

Richard Hart v. Progressive Casualty Insurance Company United States Court of Appeals for the 9th Circuit 198 Fed.Appx. 652 (Filed August 24, 2006)

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**EXCLUSIONARY CLAUSE IN AN INSURANCE POLICY WHICH PROHIBITS
COVERAGE FOR LOSS CAUSED BY “INADEQUATE MAINTENANCE” APPLIES
TO SINKING.**

The unambiguous language of the insurance contract, when interpreted in a light favorable to the insured’s reasonable expectations, applied to insured’s action which left his boat in a state of disrepair.

Richard Hart v. Progressive Casualty Insurance Company
United States Court of Appeals for the 9th Circuit
198 Fed.Appx. 652
(Filed August 24, 2006)

Plaintiff, Richard Hart (“Hart”), owned a boat, the FOOT LOOSE, which sank in Alaska in 2003. At the time, Hart had a policy of insurance for the boat with Defendant, Progressive Casualty Insurance Company (“Progressive”).

Hart claims that the FOOT LOOSE sank during a bad winter storm. Progressive, on the other hand, argues that Hart’s failure to adequately maintain the vessel proximately caused its sinking. Specifically, Progressive presented evidence that Hart was installing a new starboard engine in the vessel. He had been performing the work himself to save money. At the time of sinking, Hart was out of town and the boat was left in its berth with “an incomplete exhaust system installation.” Defendant’s expert testified that the incomplete work could have allowed the engine room to be flooded with sea water, causing the FOOT LOOSE to sink.

The insurance contract between Hart and Progressive stated, in pertinent part, that “[Progressive does] not provide coverage for physical damage to covered property: ...caused by...inadequate maintenance.” Since Hart had done the work himself, and had failed to properly support and clamp shut the exhaust system, Progressive notified him that the exclusionary clause was applicable.

Hart started suit, and the case was removed to The United States District Court. Progressive moved for summary judgment, expressing its conclusions as laid out above. Hart cross-moved for summary judgment on his theory that a bad winter storm froze the pipe, and his own negligence did not contribute. The court ruled in favor of Progressive, holding that Hart did not provide admissible evidence refuting Progressive’s assertion that Hart caused the loss. In fact, Hart’s could not get an expert to substantiate his theory. The district court found that Hart’s incomplete repairs amounted to “inadequate maintenance” within the meaning of the exclusionary clause in the insurance policy.

Hart also made a motion based on Alaska law that “[W]hen a loss is sustained by a sequence or concurrence of at least two causes, one covered under [an insurance] policy and the other excluded under the policy, the cause setting the chain of events in motion is the cause to which the loss is attributed.” Hart claims that the severe winter storm which occurred at the time of FOOT LOOSE sinking was the dominant cause of his loss, whereas Progressive pointed to Hart’s incomplete work on the boat’s exhaust system. The court refused to rule in favor of Hart’s personal opinion, since his expert witness stated that the cause of the loss was unknown. It meant little that the storm was of “unique viciousness” since Hart could not prove that the storm would have caused the loss independent of the incomplete engine installation. The court acknowledged that acceptable evidence in this regard would have included proof that other boats

in the harbor sank or that the waves generated by the storm were so severe that they would have contributed to the loss regardless of the incomplete engine work.

The Court of Appeals for the Ninth Circuit affirmed the district court's grant of summary judgment for Progressive. It also held that Hart presented no genuine issue of material fact because he failed to present evidence to refute Progressive's prima facie showing of negligence that Hart's inadequate maintenance was the dominant cause of the FOOT LOOSE's sinking.

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COURT OF APPEALS REJECTS DISTRICT COURT'S ENFORCEMENT OF OVERBROAD EXCULPATORY CLAUSE

The United States Court of Appeals for the 1st Circuit reversed the district court's decision to narrow and enforce defendant's overbroad exculpatory clause. The court considered the clause's boiler-plate nature, over-breadth, lack of clarity, and attorney fee structure in deciding that enforcement would be against public policy.

Mark Bradley v. Mashpee Neck Marina, Inc.
United States Court of Appeals for the 1st Circuit
471 F.3d 272
(Decided December 22, 2006)

Plaintiff-Appellant, Mark Bradley ("Bradley"), brought a negligence action in the United States District Court for the District of Massachusetts against Mashpee Neck Marina ("Marina"), for injuries sustained as a result of improper dock maintenance. Bradley, who rented a seasonal mooring at the marina, fractured his ankle when his foot became trapped between a fixed dock and the attached floating dock where his vessel was moored. Bradley alleged that the Marina was responsible for the accident because the Marina could have prevented exposing dock gaps by affixing a flexible material to the topside of the docks or ensuring the docks themselves were more tightly secured. The Marina contended that Bradley's negligence claim was barred by the exculpatory clause contained in the rental agreement. Bradley contended that admiralty law prohibits use of exculpatory clauses which completely immunize against ordinary negligence or bar claims for gross negligence or intentional wrongdoing. *S.C. State Ports Auth., v. Silver Anchor, S.A.*, 23 F.3d 842, 846 n. 3 (4th Cir.1994). The exculpatory clause read:

The OWNER [Bradley] warrants and [covenants] that...the OWNER...will [not] make any claims, demands, causes of action of any kind and nature, or obtain or enforce any judgments, executions or levies thereon...against MARINA, its officers, directors, agents, servants, or its employees, arising out of any damage, loss, personal injury or death suffered by [him]...The OWNER...agree[s] and covenant[s] that [he] will defend,