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## **Always Know Where You Are**

By Marilyn Raia

Many marine insurance policies condition coverage on the insured vessel remaining within a specific geographic area. If an insured vessel suffers a casualty while navigating outside the specific geographic area, most often there is no coverage for the loss. And there may be no coverage even if vessel's location was not a cause of casualty. Accordingly, it is important for a vessel owner always to be mindful of the insurance policy terms and vigilant about insured vessel is.

### **Not South of the Harbor Entrance**

Atlantic Specialty Insurance Company v. AC Chicago, LLC 2018 AMC 1183 (N. D. Ill. 2017) involved a marine insurance policy on an America's Cup Class sailboat. AC Chicago owned the vessel and contacted an insurance broker to obtain a hull and machinery policy covering it. In the application, AC Chicago requested navigation limits of "10 Miles North & 5 Miles East of 31st Street Harbor, Chicago."

Upon receipt of the application, the underwriter from Atlantic Specialty reviewed a chart of the area in question. He determined there were shoals approximately one mile south of the 31st Street Harbor and that the entrance to the Harbor opens to the south. After determining the shoals were outside the requested navigation limits, the underwriter issued the hull and machinery policy for a one year term. The policy contained a "navigation condition" which provided "it is a condition of the policy that the insured vessel be confined to ten (10) miles North and five (5) miles East of 31st Street Harbor in Chicago, IL when vessels are operated May 1 to October 21 each year." The policy further provided in the event of a breach of a policy condition, the coverage would terminate, and then be reinstated when the condition was no longer breached. The policy also provided there would be coverage in the event of a breach of the navigation condition if notice were given to the insurer and any amended policy terms and an additional premium were agreed to by AC Chicago.

On August 1, 2015, the insured vessel went on a paid excursion. It sailed north of the 31st Street Harbor. On the return trip, the vessel sailed south toward the Harbor. The winds were strong from the northwest which propelled the vessel south at a great speed. The vessel sailed approximately one mile south of the 31st Street Harbor so it could be turned back into the wind to slow its speed. As the vessel headed back north toward the Harbor, it grounded on a shoal one mile southeast of the Harbor.

One of the owners of AC Chicago, Schulz, was on board and contacted Great Lakes Repair to tow the vessel to the 31st Street Harbor. Great Lakes issued an invoice for salvage services in the amount of \$200,000 which was "shocking" to Schulz. After not being able to negotiate a reduction of the invoice and not paying it, Schulz submitted a claim to Atlantic Specialty. Great Lakes Repair sued Schulz and AC Chicago for \$200,000. Both defaulted and judgment was entered against them.

Atlantic Specialty investigated the claim and denied coverage. It determined the vessel was in breach of the navigation condition at the time of the grounding. It then filed suit against AC Chicago seeking a judgment that the policy did not provide coverage. AC Chicago filed a counterclaim against Atlantic Specialty. Both parties moved for summary judgment. The district court granted Atlantic Specialty's motion and held there was no coverage.

AC Chicago argued the term "31st Street Harbor" should be interpreted to include the area

around the Harbor and not a fixed line at the harbor's entrance because it was necessary to go south of the harbor's entrance to enter the Harbor. The district court rejected the argument. It explained it would not be reasonable to interpret the term "31st Street Harbor" in the navigation warranty to include an unspecified distance south of 31st Street Harbor. It further explained that the insured's interpretation would result in the term "31st Street Harbor" being meaningless because it would be unclear whether it referred to one mile, two miles or even ten miles south of the Harbor. The district court also rejected the insured's argument that coverage would be illusory if "31st Street Harbor" were interpreted to mean the southern boundary line of the Harbor because the vessel would go in and out of coverage every time it went in or out of the Harbor. Finally, the district court noted the policy's navigation limits were exactly as specified in the insurance application.

#### **Not Covered in a Port of Refuge**

Even a vessel that goes into a port of refuge after a casualty may void its insurance coverage if the port of refuge is not within the navigation limits of the policy. In *Northern Assurance Company of America v. D'Onofrio General Contractors Corp*, 2009 AMC 1908 (E.D. N.Y. 2009), the barge **Hughes 914** was insured under a hull and machinery policy with a navigation limit confining the insured vessel to "Atlantic Coastwise and Inland Waters of New York and New Jersey." While under tow in navigable waters between Boston and Rhode Island, the barge began to take on water. The tow was diverted to a port of refuge near Fort Adams, Newport, Rhode Island.

The barge owner submitted a claim to Northern Assurance for the damage suffered by the barge. Northern Assurance denied the claim on the ground the barge was outside of the navigational limits in the policy at the time of the casualty. It then filed suit against D'Onofrio seeking a judgment of no coverage.

D'Onofrio contended the barge was within the navigation limits of the policy because it was on the Atlantic Coast. It argued the navigation warranty was ambiguous and could be interpreted to mean the waters of the Atlantic Coast of the United States (i.e. broadening the scope of "Atlantic Coastwise" to include the entire east coast of the United States and not just the coast off New York and New Jersey ), as well as the inland waters of New York and New Jersey. The district court did not agree. It noted the insured was attempting to "re-write" the policy. It held the navigation warranty was not ambiguous and had a definite and precise meaning "unattended by danger of misconception." The district court held the warranty had only one reasonable interpretation. That interpretation confined the vessel to the Atlantic Coast and Inland waters of New York and New Jersey. Because the parties agreed the insured vessel was off the coast of Rhode Island when the casualty occurred, the district court held the navigation warranty was breached. As a result there was no coverage for the loss.

#### **Location Not a Cause of Loss**

*Pacific Fisheries Corp v. HIH Casualty & General Insurance, Ltd.* 2001 AMC 952 (9th Cir. 2001) involved two policies on a fishing vessel, **Icy Point**. One was a hull and machinery policy and one was a protection and indemnity (liability) policy. Both contained the same navigation warranty limiting coverage for the vessel when in "the waters and tributaries of the Pacific Ocean not west of 165 degrees E longitude, not south of 30 degrees S latitude and not north of 55 degrees N. latitude." The specified geographic limits did not include Guam.

The **Icy Point** sailed from San Francisco on a trip to Guam in the ordinary course of business. While the vessel was in Guam, a crewmember sued the vessel owner contending a malfunction

of the vessel's freshwater system caused him to suffer dehydration. The vessel owner told HIH about the lawsuit. HIH told the vessel owner that it needed to determine why the vessel was outside of the navigation limits in the P & I policy before agreeing to defend the vessel owner in the pending lawsuit. HIH also told the vessel owner it would not waive the navigational limits in the policy even if it agreed to defend the vessel owner.

The ***Icy Point*** eventually left Guam and headed north. When doing so, it remained outside of the navigation limits in the insurance policies. A week later, it suffered an engine breakdown. The vessel owner informed HIH about the engine breakdown. HIH denied coverage on the ground the vessel was in breach of the navigation limit in the policy when the engine breakdown occurred.

The vessel owner sued HIH for breach of the insurance contract. The district judge entered judgment in favor of HIH, finding the navigation warranty was a material provision in the policy, and had been intentionally breached. The vessel owner appealed. The Ninth Circuit affirmed the district court's judgment.

The vessel owner argued the breach of the navigation warranty did not cause the loss, so the policy should still be in effect. Citing California law which governed the policy, the Ninth Circuit noted a breach of even an immaterial warranty voids a policy when the policy says so. Causation between the breach and the loss is not required. Because the vessel owner had received notice that any breach of the navigation warranty would result in the coverage being void, the coverage was held void.

Many marine insurance policies contain provisions conditioning coverage on the vessel navigating in certain designated geographic areas. To avoid losing coverage for a casualty, a vessel owner should always know where the insured vessel is and make sure it remains where it is supposed to be.