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GCMA REPORT #R-427

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ARTCO-SIX MARINERS STAND UP AGAINST INTIMIDATION TO MOVE UNSAFE OVERSIZE & OVERLOADED TOWS.

[Publication History: GCMA Newsletter #37, Feb. 2006 and GCMA Newsletter #38, March 2006. National Association of Maritime Educators, Newsletter #44, September 1994.]

[Note: This report concentrates on the operation of only one towing company, the American River Transportation Company, and one aspect of the problem. For an overview, Refer to GCMA Report #R-340 on our internet website.]

ARTCO-SIX CASE GOES TO TRIAL FEBRUARY 27, 2006

[Source: The Dysart Law Firm, 701 Olive Street, Suite 2250, St. Louis, MO 63101. Contact: Attorneys Christopher W. Dysart or Mark P. Meuser. (314) 421-2273.]

Background to the Trial

On February 27, 2006, six former towboat Pilots and Captains for American River Transportation Company (“ARTCO”) will go to trial in federal court in the Southern District of Illinois, East St. Louis, Illinois, alleging they were improperly fired in 2003 for refusing to pilot vessels pushing oversized barge configurations on the inland waterways of the United States, including the Mississippi River.

The Complaint, alleges ARTCO, a subsidiary of Archer Daniels Midland, with its corporate headquarters in Decatur, Illinois, and its operational headquarters in the City of St. Louis, pressured its towboat Pilots and Captains to push oversized tows, for example loads in excess of a 40-barge tow up to a 48-barge tow. The Complaint alleges the pilots refused to push the oversized loads because they considered the practice to be unsafe to themselves, their crews and the public because of the dangers of colliding with bridges, river casinos, and other river going vessels.

The pilots allege the length and width of the oversized tows is too much for the inland rivers, including the Mississippi River, to safely handle. For example, a 48-barge

tow in an eight-wide by six-long configuration is approximately 280 feet in width and 1,400 feet in length (four football fields), weighs between 70,000 and 100,000 tons, and only has up to 10,500 engine horsepower. The Titanic, which was the largest oceangoing vessel when it was built, was approximately 880 feet long, weighed roughly 50,000 tons, and had a 46,000 horsepower engine. The super tanker Exxon Valdez was only 986 feet long, and had a 31,650 horsepower engine.

One of ARTCO’s “supertows” is more than a football field longer than the Exxon Valdez and the Titanic, and weighs almost twice as much as the Titanic. Moreover, because of the size and weight of oversized tows, precision steering is not possible, and it often becomes a matter of the barges dragging the towboat like the cart dragging the horse.

The Complaint also points to the long history of barge and bridge collisions, involving much smaller and lighter barges, which resulted in injury and death to members of the public, damage to property and the environment, including the release of toxic chemicals.

The Complaint was filed by Captain Larry Gwin of Golconda, Illinois, Captain Sammy Hutton of Savannah, Tennessee, Captain Thomas Mason of Metairie, Louisiana, Captain Charles Marshall of Gretna, Louisiana, Captain Tony Reames of Yazoo City, Mississippi, and Captain Gerald Ingram of Rolling Fork, Mississippi.

The Complaint seeks damages for wrongful termination including lost wages, lost benefits, lost career opportunities, and emotional distress. The Complaint also seeks punitive damages for the wrongful termination.

History

GCMA helps Congress and the public to “connect the dots” that show that there are serious problems in the marine towing industry – problems that industry trade associations and the Coast Guard have glossed over. Because much of the work of tugs and towboats is done out of the public spotlight along lonely stretches of rivers, inland waterways, and offshore outside major population centers, only a few of the most spectacular accidents attract the attention of the “national evening news.” Local news with its local coverage often generate stories of local interest which gradually fade into the sunset. Collecting these background stories will focus attention to a series of longstanding and persistent problems that involve many of our mariners. Examples follow:

- On May 26, 2002, in Webbers Falls, Oklahoma, a towboat pushing only two barges collided with the bridge support for Interstate 40 as it crosses the Arkansas River. The collision caused 10 vehicles to fall into the river, and 14 people to lose their lives. The towboat Robert Y. Love was pushing two empty asphalt barges at about 5 mph when the collision occurred, causing a 500 foot section, nearly one-third of the 1,988 foot bridge, to collapse and fall into the water.

[GCMA Comment: Overloaded ARTCO tows have had a number of less publicized allisions with bridges and docks on the Lower Mississippi River.]

- On September 15, 2001, a group of only four barges slammed into the Queen Isabella Causeway in South Padre Island, Texas; Port Isabel, Texas. Thirteen people were rescued, but eight others were killed after portions of the 2.37 mile-long Queen Isabella Causeway collapsed. A tow pushed the four barges into a pillar of the only bridge leading to South Padre Island toppling three 80-foot sections of the bridge, and killing at least eight people whose vehicles plunged into the water 85 feet below. Victims were retrieved from the Laguna Madre, part of the Gulf Intracoastal Waterway.

[GCMA Comment: Comments by the Commandant on this investigation cast doubts that the towing vessel had sufficient horsepower to safely navigate through the Queen Isabella Causeway Bridge.] Refer to GCMA File M-239, Conclusion #4 and comment.]

- On July 19, 2001, a pressure barge being pushed westbound by the M/V MR. BARRY, rammed the span of the Louisa Bridge in South Central Louisiana. Vent stacks were sheared from two of three tanks aboard the 380 by 53-foot Kirby 31801, releasing a plume of the barge's explosive propane-propylene mix cargo into the atmosphere. An estimated 500 residents and workers were evacuated from an area within a five-mile radius of the accident site and a 10-mile section of the Gulf Intracoastal Waterway was closed.

[GCMA Comment: Allision with bridge cuts off only evacuation route. Explosive flumes released in rural area cause evacuation and require state to initiate ferry operations to replace damaged bridge across Gulf Intracoastal Waterway.]

- On April 4, 1998, a tow of the M/V ANNE HOLLY, which was traveling northbound on the Mississippi River through the St. Louis Harbor, struck the Missouri-side pier of the center span of the Eads Bridge. Eight barges broke away and drifted back through the Missouri span. Three of these barges drifted toward the PRESIDENT CASINO on the ADMIRAL, a permanently moored gambling vessel below the bridge on the Missouri side of the river. The drifting barges struck the moored ADMIRAL, causing most of its mooring lines to break. The ADMIRAL then rotated away from the Missouri riverbank. The captain of the ANNE HOLLY disengaged his vessel from the remaining barges in the tow and placed the ANNE HOLLY's bow against the ADMIRAL's bow to hold it against the bank. No deaths resulted from the accident, 50 people were examined for minor injuries. Of those examined, 16 were sent to local hospitals for further treatment. Among the safety issues discussed by the National Transportation Safety Board report of the incident are: the advisability of the ANNE HOLLY captain's decision to make the upriver transit because it was underpowered; the effectiveness of safety measures provided for the permanently moored vessel PRESIDENT CASINO ON THE ADMIRAL; and the

adequacy of public safety for permanently moored vessels generally.

[GCMA Comment: "It is conceivable that, had the ANNE HOLLY not held the ADMIRAL against the riverbank on ... the ADMIRAL might have broken free of its last mooring wire and floated downriver, possibly causing collisions and sinking or capsizing under one of the lower bridges. The risk to the ADMIRAL and its more than 2,000 occupants would have been high ... because the ADMIRAL did not have means of propulsion or navigational control, marine lifesaving equipment (such as life floats or personal flotation devices), or an experienced marine crew."] *NTSB Safety Recommendation to Commandant, Sept. 27, 2000, p.8.*

[GCMA Comment: The river was in flood, the air (42°) and water were cold, a crowd of over 2,000 were aboard the casino, and it was nighttime. This accident contained the seeds for America's most catastrophic maritime accident in History if the Casino with over broken free, caught under the Eads Bridge, capsized, or sunk. Damages were estimated at \$11,000,000.]

- On September 22, 1993, about 0245, only six barges that were being pushed at only clutch speed by the towboat MAUVILLA in dense fog struck and displaced the Big Bayou Canot railroad bridge near Mobile, Alabama. About 0253, National Railroad Passenger Corporation (Amtrak) train 2, the Sunset Limited, en route from Los Angeles, California, to Miami, Florida, with 220 persons on board, struck the displaced bridge and derailed. The three locomotive units, the baggage and dormitory cars, and two of the six passenger cars fell into the water. The fuel tanks on the locomotive units ruptured, and the locomotive units and the baggage and dormitory cars caught fire. Forty-two passengers and five crewmembers were killed; 103 passengers were injured. The National Transportation Safety Board determined that contributing to the accident was the lack of a national risk assessment program to determine bridge vulnerability to marine vessel collision.

[GCMA Comment: The death toll of 47 shocked the nation and the towing industry. The Coast Guard left the towing industry to regulate itself – at least those companies who belonged to the American Waterways Operators. Licensing standards were tightened 7½ years later then left to drift for 5 years more.]

- On May 28, 1993, the towboat CHRIS, moving at only clutch speed pushing only one empty hopper barge, DM 3021, collided with a support pier of the eastern span of the Judge William Seeber Bridge in New Orleans, Louisiana. The bridge, known locally as the Claiborne Avenue bridge, carries Highway 39 over the New Orleans Inner Harbor Navigation Canal, known locally as the Industrial Canal. The impact severed the bent of the bridge designed to support vertical loads causing two approach spans (about 145 feet of bridge deck) and the

two-column support frame to collapse onto the barge and into the shallow waters of the canal. Two automobiles carrying three people fell with the four-lane bridge deck, resulting in one death to a pregnant woman and serious injuries to the other two people. As a result of the accident, the canal was closed to navigation traffic for 2 days and the bridge was closed to vehicle traffic for 2 months.

[GCMA Comment: Even a small towboat manned by only a Captain and a “deckineer” pushing a single barge can “take out” a bridge. This accident was eclipsed by the Bayou Canot accident only four months later.]

- On December 18, 1989, the tow of the M/V MATTHEW REED, tank barge HOLLYWOOD CHEM 181, allided with the East Park Avenue drawbridge in Houma, Louisiana. As a result of the collision, the gauge flange on the #1 port tank of the HOLLYWOOD CHEM 181 was damaged and a portion of the barge’s cargo, propylene, was released into the atmosphere. The East Park Avenue draw tender was treated for inhalation of propylene. Residents in the immediate vicinity were evacuated at the direction of the Terrebonne Parish Civil Defense authorities.

[GCMA Comment: An example of a tow pushing dangerous cargo through an urban area. Over 2000 citizens were evacuated as Coast Guard personnel stopped the erupting cargo flow. The Captain was blamed unfairly, while the state Bridge Tender violated Federal regulations by failing to raise her bridge in a timely manner.]

- On April 2, 1983, a tow consisting of four single-hull tank barges in tandem laden with crude oil, being pushed by the towboat CITY OF GREENVILLE, collided with one of the piers of the Poplar Street Bridge, which crosses the Mississippi River between St. Louis, Missouri, and East St. Louis, Illinois. The tow was proceeding down river during high water conditions, en route from Wood River, Illinois, to Memphis, Tennessee. At least one of the two middle barges in the tow was ruptured by the impact of the collision. Crude oil was released and ignited almost immediately. One barge remained connected to the towboat, but the other three barges broke loose and floated downriver. One barge sank about one mile from the bridge, while a second barge collided with barges moored at the Monsanto Chemical Company barge loading facility, and the other barge collided with a Pillsbury Company grain barge-loading terminal. The Monsanto and Pillsbury facilities, both located on the Illinois side of the river, sustained sever damage. The burning oil ignited several fires along about 2 miles of waterfront on the Illinois side of the river and polluted approximately 10 miles of the river. There were no deaths, and only one person, who was working on barges at the Monsanto facility, received minor injuries as a result of this accident. The damage to the barge loading facilities, the damage to grain barges

and their cargoes, the damage and loss of cargo sustained by the tow of the CITY OF GREENVILLE, and the cost of oil cleanup operations were estimated to be about \$9,000,000.

- On September 21, 1972, the small tug CAROLYN and its tow, the barge WEEKS No. 254, struck a trestle on the western side of the Chesapeake Bay Bridge and Tunnel (CBBT). After the initial impact, the tug and barge drifted south and struck the CBBT in various locations. The CAROLYN then passed under the bridge and her towing hawser parted. Thereupon, the CAROLYN drifted south and grounded on Chesapeake Beach. The Chesapeake Bay Bridge and Tunnel is the principal highway traffic artery joining the Delmarva Peninsula to tidewater Virginia in the Norfolk area. During a fourteen-day period following this accident U.S. Highway 13 remained closed. A twenty-mile, twenty-minute trip across Chesapeake Bay became a 400-mile detour. The economic loss to the area in 1972 was conservatively estimated as \$3,397,000.

The Basis of the Problem

The Attorneys representing the ARTCO-SIX pilots present a case long supported by the Gulf Coast Mariners Association in our landmark report #R-340 that pushing oversized loads creates certain unnecessary and unacceptable safety hazards including the following:

- The length and width of large tows (specifically over 35 barges) is too much for the existing bridges on the inland waterways of the United States to handle safely, and the margin of error for the pilot is too small. These tows literally fill many of the bridges. As an example, a 48-barge tow in an eight-wide by six-long configuration is approximately 280 feet in width and or four football fields, or 1,200 feet in length.
- The prospect of bridge allisions from oversize or overloaded tows is substantial; a 70,000-ton down-bound tow moving at 8-10 mph or even at a lesser speed can do untold damage to bridge piers and supports and result in serious injury and loss of life.
- Steering and handling of oversized tows are greatly diminished. For example, when a 200' x 55', 10,500 horsepower towboat faces up to 48 barges, it becomes a matter of the cart dragging the horse. This is especially true when the draft of the barges exceeds the draft of the towboat, the towboat does not have the ability to “get under” the barge it is pushing, greatly diminishing steering and handling.
- Oversize tows, as a result of their size, are extremely sluggish in their ability to maneuver. Precision steering is not possible. An example is the need for an oversize tow to flank a bend where a standard 35-barge tow would have no trouble steering the same bend.

- On a planned voyage of more than a few hours duration, the weather and river stage cannot be predicted; and adverse towing condition must always be anticipated.
- Fatigue is a critical factor on oversized and overloaded tows operating on a 24-hour schedule. Attempting to navigate an oversized tow through a narrow bridge span requires focused and consistent concentration to carry out the maneuver.
- Additional information, including reports by the Gulf Coast Mariners Association concerning oversized and overloaded tows and the dangers of bridge and towboat collisions, are available on the GCMA website.

**THIS IS WHAT THE ARTCO-SIX TRIAL
MEANS FOR AMERICA
By Patricia Hutton**

My husband was one of the pilots involved in the “ARTCO SIX” trial that was recently held in East St. Louis. In April, 2003, he was permanently laid-off supposedly for an economic slow-down, but, in fact, it was because he stood up for what he believed to be an unsafe act – refusing to push “super-tows” southbound on the lower Mississippi river.

As I listened to the testimonies of these six men, I realized how this would be very unsafe – the stress that it puts on the pilots as well as the size of the tow – not only size by length and width, but the tonnage they are pushing. I heard the pilots testify about how hard it is to flank or steer a bend because of the extra length of the tow and, also learned how difficult it is to go through the bridges that we drive over every day – never giving a second thought to the kind of tows that are being pushed beneath us.

I don’t think we realize what would happen if one of these “super-tows” struck the bridge piers just as we were going over it. Many lives could be lost should this happen and the bridge collapse. Bridges are not the only things that could be involved in an accident. There are casinos, docks – some of them chemical, fleets, and ships that could be affected, not to mention pleasure boats that use the river.

These men took a stand – because they know these tows are unsafe.

I also heard pilots for ARTCO testify as to how easy it is to push these super tows – a piece of cake – just let nature take its course – but not one of them mentioned the safety – most of them said they did it for the extra money that the company paid them to move these huge tows.

I want to say “Thank You” to all these men. These men valued their crewmembers, families and others instead of thinking only about the extra income pushing these tows would give them. I am very proud of my husband and each of the other men and their families.

I also want to say “Thank You” to the Dysart Law Firm that represented these men. They did an excellent job. Their integrity throughout this trial spoke volumes.

My prayer is that this case will be used to alert the public that there are important safety issues addressed on our waterways.

**A CLEAR WIN FOR ALL TOWBOATERS!
By Captain Richard A. Block**

**Jury Awards Captain Larry P. Gwin Back Pay
And Slaps ARTCO With Substantial Punitive Damages**

The Artco-Six case was filed on December 18, 2003 in the Federal District Court for the Southern District of Illinois in East St. Louis, Illinois, by six licensed river towboat Pilots seeking damages for wrongful termination by their employer, the American River Transportation Company of Decatur, Illinois, as well as for lost wages, benefits, and emotional distress.

The case was re-scheduled and postponed several times by motions of the defendant, ARTCO. Opening arguments were held on Monday, February 27th before Federal Judge Michael J. Reagan. The jury delivered its verdict on Thursday March 16, 2006.

Coach to Carbondale

On my journey to and from Carbondale, Illinois en route to East St. Louis from New Orleans on the train AMTRAK calls the “City of New Orleans”, I had ample time to consider this case and all of its ramifications for lower-level mariners serving on tugs, towboats, and offshore supply vessels throughout the United States. As I traveled through the states bordering the Mississippi River where this drama has played out, my thoughts turned to the words of James Russell Lowell, poet, critic and educator, written in 1854 that appeared to describe our Pilots’ situation...

Once to every man and nation,
Comes the moment to decide
In the strife of truth with falsehood,
For the good or evil side.
Then it is the brave man chooses,
While the coward stands aside,
And the multitude make virtue,
Of the faith they had denied.

I attended the trial for four days, following Mr. Richard M. Plant, one of the founders, advisors, and mentors of the Gulf Coast Mariners Association who attended the opening portion of the trial. I was followed by GCMA Director and webmaster, Captain J. David Miller, who was at the courtroom when the Jury delivered its verdict.

The Public Only Learns Part of the Story

Mr. Plant’s union, the International Organization of Masters, Mates, and Pilots, recently prevailed over ARTCO in a lawsuit filed over egregious violations of the National Labor Relations Act filed in 1999. Section 7 of the National Labor Relations Act gives employees the rights to:

- Organize.
- To form, join, or assist a union.

- To bargain collectively through representatives of their own choice.
- To act together for other mutual aid or protection; and
- To choose not to engage in any of these protected, concerted activities.

ARTCO violated these longstanding rights that should have been available to every mariner during the “Pilots Agree” strike that took place seven years earlier. However, no mention of this violation, nor the incredibly slow response by the National Labor Relations Board that took over seven years, nor the perfunctory slap-on-the-wrist it administered to ARTCO was mentioned during the trial. However, as I reviewed those documents, I understood that GCMA was not bound by any such constraints.

ARTCO is a company that has long been at war with its own employees. The company and its policies are not universally respected by other companies in the river trades whose vessels are delayed and crowded out of the river channels by its oversize and often overloaded tows.

The Trial is Set for East St. Louis, Illinois

On a Monday morning in late February, six brave mariners accompanied by their wives, sought the justice they believed they were deprived of when they were laid off by ARTCO in 2003.

To a visitor, East St. Louis is a forbidding place, a combination of the destruction recently visited upon New Orleans, and the gutted remains of neighborhoods like the South Bronx. In this scene of bleak desolation the United States Courthouse stands alone, isolated, and heavily guarded as if to remind the visitor that the Federal Government is still in control. Inside the building’s bland exterior, flickered the flame of justice sought by our six mariners. They only asked for fair treatment by an impartial judge and a jury of their peers on several controversial questions.

The Courthouse sits within sight of the Lower Mississippi River (LMR), opposite the city of St. Louis, MO, upon whose waters the drama unfolded.

The Lower Mississippi River below St. Louis is a free-flowing river not constrained by any locks or dams in contrast to the Upper Mississippi River, the Ohio River, the Allegheny, Monongahela, Arkansas, and Red rivers with their locks and dams.

Who Represents the Interests of The Public at Large?

This was a jury trial with the jury picked from a pool of citizens living in the Southern District of Illinois, essentially in an area across the river from north of St. Louis south to Cairo. Even though Illinois is bounded and crossed by navigable waterways, a lawyer presenting his clients’ case cannot assume that any juror knows the bow from the stern of a towboat or anything about river pilots and the towing industry unless all of the pertinent facts are explained clearly and carefully. In fact, the trial became a primer on “life on the river” for the judge and jury.

Judge Michael J. Reagan served as the impartial arbiter between the two conflicting sides we identify as “Management” and “Labor.” Labor in this case did not entail any direct involvement by any organized labor unions. The Gulf Coast Mariners Association is not and never has been a labor union although we unequivocally represent the interests of our working “lower-level” mariners in various segments of the maritime industry. In fact, our “footprint” is so small that the Vice-President of ARTCO claimed to know little or nothing about us and even went so far as to confuse us with the Towing Safety Advisory Committee – a strange comment from an executive of a major corporation.

These six mariners, all licensed towing vessel Masters, and their wives, took a stand against one of America’s largest and wealthiest corporations, Archer Daniels Midland (ADM). ARTCO is a subsidiary of ADM. These six mariners stood alone with only the law to protect them in an attempt to salvage their careers and reputations.

In spite of widespread pre-trial publicity, no mariners outside of four Gulf Coast Mariners Association Directors were present at various stages of the trial to offer support. However, a steady stream of supportive telephone calls poured in at all hours of the day and night before, during, and after the trial.

The Coast Guard Remains on the Sidelines

The Coast Guard never saw fit to visit the trial. This may be a result of their traditional non-involvement in “labor disputes.” Yet, this never was a traditional labor dispute with strikers and picket lines.

To their discredit, over the years, Coast Guard officials at all levels of command ignored evidence of blatant intimidation of licensed towing vessel officers by towing company management to stretch or even break laws and regulations. Such intimidation appeared at every twist and turn of the trial – without even a single Coast Guard representative there to lend an ear.

If they had attended, Coast Guard officials might have understood that an important component of the case stemmed from their failure to establish reasonable tow size limits on waters under their jurisdiction. For example, a Coast Guard/AWO report published in May 2003 studied a database of 2,692 bridge allision cases between 1992 and 2001 involving towing vessels, although it did not include the 2002 accident that knocked down the Interstate 40 bridge across the Arkansas River killing 14 motorists.

Since the Judge must remain impartial, the Jury is left to look out for matters that directly affect the public, the ordinary people who drive or take a train across bridges spanning the nation’s navigable waters – the St. Louis metropolitan area being a perfect example.

It was fitting for a Jury to hear this story from beginning to end. They represent typical members of the public who cross the river bridges, who as recreational boaters may find that they share the rivers and waterways with huge tows, and who expect licensed mariners to exercise their best professional judgment in performing their duties.

The rules of the court are clear, many of them neatly posted on the door of the spotless courtroom and were followed scrupulously by both sides.

The jury of 12 men and women, seated on the first day of the trial, received strict instructions from the Judge. There was to be absolutely no contact between either the plaintiffs (i.e., mariners) or defendants (ARTCO) and jurors during the next three weeks since the trial was a quest for the truth and must not be tainted in any manner.

The Two Components of the ARTCO-SIX Case

As we see it, this case had two principal components:

- The wrongful termination of six former ARTCO employees – all merchant marine officers with years of experience and fully licensed by the Coast Guard. *[We understood and sympathized with their personal anger and frustration over intimidation in the workplace.]*
- Public safety that is adversely affected by oversize and overloaded tows pushed by ARTCO towboats on the Lower Mississippi River.

It is this second component, one of **safety** that GCMA will focus our attention on because this never descended into a matter of money. As the trial progressed, we expected the jury to step up and play a unique role as representatives of the public at large. We believe they grasped this role, but only to a limited extent. We trust that the Coast Guard, under a new Commandant, will accept Congress' directions and bring the towing industry under an inspection regime and increased supervision. We urge the Coast Guard to develop greater professionalism in the merchant marine officers it licenses and demand full accountability for unwarranted risk-taking by corporations and individuals in pursuit of private profit at public expense by curbing the towing industry's cavalier, "public-be-damned," attitude.

A Litany of Accidents

As we listed and described above and in GCMA Report #R-340 available on the internet, there have been an epidemic of accidents involving oversize and overloaded tows. At present, ARTCO is the only company that currently chooses to push tows larger than 40 loaded barges on the Lower Mississippi River. Many of those barges can be loaded to draw several more feet of water and carry hundreds of additional tons of cargo above and beyond the standard ("jumbo") 195-to 200-foot barges.

Although it is not alone, ARTCO has had more than its share of accidents with oversize tows. We understand that during the inception of ARTCO's "super-tow" program that only about one out of every two of these behemoths completed a voyage without an incident.

The Coast Guard is supposed to protect the interest of the public in properly regulating oversize and overloaded tows. Several years ago, Rear Admiral Roy Casto pointedly warned the towing industry in an article captured in GCMA Report #R-340. However, after he retired as Eighth District Commander, the Coast Guard remained silent and failed to regulate or even define an oversize or overloaded tow.

In the meantime, mariners regularly report to us that it has become a free-for-all out on the Lower Mississippi River. The Coast Guard often lacks the manpower, experience, or background to accurately investigate why many of these heavy-tow accidents take place. The Coast Guard took no action to curb or even to formally recognize the danger to the public or the damage to the waterways infrastructure from the increasingly risky operation of oversize or overloaded tows.

The fact that the Coast Guard never even sent an observer from their nearby office in St. Louis implies disinterest in the subject and leaves them open to further criticism from the public. The near-disaster of the M/V ANNE HOLLY and the PRESIDENT CASINO in St. Louis Harbor in 1998 and the NTSB report still rattles in the public's memory. Consequently, the twelve jurors were left to consider the wisdom and safety of pushing 40 to 48 two-hundred-foot barges in a configuration 8 barges wide by 6 barges long (i.e., a "6-long super-tow") because the Coast Guard abdicated their authority to do so by their prolonged inaction and silence.

The U.S. Army Corps of Engineers who maintains the river channels, advertises the channel of the Mississippi River between St. Louis and Cairo, Illinois as 300 feet wide by 9 feet deep; they advertise the channel below Cairo as 500 feet wide by 12 feet deep. The role of the Corps of Engineers is to survey and maintain the channel with its own and contracted dredging equipment while Coast Guard buoy tenders mark it with buoys, lights, and other navigational aids. With each barge 35-feet wide, a six-wide by six-long tow leaving St. Louis would be 210 feet wide by 1,400 feet long counting the length of the towboat pushing it. Some of ARTCO's deep-draft barges can be loaded to draw 13 or 13½ feet of water. If low water occurs en route, the towboat Captain and his Pilot are left with a serious problem as an overloaded tow can ground in the middle of the channel and can delay upbound and downbound tows or even close the river to all traffic.

However, the draft of the barge loads an ARTCO towboat pushes can be tweaked by the vessel's Port Captain as this extant electronic message reveals:

"...To assure you we are not breaking any rules, the advisory is only a recommendation not a restriction. As you are aware with the Memphis gauge at 1.5 (feet) and rising, you can safely tow 11 ft.-draft barges. We are only loading to 10.6. Anything heavier that you may have is loads that have been sitting waiting to be lightered for two weeks. But, with the river stage we now have, it is not necessary to do this. The only reason we have a 10.0 advisory is because we are the only towing company that can load in Cairo and take advantage of the extra water. Everybody else would be loading way up on the Ohio River, and couldn't get their barges through the system before the river falls out. Since they can't move their barges, then they can't stand for ARTCO to have this advantage. But we are being proactive and safe and maximizing this opportunity (sic) to get 6 inches more draft while we can."

In other words, with only inches of clearance, the Port Captain sitting behind his desk at Company Headquarters "suggests" that the towboat Captain get underway. The question our mariners must resolve is: When does a "suggestion" from a superior become an order?

[GCMA Comment: GCMA has urged Congress to require the Coast Guard to inspect dry cargo barges to ensure the safety of our mariner's workplace.] Refer to GCMA Report #R-276, Rev. 9, Item #72.

[GCMA Comment: Dry cargo barges and other barges not assigned load lines should be required to carry "draft marks" to facilitate identification of barges that are overloaded in relation to the published depth of the waterway or broadcast river stage.] Refer to GCMA Report #R-426, OSHA Still Regulates Dry Cargo Barge Safety.

During the three-week trial, mariners on both sides hotly contested the safety of "6-long super-tows." A clear majority of the mariners who testified as witnesses from both sides flatly refused to push ARTCO's "6-long super-tows" for a number of reasons. The ARTCO-Six mariners contended one of the reasons ARTCO fired them was because they refused to push these oversize tows. However, a number of current ARTCO employees brought in as witnesses just as steadfastly refused to push excessively large tows yet still kept their jobs.

The argument is heated because "6-long super-tows" that make it safely through their trip south to New Orleans are "cash cows" that ARTCO milked for several years following the Pilots Agree strike of 1998.

The Pilots Agree strike was an issue that had to remain separate and was not addressed during the trial. However, it remained very much in the minds of most towboaters because of the way that ARTCO and other river towing companies mistreated their employees both during and after the strike. The seething discontent of many Pilots and Masters with their treatment connects the towing industry to its present-day personnel shortage. Challenging, bribing, and intimidating mariners to push oversize tows they are not comfortable in handling are potential disasters looking for a place to happen. This safety issue played a significant role throughout the trial.

By questions posed by the jurors to witnesses on both sides, it became clear that the Jury began to understand the risk involved in moving these oversize tows. The repeated reluctance of most of the Pilots that appeared before them as witnesses from both sides was telling. Jurors saw through the efforts of management to manipulate their Pilots into accepting the risk of moving these huge tows down river.

Company officials utilized management tools like offering a paid southbound trip as an observer to entice a Pilot by showing him "how easy it was" by watching another Pilot rise to the challenge and do the job. Some Pilots rose to the bait and an additional \$50 per day, but just as many if not more did not do so.

Management toyed with personnel evaluation forms by pointing out that a Pilot who would not accept the challenge of moving more than 40 fully loaded barges at a time did not "utilize his vessel to its "full potential." These evaluations awarded only a "fair" grade to reluctant Pilots. That low grade stood out in stark contrast to his other ratings and led the Pilot to wonder whether continued refusal might lead to the eventual loss of his job in the future when some more enterprising Pilot succumbed to corporate arm-twisting and accepted the risk in order to save his own job.

Even the evaluation process itself, when challenged in court, suddenly became "...only an experiment." The corporate managers willingly displaced licensed mariners from their "home boats." The company praised the "home boat" principle as being a good policy that improved vessel maintenance. So, after the Pilots had invested considerable time, effort, and commitment to maintain their "home boat," the company would re-assign one of its "super pilots" to that boat to push one of the company's "super-tows."

The jurors also learned of a number of serious towing accidents scattered throughout the country over the past dozen years associated with oversize and overloaded towing vessels. The jurors came face to face with some of the root causes of these accidents as they heard, first-hand, about the pressure placed on Pilots to take risks they were not comfortable with even as veterans of over twenty years or more of service in the inland towing industry.

The Jury may have wondered why the Coast Guard had not stepped up to remedy problems like this that certainly fell within their realm. Yet, the jurors did not ask this type of question. However, that does not prevent us from asking that type of question until we finally obtain an answer we can live with.

Background: Oversize and Overloaded Tows

"6-long super-tows" are only one aspect of a much broader problem that dogs the towing industry. These tows can be a source of profit. However, when abused or carried to extremes, they can become a source of considerable expense that should be hard to hide from corporate stockholders. GCMA Report #R-340 discusses a number of different types of oversize and overloaded tows of which ARTCO's "6-long super-tow" is only one variety.

Pushing these "super-tows" is also a challenge to many Pilots who believe they are capable of handling the largest of "heavy tows." The trial defined the term "heavy tow" as being a tow consisting of more than 35 loaded barges – and this definition drew no objections.

It takes considerable skill and confidence to push a tow of more than 40 barges on the Lower Mississippi River, the only place in this country where this takes place. To be sure, a Pilot (and we use this term to refer to both the licensed towing vessel Master and his second in command) must have unshakeable confidence to attempt to push more than 40 barges. However, an inflated "ego" and "greed" for the financial reward of an extra \$50 per day clearly play important roles in this story. The question among river Pilots is: "who will rise and take the bait?"

Failure in pushing a clearly oversize and overloaded tow can have tragic consequences as, for example, demonstrated in the destruction of the Queen Isabella Causeway Bridge and the death of eight motorists in south Texas on September 15, 2001. It took the Coast Guard over three years of internal wrangling to finally release this accident report.

Since the Eighth Coast Guard District has not raised a visible finger in protest about oversize and overloaded tows for the past two years, the twelve men and women jurors had to carefully weigh the evidence presented to them from both

sides and try to determine who presented the most cogent arguments.

The Public Only Learns Half the Story From a Coast Guard Accident Investigation

In August 1994, the Human Factors and Systems Analysis Unit, Idaho National Engineering Laboratory and the U.S. Coast Guard Research and Development Center completed a study on U.S. Coast Guard Marine Casualty Investigation and Reporting: Analysis and Recommendations for Improvement.⁽¹⁾ The data analysis revealed a number of problems with the collection and entry of marine casualty data in general, and human factor data in particular. As a mariner who has reviewed over 600 Coast Guard accident reports, I found the results were shocking. [⁽¹⁾GCMA File A-634-A]

When a maritime accident occurs, Congress gave Coast Guard investigating officers the first bite at the apple. The law⁽¹⁾ says that the Coast Guard must immediately investigate these casualties to determine:

- the cause of the casualty.
- whether misconduct, incompetence, negligence, unskillfulness, or willful violation of law by a licensed or documented mariner contributed to the casualty.
- whether the offender is subject to a civil or criminal penalty.
- whether new laws or regulations or changes in existing ones would prevent recurrence of the casualty. [⁽¹⁾46 U.S. Code §6301.]

However, after the Coast Guard bites the apple (and slobbers all over it), Congress legislated that "...no part of a maritime casualty investigation...including findings of fact, opinions, recommendations, deliberations, or conclusions, shall be admissible as evidence or subject to discovery in any civil or administrative proceeding other than an Administrative proceeding initiated by the United States." This complicates the job of the attorneys who must follow in the Coast Guard's wake.

For example, ARTCO's M/V CRIMSON DUKE while pushing a 42 loaded barge "super-tow" allided with the Interstate Highway 155 (I-155) bridge near Carruthersville, Missouri on May 9, 2004 breaking 34 barges out of the tow, sinking 8 barges outright and running 6 more up on a rock dike. The accident also included damage to a barge-load of ethanol carried in one of six tank barges in the tow.

The Coast Guard accident report shows "Approximately 1000 to 800 feet (above) the I-155 highway bridge, a strong current set the tow toward the right descending bank bridge pier. The Pilot used all available power on the towing vessel to compensate for current, but the tow struck the pier...The current overcame the towing vessel's steering system and engines. The current drove the tow of 42 barges into the I-155 bridge pier."

The total damage estimate in the Coast Guard investigative report to this "super-tow" came in at \$1,275,000. Salvage efforts continued for well over a month. However, salvage costs are excluded from Coast Guard accident reporting requirements⁽¹⁾ and mask the real cost of the accident. Consequently, the Coast Guard accident report

leaves us with no idea of how much this accident really cost ARTCO to clean up. We heard that this and one other "super-tow" accident cost upwards of \$30,000,000 to remediate. We will not speculate, but will leave further inquiry to concerned corporate shareholders to unravel if they choose to determine the true cost and profitability of pushing these controversial super-tows. [⁽¹⁾46 CFR 4.05-1(a)(7)]

One point the Coast Guard accident investigation made clear was that "No enforcement activity is being considered at this time." In reviewing all of ARTCO's reported "super-tow" accidents, we find the same recurring theme: no enforcement activity on the part of the Coast Guard. The "Preventive Actions Considered" space in their accident report shows a wide blank space. The Coast Guard accident investigator apparently didn't have a clue as to the cause of the accident and, therefore, simply filed his report and went about his business. GCMA unearthed this and other accident reports with timely Freedom of Information Act requests for these public documents.

Vessels usually do not allide with fixed objects like bridge piers without a good reason. If this accident was not the Pilots fault, then it must have been management's fault for dispatching a tow whose properly operating engine horsepower and steering were insufficient and could be overwhelmed by a predictable river current. However, the "knee-jerk" reaction is to lay the blame on "pilot error."

This report, in company with other "super-tow" accident investigations inevitably leads to a conclusion that ARTCO Pilots must lead a charmed life that manages to shield them from most ordinary Coast Guard Administrative Law Suspension and Revocation proceedings. Or, is it well placed money and influence that rests its finger on the scale of justice? This is a question, not an accusation – but a question worthy of investigating.

If it does nothing else, the jury verdict in this case affirms that pushing these oversize and overloaded tows IS unsafe. Even if towing companies and some mariners cannot see it, members of the public can! The time has come for the Coast Guard take its head out of the sand, step forward and define the terms "oversize" and "overloaded" before the next serious accident takes place. The time has come to recognize unsafe operating conditions in subsequent casualty investigations in both administrative and civil proceedings.

It is clear that the Interstate 155 highway bridge paid for by our tax dollars and carrying our citizens across navigable waters was placed at serious risk by an uncontrollable, oversize and overloaded tow. The same danger threatened traffic crossing the U.S. Route 190 bridge in Baton Rouge, LA, as brought out in courtroom testimony. In that case, an errant ARTCO tow did almost \$1,000,000 damage to a wharf immediately below the bridge.

What if the I-155 bridge, like the Interstate 40 bridge at Webbers Falls, OK, had fallen into the river. Sad to say, considering the continued existence of liability laws dating to the Limitation of Shipowners' Liability Act of 1851, Uncle Sam would own the nothing more than wrecked and sunken barges, bridge wreckage awaiting removal, and a thirty-year old towboat. The Coast Guard, wallowing in a prolonged state of mental constipation, never acknowledged that pushing these "super-tows" is inherently UNSAFE. We believe the

practice is controversial and support the experienced ARTCO-Six mariners and their expert witness, Jack Deck, with years of training and active-duty Coast Guard experience under his belt.

The ARTCO-Six mariners as well as many current ARTCO employees who paraded to the witness stand did the right thing and by refusing to push these tows. We applaud their courage in standing up to managerial harassment and intimidation.

The Public Needs a Sensible Horsepower-to-Tonnage or Horsepower-to-Barge Ratio.

GCMA is disappointed that the Coast Guard with all the resources available in-house and by contract to outside firms has been unable over a 30-year period to establish a reasonable horsepower to barge ratio to limit the size of tow pushed by any given towing vessel. The least they could do would be to outline the parameters of safety in the towing industry and curb its unbridled laissez-faire operations to protect the public.

An experienced towing vessel's Master or Pilot usually knows the size load he is comfortable with on a towing vessel he is familiar with under existing conditions. That should be the limiting factor. Yet, the Coast Guard has been too arrogant to seek the advice of river Pilots who can substitute years of their practical experience pushing tows for advanced college degrees.

In actuality, "Dispatchers," who usually are not mariners and who may be far-removed from river activities, often assign the number of barges and simply expect the towboat officers to comply with their orders. "If you can't do it, we'll find someone that can" is an old refrain that Coast Guard accident investigators have heard quite often – and have done too little about.

Absent a regulation governing the size of a tow, the Pilot must live with the problem in silence or face losing his job if he is an "employee at will." Only a labor contract negotiated by a union stands between a towing vessel officer and arbitrary termination. However, ARTCO along with most other river towing companies "killed" the union when they killed Pilots agree in 1998. The Coast Guard takes the easy road, chooses to view this intimidation as some kind of a "labor dispute," so it can remain aloof.

For the past 30 years, towing vessels operated as "uninspected" vessels. The Coast Guard sat back and did very little of substance even, after the AMTRAK Sunset Limited accident killed 45 railway passengers and train-crewmembers at Bayou Canot, Alabama. Then the Coast Guard let the towing industry have a crack at regulating itself for the next decade. At last, Congress directed the Coast Guard to inspect towing vessels. We suggest that setting a reasonable limitation on tow size belongs as a part of every single towing vessel's Certificate of Inspection or at least as an irrevocable letter of instruction issued to each towing vessel's Master.

Coast Guard's Lack of Experience Regulating the Towing Industry

The fact acknowledged even within Coast Guard Headquarters is that the Coast Guard has little practical experience in the towing industry. To date, most "regulating" has taken place through social contacts with compliant industry trade associations and "revolving door" jobs in the industry landed by senior retired Coast Guard officers.

Since towing vessels are still treated as "uninspected vessels," the worst abdication of leadership occurred following the Bayou Canot tragedy when Coast Guard Commandant failed to push for the inspection of towing vessels. The Coast Guard turned over the matter to an industry trade association to regulate itself with a safety management system.

Although the American Waterways Operators' "Responsible Carrier Program" (RCP) may have been a step in the right direction, it lacked enforcement powers that Congress confers only upon the Coast Guard. The RCP only applies only to Association members. The RCP left out a very significant portion but strangely invisible portion of the towing industry. For mariners, this type of industry self-regulation left wolves like ARTCO to guard the henhouse and abuses to proliferate.

Congress finally addressed this shortcoming in the Coast Guard and Maritime Transportation Act of 2004 following a series of catastrophic bridge allisions and oil spills. Legislation signed in September 2004 mandates the inspection of towing vessels. Although we are a long way from a "final rule," GCMA trusts that those rules, when promulgated, will require evaluation of each vessel's demonstrated towing ability and at least a consultation with the most experienced officers assigned to the vessel to determine the maximum number and type of barges the vessel has proven it can handle over a specified route. This information would go a long way to solving the oversize and overloaded tow problem.

The Coast Guard will have an opportunity during its initial towing vessel inspection to issue each vessel a Certificate of Inspection that will limit the tow size and area of operation of each towing vessel. Nevertheless, to do so, the Coast Guard must no longer rely solely upon the biased judgment of business executives but also should solicit the opinions of the Pilots who regularly maneuver these vessels and their tows.

Pilots have a horse in this race, too. In the past, the Coast Guard ignored the licensed Masters and Pilots who work with these tows on a daily basis. This trial highlights the need for a significant course change and recognition of the knowledge and experience gained by the most experienced licensed towing vessel officers when they identify unsafe towing conditions. We can see the beginnings of a move on the part of the towing vessel inspection regulatory team at Coast Guard headquarters to ask the man that does the job for his opinion on how best to do it. If that opinion lies counter to the dreams and ambitions of corporate management, there always remains an avenue for appeal in 46 CFR Subpart 1.03.

The past returns to haunt ARTCO

In April 1998, the towing industry including ARTCO turned on its own workers who organized a new union called Pilots Agree and refused to negotiate collectively over salary, benefit, and seniority issues. A strike ensued in which at least

500 pilots supported by perhaps a thousand more walked off their jobs only to discover to their dismay that a strike is a tactic of last resort only after all other means of settlement are exhausted.

A strike requires considerable advance planning in terms of personal savings and preparing a strike fund to pay basic expenses while the strike is in progress. At the time, Pilots were available “a dime a dozen,” and the necessity to return to work and bring home a family paycheck proved to be too great for many to resist. The walkout also provided an opportunity for some wheelhouse personnel to ingratiate themselves with their employers and step up to fill positions vacated by striking Pilots. This trial unearthed a few of these suckups.

Employers punished many pilots by dismissal, demotion, assignment to less desirable vessels, and by assignments to work under junior Pilots they had previously supervised. Clearly, industry “won” and celebrated its victory by running roughshod over their Pilots determined to crush and defeat any further attempt to organize a union or even tolerate an Association such as GCMA that exists today.

The outcome was that many Pilots changed vocations and left the industry in disgust while others discouraged friends and family – a major source of the towboat workforce – from seeking jobs afloat. A very similar thing occurred in 2000 through 2003 with lower-level mariners working on oilfield vessels in the offshore oil industry.

The situation today is different in that Pilot availability is no longer “a dime a dozen.” To further aggravate the personnel shortage, the towing industry did not act wisely when it simply ignored new Coast Guard regulations promulgated in April 2001 by failing to allocate resources to keep pace with training enough new pilots to replace those leaving the industry. This situation was addressed by Jack Simpson in a meaningful Waterways Journal editorial in the March 6, 2006 edition.

Many in management who did not work their way up “through the ranks” on towing vessels believe it is possible, even desirable, to train a pilot in a few short weeks so he can quickly step in and run a towing vessel and relieve the personnel shortage. Some believe time is wasted in any unnecessary training beyond a few basics in light of the large turnover of towing vessel personnel. These managers do not understand and are unwilling to accept the reasons for a year-long wheelhouse apprenticeship program because they only look at solving short-term crew shortages with the potential to tie up their equipment. These managers seem to think that Coast Guard licensing is a bother, and if necessary, can be ignored so it does not interrupt the flow of business. GCMA disagrees.

Training needs to be industry-wide rather than at the individual company level to give each new pilot a larger overview of the world of towing rather than to compartmentalize him on one or two small boats or on a very limited route with limited chances for advancement.

Training Pilots for “6-long” Tows

ARTCO operates some of the largest and most powerful towing vessels on the western rivers with horsepower ratings

of between 9,000 and 10,500. Although most of these vessels were built in the 1970s, ARTCO apparently maintains those vessels well by industry standards. ARTCO designates vessels to push “6-long” tows as “C-boats.”

ARTCO’s training program to upgrade a Pilot to handle a tow of over 40 barges involves having a candidate who “volunteers” for the program make three successful southbound trips pushing one of the “6-long super-tows.” To “encourage” more pilots to participate in the program, ARTCO offered a “free ride” on one of the “C-Boats” to other heavy tow pilots as a means to convince them and at the same time reward them with the chance to earn a few day’s extra salary and try their hand at maneuver these behemoth tows. In spite of blatant sales pitches, cajoling, and arm-twisting, many witnesses paraded to the stand claimed that they were not interested in assuming the risk and accepting the responsibility of taking these controversial tows even after their free orientation ride.

A number of pilots, who were not persuaded, found that they suffered in evaluations written by their immediate superiors. Reluctant Pilots learned in their written evaluation they had “failed to utilize their vessel to its full potential.” If the company Vice President or one of the two Port Captains decided the vessel was able to push more than 40 barges, a reluctant Pilot must watch his future evaluations continue to suffer until he finally rose to accept the challenge, or like the ARTCO-Six Pilots, find himself out of a job. Nevertheless, most of the Pilots paraded to the stand by ARTCO lawyers claimed under oath that they did not see the written evaluation as “pressure” by ARTCO to force them into pushing a tow they thought was unsafe. One credible witness, a current ARTCO employee, asked whether he thought it was beyond his ability to push an oversize tow, replied that he felt he could the job, but chose not to do so.

The question then became one of whether an ARTCO employee could “choose” not to push a “6-long super-tow” and still keep his job with the company. Some mariners obviously did, while the ARTCO-Six just as obviously did not. The ARTCO-Six mariners claimed that they were terminated for, among other things, refusing to push “6-long” tows were unsafe and refused to risk their licenses, future livelihood, and take the chance of killing or injuring people or causing damage along the river. The fact that they were terminated alone served its purpose as an example of managerial coercion to other employees for over 2½ years before the case came to trial.

Questions About Training

As part of a new program, the jurors may submit written questions at the conclusion of each witness’ testimony. Several questions probed at the extent of ARTCO’s training program. We believe deeper probing would have revealed an extremely shallow training program that does not adequately protect the public from the dangers of oversize or overloaded tows.

ARTCO, although it pushes oversize tows the size of six football fields carrying an estimated 100,000 tons of cargo, apparently does not recognize the importance or take

advantage of the simulator training that is available from a number of sources.

The accidents that ARTCO endures, and there have been a number of them, all took place in “real time.” Their “6-long” pilot training consists of nothing more than turning a Pilot loose after he completes three successful southbound trips in on-the-job training (OJT) pushing “6-long super-tows” down river.

When ARTCO fought Pilots Agree to a standstill in 1998, the corporation cut itself off from the world-class simulator training offered by the International Organization of Masters, Mates, and Pilots. A trained instructor can program a simulator to release any of a number of potential disasters (such as the current that caused the CRIMSON DUKE to hit the I-155 bridge) to which a Pilot must react by damaging nothing more than his ego if he fails.

Commander Jack Deck pointed out in his expert testimony in two other accidents that the true cause was NOT “pilot error” but, rather, the size of the tow the Pilot had to cope with. Yet, uninformed Pilots stepped forward and took the blame. Before getting into a position like this, we suggest that every licensed mariner purchase license insurance⁽¹⁾ and take advantage of it by immediately contacting the insurance company’s attorney to represent your position as distinct from the Company’s position. As the ARTCO-Six mariners discovered, you cannot always look to your employer to protect your best interests. [⁽¹⁾Refer to GCMA Report #R- R-342, *License Defense and Income Protection Insurance.*]

In one case, an ARTCO witness told that he was not interested in moving oversize tows but accepted a “free-ride” orientation trip. At the last moment, the regular pilot had to leave the vessel on personal business and the unwilling pilot reluctantly agreed to stand in and take over his watch without any orientation. After doing the job for several days, he decided to accept the money and job security the super-tow offered. After doing all this and secured his job, would any reasonable person expect him to stand up in court and claim he was “pressured” to accept the job. Nevertheless, pushing oversize tows involves considerable stress, and stress takes its toll silently.

ARTCO may have avoided union-sponsored simulator training, but it does not even utilize the impressive river simulator training offered at the nearby Seamens Church Institute in Paducah, Kentucky, utilized for advanced pilothouse training purposes by many other AWO-member companies.

Other questions involved the documentation of training that ARTCO keeps. From this line of questioning, it is clear that someone on the jury was a teacher in an academic or vocational area and understood critical shortcomings in ARTCO’s on-the-job training for its “6-long super-tow” pilots. Although ARTCO is a member of the American Waterways Operators, they seem to operate in a world of their own that sees little need to sponsor comprehensive pilot training.

The day may come when ARTCO finds they are mistaken in the belief that they can still go out and buy any talent they need to operate their aging vessels. They appear to believe there is no need for them to “stock the pond” by comprehensively training new pilots. Throwing a little more

money than their competitors at the problem may make it disappear temporarily but not over the long haul.

The Size of ARTCO Super-tows

ARTCO management appears to have learned little from the Pilots Agree era. The same management is in place now that was in place in 1999. The company still chooses to play hardball with its employees.

Management was persuaded after the Pilots Agree strike by several ambitious Pilots to improve their revenue flow by pushing more than the previous maximum tow size of 40 barges and increasing it to 46 to 48 barges in an 8-wide by 6-long configuration. Pushing 6-wide tows from St. Louis to Cairo takes up 210 feet of a channel that is only 300 feet wide – hardly sharing its use with other river traffic. The tow grows to 8-wide below Cairo, Illinois and takes up 280 feet of a 500 foot wide channel. With deep-draft barges scattered throughout the tow, ARTCO Pilots often “take their half of the channel from the middle.” Pilots pushing smaller tows up the river are forced out of the way as the ARTCO cumbersome downbound super-tow has the right of way. A super tow is slow and unwieldy and literally clogs the river restricting overtaking as well as passing. If it grounds, allides with a bridge, or hits a dock or the river bank, the Coast Guard may have to shut the river until other available towboats are pressed into service to recover and reassemble all the parts of the errant tow.

Federal Judge Michael J. Reagan

Like all federal judges, Judge Reagan’s appointment to the bench is a lifetime promotion. A graying man who appears to be in his late fifties, he is an imposing figure in his courtroom. Although he says little, what he did say was scrupulously fair to both sides. He manages his courtroom in a calm, even-handed manner interspersed with friendly, good-natured humor. He is the sort of person anyone would like to have as a neighbor or speak to on the street without knowing of the authority he wields as a federal judge. It was into his hands that our mariners brought their case for resolution and judgment.

On one occasion, the attorneys for ARTCO brought to the judge’s attention that a juror and several of our mariners were seen together in a smoking room on the first floor of the courthouse on a rainy day. Usually, any juror who wished to smoke could do so on a loading dock outside the courthouse but this day was different – it was raining.

Each juror has a large badge that identifies him or her as a juror. This particular juror inadvertently covered her badge with a sweater. When an ARTCO attorney learned that at least one of our mariners happened to be in the same room as a juror, he called the matter to the judge’s attention during the lunch break and demanded that the case be dismissed as a “Mistrial.” The fact that our mariners did not recognize her as a juror, never spoke with her, or even discussed the case in her presence had to be balanced against the impropriety of this chance meeting. Judge Reagan had to resolve this serious situation immediately during the lunch break.

Word came from the courthouse halfway through lunch. The mariners at our large table left their lunches and rushed back to the courtroom as their wives picked up the pieces and put them in styrofoam containers.

The proprietor of Javon's restaurant came over as I settled the bill and asked what was wrong. I said that we had a "very stressful morning" to which he replied, "I know, I have been praying for you guys from the beginning." Suddenly, the bleak scene in East St. Louis grew much brighter. I thanked him for his kindness and good food and hurried back with the wives to the courthouse.

After arguments from attorneys on both sides, the lady juror was brought into the hushed courtroom. She had done nothing more than enjoy a cigarette during the morning recess. However, the Baliff escorted her into the hushed courtroom and questioned in front of all present including our mariners, their wives, and counsel from both sides. She immediately understood the gravity of the situation and the fact that the case and a week's testimony could be thrown out of court. The case even might have to be retried.

It soon became clear that this was an inadvertent action and that there had been absolutely no impropriety. Judge Reagan questioned her at length and in considerable depth. If necessary, he had the choice of declaring a mistrial and throwing out the case that would have to be re-tried at some later date. He could have dismissed the juror from the trial and continued with the eleven remaining jurors. Or Judge Reagan could bring closure to the incident and proceed with the trial – as he decided to do.

It was clear that the lady had done nothing wrong and wanted to continue on the jury. The judge then asked her if she was angry with him. There was a big smile of relief, as the lady stood up to return to the jury room.

The next day, whenever any juror entered the courthouse lunchroom and vending machine area, an officer of the court accompanied the juror. The officer ordered silence until the juror made a purchase and left the room.

It is clear that any mistrial would have cost our mariners and their attorneys time and money they could ill afford. ARTCO, with its greater access to money could afford to stay the course. However, a mistrial would be a disaster that would be hard for our mariners to overcome. ARTCO pushed for a "mistrial" on a number of occasions with what appeared to be scant justification.

The Role of GCMA

GCMA learned about this case almost two years ago shortly after ARTCO terminated Captain Larry P. Gwin and Captain Gerald Ingram under what appeared to be questionable circumstances.

This was a personal action brought by six former towboat Masters and Pilots alleging that ARTCO pressured its pilots to push tows in excess of 40 barges. These experienced Pilots considered the practice UNSAFE to themselves, the vessel crews, and the public. One of the Pilots in the group had served ARTCO loyally for twenty-five years. Yet, ARTCO dismissed their service with the comment that they were not recalled because, "We were looking for a better class of employee." Twenty-five years is a long time to take to make

a decision like this! For this reason, if for no other reason alone, the Gulf Coast Mariners Association is proud to place ARTCO at the head of our **Brown List**.

As the ARTCO-Six case developed, we picked up more information on the problem of the super-tows and the safety issues they encompassed at all river stages on the Lower Mississippi River.

It was GCMA that recommended the Dysart Law Firm in St. Louis as a result of a series of discussions we held much earlier with an attorney previously associated with the firm. We are very satisfied with this decision and the tremendous effort put forth by the Dysart law firm on behalf of our mariners.

Over the years, GCMA developed close ties with a number of trial lawyers whose names appear on our Attorney's List on the internet. These lawyers have gone out of their way to understand our mariners, their situation in the workplace, and believe they can best represent their interests in both civil suits and in administrative proceedings.

GCMA expressed concern about all aspects of the oversize and overloaded tow situation. A number of years ago, a delegation of GCMA members including Captain J. David Miller, GCMA Webmaster, and Mr. Richard M. Plant from the International Organization of Masters, Mates, and Pilots brought the matter to the personal attention of Rear Admiral Roy Casto while he served as Eighth District Commander. GCMA also brought the matter before the Towing Safety Advisory Committee when Captain Larry P. Gwin delivered a presentation on March 17, 2004 before the Towing Safety Advisory Committee assembled at Coast Guard Headquarters.

GCMA delved into all aspects of the oversize and overloaded tow problem in GCMA Report #R-340 that we intend to revise and update following this case and which we intend to formally submit to Congress later this year.

At present, only ARTCO insists upon pushing these super-tows down the Lower Mississippi River. Other companies tried it in the past with vessels of comparable size and horsepower but appear to have given up the practice. The jury heard all about this in ample testimony.

Commander Jack Deck, (USCG Ret'd) Offers Expert Testimony on Hydraulics & Hydrology

The twelve jurors gained a new perspective on these rivers by the mariner's expert witness, Commander Jack Deck (USCG, retired), who explained some of the basic elements of hydraulics and hydrology that affect river tows. Much of this testimony explained the principles that river Pilots experience every day. The jurors appeared thoroughly interested and engaged in this testimony, and in fact, throughout the trial.

For the past quarter century, Mr. Deck, one of the founders of the American Admiralty Bureau, and graduate of the U.S. Coast Guard Academy represented both plaintiffs and defendants with testimony that lies within his area of expertise as a naval architect and marine engineer.

The American Admiralty Bureau has studied a number of areas in depth and published two significant reports on the subject of tow maneuverability as follows:

- Preview of a Tow Configuration and Power Guide (1994).

- Interim Recommendations for Tow Powering and Configuration for Western Rivers Push Tows (1996)

Both of these publications were widely disseminated throughout the industry and the subject remains under study. In fact, the Waterways Journal and GCMA recently published a technical update notice from the American Admiralty Bureau⁽¹⁾ that was pertinent to this case. [⁽¹⁾*GCMA Newsletter #36, p.6*]

Mr. Deck offered strong, expert testimony on behalf of our mariners in the field of hydrology, a study of the movement of fluids and liquids based on his background of active sea service in the Coast Guard and his graduate degrees in Naval Architecture and Marine Engineering.

Mr. Deck used his knowledge to describe how a towboat and its tow, and specifically, how a “6-long” tow is affected by river currents in bendways and at the approaches to bridges where several of the infamous “6-long” accidents discussed in this case took place.

In a computerized video sequence, Mr. Deck showed how “6-long” ARTCO tows grazed the Upper Baton Rouge (U.S. 190) Bridge and the Harahan Railroad Bridge at Memphis. Although the Coast Guard said that both accidents involved “Pilot Error” and let the incident go without citing either pilot for the accidents – one of which racked up almost \$1,000,000 in damages. By taking no administrative action in either case, the Coast Guard left the Pilots and ARTCO free to continue to make the same type of mistake again. Mr. Deck pointed out in a brief video recreation of the accident how it had taken place and that the cause of the accident was NOT pilot error.

The close tolerances allowed for tows to pass between bridge piers did not give the pilot much chance for success in either cases. The only “pilot error” was making a decision to accept a tow that proved to be too large for river conditions at the time. The difference between success and failure in both cases was no more than 10 feet of barge length.

Mr. Deck’s graphic illustration explained why these tows grazed several bridge piers rather than slamming headlong into them with barges carrying up to a total of 100,000 tons of cargo – as might have happened if it had been a true “pilot error.”

Accident Investigations Continue

GCMA continues to be concerned in viewing close-up pictures of the interstate highway bridge crossing the Mississippi River at Memphis. This bridge recently was reinforced to withstand possible earthquakes in an area traditionally cited as earthquake-prone. We remain skeptical of the Tennessee highway engineers’ belief that this bridge could withstand a solid barge strike by a heavy tow at high river stages.

GCMA has been relentless in its pursuit of information about towing accidents, not only involving ARTCO vessels but also any accident that affects our “lower-level” mariners. Although this accident information is revealing, it cannot be used in court according to 46 U.S. Code 6308 as previously mentioned. Yet, the official accounts of accidents punctuated by information furnished by dozens of mariners with personal

knowledge and insight can give us a unique insight into some of the true causes of these accidents.

Enter: The Bolivian Commodore

Bolivia is South America’s only landlocked nation without a coast line. Lake Titicaca, straddling the border between Peru and Bolivia, is the highest navigable lake on earth at 12,580 feet altitude. The Andean peoples refer to the lake as “The Sacred Lake” and legends say that the first Inca rose from its depths and went out to found the Inca Empire. Actually Lake Titicaca is two lakes joined by the Strait of Tiquina that sprawls over 3,500 square miles, fed by waters from the melting snows of the Andes. If someone falls into the lake, like a fisherman, it is traditional not to rescue them but to let them drown as an offering to the Earth Goddess Pachamama.

ARTCO called to the stand Captain ☺☺. They called and everybody waited in silence for his arrival. After several minutes, Judge Reagan called a recess and an ARTCO search team fanned out through the courthouse to find Captain ☺☺. His grand entry to the courtroom was made wearing a full-length maritime officer’s uniform overcoat with brass buttons and white full-dress uniform cap.

It was obvious from first glance that this mariner intended to impress the court with his huge ego as well as his vast store of nautical knowledge.

From his first words on the witness stand, it was clear that Captain ☺☺ would be served up as an offering to the Earth Goddess Pachamama if not first eaten alive by Artco-Six Attorney Chris Dysart on the witness stand. It was clear from his huffing, puffing, and condescending attitude that he intended to stand at least a head taller than every mariner previously taking the witness stand for either side. His self-appointed role was one of an erudite college professor whose lecture that day included Newton’s Second Law...and his first and third laws, or any other law of physics he chose to expound to his captive audience.

Captain ☺☺ proceeded to launch an attack the expert testimony of Commander Deck that he maintained could not possibly be correct. He even attempting to use Commander Deck’s video presentation against him. That ploy spiraled down in flames.

He based his testimony on his personal experience in his family’s ocean shipping firm, operating towing vessels for ARTCO, and on his two college degrees, one in Economics and the other reportedly in Engineering. However, as he answered direct questions about his engineering degree, its existence became highly questionable, as did the veracity of his entire testimony.

What really took the cake and set jurors’ eyes rolling was his suggestion that in the future, considering the pace of vast improvements to the Mississippi River channels, that a tow 11 barges wide by 8 barges long drawing 17 to 18 feet of water could be pushed safely southbound on the Lower Mississippi River.

When he was questioned about possession of a Bolivian Merchant Marine License he quickly presented an

interesting but unconvincing tale that was not challenged but will appear in the court transcript.

The high point of the Commodore's appearance came at the end of his testimony when the jury chose not to ask him a single question. Apparently, they had heard enough. Although this final pinprick must have deflated the same pompous ego known to infect other super-tow pilots and shipping company executives, Captain ☺☺ remained in the courtroom absorbing amused twitters during the rest of the afternoon session.

Aside from a few moments of hilarity and comic-opera posturing, the trial was a protracted battle with the potential of lasting forever had Judge Reagan not imposed strict time limits on witnesses from both sides.

Liar, Liar

Raymond Hopkins, one of two ARTCO Port Captains, was a controversial figure for a number of years. However, the jury did not have the benefit of a warning about his past performance in a case heard before the Administrative Law Judge Paul Bogas. In a Decision and Order, the judge characterized Hopkins' testimony in these words: "I am unwilling to take Hopkins' "word" regarding these undocumented matters since he revealed himself to be a facile historian. Indeed, some of Hopkins' testimony regarding significant matters was so utterly impeached that I hesitate to credit his statements regarding any disputed matter, and in general have given his testimony little weight."⁽¹⁾ [⁽¹⁾ARTCO vs International Organization of Masters, Mates, and Pilots before the National Labor Relations Board, Case #14-CA-257, March 1, 2001, p.16 of JD-27-01]

Neither did Judge Bogas have much positive to say about ARTCO President Royce Wilken, who would testify years later at the ARTCO-Six trial. "I did not find Wilken to be a very credible witness regarding the duties of Mates based on his demeanor and testimony which was evasive on cross examination. Wilken gave the distinct impression on multiple occasions that he was relying on feigned confusion and convenient memory lapses to avoid giving testimony to the respondent. He was also prone to changing his testimony mid-stream."⁽¹⁾ [⁽¹⁾ Ibid, p. 17]

During my four days observing the trial in progress, various ARTCO-Six mariners would approach me repeatedly and with great agitation and urgency say: "How can the Judge let Hopkins get away with telling these bald-face lies in court." My reply was that the only way to expose a lie is when our lawyers catch him in inconsistencies in his testimony and expose these statements to the jury. This occurred on a number of occasions.

In this trial, ARTCO Vice-President John David "Dave" Cook displayed a surprising ignorance of significant aspects of the business his company was engaged in and deferred to previous testimony of his superior, President Royce Wilken. Nevertheless, Cook gave surprisingly cogent testimony on how several 8,400 horsepower vessels became 9,000 horsepower vessels – testimony that directly countered information previously given to a senior marine inspector in an accident report involving the CRIMSON DUKE accident.

ARTCO's Longstanding Disrespect for Mariners and Disrespect for Authority

Licensed Masters, Mates, and Pilots have a tough job because they must serve two masters. The company controls all aspects of their job including terms of employment, scheduling, work-hours, pay, and benefits while Coast Guard regulations control a mariner's license and set the terms of his professional conduct. On July 14, 1994, Captain ☺☺☺, who is well versed in the laws and regulations he works under, reported a mechanical failure to his company's shoreside personnel. Failing to receive what he judged to be a satisfactory response, Captain ☺☺☺ accepted his personal responsibility and notified the Coast Guard Marine Safety Office in New Orleans as he was required to do under existing regulations.⁽¹⁾ The following day, ARTCO relieved and suspended Captain ☺☺☺ without pay. Captain ☺☺☺ appealed his suspension by ARTCO to the Coast Guard since he was simply carrying out a regulation mandated by the Coast Guard. [⁽¹⁾46 CFR §4.05-1(a)(3)]

Shortly thereafter, the Coast Guard sent the following letter to Captain ☺☺☺'s employer. By all accounts this is a remarkable letter.

July 20, 1994

American River Transportation Company
P.O. Box 2889
St. Louis, MO 63111

Gentlemen'

I wish to express my deep concern over the recent mechanical casualty occurring to your vessel M/V AMERICAN PILLAR, and to request your commitment to the immediate reporting of future hazardous conditions to the Coast Guard.

On the afternoon of July 14, 1994, while downbound on the Lower Mississippi River with a tow of 40 loaded barges, including three tank barges, the M/V AMERICAN PILLAR suffered a failure of the electric motor which drives one of the two air compressors vital to the safe propulsion of the towboat. These air compressors, connected in parallel, provide the compressed air necessary to start the vessel's propulsion engines and to engage the clutches.

Upon receiving notice of the failure of the air compressor motor, the operator of the AMERICAN PILLAR, Mr. ☺☺☺, reported the vessel's situation to my office. The vessel was permitted to proceed to Baton Rouge, Louisiana to effect repairs, but was ordered not to enter the harbor area until repairs had been completed. We were subsequently informed by Mr. ☺☺☺ that the AMERICAN PILLAR had held up at mile 251 above Head of Passes to make repairs, and, later, that the repairs had been completed.

I have been informed that your company instructed Mr. ☺☺☺ not to report the vessel's mechanical failure to the Coast Guard, and that Mr. ☺☺☺ has been suspended for reporting this incident. Without discussing the legality of your actions in light of Title 46, U.S. Code, §2114, I find your actions most disconcerting. Although a backup air

compressor was available, this mechanical failure adversely affected the operating reliability of the AMERICAN PILLAR's propulsion system. As such, the situation clearly constituted a "hazardous condition" as defined in Title 33, Code of Federal Regulations, §160.203 (33 CFR 160.203), for which immediate notification of the Coast Guard is required by 33 CFR 160.215. In addition, this mechanical failure could arguably be considered a reportable marine casualty per 46 CFR 4.05-1(c), which also requires notice as soon as possible to the Coast Guard. I believe that your vessel operator acted in good faith by notifying my office of a condition which could impair the propulsion of a 10,500 horsepower towboat pushing a tow 280 feet wide and 1000 feet long which had yet to clear the Upper Baton Rouge Bridge. To have failed to report this condition to my office would also have subjected Mr. ☺☺☺ to possible civil penalties and suspension and revocation action against his license.

I am concerned that your attempts to dissuade your vessel operator from reporting the vessel's hazardous condition, followed by your disciplinary action against the operator for doing so, may send the message to operators of uninspected towing vessels that they risk their continued employment and livelihood by their compliance with Coast Guard regulations. Your actions in this case are not indicative of a strong commitment to marine safety and protection of the marine environment.

Dissatisfied with the number and severity of marine casualties on the Lower Mississippi River, the Commander, Eighth Coast Guard District instituted Operation Safe River on March 24, 1994. A copy of the Safety Broadcast Notice to Mariners announcing this operation is enclosed. Although this operation has been discontinued, I ask you to take heed of this message, and to evaluate the circumstances within your control which may contribute to accidents involving your towboats, e.g., vessel horsepower for loads towed, vessel maneuvering characteristics, and operating practices which may encourage your vessel operators to take imprudent actions.

Again, I ask for your support, as a major inland waterways operator, in ensuring the prompt reporting of casualties and hazardous conditions aboard your vessels. Please help us to improve the safety and cleanliness of our nation's inland waterways.

Sincerely,
s/D.A. Lentsch
Commander, U.S. Coast Guard
Alternate Captain of the Port

The success and effectiveness of "directly reporting" maritime casualties and/or hazardous conditions still hangs in the balance. In spite of the letter and in direct defiance of the Coast Guard, ARTCO terminated Captain ☺☺☺ who later successfully sued the company.

In Summary

In the ARTCO-Six trial, Coast Guard licensed merchant marine officers brought to the attention of the Jury, and thus the public, that a major towing company was willing to use intimidation and threats to their employees jobs, benefits, and

career opportunities in order to place the private profit of their business enterprise ahead of public safety. We introduced the 1994 letter to point out that these egregious corporate acts are longstanding and their continuation is NOT in the public interest.

In order to continue to push their "super-tows," ARTCO demonstrated beyond the shadow of a doubt their willingness to exploit their workers in a variety of ways that pose clear and present dangers to their employees, other users of the public waterways, and to vital infrastructure including river channels and buoyage funded by taxpayer dollars.

ARTCO continues to show disrespect to its licensed merchant marine officers who took an oath to follow laws passed by Congress and regulations promulgated by the U.S. Coast Guard. Their actions have brought into serious question whether the Coast Guard is taking all necessary steps to ensure the safety of travel and commerce on the entire Lower Mississippi River and even whether they are capable of adequately regulating the inland towing industry.

<p style="text-align: center;">SAFETY NOT CORPORATE PROFITS MUST BECOME THE FIRST CONSIDERATION By Cheryl Mason</p>
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I sit here today with my husband observing the trial of the six pilots permanently laid off due to "lack of work" in 2003. The men believe they were fired because they refused to push "6-long" barges for valid safety reasons.

Moving the extra length of barges was supposed to be a voluntary program, and the pilots believed that in the beginning it may have been. But, as time wore on, they felt they were forced to consider trying to make a "6-long" tow or they would be faced with losing their jobs.

I am the wife of one of these Pilots who took a stand against a practice they believed was unsafe and was laid off in return for doing so.

All of these pilots were very good Pilots for ARTCO and loved their jobs.

I was very fortunate to be able to ride on one of these river towboats years ago. I was able to experience first hand what my husband does at work and understand some of the terms used by towboaters like "the river's running hot," "high and low water," where a southbound tow has the right-of-way over a northbound tow, what an eddy is and many other unique river terms. This helped me a lot, but I am learning so much more with the detailed explanations in court that I never knew before.

I was always aware that Tom's job was dangerous and very stressful at times like making certain bridges at high water or low water depending upon the number of barges he was moving in his tow. I have a clearer picture now of whether to "steer" or "flank" a bend and where to find the channel in the river.

Most of us look at a tow coming down the river. It looks so easy but you never think about what is actually going on with the boat, or the barges, the Captain or Pilot or whether or not it affects us in any way.

It could easily affect us! I live near this river, but I never thought it could affect me until I became aware of some of the

facts that I learned about in the past several years as well in this brief period during the ARTCO-Six trial.

Maneuvering a huge towboat is not like driving a car in bad weather on slippery highways. You have no brake pedal to push on when you want to stop or if you make a bad judgment call.

I have to say that I was surprised about how much I did not understand about my husband's job and how much more I know now.

This trial is very important to all towboaters running on the Lower Mississippi River as regards safety and just how far some companies can go in pushing their "super-tows" affects the safety of all of us who are not aware of the danger out there.

I hope I am wrong, but will it have to be one of these "super-tows" that takes out another bridge with cars on it and kill the people in them whose only mistake was to be in the wrong place at the wrong time. Congress and the Coast Guard need to wake up and stop this from happening.

To sum up what I learned from this case is that Safety should be the first consideration before pushing a super-tow. It should not be the profit of the company that uses the waterways improvements and infrastructure for their own selfish advantage and to boost the ego of a few daring mariners willing to assume the risk.