UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	**CRIMINAL DOCKET NO. 10-191**
v.	*	**SECTION: "B" (1)**
DRD TOWING COMPANY, LLC	*	

* * *

FACTUAL BASIS

Should this matter have gone to trial, the government would have proved beyond a reasonable doubt, through the introduction of competent testimony and admissible tangible exhibits, the following facts to support the allegations charged by the United States Attorney in the Bill of Information now pending against the defendant, **DRD TOWING COMPANY, LLC ("DRD TOWING"),** as follows:

DRD TOWING was a family owned company, located at 3701 Day Street, Harvey, Louisiana that managed and operated approximately 22 towing vessels over 26 feet in length and not more than 100 gross tons (commonly referred to as "tugboats"). These vessels pushed loaded and unloaded barges for several companies. These tugboats moved liquid and bulk cargo barges--some

of which were known as "red flag barges," which contained hazardous materials such as oil and chemicals in bulk. These tugboats and barges traversed the waterways throughout the lower Mississippi River to coastal Texas stopping at various ports along their respective routes.

As the operator of these tugboats and barges, defendant **DRD TOWING** was responsible for selecting, training, and supervising the crews of all the tugboats and barges to ensure that they were operated safely and in accordance with all U.S. laws and regulations. The defendant **DRD TOWING** acted by and through its agents and employees for the benefit of defendant **DRD TOWING,** including the employees manning the tugboats and barges and the shore-based supervisory personnel.

The United States Coast Guard ("Coast Guard"), an agency of the United States Department of Homeland Security, was charged with enforcing the Ports and Waterways Safety Act, 33 U.S.C. §§ 1221 *et seq.* ("PWSA").

Congress established the PWSA to assure the safety of vessels and protection of the marine environment by authorizing the Coast Guard to control or prohibit the operation of vessels in the navigable waters of the United States that do not comply with all applicable standards and requirements for vessel construction, equipment, manning, and operational procedures.

Federal regulations under the PWSA required that the owner, agent, master, operator, or person in charge report to the Coast Guard any "hazardous condition" either "aboard a vessel" or "caused by a vessel or its operation." Such reporting was necessary to allow the Coast Guard to determine whether the vessel was safe to continue to operate. A "hazardous condition" was broadly defined to take into account any condition that may adversely affect the safety of any vessel, bridge, structure or shore area. Such hazardous conditions included manning deficiencies. Any person who

willfully and knowingly violated this regulation was guilty of a class D felony.

Coast Guard experts would testify that a strong causal relationship has been demonstrated between fatigue, loss of situational awareness, human error, and accidents in the transportation industry. The Coast Guard experts would further testify that fatigue affects clear thinking and leads to loss of situational awareness which is critically important to completing complex tasks required to safely navigate towing vessels pushing or towing barges. The statutory standard related to fatigue was that operators were prohibited from working for more than 12 hours in a 24 hour period. Consequently, except in extraordinary circumstances with full consultation with the Coast Guard, the Coast Guard viewed the use of over-fatigued mariners operating tugboats and barges to be a hazardous condition that would not allow for safe operation of the vessel. The Coast Guard expected, pursuant to federal law, that if such a hazardous condition arose on a vessel that it would be reported to the local Coast Guard Captain of the Port immediately so that appropriate measures could be taken to ensure safety of navigation and protection of the marine environment.

Hazardous Conditions and Failure to Report

From approximately January 1, 2007 to July 23, 2008, in the Eastern District of Louisiana, on certain occasions and on certain vessels, **DRD TOWING** knowingly created, or allowed the creation of, hazardous conditions on board these vessels by requiring operators to work hours far beyond safe operating limits in violation of the PWSA.

A. Operation for extended periods of time:

Former **DRD** employees that were properly licensed to operate on specific waterways, such as the Mississippi River, and to operate vessels carrying certain dangerous cargoes, would testify that

they were paid by **DRD** to drive their vessels for extended periods of time without a relief crew as follows:

- Captain A repeatedly steered by himself from Port Allen to New Iberia pushing cargo and was paid $1000 a day (nearly double his normal pay) to work by standing a 24 hour watch;
- Captain B consistently steered by himself working 14 consecutive days standing 24 hour watches, receiving double pay (approximately $900) when he worked without a relief captain or mate and used his tankerman to steer for him when he needed a nap;
- Captain C routinely steered by himself working 24 hour watches without a relief captain or mate and got paid $1000 when he ran the boat by himself, instead of his normal rate of $550;
- Captain D routinely steered by himself working more than 12 hours in a 24 hour period without a relief captain or mate from Baton Rouge to Houston and got paid an extra $100 a day for running the boat by himself.

Coast Guard experts would testify that all the situations described above far exceeded acceptable levels of fatigue for mariners and would inevitably lead to a degradation of situational awareness and significantly increase the risk of a casualty and/or accident. Such situations would be deemed hazardous conditions under the PWSA.

Documents, including the boat logs from certain vessels described above would reflect that, on the occasions set forth above, these employees were working for extended periods of time far

exceeding the standard set forth in Title 46, United States Code, § 8104 (h) which prohibited operators from working more than 12 hours in a 24 hour period.

Testimonial evidence would be presented to establish that defendant **DRD TOWING** was aware of the situations described above, i.e., that on certain vessels on certain occasions operators worked hours beyond safe operating limits, and that the Coast Guard was not told of such hazardous conditions in violation of 33 C.F.R. § 160.215.

B. Operation by employees without appropriate licenses and qualifications:

The Coast Guard required that only properly trained, certified, and licensed personnel operate tugboats and barges. In addition to this universal training, experience, and certification requirements for the issuance of a license, the Coast Guard required additional training and experience to operate on specific waterways, such as the Mississippi River, and to operate vessels carrying certain dangerous cargoes.

Coast Guard experts would testify that this training, certification, and licensing program was a cornerstone of the Coast Guard's efforts to ensure navigation safety and protection of the marine environment. The purpose of these licensing and certification requirements was to ensure that only trained, experienced, competent mariners were allowed to operate tugboats and barges that either carry oil or hazardous materials, or operate on the same waters as other vessels carrying those dangerous cargoes.

For example, Coast Guard regulations regarding the above were as follows:

- To serve as a master an individual was generally required to have at least 48 months of experience, a minimum 18 months of which must be as a mate, as well as specific experience on the route for which the license was issued. Other minimum

requirements include radar training courses, towing vessel experience, or equivalent training and serving as an observer for a minimum number of trips over the route.

- When a towing vessel operated for more than 12 hours within a 24 hour period, in addition to having a licensed master, the vessel was required to have a second properly licensed individual to navigate the vessel on the relief watch. This second individual was typically referred to as the mate or pilot. To serve as a mate (pilot) the individual was generally required to have at least 30 months of experience, a minimum 12 months of which must be as an apprentice mate (steersman), as well as specific experience on the route for which the license was issued.

The purpose of these requirements was to ensure that individuals operating these vessels had the training, experience, familiarity, and competency to deal with a wide variety of issues to safely navigate their vessel and barges they were pushing, thus, it took more than simple familiarity with a vessel's controls to safely navigate.

Coast Guard experts would testify that the Coast Guard considered the licensed master to be a key safety position and failure to have one onboard would constitute a serious manning deficiency that, except in the most extraordinary circumstances, would prohibit operation of the vessel. Coast Guard experts would also testify that for a vessel being operated for more than 12 hours in a 24 hour period the mate was a key safety position and the failure to have one onboard in addition to the master would constitute a serious manning deficiency that, except in the most extraordinary circumstances, would prohibit operation of the vessel.

From approximately January 1, 2007 to July 23, 2008, in the Eastern District of Louisiana, defendant **DRD TOWING** knowingly assigned, or caused to be assigned, employees without

appropriate licenses and qualifications to critical positions to operate certain vessels as the master or mate. These individuals included both unlicensed deckhands and licensed individuals who did not possess the appropriate license for the position they were filling. In addition to not holding the required license, many of these individuals did not have the required training and experience appropriate for the position they were filling. In addition to creating hazardous conditions under the PWSA aboard these towing vessels, such practices violated United States Coast Guard regulations that required towing vessels' operators to employ individuals that hold a valid license for the capacity under which the individual was employed.

Through the introduction of competent testimony and admissible, tangible exhibits, the government would have proved beyond any reasonable doubt that **DRD** used unqualified and improperly licensed individuals in critical positions onboard certain **DRD** vessels and that this constituted hazardous conditions which the Coast Guard were not notified of, in violation of Title 33, C.F.R. § 160.215, codified through the Ports and Waterways Safety Act, Title 33, U.S.C. §§ 1221 *et seq*., specifically 33 U.S.C. §§ 1223, 1225, 1231, and 1232(b)(1).

Clean Water Act Negligent Discharge (July 23, 2008)

Testimony would be introduced to establish that the Mississippi River is a navigable waterway of the United States.

On or about July 15, 2008, the *M/V Mel Oliver*, a **DRD** "trip boat" that operated 24 hours a day with live-aboard crew, began a designated run with its designated barge from St. Rose, Louisiana to Port Bienville, Mississippi. Captain F, a properly licensed operator, was the designated captain. Employee B, despite not being a properly licensed operator, was the designated relief and was serving in the position of mate. Employee B did not have a mate's license and only possessed a

Coast Guard Apprentice Mate (steersman) license which allowed him to "steer" a vessel with a properly licensed captain or mate standing watch with him in the wheelhouse.

On July 20, 2008, unbeknownst to defendant **DRD TOWING**, Captain F turned over the control and operation of the *M/V Mel Oliver* to Employee B and departed the *Mel Oliver* during transit from St. Rose, Louisiana. Captain F and Employee B did not inform **DRD** on-shore personnel that Captain F had left Employee B as the only person onboard, licensed or unlicensed, to operate the *Mel Oliver* from July 20, 2008 to July 23, 2008.

On July 22, 2008, at approximately 11:00 p.m., **DRD**'s customer contacted Employee B by cell phone and instructed him to pick up red-flag tanker barge DM932 ("tanker barge") at Stone Fuel Oil dock on the West bank of the Mississippi River. Employee B picked up the tanker barge, crossed over to the East bank of Mississippi River, and proceeded northbound on the Mississippi River close along the East bank of the river. Employee B did not tell **DRD's** customer or anyone at **DRD** that he had been working for 36 hours straight, taking short cat naps, due to the fact that he was the only operator onboard the *Mel Oliver* because Captain F left the boat on July 20, 2008.

At approximately 1:30 a.m. on July 23, 2008**,** tanker barge DM932 being pushed by the *M/V Mel Oliver* collided with the *M/T Tintomara*, a 600-foot Liberian-flagged tanker ship, at or near mile marker 99 of the lower Mississippi River. Mile marker 99 was located just north of the Harvey locks and just up-river from the Central Business District in downtown New Orleans, Louisiana, in the Eastern District of Louisiana. At the time of the collision the *Mel Oliver*, instead of following its intended route tight along the East bank of Mississippi River, began crossing to the West bank of the Mississippi River into the path of the *Tintomara*. The NOBRA pilot onboard the *Tintomara* attempted to contact Employee B several times prior to the collision, but there was no response from

Employee B, or anyone on the *Mel Oliver.* Employee B had lost situational awareness and allowed the head of the *M/V Mel Oliver* tow– tanker barge DM932, to negligently swing out into the Mississippi River and cross the path of the *M/T Tintomara.* Employee B's attempt to back down on the throttle when he became aware of the *Mel Oliver's* change of course into the path of the *Tintomara* came too late to avert the collision.

DRD TOWING, by and through its employees, specifically Employee B who was acting knowingly and within the scope of his employment and for the benefit of defendant, caused the discharge of a pollutant, that is 282,686 gallons of Fuel Oil No. 6, from a point source-- barge DM932, into the Mississippi River, a navigable water of the United States, without a permit, through the collision between the *M/V Mel Oliver* and the *M/T Tintomara.* The discharge violated Title 33, United States Code, § 1319 (c)(1)(A).

READ AND APPROVED:

_____	_____
DRD Company Towing, LLC Date By: Daniel Dantin, Jr., as agent in fact Defendant	Matthew Chester Date Assistant U.S. Attorney
_____	_____
David Courcelle Date Attorney for DRD Towing, LLC	Dorothy M. Taylor Date Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	**CRIMINAL DOCKET NO. 10-190**
v.	*	**SECTION: "B"**
RANDALL DANTIN	*	
	*	

* * *

FACTUAL BASIS

Should this matter have gone to trial, the government would have proved beyond a reasonable doubt, through the introduction of competent testimony and admissible tangible exhibits, the following facts to support the allegations charged by the United States Attorney in the Bill of Information now pending against the defendant, **RANDALL DANTIN ("DANTIN")**.

Defendant **DANTIN**, a resident of Marrero, Louisiana, was a co-owner and the operations manager of DRD Towing Company, LLC, ("DRD "). DRD was a family owned company, located in Harvey, Louisiana that managed and operated vessels commonly referred to as "tugboats". One of the tugboats operated by DRD was the *M/V Mel Oliver*.

On July 23, 2008, the *M/V Mel Oliver* collided with the *M/T Tintomara*, a 600-foot Liberian-flagged tanker ship, at or near mile marker 99 of the lower Mississippi River. The collision resulted in a large amount of oil being released.

In addition to responding the oil spill, the United States Coast Guard opened a Marine Casualty Hearing ("Coast Guard Hearing"), in the Eastern District of Louisiana, to determine the cause of the collision between the *M/V Mel Oliver* and *M/T Tintomara.* The Coast Guard Hearing was a matter within the jurisdiction of the executive branch of the Government of the United States, that is the United States Coast Guard.

DRD Towing used a form called a "payroll sheet" to list the names of employees working on a particular tugboat, the dates of the shifts, the employee's position (*e.g*. captain, deckhand, etc.) and the number of shifts an employee worked. Each tugboat had a separate "payroll sheet." At the end of a week (or two week period for "trip boats") the hard copy "payroll sheet" was sent to accounting to generate a paycheck for each employee on that tugboat.

In addition to the hard copy "payroll sheets," DRD Port-Captain "A" maintained electronic versions on his DRD laptop computer. Some of these "electronic payroll sheets" reflected that improperly licensed individuals had served in critical safety positions such as master or mate. Also, some of these "electronic payroll sheets" had the number 24 listed next to the name of an employee that was scheduled to operate a certain tugboat. This indicated that should the tugboat be in operation for more than 12 hours in a 24 hour period, the employee would unlawfully be the only operator on the tugboat and would be paid for a 24 hour shift. No properly licensed and qualified relief captain or mate was listed on the payroll sheet in those instances.

Defendant **DANTIN** was knowledgeable of the information contained on the electronic "payroll sheets."

Sometime after July 23, 2008, in the Eastern District of Louisiana, the defendant, **RANDALL DANTIN**, caused the deletion of dozens of electronic "payroll sheets" located in DRD Port-Captain A's computer. Defendant **DANTIN** caused the deletion of these payroll sheets to conceal material evidence from the Coast Guard who would be looking at all of DRD records in their investigation of the collision between the *M/V Mel Oliver* and the *M/T Tintomara* on July 23, 2008. **DANTIN** knew that the Coast Guard could possibly review the electronic "payroll sheets" during their investigation and, if they did, the Coast Guard would learn that employees without proper licenses operated tugboats and that operators, licensed or unlicensed, were paid for working a 24 hour watch, both in violation of the PWSA. The destruction of the "payroll sheets" violated Title18, United States Code, Section 1505.

READ AND APPROVED:

Randall Dantin Defendant	Date	Matthew Chester Assistant U.S. Attorney	Date
Provino C. Mosca Attorney for defendant	Date	Dorothy M. Taylor Assistant U.S. Attorney	Date