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Maritime premises liability? Not really

A SIMPLE GUIDE TO STEER YOU THROUGH THE BASIC MARITIME ISSUES IN PERSONAL INJURY – SOME MAY SURPRISE YOU

Never call an adjustor or defense attorney and tell them that you want to speak with them about your maritime premises-liability case that occurred on a boat. If you do so, you are shooting a warning flare into the sky letting them know that you know nothing about maritime law, and you just devalued your case. There are decks and gangways on a vessel, but nobody commonly calls those "premises" on a boat. So, don't use the word premises. And, don't use the term "boat." It is a vessel, and yes, it matters that it is called a vessel. (See *Lozman v. City of Riviera Beach* (2013) 568 U.S. ___, 133 S.Ct. 735 [finding maritime law does not apply because an individual's floating home is not a vessel].)

Who can sue?

The status of the individual who is injured on a vessel is arguably the most important fact that you need to know before filing a maritime personal-injury lawsuit. The status of the individual determines what you can sue for and what relief you are entitled to. This article simply focuses on three different types of individuals on a vessel: (1) passengers; (2) seamen; and, (3) visitors. There are other types of individuals who can get injured on a vessel, but this article is limited to these three types.

Passengers

The first type of person that people think of who get injured on a vessel are passengers on a cruise ship, but a passenger includes individuals on vessels besides cruise ships, such as ferries and water taxis. Maritime law defines a passenger as one who travels in a public conveyance on a vessel by virtue of a contract with the carrier, paying fare or something accepted as an equivalent of. (*The Main v. Williams* (1894) 152 U.S. 122, 129.) Simply, a passenger is someone who is on a vessel for transportation who is also not a part of the crew. This passenger status creates the duty of the vessel owner to exercise reasonable care for the passenger's safety.

The important fact with a passenger is that a passenger-carrier relationship is

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created and governed by the contract of carriage, i.e., the ticket purchased for travel. (*Crowley v. S.S. Arcadia* (S.D. Cal. 1964) 244 F.Supp. 597.) The contract for carriage, i.e., the ticket, has important pieces of information for knowing which forum you must bring a lawsuit in, what time constraints you have in filing a lawsuit, and what pre-lawsuit procedures, if any, you must comply with before filing a lawsuit. If you are representing a passenger who was injured on a vessel, you need your client's ticket so you know how to proceed before filing a lawsuit.

An individual gains passenger status when the individual, in good faith, intends to take passage, and places himself in care of the vessel and crew. (*Riley v. Vallejo Ferry Co.* (N.D. Cal. 1909) 173 F. 331.) So, a stowaway, a person who conceals himself on board a vessel to obtain a free passage, is not a passenger, and the only duty owed to a stowaway is simple humane treatment while the stowaway remains on board. (*Buchanan v. Stanships, Inc.* (5th Cir. 1984) 744 F.2d 1070.) Basically, a stowaway is entitled to small amounts of bread and water until the vessel makes its next stop in port. This means that if a stowaway slips and falls on a puddle of water spilled by the crew, the stowaway likely has no lawsuit. But, a passenger would have a lawsuit from a slip and fall caused by water spilled by the crew.

The passenger-carrier relationship ends when the vessel has reached the port of destination and the passenger has left the vessel and the shipowner's dock. (*Chervy v. Peninsular & Oriental Steam Nav. Co.* (S.D. Cal. 1964) 243 F.Supp. 654.) If a passenger leaves the vessel after the journey has concluded, that individual loses passenger status. In *Chervy*, plaintiff-passengers reached their destination port and left the ship with their luggage, but they returned later to the vessel and were injured. But, the plaintiffs lost their passenger status when they left the vessel and became guests upon their return, and their contract for carriage (ticket) provided that a duty of care is not owed to guests. As a result, the plaintiff's lawsuit was dismissed because their passenger status had terminated at the time of the injury. Again, read your client's ticket before you file a lawsuit.

So, depending on whether your client was a passenger or not when the incident happened, you will be more equipped to determine if your client has a case or not.

Seamen

An entire article could be written on how to determine if someone has seaman status when injured on a vessel. Basically, a seaman is a member of the crew and determining one's status as a seaman is a flexible one. (*Warner v. Goltra* (1934) 293 U.S. 155.) For example, if a movie is being filmed onboard a vessel and certain actors being filmed are assisting with navigation, those actors are seamen. (*In re Famous Players Lasky Corp.* (S.D. Cal. 1929) 30 F.2d 402.) However, movie extras aboard during filming are not considered to be seamen. (*Bullis v. Twentieth Century-Fox Film Corp.* (9th Cir. 1973) 474 F.2d 392.)

Seamen status is significant because only seamen can sue a vessel owner for seaworthiness, and are entitled to the remedies of maintenance and cure. Seaworthiness essentially holds a vessel owner strictly liable for any injury suffered by a seaman caused by a vessel's unseaworthiness, or unfitness of a vessel for a safe voyage. (*The Osceola* (1903) 189 U.S. 158; The Harter Act, 46 U.S.C. §§ 30702-30707 (2007).) Maintenance and cure require a vessel owner to pay an injured seaman his lost wages and all related medical treatment, but again, maintenance and cure applies to seamen only.

Simply put, seamen are the most protected individuals for injuries occurring at sea.

Visitors

Picture an old-time cruise where friends and relatives gather aboard a vessel to see an individual off on a long ocean cruise before the vessel disembarks on its voyage. The individual is deemed a passenger, but the friends and relatives also have a unique status – they are deemed to be visitors on the vessel. A visitor is a person visiting a passenger onboard before disembarkation, and the vessel owes passengers a duty to exercise reasonable care for their safety. (*Kermarec v. Compagnie Generale Transatlantique* (1959) 358 U.S. 625.)

Unlike a passenger, a visitor does not have a contract for carriage, i.e., a ticket, thus a vessel owner cannot impose any forum selection clauses or pre-lawsuit procedures on a visitor before a visitor files a lawsuit. However, even though it is still an acceptable custom to have visitors aboard a vessel to wish a passenger Godspeed, most commercial cruises do not allow visitors aboard a vessel because they have no means to limit their liability from visitors' injuries. So, commercial cruise lines limit their liability by not allowing visitors aboard the vessel.

Regardless, the status of your client when injured is important and will determine what your client can sue for.

What can you sue for?

Once you have determined the status of your client, then you can decide what causes of action or claims that you can sue for. This article focuses only on negligence, Title III of the Americans with Disabilities Act, and unseaworthiness. There are several other causes of actions and claims that can be brought, but in the spirit of this Advocate issue focusing on premises liability, only these three types of claims will be discussed.

Negligence

Regardless of the status of your client, negligence is a viable cause of action so long as your client was lawfully aboard the vessel when the injury occurred. (*Kermarec v. Compagnie Generale Transatlantique* (1959) 358 U.S. 625, 632.) In proving notice in maritime negligence cases, basic principles of actual knowledge or constructive knowledge apply. (*Fairbairn v. American River Electric Co.* (1918) 179 Cal. 157.) But, there are differences in maritime negligence cases from California premises-liability cases. For example, the dreaded trivial-defect defense does not apply in maritime law. Instead, as long as you can show that a

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deck on a vessel or a gangway was not in compliance with an applicable code or regulation, no matter how trivial or minor a defect might be, you will solidify liability in a maritime negligence case. Because there are ample codes and regulations for vessels to comply with in order to set sail, you should almost always be able to find a violation that establishes liability in a maritime negligence case. However, negligence is usually not your client's only recourse.

Americans with Disabilities Act

Title III of the Americans with Disabilities Act applies to cruise ships. (*Spector v. Norwegian Cruise Line Ltd.* (2005) 545 U.S. 119.) That means all of the rights and remedies available under Title III of the ADA, including attorney's fees, apply to a maritime injury case. So, do not hesitate to allege a Title III of the ADA violation in your maritime lawsuit because you are increasing the value of your case.

However, issues may arise depending on when the vessel that your client was injured on was constructed. Even though a vessel might not accommodate a passenger with a disability, several cases have held that a vessel has no duty to comply with Title III of the ADA if compliance would require significant structural changes to the vessel. So, be wary of the defense that the vessel owner could not comply with Title III of the ADA because the structural integrity of the vessel would be diminished if modifications were made to the vessel in compliance with Title III of the ADA.

No seaworthiness for passengers

Seaworthiness is a great cause of action in a maritime injury case because there is strict liability for unseaworthiness. And, literally for almost any dangerous condition on a vessel, there is precedent if that condition is unseaworthy or not. But again, to make it clear, only seamen may sue for seaworthiness, and passengers cannot. (*Kermarec v. Compagnie Generale Transatlantique* (1959) 358 U.S. 625, 629.) So, make sure that you know what the status of your client is. If you do not know, call a maritime attorney before filing your lawsuit.

When must you sue?

Another difference in maritime law is that the statute of limitations for a maritime tort is three years. (46 U.S.C. § 30106.) This is great as you have more time than the typical two years in California to file a lawsuit, right? Wrong! Almost every contract for carriage, i.e., ticket, requires notice or filing of a claim within six months of a personal injury accident or death, and that a civil action must be filed within one year after the accident. And, the law permits this limitation on filing a maritime lawsuit. (46 U.S.C. § 30508.) There are exceptions to this one-year limitation, but do not risk having your client's lawsuit barred by waiting before filing suit.

Even though the statute of limitations for a maritime tort is three years, in reality, passengers must file their lawsuit within one year of the accident. For seamen and visitors, it's three years as there is no contract for carriage with those individuals. Again, determine the status of your client, and if your client is a passenger, read your client's ticket.

Where to sue?

With several injuries on cruise ships, a lawsuit usually must be filed in the state of Florida because of a forum selection clause buried in the contract for carriage. But, several contracts for carriage also allow suits to be filed in California. Again, read your client's ticket!

A forum-selection clause in a contract for carriage is enforceable. (*Carnival Cruise Lines, Inc. v. Shute* (1991) 499 U.S. 585.) However, the terms of the contract must be "reasonably communicated" to a passenger, and the forum-selection clause must be "fundamentally fair." (*Corna v. American Hawaii Cruises, Inc.* (D. Haw. 1992) 794 F. Supp. 1005.) Each maritime accident involving a passenger must be decided on a case-by-case basis to determine if the lawsuit should be filed where the forum selection clause requires. Typically, if the vessel disembarks from or embarks in California, a lawsuit should arguably be filed in California regardless of what forum the contract for carriage provides. This is because the vessel owner has already agreed to jurisdiction in California by having its vessel docked in California and receiving the benefits and protections from the state of California.

For seamen and visitors, they must file suit in a jurisdiction so long as there is personal jurisdiction over the vessel owner as they are not limited to a forum because there is no contract for carriage. Again, the status of your client matters.

Happy sailing!

Before you file a maritime lawsuit, do your homework. With a normal premises liability case in California, the status of the injured party – whether if the individual is a licensee or an invitee – does not matter. But, just the opposite is true for maritime lawsuits.

Know the status of your client when the accident happened. And, not to beat a dead horse, read your client's contract for carriage if your client is a passenger. Putting in a few extra hours at the beginning of a maritime case will result in smooth sailing for the rest of the lawsuit.

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