

We recently secured a dismissal of all claims against a marine surveyor who was being sued by the owner of a 45' express cruiser for failing to disclose extensive prior hull damage and repair. The prior owner had damaged the vessel in an "allision" which, in maritime parlance, means he struck a stationary object. He hit a buoy in Port Royal Sound. The plaintiff purchased the 8 year old yacht named "Dress Money" in 2008, renamed it "Sea Sweetie," and operated it with nothing more than the usual upkeep and repairs for the next 5 years. Prior to purchasing the vessel he obtained a pre-purchase survey which had been commissioned by the selling dealer which, erroneously, described the hull as "solid fiberglass." This vessel was built with a "cored" hull.

Hull insurers typically require a condition and valuation survey every 5 years on yachts they insure. In 2013, my client performed a survey of "Sea Sweetie" for the plaintiff which survey was used to renew the insurance policy on the vessel. My client did not realize this was the former "Dress Money" he had surveyed after it was damaged by the prior owner. He reported to the plaintiff evidence of a prior repair and provided extensive warnings about the potential problems which can beset cored hull vessels. The owner submitted my client's survey to his insurer who renewed his policy. The plaintiff used the vessel for a 6th year without incident.

When the plaintiff hauled his vessel in 2014, the lifting straps in the aft section of the hull directly below the engine room vents collapsed the fiberglass hull, rendering the vessel a constructive total loss. Plaintiff then learned that the boat was constructed with a "cored" hull, wherein an outer fiberglass hull is bonded to a balsa wood core which, in turn, is bonded to an inner fiberglass hull. The coring is intended to reduce weight while maintaining strength and rigidity. A great idea in theory, and a terrible situation in practice if the core gets wet. In our case, the core had gotten very, very wet for a number of reasons. The wet core weakened the hull, and it broke under its own weight. The plaintiff discovered that the vessel had undergone extensive repairs in 2003-2004 after the prior owner struck a buoy and left the vessel afloat for more than a week, allowing the core in the damaged forward hull section to soak up water. The hull assembly process had left unsealed balsa core material at every thru-hull fitting. Water soaked into the core at those areas over the life of the vessel.

When he learned that the "Sea Sweetie" had been damaged and repaired, that the core had been wetted previously, that the vessel manufacturer and core supplier had assisted with the repair protocol, which required drilling 1,200 holes 1/4" in diameter in the hull and sucking out the water using heated vacuum bags, he sued everyone in sight. He sued my client for failing to disclose to him in the 2013 survey that the vessel had been damaged previously, and he sued the manufacturer, the balsa core manufacturer, the selling dealer, the former owner, the marine surveyor who performed his pre-purchase survey, the repair yard which repaired the allision damage a decade earlier, and my surveyor client who surveyed the vessel then known as "Dress Money" 10 years earlier after the allision and unknowingly resurveyed the same vessel now known as "Sea Sweetie" in 2013.

Looks pretty bad for my client, right? He did not notice the hull ID number was that of the former "Dress Money," and he did not, therefore, report the prior history of extensive damage and repair, all of which the plaintiff would want to know, correct? Well, there was one

major hurdle the plaintiff could not overcome. He could not prove that the 2013 survey caused or contributed to any damages he may have sustained. He did not rely on the 2013 survey to his detriment. He did not take any action, spend any money or change his position to his detriment in reliance upon the 2013 survey. He had bought the vessel in 2008, relying on a survey prepared by a different and unrelated surveyor, the surveyor who reported that his hull was solid fiberglass. By the time he received my client's survey, he already had owned the vessel for 5 years. The only thing which changed as a result of my client's survey was the renewal of his insurance policy, clearly a benefit, not an injurious or damaging event for him. Through mediation, the plaintiff realized that my client's survey did not cause him any injury, and he dismissed his claims against my client with prejudice, without any payment on our behalf.

The other defendants paid the plaintiff a total of \$95,000. We paid nothing, but we learned a lot about how some cored fiberglass boats are built. The cored hull is molded without holes or penetrations for thru-hull fittings such as hatches, port lights, raw water intakes, engine room vents, and the like. The hull is cut with a saw to create openings where the vents and thru-hulls are to be placed. With a cored hull, every opening exposes raw balsa wood sandwiched between two layers of fiberglass. If the raw balsa edge is not sealed, it will, over time, soak up water which reaches the opening. That's exactly what happened here. The engine room vents allowed water to reach the unsealed balsa core which soaked it up like a sponge, and the hull failed directly beneath the vents on both the port and starboard sides as the water in the core weakened the fiberglass bonds.

Our client has never previously been sued in his long career. He insisted upon dismissal without contributing to the settlement, and he appeared genuinely miffed by the fact that we were unsuccessful in obtaining a written apology from the plaintiff. Oh, well, can't have EVERYTHING.