

ADMIRALTY COMMITTEE

Salvage: Rescue of a Vessel in Peril



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"Awards for performance of salvage services are not limited to a strict *quantum meruit* measure of the value of the services performed. Rather, the award is calculated to include a bounty or premium based upon the risk involved in the operation and the skill with which it was performed." *Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel*, 640 F.2d 560, 567 (5th Cir.1981). The calculation of the award is specific to the facts of each case, and compensation is given as a reward "for perilous services, voluntarily rendered, and as an inducement to seamen and others to embark in such undertakings to save life and property." *The Blackwall*, 77 U.S. (10 Wall.) 1, 14, 19 L.Ed. 870 (1869). In *The Blackwall*, the Supreme Court enumerated six factors related to the salvor's skill and risk in the calculation of a salvage award:

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

Contractual salvage occurs where there is a contract to pay a given sum for the services to be rendered. *Bay & Delta Tractor Tug Co. v. The Barge Pacific Trader*, 1998 AMC 494 (N.D. Ca. 1997). The agreed amount may be payable regardless of success, or the amount may be dependent on success, or the parties may agree that some amount is payable regardless of success and an additional amount may be contingent on success.



A binding contract can be oral, and an exact dollar amount is not necessary to form a binding agreement. *Id.* The normal rule is that a salvage contract will be enforced according to its terms if it was fairly entered into without compulsion, fraudulent misrepresentation, or mistake of fact, even though the stipulated amount turns out to be higher or lower than the value of the services. *The Elfrida*, 172 U.S. 186, 186 (1898). However, a salvage contract is reviewable for fairness if it was entered into while the promissor was in distress. See *Black Gold Marine Inc. v. Jackson Marine Co.*, 759 F.2d 466 (5th Cir. 1985).

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In *Osal Marine Services, Inc. v. M/V Panasea*, 1993 AMC 1930 (W.D. Wa. 1992), the court refused to enforce a written salvage contract on the ground that the salvor forced the contract on the owner by refusing to commence salvage operations until its form agreement was signed, and where the terms of the contract were exorbitant in light of the factors pertinent to a fair salvage award. Fraudulent overreaching by the master of the salving vessel in obtaining the signature to a salvage contract of the master of the imperiled vessel was held to bar any award to the salving master of the owner of the salving vessel (but not its crew, who were found to not be parties to the fraudulent conduct) in *Jackson Marine Corp. v. Blue Fox*, 845 F.2d 1307 (5th Cir. 1988). "Admiralty courts have traditionally been vigilant in protecting mariners from unscrupulous and dishonest salvors." *Id.* at 1309. Charles M. Davis, *Maritime Law Deskbook* (2016 Ed.)