



SEA TRIALS

by James Mercante



Liability for Serving Alcohol at Sea

There's something about sun and surf that go together like a martini and olive. Mixing all these ingredients, however, can cause wacky and even devilish behavior.

The booze cruise is summer fun at its best, on rivers, harbors and bays . . . music blaring, booze flowing, romantic sunsets, dancing on deck, inhibitions left ashore. This turned out to be a deadly combination for one recent harbor cruise on San Francisco Bay.

Alcohol was served by a catering company. Apparently, the alcohol turned some passengers courageous and flirtatious, resulting in a fight over a girl. In the aftermath, Voillat, a young man (with the girl) was allegedly thrown overboard into San Francisco Bay by another passenger, Monaghan (who wanted the girl). Voillat didn't surface. His decomposed body was found nearly one month later. Everyone from the vessel owner, catering company, security firm and Monaghan was sued for wrongful death in federal court pursuant to admiralty jurisdiction. One of the many causes of action was for improper service of alcohol to certain obviously intoxicated passengers, commonly known as "dram shop" liability. There is no definitive dram shop rule in admiralty law; some federal courts recognize it, while others do not. Therefore, to streamline the case and narrow the issues, defendants tried to get this particular cause of action dismissed, arguing that no "dram shop" rule exists in the general maritime law and California state law does not recognize dram shop liability. Monaghan's estate, on the other hand, hoped the court would recognize a general maritime dram shop rule like other federal courts outside California.

The dram shop rule is a recognized form of liability in New York and New Jersey. In New York, the law is codified in the General Obligations Law (GOL) and is entitled "Compensation for Injury Caused by the Illegal Sale of Intoxicating Liquor." The law states that anyone who is injured (or killed) by an intoxicated person shall have a right of action against any person who contributed to such intoxication by unlawful selling to or unlawful assisting in procuring liquor for the intoxicated person. And, yes, liquor includes beer. New Jersey's dram shop law recently resulted in a huge verdict against the concessionaire at Giants Stadium who served alcohol to an allegedly drunk fan who then drove drunk and got in a car accident resulting in the death of a young girl in another vehicle. The purpose of the law is to secure society against the dangers committed by intoxicated persons and those who knowingly serve them.

Out west, however, California's dram shop statute provides no liability for the negligent service of alcohol. In fact, California - apparently a good place to own a bar or a cruise vessel - calls it the "anti-dram shop" provision. The California law actually immunizes providers of alcoholic beverages from liability for merely furnishing alcohol. That law there states that no person who sells, furnishes or causes to be sold any alcoholic beverage shall be civilly liable to any injured person for injuries inflicted by that person as a result of such intoxication. Thus, this statutory immunity extends to providers who serve alcohol to a person who later injures someone else because of intoxication. The only exception in California applies when a person sells alcohol to an obviously drunk minor. The

exception did not apply to this case because neither Voillat nor Monaghan was a minor. Neither was the girl.

In rendering its decision on the motion to dismiss plaintiff's dram shop cause of action, the California federal court found maritime precedent involving a passenger's dram shop claim against Carnival Cruise Lines. That passenger's case was also filed in California federal court, and there, the court held that no general maritime dram shop rule exists. When no admiralty rule exists on a particular issue, the admiralty court must look to state law or it may decide to create a general maritime law. In the Carnival case, the court declined to create a general maritime dram shop rule and concluded that California's anti-dram shop provision should apply instead.

Faced with this maritime case precedent and California's anti-dram shop law, the court had no choice but to dismiss plaintiff's liquor liability cause of action against defendants. The remaining causes of action continued against all defendants and were eventually settled out of court.

This case demonstrates that those who serve alcohol on booze cruises, at least around here, should exercise care to avoid "dram" type liability. Similarly, drinking like a fish is not wise - at sea and in law.

JAMES E. MERCANTE,
admiralty partner with Rubin, Fiorella & Friedman LLP, and Commissioner on the Board of Commissioners of Pilots of the State of New York.

jmercante@rubinfiorella.com


ESSEX CREDIT

NEW - USED - REFINANCE

BBB ONLINE RELIABILITY PROGRAM

*(Subject to Program Guidelines and Credit Approval)

Boat Loans Made Easy®



Loans up to \$10 million
Instant Loan Approvals*
90 Days to First Payment*
National Lender in all 50 States

David Patnaude 866-377-3948 ext. 7036

www.essexcredit.com
Reference code = MAR972

EQUAL CREDIT OPPORTUNITY LENDER

**25 & 30 Year
Financing Available***