



# Mercante's Sea Trials



## Boating While Impaired: A Triple Whammy?

A 46-foot Silverton collided with an anchored sailboat causing a 10-foot hole in the sailboat's starboard side. Fortunately, the two people aboard the sailboat were not injured. However, what the owner of the Silverton was about to learn was that boating while impaired not only results in criminal charges, but has other implications as well.

A strong odor of alcohol was detected by law enforcement personnel who reported to the scene and the Silverton owner's speech was slurred. Prior to the collision, the yacht owner had been drinking banana schnapps and smoking marijuana. Obviously impaired in his thinking, the owner actually admitted he was too drunk to perform a field sobriety test. But, a subsequent breathalyzer revealed a blood alcohol content of 0.137 percent, far above the legal limit of 0.08 in the state of Virginia, where the incident occurred. Coast Guard officers discovered empty liter bottles of banana schnapps on board the vessel and a smoking device with marijuana residue in the owner's front pocket. Despite the fact that it was a clear summer night, the owner claimed to be unable to see the anchored sailboat prior to ramming bow first into her starboard side. That set the stage for the owner to be arrested for operating the vessel under the influence of alcohol and drugs.

### Criminal

Similar crimes exist in the New York Navigation Law, § 49-A entitled, *Operation of a Vessel While Under the Influence of Alcohol or Drugs*. A violation of this law is punishable by a fine and imprisonment. Similarly, "reckless operation" is prohibited under New York law. Any person operating a vessel recklessly is guilty of a misdemeanor. (New York Navigation Law, § 45) Section 45 has two basic mandates. First, it requires that your vessel be navigated in a *careful and prudent manner* in such a way as not to *unreasonably interfere with the free and proper use*

*of the navigable waters of the state* and secondly, that no person shall drive a vessel *at a speed greater* than is reasonable and prudent under the conditions and having regard to the actual *and potential hazards then existing*. In this case, realizing he was a total imbecile with no defense, the Silverton owner pled guilty to the charge of both operating the vessel in a reckless manner and while intoxicated.

### Confiscation

Interestingly, the boater's conduct also violated a federal statute, 46 U.S.C. § 2302(c), which prohibits operating a vessel under the influence of alcohol or a dangerous drug on navigable waters. The punishment for violating this federal statute is a civil penalty up to \$5,000 and a Class A Misdemeanor. The vessel itself is liable *in rem* for any civil penalty under this section. This means the U.S. Government is entitled to sell your vessel to satisfy any monetary penalty it levies. The record of the case did not reflect that the vessel owner was charged under this federal statute.

### Insurance

Then, the other shoe dropped and the rest of the saga unfolded. The sailboat owner sent Silverton's marine insurer written demands for payment of damages to the sailboat. However, the marine insurer declined to pay either the Silverton or the sailboat damage citing the policy's Dishonest or Illegal Acts exclusion. Seeing that the claims would not sink easily, the insurer invoked admiralty jurisdiction and filed a preemptive "declaratory judgment" action in federal court. By doing so, the insurer sought a declaration that the insurer had no obligation to pay for any damages because of the specific exclusion in the insurance policy.

Feeling confident in its position, the marine insurer then moved for summary judgment to dismiss (prior to trial) the insured's hull claim and the sailboat owner's claim for property damage.

The insurer argued that there were no questions of fact in dispute (since the insured pled guilty), and therefore all the court had to do was to decide as a matter of law whether the insured's actions (as evidenced by the collision, impairment and guilty plea) violated the policy's Dishonest or Illegal Acts provision which would foreclose coverage.

The court determined that the insurance policy's exclusion was clear and unambiguous and excluded coverage for any loss that occurs while the insured is engaged in any . . . "illegal act, regardless of whether such person is convicted of such act by a criminal court." Here the facts were undisputed that the insured was engaged in the crime of operating his boat under the influence of alcohol and drugs when it crashed into the sailboat. Thus, the judge found "no doubt" that the insured's conduct at the time of the accident fell within the plain terms of the policy's exclusion.

The court granted the insurer's motion and issued a judgment that the insurer had no obligation to provide any insurance coverage.

### Conclusion

It's high time that boaters learn to abide by the Navigation Law. No "banana" worth his or her salt should take the wheel of a vessel while so impaired. The consequences can be a triple whammy - criminal charges, no insurance, and your boat confiscated to satisfy a civil penalty.

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