



SEA TRIALS

by James E. Mercante, Esq.



Admiralty Law: Is There A Duty To Rescue?

On Memorial Day weekend, a pleasure boater rescued a Queens family from their sinking vessel in treacherous waters of the East River. The 17 foot boat, *Bite Me*, occupied by six members of the Valdez family, took on water and sank. Prior to the "Good Samaritan" coming to the rescue, at least two other boats reportedly passed the sinking vessel with nary a second glance. Did these passersby (salty version of rubberneckers) violate any maritime laws? **The casualty**

After a fine Memorial Day weekend boating, I did not hear of this casualty until days later while on the Long Island Railroad returning to my Manhattan law office. I typically judge my warm-weather weekends by whether or not I read any newspapers; it's a good sign if I did not -- signifying a full weekend of boating and fishing. So, with the beautiful weather this Memorial Day weekend, I thankfully had not read a newspaper. As a result, it was not until the westbound LIRR that I heard about this incident.

A friend and fellow commuter, Kevin Neville, sat across from me on the train and with a cryptic smile, he began the 6:30 a.m. conversation with "I tried to get a hold of you this weekend by phone and e-mail." Knowing that he too was boater, I retorted "You either caught a big fish or had a marine casualty to speak to me about." Neville replied "No, I rescued six people from the East River this weekend." With that, he handed me newspaper articles memorializing his lifesaving heroics.

continued from page 21

individual in charge of a vessel that is "involved in a marine casualty" to render assistance to any individual affected by that casualty. This means that if you are in charge of a vessel involved in a marine casualty, a duty arises to assist and exchange information with the master of the other vessel(s) involved in the casualty (like exchanging license and registration in a land accident). This includes assisting individuals aboard your boat. Violating § 2303, like § 2304, carries with it a fine of not more than \$1,000 or imprisonment of not more than two years.

Similarly, an individual who is involved in a marine casualty, according to § 2303(c), "is not liable for damages as a result of rendering assistance or for an act or omission in providing or arranging salvage, towage, medical treatment or other assistance when the individual acts as an ordinary, reasonable, and prudent individual would have acted under the circumstances." This statute is part of the Boating Safety Act. It was Congress' attempt to protect the Good Samaritan who offers assistance.

It would appear that § 2303 did not apply to Captain Neville because he was not "involved" in the marine casualty. Thus, while there is federal statutory law that applies to a rescue "at sea," it does not appear that a private party has an affirmative legal duty to rescue a vessel or person in distress, although it certainly has been encouraged by maritime law for centuries, not to mention, moral obligations. Of

The rescue

The Valdez boat was swamped by a combination of passing tugboats and heavy swells in a dangerous confluence of three waterways known, for good reason, as "Hell Gate." The current alone in these waters can run at 6 to 8 knots. The family was thrown from their small boat into the swirling waters and held on for life to a plastic cooler (a seaworthy advertisement for the cooler manufacturer!). At least two boats passed the *Bite Me* without stopping. From a distance, Captain Neville thought that the people ahead were in kayaks but upon closer inspection, he realized there was no hull under them at all. Captain Neville was heading into New York City in his 31 foot Sea-Ray powerboat, *Lisa-Marie*, to view the Parade of Ships for Fleet Week. He spotted the sinking vessel, bow-up, and quickly notified the Coast Guard and the New York Police Department. He abandoned his voyage to help the victims and maneuvered toward the six bobbing heads in the water. Neville tossed the family a life ring attached to a line secured to a cleat on his stern, pulling each family member aboard one by one. Soon after, NYPD helicopters and Coast Guard rescue boats arrived, but by this time, the shivering family was safe on board the *Lisa-Marie*.

While the Valdez family has called Neville "our angel," they have not described the boaters who passed by and ignored their plight.

Duty to rescue

For centuries, sailors have voluntarily as-

course, it is highly unlikely that the boater who passed the Valdez family knew any of these laws or anything about Good Samaritanship, in general.

Since the admiralty law encourages the rescue of a fellow mariner, there is a high legal hurdle to prove a case against a Good Samaritan for negligence that may cause or contribute to an injury or death during rescue. Courts that have been confronted with cases against a Good Samaritan for allegedly causing injury or death during a rescue have considered the admiralty law's desire to encourage emergency rescues.

When mariners have been sued for negligent rescue, these cases typically fall within the federal court's admiralty jurisdiction. The standard of care traditionally applied to the conduct of a mariner in a rescue situation is that the rescuer may be held liable for only (1) negligent conduct that worsens the position of the victim or (2) reckless and wanton conduct in performing the rescue.

As a practical matter, this means that if the rescuer puts the crew in any greater peril than they were already in, and injury ensues, liability may be imposed.

For example, had Neville not thrown a life ring to the Valdez family, a court may find this omission to be wrong. But, it would unlikely lead to any liability because the test is whether that failure put the family in any greater peril than they were already in. Under this test, liability will only be imposed in a maritime rescue situation where the rescuer,

sisted others in disasters at sea. Thus, the law of admiralty has always sought to "encourage and induce men of the sea to go to the aid of life and property in distress." This maritime "rescue doctrine" has developed to encourage life-saving efforts.

There is a federal statute requiring assistance to mariners in distress at sea. 46 U.S.C. § 2304 entitled Duty to Provide Assistance at Sea, states:

A master or individual in charge of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master or individual in charge can do so without serious danger to the master's or individual's vessel or individuals on board.

A master or individual violating this section shall be fined not more than \$1,000, imprisoned for not more than 2 years, or both.

According to this federal law, it is the master or individual in charge of a vessel's duty to render assistance at sea. The statute does not define the meaning of "at sea." However, one does not think of the "sea" as including lakes, rivers, bays and other inland waters. Therefore, perhaps there was no "duty" obligating a master operating in Hell Gate on Memorial Day weekend to come to the rescue of the distressed vessel and its occupants, other than a moral obligation.

Another federal statute, 46 U.S.C. § 2303 entitled, Duties Related to Marine Casualty Assistance and Information, requires a master or

continued on page 22

through lack of due care, has worsened the position of the victim.

It is understood that rescues do not always succeed, despite the efforts of those who give assistance. Courts will rarely second guess one who voluntarily gives aid under the dangerous conditions of the sea "under the bright light cast by . . . hindsight." *Fondow v. Unites States*, 112 F. Supp.2d 119; *Korpi v. Unites States*, 961 F. Supp. 1335 (holding that a "rescue attempt must be considered in the light of the circumstances that faced the rescuers when they acted and not with the wisdom of an 'armchair admiral' after the fact.")

Conclusion

Duty or not, Captain Neville did the right thing and will never be forgotten by the Valdez family and mariners in the know. Had Neville not responded, this casualty could have had tragic consequences and an unhappy ending. Marine casualties are unlike a land-based accident in that the boat that passes you by . . . may be the last one you ever "see".

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