



No Coverage for Boating Accident Due to Breach of Operator Warranty

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Under maritime law, a breach of a promissory warranty in a maritime insurance contract excuses the insurer from coverage. This principle was applied recently by a federal district court to void coverage for a boating accident where the vessel, at the time of the accident, was operated by an individual who was not named as an operator under the marine insurance policy's operator warranty. See *Maclean v. Travelers Ins. Co.*, 2017 WL 4873495 (D. Mass. Oct. 26, 2017). The court's ruling is a reminder that breaching an operator warranty may result in a loss of insurance coverage.

In August 2013, Kevin and Donna Maclean boarded the M/V NIKKI to enjoy a "lightning speedboat adventure" in Boston Harbor. According to the Macleans, the speedboat was traveling at high speed when it crossed the wake of another boat, tossing the Macleans into the air, resulting in serious injuries.

The owner of the M/V NIKKI had purchased commercial marine insurance cover through Travelers Property Casualty Company of America. The policy contained two relevant provisions. First, the policy contained a choice of law provision providing that it "shall be interpreted in accordance with the provisions of Federal Maritime Insurance Law." Second, the policy contained a Named Operator Endorsement, which required that any operator of the vessel be approved by Travelers and listed in a Named Operator Schedule. The endorsement further provided that coverage under the policy "is null and void when the vessel is operated by anyone other than the persons listed in the Named Operator Schedule."

At the time of the accident, the vessel was operated by an individual who was not named as an operator under the Named Operator Endorsement. For this reason, Travelers asserted that the operation of the vessel breached the policy warranty, and thus the M/V NIKKI's owner was not entitled to defense or indemnity coverage.. The owner assigned rights to the Macleans, who then sued Travelers, seeking a declaration that Travelers was required to provide coverage.

The court sided with Travelers. Under maritime law, according to the court, "a breach of a promissory warranty in a maritime insurance contract excuses the insurer from coverage." The court explained that the Named Operator Endorsement was a promissory warranty because it was a provision "by which the insured stipulates that something shall be done or omitted after the policy takes effect and during its continuance." Because the policy itself stated that it would be "null and void when the insured vessel is operated by anyone other than those persons listed on the Named Operator Schedule," and because the incident occurred when someone other than a listed operator was operating the vessel, the policy's coverage, according to the court, did not extend to the accident.

Separately, the Macleans argued that the policy was ambiguous, requiring it to be construed in favor of coverage. Specifically, they argued that the vessel operator had in fact been added to the Named Operator Schedule-two days after the accident. They submitted that the policy was silent about "retroactive approval" of Named Operators, which should result in coverage. The court rejected this argument as well. While the theory was "clever," "it does not square with the clear text of the policy which is void when operated by a non-listed operator." For this reason, the court declined to create ambiguity where none existed.

In Maclean, the court strictly enforced the operator warranty to preclude coverage where, as was the case here, the vessel was being operated in breach of the warranty at the time of the accident. The case is a reminder of how, under maritime law, an operator warranty will be applied as written to void coverage for an accident when the vessel is operated by a non-listed operator.