



## PERSPECTIVE

# Lost Ship Resurfaces In New York Documents

BY JAMES E. MERCANTE



SS Edmund Fitzgerald

NOAA

**T**his November will mark the 31st anniversary of one of the most tragic and legendary disasters in American maritime history.

On Nov. 10, 1975, the Great Lakes freighter, S.S. Edmund Fitzgerald, on a voyage from Superior, Wisconsin to Detroit, Michigan, with a full cargo of iron ore, encountered a violent storm of hurricane proportions.

At approximately 7:15 p.m., she took on a heavy list and rapidly sank to the bottom of Lake Superior without transmitting a distress call or launching the lifeboats. The entire 29-man crew perished. The Edmund Fitzgerald itself, its equipment and cargo, together with all personal effects, became a total loss. None of the crew were found.

*"Superior," they said, "never gives up her dead when the skies of November come early."*

It is believed the crew stayed off the deck and took cover inside the cabin because the captain's last late afternoon report stated that the ship "had a bad list, had lost both radars, and was taking heavy seas over the deck in one of the worst seas I have ever been in."

During testimony before a U.S. Coast Guard Board of Inquiry, the captain of a nearby Swedish vessel testified that the Fitzgerald disappeared suddenly from its radar.

*"The captain wired in he had water comin' in and the good ship and crew was in peril. And later that night when his lights went outta sight came the wreck of the Edmund Fitzgerald."*

The entire ship and crew were lost forever, but memories of the aftermath have recently surfaced in New York. The claim for total loss of the ship was paid by the hull underwriters. Loss of life claims were filed against the vessel owner in various state and federal courts in the Great Lakes region, claiming negligence of the Master and unseaworthiness of the ship. The vessel owner responded on Dec. 1, 1975, by filing a petition in federal court in Cleveland, Ohio, seeking exoneration from liability, or limitation of liability to the vessel's post-casualty value under admiralty law.<sup>1</sup> The post-casualty value was nil. Pursuant to admiralty law, this filing also enjoined all actions against the vessel owner except in the limitation proceeding.<sup>2</sup>

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The sinking was unexplained, but many theories were suggested over the years. Invoking maritime laws, the families reportedly claimed the vessel was "unseaworthy" when she set sail because it was overloaded with iron ore, and the tank tops were not watertight, allowing sea water to enter the cargo holds and saturate the cargo. The families of the seamen also sued the employer in negligence under the Jones Act.<sup>3</sup> They alleged that the captain, while trying to steer the ship to a safe haven, entered a shallow area of the lake where the ship slammed the bottom due to huge wave action and cracked in two. On the other hand, the vessel owner, invoking the Act of God defense, argued it was not liable because the ship was completely overcome by hurricane force winds and seas.<sup>4</sup>

Although the casualty occurred in the Great Lakes, there were extensive connections with New York. The admiralty firm that represented the insurer of the cargo to pursue a subrogation action against the ship owner was a prominent New York firm that recently shut its own hatches for good as well. Also, in New York, the death claims were negotiated and settled out of court by the vessel owner's Protection and Indemnity ("P&I") insurer by the New York insurance broker, Johnson & Higgins. And, recently, the Edmund Fitzgerald file resurfaced right here in New York.

The shipowner's insurance broker, Johnson & Higgins, was acquired by another large broker Marsh and McClennan, now Marsh Inc. This acquisition required Johnson & Higgins to move out of its downtown offices to midtown Manhattan. While dumpsters were being filled with decades-old marine claim files, Tom Connelly, an alert Johnson & Higgins claims manager spotted a claim file laying on top of the pile like an inadvertently discarded tombstone waiting to be dusted off and resurrected. The pages were tarnished yellow, with edges frayed from age. Curious, he took a closer look and noticed the bold lettering of the famous ship coming into focus as if through pair of binoculars. The description on the file folder was gravely stark in its brevity. It said only this:

**VESSEL: EDMUND FITZGERALD**  
**CLIENT: OGLEBAY NORTON COMPANY**  
**DATE AND NATURE OF ACCIDENT: NOVEMBER 10, 1975. SINKING**

The fascinating story of this exhumed treasure was retold by the claims manager and the file was steered in my direction to read the final chapters of this ill-fated ship. Interestingly, the file, meticulously maintained, even included the words to the song that Gordon Lightfoot dedicated to the families: "The Wreck of the Edmund Fitzgerald" (quoted in italics herein). The claims adjuster had settled all 29 death claims, without knowing that the sinking of the Edmund Fitzgerald would become a legend in both the maritime and music industries.

Despite an extensive U.S. Coast Guard investigation and exploration of the wreck by a remotely operated vehicle, the cause of the sinking has never been fully understood. The wreck and her crew remain in the ship's final resting place deep in Lake Superior.

And now when I hear the first line of the Edmund Fitzgerald song—"The legend lives on from the Chippewa on down"—, I appreciate that New York is part of the doomed ship's tale as well.

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1. 46 U.S.C. §183 et seq.; see also *Ocean Steam Navigation Co., Ltd., as owner of the Steamship TITANIC*, 233 U.S. 718, 1998 AMC 2699 (1914).

2. See Rule F(3), Federal Rules of Civil Procedure, Supplemental Rules for Certain Admiralty and Maritime Claims.

3. 46 U.S.C. §688.

4. See *Skandia Ins. Co. v. Star Shipping*, 173 F. Supp.2d 1228, 201 A.M.C. 1527 (S.D.Ala. 2001); see also *Mercante, Hurricanes and Act of God: When the Best Defense Is a Good Offense*, 18 U.S.F. Mar. L.J. 1 (2005-06).

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