

The complaint

E and E complain that Great Lakes Insurance SE declined their claim for damage to the hull of their sailing yacht

What happened

E and E had a policy with Great Lakes to cover their yacht which was used for pleasure cruises.

The yacht was due to be decommissioned at the end of the 2022 sailing season, but they say the hull was damaged on the last sea passage before decommission on 30 October 2022.

In February 2023 E and E made a claim for hull impact damage which they say had become evident when the boat had been lifted for routine maintenance. It wasn't known when the damage occurred.

E and E say as a result of the damage they have incurred costs of £28,547.26 which Great Lakes are refusing to cover, and they complained about the claim decline.

Great Lakes didn't uphold the complaint and so E and E brought their complaint to us.

One of our investigators has looked into E and E's complaint but he thought Great Lakes had acted fairly and within the terms of the policy.

E and E disagreed with our investigator's view, and so the case has come to me to review.

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.

I'm not an expert in marine engineering, and so I am reliant on the reports provided by experts on both sides when considering this complaint. My role isn't to determine how the damage has occurred, but rather to consider whether, in the light of the evidence before me, Great Lakes have made a fair and reasonable decision when declining this claim. Although I have carefully read all of the documents and responses to reports on both sides, I won't be repeating it extensively, only commenting on the parts which I consider are pertinent to explaining my reasoning.

Having considered it all, I'm not upholding this complaint and I'll explain why. Great Lakes have declined the claim for three reasons:

1. There is no specific insured event that caused the damage;
2. The pattern of cracking is not consistent with having been struck by a solid object
3. The presence of anti-fouling paint on the cracks indicate the cracks are not recent

The damage which is the subject of the claim is some external cracking on the port side of the hull area of the boat comprising approximately three straight edged horizontal cracks. In an insurance claim, the burden of proof is on the policyholder to show that an insured peril has occurred.

In E and E's policy, cover is provided for loss or damage caused by "*an accidental fortuity, theft/ attempted theft, vandalism, and malicious and/or negligent acts by a third party*". The insured peril being considered here is "accidental fortuity", and to establish that a loss is fortuitous, the insured must show that an accident has occurred which was caused by "the intervention of negligence, or adverse unusual conditions".

Great Lakes have declined the claim because they say that E and E can't show that a specific incident occurred which led to the damage, and they have said that their loss assessor, who examined the boat, has advised that the damage is more likely to have occurred through wear and tear than impact damage. Wear and tear is excluded under the policy terms on page 6:

1.15 any loss or damage directly or indirectly from wear, tear, Gradual Deterioration, Inherent Vice, corrosion, marine growth, vermin or mould

Gradual deterioration is further defined as:

"The progressive degradation of The vessel caused by wear and tear, including but not limited to rust, rot, corrosion and weathering"

As they can't demonstrate an actual impact, E and E have tried to demonstrate, though the reports of their marine engineer, that the damage caused is consistent with an impact. Great Lakes don't accept this, because their loss assessor's report says:

"The cracks have very smooth edges. Given that a GRP hull is formed by layers of chopped glass mat that is bonded together using resin that, when cured, provides a strong material that is waterproof and provides strength resulting from the multi-directional glass fibres bonded together. When a cured GRP surface is struck by a solid object, i) it requires a considerable force to cause damage and, ii) because of the nature of the lay-up the surface defect is non-uniform, whereas in this case, the cracked edges are straight.

This is reminiscent of a fatigue crack, as can occur in metals and other materials when subjected to flexing.

Different materials have different fatigue characteristics, and thus a fatigue crack occurs after a different number of cycles dependent upon the material. For GRP, the fatigue strength is likely to be reasonably low compared to steel, hence why the internal support of the structure requires to be sufficient to prevent the hull flexing. It is likely that these cracks have progressed to the situation seen due to a discrepancy in the GRP lay-up, i.e., that it is slightly thinner in this area and has succumbed to larger movement and failed as a result."

Further, they have added that:

"The presence of antifouling paint with thickness, on the cracked and protruding edges indicates that the cracks were not recent and had been painted over some time in the past, perhaps predating the policy period."

In short, Great Lakes don't accept that the damage is consistent with an impact or grounding, but rather with long term fatigue, or wear and tear, which can't be considered to be accidental fortuity, and so they don't consider that E and E have discharged the burden of proof.

E and E have contested this by providing a damage report from a marine engineer, who has examined the damage and reported that:

"Though the owners can report no specific incident, the damage observed is entirely consistent with an impact with a solid object in the sea. That this was not observed at the time is not surprising, given the amount of noise present when sailing in rough conditions."

A second report was prepared by the same marine engineer, following a further examination with the loss adjusters in April 2023

This report says that antifouling paint can be spread by jet washing and confirms that the day following the visit by the loss assessor, they further examined the paint with acetone, and noted that the traces of antifouling on the damaged edges washed off more readily than on the coated surfaces, which they seem to be suggesting means that the cracks hadn't been painted over previously.

They also undertook further examination of the damage, sanding and exposing further layers, which they say:

"The pattern of hairline cracks both externally and internally are what would be predicted by the structural analysis of a panel of laminate subjected to a specific localised (almost point) load. This observation tends to contradict the suggestion of inadequate inherent strength of this area of the structure."

Great Lakes loss adjusters have responded to the points that E and E have raised on 8 March 2023 with photographs. They have pointed out inconsistencies in the damage – that in the area of the cracking, which is claimed to be impact damage, there is intact anti fouling paint, but in another area, a large patch of anti fouling paint has come off but there are no cracks. They note that there is thicker anti fouling paint in one area which may indicate a previous repair and they have indicated internal cracks which are consistent with hull flexing in the seaway. They also have said that it hasn't been explained how a floating object (as suggested by the insured) could have caused damage to such an extended area with uniform cracks protruding outwards whilst also causing abrasion over such a wide area.

E and E disputed this and produced a further report from another expert, which reviews the content of the two other reports and makes further supportive comments for the insured but does so without sight of Great Lakes assessor's report, and without making any findings about the cause of the damage.

I've considered all these reports, but on balance I'm not satisfied that E and E's expert reports have provided sufficient evidence to discharge the burden of proof required.

Firstly, they are unable to point to a specific voyage or incident on which an impact was felt or noted, and so the suggestion as to if and when an impact occurred is speculative – and without some certainty that there was an impact, there can be no accidental fortuity, and no insured peril.

Secondly, they point to the cracks themselves and the damage to the anti-fouling paint as being indicative of an impact. However, there are several aspects of this which are

inconsistent with impact as identified by Great Lakes assessor, which E and E haven't been able to explain sufficiently, including how an impact results in cracks that protrude from the hull.

E and E have had the opportunity to provide reports and make comments, all of which have been considered by Great Lakes and their loss assessor, but the decision has not been changed.

And so on balance, I'm satisfied that Great Lakes have undertaken a thorough investigation and consideration of all the evidence presented to them and made a fair and reasonable evidence based decision to decline the claim.

My final decision

I'm not upholding E and E's complaint about Great Lakes Insurance SE and so I won't be asking them to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask E and E to accept or reject my decision before 13 February 2025.

Joanne Ward
Ombudsman