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A Career-Ending Collision at Sea

By James E. Mercante

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It is said that a collision at sea will ruin your whole day. It can also be fatal and ruin careers. One such collision punctuates this in a big, expensive, and tragic way. Ten Navy sailors died and 31 were injured. The two ships sustained millions in damage. The careers of the commanding and executive officers aboard the Navy warship ended on that fateful voyage—true to the adage that it takes years to build a reputation and minutes to destroy it.

The 9,000-ton guided-missile destroyer USS John S. McCain (the McCain) collided in the Singapore Strait with a 39,000-ton oil and chemical tanker Alnic MC (the Alnic). What resulted was a textbook case of maritime law involving issues of collision liability, apportionment of fault, federal admiralty procedure, choice of law, ship owners' Petition for Exoneration from or Limitation of Liability and the preclusion against service members suing the military.

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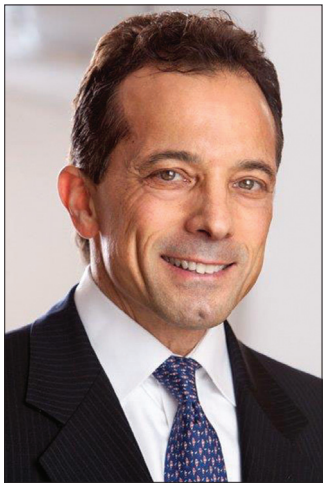
A five-day bench trial was held before Senior Judge Paul A. Crotty of the U.S. District Court for the Southern District of New York in November 2021. The massive case was split into two trial phases: Phase 1 being the trial to apportion liability between the tanker owner and the United States, and Phase II to adjudicate the death and injury claims. Crotty's 49-page decision dated June 15, 2022, admirably navigates through the collision facts in minute by minute granular detail worthy of a movie script. *In the Matter of the Complaint of Energetic Tank as Owner of the M/V ALNIC MC, for Exoneration from or Limitation of Liability,* 607 F. Supp 3d 328 (SDNY 2021).



Courtesy photo

James E. Mercante

It's hard to fathom a more comprehensive collision analysis. Indeed, the Navy took notice

of this decision and has incorporated portions of Crotty's collision analysis in its Bridge Resource Management training course taught to Surface Warfare Officers.

The awards for injury and death will be determined by a jury in Phase II, which trial has yet to begin. Alnic's appeal of Crotty's apportionment of fault ruling was just argued in the U.S. Court of Appeals for the Second Circuit on Jan. 18, 2024 before Judges John Walker, Susan Carney and Michael Park. The decision is pending.

Casualty Facts

The Aug. 21, 2017, collision occurred in one lane of a traffic separation scheme within the Singapore Strait. As the trial testimony revealed, the McCain was cruising alongside and overtaking the oil tanker. Thus, the tanker had the right of way under navigation rules. The McCain lost steering and veered left suddenly into the path of the tanker. Alnic's bow pierced the McCain's port side which flooded the McCain's compartments with seawater within seconds. *In re Energetic Tank*, 607 F.Supp 3d at 329.

Crotty ruled the Alnic to be 20% at fault while the McCain's fault was 80%. Interestingly, Alnic's fault included its post-impact omissions, which is rarely seen.

Prior to impact, the tanker captain was staring in the cross-hairs of a U.S. Navy warship cutting right across its bow. But the captain apparently froze. Crotty determined from the fact and expert testimony that the tanker kept steaming ahead in the direction of the McCain without timely reducing speed, stopping or taking the ship off autopilot.

Photo: Todd Frantom/Wikicommons

The guided missile destroyer USS John S. McCain.

With the tanker still on autopilot, the Alnic's bow was forced to its left due to the impact. The ship autocorrected to the right and sheered through the McCain's hull, killing 10 unwary Navy sailors asleep in their bunks.

The injury claimants argued that the ship should have been placed in manual steering within a traffic separation scheme. This is not a foreign concept. The Board of Commissioners of Pilots in New York (on which the author serves) has a policy and procedure that requires all vessels navigating in pilotage waters to be manually steered "by an alert and attentive member of the vessel's crew." This includes cruise ships arriving in New York.

Alnic's Limitation Action

The admiralty proceeding was commenced in New York by the tanker owner (Energetic Tank) filing a petition for exoneration from liability or to limit its liability to $16,768.00,

which was the post-casualty value of the Alnic. 46 U.S.C. §30501. A limitation action is a standard maritime defense afforded to any vessel owner, including a foreign ship owner who is either sued here or invokes United States as the jurisdiction.

The tanker was Liberian-flagged and managed by a company based in Greece. In 1914, the U.S. Supreme Court made clear in litigation involving the sinking of the RMS Titanic that a foreign vessel owner is entitled to the same statutory maritime defenses afforded to a U.S. owner. *Ocean Steam Navigation v. Mellar*, 213 U.S. 718 (1914); *See also,* James E. Mercante, "In the Wake of The Titanic: An Unsinkable Law", New York Law Journal, April 12, 2012. A limitation action allows all claims to be asserted in one proceeding against the vessel owner (like an interpleader).

Here, the claims included damages to both ships, multiple personal injuries and 10 fatalities. The military personnel were precluded by Supreme Court precedent (*Feres Doctrine)* from bringing suit against the United States for injuries arising out of or in the course of activity incident to military service. *Feres v. United States*, 340 U.S. 135 (1950).

To add insult to injury, the commanding officer was court-martialed and found guilty of dereliction of duty. The executive officer and other senior ranking officers were disciplined, effectively ending Navy career paths. The Navy issued a scathing report that was admitted in evidence.

The Target-Joint and Several Liability

The petitioner (owner of the Alnic) fought vigorously at trial to prove the McCain was 100% at fault. This was the only outcome that would sit well with the tanker owner because the military personnel were barred from suing the United States, and therefore took aim at the tanker. But, more importantly, under the maritime law of joint and several liability, Alnic was well aware that had it been found even 1% at fault, the service member injury and death claimants would recover the entirety of the judgments from the tanker owner.

This scenario became a stark reality when Crotty ruled the Alnic to be 20% at fault while the McCain's fault was 80%. Interestingly, Alnic's fault included its post-impact omissions, which is rarely seen. After the crash, Alnic failed to timely stop engines, and took no action to switch to manual steering. The McCain's faults were legion, including loss of steering, crew ignorance of the high tech steering controls, multiple navigation rule violations, no danger signal sounded, unaware that one screen touch could have stopped the ship.

Pyrrhic Victory

The parties stipulated to the damages sustained to the two ships with the high-tech Naval warship McCain suffering $185 million in damages. The Alnic damages were only $442,445. Thus, while 20% apportionment of fault may seem like a win for the Alnic, it was far from it. Under joint and several liability, the tanker owner was obligated to pay 20% of the McCain's $185 million in damages, amounting to nearly $37 million dollars. The United States (which had the larger allocation of fault) was obligated to pay the tanker 80% of its damages, only $354,000.

Accordingly, with the tanker owner also now facing the totality of the injury and death awards, the Alnic interests argued that despite the *Feres Doctrine's* direct lawsuit preclusion, the Alnic should be entitled to contribution and/or indemnity from the United Sates for its 80% allocation of fault.

The district court rejected this argument and Alnic took this legal issue up on appeal together with the apportionment of 20% fault. Findings of fact as to apportionment of fault in a collision case are subject to the difficulty to surmount 'clearly erroneous' standard of proof on appeal. Crotty cited precedent that there is "no formula for apportioning liability." The allocation requires consideration of matters not readily amenable to precise analysis but that percentages be accompanied by "sufficient explanation to provide a reviewing court with some general understanding of the basis for the decision." 607 F.Supp 3d at 360.

Limitation Action

The district court also considered Alnic's defense of limitation of liability to the tanker's value. The act protects the vessel owner from unlimited vicarious liability for damages caused by on board negligence of the captain or crew. *Tanden v. Captain's Core Marina of Bridgeport*, 752 F.3d 239, 244 (2d Cir. 2014). The court ruled that petitioner having failed to prove at trial that it (as owners of the tanker) lacked privity or knowledge of the acts and omissions that led to the collision, Alnic's petition to limit its liability was denied. *See* 607 F.Supp 3d at 371. Lack of proper crew training and crew competence were shoreside management issues.

Choice of law was and remains important in this case. The district court applied the federal maritime law of the United States in its collision liability analysis. But, despite the Alnic having chosen to file its petition here and all claims are by U.S. citizens, the court vowed to apply the law of Singapore to the injury and death claimants' remedies. *In the matter of Energetic Tank,* 2020 WL 114517 (SDNY 2020). This issue was argued on appeal as well and awaits ruling, with claimants suggesting that U.S. law should apply as well to damages.

There has been a call on for quite some time for Naval Surface Warfare Officers to qualify and obtain licenses issued by the U.S. Coast Guard (like Merchant Mariners) to operate ships. The McCain and similar Navy ship collisions perhaps makes this a Mayday call. Meanwhile, the sailor families await their day in court and fair compensation for their loss.

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