



COX WOOTTON LERNER
GRIFFIN & HANSEN LLP

BOPC RECEIVED
8/21/2020

August 21, 2020

VIA MESSENGER

David Connolly
President
Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, Suisun
660 Davis Street
San Francisco, CA 94111

Allen Garfinkle
Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, Suisun
660 Davis Street
San Francisco, CA 94111

Re: **Location:** Pier 23 San Francisco
Incident Date: October 2, 2019
Vessels: Delta Cathryn
Our Ref.: AMCLUB.BD STAR/5209

Dear Sirs:

We represent the owner of the DELTA CATHRYN with regard to the October 2, 2019, allision at Pier 23 at the Port of San Francisco (“Incident”). We are contacting the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo & Suisun (“BOPC”) and its Incident Review Committee (“IRC”) in an effort to encourage you to pursue the BOPC’s subpoena to Princess Cruises for the STAR PRINCESS’ vessel data recorder (“VDR”) information concerning the Incident. While we strongly disagree with the IRC’s initial finding of partial responsibility on the part of the DELTA CATHRYN’s operator, we are equally concerned that a failure of the BOPC to enforce its subpoena against Princess Cruises sets a dangerous precedent in this and future incident investigations.

Here, the IRC’s findings are based almost exclusively on the participants’ *recollections* of communication by and between the pilot and crew aboard the STAR PRINCESS, and the Pilot’s communication with the DELTA CATHRYN’s operator. The IRC then takes these competing *recollections* of events and makes a determination of responsibility for the Incident. This is exactly why VDR systems are required aboard vessels such as the STAR PRINCESS, so that post-incident

Terence S. Cox
Richard C. Wootton †
Neil S. Lerner ‡
Rupert P. Hansen
Marc T. Cefalu
Normand R. “Chip” Lezy ††
Michael J. Nakano ††
Galin G. Luk
Juliette B. McCullough †
Mark E. Tepper
Duane R. Miyashiro ††
Max L. Kelley
Marc A. Centor

Senior Counsel
Arthur A. Severance †††
Shawn L.M. Benton ††

Edward A. Cosgrove
Jamie C.S. Madriaga
Edward F. Sears
Thomas M. Fedeli
Hitomi Heap-Baldwin
Christopher S. Kielliger
Jennifer E. Miller

Of Counsel
Mitchell S. Griffin
Robert G. Frame ††
Donald J. Sands
Gregory W. Poulos
Cynthia A. Farias ††

† Also Admitted in Hawaii
‡ Also Admitted in New York
†† Admitted only in Hawaii
††† Admitted only in Hawaii and FL
†††† Also Admitted in AZ, AK, and CO

San Francisco
900 Front St.
Suite 350
San Francisco
California 94111
T 415.438.4600
F 415.438.4601

Los Angeles

Honolulu

www.cwlfirm.com

investigations do not need to rely on interested parties' *recollections*, but instead can be based on real-time recordings of what was actually said, when it was said and how those orders were carried out. In this case, the VDR has all of the unbiased evidence the IRC needs for its investigation, including recordings of the communication between the Pilot aboard the STAR PRINCESS and the operator of the DELTA CATHRYN, the communication between the crew of the STAR PRINCESS and the pilot (including whether the STAR PRINCESS' Master reminded the Pilot that the vessel's stern was opening from Pier 27 and that the stern thruster was still full to starboard; whether the STAR PRINCESS' 3rd officer twice warned the Pilot that the vessel was closing on Pier 23; and whether the STAR PRINCESS' lookouts properly communicated distances to the Pilot). The VDR would also have captured whether the STAR PRINCESS was suffering from an inoperative stern thruster as the Pilot mentioned in his presentation to the BOPC.

We have no doubt that all involved in the Incident are interested in discovering the truth behind the cause of the allision. The VDR information will not only answer the questions the IRC is so rightfully asking, but will also allow all parties to learn from any mistakes that were made so nothing like this happens again at San Francisco's busy cruise ship terminal. However, if the BOPC fails to pursue its subpoena, vessel owners may instead mistakenly believe that the BOPC does not have the authority to demand VDR information or worse, that a boilerplate objection to a BOPC subpoena will be sufficient to dissuade the BOPC from taking the necessary steps to compel production. This is especially dangerous when an interested party, who may share responsibility for an incident, is unwilling to release the VDR information the BOPC needs to conduct a thorough investigation.

We appreciate your efforts to subpoena the VDR information from Princess Cruises related to the Incident and would request that the BOPC takes all necessary steps to compel its production.

Sincerely,



Richard C. Wootton
COX, WOOTTON, LERNER,
GRIFFIN & HANSEN LLP