

THE LEGAL EAGLE: WHAT'S HOT IN THE LAW OF BOATING LIABILITY?

By Joan M. Bondareff

Here's a summary of a few important pending and recently decided cases involving vessel safety and rights of passengers, crews, and licensed mariners.

The U.S. Supreme Court heard arguments last month on the question of whether the Americans With Disabilities Act (ADA) applies to foreign cruise ships that enter U.S. ports and largely transport American passengers. Spector v. Norwegian Cruise Line, Ltd. (S.Ct. No. 03-1338). Plaintiffs, passengers with disabilities and their travel companions, accused Norwegian Cruise Line of violating the ADA because their staterooms and public bathrooms were inaccessible to them.² The issue has arisen because most of these ships fly foreign flags and therefore may not be subject to the ADA unless Congress clearly intended to apply the law beyond U.S. waters. Two Circuit Courts of Appeals have split over the application of the Act to foreign cruise ships. The Fifth Circuit, for example, found that Congress failed to express any intention to subject foreign-flagged cruise ships to the dictates of the ADA. The 11th Circuit, based in Atlanta and covering Miami, disagreed, siding with plaintiffs. Oral arguments in Spector were heard at the end of February, and a decision is expected before the end of the Court's term.³

On July 21, 1999, a group of teenagers sneaked into a marina on Lake Erie near Buffalo, NY, and boarded the power boat, "M/Y Group Therapy."⁴ The teenagers found the ignition key in an unlocked compartment and went for a joy ride. One of the teenagers was at the wheel when another teenager fell from the bow and was injured by the propeller. The injured teenager sued the owners of the vessel as well as the teenager at the wheel. The Second Circuit Court of Appeals upheld the district court's ruling exonerating the boat owners from liability. Under federal maritime law, a boat owner owes no legal duty to a person who is aboard for purposes inimical to the legitimate interests of the owner. Because the injured teenager was a trespasser, the owners owed no duty to him. Clementi v. Commercial Union Ins. Co., et al. (92 Fed. App. 826, March 11, 2004). *Moral: lock those keys up!*

In January 1999, the Captain of the "M/V Manzanillo" radioed the Captain of the "S/S Chelsea" to inform him that he intended to pass port-to-port instead of starboard-to-starboard as originally planned. Two minutes later, after changing his mind and turning to starboard, the two ships collided in the Miami Harbor Channel. The National Transportation Safety Board (NTSB) took up the disciplinary proceeding

against the Captain of the "Chelsea" on appeal from a Coast Guard ruling against the Captain.⁵ The Coast Guard found that the Captain of the "Chelsea" had committed misconduct by failing to give a warning signal of five whistle blasts as required by Rule 34(d) of the International Regulations for Preventing Collisions at Sea (COLREGS). The NTSB reversed the Coast Guard on the grounds that the Regulations only applied to situations where a pilot is "in doubt" that the other pilot is taking sufficient action to avoid a collision. In this case, the Captain knew with certainty a collision would occur! The case ended up in the Court of Appeals for the District of Columbia. The appeals court overturned the NTSB, siding with the Coast Guard and concluding that deference was owed to the Coast Guard's interpretation of Rule 34(d) as that agency was the primary interpreter of international maritime law. Collins v. NTSB and Nitkin (351 F.3d 1246, Dec. 19, 2003). *Moral: When in doubt, give a shout!*

Finally, plaintiffs were riding two jet skis on the Ohio River in the vicinity of the Robert C. Byrd Locks and Dam, a government-owned and operated facility on the Ohio River. The skiers approached what they believed to be a bridge, but which turned out to be the gates of the dam. Unable to stop or turn around, the plaintiffs were injured when they went over the gates and dropped twenty-five feet to the water below. The plaintiffs sued the U.S. Army Corps of Engineers for failing to place adequate signs warning boaters about the dangers of the dam. The case went to the Court of Appeals for the Fourth Circuit to decide whether the plaintiffs had a right to sue the United States under the Suits in Admiralty Act, or whether the Government was protected by the so-called implied discretionary function exception to the SIAA's waiver of sovereign immunity. In other words, if the Government could show that the placement of signs warning boaters about dams was totally discretionary on the part of the Army Corps, it could not be held liable for the skiers' injuries. The Court of Appeals agreed that this exception was available to the Government and remanded the case to the district court to decide whether the exception precluded the jet skiers' claims. McMellon et al. v. U.S. Army Corps of Engineers (387 F.3d 329, Oct. 14, 2004). *Moral: Caveat emptor near government dams and bridges!*

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² Factual summary from the New York Times (NYT), March 20, 2005.

³ In the meantime, according to the NYT, NCL has retrofitted its newer ships to comply with U.S. disabilities law.

⁴ Reported with assistance of Michael Laughton, Blank Rome LLP.

⁵ The NTSB has the authority to review administrative and disciplinary decisions of the Coast Guard for licensed personnel. 🐦

NEWS FROM THE NORTH

Barbara Byers

The Canadian Safe Boating Council's (CSBC) 2005 National Safe Boating Campaign will be building on the success of last year's campaign. We are delighted once again, to work closely with the NSBC. The partnership between the two organizations is mutually beneficial – by sharing ideas and materials, we learn from each other and importantly achieve cost savings.

The campaign will deliver the safe boating messages to the media by focusing on community newspapers as well as local and national newspapers, community cable television and radio. The cornerstone of the campaign is the use of CSBC members as volunteers for media contact. Local CSBC volunteers include members of Canadian Power and Sail Squadrons, Canadian Coast Guard Auxiliary and Canadian Yachting Association. All materials and resources for the volunteers and the media are available electronically at www.csbc.ca website.

We are delighted when our friends from the USA attend our annual conference. Please join us at the CSBC's Annual Symposium and AGM in Honey Harbour, Ontario (September 23-25th). Go to www.csbc.ca for more details. 🐦

DESIGN A BETTER LIFE JACKET AND WIN \$5000!



Most people just don't like to wear life jackets. When we ask them why, they say life jackets are too hot or bulky or they just don't see the need to wear it. But what if someone designed the ultimate life jacket that no one could complain was too hot or bulky or would ruin their tan? That's just what we hope to find with the "Innovation in Life Jacket Design Competition".

The competition, sponsored by the BoatU.S. Foundation and the Personal Floatation Device Manufacturers Association, aims to embrace and encourage innovative ideas and new technology to solve this age-old problem. Entries are being encouraged from professional and armchair inventors to high school science clubs and collegiate design programs. To keep the out-of-the-box ideas coming, there are no rules regarding the types of materials used and the designs do not have to be Coast Guard approved. To get as many creative thinkers involved a \$5,000 cash prize will go to the winning design.

The competition will be judged based on four criteria: wearability, reliability, cost and innovation. "Wearability" relates to the level of comfort. "Reliability" will take into account the chances for potential failure, while "cost" will look at the affordability of the design. "Innovation" will take into account originality or the employment of new technologies. Entries do not have to include a working model or prototype, as detailed drawings will be accepted.

So, if you have a life jacket design idea that you've stashed away in a box in your garage, dust it off and send it in by December 15th 2005. Or, if you know someone who might be interested in the competition, please let us know.

For more information, including an entry form and contest rules, visit www.boatus.com/foundation/lifejacketdesign. You may also contact me, Ruth Wood, at rwood@boatus.com or call 703-823-9550 ext. 3204.

Remember, your idea could save a life! 🐦