NMA REPORT #R-412-A

DATE: March 30, 2011

124 North Van Avenue
Houma, LA 70363-5895
Phone: (985) 851-2134
Fax: (985) 879-3911
www.nationalmariners.org
info@nationalmariners.org

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

IN SEARCH OF JUSTICE FOR CHIEF ENGINEER LEON MANDERSON

M/V Jillian Morrison

TABLE OF CONTENTS

INTRODUCTION TO MANDERSON VS. CHET MORRISON CONTRACTORS

Our Association is in search of justice for Chief Engineer Leon Manderson whose career ended as a result of illnesses he contracted or exacerbated while aboard the M/V Jillian Morrison ï referred to by several mariners as a dangerous and overcrowded, floating cesspool.

Directors of the National Mariners Association (NMA) learned that significant issues affecting the health, welfare, and safety of our limited-tonnage merchant mariners would be decided in a lawsuit months before the case went to trial.

We requested and were given access to read a number of pre-trial depositions that were taken in preparation for the trial of Leon Manderson vs Chet Morrison Contractors (hereinafter ñChet Morrisonò[(1)]). We were invited to attend the trial held before Judge Richard T. Haik, Sr. in U.S. District Court for the Western District of Louisiana, in Lafayette, LA on May 24-25, 2009. *[(1)Note that our reference to "Chet Morrison" is to Chet Morrison Contractors, Inc. and not to the company's CEO.]*

Attorney Mark L. Ross, Esq.[(1)] represented Chief Engineer Leon Manderson at trial. We were favorably impressed with Mr. Rossô thorough pre-trial preparations and with his representation of Chief Engineer Manderson during the trial itself. However, we were acutely disappointed with many of the District Courtôs subsequent decisions.

We came away with the distinct impression that the trial judge had not done his homework. Consequently, we were not surprised that Attorney Mark L. Ross filed a timely ***notice of appeal*** from the final judgment to the U.S. Fifth Circuit Court of Appeal in New Orleans on Oct 22, 2010. The appeal was perfected on Mar. 4, 2011. The basis for District Courtôs jurisdiction arose under the laws of the United States, including the Jones Act and the general maritime laws of the United States. The Fifth Circuit Court of Appeal has jurisdiction over this timely appeal filed from the final decision of the District Court. *[(1)Mark L. Ross, Esq., 600 Jefferson St., Suite 512, Lafayette, LA 70501. ☎337-266-2345; Fax # 337-266-2345.]*

Background

Leon Manderson served as the Chief Engineer on the M/V Jillian Morrison, a 150.7-foot, 1800 horsepower vintage 1982 offshore supply vessel recently converted into a diving support vessel with a crew of seven (7) and fitted with accommodations to handle 28 to 33 ñindustrial personnel.ò ï usually divers and other offshore pipeline maintenance and mission support personnel. The vesselôs Coast Guard-issued Certificate of Inspection (COI) specifies a crew of seven includingé

- 1 Master
- 2 licensed Mates (Qualified as Officers-in-Charge of a Navigation Watch
- 2 Able Seamen (Qualified as Ratings of a Navigation Watch)
- 1 Ordinary Seaman
- 1 Chief Engineer

When on voyages of less than 24 hours ï a fact that really was ***not important*** at trial ï the industrial personnel could be raised from 28 to 33 and the vesselôs crew reduced to 5. That figure always included one licensed Chief Engineer. The vessel owners, Chet Morrison Contractors, never paid much attention to the COI or the vesselôs crew or the welfare of the ñindustrial personnelò it carried.

The M/V Jillian Morrison was a thirty-year-old converted offshore supply boat refurbished as a diving support vessel and equipped with a ñfour-point mooring systemò and a crane to perform offshore construction and maintenance projects.

One provision of the vesselôs Certificate of Inspection (COI) stated: ñThe specified manning level is contingent upon the proper operation of the engineering automatic control monitoring system.ò The proper operation of this automated system is a fact disputed throughout this case. The COI required that ñAny major alteration or essential component failure must be reported immediately to the cognizant OCMI.ò

NMA Expresses Our Concerns for Vessel Engineers

Our Association had an interest in this case for three reasons:

- We assert that the vessel operated under an ***inadequate engineroom manning scale*** ï a creation of the Coast Guard as reflected in the vesselôs Certificate of Inspection that provided only one engineer and no qualified engineroom support personnel for a vessel in 24-hour service. We previously brought similar vessel manning issues to the attention of Congress[(1)] and will continue to do so until they are addressed. We also point out the human cost of comparable and widespread work-hour abuses aboard uninspected towing vessels that are ***not***

operated as inspected vessels.[2] In both areas, the ***Coast Guard fails to protect the health, safety and welfare of mariners who serve in the enginerooms aboard "limited-tonnage" commercial vessels***. This case shocks us because it shows the indifference to our marinersô working conditions extends from the vessel owners, to the Coast Guard, and now to the Federal District Court. Who, we ask, is left to enforce the existing laws and regulations designed to protect our mariners if a Federal judge refuses to do so? We can only hope that the Fifth Circuit Court of Appeal rises to the challenge. *[(1)Refer to NMA Report #R-279, Rev. 8, Request to Congress: To review and Set Safe Manning Standards for Mariners Serving on Towing and Offshore Supply Vessels. 18p. (2)Refer to NMA Report #R-412, Towboat Engineer's Death Points to Need for Changes in the Law. 20p.]*

- The physical condition of this inspected vessel and its engineering plant were not effectively managed or monitored by company supervisors or local Coast Guard inspectors.
- The deteriorated living conditions for the ñindustrial personnelò housed on board the vessel were substandard but were not corrected by company supervisory personnel following reports by the Master of the vessel. One vessel Master reported vessel safety conditions to our Association beyond those covered here that we reported to the Marine Safety Office in Morgan City, LA. Their response was delayed and, at best, lethargic and incomplete.

Very shortly ***after*** Chief Engineer Manderson was disabled and hospitalized, the M/V Jillian Morrison, while engaged in an offshore pipeline repair job, suffered a ***major engineroom explosion*** that killed the engineer on duty, injured several other persons, and sank in the Gulf of Mexico. The vessel was later raised, brought ashore and subsequently cut up as scrap. This catastrophic event was covered extensively in the trade and local media but (although covered in this report) is not part of the Manderson case.

Inadequate Vessel Manning

Beginning in April 2001, our Association reported to Congress[1] about Coast Guard ***manning requirements*** that imposed significant and constant burdens upon vessel engineers who are the sole individual assigned to manage, maintain, and repair on a 24-hour a day basis the propulsion machinery, electrical generating equipment, heating-ventilating and cooling systems, pumps, compressors and often deck equipment such as capstans, winches, and windlasses found on limited-tonnage vessels. The fact that the M/V Jillian Morrison was not operating as an offshore supply vessel at the time is not relevant to our complaint since its basic OSV machinery as well as ***additional*** specialized equipment was still in place and had to be constantly maintained, operated, and repaired. Furthermore, divers using the vessel in support of the vesselôs mission brought their own equipment that also required considerable efforts by Chief Engineer Manderson on behalf of Chet Morrisonôs customers who leased the vessel to conduct a variety of projects. *[(1)NMA Report #R-279, Rev 8, supra.]*.

Since that original report (cited above), our concerns for the health, safety and welfare of the person serving as the sole engineer extended to other vessels such as large inland and offshore towing vessels and even some ñsmallò passenger vessels carrying large numbers of passengers without the services of any trained engineers whatsoever. We are appalled that the Coast Guard, as a regulatory agency, never has been attentive to this well documented problem. In the Manderson case, we are further disturbed that the District Court neglected this important issue and that the Coast Guard refused to step forward and support our mariners by at least submitting an Amicus brief to the Court of Appeal relative to the numerous regulations and statutes the District Court chose to ignore. This reinforces our opinion that the Coast Guard couldnôt have less concern for the safety of our mariners they superintend!

Our ongoing complaint lies with the fact that our working mariners continue to have no voice in vessel manning. This allows substandard companies to make their profits on the backs of engineers like Leon Manderson by providing him and the vessel he serves on with grossly inadequate manning for the tasks they undertake. In this regard, ***the Coast Guard is as much to blame as the company*** because they allowed the disgraceful conditions to continue on a vessel they inspect without providing adequate enforcement of statutes and regulations to protect our mariners. There is no sign that this case has attracted their attention. Even the report of the explosion and sinking of the vessel that drew media attention has not been completed.

Not only did the operating company leave Chief Engineer Leon Manderson without any assistance in his engineroom, but they also cheated on terms contained in their Certificate of Inspection by not providing the second licensed Mate as required for this crowded vessel that operated in 24-hour service. The Coast Guard in allowing the vessel to be manned with only one engineer, especially when the vessel had to provide ñhotel servicesò for as many as 33 people, ignored the fact that the vessel was on a 24-hour a day job and must meet the demands and requirements imposed by this number of persons crowded in such a small space. The exceptional demands made upon the ñhotel servicesò provided on the vessel alone are considerable.

Poor Vessel Maintenance

On Nov. 27, 2006, our Association at the request of **[Mariner #69]** a crewmember on the M/V Jillian Morrison filed a formal complaint with the Coast Guard regarding unsafe deck and engine conditions reported to our Association on the vessel. These conditions are detailed later in this report.

We asked the Coast Guard to inspect the vessel and to oversee the repair of safety violations and, further, to examine a potential safety violation that we described in exceptional detail. We had to request a report of the inspection under the Freedom of Information Act from Coast Guard Headquarters to eventually discover that this safety violation apparently was never looked at. With such an ineffective response, were not surprised to hear months later that this vessel exploded and sank. It is also a sad commentary on the Coast Guardôs entire Marine Safety program ï one that was reflected in retired Vice Admiral James Cardôs 2008 report.[1] *[(1)Refer to NMA Report #R-401-E,, Marine Safety – Where the Coast Guard Went Wrong. 36p.].*

The Nature of the Case and the Bench Trial in District Court

Chief Engineer[1] Leon Manderson brought his case to recover monetary damages for injuries caused by working excessive hours averaging 16 to 20 hours a day over a fourteen month period aboard the M/V Jillian Morrison. His employer violated a number of important regulations[2] designed to enforce international treaty obligations[3] by refusing to provide him ten hours of uninterrupted rest per 24 hour day and instead, on occasion, worked him up to 24 hours a day. *[(1)Licensed as Chief Engineer, unlimited horsepower, limited to service on vessels of 1,600 gross register tons. (2)46 CFR §15.1111(a) (3)The International Convention on Standards of Training and Watchkeeping for Seafarers, 1978, as amended in 1995 and the Seafarer's Training, Certification and Watchkeeping Code.]*

Mr. Manderson also introduced virtually uncontradicted medical evidence that the de facto 24 hour a day on call schedule Chet Morrison imposed upon him caused or contributed to the first time onset of his Type II diabetes mellitus.

Leon Mandersonôs excessive work schedule stemmed from Chet Morrisonôs refusal to obey minimum manning requirements of either the vesselôs Certificate of Inspection (COI) that spell out those requirements clearly, as well as requirements of federal laws and regulations based on those laws. The law[1] prohibits a vessel owner from operating his vessel without the full crew complement required by its Coast Guard COI. *[(1)46 U.S. Code §8101(d0.]*

Chet Morrisonôs violation of the manning requirements of its vesselôs COI, as well as numerous federal work hour and manning statutes, was particularly egregious since its dive vessel often operated on a 24 hour a day on a seven days a week schedule. Contrary to the District Courtôs findings, both Chief Engineer Manderson and former Chet Morrison Master Frank Billiot gave uncontradicted live trial testimony that they repeatedly advised company managers that the M/V Jillian Morrison was dangerously undermanned ï but to no avail.

Chet Morrison contractors occasionally assigned ***untrained deck personnel*** supposedly to assist Chief Manderson in violation of specific regulations that mandate only trained personnel work in a periodically unmanned engineroom. Chet Morrison also violated a federal statute[2] that prohibits assigning deck crew to duties in the engine room. The company also violated the vesselôs COI by failing to maintain an automated engineroom system.[3] *[(1)46 CFR §15.1103 c). (2)46 U.S. Code §8104(e)(1)(A). (3) NVIC 1-69]*

Leon claimed the exhaustion and stress generated by his excessive work hours caused the first time onset of his diabetes, aggravation of his pre-existing ulcerative colitis. As a result of his illnesses contracted aboard Morrisonôs vessel, Chief Engineer Manderson sought ***maintenance and cure*** from Chet Morrison. However, ***Chet Morrison instead terminated his group health insurance, demanded that Manderson reimburse the company for two previous months of health insurance premium payments, and refused to pay his maintenance and cure as required by law.***[1] This treatment gives our mariners an exposure to the tactics used by Chet Morrison and a number of other substandard maritime employers who prey on our mariners. It certainly is not the first case like this that our Association encountered as recited in our most widely read reports.[1] *[(1)Refer to NMA Report #-344-A, Rev. 1, Mariner Rights to Maintenance and Cure 3p. and NMA Report #R-344-B, Identifying Jones Act Claims. 5p. Also refer to NMA Report #R-202, Rev. 4, Treatment of "Lower-Level" Mariners. Don't Count On Corporate Compassion or Coast Guard Concern: True Stories of Our Lost, Injured and Cheated Mariners.]*

Ironically, Mandersonôs exhaustion-generated health problems probably saved his life from the fatal unseaworthiness of this dilapidated dive boat before the vessel itself took what turned out to be ñits final dive.ò On Mar. 12, 2008, six weeks after Leon was admitted to the hospital (at his own expense), the M/V Jillian Morrisonôs engineroom was engulfed in a tremendous gas explosion that killed the vesselôs engineer, two other crewmen, and causing the boat to sink off the Louisiana coast.

Leonôs case was tried before the District Court in a bench trial (i.e., without a jury) on May 24 and 25, 2010. The District Court denied Mandersonôs claims against Chet Morrison for Jones Act negligence and unseaworthiness. However, Judge Haik did find that Chet Morrison Contractors arbitrarily and capriciously denied

Leonôs maintenance and cure and awarded him ñmaintenance and cureò that, several years after the fact, helped to cover well over $100,000 of medical expenses that were required to keep him alive. In fact, as discussed with his attorney, Leonôs appearance in the courtroom to testify in this trial remained in doubt until the last moment as a result of the seriousness of his illnesses.

EIGHT REVERSIBLE ERRORS – ISSUES PRESENTED FOR REVIEW ON APPEAL.

Attorney Mark Ross presented the U.S. Fifth Circuit Court of Appeal in New Orleans with these issues to decide ***on appeal***é .

- **Error #1.** Whether the District Court was clearly erroneous in finding that appellant Leon Manderson, failed to provide any evidence, including ñobjectiveò evidence that Chet Morrison routinely worked Leon Manderson 16 to 20 hours a day, without relief, in violation of federal manning and work hour limitation statutes.

- **Error #2**. Whether the District Court erred as a matter of law in holding crewmen like appellant Leon Manderson ultimately responsible for setting their own work and rest schedules

- **Error #3.** Whether the District Court erred as a matter of law in finding that 46 CFR. §15. 1111(g)), which directs a vessel masterôs duty to establish watch schedules, did ***not*** apply to Chet Morrisonôs dive vessel.

- **Error #4.** Whether the District Court erred as a matter of law in finding that Leon Manderson failed to prove that Chet Morrison violated 46 CFR §15.1103(c)), which prohibited Morrison from transferring untrained deck personnel to the engineroom, because Manderson supposedly failed to prove his actual work hours, an unrelated issue.

- **Error #5.** Whether the District Court erred as a matter of law in holding that Leon Manderson, was contributorily negligent and/or assumed the risk in working excessive hours given Chet Morrisonôs acknowledged statutory violations of federal manning and work hour limitation statutes.

- **Error #6.** Whether the District Court erred as a matter of law in failing to find that Chet Morrisonôs violation of its COI and multiple manning and work hours statutes, together with plaintiffôs medical evidence proving causation, shifted to Chet Morrison the burden to show that the violations could not have caused or exacerbated appellant Leon Mandersonôs injuries.

- **Error #7.** Whether the District Court erred as a matter of law in failing to find Chet Morrisonôs vessel unseaworthy.

- **Error #8.** Whether the District Court abused its discretion in denying (recovering certain costs involved in trying the case) to Mr. Manderson pursuant to Federal Rule of Civil Procedure 54(d) upon no other ground than the District Courtôs erroneous conclusion that it is within its unbounded discretion to do so.

SUMMARY OF THE APPEAL

The District Court was clearly erroneous in ***failing to be aware of eye-witness testimony*** and ***Chet Morrison's stipulations that Mr. Manderson worked an average of 16 to 18 hours a day without adequate relief***.

The District Court erred as a matter of law in holding that Mr. Manderson and the M/V Jillian Morrisonôs crew had the legal obligation to set their own work schedules in the face of federal statutes placing that duty upon the vesselôs master.

The District Court erred as a matter of law in holding Chet Morrison could not know it failed to properly man its own vessel unless Mr. Manderson told them of the manning shortage.

The District Court erred as a matter of law in holding Mr. Manderson was 100% negligent and assumed the risk of working excessive hours. No Jones Act seaman can assume the risks of his employment. Additionally, Mr. Manderson cannot be found contributorily negligent in the face of Chet Morrisonôs numerous statutory violations. In like manner, the District Court erred as a matter of law in finding that 46 CFR §15.1111(g), which directs a vessel masterôs duty to establish watch schedules, did not apply to Chet Morrisonôs undermanned dive vessel

because it had ñsuch a small crew.

The District Court erred as a matter of law in finding that Leon Manderson failed to prove that Chet Morrison violated 46 CFR §15.1103(c), which prohibited Chet Morrison from transferring untrained deck personnel to the engine room, because Manderson supposedly failed to prove his actual work hours. Proof that Chet Morrison violated the regulation is not contingent upon showing excessive work hours by Leon Manderson, but instead that Chet Morrison transferred untrained deck personnel to the engineroom.

The District Court also erred as a matter of law in failing to find Chet Morrison violated 46 U.S. ode § 8104(e)(1)(A), which prohibits assigning deck crew to the engineroom. The District Court was further clearly erroneous in failing to recognize that Chet Morrisonôs assignment of untrained deck personnel to engine room duty is objective evidence that the vessel, and specifically the engine department, is undermanned.

The District Court erred as a matter of law in failing to find the M/V Jillian Morrison unseaworthy since it was undermanned in violation of the vesselôs COI, as well as multiple federal manning and work hour statutes. Chet Morrisonôs violation of numerous manning and work hour statutes, coupled with the largely uncontradicted medical evidence establishing a causal relationship between Leon Mandersonôs shipboard work schedule and his injuries, proved the vesselôs unseaworthiness.

In like manner, the District Court erred as a matter of law in failing to shift to Chet Morrison the burden of showing its many statutory violations did not cause or contribute toChief Engineer Mandersonôs injuries, a burden Chet Morrison never met.

Finally, the District Court abused its discretion in denying Mr. Manderson costs pursuant to FRCP 54(d). The District Court erred in failing to recognize that Mr. Manderson, as the prevailing party, is presumed to be entitled to an award of court costs. The District Courtôs decision to deny court costs must be grounded on some basis other than the District Courtôs unfettered discretion.

Given the forgoing, the Fifth Circuit Court of Appeal should reverse the District Courtôs failure to find Chet Morrison liable for Mr. Mandersonôs injuries and remand the case to theDistrict Court to determine Mr. Mandersonôs damages.

Our Association offers its initial comments to each of these possible ñErrors.ò We re-state each of these errors based on our experience and a review of all the documents in our possession. We will revise and update this report as the case proceeds through the appeal process.

NMA VIEWS ON ERROR #1

NMA Re-statement: We believe the District Court erroneously found that Chief Engineer Leon Manderson, failed to provide <u>any evidence</u> (including "objective evidence") that Chet Morrison Contractors routinely worked him for 16 to 20 hours a day, without relief, in violation of federal manning and work hour limitation statutes.

[NMA Comment: We had no trouble finding plenty of this evidence in both depositions and testimony in court. Why the judge was unable to do this is incomprehensible other than to say that he did not grasp the implications of the case and its effect on limited-tonnage mariners. For a Federal Judge to ignore so many laws (and regulations based upon those laws) puts every mariner's health, safety, and welfare at risk and must not be taken lightly.]

[NMA Comment: We understand that the Coast Guard was invited to prepare an "Amicus Brief" regarding their position on the laws and regulations mentioned in this report. We are disappointed that they were unwilling to commit themselves in support of the laws they are well paid by taxpayers to uphold.

[NMA Comment: We also express our disappointment in the Coast Guard's Marine Safety Inspections conducted on the M/V Jillian Morrison in the months leading up to her final fatal explosion.]

Testimony of Former Crewmembers

The M/V Jillian Morrison was a worn out, converted offshore supply vessel (OSV) whose dilapidated condition required constant attention. For example, **Captain Frank Billiot**, an experienced veteran aboard anchor handling tugs, supply boats, and dive vessels testified that the vesselôs sewage system routinely overflowed feces and sewage (i.e. ñBlack-ò and ñgray water) throughout the vessel, including the galley. Captain Billiot told Chet Morrisonôs

management about the stench and contamination but the company did little if anything to respond to these conditions. Not only did the vesselôs crew have to live with the stench and often inoperable sewage system, but the employees of the companyôs customers had to endure these unsanitary conditions.

Seaman Jason Giuliani, a shipôs clerk who occasionally worked as an engineroom helper aboard the vessel. He provided a deposition that was introduced into evidence at trial. Mr. Giuliani first helped clean a major sewage overflow in April 2007 and recalled that raw sewage filled a 30-foot by 20-foot by 3-foot deep bilge and that sewage was everywhere. Sewage overflows occurred about once a month, and one overflow took as much as three days to clean.

Relevant to Leonôs claims, Mr. Giuliani testified the unseaworthy sewage system added to Mandersonôs already overburdened work schedule. Leon estimated that the unseaworthy sewage system required him to spend an additional, ñtwo or three or four hours every day,ò just cleaning the filth.

Leon told Chet Morrisonôs port engineer, John Brunet, about the defective sewage system as well as the vesselôs numerous other unseaworthy conditions. Leon even gave Mr. Chet Morrison, the companyôs CEO, a personal guided tour to underline the desperate need to repair the vessel. However, Mr. Morrison refused to remedy the choking stench from the sewage overflow up to the time the vessel exploded and sank on March 12, 2009. Morrison filed a limitation of liability proceeding the morning of the vesselôs explosion in the U.S. District Court in New Orleans.

Howard Leonard is a licensed Chief Engineer, Limited, Any Horsepower. Attorney Mark Ross introduced Mr. Leonardôs deposition testimony into evidence. Mr. Leonard worked for Chet Morrison as a vessel engineer and temporarily replaced Manderson on an earlier occasion. He described the M/V Jillian Morrison as a vessel ñof antiquated vintageò in need of constant attention and should have been retired from service altogether.

Mr. Leonard cited one illustrative incident when a ***rotten potable water line***[(1)] broke, threatened to pour 40,000 gallons of water into the vesselôs and flood its interior. The vesselôs captain moved the vessel to safety by pushing it into the mud to keep it from sinking. *[(1)Our Association has spent much time and energy alerting Congress to the need for closer inspection of vessel potable water systems. Refer to NMA Report #R-395, Rev.3, Report to Congress – Providing Safe Potable Water for Merchant Vessels. 10p.]*

The M/V Jillian Morrisonôs COI required the vessel to have an automated engineroom system which could be controlled from the pilothouse. The COI cautioned that the vesselôs manning requirements in turn were, ñcontingent upon the proper operation of the engineering/automated control /monitoring systems.ò If the vesselôs so-called ñautomatedò engine room did not function, then the vessel required additional engineroom crewmembers and the Coast Guardôs Officer-in-Charge Marine Inspection was to be notified.

Chief Engineer Leon Manderson asserted that the M/V Jillian Morrison never had a fully operational automated engineroom system required by the vesselôs COI. The vessel, therefore, never complied with the vesselôs manning requirements for a non-automated engineroom equipped vessel. Mr. Manderson recalled that of all the pilothouse based systems that could comprise an automated engineroom system, only a tachometer worked. Part time clerk/engine room helper Jason Giuliani described the M/V Jillian Morrisonôs engineroom operation as ñ***manual***ò as opposed to ñautomated.ò

Former chief engineer Howard Leonard described the vessels alleged automated engine room system as ñ***unreliable***ò and cited the failure of the engineroomôs bilge alarm to sound when the vessel almost sank at the dock. In his deposition transcript he noted a log entry dated August 23, 2007: ñChief notified captain taking on water in engine room. No alarm sounded.

Captain Billiot also described one incident showing the unseaworthiness of the M/V Jillian Morrison had life-threatening consequences. He described shutting down diving operations when the vesselôs defective port anchor chain parted. Nevertheless, the company ordered Captain Billiot to continue diving operations with only one bow anchor cable in his four-point mooring system deployed. Captain Billiot refused to do so for fear of killing divers and instead returned to port. IIn response, the company fired Captain Billiot. Captain Billiot reported this incident to us after his employment was terminated. We directed a lengthy report to the Coast Guard Marine Safety Unit in Morgan City with very limited satisfaction.

The M/V Jillian Morrison Operated 24 hours a day for Weeks at a Time

Former M/V Jillian Morrison Captain Frank Billiot testified that dive boats operate 24 hours a day, seven days a week ñuntil the job is completed.ò Former shipôs clerk Jason Giuliani recounted that work aboard the dive boat never stopped: ñthe boat was always operating. Itôs a 24/7 operation.ò Chief Manderson explained the M/V Jillian Morrison remained offshore two to six weeks at a time, and while offshore the vessel and Chief Engineer Manderson worked up to 24 hours a day.

With a large number of divers plus vessel crew on board, Mr. Manderson had numerous duties related to the

diversô operations as well as tending to the vesselôs engine room.

Manderson Did Introduce Evidence of Working 16–20 Hours A Day Without Rest

The District Court found Manderson failed to provide any evidence of his ***work schedule*** aboard the JM/V Jillian Morrison. The District Court also ruled Manderson failed to introduce evidence showing whether he did or did not rest 10 hours out of every 24 as mandated by 46 CFR §15.1111(a).

The District Courtôs findings are clearly erroneous. The District Court not only disregarded Mr. Mandersonôs uncontradicted testimony, but was apparently ***unaware of evidence presented by ship's clerk Jason Giuliani, former engineer Howard Leonard and former captain Frank Billiot*** which showed the engineers who served on this vessel, including Mr. Manderson, routinely worked 16 to 18 hours a day. The uncontradicted evidence also showed Chet Morrison failed to ensure that Manderson could rest 10 hours out of every 24 hours given the vesselôs chronically undermanned crew.

Former shipôs clerk Jason Giuliani recorded the shipôs personnel on board and thus was in a unique position to know that Chet Morrison Contractors made Leon Manderson work alone. This is clear from his transcript that was entered into evidence. For example, on April 2007, Mr. Giuliani volunteered to assist Leon whenever he could break away from his job as shipôs clerk. Until Mr. Giuliani volunteered to try to help Mr. Manderson as an untrained ñwiperò (i.e., a helper to clean the engineroom) Chet Morrison, ñdidnôt have a position for a wiper or even a trained oiler on its Certificate of Inspection. The Chief Engineer did the engineering and that was that.ò

When Jason Giuliani volunteered to assist Leon in the engineroom, Jason had absolutely no sea experience and no engineroom experience. An engineroom and other ñmachinery spacesò on vessels of this type and size are dangerous places equipped with large electric generators, hydraulic and pneumatic equipment, large propulsion engines and other rotating equipment.[(1)] Leon could not leave Jason alone in an engine room since he was not qualified and thus might inadvertently cause, ñany number of catastrophic events to affect not only the vessel and its crew but also the divers as well. However, given Jason Giulianiôs lack of experience, Chief Engineer Leon Manderson remained on call 24 hours a day, ***without a scheduled off-duty period***. Consequently, Jason knew, based on his work with Leon that Manderson ***averaged*** at least 16 hours of actual work a day. Jason Giuliani often assisted Leon Manderson, would go off shift, shower, sleep and then return to work to find Leon was still up and working. In addition, Jason witnessed occasions on which Leon worked 24 hours or more straight time ï all without any kind of provision for overtime pay for these extra hours. *[(1) The danger became evident when the engineroom exploded six weeks after Leon Manderson left the M/V Jillian Morrison for the last time. Refer to NMA Report #R-428. Rev.1, Report to* ***Congress****: The Forgotten Mariners. Maritime Education & Training for Entry-Level Deck & Engine Personnel.]*

Jason Giuliani, as the shipôs clerk, knew that Chet Morrison did not provide Leon Manderson with a minimum of 10 hours a day rest. Mr. Manderson, as the vesselôs licensed Chief Engineer, confirmed that the vesselôs Captain never assigned anyone to assist him who was sufficiently competent or legally qualified to allow Mr. Manderson to take off 10 hours a day for rest. Mr. Giuliani witnessed and testified to the results of Leonôs sleep deprivation when he would fall asleep while eating in the galley. Given Mandersonôs lack of any scheduled off-duty time, he tried to nap in a Zodiac inflatable rescue boat on deck since constant work interruptions made trying to sleep in his own quarters ñpointless.ò

Even Jason Giulianiôs individual and voluntary efforts to help Leon Manderson were frequently interrupted when the Captain called him back to the pilot house to work as the shipôs clerk again for ña week here and two weeks there.ò When Jason knew he would be unable to assist in the engineroom, Leon would go back to working like he did before, by himself. In any instance, Manderson worked on a 24-hour basis without an adequate relief. This was the result of a failure by the Coast Guard to provide a realistic manning for the engineroom on the vesselôs Certificate of Inspection and the failure of the Master to provide and post a reasonable work schedule. The Master was limited in that the company failed to provide sufficient trained and qualified crewmembers to operate the vessel properly.

Manderson's Replacement Engineer Also Worked Over 16 Hours a Day

In finding that Chief Engineer Leon Manderson did not present any evidence of his excessive work hours, ***the District Court also ignored the deposition testimony of Mr. Howard Leonard.*** Mr. Leonard is a former licensed chief engineer.

The M/V Jillian Morrison was one of three Chet Morrison vessels Howard worked on. He temporarily replaced Leon on that vessel on Aug. 16, 2007. Chet Morrison also worked Mr. Leonard, like Manderson, 16 to 18 hour days on the M/V Jillian Morrison. Mr. Leonard, like Mr. Manderson, was on call 24 hours a day. IThe vesselôs captain never scheduled Howardôs work so that he could receive the 10 hours of rest per day as required by regulations. Mr. Leonardôs work schedule instead was wholly ñunpredictableò. In addition to not providing for his

required rest, Chet Morrison fired him for his perceived lack of enthusiasm for working 16 to 18 hour days.

Even His Employer Agreed Leon Manderson Worked Alone in the Engineroom

The District Court was clearly erroneous in finding Manderson failed to provide the Court with evidence showing whether or not he was adequately relieved of his duties. Objective evidence of Mandersonôs lack of relief includes Chet Morrisonôs stipulations that Manderson worked on a 24 hour a day on call basis without any relief. Chet Morrison in fact made the circular argument that **because** Chet Morrison did not provide Mr. Manderson with a relief, no ñwatchò system existed and Manderson was not entitled to be relieved. In the Court Reporterôs Official Transcript of the Motion Hearing before the judge, Chet Morrison stipulated Manderson remained on call 24 hours a day, which Chet Morrison incorrectly claimed, was ñcustomary.ò Chet Morrison admitted in open court that Manderson worked virtually alone for the first five months of his fourteen months employment with Chet Morrison. Leon presented uncontradicted testimony that whenever Chet Morrison professed to provide Manderson with an engine room assistant, such personnel were grossly unqualified. After Mr. Manderson told port engineer John Brunet and personnel manager Larry Bourg of his average 16 to 18 hour daily work schedule, Chet Morrison assigned an unlicensed, untrained engine room ñhelperò to allegedly assist him.

Mr. Manderson quickly found that his new ñassistantò, ñwasnôt no oiler. He wasnôt no helper.ò Chet Morrison replaced their first ñhelperò with yet another unlicensed, untrained person whose lack of qualifications limited his duties to painting the boat.

Dive and other service vessels, which lawfully operate in the Gulf of Mexico routinely, employ at least two engineers so each can work a 12 hour shift with 12 hours off-duty to rest. Captain Frank Billiot testified that in his 33 years of seamanship he has worked with dive boat companies including Cal-Dive International, Edison Chouest and Torch Offshore, which employ two or more engineers. Manderson likewise testified that he worked with other dive companies who relieved him with another qualified engineer. In accord, Howard Leonard deposition, Chet Morrison chose to keep its vessels undermanned.

The Vessel's Master Told Chet Morrison that M/V Jillian Morrison Undermanned

We believe the District Court was clearly erroneous in finding that Leon Manderson failed to present any evidence that Chet Morrison knew it kept the M/V Jillian Morrison habitually undermanned and compelled Manderson to work 16 to 18 or more hours a day. The District Court was apparently ***unaware*** of former captain Frank Billiotôs testimony. Captain Billiot determined after his first 28-day shift that the vessel was undermanned by at least one mate, one engineer and one designated engineer trainee (DET). Captain Billiot told Chet Morrison personnel manager Larry Bourg that the vessel was short one mate, a galley hand, one engineer and a DET. Mr. Manderson likewise told Chet Morrison personnel manager Larry Bourg and port captain John Brunet that he worked 16 to 18 hour days and needed relief. It is noteworthy that Chet Morrison did not call either Mr. Bourg or Mr. Brunet as witnesses at trial.

Chet Morrison Did Not Keep Time Records for its Engineers

If District Courtôs reasons for their judgment demand for ñobjective evidenceò includes time records, they were clearly erroneous in finding Manderson failed to present any evidence, including ñobjectiveò evidence, of his excessive work load aboard M/V Jillian Marrison. If the District Courtôs reference to ñobjectiveò evidence means written time records, Chet Morrison stipulated that it did not keep time records.

Chet Morrison at first ***falsely represented that it supposedly kept time records for Manderson*** and other engineers on the M/V Jillian Morrison. Morrison initially claimed plaintiff and other engineers were supposedly obligated to document their actual work hours in logs which Chet Morrison promised to bring to trial, guaranteeing, in the Court Reporterôs official transcript that: ñ[T]he logs do exist.ò Chet Morrison initially claimed Mr. Manderson failed to fill in time records as the Chief Engineer plaintiff was responsible for completing the Engineerôs log on a daily basis despite this fact that Leon admitted that he did not enter the number of hours he worked into his logs. In reality, Morrison never kept time records for its engineers. Former Chet Morrison engineer Howard Leonard testified that Chet Morrison never asked him to fill out time sheets. In addition, no one with Chet Morrison ever showed Mr. Leonard a time sheet he had to fill out. Nor did Chet Morrison ever reprimand Mr. Leonard for supposedly failing to fill out time sheets. In fact, no one with Chet Morrison ever mentioned the subject of time sheets to Mr. Leonard, including three different Chet Morrison vessel captains.

Furthermore, Chet Morrison displayed a shocking ignorance of what records it did maintain. For example, they denied the existence of captainôs rough logs until Leon Manderson proved their existence during a hearing on his ñMotion to Compelò before the Magistrate Judge Mildred Methvin during which the judge debated whether she

should cross-examine Chet Morrison personally on what records his company did or did not have. As it was, Judge Methvin sanctioned Chet Morrison for its bad faith and overall ñstrange answersò to Mr. Mandersonôs discovery. Subsequently, through his attorney, Mr. Manderson filed a ñMotion for Application of an Adverse Inferenceò against Chet Morrison for its persistent misrepresentation that Chet Morrison engineers either kept or were supposed to keep detailed records of their work time.

In response, Chet Morrison changed course and claimed it never said its engineers kept time records: In fact, Chet Morrison never maintained that it required its engineers to record the number of hours that they worked, nor has it ever claimed that it. If the District Courtôs reference to ñobjective evidenceò is to written time records, no such records ever existed.

Undermanning a Vessel Violate its COI and Provides "Objective Evidence" of Excessive Work Hours

The District Court was clearly erroneous in finding that such statutory violations supposedly played no role in Mandersonôs Herculean work schedule. As a matter of fact in finding that Chet Morrison violated its Coast Guard Certificate of Inspection by sailing without one of its two required Mates aboard the vessel, this was a statutory violation.

The District Court reasoned that since Manderson ñclaims that only the improper manning of the engine room caused his injuries, not the manning of the deckò, Chet Morrisonôs decision to sail a mate short was of no importance. Leon Manderson testified his work was not limited to the engine room. His work on a dive vessel with 32 or more divers required him to work on dive related equipment above decks, including the diversô ñhot water machineé air compressor machine for jetting, the jet pump.ò Mr. Manderson related that with 24 hour a day dive operations, he had to constantly monitor a deck crane, air compressors and dive compressors. In fact, the presence of a carefully supervised mate could have assisted Mr. Manderson.

Shipôs clerk Jason Giuliani, who normally worked in the pilothouse, tried to assist Chief Engineer Manderson to the extent allowed by his lack of training and experience. However, the vesselôs captain often called Giuliani back to work as shipôs clerk in the pilothouse, leaving Leon to work alone again. Mr. Giulianiôs transcript provides an illustration of how too few deck personnel impacted Leonôs access to even untrained help. .

When Captain Frank Billiot told Chet Morrison personnel manager Larry Bourg that the M/V Jillian Morrison was undermanned by one mate according to its posted Certificate of Inspection and one engineer, among other deficiencies, Bourg told Captain Billiot to use Able Seamen from the deck department. However, Captain Billiot correctly refused to assign his Able Seaman to the engineroom, because Captain Billiot needed the AB to act as lookout in the pilot house ï as required by the Rules of the Road.[(1).] Furthermore, Chet Morrisonôs violation of the vesselôs Certificate of Inspection also violates law and regulation[(2)] that forbid Chet Morrison from sailing without the minimum complement specified in the vesselôs COI. The District Courtôs conclusion that Chet Morrisonôs violation of its vesselôs COI manning requirements, ñis of no moment to the case at hand,ò is deficient. *[(1)33 CFR §83.05. (2)46 CFR. §15.515(a) and 46 U.S. Code §8101(d).]*

Manderson's Medical Evidence Provides the Causal Link Between his Work Schedule and his Injuries.

Mr. Manderson required hospitalization for exacerbated ulcerative colitis on Jan. 24, 2008, that subsequently required removal of his entire colon a year later. Attorney Mark Ross obtained depositions from four highly qualified medical experts who supported the medical causation between Leonôs non-stop work schedule and exacerbation of his ulcerative colitis as well as diabetes. We summarize key items from of their deposition that are believe are important for all of our mariners to be aware of as follows:

- Working on an exhausting 24 hour a day basis is a specific stressor that would cause a flare up of ulcerative colitis.
- Exhaustion is a ñprofound physical stressor.ò If a person with pre-existing ulcerative colitis worked on call 24 hours a day for months on end, these working conditions create a ñstressful situationò known to increase flare-ups of the condition.
- Stress generated by such an extreme work schedule more than likely aggravated the illness.
- Stress can alter the course of a number of diseases including ulcerative colitis. The irritable bowel syndrome is a disease known for its direct relationship to stress. Patients can very often connect situational difficulties with their symptoms.
- During stress a number of hormones are produced. The most important hormone are the steroids produced in the adrenal glands and the other hormones, like the growth hormones that can stimulate the body to become increasingly more inflamed. Hormonal theory is reasonably well established.
- Stress generated by working 16 to 20 hours a day for weeks on end would aggravate ulcerative colitis, as well as

any other malady from which he suffered: ñIn my opinion, yes, stress can alter the course of most illnesses. Certainly, specifically, the ones Mr. Manderson had.ò

- Sleep deprivation from a 24 hour a day on-call schedule with at best broken up, sporadic opportunities to rest is a definite stressor likely to exacerbate pre-existing ulcerative colitis: The lack of a regulated, well-entrained sleep-wake schedule leads to sleep restriction, would exacerbate underlying ulcerative colitis.

Mr. Manderson also introduced largely uncontradicted medical evidence that the 24-hour a day on call schedule Chet Morrison imposed upon him caused or contributed to the first time onset of his Type II diabetes mellitus.

- The stress of insufficient sleep, inadequate sleep, and a cumulative sleep debt were a major risk factor for the unmasking of diabetes. Although Leon had a family history that may have put his baseline at a higher risk for diabetes. The timing of the diagnosis for the onset of diabetes strongly suggests that the sleep restrictions he underwent on the job presented a contributing factor.
- When asked whether a causal correlation existed between Mr. Mandersonôs 24 hour a day on call work schedule, average daily working hours of 16 to 18 hours, plaintiffôs sporadic sleep opportunities and the January 2008 onset of Mandersonôs diabetes, the fourth medical expert witness emphatically replied ñyesò: The lack of sleep can cause insulin resistance. It can cause cortisone release, which can cause elevated sugar. Cortisone release that is much higher than normal leads to decreased blood sugar. Sleep deprivation causes hormonal changes that leads to diabetes: Increased abdominal fat is one of the main criteria for insulin or one of the main acquired or ways in which one can acquire insulin resistance. Sleep deprivation contributed to Mr. Mandersonôs diabetes: ***The expert on diabetes would not permit Leon to return to work offshore given the risk of a loss of consciousness from hypoglycemic shock. This, among other medical factors ended Leon's career.***

Employer's Medical Expert Did Not Effectively Oppose Manderson's Experts and Treating Physicians

Chet Morrison medical expert conceded that he lacks the training, expertise or knowledge to rebut Mr. Mandersonôs case on medical causation and specifically had no expertise concerning sleep deprivation. For example, he did not know the five stages of sleep and deferred to Leonôs sleep specialist concerning how sleep affects a multitude of bodily functions. Morrisonôs expert agreed with Mr. Mandersonôs experts that the physical stress generated by, ñsleep deprivation, working sixteen, eighteen hours a day, day after dayò, can exacerbate ulcerative colitis. He agreed with Mr. Mandersonôs medical experts that stress obviously would have contributed to a flare-up of the disease**.** He stated if a patient sought treatment for diabetes he would have to refer him to a diabetologist or an endocrinologist and admitted he is not qualified to comment on any association between chronic insufficient sleep and diabetes. Further, Morrisonôs expert deferred to Mandersonôs diabetes doctor on whether sleep deprivation is a contributing factor to Type II diabetes. Consequently, Mandersonôs medical causation evidence was not rebutted by Chet Morrison.

NMA VIEWS ON ERROR #2

NMA Re-statement: We believe the District Court erred as a matter of law in holding that crewmen like Chief Engineer Leon Manderson ultimately are responsible for setting their own work and rest schedules.

[NMA Comment: 46 CFR §15.705 states in part: "Title 46 U.S.C. 8104 is the law applicable to the establishment of watches aboard certain U.S. vessels. The establishment of adequate watches is <u>the responsibility of the vessel's Master</u>."]

The District Court in its ñReasons for Judgment erred as a matter of law in holding Jones Act seamen like Mr. Manderson ultimately responsible to rest as they saw needed. 46 CFR §15.705 titled,ñWatchesò states simply: ñThe establishment of watches is the responsibility of the vesselôs master.ò 46 CFR §15.1109 directs the vesselôs Master, to ñensure observance of the principles concerning watchkeepingé ò

The District Courts holding contradicts federal statutes, which, consistent with centuries of maritime law, hold the vesselôs Master responsible for setting watches. The District Courtôs decision invites chaos aboard any ship on which each crewmember, from galley hand to Mate, interprets work hour statutes, ñto rest as they saw needed.ò

The District Courtôs opinion further suggests that Mr. Manderson, for unexplained reasons, was supposedly determined not to rest and would have refused commands to do so: ñThe Court cannot assume that the posting of a watch schedule would have compelled the plaintiff to rest more.ò

The Court in The DENALI case in 1939 took a far more realistic look at a claim that a vesselôs Mates

ñcustomarilyò and ñvoluntarilyò served additional watches out of alleged love for their employer:

This is surprising testimony. Knowing something of the modern sailor and the watchfulness of corporate managers over their labor costs, this maritime court wonders how long the second and third mates would have held their jobs if they failed ñcustomarilyò and ñvoluntarilyò to violate the provisions of this safety statute andé serve over its required time.

In accord, the 1954 Bradt vs. United States case held concerning the destroyed health of that sleep-deprived vessel engineer, that ñThe duty of ship owners to seamen, who are wards of admiralty, is not so lightly discarded byé a willingness to continue with his tasks.ò

The District Court erred as a matter of law in holding that since crewmembers like Mr. Manderson supposedly assumed the responsibility for setting their own watches, Mr. Manderson and other crewmembers likewise ***assumed the risk of "failing" to rest*** as they saw needed. The District Courtôs finding that Manderson allegedly ñassumed the riskò of his employment is a defense Congress eliminated in 1939. In 1958, the U.S. Supreme Court in *Kernan v. American Dredging Co.,* explained that ñassumption of the riskò is not a defense in Jones Act cases: First, Section 4 relates entirely to the defense of assumption of risk, abolishing this defense where the injury was caused by the employerôs negligence or by violationé of any statute enacted for the safety of employees.

NMA VIEWS ON ERROR #3

NMA Re-statement: We believe the District Court erred as a matter of law in finding that 46 CFR. §15.1111(g), that directs a vessel Master to establish watch schedules on his vessel, did *not* apply to Chet Morrison's dive vessel.

The District Court held it did not find it practical, ñwithin this industry for Masters of vessels manned with such a small crew to post a scheduleò, setting watches for the crew.

In 46 CFR §15.1111(g) actually provides that a vesselôs master, ñ**shall** post watch schedules where they are easily accessible.ò

The District Courtôs conclusion that dive vessels are exempt from 46 C.F.R. 15.1111(g) is erroneous as a matter of law and ironic as a matter of fact. The M/V Jillian Morrison had a ñsmall crewò since, among other things, the vessel sailed one mate short in violation of the vesselôs COI.

Although Stewardôs Department personnel generally are not specified on a vesselôs COI, former Captain Frank Billiot also determined as a practical matter that the vessel lacked a galley hand necessary to provide support for the cook. The cook was expected to provide food service and regular meals not only for the vesselôs crew but also for up to 32 additional ñindustrial personnelò carried aboard the vessel for various work projects carried out on behalf of its charterers.[(1)] *[(1) Refer to NMA Report #R-455, Rev. 3. Food Service Aboard Commercial Vessels Served by our Mariners. 3p.]*

The District Courtôs exemption of Chet Morrison from 46 CFR §15.1111(g) is nothing less than a reward for refusing to lawfully man its vessel is a clear legal error.

46 CFR §15.1111 Work hours and rest periods.

(a) Each person assigned duty as an **officer in charge of a navigational or engineering watch**, or duty as a rating forming part of a navigational or engineering watch, on board any vessel that operates beyond the Boundary Line shall receive a minimum of 10 hours of rest in any 24-hour period.

(b) The hours of rest required under paragraph (a) of this section may be divided into no more than two periods, of which one must be at least 6 hours in length.

(c) The requirements of paragraphs (a) and (b) of this section need not be maintained in the case of an emergency or drill or in other overriding operational conditions.

(d) The minimum period of 10 hours of rest required under paragraph (a) of this section may be reduced to not less than 6 consecutive hours as long asð

(1) No reduction extends beyond 2 days; and

(2) Not less than 70 hours of rest are provided each 7-day period.

(e) The minimum period of rest required under paragraph (a) of this section may not be devoted to watchkeeping or other duties.

(f) Watchkeeping personnel remain subject to the work-hour limits in 46 U.S.C. 8104 and to the conditions when crew members may be required to work.

(g) The Master shall post watch schedules where they are easily accessible. They must cover each affected member of the crew and must take into account the rest requirements of this section as well as port rotations and changes in the vessel's itinerary.

NMA VIEWS ON ERROR #4

NMA Re-statement: We believe the District Court erred as a matter of law in finding that Leon Manderson failed to prove that Chet Morrison violated 46 CFR §15.1103(c) that prohibited Morrison from transferring untrained deck personnel to perform engineroom duties, because Manderson supposedly failed to prove his actual work hours. The two issues are unrelated.

The District Court found Mr. Manderson failed to prove whether he was adequately relieved by a competent replacement as the M/V Jillian Morrisonôs engineer.

The District Court held if Mr. Manderson had proved his work hours, the District Court may then have found Chet Morrison violated ñ46 CFR §15.1103(c)ò which states:

46 CFR §15.1103 Employment and service within the restrictions of an STCW endorsement or of a certificate of training.

(c) On board a seagoing vessel driven by main propulsion machinery of 750 kW [1,000 hp] propulsion power or more, no person may employ or engage any person to serve, and no person may serve, in a rating forming part of a watch in a manned engine-room, nor may any person be designated to perform duties in a periodically unmanned engine-room, except for training or for the performance of duties of an unskilled nature, unless the person serving holds an appropriate, valid STCW certificate or endorsement issued in accordance with part 12 of this chapter.

Mr. Manderson need not prove his actual hours worked to show Chet Morrison violated 46CFR §15.1103(c) by burdening him with untrained Able Seamen, a shipôs clerk or laborers who are not engineer officers or engineer ratings. Mr. Manderson, former Captain Frank Billiot, and former shipôs clerk Jason Giuliani presented uncontradicted testimony that Chet Morrison insisted Mr. Manderson accept ***unskilled and unqualified deck crew as his "relief***ô.

Chet Morrisonôs assignment of untrained deck personnel to the engine room also violates 46 U.S. Code §8104(e)(1)(A), which prohibited Chet Morrison from assigning seaman from working alternatively in the deck and engineroom departments. Nothing in the language of either the regulation or statute conditions the statutesô application upon proof Mr. Manderson worked excessive hours. On the contrary, the District Court failed to appreciate that Morrisonôs ***unlawful assignment of unlicensed Able Seamen and other untrained personnel to the engine room*** is objective evidence the M/V Jillian
Morrison was undermanned, that Chet Morrison failed to provide Mr. Manderson with adequate, trained, and qualified relief and, as a result, Mr. Manderson worked excessive hours in violation of 46 CFR §15.1111(a).

NMA VIEWS ON ERROR #5

NMA Re-statement: We believe the District Court erred as a matter of law in holding that Leon Manderson was contributorily negligent and/or that he assumed the risk in working excessive hours regardless of Chet Morrison's acknowledged violations of federal manning and work hour limitation statutes.

Legal citations from similar maritime lawsuits provided by Attorney Mark L. Ross concluded that Chet Morrisonôs relentless violation of work hours and manning statutes as well as Chet Morrisonôs refusal to follow U.S. Coast Guard regulations designed to provide for the safety of seamen all reflect negligence by themselves ***per se***, i.e., without reference to other facts in the case. In other maritime cases, for example, it was decided thaté

- Violation of 12 Hour Rule for tug pilots contributing cause of collision.
- Plaintiffôs fatigue was a substantial factor in causing the plaintiff to fall overboard and drown.
- The strain of being on call often twenty-four hours a day was very stressfulò and led to a stroke.
- Unshared strains, the innumerable plant breakdowns, the interrupted sleepé all contributed to a vessel engineerôs tubercular condition.
- Excessive hours worked by vessel engineer caused a pulmonary embolism, and ñconstitute a patent violation of the Jones Acté ò
- Defendantôs failure to follow U.S. Coast Guard regulations on the use of respirators is negligence per se
- Absence of U.S. Coast Guard required line throwing device to rescue drowning crewman negligence per se.
- Violation of Coast Guard regulations requiring hand guards aboard fishing boat negligence per se.

The Jones Act expressly grants to seamen the rights and remedies available to railroad workers under the Federal Employers' Liability Act (FELA), 45 U.S. Code §53 of FELA declares that the alleged contributory negligence of an ***employee is disregarded where the violation of a safety statute contributes to the employee's***

injuries or death. The District Courtôs conclusion that Leon Manderson is 100% responsible for his own injuries by ñnegligentlyò remaining on call 24 hours a day is erroneous as a matter of law.

Contrary to the District Courtôs rulings, the manning of the M/V Jillian Morrison and setting of watches is a responsibility controlled by the shipôs owner or master under several federal statutes. The District Court was clearly erroneous as a matter of law in holding Mr. Manderson 100% comparatively negligent for ñoverworkingò as a result of the vesselôs undermanned crew, dearth of qualified, licensed engine room personnel and unlawful work schedules.

NMA VIEWS ON ERROR #6

NMA Re-statement: We believe the District Court erred as a matter of law in failing to find that Chet Morrison's repeated violation of numerous manning and work hours statutes, together with Manderson's medical evidence that proved causation, shifted the burden of proof to Chet Morrison to show that the violations could NOT have caused or exacerbated plaintiff's injuries.

The District Court erred as a matter of law in failing to find that Chet Morrisonôs multiple work hour and manning statutory violations, coupled with Leon Mandersonôs overwhelming evidence on medical causation, shifted the burden of proof to show its numerous statutory violations could ***not*** have caused or exacerbated Mr. Mandersonôs injuries.

Mr. Manderson proved through largely uncontradicted medical evidence by medical experts that the 24 hour a day unrelieved, on-call work schedule Chet Morrison imposed upon him caused and/or contributed to the aggravation of his pre-existing ulcerative colitis and the first time onset of his diabetes mellitus II.

The Fifth Circuit Court of Appeal previously held[(1)] that the proof necessary to show medical causation between Chet Morrisonôs multiple acts of negligence and Mr. Mandersonôs injuries is slight. A Jones Act seaman is entitled to recovery under the Jones Act if he adduced **probative evidence** that the companyôs negligence played **any part however small**-in the development of his condition. The Court added that whether a Jones Act seamanôs evidence of a causal nexus between his employerôs negligence and the injury at issue ñpreponderates is irrelevantò. Rather, the test is whether the Jones Act seaman ñproffered **some** evidence of such a nexus, **and that is all that is required** to survive appellate reviewé ò [[(1)]*Davis v. Odeco, Inc*.]

In other cases[(1)] this Court held a Jones Act employerôs negligence need not be the sole proximate cause of an injury, "but may merely be a contributing cause". Chet Morrison is liable to Leon Manderson if Morrisonôs "negligence played any part, **even the slightest**, in producing the injury for which damages are sought." [[(1)]*Reyes v. Vantage Steamship Company, Inc. and Gautreaux v. Scurlock Marine, Inc*.]

Chet Morrisonôs persistent violation of work hours and manning statutes, as well as the vesselôs Certificate of Inspection should have shifted the burden to Morrison the burden to show the violations ***could not have caused or exacerbated Leon Manderson's health problems and total disability***. This Court held in simplest terms, that rule states that where a vessel is guilty of a statutory violation, the defaulting ship must show "not merely that her fault might not have been one of the causes, or that it probably was not, **but that it could not have been**."[(1)] [[(1)]*Candies Towing Company, Inc. v. M/V B & C ESERMAN.]*

Chet Morrison violated the following statutes:

- 46 CFR §15.1111(g) that requires the vessel Master to post watch schedules.
- The M/V Jillian Morrisonôs Coast Guard Certificate of Inspection by sailing one mate short.
- Violation of 46 CFR §15.515(a) and 46 U.S. Code §8101(d), that require vessels to sail with at least the minimum complement specified by the vesselôs COI
- 46 CFR §15.725, that requires a vessel sailing with less than the crew specified in the COI to notify the Officer in Charge, Marine Inspection and file a ñreport of sailing shortò.
- Failing to maintain an ñautomated engine roomò as defined by 46 CFR §15.715,
- 46 CFR §15.801, that assigned to Chet Morrison the responsibility for manning its vessel pursuant to law;
- 46 CFR §15.705 and 15.1109, both entitled, ñWatchesò, from which the District Court erroneously exempted Chet Morrison.
- 46 CFR §15.825(a), that requires the person in charge of an engineering watch be a licensed assistant engineer.
- 46 CFR §15.1103(c) and 46 CFR §15.401 that require persons whom Chet Morrison assigned to the engine room to be licensed.
- 46 CFR §15.1111(a) entitled, ñWork hours and rest periodsò, that required Chet Morrison to provide Mr. Manderson with ten hours of rest per day including one uninterrupted 6-hour period.
- 46 U.S. Code § 8104(e)(1)(A) that prohibits Chet Morrison from assigning seamen to work alternatively in the

deck and engine departments.

If the Fifth Circuit Court of Appeal presumes causation in the face of statutory violations, legal precedents show that Chet Morrison must overcome the presumption of fault. The U.S. Supreme Court[(1)] held that a statutory violation raises this legal issue. Can it be said in this case that the statutory fault **could not by any possibility** have contributed to the Mr. Mandersonôs disability? *[(1) The Martello, (1894)]*

The District Court erred as a matter of law in failing to shift to Chet Morrison the burden of showing its myriad statutory violations did not cause or contribute to Leon Mandersonôs injuries. This Appeallate Court can find liability in favor of Mr. Manderson on this basis alone.

NMA VIEWS ON ERROR #7

NMA Re-statement: We believe the District Court erred as a matter of law in failing to find the M/V Jillian Morrison was unseaworthy.

The District Court ruled that because ñthe Court does not hold the defendant improperly manned its vessel in accordance with statutory requirements, it cannot hold the defendant liable based on a minor violation of the Certificate of Inspection.ò

The District Court found Mr. Manderson failed to prove the JM/V Jillian Morrison was unseaworthy. The District Courtôs ruling is clearly erroneous as a matter of fact and law.

Chet Morrisonôs decision to operate its vessel in such a manner that Leon Manderson had to be on duty 24/7, without ever having a scheduled, licensed, competent person on board who could fully relieve him, rendered the vessel unseaworthy. As noted, the vessel lacked a Mate required by its COI, as well as additional qualified engineroom personnel. A vessel is unseaworthy when its crew is inadequate or incompetent. Legal precedents show:

- 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.
- An inexperienced and undermanned engineroom, together with the lack of automatic engineroom like that required by the vesselôs COI, all contributed to make that vessel unseaworthy.

Chet Morrisonôs vessel boasted of ***additional unseaworthy features*** in that it stank like a country outhouse on a hot July day as a result of a defective sewage system up until the day the vessel exploded and sank. Furthermore, Morrison fired any Captain who voiced safety concerns and the vessel almost sank while docked due to the vesselôs physical deterioration. The District Courtôs conclusion it could not find the M/V Jillian Morrison unseaworthy due to ñminor violationsô of the vesselôs COI is clearly erroneous as a matter of fact and law.

NMA VIEWS ON ERROR #8

NMA Re-statement: We believe the District Court abused its discretion in denying court costs to Mr. Manderson pursuant to F.R.C.P. 54(d) upon no other ground than the District Court's erroneous conclusion that it is within its unlimited discretion to do so.

Although the District Court denied Mr. Mandersonôs claims for Jones Act negligence and unseaworthiness against Chet Morrison and its dive vessel, the District Court granted Mr. Mandersonôs claims for sizeable maintenance and cure and attorneyôs fees. Mr. Manderson is therefore the ñprevailing partyò under Federal Rules of Civil Procedure (FRCP) #54(d)(1).

The Fifth Circuit Court of Appeal previously ruled(1) that a prevailing party under FRC. 54(d) need not win all or even the major portion of a lawsuit: ñA party need not prevail on all issues to justify a full award of costs, however. Usually the litigant in whose favor judgment is rendered is the prevailing party for purposes of rule 54(d)é A party who has obtained some relief usually will be regarded as the prevailing party even though he has not sustained all his claimsé Cases from this and other circuits consistently support shifting costs if the prevailing party obtains judgment on even a fraction of the claims advanced [(1)*United States of America v. Mitchell and Wright & Miller.]*

On Feb. 2, 2011, the District Court denied Mr. Mandersonôs Motion to Tax Costs as the prevailing party. Generally, if you are the prevailing party (e.g., Manderson), the other party (e.g., Chet Morrison) pays for certain costs of the trial, for example for the deposition of expert witnesses used in trial.

In this case, the District Court held that it had already awarded Mr. Manderson attorneyôs fees and costs in connection with his maintenance and cure claims. Attorney Mark L. Ross stated that the District Court erred since it only awarded attorneyôs fees but not costs.

The District Court further ruled that a prevailing party is entitled to have costs taxed against the losing party, ***unless the court otherwise directs***." The District Court believed it possessed unfettered discretion whether or not to award costs and chose not do so and, in addition, gave no reason for its denial of court costs to Mr. Manderson.

The Fifth Circuit Court of Appeal mandates that where the District Court denies the prevailing party court costs, the District Courtôs general discretion is circumscribed: ñby the judicially-created condition that a court ñmay neither deny nor reduce a prevailing partyôs request for cost without first articulating some good reason for doing so.ò

FRCP 54(d) states a prevailing party is presumed entitled to court costs: Unless a federal statute, these rules, or a court order provides otherwise, costs-other than attorneyôs fees-should be allowed to the prevailing party. The Courts hold FRCP 54(d) creates a presumption in favor of awarding costs to the prevailing party. Costs of obtaining depositions from ñexpertsò the court recognizes are expensive, and we believe Leon Manderson is entitled to recover those costs.

CONCLUSION AND RELIEF SOUGHT ON APPEAL

In his appeal to the Fifth Circuit Court of Appeal, the Appellant, Leon Manderson, asked the Court to:

- Reverse the District Courtôs denial of his claims against Chet Morrison Contractors, Inc. for Jones Act negligence and the unseaworthiness of the M/V Jillian Morrison
- To find that Leon Manderson proved by a preponderance of the evidence that Chet Morrison Contractors, Inc. negligently caused or contributed to the exacerbation of his ulcerative colitis, colonectomy and first time onset of his diabetes mellitus II;
- To find that the M/V Jillian Morrison was unseaworthy and that this was a substantial cause of his injuries;
- To remand this matter to the District Court to decide damages to which Mr. Manderson is entitled as a result of Chet Morrisonôs actions.
- To reverse the District Courtôs denial of costs to Mr. Manderson pursuant to FRCP 54(d) and award those costs in the total amount of $15,408.31.
- To award him for all costs and expenses incurred in filing this appeal.
- For all such further relief as this Court may deem just.

PROBLEMS ON THE M/V JILLIAN MORRISON NMA REPORTED TO THE COAST GUARD

Our Letter to the Coast Guard Before the March 11, 2008 Explosion

In November 2006 we received a report from **[Mariner #69]** a crewmember on the M/V Jillian Morrison that one or more unsafe conditions may exist on the M/V Jillian Morrison, an offshore supply vessel recently converted into a 150.7-foot ñdive boatò using a four-point anchoring system. We passed along this information to the Coast Guardôs Morgan City Marine Safety Unit and ask that their marine inspectors check it out at their next inspection opportunity. The mariner who made the report had with many years experience working in the Gulf on both inspected and uninspected vessels would be available to supply further information as may be required. We understand a topside inspection was performed on this vessel about a week ago. However, our **[Mariner #69]** does not want his name made available so he could be ñblacklistedò within the industry.

- The laundry room reportedly has a 220-volt junction box that is located at or near deck level (about 3ò above the deck) on the second deck. There is concern that if a washing machine spills water onto the deck that that water could slosh onto the junction box because it is so close to the deck and electrocute a crewmember. The drain to the laundry room doesnôt always work and the water often fills the drainpipe.
- In the shower room, there are two hot water heaters. He reported that the thermostats are set so high that there is a danger of scalding. He also reported that the hot water heaters are not fitted with safety valves normally found upon hot water heaters. He has never seen hot water heaters installed in the shower room or in a head on an inspected vessel.
- The emergency lights that illuminate the vesselôs four liferafts do not work. The electrician cannot find why they donôt work.

- The vesselôs single sideband radio reportedly does not work.
- The compass deviation card does not exist. The compass had never been calibrated.
- The tachometers for both main engines are inoperative.
- The cook complains of electric shocks when he touches the stove and the deep fryer.
- **[Mariner #69]** complained to us that he did not receive support from appropriate company personnel when he reported a badly frayed mooring cable on one of the ñfour-pointò anchors. He was subsequently unable to recover the cable using his anchor winch. He noticed the problem and expressed concern that divers would be working underwater in the vicinity of a frayed anchor cable that was likely to part. Such a frayed cable, or even a cable with only a few ñfishhooks,ò has the potential of causing significant personal injury to a diver underwater. Rather than to continue to use the cable, **[Mariner #69]** cut the damaged cable, buoyed it off for future recovery, took the boat to shore to change out the damaged cable and return to the dive site in open water in South Timbalier Block 140. For making this decision and apparently based on the additional expense it incurred, he was terminated and replaced by the company. He believes that this company places profit above personal safety.
- **[Mariner #69]** also reported that the company does not use lift bags to support the weight of the steel cable as the vessel moves into position over an underwater site ï in this case a pipeline valve. It appears that the maneuver ruptured the valve or pipeline as shown by the accompanying photos and the ñIncident Summaryò reported by the supervisor. **[Mariner #69]** cited a superior system used by Cal-Dive on their vessels. He also mentioned that workers for Cal-Dive are not expected to work over the side of the vessel with the safety implications explained below.

The most significant item, however, deals with the four-point mooring system. I will describe the system as best I can from my detailed phone notes.

The vesselôs four anchors are attached directly to steel cables which are lowered and raised by winches ï one on each side of the bow and stern. These anchors are held outboard of the hull by a metal framework called a ñcow catcherò and the anchor shanks are not pulled into a hawsepipe as on a conventional offshore supply vessel. The four winches spool the four wire ropes onto four drums and do not use chain. Therefore, the deck machinery is classified as winches and NOT windlasses. They work with ***7,000 lb .anchors***.

When the anchor is weighed (i.e., lifted) it is pulled up to the ñcow catcherò with the flukes under the cow catcher framework. It is secured to the ñcow catcherò by tension in the cable that is held by a handbrake and by constant air pressure. ***The handbrake alone will not hold the anchor***. If air pressure fails, the anchor can drop suddenly. Consequently, when underway or at the dock the anchor is secured to a padeye on top of the bulwarks and directly to the swivel on the top of the anchor by a short length of approx. 5/16-inch chain. This chain is independent of the anchor and must be put in place manually. On this particular vessel, ***the bulwarks have not always been strong enough to support the weight of a 7,000 lb anchor***. Consequently they have bent, been reinforced by welding, and are bent again. Part of the strength of the bulwarks has been lost by cutting the swinging door in the bulwarks.

Our concern is with the method of securing the anchor to the cow catcher. In order to do this on the bower anchors, a mariner must open a swinging steel door cut out of the bulwarks. He must step out onto a small platform about a half-foot below the main deck level, holding on to the bulwarks. Finally, he must hold onto a sheave (or roller) over which the anchor cable passes. He must then go to his knees on the small platform only about one and one half to two feet wide that is directly above the anchor secured to the cow catcher. The anchor flukes are pointing upward to the inside of the cow catcher. The platform is often reported to be greasy as a result of the grease used to lubricate the sheave. Excess grease drips or sprays from the sheave onto the small platform.

Once on his knees, the mariner must hold on to the vessel with one hand while kneeling on the small platform outboard of the hull and constrained by his work vest. He must then accept a piece of chain fed to him by another crewmember on deck, reach down to his full armôs length with his other hand and thread the chain through the eye of the swivel attached to the shank of the anchor. He must then take the loose end of the chain and, after pulling as much slack out as possible by hand, rise from his knees, and apply a chain binder so the anchor will remain in place at sea. All this takes place outboard of the hull of the vessel.

Apparently, three or four men are required to participate in this process. However, the Master reported that ***no restraints or harnesses are used to secure the mariner who remains outboard of the bulwarks.***

We respectfully request that at the next dockside inspection of this vessel that the crew be asked to perform this evolution and that it be evaluated in its entirety by the Officer-in-Charge Marine Inspection to ensure the safety of the participating mariners.

Our concern is based on the possibility that a mariner without proper restraint harness would slip from the small platform outboard of the hull and injure himself falling on the crown of the anchor held in place by the ñcow catcher.ò Also ***consider that this evolution must be performed offshore in a seaway*** even though we only ask its demonstration take place dockside. Also consider that during cold winter months, the temperature of the Gulf waters approaches the 59 degree cold water survival threshold of NVIC 7-91 and that recovery operations may be restricted by the vesselôs role in offshore construction activities. We also ask that the use of a safety harness be evaluated under actual working conditions.

On Nov. 27, 2006 we reported that the M/V Jillian Morrison was at her dock and urged that the Marine Safety Unit send out an inspector. After going through a FOIA request to Headquarters seeking information in regard to the requested inspection I received a very abbreviated report that led me to make this statement in a letter to the Commanding Officer on Mar. 7, 2007. ñ(I cited)é a unique situation that apparently exists on that vessel that the Master was particularly concerned about. I would hope that the inspectors were given a copy of our letter before visiting the vessel. However, I do not see whether this particular area of concern was addressed during their visit. The area was of concern because it requires seamen to work outside the bulwarks of the vessel in open water. I believe to check that, it would be necessary to determine whether the evolution in question could be performed safely by the crewmembers in the opinion of the inspectors. Perhaps this was checked, but I cannot determine from the inspection report. Perhaps the Coast Guard is not allowed to put crewmembers in danger by actually performing the evolution. If not, a demonstration or explanation citing the safety equipment available or in use probably would suffice considering the conditions that were normally reported existing on the vessel as described in our letter.ò

[NMA Comment: We never received a reply to our letter from the Commanding Officer of the Coast Guard Marine Safety Unit in Morgan City. LA.]

QUESTIONS FOR COAST GUARD INVESTIGATORS AFTER THE VESSEL EXPLODED

Our Association received information from several sources that before an explosion engulfed the M/V Jillian Morrison on March 11, 2008, and for a long period before the accident, that the ***living conditions aboard the M/V Jillian Morrison were extremely unhealthful due in part to a malfunctioning sewage system***. Apparently the vessel owners were informed about this on a number of occasions but took no action to ameliorate conditions. The vessel was allowed to carry a large number of industrial workers including divers, welders, etc. The vessel was reported to have an overpowering stench throughout the vessel of feces that was characteristic of a faulty or chronically malfunctioning sewage system.

Since the Coast Guard will be examining this vessel and its operation as a result of the explosion, we asked whether the Coast Guard has any records that pertain to this sewage treatment system such asé

- its manufacturer,
- the number of persons the system is designed to handle,
- the number of times the vessel has undergone and passed or failed inspection with that system installed,
- whether the Coast Guard physically inspects the sewage system for proper operation during its regular inspections,
- although we have reports of mariners complaining to the company urging them to make repairs, has any mariner ever ***complained to the Coast Guard*** about the systemôs allegedly chronic malfunctioning.
- will the sewage system be inspected as part of any accident investigation the Coast Guard is preparing to determine the cause of the most recent accident?

Going back to our earlier report of conditions aboard the vessel filed in Sept. 2006, there apparently was an inspection made on Nov. 27, 2006 in which a number of reported violations were corrected. However, our principal complaint dealt with allegedly unsafe conditions with the method of securing the two bower anchors to the vesselôs ñcow catchersò on the bow. ***Apparently, this item was never commented upon by the inspectors whose name was redacted from the computerized report***. I am not sure whether they understood the description in the letter or even were tasked with looking into this particular matter. If they didnôt know, they could have sought further information. I certainly was not favorably impressed with having to go through the whole FOIA routine and receiving the report that I did almost five months after the original complaint. ***Perhaps, the purpose of this is to discourage mariners from reporting conditions they believe are unsafe***. Certainly the report that I received from Coast Guard Headquarters did nothing to resolve the matter I described in my letter of Sept. 7, 2006é .

[Mariner #69] who brought this matter to our attention was concerned that the condition was so unsafe that it

posed a danger of death or serious injury to a crewmember. I suppose that will be continue to be overlooked as the operating company has found other ways to kill and seriously injure several personnel on this vessel. I also was informed at a later date that the vessel was denied passage through the Freshwater Bayou locks by the lockmaster because the ñcow catchersò previously mentioned stuck out far enough to potentially cause damage to the locks. I understand some modifications were subsequently made.

We were originally asked to look into this matter by a member of the Merchant Marine Personnel Advisory Committee (MERPAC) who had been in touch with one of the injured diverôs family. I spoke with the injured diverôs family representative in Washington shortly after the accident. I told him we were aware of the accident and had several pre-existing reports of unsatisfactory conditions on the vessel as mentioned aboveé .

NEWS REPORTS ON EXPLOSION AND FATALITIES ON THE M/V JILLIAN MORRISON

*[Although three years have passed, the Coast Guard has not released the results of its investigation on the explosion of the **diving support vessel** M/V Jillian Morrison. Professional Mariner magazine in an article by Dom Yanchunas in Issue #114, June/July 2008 provided a summary of the outstanding facts several months after the accident.]*

An explosion aboard a dive support vessel killed three crewmen and injured four others during the decommissioning of a natural gas pipeline in the Gulf of Mexico.

The March 11 (2008) blast aboard the Jillian Morrison sank the vessel and prompted the Coast Guard to rescue the crew. Six of the crew were injured and were flown by helicopter to Louisiana hospitals.

Two men who both worked in the engine room, later died in a burn center. The third man, a diver, was missing for about two weeks until his body was found floating in the Gulf.

The 175-foot boat, with 33 aboard, had been performing pipeline abandonment about 15 miles south of Marsh Island, LA. The explosion happened at 2015 while Jillian Morrison was anchored in 25 feet of water. The vessel was within South Marsh Island, Block 249. Itôs an area with several gas pipelines branching out from a subsea tie-in.

Lt. Angel Flood, the Coast Guardôs investigating officer in Morgan City, said ***she has identified "safety, procedural and teamwork issues" associated with the job***. The crew likely failed to take all safety precautions when they were handling the gas line on board the vessel,ò Flood said. ñIn the operation, Iôm sure there were some procedures that werenôt adhered to exactly.ò

Jillian Morrisonôs owner is Chet Morrison Contractors, Inc. of Houma, LA. John DeBlieux, the company risk manager, said it will be difficult to determine what went wrong because the person directly performing the operation was the man that went missing. The explosion definitely happened below deck, he said. ñItôs obvious that natural gas got into the engine compartment,ò DeBlieux said. ñThe vessel blew up from the inside out.ò

Jillian Morrisonôs air compressors, jet pumps and other dive support equipment are below deck. The main deck is used for material storage and fabrication of pipeline components, according to the vesselôs specifications on Chet Morrisonôs website.

The Coast Guard said the crewmen who died in the burn center were engineer Michael Sonia, 43, of Franklin, La., and engine-room crewman Robert Stevenson Jr., 39, of Marrero, La. The diver was Andrew Sievers, of Scott, La. The Coast Guard said his body was found in the Gulf, near Galveston, Texas.

Most of the vesselôs crew and divers who were aboard didnôt witness exactly what happened and couldnôt see much in the aftermath, Flood said. ñIt was an explosion with a massive amount of smoke,ò she said. ñThe wheelhouse was full of smoke.ò DeBlieux said Chet Morrison planned to hire Bisso Marine Co. to attempt to salvage the 272-gross-ton Jillian Morrison. The twin-screw vessel was propelled by two DDA 16V149 diesel engines.

[NMA Comment: The M/V Jillian Morrison was raised, transported to Harvey, LA, surveyed and scrapped.]

ADDITIONAL INFORMATION AND OPINIONS

The vessel was anchored at the time of the blast, Chet Morrison said, and no divers were in the water. "They were in the field as part of routine connection work associated with some part of the pipeline.

Chet Morrison Contractors acquired the M/V Jillian Morrison only recently. The 175-foot vessel was a retired offshore supply vessel ï a minimal investment. It was re-created as a four-point vessel with built-in diving equipment that complimented the 185-foot vessel M/V Stephanie Morrison.

The diving support vessel M/V Jillian Morrison had a telescoping 40 ton hydraulic crane with an 86-ft vertical

reach and 75-ft horizontal reach. The crane, located near the starboard stern, was used to assist in setting risers, riser clamps, boat landings and flange-in spool pieces. Its deck configuration allowed for support equipment below deck such as diving chambers, air compressors and bells, leaving the main deck open for storage and for fabrication of pipeline materials and components. The vessel could accommodate a 33-person support crew that allowed for diving on a 24-hour basis and had 33 persons on board at the time of the explosion.

Chet Morrison Contractors, with its headquarters in Houma, Louisiana, provided construction services including pipeline, diving, fabrication and construction both inland and offshore. It operates two platform fabrication yards in Houma and New Orleans, LA with international facilities in Mexico, Trinidad and the West Indies.

Lawsuits

The following information was posted on the Off Shore Diver, a forum for commercial divers. We learned that on Wednesday, March 12, 2008, within 24 hours of the explosion aboard the M/V Jillian Morrison, attorneys for Jillian Morrison, LLC, Chet Morrison Diving, LLC, Chet Morrison Contractors, Inc. and Chet Morrison Services, LLC filed a Complaint For Exoneration From Of Limitation Of Liability in the U.S. District Court for the Eastern District of Louisiana in New Orleans (file number 08-1255).

In the filing Chet Morrison, et al in parts prays for relief that ñonly if (Chet Morrison, et al) be adjudged liable, that such liability on the part of [Chet Morrison, et al] for the loss of life, bodily injury, property damages or other loss or damage as a result of consequence of said incident be limited to the amount for value of [Chet Morrison's et al] interest in the M/V Jillian Morrisoné .

Attached to pleadings for relief is an affidavit signed by Mr. Leroy Guidry stating that the value of the M/V Jillian Morrison is ñless than $1,000,000.ò Additionally, a Notice to Claimants of Complainant for Exoneration or Limitation of Liability was filed concurrently.

Noted Bobby Delise, an attorney specializing in admiralty (or maritime) law, also at the forum, that under maritime law a vessel owner may attempt to limit liability and enjoin prosecution of any pending actions or yet to be filed actions. There are exemptions and reasons to deny the request by Chet Morrison.

This case illustrates how fast these companies engage their attorneys. While the rest of us, including the Coast Guard are still picking up the pieces and trying to figure out what just happened, the companies in this particular maritime environment work magic behind the scenes to ensure that nobody ends up paying a price because they are protected by antiquated laws that are on the books, and a Coast Guard who has no idea how to regulate them!

This is a real live case; the Coast Guard is on the scene, and the accident just happened. I would challenge each of you to track the prosecution of this case and watch how the company ends up finagling to ensure it bears no liability ï now here is the rest of the storyé

Those that were injured or end up dead will spend the next several years in and out of medical facilities trying to recover from their injuries, and they will spend the rest of their time tied up in a legal system that ultimately will rule against them. The company will get a replacement for the vessel; they will then hire a new dive crew and they will be back in business. As for those who were medivaced, they are ñhosed.ò

How do I know this? Three divers from my sonôs dive crew ended up permanently brain damaged with Carbon Monoxide poisoning from inexperienced leaders trying to handle his case. Two divers from his crew have tried suicide at least twice. All but two out of a crew of 10 (if I remember correctly) have quit the diving business. All of them are still in the legal system and have found no resolution, while the Coast Guard drags through an investigation that they may never really solveé This really isnôt science fiction, its real!

Is This What Happened?

Well, this is what happened (according to one account): They were pushing a pig through the line and catching the residue via a tote tank that was on the back deck. This tank became full. Then somebody got the bright idea to put the rest into the ship's waste oil tank. ***Rumor*** has it the office was called to get approval. Approval was given and the operation continued. The rest is history.

If this is true, it explains why the company was so quick to attempt to minimize their financial exposure. This accident was caused by human factors... and the home office played a role.

There will, I'm sure, be more to this story. I hope those officials who are investigating this accident get the truth and are not stonewalled by company officials and employees who have been threatened by company officials.