

Defense jury verdict exonerates deceased PWC operator, saving insurers millions

As the 700 horsepower, three ton MasterCraft wakeboat, piloted by the 14-year-old son of its owner, suddenly turned and roared up the wake of the Sea Doo, it was just dangerous seamanship. When the wakeboat's operator then turned around to talk and laugh with two of his four teenage passengers, allowing his 50 mph vessel to speed over 900 feet and slam into the 5 mph Sea Doo from directly astern, it quickly became a disaster.

The 15-year-old Sea Doo operator died in the water within seconds. His 16 year-old passenger, the daughter of the personal watercraft's owner, suffered a traumatic propeller amputation of her lower left leg. His 23-year-old passenger was thrown clear with only minor injuries.

Under typical circumstances, given the clear liability of the wakeboat operator, no suit would be filed by the surviving amputee. Rather, the wealthy vessel's owner and his insurers would reach an amicable settlement. However, the circumstances were not typical.

First, the wake boat owner filed for bankruptcy, leaving only a \$500,000 primary insurance policy to cover all accident claims. Second, there was \$4.8 million in coverage, from three insurance companies, for the Sea Doo operator's estate. Third, because the accident occurred on navigable waters, the Inland Navigation Rules and the admiralty rule of joint and several liability among defendants applied. Therefore, if the badly injured passenger could prove that her deceased "best friend" was only one percent at fault for causing the accident, the bank would be wide open. So she filed a lawsuit against his estate to do so.

In her suit against the operators of both vessels, the plaintiff argued that the person she allowed to operate her family's Sea Doo should have been more attentive to the MasterCraft 900 feet behind, should have anticipated that the MasterCraft's operator would not slow down or change course, and should have accelerated the Sea Doo out of the way.

Plunkett Cooney was retained to defend the Sea Doo operator's estate and hired, as expert witnesses, a professor of admiralty law and a marine accident reconstruction engineer. The legal team also conducted extensive discovery, taking depositions from dozens of witnesses including the chief investigator from the county's marine patrol unit and another boater who observed the entire accident scenario from the flybridge of his boat 12 feet above the water's surface. The legal team then filed and won a motion for partial judgment as a matter of law, knocking out the Inland Navigation Rule, which

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was key to the plaintiff's case, leaving for trial the plaintiff's marine negligence claims.

Faced with the necessity to avoid even a scintilla of liability or expose its three insurance clients to massive payouts, Plunkett Cooney's lawyers succeeded. After a five-day federal court trial, the jury, which knew nothing about the underlying insurance and collectability issues, returned an 8-0 verdict imposing \$4.6 million in damages on the MasterCraft's owner and operator and completely exonerating the firm's client, the deceased operator of the Sea Doo, and preserving intact all of his estate's potential insurance coverage.

When the plaintiff appealed, members of the firm's appellate department prepared a persuasive brief and presented a convincing argument in the court of appeals. Four weeks later, the appellate court issued a unanimous opinion affirming all of the trial court results.

Litigation of claims often can and should be avoided. However, when that is not possible, heading to court with a prepared and aggressive legal team is the only choice.