

We live in treacherous times, and only have to remember the recent Staten Island ferry accident to remind ourselves this is true. A recent federal court decision arising from the “9/11” tragedy also reminds us that once what was unimaginable may not be unforeseeable any more.

Legal experts are buzzing over a September 6, 2003 decision by U.S. District Judge Alvin Hellerstein that found that the “9/11” tragedy was a foreseeable matter to airline defendants, the owner of the World Trade Towers, the Port Authority of New York and New Jersey, and the manufacturer of the airplanes involved in the incidents. As a result, the plaintiffs’ causes of action against these defendants were not dismissed and will be allowed to proceed to trial –barring reversal on appeal. (*In Re: September 11 Litigation, Opinion and Order Denying Defendants’ Motions to Dismiss*, S.D. N.Y., Sept. 6, 2003.)

While victims of “9/11” and their families had the option of recovering funds from a federal Victim Compensation Fund, they were not obligated apply. Seventy representatives of injured or killed family members chose to sue the airlines, the airport security companies, the airport operators, the airplane manufacturer, and the operators and owners of the World Trade Center. The defendants, in turn, argued that they “could not reasonably have anticipated that terrorists would hijack several jumbo jet airplanes and crash them, killing passengers, crew, thousands on the ground, and themselves.” However, Judge Hellerstein, in a carefully considered opinion, concluded – at this stage of the lawsuit – that “the airlines reasonably could foresee that crashes causing death and destruction on the ground was a hazard that would arise should hijackers take control of a plane. The intrusion by terrorists into the cockpit, coupled with the volatility of a hijacking situation, creates a foreseeable risk that hijacked airplanes might crash jeopardizing innocent lives on the ground as well as in the airplane.”

Given this expansive approach to the *law of foreseeable consequences*, we are all on notice as owners and operators of boats and other craft that our actions will have consequences, albeit unintended. So, boat safely out there.

In a related initiative, Congress has enacted legislation, and the Department of Homeland Security (DHS) has issued new regulations, allowing manufacturers of anti-terror technologies to gain the benefit of the government contractor defense, and limit their liability, if they pursue designation as a “qualified antiterrorism technology” (QATT). The law is called the SAFETY Act for *Support Antiterrorist by Fostering Effective Technologies Act* of 2002. If a company can not introduce its anti-terror technology into the marketplace because insurers won’t insure the risk, then a company can pursue designation as a QATT and, ultimately, certification as an “approved product for homeland security.” We will soon see whether sellers of technologies, and other anti-terror devices, including vaccines, pursue these new protections. You can find the regulations at 6 CFR Part 25 (published in the *Federal Register* on October 16, 2003)

Finally, a tip of the legal hat to Admiral Jim Loy for being nominated by President Bush to the Under Secretary post in Homeland Security. TSA’s loss is our national security gain.

If you have any comments or questions about this article, I may be reached at: Bondareff@blankrome.com.

COLD WATER TIP: *Cold water poses a constant hazard to those who go boating. Accidents can and do happen, and the only way to maximize your chances of surviving a cold water emergency is to be sure you’re prepared with the knowledge and equipment it takes to stay alive.*

AWARDS AT NASBLA

Christmas came early for some NSBC members at this fall’s National Association of State Boating Law Administrator (NASBLA) convention, Virginia Beach, VA. The awards are outlined below.



George Stewart (at left) received from NSBC the **Boating Safety Hall of Fame** award for exemplary leadership and outstanding service on behalf of boating safety.

Alvin Taylor (shown in photo below) receives from Virgil Chambers of NSBC, a 1851 Navy Colt for his leadership. Taylor, NASBLA’s outgoing president, was recognized by NSBC for his leadership and service to boating safety.



THE PRESIDENT’S AWARDS
NASBLA President Alvin Taylor selected five individuals for special recognition for their contributions to

boating safety and NASBLA.



Virgil Chambers (in photo at left), NSBC’s Executive Director was one. Another winner of the Award was **Ed Carter**,



Tennessee’s Boating Law Administrator and the Safe Boating Council’s Vice Chair. (Carter in above photograph).

NASBLA AWARD

The NASBLA Award is their oldest award. It is presented to the person who has contributed to NASBLA and boating safety in general. The



2003 recipient was **Larry Innis** from the National Association of Marine Retailers and past chair of NSBC. Larry’s cooperative spirit, professional knowledge and honesty have been an asset to him throughout his career. He has participated in numerous NASBLA meetings, served on a number of committees and has been a strong supporter for boating’s portion of the Wallop-Breaux Trust Funds. Larry has served on various

national groups, including the USCG’s National Boating Safety Advisory Council and the American League of Anglers and Boaters.

PUBLIC SERVICE AWARD

This NASBLA Award was presented to **Boat US Foundation** for its loaner life jacket program, started in 1997. The program has over 350 marine businesses and groups participating and has 33 states whose marine patrol boats carry life jackets. In 2003 the Foundation distributed about 1500 loaner life jackets. This free program has put 10,000+ loaner life jackets into circulation, touching the lives of tens of thousands of children. (Chris Edmonston accepts award, photo above)



BOATING SAFETY EDUCATION AWARD

Dan Martin, Boating Safety Manager for the Pennsylvania Fish and Boat Commission (NSBC Member) received the Boating Safety Education Award. (Martin in photo at right)

Thanks to NASBLA for contributing the information and photographs of this column.

