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INVESTIGATIONS: ENFORCEMENT OF EXISTING PERSONAL INJURY REPORTING REQUIREMENTS

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INTRODUCTION

The Gulf Coast Mariners Association assigns our highest priority to our efforts to improve existing accident reporting requirements to more accurately report and properly record the personal injuries that happen to "lower-level" mariners on the job.

Item #2 in our 2007 Legislative Priorities[(1)] is to standardize logbook entries to include the reporting of personal injuries in vessel logbooks by the officer in charge of the watch at the time when the accident occurs. *[(1)GCMA Report #R-333, Rev. 3, Mar. 14, 2007. GCMA Regulatory and Legislative Agenda – 2007.]*

Item #3 in our 2007 Legislative Priorities is more sweeping and calls upon Congress to make certain basic changes in personal injury reporting, specifically:

ITEM #3. Require the Coast Guard to adequately protect mariners and offshore workers by enforcing the Congressional Intent of Occupational Safety and Health Act of 1970. Remove the data collection responsibility for health and safety issues from the Coast Guard and place it with the Department of Labor (e.g., replace forms CG-2692 with OSHA 300 series). Impose steep penalties for failing to report and track every "accident, injury, illness, and death" to a seaman, passenger, or other person on a vessel. Permanently separate personal injury and illness reporting from vessel and equipment casualties.

Existing Coast Guard Regulations

Coast Guard regulations at 46 CFR 4.05-10(a) state in part that "The owner, agent, master, operator, or person in charge shall, within five days, file a written report of any marine casualty required to be reported under §4.05-1. Such casualties include:

- Loss of life.
- Any injury that requires professional medical treatment (i.e., treatment beyond first aid).
- Any injury that leaves a person unfit to perform his or her duties.

GCMA attorney Mark Ross, Esq., investigated parish and county courthouse records in south Louisiana and Texas, checked his findings with local Coast Guard marine safety offices, and determined that one major offshore company had failed to file forty-four (44) written reports of personal injury in violation of Coast Guard regulations between 1992 and 1999. Subsequent discussions with other Coast Guard officials indicated that the number of violations for this one company alone might approach 150 ï including both mariners working on their supply boats and oilfield workers on their drilling rigs.

Other evidence gathered from a number of our members while investigating other accidents indicates that these violations were not restricted to one errant employer. There are indications are that other marine employers may have failed to file reports of accidents and injuries. Our attempts to probe this matter repeatedly were obstructed by Coast Guard officials. Violations of the reporting regulation are punishable by a civil penalty ï a policy the Coast Guard has failed to follow.

Our Association was appalled to discover that all attempts to encourage cognizant Coast Guard officers to take meaningful action on our findings, such as to impose civil penalties on the offenders, brought about no results. Consequently, GCMA attorney Mark Ross followed a different path and filed suit in Federal District Court under the False Claims Act. Unfortunately, this case was subsequently dismissed on a technicality.

Failure to report instances of serious personal injury and disability under the existing regulations seriously distort Coast Guard statistics maintained by the Coast Guard Office of Investigations and Analysis to the point that they cannot not accurately convey the dangers that our "lower-level" mariners face on the job.

PERSONAL INJURY REPORTING IN THE OFFSHORE OIL INDUSTRY.

On April 25, 2001, the Coast Guard supplied statistics to the National Offshore Safety Advisory Committee (NOSAC) purportedly covering 400 accidents involving offshore supply vessels that took place between 1992 and 2000. These statistics record 37 deaths and 144 injuries. While "deaths" are harder to cover up, the 144 reported injuries do not reflect the 44 injuries that Attorney Mark Ross uncovered reflecting those the injuries reported by a single offshore employer (ENSCO). Each of these cases was serious enough for the injured party to seek an attorney and bring the case to court! Had these cases been included, they would have reflected a significant percentage of the total reported offshore injuries.

Since ENSCO employs not only mariners but oilfield workers on the outer continental shelf, the Coast Guardôs lack of concern with monitoring reportable accidents is more widespread than if it affected mariners alone.

[GCMA Comment: In our original report we suggested that Congress should explore "accident reporting" on the entire outer continental shelf and review proposed regulations in Docket # USCG-1998-3868 that would revise the workplace safety regulations on the outer continental shelf. Industry, through NOSAC, has attempted to weaken the proposed new regulations and thereby reduce the level of protection for our mariners as well as oilfield workers.]

PERSONAL INJURY REPORTING IN THE TOWING INDUSTRY

A Coast Guard internal report of towing vessel industry personnel clearly shows that the Coast Guard does not have a grasp on this important sector of the maritime industry that employs our "lower-level" mariners.

In this instance, the accuracy of Coast Guard's count of the number of towing vessels remains in question as well as the size of the work force manning those vessels. However, the Coast Guard exposure data clearly shows that the towing industry is a very dangerous place to work.

In a memorandum dated May 12, 1994,[(1)] a program analyst in the Coast Guard's Inspection and Documentation Division reported that the death rate (i.e., the number of deaths per 100,000 workers per year) in the towing industry was far higher than had been previously reported because the number of workers in the industry was grossly exaggerated. Instead of using the American Waterways Operators (AWO) estimate of 130,000 to 140,000, the Bureau of Labor Statistics estimated the work force in the towing sector as being closer to only 37,300. This indicated a much more serious fatality rate for the towing industry than previously acknowledged. In this fiasco, it appeared that the Coast Guard depended upon an industry trade group for the statistics it blindly accepted and that they had no valid figure that listed either the exact number of persons or towing vessels in the industry. *[(1)GCMA Report #R-351, Rev.1. Oct. 24, 2006, How Safe is the Towing Industry, contains a reprint of the original Coast Guard document. This document was presented to the Towing Safety Advisory Committee in November 1994 and subsequently forgotten.]*

By pointing out these dangers to our "lower-level" mariners who work on OSVs and on uninspected towing vessels, we hope to encourage industry's employers to take active steps to focus on improving safety in their operations. Recognizing the hazards of the workplace, particularly on unregulated and uninspected towing vessels,[(1)] we hoped our report would encourage employers to provide adequate life insurance coverage for their employees and thereby attract and retain trained mariners. Unfortunately, this has not happened in the six years following our issuance of the report.

In contrast to the lack of attention employers give this issue, many union contracts provide such coverage. Workboat companies avoid the cost of insuring their employees but are willing to turn to their corporate lawyers to contest every claim a mariner makes for an accidental injury or his estate makes if the injury is fatal. *[(1)The Coast Guard will not even tell GCMA whether their proposed workplace regulatory improvements for vessels working on the outer continental shelf include uninspected towing vessels. Section 415 of the Coast Guard and Maritime Transportation Act of 2004 that requires the Coast Guard to inspect towing vessels may finally answer this question for us.]*

Proposed regulatory changes in Docket #USCG-1998-3868 will provide enhanced workplace safety for both mariners and oilfield workers on the outer continental shelf. Unfortunately, this rulemaking has been stalled in the process for the last nine years allowing existing substandard workplace safety conditions to continue.

GCMA determined through its investigation that one of the major problems of accident reporting lies within the internal structure of a number of companies. While masters and persons in charge often report accidents through company channels, and even do so on form CG-2692, some companies fail to follow through and forward these reports to the Coast Guard as they are supposed to. Other companies supply ñlook-alikeò accident report forms on their vessels and edit them in company offices to protect their own interests. While fatalities and serious accidents are usually reported, often the Coast Guard is never informed of other less significant accidents and personal injuries that also are required to be reported. Consequently, GCMA points out that the accident data the Coast Guard uses does not present an accurate picture of how dangerous working offshore or in the towing industry really is. Consequently, GCMA requested that the Coast Guard modify their accident reporting procedures in this petition dated September 7, 2001.

COAST GUARD OFFICE OF INVESTIGATIONS & ANALYSIS DERAILS GCMA ACCIDENT REPORTING PETITION

Executive Secretary
Marine Safety Council (G-LRA 3406)
United States Coast Guard
2100 Second Street, SW
Washington, DC 20593-0001

SUBJECT: Petition to Initiate Rulemaking Action

Dear Sir or Madam,

The Gulf Coast Mariners Association, pursuant to 33 CFR 1.05-20(a), respectfully and formally requests that you initiate rulemaking to expand the listing of persons that are authorized or required to fill out accident reports by 46 CFR 4.05-10(a).

We specifically request that the injured party in addition to the "The owner, agent, master, operator, or person in charge" be authorized to submit a report of his/her injury as long as it meets existing criteria in the regulation.

The criteria of 46 CFR §4.05-1(a)(6) is "An injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed aboard a vessel in commercial service, that renders the individual unfit to perform his or her routine duties." We suggest that such a report be sent on form CG-2692 directly to the Coast Guard and not through the mariner's employer.

We also request that a notice similar to that required by 46 CFR §28.165 but reflecting the proposed regulation be required to be posted on every commercial vessel on which a "lower-level" mariner works. In doing so, we specifically direct your attention to the requirements of 46 U.S. Code §10603 that are required to be posted aboard uninspected fishing vessels.

We ask that you carefully review our attached Report #R-292 as supporting information for this petition.
s/ Richard A. Block, Secretary, GCMA

Following three years of fruitless correspondence with Coast Guard Headquarters, we received this reply from W.D. Rabe, Chief, Investigations Division dated July 16, 2004 that stated in part:

ñThe current regulation, specifically 46 CFR 4.05-1, does not set limitations as to who may submit a report of marine casualty. An injured party is not prohibited from making a report to the Coast Guard. In fact, our Investigating Officers often receive reports directly from mariners and conduct an investigation based on their report.

ñI have determined the appropriate action in this instance is to release a policy letter to ensure that proper emphasis is given to any casualty report submitted to the Coast Guard regardless of source.ò

On June 30, 2005, in response to a GCMA follow-up request, we were told that the following passage would appear in the Marine Safety Manual, Part A, Chapter 5 instead of a policy letter:

ñAll incidents reported to the Coast Guard, regardless of source, ***will*** be investigated, however, the OCMI/COTP must determine on a case by case basis what investigative actions are appropriate for a specific case based on the likely value to marine safety, available resources, and risks in a given port. This policy does not limit or change OCMI/COTP authority or responsibility to determine appropriate actions. For example, a minor collision (damage of less than $25,000) of a towboat and a moored casino vessel may highlight significant safety concerns that would demand a formal investigation, or the OCMI/COTP may decide to conduct an informal investigation of three deaths from a fishing vessel if the added cost and complexity of a formal investigation would not bring appreciable benefit. In such cases, the usual process of investigating, determining causal factors, reporting, entering information in MISLE, and recordkeeping must be followed.ò

[GCMA Comment: The Coast Guard avoided the issue by missing our point that the existing accident reporting regulation at 46 CFR §4.05-1 as worded does not encourage any mariner who is NOT an owner, agent, master, or person-in-charge to file his own accident report and presenting his version of the accident or injury to the Coast Guard for consideration.]

[GCMA Comment: The Marine Safety Manual and/or Policy Letters are obscure documents most mariners never see. Although accident report form CG-2692 is more common, most employers prevent mariners from completing them and submitting them directly to the Coast Guard. GCMA maintains that such practices obscure the real cause of many accidents by preventing mariners from reporting the true causes of accidents and injuries.]

GCMA notes that industry trade associations have taken advantage of skewed accident statistics to the detriment of our mariners. The American Waterways Operators' (AWO) distorted work force estimate mentioned in **Example 2** (above) skewed the estimate of the number of deaths per 100,000 persons so that the towing industry appeared to be three to eight-times safer to work in than it really was in comparison to other U.S. industries.

In another example, the former President of the Offshore Marine Service Association (OMSA) fed this statement[(1)] to the public record:

- "Only five injuries are identified in a seven-year period that might have been prevented or diminished in severity by proposed workplace safety and health requirements." OR
- "...that OMSA operators had far fewer lost time injuries than any other sector of the U.S. marine transportation industry." OR
- "OMSA vessel operators have an exemplary injury safety record that has been improving for the past seven years." *[(1)**Source**: OMSA Letter dated 2/26/00 submitted to USCG Docket #1998-3868 as item #38. This letter spearheaded industry opposition to proposed new workplace safety standards on OSVs for outer continental shelf activities.]*

MARINERS ASSOCIATION COMPLAINTS SILENCED AT COAST GUARD ADVISORY COMMITTEE MEETING

Mrs. Penny Adams, past President of GCMA, attempted to bring the matter that employers were not reporting accidents to the attention of the National Offshore Safety Advisory Committee (NOSAC) at their meeting in Washington on April 19, 2001. However, the Committee's Executive Director, Coast Guard Captain Peter Richardson (G-MSO) prevented her from disclosing our Association's data during the public portion of the meeting. This was the most blatant attempt on the part of a Coast Guard officer to

muzzle our lower-level mariners and to suppress information that revealed problems that affect our marinersô lives and livelihood.

GCMA FILED SUIT AGAINST ENSCO FOR FAILING TO REPORT PERSONAL INJURY ACCIDENTS

*[**Source:** GCMA Press Release, March 12, 2001. Contact: Mark Ross, Esq., GCMA Counsel, (337) 266-2345.]*

The Gulf Coast Mariners Association has filed suit in federal court against ENSCO Marine Company and ENSCO Offshore Company, two large offshore supply vessel and offshore drilling companies operating in the Gulf of Mexico. The GCMA's complaint asserts that ENSCO violated federal law by consistently failing to report accidents involving their offshore employees to the U.S. Coast Guard. The lawsuit was originally filed on August 30, 2000, but has remained under seal until today in compliance with federal law.

The suit was brought under the False Claims Act, a federal whistleblower statute, and was filed in U.S. District Court in Lafayette, Louisiana. GCMA contends that federal law requires ENSCO to report all employee accidents requiring a doctorôs care. In particular, ENSCO must file an accident report (known as a CG-2692) with the Coast Guard within five days of any such accident. GCMA alleges that for many years, ENSCO systematically failed to report such employee accidents to the Coast Guard except in cases involving fatalities.

GCMA's investigation of ENSCO's compliance with the law followed requests under the Freedom of Information Act, seeking copies of ENSCO's Form CG-2692 reports for employee accidents that were the subject of other lawsuits brought against the company. Out of 44 accidents resulting in lawsuits in various federal and state courts, the U.S. Coast Guard only had one CG-2692 on file for ENSCO.

"Our investigation shows that the U.S. Coast Guard's marine safety data base, which the Coast Guard uses to track accidents and make inspection decisions in the Gulf of Mexico, is effectively rendered useless by ENSCO's refusal to report all relevant accidents," said GCMA President Penny Adams. "The safety aspects of offshore work are not as rosy as the Coast Guard portrays them."

GCMA's complaint also alleges that ENSCO failed to produce copies of the employee accident reports during the discovery process in prior lawsuits. A court transcript included with the GCMA's complaint shows than an ENSCO attorney denied that any accident reports existed in conjunction with a particular plaintiff's injury. GCMA subsequently determined that the accident report did exist, but that ENSCO had failed to provide the report to the plaintiff's counsel or to the Coast Guard.

"Following that revelation, we asked the Coast Guard to write to ENSCO and demand an explanation of why the Company had failed to file accident reports," said Richard Block, a GCMA board member. "Our members often ask us to notify the Coast Guard about boat companies that break the law."

Following the Coast Guard's inquiries, ENSCO's safety manager responded that ENSCO accident reporting to the Coast Guard had "fallen through the cracks" during a change in the ENSCO safety group in the preceding few months. However, GCMA's lawsuit alleges that ENSCO's failure to report reaches back much further and covers at least a five-year period between 1993 and 1998. "We doubt that these reports had just fallen through the cracks for the five years," said Block, adding that "the failure to file these reports suggests a broader undermining of federal safety regulations."

The GCMA's lawsuit charges that ENSCO violated the False Claims Act by providing the Coast Guard with a false explanation of the company's failure to report accidents.

The GCMA's lawsuit is in the early stages of litigation and no trial date has yet been scheduled. One of the Association's first goals is to determine how many accident reports are maintained in ENSCO's records but have never been filed with the U.S. Coast Guard. "Proper reporting of accidents is a critical component of the Coast Guard's safety strategy," said Block. "When companies fail to file the proper reports, mariners and regulators have no ability to assess safety concerns at sea. Our suit is aimed at holding ENSCO accountable to this important standard. We will also assess the compliance of other companies on these counts."

The GCMA's lawsuit seeks the proper filing of all accident reports by ENSCO, modification of ENSCO's reporting requirements, and imposition of civil penalties. Federal law provides that ENSCO can be fined up to $25,000 for each failure to report an accident. The False Claims Act also provides for treble damages and additional penalties of $5,000 to $10,000.

The GCMA is an association of ñlower-levelò mariners employed on tugs, towboats, offshore supply vessels, and small passenger vessels throughout the United States. The Association represents mariners on issues important to their profession and advocates for mariners and their families before the Coast Guard and other government agencies.

THE COAST GUARD CUTS AND RUNS

Although GCMAôs case against ENSCOôs failure to report injuries never went to court, GCMA continued to press the issue because it affected every single one of our merchant mariners.

GCMA reported the matter to the Department of Transportationôs Inspector Generalôs Office (OIG). However, we had to submit a number of FOIA requests to obtain any information as to whether the matter was even investigated. A heavily redacted document from the OIG office finally stated in part: ñOn April 23, 2001, DOT OIG contacted ■ and inquired into any civil penalties the USCG might have filed against ENSCO. ■ advised to (his/her) knowledge the USCG imposed no civil remedial files on ENSCO. ■ advised since (he/she) began working with ENSCO, they seem to be complying with USCG safety requirements. In addition, ENSCO hired two new personnel, a Safety Advisor, and a Case Management Coordinator to help ensure that ENSCO complied with USCG requirements.

[GCMA Comment: COMDTINST 16200.3A, Table 5-A gives the Civil Penalty ranges for "failure of a marine employer to report a marine casualty in writing to the

OCMI as required by 46 CFR §4.05-10(a) as between $500 and$1,000. This civil penalty for failing to report an injury is considerably less than the criminal penalty for filing a false report. There were a total of 44 separate incidents reported.]

The Coast Guard Investigations Department at Marine Safety Office in Morgan City in 2001 was clearly out of its league in attempting to deal with a major drilling contractor. Consequently, they took the easy route out that indicated that enforcing personal injury reporting regulations clearly was not high on their agenda. They issued ENSCO the following weak-kneed OCMI Letter of Warning dated February 16, 2001 and swept the matter out the door:

ñBased on the results of a Coast Guard investigation concerning the non-reporting of injuries during the period of 1993 through 1998 that occurred on various ENSCO vessels, the Coast Guard determined you were in violation of federal regulation 46 CFR §4.05-1 & 5.

ñThis violation can result in a $25,000.00 penalty for each incident. The Coast Guard has initiated casualty cases for the unreported injuries; and noted that there were an additional five reportable injuries but Coast Guard policy did not require initiation of a casualty case. In consideration of the nature of this violation, and it does not appear to be the standard policy (since other injuries were reported by ENSCO during the time period) I am issuing this Letter of Warning to you rather than initiating civil penalty action. However, I urge your cooperation in preventing future occurrences of this kind.

ñThis matter will not be pursued further unless you wish to contest this Letter of Warningé .ò

[GCMA Comment: Nobody in their right mind would contest this toothless letter that was addressed to the Company and rather than any specific person in authority at that company.]

[GCMA Comment: The Coast Guard reinforced its local investigations office in Morgan City by assigning a retired Coast Guard officer with legal training to its staff.]

CONGRESSIONAL OVERSIGHT OF COAST GUARD INVESTIGATIONS

On March 1, 2003 the Coast Guard was transferred from the Department of Transportation to the Department of Homeland Security.

On December 16, 2005 the Chairmen and Ranking Members of the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the U.S. Senate requested the Department of Homeland Securityôs Office of Inspector General to ñconduct a study of the Coast Guardôs marine casualty investigation program and to report to these Committees the findings and recommendations of that study not later than June 30, 2007.ò

The request continues: ñThe Committees expect that the study and report shall examine the extent to which marine casualty investigations and reports result in information and recommendations that prevent similar casualties; minimize the effect of similar casualties, given that it has occurred; and maximize lives saved in similar casualties, given that the vessel has become uninhabitable.

ñThe Committees also suggest that the study include the following to promote the safety of all who work on or travel by water and to protect the marine environment:

- the adequacy of resources devoted to marine casualty investigations considering caseload and duty assignment practices;
- training and experience of marine casualty investigators;
- investigation standards and methods, including a comparison of the formal and informal investigation processes;
- the use of best investigation practices considering transportation investigation practices used by other Federal agencies and foreign governments, including the British Marine Accident Investigation Branch programs;
- usefulness of the marine casualty data base for marine casualty prevention programs;
- the extent to which mariner casualty data and information have been used to improve survivability and habitability of vessels involved in marine casualties.
- any changes to current statutes that would clarify Coast Guard responsibilities for marine casualty investigations and report, and
- the extent to which the Coast Guard has reduced the frequency of formal investigations, or changed the types of incidents for which it has carried out a formal investigation process, in the past five years.

MASTER MARINER #39 REPORTS ON SHORTCOMINGS IN PERSONAL INJURY REPORTING

*[**Editorial Note**: Emphasis by underlining is ours.]*
REF: Your letter of March 20, 2007

Dear Capt. Block:

In response to your inquiry concerning our litigation related experience at the American Admiralty Bureau (AAB), I'd like to first address my experience as a working licensed master and pilot.

As you know I hold an unlimited tonnage Master's license for U.S. inland waters endorsed as First Class Pilot and Towboat Master, as well as Master of Auxiliary Sail (limited tonnage). Before working for the American Admiralty Bureau I worked for three companies that operated vessels of 1,600 gross register tons or over as relief master, pilot, or mate. I also worked as master of a fire and rescue boat for the State of Louisiana, and for several companies operating smaller craft and charter yachts.

My initial sea duty was with the U.S. Navy and Coast Guard. During the 12 years or so that I was involved in the full time operation of vessels, I never experienced a reportable accident. Consequently, like most GCMA members and other licensed officers, I never had to deal with a CG-2692 form personally. Thus I was unaware that the completion of this form was a problem until I began to see the form in litigation. I believe my experience indicates why the use of and abuse of the form has not become an issue for

licensed officers generally. Only a minority experience reportable accidents, so the rest of us are blissfully unaware of widespread industry abuses of the form and the related regulations.

I first became aware of the problems with the form in a litigation context not at the American Admiralty Bureau but at the first insurance defense admiralty law firm at which I worked as an investigator and paralegal. I do not wish to name the firm since client confidentiality is involved, nor can I name companies or cases As you know many legal settlements involve confidentiality agreements applicable to both sides. So my observations at the first law firm I worked for must be highly generalized as the underlying specific information is derived from privileged information. Additionally the firm no longer exists so verification would be impossible even if legal privilege could be broken.

As soon as I began investigating personal injuries and collisions as a law firm investigator, I noticed that many companies had not filed CG-2692 forms. The non-filers followed a pattern. If the case involved a major collision or the injured seaman was removed by ambulance or MEDIVAC helicopter, a CG-2692 form was filed. In most cases of personal injury where the crewman was not immediately MEDIVACED from the vessel no CG 2692 form was ever filed. I brought these facts to the attention of the firm's managing partner and the firm began a policy of insuring that a CG-2692 form was filed by each client, even if it was filed late. However, the firm's lawyers prepared the form, never the master or a company manager.

The firm's lawyers became experts at completing the form with the ñwho, what and whereò of the accidents but virtually none of the why or any other details that might lead to an answer as to why an accident occurred. It was this initial law-firm experience that led me to be on the look out for 2692 forms as a part of every "discovery package" received for examination at the American Admiralty Bureau, Ltd. (AAB) when I became Chief Forensic Examiner there.

During my tenure at the AAB, I examined over 1,000 cases of collision, allision, and personal injury. I immediately observed the same pattern that I observed at the law firm. More than half the cases arrived with no CG-2692 form. But I also observed something new. Of those which came with no CG-2692 form the overwhelming majority came with no Coast Guard signatures in the "Coast Guard only block". At first I thought that this simply meant that the responding party sent their copy of what they submitted to the Coast Guard. We would then submit a "Freedom of Information Act inquiry" to the Coast Guard for the investigative file. In the majority of such cases the Coast Guard would respond that they had no such case in their system. Subsequent deposition testimony would often reveal that we were furnished a lawyer-prepared 2692 form specifically designed to respond to our request for production. They would always have some excuse for their failure to file with the Coast Guard. Our technical experts acting as expert witnesses would always point out that such failure to file deprived the injured seaman of a free and neutral investigation that necessitated some of the expert expense cost of litigation that they now had to pay to make their case. Judges were receptive to this concept generally in terms of damage awards, but neither the courts nor the lawyers who hired the AAB ever reported these events to the Coast Guard. Lawyers place little value on Coast Guard investigative findings since they are inadmissible in court since the intent of such investigations has nothing to do with liability.

At the AAB we gradually educated client lawyers to the fact that while the Coast Guard's reports per se were inadmissible, they often led to other evidence that was. Additionally a competent expert would insist on examining any existing Coast Guard file and can mention parts of the content in his fully admissible expert report, providing a side door of admissibility. We did not report these instances of non-compliance to the Coast Guard based on client instructions. Once settlement discussions would begin, our client lawyers generally didn't want to do anything that might inflame the other side. The National Federation of Paralegal Association (NFPA) Code of Ethics and the National Forensic Center's (NFC) Code of Ethics that the AAB adhered to both made all support services in litigation totally subservient to the lawyer who hired the service. Adversarial codes of ethics in tort situations place a premium on adversarial efforts to "make the client whole" and not on acting as enforcer of regulations.

Based on my combined experience at both an insurance defense admiralty law firm and the somewhat more plaintiff seaman orientated American Admiralty Bureau, I believe that on average only about twenty percent of litigated reportable marine accidents are ever reported to the Coast Guard by means of the CG 2692 form or any other means. Unfortunately, with the AAB as was the case with the law firm, client confidentially precludes discussion of specific cases. In furtherance of this confidentiality all AAB case files and materials were forwarded to the commissioning attorney upon the close of the case. There is no AAB case archive. Additionally many of the business records of the AAB were destroyed in Hurricane Katrina.

I hope the above and foregoing provides some insight into the extent of the problem of non- compliance with Coast Guard accident reporting and the reasons behind it. Obviously the reason for non compliance is liability avoidance. The reason the problem stays hidden from the Coast Guard is a combination of the tendency for court cases to settle and the usual requirements for confidentiality of settlement agreements. Most of the cases I observed involved companies operating work vessels of 1,600 gross registered tons or less. My experience with American registered unlimited tonnage operations is that the presence of the union's patrol men and shop stewards drives accident reporting requirement compliance to near the 100% mark. However as you know the AGT fleet is the smallest sector of the American Merchant Marine in terms of vessel numbers and numbers of mariners. I believe that a comparison of Coast Guard accident reports filed with the total of maritime accident litigations filed in the U.S. court systems would reveal only a portion of the problem. Such a study would reveal only the difference between reported cases and those that resulted in the filing of litigation. The many reportable cases that settled on notice, or went unchallenged by the injured seaman or don't involve a probable contestant such as unintentional groundings will not show up in the court filings. So when I estimate that only about 20% of cases are reported, I'm speaking of only those cases that are eventually litigated.

Again, the problem is not so acute in the any gross tons (AGT) (unlimited tonnage) fleet where the unions monitor accident reporting compliance. The unions are the only mariner voice that the Coast Guard usually hears and they aren't complaining because their members are enjoying a high compliance rate thanks to the union's efforts. These I believe are the reasons for the high rate of non compliance and the general lack of awareness of the high rate of non compliance.

The above and foregoing of course, represent my personal opinion and not that of any organization or employer that I have ever served. The very same reasons that tend to hide the problem from the Coast Guard make it impossible for me to support my opinion with specific examples, or statistics. But for what it is worth the above and foregoing is my litigation experienced-based generalized opinion on the general state of industry compliance with accident reporting requirements.

Very Truly Yours,
Master Mariner #39

CONCLUSION

If you are a mariner and are injured or become seriously on the job, we recommend that you immediately notify the Master of **(and read this carefully)** ñan injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel in commercial service, that renders the individual unfit to perform his or her routine dutiesé ò

Even if it is just a cut, scrape, slip, trip, fall, strain or other minor injury, ask the Master of the vessel to make a logbook entry. Ask him to also report the injury or illness to the company and then check to see that he has done so. If you require more than first aid (i.e., a trip to the doctorôs office or a medical clinic, or hospital) be sure that the company reports it to the Coast Guard on CG-2692.

Be alert to the fact that most companies prefer to take care of this at the office rather than to allow the Master to fill out a form and submit it directly to the Coast Guard. However, if you doubt whether the Company reported your injury or illness to the Coast Guard, ask for a copy of the form they submitted to the Coast Guard. However, if they wonôt give you a copy or they never filled one out for you, ask for a blank copy and mail it directly to the Coast Guard. If the injury or illness is serious, immediately contact a maritime attorney of your choice, and discuss the extent of your injuries with him/her and seek advice. You will find a list of maritime attorneys on the GCMA website.

We also suggest that you read the following GCMA Reports because there is no reason for you to learn about the unscrupulous actions of some employers, even well-known large corporations, ñthe hard way.ò

- GCMA Report # R-333, Rev. 3, Jun. 21, 2006. Donôt Count On Corporate Compassion or Coast Guard Concern ï True Stories of Our Lost, Injured, and Cheated Mariners.
- GCMA Report # R-370, (Series), Jun. 16, 2003. 12 Hour Rule Violation: The Verret Case.
- GCMA Report # R-412, April 25, 2005. Towboat Engineerôs Death Points to Need for Changes in the Law.