

# The Seaman's Manslaughter Statute – An Old Tool Being Used Anew

by Jeanne M. Grasso<sup>1</sup>

Over the last ten or so years, criminal prosecutions have become commonplace in the maritime industry. The most common prosecutions stem from environmental violations, but often also include charges of false statements, conspiracy, and obstruction of justice. Over the last several years, however, a new trend has begun – that of prosecutions under the Seaman's Manslaughter Statute.<sup>2</sup> These prosecutions have come to the fore because of the Staten Island Ferry incident, which occurred in 2003, where the Seaman's Manslaughter Statute was used to extract guilty pleas from the pilot and a shoreside official.

## History of the Seaman's Manslaughter Statute.

Since the origin of steamboats in the early 1800s, thousands of passengers died from boiler explosions and fires, which plagued this class of vessel. States began to step in and regulate steamboats, but the effort was disjointed and ineffective. The death

of Senator Josiah Johnson in a steamboat explosion prompted President Andrew Jackson, in his 1833 State of the Union address, to make steamboat safety a federal priority.

In 1838, Congress passed "An act to provide for the better security of the lives of passengers aboard vessels propelled in whole or in part by steam" (the "1838 Act"). The 1838 Act set forth various licensing, inspection, and safety requirements for steamboats. The focus of the 1838 Act, however, was to demand the "utmost vigilance of the crew by attaching criminal liability for fatal lapses." According to the legislative history, the 1838 Act was designed to punish captains, engineers, and pilots of steamboats for their negligence or inattention related to vessel operations.

The 1838 Act did not go far enough, and by 1852 over 7,000 people had died on steamboats. Congress realized that the technology was part of the problem and that imposing criminal liability on the crewmembers was not

an effective solution. In 1852, another steamboat safety law was enacted (the "1852 Act"), which imposed various safety equipment requirements, including hydrostatic testing, safety valves, lifeboats, life preservers, and firefighting equipment. Steamboat-related deaths decreased dramatically after enactment of the 1852 Act, which largely provided the basis for the U.S. Coast Guard inspection regime as we know it today.

## The Seaman's Manslaughter Statute.

The Seaman's Manslaughter Statute generally criminalizes misconduct, negligence, or inattention to duties by a captain, engineer, pilot, charterer, owner, operator, or other person employed on or responsible for managing any vessel. It provides for fines and imprisonment of up to ten years.

The elements of the crime are that: (1) the defendant was [captain, pilot, operations manager, *etc.*] of the vessel; (2) the defendant was guilty of mis-

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<sup>2</sup> 18 U.S.C. § 1115.

conduct, negligence, or inattention to his duties on the vessel; and (3) that by reason of such misconduct, negligence, or inattention, someone died. Over the last few years, the Seaman's Manslaughter Statute has been used to convict not only crewmembers, but also shoreside personnel involved with vessel operations. It is important to note that intent is not an element of the offense and it is not necessary to show that the acts or omissions that caused the death were willful or intentional. In fact, in most jurisdictions where the statute has been utilized, simple negligence is enough to secure a conviction, save for in Florida, which requires gross negligence.

Until recently, prosecutions under the Seaman's Manslaughter Statute were a rare event. Recent high-profile casualties, however, have given the statute a new life. Over the last several years, it has been used to convict not only crewmembers, but also shoreside personnel who are involved with vessel operations.

## Early Prosecutions.

During its first century and half, there were roughly eight major prosecutions, spanning 1848 through 1990.<sup>3</sup> The most notable of these prosecutions involved the *General Slocum* disaster in 1904, where more than 1,000 people died when the vessel caught fire on the East River in New York. The investi-

gation revealed that: the captain did not conduct fire drills or provide emergency training to crewmembers; the fire hoses were rotten and ruptured under the pressure; and the lifejackets were rotten and contained disintegrated cork, which resulted in many passengers drowning.

Captain Van Shaick, executives of Knickerbocker Steamboat Co., and the inspector who had recently certified the vessel as fit for service were all indicted. Van Shaick was convicted of manslaughter and was sentenced to ten years hard labor, though he only served three years before being pardoned by President Taft. Knickerbocker escaped with only a nominal fine, despite the fact that the trial revealed the company had falsified records to cover up its lack of attention to passenger safety.

## Recent Prosecutions.

Unlike the paucity of prosecutions at the outset, during the last seven years, there were six major prosecutions under the Seaman's Manslaughter Statute,<sup>4</sup> as well as the recent indictment of a charterboat fishing boat captain relating to the deaths of three passengers.<sup>5</sup>

The first of the recent prosecutions, *U.S. v. Lee Peng Fei*, involved a human smuggling scheme. Fei, the mastermind, endeavored to smuggle 298 Chinese aliens aboard the *Golden*

*Venture* into New York in 1993. When his plan to send small vessels to disembark the passengers fell through, he ordered the ship to ground in New York, which resulted in ten people drowning while trying to swim ashore. After a worldwide manhunt and a subsequent extradition battle, Fei pled guilty to the deaths of six persons, among other charges. Fei was sentenced to 20 years in prison.

In *U.S. v. Mitlof*, a water taxi capsized, killing a passenger in 1998. The owner had allowed the vessel to operate with numerous mechanical and structural deficiencies. The vessel's owner and captain were convicted of conspiracy, manslaughter, and wire fraud, the latter count because the owner advertised the vessel as being Coast Guard inspected, knowing it was not.

*U.S. v. O'Keefe* involved a cocaine-impaired tugboat pilot who caused an accident resulting in the sinking of the vessel and the death of his ex-wife in 2001. The pilot was convicted of manslaughter, sentenced to one year in prison, and ordered to pay \$640,000 in restitution. He appealed the conviction, arguing that gross negligence rather than simple negligence was required to trigger criminal liability. The Fifth Circuit Court of Appeals confirmed that simple negligence was all that was

<sup>3</sup> See, e.g., *U.S. v. Warner*, 28 F. Cas. 404 (D. Ohio 1848); *U.S. v. Farnham*, 25 F. Cas. 1042 (S.D.N.Y. 1853); *U.S. v. Collyer*, 25 F. Cas. 554 (S.D.N.Y. 1855); *U.S. v. Keller*, 19 F. 633 (D. W.Va. 1884); *U.S. v. Van Schaick*, 134 F. 592 (S.D.N.Y. 1904), aff'd *Van Schaick v. U.S.*, 159 F. 847 (2d Cir. 1908); *Hoopengartner v. U.S.*, 270 F.2d 465 (6th Cir. 1959); *U.S. v. Hilger*, 867 F.2d 566 (9th Cir. 1989); and *U.S. v. Holmes*, 104 F. 884 (N.D. Ohio 1900).

<sup>4</sup> See, e.g., *U.S. v. Fei*, 225 F.3d 167 (2d Cir. 2000); *U.S. v. Mitlof*, 165 F. Supp. 2d 558 (S.D.N.Y. 2001), aff'd *U.S. v. Sheehan*, 89 Fed. Appx. 307 (2d Cir. 2004); *U.S. v. O'Keefe*, 2004 U.S. Dist. LEXIS 1494 (E.D.La. Feb. 4, 2004), aff'd Case No. 04-30691 (5th Cir. 2005); See Sentencing Memorandum of United States in *U.S. v. Shore*, No. 1:02-cr-10413-RW2-ALL (D. Mass. Sept. 3, 2004); *U.S. v. Smith*, No. 1:03-CV-06049-ERK-VVP (E.D.N.Y.); and *U.S. v. Thurston*, 362 F.3d 1319 (11th Cir. 2004).

<sup>5</sup> Press Release from the United States Attorney's Office, District of Oregon (January 12, 2006), *Fishing Boat Captain Indicted in Deaths of 3 Passengers*.

required to sustain a conviction.

In *U.S. v. Shore*, the captain and first mate pled guilty to manslaughter charges resulting from the death of an underage woman on a booze cruise in 2001. After several hours of partying, the vessel's anchor dragged and it collided with a moored sailboat, causing a section of the rail to break. The first mate motored away, knowing the rail was broken, and a woman fell overboard and drowned. The captain and first mate pled guilty to manslaughter, were sentenced to six months home detention with electronic monitoring, 500 hours of community service, and a \$10,000 fine, and were ordered to pay \$40,000 in restitution.

In *U.S. v. Thurston*, the chief mate instructed a crewmember on the *S.S. Trinity* to enter and clean a tank that had contained MTBE. When the crewmember entered the tank in 2001, he was overcome by fumes and died. The chief mate was indicted under the Seaman's Manslaughter Statute, but the first indictment was dismissed by the district court because it was based on simple negligence rather than gross negligence. A second indictment was brought charging him with the same violation, but by acting with gross rather than simple negligence. The case went to trial and the chief mate was acquitted.

The Staten Island Ferry incident, which occurred in 2003, is the most recent case resulting in convictions under the Seaman's Manslaughter Statute. In this case, the *Andrew Barberi* veered off course and allided with a concrete maintenance pier,

killing 11 people and injuring 73 others. Immediately thereafter, a joint federal/state investigation commenced, resulting in the indictments of the captain, assistant captain (pilot), director of ferry operations, port captain, and the pilot's physician.

The pilot pled guilty to 11 counts of seaman's manslaughter and for making a false statement to the government. He admitted he was overly tired, taking painkillers, and in such pain he was not in the proper physical condition to operate the vessel. In his license renewal application, the pilot stated he was not on prescription drugs for fear of losing his job. He was sentenced to 18 months in prison.

The director of ferry operations was also charged with 11 counts of manslaughter, as well as obstruction of justice and false statements. The manslaughter charge stemmed from his failure to ensure that the vessel was in the control of a qualified pilot and to enforce the two-pilot rule, which had a long history in the ferry operations. The two-pilot rule required that two pilots be in the pilothouse during docking operations. He pled guilty to one count of manslaughter and was sentenced to one year in prison.

The captain, who was not in the pilothouse at the time of the allision, was indicted for lying to the investigators. The charge was reportedly dismissed in exchange for his cooperation. The port captain was indicted for obstruction of justice and making false statements to the government for asserting that the two-pilot rule was enforced. The pilot's physician was

indicted for making false statements to the government by signing a medical form that accompanied the pilot's license renewal application submitted to the Coast Guard, which indicated that the pilot was not taking any prescription medications.

## Conclusion

The maritime industry has increasingly been the target of criminal prosecutions for the better part of the past decade, originally (and still) for environmental crimes and now for seaman's manslaughter. The recent frequent use of the Seaman's Manslaughter Statute should serve as a wakeup call for companies to take action to avoid becoming a part of this trend. This includes establishing and effectively implementing a compliance program based not only on regulatory requirements, but also on other assessed risks.

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