

# Gulf Coast Mariners Association



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LICENSE DEFENSE INSURANCE  
INCOME PROTECTION INSURANCE  
CIVIL LEGAL DEFENSE

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### INTRODUCTION

Our Association's prolonged experience with a number of cases involving "lower-level" mariners<sup>(1)</sup> demonstrated to us beyond any reasonable doubt that our "lower-level" mariners are at serious risk whenever they attempt to defend themselves at a Coast Guard hearing without first securing legal representation. <sup>[<sup>(1)</sup> GCMA seriously questions the quality and integrity of Coast Guard casualty investigations. Please consult these reports on our website for specifics:</sup>

- GCMA Report #R-429. (Series) Report to Congress: How Coast Guard Investigations Adversely Affect Lower Level Mariners.
- GCMA Report #R-429-A. (Series) U.S. Coast Guard Investigations. (Reprint of the 1994 Coast Guard R&D Report.).
- GCMA Report #R-429-B. (Series) Coast Guard Marine Casualty Investigations. (Reprint of the Quality Action Team Report, 1996)
- GCMA Report #R-429-C. Coast Guard Marine Casualty Investigations.

At a time of great personnel shortages, a wise hedge against losing licensed Masters, Mates, and Pilots that cannot be replaced easily or at all, is for an employer to provide these

valuable human resources with basic license defense insurance to protect them from overzealous or poorly trained investigators. It is one less worry for all concerned.

### Drug Cases

Unfortunately, a large proportion of administrative cases brought before Coast Guard Administrative Law Judges (ALJ) involve mariners who use illegal drugs. If you are a licensed or unlicensed mariner and "do" drugs, you are in the wrong profession. We cannot help you! License insurance cannot help you! We suggest that you either change your habits or change your profession.

GCMA has prepared a number of research reports that cover drug testing regulations. Any mariner who NEVER uses illegal drugs and believes that the drug-testing regulations and procedures can never threaten your license and livelihood is likely to have a very rude awakening. We suggest that you review our research reports in the #R-315 series on our internet website to better understand the details of "chemical testing" regulations in 49 CFR Part 40 and read reports covering actual cases our Association has witnessed.

### Administrative Law

The Coast Guard has its own Administrative Law Judges (ALJ) stationed throughout the United States to enforce its regulations governing the conduct of licensed and unlicensed merchant mariners. The goal of the system is "remedial" in that it seeks to find a remedy for mariners who are negligent, incompetent, or through misconduct violate federal regulations that the Coast Guard enforces. Being brought before an ALJ is a formal procedure that often leads to the suspension or revocation of your license or merchant-mariner document for some specified period of time. There can be other penalties, but they are not direct monetary penalties.

### Contact a Lawyer: Don't Surrender Your Rights

If you have an accident or "get in trouble" with the Coast Guard, there are actions the Coast Guard investigating officers can take that appear less threatening than bringing you before an Administrative Law Judge.

"**Settlement Agreements.**" A Coast Guard investigating officer may offer you a "settlement agreement" where you admit your wrongdoing and accept some sort of punishment. You should be very wary of offering to surrender any "rights" that you, as a mariner, may have by agreeing to accept any "settlement" offer the Coast Guard may make without first obtaining legal advice.

Our Association provided you with access to our list of maritime attorneys to contact if an emergency arises on the job that affects you or your license. You know these emergencies can arise at any time of the day or night.

Knowing an "admiralty attorney" to contact is a real plus if you are involved in a serious accident or incident. However, the garden variety of "Administrative Law" that enforces government regulations is NOT an area that most attorneys choose to get bogged down in. Even a relatively simple case requiring one or more court appearances before an ALJ can cost between \$5,000 and \$7,000. We know of several cases that have dragged on for several years and has cost the mariners between \$15,000 and \$18,000.

**Advance Planning.** Free advice is free and only as good as its source. However, you really need to contact an

admiralty attorney that already has a stake in your case, no matter where that case may lead. Most of our mariners are not wealthy enough to have a lawyer “on retainer.” Nevertheless, a little advance planning can put you in the driver’s seat in case you are involved in an accident or incident of some kind involving your job afloat, your license, or merchant mariner’s document. With planning, you will be able to tell a Coast Guard Investigating Officer with confidence: “I will not discuss this matter until I first speak with my lawyer” – and know that you already have a lawyer to speak with! If it takes an hour or a day, wait until you speak with your lawyer before discussing anything or signing any document.

Both Admiralty Law and Administrative Law (i.e., dealing with the Coast Guard bureaucracy) are specialties in the legal field and demand expertise that differs from divorce, bankruptcy, real estate, and other legal matters. Therefore, we strongly and unequivocally recommend that our licensed officers obtain license defense insurance as a minimum.

Until there is a basic sea change in the marine industry, you should consider securing license insurance as your personal responsibility as a licensed merchant marine officer and as a professional mariner. Consider license insurance as one of the hidden costs of holding a license.

In light of the current personnel shortage throughout the marine industry, we believe maritime employers should consider offering license insurance as a benefit package to their employees. However, we do not see this happening today.

Unless your employer offers to provide you with your personal license insurance policy, you face serious personal financial risks if you have an accident or violate any of number of laws or regulations. Although it may happen in certain cases, it is incorrect to assume that you, as a licensed officer, will be protected under the umbrella of your employer’s insurance policies. These policies cover his business interests and may not cover you personally or protect your license in event of an accident.<sup>(1)</sup> [<sup>(1)</sup>Example: Read GCMA Research Report #R-399, Danger on the Illinois Waterway: Towboat Pilot Loses License After he Accepts High Risk Assignment.]

**STEP #1: INSURING  
YOUR COAST GUARD LICENSE**

Most U.S. Coast Guard licensed merchant marine officers will agree on one thing: the U.S. Coast Guard has become much more aggressive in investigating marine accidents and incidents. Worrisome license suspensions and revocations are often the outcome. Whether you are operating offshore, on the inland waterways, blue water, the Great Lakes, or in American harbors and ports, your license is always at risk. What the Coast Guard gives, the Coast Guard can take away – like your license and/or merchant mariner’s document!

Congress put the pressure on the Coast Guard after a series of highly publicized incidents, involving our “lower-level” mariners. Horrific accidents like these motivate investigators to come down hard on those responsible. These incidents include:

- The deadly Amtrak Sunset Limited bridge allision and derailment in Alabama that killed 45 people<sup>(1)</sup>;
- The grounding of tank barges in Massachusetts, Rhode

Island, and Puerto Rico that polluted hundreds of miles of coastline;<sup>(2)</sup>

- The demolition of the Queen Isabella Causeway in south Texas; and the Interstate 40 bridge in Webbers Falls, Oklahoma by towboats.<sup>(3)</sup>

[On our website<sup>(1)</sup> read GCMA Report #R-293, Towboats and Bridges: A Dangerous Mix; <sup>(2)</sup>GCMA Report #R-429-D. Coast Guard Investigations: Buzzard’s Bay Tank Barge Grounding and Oil Spill, April 27, 2003. <sup>(3)</sup> GCMA Report #R-370-A. Report to Congress: Violation of the 12-Hour Rules: Webbers Falls Accident Revisited.]

**Unequal Treatment**

The other side of the story is that the Coast Guard does not want to “restrict commerce” by pushing many boat companies, especially larger ones, because these companies generally have enough cold, hard cash to hire the best defense attorneys money can buy. These attorneys often give the Coast Guard a real run for their money. Add to that the fact that boat owners often belong to powerful trade associations and may be well connected politically. Think about it for a moment. How many thousands of dollars have you contributed to your favorite candidate’s last election or re-election bid?

Coast Guard officials are public servants. Stepping on the wrong toes can end a Coast Guard career in a heartbeat. Besides that, the Coast Guard is in “partnership” with certain trade associations that gather their member companies under their own protective umbrella.

On the other hand, a Coast Guard investigator can step on your toes with impunity and score a victory in his or her “win” column. The “win” column is the investigator’s own performance rating that is a key to his or her promotion and retention in the service. Of course, all investigators are not like that. However, a 1994 Coast Guard report reveals the entire investigative process in an unfavorable and unprofessional light.<sup>(1)</sup> Because the Coast Guard has jurisdiction over all U.S. commercial merchant mariner licenses and MMDs, it is unquestionably empowered to take action in its role of superintending the U.S. Merchant Marine. You may quickly find how very small and insignificant a part of the merchant service you are. [<sup>(1)</sup>One Coast Guard officer who previously served with the Coast Guard’s Personnel Actions Branch in Washington, D.C. said, “As the specifics of every accident differ, so does each investigation at the respective marine safety office. It’s up to each individual investigating officer to conduct the investigation as he sees fit.” That philosophy gives a lot of flexibility to Coast Guard investigators – and they use it to their advantage.

**HOW CAN YOU DEFEND YOURSELF?**

Fortunately, for you, there is a way to “level the playing field” and avoid the worry and expense of license proceedings that can hang over your life for months if not years! It’s called license insurance.

Before explaining the advantages of insuring the adequate defense of your license, it is useful to look at a typical “case study” of an incident that would trigger a Coast Guard investigation that could result in “negligence, incompetence, or misconduct” charges, a court hearing before an

Administrative Law Judge (ALJ) and, potentially, a license suspension or revocation.

### **Captain Bob Jones and Captain Tom Smith The “Insurance” Difference**

Two towboat/barge combinations collide while executing an agreed upon meeting situation on a river. Some barges are scattered at odd angles in the navigable channel, effectively blocking river traffic, while others drift and beach themselves on the riverbank. The pilots of both vessels report the incident as required and the Coast Guard investigators are on the scene in less than 30 minutes.

Coast Guard investigators board each towing vessel and take charge. This is the moment of truth as the licenses, livelihoods, and professional reputations of all involved license holders are quite literally on the line.

The Coast Guard takes very seriously its mandate to “maintain the standards of competence and conduct of merchant mariners for the safety of persons, property, and the environment.”

With that in mind, the investigating officer begins his interview of **Captain Bob Jones**.<sup>(1)</sup> The investigator eventually tells Jones that it would be “in his best interest” to agree to a “settlement” that calls for his license to be immediately suspended for two months. If he doesn’t agree to the “settlement”, the investigating officer strongly suggests that he’s looking at a six-month suspension if his case is scheduled for a hearing before an Administrative Law Judge (ALJ).

Captain Jones is unsure of his legal rights. He knows he cannot afford an expensive legal defense of his license, Captain Jones reluctantly signs a “settlement agreement” and surrenders his license to the Coast Guard for 60 days. He is obviously scared and two months without work, he figures, is better than the complete financial disaster that six months with no income would bring down on his family.

**Captain Tom Smith**<sup>(1)</sup> hears the same “suggestions” from the investigating officer. However, he immediately reports the incident by cell phone to his license insurer by using the insurer’s toll-free number. He is advised to cooperate with the Coast Guard on factual and safety issues but not to sign anything and not to agree to any settlement. Within an hour an attorney, who is an expert in maritime law, contacts Captain Smith and advises him as to his next step. The attorney takes on the case and stays with it until its conclusion, no matter how small or large it is.

Captain Smith, with his license defense insurance, is confident that his license defense is in the hands of a professional maritime lawyer, who has only his best interests at heart. He has an expert on his side that knows his way around all the rules and regulations involved in marine license defense, from pollution to drug testing. Furthermore, it is all paid for!

The result? According to the agreed-upon “settlement” Captain Bob Jones’ license is suspended for two months and he has a permanent black mark against his name in the Coast Guard file. On the other hand, Captain Tom Smith was told to complete a “CG-2692” Report of Marine Accident, Injury, or Death (and its barge addendum) and to wait to hear back from the Coast Guard for a more extensive interview at a later date.

At the interview scheduled during his time off work,

Captain Smith will be accompanied and guided by his attorney. The fact that Captain Smith had license insurance and had the presence of mind to report his claim immediately may result in the dramatically different outcomes for the two masters involved in the same exact incident, and with the same degree of responsibility.

### **The License Defense Insurance Advantage**

This comparison clearly highlights the difference between “going it alone” and having the advice and counsel of a local attorney skilled in admiralty and maritime law. License insurance gives you a safety net of legal expertise, to help you when you need it most. For an affordable annual premium,<sup>(1)</sup> from the moment Captain Tom Smith reported his claim, a maritime attorney is paid to defend him and his license for the duration of any legal proceedings before the Coast Guard. If the Coast Guard files negligence charges against him and conducts suspension and revocation proceedings as a result of the accident, his maritime attorney will be at his side every step of the way. Since he is covered by license defense insurance, Captain Smith will not have to pay an additional penny for legal expenses. [<sup>(1)</sup>*Compare the cost of the annual insurance premium to the problem of finding and the cost of hiring a knowledgeable attorney for just one hour!*]

Although an incident may appear small and you may be convinced of your innocence, as a mariner you are a “fish out of water” in a courtroom. Legal defense of a Coast Guard license is tricky and expensive but license insurance is simple and affordable.

### **LICENSE DEFENSE INSURANCE: ADVICE FROM A SENIOR MARINER**

*[Source: The following is an excerpt from internet correspondence between Captain Greg Periman and Captain Philip Ritchie who is on his 13<sup>th</sup>. Issue of his unlimited Master’s license: Captain Periman is a veteran of the Coast Guard’s Administrative Law system run amuck(as described in GCMA Report #R-315C.)*

“My purpose in posting the license insurance information was to alert Pilots that there is protection available to them. You would be surprised how few inland mariners protect themselves with this very affordable insurance. Most of the blue water officers, and all the bar pilots around the country do so religiously...”

“I relate this to you in order to emphasize the vital need for the inland mariner to protect his livelihood with this insurance. With the S&R (suspension and revocation) rules now making a respondent guilty until proven innocent and the new rules that make the respondent’s defense far more complicated, the services of an experienced admiralty attorney on behalf of the respondent are paramount. Almost all inland navigators fail to see the need for license insurance. They believe their bosses when they are told, “Don’t worry, we have you covered.”

“I’m certain<sup>(1)</sup> that the pilot that was unfortunate enough to be at the sticks of the M/V ELAINE G when it ran over the six fishermen and a dog on the Ohio River wishes now that he had purchased license insurance. I will be surprised if the Coast Guard hearing does not find a basis for S&R

proceedings against his license. The towing company may, or may not, defend him. [<sup>1</sup>Writer's Opinion].

When the families of the six fishermen sue for wrongful death due to negligence and reckless navigation, the vessel owners will have no choice but to apply to the judge for exoneration or limitation of liability. Once this motion is made the judge suspends the lawsuit and convenes a separate hearing on the question of exoneration or limitation of liability. Granting of limitation of liability to the value of the vessel depends on many factors; seaworthiness, adherence to the rules of the road, company policy, condition of the vessel, crew training, and experience, etc....

"In today's inland waterway operations there are many operators who feed off major towing companies. These feeder operators operate with vessels that are ancient and worn out. I know of one currently in operation that was built in 1940. They pay their personnel as little as possible. They skimp on repairs, equipment, supplies, (and) personnel. Their boats are chartered on a bare boat lease. As often happens, their vessels are involved in casualties. If they get past the unseaworthiness of the vessel by laying the blame on the Pilot and actually receive limitation of liability, the limitation is limited to the value of the vessel, which would amount to what it would bring as scrap iron. The classic excuse to avoid the unseaworthiness of the vessel is to blame the Pilot. A good admiralty lawyer knows how to combat that move. That is why they can charge \$500 to \$600 per hour for their services....

"If you do not have license insurance, I urge you to get it before your next trip. Also, please try and convince other pilots to protect their license(s)..."

**A REAL-LIFE GCMA EXAMPLE:  
Pushing An Oversized Tow  
Can Cost A Small Mariner Big Bucks**

[Source: GCMA Newsletter #39, April May 2006]

While powerful corporations like ARTCO rack up millions of dollars of damage to public and private infrastructure along the waterways without the Eighth District even raising a finger, GCMA was brought back to the "real world" on April 12<sup>th</sup> in a hearing before an investigative officer at MSU Morgan City.

Captain ☺☺, who has been on the water all his life and is a native of the local area, was pushing an empty "six-pack" tow down the Atchafalaya River during daylight hours in full view of the Morgan City Vessel Traffic System cameras, radars, and AIS. An experienced VTS operator who reportedly held a towing officer's license was on duty at the time.

At the time, the Atchafalaya River gage was reading 7.5 feet that is "high water" for the area. Captain ☺☺ held his tow at Twenty Grand Point where the Intracoastal Waterway joins the Atchafalaya River under the control of the VTS while another southbound tow passed under the three bridges joining Morgan City on the East with Berwick on the west. This is one of the most dangerous sections of the river and is the reason why the VTS was established there thirty years earlier. Two previous accidents in the 1970s damaged spans of the railroad bridge disrupting transcontinental rail service with one accident threatening the area with a lethal chlorine spill.

The VTS gave Captain ☺☺ clearance to proceed down the river on a slow bell following the tow that just passed under the bridge. Feeling the force of the winds pushing him toward the nearby bank, Captain ☺☺ pushed his tow into the river and turned south toward the "99-Mile Board" several miles away.

As Captain ☺☺ pulled out into the river out from behind the shelter of the trees his empty barges began to feel the effects of the wind pushing him across the channel toward the Berwick shore. The river is wide at that point and presented no real problem except that there were three tows leaving the "99-Mile Board" heading in his direction. This kept him closer to the right descending bank (RDB) on the Berwick side. As he approached the "99-Mile Board" he was unable to use full power to maneuver because all the northbound tows that had clearance to come out of the "99" had not yet cleared and completed their turn to the north. That held up the tow ahead of Captain ☺☺. Yet the current continued to push him south and the wind pushed him toward the bank as he idled ahead.

**The Accident**

About this time, the VTS controller realized that Captain ☺☺ was in trouble and called him on the radio. However, Captain ☺☺ was fully aware of this and found himself boxed in by the tow ahead of him and the tows coming out from the "99." He realized that he was being pushed by the wind toward three vessels tied alongside a dock on the Berwick side of the river as the current swept him downriver.

Captain ☺☺ made the best choice possible – all of which was captured in full color by the VTS camera. He was able, by applying full power, to stop his tow and hold it in the current thereby avoiding the tow ahead of him. He could not have powered out into the river because he would not have been able to clear the passing northbound tows. He immediately sounded the Danger Signal to alert the people on the boats tied alongside the dock. One small crewboat scooted away from the dock to safety. Captain ☺☺ then straightened his tow and made an egg-shell landing against the vessels that were tied alongside the dock. Because he sounded a timely warning, there were no injuries. However, there was approximately \$5,000 damage reportedly sustained by one of the aluminum vessels at the dock. This is inevitable when a six-pack tow lands alongside you.

The fact that the small crewboat heard the warning and was able to pull away, gave Captain ☺☺ the opportunity to allow his lead barge to touch in at the dock, and pivot on the dock and out into the current and then headed into the cut at the "99-mile board."

**Picking Up the Pieces**

Captain ☺☺, the pilot of an underpowered floating object (i.e., a six-pack tow) allided with a fixed object (i.e., moored vessels) in the navigable waters of the United States. The proof of this statement was as plain as the nose on your face in full color, in full motion complete with the sound of the warning issued by the vessel traffic controller in the background.

Captain ☺☺ received a "complaint" from the Coast Guard and spoke with the investigating officer. The Coast Guard was willing to enter into a "settlement agreement" with him in return for a three-month license suspension.

Eventually, after Captain ☐☐ discussed the matter in detail, the offer was reduced to two months in lieu of bringing the matter before an Administrative Law Judge for settlement. The choice of bringing it before an ALJ always remained open. Nevertheless, the proof was on video tape. It was an open and shut case, easy for the Coast Guard to prosecute.

Captain ☐☐ is a GCMA member. He brought us the story after he had spoken with the investigating officer. GCMA brought in one of our top river pilots, a native of the Morgan City area, to discuss the matter with Captain ☐☐. Unfortunately, Captain ☐☐ had not followed GCMA's advice to purchase license insurance and did not have the money to hire a lawyer represent him before an Administrative Law Judge if he decided to follow that route. Although we believed that Captain ☐☐ had done his utmost to prevent injury and serious damage when faced by the inevitability of a potential disaster, there had been damage. While GCMA was ready to award him our (simulated) gold medal for a "great save" the accident did occur.

GCMA sought and received a hearing before the the Investigating Officer monitored by the MSU's Assistant Senior Investigating Officer. Captain ☐☐ presented a carefully prepared drawing of the accident scene showing the number of tows in the river, the current, and the wind and was allowed to present and was questioned in detail on everything that took place. He was reminded that he had the right to present everything to an Administrative Law Judge if he chose to do so and was under no obligation to accept any type of "settlement." GCMA representatives were given free and full opportunity to discuss all aspects of the issue on behalf of Captain ☐☐.

During the discussion that lasted for approximately an hour and a half, GCMA questioned why the VTS controller had allowed such a large number of tows to operate in the short distance between Twenty-Grand Point and the 99-Mile Board at the same time. Unfortunately, the VTS controller on duty was on leave at the time and was unavailable. We learned that the controller in question had an advanced issue of a towing license and presumably understood and could predict the effect of crowding a large number of tows into a relatively small area during high water and with a brisk wind blowing. The Coast Guard maintained that the wind speed was recorded at 12 mph while Captain ☐☐ maintained it was closer to 20 or 25 mph. You are at a disadvantage in rebutting the wind speed argument if your vessel is not equipped with a working anemometer.

The Coast Guard questioned whether the accident was "inevitable." What would the mariner do if presented with the same set of circumstances a second time. Why did Captain ☐☐ leave the comparative shelter behind trees that broke the wind at Twenty Grand Point and venture into the river?

Captain ☐☐ replied that the VTS controller gave him clearance to proceed with a slow bell but admitted that he did not order him out into the river. The vessel remained under the Captain's command and not the controller's command. Nevertheless, Captain ☐☐ felt obligated to follow the VTS controller's directions including the "slow bell" that kept him from running over the tow ahead yet restricted his ability to maneuver – a situation that became critical as he approached the 99-Mile Board and hindered his turn to the follow the Intracoastal Waterway to the west.

### **The Rock and the Hard Place**

As a result of the discussion with the Hearing Officer, Captain ☐☐ was offered the option of presenting his evidence to the Administrative Law Judge or admitting to "negligence" accepting a one month suspension of his license. Negligence is defined in 46 CFR §5.29 as follows:

*Negligence* is the commission of an act which a reasonable and prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonable and prudent person of the same station, under the same circumstances, would not fail to perform.

"**Negligence**" is hard to admit to when you have done everything possible to avoid an accident and it occurs anyway. GCMA wanted to award Captain ☐☐ a gold medal (simulated for budgetary reasons) for making a "great save at the 99" and not wiping out three boats and another tow by attempting a "suicide turn" as some younger and less experienced pilot might attempt to do – but this was not to be.

### **Lunch Break. Crunch Time**

Although two GCMA Directors offered to accompany and assist him in presenting the same evidence to an Administrative Law Judge that would be flown in for the occasion, Captain ☐☐ decided to accept the an admission of negligence and a one month suspension of his license. Consequently, he returned after lunch and "deposited" his license with the Investigating Officer. Like any "settlement agreement" between a mariner and a Coast Guard investigating officer this one must be approved by an ALJ. He must "sign-off" on the deal. This, however, is usually just a formality unless the Judge detects an error.

### **The Last Word**

The decision cost Captain ☐☐ far more than the reported cost of the accident. At his reported gross pay rate of \$450 per day for 30 days his loss is \$13,500. That is almost 2½ times as much as the cost of the accident. It far exceeds the cost of basic license insurance through MOPS that would have provided an experienced Admiralty attorney to argue his case before an ALJ. An experienced Admiralty attorney is knowledgeable in wading through the Coast Guard legalistic quagmire that often baffles lower-level mariners. However, even with legal assistance, there is no guarantee that you will win a specific case.

In addition, Captain ☐☐ could have purchased optional income protection insurance for a small fraction of the \$13,500 in salary he will have to forego during the next month he is out of work. The amount, though, is often more than the amount a licensed mariner would spend on a "basic" policy that just provides legal assistance (i.e., a maritime attorney) and advice.

We did not find that Captain ☐☐ 's employer, an AWO-member company, was forthcoming with any offers of legal assistance. Their towboat was involved in an accident, and they (and their insurance company) had to pay the repair bill for the boats that their tow damaged. The company buys insurance and hires lawyers to protect its own interests. It is up to the mariner to protect his own interests....

Our GCMA Director,<sup>(1)</sup> with experience working as a Pilot on towboats for the same company, opined at lunch that the allision probably would not have occurred had the tow been limited to four barges rather than six barges. The extra 200 feet by 16 to 18 feet (estimated 3,600 sq. ft.) of windage based on the height of the hull, coaming, and fiberglass covers on the lead barges of this oversize tow made the tow unmanageable under the fresh cross wind that Captain ☺☺ encountered as he traveled downriver. The Coast Guard issues “permits” for oversize tows to operate on the Gulf Intracoastal Waterway but it is up to the licensed officers to operate that tow safely. However, refusing to push extra barges for almost any reason usually is the last step before termination of a towing officer’s employment. [<sup>(1)</sup> *Our Director follows GCMA’s advice and protects himself with a license insurance policy he pays for out of his own pocket.*]

If the case had gone before an ALJ, Captain ☺☺ could have called the VTS controller and had him explain his professional judgment in allowing the number of tows he did to traverse the river at the same time. Captain ☺☺ could have called upon the company to provide a shipyard haulout report for the same vessel to repair wheel and possible rudder damage that occurred before this incident and may have further restricted the vessel’s maneuverability. Captain ☺☺ previously asked the company to provide this information but found it unwilling to do so. By agreeing to accept a charge of “negligence” Captain ☺☺ avoided these challenges as well as the aggravation of continuing to fight the battle for months awaiting a hearing date before an ALJ. All that can be chalked up to stress and strain – something it is best for all of us to avoid.

One of the things that is so difficult for many of our mariners to accept is that many Coast Guard investigating officers have no practical experience within the industry itself. They “go by the book” against our mariners, yet go by a different book against their employers.

We would like to suggest that towing companies with well maintained equipment and experienced crews invite Coast Guard Investigators to ride on their boats for several days on various routes or while conducting a variety of activities for the purpose of orientation so that they have a better idea of the problems the mariners they employ have on the job.

Captain ☺☺ made it quite clear that he was within several years of retirement and, had it not been a financial necessity, he would leave the industry immediately.

GCMA representatives suggested that the Coast Guard consider issuing him a “Letter of Warning” since this was a small accident and he had successfully avoided a major accident by taking prudent action “in extremis.” All experienced towing vessel officers, considering the hours they work and the routes they cover, have occasional “fender benders” from time to time. To allow such a “fender bender” to cost a working mariner \$13,500 out of his pocket is more than we are willing to accept. However, a “Letter of Warning” in this case could not be put on the table because he had received a previous “LOW” in another Captain of the Port Zone for an unintended grounding, and the Investigating Officer indicated that she was not allowed to offer it in this case.

It is far from certain that any business enterprise (and this refers to the entire towing industry) with its unattractive

working conditions and poor reputation, can succeed when its employees are subjected to this kind of penalty for a minor accident. Other mariners in the same Coast Guard District have major allisions with never a reprimand from a Coast Guard investigator.

**THIS IS NOT A BEDSIDE STORY**  
**It Can Happen While You Sleep:Go To Bed – No Problem**  
**Wake Up To Big Problem!**  
By Captain David C. Whitehurst in GCMA Newsletter #42

On August 16, 2006 at 22:00 I was on a towboat in the San Jacinto River building a tow preparing to head for Freeport TX. I had my two empty barges (200’x35’) doubled up and tied to an empty barge that was tied to the fleet mooring barges. I noticed an inbound tow just south of where I was doing my tow work. It really did not concern me as this area has a constant flow of traffic both in- and out-bound.

One of my deck-crew was tightening the last wire and the other was putting out the running lights while I was on the phone with MSO Houston obtaining an oversize tow permit.

#### **The Accident**

I was on watch. I saw my deck-crew scramble from the barges to our vessel and turn the headline loose. At that point I saw a loaded barge that was about seventy five feet away and headed straight for my two barges. At first I thought that the tow was going to tie off just below my barges. Then I realized that this tow was moving much too fast to stop – and its speed appeared to be increasing.

I quickly backed my vessel out of harms way as the lead loaded barge pushed under the rakes of my two empty barges breaking them free of their moorings.

I was standing by on channel 80 with the fleet office and channel 03 with my deck-crew. I made a call on channel 80 and someone responded telling me that the other towboat was calling me on channel 10. When I contacted him, he stated that he had a mechanical malfunction and his gears would not shift into reverse.

His tow was still moving forward carrying my two empty barges along with his tow. There is a mud-bank just ahead of the fleet’s mooring barges. I asked the other operator if it would be all right if I took my vessel and pushed on the forward corner of his lead barge so that it would hit the mud-bank and stop his headway. He agreed so I maneuvered my vessel to the starboard bow corner of the lead load and started pushing it toward the mud-bank.

After the tow stopped, I concentrated on my two empty barges as they were loose and moving towards the fleet’s boat dock where there were a number of vessels tied off. I also called the fleet on channel 80 requesting that a boat be dispatched to assist the other vessel and its tow. I then had my deck crew put a headline on my two empties and contacted the other operator asking permission to tie my tow alongside his loads. He agreed and I slid my barges up the side of his tow and my deck-crew secured my tow to the loaded barges.

An assist boat arrived along the starboard side of the stern barge at about the same time the operator of the other towboat stated that repairs were made and he could now

reverse his engines and back the tow so it could be secured in the fleet.

While backing his loaded barges off the bank, the port side of the loaded barges backed under a spoonbill rake of an empty barge that was tied to the fleet mooring barges. In doing this, some deck piping, handrails and a lifting boom were damaged. Everything seemed in order at this point, when I went on board the other vessel and spoke with the Captain who explained the malfunction. We had a very pleasant conversation.

At about 09:00 the following day I was awakened by my Captain who greeted me with news that I was being blamed for the damages to the other vessel's tow. I got up and went to the wheelhouse where my Captain told me the Coast Guard was on the other vessel and would be over shortly to talk with me about what happened.

I purchased license insurance a few months back after attending a hearing where I witnessed a mariner get screwed over by the Coast Guard.<sup>(1)</sup> The mariner lost his license for thirty days although he faced originally a ninety day suspension in the beginning. [<sup>(1)</sup>*GCMA Newsletter #39, Pushing an Oversize Tow Can Cost a Mariner Big Bucks.*]

I immediately picked up my cell phone and called the toll-free 800 number to call my MOPS legal representative. I spoke with a lady contact who asked where I was located, and I responded that I was in the Houston area. She then said that someone would call me shortly. No sooner than I put the phone down, it rang and an attorney introduced himself and asked what happened. My attorney instructed me to not give a written statement to the Coast Guard but that he would prepare a statement for me based on our conversation. He gave me his office phone number as well as his cell number. He told me to give these numbers to the Coast Guard investigators.

**My attorney** called me a number of times during the day to check and see how I was doing. I felt the money for my insurance premium was money well spent.

When the Coast Guard investigators boarded my vessel and asked me for a statement I told them that **my attorney** instructed me not to give them a statement at this time. They said they had no-problem with this.

### Lesson Learned

My only regret is that I did not have license insurance years ago when I found myself in a similar situation and was told I had a **company attorney** to represent me. Although I was assured that **the company attorney** would represent me, the day before I was to appear at the Coast Guard Suspension and Revocation hearing the **company attorney** informed me that he had a more important matter to tend to and would not be there to represent me.

At that point, I had to hire an attorney to represent me. Back then, it was only through the help of a patient ship-to-shore "marine operator" that I was even able to find an attorney that would represent me. It ended up costing me my two weeks pay. I went home broke but I still had my OUTV license in hand.

After this incident, I am certainly going to advise all mariners that I meet to spend a few dollars to protect your income.

When I became a member of the Board of Directors of the Gulf Coast Mariners Association, one of the first things I

did was to push to get a discount on license insurance, and was successful. I do understand when someone tells me that it is hard to come up with the money since I never could manage to set aside the money from my own paycheck.

Several months ago, when accompanied by my wife, I sat in on the hearing to try help another Captain who lost his license, we saw just how fast your house note, and car note payments can be cut off if you are out of work for a prolonged period. We learned from this bitter lesson that we witnessed and managed to come up with the money to buy license insurance. Give the crew at MOPS a call and count on them working for you or simply advising you if the need ever arises!

Our Association has assembled a number of examples where Coast Guard investigations have been poorly done and have hurt our mariners. Two Coast Guard Reports, #R-429A and #R-429B are already on the website, and #R-429 is in the final stages of preparation for submission to Congress.

Do two things to insure that you will have a safer work place and can continue to support yourself and your family. First become a member of the GCMA at \$36.00 a-year and then ask for and take advantage of the discount by contacting MOPS directly to purchase your license insurance coverage.

### STEP #2: PROTECTING MY FAMILY'S INCOME? (Optional Coverage)

Your family needs to be housed, fed, and clothed, whether you are working or not. Basic license defense insurance packaged with **basic income protection insurance** can take away that worry. Income protection insurance means that, in the unlikely event your license is suspended, the amount of income you chose to cover will continue to be paid for up to one year.

GCMA believes that license defense insurance will provide you with a highly qualified and experienced attorney to defend your license. We also believe you should **consider** income protection insurance for up to one year. The foregoing case was a good example of how much a month out of work can cost a mariner. Although the figures in this case were a shocker, you must consider what your losses would be for one, two, or three months out of work and you will have little opportunity to choose the number of months the Coast Guard will offer you.

Included in the insurance package is legal defense against any fines or penalties you might be charged with, as a result of a shipping casualty or incident involving your vessel. [*Note: However, if you lose the case, you are responsible for paying any fine or civil penalty the government levies against you.*]

### STEP #3: PROTECTING MY ASSETS (Optional Coverage)

If you purchase license defense insurance, you "covered your ass," but what about your assets? Do you own your own home, automobile, or other valuables?

As an **optional coverage**, you can chose to insure yourself

against any **civil lawsuits**<sup>(1)</sup> brought against you as the result of a shipping incident. In other words, if some person (even your employer) suffers injury or monetary loss as the result of a shipping incident you might be responsible for, they might sue you. This coverage provides fully paid legal representation to defend you from their claims. This is distinct from defending your marine license. [<sup>(1)</sup>*Civil cases: A Civil case is a more serious case that seeks money from you compared to a case under Administrative Law that seeks a lesser remedial administrative penalty such as suspending your license. If you have this optional coverage it will cover attorney fees. Criminal cases: However, if you are found guilty of breaking a law, you may be charged in a criminal action as a result of a marine casualty. Cases like this are becoming more common in areas such as pollution or otherwise harming the environment. This additional optional coverage will cover your legal defense against the suit up to a fixed limit – and you set that limit.*]

John K. Fulweiler, Esq., pointed out in the March 2006 issue of WorkBoat magazine: “The Fifth Circuit had just decided that the Jones Act doesn’t prevent a maritime employer from suing its employee to recover property damages that arise from the employee’s negligence.”

For example, if your employer ends up paying damages you caused, he might be able to turn around and pursue a claim against you to recover his losses if he can prove the incident was caused by your negligence. So, think about this. If you admit to negligence, incompetence, misconduct, or violating a law or regulation by signing a “settlement agreement” with the Coast Guard because you want to avoid the possibility of a stiffer penalty if you appear before an Administrative Law Judge to defend your license, such an action might just provide an opening for an angry employer to take everything you own.

In his article, Mr. Fulweiler went on to state: “It’s an issue that’s never been addressed by the courts before...and it’s only binding upon courts located within the Fifth Circuit<sup>(1)</sup>...It’s possible another circuit might rule differently....I wondered if the Fifth Circuit realized the kind of stress and worry it had just piled on everybody.” [<sup>(1)</sup>*The Fifth Circuit includes all of Louisiana.*]

### A RISK NOT WORTH TAKING

The Coast Guard conducts almost 500 suspension and revocation proceedings every year. We believe our uninsured lower-level mariners are sitting ducks. You have the option of sharing your risk of paying for costly license defense with thousands of other mariners by buying a license defense policy with an (optional) income protection insurance policy and civil case (optional) and/or criminal protection (optional). We believe these choices are alternatives worthy of your serious consideration.

If you are a prudent, licensed mariner living under the conditions that you know our mariners face, do you still think you want to assume any or all of these risks on your own shoulders when you literally cannot afford to lose.

Is it worth setting aside about \$200 per year<sup>(1)</sup> for a basic license defense policy to have qualified experts assume part of that risk?

### DISCLAIMER

GCMA is NOT in the business of selling insurance. We recommend that you contact insurers directly and discuss license defense insurance (and optional coverage) with them.

The GCMA Board of Directors looked into this important matter to protect our mariners. We recommend that all licensed lower-level officers at least consider a basic policy to defend their license because we believe the existing Coast Guard’s “administrative procedures” are not mariner-friendly. You earned an important document that Coast Guard administrative procedures can take away from you. The process of separating you from your license and/or MMD can be more stressful than pulling teeth. It can cause aggravation, frustration, and stress. We have seen cases where it can drag on for months and even years. Even worse, our mariners learned through hard experience that the procedure is not always conducted in a fair and impartial manner. Our well publicized attempts to remove overzealous prosecutors that unfairly attacked our mariners are seldom rewarded with success.

Some mariners were shocked to learn that the Coast Guard can even proceed against a mariner if he breaks “company rules” set down in an “operations manual,” memo, or other written document – and, even “verbal” orders that are written on the wind! A stroke of the pen on the day you were hired provides all the “proof” the Coast Guard needs to show that you read and understood every single item in the company operations manual from cover to cover.

Following company policies cannot protect mariners who fall asleep on the job after violating the Coast Guard’s “12-hour” rule.<sup>(1)</sup> The choice to insure yourself or not is left to each of our licensed officers to make. Think about it carefully. [<sup>(1)</sup>*Read GCMA Reports #R-308, Violation of the 12-Hour Rules: The Lake Washington SR-520 Bridge Allision and follow-up report #R-406, Coast Guard Assesses Civil Penalty Against Company for Violating 12-Hour Rule.*]

### LICENSE INSURANCE VENDORS (Please Do Not Call the GCMA Office)

#### Call or Fax to Discuss Terms and Obtain Insurance Quotations From These Vendors:

MOPS Marine License Insurance  
370 West Park Avenue  
Long Beach, NY 11561-3245  
PHONE: 1(800) 782-8902 ext. 3302  
[Full Coverage as Mentioned in This Report]  
Website [www.mopslicenseins.com](http://www.mopslicenseins.com).

Also  
Marine Officers Liability Insurance  
(Liability but NOT License Defense Insurance)  
Robinson & Son, LLC  
P.O. Box 432  
Hudson Falls, NY 12839  
PHONE: 888-746-9230  
FAX: 518-746-9324  
CELL: 518-683-0878