



NMA REPORT #R-433-B

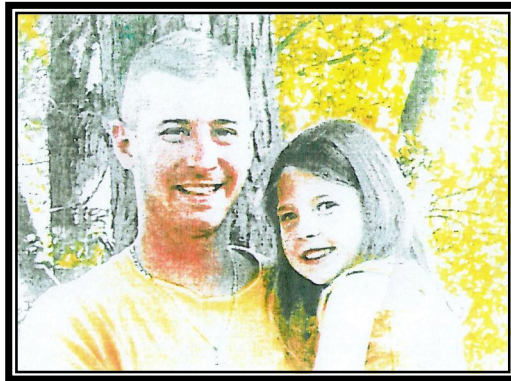
DATE: December 11, 2011

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Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

## THE PREVENTABLE DEATH OF DECKHAND CHRISTOPHER MINK



*[Source: NMA Newsletters #94& 95; USCG Report of Investigation into the Circumstances Surrounding the Incident Involving UTV Anna C – Crewmember Loss of Life on Dec. 17, 2011. Misle Activity #4210168; Misle Case #579405. Our file GCM-326.]*

March 5, 2014

TO: Capt. Tom McWhorter  
Chairman, Towing Safety Advisory Committee  
Marine Services Group of Louisiana

TO: LCDR William H. Nabach (CG-OES-2)  
Alternate Designated Federal Officer, TSAC  
U.S. Coast Guard Headquarters  
2703 Martin Luther King, Jr. Ave., SE  
Washington, DC 20593-7509

**Subject:** Request for TSAC to request a briefing on the death of Deckhand Christopher Mink.

**References:**

- 1) NMA File GCM-326;
- 2) NMA Report #R-429-M, Rev. 1;
- 3) DHS Report #OIG-12-119 (pgs.12,13)

Gentlemen,

The focus of the USCG's marine safety mission is the prevention of deaths, injuries, and property loss. Marine safety responsibilities insure the safe and environmentally sound operation of thousands of U.S. flagged commercial vessels. The USCG develops and enforces Federal marine safety regulations, certifies and provides credentials to over 218,000 mariners, investigates marine casualties and shares its findings... <sup>(1)</sup> [<sup>(1)</sup>Ref. 3, p.12.]

In FY 2011, the USCG added a new long-term performance measure for the five-year average number of

commercial and recreational deaths and injuries. The target for this measure was met.<sup>(1)</sup> [Ref. 3, p.13.]

Our Association is concerned with the death of every mariner as is the Towing Safety Advisory Committee. Although the number of deaths of mariners on the job has met a target established by the Department of Homeland Security, we assert that each fatality represents a major occurrence that deserves a full and thorough investigation and report.

In the past, the Towing Safety Advisory Committee has asked the Investigations and Casualty Analysis Branch to give a presentation on investigations involving the deaths of mariners that occurred at work while these mariners were performing their assigned duties. We respectfully request that the Committee formally extend an invitation to make a presentation at a future TSAC meeting when their work on the investigation on the death of Christopher Mink is finished and published.

We initiate this request based upon a request by **Nelson G. Wolff, Esq., a longtime member of our Association.** Mr. Wolff contacted us several weeks ago in the attached [Enclosure #1] that included a disk. I reviewed the disk that shared information of his investigation with the Commandant. I had a telephone conversation with Mr. Wolff on March 4<sup>th</sup>. that produced further clarifying information in [Enclosure #2].

We respectfully request that this item be included as a New Business item on the March 20<sup>th</sup> meeting agenda.

Very truly yours, s/Richard A. Block, Secy NMA

**Enclosure #1**  
**Schlichter, Bogard & Denton, LLP**  
**Attorneys At Law**  
**Nelson G. Wolff, Partner**  
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St. Louis, Missouri 63102  
(314) 621-6115 1 (800) 873-5297  
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(February 19, 2014)

TO: Commandant (CG-INV)  
Mail Stop: 7581  
Office of Investigations and Analysis  
2100 2nd Street, SW  
Washington, DC 20593-7581

**RE: Activity number 4210168 6 Death of Christopher Mink**

Dear Commandant:

On December 17, 2011, Christopher Mink was killed while working as a deckhand for C&B Marine (formerly known as pre-merger companies Greater Cincinnati Marine and Bray Marine) on the *M/V Anna C* on the Ohio River near Butler, Kentucky. The incident occurred at a mining load-out facility operated by Carmeuse Lime and Stone, Inc.

After the barge was loaded and the Carmeuse load out operator closed the barge's cover with a winch operated cable, the towboat pilot instructed Chris to go from the boat to the barge to disconnect the cable, which had been slackened. ***Without warning, the cable tightened when the Carmeuse employee tightened the winch and/or the towboat bumped the barge, pinning Chris between the barge combing and cable, crushing him to death.*** He was only 28 years old. He is survived by his 4 year-old daughter, Makynlee. (See enclosed photo.) He resided in the greater Cincinnati area at the time of his death, where his family continues to live.

***The Coast Guard was promptly notified of the incident, inspected the equipment/scene, and interviewed witnesses and others with knowledge of the circumstances.*** On behalf of his family, we submitted to your office on May 22, 2012 a Freedom of Information Act request for the USCG investigation report. Though Chris' family is entitled to certain records prior to the public release of the full report, Andrea Tobias of your office advised us that ***requesting those records would greatly delay the release of the report.*** Based on this representation, we agreed to limit our request in order to expedite production of the report. Nonetheless, despite several subsequent inquiries, the USCG has advised that no report has yet been finalized and it has failed or refused to produce any documents.

On behalf of the family, ***we commenced an independent investigation into the facts and circumstances of this***

**incident** as part of the civil action filed in the United States District Court for the Eastern District of Kentucky, in Covington (Estate of Christopher Mink, Cause No. 2: 12-cv-51-DLB-CJS). We took sworn deposition testimony of numerous employees and company officials from both C&B and Carmeuse which revealed complicit culpability. According to this evidence, ***C&B knowingly assigned Chris to perform work that he had never performed at this facility, with a shore based manager (Willie Terrell) who was filling in as a relief pilot on a job with which he too was unfamiliar.*** Richard Littlejohn was the towboat lead deckhand. ***Neither Terrell nor Littlejohn provided Chris with an adequate safety briefing or supervision for this job. C&B failed to implement adequate safety procedures for this job until after the incident.*** See Canava Exhibit 58 and 59, enclosed. C&B also admitted to hooking the cable to the improper location on the cover, which created a pinch point that would have been avoided had the cable been connected to the center of the cover. Its radio procedures allowed miscommunication with the Carmeuse ***winch operator, Pam Adams, whose own written statement (Exh.15) admits to tightening the cable when Chris was still attempting to release the cable.*** She reported that she did this in response to Littlejohn's radioing her to do so. Investigation also revealed that ***the towboat was defect in that not all engines were operable and the pilot faced the barge from an upriver position, contrary to safe maritime practice.*** This positioning created the increased potential for bumping the barge and, thereby, suddenly tightening the cable while Chris was attempting to disconnect it from a location not designed to secure a cable. Furthermore, the evidence shows that the drop down cable from the pulley/winch system was tangled and too short, yet Littlejohn failed to unwind it and secure it to the proper location or to warn Chris that it was defective. ***Finally, C&B's work records show that it required its crew to work excessive hours during the days leading up to the incident (approximately 60 hours for Littlejohn alone).***

Carmeuse, for its part, negligently trained and supervised Ms. Adams, who was assigned to work on a Saturday, for the first time ever in this job without supervision, because ***the supervisor may have had Christmas shopping to do.*** There were other instances of poor work practice of Ms. Adams according to C&B crew members working at the Carmeuse facility before this incident. Undisputedly, the cable should not have been tightened while Chris was still attempting to disconnect it from the barge cover. ***Carmeuse failed to implement adequate safety procedures to assure that towboat crew members were protected from incidents such as this.*** Although Ms. Adams never did return to work for Carmeuse after this incident, there is no indication that Carmeuse developed its own subsequent remedial measures to reduce the likelihood of recurrence.

The information obtained by the USCG during the few days immediately following Chris' death should clearly have demonstrated the root causes of this avoidable tragedy, even despite C&B's woefully deficient USCG Form 2692, which failed to acknowledge the forgoing. For your reference, we enclose a CD containing the depositions of Scott Bray, Joe Weber, Craig Burris, Bruce Bacon, Pam Adams, Richard Littlejohn, Willie Terrell, and Andy Canava, and exhibits identified thereto. In light of the clear evidence, administrative findings of fault on the part of C&B and Carmeuse should issue, along with appropriate sanctions, without further delay. ***Not only does Chris' family deserve the peace of mind they deserve, but other mariners should be protected against the risk of future avoidable injuries and loss of life.*** We remain willing to assist in this safety endeavor.

Sincerely,  
Nelson G. Wolff, Esq.

cc: The Honorable Sherrod Brown, United States Senate  
The Honorable Robert Portman, United States Senate  
Mr. Richard A. Block, National Mariners Association  
(***NMA Editorial Note: We redacted family names and addresses for privacy reasons.***)

**Enclosure #2**

**TO:** Mr. Richard A. Block, Secretary, NMA  
**From:** Nelson G. Wolff, Esq.  
**RE:** Death of Christopher Mink, deckhand of C&B Marine, and USCG Investigation Issues

Dear Mr. Block:

I am writing to follow up on the letter I issued to the Commandant of the United States Coast Guard on February 19, 2014 and carbon copied you. ***I request that you address this matter with the TSAC promptly.***

We have great concerns with the significant delays often encountered with obtaining information from the USCG, including the investigations it is obligated to conduct following a maritime casualty. ***Civil attorneys, like myself, which represent the families of mariners fatally injured on the inland waterways, face significant***

*challenges to conduct investigations into the circumstances of such events.* Prompt access to the USCG investigation can be very helpful to the *families which seek to better understand why their loved ones were killed in the line of work duty.* Over the past two years, we have expended substantial money and time to thoroughly investigate this incident on behalf of Chris Mink's family. The evidence of corporate responsibility of the maritime employer is now apparent, even if the USCG has yet to finalize its report.

Soon after the Mink family retained my firm, we submitted a request for information under the Freedom of Information Act (FOIA) for all records and reports regarding the incident of **December 17, 2011** on the Ohio River near the Black River mine.

As of **February 25, 2013**, the investigation report still had not been completed. We were told that it was "pending with the investigators office in Cincinnati" and no time line for completion was provided. We called John Joeckel of the USCG office in Cincinnati, who had Lt. Christina Jones (513) 912-9033 ext. 2106 return our call. She advised that the report had just been sent to the parent office for review and **advised us to check back periodically.** On September 4, 2013, Lt. Jones confirmed the investigation had been completed and the report was still in review process at the parent command, but that she would email them a reminder that the family was anxiously awaiting the report. More recent inquiries failed to elicit production of any report and **the USCG website shows no report.**

I would note that several USCG investigators appeared at the scene of the incident to interview witnesses. During our own investigation, **we can find no evidence of additional investigation by the USCG into this incident.**

According to documents we obtained from C&B Marine in the civil litigation, the USCG officers present at the scene were Brian Seaman, Mark Nemick, and Justin Hoffer. See documents AC-073 and 044, attached. A business card identifies Chief Petty Officer Brian M. Seaman of the USCG Marine Safety Detachment Cincinnati. An email discovered from C&B Marine shows that the company's USCG 2692 form was submitted to Rob Reinhart at Joseph.R.Reinhart@uscg.mil on December 23, 2011 (See documents AC-063- 065, attached).

C&B Marine's investigation was conducted by company officers Andy Cannava and Craig Burrus. These are not independent investigators, nor are they USCG officers. Documents we obtained from C&B Marine regarding its internal investigation identified the following direct and contributing causes of the incident: "New captain (Willie Terrell), new winch operator (Pam Adams of Carmeuse Lime & Stone), and new deckhand (Chris Mink) to the operation, cable (was secured) on corner of cover top, and deckhand in pinch zone." See document AC-018. C&B Marine also noted that the **winch cables were usually secured to padeyes of the barge covers, but the system was broken and the pull wire was instead secured to the right side corner of the cover, creating an unseen pinch point.** See Document AC-074. However, it appears that none of this incriminating information was ever conveyed by C&B Marine to the USCG.

There is no justification for the continued delay by the USCG in issuing a report that, objectively, would confirm the culpability of C&B Marine, and of its business partner, Carmeuse Lime and Stone. Our investigation evidences these conclusions. **USCG's final report may not even be admissible in the civil litigation, which merely seeks economic compensation for the damages sustained by Chris' young daughter. Accordingly, we have no financial incentive to seek this report. Rather, we merely seek to facilitate the prompt and thorough investigation and reporting function mandated to USCG so that it may take appropriate enforcement action** against the responsible corporate parties, issue adequate penalties, issue adequate remediation, and reduce the risk of recurrence, thereby improving the safety of all maritime workers. Please advise if we can be of further assistance.

Sincerely, s/ Nelson G. Wolff

Enclosures

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August 25, 2014

VIA EXPRESS MAIL & ELECTRONIC MAIL

Mr. Richard A. Block, Secretary  
National Mariners Association  
124 North Van Avenue  
Houma, LA 70363-5895  
richardblock@nationalmariners.us

**RE: Death of Deckhand Christopher Mink**

Dear Mr. Block:

I write to bring to your attention, and that of others interested in protecting the rights of injured mariners, the status of the case of Christopher Mink. On December 17, 2011, Chris was killed while working as a deckhand for C&B Marine (formerly known as Greater Cincinnati Marine and Bray Marine) on the *M/V Anna C* on the Ohio River near Butler, Kentucky. The incident occurred at a mining load-out facility operated by Carmeuse Lime and Stone, Inc. After the barge was loaded and the Carmeuse load out operator closed the barge's cover with a winch operated cable, the towboat pilot instructed Chris to go from the towboat to the barge to disconnect the cable, which had been slackened. Without warning, the cable tightened when the Carmeuse employee tightened the winch and/or the towboat bumped the barge, pinning Chris between the barge combing and the steel cable, crushing him to death. He was only 28 years old. He is survived by his young daughter.

The Coast Guard was promptly notified of the incident, inspected the equipment/scene, and interviewed witnesses and others with knowledge of the circumstances. On behalf of his family, we promptly issued a request for the USCG investigation report under the Freedom of Information Act. The request was repeated several more times over the ensuing two years, without any substantive response. Consequently, Chris' family retained me to investigate on its behalf and to fight for compensation for his daughter. We filed a civil action in the United States District Court for the Eastern District of Kentucky, under the Jones Act and general maritime laws against C & B Marine and the mining company (Estate of Christopher Mink, Cause No. 2:12-cv-51-DLB-CJS). We took numerous depositions of company employees and officials, secured expert testimony, and reviewed thousands of pages of documents. The evidence, in our opinion, demonstrated more than just an unfortunate "accident." Rather, it showed liability at the corporate level.



C&B knowingly assigned Chris to perform work that he had never done at this facility, with a shore based manager who was filling in as a relief pilot on a job with which he was unfamiliar. The towboat mate was experienced at this job but failed to properly instruct and supervise Chris, or advise the mine that the crew was inexperienced. C&B admitted to hooking the cable to an improper location on the cover, which created a pinch point that would have been avoided had the cable been connected to the center of the cover. Its radio procedures allowed miscommunication with the Carmeuse winch operator, who admitted to tightening the cable when Chris was still attempting to release it. She reported that she did this in response to the mate's radioing her to do so. The mate denied this specific order, but acknowledged that he did have radio communication with the mine employee right before the incident. Investigation also revealed that the towboat was defective. One engine was broken, which explained why it attempted to face the barge from an upriver position, contrary to safe maritime practice. This positioning increased the potential for bumping the barge and suddenly tightening the cable while Chris was attempting to disconnect it. Moreover, the mate failed to secure the cable to the center padeye of the cover, which would have eliminated the pinch point. He contended that the cable was tangled and could not be extended past the dagger pin box at the corner of the cover. Time considerations for this Saturday overtime work may explain why the mate did not simply unwind the cable and secure it to the proper location or to warn Chris that it was defective. The loss of situational awareness of the C&B crew could also most logically be explained by management's decision to work the crew over 60 hours during that week.

Our investigation identified additional evidence that Carmeuse failed to adequately train and supervise its load out operator, who was working without supervision for the very first time, reportedly because her supervisor was out Christmas shopping. Carmeuse admitted that the cable should not have been tightened while Chris was still attempting to disconnect it from the barge cover, yet it failed to implement adequate safety procedures to assure that towboat crew members were protected from incidents such as this.

Trial was set for July 14, 2014. Although we completed our investigation earlier this year, we still had not received any information from the Coast Guard. By letter dated March 4, 2014, we asked the National Mariners Association to address the delayed reporting issue with TSAC. On May 23, we first learned that the Coast Guard had recently issued its final report, although it failed to send a copy to us or to Chris' family. We first learned of the report when the maritime employer produced it during a court ordered mediation of our case. How and why the report was produced to C&B Marine but not to us was never explained by the Coast Guard. And, while the report was thorough, the 2 year delay in its release seems excessive. More curious is that the report is dated April 25, 2013 yet it was not "finalized" or approved until over one year later when it was first released! The sequence of these events suggests collusion between the barge company and the Coast Guard as C&B Marine attempted to use the report's assignment of fault to Chris as leverage to force a \$300,000 settlement at the mediation. This amount was similar to C&B Marine's valuation of the vessel in the Complaint it filed to limit its liability under the ancient doctrine of Limitation of Liability. We fought this claim and successfully dissolved a restraining order, which initially barred our compensation claim.

The federal maritime and Jones Act laws limit compensation in death cases to the value of pain experienced by the worker before death and the amount of financial support he would have provided to his child. Here, one medical expert estimated the period of pain and suffering to be about 15 seconds, significantly limiting the amount of compensation available. As to the financial support component, Chris was paying child support in the sum of about \$350/month or less than \$5,000/year. An economist estimated that the highest amount of contributions payable until the child became an adult totaled about \$300,000. Yet, the intangible aspects of the claim convinced us that the case had far greater value and we prepared for trial, despite defendants' claim that Chris was at fault and the recovery must be diminished in accordance therewith, as the law requires.

About one month after the unsuccessful mediation, as the trial date neared, defendants finally agreed to pay \$1.6 million to settle the case out of court. Although no amount can ever fully compensate for the loss of a loving father, as Chris was, this sum will provide financial security for Chris's daughter and enable her to have the college education he wanted for her. We are grateful to have been able to discover the truth and successfully resolve the case for this family and believe that they will now be better able to find peace from the unnecessary loss of Christopher Mink. We are less optimistic about the Coast Guard recognizing the legitimate need for more prompt reporting on these significant incidents and tremendously disappointed that it failed to impose financial penalties on either company responsible for this death. Such a posture sadly reinforces the corporate notion that employee injuries and deaths are merely a cost of doing business in an industry that too often places profits over safety.

Very truly yours,



Nelson G. Wolff  
NGW:jlg

Enclosures:

1. USCG Report (via Express Mail only due to size)
2. Last known photo of Chris Mink and his daughter (via email and Express Mail)