



16731  
August 1, 2001

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RE: MV00000339  
[REDACTED]  
M/V [REDACTED]  
\$3,000.00

Dear Mr. [REDACTED]:

The Hearing Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00000339, which includes your appeal on behalf of [REDACTED] as operator of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$5,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 4.05-1	Failure to give immediate notice of a marine casualty involving the occurrence listed in 46 CFR 4.05-1.	\$5,000.00

The violation was first noted on December 29, 1999, at the Port of Miami when the Officer in Charge of Marine Inspection (OCMI) observed the M/V [REDACTED] being towed past Coast Guard Base Miami Beach. He directed a Coast Guard watch stander to make an inquiry regarding the vessel's status. The inquiry revealed that the M/V [REDACTED] had recently experienced some mechanical problems and questions of notice were raised.

On appeal, you deny the violation and request that the civil penalty be dismissed or mitigated. You contend the "Hearing Officer incorrectly applied the regulatory scheme pertaining to reports of marine casualties," and that he "did not properly apply the express language of 46 CFR § 4.05-1." You also contend the "Hearing Officer failed to consider the right and obligation of the Master to address the vessel's immediate safety concerns at the time the first symptom of the casualty occurred." You further assert that the "Hearing Officer overlooked the telephonic report made by the vessel's Master to the Coast Guard inspector on December 27, 1999." You conclude that the "Hearing Officer failed to consider the impact of the Christmas holiday weekend upon the timing of the notification provided to the Coast Guard and the response of the Coast Guard to that notification." Your appeal is granted, in part, and denied, in part for the reasons described below.

Before I begin my analysis of the matter in issue, I believe a brief recitation of the facts is in order. On December 25, 1999, as the Panamanian flagged passenger vessel M/V [REDACTED] approached the Port

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of Miami, the Captain felt a vibration in the ship's engines. The Captain reduced the RPM on both main engines, and consulted the ship's Engineer who determined that the engines were operating normally. Noting that the vessel was slowing, the Captain ordered a deckhand to check the vessel's prop wash. As the vessel was docking, the deckhand reported that he did not observe any prop wash from the starboard shaft. The vessel safely moored but no report was made to the Coast Guard regarding this incident. Instead, on December 26, 1999, divers inspected the vessel and discovered that the starboard shaft had fractured and parted and that both the shaft and the propeller were missing from the vessel's stern tube. On December 27, 1999, the Senior Captain for the vessel received the results of the underwater inspection and made arrangements for haul-out and repair. He also called LT [REDACTED] at Coast Guard MSO Miami Beach and left a voice mail message regarding the marine casualty. On December 29, 1999, OCMI Miami observed the vessel being towed from its berth at Miami Beach Marina. The Coast Guard contacted the operating company, [REDACTED], who informed them of the M/V [REDACTED]'S condition. The Coast Guard informed the Company that immediate notice of the marine casualty was required. As a consequence, the Coast Guard issued COTP Order No. 99-456, requiring that the repairs to the shaft be completed prior to further use of the vessel.

You first contend that the Hearing Officer incorrectly applied the regulatory scheme pertaining to reports of marine casualty. I disagree. 46 CFR 4.05-1(a) states that "immediately after the addressing of resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify the nearest Marine Safety Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting in...a loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel; an occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route." The record indicates that the Master, Captain [REDACTED] [REDACTED], noted an unusual vibration" as the vessel was approaching its dock in Miami on December 25, 1999. The record further indicates that the Master believed something was wrong that involved his main propulsion. The master stated, "the vessel's speed was slower than he would have expected." This was essentially confirmed when his deckhand reported no prop wash was evident as the vessel was docking. You contend that once the vessel had docked, there was no longer any urgent safety concern requiring an immediate report to the Coast Guard. This is an incorrect interpretation of the regulation.

46 CFR 4.05-1(a), requires that notice of a marine casualty be given **immediately** after addressing any resultant safety concerns. I will not argue whether or not docking the vessel constitutes resultant safety concerns that excuse an immediate report. However, once the mooring operation was completed, such an obligation did arise. There is nothing in 46 CFR 4.05-1 that relieves a master from immediately reporting the marine casualty once it occurs. Elimination of the urgency is not a reason not to immediately notify the Coast Guard. Here the Coast Guard was not contacted until two days after the incident and even then, this notice was less than effective. Based on this, I do not agree with you contention that the Hearing Officer incorrectly applied the regulatory scheme.

Your assertion that the Hearing Officer overlooked the telephone call made to the Coast Guard is without merit. As has been discussed above, the call was not made immediately after the incident. An emergency can occur at any time, which is precisely why the Coast Guard's Marine Safety Offices are open 24 hours a day and are staffed for cases of emergency. The fact that the incident occurred during a holiday does nothing to obviate the Coast Guard's immediate notice requirement.

Finally, I do not regard the penalty amount as being either disproportionate or excessive. I have no doubt that the Hearing Officer considered all the evidence in this case. Based upon your submissions, he reduced the penalty from \$10,000.00 to \$5,000.00. He even sought additional information in his letter of August 28, 2000, prior to mailing his final decision. However, I appreciate the concern you express in

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your letter of January 10, 2001 regarding the statement provided by the Seventh Coast Guard District, Marine Safety Office regarding an unsubstantiated motive for not immediately reporting the incident. I agree with you that the record contains no evidence supporting an improper motive on the part of [REDACTED]. Although, this letter was subsequent to the Hearing Officer's penalty assessment, to eliminate any doubt that it had any effect on the final penalty I will further mitigated the penalty to \$3,000.00.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that [REDACTED] is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed, though mitigated to \$3,000.00.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$3,000.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties  
P.O. Box 100160  
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 5 % accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

//S//

DAVID J. KANTOR  
Deputy Chief,  
Office of Maritime and International Law  
By direction of the Commandant

Copy: Commanding Officer, U.S. Coast Guard Hearing Office  
Commander, Finance Center