Marilyn Raia
San Francisco,
Shareholder

Direct Dial: 415.352.2721
Fax: 415.352.2701
Email Attorney

# All-Risk Hull Insurance Clarified

By Marilyn Raia

There are some misconceptions about what all-risk hull insurance is intended to cover. It is not a substitute for title insurance. It is not a service contract on a vessel such as might be offered for a household appliance. And, it is not a means for upgrading or refurbishing a vessel. Nonetheless, insureds under all-risk hull policies do not always understand what their policies do and do not cover. What might appear in the first instance to be a covered claim because the loss or damage was not expected by the insured may not be covered at all. This article reviews some circumstances under which the loss of or damage to a vessel has been held not covered under an all-risk hull policy.

As readers may recall from a prior article, Marine Insurance 101 (*Pacific Maritime Magazine,* November 2010), there are two basic types of hull insurance, all-risk and named perils. An all-risk hull policy covers all risks of physical loss or damage to a vessel from an external cause unless specifically excluded in the policy. It is not an "all loss" policy. That is, a hull policy does not cover everything that might happen to the insured vessel. To be covered, the loss must be fortuitous. That means the loss must be unexpected, unintended, or an accident, and not something certain to occur. A named perils policy is more limited in scope and covers only losses due to the perils named in the policy. The insured under an all-risk policy has the burden of proving the loss or damage claimed for was fortuitous.

**Defective title to a vessel**

An all-risk hull insurance policy does not provide relief to a vessel buyer who does not obtain good title in the transaction. In Commercial Union v. Sponholz, 886 F.2d 1162 (9th Cir. 1989), the insureds under an all-risk hull policy bought a trawler. During the term of the policy, the police confiscated the vessel after determining the Sponholzes had bought a stolen vessel. The Sponholzes were not implicated in the theft. They made a claim under their all-risk hull policy and argued the vessel was lost to them when it was taken away by the police. The district court held the confiscation of the vessel was not a covered physical loss of the vessel but merely the result of a defect in the vessel's title. The Ninth Circuit agreed and held the hull policy was a casualty policy and could not be converted into a title insurance policy.

**Wear and Tear**

An all-risk hull policy also does not serve as a way to compensate a vessel owner for losses due to wear and tear. Wear and tear occurs in the normal use of a vessel. Losses due to wear and tear are not considered fortuitous and for that reason they are not covered under an all-risk policy. Great Lakes Reinsurance (UK) PLC v. Soveral, 2007 AMC 672 (S.D. Fla. 2007) illustrates the point well.

In Soveral, the insured vessel sank at her dock because of rainwater accumulation. The rainwater accumulated because the batteries powering the bilge pump had died. The court held the loss was not fortuitous but rather the result of wear and tear. Accordingly, it was not covered under the all-risk hull policy issued by Great Lakes. The court reasoned the vessel was left completely uncovered in a tropical location during the rainy season. Rain entered the vessel and the bilge pumps were activated and eventually drained the battery. When the battery died, the bilge pumps stopped pumping and the vessel sank. In a declaratory relief action file by Great Lakes against its insured, the court held the deterioration of the battery constituted normal wear and tear and was not fortuitous. The court also held the entry of rainwater into an uncovered vessel during the rainy season was not fortuitous.

Another case illustrating the point is Axis Reinsurance Company v. Henley 2009 WL 3416248

(N.D. Fla. 2009). In that case, the insured vessel was used for fishing charters (although that fact was concealed from the insurer). During one trip, with passengers aboard, the vessel took on water. The batteries became submerged and one of the three engines did not start. A passenger had to bail the vessel out but succeeded in lowering the water level by only a few inches. Eventually, the vessel was able to return to the dock under her own power. The next morning the vessel was found to be sinking at the dock.

The insured made a claim under his all-risk hull policy. The insurer hired a surveyor to investigate the cause of the sinking. The surveyor found clogged scuppers which he deemed to be a partial cause of the loss. He also discovered the vessel lacked a starboard bilge pump which should have been part of the vessel's original equipment, and had an inoperable port bilge pump. He also found the inboard ends of the discharge hoses for the bilge pumps were lower than the exit holes on the outside of the hull, resulting in a siphon effect and the flooding of the lazarette as the vessel took on water. The discharge hoses were not capped and did not have an anti-siphoning loop.

The court first found the policy to be void because the insured had concealed information about the vessel being used for charters. For "completeness of the record," though, the court also stated even if the policy were not void, the loss would not be covered because it was not fortuitous. The court reasoned the proximate cause of the loss was the entry of water into the vessel due to wear and tear of the bilge pumps coupled with the siphoning through the discharge hoses, and not due to waves splashing over the sides of the vessel.

**Negligence of the vessel owner**

Loss of or damage to a vessel due to the negligence of a vessel owner often is considered fortuitous and covered under an all-risk hull policy. However, that is not always the case. Under certain circumstances, the negligence of vessel owner can also be considered a non-fortuitous cause of loss precluding coverage under an all-risk hull policy.

In Reliance Ins. Co. v. McGrath 671 F. Supp. 669 (N.D.Ca. 1987), the insured wooden-hulled vessel had not been away from the dock for more than two years. One day, the vessel owner took the vessel a short distance away for refueling. When leaving the fuel dock, the vessel owner heard some banging on the hull, which he concluded resulted from the vessel striking a submerged object. He believed there was not much damage and did not immediately haul the vessel. The vessel regularly took on water thereafter and had to be pumped out from time to time. Moreover, marine borers attacked the hull area that had been damaged and scraped when the vessel struck the submerged object. The marine borers were able to access the vessel's planking because of the disturbance of the anti-fouling paint. Over many months, the borers consumed enough of the planking to allow water into the hull and sink the vessel.

The vessel owner made a claim under his all-risk hull policy for the constructive total loss of the vessel. The district court held the loss was not covered because the sinking was not fortuitous. Rather, the court found the failure to haul and inspect the hull and replace the anti-fouling coating after the vessel struck a submerged object caused the sinking, and those failures were attributable to the vessel owner's negligence and lack of due diligence.

Hull insurance is important for every vessel owner to have. However, vessel owners should not expect all-risk hull insurance to cover every casualty and occurrence that might befall their vessels. All-risk hull insurance covers only fortuitous losses and should not be considered a financial resource for business decisions gone awry or the failure to maintain the insured vessel.