

## **The complaint**

A limited company, which I will refer to as F, complains about the decision of Great Lakes Insurance SE to decline its marine insurance claim for damage.

## **What happened**

The following is intended only as a brief summary of events. Additionally, whilst other parties have been involved on both sides, I have largely just referred to F and Great Lakes for the sake of simplicity.

F owns a yacht and held a policy underwritten by Great Lakes to insure this vessel. The insurance was taken out in June 2021, and initially provided cover when the vessel was within the following Navigational Limits:

“Mediterranean waters not East of 20 degrees East thence voyage to Canary Islands, Cape Verde Caribbean 58-68 degrees West, Bahamas to Florida. Excluding Venezuela. Haiti and Cuba”

This policy provided cover for a number of risks, including damage. But had the following condition (“the Condition”):

“Cover excludes all loss or damage arising directly or indirectly from a named or numbered windstorm if the vessel is above 12.07 degrees North during the period 1<sup>st</sup> June to 30<sup>th</sup> November whilst West of 50 degrees West”

Having earlier travelled from the Mediterranean to the Americas, in May 2022, F told Great Lakes that it would be taking the yacht back to the Mediterranean shortly. After F paid an additional premium for \$6,500, the following endorsement was added to the policy (“the Endorsement”):

“It is hereby noted and agreed that with effect from the 1<sup>st</sup> June 2022 cover has been extended to include a return Atlantic crossing from USA, Bermuda, Azores, Portugal, Spain and Mediterranean waters (excluding JWC listed areas)...

All other terms, clauses and conditions remain unaltered.”

On 5 June 2022, the National Hurricane Centre designated a tropical storm with the name “Alex”. An hour or so after this, F’s yacht was struck by lightning causing damage. F sought to claim for this damage under the policy.

Great Lakes declined the claim. It said that at the time of the damage F’s yacht was within the area, and the period, set out in the Condition. And Great Lakes considered that the damage had been caused by the named windstorm Alex. So, it considered the Condition applied and the damage was excluded from cover.

F disagreed. It raised a number of arguments including that the Condition only applied to damage caused by wind, that the electrical storm/disturbances in the area existed prior (and subsequent) to Alex, and that Great Lakes had agreed to cover the damage either by providing the Endorsement or doing so when it could have reasonably been aware that Alex

was forming.

Great Lakes did not alter its position, so F's complaint about it was considered by our Investigator. He didn't recommend F's complaint should be upheld though. He thought it was reasonable for Great Lakes to conclude that the damage had been caused directly or indirectly by a named windstorm, at a time and location where the Condition applied.

As F remained unsatisfied, its complaint has been passed to me for a decision.

F has since provided additional evidence, including several expert reports. This is not something that existed or was made available to Great Lakes at the point it made its decision on the claim, or when it responded to F's complaint. As a result, I am unable to say that Great Lakes has acted unfairly by not taking it into account. However, in order to progress matters, I have thought about whether Great Lakes ought to consider its position based on this additional evidence.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I am not upholding this complaint. I'll explain why.

I should firstly say that the parties have made detailed submissions, covering a range of arguments. I have considered all of these, but I have not referred to each of them within this decision. Instead, as reflects the Financial Ombudsman Service's role as an informal dispute resolution service, I have focussed on what I consider to be the key issues.

I should also point out that I am not an expert in storms or meteorology. My role is to consider the evidence provided by the parties and to consider what a fair and reasonable outcome is in the circumstances.

It is not disputed that the yacht was at a location and time where the Condition applied. Nor is it disputed that Great Lakes would have, or ought to have, been aware that the vessel would be travelling in an area where the Condition applied, when it agreed to the Endorsement. The Endorsement, for example, refers to the planned crossing being via Bermuda, which is located within the area covered by the Condition.

Given the Endorsement also commenced from the same date the Condition applied, and that F had seemingly advised Great Lakes that it intended to make this crossing imminently, it is reasonable to conclude Great Lakes would have, or ought to have, been aware that the crossing would be made during the period the Condition applied.

So, the first key issue for me to determine is whether, by agreeing to the Endorsement with the, presumed, knowledge that the crossing being insured was to occur at a time and place when the Condition would apply, was Great Lakes acting to waive the Condition.

There is an addition to this question, which is whether the fact that storm Alex was arguably forming at the time this Endorsement was agreed to, was Great Lakes waiving the Condition as it applied to this particular storm.

However, I am not persuaded that Great Lakes was waiving the Condition on the basis of either of these points. The Endorsement clearly states that "All other terms, clauses and conditions remain unaltered." And this would include the Condition. The fact that F was intending to make a crossing at a time and place where it would not have full cover, does not

mean no cover was provided. Had, for example, damage been caused by something non-weather related, a claim may have been covered despite the crossing being within a time and area covered by the Condition.

Also, the fact that a particular storm may have been forming at the time the Endorsement was agreed, does not mean the Endorsement automatically covered any damage that might result from that storm. And it is reasonable that Great Lakes ought to be able to rely on policyholders to assess the weather circumstances and decide if making a crossing at a particular time and place is appropriate.

Taking these points into account, I consider that the Condition had not been waived and that it was appropriate to consider whether it applied to the claim.

The second key issue is whether Great Lakes acted appropriately by coming to the decision that the damage was caused by a named or numbered windstorm.

F has argued that, effectively, only damage caused by wind is excluded under the Condition. However, my understanding is that, whilst a windstorm may require there to be wind to be so named, a windstorm also seemingly has the likely potential to involve other elements of storm – rainfall, lightning, etc. Different windstorms may be more or less likely to involve these elements. But I am not persuaded by F's argument that the Condition only applies to damage caused by wind.

I note that there was apparently electrical disturbance before and after storm Alex was so named. F has argued that this disturbance cannot be said to be as a result of storm Alex. Whether that is true or not though, the lightning strike that damaged F's vessel did occur during the period of storm Alex.

I appreciate that this strike took place relatively soon after the storm had been named. And I agree that the conditions that were developing and that then led to this strike had likely begun prior to the naming of the storm. However, it is also arguable that weather is a constantly evolving state. There is no start or end to weather. In order to reach the stage where a storm is named, conditions will need to build and develop. A storm does not immediately start from nothing.

So, there will always be some part of a weather condition that exists prior to a particular weather event. I am not persuaded that this means that part of a storm event that takes place soon after the storm has been named cannot be said to have been caused by that storm. Whilst conditions that existed prior to the naming will inevitably be a factor – both in the existence of the storm itself and the specific event – this does not mean the event has not been caused by or forms part of the storm.

Ultimately, the question is, was the lightning strike more likely than not caused directly or indirectly by storm Alex?

The location of the vessel at the time of the strike was within an area that was subject to tropical storm force winds that formed part of storm Alex. The National Hurricane Centre issued briefings setting out the limits of this area. And, whilst I note F has said that the windspeeds experienced by its vessel were below this, the independent documentary evidence seems clear that the area the vessel was in fell within the limits of storm Alex.

F has said that it is not enough that the lightning strike be associated with the named storm, and that it needs to have been caused by the storm. I agree that, in order to be excluded, the proximate cause of damage needs to arise directly or indirectly from the storm. However, I consider that, in the circumstances of this case, this is what the expert evidence has

concluded was most likely.

One of F's own experts says "...the convection producing the strike was associated with these non-tropical weather features interacting with Tropical Storm Alex, rather than Alex itself."

The key point here is that it is the interaction with Alex that has, at least in part, caused the lightning strike. The comments of F's expert suggest to me that it was the combination of multiple weather events, including Alex, that led to the lightning strike. And I consider that this would satisfy the requirement for the named storm to be the direct or *indirect* cause of damage.

Great Lakes has also provided evidence from an independent expert. The expert concluded that, whilst it was impossible to be certain, the lightning strike was most likely directly associated with storm Alex. This expert goes into less detail than F's, but I consider Great Lakes acted fairly and reasonably by relying on this to come to its initial conclusion on the claim.

As mentioned, I am not an expert in meteorology. I need to make an assessment of whether Great Lakes acted appropriately by declining the claim based on the evidence it had at the time. Taking everything into account, I consider that Great Lakes reached a fair and reasonable decision on the claim. It follows that I am unable to fairly and reasonably ask it to do more.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 20 January 2025.

Sam Thomas  
**Ombudsman**