

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>F/V SAILOR, INC.,</b>	)	
	)	
<b>PLAINTIFF</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL No. 03-261-P-H</b>
	)	
<b>CITY OF ROCKLAND,</b>	)	
	)	
<b>DEFENDANT</b>	)	

**ORDER ON DEFENDANT’S MOTION FOR  
JUDGMENT AS A MATTER OF LAW AND  
MOTION FOR A NEW TRIAL**

The fishing vessel Sailor sank February 16, 2002, while docked at the City of Rockland’s Fish Pier. On September 7, 2004, a jury determined that Rockland’s negligence caused the Sailor to sink and that the owner of the Sailor was not negligent. The jury awarded damages of \$202,088.

Rockland now renews its motion for judgment as a matter of law, moves for a new trial on negligence and comparative negligence, and moves to reduce the damages (remittitur) or for a new trial on damages.<sup>1</sup> Although I might have reached a different result if I had been the factfinder, I conclude that there was sufficient evidence to support the jury’s award. Accordingly, I **DENY** Rockland’s motion for judgment as a matter of law, motion for a new trial and motion for a remittitur or new trial on damages.

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<sup>1</sup> At the close of the plaintiff’s evidence, I granted Rockland’s motion for a judgment as a matter of law on the plaintiff’s breach of contract and joint venture claims because the plaintiff, by its own admission, did not pursue those claims at trial.

## **I. APPLICABLE STANDARDS**

When evaluating a renewed motion for judgment as a matter of law, I review all the evidence in the record but do not weigh the evidence or determine credibility. See Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). I draw all reasonable inferences in favor of the nonmoving party and “disregard all evidence favorable to the moving party that the jury is not required to believe.” Id. at 150-51. I grant the motion only if “the evidence points so strongly and overwhelmingly in favor of the moving party that no reasonably jury could have returned a verdict adverse to that party.” Rivera Castillo v. Autokirey, Inc., 379 F.3d 4, 9 (1st Cir. 2004) (citation omitted).

I grant a motion for a new trial only if the verdict is against the clear weight of the evidence or results in a miscarriage of justice. Foisy v. Royal Maccabees Life Ins. Co., 356 F.3d 141, 146 (1st Cir. 2004).

I upset a jury’s damage award only if “the award exceeds any rational appraisal or estimate of the damages that could be based upon the evidence before [the court].” Wortley v. Camplin, 333 F.3d 284, 297 (1st Cir. 2003) (internal quotation marks and citation omitted).

## **II. FACTUAL BACKGROUND**

The jury could have found the following facts (stated in a light most favorable to the plaintiff). Rockland owned and operated the Rockland Fish Pier (“Fish Pier”) at the time of the sinking in February 2002. Water Street Management (“Water Street”) operated the Fish Pier for Rockland from May 1998 to December 2001 through a lease agreement with Rockland. During

that period, Everard Dodge, who managed the pier for and had an ownership interest in Water Street, alerted Rockland to problems with the pier and specifically mentioned the poor condition of the pilings. During his tenure, Dodge routinely inspected the condition of the pier, repaired pilings and chafe boards and cut off any bolts protruding from the pilings. Rockland assumed operation of the pier in January 2002. Rockland did not continue the inspections and repairs previously performed by Dodge after it began operating the pier. Many pilings were severely worn down, pilings were not replaced, chafe boards were broken or missing and the bolts that affixed them to the pilings were missing, bent over or protruding. Moreover, Rockland failed to provide the berths at the Fish Pier with enough “camels” (large logs with tires attached that serve as fender systems between vessels and the pilings of a pier). There were no camels at all at the “take-out berth,” a temporary location where vessels dock to take out their catch and where the Sailor was moored at the time she sank.

The Sailor docked at the Fish Pier February 9, 2002, then moved into the take-out berth February 12, 2002 in preparation for a voyage. The Sailor’s owner, Gary Hatch,<sup>2</sup> and her captain, Myron Benner, moored the vessel in the take-out berth. Both Hatch and Benner were experienced seafarers familiar with the Fish Pier and the take-out berth. They moored the Sailor according to their usual custom and practice for that berth. Hatch and Benner placed two

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<sup>2</sup> Gary Hatch is the president of F/V Sailor, Inc., the plaintiff in this case. For convenience, I will refer to Hatch as the owner of the Sailor.

polyballs between the vessel and the pier to serve as a cushion between the Sailor and the pilings. They left six feet of slack in the lines to accommodate the high and low tides. Hatch worked on the Sailor at the take-out berth on a daily basis between February 12 and February 15. Hatch last checked the vessel around 9:30 p.m. February 15. Benner also tended to the vessel on February 15. On the evening of February 15 there was a southwest wind of twenty to twenty-five knots. This southwest wind pushed the Sailor into the pier, so Hatch placed an additional bowline on the Sailor to protect the vessel.

A chafe board in the take-out berth split off at some point, exposing a bolt that fastened the chafe board to the piling.<sup>3</sup> The offending bolt was located at the low-tide mark and protruded about two inches from the piling. The exposed bolt pierced the Sailor's hull and caused the vessel to sink at about 3:30 a.m. on February 16, 2002. Hatch's inspection of the chafed area on the Sailor following her sinking indicated that the ship moved about six feet when moored, which Hatch described as within the normal range of movement.

Hatch and Benner noticed the poor condition of the pier and the take-out berth generally, but not the danger that a bolt could become exposed so as to gouge a hole in the Sailor. At the time of her sinking, the Sailor was in seaworthy condition. She had been repaired in October 2001, when rotted or

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<sup>3</sup> The chafe board could have split off either before or while the Sailor was docked at the take-out berth. Hatch stated that he could not testify as to when the chafe board split off and no other witnesses testified as to the timing of its disappearance. One of the defendant's witnesses, Neil Rosen, testified that Hatch told him that the chafe board had been in place before the sinking. Hatch testified that he may have made this statement to Rosen, but that he did not remember whether he did or not. The jury was free to disbelieve Rosen's testimony and credit Hatch's ignorance about the existence of the chafe board.

cracked planks were replaced and oak sheeting was installed to protect and reinforce the hull. Although parts of the hull contained planks softened by marine worms, the nearest infested plank was ten feet from where the bolt punctured the hull.

According to Hatch, the value of the vessel just prior to sinking was at least \$166,000. To replace the Sailor, Hatch borrowed money at an interest rate of 9.375%.

### **III. ANALYSIS**

#### **A. Liability**

Under maritime law, the owner or operator of a wharf (a wharfinger) must exercise reasonable care in determining the wharf's condition and safely maintaining its berths. See Pan Am. Grain Mfg. Co. v. Puerto Rico Ports Auth., 295 F.3d 108, 114 (1st Cir. 2002). If a wharfinger knows or should know of any hidden hazard not reasonably apparent to a vessel owner, the wharfinger must warn the vessel owner or remove the hazard. Id. at 114-15; see Smith v. Burnett, 173 U.S. 430, 435-36 (1899). At the same time, a vessel owner also must exercise ordinary care, and may not carelessly run into danger. Smith, 173 U.S. at 434.

A reasonable jury could find negligence on the part of Rockland and none on the part of the Sailor's owner based on the evidence presented at trial. Rockland argues that if the chafe board was present before the night of the sinking, then Rockland fulfilled its duty because the bolt was not exposed and there was nothing to warn about. Defs.' Mot. for J. as a Matter of Law

Pursuant to Rule 50(B) and Mot. for a New Trial Pursuant to Rule 59, at 8-9 (“Defs.’ Mot.”) (Docket Item 79). But the jury could have concluded that: (1) Rockland should have continued the inspections previously performed by Everard Dodge and should have known, given the dilapidated conditions and the notice received from Everard Dodge about problems with the pilings, that the chafe boards were in such a condition that they could split off as a result of the normal movement of a vessel reasonably moored against them; and (2) Rockland should have fixed this problem or warned the Sailor’s owner because the possibility that the chafe board might split off, leaving, below a vessel’s waterline, a bolt protruding about two inches from the piling, created a hidden hazard not reasonably apparent to the Sailor’s owner.

If, on the other hand, the chafe board was missing even before the night of the sinking, the bolt was already capable of doing damage. The jury then could have concluded that the bolt was a hidden hazard because it was located, according to Hatch’s testimony, at the low-tide mark. The bolt would be concealed by water at any time other than low tide and even at low tide would have been difficult for the Sailor’s owner to see. Given that Rockland was on notice of and should have been inspecting for such problems, the jury could reasonably have found that Rockland was obliged either to remove the bolt or to warn the Sailor’s owner of the danger because the bolt was not readily apparent to the Sailor’s owner.

Rockland argues that the lack of camels in the take-out berth cannot be the basis for a finding of negligence. Defs.’ Mot. at 8. Arguments can certainly

be made in support of Rockland's position that camels are at least a hindrance in a berth designed for loading and unloading. But there was other evidence that other take-out berths used camels, and that camels were used in the Fish Pier's take-out berth at some point prior to 2000. The jury could find that camels would have removed the danger by preventing vessels from docking right up against the chafe board or offending bolt and that it was negligent for Rockland not to have camels in the take-out berth.

The jury could reasonably determine that the Sailor's owner was not negligent by finding that Hatch and Benner appropriately moored the Sailor in the take-out berth and adequately monitored the vessel prior to its sinking. The jury also reasonably could conclude that any hull damage caused by marine worms was minor, and had no relationship to the breach and ultimately fatal damage to the Sailor's hull. (Hatch testified that the damage from marine worms was ten feet away from the where the bolt pierced the hull. Rockland presented contrary testimony but the jury was not required to believe it.)

### ***B. Damages***

Given the ultimate damage award of \$202,088, and accounting for compound prejudgment interest included in the damages award,<sup>4</sup> I conclude

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<sup>4</sup> "Under maritime law, the decision to award prejudgment interest is solely within the province of the jury." Carey v. Bahama Cruise Lines, 864 F.2d 201, 208 n.6 (1st Cir. 1988). I make the reasonable inference in the plaintiff's favor that the jury awarded compound rather than simple interest.

that the jury could have determined the fair market value of the vessel to be around \$169,000.<sup>5</sup> That amount is within the range permitted by the evidence.

At trial, Hatch testified that the Sailor's fair market value prior to the sinking was \$166,000 to \$189,000. Joseph Loblely, Rockland's expert, placed the value of the vessel between \$80,000 and \$100,000. Neil Rosen, another expert witness for Rockland (initially retained by the plaintiff) valued the Sailor prior to sinking at \$120,000. Rockland argues that Hatch's "self-serving testimony" about the fair market value of his vessel "was not credible evidence on which the jury could base a verdict." Defs.' Mot. at 12. But a property owner may testify as to the property's value, even if the owner has an interest in the valuation and outcome of the litigation. See Shane v. Shane, 891 F.2d 976, 982 (1st Cir. 1989) (noting that the plaintiff could testify about the value of his company's stock despite his personal interest in the valuation); see also Neff v. Kehoe, 708 F.2d 639, 644 (11th Cir. 1983) (concluding that the plaintiff should be allowed to testify as to the value of his coin collection at issue in the case). The owner's interest in the valuation and the outcome may raise

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<sup>5</sup> The jury could have arrived at its total damages award, \$202,088, by using the compound interest formula  $A=P(1+r/n)^t$ . In this formula, "A" represents the total amount of the principal plus interest, which here is the damages award (\$202,088); "P" is the principal (whatever the jury found to be the pre-sinking fair market value of the Sailor); "r" is the interest rate (9.375%, the rate at which Hatch borrowed to replace the Sailor. See United States v. Cent. Gulf Lines, Inc., 974 F.2d 621, 631 (5th Cir. 1992) (holding that a district court sitting in admiralty as the trier of fact may look to the cost of borrowing to determine the interest rate on a judgment)); "n" is number of compounding periods per year (I will conservatively presume interest compounding annually); and "t" is the time in years (two years, between the date of the sinking in February 2002 and the date of the verdict in September 2004). Plugging these numbers in and solving for "P" to find the principal, the jury could have determined that the Sailor's fair market value prior to the sinking was around \$168,929.07. This figure is at the low end of Hatch's valuation range of \$166,000 to \$189,000. At simple interest, using the same numbers, the principal amount would be around \$170,179.37, still at the low end of Hatch's valuation.

questions about the accuracy and credibility of the testimony, Shane, 891 F.2d at 982, but such matters are for argument: the jury here could have resolved these questions in the Sailor's favor and rejected Rockland's experts' lower valuations.

My earlier rulings in this case resulted in some confusion at trial over available damages. At the summary judgment stage, I limited the damages to the fair market value of the vessel plus interest. Sailor Inc. F/V v. City of Rockland, 324 F. Supp.2d 197, 202 (D. Me. 2004) ("Sailor I"). I did so based on a determination on the summary judgment record that the Sailor was a constructive total loss, meaning that the cost of repairing the vessel exceeded the vessel's fair market value prior to her sinking. Id. In response to Rockland's motion *in limine*, I excluded any testimony or evidence on damages not relevant to the vessel's fair market value prior to its sinking. F/V Sailor, Inc. v. City of Rockland, 329 F. Supp.2d 176, 178 (D. Me. 2004) ("Sailor II").

At trial, Rockland suggested that these rulings limited recovery to a maximum fair market value of \$180,000, based on the \$150,000 to \$180,000 value range the plaintiff submitted at summary judgment, Sailor I, 324 F. Supp.2d at 198 n.2. I ruled at trial that my summary judgment rulings did not cap the fair market value at \$180,000.<sup>6</sup> I reasoned that my summary judgment ruling conceptually limited the plaintiff's recovery to the fair market

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<sup>6</sup> In my order denying the defendant's motion for a bench trial, I stated, "The plaintiff is reminded that I have already set a ceiling on damages in my Order on Defendant's Motion for Partial Summary Judgment. That is now law of the case." (Docket Item 33). This notation was to remind the plaintiff that damages were limited to the fair market value of the Sailor, and was not meant to indicate that damages were capped at \$180,000 based on my summary judgment order.

value of the vessel (as opposed to including, for example, damages for loss of use or the cost of repairs) but did not establish a number determining what the fair market value of the Sailor was. See id. at 198. This issue and resulting ruling at trial now have no effect given the jury's finding of a fair market value around \$169,000 (well below the cap of \$180,000 Rockland requested).

The jury's determination of fair market value is consistent with my ruling at summary judgment that the vessel was a constructive total loss because the cost of repair, \$187,543, Sailor I, 324 F. Supp.2d at 203, exceeds the Sailor's pre-sinking fair market value of around \$169,000, as found by the jury. Any concerns I had about whether the jury finding of fair market value would exceed the cost of repairs are now moot.

#### **IV. CONCLUSION**

The City of Rockland's renewed motion for a judgment as a matter of law, motion for a new trial and motion for remittitur are **DENIED** because there was sufficient evidence to support the jury's verdict.

**SO ORDERED.**

**DATED THIS 3RD DAY OF JANUARY, 2005**

/s/D. BROCK HORNBY

**D. BROCK HORNBY**  
**UNITED STATES DISTRICT JUDGE**

**U.S. DISTRICT COURT  
DISTRICT OF MAINE (PORTLAND)  
CIVIL DOCKET FOR CASE #: 2:03CV261**

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