



## **SEAMAN’S MANSLAUGHTER: THE CRIMINALIZATION OF DEATH BY NEGLIGENCE.**

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There has been a resurgence of criminal prosecutions seeking to hold seafarers, owners of vessels, and the corporate management that controls vessels criminally accountable for maritime accidents that result in the death of a person.<sup>1</sup> Title 18 Section 1115 of the U.S. Criminal Code criminalizes the misconduct or negligence of a ship’s officers that results in the death of another and for corporate management that knowingly and willfully causes or allows the misconduct or negligence of a ship’s officers that result in the death of a person.<sup>2</sup> Commonly, this statute has been known as seaman’s or seafarer manslaughter.<sup>3</sup> Much of the case law relating to this statute was created more than 150 years ago under its predecessor, which applied exclusively to steamships.<sup>4</sup> Within the last ten years there has been a resurgence of prosecutions, forcing courts to re-examine what kind of conduct and what proof is required to sustain a conviction.<sup>5</sup>

Seamen's manslaughter exposes three distinct groups to liability. The first group is the ship's officers. "Every captain, engineer, pilot, or other person employed on any...vessel, by whose misconduct, negligence or inattention to his duties on such vessel the life of any person is destroyed..." are subject to ten years in prison and a fine.<sup>6</sup> Ship's officers are the most common cases because the chain of causation required can—in most instances—be more easily traced to them because of the physical presence at the scene of the accident and actual on-site responsibility and control for the vessel, crew and passengers.<sup>7</sup>

The second group consists of those who, while not taking part in operating the vessel, have such responsibility over its condition so that their acts or failure to act could cause the loss of life. "[E]very owner, charterer, inspector, other public officer, through whose fraud, neglect, connivance, misconduct or violation of the law the life of any person is destroyed shall be fined or imprisoned not more than ten years, or both."<sup>8</sup>

The third group exposed to criminal liability is corporate management. "The owner or charter of any steamboat or vessel is a corporation, any executive officer of such corporation for the time being actually charged with the control and management of the operation equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct, or violation of law by which the life of any person is destroyed, shall be fined or imprisoned not more than ten years, or both."<sup>9</sup> The mens rea requirement for corporate management is heightened from negligence to "knowingly and willfully" causing or allowing misconduct or negligence.<sup>10</sup> This exposes corporate management

to liability when they know of an unsafe condition that amounts to the violation of the law, like an OSHA violation, and is triggered when they purposely disregard their duty to take corrective action or fail to discover the violation through willful blindness.<sup>11</sup> Management may also become exposed to liability under this section when they know that their officers or those with responsibility over the vessel are acting negligently and then fail to take corrective action, thus allowing the unsafe condition to continue until it causes death.<sup>12</sup>

Though referred to as seaman's manslaughter, Section 1115 requires a lower degree of negligence to be proven to sustain a conviction than its sister statute Title 18 U.S.C. § 1112 which incorporated elements of common law manslaughter.<sup>13</sup> At common law, the government must prove gross negligence or heat of passion in the absence of malice for a manslaughter conviction.<sup>14</sup> Courts have long held—for more than 150 years—that “[a]ny degree of negligence is sufficient to meet the culpability threshold” as Congress did not intend to incorporate common law elements of manslaughter into Section 1115.<sup>15</sup> Courts have consistently held that Congress intended no heightened mens rea requirements, instead opting for simple negligence.<sup>16</sup> Negligence occurs when there is a breach of duty, which is an omission to perform an act or to act in violation of a standard of care that is made to govern and control the manner of the discharge of a duty.<sup>17</sup>

The duty is made out by showing that the vessel was commercial rather than operated for personal pleasure.<sup>18</sup> The owners, operators, and inspectors of commercial vessels have “unique responsibility or fiduciary duty” to those who are killed because of the misconduct or violations of standards of care.<sup>19</sup> Section 1115 applies only to commercial vessels because those operators

and owners, ‘daily have the lives of thousands of helpless human beings in their keeping.’<sup>20</sup> Section 1115 is not limited in application to the deaths of passengers, but is applicable when that misconduct or negligence causes any death—whether crew of the vessel, dock workman, or visiting ex-wives.<sup>21</sup>

At the 2010 Seafarer Region Conference participants representing various maritime interests, unions, and associations adopted a resolution addressing the trend of using criminal prosecution instead of professional and civil sanctions to penalize simple negligence.<sup>22</sup> The resolution asked Congress to review Section 1115 and make appropriate changes to clarify that criminal prosecution is only appropriate for cases of “willful, callous, reckless or other intentional misconduct.”<sup>23</sup> As it stands, ship officers and those closely responsible for the safety and operation may be liable for negligence or misconduct that causes the death of a human being; and corporate managers may be found liable for knowingly and willfully causing or allowing the misconduct or negligence that causes the death of a human being.

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<sup>1</sup> *See*, *United States v. O’Keefe*, 426 F.3d 274, (5th Cir. 2005); *United States v. Schroder*, 2006 WL 1663663 (S.D.Ala.).

<sup>2</sup> 18 U.S.C. § 1115

<sup>3</sup> *See*, A Resolution addressing the Criminalization of Seafarer Manslaughter Act, 2010 Seafarer Regional Conference (March 9—10, 2010), <http://seafarerissues.net/static/manslaughter.doc>; *O’Keefe*, 426 F.3d at 277 (“...on a charge of seaman’s manslaughter pursuant to § 1115.”).

<sup>4</sup> *See*, *O’Keefe*, 426 F.3d at 278 (citing *United States v. Warner*, 28 F.Cas. 404, 407 (D. Ohio, 1848); *United States v. Farnham*, 25 F.Cas. 1042, 1044 (S.D. New York, 1853); *United States v. Collyer*, 25 F.Cas. 554, 578 (S.D.N.Y.1855); *United States v. Keller*, 19 F. 633, 638 (D. West Virginia, 1884); and *Van Schaick v. United States*, 159 F. 847, 850 (2d Cir.1908) as the controlling case law on which they base their holding)

<sup>5</sup> *See*, *O’Keefe*, 426 F.3d 274; *Schroder*, 2006 WL 1663663.

<sup>6</sup> 18 U.S.C. § 1115.

<sup>7</sup> *See*, *O’Keefe*, 426 F.3d 274; *Schroder*, 2006 WL 1663663.

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<sup>8</sup> 18 U.S.C. § 1115.

<sup>9</sup> 18 U.S.C. § 1115.

<sup>10</sup> 18 U.S.C. § 1115.

<sup>11</sup> *See*, 18 U.S.C. § 1115; *Georgia Electric Co. v. Marshall*, 595 F.2d 309 (5th Cir. 1979).

<sup>12</sup> *See*, 18 U.S.C. § 1115.

<sup>13</sup> *O’Keefe*, 426 F.3d at 278—279; *Schroder*, 2006 WL 1663663 at \*1; *See*, 18 U.S.C. § 1112.

<sup>14</sup> *O’Keefe*, 426 F.3d at 278; *See*, 18 U.S.C. § 1112.

<sup>15</sup> *O’Keefe*, 426 F.3d at 278. *See*, *United States v. Warner*, 28 F.Cas. 404, 407 (D. Ohio, 1848); *United States v. Farnham*, 25 F.Cas. 1042, 1044 (S.D. New York, 1853); *United States v. Collyer*, 25 F.Cas. 554, 578 (S.D.N.Y. 1855); *United States v. Keller*, 19 F. 633, 638 (D. West Virginia, 1884); and *Van Schaick v. United States*, 159 F. 847, 850 (2d Cir. 1908).

<sup>16</sup> *O’Keefe*, 426 F.3d at 278; *See*, *United States v. Warner*, 28 F.Cas. 404, 407 (D. Ohio, 1848); *United States v. Farnham*, 25 F.Cas. 1042, 1044 (S.D. New York, 1853); *United States v. Collyer*, 25 F.Cas. 554, 578 (S.D.N.Y. 1855); *United States v. Keller*, 19 F. 633, 638 (D. West Virginia, 1884); and *Van Schaick v. United States*, 159 F. 847, 850 (2d Cir. 1908).

<sup>17</sup> *See*, *O’Keefe*, 426 F.3d at 278 (“The term ‘negligence’ is defined as a breach of duty. A breach of a duty is defined as an omission to perform some duty, or it is a violation of some rule or standard of care, which is made to govern and control one in the discharge of some duty.”).

<sup>18</sup> *O’Keefe*, 426 F.3d at 278—279 (“The Court does not agree that because the predecessor to § 1115 was called man-slaughter that it automatically engrafts the case law interpreting other definitions of manslaughter from other statutes. [Section] 1112 and § 1115 are separate crimes addressing different concerns with different penalties. Involuntary man-slaughter as defined in § 1112 applies to all persons, regardless of where the offense occurs or whether the offender had any unique responsibility or fiduciary duty towards the victim of the crime. On the other hand, § 1115 applies only to commercial vessels whose operators and owners, historically speaking, ‘daily have the lives of thousand of helpless humans beings in their keeping.’”).

<sup>19</sup> *O’Keefe*, 426 F.3d at 279 n.1.

<sup>20</sup> *Id.*

<sup>21</sup> *See*, *Schroder*, 2006 WL 1663663 (Captain of a ship convicted after his ship collided with container crane on the dock, killing its operator.); *United States v. O’Keefe*, 426 F.3d 274 (Captain of a tug, convicted after tug sank while under the influence of cocaine, killing an unauthorized passenger—the captain’s ex-wife.); 18 U.S.C. § 1115 (“...the life of any person is destroyed...”).

<sup>22</sup> A Resolution addressing the Criminalization of Seafarer Manslaughter Act, 2010 Seafarer Regional Conference (March 9—10, 2010), <http://seafarerissues.net/static/manslaughter.doc>.

<sup>23</sup> *Id.*