

BODILY INJURY NEWS

The journal of the Thomas Miller Americas' bodily injury team

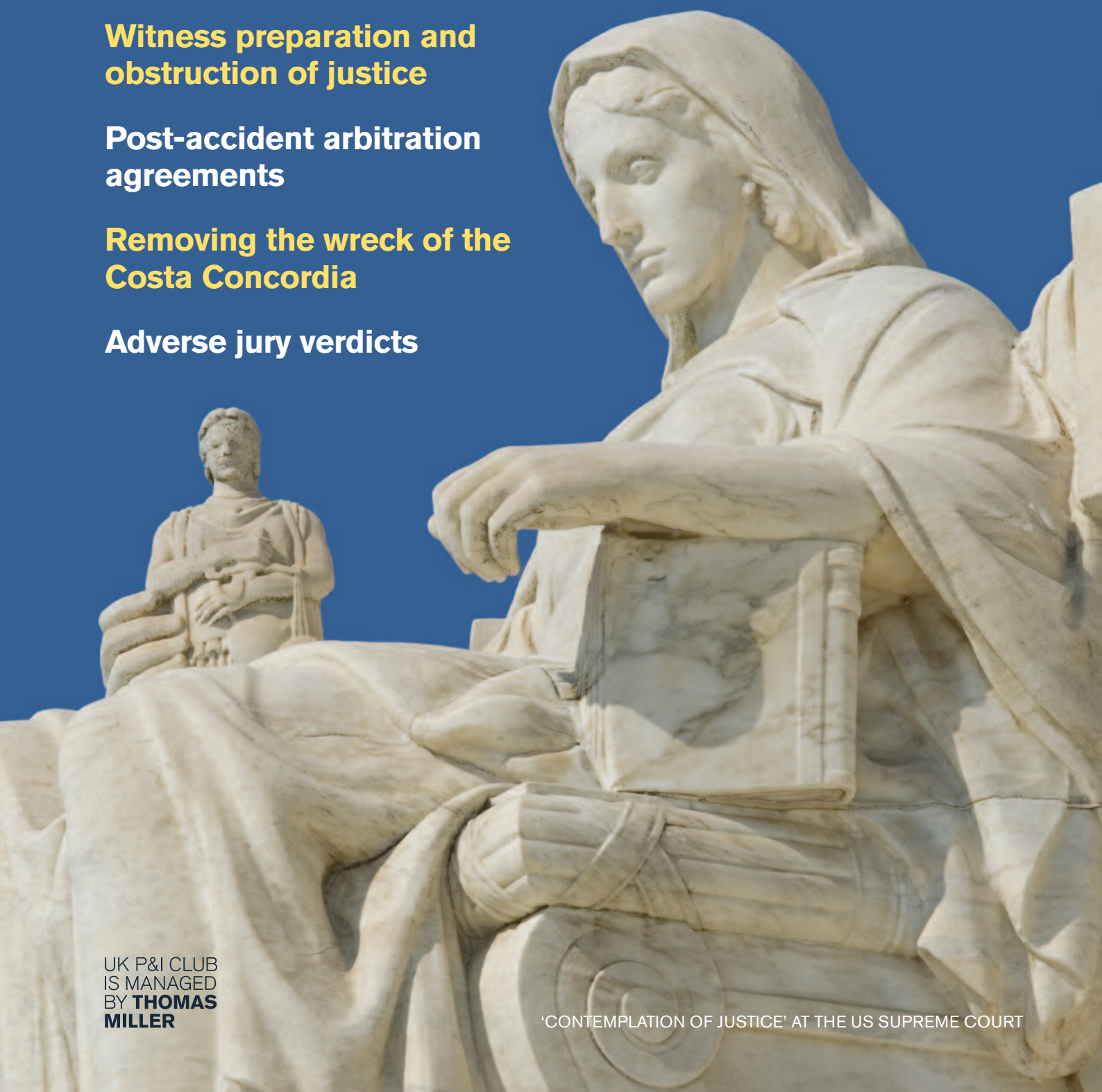
Good investigative practice

**Witness preparation and
obstruction of justice**

**Post-accident arbitration
agreements**

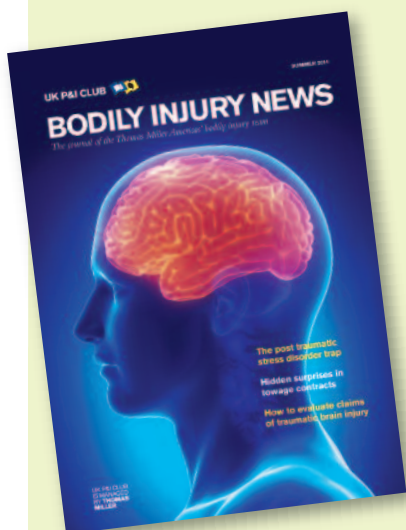
**Removing the wreck of the
Costa Concordia**

Adverse jury verdicts



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Bodily Injury News

Bodily Injury News is the bi-annual newsletter of the Thomas Miller Americas' Bodily Injury Team.

The topics it addresses are highly relevant to all our Members worldwide given more than half of the Club's personal injury claims over \$100,000 are brought in the American courts.

We welcome your feedback on the topics we cover as well as suggestions on subjects to address in future issues. Please send your comments and ideas to Louise Livingston at louise.livingston@thomasmiller.com

The information in this newsletter is not legal advice and should not be relied upon as such.

Full house

This year's BI seminar was the 10th annual seminar. What began as a small informal half day discussion of one or two topics for specific Members has grown to become a comprehensive full day seminar combining legal updates by the Club's service providers and hands on practical problem solving using specific cases handled by the Club.



Topics covered by the seminar over the past ten years have included crew medical fraud in PEME exams, US Customs & Immigration's handling of stowaways and refugees, dealing with the media; limitation of liability, criminalization of crew members and shipowner, employment law issues in crew claims and best practices when investing and handling bodily injury claims.

As ever, this year's seminar was very well attended by a cross section of the Club's Members. After completing a full agenda, participants, Thomas Miller claims executives, seminar speakers (some of the top maritime trial lawyers in USA) and local service providers relaxed with cocktails and dinner in Manhattan.

As you may know, the TMA BI Team meets once a month to discuss cases, which meet a variety of criteria. The Team uses its collective nationwide experience to develop case handling strategies, consider appropriate reserves and review the performance of the key maritime attorneys who work with us and the Members to mitigate exposure in this volatile claims area. From the Thomas Miller offices in New Jersey and San Francisco, BI claims executives with full Club authority can attend mediations, arbitrations and trials at short notice and low cost.

In addition to best practices claims handling and estimating, the UK Club's Risk Assessors have been visiting Member ships. They often observe good practices which may be adopted on other ships. Those practices have been collected on the Loss Prevention section of the website www.ukpandi.com/loss-prevention/on-board-practical-advice/. Good practices in preventing bodily injuries include: confined space entry warnings stencilled on cargo hatches; gentle fall arrestor safety harnesses; good mooring line protections; and PPE stations at the entrance to chemical store.

The Team will soon start working on the 2015 Seminar, details of which will be included in the Spring/Summer edition of BI News. If anyone has any suggestions for topics to be included in the 2015 Seminar, we look forward to hearing from you. Contact details for our Bodily Injury Team can be found on the back page.

Mike Jarrett

President & CEO, Thomas Miller (Americas) Inc.

Good practice

Louise Livingston recaps Chris Reilly's back to basics approach in investigations.

The UK Club consistently stresses that the best way to control bodily injury claims is early involvement of the Club and prompt and thorough investigation. Though past BI Seminars have touched on investigations including the difference between investigations of civil and criminal incidents, this year we went back to basics.

Chris Reilly of Nicoll, Black & Feig, LLP in Seattle, Washington, has a marine engineering background. He is a retired Judge Advocate General with the United States Coast Guard. Chris spoke at this year's seminar on investigation. His investigative strategy is to answer three seemingly basic questions:

1. What happened?
2. Why did it happen? and
3. What can be done to prevent it happening again?

Devoting the appropriate time and resources to properly answering these questions can meet both the regulatory requirements under the ISM Code as well as protecting legal needs in the event a lawsuit is filed. With investigations, one size clearly does not fit all.

Thorough investigation prevent future accidents

The key duties of any investigator are to collect and preserve evidence, avoid making assumptions about the facts and evidence, avoid jumping to conclusions about the incident, and to take the time necessary to do a thorough investigation. If a shipowner is unable to find out what really happened and what caused the accident, it will be impossible to determine what can be done to prevent a similar accident in the future. In addition, an effective legal defense will be difficult.

A good investigator should be skeptical, curious and loyal only to the truth.

From the Club's perspective, even if the evidence indicates a clear legal liability for the incident causing the injury, the information to evaluate that liability is available promptly and should guide the Member's and Club's response to that particular claim.

Chris noted that the American Bureau of Shipping's ISM Guidance note encourages shipowners to seek legal counsel (see box below). In general, any investigation that is not conducted by or directed by an attorney will likely be discovered by the plaintiff if a lawsuit is filed.

DO

Involve the legal department or outside counsel if potential liability for the company

DON'T

Use judgmental words like "negligent" "deficient" "intentional"

Assign blame

Make broad conclusions unsupported by the facts

Offer unsupported opinions, perceptions or speculations

Witness recollection

Interviewing witnesses promptly, face to face, including the injured party, whenever possible, is essential to a full understanding of what happened. If an immediate interview of an injured party isn't possible, one should be done as soon as medically possible – often ashore.

Determining where the witnesses' attention was at the time of the incident,

seeking perceptions and facts, not opinions is also key to understanding the incident. Memories fade over time and people change their minds about what occurred, particularly after speaking with other witnesses. Having a record of witnesses' recollections soon after the incident is critical.

Chris recommended against injury report forms presupposing ship's equipment was at fault and caused an accident. For example, one accident report form contained the question "What item/equipment do you think caused the accident?"

Relying on his experience with investigations, Chris touched on the multitude of sources of information on-board a ship, which should be preserved including contemporaneous smart phone photographs by the crew, ships documents and various data recorders. He also discussed the various experts that should be involved to assist the investigation if warranted.

Any investigation should include exploring whether or not there could be a recovery against a third party. Key evidence involved in the accident should also be preserved such as a block and tackle or a parted line.

"I do not know" may be an acceptable answer to "Why did the incident occur?"

The initial investigative report prepared by the curious and sceptical investigator should assemble the evidence, interviews and reports facts. The report should identify key disputed issues and disputes between statements and the evidence. Chris made an important point that sometimes, "I do not know" may be an acceptable answer to "Why did the incident occur?" ■

For more information, please contact creilly@nichollblack.com

Witness preparation and obstruction of justice

An insider's view of witness preparation, avoiding charges of obstruction of justice and employer responsibility. **Noreen Arralde** recaps the seminar.

Chris Reilly, former staff judge advocate for the 17th Coast Guard District in Alaska and current member of the firm Nicoll Black & Feig, provided an insider's view of preparing witnesses with an eye toward avoiding charges of obstruction of justice, while Freehill, Hogan & Mahar partners Mike Fernandez and Tom Russo shared their experiences based on many years of defending corporations and individuals in matters involving MARPOL violations and other criminal enforcement actions.

Mike, a graduate of Kings Point and Master Mariner, is a frequent lecturer both here and abroad on topics such as preparing witnesses to be interviewed by the authorities and the role of counsel in investigations, as is Tom, an internationally known lawyer with expertise in environmental criminal law matters. Delegates to the Bodily Injury Seminar were privileged to hear from these three extraordinary lawyers.

The focus of the Witness Preparation and Obstruction of Justice segment was

bodily injury claims, but the speakers made it clear that the issues apply equally to property damage, pollution, and other claims.

The preliminary issues identified:

- **Who are the witnesses needing preparation for interviews or testimony**
- **What entities will be conducting interviews or taking the testimony**
- **What does the preparation actually involve**

Once preliminary issues were reviewed, explanation of the importance of investing the time and resources necessary to properly prepare witnesses was discussed. Special emphasis was placed on the need to have lawyers conducting witness preparation.

Who are the witnesses needing preparation for interviews or testimony

For every incident involving a serious bodily injury on a ship, there are at least

a dozen witnesses. Witnesses are not limited to eye-witnesses to the occurrence; the definition of witness is much broader than that. Regulatory agencies investigating a bodily injury and lawyers suing over a bodily injury are considering many issues beyond the immediate incident that specifically resulted in the injury. A witness is someone who can provide first hand information regarding the incident or facts related to the incident.

What entities will be conducting interviews or taking testimony

In the aftermath of a marine casualty or accident, the United States Coast Guard may initiate an investigation for the purpose of taking appropriate measures for promoting safety of life and property at sea. When there is a shipboard injury, the Coast Guard can initiate an investigation if an injury requires professional medical treatment or renders a seaman unfit for duty. The Coast Guard's geographical jurisdiction is from the waterfront seaward and all navigable internal/inland waters. In broad terms, the Coast Guard has authority over all US vessels regardless of location anywhere in the world, and over all vessels located within US waters.

The National Transportation Safety Board ("NTSB") also plays a role in investigating major marine accidents on navigable waters, internal waters, or the territorial sea of the United States and accidents involving US flagged vessels worldwide to determine the probable cause and identify safety recommendations which will prevent similar events in the future.



WITNESS PREPARATION

The Environmental Protection Agency (“EPA”) or Occupational Safety and Health Administration (“OSHA”) may also get involved in certain circumstances in maritime casualties. They will typically do so in coordination with Coast Guard officials.

The United States Coast Guard Investigative Service (“CGIS”) has investigators authorized to carry firearms, execute and serve warrants, and to make arrests. When CGIS responds to an incident, they are looking for evidence of a crime.

The Coast Guard investigations of marine casualties are “not intended to fix civil or criminal responsibility,” but the Coast Guard investigators often seize evidence or obtain information from witnesses that has some bearing on subsequent determinations of criminal or civil liability. Therefore, making sure you understand what information is being gathered by these investigators is important.

What does witness preparation actually involve

Issues which need to be considered when preparing crew witnesses for interviews by the authorities include:

- **Does the crew member require an interpreter?**
- **Interviews are protected only if conducted by counsel**
- **Is the crew witness a potential whistleblower?**
- **Vessel records maintained by the crew must be preserved**
- **Crew member may face individual criminal exposure**

In the context of marine casualty investigations, the authorities have several criminal statutes at their disposal in order to charge companies and/or individuals with obstruction of justice and other crimes. False statements or entries in ship’s records, obstruction of proceedings, tampering with witnesses, and destruction or alteration of records can give rise to criminal charges.

Many prosecutions related to so-called



Pipeline disaster which killed eight people and destroyed 38 homes

magic pipes used to bypass oily water separators and discharge oily waste water have been based on false statements given to investigators and/or falsification of record books. The principles of obstructing an investigation in the context of a personal injury investigation are the same.

According to the US Attorney’s manual, a federal prosecutor should initiate or recommend federal prosecution if the prosecutor believes the person’s conduct constitutes a federal offense and the admissible evidence probably will be sufficient to obtain and sustain a conviction. Generally speaking, hiding evidence or instructing a witness to lie in the context of a bodily injury investigation could result in an individual or company indictment.

During the course of the investigation into a pipeline disaster which killed eight people and destroyed 38 homes, the public utility provided investigators with a policy document, but later claimed that document was a “draft” policy which was not in effect at the time of the incident. Subsequent investigation revealed the policy was in effect at the time of the incident and the policy tended to establish the utility’s culpability for the disaster. The company has been indicted by a grand jury because of the false statement to the investigators. The employees who made the false statement may face jail time.

Direct and vicarious criminal liability/respondent superior

A corporation may be held liable for the criminal acts of its employees, even if the corporation did not have knowledge of the act, if:

- **The conduct is related to duties the employee has authority to perform, and**
- **The conduct benefits, or is intended to benefit, the company**

Note that the above concepts are broadly interpreted by the authorities.

Attorney-client and work product protection

If witness preparation is conducted by counsel, conversations with the employees and crew members are protected as confidential, as are notes of the attorney’s interviews and certain information gathered by counsel, but not records maintained in the regular course of business.

If witness preparation is conducted without counsel, nothing is protected as confidential. There is no protection afforded communications to and from the company, the company’s investigation, crew interviews and internal reporting. ■

For more information, please contact russo@freehill.com or fernandez@freehill.com

Post-accident arbitration agreements

A useful tool to help employers manage injury cases. **Dee O'Leary** summarizes the session.

Tom Canevari of Freehill Hogan & Mahar explained that post-accident arbitration agreements are different from arbitration clauses in a seafarer's contract. Post-accident arbitration agreements are entered into following an incident and are not part of the employment agreement.

The post-accident arbitration agreement was designed so that the shipowner could pay settlement advances in the hope of avoiding litigation. However, some seaman took the advances but then sued anyway. Shipowners then conditioned the agreement to arbitrate upon the seaman agreeing to arbitrate in exchange for the settlement advances.

Arbitration clauses are not typically seen in US seaman contracts or collective bargaining agreements, because US seaman employment contracts are not subject to the Federal Arbitration Act ("FAA"). Employment contracts of foreign seaman are subject to the Federal Arbitration Act.

The NY Court of Appeals, in *"Schreiber v. K-Sea Transportation"*, held that post-accident arbitration agreements are not "contracts of employment" and are enforceable under the FAA.

Several plaintiffs have challenged the validity of the post-accident arbitration agreements, but have not been successful. In *"Schreiber"*, the Court put the burden on the plaintiff to show why the agreement should be held invalid, holding: the arbitration agreement was not a release and the "ward of the admiralty" doctrine did not outweigh the policy favoring arbitration.

Early on, the agreements were short, one-page documents using simple language to avoid claims that the seaman "didn't know what he was signing." But that format didn't stop the seaman from claiming other reasons – such as "I didn't know I was waiving my right to a jury;" "I didn't know what arbitration was;" "I was on medication or too drunk to understand what I was signing." Courts then required an evidentiary hearing to determine whether the agreement was enforceable. The shipowner, with the help of counsel, designed a "Red Letter" Arbitration agreement, much like the Seaman's Red Letter Release. The Red Letter Arbitration Agreement has a detailed list of statements and questions dealing with common issues, such as: waiving right to jury;

opportunity to consult with counsel; future employment not dependent on signing agreement, etc. The seaman must write in his own handwriting that he understands what he is signing and that he is signing the agreement knowingly and willingly. Since the Red Letter Release was developed, no seaman has challenged it.

In appropriate cases, post-accident arbitration agreements are useful tools in managing injury cases. The shipowner avoids the uncertainty and costs of litigation and the seaman receives a regular income while recovering from his injuries. ■

For more information on post-accident arbitration agreements, please contact Tom Canevari at canevari@freehill.com



Distinctions between arbitration and litigation

Presentation by Curtis Mase of Mase Lara, Miami Florida

ARBITRATION	LITIGATION
Basics <ul style="list-style-type: none">▪ Private – between parties▪ No Jury▪ Arises from a contract▪ Quicker	Basics <ul style="list-style-type: none">▪ Public▪ Judge or Jury▪ State or Federal▪ Longer
Venue <ul style="list-style-type: none">▪ Location of arbitration will be provided for in contract clause▪ May be flag state, crewmember's country of citizenship or country of shipowner's incorporation	Venue <ul style="list-style-type: none">▪ Location of trial will be place where tort occurred or contract breached▪ May be a forum selection clause contained in contract which provides for specific location
Governing Law <ul style="list-style-type: none">▪ Will be provided for in contract▪ Parties may agree otherwise	Governing Law <ul style="list-style-type: none">▪ Law of the venue (most often)
Selection of Arbitrator/Judge <ul style="list-style-type: none">▪ Contract clause will provide number of arbitrators (1 or 3)▪ Parties agree on arbitration▪ No jury—arbitrator decides all	Selection of Arbitrator/Judge <ul style="list-style-type: none">▪ Judge select at random▪ Can be a jury trial or bench trial
Discovery Process <ul style="list-style-type: none">▪ Very limited discovery▪ Controlled by arbitrator▪ Rules not strictly applied	Discovery Process <ul style="list-style-type: none">▪ Full discovery▪ Deadlines set by Court▪ Rules of evidence apply
Proceedings <ul style="list-style-type: none">▪ Informal process▪ No evidence rules▪ Submissions with limited hearings▪ Full hearings are similar to trial	Proceedings <ul style="list-style-type: none">▪ Very formal process▪ Can take many days▪ Rules of evidence enforced by Judge
Appealability <ul style="list-style-type: none">▪ No right to appeal▪ Right to modify or clarify extremely limited▪ Binding in most instances	Appealability <ul style="list-style-type: none">▪ Right to appeal to higher court
Costs <ul style="list-style-type: none">▪ Theoretically lower costs▪ Must pay arbitrator – can be expensive▪ Usually prepay all costs of arbitration▪ Often shipowner pays all costs of arbitration	Costs <ul style="list-style-type: none">▪ Theoretically higher costs▪ Usually prevailing party entitled to costs and fees from other side

Curtis Mase explains the differences between arbitration either in an employment agreement or post-accident arbitration and litigation, which are summarized here. Understanding the benefit and drawbacks of both systems of dispute resolution is an important tool for Members in considering their response to an injury or illness claim. For more information, please contact cmase@maselara.com

Wreck removal – Innovative engineering

Lindsay Malen, Director of Business Development at Titan Salvage, gave us a “bird’s eye view” of the colossal task of the removal of the COSTA CONCORDIA from the waters off the Italian island of Giglio. **Linda Wright** summarizes the presentation.

The ship was carrying over 4,000 passengers and crew on January 13, 2012, when she struck rocks along the island coast, killing 32 people. The vessel came to rest against the steeply slanted ocean floor, listing 74 degrees to starboard near a national ecologically pristine coral reef preserve.

Titan Salvage, a world leader and specialist in marine salvage and wreck removal, teamed up with Microperi, an Italian marine contractor, specialists in underwater construction and engineering. Together their large team of engineers developed a solution to remove the wreck with the least chance of environmental damage to the sea and the tourism of Giglio. The ship was about 60,000 tons, and the length of three football fields. Titan expected to rotate the ship to an upright position, refloat her, and tow her to a shipyard for dismantling. But how?

Imaginative planning

The plan was imaginative, with little room for error. The phases were outlined as follows:

- **Fuel removal – Done by emergency responder**
- **Holdback system and stabilization**
- **Underwater support and portside sponsons**
- **The Parbuckling – Rotate ship to upright position**
- **Starboardside sponsons and refloating all sponsons**
- **Refloat ship for tow to Genova shipyard**

Environmental impact

The number one priority for Titan was the environment – protection of the coral reef, the dolphins, the endangered pinna nobilis mussels, posidonia meadows, and over hundred species of exotic fish and botanical life.

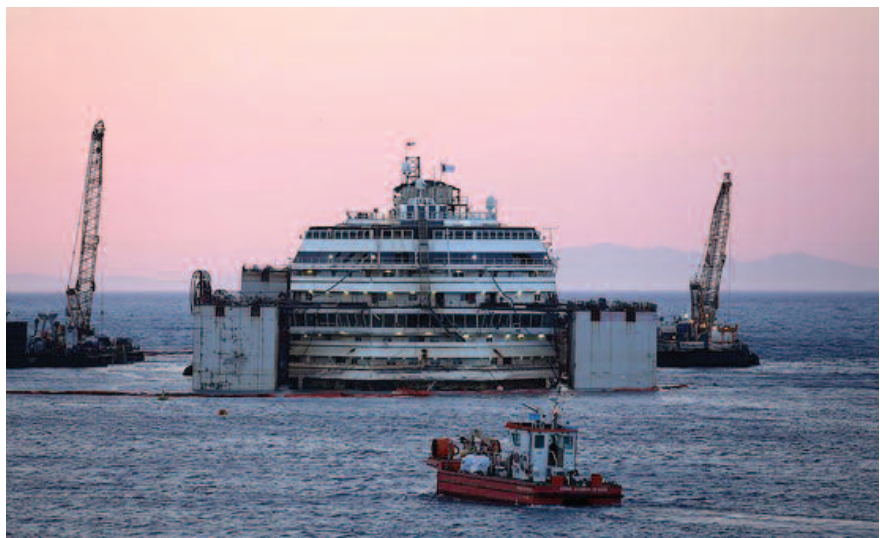
The safety of the crews working on the wreck was also of the utmost importance. Due to the dangerous resting spot of the ship, workers were given courses in mountaineering to assist them in working at such a sharp angle. The divers were allowed only 45 minutes underwater, and then hastened to a chamber for safe decompression. Extraordinary efforts were made for the daunting task to remove the COSTA CONCORDIA from the ocean bed.

Titan was awarded the project contract in April 2012, and the removal plan was submitted in May. The vessel would be removed in one piece, refloated and towed away.

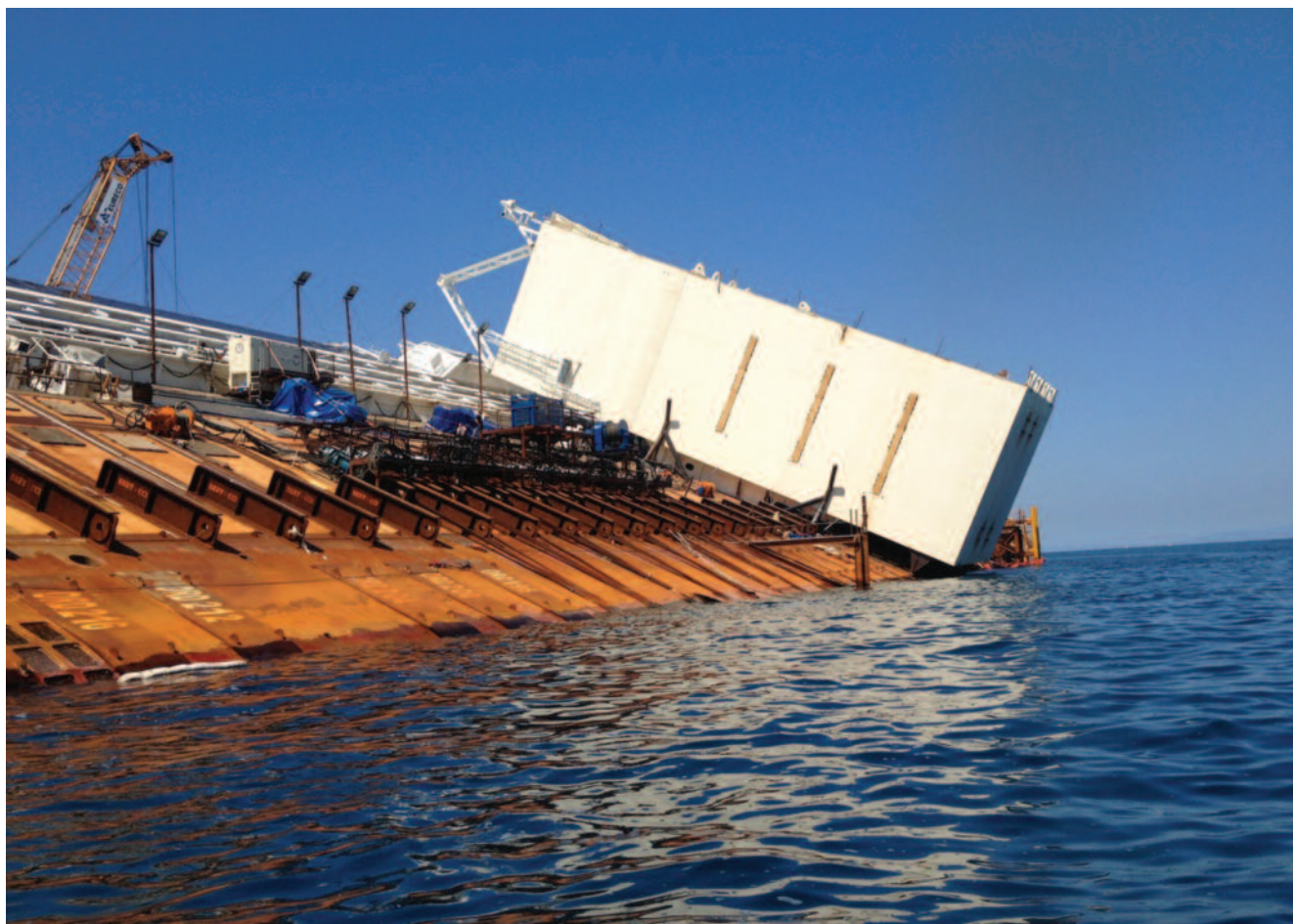
The immediate concern was to stabilize the wreck, which was in danger of slipping from its precarious position to the deeper sea floor. Cables were run from the portside of the ship, under the hull and anchored to the starboard side of the granite seabed. Anchor blocks were fixed to the sea floor between the center of the wreck and the coast, holding the ship in a stable position.

The next phase involved constructing underwater platforms, which were then fixed in place portside to create a horizontal plane onto which the wreck could be rotated maintaining an upright stance. While still partially submerged, the work of welding 13 water-filled sponsons to the above-sea portside would be completed to prepare for the rotation – or parbuckling.

Months of off-site construction of platforms, sponsons, blister tanks (a kneewck brace to support the vessel bow) altogether fabricating over 30,000 tons of external steel structures. Transport



COSTA CONCORDIA



and installation of same, resulted in the parabuckling stage being performed in September 2013. Several times winter weather conditions caused the wreck to settle, and there was weakening of the ship's structure, but all systems were "go" for September 16th 2013. The actual rotation would take about 19 hours, as the cables attached to the sponsons would slowly roll the ship up. There was only one chance to rotate successfully, so the delicate movement of the ship had to balance the forces involved without deforming the hull. The parabuckling phase was successfully completed, and was a tribute to the expert engineering team.

Now upright and exposed, the vessel was ready for the next phase – the attachment of replicating sponsons to the starboard side to create balance. Once the sponsons were stabilized against the starboard side using strandjack towers mounted to the sponsons, the refloating process commenced July 14th, 2014. Slowly the

water was pneumatically pumped out of all sponsons. The air remaining in the tanks created a "water wings" effect, resulting in appropriate buoyancy. Now afloat, COSTA CONCORDIA was ready for the final phase.

On July 23rd, 2014, the massive floating ship, supported by sponsons and steel plates, left the harbor of Giglio, with surrounding boat horns blasting. Her speed was 2 knots, and 18 meters of the ship were submerged, but on Sunday, July 27th, 2014, COSTA CONCORDIA arrived in Genova, Italy for dismantling. The largest project in the history of salvage was almost completed. This job included over 520 men and women and 24 nationalities who worked tirelessly under the MD Capt. Rich Habib and Salvage Master Capt. Nick Sloane.

But the Titan team was not finished. Their commitment to Giglio and the environment meant continued cleaning, restoring and replanting of the sea bed

off the island coast in order to bring Giglio back to its original state. During the two year salvage and removal effort, the Titan environmental team, along with the University of Rome, catalogued and monitored the conditions of all sea life in the area, relocating plants other sea life if they were threatened by the wreck. Even after the project end they kept their promise to restore the ecological beauty of this national treasure.

Ms. Malen's presentation at the BI Seminar luncheon was highlighted by her array of photos and graphics of the removal operation phases, and underwater scenes of environmental custodial care. She attended the wreck several times, and has been invited to speak at numerous events across the globe on the COSTA CONCORDIA removal project. ■

For further details and fascinating photos taken during the two year process, view the Titan Salvage website: titansalvage.com or theparabucklingproject.com



Adverse jury verdicts in injury cases: Evaluating options

Markus McMillin gives the low-down on the Bodily Injury Seminar's panel discussion on whether to appeal an adverse jury verdict.

In the afternoon of this year's Round Table Seminar, the Club hosted a panel discussion regarding evaluating the myriad of issues involved in deciding whether or not to appeal an adverse jury verdict. The panelists were Club recommended attorneys from Florida, David McCreadie of Lau, Lane, Pieper, Conley, & McCreadie, P.A. and Curtis Mase of Mase Lara, both of whom have argued appeals before the United States Supreme Court.

For those Members less experienced with United States legal processes, Mr. McCreadie and Mr. Mase began with an overview of the State and Federal court systems. They explained how appeals

navigate through the two court systems up to the highest state court or, if accepted, to the United States Supreme Court. Importantly, they noted that out of the ten thousand or so petitions sent to the Supreme Court each year, less than 1% are actually heard.

Next, the panelists discussed the importance of post-trial motions before the trial court after an adverse jury verdict has been reached. Both proper post-trial motion work, and the timing of those motions, are critical to ensure that one has a viable appeal. If not done correctly, one could lose on procedural grounds alone. A few post-trial motions are as follows:

1. Motion for Judgment Notwithstanding the Verdict, where the judge is asked to reverse the jury's verdict because there was no factual basis for the verdict or it was contrary to the law;
2. Motion for New Trial, where a request is made by the losing party for the case to be tried again on the basis that there were significant legal errors in the way the trial was conducted or the jury obviously came to an incorrect result; and
3. Motion for Remittitur, where the losing party asks the judge to reduce the jury award because it is grossly excessive as a matter of law.

JURY VERDICTS

On the whole, these motions are rarely granted, but they are important to make to support the record for appeal.

Mr. Mase and Mr. McCreadie then reviewed various grounds for filing an appeal including race and gender discrimination in jury selection, jury misconduct (truthful disclosure of information to sit on the jury and also improper conduct during the trial such as independent internet research on people or facts in the trial); and jury tampering (attempts to influence the jury through means other than representing evidence or argument in court). They also discussed evidentiary and legal rulings by the court including incorrect jury instructions or jury verdict forms as a basis for appealing (these are the most common).

The panelists then discussed procedures on appeal, including staying the judgment and any mandate by an appellate court to enforce the judgment prior to the appeal being heard by a higher court. These are critical tasks to ensure that the

prevailing party does not enforce the judgment against the losing party.

...there is no flow chart or matrix to follow in evaluating whether or not to appeal an adverse jury verdict.

Next, Mr. McCreadie and Mr. Mase discussed considerations regarding the length of time for an appeal (approximately one to two years and more if it is ultimately heard by the United States Supreme Court); fees and costs on appeal; the losing party's obligation to put up a bond or security with the court while the appeal is pending (this can be quite expensive); the interest accruing on the judgment while the appeal is pending (this can also be quite expensive); use of specialized appellate counsel or the trial counsel to appeal an adverse jury verdict (there are advantages and disadvantages to both).

Other considerations when deciding whether or not to appeal are using the threat of an appeal as leverage to negotiate a settlement (vs. truly appealing the judgment); the amount of the judgment vs. the time and money involved in appealing the case; setting precedent on a legal issue of great importance, or alternatively, the risk of setting bad precedent because the case at hand has particularly weak facts; if the appeal is won and retried, could the result of the second trial actually be worse than the first trial; and the composition of the appellate court – does one know if the appellate court panel leans one way or another with regard to the issues in your case.

In summary, there is no flow chart or matrix to follow in evaluating whether or not to appeal an adverse jury verdict. There are many varied and complex issues involved and each case rests on its own facts and legal grounds. But a thorough evaluation of the above issues should assist in deciding whether or not an appeal should be undertaken. ■

The Bodily Injury Team wish all our Members and friends a Merry Christmas and a Happy and Prosperous 2015



As always, our best wishes and thoughts
are with the crews who keep watch on board
ships at sea during the festive season



We look forward to working with
you all in the New Year

Expertise and experience

A specialist group from both the New Jersey and San Francisco offices empowered with a significant settlement authority to deal with the particularly demanding cases of bodily injury in America.

San Francisco



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Louise is an attorney specializing in bodily injury claims. Before joining Thomas Miller (Americas) in March 2002, Louise was a partner in a San Francisco maritime law firm. She leads TM(A)'s Bodily Injury Team.



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Linda joined Thomas Miller (Americas) in May 2010. Previously, she was a P&I Club correspondent on the Pacific West Coast for 29 years.



Markus McMillin
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Markus joined Thomas Miller (Americas) in 2006, having worked at two maritime law firms in San Francisco.

Thomas Miller Americas' Bodily Injury Team

This dedicated team supports Members based both in the United States and abroad in dealing with a diverse and complex range of personal injury and illness cases. The one common factor is the influence of US jurisdiction or emergency response.

In the past six months, the team has handled cases ranging from suspicious death, passenger's leisure activity injuries, long-term occupational illness, engine room and cargo handling fatalities, through to shore-side accidents, loss of limbs in mooring activity and even sexual assault.

As well as supporting Member's claims and enquiries directly, the team share their collective experience through the pages of "Bodily Injury News".

New Jersey



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Jana joined Thomas Miller (Americas) in November 2005 after seven years of practice as an attorney specializing in maritime matters.



Dee O'Leary
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Dee joined Thomas Miller (Americas) in December 2007 after 17 years practicing law in New York City with a firm specializing in maritime matters.



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