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DUTY OF SEAWORTHINESS UNDER MARINE INSURANCE POLICY

Owner's duty of seaworthiness remained in effect under marine insurance policy, although the vessel was undergoing repairs, because the risk to the vessel was readily capable of being resolved by capping the hoses

Underwriters at Lloyd's v. Carlos H. Labarca
260 F.3d 3 (1st Cir. 2001)
(Decided August 2, 2001)

Insurer, Underwriters at Lloyd's ("Lloyd's") brought action for declaratory judgment, to obtain a declaration as to obligations under a marine insurance policy for one hundred seventy thousand dollars issued for a sport fisherman vessel which sank in calm waters. The District Court for the District of Puerto Rico granted summary judgment in favor of plaintiff holding that the Underwriters were relieved of any obligation under the policy because the vessel was unseaworthy at the time and the unseaworthy condition caused the ship to sink. Defendant, Carlos Labarca ("Labarca"), the insured and owner of the M/V GYPSY appeals.

Several days before the M/V GYPSY sank in her slip, Labarca and a mechanic removed two of the vessel's four air-conditioning units. All four of the vessel's air-conditioning units were cooled with raw seawater from one pump which directed water through four individual hoses that ran directly from the ocean into each unit. Unbeknown to Labarca, when two of the four units were removed, two hoses were left unsealed at the ends. Experts for both the plaintiff and defendant agree that the two unsealed air-conditioner hoses caused the sinking by flooding the vessel after Labarca disembarked for the night but had left the air-conditioning system running.

The First Circuit addresses whether an insurer may deny coverage under a marine policy for breach of warranty of seaworthiness when a vessel's equipment is temporarily rendered unfit for its intended use, and is the proximate cause of a vessel's sinking? The First Circuit states that a warranty of seaworthiness is an absolute duty owed by a shipowner to its crew, and, in this case, to its insurer to provide "a vessel and appurtenances reasonably fit for their intended use." *Mitchell v. Trawler Racer Inc.*, 362 U.S. 539, 550, 80 S.Ct.926, 4 L.Ed2d 941 (1960); *Carr v. PMS Fishing Corp.*, 191 F.3d 1,3 (1st Cir.1999); *Ferrara v. A.V. Fishing Inc.*, 99 F.3d 449, 453 (1st Cir.1996).

Even, “temporary and unforeseeable malfunction or failure of a piece of equipment under proper and expected use is sufficient to establish...unseaworthiness.” *Hubbard v. Faros Fisheries, Inc.*, 626 F.2d 196, 199(1st Cir.1980).

When a vessel sinks in calm waters a presumption of unseaworthiness arises and it is for the insured to rebut by producing competent evidence from which a factfinder could determine that the vessel sank for some reason other than the alleged unseaworthy condition. The Circuit Court found that based on the record, Labarca failed to show that the vessel sinking could be attributed to a latent defect.

While the duty of seaworthiness is implied in every marine insurance policy, it is not an indefinite warranty and will not apply at all times. *See e.g. West v. United States*, 361 U.S. 118, 122 (1959) (determining that “it would be an unfair contradiction to say that the owner held the vessel out as seaworthy” where the vessel has been turned over to a ship repair contractor for a complete overhaul for the sole purpose of making her seaworthy); *Roper v. United States*, 368 U.S. 20, 21-22 (1961) (where a vessel is not “in navigation” – *i.e.*, no longer used to travel the seas – it carries no warranty of seaworthiness). The Court found that since the risk to the vessel was readily capable of being resolved by capping the hoses or by refraining from operating the air-conditioning system until the two removed units had been reconnected, Labarca’s warranty of seaworthiness remained in effect.

Although the Circuit Court denied the notion that a ship owner is obligated to furnish an accident-free ship in-line with a standard of perfection, the owner is under an absolute duty to furnish a vessel and appurtenances reasonably fit for their intended use. Since the Court found that the air-conditioning system had been left both unfit for its intended use and highly dangerous to the vessel’s continued viability, the Circuit Court affirmed the judgment below and found Lloyd’s was thus relieved of any obligation under the insurance policy.

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