



SEA TRIALS

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Jet Skiing: When Friends Collide

Wake jumping on a personal watercraft is fun, or so I've been told. Never did it. My son would say to that..."Dad, you got to get out more!" It is also inexpensive, yet it can cost an arm and a leg. One thing for certain...wake jumping is an "obvious danger." A federal court just told that to every wake jumper who will listen.

Collision

Two 18-year-old friends, McAlpine and Hodges, rented Sea Doo personal watercrafts (PWCs) from Summer Fun Rentals on the Columbia River. Neither of them had ever used a PWC before. According to the federal appeals court in *Hodges v. Summer Fun Rentals, Inc.*, the rental company gave only brief instructions to the boys before letting them get underway. The instructions were about the "kill switch" feature on the throttle, staying out of shallow water and not exceeding five miles per hour until they reached the buoy and then they were told to "go ahead and do whatever they wanted to do." They were not given any other warnings or told that jumping other vessel's wakes can be dangerous. Rather, the evidence showed that both boys thought wake jumping was permitted because they "saw others doing

it" and because they had "seen people on television jumping wakes while operating personal watercraft."

McAlpine and Hodges were fast learners. They rode the PWC without incident for about 50 minutes, executing spinning and wake jumping moves. Then their luck ran out. The boys saw an approaching pleasure craft and decided to pass the vessel close aboard on opposite sides so that they could jump its wake. In the act of jumping the wake, Hodges fell off his PWC in McAlpine's path resulting in a crash between them. The collision severely injured Hodges resulting in the amputation of his leg below the knee.

In another incident, a jet ski operator's arm was severed in a collision with a motorboat on Lake George. *Martell v. Kawasaki Motors Corp., Nicholas Cutro, et al.* There have also been fatalities arising from PWC accidents.

Reckless operation prohibited

New York, like most states, prohibits reckless operation of a vessel. Remember, a jet ski is a "vessel" under the Navigation Rules. Also prohibited are certain types of wake jumping; but wake jumping is not

banned outright. New York Navigation Law devotes an entire section to personal watercraft. Section 73-a entitled, Regulations of Personal Watercraft, provides that:

Every personal watercraft shall at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including but not limited to i) weaving through congested vessel traffic, or ii) jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, or iii) swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel.

It is a misdemeanor to operate a personal watercraft recklessly and the operator can be fined or imprisoned pursuant to Section 73-b of the Navigation Law.

Risk obvious to those of "ordinary intelligence"

Hodges sued Summer Fun Rentals alleging the company was negligent under mar-

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itime law in failing to warn the duo of the hazards of wake jumping. The court defined wake jumping as "crossing a wake at such a speed that the PWC will become airborne, that is, it will leave the surface of the water as it crosses the wake and will come back into contact with the water somewhere on the other side of the wake, depending on the speed and height of the wake."

The issue to be decided in the *Hodges* case was whether a rental agency has a duty to warn the user, or renter, that wake jumping and operating too close to another vessel is dangerous. The trial court held that there was no duty to warn because those dangers are "open" and "obvious" and dismissed Hodges complaint. The Court of Appeals agreed and recently affirmed the decision. It determined that wake jumping risks, including falling off and colliding with another vessel are dangers that are "obvious to any person of ordinary intelligence." The appeals court decided that there was no duty to give these particular warnings because the care required in the presence of other craft and heavy waves is obvious. Drawing upon analogy ashore, the court suggested that mandating such warnings would be like

requiring the car renter to tell the user to watch for traffic and slow the speed when near other vehicles, or to require the lessor of a building to tell the lessee to walk slowly going down stairs and to keep a safe distance from others.

In the *Martell* case a motorboat collided with a jet ski. The jet ski operator lost the lower two-thirds of his arm in the accident and suffered fractures of the fourth and fifth ribs, a punctured lung, and multiple contusions. The operator of the jet ski, William Brent Martell, had sailing experience and familiarity with the rules of navigation, but had never operated a jet ski before. He was only 16. Brent sued the manufacturer (Kawasaki) and the rental company (Cutro) in New York federal court. The jury found the rental company not liable, but held Kawasaki at fault for failing to provide adequate warnings of potential dangers associated with foreseeable uses of the jet ski. The warnings on the jet ski were inadequate. While *Martell* was decided in 1984, it provides another case example of how courts resolve suits against manufacturers and renters/vendors of personal watercraft. This jury's ruling in *Martell* was affirmed by the Second Circuit Court of Appeals. According to the appeals court, the duty of a manufacturer to warn of potential hazards in its products is sometimes

greater than the duty of a mere vendor to warn.

As a result of cases like this, I imagine that personal watercraft now comes equipped with a dizzying array of warning labels. *Warning: Do not maneuver too close to a PWC to check its labels.*

Conclusion

It seems that every recreational activity carries with it some risk...some more than others. However, when a vessel operator -- whether of "ordinary intelligence" or not -- ramps up the risk by engaging in reckless activity, that risk can spread like tentacles, to innocent others, afloat and ashore. Nonetheless, a few warnings and some instruction doesn't take long, and costs less than an arm and a leg.

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