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Short Sea Shipping
What's the Hold Up?

2010 Resolution
Invest in Infrastructure
Calhooun, WCI Chairman

Boatbuilder Profiles
Chesapeake Shipbuilding

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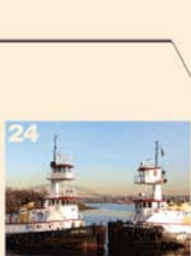

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A Vessel Owner's Warranty of Seaworthiness

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Vessel owners owe an implied duty under admiralty and maritime law, what lawyers call "the general maritime law," to operate "seaworthy" vessels. This is a duty that is imposed automatically. No statute, regulation, or contract need state this, although they often do. Vessel owners can be held "strictly liable" if they breach their "absolute" duty to operate a seaworthy vessel. This means whether they were negligent or not is irrelevant when courts analyze an unseaworthiness claim. This is why seaworthiness is a form of "liability without fault." Seaworthiness is a warranty, or a promise. Lawyers and judges refer to the "warranty of seaworthiness."

The duty to operate a seaworthy vessel is "nondelegable." This means at the end of the day, the vessel owner is, generally, on the hook if the vessel is unseaworthy and the unseaworthy condition caused the accident. Seaworthiness also has insurance ramifications. The general maritime law implies two warranties of seaworthiness in a hull insurance policy. First: the absolute implied warranty of seaworthiness. This warranty of seaworthiness applies at the beginning of the insurance policy. Under this warranty, a marine insurer can void the hull insurance policy if the vessel is not seaworthy at the inception of the policy. Second: the negative implied warranty. Under this warranty, the insured vessel owner promises not to knowingly send its vessel to sea in an unseaworthy condition. This seaworthiness warranty applies only after the policy has been issued. If the marine insurer wants to avoid a claim under its policy under this warranty, it must prove that the vessel owner knew of the unseaworthy condition of its vessel.

For example, a marine insurer may deny a claim on a hull insurance policy if it is determined the vessel sank, not because of a fortuitous event, but because the vessel was not maintained in a seaworthy condition. In maritime law a vessel that sinks in calm weather and calm seas is presumed unseaworthy. Marine hull insurance policies typically also have express seaworthiness clauses, such as: "The Underwriters shall not be liable for any loss, damage or expense arising out of the failure of the Assured to exercise due diligence to maintain the Vessel in a seaworthy condition after attachment of this Policy; the foregoing, however, not to be deemed a waiver of any warranty of seaworthiness implied at law."

But, what is a "seaworthy" vessel? Courts have long described a seaworthy vessel as one "reasonably fit for its intended purpose." Seaworthiness is a relative term, varying with the type of vessel and the nature of its voyage. A general rule courts use is that a vessel must be "staunch, strong, well equipped for the intended voyage and manned by a competent and skillful master of sound judgment and discretion." The manning aspect of seaworthiness also extends beyond the master or captain to encompass a sufficiently numerous crew and a sufficiently competent crew. One of the most repeated descriptions of seaworthiness is that announced by the U.S. Supreme Court in the 1960 case of Mitchell v. Trawler Racer, Inc. In this decision, Justice Stewart wrote: "What has been said is not to suggest that the owner is obligated to furnish an accident-free ship. The duty is absolute, but it is a duty only to furnish a vessel and appurtenances reasonably fit for their intended use. The standard is not perfection, but reasonable fitness; not a ship that will weather every conceivable storm or withstand every imaginable peril of the sea, but a vessel reasonably suitable for her intended service."

Judges often instruct juries hearing maritime cases that "a shipowner owes to every member of the crew employed on its vessel the absolute duty to keep and maintain the ship, and all decks and passageways, appliances, gear, tools, parts and equipment of the vessel in a seaworthy condition at all times." Courts have found vessels unseaworthy for a broad range of deficiencies: lack of a bilge pump or other tools and equipment; defective gear; broken hand tools and other appurtenances being in a state of disrepair; insufficient manpower assigned to perform a particular task; unfit crewmembers; improper methods of

loading or stowing cargo; unsafe work methods; on a fishing vessel a rail made slippery by fish guts. Importantly, an unseaworthy condition need not be permanent or present for a long time; an unseaworthy condition can be momentary and it can arise after the voyage begins. **MN**

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In most cases, each party will offer prehearing argument before its evidence is taken. After both parties have completed presenting their cases, the panel may order the matter closed to further evidence. However, the panel may still direct the parties to provide additional evidence for purposes of clarification, and may even order further hearings for the taking of such evidence. After all hearings are completed, the parties will either brief the matter again or provide closing arguments in the final hearing. Either way, each will sum up the evidence for the panel and argue the legal issues in the case it believes to be supported by the evidence that has been taken. Once the proceedings are closed, the panel will meet and deliberate on the evidence and the law. They will weigh the evidence taken in its various forms in accordance with their judgment of its persuasiveness. Typically, they will give greater weight to evidence taken from a witness who has been before them, subjected to cross-examination, and whose credibility they have had the opportunity to assess, than they will to evidence submitted by deposition or by affidavit. Of course, there are many variables in this process, and there are no hard and fast evidentiary rules as there are in court.

Once deliberations are concluded, the panel will issue its decision, usually referred to as its "award." Under the SMA Rules, the panel is required to issue a "reasoned decision." In a panel of three arbitrators, unless the arbitration clause requires unanimity, the decision of a majority will be the award, although the dissenting arbitrator will write a separate reasoned opinion. Once the panel has issued its award, it has no further power to hear argument or take evidence. Its award is binding on the parties so long as it does not run afoul of the limited grounds for a court to vacate, modify, or correct it as discussed in the December column. The award may include a division of the costs and expenses of the arbitration and attorneys' fees if the SMA Rules apply, or if the arbitration clause so provides.

The award may be made into a judgment of a court of competent jurisdiction if that is required for enforcement within the U.S., or it may be enforced in foreign jurisdictions pursuant to the terms of the New York Convention or the Inter-American Convention. If the SMA Rules apply, the award will be published unless both parties agree otherwise. The panel may, however, be persuaded not to include in the published award proprietary information of either party. As noted in December, the finality of the award is one of the greatest advantages of arbitration because finality avoids the string or appeals and remands that so often are an expensive and time consuming part of the litigation process. **MN**