



Association of Transportation Law Professionals

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Lingering Questions About Independent Flag State Reports of Marine Casualties

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The MV DALI allision with the Francis Scott Key Bridge in Baltimore, Maryland may present an opportunity for a court to decide an important legal question—whether the findings and conclusions of a truly independent maritime casualty investigation by a flag State¹ are admissible in a civil proceeding.

Purposes and Limitations of Marine Casualty Investigation Reports

There are several purposes of marine casualty investigations, including determining (1) the cause of the casualty, (2) whether misconduct, incompetence, negligence, or willful violation of a law by a person contributed to the cause of casualty, and (3) whether there is a need for new laws or regulations to prevent the recurrence of the casualty. *See* 46 U.S.C. §6301.

As experienced maritime attorneys are aware, no part of a maritime casualty investigation report conducted under 46 U.S.C. §6301 is admissible or subject to discovery in a civil proceeding.² 46 U.S.C. §6308(a). This includes “findings of fact, opinions, recommendations, deliberations, or conclusions.” *Id.* Additionally, members or employees of the Coast Guard who investigated a marine casualty may not be subject to deposition or other discovery or offer testimony without the permission of the Secretary of the Department of Homeland Security. 46 U.S.C. §6308(b).

A Truly Independent Flag State Maritime Casualty Investigation May Be Discoverable and Admissible in Civil Proceedings

¹ “Each state shall cause an inquiry to be held ... into every marine casualty ... involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment.” United Nations Convention on the Law of the Sea, Dec. 10, 1982, art. 94, at 435, <https://treaties.un.org/doc/Publication/UNTS/Volume%201833/volume-1833-A-31363-English.pdf> (last visited September 6, 2024).

² Photographs that are incorporated into the report and “illustrate the condition of the objects depicted in the photos as they existed ... at the time that the pictures were taken” may be admissible. *In re Complaint of Danos & Curole Marine Contractors, Inc.*, 278 F. Supp.2d 783, 785 (E.D. La. 2003).

The MV DALI is registered in Singapore,³ which has a Transport Safety Investigation Bureau (TSIB) to investigate marine accidents for compliance with vessel regulations.⁴ According to one news source, the TSIB will be conducting “an *independent* marine safety investigation,” but would not be seeking to apportion responsibility or determine liability.⁵

There are at least two cases that have touched on marine casualty investigation reports by a flag State. *In re Oil Spill*, MDL No. 2179, 2012 WL 425164 (E.D. La. Feb. 9, 2012); *Incardone v. Royal Caribbean Cruises, Ltd.*, No. 16-20924, 2019 WL 8989910 (S.D. Fl. Sept. 30, 2019).

In *In re Oil Spill*, an offshore drilling rig known as Deepwater Horizon exploded and sank in the Gulf of Mexico in 2010. This resulted in the largest marine oil spill in history. The Republic of the Marshall Islands conducted a flag State marine casualty investigation⁶ and issued a report that contained findings of fact and conclusions.⁷

Ruling on a motion *in limine*, the district court excluded the Marshall Islands marine casualty investigation report in part because the parties failed to thoroughly brief the issue of whether the report was admissible. 2012 WL 425164 at *3. The court also noted that the report was based in part on joint investigation evidence and testimony, and that such reliance on joint investigation materials “may run into statutory exclusion issues.” *Id.* The court also noted that it was “not clear that the report is the product of proper legal authority,” citing portions of the report that indicated that Marshall Islands relied on material that were “outside the purview of the flag State.” *Id.*, fn. 3.

³ Marine Traffic, at <https://www.marinetraffic.com/en/ais/details/ships/shipid:2810451/mmsi:563004200/imo:9697428/vessel:DALI> (last visited September 6, 2024).

⁴ Singapore Ministry of Transport, <https://www.mot.gov.sg/what-we-do/transport-investigations> (last visited September 6, 2024).

⁵ The Straits Times, “MPA to probe whether S’pore law violated in Dali ship crash that led to Baltimore bridge collapse,” March 28, 2024, at <https://www.straitstimes.com/singapore/mpa-investigating-if-dali-crash-into-baltimore-bridge-violated-merchant-shipping-act-1995> (last visited September 6, 2024).

⁶ The Deepwater Horizon vessel had sailed under the flag of Marshall Islands. *See* The Times-Picayune, “Kenner hearing: Marshall Islands-flagged rig in Gulf oil spill was reviewed in February,” May 12, 2010, at https://web.archive.org/web/20151012104655/http://www.nola.com/news/gulf-oil-spill/index.ssf/2010/05/kenner_hearing_marshall_island.html (last visited September 6, 2024).

⁷ Republic of the Marshall Islands DEEPWATER HORIZON Marine Casualty Investigation Report, at https://www.register-iri.com/wp-content/uploads/Republic_of_the_Marshall_Islands_DEEPWATER_HORIZON_Marine_Casualty_Investigation_Report-Low_Resolution.pdf (last visited September 6, 2024).

Unfortunately, *Incardone* does not offer litigants any further guidance. In that case, a class of plaintiffs alleged that they sustained personal injuries while sailing on the Anthem of the Seas. The ship was registered with the Bahamas Maritime Authority. But the plaintiffs and defendants each moved *in limine* to exclude the Bahamas Maritime Authority Investigation report. 2019 WL 8989910, at *2.⁸ So, the parties did not disagree as to the admissibility issue of the Bahamas report.

Unlike the Marshall Islands report, the Bahamas report⁹ does not indicate that it was based on any joint investigation evidence or testimony. Although the Bahamas report references factual information reported to the U.S. Coast Guard in the “Narrative of Events,”¹⁰ and there is a reference to the National Transportation Safety Board’s review of weather forecast in the “Analysis and Discussion” section,¹¹ there is no indication that there was a joint investigation. Also, unlike the Marshall Islands report, the Bahamas report does not indicate that it relied on material that were outside the purview of the flag State. It is unclear if the preface to the Bahamas report stating that the report shall “not be used as evidence in any legal proceedings anywhere in the world” had any effect.

Singapore’s Report Not Yet Available

The inadmissibility of maritime casualty investigation reports in civil proceedings pursuant to 46 U.S.C. §6301 likely does not apply to flag State reports *unless* they contain joint investigation evidence, testimony, or material. It has been reported that Singapore will carry out an *independent* investigation. At the time of this writing Singapore’s report of the MV DALI allision is not yet available, and it remains to be seen whether the report will be admissible.

⁸ See also Dkt. 442 in *Incardone*, which refers to a paperless order granting Plaintiffs’ Unopposed Motion in Limine to Preclude Findings from the Bahamas Maritime, U.S. Coast Guard, and National Transportation Safety Board Investigation.

⁹ The Bahamas Maritime Authority, Anthem of the Seas, Report of the marine safety investigation into a heavy weather incident on 7th and 8th February 2016, at <https://www.bahamasmaritime.com/wp-content/uploads/2020/10/BMA-Investigation-Report-Heavy-weather-damage-to-the-Anthem-of-the-Seas.pdf?swcfpc=1> (last visited September 6, 2024).

¹⁰ *Id.*, at 8-12.

¹¹ *Id.*, at 14.