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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 Broadley 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 Broadley (“Broadley”), 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. Broadley, 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. Broadley 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 Broadley’s negligence claim was barred by the exculpatory clause contained in the rental agreement. Broadley 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 [Broadley] 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,