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Asserting our right "…to petition the Government for redress of grievances."
Amendment 1, U.S. Constitution, Dec. 15, 1791

WHISTLEBLOWER PROTECTION FOR MERCHANT MARINE OFFICERS

(46 United States Code §2114n & Louisiana R.S. 23 §967)

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Anyone with Coast Guard credentials (formerly called a "license") must study and pass an examination before being issued a credential with one or more "endorsements" in a passport-style booklet. Before the Coast Guard finally issues the credential, the successful applicant must swear and sign an oath that reads as follows:

"I do solemnly swear or affirm that I will faithfully and honestly, according to my best skill and judgment, and without concealment and reservation, perform all the duties required of me by the laws of the United States. I will faithfully and honestly carry out the lawful orders of my superior officers aboard a vessel."

Many of the laws are contained in Title 46, U.S. Code (Shipping), are explained in greater detail in the regulations contained in Title 46, Code of Federal Regulations, parts 1-199 (Shipping) and Title 33 Code of Federal Regulations, Parts 1-199 (Navigation and Navigable Waters). These laws also sometimes adopt and incorporate certain land based laws by reference.

Certain safety requirements for manning vessels and limiting the working hours of mariners based upon vessel type, tonnage, location, and job function are codified in the U.S. Code Title 46 (Shipping), Subtitle II (Vessels and Seamen), Part F (Manning of Vessels), Chapter 81 (General), Section 8104 (Watches). These manning requirements specify the minimum personnel that must be employed aboard the vessel. The statutes refer to mariners as "licensed individuals", "crewmembers", a "licensed operator", "seaman" and other descriptive designations because these provisions establish minimum vessel manning requirements and it is necessary to describe the various positions of the crewmembers. The maximum permitted work hours for the safety of the vessel's crew and operation as well as certain record keeping requirements is also provided. The obvious purpose of such designations in these safety laws is to allow the fair interpretation and understanding of these provisions, by generally describing the required positions and qualifications for the crew, and not to provide vessel owners with a means to avoid these safety laws by hiring crewmembers who do not have official Coast Guard credentials.

46 U.S.C. 8104(h) generally provides that a licensed mariner is prohibited from working more than 12 hours in a consecutive 24 hour period (the "12—hour rule"), except in the case of an emergency. In the past, the Coast Guard has maintained that the 12—hour rule does not apply to unlicensed mariners because the Coast Guard did not believe that it had the statutory authority to promulgate a regulation limiting work hours for unlicensed personnel. Since the coast Guard now issues "credentials" and it no longer issues "licenses" to mariners, the logical extension of this illogical position could result in an even more illogical finding. However, the 12-hour rule is a safety rule for seamen. Seamen without official Coast Guard credentials who are in fact performing the work of seaman on a

regulated vessel should be afforded the same protections from excessive and unsafe work hours.

The rights of mariners with Coast Guard credentials who were terminated for reporting an employer's conduct that violated United States laws were very limited under federal law until October 15, 2010, the effective date of an important amendment to 46 U.S. Code § 2114, enacted as part of the *Coast Guard Authorization Act of 2010.* As of October 15, 2010, the enforcement of the Seaman's Protection Act was moved from the Coast Guard to U.S. Department of Labor, Occupational Safety & Health Administration. If a case was already case was pending at the time the agency was transferred by the Coast Guard transferred from the Department of Transportation to the Department of Homeland Security, pending proceedings are to be continued, notwithstanding the transfer of the Agency, pursuant to the Savings Provision of HR 5005 § 1512 (PL 107-296).

The Seaman's Protection Act, 46 U.S.C. §2114 (SPA) as amended by Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281, provides Whistle Blower Protection for Seamen. The statute refers to a "seaman" and it does not state anything about Coast Guard credentials being required before a seaman may invoke these protections. These changes significantly enhance the rights and whistleblower protection available to a mariner who has a asserted a valid complaint and followed the proper procedures, where an employer terminates or discriminates against a maritime employee who has reported a legal violation. It is likely that the Coast Guard could have applied the Seaman's Protection Act to seamen without Coast Guard credentials, if it had been so inclined. However, many have commented that the Coast Guard did not seem to be very inclined to get involved in whistleblower matters before the change. Now that the Coast Guard is no longer involved in the administration of this law, Seamen with or without Coast Guard Credentials should be covered by the whistleblower law as administered by OSHA.

The rights of mariners in the State of Louisiana who have been punished or terminated for notifying an employer of a violation of law have been protected by Louisiana's Employee Protection from Reprisal law since 1997. Louisiana's statute is a general law that applies to all types of employment and it is not maritime specific. Although the federal and state remedies are similar in many ways, including the availability of compensatory damages, back pay, benefits, reinstatement, reasonable attorney fees, and court costs, the federal legislation includes administrative procedural requirements that are not required by Louisiana law. Potential punitive damages of up to $250,000.00 are permitted under federal law, which are not presently available under Louisiana law. Overall, the scope of the federal whistleblower law and its availability to mariners is much broader than the Louisiana statute.

FEDERAL LAW

46 USC § 2114 (the *"Seaman's Protection Act)* was amended on October 15, 2010 to read as follows:

46 USC § 2114. Protection of seamen against discrimination:

(a)(1) A person may not discharge or in any manner discriminate against a seaman because--

(A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred;

(B) the seaman has refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public;

(C) the seaman testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law;

(D) the seaman notified, or attempted to notify, the vessel owner or the Secretary of a work-related personal injury or work-related illness of a seaman;

(E) the seaman cooperated with a safety investigation by the Secretary or the National Transportation Safety Board;

(F) the seaman furnished information to the Secretary, the National Transportation Safety Board, or any other public official as to the facts relating to any marine casualty resulting in injury or death to an individual or damage to property occurring in connection with vessel transportation; or

(G) the seaman accurately reported hours of duty under this part.

(2) The circumstances causing a seaman's apprehension of serious injury under paragraph (1)(B) must be of such a nature that a reasonable person, under similar circumstances, would conclude that there is a real danger of an injury or serious impairment of health resulting from the performance of duties as ordered by the seaman's employer.

(3) To qualify for protection against the seaman's employer under paragraph (1)(B), the employee must

have sought from the employer, and been unable to obtain, correction of the unsafe condition.

(b) A seaman alleging discharge or discrimination in violation of subsection (a) of this section, or another person at the seaman's request, may file a complaint with respect to such allegation in the same manner as a complaint may be filed under subsection (b) of section 31105 of title 49. Such complaint shall be subject to the procedures, requirements, and rights described in that section, including with respect to the right to file an objection, the right of a person to file for a petition for review under subsection (c) of that section, and the requirement to bring a civil action under subsection (d) of that section.

# # # #

Before the 2010 amendment to the federal maritime law contained above in the Seaman's Protection Act, the Coast Guard was responsible for the enforcement of the prior law. However, the Coast Guard is ill-equipped to deal with labor disputes and seamen who were fired for protesting unsafe or illegal work practices were largely out of luck. Today, the Seaman's Protection Act adopts and authorizes the use of remedies and procedures contained in existing land-based transportation laws that were enacted in 1994 to afford whistleblower protection to land based drivers of commercial trucks and motor vehicles. This is a significant change because future whistleblower disputes will be settled by the U.S. Department of Labor, which has a lot of experience in dealing with labor rights under various existing laws. Therefore, maritime whistleblowers will now be accorded the same protections and administrative treatment as workers in the land-based transportation industry.

This is not the first time that the maritime law has been supplemented by the adoption of land-based laws. Most seamen have general knowledge of the Merchant Marine Act of 1920 (P. L. 66-261) commonly referred to as the *"Jones Act' (46* USC § 688), which affords important rights and protections to seamen who sustain injuries while working. However, they may not know that the Jones Act incorporates and borrows laws that govern land based railway workers under the Federal Employees' Liabilities Act (FELA), expressly stating that *"all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable".*

Title 46 of the US Code deals with "Shipping" and typically involves maritime laws. Title 49 of the US Code deals with "Transportation" and typically refers to trucks and land vehicles. The amendment to the Seaman's Protection Act (46 USC § 2114) that was enacted in October of 2010 states that a seaman or another person at the seaman's request may file a complaint with respect to any discharge or discrimination that results from the enumerated matters, (such as reporting a violation of a maritime safety law) in the same manner as a complaint may be filed under 49 USC 31105(b) and the complaint shall be subject to the procedures, requirements, and rights described in that section, including with respect to the right to file an objection, the right of a person to file for a petition for review under subsection (c) of that section, and the requirement to bring a civil action under subsection (d) of that section, in the same manner that a complaint may be filed by a land based worker under 49 USC 31105(b), which reads as follows:

(b) Filing complaints and procedures.

(1) An employee alleging discharge, discipline, or discrimination in violation of subsection (a) of this section, or another person at the employee's request, may file a complaint with the Secretary of Labor not later than 180 days after the alleged violation occurred. All complaints initiated under this section shall be governed by the legal burdens of proof set forth in section 42121(b)[1]. On receiving the complaint, the Secretary of Labor shall notify, in writing, the person alleged to have committed the violation of the filing of the complaint.

(2)(A) Not later than 60 days after receiving a complaint, the Secretary of Labor shall conduct an investigation, decide whether it is reasonable to believe the complaint has merit, and notify, in writing, the complainant and the person alleged to have committed the violation of the findings. If the Secretary of Labor decides it is reasonable to believe a violation occurred, the Secretary of Labor shall include with the decision findings and a preliminary order for the relief provided under paragraph (3) of this subsection.

(B) Not later than 30 days after the notice under subparagraph (A) of this paragraph, the complainant and the person alleged to have committed the violation may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of objections does not stay a reinstatement ordered in the preliminary order. If a hearing is not requested within the 30 days, the preliminary order is final and not subject to judicial review.

[1](C) A hearing shall be conducted expeditiously. Not later than 120 days after the end of the hearing, the Secretary of Labor shall issue a final order. Before the final order is issued, the proceeding may be ended by a

[1] [1] This incorporates the burden of proof established for whistleblower complaints by airline employees.

settlement agreement made by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(3)(A) If the Secretary of Labor decides, on the basis of a complaint, a person violated subsection (a) of this section, the Secretary of Labor shall order the person to--

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to the former position with the same pay and terms and privileges of employment; and

(iii) pay compensatory damages, including backpay with interest and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(B) If the Secretary of Labor issues an order under subparagraph (A) of this paragraph and the complainant requests, the Secretary of Labor may assess against the person against whom the order is issued the costs (including attorney fees) reasonably incurred by the complainant in bringing the complaint. The Secretary of Labor shall determine the costs that reasonably were incurred.

(C) Relief in any action under subsection (b) may include punitive damages in an amount not to exceed $250,000.

(c) De novo review. With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(d) Judicial review and venue.--A person adversely affected by an order issued after a hearing under subsection (b) of this section may file a petition for review, not later than 60 days after the order is issued, in the court of appeals of the United States for the circuit in which the violation occurred or the person resided on the date of the violation. Review shall conform to chapter 7 of title 5. The review shall be heard and decided expeditiously. An order of the Secretary of Labor subject to review under this subsection is not subject to judicial review in a criminal or other civil proceeding.

(e) Civil actions to enforce.--If a person fails to comply with an order issued under subsection (b) of this section, the Secretary of Labor shall bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

(f) No preemption.--Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

(g) Rights retained by employee. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

(h) Disclosure of identity.

(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or the Secretary of Homeland Security may not disclose the name of an employee who has provided information about an alleged violation of this part, or a regulation prescribed or order issued under any of those provisions.

(2) The Secretary of Transportation or the Secretary of Homeland Security shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement. The Secretary making such disclosure shall provide reasonable advance notice to the affected employee if disclosure of that person's identity or identifying information is to occur.

LOUISIANA LAW

In 1997 the State of Louisiana enacted its own whistleblower law at LA R.S. 23 § 967, captioned *"Employee Protection from Reprisal; Prohibited Practices; Remedies"*. A close reading of the federal Seaman's Protection Act indicates that the federal remedy is not intended to preempt or eliminate existing state based remedies. The grounds for relief under the federal law are somewhat broader than the grounds enumerated under the Louisiana state statute.

A seaman alleging discharge or discrimination under the Seaman's Protection Act shall be subject to the procedures, requirements, and rights described in 49 USC 31105(b), including the right to file an objection, the right of a person to file for a petition for review under subsection (c), and the requirement to bring a civil action under subsection (d). 49 USC 31105(b) also includes four additional subsections (e) through (h). Although they are

not specifically mentioned, they are in fact also a part of 49 USC 31105(b) and they are not excluded. Subsection (e) *"Civil actions to enforce",* (f) *"No preemption",* (g)"Rights *retained by employee",* and (h) *"Disclosure of identity"* also comprise part of 49 USC 31105(b). The use of the term *"including"* and the uniformity that the legislation seeks to achieve indicate that the entirety of 49 USC 31105(b) should be applied to the Seaman's Protection Act, including subsections (e) through (h).

49 USC 31105(b)(3)(f) *"No preemption"* states that nothing in this law preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law. Therefore the Louisiana, state-based remedies of LA R.S. 23 § 967 (set forth below), should also be available.

LA R.S. 23 § 967. Employee Protection from Reprisal; Prohibited Practices; Remedies (La Acts 1997, No. 1104, §1.)

A. An employer shall not take reprisal against an employee who in good faith, and after advising the employer of the violation of law:

(1) Discloses or threatens to disclose a workplace act or practice that is in violation of state law.

(2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of law.

(3) Objects to or refuses to participate in an employment act or practice that is in violation of law.

B. An employee may commence a civil action in a district court where the violation occurred against any employer who engages in a practice prohibited by Subsection A of this Section. If the court finds the provisions of Subsection A of this Section have been violated, the plaintiff may recover from the employer damages, reasonable attorney fees, and court costs.

C. For the purposes of this Section, the following terms shall have the definitions ascribed below:

(1)"Reprisal" includes firing, layoff, loss of benefits, or any discriminatory action the court finds was taken as a result of an action by the employee that is protected under Subsection A of this Section; however, nothing in this Section shall prohibit an employer from enforcing an established employment policy, procedure, or practice or exempt an employee from compliance with such.

(2)"Damages" include compensatory damages, back pay, benefits, reinstatement, reasonable attorney fees, and court costs resulting from the reprisal.

D. If suit or complaint is brought in bad faith or if it should be determined by a court that the employer's act or practice was not in violation of the law, the employer may be entitled to reasonable attorney fees and court costs from the employee.

In order to qualify for protection under the Louisiana state whistleblower statute, a plaintiff must prove an actual violation of a Louisiana state law, not just a good faith belief that a state law was broken. Mabry v. Andrus, App. 2 Cir.2010, 34 So.3d 1075, 45,135 (La. App. 2 Cir. 4/14/10), rehearing denied, writ denied 2010-1368 (La. 9/24/10), 2010 WL 3990707; Kristen D. Peel, *"Louisiana's Revised Statutes 23:967: The Questionable Interpretation of Louisiana's Whistleblower Statute and a Solution for the Courts,"* 34 S.U.L.Rev. 103, 116-119 (Spring 2007).(Note that Louisiana actual violation requirement is different from the "good faith" belief requirement under federal law). Moreover, the employee must first "advise the employer of the violation of law" before the statutory remedies under the Louisiana statute take effect. R.S. 23:967 A.

In Winkler vs. Coastal Towing, LLC and TLC Marine Services, Inc., No. 2001 CA 0399 (La App 1st Cir 04-11-02); 823 So.2d 351, a tug boat captain who was laid because he refused to transport empty barges to designated location, filed an action against his employer seeking compensatory and equitable relief pursuant to the Louisiana statute that provides that an employer shall not take reprisal against employee who in good faith, and after advising employer of violation of law, refuses to participate in employment act or practice that is in violation of law. The primary question was whether federal law or state law governed the case. The federal statutes and their interpretations by the federal judiciary did not offer suitable protections at that time (before the 2010 amendment to federal law), and the Louisiana whistleblower statute offered better protections. The Louisiana court of appeal rendered its decision, as follows:

> "In conclusion, we find that federal maritime law does not preempt La. R.S. 23:967 in a case involving a Louisiana plaintiff, a Louisiana defendant, and facts that occurred solely in Louisiana. The application of La. R.S. 23:967 will not conflict with either specific federal maritime law or with the characteristic features of maritime law, nor would the application of La. R.S. 23:967 in this purely interstate dispute interfere with the uniformity of federal maritime law in its interstate or international relations."

AVAILABILITY OF GENERAL DAMAGES

Neither the federal nor state statute expressly provide remedies for mental anguish, emotional distress, or othertypes of general damages. However, neither statute takes away any cause of action for general damages that may otherwise exist under state or federal law.

In Alonso v. McAllister Towing of Charleston, Inc., D.S.C.2009, 595 F.Supp.2d 645, the court held that the Federal Seaman's Protection Act did not supersede South Carolina common law with regard to a tug captain's intentional infliction of emotional distress claim in tort against a marine towing company because there was no federal admiralty rule concerning such a common law claim.

In Louisiana, tort claims for the intentional infliction of emotional distress fall under Louisiana Civil Code Article 2315.

To recover for the intentional infliction of emotional distress under Louisiana law, a plaintiff has the burden of proving the following:

(1) that the conduct of the defendants was extreme and outrageous;
(2) that the emotional distress suffered by him was severe; and
(3) that the defendants desired to inflict severe emotional distress or knew that severe emotional distress would be certain or substantially certain to result from their conduct. White v. Monsanto Co., 585 So.2d 1205, 1209-10 (La.1991); Moresi v. State, Department of Wildlife and Fisheries, 567 So.2d 1081, 1095 (La.1990); Deus v. Allstate Insurance Co., 15 F.3d 506, 514 (5th Cir.1994).

The conduct complained of must be so outrageous in character and so extreme in degree that it goes beyond all possible bounds of decency and is regarded as utterly intolerable in a civilized community. Id. Liability arises only where the mental suffering or anguish is extreme, and the distress suffered must be such that no reasonable person could be expected to endure it. White, 585 So.2d at 1210.

As with other Louisiana torts, the prescriptive period (statute of limitations) for a tort claim for the intentional infliction of emotional distress is one year from the date the wrongful act occurred. However, the Louisiana Supreme Court has held that the "continuing tort" doctrine applies to claims for intentional infliction of emotional distress brought in the context of allegations of a hostile/abusive work environment, and that "a pattern of on-going, repeated harassment which gradually caused [plaintiff] serious emotional injury" sufficient to constitute intentional infliction of emotional distress is actionable as a continuous tort, where "prescription does not run until such continuous conduct is abated." Bustamento v. Tucker, 607 So.2d 532, 538-39 (La.1992).

The Louisiana statute does not define "employer." However, the courts have held that the definition of "employer" for purposes of the Louisiana Employment Discrimination Law contained in La. R.S. 23:302(2) is applicable to Whistleblower claims under La. R.S. 23:967. Langley v. Pinkerton's, Inc., 220 F.Supp.2d 575, 580 (M.D.La.2002) citing Jackson v. Xavier Univ. of Louisiana, 2002 WL 1482756 (E.D.La.2002) and Jones v. JCC Holding Co., 2001 WL 537001 (E.D.La.2001). Under La. R.S. 23:302(2), "employer" is defined as "a person, association, legal or commercial entity, the state, or any state agency, board, commission, or political subdivision of the state receiving services from an employee and, in return, giving compensation of any kind to an employee."

Louisiana courts have defined the "employer" who may be liable under the Louisiana Whistleblower statute as the one who gives compensation to an employee, not the one who has the right to control the employee. See Seal v. Gateway Companies, Inc., 2002 WL 10456, (E.D.La.2002) (and cases cited therein), (finding that "Louisiana jurisprudence is precisely to the effect that the `right to control' analysis is not applicable, since the term 'employer' is precisely defined by the Louisiana's employment discrimination statute [and that] if compensation of some kind was not paid by that particular commercial or legal entity directly to the employee, under Louisiana employment discrimination law, such a commercial or legal entity is not an employer".) Myers v. BP America, Inc., No. 6:08-0168 (VV D.La. 09-28-10), 2010 WL 3878920.

CONCLUSION

The 2010 amendments to the *Seaman's Protection Act* provide important federal rights that promote safety and compliance with maritime laws. The U.S. Department of Labor, Occupational Safety & Health Administration (OSHA) is much better positioned to handle whistleblower claims than the Coast Guard. OSHA now administers

the whistleblower protection provisions of twenty-one different whistleblower protection statutes, including the *Seaman's Protection Act.*

The availability of punitive damages up to $250,000, the multiple grounds upon which federal protection can be claimed, and the "good faith belief" requirement under the *Seaman's Protection Act,* make the federal act superior to the Louisiana State law, which does not provide for punitive damages, has fewer grounds for relief, and which requires proof of an actual violation of Louisiana law, rather than a good faith belief that a law has been violated.

State based tort claims for the intentional infliction of emotional distress can still be available and are not preempted or superseded by the Federal Seaman's Protection Act or the Louisiana statute.

As with other claims, the claimant still bears the burden of proof and employers will undoubtably deny any discrimination or retaliatory actions. Therefore, mariners should preserve all necessary proof, identify all witnesses, and take all possible actions to preserve related documents to assist proving the employer's violation and the retaliatory actions that were taken after a violation has been reported.

By Stephen M. Chouest, Esq.

APPENDIX

Notes about the 12-Hour Work Limitation under 46 U.S.C. 8104(h)_

In Mercer v. Chem Carriers [[C, No. 10-117 (E.D. La. 05-17-11), --- F.Supp.2d 2011 WL 1872580, the plaintiff alleged that the Captain work schedule violated the 12—hour rule, that the vessel's Captain was fatigued, and his fatigue caused the plaintiff's injury. District Court Judge Carl J. Barbier described the issue as whether the 24—hour period referred to in 46 U.S.C. 8104(h) is a calendar day starting at 12:01 a.m. or whether the countdown starts from the time the injury occurred, going back 24 hours. The court held that the 24—hour period referred to where a licensed mariner is prohibited from working more than 12 hours in a consecutive 24 hour period, is not a calendar day starting at midnight, but, rather, the countdown starts from the time the injury occurred, going back 24 hours.

In Swan Crewboats, Inc. v. Phipps, E.D.La.2002, 2002 WL 1733647 (Unreported), a seaman was allegedly injured while working excessive hours in violation of the 12-hour rule when wave action and the vessel's movement caused him to fall. He sought to assert the *Pennsylvania* rule, under which a legal presumption of fault arises when a ship is in actual violation of statutory rule intended to prevent collisions at the time of a collision. The court held that the *Pennsylvania* rule did not apply to create presumption of negligence on the part of vessel owner because of the absence of the requisite collision,

Coast Guard Policy Letters do not have the force of law but they provide guidance to summarize and clarify the Coast Guard's position. G-MOC Policy Letter 4-00, REV-1; Subject: *"Watchkeeping and Work-hour Limitations on Towing Vessels, Offshore Supply Vessels (OSV) & Crew Boats Utilizing a Two Watch System"* dated April 26, 2001) states that "46 U.S.C. § 8104(h) establishes that licensed operators of towing vessels ... may not work in excess of 12 hours in any consecutive 24—hour period, except in an emergency". The same Policy Letter contains the definition of an "Emergency" as used by the Coast Guard in its policies and regulations as follows:

***"Emergency** is* an unforeseen development that imposes an immediate hazard to the safety of the vessel, the passengers, the crew, the cargo, property, or the marine environment, requiring urgent action to remove or mitigate the hazard,"