

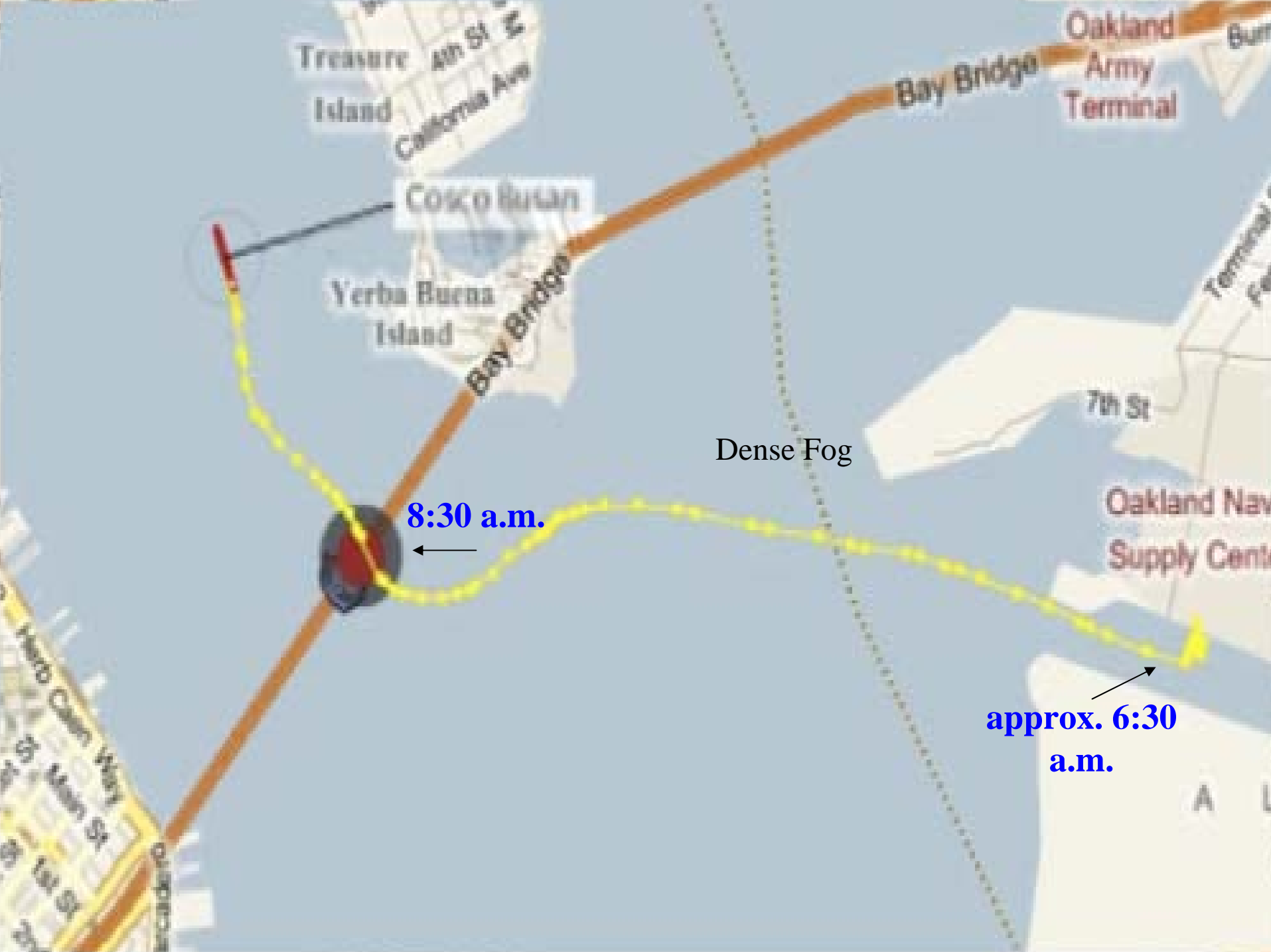


How to Keep a Collision and Allison from Ruining your Day

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Treasure Island
4th St
California Ave

Cosco Busan

Yerba Buena Island

Bay Bridge

Bay Bridge
Oakland Army Terminal

7th St

Oakland Naval Supply Center

Dense Fog

8:30 a.m.

approx. 6:30 a.m.

Hardy Canyon Way
Mission St
Escalante

A L



Initial Response

- Find Out What Happened
- Preserve Evidence
- The Port Authority's Rights to Investigate
- Dealing with Investigating Authorities
- Dealing with Media
- Dealing with Ship Owners



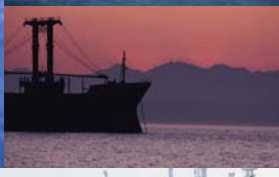
Investigation

- Limits on attorney interviews
- *Upjohn* warnings
- Who represents the Port Authority?
- Should the Port Authority arrange for individual representation of any of its employees?
- Limits of the attorney-client privilege



Preservation of Evidence

- What must be preserved?
 - Documents
 - Electronic Evidence (computer data)
 - Tapes
 - Video Surveillance Tapes
 - Notes
 - Pictures
 - How is preservation accomplished?
- Litigation Holds – duties and privileges
 - Spoliation



Port Authority Rights to Investigate

- Non-spoilation letters
- Right to conduct investigations
- Subpoenas to preserve evidence
- Cases are won or lost at the investigation stage



Dealing with Investigating Authorities

- What agencies/authorities will investigate?
 - Coast Guard
 - NTSB
 - State Police
 - OSHA
- Authority To:
 - Investigate
 - Obtain evidence
 - Interview employees



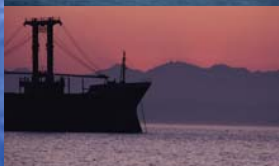
Media and Public Relations

- What advice should you give to management?
 - Remember management will likely become witnesses
 - Express concern about those injured
 - Pledge cooperation with the authorities and investigators
- Be truthful and don't speculate
- Instruct people to not speak on behalf of the Port Authority

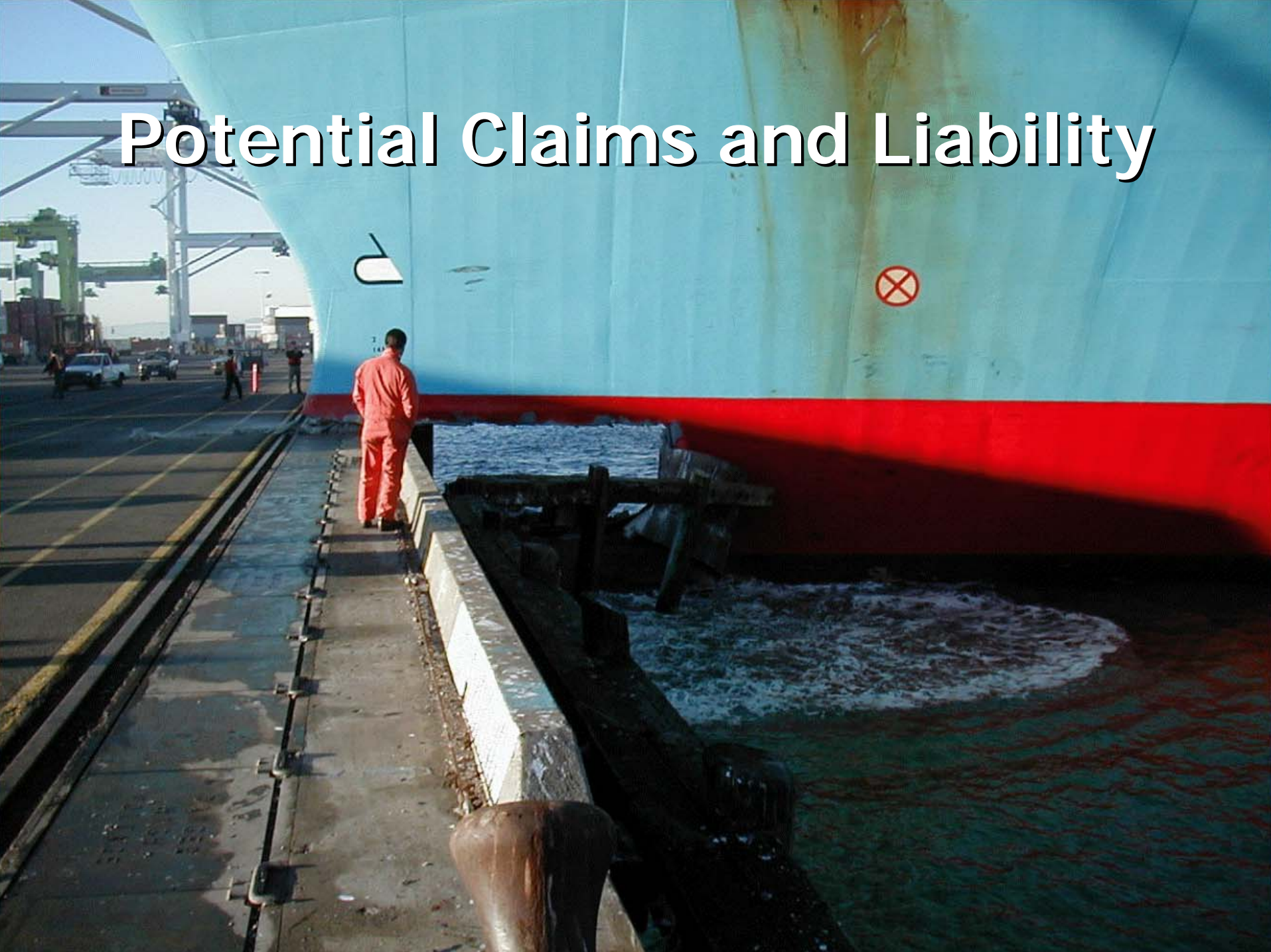


Dealing with Ship Owners

- Letters of Undertaking
- Bonds
- Cooperation agreements
- Impact of business relationships

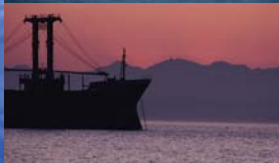


Potential Claims and Liability



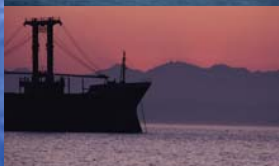
Potential Claims Against the Port Authority

- Longshoreman injury claims
- Other personal injury claims
- Unsafe berth claims
- Breach of contract



Potential Claims by the Port Authority

- Property Damage – Tort
- Contribution for Longshoreman Claims
- Indemnification
- Business Interruption?



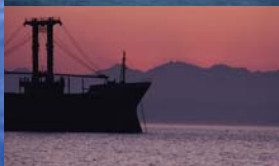
Longshoreman Claims

- Standard

All Injuries, Without Regard to Fault

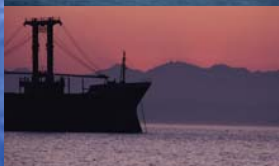
EXCEPT:

- Solely caused by intoxication
- Caused by willful intent to kill or injure



Longshoreman Claims Covered Employees

- SITUS
 - Navigable Waters, Adjoining Areas
- STATUS
 - Maritime Employment
 - Longshoreman
 - Ship Repairer
 - EXCLUDED PERSONS
 - Office Workers
 - Suppliers
 - Vessel crews, Master



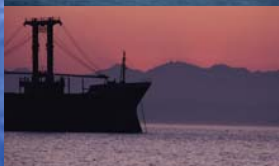
Longshoreman Claims

- Coverage
 - Medical
 - Disability
 - Death Payments
- Third-Party Recovery
 - Employer's Lien on Worker's Recovery
 - Employer's Right to Prosecute Third Parties



Standard of Care

- General – Proportional Fault
- The *Pennsylvania* Rule
- The *Oregon* Rule
- Superseding Cause
- Pilots



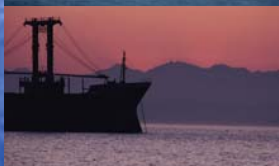
Potential Defenses

- Act of God
- Inevitable Accident
- Inscrutable Accident
- Economic Loss Rule
(*Robins Drydock Doctrine*)



Maritime Remedies

- Maritime Lien and Arrest
- Maritime Attachment
- Maritime Tort Actions
 - Direct losses
 - Subrogation Actions



Limitation Proceedings

- The Limitation of Liability Proceeding
- Timing
- The Fund
- Mandatory Concursus
- Notice and Publication
- Impleading



The Limitation Proceeding

- First Issue: Exoneration
- Limitation:
"Privity and Knowledge?"
- Res Judicata

