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PROTECTING YOUR PROPERTY

Marina Property Risks Need Careful Scrutiny

Marinas are fun, but they are also a unique collection of risk exposures, including water, electricity, fuels, unsure footing, and, often, alcoholic beverages.

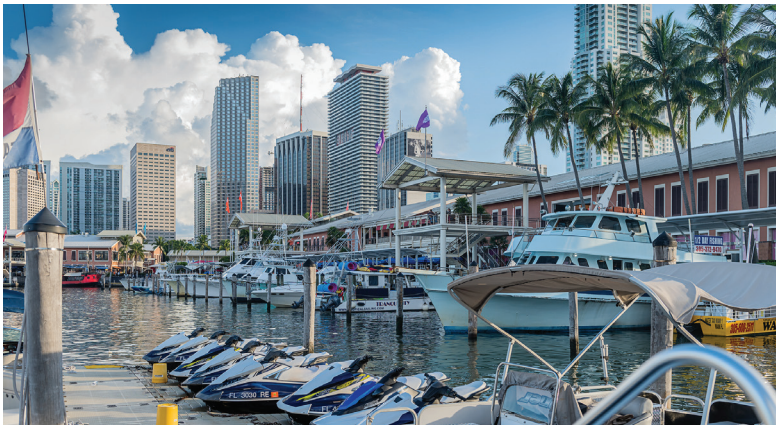
Therefore, risk management is a major responsibility of marina operators, who are commonly faced with three categories of risk exposures and related insurance coverages.

Perhaps the largest of these is the legal liability exposure for property of others in the insured's care, custody, and control; i.e., a marina's liability for protecting the boats and equipment it docks and stores (other than its own) as boatowners have committed their craft to marinas for safekeeping, and the marina typically assumes liability as a bailee.

Next, there is liability for bodily injury and property damage to others. Given their proximity to water, marinas have unique and potentially severe exposure to drownings, boating accidents, and environmental liability, in addition to general liability exposures common to all enterprises.

Third there's the exposure to property damage for the docks, storage buildings, racks, equipment, and watercraft owned by a marina itself.

Marinas often find themselves underinsured for the value of their docks and buildings, according to Keith Hayman, senior vice president of Goodman-Gable-Gould/Adjusters International (GGG/AI), one of North America's leading public adjusting firms. Any marina that chooses to underinsure its property exposures should do so, consciously and carefully, with full appreciation for the potential consequences.



"Marinas need to value their docks, buildings, and equipment properly," he says. "Secure a blanket property policy and be careful of coinsurance requirements. Work with your broker to get agreed value coverage." Blanket coverage is also better for addressing income losses at marinas, Hayman adds, "especially when the revenue streams complement each other."

Beyond these exposures that are inherent to any marina operation, there may be additional class-specific exposures for marina restaurants and entertainment venues. These types of risks have become more extensive in recent years, as marinas have explored new sources of revenue to counteract the decline in the number of boats in the U.S. following the last recession.

(Boat sales have increased in recent years, but have not reached their pre-2007 peak. Also, the average age of boatowners continues to increase, an indication that fewer young people are purchasing watercraft.)

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Importance of Clean marinas

Protection of the general public from injury and damage, and protection of the property of others in a marina's care, custody, and control, is heavily dependent on the quality and upkeeping of marina property.

That could become even harder as states, localities, and regional organizations become more aggressive in promoting standards for "clean" and "resilient" marinas.

At this time, 26 states participate in voluntary "Clean Marinas" programs started and designed to encourage marinas to create environmentally sound facilities. Participating marinas can earn a designation as a "clean marina" by adopting and adhering to a series of standards for controlling waste and litter, eliminating uncontrolled discharges of fuel and other substances, and instituting regular staff training in environmentally friendly marina management practices.

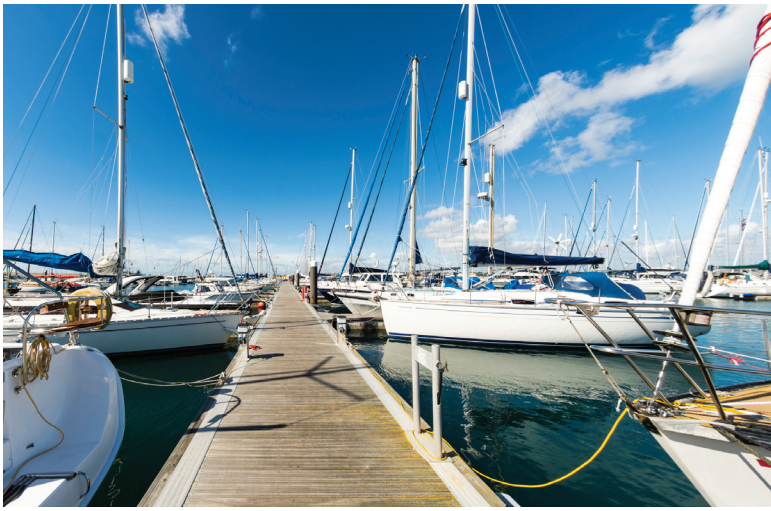
As of October 2017, there were 303 marinas with a clean marina designation in the Gulf States alone, along with 46 boatyards and 20 waterfront boat retailers.[1]

Resiliency is Critical

In addition, there were 18 Gulf State marinas also designated as "resilient" for their ability to withstand storms and catastrophic events and recover quickly. The criteria for resilience were added to the clean marina programs in the mid-2010's and extend beyond waste management into the siting and construction of marina facilities.

To be "resilient" in the face of natural disasters, marinas need to be designed for abrupt and severe fluctuations in water levels and precipitation, according to a 2015 report from Sea Grant Michigan, one of several university consortia that conduct research on aquatic conditions under the federal government's Sea Grant program.

For example, the Sea Grant Michigan report recommends the installation of floating docks wherever practical. Not only do



floating docks respond more flexibly to buffeting wind and waves, but they maintain a constant vertical distance between the dock and watercraft, reducing falls and injuries from boaters getting in and out of their craft.

On a larger scale, resilient marina programs raise expectations that marinas will expand their breakwaters, enhance protection against "scour" (seabed erosion), and renovate older structures to meet the latest design standards for durability and avoiding environmental damage.

Potential for Regulations

So far, clean and resilient marina programs are promoted as non-regulatory government-industry partnerships that reward voluntary efforts for environmental protection and resource conservation. What starts out as voluntary doesn't always stay that way, however.

Conte Cicala, an attorney with the firm Clyde & Co. experienced in maritime law, cautioned marina owners in a recent article that "it is prudent to keep an eye on voluntary compliance programs, since they can develop quickly into compulsory programs, complete with fines, penalties and potential civil liability exposure."[2]

As an example, Cicala cites regulations regarding the exchange of ballast water on the open ocean, which originated as voluntary guidelines. He suggests that clean and resilient marina standards have the same potential to become

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mandatory. If that happens, marina operators will have to give more thought to insurance considerations that owners of property on land have long been accustomed to.

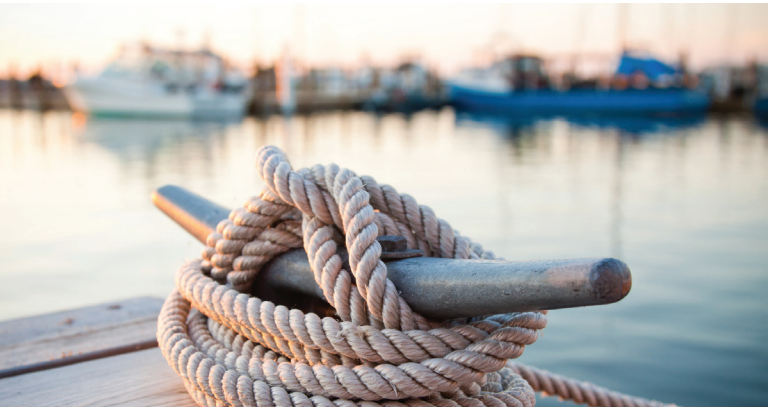
Even today, marinas have to comply with the same codes regulations as any other structures or facilities with comparable features. To that end, they are advised to acquire coverage for increased costs to reconstruct a damaged property so that it complies with regulations for land use, construction, electrical and plumbing systems, or any other features subject to updated building codes and similar laws enacted after the original construction and before a loss occurs.

"Many marinas need to upgrade to code after a loss," says Hayman at GGG/AI. "They should make sure they secure proper code upgrade coverage."

Should any elements of resiliency become mandatory, marina operators will need to know to what extent their property insurance will cover additional costs to meet resiliency standards when repairing or replacing damaged property.

Green

Even if marina resiliency standards remain voluntary, marina operators may face a challenge in maintaining their resilient marina designation following a loss. The situation here is analogous to what commercial property risk and insurance professionals face with "green" building construction.



Under green construction, buildings are designed and constructed to meet standards established by international organizations for energy efficiency and environmental impact. Under green property policies, a building that attained a certain green ranking can be repaired or replaced to standards required to maintain their ranking — even if the standards for the ranking have been raised.

In this way, it is theoretically possible for the owner of a green-insured building to have it repaired or replaced in a manner at a cost higher than that of the original structure, even if the upgrades are not mandatory, and even if the standards are altered between the time a designation is first earned and the time a loss occurs.

Electrical Concerns

Although risk and insurance professionals recognize distinctions among property exposures, bailment exposures, and third-party liability exposures, the three are inextricably linked for practical purposes — and under intensifying regulatory scrutiny.

Today, no marina can update its electrical system without careful consideration of the risk of "electric shock drowning," or ESD, which occurs when low voltage AC current flows through recreational waters. The AC current is typically not strong enough to electrocute people, but it can paralyze and prevent them from calling for help or swimming to safety.

From 2006-16 there were at least 60 incidents of ESD or electrocution in recreational waters, according to a report by Quality Marine Services, LLC, of Jacksonville, Florida. The report emphasizes that those are only the incidents researchers are aware of; ESD leaves no evidence after death and may have contributed to more deaths than reported.[3]

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Clearly, where necessary, marinas must upgrade their electrical systems to meet the latest maritime electrical codes (which are different from the codes that apply on land) and carefully monitor the use of electricity by boaters, both for fire safety and to prevent casualties from electrical mishaps.

Environmental Issues

Environmental liability is "the most obvious area of growing exposure" for marinas, Cicala said in an interview with *Insights for Your Industry.* Today, he says, even the simplest of spills can lead to costly cleanup, thanks to heightened awareness of the interconnectedness of water systems.

This scrutiny adds urgency to the task of removing and disposing of wrecks. Previously, if an abandoned wreck was not obstructing traffic, the timing of its removal was largely a business decision. Under the right circumstances, it might be put off until after the close of boating season.

That's unlikely today, says Cicala. If a wrecked boat were to leak fuel, waste water, or any other contaminant, marina operators can expect an "aggressive" response by multiple jurisdictions employing expensive resources to clean and contain the spill. Along the same line, Cicala is watching the public response to "invasive species," the introduction of non-native plants and animals into an ecosystem, often through the discharge of ballast water from vessels at marinas. In the absence of predators or grazers, invasive species can thrive and disrupt an ecosystem.

Importance of Risk management

Any idea that operating a marina is as an easy-going occupation spent in a hammock with a cool drink has never been more off the mark than today.

The growing property and liability exposures facing marinas make it more imperative than ever that marina operators establish and maintain a comprehensive risk management program grounded in best practices for marina management. Those that don't are clearly putting their livelihoods at risk.

"[As] for insurers that underwrite marina operators' property and liability exposures, risk mitigation requires a thorough understanding of the dynamics of the marine environment and appropriate use of insuring agreements," Cicala writes.

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[1] Jeanne Williams, Clean Marina Coordinator, Florida Department of Environmental Protection, "Clean Marina Program, Clean & Resilient Marinas, Clean Vessel Act," Nov. 1, 2017; accessed at *https://floridadep.gov/ sites/default/files/NWD%20Clean%20Marina%20with%20Resilient%20-%20Vessel%202017.pdf*

[2] Conte Cicala, "Marine Risks Complicated by the Nature of the Business," Clyde & Co., November 2017; accessed at *https://www.clydeco.com/blog/insurance-hub/article/marina-risks-complicated-by-nature-of-the-business*

[3] James D. Shafer and Capt. David E., "Electric Shock Drowning Incidents – Marinas," Rifkin Quality Marine Services, LLC, revised Oct. 16, 2017; accessed at *http://www.electricshockdrowning.org/uploads/ 4/8/5/6/48564375/esd_list_-_updated_10.17.17.pdf*

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