UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD

UNITED STATES COAST GUARD	)	
Complainant	)	**DECISION AND ORDER**
	)	
vs.	)	**Docket Number: 01-0562**
	)	**PA Number: 01001436**
WILLIAM H. GRIMES	)	
Respondent	)	
	)	

APPEARANCES:

FOR THE U.S. COAST GUARD:
Senior Investigating Officer, Lieutenant Commander Craig A. Petersen and Investigating Officer, Lieutenant (Junior Grade) James B. Stellflug

FOR THE RESPONDENT:
William H. Grimes, pro se

PRESIDING:
THOMAS E. MCELLIGOT
United States Administrative Law Judge

I

PRELIMINARY STATEMENT

The genesis of these charges and hearings, held at the port of Lihue, Kauai, Hawaii, on November 13, 2001, involved the capsizing and foundering of the Respondent's vessel known as the SCUBA CAT, operated by Respondent, while Respondent was acting as Captain and/or Operator of the vessel, on Wednesday, July 18, 2001. Dive Kauai Scuba Center, Inc. is listed as the Owner on the Certificate of Inspection, Investigating Officer's (IO's) Exhibit 2. The vessel is allowed to carry a total of nineteen (19) persons aboard.

On or about August 17, 2001, IO James B. Stellflug, of the U.S. Coast Guard Marine Safety Office (MSO) of the port of Honolulu, Hawaii, signed and served on Respondent an official Investigating Officer's Complaint against Respondent William H. Grimes, with Administrative Law Judge (ALJ) Docket Number 01-0562, and Coast Guard Case Number PA01000510.[1]

Respondent's formal written Answer to the IO's Complaint admitted the following was true and correct with regard to the jurisdictional allegations that Respondent's address is as follows: P.O. Box 1556, Koloa, HI 96756, telephone 808-639-1565. Respondent further admitted that he holds the U.S. Coast Guard issued credential(s), namely, License Number 779221. Respondent further admitted that he was acting under the authority of that license on July 18, 2001, by serving as Master aboard the SCUBA CAT, Vessel Identification Number HA684CP, as required by law or regulation.

Respondent also admitted the third factual allegation – Use of a Dangerous Drug, which also alleged the following: The Coast Guard alleges that on July 19, 2001 you [Respondent] submitted a post casualty urine sample in which Medical Review Officer Dr. James Baber determined that you tested positive for cannabinoids (marijuana).

The Coast Guard added two other factual allegations of Negligence to their official Complaint at that time, which Respondent denied in his formal Answer to their Complaint. They alleged the following: (1) The Coast Guard alleges that on July 18,

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[1] The correct Coast Guard Case Number for this case is PA01001436. The wrong Coast Guard Case Number, PA0100510, was originally assigned to this case; PA0100510 is for a previous case of this same Respondent, which has already been completed and closed.

2001 while operating the vessel SCUBA CAT during high surf and sea conditions you [Respondent] failed to make proper allowances for the effects of the seas and weather. Thereby causing the vessel to founder and endangering the lives of nine (9) passengers and your crew. (2) The Coast Guard alleges that on July 18, 2001 while operating the vessel SCUBA CAT in high surf and sea conditions you failed to account for the reduced operational capability of the SCUBA CAT after one of the two outboard engines became inoperable.

Respondent admitted in his written Answer to failing the drug test for marijuana, after the tests were completed on a urine sample that he gave the very next day, after the sinking of the vessel SCUBA CAT, on July 18, 2001, namely, July 19, 2001. Ordinarily Respondent's formal written admission in his Answer to the written Complaint closes the issue of failing the drug test. However, Respondent still wanted to present as part of his defense, testimony by his adult son, Jason Grimes and adult daughter, Janinne Grimes, a nurse. Since Respondent was being represented pro se, I granted him a little latitude or liberty in the presentment of his defense.

Respondent's position at the hearing, in his Opening Statement and by the testimony of his son and daughter was that he became ill in March 2001 prior to these July 2001 incidents. It was alleged in the Complaint to have occurred on July 18, 2001 and July 19, 2001, namely, the testing positive for cannabinoids (marijuana) of his urine sample on July 19, 2001, the day after the foundering of his vessel and its total capsizing in the waters on July 18, 2001. Respondent gave his urine sample on July 19, 2001. In the usual course of events, this urine sample was examined and tested by a certified drug-testing laboratory by the two required tests required by the law in statutes and regulations. The certified laboratory found a positive for marijuana in Respondent's urine sample and the Medical Review Officer (MRO), Dr. James Baber, confirmed the

findings of the laboratory that this was a definite positive for marijuana found in Respondent's urine sample. Dr. and MRO James Baber found no believable medical excuse for Respondent's use of marijuana.

Nevertheless, Respondent and his two adult children took the position that Respondent became very ill in the prior March of 2001 and that he was then close to dying from some infection. His daughter, who is a registered nurse, and had power of attorney from Respondent, took him out of the hospital and called his son home from the mainland. Respondent's son and daughter decided that perhaps he needed his appetite stimulated to try to bring him back from death's door. They took Respondent out of the hospital when the doctor said he might not live but a few days. They took Respondent home and they claim they fed Respondent marijuana tea, that is tea with marijuana in it, about a quart to a gallon of this tea. They stopped giving him this tea approximately two months before the incidents of July 18, 2001 and July 19, 2001.

The Medical Review Officer (MRO), Dr. James Baber, testified credibly that if Respondent stopped drinking the tea laced with marijuana approximately two months before this incident that he would not get a positive for that marijuana in his urine sample, two months later, in his urine sample of July 19, 2001. It is so found. I find the doctor's testimony credible and consistent with other testimonies by the other MROs in other drug cases, many over which I have presided and written Decisions. In other words, the evidence proved that Respondent was taking or using marijuana much closer to the date of July 19, 2001 than he is actually admitting. It is found that Respondent's urine sample of July 19, 2001, given the very next day after the foundering of his vessel, established by the tests from the certified drug-testing laboratory and the findings of the MRO that Respondent had marijuana in his urine sample. The positive test results did not come from drinking marijuana tea more than two months prior. Respondent claimed

he had stopped drinking such tea approximately two months before. In other words, Respondent had been using or taking marijuana much closer than two months to the date of July 18, 2001, the dates of the capsizing of his vessel and the giving of his urine samples for test purposes.

There were a total of nine (9) witnesses who testified under oath in this case. The Coast Guard produced five (5) witnesses. The first witness was Mr. Brian Atkins, the passenger who stayed on the vessel the longest during the two dive voyages. The second witness was Mr. Charles John Unger, another passenger providing testimony regarding the dive trip. The third witness was Mr. Leonard Scovel, a Dive Boat Captain, providing sworn testimony on the dive operations of his vessel on July 18, 2001, the day in question. The fourth witness was Mr. Marvin Dean Otsuji, the rescuer on vessel KAI NANI. Mr. Otsuji is the Seasport Divers' owner. He provided testimony on his rescue of the SCUBA CAT's passengers, crew and the Respondent and on Seasport Diver's dive type operations on July 18, 2001. The date of Respondent's vessel foundering, Mr. Otsuji decided not to go to sea for diving purposes with paying passengers as Respondent did because of the National Weather Service prior predictions of bad weather out at sea and in the sea waters on the south and east sides of all of the Hawaiian Islands, on July 18, 2001. Respondent's other witnesses were Mr. Hugo Probst, an employee crewmember and Mr. Casey Gough, an employee crewmember. Mr. Probst and Mr. Gough were both so-called dive captains. The Coast Guard also produced Dr. James Baber, the MRO in this case, whom I find testified credibly. This MRO's testimony included the positive marijuana use findings by this MRO after he received the certified drug-testing laboratory reports in this case showing a positive for marijuana.

Respondent was issued a U.S. Coast Guard License, with Serial Number 779221, Issue Number 1 or First Issue of this License, to U.S. Merchant Marine Officer William

H. Grimes. The License states: "This is to certify that WILLIAM H. GRIMES having been duly examined and found competent by the undersigned, is licensed to serve as MASTER NEAR COASTAL STEAM, MOTOR, OR AUXILIARY SAIL VESSELS OF NOT MORE THAN 50 GROSS TONS; AUTHORIED TO ENGAGE IN COMMERCIAL ASSISTANCE TOWING," dated the 04th day of October 1996, for the term of five years from that date. It was issued to him by the U.S. Coast Guard's Regional Examination Center (REC) in the port of Honolulu, Hawaii.

Respondent's Exhibit A was a photograph of a portion of the stern of his vessel that broke away during the voyage and caused the vessel to founder and eventually turn over completely in the water so that everyone, all the passengers, crew and Respondent, had to abandon the vessel by going into the water. They had to be rescued later by another vessel, after Respondent called for rescue by giving out a mayday call on his ship to shore radio or phone as well as pulling his Emergency Position Indicating Radio Beacon (EPIRB) message to the U.S. Coast Guard of his vessel about to founder. Respondent's vessel later turned over completely in the water, as shown by one of the photographs admitted into evidence by this undersigned Administrative Law Judge.

In addition to fourteen (14) photographs offered by the Coast Guard of the vessel, on or about the day in question, the Coast Guard offered eight (8) additional exhibits. IO's Exhibit 3 is a National Weather Service Advisory, issued in the early morning of the date in question, Wednesday, July 18, 2001, at 8:30 a.m., Hawaiian Standard Time (HST). It is entitled "High Surf Advisory Number 3" and states in relevant part: "The National Weather Service has continued a (1) a high surf advisory continues for the east and south facing shores of all Hawaiian Islands." The Respondent was operating off the east and south shores of the Hawaiian Island in question, namely Kauai, Hawaii. The Advisory states it was: "Effective today thru tomorrow" and it further said, "The surf on

both the east shores and south shores will be 6 to 8 feet thru Thursday. The high surf due to large trade wind swells from a persistently strong northeast Pacific High will last for several more days. Southerly swells from a long since dissipated storm once east of New Zealand arrived late yesterday afternoon and should last thru tomorrow. Beachgoers should stay safely away from affected shorelines due to hazardous wave action and rip currents. Forecast surf heights are estimates of the height of the face or front of the waves. This may be up to twice the surf heights traditionally reported in Hawaii. The next advisory will be issued at 8:30 pm. tonight." This Advisory was issued by the National Weather Service of Honolulu, Hawaii, for all the Hawaiian Islands and nearby waters. (Emphasis supplied.)

IO's Exhibit 4 is another National Weather Service Advisory entitled "Outlook for Offshore Waters," also issued on the morning of Hawaiian Standard Time, Tuesday, July 18, 2001, [Wednesday]. The Advisory states: "Thursday through Saturday [July 19, 2001 through July 21, 2001] winds 20 knots or less seas 8 feet or less. The coastal and offshore forecast for Hawaii, correction, National Weather Service Honolulu, Hawaii, Hawaiian Standard Time, Wednesday, July 18, 2001. Hawaiian coastal waters within 100 nautical miles including the Hawaiian Islands Humpback Whale National Marine Sanctuary. The a.m. forecast for Hawaiian Standard Time, Wednesday, July 18, 2001, caution is advised over coastal waters due to marginal wind and sea conditions. High surf advisory remains in effect for south and east shores of all Hawaiian Islands. Today, east winds 15 to 20 knots. Seas 4 to 8 feet. South and east swells 4 feet. Few showers. Tonight and Thursday, east winds 15 to 20 knots. Seas 4 to 8 feet. South and east swells 4 feet. A few showers. Caution is advised over channel waters due to marginal wind and sea conditions." (Emphasis supplied.)

II

FINDINGS OF FACT

1. Respondent William H. Grimes signed a formal admission in his written Answer filed to the written IO's Complaint portion regarding Use of a Dangerous Drug, as a result of submitting Respondent's post casualty urine sample the next day after the capsizing. After which the MRO, Dr. James Baber, determined that Respondent tested positive for marijuana based upon the reports and findings of a certified, drug-testing laboratory, prior inspected and certified by the United States Government.

2. Reliable and credible documentary evidence and witness testimony has proved that on July 18, 2001, Respondent, while the holder of a valid U.S. Coast Guard License Number 779221, chose to embark on a voyage with twelve (12) people aboard, including nine (9) passengers and two (2) other crewmen, in predicted heavy weather and marginal sea conditions. The record establishes and shows that other competitors of the Respondent chose not to go out in such weather for such dives by their paying passengers. The other reasonable, prudent and careful people and Respondent's competitors chose not to go out in such weather for such dive voyages. His competitors gave up the paying passengers' revenue to avoid the rough predicted winds and seas.

3. Even after Respondent chose to go out into such weather and before he had completed the second of two dives for the day that had been chartered, Respondent lost half of his propulsion of the vessel. Yet Respondent chose to continue to stay out and travel to the second drive location and attempt to complete the second dive. It was while he was still out there attempting to

complete the second dive that he noticed a red portion of the rear or stern of his vessel was floating away in the waters. One of his divers/crewmembers dove into the water to retrieve it. Eventually all his other passengers and his two (2) crewmembers had to abandon the Respondent's vessel. This left only Respondent and one of the passengers aboard. Eventually both of them had to leave the vessel as well. All had to abandon the vessel, which eventually foundered and turned over completely, or capsized.

4. Such actions after continuing a voyage or trip after losing half of propulsion has been previously ruled to be negligent in the Commandant's Appeal Decision 2340 (JAFFEE). In which the Coast Guard Commandant ruled that a vessel operator was negligent when carrying passengers for hire and continuing on a voyage with one engine inoperative. Respondent Grime's decision to remain at sea in this case placed all on board in a position in which they eventually had to abandon the vessel, in which injuries or deaths could have resulted from his decision.

5. Mr. Brian Atkins and Mr. Charles Unger testified that Respondent failed to give adequate emergency instructions to the passengers who were unfamiliar with the vessel and the waters in which the emergency took place. Respondent's actions, decisions and inactions put the lives and safety of all persons aboard the SCUBA CAT in needless jeopardy and danger.

6. Respondent has a history of operating vessels and the SCUBA CAT beyond his authorized and limited parameters, as previously established and proven in a Letter of Warning by the Coast Guard Investigating Officers, now IO's Exhibit 6.

7. William Grimes also has a history of operating a vessel as a Master under the authority of his license while under the influence of an intoxicant, as previously proven and shown in the Decision and Order issued to Respondent, dated January

25, 2000, by another ALJ, Judge P. L. McKenna, now IO's Exhibit 8. He was given a six-month outright suspension and probation for that incident.

8. Respondent willfully took nine (9) passengers and two (2) crewmembers on a voyage in predicted marginal wind and sea conditions. The post accident drug test taken from a urine sample Respondent gave the day following the foundering incident of his vessel yielded a positive result for the use of marijuana by the Respondent. This may have contributed to his poor judgment on July 18, 2001 and may have impacted on his crucial emergency decisions. The Coast Guard is mandated and ordered to investigate marine casualties and to take appropriate actions to prevent a reoccurrence of similar such incidents in order to protect the lives and limbs of U.S. citizens and others, including vessels and properties, in or near U.S. waters.

9. In one of the previous incidents submitted as IO's Exhibit 8, Respondent was issued a six-month outright suspension and probation of his license by another Administrative Law Judge. This prior sanction did not prevent Respondent from continuing to act in a negligent manner in this case.

III

CONCLUSIONS OF LAW

1. The U.S. Coast Guard and the U.S. Administrative Law Judge have jurisdiction over the subject matter of this hearing under the provisions of 46 U.S. Code Chapter 77, including 46 U.S. Code sections 7703 and 7704; the U.S. Administrative Procedure Act, 5 U.S. Code sections 551 through 559; 46 Code of Federal Regulations (CFR) Parts 4, 5 and 16, as amended; and 33 CFR Part 95 and Part 20.

2. The factual allegation involving Use of a Dangerous Drug is found proved by Respondent's formal admission to this allegation in his formal Answer to this Complaint and by the credible evidence at the hearing. The Coast Guard Investigating Officers alleged and proved that on July 19, 2001, Respondent submitted a post casualty urine sample or specimen in which a Medical Review Officer, Dr. James Baber, and a certified drug-testing laboratory determined that Respondent tested positive for recent use of cannabinoids, or marijuana.

3. With regard to the factual allegations of Negligence, the Coast Guard Investigating Officers alleged and proved that on July 18, 2001, while operating the vessel SCUBA CAT during predicted high surf and sea conditions, Respondent failed to make proper allowances for the effects of the seas and the weather. Thereby contributing to causing the vessel to founder and endangering the lives of nine (9) passengers and two (2) additional crewmembers, as well as Respondent's own life.

4. The Coast Guard Investigating Officers alleged and proved that on July 18, 2001, while operating the vessel SCUBA CAT in predicted high surf and sea conditions, Respondent failed to account for the reduced operational capability of the SCUBA CAT, after one of its two outboard engines became inoperable. This was also established and proved.

5. As a result of these problems, Respondent's vessel capsized and foundered and all aboard his vessel, including himself, had to be rescued by another vessel called from ship to shore.

IV

OPINION

The above Preliminary Statement, Findings of Fact and Conclusions of Law are incorporated herein as if set forth in full.

I presided at and wrote a Decision and Order on a somewhat similar case known as the United States Coast Guard versus the License Issued to Roger N. Sorenson, ALJ Docket No. 08-0078-TEM-95, brought by the Marine Safety Office Corpus Christi, Texas. There the Respondent took out a fishing vessel with several passengers on an unseaworthy vessel that eventually sank due to negligent repairs and maintenance prior to the voyage performed by Respondent and his co-owner, as well as others. This resulted in the sinking of the vessel and the drowning of two 34-year old women, both of whom had life vests on, but were trapped in the sinking vessel and could not escape. One of these 34-year old women was a wife and mother of two little children. However, in the Sorenson case, there were no drugs involved.

46 U.S. Code section 7703 is entitled "Basis for Suspension or Revocation" and states as follows:

> "A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder –
>
> "(1) when acting under the authority of that license, certificate, or document –
>
> (A) has violated or fails to comply with this subtitle, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine safety or to protect navigable waters; or
>
> (B) has committed an act of incompetence, misconduct, or negligence;
>
> "(2) is convicted of an offense that would prevent the issuance or renewal of a license, certificate of registry, or merchant mariner's document; or

> "(3) within the 3-year period preceding the initiation of the suspension or revocation proceeding is convicted of an offense described in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (23 U.S. Code 401 note)."

46 U.S. Code section 2101 (21a) provides that,

> "'passenger for hire' means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person having an interest in the vessel."

As the trier of the facts, it is the U.S. Administrative Law Judge's duty to interpret or assess the evidence before him. Unless the Judge's interpretation is clearly erroneous, it will not be overturned on appeal. Commandant's Appeal Decision 2452 (MORGANDE), 2330 (LORENZ) and 2527 (FRANCIS).

The Administrative Law Judge's findings will not be disturbed on appeal unless inherently incredible. Commandant's Appeal Decision 2395 (LAMBERT), 2333 (AYALA), and 2302 (FRAPPIER). See also Commandant's Appeal Decision 2390 (PURSER), Aff'd sub nom Purser, NTSB Order EM-130 (1986); Appeal Decision 2356 (FOSTER); 2344 (KOHAJDA); 2340 (JAFFE); and 2512 (ALLIVIO).

Regarding the sufficiency of the evidence, the test is whether the findings by the Administrative Law Judge were based upon substantial evidence of a reliable and probative character supporting the required elements of the charge. Appeal Decision 2183 (FAIRALL). Additionally, the rules require the quality of the evidence necessary to support findings to be:

> "...evidence of such probative value as a reasonably prudent and responsible person is accustomed to rely on when making decisions in important matters. It is not limited to evidence which is considered to be competent evidence for the purpose of admissibility under the jury trial rules."

Appeal Decision 2314 (CREWS).

It has long been the rule under the U.S. Administrative Procedure Act, that any relevant oral and documentary evidence is admissible as long as it is not redundant. This is a time-honored rule of over 50 years, under the U.S. Administrative Procedure Act, 5 U.S. Code 551-559, first enacted by the Congress and then President in 1948. Commandant Appeal Decision 2575 (WILLIAMS).

> "Under the guidelines of the Administrative Procedure Act (APA), which applied to this proceeding, any or all documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence."

5 U.S. Code section 556(e) (Emphasis added); 46 U.S. Code section 7702, Appeal Decision 2575 (WILLIAMS).

"IN EXTREMIS" EXCEPTION DOES NOT APPLY TO RESPONDENT BECAUSE HE WAS NOT WITHOUT FAULT

In Commandant's Appeal Decision 2358 (BUISSETT), the Vice Commandant addressed the "in extremis" defense: The principle of error "in extremis" is stated in a case cited by the BUISSETT Appeal Decision:

> "errors in judgement committed by a vessel put in sudden peril through no fault of her own, ought to be leniently judged. "Union Oil Company v. The Tug MARY MALLOY, 414 F.2d 669 (5th Cir. 1969). That the peril must be caused "through no fault of her own", means that a vessel which is herself to blame for the existence of the emergency cannot use it as an excuse for her own erroneous action. The principle applies only where the danger has been caused solely by the fault of another vessel or force of nature, such as a hurricane. The ELIZABETH ONES, 112 U.S. 514 [1884]."

The "In Extremis" Exception Doctrine of Maritime Law is not applicable in Respondent Grime's case. It is not applicable where the Respondent as operator of the vessel was guilty of negligence. Here the captioned Respondent was operator of the vessel and was not without fault contributing to the foundering of this vessel and forcing all aboard to need to abandon the vessel SCUBA CAT.

ADMISSION OF EVIDENCE

The federal rules of evidence do not need to be adhered to in these Administrative hearings. These hearings are directly under the U.S. Administrative Procedure Act (APA), Title 5 U.S. Code sections 551 through 559. The APA is less restrictive regarding the admissibility of evidence than the Federal Rules of Evidence.

Federal Rule of Evidence Rule 401, states that:

> "These rules shall be construed to secure fairness in Administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined."

Even under the more restrictive Federal Rules of Evidence, under Rule 402, all relevant evidence is admissible, unless some other provision of law excludes the evidence. Therefore, in the Federal Rule of Evidence, Rule 401's definition of relevant evidence delineates the scope of admissible evidence.

Under Federal Rule of Evidence Rule 401, it states

> "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable then it would be without the evidence."

This is a very expansive definition. It is not as expansive as the U.S. Administrative Procedure Act, Title 5, U.S. Code sections 551-559, that we were proceeding under in this hearing.

V

PRESUMPTION OF UNSEAWORHINESS

There is a time honored rule under the Maritime Law and the Law of Admiralty that there is a presumption of unseaworthiness of a vessel, which arises only after a vessel sinks or capsizes under circumstances and conditions which the vessel operator should reasonably anticipate and be able to overcome. The Respondent failed to establish that

his vessel was seaworthy on the day she foundered and overturned without a collision and in daylight. After the presumption arises, the presumption of unseaworthiness must be rebutted by the Respondent by a showing with some new, unforeseen, intervening force or factor caused the sinking of the vessel. Walker v. Harris, 335 F2d. 185 at 193 (5th Cir. 1964); The Harper No. 145, 42 F2d. 161 (2nd Cir. 1930); and Pace v. Insurance Co. of N. America, 838 F2d. 572; 1988 U.S. App Lexis 1211; 24 Fed. R. Evid. Serv. (Callahan) 705 (1st Cir. 1988).

Under Federal Appeal Court Decisions, the determination of a vessel's seaworthiness is based on reasonable fitness to perform or do the work at hand or what is expected of it. The subsidiary questions leading to the ultimate conclusion of seaworthiness are therefore: What is the vessel to do? What are the hazards, the perils, and the forces likely to be incurred? Is the vessel or the particular fitting under scrutiny sufficient to withstand those anticipated forces? If the answer is in the affirmative, the vessel (or its fitting) is seaworthy. If the answer is in the negative, then the vessel (or its fitting) is unseaworthy. No matter how diligent, careful, or prudent the owner might have been. Walker v. Harris, 335 F2d. 185, (5th Cir. 1964).

This brings us to the application of this familiar doctrine, so often invoked by the courts, where vessels sink in calm waters. That sinking (or other failure), under circumstances and conditions which the vessel captain or operator must reasonably anticipate and overcome, is the best proof of, and makes out the classic case of unseaworthiness. Although not articulated in such terms, it is sort of a sea going res ipsa loquitur, (the thing or circumstances speak for themselves). Once it is assumed, (or judicially held) that the vessel must anticipate the particular hazard and be staunch enough to override it, the only escape from the inference of unseaworthiness is proof that

some new, unforeseen, intervening force or factor brought about the failure of the ship or gear. Walker v. Harris, supra at 193, The Harper, No. 145 42 F2d. 161 (2nd Cir. 1930).

There was no credible evidence of a new or intervening force or factor in the sinking of the SCUBA CAT. It has been ruled in the U.S. Supreme Court that a defect in the vessel, which developed without any apparent cause, is presumed to have existed when the service or voyage began. Word v. Leathers, 97 U.S. 379 (1878).

A vessel's officers, operators and owners have a high duty of care for the safety of passengers. Voltmann v. United Fruit Co., 147 F. 2d 514, 518 (2 Cir. 1945); Ludena v. Santa Luisa, 112 F. Supp 401, 407 (S.D.N.Y. 1953); and Rechaney v. Roland, 235 F. Supp 79, at 84, (S.D.N.Y. 1964).

Since the 1903 decision by the U.S. Supreme Court regarding the vessel OSCEOLA, it is the settled rule of law that the vessel and her owners are liable to indemnify a seaman or passenger for injuries caused by unseaworthiness of the vessel or it's appurtenant appliances and equipment. This case was decided in 1903 and is reported as The OSCEOLA, 189 U.S. 158, 47 L.ed. 760, 23 S. Ct. 483 (1903); The Law of Seaman, 3rd Ed., by Martin J. Norris, Vol. 2, page 187 section 619.

The Commandant's Decision on Appeal 2307 (CABOURY), holds in relevant part:

> "In order to insure the proper management and safety of his vessel and crew, the master must keep himself well informed of any defects in the vessel which could pose a significant hazard to life or property."

The Respondent's negligence violated 46 U.S. Code section 7703.

The Respondent is advised of the right to appeal which is as set forth in 33 CFR Subpart J, Section 20.1001, enclosed herein.

VI

ORDER

That the Respondent's captioned U.S. Coast Guard License is hereby REVOKED, as of the date deposited with the U.S. Coast Guard Marine Safety Office Honolulu, Hawaii. Respondent should deliver it and all other valid, unexpired, U.S. Coast Guard issued licenses and merchant mariner's documents, if any, in his possession, to the nearest Coast Guard office. They will then deliver them to the Commanding Officer of the U.S. Coast Guard Marine Safety Office in Honolulu, Hawaii.

Some people refer to the procedures following as the U.S. Coast Guard's "Administrative Clemency Board Program." Procedures are provided by which a person, or Respondent, whose U.S. Merchant Mariner's License and/or Document has been revoked, may apply to any Commanding Officer of a Marine Safety Office of the U.S. Coast Guard, after an applicable waiting period, for the issuance of a new license or document. These rules and conditions are found in 46 CFR Subpart L (46 CFR 5.901, 5.903 and 5.905) entitled "Issuance of New Licenses, Certificates or Documents After Revocation or Surrender."

DONE AND DATED THIS 14th **DAY OF JANUARY 2002**

HOUSTON, TEXAS

Thomas E. McElligott

THOMAS E. MCELLIGOTT
U.S. Administrative Law Judge

Copy:
MSO Honolulu, Attn: LCDR Craig A. Petersen, SIO
William H. Grimes, Respondent
CCGD14(m)
ALJ Docketing Center, Baltimore