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January 23, 2021

**BY FACSIMILE AND EMAIL**

David R. Aden
Progressive Claims
2150 Harvard Street
Sacramento, CA 95815
Facsimile: (833) 958-1219
Email: david_r_aden@progressive.com

Re: Motor Vessel "Gritz" Claim (the "Vessel")
Claim No.: 20-1068426 (the "Claim")
DOL: October 23, 2020
Policy No.: 2748 (05/11) (the "Policy")

Dear David:

I write with respect to the above-referenced Claim and in response to your letter dated December 23, 2020. The purpose of this letter is to demand indemnity for the full value of the Claim, as set forth in detail herein. This demand is premised upon the following facts.

The Vessel is a 2001 Sea Ray Sundancer 340DA. On October 23, 2020, I along with my two sons (7 and 9), two of their friends and their father, were on the Vessel heading to Catalina, on plane at approximately 23 knots. The two engines were at operating temperature and running at approximately 3300 rpm. The sea state was nominal, and everything was operating normally. We were running off LAX, just beyond the tanker moorings when the Vessel suddenly dropped off plane. Looking astern, their appeared to be some debris in the receding wake made up of bits of wood and perhaps netting, but it was hard to tell. I shifted both engines into neutral. All gauges appeared normal. I then shifted each engine into forward. Looking astern, when the starboard engine was shifted into forward I observed prop wash. No prop wash was observed on the port side, however, when the port engine was shifted into forward. With the starboard engine in forward so as to keep the bow into the wind, I opened the engine compartment. I observed that that the port shaft coupling was turning rapidly with the port engine in neutral. Otherwise, everything appeared normal. We motored back to Marina del Rey on the starboard engine. Upon our arrival, I again opened the engine hatch and then shifted the port engine into forward and then reverse. Once again, no prop wash was observed in either direction. I noted again that in neutral, the shaft coupler on the front of the port transmission was spinning rapidly. I climbed into the

engine compartment and attempted to stop the coupler from spinning (while the transmission was in neutral) with both hands but could not.

On the following Monday, I was contacted by the diver who regularly cleans the hull. He reported that the port propeller shaft had slid astern, with the propeller resting against the port rudder. I thereafter went to the Vessel. Utilizing a cellphone endoscope I was able to observe the shaft break inside the shaft tube on the port transmission.

I thereafter consulted with several marine mechanics. Based upon what I had observed, I was informed that the port propeller had likely come into contact with a submerged object on October 23, 2020, which caused a massive torque load to emanate up the port shaft and into the transmission. The sudden load likely snapped the propeller shaft and overloaded the clutch pack in the port transmission, causing it to lock up—hence the transmission coupler continuing to spin forcefully, while in neutral. I was further informed that the model ZF/Hurth V-Drive transmission at issue could not be economically repaired, and thus the only solution would be to replace it, along with the propeller shaft, etc.

Based upon this information, I submitted the Claim and immediately ordered a new transmission so that it would be delivered and ready to install upon haul out. The Vessel was hauled out at Windward Yacht Center on or about December 7, 2020. George Boulanger, the service manager at Windward thereafter inspected the port propeller, rudder and shaft. I understand that Progressive's adjuster, Alexander Lee, also inspected the Vessel, port propeller, rudder and shaft both pre and post removal.

Subsequent to the initial inspection and removal, the port shaft (2 pieces) and rudder were delivered to Wilmington Ironworks and the propeller to Wilmington Propeller. Shortly after delivery of the propeller shaft to Wilmington Ironworks, I understand that Mr. Lee inspected the broken shaft for "3-4" minutes. Thereafter, I was contacted by Mr. Lee who informed me that he had observed "beach marks" which according to him were indicative of "metal fatigue" as the cause of the shaft break, as opposed to a propeller strike. As this was contrary to what I had been told initially, I began following up with the folks at Windward and Wilmington Ironworks.

George, who I understand has been in the marine repair business for well over 40 years, informed me that based upon his inspections and his 40 years of experience, there was absolutely no doubt in his mind that the propeller had struck a submerged object, which tore one of the propeller blades, broke the shaft and pulled it and the propeller astern, into the rudder. He further stated that the shaft break itself appeared to him to be a "clean break" and not the result of metal fatigue.

I also spoke with Ryan Richards at Wilmington Ironworks. Ryan informed me that Mr. Lee had spent only 3 to 4 minutes looking at the broken shaft. According to Ryan, who has been working with propeller shafts going on 20 years as well as the foreman at Wilmington Ironworks, who has more than 40 years of experience, the face of the shaft break conclusively showed that the break was caused by a massive and immediate torque load that likely resulted from the

propeller striking an submerged object. The surface of the break, according to them, did not evidence "metal fatigue."

At that point I retained the services of Bill Trenkle of Todd & Associates in San Diego. As you may know, Mr. Trenkle is a very well-regarded marine surveyor and engineer with over 40 years of experience in the marine industry. I asked Mr. Trenkle to inspect the Vessel, shaft, propeller and rudder and give me his opinion with respect to the cause of the shaft break and other damage. Mr. Trenkle's report is enclosed herein. As you will note, Mr. Trenkle concurred with the conclusions of the folks at Windward and at Wilmington Ironworks, that the most likely cause of the shaft break was the propeller striking a submerged object at speed.

This leaves the issue of the transmission. I retained Carl Meentzen of CC Marine in Marina del Rey to switch out the existing transmission, as well as to disassemble it and opine as to whether it had been damaged as a result of whatever broke the shaft. As you may know, Mr. Meentzen has over 37 years of experience in the marine industry. No one, and I mean no one in Los Angeles County (and very likely beyond) comes close to his level of experience. Mr. Meentzen disassembled the transmission and noted material warping in the clutch discs, which would be consistent with the application of a sudden torque load to the propeller shaft. Such would also be consistent with the transmission being observed 'in gear' while in neutral. Mr. Meentzen's advice was consistent with that received from other marine technicians prior to haul out—the transmission was damages as a result of the torque load that broke the shaft and the only economical solution is to replace it with a new one.

Based upon the above, it is abundantly apparent that on October 23, 2020 while we were cruising at 23 knots off of LAX beyond the tanker moorings, the port propeller came into contact with a submerged object of some sort. The propeller struck the object with such force that it left a large gash in one of the blades. The strike caused a momentary and massive load to be applied to the propeller shaft and the attached transmission. The load snapped the shaft. In the milliseconds before the break, the forward clutch pack in the port transmission overloaded, warping the clutch discs and locking it into gear. My observations that day—debris in the wake and the port shaft coupling turning vigorously in neutral—only serve to confirm this chain of events.

Turning now to the Policy at issue, the Policy provides in pertinent part as follows.

First, "[c]overed watercraft" is defined as:

a. any watercraft expressly identified on the declaration page for the coverages applicable to that watercraft.

"Permanent equipment" is defined to mean "equipment permanently installed on a covered watercraft using bolts or brackets, including slide-out brackets."

> Under Part IV—Physical Damage Coverage, Insuring Agreement – Collision Coverage provides that "[i]f you pay the premium for this coverage, we will pay for sudden, direct and accidental loss to a covered watercraft resulting from collision."
>
> When used in Part IV, "Collision means the upset of a watercraft or trailer or ***its impact with another watercraft or object***." (emphasis added).
>
> When used in Part IV, "Covered watercraft" means a "covered watercraft" as defined in the 'General Definitions' section of this policy, including the following components:
>
> a. motor(s);
>
> b. permanent equipment while used with the covered watercraft. . . .

As applied here, the Vessel is a "covered watercraft" within the meaning of the Policy. The shaft, propeller, rudder, and transmission comprise part of the motor and/or permanent equipment and thus are deemed part of the "covered watercraft" as said term is used under Part IV of the Policy.

The Insuring Agreement – Collision Coverage under the Policy provides that Progressive "will pay for sudden, direct and accidental loss to a covered watercraft resulting from collision."

Collision as utilized in Part IV means "the upset of a watercraft or trailer or ***its impact with another watercraft or object***." (emphasis added).

Applying the terms of the Policy to the facts of the Claim, the Vessel at issue struck an unknown, underwater object, which was the direct and proximate cause of a loss to the covered watercraft, in the form of a damaged propeller, broken propeller shaft, damaged rudder and damaged transmission.

As a result of the loss, I am presently out of pocket the following:

| | |
|---|---|
| Windward Yacht Center—haul out, replace shaft, remove, repair and reinstall propeller and rudder. | $6,987.41 |
| CC Marine—Remove old transmission and install replacement. | $3,888.37 |
| Transmission Marine, Inc.—replacement transmission | $3,695.08 |
| **SUBTOTAL** | **$14,570.86** |

This subtotal does not include the labor associated with the disassembly and analysis of the old transmission, or the in-water port shaft alignment which still needs to be performed.

I have been an avid boater going on 30 years now. I have never had an insurance claim. As I informed Mr. Lee at the outset, I was going to go ahead and have the necessary repairs completed at my expense without waiting for the Insurer to make its decision, as the repairs needed to be performed. But for the transmission teardown and in-water alignment, the repairs have been completed and paid for.

This letter constitutes a demand that Progressive accept full coverage for the Claim and reimburse my out-of-pocket expenses set forth above, along with any additional charges associated with the transmission disassembly and in-water alignment—less the applicable deductible.

While I litigate for a living, it is my hope that such will not be necessary here. There is no reasonable question as to what occurred here, and no reasonable question as to Progressive's legal obligation to cover this Claim. I look forward to your prompt response and remain hopeful that this Claim can be resolved quickly and amicably.

Very truly yours,

Brandon C. Fernald

BCF/
Enclosure
cc: Alexander Lee (via email)

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File #: 20-1274
January 22, 2021

## MARINE SURVEYOR - DAMAGE SURVEY REPORT

**AT THE REQUEST OF:** Brandon Fernald-vessel owner

**VESSEL:** 2001 34' Sea Ray Sundancer 340DA "Gritz"

**HIN#:** SERT7505G001

**DATE OF LOSS:** October 23,2020

**THIS WILL CERTIFY THAT THE UNDERSIGNED ACCREDITED PUBLIC MARINE SURVEYOR, ACTING UPON THE ABOVE REQUEST,** attended the subject vessel, while hauled out at the Windward Shipyard, attended the vessels broken port propeller shaft and port rudder at Wilmington Ironworks aand attended the port propeller at Wilmington Propeller, on December 15, 2020. The purpose of the attendances was to provide Mr. Fernald with the undersigned's professional opinion as to the cause, nature, and extent of damage to the insured vessel, following a reported incident of striking a submerged object.

## DESRIPTION OF INCIDENT

The undersigned interviewed Mr. Fernald the vessel owner regarding the incident of loss suffered on October 23, 2020. Mr. Fernald stated that while traveling from Marina del Rey to Catalina Island, while in the open Pacific Ocean , traveling at approximately 23 knots, with the engine at 3,300 RPMs, the vessel suddenly lost power. Mr. Fernald looked aft and saw debris which appeared to be wood in the vessel's wake. After putting the vessels port

and starboard engines into neutral, he shifted each engine into gear and noticed the port engine was not providing any thrust. During inspections inside the engine compartment the assured could see that the port transmission propeller shaft coupler was spinning, indicating that the transmission was engaged. At that point he could not tell why the port engine was not producing thrust. He returned to his slip and had a diver provide inspections. The diver informed him that the propeller and shaft had slid aft and were up against the rudder. When Mr. Fernald checked the transmission, he observed that even in neutral the coupler was spinning and he was not able to stop it with his hands, which if the transmission was operating properly would have been possible. Mr. Fernald made arrangements to have the vessel hauled at the Windward Yacht Center. At that time, it was discovered that the propeller shaft had broken and it was observed that the propeller was badly damaged. The damaged parts were sent to Wilmington Ironworks and Wilmington Propeller.

## DESCRIPTION OF DAMAGES

On December 15, 2020, Bill Trenkle, Marine Engineer, AMS, CMI, of the undersigned surveyor's office, attended the insured vessel at the Windward Yacht Center. At the time of attendance, the following observations were made:

1. The port propeller shaft and propeller had been removed.
2. The port ZF Vee drive transmission shift valve cover had been removed in order to inspect the ship valves to determine if they were malfunctioning. It was reported that they were not.
3. Measurements were taken of the starboard propeller and the distance between it and the rudder, as well as observations of the relative positioning of the propeller blades and the rudder leading edge.

4. Following inspections of the vessel the undersigned attended the propeller shaft at Wilmington Ironworks. Inspections of the fracture surface of the propeller shaft revealed that there was plastic deformation on the outer surface of the shaft with a fracture initiation adjacent to the propeller keyway slot. Beachmarks consistent with the now oscillating, rotation of the shaft after the initial fracture, were observed across the fracture surface, terminating on the other side of the keyway with a sudden final fracture. No corrosion was visible on the fracture surface. The entire surface is similar in condition, consistent with a sudden fracture. See figure #1 below.

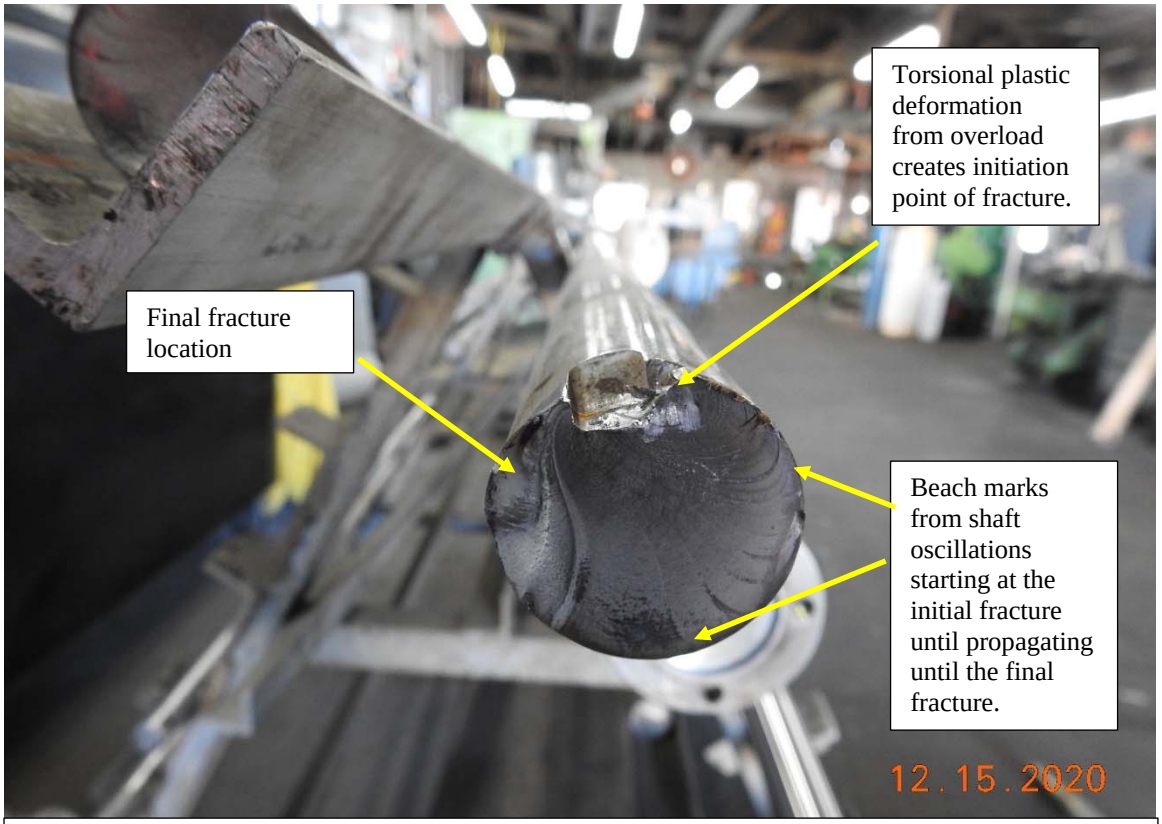


Figure #1- Driving end of shaft at fracture surface.

5. Inspection of the port propeller revealed impact damage consistent with striking an object. The damage does not align with the rudder and is severe so it could not have

occurred after the shaft broke and the propeller slide back to the rudder leading edge. See figure #2.


Figure #2- Damaged port propeller

6. Inspections of the rudder leading edge did not reveal any impact damage. If the rudder had been impacted by the nibral propeller which is made of a harder alloy than the rudder, there would have been damage to the leading edge of the rudder and no damage from a substantial impact to the rudder leading edge was observed. See figure #3.


Figure #3- Leading edge of rudder where propeller impact would have been visible. If it caused the damage observed to the propeller.

7. An impact with a submerged object that caused the observed damage to the propeller and to the propeller shaft would have created a torque overload of the transmission, as it appears that the propeller was suddenly stopped from turning at 3,300 RPMs, tearing one of the nibral propeller blades and fracturing the shaft. The undersigned has seen numerous transmissions damaged without a propeller shaft overload and fracture from striking of submerged objects, with the only evidence being a damage propeller. Inspections of the interior of the transmission revealed warped clutch pressure plates, which is consistent with a transmission overload. The warped pressure plates are what caused the assured to observed that the transmission would no longer go into neutral. Due to the extensive damage to the shaft and propeller re-using the present transmission without it undergoing complete disassembly and magna flux inspections to ensure there are no micro cracks in

the gears and shafts would be well outside industry norms. The cost of the disassembly and magna fluxing, along with the cost of replacing the already visibly him damaged clutch components would exceed the cost of a replacement transmission. It is opinion of the undersigned that the vessel owner's decision to replace the transmission rather than to repair it was prudent and was the most cost-effective repair. Damages to the transmission pressure plates can be seen in the figure #4.


Figure #4- Warped clutch pressure plate.

It is the professional opinion of the undersigned marine surveyor, that the damages observed are consistent the subject vessel striking a submerged object at high RPMs .

## ESTIMATES TO REPAIR

The undersigned was provided with repair costs incurred by Mr. Fernald to date as follows:

| | |
|---|---|
| **Windward Yacht Center**—haul out, replace shaft, remove, repair and reinstall propeller and rudder. | $6,987.41 |
| **CC Marine**—Remove old transmission and install replacement. | $3,888.37 |
| **Transmission Marine, Inc**.—replacement transmission | $3,695.08 |
| **SUBTOTAL** | **$14,570.86** |

It is the professional opinion of the undersigned Marine surveyor that these repair costs are generally fair and reasonable for the repair of damages directly related to the October 23, 2020 incident of striking a submerged object.

## CONCLUSIONS

After attendance to the insured vessel, the port shaft, rudder and propeller, discussions with the assured and review of photographs of the vessel's disassembled port transmission, it is the professional opinion of the undersigned that the insured vessel struck a submerged object with the port propeller, while operating the vessel in the ocean with the engine at high RPMs. Striking a submerged object with the vessel's high-strength nibral propeller resulted in a sudden excessive torque load being applied to the propeller shaft and transmission. The overload damaged the transmission and caused the propeller shaft to fracture.

Damage to the propeller occurred while the propeller was turning at high RPMs and not from sliding back and impacting the rudder. Beach marks visible on the propeller shaft occurred after the initial break as the propeller shaft continued to rotate but because the shaft was compromised, and the propeller was out of balance, the shaft oscillated creating beach marks across the surface before the shaft completely failed. At 3,300 RPMs with the transmission gear ratio of 1.56:1 the propeller is spinning at 35 revolutions per second. On

the face of the broken shaft approximately 25 beach marks are visible. These beach marks were made in the less than one second from the time of the initial fracture until the shaft failed.

Based on telescoping damage theory, it is known that the damage occurred first at the propeller, then the shaft, then the transmission. At this stage the vessel owner does not believe there is any damage to the port main engine. The damage to the transmission is readily visible in the form of warped clutch pressure plates. The plates become warped when they received a high load at the shaft when they are trying to transfer full horsepower through the clutch to the shaft. Further investigations into the transmission condition would be costly and based on the low price that the vessel owner was able to purchase the replacement transmission at, it appears he made a prudent decision.

The opinions expressed above by the undersigned are based on physical inspections conducted by the undersigned and review of the disassembled transmission photographs provided by Mr. Fernald's mechanic. The undersigned reserves the right to modify the opinions expressed herein if additional evidence is brought forward that would affect the initial opinions provided.

Issued without prejudice,



Bill Trenkle, Marine Engineer, AMS, CMI
Todd & Associates, Inc.

Enclosures