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FWY Confronts Exoneration Action, Recovers Multi-Million Dollar Settlement for Families of Deceased Fishermen in *Death on the High Seas Act Case*

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On December 4, 2017 a fishing vessel left New Bedford heading for the fishing grounds off the coast of Nantucket. Unbeknownst to its crew and even to its brand new captain, the vessel had recently gone through a series of modifications that made it top heavy, prone to list to the portside and unstable. Only a few weeks before, the vessel's longtime former captain essentially quit due to safety concerns, having for months complained to the vessel's ownership that their modifications – including the addition of a heavy articulated boom crane 8-12 feet above the working deck's surface made the vessel dangerously unstable. Among other things, the former captain asked the company to perform stability testing on the vessel but they refused.

About a day into the trip, the vessel began to take water into its holds. The captain at first did not know that this was occurring given that the holds were not equipped with high water alarms. By the time he realized what was happening, the vessel was listing dangerously to port (the side to which the boom crane's arm was stored). He then tried to pump the water out of the clam holds but found that he was unable to get the main pump started (a condition of which ownership was aware of beforehand) and the backup pump was broken and in need of repair (also known to ownership given that the part necessary for the repair was on order but had not yet been delivered). Despite communicating by radio to captains of other vessels in the same owner's fleet, ownership did nothing to assist the vessel as it crept dangerously closer to sinking. Ultimately as the vessel started to capsize, the captain ordered the crew to abandon ship. He and another crewmember were able to do so but two of the other crewmembers, including the first mate, were last seen in the galley. At least one was trying to put on a survival suit and it appears as if the vessel did not provide another survival suit for the final crewmember. With an air pocket having developed in the galley, the vessel sank with its bow up in the air. The last thing the captain saw before the vessel went down was the crew in the air pocket that had developed in the galley. Thus, as the vessel sank stern first and came to rest on the bottom of the North Atlantic, the two crewmembers who were trapped in the galley were alive and breathing for a significant period of time as the vessel was sinking.

Missing and presumed dead after the Coast Guard's search and rescue mission was aborted, the bodies of the crewmembers were not recovered until divers recovered the bodies some two weeks later. By that time, the vessel owner had filed an exoneration/limitation of liability action in Federal Court in New Jersey, claiming that the vessel was "...tight, staunch, strong, properly manned, equipped and supplied, and in all respects seaworthy for the voyage and service in which she was engaged". After getting the case transferred from New Jersey to Federal Court in Boston on behalf of the deceased family members (all of whom resided in Massachusetts), FWY's pursued the case aggressively. Several discovery motions were filed all of which were ruled in favor of FWY and its clients and six depositions were taken during which many of the facts recited herein were discovered. Finally after 24 months of protracted litigation the case settled after two separate mediation sessions for a total of \$4,500,000.00.

FLYNN|WIRKUS|YOUNG, P.C. is a sophisticated firm of trial attorneys, rated AV® Preeminent™ by Martindale-Hubbell. We are a medium-sized firm dedicated to the practice of civil litigation in New England, the Northeast and across the U.S. At FWY, we put our passion to work to ensure your excellence. We develop a creative approach to suit each of our clients' individual needs. To us, conventional wisdom is never good enough.

More information pertaining to additional specific results will be provided upon request. Prior results do not guarantee a similar outcome.