

Liability Lessons from the Maersk Alabama

June 18, 2009



Darren Friedman and Lauren Smith of Maltzman Foreman, P.A. weigh in on legal implications of a lawsuit in the wake of the recent piracy incident in the Gulf of Aden.

On April 8, 2009, the U.S. flagged container ship, Maersk Alabama, was attacked by pirates in the Gulf of Aden. Four pirates, armed with assault rifles, boarded the cargo ship and attempted to take over the vessel and its 21 crewmembers. The majority of the ship's crew locked themselves in the ship's steering room and remained there for nearly twelve hours. Unable to gain control of the ship, the four pirates left the Maersk Alabama in a lifeboat, taking the vessel's captain as hostage. A U.S. navy destroyer was dispatched to the scene and eventually rescued the captain, unharmed, four days after his capture.

On April 27, 2009, following the harrowing incident at sea, Richard Hicks, a crewmember of the Maersk Alabama, filed a lawsuit against Maersk Line, Ltd., the owner of the vessel, and Waterman Steamship Corporation, the company that provided the crew. The lawsuit alleges that the defendants' acts of negligence were the cause of Hicks' injuries. The outcome of this case could have serious implications for shipowners and employers in the maritime business, particularly those who send vessels through waters with known pirate activity. If the safety precautions and security measures taken by the Maersk Alabama are found to be inadequate, the entire industry may have to consider changes in order to provide greater protection to crewmembers. Although the outcome of this case is uncertain, an explanation of liability under the Jones Act, as it will be applied in the Maersk Alabama case, can provide shipowners and employers with a better understanding of their obligations under the law.

The Jones Act is a federal statute which allows a seaman to sue his employer for negligence. Under the Jones Act, an employer has a duty to provide its crewmembers with a reasonably safe place to work. The concept of negligence under the Jones Act requires that an employer have notice of any unsafe condition and the opportunity to correct that condition before liability will be imposed. Further, Jones Act precedents relax the standard of causation between the wrongful act and the injury imposed by typical tort law; the Jones Act requires only that the employer's negligence contribute to the injury, not necessarily be the sole cause of the injury.

Hicks alleges in his lawsuit that his employer breached its duty to him to provide a reasonably safe place to work by knowingly sending him into pirate-infested waters

rather than taking safer routes and by failing to provide appropriate security. In order to prove that these acts amounted to a breach of duty, Hicks will need to establish that his employer knew of the dangers in the area and acted unreasonably under the circumstances. In defense of the claim, the employer can argue that it lacked notice of the danger and/or that it acted reasonably given the danger.

The fact that criminal elements caused the harm to Hicks is not necessarily a defense to the lawsuit. The law imposes a duty upon an employer to take reasonable precautions against the foreseeable criminal or intentional acts of third parties. An example of a case that recognized this duty involved a railroad employee who worked alone at night. Even though the employer knew of prior criminal activity in the area, no precautions were taken to protect the employee. Unfortunately, the employee was assaulted and a lawsuit ensued. The court found that the employer had a duty to the plaintiff to take precautions when he knew or should have known that the area was dangerous at night. Other cases have similarly found that a foreseeable danger to an employee can exist when criminal acts occur in surrounding areas, not necessarily at the place of employment. The numerous acts of piracy in and around the Gulf of Aden in recent months will make it difficult for employers to argue that the attacks were not foreseeable. Notably, the International Maritime Bureau documents 61 confirmed pirate attacks and 27 hijackings on the East Coast of Africa between January 1, 2009 and May 12, 2009.

The threat of piracy is real and proper crew training and security plans are crucial. The outcome of the Hicks case, should it go to trial, will no doubt assist shipowners and employers in recognizing what types of safety precautions are reasonable. In the meantime, employers need to analyze their current security plans and implement any changes that might prevent an attack from occurring. The International Maritime Organization is a good source of information and provides guidance to shipowners, operators, masters and crew on preventing and suppressing acts of piracy (click [HERE](#) to read the document). The International Chamber of Shipping (ICS) and the International Shipping Federation (ISF) also provide guidance in another document (Read it [HERE](#)).

Darren Friedman is a Partner at Maltzman Foreman, PA (www.mflegal.com) in Miami and specializes in representing the maritime industry. Mr. Friedman can be reached at DFriedman@mflegal.com. Lauren Smith is a third year law student at the University of Miami and is a law clerk for Maltzman Foreman, PA. Both have contributed articles to the MarEx e-newsletter in the past. Read their previous submission involving Jones Act issues, first put on line on June 4, 2009, by clicking [HERE](#).