

Bad Acts on Board – Which Ones Lead to Owner Liability?

How many times have you heard: Isn't that the yacht where... *[fill in the blank with an instance of something bad happening onboard]*?

Which brings me to the reality television program, "Below Decks Mediterranean". I love it. I particularly love watching Captain Sandy Yawn exert a level of parental control over those carriers of steroid hormones otherwise known as crew. I enjoy laughing at what is happening below decks while Sandy carries on running the ship safely and professionally in all respects.

But which acts by the crew specifically are within the scope of their employment and which are not?

This is usually construed broadly but there are limits.

Most of what I see the crew doing on the popular "Below Decks" series would be considered "within the scope" of their employment. Therefore, any claims arising out of their actions would be considered part of their job description. In other words, acts that are performed for the benefit of the yacht and her owners would be covered by the yacht's insurance or by the yacht itself in the absence of insurance.

Here are three examples of acts that resulted in lawsuits where the yacht owner was not liable:

- In the case of *Stoot v. D&D Catering Serv., Inc.*, 807 F.2d 1197 (5th Cir. 1987), the chef was not acting within the scope of her employment when she acted badly out of resentment over the captain's order to accommodate a fellow crewmember's schedule by serving him meals outside of regular crew meal hours. Acting out of anger and revenge and in the course of an argument with her co-employee, she slashed his fingers with a knife. Clearly, in *Stoot*, the knife-wielding chef was not acting within the scope of her employment.
- In *Sobieski v. Ispat Island, Inc.*, 413 F.3d 628 (7th Cir. 2005), a seaman who was not a chiropractor and not employed as such "cracked another crewmember's neck for chiropractic purposes". The Court found he was not acting within the scope of his employment. No matter how you define a seaman's duties, intentionally cracking the neck of a co-employee would almost never fit within them.

- In *Beech v. Hercules Drilling Co., LLC* 691 F.3d 566, 572 (5th Cir. 2012), a crewmember brought a pistol onboard, contrary to the vessel's clearly stated and written policies prohibiting bringing weapons onboard. The gun was then brought into the crew accommodations area when it was displayed to another seaman. The gun accidentally discharged and sadly killed the shipmate. The gun-wielding crewmember was clearly not acting within the scope of his duties as a seaman and for the benefit of the owner. In these circumstances, the yacht would not be liable for the wrongful death.



The superyacht Talisman Maiton from "Below Decks"

Photo credit: Bravo TV

The test to determine if the acts of the negligent seaman may be attributed to the yacht's owner and the yacht's underwriters is often referred to as the "Business Interest Test". In other words, to prove that the negligent employee's actions were in the course of employment, the injured seaman must show that the employee's tort was committed in furtherance of the employer's business.

The injured plaintiff must show that the coworker acted in furtherance of the ship's business. Regardless of how individual courts have stated the tests, in order

for an activity to qualify as being within the scope of employment, it must be a necessary incident of the day's work or be essential to the performance of the work. The category of acts commonly held to be outside the scope of employment are those undertaken by an employee for a private purpose and having no causal relationship with his employment.

The business interest standard has been deployed to determine course of employment in maritime cases following the standard as articulated under the Federal Employer's Liability Act. See *Beech v. Hercules Drilling Co., L.L.C.*, 691 F.3d 566, 568 (5th Cir. 2012)

So, there is a large gray area between slashing your fellow crewmember, breaking their necks or shooting them and what the yacht is liable for or whether the injured party will have the benefits of the yacht's insurance.

Hannah, are you reading this? ♦