

## Catastrophic Marine Loss Alert

### CATASTROPHIC MARINE LOSS ALERT

While our thoughts go to the victims of Hurricane Irma, we also want our clients to know that we are available to help. The damage left in the wake of Irma and as you most likely know Florida is experiencing significant damage to vessels, docks, and marinas.

Often marine losses become high profile, bringing external considerations into the claim. While these external considerations do not have a direct impact on the interpretation of policy wording, a claim requires an elevated level of attention to time considerations in the claims process to meet the expectations of the insured.

During these difficult times, we thought it would be helpful to point out some important considerations that may be implicated in the aftermath of hurricanes, floods and surges.

#### ● What to Expect

- Hull claims
- Claims by vessel owners against marina operators for damage to their vessels
- Claims by marina operators against vessel owners for damage to marinas
- Claims by third parties for property damage caused by vessels blown out of moorings
- Derelict vessel issues

#### ● General Maritime Law or State Law?

- General maritime law applies on the navigable waters of the United States, including the "waterside" of a seawall.
- Dockage Agreements and Slip Rental Agreements for "In-Water" and "Maritime" contracts governed by the general maritime law.
- Damage caused ashore during a hurricane by vessels on the water falls under general maritime law.
- State law may supplement but not change general maritime law.
- Local activities such as anchoring and mooring are especially suited for local law.
- Local regulations, however, cannot alter fundamental principles such as the choice of law.
- In coverage disputes, applicable law may be dictated by a choice of law provision in the policy. A selected state's law bears a substantial connection to the Policy.
- Be mindful that the current status of general maritime law in the 11th Circuit may affect prevailing party attorneys fees under Fla. Stat. 627.428 in a coverage dispute.
- Challenges to choice of law provisions could result in application of another state's law and statutory attorney fees as well (Texas, for example).
- Florida has enacted legislation addressing public policy concerning whether actions taken to prepare for hurricanes may, or may not, be included in a policy.
- Florida Statute Section 327.59 provides that marinas may not adopt policies which require vessels to be removed from marinas following the issuance of a warning to ensure that protecting lives and safety of vessel owners is placed before property protection.

- **Wharfinger Duties**

- Under general maritime law, the entity that provides vessel berths, docks, and “wharfingers”;
- The most elemental duties owed by the wharfinger to a shipowner are to provide adequate mooring appliances, and safe ingress and egress.
- The failure to provide a safe berth may create a presumption of negligent maintenance.
- Be aware&hellip;..many marinas designed or built before 1994 were NOT designed for hurricane force wind and waves WITH vessels moored to the piers. As a result, a storm of force with vessels moored to the piers.

- **Vessel Owner Duties**

- Act with reasonable care under the circumstances.
- Use all reasonable means and take proper action to prevent or mitigate the damage.
- Properly moor the vessel, stow loose gear on deck, and properly tie down cargo.
- Must follow insured&rsquo;s specific hurricane plan where one was required.

- **Act of God**

- The Act of God defense applies only to events in nature so extraordinary that other conditions in the particular locality affords no reasonable warning or opportunity to avoid the event.
- Thus, an essential element of the Act of God defense is “that the event could not have been prevented by the exercise of reasonable care.&rdquo;

- **Force Majeure**

- An inevitable or unavoidable accident caused by overwhelming and unforeseeable forces that could not have been avoided by reasonable precautions or measures.
- Party relying on the “Act of God” defense bears a heavy burden to show that it took every reasonable possible precaution and did everything reasonable care required.

- **Other Important Considerations**

- Take note of the quantum of a hull claim - is the insured vessel a construction barge?
- Require a sworn proof of loss with a detailed written list of damages for all items, except for a small exception.
- Be sure to confirm accurate mooring locations for any insured vessel that is moored.
- Waiver of Subrogation issues
- Marinas as additional insureds
- Hold harmless and indemnify from third party claims
- Shifting loss to third party insurer
- Indemnify for loss without fault
- Exculpatory Clauses
- Limitation of Liability Clauses
- Evacuation requirements

- **Abandoned and Derelict Vessels**

- Derelict vessels are those in a wrecked or substantially dismantled condition at any port in this state without the consent of the agency having jurisdiction over the property of another without the consent of the property owner.
- Fla. Stat. 823.11 states that it is unlawful for any person, firm, or corporation to leave a derelict vessel.
- Violation of this section constitutes a 1st Degree Misdemeanor (punishable by up to one year).
- When a derelict vessel is docked or grounded upon private property, the vessel at the vessel owner’s expense 60 days after compliance with the provisions of 328.17(5).
- For removal, contact the Florida Fish and Wildlife Conservation Commission to remove abandoned or derelict vessel.

For many years, Chartwell Law&rsquo;s maritime attorneys have assisted clients with claims arising from hurricanes and other natural disasters throughout the United States, including the most recent hurricanes. Our maritime group practices out of our Miami office, Chartwell has seven offices located throughout the state. Irma claims anywhere in the state. A map of our Florida office locations and a list of our office locations is available on our website.

Our marine coverage and litigation experience includes claims arising from marine injury and wrongful death, maritime commercial disputes, shipping and cargo claims, recreational watercraft issues, and environmental concerns. Our clients include most major U.S. and European insurers.

Chartwell&rsquo;s admiralty and maritime group works closely and collaboratively with our other attorneys to provide comprehensive legal services to our clients.

and consultants to ensure prompt, accurate and legally defensible positions on claim ensures the fair and timely assessment of all available information and the proper ap accordance with the relevant legal standards.

If we can be of any assistance to you during these hectic times, please feel free to c opportunity to serve your legal needs and for your confidence in our work.

Regards,

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