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Opinion: Navigating the legal issues involved in boating accidents

By Adam Blank and Zachary Phillipps
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Sailboats off the coast of Greenwich, Conn.
Bob Luckey Jr./Hearst Connecticut Media

Attention sailors: What are your legal rights if you or one of your passengers is injured in a boating accident? How does the legal process compare to the procedure for automobile accidents?

In Connecticut there are about 90,000 registered boats (nearly 12 million nationwide). Certain small sailboats and non-motorized vessels generally do not need to be registered, meaning the total number of recreational boaters on our state's waters far exceeds 90,000. It is no wonder, then, that there are many boating accidents. In the last five years, just in Connecticut, there have been 200 recreational boating accidents resulting in injuries to approximately 100 people — 26 were killed.

Unlike automobiles and motorcycles, Connecticut does not require that recreational boat owners and operators carry liability insurance. Importantly, the owner's or operator's automobile or homeowners' insurance typically will not provide liability coverage for a boating accident. Based on history, it is likely

that a person who causes a boating accident will not have insurance coverage for damages and injuries.

Also, often a different type of law governs the rights and responsibilities of the people involved in a boating accident. When people are injured in a car crash a claim can be brought under Connecticut law in a local courthouse. While a person injured on a boat can also bring a legal claim for the injuries suffered, the law is significantly more complicated.

Boat accidents that occur on navigable waters capable of being used in interstate commerce are subject to admiralty or maritime jurisdiction of the federal courts, with their own rules and procedures. Connecticut's harbors and Long Island Sound are clearly navigable waters, as is the Connecticut River, but certain other lakes and rivers wholly within Connecticut are not deemed navigable waters for interstate commerce and, therefore, are not subject to admiralty law but rather Connecticut common law.

To make it even more complicated, a lawsuit subject to admiralty law can often be brought in state court — following federal law.

Admiralty cases brought in federal court are not entitled to a jury trial. A judge rules. Admiralty law also has developed a complex system for determining fault. Under both common law and admiralty law the basic standard applied to judge the operator's conduct is "reasonable care." If reasonable care was exercised given the circumstances, there will be no liability; however, if the care departed from this standard, there is typically liability. Add in to the mix, there can be different definitions of reasonable care.

Another key distinction between a boating accident claim brought under maritime law compared with one brought under Connecticut law is the concept of comparative fault. This is the concept that the injured person may bear partial fault for the accident. In other words, not every case involves a plaintiff who is 0% at fault and a defendant who is 100% at fault. Under Connecticut law the plaintiff must prove that the defendant was at least 50% at fault and any damages award to a plaintiff is reduced by the plaintiff's own percentage of fault. In contrast, maritime law does not require that the plaintiff prove that the defendant was at least 50% at fault. For example, if the plaintiff was 99% at fault and the defendant 1% at fault, the plaintiff will recover 1% of their damages. If the defendant was 99% at fault and the plaintiff 1% at fault, the plaintiff will recover 99% of their damages.

A separate question is whether the Limitation of Liability Act applies to claims involving injuries from boating accidents. This act, adopted in 1851, was to

encourage shipbuilding and ship ownership and allow a vessel owner to limit liability to the value of the vessel post-accident, unless the loss was caused by the owner's personal fault. This limitation can have significant consequences when a boat crash causes significant injury or death and the recovery is limited to the value of the vessel. However, as a practical matter, in most crashes involving recreational boats the owner's direct negligence plays a key role in the crash (either as the driver, or by negligently allowing an untrained or inebriated passenger to take the helm or by failing to maintain a seaworthy vessel).

Clearly, it is a complicated area of the law.

Meanwhile, be safe on the water. Boating accidents can be caused by a variety of factors, including alcohol (the leading factor nationally), operator inattention, inexperience, and excessive speed.

Adam Blank and Zachary Phillipps are attorneys at the law firm of Wofsey Rosen Kweskin & Kuriansky LLP in Stamford and can be reached at 203-327-2300. Their practice includes personal injury litigation, including representing people who have been injured in boating accidents.

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Adam Blank and Zachary Phillipps