BOATING BRIEFS

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Todd Lochner, Chair
Jody McCormack, Editor

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Third Circuit: Policyholder must prove fortuity to recover under all-risk policy

Chartis Prop. Cas. Co. v. Inganamort, 953 F.3d 231 (3d Cir. 2020)

The U.S. Court of Appeals for the Third Circuit has upheld a district court's ruling in favor of a yacht insurer on the basis that the insureds failed to show that the loss was fortuitous.

The insureds' 65-foot yacht, *Three Times a Lady*, partially sank behind their Florida home while they were away in New Jersey. A subsequent inspection by the insurer's claims specialist revealed three inches of standing water in the bilge and multiple potential sources of water ingress, including a hole in the hull the size of a screw. The specialist also found that the electrical breakers had suffered an electrical failure and that the battery charger was not working, with the result that the bilge pumps had stopped running.

The insurer sought declaratory relief, and both sides moved for summary judgment. Agreeing with the insurer that the insureds had failed to establish fortuity, the district court granted summary judgment for the insurer.

On appeal, the insureds argued that proving fortuity was unnecessary, and that to make out a prima facie case for coverage under an all-risk policy they needed only to show that a loss occurred. As an alternative, they argued that even if proving fortuity was necessary, they had met their burden because the sinking was caused by heavy rain. The Third Circuit rejected both arguments.

The First, Second, Fifth, and Eleventh Circuits have each held that a marine insured bears the burden of proving that a loss was fortuitous. Agreeing with these holdings, the Third Circuit concluded that an insured must make "some showing that the loss occurred by chance" (rather than, say, a history of poor maintenance).

As to the insureds' argument that the loss was caused by heavy rain, they had failed in the district court to produce any evidence that the loss was caused by adverse weather. While the burden of proving fortuity is not a heavy one, the Third Circuit noted that "it is more than negligible." An insured need not prove precisely how a loss occurred to avail itself of coverage under an all-risk policy, but must make some showing that the loss occurred fortuitously, i.e., by chance. ■

This newsletter summarizes the latest cases and other legal developments affecting the recreational-boating industry. Articles, case summaries, suggestions for topics, and requests to be added to the mailing list are welcome and should be addressed to the editor.

Inside this Issue

Eleventh Circuit rejects insured's ambiguity and waiver arguments and enforces navigational warranty

GEICO Marine Ins. Co. v. Shackleford, 945 F.3d 1135 (11th Cir. 2019)

After his prior insurer had paid out on a claim for constructive total loss following a lightning strike along the Gulf coast of Florida, a boat owner obtained a new policy from Geico. The Geico policy stated that coverage would apply "[w]hile the boat ... is ashore ... in the United States or Canada" or "[w]hile the boat is afloat within the navigational area shown on the Declarations Page." The declarations page included the following provision:

> CRUISING LIMITS: While afloat, the insured Yacht shall be confined to the waters indicated below:
>
> (There is no coverage outside of this area without the Company's written permission.)
>
> U.S. Atlantic and Gulf Coastal waters and inland waters tributary thereto between Eastport, ME and Brownsville, TX..., however the boat must be north of Cape Hatteras, NC from June 1 until November 1 annually.

The day after the policy was issued, the insured asked Geico to restrict the coverage to "port risk ashore," meaning that the policy would provide coverage only if the boat was out of the water. Geico did as it was asked, and issued a new declarations page without the navigational limit.

After a shoreside inspection revealed that the damage was not as severe as thought, the insured decided to take the vessel to Fort Lauderdale to have extensive repairs done. Accordingly, the insured asked Geico to remove the "port risk ashore" restriction. Geico did so, and at the same time reinstated the original navigational limit. (By its terms, the policy continued to provide coverage "[w]hile the boat ... is ashore ... in the United States or Canada.") Geico emailed the insured a new declarations page which—like the original declarations page—required the vessel "[w]hile afloat" to be "north of Cape Hatteras, NC from June 1 until November 1 annually." The insured denied requesting that the navigational limit be reinstated and could not recall seeing the updated declarations page before departing for Fort Lauderdale.

The vessel arrived in Fort Lauderdale by June 1, but went to anchor rather than going directly to the repair yard. While at anchor, a storm drove the boat into a sea wall. Geico denied coverage on the basis that the vessel was in breach of the navigational limits. The insured countered that the policy was ambiguous as to whether the navigational limits even applied, and that in any event Geico waived the right to rely on the limits when it removed the "port risk ashore" restriction so as to permit the insured to take the vessel to Fort Lauderdale. The trial court agreed with the insured.

The Eleventh Circuit reversed. Although the policy used the term "navigational area" while the declarations page used the term "cruising limits," the appellate court considered the two terms to be synonymous. Since the vessel that was outside the "cruising limits" on the declarations page, it was likewise outside the "navigational area" specified in the policy and thus there was no coverage for the loss.

With respect to the waiver issue, the Eleventh Circuit held that Geico "could reasonably have expected that [the insured] would comply with the navigational limit by having the vessel hauled ashore for repairs in Fort Lauderdale by June 1. The only way Geico Marine's conduct could have suggested it intended to waive the navigational limit is if the voyage to Fort Lauderdale was impossible to complete by June 1." But since the insured conceded that the vessel did arrive in Fort

Lauderdale by June 1, there was no showing that the navigational limit was impossible to comply with. Accordingly, Geico was entitled to judgment. ■

Jurisdiction/Procedure

Ninth Circuit: Renting a stand-up paddleboard is not a traditional maritime activity

In re Blue Water Boating Inc., 2019 WL 6525202 (9th Cir. Dec. 4, 2019)

Davies Kabogoza drowned in the Santa Barbara Harbor while using a stand-up paddleboard rented from a watersports company. In response to a wrongful death and survival action filed in California state court, the company brought an action in federal court seeking to limit its liability to the value of the paddleboard. The district court dismissed for lack of maritime jurisdiction, and the company appealed.

The Ninth Circuit noted that tort claims invoking a federal court's admiralty jurisdiction under 28 U.S.C. § 1333 must satisfy the location and maritime connection tests, which require that: (1) the alleged tort occur on navigable waters; (2) the general features of the incident have a potential to disrupt maritime commerce; and (3) the general character of the activity giving rise to the incident have a substantial relationship to traditional maritime activity.

The court focused on what it viewed as the underlying activity at issue in the case – the rental of the paddleboard. The court concluded that "the general character of the activity giving rise to the incident" did not have "a substantial relationship to traditional maritime activity." In focusing on the rental of the paddleboard, as opposed to the use of the paddleboard on navigable waters, the court concluded that neither navigation, storage, nor maintenance of a vessel was at issue. The company's alleged negligence lacked both "maritime flavor" and a "close relation to activity traditionally subject to admiralty basis," and on that ground the court affirmed the lower court's decision to dismiss the limitation action. ■

S.D. Fla. dismisses possessory action for lack of admiralty jurisdiction

Turner v. One 2019 76-Foot Sunseeker Sport Yacht, 2020 U.S. Dist. LEXIS 26092 (S.D. Fla. Feb. 13, 2020)

In a recent order, the U.S. District Court for the Southern District of Florida vacated the arrest of a 2020 74-foot Sunseeker on the basis that the underlying ownership dispute was not subject to admiralty jurisdiction.

The plaintiffs had signed a purchase agreement to buy the vessel from Rick Obey & Associates, who, at the time, was an authorized Sunseeker USA dealer. Construction of the vessel began two days after plaintiffs signed the purchase agreement. Plaintiffs traded in their 2016 Sunseeker and made all the required payments to Obey but never received the new vessel.

Sunseeker International, located in the United Kingdom, constructs Sunseeker vessels. In a typical transaction, a customer purchases a Sunseeker vessel from an authorized dealer—in this case, Obey. Once the customer signs a purchase agreement with the dealer, the dealer hands the payment over to Sunseeker USA, who then hands payment to Sunseeker International, the manufacturer. The vessel's title is passed from Sunseeker International to Sunseeker USA once payment is received, and Sunseeker USA then gives title and possession to the dealer who, in turn, conveys the vessel along with its title to the customer.

Shortly after construction began on the vessel, but well before the plaintiffs expected to take delivery, Sunseeker USA notified Obey that it was in default of their dealer agreement due to a failure to pay for vessels Obey had ordered from Sunseeker. After Obey allegedly failed to cure the default, Sunseeker USA terminated its dealer agreement with Obey. Three weeks later, Obey requested and accepted a final payment of nearly $1 million from the plaintiffs. After realizing that they would never receive the vessel due to Obey's failure to pay Sunseeker USA, the plaintiffs filed a lawsuit in state court, asserting a breach of the purchase agreement and requesting that the court order delivery of the vessel.

While the lawsuit was working its way through the state court system, Sunseeker USA arranged to have the now-built vessel shipped to the Fort Lauderdale International Boat Show to be displayed by a new dealer. The plaintiffs brought an arrest action in federal court, invoking Supplemental Admiralty Rule D of the Federal Rules of Civil Procedure. Sunseeker USA then sought to vacate the vessel's arrest and dismiss the case on the basis that admiralty jurisdiction was lacking. The court agreed with Sunseeker USA.

In finding that admiralty jurisdiction was lacking, the court noted that "Rule D does not create admiralty jurisdiction," and that "the remedy provided by Rule D is only available if a case is otherwise subject to admiralty jurisdiction." Since contracts for the sale of a vessel are not considered to be maritime contracts, and since "a court sitting in admiralty does not have jurisdiction to compel specific performance of a contract to purchase a vessel," no admiralty jurisdiction existed with respect to the purchase agreement.

The plaintiffs also argued that admiralty jurisdiction existed on the basis they had been wrongfully deprived of possession of their vessel. In dispelling this argument, the court noted that, in a possessory suit, admiralty jurisdiction exists when the legal owner is deprived possession, and here plaintiffs never possessed title to the vessel. Since Obey never paid Sunseeker USA in full, Sunseeker USA rightfully held onto the vessel's title. Plaintiffs argued that, by operation of Florida law, they held title to the vessel. This argument failed for two reasons: First, the statute on which plaintiffs relied only applied to identifiable goods in existence at the time the contract was executed. When this particular purchase agreement was signed, the vessel did not yet exist. Secondly, since Obey never held title to the vessel, Obey was never in a position to convey title to plaintiffs upon final payment.

The court concluded that, "at bottom, [the issue was] a commercial contract dispute," and that plaintiffs could not use "Supplemental Rule D to obtain the specific performance they have asked the state court to order." ■

Court transfers arrest case

IK Yacht Design v. M/V Almost There, 2019 WL 6107847 (D. Me. Nov. 15, 2019)

Plaintiff IK Yacht Design, a Florida company, filed an action in rem in the District of Maine against the *M/V Almost There* for the value of repairs and services (in excess of $194,000) provided to the vessel. The Vessel Owner, 15 Year Plan, a Florida company, specially appeared and filed a motion to dismiss or transfer the case to the Southern District of Florida.

The basis for the lawsuit was a garden variety contract dispute arising out of work IK Yacht Design performed on the *Almost There* at IK Yacht Design's facility in Florida. After the boat was removed from the yard, it cruised to Maine at which point it was arrested to answer for the unpaid debts. The Vessel Owner argued that the interest of justice and convenience of the parties

would be served by transferring the case to the Southern District of Florida. In support of their argument they noted that the contract dispute had no meaningful connection to Maine and that the relevant evidence and witnesses were in Florida.

Plaintiffs countered that the case should remain in Maine as that was its choice of forum and they asserted that the case could be more efficiently tried in Maine.

The court began by noting that that while technically an action in rem could not have been brought against the vessel in the Southern District of Florida, as the vessel was physically located in Maine when the proceeding began, that alone did not render transfer inappropriate. While a maritime lien may be enforced only through an action in rem—that is, by proceeding against the vessel itself where it is then found, in *Continental Grain Co. v. The FBL-585*, 364 U.S. 19 (1960), the Supreme Court upheld transfer of an in rem action from one district to another even though the in rem action could not have been brought initially in the transferee District, as the vessel was not located there when the plaintiff filed suit. The Court emphasized that making physical presence of the res an absolute jurisdictional requirement would merely have "provide[d] a shelter for in rem admiralty proceedings in costly and inconvenient forums." Here, as in *Continental Grain*, "the fiction appears to have no relevance whatsoever in a District Court's determination of where a case can most conveniently be tried. As such, a fiction born to provide convenient forums should not be transferred into a weapon to defeat that very purpose."

The parties jointly moved for an Order Releasing the Arrested Vessel and Authorizing the Deposit of Funds and the Vessel Owner promptly posted the bond to serve as substitute security for the arrested vessel. The Vessel Owner was subject to personal jurisdiction in the Southern District of Florida; the physical evidence and witnesses were all in Florida; and thus transfer was warranted. ■

Seamen

Court declines to dismiss Jones Act claims against multiple defendants

Saltzman v. Whisper Yacht, Ltd., 2019 WL 6954223 (D.R.I. Dec. 19, 2019)

A professional sailor was injured aboard the 116-foot recreational sailing yacht *Whisper* when his arm was sucked in by the furling unit on the head sail at a dock in Newport, Rhode Island. Alleging that he was a seaman crewing on the yacht at the time of his accident, he brought suit and named three parties as the vessel owner and his employer: Whisper Yacht, Ltd. ("Whisper Ltd."), a Cayman entity; Whisper Yacht (USA), LLC ("Whisper USA"), a Minnesota limited liability company; and Churchill Yacht Partners, LLC ("CYP"). His complaint included causes of action for (1) unseaworthiness, (2) negligence under the Jones Act, (3) maintenance and cure, (4) wages, and (5) negligence under general maritime law. In lieu of an answer, the defendants filed two motions to dismiss or in the alternative for summary judgment. The first motion, on seaman status, was not decided here. The second, brought by Defendants Whisper USA and CYP only, was made on the grounds that those defendants were not the plaintiff's employer at the time of the incident and so were not subject to liability.

It was undisputed that during the relevant period the yacht was flagged in the Marshall Islands and was owned by Whisper Ltd., a Cayman Islands entity. Whisper Ltd. was a wholly owned

subsidiary of Whisper USA. Whisper USA paid invoices for maintenance work directly for the yacht; the defendants asserted that this was done merely as a pass through to Whisper Ltd. based on convenience and timing.

CYP is a luxury yacht charter management business based in Minnesota, and the *S/Y Whisper* was listed as one of the yachts that was available to its clients for charter.

Both Whisper Ltd. and Whisper USA were named on the insurance policy that covered maintenance and cure obligations of the yacht. CYP was listed as an additional insured. All three entities shared the same mailing address and phone number. The captain of the vessel hired the plaintiff and paid him in cash from the vessel's account. The employer of the captain and the source of the cash were not specified.

Following an examination of various affidavits and the available documents, the court concluded that the Jones Act "single employer" principle, while persuasive, did not justify dismissal of either Whisper USA or CYP at the pleading stage. The identity of the Jones act employer was a factual determination to be made on the basis of evidence, and it was permissible as the pleading stage for plaintiff to identify one or two (or more) entities as his putative Jones Act employer. Accordingly, the court declined to dismiss the claims. ■

S.D. Fla. awards punitive damages after finding yacht owner wantonly refused to pay maintenance and cure

Hurtado v. Balerno Inernational Ltd., 408 F.Supp.3d 1315 (S.D. Fla. 2019)

This case highlights a yacht owner's obligations to crewmembers who are injured or become ill while in the service of the yacht. Here the yacht owner was held liable to a chef for some $780,000 after failing to pay for less than $10,000 in medical care.

The chef suffered from a strangulated umbilical hernia while working aboard the yacht in the Caribbean and underwent surgery in Cuba, where the vessel had docked. Initially the owner refused to provide the chef with a $1,000 deposit so that he could receive a hernia repair at the international hospital in Cuba. The chef was forced to wait two days and then went to a public hospital, which botched the surgery. Thereafter the chef was unable to have an additional surgery to repair the botched surgery because the owner refused to pay maintenance and cure for an additional two years. The court found that the yacht owner's refusal to pay caused a prolonged period of pain and suffering, and that the chef was entitled to a pain-and-suffering award of $300,000.

The owner's primary defense was that the hernia predated the chef's employment on the vessel. In that regard, the chef's primary care doctor had examined him two months before he signed aboard and found no signs of an umbilical hernia. The chef did have a preexisting inguinal hernia, but it was asymptomatic and did not render him unfit to work on a yacht. The court held that the chef had a good-faith belief that he was fit for duty, that his preexisting inguinal hernia diagnosis would not have been material to the owner's decision to hire him, and that the preexisting condition was entirely unrelated to the subsequent disability caused by his umbilical hernia.

A yacht owner is obligated to pay maintenance and cure until the crewmember reached maximum medical cure. Maximum cure is the point at which further treatment will result in no betterment of the crewmember's condition. A crewmember is also entitled to pain and suffering damages if a yacht owner fails to provide maintenance and cure and thereby aggravates an injury or illness. Further, if a yacht owner lacks a reasonable basis for

denying maintenance and cure, and exhibits callousness and indifference to the crewmember's circumstances, punitive damages and attorney fees can be awarded. Prejudgment interest on an award for maintenance and cure accrues from the date of the crewmember's injury.

It is important for yacht owners to understand the escalating nature of liability when addressing maintenance and cure. A yacht owner who is responsible to pay maintenance and cure, but who has been reasonable in denying liability, may be held liable only for maintenance and cure. If the yacht owner refuses to pay without a reasonable defense, he becomes liable in addition for compensatory damages. If the owner not only lacks a reasonable defense but has exhibited callousness and indifference to the seaman's plight, he becomes liable for punitive damages and attorney's fees as well. Finally, once an award is made, the owner is liable for prejudgment interest on the award.

In this case, having found that the owner's refusal to pay maintenance and cure was willful and wanton, the court awarded punitive damages in an amount equal to the total award for maintenance, cure, wages, and pain and suffering. The total judgment came to about $750,000, plus prejudgment interest. ■

Torts

Court enforces release in recreational charter

Matter of Carpe Diem 1969 LLC, 2019 WL 3413841 (D.V.I. July 29, 2019)

Susan and Michael Graham chartered two boats with captains from Carpe Diem, a charter operator in the U.S. Virgin Islands, for the purpose of swimming and to visit local beaches with their friends and family. Before their departure, the captain gave the Grahams and their guests a clipboard with a release to sign. The release consisted of about a half page of print followed by blank spaces for passengers to print and sign their names. The Grahams and their guests signed the release. Susan Graham was injured after the vessel left a bay and was transiting a passage called the Narrows.

Carpe Diem filed an action for exoneration from or limitation of liability. The Grahams answered and asserted claims of simple negligence, gross negligence, and loss of consortium against Carpe Diem.

Notwithstanding the prohibition in the Limitation Act against "the owner ... limiting liability ... for personal injury or death caused by the negligence or fault of the owner or the owner's employees or agents" (see 46 U.S.C. § 30509(a)(1)), the court recognized that federal maritime common law upholds the enforceability of releases under certain circumstances. To be enforceable under maritime law, an exculpatory clause must be (1) clear and unambiguous; (2) not inconsistent with public policy; and (3) not an adhesion contract. *Olmo v. Atlantic City Parasail, LLC*, 2016 WL 1704365, at*8 (D.N.J. 2016).

After examining the facts and circumstances of the Grahams' execution of the release, the court concluded that the release unambiguously reflected the parties' intent to exempt Carpe Diem from liability. Moreover, the court concluded that Carpe Diem did not possess excessive bargaining power, nor was it occupying a monopoly position relative to the Grahams. Lastly the court found that the release was not a contract of adhesion. Accordingly, the court enforced the release to the extent it waived liability for Susan Graham's claim based on ordinary negligence, and Michael Graham's loss of consortium claim derived from Susan

Graham's ordinary-negligence claim. Because under federal maritime law owners of recreational boats may not disclaim liability for gross negligence, that cause of action could proceed. ■

Government Liability

Eleventh Circuit: Government cannot be sued for NVDC's failure to disclose mortgage

Evergreen Marine Ltd. v. USA, 2019 WL 5295375 (11th Cir. Oct. 18, 2019) (unpublished)

Plaintiff Evergreen Marine, Ltd. purchased a vessel in reliance on the U.S. Coast Guard's representation that the vessel was unencumbered by a mortgage or other lien. But in fact, there was a mortgage on the vessel, and the mortgage holder later seized the vessel and initiated a foreclosure action. After settling with the mortgage holder, Evergreen sued the United States under the Federal Tort Claims Act ("FTCA"). The district court dismissed the action for lack of subject-matter jurisdiction, concluding that the United States enjoyed sovereign immunity from Evergreen's claims under the FTCA's misrepresentation exception. Evergreen appealed.

The United States, as a sovereign entity, is immune from suit unless it consents to be sued. Through the FTCA the United States has, as a general matter, waived its immunity from tort suits based on state-law tort claims. But, the FTCA provides some exceptions. The exception at issue here is the FTCA's exception from its waiver of sovereign immunity for any claim "arising out of ... misrepresentation, deceit, or interference with contract rights." 28 U.S.C.§ 2680(h). Where an exception applies, the court will find a lack of subject-matter jurisdiction.

The test used by the court in applying the misrepresentation exception is "whether the essence of the claim involves the government's failure to use due care in obtaining and communicating information." The court found that Evergreen's allegations fell squarely within that exception. Evergreen claimed to have suffered economic injuries because of a commercial decision—purchasing a vessel encumbered by a mortgage—that it may not have made had the NVDC not negligently failed to communicate the existence of the mortgage on the vessel. All injuries alleged—settlement of the mortgage, damages to the vessel as a result of the foreclosure, and defense costs—were found attributable to that decision. In other words, Evergreen's injuries were "based on the communication or miscommunication of information upon which others might be expected to rely in economic matters."

The court rejected attempts by Evergreen to frame its injury in terms of the breach of the duty of the NVDC to maintain its records and instead found that Evergreen would have suffered no injury caused by the NVDC's failure to maintain accurate records absent the NVDC's communication of its inaccurate record to Evergreen. ■

Coast Guard Update

Changes to Navigation and Vessel Inspection Circulars: 04-14, 08-14, 09-14, 12-14, and 14-14

The Office of Merchant Mariner Credentialing published changes to five Navigation and Vessel Inspection Circulars (NVICs) concerning qualification for certain Merchant Mariner Credential Standards of Training, Certification, and Watch-

keeping for Seafarers, 1978, as amended (STCW) endorsements. Visit the U.S. Coast Guard NVIC webpage to view the revised NVICs. ■

United States Coast Guard Marine Safety Advisory – February 10, 2020 – No. 01-20

The USCG Marine Safety Advisory Inspections and Compliance Directorate issued a warning on the potential for positive drug test results from use of hemp plant products. This was in direct response to the increase in availability and usage of over the counter products marked as hemp or cannabidiol (CBD) which may contain enough tetrahydrocannabinol (THC) to cause a positive drug test and jeopardize credentials of merchant mariners.

The USCG noted that It remains unacceptable for any U.S Coast Guard credentialed mariner or other safety-sensitive worker working aboard a vessel that is subject to U.S Coast Guard drug testing regulations to use THC. Claimed use of hemp products or CBD products is not an acceptable defense for a THC- positive drug test result. ■

State-Law Update

- **Alaska**
  - S.B. 29, 31st Leg. Sess., Reg. Sess. (Alaska 2019).
    - Extends the termination date of the Board of Marine Pilots from June 30, 2019 to June 30, 2027.

- **California**
  - A.B. 912, 2019 Assemb., Reg. Sess. (Cal. 2019).
    - The bill delays the implementation of California's ballast water discharge standards until 2030, and further directs the State Lands Commission to enforce discharge standards set forth in the Code of Federal Regulations.
  - No. 42-Z, California Regulatory Notice Register 2019-10-18 pp.1405-1418.
    - California has announced a Notice of Proposed Rulemaking inviting public comment on the proposed *Control Measure for Ocean-Going Vessels At Berth*. The rule, if enacted, would further tighten emission regulations for vessels berthing at California ports.

- **Colorado**
  - H.B. 1026, 72nd Gen. Assemb., Reg. Sess. (Colo. 2019).
    - Amends C.R.S. § 33-13-108 and doubles the penalty from $50 to $100 for those who operate or give permission to operate a vessel that is not equipped as required by Colorado law; emits noise in excess of the standards prescribed under Colorado law; travels above wake speed in zones marked as wakeless. The penalty for operating a vessel in a careless or imprudent manner was also increased from $100 to $200.

- **Connecticut**
  - Conn. Agencies Regs. § 15-229-1
    - Going into effect on March 5, 2020, the new regulation requires that certificates of title contain the brand "PREVIOUSLY BRANDED IN" if a brand was applied to the vessel's title by a jurisdiction in which the vessel was previously titled as a prerequisite for receiving title in Connecticut.

- **Florida**
  - FWC Executive Order No. 20-09
    - Declares and designates all waters of the state to be a boating restricted area and limits recreational vessel occupancy to no more than 10 persons per vessel and further mandates that a minimum distance of 50 feet be maintained between recreational vessels.

- **Georgia**
  - H.B. 201, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).
    - Authorizes the Department of Natural Resources to promulgate rules pertaining to the anchoring of certain vessels within the state's estuarine areas, and further prohibits the discharge of sewage into estuarine areas from certain vessels.
  - An Administrative Order, signed by the Commissioner of Natural Resources on December 30, 2019, prohibits overnight anchoring within 1000 feet of any structures (except for Marinas).

- **Hawaii**
  - H.B. 1033, 30th Leg., 2019 Leg. Sess. (Haw. 2019).
    - H.B. 1033 applies to "all owners of vessels originally manufactured with a length of twenty-six feet or more" and also applies to "[o]wners of vessels originally manufactured with a length of less than twenty-six feet who were or are the registered owner of a grounded vessel located anywhere in the State or state ocean waters." The bill requires owners of covered vessels to obtain insurance coverage of at least $100,000.00 that ensures the removal and salvage of grounded vessels.

- **Maryland**
  - Per Governor Hogan's shelter in place order of 3/30/20, all recreational boating activities in Maryland waters is prohibited until further notice. It is still acceptable to reside on a vessel if that is one's residence, and fishing and crabbing are still acceptable so long it is being done to acquire food.
  - S.B. 93
    - Changes the hours of operation of the controlled water ski course in Maynadier Creek. Unless further action is taken by the Maryland General Assembly, then the law will be automatically abrogated at the end of May 31, 2023.

- **Michigan**
  - H.B. 5401, 100th Leg., Reg. Sess. (Mich. 2020)
    - Allows the Department of Natural Resources to establish temporary vessel speed limits during periods of high water conditions and also allows for fines of up to $500 for those who violate temporary speed limits.
  - H.B. 4858, 100th Leg., Reg. Sess. (Mich. 2019)
    - Amends the Natural Resources and Environmental Protection Act, originally set to expire on October 1, 2019, to October 1, 2023. The Act mandates that the secretary of state create and maintain a database of watercraft title records, among other things, and the search fees generate sizable income for the state.

- **Nebraska**
  - L.B. 287, 106th Leg., Sec. Reg. Sess. (Neb. 2020).
    - Increases the vessel registration fee of Class 1 boats to $28, $51 for Class 2 boats, $72.50 for

Class 3 boats, and $120 for Class 4 boats. The bill further allows up to $10 dollars of each registration fee be used for the Aquatic Invasive Species Program.

- **Nevada**
  - 2018 NV Regulation Text 6533 – A new regulation promulgated by the Department of Conservation and Natural Resources / Division of State Lands establishing the monetary amount of annual use fees associated with the use of state lands associated with navigable waters of the state.

- **New Hampshire**
  - H.B. 137, 2019 Leg., 166th Sess. (N.H. 2019).
    - Establishes a commission to study the positive and negative effects of wake boats in the state.
  - H.B. 244, 2019 Leg., 166th Sess. (N.H. 2019).
    - Under New Hampshire law, specifically RSA 270:66, the director of department safety in the division of state police has authority under specific circumstances to remove or cause the removal of any mooring or boat attached thereto. H.B. 244 repeals the moorings appeals board and, in lieu thereof, directs the owner or individual controlling the mooring to appeal directly to the commissioner of the department of safety.
  - H.B. 324, 2019 Leg., 166th Sess. (N.H. 2019).
    - Prohibits personal watercraft, defined as a motorboat less than 16 feet in length and propelled by jet pump, from operating within 300 feet of any marsh land in the Hampton/Seabrook estuary.

- **New York**
  - SB 5685, 2019 Leg. 242nd Leg. Sess. (N.Y. 2019).
    - Known as Brianna's Law, S.B. 5685 prohibits individuals from operating a mechanically propelled vessel on the navigable waters of the state as well as any tidewaters bordering or contained within Nassau and Suffolk counties without first completing an approved boater safety course and receiving a certificate of completion. The law removes the previously existing exemption for individuals born prior to May 1, 1996 and the certification requirement will apply to all operators by the year 2025.
  - SB 6541, 2019 Leg. 242nd Leg. Sess. (N.Y. 2019).
    - Prohibit vessels from operating a digital billboard while operating, anchoring, or mooring in the navigable waters of the state. First-time violations result in a $1,000.00 civil penalty, and a $5,000.00 civil penalty is assessed for all subsequent violations.

- **Oregon**
  - S.B. 47, 80th Leg. Assemb., Reg. Sess. (Or. 2019).
    - Establishes an account for the purposes of increasing access to waterways. Funding would be derived from a permit which would need to be displayed on all boats 10' and over, except for motorboats and sail boats with valid registration decals.
  - H.B. 2076, 80th Leg. Assemb., Reg. Sess. (Or. 2019).

        - Enables law enforcement to require those who bypass an open inspection station to return the inspection station for an inspection. Further requires boaters to "pull the plug" and drain any water prior to transporting over land.
    - H.B. 2077, 80th Leg. Assemb., Reg. Sess. (Or. 2019).
        - Mandates that boat liveries register with the Marine Board.
    - H.B. 2078, 80th Leg. Assemb., Reg. Sess. (Or. 2019).
        - Removes the 60-day exemption for those who purchase a new boat from taking an approved boater safety course, provided that the boat has more than 10 horsepower. Out-of-state visitors must have completed any necessary boating education as required by their home states.
    - H.B. 2079, 80th Leg. Assemb., Reg. Sess. (Or. 2019).
        - Enables courts and the Marine Board to suspend the Boater Education Card for convictions for BUII for one to three years and enables suspension of the boater education card for one year for a conviction of reckless boating. Updates the language for reckless boating to the standard used in the motor vehicle code. Changes fine for not carrying a life jacket from a class B violation ($265) to a class D violation ($115).
    - H.B. 2080, 80th Leg. Assemb., Reg. Sess. (Or. 2019).
        - Registration fees would increase from $4.50 per foot to $5.95 per foot, a 33% increase (or $1.45 per foot). New title and title transfer fees increase from $50 to $75. H.B. 2080 also increases fees for a boater education card from $10 to $20.
    - A new administrative order promulgated by the Public Utility Commission/Board of Maritime Pilots allows for military spouses in Oregon who hold a marine pilot license in another state to qualify for a non-renewable marine pilot license in Oregon.

- **Pennsylvania**
    - H.B. 1166, 203rd Gen. Assemb., Reg. Sess. (Pa. 2019).
        - H.B. 1166 amended statutes relating to the rates of pilotage and the computation of the rates thereof. In general, H.B. 1166 increased the charge per pilotage unit and the maximum unit charge.

- **South Dakota**
    - H.B. 1033, 95th Leg. Assemb., Reg. Sess. (S.D. 2020).
        - H.B. 1033 seeks to limit the introduction of aquatic invasive species into the waters of the state. The bill requires individuals to clean the surface of any conveyance capable of containing aquatic invasive species and pull the plug on boats to drain out any and all water.

- **Tennessee**
    - S.B. 857, 111th Gen. Assemb., Reg. Sess. (Tenn. 2019).
        - Requires that marinas, liveries and other rental operations provide the renter with an orientation pertinent to they type of vessel being rented. At a minimum, the orientation must include the basic operation of the rented vessel, required safety equipment, rules and regulations relating to the operation of the vessel on state waterways, and an explanation of the buoy system.

- **Texas**
  - H.B. 4032, 86th Leg., Reg. Sess. (Tex. 2019).
    - The bill provides for a more competitive sales tax on certain vessels and motors. Specifically, the bill exempts certain boats and motors from taxes associated with their sale and use if the boat or motor is sold in Texas for use in another state and is removed from Texas within 10 days of the sale.

- **Utah**
  - H.B. 255, 63rd Leg., Gen. Sess. (Utah 2020).
    - The bill creates an aquatic invasive species fee that is to be imposed annually on nonresidents seeking to operate or launch a boat in the state. The bill further mandates the removal of all plugs from conveyances prior to their transport on a highway.

- **Washington**
  - S.B. 5918, 66th Leg., Reg. Sess. (Wash. 2019).
    - The bill mandates that educational material regarding whale watching is added to boating safety education programs.
  - S.B. 5577, 66th Leg., Reg. Sess. (Wash. 2019).
    - Prohibits vessels from positioning behind a southern resident orca whale at any point located within four-hundred yards and prohibits vessels to exceed seven knots when they are within one-half nautical mile from as southern resident orca whale.
  - S.B. 6528, 66th Leg., Reg. Sess. (Wash. 2020).
    - Requires vessel owners to obtain a vessel inspection prior to transferring ownership if said vessel is more than thirty-five feet long and over forty years old. The bill further allows the department of natural resources to issue tickets by mail to enforce vessel registration requirements.

- **Wisconsin**
  - A.B. 704, 104th Leg. Sess., Reg. Sess. (Wis. 2020)—Requires that the parent, guardian, or designated adult who is charged with supervising a minor engaged in the operation of a motorboat hold a valid boating safety certificate. ■

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Committee Chair
Todd Lochner
Lochner Law Firm, P.C.
tlochner@lochnerlawfirm.com

Editor
Jody McCormack
Bohonnon Law Firm, LLC
jmccormck@bohonnon.com

Past Editors
Thomas A. Russell
Frank P. DeGiulio
Todd D. Lochner
Daniel Wooster

Contributors to this Issue

Chase Eshelman
Lochner Law Firm, P.C.

Charles McCammon
Willis Towers Watson

Daniel Wooster
Palmer Biezup & Henderson LLP