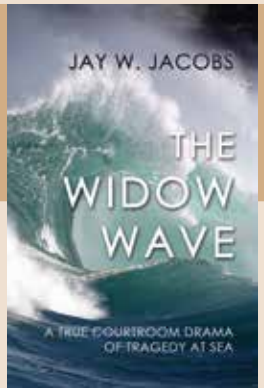
The Widow Wave



By Jay W. Jacobs, published by Quid Pro Books (2014), 278 pages, hardcover ($32.99), softcover ($17.99), ebook ($7.99)
http://www.thewidowwave.com

Reviewed by Paul Andrew Kettunen

Jay Jacobs, a California attorney concentrating in maritime law, has written a captivating tale of his experience as defense attorney representing the estate of the owner of a recreational boat, the ALOHA, which disappeared at sea in 1984 after departing San Francisco Bay, with the loss of all aboard.

The ALOHA was a 34-foot cabin cruiser used for recreational and fishing excursions by owner Francis Dowd, a senior executive at Raytheon Corp. Dowd had extensive boating experience, including four years in the Navy, reaching the rank of sonarman first class.

A fishing trip was arranged for the morning of March 9, 1984, with a crew of five: Dowd, his son, his brother-in-law, a fellow executive at Raytheon, and Andy Ang, a friend of Dowd and a Manila businessman whose company provided Raytheon with management services for its manufacturing operations in the Philippines.

The ALOHA left her berth in Sausalito in the early morning of March 9. There is a major discrepancy as to the time the vessel departed: either 6:30 a.m., as stated by Dowd's wife to the Coast Guard and recorded in its report the night of the incident; or approximately 7:40 a.m., as she asserted in her answers to interrogatories. Jacobs indicates that the latter statement was provided to him in error when Mrs. Dowd submitted her draft answers, and he severely chastises himself for not correcting this error before the interrogatories were served.[1] This time discrepancy presents one of the chief evidentiary issues affecting the outcome of the case.

Dowd and his crew were heading for Duxbury Reef. Located off the Marin County coast, the reef is traditionally favored by Bay Area fishermen for its abundance of salmon. After leaving San Francisco Bay and passing under the Golden Gate Bridge, there are two routes to reach Duxbury Reef—one keeps closer to the coast through the Bonita Channel, while the other, much longer route heads west for several miles into open sea through the main shipping channel and then veers north. Although the route through the Bonita Channel is the most direct, this hourglass-shaped channel passes between the relatively shallow waters of the Four Fathom Bank and the Marin headlands, which can become extremely treacherous in poor weather.

Although 15 to 20 fishing boats headed for Duxbury Reef via the main shipping channel the morning of the incident, none observed the ALOHA, leading to a strong presumption that Dowd chose the shorter route through the Bonita Channel. At 8 a.m., the National Weather Service forecast was "radically changed" from overcast conditions with moderate swells to small craft warnings with dangerous seas. If the ALOHA had departed Sausalito at 7:40 a.m., as presented in the interrogatory answers, and not 6:30 a.m., as stated in the Coast Guard report, the cruiser would have been within the safety of San Francisco Bay at the time the small-craft advisories were issued, and venturing into Bonita Channel under those circumstances would constitute a clear act of negligence on Dowd's part.

Sometime after leaving Sausalito, the ALOHA disappeared. Dowd's body (he was not wearing a life jacket) was discovered in San Francisco Bay a month later. The vessel and the bodies of the other crew members were never recovered. Although the U.S. Coast Guard's investigation report made no determination as to the seaworthiness of the ALOHA or the competency of its crew, it also did not establish what caused the vessel to go down. The report simply concluded that it "had capsized."

One day before the statute of limitations expired, a maritime wrongful death lawsuit was filed against Dowd on behalf of Jane Ang, Andy Ang's widow, and her five children, alleging negligence of Dowd as owner and operator of the ALOHA and unseaworthiness of the vessel.

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One concern Jacobs expresses early in the book is whether the burden-shifting principal articulated in the case of *In re Marine Sulphur Queen*[2] might be invoked. The principal states that when a vessel disappears in expectable weather conditions under otherwise unknown circumstances, proof by the plaintiff of some element of unseaworthiness—it was alleged that the vessel was not fitted with the proper radar and communications equipment—permits the trier of fact to infer that unseaworthiness was the proximate cause of the loss. Although its application in this case is questionable since it normally requires the disappearance of a vessel in sea conditions in which a seaworthy vessel would not be expected to capsize, it hovers throughout the tale like the sword of Damocles and adds a degree of tension to the story.

During one of his early meetings with Dowd's wife, Jacobs discusses the strengths and weaknesses of the case and the possibility of settlement. Mrs. Dowd reacts unfavorably to the idea of settlement, telling Jacobs, "My husband was not a perfect man…but he was never careless…and never negligent…ever." The sincerity and resoluteness of her words had a tremendous effect on Jacobs: "She spoke in a tone…making it abundantly clear that her words were to be taken as a statement of fact." These words "threw down the gauntlet for her husband's honor" and become the constant, underlying theme of the story. In times of doubt during the trial, Jacobs recalls the sincerity and determination of these words, regains his confidence, and pushes on. And push on he does, in grand fashion.

After discovery is completed, a settlement conference is scheduled. Under the facts and circumstances of this case, most litigation attorneys would recommend that their client take the prudent course of at least exploring the possibility of settlement. There are indications that the plaintiff would accept the policy limits of $1.1 million which, considering this was a maritime wrongful death case, would likely be surpassed should a plaintiff's verdict be rendered. To the dismay of the settlement judge and the surprise of plaintiff's counsel, however, Jacobs flatly declines to enter into settlement negotiations, instead conveying his client's wish to try the case to its conclusion and clear her husband's name.

Further adding to the emotional tension created by the decision to forego settlement and try the case is the *David v Goliath* aspect of the tale: Martin Baum, the plaintiff's lead attorney, is a prominent member of the San Francisco plaintiff's bar with a reputation for winning multimillion-dollar suits. Jacobs only learns that Baum would try the case after the final pretrial settlement conference when he refuses to enter into settlement negotiations. While Jacobs has become a successful lawyer in his own right, at the time he was unable to point to such prominence or trial successes, and by his own admission was overwhelmed at the prospect of doing battle with the highly skilled Baum.

Jacobs' book is a thrilling, detailed account of the trial. This is certainly a great read for attorneys involved in civil litigation, maritime or otherwise. But the book easily reaches beyond this limited audience to readers of all stripes: those who enjoy sea tales, mysteries, and human-interest stories focusing on an individual's determination not to bend in the face of battle, but to fight the honorable fight. I highly recommend this absorbing and entertaining book.

Congratulations to Jacobs and Mrs. Dowd on a job well done in defending the honor and integrity of the late Mr. Dowd. ■

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ENDNOTES

1. The interrogatory asked what time Mr. Dowd left his home for the marina in Sausalito on the morning of the incident, to which she answered 6:30 a.m. This would put departure from port in Sausalito at approximately 7:40 a.m., since the drive from their home to Sausalito was about one hour, and an additional 10 minutes would be expended in transferring gear to the vessel and warming up her engines. Apparently, Mrs. Dowd misunderstood the interrogatory to be asking the time of departure from port in Sausalito, and she provided the same time she had provided to the Coast Guard, 6:30 a.m.
2. *In re Marine Sulphur Queen*, 460 F2d 89 (CA 2, 1972).

SBM MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-month intervals on January and July of each year, from when the complaint was filed, and is compounded annually.

For a complaint filed after December 31, 1986, the rate as of January 1, 2015 is 2.678 percent. This rate includes the statutory 1 percent.

But a different rule applies for a complaint filed after June 30, 2002 that is based on a written instrument with its own specified interest rate. The rate is the lesser of:

(1) 13 percent a year, compounded annually; or
(2) the specified rate, if it is fixed—or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/interest.pdf.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.