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A Bridge Too Near

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Millions of people drive on bridges spanning the navigable waters of the United States every day. While doing so, most probably don't consider the law applicable to the bridge and the vessels traveling under it. This article provides some "bridge basics."

The Right to Navigate

Under federal maritime law, the right of a vessel to navigate in the navigable waters of the United States free from obstructions is paramount, and extends to the entire width of the waterway. The right of vehicular traffic to pass over a bridge is subservient to the right of vessel traffic to pass under it.

A bridge over a navigable waterway is considered an obstruction to navigation. Federal statutory law prohibits a bridge from unreasonably obstructing free navigation of the navigable waters. Before any structure, such as a bridge, is built on, under, or about a navigable waterway, a permit for that structure must be obtained from the United States Army Corps of Engineers. And, the structure must be built and maintained in strict compliance with the permit's terms and conditions. Any modification to the bridge must be approved by the Secretary of Transportation.

The Presumption of Fault

It is a rare bridge that has not been hit at least once by a vessel passing under it. The contact between a moving vessel and a bridge (or any other stationary object including an anchored vessel) is called an "allision," a maritime term many computer spell checkers do not recognize. It is distinguished from a "collision," which occurs when two moving vessels hit each other.

As a general rule, a presumption of fault arises when a moving vessel strikes a stationary object. This is known as **The Oregon** Rule, which derives from an 1895 US Supreme Court case involving a vessel named **The Oregon**, which struck an anchored vessel. The presumption shifts the burden of proof to the moving vessel's operator to show 1) the vessel acted with reasonable care; or 2) the accident was the fault of the stationary object. Some but not all courts have held the presumption of fault on the part of the moving vessel does not arise when a vessel strikes a bridge, reasoning the bridge is an obstruction to navigation and the right to navigate prevails.

The principle of comparative fault governs the allocation of fault between the parties in a ship/bridge allision just as it governs the allocation of fault between two vessels that have collided with each other. The **Pennsylvania** Rule, which raises a presumption of fault when a statutory violation has occurred, also applies. It shifts the burden of proof to the violator to show the statutory violation did not and could not have played a role in the allision.

A Bridge at Fault

While it may be hard to imagine how a bridge could be held at fault when struck by a moving vessel, in fact, many courts have held a bridge solely at fault in an allision.

The Eureka, 80 F.2d 303 (9th Cir. 1935) involved an allision between the steamship **Eureka** and the Burnside Bridge, a bascule type drawbridge over the Willamette River in Portland, Oregon. The bridge was owned and operated by Multnomah County. Upon a signal from the



Eureka to which he responded, the bridge tender started to open the two bridge draws to allow the vessel to pass. The west leaf opened promptly but the east leaf could not be raised. When the **Eureka** was approximately 150-200 feet from the bridge, the **Eureka's** pilot became aware the east leaf might not open and changed course to avoid contact with the bridge. He attempted to maneuver the vessel through the one open draw but her mainmast and rigging failed to clear the east leaf and suffered damage.

The trial court held the bridge tender solely at fault when failing to sound the danger signal to the approaching **Eureka** when the east leaf could not be opened. The County of Multnomah appealed. It argued the **Eureka** failed to have a proper lookout and proceeded at a too fast speed when realizing only one leaf of the bridge was opening. The Ninth Circuit affirmed the district court's judgment in favor of the **Eureka**. It held the **Eureka's** pilot was entitled to rely on the answering signal given by the bridge tender as an invitation to proceed. The failure of the bridge tender to give a warning about the malfunctioning of the east leaf entitled the **Eureka** to proceed until it should have been apparent that the invitation to proceed could not be complied with. The court also held the efforts by the **Eureka's** pilot to avoid the collision were not negligent given the peril in which the **Eureka** had been placed by the bridge tender.

Folkstone Maritime Limited v. CSX Corporation, 1995 AMC 2705 (7th Cir. 1995) also illustrates the point. In that case, the port wing of the **M.V. Pontokratis** struck the B&O Railroad Bridge which spans the Calumet River in Illinois. After being hit, the bridge leaf collapsed onto the vessel's wheelhouse causing the vessel to roll and be pulled against the bridge's fendering system. The bridge leaf became wrapped around the vessel during the incident. The vessel was eventually removed from the bridge's fendering system and towed to another area of the river where the remaining bridge parts were removed from the vessel's superstructure by shoreside cranes.

The bridge tender knew he had to fully open the bridge so the **Pontokratis** could safely pass below. He performed the bridge opening procedures until a "fully open 83 degrees" indicator light was illuminated on the control panel. During a post accident survey of the bridge, the "fully open 83 degrees" indicator light was on but the angle indicator on the control panel read approximately 76 degrees. The bridge tender said he believed the angle indicator was wrong based on his having observed the angle indicator reading 10 degrees when the bridge was fully closed.

The accident investigation revealed that in 1910, the Secretary of War issued a notice to B&O Railroad Company to alter its bridge on the Calumet River because it obstructed free navigation on the river. The Secretary recommended removal of the existing bridge and replacing it with a bascule type bridge. In 1911, B & O Railroad Company submitted plans for a single leaf bascule bridge providing a full open angle of 83 degrees. The plans were approved and in 1916, the newly built bridge was found to be in substantial compliance with the Secretary's order.

Between 1918 and 1959, the method of raising the bridge was modified a few times and the electrical controls were adjusted to preclude the bridge from opening more than 76 degrees. No permit was obtained from the Army Corps of Engineers before the modifications were implemented.

In 1960 and before the opening of the St. Lawrence Seaway and the introduction of larger vessels into the Great Lakes, B & O Railroad Company was warned of the need to make sure its bridge, which was on a waterway leading to the Great Lakes, complied with the terms of its



permit. Its employee, Richter, supervised the modification of the bridge so it could again open fully to 83 degrees. Also, the operator's console was fitted with an angle indicator that could continuously measure the angle of elevation.

While observing a test of the full opening of the bridge, Richter became concerned that an electrical junction box would be crushed against the counterweight tower. He ordered the opening of the bridge to be stopped short of 83 degrees to prevent damage. The electrical junction box could have been repositioned so that the bridge could be opened to 83 degrees. Instead, the indicators were adjusted so that the stopping point (approximately 79-80 degrees), would be the "fully open" position.

The owner of the *Pontokratis* sued B&O Railroad Company for the vessel damage and the railroad countersued the vessel, the vessel's pilot, and the assisting tugs for the damage to the bridge. The district court found the sole proximate cause of the allision was the angle of the bridge opening, which the evidence showed was only 67 degrees at the time of impact. It also found the railroad was negligent in failing to make sure the bridge opened to 83 degrees. The Seventh Circuit affirmed. It found the opening of the bridge to only 67 degrees constituted an unreasonable and latent obstruction to navigation on the river. It also noted a bridge owner has the burden of demonstrating a bridge not in compliance with its bridge permit, which triggers the *Pennsylvania* Rule, did not and could not have contributed to the accident. The B&O Railroad Company could not sustain its burden. The court also found the *Pontokratis'* operator presented sufficient evidence at trial to overcome the presumption of fault raised when a moving vessel hits a stationary object.

When a bridge/vessel allision occurs, the court will determine the bridge's fault as well as the moving vessel's fault. Despite being a stationary object, the bridge may be held solely liable for the damage suffered.