



FATAL FLAW: THE MISSING LOU

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The Letter of Undertaking (LOU) is a crucial document in the case file. It can mean the difference between an enforcement activity proceeding to a preliminary review by a Hearing Officer or being dismissed outright.

The LOU is a legal agreement requested by the Coast Guard to secure payment of a civil penalty should one be assessed against a foreign entity. Typically, when the foreign entity is a foreign commercial vessel, a Captain of the Port (COTP) order will initiate the requirement for the LOU. This occurs when the COTP is made aware of an alleged violation by the vessel, the statutory authority to impose a civil penalty exists, and the vessel is desirous of leaving the port. Securing the LOU allows the vessel to depart and conduct business elsewhere while the civil penalty process proceeds. Should a civil penalty be imposed, the civil penalty is collected "against" the LOU. The party's issuance of an LOU does not "admit" that a violation occurred. The LOU provides for payment in the event a violation is "proved" and a civil penalty is imposed.

The LOU is a powerful document. Without this document, international trade would be adversely impacted. It guarantees payment of a civil penalty despite where the vessel or its owner may be located at the time the civil penalty is assessed. If there is no LOU the chance of collecting a civil penalty against the foreign entity is very difficult. Therefore, before a Hearing Officer will begin review of alleged violations against a foreign commercial entity, the Hearing Officer will look to see if the *original* LOU is in the file. If it is missing, the enforcement activity will be dismissed. The original is necessary. The original reflects the original signature and "seal." A copy cannot be substituted. Therefore, in accordance with the Marine Safety Manual and Coast Guard Hearing Office requirements,

always insert the original LOU in the case file before mailing it to the Hearing Office.