



M/V DALI AND THE KEY BRIDGE — LESSONS FOR PORT OPERATORS.

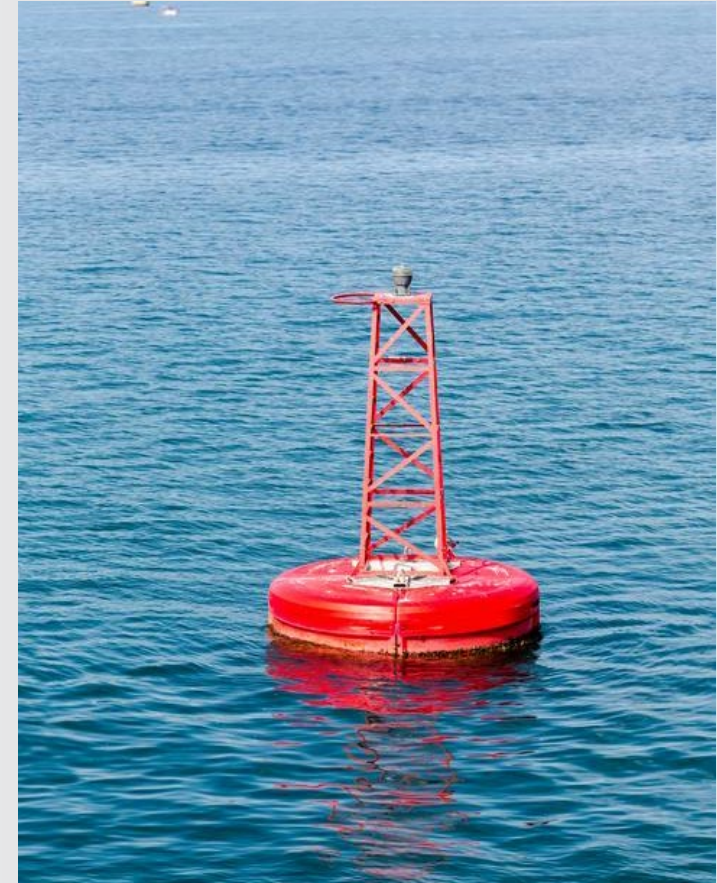
PRESENTED BY
Adam Murray

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Schwabe

December 11, 2024

AGENDA

1. DALI and the Key Bridge incident.
2. The Limitation of Liability Act
3. Investigation of cause.
4. Claims in the Limitation action
5. Roadblock to recovery - the Robins Dry Dock Rule
6. Lessons for WPPA ports.



CAVEATS AND LEGAL STUFF

- Not intended to
 - State a legal standard of care
 - Create a lawyer-client relationship
- Keep hypotheticals hypothetical
- Seek legal counsel for specific questions
- If you have a question, free to ask anytime



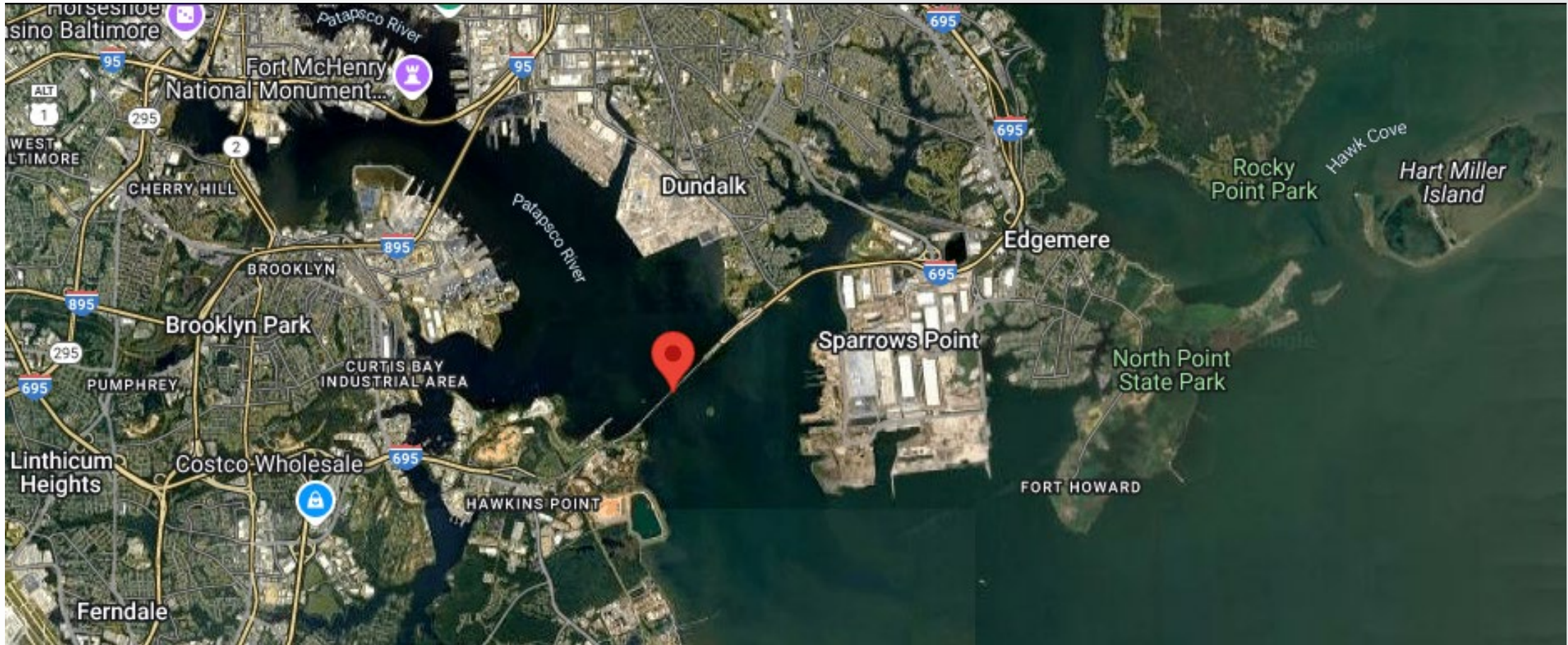


**The
Guardian**



MAP OF BALTIMORE CITY

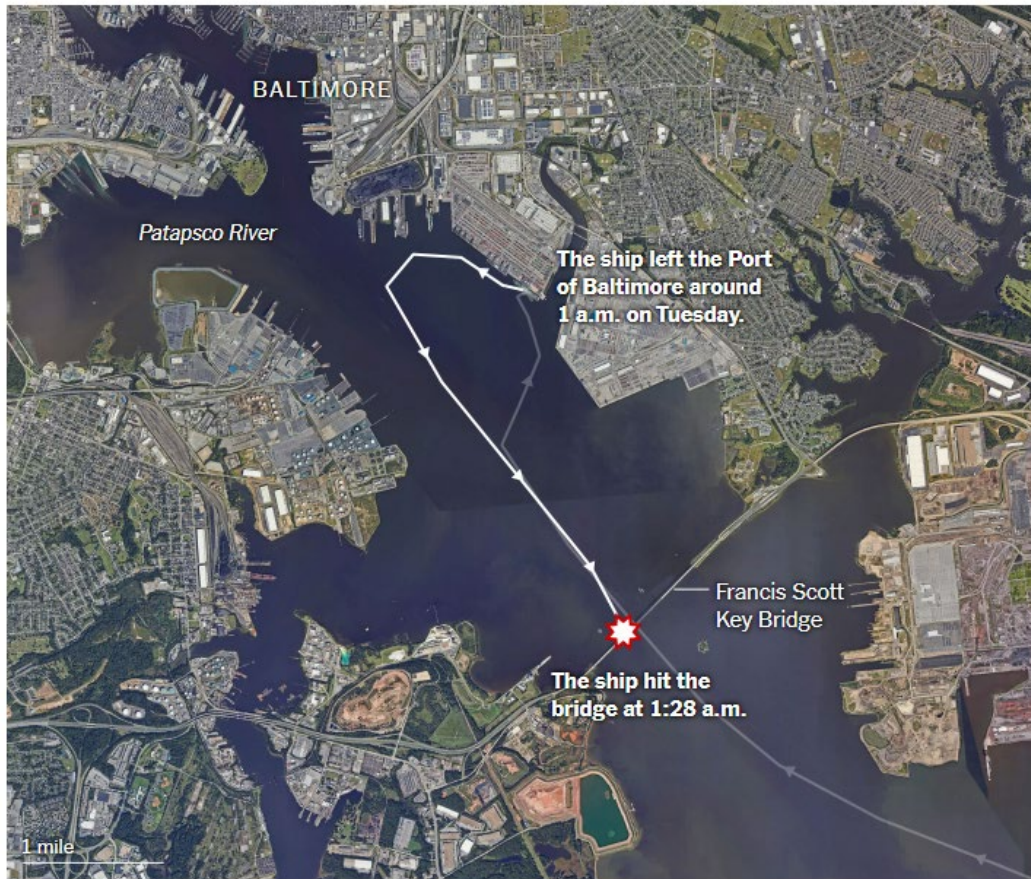
Key Bridge connected populated areas on either side of the bridge



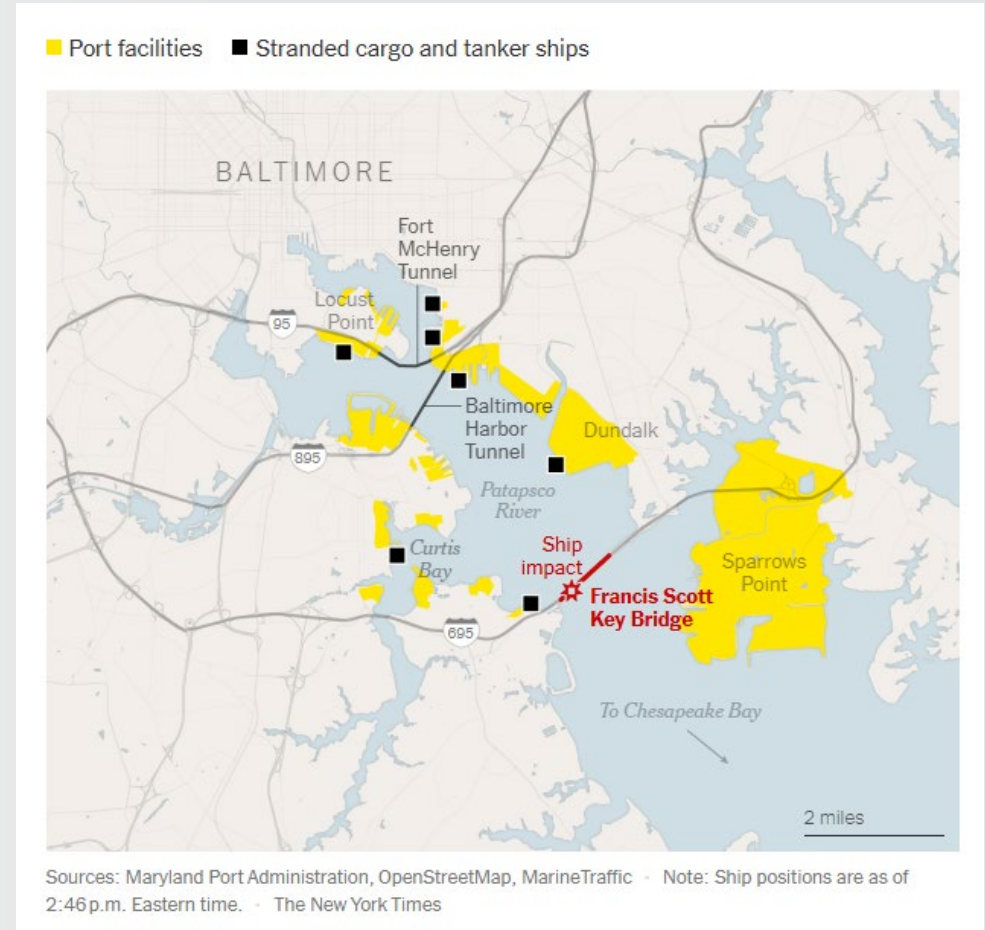
Map Data 2024

MAP OF BALTIMORE HARBOR

Key Bridge location in reference to the Port areas within Baltimore Harbor

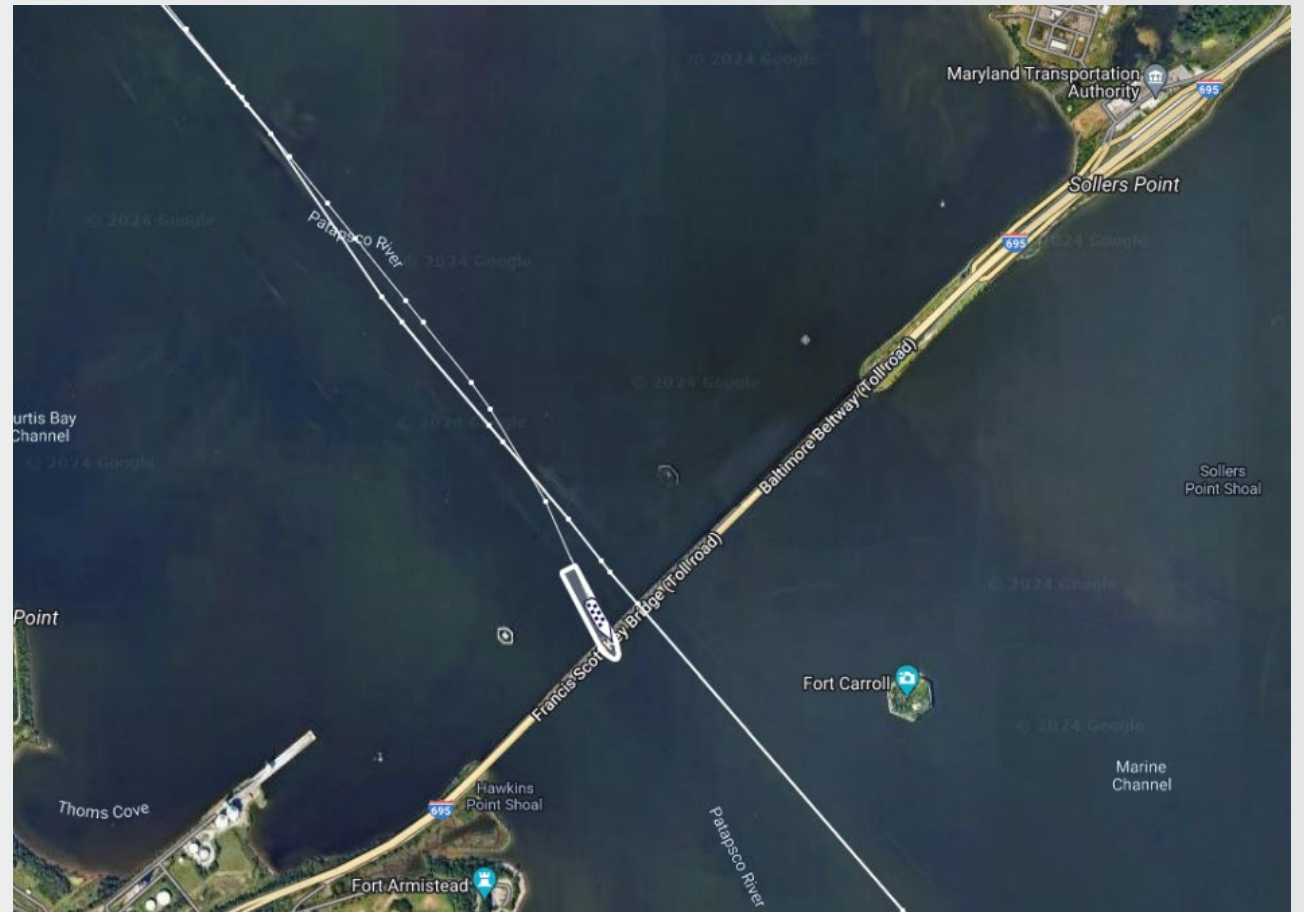


Source: Spire Global - The New York Times; satellite image by Google Earth



Immediate Federal and State Investigations

- US Coast Guard
- National Transportation Safety Board (NTSB)
- FBI
- US Department of Justice
- Maryland State Police
- Maryland Dept. of Transportation



The New York Times

Who Will Pay for the Baltimore Bridge Collapse?

Disputes over liability and the cost of claims could take years for insurers to resolve and result in billions of dollars in payouts.

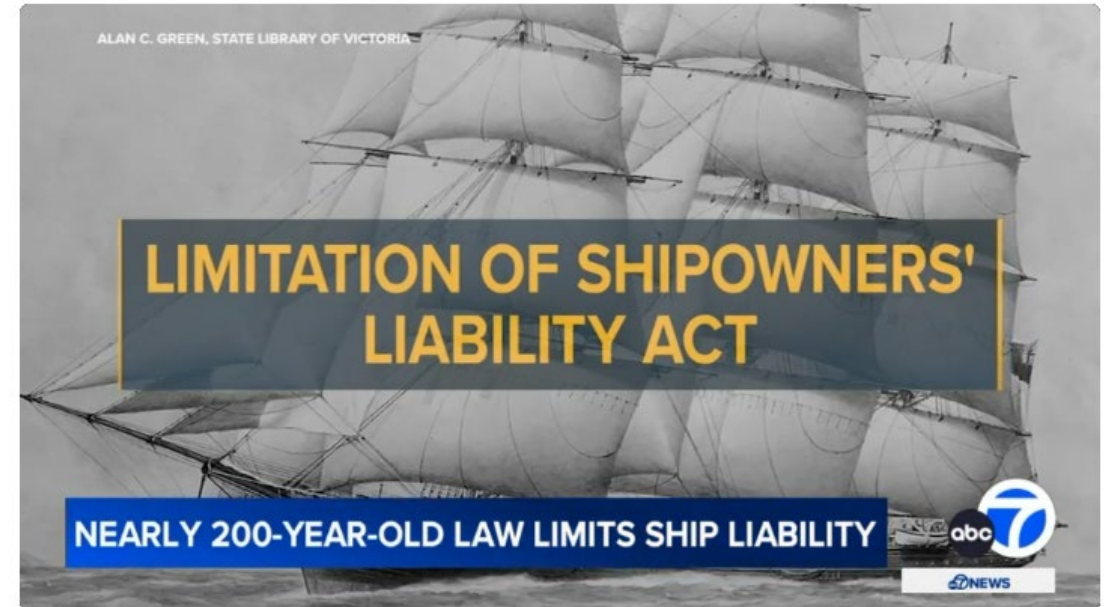
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19th century maritime law could affect payout for Baltimore bridge disaster, expert says

By Julian Glover 
Monday, April 8, 2024



SHIPOWNER'S LIMITATION OF LIABILITY ACT

- Vessel Owners may limit their liability to the value of the vessel *after the casualty*, plus pending freight (subject to minimum amounts for personal injury or death claims).
- But only if the casualty was without the “privity or knowledge of the Owner.”
 - The Limitation Act applies to seagoing vessel and vessels used on lakes or rivers, or in inland navigation, but does not apply to certain small passenger vessels.
 - “Owner” includes bareboat charterers who “mans, supplies, and navigates,” but not time or voyage charterers.

THE LIMITATION PROCESS

- Shipowner files Complaint (Petition) in federal court within 6 months of receiving written notice of a claim against the Shipowner.
- Shipowner deposits sum equal to the vessel value after the casualty plus pending freight.
- Court issues an injunction staying other lawsuits. All claims must be filed in limitation action – “concurus.”
- Notice is published that all potential claimants must assert claims within six months following notice. Failure to file, no claim.
- Court determines liability and whether Shipowner can limit its liability.
- If liability is limited, the court allocates the limitation funds to claimants.

BENEFITS OF LIMITATION

- Benefit of trial in federal court under admiralty jurisdiction, i.e., no jury.
- Potential to limit liability to value of vessel and pending freight.
- Flush out claims in a single proceeding – “concurus.”



WHAT IS PRIVILEGE AND KNOWLEDGE?

- What a “reasonable person” would know considering all the circumstances.
- Actual or constructive knowledge – privilege – the Shipowner is presumed to know what ship’s senior officers knew or should have known.
- Original concept to encourage shipping investment by innocent shipowners ashore, but that was long before modern communications and management.
- Principal reasons for denying limitation = **lack of proper maintenance procedures, inadequate crew training, failure to establish or implement proper maintenance and safety procedures.**

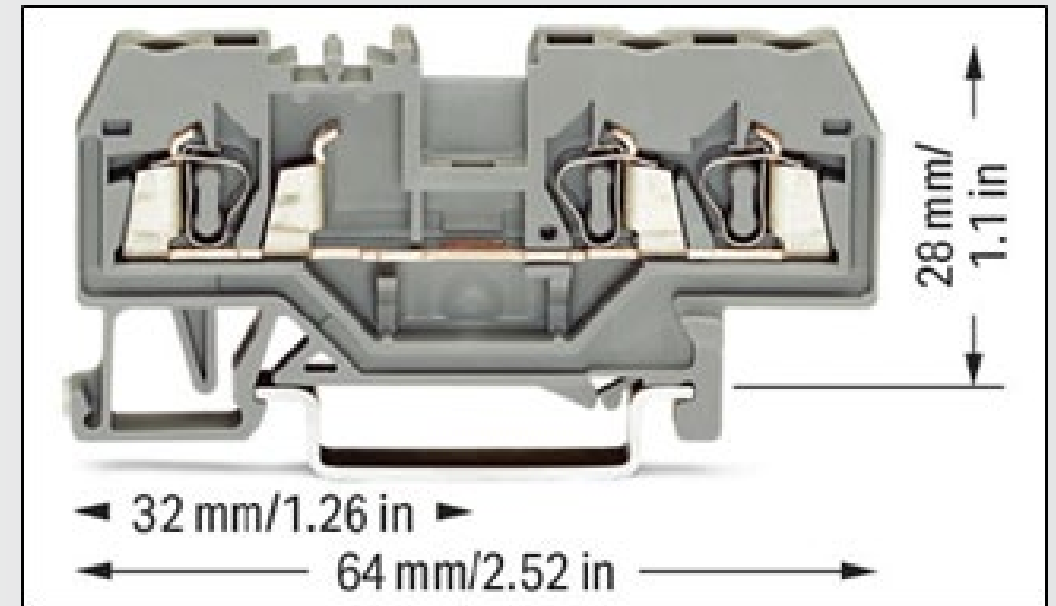
THE DALI LIMITATION FUND - \$43 MILLION

The Limitation Complaint must be accompanied by a deposit or bond into Court for an amount equal to the value of the vessel plus pending freight.

- M/V DALI Owner deposits \$43 Million as the value of the ship post-casualty plus pending freight monies for the cargo on board.
- Compare potential damages: Cost to reconstruct Key Bridge alone estimated to exceed \$1 Billion.

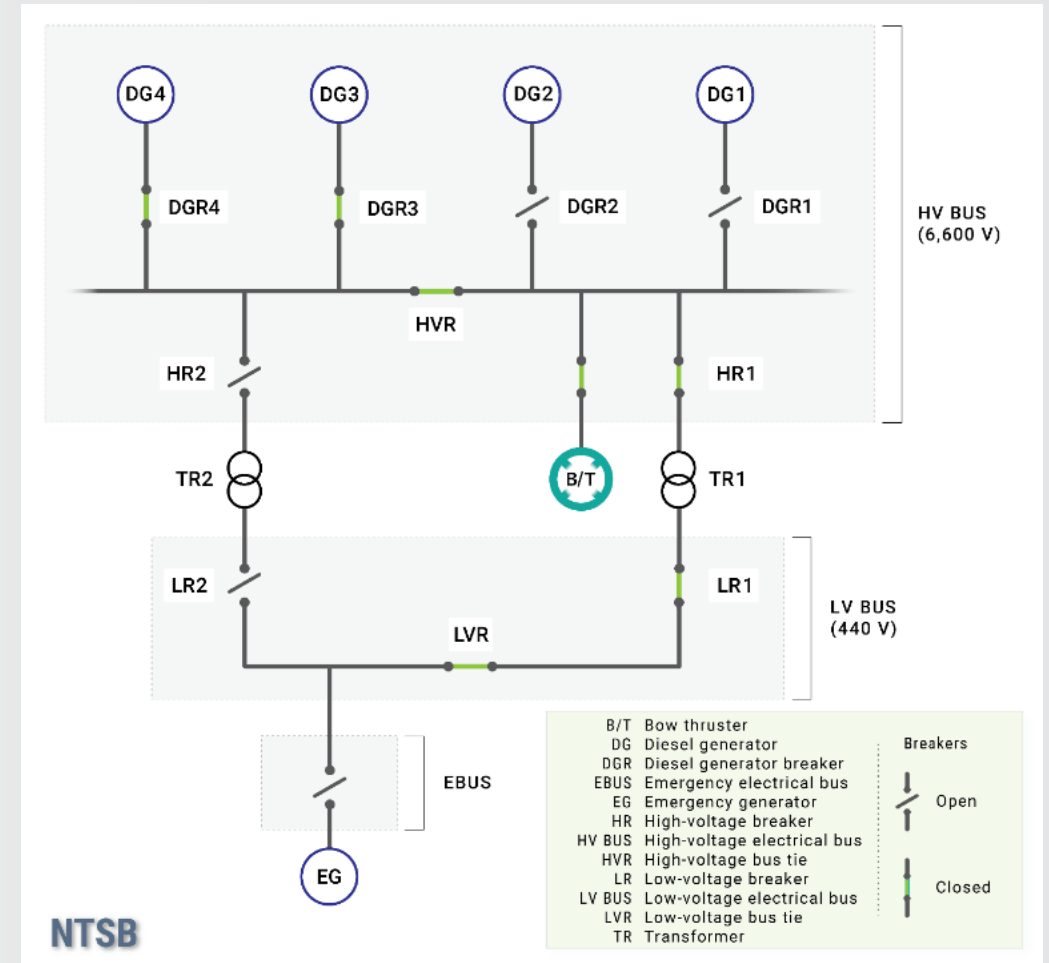
A LOOSE WIRE?

- NTSB pulled a terminal block—a connector socket for plug-in components—out of the control circuit for the breaker undervoltage release.
- NTSB investigators noticed "an interruption in the control circuit for HR1's undervoltage release."
- Anti-vibration device broken, did this cause a loose wire?



AUTOMATIC REDUNDANCY DISABLED?

- Power *should* transfer to TR2 pathway within seconds if TR1 pathway fails.
- Can be automatic or manual, and was set to manual ... in the dark.



UNSEAWORTHINESS & LIMITATION

- Faulty wiring and power loss is an unseaworthy condition for which the DALI is liable up to the amount of the Limitation Fund - \$43 Million.
- But that alone does not "break limitation" - faults of the ship must have been within the privity and knowledge of the Shipowner.



Figure 8. An NTSB investigator examining the *Dali*'s HV switchboard (which houses the HV bus) and applying tamper-evident preservation seals.

PRIVITY & KNOWLEDGE?

- Who knew the extent of vibration problems near critical electrical connections?
- “Jury-rigged” turnbuckle welded to the vessel and a transformer was painted and there is evidence it had been repaired and re-welded.



DAI COURT WILL FIRST DECIDE LIMITATION

- Two-step analysis:
 - Claimant must prove loss was caused by negligence or unseaworthiness of vessel;
 - Burden shifts to Shipowner to show no privity or knowledge as to the faults leading to the casualty.
- If Shipowner proves lack of privity or knowledge, Court will proceed to damages phase, determine validity of claims and enter judgment from the fund.
- If Shipowner *fails to prove* lack of privity or knowledge, Claimants have “broken limitation” and
 - Federal Court determine validity of claims and enters judgment against the Shipowner, **OR**
 - **Claimants may file their claims in State court and proceed to judgement against Shipowner.**

OVER 40 CLAIMS FILED IN LIMITATION PROCEEDING

- “Largest maritime loss in history” [in monetary value].
- Six transportation workers died.
- Port of Baltimore closed for weeks, seven ships trapped in port.
- Economic disruption throughout the Baltimore area and US East Coast.



Image courtesy USACE

CATEGORIES OF CLAIMS - DIRECT DAMAGES

- **U.S. Government** – mostly US Coast Guard and USACE costs in the immediate response and managing bridge section removals to re-open channels.
- Limitation Act cannot limit US Government claims under Ports & Waterways Safety Act and other federal statutes.
- In October, Shipowner settled Government's claim for \$102 million.
- **U.S. Government may still seek criminal sanctions.**



CATEGORIES OF CLAIMS - DIRECT DAMAGES

Wrongful death of 6 transportation workers.

- Most Limitation Act cases involve personal injury or death claims.
- Judges have shown consistent dislike of Limitation that denies compensation to injured parties.
- Judges frequently "break limitation" in injury and death cases.



CATEGORIES OF CLAIMS - DIRECT DAMAGES

State of Maryland – Destruction of Key Bridge.

- Replacement of the bridge;
- All costs associated with the emergency response, salvage, demolition, and benefits paid to affected workers and businesses;
- Lost revenues, including tolls, fees, and taxes;
- Indemnification, damages, and attorneys' fees pursuant to the Bridge Tariff;
- Damage to the State's natural resources;
- All costs related to environmental contamination and penalties;
- Increased wear and tear on the State's infrastructure; and
- Other forms of economic loss flowing from the destruction of the bridge.



CATEGORIES OF CLAIMS - ECONOMIC LOSS

Multiple claims for economic or consequential losses due to destruction of Key Bridge. *Court is treating Economic Loss claims as a separate claim category.*

Examples of a few:

- Ports America Chesapeake, which operates the Port of Baltimore - \$40 million lost revenue.
- International Longshoremen's Association - class action lawsuit for lost longshore worker wages.
- Baltimore Gas & Electric – lost revenue due to natural gas pipeline taken out of service during channel clearing work.
- Individual claims - lost income/revenue
- Baltimore businesses – several class actions for lost revenue due to bridge destruction.
- City of Baltimore – loss of business revenue and tax revenue.

ECONOMIC LOSS – THE ROBINS DRY DOCK RULE

- **Persons who do not have a proprietary interest in property which is physically damaged have no cause of action for their economic losses resulting from unintentional maritime torts.**
- Robins Dry Dock v. Flint, SCOTUS 1927
- Example: Key Bridge was a toll bridge, so Maryland can recover both replacement cost and lost toll revenue.
- But: Robins Dry Dock Rule prohibits recovering purely economic loss unaccompanied by physical damage to the claimant's property.
 - Businesses that are losing revenue had no ownership interest in the bridge.
 - Port of Baltimore and Baltimore City had no ownership interest in the bridge.

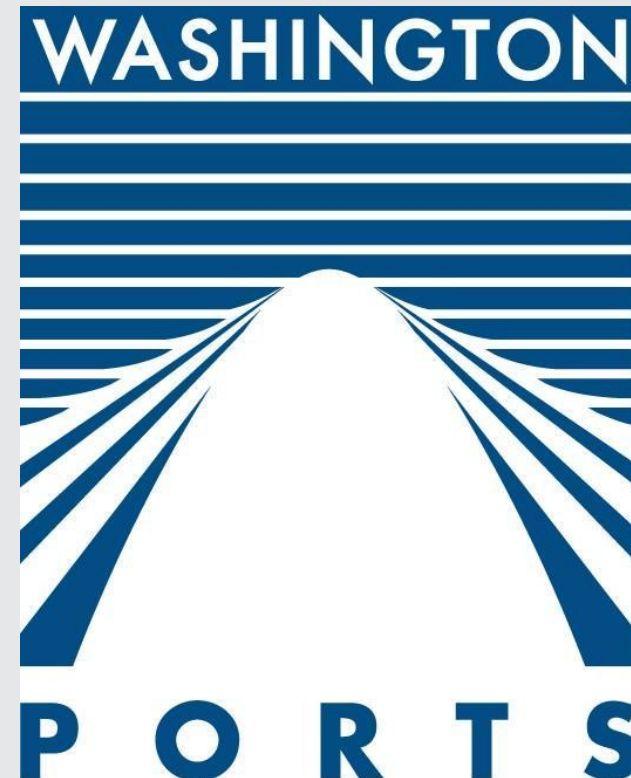
ECONOMIC LOSS – THE ROBINS DRY DOCK RULE

- Dali insurer estimates claims could exceed \$4 Billion.
- Economic Loss claimants are gambling on getting SCOTUS to reverse the Robins Dry Dock.
- Similar state law rules limit scope of who can claim economic losses absent direct injury to owned property.



PROTECTION AGAINST PURELY ECONOMIC LOSS

- WPPA Ports – what are your Robins Drydock risks?
 - Barge sinks in channel, preventing vessels from reaching port?
 - Tanker truck fire destroys public road overpass leading to port facilities?
 - Nearby chemical spill and evacuations interrupt port use and operations?
 - Wildfire smoke shuts down operations?
- Assess risks and weakness to outside casualties impacting port operations



PROTECTION AGAINST PURELY ECONOMIC LOSS

- Ports America Chesapeake (Port of Baltimore) - \$40 million lost revenue
 - Markel Insurance – real party in interest on insurance subrogation claim.
 - Port carried Business Interruption Insurance which covered Port's economic losses during the Port of Baltimore closure.
- Look at insurance coverage for Port and tenants.
 - DALI in Britannia P&I Club, an indemnity-based coverage with reinsurance layers reportedly going to \$3.1 billion before Club members must cover shortfall.

Questions

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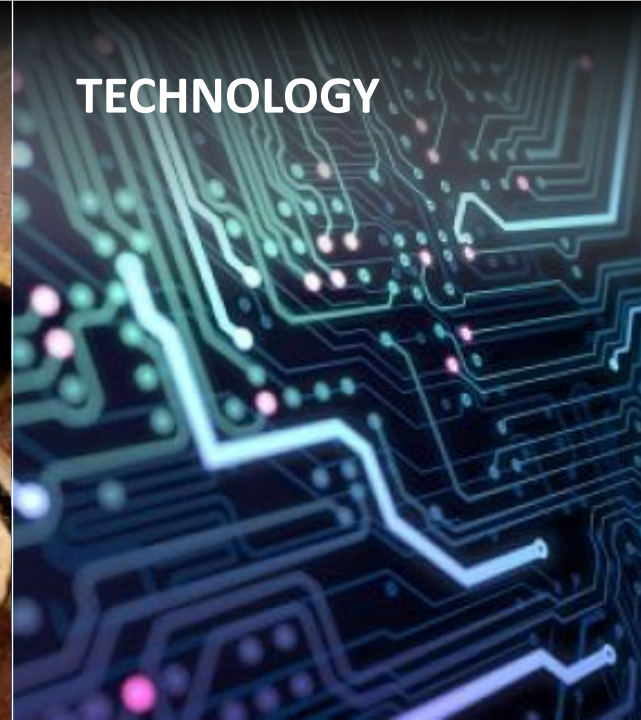
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