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Marine Accident Investigations at the Panama Canal - A success story of over 100 years.

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Throughout history, investigations of maritime accidents have always played a significant role when analyzing and designing waterborne transport infrastructures, and such has been the case for the Panama Canal. With more than 100 years in operation, the Panama Canal, since its inception, has taken into account lessons learned from accident investigations. Based on these investigations, the Panama Canal has implemented changes over the years, not only to its infrastructure, but also to the operation of the Canal and the way ships are maneuvered through its confined channels and locks. In fact, the Panama Canal, when conducting simulator training for Panama Canal pilots, recreates actual accidents that have occurred so that pilots are exposed to the conditions that led to these accidents.

In order to learn from these accidents, but also as a unique method to resolve disputes and claims that may arise from maritime accidents, the Panama Canal established, more than 100 years ago, a system to conduct formal investigations of accidents that occur within Panama Canal waters. Together with this process, the Canal implemented a process by which customers can present claims to the Panama Canal. In 1909, prior to the Canal's opening in 1914, the Board of Inspector's was created and charged with conducting formal investigations of maritime accidents involving vessels navigating in Panama Canal waters while under the control of Panama Canal pilots.

After each formal investigation, this specialized technical board is tasked with producing a formal technical report that contains the opinion of the board regarding the cause of the accident and establishes responsibilities among the parties in interest who were involved in the accident, or who may have contributed to the accident. The historical record of the findings of the Board of Inspectors not only shows complete impartiality, but also reveals that with these investigations and the formal reports produced by the Board, the Canal has been able to reach, in most cases, friendly settlements with its customers, avoiding long and costly litigations at the Maritime Tribunals.

This system, which the United States maintained during its entire administration of the Canal, was adopted by the Panamanian administration of the waterway, and was, in fact, elevated at the time of the turnover of the Canal to the level of Law of the Republic, establishing this

system as part of the Law that governs the administration of the Panama Canal. As a matter of information, the Board of Inspectors and the Office of the Inspector General of the Panama Canal are the only two entities within the Canal that were created at the level of Law.

From 1909 to 1999, the Board was known as the Board of Local Inspectors, since it was part of the Canal Zone judicial system and was under the jurisdiction of the Louisiana Maritime Courts. Any case that did not end in a friendly settlement, would be appealed, and would go before the Louisiana Maritime Courts for final resolution. After a successful transition of the administration of the Panama Canal to Panamanian administration at the end of 1999, the name of the Board was changed to Board of Inspectors, removing "Local", since from that date on, the next level of appeal is the Maritime Tribunal of Panama.

A key aspect that has an important effect in these investigations, which is also unique to the Panama Canal, is the fact that Panama Canal pilots relieve the masters of transiting vessels and take control of the movement and navigation of all vessels, including nuclear ballistic submarines, during their transit or port calls. However, although interesting, that peculiarity of the Canal could be the subject for another discussion at a later date.

The Panamanian administration of the Canal decided that, when dealing with maritime accident investigations, it would maintain the Anglo-Saxon system of justice, which allows for establishing shared fault in an accident, unlike the Roman law system practiced in Panama, where shared fault does not exist.

The fact that Panama Canal pilots take control of the navigation of vessels comes into play when attributing fault, since pilots are in full control. In most cases, it is unlikely to attribute 100% of the fault to the vessel, since there will always be something the pilot or any Canal employee could or should have done to avoid the accident. On the other hand, because of the same fact, finding 100% of the fault with the Panama Canal is common.

The Organic Law of the Republic of Panama, which created the Panama Canal Authority, established the process to follow in order to present Claims to the Panama Canal for damage resulting from maritime accidents involving vessels in Panama Canal waters under the control of Panama Canal pilots. This Law establishes that, in order for the Panama Canal to be able to accept any claim, and process its corresponding payment, a formal investigation conducted by Board of Inspectors, which requires a formal hearing, has to take place prior to the vessel's departure from Panama Canal waters. If the vessel departs Panama Canal waters without this formal investigation, the vessel would waive all rights to present a claim before the Panama Canal for these damages.

The Board of Inspectors conducts its hearings in a formal setting, very similar to hearings conducted in a court or by the Maritime Tribunal of Panama, and require all witnesses to render testimony under oath, subject to the Penal Code of Panama. The Board normally begins its formal hearings within 24 hours from the time the accident occurred, with the advantage that witnesses render testimony with a fresh recollection of the facts.

Parties in interest have the right to representation during the hearing by legal counsel of their choosing, as well as the right to interview and cross-examine all witnesses and introduce documents and other evidence into the record pertinent to the hearing.

Each investigation conducted by the Board of Inspectors is required to have a minimum of three board members. The only permanent member of the board is the Chairman, who is required to be a senior unlimited Panama Canal pilot. The Chairman has the option of choosing the other two members of the board, depending on the type of accident, its seriousness, the extent of the damage, or whether a specific technical knowledge or expertise is required, such as firefighters or naval architects. However, the Board is required to reach an opinion regarding the accident by consensus of all members and not by majority.

The Board of Inspectors is technical in nature and, as a result, conducts investigations that produce technical, non-binding, opinions that establish the cause or causes of the accident and attributes fault to each of the parties in interest, as deemed necessary. Parties in interest present during the hearing include the Panama Canal Authority, the vessel, or vessels in case of collisions, private port terminals that operate within Canal waters, or private tug companies that provide assistance to the vessels, if they are involved in the accident.

Thereafter, the Board of Inspectors produces a formal report that is published not later than 25 working days after the hearing, but it could be longer based on the duration of the hearing, which determines publication date. This report contains, in addition to the findings of facts and the opinion of the Board that establishes the cause of the accident and responsibility, a complete verbatim transcript of the formal hearing and copies of all evidence introduced during the hearing.

From the inauguration of the Canal in 1914, and the establishment of the Board of Inspectors in 1909, the intention of this exclusive arrangement, enjoyed by the Canal for over a century, has been that, once the report by the Board of Inspectors is published, lawyers from the Panama Canal and lawyers representing the other parties in interest, meet in an attempt to arrive at a friendly settlement to close the case in an amicable manner.

In conclusion and as the record speaks for itself, the Panama Canal has been successful in reaching friendly settlements with its customers in more than 95 percent of the accident investigations conducted by the Board of Inspectors. This is attributed to maintaining this unique system, thus avoiding long and costly litigations in court by both parties, while daily providing a safe and optimum service to our customers for their continued use of the Panama Canal.