



Marilyn Raia
San Francisco,
Shareholder

Direct Dial: 415.352.2721
Fax: 415.352.2701
Email Attorney

Seaworthiness Defined

By Marilyn Raia

The concepts of seaworthiness and its opposite, unseaworthiness, can be found in many aspects of maritime law. Despite their pervasive presence, the concepts are not easily defined. A vessel that is seaworthy in one circumstance may not be seaworthy in another. Moreover, what was considered a seaworthy vessel a decade ago may no longer be so because of technological advances.

Over the years, the courts have fashioned various definitions of seaworthiness. In the mid-nineteenth century, the US Supreme Court in *E.J. Dupont de Nemours & Co. v. Vance* 60 US 162 (1857) agreed with the following standard for the seaworthiness of a cargo ship:

To constitute seaworthiness of the hull of a vessel in respect to cargo, the hull must be so tight, staunch, and strong, as to be competent to resist all ordinary action of the sea, and to prosecute and complete the voyage without damage to the cargo under deck.

In seamen's personal injury cases, the courts have held that to be considered seaworthy, a vessel, including her crew and appurtenances, must be reasonably safe to use and perform her assigned tasks. Stated another simpler way, to be seaworthy, a vessel must be reasonably fit for her intended purpose. In the towing context, a seaworthy vessel is one that is sufficiently staunch to withstand the normal and expected rigors of the tow.

Presumption of Unseaworthiness

A vessel is not required to be in perfect condition to be seaworthy. Moreover, the mere happening of an accident aboard a vessel does not raise a presumption the vessel was unseaworthy. However, a presumption of unseaworthiness does arise if the vessel's equipment fails under normal use. A presumption of unseaworthiness also arises if the vessel sinks without explanation in fair weather and calm seas. A certificate from a classification society or marine surveyor is not conclusive as to a vessel's seaworthiness.

In any context, a deteriorated hull, inoperable equipment and missing equipment are obvious indicia of unseaworthiness. However, a vessel can be held unseaworthy for a wide variety of reasons, many not readily apparent. While not intended to be an exhaustive list of conditions rendering a vessel unseaworthy, below are some conditions not related to the hull or equipment, which should not be overlooked by the vessel owner.

Inadequate Manning

A vessel must have an adequate number of crewmembers who are properly licensed if required for their positions, and who are competent to perform their assigned work. The vessel owner must also assign the proper number of crewmembers to perform tasks aboard the vessel. For example, in *American President Lines, Ltd. v. Welch*, 377 F.2d 501 (9th Cir. 1967), the district court held the vessel owner 50 percent liable for the back injury suffered by the third assistant engineer. The third assistant engineer undertook repair of the lube pump, which the court found to be a two-man job. The vessel owner had not provided a second man to assist him for the entire task, resulting in a finding of unseaworthiness due to improper manning. The court also found the third assistant engineer 50 percent at fault for not requesting assistance. Other courts have declined to find an unseaworthy condition when the injured party fails to request assistance and other crewmembers are available to assist with a job requiring more than one person such as a heavy lift.

Safety Equipment

A vessel owner has an obligation to furnish the crew with protective gear as well as safety and

lifesaving equipment aboard the vessel. The failure to do so can result in a finding of unseaworthiness. For example, in *Lasseigne & Sons, Inc. v. Bacon*, 1987 AMC 2251 (D. Or. 1987), a fishing vessel capsized and her crew of three drowned. The district court held the fishing vessel to have been unseaworthy because it did not provide a suitable life raft and survival suit for each of the crew members.

In *Webb v. Dresser Industries*, 536 F.2d 603 (5th Cir. 1976), a crew member of an ocean surveying vessel was ordered ashore in Seward, Alaska in winter to get supplies for the vessel. Large amounts of snow and ice had accumulated on the ground making the walking conditions very hazardous. While taking inventory of the supplies, the crewmember slipped on the snow and ice, injuring himself. The appellate court affirmed the trial court's finding the vessel was unseaworthy because the vessel owner failed to provide the crew member with proper boots to wear while walking in the snow, particularly when wet weather gear was provided to the scientists working aboard the vessel. The court declined to impose a duty on the vessel owner to supply every crewmember with boots for shoreside conditions that foreseeably might be encountered. However, it did hold the vessel owner had a duty to provide appropriate footwear to those crewmembers who were ordered to work under reasonably foreseeable adverse conditions.

Manuals and charts

Modern day vessels can be equipped with many different types of equipment, some more technologically complex than others. Not every crewmember knows how to operate every piece of equipment aboard the vessel. The vessel should maintain adequate and current manuals as reference guides. Their absence could render the vessel unseaworthy.

A vessel can also be found unseaworthy due to the failure to have current or sufficiently detailed charts aboard. *In re Complaint of Thebes Shipping, Inc.*, 486 F. Supp. 436 (S.D.N.Y. 1980), involved the grounding of the **Argo Merchant** off Nantucket Island on December 15, 1976. The November 1976 Pilot Chart of the North Atlantic Ocean was aboard the vessel but not the December 1976 issue. There were some differences in the direction of the currents in the area of the grounding on the two charts. The district court held the vessel to have been unseaworthy for many reasons including the lack of a current pilot chart. Similarly, in *In re Complaint of Delphinus Maritima S.A.*, 1981 AMC 2362 (S.D.N.Y. 1981), the vessel went aground on a coral reef near Bermuda while seeking a port of refuge where the cargo on board could be re-secured. The court held the vessel unseaworthy for, among other things, failing to have a large-scale chart of Bermuda or its adjacent waters because Bermuda would be a logical port of refuge on the voyage from the US East Coast to the Mediterranean.

Vessel Scheduling

A vessel's schedule can also be the basis for a finding of unseaworthiness. In *In re Complaint of Armatur, S.A.*, 710 F. Supp. 390 (D.P.R. 1988) the master had been on the vessel for nearly one year without a break. The court held the vessel's demanding schedule led to the master's fatigue and grounding of the vessel while he was on watch, and rendered the vessel unseaworthy. Frequent violation of the federal law specifying the maximum hours a seaman may work may also render the vessel unseaworthy. That a seaman may have to work more than the maximum hours because of exigent circumstances may not necessarily render the vessel unseaworthy.

Establishing a published port of call schedule and pressuring the master to adhere to the schedule may also lead to a finding the vessel was unseaworthy if the vessel encounters heavy

weather and the master does not reduce speed or change course in order to comply with the vessel owner's instructions to meet that schedule. Further, a vessel sailing with the knowledge it may be subject to arrest or detention at a subsequent port because of outstanding debts, may be held "financially unseaworthy" and liable for cargo damage proximately caused by the arrest or detention.

Duty to Provide Seaworthy Vessel

The duties imposed on vessel owners regarding the seaworthiness of their vessels can vary depending on the circumstances. A vessel owner owes an absolute duty to crewmember-employees to provide them with a seaworthy vessel. But, with respect to passengers, there is no such duty. Rather, a vessel owner has a duty only to exercise reasonable care under the circumstances. With respect to the owners of cargo carried aboard a vessel, the vessel owner has a non-delegable duty to exercise due diligence at the beginning of the voyage to make the vessel seaworthy.

There are no fixed criteria setting the standard for a vessel's seaworthiness. As a general rule however, a vessel will be found seaworthy if it is reasonably fit for its intended purpose, whether that be as a towed vessel, a towing vessel, a cargo-carrying vessel or a passenger-carrying vessel. In addition to deterioration of the vessel's hull and equipment, conditions not directly related to the vessel's hull and equipment may lead to a finding of unseaworthiness and the imposition of liability. Whether a vessel owner has a duty to provide a seaworthy vessel in the first instance and the effort needed to make the vessel seaworthy will depend on the circumstances.