BLOOD ON BROWN WATER

Report #R-213

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Editor

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PROLOGUE

As you read this book, many of America's 126,000 merchant seamen who serve on vessels of less than 1,600 gross tons (i.e., about 60% of the entire 210,000 U.S. merchant mariners) are laboring, and some are even dying under third-world working conditions on the rivers and inland waters of the United States, on the American Outer Continental Shelf waters, and off the coast of Alaska. The United States Coast Guard, OSHA, the Inspector General of the Department of Homeland Security, and relevant Congressional committees are well aware of this situation.

Of more immediate concern to you, the reader, is the fact that these conditions all too often result in mariners so impaired on the navigation bridge that their cognitive performance is no better than that of a driver under the influence of alcohol. In the last few decades these fatigue impaired mariners, victims themselves of undermanning and overwork in the service of greedy corporations, have struck many bridges over navigable waters and have sent dozens of automobiles, one passenger train, and one bus hurtling into the waters below with tragic and fatal results.

These mariners serving mostly in the Jones Act domestic trades on our near coastal and inland waters aboard vessels of limited size but still able to inflict real damage on our maritime infrastructure are rarely served by labor unions that provide responsible training for their members. These mariners have no voice in the work place and are routinely abused and forced into fatigue induced states where no person should ever be operating machinery of any sort much less navigating vessels capable of taking down bridges, power lines, and damaging other structures. These same fatigued mariners are attempting to unload people and cargoes in high seas from supply vessels to offshore oilrigs and often being killed and maimed in the process. Our mariners, unlike their employers, belong to no powerful lobbying organizations able to offer cushy retirement jobs to senior Coast Guard officers. And, above all, our mariners have been easy to ignore.

Much of this happens to our mariners out of sight of land or in remote locations wherever the industry functions. It happens to mariners scattered across many Congressional districts. It happens during or at the end of their weeks to months' long tours of duty. Our mariners make up a majority in no Congressional District.

While losing a tugboat or an OSV or one or two deckhands may be front-page news in a Texas, Louisiana or other local media outlet, it probably won't make the national news, and the crewmembers' homes will be widely scattered mostly rural counties in the South. The boat company is free to recruit more hands to replace the dead and the entire process is reduced to a mere inconvenience.

When complaints are lodged with government regulators and departmental Inspectors General, they are dismissed as "labor disputes". When the occasional ordinary citizen is killed crossing a bridge at the wrong moment it draws little notice nationally. Such "civilian deaths" while all too common are nonetheless spread apart by time and distance and nobody seems to see the pattern except a tiny voice in the wilderness known as the National Mariner's Association whose accurate, alarming but relatively dry and technical reports are routinely shelved by all the responsible branches of government.

In this book we will tell you, as members of the American Public, some of the true horror stories of what is going on offshore or even "inside the levee" in the hopes that an aroused public will be able to move Congress to act, where the rattle of dry facts and figures have been unable to do so. Seafaring American merchant seamen once faced similar conditions. Reform began with the publication of a single book – Richard Henry Dana's "TWO YEARS BEFORE THE MAST." Today's blue-water American merchant seamen are protected by statute from excessive work hours and improper provisioning, and by strong unions that insure decent working conditions. By contrast, too many of our Jones Act seamen do not even receive the woefully inadequate protections of the minimal regulations that apply to them. The result is death, dismemberment, and debilitating injury for both seamen and occasionally the innocent bystander in the thirty-three American states served by inland and coastal navigation.

We can't wait for another Richard Henry Dana to appear so we have brought some of the on-going horror stories straight from the pages of the National Mariners Association's documents. We urge you to read, and then to react by contacting Congress and demanding reform.

CHAPTER 1
America's Invisible Merchant Marine Fleet

Most Americans perceive the United States as a continental power stretching from sea to sea, containing vast natural resources, and virtually self-sufficient in raw materials. In fact, in terms of modern industrial requirements, we are a "have-not" nation. Of the 77 strategic materials that we need to sustain our economy, 66 must be imported. The vast bulk of these imports come to us by sea with more than 99% carried by foreign-flag commercial shipping. So we are not only a "have-not" nation in terms of strategic materials, we are also a nation dependent on foreign merchant marines for the delivery of our needs.

During World War II the United States Merchant Marine was the largest in the world numbering at times over 5,000 ships even while sustaining heavy losses. Today we have about 10 commercial transoceanic transports in the international trades and possibly as many as 200 civilian-manned navy-owned and operated transoceanic major transports dedicated to the service of military logistics. We still possess the world's most powerful navy and there are no navies seeking to destroy our commerce. Piracy, while still with us, is confined to several regional problem areas. With such relatively safe seas, foreign carriers don't mind carrying our trade. Both foreign carriers and American-owned but foreign-registered "flag-of-convenience" shipping can carry our international trade at an attractive profit, and at the expense of American jobs, as long as the seas remain free to transit. The freedom of transit is largely paid for by American taxpayers through the maintenance of the American Navy.

Unfortunately, history in two World Wars taught us that willing foreign carriers disappear when the risks to shipping begin to interfere with their profits. When forced to do so, the United States has on several occasions demonstrated an uncanny ability to vastly expand its national merchant marine, its international transport fleet, and properly crew it in a very short time frame.

To understand how we have been able to do these things in the past, you must reverse a very common image of America's Merchant Marine. According to the ***popular image,*** big deep-sea transports, freighters, container ships, tankers, and bulk carriers are our "real" Merchant Marine while our tugs and barges, offshore supply and service vessels, ferries, and excursion boats are auxiliary to, or only a minor branch of the American Merchant Marine. Actually the reverse is true. Since the dawn of the Republic, America has conducted more trade by water between and among our own states than with foreign economies despite our shortage of strategic materials and the recent downturn in manufacturing.

Of course, some of this domestic waterway trade is a continuation of imports in foreign trade or part of the beginning of export voyages. Some typical examples would include the movement of gasoline and heating oil, refined products of Louisiana, up the Mississippi River for eventual distribution by tank barge to 18 interior states. The refined product was derived in part from imported crude oil, which reached New Orleans and Baton Rouge, by tank ship. However the foreign crude stocks are not the reason this interior waterborne trade exists. The trade started when Louisiana refineries were fed only crude stocks pumped from Louisiana and Texas, back when our country was an oil exporting nation as we were before World War II (1941-1945). Jet fuel moves from Houston refineries to the Florida panhandle's military air stations by tank barge propelled by American-manned and American-documented towboats. Coastwise American tankers and tug/tank barge unit tows carry chemical stocks between Houston, the New Orleans-Baton Rouge "chemical corridor," and east coast ports like Baltimore.

Grain for export from the mid-west heartland is transported down to New Orleans by towboat and barge; but along with the export grain a great deal of the grain slated for domestic consumption is also distributed by barge. Giant bulk carriers called "Lakers" ply the Great Lakes shifting the area's grain and iron ore cargoes both between and among regional users and to export points. There are even barge movements carrying potatoes out of parts of Idaho to the west coast via the Snake and Columbia rivers for domestic consumption and export.

Off of the Gulf Coast, the coasts of Southern California, and Alaska small nimble ships called Offshore Supply Vessels (OSVs) deliver supplies and personnel to America's offshore oil and gas rigs on our Outer Continental Shelf (OCS) and elsewhere in our Exclusive Economic Zone (EEZ). In more than 33 American States with navigable waters, large and small ferries shuttle people to work and to resorts. Day excursion vessels of all sizes crewed by our "limited-tonnage" mariners carry day-trippers on sightseeing tours. Around all four coasts and in our "inland seas" like Chesapeake Bay, Long Island and Puget Sounds powerful harbor tugs see to the general towage needs of the marine transportation and construction industries. In all navigable waters and even in places not normally navigable, available tugs and towboats provide services to America's bridge builders, pier builders,

bulkhead builders, and the maritime civil engineering industry generally. The Officers and most of the seamen aboard this vast domestic fleet of sturdy "work boats" are licensed and certified members of the United States Merchant Marine and serve under the general superintendence of the U.S. Coast Guard. The various domestic fleets they serve feature vessels ranging in length from 26 feet to in excess of 400 feet. These vessels, in turn, are serviced by dozens of "second-tier shipyards."

It is from this vast domestic shipping industry that we have drawn the seamen and ship builders in the past to rapidly expand our international fleet when the "beans and bullets" had to reach foreign countries and to deploy American troops while the usual foreign-flag marine transport suppliers were nowhere to be found.

Make no mistake about it, this domestic fleet only survived competition from third-world and "flag-of-convenience" vessels built at a fraction of the cost of American-built vessels, and third world seamen willing to work for a bowl of rice because it was "***protected***." Most successful commercial nations provide legal protection for their "cabotage trades" (from the French term meaning "trade between the capes"). Allowing foreign flag vessels to carry domestic waterborne trade is both a security risk and commercial suicide. To get a really visceral feel for what it is like to allow foreign mariners to carry your domestic commerce, rent the old Steve McQueen movie "*THE SAND PEBBLES."* Try to consider the events depicted during Boxer Rebellion in China in 1900 from the Chinese perspective. What were American and British gunboats doing patrolling a thousand miles up their Yangtze River? The answer is simple, American and British merchant vessels went in before them and took jobs from Chinese water-men and generated poverty that eventually degenerated into banditry and river piracy. Since navies traditionally protected their merchant shipping, it was only logical that foreign navies would soon ascend the rivers of China sparking a chain of events that we have not finished witnessing even today. Except for a series of statutes collectively known as the "Jones Act," America today would be in the same boat that China was in on the eve of the Boxer Rebellion over a century ago.

Today, we are slowly relinquishing to corporate greed the domestic trades that are the backbone of our merchant marine that no foreign power ever was able to take from us by force. The Jones Act fleet is under constant political attack in Congress, while Jones Act crews in many trades often are reduced to third world working conditions. Because of these working conditions, which some observers believe have reduced the life expectancy of Jones Act seamen to an average of approximately 57 years, the aging crews of America's work boats are not being replaced by members of a new generation. Each year more and more waivers are granted allowing foreign crews into our domestic waterborne trade. Japanese, French, and Italian interests own some of the export grain elevators and lobby Congress for ever cheaper water transport unconcerned by the thought of what a foreign crew on a Mississippi River towboat would mean in the way of American port and waterway safety and security. Unfortunately, the reality of today's Jones Act crews doesn't provide much contrast with what we might expect out of some third-world crews. It is not the fault of our superbly trained, tested, and experienced Jones Act seamen. Our domestic crews are worked such impossibly long and irregular hours that Coast Guard studies indicate that many non-union crews, and they are in the majority, are so fatigue impaired after only a couple of days aboard that their cognitive functions are on a par with an alcohol impaired driver in the .05 to .08 blood alcohol range – with .08 BAC being "intoxicated" in most states!

In the pages of this book, we will make our case that domestic American waters are being served by fatigue-impaired navigators and their undermanned deck and engine crews. This is a work force of 126,000 hard working Americans performing a vital national service often at very serious detriment to their safety and health.

In the process ordinary Americans are being killed in surprising numbers while trying to do such mundane things as motor across a bridge over a navigable waterway. The horrors we will document in this book have been going on for over thirty years in the full view of the United States Coast Guard. In more recent years, Congress has been informed and attempted some well-meaning reform only to have the Coast Guard ignore their instructions or to have vessel owner lobbies water down the legislation. The Inspector Generals of the Transportation Department and the Department of Homeland Security were informed and have done nothing to remedy the situation. Now, to protect our mariners as well as the public at large, we are taking our case to the American people.

We are not the first to describe our cabotage trade fleets as the root, the heart, and the core of the American Merchant Marine. Alex Roland, W. Jeffery Bolster, and Alexander Keyssar did an earlier and far more extensive job of it in *"THE WAY OF THE SHIP"* for the American Maritime History Project. We urge our readers to read this work. If you do that, you will be struck by two paradoxes. The first is the incredible contrast between the volume of U.S. trade and the miniscule size of the American international merchant marine. In the second you will be amazed by the contrast between the importance shipping, particularly coastwise and inland waterway shipping,

our domestic merchant marine; have exerted on American history and life and its relative invisibility to historians and citizens.

"*THE WAY OF THE SHIP*" is perhaps the first maritime history to tell in detail the important story of the commercial transport of cargo and passengers between American ports and the ways in which it fueled the material and economic expansion of our country. In our attempt to describe the present day plight of the crews of our domestic fleets we have neither the time nor the space to fully educate the reader to the long history and vital importance of these fleets and shipyards to our national survival. We can only refer you to *"THE WAY OF THE SHIP"* and proceed with our narrative.

We intend in these pages to describe the working conditions aboard America's working domestic commercial vessels and the effects those conditions have upon the crewmembers, their families, and occasionally the general public. This is a twice-told tale, told in a hurry against gathering darkness. Would that we had a Richard Henry Dana and a "*TWO YEARS BEFORE THE MAST"* but all we have is the truth and very little time to tell it.

CHAPTER 2
Third World Work Hours and Life Expectancy in the Invisible Fleet

America's "work boat men" generally work a "two-watch system" meaning that there are only enough crewmen to operate the vessel around the clock divided into two watches. This means that each crewman, whether a licensed "officer" or an unlicensed "rating" must cover 12 hours of vessel operation during each 24-hour period. Deep sea mariners by international convention work four hours on and eight hours off in a three-watch system. This is also true of many foreign nations in their domestic or cabotage trades, including many third-world nations. By contrast most working mariners in the American towing industry work six hours on and six hours off around the clock for tours of duty that last two to four weeks but often last much longer.

Not without good reason, the National Transportation Safety Board (NTSB) has called for introducing scientifically based hours of work regulations as a "most wanted" improvement in maritime safety for over twenty years. To understand what years of such working hours and conditions can do to a man, we introduce you to Captain Antoine Collins Verret from the pages of a widely read report from the National Mariners Association.

The Verret Family Tragedy Brought on by "Inevitable" Fatigue

On Dec. 4, 2000, Rita Billiot called to tell us that her brother-in-law Antoine Collins Verret, master of the anchor-handling tug M/V Mohawk Eagle owned at the time by Double Eagle Marine, was found unconscious in his cabin after suffering a stroke on the vessel while returning to an anchor-handling job for the pipe-laying barge Midnight Brave 60 miles offshore in the Gulf of Mexico. She reported that Collins was evacuated by helicopter to Lake Charles Memorial Hospital. The company called Rita's sister Catherine, Collins' wife, about 6:00 a.m., and told her that her husband was "rather sick." She would later learn that this understatement clouded the reality that Collins was close to death.

A company representative, in trying to minimize the seriousness of the illness, provided additional details to Rita over the phone indicating that Collins' condition was extremely grave. Somehow, Rita in a near panic, managed to drive her sister, Catherine, at speeds approaching 80 mph, more than 150 miles to Lake Charles, Louisiana, where Collins now lay in intensive care partially paralyzed, incoherent, and just barely conscious.

After several days as his condition stabilized, Collins was transferred by ambulance to the Terrebonne General Medical Center several miles from his home in Houma, LA, where he would spend several weeks in the rehabilitation unit. It was at this point where friends, family, and eventually our Association's officers first viewed the devastation caused by the stroke that left him paralyzed on his left side and barely able to speak.

Twelve years later, Collins remains paralyzed on his left side. He is wheelchair-bound, unable to walk without direct supervision, and cannot write or use his left hand. Much water passed under the bridge in the years after his stroke. Collins Verret's story should provide food for thought for any mariner who chooses or is forced to do the work of two men, work excessive hours often under harrowing conditions and to the point of exhaustion on the job.

According to testimony taken under oath, Collins was an exemplary mariner. During his 45 years of service in the marine industry, he had a clear Coast Guard record, a clean driving record, had never been involved in a serious accident. He was well liked by his company personnel manager who considered him a "friend" and was respected by both his crew as well as the customer he was working for. One crewmember went so far as to say that both of the barge captains on the Midnight Brave "loved" him.

It was clear that when Barge-Captain Nini heard of Collins' stroke he moved heaven and earth to get an evacuation helicopter into the air and en route to the scene – with no delay and without any inane questions as to who would pay the bill. Collins is friendly and soft-spoken and dedicated to performing whatever job he is given to the very best of his ability…as he proved by sacrificing his health in this case that should provide several very important lessons for our mariners. One of those lessons involves the stress and fatigue that working on commercial and largely unregulated towing vessels can cause.[1] *[(1)Refer to NMA Report #R-403.]*

In the mid-1990s, Captain John R. Sutton, President of the American Inland Mariners Association (AIM), made inquiries of many knowledgeable masters and river towboat pilots, searched obituaries of friends and other mariners who passed away and found that their <u>average</u> lifespan was only slightly over 57 years. His study was as thorough as possible under the circumstances although admittedly not "scientific".

For "science" in Captain Verret's case, we rely on the sworn testimony of Dr. John Stirling Meyer, a researcher on stroke at the Veterans Administration Medical Center and Professor at Baylor College of Medicine in Houston, TX. Dr.

Meyer presented an expert opinion that stated in part: "The fatigue, sleep deprivation, and stress experienced by Captain Verret, more probably than not, aggravated or contributed to his stroke." This testimony given in a 115-page deposition is so convincing that we forwarded a copy to the National Transportation Safety Board to consider as supporting evidence in their ongoing "scientific hours-of-work" project.[1] *[[1]NTSB Recommendation M-99-1.]*

Captain Verret was 59 years of age at the time of the stroke that left him permanently and completely disabled. "Disabled" has meant that Collins spent the next twelve years in a wheelchair dependent upon his wife, Catherine, and other members of his immediate family as caregivers. His future is bleak.

Our Association hears of many mariners that worked on boats all their lives with the intention of retiring from the industry someday – as Captain Verret planned to do in several years. Regrettably, many mariners develop health problems that force them out of the industry before they can reach an age covered by Social Security and/or Medicare. This is a result of the aging process accompanied by stressors unique to this industry including:

- unreasonably harsh working conditions that become unrelenting when applied to older mariners;
- long-term vessel undermanning;
- working with untrained crewmembers including "green" deckhands prone to accidents, and inexperienced Mates not capable of standing their watch alone;
- working excessively long hours to make up for shortcomings of other crewmembers;
- running the boat in the stress of rough weather, during hours of darkness and in fog with limited visibility;
- enduring years of poor diets;
- drinking unsanitary and impure drinking water from rusty and decaying water tanks;
- frequent interruptions of sleep by noise, vibration, and vessel motion;
- years of smoking or being forced to live with exposure to second-hand tobacco smoke in close quarters;
- high accident rates caused by dangerous and largely unregulated working conditions on towing vessels that still do not undergo Coast Guard inspections.[1] *[[1]Refer to NMA Report #R-276, Rev.10.]*

These conditions help to explain why the "average" lifespan of a towing vessel officer may be shortened by years. For survivors, career ending medical problems may occur long before the date when Social Security and/or Medicare coverage kicks in. In addition, many "limited-tonnage" mariners work "off-and-on" for many different employers, live paycheck to paycheck, and have no viable plans to fund their retirement. Few boat companies offer pensions that have a reasonable expectation of rewarding years of loyal service! In fact, with so many mergers, buyouts, and other wheeling and dealing common to this industry, coupled with the cyclical nature of the towing and oil sectors, simply holding a job requires a high degree of good luck. "At-will" employment serves as a stark reminder to do as you are told and never "rock the boat." It is virtually unheard of to question policies dictated by mid-level executives who, like Collins' personnel director, never had any first-hand experience working on boats. Without this experience, it is easy to see why "the company's bottom line" took precedence over assigning a second trained and experienced mate to assist with the training duties dumped on Captain Collins Verret.

There are so many bumps and pitfalls in the job market facing our "limited-tonnage" mariners that membership in an established union with the training, insurance, and the other plans that such membership can offer provides the only organized cure to these ills on the horizon. Above all, union membership requires mariners to face these issues squarely and work together with other company employees and not at cross purposes to solve problems that employers and regulators ignored for years and, most likely, will continue to ignore as long as they are not called on the carpet for doing so. The proposed towing vessel inspection regulations proposed published in August 2011 after seven years in the making offer very little in the way of improving working conditions.

This story reinforces and updates the letters written by dozens of our mariners relating the <u>true</u> stories of violations of the work-hours statutes in our Association's "Yellow Book."[1] We watched in shock and amazement as the Coast Guard at the Eighth District and at the national level ignored constant violations of the laws designed to protect our mariners. We heard the President of the Offshore Marine Services Association (OMSA), a trade association representing offshore vessel owners; deny that work-hour violations even exist. We watched the National Offshore Safety Advisory Committee (NOSAC), a federal advisory committee appointed by the Secretary of Transportation, cater to industry wishes and do its best to sidetrack and dismiss our allegations of work-hour violations. This came to a boil in April 2002 when a dozen of our Association directors and members traveled to Coast Guard Headquarters and dumped NOSAC's bungling mess into the Coast Guard's lap claiming, after wasting 1½ years, that it didn't even have the power to investigate our claims if it had chosen to do so. In spite of promises extracted from RADM Pluta, the Coast Guard never investigated a single one of the 57 separate claims about the ongoing statutory violations. The Coast Guard obviously had no plan to challenge the owners of uninspected

towing vessels or offshore supply vessels to "clean up their act" and adequately crew their vessels and stop overworking their personnel.

Finally, in February 2003, our Association pulled the problem from the Coast Guard and brought it directly to the attention of the media and two Congressional oversight committees and have kept our focus on the problem ever since.[1] *[[1]Refer to NMA Report #R-350, Rev. 6.]*

An Injured Mariner Needs Immediate First Class Legal Representation

Here are some problems a seriously injured mariner faces to obtain the care and attention he rightfully deserves following a serious job-related accident.

Collins' sister-in-law, Rita Billiot called us on behalf of her family for advice. Our Association recommended that her family seek legal counsel from Mark L. Ross, Esq. who is well known by our mariners. Mr. Ross visited with the family at the hospital in Lake Charles, LA, on the day after the accident and took charge of the situation to ensure that Collins' immediate and long-term medical needs were attended to. In doing so, he sought to work with the company, R& B Falcon, and its insurer. The vessel itself was in the process of being transferred from one owner to another.

When the attorneys for the new owners, Delta Towing, made things difficult in a number of ways, Attorney Mark Ross filed a lawsuit and brought the matter to a head. In the meanwhile, Delta Towing procrastinated and failed to come forward with the Mate, a key witness to this tragic event, ***for almost two years***. During this time, Collins and Catherine and their family were left to their own limited means to do their best to try to cope with their shattered lives. This part of the story was absolutely unforgivable on the part of Delta Towing (as successor to R&B Falcon) but is not uncommon in the maritime industry. Our Association condemns the type of unnecessary hardship that this company and its attorneys perpetuated.

In acknowledging the referral of this case, Attorney Ross reminded our Association's officers that he owed his undivided allegiance to his client, Collins Verret and his family, and that he would do his best to secure a fair and full monetary settlement for them so that they could try to pick up the pieces of their lives.

Since this was the most horrendous example of a violation of the 12-hour statute we had witnessed to date, we hoped that a victory in court based on violations of the 12-hour rule would prove once and for all that all licensed mariners were clearly entitled to protection under the law. This did not happen because this case, like so many others finally was settled quietly "out of court." Consequently, in its final settlement, the towing company could assert that it had broken no laws, is guilty of nothing, and settled amicably with their former employee. It's the truth, but it is certainly not the whole truth. This is why we examined this case so carefully so that we could share its findings with other mariners.

Nevertheless, the final settlement did ensure that Captain Verret and his family would receive compensation for damages – following 2½ years of intense privation, anxiety over medical bills and their future, additional stress, and suffering. Sadly, the damage done to Collins and his family can never be repaired or restored. In viewing Collins after his accident, the cold hard cash from the settlement truly is both cold and hard.

If a Judge had arrived at a decision after court proceedings, his decision might have set a clear precedent all injured mariners could look to. But, at this point, we believe it would be best to replace the existing 12-hour statute by "scientifically based hours-of-work regulations" not only for officers but also for other crewmembers as well. A twelve-hour workday limit takes into consideration certain "human factors" that cannot be denied. But ***Congress, rather than the Coast Guard, will have to order a 12-hour workday for unlicensed crewmembers because the Coast Guard lacks the authority to do so***. Our Association formally requested that Congress take this action because unlicensed crewmembers need the same consideration as their officers.[1] *[[1]Refer to NMA Report #R-350, Rev. 6, Issues "H" & "K".]*

Our Association asserts that any new work-hour statutes should be based on suitable scientific studies. Congress ordered and received a Coast Guard Crew Endurance Management Study (CEMS) in 2005. While the science was excellent, the results did not justify using CEMS procedures as a ***substitute*** for adequate vessel manning. In public meetings, in October 2011, industry leaders continue to show no willingness to find a way to provide for a proven human need for 7 to 8 hours of uninterrupted sleep for their mariners in any 24-hour period. For the present, the NTSB recommendations for scientifically based hours of service regulations are just that – ***recommendations***. They will remain a pipe dream unless Congress takes action and the Coast Guard enforces it. Limited-tonnage mariners who take a stand on this issue and refuse to be a party to breaking existing work-hour laws and regulations[1] will fight a losing battle until the law is changed and the Coast Guard enforces it. The existing 84-hour workweek that

employers violate with impunity and the Coast Guard refuses to enforce must change. Unfortunately, it often takes a disaster to bring about changes. Even then, the last clear work-hour disaster that took out the I-40 Bridge at Webbers Falls, OK, along with 14 lives and $30,000,000 in damage apparently was not enough.

Ungrateful Company Owners and Officials

*[**Source:** Article by Rita Billiot in Newsletter #8]*

I am prompted to write this letter after what happened to my brother-in-law, Collins Verret.

Collins has been a mariner all his life. He's in his late 50s. He was working on the boat when he had a stroke. Crewmembers found him on the deck in his room,(1) where he had gone to try to get some rest after working far beyond his normal shift.(2) He is left-handed; now he is paralyzed on his left side and confined to bed and a wheelchair. ***[Editorial notes:** (1)See "Lies, Ignorance, or Incompetence?" below. (2)The "truth" is that he had worked for almost 48 hours without a meaningful relief. This was revealed in depositions taken two years after his stroke.]*

He was being overworked on the job. Nobody cared that he could not get the rest he needed, and he did not eat right. He is now is a man that is not able to do anything for himself anymore. He is depressed all the time, feels useless because he cannot support his family anymore. His son had to drop out of school to help his mother to take care of his dad. She is not well herself.

What gets to me the most is that not one of the company owners or officials from the company office ever went to the hospital to see about him. They have not as much as called. They even tried to get out of paying his benefits by saying that it was not an "at fault" incident. Might I say though, that members of our Association did go see about him and have kept up with his progress.

With all I have seen with my husband being a mariner (and my brother and brother-in-law are also mariners), these company "higher ups" are the most unappreciative, ungrateful, unconcerned bunch of employers I have ever seen. They could care less about what happens to these men when they get hurt while working for them or get fired for a stupid reason, as once happened to my husband.(1) As long as they have their bills paid, drive their nice vehicles, go home to their fancy houses in the best neighborhoods, eat at the finest restaurants, they simply don't care. They need to remember one thing though. It's our husbands, the men who sweat and risk their lives and licenses that make possible the owners' big fat paycheck. *[(1)R&B Falcon fired her husband for refusing to leave port on an international voyage until his tug's navigation equipment was repaired. He finally sued and recovered for wrongful termination.]*

Who am I? I am a concerned wife of a seaman who is fed up with the abuse and the neglect from these companies. I am staying in contact with our Association to try to put a stop to these companies that are abusing and neglecting their employees. Since there are "rules and regulations" for the mariners to follow and there should be "rules and regulations" for these companies to be held accountable for as well. They need to be held accountable for breaking the rules just like the seaman are when something happens on a boat. Sincerely, Rita Billiot.

Lies, Ignorance, or Just Plain Incompetence?

Somewhere around 11:30 on the evening of Dec. 2, 2000, in very rough weather while returning to the pipe-laying barge they were servicing, the mate of the tug Mohawk Eagle on reaching the pilothouse found the tugboat plowing through heavy seas on automatic-pilot with Captain Collins Verret lying on the pilothouse floor. One deckhand was told later that morning that he heard that Collins "…was laying on his knees by the chair holding on." The mate asked if Collins hurt himself and Collins reportedly said, "no" and that he was simply tired and just wanted to sleep. The mate found this highly unusual, said he suggested that Collins go below to his cabin but reported receiving a reply that it was too rough to go below. The mate gave him a pillow and left him lying on the deck. Collins had suffered a stroke that the mate apparently did not recognize.

For the next six hours, Collins continued lying on the pilothouse floor, apparently asleep. It was only when the pipe-laying barge called at 05:30 the next morning to start the day's work that the mate attempted to arouse Collins but was unable to do so. When his deckhand reported for duty at watch change, he had him call the cook and asked him to bring Collins' sleeping bag to the pilothouse. The cook examined Collins and immediately concluded that he was seriously ill. He, thereupon, reminded the mate he was now the captain of the vessel, and urged him to call the barge captain to ask the Emergency Medical Technician (EMT) assigned to the lay barge to examine Collins – which he did as well as calling his office.

The mate maneuvered the tug near the barge and the EMT made a harrowing leap in 6-8 foot seas and proceeded to examine Collins on the deck of the pilothouse and, following a detailed examination, declared that he had suffered a stroke. The barge captain, who knew and had great respect for Collins, <u>immediately</u> called for a

commercial evacuation helicopter that set out promptly for the barge. Three riggers and three tug crewmembers put Collins in a litter basket, carried him down to the after deck, and transferred him by personnel basket to the lay barge from which the helicopter brought him ashore.

The delay in determining that Collins had suffered a stroke was critical to his recovery and could have taken his life. According to the expert testimony of Dr. Meyer: "The delay of six hours prior to his receiving medical attention, more probably than not, denied him the benefits of TPA therapy, as the earlier the TPA treatment is administered within three hours for ischemic stroke the better the outcome."

The family was told, and believed, that Collins had suffered a stroke in his stateroom sometime during the night. It only became apparent in a deposition given under oath more than two years later that Collins had really collapsed in the pilothouse as the vessel was running on autopilot and was left to lie where he fell for more than six hours without summoning medical attention from the nearby barge or from the Coast Guard. One story recited by one of the deckhands indicated that he sat for a while in the pilothouse with the mate in the dark while Collins lying on the deck and that Collins responded to their questions. Collins recalls nothing of events after about 11:00 in the evening or of his stroke until he was revived in the hospital. The mate, however, denied that the deckhand ever sat in the pilothouse that night. When Catherine heard the mate's statement under oath in the deposition two years after the fact, it was "as if he had cut my heart out."

Dr. Meyer, a renowned stroke treatment specialist, stated clearly in his testimony that giving TPA therapy after the initial three-hour window of opportunity passes can clearly endanger the life of the patient. However, it appears that there was no clear transfer of information as to when the stroke occurred – was it at 11:30 p.m. or 5:30 a.m.? Consequently, Collins received the TPA treatment far beyond the "window of opportunity" on his arrival at Lake Charles Memorial Hospital. This late treatment alone could have killed him – but, fortunately, did not.

The irony is that the mate had taken two complete first aid and CPR classes earlier in the year during his licensure and later as a part of his STCW training. Yet, he either failed to recognize the signs of stroke that he should have learned in school or failed to take decisive action and call either the barge or his home office for six hours. Was it gross incompetence or just plain ignorance…we may never know – but there certainly were a number of lies and other misleading information that needed to be unraveled!

Big Deals in the Making

Collins' stroke was probably the last thing on the minds of the executives of the large corporation that he worked for as Dec. 2000 turned into Jan. 2001. Only recently had R&B Falcon consolidated a number of smaller local towing companies including Double Eagle into one large local towing conglomerate when they were forced to turn over control of their vessels to another large company for reasons recited in the following news article.

Merger Results in New Vessel Company

*[**Source:** By Bill Evans, The Waterways Journal, Feb. 19, 2001, pgs 3, 6.]*

A recently concluded merger of major players in the international oil and gas industry and a joint-venture with two Louisiana businessmen has resulted in creation of Delta Towing LLC, operators of a 202-vessel fleet of inland tugs and towboats, offshore tugs, crewboats, and service barges, with another 10 crewboats under construction.

Transocean Sedco Forex, Inc. on Jan. 31, 2001 announced closing of its merger with R&B Falcon Corp., creating an offshore drilling contracting firm with a mega fleet and worldwide operations. Both Transocean Sedco Forex and R&B Falcon are Houston, TX-based companies.

Prior to the merger, Transocean Sedco Forex billed itself as the world's largest offshore drilling contractor. The firm's stock is traded on the New York Stock Exchange under the symbol "RIG." R&B Falcon Corp. operates the world's largest fleet of marine-based drilling units servicing the international oil and gas industry.

Because Transocean Sedco Forex is a foreign-owned corporation chartered in the Cayman Islands, under terms of the Jones Act the firms were required to either spin off the R&B Falcon marine transportation fleet or limit its ownership in the fleet to no more than 25 percent.

Delta Towing LLC was formed as a joint venture between Transocean Sedco Forex, R&B Falcon, and Gary and Laney Chouest, principals in Edison Chouest Offshore of Galliano, LA. The joint venture became effective upon conclusion of the Transocean/R&B Falcon merger on Jan. 31. Under the joint venture agreement, Delta Towing will own and operate the former R&B Falcon marine transportation fleet, consisting of 72 inland tugs and towboats, 34 offshore tugs, 28 crewboats plus the 10 under construction, and 66 service barges. The fleet includes two additional vessels, but Lonne Thibodeaux, Edison Chouest Offshore director of corporate communications, said last

week he was unsure of their type. In addition, Delta Towing charters another 15 vessels, he said.

“The vessels will operate both inland and offshore, in both oilfield and general towing service,” said Thibodeaux. Details of the planned operation including any vessel name change plans were not immediately available. R&B Falcon will receive $80 million in the form of a secured contingent note, plus other contingent consideration, and will retain 25% ownership in the operation, the firms said in an earlier announcement.

"This acquisition clearly fits with our current expansion plans into the inland and river services market," said Gary Chouest in the announcement.

Calling the R&B Falcon marine fleet "a welcome addition to the existing Chouest fleet," Laney Chouest said "The transaction will accomplish the Chouest goal of becoming a full marine supplier offering a full range of services, complementing our sizeable number of new-generation deepwater service vessels and the remainder of our 'blue-water' fleet with a large fleet of inland 'brown-water' vessels." Edison Chouest Offshore operates more than 120 vessels and employs more than 3,000 people worldwide.■

All of this wheeling and dealing provided no care or comfort to Capt. Collins Verret who was disabled and turned out to pasture.

The Lawsuit

In Dec. 2000, Antoine Collins Verret was a 59-year old resident of Houma, LA, a life-long licensed mariner and captain of the anchor-handling tugboat M/V Mohawk Eagle, a vessel then operated by R&B Falcon Marine. In Jan. 2001, R&B Falcon and two other marine companies became Delta Towing LLC.

Earlier, in late 2000, mate Leroy "V" began to work aboard the anchor handling vessel M/V Mohawk Eagle. Mr. V obtained his mate's license in Feb. 2000, but had little or no experience handling anchors. As more fully explained below, Delta's decision to burden Captain Verret with an untrained “relief” pilot forced Captain Verret to work well over 12 hours a day. This stress in turn eventually caused Captain Verret to suffer a stroke on Dec. 2, 2000 that left him wheel chair bound and permanently disabled.

Delta Towing told Captain Verret to Train His New Mate in Anchor-Handling Techniques

In late 2000, Delta assigned Mr. V to act as Captain Verret's relief pilot aboard the M/V Mohawk Eagle, and was the first anchor-handling vessel on which Mr. V had ever worked. Since Mr. V had little or no experience in anchor handling operations, Delta directed Captain Verret to train him. ***But Delta had no program, procedures, tests, or written materials of any kind on how to train newly licensed mates to become relief pilots on anchor handling tugs***. Additionally, Delta did not give Captain Verret any help to train his own “relief” pilot. However, Delta did have an option of pairing Captain Verret with an experienced relief pilot while training Mr. V. Both Captain Verret and his experienced relief could then take turns training Mr. V. However, Delta chose the less expensive route and left the full burden of training Mr. V rest with Captain Verret alone.

Captain Verret had to teach Mr. V to use the winch controls, hook buoys, and pick up anchors. Captain Verret first let Mr. V watch him perform these tasks, then try them himself so his mate could get the feel for it. One M/V Mohawk Eagle deckhand recalled that since Mr. V did not know how to perform anchor-handling operations, "the old man (Captain Verret) had to be up long hours showing him, teaching him, you know."

Captain Verret Had to Work Excessive Hours to do His Job and Then Train His Own "Relief" Pilot

As experienced offshore mariners know, an anchor handling vessel can expect to work up to 24 hours a day. A M/V Mohawk Eagle deckhand recalled the vessel ran anchors for the lay barge Midnight Brave near High Island, West Cameron Block, Gulf of Mexico on the day Captain Verret suffered his stroke. The deckhand said the vessel was running anchors, "24 hours a day, constantly running anchors with them." Mr. V, the relief pilot, likewise recalled, "One time I was pulling anchors, I stayed in the doghouse for six hours, oh yeah, and it was rough." Until Captain Verret trained Mr. V to at least some minimal level of anchor handling skill, Captain Verret was the only person on the M/V Mohawk Eagle who could perform all the vessel's anchor handling assignments.

Mr. V felt that Captain Verret taught him how to pull anchors after only two days of intensive training. During these first two days of training, Captain Verret worked his own two six-hour shifts and then trained Mr. V. Mr. V recalled he could sleep while off duty but that Captain Verret, "Yeah, the first two days he had to watch me, you know." However, after only two days of training, Mr. V could not place or take away anchors from a barge. Captain Verret had to perform those tasks during Mr. V's shifts. Likewise, Mr. V could not set up the vessel's tow cable to tow a barge.

R&B Falcon's former personnel manager agreed in sworn deposition testimony that if a trainee-mate cannot put

or take anchors off a barge, nor set up a tow, then that mate should not serve as a relief pilot on a working anchor handling tug. But, that is exactly what he was left out in the Gulf to do!

Mr. V knew that: "Some vessel captains do not like to train new mates but prefer to work with experienced relief pilots, "...because they don't like to lose no sleep, and they like to get their rest." Mr. V acknowledged that many captains prefer to work with an experienced relief pilot because he, "…Can do his own job, you know, so he (the captain) can get rest and not worry about what's going on out". Mr. V understood that with an inexperienced, trainee relief pilot on board a vessel: "Well, the captain is going to stay up and wonder if he can do the job, you know, oh yeah. Because he's always going to have in the back of his mind if something is going to happen or not. When a captain is compelled to train his own supposed "relief" pilot," …they can be up 24 hours…"

Captain Verret Had to Stay Up Almost 24 Hours Before His Stroke to Navigate the Vessel Because His "Relief" Pilot Lacked Experience

Delta assigned Mr. V to be Captain Verret's supposed relief pilot for the last time the week of Nov. 26, 2000. On Dec. 1, 2000, shortly after midnight, the M/V Mohawk Eagle departed the Gulf of Mexico and sailed to Port Arthur, TX, to repair the gear box on the vessel's winch. Since Mr. V did not know Port Arthur, Captain Verret had to bring the vessel into port. A former M/V Mohawk Eagle deckhand confirmed Captain Verret had to take the vessel into Port Arthur because, "Leroy, he didn't know his way in there too good..."

Captain Verret attempted to take a short nap while the vessel was in Port Arthur, but repairs were quickly performed and the vessel soon had to head back out to sea.

While in Port Arthur, Captain Verret did have the chance to call his wife, Catherine, to say hello. Among other topics, Captain Verret told his wife that he had been working with little sleep over the last several days and looked forward to the end of his shift.

Captain Verret took the M/V Mohawk Eagle out of Port Arthur given Mr. V's lack of familiarity with the area. Additionally, Captain Verret believed he should pilot the vessel because of the increasingly bad weather. By Dec. 2, 2000, an already-exhausted Captain Verret had been working with little opportunity for rest for the better part of the entire day. A former M/V Mohawk Eagle deckhand estimated Captain Verret remained at the wheel or was otherwise on duty the day of his stroke, "...at least 18 to 24 hours..."

Mr. V Found Captain Verret Collapsed on the Pilot House Floor and Left Him There

At 11:00 p.m. the evening of Dec. 2, 2000, Mr. V went to the M/V Mohawk Eagle's pilothouse and found Captain Verret lying on the pilothouse floor. At the time, the vessel was sailing through the storm-tossed seas of the Gulf of Mexico at night on automatic pilot. Mr. V did not try to get Captain Verret any medical aid, contact other crewmembers, or radio Delta Towing. Instead, Mr. V supposedly asked Captain Verret if he fell. Mr. V then got Captain Verret a pillow so he could "sleep" on the pilothouse floor. Captain Verret was not "sleeping" but had suffered a stroke.

Mr. V sailed on to the lay barge Midnight Brave, arriving at 24:00 hours, Dec.2, 2000, an hour after finding Captain Verret on the pilothouse floor. Mr. V left Captain Verret on the floor until 6:30 a.m. the next morning while he circled the lay barge because of the heavy seas. Mr. V did not radio the Midnight Brave's crew that he found Captain Verret lying on the pilothouse floor although the lay barge had a paramedic among its crew.

At 6:30 a.m., Mr. V tried to waken Captain Collins to begin his shift. However, Captain Verret could not get up. Mr. V began to realize something was wrong with Captain Verret, finally radioed the lay barge whose paramedic came aboard and quickly confirmed the captain had suffered a stroke.

Mr. V held a U.S. Coast Guard mate's license for motor vessels not exceeding 200 tons and the prerequisites for the license required him to be trained in First Aid and CPR and recognize the symptoms of a stroke. Delta Towing supposedly held safety meetings and distributed written materials to its employees on how to recognize and respond to strokes. Mr. V could have radioed for a medevac helicopter to meet him at the lay barge to evacuate Collins – but did not do so. When the Midnight Brave's barge captain called an Acadian Air Ambulance helicopter to evacuate Captain Verret, it took the helicopter only 37 minutes flying time to arrive at the lay barge. Prompt medical treatment, including an anticoagulant injection given within three hours of Captain Verret's stroke, could have reduced or eliminated permanent neurological damage – but his medical care was needlessly delayed for over nine hours because of Mr. V's inability to recognize or respond to the situation. So, Captain Verret will now live his life in a wheel chair with left arm and leg paralysis.

Legal issues – Mr. V's Inexperience Rendered His Tug "Unseaworthy"

Delta's decision to burden Captain Verret with an unqualified, trainee "relief" pilot rendered the M/V Mohawk Eagle "unseaworthy" as a matter of law. The law holds that an owner is responsible to his seaman-employees, including the captain, for injuries caused by a vessel's unseaworthiness. ***A vessel can be unseaworthy when its crew is inadequate or incompetent***. A vessel owner's duty to provide a competent crew is absolute and non-delegable. The vessel owner can be liable for a vessel's unseaworthiness regardless of the vessel owner's negligence or failure to exercise reasonable care. Delta knew Mr. V could not perform the duties of an anchor handling relief pilot since Delta directed Captain Verret to train Mr. V.

Delta Towing Committed a Statutory Violation of the 12-Hour Rule.

Delta's decision to burden Captain Verret with a trainee relief pilot forced Captain Verret to work well over 12 hours a day pulling his own shifts and then training and supervising Mr. V. Until Captain Verret taught Mr. V minimum anchor-handling skills, Delta put Captain Verret in a position where he was forced to work continuously.

46 U.S. Code §8104(h), known as the "12-Hour Rule" says: (h) On a vessel to which section 8904 of this title applies, an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency.

46 U.S. Code §8904 applies to a towing vessel like the M/V Mohawk Eagle.

The Coast Guard's Interpretation of 12-Hour Rule

The United States Coast Guard has issued a Policy Letter regarding the 12-Hour Rule, G-MOC Policy Letter 4-00, Change 1 entitled, "Watchkeeping and Work-Hour Limitations on Towing Vessels. This policy letter, among other things, defines the period of rest to which semen are entitled by law: **(c) Rest** means a period of time during which the person concerned is off duty, is not performing work, including administrative tasks... **and is allowed to sleep without being interrupted**.

The Coast Guard further mandates: (f) 46 U.S. Code §8104(h) establishes that operators of towing vessels subject to 46 U.S. Code §8904 are not permitted to work in excess of 12 hours in any consecutive 24-hour period, except in an emergency.

Captain Verret and relief pilot Mr. V were supposed to work six-hour alternating shifts. Captain Verret therefore should have had the opportunity to enjoy up to six hours of uninterrupted sleep, consistent with the Coast Guard's mandate that: (b) The hours of rest may be divided into no more than two periods, of which one must be at least 6 hours in length. However, Captain Verret rarely, if ever, enjoyed six hours of uninterrupted sleep from the time Mr. V came on board his vessel.

Other Courts Found 12-Hour Rule Violations Can Cause Strokes and Other Illnesses

The courts previously found that violations of the 12-Hour Rule caused or contributed to a seaman's stroke, illness or accident. The court in *Smith v Cameron Crews, Inc.*[(1)], found that the stress resulting from an undermanned boat working in the Gulf of Mexico contributed to a boat captain's stroke. The vessel's Certificate of Inspection required the vessel be manned with two licensed operators and two deckhands when operating more than 12 hours a day. The vessel never had more than the plaintiff and one deckhand aboard regardless of how long; the vessel operated. *[(1)348 So.2d 179 (La. App. 3d Cir. 1977)]*

The plaintiff presented the medical testimony of his treating physicians that many things can contribute to stroke and heart attack and, "...that the stress of the job in the Gulf of Mexico was one contributing factor among many..." The court found that since, "...the strain of being on call often 24 hours a day was very stressful", that the violation of the boat's manning certificate contributed to the plaintiffs stroke.

The court in *Elms v. Crowley Marine Service, Inc.*[(1)], found that a seaman's fall from a barge in tow resulted from fatigue caused by continuous violations of the 12-Hour Rule. In *Bradt v. United States, et al,* the court held that the plaintiff, Bradt, "...suffered tuberculosis as the result of the pattern of overwork enforced upon him because of the consistent undermanning of the vessel." Similarly, in *Gajewski v. United States, et al.*[(3)], the court found that the plaintiff's pulmonary embolism resulted from the constant violations of the maximum work hour limitations and concluded, "The excessive hours tolled by Mr. Gajewski aboard the Neches constitute a patent violation of the Jones Act…" *[(1)1997 A.M.C. 835 (W.D. Wash. 1996). (2)122 F.Supp. 190 (E.D.N.Y. 1954), aff'd, 221 F.2d 325 (2d Cir. 1955). (3) 540 F.Supp. 381 (S.D.N.Y. 1982).]*

Vessel Owners Have a Duty to Provide Seamen With Prompt Medical Care

The U. S. Supreme Court has long held a seaman's employer liable for damages resulting from his failure to promptly provide an injured or ill seaman prompt medical care: "The duty to provide proper medical treatment and attendance for seamen falling ill or suffering injury in the service of the ship has been imposed upon the ship owners by all maritime nations."[(1)] A shipowner may be sued for his negligent failure to provide his seamen prompt medical care.[(2)] *[(1)The Iroquois, 194 U.S. 240, 241042, 24 S.Ct. 640 (1904). (2) Cortes v. Baltimore Insular Line, 287 U.S. 367, 376, 53 S.Ct. 173(1932); Motts v. M/V Green Wave, 210 F.3d 565 (5th. Cir. 2000); De Centeno v. Gulf Fleet Crews, Inc, 798 F.2d 138, 140 (5th Cir. 1986); Holliday v. Pacific Atlantic Steamship Co., 197 F.2d 610, 613 (3d Cir. 1952); Fitzgerald v A.L. Burbank & Co., 451 F.2d 670, 679 (2d Cir. 1971), Olsen v. American Steamship Co., 176 F.3d 891, 895 (6th Cir.1999).]*

Mr. V's failure to promptly recognize and obtain treatment for Captain Verret when he found him on the pilothouse floor caused or worsened plaintiff's current permanent and total stroke-related disabilities. In the case of *Motts v. M/V Green Wave,*[(1)] the court discussed a vessel's failure to obtain medical care for a vessel engineer, Motts, who suffered a fractured pelvis in the waters of Antarctica. Motts died after arriving back in the United States. *[(1)50F.Supp. 2d 634 (S.D. Tex. 1999), affirmed in part and reversed in part, 210 F.3d. 565 (5th Cir. 2000.])*

The captain of Motts' vessel never told an assisting U.S. Coast Guard vessel, the M/V Polar Star, about the seriousness of Mott's injuries; "Incredibly, while Captain Peter Stalkus and Chief Mate Christopher Murray suspected by now that Mr. Motts had sustained a serious fracture...no mention of this was made to the attending Polar Star." Since, like the lay barge Midnight Brave, the U.S. Coast Guard's Polar Star was equipped with trained medical personnel, the court found the defendants' failure to advise the Polar Star that Motts "required immediate medical assistance" to be "inexplicable" and "remarkably negligent." The court held: "The Court finds that the Master and Chief Mate were not competent to evaluate and determine appropriate medical care for a crewmember, and this ***incompetence*** was negligent and/or rendered the M/V Green Wave unseaworthy."

In *Holliday v. Pacific Atlantic Steamship Co.(1),* the court found that the captain's delay of 15 hours or more in obtaining a physician for an obviously ill seaman negligence and a serious dereliction of duty owed the seaman. In short, no matter what the cause of an initial illness or injury on board a vessel, the seaman's employer must use every reasonable effort to obtain prompt medical care for the injured or ill seaman. *[(1)197 F.2d 610,613 (3d Cir. 1952).]*

Final Settlement of the Verret Case

The damages claimed in the Verret lawsuit filed in the United Stated Federal Court in Lafayette, LA were over $3,000,000. The counsel hired medical and economic experts that showed that Captain Verret's past and future medical costs alone exceeded $2,000,000. Fortunately, by gathering evidence and building up the facts of their case, the Verrets convinced Delta Towing and their insurers of the wisdom of settling Captain Verret's case before trial for a sum sufficient to take care of the Verrets' needs for the rest of their lives.

Conclusion

A shipowner's failure to properly man a vessel with trained seamen can render the vessel unseaworthy. In addition, the shipowner can be found guilty of a statutory violation if its failure to properly man a vessel causes a seaman to suffer an injury or an illness like a stroke or heart attack.

A shipowner-employer must diligently obtain prompt medical care for the injured or ill seaman, regardless of the cause or any question of fault. A ship owner-employer's failure to do so can make him liable for any aggravation of the injury or illness caused by a delay or total failure to provide a seaman-employee prompt medical care.

CHAPTER 3
The Industry Abandons Its Sick and Injured Mariners

Marine towing as well as providing logistical support to off shore construction, drilling, construction, production and salvage activities is an inherently dangerous job. Even in the best-run companies, accidents that kill, cripple and maim seamen do happen. What sets the domestic fleets engaged in these activities apart from other American work places is what happens all too often in the wake of such accidents to the good seamen who simply did their duty and mistakenly expected better treatment from their employers who profited from their labor.

The following two stories are of cook Preston P. Joseph of the M/V War Admiral and of deckhand Herman Newton on the inland towboat East Wind as recorded by the National Mariners Association and substantiated in the court records.

Mariner Seriously Injured at Work and Abandoned by His Employer

*[**Sources:** Mark L. Ross, Esq., Lafayette, LA 70501. Tel: 337.266.2345; Eastern Dist. of LA Civil Action #01-3594]*

In too many cases when mariners are injured on the job, they are left to their own devices to fend for themselves. Eventually, most angry and betrayed mariners thumb through the yellow pages in the phone book and let their fingers do the walking to find an attorney. Somehow, the rest of the story often appears blurred after it turns into a legal battle between the seaman and his employer for a legendary "pot of gold" that some mariners hope to find at the end of the rainbow. With the focus on this alleged "pot of gold," money appears to become the prize and the seaman's suffering becomes incidental. The gold at the end of the rainbow is truly "fool's gold."

In our account of this case, the "prize" in no way compensates the injured seaman, Preston Joseph, for the pain and agony that he had to endure because of the callous neglect demonstrated by his employer, Tidewater Marine, LLC – the largest offshore boat operator in the world – in finally being forced to compensate him for his painful injury. In a field with so many workplace injuries, our mariners increasingly must depend upon the work of astute trial lawyers to remind some employers of the need to develop a conscience beneath their corporate veil.

The Accident and Injury

"On Dec. 16, 1998, plaintiff Preston P. Joseph was a crewmember of the M/V WAR ADMIRAL and working in the Gulf of Mexico, Block 62, Southwest Pass. Preston worked as the vessel's cook. While so employed, he slipped and fell in water collected on the deck of the vessel's walk-in cooler while moving leaking bottles of water from the cooler floor to a top shelf so that he could gain better access to the walk-in cooler.

"Preston alleged that other crewmembers of the M/V War Admiral placed the water bottles that obstructed his access to the walk-in cooler and that the placement of the water bottles that were leaking caused the floor to become slippery. He asserted, without any malice implied in his legal statement, that this was negligence and led to his injury thereby rendering the vessel unseaworthy."

Tidewater's Personal Injury or Illness Report dated Dec. 17, 1998 records that: "He was moving 2 cases of water from deck of the walk-in cooler to the top shelf and felt sharp pain in groin on right side." The report relates that his injury was in the form of a "right testicle swollen and lower back in pain."

This was a "slip, trip, and fall" type accident that is common in the workplace. The fact that this type of injury is common does ***not*** mean that it is not serious. This accident was both serious and painful.

Treatment

Preston was taken to Terrebonne General Medical Center in Houma, LA, immediately after the accident, as any responsible employer should reasonably be expected to do. Tidewater signed as the "Guarantor Employer" responsible for handling his medical bills at the hospital. While at the hospital, Preston was given "post accident" drug and alcohol testing with negative results proving that he was free of drugs and alcohol. Had such tests been positive, the story (and possibly the treatment) probably would have ended at that point. However, we point out that withholding medical treatment awaiting the results of such testing can add to the seaman's suffering.

On the following day, Preston went home and sought further treatment by specialists in nearby Lafayette, LA, for "scrotal swelling and pain." One month after the accident he ***underwent surgery*** to repair a "massive hernia."

As months passed, Preston remained in pain and was unable to return to work. However, he and his wife kept Tidewater informed of the status of his disability as well as the fact that he could not return to work. On June 14,

1999, his treating surgeon told Tidewater that Preston remained under his care and was unable to return to work. Another physician confirmed his disability again on October 22, 1999 ten months after his accident.

Stiffed by His Employer

Tidewater refused several requests by Preston, his wife, and his attorney to pay him maintenance and cure. Over a year after the accident, even though Tidewater arranged for his initial medical treatment and was listed at the hospital as Preston's guaranteeing employer and had received a constant stream of medical updates from his doctors, they claimed they still had to "investigate" his injuries before paying his maintenance and cure.

What is Maintenance and Cure? Know Your Rights

Our Association keeps our mariners informed of their basic rights under maritime law. From time to time, we will explain certain legal rights that, although settled many of years ago, often are conveniently "forgotten" by boat operating companies.

Since mariners are not covered by Workmen's Compensation, "***Maintenance***" is a substitute for seaman's workers compensation. Maintenance is a daily stipend, generally in the $15 to $20 range. However, if you can show your living costs are more than $15 to $20 per day, as is usually the case, you can prove your actual living expenses to a court and may obtain an award for that amount. Generally, maintenance includes expenses like room and board that a mariner would not have to pay if he or she still worked aboard a vessel. Shoreside expenses like clothes cleaning bills would not be included under maintenance.

A boat company must pay an ill or injured seaman maintenance from the day he becomes ill or injured until he recovers. Alternatively, a boat company must pay its ill or injured seaman maintenance until a doctor says the seaman has reached ***maximum medical cure***. Maximum medical cure is the point where, although a seaman may still be ill, a doctor says he cannot do anything more to improve the seaman's condition.

If the question of whether a seaman has reached maximum medical cure is disputed between the boat company and the seaman, a court can decide the issue. Generally, a court will favor the opinion of the doctor who actually treated the seaman, as opposed to a company's selected physician who may have only seen the seaman once or twice.

Cure is a maritime term meaning that a boat company has to pay the medical bills arising out of the illness or injury the seaman suffered while on duty aboard his vessel. A boat company must pay 100% of the seaman's medical bills even if the seaman has health insurance until the seaman reaches maximum medical cure.

A boat company, as an employer, can avoid paying maintenance and cure for only two reasons. First, they do not have to pay maintenance and cure if they can show the seaman lied on his employment application about his health. A common ***example*** is if a seaman says he hurt his back while working. If the boat company finds the seaman hurt his back before working for that company, but denied any prior back injury on his employment application, the boat company could refuse to pay maintenance and cure for the second back injury. The prior back injury must be directly related to the injury or illness at issue, however, and the boat company's employment application must clearly ask the seaman about the prior illness or injury.

Second, a boat company can avoid paying maintenance and cure if a seaman's injury or illness results from "***misconduct***". Most "misconduct" cases involve someone getting sick or hurt as a result of misusing drugs or alcohol. Courts have similarly ruled that a seaman cannot get maintenance and cure from illnesses caused by sexually transmitted diseases or from active AIDs since those are likewise deemed to result from "misconduct."

The foregoing is not a complete discussion of this often-complicated area of seamen's rights, but we want to inform mariners that these rights and remedies exist so that, if necessary, they can ask their employers or an attorney about their rights to maintenance and cure.

Tidewater's One-Time Payment

On Mar. 21, 2000, after Preston and his wife made repeated efforts to contact Tidewater to obtain maintenance and cure, Tidewater's claims manager, Sandy Duplantier, agreed to investigate Preston's well-documented accident and injuries but apparently was in no rush to do so. On Nov. 20, 2000, six months after promising to investigate and almost two years after the accident, Tidewater made a one-time maintenance payment of $3,870 covering the period from the date of the accident but only through Aug. 31, 1999 at a rate of $15.00 per day!

We believe each mariner should ask himself or herself this question. If I am out of work, could I survive on $15.00 per day which is equivalent to $5,475 a year? Do you know the amount that your company pays for

maintenance of mariners injured at work? Is it even $15.00 per day? For ***example***, one major towing company offered an American seaman seriously injured in Africa only $8.00 per day. Could you survive for two years waiting to receive even a partial payment as Preston did? Keep in mind that Tidewater is the largest operator of offshore supply vessels in the world. Now, consider the proposition of having to wait two years to be paid this pittance and then only after hiring a lawyer to even get this far. Shame on Tidewater; shame on the perpetuation of this entire system of accident and injury compensation.

After Preston Joseph hired a lawyer, Tidewater agreed that, after examining the medical records, "…it appears that Tidewater is obligated to pay maintenance and cure related to the hernia." Yet, Tidewater claimed that it had no knowledge whether Preston received any medical treatment after their arbitrary cut off date of Aug. 31, 1999 even though they had in their possession a report from Preston's physician dated Oct. 22, 1999 that he was scheduled to see a urologist to determine whether he might return to work. Tidewater unilaterally decided to stop making any further maintenance and cure payments even though no doctor ever found that Preston had reached "maximum cure."

Down to the Wire

Because of the impending **statute of limitations**, Preston filed a lawsuit against Tidewater on Nov. 30, 2001…almost three years after the accident. Had he not done this in a timely manner, Tidewater would have been able to get by scot-free without shouldering any of its obligations for this injured seaman. All a corporation has to do is be callous enough to ignore the problem until it simply goes away. Of course, this can be a recipe for a four or five-digit medical problem to result in a six- or seven-digit financial solution.

Statutes of limitations exist for different laws and regulations are of different length. For a mariner wrongly prosecuted by the Coast Guard, for example, the limitation can be as short as one month. In Preston's case, the statute of limitations would have kicked in three years after his accident. To determine when the time limit "tolls" for any given law, mariners should contact a maritime attorney immediately following any serious accident or injury. Our Association recommends those attorneys who practice maritime law and support our efforts to keep our mariners informed. We list them on our Internet website.

On Jan. 28, 2002, Preston's lawyer informed Tidewater that his doctor recommended that he undergo further surgery but that he was financially unable to do so. The attorney demanded that Tidewater resume its maintenance and cure payments and requested that Tidewater disclose any medical records that would support a finding that he might have reached "maximum medical cure." ***Tidewater never produced any such evidence.***

Preston's attorney provided Tidewater with medical records from July 2000 showing that Preston continued to complain of scrotal pain among related complaints and that he would "tentatively schedule surgery for Friday" that was never done. As of March 2001 another doctor found Preston complaining of "…severe testicle pain – unable to tolerate" and referred him to another physician to discuss removal of a testicle.

Although we will spare our readers the graphic details, we want to point out that this is a particularly painful injury. The fact that the pain was constant and unbearable was just as clearly presented to Tidewater officials as it was to us. This case clearly shows that caring for injured employees did not rank as a high priority for Tidewater and serves as a clear warning to other mariners who rely heavily on corporate compassion to care for them if they are injured.

On Mar. 12, 2002, Preston's lawyer asked Tidewater to guarantee payment of Preston's treatment by a Lafayette urologist. However, Tidewater procrastinated and replied that it needed more time to investigate and evaluate his request for maintenance and cure.

Heading For Court

As Tidewater continued to dither and delay, the lawsuit moved closer to a showdown in Federal District Court in New Orleans. As a large corporation, Tidewater has access to the best legal talent money can buy. However, when the case reaches court, the facts of a case and the law become determining factors. Issues that can have monetary value are tagged with a dollar amount.

An attorney must always seek the best possible settlement for his client. In doing so, he may have to make all sorts of compromises based on his best legal judgment as to how his case is developing. In many cases, the defendant (e.g., Tidewater) will make a settlement offer. If that offer is acceptable to the plaintiff (e.g., Preston Joseph) then the case will be settled and dismissed by the judge.

Out-of-Court Settlements Receive Little Publicity

All that appears in the public record is the "dismissal" of a lawsuit rather than any mention of an "out of court" settlement. As far as any publicity is concerned, ***most private cases involving mariners receive little or no attention from the press because the general public couldn't possibly care less***. As part of an "out-of-court" settlement, the defendant may include a stipulation (i.e., agreement) that the terms of the settlement not be revealed. Since the settlement is not recorded in the court record, neither Preston nor his attorney can reveal the amount. That settles any curiosity about the size of the "pot of gold" at the end of the rainbow. ***As a result of the out-of-court settlement, Tidewater was never "found guilty" of anything***. They can trumpet this fact to their heart's content.

Our Association Assesses the "Pot of Gold"

Yes, Preston won…but it was no "cake walk" in spite of the number of legal precedents cited by his attorney. We are relieved that the settlement was deemed "satisfactory" to cover Preston's expenses and his needs. No matter what the amount (which is certainly none of our business), through what we learned from the public record and as the case progressed, was that ***the pain and suffering was intense and continuous***. We felt that and wish to convey that fact first and foremost to our readers. Not only was there physical pain and suffering but also the aggravation of dealing with a large corporation that aggressively delayed making a reasonable settlement. As a result, a considerable portion of Tidewater's expensive settlement was a direct result of their own failure to come to grips with their corporate responsibility to care for their injured mariner and to treat him fairly. Preston's attorney skillfully outlined the legal precedents in papers filed with the court and cited in our heading.

Towing Company Must Pay for Endangering its Mariners' Health

[Editorial note:*. NMA followed this remarkable case from the outset through the court's rendering the summary judgment requested by Plaintiff Herman Newton. This article is an edited version of the motion for summary judgment, Civil Action #36199, filed in Division A of the 18th. Judicial District of Louisiana subsequently granted on "maintenance and cure" and "unseaworthiness" issues. The motion was filed by NMA Attorney Mark L. Ross, Esq. we edited out (for readability) cites of case law and use of depositions obtained in this case. For further information, contact Attorney Mark L. Ross, 600 Jefferson St., Suite 501, Lafayette, La. 70501. Tel.(337) 266-2345.]*

Herman Newton vs. Versatility Marine, LLC

The plaintiff, Herman Newton, brought the Motion for Summary Judgment under La C.C.P, 966, the Jones Act, 46 U.S.C. 688, et seq. and the general maritime law.

The Plaintiff moves the Court to find as an uncontested matter of fact or law that the defendant, Versatility Marine, LLC, owes the plaintiff, a former member of defendant's crew aboard defendant's towboat **East Wind**, maintenance and cure following his development of an MRSA staph infection on or about Mar. 2, 2007.

The evidence shows that plaintiff became ill while in the service of his vessel. The evidence also shows that despite actual, repeated notice of plaintiff's staph infection and eleven day hospitalization, ***Versatility Marine, LLC arbitrarily and capriciously denied plaintiff maintenance and cure.***

The Plaintiff further moves the Court to find as an uncontested matter of fact and law that defendant, Versatility Marine, LLC, is liable to plaintiff since ***plaintiff's staph infection resulted from the unseaworthiness of the M/V East Wind.***

Towboat East Wind Judged to be "Unseaworthy"

The M/V East Wind's crew was rendered unseaworthy in that a fellow deckhand, Adam Hanshew, carried the MRSA staph and infected the plaintiff, Herman Newton. The vessel was further rendered unseaworthy by ***Versatility's failure to properly decontaminate the vessel after notification of the staph contagion, as well as provide plaintiff with medical care under Versatility's maintenance and cure obligations***.

Herman Newton is a former crewmember of the M/V East Wind, a vessel chartered and/or operated by defendant, Versatility Marine, a towboat company doing business within the State of Louisiana from its office in Port Allen, Louisiana.

Another Crewmember Infected Herman Newton

In mid-February 2007, Herman Newton, was a crewmember of the M/V East Wind and working out of Galveston, Texas. On or about Feb. 11, 2007, Versatility brought aboard a new deckhand, Adam Hanshew. Unbeknownst to Newton, Adam Hanshew previously contracted and continued to suffer from a staph infection known as Methecillin-

Resistant Staphylococcus Aureus (hereinafter "MRSA"). ***MRSA is infectious, resistant to antibiotics and can lead to toxic shock syndrome, pneumonia, blood poisoning, organ failure, the loss of limbs and death. Once contracted, MRSA remains in the victim's blood system for life and can manifest again at any time***.

One eyewitness to the events at issue was former Versatility Captain Gary Hensley, a towboat pilot with 20 years experience who began working with Versatility on Sept. 7, 2006 and who provided a deposition in this case.

Versatility appointed Captain Hensley to pilot their towboat M/V East Wind and gave him the option to choose his own crew. Captain Hensley chose as deckhand plaintiff Herman Newton with whom he had worked previously and considered an "outstanding deckhand."

Captain Hensley recalled that the carrier of the staph infection, Adam Hanshew, came aboard the M/V East Wind as a new deckhand in early Feb. 2007. After a day or day and a half, Captain Hensley noticed that Hanshew's nose was swollen and was "real red." Hanshew's nose continued to get "really big and really sore and it started draining". At that point, Hanshew told Captain Hensley and Herman Newton that the swelling stemmed from a staph infection from which he had suffered three previous outbreaks and showed them surgical scars to his stomach, chest and arm required to cut out the infected tissue. As deckhand Hanshew's infection continued to worsen it began to drain a "pussy mucus type drain."

Captain Hensley arranged for Hanshew to receive medical treatment in Port Arthur, Texas, because Hanshew told him he could not sleep due to the "pussy mucus type" draining. Furthermore, ***Captain Hensley and his crew feared being infected since Hanshew cooked the crew's meals***.

Captain Hensley felt compelled to get Hanshew medical attention less than a week after Hanshew came on board the M/V East Wind. The examining physician found that Hanshew suffered from a staph infection and refused to release him to return to work and further directed that Hanshew receive immediate medical attention at his home in Mississippi.

From the time Adam Hanshew came on board the M/V East Wind until he had to leave due to his staph infection, he bunked with the plaintiff, fellow deckhand Herman Newton, in an 8' by 10' bunkroom. Hanshew and Newton used the same shower and toilet. Captain Hensley recalled that Hanshew was "draining" and bunking with Herman Newton for three or four days.

Versatility Marine's management recognized the highly contagious nature of Hanshew's staph infection from the outset. When ***Versatility refused to provide transportation for Adam Hanshew to return home to Mississippi from Port Arthur, Texas***, Versatility Marine general manager Rhonda Watson and port captain Doug Faust told Captain Hensley they were concerned about the contagious nature of Hanshew's staph infection and Versatility's potential liability if some else became infected.

Captain Hensley and his relief pilot, Captain David Whitehurst, concerned about their own exposure to Hanshew's staph infection, went on the internet to learn about staph infections, "and the more we read, the more scared we got about it..."

Captains Hensley and Whitehurst thereupon contacted the Center for Disease Control (CDC) in Atlanta, Georgia, among other agencies, and ***were advised to have a professional cleaning crew fumigate and clean the boat. The CDC also advised Captain Hensley to throw away the mattresses on which Adam Henshaw and his roommate, Herman Newton, had slept***. Captain Hensley told Versatility's port captain, Doug Faust, its general manager, Rhonda Watson and the company's owner, Bud Watson, about the CDC's recommendations that Versatility shut down the M/V East Wind so a professional service could fumigate the vessel and that Hanshew's and Newton's mattresses be thrown away, "… to kill whatever viruses may be on that boat to protect us."

Versatility Refused to Take CDC Recommended Steps to Remove Staph Infection From Their Towboat

Doug Faust was the marine superintendent for Versatility and was in charge of regulatory compliance and safety for Versatility's vessels. Faust admitted he learned of the staph infections aboard the M/V East Wind when the vessel's captain, Gary Hensley, called and told him of deckhand Hanshew's infection. When the subject of maintenance and cure for deckhand Hanshew was discussed, however, ***Versatility refused to provide Hanshew medical treatment on the pretext that Hanshew's affliction was a so-called "pre-existing condition***."

Incredibly, about two months after ejecting Hanshew from the M/V East Wind in Port Arthur, Texas and refusing to provide him medical treatment, Versatility rehired Adam Hanshew. Versatility rehired Hanshew despite its knowledge that he could expose yet other Versatility employees to the highly infectious and dangerous MRSA staph. Hanshew did not finish his 28 day hitch after Versatility hired him a second time since Hanshew had yet

another outbreak and had to leave the vessel again.

Captain Hensley subsequently discovered in speaking with the captain of Hanshew's second Versatility boat that Hanshew came down with an outbreak of "something" and that ***Versatility never advised that vessel's crew that Hanshew had recently suffered an MRSA staph outbreak***.

After deckhand Hanshew left the M/V East Wind to obtain medical treatment on his own, ***Versatility refused to hire a professional decontamination service to clean the M/V East Wind***. Versatility told Captain Hensley, "they could not afford to shut the boat down for a professional cleaning crew...." Instead, Versatility's port captain Faust told Captain Hensley to have the crew clean the boat with Lysol and bleach.

Versatility also refused to throw away the mattresses on which Hanshew and Newton slept despite the CDC's strong recommendation that the mattresses be discarded since once the staph, "gets into the mattress, there is no killing that virus in the mattress." Versatility's Doug Faust responded that ***Versatility would not discard the mattresses as they were supposedly brand new and Versatility did not want to buy new ones.***

Herman Newton Contracts MRSAStaph Infection

Captain Hensley recalled that Newton came to him a few days after Hanshew left the boat complaining of painful red spot on his right leg above his knee with a black spot in the middle. Captain Hensley told Doug Faust, Versatility's port captain, about Newton's staph infection, which was the second infection aboard his vessel in the space of a week.

Herman Newton went to San Jacinto Methodist Hospital in Baytown, Texas where he had his right leg aspirated, was prescribed antibiotics, given a "do not return for work" slip and directed to seek medical attention.

Captain Gary Hensley e-mailed Versatility port captain Doug Faust and general manager Rhoda Watson a "First Report of Injury or Illness" dated Mar. 2, 2007, which reported that Newton suffered, "Possible spider bite or outbreak of Staph infection." Captain Hensley recalled that Versatility's port captain Doug Faust, general manager Rhonda Watson and owner Bud Watson seemed "very nonchalant" about a second case of staph infection aboard the M/V East Wind. Doug Faust and Versatility refused even after a second staph infection within a week to retain a professional cleaning crew to fumigate and decontaminate the vessel.

Captain Hensley recalled that ***Versatility would not arrange transportation for Herman Newton to return home to Florida because Versatility was concerned, "about the contagious level of it" and, "that they could be held liable and responsible*** for Mr. Joe Blow or Mr. Julio Inglesias coming down with this stuff...." ***Plaintiff Herman Newton, like Hanshew, therefore had to find his own way home***.

Versatility's Doug Faust spoke to plaintiff Herman Newton after Newton left the M/V East Wind in Texas and returned home to Crestview, Florida to seek medical care. Newton informed Faust that a Florida doctor sent him straight to a hospital emergency room, "Because he was in urgent need," due to the infection in his right leg. ***Newton informed Faust in a series of telephone calls that he had been placed in isolation, diagnosed with a staph infection and repeated asked if Versatility would cover plaintiff's medical expenses***. Faust filed an, "Incident Investigation Report" dated Mar. 12, 2007 with Versatility, reporting that Herman Newton had suffered an, "Infection of right leg", and that, "At his home in Florida he was diagnosed with CAMRSA." No form CG-2692 ever was filed nor was the Coast guard notified by the company of Newton's illness. In short, Versatility received a constant stream of information concerning the source of Newton's infection, its diagnosis and pleas from Newton for maintenance and cure, all of which Versatility ignored.

Herman Newton entered North Okaloosa Medical Center on March 6 and was discharged from hospital on March 16, 2007. A treating physician diagnosed that Newton suffered from MRSA staph infection. Newton's physician stated that: "(he was)…a previously healthy 28-year-old gentlemen whom I have seen in the postoperative period after he had had an incision and drainage of his right knee. I agree with Dr. Herf's antibiotic choices in the form of Vancomycin and Zosyn, as the patient is a perfect setup for community acquired methicillin-resistant staphylococcus aureus**.** I question whether or not he ever actually had a spider bite. He denies any trauma to the right knee. He states that it popped up spontaneously, but given the history that there are other folks on the boat that he was working on in close quarters with this infection, I feel that this may be methicillin-resistant staphylococcus aureus..."

Newton presented a full set of the voluminous North Okaloosa Medical Center records for to Versatility Marine, LLC, but received no response to his request for payment of maintenance and cure.

Versatility's port captain, Doug Faust, "felt quite sure" that Versatility would cover plaintiff's maintenance and cure expenses "because of the situation at hand. He was aboard our vessel, had an infection, and sought medical

treatment, and I felt it was our responsibility." Faust could not think of any reason why Herman Newton should not receive maintenance and cure. Captain Hensley agreed that he could not think of any reason why Newton should not receive maintenance and cure. Captain Hensley concurs that by all rights, "he should have been paid maintenance and cure and transportation home by the law."

Versatility "Stiffs" its Mariners

Versatility has neither paid, nor offered to pay, nor been willing to discuss whether it will pay Herman Newton maintenance and cure despite repeated requests from Newton and his attorney.

The amount of maintenance and cure owed by Versatility to Herman Newton is considerable. Herman Newton is indebted to the North Okaloosa Medical Center for his eleven day stay in isolation and surgery in the amount of $42,739.75. Mr. Newton is also indebted to a treating physician for post-discharge out-patient care, Dr. David Herf, in the amount of $630.00.

Herman Newton was out of work due to his staph infection from Mar. 2, 2007 until May 2007. Versatility's former port captain, Doug Faust, testified that Versatility's general manager, Rhonda Watson, had agreed to pay Newton maintenance of $15.00 per day, although no payment had ever actually been made.

The leading maintenance and cure case of *Hall v. Noble Drilling,* 242 F.3d 582, 591-2 (5th Cir. 2001), contains an excellent discussion how the marine industry's selection of $15.00 a day maintenance in the 1970's now translates into $38.35 per day in current dollars. Plaintiff notes that even $38.35 per day is a small fraction of the two-thirds payment of worker's compensation assured injured land based workers. Mr. Newton is entitled to unpaid maintenance in the amount of $1,342.25, representing the period between Mar. 2, 2007 and his release from this particular bout of MRSA staph infection on Apri.16, 2007 at a rate of $38.35 a day. Newton also is entitled to an award of attorney's fees incurred in the prosecution of plaintiff's maintenance and cure claim.

Maintenance and Cure

The law required Versatility, as Herman Newton's Jones Act employer, to provide Newton medical care for any injury or illness incurred in the service of his vessel. Jones Act employers specifically owe maintenance and cure to a seaman who suffers illnesses while in the service of their vessels. The Plaintiff need not show his illness is job-related. Similarly, ***a "seaman's entitlement to maintenance and cure is entirely unrelated to any fault or negligence on the part of the shipowner.***" A seaman need not "absolutely" prove his entitlement to maintenance and cure: "Any doubts or ambiguities in the application of the law of maintenance and cure are resolved in favor of the seaman." The employer's duty to pay maintenance and cure "is of ancient vintage...". ***[Editorial note:*** *Attorney Mark Ross fully documented each of these statements in case law in his motion.]*

Doug Faust, Versatility's ***former*** port captain and Captain Gary Hensley, ***former*** captain of the M/V East Wind, have both testified no issue existed in their minds that Versatility owed Herman Newton maintenance and cure. Given Versatility's denial of maintenance and cure to Herman Newton constitutes by any measure the "egregious fault," the plaintiff is also entitled to an award of attorney's fees. Therefore, Attorney Mark L. Ross moved the Court to award attorney's fees on a contingency fee basis based on the amount the Court may chose to award in maintenance and cure citing a Supreme Court case that observed that a lower court had assessed attorney's fees at 50% of the maintenance and cure award.

The Vessel Was Unseaworthy as a Matter of Law –
A Substantial Cause of Newton's Infection.

"The case law holds that an owner is responsible to the captain or any seaman thereof for injuries received because of the unseaworthiness of the vessel." A vessel is unseaworthy when its crew is inadequate or incompetent. The duty of a vessel owner to provide a seaworthy vessel, including a competent crew, is absolute and non-delegable. Liability is imposed for unseaworthiness regardless of the vessel owner's negligence or failure to exercise reasonable care.

Versatility was obligated under its duty to provide plaintiff with a seaworthy vessel and an adequate crew. It is an uncontested matter of fact and law that burdening the M/V East Wind with an MRSA staph infected crewman such as Adam Hanshew rendered the vessel unseaworthy. Newton, in order to prevail on its unseaworthiness claim against Versatility, need not show that Versatility knew or should have known of Adam Hanshew's MRSA staph infection when it hired him since, "Liability is imposed for unseaworthiness regardless of fault, negligence or the failure to exercise reasonable care on the part of the vessel owner." However, given that Versatility rehired

Hanshew after the outbreak of his Feb. 2007 staph infection and despite the infection of fellow crewman Herman Newton, ***the Court concluded that Versatility was indifferent to the health risks that an MRSA staph carrier presented to its employees***.

Refusal to Professionally Decontaminate the Vessel Also Rendered M/V East Wind Unseaworthy.

Versatility's refusal to have a professional cleaning service decontaminate the M/V East Wind and at a bare minimum dispose of the mattress on which Adam Hanshew had been draining a "pussy mucus type drain" rendered the vessel unseaworthy and led to plaintiff's MRSA staph infection. Professional cleaning services with special expertise in addressing MRSA staph infections exist and are readily available. Attorney Mark Ross attached a brochure of one such service with special expertise in addressing MRSA staph infections.

Versatility's refusal to dispose of Hanshew's obviously staph infected mattress, which may still be in use to this day, likewise renders the vessel unseaworthy.

Versatility's Failure to Provide Medical Care Rendered the Vessel Unseaworthy

Versatility's uncontradicted refusal to provide Herman Newton with medical care rendered the M/V East Wind unseaworthy. Failure to evaluate and provide proper medical care rendered vessel unseaworthy. The vessel was "rendered unseaworthy by the failure of the ship owner to render prompt and adequate medical treatment."

Unseaworthiness was the Proximate Cause of Newton's MRSA Staph Infection

For Herman Newton to prevail on a claim of unseaworthiness, he had to show that the unseaworthy condition, the presence of MRSA staph infected Adam Hanshew and Versatility's refusal to provide him with prompt medical care, was a proximate cause of his staph infection (i.e. that Newton's staph infection was, "a reasonably probable consequence of the unseaworthy condition). The evidence on causation exceeds that of being "reasonably probable" and was more in the realm of beyond a reasonable doubt.

Conclusion

On Nov. 26, 2007 Judge James Best, Division A, 18th Judicial District, New Roads, LA, granted Herman Newton's motion for summary judgment for the reasons stated in the plaintiff's motion (above) that were adopted by the court as its own.

The Plaintiff, Herman Newton, moved the Court to find as an uncontested matter of fact or law that the defendant, Versatility Marine, LLC, owes plaintiff maintenance and cure following his development of an MRSA staph infection while working in the course and scope of his employment as deckhand aboard defendant's towboat, the M/V East Wind. Newton showed that despite Versatility Marine having actual and repeated notice of plaintiff's staph infection, they ***arbitrarily and capriciously refused to pay plaintiff maintenance and cure***.

Plaintiff further moved the Court to find as an uncontested matter of fact and law that Versatility Marine was liable to the plaintiff since the plaintiff's MRSA staph infection resulted from the unseaworthiness of the towboat M/V East Wind. The crew was rendered unseaworthy in that a fellow deckhand, Adam Hanshew, carried the MRSA staph and infected Herman Newton. The vessel was further rendered unseaworthy by Versatility's failure to properly decontaminate the vessel after discovery of the staph contagion, as well as Versatility's refusal to provide plaintiff with medical care under Versatility's maintenance and cure obligations.

We were informed by reliable sources that Versatility Marine is no longer in business. Companies operated in this manner give the industry a bad name.

CHAPTER 4
An Industry That Eats Its Young

Because of the unbelievably harsh working conditions on so many work boats that operate uninhibited by collective bargaining that could soften these working conditions, new recruits for the industry such as "green deckhands" or mechanically inclined "wipers" and other manpower to fill positions in the engineroom are becoming hard to find and even harder to retain.

Young men sometimes are enticed by offers of good pay, good food, and a place to stay and often give the tugs and towboats a try but leave the industry after a single two-week to one month stint. There is a demand by industry management, the same short-sighted management that has created the harsh conditions in a non-union vacuum, to reduce apprenticeship training time in order to speed the development of licensed officers without which the companies can not legally operate. Generally, this is not a very good idea in an area that requires a high order of skills and where life and death can hang in the balance as a consequence of a moment's slack job performance. Here is the story of a motivated young deckhand who was attracted by the job, followed in the footsteps of his father, and was prepared to make almost any sacrifice to a career in the industry. Unfortunately, his apprenticeship ended before he lived to see the inside of the wheelhouse. Meet the late Joe Hulen.

Deckhand Crushed to Death in Fall From his Towboat

*[**Source:** This case was reported by Nelson G. Wolff, Esq., Schlicter, Bogard & Denton, 100 South 4th Street, Suite 900, St. Louis, MO 63102. Tel: 314.621.6115; Fax: 314.621.7151; e-mail: nwolff@uselaws.com]*

*[**Editorial Note:** We redacted the names of individuals directly involved in this terrible tragedy since responsibility for the death of deckhand Joseph Hulen was that of company management and not the crewmembers. The lessons the crewmembers learned from this tragedy were learned "first hand." If mistakes were made, their burden will be to live with them for the rest of their lives. However, our mariners and others can learn from the attorneys and forensic experts who commented on this accident and to whom we are indebted. We are indebted as well as to Joseph's parents, Mr. and Mrs. William Hulen, who contacted our Association and supported us as we brought this matter to the attention of the Towing Safety Advisory Committee (TSAC) in Washington in March 2006 – at which time an executive from the company accepted responsibility for the accident and the shortcomings it revealed.]*

At a Towing Safety Advisory Committee (TSAC) licensing work group meeting in Houston, employers suggested that new regulations requiring new deckhands to "waste" a year and a half serving on deck before they became eligible to train for duty in the pilothouse were "excessive" and that some time period considerably shorter should be considered.

Captain David Whitehurst, representing our Association, firmly rejected any thought that time spent learning to be the best deckhand possible was a "waste of time." He rejected any thought of reducing time in service based on his more than 30-years experience on inland towing vessels.

Joe Hulen's Hopes and Dreams

The case under review presents the needless and preventable death of a young man seeking a maritime career.

The immediate and obvious cause of death was a fall overboard between two vessels during an equipment transfer. The Coast Guard investigated the accident and prepared its report, a copy of which we received under the Freedom of Information Act.

This case arises from the death of Joseph Hulen, who was working as a deckhand for American Commercial Barge Lines (ACBL) on its towboat the M/V Wally Roller when he died in an accident on Nov. 2, 2002. Joe was only eighteen years old at the time of his death and is survived by his mother Lisa and father Bill. The same company, ACBL employed Bill Hulen for a number of years as a Chief Engineer on a different vessel. Joe, who had just graduated from High School, hoped to follow in his father's footsteps as an engineer. His Mom and Dad told our Association how much he loved working on the towboats and that after only a few trips he announced to them that towboating was a career he wanted to excel in. At the time of his death, Joe had worked for ACBL for only a few months as a deckhand trainee.

An Outline of the Accident

The incident occurred on the Ohio River, between the states of Illinois and Kentucky. The towboat and its crew had "touched up," but did not tie off to a fleet of 15 barges. Just before the accident, Joe was standing on the towboat as it approached a barge on which the other deckhand ■■■ was standing. As Joe was attempting to pass a 150-foot coiled lock line from the starboard bow of the boat to the other deckhand on the barge, the towboat slowly drifted away from the barge at the stern allowing a gap to form between the towboat and the barge.

After a failed initial attempt to transfer the line to the barge, it got tangled up between the crewmembers and Joe fell into the river. Joe struggled to escape the closing gap between the boat and barge but, because of his body weight and the weight of his equipment, he was not successful. Attempts by the other deckhand to pull him onto the barge also were unsuccessful. In his attempt to help Joe out of the water, the other deckhand failed to alert the Master of the towboat of his plight with his hand held radio.

The Master apparently heard the "man overboard" cries and started to maneuver the boat back to the barge because he could not see the deck crew from his position in the pilothouse. In the meanwhile, other crewmembers were alerted to the emergency. At least one of them saw the scene and went back inside the towboat to alert the Master to the situation and also ordered the cook to awake the sleeping crewmembers for assistance. Before actual additional rescue assistance was rendered, the Master allowed the boat to swing back toward the barge, slowly pinning and crushing Joe against the barge while the other deckhand was holding him.

Joe did not sink or drown; rather, he struggled to escape before and after the boat trapped his body against the barge. Eventually, the operator swung the boat away and Joe was pulled aboard the vessel and first aid started. He was transferred across the river to the Illinois shore where he was given further aid by EMT and transported to the hospital, but was pronounced dead upon arrival. At Joe's funeral, the company tried to cover up its responsibility by suggesting to the family that Joe's death was "just an accident."

The Coast Guard Investigation and Report

The Coast Guard investigation reached three conclusions:

- That a briefing and discussion should have been held between the deckhands and the Captain so they could discuss possibly dangerous situations and ways to avoid tragedy.
- That ACBL failed to provide and ensure adequate communication between deck crew and the boat operator. The operator did not have visual contact with the crew and the hand-held radios were "useless" since the crew's work did not allow them a free hand to physically key the microphone.
- That ACBL failed to have a safety policy requiring that its boat be secured to barges before attempting line transfers. If the boat and barge had been tied off instead of being free-floating, there would not have been a gap in between for Joe Hulen to fall into.

Bill Hulen sadly pointed to these three sensible conclusions. He pointed out that they were only advisory in nature and that the Coast Guard showed no further interest in taking steps to ***require*** ACBL to change existing practices. Despite these obvious safety violations, the Coast Guard did not fine or otherwise reprimand ACBL.

Our Association often requests copies of Coast Guard accident reports under the Freedom of Information Act. While these reports may be useful for a number of reasons, our mariners must understand that 46 U.S. Code §6308 states in part that "…no part of a report of a marine casualty investigation … including findings of fact, opinions, recommendations, deliberations, or conclusions, shall be admissible as evidence or subject to discovery in any civil…proceedings. In other words, the Coast Guard can investigate the accident ***for its own purposes*** – but mariners or other parties at interest will have to conduct their own investigations and hire attorneys and take the case to court if they want to learn facts and causes of injuries and deaths. It is easy to understand why many mariners view the accident investigation process as a sham – especially the required accident report form CG-2692 that mocks the reporting process. Our Association is making a major effort to bring the deficient personal injury reporting process not only to the attention of the Coast Guard and OSHA but also to Congress as well.[1] *[[1]Refer to NMA Report #R-350-Y.]*

We often point to a report commissioned by the Coast Guard Research and Development Center in 1994 titled U.S. Coast Guard Marine Casualty Investigation and Reporting: Analysis and Recommendations for Improvement that really gets to the heart of the problem about accident investigations[1] although these problems for the most part still remain unresolved. The matter finally came to a head on May 20, 2008 in a hearing before the House Transportation and Infrastructure Committee as a result of a report by the Department of Homeland Security's Office of the Inspector General (#OIG 08-51).[2] *[[1]NMA Report #R-429-A, Rev. 1. [2]NMA Report #R-429-M.]*

Legal Challenges to Proving the Case

Numerous complex legal hurdles faced the Hulens in their quest for the truth. Shortly after telling the Hulens their son's death was "just an accident" and then suggesting the barge line was not at fault, ACBL and its lawyers actually filed the first legal suit under an ancient maritime doctrine. It sought to exonerate or excuse the corporation from any liability for compensatory damages it had to the Hulens whatsoever or, alternatively, to limit any liability it had to the mere value of its towboat.

The Hulens were served with notice of ACBL's lawsuit just days after the funeral and were told that if they did not file a legal claim within a short time period, they would be barred from doing so.

The Hulens were referred to St. Louis Maritime Attorney Nelson G. Wolff who had successfully represented the family of another ACBL employee who suffered a work-related death.(1) *[(1)Refer to NMA Report #R-412.]*

Wolff successfully argued that ACBL should not be allowed to be free of liability or to limit the value of human life to the value of the vessel and that the Hulens were entitled to a trial by jury. The court eventually dismissed ACBL's case.

While this case was being contested, ACBL filed for bankruptcy protection and again attempted to have the Hulens' case dismissed. Only after months of intense legal battles were the Hulens allowed to pursue their claim against ACBL to prove its responsibilities for their son's death.

Under the Jones Act, an employer is liable for compensatory damages caused in whole or in part by its negligence. A single claim inures to the surviving parents of an employee and the employee's estate, if the employee has no spouse or children. In this case, Joe was survived by both parents, Bill and Lisa Hulen, with whom he was living at the time of his death.

Under the law, Joe's parents, Bill and Lisa Hulen, are entitled to compensation for lost economic support that they reasonably expected to receive, loss of counsel, support, guidance and for the conscious pain, suffering, and emotional distress experienced by Joe before he died. No compensation is allowed for grief and bereavement.

Joe had, in the past, and was expected in the future to have, provided some amount of economic support, emotional counseling and guidance to his parents. The most significant component of damages available under the law in this case, however, was the conscious pain, suffering, and distress he experienced until the time of his death.

Unimaginable Crushing Pain

One of our most revealing reports is a reprint of a Coast Guard document that provides useful statistics on the dangers inherent in the towing industry as measured by industry fatalities. This document contains statistics that should jolt many "green" deckhands who might consider a career in the towing industry. So, too, should the AWO/USCG Joint Quality Action Team report on deck crew safety in the inland towing industry released on Dec 30, 1996.(2) But, these reports are just statistics. Here is a sample of the pain resulting from the most minor misstep. *[(1)NMA Report #R-351, Rev. 1. (2)NMA Report #R-428, Rev. 1.]*

The incident occurred at 10:30 a.m. and Joe was pronounced dead at 12:13. The autopsy report confirms that Joe's chest and abdomen were crushed with hemorrhages of the forehead, eyes and face, bilateral multiple rib fractures and fracture dislocation of his pelvis, lacerations of the liver, small intestine and transverse colon. His scrotum was distended and accumulated fluid consistent with acute trauma was noted. He had swelling and congestion in his lungs, consistent with a lost struggle to breathe and damage to the lungs. The cause of death was held to be asphyxiation due to thoraco-abdominal compression due to blunt trauma to the chest, abdomen and pelvis. In layman's terms, his body was crushed such that he was unable to inhale and exhale while pinned between the barge and the towboat. The Coroner concluded that Joe did not suffer any direct trauma to the head or face and that he remained conscious during the crushing process.

According to the various accounts of the incident, the period of Joe's conscious pain and suffering ranged from a few seconds to a few minutes. Undoubtedly, the fatal injuries were exquisitely painful and Joe experienced psychological distress from the moment he was knocked from his feet until his death, with a conscious awareness, over what must have seemed like an eternity to him, that he was in grave danger and that severe injury or death was likely. An expert in pre-death terror opined that Joe would have experienced pre-death terror over a period as short as three seconds, including a "life review process," where, literally, his life and family would flash before his eyes. This distress and his pain and suffering represented the most significant element of damages in this case.

Anguish of Joe's Family

Lisa Hulen first heard of our Association almost two years after Joe's accident. In her call, that best can be described as distraught, she and her husband simply could not understand why nobody appeared interested or

concerned about what happened to their oldest son. It was obvious that she and her husband Bill needed the services of a good admiralty lawyer.

At that point, I determined that they had hired an attorney, Nelson G. Wolff, Esq. of Schlicter, Bogard & Denton of St. Louis, whose success in handling difficult cases was chronicled by our Association on a number of occasions. The concern both Lisa and Bill spoke about was ***NOT*** about collecting any money for their son's death. Their concern from day one was to discover the cause of their son's death in order to raise awareness of how both the industry and the Coast Guard treated Joe's death as if it were "business as usual." Bill had a unique view from his inside position as an Engineer for the same company that their attitude was that "***deckhands are expendable commodities***."

How long do you grieve for a lost son? The company answered that question rather bluntly by calling Bill a few weeks later suggesting that it was time he thought about going to work again – because they needed his services. Instead, Bill chose to quit both the job and the industry and now works ashore at a construction job!

Grieving for Joe Was Only Half of Bill's Burden

A significant precursor to Joe Hulen's death occurred on August 28, 2002, just two months before Joe was killed aboard ACBL's M/V Wally Roller. At the time, Engineer Bill Hulen, then was serving on ACBL's M/V Charles Ditmar, Jr., when deckhand Charles Hamby drowned after falling from the towboat's skiff while making crew change near Terrene Landing at Lower Mississippi River Mile 592.1.[(1)] Chad Hamby was only 26 years old and had worked on the river just over a year. *[(1)NMA accident file #M-550-A.]*

Bill was very upset about the accident and caustic about the length to which the company went to deny any responsibility for the accident. Bill believed that Chad Hamby never was trained properly to operate the towboat's skiff. After watching the way that the company lawyers handled the investigation following the accident, he seriously began to question whether his son, Joe, was wise to stick to his plans of making a career in the towing industry. It is this nagging doubt and the thought that he might have been able to change future events that haunts him to this day. This accident, that was so up-close and personal, coupled with the loss of their own son is what motivates Bill and Lisa Hulen to work to improve working conditions on towing vessels. Husband and wife attended the U.S. Coast Guard's preliminary public meeting on towing vessel inspection held in 2005 and spoke briefly about the accident and to point out that ***ACBL had, in a short period of time, lost three "green" deckhands to fatal accidents and had not taken responsibility for any of these deaths***! This, and not the desire to reap a huge posthumous cash award, motivated the Hulens to press forward in a lawsuit against ACBL and set the tone for ACBL finally to accept responsibility for their actions.

As a direct result of our Association's discussion of the Chad Hamby accident with Bill Hulen, Captains Larry P. Gwin and David C. Whitehurst on our Board of Directors helped to prepare a detailed proposal that seeks to require "Rescue Boat Training" for all crewmembers who serve on inland towing vessels because knowledge of small boats has been taken for granted in the towing industry for many years. In fact, this was the second fatality involving the capsizing of a skiff that our Association reviewed in detail in the past year.[(1)] We furnished this significant recommendation to the Coast Guard for consideration in the Towing Vessel Inspection rulemaking package. Unfortunately, to date, the TSAC Working Group composed mostly of AWO member companies appears to have ignored both the problem and our Association's proposed solution. The Notice of Proposed Rulemaking (NPRM) for the Inspection of Towing Vessels issued in Aug. 2011 shows that most of our Association's recommendations simply were ignored. *[(1)Refer to NMA file #M-547.]*

Company Blames Joe for His Own Death

Facing a possible lawsuit, the ACBL lawyers closed ranks and asserted that Joe Hulen had negligently caused his own death. Interestingly, they apparently failed to inform their own Director of Safety and Training of this who, stated in a Deposition: "No, I wasn't aware of that part of it, no."[(1)] "Given the facts as – that I have reviewed them, I don't know if young Joe really did do anything wrong." *[(1)Andrew Cannava, Deposition, Oct. 27, 2004, p.49, 50.*]

Understanding there are different viewpoints, here is an account of the accident as presented by Mr. Cannava, ACBL's Director of Training, in his deposition:[(1)] *[(1)Transcript, pgs. 54-58.]*

"Given what I've read, and given what our investigation has shown, we were building a 15-barge coal tow on the Ohio River on the Kentucky shore across the river from a loading facility on the Illinois shore, at approximate location of Shawneetown, Illinois.

"It was approximately 10:00 o'clock in the morning and on Eastern Time, and the Wally Roller was just finishing up the tow, putting the last barges in tow shifting their lines around, preparing to face up to depart the area.

"We were moving a lock line from one end of a barge in mid tow up to the break coupling in the tow, by the boat, because we – the Captain felt, and the way we train is that if we can move the equipment in the easiest way possible, that is the route we are to take. That is the decision making process that the crew undertakes, and this time they chose, instead of carrying a line, the one single lock line they were going to move it on the head of the boat up from one end of the barge to the other.

"Once they had loaded it onto the boat, the head of the Wally Roller on the starboard head, one deckhand walked up the tow and…Joe Hulen, the Probationary Deckhand, stayed on the boat and up to the next coupling.

"By the time the boat got up to the next coupling, the other deckhand that was on the tow, ■■■ had met the boat right there at the coupling, and they were in the process of offloading a line, one line, a break-coupling line, onto the tow.

"Mr. Hulen had picked up the line, and I think it's a little unclear as to whether it was the whole line or part of it, the head of the Wally Roller gapped out away from the tow, and that was done just at the same time that Joe was giving it a second try to pass the line over to (the other deckhand), and when ■■■ saw that the boat was gapping out away from the tow, he had reached over to push Joe back, because he saw his motion – he was in motion to give the line over to him. ■■■ tried to push him back. At the same time Joe was trying to drop the line, but as he twisted and tried to drop the line, he tripped on something. The report says he tripped on something, what, we don't know, and the line went on the deck, and he went down between the boat and the tow…

"…as the boat gapped out, just a little bit more, ■■■ had jumped back a little bit and got down onto the deck, stepping over a deck fitting, and laid down on the deck and reached over the side of the tow just a few feet back just from where Joe had fallen in; and he reached into the water and grabbed Joe by the collar, by his shirt, or by the life jacket strap on his life jacket, and pulled him back up and tried to swing him up. And all the while he had one hand on Joe, and the other hand on the coaming of the barge behind him as he was lying down, or on something behind him to try to stabilize him, so he wouldn't go in the river, too.

"Joe tried, along with ■■■, he knew ■■■ had hold of him, and he was trying to swing his leg up onto the deck of the barge, and from what I understand, he tried it a couple of times, and he couldn't get … between ■■■ and Joe they couldn't get him out of the water, pull him up over the side of the barge, and at the same time ■■■ was hollering that we had a man overboard. The engineer had heard him. He came out, and he ran back inside, he being the engineer, ran back inside to call up to the pilothouse to say that they had a man in the river, and to try to get him to bring the boat back out, because he saw the boat was coming in on the bow.

"And they didn't have him far enough out of the water, or far enough, and the boat came in and landed on Joe, crushing him between the head of the boat and the tow. ■■■ still had hold of him, and by that time [the mate] had arrived at the spot at the break coupling, and [the mate] helped ■■■ get Joe out of the water and back up onto the tow. They put Joe in a Stokes basket, a litter, put him on the Wally Roller and, at the same time, they had called over to the paramedics over in Illinois, and they had tried to go across the river as fast as they could to get him to some medical help.

The Other Side of the Story

ACBL was the defendant in the lawsuit titled Estate of Joseph Hulen vs. American Commercial Barge Line.

Although Mr. Andrew Cannava, the company Director of Safety and Training, had full access to company records he had not been at the accident scene. Only the boat crew was there and only (the deckhand, the mate), and the Engineer saw the event occur. The Captain from his position in the pilothouse could not see the events taking place on the deck beneath him and had no posted lookout in place to inform him of the events that were unfolding.

Bill and Lisa Hulen's attorney had to reconstruct the evidence after the fact through "discovery" and, to do so, had to rely on the same evidence the company used, although with an eye toward identifying company fault. In preparing his case for trial, the Hulens' attorney, Nelson G. Wolff, Esq., sought help from an extremely thorough and well-qualified forensic team affiliated with the American Admiralty Bureau operating in strict conformance with the Code of Professional and Ethical Conduct of the National Forensic Center.

The forensic team made a number of significant points that we believe are significant for our mariners. Faced with these significant points, which provided substantial evidence of ACBL's unsafe practices and policies, it had to admit liability and settle out of court on the eve of the trial for a substantial cash settlement. As a part of the settlement, there are no limitations on disclosure. We believe that each of these points made by the forensic experts, above and beyond the conclusions reached in the Coast Guard accident report, have merit and present them below: ***[Editorial Note:*** *Our edited, abbreviated, and annotated excerpts appears below.]*

- **Safe workplace.** Section (654) of the OSHA Act states in part that "Each employer…shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees…"

  The company allowed certain "recognized hazards" (cited below) to exist on their workboats. Control and reduction of these recognized hazards was the duty of the owners and ship's officers rather than an apprentice deckhand just learning the trade.
- **Trainee or "probationary" deckhand.** Joe Hulen, who was only on his third trip, was considered to be and paid as a trainee. He was paired with a "more experienced" deckhand ■■■ who was only on his fifth trip.
- **No USCG certification.** Since the Coast Guard does not require certificated and tested "Able Seamen" on western rivers towboats, there is no "third-party" competency certification of "deckhands." The company alone determines and assumes responsibility for rating an "experienced" or "supervisory capable" deckhand.
- **Placement of barge in tow.** The Captain allowed the box barge (i.e., the barge involved in the accident) to be returned to and inserted in the tow "backwards" with its lock line on the wrong end of the tow. As a result, this bulky line, weighing 100 lbs., had to be moved 200 feet to the other end of the barge. It was during this move that the fatal accident occurred.
- **Failed to secure towboat to barge before passing the line.** This simple action would have taken less than a minute. Failing to do this allowed the towboat to drift away from the barge as Joe attempted to pass 100 lbs. of line across the gap. The load was too heavy and the gap shouldn't have been there. This was an unsafe and unnecessary hazard.
- **Alternate methods of line-handling were available** but were not used. The entire evolution was not adequately supervised by the mate, ■■, who was in the general area at the time of the accident.
- **Deckhands' errors.** Deckhand ■■■ did not keep a careful lookout for dangerous conditions and failed to notify the Captain by radio that the towboat was slowly drifting away from the barge. Although there was a delay while Joe made a second attempt to pass a smaller length of line across the gap, ■■■ did not keep a lookout for the gap or tell the captain of this delay.
- **Supervisory error.** Although ■■■ testified that Joe may have turned his back to the water while preparing to pass the line across the gap, he did not testify that he ever admonished Joe (his trainee) that this was an "unsafe practice."
- **Violated company "man overboard" procedure.** Page 60 of ACBL's deckhand training guide called for ■■■ to contact the pilothouse immediately by radio twice to alert the Captain of the situation. Only then should he have attempted rescuing Joe Hulen. As soon as he dropped to the deck with one hand holding the barge coaming and one hand outstretched to Joe, he deprived himself of the ability to use the "push-to-talk" button on his hand-held radio. Given his deposition testimony under oath, there would have been ample time for the Captain to control the boat to protect Joe in the water.
- **Shouting and yelling was futile.** ■■■'s attempts to alert the Captain or others by yelling were inadequate. This may have been a result of inadequate and ineffective training by ACBL and panic that resulted from the situation and training inadequacy. Common sense and minimal experience on a towboat this size should demonstrate that the pilothouse can be a noisy place with all sounds from radios and other sources competing for attention.
- **Inadequate supervision by the mate**. ■■ failed to conduct any job safety briefing as set forth in ACBL's "Job Briefing" guide.
- **Mate was not present as a lookout for the line transfer task.** The line transfer was taking place in a blind spot relative to the pilothouse. Since ■■■ and Joe Hulen were both fully engaged in passing this bulky line from boat to barge, the mate should have been on the spot to coordinate with the Captain.
- **The Captain failed to maintain control of the boat.** The Captain did not keep the boat against the barge until the line transfer was safely completed.
- **The Captain allowed the transfer to take place in a blind spot where he could not observe the activity.** He did not call for the mate to serve as his lookout during the transfer. He failed to question the delay in making a transfer that he later testified should only have taken 1 to 2 seconds.
- **The Captain's response to finally being alerted to an unusual situation was unsafe and improper.** He testified in his deposition that one-minute or so before he received an intercom alert from his Chief Engineer, he heard ■■■ yelling that indicated something was wrong. At that point, he should have communicated with the crew to assess the situation before bringing the boat back against the barge. Instead, he reacted by closing the gap, which is an illogical and inexplicable reaction for an experienced operator to make. ***[Ed. Note:*** *This evaluation is tempered by subsequent comments recited below.]*
- **ACBL improperly allowed ■■■ to supervise and train Joe Hulen.** ■■■ only had served as a deckhand for 5 to six trips according to the Safety and Training Director's testimony. His training should have been left to a

more experienced deckhand.

- **ACBL is responsible for work practices that likely allowed fatigue to contribute to the incident.** The Captain had been allowed to work on the boat for almost 60 consecutive days while ■■■ had worked over 30 consecutive days. Although licensed officers are limited by law to 12-hour workdays, no such limitations apply to either deckhands like ■■■ or non-navigating mates like ■■. In fact, the AWO's Responsible Carrier Program has institutionalized the industry's use of a 15-hour day in spite of years of protest from our Association and other mariner organizations. In fact, in 2000 our Association published the book Mariners Speak Out on Violation of the 12-Hour Work Day containing 57 letters from mariners exposing widespread abuses of work hours. We distributed several hundred copies to the Coast Guard, Congress, and to national and international labor organizations.
- **Joe Hulen was assigned to the "call watch" at the time of the accident.** This meant that his workday was subject to irregular breaks instead of the standard routine of 6 hours on duty followed by 6 hours off duty around the clock. The call watch, in addition to the 15-hour workday in this industry is a real travesty whose scope our Association revealed to the public in two reports.(1) *[(1)NMA Reports #R-370-G, Rev. 1 and #R-401.]*

  We hope that Congress will respond to these appeals to remedy abuses as pervasive in the 21st century as those revealed by Richard Henry Dana in Two Years Before the Mast in the 19th century.
- **The "call watch" abuse is a result of improper manning.** If there is a "two-watch" system, there should be a full crew to stand each watch. It is clear that this simple maneuver that turned deadly required three men on deck under all the circumstances of that maneuver. However, the company allowed one man, Deckhand Trainee Joe Hulen to be used on both watches – which really defines the true meaning of the "call watch." The company thereby saved the wages of one deckhand by using their most junior, most low-paid, and most vulnerable "green" deckhand on both the "front watch" and the "back watch." While this may provide more and a greater variety of training for a new man, it also expects more in the way of alertness and stamina. Deckhand trainees, by whatever name they are known, should be supernumeraries and not treated as "cannon fodder" to be awarded a small pay raise if they survive the experience.
- **Clearer heads might prevail if everybody involved had not been obviously fatigued**. Fatigue appeared to be a contributing factor in this accident and a growing menace to the public as reduced crew size is imposed on an already-stressed two-watch system. Any employer is free to grant crews on towing vessels an 8-hour, three-watch system. Yet, there is only permissive authority in the regulations to impose the two-watch system. The two-watch system maximizes profits by reducing overhead by eliminating about four jobs aboard a typical line-haul towboat. The major savings extracted from the system today are the elimination of a second Pilot, one of the highest-paid crewmembers. Today, there has been an overall reduction in crew size so that, on average, boats carry about one to four less crewmen than vessels under the two-watch system in the past. Yet, there has been no real change in the technology of this type of towing that would eliminate the tasking previously performed by the missing crewmembers. To the extent that fatigue contributed to this accident, company management practices imposed it, Joe Hulen died for it, and his mother and father both had the guts to stand up and oppose it.

The Expert's Summary

Maritime expert, the late Captain Jay Disler (1941-2006), a longtime member of our Association, developed these professional opinions:

The case under examination presents the needless and preventable death of a young man seeking a maritime career. The immediate and obvious cause of death was a fall overboard between two moving vessels. But, as demonstrated in the body of this report this fall was not a simple act of carelessness or inattention.

Joe Hulen died because he was overburdened by an awkward load, his superiors were inattentive to the evolving hazard forming next to him as a gap between the vessels widened.

His superiors deviated from standard procedure, and ***it is highly likely that these deviations and inattentions were at least in part the result of fatigue***. Fatigue in this case was induced by work practices imposed by management. The work method chosen that failed to wait for a secured closure of the two vessels responded to economic pressures on operational tempo that was described in the body of this report and an admitted absence of relevant management policy.

On its face, this is a simple fall overboard, one man dead with little relationship to other cases or impact on society. However as demonstrated within the body of this report, ***this case is a tragic example of a larger safety problem; rampant in the inland towing industry***. This problem manifests itself in crew injuries, collisions, and bridge allisions, often with large numbers of deaths

Without the introduction of new technologies, it is unsafe to attempt serious reductions in deadhead time while

simultaneously reducing crew size, increasing crew working hours, and increasing tow size. All of these cost-saving and profit enhancement measures taken without consideration of this effect on each other have, and continue, to drastically diminish safety margins on the inland navigational system.

The new technologies that have been introduced have not decreased the need for labor. Automatic plotting radar, GPS, and bridge-to-bridge radios have only increased the tasking in the pilothouse, yet the pilothouse is still manned by only one licensed officer at a time.

We still build tows with the same tools and rigging as 50 years ago, but now we do it with half the workers while the barges are growing larger. ***Labor unions, the traditional watchdogs of abusive practices, in this field are virtually extinct***. ***The major regulator, the U.S. Coast Guard is distracted from its Marine Safety mission by a growing list of high priority homeland security missions***.

The courts are the only place where this trend can now be documented, described, and brought to the attention of the industry, the last power with any real ability to level the playing field in favor of increased safety that means a retreat from some of the more onerous crew reductions, and operational practices.

Fortunately, as a result of the hard-fought litigation against ACBL, Bill Hulen's attorney and his maritime expert, the complete picture of responsibility could be revealed and corporate accountability be compelled. The death of Joseph Hulen was not an isolated event, but an exemplary event that warrants serious attention, analysis, and publication of the results.

A Message to Mariners from Nelson G. Wolff, Esq.

As Capt. Disler mentioned in his report, "the courts are the only place where this trend against safety in the industry can be brought to the attention of the industry, the last power with any real ability to level the playing field…."

Unfortunately, meaningful access to the courts and the opportunity to achieve the potential for reform depends on injured workers finding legal counsel who is experienced with the nuances and challenges of the complex law that governs mariners. The only thing more unfortunate than the injury or death of a maritime worker is the failure to obtain compensation and lost opportunity to send a message to the industry in a language that it can understand – money.

I appreciate the opportunity you have afforded me through your media to communicate these results in hopes that other workers will not be deprived of their right to compensation and that industry safety can be improved through lessons learned through hard ball litigation and court judgments. Hopefully, it will result in fewer such deaths/injuries, whether be by increased, effective regulation or through cost management at the company level.

CHAPTER 5
The Short Leash

One of the arguments that towing vessel management made in the early 1970s when they insisted that the Coast Guard not impose the traditional Master, Mate, and Pilot officer licensing regime on diesel towing vessels after series of horrific accidents that impelled Congress to mandate the examination and licensing of towboat "operators" in 1972. This was called the ***"short leash argument."*** Towing company owners and managers argued that inland, harbor, and coastwise towing vessels were given so much support from their shoreside offices and available contract service providers that more extensive knowledge of navigation, stability, national shipping laws and regulations, and emergency medical practices common for most traditional Merchant Marine licensed officers were not really necessary in the towing industry. Much the same argument was put forward by the new offshore mineral and oil industry in the Gulf of Mexico at the same time.

Management would change their tune years later when they realized that their "short leash" left management holding the bag for liability in an accident because the law, as written, left them with a choice; they could either hire a licensed Master and Pilot or one of the newly licensed towing vessel "operators." Unfortunately for management, they nearly always chose the lower-paid "operator" to maximize their profits.

Management, in the Congressional Record, described the relative lack of training for these "operators" and their successful management of that risk by using the "short leash" to keep on top of things! When an unfortunate series of major accidents started to happen from the 1993 Sunset Limited accident forward, management found itself unable to take advantage of the "limitation of liability" provision in maritime law that allowed a ship owner to avoid liability beyond the salvage value of his ship and its cargo in the wake of an accident caused by factors beyond his "privity and knowledge." By using licensed "operators," the owners could no longer argue that they had hired "licensed professionals" to run their vessels and that, as owners, they had no "privity and knowledge" of any navigational or operational professional shortcomings their Captains may have had. Needless to say following several spectacular and expensive accidents, the easy-to-obtain "operator" class of license was regulated out of existence and started to disappear between 2001 and 2006. Holders of the old "Operator" licenses were "grandfathered" as Masters, Mates, or Pilots of towing vessels with licenses that became increasingly restricted to domestic routes. Deckhands hopeful of obtaining a new towing license came up against a one-year apprenticeship requirement and seriously enhanced experience, training, and professional examination requirements.

Yet even today, the vessel owners and their operating companies still argue the "short leash" as if the short leash still existed when denying their officers and crewmembers first class emergency medical response on board equipment and training.

Meet Capt. John LoCicero.

He Made His Own Splint with a Rolled Newspaper and Duct Tape; Years After His Injury, He Cannot Use His Right Hand

*[**Source:** Reported by Captain John LoCicero in several interviews.]*

When Captain John LoCicero was an active member of our Association, he told us that ten years ago, he never would have considered joining a mariner's association like ours, or a labor union. Back then, he believed that his employer cared about him as a person and would take care of him if he was hurt on the job. He now admits that his trust was misplaced and wants to tell his story to other mariners so they may avoid the same bitter experience.

A mariner needs to understand that there are two sides to many important health, safety, and welfare issues. Although your boss may be a fine and honorable person you respect and enjoy working for, he is your employer and his interests and concerns may not always coincide with yours. Although you owe him your loyalty as an employee, there are times when you must put your interests and those of your family first and foremost.

In 1993, John was serving as relief captain on an uninspected towing vessel working on the Gulf Intracoastal Waterway pushing tank barges between Louisiana and Texas. He was employed by the Frazier Towing Company, a small mom-and-pop towing operation based in southeast Louisiana. On the voyage when he was injured, he was working as Pilot under the direction of the son of the company's owner who served as the vessel's captain.

The tow consisted of one tank barge owned by Hollywood Marine – a customer of Frazier Towing Company.

While underway during a voyage in 1994, John tripped on the deck and injured his right wrist and arm and was in severe pain. The boat's Captain called on Hollywood Marine for assistance. A Hollywood employee drove John

to a local Houston-area hospital where John's injured arm was examined. He was told his wrist was broken but that the hospital's orthopedic specialist was not there to set it. Consequently, John was brought back to the towboat even though he asked to be taken to another hospital for immediate emergency treatment. He was told that medical treatment was the responsibility of his employer, the Frazier Towing Company, and not up to Hollywood Marine, owner of the barge.

On returning to the boat, John was in severe pain and told the Captain that he thought he was going into shock. Since the towboat was now tied to the dock at the refinery, the Captain called the refinery's emergency medical technician (EMT) who arrived in an ambulance but did not even have a splint to immobilize the fracture. John finally immobilized it himself by wrapping a newspaper around it and using duct tape to secure it. Since he could not work because of the pain, he asked to be relieved.

Left to Suffer

Twenty-four hours later, John arrived by company carryall at Frazier Towing Company's parking lot on the bayou in southeast Louisiana where he was dropped off at his parked car and left to fend for himself. He had received no additional medical treatment and was still in severe pain. John put it this way: "I have hurt myself in the past, but I never had pain like that in my life. I hurt so damn bad I can't even begin to tell anyone the pain I felt."

John was left with no alternative but to drive his car with one arm immobilized about 25 miles up the bayou to Raceland and then on to his home forty miles further on in Metairie. He immediately called the company office and, being a Saturday, left a message for the Port Captain to call him with further instructions for medical care.

No Immediate Company Concern

On Sunday, the port captain never bothered to return his call. So, bright and early on Monday, John called the office and spoke to the secretary. The secretary asked him why he was still walking around-with a broken arm. John replied that the hospitals asked embarrassing questions about his medical coverage he could not answer and, specifically, who was responsible for paying the bill. Eventually, the office appeared to settle the matter and sent him to a doctor later in the day. The doctor gave him pain medicine, properly immobilized the arm, and because the doctor was busy, gave him an appointment to come back in a week to get it set.

When John returned, he learned that his arm had suffered severe nerve damage and that it would require a major operation using a nerve taken from his leg. The doctor scheduled the operation for the next day. However, when John arrived for the operation, he was told that the company did not have the funds to pay for it and that it could not be performed. Shortly thereafter, the company stopped paying his maintenance and cure. Four-and-a-half months later, they were still talking about surgery but had not yet performed it.

No Surgery and Inadequate Settlement

John then hired an attorney who was only able to extract a small and unsatisfactory settlement from the company. John can no longer work as a mariner. Eighteen years later, John has no use of his right hand whatsoever and lives on small government disability payments.

Some Thoughts for Fellow Mariners

John's advice to his fellow mariners is this: "Watch your step. Be careful whom you work for. Be sure these people can and will take care of you if you are hurt. Don't blindly accept what these companies tell you, because they are all born liars. They'll tell you what you want to hear."

John asks our mariners consider these points:

- Are you working for a reputable employer that provides you and your family with adequate medical and disability coverage?
- Has your employer ever cheated mariners that you know out of legitimate "maintenance and cure" payments?
- What type of medical coverage do you have today and how would it cover you under the same circumstances that he faced in a distant city or even at home?
- Have you read the fine-print of your medical policy or do you need it explained to you?
- Do you carry the necessary credentials that will give you entry to an emergency room?
- Does your health coverage include transportation by ambulance if it is medically necessary?
- How soon will you be covered if you go to work for a new employer? If you have a 60 or 90 day waiting period, how do you plan to protect yourself against possible medical bills that could bankrupt you?
- If you must sue your employer, does he carry enough insurance to pay you for your medical care, your time lost

from work, or for a disabling injury that lasts for the rest of your life? Would your employer fire you if you asked these questions? If so, your relationship with your employer is fragile indeed.

In 1994, the Coast Guard determined that working on a towing vessel was nine times more dangerous than working at an "average" job – even more dangerous than on a commercial fishing vessel.[1] With that in mind, do you have a lawyer in mind that can represent your interests in the maritime environment? *[[1]Refer to our Report #R-351, Rev.1.]*

As a post-script, John left this thought: "I wish I could make our guys understand that it's not the same world anymore. Small companies are being swallowed up by big companies. Soon, only two or three big companies will be left, and the little guy will not have much of a choice anymore. One mistake and you just won't work on boats again – plain and simple. We are looking at a sweat-shop situation if we don't stand up, pitch in, and get noticed."

The comment that "…You just won't work on boats again" refers to the practice of "blacklisting" or "blackballing" – a unfair labor practice that continues to end many seagoing careers. Our Association urged Congress to amend 46 U.S. Code §2114, Protection Against Discrimination which they did in 2010.[1] *[[1]Refer to NMA Report #R-210 that explains the elaborate details.]*

CHAPTER 6
The Black List

When a crewmember is seriously injured in service to his vessel in this industry, he has little choice but to sue his employer since seamen have none of the workers compensation benefits of landside employees. Once he does, even if he wins a modest settlement, his career is over. On Sept. 1, 2003 our Association wrote the following letter to Representative Billy Tauzin (R-La), then Chairman of the House Committee on Energy and Commerce, as well as to each member of the Committee presenting our views on the provisions of the Fair Credit Reporting Act (FCRA). We followed up our correspondence with a second letter to the Chairman Tauzin on Dec. 17, 2003 without receiving any response and, consequently, have little to show for our efforts. These practices continue to adversely affect our mariners.

Industry Black Listing Practices and the Fair Credit Reporting Act (FCRA)
Our Letter to Former U.S. Representative Tauzin

"I am writing to you as a member of the House **Subcommittee on Commerce, Trade and Consumer Protection** to earnestly ask you to amend a provision in the Fair Credit Reporting Act (FCRA). I am writing on behalf of the Gulf Coast Mariners Association,[(1)] an independent Association representing the interests and concerns of approximately [126,000 limited-tonnage] merchant mariners who serve on the nation's tugs, towboats, small passenger vessels and offshore supply vessels. *[(1)GCMA became NMA on Jan. 1, 2008]*

"Employment purposes. 15 USC §1681b indicates that one of the permissible purposes of a consumer report is for "employment purposes." The Federal Trade Commission further defines these "permissible purposes" relating to employment to include reports used for evaluating a consumer "for employment, promotion, reassignment or retention as an employee." Our request concerns abuse of this provision in a significant, non-unionized portion of the maritime industry for employment purposes.

"We believe that a good employee will try to maintain a good work record. The fact that such a record really exists and may follow him in the workplace provides a positive and sobering influence upon his or her conduct and stability.

"Unfortunately, there is one feature that stands out and detracts from the value of this type of "consumer report." That point deals with the answer to the question, "Would you rehire this employee?" or, restated, "Is this former employee eligible for rehire by your company?"

"We receive widespread reports from our mariners that this single point is used to evaluate and subsequently to "**blacklist**" many of our mariners. It is a "quick and dirty" test of suitability for employment. Our complaint lies with the law and not with the Consumer Reporting Agency that only appears to be doing what the law and/or the Federal Trade Commission allow. We make the following arguments for change. **[Enclosure #1]** is a Work Report with the "would rehire" blank circled. An employer may elect a "Yes", "No" or simply to make no comment.

- "**Would not rehire**" is not based upon any uniform set of employment guidelines. It is a subjective opinion of some person working for a former employer who is under no obligation to reveal his/her identity or even position within the company. It could represent the opinion of a President, a Personnel Director, or even a clerk-typist with access to the company's computer. In the case covered above the employee was never "fired" or even given a "pink slip."
- A mariner does not know which person "blacklisted" him or when it was done. However, "would not rehire" now can appear on a computer screen at a job seeker's next job interview. Or, it may appear as part of the "reinvestigation" the present law allows. In this case, the job applicant found out about it ***three years later*** – much of that time spent unemployed but constantly seeking work. Although he made written inquiry to both his former employer and to the Credit Reporting Agency, he was never told why his former employer would not rehire him. The information the mariner chose to add to his consumer report to counteract the "blacklisting" was nothing more than a shot in the dark since he had no access to solid facts he could refute. ***Even worse, his statement now stands out like a sore thumb on his work report***.
- Most job applications require job seekers to list their previous employers. In the transportation industry, 49 CFR §40.25 even requires prospective employers to verify a job seeker's drug records for the past two years. If the prospective employer made such a call he would have a greater opportunity to speak with a responsible person in authority and ask legally permissible questions about the job seeker. A "would not rehire" computer entry short circuits the entire process and is manifestly unfair to job seeker.
- Accepting "would not rehire" notations without identifying them by name coupled with the limitation of liability in 15 U.S. Code §1681h make it very extremely difficult for an injured employee to prove in court that he was

disqualified from employment by "...false information furnished with malice or willful intent to injure such (a) consumer" if this is the case. Our experience shows that most mariners, especially those who are unemployed, do not have the means, the ability, and the knowledge to deal with the administrative procedures of the Credit Reporting Agencies – even when those agencies scrupulously follow the law.

"It is for these reasons and in the interest of fairness to our mariners that I ask you on behalf of our Association to amend the Fair Credit Reporting Act to exclude the solicitation of the information by Credit Reporting Agencies that allows notations such as "would not rehire" or "not eligible for rehire" to appear on a work report furnished by such an agency." s/ Secretary, National Mariners Association

Our Association never received the courtesy of a reply from Congressman Tauzin or from any member of his committee. Former Congressman Tauzin is now a paid lobbyist for a pharmaceutical trade association in Washington. Sadly, stonewalling this issue only showed that he was never an advocate for our mariners, only for management.

A Mariner is at the Mercy of a Credit Reporting Agency

[Source:** NMA Mariner #181. Name redacted for privacy. Letter to Reporting Agency "Pretiem." **Emphasis is ours!]

ATTN: Ms. Mary E. King, Consumer Relations
PRETIEM, 195 Clarksville Rd.
Princeton Junction, NJ 08550

Dear Ms. King,

I wish to contest the entry of "would not rehire" ascribed to my former employer, TORCH, Inc. According to your records, I last worked for TORCH, inc. on Feb. 12, 1999.

I was never told by any representative of TORCH, Inc. that I would not be rehired. To the best of my knowledge and belief, I left their employ in good standing.

I started working as second Captain on a 120-foot utility boat M/V Fox under Capt. Bill Woodard. Later I was transferred transferred to a larger boat the M/V Midnight Dancer for further training in four-point anchoring work as I had some previous experience working with SubSea International. I spent four days on board the M/V Midnight Dancer. I never received any training and was sent home.

I worked with TORCH, Inc. into the winter of 1998-99 until the work shut down offshore. When I went home it was with the understanding that they would call me when work picked up. They never recalled me. I was simply left at home waiting for a call that never came. After a reasonable period of time I called my immediate supervisor, Ed. Ed asked, "Nobody called you from the office?" Ed then paged the office and came back on the line and said: "Look, we don't need you any more." I asked, "what's the problem?" He said, "Well, we just don't need you any more."

I can accept the fact that they no longer need my services; however, ***I believe I deserve an explanation of WHY they filed a "would not rehire" with PRETIEM that will affect my employment with other companies and, in fact, with just about every maritime company I try to get a job with***. This is a sneaky, underhanded thing to do. If TORCH did not like my professional services for any reason, they do not have to rehire me! I really do not have a clue and, in the absence of one, I am left to assume it may well be a matter of racial discrimination. But, ***without a good reason, they have no right to ruin my career***. Unless I obtain a reasonable answer, I will report the matter to the Equal Employment Opportunity Commission (EEOC). I always try to get along with my employers and never did anything that would have brought about a reason for them to refuse to hire me in the future. I just want the courtesy of a reasonable explanation.

The fact that this "would not rehire" notation is on my record damages my chances for employment with other companies. In looking for employment, when potential employers see this entry on my employment record, they tend to jump to conclusions that I am not a good employee rather than to take the time to check with other employers I have worked for.

I have all sorts of family obligations I need to fulfill with a paycheck from an industry I have worked in all my life.

I respectfully request that your Agency either provide me with a complete explanation of the background of the "would not rehire" entry in your records from TORCH, Inc. or totally expunge the record from my files. Please furnish me with a copy of my adjusted records.

Very Truly Yours,
[s/Mariner #181]

CHAPTER 7
Foreign Seamen Are Employed and Mistreated

One way that U.S. Flag vessel operating companies try to deal with their self-generated labor shortage is to import foreign seamen to serve on U.S. Flag commercial vessels under waivers to the Jones Act . Once aboard these U.S. Flag vessels these mostly third world seamen discover conditions of employment right out of the peon/patron system of their native countries.

In a Life or Death Decision an Employer Evades Responsibility

*[**Source:** By Jan Clifford, The Houma Courier, Apr.19, 2006. **Emphasis is ours**!.*

A Honduran seaman hospitalized in Terrebonne General Medical Center since early February is at the center of what could be a landmark case in maritime law, according to an attorney representing him. While lawyers for the 20-year-old and the tugboat company he worked for argue about who is responsible for the costly life-saving procedure, Dilbert Calix remains in the hospital's intensive-care unit, his condition rapidly worsening.

Calix went to work for Global International Marine of Houma, LA, about a year ago. Global International operates ocean-class tugs and barges in domestic and foreign waters. Calix's father Daniel Chacon has worked for the same company for seven years, though he and his son were assigned to different vessels. Neither man speaks English.

Calix got sick in early February while working on a tugboat docked in Houma, said Dora Delancey, Hispanic community coordinator for Annunziata Catholic Church and translator for the father and son.

He underwent emergency gall bladder surgery but didn't get better, she said. That's when doctors made a second, more serious, diagnosis – Calix has congestive heart failure and won't survive without a heart transplant.

But it's doubtful he'll get the surgery unless a judge intervenes.

The problem? Calix could be forced to return to Honduras. His advocates say he's unlikely to get the necessary surgery in that country.

Global International CEO Tony Authement declined comment, citing the ongoing legal dispute. The company's attorney says the company is simply trying to do what Calix, and his father, agreed to when they signed on with the company. ***The men signed a contract, which states that each agrees to be sent home in the event of any illness, death, or employment dispute,*** said Randolph Waits, a New Orleans attorney representing Global International.

The contracts are written in English, but they include a measure that says the signers "have read or have had read to them" the contents.

"They agreed by international contract to bring their case before a Honduran court of law," Waits said. He said Global International has the right to send Calix back to Honduras for medical care. Asked if hospitals in that country had facilities necessary for heart-transplant surgery, Waits said he didn't know.

Calix and Chacon say they did not understand the particulars of the contract they signed in order to obtain work. They want Calix to get the operation here, and they want Global International to pay for it. Calix's family and friends say sending him to Honduras without a heart transplant amounts to a death sentence.

While lawyers debate his fate, Calix spends his days in a hospital bed hoping that his condition improves enough for him to be allowed to return to work.

He said he has "never run from work" and dreams of becoming a boat captain one day.

Calix is in constant pain, Myers said, and tries to stay as still as possible for fear of triggering a fatal heart attack. His father keeps a constant vigil at Calix's bedside and worries about the future. Chacon says ***a company representative told him to stay with his son and promised both men would continue to receive their paychecks.***

They haven't gotten the money as promised, he said, and the cash they had is running out.

The men said they had hoped that Marta Chacon, Chacon's wife, could come to Houma and stay by Calix's side so Chacon, who is the family's sole source of income, could return to work. But Marta Chacon hasn't been able to secure the travel visa she needs to come to this country.

Dilbert Calix, a Honduras native who was working for a Houma company, waits in a Terrebonne General Medical Center hospital room with his father, Daniel Chacon, to find out if he will get the heart transplant he needs to survive. (Sabree Hill/The Courier)

Global International hired Calix through the Harvey-based Pontchartrain Marine, Inc., according to the signed employment contract the family showed a Courier reporter. According to Pontchartrain Marine's Web site, the company provides foreign crewmembers to work on vessels worldwide. Patricia Martinez, a human-resources manager for the company, refused to speak with The Courier.

According to Calix's father and uncle, Martinez is the woman who visited Calix's hospital room after his gall bladder surgery bearing a portable oxygen tank and plane tickets to Honduras. That's when the family contacted an attorney. Since Calix needed emergency-medical care while working on an American vessel docked in Houma, his case may fall under U.S. maritime law, said Matthew Slingbaum, a Florida attorney representing Calix.

Robert Myers, an attorney handling the Louisiana proceedings for Slingbaum, said offshore workers have been involved in similar incidents, but this is the first instance involving a resident of another country who has Louisiana ties.

Myers filed a motion late last month, asking a federal judge to determine whether the contract Calix signed is legally binding.

"A seaman is legally a ward of the court," Myers said, adding that the law, which is "hundreds of years old" requires the employer to pay for medical treatment when a seaman is injured or gets sick while working, whether his condition is pre-existing or not.

Authement, Global International's attorney, says the contract is valid, and Calix must seek treatment on his own in Honduras.

If U.S. District Court Judge Carl Barbier of New Orleans agrees, Calix will be sent back to Central America, and Global International will not be liable for his medical bills.

The heart surgery would cost an estimated $500,000; the hospital bills to date are upwards of $200,000, Myers said.

Once Barbier rules on the contract, Slingbaum said he'd file papers alleging that Calix's health problems stem from Global International's hazardous work conditions.

Calix's job was to clean diesel and bilge tanks, the family said, adding he wasn't provided with the necessary protective gear. They allege that's what caused his heart problem and say that a Honduras doctor gave Calix a clean bill of health during a pre-employment physical. The Courier's efforts to reach Dr. Oscar Luis Chavarria in Honduras were unsuccessful.

Waits disputes the men's claims, adding that other family members have suffered the same disease.

Attorneys for both sides say Barbier took an immediate interest in Calix's case, and is moving swiftly to reach a decision.

Waits' response to Myer's motion is due in the judge's office by May 1. A decision should come soon after that date.

As to what will happen if Calix does not recover, Myers said the litigation would escalate.

"We'll file a wrongful-death claim," he said.

Who Cares For Foreign Seamen Working On U.S.-Flag Vessels?

We explored this issue in our on foreign seamen serving on American-flagged vessels[(1)] in 2005 when the issue was reignited by the introduction of the Transportation Workers Identification Credential (TWIC) requirements. *[(1)NMA Report #R-334, Rev. 2.]*

Our Association consistently opposes exploitation of American "limited-tonnage" mariners serving on vessels of less than 1600 gross tons. The examples we cite are the abuse of the "12-Hour Rule" revealed collected in our reports that the Coast Guard has repeatedly ignored.[1] Cases like these and those reported in 2000 to the Marine Safety Directorate in Coast Guard Headquarters[2] cautioned many mariners and potential mariners to the abuses encountered in working on commercial vessels. These reports were mileposts along the way to the industry's current personnel shortages. *[[1]NMA Report #R-370, Rev. 4 and other reports in the #R-370 series. [2]NMA Report #R-201.]*

During the past twenty years, boat companies in the inland towing and offshore oil industry sectors cut crew size to the bone. Our mariners' wages failed to keep pace with inflation. Mariners were routinely overworked and overwhelmed in several attempts to organize to protect and advance their own interests.

The Pilots Agree movement on the western rivers and Gulf Intracoastal Waterway in 1998 was followed by an attempt to organize an independent union (Offshore Mariners United) to represent thousands of mariners in the offshore oil industry. These two movements were defeated by millions of dollars spent by individual boat companies and industry trade associations that even hired professional "union busters" to distort the issues and mislead mariners. Many of our Association's directors and members are veterans of these movements and continue to assist and inform our limited-tonnage mariners. While we witnessed these events happen, we do our best to maintain a record of these events and explain why they happened and see that they are not repeated.

Temporary Work Visas Are No Answer

Boat owners are becoming desperate to crew their boats. Many boat owners believe their key to "success" is to recruit "cheap" labor. "Cheap" inevitably leads to using individuals from foreign countries who may be desperate for a job or to immigrate to the United States for a "better life."

A letter in the May 2006 issue of WorkBoat magazine suggested that the maritime industry be granted an allotment of H-1B visas so they can bring in skilled workers from other countries as is allowed in other industries with a proven shortage of skilled labor.

We were not impressed with this argument. However, we were impressed, by a letter, by a Lawrence Crompton, a 1,600 GT Master and Third Mate who wrote the following in a letter to the editor in WorkBoat's June issue.

"I strongly disagree with the letter… "Temporary Visas Could Ease Mariner Labor Woes." Not only would it not ease the woes, it would create even more problems.

"First, the officer pool in the "patch" (i.e., offshore oil industry) is made up almost entirely from those who came up the hawsepipe. When we open the entry-level jobs to H-1B (visa) labor, who are we training to run the boats in the future? It would only take a few years worth of layoffs and rehire cycles, and we would have to start hiring H-1B officers. How does that ease the woes?

"Second is the Jones Act. Shall we abolish it all at once to bring in "skilled workers" from other countries or just whittle it away piece by piece? The loss of the Jones Act would mean the death to U.S. maritime labor. We would also have to ask just how skilled these laborers are. Many of the H-1B workers I have seen are hired from their government-owned employment services. Will those governments also guarantee the skill and training levels of the workforce?

"The last thing I want to mention is the revolving door of H-1B labor. In other industries, H-1B labor has been used for short term (often on a six-month work visa) in jobs the employer can't find local labor to fill. Most are ***minimum wage*** positions. Once these jobs have been given to H-1B labor, there is no reason to improve working conditions and make wages more appealing to the local work force. In six months (with a minimal amount of paperwork) they hire another group for the next six months.

"In the Oil Patch they are having a hard time with labor because of the working conditions and wages. When the less expensive H-1B labor comes in then wages will most likely drop, benefits lost, rotations will increase to six months on (same as the work visa) and conditions will not improve, except when legally required. That will surely push the mariner out of the workforce. I guess that would ease the woes of the U.S. mariner, because there wouldn't be any."

NMA Traditions

From the earliest days of our Association, the International Transport Workers Federation (ITF) always has been a source of support. We recall the day when one hundred fifty ITF delegates attending an international conference in New Orleans marched in support of our mariners and demonstrated in front of the Work Boat Show. They came

from all corners of the globe to protest the way that the offshore oil industry trampled the rights of our mariners.

Our concern over the employment of foreign workers follows most of the concerns mentioned in Lawrence Crompton's letter as well as the fact that the same people who exploit American workers can be trusted to do the same thing to foreign workers. This case serves as an example that we brought to the attention of both the Coast Guard and the International Transport Workers Federation.

CHAPTER 8
No Next Generation of Seamen

Young Americans newly reporting aboard America's work boats often fare even worse than the imported Third World labor. Too many quit too soon as a result of the harsh working conditions and contribute to the labor shortage. Others without previous experience at sea never receive a proper job safety orientation and step aboard to fill a job opening with no idea of what they are getting into. Others make foolish mistakes at sea and find the sea is unforgiving and become permanently removed from the potential labor pool. This is an industry with a "sink or swim" attitude that all too often kills its young. Read of the demise of twenty two year old ordinary seaman Jamie Ashford on a routine crewboat trip offshore that highlights an almost total lack of responsibility and accountability by the boat owner and two licensed officers.

"Green" Deckhand Lost at Sea – The M/V Gulf Pride Case

*[**Source:** NMA File A-174. **Disclaimer:** What follows is not legal advice. Rather, it is a synopsis of information gleaned from reading this case. Each case must stand on its own merits. If you have a specific legal problem, you should contact a lawyer for legal advice.]*

If there is any "Gulf Pride" in the offshore oil industry in the Gulf of Mexico it is not symbolized by the now-defunct company of that name or by the repossessed crewboat bearing the same name. In fact, the boat owner, the boat, its master and mate were just about as sorry as it gets out in the oil patch.

This is the largely untold and unpublicized story of what many "limited-tonnage" mariners know happens in a hundred different forms but never sees in print. When a whiff of scandal does reach the newspapers, it never did in this case, it may appear in a 3½-inch release from the court announcing a decision.

There are things that industry apologists don't want the general public to know about the marine industry. It is the truth about things that happen to many of our mariners both in the Gulf of Mexico as well as on inland waters.

The marine industry can be a very dangerous place for a newcomer, especially a young man with little or no experience around boats. It does not have to be a hostile environment, but it can still be a dangerous one because of the hazards of the oil industry. These hazards are coupled with the hazards of the sea and the carelessness of some people who work in the industry. The lack of standards of care and ethics of some (but not all) boat owners, whether individual or corporate, creates a workplace that leaves a great deal to be desired.

This is a <u>true story</u> brought to our attention by a brief news release of 3½ column inches in a local newspaper that never made front-page news. It announced a sizeable settlement made on behalf of two children of a mariner lost at sea. We extracted the story from the public record. The matter was brought to its conclusion by a team of persistent attorneys[(1)] who exposed a pattern of carelessness and neglect that left a several insurance companies holding the bill for insuring a very questionable commercial boat operation. *[[(1)]Hebert & Marceaux, 8026 Main St, Houma, LA 70360. (985) 876-4324]*

To secure "justice" in the marine industry, a mariner – and often his family or heirs – must be prepared to fight for it. To do this, you will have to call on the services of <u>an experienced admiralty attorney</u> who has studied the law, is conversant with all sorts of federal regulations and agency policies, and above all, is able to combine considerable legal research in case law with some good detective work and credible expert witnesses to forge the tools necessary to prevail.

The maritime industry in this part of the country brainwashes the public to look askance at trial lawyers much as they have been taught to look down on our "limited-tonnage" mariners as "boat trash." However, <u>without conscientious trial lawyers, our mariners would never have their day in court</u>.

Statement of the Case

*[**Editorial note:** Most of the following was extracted and edited directly from the public record with legal citations removed for ease of reading. Although some names are presented, others are not identified in the interest of privacy. Most of the events recited took place in Terrebonne Parish, LA, and in nearby offshore waters.]*

Names and Positions

- Jamie Ashford - Deckhand lost at sea.
- Robert Jones[(1)] - Boat owner of M/V Gulf Pride

●Captain Gerald Smith[(1)] - Captain M/V Gulf Pride
●Phil Taylor[(1)] - Unlicensed Relief Captain, Mate of M/V Gulf Pride
[(1)A pseudonym.]

["I guess the thing that is most shocking to my soul and heart is the fact that when they reached the Global Dock, the Captain did not report Jamie missing, and in part his fault and part the fault of Mr. Jones because they were both aware that he was missing and to wait some 12 to 13 hours before reporting it to the Coast Guard or the Sheriff's Office is almost criminal in my mind. I think it could be considered a cause of Mr. Ashford's death." The Court.]

Trial court's decision.[(1)] The trial court held that Jamie Ashford died on the high seas, i.e., beyond territorial waters. The court concluded that Jamie's survival time in the cold water was 5-6 hours. *[(1)The trial took place in the 32nd. Judicial District Court, Terrebonne Parish, LA. The decision was appealed to the First Circuit, Court of Appeal, in Baton Rouge, LA, that rendered its decision on Mar. 28, 2002.]*

The trial court found that the evidence proved that Gulf Pride was negligent for:
●failure to report a man overboard;
●failure to conduct a search and rescue for over twelve hours;
●failure to have a proper communication system between the Captain and crew working at night;
●failure to obtain knowledge of Jamie's whereabouts;
●failure to properly man the vessel for the job;
●failure to provide proper training and rules on the proper use of safety vests; and
●the bulwarks on the vessel were low.

The court found that Jamie was a young, "green" hand and, thus, was not contributorily negligent. The court held that the vessel was unseaworthy, but was not the proximate cause leading to Jamie's death.

Jamie was 22 years old. He was a first-time deckhand assigned to the M/V Gulf Pride. He fell off the vessel on Jan. 27, 1997 while he was on night watch. Captain Gerald Smith testified that it was four hours after last seeing Jamie before he realized that he was no longer on the vessel. However, Jamie was conducting his night watch activities, as required by law. More egregious, however, was that once Captain Smith reached the dock in Houma, he did not call the Coast Guard. Rather, he called the vessel owner, Robert Jones. Nevertheless, neither man called the Coast Guard or law enforcement until the next day, well past any possible survival time. In fact, Captain Smith went to bed.

The defendants stipulated (i.e., agreed) that Jamie was a Jones Act seaman. They acknowledge their duty to keep watch and to rescue crewmembers that fell overboard. After Jamie's mother (i.e., the "plaintiff") presented her case, defense counsel admitted to the court that it was reasonable to infer from the evidence that Jamie fell off the M/V Gulf Pride.

Another unfortunate human being who previously had fallen off a vessel spent 10 hours in the Gulf of Mexico, and survived, stated, "I was not ready to die." He was lucky, but Jamie was not as lucky and is dead. The defendants' actions in this case are horrible by any standards of humanity.

Jamie's employment. Gulf Pride Marine Services, Inc. employed Jamie in Nov. 1996. He was 22 years old. He was assigned to the M/V Gulf Pride as a deckhand/seaman. On the date of the accident, a three-man crew manned the M/V Gulf Pride. The crew consisted of Captain Smith and Relief Captain/Mate Phil Taylor, and Jamie.

The Gulf Pride is a 95-foot, 92 gross ton aluminum hull crewboat. Other than working for several months as a roustabout/roughneck aboard a drilling rig, Jamie had little experience in the oilfield. Jamie's first experience working aboard vessels was with M/V Gulf Pride. He had only worked a couple of months on the vessel at the time of the accident and was a classic "green" hand. According to Captain Smith, it was his responsibility to train Jamie on the job. He admitted that a two to three month "first time" hitch was little experience.

The Gulf Pride (the boat and the company) were formerly owned by Robert Jones. Gulf Pride is no longer in business because of extreme financial trouble.[(1)] This led to its failure to maintain the two vessels which comprised its fleet. Subsequent to the incident at issue, Sea Craft Corporation seized the M/V Gulf Pride because Gulf Pride did not pay for necessary repairs done to the vessel. Jones is a convicted felon for theft. *[(1)For a colorful yet sordid history of Gulf Pride's "operations" see Matter of Gulf Pride Marine Service, Inc., 1997 WL 118394 (E.D. La. 1997).]*

The M/V Gulf Pride was a vessel inspected by the United States Coast Guard. After inspecting the vessel, the Coast Guard issues a Certificate of Inspection with certain requirements for the vessel that must be followed along with vessel manning requirements. The certificate is then posted on the vessel in public view. The Coast Guard

performs inspections and re-inspections annually. If events occur during the year that affects the vessel's seaworthiness, the Captain is required to notify the Coast Guard.

The M/V Gulf Pride was supposed to have a minimum of a four-man crew when operating more than twelve hours per day. However, Jamie was part of only a three-man crew when he drowned. Captain Smith testified that with a three-man crew, the vessel was considered undermanned. He often complained to Jones about operating with only a three-man crew but Jones disregarded his complaints.

Our Association is quick to add that the Coast Guard has a dismal record of enforcing its vessel manning requirements in the Eighth Coast Guard District.

Global Industries chartered the M/V Gulf Pride to provide crewboat services to its pipe laying barges working in the Gulf of Mexico. On Jan. 27, 1997, the M/V Gulf Pride made a trip to the Global pipe-laying barge GP-37, which was working on the outer continental shelf (OCS). It was located in the Gulf of Mexico, approximately four to five hours from Global's dock in Houma, LA. The lay barge was located southwards from Cat Island Pass, the entrance to Terrebonne Bay. Captain Smith, along with mate Taylor and Jamie traveled past territorial waters to reach the GP-37.

On the day of his disappearance, approximately thirty Global employees boarded the M/V Gulf Pride to ride home. Captain Smith began the return trip from the Global barge, heading to the Global dock in Houma where the passengers would disembark.

The only crewmembers transporting the passengers while underway were Captain Smith and Jamie, as his watchman. Jamie, as the deckhand on watch, would be "about" the vessel in order to perform his duties. For example, Captain Smith testified that when they were underway, he ordered Jamie to check the engineroom every twenty minutes – but apparently never checked to determine that this was being done.

After the Global passengers boarded the boat in the Gulf of Mexico, they went below deck to the cabin and there they went to sleep during the ride in.

The M/V Gulf Pride got underway between 6:30-7:00 p.m. in darkness. Captain Smith took a route that allowed them to travel through Cat Island Pass, up the Houma Navigational Canal, and ultimately to the Global dock in Houma. The seas that evening were estimated to have been between two and four feet, with occasional swells. The water temperature was 62 degrees. Hypothermia is a serious issue facing mariners who fall overboard in cold water – and one we believe the Coast Guard has neglected over the years as we reported to Congress in detail.[1] Fortunately, Congress took some important steps to address the issues in 2010.[2] *[[1]NMA Report #R-354, Rev. 4. [2]46 U.S. Code §3104 added.]*

Upon getting underway, the vessel ran without using either its inside or deck lights. Jamie was in the pilothouse with Captain Smith and a passenger. Captain Smith allowed Jamie to pilot the vessel for approximately 15 minutes. Thereafter, Jamie left the pilothouse. Captain Smith claims Jamie's destination was not known exactly, a claim that relies upon Captain Smith's veracity. Mate Taylor was sleeping since it was his time off duty.

The M/V Gulf Pride arrived at the Global dock at approximately 11:30 p.m. on Jan. 27, 1997. However, Jamie was not on deck to throw the lines to tie up the vessel. Unless Jamie could walk on water, it soon became clear that he was not on the vessel. Ironically, Captain Smith testified that he had not seen Jamie for the last three and one-half to four hours of the voyage. Captain Smith did not know Jamie's whereabouts for almost the entire trip. Modern seamanship practices and common sense dictate that the captain account for his crew on duty at regular intervals and use communication devices, such as walkie-talkies, to stay in contact with his deckhand on watch. All the vessel captains, including mate Taylor, testified that Captain Smith should have checked on Jamie's whereabouts every 15 to 30 minutes. Captain Smith was aware of his duty to care for and look out for the safety of his crew.

Captain Smith was the master of the vessel at the time that Jamie drowned. Captain Smith's license is currently under suspension because he failed a Coast Guard drug screen unrelated to this incident. Mate Taylor was not licensed because he pled guilty to negligent homicide in 1995 when he attempted to "perform surgery" on his girlfriend who overdosed. He has a 7th grade education. ***Jones knew that he was required to have two licensed personnel as well as two deckhands on board the vessel but willfully operated the vessel without a proper crew!*** This was a pretty shabby operation.

The boat. On Jan. 27, 1997, as well as several months before and seven months after, the M/V Gulf Pride had problems taking on unwanted water because of a cracked hull. Captain Smith knew this, but never reported the hull problem to the Coast Guard, as he was required to do. Captain Smith knew that once they got offshore, the boat had to be pumped out with the bilge pump. He knew this would be done at night, and would require the deckhand to check for oil discharge sheen by looking overboard because some oil commonly leaks into the bilge from the

engines. Monitoring the bilge pump's flow was a continuous operation. Although a person inspecting the engineroom could tell if the bilge pump was pumping, he could not tell if it was pumping oil overboard except by visual inspection. To make this visual inspection, a person had to straddle the side of the vessel and lean over the side to view the discharge opening approximately 2 feet above water level. However, the top of the bulwark railing presented a hazard because it was below knee height.

Captain Smith knew the severe consequences of discharging oil in open water; and he knew that the "red hand" patch material was not stopping the leak in the vessel. In fact, the ***M/V Gulf Pride's Certificate of Inspection was temporarily suspended during a routine inspection in Aug. 1997, months after the accident, because of the cracks in the hull. Since Jones did not want his customers to know his boat leaked, he instructed Captain Smith to make no such notations in the billing logs***. Although requested in court, Gulf Pride did not produce the official Captain's logs or the engineroom logs for Jan. 27, 1997 or surrounding dates.

Our Association prodded the Coast Guard on many occasions to make necessary reforms in the way that entries are made in an inspected vessel's logbook. When the Coast Guard refused to take any action, our Association took the matter to Congress. In 2010, Congress acted and amended the statute and required Official Logbooks on all inspected vessels.[1] *[[1]46 U.S. Code §11304 added.]*

Part of Jamie's deckhand duties, although Gulf Pride never specifically trained him how to do it, was to check the bilge discharge while the pump was operating. Furthermore, no one ever told Jamie to wear a life vest or life jacket to perform this inspection or even to always wear it while on deck when the vessel was underway.

The last time anyone saw Jamie alive was between 15 and 60 minutes after departing the GP-37 lay barge. Allegedly, Captain Smith did not know where Jamie was going when he left the wheelhouse. Of course, Captain Smith would never announce to his passengers that the vessel had problems taking on unwanted water! About thirty minutes after getting underway, a passenger saw Jamie down below looking for something in the storage compartment. At the time, Jamie had a life vest on. The item Jamie removed from the closet had a hose on it and appeared to be a pump. Another passenger saw Jamie on deck heading towards the side of the vessel.

Although Jones and the Coast Guard records dispute Smith's testimony, Smith claims to have no idea when Jamie was last seen. ***At no time did Captain Smith attempt to backtrack and perform what is known as a Williamson Turn maneuver to search for Jamie***. This could easily have been done since Captain Smith had tracked his route on LORAN. Once he reached the Global dock in Houma, Jamie was not onboard. Captain Smith and mate Taylor did, however, search the vessel. They found Jamie's clothes and wallet, and Taylor claimed that the wallet was empty. The Terrebonne Parish Sheriff's Office later returned Jamie's clothes to his mother.

Knowing that Jamie obviously was not on the vessel, Captain Smith refused to notify the Coast Guard. Rather, he called Jones from the Global yard. This was after the vessel docked in between 11:00 p.m. and 12:00 a.m.

Jones instructed Captain Smith and mate Taylor to take no further action because allegedly he wanted them to wait until the morning to "see if Jamie would reappear." This was under the guise that Jones believed Jamie had left the vessel to go drinking in bars. Captain Smith and mate Taylor then went to bed. The next morning at approximately 8:00 a.m. Captain Smith again spoke with Jones. Finally, on Jan. 28, 1997, at approximately 10:14 a.m., fourteen hours after leaving barge GP-37, Jones notified the Coast Guard in Grand Isle. Around 11:00 a.m. he notified the Terrebonne Parish Sheriff's Office. He told these agencies that Jamie was missing and that "he was last seen at the dock." Jones never ordered his crew to use the vessel and attempt a search.

The Coast Guard dispatched a helicopter to cover the Gulf and notified the Terrebonne Parish Sheriff's Office. According to the Coast Guard's official record, Jones called the Coast Guard. The Coast Guard report states that Jones told them a person was in the water off the vessel M/V Gulf Pride and was last seen at "Cat Island Pass working on a light in a shop." The shop was the engineroom. Cat Island Pass is about ten miles offshore from the mainland at the entrance to Terrebonne Bay.

Captain Smith testified that he did not know who told Jones this information. On the other hand, Jones, by deposition impeachment testimony, testified that the crew thought Jamie had fallen overboard. ***Jones did not report the claim to his insurer until June 17, 1999 (almost 5 months after the accident), and falsified certain information about the incident.***

The vessel had two logs: (1) The rough log that kept day-to-day events; and (2) a smooth log, sent to the customer, and called the billing log. Defendants never produced the rough logs and produced only portions of the billing logs. Captain Smith testified that the rough logs should contain information about the incident. Further, problems with the vessel were logged there as well.

Neither Captain Smith nor Jones ever filed a Coast Guard Form 2692 Incident Report to report the accident. The Coast Guard requires that this form be completed along with a 2692-A Substance Abuse Form – but apparently

never checked to determine that the casualty report was submitted. ***Also, the captain must take a substance abuse test within two hours after a serious incident such as loss of life occurs. This never happened.***

A former Gulf Pride captain and close friend of mate Taylor's testified that during the early morning hours of Jan. 28, 1997, mate Taylor called him and was very excited and confused because he did not know what to do. ***Taylor told his friend that Jones wanted him and Captain Smith to lie by telling the authorities that they saw Jamie leaving the vessel after it arrived in port***. Mate Taylor admits that he called his friend to tell him about "a missing deckhand" and that he was upset. Mate Taylor could never be located, until shortly before trial when Gulf Pride found and produced him for a deposition. A "statement" was written by Gulf Pride's attorney at his office before the deposition and Taylor signed it.

The Global yard is a fenced-in yard with barbed wire and has a secured exit with a guard shack. It is well lighted with two or three security officers that checked out persons in and out of the yard. Security guards also patrolled the yard. A security guard noted in his logs that "word on the yard is that the deckhand was last seen near the sea buoy." No one at Global ever saw Jamie. No passenger who disembarked from the vessel saw Jamie at the dock. From the dock to the Global parking lot is about 829 feet, and means that everyone had to walk from the dock to the parking lot.

A Detective Lieutenant of the Terrebonne Parish Sheriff's Office investigated the case. He placed Jamie's name in the nationwide computer service used by law enforcement. On Mar. 10. 1997, a U.S. Customs Inspector from Galliano, Louisiana, called the detective. When the M/V Gulf Pride operates beyond territorial waters, a vessel officer, by federal law and under oath, must certify who comprises the vessel's crew. She informed the detective that Captain Smith and mate Taylor listed Jamie as a crewmember aboard the vessel on at least three separate occasions ***after*** Jan. 27, 1997. By signing the declaration forms indicating that Jamie was part of the crew on those occasions, the captain and mate certified that the information was true and correct.

After receiving this information, the detective immediately went to Jones' home in Chauvin, LA, which served as Gulf Pride's office. The detective was very puzzled that Jamie was still being listed as a crewmember aboard the vessel. Jones was aware that the captain and mate continued to use Jamie's name as a crewmember. Jones told the detective that he was required to have four (4) people on the vessel. Neither the Terrebonne Parish detective nor an independent detective have been able to find Jamie.

In 1996, David Morin prepared a safety audit, by written questionnaire, on Gulf Pride for insurance purposes. He wanted to see what safety procedures that Gulf Pride had implemented. Jones told Morin that the vessel maintained daily logs; after an accident they conducted drug testing; there was a formal written safety program; the crew on the vessel consisted of four members; and that they maintained two types of logs – master's rough log and Gulf Pride billing log. Morin then made recommendations to Jones on reporting and investigating incidents and provided him with Coast Guard forms.

Jones did not provide deckhand safety manuals to new employees, and Gulf Pride had no safety or training programs. Furthermore, the Coast guard has no requirements for training entry-level (i.e., “green”) deckhands or “deckineers” who are expected to perform duties in the engineroom.[1] *[[1]NMA Report #R-428, Rev. 1.]*

Captain Smith testified that it was only mandatory at a dock or when a barge was at the stern bitts for crewmembers to wear a life vest. Captain Smith and mate Taylor testified that they never wore work or life vests while aboard the M/V Gulf Pride.

Captain Smith quit Gulf Pride in May 1997 for fear of losing his license because of safety concerns aboard the M/V Gulf Pride. He testified that Gulf Pride's paychecks were bad. In May 1997, by impeachment, Captain Smith admitted that the hull leak still existed.

Dr. Alan M. Steinman, a former Coast Guard surgeon general who is board certified in occupational and environmental medical matters, specialized in sea survival in cold weather, cold water exposure, hypothermia, and drowning. He is the author of numerous publications on sea survival and hypothermia and was a flight surgeon. He is a graduate of M.I.T., Stanford, the Mayo Clinic, and the University of Washington and has performed experiments on sea survival and hypothermia. He was the Coast Guard's expert for twenty years in this field.

As an expert witness, Dr. Steinman offered the opinion that Jamie had a sea survival time of 5 to 10 hours in seawater of the temperature at the time of the accident. The Coast Guard records estimated Jamie had sea survival time of 8 hours. Dr. Steinman explained the events Jamie went through psychologically and physiology immediately upon falling into the water and up to his death.

Falling overboard is common on vessels. In its practice of search and rescue, the Coast Guard's purpose is to rescue people in the water. A timely rescue is relevant to survival. A lifejacket will not prevent death unless a person is rescued in a timely manner. It is not unusual that a body lost at sea cannot be located. Dr. Steinman

testified that people do not become unconscious immediately upon entering the water. Also, it is unusual to be sucked under the boat after falling overboard. The defendants' expert said that Jamie would have survived if rescued within two hours and further testified that Jamie would not have become unconscious upon immediately hitting the water. ***Both experts testified that Jamie would have suffered a horrifying death***.

Finally, Gulf Pride did not do an investigation or take any statements concerning Jamie's drowning. Captain Smith and mate Taylor downplayed the leak on the vessel. They testified: "we patched it with red-hand." On Aug. 15, 1997, upon routine inspection, the Coast Guard pulled the M/V Gulf Pride's Certificate of Inspection when they found "a crack in the engineroom covered with red hand" and the life rings and life jackets were unsatisfactory.

Jamie's father testified that Jamie had little experience in the oilfield although he wanted to learn about it. In late Dec. 1996, Jamie was in good spirits. Jamie was working to buy a car and marry his fiancée. He was a fair swimmer.

The Building Blocks of This Case

For those mariners who believe the Coast Guard is out there on the water to protect your interests, think again. The Coast Guard does its best to police the waterways with its limited resources and does a good job in carrying out search and rescue work. The Coast Guard expects mariners to obey all laws and regulations, but does not always enforce all the laws uniformly. As you can see, they played a very minor role in this accident and many other cases that affect mariners that must finally be resolved in court.

This case relied upon a number of laws and regulations. However, it also relied just as heavily on judgments reached in previous cases that were applied to the specific circumstances of this case (i.e., case law).

In this particular case, certain laws, regulations, policies, principles and precedents were skillfully blended together to identify the parties responsible for Jamie's death, to prove they were responsible, to arrive at a fair and just settlement for Jamie's mother and two children. Properly blending and presenting it at two trials and defending it against all challenges is up to the attorneys.

In this case, the "blend" involved each of the following items to some degree or another. Do not consider any of these to be absolute pronouncements that you can consider as your "rights" as a mariner. You may find some of them helpful, where some may be of no value. However, based on this particular case, these are at least "talking points" if nothing more:

1. If a trial court makes an error of law, the appellate court (i.e., court of appeal) reviews the evidence de novo.[(1)] *[(1)**Vocabulary: De novo** = a second time; from scratch.]*
2. The Jones Act states that the recovery of damages for death of seaman shall follow the laws for railway employees. *[Railway employees are covered by the Federal Employers Liability Act of 1908 (FELA) as amended.]*
3. Under FELA, a Jones Act seaman who dies has a negligence cause of action[(1)] for survival and wrongful death damages. *[(1)**Vocabulary: Cause of action** = a claim in law and fact sufficient to demand judicial attention to enforce a right.]*
4. If the death occurs on high seas, the Jones Act seaman has an additional claim for unseaworthiness for wrongful death under the Death on the High Seas Act (DOHSA).
5. The Outer Continental Shelf Lands Act (OCSLA) and its complimentary regulations may apply to vessels working on the water and regulates OCS activities in navigable waters. OCS activity includes any offshore activity associated with exploration or development of minerals.
6. Workplace safety is paramount on the outer continental shelf. Owners must conduct workplace activities free of hazards that can cause death or serious injury.
7. Adjacent state law may be adopted as Federal Law for damages and liability for breach of OCS violations.
8. The Code of Federal Regulations (CFR) may have the force and effect of law.
9. Coast Guard regulations may be used to establish a duty under Louisiana law and are adopted as federal OCS law.
10. Damages available under the Jones Act are survival and wrongful death. Survival damages under the Jones Act allow recovery for pre-death pain and suffering. These damages include compensation for the terror and fright a drowning victim experiences on the realization that he is about to lose his life.
11. Under the Jones Act, wrongful death damages allow recovery of only pecuniary damages. Pecuniary damages are generally defined as loss of support; loss of services; loss of nurture, guidance, care, and instruction; loss inheritance; loss of earning capacity; and expenses. The Jones Act does not allow recovery for loss of society, loss of consortium, or punitive damages because they are non-pecuniary.

12. DOHSA provides only a wrongful death remedy. DOHSA follows the Jones Act and only allows recovery for pecuniary damages for wrongful death unseaworthiness claims. The courts have allowed the following damages: loss of support; loss of services of deceased; loss of nurture, guidance, care, and instruction; Loss of inheritance; and funeral expenses.
13. DOHSA and the Jones Act may allow recovery for loss of inheritance, which is different from future loss earnings.
14. Under the General Maritime Law, there are survival and wrongful death remedies. Damages for a General Maritime death claim in territorial waters may be loss of support, loss of services, funeral expenses, loss of nurture, loss of inheritance, and loss of fringe benefits.
15. A seaman may be allowed to supplement the Jones Act with Louisiana law because the Outer Continental Shelf Lands Act (OCSLA) federalizes state law. The seaman's beneficiaries have the benefit of recovering Louisiana damages for mental anguish, and loss of society, love, and companionship by applying Louisiana law as an additional damages remedy.
16. The Jones Act requires a reasonable man standard. The negligence of the employer must be judged as a reasonable employer under like circumstances; and the seaman's negligence must be judged according to a reasonable seaman under like circumstances.
17. Negligence on the part of the employer may arise in many ways, including failure to provide the seaman a safe place to work, existence of a dangerous condition aboard the vessel, or any other breach of the standard of care. Since the duty to provide the employee with a safe place to work allocates substantial risk of maritime employment to the employer, identical conduct is not demanded of the employer and employee. Different risks are allocated to different parties. Central to the negligence inquiry is who had the duty to eliminate or minimize the risks.
18. Even under the ordinary standard of care required under the Jones Act, the slightest evidence meets the burden of proof.
19. The duty to provide a seaworthy vessel is a non-delegable duty on the vessel owner. Defective conditions on a ship or its appurtenances, and unqualified crews, all are situations that give rise to unseaworthiness. The test is one of reasonable fitness.
20. A vessel crew that is trained inadequately, not instructed properly, engages in unsafe work methods, or is furnished inadequate equipment can result in unseaworthiness.
21. Although a safer method may be proven, the causal chain is not broken if the evidence establishes that the seaman did not know of the safer method.
22. Failure to supply a vessel with a crew both adequate in number and competence in duties constitutes a classic case of unseaworthiness.
23. The rescue of a person in the water gives rise to an exceptional duty and accountability. The underlying character of the duty the employer owes a seaman overboard is such that, although it is less than a duty to rescue him, regardless of the cause for which he went overboard, it is a positive obligation to make a sincere attempt at rescue. "The duty is of such nature that ... once the evidence sustains the reasonable possibility of rescue, ample or narrow, according to the circumstances, total disregard of the duty, refusal to make even a try imposes liability."
24. The maritime rescue doctrine provides that where a seaman "has apparently fallen overboard, but his presence or location in the water is not readily discernable from the ship, the ship's officers are required to both effect a search of the area traversed by the ship and to rescue the seaman, so long as it is reasonably possible that the seaman remains alive in the water."
25. The absence of a crew member cannot be disregarded with impunity. Certain knowledge that a seaman is missing is not a prerequisite to the duty of search and rescue. The maritime rescue doctrine is based on the law of negligence, and like other aspects of this law, responsibility is tested by the standard of reasonable care.
26. If there is a reasonable possibility of rescue, the ship is under a duty to search and attempt a rescue when its officers know or, in the exercise of reasonable care, should have known a crewman is missing.
27. A Jones Act employer has a duty to supervise or instruct seamen as to safe methods by which they can carry out orders given to them.
28. A vessel captain has a duty to look out for the safety and care of his crew.
29. If a seaman is required to do his work in a dangerous manner where there are other and safer ways to do it, an officer may be negligent by having breached his duty to exercise reasonable care for the seaman's safety.
30. Whatever a ship owner might be permitted to do with respect to seasoned hands familiar with the peculiar

hazards of the sea, it is plain that it may not be able to absolve itself of the obligation to furnish a seaworthy vessel and exercise prudent care for seamen by leaving this important decision (e.g., to wear or not to wear a life vest) up to an inexperienced person who had not yet begun to get his sea legs.

31. The mere issuance of a Certificate of Inspection by the U. S. Coast Guard does not mean that the vessel is seaworthy.
32. There may be no contributory negligence (on the part of the seaman) if the violation of a safety statute contributes to the seaman's injury.
33. If there is a violation of a statute, there may be a presumption of liability without regard to the seaman's negligence.
34. Unseaworthiness, like Jones Act negligence, can also be the per se result of a regulatory violation.
35. A vessel cannot begin to sail in an unseaworthy condition.
36. A captain must render assistance to seaman overboard.
37. A small passenger vessel may have to have a public address system. *[46 CFR 184.610.]*
38. The master and crew must be properly trained and trained for man overboard situations.
39. The failure to investigate a serious incident without substance abuse testing may violate federal statutes and regulations.
40. Adequate rails are needed on a vessel to prevent persons from falling overboard.
41. The standard in an unseaworthiness claim is "proximate cause in the traditional sense." Proximate cause means that:
    a. The unseaworthiness played a substantial part in bringing about or actually causing the injury; and
    b. The injury was either a direct result or a reasonably probable consequence of the unseaworthiness.
42. Courts have viewed the failure to make and keep appropriate entries in vessel logs with <u>suspicion</u> and <u>disfavor</u>. Failure to make, critical entries is proof, by itself, of the facts omitted.
43. Absence of a controversial fact in a logbook may be significant in evaluating testimony.
44. Suppression and loss of the vessel logs, such as spoliation of evidence, may create a legitimate inference that if the true facts were entered in the logs they would be unfavorable to the vessel.
45. A vessel's logs must be preserved after an incident.
46. A captain should log all vessel accidents.
47. When a seaman deserts a vessel, a vessel officer should promptly make an entry of this fact in the vessel's logbook. The entry must be signed by the master and witnessed by the mate or a crewmember.

There is a presumption of innocence from a charge of desertion in favor of the seaman if he leaves his clothes aboard the vessel when he left the ship. Leaving his clothes and possessions aboard his ship may be prima facie evidence that the seaman did not intend to desert his ship.

CHAPTER 9
If Injured Crewmen Are Ruined

Middle-aged seamen on workboats industries seem less likely to be lost overboard than green young seamen. Yet some are lost in most years and many more experience serious injury. Even a relatively minor on board injury can mean the loss of a job and all meaningful financial support. Seamen in these trades are often denied even the miniscule supports provided by the Jones Act which are so far below the workmen's compensation payments that any land based employee in a heavy industry might expect as to appear to be third-world in origin. The on duty accident and injury compensation program of the domestic non-union workboat sector is in fact nineteenth century in origin with some minor tweaking in 1920 and is played to advantage by today's maritime employers. The resulting stories of ruin in the face of relatively minor injury and families virtually uncompensated for the death of the bread winner seem straight out of Charles Dickens. Here are two examples. Meet First Mate Rusty Smith and the late commercial fisherman Joseph Waterhouse.

Stacked Deck: Death on the High Seas

*[**Source:** **NMA** Report #R-309, From National Fisherman, Apr. 2002 issue with permission.]*

Rusty Smith was working as a first mate on a freighter in Alaska when a pallet jack ran over his foot, breaking his big toe. Smith, a 10-year veteran in the merchant marine who has also worked on crab boats, trawlers and tugs in Alaskan waters, toughed the injury out until arriving in Dutch Harbor on Jan. 5.

At the hospital, doctors discovered an infection and put the 46-year-old Ballard, Wash., resident on an intravenous drip of antibiotics and put his foot into a whirlpool filled with betadine solution. Smith wanted the physician treating him to allow him to go on light duty, so that he could earn a living. But the doctor declared him unfit, gave him a pair of crutches and told him to return home to Ballard for further observation and treatment.

"The doctor said, "You could lose your toe or the lower part of your foot," Smith recalls.

It was then Smith found out just how tough life can get for injured, out-of-work seamen. Although the company he was working for is on the hook for Smith's medical bills, it will only have to pay a fraction of his living expenses while he's unable to work.

A shore-based employee could expect to get up to two-thirds of his income while out on workers' compensation, But under the Jones Act – a law governing maritime injuries – Smith will be lucky to get $35, a day. The act says he is entitled to maintenance (the cost of room and board for the time he would have been out at sea) and cure (the cost of his medical bills).

It may sound good, in theory, but the reality is that boat owners and insurance companies typically end up spending very little for maintenance and may even cut corners when it comes time to pay for the cure.

Smith says that the company he worked for is trying to get him to accept $20 a day for maintenance, although under its typical contract, an officer would get $35. Smith, who was working without a contract, has hired a lawyer. As parsimonious as the $20 may seem, it's typical for the industry. Payouts for maintenance in the United States generally range from $8 to $20 a day.

Over the long term, lawyers explain, Smith may be entitled to more than just the maintenance and cure if he is able to prove the pallet jack was poorly maintained. In instances where a seaman can prove unseaworthiness or negligence on the part of the boat owner, he can sue for emotional pain and suffering and for all of the lost wages he suffered while out of work – in the latter case, a right not typically accorded to shore-based employees under state-run workmen's compensation programs.

Additionally, if the injury is permanent, a seaman is entitled to recover the difference between his income as a seaman and his income in his next line of disabled work, the seaman is entitled to full wages. But recovering these payments can take months or years, which makes the dependence on maintenance payments from insurance companies so important to injured seamen.

"A seaman cannot have a roof over his head or survive on $20 a day anywhere in the U.S.," says Smith's lawyer, Seattle-based Anthony Urie. "Maybe in Mexico, but not in the U.S."

But if it seems harsh that an injured seaman is expected to make-do on $20 a day, God forbid he or she should get killed at sea. If he is unmarried or has no children, his parents and siblings get nothing.

Indeed, while under U.S. maritime law a vessel's owner or insurer may be forced to compensate a seaman who survives an accident, either may get away scot-free if he dies. The reality is this: The death of a fisherman with no wife or children costs a vessel less than an amputated pinky. "There's a saying among marine insurers," says David Anderson, a partner in the Boston-based maritime law firm, Latti and Anderson. "If you're going to hurt him bad, make sure he dies."

The law largely responsible for this state of affairs is called the ***Death on the High Seas Act***. The 1920 law stipulates that the survivors of seamen (a legal category that includes fishermen) who die offshore as a result of an accident are entitled to sue for monetary damages and for the conscious pain and suffering of the seaman before he died. If the survivors prove that the death was the result of negligence or unseaworthiness, they are entitled to compensation for the terror of dying at sea and the financial support the seaman would have provided to them if he hadn't died.

"The damages to the wife are pre-death conscious pain and suffering and loss of income," says Carolyn Latti, of Latti and Anderson. "If he has kids they get what we call `loss of nurture and guidance' to age 18."

Siblings and parents who suffer the loss of a loved one at sea get nothing unless they can prove the victim gave them financial support. Although relatives can get millions in the loss of a loved one in an accident ashore, U.S. maritime law recognizes no emotional component in the loss of a husband, father, or brother.

Insurance companies and boat owners have been known to go to great lengths to undermine the claim of financial support, lawyers familiar with such cases say. If the victim was a smoker, a heavy eater or wore expensive clothes, the insurance company will argue that the cost of these should be deducted from his income, says Steve Ouellette, a Gloucester-based maritime lawyer whose practice is for the most part devoted to fishermen's issues.

Urie agrees that insurers play hardball. "I represented a fellow who died on the Aleutian Enterprise," he says, referring to a catcher-processor that capsized in the Bering Sea in 1990. "He hadn't been paying child support regularly, so, the insurance company told his family, “You can't make the argument you lost anything.”

Urie was able to obtain a settlement for the seaman's survivors by demonstrating that in cases of non-payment of child support the state steps in, makes payments and then goes after non-payers, but the strategy demonstrated just how aggressive insurance companies are. "They try to knock down damages," Urie says.

The Death on the High Seas Act was amended in 2000 following a series of aviation disasters in the 1990s that took place over the water. When families discovered the law deprived them of the right to be compensated for their grief at the loss of their loved ones, they pressured Congress to amend it, giving them the right to sue for non-pecuniary damages – "the loss of care, comfort and companionship."

The straw that broke the camel's back, legislatively, with respect to aviation disasters and the high seas act, was the crash, in 1996, of TWA Flight 800 in the waters off Long Island. Sixteen children from Pennsylvania, on a school trip, were among the 230 victims. The children were held as having died instantaneously, and as minors were seen as having contributed nothing to family income. Nonetheless, the notion their relatives were not entitled to compensation seemed indefensible, if not shocking.

"There is something wrong when a shipping law dating back to 1920 keeps these families from having their day in court and, by limiting compensation to pecuniary losses, tells them that their loved ones had no value to them other than the salaries they brought home," said U.S. Sen. Arlen Specter (R-Penn.).

However, when the act was amended, the survivors of fishermen and other seamen lost at sea were excluded from the modified provisions.

Paul Hoffman, a maritime lawyer from New York, testified before Congress in 1998 in an effort to convince lawmakers that the survivors of seamen deserve the same legal rights they were proposing to give air travelers.

To not do so, he said, would create a "steerage class" of victims whose loved ones died in accidents afloat, Hoffman said. "It is discriminatory to create yet another class of wrongful-death victims, by allowing certain remedies to airplane accident victims dying on the high seas, while excluding from those rights the families of persons who die on ships and boats on the same waters."

Later in his testimony, he added: "Merely singling out airplane accident victims for special treatment is an affront to those whose family loved ones died at sea in vessel accidents."

Hoffman told the story of Joseph Waterhouse, a 37-year-old fisherman who died on board the Terri Lei, a fishing boat that sank in 1993 without explanation. Waterhouse's family recovered approximately $30,000, in pecuniary damages. As far as emotional damages, his survivors, who included a 10-year-old son got nothing.

"As to Joe's family, his son will never again be able to walk on the beach with his dad," Hoffman told Congress. "He'll never be able to speak to him on the phone to pass the time, ask his advice or tell a joke. Joe's mother will

never again be able to sit down across the table and chat with him over Sunday dinner, or see all of her sons together again. But none of these intangible losses can be compensated under [the act]."

Hoffman said there was no way commercial fishermen could match the political clout enjoyed by the victims of aviation disasters and that his efforts to include seamen in the high seas act amendments failed because of opposition from the shipping industry. In order to get any changes passed, those who wanted the act amended had to content themselves with helping aviation accident victims, Hoffman says.

"The deal was `Let's do it for aviation, but when it comes to maritime interests let's ignore the seamen,'" he says.

Like the Death on the High Seas Act, the Vessel Liability Act limits the compensation given families of seamen who die at sea. The 1850 law, which was passed to promote the U.S. maritime industry, affords ***vessel owners*** the chance to limit their liability to the value of the vessel at the end of the trip that has triggered wrongful-death suit.

Thus, if the vessel is unsalvageable and lies at the bottom of the ocean, an owner's liability may be nothing. Only plaintiffs, who can prove that a boat was unseaworthy, and that its owner was aware of it, can surmount this provision of the law.

When the Vessel Liability Act is successfully invoked by boat owners and insurance companies – and it often is – victim's families get nothing.

For instance, Anderson says, if a boat goes down without a trace and no one knows why, families can't prove unseaworthiness.

Anderson says this could prove to be the case with the Arctic Rose, a trawler that sank last year in the Bering Sea for reasons as yet uncertain. All 15 persons aboard the Artic Rose perished. "There you have a lot of people dying," Anderson says, "but you don't know what happened, making it more difficult to prove the owner knew what caused the sinking."

Vessel owners and maritime insurance companies love the Vessel Liability Act, Latti says, because it often prevents claimants from getting any money. Insurance companies may pay a nominal sum to families to make them go away, but otherwise, the real cost of a sinking is the claim for the hull.

"Even though they are collecting premiums, if they prove limitation they don't have to pay a thing for a death," she says. "It's a great thing for them."

Moreover, with the lives of fishermen and other seamen seemingly so cheap, insurance companies don't do everything they should to make sure the boats they insure are safe, Anderson says. "If the law valued the life of seamen, the insurance companies would not let a lot of these boats leave the dock."

Taken together, the consequences of federal law – the Jones Act, the Death on the High Seas Act, and the Vessel Liability Act – is more than unfair treatment of families, Anderson says.

"When you undervalue life," Anderson says, "you make it expendable."

CHAPTER 10
A Danger to More Than Just Themselves

Fatigued mariners don't just injure themselves. Too often work boat mariners are given greater tasks than their boats should handle while the mariners themselves become so fatigued and cognitively impaired that handling normal tasking becomes unduly challenging. One of the more common results of underpowered tows combined with overly fatigued crews is the bridge allision – the part where members of the public connect the dots and realize that they or their loved ones could be killed as a result of these abuses.

A little admiralty law tutorial may be in order here. Vessels *collide* with one another and *allide* with immovable objects such as bridges or other parts of the nation's infrastructure like piers, wire line towers, levees, bulkheads and other fixed structures. Ships have *collisions* with each other but have *allisions* with bridges.

In a collision, the admiralty courts begin their examination with a sort of *"it takes two to tango"* attitude. Since bridges, piers, and breakwaters are unlikely to grow wings and fly into the path of an oncoming ship, the courts start with a much more negative attitude towards the Captain who experiences an allision.

Despite the long-standing denial by towing industry management, there is a predictive relationship between available horsepower and safe tow size. There is also a relationship between being a non-union "employee at will" Captain and the ability to refuse an unsuitable tow, or refuse to attempt a movement while in an impaired condition. The "at will employee" must tow what he is given whenever and wherever he is told to do so, or he is quite simply fired. Meet Captain Kevin D. Kelly.

Master Fired For Making a Professional Judgment in a Safety Call

***[Source:** NMA Newsletter #9, Sept./Oct. 2001, p. 24.]*

If you are an "employee at will," as are most mariners working for non-union companies, you can be fired at any time for any reason whatsoever. Termination can be particularly painful when you are a long-term employee, are told reassuringly that you are a part of company "management," and are encouraged and expected to exercise your "professional judgment" on the job. This is the story of Captain Kevin Kelly of Alton, Illinois.

Let Captain Kelly's letter serve as a warning for long-term employees who hold their jobs without the protection of a written contract. This could be what happens when you exercise your professional judgment! Here is Captain Kelly's story:

On June 3, 2001, while Master of American Commercial Barge Lines (ACBL) towing vessel M/V Tom Frazier, I refused to accept a 12 barge-loaded tow that was destined southbound out of the Upper Mississippi River. On June 4th, I was relieved of my duties by Thomas L. More, ACBL's Marine Superintendent at Burlington, Iowa, while I was still northbound. Subsequently, on June 7th, I received a letter stating that I was terminated immediately for "serious misconduct" for refusing to push this tow.

I had been an employee at ACBL for 26 years, 21 of which was in the capacity of Pilot or Captain. I have 15 years of experience on the Upper Mississippi River. In over 21 years I operated vessels for ACBL, I have never before refused to take a tow. So, why did I refuse this one?

ACBL claims its Company Policy is for every employee to abide by the company's four operating priorities, which are:

- Safety of life and limb;
- Safety of marine environment;
- Safety of property and equipment; and
- Cost and efficiency.

As individual employees, we are not only required to abide by these priorities but to report any employees we feel are not doing so. That the M/V Tom Frazier was in ***disrepair*** is indisputable.[(1)] That its state of disrepair was bad enough to affect its performance is also indisputable. Whether or not it was unsafe is an opinion. Frankly, at the time, I was the only person qualified to make that decision. *[(1)NMA Reports #R-412 & 412-A, Rev. 1 deal with vessel engineers overwhelmed with overwork, fatigue, and unbearable physical and psychological pressure as well as vessel maintenance issues.]*

Neither of the Marine Superintendents that kept insisting that the vessel was safe ever boarded it prior to my being relieved. The one that relieved me spent 24 hours aboard and then got off. During this time the vessel never navigated a lock or a narrow swing bridge traveling southbound with the current. In fact, the vessel traveled less

than 30 miles southbound for the entire time he was aboard.

The Marine Superintendent that relieved me also had very little experience on the section of river in question. In fact, he brought another Pilot with him to operate the vessel. The second Marine Superintendent hadn't spent a 30-day trip operating a vessel in over 20 years. He, too, hadn't the experience on the river in question that I do. Furthermore, the Pilot that was aboard the vessel when I refused the tow had been aboard for only four days and had yet to operate the vessel south bound. I was the only one who had the experience to make an informed decision. Before I refused the tow, I took into consideration my experience with this vessel, my experience on the river in question, and the comments, and opinions of the Pilots who had worked aboard the vessel with me. I even called the Relief Captain at home to get his opinion. It was my decision, but it was an informed decision.

To call these towboats "uninspected vessels" is misleading. They are inspected every day by the men and women who work on them. By Coast Guard regulations at 33 CFR §164.80, we are required to document an inspection within 24 hours of boarding the vessel. The question now becomes who is responsible for determining the seaworthiness of this "uninspected vessel?"

The Coast Guard tends to be reactive instead of proactive. I notified St. Louis Marine Safety Office about my concerns. Yet, to the best of my knowledge and belief the vessel was never boarded. So that leaves the men and women who operate them and the company as being responsible for safe vessel operation.

The industry has long argued before the NLRB that the Captains and Pilots are management. Yet when I, as Captain in charge of this vessel made a management decision that only I was fully qualified to make, I was terminated for "serious misconduct."

If the Captain cannot be trusted with making such a decision, that just leaves the company men and women behind the desks. Our industry operates on the rivers by the grace of public trust. With the environmental issues we face today, that public trust is shaky at best, especially on the environmentally sensitive Upper Mississippi River.

After the Bayou Canot incident; the industry assured everyone that it was capable of policing itself. Out of that disaster emerged the "Responsible Carrier Program." While painting yellow stripes around all the equipment and posting colorful warning signs all over the vessel is fine, anyone in any type of transportation business will tell you safety starts with the maintenance and repair of the equipment.

It is no secret that the maintenance and repair at ACBL has been a long-standing joke with all of their vessel employees. So why should the Coast Guard and the general public be concerned with what is happening at ACBL? This concern should arise because ACBL is not only the largest carrier on the inland waterways but also the second largest carrier of hazardous cargoes. This company needs to be reminded that using the inland waterways is an exercise in protecting the public trust not putting it at risk.

I certify that this information is true and correct to the best of my knowledge and belief.
s/Capt. Kevin D. Kelly■

Lake Pontchartrain, LA: Tugs & Tows Struck Causeway Bridge 16 Times

Too few mariners exhibit the moral courage of Captain Kelly in the face of certain dismissal and blacklisting. All too often fatigue-impaired mariners attempt to navigate tows that are beyond their capacity or the capacity of their boat to handle. Far too often they make their attempt in a fatigue impaired physical state that ends in a reportable casualty or "serious marine incident." Some of these accidents are spectacular.

The public became aware of the impact of fatigue on vessel operators shortly after the Lake Pontchatrain Causeway in Louisiana was constructed and a few years after management began reducing crew size in the industry generally by eliminating cooks and deckhands. One errant tow took out a portion of the causeway and dropped a busload of passengers into the water with fatal results.

Since its construction began in 1955, the Lake Pontchartrain Causeway was struck sixteen (16) times according to Debbie Lopreore, Supervisor of Operations for the Greater New Orleans Expressway Authority. "However, this does not mean that portions of the 24-mile twin roadways were knocked down that number of times," she cautioned. However, the scrapbook of newspaper articles and editorials she provided our Association showed a number of photographs illustrating the damage wrought by out-of-control towing vessels and barges.

Several notable incidents involving towing vessels and the problems they illustrate are cited below. These incidents and the collision involving the towboat M/V Warren J. Doucet pushing a tow carrying approximately 27,000 barrels of crude oil in the nearby waters of the Mississippi River near the Greater New Orleans Bridge on April 6, 1969 with Taiwanese freighter SS Union Faith tolled the loss of twenty-five lives and led to the enactment of the Pilothouse Licensing Act (Public Law 92-339) that first licensed towing vessel "operators" in 1972 – but clearly did not solve many of the related problems festering today.

Two Incidents in 1964: "Passed out," before barges hit span, first mate quoted.

*[**Source:** Edited from the Times Picayune, June 17, 1964.]*

The first mate of the tugboat that pushed two barges into the Lake Pontchartrain Causeway early Tuesday morning told state police he had "passed out" sometime before the accident and was not at the wheel of the tug.

A Continental Trailways bus plunged into the lake, killing six people after the barges had ripped out four 56-foot sections of the bridge.

Capt. Vincent H. Ebeler, Jr., commander of Louisiana State Police, Troop B, said first mate ■, 30, told him he "didn't even feel the crash."

Ebeler quoted ■ as saying he radioed Louisiana Material Co. shortly after taking over the wheel about 12:45 a.m. This ■ said, was about the last thing he remembered until after the crash, which occurred about 1:30 a.m.

Capt. Ebeler said, however, that ■ will be booked with negligent homicide after his release from Touro Infirmary. The local state police commander said he decided to book ■ after obtaining a statement from ■■, the tug's captain, that he heard ■ yelling for him immediately after the impact.

Capt. ■■ said he went to the wheel right away, took over from ■ and then gave him series of orders, which he followed without showing any signs of physical disability, according to Capt. Ebeler. The state police commander said ■'s condition did not seem to be serious and he was told by hospital attaches the man would be released soon.

Coast Guard Finds Tug Crew Inadequate.

*[**Source:** Edited from the St. Tammany Farmer, Oct. 9, 1964.]*

Captain ■■ was asleep. They were the only (two) men aboard at the time. ***The Coast Guard noted that had another man been on duty at the wheel, the accident might have been avoided***.

Findings revealed that the two men had been operating the tug by themselves more or less continuously over a period of 16 days. It was **hinted** neither man could have received adequate rest.

The tug was owned by Ace Towing Co. of Gretna and was under charter to the Louisiana Materials Co. The Coast Guard said the tug's owner and the Master of the vessel were responsible for the inadequate manning of the boat and the excessive working hours.

An "at will" employer with the right to "hire and fire" must be held responsible for adequately manning the vessel while the vessel's Master is responsible for establishing a legal watch schedule – something he can only do if the vessel is adequately manned.

Television Station Editorial.

*[**Source:** WWL-TV Editorial, July 27, 1964.]*

It seems like only yesterday – and it almost was – that this station commented on the Lake Pontchartrain Causeway and the awful tragedy of June 16th. Six lives were lost when two barges knocked 230 feet of roadway into the lake, dropping with it a bus carrying eight people. It was the ***fourth time*** that the bridge had been knocked out of business, but the first time any lives were lost. We ended the editorial with these words: Perhaps the blame can be placed. But this is not the answer.

This $51 million bridge will continue to be knocked down – and perhaps more people will be killed – unless laws are passed to regulate more stringently the operations of tugs and barges on the lake,[(1)] and to regulate the men who command these vessels."[(2)] Of course, we did not expect this prediction to be fulfilled so soon. But here we are, only 41 days since the last tragic collision, and we have another. In June the man supposed to be steering the tug and two barges said he "blacked out."

Last Saturday, when another tug and two barges crashed into the bridge – knocking out 200 feet of roadway – the man supposed to be steering told the Coast Guard investigators he had fallen asleep. And, passengers of a bus, which crossed that portion of the bridge just before the collision, reported that they could see no one in the pilothouse of the tug. Now in the context of logic and normalcy, it seems incredible that Saturday's accident could have happened at all. But then, it is just as incredible that the earlier collision should have happened, and six people killed. The Lake is so big – 600 square miles. The damages are so great – about $500,000 total for both accidents. The stakes are so tremendous. And yet, simply because one man "blacked out," and another fell asleep, tragedy, and chaos resulted. Now we talk about safeguards for the drivers on the bridge, and of radar, and other precautions. But until something is done – and again, we are only repeating ourselves – until something is done to regulate, to license, to govern what kind of a man can operate tugboats and such on the lake, travel on this $51 million bridge will be like playing Russian roulette – purely a matter of changes whether you will get across or not.

Well, "something" was done. Congress passed the Pilothouse Licensing Act on July 6, 1972 and

"grandfathered" existing industry personnel. Licensing regulations for towing vessel officers were tightened in 2001, but work-hours violations still continue. Local regulations passed by the State Legislature now govern approaches to the causeway.

Another Incident in 1974: Barge Knocks Out Causeway Section.
Captain and Owner Cite the Fifth Amendment.

*[**Source:** Edited from the Times-Picayune, Aug. 3, 1974. by Emile Lafourcade.]*

Both the Captain of the towboat Miss Andy and the owner firm's President took the Fifth Amendment Friday at a Coast Guard hearing on the boat's ramming of the Lake Pontchartrain causeway early Thursday.

But a statement written and signed by Captain ■■■ of Galliano, and introduced into evidence, indicated ■■■■ ***was asleep at the helm at least 20 minutes before his tow of empty barges struck the northbound span of the causeway***, creating a 252-foot gap.

Two motorists – Tazille Charles Madison, 36, and Edgar E. Dillon, 41, both of New Orleans – died when the vehicles they were driving crashed through the gap and into the lake soon after the bridge was rammed. Dillon's brother, Wallace, 19, is believed missing in the crash wreckage.

The Coast Guard hearing, which lasted four and a half hours, ended at 5:30 p.m. Friday with the hearing examiner, Lt. (j.g.) Richard C. Wigger telling Capt. ■■■■, "I inform you that the Coast Guard will take action to secure your testimony."

He made the same statement to ■■■ earlier in the hearing and again to Autry James Dufrene...of...Gretna, president of American Tugs, Inc., owner of the M/V Miss Andy, when he refused to answer the examiner's questions on advice of his legal counsel.

The boat's mate, Larry Stelly, and deckhand, David Knott, both of Arnaudville, were more talkative.

Their testimony characterized American Tugs[(1)] as a loosely-run outfit lacking clearly defined lines of communication and duties for crewmembers and ***with no set work or watch schedules***.

Both said that when they were hired (Knott was hired just over a week ago) ***they were not told of any specific duties they were to perform or at what time of day they were to perform duties***. *[(1)Refer to NMA file #M-190]*

They said the matter of duties and their timing were left to the captain.

Stelly said watch duties for him and the captain ran as much as 12 hours at a stretch. He added that he is paid $40 a day with no accounting for the number of hours worked in a given day.

Knott testified ***his workday averages 13 to 14 hours***, adding that on some difficult duties he was assisted by Stelly or ■■■■, whichever was not at the boat's wheel at the time.

Asked if a crew of three was sufficient to handle the boat's work load, Knott said three was "not enough."

The hearing progressed tediously at first as the hearing examiner and the attorneys asked numerous questions related to the M/V Miss Andy's log for the 48-hour period prior to the accident.

Lt. Wigger was trying to put together a picture of the pattern of activities aboard the towboat.

Stelly testified that at the time of the accident he was dozing in the bunk room behind the boat's wheelhouse. Knott testified he was asleep below the deck at the time and did not know of the accident until Stelly woke him up a few minutes afterward, telling him to light a fire on the barge in an attempt to caution any motorists who might be headed toward the causeway gap.

The hearing became punctuated with controversy and legal questions during testimony of the third witness, Lt. (j.g.) Terry L. Rice, the Coast Guard's investigating officer at the accident scene.

He said he arrived on the scene shortly after 6 a.m. Thursday and soon after boarded the Miss Andy with a Jefferson Parish sheriff's deputy.

He testified the deputy placed ■■■■ under arrest and informed him of his rights, adding that Lt. Rice also informed the captain of his rights, but encouraged him to answer his questions and sign a statement.

He quoted ■■■■ as saying he came on watch at 2:30 a.m. Thursday just before the towboat passed the Florida Avenue Bridge over the Industrial Canal. That he piloted the boat past the Seabrook Bridge and into the lake.

Stelly testified that the night was clear, that he could see lights on the causeway from Seabrook and then retired to his bunk.

Lt. Rice quoted ■■■■ as saying his boat was traveling toward the causeway at four miles an hour.

Lt. Wigger asked Lt. Rice to read the statement given him by ■■■■ and both ■■■■'s attorney, William Crull, and the attorney for American Tugs, George B. Matthews, strenuously objected to admitting the statement into evidence. Crull adding he was concerned about the "wide dissemination" the statement would be given if made public.

The objections were over-ruled and Lt. Rice read that the towboat had "cleared Seabrook and headed for the south draw" of the causeway.

He continued reading from the statement that ■■■■ "came in line with the draw and lined up the tow with the green lights on the south draw. ***I was about one and a half miles from the draw and then I hit the causeway and that's when I woke up***."

Asked what was ■■■■'s apparent condition and general appearance when he (Lt. Rice) boarded the Miss Andy. Lt. Rice said ■■■■ was "very nervous" and was wearing a white shirt that was dirty and gray pants and "looked like he had been up a while."

Dufrene was then called to the stand, but answered Lt. Wigger's three questions with a Fifth Amendment declaration...

Tightened Local Regulations Now Govern Causeway Commercial Boat Traffic

*[**Source**: U.S. Coast Pilot #5]*

Notice to commercial maritime interests in Lake Pontchartrain. Local Regulations.

Effective July 14, 1988, the Louisiana Legislature passed and Governor Roemer signed into law LA. Acts (1988) No. 552, regulating navigational safety near the Lake Pontchartrain Causeway Bridges. Key features of this Act:

(1) Require all tugs, towboats, self-propelled dredges, jack-up barges, jack-up rigs and all self-propelled vessels of one hundred net tons or greater, or one hundred feet in overall length or greater, and all vessel flotillas of one hundred aggregate net tons or greater operating on Lake Pontchartrain to be equipped with Loran C equipment suitable for use with the Lake Pontchartrain Collision Avoidance Warning System (CAWS);

(2) Establish a "prohibited zone" paralleling each side of the entire length of the Lake Pontchartrain Causeway Bridge and extending outward for a distance of one mile from the easterly and westerly outboard sides of the causeway bridge twin spans;

(3) Prohibit all privately-owned vessels within the classes listed in paragraph (1), above, from entering, navigating, mooring, or anchoring in any manner within the "prohibited zone," except:

(a) as required to navigate through the Lake Pontchartrain Causeway Bridge openings upon such course and upon such directions as may be given by the Causeway Bridge tender,

(b) as required in an emergency to protect against loss of life or property, or

(c) as otherwise permitted in accordance with permitting procedures set forth by the Act and the Rules and Regulations of the Greater New Orleans Expressway Commission;

(4) Provides for the assessment of a civil penalty in the amount of up to $1,000 per vessel per violation against the owner, operator, or charterer of any vessel within the classes listed in paragraph (1), above, which impermissibly enters the "prohibited zone," or which enters the "prohibited zone" without the Loran C equipment required by the Act;

(5) Requires that all collisions, accidents or other casualties involving a vessel within any of the classes listed in paragraph (1), above, be reported to the Greater New Orleans Expressway Commission within 48 hours if such casualty has resulted in death or injury, or within 5 days, if such casualty resulted in property damage exceeding $200.

Tightened Requirements: Hours-of-Service Must Be Logged

Our Association asked Congress to require maritime employees to record in a vessel's "Official Logbook" the hours that each mariner worked each day. Congress added these requirements at 46 U.S. Code §11304 in October 2010 and the Coast Guard gave notice in Marine Inspection Notice 03-12 on March 10, 2012 of their intent to review (1) officer/seaman watch change outs, (2) hours of service for officers/seamen, and (3) documentation of accidents, illnesses, and injuries that occur during watch.

Following an accident, a licensed mariner often is caught between a rock and a hard place between company policies and government investigators. A mariner must protect his personal interests, his license, and his job. Only through license insurance can a mariner ensure immediate access to a trained admiralty attorney to protect him from regulations he may not be fully aware of.

Reducing Crew Size

Cooks kept the boat crews healthier by preparing decent meals and improved sanitation by eliminating unnecessary hands in the food supply as cooking became everybody's job and maintaining the galley often a sadly neglected chore. The original "Call Watch" involved a crewman who was not burdened with a regular set of two six hour watches per day, but was on call to fill in all those non emergency needs such as when an extra lookout

was needed or an extra deck hand to lend a hand building or breaking tow. The original "Call Watchman", sometimes called the "Utility Man" allowed the officer on watch to avoid waking up the off-duty crew for routine tasking. Today the "Call Watch" is simply usually the last hired and often youngest crewman who is already assigned a regular set of two daily six-hour watches and all of the extra work. In the Lake Pontchartrain disaster the tow operator had fallen into a micro sleep, the tow was not underpowered. In other bridge allisions we have seen the deadly effects of both fatigue induced impairment and under powering all too often operating in tandem.

Downgrading Engineers to "Deckineers"

The lack of a trained designated duty engineer (DDE) on many work boats has lead to disaster and loss of life for innocent "civilians" attempting to drive across bridges. On May 28, 1993 the Captain of the small towboat M/V Chris instructed his newly-assigned deckhand that he would have to drain the engine's fuel traps on every watch because they "must have picked up some dirty fuel." The untrained deckhand became a "deckineer" and went below to the engine room where he attempted to drain the fuel traps the Captain desired.

The Captain had pushed the tow up on the bank and left one engine engaged in gear, a standard practice for keeping a river or canal tow in temporary position waiting to move into a lock. Next, he did something that only an experienced Captain would be tempted to do on a chronically undermanned vessel. He dashed below to help the new green hand. Apparently a wind gust caused the tow to slip and start to twist off the bank. In the estimated 3 to 5 minutes that the Captain and deck hand were in the engine room the tow came off the bank and struck the one of the support columns of the Claiborne Avenue bridge over the Industrial canal in New Orleans. A section of the roadway collapsed with fatal results to the occupants of one automobile and severe injuries to others.

When we view this incident against other incidents investigated by the National Transportation Safety Board (NTSB) in recent years the results seem minor in comparison particularly when compared to the fatalities inflicted when a tow struck the Queen Isabella Causeway in Texas and dropped fifteen cars into the water or the ramming of the railroad bridge in Bayou Canot, Alabama that wrecked the Amtrak passenger train Sunset Limited in 1993 with 45 fatalities and over one hundred injuries to the train crew and passengers.

Events like these are somewhat separated in terms of times and distance and certainly in the levels of national media attention. The result is that the general public with its collective short memory span does not appear to see the pattern. This is not just an issue concerning the health and safety of one industry's work force but a public safety issue as well. At least thirty-three American states have bridges crossing commercially navigable waters. The death toll of vehicle occupants killed in bridge allusions with commercial vessels in the last three decades is probably in excess of 100. These people who died while simply trying to cross a bridge were not mariners but moms, dads, children, grandparents, some poor, most middle class and few rich – a cross section of America. These citizens were not at fault. While the towboat captains took the blame and paid the penalty for a moment of fatigue induced weakness, inattention, or failure to exert the moral courage to refuse to take an under powered tow, the company officials who forced these choices and horrific working conditions upon their workers have yet to be held responsible.

CHAPTER 11
You May Never Be Able to Go Home Again

For over one hundred years in the American-flag international trades seamen have had an assured way to get home if they did not complete the intended voyage they signed on for. If all else failed, a stranded American seaman in a foreign port could report to the nearest U.S. Consul who could require the next departing American ship to carry the seaman back to the United States. Jones Act and other work boat seamen often travel hundreds of miles to their embarkation point which in many cases has to be considered the place where they catch the company van that transports them to the crew change point. This final van ride can be several hours in duration. When these employees are discharged for any reason, sometimes including simply being ill, companies feel free to simply abandon them on the side of the nearest road and often do so. Here is an example case and an explanation of the practice as we learned it from our mariners.

Abandoning Mariners Without Transportation Home

*[**Source:** NMA Report #R-202, Rev. 5 and Newsletter #54]*

Our Association received a number of calls from distressed mariners who, for various reasons, were abandoned by their employers and told to furnish their own transportation home.

Since the Coast Guard "superintends" our merchant mariners, we took the opportunity to inform them of a "typical" case in a letter dated Dec. 18, 2007 to the attention of the Eighth District Commander through our Coast Guard Liaison Officer.

The Situation

Captain ■ related to me that his former employer told to get out of his truck miles away from home as a result of a disagreement. Captain ■ reportedly notified the boat's charterer (Kirby Inland Marine) and they sent a vehicle to pick him up and charged the vessel's operating company $185.00 for doing so. The charterer reportedly then billed the boat owner for the $185.00 transportation charge.

The boat owner, in turn, deducted $185.00 from Captain ■'s wages.

Unfortunately, other towing companies simply ditch unwanted crewmembers "in the middle of nowhere." In fact, this practice has become quite common. In two recent cases, Versatility Marine (now out of business) put two seriously ill mariners off their towboat in Texas and told to find their own way home to Mississippi and Florida respectively – as reported in the next case (below).

We asked the Coast Guard to comment on these stories and to provide guidance for our mariners. We asked that the Coast Guard give us their "position" on grievances involving abandonment without travel funds remembering that the mariners we represent are, for the most part, ***not*** members of a labor union that have grievance procedures established under a collective bargaining agreement.

Coast Guard Response

Dear Mr. Block:

I am writing in response to your letter dated Dec. 18, 2007 in which you described several instances where mariners were reportedly discharged in remote locations by their employers and left to make their way home at their own expense.

Since ***this is inherently a labor issue***, and thus outside the purview of our authority, the Coast Guard does not have an opinion about the practice of discharging mariners in remote locations without arranged transportation or travel reimbursement. As you are aware, there are many factors that influence how and where a mariner is discharged from a vessel. Company policy, contractual agreements, and the circumstances surrounding the mariner's discharge (i.e. completed their hitch, quit, terminated, illness, etc.) may all factor into whether the mariner is provided transportation or travel reimbursement.

Although ***it would be inappropriate for the Coast Guard to take a position or directly assist a mariner with a grievance relating to a labor issue***, I can offer the following suggestions.

- Mariners are encouraged to know the rights and protections afforded them under Federal and State labor laws. Individuals interested in researching labor related issues may consult the U.S. Department of Labor's employment law assistance (ELAWS) website at http://www.dol.gov/elaws/.

- Additionally, mariners should have a thorough knowledge of all company policy and contractual agreements relating to transportation or travel reimbursement following their discharge from the vessel.
- In those instances where pre-existing policy or contractual agreements do not exist, mariners are encouraged to consult with their employers and establish a clear understanding regarding whether they will be provided transportation or travel reimbursement prior to joining the vessel.

If you have any additional questions regarding this issue, please contact Commander Jim Stewart at (504) 671-2164. Sincerely, s/T.D. Hooper, Captain, U.S. Coast Guard – Chief, Prevention Division, By Direction of the Commander, Eighth Coast Guard District

The "Labor Issue" Excuse

We find the Coast Guard often cites the "labor issue" to avoid any responsibility for looking out for the legitimate interests of working mariners. From our experience, the Coast Guard shows little real interest in our mariners safety, health and welfare. When in doubt, we suggest that our mariners forget about the Coast Guard and ask a maritime lawyer for legal advice.

Although our Association is **not** a union, we urge mariners to join a labor union in order to establish a contractual relationship to effectively address this and other related issues. Until you do this, plan to carry enough cash and a working cell phone so you can get home on your own or at least summon help. You are on your own! Don't expect the Coast Guard to help you!

CHAPTER 12
The Last Message from The Alamo

The National Mariners Association (NMA) is not a union, rather it is a professional association of career mariners that studies safety issues and publishes reports to improve the safety, health and welfare of merchant mariners. The association also advocates at times for action based on its reports. It is neither a union nor a lobby but is the only independent voice of the 126,000 mariners presently laboring under third-world conditions to bring America its heating oil, gasoline, grain, jet fuel and countless other bulk and non time sensitive commodities. These are also the merchant mariners who move America's oversized objects on our internal waterways and keep them off of our highways. Among the more sensitive and important objects these dedicated maritime professionals have ever moved is every moon rocket and engine ever constructed by NASA. They also moved entire companies of tanks and armored vehicles from inland military installations to embarkation points for foreign deployment at New Orleans and other ports of embarkation. What they do is important but rather obviously unappreciated by their employers or the government.

Over the years, the National Mariners Association published more than 230 reports documenting deplorable working conditions, occupational health issues, and unfairness in the Coast Guard's administration of this large segment of the American Merchant Marine. NMA has delivered and will continue to deliver our reports to the Coast Guard's Marine Safety Directorate, the Inspectors General of the Departments of Transportation and Homeland Security, and to various Coast Guard rulemaking dockets and with, far too few exceptions, received nothing more than a deaf ear and a blind eye. We have delivered our reports and testified before Congress with only moderately better results. Often when the Congress does act and the bill writing begins the vessel owners and their trade organizations show up, claim to speak for all their employees, and succeed at watering down the provisions of new legislation. The Coast Guard then is often subjected to similar pressures from vessel owners to water down enforcement of existing and needed regulations. When this happens all that NMA has on its side is the truth as documented in our well prepared published reports. We have no political campaign money to distribute, no entertainment budget, no professional lobbyist, and no permanent presence in Washington DC. There has never been an effective counterweight to the influence of the owner management trade organizations determination to maintain the status quo and improve the bottom line even at the expense of their own mariners.

One of our latest reports is titled "***Report to Congress: Abuse of Mariners Under the Two-Watch System.***"[1] Armed with the truth contained in this report we have again asked Congress to grant some relief to our mariners. This time however we are attempting to assure that there will be some counter weight to the owners' demands. We don't normally use the type of language found in this work nor do our reports have titles like "**BLOOD ON BROWN WATER."** We are reaching for the American public for support. The officers of our association are aging. Our mariner rank and file members are mostly "at will employees," who must keep their membership in our organization secret or risk dismissal. Our officers are largely retired officers who survived maritime operational careers and began at the time when the operating companies passed out of the hands of their original captain entrepreneurship to professional managers with MBA degrees and without experience on a vessel and without empathy for working men and women who grew up in the boat business. *[[1]NMA Report #R-370, Revision 4.]*

There are no more like us in any pipeline since the Coast Guard has started to act as an instructor approval authority. Today to teach a Coast Guard-approved course not only must the course content be approved by the Coast Guard but also must the instructor and they favor active Merchant Marine Officers rendering much of the vocational technical instructor corps part time and subject to ship owner discipline. By producing "**BLOOD ON BROWN WATER**" we hope to enlist the aid and oversight of the American people and the "Doctors Caucus" in Congress. There are more medical doctors in the U.S. Congress now

than ever before. If anyone in Congress can be beyond the reach of ship owner influence and understand our safety and health issues we believe that it may be the Doctors Caucus who we are attempting to reach in the hope that they can enlighten the maritime subcommittees where any relief bills will be crafted. But we also need the help of the general population of Americans. We appeal to you now to assert your interest in safe and reliable water transport conducted by healthy American crews helping to insure your timely and efficient delivery of products and safety when on or near the water. Below is a copy of our latest request to Congress. Please note that we aren't even asking for the eight-hour work day that all other American workers and other mariners enjoy, just effective enforcement of a 12 hour work day.

We hope that our book has provided you with a basic understanding of the plight of our mariners and a bit of a look inside our typical reports without many of the technicalities that we feel compelled to provide when drafting a report to Congress. To the American people from this, quite possibly our last stand before circumstances and age remove us from the scene, we ask that you come to the support of our mariners.

EPILOG

There are in excess of 210,000 certificated merchant mariners in the United States. Of this number, approximately 126,000 are "limited-tonnage" mariners serving on vessels of less than 1,600 gross tons.

The towing industry is an important segment of the U.S. Merchant Marine and employs at least 32,000 people on an estimated 6,100 towing vessels. The Government predicts that waterborne commerce will increase substantially in the next decade. Nevertheless, the marine industry faces a growing shortage of personnel to man its vessels. Although many industry leaders don't seem to have a clue as to the causes of the underlying problem, this book provides anecdotal evidence from a number of "limited-tonnage" mariners that deserves wider attention.

In 1996, **American Inland Mariners Association**, a predecessor of NMA rallied a large number of mariners to respond to proposed changes in licensing regulations that went into effect in 2001. As a result, over 800 comments were submitted to the public rulemaking docket. Although a number of serious issues were raised, many were poorly handled after the release of the resulting Final Rule because of subsequent mismanagement by the Marine Safety Directorate at Coast Guard Headquarters, many of the Coast Guard's Regional Exam Centers, and above all by the National Maritime Center.[1] *[[1]Refer to NMA reports to Congress #R-428-D and #R-428-D, Rev. 1.]*

In 1998, **Pilots Agree,** a grass roots mariner organization with a reported membership of 1,500, staged a job action when the management of towing vessel companies in mid-America refused to meet with its organizers to discuss working conditions. Although the strike eventually was broken, so was the morale of mariners and with it went the myth that management truly respected its towing vessel officers.

In June 2000, our Association published a book titled Mariners Speak Out on Violations of the 12-Hour Work Day. The book, presented to senior Coast Guard officials at District and national Headquarters level, was a snapshot of conditions submitted by 57 working mariners in the towing industry and the offshore oil industry.[1] The Coast Guard Marine Safety Directorate ignored the book and refused to investigate its allegations. *[[1]NMA Report #R-201].*

CHAPTER 13
How You Can Help Our Mariners

You can help our mariners by supporting our "watch dog" organization, the National Mariners Association by in several ways, namely:

- Join our Association and support us with your annual membership dues of $36.00. (Membership blank enclosed)
- By a direct donation to support our work.
- Follow up your reading, go to our website, look up the titles of the NMA Reports that may be of particular interest to you and provide additional details and order them for delivery by internet or by mail (please specify).
- Order copies of this book for your friends.
- Contact a local newspaper reporter and tell him about this book.
- Send this book with a brief letter to your U.S. Representative or Senator and ask for his or her comment.
- Sending this book to a member on the House Coast Guard and Maritime Transportation Subcommittee or the Senate Commerce, Science and Transportation Committee in Washington.

"Civics 101" – How to Contact Members of Congress on Maritime Issues

The Merchant Marine is regulated by Federal rather than by state regulations. Consequently, our mariners hold "federal" credentials as officers and ratings issued by the U.S. Coast Guard and TWIC cards issued by the Transportation Security Administration (TSA).

The United States Federal Government is composed of three separate and distinct Branches:

- The **Executive Branch** includes the President and Vice-President who serve four-year terms. The President appoints his "Cabinet" composed of Secretaries of Cabinet Level Departments. The Department of Homeland Security (DHS) in which the U.S. Coast Guard resides since 2003 is one such Department with approximately 160,000 federal employees. The Coast Guard is the Department of Homeland Security's its largest Agency with approximately 42,000 employees. The Transportation Security Administration (TSA) is another DHS agency that issues TWIC cards and investigates transportation security incidents. The National Transportation Safety Board is an independent Agency, that investigates some major maritime accidents. The U.S. Department of Labor (DoL) and the Occupational Safety and Health Administration (OSHA) have jurisdiction over uninspected towing vessels including tugs, towboats, and uninspected passenger vessels.

- The **Judicial Branch**. Includes the Supreme Court, Federal Courts of Appeal, Federal District Courts.

- **Congress.** Includes the U.S. House of Representatives with its 435 "Representatives" apportioned according to each state's population elected for two-year terms. The U.S. Senate has 100 Senators with two "Senators" elected from each state with six-year terms of office.

Congressional Representation

Each individual in the United States is "represented" by one U.S. Representative and two U.S. Senators. If you experience an issue or problem with ***any federal agency***, you may want to contact the Representative in your Congressional District or one of your two Senators. Each Representative or Senator has a nearby local office that is staffed to handle your complaints – as long as that complaint deals with a "***federal***" and not a "state" or local governmental issue. You will find their addresses and phone numbers in your local phone book under U.S. Government. Each also has an internet website.

If you divide the nation's population of about 310,000,000 by its 435 Representatives, you will find that each Representative serves slightly less than 700,000 people. Both your Senators and your Representative maintain offices in Washington as well as one or more local offices and staff to answer your questions and respond to your concerns.

How important are our nation's mariners and where do they fit into the "big picture"? Well, the Coast Guard says that there are about 210,000 credentialed mariners in the country. So, even if every credentialed mariner lived in exactly the same Congressional District and was concerned about the same issues, we would not be in the majority in even one Congressional district.

Dividing the Workload – The U.S. House of Representatives

Congress works by Committee. One of the important committees that deal with the Merchant Marine is the House Committee on Transportation and Infrastructure. In the 112th Congress, this large committee is composed of 26 Democrats and 33 Republicans with its Chairman **Representative John Mica (R-FL**) and its minority "Ranking Member" is **Representative Nick Rahall (D-WV).**

A 59-person committee is unwieldy to work with and its work is parceled out into six specialized **Subcommittees**. Of these subcommittees, the one of most concern to our mariners is the **Coast Guard and Maritime Transportation Sub-Committee**. This sub-committee is part of the House Committee on Transportation and Infrastructure and deals directly with maritime issues. The Sub-committee Chairman is **Representative Frank LoBiondo (R-NJ),** Vice-Chairman **Jeff Landry (R-LA),** and its Ranking Member is **Representative Rick Larsen (D-WA)**. Representatives Mica and Rahall, chair and Ranking Member of the full Transportation and Infrastructure Committee also serve "ex-officio" on each sub-committee.

The House Transportation and Infrastructure Committee staff is located at Room 2165, Rayburn House Office Building, Washington, DC 20515. Telephone #: 202-225-9446.

The Coast Guard and Maritime Transportation Sub-Committee staff office is in Room 507, Ford House Office Building, Washington, DC 20515. Phone #: 202-226-3552.

What Does the Coast Guard and Maritime Subcommittee do?

Rep. Frank LoBiondo, Chairman. The Coast Guard and Maritime Transportation Subcommittee **oversee laws related to the Coast Guard**, shipping and all aspects of maritime transportation.

Coast Guard Authorization: One of the Committee's priorities in the 112th Congress is enacting legislation to provide the necessary authorities and resources for the Coast Guard to carry out its broad responsibilities. The service enforces the nation's laws in U.S. waters and on the high seas, and protects the lives and property of those at sea. The Coast Guard's missions include maritime search and rescue, illegal drug and migrant interdiction, oil spill prevention and response in the marine environment, ***marine safety***, maintenance of aids to navigation, icebreaking, enforcement of U.S. fisheries and other marine environmental laws, and maritime defense readiness. Marine Safety, that regulates the U.S. Merchant Marine, is only one of the eleven Coast Guard "missions."

Maritime Transportation: The Committee supports the development of a national strategic transportation plan that includes a strong maritime transportation component and greater use of coastwise trade. Marine highways represent a cost effective but underutilized mode of transportation, and the Committee will examine ways to encourage the use of short-sea shipping, or shipping between domestic ports in the United States. This concept has the potential to create new maritime industry jobs for Americans.

Oil Spill Prevention and Response: The Coast Guard was the first federal agency to respond to the Deepwater Horizon oil spill in the Gulf of Mexico. The service also assumed the role as the Federal On-Scene Coordinator and the National Incident Commander for the spill.

The Committee will work to ensure that the nation's oil spill prevention and response capabilities protect the environment without threatening U.S. jobs. The Committee is also committed to ensuring that future deepwater drilling permits are not rubberstamped and that adequate technologies, more thorough inspections, better oversight and better planning are required for future exploration and drilling activities.

We can provide responsible environmental safeguards while continuing to utilize domestic energy resources and ensuring vital energy sector jobs.

Dividing the Workload – U.S. Senate

In the U.S. Senate, the Senate Commerce, Science and Transportation Committee composed of 13 Democrats and 12 Republicans and is divided into seven (7) sub-committees. The Surface Transportation and Merchant Marine Infrastructure Subcommittee with Senator Frank Lautenberg (D-NJ) as Chairman and Senator John Thune (R-SD) as Ranking Member deal with many of our issues as does the Oceans, Atmosphere, Fisheries and Coast Guard Sub-committee with Senator Mark Begich (D-AK) as Chairman and Senator Olympia Snowe (R-ME) as Ranking Member.

The Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard

This subcommittee is responsible for legislation and oversight of matters that impact our oceans, coasts, and climate, including: coastal zone management; marine fisheries and marine mammals; oceans, weather and atmospheric activities; marine and ocean navigation; ocean policy and NOAA. The Subcommittee is responsible for **overseeing the Coast Guard**, which includes the safe and secure operations of vessels entering the United States or transiting through our Exclusive Economic Zone and the enforcement of maritime laws to support maritime commerce and protect marine living resources.

The Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security

This subcommittee has jurisdiction over matters relating to interstate transportation policy issues. In addition to the Committee's broad oversight of the Department of Transportation, the Subcommittee has oversight over the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the Pipelines and Hazardous Materials Safety Administration, the Research and Innovative Technology Administration, the Maritime Administration and the Saint Lawrence Seaway Development Corporation. **The Subcommittee also has jurisdiction over the transportation security programs and policies of the Department of Homeland Security.** It also has jurisdiction over independent transportation regulatory boards, including the Federal Maritime Commission and the Surface Transportation Board. The Subcommittee focuses on safety, security, and infrastructure development related to both freight and passenger transportation.

Each Senate Committee has **Staff Members** who carry out the tasks assigned by their Committee or Subcommittee. The Commerce, Science, and Transportation Committee is located at Room 254, Russell Senate Office Building, Washington, DC 20510. Telephone: (202) 224-0411.

The following pages list the mailing addresses (i.e., snail mail) for the Washington, DC office of each of these committee members. To find the telephone, fax, or e-mail address of ANY Representative or Senator, use the internet address http://Thomas.loc.gov/ or call the local office of your U.S. Representative or U.S. Senator. If you are an NMA member, call us for this type of information and suggestions.

The following pages are set up to print on a 1 in. x 2 5/8 inch label. Compared to Avery #5960.

What Does Our Association Ask of the 112th Congress?

We ask Congress to consider our requests contained in NMA Report #R-350, Rev. 6 titled Limited Tonnage Mariners Ask for Assistance from Congress on Marine Safety, Health, and Work-Related Issues. This list focuses on important changes that we believe need to be made at the Congressional level, especially in areas where the Coast Guard tells us it lacks the authority to make the changes requested or where a conflict exists between two Executive Branch agencies.

House of Representatives
Coast Guard & Maritime Transportation
Subcommittee
112th. Congress -2011
REPUBLICANS

Rep. Frank LoBiondo, Chairman
Coast Guard & Mar Trans. Subcommittee
2427 Rayburn House Office Bldg/
Washington, D.C. 20515

Rep. Don Young
Coast Guard & Mar Trans. Subcommittee
2314 Rayburn House Office Bldg.
Washington, DC 20515

Rep. Howard Coble
Coast Guard & Mar Trans. Subcommittee
2188 Rayburn House Office Bldg.
Washington, DC 20515

Rep. Andy Harris
Coast Guard & Mar Trans. Subcommittee
506 Cannon House Office Building
Washington, DC 20515

Rep. Frank Guinta
Coast Guard & Mar Trans. Subcommittee
1223 Longworth House Office Building
Washington, DC 20515

Rep. Chip Cravaack
Coast Guard & Mar Trans. Subcommittee
508 Cannon House Office Building
Washington, DC 20515

Rep. Blake Farenhold
Coast Guard & Mar Trans. Subcommittee
2110 Rayburn House Office Bldg.
Washington, DC 20515

Rep. Jeffrey Landry
Coast Guard & Mar Trans. Subcommittee
206 Cannon House Office Bldg.
Washington, DC 20515

House of Representatives
Coast Guard & Maritime Transportation
Subcommittee
112th. Congress -2011
DEMOCRATS

Rep. Rick Larsen, Ranking Member
Coast Guard & Mar Trans.
Subcommittee,
108 Cannon House Office Building
Washington, DC 20515

Rep. Elijah Cummings
Coast Guard & Mar Trans. Subcommittee
2235 Rayburn House Office Bldg.
Washington, DC 20515

Rep. Corinne Brown
Coast Guard & Mar Trans. Subcommittee
2336 Rayburn House Office Building
Washington, D.C. 20515

Rep. Tim Bishop
Coast Guard & Mar Trans. Subcommittee
306 Cannon House Office Bldg.
Washington, DC 20515

Rep. Mazie K. Hirono
Coast Guard & Mar Trans. Subcommittee
1410 Longworth House Office Bldg.
Washington, DC 20515

Rep. Michael Michaud
Coast Guard & Mar Trans. Subcommittee
1724 Longworth House Office Bldg.
Washington, DC 20515

House of Representatives
Coast Guard & Maritime Transportation
Subcommittee
112th. Congress -2011
EX OFFICIO

Rep. John Mica
Coast Guard & Mar Trans. Subcommittee
2187 Rayburn House Office Bldg.
Washington, DC 20515

Rep. Nick Rahall
Coast Guard & Mar Trans. Subcommittee
2307 Rayburn House Office Bldg.
Washington, DC 20515

Mr. James W. Coon
Chief of Staff
House Trans.& Infrastructure Committee
2165 Rayburn House Office Bldg.
Washington, DC 20515

U.S.Senate
Commerce, Science & Trans.
Committee
Oceans, Atmosphere, Fisheries & USCG
DEMOCRATS

Senator Mark Begich, Chairman
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
144 Russell Senate Office Building
Washington, DC 20510

Senator Daniel K. Inouye
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
722 Hart Senate Office Bldg.
Washington, DC 20510

Senator John F. Kerry
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
218 Russell Senate Office Bldg.
Washington, DC 20510

Senator Bill Nelson
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
716 Hart Senate Office Bldg.
Washington, DC 20510

Senator Maria Cantwell
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
311 Hart Senate Office Bldg.
Washington, DC 20510

Senator Frank Lautenberg
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
324 Hart Senate Office Bldg.
Washington, DC 20510

Senator Amy Klobuchar
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
302 Hart Senate Office Bldg.
Washington, DC 20510

U.S.Senate
Commerce, Science & Trans.
Committee
Oceans, Atmosphere, Fisheries & USCG
REPULICANS

Sen. Olympia J. Snowe, Ranking Mem.
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
154 Russell Senate Office Bldg.
Washington, DC 20510

Senator Dean Heller
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
361 Russell Senate Office Bldg..
Washington, DC 20510

Senator Roger Wicker
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
555 Dirksen Senate Office Bldg.
Washington, DC 20510

Senator Johnny Isakson
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
120 Russell Senate Office Bldg,
Washington, DC 20510

Senator John Boozman
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
132 Hart Senate Office Bldg.
Washington, DC 20510

Senator Marco Rubio
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
317 Hart Senate Office Bldg.
Washington, DC 20510

Senator Kelly Ayotte
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
144 Russell Senate Office Bldg.
Washington, DC 20510

U.S.Senate
Commerce, Science & Trans.
Committee
Oceans, Atmosphere, Fisheries & USCG
EX OFFICIO

Senator Jay Rockefeller, Chairman
Commerce, Science & Trans. Committee
531 Hart Senate Office Bldg.
Washington, DC 20510

Senator Kay Bailey Hutchison, RM
Commerce, Science & Trans. Committee
284 Russell Senate Office Bldg.
Washington, DC 20510

Ms. Ellen Doneski
Majority Chief of Staff
Commerce, Science & Transp. Committee
254 Russell Senate Office Building
Washington, DC 20510

Mr. Richard Russell
Minority Chief of Staff
Commerce, Science & Transp. Committee
254 Russell Senate Office Building
Washington, DC 20510

Senator Mark Warner
Oceans, Atmos., Fisheries & Coast Guard Subcommittee
459A Russell Senate Office Bldg.
Washington, DC 20510

U.S. Senate
Surface Transportation & Merchant Marine Infrastructure, Safety & Security Subcommittee
(Additional Members not on Oceans, Atmos, Fish & USCG Subcommittee)

Senator Barbara Boxer
Commerce, Science & Trans. Committee
112 Hart Senate Office Bldg.
Washington, DC 20510

Senator Mark Pryor
Commerce, Science & Trans. Committee
255 Dirksen Senate Office Building
Washington, DC 20510

Senator Claire McCaskill
Commerce, Science & Trans. Committee
717 Hart Senate Office Bldg.
Washington, DC 20510

Senator Tom Udall
Commerce, Science & Trans. Committee
110 Hart Senate Office Bldg.
Washington, DC 20510

Senator John Thune
Commerce, Science & Trans. Committee
493 Russell Senate Office Bldg.
Washington, DC 20510

Senator Jim DeMint
Commerce, Science & Trans. Committee
167 Russell Senate Office Bldg.
Washington, DC 20510

Senator Roy Blunt
Commerce, Science & Trans. Committee
B40C Dirksen Senate Office Bldg.
Washington, DC 20510

Senator Patrick J. Toomey
Commerce, Science & Trans. Committee
B40B Dirksen Senate Office Bldg.
Washington, DC 20510