



SEA TRIALS

by James E. Mercante, Esq.

Jones Inlet Tragedy: the Final Chapters

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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 flotation 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).

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