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Vessel Crewing

Operators Face Liability for Numerical, Task Assignment, Competency, Training, and Demeanor Deficiencies

By Frederick B. Goldsmith

Vessel owners must know and meet the statutory and regulatory crewing, or "manning," standards for the particular class and service of vessels they operate, whether "inspected" or "uninspected," including, among other matters, number and type of crewmembers, work-hour limitations, and U.S. citizenship requirements. A good reference source for these statutes and regulations is Volume III of the U.S. Coast Guard's Marine Safety Manual, entitled "Marine Industry Personnel." This volume is available on the agency's website (type: "Volume III Marine Safety Manual" in an internet search engine).

Violation of statutory and regulatory crewing/manning requirements can expose the vessel operator to a Coast Guard civil penalty action. See, for example, 46 U.S. Code § 8101(f) ("The owner, charterer, or managing operator of a vessel not manned as required by this section is liable to the Government for a civil penalty of $10,000.").

Civil Liability Standards under the Jones Act

The attorney for a seaman or his or her family suing a vessel operator under the federal Jones Act for personal injury or wrongful death can put to effective use a vessel operator's violation of a Coast Guard manning statute or regulation. The Jones Act, codified at 46 U.S.C. § 30104, creates a statutory negligence action for seamen against their employer. The Jones Act states:

"§ 30104. Personal injury to or death of seamen

A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section."

First, a Coast Guard statutory or regulatory manning violation can serve as the basis for liability as "negligence per se" under the Jones Act. Black's Law Dictionary defines "negligence per se" as: "Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes."

Second, under the Pennsylvania Rule, named after an 1873 U.S. Supreme Court decision in a vessel collision case entitled "The Pennsylvania," when a vessel operator has violated a safety statute, a rebuttable presumption arises that this violation caused the accident. Further, under the Pennsylvania Rule, the violator must show the violation not only did not cause, but could not have, caused or contributed to cause the accident. While the Pennsylvania Rule originally applied only in collision cases, courts have since applied the rule in non-collision and non-navigation cases. Finally, the Jones Act expressly adopts by reference the Federal Employers' Liability Act ("FELA"), the federal statute which provides a negligence claim for rail workers against their employers. Section 53 of the FELA, however, supercharges both the FELA and the Jones Act in favor of the employee when the railroad or vessel operator has violated a statute enacted for the safety of the employee. Section 53 states:

"§ 53. Contributory negligence; diminution of damages

In all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this act to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery,

but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: Provided, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee."

Specifically interpreting Section 53 of the FELA, courts have found that where a seaman was injured due to a vessel operator's violation of a Coast Guard manning statute, the seaman cannot be charged with contributory negligence. This means the seaman's monetary damages cannot be reduced even if the seaman is also at fault in causing or contributing to cause the accident. He is essentially exonerated, or immunized, under Section 53 by the employer's statutory violation.

The U.S. Fifth Circuit Court of Appeals addressed this precise issue in 1985 in a case entitled, Roy Crook & Sons, Inc. v. Allen. In the Allen case, Captain Newell Allen drowned in the Gulf of Mexico while attempting to bring in the anchor of the M/V Lady Patricia, a ship owned by Roy Crook & Sons, Inc. At the time, only two crewmembers were aboard: Captain Newell Allen and a deckhand. The M/V Lady Patricia was sixty-five feet long, had a capacity of 89 gross tons, and operated under a Coast Guard Certificate of Inspection which required a crew of two ocean operators and two deck-hands. The appellate court found that the vessel operator had indeed violated the Coast Guard manning statute (which requires a vessel be manned in accordance with its COI) and thus that Captain Newell could not be charged with any comparative negligence.

Civil Liability Standards under the General Maritime Law for Unseaworthiness

Separate and apart from exposure to a seaman's Jones Act negligence claim, vessel operators face liability to their seamen employees in the crewing context under the general maritime law (or federal common, or judge-made, law) under the warranty of unseaworthiness. Under this doctrine, vessel owners essentially promise to provide for their

crewmembers seaworthy vessels, that is, vessels reasonably fit for their intended use or purpose. The duty to provide a seaworthy vessel is absolute and completely independent of the duty under the Jones Act to exercise reasonable care or be free from negligence. In other words, a seaman need not prove the vessel operator is negligent to win an unseaworthiness claim.

The seaworthiness duty covers not only the vessel itself, and its equipment, but also its crew. Seaworthiness is a relative term, and the standard varies depending on the type of vessel and the nature of the voyage. Generally, courts hold that vessels must be "staunch, strong, well equipped for the intended voyage and manned by a competent and skillful master of sound judgment and discretion," and that shipowners have "a nondelegable duty to provide a qualified master and crew for the intended voyage."

In the crewing and manning context, courts have regularly found vessels unseaworthy, and thus the vessel owner liable for injuries and damages which result, where a vessel is inadequately crewed, either in terms of number aboard, number assigned to perform a given task, competency, training, or disposition. Some examples from published court decisions:

• "While there was one other experienced crewman, the engineer, Nichols was the only experienced navigator and his physical and mental endurance must have been overtaxed by working long hours in such severe conditions with an undermanned and incompetent crew. The DEEP SEA was unseaworthy in such respects and the unseaworthiness contributed to his fatal mistake in judgment." (Petition of New England Fish Co., 465 F. Supp. 1003 (D. Wash. 1979))

• Vessel unseaworthy where a vessel owner failed to post dedicated lookout who had no other duties (In re Complaint of Delphinus Maritima, S.A., 523 F.Supp. 583 (S.D.N.Y. 1981)).

• "[I]t makes no difference that respondent's vessel was fully manned or that there was a sufficient complement of seamen engaged in the overall docking operation, for there were too few men assigned 'when and where' the job of uncoiling the rope was to be done. it makes no difference that the third mate and two men he assigned to perform the job were themselves competent seamen, or that the rope was itself a sound piece of gear. By assigning too few men to uncoil and carry the heavy rope, the mate caused both the men and the rope to be misused." (Waldron v. Moore-McCormack Lines, Inc., 386 U.S. 724 (1967))

• "Diamond B was aware that Bennett had trouble hearing the radio over the engine noise and that this noise also drowned out other vessels' fog signals; yet Diamond B sent him out anyway. Diamond B also sent him out without a lookout and with a radar system that Bennett had no training in how to use. Diamond B claims that Bennett had sufficient hands-on experience in using radar, but the fact that Bennett could not even tell which direction the CANE RIVER was traveling on radar indicates otherwise. In short, the facts found in this case go far beyond mere navigational errors. Diamond B knew, or should have known, that the MISS BERNICE was unseaworthy and

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that its captain was improperly trained." (Trico Marine Assets Inc. v. Diamond B Marine Servs., 332 F.3d 779 (5th Cir. 2003))

- "At trial, the plaintiff's expert, Dr. Nelson, testified that Marceaux was ill-trained for the task he was assigned to perform aboard the M/V LAKE CHARLES. Marceaux confirmed his lack of knowledge regarding his ability to lift the crossover hose using the procedures he had been taught by Conoco and testified as to how the attempted lift injured his back. In addition, there was testimony offered as to the lack of mechanical devices to aid him in the off-loading operation. There was clearly sufficient evidence for the jury to find that the vessel was unseaworthy due to an improperly trained crew and that the vessel's unseaworthy condition was a legal cause of injury to the plaintiff." (Marceaux v. Conoco, 124 F.3d 730 (5th Cir. 1997))

Conclusion

Proper vessel crewing, or manning, while it begins with compliance with U.S. Coast Guard statutory and regulatory requirements, does not end there. The crewing obligation also encompasses ensuring that a sufficient number of crewmembers are assigned to perform specific work, that the crewmembers aboard are competent and properly trained, and that they are capable of demeaning themselves in such a way so as not to injure other crewmembers or property.

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FINANCE

interested finance source, be prepared to provide documentation to prove your business and financial condition. If you are currently in business, these will include:

- Three years of personal and business financial statements;
- Three years of tax returns;
- Current quarter and historic quarter financial statements;
- Business licenses or other pertinent federal or state documents;
- Resumes of all principals and management;
- Copies of leases for operating location(s);
- Letters of interest from potential or current customers.

If you are a start-up or other new venture, your proformas – hypothetical financial figures based on previous business operations for estimate purposes – will be critical in evaluating the viability of your request.

Launching: and Staying Afloat

The United States Small Business Administration offers guidance in writing a business plan. You may want to see what they have to say. Your completed document should reflect the effort you have made in assembling and analyzing your data. Your narrative sections should let your professionalism and depths of understanding of the industry come through. And, just as important, is having your business plan read, evaluated and understood – in advance – by a finance source who knows the real value of your dreamboat.

SBA on the Web:
http://www.sba.gov/category/navigation-structure/starting-managing-business/starting-business/writing-business-plan.

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