



SEA TRIALS



by James E. Mercante, Esq.

Jones Inlet Accident: The End - Part II

Last month in *Sea Trials*, we reviewed a boating accident in Jones Inlet on October 1, 2001, that claimed the lives of two experienced boaters. What transpired over the next several years was bitter litigation between family members, a four-day federal court trial and an appeal to the highest federal court in the region, the United States Court of Appeals for the Second Circuit. The casualty resulted in Alan Cornfield (Jules Cornfield's son) and Fred Hebig (Jules' friend) going overboard from Jules Cornfield's 22-foot Angler walk-around. In *Part I* last month, we discussed the facts of the case and the discovery phase leading up to the federal admiralty trial.

Now, the decision.

The Accident

The *CARA ANN* returned from fishing in the ocean, following a route to transit the navigation channel in Jones Inlet when the vessel was struck, unexpectedly, on its starboard side by a wave that knocked Alan Cornfield and Fred Hebig overboard.

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 inshore of the *West Bar*, a charted hazard area, and was overcome by breaking waves. This finding was a primary focus of the trial.

The Lawsuit

Donna Klein Cornfield (referred to as 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 (referred to as the "*Petitioner*"), we filed a vessel owner's Petition for Exoneration from or Limitation of Liability pursuant to admiralty law, 46 U.S.C. § 183. This procedure is unique to admiralty law where a vessel owner seeks "*exoneration*" from liability or to "*limit liability*" to the value of his/her vessel, in federal court without a jury. This type of proceeding has been discussed in past *Sea Trial* columns.

The claims could not be settled, although a substantial settlement offer was made to the Claimant. Accordingly, the case headed to a 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 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, commercial fishing vessel Captain Tom Weiss of the F/V *CAPTAIN AL* in Point Lookout, marine expert Ronald Alcus of Alcus Marine Technical, and a weather expert. Another expert explained at trial how objects move in the water based on wind, waves and current, with a CD-ROM presentation in the courtroom. This expert testified for Mr. Cornfield about how these conditions affected the vessel and the bodies

in water in order to explain *CARA ANN*'s position in the breakers at the time of rescue.

Maritime Law

Under maritime law, a vessel owner owes guests a duty to exercise "*reasonable care*" under the circumstances. This duty of care does not render the vessel owner the insurer of guest's safety.

Claimant argued that Mr. Cornfield did not exercise "*reasonable care*" as owner and operator of the *CARA ANN*, for two reasons: *First*, Claimant asserted that Petitioner was negligent in his decision to take the *CARA ANN* out on the seas on the day of the accident. *Second*, Claimant contended negligence in the operation of the vessel that day.

Decision to Take the Vessel Out

Claimant suggested that it was negligent not to review weather forecasts, tides and charts prior to taking the *CARA ANN* out to sea. As to this argument, the court recognized that while consulting weather forecasts and other atmospheric data is "*an acceptable and learned way for a prudent mariner to ascertain sea conditions, it is not the only way.*" Mr. Cornfield was aware of the actual wind conditions by looking at the trees across the canal in his backyard on the South Shore; the leaves had little movement, indicating only a slight breeze. He observed the sea conditions by checking the waters in the canal in his backyard and outside Jones Inlet before proceeding. In this regard, the judge noted that "*observing the conditions first-hand provided a reasonable - and arguably more accurate - method of determining whether sea conditions were prohibitive for navigation.*" Moreover, the weather forecasts were inaccurate because the gale winds posted by the Coast Guard flags and the weather forecasts never came to fruition.

As to not having a nautical chart aboard *CARA ANN*, Mr. Cornfield possessed the information that a chart could provide through his years of experience transiting the waters of Jones Inlet.

Indeed, the marine police confirmed that a chart is not required on small pleasure craft. With regard to sea conditions, a Coast Guard surveillance video showed navigable conditions in Jones Inlet, and Mr. Cornfield testified that he makes the decision whether or not to go into the ocean by examining conditions when he reaches the Inlet. It was established at trial that this is the same procedure followed by commercial fisherman and the marine police.

There was testimony offered by the Nassau County Marine Police and a Hempstead Bay Constable that the waters were rough and not suitable for the *CARA ANN*. Waves from four to six feet were consistently breaking in the West Bar. However, Mr. Cornfield testified that, with the exception of the rogue wave that hit the *CARA ANN*, he did not experience any dangerous seas on the way back. He followed the same route he has taken for many years. Indeed, he saw the breakers at the West Bar and gave them a wide berth as he approached the inlet. Captain Thomas Weiss, a commercial fisherman, who is extremely familiar with the waters surrounding Jones Inlet, testified

that there was nothing wrong with Mr. Cornfield's decision to transit the ocean under the prevailing conditions.

The court determined that while ocean conditions were not necessarily ideal on the day of the accident, it was the Claimant's burden to establish that conditions were prohibitive for the *CARA ANN*. It appeared from the testimony that Claimant's evidence primarily focused on conditions in the breakers at the West Bar, which can provide treacherous conditions irrespective of prevailing sea conditions. Thus, Claimant did not offer sufficient evidence to rebut Mr. Cornfield's testimony that, with the exception of the wave that hit *CARA ANN*, ocean conditions, in general, were suitable for fishing and navigation. Accordingly, in light of the evidence presented at trial, the court found that Donna Klein Cornfield failed to prove, by a preponderance of the evidence, that the ocean conditions were such that Petitioner's decision to take the *CARA ANN* out on the ocean was negligent.

Operation of the Vessel

Claimant also suggested that Petitioner negligently operated the *CARA ANN*, a claim hinging mainly on the location of the accident. There was no dispute that the *CARA ANN* was heading back towards Jones Inlet when the accident happened, but the parties disagreed as to the route actually followed and the precise location of the accident. Claimant argued that Petitioner traveled too close to shore and ventured inshore of the West Bar. Mr. Cornfield testified that the wave hit the boat as it was navigating between the Jones Inlet buoys.

Because of the conflicting testimony, the court was unable to determine the precise location of the accident. Once again, since it was the Claimant's burden of proof, her claim that Mr. Cornfield navigated inshore of the West Bar failed. There was testimony from rescue personnel that the *CARA ANN* was found, after the accident, in the breakers at the West Bar when they arrived on scene. Claimant relied heavily on the accident report at trial that had been prepared by the Nassau County Marine Police. Judge Seybert evaluated all the evidence and determined that the accuracy of the location described in the report was *suspect*. For example, *the officer was not at the scene at the time of the accident, so he relied on a location provided by rescue personnel who testified that they never saw the vessel on the day of the accident. The officer admitted at trial that he picked an arbitrary measuring point in order to come up with his location.* Moreover, the accident location in the report failed to account for the wind and current prevailing at the time of the accident which would have caused the vessel to drift quickly in the direction of the West Bar. Thus, the court concluded that the police report offered a "*best guess*" of the *CARA ANN*'s location when struck by the wave. It appeared that the investigation pre-determined the location of the accident based solely on where the *CARA ANN* was found by rescue personnel after the accident.

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While Mr. Cornfield seemed at bit confused about the location of his boat at the time of the accident, the judge observed that he consistently described the sea conditions as navigable at the time of the accident and maintained that the wave that hit the *CARA ANN* was completely unexpected.

Both Captain Tom Weiss (Captain of the Point Lookout fishing vessel, *CAPTAIN AL*), and a weather expert, explained how a wave can form within the navigable channel of Jones Inlet. Another expert testified concerning how wind and current would affect the vessel and the bodies to explain the *CARA ANN*'s position in the breakers at the time of rescue. However, the most persuasive evidence presented at trial was a Coast Guard surveillance video that captured sea conditions at the time of the accident. The rotating video camera atop the U.S. Coast Guard station at Jones Inlet did not show the accident, but the rough conditions in the West Bar were visible. Captain Weiss testified at trial, and the court agreed, that "To drive due east and stare for five miles at nonstop breaking waves for three adults, experienced mariners to go right through that just makes absolutely no sense whatsoever." After all, Mr. Cornfield was 73 years old at the time of the accident, could not swim, and

due to a medical condition, had to operate the *CARA ANN* at relatively slow speeds. For these reasons, the judge found that Claimant did not offer sufficient evidence at trial to conclude that Mr. Cornfield navigated the vessel inshore of the West Bar, a treacherous area that is obvious to the mariner.

Claimant argued that because Mr. Cornfield had "local knowledge" of the waters of Jones Inlet, he should have known that the timing of the return trip was not ideal because there was a greater chance of breaking waves at the time even in Jones Inlet. However, the court rejected this argument, too, finding that the standard of care a vessel owner owes to his/her guest is "reasonable care under the circumstances." It appeared that Claimant was seeking to hold Mr. Cornfield to a "heightened" standard of care typically imposed upon ocean carriers and commercial vessels, even though this was abandoned by the courts in favor of reasonableness under the circumstances test for pleasure craft.

Accordingly, in a written decision, the court concluded that Donna Klein Cornfield failed to prove her case against Mr. Cornfield. The court dismissed her complaint and Jules Cornfield was exonerated from all claims arising from the events of October 1, 2001. Donna Klein Cornfield then

appealed the trial court's decision to the U.S. Court of Appeals for the Second Circuit. The three-member panel of the Second Circuit agreed in all respects with judge's decision and affirmed her ruling.

The case is over, but the family stand-off unfortunately continues.

Conclusion

As this case demonstrates, the facts relating to a boating accident are seldom simple. A court that is willing to listen carefully to all the evidence, even evidence that may initially appear inconsistent, may be able to determine what actually happened and arrive at a just result. And, finally, despite the skill and experience of mariners, accidents at sea can still happen without fault.

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