

Mid-Atlantic Mariners Club

Newsletter

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Fall 2007

Volume 3, Issue 1

October Meeting & Cocktail Reception in Annapolis, December Meeting & Holiday Party in Philly, and "Thank You" to Damon Hostetter

Another Mariners Club Crab Feast has come and gone. Perfect weather, plenty of crabs and beer, crab races, and a general good time had by all this past July at the Kent Island Yacht Club. Hard to believe, but its already time to look at the upcoming Fall and Winter events. See the "Upcoming Events" section on page 3 for details. As you will see, the October event will coincide with the Annapolis Sailboat Show, so this will be a great opportunity to attend both in the same week. And guess what, for the Holiday function in December we're taking it north to the Philly area aboard the restaurant/converted sailing ship "Moshulu"! More details to follow in the upcoming months on that.

In Club News, you may recall from the last newsletter that effective January 2008 our current Skipper, Damon Hostetter of Jack Martin and Associates will be passing the baton to Charlie Simmons of Gorman and Williams. Damon has been the lifeblood of this organization since its inception in 2003, but he will continue to be active in the Club as a member of the Executive Committee. A huge "thank you" goes out to Damon from all of us. His ideal combination of business sense, humor, and passion for the Club's success and growth helped drive it from inception to an ever-growing industry group today. His last edition of "The Skippers Corner" appears in this issue.

So enjoy this issue of our MAMC Newsletter. We have two "Current Thought" submissions this issue that include multiple viewpoints, plus we have a very interesting legal read, a great article from a yacht salvage company, and the latest "What's Shakin" news to keep you on top of who's movin around out there. Hope to see you at our next event!



The Skipper's Corner **Damon Hostetter** **Jack Martin & Assoc.**

It seems like only yesterday that a small group of us gathered around a conference table in Annapolis to discuss the concept of a Mid-Atlantic Mariners Club. Putting together the original framework, it was difficult to imagine exactly how the Club would take shape and where we would be in 5 years. And while things have changed and evolved as we approach our 4th Anniversary, one thing has remained the same: Our Marine Family.

The relatively small pleasure marine insurance industry is like one big extended family. For the most part we know, if not personally, at least by name and reputation most of our extended family members. While we work most closely with our immediate family, we often find the need to reach out to a member of our extended family to create valuable partnerships, ask for advice, seek solutions to vexing problems, or sometimes just to say a simple hello. And like a family, word passes extremely quickly (sometimes at warp speed) when there is a new marriage or divorce, a possible love affair brewing, a sickness in the family, an unfortunate death, or when a rising child is adopted or born. There really are no secrets in our family!

Continued on Page 2

("Skipper's Corner" continued from page 1)

For the most part, we really like and care for our family members. We recognize each other's strengths and weaknesses and simultaneously deal with, or work through, the eccentricities. When a unique or possible better opportunity makes itself known, we look out for the best interest of our extended family by ensuring our brothers and sisters are aware of the situation. Similarly when we are uneasy or dissatisfied with our immediate family, we let our brethren know of our situation to see if they might have suggestions or insight. And so it is, we often find our closest family members moving to live temporarily, and sometimes permanently, with a distant relative. Ultimately, this doesn't weaken our family; rather to the contrary this generally serves to strengthen the organization by further passing knowledge, experience and wisdom.

And so it is with the Mid-Atlantic Mariner's Club, our organization has in some little way helped and continues to strengthen our family. In addition to the valuable experience of listening and learning from the experiences of our collective members, our Club has enabled us to network and get to know some of our extended family better. We've been able to place names with faces in a relaxed and comfortable environment. Alliances have formed, relationships have been strengthened, and marriages have blossomed.

As with any family, it is good to learn from all its' members, to share in the passion and energy of youth, and let others spread their wings and fly. And so it is, I am passing the torch to a new Skipper, Charlie Simmons, in 2008. I wish Charlie and his hard working staff of officers and volunteers well and I know they will do a remarkable job. For making these formative years of Mid-Atlantic Mariner's Club so special, I say "thank you" to one and all.

Mid Atlantic Mariner's Club Upcoming Events:

October 3rd, 2007

Meeting with cocktail reception afterwards

Location: Calvert House (Downtown Annapolis)

Topics:

- **Marina Fire Investigations:** Mike Linscott from SEA Limited
- **"How Slip Agreements Change the Game":** Todd Lochner and Dirk Schwenk from Lochner and Schwenk, LLC)
- **Sailboat Rigging Inspections:** Tom Wohlgemuth, President of Chesapeake Rigging
- **Clean Water Act Legislation for Recreational Boats** Margaret Podlich from Boat U.S

Cost: \$75 for members, \$110 for non members

Contact Alicia Shaffer at alicia.shaffer@zurich.com to check on space availability.

December 7th, 2007

Holiday Meeting and Party

Location: Moshulu Restaurant (converted sailing ship) in Penn's Landing, Philadelphia

Details to follow in upcoming weeks via e-mail to our mailing list.

Interested in getting on our e-mail mailing list for upcoming events, newsletters, etc.? Send an e-mail to mail@marinersclub.net with a simple request and we will be happy to add you on!

W&S

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- Marine Insurance • Charter Parties

What's Shakin'?



Alicia Shaffer (Mid-Atlantic Mariners Club Officer) recently accepted a Yacht Underwriting position within the Marine division of Zurich Global Energy.

Basil Voges Insurance Agency recently moved their office to 2001 Tidewater Drive, Suite 100, Annapolis MD. Their other contact info remains unchanged.

RLI Marine Insurance recently hired MAMC member Craig McGinnes to oversee/develop their Mid-Atlantic branch, with products to include Marine Artisans, Marina/Boat Dealerships, and Yachts for the USA marketplace.

Lucas and Cavalier, LLC recently hired John A. Carleton, Esquire, a recent graduate of Widener University, School of Law as an associate and Robert M. Cavalier, Esquire recently provided a lecture for the Union League of Philadelphia, Yacht Club Group, concerning the maritime law of tow/salvage

In BoatU.S. news, National Indemnity Company (a Berkshire Hathaway company) is acquiring Boat America Corporation. Boat America is the exclusive provider of products and services to BoatU.S., including the insurance operations. They will continue to work hard to provide consistent service and savings to their members.

Zurich Marine Specialty announces new management in their Baltimore office. Jay Canedo has recently been promoted to the position of Operations Manager and will oversee Operations, Underwriting and Product Development for the Marine division. Jay has been with Zurich for 16 years and has been in the Marine Department for 8. He is looking forward to becoming more involved with the Mid-Atlantic Mariners Club

The Ft. Lauderdale Mariners Club 18th Annual Seminar will be here before we know it, the week of October 22! Visit their website for details.

Around the Marketplace

"Yachtfest" recently took place in San Diego, CA from 9/13 through 9/16. Yachts of up to 143' were on display, and the typical San Diego weather did not disappoint. Although only having 40 large yachts on hand is small by our East Coast standards, the values totaled higher than any previous Yachtfest Show and stirred excitement in the local community, even prompting local news channels to show up and run live stories. Ashmead and White Consulting also ran "Super Yacht, Future Shock II" during this week, and had interesting speakers ranging from insurance agents to offshore flagging firms. The following pictures give a taste of the Show just before opening and of the seminar held in the always popular Shelter Island area. – Alex Kripetz, [Travelers Luxury Yacht](#)



“A Current Thought”

*The following submission comes from an insurance agent and a consultant.



**New Insurance Company Requirements for State Licensing
By an Anonymous (and frustrated) Insurance Agent, with subsequent comments by
Joan Guyther, Consultant with 3H Corporate Services**

We begin with the anonymous agent:

I am an insurance agent in Maryland, and the agency that I work for has been informed by some of our insurance companies that in order to continue to write marine insurance, we are now required to be licensed in every state where the boat is moored and/or where the owner resides. Makes me wonder how an insurance company is going to handle a customer who has a loss in Savannah, GA, a primary mooring location in New Jersey and a primary residence in Illinois? The New Jersey Insurance Commissioner probably isn't going to care about a loss in Georgia, neither is the Illinois Insurance Commissioner. I get the feeling that the insurance companies believe that obtaining licenses in many different states is "no big deal"; as if their agents and agency staff are twiddling their thumbs looking for busy work to do. Not only is this very time consuming (and frustrating), but it is also very expensive, and either way I am losing money. This new "requirement" is taking away from time that I normally use to work with customers and their needs, not to mention the fact that each state's licensing requirements are all extremely different. It is not as simple as filling out a form and mailing it, or requesting it online and then a license appears a couple of weeks later. Even though I am speaking from a small agency's point of view, I can't imagine that this is an easy adjustment and any less of an expense for a large marine insurance agency either.

I have been designated as the "lucky one" responsible for agency compliance, and I have found that in order to do so I will either have to handle this alone and become bald from ripping my hair out, or hire professionals to work with me on this project. As I stated earlier, either way I am losing money and now I will possibly have to shave my head! Some states require that you be approved by the Sec of State (Certificate of Authority), get approvals on any DBA, have a physical address in that state, get fingerprints, etc., etc. in order to get a corporate agency license from them. What a mess and an expensive, needless pile of work! A part of me believes insurance companies to be over-reacting and making part of the reasoning for this new requirement up; perhaps this is not for compliance reasons, but rather for internal controls. Or perhaps this is all because some powerful politician jumped on the insurance department over something small, maybe on a claim that did not go his/her way.

In talking with other underwriters and agents who have extensive experience and credentials, I get the same kinds of reactions. When a policy now needs to be rewritten because a customer changes his mooring location from Maryland to Delaware, the "license for every state requirement" comes off as just plain nuts. Does this bug anybody else? Maybe not agents in larger states like California or Florida, but here in the smaller states of the Mid Atlantic or New England, people do move their boats around (they float, you know). What a mess it will be down the road when we can't track claims, payment, and producer records without loads of errors. It will probably blow over some day because it will topple from its own weight. In my opinion this is gross over-reaction or imposition of fixes.

It does not appear to me that any states have moved yachts (always Ocean Marine) out of "exempt" status and into "controlled" like auto and homeowners. I have made some inquiries about this licensing requirement and have not found any actual proof that this is a regulation by any particular state. After some brief research, the closest thing that I have found is that some states only require you to be licensed with them if you are actively soliciting IN THAT STATE, and it does not apply if the client seeks you out. Please note that this is merely my opinion, observations and current situation. If anybody sees it even partially my way, I hope we could collectively lean on insurance companies who are enforcing these rules to come back to reality.

The Response from the Business Consultant (Joan Guyther): Tips for Navigating These Waters

Although time consuming, the licensing requirements do not need to be confusing. The National Association of Insurance Commissioners' website provides a broad summary of state requirements, see: http://www.nipr.com/non_resident_paper_licensing.htm. Requirements may differ based on type of organization (LLC vs Corporation). Pay special attention to the following items when applying for a business license:

Continued on next page

Name approval. States have specific regulations to ensure a name is not misleading to the public. States may also require trade name registration.

Secretary of State (SOS) registrations. Some states require registration with the Secretary of State prior to licensure. A couple of jurisdictions require registration after the license is granted (D.C.; NJ). SOS registrations may ask for a "resident agent". The resident agent is physically located in the state. The resident agent will charge an annual fee to represent you in the state. Typically, the representation services include agreeing to accept service of suit or state related paperwork on the business entity's behalf.

Fees for the Secretary of State may vary based on state of incorporation, formation and authorized share capital. Fees for an insurance license may vary based on number of principals' licensed, type of entity; lines of authority and/or resident state.

Fully complete the application. Information must be accurate and all questions answered. Supporting documentation must be provided (i.e. name approval; SOS registration; trade name filings as required). Make sure that the proper person (officer or designated agent) signs the application.

License application order of priority. Some states require that an individual and business entity application be filed together. Other states require the individual be licensed first.

Regulatory Actions. Regulatory actions must be fully disclosed with a written explanation and copy of the action with receipt for payment of fines. Be specific when explaining any "yes" answer to the screening questions.

Affiliation form. Check to see if state requires an "Affiliation form". This affiliates the individual to represent the agency.

Two or more locations. Operating more than one location under the same Federal Employer Identification Number (FEIN) may require a separate license application or branch registration.

Cover Letter should be included with contact information for paper filed applications. States may call the contact person to request additional information and/or clarify information.

State's differentiate between business entities, for insurance license purposes, based on the entities' FEIN. Thus, if the same management/owners operate several Business Entities, each entity having a separate FEIN, most states will require each business entity obtain a separate insurance license.

You must hold a resident license for the same lines of authority before applying for a non-resident license. States will only issue an insurance license to an agency for the same lines of authority which the individual responsible holds in that state.

License renewals are typically sent by the state 30 days or more prior to the renewal. When the license is issued the state provides license expiration and/or renewal information. ***Track your license expiration or renewal dates based on information provided with your initial license.*** Follow state renewal instructions provided. States continue licenses in various ways. States will send notices to renew or pay a "continuing education" fee to continue the term of the license. Also, some states consult the National Insurance Producer Database and confirm resident licensure. Once confirmation of resident license is complete the license is continued automatically. Renewal licenses are not mailed for states that issue perpetual license (no expiration date). You should check to make sure you continuation fee has been paid and the state has updated their records based on state requirements. State rules for renewals may differ for individuals and business entity licenses.

Secretary of State Registrations must be continued. This should be done based on state instructions provided. It may entail filing an annual report and/or tax filing. States requiring Secretary of State Registrations for licensure may check to ensure you remain in good standing.

License changes must be reported usually within 30 days. Changes include - name changes; address changes (business and resident); regulatory actions. Some states will require the individual responsible licensee be an officer of the Business Entity.

Following the state checklist and requirements will help to ensure your license is granted without the application being returned. We will be happy to discuss in further detail any questions you may have regarding this article.

Joan M. Guyther, CPCU, Managing Principal
3H Corporate Services
(301) 384-4530.

Vessel Owner's Maritime Defense Succeeds in Drowning Case

By: James E. Mercante, Esq.



Showing off your boat to friends is common. Less common is an understanding of the vessel owner's duties and potential liabilities when something goes wrong. In one recent case, the result was fatal.

The Accident

Members and friends gathered in the clubhouse at a yacht club's annual clambake. All was well when the dinner ended. But, things quickly changed when Rogers, the owner of the pleasure craft *Maggie Lou*, invited two friends to see her boat docked at a finger pier adjacent to "A" dock.

Later, the owner left her two friends, Loretta Childs and Robert Lilly, on the boat by themselves while she drove another friend home at about 10:00PM. At some point, Lilly fell into the water and drowned.

Childs said that they were about to get off the boat when she went to grab two sodas and heard a splash. She did not know that Lilly had left the boat. In her testimony, Childs said she did not see the accident and had "no idea" how or where Lilly fell into the water, i.e. from the boat or from A dock. She went to find Lilly and saw him floating in the water near the back of the boat. A nearby boat owner got a brief glance at Lilly waling on A-dock towards the clubhouse. Seconds later, this owner heard a splash and a woman on the dock screaming but Lilly was no longer in sight when he looked up. The nearby boat owner testified that he ran onto the dock and saw Lilly in the water in a panic. He tried to rescue Lilly, who could not swim, but in Lilly's panic, he never grabbed the man's arm.

The inference drawn from the testimony of the nearby boat owner was that Lilly fell from A-dock, not the boat.

The Lawsuits

Lilly's estate commenced a wrongful death action in state court against the owner of *Maggie Lou*. The theory of liability was that Lilly fell from the boat at the disembarkment location, that the boat was moored improperly, and that the two inexperienced guests were left unattended on the *Maggie Lou*. *Maggie Lou's* owner countered by filing an action in federal court invoking the court's admiralty jurisdiction. This strategy, unique to federal admiralty law, resulted in all other proceedings being halted, including Lilly's state court action. In the Federal proceeding, the vessel owner sought exoneration from liability, or alternatively, limitation of liability to the value of the *Maggie Lou*, pursuant to admiralty law, 46 U.S.C.A 183 (a). This federal statute allows a vessel owner to limit his or her liability to the value of vessel when a loss occurs without "privity" or "knowledge" of the vessel owner. The determination of whether an owner may limit liability is a two-step process. First, a court must determine what acts of negligence caused the accident. If there was no negligence, the vessel owner is "exonerated" and the issue of limitation is not reached. Second, if it is proved that some form of negligence did contribute to the accident, the court must determine whether the vessel owner personally participated in some way in the acts or omissions that contributed to the loss. If the vessel owner did not participate in any way, then he or she is entitled to limit liability to the value of the vessel.

Here, the vessel owner argued that she did nothing to cause the accident and that Lilly did not fall from the boat, but fell when he was some distance from the boat walking on A-dock. Because the credible testimony showed that Lilly did not fall off of the boat, the court found no liability against the vessel owner. As a result, in *Rogers v. Lilly*, 1:04 CV2133, the federal judge dismissed the wrongful death action and exonerated Rogers.

Conclusion

In this case, the vessel owner was lucky that her guest did not fall from the boat. A vessel owner must exercise reasonable care for the safety of his or her guests while onboard the vessel. It also pays to know if your guests can swim or not. If not, take adequate precautions.

***James E. Mercante, admiralty partner with Rubin, Fiorella and Friedman LLP. Jmercante@rubinfiorella.com
James originally wrote this article for Long Island Boating World in 2/07; it is republished here with permission.***

Yacht/Boat Liquidation and Your Goals

By Michael Costa
Director of Bank and Insurance Co. Relations/Broker
Certified Sales, Inc./YachtSalvage.com



Insurance Companies and Banks typically have two major goals for their Total Constructive Losses and Asset Recoveries:

- 1) Minimize the time a file is open (i.e. minimize "open file costs").
- 2) Maximize the Net Return on the Asset.

Many insurance companies and banks have done detailed research on their in-house open file maintenance costs and outside liquidation vendor costs. Both costs are significant, but too much attention is placed on open file costs and too little attention on the real prize, a high Gross Sale Price.

Open File Costs are important to control, but a high Gross Sale Price drives a strong Net Return.

A partnership with the right Liquidator can deliver a nice balance on both goals by combining the right auction process with proper cost controls on Recovery, Transport and Storage. Your assets can then result in the net returns you desire.

There are many types of liquidation processes: on-site auctions, timed auctions, sealed bid auctions, open and competitive auctions. There are also cases where a surveyor or third party adjuster is instructed to offer the asset to a local group of regular salvage buyers (some of these are limited to dealers, others are open to dealers and the public). Following are examples I have seen that demonstrate how liquidation processes can affect the Gross Sale Price:

- A third party adjuster offered a 48' 2005 CTL motor yacht to a local group of regular salvage buyers. The yacht was auctioned quickly via sealed bid for \$110,000. The high bidder subsequently resold the yacht 'as is' in an open and competitive bid process for \$200,000. ***In this first example the desire to close the file quickly resulted in a significantly lower Gross Sale Price.***
- A 2006 38' Center Console CTL, was stored at a dealer's yard next to another boat that caught fire. The Center Console suffered some damage. The Dealer offered \$40,000 to buy the boat immediately for a quick close to the file. However, the insurance company followed its usual procedure and assigned it to their salvage vendor. The boat was auctioned 'as is' for \$132,500 in an open and competitive bid process. ***This second example reflects a balanced approach by the insurance company. A month or two of reasonable storage fees will pale in comparison to a dramatically higher Gross Sale Price.***

The Gross Sale Price can also be negatively affected by other costs that are not so evident. In addition to the sales costs paid by you, the liquidator might add a "Buyer's Premium" or exorbitant loading or storage fees. Close attention must be paid to all costs passed on to the buyer by the liquidator.

Make sure your vendor can deliver a high Gross Sale Price along with professional and timely service at reasonable rates anywhere in the U.S. and Islands. If you are unhappy with your current vendor, find one that has the expertise and marketing ability you need.

Adjusters and Lenders are faced with many decisions and questions on their CTLs and Assets. An experienced liquidation vendor, in tune with your goals, can make the process a lot easier and more profitable for your company.

“A Current Thought”

*The following submission comes from an insurance agent, yacht underwriter, and a maritime attorney.



Storms Strand Boaters, and the issues of Navigation Warranties and “Safe Harbor”

**By an anonymous Insurance Agent, anonymous Yacht Underwriter, and Maritime Attorney
Stephen F. White**

The Anonymous Agent’s thoughts:

Late May of 2007 brought storms and high seas to south Florida and Bahamas. The storms were in a holding pattern, and this caused considerable concern to many seasonal “snowbird” boaters scheduled to make the springtime trip back north. Possible changes to the navigating plans were being considered, so during this time we heard from several of these Insureds. They were concerned about the navigation limits/warranties on their policies, required by their policies. Depending on their particular insurance navigational requirements, they were required to be north of either Georgia or North Carolina before the date designated as the “official” start of the dreaded hurricane season. This posed a problem for agents and underwriters as well, as we compared the needs and concerns of our Insureds with the warranties on the policies. The questions arose: did the Insureds plan well enough, or should they have known better and left before the situation became dangerous? Were they typical recreational boaters who would have been stuck in a bad and potentially dangerous situation if they left to meet the obligations of their insurance policy?

Another question that came to mind is the question of Safe Harbor. Maritime law does reference the weather, and the possibility that a mariner may have to go off course to protect lives and property in the event of severe weather. Does this have any bearing on the situation? When does a policy take precedence over safety and loss of property? What is the responsibility of the recreational boater – should they have known and planned better? And, worst case scenario, if a loss did occur due to dangerous weather and sea conditions, and the vessel is not in the navigation limits described on the policy – what would the outcome be? Would the courts side with the distressed boater or adhere to the warranties of the insurance policy? There are legal questions here, business questions, underwriting questions and ultimately moral questions.

The end to this story was a happy one, the storm did let up. The boaters were able to make it to their described navigations safely. But for a few days, in our office there were discussions, and more discussions, on how this should be handled. Who should have done what? Who would suffer if there was a loss, and what is the fair middle ground for our Insured’s, and the contract and exceptions to the contract? Ultimately what business decisions need to be considered?

All I can say with absolute certainty as an Agent (regardless of what my Underwriter says about coverage) - I will never advise an Insured to leave port when the winds are blowing, the rain is coming down and the seas are high from the safety of my land-bound office.

The Anonymous Yacht Underwriter response:

I am surprised the agent above went through such a tough time in June; normally the most difficult requests are the boaters that want to amend their navigational warranty and head down in the Fall before the hurricane season is over. Different companies underwrite differently, but here is some of the thought process I consider if faced with the June nav warranty request:

- Is it a valid dilemma that was reported in to the agent in a timely manner? If so, most insurance companies use a date anywhere from 6/1-6/15 to be north of the required point, and for the most part “June too soon” for tropical storms of real consequence tends to be true. During this month, a little flexing on the date with a named storm deductible and a/p may be a pretty safe bet for a couple of weeks, and I’ve found this will usually work for the insured in order to get back on track. I find it much easier to work with troubled clients looking to get back up North in June than those who want to head down South before hurricane season is over!
- Of course I do not want my insureds venturing out into conditions they are not comfortable with. As far

Continued on next page

as the issue of safe harbor, now we are talking circumstances/events that come up after the underwriting is complete and are in my opinion very case-specific. These tend to come down to the particular situation, applicable maritime laws and perhaps even court decisions. Again, these breach of conditions should always be reported in to the agent asap, and then underwriting/management/claims can confer on the particular circumstances so that all parties are on the same page.

- Pay the additional premium! It can be frustrating when I agree to flex as described earlier, and then the insured is unhappy having to pay for it. Additional exposure translates into additional dollars; this is the basic principle of risk transfer (albeit a modest increase in risk should only result in a modest additional premium).

***The Maritime Attorney's Response:* by Stephen F. White, Esq. *, Wright, Constable & Skeen, LLP**

Trading Warranties (also called Navigation limits) can be found in almost every marine insurance policy. A typical yacht policy navigation warranty states: "This policy provides coverage when the 'insured yacht' is being used or navigated within navigation limits specified on the Declarations page. There is no coverage under this policy if the 'insured yacht' is being used or navigated outside the navigation limits specified on the Declarations page." The Declarations page may then provide certain route restrictions (e.g., remain in inland waterways), may specify areas to be avoided during hurricane season, or may limit how far offshore the vessel may go before "sailing out of coverage."

Navigation/trading warranties date back to the early days of sailing. Then, as now, insurers carefully examined the risk and set the premium, based upon whether the vessel would remain in known waters between safe ports, during calm weather, or would be facing dangers such as hurricanes or pirates. Coverage would be immediately terminated once the insured deviated from the warranty. English law has always provided for strict interpretation and application of navigational warranties (known as the "literal compliance rule"). A breach of warranty would void the policy and coverage of a loss would be denied – *even if there was no connection between the violation of the warranty and the cause of the loss.*

Until 1955, courts in the United States also followed the "literal compliance rule" in maritime cases. However, that year the U.S. Supreme Court decided the case of Wilburn Boat v. Fireman's Fund Ins. Co. In Wilburn Boat the Supreme Court held that the breach of a warranty in a policy of marine insurance should be interpreted in accordance with applicable state law, *unless* it was found that there was already an "entrenched" precedent under federal maritime law. Admiralty law scholar Alex Parks put it another way: "Under Wilburn, where a state statute requires that the breach of warranty must contribute to the loss, the state statute governs; where the state statute does not so provide, a mere violation of the warranty is sufficient to void the policy even though the loss may not be attributable to the breach."

In deciding Wilburn, the Supreme Court apparently attempted to avoid the harsh effect of the literal compliance rule by permitting courts to apply certain "anti-technical statutes" that had been adopted by a minority of states. These statutes required insurers to prove that a breach of warranty caused or contributed to the loss, before they could deny coverage based upon a breach of warranty. However, despite the Supreme Court's good intentions, since 1955, the lower courts have either ignored Wilburn, or found ways to circumvent it, thereby effectively reinstating the literal compliance rule. Today, an insured's breach of a navigational warranty, provides the marine insurer with one its most potent grounds upon which to void the insurance policy and to deny coverage of losses occurring after the navigational limits have been violated - *regardless* of whether the violation has any causal connection with the claimed loss.

Some courts have achieved this end by simply following the Wilburn rule. After looking to state law, they find that the state would enforce the literal compliance rule. Other courts have simply ignored Wilburn, and held that there is an entrenched federal maritime law precedent that requires strict compliance with navigational warranties, regardless of causal connection with the loss. Other courts have held that strict compliance is required by both state *and* federal law. The only courts following Wilburn and applying state laws that require there to be a causal connection between the breach of warranty and the claimed loss appear to be in Texas and Oregon.

On the East Coast of the United States, the following quotation from the Eleventh Circuit's 1988 decision of

Continued on next page

Lexington Ins. Co. v. Cooke's Seafood, appears to summarize the general rule in this geographic region: "[A]dmiralty law requires the strict construction of express warranties in marine insurance contracts; breach of the express warranty by the insured releases that insurance company from liability even if compliance with the warranty would not have avoided the loss."

Due to the harsh results of a breach of warranty, insurance agents and brokers must be particularly careful when responding to requests from insureds for a modification of their navigation/trading limits. In several cases, courts have held that agents have spoken with apparent authority for the insurer, when they notified insureds that their navigation limits had been modified, when in fact, the insurer had not approved the change. In such cases, the agents face potential liability to the carrier for conveying unapproved modifications of navigational limits to the insured. In one case the court even held that there was an issue of fact as to whether a broker (usually acting on behalf of the insured) could act for the insurer. On the other hand, courts have held that notice of navigation limits, given by the insurer to the broker, is considered notice to the insured, even though the broker never conveyed the limits to the insured. One insurer attempted to negate the apparent authority of its agent to modify navigation limits without its consent, by relying on the policy language that allows changes to the policy only when made by "us." However, the court held that without express language stating that agents could not bind the insurer to changes, the "us" clause did not relieve the insurer of complying with an extended navigation limit, granted by the agent without the insurer's consent.

In several cases, insurance claims for vessels lost beyond their navigational limits have been denied and policies voided by insurers, only to have coverage reinstated by the courts after holding that the real cause of the loss was barratry. In those cases, the Captains of the vessels fraudulently used the vessel for their own purposes (such as a drug run) without the knowledge or consent of the owners. Since the barratry was initiated before the vessels crossed the navigational limit, such claims were held covered.

Other courts have refused to enforce navigational limits that were not sufficiently described in the policy. Such clauses are still strictly construed against the insurer. Navigational limits must be drafted with great specificity in order to avoid being found ambiguous and unenforceable. In one case, the navigational limit included northern and southern boundaries of latitude, but failed to specify the distance that could be traveled out to sea. Therefore, the court held that the insured vessel could sail around the world without violating the navigational limits. Of course, as with all warranty clauses, the insurer may waive its right to enforce the navigational limit in the event it does not raise the violation as grounds for the initial declination of coverage.

Navigational limits are fundamentally the result of risk analysis in the formation of the insurance contract. If the insurer is not willing to accept the risk of insuring the vessel beyond a certain point, or after a certain date, it will set navigational limits that it is not required to alter or amend unless it agrees to do so. Any insured that violates navigational limits (except in an emergency) does so at its own peril, with the likely result that its policy will be voided and coverage of any claim made following the breach will be denied, regardless of whether the violation of the navigational limit caused or contributed to the loss.

Stephen F. White is a maritime attorney with the law firm of Wright, Constable & Skeen, LLP in Baltimore, Maryland. © Stephen F. White 2007

Ahhh Summer, we hardly knew ye.....





Advertising Information

This third edition of our MAMC newsletter will be distributed to all of our Club members, numerous non-members, and marine-related businesses. For those interested in advertising in an upcoming issue, we will be offering the following space on a per-issue basis:

Full-Page Ad: \$250

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Contact Information:**Regular Mail:**

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Newsletter Article Submissions

*Would you like to write an article for an upcoming edition of this newsletter?
If so, please send it to the e-mail address above along with your contact
information, and the newsletter committee will be happy to review.*

Acknowledgements**MAMC Officers**

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First Mate:	Helen Dierker	International Marine Insurance Services
Program Director:	Derek Rhymes	All Boat & Yacht Inspections (Marine Surveyor)
Purser:	Alicia Shaffer	Zurich Global Energy
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Randy Renn	Accredited Marine Surveyor AMS®
Dirk Schwenk	Lochner and Schwenk, LLC



Mid-Atlantic Mariners Club

APPLICATION FOR INDIVIDUAL MEMBERSHIP

Mid-Atlantic Mariners Club members in good standing must sponsor your application. Membership dues of \$100 must accompany this application. Please mail back application and payment made out to "Mid-Atlantic Mariners Club" to: MAMC, PO BOX 709, Annapolis MD 21404. You will then be contacted regarding membership.

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E-mail Address: _____ Web Address: _____

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Describe your involvement in the Marine Industry: _____

Why do you want to be a member of the Mariners Club? _____

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Describe your involvement in the Marine Industry: _____

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Initial list of your employees:

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What name would you like on your badges? _____

Would anyone in your firm be interested in serving on committees or the leadership of the club?

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