

Minutes Open Session	Monthly Board Meeting	Date: April 4, 2013
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Board members present

RADM. Frank Johnston, Vice President
RADM. Jack Brooks, Commissioner
Capt. Steve Roberts, Commissioner
Mr. Dave Connolly, Commissioner
Capt. Joe Long, Commissioner
Mr. John Schneider, Commissioner
Gabor Morocz, Ex Officio Member, Designee of the Secretary of the Business Transportation and Housing Agency (BTH)

Staff present

Allen Garfinkle, Executive Director;
Dennis Eagan, Board Counsel;
Kelly Dolcini, Staff Services Analyst;
Sigrid Hjelle, Office Technician

Others present

Gareth Lacy, Deputy Secretary of Communications and Strategic Planning, BTH
Ben de Alba, Special Assistant, BTH
Rex Clack, Esq., and David Russo, Esq., Counsels for Capt. Guy Kleess

Public present

Lt. John Lane, Cmdr. Jason Tama, Capt. Rick Hurt, Mike Jacob, Ray Paetzold, Vic Schissler, Dennis Plant, Deb Self, several local media representatives.

1. Call to order and roll call

Vice President Johnston, who is acting as President in the absence of an elected president, called the meeting of the Board to order at 10:05 a.m.

2. Incident Review Committee

After roll call, Vice President Johnston asked Mr. Eagan to explain the Incident Review Committee (IRC) process and possible outcomes. Mr. Eagan provided a presentation and description of the Board hearing process in matters of receiving incident reports and recommendations from the IRC.

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Because Vice President Johnston had a statutory conflict in chairing the IRC and sitting on the Board as the trier of fact for the incident to be reported, he designated Mr. Morocz to chair the incident review hearing as Chairman Pro Tem. Mr. Morocz took over the chairmanship and proceeded with the hearing.

Preceding the IRC presentation, Mr. Eagan stated that Commissioner Schneider had disclosed to him that he had received information concerning the OVERSEAS REYMAR allision with the Bay Bridge prior to the hearing. This information was received before his appointment as a board member. Commissioner Schneider received a written report concerning the incident from Overseas Shipholding Group (OSG), the owner of the vessel. He also was present at a meeting between Tesoro and OSG at which an OSG employee reported orally on the incident. Commissioner Schneider received both reports as part of his official duties at his employer, Tesoro. Inc. Commissioner Schneider stated that all he recalled about the reports was that they included a timeline of the incident and that currents may have been a factor. Upon the disclosure, neither the IRC nor counsel for Capt. Kleess had any comments.

In the first part of the incident review hearing, a presentation of the IRC findings was offered. Mr. Garfinkle provided a condensed version of the IRC report concerning the allision of the M/T OVERSEAS REYMAR with the “Echo” tower of the San Francisco-Oakland Bay Bridge. The report, signed by Vice President Johnston and Mr. Garfinkle, was offered and admitted as Exhibit 1 for the record.

Mr. Garfinkle summarized the findings of the IRC as a failure to employ effective Bridge Resource Management, a loss of situational awareness, and an overall complacency. After the summary of facts and conclusions made by the IRC, Mr. Garfinkle played a video recording made by the Automatic Identification System of the U.S. Coast Guard, depicting the transit of the ship from Anchorage 9 to the point of allision with the “E” Tower of the bridge. The recording also had audio capturing the VHF transmission between the ship and Vessel Traffic Control. Mr. Garfinkle pointed out relevant facts that were analyzed by the IRC report. The recording was identified as Exhibit 2 for the record.

Lastly, Mr. Garfinkle played a video recording of the radar images and navigational instrument readings captured by the voyage data recorder of the ship. The recording also had audio capturing the conversations on the bridge of the ship. Mr. Garfinkle pointed out the relevant occurrences mentioned and analyzed in the IRC report. The recording was identified and admitted as Exhibit 3 for the record.

After Mr. Garfinkle’s explanation of facts and conclusions made by the investigators, Vice President Johnston announced the recommendations of IRC in that the Board should find pilot error and then file an accusation for the suspension or revocation of Capt. Kleess’ pilot license.

In response to the IRC presentation, Capt. Kleess’ counsel, Mr. Rex Clack, were recognized by the Chair Pro Tem to present a statement in defense. Mr. Clack made a brief presentation emphasizing that Capt. Kleess was a well-trained and highly experienced mariner with an impressive resume. He stated that although the facts of this case are not in dispute, the position

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of the defense is that Capt. Kleess has performed according to the reasonable standards of an expert in his profession. He stated that perfection is not the appropriate measure and that mere errors in judgment by him should not make him liable for the allision. He stated that the defense rejects the IRC recommendations. On questioning from Commissioner Brooks, Mr. Clack said that although the facts are not in dispute he nevertheless declined to stipulate to the facts.

After hearing from both the IRC and pilot's counsel, the matter was submitted to the Board for its consideration. Subsequently, the Board adjourned into closed session to deliberate on the recommendations received.

CLOSED SESSION STARTED: 11:25

CLOSED SESSION ENDED: 12:15

OPEN MEETING RESUMED: 12:18

Following the closed session, Mr. Morocz noted that a quorum was still established and the Board returned to open session to announce its decision on the matter.

Mr. Morocz announced that, in closed session, the Board had deliberated and reached the following unanimous decision:

1. The Board directs that an accusation be filed seeking the suspension or revocation of Captain Kleess's pilot license.
2. The Board further determines that, in its opinion, there is reasonable cause to believe that the public interest requires that the pilot license of Captain Kleess be summarily suspended pending hearing and decision on the charges in the accusation. Accordingly, the pilot license of Captain Kleess is temporarily suspended under the provisions of section 1180 of the Harbors and Navigation Code.

In explanation of the practical effects of the decision, Mr. Morocz noted that the Office of the Attorney General will be notified of the Board's decision for further handling and the matter will be heard before an administrative law judge of the Office of Administrative Hearings.

3. Public comment on matters not on the agenda

There were no comments.

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4. **Proposals for additions to next month's agenda**

There were none.

5. **Adjournment**

The meeting adjourned at 12:20 p.m.

Allen Garfinkle. Executive Director

Prepared by: Kelly Dolcini