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October 23, 2007

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OREGON ADMIRALTY COURT ALLOWS SALVAGE CLAIM FOR HELPING A BOAT TO SAFETY—BUT ONLY IN A REASONABLE AMOUNT

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The maritime law of salvage provides for an award to those who come to the aid of vessels in distress, but the amount must be reasonable under the circumstances. In a recent case litigated in U.S. District Court in Oregon, Sea Tow Portland/Vancouver v. Yacht HIGH STEAKS, Cause No. CV-06-985-HU, Magistrate Judge Dennis Hubel awarded only $3,000—not the $230,000 sought by the salvor.

In the early morning hours of January 25, 2006, a fire broke out in a boathouse at the Columbia River Yacht Club in Portland. By the time it was discovered, three boathouses—and the three boats stored within those boathouses—were fully engulfed. A firefighter for the City of Portland determined that it was futile to attempt a rescue of the boats already on fire, so he quickly moved to the boathouse next door, which was not yet involved. When the firefighter was unable to start the boat, a new 65-foot pleasure vessel called HIGH STEAKS, he eased it out of its boathouse by hand, whereupon a Rescue Boat operated by Port of Portland firefighters attached a line and towed HIGH STEAKS away from the fire area. The firefighters testified that they intended to tie up HIGH STEAKS at a fuel dock a safe distance away from the fire.

Waiting nearby, however, was a boat owned and operated by Sea Tow Portland/Vancouver, a vessel assist company that provides an American Automobile Association-type service for boats. The Sea Tow owner/operator lived near the Columbia River Yacht Club. He awakened to the sound of sirens and flipped on the

MARITIME TERM OF THE DAY - "Take the wind out of his sails"

For sailors, it meant, literally, to put their vessels to windward of another vessel so as to block the wind from the sails of the other vessel.

television to see the marina fire as the morning's breaking news. He quickly dressed and took his service boat over to the Yacht Club to render assistance. He was initially shooed out of the way by the firefighters and told to stay back, which he did.

The Port of Portland Rescue Boat had towed the HIGH STEAKS out of the area they considered to be threatened by the fire. One of the firefighters signaled to Sea Tow to take HIGH STEAKS, so Sea Tow backed down to attach its line. At about the same time, the cousin of the owner of HIGH STEAKS was able to board the stern of HIGH STEAKS from an adjoining dock. Sea Tow suggested that rather than tying HIGH STEAKS up to the fuel dock, it would tow the Yacht out a little further. As they reached the entrance to the Columbia River Yacht Club, the cousin contacted the vessel owner by cell phone to learn the location of the keys. Once under its own power, HIGH STEAKS continued on its way without further assistance. According to the testimony of the Sea Tow operator, his actual service lasted about half an hour.

Two days later, a Fed Ex delivery appeared on the doorstep of the home of the owner of HIGH STEAKS. The package contained Sea-Tow's claim for salvage: 10% of the HIGH STEAKS' $2.3 million value.

HIGH STEAKS' owner promptly notified his insurer, which retained defense counsel immediately. An offer of payment was made to Sea Tow in the amount of $2,300, which was not accepted. Sea Tow thereafter filed suit in admiralty against the vessel, *in rem*, and the case ultimately proceeded to trial. Sea Tow, Sea Tow's expert witness, the owner of HIGH STEAKS, the owner's cousin, and three firefighters from the City of Portland and the Port of Portland departments testified at trial. Another helpful piece of evidence was the video footage shot from the news helicopter, which established the precise chain of events with a specificity which would not have been possible from witnesses' memories alone. The trial judge found that HIGH STEAKS was in peril when Sea Tow began its services, that a salvage award was therefore merited, and that an appropriate award was $3,000.

Like other unique admiralty principles that keep life interesting for marine adjusters, the law of salvage is based entirely on the common law, resting solely on opinions of judges sitting in admiralty. The concept of an award based on a percentage of salved value dates to the ninth century B.C. when the Island of Rhodes ruled the maritime world and developed maritime law concepts which persist today, after they were absorbed into Roman, then British, and finally American jurisprudence after 1776. The elements of salvage are solidly established in present maritime law: (1) there must be a maritime peril from which the vessel could not have been rescued without the salvor's assistance; (2) the salvor's act must be voluntary; and (3) the effort must be successful, at least in part. The voluntary requirement eliminates public firefighters from pressing salvage claims, as a successful salvor "must be under no official or legal duty to render the assistance."

Once a salvage situation has been determined to be appropriate for an award, a long line of cases dating to the U.S. Supreme Court case of *The Blackwall,* 77 U.S. 1 (1870) has established the elements to be considered: (1) the labor of the salvor; (2) the salvor's promptitude, skill, and energy; (3) the value of the salvor's property and danger to it; (4) the risk incurred by salvors; (5) the value of the property saved; and (6) the degree of danger from which property was rescued. More recent cases have added another factor: prevention or containment of environmental damage. Many salvage awards are based on a percentage of the value of the vessel at the end of the adventure; others, as in the Sea Tow v. HIGH STEAKS case, are determined on lesser considerations such as multiples of ordinary rates.

Although there is very little dispute about the legal issues underlying a salvage claim, each case represents its own set of unique facts for the Admiralty Judge to consider. In fact, because of the importance of deciding each salvage case on its own peculiar facts, one judge went so far as to say: "citations in salvage are rarely useful." The *GEORGE W. ELZEY,* 250 Fed. 602 (1918). The trial judge has broad discretion to weigh all the evidence and decide whether the circumstances warrant an award on a percentage basis or application of a more modest approach.

Numerous decisions, however, establish that salvage has always been intended to be a generous reward system. In an 1804 decision, *Mason v. The BLAIREAU*, 6 U.S. 240, the U.S. Supreme Court stated in a salvage case that "ample compensation for those services…is intended as an inducement to render them." And the awards can be ample: the largest award on record appears to be $4.125 million, based on 12.5% of the salved values, in favor of a tanker and its crew under the direction of the "suitably named Captain Strong," which had the good fortune to rescue a distressed ship transporting a U.S. space shuttle fuel tank during a tropical storm. *Margate Shipping Co. v. M/V JA ORGERON,* 143 F.3d 976 (5th Cir., 1998). Professional salvors are welcomed and some decisions even allow an added award, an "uplift," when professional salvors are involved because "professional salvors possess unique skills and must maintain expensive equipment." *B.V. Bureau Wijsmuller v. United States,* 702 F.2d 333 (2nd Cir., 1982). Nor is the salvor's greed a defense: as stated in the Margate case, "It is profit, not principle, that is the driving force behind the law of salvage, and the question for the court is simply what amount of profit is fitting in the case before it."

Testimony in the Sea Tow v. HIGH STEAKS case established that this situation was no stray occurrence in the industry. In fact, part of the orientation the national Sea Tow company gives its new franchisees includes training not only in the nautical aspects of salvage—but also the law of salvage and the opportunities it provides. The problem is national in scope as demonstrated in the Florida case of *Key Tow d/b/a Sea Tow Biscayne Bay v. M/V JUST J'S,* 2005 WL 3132454, in which Judge Altonaga decried "the unfortunate tendency of some in the towing/salvage industry to `sit there and try to create a situation, self-induced peril, where…it looks like they are doing something

when, in fact, they're not really doing anything.'" These cases confirm that the Sea Tow network has made a concerted corporate decision to pursue salvage incidents as an integral part of its business plan and, relying on the generous nature of salvage law, to make stunningly large claims, claiming a healthy percentage of the vessel's value. Similar companies in the industry do likewise. Engaging defense counsel experienced in salvage claims is clearly one way for marine insurers to lessen their exposure in these situations, both in terms of determining the merit of large salvage claims after they are made and in defending against those claims whose merit is lacking.

Rod Fonda of Cozen O'Connor's Seattle office represented the vessel HIGH STEAKS, *in rem*.

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