



Marilyn Raia
San Francisco,
Shareholder

Direct Dial: 415.352.2721
Fax: 415.352.2701
Email Attorney

When Crewmembers Duke It Out

By Marilyn Raia

Disputes aboard a vessel are usually resolved with words and amicable negotiation. Occasionally, they are resolved with fists and weapons. This column explains the circumstances under which a vessel owner can be held liable for personal injuries or death resulting from a fight between crewmembers aboard a vessel.

The Seaworthiness Standard

More than sixty years ago, the United States Supreme Court considered the question of whether a vessel owner could be held liable for injuries or death resulting from a shipboard fight between two crewmembers. It answered the question "yes."

Boudoin v. Lykes Brothers Steamship Co. Inc. 75 S. Ct. 382 (1955) arose out of a fight between plaintiff Boudoin, an oiler on a Lykes vessel, and Gonzalez, a deck maintenance man on the same vessel. After a drinking party aboard the vessel, Gonzalez became drunk and struck Boudoin with a liquor bottle. Gonzalez left the scene and returned with a large knife. Boudoin was taken to the vessel's hospital outside of which Gonzalez created a disturbance including threatening the mate.

Six hours after the incident, Gonzalez was ordered to the master's cabin. He refused to make any statement about what had happened. He was then ordered to clean the vessel's hospital but instead left the vessel. Later, he returned with bottles of liquor. The captain caught him, took away the liquor, and placed him in irons. The next day, Gonzalez left the vessel without permission. He returned two days later whereupon his absence without permission was noted, and he was fined. When the vessel returned to the United States, the master fired Gonzalez although he later worked on other vessels owned by Lykes.

Boudoin sued Lykes for his personal injuries. He alleged negligence and breach of the warranty of seaworthiness owed to him by Lykes. The district court entered judgment for Boudoin holding: 1) Lykes breached the warranty of seaworthiness by employing Gonzalez on the vessel; and 2) the vessel's officers were negligent. It relied on a Second Circuit case in which the court analyzed the doctrine of seaworthiness. The Second Circuit noted that as to the vessel itself, seaworthiness does not mean the vessel can withstand every condition encountered. Rather, the vessel must be reasonably fit for the intended voyage. Similarly, with respect to the crew, seaworthiness does not mean each crewmember must be competent to face all conditions. Rather, each crewmember must be "equal in disposition and seamanship to the ordinary men in the calling." The district court found Gonzalez was not equal in disposition and seamanship resulting in the vessel being held unseaworthy and its owner being held liable for Boudoin's injuries. The court of appeals reversed.

The United States Supreme Court agreed with the district court's analysis and reversed the court of appeal, resulting in the vessel owner being held liable. The Supreme Court noted the warranty of seaworthiness owed to a seaman is a type of liability imposed without fault. However, it made clear a vessel owner is not liable for injuries resulting from "every sailor's brawl" or "every time a seaman gets drunk". It recognized "sailors lead a rough life and are more apt to use their fists than office employees." It applied the same standard for judging the seaworthiness of the vessel to judge the seaworthiness of the crewmembers. It posed the question "was the assault within the usual and customary standards of the calling" or did it involve a seaman "with a wicked disposition, a propensity to evil conduct, a savage and vicious nature?" If the former, then it was part of the risk assumed by a seaman and therefore not a

breach of the warranty of seaworthiness. If the latter, then the vessel became "a perilous place" and the warranty of seaworthiness was breached. The court said "a vessel bursting at the seams might well be a safer place than one with a homicidal maniac as a crew member." While expressly disavowing any suggestion that Gonzalez was a homicidal maniac, the court held there was sufficient evidence for the district court to have concluded Gonzalez had a savage disposition endangering the lives of other crewmembers working aboard the vessel.

Vessel Owner Liability Not Found

The seaworthiness standard for crewmembers fashioned by the United States Supreme Court in *Boudoin* has been relied on by courts since then to judge whether a vessel owner should be held liable for personal injuries or death suffered by a crewmember in a shipboard fight. The lack of knowledge by the vessel owner of a crewmember's vicious tendencies is not a defense to liability. Surprisingly, many courts have held vessel owners not liable for injuries caused by fighting aboard a vessel in circumstances that would likely lead to liability in the case of non-seafarers.

Kirsch v. United States of America, 450 F.2d 326 (9th Cir. 1971) involved a fight between chief steward Kirsch and third assistant engineer Hutchison. Kirsch allegedly failed to arrange for Hutchison's bed to be made up. Kirsch and Hutchison met to discuss the matter. Hutchison lost his temper and struck Kirsch twice with his fist. Kirsch then fell over the raised threshold of the room where they were meeting. Kirsch did not try to hit Hutchison. After Kirsch fell, the fight ended and Kirsch was able to carry out his duties until the end of the voyage. He sued the United States as vessel owner for his injuries. The district court held Hutchison's presence on the vessel rendered it unseaworthy. The Ninth Circuit disagreed.

It noted Hutchison had been in three previous fights during his thirty year career, all of which fights had occurred ten years before his fight with Kirsch. It also noted Hutchison had been in one fight after the incident with Kirsch. Nonetheless, the Ninth Circuit reasoned the short-lived fights involved only the use of hands and did not evidence sufficient brutality or viciousness to rise to the level of conduct rendering the vessel unseaworthy under the criteria set forth in *Boudoin*. It noted a seaman's shipboard conduct "is not measured by the same standard as the conduct of ordinary men ashore." Accordingly, it found five shipboard fights in his career did not evidence Hutchison had a savage or vicious nature such as to make the vessel on which he was serving "a perilous place."

Vessel Owner Liability Found

Cases in which the court found a crewmember's conduct sufficiently egregious to meet the *Boudoin* standard for imposing liability on the vessel owner for injuries resulting from a shipboard fight are relatively rare. The rarity of such cases reflects a high tolerance by the courts for the stresses of life at sea. Indeed, one court noted "all men are to some degree irascible." Further, the courts have considered "the rigors of work at sea for long periods of time in close confines of a vessel may lead not only to quarrels but to physical challenges." The occasional cases in which vessel owner liability was found involved dangerous weapons and egregious conduct.

Liability was imposed on the vessel owner for the death of a crewmember in *Miles v. Melrose*, 882 F.2d 976 (5th Cir. 1989.) Melrose was the chief cook on the *M/V Archon*. Jackson was the chief steward/baker and the decedent, Torregano, was the steward's assistant. Melrose was

not happy with the working conditions aboard the **M/V Archon** and asked the captain to be relieved of his duties. The captain informed him he would be put off the vessel at the next port of call. On the same day, Melrose argued with Jackson. He accused him of being a weak steward, and too permissive with Torregano. Jackson believed Melrose to be under the influence of alcohol at that time as well as hostile and angry.

Approximately one hour after his argument with Melrose, Jackson went to Torregano's cabin and found him dead, lying in a pool of blood. In the hallway outside Torregano's cabin, Jackson found Melrose standing naked with a bloody towel wrapped around his arm. The autopsy revealed Torregano suffered sixty-two stab wounds and cuts including wounds on his back which indicated they were inflicted when Torregano was unable to defend himself. Torregano died as a result of stab wounds to his heart and chest. Melrose was found to have a blood alcohol level of .19.

Torregano's mother, Mercedel Miles, sued the owner of the **M/V Archon** alleging among other things, that the M/V Archon was unseaworthy as a result of Melrose's presence as a crewmember. The jury found the vessel owner to have been negligent and attributed 7 percent comparative fault to Torregano. The jury also found the **M/V Archon** was seaworthy. Miles moved for the judge to enter judgment in her favor despite the jury's verdict. The court denied the motion. Miles appealed.

The Fifth Circuit reversed. It held the district court erred when not entering judgment in Miles's favor based on the unseaworthiness of the **M/V Archon** even though the jury had found otherwise. The court found the viciousness of the attack led to the conclusion Melrose had an "especially dangerous disposition" and was not "equal in disposition and seamanship to the ordinary men in the calling" which rendered the **M/V Archon** unseaworthy. The court also held there was insufficient evidence to attribute any comparative fault to the decedent.

A vessel owner can be held liable for personal injuries or death resulting from a fight between crewmembers based on an unseaworthiness theory. The imposition of such liability is relatively rare but will occur if the seaman inflicting the injuries or death has a savage and vicious nature beyond the customary standards of seamen.