

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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Investigation of: *

CAPSIZING AND SUBSEQUENT SINKING OF *
COMMERCIAL FISHING VESSEL *MISTY BLUE* *
DECEMBER 4, 2017 *

Accident No.: DCA18FM005

* * * * *

Interview of: DANIEL COHEN

Via Telephone

Friday,
December 22, 2017

APPEARANCES:

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I N T E R V I E W

(10:34 a.m.)

1
2
3 [REDACTED] So good morning. This is [REDACTED] [REDACTED]
4 [REDACTED] I'm in the Sector Southeastern, Providence office.
5 Today is December 22nd, and it is 10:34 a.m. This conference call
6 is to talk to Mr. Danny Cohen, to discuss the *Misty Blue* and
7 determine some facts relating to the sinking of the vessel. I'm
8 the lead investigator on this case. My last name is [REDACTED]
9 [REDACTED]. I'm going to go around and just ask each
10 person to say their name, and then spell their last name.

11 So [REDACTED] [REDACTED] [REDACTED]
12 [REDACTED] [REDACTED] [REDACTED]. And I'm with Sector
13 Southeastern New England.

14 [REDACTED] Mr. [REDACTED]
15 MR. [REDACTED] This is [REDACTED] [REDACTED] P [REDACTED].
16 And I'm with Coast Guard Investigative Service.

17 [REDACTED] Mr. McEwing?
18 MR. MCEWING: And Brian -- yeah, Brian McEwing, M-c-E-w-i-n-
19 g. I am counsel to parties in interest in this investigation.

20 [REDACTED] And Mr. Cohen?
21 MR. COHEN: Yes. Daniel Cohen, C-o-h-e-n.

22 [REDACTED] Thank you. We'd just like to review that if
23 we ask a question that you don't know the answer to, then please
24 just say so. As well, if you ever need a break at any time, then
25 please say so and we'll take a break as needed.

1 MR. COHEN: Okay.

2 INTERVIEW OF DANIEL COHEN

3 BY [REDACTED]

4 Q. To begin, we'd like to find out a little bit more about
5 yourself. What is your background with the fishing industry and
6 your maritime background as well?

7 A. I'm second generation in the commercial fishing business. My
8 father died in 1974. In 1976, I opened up the business again.
9 I've been in the fishing business now for 41 years. I bought --
10 you know, I helped buy our first boat in '78, and we've bought and
11 sold many boats since then, and operate many fishing vessels since
12 1978. I mean, the company, we've -- I've grown from a dock in
13 Cape May to now it's (indiscernible) company that the -- in
14 various corporate entities own fishing vessels, various processing
15 plants, and we catch, process and market seafood, and import and
16 export.

17 Q. Was there any time that you were a captain of a fishing
18 vessel or a crew member onboard?

19 A. I personally have not been captain of a boat. My primary
20 role has been in terms of initially maintenance and fixing
21 vessels, and then purchasing and managing vessels, and the
22 financing. So I've had experience at sea repairing vessels and
23 maintaining vessels, but I'm not a captain.

24 Q. Has the company that you operated, has it always been
25 Atlantic Capes or a different company name?

1 A. Atlantic Capes -- no. So it -- when I said I've been in the
2 business for 41 years, Atlantic Capes was only formed in 1985. It
3 was a company I formed with four other fishermen -- we all owned
4 boats -- to do joint marketing. And after a number of years it
5 wasn't very functional with, like, four heads -- or five heads.
6 So eventually I bought out the other fishermen and then, you know,
7 began operating by myself.

8 In 1976, when I opened up again, it was Sea Harvest,
9 Incorporated. And so, you know, so some of the corporate
10 entities, such as Sea Harvest, have been -- my father formed that
11 company in 1964, I think, and that company still operates today.
12 But Atlantic Capes began in 1985.

13 Q. What fishery was Atlantic Capes originally fishing in? Was
14 it scallops or clams?

15 A. Let's -- you used the word there Atlantic Capes. You know,
16 maybe if I -- are you asking Atlantic Capes or Daniel Cohen and
17 his experience? Which one?

18 Q. Now I'd like to know about Atlantic Capes. What is the
19 history of the fisheries that Atlantic Capes has been involved
20 with?

21 A. Atlantic Capes' main fisheries have been surf clams -- I'm
22 sorry -- have been sea scallops, surf clams -- this is in terms of
23 marketing. Atlantic Capes is primarily a marketing company. So
24 to be clear, Atlantic Capes has primarily been a marketing
25 company, and it's been involved in sea scallops, surf clams. We

1 operated joint ventures with Italian vessel owners for
2 transferring loligo and illex squid; we operated a joint venture
3 with Russian for transferring mackerel, and we've marketed and
4 processed loligo squid, illex squid, mackerel, flukes, sea scup --
5 scup and sea bass. Pretty much -- so Atlantic Capes is primarily
6 a marketing company.

7 Q. Okay. What company owns the fishing vessel *Misty Blue*?

8 A. FV Misty Blue LLC.

9 Q. Is that a parent company beyond the --

10 A. It's the -- Misty Blue LLC. It's a single member LLC. The
11 owner of the single member LLC is Fishing Vessel Enterprises,
12 Inc., which -- and that company is 100 percent owned by me, Daniel
13 Cohen.

14 Q. So how is Atlantic Capes related to fishing vessel *Misty*
15 *Blue*?

16 A. Fishing vessel *Misty Blue* harvested surf clams and sold those
17 surf clams to a division of Atlantic Capes fisheries called
18 Galilean Seafoods that is owned by Atlantic Capes. And Atlantic
19 Capes marketed the finished goods from the clam plant. So fishing
20 -- you know, FV Misty Blue LLC harvested surf clams. Those were
21 sold to the clam plant owned by Atlantic Capes, and the finished
22 goods -- along with other clam boats. *Misty Blue* is not the only
23 clam boat supplying the clams. And then the finished goods are
24 marketed by Atlantic Capes.

25 Q. What are the other fishing vessels that are affiliated with

1 Atlantic Capes that are in Fairhaven?

2 A. So in Fairhaven we are currently operating -- well, at the
3 time when *Misty* -- at the time with *Misty Blue*, there were six
4 clam vessels: The FV *Lauren*, owned FV Lauren LLC; the *Enterprise*,
5 owned by FV Enterprise LLC; the FV *Lori Ann*, owned by FV Lori Ann
6 LLC; the FV *Silver Fox*, owned by FV Silver Fox LLC; the FV *Misty*
7 *Blue*. And there's actually one boat we're not operating there
8 that we're going to move out of there -- it's not operational,
9 hasn't operated for a couple of years -- called the *Morgan Lee* or
10 *Mystic Light*. But it's not operational. So there were six boats.
11 Did I name them all? *Lauren*, *Lori Ann*, *Enterprise*, *Silver Fox*,
12 *Misty Blue* -- I'm missing a boat. I said six boats?

13 Q. Is the *Mandy* [REDACTED] affiliated with your company?

14 A. Oh, the *Mandy* [REDACTED] Thank you very much. Yeah. We only
15 purchased that boat this year and it's not fishing yet. It should
16 be fishing early in 2018.

17 Q. And what is the relationship between those boats? Do they
18 share similar company policies?

19 A. So all of those vessels and those LLCs are subsidiaries of
20 Fishing Vessel Enterprises, Incorporated. So they're single
21 member LLCs owned by Fishing Vessel Enterprises, Inc., and Daniel
22 Cohen is the owner of Fishing Vessel Enterprises, Inc. And yes,
23 they share, you know, all management, you know, they -- yes, they
24 share similar policies in terms of operations, safety,
25 maintenance, those things, et cetera. Yes.

1 Q. Could you explain the company hierarchy of, you know, how
2 does the vessels interact with the shore-side personnel? And then
3 how is that related to the company in Cape May?

4 A. Yes. So the vessels are -- they have a charter to Sea
5 Harvest, Incorporated, which is also a company 100 percent owned
6 by me. We are in the process of separating the scallop fleet from
7 the clam fleet with the intention that, beginning in 2018, the
8 Atlantic Harvester was going to be able to charter the clam boats.
9 But that's not important now.

10 So Sea Harvest operated the vessels, maintained the vessels.
11 In New England, we have a core group of shore-based people who
12 help manage and maintain the vessels. A captain who worked for me
13 for about 30 years has been the shore-side manager for a number of
14 years. His name is James Stock. He was in the process of
15 retiring, and in July we purchased the *Mandy* [REDACTED] so that, one,
16 the boat would work for us full-time, but two, so that its
17 captain/owner, Chad Brayton, would get off the water and become
18 the full-time boat manager. And we were in the transition between
19 James Stock managing the vessels and Chad Brayton managing the
20 vessels at the time of this incident.

21 Q. And how does --

22 A. And in Fairhaven, so there is a team, you know, now led by
23 Chad. They have a couple of welders and mechanics who go on the
24 boats, maintain them and fix them. And with the work that we
25 can't do, we use outside subcontractors, like Marine Hydraulics

1 and Bluefleet Welding, et cetera, the local marine maintenance
2 community in New Bedford. And typically are hauling out at Promet
3 or at Fairhaven Shipyard or one of those shipyards like that. Did
4 that answer your question about what the -- what is the role of
5 the people in Fairhaven?

6 Q. That does. Thank you.

7 What is the relationship of the vessel managers in Fairhaven
8 with the Atlantic Capes company in Cape May?

9 A. So in Cape May, Sea Harvest also manages vessels in Cape May.
10 There we have a vice president of operations. His name is Sam
11 Martin. Sam Martin also was a captain and a vessel owner before
12 he went on shore. He primarily has been managing the scallop
13 vessels, though he actually used to clam and is familiar with
14 clamming. And so, he is in charge of our risk management and our
15 safety protocols, and is responsible to help train Chad about
16 those same protocols in Fairhaven.

17 And continuing, our -- the books of the vessels primarily
18 were being maintained in Cape May prior to the mid-part or end of
19 2017, and we were in the process of transferring the bookkeeping
20 from Cape May to our Bristol, Rhode Island location. So in
21 Bristol, Rhode Island, we shuck the clams, Atlantic Capes, so -- I
22 use the word we liberally, so I guess I should keep referring to
23 the various corporate entities.

24 But in Bristol, Rhode Island, Atlantic Capes Fisheries
25 operates the clam plant. We have bookkeepers there, and there was

1 -- we were in the process of moving all the clam boat bookkeeping
2 to Bristol, Rhode Island, so that all the clam boats would be
3 located in the New England area and the bookkeeping there, rather
4 than having the bookkeeping continuing in Cape May. And we were
5 in the process of separating out the two fleets, the surf clam
6 fleet and the scallop fleet from -- so your question was what does
7 Cape May do for the vessels. And hopefully I described that role,
8 of Cape May and Sam Martin.

9 Q. Thank you. Is it -- is Sam Martin considered to be the
10 supervisor of the vessel managers that are in Fairhaven?

11 A. I would say it's both me and Sam together. I do some aspects
12 of it and Sam does other. Sam -- we have a, you know, a drug
13 testing policy, accident reporting policy. He is more day to day
14 with managing all of that. And so the -- those safety programs he
15 is more often doing, but I play a role in all of this also.

16 Q. Could you describe, are there other policies that are
17 companywide besides drug testing and accident reporting
18 procedures?

19 A. For the vessels or for other things?

20 Q. For the vessels and vessel operations.

21 A. Yeah. I mean, I -- you know, I can generally tell you what I
22 think our protocols are. And, you know, we try to have the
23 vessels U.S. Coast Guard safety inspected annually, rather than
24 sending them every other year. We have developed a policy of
25 having all of the captains being Coast Guard -- get -- become

1 certified to be Coast Guard drill instructors, because we noticed
2 a lag between, you know -- the idea is that we're supposed to have
3 drills monthly, but if the captain is incapable of doing the
4 drills, it's hard to get third parties here monthly. So we
5 developed a program of sponsoring classes for Coast Guard drill
6 instructors. Sam, for the last few years, has been coordinating
7 that and maintaining -- make certain that those classes take place
8 and the captains become Coast Guard drill instructors.

9 You know, we have standard, you know, sort of pre-application
10 procedures for crewmen in terms of filling out applications. We
11 have standard pre-employment drug testing, which we do in Cape
12 May, and Sam has been working with Jim and then Chad to impose the
13 same rigor of drug testing in Fairhaven that we've been doing in
14 Cape May. I'm trying to think.

15 You know, we have -- I think those are the -- that I can
16 think of right now. One of our primary policies that I can think
17 of -- and obviously, we follow, you know, MARPOL regulations, U.S.
18 Coast Guard regulations. We're going to follow the National
19 Fishery Service regulations. So, you know, being aware of and
20 being part of the regulatory environment, you know, we're very
21 much involved in that regulatory fisheries management environment
22 because of the nature of the fisheries that we're involved in. So
23 I mean, part of the protocols have to do with maintenance.
24 Certainly the captains are aware of that they're -- the plotters
25 have on them where they're allowed to fish and where they're not

1 allowed to fish, things like that.

2 Q. Are these policies written down?

3 A. Some are, and some are not. You know, the -- like the idea
4 that we want to have -- I'll have to see whether Sam has -- what
5 he has, because, you know, that we want to do U.S. Coast Guard
6 inspections annually is something that we actually -- it may or
7 may not be written down, but we do it all the time.

8 So, you know, we have crew manifests that the crewmen have to
9 fill out beforehand. There's crew applications. So yeah, some of
10 these are in writing. And we could -- I could have them provided
11 to you. There is some drug information in writing and all the
12 manifests have it; that's correct. So we have forms that they're
13 -- when the drug testing is done, that need to be filled out. If
14 you would like me to have them made available to you, we could.

15 Q. That would be helpful. Thank you.

16 A. Okay.

17 Q. Do you keep documentation of which captains are qualified to
18 be drill conductors?

19 A. Yes. Sam has a list of all of them.

20 Q. Could we get a copy of that as well, please?

21 A. Yeah. I'm pretty sure he has a list of that. Uh-huh.

22 Q. Do you require your captains or vessel managers to document
23 when the drills are completed?

24 A. I believe we do. That's what they should be doing. I'm not
25 -- you know, I believe that each captain is supposed to have a log

1 where they're maintaining when they do the drills. Also, it's
2 part of our crew manifest. So -- but we will get that to you.
3 You want the list of U.S. Coast Guard -- I'm going to make myself
4 a list. List of U.S. Coast Guard instructor, safety program, the
5 U.S. Coast Guard inspections, and did you -- do you want this
6 limited to the six clam boats or are you asking for other boats
7 too? Or just looking -- are you focusing just on the clam boats?
8 Just to help me to what -- you know, how broad you want me to be.
9 Q. Just the clam boats, please. Or the vessel managers for the
10 clam boats. We're interested in the Fairhaven operations.
11 A. Okay. Go ahead.
12 Q. Is the conducting drills, does the vessel manager have any
13 oversight or responsibility with that program?
14 A. He should, yes. You know, whether or not -- how quickly, you
15 know, Chad has fully embraced all this responsibility I would have
16 to check. But yes, he is -- that's in the responsibilities.
17 Q. Or, I guess, before Chad started working was it Mr. Stock's
18 responsibilities?
19 A. Yes.
20 Q. Okay. Does the company have any preventive maintenance
21 policies for the upkeep of the vessels?
22 A. As a written policy, I'm not certain. No. As a -- of
23 course, you know, we do our best to maintain the boats. It's
24 better to try to fix them before they break down than fix them
25 afterwards. Some things you can anticipate and some things you

1 can't. But, I mean, there is not a -- so most of the vessels are
2 relatively unique designs. And then, other than hours on the
3 engines, which might say, you know, at 35,000 hours or 15,000
4 hours we recommend a top job or a bottom job, things like that --
5 and we often look at that with engines and decide, yes, does it
6 make sense for us to do this or do we feel the engine can go for a
7 little longer. But the other equipment, you know, there aren't
8 protocols other than, you know, good inspection. Look at your
9 bearings, to look at your greasings, to look at your fittings and
10 say, okay, is everything tight and fit or do we have to replace
11 something?

12 Q. What about lifesaving equipment, items that have expiration
13 dates or maintenance procedures that need to be upkeep? Is there
14 any company policy with doing that --

15 A. Yeah. That's -- one of the reasons to have the annual
16 inspection annually for voluntary inspection programs. Yeah, you
17 need to make sure you have, you know, your radio license in 5
18 years. You need to have your EPIRBs checked -- all those things
19 have expiration dates, and one reason to say let's do our
20 voluntary inspections frequently is to make certain that you're up
21 to date. Because all of those things are checked at that time
22 also by the Coast Guard inspectors.

23 Q. Is there a company policy to have a crew member or the vessel
24 manager do an inspection themselves before the Coast Guard
25 examiner or the third-party examiner comes to the vessel?

1 A. Usually, since we're calling them down, usually the captain
2 and the boat managers go through the boats first to make sure they
3 think they comply. I mean, there's no point in wasting the
4 inspector's time. The inspector will come down and if you've
5 failed something they'll tell you, and it will make them come
6 back. But, yeah, usually the captain and the shore-based people
7 go through the boat together.

8 Now, you know, the first thing is, you know, I'm much more
9 familiar with how this is happening on a continual basis for the
10 boats in Cape May than I am in the boats in Fairhaven. It's more
11 remote, and in fact that operation has really grown because, you
12 know -- I don't know that it's grown intentionally. But, you
13 know, originally all the boats were all in New Jersey and
14 therefore the managing them together was a much simpler task. But
15 because of, you know, global climate change, the surf clams have
16 just -- the sets off of the mid-Atlantic have gotten worse and the
17 sets off of New England have gotten better and over time, you
18 know, we migrated to New England.

19 A few years ago, we only had one or two boats here and now we
20 have -- well, we have six. So we've been building this
21 infrastructure and trying to -- and that's why the decision was
22 made recently let's try to even more formalize it, separate out.
23 Because it was, you know, some amount of inefficiency as to what
24 was being done in Cape May and what was being done in Fairhaven.

25 Q. How often do you visit the Fairhaven facility and vessels?

1 A. I'm in New England about twice a month, sometimes three times
2 a month. But, you know, I'm splitting my time even when I'm here
3 between the dock in Fairhaven, our plant in Fall River, and our
4 plant in Bristol.

5 Q. Does Mr. --

6 A. So I'm usually here -- you know, when I come up here I'm
7 usually here for 2 or 3 days. And I'm here usually two to three
8 times a month.

9 Q. Does Mr. Martin make trips to New England as well?

10 A. Much less -- infrequently. He's probably only up here maybe
11 twice a year, I'd estimate. So I would say I play a role -- you
12 know, Sam does some. But again, we all communicate by email and
13 phone, so it's possible for me to communicate with people that way
14 also.

15 Q. How often do you have your vessel surveyed by a marine
16 surveyor?

17 A. Well, we -- well, there's an interplay between how often we
18 -- you know, when we want to do it and also when the insurance
19 companies do. You know, traditionally we were -- so it's anywhere
20 between, you know, I would say on average about every 3 years a
21 boat. But now it's every time we haul a boat, which is usually
22 about -- unless there's a problem, about every 3 to 4 years. But
23 we -- every time we haul a boat now, we're starting to do it. So
24 I'd say on average about every 3 years.

25 Q. And that's because the insurance company requires it?

1 A. Well, no, it's -- we we do it for, I'd say, three reasons.
2 One was for the insurance company; two is for the banks, in terms
3 of valuations; and three just, you know, for our own, you know,
4 sense of understanding. But we -- about every 3 years. And
5 again, if you want a list of, you know, survey dates, something
6 like that, I can get them to you.

7 Q. I think we have the -- I guess it would be helpful if we had
8 a list to compare the reports that we have, but you don't probably
9 need to get the reports unless we realize we're missing one,
10 because we have a good amount of the ones recently from Marine
11 Safety Consultants. But if there's --

12 A. Okay.

13 Q. -- additional ones --

14 A. No. Okay. So if you're asking me specifically about the
15 *Misty Blue* I think you have all the surveys.

16 Q. Okay.

17 A. I couldn't understand if you were talking about other boats.
18 Okay.

19 Q. Okay. Understood. Yeah, in terms of the particular surveys,
20 we are interested in the *Misty Blue* surveys.

21 A. Okay. No problem.

22 Q. Do you remember when you purchased the *Misty Blue*?

23 A. Yes. Do you want -- the answer was yes. Do you want me to
24 give me more information or what would you like to know?

25 Q. Well, what year did you acquire the *Misty Blue*?

1 A. If you'd like, I can tell you the story about us acquiring
2 the *Misty Blue*. I acquired --

3 Q. Oh, okay.

4 A. -- the *Misty Blue* in -- I believe it was June. I can look at
5 my laptop right now and tell you exactly when, but -- in June of
6 2015. And we purchased the vessel, you know -- it's a long story
7 -- or, a short story. The boat was rigged by a man named John
8 Roberts, who I've probably known for about 30 years. He was a
9 very experienced clam boat captain, and he actually built the
10 first stern rig, which is called the *Easy Rider*. And it was, you
11 know, a very large vessel, a hundred and some foot long. At some
12 he sold out of the clam business and I think he went to Alaska
13 crabbing. I can't remember what he did. And then later he came
14 back to the East Coast and he bought a vessel in New Bedford that
15 he renamed the *Misty Blue*. And he converted it to a small stern
16 rig surf clam vessel.

17 When he did that, he was doing that in relationship with
18 another company, called Fair Tide, and he was supplying -- so he
19 -- nothing to do with Atlantic Capes or me or anything -- he was
20 supplying this other company, Fair Tide, with clams. In 2010, we
21 purchased -- Atlantic Cape Fisheries purchased the Fair Tide
22 company, their shucking, and with that came all of their customer
23 relationships and their supply relationships. So the boats that
24 were working for Fair Tide ended up working for us.

25 The prior owner of Fair Tide had lent money to John Roberts

1 to rig the boat, so John is operating the boat working for
2 Atlantic Capes now, because we purchased the company he used to
3 work for. And, you know, we inherited some of the debt, where he
4 owed us money.

5 So he ended up getting meningitis and had both of his feet
6 amputated and his fingers amputated, but he lived. He's still
7 alive today. But he was obviously unable to successfully run a
8 boat without feet and fingers. And I didn't -- I must admit, I
9 didn't really realize everything that was going on. But he kept
10 on borrowing money from our CFO -- I thought for the vessel, but
11 really it was to help pay his medical bills. He had his son-in-
12 law running the boat, and at some point actually he approached my
13 CFO and one of our employees and basically said, you know, you
14 need to buy the boat from me; I owe you money. And we ended up
15 buying the boat from him because he was incapable of operating it
16 and had owed us money. And that's how we ended up buying the boat
17 in 2015.

18 Q. When you purchased the vessel did you get any documentation
19 or history about the vessel with the purchase?

20 A. Only what we were told by John. Again, it's a one-off
21 vessel. So no, I didn't get -- other than an agreement of sale
22 and a bill of sale, I don't recall being given any other
23 documentation other than that.

24 Q. Was there any discussion with Mr. Roberts about the stability
25 of the vessel?

1 A. Yeah. It was my understanding from John that he had had the
2 boat stability tested and the vessel had been approved -- it was
3 my understanding for 20 cages. Subsequently, from looking at
4 documents, it appears it might have been stability tested for 26
5 cages. But he mostly, when he was fishing, came in with about 20
6 cages. But my understanding was that it was stability tested, but
7 I never actually got a copy of the stability book from him.

8 Q. Once you purchased the vessel did you ever have a stability
9 test completed for the *Misty Blue*?

10 A. No. When we purchased the vessel it was operating. It was
11 operating with his son-in-law as the captain. He'd been on the
12 boat since he rigged it. And when we went to insure the vessel,
13 it was insured by -- through the same insurance agent. So they
14 didn't ask us for anything more because they had the records, you
15 know, already, they felt, complete. So they didn't ask us for any
16 more records.

17 Q. Who was -- what was the name of the son-in-law that was
18 working on the boat?

19 A. Douglas Kapak (ph.).

20 Q. Thank you. Is there -- how does the -- how do you determine
21 when a stability test is needed on a vessel?

22 A. Well, current regulations require when you do a significant
23 change to the vessel you're supposed to do a stability test. And,
24 you know, I -- you know, other than -- you know, obviously if you
25 build a new vessel you do one. But my understanding is when you

1 make a significant change to the vessel you get a stability test.

2 Q. What would be -- what do you consider a significant change?

3 A. It really depends upon -- you know, this is now a judgment
4 call. It really depends upon what you're doing. I mean, you
5 know, obviously in retrospect of this, if you're asking me did I
6 consider that when we put the knuckle boom crane a significant
7 change, I would say the answer is no. But I will tell you -- if
8 you'd like me, I will tell you why I believe no.

9 Q. Okay. Could you please tell me?

10 A. Okay. Yeah. So -- okay, so first -- I want to first go to
11 why the crane was put on and then why my thoughts are that at that
12 point it wasn't needed, because I don't think it was. So mostly
13 our boats fish out of Fairhaven, but it's a very long steam to the
14 fishing grounds. There's a port in Cape Cod called Hyannis, where
15 you can come in if you're a small enough boat. You have to be
16 under, I think, 70 or 72 foot overall. And you have to be able to
17 offload yourself because it's just public docks and there's no
18 offloading crane. So each boat has to be able to offload itself.

19 So we had made a decision, because the boat was not as
20 productive as other boats, that if we put up -- if he was able to
21 go in and out of Hyannis, because they're the right length but
22 didn't have their own boom for offloading. Actually, so Jimmy
23 Stock started building a boom for offloading and then realized
24 that he had the knuckle boom crane from the *Mystic Light*, and he
25 thought that would be more compact and actually better, in effect,

1 less -- you know, by putting a knuckle boom crane on. So the
2 *Mystic Light*, which is still up in Fairhaven, used to have that
3 knuckle boom crane on the side of the boat but on its outward leg.
4 So it was about 4 feet above the deck. Jim installed it on the
5 centerline of the boat on the overhead, which the overhead is
6 probably only 7 foot, but let's call it 8 foot. So maybe about a
7 foot -- minimum, you know, minimum, let's say, 3 to 4 foot higher
8 than it was, but it would be on the centerline, not on the side.

9 And if you looked at the other boats that have their own
10 offloading -- and again, that boat, the *Misty Blue*, when it was
11 originally built was a fishing boat and it used to have a center
12 boom. It didn't have a center boom anymore. But if you look at
13 the other boats -- the *Mandy* [REDACTED] the *Silver Fox*, the *Lauren*, the
14 *Tom Slaughter* -- they all have hanging booms that go much higher
15 in the air. They have all the blocks, et cetera. So I'd have to
16 do the weight and calculation, but I think their -- at least their
17 center of gravity would be at least as much or more than the
18 crane. But the crane -- and in some of this -- you know, the
19 crane only weighed about 2600 pounds, which is like -- I can give
20 you the make and model and spec sheet so you can see that.

21 And if we have a stability report that said -- you know, if
22 you look at the Marine Safety letter, it said that the boat could
23 carry 10 cages on deck in addition to the 16 below. That'd be 26
24 cages. Ten cages -- the clam cage filled weighs about -- well,
25 most people estimate 3,000 pounds, but if you weigh them, they're

1 sometimes as light as 2700 pounds. So you're talking about
2 between 27,000, 30,000 pounds on deck, versus -- and a clam cage
3 is 5½ feet tall, right. Because by law, we have -- they're 3 foot
4 by 4 foot by 5 foot, and there's a 6-inch leg. So they're 5 foot
5 tall. And putting 2700 pounds that are crunched down in the
6 centerline is much less than those 10 cages on deck. And we were
7 never -- you know, we actually, ever since we've owned the boat,
8 have mostly been limiting the boat to 16 -- 14 to 16 cages,
9 because we've been limiting it to one truckload just because of
10 the cost of trucking. Because, you know, when you get to 20
11 cages, it's an uneven truckload amount.

12 So I -- you know, I don't think the crane -- in terms of
13 vessel stability compared to 10 full cages is insignificant. And
14 when the boat had its -- when it sank, it only had, reportedly,
15 from what I understand, 14 or 14½ cages below deck. So I don't
16 think the weight of the crane is at all significant compared to 10
17 cages on deck.

18 Q. It would be helpful to have a copy of that spec sheet that
19 you referred to for the crane.

20 A. Okay. I can send it -- yes, whatever you ask me for, I'm
21 going to get this to -- you know, I'll get this information to
22 Brian, and Brian will get it to you. Okay?

23 Q. Thank you. Are you --

24 MR. McEWING: So [REDACTED] --

25 [REDACTED] Yeah?

1 MR. McEWING: -- this is Brian.

2 [REDACTED] Yeah.

3 MR. McEWING: And we just want to make sure that we have the
4 right model crane before we do that. So --

5 [REDACTED] Okay.

6 MR. COHEN: I'm sure, I'm sure I do. Because I have a
7 picture of the crane before it got painted, and you can see the
8 model number right on it. Yeah, I'm sure -- yeah, no problem.
9 I'll even give you that evidence, too, so you'll see it. Okay?

10 BY [REDACTED]

11 Q. Thank you. Are you aware of any other modifications to the
12 vessel since you took over ownership of it?

13 A. Other than, you know, we did things like putting air -- you
14 know, their air conditioning system didn't work. We fixed the air
15 conditioning system. They had bedbugs. We took 3 months of
16 fumigating to get rid of them. We, you know, sandblasted,
17 painted, put new hatch covers on, put a new deck conveyor, put a
18 new hopper. I mean, all that was replacing generally like for
19 like. The shaker, things like that.

20 Q. Was there any --

21 A. But that -- none of that would be significant. In other
22 words, we -- you know, the boat had not been well-maintained and
23 we had done a lot of maintenance to the boat.

24 Q. Was there a change in the dredge or the A-frame?

25 A. No, not that I'm aware of at all.

1 Q. So, how would you -- let's say there -- how do you keep track
2 of modifications so that you know, you know, when stability might
3 need to be recalculated?

4 A. Again, the work I mentioned before, where we put in a -- you
5 know, replaced a conveyor, shaker, things like that, I think
6 that's all minor and doesn't add anything. I guess it -- I don't
7 have a written document that says how you make that judgment call.

8 Q. Do you have anything similar for the other vessels that
9 operate out of Fairhaven?

10 A. No. But, again, most of these vessels haven't changed in
11 their design for years. The *Lori Ann*, the *Enterprise*, the *Lauren*,
12 the *Silver Fox*, we've only been changing like for like. For
13 example, the *Lori Ann*, we did a lot of work when we purchased it.
14 And then we did have a stability test, because at that point we
15 lengthened the boat, we put a bigger dredge on the boat. So when
16 we bought the *Lori Ann* -- so maybe this is a good example. When
17 we bought the *Lori Ann*, we did do significant work and we did have
18 a stability test. You know, that would be my best example for
19 you. And there, the work we did was clearly affecting its
20 stability. We cut off the stern; we put a new stern on and
21 lengthened it. We put a larger dredge. So, you know -- and we
22 did do a stability test.

23 Q. Okay. Thank you.

24 A. But again, you know, there wasn't a written thing other than
25 a guideline that says if you do significant work you've got to

1 have a stability test. We knew that and we did it.

2 Q. How were the captains and the crew members made aware of the
3 stability criteria for the vessel?

4 A. Well, what -- you're saying specifically the *Misty Blue*?

5 Q. Yes, please.

6 A. Well, you know, first, you know, Douglas Kapak, who was the
7 captain when we purchased the boat, you know -- it was just an
8 assumption on my part that -- and the company's part, that, you
9 know, he knew the boat well, since he's been on it ever since it
10 had been rigged and he had worked for his father-in-law.

11 And then when he was replaced with Eric Arabian, you know,
12 Eric had been a captain on stern-rigged boats previously. He'd
13 been on, my memory is, the *Captain Frank*, the *Goody Hallet*, and
14 the *New Sea Rover*, and he had worked for us previously as the
15 captain on the *Silver Fox* for, I don't know, 2 years. I'd have to
16 check exact records. And he did not have any incidents when he
17 had been the captain for *Silver Fox*, and since he had successfully
18 been captain of other stern-rigged vessels, and he had been
19 trained on this vessel, one, on the dock where it was explained by
20 one of the shore engineers who had worked on the boat and been a
21 mate before. And also, he had gone out for a couple of trips with
22 another one of our mates, who had been experienced on the boat.

23 So I guess the best answer I can say is, you know, we made a
24 judgment call that Eric knew the boat well enough from being out
25 before with the other mate and from being -- the training from the

1 shore engineer, and because he was familiar with stern rigs and
2 been captain before for us for 2 years, that he was experienced
3 and knew what he was doing.

4 Q. Do you know which shore engineer would have given that
5 training?

6 A. In terms of how to manage the plumbing system and managing
7 the rigs and the boat, it would have been Eric -- I believe it was
8 Eric Chor. I don't know how you actually spell his last name. I
9 think it's Chor, C-h-o-r, I think.

10 Q. I think you're right.

11 A. Uh-huh. Yeah. He has been on the boat also for a long
12 period of time. He had stopped fishing himself because of a prior
13 injury. But he, you know, worked for us on the dock and was good
14 with boats and --

15 Q. Do you ever offer any stability training or information to
16 the captains and crew members of any of the boats that operate out
17 of Fairhaven?

18 A. Other than that, what they would get from the, you know, the
19 U.S. Coast Guard drill conductor or when people do conduct
20 classes, I'm not -- unaware of anything extra.

21 Q. Are the crew members or captains required to go to these
22 courses?

23 A. You know, again, we may have missed something, but the --
24 whether -- I mean, I'm would need to even check to see whether
25 Eric Arabian was U.S. -- he had already gotten his U.S. drill

1 conductor thing or not. So I would have to research that.

2 Q. Okay.

3 A. I don't know the answer.

4 Q. Do you know, does the drill conductor course discuss
5 stability?

6 A. I know when I participated in it, it did. I haven't
7 participated for a while. But we helped write and sponsor in Cape
8 May drill conductor courses. This was starting in about the year
9 2002 or '03, and I know they did then. At that point it was a 2-
10 day course. I know now they've abbreviated it to a 1-day course,
11 and I don't know if that means they've eliminated things. But in
12 2002 or '03, when I was involved in the drill conductor classes in
13 Cape May, the answer was yes. But where they are today, I don't
14 know.

15 Q. Okay. Is there any concern that the *Misty Blue* did not have
16 a stability letter onboard?

17 A. Well, I mean --

18 MR. MCEWING: Excuse me, Danny. Hang on. When --
19 respectfully, this is a facts interview and your questions seem to
20 be more and more, you know, asking for opinion. And, you know, I
21 have an issue with that.

22 [REDACTED] Okay. I'll rephrase the question.

23 BY [REDACTED]

24 Q. Was there a stability letter onboard the *Misty Blue*?

25 A. I don't know for a fact whether there was a stability letter

1 or a stability report onboard the boat. Again, I just made
2 assumptions that Doug Kapak (a) knew, and (b) whatever information
3 that he inherited from his father-in-law was on board the boat. I
4 do not know whether or not it was actually on the boat or not.

5 Q. Is there a company policy for any of the vessels out of
6 Fairhaven to have stability tests completed or stability letters
7 on board?

8 A. I don't believe we had a written policy prior to this
9 incident.

10 Q. Has there been any action since the incident to develop
11 policy?

12 A. Since the incident, we are reviewing ourselves the stability
13 reports on the other vessels and making, you know, a policy about
14 how -- they're on the vessels, and with the captains. And we're
15 still in the process of reviewing that with them.

16 There are -- now, I have -- we have determined that there are
17 stability tests for the *Enterprise*, *Lori Ann*, *Silver Fox* and
18 *Lauren*. The *Mandy* [REDACTED] under its prior owner, did not have a
19 stability test. So we arranged that before the boat goes fishing,
20 after the work was done, even though we're doing no significant
21 work to the boat in terms of anything that would change its
22 stability -- we replaced the main engine, we replaced a generator;
23 all the work we're doing is replacing like for like -- but we're
24 going to still do the stability test before the boat goes fishing.

25 Q. Are you familiar with the -- the Coast Guard made a book.

1 It's called "A Best Practices Guide to Vessel Stability: Guiding
2 Fishermen Safely into the Future." Have you heard of this?

3 A. Not that I can recall.

4 Q. Are you individually or is Atlantic Capes involved in any
5 regulatory group or commercial industry group that represents the
6 industry at, you know, at conferences or meetings?

7 A. In many different formats, yes. That's a pretty broad
8 question.

9 Q. What are some of the examples of conferences or groups that
10 you are a part of?

11 A. Well, I want to be clear. You said industry and regulatory,
12 and there -- there's a gamut of that. Or you only want to be
13 focused on U.S. Coast Guard. Which one?

14 Q. I'm just -- I'm not really sure with what all the different
15 organizations or conferences that occur are. So just if you could
16 give me a couple examples of what your role within the industry to
17 further safety is. Or, if you have one.

18 A. Well, okay. So again, we are involved, from a regulatory
19 point of view, in things like the ISSC, which is Interstate
20 Shellfish Shippers Conference, which has to do with public health
21 safety. We participate fully in it, and one of my employees is on
22 the committee. We participate completely in the fisheries
23 management process. I believe, the Mid-Atlantic and New England
24 Fishery Management Council, one of my employees is appointed by --
25 nominated by our governor, and appointed by the secretary of

1 Commerce, to be a voting member of the Mid-Atlantic Fishery
2 Management Council.

3 From the point of view of U.S. Coast Guard safety, the only
4 thing I'm familiar with has been, in the last few years, there's
5 been a whole series of discussions as to whether or not there
6 would be new safety regulations or not. There were a couple of
7 committees that either people we knew were participating in -- no
8 one directly from our company, but we participate in industry
9 associations talking to them.

10 So Tom Dameron from Surfside Products, and Garrett Norton,
11 who's a naval architect, were participating in the U.S. Coast
12 Guard industry-sponsored whatever -- committees that were looking
13 at the regulations as to whether the new regulations were going to
14 be required. Now they're a guidance document now. That's a
15 different guidance document than you talked about just with vessel
16 stability. I think there's a guidance document in the new
17 regulations that were going to be imposed but are not being
18 imposed yet. I'm not sure if I'm saying it correctly. That's my
19 general knowledge of that.

20 And, yes, myself and Sam participated in meetings and
21 conference calls with Tom Dameron and Garrett Norton and others
22 who participated in those committees directly. But none of my
23 employees directly were on those committees.

24 Q. Okay.

25 A. And that's the only Coast Guard committees that I'm aware of

1 is that. I guess we have also participated in some understanding
2 and discussions of what the U.S. Coast Guard alternative
3 compliance meant on the West Coast, because we were looking at and
4 participating with some West Coast fisheries with alternative
5 compliance.

6 And I have, you know, just interacted myself directly and
7 through attorneys with the U.S. Coast Guard, trying to understand
8 the various difference between at-sea processing regulations and
9 load line versus non-load line, et cetera. But I'm unaware of any
10 other task force other than what I talked about for the Coast
11 Guard.

12 Q. Okay. Thank you.

13 A. You bet. You know, and we participate in other industry
14 organizations like the National Fisheries Institute and things
15 like that. But they're more about, you know, food safety and --
16 than they are about harvesting.

17 Q. Right. Okay. Thank you. I think the -- one of the
18 documents you might have been referring to -- could you tell me if
19 "The Voluntary Safety Initiatives and Good Marine Practice for
20 Commercial Fishing Industry Vessels," published January 2017, does
21 that sound familiar?

22 A. Yes. Yeah, and my understanding is that that -- that was a
23 decision by the Coast Guard to do a voluntary program rather than
24 a compliance -- a required program. But, yes, that's the document
25 I'm referring to.

1 Q. Have you read that document?

2 A. I know I have looked at it and read it but I can't quote it
3 at this moment.

4 Q. Okay. Thank you.

5 A. It's on my laptop. I can tell you that.

6 [REDACTED] Oh, that's what I -- I just wanted to find
7 out if you were aware of it. That's what I was looking for. So
8 thank you.

9 I don't think at this time that I have any other questions.
10 Are you still good to continue talking, Mr. Cohen?

11 MR. COHEN: You know, I'm here at your service. Obviously
12 we've had a loss, a loss of life and a loss of a vessel. We
13 shouldn't take it lightly. And I would say your -- whatever your
14 time is, is more important than mine right now. So go ahead.

15 [REDACTED] Okay. Thank you, sir. [REDACTED]
16 [REDACTED] is going to ask you some questions now.

17 BY [REDACTED]

18 Q. Hey, good morning, Mr. Cohen. I'm curious the company's
19 policy -- I know [REDACTED] touched base on stability training with
20 masters. What about training for emergency situations?

21 A. Again, the U.S. Coast Guard drill conductor class. And then
22 the classes you're supposed to do monthly are actually supposed to
23 do all of them: man overboard, donning survival suits, fighting a
24 fire. So all of those aspects are covered and should be covered
25 in the monthly drills on board the vessels. So I'm not certain

1 I'm answering your question. Have I answered your question?

2 Q. Sure. In the company's hiring practices for hiring
3 specifically masters, is there a requirement that they have some
4 type of formal training or prior experience or --

5 A. So there's both. So to be clear -- again, how well we were
6 following our own policy I'm not certain, but I guess I'm going to
7 do more research now. But, you know, especially in Cape May, we
8 had a policy that all the captains needed to become drill
9 conductors. Whether Eric was and whether or not all the captains
10 in Fairhaven were, I don't know. But I'm going to research that.

11 So that is the only formal class that we've been saying that
12 we want -- oh, no, we -- I apologize. All the captains need to
13 have a CPR to be a captain. And then they need to have a National
14 Fisheries Service operator's permit. But that's just a simple
15 thing. There's no real requirement for that.

16 So yes, all the captains, before they're hired, are -- you
17 know, have to fill out a job application and a resume, and, you
18 know, usually they're people we know, and usually we check people
19 and it's all about, you know, long-term relationships, because
20 that's the only way you get to know people. Again, here, you
21 know, we had made the decision that Eric was capable and
22 experienced because he not only worked for other people but had
23 worked for us for a couple of years without any crew incidents or
24 similar problems like this.

25 To be clear, if, you know, if you counted our scallop boats

1 and clam boats and the number of years I've been involved in
2 vessel ownership, it's been hundreds and hundreds of years of
3 vessel ownership, and this is the only vessel underneath our
4 management that has been lost at sea, other than one boat that
5 caught on fire; that was in 1980. And this is the only loss of
6 life from a boat lost at sea. The one that caught on fire,
7 everybody walked off onto another boat.

8 So, you know, this is a horrible thing that happened, but
9 it's not like it's our course of conduct. We, like I said, have
10 had hundreds of years of vessel ownership and this is the only
11 vessel lost at sea.

12 Q. Sure. Can you talk me through the company policy for
13 reporting marine casualties?

14 A. Yeah. And that's in writing. Sam -- I should be able to get
15 that from Sam and give it to Brian.

16 You know, we have -- our captains are trained that if there
17 is someone hurt they've got to call immediately, 24 hours a day,
18 it doesn't matter. And they've got to call Sam or, you know,
19 Chad, and Chad will call Sam. But if they don't get to him
20 there's like a phone tree, so that -- you know, especially people
21 hurt at sea, people are informed immediately, 24 hours a day. But
22 there is a written protocol, and Sam has one and I can -- he
23 shared it with the captains. And again, this may have been better
24 communicated in Cape May than Fairhaven. I don't know. But we
25 definitely have written policy for that.

1 Q. Okay. After the phone tree call is made to the vessel
2 manager or -- who's -- who calls the Coast Guard?

3 A. Excuse me?

4 Q. So if I understood correctly, you kind of report -- you
5 talked about how it's reported from vessel masters to the company.
6 Who then calls the Coast Guard or when is the Coast Guard
7 notified?

8 A. Well, again, we have to look -- we'll have to look at the --
9 how it's put in writing. But it all depends upon what the
10 incident is. If it's a person hurt at sea, it's all depending
11 upon how badly they're hurt and what we need to do whether the
12 Coast Guard is called or not. In terms of, like, you know, a
13 major incident, such as a loss of -- the vessel sinking, things
14 like that, which we haven't had in 40 years -- you know, like an
15 example, in this instance, from what I understand, the Coast Guard
16 was notified before we were by the EPIRB.

17 Q. Right.

18 A. I'm not certain I understood the question. I'm not certain I
19 understand your question.

20 Q. Okay. So I'm just going to try and rephrase. With the
21 exception of what you refer to as major casualties -- so the
22 sinking of the *Misty Blue* and subsequent loss of life, or the fire
23 that you mentioned earlier, with a -- if a -- say, for instance, a
24 vessel's propeller gets fouled by its gear or a vessel runs
25 aground or a crew member is injured, maybe not necessarily what

1 you determine to be a life-threatening injury, how and when is the
2 Coast Guard notified of those types of situations?

3 A. Unless there is a risk to the vessel or a crewman -- like
4 when we get cable or a hose in the wheel, I'm not familiar of
5 contacting the Coast Guard at all. We usually take care of that
6 -- you know, as long as the vessel is not at risk and no one is at
7 risk, you know, you get a diver and, you know, tow the boat in.
8 We do it ourselves.

9 So I'm not certain that if there -- so, now, if there is a --
10 I'm aware of, but the exact -- I believe if it's, you know, an
11 incident in excess of \$25,000, I think -- I might be -- I think
12 it's what the -- if it's an incident above a certain value, then
13 we have to report it to the Coast Guard. And it's the same -- you
14 know, if a person, you know, cuts their hand and needs minor
15 medical, then we typically don't report that to the Coast Guard.
16 If it's a thing that required -- that is a major incident with a
17 person, we do. So I'd have to recall -- I'd have to look at both
18 the 1292 form to recall what the dollar amount is on them, but I
19 don't recall that right now.

20 Q. Okay. So --

21 A. And it may be in the written policy, but I don't have it in
22 front of me.

23 Q. Okay. And at another time I'm happy to discuss the reporting
24 of marine casualties with you. Because you are referring to some
25 of the thresholds, but --

1 A. Uh-huh.

2 Q. -- I would like to refamiliarize you with the federal
3 regulations, just to make sure that we're catching all categories
4 of marine casualties. Because although some may be deemed minor
5 by the company, it's -- they could still be a reportable marine
6 casualty. In which case, those require immediate notification to
7 the Coast Guard after the addressing of resulting safety concerns.
8 So this is something we can revisit. But I just wanted to --

9 A. Yes.

10 Q. -- touch base with you about that.

11 A. Thank you. So if we can separate my -- our fact-finding from
12 today, and, you know, if you want to make certain that you can
13 help educate us in a collaborative review, that would be great.
14 And if you did, then I would suggest that I would have Chad, Sam,
15 Jason, myself, and Brian with us. The more we can be educated,
16 and if we're missing something, then we'd be happy to, you know,
17 work on that. The better we could be, the better we could be.

18 Q. Okay. That sounds good.

19 A. But the facts, it was just -- you know, if it's in a separate
20 environment, I would include more people and make certain that
21 everyone was aware.

22 Q. Okay. And I do think that educational outreach should be a
23 separate environment, separate from this. And we will follow up
24 with that at a later time. Okay?

25 A. Thank you very much.

1 [REDACTED] Okay. All right. So those are my questions for
2 now. At this time I'd like to invite Mr. [REDACTED] if you have
3 any questions yourself?

4 MR. [REDACTED] I do not at this time.

5 [REDACTED] Mr. McEwing, do you have any questions?

6 MR. MCEWING: I do not.

7 [REDACTED] Mr. Cohen, I just have a couple more
8 questions.

9 MR. COHEN: Okay.

10 BY [REDACTED]

11 Q. Could you describe how the dredge on the back of the clam
12 boat, how does it get pulled back up into the rack?

13 A. Okay. So on a stern-rigged clam boat there is a Y that is
14 about at the waterline on the stern of the boat. Now, there is a
15 block at the top of the A-frame. The winch goes to the top of the
16 block and then to the dredge. The dredge is overboard, you know.
17 It's released to go overboard. It's dragged on the bottom.

18 When they haul back, the Y is extended. The Y has -- the Y
19 is referred to as a Y. It's extended with a hydraulic ram. The Y
20 is referred to as a Y because it looks like a big Y or V, and at
21 the apex -- not the apex. Where the two arms of the Y come
22 together, there is a sheave, so that the cable gets fed back by
23 the two parts of the Y to the sheave. The sheave is basically
24 there to center the dredge into the rack. When the dredge gets to
25 the stern of the boat, the Y is pulled in. That brings the nose

1 of the dredge into the rack, and then the winch continues pulling
2 it up the ramp.

3 Most stern-rigged boats have an automatic dredge dumper. So
4 as the boat -- dredge comes up the ramp, it hits the dredge
5 dumper. So a person doesn't have to get up there at all. And it
6 automatically opens the door, drops the clams into the hopper.
7 And then the captain lowers the dredge, it automatically shuts the
8 door and it's now prepared to set out again.

9 Did that answer your question?

10 Q. That does. Thank you. It is possible for the dredge to not,
11 like, sit in the rack properly, like to misalign when it's coming
12 up?

13 A. Not typically. No. I mean, maybe in really horrible,
14 horrible, horrible weather you might have some problems. But the
15 weather wasn't like that then. No, the dredge would not typically
16 not go in the rack. No.

17 Q. Okay. Thanks. Do you have contact information for Doug
18 Kapak that could maybe be made available to us at a later time?

19 A. Yes. Just ask Brian, and we could work on it.

20 Q. Do you know why Mr. Kapak left working the *Misty Blue*?

21 A. The boat manager spoke to me and Chad. Doug was not that
22 aggressive in terms of wanting to work, and his wife died, which
23 was John's daughter, and he just lost focus. And what they
24 offered him was, look, you know, why don't you go mate on the *Lori*
25 *Ann*, where (a) that captain can teach you to be a better catcher

1 and you'll have less responsibility right now. He decided that he
2 didn't -- you know, he got insulted by the idea that he would go
3 from the captain of a smaller boat to the mate of a bigger boat.
4 But they thought it would be better for him, in terms of his
5 focus, after -- and, you know, his lack of drive in terms of
6 running the boat. So he -- when he was offered that, he quit
7 instead.

8 Q. Do you remember when he quit? What month?

9 A. I can check the records, but it would probably be, you know,
10 October or -- September or October 2017. I could, you know, check
11 the records.

12 Q. Was there a gap between -- do you know when Eric was then
13 hired to be the *Misty Blue* captain?

14 A. In early November.

15 Q. So the -- in that time in between, was there just not a
16 captain for the *Misty Blue*?

17 A. Some of the crew from the *Enterprise* took the boat. We --
18 and they actually took the boat with Doug Kapak also, the idea
19 being to help Doug become a better fisherman. He just did not
20 take well -- you know, he felt that he was -- knew everything, but
21 he just wasn't able to catch effectively. That's why the decision
22 was made to, you know, offer him the mate's job. He was really
23 good with the boat. He was good on a boat. Just he wasn't
24 catching much.

25 Q. Sure. Are you aware if there's any drawings or schematics of

1 the *Misty Blue*? Other than the hand-drawn ones that we've seen
2 that your company has already provided.

3 A. I'm unaware of any that are -- I'm personally unaware of any
4 other than those.

5 Q. Do you have contact information for John Roberts that we
6 could maybe get at a different point?

7 A. Yes.

8 Q. Okay. Can you explain how did the --

9 A. He's in an old-age home. But we can get you the name of it,
10 on that.

11 Q. Okay. Do you know, is he still in New England or somewhere
12 else?

13 A. No, he's in the Cape Cod area.

14 Q. Okay. Thank you. How do you determine which insurance
15 provider you're going to use for your vessels?

16 MR. McEWING: [REDACTED] before that's answered, I mean, where are
17 we going with insurance? I mean --

18 [REDACTED] Just --

19 MR. McEWING: -- what does that have to do with fact-finding?

20 [REDACTED] Just trying to understand what the
21 insurance's policies are and the requirements that they put on
22 vessels to know, maybe there's -- maybe it's not a company policy,
23 but maybe there's an insurance policy saying, you know, these
24 boats need to do these things. That's what we're trying to find
25 out, more about the process of insuring vessels so we could -- I

1 just don't really understand the process, so --

2 MR. McEWING: Well, I'm -- you know, I don't know how that's
3 going to help with this investigation. And I'm concerned that
4 we're talking about insurance in an interview that's going to be
5 made public at some point.

6 [REDACTED] So, Mr. McEwing, this is [REDACTED] I'm not
7 looking for monetary values or anything like that. It's more
8 just, as [REDACTED] said, sometimes Coast Guard regulations don't
9 require things but insurance companies do. So it's possible that
10 if we knew a little bit more about who the insurer is we could
11 find out if they have requirements of these vessels that might aid
12 in the investigation.

13 MR. McEWING: Well, but I think Mr. Cohen already testified
14 that the insurance company was the same insurance company that the
15 boat had been insured with and therefore there was nothing that
16 was required by the insurance company.

17 [REDACTED] So how does the interaction -- does the
18 insurance company -- you know, do you get phone calls from the
19 insurance company asking for updates? Or they -- you know, they
20 just get a marine survey every couple years to -- you know, for
21 their purposes? What are they -- what do they requests from the
22 vessels?

23 MR. COHEN: Brian, if you don't mind, I'll answer. It's up
24 to you.

25 MR. McEWING: Yeah, you can answer that. Sure.

1 MR. COHEN: Yes. Typically our insurance policies are
2 annual. Typically we try to have long-term relationships, which
3 means we don't typically change insurers every year. Though we
4 will periodically go out and, you know, look for competitive
5 quotes, we would only change policies or change insurer if
6 there's, you know, a real problem with the competitive quotes.

7 We insure a number of vessels underneath a fleet policy. The
8 insurance company gets copies of the surveys every year. If they
9 feel any of our surveys are too old, they'll tell us and ask us to
10 update them. But we're -- you know, they're pretty good with us
11 with the -- on an average, every 3 years.

12 You know, I have seen insurance companies specifically ask
13 certain times for stability tests, and sometimes not, in my vast
14 40 years of vessel ownership. And I -- they, you know, the
15 insurance companies require that when a survey is done that if
16 there's a list of recommendations, we have to certify that we've
17 complied with them. The recommendations are usually involving
18 things about safety. So we have to comply with them and give them
19 a letter that we've complied with them.

20 So there is an annual look at our insurance, by ourselves and
21 the agent and sometimes multiple agents, annually. I don't -- I
22 mean, does that answer your question?

23 [REDACTED] That does. Thank you.

24 BY [REDACTED]

25 Q. For the surveys that are required, does the insurance company

1 pick the surveyor or that's up to the vessel owner to pick a
2 surveyor?

3 A. Usually the insurance company picks the surveyor or approves
4 the surveyor. Depending upon the insurance company, it will
5 sometimes pay for the survey. In the last few renewals we've had,
6 we've been paying for the surveyor, though we've been using a
7 surveyor who the insurance company introduced us to a number of
8 years ago. So we've been using primarily the same surveying
9 company the last 10 plus years, but we were initially introduced
10 to them by one of the insurance companies.

11 Q. Do you know, is there a list of approved surveyors?

12 A. Well, again, you'd have to go to each insurance company. But
13 most of them have surveyors that they approve. You know, some of
14 them will say -- now I'm just talking general. Some will say
15 they'll take any -- I think it's called a SAMS survey, or someone
16 who's part of a society. But my recollection with, you know, the
17 last 40 years, that most of the insurance agencies and
18 underwriters in the fishing -- insuring fishing fleets, have a
19 list of surveyors that they've approved already and you -- they
20 want you to use one of them.

21 Q. Would it be possible to get -- so is there an agent that's
22 familiar with -- that you usually interact with that would know
23 the insurance company's policies?

24 A. Yeah. I --

25 MR. McEWING: Again, [REDACTED] I mean, where are we going here?

1 What does this have to do with the Coast Guard investigation?

2 [REDACTED] I'd just like to get a point of contact for
3 the insurance company so I could determine how they select
4 surveyors, as well as what policies they require for the vessels
5 that they insure. So just looking for a point of contact that
6 maybe you could provide at a later time.

7 MR. McEWING: Okay. But the Coast Guard --

8 MR. COHEN: Can I --

9 MR. McEWING: Yeah, Coast Guard has no regulatory authority
10 over insurance companies.

11 [REDACTED] Understood. But it's something that, like
12 [REDACTED] was saying, sometimes vessels do certain things because
13 it's required by insurance, and that is sometimes more difficult
14 to comply with than what, you know, Coast Guard regulations are.
15 So I'd just like to know what the -- what their policies are.

16 MR. COHEN: Yeah. Can I interject here?

17 [REDACTED] Yeah.

18 MR. COHEN: I would like to put this in a different
19 perspective. I actually think your question is a very good
20 question, and it might be very educational for me and for the
21 Coast Guard. But I agree with Brian. I think -- could we
22 separate this kind of thing and finish the investigation, resolve
23 whatever the issue is in terms of how the vessel sank, so that --
24 and then subsequent to that, I'd be more than happy to introduce
25 you to more than one agent and discuss these things. Because it's

1 more -- that's more like a wholly educational thing, where we'll
2 go.

3 But in a certain level, if you begin -- unless you bifurcate
4 this and you make a separate committee that's uninvolved with the
5 *Misty Blue* sinking, we're actually going to delay resolving the
6 issue and we'll confuse it. You know, oh, maybe the agent should
7 have done more than he did. But that's -- you know, that's more
8 like an educational thing, to learn from -- for a different piece.
9 Not related to exactly this.

10 So can we somehow bifurcate these and then say -- I'm more
11 than happy to help you. And, you know, I have a wealth of
12 knowledge -- even though I sound pretty dumb, I do have a wealth
13 of knowledge of the fishing industry, the participants, the
14 insurance companies, you know, even, you know, the sort of
15 practices that we do and other people do. You know, I wouldn't be
16 in business for 41 years without at least some knowledge. But we
17 could go down a rabbit hole of -- I can talk forever. If we could
18 bifurcate them, and then say when this is done we're going to do
19 that, I'd be more than -- I'd be a happy volunteer for you.

20 [REDACTED] Okay. That sounds good, sir. Thank you. I
21 think at this time I don't have any other questions, but

22 [REDACTED] just has a couple more.

23 BY [REDACTED]

24 Q. Mr. Cohen, back to the crane that was installed. Do you
25 recall when that was installed?

1 A. Yeah. We had tied the boat up sometime in 2016, and put the
2 boat back to work in 2017. It was installed during that period of
3 time. Exactly -- I'll have to get it for you, but during a major
4 refit and reconditioning of the boat was when we did it.

5 Q. And do you recall where that refit was made? Or --

6 A. Yeah. We did work at the dock in Fairhaven and also at
7 Promet shipyard in Providence.

8 Q. Okay. And if you could get that specific information, as to
9 when it was installed, that would be helpful. If you wanted to
10 add that to your list.

11 MR. COHEN: Okay. And I'm assuming, Brian, you're making a
12 list also. Right?

13 MR. McEWING: Yes.

14 MR. COHEN: Okay. Yeah, no problem.

15 BY [REDACTED]

16 Q. Okay. To your knowledge, since owning the *Misty Blue* since
17 2015, has anyone -- have any crew members or masters raised any
18 safety concerns regarding the vessel?

19 A. Other than bedbugs, no.

20 Q. Okay. So bedbugs were the only issue that were raised?

21 A. That I'm aware of, yes.

22 [REDACTED] Okay. That's all I have for now.

23 Mr. [REDACTED]

24 MR. [REDACTED] I apologize. No, that's all I -- that's -- I
25 don't have anything further to add.

1 [REDACTED] Thank you.

2 Mr. McEwing?

3 MR. McEWING: No questions.

4 [REDACTED] Okay. Thank you.

5 Mr. Cohen, I think at this point we don't have any other
6 questions. Is there anything that we did not talk about today
7 that you think is relevant that we should discuss?

8 MR. COHEN: No, other than, you know, Brian has told me that
9 I should expect it will take you guys a year to do your report.
10 And I'm hoping that you're going to prove him to be really
11 underestimating the capabilities of the U.S. Coast Guard and the
12 NTSB, and I'm hoping you can, you know, investigate this fully and
13 come to conclusions quickly. Because it will put everyone's mind
14 to rest, the quicker you do that. So I don't know how to
15 encourage you to have Godspeed but that's what I'm encouraging you
16 to do.

17 [REDACTED] We will work as diligently as we can. Our
18 report does have to go up through the chain of command to district
19 and to commandant, so there is some time involved in that process
20 that's different than us just doing our investigation and
21 developing a report. So we can control some of it but not all of
22 it. And --

23 MR. COHEN: I understand.

24 [REDACTED] And to clarify, NTSB and the Coast Guard,
25 we're collecting information together; that way you don't have to

1 do two separate interviews. But once we have our information, we
2 then do separate analysis. And then they will come out with their
3 separate report and we will come out with our own report.

4 MR. COHEN: Okay. Well, look, I appreciate that very much.
5 And the best I can tell you is, you have a good holiday with your
6 families.

7 [REDACTED] Thank you. You too. Do you have any other
8 questions?

9 MR. COHEN: No. I'm okay.

10 [REDACTED] Okay. Thank you for your time.

11 MR. COHEN: You're welcome. Thank you very much.

12 [REDACTED] Have a good day. Bye.

13 MR. COHEN: Okay. Bye.

14 [REDACTED] Did you have a question?

15 MR. McEWING: Brian McEwing --

16 [REDACTED] Okay.

17 ELECTRONIC VOICE: -- is now exiting.

18 MR. COHEN: Dan Cohen --

19 ELECTRONIC VOICE: -- is now exiting.

20 (Whereupon, the interview was concluded.)
21
22
23
24
25

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: CAPSIZING AND SUBSEQUENT SINKING OF
 COMMERCIAL FISHING VESSEL *MISTY BLUE*
 DECEMBER 4, 2017
 Interview of Daniel Cohen

ACCIDENT NO.: DCA18FM005

PLACE: Via Telephone

DATE: December 22, 2017

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been transcribed
to the best of my skill and ability.

A solid black rectangular redaction box covering the signature of Jane W. Gilliam.

Jane W. Gilliam
Transcriber