

40430 3 2 1 Connell writes from Andrews, "Dear Lawyer Cooper, my brother Duane and I have a problem that started when we were comin back from the Florida keys in our new boat, THE WHOPPER. Ray from over at the truck stop had been fishin with us in Florida and we were all three bringin THE WHOPPER back to South Carolina. On the way up the ditch we suddenly ran hard aground on a bar in the middle of the waterway and, on impact, Ray fell down into the engine space and was paralyzed. Come to find out the marker buoy shown on the chart was in the wrong place. Can we hold the government responsible for Ray's injuries?

Good question, Connell. The government does not have to mark the channel with aids to navigation, but, if the government undertakes to install and maintain such aids, it must exercise reasonable care to avoid injury to those who rely on such aids to navigation. In your case, if the buoy drifted off station and the government failed to use reasonable care to maintain a buoy in the proper location or to warn mariners and if that caused Ray's injuries, then he has a right to proceed against the United States under the Suits in Admiralty Act. Be warned that this statute includes a 2 year statute of limitations and strict service of process provisions; any failure to comply may defeat Ray's action.

"Mr. Cooper, if Ray sues the government, can the government bring a claim against me?"

Another good question. You can reasonably expect that attorneys for the United States will consider claims against you, THE WHOPPER, Ray, and any other party whose fault or failure to exercise reasonable care may have caused or contributed to Ray's

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vessel under the admiralty jurisdiction. However, if the debtor files a petition in the U. S. Bankruptcy Court before ~~in rem~~ process is served upon the vessel, then §362(a) of the Bankruptcy Act automatically stays any further action to advance claims against the debtor and his vessel and deprives all other courts of jurisdiction. Although relief from the stay may be sought, it may properly be denied in a Chapter 11 proceeding.

In this context, it's hard to find fault with the advice of the old divorce lawyer, "File early, file often."

More next week on The Admiralty Docket. Until then remember your rights and responsibilities may change as you approach the shore and may God Almighty grant you pleasant sailing.

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