



SEA TRIALS

by James E. Mercante, Esq.



Jones Inlet Tragedy: the Final Chapters

It has been almost five years since a casualty in Jones Inlet, widely reported by local newspapers, claimed the lives of two experienced boaters. While the news reported the event at the time, there was no follow-up. Yet, what transpired over the next several years was as newsworthy as the casualty itself. It involved bitter litigation between family members and a four-day federal court trial. The trial verdict did not end the case, since the decision was then appealed to the highest federal court in the region, the United States Court of Appeals for the Second Circuit. This month and next, I will report the rest of the story, since your author was admiralty counsel for the vessel owner throughout the case.

The CARA ANN

On October 1, 2001, just a few weeks after the attack on the World Trade Center, a father, his only son, and the father's best friend and fishing buddy decided to enjoy time together on a fishing trip aboard the father's vessel, the CARA ANN. The boat owner, Jules Cornfield, 73 years old at the time, his son, Alan Cornfield, 38, and Fred Hebig, aged 70, were each an experienced boater and fisherman. CARA ANN is a 22-foot fiberglass Angler "walk-around" boat with a 200-horsepower engine, named after Mr. Cornfield's two daughters, Cara and Ann. Mr. Cornfield has navigated boats and fished for almost 40 years and has fished the waters in and around Jones Inlet for almost 30 years. He also served as a proctor for the Power Squadron, an organization that provides boating instruction courses. Similarly, Alan Cornfield had been on boats from the age of 6, owned boats, and been fishing with his father aboard CARA ANN on numerous occasions prior to the accident. Fred Hebig also owned his own boat and fished with Mr. Cornfield on many occasions over the years prior to the accident.

Although there had been a storm the day before, Alan had taken off that day from work, bought lunch and the bait, and met his father at his father's house in Oceanside early that morning. Alan's mother, Miriam Cornfield, told them not to go into the ocean. Mrs. Cornfield typically gave this warning whenever either her husband or son went out fishing because, as she testified at trial, she is a very nervous person by nature and hates the ocean; she also worried because Jules Cornfield could not swim. Alan told his mother that he drove to their house down Ocean Parkway, saw the ocean conditions and said, "There were no white caps; don't worry; we'll be okay," and he kissed his mother goodbye. Those were the last words she ever heard from Alan.

The CARA ANN transited from Oceanside, New York, through Reynolds Channel toward Jones Inlet that morning. They fished for about an hour and a half north of Jones Inlet on the Jones Beach side. From there,

Mr. Cornfield checked and saw that the weather and sea conditions in the ocean were fine. He did not listen for a weather forecast on the radio. Since forecasts are not always accurate, a visual check is exactly how marine police and commercial fisherman learn for sure what the actual weather and sea conditions are.

The day before the fishing trip, a nor'easter had passed through the area. The National Weather Service forecast for October 1, 2001, called for gale winds (30-35 knots) from the northeast, diminishing to 20-25 knots by early afternoon. The gale forecast was not accurate, however, since the actual wind conditions in the vicinity of Jones Inlet were 12-20 knots between 10:00 a.m. and 11:00 a.m. and only 11-16 knot northerly winds around 1:00 p.m. - the time of the accident. These winds are not gale strength. An experienced and respected commercial fisherman, Captain Tom Weiss, of the Point Lookout fishing vessel F/V CAPTAIN AL, transits Jones Inlet about 600 times a year. He testified as an expert witness at trial for the vessel owner that a northerly wind of just 16 knots is a beautiful wind and has a tendency to set down the sea conditions. In fact, it was the calm after the storm. It was undisputed that there were no gale force winds or sea conditions on October 1, 2001. This much was conceded by the Nassau County Police marine accident investigator, a weather expert and Captain Tom Weiss, who referred to his log aboard F/V CAPTAIN AL from that October date to refresh his recollection as to the actual weather conditions.

The boat owner did not see the gale warning pennants flying that day above the Coast Guard station at Short Beach, but the three fishermen aboard CARA ANN had determined from the actual wind and sea conditions that the conditions were not prohibitive to be out fishing that day.

Jones Inlet

After catching no fish in Jones Inlet, the three fishermen decided to go offshore where they had caught fish on a previous trip together in 40 feet of water off the Lido Beach Hotel. It was upon returning from this location - while following the Jones Inlet navigation buoys - that the accident occurred. While the three men fished off the Lido Beach Hotel, the ocean conditions in that location were relatively calm, with waves of approximately one foot. The sky was overcast with occasional patches of sun breaking through. Around 1:00 p.m. they headed back to shore with the vessel owner at the helm. None of the three men were wearing life jackets as the vessel headed for Jones Inlet to return home; the depth finder was on; the radio was off.

When CARA ANN departed from Jones Inlet to fish offshore in the lee of the land off Long Beach, the tide in the Jones Inlet navigation channel was still high and the water was deep. However, when CARA ANN later

returned to Jones Inlet, the conditions had changed. The tide was now low, lower than usual due to the moon phase; it was the last hour of the outgoing (ebb) tide and the current was flowing out strongly due to the phase of the moon; there was a northerly wind and an east-southeasterly swell. These conditions resulted in one of the lowest tides in Jones Inlet for the entire year. This confluence of factors caused an unexpected steepening of a swell in a shallow area in the navigation channel at the same moment CARA ANN unwittingly entered the area. Swells normally roll through the deeper water of Jones Inlet's navigation channel and do not break. However, when the Inlet becomes very shallow, the swell gets steeper as it rises and under those circumstances, can cause an unforeseen breaking wave in the navigation channel. Captain Tom Weiss described how the water depth in the navigation channel often changes as sand migrates around the jetty and is deposited at various locations within the channel. A depth finder is of little benefit because while it gives an accurate depth directly under the boat, it does not record what lies ahead.

As the CARA ANN was returning through the navigation channel, the vessel was struck, unexpectedly, on its starboard side by a wave that knocked Alan Cornfield and Fred Hebig overboard, leaving Mr. Cornfield on board alone. None of the men said anything before the wave hit. Mr. Cornfield did not slow down or increase speed, demonstrating that the rising swell or wave that lifted CARA ANN was not anticipated. He attempted to rescue the two men, throwing life jackets and a floating seat cushion to them. At one point, Mr. Cornfield had his son in his arms and was attempting to lift him back aboard when CARA ANN was struck by another wave, causing him to lose his grasp. After this Mr. Cornfield lost sight of both his son and his best friend, Fred Hebig.

Each Coast Guard station was equipped with surveillance cameras after September 11, 2001, and the Coast Guard station at Short Beach adjacent to Jones Inlet was no exception. The Coast Guard surveillance video tapes were material evidence in the trial. The footage captures the response to the Mayday call and shows minimal sea conditions within Jones Inlet at the time of the casualty, while rough seas were located in an adjacent area known as the "breakers", or West Bar. There was testimony from Captain Weiss and others that sea conditions in the breakers (shown on the navigation chart) can be treacherous, while conditions outside the breakers and in the inlet are quite navigable.

After his rescue attempt failed, Mr. Cornfield transmitted a Mayday. The response was swift and included the United States Coast Guard, the Nassau County Marine Police and the Town of Hempstead Bay Constables. The response was by sea and by helicopter. The

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Coast Guard deployed a datum buoy in an effort to ascertain, from the buoy's drift pattern, the effect of the wind and current to determine where the two men might have drifted. With the vessel owner still aboard, CARA ANN was found in the breaker zone near the West Bar and then escorted by the Bay Constables to the Short Beach Coast Guard Station. Within an hour or so after the Mayday transmission, the helicopter patrols spotted the two men, who had drowned, approximately 200 yards off the beach.

A marine investigation was conducted by the Nassau County Marine Police. Based on the evidence available at that time, the accident investigation concluded that the CARA ANN navigated into the surf zone at the West Bar and was overcome by breaking waves. This finding was the main subject in dispute. The vessel owner was not cited for reckless boating or speeding under New York Navigation Law, but had received one summons for failing to have a throwable floatation device, i.e., seat cushion, aboard the boat. However, that summons was subsequently dismissed because the vessel owner appeared and explained that he had thrown the seat cushion overboard during the rescue attempt.

The Lawsuit

This was not the end of the tragedy. The representatives of Fred Hebig, Jules' friend and neighbor, did not file a claim against him arising from the October 1, 2001 accident. Mr. Cornfield's daughter-in-law, Donna Klein Cornfield (the "claimant"), filed a claim for \$20 million against her father-in-law in federal court, Eastern District of New York in Islip. On behalf of Mr. Cornfield, we filed a vessel owner's Petition for Exoneration from or Limitation of Liability pursuant to admiralty law ("Limitation Act"), 46 U.S.C. § 183. Over the course of many months, the discovery phase of the

case took place. Deposition testimony was taken of Mr. Cornfield, Donna Klein Cornfield, Miriam Cornfield, the Nassau County Marine Police investigator (twice), the Town of Hempstead Bay Constables, Captain Tom Weiss, and the claimant's well-regarded marine liability expert, Ronald Alcus of Alcus Marine Technical on Long Island.

The claims could not be settled although a substantial settlement offer was made to the claimant. Accordingly, the case headed to a federal trial that lasted four days in September, 2004, before District Court Judge Joanna Seybert in the Eastern District of New York. The trial was an emotional experience in which Mr. and Mrs. Cornfield testified about the events of that tragic day. Also testifying at the trial were representatives of the responding agencies, the Nassau County Marine Police, the Nassau County marine accident investigator, the helicopter pilot, a Bay Constable, Captain Tom Weiss, Ronald Alcus, a weather expert, and an expert in calculating how objects move in the water based on wind, waves and current. This expert testified about how such conditions would affect the vessel and the bodies in water in order to explain CARA ANN's position in the breakers at the time of rescue.

The Verdict

Next Month: The Judge's Verdict (and the Appeal): In the Matter of the Complaint of Jules S. Cornfield as Owner of the Vessel "CARA ANN" for Exoneration from or Limitation of Liability.

ENDNOTE 1: Much of the detail in this article is taken from the trial court's decision published at 2005 A.M.C. 201, 365 F. Supp.2d 271 (E.D.N.Y. 2004).

JAMES E. MERCANTE, admiralty partner with Rubin, Fiorella & Friedman LLP. Mr. Mercante represented the petitioner, Jules Cornfield in this case.
E-mail address: jmercante@rubin-fiorella.com