



## Mercante's Sea Trials



### Admiralty Law and Acts of God

Mother Nature has been out in full swing this winter. Snow, wind and ice storms are hitting us square in the face. Good thing most pleasure craft are out of the water and tucked away for the winter. Otherwise, this kind of weather could wreak havoc on boats moored or berthed and expose property to damage from breakaway boats. But, if that were to happen, does Mother Nature provide a defense to the vessel owner, a.k.a. "Act of God"? The answer is, maybe, yes.

#### Presumption of fault

If a vessel has been set adrift and collides with another vessel or a fixed object such as a bridge or a dock, the drifting vessel is presumed to be at fault under the general maritime law. The general maritime law is a body of laws either statutory or decisional handed down in maritime cases by federal or state court judges know as case law. The general maritime law is used in future cases as precedent to guide a judge in deciding the outcome of a dispute.

In the Northeast, we often get hit with heavy weather outside of winter, sometimes a nor'easter, or even hurricane force winds. Typically, these events are predictable and well forecasted, allowing the prudent boat owner to take some precautions to "batten down the hatches" in order to secure his own boat, but also to protect other nearby boats and property from a breakaway boat that can cause major damage and result in major lawsuits.

#### Act of God test

When a breakaway occurs in heavy weather, the general maritime law in its holy wisdom provides a defense. The "Act of God" defense applies, however, only if 1) the accident is due directly and exclusively to natural causes without human intervention and 2) no negligent behavior by the vessel owner contributed to the accident.

A recent decision involving Hurricane Katrina illustrates the Act of God defense. A federal court in the Eastern District of Louisiana ruled that a category 4 or 5 hurricane was an Act of God sufficient to bar a claim by a marina owner against the owner of a vessel that broke away from her berth in heavy winds causing significant damage to the marina property.

The marina owner (plaintiff) brought suit under admiralty law in federal court against the owner of TRUST ME II, a 47-foot sailboat. TRUST ME II broke free and the "offending vessel," like a huge pinball, plowed into plaintiff's docks, boathouse, hoist, cabana and landscaping. The marina alleged that the vessel owner was liable for all the damage because she breached a duty she owed the public by "failing to heed public warnings of an impending category 4 hurricane and failed to take any measures whatever to move, relocate, or secure the sailboat".

#### Proper Precaution

In response to the allegations, TRUST ME II's owner claimed that she had asked two people with marine experience to check on her vessel before the storm to make sure the mooring lines were adequate. One of them added additional mooring lines and testified in the case that TRUST ME II was secured as well as she could be at that location. The vessel owner leaned heavily on the Act of God defense stating that there was nothing else she could have done and that it was God's forces, not her negligence, that created the environment that lead to the unavoidable property damage.

This set the stage for the court to analyze whether indeed the breakaway was solely due to the unrelenting forces of nature, or whether the vessel owner had any hand in it (human intervention) by not properly caring for her vessel in the face of an impending storm. Because of the presumption of fault that exists against a drifting vessel that strikes a stationary vessel or object, it was an uphill battle for TRUST ME II.

The "presumption of fault" applies in these circumstances because of the logical deduction that an aimlessly drifting vessel was mishandled or improperly moored. The presumption against TRUST ME II shifted the burden of proof to her owner to show that she was not at fault by establishing the drifting was the result of an "inevitable accident" (force majeure or vis major in admiralty parlance) which human skill and precaution and a proper display of nautical skill could not have prevented. The burden of proof is heavy (but not insurmountable) against the custodian of a drifting vessel that offers up an Act of God defense.

#### Blame Katrina

It was not a hard call in this case for the judge. Hurricane Katrina was clearly an unexpected and extraordinary force of nature, and many courts confronted with such lawsuits held that Katrina satisfied the Act of God defense under the law. Katrina was a wild one that showed unprecedented flooding and devastation. It was a force majeure or Act of God, the force of which was unforeseen and unavoidable.

However, the federal judge still was required to judge the actions of the vessel owner to determine if she did all that she could have done under the circumstances to avoid the vessel from breaking away from her mooring. This is because the Act of God defense applies, as previously stated, only if 1) the accident is due directly and exclusively to natural causes without human intervention, and 2) no negligent behavior by the vessel owner contributed to the accident.

The plaintiff raised several arguments as to what the vessel owner could have or should have done to protect the mooring, but the court found these to be nothing more than hindsight speculations about what could have been done, not facts which countered the actual evidence that the vessel owner had exercised reasonable care under the circumstances. The evidence established that TRUST ME II was double checked by capable people, secured with additional lines, and adequately moored.

Accordingly, it appears that someone answered the vessel owner's prayers, perhaps the federal judge, and TRUST ME II was not held accountable for the resulting property damage.

#### Conclusion

When on notice of an impending storm, it is wise to take proper precautions with your moored or berthed vessel to avoid damage and damaging lawsuits. Trust me on this!

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