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## **Gross negligence costs \$150,000 and more**

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On November 22, 2006, the US Coast Guard detained the bulk carrier WARRIOR in Pittsburg, California for various violations of international requirements. Before the dust settled, though, the registered owner ended up with a federal conviction.

Port state control records indicate that the Maltese-registered ship (built in 1984) had a less than outstanding, but by no means unusual, history. Deficiencies were found during previous port calls in Europe and the United States, but the ship was never detained. The ship was classed by a respected classification society and insured with a respected protection and indemnity club.

It is unclear what caught the eye to the USCG port state control boarding team. It may have been the absence of a ship-specific garbage management plan. It may have been the wasted air vents to the forepeak tank and the aft peak tank. Or it may have been the painted-over tape on the main deck. Removal of the tape revealed two large cracks in the deck, each up to two-and-one-half feet (0.77 meters) in length. Pursuing the inquiry further, the Coast Guard learned that, during a crossing of the North Atlantic from Europe to North America in September 2006, the crew identified several small cracks and rust holes on the starboard side of the main deck. These cracks and holes were repaired by welding. Soon thereafter, the crew identified the two large cracks on the port side of the main deck. Instead of repairing the new cracks and at the direction of the master, the crew covered them with tape and painted the tape to blend in with the painted deck. The cracks were not reported to the flag administration, the class society, or the port states at which the ship called on its voyages.

The International Convention for the Safety of Life at Sea (SOLAS Convention) requires, in pertinent part, that, after a ship has been surveyed by a flag administration or its duly authorized representative and found seaworthy, the condition of the ship be maintained to conform with applicable requirements to ensure that the ship in all respects will remain fit to proceed to sea without danger to the ship or persons on board. Material deviation from this standard by a ship authorizes the port state to exercise control over the ship, including detention when warranted.

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Regulations promulgated by the US Coast Guard under authority of the Ports and Waterways Safety Act require ships, prior to calling in United States ports, to notify the agency of hazardous conditions aboard the vessel. Failure to submit such a report in a timely manner is a criminal offense, but may also subject the master and owner to civil penalties. Criminal prosecutions and assessment of civil penalties for violations of the Ports and Waterways Safety Act are by no means rare. There is even a reported case where civil penalties were assessed against both the master and the ship owner for failure to submit to the Coast Guard a report of hull cracks in the ship.

The WARRIOR incident was handled differently, though. The owner was not prosecuted for failure to submit a report concerning the cracks in the hull. Rather, the prosecution proceeded under an obscure statute making it a criminal offense to operate a vessel in a grossly negligent manner that endangers life, limb, or property. Research has revealed only two reported case of litigated criminal prosecution under this statute and both convictions were overturned on appeal.

We will never know how the WARRIOR case would have turned out at trial because the owner pled guilty and agreed to pay a criminal fine of \$50,000, to make a payment of \$100,000 to a local environmental restoration fund, and to institute an environmental compliance program. In the plea agreement, the owner conceded that taping over the deck cracks was grossly negligent and endangered the life, limb, and property of a person. Court documents also indicate that the cost of repairs, loss of hire of the vessel, bunkers, crew expenses and other costs to be paid by the owner amounted to more than \$1,300,000.

While costly to the owner of the WARRIOR, this incident may have deeper meaning for the maritime industry. This may signal the opening of a new front on the part of the US Coast Guard and the Department of Justice in their efforts to eliminate substandard ships from United States ports and to ensure compliance with applicable law. Prosecution under the Ports and Waterways Safety Act would have not raised many eyebrows, because it would not have been uncommon. Prosecution for grossly negligent operation sends a loud and clear signal that substandard conditions on ships calling in US ports will not be tolerated. The Coast Guard and the Department of Justice are prepared to utilize whatever tools are available in this quest.

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