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SEA TRIALS

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Hurricane Duty - A Vessel Owner's Obligation

When a hurricane or gale warning is issued, a boat owner must take action to prepare the boat for a potential hit. If you don't, you may be liable for any damage caused by your improperly secured boat.

It has been said that a hurricane is an erratic phenomena of nature because no two are alike or follow the same track; they cross, re-cross and re-occur without seeming to obey any physical law; it is difficult to predict the course of a hurricane. A hurricane that causes unexpected and unforeseeable devastation with unprecedented wind velocity, tidal rise, and tidal surge is a classic case of an act of God. As one recent case confirms, while a hurricane may qualify as an act of God, the act of God defense will not always succeed when a vessel at a marina or a mooring breaks free in heavy winds and surge and causes damage to other vessels or property.

Notwithstanding that such severe weather may be classified as an act of God, it must be remembered that boat owners are relieved from liability only if they can show the damage caused to other vessels or property could not have been prevented even with exercise of "reasonable care". In this regard, courts have held that only when the force of nature is of such catastrophic proportions sufficient to overcome all reasonable preparations the act of God defense will be sustained. This means in essence that an owner may be liable for damages caused by his/her vessel during a heavy weather if the owner fails to take reasonable precautions under weather conditions known to the owner or reasonably to be anticipated. For example, if a boat owner has sufficient warning and reasonable means to take proper action to guard against, prevent or mitigate the damages posed by extreme weather but fails to do so, then the boat owner can be held responsible for any resulting damages. The test for reasonableness is that of a prudent person familiar with the ways and vagaries of the sea. A court will consider what the boat owner knew and could do at the time.

There have been several cases where weather conditions have been disputed and the court left this question of fact to be determined at trial. For example, in Wyler v. Holland America Line USA, Inc., a passenger on a cruise ship was injured when a large wave struck the ship as it was making a turn and she was thrown from her chair. The plaintiff moved for summary judgment on the cruise line's "act of God" defense that the wave was so big it was unforeseeable and, thus, there was no duty to warn the passengers. The court felt the issue of whether the wave was unforeseeable was best left for the trier of fact to resolve and denied the plaintiff's motion.

In a recent case, Fischer v. S/Y NERAIDA, there was significant damage caused to other vessels and property when the NERAIDA broke free from her mooring during Hurricane Frances. The court reviewed the facts and considered the damage in light of the above stated principles of law. The court concluded that the owner of the sailing yacht did take all reasonable precautions under the circumstances known at the time or reasonably to have been anticipated to prepare NERAIDA for the weather event. The vessel owner anchored the vessel at the mooring employing two anchors, furled and covered the sails and strapped down all gear and antennas. The court considered the condition of the vessel, the fitness of her equipment and the adequacy of the actions taken by the owner. It determined that the vessel owner was not negligent and the NERAIDA was not "unseaworthy" as had been alleged by the claimants. According to the federal court that heard the matter, proof of "unseaworthiness" requires a showing of an unsafe, injury-causing condition of the

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vessel. The claimants had failed to prove that any alleged defective condition of the vessel or owner negligence in his hurricane preparations caused her to break free from her moorings.

The court concluded that the vessel owner was not at fault for the accident and was, therefore, entitled to exoneration from liability under admiralty law.

In *Dion's Yacht Yard, Inc. v. Hydro-Dredge Corp.*, the sole question presented was whether the damage to a pier was the result of the boat owner's negligence or the result of an intervening act of God. The court ruled against the defendant boat owner for failing to adequately secure the vessel in light of existing weather conditions, therefore displaying a lack of good seamanship. The court determined that notwithstanding a storm of great force, the accident and resulting damage could have been prevented by the use of reasonable care the situation demanded, which was within the capabilities of this boat owner. The storm had been previously forecasted and consisted of snowfall, high tides, and wind gusts to seventy miles per hour. The "act of God" defense did not relieve the vessel owner of liability because his negligent conduct created a risk of the same harm that ultimately occurred.

The cases show that, under admiralty law, the existence of extreme weather which may be considered an act of God will not necessarily exonerate the boat owner from liability for property damage.

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