



41st Annual Membership Conference

Pacific Coast Congress of Harbormasters
and Port Managers
Astoria, Oregon



Caveats

- This is not privileged or confidential
- This does not create an attorney-client relationship
- Marijuana remains illegal under federal law
- Seek counsel for legal advice



Residential FED Laws

- *Eagle's Cove Marina & RV vs. Woldridge, et. al.*
- **Oregon** Court of Appeals, 2008
- 78 slip marina - “a live aboard community”
- 3 boat owners lived aboard full time
- Month to month leases



Residential FED Laws

- Three sailboats issued 30 day eviction notices (*not for cause*)
- Boat owners refused to leave - 30 day notice illegal!!
- Marina brings FED to evict
- Trial court orders eviction



Residential FED Laws

- One sailboat sails 15 days per year
- Other 2 sailboats never moved outside Marina
- Are they “boats”? - not covered by Oregon RLTA
- Are they “floating homes”? - covered by RLTA



Residential FED Laws

- “Dwelling unit” under RLTA includes rented moorage slips for “floating homes”
- But not rented moorage slips for boats
- Under RLTA – 180 notice required to end floating home tenancy without cause



Residential FED Laws

- Finding: these boats are used primarily as domiciles, not boats.
- Considered “floating homes” covered by RLTA
- Cannot be evicted on only 30 days notice without cause



Residential FED Laws

- *Bad*: may expose Marina to other landlord requirements under RLTA (e.g., condition, services)
- End all live aboard use? Requires 180 day notice plus:
 - must find boat owner new live aboard slip and...
 - pay up to \$3500 moving expense



Residential FED Laws

- *Good:* RLTA eviction options:
- Fail to pay rent - 72-hour nonpayment notice
- Fail to follow Marina rules - 30-day for cause notice
- Fail to maintain floating home - 30-day repair notice



The Increasing Hazards of Derelict Vessels

- **Facts:** Large Derelict Vessel (DV) is left at marina without permission, contract, insurance or any \$\$\$.
- DV sinks (well, of course it does)



Derelict Vessels

- Marina operator tries in vain to get former owner to remove DV
- Owner has no \$ for \$30K estimated cost to raise and remove
- Tic, tock....tic, tock estimated cost to remove DV now almost \$1 Million
- WHY?



Derelict Vessels

- A: Vessel has sanded in; removal will now disturb sediments, preexisting pollutants
- Remediation now large scale and complicated – Endangered Species Act, EPA, State environmental and fisheries agencies



Derelict Vessels

- Marina operator doesn't own vessel and never had care or custody
- Marina operator is strictly liable for performing removal and cost of removal
- **WHY??**



Derelict Vessels

- A: state lands lease for submerged and submersible lands
- Marina operator has “Marina Operator Liability Insurance”
- This insurance ***does not*** cover clean up cost
- WHY??



Derelict Vessels

- A: Marina liability policy does not cover pollution from vessels not in the marina's care and custody
- *Review your insurance regularly!!*
- *Enforce your transient and derelict vessel rules diligently!!*



Disaster Litigation

- Marina fire causes multiple boats to sink, releasing oil and chemicals.
- Marina (and insurer) spend \$\$\$ recovering sunken marina parts and removing oil
- Insurer sues owner of boat on which fire allegedly started

Disaster Litigation

Claims:

- OPA 90, CERCLA, Clean Water Act
- Wreck Removal Act
- State environmental law
- Indemnity clause in moorage agreement



Disaster Litigation

- Defense: Limitation of Liability Act
- Boat owner's liability limited to value of boat *after* the casualty
- Boat owner must show casualty occurred without owner's "privity or knowledge"



Disaster Litigation

- OPA 90, CERCLA, Clean Water Act – expressly preempt Limitation Act
- Wreck Removal Act – violation cannot be outside owner's privity and knowledge



Disaster Litigation

- Indemnity clause in moorage agreement:
- Personal contract obligations are not subject to limitation under the Limitation Act.



Marijuana in the Maritime Workplace

- Laws in Oregon, Washington, and Alaska
- Pertinent maritime regulations
- Presumed liability and other concerns
- Employer issues and drug testing

Sarah Palin, one of the country's most well-known Alaskans, is quoted as saying:

"If somebody's gonna smoke a joint in their house and not do anybody harm then perhaps there are other things our cops should be looking at to engage in and try to clean up some of the other problems we have in society."



DOT Policy Bulletin

- DOT's Notice was directed at “pilots, school bus drivers, truck drivers, train engineers, subway operators, aircraft maintenance personnel, transit fire-armed security personnel, ship captains, and pipeline emergency personnel, among others.”
- The DOT Notice was intended to “assure the travelling public that our transportation system is the safest it can possibly be.”



The USCG also issued an Anti-Pot “Safety Bulletin”

- USCG published a “Marine Safety Information Bulletin” titled “Recreational and Medicinal Marijuana Use Policies for Maritime Transportation Workers” on January 14, 2014, referencing the DOT Compliance Notice.
- The Bulletin was intended to “ensure that mariners, marine employers, Medical Review Officers and the public are knowledgeable of the continuing prohibition of marijuana use by those serving in safety-sensitive positions in the maritime transportation industry.”



How will courts view positive tests?

- *Exxon Shipping v. Exxon Seamen's Union*, 993 F.2d 357 (3rd Cir. 1993): A seaman was fired when his post-incident drug test showed low levels of cannabinoids (lower than USCG limits but higher than Exxon's own policy limits).
- The court noted “there was no evidence that [plaintiff] had used or possessed drugs on company business or premises [because] he had returned from vacation nine days before testing and credited testimony from Exxon' expert stated that an individual might be expected to test positive for marijuana fifteen days after using it.”
- Regardless, Exxon's zero tolerance policies had been violated so the court concluded the seaman's termination was proper.

How long do drug tests detect marijuana?

“There is no simple answer to this question. Detection time depends strongly on the kind and sensitivity of the test employed; the frequency, dosage, and last time of use; the individual subject's genetic makeup, the state of one's metabolism, digestive and excretory systems; and other random, unknown factors. “

California NORML Guide to Drug Testing



Types of Testing

- Urine
- Blood
- Saliva
- Hair
- Breath (coming soon)
- Sweat (uncommon)



Urine

- Old standard—relied on by USCG
- Will detect THC for up to 12 weeks
- Generally used to determine whether a person is a habitual user; cannot determine whether is impaired at the time of the test
- Inexpensive (Walgreen's sells one for less than \$8)
- Less intrusive
- False positives are rare



Drug and Alcohol Policies - Zero Tolerance

- What to include:
 - Move away from “under the influence” policies and use a “no detectable amount” policy
 - Any positive urine test results in termination
 - May not need to bother with blood tests or other tests
 - Use random testing



Drug and Alcohol Policies Generally

- Not “Abuse” Policies, say “Drug and Alcohol Policy” or similar name
- Clearly state that it covers drugs illegal under local, state, *or federal law*
- Explicitly include marijuana or any related substance
- Include prescription drug policy
 - Notice to supervisor?
- Include notice that blood tests or other invasive tests may be used (leaves open as a possible accommodation if the *ADA* issues arise)

What Can You Do if Employees Use On Site?

- You **MUST** take action
- You do not want to be involved in a violation of federal law
- You do not want to be accused of negligence

Summary

- Just like employees may not come to work drunk, they may not come to work high
 - Make a few policy changes
 - Watch for the accommodation issue to arise
 - Check before terminating for a positive marijuana test because law in this area may change in the coming months and years

Open Forum

Bring it !!!