

# GCMA NEWS

The Voice for Mariners

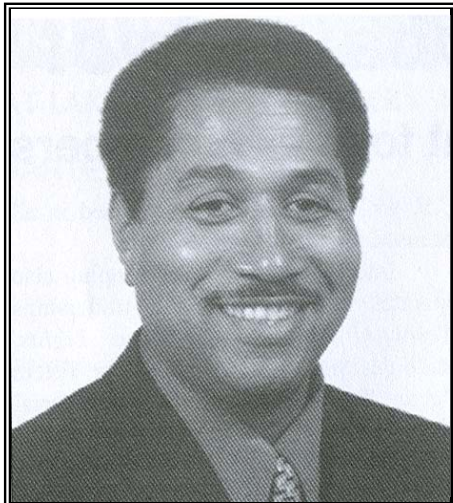


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### GCMA FRIEND AND MENTOR: CHIEF ENGINEER LEROY C. TANNER DEAD AT 54

#### Leroy Tanner

GCMA members who have been with our Association from its earliest days in April 1999 will long remember our friend Leroy Tanner.

Each of the four unions that established GCMA as an independent association of mariners had the opportunity of working with Leroy to build our organization. Leroy was on loan to us from the American Maritime Officers and participated in every activity involving building our membership and training our members to stand on their own feet for the things we believe in.

Leroy was a self-made man who, as a youngster in Harlem literally picked himself up by his bootstraps and made something of himself. The union was his life. He followed the examples of his union leaders and became a tireless leader himself.

As a steam engineer, he worked on the largest American-flag vessels afloat. Yet,

when he stepped aboard the small diesel tug we used in the GCMA membership campaign, Leroy immediately went into the engineroom, familiarized himself with the main engine, generator, hydraulic steering, bilge pumping systems and checked it out methodically and thoroughly before shooting the air to the starter. He remained there until everything was up, running and warmed up for the trip and returned to check it out every 20 minutes. He talked the talk and walked the walk.

Leroy adopted all the latest technology. He was a whiz on the computer and was constantly engaged in stimulating his mind by undertaking new challenges.

Leroy was driven by his interest in sharing the benefits he had gained during his lifetime association with the labor movement with our "lower-level" mariners. He believed that the unions had a great deal to offer our "lower-level" mariners if they would join together in solidarity. Most of all, Leroy offered our mariners a hope for a better life. It was not a life without challenges because Leroy was motivated by challenges.

Leroy had a life outside the months he spent with us. This is revealed in an article taken from the July edition of the American Maritime Officer printed below.

#### AMO National Assistant Vice President At Large Leroy C. Tanner 54

Leroy C. Tanner, national at-large assistant vice president of American Maritime Officers since January 2002, died of cancer at a Fort Lauderdale Hospice June 8. He was 54.

Tanner, who went to sea from the Port of New York as a member of the Seafarers International Union in 1971, earned his third assistant engineer's license and joined AMO – then District 2 MEBA-AMO – in July 1985. He upgraded his license steadily, receiving his chief engineer's ticket in March 1990.

In 1998, Tanner came ashore as a national AMO representative and later was

appointed to the AMO national executive board. He was elected by the AMO membership as a national assistant vice president at-large in a union-wide vote that began in October 2001 and ended in December 2001.

"Leroy Tanner put his heart and soul into our union," said AMO National President Michael R. McKay. "He wanted nothing more than to help AMO members and their families, and he did so with energy and passion, even as he fought cancer courageously in the last few years of his young life."

McKay continued: "Leroy saw his seagoing career as an opportunity, and he sought to give that opportunity to others. He has genuine respect, affection and admiration not only for SIU and AMO members, but also for every man and woman living and working at sea in the American merchant marine. We will miss him – everyone who knew Leroy personally understands what a great loss this is."

Longtime friends and fellow AMO members Frederick Reyes and Richard LeClaire eulogized Tanner at separate memorial services.

"I met Leroy in 1973," Reyes recalled June 11 during a Fort Lauderdale remembrance. "We were both from New York—Leroy was from Harlem, and I grew up in the South Bronx. We met in the SIU hall in Brooklyn. We were both in our early 20s. We were both handsome and tough. We were both determined to make a better life for ourselves and our children."

Drawing a laugh, Reyes said he had been cautioned to "tell no sea stories," so he spoke from somewhere deep inside about his friend.

"Leroy was a strong man, in heart and character," Reyes said. "Leroy and I had the opportunity to learn from two great labor unionists – Mr. Paul Hall, leader of SIU, and Mr. Ray McKay, founder of what is now AMO. We were taught what 'solidarity' was. Leroy saw it very clear, and he knew what he had to do – Leroy worked diligently for the greater good. He would help anyone."

Reyes concluded: "I feel honored that I can call another great union leader my friend. And that great man was Leroy Tanner."

Two days later, LeClaire spoke in Appomattox, Va., where Tanner was buried.

"We became friends through our work as labor

organizers," LeClaire said. "For two years, we practically lived out of the trunk of a car, sometimes traveling 500 or 600 miles a day. Working 18-hour days, Sunday through Saturday was the norm.

"You learn a lot about each other under those circumstances," LeClaire continued. "I learned how much 'Lee' loved his family – his wife, children and grandchildren. I learned how much he loved and respected his grandmother for the values she instilled in him, the same values he carried in his life and called on in his work. I learned how hard Leroy had to work to become a skilled sailor and chief engineer.

LeClaire remembered Tanner as "a leader" who, as a union official, "led by example – hard work and fairness."

He also praised Tanner for persistence under often difficult circumstances. "Once he established a goal, he never quit until it was achieved," LeClaire said. "Leroy was a fighter – I know this because I was beside him for a lot of those fights."

LeClaire added: "Leroy was a compassionate man whose word was his bond. He was always ready to go the extra mile to help a shipmate. Leroy touched many peoples' lives in a positive way.

"I learned a lot from and about Leroy Tanner over those miles we traveled. I know I will dearly miss Leroy's counsel and friendship.

"While reflecting on our years of friendship and what I could say here today about my friend, I thought about where Lee will be and how he will continue to touch the souls of others. I thought of St. Peter and remembered that he was a fisherman, which makes him a sailor. Lee was a merchant mariner, which makes him a sailor also. So it would not surprise me if Lee and St. Peter were in heaven swapping sea stories right now. Knowing Lee, he's up there trying to organize something."

Leroy Curtis Tanner is survived by his wife Angelina-Seals Tanner, his mother Edith Tanner Pless, his son, Leroy Casey, his daughters Kim Casey and Chantay Tanner, three sisters, three brothers and two grandchildren.

### NEW STATISTICS SHOW THE ADVANTAGE OF UNION MEMBERSHIP

Looking at the newest figures from the Bureau of Labor Statistics (BLS), it's easy to see why most workers say they would join a union if they could find a way to do it. When it comes to wages and benefits, the "union advantage" continues to increase during this time of massive shifts in the economy and out-of-control health care costs.

Here are some of the latest findings, based on a BLS survey of 4,703 private sector business establishments, representing some 102.3 million workers:

- "An overwhelming 89 percent of union workers have access to employer-provided medical benefits, compared with 67 percent of nonunion workers. Employers pay 83 percent of the cost of health benefits for family coverage for union workers, but only 67 percent of the costs for

nonunion workers. Employers pay all costs for 43 percent of union workers, but only 21 percent of nonunion workers have coverage that is fully paid by their employer. "

- Union workers who contribute to the cost of health care pay far less (\$56.53 a month on average for individual coverage; \$195.12 monthly for family coverage) than their nonunion counterparts, who pay \$68.98 per month, or \$273.51 for a family. Nonunion workers are paying an average \$1,052.64 per year more for family coverage today than they were in 2000.
- "Traditional defined-benefit pension plans have become a union only benefit, for the most part. Only 21 percent of all workers are covered by such plans, and only 10 percent of all private sector establishments offer the plan. But 70 percent of union workers are covered by defined-benefit plans, while only 16 percent of non-union workers are covered.
- "Thanks mostly to rising health costs, total compensation costs increased 5.8 percent for union workers, compared with 3.4 percent for nonunion.

## A TOWING INDUSTRY TRAGEDY: DEATH OF A YOUNG DECKHAND



**The Hulen Family**

*[<sup>(1)</sup>Ed Note: GCMA redacted the names of individuals directly involved in this terrible tragedy since responsibility for the death of deckhand Joseph Hulen was that of company management and not the crewmembers. The lessons the crewmembers learned from this tragedy were learned "first hand." If mistakes were made, their burden will be to live with them. However, we believe our mariners and others can learn from the attorneys and forensic experts who commented on this accident and to whom we are indebted as well as to Mr. and Mrs. William Hulen who contacted our Association.]*

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

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

### **Joe Hulen's Hopes and Dreams**

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

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

This case arises from the death of Joseph Hulen, who was working as a deckhand for American Commercial Barge Lines (ACBL) on its towboat the M/V WALLY ROLLER when he died in an accident on November 2, 2002. Joe was only eighteen years old at the time of his death and is survived by his mother Lisa and father Bill. The same company, ACBL employed Bill for a number of years as a Chief Engineer on a different vessel. Joe, who had just graduated from High

School, hoped to follow in his father's footsteps as an engineer. His Mom and Dad told GCMA how much he loved working on the towboats and that after only a few trips he announced to them that towboating was a career he wanted to excel in. At the time of his death, Joe had worked for ACBL for only a few months as a deckhand trainee.

### **An Outline of the Accident**

The incident occurred on the Ohio River, between the States of Illinois and Kentucky. The towboat and its crew had "touched up," but did not tie off to a fleet of 15 barges.

Just before the accident, Joe was standing on the towboat as it approached a barge on which the other deckhand, ■■■<sup>(1)</sup> was standing. As Joe was attempting to pass a 150-foot coiled lock line from the starboard bow of the boat to the other deckhand on the barge, the towboat slowly drifted away from the barge at the stern allowing a gap to form between it and the barge.

After a failed initial attempt to transfer the line to the barge, it got tangled up between the crewmembers and Joe fell into the river. Joe struggled to escape the closing gap between the boat and barge but, due to his body weight and the weight of his equipment, he was unsuccessful. Attempts by the other deckhand to pull him onto the barge were also unsuccessful. In his attempt to help Joe out of the water, the other deckhand failed to alert the Master of the towboat of his plight by radio.

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

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

### **The Coast Guard Investigation and Report**

The Coast Guard reached three conclusions:

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

Bill Hulen sadly pointed to these three sensible conclusions.

He pointed out that they were advisory in nature and that the Coast Guard showed no further interest in taking steps to require ACBL to change existing practices. Despite these obvious safety violations, the Coast Guard did not fine ACBL.

GCMA often requests USCG accident reports under the Freedom of Information Act. While these reports may be useful for a number of reasons, our mariners must understand that 46 U.S. Code §6308 states in part that "...no part of a report of a marine casualty investigation ... including findings of fact, opinions, recommendations, deliberations, or conclusions, shall be admissible as evidence or subject to discovery in any civil...proceedings. In other words, the Coast Guard can investigate the accident for its own purposes – but mariners or other parties at interest will have to conduct their own investigations and hire attorneys and take the case to court if they want to learn facts and causes of injuries and deaths. It is easy to understand why many mariners view the accident investigation process as a sham – especially the required accident report form CG-2692 that mocks the reporting process.

GCMA often points to a report commissioned by the USCG Research and Development Center in 1994 titled U.S. Coast Guard Marine Casualty Investigation and Reporting: Analysis and Recommendations for Improvement that really gets to the heart of the problem about accident investigations.<sup>(1)</sup> [<sup>(1)</sup>CG-D-13-95, GCMA File #A-634A]

### **Legal Challenges to Proving the Case**

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

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

The Hulens were referred to St. Louis Maritime Attorney Nelson G. Wolff who had successfully represented the family of another ACBL employee who suffered a work-related death.<sup>(1)</sup> [<sup>(1)</sup>Refer to GCMA Report #R-412, Towboat Engineer's Death Points to Need for Changes in the Law.]

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

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

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

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

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

### **Unimaginable Crushing Pain**

GCMA Report #R-351, How Safe Is The Towing Industry? is a reprint of a USCG document that provides useful statistics on the dangers inherent in the towing industry as measured by industry fatalities. This document contains statistics that should jolt many "green" deckhands who consider a career in the towing industry. So, too, should the AWO/USCG Joint Quality Action Team report on deck crew safety in the inland towing industry released on Dec 30, 1996<sup>(1)</sup> But, these reports are just statistics. Here is a sample of the pain resulting from the most minor misstep. [<sup>(1)</sup> USCG, *G-MOA-1. Capt. Scott Cooper, USCG GCMA File A-424.*]

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

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

### **Anguish of Joe's Family**

Lisa Hulen first heard of GCMA almost two years after the accident. In her call, that best can be described as distraught, she and her husband simply could not understand why nobody appeared interested or concerned about what happened to their oldest son. It was obvious that she and her husband Bill needed the services of a good admiralty lawyer.

At that point, I determined that they had hired an attorney, Nelson G. Wolff, Esq. of Schlicker, Bogard & Denton of St. Louis, whose success in handling difficult cases has been chronicled by GCMA on several previous occasions. The concern both Lisa and Bill spoke about was not collecting money for their son's death. Their concern from day one was to discover the cause of their son's death in order to raise awareness of how both the industry and the Coast Guard were

treating Joe's death as if it were "business as usual." Bill had a unique view from his inside position as an Engineer for the same company that their attitude was "deckhands are expendable commodities."

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

### Grieving for Joe Was Only Half of Bill's Burden

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

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

As a direct result of GCMA's discussion of the Chad Hamby accident with Bill Hulén, Captain Larry P. Gwin and Captain David C. Whitehurst on our Board of Directors helped to prepare GCMA Recommendation #77 in GCMA Report #R-276. This is a detailed proposal that seeks to require "Rescue Boat & Training" for all crewmembers who serve on inland towing vessels because knowledge of small boats has been taken for granted for many years. In fact, this is the second fatality we reviewed in detail in the past year.<sup>(1)</sup> We furnished this significant recommendation to the Coast Guard for consideration in the Towing Vessel Inspection rulemaking package. Unfortunately, to date, the TSAC Working Group composed mostly of AWO member companies appears to have ignored both the problem and GCMA's proposed solution. [<sup>(1)</sup>Refer to GCMA file #M-547, USCG MISLE Activity #1732894. The story appears in GCMA Newsletter #30, May 2005, pages 9-13.]

### Company Blames Joe for His Own Death

Facing a possible lawsuit, the ACBL lawyers closed ranks and asserted that Joe Hulén had negligently caused his own death. Interestingly, they apparently failed to inform their own Director of Safety and Training of this who, stated in a

Deposition: "No, I wasn't aware of that part of it, no."<sup>(1)</sup> "Given the facts as – that I have reviewed them, I don't know if young Joe really did do anything wrong." [<sup>(1)</sup> Andrew Cannava, Deposition, Oct. 27, 2004, p.49, 50.]

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

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

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

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

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

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

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

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

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

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

### The Other Side of the Story

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

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

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

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

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

The company allowed certain “recognized hazards” (cited below) to exist on their workboats. Control and reduction of these recognized hazards was the duty of the owners and ship’s officers rather than an apprentice deckhand just learning the trade.

- **Trainee or “probationary” deckhand.** Joe Hulen (who was only on his third trip) was considered (and paid) as a trainee. He was paired with a “more experienced” deckhand ■■■ (who was only on his fifth trip).
- **No USCG certification.** Since the Coast Guard does not require certificated and tested “Able Seamen” on western rivers towboats, there is no “third-party” competency certification of “deckhands.” The company alone determines and assumes responsibility for rating an

“experienced” or “supervisory capable” deckhand.

- **Placement of barge in tow.** The Captain allowed the box barge (i.e., the barge involved in the accident) to be returned to and inserted in the tow “backwards” with its lock line on the wrong end of the tow. As a result, this bulky line, weighing 100 lbs., had to be moved 200 feet to the other end of the barge. It was during this move that the fatal accident occurred.
- **Failed to secure towboat to barge before passing the line.** This simple action would have taken less than a minute. This allowed the towboat to drift away from the barge as Joe attempted to pass 100 lbs. of line across the gap. The load was too heavy and the gap shouldn’t have been there. This was an unsafe and unnecessary hazard.
- **Alternate methods of line-handling were available** but were not used. The entire evolution was not adequately supervised by the mate, ■■■, who was in the general area at the time of the accident.
- **Deckhands’ errors.** Deckhand ■■■ did not keep a careful lookout for dangerous conditions and failed to notify the Captain by radio that the towboat was slowly drifting away from the barge. Although there was a delay while Joe made a second attempt to pass a smaller length of line across the gap, ■■■ did not keep a lookout for the gap or tell the captain of this delay.
- **Supervisory error.** Although ■■■ testified that Joe may have turned his back to the water while preparing to pass the line across the gap, he did not testify that he ever admonished Joe (his trainee) that this was an “unsafe practice.”
- **Violated company “man overboard” procedure.** Page 60 of ACBL’s deckhand training guide called for ■■■ to contact the pilothouse immediately by radio twice to alert the Captain of the situation. Only then should he have attempted rescuing Joe Hulen. As soon as he dropped to the deck with one hand holding the barge coaming and one hand outstretched to Joe, he deprived himself of the ability to use the “push-to-talk” button on his hand-held radio. Given his deposition testimony under oath, there would have been ample time for the Captain to control the boat to protect Joe in the water.
- **Shouting and yelling was futile.** ■■■’s attempts to alert the Captain or others by yelling were inadequate. This may have been a result of inadequate and ineffective training by ACBL and panic that resulted from the situation and training inadequacy. Common sense and minimal experience on a towboat this size should demonstrate that the pilothouse can be a noisy place with all sounds from radios and other sources competing for attention.
- **Inadequate supervision by the mate.** ■■■ failed to conduct any job safety briefing as set forth in ACBL’s “Job Briefing” guide.
- **Mate was not present as a lookout for the line transfer task.** The line transfer was taking place in a blind spot relative to the pilothouse. Since ■■■ and Joe Hulen were both fully engaged in passing this bulky line from boat to barge, the mate should have been on the spot to coordinate with the Captain.

- **The Captain failed to maintain control of the boat.** He did not keep the boat against the barge until the line transfer was safely completed.
- **The Captain allowed the transfer to take place in a blind spot where he could not observe the activity.** He did not call for the mate to serve as his lookout during the transfer. He failed to question the delay in making a transfer that he later testified should only have taken 1 to 2 seconds.
- **The Captain's response to finally being alerted to an unusual situation was unsafe and improper.** He testified in his deposition that one minute or so before he received an intercom alert from his Chief Engineer, he heard ■■■■ yelling that indicated something was wrong. At that point, he should have communicated with the crew to assess the situation before bringing the boat back against the barge. Instead, he reacted by closing the gap which is an illogical and inexplicable reaction for an experienced operator to make. [*Ed. Note: This evaluation is tempered by subsequent comments recited below.*]
- **ACBL improperly allowed ■■■■ to supervise and train Joe Hulén.** ■■■■ only had served as a deckhand for 5 to six trips according to the Safety and Training Director's testimony. His training should have been left to a more experienced deckhand.
- **ACBL is responsible for work practices that likely allowed fatigue to contribute to the incident.** The Captain had been allowed to work on the boat for almost 60 consecutive days while ■■■■ had worked over 30 consecutive days. Although licensed officers are limited by law to 12-hour workdays, no such limitations apply to either deckhands like ■■■■ or non-navigating mates like ■■■■. In fact, the AWO's Responsible Carrier Program has institutionalized the industry's use of a 15-hour day in spite of years of protest from GCMA and other mariner organizations. In fact, in 2000 GCMA published the book Mariners Speak Out on Violation of the 12-Hour Work Day containing over 50 letters from mariners exposing abuses of work hours. GCMA distributed several hundred copies to the Coast Guard, Congress, and to national and international labor organizations.
- **Joe Hulén was assigned to the "call watch" at the time of the accident.** This meant that his workday was subject to irregular breaks instead of the standard routine of 6 hours on duty followed by 6 hours off duty around the clock. The call watch, in addition to the 15-hour workday in this industry is a real travesty whose scope was revealed to the public in GCMA Report #R-375, Crew Endurance: overboard between two moving vessels. But, as demonstrated in the body of this report this fall was not a simple act of carelessness or inattention.  
Joe Hulén died because he was overburdened by an awkward load, his superiors were inattentive to the evolving hazard forming next to him as a gap between the vessels widened.  
His superiors deviated from standard procedure and it is highly likely that these deviations and inattentions were at least in part the result of fatigue. Fatigue in this case was induced by work practices imposed by management. The work method chosen that failed to wait for a secured closure of the two vessels responded to economic pressures of operational tempo that was described in the body of this report and an admitted absence of relevant management policy.

The Call-Watch Cover-up and in GCMA Report # R-401, Crew Endurance and the Towing Vessel Engineer – A Direct Appeal to Congress. We hope that Congress will respond to these appeals to remedy abuses as pervasive in the 21<sup>st</sup> century as those revealed by Richard Henry Dana in Two Years Before the Mast in the 19<sup>th</sup> century.

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

### The Expert's Summary

Maritime expert Captain Jay Disler developed the following professional opinions:

The case under examination presents the needless and preventable death of a young man seeking a maritime career. The immediate and obvious cause of death was a fall

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

Without the introduction of new technologies, it is unsafe to attempt serious reductions in deadhead time while simultaneously reducing crew size, increasing crew working hours, and increasing tow size. All of these cost-saving and profit enhancement measures taken without consideration of this effect on each other have, and continue, to drastically diminish safety margins on the inland navigational system.

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

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

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

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

#### **A Message to Mariners From Nelson G. Wolff, Esq.**

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

#### **GCMA PETITIONS CONGRESS TO REVAMP TOWING SAFETY ADVISORY COMMITTEE**

On August 1, 2005 GCMA formally petitioned Congress to make several important changes. We asked that Congress revise 33 U.S. Code §1231a, Towing Safety Advisory Committee to expand or adjust membership on this Federal advisory committee to include:

- One active licensed inland towboat Master or Pilot with broad experience on the Western Rivers and Gulf Intracoastal Waterway.
- One active licensed offshore tugboat Master,
- One active licensed ship docking or harbor tugboat master,
- One experienced licensed or unlicensed tugboat or towboat engineer with significant formal training and experience.<sup>(1)</sup>

<sup>(1)</sup>Refer to GCMA Report #R-401, Revision 1, Crew Endurance and the Towing Vessel Engineer: A Direct Appeal to Congress.

We further request that each of these individuals selected by the Coast Guard to serve on this advisory committee be allowed to have his/her position represented by an alternate of his/her choice with comparable experience in case he/she is unable to attend any given committee meeting.

We further requested that the Coast Guard be directed to fund these positions for travel and per diem when attending announced TSAC meetings.

A personal letter sent to approximately 40 Members of Congress in both the House and Senate and accompanied by GCMA Report #R-417 that describes our complaints on the way this Congressionally-chartered advisory committee has operated for a number of years.

At present, there are no "working mariners" represented on

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

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

St. Louis 314/621-6115  
Toll Free: USA 1-800/873-5297

### **Nelson G. Wolff**

Attorney at Law

Schlichter, Bogard & Denton

Maritime Injury Attorneys

100 S. 4<sup>th</sup> St., Suite 900  
St. Louis, MO 63102

this 16-person Federal advisory committee although there are currently three license holders on the committee who hold positions in corporate management.

The majority of towing companies currently represented on TSAC are members of the American Waterways Operators, an industry trade association that has a formal "partnering" agreement with the Coast Guard.

GCMA is not asking for any special treatment for "lower-level" mariners from Congress – just fair and equitable representation on an important committee that advises the Coast Guard. We believe it is only fair that working mariners have a voice in how they are regulated by the Coast Guard and offer their expertise on the jobs they perform on a daily basis.



## SEAMAN SUES FORMER EMPLOYER OVER OUTRAGEOUS WORKING CONDITIONS

Able Seaman Mark A. Blackman, a former employee of Global Industries Offshore, L.L.C. recently filed a Civil Action against his former employer in the U.S. District Court for the Western District of Louisiana.

Although GCMA is not a party to the lawsuit, Mark Blackman kept our office fully informed on each development as it occurred over most of his period of employment with the company extending from 2001 to 2004. Consequently, we are confident that he can document more than adequate grounds for filing his EEOC-authorized lawsuit because he has already supplied this documentation to several government agencies.

Blackman thoroughly documented each step of his egregious treatment along the lines we remind all of our mariners to follow and not wait until the last moment if you know that events you are participating in are either unsafe or even illegal. Where “a picture is worth a thousand words,” Mark has the pictures. In places where there is a question of “who said what,” there are recorded voices to hear. Whether it all comes together in a courtroom remains to be seen.

Employment with this many-faceted company was no picnic for Seaman Blackman, yet his allegations are not “nuisance” matters that such a corporation can dismiss lightly.

Appearing throughout his story are examples of the overt racial discrimination he faced that cost him measurable losses of pay and immeasurable aggravation – and essentially undermined four years of his working life. In talking with his co-workers, as we have done, it is clear that he faced racial discrimination throughout his tenure with Global. Our review of his allegations follows.

### **Sending an Unseaworthy Liftboat to Sea**

Until recently, Global Industries where Mark Blackman worked operated a fleet of older “liftboats.” Liftboats are now “inspected” vessels after coming under Coast Guard inspection around 1990 following a dramatic series of accidents. The vessels he worked on were built before the current OSV inspection statutes applied to these vessels. Consequently, some of the older features of these vessels were “grandfathered” by the new regulations. However, when under inspection, the Coast Guard requires periodic drydocking and inspects the integrity of the hull. Sometimes, problems like rusted out hull plating are not readily apparent.

The company evidently was not happy after Mark filed a complaint against his vessel’s Captain for taking an unseaworthy vessel to sea – specifically on an offshore trip between Port O’Connor, Texas and Cameron, LA that had to be aborted in Freeport, Texas, because of bad weather. This voyage placed all their lives directly at risk because the Captain knew there was a hole in the hull.

GCMA was appalled by this story relayed by cell phone and reported the matter directly to the GCMA-liaison officer at Eighth U.S. Coast Guard District Headquarters in New Orleans. The Coast Guard immediately requested an investigation by marine inspectors from USCG MSU Galveston, TX. Mark Blackman provided supporting photographs along with witness statement in support of his position that the Captain working with his land-based supervisor conspired to jack the liftboat out of the water and

patch the hole in the bottom with “Red Hand,” a plastic compound in violation of inspection statutes.

As a result, the Coast Guard inspectors from MSU Galveston ordered to cut out several sections of the lift boat’s bottom plating before allowing it to proceed on to a shipyard in New Iberia. MSO Morgan City issued the vessel’s Captain a “Letter of Warning” – a punishment we considered far too lenient in light of the fact that the unauthorized repairs apparently were made as part of a conspiracy between the Captain and company management to allow the vessel to continue to operate unsafely until its next scheduled drydocking.

Shortly after signing his well deserved Letter of Warning, the Captain called Blackman on the phone and threatened him – a fact also reported to the Coast Guard with no action being taken. In addition, another crewmember from Global was fired after complaining about harassment by the same captain and complaining about the hole in the bottom of the hull.

### **Living With Abominable Potable Water**

Seaman Mark Blackman, the crew and the numerous offshore workers housed on his liftboat also had to endure abominably poor potable water for drinking, cooking, and bathing while working out in the Gulf of Mexico. Mark also documented the substandard sanitary conditions in the galley to the Coast Guard. After receiving no satisfaction, GCMA submitted GCMA Report #R-395 directly to Congress.

A direct result of GCMA Report #R-395 appeared in §416 of the Coast Guard and Maritime Transportation Act of 2004 titled “Potable Water.” The Coast Guard must now undertake a rulemaking project to address the problem of unsanitary drinking water they succeeded in avoiding for the past 35 years. Consequently, they recently opened regulatory docket #USCG-2005-20052 that we believe may lead to eventual improvement in drinking water quality for all lower-level mariners. This has the potential to improve the health of every lower-level mariner in the future and will happen because Mark and several other mariners stood up and told their story – not just to their friends and buddies but to the people who have the authority to make changes. We commend Mark for his work including photographs submitted in this project.

### **Discrimination in Training**

GCMA believes Global discriminated against Able Seaman Blackman by refusing to send him to attend a marine officers licensing course with money provided by the state grant awarded to the company by the State of Louisiana. We also know that Global discriminated against another African-American employee with five years service with the company, who, in his letter of resignation from the company, stated this as one of the reasons. This experienced seaman turned away from the sea because of this treatment – joining a list of other seaman disgusted with their shabby treatment.

We believe the company will have to provide complete documentation of the grant papers for discovery in the upcoming court case. GCMA is particularly concerned that the Louisiana Department of Labor refused to answer several of our letters inquiring about this grant money. In fact, a letter reporting our problems to Louisiana Governor Kathleen Blanco still remains unanswered.

Global may have further discriminated against him by even refusing to allow him to take the necessary time off work to attend a marine training course at his own expense after he

offered to do in order to advance in his employment within the offshore oil industry. This denied him the potential for earning a Captain's pay. We estimate he may have suffered potential losses from this difference in pay at the rate of \$130 per day for 2 years.

GCMA hears constantly of the unfilled demand for lower-level licensed mariners that is projected to increase in the future. There are personnel shortages that already exist in the industry. The state of Louisiana provides training at several vocational schools for just this reason. Mark Blackman is a mature and literate individual that clearly could profit from this training and advance within the industry if given the opportunity to do so.

We are particularly concerned that the Louisiana Department of Labor may not be administering the grant money handed out in the millions of dollars to large corporate interests in this state in a non-discriminatory manner.

### **Allegations of Asbestos Hazards Abuse Affected Mariners and Shipyard Workers**

Seaman Blackman reported that his health, the health of other crewmembers working with him, as well as the health of contract shipyard workers was put in danger when they were given the job of remove asbestos from an old liftboat that was being made ready for sale to a potential buyer. However, the vessel's Captain and Mate omitted any mention of the fact that material containing asbestos was removed from the vessel – thereby falsifying the vessel's log by omission.

Mark is not qualified by experience or training to make asbestos removals. He knows this because he has studied the applicable regulations GCMA furnished him. The type of work he and other seamen were forced to do violated many of the standards set out in Coast Guard and Navigation and Vessel Inspection Circular 6-87, Commandant Notice 6260 (27 Feb 1996), as well as in applicable OSHA Regulations at 29 CFR 1915.0001.

GCMA reported this matter of asbestos exposure to both the Coast Guard and OSHA on Mark's behalf and received little in the way of support from either agency.

According to the Chief, Inspection Department, MSO Morgan City in a reply to GCMA on October 12, 2004: "The Coast Guard has developed a Memorandum of Understanding (MOU) with OSHA regarding the enforcement of occupational safety regulations for seamen who worked onboard inspected vessels. This MOU became effective March 3, 1983, and it establishes the Coast Guard as the lead in the enforcement federal agency affecting the safety and health of seamen aboard inspected vessels."

While the Coast Guard diligently protects its own personnel, GCMA opines that they show less diligence and concern for protecting lower-level mariners.

We continue to press both the Coast Guard and Congress on the issue of "asbestos removal" issues in GCMA Report #R-276, Rev. 9, Item #55 – although this matter clearly touches all older vessels with asbestos lagging, asbestos fireproofing material, or asbestos floor tile.<sup>(1)</sup> The photographs and audiotapes he collected will help to support his position on this matter. [<sup>(1)</sup>File GCM-102.]

Global reportedly retaliated against Seaman Blackman by refusing to authorize a company doctor to perform a basic asbestos screening test after he requested such a test in writing after illegal exposure to large quantities of asbestos dust on

the old liftboats the company succeeded in selling to Hercules Offshore for a figure in excess of \$50,000,000.

GCMA believe Mark's treatment by his employer during this renovation aimed at disposing of its superannuated liftboat fleet was an example of unmitigated stupidity moved by greed on the part of corporate management. We believe his fears of future lung problems have a basis in fact. In addition, Mark had a close relative who passed away from asbestosis. Consequently, Mark knows more about the problem than most of our mariners. GCMA believes that Mark deserved the medical testing and subsequent monitoring that he requested.

### **Assigning Seamen to Prolonged Shipyard Duty**

It is clear that Global wanted to get rid of Mark Blackman while Mark determined not to give them any cause to terminate him.

Although Mark signed on as an Able Seaman, his company retaliated against him by removing him from his assigned vessel and re-assigning him to work in the shipyard for a long time.

In a position as a mariner, GCMA discovered he was not protected by the same rules that OSHA invokes to protect shipyard worker under 29 CFR Part 1915. For example, OSHA only expressed concern with protecting shipyard workers against asbestosis. The Coast Guard wrote us a letter but, to the best of our knowledge, never conducted an inspection of the specific renovation underway in the shipyard looking for asbestos rule violations. Consequently, GCMA determined that Mark was not protected adequately either by USCG regulations or by OSHA regulations.

GCMA encountered similar questions in other cases and urges the Coast Guard and OSHA to address this particular problem. Many mariners are required to spend days and weeks living and sleeping amidst the filth and debris of construction and renovation in progress on board their vessel while it is a shipyard – often without access to running water or air conditioning. Serious problems also exist where crewmembers must sleep in poorly ventilated quarters after recent painting or when tank-coatings are applied on board the vessel during the day.

During his time in the shipyard, Mark Blackman was required to work in confined spaces and engine rooms without proper gear to protect him from dangerous chemicals, arc-welding smoke, cutting-torch smoke, to say nothing of asbestos dust and fibers. Photographs that may be unremarkable to most lower-level mariners may attract attention by a judge and jury, to support Mark's contentions.

To round out the asbestos incident, Blackman stated that Global placed him on paid leave of absence and then terminated him after a company doctor detected blood in his urine shortly after his reported exposure to asbestos.

### **Company Failed to Enforce its Workplace Policies**

Global was unhappy with Mark for coming forward and voicing complaints about crewmembers and the countless "persons in addition to the crew" housed on the vessel who smoked inside the vessel, in clear violation of company policy.

Mariners understand that they must abide by company policies. In cases of "Misconduct" in 46 CFR §5.27, the Coast Guard considers company policies as "...some formal,

duly established rule. Such rules are found in, among other places, ...a ship's regulation or order." Therefore, in Suspension and Revocation hearings, such rules are enforceable – and we have seen them enforced by an Administrative Law Judge.

Since the heating and air conditioning system re-circulates "second-hand smoke" (a known health hazard), Mark was correct in reporting these "smoking" violations to his company as a good employee.

After making these reports, Mark had to endure weeks on the job while his company officials failed to enforce their own company rules on their vessel. This demonstrates that company had no serious intention of enforcing its own workplace standards. If such standards are only "selectively" enforced, this gives rise to the question of why should any mariner be held to obey any of such standards. Clearly, this was a failure of corporate management to adequately supervise the conduct of their employees and effectively inform the charterers of their vessels. [Refer to GCMA Report #R- R-341, Rev. 2., Smoking and Your Health Afloat.]

### Work-Hour Abuse

Mark reported that his employer retaliated against him for filing complaints for insufficient manning when Captains on their vessels violated the 12-hour rules by running the boat in excess of 12-hours in a 24-hour period with only one licensed officer on board.

Mark reported that he was threatened for refusing to work past 12 hours under Captain ■■■ and by another Captain who stated "I'll throw you off my boat if you refuse to work past 12 hours."

Although GCMA passed these allegations supported by log entries to the Coast Guard, we continue to vigorously pursue the matter of the wholesale work-hour violations throughout the industry. We first reported this problem to the Eighth District Commander (RADM Paul Pluta) in May 2000 in our book titled Mariners Speak Out on Violation of the 12-Hour Work Day. The Coast Guard stalled us, then delayed, and finally refused to investigate the matter several years ago even though they never succeeded in covering up these abuses.

### Threats

Mark fought to hold on to his position at Global while other employees he worked with simply threw in the towel and quit in disgust. Several employees that we spoke with were angry enough to file actions with the Equal Employment Opportunity Commission (EEOC) – as did Mark. In fact, EEOC finally granted Mark the right to sue his former employer after reviewing his case.

Not every Captain who worked for Global appreciated Mark or the fact that he was often better informed about things they knew little about. One Captain reportedly threatened him by stating: "I'll personally have you locked up." The Captain does not have the authority to imprison any crewmember. Another Captain on the L/B BLUE RUNNER allegedly threatened to put any crewmember in jail if they called the Coast Guard to report anything while they served on his boat. While the statement is patently ridiculous, it was also threatening. Mariners can call the Coast Guard at any time to report anything that they believe is illegal or unsafe.

46 U.S. Code §3315(a) requires a licensed officer to report defects and "assist in the inspection or examination" of his vessel. One Captain reportedly did not choose to report his vessel's defects to a visiting Coast Guard inspector and objected to Mark reminding him of his responsibility.

On one occasion, Mark believes that Global placed his life in jeopardy by failing to protect him against harm from a disgruntled former employee who was allowed to come past a security guard and board a company vessel while the vessel was in the shipyard. The man, possibly armed, came on the vessel and threatened Mark.

Mark also reported being harassed and threatened by another crewmember who pointedly warned him to stop making complaints since he knew of people who filed complaints often "came up missing offshore" and were never found.

### Sexual Harassment

Mark reported that Global retaliated against him for filing a sexual harassment complaint against Captain ■■■. 46 U.S. Code §10104(b) states: "A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of \$5,000. Mark reported the conduct of the Master of his vessel directly to his supervisor who reportedly did nothing. He also reported being retaliated against by Captain ■■■ after filing sexual harassment charges by receiving a decrease in score on his quarterly evaluation reports. Throughout this protracted ordeal, Mark continued to perform his job as a good employee. We believe he should have reported the incident he detailed to us to the Coast Guard under the statute cited above.

### Take Action

Most mariners would part company with an employer under any one of the conditions described in this article. However, Mark Blackman chose to stand his ground and asked for help from the Coast Guard, OSHA, and the EEOC.

While the Coast Guard did take action on our complaint to repair the liftboat with the hole in the bottom, all other federal safeguards to mariners failed him in some degree.

Through Mark Blackman's patience and untiring efforts to have "the system" work on his behalf, GCMA learned many valuable lessons we can pass on to other mariners. The first is that Global holds a well-established place on our list of "Brown List" companies.



## NEWS BRIEFS

### New GCMA Board Member

#### Captain Joe Dady joins GCMA Board of Directors.

Captain Joe Dady, founder of United Mariner whose web pages are linked to the GCMA website, recently joined our Board of Directors. This is an important link in our growing network of "lower-level" mariners.

United Mariner is a voluntary organization active in the New York and mid-Atlantic Coast where it has worked with mariners to try to untangle the unmitigated mess that engulfed the Coast Guard's Regional Exam Center in New York costing mariners time, aggravation, lost wages and lost opportunities. Joe contributed several insightful articles for publication in this newsletter and works actively to assist his fellow mariners.

Captain Dady is a member of ILA Local 333 that represents hundreds of mariners along the East Coast and is active in the affairs of that organization. As a lifetime tugboat Captain, Joe recently applied to the Coast Guard for membership on the Towing Safety Advisory Committee where. There are no mariners currently serving on TSAC that work on the water on a daily basis although three members of management do hold Coast Guard licenses. We see this as a critical shortcoming of TSAC, a federal advisory committee dominated by management and supported by the formal "partnership" between the American Waterways Operators, a powerful Washington lobbying organization, and the Coast Guard.

#### The "Arbitration" Pitfall Our Thanks to Attorney Les Martin

We recently learned that several large corporations on the river and offshore require new employees to sign a legal document in the form of an agreement stating that "I agree that all disputes which I have with my employer must be arbitrated."

Several attorneys we consulted chose not to represent a mariner who had signed such an agreement. One attorney stated: "In arbitration you are not allowed to present your case before a court; rather, you must present your claim

before an arbitrator. I have found that this is not a reliable manner to present a claim."

GCMA is aware that many companies attempt to mislead their employees who are injured or discriminated against in their maritime employment. It appears that "Arbitration" is one of these schemes as far as mariners are concerned.

Attorney Les Martin brought to our attention an important case, *BROWN v. NABORS OFFSHORE CORPORATION*, decided by the U.S. Court of Appeals, Fifth Circuit, on August 6, 2003. In this case, "provision of the Federal Arbitration Act (FAA) **excluded** from its reach "contracts of employment of **seamen**, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

This may be important if one of these signed "arbitration agreements" lurks in your personnel file. Perhaps, it was simply a part of the blizzard of paperwork that you signed when you applied for your job. If so, chances are you would not have been hired if you didn't sign it.

GCMA is not in the business of giving legal advice. However, we do recommend that you consult with an attorney if you are hurt on the job or believe that your rights are violated. Attorney Les Martin has worked hard on behalf of many of our mariners in a number of cases, one of the most noteworthy is described in GCMA Report #R-299, the [M/V SEABULK GEORGIA Accident](#)

If your company made had you sign an "Arbitration Agreement" please let GCMA know about it. If you are injured and your employer pulls this particular rabbit from their hat, we suggest you call Attorney Les Martin who went way out of his way to assist us on this matter.

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#### ENGINEER OUTLINES CHANGES TO IMPROVE WESTERN RIVERS TOWING INDUSTRY

##### Introduction

GCMA received a neatly typed document from **Chief Engineer David Sager** that suggests a number of changes he believes are necessary to ensure the viability of the western rivers towing industry.

Chief Engineer David Sager retired from the U.S. Navy in 1982. During his service, he received two Navy Achievement Medals for his work on shipboard engineering plants and became one of a very few certified navy Diesel Engine Inspectors. He held a Third Assistant Engineer's License before he retired from the navy. After leaving the U.S. Navy he became a towboat engineer on the Mississippi River.

When he retired several years ago, he held an unlimited First Assistant Engineer's License and a Limited Chief Engineer License (Motor) license.

We believe his comments covering several specific topics are particularly revealing of an industry that has no established program to offer formal training to thousands of its vessel engineers as pointed out in GCMA Report #R-401, [Crew Endurance and the Towing Vessel Engineer – A Direct Appeal to Congress](#).

##### U.S. Coast Guard Inspections

Nobody knows a towboat as well as a crewmember that rides it everyday. They are well motivated to see the boat is well maintained. Informed mariners will stand behind reasonable and necessary vessel inspection policies.

Office people should not do vessel inspections; boat people should.

Give the towing companies a reasonable amount of time to bring their boats up to new USCG inspection standards.

Make it easy for a licensed officer or engineer to contact the Coast Guard to report things that are not according to regulations.

I would like to see towboats built to ABS standards in the future. That way boat owners could not get away with some of the safety violations they do today.

It appears that AWO's real objective is to neutralize Coast Guard inspection and stack the deck so they can continue to do "business as usual."

Congress must beef up whistleblower protection for mariners when the companies refuse to fix an unsafe condition on one of their boats. A crewmember must be able to report an unsafe condition to a Coast Guard inspector without job retaliation.

**[GCMA Comment: 46 U.S.Code §2114(b) offers this protection, but the \$1,000 cap on attorney fees needs to be raised a more reasonable figure to make this protection for mariners both meaningful and attainable. GCMA suggests a \$5,000 cap.]**

Barge lines that keep their boats up to par will benefit from vessel inspections. In the past they had to compete with the substandard operators who cut corners on vessel maintenance. USCG inspection will level the playing field.

Instead of fixing it right, many companies try to jury-rig repairs. This "jury-rig mentality" is so ingrained and pervasive that it will be hard to change.

USCG inspection is going to have to come down hard on the habitability of some towboats. The noise and vibration can be unbearable when the boat backs down hard.

Educating crewmembers about the new USCG towing vessel inspection rules will be mariners greatest asset in the future.

I hope that what USCG Inspection will accomplish is to stop the cut rate, jury rig, sledge hammer repairs on towboats – or running these vessels without making necessary repairs at all.

The list of companies participating in the TSAC towing vessel inspection working group shows an absence of representatives from some of the better river barge lines. The group contained representatives from many companies that will have plenty to worry about when towing vessels finally are inspected.

### **Problems With Management**

In the early 1990s the "big take away" of pay and benefits as well as crew size reductions surged ahead at full bore.

Company mergers and buy-outs have hurt crewmembers the most.

Boat companies are run by accountants and not "boat people." These "bean counters" are not mariners. They don't know what life is like out on a towboat. All they see are the dollar signs. They are arrogant and look down their noses at the

common workingman.

Twenty years of being a riverboat Captain, Pilot or Chief Engineer was a prestigious thing at one time. This is no longer true! Many of the most experienced mariners no longer want their children working on the river.

Many companies have vindictive attitudes and take them out of their mariners' pay, and every other way they can. They demand a work force that has minimal rights and protections so that they can exercise absolute power over them. With a much smaller number of large companies, if one company fires you, you are really in a bind to find a job with another company. Mariners need to energize Congress to come down hard on the blackballing issue.

**[GCMA Comment: On Sept. 1, 2003 we wrote to Congressman Billy Tauzin as Chairman of the House Committee on Energy and Commerce seeking an amendment to a provision in the Fair Credit Reporting Act (FCRA) that permits a form of "black listing." We were blown off without the courtesy of a reply. We will try again.]**

As regards crewmember fatigue, barge line management demonstrates it does not intend to change its way of doing business.

Sleep is such a precious commodity on a towboat that I have seen Captains punish crewmembers by depriving them of sleep.

**[GCMA Comment: Refer to GCMA Report #R-375, Crew Endurance: The Call-Watch Cover-up]**

In the wheelhouse, when your six hour shift is over you are done. However, in the engineroom you are on call 24/7.

There had been times when I have had to work 18 to 24 hours without sleep. Congress should enact a law that limits how many hours any licensed or unlicensed engineer is required to work without sleep.

**[GCMA Comment: Refer to GCMA Report #R-412, Towboat Engineer's Death Points to Need for Changes in the Law.]**

Having too much technical knowledge as with a trained towboat engineer is often proved to be a liability. If company management (including Port Captains and Port Engineers) think you know more than they know, they will run you off.

Barge Line management is finally resigned to the fact that for the pay and working condition they are willing to provide they will have problems getting people to work out there.

Most of the new people they get out here today are not good people. Only in recent years have I started to have problems with the deck crew.

Low pay makes it hard to recruit good people. Keeping the pay low forces the deck crew to have to ride over to make a living wage. This particularly speaks to the continuing shortage of good deckhands.

The reason for companies farming-out their towboats to other companies in the past was to facilitate "union busting."

I believe that some companies deliberately try to run people

off so they can go to the government and say, "We can't get Americans to do their work any more and have to be allowed to use immigrant labor."

Because of the family separation aspect of towboating, companies are going to have to overcompensate by providing better pay and better working conditions. When a company runs a 30/15 schedule, a crewmember may ride as many as three boats in one trip. Consequently, driving a rental car or crew van is not something that only happens at the beginning of the trip.

**[GCMA Comment: Refer to GCMA Report #R-398, Crew Van – Death Van that discusses dangerous conditions boat crews in transit often encounter.]**

Crew waiting facilities where they even exist are on a par with a skid row flophouse and, as such are unacceptable.

### **Problems With ACBL Management**

**[GCMA Comment: Chief Sager worked for American Commercial Barge Lines for a number of years. These comments are based upon his experiences. ACBL is a GCMA "Brown-List Company."]**

Towboats must be Coast Guard inspected because companies like ACBL won't keep their boats up on their own.

Many of their vessels operating today are substandard and in deteriorating condition.

ACBL doesn't have any **respect** for the engineers on their boats. Consequently, there are lots of engineers at ACBL that don't care. Many towboat engineers working at ACBL are "shade tree mechanics."

The last relief engineer I had while working for this company was an ace paint and soogee man, but lacked needed skills as a fix-it man. So, he would leave a lot of the repairs for me to do.

I have never seen the wheelhouse personnel work the hours an engineer must to work in case of a breakdown. Management will force them to work 24, 36, 48 hours without sleep. When he is done, he cranks the engine up then collapses in bed dead to the world – and the engine room definitely must operate in "automatic" until the engineer recovers.

**[GCMA Comment: Refer to GCMA Report #R-412. Towboat Engineer's Death Points to Need for Changes in the Law that substantiates this comment.]**

At ACBL "everywhere I looked things were beat, battered, rounded off, stripped-out and cross-threaded."

Heavy concentration of direct exhaust smoke in the engine room is a fact of life in ALCO-powered towboats. Exhaust manifold leaks are impossible to stop on the ALCO engines.

A crewmember will not quit a viable company to go to work for a company in bankruptcy. Companies in bankruptcy can imitate the airlines and jettison their retirement plans. The unfair thing is that bankruptcy hurts the crewmembers the most.

**[GCMA Comment: ACBL recently emerged from bankruptcy.]**



## **UNITED MARINER REGIONAL EXAM CENTER (DIS)-SATISFACTION SURVEY RESULTS**

In GCMA Newsletter #27 (Jan. 2005) we announced that Captain Joe Dady was conducting a survey of "lower-level" mariners to determine their level of satisfaction (or dissatisfaction) with the service they receive from the Regional Exam Center that handles their license and document transactions.

While we understand that the Coast Guard has a long range plan to "fix" the problems at the REC, mariners have heard this many times before.

We asked our mariners to take the time to complete the form we printed on page 22 of Newsletter #27 or go to the United Mariner website and send it to Captain Dady for tabulation.

### **Results of the Questionnaire**

Mariner's response to the survey was only fair at best. That may be due to the fact that we requested your contact information as part of the survey in an effort to expand our data base. Out of about one hundred responses the results were as follows. It seems that few "satisfied customers" participated:

- 60% of responders to our survey used REC New York. 15% Boston; 15% Baltimore; 5% Memphis and 5% used Miami.
- About 60% had license-renewal complaints; About 5% were STCW related; About 15% were about MMDs; About 5% were upgrades and testing; About 15% were for original documents.
- About 70% of those cases took 5 or 6 months to process; About 15% took 8 months; Less than 5% took 11+ months. Applicants below the six-month threshold did not seem to respond to our survey. The 8 and 11 month cases had medical review problems which included a request for additional testing from the medical review board.
- When asked if their evaluator was courteous and helpful through the process 100% said NO! When asked if all information was submitted as required about 85% said yes. When asked if a file had been lost or misplaced 60% of the survey answered YES.
- When asked if notification of a problem or request for additional information was received by mail or phone 90% said NO.
- When asked if there was mail or phone communication from REC that applicants did not receive about 20% said YES; 30% said NO; 50% did not know.
- When asked if their delay was caused by a medical review about 25% said YES; 35% said NO; and 40% did not know.
- When asked if employment and income was lost during the delay over 60% said YES.
- When asked if a job was lost or opportunity for advancement was missed less than 15% said YES.
- When asked if the applicant found the new application to be user friendly 100% said NO.
- When asked in their opinion if the renewal process was handled in a satisfactory and timely manner 100% of the survey said NO.
- When asked if applicants used a License Consultant 100% said NO.
- When asked if REC user fees were worthy of the service received 100% said NO.
- When asked if the applicant would use a computer based renewal system if available 100% said YES.

## Captain Dady Evaluates His Two Year Effort

After two years of following the REC story, here is my personal outlook on the quagmire and how we got to this point:

The U.S. Coast Guard gave out MMDs with minimum background checks to U.S. citizens and foreign nationals for many years.

After 9/11, Headquarters realized it had a real security problem with MMD identity issues. Had the Coast Guard and the American taxpayer not been ripped off by the computer contractors hired to develop their computer systems during the 1990s, the REC's would have been able to deal with the work load created by the new background checks.

Next we had STCW added to the REC's workload. Headquarters did not make the necessary improvements and chugged along with its antiquated renewal process ignoring disgruntled lower-level mariners at the bottom of the USCG's "budget food chain."

President Bush placed the responsibility of homeland security on the USCG and dumped a pile of money in their lap. Did Headquarters make improvements to the overburdened REC's? No! Instead, they cut back.

## USCG PLANS TO "CENTRALIZE" LICENSE EVALUATIONS IN WEST VIRGINIA

*[Source: The Waterways Journal, Coast Guard Planning To Centralize License Evaluations, July 25, 2005, By Capt. Richard Eberhardt. GCMA added comments and emphasis by underlining.]*

The Coast Guard is developing plans to centralize evaluations, processing and issuing of mariners' credentials (z-cards, licenses, STCW documents, etc.) in an effort to improve security, consistency and efficiency, said Cmdr. David Kranking, project manager at the National Maritime Center (NMC) in Arlington, Va.

Funding for the project is being sought for the fiscal year 2006, beginning October 1, 2005. It would entail moving the NMC from Arlington to the Martinsburg, W.Va., area, according to a press release from Sen. Robert Byrd (D-WVa.).

**[GCMA Comment: There is a big difference between seeking and obtaining funding.]**

Even if funding is approved by Congress, Kranking said it will be 2007 before the changes in the Regional Exam Centers (RECs) could be implemented and the West Virginia facility could be built, staffed and running.

**[GCMA Comment: Mariner licensing was centralized at USCG Headquarters in Washington in the 1970s, moved to Oklahoma City by the 1980s, and moved back to Arlington, VA in 1999. At each move, the USCG lost most of their experienced personnel who had important knowledge and experience with the licensing program.]**

Twice before in the last 10 years, the Coast Guard proposed different concepts to improve licensing and documentation. The current plan, with input from the marine

I have this cartoon image of an Admiral sitting on a pile of money holding an REC's computer in one hand a new machine gun in the other. What to do? What to buy? (No disrespect intended toward USCG. USCG has a great responsibility and does a great job in some areas.)

Now, added to USCG's responsibilities, comes the laws enacted by Congress to inspect all 5,200 towing vessels following the AMTRAK disaster, the Rhode Island oil spill, the Queen Isabella Causeway disaster, the I-40 bridge allision in Oklahoma, the Buzzards Bay oil spill, the Staten Island Ferry crash plus a cumulation of hundreds of other reported uninspected towing vessel collisions, capsizings, sinkings, explosions, fires, oil spills.

The Staten Island Ferry accident led to a National Transportation Safety Board Investigation. NTSB's report recommends a more thorough "Medical Review" of licensed merchant mariners by Coast Guard's Medical Review Board. The Physical Evaluation Guidelines for Merchant Mariner's Documents and Licenses are tough enough already. Did Headquarters expand the medical review board's resources to deal with the additional requirements of Congress and the NTSB recommendations. No! Headquarters continues to ignore the mariners' plea for improvements at their Regional Exam Centers.

industry, appears to be gaining wide approval, Kranking said. Vessel documentation went through some similar stages of regionalization and eventually centralization about 10 years ago.

**[GCMA Comment: USCG Vessel documentation is now centralized in Byrdland at Falling Waters, WV.]**

"There are some lessons from their [vessel documentation] experience that we have used in the development of our [REC changes] plan, although their requirements for direct interface with their customers are significantly different than ours," Kranking explained.

Sen. Byrd's release said he met several times with Coast Guard Commandant Adm. Thomas Collins to discuss the Coast Guard "expanding its mission in West Virginia" by relocating the NMC near the Coast Guard Operations Systems Center.

"The Coast Guard's licensing and documentation staffing and information technology systems have changed little during the past 20 years, while the training and security vetting for mariners have increased dramatically, especially in the wake of the September 11 terrorist attacks," Sen. Byrd's release said.

"In addition to a 25 percent increase in applications in recent years, the process has become overwhelmed with complex new requirements and security needs, which have created a lengthy backlog in the processing of merchant mariner documents," said the ranking Democrat on the Homeland Security Appropriations Subcommittee.

"Backlogged applications threaten the ability of mariners to support their families and the ability of U.S. shippers to deliver needed goods and services to consumers worldwide," the release added.

Staff at NMC will increase from about 90 to 250, some of whom will be evaluators relocating from the 17 REC offices, Kranking said. Overall, there will be more staff evaluating license applications.

**[GCMA Comment: The shortage of personnel with the**

**background and knowledge to evaluate complex applications is a longstanding Coast Guard problem.]**

One of the big advantages to mariners will be the ability to walk into any REC nationwide to request documents, Kranking said. Some RECs request that mariners schedule appointments, which can be weeks later.

Currently, a mariner must work through the REC where his paper file is physically located, or request the documents be moved to another REC before that location can act.

With all records centralized in West Virginia, where the evaluators will be relocated, those records need not be shipped, saving time and eliminating the possibility of records lost in transit.

**[GCMA Comment: Misplaced paperwork including applications is another longstanding problem.]**

Plans are for the nation's 17 RECs to remain open, albeit reduced somewhat in staff. Mariners will still be able to walk in the RECs "store-front operations" to interface with staff for proving identity, fingerprinting and to take exams.

Staff at the RECs will check applications for completeness and forward them to the NMC for formal evaluation under the new system. Mariners will still be able to mail applications to the NMC once the change is made. Electronic filing of applications and user fee payments is envisioned in the fully implemented plans.

Currently the application of any mariner who has had a significant change in his medical condition must be forwarded to NMC for a medical waiver. Minor changes in a medical condition can now be approved at the local REC.

Applications requiring NMC medical waivers will be handled more quickly since the file will just have to go to the room down the hall, Kranking explained.

**[GCMA Comment: Improvements are long overdue in handling medical waivers. Refer to Bad News On License Renewal Medical Waivers in this Newsletter.]**

It is generally acknowledged that some RECs return mariners' credentials more quickly than others, based in part on the workload of the facility. Once the centralized facility is up and running, mariners can expect a more consistent time requirement for licensing, subject to lesser surges for seasonal fluctuations and new requirements, such as STCW (Standards of Training Certification and Watchkeeping), which slowed renewal time because of the dramatic increase in RECs' work loads, Kranking said.

Included in the funding request is equipment and staff to convert record keeping to electronic from paper. Kranking said the changeover will increase efficiency by allowing documents to flow quickly through the system.

A mariner's application for renewal of license, Merchant Mariner Document (MMD), and STCW certificate could be handled simultaneously in an electronic environment, where in a paper format, as it is now handled, it may require documents to be reviewed one at a time.

Also, by doing all evaluations at one central location, it will eliminate different interpretations of the many rules and make training of evaluators easier, Kranking pointed out.

Richard Wells, assistant chief of the New Orleans REC, said there is a separate group within the Coast Guard which is

currently evaluating licensing requirements, but that will be a lengthy process. Kranking added the Coast Guard group is "reviewing the regulations with the intent to streamline (simplify) them and to align our domestic (Coast Guard) regulations with (international) STCW rules.

Another enhancement of the proposed new system will be a "call center" staffed to answer mariners' questions. Both Kranking and Wells acknowledged mariners have a difficulty "reaching someone to talk to" regarding licensing issues.

The call center staffers will be able to advise applicants new to the marine industry of document requirements and also be able to tell a mariner the status of his license renewal, once the new facility is fully funded and changes are implemented.

The "bank" of phones at NMC will "be staffed by a cadre of personnel dedicated solely to answering phones and resolving the mariners' inquiries," Kranking said. "The phone center would have a toll-free number mariners could call."

Wells also said it is his understanding that once individual evaluations are moved to the NMC, it will free up an employee at the REC to devote full time to conducting oversight of training schools, which teach Coast Guard approved courses. Currently it is handled part time.

**[GCMA Comment: A year ago we learned the Coast Guard had cut funding to conduct oversight of training schools. That turns the "Course Approval" process into nothing more than a paper shuffle – an expensive one for some mariners who do not get the training they pay for.]**

"Even if we receive full funding, not all of the changes are expected to coincide NMC's relocation to West Virginia," Kranking said. He cited some of the technology solutions, such as electronic submission of applications by mariners, as an example.

**[GCMA Comment: The Commandant approved the plan to restructure the licensing and documentation program on a "short list of unfunded priorities." However, the key word here is "unfunded." Only Congress can provide the funding. Until this happens, this plan is no more substantial than pie in the sky. Refer to Proceedings, Summer 2005, p. 1. Note: The entire issue of this freebie USCG magazine is devoted to the National Maritime Center, it plans personnel and processes.]**

"However, we expect the centralization to improve efficiency and consistency, even before all of the technological solutions have been completed," he added. "If we receive only partial funding, it will be difficult to break up the comprehensive restructuring plan, but we will apply the resources we do receive to the best advantage in improving the program."

Both Kranking and Wells said mariners will soon begin to get new STCW documents which will have the mariners' photographs printed on the paper, rather than the photograph "glued on." New STCW documents will have more of a "license" look, rather than just a laser-jet copy appearance, in addition to a number of other anti-counterfeiting features. Currently, the plan is that new STCW documents will be phased in at the mariner's regular five-year renewal.



## BAD NEWS ON LICENSE RENEWAL MEDICAL WAIVERS

[Source: E-mail from REC New Orleans dated July 28, 2004. GCMA emphasis is shown by underlining.]

"I suspect most of you are aware that the medical waiver process is taking longer to complete than in the past. Medical waivers are required for health conditions that could put the mariner or his/her ship at risk, such as heart condition, diabetes, high blood pressure, loss of sight/hearing, etc.

"Unfortunately, the current time to get an answer on medical waivers is often 90-120 days. In some cases the answer after 90 days is "we need more information about..." which further delays the final answer.

"To avoid mariner credentials (license/MMD/STCW) expiring before a medical waiver can be granted requires

submission of applications well in advance.

"A mariner may apply for a renewal up to 12 months before expiration. To allow maximum time for medical waiver issues, applying 12 months in advance is strongly encouraged.

"To avoid unnecessary loss of part of the 5-year validity of the credential due to applying early, just attach a note asking for "delayed issuance." Under delayed issuance, the REC will complete all of the application processing except for printing and issuing the credential as soon as possible. Then we put it "on the shelf" until 30 days before the credential expires, and then print and issue it. Or if you know your work schedule requires issuance more than 30 days before expiration, just tell us when you need it and we will print it then. This allows a person to submit an application early without losing excessive time off of their credential.

"Of course even if a person lost a full year off the 5-year term of a credential each time it was renewed, you (sic)

would only pay for one "extra renewal" at the 15th year of service (four 4-year renewals vs. three 5-year renewals). But for many mariner's, the peace of mind is well worth the additional cost especially when compared to the loss of pay for even one day off of work due to a late renewal of their (sic) credentials.

"Please pass this information along to your employees, clients, students to ensure they are aware of the medical waiver time requirements and the option for delayed issuance."

Richard E. Wells

Asst. Chief, Regional Examination Center

Phone: (504) 240-7300 x232;

Fax (504) 240-7292

**[GCMA Comment: We recently worked with one mariner whose application was held up for over 8 months at REC Memphis over a medical waiver. He lost considerable time off work as a result.]**

## YOUR DUTY TO YOUR SHIP

### Employee at Will

Unless you are represented by a union and your employment is covered by a union contract, most of our mariners find that they are nothing more than "Employees at Will." This means that your employment may be terminated at any time for any reason whatsoever. Unfortunately, many mariners believe that "turnabout it fair play" and that you can quit your job on the boat at any time you feel like it – especially during the "dog days" of summer. The point this article will try to make is this: "Use caution!"

### Unexcused Absence Cost a Mariner His License

In GCMA Report #R-315C, Mariner Drug Cases, refer to Case #2 (on p.7). In this case, Administrative Law Judge Fitzpatrick pointed out that Captain ■■■'s unexcused absence led him into a problem that was potentially more serious. We suggest you read the report of this case.

If the Captain had remained on the boat (as his company expected him to do) until his relief arrived at the boat and had been there to take an unannounced random drug test his employer had scheduled after the vessel's arrival in port, he would not have been charged with "refusal to take a drug test."

In another drug test, a Captain who left his boat although safely tied to the dock with a deckhand on board was charged with "desertion." Although his lawyer was able to

rebut the charge of desertion, his legal fees approached \$10,000.

### Desertion

While there has been much new legislation in favor of seamen since 1896 and the Courts generally liberalized their treatment of seamen, this concept dating back to a U.S. Supreme Court decision of that date reportedly prevails today:

"From the earliest historical period, the contract of the sailor has been treated as an exceptional one, and involving, to a certain extent, the surrender of his personal liberty during the life of the contract. Indeed, the business of navigation could scarcely be carried on without some guaranty, beyond the ordinary civil remedies upon contract, that the sailor will not desert the ship at a critical moment, or leave her at some place where seamen are impossible to obtain – as Molloy forcibly expresses it, "to rot in her neglected brine." Such desertion might involve a long delay of the vessel while the master is seeking another crew, an abandonment of the voyage, and, in some cases, the safety of the ship itself."<sup>(1)</sup> [<sup>(1)</sup>U.S. Supreme Court in *Robertson V. Baldwin*, 165 US 275, 283.]

While only our lawyers give legal advice, we present for your consideration several current statutes that may serve as a warning for mariners suffering from the "at will" nature of their employment:

- 46 U.S. Code 11501(a): When a seaman lawfully engaged commits any of the following offenses, the seaman shall be punished as specified: – (1) For desertion, the seaman forfeits any part of the money or property the seaman leaves on board

and any part of earned wages. (3) For quitting the vessel without leave after the vessel's arrival at the port of delivery and before the vessel is placed in security, the seaman forfeits from the seaman's wages not more than one month's pay.

- 46 U.S. Code §10509(b). A seaman who does not report at all or subsequently deserts forfeits all wages.

A potentially more effective device is allowed under a rather obscure provision of the Fair Credit Reporting Act – that we call "blacklisting." This, and a telephone call to any potential employer who must legitimately check on the drug and alcohol testing record of an employee they plan to use to perform safety sensitive duties aboard ship (49 CFR §40.25) may also reveal other poor performance such as desertion.

### Guano

Captain Jay Disler called to remind our mariners that they have a duty to their employer to work safely. He cited a case of a deckhand who noted an excessive number of seagull droppings on the sloping deck of a tank barge in his tow. Apparently, the deckhand did not bother to clean them off or even notify the officer on duty of a potential slipping hazard. Later, after a damp evening dew mixed with the fecal matter, it made the deck so slippery that the deckhand, while crossing the deck lost his footing and fell. After the fall, that reportedly injured his back (although not supported by medical evidence) he found he did not have a legal case to pursue against his employer.

## NEW GCMA RESEARCH REPORTS

### **GCMA Report #R-418: When Your "Crimes" Return To Haunt You**

A number of mariners express fear about past run-ins with the law and how it may affect their career "at sea" whether it is on the rivers, on inland waters, or offshore. Such run-ins may have occurred long ago or between license or merchant mariner document renewals.

In the "good old days" the Coast Guard believed almost everything a mariner would tell them, and every word blessed with company stationery and a signature was beyond reproach.

In the 1990s, the Coast Guard tried to include \$17 in a "user fee" for each mariner to pay for a basic FBI check before issuing new licenses and documents. The courts disagreed. When faced with paying this fee of \$17 out of their budget, the Coast Guard often opted to forego the check and save the seventeen bucks. And then the terrorist attacks of September 11, 2001 occurred and changed everything.

The change that occurred did not happen overnight and the events of 9/11 did not cause all the changes. However, if you have a "record" – anything from a traffic violation to jail time, we suggest that you read GCMA Report #R-418 (on our website) to obtain useful background information on how the Coast Guard evaluates character issues and violations of the law. The report also describes how "Assessment Periods" can delay renewal of your license (sometimes for years) if you are guilty of certain criminal convictions like reckless driving or DWI.

### **GCMA Report #R-417: GCMA Requests Congressional Oversight on the Towing Safety Advisory Committee**

Refer to the article titled GCMA Petitions Congress to Revamp the Towing Safety Advisory Committee in this newsletter. GCMA Research Reports are available on our internet website.

### **GCMA Report #R-416: GCMA Suggestions Submitted To TSAC License Working Group**

GCMA participated in a TSAC license working group meeting at Buffalo Marine Service in Houston, TX on July 14, 2005. Our report, prepared for the GCMA Board of Directors, lists the suggestions we forwarded to the TSAC License working group chairman after the meeting as well as to the Coast Guard under separate cover.

### **GCMA Report #R-415, Rev. 1: Training and Licensing Problems for Towing Vessel Officers**

A reprint of the article from GCMA Newsletter #32., pages 1-8. This report was prepared in advance of the TSAC license working group meeting in Houston mentioned above.

### **GCMA Report #R-413: It Is Time to End The Two Watch System**

Extra duties, whether imposed by the Responsible Carrier Program or another Safety Management System as well as the new security initiatives have hopelessly overloaded and abused the two-watch system. This tendency to overload licensed officers is not limited to tugs and towboats. It also occurs on passenger ferries as we relate in the grounding of the Alaska Marine Highway System's ferry LeConte with 86 passengers, 23 crewmembers and 7 vehicles aboard at the time of the grounding.

## U.S. DEPARTMENT OF TRANSPORTATION RETAINS CONTROVERSIAL TRUCKER RULE

By LESLIE MILLER, Associated Press Writer  
Sat Aug 20, 2005

WASHINGTON - Truckers can still spend six days on the road during the week and drive for 11 hours at a time, thanks to a rule the Bush administration decided to leave intact even though truckers and safety advocates say it's unsafe.

For 60 years, truckers could drive for 10 consecutive hours. On Jan. 1, 2004, the Federal Motor Carrier Safety Administration changed the rule to allow them another hour behind the wheel. A federal court, however, threw out the changes.

On Friday, the truck-safety agency announced that a revision to the rule would still allow the big rigs to roll for 11 hours, three hours more than safety advocates say they should.

"What reasonable person who has traveled our nation's roads and highways thinks that forcing tired truck drivers to stay behind the wheel even longer is good public policy?" asked Teamsters Union President James P. Hoffa.

More than a year ago, a federal court struck down the rule, saying it was "arbitrary and capricious" and failed to consider truckers' health. The Bush administration was left to revise it.

Annette Sandberg, chief of the truck-safety agency, said the new rule is backed by more research and was designed to reduce the number of crashes caused by fatigued drivers. "The research shows that this new rule will improve driver health and safety and the safety of our roadways," Sandberg said during a press conference. She said the rule requires drivers to take at least 10 hours off between shifts, two more than before, and reduces the maximum workday from 15 hours to 14.

But Joan Claybrook, president of the safety group Public Citizen, said that drivers can drive 20 percent longer and spend 30 percent more time on duty under the new rule. She said the agency's own data show that deaths resulting from large truck crashes are up 3.1 percent from 2003 to 2004.

The Bush administration also announced a new set of rules for truck drivers who travel less than 150 miles in a day and don't need a commercial driver's license. Those drivers, who typically work for retailers and small package-delivery companies, would be partially exempt from the 14-hour workday. For two days a week, they could work 16-hour days, including breaks.

Wal-Mart and other retailers have lobbied Congress to extend the workday for truckers to 16 hours, something labor unions and safety advocates say would make roadways more dangerous for all drivers.

Some members of Congress had a similar proposal, but the legislation was withdrawn in March when safety advocates and unions representing truckers opposed it.

Sandberg said it makes sense to let short-haul drivers work longer because they're 18 times less likely to be involved in a crash caused by fatigue than long-haul drivers. Sleepy drivers cause only 5.5 percent of all truck crashes, she said.

She said the rule, which will take effect Oct. 1, will cost long-haul trucking companies \$10 million and save short-haul companies \$280 million.

The Transportation Department's inspector general is evaluating whether it should investigate allegations by four safety groups that the truck-safety agency had improper meetings with trucking industry representatives, according to a spokesman. Safety groups disagree with the trucking industry and the government over whether the rule improves or diminishes highway safety, and each cites studies to support its view.

Claybrook said the risk of deadly crashes significantly rises after the 10th and 11th hours of driving. Mike Russell, spokesman for the American Trucking Associations, said most deadly truck accidents don't happen after long hours of driving. The group supports the rule.

## TOWING VESSEL SINKINGS CONTINUE TO BE POORLY INVESTIGATED

GCMA believes that the Coast Guard must put forth a more vigorous effort to determine why uninspected towing vessels were allowed to sink in such large numbers over the past dozen years without that agency ever undertaking a formal investigation of these accumulated sinkings. In order to better understand the matter we requested<sup>(1)</sup> that such an investigation be made a part of the Towing Vessel Inspection rulemaking project. [<sup>(1)</sup>Letter to Docket #USCG-2004-19977-17 dated Feb. 14, 2005 as reported in GCMA Newsletter #28, Feb/Mar 2005, pgs 6-8.]

### GCMA Activities to Date

In GCMA Report #R-276, Rev. 9, Item #33 – also submitted to the Coast Guard for their consideration in the upcoming rulemaking on towing vessel inspection – we point to bilge pumping systems as a possible culprit in these sinkings. We stated:

“Like other classes of inspected vessels, our mariners **expect** new towing vessel inspection regulations to require a towing vessel’s bilge pumping system to be piped to every compartment with bilge strainers **easily accessible** for cleaning in each compartment. Our mariners also **expect** a requirement for installation of at least one dedicated bilge pump solely to pump the bilges.

“Our concern over the large number of sinking and flooding towing vessels dictates that improved bilge pumping and piping systems must become an important regulatory consideration, perhaps more so on towing vessels than on other commercial vessels of comparable size.

“Coast Guard raw accident statistics indicate that 607 sinking, 593 flooding, and 115 capsizing cases occurred between 1992 and 2004. GCMA requested (in Docket #USCG-2004-19977) that these 1315 “occurrences” be the subject of a Coast Guard inquiry for use in the towing vessel inspection rulemaking project. We do not know whether our request will be honored.

“**Status:** A new regulation effective April 29, 2005 at 46 CFR §27.301 requires a fixed or portable fire pump but fails to address bilge-pumping systems.”

### New Evidence of Shabby Investigations

In GCMA Newsletter #28, February/March 2005 we listed three (3) incidents where tugs sank and the Coast Guard report appeared to show that the Coast Guard’s investigation was less than adequate. Here are two **additional** investigations (#4 & #5) that recently crossed our desk. The first accident involved a fatality and two injuries.

#### **Incident #4: M/V David C. Devall sinks in Houston Ship Channel.**

GCMA File #M-556.

Originating Unit: USCG MSU Galveston, TX.

Misle Activity #2328263; Misle Case #225499

Owner: David C. Devall, Inc.

Official #591491; 54 feet, 98 Gross Register Tons

Damage estimate: \$240,000; Total constructive loss; Vessel salvaged.

**Number of Vessels Delayed:** There are two conflicting, unresolved statements: One recites that 35 vessels were delayed for up to 18 hours. One radio report said: “There are currently 41 deep draft and 30 tows awaiting transit of the Houston Ship Channel.” Another report states: “There are currently 70 deep-drafts and 25 tows awaiting transit of the HSC.” The Coast Guard report labeled SITREP 4 (final) also states: “Economic Impact: Low, Disruption to vessel traffic. Media interest: Low.”

Perhaps it will take an atomic attack by terrorists to rate a “High” economic impact or media interest. Or, maybe it will take more than shutting down the Port of Houston for a day. Although the Coast Guard and the media show little apparent interest in the reason why three “lower-level” mariners are dead or injured, our interest at GCMA is much more intense.

**Incident Brief:** “The UTV David C. Devall capsized and sank in the middle of the Houston Ship Channel near Lights 53 and 54. One crewmember died and two crewmembers were injured.” [**Ed. Note:** *That was the extent of the report’s summary. We had to pick other facts out of the body of the report.*]

The vessel was salvaged and certainly was available to the Coast Guard to determine the cause of its sinking.

At the time of the accident, the pushboat was enroute to a local shipyard where damaged bulwarks were going to be removed and replaced. The vessel carried a crew of three, a Master, a Pilot, and a certificated tankerman. There was a strong wind blowing estimated in the report to be as much as 30 to 35 mph out of the south and southeast with a strong ebb tide. The Pilot, who was on duty, stated: “One wave hit on our port side and we rolled over on our starboard side. I dove. Wayne, the Captain dove in the water but Carlton Guidry said, ‘I cant’. The last time I heard from him.”

The Captain said in his statement: “I woke up because the boat was listing severely. I looked outside and saw we were capsizing, so I put some clothes on and ran upstairs to see if I could do anything. When I got upstairs, the boat was already laying on its port side. The Pilot went out first and I followed out the starboard side wheelhouse door. When I got to the door, Carlton Guidry (tankerman/deckhand) was right behind me. As I was going out the door, the force of the water slammed it shut on my head. I then pushed the door back open and exited the boat. When I surfaced, I looked for the rest of my crew but could only find the Pilot. After treading water for a little while, an oyster boat picked me up....” Carlton Guidry was later found by divers drowned but still aboard the sunken vessel.

The accident left the M/V David C. Devall sunk about 100 feet left of center in approximately 49 feet of water with overhead clearance of about 30 feet. The Coast Guard’s main concern was to prevent deep draft traffic from striking the wreck with the bottom width of the channel about 500 feet.

The Coast Guard (p.14) reported that “All watertight enclosures were reported closed during transit. The operator on wheelhouse watch stated that seas were splashing over the bow onto the main deck.”

The report contains another conflict. On page 15: “Only one crewman donned (a) PFD, he was the crewman that died. He never made it out of the vessel.” However, on p. 17, the “Number entering the water without lifesaving equipment” is shown as 3.

On page 19, there is a note concerning hull plating failure, but it states: “Non-catastrophic failure requiring repair/replacement.

Vessel sustained damage after the capsizing and sinking from a salvage operation and marine traffic prior to the channel being closed by the COTP.” That most likely is reflected by the picture below – if you want to believe it.



M/V David C. Devall

### GCMA Comments

The Coast Guard clearly spent most of its effort managing a major traffic snarl, supervising the prompt removal of the derelict vessel, drug testing the surviving crewmembers. When all is said and done, the remaining question that appears to have been completely ignored is, “Why did the boat sink?”

Were all the watertight doors really closed as the vessel traveled through the choppy waters of Galveston Bay? There is no hint in the report that the divers found them all closed. If not, whose responsibility was it to close them? The Captain was off watch and in his bunk.

Did the Pilot on duty at the time of the sinking order somebody to close the engineroom or galley doors? There is no mention in the report that this question was either asked or answered.

Did the tankerman/deckhand close the engineroom doors? Nobody can ask him whether he attended to this chore because he is dead.

Was the tankerman/deckhand also expected to serve as engineer on this pushboat? There is nothing in this report to indicate this question was even asked or answered. If so, what was the condition of the bilge as the vessel headed out into rough water? Was it dry? Were there any major leaks? There is nothing in the report to show whether this question was ever asked or answered.

The information about the “hull plating” failure in the report is suspicious. We can see no evidence in the report that the Coast Guard ever made any attempt after the accident when the vessel was dewatered and salvage to check the vessel’s hull-plating to determine its thickness by electronic gauging? Since the vessel was “inspected” in name only (after the new inspection statute was passed but no regulations have yet been promulgated), they might not have been required to do so. Yet, a man lost his life in this accident – a man who worked for the company for 10 years.

It is unusual for a 54-foot towboat whose watertight doors are in tact and closed to sink in a body of water like Galveston Bay even in “rough seas” whose height was not mentioned. In

fact, the entire section of the report titled “water conditions” consisting of 21 sections was left blank.

Was the towboat blown over by this wind? If so, was there a stability problem. We will never know because stability testing was never required on uninspected towing vessel. Nor does there appear to have been any effort to determine the vessel’s stability as a possible cause of the accident. GCMA has asked for stability testing to be included in the new towing vessel regulations.<sup>(1)</sup> [<sup>(1)</sup>Refer to GCMA Report #R-276, Rev. 9, Item #4 submitted to Docket #USCH-2004-19977.]

The Coast Guard Research and Development Center Report #CG-D-09-97 titled Procedures for Investigating and Reporting Human Factors and Fatigue Contributions to Marine Casualties, by Marvin McCallum, Mirielle Raby, & Anita M. Rothblum, Sept. 1996., documents research that was successful at improving the Coast Guard’s methods for investigating and reporting the incidence of fatigue in marine accidents. Yet with that research report, current USCG directives on evaluating fatigue in accidents, and all the highly publicized work underway in the towing industry on “Crew Endurance” apparently did not give the two unnamed Coast Guard investigators working the case a reason to look into fatigue. The report shows nothing about the one man who was expected to serve as tankerman, deckhand, and engineer who probably was responsible for closing the doors and checking the engineroom for water. Where was this man? How long had he worked in the past 24 hours? Was he catching a nap in his bunk as the boat plowed its course down to the bottom of Galveston Bay? The report shows us nothing!

As a unlicensed crewmember, the existing law appears to allow him to work any number of hours until he drops. Even AWO’s “Responsible Carrier Program” finds nothing wrong with working unlicensed crewmembers for 15 hours a day. Devall Towing, as an AWO member, follows this Safety Management System. Maybe the Master or the Pilot could have answered these questions, but it appears that the Coast Guard investigators never asked these basic question or received no answers.

The section titled “V. CAUSAL ANALYSIS” in the Coast Guard report is completely blank as is section “VI. REFERRAL FOR ENFORCEMENT ACTION.”

The Coast Guard investigators who prepared this report should feel ashamed to have prepared this document. This is a shining example of a report whose “Level of Investigation” is simply “Data Collection.”

### Incident #6. Uninspected Towing Vessel MR. SID Sinking on February 23, 2004.

**Originating Unit:** MIDET Harvey Canal Detail  
GCMA File #M-586

Misle Activity #2012724; Misle Case #0

Status: Uninspected Towing Vessel.

Owner: Central Boat Rentals, Berwick, LA.

Official #: 292617; Length 46 ft; 52 Gross Tons

Damage Estimate: \$250,000; Total Constructive Loss;

Salvage. No injuries.

**Sequence of events:** Feb. 23, 2004 12:40 to 13:30. Captain ■■ indicated the tug experienced 1½-foot seas in the Baptiste Collette Waterway (east of Venice, LA) but shortly after exiting the waterway they encountered seas of five to six feet which broke over the gunwales of the (towboat). Captain ■■ indicated it was not safe to go out on deck. Shortly

thereafter, he indicated he decided to turn around due to the hazardous sea state. Thirty to forty minutes after having turned around, Captain ■■■ noted the tug was down at the stern and he believed the rudder compartment was flooding. He was not able to explain why he thought water could have gotten into it, just that the tug began to ride lower at the stern. A short time later the wire ropes attaching the shale barge to the tug parted due to strain and the tug began to sink. Captain ■■■ indicated he made mayday radio calls and fired off flares. The tug finally settled in eight to ten feet of water listing to starboard. Captain ■■■ and Mr. ■■■■ stayed on the pilothouse walkway (third deck) which was above water, until they were rescued by Coast Guard Station Venice. Captain ■■■ was fairly calm considering the ordeal and had a good recollection of details.

Mr. ■■■■ indicated he was in the galley cooking and did not communicate with the Captain about whether to turn around but he indicated he was aware of the forecast and had advised Captain ■■■ not to get underway, but indicated he was overruled. While in the galley, Mr. ■■■■ noted the seas building and 15 minutes after the first 3-foot sea hit, he checked the engineering spaces and noted two feet of water in the bilges so he turned on the bilge pump.

Upon exiting, he closed the port side engineroom door. He indicated the starboard door remained closed throughout the voyage but the port side engineroom door had remained open until that point. Eventually, the deck became awash, and he battened down the galley doors. Mr. ■■■■ stated the galley doors were watertight but the port side engineroom door was bent and not watertight. Mr. ■■■■ stated he believed water continued to downflood the engineroom even with the port side door closed. I asked him if he thought the tug's rudder compartment could have flooded, and he indicated maybe, but he believed the tug sank due to the downflooding of the engineroom. Interestingly, neither man communicated with the other during the period up to and including the turnaround. Mr. ■■■■ noted the tug turning around and thought to himself "he should have done it much sooner." Mr. ■■■■ was shaken up and upset when I spoke to him and he indicated a bitterness toward Captain ■■■ for deciding to get underway in the first place, and then for waiting too long before turning back. A small craft warning was in effect during the voyage, however the combined length of the tug and tow was 176 ft. and a beam of 18 ft and 30 ft. respectively.

### GCMA Comments

The "investigation" of this sinking was conducted by a Coast Guard officer by telephone. There is no mention in the report of the investigator visiting the accident site nor is there any material in the accident file that contains descriptive material from the USCG rescue boat from Coast Guard Station Venice that picked up the two survivors.

The owners arranged for crane barges to salvage the pushboat, refloat it and tow it to Morgan City. There is nothing in the report that notified MSO Morgan City or asked them to even view the salvaged vessel.

The report contains no "CAUSAL ANALYSIS" and there is no "REFERRAL FOR ENFORCEMENT ACTION."

The towboat was refloated and moved to the Morgan City area several days later. The shale barge was retrieved undamaged the same day. However, there is no mention in the accident report that Coast Guard investigators visited the

pushboat after it was dewatered to examine the (reportedly) bent port side engineroom door or the rudder compartment to determine the source of the leaks that sunk the boat.

Mr. ■■■■, the deckhand who was probably the de facto engineer (as the Master could not be two places at once and certainly had his hands full in the pilothouse) reported turning on the bilge pump. There is no evidence in the report that describes the type of bilge pump or whether Mr. ■■■■ determined that it was pumping properly or whether it was keeping ahead of the (rising) water. As de facto engineer, he apparently did not report bother to go to the pilothouse and report to him his significant discovery of two feet of water sloshing around in the engineroom.

Apparently, after this hearing this revelation, the investigator did not ask any questions about the (inadequate) training this green deckhand received either from his company or his Captain on-the-job regarding the duties he was expected to perform. Nor were there any questions about whether there was an installed intercom system the Captain could use to exchange pertinent information with the deckhand who remained below during most of the voyage.

In a subsequent conversation with the Captain, GCMA learned there was no installed intercom on the boat. This is understandable since 46 CFR §27.205(b) states that: "Twin screw vessels with operating station-control for both engines are not required to have internal communications systems." However, without such a means of communication a Master who has his "hands full" controlling his vessel and an open 130 foot barge in heavy weather in open water is hard put to contact his deckhand to solicit his help or even to warn him of a calamity about to overtake the vessel such as its capsizing. An observation like this certainly is part and parcel of a meaningful Coast Guard investigation that should call for a re-evaluation of this new regulation that was recently put on the books.

Although the report mentioned that there was a small craft warning in effect, there is no mention of weather and sea conditions in the report as usually appears in cases where weather is a factor.

Another factor to consider clearly is the use of push boats in open waters. This vessel was en route from Venice, LA via Bayou Baptiste Collette and Breton Sound to the area of Biloxi, MS. The statement: "A small craft warning was in effect during the voyage, however the combined length of the tug and tow was 176 ft. and a beam of 18 ft and 30 ft. respectively" does not indicate an appreciation of a very dynamic situation on the part of the investigator sitting behind a desk 50 miles away. He is not looking at a 176-foot vessel like an OSV that is built on one hull, but an wildly articulating unit held together with nothing more than steel cables.

This appears to be another example of a report that is nothing more than "Data Collection." While it is up to the Coast Guard to decide how much effort to expend on investigating a sinking like this, we do not have to agree with them that this level of investigation is satisfactory. We can, however, ask for more adequate investigations as towing vessels move from "uninspected" to "inspected" status. In particular, every watertight door must close and seat and bilge pumps will need to be operable and their strainers readily accessible for cleaning. Further, the watertight integrity of an inspected vessel must be suitable for the vessel's route and must be specified on the vessel's Certificate of Inspection.

## HEADHUNTING

[“Headhunting” refers to the practice of independent personnel contractors recruiting licensed or unlicensed mariners on behalf of companies that own or operate vessels. The practice of **charging seamen** for this service was prohibited by the International Labour Organization’s Placing of Seamen Convention No. 9, (1920). **Source:** This article is titled “What you should know about Head Hunter Agencies who ship you to Union Companies” and is based on information furnished to members of ILA Local 333 in Staten Island, New York.]

46 USC: 10505(a)(1)(C) states: "A person may not -make to another person an order, note, or other evidence of indebtedness of the wages, or pay another person, for the engagement of seaman when payment is deducted from the seaman's wage."

A person violating this subsection is liable a civil penalty of no more than \$ 5,000.

The law means you can not enter into an agreement allowing the company to deduct payment to the Headhunters from your pay check. If a company uses an agency the company must pay the fee.

If an agency or company has told you "You do not have to pay union fees and dues if you were hired through an agency," you have been misled. You are obligated to pay fees and dues if you are shipped to a company under union contract. That is the law and you will be made to pay or lose your job.

Unions are not in the business of causing people to lose their jobs. Considerations are made for those mariners who have been unlawfully treated by any company or agency.

Don't be duped into paying twice. You can ship directly from the union hiring hall. Just give them a call. Local 333 in New York will ship you with a temporary union card. You pay nothing. It costs nothing to ship. No one will ask you to sign your pay check away.

You have three or four months to pay initiation which is only a third of most headhunter fees. You will pay about thirty dollars a month dues. You will never have to pay to ship again no matter how many times you use your hiring hall. The union will fight for your rights. The union negotiates your pay hikes, benefits, and job improvements. You get arbitration protection and legal assistance should you become involved in a labor dispute. Your union dues help support lobbying efforts and afford representation for mariners in Washington.

We are sure there are credible agencies that charge a fair price, tell you the truth, and do not take your money out of your pay check illegally. Beware of those that do! Like something out of the dark ages they are evil "Rapper Brown" types who prey on seaman!

If you have been lied to by an agency or company while being shipped to a Local 333 company or had money taken from your pay check you should contact Local 333. (Even if you signed an agreement your rights still were violated) The union's legal department would like to hear your story. You may be entitled to your money back.

Local 333 is hiring in all departments. Contact them at 718-727-5675.

## GCMA SEEKS TO CONFIRM RUMOR COMPANY PLANS TO OVERLOAD TOWS ON THE UPPER MISSISSIPPI RIVER

The Captain of a vessel owned by the American River Transportation Company (ARTCO), a division of Archer Daniels Midland stated over the radio that their company will be starting to push “six-long” tows in the near future on the Upper Mississippi River. GCMA seeks to confirm this message but, pending confirmation, will treat it as a RUMOR!

### GCMA Comment

In locking a 15-barge tow, the largest commonly used on the Upper Mississippi and Ohio Rivers, you must make a double locking. This means that you push 9 barges in the “first cut” into what then becomes a full lock chamber. The lock pulls first cut out of the lock chamber with the “mule” (i.e., winch) and deck crew left on the barges stops the first cut as it emerges from the lock.

The towboat and the remaining barges make the second cut and, as they emerge from the locks, the deckhands make up the tow again at the “break coupling.” This is an extremely dangerous but common procedure even when experienced deckhands are available. The danger increases on towboats that cut back on their deckhands by using green deckhands or personnel on “call watch.”<sup>(1)</sup> [<sup>(1)</sup>Refer to GCMA Report #R-375, Crew Endurance: The Call Watch Cover-up.]

### Blooming Idiots

One particularly damning comment we received refers to the people who subscribe to the plan to push more than 15 barges as the blooming idiots and their idiot employers as follows:

“The flower company and the tulips are going to increase the risk of life, limb, and property, but this has to stop. I believe this will cause more property damage and even death.

“Six long by 3 wide equals 18 barges. Even if you only take one extra barge above and beyond the customary 15 barges and put the towboat in the notch, this extra barge sitting alongside the towboat will greatly reduce the maneuverability of the towboat while steering and flanking. Where can the water from the propeller wash go when you back down since one side (or both) sides of your towboat is/are fenced in by 9-foot vertical steel walls formed by the loaded barge(s)?

“Back to the task of locking through. In order to lock an 18-barge tow you would have to make three separate lockings. The first cut would be a block of 9 barges. The second cut would be a block of 9 barges. The third cut would be the towboat boat by itself. Or, you could make three blocks of six barges each with last cut being boat and 6 barges.

“The problem is even more complicated. How do you remake couplings or put the barges back up in tow? Does this mean the towboat will carry two or three additional crew to serve as deckhands. I think not! Does this mean leaving barges unmanned while they lock the extra cut through? Some of the lock guide walls are only long enough to hold one cut. Where would a second cut go?

“Hasn’t ARTCO done enough damage with their overloaded tows on the Lower Mississippi River? Is it going to take more deaths before the other towing companies, the Coast Guard and the Army Corps of Engineers step in? Can the locks on the UMR, most dating from the 1930s, take any more punishment or needless abuse from towboats that cannot steer and flank properly – only push and grind their way in and out of the locks? Damage at even one lock could place the mid-west’s fall harvest in peril by shutting down the river above St. Louis. I can only imagine how long it will take for

one overworked crew to lock through three cuts and navigate a six-long tow through some of the antiquated swing bridges along the route between St. Paul and St. Louis.

“If ARTCO really plans to carry out this program to make a fast buck, it will be at the risk of waterway infrastructure financed by the public. I am concerned that the Coast Guard has not wised up to the problem of oversized and overloaded tows this company has already created.”

Our mariners can only hope this RUMOR is unfounded.

#### UPDATED GCMA “BROWN-LIST”

GCMA fields a significant number of complaints on employment issues from lower-level mariners in as fair a manner as possible. When a mariner gets a “raw deal” we do what little we can to get to the bottom of the problem. However, we are not and never have been a labor union.

The vast majority of our “lower-level” mariners work as “employees at will.” Unfortunately, this means that they do not work under a labor contract negotiated through collective bargaining that controls their conditions of employment and provides the machinery to resolve their grievances. Without such a contract, most of our mariners can be fired or demoted at any time, for any reason whether fair or not. There is little recourse for most of our mariners unless such termination is clearly illegal – and only then with the help of an attorney.

When one of our mariners is mistreated, we take the matter very seriously. As a mariners Association, we keep track of these incidents. When our mariners look for a new job, we want them to obtain jobs with employers who respect them and will treat them fairly. We assign companies whose names appear in our records as having mistreated one or more of our mariners to our “Brown List.”

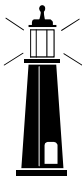
Mariners must make their own decisions about their employers. As a service to dues-paying members of GCMA (only) we can inform you of some of the specific incidents that led us to “Brown List” a company. Then you can decide whether you want to learn the same lessons the hard way by working for a “Brown Listed” company.

#### Company:

- **Abdon Callais Offshore.**
- **American River Transportation Co.**
- **American Commercial Barge Lines**
- **Coastal Towing, LLC & TLC Marine Svc.**
- **Delta Towing.**
- **ENSCO.**
- **Frazier Towing**
- **Global Industries Offshore**
- **Gulf Pride Marine Service, Inc.**
- **Guidry Brothers/Harvey Gulf Marine**
- **L&M Botruc Rentals**
- **Maryland Marine**
- **Stapp Towing**
- **Tidewater Marine**
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