

## Admiralty Law

## Expert Analysis

# ‘Mari-Crimes’ on the Radar

Due to the rigors of the sea, long periods of time away from home and the whim of tyrannical captains, seafarers have historically been treated as “wards” of the court and with the “tenderness of a guardian.” *Boulton v. Moore*, 14 F.922, 926 (N.D. Ill. 1883). However, that tide may be turning.

In a time not long ago, a seaman could venture ashore in a foreign port, jump out of the window of a brothel and break a leg. Yet, that seaman was nonetheless entitled to a remedy against his employer for “maintenance” (daily living expenses) and “cure” (medical care) while recovering. The reason being that even some deliberate acts of misbehavior were considered a “classic predisposition of sailors ashore.” As a result, courts were liberal in their attitude toward seamen who

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received injuries while on shore leave through their “notorious penchants.” *Koistinen v. American Export Lines*, 194 Misc. 942 (City Court, New York County 1948). In a case involving a seaman’s brawl aboard ship, the Second Circuit stated that the ordinary seaman is likely to be less even tempered than others, while recognizing that a shipowner violates its duty only if there is present in the crew “a seaman with a wicked disposition, a propensity to evil conduct, a savage and vicious nature.” *Gerald v. United States Lines Co.*, 368 F. 2d 343 (2d Cir. 1966).

### Mari-Crimes

A recent verdict in excess of \$70 million in favor of a marine stewardess raped by a fellow crewmember is signaling that vessel owners need a system to weed out those seafarers

equipped with wicked dispositions. *Baca v. Island Girl*, No. 16-003324 (Fla. 17th Cir. Ct. Jan. 29, 2018).

On Feb. 25, 2015, a 20-year-old woman was working as a stewardess onboard a three-deck, 150-foot luxury yacht named “ENDLESS SUMMER.” The stewardess and a fellow deckhand had separate cabins on the lowest deck, while the captain had his

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cabin on the third deck. The deckhand went ashore and returned to the yacht intoxicated. He then reportedly forced his way into the stewardess’ cabin and raped her. The captain was in his cabin at the time and either did not see or otherwise prevent the drunken sailor from boarding the yacht, nor hear the stewardess’ cry for help from below deck. There were no other people

onboard and the yacht's communication system was down, so the stewardess apparently had no means to call for help. The deckhand was prosecuted and pled guilty to sexual battery. The stewardess initiated a civil suit against the deckhand and her employer, the yacht owner. According to the verdict sheet, the jury found that the plaintiff stewardess was acting within the course of employment as a crewmember of a vessel in navigation at the time of the incident; that the yacht owner was negligent and that negligence was the legal cause of the damage to plaintiff. *Id.*

There were issues in the *Baca* case as to whether the laid-up and out of commission yacht still qualified as a "vessel in navigation" under maritime law and, in the same vein, whether the culpable deckhand qualified as a "seaman." Seaman status goes hand-in-hand with employment aboard a vessel, but by the same token, if the yacht no longer qualifies as a vessel in navigation, the worker no longer qualifies as a seaman. The jury's determinations on these issues apparently triggered the yacht owner's marine insurance policy indemnifying for negligent acts of a crewmember. The "status" issues reportedly will be the subject of an appeal.

### Marine Liability

When a crime occurs at sea involving a crew member or passenger, the finger typically gets pointed at the

vessel owner or employer with the deep pocket and a responsibility to provide persons with a safe vessel. In practice, a seaman's employer can be held accountable for liability arising from injury or death to another seaman under the federal "Jones Act" (46 U.S.C. §30104) or the doctrine of "unseaworthiness." Comparatively, a common carrier like a cruise ship owner owes a non-delegable duty to protect its passengers from crimes. While most courts hold carriers strictly liable for assault by a crewmember on a passenger, New York federal courts anchor carrier

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liability based on negligence. *York v. Commodore Cruise Line, Ltd.*, 863 F. Supp. 159 (S.D.N.Y. 1994).

An employer's liability under the Jones Act for a crewmember's assault against another crewmember requires either that the: (1) assault was committed by a crewmember's superior for the benefit of the ship's business; (2) ship's officers negligently failed to prevent a foreseeable assault; or (3) employer negligently hired the seaman when it should have known of the seaman's troubling temperament. *Lambert v.*

*Morania Tanke*, 677 F.2d 245 (2d Cir. 1982). In *Cain v. Alpha S.S.*, 35 F.2d 717 (2d Cir. 1929), a shipowner was held responsible when its captain beat a crewmember with a wrench for being late to work. Oddly enough, in finding liability, the court held that the assault was done to benefit ship's business because the captain was making an "effort to maintain discipline and obtain a full engine room crew for the watch of which he was in charge." *Id.* In *Baca v. Island Girl*, the yacht owner's reported failure to conduct a background check on its hired crew coupled with the captain not enforcing a rule against allowing intoxicated crew members to board the vessel was apparently instrumental in finding negligence and unseaworthiness of the vessel.

The doctrine of seaworthiness is a general maritime law concept developed by federal admiralty courts. It is a close cousin of strict liability when a vessel is deemed not fit for its intended purpose, whether by poor design, a dangerous condition, or the owner's hiring of an incompetent officer or crewmember. The duty includes the obligation to provide a ship with seamen "equal in disposition and seamanship to the ordinary men in the calling." *Jones v. Lykes Bros. Steamship*, 204 F.2d 815, 817 (2d Cir. 1953). For example, just the presence onboard of a violent crewmember

can trigger a shipowner's liability if the crewmember is deemed to be "savage" and "vicious" in nature. *Boudin v. Lykes Bros. S.S. Co.*, 348 U.S. 336 (1955). In *Miles v. Apex Marine*, 498 U.S. 19 (1990), evidence of an assailant's vicious infliction of 62 knife wounds was enough to deem the vessel unseaworthy. A seaman who was attacked from behind by an "insane" crewmember with a meat cleaver was also able to recover against his employer in *Kenn v. Overseas Tankship*, 194 F.2d 515 (2d Cir. 1952).

Still, in *Walters v. Moore-McCormack Lines*, 309 F.2d 191 (2d Cir. 1962), a run-of-the-mill fistfight was considered by the Second Circuit to be a "normal" risk faced by a seaman, and did not in itself make a vessel "unseaworthy." In addition, the assault was held to have been committed solely to satisfy the temper of the assailant, and not for any benefit of the ship or the ship's business. Surprisingly, in *Ballance v. Energy Transp.*, 2001 U.S. Dist. LEXIS 16763, 2002 AMC 198 (S.D.N.Y. 2001), the Southern District of New York held that a female cook aboard ship who was sexually harassed both verbally and physically by her fellow crewmembers did not have a claim for unseaworthiness. The court explained that it "is aware of no case, nor does plaintiff present one, in which alleged sexual harassment aboard a vessel, even

that which involves possible physical contact, survived a summary judgment motion. Unlike the assault claims where the attacks were savage and vicious, the alleged assault here does not fall into the same category." However, the seaman's claim under the Jones Act survived summary judgment since a question of fact existed as to whether she feared an immediate risk of physical harm by the alleged sexual harassment. *Id.*

In addition to civil liability, maritime law maintains its own set of criminal statutes. Most significantly, the Seaman's Manslaughter Statute can impose criminal liability on a vessel owner or officer for a seaman's death caused by negligence. 18 U.S.C.S. §1115. In *United States v. Lee Peng Fei*, 225 F.3d 167 (2d Cir. 2000), a smuggler was sentenced to 10 years' imprisonment under the Seaman's Manslaughter Statute. He had arranged for hundreds of aliens to be transported and cast ashore from the cargo ship GOLDEN VENTURE with no life preservers, limited access to food and inhumane conditions. The defendant ordered the ship to intentionally ground at full speed off the coast of Rockaway Point in Queens, N.Y., and directed passengers to jump overboard and swim to shore. Six died from drowning, and the court found that the defendant's control over the ship and his misconduct warranted his

conviction for the statute's maximum punishment.

### Lien on Me

Even if a victim is able to prove liability against the vessel owner for a criminal act, there is typically an uphill battle in collecting the judgment. This is because most marine insurance policies exclude coverage for criminal or illegal acts. If this becomes an issue, the crewmember will likely attempt to assert a maritime lien against the vessel by initiating an "in rem" action in federal court. In this scenario, a federal court will be asked to issue a warrant of "arrest" to seize and sell the vessel to allow the seafarer to recover damages up to the value of the vessel.

### Time's Up!

Courts are drifting away from the idea that violence is an acceptable risk for persons enduring the rigors of the sea and the temperament of certain seafarers. Thorough employee background checks and proper onboard security and communications measures are here to stay for vessels of all shapes and sizes employing a crew. Indeed, vessel owners today are much more involved in making sure that not only the vessel but also the crew is "seaworthy."