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MEMO

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Re: Memorandum for Firm Website

Boat Owner's Liability for Damages Caused by his Boat During a Hurricane

Generally, a boat owner will be responsible for damages caused by his boat that are occasioned by his negligence. However, where such damages are caused during the course of a hurricane or other natural disaster, the boat owner has available to him the defense of "act of God." This defense is not absolute and the boat owner can be subject to liability if the evidence shows that his negligence caused or contributed to the damages. The following analysis specifically focuses on various cases relative to the liability of a boat owner where his boat drifts away from its moorings during the course of a hurricane and causes damages to another's boat.

In Burklow and Associates, Inc. v. Belcher, 719 So.2d 31 (Fla. 1st DCA 1998), a marina owner sued owners of sixteen boats stored at a marina for breach of contract and negligence for damages caused by the boat owners' failure to remove vessels from the marina before a hurricane. The issue in this case was whether the boat owners were under a duty to remove their boats. The First District Court of Appeal looked to several federal cases and concluded that the line of cases supported the imposition of a duty on a vessel owner ***to take reasonable care for the protection of another's property*** which may include moving the vessel from a marina after a storm warning has been issued. Id. (emphasis supplied).

Among the cases cited by the court in Burklow was Twery v. Houseboat Jilly's Yen, Houseboat Surfside Six, 267 F.Supp. 722 (S.D. Fla. 1967). In Twery, a houseboat

broke away from its permanent moorings during “an exceptionally strong and dangerous hurricane” and damaged nearby property. The defendants presented evidence that the houseboat had been properly moored by an expert two hours prior to the first definite weather advisory that hurricane was a definite threat to South Florida. The court found that the boat owners were *not negligent* in securing the houseboat as they had used reasonable precaution under the known circumstances; that there was no showing that the houseboat could or should have been made more secure or that it should have been moved prior to the hurricane; and that the houseboat broke away from its moorings as a result of an inevitable accident or an act of God.

In Bunge Corporation v. Freeport Marine Repair, Inc., 240 F.3d 919 (11th Cir. 2001), an owner of a grain loading facility brought an action against a ship owner for damages that occurred when the ship¹ broke free from its moorings, drifted away, and struck and damaged the grain facility during a hurricane. The court *rejected* the ship owner’s argument that he was not negligent in maintaining or securely mooring the ship because the hurricane was an “act of God” that caused the ship to break away despite ship owner’s reasonable diligence. The court applied the rule of The Louisiana, 70 U.S. 164 (1865), which provides that ***a drifting vessel is presumptively liable for damages unless it “can show affirmatively that the drifting was a result of an inevitable accident, or of a vis major, which human skill and precaution and a proper display of nautical skill could not have prevented.”*** The Louisiana (emphasis supplied).

In Buntin v. Fletchas, 257 F.2d 512 (5th Cir. 1958), a boat owner brought an action against a repair yard owner for damages to his boat that occurred during a hurricane. The court ruled in favor of the repair yard owner based on the fact that the boat was secured in the same manner as other boats that survived the hurricane and based on the yard owner’s testimony that he “took the precautions a man with 44 years experience would take to prevent damage to the houseboat.” The court agreed with a Ninth Circuit Court of Appeal decision that held that ***“when an act of negligence concurs with an act of God to cause damage, the negligent party is liable.”*** Id.

¹ The ship was in the final stages of construction at the defendant’s facility.

citing Inland Power & Light Co. v. Grieger, 91 F.2d 811 (9th Cir. 1937) (emphasis supplied). However, the court found that since the repair yard owner had come forward with proof of due care, that the burden was on the boat owner to establish negligence, which he had failed to meet.

Based on the foregoing, it is likely that a boat owner will be held liable for property damage caused by his boat during the course of a hurricane if the evidence shows that the boat owner's negligence caused or contributed to the resulting harm. See also Marrero v. Salkind, 433 So.2d 1224 (Fla. 3d DCA 1983) (for the general proposition that a wrongdoer remains liable for a consequent harm when the result is caused by a congruence of his own negligent act with a natural force or condition, often called an "act of God"). Moreover, the burden is on the boat owner to establish an "act of God" defense and prove that he took reasonable precautions given the risk of an impending hurricane. See The Louisiana.

In conclusion, the following factors are relevant in determining the liability of a boat owner for damages caused to another's boat during a hurricane:

- a. Whether the precautions taken by the boat owner were reasonable given the circumstances of an impending hurricane;
- b. The manner in which the boat was moored or secured, including the materials used and the method employed in securing the boat;
- c. Whether the boat owner secured the boat himself and his level of experience;
- d. Alternatively, the level of experience of the person who secured the boat, if someone other than the boat owner;
- e. The time frame, relative to hurricane advisories, within which the boat owner secured or attempted to secure his boat;
- f. Whether the boat could have been made more secure prior to the hurricane;
- g. The manner in which the damaged boat was moored or secured;
- h. The manner in which other boats in the area, where the damages occurred, were secured;

- i. The harm or damage to other boats in the same area, where the damages occurred, as a result of the hurricane; and
- j. The intensity of the hurricane.