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LONG ISLAND Boating World

sea Trials

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MAN HIT BRIDGE. BRIDGE PAY MAN?



Imagine this. You spend your life savings on a submerged and rotting 70-foot wooden sloop. Picturing it a diamond in the rough, you invest time and money to tidy her up with plans to put her out to charter, carrying passengers for hire. Even before the first charter, disaster strikes.

The dream was complete. It took over one year. The yacht was fully restored. Christened the *Ventura*, she's launched and looking pretty. Now, you're not the only one that understands — the historic boat is truly a treasure for all to appreciate her glorious past. Designed and built in 1920 by the famed Nathaniel Greene Herreshoff for a wealthy businessman, founder of Citibank, the Gatsby-era classic was primarily used as his duck hunting yacht on the North Shore of Long Island. At some point in her illustrious career, the yacht suffered a fire and was abandoned in a Staten Island marina until discovered by sea captain and sailing historian, Patrick Harris. Harris made it his hobby to restore her beauty, a time-consuming and expensive undertaking.

Maiden Voyage

On *Ventura's* maiden voyage to Manhattan to take her elegant berth at North Cove Yacht Harbor in time for the summer charter season, the dream was shattered — literally. It was a clear and sunny fall day a few years ago. The course was set from South Bay Boat Repair on the Patchogue River,

due west to exit Jones Inlet bound for the Battery in New York City. Captain Pat called ahead to the bridges to confirm openings would be made to accommodate *Ventura's* 80-foot-tall wooden mast. He reviewed the Coast Guard's local Notice to Mariners as well, which revealed nothing of concern along the route and no restrictions in bridge operation or openings. The voyage was uneventful until the approach to the Goose Creek Bridge in Nassau County.

Hazard to Navigation

The Goose Creek Bridge operator did not respond to Harris' numerous VHF radio calls. Harris was about to turn the wheel hard over to abort the transit when he noticed men in hard hats working on the bridge, gesturing him to bring her through. The bascule drawspans slowly began to open. Harris steadied the big wheel on the heavy sloop and motored *Ventura* toward the bridge. By the time he noticed that only one drawspan was lifting and that large construction scaffolding was blocking a good portion of the opening, it was too late to turn away. The strong, fair current at the stern of *Ventura* was pushing the boat in the direction of the bridge . . . the only hope was to thread the needle. *Ventura* was almost through, when the backstay of the mast caught in the teeth of the bridge span that did not open fully and was actually being lowered before *Ventura* cleared the span.

Like a bow and arrow, the *Ventura* was propelled backwards and out of control. The proud spruce mast cracked in half and the mahogany and teak decking buckled as the hull smashed into scaffolding and pilings. The cabin skylights shattered on impact.

As it turned out, a construction company and electricians were working on the bridge. Thus, radio telephone communications were out, both bridge spans could not be raised simultaneously, and construction scaffolding narrowed the horizontal clearance for transits. The damage estimate exceeded \$100,000. That was tragic enough, but Harris couldn't help but cry upon realizing that he bound his marine insurance policy to take effect upon arrival at North Cove. Whoops! Big damage, no insurance, bad decision.

Liability for an "Allision"

Harris called an attorney, non-marine type. Attorney requests a retainer fee and "all the documents," and says "I'll give you my opinion in a couple of weeks after I look over the documents and read the law." Harris hung up and thought to himself, *what's he talking about, there's no documents . . . I hit a bridge, and I can't afford a retainer.* Having read one of my articles, Harris next calls me. I give it to him straight. In admiralty >

law, when a moving vessel, like *Ventura*, strikes a stationary object, like a bridge — an "allision" as it's called — the vessel owner is presumed to be at fault, so it doesn't look good for you. Pat's response. Your hired. Whether my retention had to do with my quick report of bad news without the need to look at documents nor research the law, or the fact that I didn't request a retainer fee, I'll never know. In any event, if you had to allide with a bridge that day, this was the bridge to hit.

Navigation is the Paramount Right

Federal law states that "no bridge...shall at any time unreasonably obstruct the free navigation of the waters over which it is constructed." The United States Code requires that navigation under a bridge must be reasonably free, easy, and unobstructed. Also, federal law provides that if the bridge is constructed with a draw, the draw shall be opened promptly by the persons owning or operating the bridge upon reasonable signal for the passage of boats and other watercraft. Similarly, the code of federal regulations contains a provision, 33 CFR Section 117.5 entitled "When the draw shall open" which reads "drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with this subpart." The law requires owners of drawbridges to ensure that the necessary drawtenders are provided for the safe and prompt opening of the draw and that the operating machinery is maintained in a serviceable condition. (Section 117.7)

Thus, a vessel owner has a right to assume a bridge will be timely and fully opened for passage. This law stems from the paramount right of navigation and commerce upon navigable waters of the United States. Indeed, courts have held that the right to navigate a waterway is paramount to the right to maintain a bridge across it. Therefore, a bridge must be so constructed and maintained that it may be readily opened to admit the passage of vessels.

What a Country

So, while there was a "presumption of fault" operating against *Ventura*, a big hurdle, the presumption may be overcome if it could be demonstrated that the bridge was at fault for the allision, not *Ventura*. No easy task. While we could not prove the bridge "hit" the *Ventura*, it took less than four months, without litigation, to convince the bridge owner and contractors that the bridge was a hazard to navigation. The bridge was not in compliance with federal law and failed to open promptly and fully upon request. The bridge had no means for signaling and communicating with vessels that day. None of these restrictions or obstructions were reported in the Notice to Mariners. In effect, the bridge became an impediment to navigation. We established violations of these statutory duties.

Captain Pat was back in the money, recovering 100 percent of his damages including a new spruce mast from Canada, the only place he could find a tree that tall. When I informed Captain Pat of the quick settlement, he cried again, this time with glee, and in an instant replied in words I will never forget. "What a country, man hit bridge, bridge pay man!" He was grateful, of course, and funny thing is, he has never since called me anything but "Aqualaw."

The stately *Ventura* can be seen at www.sailnewyork.com <<http://www.sailnewyork.com>>. And, speaking of grateful, if you ever venture aboard *Ventura* at North Cove Yacht Harbor, ask Captain Pat to show you the bronze plaque at the base of the mast dedicated to "Mastus Erectus - Aqualaw." He tells me there is a similar plaque in the wheelhouse of his other boat, *Jubilee*, docked at The Oar restaurant in Patchogue, Long Island which reportedly reads. "This vessel is protected by Aqualaw."

Nonetheless, whenever I hear from Captain Pat, I have him confirm, fully and promptly, that his marine insurance policy is in force!

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