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## Maritime Law Heating up as COVID-19 Boosts Boating Demand in South Florida

"Florida courts have said the hurricanes are not 'unexpected' and are therefore not necessarily an act of God," said James N. Hurley, shareholder and chair of Fowler White's Maritime Law Practice Group.

By Raychel Lean | July 21, 2021



**Photo: Just dance/Shutterstock.com.**

Ever since the COVID-19 pandemic made “social distancing” a household phrase, boating has become a go-to activity for South Floridians wanting to get outdoors without mingling with other people.

Enter James N. Hurley, shareholder and chair of Fowler White’s Maritime Law Practice Group, who said he’s watched liability claims rise in tandem with an influx of more inexperienced boaters on South Florida waters. Meanwhile, U.S. Coast Guard activity is spiking, the cruise industry is battered and insurance is becoming harder to obtain.

With hurricane season underway, here’s what Hurley said is on the radar for the maritime law industry. Responses have been edited for content and news style.

### **How has the COVID-19 pandemic impacted the boating industry and maritime practice?**



**James N. Hurley, shareholder and Chair of Fowler White’s maritime law practice group. Courtesy photo.**

Despite the CDC’s “no sail” order and the nation’s “shelter in place” restrictions during the pandemic, Fowler White’s maritime practice not only thrived but actually expanded with the addition of four new maritime attorneys. It quickly became obvious that recreational boating offered one of the few outlets where families could be outside and practice safe social distancing. Sales of powerboats in Miami-Dade and Broward counties increased by 21% in 2020, compared to 2019. And the increased demand, together with lessening inventory due to factory shutdowns, dramatically increased prices and created an immediate shortage of vessel and parts.

Fowler White’s versatility across the broad maritime spectrum has led to an increased amount of yacht and smaller vessel closings over previous years as we guided our clients through the complicated web of restrictions on ownership and use of vessels.

### **What other maritime issues do you foresee because of increased boat sales?**

The increased desire for boating has also increased the legal needs of the recreational boating industry. There are more inexperienced boaters on the water and Florida does not have licensing requirements for adult recreational boaters. As a direct result, there has been an increase in liability incidents, both at marine facilities and on the water.

In addition to the boating industry’s rising sales, U.S. Coast Guard enforcement activity has increased dramatically. From Oct. 1, 2019, through Sept. 30, 2021 — the Coast Guard’s fiscal year — search and rescues increased by 92%. A further 50% increase for this year is anticipated, and the Coast Guard has made a point of targeting unlicensed charters. The current trend shows a 100% increase in Coast Guard intercession for unlicensed charters with potential fines in excess of \$94,000 per day. Fowler White’s maritime practice has been active in handling mitigation proceedings with the U.S. Coast Guard.

### **My client is buying a boat. What should I look out for?**

No matter what the salesperson says, buying a boat is not the same as buying a car. Ownership and use of vessels is subject to a myriad federal and state restrictions and an experienced maritime lawyer is paramount to properly protecting a client from the risks of boat ownership.

Properly advising a client begins with the form of ownership. Liability considerations are significantly greater with a boat. Not only is there potential for personal and property damage, but there is also environmental exposure. We almost always advise clients not to purchase vessels in their individual names, but instead to utilize a domestic or foreign business entity as may be appropriate to minimize possible exposure of their personal assets in a liability situation.

The place of registration is also important. Vessels of a certain size must either be U.S. or foreign documented. All vessels in Florida must also have a state registration. A foreign person or entity cannot own a U.S. documented vessel. A non-U.S. documented vessel cannot engage in coastwise trade, which is the carriage of passengers between U.S. ports. A foreign flagged vessel can travel between U.S. ports for private pleasure purposes, but will need a cruising permit.

A cruising permit may also protect an owner from the need to pay custom's duties or Florida sales or use taxes, but it also has requirements regarding traveling outside of the U.S. to a foreign port periodically and is subject to annual, and sometimes shorter, renewal. Likewise, a U.S. documented vessel must be properly documented to conduct coastwise fishing trades. They are also subject to U.S. crewing regulations.

### **What about insurance?**

Boating also has special insurance consideration. Many companies, especially European insurers, no longer offer recreational boating insurance in the U.S. due to liability exposure. Insurance is getting harder to find and special insurance clauses are needed if you will be utilizing a paid captain or crew.

### **Hurricane season has started. What should boat owners know?**

Clients have special needs for legal advice during hurricane season. It is almost universal that insurance policies will impose special obligations on boat owners to take proactive protective measures from June through November. Hurricane Dorian was a significant source of business. Many U.S.-owned and insured boats were caught unexpectedly in the Bahamas by the storm. Most of the boats were insured by policies which had requirements for pre-approved hurricane plans. The failure to comply with those plans could be grounds for denial of an insurance claim. Such plans normally specify a safe berth during a storm, and some even require that the vessel not be as far south as Florida during hurricane season. Navigational limits are common in such policies, and special attention should be paid to ensure that the expected use does not violate the specified limits.

Boat owners are responsible for taking reasonable steps to insure that their boats are properly prepared for a hurricane. Florida courts have said the hurricanes are not "unexpectedable" and are therefore not necessarily an Act of God. A negligence standard is applied if a boat breaks loose and damages other property. Whether or not a vessel can be contractually held liable for damage it causes to a marina during a hurricane is unanswered.

Since Hurricane Andrew, Florida Statute Section 327.59 (<https://www.flsenate.gov/Laws/Statutes/2011/0327.59>) has prevented marinas from adopting, maintaining or enforcing a policy which requires a vessel to be moved from a marina after the issuance of a hurricane watch or warning, the rationale being that personal safety is more important than the preservation of property. The statute was amended in 2021 to provide an exception to the prohibition for designated deep-water seaports.

### **With the "No Sail" order in effect, what work is coming from the cruise industry?**



While the cruise and cruise support industries have suffered terribly during the pandemic, the need for cruise-related legal services has remained constant. Cruise litigation is now in the same “catch up” phase, and the recreational boating litigation discussed above and capacity has increased. Additionally, new opportunities, especially in assisting cruise lines with return to service procedures, including the review of special ticket provisions and information literature pertaining to shipboard and shore excursion precautions, has provided a new source of business opportunity.

### **What is happening with cruises?**

The status of cruise travel changes daily, although it is almost certain that the beginning of U.S. cruises is imminent. Many cruise lines have placed vaccination requirements for passengers and crew to meet the CDC's 95 to 98% threshold for conditional permission to sail. These requirements are expected to remain in place for cruises originating through much of the world, except for Florida, pending the ultimate outcome of the DeSantis/CDC litigation.

The temporary cessation of cruising has resulted in losses of billions of dollars in revenue from the cruise lines themselves, their shipboard and shoreside employees, countless other shoreside support workers such as stevedores and ship suppliers, and many of the tour operators. The restart of U.S. cruising, expected to begin this month, is greatly anticipated.

### **How might COVID-19 shape the cruise industry?**

Regardless of the ultimate outcome of the DeSantis/CDC litigation, in order to properly address concerns over COVID, there will be necessary changes in the cruise experience.

First, the passenger ticket and passenger policies will likely include provisions specifying cruise line and passenger rights and obligations in the event of a possible infection or exposure. These rights will include the ability to require quarantining on board or forced disembarkation, restrictions on shore activities from non-approved vendors and spot health checks in order to protect the health of fellow passengers and crew. Masks may still be required inside at certain locations and there may be restrictions on gathering size for certain onboard activities, which are likely to be modified.

One of the difficulties facing cruise lines will be the need to comply with the laws of multiple jurisdictions when traveling to those ports. As such, itinerary flexibility will be a must. If the recent airline travel statistic is any indication, it is expected that the number of people cruising will be significant.

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