pick up Coast Guard authority to operate ocean freighters like you can a driver's license at the local DMV. Navigating waterways is far more complex than driving down a highway. While a highway traffic collision can be tragic, a maritime accident can be devastating for entire communities and industries.

The intricacies of safe maritime navigation, a long and rich evolutionary history of waterborne transportation, developing technology, and other factors have produced codified sets of navigation rules. Some apply to international transit, others to inland, and still others to certain bodies of water, but all have the force and effect of federal statutes. A couple of court decisions recently came down which explain how salty traffic laws are adjudicated. They also explain why we wouldn't want freighter captains to be awarded licenses the same way as those who pilot SUVs.

These cases involved collisions between tugs operating pursuant to the Inland Regulations for Preventing Collisions at Sea, 1972 33 U.S.C. § 2001, *et seq.* The first one addressed a floating casino, the *Miss Belterra*, which was working its way down the Mississippi near St. Louis. On its way up the river was towboat *Elizabeth Ann*. But also headed upriver was a third vessel, *Eileen Bigelow*.

The problem was confusion as to who was talking to whom when pilots tried to coordinate passage. A navigation reg mandates that vessels must communicate their intentions when approaching each other in narrow waterways. Before the days of marine radios, a vessel would sound its whistle once to indicate passage port to port, and twice for starboard to starboard. *Miss Belterra's* pilot asked for a two-whistle passage, and heard *Elizabeth Ann's* master concur. Apparently, however, *Elizabeth Ann's* operator thought he'd been talking to *Eileen Bigelow*.

Was the ensuing bang up the result of a simple misunderstanding? Not quite. It also turns out that *Miss Belterra* was sailing without running lights. Moreover, the casino wasn't close enough to its starboard bank, as is required during narrow channel operations. For that, the casino's owner got tagged with 10% responsibility for damages to both vessels. The trial court found, and the court of appeals agreed, *Elizabeth Ann's*

pilot was “inattentive.” This was especially so given that he apparently blew a chance to avoid the collision after seeing *Miss Belterra*.

In another recent collision case, two tugs met under unfortunate circumstances in Arthur Kill, a narrow waterway dividing Staten Island, New York and New Jersey. This time, the vessels collided after both allegedly violated a smorgasbord of navigation regs. These included failure to sound emergency whistle blasts; improper speed; failure to reverse engines to avoid collision; and failure to operate appropriately close to a bank in a narrow channel. But one of the two vessels had no lookout (call it a “Legal Lookout,” because they’re required by law), who might have prevented the whole mess in the first place. Per the court, the other vessel’s no-no’s were committed only in the hopes of avoiding a more serious head-on collision.

While volumes have been written about vessel navigation and the law that governs it, a few legal principles regarding liability for operational infractions are particularly interesting. Here’s a crash course:

Liability when two or more vessels are involved in a navigational mishap is allocated by percentage of fault as determined by the court. In other words, if one vessel is 20% to blame and the other 80% (and it’s not often 100% to one vessel), then the total damages of both vessels are tallied up and apportioned accordingly.

The “Pennsylvania Rule” provides that if a vessel operates in violation of any maritime reg, it’s not enough to say, “hey, my infraction didn’t cause the problem.” Rather, a vessel owner must demonstrate its violation *could not* have played a role in the accident, which is a much higher standard.

A vessel whose nose is clean until a mishap is imminent, and breaks a navigation rule trying to fix the situation, may be forgiven for the violation (known as errors *in extremis*). The law recognizes that things can get pretty charged when a barge is about to slam into you.

Lastly, a vessel owner’s liability may be limited to the value of its vessel plus pending freight, if the vessel owner didn’t know about or was not legally responsible for the condition that caused an accident. Thus, if a vessel is sitting on the bottom of the Atlantic, its owner’s liability might be nil. An old rust bucket’s value might be a fraction of the damages it causes. Many “ifs and buts” qualify this doctrine, but it’s one anyone involved in a maritime accident should be aware of.

Ref: MO Barge Lines, Inc. et al v. Belterra Resort Indiana, Inc., et al, 360 F.3d 885 (8th Cir. 2004); and Hygrade Operators, Inc. v. the Tug Tachee, 2003 WL 23309451 (D NJ).