

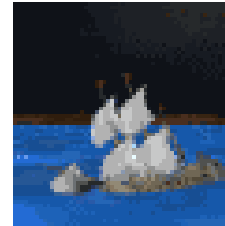
PLRB 2003 'Boats' Workshop



Salvage or Towing
A Marine Perspective



⌘ Salvage defined:



- ☒ An action for an award against a maritime property which was subject to a marine peril and benefited by services voluntarily rendered by the claimant.
- ☒ The compensation allowed persons by whose assistance a ship or her cargo have been saved, in whole or in part, from impending peril on the sea, or recovering such property from actual loss, as in the case of shipwreck, from derelict or recapture.

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⌘ Salvage claims:

- ☒ “Pure salvage” - where services are rendered without prior agreements as to compensation.
- ☒ “Contract salvage” - where the services to be rendered and compensation therefore are set by contract.
- ☒ “Salvage” traditionally refers to actions for awards for “pure salvage”.

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⌘ The elements required for a salvage claim:



- ☒ 1. A maritime peril to the property rescued.
- ☒ 2. Voluntary service not owed to the property as a matter of duty.
- ☒ 3. Success in saving the property or some portion of it from impending peril.

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⌘ "Pure salvage" compensation:

- ☑ General rule- compensation is an award secured by a maritime lien. Though long term abandonment may trigger the law of 'finds'.
- ☑ Owner retains title to its vessel, subject to the lien for salvage services and the right to refuse salvage services.
- ☑ Action prosecuted *in rem*.
- ☑ Salvor must return property to safe port/owner.

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⌘ “Contract salvage” compensation:

- ☒ Services and compensation agreed to prior to commencement of work.
- ☒ Actions to enforce contract are *in personam*.
- ☒ Does not give rise to ownership interest or any possessory right.
- ☒ Must return vessel to safe port and owner.
- ☒ Precludes “pure salvage” compensation*.
- ☒ * Crew of a non professional salvor not bound.



⌘ Maritime peril.

- ☑ Does not have to be “immediate” or “absolute”. So long as it is “reasonable to be apprehended”, such as.
 - ☒ Mechanical breakdown outside of port.
 - ☒ Stranding-whether or not storms are imminent.
 - ☒ Bureau Wijsmuller v united states, 702 F.2nd 1471 (2nd cir. 1983) reviews most of the cases on the issue.

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⌘ Voluntary service not owed as a matter of duty:

- ☑ Service of government entities, public authorities- normally under duty to provide.
- ☑ Service of pilots and crewmembers of the salved vessel- normally pursuant to their duties- if discharged from employment and volunteer services they are entitled to an award.

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⌘ Voluntary service....Continued

☑ Services of towing vessels:



- ☑ Where the peril is not attributable to any fault of the towing vessel and the contract does not contemplate salvage services by the towing vessel, extraordinary and voluntary efforts by the towing vessel to rescue its tow may give rise to a salvage claim.

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⌘ Service cannot be forced on the owner.

☑ Salvage cannot be exacted for assistance forced upon a vessel against the will of its owner.

⌘ Priority of first Salvor.

☑ First salvors are protected against others if ready, willing and able to complete the project.

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⌘ Success.

- ☑ As the award is a lien against the property, if no property is saved there can be no award (the award cannot exceed the value saved).
- ☑ Exception- when the master or owner requests services and a promise to pay for service is agreed or implied, courts will enforce an actual or implied contract to pay.

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⌘ Life salvage.

- ☑ Property must be saved for an award.
- ☑ Where one vessel saves life and the other saves property, by statute, both share the award.

⌘ Quasi-contractual recovery for expenses, value of services.

- ☑ Medical services with intent to charge.

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⌘ Liability salvage

- ☑ Salvors should be compensated for liability avoided.
- ☑ The skill and efforts of the salvors in preventing or minimizing damage to the environment should be a factor considered in determining a salvage award.

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⌘ Incidental and direct benefit.

- ☑ Services rendered to one vessel indirectly benefit another vessel or maritime property, a salvage claim cannot be sustained against the benefited vessel or maritime property.
- ☑ Unless a collision (direct benefit) is prevented and then an award is appropriate.



⌘ Damages for “negligent creation of peril.”

☑ A rescuer can recover damages incurred in saving life where no property was saved on the theory that a rescuer can recover damages from a person who negligently created a peril requiring rescue.

☑ Not a salvage award but an award in tort.



⌘ *In rem* and *in personam* liability.

- ☑ Salvor action *in Rem* against the property saved-vessel, cargo, unearned freight.
- ☑ Salvor action *in personam* against owner, demise charterer, or insurer of a saved vessel if the master, manager or owner authorized the service.



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⌘ Amount of award

☒ No precise formula, must decide on a fact specific basis

☒ (Not limited to strict *quantum meriut*, but more in the nature of a bounty)

☒ 1. Labor expended

☒ 2. Promptitude, skill, and energy

☒ 3. Value of the property employed and danger exposed

☒ 4. Risk to the salvor

☒ 5. Value of property saved

☒ 6. Degree of danger from which the property was saved

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⌘ Article 13, int'l convention on salvage 1989

- ☒ The reward shall be fixed with a view to encouraging salvage operations, taking into account the following without regard to order:
 - ☒ A. The salved value of the vessel and other property
 - ☒ B. The skill and effort of the salvor in preventing or minimizing damage to the environment
 - ☒ C. The measure of success obtained by the salvor
 - ☒ D. The nature and degree of danger
 - ☒ E. The skill and effort of the salvor in salvaging the vessel, other property and life
 - ☒ F. The time used and expenses and losses incurred by the salvor

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⌘ Article 13, int'l convention on salvage 1989, continued

- ☒ G. The risk of liability and other risks run by the salvors or their equipment
- ☒ H. The availability and use of vessels or other equipment intended for salvage operations
- ☒ I. The state of readiness and efficiency of the salvors equipment and the value thereof

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⌘ Awards to professional salvors.

- ☑ A salvage award is normally increased by a bonus award or premium if the salvor is found to be a professional salvor.
- ☑ A part-time operator can be a professional salvor.



⌘ Towing of disabled vessels as salvage.

☑ Vessel disabled at sea, no imminent peril.

☑ Considered salvage rather than towage.

☑ Low order of salvage.

- Award “in the range” of 4x the hourly towing fee.
- Plus allowance for use of equipment, fuel, etc.



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⌘ Awards to crew members of salving vessels.

☑ Non-professionals not bound to employers contracts.

⌘ Forfeiture of right to an award.

☑ Misconduct- taking advantage of a helpless vessel by looting her- an award may be reduced or entirely forfeited.



⌘ Overreaching in demanding salvage contract

☑ Contract will be enforced if entered into without

- Compulsion
- Fraud
- Misrepresentation
- Mistake of fact

☒ Even if amount is higher or lower than the value of the services rendered

☒ Contract can be reviewed if promisor was in distress

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⌘ Liability for negligent salvage

- ☒ Award denied or reduced

⌘ Standard of care for salvors

- ☒ No duty to rescue

- ☒ Liable for negligent conduct which worsens the position of the victim

- ☒ Reckless or wanton conduct in performance of the rescue

- ☒ Professional held to standard of “experts”, others to standard of reasonable seamen

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⌘ Good Samaritan statute 46USC 2303 (c).

- ☑ Master of any vessel involved in a marine casualty shall render assistance, or who in good faith or gratuitously renders assistance.
- ☑ 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 where the individual acts as an ordinary, reasonable and prudent individual would have acted under the circumstances.

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⌘ Theories of liability for negligent salvage

☑ Tort negligence, breach of contract

- ☑ If damage is a result of the original peril, salvor liable only for damage resultant of gross negligence or willful misconduct

☑ Damages may include

- ☑ Damage to or loss of vessel in peril
- ☑ Enhanced wreck removal expenses
- ☑ Enhanced pollution expenses

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⌘ Lloyd's open form

☑ Most used salvage contract worldwide

- ☒ Salvor agrees to use best efforts to save and bring to agreed safe port
- ☒ "No cure no pay" - award contingent upon success
- ☒ Services performed prior to signing agreement come within its scope
- ☒ Salvor may use vessel and her equipment without cost
- ☒ Award is set by committee at Lloyd's or arbitrator
- ☒ Binding arbitration is set in London, England- under English law

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- ⌘ Boat US -standard form yacht salvage contract
- ⌘ Boat US salvage arbitration program
- ⌘ American institute of marine underwriters

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⌘ Wreck removal obligations.

- ☑ Owner, operator, or demise charterer of a vessel which has sunk in navigable waters which constitutes a hazard to navigation is required to mark and remove it, is liable to the government for any costs incurred by the government in marking it and removing it, and may be liable to third parties whose property may be physically injured as a result of its failure to promptly remove the wreck or its failure to promptly mark it.



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⌘ Liability to immediately remove and mark a sunken vessel

☑ 33 USC 409

- ☑ Duty is irrespective of cause of sinking
- ☑ Unlawful to voluntarily or carelessly sink, or permit to be sunk
- ☑ Immediately mark with buoy or beacon, lighted at night
- ☑ Maintain markers until removed or abandoned

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⌘ Obligation to reimburse united states

- ☑ Remove within 30 days or be liable to the united states for costs to remove, less sale of salvage or disposition of wreck
- ☑ Liability passes to post sinking purchaser

⌘ Liability to remove obstruction to navigation

- ☑ Not necessary to be sunk in channel

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⌘ Duty to mark wreck

- ☑ Owner must mark immediately
- ☑ Owner must maintain marks until removed
- ☑ Duty is non-delegable
- ☑ US has no duty to mark

⌘ Limitation of liability in wreck removal

- ☑ No limitation exists in owner negligence
- ☑ 3rd party limitation if marked, non negligence



⌘ Liabilities to third parties- depends upon

☒ Failure to mark wreck

- ☒ If marked a negligent owner may be liable

☒ Failure to remove wreck

- ☒ Liable to US regardless of negligence
- ☒ Liable to third parties-if abandoned-may exist

☒ Consequential damages

- ☒ Negligence may open extraordinary expense claims

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⌘ Liabilities under the rivers and harbors act- 33 USC 403.

- ☑ Compels removal of wrecks from navigable waters generally- not just channels.
- ☑ Unlawful to create an obstruction to navigation if it is in or near waters open to the use of others.



⌘ Strict liability for injury to locks, dams and improvements- 33 USC 408

- ☑ Any person whose vessel damages or removes government waterway improvements or navigational aids
 - ☒ Contributory negligence rules may apply



⌘ Right of private property owner to wreck removal

- ☑ Owner of wharf may remove wreck if abandoned

- ☑ No right to recover costs unless sinking resulted from owner negligence



⌘ P&I policy coverage for “compulsory” wreck removal expenses.

- ☑ Removal directed by governmental order, statute or regulation.
- ☑ Removal is reasonable under a cost-benefit analysis or removal cost against liability costs for failure to remove.
- ☑ No coverage for voluntary removal.
- ☑ Exposure to civil damages could be “legal compulsion.”

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- ⌘ Salvage or sue and labor expense opposed to compulsory wreck removal expense covered by P&I policies
 - ☑ If hull damage is severe enough to be considered a wreck, the removal is P&I expense, not sue and labor.



⌘ Liability for losses or removal occurring after the expiration of P&I policies

- ☑ No coverage for neglect to mark and remove the wreck where the ship struck the wreck after the expiration of the policy
- ☑ No liability for removal expenses where the “legal compulsion” arose after a reasonable time after the expiration of the policy

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