

***Maritime Negligence: Who gets to pay when something goes wrong, and how legal liability can be dodged***

by *Steven W. Block* October 2003

**Reprinted with permission from  
*Marine Digest and Transportation News***

Two recent federal court decisions addressing maritime law's approach to negligence provide some good pointers for those harmed by, or accused of causing, mishaps at sea. For purposes of admiralty jurisdiction (i.e., maritime law applicability), vessels "at sea" include those floating at marinas, piers, wharves and other mooring stations.

Admiralty doesn't treat negligence actions much differently than does other law, although there are a few twists, turns and name changes in the process. At the heart of the concept are four "elements," or things a plaintiff must prove to win: Duty, Breach, Causation and Damages. "Duty" is an obligation not to do something harmful that you owe customers, contractors, partners, innocent bystanders and many others. The concept of "duty" is broadly construed; pretty much anyone you come in contact with has a right to assume you won't be negligent. However, it still must be demonstrated.

Next on the laundry list is "breach," or the violation of the duty described above. You have a duty not to crash into someone else's vessel, lose your shipper's cargo, or provide incorrect shipper's instructions to your customer's carrier; you breach that duty when you collide, drop a container overboard, or tell a carrier to maintain a chemical cargo at 20° Celsius instead of Fahrenheit (yes, it's happened).

But just because a duty's been breached, a no-no has occurred, and something needs to be done better next time, doesn't necessarily mean liability. To satisfy the element of causation, a plaintiff has to show that the breach of a duty actually caused harm. It makes no difference if an equipment supplier negligently sold a vessel operator faulty positioning equipment, if the vessel wouldn't have avoided that storm even with appropriate gear because a crewmember was too snookered to use it (yes, that's happened too). Generally, causation requires that the variety of harm caused was foreseeable to the wrongdoer.

Lastly, a plaintiff alleging negligence has to show the extent of damages caused by a breached duty. Some leeway is given when an exact figure is unascertainable, but you're supposed to point to the size of your loss with specificity.

The federal court sitting in Delaware recently reaffirmed these principles in the context of an electrical fire on one yacht, which spread to another boat moored next to it. Both vessels found their way to Davie Jones' Locker, and a lawsuit followed. Duty? Sure. You have a duty not to endanger another vessel by having a fire-hazard condition on your own boat. Damages? Of course. A yacht's acquaintance with the seabed is a loss in anybody's book.

But in this case, the plaintiff couldn't show breach. A licensed marine electrician had just blessed the defendant vessel's wiring, which allegedly started the fire. That's all a

pleasure craft owner needs to do (a different standard might apply to commercial vessels). There's no automatic liability just because a fire breaks out on your yacht; if you did what the Coast Guard requires, and what a phantom character the law knows as "the reasonably prudent man" would have done, you're probably okay.

That was enough to end the matter, but the court, just to make its point clear, also addressed the absence of causation. The plaintiff couldn't show sufficient evidence that the defendant vessel's bad wiring actually sparked the fire. Expert witnesses differed. Even if a hazardous condition existed, it didn't necessarily cause the problem.

In this era of contractual freedom, shouldn't players be free to strike a deal regarding who shoulders risk during the course of a business relationship? Certainly those writing standardized contracts have long thought so. Most everyone has encountered a contractual "exculpatory clause," or a term that basically says, "even if I cause you harm by my own negligence, I won't be liable for it."

The law has long looked at exculpatory agreements with a jaundiced eye, and for many years wouldn't enforce them at all as contrary to public policy. We just don't want folks feeling free not to worry about keeping things safe. But recognizing economic realities and business trends, courts, including those sitting in admiralty, reluctantly enforce exculpatory clauses. However, they must be clear and precise under the circumstances. In other words, there has to be no doubt that the party giving up its right to sue for negligence knew just what it was doing. The contract language has to be almost nauseatingly precise.

When scrutinizing exculpatory agreements, judges are far more loath to throw out of court an individual plaintiff naïve to the business world than a sophisticated company experienced in negotiating deals. The former need the benefit of public policy protection; the latter are presumed capable of taking care of themselves (and to have gained some benefit by agreeing to the term in the first place). Still, there must be some basis for a court to ignore an exculpatory clause, and inadequate specificity is the most common.

That's pretty much what recently happened in the Empire State, as addressed by the federal court for the Eastern District of New York. There, an exculpatory clause provided that a marina wouldn't be liable for any loss "irrespective of how the same is caused." That wasn't good enough, as it was unclear that negligence was encompassed by the term "irrespective." The marina gets to pay for fire damage. Note also that courts won't enforce an agreement that purports to exculpate really bad ("gross" in legal-ese) negligence or intentional acts.

The moral of the stories: live defensively and safely, and don't rely on exculpatory clauses. Recovery of damages by way of a maritime negligence claim often hinges on proving elements beyond your control.

***Ref: Commercial Union Insurance Co. v. Blue Water Yacht Club Assoc., 239 F.Supp. 316 (EDNY 2003); and Galentine v. Estate of Stekervetz, 2003 WL 21729781 (D. Del. 2003)***