

## ADMIRALTY LAW

BY PAUL S. EDELMAN AND JAMES E. MERCANTE

*The Floating Dram Shop*

The popularity of gambling "cruises" and "booze cruises" have increased the incidents of lawsuits against vessel owners.

These cruises occur on navigable waters, relate substantially to "traditional maritime activities" and may have a disruptive effect on maritime commerce. Thus, a tort involving a cruise, even with an alcohol-related injury to a third party by an intoxicated passenger or crew member, will typically sustain admiralty jurisdiction.

However, despite the ardent strive for uniformity in admiralty law by practitioners and the courts, the "dram shop" acts has come up short of that goal. One reason is that dram shop liability is not even uniformly recognized by the states, as a recent holding demonstrates.

**Man Overboard**

In *Voillat v. Red and White Fleet, et al.*,<sup>1</sup> alcohol was served by a catering company aboard a harbor cruise on San Francisco Bay. The alcohol turned some passengers courageous and flirtatious, resulting in a fight over a girl. In the aftermath, Mr. Voillat, a young man (with the girl) was allegedly thrown overboard into San Francisco Bay by another passenger, Mr. Monaghan (who wanted the girl). Mr. Voillat did not surface and his decomposed body was found nearly one month later. The vessel owner, catering company, security firm and Mr. Monaghan were sued for wrongful death. One of the causes of action, for improper service of alcohol to obviously intoxicated passengers, is commonly known as dram shop liability. The case was filed in federal court pursuant to admiralty jurisdiction, 28 USC §1333.

Ordinarily, with admiralty jurisdiction comes the application of maritime law. However, there is no definitive dram shop rule in admiralty law; some federal courts recognize it, while other do not. When no settled admiralty rule exists on a disputed point, the federal court must look to state law or in the absence of state law on the issue, it may choose to fashion a new rule and create general maritime law.

In *Voillat*, defendants moved to dismiss the dram shop cause of action arguing that neither general maritime law nor California state law recognizes dram shop liability. Mr. Voillat's estate, on the other hand, urged the court to recognize, or adopt a general maritime dram shop rule like other federal courts outside California.

In considering defendants', including the vessel owner's, motion to dismiss plaintiff's dram shop cause of action, the federal court reviewed maritime precedent involving a passengers dram shop claim against Carnival Cruise Lines. In *Meyer v. Carnival Cruise Lines, Inc.*,<sup>2</sup> the U.S. Court for the Northern District of California determined that plaintiff's lawsuit for an injury incurred in falling over a staircase on a cruise ship was governed by United States maritime law. Nonetheless, the court



Paul S. Edelman



James E. Mercante

looked to California state law because it found that no federal maritime dram shop rule existed. The court declined to fashion a federal maritime dram shop rule which would impose tort liability on sellers of alcohol and concluded California's "anti-dram shop" rule should apply.

California's dram shop statute does not recognize liability for the negligent service of alcohol. In fact, California—apparently a good place to own a bar or a cruise vessel—calls it the "anti-dram shop" provision and actually immunizes providers of alcoholic beverages from liability for merely furnishing alcohol. That law states that no person who sells, furnishes or causes to be sold any alcoholic beverage shall be civilly liable to any injured person for injuries inflicted by that person as a result of such intoxication.<sup>3</sup> This statutory immunity extends to providers who serve alcohol to a person who later injures someone else because of intoxication. However, California does allow recovery for service of alcohol to visibly intoxicated minors.

Faced with the admiralty decision in *Meyer*, and California's anti-dram shop statute, the court in *Voillat* had no choice but to dismiss plaintiff's liquor liability cause of action against defendants. The remaining causes of action continued against all defendants and were eventually settled out of court.

**New York Dram Shop**

The dram shop rule is a recognized form of liability in New York and New Jersey. In New York, the law is codified in the General Obligations Law (GOL) and is entitled "Compensation for Injury Caused by the Illegal Sale of Intoxicating Liquor."<sup>4</sup> The law states that anyone who is injured (or killed) by an intoxicated person shall have a right of action against any person who contributed to such intoxication by unlawful selling to or unlawful assisting in procuring liquor (including beer) for the intoxicated person. Thus, it applies only to injuries caused by the intoxicated consumer to a third party. It has been held in New York that even a remote proximate cause between the sale and injury is sufficient to impose liability on the vendor.<sup>5</sup>

New Jersey's dram shop law recently resulted in a multi-million-dollar verdict against the concessionaire at Giants Stadium who served alcohol to an allegedly drunken fan who then drove while intoxicated and caused a car accident that resulted in the death of a young girl in another vehicle.

The U.S. Court of Appeals for the Eastern District of New York seems to recognize maritime dram shop type liability and relied on the U.S. Court of Appeals for the Fifth Circuit law for support.<sup>6</sup> Similarly, the U.S. District Court for the Southern District of New York observed dram-type tort liability in *Taylor v. Costa Cruises, Inc.*<sup>7</sup> but it was pleaded as "negligent service of alcohol." In *Costa Cruises*, the court determined that a vessel owner had responsibility for the ship's operations and the conduct of the crew that involved serving alcohol to an intoxicated minor. There, the court ruled that federal maritime

Paul S. Edelman is of counsel at Kriendler & Kriendler. James E. Mercante, is an admiralty partner at Rubin, Fiorella & Friedman and commissioner on the Board of Commissioners of Pilots of the State of New York.

## ADMIRALTY LAW

*The Floating Dram Shop*

Continued from page 3

law was to be applied because the plaintiff's cruise ticket was a maritime contract.

**Law Not Settled**

However, other courts have found that liability of a vessel owner in admiralty law exists for "providing alcohol without adequate supervision" and for "failing to monitor alcohol consumption onboard, fostering a party atmosphere, and failing to prohibit drunk officers from driving."<sup>8</sup> The U.S. Court of Appeals for the Fifth Circuit has also recognized a general maritime dram shop rule in a case where it referred to the vessel as a "floating dram shop" from which crew members obtained intoxicants with no supervision.<sup>9</sup>

The Fifth Circuit suggested that the trial court, in considering causation, should weigh the "unseaworthiness" of the ship where a seaperson is involved, or the "negligence" of defendants with respect to the operation of a floating dram shop.

Indeed, one district court minced no words on this subject. In a case involving a Louisiana riverboat cas-

no where an intoxicated guest later drove his car and collided killing several people, the court, obviously irked, stated: "If Louisiana wants to establish shoreside casinos and insulate their liability, that is solely Louisiana's business. But, where navigable ships in Louisiana are going to entice residents of Texas and other states to flock in huge numbers to their casinos to drink too much and return home in a murderous condition, the general maritime law should and does afford the endangered public with a ready and wholly appropriate remedy."<sup>10</sup> The key here was that the involvement of a vessel on "navigable" waters allowed the court to look beyond state law and into admiralty precedent.

Similarly, a district court in the U.S. Court of Appeals for the Seventh Circuit applied general maritime negligence standards to evaluate liability and fashion a remedy in an intoxication-related injury case after determining that the Seventh Circuit had no maritime dram shop law.<sup>11</sup>

**Conclusion**

These cases demonstrate the unsettled nature in this area of maritime law, a field where uniformity

is typically desired. These cases also show, however, that whether or not there is a recognized maritime "floating dram shop," courts seem to consider other admiralty theories of liability, such as general maritime negligence and unseaworthiness when appropriate to fill the void.

1. 2006 A.M.C. 66 (N.D. Calif. 2004).
2. 1994 U.S. Dist. LEXIS 21431, 1994 WL 832006 (N.D. Cal. 1994).
3. Cal. & Bus. Prof. Code §25602.
4. NY CLS Gen Oblig §11-101 (2006).
5. *Wing v. Cavalry Veterans of Syracuse, Inc.*, 130 Misc.2d 580, 497 N.Y.S.2d 291 (1985).
6. *Bay Casino, LLC v. M/V ROYAL EMPRESS et al.*, 199 FRD 464, 2000 A.M.C. 502 (E.D.N.Y. 1999).
7. 1996 U.S. Dist. LEXIS 22510 (S.D.N.Y. 1996); see also *Guinn v. Commodore Cruise Line, Ltd.*, 1997 WL 164290 (S.D.N.Y. April 7, 1997).
8. *Thier v. Lykes Bros. Inc.*, 900 F. Supp. 864, 866 (S.D. Tex. 1995); *Young v. Payers Lake Charles, LLC*, 47 F. Supp.2d 832, 833 (S.D. Tex. 1999); see also *Hall v. Caribbean Cruises, Ltd.*, 888 So.2d 654 (Fla. Dist. Ct. App.3d Dist. 2004).
9. *Reyes v. Vantage Steamship Co., Inc.*, 609 F.2d 140, 146 (5th Cir. 1980).
10. *Young v. Payers Lake Charles, LLC et al.*, 47 F. Supp.2d 832, 837 (S.D. Tex. 1999).
11. *Kludt v. Majestic Star Casino, LLC*, 200 F. Supp.2d 979 (N.D. In. 2001).

RENEW YOUR SUBSCRIPTION BY PHONE!

New York Law Journal

Call: (212) 545-6234