

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**BARBARA GANLEY and ALBERT  
GANLEY,**

**PLAINTIFFS**

**v.**

**GORDON BAXTER and KATHRYN  
BAXTER d/b/a Atlantic Coast  
Schooner Company,**

**DEFENDANTS**

**Civil No. 99-224-P-H**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In this case, the Ganleys, a very happily married couple, planned to celebrate their 45<sup>th</sup> wedding anniversary by taking a luxury schooner cruise in Maine waters. An unfortunate turn of circumstances brought severe injury and physical limitations to Mrs. Ganley, a woman who previously had been physically agile and fond of engaging in a wide range of physical activities with her husband and grandchildren. Ultimately, however, I conclude that the unfortunate event was an accident not caused by the defendants' negligence. I heard testimony on March 28 and 29, 2000. This document is my findings of fact and conclusions of law under Fed. R. Civ. P. 52.

**FINDINGS OF FACT**

1. Barbara Ganley and her husband signed up for a cruise on the Schooner KATHRYN B to celebrate their 45<sup>th</sup> wedding anniversary.
2. They appeared at the vessel dockside in Camden harbor on September 3, 1996, at about 5:00 p.m.

3. The captain, Gordon Baxter, approached the Ganleys on the dock after they had waited about 15 or 20 minutes with another couple who were also going on the cruise.

4. The Ganleys were carrying their luggage, consisting of a large duffel bag, a smaller duffel bag just over two feet in length, a soft-sided small suitcase, and Mrs. Ganley's pocketbook.

5. Captain Baxter asked the two couples to hand up their luggage to him on the deck of the vessel and invited them on board. He said that he would go down the hatch and that they should hand down to him their luggage for him to put in their cabins. He also warned them that the hatch ladder was steep and that they must turn around to descend.

6. Captain Baxter then descended the hatch and someone handed down to him the Ganleys' large duffel bag. He proceeded down the corridor below to take it to the Ganleys' stateroom. Captain Baxter intended to carry all the luggage.

7. In the meantime, Mrs. Ganley, who had the smaller duffel bag over one shoulder and her pocket book over the other, began to descend the hatch ladder without Captain Baxter's knowledge.

8. The hatch ladder is about seven feet long; Mrs. Ganley is 5'6" tall.

9. At the beginning of her descent, Mrs. Ganley held onto the sill in front of the hatch with both hands.

10. When she had descended far enough that her face was even with the deck, Mrs. Ganley released the sill with her right hand, and groped for a handhold. As she did so, her duffel bag began to swing out and she began to lose her balance.

She therefore decided to let the duffel bag fall. At the same time, however, she released her left hand grip on the sill before she had obtained any purchase with her right hand. She could find nothing to grip with her left hand, and she fell the remaining distance to the hold, severely injuring her left knee.

11. There was no artificial light illuminating the hold into which Mrs. Ganley was descending. The light outside was a bright September afternoon. There was adequate natural light for someone inside the hatch to see her surroundings, but it is understandable that the glare of the outside light would require first a moment's eye adjustment upon entering the darker hatchway.

12. There were in fact brass handrails on either side of the ladder, but Mrs. Ganley did not see them and her groping did not discover them. There were no hand holds on the ladder except for the ladder rails themselves, and the top tread of the ladder could not be gripped because it was attached to the wall.

#### **CONCLUSIONS OF LAW**

1. Jurisdiction is based upon the admiralty jurisdiction of the federal court. See 28 U.S.C.A. § 1333(1) (West 1993).

2. “[A] shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew,” Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630 (1959), “the duty of exercising reasonable care under the circumstances of each case.” Id. at 632. See Muratore v. M/S Scotia Prince, 845 F.2d 347, 353 (1st Cir. 1988) (“the degree of care required must be in proportion to the apparent risk”).

3. The Ganleys do not claim that the ship's ladder was negligently designed or negligently maintained. Their claims of negligence are that the hatchway was too dark, and that Captain Baxter gave inadequate warnings about carrying luggage, locating handholds on the ladder and exercising caution on the ladder.

4. Captain Baxter exercised reasonable care in attempting to carry all the luggage for the passengers and asking them to pass down the luggage.

5. Mrs. Ganley has failed to meet her burden of proof to show that it was foreseeable that Captain Baxter's request to hand down the luggage to him would not deter her from attempting to carry her own luggage down the ladder.

6. Captain Baxter exercised reasonable care in warning the passengers that the ladder was steep and must be descended backward.

7. Mrs. Ganley caused her own fall by releasing her grip on the sill with her left hand before she had obtained purchase with her right hand.

8. Mrs. Ganley has failed to meet her burden of proof to show that the hatch ladder was unreasonably dark, or that any darkness caused her to fall.

Accordingly, judgment shall be entered for the defendants.

**SO ORDERED.**

**DATED THIS 31ST DAY OF MARCH, 2000.**

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**D. BROCK HORNBY**  
**UNITED STATES CHIEF DISTRICT JUDGE**

U.S. District Court  
District of Maine (Portland)  
CIVIL DOCKET FOR CASE #: 99-CV-224

GANLEY, et al v. BAXTER, et al  
Assigned to: JUDGE D. BROCK HORNBY  
Demand: \$0,000  
Lead Docket: None  
Dkt# in other court: None  
Cause: 28:1333 Admiralty

Filed: 07/13/99

Nature of Suit: 340  
Jurisdiction: Federal Question

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plaintiff

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(See above)

WILLIAM H. WELTE  
(See above)

v.

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