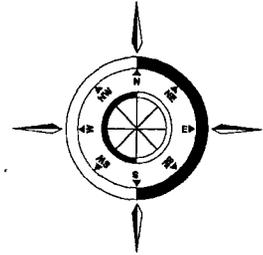


# BOATING BRIEFS



Frank P. DeGiulio, Chairman

Volume 16 Number 1

Spring/Summer 2007

*This journal will summarize the latest cases and other developments which impact the recreational boating industry. We welcome any articles of interest or suggestions for upcoming issues.*

- The Editorial Staff

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## Limitation Action Dismissed for Lack of Admiralty Jurisdiction; Claimant's Request for Sanctions Denied

In *Petition of Johnson*, 2007 U.S. Dist. LEXIS 20467 (D. Conn. March 2, 2007), the U.S. District Court for the District of Connecticut dismissed a limitation action for lack of jurisdiction where the underlying collision occurred on a lake that was entirely within the borders of one state and had no connecting waterways capable of supporting interstate or foreign commerce.

On a July evening in 2005, a Formula 223LS collided with a Fever Fountain on Candlewood Lake in western Connecticut. Gary Anderson, the owner and operator of the Fountain, brought a negligence suit in state court against Mathew Johnson, the owner and operator of the Formula. Johnson then filed a federal limitation action, which Anderson moved to dismiss for lack of subject matter jurisdiction. Anderson also moved for Rule 11 sanctions against Johnson's attorneys, claiming the limitation petition was frivolous because there was no possibility of the court exonerating him or limiting his liability given the circumstances of the collision.

In view of the uncontested evidence that Lake Candlewood was situated wholly within the state of Connecticut and had no outlets that were passable by vessels, the court readily concluded that the lake was not navigable for purposes of admiralty tort jurisdiction. Surveying the numerous appellate

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## Jury Finds Sailboat Owner and Operator Not Negligent in Traumatic Head Injury Case

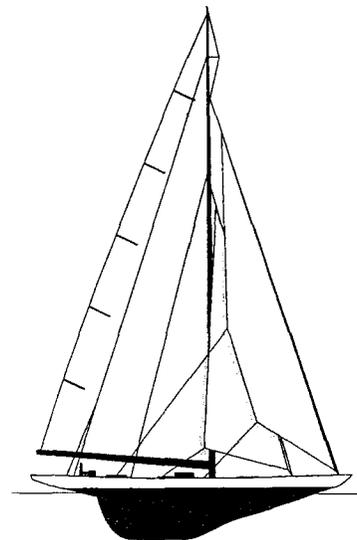
On March 23, 2007, a jury in the Court of Common Pleas of Chester County, Pennsylvania, returned a verdict for both defendants on the issue of negligence in the case of *Lepone v. Brown*, Docket No.: 05-05374. In doing so, the jury found in the defendants' favor with respect to several navigational rules which were directly at issue in the case.

On July 18, 2003 the plaintiff, Joseph Lepone, was a passenger aboard the defendants' 37-foot sailboat ("COURAGE") during a trip in the Chesapeake Bay from Havre de Grace to Baltimore, Maryland. Aboard the vessel were the owner (defendant O. Hampton Brown, III), his wife (defendant Susan Brown), their two young children, and the plaintiff. Mr. Lepone had been a family friend of the Browns for about ten years prior to this trip, and had previously sailed this same trip on the COURAGE on about a half dozen occasions. Immediately prior to the accident it was a hot, sunny day with no wind, and the water was flat. The COURAGE was operating under power, traveling at approximately three knots. Mrs. Brown was at the helm, and Mr. Brown and their two children were in the cabin and cockpit. Mr. Lepone – 77 years old at the time – was sitting in a portable chair at the bow of the sailboat with his feet propped up on the lifeline and his eyes closed.

Mrs. Brown noticed a large power cruiser approximately 75 feet long about 200 yards off her port bow. When she first observed the vessel ("DESTINY"), it was not traveling at a high rate of speed, was not creating a wake, and was going to cross in front of COURAGE far enough ahead so as not to pose any danger. As the two boats closed to where DESTINY was approximately 50 yards off her port bow, she noticed it had changed course and speed. DESTINY had veered toward its starboard, was traveling at a much greater speed and creating a significant wake, and was now going to cross much more closely in front of COURAGE. Mrs. Brown called out to Mr. Lepone, who did not hear her because his hearing was impaired. She steered into the wake to avoid "rolling" the sailboat and throwing Mr. Lepone overboard. Unfortunately Mr. Lepone still fell out of his chair and onto the deck of the boat. As the boat continued to pitch up and down from the wake, he tried to stand up but slipped, fell, and struck his face on the deck.

A few weeks later Mr. Lepone developed headaches and a CT scan revealed a massive subdural hematoma. He underwent a craniotomy and multiple evacuations to remove the blood from his brain. He had a seizure from the bleeding and very nearly died. Mr. Lepone spent several weeks in the hospital, followed by several more in an in-patient skilled nursing facility. After many months of therapy he regained a significant amount of his speech and cognitive abilities, but never returned to normal.

At trial plaintiff pursued two main theories of liability against the defendants: 1) defendant Susan Brown failed to



maintain a proper look-out while at the helm, in violation of Rule 5 of the Inland Navigational Rules, 33 U.S.C. § 2001 *et seq.*; and 2) both defendants allowed him to improperly “bow ride,” which is a dangerous activity. The defendants claimed Susan Brown did maintain a proper look-out and there was nothing she could have done to avoid the unanticipated actions of DESTINY. They further contended DESTINY – not COURAGE – violated the Navigational Rules, specifically Rule 15 which governs crossing situations and required DESTINY (the “give-way” vessel) to permit COURAGE (the “stand-on” vessel) to cross in front of it. The defendants additionally claimed there is no true definition of “bow riding,” and asserted there was nothing unreasonably dangerous about permitting Mr. Lepone to sit at the bow under the conditions present, particularly in view of his prior experience on the COURAGE and the fact he failed to protect himself by having his eyes closed. After a one-week trial and two-hour deliberation, the jury agreed with the defendants and found them not negligent. Efforts made by the defendants prior to trial to locate the owner/operator of DESTINY were unsuccessful, as no home port was observed.

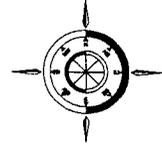
*The Editors thank Matthew S. Marrone, Esq., of Lucas & Cavalier, for submitting this article.*

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## NBSAC Vacancies

The Coast Guard is accepting applications for seven positions on the National Boating Safety Advisory Council. The Coast Guard seeks two representatives of State boating safety programs, three representatives of boat and associated equipment manufacturers, and two representatives from the general public or from national boating organizations. Further information is published in the Federal Register for April 26, 2007 (Vol. 72, No. 80, pp. 20862-63), and application forms are available at <http://www.uscgboating.org/nbsac/applications.htm>. Applications should be submitted by August 17, 2007.

## BOATING BRIEFS



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of the United States.

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Cite as 16 Boating Briefs No. 1 (Mar. L.  
Ass'n) (Todd D. Lochner Ed. 2007).

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