

Long Island

# Boating World

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## SEA TRIALS The Case of Big Foot and the Undulating Wave

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If you berth your boat at a marina, odds are you signed a marina storage contract. This document contains much "fine" print and legalese that is worth falling asleep to on a rainy day.

In a previous Sea Trials column, your author discussed marina storage contracts in the context of liability for property damage. In a recent admiralty case, the marina storage contract was the focal point involving a personal injury to a boater.

### The Accident

A boat owner was injured at a dock owned by the marina. The boater's big foot got caught and crushed between the main dock and a floating dock to which his boat was moored. The accident occurred when the floating dock undulated as a result of the wake from a passing boat. His next step (limping, of course) was to sue the marina. The suit was brought in federal court pursuant to admiralty jurisdiction. The boater, now plaintiff, contended that admiralty jurisdiction existed because of a federal statute known as the Admiralty Extension Act, 46 U.S.C. Section 740, which extends the federal court's admiralty jurisdiction to accidents resulting on land but having been caused by a vessel on navigable waters.

By way of example, consider the ship berthing in New York Harbor not too long ago whose bow wound up breaking through the wall of a harborside restaurant during docking and injuring some unwary diners.

### The Fine Print

The marina contract at issue in the big foot case contained an "exculpatory" clause stating that the boat owner would not bring any claims of any kind or nature against the marina and that he would even defend, indemnify and hold the marina harmless from any such claims.

Whether these clauses are enforceable typically depends on the law of the state or the federal jurisdiction in which the case is pending.



Generally, courts disfavor contract terms that seek to relieve a marina from liability for its own negligence. However, such terms can and have been enforced if the exculpatory language is specific and clear, and when there is some consideration given by the marina in exchange for it, to wit, a better storage rate per foot. It's rare, but your author has heard of situations where a marina operator will agree to strike the clause to get the business.

### Jurisdiction Challenge

The court has not yet decided the validity of the exculpatory clause, having been sidetracked with the marina's challenge over whether the federal court has jurisdiction over the case. The marina moved to dismiss the case for lack of admiralty jurisdiction. For the marina to have employed this jurisdictional battle, state law must have been more favorable to the marina than federal admiralty law on the enforcement of the marina's terms. The mari-

na's position was that the contract (which governs whether or not the boater can go forward with his claim because of the exculpatory clause) is not a maritime contract. On the other hand, the injured plaintiff argued that the case belongs in federal court because the injury - which occurred on an (undulating) dock caused by the wake of a vessel in navigable waters - is a maritime accident.

The court found that the marina's storage agreement is a maritime contract and thus admiralty jurisdiction exists. However, the court determined that the plaintiff boater can not proceed on the injury claim until after the court first resolves the contractual issue. In other words, if the exculpatory term of the storage agreement is valid and enforceable, the boater's negligence claim would be doomed. The Judge summed it up this way: The negligence claim cannot be divorced from the contract claim because without success on the latter, the plaintiff cannot proceed on the former. That clears it up!

Marinas are entitled to store boats pursuant to maritime contracts. Boaters should read the fine (depending on one's perspective) print! As with the law, ignorance of the contract terms is no excuse.

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