



# SEA TRIALS



by James E. Mercante, Esq.

## Marine Insurance: Speedboat Owner Denied Insurance

It takes special skill to operate a high-performance speedboat. There is little room for error and even the slightest mishandling of the helm can result in a casualty.

Due to the high risk involved, many marine insurance companies will not insure a speedboat. Those that do require a Named Operator Warranty stating that insurance coverage will apply only for the operator(s) specifically named in the policy. This warranty is by an endorsement attached to the policy. So, unlike a marine insurance policy which typically provides liability coverage for someone operating your vessel with your permission, this is not the case when the policy insures a speedboat. This was a lesson learned recently by one Long Islander who owned a 31-ft. Sonic speedboat.

The high-performance Sonic had two 215 horsepower engines and was capable of speeds of 60 mph or more. The vessel was being operated by a marine mechanic with the insured and his daughter on board. The mechanic was hired by the vessel owner to service and repair the two engines. While traveling at a fast pace with the mechanic at the helm, the vessel flipped over and the insured's daughter was injured.

The daughter sued the mechanic and her father for the injuries she sustained in the casualty. However, the marine insurer denied coverage based on breach of the named operator warranty and the policy's exclusion of suits between family members.

To obtain a court decree that its denial of coverage was justified, the insurer, represented by us, filed a "declaratory judgment" action in federal court under admiralty law seeking a declaration that its denial was proper. We then moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, which affords the court an opportunity to decide a case without a trial when there are no facts in dispute and one party may be entitled to judgment as a matter of law. Summary judgment is a short cut to a resolution if there are no facts in dispute that need to be determined by a fact finder. If there are no disputed facts, a judge will apply the law to the facts and decide the case summarily. Indeed, this comports with Rule 1 of the Federal Rules of Civil Procedure which calls for the "just, speedy, and inexpensive determination of every action."

In this case, the facts as previously stated, were not in dispute. Therefore, Senior District Judge Dennis R. Hurley of the United States District Court for the Eastern District of New York was asked to decide the insur-

ance question by way of summary judgment. On December 7, 2007, Judge Hurley issued a well-reasoned decision in favor of the plaintiff, Insurance Company of North America.

The legal issues included breach of the *named operator warranty* and an *intra-family exclusion* in the policy. The policy's "High-Performance Vessel Endorsement with Named Operator Endorsement" provided as follows:

### Named Operator:

Warranted by the insured that the coverage provided by this policy applies only when the vessel is operated by:

### (Named Insured)

The insurance policy also concluded a navigation provision called the "Atlantic Coast Navigation Warranty" stating that the vessel was entitled to navigate in Atlantic coastwise and inland tributary waters of the United States and Canada. The policy also contained certain exclusions from coverage, including the following *intra-family* exclusion:

**Exclusions:** We do not provide coverage under Part B: Liability coverage for:

- a. Liability of other covered persons to you, your spouse, or other persons who reside in your household;
- b. Your liability to your spouse, or other persons who reside in your household.

The defendants argued that the *intra-family* exclusion is void as against public policy. Defendants also argued that allowing the marine mechanic to operate the vessel did not breach the named operator warranty because under the policy the insured had an obligation to maintain the vessel.

The court recognized that because a contract of marine insurance was involved, federal admiralty jurisdiction was triggered and the dispute was governed by maritime law. However, absent a specific federal maritime rule, a federal court is guided by state law to resolve legal issues. Here, there was no federal maritime rule governing the named operator warranty or the *intra-family* exclusion and, therefore, the court applied New York law to the disputed legal issues.

The court ruled that the marine insurer was not obligated to defend or indemnify the marine mechanic because he was not specifically iden-

tified in the named operator endorsement and the operator/mechanic was otherwise excluded by the policy's definition of insured.

The court then went on to discuss liability to a household resident. The policy excluded coverage for the insured's liability to "[his] spouse, or other persons who reside in [his] household." The insured's daughter resided in his house. The defendants did not dispute the language of the exclusion, but argued that the provision should not be enforced because it was against public policy in New York to have such an exclusionary provision in a policy. Since the Sonic was an "ocean-going vessel," however, it was statutorily exempt from certain state insurance regulations including those that require family members be covered.

The court agreed with the marine insurer that New York State Insurance Law was not triggered because of the insurance law's exemption for ocean-going vessels. Thus, the court declined to hold that an insurance policy provision that excludes coverage for liability to persons who reside in the insured's household is against public policy when an ocean-going vessel is involved.

The court also agreed with the insurer that in determining whether the Sonic qualified as an ocean-going vessel, the court does not necessarily look at the physical attributes of the vessel, but rather the terms of the insurance policy. In this regard, the policy contained the aforementioned "Atlantic Coast Navigation Warranty" specifically allowing navigation in the ocean. Therefore, the vessel qualified as an ocean-going vessel by the terms of the insurance policy that the insured agreed to.

As a result, the *intra-family* exclusion was valid and the owner of the boat was denied coverage in a liability suit against him by his daughter.

### Conclusion

No doubt speedboats are fast and fun (unless you are a fisherman), but owners of speedboats, as any vessel owner, are well advised to read and understand the terms of their marine insurance policy.

—JAMES E. MERCANTE, admiralty partner with Rubin, Fiorella & Friedman LLP, and Commissioner on the Board of Commissioners of Pilots of the State of New York, represented the marine insurer in this case. E-mail address: jmercante@rubinfiorella.com. *The information in this article must not be construed as legal advice and laws may vary from jurisdiction to jurisdiction.*

Surfing the Web? Visit Our Interactive Web Site at...  
**www.liboatingworld.com**