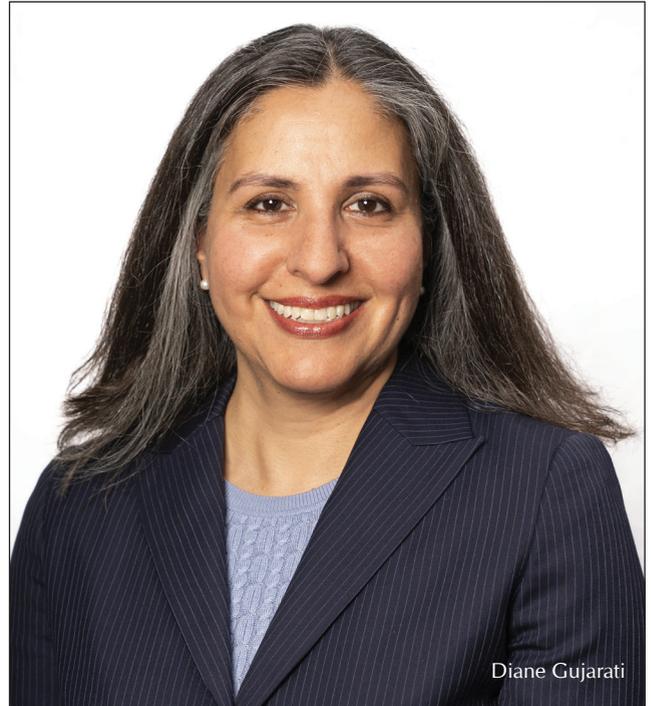


# Acadia Insurance loses HMS Bounty case

Michael Chalos and co-counsel Frank Ambrosino, with the assistance of Melissa Russo, successfully defended HMS Bounty Organization, LLC (“HMS Bounty”) and Robert Hansen (collectively the “Defendants”), in a recent bench trial before Diane Gujarati in the United States District Court for the Eastern District of New York. Judge Gujarati issued her decision on April 11, 2022 finding that the Plaintiff, Acadia Insurance Company (“Acadia”), had failed to prove any of its claims against the Defendants and granted judgment in favour of Defendants.

In 2014, Acadia filed a declaratory judgment action against Defendants seeking to have an insurance policy issued to the Defendants for the HMS Bounty (the “Vessel”) (a wooden replica of the famous British naval vessel) declared void ab initio, or alternatively, to find that there was no coverage under the policy based on alleged breaches of the duty of utmost good faith, absolute implied warranty of seaworthiness, implied negative warranty of seaworthiness, implied negative modified warranty of seaworthiness, crew warranty and compliance, express warranty of seaworthiness, and warranty to comply with state and federal regulations.

The Vessel was purchased by the Defendants in 2001 to be utilized as an authentic square-rigged sailing



Diane Gujarati

vessel for educational and training purposes. The Vessel was operated as an uninspected recreational vessel and a moored attraction vessel throughout the entire time the Defendants owned the Vessel. In 2008, the Plaintiff began providing protection & indemnity and hull & machinery coverage to the Vessel. The Vessel was lost on October 29, 2012 after encountering Hurricane Sandy on its final voyage. When the Vessel left New London, Connecticut, several days before



Sinking of the HMS Bounty



the loss, the testimony indicated that it was in good condition and the weather encountered was pleasant. The intended heading of the Vessel was to avoid the hurricane. However, due to Sandy's erratic changes of direction coming up the east coast of the United States, the Vessel's course was altered by its Master on several occasions to avoid the storm. It was not until the Vessel sailed for two (2) days that the weather started to worsen, when the Vessel's and the hurricane's paths crossed. As a result of the heavy weather encountered, the bilge pumps and generators failed and were unable to keep up with the water ingress. The Court found that the evidence presented was that the Vessel never intended to sail through Hurricane Sandy but rather planned to avoid the hurricane up until the moment it was encountered. Acadia was promptly notified of the loss of the Vessel; paid the policy limits for hull & machinery, liability and loss of earnings portions of the policies; and, nearly six (6) months later issued its first reservation of rights letters and thereafter nearly two years later filed an action to recover the payments made.

Judge Gujarati engaged in a detailed analysis of the various types of seaworthiness warranties contained in the policy issued for the Vessel. The Court was clear that the burden was on the insurer (i.e. Acadia) to prove the unseaworthiness of the Vessel. After hearing multiple facts and expert witnesses, the Court found that Acadia had failed to prove by a preponderance of the evidence that the Vessel was unseaworthy at the time the policy was first issued, subsequently renewed, or at the time of the loss. The Court also held that while Acadia highlighted certain facts, they believed that the Defendants violated the duty of utmost good faith, those same facts were not shown to be material, or to have been relied upon by Acadia when making their decision to bind coverage. While Acadia also raised claims related to crew warranties and violations of federal regulations, it was found that the Plaintiff had not articulated what regulations with respect to the crew had been violated. Finally, the Court held that the Defendants had carried their burden to show that the loss of the Vessel was caused by several covered perils of the sea under the Acadia policy.

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