



Mercante's Sea Trials

Navigation Limits: Out of Bounds!



Prior SEA TRIALS columns have discussed warranties in marine insurance policies and the impact on insurance coverage of a breach of warranty. A recent federal court decision demonstrates that a breach of the "navigation limits" or "trading limits" warranty forfeits coverage for an incident that happens outside the approved navigation area.

Virtually all marine insurance policies (particularly for pleasure craft, yachts, fishing vessels, etc.), contain a navigation warranty identifying the boundaries in which the vessel may navigate. Venturing outside the zone will impact insurance coverage.

The insurance policy in the case of *Northern Insurance Company of America v. D'Onofrio General Contractors Corp.* included the following language:

General Conditions & Warranties

NAVIGATION: It is a condition of this Policy that the vessel shall be confined to Atlantic Coastwise and Inland waters of New York and New Jersey. In no event shall the vessel be navigable beyond the limits permitted by the United States Coast Guard. If there is a failure to comply with this condition, there is no coverage under this Policy.

YOU BE THE JUDGE: If presented with this warranty, would you understand it or consider it ambiguous? Would you construe these terms to permit navigation *anywhere* along the Atlantic Coast, in addition to the inland waters of New York and New Jersey? Or, in the alternative, would you judge the terms to mean that navigation is confined to the Atlantic Coastwise and Inland waters of only New York and New Jersey?

These were the issues before United States District Court Judge, Sandra J. Feuerstein, in the Eastern District of New York (Long Island). The case was decided on May 18, 2009, on motions for summary judgment filed by both the insurer and the vessel owner.

The Casualty Facts

A barge called the "Hughes 914" was under tow in navigable waters between Boston and Rhode Island en route New York City. During the tow, and while still between Boston and Rhode Island, the barge began to take on significant amounts of water and was in danger of sinking. As a result, the tug detoured from its intended voyage to New York and towed the barge

to safe harbor in Newport, Rhode Island. The barge interests then submitted a claim to their marine insurer seeking to recover damages sustained in the incident. The claim was denied by the insurance company and the litigation battle began.

The Litigation

After the exchange of 'discovery,' both the insurer and vessel owner made application to the court for 'summary judgment' (decision without a trial), since the facts and location of the casualty were undisputed and thus a jury trial was unnecessary. In other words, it appeared to be a case that could be decided by the federal judge (on documents, affidavits and briefs) as a matter of contract law.

Arguments

A marine 'hull' policy is essentially the maritime equivalent of property insurance that covers the vessel itself. Here, the policy contained the warranty quoted above. It goes without saying that a marine insurance policy requires strict compliance with its terms. After all, it's a contract! In addition, breach of an express warranty will void the policy, irrespective of whether the breach increases the risk of loss or not.

The insurer contended that because the loss occurred when the vessel was off the coast of Rhode Island and not within the waters of New York and New Jersey, the warranty was breached. Further, because the barge was navigating in waters beyond the area designated in the clear-cut terms of the navigation warranty of the policy, the insurer argued that it had no obligation to pay the claim.

On the other hand, the vessel owner argued that the barge was indeed within the specified navigation area required for coverage under the policy. The barge interests construed the wording differently, suggesting that the policy "provides for navigation of all Atlantic Coastwise waters, i.e. the waters between the ports on the Atlantic Coast of the United States, and the inland waters of New York and New Jersey." At best, they suggested that the warranty is 'ambiguous' and, as a result, must be construed against the insurance company as the author of an ambiguous clause in the contract.

How would YOU Rule?

Judge Feuerstein evaluated both the insurer's (plaintiff) and barge interest's (defendant)

arguments and first determined that the warranty was clear and not ambiguous. It has "a definite and precise meaning, unintended by danger of misconception..." and "there is no reasonable basis for a difference in opinion." The judge determined that just because two parties assert different interpretations of insurance contract language does not render the terms ambiguous "where one party's view strains the contract language beyond its reasonable and ordinary meaning."

Next, the judge determined that the defendant was seeking to re-write the navigation warranty to state: "confined to Atlantic Coastwise of the United States and inland waters of New York and New Jersey." However, in insurance policy disputes, the court may not re-write a contract when the language is already clear.

Accordingly, because the parties did not dispute that the barge was off the coast of Rhode Island when it took on water and detoured to a safe harbor near Newport, Rhode Island, defendant was out of bounds (so to speak) and found to be in breach of the navigation warranty. Therefore, there was no coverage under the policy."

Thus, if YOU thought that the navigation warranty clear and not ambiguous and that it restricted navigation to the coastwise and inland waters of New York and New Jersey, you were in agreement with the federal judge.

As a result, the insurer's motion for 'summary judgment' was granted declaring that coverage under the policy was unavailable based upon breach of the navigation warranty.

Conclusion

As this case demonstrates, it is very important to know your policy's navigation limits and ensure that you do not step out of bounds!

A copy of the judge's opinion is available by e-mail upon request.

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