



# SEA TRIALS

by James E. Mercante, Esq.



## Judge Rules Salvage, not Towing. Hooray!

*Our contributing writer, maritime attorney James E. Mercante, sent us the following story about the horrific and deadly crash of the ferry-boat.*

*Andrew J. Barberi into the Staten Island Ferry Terminal in October of 2003 and the swift succor provided by the Dorothy J, a nearby tugboat waiting to push an oil barge.*

*When the ferry crashed into the concrete maintenance pier, 11 people were killed and more than 70 were injured. The ferry's mate, Robert Seckers, was aboard Henry Marine's tug, "Dorothy J", and swung into action immediately. During the ensuing months, the case went before Eastern District Court Judge Edward R. Korman for a decision on summary judgement. James E. Mercante represented Henry Marine, the tug's owner, who had filed a salvage claim against the city.*

*The particulars of the summary judgement and the judge's decision became a front page story by Mark Fass that ran last month in the New York Law Journal. It is presented below. Our acknowledgements and gratitude are extended to Messers. Fass and Mercante.*

The owners and a crew member of the *Dorothy J*, a tugboat that came to the aid of the *Andrew J. Barberi* ferry after it crashed into the Staten Island Ferry Terminal, are entitled under maritime law to a "salvage award" for the crew's efforts in the immediate aftermath of the crash, a Brooklyn federal judge has ruled.

However, the claimants are not entitled to an award for later keeping the *Barberi* stable within its ferry slip, the judge added, as the company was required to do under the terms of a pre-existing contract with the city.

Eastern District Judge Edward R. Korman found in *In the Matter of the Complaint of the City of New York, 03-cv-6049*, that the tugboat's actions in the half-hour following the crash satisfied the three elements of a "salvage service" under common law: there was "marine peril," the service was voluntary and the operation was a success. The judge granted summary judgment in favor of Henry Marine Service, which owns the *Dorothy J*, and in favor of its mate, Robert Seckers. The decision was published Thursday, February 21, 2008.

The *Barberi* collided into a concrete maintenance pier on the afternoon of October 15, 2003, killing 11 people and injuring more than 70. At the time of the crash, the *Dorothy J* was docked at a nearby pier, awaiting orders regarding an oil barge.

Mr. Seckers quickly maneuvered his boat into action. Initially, he attempted to secure a line to the damaged end of the ferry in order to prevent it from drifting toward the Verrazano Bridge. When that plan failed, the tugboat's engineer boarded the *Barberi* to fasten a line. The *Dorothy J* then pushed the ferry back to the passenger slip, where emergency workers were waiting. Members of the tugboat crew also attempted to calm ferry passengers, coaxing them not to jump into the water and providing the larger ship with its first-aid kit.

With the tugboat's help, the ferry returned to the landing within half an hour. The city then ordered the *Dorothy J*, under the terms of its contract, to spend the next few days "pushing" the *Barberi* to keep it stable in its slip. The following March, Henry Marine filed a salvage claim against the city, seeking \$6 million for its work between the Wednesday of the accident and the following Saturday. Mr. Seckers, the ship's mate, submitted his own salvage claim, as well as a separate tort claim, seeking \$2 million. Henry Marine and Mr. Seckers both moved for summary judgment on the issue of whether their actions constituted a cognizable marine salvage claim. The city cross-moved for summary judgment.

Judge Korman ruled largely in favor of the shipping company, finding that the aid offered in the "immediate aftermath of the collision" though not after the city ordered the tugboat to keep *Barberi* in its slip, entitled the claimants to a salvage award. The decision offered an extensive history of salvage law "...the right to be rewarded for saving a ship or its property from peril" – which pre-dates the Christian era by 900 years.

### Ferry in Peril

Since both sides agreed that the *Dorothy J*'s efforts were successful, the city contested only the first two elements of a marine salvage claim: that the ship was in peril and that the service was voluntarily rendered. The court found for the claimants on both counts.

"Many of the passengers and crew have described the horrifying and chaotic scene aboard the

*Barberi* after the crash...there is also evidence that the city was concerned that *Barberi* was in danger of sinking even after the *Dorothy J*, pushed it back into the ferry slip and, for this reason, directed the *Dorothy J* to continue pushing on the *Barberi* instead of attaching lines or cables to her," the judge wrote.

Judge Korman also found the services to have been volunteered since they did not fall within Henry Marine's pre-existing contract with the city for tugboat services. The judge concluded, "Under these circumstances, Henry Marine and Mr. Seckers are entitled to a salvage award for the prompt and spontaneous efforts to aid *Barberi* in the immediate aftermath of the collision." He also ruled that the two claimants, Henry Marine and Mr. Seckers, were entitled to a single award. How such an award would be divided, the judge added, was not a subject of the present motion and cross-motion.

The judge did not determine the size of the award. Although Henry Marine asked for \$6 million, Judge Korman said at a March 2007 hearing that he believed that the company perhaps deserved "a bonus" of "...not more than five figures." (NYLJ, March 29, 2007).

Even though the judge limited the award to *Dorothy J*'s first 30 minutes of work, the attorney for the tugboat's owners, James E. Mercante, of Rubin, Fiorella & Friedman, called the decision "a big win."

"The time on the scene is not one of the elements of the salvage award. The elements are the value of the vessel rescued, the degree of peril it was in, the value of the equipment that the salvor put at risk, the lives saved and the skill employed by the salvors," Mr. Mercante said. "We made a motion for summary judgment to get a ruling that Henry Marine's service was salvage under admiralty law and not towing, and Judge Korman agreed. [We got] "exactly what we were asking for."

The size of the award will be determined at a later proceeding, which was not specified in the judge's decision.

James E. Ryan of Dougherty, Ryan, Giuffra, Zambito & Hession represented Mr. Seckers.

Lawrence S. Kahn, chief litigating assistant for the city's Law Department, who was involved in the case, said, "We're reviewing the decision."

# Deep Down

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