

Seamanship

by Vincent Pica, Chief of Staff, First District, Southern Region (DISR), U.S. Coast Guard Auxiliary

An Act of God - Just What Is That?

Any school child knows, or at least believes, a terrible storm or other natural phenomena that causes damage to your property, or causes your property (your boat) to damage someone else's (another boat), is an Act of God. Behind this "fact" lies protection for the insurance company that may, or may not, have to pay (Check the fine print and be sure of what you are paying for.) or for you when your boat sets down on someone else's during a storm and sinks it. Or, does it? With Sandy passing through, what are the facts?

The 4-Day Nor'easter

Some of you may recall the severe nor'easter we had in the late fall of '05. I do in particular because my son and I moor our boats in a bite of water east of Gunning Point, along with about a dozen other boaters. During that storm, two of those dozen boats broke loose from their ground tackle. One, my son's, ended up about 300 yards to windward, way up in a marsh. The other, my neighbor's ("Joe"), set down on my boat in the storm and sank it. His boat ended up against my dock and sustained considerable damage, just from being banged up against the bollards. After two days of mourning, I said to myself, "Hey, it's a boat. Call the insurance company. Work something out. Buy another boat." And I did. The insurance company was professional in every way.

Enter Joe, the Neighbor

My neighbor, Joe, was really and truly sorry that it had happened. He came over to the house, hat and

checkbook in hand, and offered to pay for the damages. "Joe, don't be silly. It was an Act of God. No one's fault... For cripes'sake, the wind blew for 4 days straight! Go home." And, after many, many attempts at redressing what he felt was his fault, he went home*.

What Actually Is an Act of God?

An Act of God from a layman's point of view is any natural act caused without human intervention – hurricane, tornado, earthquake, lightning, etc. From a legal point of view, it is the same. However, to seek a defense as an Act of God, there is a second test. There must be no negligent behavior by, for example, the vessel owner that contributed to the accident. There is a presumption of fault under the law, from the start, that a vessel adrift is adrift due to negligence so it is a difficult "beat to windward" to offset that presumption. If, for example, everyone in the marina doubled their lines because a heavy storm was predicted, and you didn't, you very well may have an issue with the second test. Were you negligent in failing to act as other skippers did?

A case having to do with Hurricane Katrina, a vessel named the "Trust Me II" and the marina that she was moored at highlights all of these issues. First, Katrina clearly passes the Act of God test as a natural act caused without human intervention. And there was plenty of damage caused by "Trust Me II" as she broke from her mooring lines and ping-ponged through the marina. And, as noted above, the presumption of fault lies with the owner of the vessel adrift, despite the massive power

of Katrina, so the facts have to be compellingly on the side of the vessel owner. So, was there negligence?

The owner of "Trust Me II" didn't go down to the marina herself. She did, however, ask two qualified mariners to check on her vessel and make sure that she had adequate lines. Extra lines were added and one of the mariners testified that "Trust Me II" was secured as well as she could be, given the circumstances. Given the presumption of fault, the judge had to weigh that these facts – boat double checked, lines doubled, all by competent mariners – were sufficient ballast against the presumption of fault under the law.

You won't be surprised to know that the judge, despite several arguments by the marina owner that the vessel owner could have or should have taken further precautions, ruled in favor of "Trust Me II"'s owner that the facts met the legal test of an Act of God.

But, what if the owner hadn't asked for that extra help...?

Only God knows...

* Several months later, with his youngest daughter in tow, Joe came over with a sealed greeting card and said, "We're not leaving unless you open the envelope." So, I did. When I looked up, they were already walking down the path to their home. And I held a gift certificate from West Marine...

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