

Admiralty Committee

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IS IT TOWING OR IS IT SALVAGE?

Many boaters, including myself, have contracted with towing companies such as Sea Tow and BoatUS for assistance with a tow home, to a marina, or to repair facility in the event that need arises while boating away from their regular place for dockage. Occasionally, the provider will inform the boater that the assistance is a salvage event not covered under their towing contract and require the boater to sign its salvage contract to obtain assistance. This is significant because towing fees are paid in advance by contract while salvage fees are based on the value of the vessel salvaged, the extent of services rendered, and are awarded by a court or by agreement with the boat owner thereafter.

So what constitutes a salvage situation as opposed to a tow? The distinction between towing and salvage is absence of peril. For a situation to be that of salvage:

First, there must be a peril to the vessel such that the vessel is in a situation that might expose her to loss or destruction. *Lewis v. JPI Corp.*, 2009 WL 3761984 (S.D. Fla.2009). It is well settled that the danger need not be immediate or actual. Nor is it the degree of peril - it may be slight, moderate or severe - that determines whether a marine peril exists at the time assistance is rendered. The peril may be imminent or merely potential and prospective damage may be minimal. These figure into dollar value of the salvor's efforts. Distress signals from a vessel or crew are strong evidence that a marine peril is genuine and that the response effort is salvage. The fact that a vessel is anchored when service is requested does not eliminate the element of peril. For example, a vessel anchored near a reef when the weather is uncertain is in peril. A vessel at its home dock taking on water and having inoperable or inadequate pumps is in

peril of sinking. A vessel driven aground - on rocks, shoals, or a reef - is per se in a state of marine peril. In such a situation, the vessel is exposed to the vagaries of wind, weather, and waves, and clearly a vessel that remains in that helpless situation without further assistance is subject to damage, breaking up or sinking.

Second, the service offered and rendered must be voluntary. That is, the prospective salvor must not be under any official or legal duty to render assistance. The crew of a vessel have a duty to render assistance to prevent damage to their vessel and are, therefore, not entitled to seek a salvage award for rescuing their ship from a peril. Similarly, U.S. Coast Guard personnel have a duty to assist vessels in distress.

Third, the salvor must have success in saving the vessel from whatever real or potential peril was avoided and the ship is preserved for the benefit of the owner. The success need not be complete; there must be some part of vessel or its property that is saved. Nor does it need to be dramatic: it may consist of merely standing or escorting a distressed ship to safe harbor.

Potential salvors do not have an inherent right to save distressed vessels. Instead, the law of salvage permits an owner of a vessel in marine peril to decline the assistance of others so long as only the owner's property interests are at stake.

