

Third Circuit Finds Insured Has Burden of Proving Fortuity Under Yacht Policy

On March 24, 2020, the U.S. Court of Appeals for the Third Circuit, in *Chartis Property Casualty Company v. John Inganamort, et al.*, held that the insured failed to meet his initial burden of establishing a fortuity under the involved policy. This decision is noteworthy because the Third Circuit decided to follow the First, Second, Fifth and Eleventh Circuits in concluding that the insured bears the initial burden of proving a fortuitous loss. In this case, the policy of insurance provided “all-risk” coverage for a 65-foot fishing vessel that was found to be partially sunk behind the insured’s second home in Boca Raton, Fla. All-risk coverage is considered to be broad in scope because it is normally interpreted to mean that the policy will cover every kind of loss, except those that are specifically excluded under the policy. In the marine insurance context, all-risk policies are usually construed to mean that all losses that are “fortuitous” or “accidental” are covered.

The loss occurred sometime in September 2011 when the insured was at home in New Jersey. The insured timely reported the claim and the insurer sent a claims specialist to conduct a preliminary survey on October 24, 2011. He reported, “three inches of standing water in the starboard forward cabin bilge and multiple potential sources of water ingress, including a hole in the hull the size of a screw.” He also found that the electrical breakers were “severely rust-stained and blackened from an electrical failure[.]” and subsequent testing “revealed obvious water intrusion[.]” A final survey was completed on June 28, 2012, that confirmed the preliminary survey’s findings and also found the ship’s battery charger was not working, and, without a source of power, the ship’s bilge pump could not operate.

Even though the insured’s vessel was clearly in disrepair, the insured argued that he was not obligated to prove a fortuity under the policy, only that a loss had occurred. In the alternative, the insured also argued that the proximate cause of the loss was heavy rainfall. However, the insured’s own expert would not say with any certainty that there was any heavy rainfall in or around Boca Raton during the relevant time period. Further, the insured’s position was not advanced by its failure to deny the Uncontested Statement of Facts served by the insurer in support of its motion — in the absence of any response, the trial court deemed the facts asserted therein to be admitted. Based on the available record, the Third Circuit found that there was insufficient evidence to conclude that heavy rain or any other fortuity caused the loss.

Under normal circumstances, the insured’s burden of establishing a fortuity is not difficult to meet. This initial burden is not heavy, especially in the marine context, because the insured may not even be present when the loss occurred. Therefore the insured is not expected to explain how the loss occurred or identify the exact cause of loss. Indeed, a fortuity can be inferred if the insured can demonstrate it took reasonable steps to care for or maintain the vessel prior to the loss.

In this case, although the insured argued the vessel was in fact seaworthy prior to the loss, the insured did not present sufficient evidence of seaworthiness before the district court or the Third Circuit. Under the circumstances, the Third Circuit had no alternative but to conclude that the insured failed to meet his initial burden of establishing a fortuitous loss under the policy.

The question of whether a loss was in fact fortuitous is often a fact specific exercise, but this case shows that an insured nevertheless should exercise some care in investigating the loss promptly and retaining appropriate experts to reasonably preserve the facts and circumstances leading up to the loss. Failure to do so, especially in the marine context, can lead to a denial of coverage.



Christopher Raleigh

Member

craleigh@cozen.com
Phone: (212) 908-1245
Fax: (212) 509-9492

Related Practice Areas

- Maritime Litigation

Industry Sectors

- Maritime