



SEA TRIALS

by James E. Mercante, Esq.



ADMIRALTY LAW: When "Right of Way" Is Wrong

Two vessels collided on a lake and three passengers were killed. The intoxicated operator of one of the boats had only one defense card to play...that his intoxication was not a factor in the fatal collision because he complied with the rules of the road. In other words, I'm not moving Buster because I have the right of way. You see these games of chicken on the water all too often. But you will now see, as one court recently held, it can be wrong to rigidly hold your course and speed in defiance of another vessel even when you have the right of way.

The *Julie V* and a Wellcraft Nova Spyder collided on Lake Conroe in Texas. Three passengers aboard the *Julie V* were killed. Morris, the driver of the Wellcraft was found guilty of three separate counts of intoxication manslaughter and sentenced to 18 years in prison. They say a bad day boating is better than a good day at the office; but not for Morris. Under Texas law, like many states, a person commits intoxication manslaughter if he or she i) operates a watercraft; ii) is intoxicated; and iii) by reason of the intoxication causes the death of another by accident or mistake.

Morris denied in deposition testimony that he was driving the Wellcraft at the time of the collision. He said he was drinking during the day and decided not to drive the boat because he drank to the point that he was getting drunk. That backfired because when the jury determined Morris was driving the boat, he had to swallow hard having admitted to the bender. So, on appeal, Morris raised a clever argument - analogizing it to an accident between two cars and identified his boat as the equivalent of the car with the right-of-way to travel in its designated lane. Morris concluded that the Wellcraft had the right of way at the time of collision and *Julie V*'s operator failed to maintain a proper lookout or yield the right of way; thus, the accident was caused by the other operator's failure to yield the

right-of-way, not by any act or omission of the driver with the right-of-way even if that driver is intoxicated. This argument failed because driving a boat is not like driving a car and vastly different "Rules of the Road" apply. (Maybe they should be called Rules of the Water to avoid confusion). To support his argument that the Wellcraft had the right to maintain its course and speed in the face of imminent danger, Morris cited to several of the Inland Navigation Rules. These rules are codified at Title 33 of the United States Code.

The Inland Navigation Rules generally create right-of-way rules. In a crossing situation, the (give-way) vessel that has the other on her starboard side is required to keep out of the way and avoid crossing ahead of the other (stand-on) vessel. The Inland Rules apply to all vessels upon inland waters of the United States. (Rule 1).

The Texas Court of Appeals in *Morris v. The State of Texas* (2007), held that the Inland Navigation Rules do not create an absolute right-of-way for the vessel on the right, as a vessel with the right-of-way is permitted to "take action to avoid collision by her maneuver alone." (Rule 17, Action by Stand-on Vessel). In other words, the stand-on (privileged) vessel is not to be considered rigidly stuck in a traffic lane but may be expected to take action to avoid collision by her maneuver alone, once it becomes apparent that the (burdened) vessel required to keep out of the way is not taking appropriate action in compliance with the Rules. (Rule 17). Indeed, Rule 17 mandates that when the stand-on vessel finds herself so close that a collision cannot be avoided by the action of the give-way vessel alone, she "shall take action as will best aid to avoid collision." Thus, according to this decision, the applicable rules require that each vessel proceed at a safe speed to allow each to take proper and effective action to avoid a collision and stop within

a distance appropriate to the prevailing conditions. (Rule 6).

Under admiralty law, the legal responsibility for a collision between vessels is based on each party's proportionate fault. Rarely is there a sole-fault collision. According to admiralty law, when two or more vessel operators have contributed by their fault to a collision or a stranding, liability for such damage is to be allocated proportionately to the parties's comparative degree of fault. According to the Court of Appeals, Morris' contention that his Wellcraft had the "right-of-way" is only one factor to consider in determining fault. The review of the trial record revealed ample evidence that the Wellcraft operator's fault produced the resulting fatalities. For example, the jury heard considerable evidence regarding the Wellcraft operator's intoxication and evidence that he drove at an unsafe speed. Thus, the Appeals Court held that the jury could find beyond reasonable doubt that Morris' conduct was a sufficient contributing cause of the collision and deaths. The Court rejected Morris' argument that his intoxication did not contribute to the cause of the collision.

Conclusion

Mariners should think twice or even thrice about sticking to their designated lane when risk of collision is imminent. Learning the Rules of the Road takes substantially less than 18 years.

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