Mercante's *Sea Trials*

Superstorm Sandy: Lawsuit Blows Over

Since Superstorm Sandy struck last October, multiple lawsuits have been filed across the tri-state area by people looking to recover for storm-related destruction to their property. Many of these lawsuits are by boat owners – or against boat owners, marinas and yacht clubs, for damage caused by unprecedented storm surge that swept thousands of boats from their berths and from shore-side storage.

In the first known reported decision concerning Superstorm Sandy, a court in Staten Island recently ruled that an automobile repair facility was not liable to the owner of a motor vehicle that was damaged by the rising water while stored inside the facility because the cause was an "act of Nature". Though not a maritime case, the judge's decision is informative as to how marine-related Sandy losses may be evaluated by the courts.

Flood Waters

The owner of the car testified at trial that a few days before the storm, the vehicle was left at the garage facility for repairs. The garage is located across the street from the Kill Van Kull waterway on the North side of Staten Island. During the storm, the vehicle was flooded and became a total loss. The car owner's automobile insurer paid the loss, but the owner sought to recover his $1,000 insurance deductible from the garage facility. The vehicle was stored inside the garage when the storm hit and the water unexpectedly rose about four feet above ground level, inundating the premises and the car.

The judge observed that in the initial evaluation, a garage owner may be presumed at fault damage to a car in its possession as a 'bailee' of the car. However, the "act of Nature" defense (which the Court assumed to be "the politically correct modern term for act of God"), may relieve the garage owner of liability if it had no control over the cause of the damage and did not make it worse.

Act of God (or 'Nature')

The Act of God defense has been invoked in hurricane cases for decades. The general rule is that if the force of nature is sufficiently catastrophic, then a court may infer that *no* reasonable preparations would have prevented the damage. However, if the damage could have been reasonably foreseen *and* prevented by reasonable measures, then a party may be found liable.

In the marine context, many lawsuits have been filed for damage to surrounding property caused by vessels that broke free from their berth or storage location due to hurricane forces. In those cases, while initially there may be a "presumption of fault" operating against the vessel owner (like the garage owner in Staten Island), the vessel owner (yacht club, marina or warehouse) will invoke the "act of God" defense and show that (i) the damage was solely caused by an extreme force of nature, and (ii) that the vessel owner (yacht club, marina or warehouse) had acted reasonably under the circumstances. This defense applies as forcefully in the recreational boating context as it does in commercial marine setting involving tugs, barges, ships and warehouses that store cargo.

Reviewing the facts and the storm force, the judge easily found Superstorm Sandy triggered the "act of Nature" defense noting that it "*caused the loss of life, resulted in billions of dollars of property damage, and caused the disruption of countless people's lives.*" The judge also concluded that the defendant repair shop, which had no known history of flooding, had acted reasonably under the circumstances. Accordingly, the facility was not liable for the damage to the plaintiff's motor vehicle.

Conclusion

The first-reported ruling on Superstorm Sandy property damage offers a seaworthy road map of how courts will likely evaluate lawsuits resulting from the "Storm of the Century" and the politically correct "act of Nature" defense.

A copy of the court's decision is available upon request.

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