

A crash course: What happens when vessels hit things.

by *Steven W. Block* August 2003

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A federal district court sitting in the Northern District of Illinois recently decided a case addressing so many points of maritime law, it almost reads like a law school hornbook. That also makes the decision excellent fodder for lawyers who write legal columns.

When two vessels run into each other, it's called a "collision." When a vessel hits a stationary object, "allision" is the legal moniker of choice. In sorting out who gets to pay how much for what, courts treat the two circumstances pretty much the same, although liability presumptions can differ.

The Bump. Oops!

Here, tug *Morgan* was pushing four barges up the Calumet River in Chicago. This tug steered and controlled its tow by affixing them together with a series of winch-driven lines. The barges' direction, as well as their positioning, were controlled by those lines being tightened, slackened or held steady. Apparently, one of *Morgan's* winches was out of kilter, causing it to fail when the tug's captain tried to tighten it up. Consequently, the port-forward barge strayed out of control.

Yes, a City of Chicago-owned bridge was coming up, about 100 feet dead ahead. Despite the bad winch, *Morgan* and her barges appeared to be safely within the bridge's two piers. Besides, the piers' inner faces were designed to withstand occasional bumping by the gunwales of catawampus boats. The cable wires which controlled the bridge's opening and closure ran along the riverbed and up the structure along the piers' inner faces, but they were safely ensconced in recesses. Moreover, a wooden rub rail protected the cables from an unlikely, but possible, direct impact. *Morgan's* captain killed his engines, but thought he had everything under control. Holding his breath as his tug passed under the bridge, the skipper heard no sound of a problem.

Unbeknownst to the *Morgan's* crew, the unsecured barge had struck one of the cables, damaging the bridge's control system to the tune of some 625 grand. The wooden rub rail, noted by the Coast Guard in the bridge's certification documents, had disintegrated due to lack of maintenance.

A tour of three states.

Maritime law's principles all have catchy little titles. In this case, the court looked at three such doctrines, the Pennsylvania, Oregon and Louisiana Rules, in deciding who was liable for the bridge's repair costs. Incidentally, these doctrines are named after vessels that happened to have state names, not out of some reverence to the Keystone, Beaver and Pelican States.

First stop, Pennsylvania, the namesake of a maritime law doctrine that says, “defendant vessel owner, if you violate a Coast Guard reg or other law designed to prevent a variety of mishap, then your violation is presumed to have caused that mishap.” It’s not enough to show the reg violation didn’t cause the accident; rather, you have the steep burden of proving your infraction *could not* have even contributed to it. That’s usually a pretty tough standard, but one *Morgan*’s owner met. The tug hadn’t run afoul of any navigational rules, and running a vessel with broken winches apparently doesn’t cross any regs. Would the Windy City have to prove its case the old-fashioned way, with a preponderance of the evidence that the accident was *Morgan*’s fault?

The next rules at play were Louisiana and Oregon. These two work pretty much identically, but in slightly different circumstances. The Oregon Rule provides that if a vessel operating under its own power knocks into a fixed object, then the accident is presumptively the vessel’s fault. Hey, that just doesn’t happen unless the vessel goofed up somehow. The Louisiana Rule says the same thing, only about drifting vessels. It wasn’t clear whether *Morgan* was under power at the time of the allision, but it didn’t really matter for purposes at hand. By the way, not all courts administer these rules, at least not in the same ways.

Hoping to avoid near automatic liability, *Morgan*’s owner tried to argue the mishap was unavoidable, and therefore not within the Louisiana or Oregon Rule’s domain. The court didn’t buy it, realizing that thousands of boats had passed under the bridge without incident for half a century under a wide range of conditions. Moreover, the vessel admittedly was running with malfunctioning gear, and apparently could have taken evasive action. Thus, the tug shoulders some of the blame, and therefore at least some of the tab, without the Windy City having to discern and prove exactly what happened.

The court also addressed admiralty’s New-for-Old Rule, which says a liable defendant doesn’t have to pay the full costs of replacing the plaintiff’s damaged old property with more expensive new stuff. Nothing really suggested the damaged cables, though fifty years old, had deteriorated in value. Also, repair efforts were shown to have been effected economically.

The Denouement, or How Maritime Law Divvies up Liability in Collision/Allision Cases.

Just because *Morgan* and her owners are liable by operation of law doesn’t mean the bridge’s owner isn’t culpable. Maritime law embraces the general legal principle of “comparative fault” whereby courts make wrongdoing defendants pay the Piper only to the extent their no-no’s justify it. If the plaintiff is also legally in the wrong, any award against the defendant gets docked accordingly. In this case, the court found Chicago equally to blame for the allision for letting the wooden rub rail rot away. True, the rub rail’s absence didn’t actually cause the allision, but it did turn an otherwise innocuous tap into a big-buck claim. Thus, *Morgan*’s owner has to pay only 50% of the bridge’s repair tab.

Had the tug suffered damage (it apparently didn't, or at least the owner didn't make an issue of it), half the vessel's repair costs would have been chargeable to Chicago, a sum which would have been deducted from the bridge repair costs in Chicago's ultimate award. That's actually the more typical way these collision/allision cases work out.

Maritime law's inter-working system of industry-specific rules is designed to hold wrongdoers' feet to the fire while ensuring an equitable result. If you're doing something wrong or operating defective equipment, you could lose out even if someone else's blunder brings it to bear.

Ref: City of Chicago v. M/V MORGAN, 248 F.Supp. 759 (N.D. Ill. 2003).