

Navigating Novel Negligence Cases

Part 4: How to Successfully Litigate Jet Ski Negligence Cases

MATERIALS BY
Andrew Smiley

—New York State—
ACADEMY
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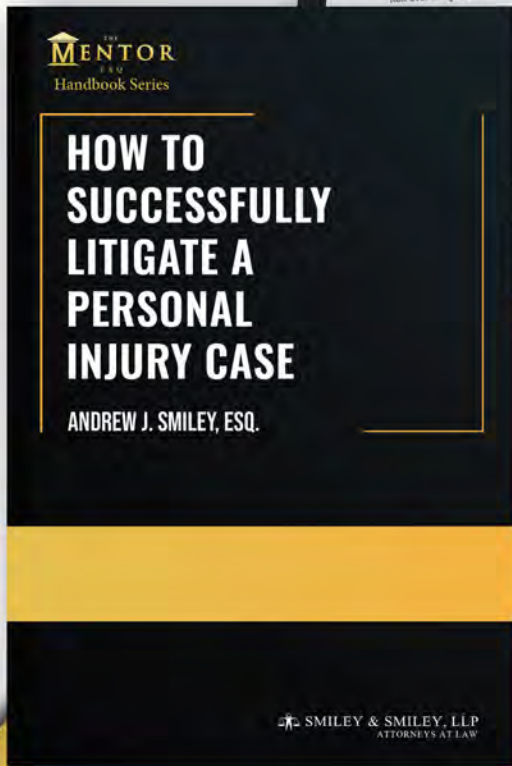
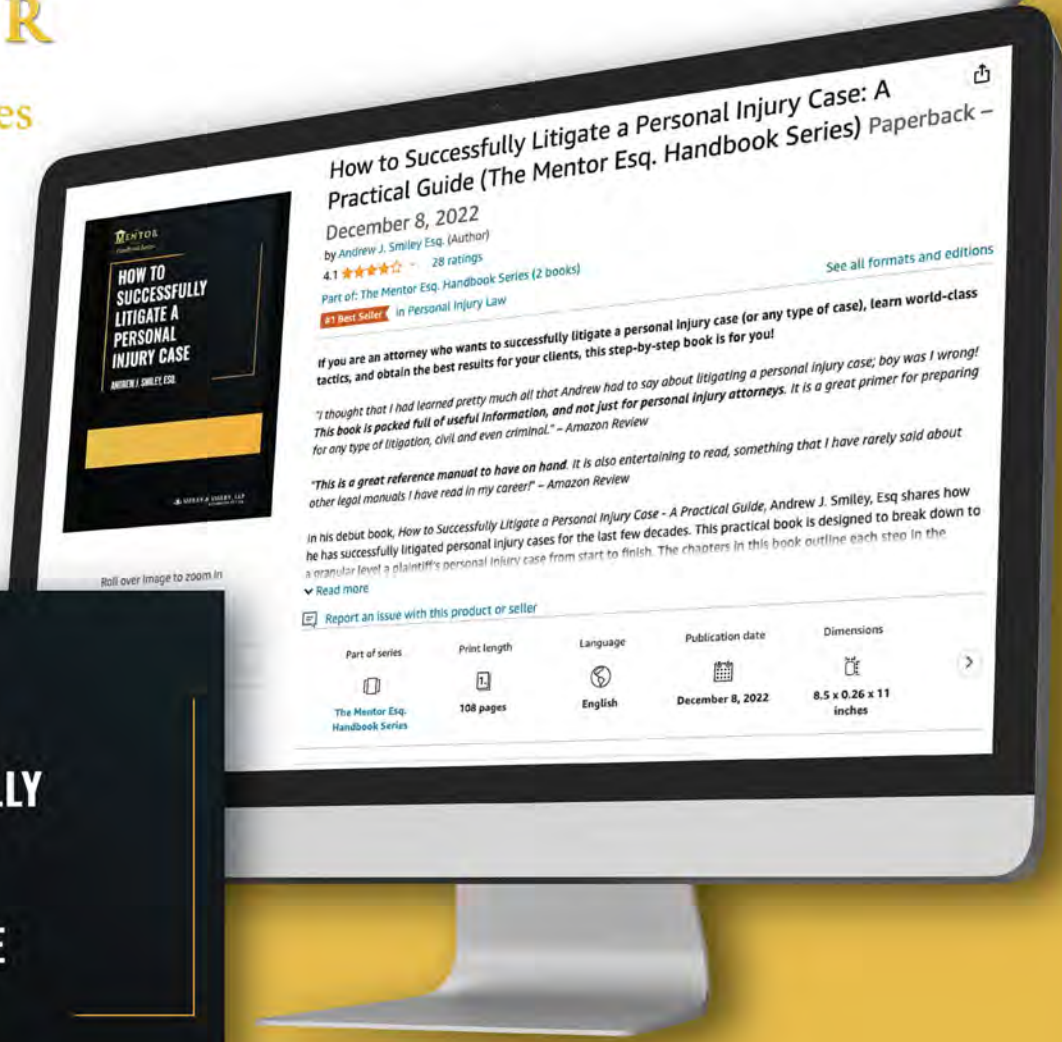
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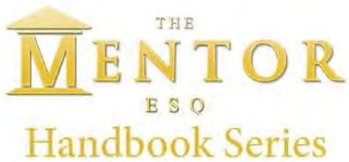


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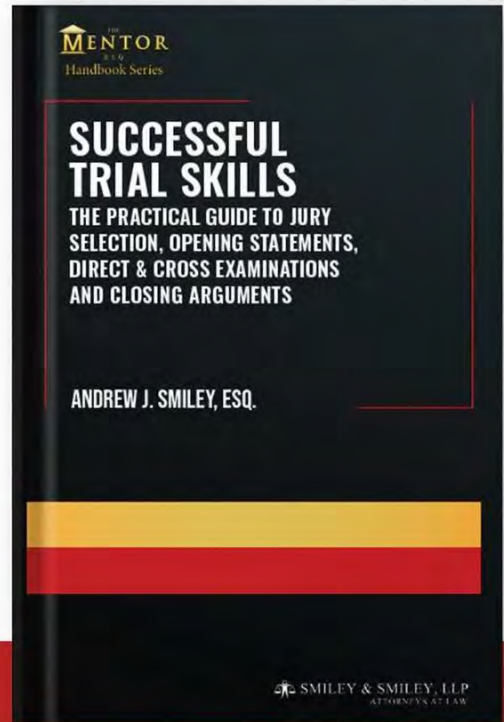
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CURRICULUM VITAE

Education:

· Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)
Moot Court Honor Society - Competitor - National Appellate Trademark Competition
Moot Court Honor Society – Coach, National Trial Team – Regional Champions
CALI Excellence For The Future Award - Advanced Legal Research
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

· Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

Professional:

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation

Andrew J. Smiley, Esq. Curriculum Vitae, Page 2

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *The Mentor Esq. Podcast – A Podcast for Lawyers*

- Founder & Host (2019 – Present)

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024

Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District, Southern District & Northern District of New York
- United States District Court of Vermont

Organizations/Affiliations:

· New York State Academy of Trial Lawyers

- Immediate Past President (May 2018- May 2019)
- President (May 2017 – May 2018)
- President-Elect – (April 2016- May 2017)
- Vice President – 1st Dept. (July 2013-May 2016)
- Executive Committee (May 2019 – present)
- Board of Directors (2013- present)
- Judicial Screening Committee (2013- present)
- Master CLE Instructor (2020 – present)
- CLE Instructor (2013 – present)

· New York City Trial Lawyers Alliance

- Chairman of Board of Governors (July 2017 – July 2019)
- President (July 2015 – July 2017)
- Vice President (June 2013 – July 2015)
- Treasurer (June 2011 – June 2013)
- Secretary (June 2009- June 2011)
- Board of Directors (2000-present)

- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
- Brooklyn Bar Association
 - Medical Malpractice Committee
 - Supreme Courts Committee
- American Bar Association
- The American Association for Justice

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- Brooklyn Law School Alumni Association
- National Order of Barristers
- Lime Rock Drivers Club
- Porsche Club of America (Connecticut Valley Region)
- Porsche Sim Racing League
- Sports Car Driving Association (SCDA)
- Just Hands Racing Foundation – Board of Directors

Authored Books

Smiley, Andrew J. *How to Successfully Litigate a Personal Injury Case – A Practical Guide*, 2022, The Mentor Esq. Handbook Series – Amazon Best Seller in Personal Injury Law

Smiley, Andrew J. *Successful Trial Skills – A Practical Guide to Jury Selection, Opening Statements, Direct & Cross Examinations and Closing Arguments*, 2024, The Mentor Esq. Handbook Series – Amazon #1 New Release in Trial Practice

Continuing Legal Education (CLE) Presentations:

(72) *Working with Experts*, Office of The New York State Attorney General – Legal Education and Professional Development, April 2, 2024

(71) *Novel Negligence Cases – Part 3: How to Successfully Litigate Ski Accident Cases*, New York State Academy of Trial Lawyers, March 6, 2024

(70) *Novel Negligence Cases – Part 1: How to Successfully Litigate Personal Trainer and Gym Negligence Cases*, New York State Academy of Trial Lawyers, January 3, 2024

(69) *Litigation Back to Basics – Part 3: Introducing Evidence and Impeaching Witnesses*, New York State Academy of Trial Lawyers, December 6, 2023

(68) *Litigation Back to Basics – Part 2: Working With Experts*, New York State Academy of Trial Lawyers, November 1, 2023

(67) *Construction Site Injury Litigation: Pursuing or Defending Claims Against Site Owners, Contractors, and Other Third Parties*, Strafford CLE/BarBri, October 17, 2023

(66) *Litigation Back to Basics – Part 1: Preparing and Conducting Depositions*, New York State Academy of Trial Lawyers, October 4, 2023

(65) *Depositions*, Office of The New York State Attorney General – Legal Education and Professional Development, September 28, 2023

(64) *How to Litigate a Medical Malpractice Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, June 7, 2023

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Continuing Legal Education (CLE) Presentations Continued:

(63) *How to Litigate a Medical Malpractice Case – Part 5: Pre-Trial Preparation*, New York State Academy of Trial Lawyers, May 3, 2023

(62) *How to Litigate a Medical Malpractice Case – Part 4: Discovery & Depositions*, New York State Academy of Trial Lawyers, April 4, 2023

(61) *How to Litigate a Medical Malpractice Case – Part 3: Commencing the Action*, New York State Academy of Trial Lawyers, February 28, 2023

(60) *How to Litigate a Medical Malpractice Case – Part 2: Expert Selection*, New York State Academy of Trial Lawyers, February 1, 2023

(59) *How to Litigate a Medical Malpractice Case – Part 1: The Initial Screening*, New York State Academy of Trial Lawyers, January 4, 2023

(58) *How to Litigate a Construction Accident Case – Part 4: Motion Practice*, New York State Academy of Trial Lawyers, December 7, 2022

(57) *Preparing for Depositions: Best Practices for Asking and Answering Questions*, Office of The New York State Attorney General, 2022 Legislature Program, December 6, 2022

(56) *How to Litigate a Construction Accident Case – Part 3: Depositions*, New York State Academy of Trial Lawyers, November 2, 2022

(55) *How to Litigate a Construction Accident Case – Part 2: Commencing The Action*, New York State Academy of Trial Lawyers, October 3, 2022

(54) *Trial Series: Part 2 - Opening Statement Webinar*, Queens County Bar Association, September 22, 2022

(53) *How to Litigate a Construction Accident Case – Part 1: An Overview of New York Labor Law*, New York State Academy of Trial Lawyers, September 7, 2022

(52) *How to Litigate a Catastrophic Automobile Accident Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, July 6, 2022

(51) *How to Litigate a Catastrophic Automobile Accident Case – Part 5: Mediation and Settlement*, New York State Academy of Trial Lawyers, June 2, 2022

(50) *How to Litigate a Catastrophic Automobile Accident Case – Part 4: Expert Depositions*, New York State Academy of Trial Lawyers, May 4, 2022

(49) *How to Litigate a Catastrophic Automobile Accident Case – Part 3: Liability and Damages Experts*, New York State Academy of Trial Lawyers, April 6, 2022

(48) *How to Litigate a Catastrophic Automobile Accident Case – Part 2: Commencing the Action*, New York State Academy of Trial Lawyers, March 2, 2022

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Continuing Legal Education (CLE) Presentations Continued:

- (47) *How to Litigate a Catastrophic Automobile Accident Case – Part 1: The Investigation*, New York State Academy of Trial Lawyers, February 4, 2022
- (46) *Anatomy of a Trial, a Trial Skills Series – Part 5: Summations*, New York State Academy of Trial Lawyers, January 5, 2022
- (45) *Anatomy of a Trial, a Trial Skills Series – Part 4: Cross-Examination*, New York State Academy of Trial Lawyers, December 1, 2021
- (44) *Anatomy of a Trial, a Trial Skills Series – Part 3: Direct Examination*, New York State Academy of Trial Lawyers, November 3, 2021
- (43) *Anatomy of a Trial, a Trial Skills Series – Part 2: Opening Statements*, New York State Academy of Trial Lawyers, October 6, 2021
- (42) *Anatomy of a Trial, a Trial Skills Series – Part 1: Jury Selection*, New York State Academy of Trial Lawyers, September 10, 2021
- (41) *How to Successfully Litigate a Personal Injury Case Series - Part 7: It's a Wrap!*, New York State Academy of Trial Lawyers, July 7, 2021
- (40) *How to Successfully Litigate a Personal Injury Case Series - Part 6: The Trial*, New York State Academy of Trial Lawyers, June 2, 2021
- (39) *How to Successfully Litigate a Personal Injury Case Series - Part 5: Pre-Trial Disclosures and Gearing up for Trial*, New York State Academy of Trial Lawyers, May 5, 2021
- (38) *How to Successfully Litigate a Personal Injury Case Series - Part 4: Depositions*, New York State Academy of Trial Lawyers, April 7, 2021
- (37) *How to Successfully Litigate a Personal Injury Case Series - Part 3: Your Adversary, the Preliminary Conference and Initial Discovery*, New York State Academy of Trial Lawyers, March 3, 2021
- (36) *How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit*, New York State Academy of Trial Lawyers, February 3, 2021
- (35) *How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File*, New York State Academy of Trial Lawyers, January 6, 2021
- (34) *Brick by Brick: Building a Personal Injury Practice*, New York State Academy of Trial Lawyers, December 10, 2020
- (33) *Working with Experts to Build Your Case*, New York State Academy of Trial Lawyers, October 8, 2020

Andrew J. Smiley, Esq. Curriculum Vitae, Page 6

Continuing Legal Education (CLE) Presentations Continued:

- (32) *Fitness Industry Liability: Gyms, Trainers and Waivers*, The Mentor Esq. Podcast, September 8, 2020
- (31) *Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court*, New York State Academy of Trial Lawyers, June 9, 2020
- (30) *Crisis Management - The Corona Virus Pandemic*, The Mentor Esq. Podcast, April 9, 2020
- (29) *Do You Have a Federal Tort Claims Act Case in Your Office*, New York State Academy of Trial Lawyers, December 10, 2019
- (28) *Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts*, New York State Bar Association, September 9, 2019
- (27) *Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective*, The Defense Association of New York, March 12, 2019
- (26) *Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions*, The Defense Association of New York, January 31, 2019
- (25) *Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018
- (24) *Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017
- (23) *Presenter on Evidence, 2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016
- (22) *Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015
- (21) *Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015
- (20) *Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015
- (19) *Powerful Opening Statements*, Clear Law Institute, January 13, 2015
- (18) *The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014
- (17) *Killer Cross Examination Strategies*, Lawline.com, November 20, 2014
- (16) *Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014
- (15) *Personal Trainer Negligence Update*, Lawline.com, October 14, 2014
- (14) *Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014

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Continuing Legal Education (CLE) Presentations Continued:

- (13) *Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014
- (12) *Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013
- (11) *Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013
- (10) *Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012
- (9) *“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012
- (8) *Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012
- (7) *The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011
- (6) *Personal Trainer Negligence*, Lawline.com, March 22, 2011
- (5) *Trial Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011
Techniques: The Tricks of the Trade, Lawline.com, February 16, 2011
- (4) *Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011
- (3) *Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010
- (2) *Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010
- (1) *Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009

Television Appearances

Fox News Channel

- The O’Reilly Factor
- What’s Happening Now with Martha McCallum
- America’s News Room
- Fox & Friends
- Fox Business Channel
- Neil Cavuto
- Money with Melissa Francis

CNN -Anderson Cooper 360

ET – Entertainment Tonight

Bloomberg TV

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Headline News

Tru TV

Court TV

The Morning Show with Mike and Juliet

Interests, Hobbies:

High Performance Driving Events, Sim Racing, Tennis, Lego, Cooking



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Civil Action No.: : -cv-

-----X
[REDACTED]

Plaintiff,

VERIFIED COMPLAINT

-against-

[REDACTED], and
[REDACTED]

**PLAINTIFF
DEMANDS
TRIAL BY JURY**

Defendants.
-----X

Plaintiff, [REDACTED] by her attorneys, SMILEY & SMILEY, LLP, complaining of the defendants, [REDACTED], hereinafter alleges upon information and belief at all times hereinafter relevant hereto, as follows:

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332, in that this is an action by and between citizens of different States. The amount in controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars as to the plaintiff, exclusive of interests and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events giving rise to the claim occurred in this district.

3. Plaintiff demands a trial by jury on each of the causes of action pleaded herein.

THE PARTIES

4. Plaintiff, [REDACTED] is a citizen of the State of Virginia, domiciled and residing at [REDACTED].

5. Defendant, [REDACTED], (hereinafter referred to as “[REDACTED]”), is a citizen of the State of Ohio, domiciled and residing at [REDACTED].

6. Defendant, [REDACTED], (hereinafter referred to as “[REDACTED]”), is a citizen of the State of New York, domiciled and residing at [REDACTED].

7. Defendant, [REDACTED], (hereinafter referred to as “[REDACTED]”), is a citizen of the State of New York, domiciled and residing at [REDACTED].

FACTS

8. On August 10, 2020 at approximately 3:00 P.M. plaintiff, [REDACTED] and defendant, [REDACTED] were lawfully present at [REDACTED] (hereinafter referred to as “LAKE HOUSE”).

9. On August 10, 2020 defendant, [REDACTED] owned the LAKE HOUSE, which borders Lake Cayuga, a navigable lake, located in New York State.

10. Defendant, [REDACTED] maintained a navigable vessel, specifically a Jet Ski (hereinafter referred to as “JET SKI”) on the premises and for use at the LAKE HOUSE.

11. On August 10, 2020, defendant, [REDACTED] was the registered owner of the JET SKI.

12. On August 10, 2020, defendant, [REDACTED] owned the JET SKI for a period of time greater than thirty days.

13. On August 10, 2020, defendant, [REDACTED] was in possession and control of the JET SKI for a period of time greater than thirty days.

14. On August 10, 2020, defendant, [REDACTED] did not have a New York State Boating License to operate the JET SKI.

15. On August 10, 2020, defendant, [REDACTED] did not complete a New York State Boating Safety Course to operate the JET SKI.

16. On August 10, 2020, defendant, [REDACTED] did operate the JET SKI at the LAKE HOUSE.

17. On August 10, 2020, defendant, [REDACTED] did operate the JET SKI at the LAKE HOUSE solely in a recreational manner and not part of a competitive regatta or boat race.

18. On August 10, 2020, defendant, [REDACTED] operated the JET SKI with the consent, express or implied, of defendant, [REDACTED].

19. On August 10, 2020, defendant, [REDACTED], entrusted the use of the JET SKI to defendant, [REDACTED].

20. On August 10, 2020, defendant, [REDACTED] operated the JET SKI with the consent, express or implied, of defendant, [REDACTED].

21. On August 10, 2020, defendant, [REDACTED], entrusted the use of the JET SKI to defendant, [REDACTED].

22. On August 10, 2020, prior to operating the JET SKI, defendant, [REDACTED] consumed alcohol.

23. On August 10, 2020, defendant, [REDACTED] operated the JET SKI, on Lake Cayuga, with plaintiff, [REDACTED] as the rear passenger on the JET SKI.

24. On August 10, 2020, at approximately 3:00 P.M. defendant, [REDACTED] was operating the JET SKI, on Lake Cayuga, at excessive speeds while plaintiff, [REDACTED] was the rear passenger on the JET SKI.

25. On August 10, 2020 at approximately 3:00 P.M., defendant, [REDACTED] was operating the JET SKI, on Lake Cayuga, while impaired and under the influence of alcohol, while plaintiff was a rear passenger on the JET SKI.

26. On August 10, 2020, while on the JET SKI, despite repeated requests made by

plaintiff for defendant, [REDACTED] to slow down, defendant, [REDACTED] did not comply.

27. As a result of defendant, [REDACTED] s operation of the JET SKI at excessive rates of speed; in a reckless manner; and while intoxicated and impaired, plaintiff, [REDACTED] was violently thrown off the back of the JET SKI sustaining severe, permanent, and catastrophic injuries.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT [REDACTED]

28. Plaintiff, [REDACTED], repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “27”.

29. The defendant, [REDACTED], was negligent in failing to operate the JET SKI with a valid New York State Boating license; in failing to complete a New York State boating safety course prior to the operation of the JET SKI; in operating the JET SKI without proper training; in operating the JET SKI in a reckless manner; in failing to heed warnings from Plaintiff to slow down; in operating the JET SKI at excessive rates of speed; in failing to operate the JET SKI at a reasonable speed; in consuming alcohol prior to operating the JET SKI; in operating the JET SKI while intoxicated and impaired; in causing and permitting an unsafe and hazardous condition; in causing and permitting the plaintiff to enter into a position of danger; in failing to provide warnings to plaintiff while operating the JET SKI; in failing to operate the JET SKI in a careful and prudent manner; and in failing to provide the plaintiff with a safe means of riding on the JET SKI.

30. As a result of defendant, [REDACTED]’s negligent operation of the JET SKI, the plaintiff, [REDACTED] was violently thrown off the back of the JET SKI sustaining severe, permanent, and catastrophic injuries.

31. Plaintiff, [REDACTED], in no way contributed to the foregoing, and her

injuries were due to the negligence and carelessness of the defendant, [REDACTED].

32. By reason of the foregoing, plaintiff, [REDACTED] claims compensatory damages in the amount of FIVE MILLION (\$5,000,000) DOLLARS.

33. Defendant, [REDACTED] acted with willful, wanton, and reckless disregard for the health, welfare and safety of plaintiff, [REDACTED].

34. By reason of the foregoing, plaintiff, [REDACTED], seeks punitive or exemplary damages in the sum of FIFTEEN MILLION (\$15,000,000) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT [REDACTED]

35. Plaintiff, [REDACTED], repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "34".

36. On August 10, 2020, defendant, [REDACTED] operated the JET SKI, without being a holder of a valid New York State boating safety license, certificate, nor did she complete a boating safety course.

37. By reason of the foregoing, defendant, [REDACTED] violated New York State Navigation Law Section 48.

38. By reason of the foregoing, plaintiff, [REDACTED] was violently thrown off the back of the JET SKI sustaining severe, permanent, and catastrophic injuries.

39. By reason of the foregoing, plaintiff, [REDACTED] claims compensatory damages in the amount of FIVE MILLION (\$5,000,000) DOLLARS and punitive or exemplary damages in the sum of FIFTEEN MILLION (\$15,000,000) DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT [REDACTED]

40. Plaintiff, [REDACTED], repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "39".

41. Defendant, [REDACTED] operated the JET SKI at a speed greater than what is reasonable and prudent.

42. By reason of the foregoing, defendant, [REDACTED] violated New York State Navigation Law Section 45.

43. By reason of the foregoing, plaintiff, [REDACTED] was violently thrown off the back of the JET SKI sustaining severe, permanent, and catastrophic injuries

44. By reason of the foregoing, plaintiff, [REDACTED] claims compensatory damages in the amount of FIVE MILLION (\$5,000,000) DOLLARS and punitive or exemplary damages in the sum of FIFTEEN MILLION (\$15,000,000) DOLLARS.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT [REDACTED]

45. Plaintiff, [REDACTED], repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “44”.

46. On August 10, 2020, defendant, [REDACTED] operated the JET SKI while under the influence of alcohol.

47. By reason of the foregoing, defendant, [REDACTED] violated New York State Navigation Law Section 49-a.

48. By reason of the foregoing, plaintiff, [REDACTED] was violently thrown off the back of the JET SKI sustaining severe, permanent, and catastrophic injuries.

49. By reason of the foregoing, plaintiff, [REDACTED] claims compensatory damages in the amount of FIVE MILLION (\$5,000,000) DOLLARS and punitive or exemplary damages in the sum of FIFTEEN MILLION (\$15,000,000) DOLLARS.

AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANT [REDACTED]

50. Plaintiff, [REDACTED], repeats, reiterates and realleges each and every

allegation contained in paragraphs “1” through “49”.

51. On August 10, 2020, defendant, [REDACTED], was the registered owner of the JET SKI.

52. Pursuant to New York State Navigation Law Section 48(1), defendant, [REDACTED], is vicariously liable for the actions of defendant, CHA.

53. By reason of the foregoing, plaintiff, [REDACTED] claims compensatory damages in the amount of FIVE MILLION (\$5,000,000) DOLLARS.

AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANT [REDACTED]

54. Plaintiff, [REDACTED], repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “53”.

55. The defendant, [REDACTED], was negligent in failing to maintain proper possession and custody of the JET SKI; in allowing defendant, [REDACTED] to operate the JET SKI without a valid New York State boating license; in allowing defendant, [REDACTED] to operate the JET SKI without completing a valid New York State boating safety course; in allowing defendant, [REDACTED] to operate the JET SKI despite having consumed alcohol; in failing to train defendant, [REDACTED] how to legally, properly, and safely use the JET SKI; in permitting the JET SKI to be operated in a negligent, careless, and reckless manner; in permitting defendant [REDACTED] to operate the JET SKI at excessive speeds; and in permitting defendant [REDACTED] to operate the JET SKI at a greater rate of speed than care and caution would permit under the circumstances.

56. Defendant, [REDACTED] negligently entrusted the use of the JET SKI to defendant, [REDACTED] an unfit or incompetent person.

57. By reason of the foregoing, the plaintiff, [REDACTED] was violently thrown off the back of the JET SKI sustaining severe, permanent, and catastrophic injuries.

58. Plaintiff, [REDACTED], in no way contributed to the foregoing, and her injuries were due to the negligence and carelessness of the defendant, [REDACTED].

59. By reason of the foregoing, plaintiff, [REDACTED] claims compensatory damages in the amount of FIVE MILLION (\$5,000,000) DOLLARS.

60. Defendant, [REDACTED] acted with willful, wanton, and reckless disregard for the health, welfare and safety of plaintiff, [REDACTED].

61. By reason of the foregoing, plaintiff, [REDACTED] punitive or exemplary damages in the sum of FIFTEEN MILLION (\$15,000,000) DOLLARS.

AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANT [REDACTED]

62. Plaintiff, [REDACTED], repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “61”.

63. Defendant, [REDACTED], maintained custody of the JET SKI and had the exclusive use and control thereof for a period of time greater than thirty days at the LAKE HOUSE prior to August 10, 2020.

64. Defendant, [REDACTED], became a statutory and/or *de facto* owner of the JET SKI pursuant to New York State Navigation Law Section 48(4).

65. By reason of the foregoing, defendant, [REDACTED] became vicariously liable for the actions of defendant, [REDACTED].

66. By reason of the foregoing, plaintiff, [REDACTED] claims compensatory damages in the amount of FIVE MILLION (\$5,000,000) DOLLARS.

AS AND FOR A EIGHTH CAUSE OF ACTION AGAINST DEFENDANT [REDACTED]

67. Plaintiff, [REDACTED], repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “66”.

68. The defendant, [REDACTED], was negligent in failing to maintain proper possession and custody of the JET SKI; in allowing defendant, [REDACTED] to operate the JET SKI without a valid New York State boating license; in allowing defendant, [REDACTED] to operate the JET SKI without passing a valid New York State boating safety course; in allowing defendant, [REDACTED] to operate the JET SKI despite having consumed alcohol; in failing to train defendant, [REDACTED] how to legally, properly, and safely use the JET SKI; in permitting the JET SKI to be operated in a negligent, careless, and reckless manner; in permitting defendant [REDACTED] to operate the JET SKI at excessive speeds; and in permitting defendant [REDACTED] to operate the JET SKI at a greater rate of speed than care and caution would permit under the circumstances.

69. Defendant, [REDACTED] negligently entrusted the use of the JET SKI to defendant, [REDACTED], an unfit or incompetent person.

70. By reason of the foregoing, the plaintiff, [REDACTED] was violently thrown off the back of the JET SKI sustaining severe, permanent, and catastrophic injuries.

71. Plaintiff, [REDACTED], in no way contributed to the foregoing, and her injuries were due to the negligence and carelessness of the defendant, [REDACTED].

72. By reason of the foregoing, plaintiff, [REDACTED] claims compensatory damages in the amount of FIVE MILLION (\$5,000,000) DOLLARS.

73. Defendant, [REDACTED] acted with willful, wanton, and reckless disregard for the health, welfare and safety of plaintiff, [REDACTED].

74. By reason of the foregoing, plaintiff, [REDACTED] claims punitive or exemplary damages in the sum of FIFTEEN MILLION (\$15,000,000) DOLLARS.

WHEREFORE, plaintiff, [REDACTED], demands judgment as follows: Against defendant, [REDACTED], on the First, Second, Third, and Fourth Causes of Action in the sum

of FIVE MILLION (\$5,000,000.00) DOLLARS each for compensatory damages and FIFTEEN MILLION (\$15,000,000) DOLLARS each for punitive damages; Against defendant, [REDACTED], on the Fifth and Sixth Causes of Action in the sum of FIVE MILLION (\$5,000,000.00) DOLLARS each for compensatory damages and FIFTEEN MILLION (\$15,000,000) DOLLARS punitive damages; and Against defendant, [REDACTED], on the Seventh and Eighth Causes of Action in the sum of FIVE MILLION (\$5,000,000.00) DOLLARS each for compensatory damages and FIFTEEN MILLION (\$15,000,000) DOLLARS punitive damages, together with the costs and disbursements of this action.

Dated: New York, New York
June 3, 2021

Yours, etc.,

SMILEY & SMILEY, LLP
Attorneys for Plaintiffs

By:  _____

ANDREW J. SMILEY
122 East 42nd Street, Suite 3900
New York, New York 10168
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New York Consolidated Laws, Navigation Law - NAV § 48. Negligence in use or operation of vessel attributable to owner

1. Every owner of a vessel used or operated upon the navigable waters of the state or any tidewaters bordering on or lying within the boundaries of Nassau and Suffolk counties, shall be liable and responsible for death or injuries to person or property resulting from negligence in the use or operation of such vessel, in the business of such owner, or otherwise, by any person using or operating the same with the permission, express or implied, of such owner.

The use or operation by a non-resident or non-residents of a vessel in this state, or the use or operation in this state of a vessel in the business of a non-resident, or the use or operation in this state of a vessel owned by a non-resident if so used or operated with his permission, express or implied, shall be deemed equivalent to an appointment by such non-resident of the secretary of state to be his true and lawful attorney upon whom may be served the summons in any action against him, growing out of any accident or collision in which such non-resident may be involved while using or operating such vessel in this state or in which such vessel may be involved while being used or operated in this state in the business of such non-resident or with the permission, express or implied, of such non-resident owner; and such use or operation shall be a signification of his agreement that any such summons against him which is so served shall be of the same legal force and validity as if served on him personally within the state and within the territorial jurisdiction of the court from which the summons issues, and that such appointment of the secretary of state shall be irrevocable and binding upon his executor or administrator. Where such non-resident has died prior to the commencement of an action brought pursuant to this section, service of process shall be made on the executor or administrator of such non-resident in the same manner and on the same notice as is provided in the case of the non-resident himself. Where an action has been duly commenced under the provisions of this section against a non-resident who dies thereafter, the court must allow the action to be continued against his executor or administrator upon motion with such notice as the court may deem proper.

2. A summons in an action described in this section may issue in any court in the state having jurisdiction of the subject matter and be served as hereinafter provided. Service of such summons shall be made by mailing a copy thereof to the secretary of state at his office in the city of Albany, or by personally delivering a copy thereof to one of his regularly established offices, with a fee of ten dollars, and such service shall be sufficient service upon such non-resident provided that notice of such service and a copy of the summons and complaint are forthwith sent by or on behalf of the plaintiff to the defendant by registered mail with return receipt requested. The plaintiff shall file with the clerk of the court in which the action is pending, or with the judge or justice of such court in case there be no clerk, an affidavit of compliance herewith, a copy of the

summons and complaint, and either a return receipt purporting to be signed by the defendant or a person qualified to receive his registered mail, in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the defendant or his agent, the original envelope bearing a notation by the postal authorities that receipt was refused, and an affidavit by or on behalf of the plaintiff that notice of such mailing and refusal was forthwith sent to the defendant by ordinary mail. Where the summons is mailed to a foreign country, other official proof of the delivery of the mail may be filed in case the post-office department is unable to obtain such a return receipt. The foregoing papers shall be filed within thirty days after the return receipt or other official proof of delivery or the original envelope bearing a notation of refusal, as the case may be, is received by the plaintiff. Service of process shall be complete ten days after such papers are filed. The return receipt or other official proof of delivery shall constitute presumptive evidence that the summons mailed was received by the defendant or a person qualified to receive his registered mail; and the notation or refusal shall constitute presumptive evidence that the refusal was by the defendant or his agent. Service of such summons also may be made by mailing a copy thereof to the secretary of state at this office in the city of Albany, or by personally delivering a copy thereof to one of his regularly established offices, with a fee of ten dollars, and by delivering a duplicate copy thereof, with the complaint annexed thereto, to the defendant personally without the state by a resident or citizen of the state of New York or a sheriff, under-sheriff, deputy-sheriff or constable of the county or other political subdivision in which the personal service is made, or an officer authorized by the laws of this state, to take acknowledgements of deeds to be recorded in this state, or an attorney and/or counselor at law, solicitor, advocate or barrister duly qualified to practice in the state or country where such service is made, or by a United States marshal or deputy United States marshal. Proof of personal service without the state shall be filed with the clerk of the court in which the action is pending within thirty days after such service. Personal service without the state is complete ten days after proof thereof is filed. The court in which the action is pending may order such extensions as may be necessary to afford the defendant reasonable opportunity to defend the action.

Nothing herein shall be construed as affecting other methods of service of process against non-residents as provided by law.

3. As used in this section "vessel" means a vessel as defined in [section two, subdivision six](#) of this chapter, except a vessel having a valid marine document issued by the United States or a foreign government.

4. As used in this section, "owner" means any person other than a lien holder having the property in or title to a vessel, and also any lessee or bailee having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days, and their liability under this section, shall be joint and several. If a vessel be sold under a contract of conditional sale whereby the title to such vessel remains in the vendor, such vendor or his assignee shall not, after delivery of such vessel, be deemed an owner within the provisions of this section, but the vendee or his assignee, receiving possession thereof, shall be deemed such owner notwithstanding the terms of such

contract, until the vendor or his assignee shall retake possession of such vessel. A chattel mortgagee, conditional vendor, or an entruster as defined by [section fifty-one of the personal property law](#), of any vessel out of possession, shall not be deemed an owner within the provisions of this section.

5. All bonds executed by or policies of insurance issued to the owner of any vessel subject to the provisions of this section shall contain a provision for indemnity or security against the liability and responsibility provided in this section; but this provision shall not be construed as requiring that such a policy include insurance against any liability of the insured, being an individual, for death of or injuries to his or her spouse or injury to property of either.

6. This section shall not be construed to affect any of the rights of an owner under the laws of the United States.



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New York Consolidated Laws, Navigation Law - NAV § 45. Reckless operation of a vessel; speed.

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1. (a) Every master or operator of a vessel shall at all times navigate the same in a careful and prudent manner in such a way as not to unreasonably interfere with the free and proper use of the navigable waters of the state and all tidewaters bordering on or lying within the boundaries of Nassau and Suffolk counties or unreasonably endanger any vessel or person. Reckless operation is prohibited. Any person operating a vessel in violation of this subdivision shall be guilty of a misdemeanor punishable as set forth in [section seventy-three-b](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=Ibd57c) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=Ibd57c>) of this article.

(b) No person shall operate a vessel at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.

1-a. No vessel other than the tending vessel shall be operated within one hundred feet of a red flag with a diagonal white bar which, when displayed on the water or from a boat, indicates underwater diving, or a designated course for racing shells but no such flag shall be placed so as to deny access or use of any boathouse, wharf, harbor, bay, channel or navigable waterway.

2. Except as provided in [section forty-five-cc](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=Ibd5813) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=Ibd5813>) of this part, no vessel shall be operated within one hundred feet of the shore, a dock, pier, raft, float or an anchored or moored vessel at a speed exceeding five miles per hour, unless such vessel is being operated near such shore, dock, float, pier, raft, or anchored vessel for the purpose of enabling a person engaged in water skiing to take off or land.

3. The provisions of this section shall not apply to a vessel while actually competing in a regatta or boat race authorized under [section thirty-four](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=Ibd5813) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=Ibd5813>) of this chapter.

4. The provisions of subdivision two above shall not apply to commercial vessels having a valid marine document issued by the United States or a foreign government.

5. The violation of any of the provisions of this section other than paragraph (a) of subdivision one of this section shall constitute a violation punishable as set forth in [section seventy-three-c](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=Ibd583a) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=Ibd583a>) of this article.

7. ¹ (a) The court may suspend a person's privilege to operate a vessel for a period of at least three but less than twelve months upon conviction for reckless operation of a vessel pursuant to any applicable provision of this article. In determining the length of such suspension, the court may take into consideration the seriousness of the offense and may impose a period of suspension whereby such suspension may be in effect during a portion of the current or subsequent boating season.

(b) The court shall suspend a person's privilege to operate and may suspend a vessel registration:

(1) for a period of at least six but less than twelve months where a person is convicted of reckless operation of a vessel pursuant to any applicable provision of this article after having been convicted of any such offense within the preceding eighteen months. In determining the length of such suspension or suspensions, the court may take into consideration the seriousness of the offense and may impose a period of suspension whereby such suspension may be in effect during a portion of the current or subsequent boating season;

(2) for a period of at least six but less than twelve months upon a third or subsequent conviction for any violation of any law, ordinance or regulation limiting the speed of a vessel or any provision constituted a misdemeanor by this article except for the commission of a third or subsequent misdemeanor as set forth in subparagraph three of this paragraph. In determining the length of such suspension or suspensions, the court may take into consideration the seriousness of the offense and may impose a period of suspension whereby such suspension may be in effect during a portion of the current or subsequent boating season;

(3) for a period of twelve months where a person is convicted of reckless operation of a vessel pursuant to any applicable provision of this article after having been twice convicted of any such offense within the preceding eighteen months.

(c) When a person is convicted pursuant to this article the court may, in any case before the court, and shall when the convicted person is subject to a suspension pursuant to this subdivision, in addition to any other penalties invoked under this article, require the convicted person, as a condition of the sentence, to complete a boating safety course of the state, U.S. Power Squadrons, U.S. Coast Guard Auxiliary, or a powerboating course or courses

offered by the United States sailing association which are approved by the commissioner and show proof of successful completion of such course to the court or its designee.

1 No subd. 6 has been enacted.

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New York Consolidated Laws, Navigation Law - NAV § 49-a. Operation of a vessel while under the influence of alcohol or drugs

Current as of January 01, 2021 | Updated by FindLaw Staff (<https://www.findlaw.com/company/our-team.html>)

1. Definitions. As used in this section, unless the context clearly indicates otherwise:

(a) The term "vessel" shall be every description of watercraft or other artificial contrivance propelled in whole or in part by mechanical power and, which is used or capable of being used as a means of transportation over water, and which is underway and not at anchor or made fast to the shore or ground. The term "vessel" shall include a "public vessel" as defined herein unless otherwise specified.

(b) The term "public vessel" shall mean and include every vessel which is propelled in whole or in part by mechanical power and is used or operated for commercial purposes on the navigable waters of the state; that is either carrying passengers, carrying freight, towing, or for any other use, for which a compensation is received, either directly or where provided as an accommodation, advantage, facility or privilege at any place of public accommodation, resort or amusement.

(c) The term "waters of the state" means all of the waterways or bodies of water located within New York state or that part of any body of water which is adjacent to New York state over which the state has territorial jurisdiction, on which a vessel or public vessel may be used or operated, including Nassau and Suffolk counties.

2. Offenses: criminal penalties. (a) No person shall operate a vessel upon the waters of the state while his or her ability to operate such vessel is impaired by the consumption of alcohol. (1) A violation of this subdivision shall be an offense and shall be punishable by a fine of not less than three hundred dollars nor more than five hundred dollars, or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment. (2) A person who operates a vessel in violation of this subdivision after being convicted of a violation of any subdivision of this section within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than seven hundred fifty dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment. (3) A person who operates a vessel in violation of this subdivision after being convicted two or more times of a violation of any subdivision of this section within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not less than seven hundred fifty dollars nor more than fifteen hundred dollars, or by imprisonment of not more than one hundred eighty days in a penitentiary or county jail or by both such fine and imprisonment.

(b) No such person shall operate a vessel other than a public vessel while he has .08 of one per centum or more by weight of alcohol in his blood, breath, urine, or saliva, as determined by the chemical test made pursuant to the provisions of subdivision seven of this section.

(c) No such person shall operate a public vessel while he has .04 of one per centum or more by weight of alcohol in his blood, breath, urine, or saliva, as determined by the chemical test made pursuant to the provisions of subdivision seven of this section.

(d) No person shall operate a vessel while he is in an intoxicated condition.

(e) No person shall operate a vessel while his ability to operate such vessel is impaired by the use of a drug as defined by [section one hundred fourteen-a of the vehicle and traffic law \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000155&refType=LQ&originatingDoc=ldbdcfA\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000155&refType=LQ&originatingDoc=ldbdcfA).

(f)(1) A violation of paragraph (b), (c), (d) or (e) of this subdivision shall be a misdemeanor and shall be punishable by imprisonment in a penitentiary or county jail for not more than one year, or by a fine of not less than five hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment. (2) A person who operates a vessel in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been convicted of a violation of paragraph (b), (c), (d) or (e) of this subdivision, or of operating a vessel or public vessel while intoxicated or while under the influence of drugs, within the preceding ten years, shall be guilty of a class E felony and shall be punished by a period of imprisonment as provided in the penal law, or by a fine of not less than one thousand dollars nor more than five thousand dollars, or by both such fine and imprisonment. (3) A person who operates a vessel in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been twice convicted of a violation of any of such paragraph (b), (c), (d) or (e) of this subdivision or of operating a vessel or public vessel while intoxicated or under the influence of drugs, within the preceding ten years, shall be guilty of a class D felony and shall be punished by a fine of not less than two thousand dollars nor more than ten thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

3. Privilege to operate a vessel; suspensions. (a) The court shall suspend a person's privilege to operate a vessel and may suspend a vessel registration for:

(1) a period of at least six but less than twelve months where an operator is convicted of a violation of paragraph (a) of subdivision two of this section. In determining the length of such suspension or suspensions, the court may take into consideration the seriousness of the offense and may impose a period of suspension whereby such suspension may be in effect during a portion of the current or subsequent boating season;

(2) a period of twelve months where an operator is convicted of a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section;

(3) a period of twenty-four months where a person is convicted of a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section after having been convicted of a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section or of operating a vessel or public vessel while intoxicated or under the influence of drugs within the preceding ten years.

(b) The court shall report each conviction recorded pursuant to this section to the commissioner of motor vehicles and the commissioner of parks, recreation and historic preservation on forms provided by the department of motor vehicles. Such reports shall include the length of any suspension imposed on the privilege to operate a vessel and any suspension imposed against a vessel registration. The department of motor vehicles shall maintain a record of all convictions and suspensions in order to effectuate the provisions of this section.

4. (a) Operation of vessel while operating privileges have been suspended. No person shall operate a vessel upon the waters of the state while operating privileges have been suspended pursuant to this section or [section forty-nine-b \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=ldbbcbB\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=ldbbcbB) of this article. A violation of the provisions of this paragraph shall be a violation and shall be punishable by a fine of not less than three hundred fifty dollars nor more than seven hundred fifty dollars or by imprisonment for a period of not more than ninety days, or by both such fine and imprisonment.

(b) A person who is in violation of the provisions of paragraph (a) of this subdivision, and in addition is in violation of the provisions of any paragraph of subdivision two of this section arising out of the same incident, shall be guilty of a misdemeanor punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by a period of imprisonment for a period of not more than one year or by both such fine and imprisonment.

5. Sentencing limitations. Notwithstanding any provision of the penal law, no judge or magistrate shall impose a sentence of unconditional discharge for a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section nor shall he or she impose a sentence of conditional discharge unless such conditional discharge is accompanied by a sentence of a fine as provided in this section.

5-a. Sentencing; previous convictions. When sentencing a person for a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section pursuant to subparagraph two of paragraph (f) of subdivision two of this section, the court shall consider any prior convictions the person may have for a violation of [subdivision two, two-a three, four, or four-a of section eleven hundred ninety-two of the vehicle and traffic law \(https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000155&refType=SP&originatingDoc=ldbbd24)

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6. Arrest and testing. (a) Notwithstanding the provisions of [section 140.10 of the criminal procedure law \(https://1.next.westlaw.com/Link/Document/FullText?](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000066&refType=LQ&originatingDoc=ldbbd24)

[findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000066&refType=LQ&originatingDoc=ldbbd24](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000066&refType=LQ&originatingDoc=ldbbd24) a police officer may, without a warrant, arrest a person, in case of a violation of any paragraph of subdivision two of this section, if such violation is coupled with an accident or collision in which such person is involved, which in fact had been committed, though not in the police officer's presence, when he has reasonable cause to believe that the violation was committed by such person. For the purposes of this subdivision police officer shall also include a peace officer authorized to enforce this chapter when the alleged violation constitutes a crime.

(b) Breath test for operators of vessel. Every person operating a vessel on the waters of the state which has been involved in an accident or which is operated in violation of any of the provisions of this section which regulate the manner in which a vessel is to be properly operated while underway shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision seven of this section. For the purposes of this section, a vessel is being "operated" only when such vessel is underway and is being propelled in whole or in part by mechanical power.

7. Chemical tests. (a) Any person who operates a vessel on the waters of the state shall be requested to consent to a chemical test of one or more of the following: breath, blood, urine, or saliva for the purpose of determining the alcoholic or drug content of his blood, provided that such test is administered at the direction of a police officer: (1) having reasonable cause to believe such person to have been operating in violation of this subdivision or paragraph (a), (b), (c), (d) or (e) of subdivision two of this section and within two hours after such person has been placed under arrest for any such violation or (2) within two hours after a breath test as provided in paragraph (b) of subdivision six of this section indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member.

(b) If such person having been placed under arrest (b) or after a breath test indicates the presence of alcohol in the person's system and having thereafter been requested to submit to such chemical test and having been informed that the person's privilege to operate a vessel shall be immediately suspended for refusal to submit to such chemical test or any portion thereof, whether or not the person is found guilty of the charge for which such person is arrested, refuses to submit to such chemical test or any portion thereof, unless a court order has been granted pursuant to subdivision eight of this section, the test shall not be given and a written report of such refusal shall be immediately made by the police officer before whom such refusal was made. Such report may be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to [section 210.45 of the penal law \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbd\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbd), and such form notice together with the subscription of the deponent shall constitute a verification of the report. The report of the police officer shall set forth reasonable grounds to believe such arrested person to have been operating a vessel in violation of any paragraph of subdivision two of this section, that said person had refused to submit to such chemical test, and that no chemical test was administered pursuant to the requirements of subdivision eight of this section. The report shall be presented to the court upon the arraignment of the arrested person. The privilege to operate a vessel shall, upon the basis of such written report, be temporarily suspended by the court without notice pending the determination of a hearing as provided herein. Copies of such report must be transmitted by the court to the commissioner of parks, recreation and historic preservation and the commissioner of motor vehicles and such transmittal may not be waived even with the consent of all the parties. Such report shall be forwarded to each commissioner within forty-eight hours of such arraignment. The court shall provide such person with a hearing date schedule, a waiver form, and such other information as may be required by the commissioner of motor vehicles. If a hearing, as provided for in paragraph (c) of this subdivision, is waived by such person, the commissioner of motor vehicles shall immediately suspend the privilege to operate a vessel, as of the date of receipt of such waiver in accordance with the provisions of paragraph (d) of this subdivision.

(c) Any person whose privilege to operate a vessel has been suspended pursuant to paragraph (b) of this subdivision is entitled to a hearing in accordance with a hearing schedule to be promulgated by the commissioner of motor vehicles. If the department fails to provide for such hearing fifteen days after the date of the arraignment of the arrested person, the privilege to operate a vessel of such person shall be reinstated pending a hearing pursuant to this section. The hearing shall be limited to the following issues: (1) did the police officer have reasonable cause to believe that such person had been operating a vessel in violation of any paragraph of subdivision two of this section; (2) did the police officer make a lawful arrest of such person; (3) was such person given sufficient warning, in clear or unequivocal language, prior to such refusal that such refusal to submit to such chemical test or any portion thereof, would result in the immediate suspension of such person's privilege to operate a vessel whether or not such person is found guilty of the charge for which the arrest was made; and (4) did such person refuse to submit to such chemical test or any portion thereof. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles, finds on any one of said issues in the negative, the hearing officer shall immediately terminate any suspension arising from such refusal. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles finds all of the issues in the affirmative, such officer shall immediately suspend the privilege to operate a vessel in accordance with the provisions of paragraph (d) of this subdivision. A person who has had the privilege to operate a vessel suspended pursuant to this subdivision may appeal the findings of the hearing officer in accordance with the provisions of article three-A of the vehicle and traffic law. Any person may waive the right to a hearing under this section. Failure by such person to appear for the scheduled hearing shall constitute a waiver of such hearing, provided, however, that such person may petition the commissioner of motor vehicles for a new hearing which shall be held as soon as practicable.

(d)(1) Any privilege to operate a vessel which has been suspended pursuant to paragraph (c) of this subdivision shall not be restored for six months after such suspension. However, no such privilege shall be restored for at least one year after such suspension in any case where the person was under the age of twenty-one at the time of the offense, has had a prior suspension resulting from refusal to submit to a chemical test pursuant to this subdivision or [subdivision six of section forty-nine-b \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=SP&originatingDoc=ldbbd\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=SP&originatingDoc=ldbbd)

[B\) of this article, or has been convicted of a violation of any paragraph of subdivision two of this section not arising out of the same incident, within the five years immediately preceding the date of such suspension; provided, however, a prior finding that a person under the age of twenty-one has refused to submit to a chemical test pursuant to such \[subdivision six of section forty-nine-b \\(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=SP&originatingDoc=ldbbd\\)\]\(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=SP&originatingDoc=ldbbd\) of this article shall have the same effect as a prior finding of a refusal pursuant to this subdivision solely for the purpose of determining the length of any suspension required to be imposed under any provision of this article, provided that the subsequent offense or refusal is committed or occurred prior to the expiration of the retention period for such prior refusal as set forth in \[paragraph \\(k\\) of subdivision one of section two hundred one of the vehicle and traffic law \\(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000155&refType=SP&originatingDoc=ldbbd\\)\]\(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000155&refType=SP&originatingDoc=ldbbd\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=SP&originatingDoc=ldbbd)

Notwithstanding any provision of this paragraph to the contrary, any privilege to operate a vessel which has been suspended pursuant to paragraph (c) of this subdivision, where the person was under the age of twenty-one at the time of the refusal, and such person under the age of twenty-one

(c) or this subdivision, where the person was under the age of twenty-one at the time of the refusal, and such person under the age of twenty-one has a prior finding, conviction or youthful offender adjudication resulting from a violation of this section or [section forty-nine-b](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=ldbbx) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000111&refType=LQ&originatingDoc=ldbbx>).

(d) of this article, not arising from the same incident, shall not be restored for at least one year or until such person reaches the age of twenty-one years, whichever is the greater period of time.

(2) Any person whose privilege to operate a vessel is suspended pursuant to the provisions of this subdivision shall also be liable for a civil penalty in the amount of two hundred dollars except that if such suspension is a second or subsequent suspension pursuant to this subdivision issued within a five year period, or such person has been convicted of a violation of any paragraph of subdivision two of this section within the past five years not arising out of the same incident, the civil penalty shall be in the amount of five hundred dollars. The privilege to operate a vessel shall not be restored to such person unless such penalty has been paid. The first one hundred dollars of each penalty collected by the department of motor vehicles pursuant to the provisions of this subdivision shall be paid to the commissioner of motor vehicles for deposit to the general fund and the remainder of all such penalties shall be paid to the commissioner of parks, recreation and historic preservation for deposit in the "I Love NY Waterways" boating safety fund established pursuant to [section ninety-seven-nn of the state finance law](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000138&refType=LQ&originatingDoc=ldbbx) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000138&refType=LQ&originatingDoc=ldbbx>).

(e) The commissioner of motor vehicles in consultation with the commissioner of parks, recreation and historic preservation shall promulgate such rules and regulations as may be necessary to effectuate the provisions of this subdivision.

(f) Evidence of a refusal to submit to such chemical test shall be admissible in any trial, proceeding or hearing based upon a violation of the provisions of this section, but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and that the person persisted in his or her refusal.

(g) Upon the request of the person tested, the results of such test shall be made available to him or her.

8. Compulsory chemical tests. (a) Notwithstanding the provisions of subdivision seven of this section, no person who operates a vessel in the waters of this state may refuse to submit to a chemical test of one or more of the following: breath, blood, urine or saliva, for the purpose of determining the alcoholic and/or drug content of the blood when a court order for such chemical test has been issued in accordance with the provisions of this subdivision.

(b) Upon refusal by any person to submit to a chemical test or any portion thereof as described in paragraph (a) of this subdivision, the test shall not be given unless a police officer or a district attorney, as defined in [subdivision thirty-two of section 1.20 of the criminal procedure law](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000066&refType=SP&originatingDoc=ldbbx) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000066&refType=SP&originatingDoc=ldbbx>), requests and obtains a court order to compel a person to submit to a chemical test to determine the alcoholic or drug content of the person's blood upon a finding of reasonable cause to believe that:

(1) such person was the operator of a vessel and in the course of such operation a person other than the operator was killed or suffered serious physical injury as defined in [section 10.00 of the penal law](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbx) (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbx>);

(2)(i) either such person operated the vessel in violation of any paragraph of subdivision two of this section, or

(ii) a breath test administered by a police officer in accordance with subdivision six of this section indicates that alcohol has been consumed by such person; and

(3) such person has been placed under lawful arrest; and

(4) such person has refused to submit to a chemical test or any portion thereof, requested in accordance with the provisions of subdivision seven of this section or is unable to give consent to such a test.

(c) For the purpose of this subdivision "reasonable cause" shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was operating a vessel in violation of any paragraph of subdivision two of this section. Such circumstances may include, but are not limited to: evidence that the operator was operating a vessel in violation of any provision of this chapter which regulates the manner in which a vessel is to be properly operated while underway at the time of the incident; any visible indication of alcohol or drug consumption or impairment by the operator; any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a vessel while impaired by the consumption of alcohol or drugs or was intoxicated at the time of the incident.

(d)(1) An application for a court order to compel submission to a chemical test or any portion thereof, may be made to any supreme court justice, county court judge or district court judge in the judicial district in which the incident occurred, or if the incident occurred in the city of New York,

county court judge or district court judge in the judicial district in which the incident occurred, or if the incident occurred in the city of New York before any supreme court justice or judge of the criminal court of the city of New York. Such application may be communicated by telephone, radio or other means of electronic communication, or in person.

(2) The applicant must provide identification by name and title and must state the purpose of the communication. Upon being advised that an application for a court order to compel submission to a chemical test is being made, the court shall place under oath the applicant and any other person providing information in support of the application as provided in subparagraph three of this paragraph. After being sworn the applicant must state that the person from whom the chemical test was requested was the operator of a vessel and in the course of such operation a person, other than the operator, has been killed or seriously injured and, based upon the totality of circumstances, there is reasonable cause to believe that such person was operating a vessel in violation of any paragraph of subdivision two of this section and, after being placed under lawful arrest such person refused to submit to a chemical test or any portion thereof, in accordance with the provisions of this section or is unable to give consent to such a test or any portion thereof. The applicant must make specific allegations of fact to support such statement. Any other person properly identified, may present sworn allegations of fact in support of the applicant's statement.

(3) Upon being advised that an oral application for a court order to compel a person to submit to a chemical test is being made, a judge or justice shall place under oath the applicant and any other person providing information in support of the application. Such oath or oaths and all of the remaining communication must be recorded, either by means of a voice recording device or verbatim stenographic or verbatim longhand notes. If a voice recording device is used or a stenographic record made, the judge must have the record transcribed, certify to the accuracy of the transcription and file the original record and transcription with the court within seventy-two hours of the issuance of the court order. If the longhand notes are taken, the judge shall subscribe a copy and file it with the court within twenty-four hours of the issuance of the order.

(4) If the court is satisfied that the requirements for the issuance of a court order pursuant to the provisions of paragraph (b) of this subdivision have been met, it may grant the application and issue an order requiring the accused to submit to a chemical test to determine the alcoholic and/or drug content of his blood and ordering the withdrawal of a blood sample in accordance with the provisions of subdivision nine of this section. When a judge or justice determines to issue an order to compel submission to a chemical test based on an oral application, the applicant therefor shall prepare the order in accordance with the instructions of the judge or justice. In all cases the order shall include the name of the issuing judge or justice, the name of the applicant, and the date and time it was issued. It must be signed by the judge or justice if issued in person, or by the applicant if issued orally.

(5) Any false statement by an applicant or any other person in support of an application for a court order shall subject such person to the offenses for perjury set forth in article two hundred ten of the penal law.

(e) An order issued pursuant to the provisions of this subdivision shall require that a chemical test to determine the alcoholic and/or drug content of the operator's blood must be administered. The provisions of paragraphs (a), (b) and (c) of subdivision nine of this section shall be applicable to any chemical test administered pursuant to this section.

(f) A defendant who has been compelled to submit to a chemical test pursuant to the provisions of this subdivision may move for the suppression of such evidence in accordance with article seven hundred ten of the criminal procedure law on the grounds that the order was obtained and the test administered in violation of the provisions of this subdivision or any other applicable law.

9. Testing procedures. (a) At the request of a police officer, the following persons may withdraw blood for the purpose of determining the alcohol or drug content therein: (1) a physician, a registered professional nurse or a registered physician's assistant; or (2) under the supervision and at the direction of a physician: a medical laboratory technician or medical technologist as classified by civil service; a phlebotomist; an advanced emergency medical technician as certified by the department of health, or a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the public health law. This limitation shall not apply to the taking of a urine, saliva or breath specimen.

(b) No person entitled to withdraw blood pursuant to paragraph (a) of this subdivision or hospital employing such person and no other employer of such person shall be sued or held liable for any act done or omitted in the course of withdrawing blood at the request of a police officer or peace officer acting pursuant to his special duties pursuant to this subdivision.

(c) Any person who may have a cause of action arising from the withdrawal of blood as aforesaid, for which no personal liability exists under paragraph (b) of this subdivision, may maintain such action against the state if the person entitled to withdraw blood pursuant to paragraph (a) of this subdivision acted at the request of a police officer or peace officer acting pursuant to his special duties, employed by the state, or against the appropriate political subdivision of the state if the person acted at the request of a police officer or peace officer acting pursuant to his special duties, employed by a political subdivision of the state. No action shall be maintained pursuant to this paragraph unless notice of claim is duly filed or served in compliance with law.

(d) Notwithstanding the foregoing provisions of this subdivision, an action may be maintained by the state or a political subdivision thereof against a person entitled to withdraw blood pursuant to paragraph (a) of this subdivision or hospital employing such person for whose act or omission the state or the political subdivision has been held liable under this subdivision to recover damages, not exceeding the amount awarded to the claimant, that may have been sustained by the state or the political subdivision by reason of gross negligence on the part of such person entitled to withdraw blood.

(e) The testimony of any person, other than a physician, entitled to draw blood pursuant to paragraph (a) of this subdivision in respect to any such withdrawal of blood made by him may be received in evidence with the same weight, force and effect as if such withdrawal of blood were made by a physician.

(f) The provisions of paragraphs (b), (c) and (d) of this subdivision shall also apply with regard to any person employed by a hospital as security personnel for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to a court order in accordance with this subdivision.

(g) The person tested shall be permitted to choose a physician to administer a chemical test in addition to the one administered at the direction of the police officer.

10. Chemical test evidence. (a) Upon the trial of any such action or proceeding arising out of actions alleged to have been committed by any person arrested for a violation of any paragraph of subdivision two of this section, the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as shown by a test administered pursuant to the provisions of subdivision seven or eight of this section.

(b) The following effect shall be given to evidence of blood alcohol content, as determined by such tests, of a person arrested for a violation of any paragraph of subdivision two of this section and who was operating a vessel other than a public vessel:

(1) evidence that there was .05 of one per centum or less by weight of alcohol in such person's blood shall be prima facie evidence that the ability of such person to operate a vessel was not impaired by the consumption of alcohol, and that such person was not in an intoxicated condition.

(2) evidence that there was more than .05 of one per centum but less than .07 of one per centum of weight in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be relevant evidence but not be given prima facie effect, in determining whether the ability of such person to operate a vessel was impaired by the consumption of alcohol.

(3) evidence that there was .07 of one per centum or more but less than .08 of one per centum by weight of alcohol in his blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be given prima facie effect in determining whether the ability of such person to operate a vessel was impaired by the consumption of alcohol.

(c) Evidence of a refusal to submit to a chemical test or any portion thereof shall be admissible in any trial or hearing provided the request to submit to such a test was made in accordance with the provisions of subdivision seven of this section.

11. Limitations. (a) A vessel operator may be convicted of a violation of paragraphs (a), (b), (d) and (e) of subdivision two of this section, notwithstanding that the charge laid before the court alleged a violation of paragraph (b), (d) or (e) of subdivision two of this section, and regardless of whether or not such condition is based on a plea of guilty.

(b) In any case wherein the charge laid before the court alleges a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of one of the paragraphs of such subdivision two and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney upon reviewing the available evidence determines that the charge of a violation of subdivision two of this section is not warranted, he may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge.

12. Suspension pending prosecution. (a) Without notice, pending any prosecution, the court may suspend the right to operate a vessel where the vessel operator has been charged with vehicular assault in the second degree or vehicular manslaughter in the second degree as defined, respectively, in sections 120.03 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbfb>)

and 125.12 of the penal law (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbfb>)

and there exists reasonable cause to believe that the accused operated a vessel in violation of section 120.03 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbfb>)

(b) A suspension under this subdivision shall occur no later than twenty days after the vessel operator's first appearance before the court on the charges or at the conclusion of all proceedings required for the arraignment, whichever comes first. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000066&refType=LQ&originatingDoc=ldbbfb>)

and there exists reasonable cause to believe that the accused operated a vessel in violation of section 120.03 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbfb>)

or 125.12 of the penal law (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbfb>)

and there exists reasonable cause to believe that the accused operated a vessel in violation of section 120.03 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbfb>)

At such time the operator shall be entitled to an opportunity to make a statement regarding the enumerated issues and to present evidence tending to rebut the court's findings. Where such suspension is imposed upon such pending charge and the operator has requested a hearing pursuant to article one hundred eighty of the criminal procedure law, the court shall conduct such hearing. If upon completion of the hearing, the court fails to find that

New York Consolidated Laws, Navigation Law - NAV § 49-a | FindLaw <https://codes.findlaw.com/ny/navigation-law/nav-sect-49-a/>
there is reasonable cause to believe that the operator committed a felony under section 120.03 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbfb>)
or 125.12 of the penal law (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000115&refType=LQ&originatingDoc=ldbbfb>)
the court shall promptly direct restoration of such operating privileges to the operator unless such operating privileges are suspended or revoked pursuant to any other provision of this chapter.

13. Boating safety course. Upon the conviction of any subdivision of this section, the court shall, in addition to any other penalties invoked under this section, require the convicted person, as a condition of the sentence, to complete a boating safety course of the state, U.S. Power Squadrons, U.S. Coast Guard Auxiliary or a powerboating course or courses offered by the United States sailing association which are approved by the commissioner and show proof of successful completion of such course to the court or its designee.

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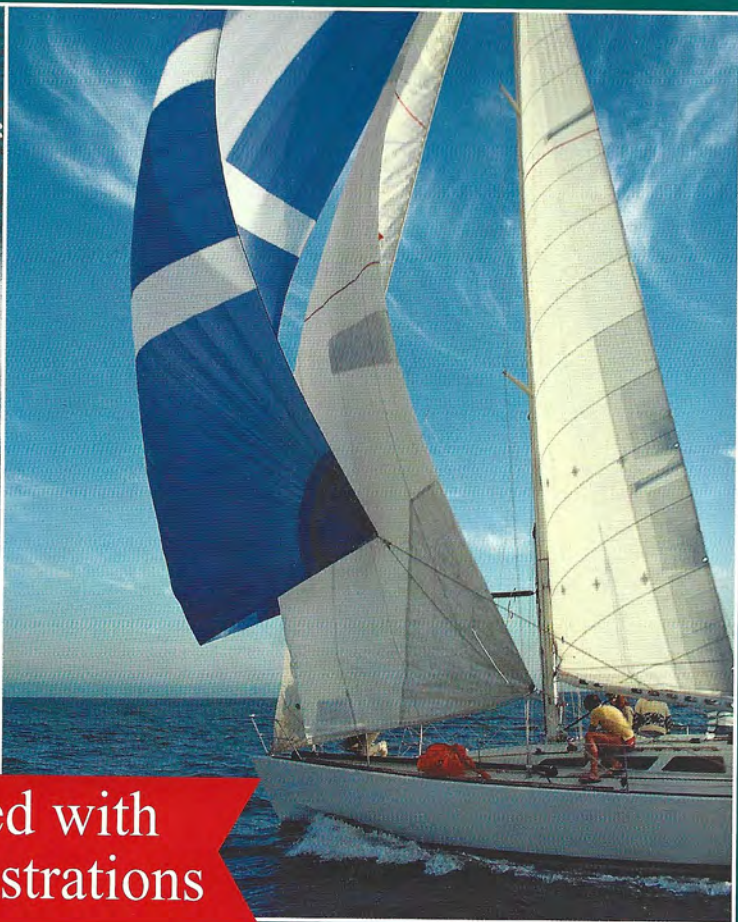
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Figure 2-05 All personal watercraft, PWCs, are considered to be "boats" or "vessels" and subject to all laws and regulations covering such craft.

In this Act, the word "vessel" includes every description of watercraft, other than a seaplane, that can be used as a means of transportation on the water; see **Figure 2-05**. The term "boat" is limited to the following categories of vessels:

Those manufactured or used primarily for noncommercial use.

Those leased, rented, or chartered to another for the latter's noncommercial use.

Those engaged in the carrying of six or fewer passengers for hire.

The distinction between "vessels" and "boats" is necessary because certain sections of the FBSA/71 (notably those dealing with safety standards and equipment) pertain *only* to the category called "boats." Other sections (those dealing with numbering) pertain to a broader category—all undocumented vessels equipped with propulsion machinery. Still other provisions (the prohibition of negligent operation) pertain to *all* vessels. Note that there is *no upper size limit* in the definition of "boat" as used in the FBSA/71.

Despite its general aim toward regulating non-commercial boats and boating, craft carrying six or fewer passengers for hire (see the "passengers for hire" definition on pages 77–78 are included,

because these are not covered by the laws for vessels carrying more than six passengers for hire. Livery and charter boats are included in the FBSA/71 because their operation is closely akin to noncommercial recreational use even though they are a part of a commercial enterprise.

The term "associated equipment" means:

- Any system, part, or component of a boat as originally manufactured, or as sold for replacement, repair, or improvement of a boat.
- Any accessory or equipment for, or appurtenance to, a boat.
- Any marine safety article, accessory, or equipment intended for use by a person on a boat.

The word "State" means a State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

Applicability

The FBSA/71 applies to vessels and associated equipment used, or to be used, or carried on vessels on waters subject to the jurisdiction of the United States. This Act *also* applies to every vessel owned in a "State" and *used on the high*

Jet-drive craft have no steering capability if there is no jet discharging. Reverse is achieved by lowering a deflector or “clam shell” to divert the flow of water forward. If done suddenly on a small boat, it stops the boat in its own length—a maneuver that should not be done at high speed because of possible injuries to the operator and any passengers, and/or somersault of the light craft. Because there is no gearbox, shifting from forward to reverse at any speed does not overload the engine—only the direction of the external water stream is altered in stopping or reversing. The pivot point of a light displacement jet boat can be as little as two feet forward of the jet nozzle. Without rudder or lower unit drag, sharp turns can be made; it is possible to reverse course in little more than the boat’s length. Getting into a tight space at a pier can be accomplished by using short bursts of power alternatively in forward and reverse.

Jet-drive boats with the best handling characteristics are those designed specifically for this means of propulsion. Their hulls are designed to ensure that the aerated water from the bow wave

does not enter the jet, thus avoiding the creation of slip and minimizing power loss.

Personal Watercraft

A personal watercraft (PWC) is a common introduction to boating for young people. Because such craft sometimes use the same waters as other powerboats, it is important that boaters be informed about their use and about how to avoid collision.

A personal watercraft is classified by the U.S. Coast Guard as a “Class A Inboard Boat” and is subject to the same laws and requirements as conventional boats. Under the Navigation Rules, there is no difference between operating a PWC and any other craft. You are operating a highly maneuverable type of boat but you have the same privileges and obligations as the operator of any other vessel. A proper lookout all around is constantly required. With no navigation lights installed, *a PWC may not be used after dark.*

Remember that both the owner and the skipper are responsible for the safety of

Personal Watercraft Operation: Do's & Don'ts

- Do know how to swim, but always wear a PFD. Always attach the throttle safety lanyard to your vest before starting the engine.
- Do go slowly until you are in a clear area.
- Do make sure you can be seen at all times.
- Do have available an up-to-date chart of the waters where you are intending to go boating.
- Do check for, and obey, “no wake” signs.
- Do look behind you for traffic as you prepare for each turn.
- Do keep a substantial distance between your watercraft and every other person or craft in or on the water.
- Do avoid ship channels whenever possible; if absolutely necessary, cross them vigilantly and quickly.
- Do operate courteously. Showing

respect to others will help maintain a high public regard for your sport. Keep in mind that only a few irresponsible operators can lead to restrictive local regulations that may reduce your chances to fully enjoy your craft.

• Do slow down and be extra cautious on your way home. Numerous studies have shown that fatigue caused by the glare, motion, noise, and vibration during a day on the water will reduce your reactions to nearly the same level as if you were legally intoxicated.

- Do *not* speed in congested areas.
- Do *not* speed in fog or stormy conditions.
- Do *not* come too close to another vessel.
- Do *not* engage in wake-jumping—crossing close astern of larger boats underway.

everyone on board, as well as any damage that may occur from the PWC's wake—an important consideration when lending or borrowing such a craft. Manufacturers recommend that no privately owned PWC be operated by anyone below the age of 14 or rented to anyone below the age of 16. There may be state or local age restrictions; these will vary from one jurisdiction to another.

WATERSKIING

Since every boater is likely to encounter waterskiers at one time or another while underway—or to participate in the sport—a mention of waterskiing is relevant in terms of safety. This brief coverage of the subject is intended to help the boater anticipate dangerous situations and to respond quickly and effectively.

The Boat

Waterskiing doesn't require a large boat with a high-powered engine. Although tournament and show skiers use very sophisticated equipment, the average skier can use the family boat, whether outboard, inboard, or stern-drive. Although it is possible to ski behind a boat as small as a personal watercraft—and even behind an inflatable with a 20-hp (14.7 kW) engine—the normal length is 14 to 20 feet (4.3 to 6.1 m). It is generally accepted, though, that 75 hp (55 kW) is approximately the minimum size for a tow motor. The most important factor is the size of the engine: It must be more powerful than the required minimum for the activity. Otherwise, the waterskiing can overload the motor, reducing its useful lifespan.

When pulling skiers, it is important to maintain constant speed—ideally using a speedometer and/or a tachometer to ensure that the engine won't exceed its maximum rpm. To achieve maximum efficiency when towing skiers, using a smaller pitch propeller will help to keep the power to its maximum in the ranges of speed used. Top-end speed may be lower but acceleration will be better. For the best steering capability, the towline for the skier should be fastened

to a high point well forward of the transom on a post called a "pylon"; alternatively, a bridle can be attached at two points through-bolted on the stern. Never tie to one corner only, as this could cause a small boat to upset and greatly hinder maneuverability on larger boats.

Since verbal communication between the skier and the boat's crew is difficult if not impossible, it is essential that a universally accepted group of signals be used. Using the observer as a intermediate to the driver, the skier is able to communicate his wishes by these gestures, shown below; see **Figure 7-54**.

Safe Waterskiing: Do's & Don'ts

- Do learn good swimming skills. This is important for the skier and for the boat's crew.
- Do wear a PFD that is secure, durable, and is not too bulky or awkward.
- Do familiarize yourself with safe boating procedures. Although most boating fatalities result from collision, capsizing, or falls overboard, with personal watercraft and waterskiing, falling overboard is often considered part of the fun; be prepared with a flotation jacket or belt.

The Skier

- Do learn about waterskiing from a qualified instructor.
- Do make yourself visible if you fall in waters where traffic exists. Hold a ski halfway up to alert boats nearby.
- Do *not* put any part of your body through the bridle or place the handle behind the neck or knees. A fall in this position has the potential for serious injury.
- Do insist on having a competent observer in addition to the driver—someone who is appointed to watch the skier at all times and report to the driver of the boat. That observer should be able to physically assist the skier in case of need. Above all, the lookout should remember that objects and other boats present the greatest danger. Be aware that an observer is a legal requirement in most states.
- Do *not* dry land at a dock or beach. Any error in judgment could result in an injury.



Although boating is not an inherently unsafe activity, there are many actions that can make it safe and carefree without spoiling its enjoyment. Good seamanship begins with knowledge and use of safe practices in all aspects of boating. For the skipper, this includes knowing his duties and responsibilities, as well as having an understanding of the construction of boats, their equipment, operation, and maintenance. While not allowing it to detract from his enjoyment of boating, the wise operator practices safety at all times while afloat and studies it frequently ashore. He recognizes the importance of safety, and it is always in the back of his mind. He views safety not as an arbitrary set of rules, but as the practical application of special knowledge and common sense.

Most boating accidents and difficulties arise from ignorance and could have been avoided. A person does not knowingly put his life, and the lives of others, and the safety of valuable property in jeopardy, but he may do so through lack of knowledge.

DUTIES & RESPONSIBILITIES OF THE SKIPPER

As the skipper you are responsible for the safety of your boat and the people on board. You are also responsible for the safety of nearby craft and the people on them, for swimmers and water-skiers in your vicinity, and anyone else who might be affected by your boat's course or wake. This

Previous Page: Figure 11-01 At least one person on board other than the skipper should be fully capable of sending a distress message, recovering a person who falls overboard, or returning the boat to port should the skipper become incapacitated.

applies to all sizes of boats, on all waters, and at all times. One of the challenges of boating is accepting this responsibility without letting it detract from your enjoyment of boating.

Leadership

Leadership and discipline are subjects rarely considered by recreational boaters but they are valuable assets, particularly should an emergency occur.

Discipline means prompt and cheerful obedience to laws and regulations designed primarily for safety. It also means a square deal to shipmates; the skipper who expects discipline of his crew must likewise discipline himself.

Discipline does not mean a long string of commands with a crew constantly scurrying about the deck. There can be discipline on board the smallest craft without there being any apparent show of it. Real discipline is a function of leadership and leadership can be exercised in casual clothing on any boat. If you establish your authority as the leader and delegate with tact, each outing on your boat can be both fun and safe.

Leadership is based on three things: (1) each skipper must know himself, his abilities, and his limitations; (2) he must know his job, know it so well that he doesn't have to think about the details of doing it; (3) he must know his crew and his boat and what he can reasonably expect of them in an emergency.

Foresight

Next to leadership comes forehandedness or foresightedness. A first-class skipper doesn't wait for an emergency to arise; he has already formulated solutions to any emergency he may face. "Plan ahead" is one of the best pieces of advice you can be given in boating.

Even the most experienced skipper will admit that he has at times been fooled by unexpected effects of wind or current or by engine failure. Dangerous situations can develop with great suddenness—so even when all looks well, watch out! You should have an answer to every threat, and a plan to take you out of every danger.

Vigilance

Next in importance is vigilance. As skipper, you must see intelligently all that comes within your vision, outside and inside the boat. And your vigilance must extend beyond this to foreseeing situations as well. An aircraft pilot's rule that he must be able to get into alternate fields as well as the airport of his destination holds equal meaning for the boat skipper, too.

You must be able to concentrate—distractions such as loud music or rowdy passengers must not be allowed to divert your attention from your important tasks. Maintain a safety consciousness at all times.

Common Sense

One more checkpoint: common sense. The successful skipper has a sense of proportion and of the fitness of things. We can all recall cases where through lack of common sense, we did things that later looked rather ridiculous. Use your head!

Check of Equipment

Before you get any boat underway, check to see if it is really ready to go. Not only should all equipment required by law (Chapters 2 and 3) be on board and in proper condition for use, but all navigational and other equipment should be at hand. Check water and fuel tanks, inspect ground tackle, check stores, and complete all those other small jobs that can be done easily at the mooring or safe in a slip, but not underway in an emergency.

Prepare a "predeparture checklist" (see page 377) and keep it updated. Don't trust to memory or routine to ensure that *everything* necessary is on board—have a list and use it.

Physical Condition of the Skipper

Also relevant to a boat's safe operation is the physical condition of its skipper. The constant

vigil that is necessary requires his complete possession of his faculties and a sense of physical well-being. Except in cases of extreme emergency, no skipper should expose his boat or his people to danger unless he is in good physical and mental condition.

Although the partaking of alcoholic beverages is commonly a part of many boating activities, the prudent skipper abstains while underway or when getting underway is anticipated in the next few hours. Alcohol adversely affects memory, balance, night vision, and muscular coordination; tests have shown that effects of sun and wind encountered in boating tend to aggravate these effects. Think before you drink—especially when boating.

Avoiding Risk

Do not permit any of your crew or guests to take needless risks. If someone must do a dangerous job that could result in his being swept overboard insist that he wear a life jacket—an approved PFD.

Carefully observe the current weather and check the forecast before getting underway. If the weather doesn't look good, stay in port until conditions improve. A day on the water is not worth the risk of your boat or a life.

Acting Moderately

A major part of common sense is acting moderately. Make all changes of course and speed with moderation. Don't accelerate from a stop or slow speed so abruptly as to possibly cause other persons on board discomfort or injury. Full-throttle starts are not necessary, except perhaps for getting a water-skier up and going. Likewise, don't make sudden and abrupt changes in heading unless necessary.

If appropriate, as it will be in many cases, make an announcement or warning of what you are about to do. A simple "Here we go" or "Hold tight" will do much to avoid a preventable accident.

Maintaining a Lookout

A small craft cannot readily use the lookout routine of the large vessel, but the vigilance and

Welcome To

BRIANNASLAW.COM

Brianna's Law Adopted August 6, 2019

This website exists to promote boating safety courses throughout New York State and is not connected to or endorsed by the Lieneck family



Governor Andrew Cuomo at the signing of Brianna's Law



Capt. Richard Werner of Safe Boating America contributed greatly to the passage of Brianna's Law.

Read more here:

[NASBLA Award](#)

[For class dates, locations and to register online click here](#)

On August 6, 2019 Governor Cuomo signed Brianna's Law. A comprehensive boater education law requiring all power boaters (including those operating sailing vessels with auxiliary power) to complete a boater safety course.

IS THIS A BOATING LICENSE REQUIREMENT? Technically, no. However, New York State requires certain boat operators to have a boating safety certificate. There are licenses for operating a boat on a professional level such as sightseeing or charter fishing or even commercial work boats such as tug and ferries. There's no such thing as a "license" being required to operate a boat for recreational purposes in the State of New York. There IS a requirement for a Boating Safety Certificate/Certification and this is what Brianna's Law is all about. Keep in mind that many people commonly refer to a Boating Safety Certificate as a Boating License, especially since you can now have a boating safety certificate endorsement placed on your drivers license (see bottom).

From Governor Cuomo's Website:

Governor Andrew M. Cuomo signed legislation (S.5685/A.4853.A) - or Brianna's Law - to phase in requirements that all operators of motorized watercraft must complete a state-approved boating safety course. Brianna's Law is named after Brianna Lieneck, an 11-year-old Long Island girl who was killed in a 2005 boating accident. The Governor also directed State Parks to launch a boating safety promotional campaign to remind boaters of the new requirement to take a safety course.

"Boating has become much more popular and our rules and our laws really have not kept pace with it," Governor Cuomo said. "There should be a basic level of knowledge that you have before you're given the permission to go out there and operate a boat, and making a safety course mandatory is common sense. It protects the operator of the boat and everyone that operator could come into contact with, and it will make our waters safer. It took a horrific accident to make this situation real for people, but through this law Brianna is saving lives and her love lives on."

Jetski/PWC Operators: For those taking an upcoming course at the link above. If you are 18 or older, you will receive a form at class which is mailed in after class. A new NYS Drivers License is mailed to you with the anchor on it.

Brianna's Law Enhances the current requirements as follows: (and those under 18): YOU CANNOT get the anchor put on your license by mail. You'll need to bring your certificate to a NYS DMV and have it only added to your license in person.

- ~Those born on or after 1/1/1988 need a safety certificate beginning January 2022.
- ~Those born on or after 1/1/1983 need a safety certificate beginning January 2023.
- ~Those born on or after 1/1/1978 need a safety certificate beginning January 2024.
- ~All powerboat operators regardless of age will need a boating safety certificate beginning in January 2025.

If you've taken an 8hr boating safety course in the past, you're all set. All NYS courses offered and listed at the link below are NYS Parks, Recreation and Historic Preservation courses and enable the student to have an anchor endorsement on their NYS Drivers License in addition to receiving a boater safety certificate.



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