



An Act of God - Just What Is That..?

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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? 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 (see SSP, "Boat Insurance - Friend or Foe? An Update", 12/09/09).

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 four 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 recent 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 adrift vessel, 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 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 Westmarine...

BTW, if you are interested in being part of USCG Forces, email me at JoinUSCGAux@aol.com or go direct to the D1SR Human Resources department, who are in charge of new members matters, at DSO-HR and we will help you "get in this thing..."



County Clerk Update

by SUFFOLK COUNTY CLERK
JUDY PASCALE

MORTGAGE MODIFICATION & REFINANCING ACTIVITY ON THE RISE

Recent activity in the County Clerk's Office indicates many homeowners are refinancing or modifying their mortgages in an attempt to avoid foreclosure and reduce monthly payments.

In the hopes of curtailing future mortgage foreclosures, the federal government has created several programs to help people stay in their homes. To answer many of the questions about the differences between loan modification and refinancing, you should contact an attorney or mortgage banking professional to first decide which options may be available to you.

Many homeowners often get confused with loan terminology when they are looking for solutions to their current mortgage payment situation; so here are some quick definitions:

- A Loan Modification is a permanent change to one or more of the terms of an existing mortgage loan agreed upon by the borrower (you) and lender (bank). This change may include many different variables of the loan: interest rate, loan term, loan balance, etc.

- A Refinancing is the process of taking out a new loan with different/better terms than an existing loan. The new loans will more than likely pay off the existing loan; which will then be terminated. The borrower will now have a new loan with new terms and conditions. The new loan can be originated with a different bank and is completely independent from the existing loan.

"Over the last several months, lending institutions have been more inclined to work with homeowners to keep them in their homes by making their monthly payments more affordable. Additionally, mortgage interest rates are at near historical lows. This is good news for homeowners in Suffolk County but it is suggested that they check with their lending institution to see what options are available to them," concluded County Clerk Pascale.



by TONY SALERNO

FISHING WITH TONY

SUMMER FISHING GETTING INTO GEAR

With the dog days of summer just upon us, it's time to hit the water as the summer spectaculars are producing some outstanding catches of a variety of species around the island just about around the clock.

Along the north shore, Candy Caraftis of Caraftis Fishing Station on Main Street in Port Jefferson reports plenty of porgies at Old Field Point and Crane's Neck as well as inside Port Jeff Harbor. Worms and clams are the tickets to slamming a limit of scup at these spots on the last of the incoming tide.

If bass and blues are more of your forte, Candy advises casting tins and jigs by buoy 11 for the duo as plenty can be found in the area. Candy also states that cocktail blues are everywhere. Anglers bouncing bucktails among the shoals from Northport to Rocky Point are finding plenty of fluke are abundant; however quite honestly, most of the flatties are shorts. On the other hand, boatmen and open boats such as the Celtic Quest heading east to the shoals between buoys 11 and 9 are finding a dramatic increase in the quantity and quality of keepers on bucktails tipped with spearing, squid or sand eels.

Along the south shore, sea bass and porgies have been on center stage as all the local reefs and rock piles have been producing plenty of action on the silver and indigo beauties. Open boats such as the Rosie out of Center Moriches and the Hampton Lady out of Hampton Bays have been putting their fares knee deep in action where just about everyday sees patrons leaving these boats with big smiles and full bags of tasty fillets. Meanwhile, the other Hampton Bay open boat, the Shinnecock Star, has been having a blast keeping their patrons busy with nice big Shinnecock fluke. According to skipper John Capuano, the last 10 days have produced some of the best action of the season with plenty of keepers and tasty fillets to go around. The key to the fishing has been the top of the tide when the flatties are going ballistic for bucktails tipped with spearing.

During the evening tides, both Shinnecock and Moriches inlets are seeing good striper action on bucktails and live eels. The entire stretch of the outgoing tide has been producing bass to 27-pounds. In addition, bluefish have also been frequenting both inlets during the evening hours to spice things up. Plenty of action waits. Now is the time to cash in.

