

Risking the Wind

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By Alice Kohn

They checked the weather forecast Friday morning because they always checked the forecast before a trip. When you take a 50-footer all the way out to Georges Bank to catch lobster, you had better know what the seas are going to be like. Once you get far enough away from shore, there's no turning back.

So Billy Garnos, 38, captain of the *Fairwind*, listened to the all-weather VHF broadcast early that morning as he got dressed in the Beverly, Mass. home he shared with his parents. And Gary Brown, 25, first mate on the *Sea Fever*, did likewise. Gary's mother had just bought him one of those weather radios and he tuned in religiously.

The forecast was encouraging and their spirits were high. It was one of the last trips of the season for both men. Although they made good money, the schedule was grueling: a day's trip out, two or three solid days of hauling up traps and rehabilitating them, and a day's back on a day's back, and a day's back on a day's back. Billy's first child was due in three or four months and he was planning to attend natural childbirth classes with his wife, Honour. Billy, who had ritualistically proclaimed he was "never gonna get married," had just fallen in love with a schoolteacher. Exactly ten days ago they had decided on a Valentine's Day wedding.

Just after 11 a.m., November 21, 1980, the *Fairwind* chugged out of Hyannis harbor with its crew of four men. A little while later, the *Sea Fever* followed. The updated weather forecast still seemed promising. With a little luck, each ship would bag three or four thousand pounds of lobster and finish up the season with a flourish.

But this was not the way things would work out. Instead, a horrific storm packing hurricane-force winds would sweep out of nowhere into Georges Bank, washing Gary out of his boat and flipping the *Fairwind* completely upside down. Scarcely 24 hours after leaving port, Billy Garnos, Gary Brown, and two other men on Billy's boat would be dead.

It would have been a personal tragedy to the families and friends of these men, an item in the local papers, and nothing more. It were it not for a single weather buoy located out in the Bank. The buoy, which provides data to help the National Weather Service draw up its forecasts, had been malfunctioning for going on three months. Could that storm have been predicted if the buoy had been working? Did the Service have a legal obligation to keep it in good repair -- or at least to let those who relied on its forecasts know that it was down? Michael Latti, a maritime lawyer in Boston, thought the answer to both questions was yes. Thus began an extraordinary legal action: Honour Brown, et al. versus the United States of America.

The case attracted wide attention because of its possible implications for those who try to predict the weather. Meteorologists spoke darkly of how disclaimers would have to be appended to every forecast. "The entire operation of the National Weather Service" would be at risk and the implications are "very ominous," said Robert Willmore, the deputy assistant attorney general who argued the case before the Court of Appeals.

More important, the case seemed to epitomize how litigious our society has become. The national media picked up the story in 1984 as the lawsuit went to trial in Boston, and there was much amused head-shaking in all quarters. Can you believe this? Now they're even going to court because somebody didn't see a storm coming! What next? Sue the guy on TV when it unexpectedly rains on your picnic?

"That's probably the way I'd feel, too, if I hadn't read the evidence," quips U.S. District Judge Joseph Tauro, who presided at the trial. Latti goes a step further, arguing that this view of the lawsuit corresponds precisely to how the government wanted people to think of the suit. As Latti sees it, the question is not whether someone flubbed a storm prediction but whether fishermen were encouraged to rely on a buoy-based forecast and then left to drown because no one bothered to fix one of the key buoys when it broke.

The first round went to Latti and his clients: Judge Tauro bought the plaintiffs' arguments up and down the line. He awarded \$1.25 million to the families -- the lion's share of it to Honour Brown and her baby daughter, Gary. The second round went to the National Weather Service when a three-judge panel of the U.S. Court of Appeals for the First Circuit unanimously tossed out Tauro's ruling last May. Latti's only hope now is that the Supreme Court will hear the case and reaffirm the original verdict.

Once you get 40 or 50 miles from shore, you can no longer pick up the continuous VHF forecasts. Instead, you must rely on a sideband radio that receives updated weather broadcasts every six hours: 11:00 and 5:00, a.m. and p.m., repeated 20 minutes after those hours.

The last forecast that could have caused the *Fairwind* and *Sea Fever* to abort their trips was the one they heard at sea at 5 p.m. Friday. But it called for winds of 15 to 25 knots and they already knew of 5 to 10 feet on Saturday -- hardly placid conditions but nothing that would tempt them to turn around.

At 11 p.m., as they were reaching the Bank, the weather got worse but the forecast stayed essentially the same. Only at 5:00 Saturday morning did their radio finally describe what they already knew: a full-fledged gale had hit. The wind was coming from home -- the northwest -- so return was impossible. Now that the boats were 150 miles from land, less than an hour from their lobster traps, all they could do was "lay to" (stay put) and try to ride out the weather.

By 11 a.m., the Weather Service announced that Georges Bank had been hit by a full-fledged storm. (Technically, a "storm" has winds in excess of 47 knots -- 54 miles per hour -- while a "gale" has winds between 34 and 47 knots.) In fact, the fishermen figured the gusts were topping 100 miles per hour, and the waves were anywhere from 40 to 70 feet high: enormous, angry walls of water slamming into the boats. Peter Brown, who is no relation to Gary, was captain of the *Sea Fever*. "We'd been in bad weather [before], but we didn't understand what we were getting into," he recalled recently. "The torrential rain and blasting wind were the worst we'd ever seen -- and it just kept getting worse. It was mind-boggling. When they're so far off their forecast, you start to wonder: 'Why you?'"

Buried in foam, the *Fairwind* was suddenly spun completely around and then turned upside down. When crewman Ernie Hazard -- the only one not trapped in the pilot house -- surfaced in the icy water, he grabbed hold of a barrel and managed to get back to the boat where an orange life raft was waiting for him. His three mates, including Billy Garnos, were not. He climbed into the raft and cut it free from the sinking boat.

A huge sea came up, picked up the boat, and just pretty nearly capsized us, but threw us on our side, and the water came into the cockpit and in a split second Gary was gone overboard...We attempted to get near him with [the] boat. And the boat was taking on water and we tried to get near him as best we could, threw him a life ring, threw him a lifeline, made several attempts, passed [by] him. There wasn't anything we could do in that weather.

The phone awakened Charlie Raymond, the *Fairwind's* owner, at 7:00 Sunday morning. Another boat in Georges Bank was calling through the marine operator to tell him there had been a bad storm -- "news to me," Raymond said later -- and to urge him to get the Coast Guard out.

Raymond, a muscular man with an open, earnest face, spent that Sunday pacing the floor of his Beverly waterfront home, calling the Coast Guard and his crew's relatives. They tried to convince each other that nothing more serious than a broken antenna was the reason the boat couldn't be raised on the radio. Meanwhile, the Sandwich, Mass. police were calling Honour Brown. "They didn't want to upset me over the phone," she remembers. "They said he was missing. It wasn't like Gary. I said, 'What do you mean he fell off the side of the boat?'"

By Monday morning, when Ernie Hazard had been plucked from the water and hospitalized for frostbitten toes, the families knew what had happened and the Coast Guard had called off the search. Gary's mother, Pat Tracy, became furious, desperate. "I called Senator Kennedy's office, I called our representative, I called F. Lee Bailey's office, and I got the Coast Guard back out to search for him again. They said they looked and he was gone."

Buy buoy 6N12, bobbing in the waves at Georges Bank (40.8 N, 68.5 W) since early 1977, looks like a dumpster with antennas sticking out. Like the 20 or so other buoys in the Atlantic and the Gulf of Mexico in 1980, it was supposed to be providing on-the-spot readings of air temperature and pressure, wind speed and direction, water temperature and wave height. Those data are transmitted every hour to Washington, D.C. by satellite and then sent back to the National Weather Service office in Boston.

In the spring of 1980, the Georges Bank buoy began having trouble with its wind sensors. When a ship hit it during the summer, things only got worse. Repairs were made in mid-August, but its wind reports went haywire again a few weeks later. On November night that the boats headed out to the Bank, the buoy was reporting winds of 27 knots one hour and 84 knots the next.

Four years later, 6N12 was the star of a Federal trial. For seven days in May, Michael Latti and the government's lawyer, David Hutchinson, dissected its failure and argued about its importance. They did everything short of hauling the buoy into Judge Tauro's downtown Boston courtroom. By the time the last witness was dismissed, they had produced more than 1,150 pages of transcript with their scuffling.

Latti had three major arguments. The first was that lobstermen began taking relatively small boats all the way out to Georges Bank in 1977 precisely because the buoy went into operation that year -- and because the government encouraged them to take advantage of the more reliable forecasts that the buoy permitted.

Asked about this after the trial, Latti pointed to Peter Brown as his primary source. But Brown disputes the claim. "It had nothing to do with the buoys that people went out further," he says. "I don't think people built their business on it at all. Any seafaring person knows when they leave the dock that they can't rely on forecasts."

Second, Latti pointed out that the Weather Service knew the buoy wasn't transmitting wind data and decided not to do anything about it since it was due to be replaced in early 1981. The government admitted this was true but insisted that the Service just didn't have the resources to fix it. "It was determined that the anemometer [wind measuring instrument] could not be repaired on site," says Don Witten, public affairs director for the Service. "With the other systems working, would it have made sense to tow the buoy out of there?"

Latti's third argument, which took up most of the trial, was that information from the buoy -- particularly its wind reports -- was critical to preparing accurate forecasts and probably would have allowed meteorologists to predict the storm that killed Gary and Billy and sank four boats in all. This the government strenuously denied, noting that forecasts are also based on reports from satellites, ships at sea, and a variety of other sources.

The battle of the expert witnesses began. On the third day of the trial, Latti produced a consulting meteorologist from North Carolina named William Haggard, who testified that "the absence of the [buoy] data caused the forecast not to be issued in as timely a manner or as proper a location." (Haggard, in "hindcasting" the course of that storm, also estimated that the Weather Service had put its center 180 miles too far to the northeast on Friday evening.) The next week, the government produced its own expert, Frederick Sanders of MIT, who said that wind information would not have made much difference to the forecasters.

But Latti had an ace in the hole: a series of memos about this very buoy written by the head meteorologist in Boston himself, Rodney Winslow. In increasingly urgent tones, these memos asked that the buoy be repaired. Latti had found out that they existed and so was able to demand copies in the discovery portion of the trial. He put Winslow on the stand, handed him the memos, and told him to read what he had written four years earlier.

LATTI: I ask you to tell me what the date is at the top of that document, sir.
WINSLOW: Thirtieth of October, 1980.
LATTI: Is this also a memo from yourself?
WINSLOW: That's correct.
LATTI: And who was this one directed to, sir?
WINSLOW: The Chief of Meteorological Services and also to the data acquisition individual in New York. I'm not sure which person it was at that particular time.
LATTI: Would you read this in its entirety, sir?
WINSLOW: "...I cannot overemphasize the importance we place on buoy reports. We use them not only in daily operational forecasts -- but we use them in our important verification program -- a program that I feel has allowed us to improve forecasts in both the Gulf of Maine and in the Georges Bank area...Must we once again open ourselves to political repercussions because of the failure of an important piece of equipment?"
Rod Winslow retired five months after the trial and dropped dead of a heart attack two months after that, at the age of 57. "It took an awful lot out of him on the stand," says Tom Reppert, who works in the marine services branch of the Weather Service. It took an awful lot out of the government's case, too.
Hutchinson tried hard to play down the admission. "If a manager wants something done, he writes a memo," he said later. "The squawk wheel gets the oil." But here were the meteorologists themselves underscoring the importance of getting that buoy working again. It made a powerful impression on Judge Tauro. Because the buoy was allowed to remain inoperative, he wrote in his decision, "the NWS suffered a critical void in its information gathering system." The footnote to that sentence quotes from one of Winslow's memos.
On Friday, December 21, 1984, Helen Garnos was doing some last minute Christmas shopping in a drugstore, not really listening to the slushy radio music being piped through the store. "They broke in for a news flash and that's when I heard it," she remembers. She had won. The government was liable for Billy's death. "I couldn't believe it, really. I called my husband and he was at work at the time. I couldn't talk. I couldn't drive. I cried. You put this out of your mind," she says, referring to the awful memory of that Sunday in November. "And then you get hit with something like that. It brings it all right back."
Helen and her husband Angelo, a retired truck driver and part-time typewriter repairman, live in a two-story wood clapboard house that Billy bought for them. The family room has been decorated with the ocean in mind. In the kitchen, a small plastic lobster dangles from a string. Long before his son disappeared in the north Atlantic, Angelo lost his father in a boating accident. His older brother was a lobsterman and he, himself, was in the merchant marines. "The whole family seems to revolve around water," he says.
The Garnoses attended every day of the trial and became reluctant celebrities when Tauro found in their favor. They agreed to talk to reporters only because Latti asked them. "My name in the paper is the last thing I care for," Angelo says. "I never really accomplished a hell of a lot -- except for being the father of Billy. I suppose a lot of people look on us as villains [for suing the Weather Service, but] as far as putting dollar signs in my eyes, take 'em out. They're not there."
Nevertheless, Judge Tauro awarded the Garnoses \$412,200 the following August. (More than \$1.25 million went to Honour Brown and another \$68,000 to the father of David Berry, another man lost on the *Fairwind*.)
David Hutchinson, 46, was one unhappy lawyer when the decision was announced. A forceful man whose laugh -- "bursting with merriment," as the judge would put Latti's case. In an interview, Hutchinson framed his argument more clearly than he had during the trial. The buoy couldn't have made any difference, he says impatiently. The winds in the area where it sat were normal until 7 a.m. that Saturday. The fishermen passed a few miles from the buoy late Friday night and they reported winds of only 15-20 knots. So how could a report from a buoy that told of relatively calm winds have helped the weathermen to predict this storm?
When Latti is asked to answer this argument, he replies, "The buoy being out tainted the whole data base. The infection is a continuous thing over a period of time." But he cannot explain exactly how reports of normal winds over a period of time might have helped the meteorologists know a storm would develop suddenly on Saturday, November 22. Even Peter Brown, who watched Gary disappear under the waves and very nearly met the same fate himself, discounts the importance of the buoys. "Nice to have 'em, but they wouldn't have prevented anything," he says. "I can't see how anyone in the fishing industry would say they would have made any difference."
For the appellate court, which very rarely challenges a lower court's findings of fact, all of this was mostly irrelevant. It is mostly the interpretation of the facts that the long-established legal principle of government immunity to such lawsuits. The government, according to the theory known as "discretionary function," can make policies however it sees fit and cannot be dragged into court just because one of those policies proves harmful to someone.
The Supreme Court created an exception to that principle in 1955 in the case of *Indian Towing Co. v. U.S.* A tugboat pulling a barge ran aground because a lighthouse wasn't working. Whether or not government officials chose to install a lighthouse is his business, said the Court. But if they're going to put one in, they have "assumed a duty" to maintain it properly, and they can be held liable if they don't. Latti clung to the *Indian Towing* precedent for dear life and Judge Tauro went along.
But the Court of Appeals judges said no. If the idea of discretionary function applies anywhere, it applies to a weather forecast, they said, since this is a "classic example of a prediction of indeterminate reliability, and a place peculiarly open to debatable decisions."
Now it was Latti's turn to react with disbelief. "We're still in a state of shock," he says in an interview. His secretary interrupts to tell him someone is on the phone. "Tell 'em I'm out of town," he instructs her. Then, returning to the subject of his loss: "Had this case come before the Second Circuit, clearly they would have decided this case favorably."
Latti, 51 and balding, is a prosperous lawyer who stumbled into maritime law by accident 26 years ago and now is about to open a fourth office, this one in Portland, Maine. He has not made his reputation without controversy. Reportedly he tried to sue lawyers in his firm who left to start their own practices. More recently, he found himself the target of a suit by an angry woman who rents a Beacon Hill apartment in a building he owns.
Having taken the weather case on the usual contingency basis -- one third of the award if he wins, nothing if he loses -- he is more than a little concerned with whether the issues of the suit are interesting enough to the Supreme Court. If not, the appellate decision stands and he makes not a penny.
Likewise, Honour Brown will have to be content with the insurance settlement she got. "We're up against a lot," she says. "I'm not really that optimistic." Honour, who is now remarried, sits on the couch of her Plymouth, Mass. home, keeping an eye on Cary, now 5, and her younger daughter, Dawn, whom she calls her "monkeys." On the wall is an enormous speckled trout that Gary caught but didn't live to see mounted. The coffee table by her feet is a lobster trap with a sheet of glass on top. "I know a lot of people are suing, jumping on the bandwagon," she says. "I don't want to be known as someone who wants to get something. You feel sort of funny doing that, but you had to do something. You do the best you can."
For their part, the Garnoses are skeptical that they will see the money before they die. When the decision was overturned by the appellate court, Helen Garnos seemed unconcerned. "It doesn't make any difference to us anyway," she said. "We didn't get into it for the money. We've already won regardless."
What she believes have been won are changes in the way the National Weather Service does business. "They have the buoys out there and they're maintaining them," her husband chimes in. "I'm feeling very satisfied."
The idea that the Service has cleaned up its act is vigorously propounded by Latti, who claims, among other things, that the buoys are now monitored far more carefully. "There's an awful high priority today on maintaining those buoys," he says proudly.
But the National Weather Service tells a different story. "There's nothing we do different," says Tom McGuire, Boston's meteorologist-in-charge.
"As far as I know, everything is exactly as it was. Nothing has changed one iota," says Tom Reppert.
"We're conducting business as we always have. There's no change," says public affairs director Don Witten.
The weatherman who works most closely with New England fishermen is Eugene Auciello. He is known as the "marine focal point" and he holds the clean-cut, all-business, pencil-behind-the-ear manner of a military man. He sits in his office, tapping his brown loafer on an old lobster trap underneath his desk. When he is asked if the terrible cost of that unpredicted storm hangs over his head, he unhesitatingly replies, "No, it does not. I have not met one individual who thought that that particular situation should have ended up in court." And has anything changed since then? "We have exactly the same equipment," he says flatly. "We're using the same information as 1980."
Yet things are not quite the same. The Weather Service office, which is located in an old terminal building at Logan airport, hums with a few more machines today than six years ago. Computer-produced forecast maps are being transmitted directly to the Coast Guard, as they have been since 1984. Another computer waits to send out the latest forecast to any personal computer owner with a modem, a service begun in early 1983. Weather reports are collected twice a day from any boats willing to call them in under the voluntary Mariners Reporting Program (MAREP) started in 1981.
These improvements all grew out of the semiannual Marine Users' Forums, informal gatherings of those who prepare marine forecasts and those who use them, notably fishermen. The first forum, held in March of 1981, "was instituted as a result of the Georges Bank, um, problem," Auciello concedes.
The offshore lobstering industry has changed some, too, since 1980. Most important has been the shift to larger boats -- motivated more by economics than safety considerations. To replace the *Fairwind*, which now lies two miles beneath the surface of the Atlantic Ocean, Charlie Raymond bought the *Michael and Kristen*, a 77-footer. The *Sea Fever* has been sold, and Peter Brown now is skipper of the 70-foot *Sea Star*.
The other major change in Brown's life is less tangible but no less significant. He has lost whatever faith he may once have had in weather forecasting. This, of course, is hardly surprising since David Hutchinson announced in his opening statement at the trial: "It is unreasonable to rely upon predictions." Although the radio on his kitchen table, with its coat hanger antenna, is still tuned to 162.475 megahertz, Brown listens now mostly out of habit.
"They can't even get the forecasts right on shore!" he exclaims, shaking his head with open-mouthed resignation. "Forecasts are wrong 50% wrong. They're wrong 50% wrong. They're wrong. They're not. It almost goes like, take the opposite of what they say. 'How can you anticipate these things?' he asks, referring to that monster storm that still weighs on his mind. Buoys or no buoys, says Peter Brown, "you realize every time you go out that the same thing could happen again. I think Gary Brown knew it could happen, too."
None of the snazzy computers or careful hand-drawn forecast maps from the National Weather Service set his mind at ease when he pushes off from the dock these days. The predictions have been wrong one too many times. So now Brown uses his own system: "If it isn't windy at your house, you go fishing. Otherwise you go broke."

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