



Mercante's Sea Trials

Winning Fight, Losing Insurance



Sometime or another you probably wanted to bob or even ram the guy in the boat that cut right through your chum slick, or raced past the area you were tossing your pencil popper, or sped by too close and literally left you pitching and rolling in his wake. Or, maybe you even had an unruly guest aboard that got you peeved enough to hit him or her with a right cross or perhaps a left hook or uppercut. Problem is that if you act on your impulse, and get sued for damages, or worse, you will not have insurance to protect and defend you.

Un-she-worthy vessel?

A sailboat owner had an altercation on board his vessel during which he allegedly assaulted a woman. A protracted physical struggle occurred aboard the BOUNDLESS between the vessel owner and his female guest. They were on a year-long cruise aboard BOUNDLESS. Allegedly, the owner struck his guest repeatedly, then bound and gagged her causing extensive personal and emotional injury. He may have prevailed aboard the vessel, but his guest came out swinging with a lawsuit seeking to land \$10 million. The suit alleged battery, false imprisonment, intentional infliction of emotional distress, negligence, and unseaworthiness of the vessel. Did this cause the vessel owner to throw in the towel and offer to settle the claim? Course not.

Instead, the owner filed his own claim with his marine insurer requesting that the insurer provide him a defense attorney and that the insurer pay any judgment he would be hit with.

Insurer weighs in

The vessel owner had a water craft insurance policy covering damages to and losses incurred aboard the BOUNDLESS subject to certain limitations and exclusions.

The marine insurer filed a "declaratory judgment" action in U.S. District Court seeking a declaration from a Federal judge that the insurer had no duty to defend or to indemnify the vessel owner in the underlying lawsuit. The litigation concerned the scope of insurance coverage available for events occurring on board the sailing vessel BOUNDLESS.

The marine insurer contended that the woman's claims were not covered under the insurance policy because the acts leading to her injuries (i) did not "arise from the ownership, custody, maintenance or use of the vessel," (ii) did not qualify as an "occurrence" as defined in

the policy, (iii) were intentionally caused by the insured and also excluded by the terms of the policy, (iv) were illegal or dishonest acts which are excluded from the policy, (v) involved breach of the seaworthiness and crew warranties, and (vi) were not promptly brought to the attention of the insurance company in a timely manner as required by the policy.

Exclusion

Marine insurance covers a vessel owner for an "occurrence" or marine perils that fall within the terms of the insurance policy, typically defined as an "accident". An intentional act is no accident, so for this reason alone, an insurance policy will not be triggered when you go to blows with someone on the water. Similarly, "intentional acts" are typically expressly excluded from coverage by the terms of a marine insurance policy.

The marine insurance policy contained the following exclusion from coverage that is typical of most, if not all, marine insurance policies:

Intentional Acts Exclusion

Occurrences where loss, damage, bodily injury or property damage is caused intentionally by or at the direction of you or any Named Insured or results from any intentional act by you or any Named Insured are exclusions.

According to this provision, the insurer does not afford coverage if any insured "intentionally" causes a loss or damage for which coverage is sought. In deciding the case in favor of the insurer in *Markel American Insurance Company v. Staples*, the judge determined that the allegation of "negligence" in the complaint to describe the owner's actions were transparent and a red herring, probably designed to trigger insurance coverage. Thus, the mere presence of a negligence claim was insufficient to end-run an intentional acts exclusion. Instead, the court examined the facts and the nature of the claim and determined that the various causes of action all stemmed from a series of intentional and illegal acts by the vessel owner. According to the court, the factual allegations in the complaint recounted a malicious and unprovoked attack that can only be characterized as intentional and purposeful. Accordingly, on the basis of the intentional acts exclusion, the court determined that all claims in the complaint were excluded from insurance coverage under the policy and, therefore, the

insurer had no duty to defend or indemnify the vessel owner in the underlying lawsuit.

No occurrence

The marine policy defined occurrence as any sudden and fortuitous accident which occurs during the policy period. The marine insurer contended that the facts that gave rise to the underlying suit did not qualify as an occurrence and thus did not provide coverage. Here also, the court determined that just a "bald assertion" of

negligence does not circumvent application of an intentional acts exclusion, nor did plaintiff's use of such a label automatically create an "occurrence". Simply attaching a negligence claim to a suit will not spring an otherwise intentional act within the scope of coverage as coverage decisions turn on a careful review of all factual allegations, not simply the scrivener's characterizations. The court determined that "intentional acts" are neither occurrences nor accidents.

The lack of an "occurrence" provided an additional basis for a finding that there was no coverage under the marine insurance policy.

Accordingly, the court granted the insurer's motion for summary judgment declaring that it had no duty to defend or indemnify the vessel owner against his guest's lawsuit. The owner was, therefore, obligated to protect and defend himself.

Conclusion

This is another example of how BOUNDLESS claims involving vessels and mariners are in the sea of admiralty law. It also demonstrates that even marine insurance that covers "all-risks" has a specific purpose and scope of coverage limited primarily to marine "perils" and related "accidents." The insurer never envisioned taking on the risk of covering such an egregious act. Thus, while onboard your vessel, the best reaction to a heated situation is to get out of the ring!

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