

Marine Occupier's Liability & the Holiday Season

The holiday season is an important time to keep a watchful eye for hazards that lie in wait on or near your vessel. Although there is nothing that makes the holiday season different at law from any other time of the year, like the August long weekend more people tend to get injured during these times of socializing and traveling. In many cases, where there is an injury, a law suit is soon to follow.

This month's *Legal Desk* is a refresher on occupier's liability law as it relates to fixed and floating objects. Basically, "occupier's liability" is legal liability to someone who is injured in or on property that you control. "Occupier" is used to refer to someone who *controls* the property – you do not have to be the owner to be liable, merely be responsible for the maintenance and use of the property. Most commonly this area of law applies to real estate, such as houses and shopping malls, but it is a mistake to assume it does not apply to vessels (at sea and at the dock) and marine fixtures such as docks and piers.

Imagine this, your company owns a commercial vessel and, as has become custom over several years, you invite clients, crew and friends aboard for a holiday party. You are well intentioned and everyone is having a good time until, one by one, things start to go sideways. First, a client trips on a shore-power cable and breaks his wrist while walking down the dock. Another visitor, unfamiliar with galleys, sets their hand down on the top of the diesel stove and is badly burned. Finally, the last visitor to leave, having had entirely too much to drink, loses his footing while crossing the port rail and leaves four of his front teeth on the deck. A string of bad luck, but not unforeseeable.

So, what is the mariner's legal exposure for visitors being injured on or near a vessel over the holiday season? An occupier has a legal responsibility to ensure that the property they control is reasonably safe for use by others, particularly if persons are invited onto the property. This legal responsibility includes a duty to maintain the property so that it is not likely to cause injury, as well as preventing hidden hazards. Traditionally, this has meant grocery stores keeping their floors dry, their parking lot ice-free and not stacking goods so that they will fall on customers. In the marine context, this can mean providing safe means of boarding a vessel, marking potential hazards such as manholes, providing adequate lighting, and other measures intended to prevent injury to visitors. Failure to meet this responsibility can result in liability for other's injuries.

In many cases, we do not think of liability to persons visiting the vessel. Most commercial vessels do not see many visitors that are not associated with the ongoing work. Workers compensation law, which prevents workers from suing for personal injuries suffered in the line of work, may cause us to overlook our responsibility to visitors. *During the holiday season it is important to remember that as the number of persons visiting the vessel increases, so does your potential liability.*

As most readers are aware, there is a two year limitation period for personal injuries that occur within the province. Generally, this means people cannot bring a law suit more than two years after they have been injured. However, if the vessel is operating outside of provincial boundaries, such as off the west coast of Vancouver Island, this two year limitation period does not apply, and the limitation period becomes six years under federal law. Consequently, failure to prevent an injury on one occasion can lead to years of exposure to a law suit.

Here are some general tips that will assist in reducing your potential liability if you are expecting visitors to your vessel over the holiday season:

- **Berthage** - Ensure your vessel is berthed in a location where safe access is easy for a visitor to find. Avoid piers and other fixtures that do not rise and fall with the tide – docks are preferable. Where possible, avoid docks that are poorly maintained, cluttered or dimly lit.
- **Means of Boarding** - Ensure that there is safe means of actually boarding the vessel. While gangways are often impractical or unavailable, failing to provide any means of safely boarding a vessel can result in liability. To this end, even a rope hung over the rail may be better than nothing. Avoid piers with head-logs that leave a large gap between the vessel and the pier.
- **Lighting** - Always provide adequate lighting on and around the vessel. Lighting is one of the first things an insurer or lawyer will look for in assessing liability for a slip and fall injury. Even though you do not own the dock or pier where the vessel is located, requiring your visitors to navigate hazardous (dark or slippery) routes to the boat can make you liable if they are injured in those locations. Make flashlights available, even if they are not used by visitors.
- **Personal Assistance** - Offer assistance to people getting on and off, even if you expect they won't take it. Offering assistance may relieve you of some liability. This is particularly true if you have served the visitor alcohol.
- **Hidden Hazards** - Make sure hazards on the vessel, particularly hidden or subtle ones, are clearly marked, even by temporary means. When assessing what is a hazard, be conservative - come from the perspective of someone never having been on a vessel before. A dark foc'sle ladder may be common place for mariners and a hidden trap for landlubbers. An empty diesel stove-top may look like a metal counter-top to a tipsy holiday visitor.
- **Alcohol** - Be especially vigilant if you have been serving anyone alcohol. Serving alcohol and then failing to account for the effects it has on your visitors often leads to increased liability.

If you do get sued by someone who injures themselves on or near your vessel, try not to take it personally. This is a tough pill to swallow when the objective of someone suing you is to show that you are at fault for their injuries. However, try to remember that a visitor is not entitled to workers compensation benefits and may have no other means of replacing the lost income they may suffer from an injury. In most cases, people sue for insurance proceeds, not to show that you have acted wrongly. Also, never assume a person won't sue you just because they are a friend.

In closing, when having visitors aboard your vessel, don't let carelessness or apathy in planning result in an injury that will ruin your (and the visitor's) holiday season. Happy holidays and take care.

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