

by James E. Mercante, Esq.

## One Man's Peril May Be Another's Profit

**THIS IS A TEST.** The following is a real maritime dispute. I will provide the facts and summarize the law. You be the judge and decide the case.

### THE FACTS

A fishing vessel ran hard aground on rocks and was rescued by a marine towing company. The legal question was whether the services rendered were either (i) a marine "salvage" entitling the towing company to an award based in part, on a percentage of the rescued vessel's fair market value, or, (ii) did the services consist of a simple tow to be compensated only at an hourly rate.

The towing company sought a "salvage" reward of nearly \$65,000. In response, the marine insurer for the rescued vessel offered to pay \$250, the tower's hourly rate of \$125 per hour for about two hours worked. Now that's a dispute! The case was recently decided by your author, selected by both parties to arbitrate the dispute. The facts are real; only the parties names are fictitious.

The M/V CAPTAIN BILL, a 56-foot fiberglass charter fishing vessel was returning from an ocean fishing excursion with 34 passengers aboard. Approaching a local inlet in dense fog and rain, the captain confused the inlet buoys and steered to port with the intention of entering the inlet. This navigation error resulted in the vessel missing the entrance channel and proceeding instead toward the beach.

The running gear struck submerged rocks from an old rock jetty disabling the rudders, shafts and propellers, and the vessel wound up bouncing in the surf zone. The weather was light winds with a 2 to 4 foot swell, scattered rain showers and fog. The tide was flooding. CAPTAIN BILL radioed a "May Day" distress call on VHF channel 16, stating that "we're on the rocks" and "slamming bottom - I don't know if we can get yanked out of here." The captain confirmed that he had "life jackets on everyone." The captain was also concerned about becoming high and dry when the tide went down because the tide was nearly high at the time of the grounding. The Coast Guard answered the distress call, but could not get a boat equipped to tow into the surf zone. A marine towing company, Artie's Tow, overheard the call and promptly responded to the scene with three personnel aboard its tow vessel. Artie's Tow had no contract or duty to respond. No other vessel could reach the CAPTAIN BILL.

Meanwhile, CAPTAIN BILL prudently anchored with her bow facing seaward to prevent any further drift towards the beach. Another line was stretched from her transom to a lifeguard stand on the beach to stabilize the vessel. The fishing vessel captain then ordered all passengers to put on life preservers and all 34 passengers abandoned ship. Artie's Tow assisted in evacuating the passengers. Then, a towing hawser was secured to CAPTAIN BILL and secured to the tow boat. The CAPTAIN BILL was then yanked from the rocks and out of the surf zone into deep water. The towing company then towed CAPTAIN BILL to safe haven, approximately 9 miles away for haul out and repairs. The repair bill was about \$28,500.

CAPTAIN BILL argued this was a simple towing operation that should be billed to them for not more than \$125.00 per hour for two hours of work. Artie's Tow stated that it rendered a salvage service in rescuing the fishing vessel that warranted an award of 30% of CAPTAIN BILL's post-casualty value, totaling nearly \$65,000.

### THE LAW

In maritime law, a professional tower or even a good samaritan may be entitled to a "salvage" award, if it can be established that (i) the vessel was in peril, (ii) the service rendered to the vessel was voluntary and (iii) it was a success.

A marine peril exists whenever a vessel "is driven ashore, when afire, out of control, unnavigable or when she has encountered any of the numerous casualties to which a ship can fall heir to-in short, when she has met any accident or incident which interfered with her natural function..." Norris, THE LAW OF SALVAGE. The danger need not be imminent or actual and all that is necessary is a reasonable apprehension of peril. The vessel does not have to be in immediate danger of sinking or other immediate catastrophic fate. A soft grounding, however, on a sandy bottom is typically found not to be a peril.

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# SEA TRIALS

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## THE ISSUE TO DECIDE

Based on the facts and the law...was the CAPTAIN BILL "in peril"? Was Artie's service voluntary? And, was it a success? If you judged all three elements in the affirmative, then you would find this was salvage, entitling the towing company to a monetary award. If you say negative to any one of the three, then you would only compensate Artie's at its hourly rate.

## THE ANSWER

In this hotly disputed case, well briefed by the admiralty attorneys for both parties, I found that the three elements of salvage did exist and that an award of salvage was justified. The next question became HOW MUCH? What do you think? Read on, but cover "The Award" to test your own adjudicatory prowess.

There are six factors that courts consider in determining the amount of a salvage award. These factors, established long ago by the U.S Supreme Court in an 1869 case named after a vessel called *The Blackwall* are:

1. The degree of danger from which the property was rescued;
2. The value of the property saved;
3. The risk incurred by the salvor in securing the property from impending peril;
4. The promptitude, skill and energy displayed by the salvor in saving the property;
5. The value of the property employed by the salvor in rendering the service and the danger to which such property was exposed;
6. The time and labor expended by the salvor in rendering the salvage service.

## ANALYZING THE BLACKWALL FACTORS

While the fishing vessel was in peril based on the evidence presented, it did not appear to have been in a position of "extreme peril" or danger. The tower arrived on scene and had the vessel in tow with one of its hawsers and secured to the dock within two to three hours. Thus, the actual time and labor expended by the salvor was not significant. However, the weather was not mild and the tide would be on its way out within three hours, at which time the fishing vessel would become high and dry if not extracted.

The promptitude, skill and local knowledge displayed by the crew of the 32-foot towing vessel was admirable in "yanking" the 56-foot disabled vessel out of the surf zone, towing her in a proper direction away from further damages on the rock jetty and into deep water, followed by a safe transit through the inlet to a haul out facility. The risk incurred by the crew of the towing vessel was not excessive. Its maneuvers in the shallow area where the rock jetty was located in fog and rain near the surf zone was skillful, but this same skill and local knowledge no doubt kept the risk to the salvor to a minimum.

The value of Artie's salvage vessel was \$50,000. The post-casualty value of the property saved, M/V CAPTAIN BILL, was approximately \$142,000.

## THE AWARD

Knowing now that I determined this operation met the test for salvage, and based on the six *Blackwall* factors analyzed above, how much do you think should have been awarded to the tower for salvage? Remember the tower wanted nearly \$65,000.

The vessel owner wanted to pay about \$250.

The amount I awarded was:

Salvage Award: \$18,000

Interest: \$ 2,341

Total Award: \$20,341

## CONCLUSION

It is a custom of the sea to come to the rescue of a mariner in distress. A successful rescue from a marine peril may entitle the rescuer, whether a professional tower or not, to an award. The awards vary significantly from

case to case and depend greatly on the facts of each situation.

While mariners are a compassionate breed who will promptly and voluntarily spring into action

to help a fellow boater, a salvage award has the added effect of encouraging professional towing companies to invest in vessels, equipment and qualified captains. Such awards are also incentive for towers to be ready and fully equipped 24/7 to help others in time of distress.

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