

The Law Of Salvage

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Under maritime law, a salvor of endangered property on navigable waters obtains the right to monetary payment from the owner. This is an ancient law developed to encourage efforts to save property and to discourage embezzlement by salvors. The act of salvage creates a right to a reward, and a maritime lien attaches to the property that was salvaged.

A. The Elements of a Salvage Claim.

For there to be a valid salvage claim:

1. There must be a marine peril placing the property at risk of loss, destruction, or deterioration;
2. The salvage service must be voluntarily rendered and not required by an existing duty or by special contract; and
3. The salvage efforts must be successful, in whole or in part.

The SABINE, 101 U.S. (11 Otto) 384 (1879); *Markakis v. S/S VOLENDAM*, 486 F. Supp. 1103 (S.D.N.Y. 1980); Schoenbaum, *Admiralty and Maritime Law* § 15-1, p. 502 (1987).

As to the first element, marine peril, the question is whether or not the ship was in a situation that might expose it to loss or destruction. The danger need not be imminent or actual; all that is necessary is a reasonable apprehension of danger. However, if the vessel has the situation under control, there is no peril.

The second element, that the salvage be "voluntary," is determined by whether the salvor already had a legal duty to give assistance. This would include a pre-existing contract or other obligation. This does not rule out professional salvors who act for economic gain, they are considered volunteers just as much as a "good samaritan" salvors.

The last requirement, that the salvage at least in part be successful, is owing to the concept that with a "pure" salvage, the reward is made out of the property that is spared from destruction. This has been

phrased as "no cure, no pay." In a no cure, no pay situation, the salvor gets paid only if successful, as opposed to contract salvage where the service is performed for a fixed compensation, often without regard to success. An example being towage which is compensated at a contract rate. One distinguishing feature between salvage and towage, is that in salvage there is an unanticipated marine peril which has given rise to the need for assistance.

The salvor who acts without express or implied consent of the owner is not entitled to any salvage award. However, if the vessel is a derelict, abandoned by its master and crew, it can be salvaged without consent.

Anybody, including a corporation or governmental agency, may qualify for a salvage award as long as there is no pre-existing duty. It is deemed that crewmembers of the salvaged ship are expected to take whatever steps are necessary in perilous situations and are therefore not entitled to a salvage award, unless the ship has been abandoned by the master or owner. The master and crew of a sister ship may obtain a salvage award. The Coast Guard may qualify for a salvage award but only in the case of extraordinary efforts beyond its usual duties of going to the aid of distressed vessels.

B. Salvor's Liability.

The salvor has a duty to undertake the salvage effort with reasonable skill and care. He or she is liable for ordinary negligence in carrying out the salvage. Any salvage damage assessed will reduce the amount of the salvage award. *Noah's Ark v. Bentley & Felton Corp.*, 292 F.2d 437, 443 (5th Cir. 1961); Schoenbaum at 507. However, where the salvage is attempted and efforts are unsuccessful, the salvor is not liable for losses sustained by the owners or third parties unless gross negligent conduct by him caused the loss.

C. Calculation of the Salvage Award.

The court or an arbitrator normally determines the proper award for a salvage service. The criteria are:

1. The time and labor expended by the salvors in rendering the salvage service;
2. The promptitude, skill, and energy displayed in rendering the service in saving the property;
3. The value of the property at risk or employed the salvor, and the degree of danger to which this property was exposed;
4. The value of the property saved; and
5. The degree of danger from which lives and property are rescued.

The BLACKWALL, 77 U.S. (10 Wall.) 1, 14 (1869); *Osal Marine Services, Inc. v. M/V PANASEA*, 1993

AMC 1930, 1932 (W.D. Wash. 1992); *Sobonis v. Steam Tanker NATIONAL DEFENDER*, 298 F. Supp. 631 (S.D.N.Y. 1969); Schoenbaum at 508.

The purpose of the award is not to provide unreasonable windfalls, but to encourage seamen and others to incur risks to go to the aid of vessels in distress. The salvage award cannot exceed the value of the property saved.

D. Contract Salvage.

The law distinguishes instances of "pure" salvage (where the salvor is a volunteer), where there is no pre-existing agreement between the parties, from contract salvage where the salvor acts to save the maritime property after entering into an agreement to use "best endeavors" to do so for a fixed fee, payment according to a schedule, or payment to be fixed by arbitration. In high seas salvage, the Lloyds' Open Form (LOF) 1980 is generally accepted and provides for arbitration.⁽¹⁾ Locally, professional salvage companies have drafted their own contracts.

If a contract sets out onerous and over-reaching terms and was entered into while the vessel was in extreme distress, the courts will give the contract close scrutiny and may set aside the contract if the compensation is exorbitant or if the salvor took unfair advantage or was guilty of fraud. *Osal, supra*; see *The ELFRIDA*, 172 U.S. 186 (1898); Schoenbaum at p. 511. However, if the contract was fairly bargained for, the court will usually enforce its terms. *Id.*

Issues of contract salvage have become more prevalent in recent years because the Coast Guard has to some extent abdicated its traditional function of providing rescue services. The Coast Guard's policy now is to try to find either a volunteer or commercial salvor to provide rescue services where life is not in danger. As a result, several small salvage and towage companies have come into existence. Though most of them are fair and provide an essential service, there have been examples of over-reaching. See *Osal, supra*. A well-informed shipowner or master is advised to closely scrutinize any contracts handed him by a professional salvor and if the contract is at all unacceptable, he or she should try to get the salvor to instead agree to a later arbitration of a fair award.

E. Treasure Salvage and Abandoned Property.

In salvage the salvor obtains the right to compensation, but not to title. This applies even with respect to "derelict" property which has been abandoned by those who were in charge of it. A salvor of derelict property does not acquire the title but he can claim an increased award and cannot be charged with being a trespasser.

The law of salvage is to be distinguished from the law of finds where the assumption is that title to the property has been lost. This is normally the exception and requires proof, such as the owner's express declaration abandoning title. However, the finder can acquire title against all the world except the owner. To obtain title as against the original owner the finder must prove that the property was

abandoned, then the law of finds applies; otherwise the law of salvage is applicable. *Columbus-America Discovery v. Atlantic Mut. Ins.*, 974 F.2d 450 (4th Cir. 1992). The U.S. government is presumed to not have abandoned its property, absent congressional action and has been held to hold title to former property of the Confederacy even outside the United States. *United States v. Steinmetz*, 973 F.2d 212 (3d Cir. 1992).

The problematic area is the recovery of treasure and artifacts from ancient shipwrecks. The cases are largely in conflict and there are no clear rules that apply.

F. Life Salvage.

Generally, there is no salvage award for purely "life salvage" where there is no property at risk and the rescue is solely of human life. A person who saves a life has no claim against the person saved or from the owner of the ship or its cargo. This rule, however, has been to some extent modified by international conventions, statutes and case law so that life salvors may obtain an award in many cases.

There is a duty both under international and U.S. law to endeavor to save life at sea. The Standby Act requires the master of the vessel involved in a collision, to the extent that he can do so without seriously endangering his own vessel, crew and passengers, to stand by the other vessel until he has ascertained that it has no need of further assistance. 46 U.S.C. § 2303. The Salvage Act requires a "master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, crew, or passengers, render assistance to every person who is found at sea in danger of being lost". 46 U.S.C. § 728. If there is also salvage of the vessel, then the life salvors may share in the award to the salvors of the vessel. 46 U.S.C. § 729.

In the situation where both life and property are salvaged, the courts often deny an award for life salvage but take into account that lives were saved, by increasing the reward for property salvage. It is only in the situation where only lives have been saved and no property has been saved that there is no right to a reward. But this rule is often avoided by the courts where assistance was requested or where there were other extenuating circumstances.⁽²⁾

As with a property salvor, a life salvor may be liable for negligence in rescue operations that result in property damage, personal injury or death. Generally, the rescuer will be held liable only for negligent conduct that worsens the position of the victim or for reckless or wanton conduct in performing the rescue. *Berg v. Chevron USA*, 759 F.2d 1425 (9th Cir. 1985); Schoenbaum at 521.

G. Liability Salvage.

The traditional rule is that a salvage claimant cannot claim that the value of the "property saved" should include potential liabilities of the vessel saved to third parties to whom the vessel otherwise would have been liable. *Hendricks v. Tug GORDON GILL*, 737 F. Supp. 1099, 1104 (D. Alaska 1989), *Westar Marine Service v. Heerema Marine Contractors*, 621 F. Supp. 1135, 1988 AMC 1122 (N.D. Cal. 1985),

rejected such liability salvage. However, the court in *Allseas Maritime S.A. v. M/V MIMOSA*, 812 F.2d 243, 247, 1987 AMC 2515 (5th Cir. 1987), made an aside comment, *in dictum*, that "salvors should be compensated for liability avoided" acknowledging however that the traditional salvage law does not reward a salvor for saving the shipowner from liability to other ships or property. The issue is unsettled in the Ninth Circuit. *Tidewater Salvage, Inc. v. Weyerhaeuser Co.*, 633 F.2d 1304, 1306 n.4, 1982 AMC 719 (9th Cir. 1980).

Trico Marine Operators, Inc. v. Dow Chemical Co., 1993 AMC 1042 (E.D. La. 1992), though it followed *Westar*, determined that the skill and efforts of the salvors in preventing or minimizing damage to the environment should be a factor considered in determining the salvage award. In *Trico* it was argued that there should be a salvage award for averted liability which the salvees would have faced under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, and the Oil Pollution Act (OPA), 33 U.S.C. § 2701, *et. seq.* See *Trico Marine*, 1993 AMC at 1043, 1047, 1047 n.5.

In a recent case, *Ocean Services Towing and Salvage v. Brown*, 810 F. Supp. 1258 (S.D. Fla. 1993), the court did take into consideration out-of-pocket expenses for oil pollution containment equipment. The court declined to address whether there exists an exception to the principle that the salvaged value serves as a ceiling for the maximum allowable total award, where the salvage operation averted the owner's potential exposure to liability from environmental damage, because in that case there was no preponderance of the evidence that damage to the environment would have occurred but for the successful salvage.

Though United States courts have been reluctant to provide liability salvage even for the prevention or mitigation of environmental damages, increasingly the courts and commentators have observed that there is a need to reward persons who prevent environmental damage. *Trico Marine, supra*; W. Neilson, *Convention on Salvage*, 24 Conn. L. Rev. 1203 (1992); Pell, *International Convention on Salvage*, S. Exec. Rep. No. 102-17, 102nd Cong., 1st Sess. 1991; Gaskell, *The 1989 Salvage Convention*, 16 Tul. Mar. L.J., 1, 10, 11 (1991); Binney, *Protecting the Environment with Salvage Law: Risk, Rewards, and the 1989 Salvage Convention*, 65 Wash. L. Rev. 639 (1990); *see also* Note, *Calculating and Allocating Salvage Liability*, 99 Harv. L. Rev. 1896, 1904 (1986) (commentator expressed support for liability salvage in general).

1. The principal characteristics of the Lloyds' Open Form are (1) the salvor agrees to use his best efforts to save the vessel and cargo and deliver them to an agreed place of safety; (2) services are performed on a "no cure - no pay" basis; (3) services involved before the signing of the contract come within its scope; (4) the salvor may use vessel equipment without costs to the salvor; (5) the amount of any award is to be fixed by the committee at Lloyds or an arbitrator appointed by the committee; (6) binding arbitration in London, subject to English law; (7) appeal of the arbitrator's award to the committee. The 1990 amendments modify the no cure - no pay tradition of the LOF in providing that a salvor shall receive compensation for preventing or minimizing pollution, threatened or actual, to the environment attributed to the vessel, its cargo or bunkers, even if the salvor is unsuccessful in saving property. The standard LOF is often modified to provide indemnity to the salvor for any liability he may incur for oil pollution.

See C. Davis, *Maritime Law Deskbook* (1991 ed.) p. 393. A recent case has held that the London arbitration clause of a LOF is unenforceable where there is no connection between any party and London. *Brier v. North Star Marine, Inc.*, 1993 AMC 1194 (D.N.J. 1992). [\[Back to text\]](#)

2. *Peninsular & Oriental, Etc. v. Overseas Oil Carriers*, 553 F.2d 830 (2d Cir. 1977) (recovery for out-of-pocket expenses for providing medical care to the seaman of another vessel on a quasi-contract theory where the services were requested and served the function of fulfilling the vessel's obligation to provide medical care to its seamen, included were the fuel costs incurred); *In the Matter of the Complaint of Ta Chi Navigation*, 1985 AMC 1367 (S.D.N.Y. 1984) (vessel recovered on a quasi-contractual basis for diversion expenses in transporting injured seamen from burning freighter to medical aid as requested by freighter's owner). [\[back to text\]](#)

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