

September 2019

We met with Club Marine officials in their Sydney office.

They explained the nature of the policy cover offered by Club Marine insofar as it relates to a vessel breaking its moorings, damaging other vessels and/or objects (such as jetties, nav aids etc), and sustaining damage itself. They were of the general view that the policy coverage is generally consistent with those of their competitors.

To clarify an important aspect of the cover: CM covers its owners for their *legal liabilities* to third parties. This means that, after an incident and proper enquiry, if CM reaches the conclusion that the owner was negligent, then the owner becomes legally liable for all damages arising from that negligence. CM, as that owner's insurer, will reimburse all other owners whose vessels have been damaged by their owner's negligence (with provisos as to repair costs etc as noted in the scenarios below).

The expression "properly maintained" includes the mooring being "fit for purpose" in all respect including its structural strength for the vessel, properly laid, connected etc.

1st scenario – Owner is negligent because owner's mooring not maintained

The owner's own mooring is not properly maintained. The owner's boat breaks free from the poorly maintained mooring and damages other vessels. The owner's vessel is also damaged.

The owner is negligent for their poorly maintained mooring making the owner *legally liable* to reimburse the owners of the damaged vessels for the *reasonable cost of repairing their vessels to their pre-damage condition*.

Because the owner was *legally liable*, CM will stand in the shoes of the negligent owner and reimburse the aforementioned cost of repairs.

Because the owner was *negligent*, CM may not reimburse the owner for the cost of repairing their own vessel.

2nd scenario – Owner not negligent; mooring properly maintained

The owner's own mooring is properly maintained. Due to a severe weather event in excess of the design (structural integrity) of the mooring, the properly maintained mooring gives way. The owner's vessel damages other vessels. The owner's vessel is also damaged.

Because the owner's mooring was properly maintained, the owner was *not negligent*, and therefore *not legally liable* for the damages caused by their vessel.

Because the owner was *not negligent* and therefore *not legally liable*, CM will reimburse their owner for the reasonable cost to repair their owner's vessel to pre-damage condition. CM will not reimburse owners of damaged vessels because their owner was *not legally liable* for those damages.

Example of similar incident that went legal

To provide an insight into how the law treats owners who have not been negligent viz done the right thing and therefore *not legally liable*, CM mentioned a similar incident that occurred some years ago. Their owner's vessel broke free from its properly maintained mooring and damaged a jetty. Because the mooring had been *properly maintained the owner was not legally liable* for the damages to the jetty. The jetty owner's claim against the owner was defended by CM as the vessel's insurer. The court dismissed the claim because the owner was *not legally liable*.

In addition, they issued the following statement:

Quote

You should read the document in its entirety to understand the coverage available and the Terms and Conditions which apply in relation to that Insurance. Any advice contained in the document is general advice only and does not take into account Your individual objectives, financial situation or needs. Because of this You should consider the appropriateness of the advice and the product having regard to Your objectives, financial situation and needs.

Unquote

If we can be of further assistance, please feel free to contact us.