Restitution for Life Salvage at Sea in the Wake of Peninsular & Oriental Steam Navigation Co. v. Overseas Oil Carriers, Inc.

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In Peninsular & Oriental Steam Navigation Co. v. Overseas Oil Carriers, Inc., the United States Court of Appeals for the Second Circuit, sitting in admiralty, devised a novel judicial remedy for the ancient problem of the life salvor. For centuries admiralty law has rewarded one who voluntarily saves property in peril at sea under the maritime doctrine of salvage, but has denied remuneration to one who saves lives but no property. This practice encourages salvage of property over life when both are at stake and has long been heartily condemned by admiralty courts and legal commentators. In the instant case, owners of S.S. CANBERRA, a hospital-equipped passenger liner, filed suit against owners of the tanker S.T. OVERSEAS PROGRESS for the costs of rescuing a heart attack victim aboard OVERSEAS PROGRESS. The trial court, following well-established American admiralty practice, treated the case as one of life salvage and denied CANBERRA's claim for increased fuel costs. The Second Circuit reversed and framed a recovery for CANBERRA on principles of quasi-contract. By avoiding "the questionable doctrine of 'pure life salvage'" and treating the claim as one for restitution, the Second Circuit created a judicial remedy which could have a profound effect upon the present role of life salvage in admiralty.

This Note will examine P&O in terms of the district court's opinion, which illustrates American admiralty law's traditional approach to life salvage under common law and statute and which reflects the prevailing view in this country. The Note will then develop the proposition that the present life salvage statute, which is purportedly more humane than the common law, improves the situation of the life salvor only minimally. The Second Circuit's approach, which applies princi-

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5. Id. at 836.
ples of restitution to life salvage, is a more satisfactory solution. The solution proposed by the court will encourage the saving of life at sea, offering potential salvors an action at law to recover, at minimum, their salvage related expenses from the owners of the vessel in distress.

**Facts in P&O**

The facts giving rise to the claim for restitution in *P&O* were not disputed. S.T. OVERSEAS PROGRESS was in mid-Atlantic Ocean en route to Baltimore from Haifa, Israel when a ship's fireman, William Turpin, was stricken with chest pains suggestive of a heart attack. The ship had no surgeon aboard. Medication administered by the ship's officers failed to relieve Turpin's discomfort and on the following evening he suffered another attack. Realizing that his vessel's resources were inadequate to deal with Turpin's worsening condition, the captain of OVERSEAS PROGRESS sent a radio message calling for responses from all vessels in the vicinity with doctors aboard. Three ships answered the transmission, the closest of which was S.S. CANBERRA, then en route to New York from Dakar, Senegal. CANBERRA had a maximum speed of 25 knots (approximately 28.8 mph) and was thus considerably faster than OVERSEAS PROGRESS which had a maximum speed of only 13.8 knots (approximately 15.9 mph). CANBERRA, moreover, carried a fully equipped hospital and medical staff able to provide Turpin with immediate medical attention.

In light of Turpin's increasingly serious condition and the proximity of CANBERRA, OVERSEAS PROGRESS directed a second message to the British ship explaining the crewman's critical situation and requesting an immediate rendezvous to enable transfer of the crew member. Having agreed to aid OVERSEAS PROGRESS, CANBERRA altered course and proceeded to accomplish the rendezvous at maximum speed. The meeting of OVERSEAS PROGRESS and CANBERRA was achieved in six and one-half hours; by comparison it would have taken OVERSEAS PROGRESS fifty-seven hours to reach the nearest shore hospital which was 740 miles away at St. John's, Newfoundland.

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6. For a complete account of the stipulated facts, see *id.* at 832-34.
7. S.T. OVERSEAS PROGRESS was an American flag tanker of approximately 13,030 gross tons, owned by Overseas Oil Carriers (Overseas), an American corporation with its principal place of business in New York. *Id.* at 832.
9. S.S. CANBERRA was a British flag passenger vessel of approximately 43,975 gross tons owned by Peninsular & Oriental Steam Navigation Company (P&O), an English limited liability company with its principal place of business in London. 553 F.2d at 832.
In the course of their radio communication, the captains of the two vessels briefly considered allocating the costs of the rescue effort, without attempting to reach an agreement. When the ships met, the two men signed a letter, written by CANBERRA's captain, which indicated an awareness of the problem but left the question of payment for determination by the vessels' owners.

CANBERRA brought Turpin aboard and resumed course for New York at maximum speed. Despite having travelled 232 extra miles to oblige OVERSEAS PROGRESS, however, CANBERRA's scheduled arrival in New York was delayed only two and one-half hours. Turpin was treated at the United States Public Health Service Hospital on Staten Island and eventually recovered. Overseas Oil Carriers, the owner of OVERSEAS PROGRESS, promptly paid $248 to CANBERRA's surgeon for medical services rendered Turpin. P&O's subsequent request for reimbursement, seeking $12,108.95 for Turpin's nursing and accommodation, and, principally, for increased fuel costs, was rejected. Overseas gratefully acknowledged CANBERRA's assistance but asserted that payment of P&O's claim was not in keeping with "the traditional concept of rescue at sea." In April 1974, P&O filed suit.

The Federal District Court for the Southern District of New York, sitting in admiralty, agreed with Overseas that the foregoing facts stated a claim for "pure life salvage" and therefore denied P&O recovery except for an allowance of $500 representing the cost of the nursing and accommodation provided by CANBERRA. The portion of the court's judgment allowing for a recovery of Turpin's hospital expenses was based on the court's construction of the admiralty doctrine of

10. The letter read: "I trust you understood my remarks on the R.T. when I came to your assistance. I have to inform you that you should inform your owners that my company, P&O Steam Navigation Company, may look to them for reimbursement of diversion costs, medical and out-of-pocket expenses. Would you please sign a copy of this letter to indicate your understanding and receipt of this information." Peninsular & Oriental Steam Nav. Co. v. Overseas Oil Carriers, Inc., 418 F. Supp. 656, 659 (S.D.N.Y. 1976), rev'd, 553 F.2d 830 (2d Cir.), cert. denied, 98 S. Ct. 183 (1977).

11. In a letter to P&O's Passenger Division, Overseas' agent wrote: "Although we are extremely grateful for the kind assistance you have rendered Mr. Turpin, we must point out that your claim does not appear to be in keeping with the norms and practices of the traditional concept of rescue at sea.

Indeed, we have on many occasions rendered similar aid at great risk to our crews and vessels but have never entertained the thought of recovering our expenses.

We hope that our position will meet with your understanding and trust that you will accept the assurance of our willingness to reciprocate in the unhappy event that the roles should one day be reversed." Joint Appendix at 16a-17a, Peninsular & Oriental Steam Nav. Co. v. Overseas Oil Carriers, Inc., 553 F.2d 830 (2d Cir. 1977), cert. denied, 98 S. Ct. 183 (1977).

12. 418 F. Supp. at 659.
maintenance and cure. The court reasoned that had Turpin been placed in a shoreside hospital, OVERSEAS PROGRESS' obligation to pay his maintenance and cure would have amounted to $500.15

On appeal, the Court of Appeals for the Second Circuit reversed that part of the judgment which denied CANBERRA's claim for fuel expenses. Construing the doctrine of maintenance and cure more expansively than did the trial court, the circuit court viewed the situation in terms of Overseas' statutory obligation to provide medical attention for its sailors, which it held would encompass transportation expenses as well as nursing and accommodation. The court reasoned that as CANBERRA had performed OVERSEAS PROGRESS' duty to its own crewman, Overseas had been unjustly enriched at P&O's expense, and therefore P&O was entitled to restitution for its costs. Judgment was consequently entered for P&O in the sum of $8,500, representing CANBERRA's fuel costs for her diversion and increased speed.

P&O in the District Court

The federal district court's approach to the issues presented by P&O fits squarely within the mainstream of American admiralty law. The federal district court's opinion treated three distinct aspects of the case: Overseas' contention that CANBERRA's service was merely non-compensable life salvage, P&O's quasi-contract claim, and the court's limited finding of unjust enrichment on maintenance and cure grounds.

The issue of life salvage was successfully raised by Overseas at the trial court level as a defense to CANBERRA's claim for reimbursement of medical and fuel costs incurred on behalf of OVERSEAS PROGRESS. Judge Goettel, writing for the federal district court, found "[t]his situation, while not the classic rescue at sea, does resemble

13. See text accompanying notes 95-96 infra.
14. See text accompanying notes 104-105 infra.
15. 418 F. Supp. at 659. See text accompanying notes 94-95 infra.
16. 553 F.2d at 834-36. See notes 104-107 & accompanying text infra.
17. 553 F.2d at 834-36. See notes 101-110 & accompanying text infra.
18. 553 F.2d at 837 n.7.
20. See notes 25-26 & accompanying text infra.
21. See notes 87-94 & accompanying text infra.
22. See notes 95-97 & accompanying text infra.
23. 418 F. Supp. at 657.
life salvage, as it is possible that Turpin would not have survived a fifty-seven hour trip to the nearest shore hospital [aboard OVERSEAS PROGRESS]." Like a "pure" salvage operation, Turpin's rescue was effected by a volunteer, responding successfully to rescue a life imperiled at sea. The courts have not adopted the position that saving a life is in itself an independently compensable act of salvage without, at minimum, a concurrent saving of property. Cognizant, therefore, of the constraints of American admiralty doctrine, Judge Goettel held that "[f]or the present it would appear to be beyond the province of this court to inaugurate a new policy deviating from the centuries old common law doctrine."

Life Salvage: Common Law Precedent

The Second Circuit's reversal on appeal, and its importation of quasi-contractual remedies into this area of admiralty law, can only be appreciated against the backdrop of precedent which guided the district court.

The doctrine of life salvage is a facet of the ancient law of salvage. Salvage itself is a uniquely maritime service. A volunteer acting on land may rescue valuable goods from peril at great personal hazard but may not detain the goods; at most, limited authority holds the volunteer may sue the property owners on a quantum meruit basis. Should the same order of service be performed at sea, however, the salvor who successfully preserves, or contributes to the preservation of, a vessel in distress and its cargo, obtains a lien of high priority.

24. Id. at 658.
25. See note 41 supra.
27. Salvage may be defined as "the reward allowed for a service rendered to marine property, at risk or distress, by those under no obligation (independent of statute) to render it, which results in a benefit to the property if eventually saved." R. Hughes, Handbook of Admiralty Law § 63 (2d ed. 1920) [hereinafter cited as Hughes]. Life salvage may be defined as "a reward... for saving human life in danger at sea." See Jarrett, The Life Salvor Problem in Admiralty, 63 Yale L.J. 779, 779 n.3 (1954) (citing Dunlop, Life Salvage, 15 Scot. L. Rev. 44 (1899)).
29. See, e.g., Corbin, Quasi-Contractual Obligations, 21 Yale L.J. 533, 539 & n.30 (1912). "Compensation as salvage is not viewed by the admiralty courts merely as pay, on the principle of a quantum meruit, or as a remuneration pro opere et labore, but as a reward given 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 (1869) (Clifford, J.).
30. "Success in whole or in part, or that the service rendered contributed to such success," is an essential element of a salvage claim. The Sabine, 101 U.S. 384, 384 (1879). Towing a derelict vessel closer to port, if that vessel is eventually salvaged, constitutes a compensable salvage service. The Strathearn, 76 F. 855 (D. Wash. 1896). Merely notifying the rescue vessel may constitute a compensable salvage service, in the event that the...
upon the vessel, cargo, and freight. The lien is made enforceable by an admiralty court through the granting of a salvage award. The amount of this award is determined by a multitude of factors subject to the discretion of the court, and frequently includes the salvor’s expenses and damages incurred by the salvaging vessel. The total award, however, may not exceed the value of the property saved and, today, because of the extremely high value of ocean-going vessels and cargo, such awards will rarely exceed twenty percent of the value of ship and cargo after salvage. Operating as a powerful inducement to seamen and others to aid marine property in peril, the promise of a liberal salvage award promotes the orderly organization of a salvage effort, minimizes commercial loss and discourages struggles, theft and outright piracy in situations where police surveillance is rarely present.
Given the valuable commercial and humanitarian motives advanced by awards to salvors aiding ships in distress, and the historically solicitous attitude of admiralty courts towards seamen, it is all the more anomalous that no equivalent incentive is held out to encourage seamen to rescue their brethren at sea. On the contrary, the salvor's humanity in saving life at sea has never been the object of a direct award by way of salvage when a vessel is saved, although the danger to the lives of those on board the distressed ship may be considered by the courts to increase the property salvage award. At least one commentator has argued that the saving of life at sea is a compensable form of property salvage. He reasons that the life salvor protects the shipowner from burdensome wrongful death claims for the death of crew and passengers, but this reasoning has never been adopted by the


39. E.g., The George W. Clyde, 80 F. 157 (E.D.N.Y. 1897), aff'd, 86 F. 665 (2d Cir. 1898); The Plymouth Rock, 9 F. 413 (S.D.N.Y. 1881); The Emblem, 8 F. Cas. 611 (D. Me. 1840) (No. 4,834). See generally Norris, supra note 22, at § 24.

40. See 68 AM. JUR. 2D Salvage § 10 (1973). Norris interprets the sixth criterion of Justice Clifford's classic enumeration of the elements of salvage, note 25 supra, to read: "The degree of danger from which the lives and property are rescued." Norris, supra note 30, § 237 (emphasis added).


The author of the comment cited in the preceding paragraph recognizes that one reason for disallowing "pure life salvage" in the absence of property salvage is admiralty's reluctance to unduly burden a shipowner with salvage payments though no property was saved. Yet in many instances, he argues, "the contingent liability incurred by the owners where loss of crew and passengers are involved would far exceed the cost to the owners of replacing the vessel. The life salvor insulates the owner from this liability. In U.S. v. Cornell Steamboat Co., 202 U.S. 184 (1906) the government was obliged to contribute to a salvor's award even though it had only an intangible interest in the property. The Supreme Court said that the salvor's in personam remedy 'extends to one who has a direct pecuniary interest in such property.' Ship operators are carriers owing a duty to their passengers and crew. They have an insurable interest in their safety. They have to respond in money damages for negligence in performing their duty. To this extent operators have a direct, pecuniary interest in their passengers and crew. In this sense life salvors are protecting the operators' property when they save lives. For this service they should be entitled to compensation even in the absence of other property salvage." 2 Hastings L.J. at 55 (Spring 1951).
The reluctance of admiralty courts to order financial awards for the independent saving of life is premised in part on a practical difficulty inherent in the in rem nature of the salvage libel.\textsuperscript{43} The salvor's bounty depends on the attachment of the marine property saved;\textsuperscript{44} a salvor could hardly be allowed to hold the body of persons rescued at sea until salvage was paid for their release.\textsuperscript{45} If money or jewelry were discovered on the survivor, these valuables were subject to the in rem property salvage proceeding,\textsuperscript{46} but their owner, of course, was not. Life salvors have never had a cause of action against the human beneficiaries of their service.\textsuperscript{47} Courts consider it to be, rather, the common duty of humanity for one sailor to rescue another on the high seas. As the district court concluded in the instant case, "Plaintiff is left... with the recognition that its efforts were in keeping with the finest traditions of the sea."\textsuperscript{48} Unfortunately, although the moral reward for saving fellow humans at sea has been beyond the jurisdiction of earthly courts to dispense, instances are legion where this higher reward has proved ineffective to spur the saving of life at sea.\textsuperscript{49}


\textsuperscript{43} The term "libel" is equivalent to "complaint" and was utilized in admiralty practice when federal district courts had an admiralty "side" with a separate docket and separate rules of procedure applicable to admiralty. Since 1966 the "sides" have been merged, the Federal Rules of Civil Procedure became generally applicable to maritime actions, and the older terms became obsolete. A "libellant" is the older version of "plaintiff." See Gilmore & Black, supra note 33, at 2, 19.


\textsuperscript{45} See Jarrett, The Life Salvor Problem in Admiralty, 63 Yale L.J. 779, 781 (1954). Slaves were an exception to this rule because they were property. See, e.g., The Mulhouse, 17 F. Cas. 962 (S.D. Fla. 1859) (No. 9,910). "Since slaves were regarded as property, their salvors were granted awards (citations omitted), apparently without the courts' perceiving that they were thus indirectly encouraging the saving of slaves in preference to freemen. While this policy might have found favor in the eyes of the early abolitionists, it could hardly have been the intention of the jurist or slave owner (sometimes the same person)." Jarrett, The Life Salvor Problem in Admiralty, 63 Yale L.J. 779, 784 (1954).

\textsuperscript{46} Gilmore & Black, supra note 33, at 539.


\textsuperscript{48} 418 F. Supp. at 660.

\textsuperscript{49} See, e.g., Warshaver v. Lloyd Sabaudo S.A., 71 F.2d 146 (2d Cir. 1934); The Dr. George J. Moser, Inc., 55 F.2d 904 (2d Cir. 1932); The Emblem, 8 F. Cas. 611 (D. Me. 1840) (No. 4,434). The situation presented in The Emblem so shocked District Judge Ware that he commented: "But, in the present case, there are some circumstances which, I am free to say, have struck my mind with considerable surprise. They are, that this vessel should have lain, for four days, in one of the most frequented parts of the American seas, with vessels continually passing her, some of them almost within hailing distance, and when they were in full view of this unhappy company, who were lying thus lashed and dying upon the wreck, and no one came to their relief until more than half of their number were released from their sufferings, by death, and consigned to a watery grave... If this fact is to be taken as a just
Life Salvage: Statute

The life salvor has long received more humane treatment in English admiralty courts than that afforded within the American system. By giving the life salvor’s claim statutory recognition in the British Merchant Shipping Repeal Act of 1854, Great Britain became the first maritime power to soften the rigor of the general maritime law regarding life salvage. The Act declared that if life and property were saved simultaneously by different salvors, the property salvor was obligated to share his award with the life salvor. Some forty years later, this principle was adopted by the International Salvage Convention of 1910. The United States, as a party to this agreement, then promulgated the terms of the Convention into law in the Salvage Act of 1912.53 Presently the portion of the Salvage Act concerning life salvage, codified as 46 U.S.C. § 729, provides: “Salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo, and accessories.” The statute represents an improvement over the common law because it provides remuneration for the saving of life without requiring the life salvor to salvage property as well.

Maritime law has distinguished three situations which potentially confront the life salvor: (1) the salvor saves life alone, (2) the salvor saves both life and property, and (3) one set of salvors saves life and

measure of the humanity of the persons who frequent these seas, I know not but it may be the part, not only of humanity, but of worldly wisdom, to let them understand that sometimes even in godliness there is gain, and to tempt them by the allurements of pecuniary profit, if they can be led by no other, to acts of humanity and mercy.” Id. at 612-13.

In a fictional context, Herman Melville characterized seafaring mores this way: “Stick to the boat, Pip, or by the Lord, I won’t pick you up if you jump; mind that. We can’t afford to lose whales by the likes of you; a whale would sell for thirty times what you would, Pip, in Alabama. Bear that in mind, and don’t jump any more.” Hereby perhaps Stubb indirectly hinted, that though man loved his fellow, yet man is a money-making animal, which propensity too often interferes with his benevolence.” H. MELVILLE, MOBY DICK ch. XCIII (1851).

50. 17 & 18 Vict., c. 104. See Jarrett, The Life Salvor Problem in Admiralty, 63 YALE L.J. 779, 782 n.23, for the historical evolution of the English life salvage statute. Since the Merchant Shipping Act of 1894, 57 & 58 Vict., c. 60, English admiralty courts have recognized an independent right to claim a salvage award for lives rescued from a British vessel anywhere, or from a foreign flag vessel if the act occurs in British waters. 57 & 58 Vict., c. 60, § 544. Although the life salvage award is accorded the highest priority against the owner of the surviving vessel, where the surviving value is insufficient to satisfy the life salvor’s claim the life salvor may be rewarded out of a Merchantile Marine Fund as provided by Parliament. 57 & 58 Vict., c. 60, §§ 544-545.

51. 17 & 18 Vict., c. 104, § 459.

52. Salvage Convention of 1910, art. 9, reprinted in NORRIS, supra note 30, at 514.


another set saves property. In the third situation, section 729 attempts
to ameliorate the harshness of the life salvage doctrine by giving the
life salvor a "fair share" of the property salvor's award. Under this
statute, however, the first and second situations remain unchanged.

A review of the principal cases construing section 729 underscores
continuing judicial hesitation to reward the life salvor's effort even in
the limited situations to which it applies. The courts have tended to
focus on three considerations in deciding whether to grant life salvage
under the statute: first, was the life salvor faced with a choice to save
life or property; second, if the life and property salvage operations were
not simultaneous, how much time must have elapsed between the sav-
ing of life and the salvage of property before the life salvor's claim will
fail; and third, against whom or what did the life salvor's remedy lie.

When a salvor chooses to save life before property the courts have
shown a willingness to grant life salvage. Yet many claims are de-
nied on the basis of a technical distinction which first crept into the law
in 1919 in the now well-known case, *The Eastland*. In that case, the
Federal District Court for the Northern District of Illinois stated that
insofar as the purpose of the statute was to put rescue of life on a par
with property salvage, life salvage must apply where the salvor had a
choice to save one or the other. *EASTLAND* had sunk with great loss
of life in the Chicago River. Only the "magnificent and heroic ef-
forts" of the life salvors prevented even greater catastrophe. Because
the salvors had manned small craft in the rescue effort, however, the
court found that statutory life salvage was unavailable, as the salvors
were incapable of saving EASTLAND itself. Determining that the
rescuers had never been faced with a choice to save property before
life, the court stated that the salvors were simply fulfilling a moral
duty. Although the court's language in *The Eastland* was dictum be-
cause the libelants had not filed their claim until the two year statute of
limitations had run, that case has been cited for the proposition that,

55. Although the United States has gone no further than the 1912 Salvage Act, it
should be noted that Great Britain has by statute granted an independent right to claim a
life salvage award which may be satisfied out of a Mercantile Marine Fund if no property is
preserved. 57 & 58 Vict., c. 60, §§ 544-545.
56. See notes 39-49 & accompanying text supra.
57. See note 40 & accompanying text supra.
60. *Id.* at 539-40.
61. *Id.* at 536.
62. "What they did was inspired by the spirit which since Christendom has been the
foundation of the great brotherhood of mankind. . . . Their reward they have; it can never
be taken from them, and it is measured by a standard greater than money." *Id.* at 540.
for the statutory remedy to apply, a salvor must choose to save lives before property and have the capacity to do both.

As recently as 1970 the District Court of Hawaii used The Eastland’s reasoning to deny life salvors’ claims in Saint Paul Marine Transportation Corp. v. Cerro Sales Corp. In that case M.V. SAINT PAUL, following its rescue of S.S. NORTH AMERICA’s crew, was unable to take the distressed ship in tow and thus was not entitled to an award because it had not been faced with a choice to save life before property. The court worked some justice for SAINT PAUL, nevertheless, when it found her crew had performed valuable salvage service by extinguishing some smoldering fires aboard NORTH AMERICA. Since a salvage service need only contribute to the eventual recovery of the property to merit compensation, the court granted a salvage award on the basis of the incidental benefit to the ship. In view of the generous salvage award granted, however, it seems highly probable that the court, in fixing the award, was swayed by SAINT PAUL’s rescue of NORTH AMERICA’s crew.

Where life salvors are in a position to save life before turning to more profitable salvage, courts will reward the life salvor under the terms of the statute. In The Shreveport, decided in 1930 by the District Court for the Eastern District of South Carolina, the tug ALDECOA rescued SHREVEPORT’s crew from lifeboats. Since some of the crew were badly burned, ALDECOA put ashore as quickly as possible without attempting to tow or otherwise salvage SHREVEPORT. Instead, MARINER’S HARBOR performed this service five hours later. Despite the latter’s assertion that ALDECOA’s acts were so disconnected in point of time as to disallow remuneration, the court held that since ALDECOA had “foregone an opportunity” to do more profitable work,

[the statute should be liberally construed with the humane object in view. . . . Life salvors, even though acting independently of the property salvors, are entitled to share in the award, provided their services are rendered on the occasion of the accident giving rise to salvage.

66. Id. at 379.
67. 332 F. Supp. 233 (D. Hawaii 1971), aff'd, 505 F.2d 1115 (9th Cir. 1974). The salvage award to SAINT PAUL’s owners and crew totaled $194,070.40. Id. at 1121-22. See note 40 supra.
69. Id. at 537.
70. Id. at 538.
In *The Shreveport*, the statute provided a reward for ALDECOA where the maritime common law, requiring some form of property salvage, would not.

A second major consideration in a court's decision to grant statutory life salvage concerns construction of the phrase "rendered on the occasion of the accident giving rise to salvage." In *The Eastland* this phrase was construed in dictum to require salvage of life while the property was still at risk and could be saved. Although EASTLAND was eventually raised eleven days after the disaster, the act of salvage performed under contract was found to be unrelated to the acts of the life salvors. Other courts, however, have taken a different view. In *The Annie Lord*, the libelant rescued the crew of the waterlogged LORD and attempted to tow the vessel into port. Inclement weather caused the tow to be abandoned and LORD was subsequently salvaged by other vessels. Although the rescue and the conclusion of the salvage operation were separated by two days, the Massachusetts district court awarded life salvage to the libelant. The court based the award on a finding that libelant had contributed to the salvage of ANNIE LORD by towing the schooner closer to port. In *The Shreveport*, some five hours elapsed between ALDECOA's rescue of SHREVEPORT's crew and the arrival of MARINER'S HARBOR to tow SHREVEPORT. The court stated that five hours was not enough time to cut off ALDECOA's claim. In sum, there is little guidance offered by judicial interpretation of the language of the statute regarding the meaning of "rendered on the occasion of the accident." This lack of definition continues to be a point of controversy in life salvage litigation.

72. 262 F. 535 (N.D. Ill. 1919).
73. See note 63 & accompanying text *supra*.
74. "When the services of the life salvors were rendered, the steamer had already settled safely in the mud at the bottom of the river . . . . The efforts of the life salvors were directed solely to saving from drowning the passengers and crew . . . . There was nothing to distract those salvors from their humane purpose. The statute, I think, presupposed possibly a divided interest, and probably a sordid interest, in the average salver . . . . The statute . . . . presupposed an emergency where both lives and goods were at hazard, and aimed to encourage the saving of life. It is a sad reflection to contemplate this law." *Id.* at 539-40 (Carpenter, D.J.).
75. *Id.* at 541.
76. 251 F. 157 (D. Mass. 1917).
77. *Id.* at 159-60. See note 30 & accompanying text *supra*.
A third important factor that may frustrate a life salvage claim is the issue of against whom or what the salvor's remedy lies. The usual property salvage remedy is an in rem right which accrues for service to the vessel.\textsuperscript{80} Admiralty has been reluctant to allow maritime liens on a vessel for services rendered to its passengers unless those services were closely related to the vessel salvage.\textsuperscript{81} The statutory life salvage remedy has therefore been an in personam action against the recipients of the salvage award.\textsuperscript{82}

The problem of a defectively applied libel was addressed by the Second Circuit in \textit{The Dr. George J. Moser, Inc.}\textsuperscript{83} There the libelant proceeded for life salvage in rem against ROCKEFELLER but the court interpreted section 729 as providing for a share in the awards made to other salvors who had participated in the property salvage and not as permitting the life salvor to seek a recovery against the ship itself.\textsuperscript{84} The libel for life salvage against ROCKEFELLER was therefore dismissed.\textsuperscript{85}

\textsuperscript{80} See notes 28-37 & accompanying text \textit{supra}.

\textsuperscript{81} See notes 71-79 & accompanying text \textit{supra}.

\textsuperscript{82} Aside from the traditionally distinct treatment accorded salvors for services to the vessel as opposed to services to passengers, see notes 27-49 & accompanying text \textit{supra}, admiralty courts realize that ships are of their greatest value economically when they are continuing their voyage, not when they are tied up in litigation. An in personam action for life salvage obviates these problems so far as the ship is concerned. Comment, \textit{Compensation for Life Salvage at Sea}, 2 HASTINGS L.J. 53, 54-55 (Spring 1951).

\textsuperscript{83} 55 F.2d 904 (2d Cir. 1932).

\textsuperscript{84} \textit{Id.} at 905. MOSER, a tug, was one of nineteen vessels involved in a salvage operation when the steamer WILLIAM ROCKEFELLER exploded at its wharf. While salvage was underway MOSER left the scene to carry a critically injured seaman to an ambulance. This act was performed, after a twenty minute delay, at the request of another tug which had the injured man on board but was fastened to ROCKEFELLER inboard of MOSER. When MOSER returned to the scene of the operation many other vessels were assisting the effort but MOSER stood by and continued to help as directed. In the subsequent libels for salvage and life salvage, the lower court denied MOSER's in rem claim against ROCKEFELLER. \textit{Id.} at 904. On appeal to the Second Circuit, the respondents argued that MOSER's reluctance to transfer the wounded man aboard precluded its participation in the salvage award. The court, however, recognizing MOSER's dilemma, the profitability of property salvage as against the uncertainty of life salvage, granted MOSER a small salvage award on the basis of a minimal contribution to property salvage. The court pointed out that it was rather the duty of the tug having the injured man on board to care for him and that “[i]n the contest in inhumanity, if there was one, the NO. NINETEEN [the inboard tug] has the unenviable victory.” \textit{Id.} at 905.

\textsuperscript{85} \textit{Id.} at 905. Further limiting the life salvor's right to proceed in rem against the recipients of a salvage award, the Oregon district court in \textit{In re Yamashita-Shinnihon Kisen}, 305 F. Supp. 796 (D. Ore. 1969), held that the in personam proceeding does not include the right to proceed against an amount paid to a property salvor under contract salvage. Contract salvage is salvage pursuant to an agreement entered into by the salvors and the owners of the property in peril. The court fixed the amount of salvage, thus precluding the court from fixing a discretionary award. \textit{See generally} \textit{Norris, supra} note 30, at §§ 159-79.
In sum, the present life salvage statute has advanced the life salvor's legal position in American admiralty court only marginally. Courts may increase an award for the most minimal salvage service if lives are saved, but this is no more than the traditional discretion permitted a court in fixing a salvage award. Where the life salvor did not perform property salvage, admiralty courts have focused on three other factors to determine the life salvor's eligibility for a statutory share of the property salvage: first, did the life salvor make a choice to save life when property was at risk; second, was the life salvor's effort sufficiently simultaneous with the property salvage operation; and third, did the libelants correctly proceed in personam against the recipients of the salvage award. Only the third of these criteria commands a consensus among the district courts.

Plaintiff's quantum meruit and quasi-contract claim

In response to plaintiff's argument that it was not seeking a reward for its services but merely reimbursement via quantum meruit or quasi-contract, the district court in *P&O* noted that such a distinction between salvage and restitution had not been recognized by American admiralty, the evident inequities of the case notwithstanding. Quoting from *Miller v. Schloss*, the court distinguished the two types of implied contracts:

A contract cannot be implied *in fact* where the facts are inconsistent with its existence; or against the declaration of the party to be charged; . . . The assent of the person to be charged is necessary and unless he has conducted himself in such a manner that his assent may fairly be inferred he has not contracted.

. . . . .

A quasi . . . contract rests upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another . . . . It is an obligation which the law creates . . . .

In considering the quantum meruit claim, the court found that the letter signed by both captains at the time of Turpin's transfer was not a demand for payment sufficient to imply a contract because it left the question of payment open for determination by the vessels' owners. As such, the letter was insufficient to indicate Overseas' intent to pay, thereby invalidating any contract implied in fact. The disposition of

87. *Id.* at 658. See note 33 & accompanying text *supra*.
88. *Id.* at 660.
90. 418 F. Supp. at 658-59.
91. See note 10 *supra* for text of the letter.
92. 418 F. Supp. at 659.
the quasi-contract claim was even more summary because the district
court proceeded on an erroneous conception of quasi-contract. As-
suming that misconduct or fault on the part of the party sought to be
charged was a required element of an unjust enrichment claim,93 and
finding none, the court held the facts would not support a full quasi-
contract recovery. According to the Circuit Court and the Restatement
of Restitution, however, fault or misconduct on the part of the person
unjustly enriched need not be present to base a claim in restitution.94

Curiously, the court did allow some recovery based on unjust en-
richment even without misconduct or fault of Overseas. P&O claimed
$500 of CANBERRA's diversion expense was attributable to Turpin's
hospitalization.95 The court reasoned that if OVERSEAS PRO-
GRESS had been in port when Turpin fell ill, the maritime doctrine of
maintenance and cure6 would have obligated the ship to pay the ex-
penses of Turpin's hospitalization. Since CANBERRA had hospital-
ized Turpin after the rescue had been effected, the cost of "custodial
care" was a charge separable from nonrefundable expenses accruing
before or during the life salvage operation. The court realized the in-
consistency of finding one expense compensable and the other not, but
in the absence of controlling authority granting reimbursement for life
salvage it was hesitant to break new ground. Instead, the court sug-
gested "appropriately drafted legislation,"97 and offered plaintiffs
whatever solace they might find in upholding "the finest traditions of
the sea."98

The district court's opinion in P&O reflects the life salvor's tradi-
tional status in American admiralty courts. The rigor of the common
law has not been effectively ameliorated by the enactment of the Life
Salvage Act.99 Indeed, the terms of the statute will often be inapplica-
table to a life salvage situation, as in P&O.

Section 729 has been interpreted to permit recovery for saving
human life only if the rescuer has foregone an opportunity to perform
property salvage. The common law allows a reward for life salvage
only when the salvor saves valuable property as well as life. Instead, a
rule is needed which will encourage shipowners and seamen to engage
in potentially costly rescue operations by shifting the expense of such
operations to those with the legal obligation to provide them.

93. Id. at 659.
94. See notes 108-09 & accompanying text infra.
95. 418 F. Supp. at 659.
96. See notes 104-07 & accompanying text infra.
97. For a draft of sample legislation, see Jarrett, The Life Salvor Problem in Admiralty,
98. 418 F. Supp. 656, 660.
P&O on Appeal to the Second Circuit

Reversing the decision of the district court, the United States Court of Appeals for the Second Circuit\(^1\) adopted a very different view of the facts in P&O. It rejected the lower court's position, and viewed the situation in terms of CANBERRA's performance of OVERSEAS PROGRESS' statutory and common law duty under the doctrine of maintenance and cure to care for its own crewman. In so doing, the appellate court avoided the life salvage problem altogether. Seen in this light, CANBERRA's intervention at the request of OVERSEAS PROGRESS constituted a benefit to the latter by making it unnecessary for OVERSEAS PROGRESS to reroute some 740 miles and fifty-seven hours out of its way to seek hospitalization for its crew member.\(^1\) Thus, by sustaining P&O's claim for restitution of CANBERRA's increased fuel cost caused by Turpin's rescue, the Second Circuit has created a judicial remedy which may greatly reduce the role of life salvage in modern American admiralty law. While life salvage may continue to have limited application,\(^2\) the solution advanced in the court's decision provides a partial remedy restoring the life salvor's expenses which would otherwise be unrecoverable.

The Second Circuit found that the admiralty doctrine of maintenance and cure underpinned OVERSEAS PROGRESS' duty to care for its seaman.\(^3\) Maintenance and cure describes the ship's obligation to provide medical care, food, lodging, and wages for the duration of the voyage to a crew member injured or falling ill in the vessel's service.\(^4\) The shipowner's obligation is deep-rooted in maritime law and is an incident or implied term of a contract for maritime employment.\(^5\) If, while on the high seas, a sailor requires immediate medical attention which the facilities of the vessel cannot provide, the ship's

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101. The extent of this benefit in economic terms was pointed out by P&O on appeal when counsel estimated that the costs of diverting a 13,030 ton tanker this distance would have been at least $6,500 plus the cost of getting the ship back on course to its original destination. Brief for Appellant at 10 n.5. In effect, restitution does not cover all the rescuing vessel's expenses but does spread the costs of rescue more evenly among the vessels involved.

102. For example, sailing vessels may rescue victims of shipwreck, or small craft may come to the aid of a vessel in distress at little or no expense.

103. 553 F.2d at 834. P&O's recovery in the appellate court is based on an American notion of maintenance and cure. Had OVERSEAS PROGRESS been a foreign flag vessel governed by laws of a state which did not recognize a similar obligation on behalf of a crewman falling ill in the service of the ship, the ship's obligation to the crewman may have been very different. See Usatorre v. The Victoria, 172 F.2d 434, 438 (2d Cir. 1949).


master is bound, in the exercise of reasonable judgment, to have the crewmember taken to a hospital or put ashore where medical treatment may be obtained. In the instant case, OVERSEAS PROGRESS would have been required to pay Turpin the costs of his hospitalization and treatment as well as the expense of repatriation to the United States had he been landed in Newfoundland. Although the doctrine of maintenance and cure has not traditionally comprehended the modern factor of increased fuel costs, it is consistent with the ship's obligation to pay for medical care for a seaman when the ship itself is unequipped to do so.

To accommodate this expanded notion of maintenance and cure, the court drew upon the Restatement of Restitution, section 114, which provides:

A person who has performed the duty of another by supplying a third person with necessaries . . . is entitled to restitution from the other therefor if (a) he acted unofficiously with intent to charge therefor, and (b) the things or services supplied were immediately necessary to prevent serious bodily harm or suffering by such person.

The court reasoned that because CANBERRA had performed OVERSEAS PROGRESS' manifest duty under maintenance and cure on her behalf and had put OVERSEAS PROGRESS on notice that this service was not a gratuity, "[t]he circumstances of this case compel application of the rule." The fact that OVERSEAS PROGRESS had actually requested aid made P&O's claim for restitution even stronger.

Overseas contended that although principles of quasi-contract reflected equitable principles appropriate to land-based law, their application in the instant case was beyond the admiralty jurisdiction of the court. Admiralty courts are specially designed forums for the settlement of marine disputes. They are characterized by simple rules of pleading and procedure and pride themselves on administering justice by "equitable principles." Because of historical strife between com-

106. "With reference to putting into port, all that can be demanded of the master is the exercise of reasonable judgment and the ordinary acquaintance of a seaman with the geography and resources of the country. He is not absolutely bound to put into such port if the cargo be such as would be seriously injured by the delay. Even claims of humanity must be weighed in a balance with the loss that would probably occur to the owners of the ship and cargo. A seafaring life is a dangerous one . . . ." The Iroquois, 194 U.S. 240, 243 (1904).
107. See Gilmore & Black, supra note 25, at 311. See note 103 & accompanying text supra.
108. RESTATEMENT OF RESTITUTION § 114 (1937).
109. 553 F.2d at 835 n.3.
110. Id. at 835.
111. Id.
112. See, e.g., Demsey & Associates, Inc. v. S.S. Sea Star, 500 F.2d 409, 411 (2d Cir.
mon law and admiralty courts, however, the latter have never enjoyed the full range of the distinctive remedial powers of equity. Yet, other legal remedies analogous to quasi-contract, such as salvage and general average, have long been utilized in admiralty. Indeed, there is evidence that quasi-contractual relief was employed by English admiralty courts over four centuries ago. Whatever doubt had shrouded the competence of modern American admiralty to dispense quasi-contractual relief was dispelled by Justice Douglas twenty-three years ago in Archawski v. Hanioti when he wrote for a unanimous Supreme Court:

Analogous conceptions of rights based on quasi-contract are found in admiralty. One who saves property at sea has the right to an award of salvage, regardless of any agreement between him and the owner . . . . Rights which admiralty recognizes as serving the ends of justice are often indistinguishable from ordinary quasi-contractual

115. See note 27 supra.
116. "General average contribution is defined to be a contribution by all the parties in a sea adventure [in the absence of contract] to make good the loss sustained by one of their number on account of sacrifices voluntarily made of part of the ship or cargo to save the residue and the lives of those on board from an impending peril, or for extraordinary expenses necessarily incurred by one or more of the parties for the general benefit of all the interests embarked in the enterprise." The Star of Hope, 76 U.S. (9 Wall.) 203, 228 (1870).
118. 350 U.S. 532 (1956). Archawski and its companion case in the Second Circuit, Sword Line, Inc. v. United States, 228 F.2d 344 (2d Cir. 1955), aff'd 230 F.2d 75 (2d Cir.), reh. en banc, 230 F.2d 75 (2d Cir.), aff'd per curiam, 351 U.S. 976 (1956), both relied on Krauss Bros. Lumber Co. v. Dimon S.S. Corp., 290 U.S. 117 (1933). In Krauss, the Court held that an action for recovery of a freight charge exceeding the contract rate enforced by a lien against the vessel was properly laid in admiralty. Although the libel read as a cause of action for money had and received—a traditional common law plea—the libelants' remedy could be had in admiralty because "[a]dmiralty is not concerned with the form of the action, but with its substance." 290 U.S. at 124. The substance of the action was a suit on a maritime contract of affreightment, a subject properly within the jurisdiction of admiralty. See generally Morrison, The Remedial Powers of Admiralty, 43 Yale L.J. 1 (1933); Chandler, Quasi Contractual Relief in Admiralty, 27 Mich. L. Rev. 23 (1928).
rights created to prevent unjust enrichment.\textsuperscript{119} 
Taken together, principles of quasi-contract and maintenance and cure enabled the Second Circuit to compel restitution of CANBERRA’s rescue costs.

\textbf{Overseas Progress’ Request}

The holding in \textit{P\&O} appears to turn on OVERSEAS PROGRESS’ request for assistance:

Since vessels such as OVERSEAS PROGRESS are best able to avoid unnecessary costs in obtaining medical aid for their crews, we conclude that the owners of such ships are liable for the reasonable value of services rendered by other vessels \textit{at their request}, regardless of the value of the benefit actually conferred.\textsuperscript{120}

Logically, however, a request would not be necessary to justify CANBERRA’s recovery. It has already been established that the doctrine of maintenance and cure imposes a duty upon the shipowner to aid a seaman who is injured or becomes ill in the service of the vessel.\textsuperscript{121} Similarly, if the vessel is a common carrier, a high standard of care is owed to its passengers.\textsuperscript{122} The principles of restitution relied upon by the court, however, do not require that one providing emergency services in another’s stead do so at the latter’s request; rather, the \textit{Restatement of Restitution} section 114 merely states: “[a] person who has performed the duty of another . . . for a third person . . . although acting without the other’s knowledge or consent, is entitled to restitution . . . if . . . [the] services supplied were immediately necessary to prevent serious bodily harm . . . [to] such person.” It therefore appears that even though OVERSEAS PROGRESS’ request made CANBERRA’s suit more compelling, the request was not legally necessary to the holding. The result in \textit{P\&O} should be applied to rescue situations whether or not the vessel in distress radioed for assistance.

\textbf{Conclusion}

The holding in \textit{P\&O} may provide courts with a way to avoid the hoary admiralty doctrine which denies a salvage award for saving human life. Implicit in the Second Circuit’s reversal of \textit{P\&O} is the notion that the moral recompense for upholding the “finest traditions of the sea” is simply insufficient in modern maritime commerce. Admiralty law reflects the essential nature of seagoing business as it has evolved over centuries, but despite the present vitality of maintenance and cure, both it and the much excoriated doctrine of life salvage pre-

\begin{itemize}
  \item \textsuperscript{119} 350 U.S. at 535-36.
  \item \textsuperscript{120} 553 F.2d at 836 (emphasis added).
  \item \textsuperscript{121} See notes 104-10 & accompanying text \textit{supra}.
  \item \textsuperscript{122} See 2 J. Dooley, \textit{Modern Tort Law} § 27.95 (1977).
\end{itemize}
date the era of radio communication and oil-powered ships. Before the advent of radio, if one ship came upon another in distress on the high seas and salvaged property or life, it was merely a happy accident, the salving vessel suffering no more delay than that required for the service. Historically there was simply no need to reimburse shipowners for extra fuel costs because sail or slave-powered vessels had no such requirements. Radio communication, and the transmission of distress signals over wide areas of ocean make the seafaring life a less dangerous one, but the unavoidable tradeoff is the extra expense of fuel consumption, as in P&O. Although Overseas argued in the trial court and on appeal that a ship with a stricken crew member aboard might be reluctant to seek aid if large expenses could be assessed against it, this contention approaches the question from only one side. If smaller vessels summoned large, hospital-equipped ships expecting the latter to render their services gratis, these larger ships would undoubtedly soon refuse to venture out of their way. Although OVERSEAS PROGRESS presumably could not anticipate bearing the full burden of CANBERRA’s increased fuel consumption, CANBERRA’s relative proximity, speed, and onboard facilities certainly were considered in selecting her assistance over the other vessels answering OVERSEAS PROGRESS’ call. As the court noted, OVERSEAS PROGRESS already had a duty to make reasonable efforts to aid Turpin; its master’s decision to radio for assistance was based on an evaluation of the costs and benefits available to him. Since P&O establishes that the fuel expenses of the ship rendering assistance is one of these costs, it will simply become another factor in the captain’s decision to seek aid or put into port.

As against the intricacies and pitfalls attending a life salvage claim, the remedy of restitution on a quasi-contractual theory now offers the life salvor a previously unobtainable recovery. Restitution does not offer the salvor an award, but the remedy applies to restore expenses where there has been no simultaneous property salvage or no property salvage at all. The measure of the life salvor’s remedy, furthermore, is relatively simple for the court to ascertain. The Second Circuit held that CANBERRA was entitled to the “reasonable value” of its services. Traditionally, one determination of reasonable value

123. But consider that Lloyd’s Register of Shipping reported that the world’s merchant fleets lost 962 ships in 1975, representing almost a million tons. This loss was the second largest amount ever recorded. N.Y. Times, Sept. 30, 1976, at 62, col. 6.
124. 418 F. Supp. at 660; 553 F.2d at 836.
125. 553 F.2d at 834. See note 101 & accompanying text supra. CANBERRA’s rescue in the instant case represented a considerable cost avoided to OVERSEAS PROGRESS, given the latter’s duty to care for its ailing crewmember. See notes 104-110 & accompanying text supra.
126. 553 F.2d at 836.
is the market price for obtaining similar services. In the instant case, however, CANBERRA's assistance was unique inasmuch as no other vessel could have served OVERSEAS PROGRESS as quickly and efficiently as it did. The court, therefore, found "the only possible measure of 'reasonable value' is the reasonable expense incurred by CANBERRA as a result of its assistance to Turpin."127 The action of a rescuing vessel will necessarily be unique, however, because there is no market providing comparable services on the high seas. The "reasonable expense" of any given rescuer ship, furthermore, will vary greatly in relation to its size and speed.128 To calculate a rescuing ship's recovery on the basis of "benefit conferred" would involve too many speculative factors, whereas extra fuel costs represent an expense susceptible of ready calculation. For practical reasons, therefore, the measure of recovery in a life salvage situation, as applied by the Second Circuit, should be the expense attributed to the rescue which reflects the fuel consumed by the vessel's deviation from its original course and its increased speed.

It is in the light of these policy considerations that P&O indicates a new and welcome direction in admiralty law. Allowing vessels to recover their rescue expenses will encourage fully-equipped vessels to perform their moral duty to fellow sailors aboard ships in distress, and to seamen who have fallen ill aboard ships without medical facilities while shifting the financial burden to those with the legal duty to protect the seafarers lives. It will bring the American law of life salvage into step with the twentieth century.

127. 553 F.2d at 836.
128. See note 101 & accompanying text supra.