

## What Shall We Do With The Drunken Passenger?

The traditional shanty suggests appropriate fates for drunken sailors, but who is responsible for the actions of drunken passengers?

It's that time of year again when Christmas festivities and end of year functions are in full swing. At least here in the Southern hemisphere the warm summer weather means boat cruises are a popular choice for parties, particularly work-related parties, and alcohol consumption is a given. You don't need a lawyer to tell you that excessive drinking can lead to an increased risk of injuries, violence and other mishaps. However, as demonstrated by the recent Queensland Supreme Court case of *Packer v Tall Ship Sailing Cruises Australia Pty Ltd and Anor*<sup>1</sup>, you may need a judge to tell you whether or not an employer and/or vessel operator is liable for incidents occurring on a so called "booze cruise".

On 2 December 2006, Mr Packer attended his employer's Christmas party. The party was a day time boat cruise from Mariner's Cove on the Gold Coast to McLaren's Landing on South Stradbroke Island, where lunch and water sports were provided, before returning to Mariner's Cove in the afternoon. The cruise was provided by Tall Ship Sailing Cruises on its catamaran the *MV 2000*. The cruise included food, alcohol and activities, on the catamaran and at McLaren's Landing.

Mr Packer's employer, Commercial Waterproofing Services, had invited its employees and their families to the Christmas party and so approximately 90 people, about half of whom were children, attended the cruise. Malouf Marine was also holding a party with Tall Ship that day and approximately 20 people attended the cruise from Malouf Marine.

The day proceeded in a routine manner, with members of both parties enjoying the activities at McLaren's Landing and drinking alcohol. However, when the time came to board the catamaran for the return trip, according to the

judgment a number of men from the Malouf Marine group were swearing, being loud and generally acting in a drunken manner. Mr Packer asked the men to "keep their language down" as it wasn't appropriate in front of children but the group told Mr Packer to "piss off".

Once on board the catamaran, the group of men from Malouf Marine went straight to the bar. The court found that Mr Packer approached the group, again to ask them to keep their language down, when he was punched in the side of the face from behind. Mr Packer suffered serious facial injuries, requiring surgery and the insertion of plates and screws to reconstruct his facial bones. The specific assailant was not identified.

Mr Packer brought a claim against both his employer CWS and Tall Ship for the incident, however the claims were dismissed by the Queensland Supreme Court. The court held that although both CWS and Tall Ship both owed a duty of care to Mr Packer, neither party had breached their duty in the circumstances.



The court accepted that where Tall Ship was serving alcohol to passengers on its catamaran and at McLaren's Landing, Tall Ship ought to have known there was a risk "there might be violent, quarrelsome or disorderly conduct by passengers who may have had too much to drink". However, the court held that in these circumstances the risk was "not a high one" considering the parties partaking in the cruise on the day of the incident, the nature of activities planned and

length of time involved. As such, Tall Ship did not breach its duty by failing to have security personnel on the catamaran in addition to the ten crew members.

In finding that CWS had not breached its duty of care as Mr Packer's employer, the court held that CWS had no control over other passengers onboard the catamaran (ie the Malouf Marine group) and was not required to "audit" conditions on the catamaran or at McLaren's Landing when making arrangements for the Christmas party.

Further, the court held that the assault on Mr Packer was "sudden, unexpected and came without prior warning". It was not reasonably foreseeable that a member of a group that was swearing and oblivious to the presence of children would necessarily become violent. As such, Tall Ship and CWS did not breach their respective duties through a failure of either the crew members or CWS employees to intervene before the assault occurred.

Mr Packer has appealed the decision as against Tall Ship, so this is unlikely to be the end of this story. Mr Packer's circumstances are clearly highly unfortunate. However, the government advertisements warn us to drink responsibly, and the decision as it stands is an example of an employer and a vessel owner not copping the blame for an anonymous violent drunk who didn't heed the warnings.

All of us in the Thynne + Macartney Maritime and Transport team are hoping to enjoy the festive season – including the odd drink or three - without becoming victims (or perpetrators) of "violent, quarrelsome or disorderly conduct", and we hope the same for you.

<sup>1</sup> [2014] QSC 212.



**Michael Fisher**  
Partner  
P: +617 3231 8857  
M: +61 408 735 653  
E: [mfisher@thymac.com.au](mailto:mfisher@thymac.com.au)



**Matthew Hockaday**  
Partner  
P: +617 3231 8814  
M: +61 422 318 678  
E: [mhockaday@thymac.com.au](mailto:mhockaday@thymac.com.au)

Central email: [transport@thymac.com.au](mailto:transport@thymac.com.au)