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Common Issues in Maritime Subrogation Actions: A Case Study

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This paper will focus on a recent case study from Hurricane Harvey involving an allision between a drillship and a large pier with attendant structures located in Port Aransas, Texas. The names of the participants have been omitted to protect the innocent...and not so innocent.

Factual Background

On the date of the loss, a drillship allided with a large research pier in Port Aransas, Texas after Hurricane Harvey made landfall at Rockport, Texas on August 25, 2017 as a hurricane CAT 4 with maximum sustained winds of 115 knots. This paper and presentation will examine the underlying event, liability exposure for the parties involved and common subrogation issues which surface in maritime subrogation claims.

By way of background, the drillship had been berthed in Corpus Christi since the end of May 2017 by the owner of the unit. Because the rig was experiencing excessive motions while berthed due to the local surge caused by ships passing in the channel, the ship's mooring condition was analyzed and modified using new high specification mooring ropes and new ship mounted mooring bits by a third-party contractor retained directly by the drillship's owner. After the modifications were made, the allowable sustained wind speeds for the ship was 67 knots. If the ship could potentially be exposed to excessive wind speeds due to a weather event, the ship would be moved to the open sea.

As with any major weather event, the lead up to Hurricane Harvey making landfall was fraught with changing landfall projections and estimates regarding maximum wind speeds once it made landfall. On August 21, 2017, it was initially projected that then Tropical Disturbance Harvey would make landfall on the northern coast of Mexico approximately 160 nautical miles south of Brownsville, Texas. At that time the expected wind speeds that would be experienced at Port Aransas were well below the allowable wind speed for the new mooring modifications.

On August 22, 2017, Tropical Disturbance Harvey was now projected to make landfall approximately 20 nautical miles from Corpus Christi as a tropical storm with wind speeds still below the

mooring configuration for the drillship. Things quickly changed later that day when now Hurricane Harvey was projected to make landfall as a category 1 hurricane at Corpus Christi on the afternoon of Friday, August 25th. At this time, it was confirmed that the sustained wind speeds at Port Aransas would be at approximately 70 knots which would exceed the allowable wind speed for the mooring configuration. This projection changed yet again on August 23rd when Harvey was estimated to make landfall approximately 40 nautical miles north of Corpus Christi as a tropical storm with maximum sustained wind speeds of 50 knots which was below the current mooring configuration.

Given the changing landscape, a decision was made to move the drillship out to the open sea on August 23rd. On August 24th, the strength of the storm intensified and current projections now had Hurricane Harvey making landfall on the evening of August 25th as a category 3 hurricane with maximum sustained winds of 105 knots. The strength of the storm expected to make landfall now clearly exceeded the mooring configuration of the drillship.

Unfortunately, another larger drillship was being moved on August 24th, and by the time it had cleared the Port, the departure of the drillship was cancelled by the United States Coast Guard. Since the drillship would remain in the Port, additional lines were added to the mooring arrangement. In addition, a third-party tug company was enlisted to provide two tugs to assist holding the drillship in place.

On the morning of August 25th, the two tugs arrived to hold the drillship in position. At approximately 6:00 p.m., the tugs reported that all was well with the drillship. That night at approximately 11:00 p.m., Hurricane Harvey made landfall at Rockport, Texas as a category 4 hurricane with maximum sustained winds of 115 knots. Shortly after midnight, the wind speeds became too high for the tugs to hold the drillship in position. The drillship broke loose and was drifting uncontrolled. The owner of the tugs reported that both vessels had sustained damage. At approximately 1:30 a.m. the drillship's GPS system indicated that the rig was on the north side of the channel entrance and was not moving. Later that morning, the crew on board the tugs were rescued by the Coast Guard. Sometime after the rescue,

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