

Maritime Law Case Update

\$70.6 million rape case

Baca v. The Motor Yacht, Endless Summer, Official No. 71013, No. 18-CV-60200, 2018 WL 4077026 (S.D. Fla. Aug. 27, 2018).

- Woman sued a 130-foot luxury yacht owner after she was raped on the vessel (Endless Summer) while it was docked in Fort Lauderdale
- She worked as a stewardess for the company that owned the yacht, Island Girl Ltd.
- She was raped by a deckhand who entered her cabin drunk and threatened to kill her if she did not comply with his demands
- He plead guilty and served a two-year sentence and was later deported to Poland
- The only other person on board at the time was the captain
- She sued under the Jones Act on the basis of negligence, unseaworthiness, and denial of maintenance and cure by the vessel after the incident
- The jury found that the woman was “acting as a crew of a vessel in navigation” and that Island Girl was negligent in “failing to adopt and enforce an alcohol control policy” and “failing to determine the sobriety and health of the crew before the crew boarded the vessel”
- They also found that the vessel was unseaworthy because of an “inadequate security system” and “a non-functioning telecommunications system which made it impossible for the woman to call for help”
- They awarded her \$70,000 in lost wages, \$4.2 million in lost future earnings, \$66 million for pain and suffering, and \$290,050 in past and future medical expenses

Whether a plaintiff can recover for emotional injury under the general maritime law without sustaining a contemporaneous physical impact?

Sawyer Bros., Inc. v. Island Transporter, LLC, 887 F.3d 23 (1st Cir. 2018).

- *Sawyer Brothers, Inc. v. Island Transporter, LLC; and M/V Island Transporter*
- Shippers brought a maritime action against carriers alleging that the captain was negligent and seeking damages for property loss and emotional distress arising from the incident
- The Court of Appeals affirmed district court determination that a plaintiff within the zone of danger can recover for negligent infliction of emotional distress in maritime cases
- Captain breaches his duty of reasonable care if he makes a decision which nautical experience and good seamanship would condemn as inexpedient and unjustifiable at the time and under the circumstances such as failing to monitor and take into account weather conditions on a voyage
- Supreme Court case already holding that seamen can recover NIED if they were within the zone of danger and this case now holds the same application to passengers
- Plaintiff is within the zone of danger if he sustains a physical impact or is placed in immediate risk of physical harm by the defendant's negligent conduct
- Another way of articulating it is that they are faced with immediate physical peril or the reasonable apprehension thereof

Precluded Presumption of Fault Against Moving Vessel in an Allision

Vane Line Bunkering, Inc. v. NATALIE D M/V, No. CV 17-1882, 2018 WL 999912 (E.D. La. Feb. 21, 2018).

- The Oregon Rule presumes that a moving vessel is at fault when it allides with a stationary object and it operates to shift the burden of proof onto the moving vessel
- The moving vessel can rebut this by providing (by a preponderance of the evidence) that it acted with reasonable care, the stationary object was at fault, or the allision was unavoidable
- The Oregon rule does not apply to allision with sunken and hidden objects though, unless the captain or other operators had knowledge of the object
- In this case, Vane Link Bunkering, Inc. v. Natalie D M/V, a moving vessel allided with a stationary anchor wire below the water and not visible or known to the captain
- The court found that the moving vessel acted reasonably in its navigation through the area and it is a jury question whether the stationary object was at fault or not but overall the presumption of fault on the moving vessel was precluded

Superyacht Owners Able to Fly American Flags

- Until August 2018, US law has defined a yacht as a vessel whose volume was a maximum of 300 GT (gross tonnage) as per a law written in 1920
- Americans owning yachts over 300 GT have had to have a foreign registry or register as a commercial vessel if they wanted an American registry
- The problem with this is that commercial vessels are held to different standards than recreational ones, so owners thought it unreasonable to register in the US
- This change will lead to more large recreational vessels registered in the US and in turn more jobs in other areas of the yacht industry such as repair and crew
- There may also be other economic benefits of larger yachts spending more time in US waters
- There are at least a couple of downsides to this new law. One is that it requires the disclosure of the identification and place of residence of the vessel owner, and if the owner is an entity, the beneficial owners of the entity (with certain exceptions). The other is that the law does not benefit large yachts that carry any passengers for hire, such as is the common practice with yachts that charter in the Mediterranean.
- Specific US Large Yacht Code is now being developed by the US Coast Guard to go into effect in 2020- referenced in John S. McCain National Defense Authorization Act for Fiscal Year 2019
 - SEC. 3529. LARGE COMMERCIAL YACHT CODE.- The Secretary of the department in which the Coast Guard is operating, acting through the Commandant of the Coast Guard, shall develop a Large Commercial Yacht code for recreational vessels over 300 gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of such title (as prescribed by the Secretary under section 14104 of such title), that is comparable to the Code of Safe Practice for Large Commercial Yachts (commonly referred to as the “Large Commercial Yacht Code”), as published by the Maritime and Coast Guard of the United Kingdom. The Secretary shall complete such code by no later than one year after the date of the enactment of this Act.
- Interim exemption from inspection will be granting to large recreation vessels under 46 USC 3301(7) as a “seagoing motor vessel” if they comply with LY3 or another acceptable code. When the new regulations become effective, such vessels will not be subject to inspection under section 3301(7) if they comply with the new large recreational vessel regulations issued by the Secretary.

Additional 25% import duty on US Yachts

- European Commission placed an additional 25% duty on, amongst other things, all “sea going boats and yachts, with or without auxiliary motor, for pleasure or sports” imported from the US
- The EU published the measures in a traded document over the summer in response to the US’s tariffs on steel and aluminum
- The additional duty has lead to cancelled orders in US shipyards that were to be sent to the EU

Britain Divorce Case (just interesting)

- A \$500 million yacht named Luna is at the center of what is described as Britain's most expensive divorce
- The yacht has nine decks, two heliports, a spa, swimming pool, and takes a crew of around fifty people
- The lifeboats reportedly cost \$4 million apiece
- The yacht also has a missile detection system, an anti-drone system, bulletproof windows, and bombproof doors
- A High Court judge ordered Farkhad Akhmedov to pay the equivalent of \$656 million to his ex-wife, Tatiana Akhmedova, in 2016
- He claimed the couple had been divorced in Russia a decade ago and refused to pay her
- In April the judge ordered him to give her the yacht valued at roughly \$500 million
- The yacht was in Dubai for maintenance work when it was impounded on behalf of the U.K. High Court and it still remains there
- Farkhad and representing attorneys filed a claim arguing future decisions regarding the yacht should be decided by a local court in Dubai

Cases Yet to be Adjudication but of Interest

Should a Duck Boat fall under maritime law?

- Duck boat accident on Table Rock Lake in the Ozarks near Branson, Missouri
- July 19, 2018 the Ride the Ducks tour boat sank with 31 people on board and 17 died
- Duck boats are amphibious vehicles originally used by the US military during WWII and the Korean War
- Now they are used in various cities around the US for tours
- Any claims against them might be limited by an 1851 law, the Shipowner's Limitation of Liability Act, which often caps damages to no more than the salvage value of the sunken vessel

- Being that it is a sunken vessel, the value is usually very limited compared to what claimants could receive in the absence of the law
- The law was initially intended to help build up the US's marine fleet
- In 1850s there was no insurance for maritime vessels, so Congress was trying to encourage people to still get involved in the maritime shipping industry by protecting them through this act
- Now, however, there are more ways for owners to be involved with the business and day to day decisions on their vessels as well as insurance coverage, so the law seems a bit out dated
- Nonetheless, the law remains, and the boat is virtually worthless
- The question of maritime jurisdiction (which might permit the limitation of liability defense) may rest on the classification of Table Rock Lake as "navigable"
- A federal court in the 80s ruled that it was not but usually when a body of water touches more than one state it is considered navigable

Educating People about "Legal" Marijuana and Boating

- Recreational cannabis is legal in nine states (Alaska, Washington, Oregon, California Nevada, Colorado, Massachusetts, Maine, and Vermont) but still illegal under federal law for any purpose by way of the Controlled Substances Act
- So, what does that mean for boaters who possess "legal" marijuana in their state and try to take it on their boats or on public waterway transportation to islands of legal states?
- Of course, any boater operating a vessel under the influence of marijuana could be subject to DUI charges but what about passengers?
- Federal preemption holds that federal law preempts state law even when they conflict
- So, while you may be in a harbor or marina of a legal state, if it is considered a navigable waterway, federal laws will usually supersede, and the Coast Guard will be within its perfunctory duties to board your boat if they suspect marijuana use
- State officers are free to enforce only state laws
- The same applies for ferry systems run by the Department of Transportation that transport people from legal states to their surrounding islands where the marijuana is legal (under state law at least) before and after the boat ride but not during

