



SEA TRIALS

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Breach of Lay-Up Warranty

BREACH OF LAY-UP WARRANTY

Proper preparation for the beginning of the boating season must include a thorough review of your marine insurance policy. But, as one boater found out recently, it's just as important to check your policy at the end of the season.

The issue in the case involved a warranty in a yacht policy.

What is a warranty ?

A warranty is a provision in a policy that the insured/boat owner agrees to comply with as a condition of coverage. No compliance, no coverage. In other words, marine insurers, and courts, expect strict compliance with a policy warranty. Basically, any fact can be made the subject of a warranty and the initial or continued validity of the policy may be made conditional on the compliance with that fact. For example, in a marine insurance policy, you will typically find a navigation limits warranty (the geographic limits in which coverage applies), a lay up warranty (time period the boat must be laid up for winter months), and some policies contain a seaworthiness warranty (boat is fit for its intended purpose). Most warranties are expressed in the policy, but in admiralty law, a warranty can be implied. For example, the warranty of seaworthiness can be expressed in the policy, but even if it is not stated, most courts recognize what is called the "implied" warranty of seaworthiness.

A case of the Blues

One boater in Rhode Island recently lost his case, and his insurance coverage, because a federal district court determined that he was in violation of his policy's lay up warranty. The case involved a 1993 49-foot Blue Water motorboat. The yacht policy provided coverage to the Blue Water vessel subject to a number of restrictions. The "restrictions provision" provided in pertinent part:

1. RESTRICTIONS ON THE USE OF YOUR YACHT:

There are certain restrictions on the use of your yacht under this policy. We shall not cover losses that occur while your yacht is being used in any way that is prohibited by this policy.

These are the restrictions:

* * *

(d) Your yacht must be laid-up and out of commis-

sion during the period shown on the declarations. The policy declarations page contained a "Lay-Up Warranty:" that states "Warranted that the described yacht be laid up and out of commission and not used by the insured for any purpose during the period from 10/31 to 4/15."

Warranty Breached

The insured navigated his vessel from one marina to another during the lay-up period and did not fully winterize the boat prior to the October 31st lay-up date specified in the policy. The boat remained in the water at Hinckley Yacht Services in Portsmouth, Rhode Island, awaiting haul out. During the lay-up period, a storm passed through the marina and the vessel broke free of the dock. The Blue Water was damaged and it collided with two sailboats, damaging them as well. Naturally, the owner filed an insurance claim but it was denied when it was determined that the accident occurred during the lay-up period and the boat was not properly laid up for the winter in accordance with the warranty.

Next step, Federal Court

Litigation ensued placing the parties coverage dispute before federal judge Mary M. Lisi in Rhode Island. Both parties moved for summary judgment prior to trial, asking the judge to construe the terms of the insurance contract. In other words, since the basic facts were not in dispute, a trial by jury to determine facts was unnecessary. When the material facts are not in dispute, such as in this case, federal procedure allows a judge to decide the case "as a matter of law" summarily, without trial. Citing to the policy's "Restrictions Provision", the insured

argued that the consequence of any noncompliance with the lay-up requirement is that the policy will not cover losses that occur "while your yacht is being used" in violation of the lay-up term. In essence, the boat owner claimed that he did not breach the warranty because the vessel was not being used at the time of the accident.

Judge Lisi was not persuaded and called this a "tortured interpretation" and an "illogical construction" of the Restrictions Provision by seeking to isolate the first portion of the provision while entirely ignoring the words that follow. The Judge carefully reviewed the policy and the admiralty law and determined that the yacht policy plainly and unambiguously requires the insured to have his vessel laid up and out of commission from October 31 to April 15, the dates listed in the lay-up warranty on the declarations page.

Judge Lisi then engaged in a methodical discussion of marine insurance warranties and which state's law applies when construing the policy. She described the yacht policy as a marine insurance contract that falls under the court's admiralty jurisdiction. Because the insured resided in New York, the policy was issued in New York, and the marine insurer has an office in New York, the Judge determined that New York State law would apply to interpret the yacht policy. The court then found that recovery under a marine insurance policy is precluded if a warranty is breached.

The Judge discussed the practice and custom of laying up motorboats and determined that lay up includes winterizing the engines. The insured had not completed the winterization process at the time of the accident. Thus, the judge found that the boat was not laid up and out of commission as required by the policy. Accordingly, the boat owner was denied recovery from his marine insurer for the damage to his boat and liability coverage for the two damaged sailboats. This case demonstrates that proper preparation for the end of the boating season, and policy terms, are often overlooked.

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