

GCMANews

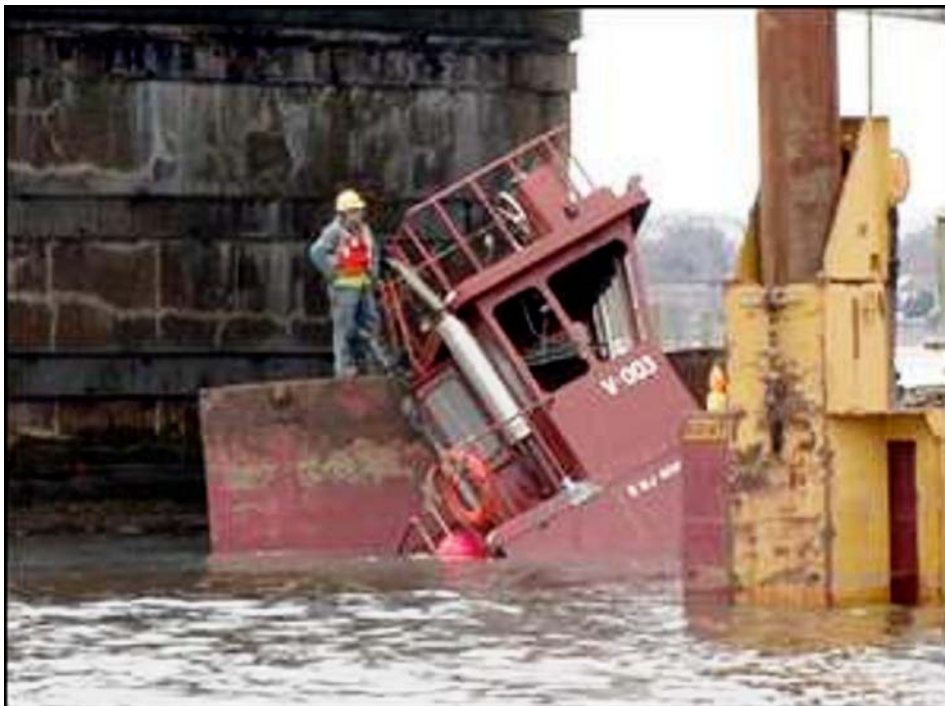
The Voice for Mariners

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INSIDE THIS ISSUE

1	Should Coast Guard Regulate Merchant Mariners?
3	USCG Dishonors Mariners
5	Reader Comment: Dump the Coast Guard
6	USCG Performance is a Paradox
6	Book Review
7	Licensing SOS
8	Admiral's Homework Assignment
11	Sea Service Letters
12	Travel Time is "On Duty"
13	Trash Barge Flips Small Towboat
14	Another Barge Crane Accident
14	USCG: Tell Congress You Screwed Up
16	Sleep Aid Accidents
16	Mariner Sentenced
17	TWIC – Sand Slows Progress
17	New USCG Mariner Website
18	Mariner Consultation Services, LLC
18	New & Revised GCMAR Reports
19	Cutting Deals
19	Updated GCMAR Brown List



**Loaded Trash Barge Flips 25-foot Towboat Drowning Deckhand.
Article on Page 14**

SHOULD THE COAST GUARD CONTINUE TO REGULATE MERCHANT MARINERS?

By Richard A. Block

It started out as a temporary wartime measure in World War II, but on July 16, 1946 the Bureau of Marine Inspection and Navigation was permanently transferred to the Coast Guard. After sixty-one years, however, many of our mariners believe that enough is enough and that it time for Congress to cut the Coast Guard loose and for the Merchant Marine to set a new course. Our complaints have fallen on deaf ears and blind eyes in the Coast Guard hierarchy. The time has come to cut trim the agency of useless, incompetent, and inattentive officers and put the U.S. Merchant Marine in the hands of capable and competent maritime professionals.

We believe the time is ripe for change. Recently, we received a copy of two lawsuits¹ filed in the Federal District Court for the Eastern District of Louisiana on March 30 and April 4, 2007. Since it is now June, that fact makes this article old news.² [U.S. District Court, Eastern District of Louisiana, Civil Action #07-1536. and) Civil Action #07-1497.]

“The whole fish is rotten from head to tail”

In reading any lawsuit, you always must presume the Defendants are innocent until proven guilty. Justice, if it really exists, will come as a result of a trial that lies at some date far in the future. Of course, that is the same assumption that our mariners should be able to expect in their treatment from any agency of our government including the Coast Guard.

Surprisingly, I learned of the existence of one lawsuit from one of the defendants in mid-April in a meeting at the Marine Safety Unit in Morgan City while in pursuit of justice accompanied by one of our mariners at that office. That visit piqued my interest, and I gained further insight about the underlying case in the following weeks. The defendants in the lawsuits include the Commandant and the Vice Commandant of the Coast Guard in their official capacities as well as the Chief Administrative Law Judge individually and in his official capacity along with the Chief of the Administrative Law Judge Docketing Center in Baltimore and four other lesser Coast Guard officials.

Is This Just Another National Scandal?

As discussed in recent GCMA Newsletters, I believe the Coast Guard may have another and extremely serious problem on its hands that demonstrates how far this agency has drifted off course in recent years. It comes as a terrible disappointment to members of the public who have been led to believe the Coast Guard as a public agency, always tries to be even-handed and above board in its dealings with the public and with over 200,000 merchant mariners Congress entrusts them to superintend. But this disappointment is tempered by the realism of the condescending treatment our mariners in this and predecessor organizations received at the hands of Coast Guard officials for many years. However, this scandal could directly affect many of our merchant mariners and others who may have been driven out of the merchant marine.

Some of the Coast Guard's other and recently exposed shortcomings aired on a national CBS 60-Minutes television broadcast by Steve Kroft on Sunday May 20th and include:

- The new National Security Cutter is \$250,000,000 wildly over budget and its entire Deepwater Program in tatters and in complete disarray. This fiasco did not happen overnight!
- The failed scheme to lengthen eight battered and badly wasted 110-foot patrol boats to 123 feet that turned into an engineering fiasco wasted another \$64,000,000 and resulted in scrapping of eight of the old but already-lengthened patrol boats. Plans to lengthen an additional 41 of these junkers was also scrapped.
- Another \$38,000,000 was wasted in an attempt to develop a fast response cutter using unproven composite hull materials.
- The failed merchant marine personnel programs at the National Maritime Center and the 17 Regional Exam Centers that succeeded in driving thousands of mariners out of the industry that we previously pointed out in GCMA Report R-428-D, Report to the 110th Congress: Substandard Coast Guard Merchant Marine Personnel Services on our website.
- The problems in investigations including the problems uncovered and probed in the attached lawsuit. (Refer to

GCMA Reports from the entire #R-429 series also available on our website.)

Focus on the Problem

To save printing 126 pages from the two lawsuits, which are expected to grow both in number and in size as additional filings take place, I focused on item 57 in one of the lawsuits and this sentence that described a meeting held in Baltimore between Chief Administrative Law Judge Joseph Ingolia and his subordinate, Judge Jeffie J. Massey:

At that meeting, defendant Ingolia informed Judge Massey of his unwritten policy that USCG ALJs are to always rule for the USCG in S&R (Suspension and Revocation) cases; and, that if there is no possible way for to rule for the Coast Guard, then and only then can a USCG ALJ rule against the USCG in an S&R case; but in accordance with Defendant Ingolia's aforesaid unwritten policy a ruling unfavorable to the USCG must be made in an apologetic manner. [Emphasis is ours.]

Where there is smoke, there also may be fire. Although all of the facts are not in yet, this fire has generated more than smoke. It already has left a pervasive stench that reaches from Baltimore to Washington and even to far-off Morgan City, Louisiana. That fire is spreading.

Why Must the Coast Guard Win at Any Cost?

The cost as in these two lawsuits is borne by any mariner who is unfortunate enough to have a problem that possibly could lead to suspension or revocation of his/her license or merchant mariner document (MMD). Such a prosecution will interrupt or more likely end his or her career in the merchant marine. This includes strong-arm tactics by Investigation Officers to ensure a settlement agreement in lieu of formal hearings that also must be approved by an Administrative Law Judge. I believe this unwritten policy to win at any cost may have enhanced the Coast Guard's win record against all mariners at all investigative levels.

There is no telling how long this unwritten policy has been in effect and how long it has been carried out by the Chief ALJ's docile subordinate judges, but Chief ALJ Ingolia has been on the bench for the past decade! Unfortunately, for the Coast Guard and fortunately for our mariners, Judge Massey proved she was not willing to play his game and courageously came forward and exposed some of the major players.

Regrettably, corruption at this level apparently is endemic in the Coast Guard and was in place even before Chief ALJ Ingolia came to office. Former Chief ALJ Chatterton was allowed to retire after travel fund abuses were revealed by former Administrative Law Judge Rosemary Denson. Judge Denson spoke with me at length and provided documentation of that incident when I was editor of the National Association of Maritime Educators Newsletter. Her story appeared in NAME Newsletter #57, June 1996. It was ignored, and Judge Denson was driven from the bench ten years ago by the old boy network. Her story also appears on the internet in GCMA Report #R-396 and again ignored by the Coast Guard although in plain public view. The Coast Guard has been able to maintain an aura of respectability because of outstanding work performed by many of its officers and enlisted men in areas like search and rescue and drug interdiction far removed from investigations. However, the Coast Guard also has a

dark side that has been hidden from the public view for far too long and investigations has a well documented and sorry history as related in GCMA Report #R-429-A, Rev 1. U.S. Coast Guard Marine Casualty Investigations and Reporting: Analysis and Recommendations for Improvement and GCMA Report #R-429-B, Rev. 1. Report of the USCG Quality Action Team on Marine Safety Investigations.

“Power tends to corrupt; absolute power corrupts absolutely.” – (Lord Acton, 1887)

Unfortunately, granting the Coast Guard’s Administrative Law System such absolute power over the lives of our mariners appears to have led to absolute corruption within the system. We can only ask these pertinent questions and wait for answers that may never come:

- **What action will the Commandant take, especially since he is a party to the lawsuit?**
- **How soon will he take action?** (*He has known about it for well over a month!*)
- **How many cases that were previously decided will have to be re-opened?**
- **How many mariners’ careers were interrupted or destroyed when they were denied “due process.”**
- **Can the Coast Guard remedy the situation alone, and if not, who will clean up the mess and when?**
- **Should Congress still allow the Coast Guard to superintend the U.S. Merchant Marine or should they assign his task to another agency?**
- **How deeply are others in Coast Guard “management”**

involved in secret meetings and ex parte communications that will be exposed by these and subsequent lawsuits?

Answering the Questions

If even some of the facts alleged in the lawsuits are true, it means that Coast Guard management has become fouled with self-aggrandizing corruption ó and that has gone on for some time! It may mean that every proceeding before a Coast Guard Administrative Law Judge for at least the last dozen years must be thrown out or have its transcript reviewed and be thoroughly reinvestigated by an independent third party. This can also extend to settlement agreements wrung from indigent mariners who could not afford a maritime attorney to protect their license, MMD, and ultimately their means of making a living. Does this level of corruption disqualify the Coast Guard from its role in õ superintendence over the merchant marine of the United States and of merchant marine personnel^õ as required by 46 U.S. Code 2103?

We can only hope that Congress will promptly attend to necessary changes because we seriously doubt that it would be appropriate for the Coast Guard to attempt to remedy this situation without immediately seeking Congressional guidance.

What is clear is that this situation must not be allowed to continue without an immediate official investigation! On May 31, 2005 Judge Jeffie J. Massey asked for an õindependent investigation^õ of the entire affair.⁽¹⁾ I believe that request, although purposely ignored by her superiors in the Coast Guard for two whole years, is long overdue, and should be provided with Congressional oversight. [⁽¹⁾*On page 78 (exhibit 8)*].

THE COAST GUARD’S “SMALL PEOPLE WITH LARGE POWER SYNDROME” DISHONORS OUR MARINERS

By Richard A. Block

Tampering With Justice

The events leading up to as many as three lawsuits alleging wrongdoing on the part of Coast Guard Administrative Law Judges and other civilian and military employees has had a serious effect on our mariners for many years. Unless swift action is taken, unfolding revelations will continue to adversely affect the retention of our õlower-level^õ mariners in the U.S. Merchant Marine in the future.

Our Association has been powerless to do much more than to follow along and pick up the pieces of shattered lives and careers and offer comments on them in our publications and on our website. The Coast Guard studiously ignored well founded mariner complaints for years ó long before GCMA was founded in April 1999.

Unfortunately, Chief Administrative Law Judge Ingolia’s õunwritten policy^õ denied due process to many innocent mariners specifically including mariners like our Captain Greg Periman, Captain Gary Robertson, õCaptain Ken^õ and others whose cases percolated through our newsletters since 2000. The most egregious examples appear ó and will continue to appear ó in GCMA Report #R-315-C that was recently revised and sent to Congress.

GCMA reported corruption within the towing and offshore oil industry to deaf ears and blind eyes within the Coast Guard starting with our widely circulated õYellow Book^õ titled Mariners Speak Out on Violation of the 12-Hour Work Day in 2000 (GCMA Report #R-201) which the Coast Guard, and most specifically Rear Admiral Paul Pluta, pointedly ignored and

conveniently hid under the rug.

Personnel problems nagging the merchant marine have not gone away while the Admiral and other senior Coast Guard officers sidestepped them and slipped away into a comfortable, taxpayer-financed retirement leaving increasingly disgruntled mariners in their wake.

GCMA Attends and Reviews ALJ Hearings

I have attended hearings conducted before various Administrative Law Judges in New Orleans, Houma, Morgan City and Lafayette, Louisiana including several of the cases mentioned in three of the current lawsuits. GCMA also followed carefully an ALJ hearing on the Illinois River in GCMA Report #R-399, Danger on the Illinois Waterway: Towboat Pilot Loses License After he Accepts High Risk Assignment where the Coast Guard ó as usual ó was determined to õwin at any cost.^õ Although the Coast Guard prevailed and succeeded in suspending the mariner’s license to mollify the complaints of angry and inconvenienced local citizens, they pointedly refused to ban what their own investigators had previously described as an unsafe industry practice of pushing fifteen loaded barges through a severely confined waterway in the center of downtown Joliet, Illinois. In this case, the Coast Guard’s failure to enforce reasonable tow size led to the disabling of a major urban drawbridge in downtown Joliet, a city of 145,000 people, for over six months by õblaming the mariner^õ for the accident.

The Eighth Coast Guard District also failed to enforce reasonable tow size on the main stem of the Lower Mississippi River as well as on the Port Allen Route while bending to the will and greed of major corporations and totally ignoring the advice of our experienced mariners as reported in GCMA Report #R-340, Rev. 8, Oversize and Overloaded Tows Cause Safety Problems.

While the local or even District Coast Guard can be õbought off^õ or flattered, the U.S. Circuit Court of Appeal in Chicago

apparently could recognize a lie when they heard it from the mouth of an attorney for a major corporation and came out on the side of our mariners in the ARTCO-Six case.

I am confident that GCMA Attorney J. Mac Morgan's allegations against the corruption in the Coast Guard establishment have a solid base in fact and will withstand scrutiny in the months ahead. One of Mac's most potent tools is that he is also a licensed towing vessel Master with heavy towing experience. He has little time for fools masquerading as experts but lacking experience or knowledge. Our Association respects and appreciates his leadership and will do our best to keep our mariners informed as the cases move toward trial in New Orleans.

GCMA Report #R-315-C

GCMA publicized a number of ALJ cases for the record in GCMA Report #R-315-C and in GCMA Newsletters. In the Captain Ken case (i.e., Case #3), Ken was dragged before former ALJ Archie Boggs (also prominently mentioned in one lawsuit) on three separate occasions after LCDR Andy Norris of MSO New Orleans demonstrated his tenacity to win the Coast Guard's case at any cost by beating-up on Captain Ken. Captain Ken ended up in a virtual state of nervous collapse by the end of the third session with all of the resources of the Coast Guard fully arrayed with the clear intent to strip him of his license in a completely bogus case. However, through the efforts of his attorney, Captain Robert Landsen,⁽¹⁾ an unlimited master mariner and attorney, Captain Ken was **not** convicted of a false refusal to test drug charge concocted by his disgruntled and thoroughly disreputable former employer. [⁽¹⁾Refer to cover story and picture in GCMA Newsletter #42.]

Ken's legal bills reached \$10,000. Since the Coast Guard lost the case, his GCMA-attorney Captain Robert Landsen attempted to recoup these fees under provisions of the Equal Access to Justice Act as did Captain Greg Periman in an earlier case represented by GCMA Attorney J. Mac Morgan. However, the Coast Guard summarily denied both applications. These denials for reimbursement of legitimate attorneys' fees appear to be just another part of the Coast Guard's game plan to break our mariners' spirits as well as their finances in their effort to prevail at any cost. Unfortunately for our mariners, the Coast Guard's game plan has been devastatingly successful.

The Coast Guard "Owns" The Justice System

The Coast Guard owns the ALJ system if they make and enforce the rules and regulations, they pay the salaries of the judges who render the judgment, and they administer the punishment to our mariners. Although the rules allow a respondent to be represented by a professional counsel, there is little purpose in doing so if the Chief ALJ's unwritten policy means that the mariner's attorney can only run up expenses but will ultimately lose the case. The fix is in for the Coast Guard to win at all costs and to admit nothing if it happens to lose.

In our Newsletter and in GCMA Report #R-342, Rev.5. License Defense Insurance; Income Protection Insurance and Civil Legal Defense, we preach the need for our mariners to share the risk by protecting themselves with the best legal representation money can buy in advance. Since appearances before an ALJ will cost a mariner a minimum of \$5,000 for legal representation, that alone makes it virtually impossible for many mariners, who like many other working Americans often live from paycheck to paycheck, to obtain legal representation.

Now we see this admission from the Chief ALJ that comes to light: "if when respondents have lawyers, it creates problems for the IOs" as quoted from Exhibit 4 in the lawsuit. Consequently, a Coast Guard hearing is nothing more than a minefield and mariner's best defense, even at the settlement

agreement stage is to have the services of a knowledgeable attorney who knows how the Coast Guard's justice system really works.

The mariner usually is presented with a convenient alternative to a formal appearance before an Administrative Law Judge. Coast Guard Investigating Officers (IOs) are minor functionaries who chase after and try to entice wayward mariners with so-called settlement agreements (plea bargains). These settlement agreements are as we found in the case of veteran towboat Captain [redacted] and reported in our Newsletter #39, cost him over \$13,000 in lost wages for a one-month suspension. The accident he was involved in, that most likely was not his fault, caused only \$5,000 damage.

The investigating officer in this case had just completed a three-week investigation course and had absolutely no towing experience whereas Captain [redacted] had spent his entire life on the water! She gave Captain [redacted] a choice of one month suspension (instead of the two months originally sought) or the opportunity to present his case before an Administrative Law Judge.

Whichever judge would have been assigned to the case by the ALJ Docketing Center in Baltimore, would have been flown in at considerable government expense. The judge certainly would have had no experience piloting the waters of the Lower Atchafalaya River within the VTS area in which Captain [redacted]'s accident occurred. However, the Coast Guard could have arrayed the entire Vessel Traffic Service apparatus, the VTS operator who was not available for the settlement conference, and any other resources against the mariner in the courtroom. The VTS center is a very impressive, state-of-the-art facility located just a few doors away from the courtroom. The Investigating Officer could have made a very impressive courtroom appearance as she did in another case I witnessed (she does her job well!). All that would have bewildered Captain [redacted] who would have been a fish out of water trying to represent himself before the judge. The cards are stacked against any mariner who only has his experience to protect him and that experience seems to count for little to nothing with most of the Coast Guard officers we have dealt with. They tend to discount practical experience because most of them have so little of it.

Although an ALJ must sign off on all settlement agreements, the Coast Guard Investigating Officer certainly must win points by arriving at a settlement agreement. Look at the time and resources it saves in preparing a formal case, and in the travel expenses for the ALJ alone. However, the corruption evidenced in the ELSIK⁽¹⁾ and DRESSER⁽²⁾ cases has much deeper roots and has affected a great many mariners over a vast spectrum of cases. [⁽¹⁾U.S. District Court, Eastern District of Louisiana, Civil Action #07-1536. ⁽²⁾ Civil Action #07-1497.]

"The Good Lord Hates A Coward"

Several weeks ago, I spoke with Captain Joseph J. Kinneary, Ph.D, in New York. He wrote a book titled The Good Lord Hates a Coward that was reviewed last August 21st by Editor Jack Simpson in the Waterways Journal. His book details the win at any cost philosophy as applied in the New York area suffering with some sort of disorder he called Small People With Large Power Syndrome (SPWLPS). You will find Captain Kinneary's book a good read. Call him at (631) 858-1886 to order a copy of his book. We have added a summary of his case to GCMA Report #R-315-C to provide a permanent record of how the Coast Guard mishandles many drug cases. Here is an excerpt describing his hearing before an ALJ in New York:

The U.S. Coast Guard's administrative law judge, Peter Fitzpatrick, was quite judicial. He had on a judicial black robe,

had a judicial countenance and judicial demeanor, used judicial terms, and asked questions judiciously. By the end of the day, I did have my suspicions as to whether his judicial deportment would allow him to appreciate (my Attorney) Michael Sussman's unorthodox style, as we had. It was apparent the Coast Guard's administrative process was being presented with a situation they were not familiar nor comfortable with ó an expert civil rights attorney.

óLt. Province, with the aid of an assistant, CWO Charles Cobb, led the charge for the USCG. Lt. Commander Post, with two other Coast Guardsmen, led the cheering section ó from time to time, sending slips of paper forward to Province during the hearing, and some good old back slapping during the breaks. I could see early on, that this had become about winning, not about whether or not I had refused to take a random drug test. Let's face it, one doesn't rise through the ranks by losing cases in which the Coast Guard has invested time and resources. Province appeared as aggressive as I had inferred he was from the phone interrogations weeks earlier. Broad shouldered and physically imposing, his appearance would have served him equally well in the United States Marine Corps. It was obvious from his opening statement: he had done his homework on the case; was well organized; had a plan of attack; and unfortunately was familiar with the appropriate regulations.

óAfter the oceanography affair, we were totally surprised to see Lt. Mutto taking an active role in the proceedings, or being involved at all. Acting as a sort of court officer, he stood at the courtroom door, handled the evidential papers, and generally followed the judge's every movement, continually tidying and re-tidying the judicial bench and judicial paperwork. The incessant tidying, while at first amusing, began to aggravate me as the day wore on. Judge Fitzpatrick, was, in spite of his judicial training, bound to be affected, if only subconsciously, by the constant chambermaid-like attention of Mutto. I whispered to attorney Sussman, that perhaps when I saw an opening, I should grab the opportunity and tidy-up the judge's desk a bit myself. We should be afforded equal tidy time to insure there would be no bias. Michael would have none of it.

óSlowly, as the hearing wore on, Lt. Province began to unravel. Was it this regulation, or that regulation, that contained the appropriate regulatory passage? Surely there was an appropriate regulation, which regulated the immediate situation, there always is. But which one was it? By the time I was cross

examined near the end of a long tough day in court, I noticed the left corner of Province's mouth twitching in an unregulated manner, acting as if he were a student surprised by the teacher's question, frantically flipping through his ring binder, each page meticulously placed in a durable, clear plastic report cover. Finally, "(Mr. Kinneary) if you could, could you read the yellow highlighted section (of the federal regulations) on the top of page nine.ó

Follow the Leader

Perhaps, what bothers me most is that all the ALJs except Judge Jeffie J. Massey appear to support the Chief ALJ's unwritten policy. Judge Massey, although she served as an Administrative Law Judge for several other government agencies and is extremely knowledgeable of the Administrative Procedures Act and the protections it offers defendants such as our mariners, was new to the Coast Guard system. However, she quickly detected the Coast Guard's malodorous policies, and had the guts to stand up to her óbossó and to óthe system.ó I have been in this lady's courtroom, and I have seen her stand up against Coast Guard bullying tactics.

Ten years earlier, Judge Rosemary Denson faced similar problems in St. Louis and was driven from the bench by the ógood old boyó system. During the intervening years, the decay within the system has spread.

Again in 2007, as in our óYellow Bookó compiled in 2000, it is time for our mariners to óSpeak Outó against the injustices of the Coast Guard system that has marginalized and generally discredited our merchant mariners. We believe the time has come for Congress to remove the Coast Guard from the role it has played since World War II in its ógeneral superintendence over the merchant marine of the United States and of merchant marine personnel.ó We also believe it is time that Coast Guard officers as well as civilian employees be punished for the things they have done to dishonor our mariners as well as the damage they have caused to the Coast Guard's reputation as well.

You may remember the slogan, óHonor the Marineró coined by Vice Admiral James Card in the mid-1990's. These are now revealed to be empty words indeed as this unwritten policy clearly dishonors our mariners as well as the Coast Guard itself. As American citizens, we can only trust that the defendants will receive a fairer trial in the Federal District Court for the Eastern District of Louisiana than it appears they were willing to provide for our mariners in various Coast Guard courtrooms.

READER COMMENTS REMOVE THE COAST GUARD FROM LICENSING, INSPECTIONS, AND INVESTIGATIONS

[Source: May 15, 2007 E-mail from a concerned mariner.]

The United States Coast Guard, with the help of Congress, has lost their real, historic purpose. Once a vehicle for Search and Rescue, assistance at sea, and an organization mariners could trust and rely upon has turned into an adversary to be viewed with fear, distrust, and contempt.

As a quasi-military government entity they view civilians and their needs as a hindrance to their mission.

Being a certificated aircraft pilot, I deal with the Federal Aviation Agency (FAA), a purely civilian operated government agency. The U.S. aviation industry is the leader in world aviation because there is not the military mindset as exhibited by the USCG. The FAA is a civilian (agency)

dealing primarily with civilian pilots, mechanics, manufacturers, controllers, airports, the list goes on. My suggestion is to turn ALL maritime duties over to the American Bureau of Shipping (ABS) and let the USCG join ranks with the Air Force, Army, Navy, and Marines.

[GCMA Comment: GCMA Report #R-428-D asks Congress to take the administration of merchant marine away from the Coast Guard and makes a strong case for doing so.]

[GCMA Comment: Congress tasked the DHS Inspector General to look into Coast Guard "Investigations."]

[GCMA Comment: The Coast Guard is already having trouble keeping enough trained inspectors to service existing inspected vessels. They will have their hands full with many of the dilapidated antiques they will uncover when they start to inspect 5,200 towing vessels.]

COAST GUARD'S PERFORMANCE IS A PARADOX

[Source: By Jack R. Simpson, Contributing Editor (Editorials), *Waterways Journal*, August 21, 2006. Vocabulary: **Paradox** = a self-contradictory and false proposition.]

We have on numerous occasions written kind words about the performance of the U.S. Coast Guard, major player in the homeland security game, and protector of mariners at sea. But the agency's involvement in the licensing of seamen, both blue water and brown, turns it into a paradox.

There is no denying that Coast Guard personnel performed masterfully during hurricane recovery efforts and that many Katrina victims owe their lives to the agency's rescue efforts. But there is also no denying that the agency is causing one very big headache for the towing industry and efforts to man its boats. It is not the first time we have broached the subject. Talk to the grass-roots crewmen, talk to the industry leaders, talk to almost anyone, and you'll find that the Coast Guard puts far too many stumbling blocks in the path of mariners seeking to renew their licenses and new potential mariners seeking their first jobs.

Why is that? Seriously now, why is that? We all know that water transportation is vital to the economic well-being of the nation. We wonder why, when it is so important, the Coast Guard feels compelled to make things so tough. It is so unfairly tough that many trained rivermen with decades of experience are just plain fed up and are leaving the industry.

Believe it or not, the Coast Guard is also guilty of getting rid of blue- and brown-water mariners who have committed no crime ó people who are guilty of no infraction whatsoever.

A case in point is that of **Capt. Joseph J. Kinneary, Ph.D.**, who had managed to obtain an unlimited master's license and 15 pilotage endorsements for New York Harbor. Capt. Kinneary has both brown-water and blue-water experience, including piloting loaded oil tankers through a congested harbor in zero visibility. The captain's story is fully documented in [The Good Lord Hates A Coward](#), "An Account of Life as a Merchant Seaman," including a journal of a

random drug test. It was written by the captain and published by JK Marine. The tale is almost unbelievable, except that it is so well-documented that we believe it.

On October 16, 2002, in Criminal Court Room 453 in New York City, Judge Peter A. Fitzpatrick requested and received Capt. Kinneary's master's license No. 035508. The matter involved an action brought by the Coast Guard against Capt. Kinneary, who was charged with misconduct. The Coast Guard sought revocation or suspension of his license. That sets the scene.

Now we fade to the cause of the action. Capt. Kinneary was unfortunate enough to have a psychological disorder known as shy bladder syndrome, which prevented urination during random drug tests. When his attempts to comply failed time after time, he

was not allowed to substitute results from blood or saliva tests, which are permissible under the Coast Guard regulations. The only infraction we can discover is that during one of the many test attempts, when the subject could not produce the full amount of specimen required, he simply weakened and added warm tap water to the container.

We note here that Capt. Kinneary sought and made use of legal counsel. He had also the testimony of physicians and ship-mates. For whatever reason, some of those in the chain of Coast Guard misfits who hounded him couldn't accept the fact that he had never taken drugs in his life. He simply had no desire to.

Despite the captain's efforts over and over again to comply with the random drug test, he was ultimately found guilty of not complying. If this charade weren't so serious it would be funny. The testimony brought to light that the company handling the urine test had let the watered specimen pass through unchallenged for quite some time. It was serious enough to relieve the company of its contract.

During his lengthy ordeal, Capt. Kinneary was unable to work much of the time. Ultimately, he lost his license and was unable to work at all. Also during his ordeal, he came to believe that the Coast Guard investigators were suffering with some sort of disorder he called Small People With Large Power Syndrome (SPWLPS).

Well, we have run across SPWLPS before, almost in every walk of life ó particularly at various levels of local, state and federal government. And, unfortunately, we have run into it in the Coast Guard. But isn't it sad? Isn't it sad that a captain with years of experience, a captain who used his spare time to gain a doctorate, a captain who has exactly the kind of experience the marine industry needs, is ousted because some Coast Guard "bureaucrats" with SPWLPS needed to show him who was boss?

This case is fully documented. It has been written up in newspapers. We invite the Coast Guard to explain why this captain was treated as he was. If the charges in his book are inaccurate, we'd like to know about it. We'd like to know because there are hundreds of rivermen who are trying to decide whether working on the river is worth the effort and whether they, too, can be given the bum's rush. There are hundreds of rivermen who feel just as Capt. Kinneary feels.

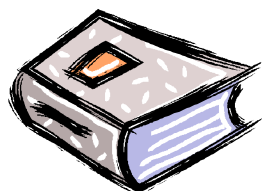
In Congress there is currently an effort to produce a Water Resources Development Act that will satisfy the desires of the U.S. Senate and House of Representatives. It is safe to say that over a period of several years, the cost to bring the issue to this point has been in the millions of dollars. But of what use will waterways be if we can't man the boats that are supposed to ply them?

The Coast Guard needs to wake up. This is not a homeland security issue. It's a matter of SPWLPS.

[GCMA Comment: We believe SPWLPS is an issue that should concern all mariners. We invite our readers' comments and specific examples.]

BOOK REVIEW

By Jim Maloney



[The Good Lord Hates a Coward](#), (an account of life as a merchant seaman), by Joseph J. Kinneary, Ph.D. (2005)

Captain Kinneary is a man who, in recent years, has lived up to Rudyard Kipling's advice, keeping his head when all about him

seemed to be losing theirs and blaming it on him. His 144-page book, published privately by his own company, JK Marine, for the most part begins its narrative with the author's entry into Kings Point in 1971, then charts a course through a seagoing career that, on December 27, 2001, was unexpectedly dashed on the rocks by a random drug test required by United States Coast Guard regulations.

Kinneary has a documented medical condition known as "shy bladder syndrome." Individuals suffering from this not-all-that-rare neurological malady find it extremely difficult, even impossible, to urinate under stressful conditions. At his December 2001 callup for random urinalysis, which occurred

while he was employed as Master of a sludge tanker for the New York City Department of Environmental Protection, Kinneary was unable to produce a urine specimen within the allotted time. His on-the-spot offer to submit instead to blood testing was summarily rejected, and within a short time Kinneary found himself out of a job, with his license under attack, charged with "refusal" to submit to a urine test.

In a real-life narrative eerily reminiscent of a George Orwell novel, Kinneary (who may suffer from shy bladder syndrome but who is not shy about discussing it) takes the reader through a disturbing saga of work suspensions, administrative hearings, medical benefit denials, and so forth: a plethora of bizarre and draconian consequences of a single failure to produce a specimen, which, collectively, can only be described as symptomatic of an administrative agency

malfunction of the highest order. When one reads of the troubles thrust upon this experienced, learned mariner (he also holds a Ph.D. in Marine Biology from Rutgers) despite the fact that there was never the slightest indication that he had actually used any illegal drugs, one cannot help wondering whether the complex web of regulatory oversight that is being spun around maritime personnel in recent years can possibly be achieving its stated goal of increasing shipboard safety. The book is a must-read for every seafarer, marine personnel manager, maritime lawyer, and concerned citizen.

Copies of the book can be obtained by sending a check or money order in the amount of \$24.95 to JK Marine, P.O. Box 502, East Northport, NY 11731. The author may be reached via e-mail at jjk@kpalum.com.

ON THE WATER: LICENSING SOS

By Captain Joel Milton

[Source: WorkBoat Magazine, May & June 2007.]

Over the years, mariners have experienced all types of problems while going through the renewal process for U.S. Coast Guard-issued licenses or merchant mariners' documents. In the last few years, the number and severity of the problems seem to have gotten steadily worse.

Some of this has undoubtedly been caused by the increased security requirements in the post-9/11 era. But it can also be argued that much older and deeper systemic problems are the root cause of the decline in service in the Coast Guard's licensing system.

That is exactly the contention of the Gulf Coast Mariners Association. The Houma, La.-based group that represents lower-level mariners recently submitted a 55-page report to Congress requesting that the Coast Guard be removed as the license issuing and supervisory agency for the U.S. Merchant Marine. The report, #R-428-D, can be viewed on the GCMA Website at www.gulfcoastmariners.org. Also on the site is a petition that mariners can add their names to in support of GCMA's efforts.

This long and detailed report represents some serious and sober reading. It paints an ugly picture of a system gone awry. A system that is a source of frustration and grief for many and administered by an agency that has neither the firsthand experience nor the institutional knowledge to carry out its licensing duties in a fair, impartial, timely and professional manner.

It's a sad fact that the Coast Guard really knows almost nothing about our jobs and us. They can't relate because they've never done it themselves, and few have ever been through the mariner licensing process.

This situation is unlikely to change. This isn't news to mariners. Although some Regional Exam Centers may provide good service to some mariners some of the time, the overall level of service leaves a lot to be desired. Mariners pay a "user fee" for this service. Coupled with the rapidly approaching deadline for the Transportation Worker Identification Credential from yet another agency that neither understands nor cares about us (the Transportation Security Administration), the licensing, credentialing, and medical standards mess threatens the very

viability of the U.S. Merchant Marine.

How much longer will it be before the calls start pouring in to allow foreign guest workers to relieve the self-inflicted mariner shortage?

When it comes to the Coast Guard's handling of merchant mariner licensing and documentation, the Gulf Coast Mariners Association's critique is right on. Moreover, GCMA's recommendation that these duties should be handed over to a civilian-run agency within the Department of Transportation dedicated to this mission is fully warranted.

With great patience, good faith and tenacity, GCMA has tried for years to work within the system to effect some positive changes for mariners over a broad range of health, safety, licensing and other regulatory issues. For its efforts, the Houma, La.-based association has been virtually ignored by the Coast Guard licensing and marine safety bureaucracy and its industry-dominated advisory committees. (GCMA represents lower-level licensed and unlicensed merchant mariners who traditionally serve on U.S.-flag vessels of up to 1,600 GT.)

Despite all the "honor the mariner" rhetoric, it appears that the Coast Guard is not overly concerned with the opinions and concerns of mariners. The lack of response from the Coast Guard has led GCMA to go directly to Congress to seek help with the licensing fiasco. For this effort, and for its past attempts to help mariners, the association deserves our collective support.

Mariners are prone to regional rivalries and provincialism, which has hurt us for a long time. So, don't be fooled by the "Gulf Coast" part of GCMA's name. Since its inception in 1999, GCMA has been fighting on behalf of limited-tonnage U.S. merchant mariners working on all kinds of vessels throughout the U.S. These problems affect us no matter where we work, whether it's on the Mississippi River system, along the East Coast, or the Hawaiian Islands. From offshore crewboats and supply boats to coastal tugs and barges and inland river tows, we've all suffered equally from inaction at Coast Guard headquarters in Washington, D.C.

I suggest you go to www.gulfcoastmariners.org and read some of GCMA's reports. Get informed about what is going on, call or write your congressional representatives, and consider joining the GCMA.

Joel Milton works on towing vessels. He can be reached at joelmilton@yahoo.com

**GCMA WELCOMES ADMIRAL SALERNO
AS NEW ADVISORY COMMITTEE SPONSOR**

[GCMA has a member appointed by the Secretary of Homeland Security on each of three Federal Advisory Committees sponsored by the Coast Guard, namely, the Towing Safety Advisory Committee (TSAC), the Merchant Marine Personnel Advisory Committee (MERPAC), and the National Offshore Safety Advisory Committee (NOSAC).]

May 6, 2007

Rear Admiral B.M. Salerno
Assistant Commandant for Prevention
U.S. Coast Guard Headquarters
2100 Second Street, SW
Washington, DC 20593-0001

SUBJECT: Welcome to your job as advisory committee(s) sponsor.

Dear Admiral Salerno,

I recently had an opportunity to meet you briefly before the recent TSAC meeting at the Calhoun MEBA Engineering School in Easton, Maryland. It appears that you replaced Admiral C.E. Bone as the sponsor of this and other of the Coast Guard's federal advisory committees. I hope you do not consider this letter inappropriate or out of place and that you will recognize that I am an educator by profession, and that I have a number of "enclosures" that I am offering as "homework assignments" to make your transition into your new position more successful.

I want to introduce myself as the Secretary of the Gulf Coast Mariners Association. Our Association represents the interests and concerns of thousands of lower-level licensed and unlicensed mariners who serve on "shallow-draft" vessels of less than 1,600 gross register tons (GRT) on most of the nation's tugs, towboats, offshore supply vessels, and small passenger vessels. Three of our Association's Directors currently serve on advisory committees that you sponsor, namely **Chief Engineer Glenn Pigott** on MERPAC, **Captain Roland Rodney** on NOSAC, and **Captain Joseph Dady** on TSAC. Of these three advisory committees, only MERPAC pays the travel and per diem of its attendees. Both Captain Rodney and Captain Dady must pay their own way to attend committee meetings when their schedules allow. This is not a satisfactory arrangement.

The purpose of this letter is informative and the information is directed to you personally. If you choose not to read it, the only readers will be our mariners that we share it with in their next regular newsletter. I hope you will spare Captain Thomas the inconvenience of drafting a response on your behalf as he is well aware of the issues and has little he can add to them.

Our Association has followed the activities of these three Coast Guard advisory committees since our founding in April 1999. As a maritime educator, I have followed the progress of lower-level mariner education, training, and licensing since 1970. In February 2007, our Association published GCMA Report #R-428-D, Report to the 110th Congress: Substandard Coast Guard Merchant Marine Personnel Services. [Enclosure #1]

Since the Coast Guard clearly has **proven** to be so deficient in its superintendence of lower-level merchant marine personnel in so many areas, it has become increasingly

incumbent upon our Association's Directors to directly inform Congress of our views in areas such as health, safety, welfare and training. In this report, we specifically recommended that superintendence of Merchant Marine personnel be taken from the Coast Guard and returned to civilian control within the U.S. Department of Transportation. We believe the reasons we provided were sufficient for Congress to consider. Whether the individual members of Congress choose to read or file our reports is up to them. However, we consistently make the effort to inform them. We also inform our Association members and, at the same time, inform the public on our website.

In attending advisory committee meetings, our mariners are NOT well represented for a number of reasons. Let's look at each of the three committees.

Towing Safety Advisory Committee (TSAC). The situation regarding representation on the Towing Safety Advisory Committee is so bad that we sent a separate report to Congress, GCMA Report #R-417, Rev. 1 titled Request for Congressional Oversight on the Towing Safety Advisory Committee asking for increased oversight. [Enclosure #2]. Nevertheless, we continue to participate as best we can as evidenced by three reports submitted over the years on the matter of towing vessel inspection, namely:

- GCMA Report #R-276, Rev. 9, Towing Vessels Must be Inspected Like Every Other Inspected Vessel. [Enclosure #3].
- GCMA Report #R-276-A. Towing Vessel Inspection (Suggestions & Initiatives). [Enclosure #4].
- GCMA Report #R-276-B. Availability of the Draft Towing Vessel Inspection Regulations. [Enclosure #5].

This is input from our lower-level mariners and not from management. We expect all of it to be considered by your regulatory team. We will expect to see each item either in the new regulations or specifically rejected for cause in the preamble of the Notice of Proposed Rulemaking. Our mariners have too much time and effort invested in this to see any of it go down the drain. The towing industry would not be in the shape it is today if towing vessels had been inspected 30 years ago! Mr. Jerry Miente is well versed in our problems with TSAC.

Merchant Marine Personnel Advisory Committee (MERPAC). Mr. Glenn Pigott and I introduced and MERPAC agreed to accept Task Statement #55 (TS-55) in April 2006. He and I collaborated to put it in its present form. We have worked together for over 30 years on a number of projects that involve lower-level engineers. We did our best to combine and adapt TS-55 to conform to two existing Coast Guard NVICs prepared by the Passenger Vessel Association and TSAC during the 1990s as the report clearly states.

When Mr. Pigott was unable to attend the September 14, 2006 meeting in Baltimore, I offered to make the trip at my own expense and was fully prepared to continue the work on the task statement and build upon the base we had built. However, I was informed by Captain Thomas that "a member of the public cannot speak on behalf of a committee member." Although I pay close attention to these advisory committees, I did not previously recall that particular rule. On the contrary, at a previous TSAC meeting, Mr. Rene Cheramie's father sat in for him as a member of the committee while his son was serving in Iraq. At the September 2006 TSAC meeting, Captain Joseph Dady arranged to have Captain Bill Beacom sit in for him. He sat with the committee for the first day of the meeting, but was not allowed to sit in for him at the public

session on the second day much to our surprise. Consequently, no active working mariners were represented on the TSAC committee at that meeting. The same situation reoccurred at MERPAC in Seattle where Mr. Pigott could not attend because he was at work and TS-55 stalled again.

I have come across a number of other "prohibitions" and "surprises" that suddenly appear at these committee meetings. I had no intention of traveling over 1,000 miles to Baltimore have someone else blunder through something that Mr. Pigott and I worked so hard and so long preparing and certainly not more than 2,000 miles to Seattle. In September, we were told that "after lengthy deliberations, the task statement was found to be too generic and he recommended that it be refined in order to have more achievable goals, or possibly be expanded into more than one task statement." Garbage! The MERPAC minutes provided after the recent meeting in Seattle were equally vague in describing what occurred. The assistance promised by two of three other working group members in the previous April 5, 2006 meeting simply did not materialize even after we reminded them of their commitment. We included the material promised by the third member, Captain Ken Dawson, appeared in our report.

The fact of the matter is that the Coast Guard has totally ignored training lower-level mariners for engine room duties for the past 35 years. The problem goes back to 1973 and a report that the Coast Guard prepared for Congress that was at best "inadequate." As a result, lower-level engineers on towing vessels were no longer required to be licensed and, as far as many companies were concerned, were no longer required to be trained. This is detailed in GCMA Report #R-401, Rev. 1, Crew Endurance and the Towing Vessel Engineer: A Direct Appeal to Congress. [Enclosure #6]. Since that time, companies have spent far more than the cost of training in the cost of repairing damaged and neglected machinery. That, however, is their problem. We represent mariners who have never received the proper training to adequately superintend a working engine room, conduct preventive maintenance, protect themselves against engine room hazards, and enhance the safe navigation of their vessel. As a direct consequence, "Since 1992, towing vessels have been involved in more than 607 sinkings, 593 floodings, 494 fires, 115 capsizings, 41 explosions, and 103 abandonments." [Enclosure #7], Letter, Congressman James L. Oberstar, Mar. 23, 2005, p.2].

Entry-level mariners suffer because they often are not provided meaningful and effective safety and vocational training. The core of Coast Guard's interest has never extended down to vessels of less than 100 gross register tons or to vessels on inland waters or rivers. Over the past 35 years, the 100-ton benchmark has incorporated ever larger vessels, some as long as 185 feet. Lack of safety and vocational training is especially evident in the engine rooms of all small vessels, especially thousands of small commercial vessels that do not require Coast Guard licensed engineers.⁽¹⁾ The Coast Guard has overlooked and ignored this matter for thirty-five years, and the National Maritime Center in particular continues to ignore it. Companies overlook it because training costs money and deckhands are (or were) a "dime a dozen."

Consequently, while MERPAC's "stand-in" work group chairperson "fumbled with an unwelcome and probably unexpected task, our Association took the ball and ran with it. Since Glenn Pigott and I both are Directors of the Gulf Coast Mariners Association and contributed 100% of the work involved in TS-55 as it stands today, I prepared a suitable nine-page introduction and submitted our report to every member of the House Transportation and Infrastructure Committee and the Senate Commerce, Science and

Transportation Committee following the Baltimore meeting.

Our Association adopted TS-55 in toto into GCMA Report #R-428, Rev. 1, Report to Congress: The Forgotten Mariners of Maritime Education and Training for Entry-Level Deck and Engine Personnel. [Enclosure #8]. Congressional committee members have had this report since last October while MERPAC fumbles with the issue. However, this is essentially *another Coast Guard failure in leadership and failure to understand the industries they have endeavored to regulate* and it has been compounded and continues to be compounded since the Coast Guard furnished its inadequate report to Congress in 1973.

Admiral, from our common experience at the MEBA union school in Easton, upper-level union engineers receive excellent training at their world-class facility. However, our lower-level engineers CAN RECEIVE ABSOLUTELY NO FORMAL TRAINING WHATSOEVER in the entire Gulf Coast area. The Coast Guard requires NOTHING of engine room personnel on most vessels served by our mariners except for OSVs over 200 GRT! As a result, there are few lower-level licensed engineers in the entire industry, and those who have licenses probably had to go through hell to get them. Furthermore, the Coast Guard apparently plans to apply entirely unrealistic STCW training standards that may even eliminate most of the existing Designated Duty Engineer licenses. Regrettably, an entire generation of mariners performing part-time and full-time engine room duties in the towing and offshore oil industries are largely untrained, unmotivated, and is increasingly unavailable.

The Coast Guard has created this disaster while walking hand-in-hand with management who unwisely "saved" investing money in training its personnel. Clearly, Congress "advised by an "inadequate" Coast Guard report "in 1973 should have paid attention to the engineering professionals at MEBA in 1973 as reflected in their report submitted to Congress on January 2, 1973 as reprinted in GCMA Report #R-401, Rev. 1, starting on page 23.

MERPAC has TS-55. If nothing else, it should be used to update two existing NVICs although that may be a meaningless exercise because they are only "guidelines" and widely ignored. As an educator by profession, I realize that someone must have a vision for turning a paper "checklist" such as TS-55 into a meaningful training program. The problem has NOT been with the "deck" training program. There are a number of "deckhand" training schools, especially for towing vessels. The REAL problem has been training lower-level engineers. Thirty years ago when I managed a nine-boat offshore boat company, our problem was training responsible deckhands to become conscientious maintainers and occasionally repairers of machinery. GCMA Directors Glenn Pigott, Captain Roland Rodney and I prepared another report, GCMA Report #R-279, Rev. 6 Report to Congress on the Need to Review and Set Safe Manning Standards for Offshore Supply Vessels and Towing Vessels. [Enclosure #9].

Such vision exists within our Association. The job of turning a checklist compiled and verified by a man with almost 50 years experience (i.e., Mr. Pigott) working in the engine room of every type of vessel from a fishing vessel, to an ocean going tug, to an OSV, to a casino boat in every possible climate and condition into a meaningful but abbreviated classroom experience.

GCMA Director **V.J. Gianelloni** is a Merchant Marine Academy graduate, former Coast Guard Commander, teacher, retired Chief Engineer, former school director and currently a curriculum specialist. He submitted the attached outline [Enclosure #10] as part of a program at a local technical college to the National Maritime Center. Unfortunately, his

program cannot seem to get past your “experts” at the National Maritime Center who have never been “lower-level” commercial mariners in the sense of the term as used here in south Louisiana and throughout the rest of the United States and clearly do not understand where we are coming from.

One of the problems our mariners face is that boat owners do not recognize (or are unwilling to admit) the value of a responsible, trained, and properly motivated engineer. They count the cost of continually abused machinery as part of the cost of doing business. Our Association and MERPAC when it enthusiastically accepted TS-55 appears to see it differently. We see **danger** starting the first moment when an untrained man first sets foot in an unfamiliar engineroom. Rotating machinery, compressed air, electricity, hydraulics, unfamiliar machinery, controls, trip-slip-fall hazards, hot pipes all conspire against an entry-level mariner sent on a blind mission to check or fix something he knows nothing about. Often that individual is the only person available on watch to go to the engineroom.

V.J. Gianelloni has the skill and ability to translate the TS-55 checklist for engineers into practical reality in a classroom in as little forty hours of instruction. He has received little cooperation from the National Maritime Center.

Maritime Education and Training. Our Association is starting in its eighth year. However, Coast Guard procrastination, meddling and interference adversely affected our mariners in the shallow-draft segment of the maritime industry for many years. The Coast Guard abjectly failed to come to grips with the needs of our lower-level mariners time and time again. The situation has deteriorated rapidly in the years following 9/11.

Our mariners seek training to increase their technical knowledge and improve their skills, yet the Coast Guard shows no concern about how they will pay the bills to attend enhanced courses. Your agency never has taken the first step to seek funding for maritime training programs. While our Association succeeded in obtaining funding of almost \$4,000,000 from the Department of Labor to fund STCW training in 2000, the industry did its best to shut us down because it feared that would bring union influence into their closed industry. The fact is that GCMA is not now and never was a union.

The Coast Guard, if nothing else, is thoroughly consistent. It does nothing! Today, it pontificates over our mariners finding only their imperfections and unworthiness to hold licenses and merchant mariner documents or to advance in grade. Lower-level mariners never have been perfect people, but they certainly have proven they can get the job done if left alone to do it without the undue interference they have experienced from the Coast Guard’s oppressive over-regulation in recent years. Nor do the vast majority of lower-level mariners have college educations; many, probably even a majority, lack even a high school diploma. Yet, your agency treats them like dirt when they apply for licenses and Z-cards at the Regional Exam Centers, and as if they were candidates for commissions as Coast Guard officers when you pontificate over their past infractions and misdeeds. Consequently, we are not particularly receptive to “more sunny promises” as reflected in footnotes attached to a recent message from your office passed on to us by one of the Marine Safety Units and re-printed in GCMA Newsletter #47. **[Enclosure #11]**

National Offshore Safety Advisory Committee. The Coast Guard has chosen not to provide for TSAC members’ travel and per diem although Congress did not prevent you from doing so. NOSAC convinced the Coast Guard (rather than Congress) to charter it and effectively excluded mariners

by denying travel funding for members. In fact the first “labor” representative appointed to NOSAC was the owner of a number of shipyards. If you owned the slaves on a plantation, there was no reason why you shouldn’t “represent” them! Consequently, NOSAC has been a “management-oriented” deliberative body ever since. Because of this orientation, our mariners could not receive a fair hearing during RADM Pluta’s administration. In fact, his anti-mariner bias was nothing short of dereliction of duty to properly superintend the merchant marine as I plainly stated in NOSAC’s April 25, 2002 Meeting at Coast Guard Headquarters. Mr. Jim Magill of your staff can inform you of our problems with NOSAC which, fortunately seem to be in the past. We commend Mr. Magill for his dedication to the work of the committee and especially for his rulemaking efforts in respect to 33 CFR Subchapter N.

Mariner Representation on Advisory Committees.

Lower-level merchant mariners may have no representation at TSAC if the cost of travel, room and board should become a concern. This was not an unmanageable problem since there are generally only two plenary meetings a year. However, with numerous “working group” meetings taking place in Arlington, VA which just happens to be the home of the American Waterways Operators’ travel and per diem to attend these meetings becomes a real problem. GCMA spent over \$6,000 on travel and lodging to attend working group meetings when the new licensing regulations were being prepared in the winter of 2000-2001. That is no longer possible with our Association’s present membership dues structure. Furthermore, the AWO attendees really are not interested in entertaining our mariners’ views and have controlled TSAC from the day it was established. Consequently, the bulk of the advice the Coast Guard receives and listens to comes from “management” sources.

Unfortunately, your agency has gone out of the way to cut off the source of first-hand regulatory advice from our mariners who must contend with the realities of life afloat every day of their lives. I hope that you will finally realize that your own regulatory personnel both at headquarters and out in the field largely lack comparable shallow-draft commercial experience.

Travel and per diem is only one problem that our mariners face in dealing with your advisory committees. Mariners have jobs whose schedules often conflict with meeting dates. They are the “workers” and not the “bosses.” If the meeting falls in the middle of a tour of duty, the mariner may have a serious scheduling problem that he cannot resolve. For example, Captain Rodney who is extremely proud of his membership on NOSAC, unfortunately was out of the country for several NOSAC meetings. In those cases, I did my best to “cover” the meetings on behalf of GCMA and felt that Mr. Magill would assist the chair in recognizing me if a mariner’s view was needed. As a Director and officer of GCMA, I have also attended MERPAC, TSAC, and NOSAC meetings as a member of the public at my own expense. Unfortunately, Captain Dady has had much the same experience. In addition, he was put under pressure by a former employer who was an AWO Regional Chairman, who reminded him that he was his employee. To his credit, Captain Dady decided to change employment rather than to “toe the line” and reported the matter at length to other GCMA Directors.

Comments at the Recent TSAC Meeting. I attended the recent TSAC meeting in Easton, Maryland and heard your presentation. As a member of the public, I had my opportunity to comment at the end of the meeting and by which

time you had left.

I commented upon the fact that the Coast Guard is driving lower-level mariners out of the maritime industry by its misguided policies. Aside from the circus the 17 RECs have become and the well documented disruption and harassment they have caused, many of our mariners find the new TWIC cards threaten their careers.

The Coast Guard has put a great deal of pressure on our mariners by ill-advised policies and directives. Last year's edict requiring our mariners to travel to the REC for identification regardless of distance and expense was much more than "unpopular." Forcing mariners to "confess to past crimes" when renewing their licenses and z-cards has been humiliating and embarrassing to large numbers of mariners. It was also difficult, time consuming and expensive, especially in trying to dredge up past history considering the fact that most mariners previously reported these things in past renewals and assumed that the Coast Guard had this "on file" somewhere. After all, that is what most mariners believe their "user fees" are used for. In recent years, with increasing shortages of lower-level mariners, many employers have used individuals with past criminal convictions. They have used them and trained them, where necessary invested in them, and these individuals have gained experience and become assets. The TWIC card, intense Coast Guard scrutiny, the Coast Guard's lack of knowledge and inattention to our mariners is making the personnel shortages even more acute. This is creating a crisis for the boat owners that will soon result in two things: 1) illegal operation, or 2) pressure on Congress. We saw this in south Louisiana in 1970-71 where the Coast Guard tried to enforce small passenger vessel inspections and licensing regulations that were in place as much as 12 years earlier in other parts of the country. This, in turn, led to Senator Russell Long calling for the Coast Guard study that later became known as the Newman Report (GCMA Report #R-428-A available on our website). As a result, the Coast Guard was forced to revise its thinking for the next ten years! Something like this needs to happen again and this could well be the year it happens.

I also commented that the new "medical NVIC" that sticks the Coast Guard's nose invasively into mariners' medical records is universally detested. Most mariners have little use for the bumbling, invasive bureaucracy and are beginning to take the earliest opportunity to exit the industry taking their years of experience and training with them. In an industry where there are relatively few young Captains any more, the last thing that needs to happen is to chase off the older, more experienced personnel for "medical" reasons. If you can no longer reach "social security age" in this industry, it is no

longer realistic to pursue it as a career.

I also commented upon GCMA Report #R-429, Report to Congress: How Coast Guard Investigations Adversely Affect Lower-Level Mariners. [Enclosure #12] Investigations of marine accidents and merchant mariner personnel issues is another segment of "traditional" Coast Guard interaction with our personnel that we increasingly believe needs to be removed from Coast Guard control and returned to civilian control. Our report released last August has been supplemented by new cases that reinforce this view. Recent reports by the Office of the Inspector General indicate that the Coast Guard barely has control over its own affairs. Any agency that can waste as much money as the Coast Guard has on shipbuilding projects where it should have demonstrated its preeminent expertise is in very sad shape. However, we have seen this depressing downward trend in your agency's leadership for the past decade.

We are adamant that the Coast Guard should no longer be allowed to decimate the ranks of our mariners.

That said, we still support the Coast Guard in its other activities far removed from our merchant marine personnel. As a Louisiana resident, I have the greatest respect for Admiral Allen and his leadership ability based on his demonstrated past performance. Our Association has the greatest respect for those Coast Guard men and women who engage in search and rescue operations that benefit our mariners. However, Admiral Allen's ship has been severely damaged by failures of leadership of flag officers that have let his ship drift off course and waste hundreds of millions of dollars in the Acquisition of the National Security Cutter (OIG-07-23) and the 110/123 Maritime Patrol Boat Modernization Project (OIG-07-27).

If the Coast Guard had only invested a small portion of what they wasted on educating, training, licensing and treating our merchant mariners with fairness, dignity, and respect, your Agency might have avoided the next three potential disasters I see in my crystal ball, specifically 1) the potential collapse of the entire lower-level mariner work force, 2) insurmountable problems and concessions necessary to make TWIC even marginally effective, and 3) the scandal that is about to envelop your ALJ system.

Since you are new in this job, I will not blame you for the many sins of your predecessors. However, I offer you these enclosures in the hope that you will understand that our lower-level mariners are a majority of all the merchant mariners in this country [Enclosure #13, GCMA Report #R-353]. They are unique, require understanding and attention, deserve your respect as individuals and as taxpayers who pay your salary. s/Richard A. Block, Sec'y, GCMA.

**THE COAST GUARD BUREAUCRACY ALLOWED
SEA SERVICE LETTERS TO BECOME
A PERPETUAL PROBLEM**

By Bruce A. Fizell, GCMA #1240

I have been a member of GCMA for a few years, and I would like to bring to your attention the problem of obtaining accurate sea time letters from present and/or former employers.

[GCMA Comment: We have been working on the sea service letter problem since 2003 with both the Coast Guard and Congress. We wrote an article in GCMA Newsletter #27, Jan. 2005. and are now following up the action the Coast Guard has taken since then.]

[GCMA Comment: By denying a mariner credit for the sea

service he earned cheats him out of time the Coast Guard requires for him/her to advance in grade. Over the years, the Coast Guard rarely stood up to protect our mariners. Now, the time has arrived to replace the Coast Guard with an agency that will respect and protect our mariners.]

Last September, I began the process of renewing my license by collecting sea time letters. My present and most recent former employers used a generic format which simply stated that I worked for so many days since (date of employment) in the position of (present position) on motor vessel (vessel presently assigned). The number of days worked was compiled from payroll records, not actual boat assignment records. The problems with this format are as follows:

1. Dates worked should show a listing by date on/date off = time worked each hitch, then the total time worked at

bottom of each column.

2. I have worked on various tugs; pushboats, inshore and offshore model bow tugs, as well as supply boats. In one instance I operated a crewboat for a while, during my time off from the tug. The letters of sea time did not reflect an accurate record of my experience on various types of boats and their areas of operation ó inland, coastwise, oceans, domestic, and/or foreign.
3. Sometimes I worked in different positions such as Captain, Mate, or unlicensed Engineer , but the sea time letters don't show that.
4. I couldn't even get a letter of sea time from one company because as an ex-employee, they just don't care about my need for a sea time letter.

There should be a standardized format for sea time letters and the Coast Guard should have enforcement powers to help the Mariner obtain his/her sea time letters from reluctant companies. They do not have this authority at the present time, as explained to me by the Miami Coast Guard office.

[GCMA Comment: We asked the Coast Guard to approach Congress with a Legislative Change Proposal several years ago. Apparently, they couldn't be bothered and dropped the ball since it didn't involve their careers!]

I was told they don't/can't get involved in this sort of thing. Nevertheless, I did get some action out of them by referring to all the statements I had to sign on my renewal applications (license, STCW, z-card) that say these are truthful statements. I impressed upon them that by turning in a letter of sea time that did not accurately reflect my sea time work history, I was conspiring with my company to make a false statement. I did not want to do that, because then I would be doing something illegal. I explained that I had already tried to get the letters corrected but was rebuffed by both companies because "that is the way we do it for everybody." However, if the Coast Guard called them seeking an accurate statement of boats/positions I worked, these companies would have to come up with a better answer than that. I simply told the Miami Coast Guard office that the letters, as presented, were simply not truthful statements, so what were they going to do about it? I backed up my claim by presenting my pocket sized calendar date books showing the time I left the house and the time and place I arrived on the boat, where we were every day while on the boat, the barges we moved, the time and place I got off the boat and the time I arrived home. The lady in the Miami office understood my predicament and offered to call two (2) companies while telling me that the Coast Guard really had no authority to do so. Because of her calls, I did get letters that were better than the original sea time letters from both companies after the Coast Guard in Miami called them.

How many other people have had this same problem? We need a standardized form letter for deck and engineer sea time letters. Companies must be made to keep accurate maritime work records and must produce them, when requested by the

**TRAVEL TIME MUST BE "ON DUTY" TIME
By Captain David C. Whitehurst**

Travel time! A fifteen passenger van loaded with crews and supplies for three vessels departs Paducah KY. Headed south, six to seven hours later it finally arrives in Mobile, Alabama, makes a crew change on the first vessel, and then heads on to New Orleans, LA, where it makes another crew change three hours later.

Now, the van sets out for its last and final crew change in Houston TX which will log another six-hour drive after the third

mariner, within a reasonable time, say 10 working days (2 weeks). Perhaps companies should be required to present an accurate letter of sea time to a mariner at the time of termination, as part of the termination procedure. If that is too cumbersome, as in dredging or construction projects where layoffs occur frequently, companies could present an annual letter of sea time, just as they mail out our tax statements at the end of every year.

[GCMA Comment: Most of these laws already exist. The problem is that the Coast Guard usually finds it much easier to ignore our mariners than provide the type of licensing service our "user fees" pay for.]

[GCMA Comment: 46 U.S. Code §10321 calls for a civil penalty of not more than \$5,000 for violating provisions of the chapter. The Coast Guard no longer has any credibility in managing merchant marine personnel. We asked Congress to remove the Coast Guard from all contact with our merchant marine personnel. Take the time to read GCMA Report #R-428-D.]

Each sea time letter format should include the following information: Position, Boat Name, Official Number, Flag, Vessel type, Gross/Net tons, Horsepower, Operational area, Date on/off, and days worked.

GCMA Letter of May 16, 2007 Points the Finger

ATTN: LCDR Derek DøOrazio
Chief, Marine Personnel Qualifications Division
U.S. Coast Guard Headquarters
2100 Second Street, SW
Washington, DC 20593-0001

VIA FAX TO: 202-372-1926

Subject: Sea Service Letters
Reference: File GCM-78

Dear Commander DøOrazio,

I am writing to follow up on the progress of a letter from Captain David L. Scott of December 1, 2004 [**Enclosure #1**] in response to prior correspondence. My files show that I furnished a copy of this prior correspondence via Fax to Jerry Miantè on January 29, 2007 at his request.

I have had a recent inquiry from a mariner in southern California (Vol. PH-43, this date) complaining of his employer's absolute refusal to provide him with a copy of his earned sea service. The REC was, of course, helpless. Nothing new here for the past 37 years ó but it is something we expect will change. Consequently, I request a status report on the Legislative Change Proposal (LCP) and an explanation as to whether it ever was included in the 2005, 2006, or 2007 LCP submitted to Congress by the Coast Guard. s/ Richard A. Block, Secøy, GCMA.

and last. It is now sixteen hours of driving plus the additional time spent waiting on the vessels to arrive and unloading and loading crew's luggage and groceries and supplies from the U-Haul type trailer the van is pulling.

The crew is dead tied (tired) before they even board the vessel and the licensed and unlicensed crew now are expected to take over a navigational watch. Navigating a towing vessel and its tow into locks and through bridges takes skill and concentration and a wide-awake and alert Master or Pilot and equally alert crewmembers. Anyone who is deprived of sleep can not function mentally at their peak.

When military personal are captured, one method to extract

information is to deprive the prisoner of sleep because when you are fatigued you can not make the right decisions.

These fifteen-passenger vans have been called "death vans" by the automobile insurance institute. I use the same term in GCMA Report #R-398. The vans' poor highway handling characteristics coupled with fatigue is a dangerous mix. It is much the same as a drunk driver, because the driver is fatigued and considered (Punch Drunk or a Zombie).

It is getting increasingly dangerous in the inland towing industry because of the huge shortage of licensed personnel that is needed to man the fleet of towing vessels. The companies are using anyone that holds a license to operate their vessels and many are paying extra money to any officer that will work over their allotted twelve-hour workday. Congress has failed to provide work-hour legislation for unlicensed crewmembers although GCMA recently reminded them of this omission in GCMA Report #R-332, Rev.3 of our Association's updated legislative and regulatory agenda. There are many companies that crew their vessels with only one licensed captain although the vessel is working in a twenty-four-hour trade.

I predict that in the years ahead the accident rate in the towing industry will increase not decrease because of the poor quality of training of the personnel from the deck to the wheelhouse and

from the deck down to the engineroom. The entry level personnel are moved through the training program without ever mastering the necessary job skills.

Other modes of transportation recognize "Travel Time" as "on-duty" time. Travel time fits the Coast Guard's definition of "work" in G-MOC Policy Letter #04-00, Rev. 1 as "any activity that is performed on behalf of a vessel, its crew, its cargo, or the vessel's owner or operator." This includes standing watches, performing maintenance on the vessel or its appliances, unloading cargo, or performing administrative tasks, whether underway or at the dock.

GCMA maintains that the act of traveling to the vessel is an activity performed on behalf of a vessel, its crew, its cargo, or the vessel's owner or operator. Although it seems plain enough, the Coast Guard should have specified "getting to the boat" as one of the items done on behalf of the vessel's owner or operator.

[GCMA Comment: The Coast Guard clearly failed to enforce the statute. We watched them ineptly play with this issue for the past 5 years. Consequently, we put the story together, renamed and forwarded GCMA Report #R-370-A, Rev. 2, Report to Congress: Fifth Anniversary of the Webbers Falls I-40 Fatal Bridge Accident: Unresolved Issues Revisited, to Congress.]

LOADED TRASH BARGE FLIPS 25-FOOT TOWBOAT DROWNING DECKHAND

[Source: Posted by the Asbury Park (NJ) Press on April 18, 2007. By James A. Quirk and Alex Biese Staff Writers and Margaret F. Bonafide, contributor. GCMA title, comments and emphasis added See picture on page 1.]

A 37-year-old worker with George Harms Construction Co. was killed today after a barge and push-boat flipped over in the Manasquan River underneath the Route 70 bridge at the boundary of Brick and Brielle, New Jersey. It took rescue workers nearly five hours to recover the body of James P. Lovely of Cliffwood in the center of the channel, where the water runs between 10 and 12 feet deep.

According to State Police Sgt. Steve Jones, at the time of the accident, around 4 p.m., Lovely was working on the 20-by-50-foot barge, which looks like a squat, trapezoidal trash bin. Chris Ramano, 32, of Brick was operating the 25-foot push-boat connected to the barge.

[GCMA Comment: Most laws governing towing vessels only apply to towing vessels over twenty-six (26) feet in length. AWO has been lobbying to exempt towing vessels used in construction projects and dredging from inspection regulations. GCMA opposes this and insists that safety and inspection rules should cover all commercial towing vessels and that the persons operating these vessels should be properly trained and licensed.]

[GCMA Comment: A GCMA licensed mariner with considerable experience in commercial diving and marine construction reminded the Coast Guard at a TSAC meeting that towboats less than 26 feet in length often push barges up to 195 feet in length on the exposed waters of Chesapeake Bay.]

"The initial investigation indicates that when Lovely unhitched or disconnected the barge, an uneven weight

distribution caused it to flip over," Jones said.

[GCMA Comment: This appears to be a stability related accident related to the barge's loading. GCMA reported on a similar stability-related barge \$450,000 accident in Louisiana in GCMA Newsletter #24, p. 9.]

When both vessels overturned, Ramano managed to escape to safety. But Lovely attempted to jump from the barge and may have been struck by the concrete debris contained within the vessel, Jones said. The exact cause of death has not been determined.

The Coast Guard and the State Police received a report of an accident involving the push-boat and barge at 4 p.m., said Coast Guard Chief Warrant Officer Steven D. McDonnell. Rescue workers quickly arrived on the scene and found the rear of the push-boat submerged and the barge flipped over. Capt. Doug Kinney of the Brick (NJ) Police Department said several dive teams from the area responded to the scene for a water rescue. The State Police, the Coast Guard, and the Brielle and Brick police dispatched boats to assist in the rescue efforts. Two helicopters flew in continuous circles over the river, looking for anyone who may have been on board the vessel. The rescue effort of the dive teams may have been initially hampered by what McDonnell said was the release of roughly 100 gallons of diesel fuel from the push-boat into the river. Lovely's body was recovered about 8:30 p.m. when rescue workers brought the barge back to its upright position. A towering crane on a floating platform was used to pull both boats out of the water.

The operation to dismantle the 71-year-old drawbridge spanning the Manasquan River had begun Monday, and crews with George Harms Construction were working to remove the steel span that lifted the drawbridge. Crews were set to have the superstructure of the bridge removed by mid-June but delayed the larger demolition work, including removing piers and support beams, until after July 1 in order to not conflict with the flounder spawning season, senior project engineer Jeff Brantly of George Harms Construction had said this morning.

ANOTHER BRIDGE DAMAGED BY A BARGE CRANE ACCIDENT

BEAUFORT, SC - Traffic on a bridge over the Beaufort River will be limited after the span was damaged this week by a passing barge.

The J.E. McTeer Bridge connects Port Royal and Lady's Island along U.S. Highway 21.

The state Transportation Department says the bridge was damaged Thursday night when it was hit by the barge with a crane boom.

Traffic will be limited to one lane for two-axle vehicles only from 6 to 9 a.m. for traffic leaving Lady's Island for Port Royal and from three to 6 p.m. for traffic going the other way. Clark says the bridge will be closed for about three weeks during the repair process so damaged beams can be replaced. Other traffic will be routed to a swing bridge near downtown.

[GCMA Report R-293. Rev. 2., Towboats and Bridges, A Dangerous Mix and GCMA Report #R-411, Rev. 4, Congressional Oversight is Necessary to Prevent Continuing Overhead Clearance Accidents speak to these issues on the national level. Although the Coast Guard cannot seem to "connect the dots" between its own investigations, GCMA did it for them and informed the cognizant Congressional committees of the problem in our reports.]

READER COMMENT: THE COAST GUARD SHOULD TELL CONGRESS HOW BADLY IT SCREWED UP

By Captain Paul McElroy

[Source: Captain Paul McElroy is a retired maritime educator, maritime consultant, former publisher of the Charter Industry News, an industry trade publication, and an active contributor to the National Association of Maritime Educators. He is now a consultant in Stuart, Florida. We encourage his commentary as a knowledgeable representative of charter boat Captains and especially of the Coast Guard's impact on that sector of the industry.]

Merchant Mariner Credentials

I thoroughly enjoyed reading the April 2007 issue of "GCMA News." Once again the USCG (Uncle Sam's Confused Group) has shot itself in the foot. Why do they do such stupid things without considering the effects, or consulting those of us in private industry? I am referring to the excerpts from the proposed "Merchant Marine Credentials Improvement Act of 2007" on page 24. Who writes this stuff and then slips it over to Congress in search of an uninformed, or naïve sponsor?

[GCMA Comment: This is only a "Bill." It has not yet gone to committee or even passed the House of Representatives to say nothing of the Senate. This is the time to make your comments known to the bill's sponsors, Congressmen LaTourette, Young, and LoBiondo.]

Section 2. Oaths

For what possible reason would the requirement for a merchant mariner to take an oath be repealed? Is this to reduce the meaningfulness of a license to slightly more than toilet paper,

or is it to be politically correct and allow non-citizens to obtain American licenses?

Section 7106 (b). Duration of Licenses

I applaud the effort to reduce the shrinkage for those mariners who submit a renewal application in advance of their license's expiration date (currently up to 12 months in advance). However, I see no mention in the revised verbiage as to how far in advance under the changed regulation. Is it still 12 months in advance? The USCG allowed themselves a 12 month slop-over period in Section 7508.



Section 4. Processing Time For Documents

Wow! The Bill states, "The Secretary may not charge a fee if, within 30 days after the date (the law goes into effect) the individual submits a complete application." The wording should read "a correct and complete application." An applicant can "throw something together," submit it and hope for the best. It might be "complete" but not necessarily correct!

[GCMA Comment: An applicant is more likely to "throw something together" when he cannot obtain any guidance over the phone from the Regional Exam Center as has been the case for quite some time. Refer to GCMA Report #R-428-D.]

Of course, there is the proviso that the USCG must issue the document within 30 days.

Nothing in (1) and (2) refers to the "correctness" of an application. If the USCG is willing to penalize itself for not processing a "complete" application and issuing the document or license within 30 days, the applicant should also be penalized if they file an incomplete or incorrect application. I can easily file a "complete" but not "correct" application.

[GCMA Comment: The Coast Guard has penalized mariners by delaying their application for as much as 16 weeks for failing to dot an "i" or cross a "t." Please, let's not talk about any more penalties for mariners!]

Evaluation Fees (\$100 for original license and \$50 for renewals) are paid in advance and submitted with the application. Does this mean that the USCG has a procedure in place for refunding thousands of dollars in fees for all of those mariners who submit "complete" applications? I doubt that they even thought about it.

More disconcerting is the "weasel wording" referring to charging fees for: application, processing, or issuing a license or document. There are no such terms as "application" or "processing" in the "User Fee" portion of the regulations. Are they about to slip in new user fees with new (application and processing) names? I wasn't an English major, but shouldn't the terms be consistent?

Section 7507. Fingerprinting

The USCG has decided that if mariners are fingerprinted for a TWIC, the USCG doesn't have to do it again. What if they file for a license, or document before they apply for a TWIC? What if the applicant is not subject to TWIC requirements? Does the USCG plan to maintain a place and manner of taking fingerprints from those individuals? I doubt it. They are in a hurry to rid

themselves of the fingerprinting burden after spending thousands of dollars on electronic fingerprint scanners placed in RECs and in locations other than RECs. What is going to happen to all of those scanners? Who is accountable for that fiasco?

Section 7508. Authority to Extend the Duration of Licenses

The NMC has built-in its own excuse for failure in their "centralized" Taj Mahal in West Virginia by allowing for an automatic one-year extension of a mariner's license, or document, if they need the time to clean up a backlog of applications. Didn't I read on page 3 of Newsletter #47 that Admiral Salerno is insisting on a one-week license cycle time within two years? This does not seem to be consistent!

However, there is no mention of how they are going to notify the mariner that their license or document is being extended for 12 months past the expiration date. Will the NMC issue an "extended document notice" or write the mariner, or call him/her? That will take as much time as actually processing their application and using the license or document.

Without official notification many mariners will conclude that their license, or document, has expired and not pursue the matter further. What does this do to the one year "Grace Period" the Coast Guard pursues with a vengeance against tardy mariners?

Section 8. Merchant Mariner Assistance Report?

(1). What is the "streamlined evaluation" process program affiliated with the Houston REC? When the Coast Guard uses the term "streamlining," it scares the hell out of me.

(2) "Simplify the application process" by including instructions attached to the application form and a modified form for renewals with questions pertaining only to the period of time since the previous application.

Five years ago the National Maritime Center (NMC) "attempted" to "simplify" the application and completely screwed it up. Now they are going to do it again! God help us! Every REC has developed its own set of instructions and information package and has their own local policies and interpretations of regulations and procedures. Nothing has changed since I participated in a Quality Action Team at Coast Guard Headquarters in Washington, DC in 1997 and submitted two papers; "What's Wrong with the USCG Licensing Program" and "Recommendations for Improving the Licensing Program."

[GCMA Comment: These documents are in our files and represent a great deal of work on the part of Paul McElroy and considerable personal expense to attend these meetings.]

I am very concerned over the statement; "Simplify the application process" by including instructions attached to the application form and a modified form for renewals with questions pertaining only to the period of time since the previous application.

Those of us in the "real world" of licensing consulting know that there are hundreds, if not thousands, of licensed mariners out there with DUIs and drug offenses in their records that were never reported to or picked up by the USCG with the original and subsequent renewal applications. Why? Because the USCG never did background checks on renewals and for several years skated over fingerprint and criminal background checks for new applicants.

[GCMA Comment: All their bungling and cheapskating finally caught up with the Coast Guard who promptly hid the problem by unloading the task and expenses involved upon our mariners. This odious rulemaking appeared in Docket #USCG-2004-17455, 71 FR 2145, Jan. 13, 2006]

I interview mariners daily and stress that they should report

everything no matter how far in their dark past it may be in order not to be accused of filing a "false" application. Once again the USCG is going down the dark road of "change" without a map or even a flashlight.

As Regards the Recent ALJ Lawsuits

I enjoyed reading your advance overview of the lawsuit filed by Captain James Elsik against the Coast Guard's Chief Administrative Law Judge, members of his staff, et al.

I find that the Coast Guard will protect their own no matter how incompetent they are. Why is this guy the Chief ALJ anyway? He is close to eighty-five years old and should be basking in the sun around the pool of a retirement home in New Guinea. His staff is no doubt a pride of "young lions" with little courtroom experience who rely on the "old boy" network, intimidation and whining to get their way. "Wah! Wah! Mommy, he took my pacifier."

Intimidation is a "big gun" in the arsenal of the IOs and they use it well.⁽¹⁾ "... when respondents have lawyers it creates problems for the IOs." Of course it does! Most IOs have no courtroom experience, and neither do the young USCG attorneys who prepare their cases. In this case it was two Ensigns from Morgan City under a LCDR who probably would wet his pants and hold his breath until he turned blue if thrown into a courtroom scenario. [⁽¹⁾*Ibid*, p. 0040]

After reading ALJ Massey's comments dated March 23, 2005, I surmise that it exactly what he did because "... he did not know that the Administrative Procedures Act guaranteed due process rights to citizens appearing before (government) agencies" and sent his supervisor Cmdr. Simmons, his surrogate daddy, to scold the teacher (ALJ Massey) because he got bad grades. [⁽¹⁾**Vocabulary: Due Process = Notice of a citizen's right to a notice and a fair hearing before being deprived of something of value, e.g., a license or MMD.]**

Let's put this episode (ALJ Massey's harassment by the "good old boy network") in the proper perspective and compare it to a grade school student-teacher-parent scenario while ignoring the merits of Capt. Elsik's case.

It is very simple. The two Ensigns who prepared the Coast Guard's case did a sloppy job and expected Capt. Elsik to roll over and accept their plea deal which was the historic precedent. They didn't do their homework, their presentation was sloppy and lacked merit.

They didn't know what they were doing and no doubt had never appeared in a courtroom except a mock one in law school. ALJ Massey told them so.⁽¹⁾ "Judge Massey indulged the USCG and ruled on each of its objections to the interrogatories finding they were "frivolous," "nonsensical" and "without merit." [⁽¹⁾*Ibid*, p. 0009],

Preparing for a case to be heard in front of an experienced, no-nonsense, objective ALJ isn't something to be done over an "all-nighter" catered by Pizza Hut. College professors might accept sloppy work because of their workload, but ALJ Massey would not. It is unfortunate that she did not simply tell them to go back and do it right!

This is a student-teacher-parent-school board scenario. The two Ensigns working on the case didn't prepare and present their case properly, assuming that the "good old boy network" would cover their butts. ALJ Massey sent them back to the drawing board with firm instructions on what she expected, and they ignored her. They whined to their daddy how tough their teacher was on them and he went to see her expecting that she would cave in and give the spoiled brats a passing grade. She didn't. Bravo for her!

Rebuffed, the now furious parents went to the school board (the office of the Chief ALJ) to plead their case to a sympathetic staff who was already immersed in the fiasco and needed to cover

their tracks. They went to the teacher (ALJ Massey) to get her to listen to reason and she refused to capitulate. Good for her! Then she was discredited and punished for objectively doing her job as she saw it. Shame on you Coast Guard!

The "good old boy network" is alive and well as ALJ Massey found out!

Unfortunately, ALJ Massey was destined to face a morass of mediocrity destined to come before her and unable to be objective in her decisions because of the scolding she received from the Chief ALJ. She would be continually looking over she

shoulder for the telltale cloud of dust from the approaching posse from Baltimore.

She now knows her place in a man's world, (i.e., the Coast Guard), because I am a woman, they chose to mount these personal attacks on me through the "good old boy" network... my professional name has been defamed..." I agree with her. [⁽¹⁾ *Ibid*, p. 0078]

Sincerely,
Paul McElroy

SLEEP-AID ACCIDENTS



These two articles contributed by Jeannette Bergeron tie into the article titled "Use of Prescription Drug Sleep-aids Leads to Accident and Penalty" that appeared in GCMA Newsletter #47.

Can't Sleep? Try Some Milk Instead Of Sleeping Pills.

[Source: www.tesh.com]

You can barely turn on the TV these days without seeing an ad for the latest prescription sleeping pill. But those commercials may be having too much influence over how we treat sleeplessness.

According to Consumer Reports, prescription sleeping pill use has risen nearly 50% since 2001, and part of the increase is because of the surge in direct-to-consumer advertising of anti-insomnia drugs like Ambien and Lunesta. But critics say, most people don't need a prescription to get rest. Other sleep remedies, like over-the-counter medicines, changing your sleep habits, or even drinking milk might work just as well as, or even better than, the advertised pills.

Sleep expert Dr. Marvin M. Lipman says that about 60 million Americans suffer from insomnia, but it's not really a disease. It's a set of symptoms mostly triggered by things like stress, pain, and jet lag. And he believes the ads have basically made a mountain out of a molehill. In a sense, they've helped *create* a disease and provided the pills to fix it. The ads make everybody think that they have a bigger problem than they really do and that they need a pill to fix it.

The United States is one of a few countries that allows consumer advertising of prescription drugs, and last year the drug industry spent more than \$4 billion dollars in advertising, a 500% increase in 10 years; and each additional dollar spent in consumer advertising yielded \$4.20 in drug sales.

By heavily promoting drugs that treat symptoms rather than illnesses, some doctors say that companies are driving patients to look for a quick fix instead of finding a solution. In most cases, sleeping pills should be the last resort. But for a

lot of insomnia sufferers, that's the first thing they ask for when they see their doctor.

So, next time you can't sleep, use the medical commercial as a place to start a conversation with your doctor. But be sure to explore all your treatment options. Bottom line: You wouldn't buy a car you never touched or test drove just because you saw an ad on TV. Don't base your important health decisions on flashy advertising either.

Don't Take Sleeping Pills and Drive

Be careful on the road! A new, dangerous type of motorist is on the loose. They smash into parked cars, drive on the sidewalks and even go the wrong direction down one-way streets. No, they're not drunk. They're not teenagers or thrill-seekers. They're insomniacs!

According to the New York Times, Ambien, the most popular prescription sleeping pill, is becoming a factor in more and more traffic accidents and arrests.

For example, last year in Washington state, 78 people were arrested for being under the influence of the pill while driving; and in many cases, drivers say they don't even remember getting behind the wheel. Recently, a Wisconsin man who'd taken Ambien crashed into two cars and drove over a curb. When the police confronted him, he had no idea what he'd done.

So why are people getting doped up and driving? Many users say they take the pills on their way home after a long day, hoping they will kick in by bedtime. But according to sleep specialist Dr. Brooke Judd, that's a bad idea. She says nowadays, most sleep medications take effect really quickly, so people can get to sleep faster.

You shouldn't take sleep aids until you're ready to go to bed. Also, the effects of the pills can last for up to 8 hours. So, if you take a pill at 2 AM because you can't sleep, then force yourself to get up at 6:00 to go to work, you might still be dangerously groggy when you hit the road.

The Food and Drug Administration says Ambien's current label warnings are adequate. They state that users shouldn't drive or operate machinery. Still, with 26 million prescriptions being filled annually, people are bound to slip up. Bottom line? If you take Ambien, don't get behind the wheel. Your safety, and the safety of those around you, depends on it.

MARINER SENTENCED TO PRISON FOLLOWING TOWING ACCIDENT

[Source: *U.S. Department of Justice Press Release.*]

South Bend, IN. The United States Attorney's Office announced today that Gary O. Burnham, age 52, of Michigan City, Indiana, was sentenced to thirty (30) months imprisonment followed by two years supervised release for

operating as a ship's captain on a forged license, neglect of duty by a seaman resulting in sinking of the M/V MARGARET ANN, and negligently causing a diesel fuel spill in Lake Michigan. He was also ordered to pay \$750,000 in restitution to Holly Marine Towing, the owner of the vessel.

On March 31, 2005, the merchant vessel MARGARET ANN sank in Indiana waters in Lake Michigan while towing two barges. The captain of that large towing vessel was Burnham. Burnham used tow lines of approximately 75 feet

when he should have used tow lines greater than 400 feet. Also, Burnham was working on a written report and failed to keep a proper watch on the tow and the barges being towed. As a result of these failures and omissions, the short tow lines tripped the tug during tow operations causing her to sink and placing the captain and crew in immediate danger of suffering serious injury and loss of life. The Coast Guard had to rescue Burnham and several crew members.

The sinking of the M/V MARGARET ANN caused a 250 gallon diesel spill in navigable waters. Diesel fuel, a hazardous substance, leaked from the fuel tanks into Lake Michigan waters. More than \$750,000 in damages were caused by the sinking, including more than \$68,000 for pollution mitigation, more than \$86,000 to raise the vessel, and more than \$680,000 to overhaul and repair her.

In the course of the marine investigation into the sinking and rescue, the Coast Guard Investigative Service discovered that

Burnham had falsified his Coast Guard mariner's license. Burnham had been a licensed captain and master from 1989 through 1999. But after 1999 Burnham had let his United States Coast Guard marine mariner's license lapse. Instead of renewing his license, Burnham forged a United States Coast Guard marine mariner's license certificate and provided this forged document to his employer, Holly Marine. Burnham continued to operate as a captain of Holly Marine merchant vessels, including the M/V Margaret Ann, on this forged and altered license for about three years and through the date of the sinking.

This case was investigated by the U.S. Department of Homeland Security and the Coast Guard Investigative Service (Chicago), and was prosecuted by Assistant United States Attorney Donald J. Schmid.

[GCMA Comment: GCMA filed a FOIA request on this accident.]

TWIC IDENTITY CARD PROGRAM ON INDEFINITE HOLD

[Source: Wheelhouse Weekly, Masters, Mates & Pilots, May 9, 2007.]

The Transportation Worker Identification Credential (TWIC) program has been placed on indefinite hold and is unlikely to meet its deployment schedule. In the most recent of numerous congressional hearings on the TWIC program, members of the House Homeland Security Committee expressed skepticism about the Homeland Security Department's ability to begin testing the card at key U.S. ports by July 1. "We know they are not going to meet this deadline," says House Homeland Security Committee Chairman Bennie Thompson (D-Miss.).

Members of the committee were particularly concerned when the director of the TWIC program, Maurine Fanguy, was unable to name the ports at which the program is initially supposed to be implemented. She told the committee that the rollout would begin at the Port of Wilmington, but could not say when that would happen.

[GCMA Comment: As soon as the Department of Homeland Security depended upon the Coast Guard's "experience" in the marine industry to guide their program, they stepped into TWIC-sand without a lifeline.]

On the basis of information provided by the Department of Homeland Security, MM&P has reported that mariners would be able to "pre-enroll" for the card on a government web site. Visitors to the site are now being informed that "pre-enrollment is not currently available.

[GCMA Comment: GCMA Report #R-439 lists the proposed cities where enrollment centers will be established – if and when this expensive but ill-informed boondoggle finally gets off the ground.]

COAST GUARD ESTABLISHES MARINER WEBSITE

[Source: Coast Guard News Release.]

WASHINGTON - Today the Coast Guard launched a website to provide merchant mariners with real-time information on the status of pending mariner credential applications.

Merchant mariners can check the status of application packages throughout the verification and approval process by logging onto <http://homeport.uscg.mil/>, clicking on the Merchant Mariners tab and then clicking on Merchant Mariner Application Status.

[GCMA Comment: "Homeport" by itself appears to be considerably less than a resounding success. It reminds us of other Coast Guard computerized SNAFUS as described in GCMA Report #R-401-B, Finally Answered: How Bureaucracy Wrecked the Coast Guard Merchant Marine Licensing and Documentation Computer System.]

When application information is entered, Homeport will display the information submitted with the application package and current application status information. Mariner credentials that have already been issued will be displayed in Homeport as "issued" for a 120 day period. Mariners who need additional information after visiting the website can request additional information by telephone or email.

[GCMA Comment: Good luck!!! Tell us your results so we can share them with other mariners.]



MARINER CONSULTATION SERVICES, LLC

May 8, 2007

Dear Captain Block,

It was a pleasure speaking with you today. As you know, I have recently retired from the U.S. Coast Guard after 27 years of active duty service. Many of my years with the U.S.C.G. involved the prosecution of Mariners for regulatory infractions. During this time I also became acquainted with Captain David Whitehurst with CGMA.

Through my conversations with Captain Whitehurst over the years it became apparent that there is a lack of understanding by most Merchant Mariners when it came to understanding U.S. Coast Guard regulations and licensing issues. This lack of understanding places the Mariner at a real disadvantage when negotiating with the U.S. Coast Guard representative, often times directly affecting their ability to provide a living as a Merchant Mariner.

With these needs in mind Mariner Consultation Services, L.L.C. was founded. Our services include guidance, interpretation of regulations and direct representation of the Mariner when navigating the rough seas of U.S. Coast Guard regulations. My understanding of these regulations and how the U.S. Coast Guard interprets these regulations provides a level playing field for the Mariner and the leverage they need to negotiate a favorable settlement.

Our services include a one-time consultation fee of \$300.00, at which time we meet in person with the Mariner to discuss the details of their case. After a review of their case, and should we determine that our services could prove helpful, a strategic plan of action is discussed with the Mariner as well as a retainer fee for our services.

A simple telephone call to our office opens the door to our services. We look forward to speaking with you should you have any comments or questions whatsoever.

Thanks again for your time and consideration.

Sincerely,

John Catanzaro

Mariner Consultation Services, L.L.C.

P.O. Box 160461

Mobile, Al. 36616

(251)-479-7643



Our Services:

Mariner Consultation Services, Inc. provides services to Merchant Mariners involving license infractions and misconduct problems. Many times Merchant Mariners have difficulty understanding and dealing with the U.S. Coast Guard and the volume of regulations involved in their particular case. John Catanzaro with Mariner Consultation Services, Inc. retired from the United States Coast Guard after 27 years. His final years were spent as the Assistant Senior Investigating Officer in

Mobile, Al. John's considerable experience enforcing license infractions, misconduct claims, collisions, allisions, groundings, and negligence claims provides valuable knowledge to Merchant Mariners when dealing with the U.S. Coast Guard.

You can be assured that the investigator for the U.S. Coast Guard will be prepared to enforce the Code of Federal Regulations as it pertains to your case hearing. With this said, it is very important that a Merchant Mariner have the guidance of an experienced representative when negotiating the rules and regulations with the U.S. Coast Guard and their representative.

A simple telephone call to our office opens the door to our services. We look forward to speaking with you and having the opportunity to assist you with your case.

Sincerely,

John Catanzaro (U.S.C.G. Retired)

Areas of Service:

- * U.S. Coast Guard Infractions
- * Application for License or document
- * License Renewal
- * License or MMD denied
- * Drug testing matters
- * Understanding and interpreting U.S. Coast Guard regulations
- * Misconduct claims
- * Direct consultation with the U.S. Coast Guard on your behalf to resolve your case
- * Consultation prior to U.S.C.G. Administrative hearing or settlement
- * Consultation during U.S.C.G. Administrative hearing or settlement

Our Fees:

Initial consultation fee of \$300.00 during the review of your case. Additional fee of \$75.00 per hour during the consultation and representation of your case. (Retainer required on all cases following the initial consultation should we accept your case).

Experience:

Represented U.S.C.G. at Administrative hearings

- * License Renewal
- * Investigated allegations of wrong doing against Merchant Mariners
- * Represented U.S.C.G. at settlement agreements
- * Prepared case and documented evidence against Merchant Mariners
- * Investigated cases of collisions, allisions, misconduct, groundings, negligence positive drug tests and refusals
- * Held position as the Asst. Senior Investigating Officer Coast Guard Marine Inspector
- * Coast Guard Marine Investigator
- * Marine Surveyor listed with S.A.M.S.

NEW & REVISED GCMA REPORTS

GCMA Report #R-370-A, Revision 2 Report to Congress: Fifth Anniversary of the Webbers Falls I-40 Fatal Bridge Accident: Unresolved Issues Revisited.

The fifth anniversary of this tragic accident just passed on May 26th, and we received a call from a reporter from the Oklahoman inquiring about the accident. The Commandant of the Coast Guard is currently handling an appeal from a

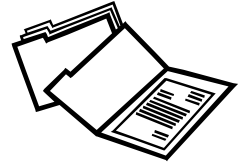
\$20,000 civil penalty for permitting the Master to violate the 12-Hour Rule. We understand that the penalty was dropped from \$20,000 as reported in the Waterways Journal to \$2,000 but that amount is being further appealed. We asked in a FOIA request to be kept informed of that appeal. Meanwhile, TSAC believes that the question of a Master obtaining proper rest before taking over the watch at crew change should be dealt with in the proposed new Safety Management System rather than by an enforceable regulation. In fact, Captain Lorne Thomas, TSAC Executive Director, became quite vocal about that at the last TSAC meeting in Maryland. GCMA believes a Coast Guard regulation with teeth should

reinforce the existing statute. We also believe the statute should provide rest for the entire crew before going on duty before leaving port at crew change.

GCMA Report # R-439 TWIC Issuance Ports

This is the list of ports where the Transportation Security Administration plans to issue TWIC cards if and when they manage to get the program off the ground. We have heard about it for so long that we couldn't resist the urge to make it

available the moment we saw it in print. Look at the report and put it on the back burner.



GCMA Report #R-440 Maintenance and Cure. (By Mark L. Ross, Esq.)

We had several recent requests first published in our December 2000 Newsletter and wanted to make it accessible to all our mariners.

WHEN INDUSTRY CUTS ITS OWN DEALS WITH THE COAST GUARD



When mariners are not represented by strong labor unions, as is the case with most of our lower-level mariners, industry lobbyists are free to make their own deals with the Coast Guard. In the past, the Coast Guard has displayed the backbone of a jellyfish in dealing with industry trade associations. The resulting deals are seldom in the best interests of our working mariners. In fact, mariners rarely have a place at the table when these deals are cut. For example:

- The offshore oil industry mints brand new “Able Seamen/OSV” to work on their offshore supply vessels. However, these easily obtained AB/OSVs z-cards are not valid to work upon tugboats if the oilfield business slacks off. **Why** don't mariners have the ability to use their credentials where the jobs are?
- **Why** are OSVs only required to carry a third licensed officer when the length of their voyages exceed 600 miles? What is so special about 600 miles ó especially when fatigue and stress that affects those licensed officers is

much greater on short round trips of much less than 600 miles rather than on long trips. OSV owners know most trips are less than 600 miles.

- **Why** must OSVs have a third licensed man in the pilothouse on trips over 600 miles where a towing vessel owner can make his licensed officers stand a “two watch” schedule on a voyage of any length ó even around the world.
- **Why** is 59°F designated as the regulatory cutoff point between “warm water” and “cold water” in the important lifesaving NVIC 7-91? Just happens that the water temperature in the Gulf of Mexico seldom falls below this cutoff point ó but the water is still plenty cold if your vessel sinks in mid-winter and you are not required to have an immersion suit. Of course, this saves boat and oilfield companies a lot of money.
- **Why** aren't immersion suits or at least “exposure suits” required on inland winters where the water temperatures fall well below 59°F in the Fall, Winter, and well into the Spring? Asking the Coast Guard any of these questions ó and we have done so many times ó is like asking a stone wall. We need to replace inattentive and useless pencil pushers at Coast Guard Headquarters with real, live merchant marine officers who know and care about our mariners.

UPDATED GCMA “BROWN-LIST”

GCMA fields a significant number of complaints on employment issues from lower-level mariners in as fair a manner as possible. When a mariner gets a “raw deal” we do what little we can to get to the bottom of the problem. However, we are not and never have been a labor union, and we have no formal contractual relationship with any employers.

The vast majority of our lower-level mariners work as “employees at will.” Unfortunately, this means that they do not work under a labor contract negotiated through collective bargaining that could control their conditions of employment and provide the “machinery” to resolve their grievances. Without such a contract, most of our mariners can be fired or demoted at any time, for any reason whatsoever whether fair or not. There is little recourse for most of our mariners unless such termination is clearly illegal ó and only then with the help of an attorney. In addition, some employers “black list” former employees and make it difficult if not impossible for them to obtain another job.

When one of our mariners is mistreated, we take the matter very seriously. As a mariners' Association, we keep track of these incidents. When our mariners look for a new job, we want them to obtain jobs with employers who respect them and will treat them fairly. We assign companies whose names appear in our records as having mistreated one or more of our mariners to our “Brown List.”

Mariners must make their own decisions about their employers. As a service to dues-paying members of GCMA (only) we can inform you of some of the specific incidents that led us to “Brown

List” a company. Then you can decide whether you want to learn the same lessons the hard way by working for one of these “Brown Listed” companies. We can only tell our mariners that those who fail to learn the lessons of History (as recorded by other mariners) are destined to repeat them!

Brown Listed Companies:

- **Abdon Callais Offshore.**
- **American River Transportation Co. (ARTCO)**
- **American Commercial Barge Lines (ACBL)**
- **BJ Services, Inc.**
- **Chet Morrison Contractors, Inc.**
- **Coastal Towing, LLC & TLC Marine Svc.**
- **Delta Towing.**
- **ENSCO.**
- **Five Bs Towing Inc.**
- **Frazier Towing**
- **Global Industries Offshore**
- **Gulf Pride Marine Service, Inc.**
- **Guidry Brothers/Harvey Gulf Marine**
- **L&M Botruc Rentals**
- **Maryland Marine**
- **Stapp Towing**
- **Steel City Marine Transportation, Inc.**
- **Tidewater Marine**
- **Trico**
- **Versatility Marine**
- **Western Kentucky Navigation Company (WKN)**