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**SUBJECTIVE BELIEF IN AN OPERATOR'S COMPETENCY TO OPERATE A
WATER VESSEL CANNOT LIMIT THE OWNER'S LIABILITY.**

The Second Circuit Court of Appeals held that a water vessel owner's subjective belief in the competency of the vessel's operator, barring evidence of objective belief, is not enough to exonerate or limit the owner's liability in the event of damages.

In Re Complaint of Messina
United States Court of Appeals for the Second Circuit
574 F.3d 119
(Decided July 31, 2009)

The defendant, Messina ("Petitioner"), had invited plaintiffs White and Murray to his beach house in Florida on the Gulf of Mexico. Petitioner was the owner of a wave rider named the Sunset Runner. On February 24, 2004, Murray was operating the wave rider with Petitioner being towed astern aboard an inner tube. During this time, Petitioner had indicated to Murray to go faster because "[he] was going extremely slow. He was being very cautious."³⁹ After some 20-50 minutes had passed, Messina verbally signaled to Murray to head back to shore and allow other guests to be towed by the wave runner. Murray executed a turn at high speed that propelled Petitioner and the inner tube ashore at a dangerous speed. White was mistakenly hit by the Petitioner and knocked into a second wave runner also owned by Petitioner. Prior to the incident, Petitioner had asked whether Murray had ever operated a wave runner to which the claimant answered in the affirmative. White then commenced an action against Petitioner seeking damages for his injuries.

At trial court, Messina sought a judgment limiting his liability to the monetary equivalent of the vessel and inner tube in accordance with 46 U.S.C. § 30505, also known as the Limitation of Liability Act. This section allows a limitation of liability to the value of the vessel and pending freight so long as the incident "occasioned or incurred without the privity or knowledge of the owner."⁴⁰ The district court found that Messina did have knowledge that the wave runner was unseaworthy and operated negligently with White at the helm. As such, the district court entered judgment for the plaintiff.

The Petitioner appealed, contending that the district court should have found him blameless in the incident because he entrusted the vessel to a competent operator, that the error was a navigation error, that navigation errors are not commensurate with unseaworthiness, and that the operator's error should not give liability to the defendant. The first issue before this court was whether the defendant had privity or knowledge of the negligent acts.

In determining whether the defendant had privity and knowledge, the first step is to determine whether the accident was caused by conduct that is actionable. The second is to examine the facts and determine if the owner of the vessel was aware of the negligence of the operator.

Murray's actions as operator of the wave runner resulted in injury to White and demonstrated an inability to properly navigate a wave runner with an inner tube in tow astern. This conduct is actionable negligence. The court then stated that the determinative issue was whether the defendant had an objective belief that the operator was competent based on fact and evidence.

For 46 U.S.C. § 30505 to apply, an owner of a vessel must insure that the operators of their vessels are competent based on fact and evidence. The owner's failure to do so is comparable to negligence on their part. The vessel owners may not simply assume that the operator is competent until proven otherwise. The Petitioner had questioned Murray as to whether he had previously operated a

³⁹ *In re Complaint of Messina*, United States Court of Appeals for the Second Circuit 574 F.3d 119 at 123.

⁴⁰ *See* 46 U.S.C. § 30505(a) and (b).

wave runner. Murray answered affirmatively, yet he was not questioned whether he had ever towed a person of the Petitioner's size within an inner tube astern. Moreover, the Petitioner instructed the plaintiff to increase his speed because he was being too cautious. Later, Petitioner noted that their shoreward approach was too fast and admitted to neither verbally nor visually signaling to slow down.

After reviewing the evidence and again considering the arguments from both parties, the court found that the Petitioner's subjective belief in the competency of Murray paired with his own negligent instructions precluded him from being limiting liability or being liable only to the value of the vessel as per the Limitation of Liability Act.⁴¹ Therefore, the court found Petitioner's claims to be without merit and affirmed the decision of the district court to deny any limitation or exoneration of liability.

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⁴¹ 46 U.S.C. § 30505