

**RECENT DEVELOPMENTS IN SALVAGE LAW**  
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*In re Dorothy J v. The City of New York*, 2010 WL 3539033 (E.D.N.Y., Sept. 11, 2010): “comfort” salvage = minimal award; crew apportioned greater share than vessel; non-claimants = no award.

On October 15, 2003, the Staten Island Ferry, *Andrew J. Barberi*, allided with a maintenance pier near the Ferry Terminal, causing injuries and fatalities to those aboard the Ferry. The tug *Dorothy J* attempted to assist the *Barberi* back to the passenger slip, then spent several days continuously pushing on the *Barberi* to hold her in position. A bench trial was held to determine the award for the salvage.

In an earlier ruling on a summary judgment motion, the Court concluded that the *Dorothy J* successfully helped push the *Barberi* back to the passenger slip. However, after hearing further evidence, it concluded that it did *not* do so. There was evidence that aid was supplied by the *Dorothy J* and her crew to injured and frightened passengers on the *Barberi* in the form of a first aid kit, blankets and sweaters and some comfort was given to the *Barberi*'s Captain who expressed a “feeling of relief.... While the comfort and aid that the *Dorothy J* provided may not have directly contributed to the *Barberi*'s safe return, it was nevertheless ‘useful’ to [the Captain] and the passengers aboard the *Barberi*, and is deserving of a salvage award.” At 15.

The “extremely limited” success warranted a salvage award in the amount of \$75,000 based on the narrow extent of the service. *See Markakis v. S/S Volendam*, 486 F.Supp. 1103, 1110 (S.D.N.Y. 1980). Interestingly, the “normal justification for apportioning the owner of a salvaging vessel the majority of the salvage award [did] not apply.” The Court awarded 1/3 (\$25,000) to the owner of the *Dorothy J* and apportioned the remaining 2/3 (\$50,000) amongst the Captain (18+%; \$9k+), Mate (32+%; \$16k+), Engineer (39+%; \$19k+) and Deckhand (9+%; \$4k+). However, the Captain and Engineer declined to pursue their claims. The Court allowed the City of New York to reduce the sum it was required to pay by the amounts apportioned to the non-claiming crew (\$28k+).

Also of note, the Court generally applied the Salvage Convention of 1989 coupled with the *Blackwall* factors and declined to apply the concept of “liability salvage” (concerning alleged reduction in liability to third parties) describing it as a “vague factor.” At 16.

*Mon River Towing, Inc. v. Industry Terminal and Salvage Co.*, 2010 WL 1337693 (W.D.Pa., Mar. 31, 2010).

Industry Terminal Salvage Co. (ITSC) accepted Mon River Towing, Inc.'s barges into its fleeting facility and stored them. The Court deemed the arrangement a bailment for hire. During a heavy rain, ITSC checked the docked barges “cursorily and sporadically at best” and a maneuver to cut a fouled line (instead of retie it earlier) led to a breakaway and damage to the barges. At 7. The Court found ITSC negligent and liable for the breakaway and awarded substantial damages. The damages included lost profits (the Court preferred the Lost Opportunity method to the Demurrage method), and the Court indicated it would entertain a motion for attorneys fees and costs due to ITSC's bad faith in investigating and litigating the issues of bailment and liability despite knowing early on that it was liable, a “strong inference that evidence was deliberately withheld” and because certain representatives of ITSC were “lacking in credibility”. At 33, 26.