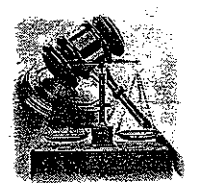




SEA TRIALS

by James E. Mercante, Esq.



Insurance Coverage Shot Down

A young woman moved in with her boyfriend named Alan aboard his vessel - inaptly named *Tranquility*. While *Tranquility* was in its berth in Newport Harbor, the gal was shot and killed aboard the vessel. The facts remained murky till the end, but the allegation was, like the game of Clue, it was the boyfriend, in the cabin, with the gun.

The woman's mother filed a complaint against Alan seeking to recover damages for the wrongful death of her daughter as well as his alleged intentional and negligent infliction of emotional distress on the mother.

The marine insurance company that insured Alan's yacht, the Reliance Insurance Company, provided him with a defense against the civil lawsuit, but did so pursuant to what is called a "reservation of rights". By this process, an insurance company provides a defense to a civil lawsuit while at the same time reserving the right to continue the investigation into whether coverage exists. If it is subsequently determined that coverage does not exist, the insurance company may then elect to withdraw the reservation of rights and deny coverage.

Here, after they concluded the investigation, Reliance determined that there was no coverage under the yacht policy for the shooting. The insurance company contended that it had no obligation either to defend or to indemnify the vessel owner in the wrongful death suit for damages because the claim did not arise out of the "ownership, operation or maintenance" of the insured vessel. *Reliance Insurance Company v. Colin Alan et al.* 222 Cal. App. 3d 702.

An insurance policy is a contract between an insured and an insurer. Therefore, a dispute involving the insurance contract is resolved by the courts similarly to any breach of contract action. The insurance policy must phrase exceptions and exclusions to coverage in "clear unmistakable language". When the terms are plain and unambiguous, the court is bound to enforce the language and policy as written. Here, the controlling provision of the yacht policy is stated in pertinent part as follows:

Perils Insured Against: We will pay sums with you or covered person under this policy

becomes legally obligated to pay as a result of the ownership, operation, or maintenance of your insured property because of:

- A. Property damage
- B. Personal injury

Thus, to come within the scope of coverage under the yacht policy, the vessel owner's liability must have arisen out of the "ownership, operation or maintenance" of the insured vessel. A marine protection and indemnity insurance policy ("P&I") affords coverage of a limited nature. The coverage is not as broad as a land-based comprehensive general liability ("CGL") insurance policy. As seen in the above quoted provision, one important feature of the P&I policy is that it only covers liabilities incurred "as owners of the [insured] vessel". It is not general liability coverage and therefore if the vessel owner's conduct that results in injury involves some non-vessel-related operation, even when it occurs aboard the vessel, the loss may not be covered by insurance depending on the terms of the policy. The reason for this is that the owner's liability does not occur as a vessel owner in the traditional sense of ownership, operation or maintenance of the vessel.

The limited nature of a P&I policy has been explained by a federal judge as a policy that does not cover all types of a vessel owner's liability, but extends only to the liabilities specifically enumerated in the insuring agreement. Federal admiralty courts have also noted that for coverage to apply, the vessel itself must afford something more than a mere "condition" or "location" for the accident. In other words there must be at least some causal and operational relation between the vessel and the resulting injury. Where injury is done through non-vessel operations, for the coverage to apply, the vessel must serve as more than simply the locale of the injury. Thus for example a fight on board a vessel will likely result in no coverage for the vessel owner not to mention a shooting as occurred in this case.

Where the conduct of the insured vessel owner is the cause of an injury in a non-vessel related act, even when occurring aboard the vessel, the loss is not typically covered by the standard yacht policy. This does not mean the vessel has to be underway or in operation for coverage to apply.

For example, in one case an injury occurred while the vessel owner was helping a guest off the boat and coverage was found to exist under the yacht policy because the parties were involved in activities necessary to properly leave the yacht at the end of a trip.

In the Reliance Insurance case, the vessel owner fought hard for coverage stating that the shooting occurred on board his boat while it was being "used". However the yacht policy issued by Reliance only afforded coverage arising out of the "operation, ownership and maintenance" of the vessel, but did not include coverage for liability arising out of the "use" of the vessel for a non-vessel related activity. Moreover, there was no causal "operational" relationship between the vessel and the shooting death of his guest. Here, the court determined that at the time of the fatal shooting, the vessel was moored in her berth and therefore served merely as the locale of the shooting and there was no causal relationship between the boat and the shooting which would trigger coverage under the marine protection and indemnity policy.

As a result, the court determined that the marine insurer had no duty to defend or indemnify the vessel owner against the underlying wrongful death action.

CONCLUSION

Boat owners should be aware that marine protection and indemnity coverage provided in yacht policies is of limited nature. It will not cover everything that occurs aboard the vessel particularly when an incident is unrelated to vessel ownership, operation or maintenance. Boat owners should review their protection and indemnity coverage to determine the expanse or narrowness of its protection. Not doing so may be fatal when coverage is really needed.

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