How to Keep a Collision and Allison from Ruining your Day

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Dense Fog

8:30 a.m.

approx. 6:30 a.m.
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-spoliation 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
  \((\text{Robins Drydock Doctrine})\)
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