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September 23, 2021

Via Email at michael.kucharski@ntsb.gov and Federal Express

Captain Michael J. Kucharski
Senior Marine Investigator
National Transportation Safety Board
Office of Marine Safety
490 L'Enfant Plaza, SW
Washington, DC 20594-2000

Re: Party Submission of Cox Operating LLC
No. DCA21FM004

Dear Captain Kucharski:

In response to your correspondence dated September 13, 2021, Cox Operating LLC ("Cox") provides you with its party submission:

1. Cox is not in possession of nor has access to the NTSB investigation file or the materials referenced in the draft "Factual Report." Accordingly, Cox is severely limited in its ability to provide comments.
2. The draft "Factual Report" does not fully reflect the intimate involvement of the M/T ATINA's shore side management in the operations and circumstances that resulted in the casualty. This includes the circumstances surrounding the hiring of the onsigning Master (Captain Hurmuzlu) in Istanbul, the travel schedule arranged by management which resulted in the onsigning Master being sleep deprived and exhausted, how shore side management handled the swap out of the Masters and the turnover of the ship without sufficient time for the two Masters to have an orderly and proper turnover of the vessel, the shore side management's failure to follow the company's own written procedures regarding the turnover of the vessel from the offsigning Master (Captain Edin) to the onsigning Master (Captain Hurmuzlu), and the shore side management's decision to change out the Masters while the vessel was underway in the Mississippi River. The shore side management could have easily coordinated a proper turnover of the vessel from Captain Edin (the

offsigning Master) to Captain Hurmuzlu (the onsigning Master) so that Captain Hurmuzlu could have obtained adequate rest and seven days of overlapping service with the offgoing Master.

3. On October 15, 2020, Captain Hurmuzlu appeared at the company's office in Istanbul and completed an application for employment. (Bates Number ATINA 002784 to 002789, redacted copy attached.) Captain Hurmuzlu's application reflects that he had not worked for Besiktas or Ciner, but had worked for other marine companies. (Bates Number ATINA 002785.)
4. Captain Hurmuzlu was hired in Istanbul on October 15, 2020 and was new to the company. The shore side management for the ATINA booked Captain Hurmuzlu on a travel itinerary (details below) so that he could immediately join the vessel. The shore side management also booked and arranged for the offsigning Master to leave the vessel as soon as the onsigning Master had arrived, in violation of the company's "Main Manual" requirement that there should be an overlapping period of "at least one day for Senior Officers already within the company and at least 7 days for new Senior Officers to the company." (Bates No. ATINA 000085, copy attached.) The vessel's management thus created the circumstances which: (1) resulted in Captain Hurmuzlu being sleep deprived and exhausted from travel, and (2) resulted in an improper handover of the vessel which was not in compliance with the company's written directives.
5. By email message dated October 15, 2020, from Besiktas to the local port agent, Besiktas stated: "We're planning crew change for 1 Turkish onsigner and 1 Turkish offsigner at SW Pass anchor/drift tomorrow. You can find their details as below. Tickets will be shared ASAP...." (Bates Number ATINA 001060, redacted copy attached.) The port agent provided Besiktas with an estimate of costs, and Besiktas then inquired if the offsigning Master (Captain Edin) could leave the vessel with the onsigning Master's boat. (Bates No. ATINA 001050, copy attached.), to which GAC replied "yes." (Bates No. ATINA 001049, copy attached.)
6. By email message dated October 15, 2020 from Besiktas to Vincent Monica (Port Agent in Louisiana at GAC), Besiktas advised the port agent that the following itinerary was confirmed by Besiktas for Captain Hurmuzlu.

Friday, October 16 Istanbul to London (BA flight 675)

connecting

Friday, October 16 London to Miami (BA Flight 209)

connecting

Friday, October 16 Miami to New Orleans (AA 329).

(Bates No. ATINA 001054 to 001055, copy attached.)

7. After travelling for more than 24 hours straight, Captain Hurmuzlu arrived at the New Orleans airport at approximately 2136 hours on October 16th and then was transported by vehicle to Venice, Louisiana, a two hour drive to the launch. (Bates No. ATINA 1898, copy attached.) Besiktas also advised the local port agent that “I have spoken with Master and he says they will be at Pilottown at around 1:30 17th. Pleas[e] urgently advise if masters change can be done here? Or is there any possibility and place to make the change during Mississippi river sailing?” (Bates No. ATINA 000981, copy attached.) Thus, Besiktas controlled all details and aspects of the swap out of the two Masters.
8. At the request of shore side management, the port agent arranged for a launch to take Captain Hurmuzlu to the vessel and then pick up Captain Edin while the vessel was underway in the Mississippi River. This placed the already exhausted Captain Hurmuzlu on the bridge and in command of the vessel without sufficient rest. The management also booked Captain Edin on a flight to depart New Orleans October 17, 2020 to fly from New Orleans to Atlanta to Amsterdam to Istanbul on KLM Royal Dutch Lines. (Bates No. ATINA 001056 to 001057, copy attached.) This made it impossible for there to be a proper handover of the vessel.
9. According to the handwritten deck log for the M/T ATINA, Captain Edin (the offsigning Master) left the bridge at 0100 hours on October 17, 2020. Captain Hurmuzlu (the onsigning Master) was on the bridge at 0105 hours in command of the ship. (Bates No. ATINA 2032, copy attached.) The handwritten deck log provides as follows in Bates Number document “ATINA 002032” produced by ATINA:

October 17, 2020 (Sat) 0100 hours local time. Master [Captain Edin] left vessel.

0105 Master on Bridge
Master F. Onur Hurmuzlu takes command of ship.

10. The International Maritime Organization (“IMO”) issued “Guidelines on Fatigue” in MSC.1/Circ. 1598 dated 24 January 2019. Annex, Page 24 of these Guidelines lists clear and concise company guidelines for fatigue prevention. These include “the need for joining seafarers to be adequately rested before assuming duties” and “schedule time for proper handover or crew change.” The IMO Guidelines also stress the importance of training shorebased personnel on fatigue training and awareness:

Fatigue training and awareness are essential components. The company should ensure all personnel have appropriate training. This includes shore-based personnel whose decisions may impact on the management of fatigue (such as those involved in resource planning, including ship manning levels, and duty scheduling decisions) and fatigue-related processes. This is important, as their decisions potentially affect fatigue levels of seafarers and consequently shipboard safety.

(Annex to MSC.1/Circ. 1598, p. 24.)

11. The M/T ATINA's flag state is Malta, which has ratified the Maritime Labour Convention, 2006, as amended ("MLC"). Regulation 2.3 of the MLC applies to the M/T ATINA and requires that the company "ensure that the hours of work or hours of rest for the seafarers are regulated." Under the MLC, the minimum hours of rest shall not be less than 10 hours in any 24 hour period. (Regulation 2.3, Standard A2.3(b)(5)(b). This provision of the MLC was violated by shore side management.
12. The M/T ATINA also participated in the "Ship Inspection Report (SIRE) Programme." The SIRE questionnaire for tankers (Seventh Edition, 22 Feb. 2019) requires that the flag state's regulations that control hours of work and work/rest be followed, and that records of compliance be maintained (See 3.2 of SIRE Questionnaire addressing MLC 2006.)
13. The casualty could have been easily avoided had shore side management allowed the offsigning Master to remain onboard so that the onsigning Master could rest and then have a period of overlap with the offsigning Master. The offsigning vessel could have easily anchored the vessel in the Mississippi River and allowed time for the onsigning Master to board, rest and familiarize himself with the ship. Alternatively, in accordance with the owner's Main Manual Section 6.3.13.2, if it was necessary that the offsigning Master leave immediately, the owners could have arranged for the port captain (who was onboard at NuStar) to remain on the vessel for the necessary turnover period. The Main Manual provides at 6.3.13.2:

In case overlapping is not possible a senior officer on board the vessel shall undertake the task. A Superintendent will join the vessel and remain on board together with onsigner Master and Chief Engineer where recruited from outside the Company or promoted within the Company for onboard familiarization.

(Bates No. ATINA 000085, copy attached.)

14. In summary, shore side management failed to comply with the company's SMS "Main Manual", the IMO's "Guidelines on Fatigue" as set forth in MLC.1/Circ. 1598 dated 24 January 2019, and the provisions of the MLC (applicable to the flag state of Malta) with regard to work/rest and turnover time. These failures of shore side management were the direct cause of the casualty.

Sincerely,

A black rectangular redaction box covers the signature area. A blue ink scribble is visible to the right of the box.

Craig L. Sanders
Cox Operating LLC

Enclosures