

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE COMPLAINT OF  
TRADEWINDS ENVIRONMENTAL  
RESTORATION, INC., AS THE OWNER OF  
A CERTAIN VESSEL FOR EXONERATION  
FROM AND LIMITATION OF LIABILITY

ORDER  
05-CV-0815 (RRM)

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MAUSKOPF, United States District Judge.

Following a bench trial held in this matter, and after considering the evidence and the arguments therein, the petition of Tradewinds Environmental Restoration, Inc. (“Tradewinds” or “Petitioner”) for limitation and exoneration is DENIED. This Court finds based on a preponderance of the credible evidence that the collision between the vessels “Mr. Lucky” and “Sayonara” on July 4, 2004 in the State Boat Channel in and around Zach’s Bay, Long Island, was caused by:

- 1) the negligent operation of “Mr. Lucky” including, but not limited to,
  - a. operation of the vessel without sufficient knowledge of the prevailing regulations for operating in the State Boat Channel, including the speed restrictions in force at the location of the collision;
  - b. operating the vessel in excess of the posted speed restriction at the time of the collision;
  - c. failure to maintain a proper lookout;
  - d. operation of the vessel with a sightline-obscuring raft affixed to the bow;
  - e. failure to take reasonable steps to detect other boaters by utilizing on-board radar, the vessel’s roof-mounted searchlight, and/or a hand-held searchlight; and
- 2) the unseaworthiness of “Mr. Lucky,” caused by
  - a. the installation of a radar dome obscuring the vessel’s all-around white light, which deprived other vessels, including the Sayonara, of valuable visual information to assist in detecting the presence and aspect of “Mr. Lucky” when underway; and

- b. the installation by Arthur Baldwin of sightline-obscuring equipment in the vessel's cabin, including a fathometer, rearview mirror, GPS display, ship-to-shore radio set, and dash-mounted radar display.

The negligent operation of the vessel and these unseaworthy conditions contributed, independently or in combination, to the collision. "Sayonara" was not at fault. Thus, Respondents have met their burden of proving negligence and unseaworthiness on the part of "Mr. Lucky" as a cause of the collision.

This Court further finds, based on a preponderance of the credible evidence presented at trial and on the controlling law, that Petitioner, through its third highest-ranking officer Arthur Baldwin, had privity and knowledge of the conditions that rendered "Mr. Lucky" unseaworthy and caused the collision at issue. The undisputed evidence demonstrates that on the day of the collision, and well before, Arthur Baldwin was well aware of the two conditions that rendered "Mr. Lucky" unseaworthy: Baldwin personally installed the sightline-obscuring cabin equipment, and was knew that the radar dome placement obscured the vessel's all-around white light. In his capacity as Petitioner's Director of Environmental Services, Baldwin commands the company's day-to-day remediation efforts and oversees its vessel fleet. Moreover, when not required for remediation work, "Mr. Lucky" was at Arthur Baldwin's unfettered disposal -- a "perk" accorded to him by Petitioner as a result of his corporate position. Based on the totality of these circumstances, Petitioner had privity and knowledge of the unseaworthiness of "Mr. Lucky."

For all of the foregoing reasons, the petition for exoneration and limitation is DENIED. A more complete written Decision and Order will follow. The parties are Ordered to appear before the undersigned for a status conference on November 6, 2009 at 11:00 a.m. in Courtroom

N6F, Sixth Floor, North Wing, United States Courthouse, 225 Cadman Plaza East, Brooklyn,  
New York.

SO ORDERED.

Dated: Brooklyn, New York  
September 30, 2009

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ROSLYNN R. MAUSKOPF  
United States District Judge