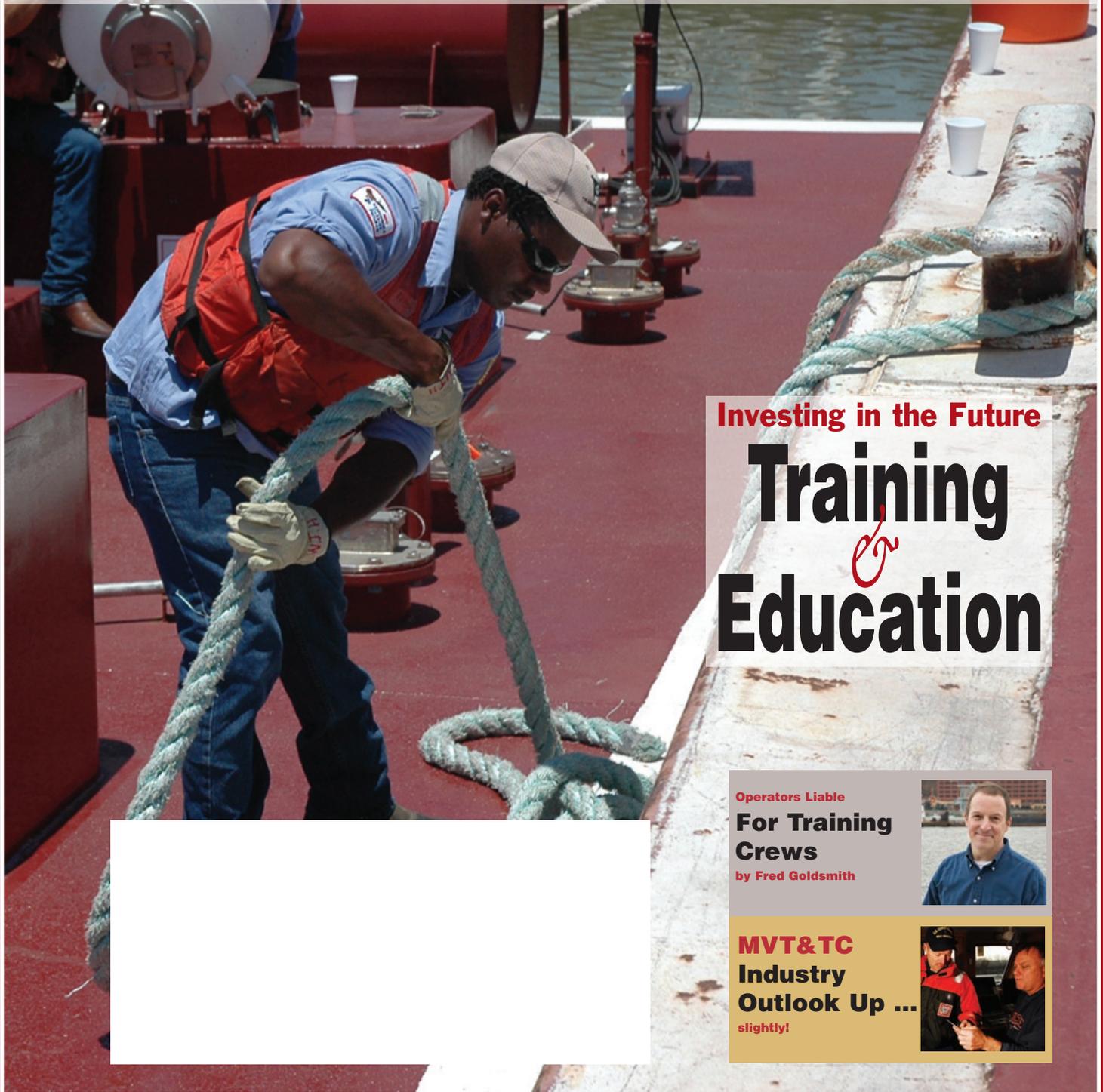


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Investing in the Future

Training *and* Education

Operators Liable
**For Training
Crews**
by Fred Goldsmith



MVT&TC
**Industry
Outlook Up ...**
slightly!



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Fred Goldsmith, licensed in Pa., W.V., Ohio and Texas, practices admiralty & maritime, railroad, personal injury, motorcycle, and commercial litigation with Pittsburgh-based Goldsmith & Ogrodowski, LLC (www.golawllc.com). If you have questions about this column, you can reach him at fbg@golawllc.com or (877) 404-6529.

Was a 34 Year-Old Man's Death Avoidable?

A 34-year-old man is dead and if a passenger excursion vessel operator had properly trained its crew, this otherwise healthy asthmatic passenger might still be alive. This is the written conclusion in 2007 of a well-regarded federal judge. By taking a closer look at this decision, and reviewing the excerpts provided below of other recent federal court decisions, commercial vessel operators can gain a better appreciation for the scope of their legal duty to train their crews.

The decedent passenger was aboard an excursion boat for a nighttime wedding reception cruise along with more than 300 other guests. Fellow passengers found him leaning over a railing, sweating, and having difficulty breathing. They learned the decedent's asthma inhaler was not working, informed a crewmember the decedent was having an asthma attack, and asked that help be summoned. The Chief Mate saw the decedent's condition, monitored his airway, breathing, and circulation, knew the decedent needed more medical assistance than he could provide, and notified the Captain.

While the decedent was in physical distress, fellow passengers, including those who had CPR training, several times asked crewmembers for oxygen. Crewmembers told the passengers oxygen was not aboard and it wouldn't help the decedent anyway. Actually, low-flow canistered oxygen was aboard, but the vessel operator's policy dictated that it was only available for use by doctors or nurses, not the crew. The vessel operator did not train its crewmembers on how to administer oxygen aboard ship. When another passenger, a medical doctor certified in psychiatry, identified herself to the Chief Mate as a doctor and asked for oxygen and epinephrine to help the decedent, crewmembers told her the vessel did not have such medical supplies. No crewmembers ever administered oxygen to the decedent.

When the Captain learned of the decedent's medical

emergency, the vessel was about four river miles away from the company landing and heading further away. The Captain turned the vessel around, headed back to the company landing at full speed, about nine to 10 mph, and then for the first time called 911, about fourteen minutes after the Chief Mate first learned of the decedent's difficulty breathing. About six minutes later, twenty minutes after the Chief Mate first learned of the decedent's situation, the Captain called 911 again, this time asking the local river rescue crew to assist. But neither the Captain nor the company knew the river rescue service was not staffed full-time at this time of night. The vessel arrived back at the company dock about half an hour after the decedent was first found in distress. Local paramedics and a medical doctor immediately boarded the vessel. They found the decedent conscious but unable to walk or stand. The decedent lost consciousness, was intubated on the dock, and was transported to a local hospital, where he died four days later.

The Family Sues: Claimant Experts & Court Describe Deficient Crew Training

The decedent's widow and estate sued the vessel operator contending it and its crew were negligent for failing to adequately train its captains on the accessible emergency landings available to the vessel during a medical emergency; failing to implement its federally-mandated Shipboard Safety Contingency Plan; failing to adequately train its captains in such Plan; failing to adequately train its crew in medical emergency drills, as well as in administering oxygen which was aboard its vessel; and for failing to train its captains in the shifts and seasons during which the river rescue service is staffed. The family's lawyers hired experts in marine operations and medicine, whom the court quoted in its opinion.

The court found that after the Captain turned the vessel around and headed for home, "there were several closer landings where he could have docked." The vessel's

Safety Contingency Plan listed three landings accessible to the vessel in the event of a medical emergency and closer than the company landing, yet, the court wrote, the company “never provided its captains with the list of accessible landings from its Safety Contingency Plan, and it never provided training to them on accessible landings which were available in the event of an emergency.” One of the alternate landings was just one mile, thus about seven minutes, from where the Captain turned the vessel around.

The court found the Captain upon learning of the decedent’s plight had a duty to change course and put in at the nearest port according to the gravity of the effected person’s illness. Yet the court found the vessel owner had never trained the Captain that the close-by alternate landing was accessible to the vessel and this is why, the court wrote, the Captain didn’t consider docking there that night.

The court quoted from the report of one of the claimant’s maritime liability experts: “[The vessel operator] should have researched and identified potential, alter-

native evacuation points and then developed communication policies to contact those docks to secure permission to dock and allow access to shoreside emergency medical service. [The vessel operator] then should have trained its captains—before medical evacuation was necessary—on which docks offered alternative evacuation points. [The Captain]—a captain who often transited the areas—should have been made familiar with optional, local docks that could be available for medical emergencies.”

The claimant’s liability expert also criticized in his report the excursion vessel’s failure to provide oxygen to the decedent: “It does little good to equip a vessel with traditional emergency equipment such as oxygen and then fail to train the crew on when and how to use the equipment. [The vessel operator’s] managers failed in their non-delegable duty to train their crew. [The vessel operator’s] failures unnecessarily delayed [the decedent’s] access to oxygen.”

The court then quoted from the claimant’s medical expert’s report: “It is with reasonable medical certainty that the delay in medical care associated with the decision

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to not go to the closest dock or rendezvous with [the river rescue service] cost [the decedent] his life. With prompt and appropriate medical care available like that in the [city where the incident occurred], an otherwise healthy 34-year-old male like [the decedent] should not die from an asthmatic attack ... Additionally, the decision to not provide oxygen to [the decedent] contributed to the unrecoverable anoxic brain injury and death.”

As to the vessel’s Safety Contingency Plan, the court quoted the claimant’s liability expert’s criticisms of the vessel operator for its “failure to implement and update” this Plan and how such “left [the Captain] untrained and unprepared to react appropriately to [the decedent’s] medical emergency.”

Before summarizing its findings, which largely tracked the opinions of the claimant’s experts, the court set forth the parameters of the general maritime, or judge-made, law on crew training: “[a] shipowner’s failure to provide adequate training for its crew can demonstrate its negligence.” It concluded, “the claimant has met her burden of proof on the issue of [the vessel operator’s] liability.” The court also found the vessel operator’s shoreside management’s negligence precluded the vessel owner’s ability to limit its liability under the Vessel Owner’s Limitation of Liability Act. This federal statute, provided certain prerequisites are met, allows a vessel owner to limit its and its insurers’ financial liability in the event of a casualty to the post-accident value of the vessel, plus pending freight. The case later settled for a confidential sum.

What is the Law on Crew Training?

Reproduced below are several self-explanatory excerpts from other recent federal court decisions which, in different factual settings, describe the scope of a vessel owner’s duty to train its crewmembers:

- “There is no duty to instruct an experienced seaman on matters within common sense, or to remind him of what he already knew or should have known.”
- “The circumstances of a seaman’s employment include not only his reliance on his employer to provide a safe work environment but also his own experience, training, or education.”
- “The district court correctly concluded that [the vessel operator] had no duty to train [the crewman] to face a ladder when using it because ‘[t]he law does not impose a duty to warn of an obvious danger.’”

- “The evidence here, when viewed in the light most favorable to [the crewman], as we must on this issue, does suggest that her injury may have been caused by [the vessel operator’s] failure to properly train its employees on the proper methods of operating and mooring the barge, which would render the ship unseaworthy...[a] vessel’s condition of unseaworthiness may arise from the unfitness of her crew.”

- “A key contributing factor to the crew’s incompetence and hence the vessel’s unseaworthiness is the absence of any meaningful training or the implementation of proper procedures for the safe navigation of the vessel. Such a lack of training by [the vessel operator] clearly contributed to the unseaworthiness of the vessel ...the deckhands were not adequately trained as lookouts, and [the vessel operator] left the training of the deckhands to the discretion of its pilots and captains. At least in the case of the [vessel involved], such training seems derelict if not completely absent. Furthermore, [the vessel operator] invested no time or effort in the training of the more senior crew members on its vessels ...[the towboat pilot’s] training merely consisted of riding under the watch of [a captain] for one week before he was given charge of a ...vessel. Any other skill or knowledge he may have possessed was learned on his own. [The vessel operator] had the utmost faith in his men to independently avail themselves of the latest safety and navigational information. While he avers that he made all Coast Guard regulations available to his crew on his vessels, he made no effort to assure that these manuals were ever read, and the Court believes that they rarely were read. [The vessel operator] placed great reliance on the crew members keeping abreast of safety and navigational information pursuant to their license renewal requirements which occurred every five years instead of training them himself. [The vessel operator’s] reliance on others to train its crew for it represents negligent manning of the vessel. The Court finds that [the vessel operator] provided inadequate training to its crews on all levels from the deckhands through to captain which contributed to the unseaworthiness of the [vessel in question].”

- “[The vessel operator’s] lack of training for its crew members as well as the lack of procedures in place to deal with such dangerous situations played a key role in contributing to the accident. A loss occurring due to the owner’s failure to use due and proper care to provide a

competent master and crew is within the owner's privity ...the accident resulted from a complete breakdown in any meaningful training or implementation of safety procedures as well as a complete absence of diligence in the selection of its crews."

- "Failure to properly train vessel employees concerning proper navigation of a vessel, or to engage in proper inquiry of employees to determine whether they have sufficient skill and knowledge to navigate a vessel safely and in conformity with mandatory regulations, establishes unseaworthiness that is within the privity or knowledge chargeable to the corporation."

- "[W]hen a shipowner neglects to provide adequate training, then it is in privity and knowledge of the crew's negligence and the vessel's unseaworthiness [and thus cannot successfully invoke the Vessel Owner's Limitation of Liability Act.]"

- "Apart from these mechanical and maintenance problems, a significant cause of the grounding of the [tanker] was that its crew was trained improperly with respect to the maintenance, operation, inspection, and repair of the steering gear system. This lapse in training contributed to the failure of the steering gear system and the inability of the crew to reestablish steering control ...The crew was not instructed as to the acceptable level of hydraulic fluid consumption of the steering gear. [The vessel operator] never directed the crew to clean the filters or change the hydraulic fluid in the steering gear, as required by the manufacturer's manual. Although it was critical to keep the hydraulic fluid uncontaminated, [the vessel operator] never told the crew to take samples of

steering gear hydraulic fluid to test for purity ... Apart from the initial failure of the steering gear system, the failure to train and instruct the crew in emergency procedures and to keep the isolation valves in working order are sufficient to hold [the vessel operator] liable for the damages caused by the oil spill."

Conclusion: Vessel Operators Who Fail to Properly & Continuously Train Their Crews Will Likely Be Found Liable

Crew training, for routine operations and for contingencies and emergencies that are reasonably foreseeable, is critical for commercial vessel operators.

When an incident occurs — whether involving personal injury, property damage, or an oil spill — and litigation results, courts will hold

liable and assess damages against vessel operators which fail to properly train their crews, have contingency plans in place for reasonably foreseeable events, and train their crews on these plans. Courts are likely to find companies which have a Safety Contingency Plan, Safety Manual, Operations Manual, or AWO Responsible Carrier Program Manual, but fail to train and drill their crews on these documents, as negligent. Designing, wording, and distributing these plans or manuals to your crews, and constantly updating them, is only part of what is required. Companies must ensure their crewmembers know these plans, programs, and manuals, and applicable laws and Coast Guard regulations, through practice, drilling, and continuous crew education.

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