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News

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Offshore

Technology Drives Interest in Gulf Lease Sales

By Matt Gresham

SALVAGE
Ancient
Origins



**GREAT
BOATS**
Passenger
Vessels



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Maritime Salvage: Ancient Origins, Modern Applications



Fred Goldsmith practices admiralty & maritime, insurance coverage, personal injury and commercial litigation in PA, WV, and OH with Goldsmith & Ogradowski, LLC. He can be reached at fbg@golawllc.com.

Most modern American admiralty and maritime law has a rich history dating back several centuries. One area of modern admiralty and maritime law that is particularly ancient in origin, interesting, and also potentially lucrative for the unique individuals whom it governs, is salvage.

The law of maritime salvage dates to the ancient Rhodians in the fourth century B.C. and the Rhodian Sea-Law from 600-800 A.D. Salvage is also described in Roman law and the Laws of Oleron, the twelfth-century French precursor of English maritime law. Salvage is also described in U.S. jurisprudence within twenty years after the signing of the Declaration of Independence.

In an 1874 decision in a case called "The CLARITA," the U.S. Supreme Court defined a salvor as "a person who, without any particular relation to the ship in distress, proffers useful service and gives it as a volunteer adventurer without any pre-existing contract that connected him with the duty of employing himself for the preservation of the vessel."

Thus, to state a valid, current-day court claim for salvage in this country, the would-be salvor must prove:

- There was a marine peril which placed the property at risk of loss, destruction, or deterioration;
- The salvage service was rendered voluntarily, not pursuant to a pre-existing duty or contract; and
- The salvage efforts were at least partially successful.

Salvage awards are not simply based on the time the salvor devotes to the operation, but rather, as the U.S. Fifth Circuit Court of Appeals wrote in 1981, are usually pumped-up to include a "bounty or premium based upon the risk involved in the operation and the skill with which



With a fiery liftoff, Space Shuttle Atlantis roars off the launch pad for a rendezvous with the International Space Station on mission STS-115. The largest maritime salvage award in recorded history was the subject of a 1998 U.S. Fifth Circuit Court of Appeals decision, which was reviewing the decision of a New Orleans-based federal trial court. In this decision, the court describes how the M/V Cherry Valley, a fully-laden oil tanker owned by Margate Shipping Company, about one mile offshore Florida's east coast, rescued a barge which was transporting a new external fuel tank, valued at over \$50m, for NASA's space shuttle. (Image credit: NASA/Dennis Sabo)

it was performed."

When a court grants a salvage award, both the crewmen involved in the salvage operation and the owner of the vessel on which they sail are entitled to share in it. The rationale is to reward the crewmen for risking life and limb, and the vessel owner for risking his or her valuable floating asset.

Modern American court decisions on salvage routinely rely on and cite an 1869 U.S. Supreme Court decision called "The BLACKWALL." In this decision, the Supreme Court articulated six factors to guide trial court judges when determining the amount of the salvage award, assuming the above-described three prerequisites have been met. The factors are:

- The labor expended by the salvors in rendering the salvage service;
- The promptitude, skill, and energy displayed in rendering the service and saving the property;
- The value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed;
- The risk incurred by the salvors in securing the property from the impending peril;
- The value of the property saved; and
- The degree of danger from which the property was rescued.

The salvage doctrine described above is referred to as "pure" salvage, because there is no contract involved and because the salvage award was historically made from the property or vessel which was saved. In contrast, salvage may also be performed pursuant to an oral or written contract, "contract salvage," in which case the terms of the service and the award are described in the parties' agreement. Even under a common salvage contract form, the Lloyds Open Form, however, which is a "no cure, no pay"

form, additional compensation may be available to the salvor by incorporating a SCOPIC clause (short for "special compensation of P&I Clubs").

In the United States, federal courts have jurisdiction over suits to recover salvage awards. Suit must generally be brought within two years of the salvage operation. The salvor has a lien against the salvaged vessel. While most salvage cases involve saved vessels and property, court decisions and commentators have also described "life salvage" and "liability salvage," the latter usually in the context of rescuing a vessel and thereby avoiding an oil spill.

The largest maritime salvage award in recorded history was the subject of a 1998 U.S. Fifth Circuit Court of Appeals decision, which was reviewing the decision of a New Orleans-based federal trial court. In this decision, the court describes how the M/V Cherry Valley, a fully-laden oil tanker owned by Margate Shipping Company, about one mile offshore Florida's east coast, rescued a barge which was transporting a new external fuel tank, valued at over \$50 million, for NASA's space shuttle. The appellate court described the facts of the case in epic fashion:

"'Twas a dark and very stormy night, November 14-15, 1994 and the situation looked bleak for the barge Poseidon. Caught in the clutches of Tropical Storm Gordon, Poseidon and her escort, the J.A. Orgeron, were without power and adrift. Driven on the gales of the tempest, the flotilla was swiftly approaching the Bethel Shoal; if they ran aground, the ships were sure to founder and be lost. Acutely aware of the danger, Orgeron's captain radioed for help. Alas, the Coast Guard was not in a position to mount a rescue. In despair, the captain made plans to release Poseidon and her valuable cargo, an external fuel tank for the space shuttle. Although this action would result in the certain loss of Poseidon and the tank, the cap-



The 600 ton capacity D/B BIG T, owned by T&T Marine Salvage of Galveston, Texas, and the 700 ton capacity D/B Cappy Bisso, owned by Bisso Marine of Houston, Texas, were used to make a tandem lift of a 105' sunken tugboat in Port Arthur, Texas.

tain hoped thereby to save Orgeron and her crew."

"Orgeron's distress call had been picked up by the M/V Cherry Valley. Cherry Valley was a 688-ft. oil tanker owned by Margate with a crew of 25 and a value of \$7.5m. On November 15, the ship was fully laden with nine million gallons of heavy fuel oil and had a draft of about 35 feet. She was pursuing a course in deep water somewhat south of Orgeron's position when she picked up the distress call. Although under no obligation to assist, Cherry Valley's master, the suitably named Captain Strong, immediately altered course to rendezvous with the tug. In so doing, he took his relatively unmaneuverable craft into perilous shoal waters in direct violation of standing orders."

The court then described Captain Strong:

"Captain Prentice Strong III was a graduate of the Maine Maritime Academy, and had been going to sea for over ten years at the time of the events in this case. It is a substantial testament to his ability that he reached the pinnacle of his profession, master of a large ocean-going tanker, at the remarkably youthful age of 32. Given this record, we are not surprised that Captain Strong displayed exemplary seamanship throughout this incident."

The trial court awarded Margate approximately \$6.4 million in salvage, which the appeals court reduced to \$4.125 million due to the trial court's error in valuing the tank.

Thus, while it has ancient origins, modern American salvage law remains very relevant and, for those who undertake the risks which can attend a salvage operation, potentially huge financial awards.

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