

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

CIVIL ACTION  
NO. 89-0181-P

H.R.M., Inc.  
*Plaintiff*

VS.

S/V MARTINA MIA II, her engines,  
tackle, apparel, furnishings,  
equipment, etc.; MARTINE MUSCOVITA:  
M/V ENTICER, her engines, tackle,  
apparel, furnishings, equipment,  
etc., and JOHN HIGHAM,  
*Defendants*

### **Arbitrators Decision**

#### **I - Award**

The sailing vessel MARTINA MIA II was a 34 foot Hunter sailing vessel built in 1984 and purchased by the owners for \$55,000. At the time of the salvage involved, she was insured for that amount. The Bertram 24 foot motor vessel ENTICER was purchased by its owner John Higham for \$12,000 and at the time of the salvage was of that value and was insured for a like amount.

On October 22, 1988, Owner Higham was advised by a neighbor that his boat was going by his neighbor's house. Higham got up, dressed and went down to the pier at inner Wickford Cove where he found his boat already there. The weather was now down to about 25 m.p.h. Higham testified that a few days later of getting a call from somebody at HRM asking him as to the insured value of ENTICER, and telling HRM that she was insured by Aetna for \$12,000. Later when he remoored his boat on his assigned mooring in the outer harbor, he found that his mooring had been pulled or had been displaced by approximately 30 feet from its original spot in a northeasterly direction.

Shortly after securing the WAKE at the dock in Wickford Cove at about 5:30 AM on October 22, 1988, both crew members, Captain Peter Andrews and Bryson Hall of the KROPP 3 saw yet another vessel adrift in close proximity to the moored motor boat ENTICER in outer Wickford Harbor. This vessel, the MARTINA MIA II, appeared to be fouled in ENTICER's mooring line with her stern hooked into the mooring line of the ENTICER. Captain Peter Andrews observed for about a minute and believed both were being driven down by sea and wind. The ENTICER was facing head into the

Easterly wind and sea, while the port side of the MARTINA MIA was to the sea and wind with her stern fouled with ENTICER's mooring line. The weather had moderated considerably. Andrews immediately got underway with crewman Hall in KROPP 3, picking his way through other moored vessels to the MARTINA MIA and behind ENTICER, pulling up with his starboard side to MARTINA's port. The port side of MARTINA was grinding against ENTICER's bow. Although Captain Andrews recalled that the weather was still about the same as on the earlier salvages, the weather had clearly moderated, as it was now about 6:00 a.m. He maneuvered KROPP 3 around so that her starboard side was toward the port quarter of the MARTINA MIA as she lay fouled alongside the ENTICER's starboard side. Hall testified that it took one or two minutes for the KROPP 3 to get to the MARTINA MIA. All vessels were within 100 yards of the shore. Hall said that Peter "went in there but he couldn't go in any further because he was faced with the danger of going aground." Hall further stated that each were facing in a Northerly direction, or a "little east of north" and (as indicated Exhibit #5, R.H. Depos. Vol. 2, Pages 27ff.) they were both still held on ENTICER's mooring line and were dragging toward the lee shore. He indicated that "I could see we were going to have trouble" so that instead of jumping on the MARTINA MIA as he would usually do, Hall threw the towing line over the bow of the MARTINA MIA first, thinking that Peter was going to continue on by with the KROPP 3 and that he would jump over onto the MARTINA, but the flare of the port bow of the MARTINA MIA hooked under the starboard side of the pilot house of KROPP 3, as both vessels rolled and worked in the seaway. Bryson Hall was right there on the after corner of KROPP 3's starboard side pilothouse, and fell over the side into the sea. Hall had no lifejacket on and stated that he "didn't have the right one with me at the time", saying that he usually worked better without a lifejacket. He testified that the MARTINA MIA drew 6 feet and he fell in water that was 8 to 10 feet deep at most. By a sheer stroke of luck, or an act of God, a wave popped him up so that he came up with the sea and ended up on deck of the MARTINA MIA. He then secured KROPP 3's towline to MARTINA's bow and proceeded around to the after port side of the MARTINA MIA, where he obtained a line from her and secured it to the ENTICER, pulling the ENTICER in closer and secured the two vessels to each other. He had gone aboard the ENTICER to secure her to the MARTINA MIA but "we couldn't make it move, so I cut the ENTICER's mooring line". In addition, he started the MARTINA MIA's engine having gone below and somehow turned on the battery switch. Having earlier secured the towing line of the KROPP 3 to the bow of the MARTINA MIA, KROPP 3 with Captain Peter Andrews, who had been pulling throughout with the vessels straight ahead into the wind, i.e. in an E'ly direction, started to tow them around and into the Inner Cove.

Bryson Hall's chalk sketches, Exhibits no. 5 and 6 Vol. II of his deposition dated Jan. 18, 1990, show how the vessels were secured to lines, and the direction that KROPP 3 started hauling MARTINA MIA. Both Captain Andrews and Hall testified that the upper side of the starboard side of the pilothouse, which was flush with the outside of the KROPP 3, had hooked under the flare of the bow of the MARTINA MIA, causing damage to the upper part of the KROPP 3 pilothouse as it caught the overhang of MARTINA's bow as they rolled in the seaway. It would appear at that time that KROPP 3 was in the trough of the sea as she was coming alongside the MARTINA MIA, and as the vessel rolled over. Captain Andrews saw Bryson Hall disappear into the water. He immediately stopped KROPP 3's propellers by throwing the engines out of gear. He didn't see Bryson Hall until the stern of MARTINA MIA came down, and the

next thing he noticed was Hall vaulting over the rail of MARTINA MIA, pulling himself aboard. He saw Hall grab the towline and pull it to the bow of MARTINA where he secured it. Captain Andrews then put his screws back in gear and he pulled away from MARTINA MIA and let his towline pay out. As KROPP 3 took a strain on the towing line, she pulled the bow of MARTINA MIA into the wind. As he did so, Captain Andrews hoped that the mooring line pennant of the ENTICER, which was fouled in the rudder and stern of the MARTINA MIA, would somehow clear as he kept pulling it, and he testified that "it was up to Bryson to figure out how to get us out of there." He continued heading into the wind in an easterly direction with a constant pulling strain on his towline, pulling both vessels on ENTICER's mooring. Bryson Hall went aft on the MARTINA MIA, secured a line to bow cleat on the ENTICER and then cut the ENTICER mooring pennant so that the ENTICER fell back. Now KROPP 3 had two vessels in tandem tow. Andrews saw that Bryson Hall had started the MARTINA MIA'S engine, let go of KROPP 3's towline, and started to tow the ENTICER to the Inner Cove without KROPP 3's assistance. Captain Andrews noted that when Bryson Hall went overboard, they were within 100 feet of the seawall. He testified that Bryson Hall was in the water for a period of 1 or 2 minutes, wearing his work boots, and had no lifejacket on. Hall's memory of time in the water is substantially less, of seconds.

Captain Peter Andrews indicated that Hall's failure to wear a lifejacket was his (Andrews') fault and that he "made a mistake". Hall himself barely mentioned the failure to wear a lifejacket, other than to say that he worked better without a lifejacket and that he did not have his working lifejacket, apparently a close-vested one, available to him. The salvage of the MARTINA MIA and ENTICER took between 1/2 hour to 45 minutes because of the additional time to handle two boats.

Captain Peter Andrews, on cross-examination, changed that part of his testimony with regard to his approach to the MARTINA MIA and reversed from his earlier testimony the positions of MARTINA MIA. This changed testimony was of little significance for reason that the situation at the time of the salvage of MARTINA MIA and ENTICER was one of actions taken in extremis, and it may well be that the salvage might have been accomplished in a different and better manner as Captain Peter Andrews on cross-examination conceded. However, there will always be shore captains sitting in the safety of their living room chairs who will give opinions on how the matter might have been better mastered or the ship had been better handled. Defendant Boat Owner contends that the ENTICER was safe at her mooring and should not have had her mooring cut. An equally speculative argument could be made that Hall might have started MARTINA's engines (as he did) and pulled her free of ENTICER, but again he might have cut ENTICER's line with MARTINA's screw leaving her to beach. as it was, there were two vessels hung up in ENTICER's mooring line, with the obvious marine peril of all being driven ashore. The weather and sea, though abating, were still strong enough in the 30 knot area, to put all vessels ashore with exposure to becoming total wrecks. The entire operation, in Bryson Hall's deposition memory, seemed to have taken one to one and a half hours, whereas Captain Peter Andrews indicated that the entire matter took about 30 to 45 minutes, to go to both vessels, securing them in tow and bring them to the Inner Cove, with some additional time to dock both vessels. The fair amount of time to be allocated to the entire operation would be in the area of 1 hour and I so find.

The owner of MARTINA MIA II, Peter Moskavita, testified that he had purchased his 34 foot Hunter MARTINA MIA II in 1984 for \$48,000 and added additional equipment to bring her value up to \$55,000, which was her insured value at the time of the salvage. Plaintiff's complaint sought a pure salvage award in the amount of \$27,500.00, being approximately 50% of the slaved value (and insured value) of the vessel.

I find the salved value of the MARTINA MIA II to be \$48,000, and I find the salved value of the ENTICER to be \$12,000. I find that the entire incident took one hour and involved only the KROPP 3 and her two crew members, Andrews and Hall. The entire operation I find to be one of pure salvage of both vessels, ENTICER and MARTINA MIA. There was a marine peril to both vessels, ENTICER and MARTINA MIA, and voluntary service by KROPP 3 and her crew. Both vessels were salved with damage to the MARTINA of \$6,800.00 and some to KROPP 3's wheelhouse. No damage was sustained by ENTICER. I reject Defendants' argument that the ENTICER was a mere misdirected beneficiary of the services of the salvor of MARTINA. After MARTINA fouled ENTICER's mooring line in her rudder and/or screw, with the obviously greatly increased sail surface of MARTINA, they both would have dragged ENTICER's mooring or snapped or chafed her line free in the wind and sea and both come aground. I believe the testimony of Andrews and Hall that both vessels, with the additional exposed sail surface of the MARTINA in the wind, were dragging the ENTICER mooring down, and in short time under the existing sea and wind both would have gone ashore.

After due consideration of all Blackwall factors under all the above facts, I find a fair and meritorious award for the salvage of the ENTICER to be Three Thousand (\$3,000) Dollars, and for the salvage of the MARTINA MIA II to be Thirteen Thousand (\$13,000) Dollars. I also award prejudgement interest at the legal rate in effect on the date of the complaint.

## **II - Professional Salvor**

All parties agree that a "professional salvor" is entitled to an "equitable uplift" factor which is awarded in addition to what ever salvage award was found, if that salvor is found to be a "professional salvor". This equitable uplift provision is found in the Lloyd's Open Form Agreement. The case of Bureau Wijsmuller vs. U.S., 1979 AMC 2331; aff'd 633 F2d 202, 1980 AMC 2993, seems to indicate that a "professional salvor" is entitled to claim a special bonus award for a successful salvage. The classic work on salvage "The Law of Salvage" by Martin J. Norris, (1958-Baker Voorhis) was last updated in 1974 (before it went into BENEDICT ON ADMIRALTY as Vol. 3) in Sections 58 and 81 (pp 90 f.f. and pp 134 f.f.) providing for "Professional Salvors" and in the 1974 pocket parts to the original work, cites two cases standing for that proposition; DEVINE v. UNITED TRANSPORTATION, 1957 AMC 175 and the OCKLAWAHA, 1964 AMC 2695. Both these cases refer to the "professional" vessel being entitled to premium pay for such efforts. In the DEVINE case, the matter involved a "professional" salvor vessel, the SALVAGE T, which came down to the area and was allowed a special finding in

addition to the \$2,500 salvage award. In the WIJSMULLER case, the trial court made an award of \$500,000 and then applied an extra factor for professional status reaching a total of \$635,000, which included the equitable uplift due its professional status.

When Norris transferred his entire work into BENEDICT ON ADMIRALTY, 7th Ed., Volume 3A, the section involving "professional salvors" remained as Sections 58 and 81. Section 58 (pp4-21) is verbatim the earlier work and so with section 81 (pp 6-30 f.f. also). While the case makes reference to Page 339 "Professional salvors" who performed their services for monetary gain and may claim a salvage award, it does not say anything about who and what is a "professional salvor". While the only cases on point cited by the parties are few, the last clear definition of a professional salvor was in the LAMINGTON 86 Fed. 675, which set out some factors as to what constitutes a professional salvor. Those refer to machinery, skills, and appliances being ready for instant service, even though called for but occasionally, are now regarded as a "meritorious act calling for a liberal award." There is a more recent case, cited by Plaintiff, BIDON v. JONES, 1986 AMC 1403, which is in line with the facts in our case which indicated that a part-time professional salvor status can exist. BUREAU WIJSMULLER qualified as a professional salvor, "at least in substantial part" and the Second Circuit indicated that "exclusive devotion of company's resources to salvage is not a condition precedent to recognition of a professional salvor's favored status." (Note 1, 1989 Suppl. p.71 Vol.3A-Benedict). In the facts at hand, there is no question but that the plaintiff HRM's claim to professional salvor status is during a limited season, and that season is limited in time and vessels to the yacht or pleasure boat season, May through October. In effect, their position is that they are a professional salvor for these particular people in a limited area, namely certain specific area, the Narragansett Bay, Block Island and close adjacent waters. As far as the equipment goes, they have several vessels available on station during that season. They have in reserve the heavy slow tug, WILLIAM D. KROPP, which was originally purchased by Captain John Andrews in 1984 for \$60,000, and then updated with equipment and repairs so its value at the times involved was over \$100,000. In addition, the KROPP 3 was purchased at \$12,000 but upgraded with two 135 hp engines for \$5,000 each, plus towing equipment, so at the time of the salvage efforts, KROPP 3 was valued at between \$30,000 and \$35,000. The large tug WILLIAM D. KROPP was used 80% in marine rescue and beach work, 10% to 15% in towing. The KROPP 3 was used exclusively on station as rescue in HRM, Inc., which was, and is, a regularly scheduled patrol service provided by HRM. The KROPP RESCUE, an inflatable hull 24 footer, valued at about \$12,000, was used 5% for towing, and 95% in marine rescue work. The KROPP SALVOR, valued at \$90,000, a 26 foot by 10 foot twin 240hp diesel power boat, of about 22 knots speed, was purchased for \$55,000 and updated with various appliances to a value of \$90,000. In addition, there is a substantial amount of equipment purchased by Plaintiff HRM involving various kinds of tapes, epoxy, oil pads, plugs, shims, and synthetic glass, cardboard, hardboard, plywood, plugs, towing lines, special lines, and all sorts of gear to some considerable unstated value. The total investment and assets, including shore office electronics, easily exceed \$300,000, a considerable and substantial undertaking.

With regard to experience and training, there are only two regularly employed people, first being Captain John Andrews, who got into the full time basis about 1985 when the Coast Guard decided to back out of the work of rescuing small boats and pleasure craft. In 1984, he received a U.S. Coast Guard limited license, which he

updated in 1988 to a 100-ton Master's. He also took several courses in rescuing vessels, read various publications of Cornell Maritime Press and was involved with Marine Rescue Services, Inc. He joined various organizations throughout the East Coast and with others on the West Coast who were involved in similar work. His son, Peter Andrews, early on got a limited license, having been on boats all his life in the Wickford area. He crewed on yachts in the Bermuda race, and had experience on small power vessels, Boston whalers, etc. Since August of 1986, he has held a Master's license of 50-ton or less, with a limited operational capacity within 100 mile from shore, and advanced shortly to a Master of near coastal areas, and in September of 1988, got a second commercial endorsement. Young Andrews attended maritime courses in Jamestown, Rhode Island, and in May of 1988, qualified as a diver. In the summer of 1988, he was based on Block Island on patrol with the KROPP SALVOR as part of the HRM quick response facility. Accordingly, when he started the HRM salvage route in 1985, Captain John Andrews had only one full-time employee, and that was himself. Peter assisted part-time in 1986, and then in the latter part of 1987 started doing the full-time work. Beginning early in the season in 1988, there were two full-time employees, John Andrews and his son, Peter Andrews. They had no particular part-time employees, and if needed, they had qualified people who would assist on call. As for divers, they would hire them by calling from a list of standby qualified divers that were available in the Narragansett Bay area, including the divers involved in these cases. Plaintiff HRM presented clear evidence of substantial rescue and salvage work in its prescribed action areas since 1987. HRM is listed as a service available for quick response salvage services and the evidence that back in June of 1985, the U.S. Coast Guard listed HRM "inspected and qualified to perform, emergency towing and salvage in support of the Coast Guard's function. Based on all the facts and despite the fact that all the vessel are not engaged exclusively in the work of salvage, the evidence indicates that substantial portions, 75% of the work of the smaller vessels are engaged in salvage, and the large tug, WILLIAM D. KROPP, is engaged in the amount of 25%. Clearly, a substantial, though not exclusive, amount of its work is salvage and rescue. Nonetheless, there is a considerable outlay of equipment and vessels readily available to do the rescue and salvage service of boats in difficulty and in need of salvage, pure or contract, so that this particular activity should be encouraged as HRM provides a very useful, monetary and life saving service in this area, both for boat owners and for the insurance companies who insure these boats. Salvage is about money primarily.

One last matter must be addressed, as it is implicit in the very word "professional", and that is what is required in the context the claim of such status is made and contested. Captain Collyer would by definition deny that status but he clearly "doesn't get it". "It" does not involve deep water seamen, mates, engineers or master who have faced high risk and danger in terrifying North Atlantic gales or Pacific typhoons without dismay to rescue stranded or helpless deep water vessels and their cargo. With rare exception, the vessel involved here is a boat of less than sixty feet, worth less than half a million dollars, and much less in today's depressed boat market, "skipped" by a "captain" who "takes a left turn", goes "upstairs or downstairs", and is oblivious to any consideration of "set" or "drift". To "rescue" these marine hotrodders does not require the length, depth, and scope of training and experience that a deep water "professional salvor" must have. He, unlike his inshore, coastwise brother, does not have the easy choice of waiting until the gale abates to venture out to lasoo the drifting 36 foot Hinter Holler sailing vessel torn loose from its inadequate mooring. We are here dealing

substantially with plugging, pasting plastic, stuffing, patching, and pumping out and towing in, holed or damaged plastic leisure toys of grown persons. Those who perform these tasks, by and large, require no great amount of maritime training or schooling, or "seatime" with boats, to become "professional" in the work demanded. To compare them to the "professional salvor" of the Dutch Smit Deep Sea Group or the legendary Merritt, Chapman & Scott is ludicrous. Nonetheless, to deny that the HRM enterprise is less than a substantial and serious effort, clearly demonstrating a commitment man power and material to rescue and salvage work in a limited area and deserving of recognition as a "professional salvor", though limited as reviewed above, would fly in the face of a great volume of detailed and drawn out testimony and evidence, clearly compelling the finding of such a label.

Accordingly, it is the opinion and decision of the arbitrator that these findings of fact compel a conclusion that the Plaintiff HRM was, and is, a "special professional salvor" in the same sense as referred to in the case of BIDON v. JONES, cit. supra, of a "part-time professional salvor" and that status requires that HRM be given an "increment" or an "entitlement" of a special bonus for each pure salvage performed by HRM. I therefore find, and add, an increment of 5% across the board to each final award including interest in the pure salvage cases involving the C-SCAPE, OTAVA, WAKE, and the combined salvage of the MARTINA MIA II and ENTICER (total of 4).

Signed: Myron Boluch  
7/14/91