

Admiralty Docket: 50506 The Act of God Defense

3..2..1.. Today attorney John Kern joins me in a discussion of the "Act of God" Defense in the context of collision cases. When admiralty courts set out to determine fault when vessels have smashed into each other or knocked down a pier, one perfect Defense available to the vessel owner is the "Act of God" Defense.

According to the U.S. Supreme Court, the defense comes into play when the vessel operator can prove that (1) the weather was of unexpectedly catastrophic proportions, and (2) that the accident could not have been avoided by a proper display of nautical skill and precaution.

With these requirements, the first question at trial is often on the extent of warning vessel operators had that weather conditions were becoming dangerous. Warnings of stormy weather posted over the radio airways place vessel operators on notice that trouble is on the way. If you didn't know, but should have known that a storm was brewing, the defense will not work.

The second question is whether the vessel's operator or crew took reasonable precautions in the face of the storm. The courts have seen many cases where everyone had notice of bad weather, and one or more vessels were moored securely to a pier. As you might expect, there is often one that is torn from her moorings or anchorage, and begins a drift of destruction into other other stationary and faultless boats and piers.

In one case out of Seattle, a court found that a crew had properly fastened their passenger ship to a pier with some 11 lines - capable of handling the forecast 35 miles per hour winds. But as

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the day wore on, the forecast changed to predict gale force winds up to 75 miles per hour. The crew failed to take notice of gale force flags flown 2 hours in advance of the storm, and later failed to drop their anchor or add extra lines. The moorage proved to be inadequate and the vessel drifted into four others causing mass destruction. The Court found that the Act of God defense was not good where the crew failed to recognize the warning signs, and thereafter failed to take proper actions dictated by sound seamanship.

In short, claiming that an "Act of God" has occurred and that the cause of the damage is beyond one's control works as a perfect excuse - but only to the extent that you did not know how God was going to act, and provided that you have taken reasonable precautions under the circumstances.

More next week on the Admiralty Docket. Until then, remember, your rights and responsibilities change as you approach the shore, and may God Almighty grant you pleasant sailing - and good weather.