



SEA TRIALS



by James E. Mercante, Esq.

Vessel Owner's Maritime Defense Succeeds In Drowning Case

Showing off your boat to friends is common. Less common is an understanding of the vessel owner's duties and potential liabilities when something goes wrong. In one recent case, the result was fatal.

The Accident

Members and friends gathered in the clubhouse at a yacht club's annual clambake. All was well when the dinner ended. But, things quickly changed when Rogers, the owner of the pleasure craft *Maggie Lou*, invited two friends to see her boat docked at a finger pier adjacent to "A" dock. Later, the owner left her two friends, Loretta Childs and Robert Lilly, on the boat by themselves while she drove another friend home at about 10:00 p.m. At some point, Lilly fell into the water and drowned. Childs said that they were about to get off the boat when she went to grab two sodas and heard a splash. She did not know that Lilly had left the boat. In her testimony, Childs said she did not see the accident and had "no idea" how or where Lilly fell into the water, i.e. from the boat or from A-dock. She went to find Lilly and saw him floating in the water near the back of the boat. A nearby boat owner got a brief glance at Lilly walking on A-dock towards the clubhouse. Seconds later, this owner heard a splash and a woman on the dock screaming but Lilly was no longer in sight when he looked up. The nearby boat owner testified that he ran

onto the dock and saw Lilly in the water in a panic. He tried to rescue Lilly, who could not swim, but in Lilly's panic, he never grabbed the man's arm.

The inference drawn from the testimony of the nearby boat owner was that Lilly fell from A-dock, not the boat.

The Lawsuits

Lilly's estate commenced a wrongful death action in state court against the owner of *Maggie Lou*. The theory of liability was that Lilly fell from the boat at the disembarkation location, that the boat was moored improperly, and that the two inexperienced guests were left unattended on the *Maggie Lou*. *Maggie Lou's* owner countered by filing an action in federal court invoking the court's admiralty jurisdiction. This strategy, unique to federal admiralty law, resulted in all other proceedings being halted, including Lilly's state court action. In the federal proceeding, the vessel owner sought exoneration from liability, or alternatively, limitation of liability to the value of the *Maggie Lou*, pursuant to admiralty law, 46 U.S.C.A. 183(a). This federal statute allows a vessel owner to limit his or her liability to the value of vessel when a loss occurs without "privity" or "knowledge" of the vessel owner. The determination of whether an owner may limit liability is a two-step process. First, a court must determine what acts of negligence caused the accident. If there was no negligence, the vessel owner is

"exonerated" and the issue of limitation is not reached. Second, if it is proved that some form of negligence did contribute to the accident, the court must determine whether the vessel owner personally participated in some way in the acts or omissions that contributed to the loss. If the vessel owner did not participate in any way, then he or she is entitled to limit liability to the value of the vessel.

Here, the vessel owner argued that she did nothing to cause the accident and that Lilly did not fall from the boat, but fell when he was some distance from the boat while walking on A-dock. Because the credible testimony showed that Lilly did not fall off the boat, the court found no liability against the vessel owner. As a result, in *Rogers v. Lilly*, 1:04 CV 2133, the federal judge dismissed the wrongful death action and exonerated Rogers.

Conclusion

In this case, the vessel owner was lucky that her guest did not fall from the boat. A vessel owner must exercise reasonable care for the safety of his or her guests while on board the vessel. It also pays to know if your guests can swim or not. If not, take adequate precautions.

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