

Brief Overview of *D/V Conception* Fire and Litigation

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The *MV Conception* was a 75ft dive boat owned by Truth Aquatics, Inc. (and Glen and Dana Fritzler). Truth Aquatics operated charter excursions around the Channel Islands out of Santa Barbara Harbor. Worldwide Diving Adventures, LLC was the charterer of the *Conception* over Labor Day weekend in 2019. The wood and fiberglass vessel had three decks and a six-member crew, including Captain Jerry Nehl Boylan. The *Conception* departed Santa Barbara on August 31, 2019, with 33 passengers.

On September 1, the group held a night dive off the coast of Santa Cruz Island between 8:30pm and 9:30 p.m. Afterwards, some of the divers stored various devices, such as cameras, flashlights, cellphones, and tablets on a crowded charging station in the salon/galley area. Sometime around 3:00 a.m., crewmember Ryan Sims awoke to a “pop” sound from the galley area. He soon discovered an uncontrollable fire on the main deck, which spread to the aft end of the upper deck. He then returned to wake the other crewmembers on the upper deck. Two mayday calls were placed at 3:14 a.m. from the vessel’s wheelhouse. The aft escape hatch was apparently engulfed in flames, and the surviving crewmembers could not help the passengers and one crewmember who were all in the lower deck berths.

The NTSB report concluded that the probable cause of the accident was the lack of effective oversight of the vessel and crew operations, such as the lack of a roving overnight patrol of the vessel. The report also suggested that Truth Aquatics had deviated from required safety practices for some time prior to the accident. Investigations also highlighted the inadequacy of smoke detection and escape arrangements onboard the vessel.

All 33 passengers and one crewmember died from smoke inhalation during the fire. The remaining five crewmembers escaped with injuries to a vessel moored nearby, the *Grape Escape*. Boats and helicopters from the Coast Guard, Ventura County and Santa Barbara County Fire Departments, and a private company were dispatched to the site. The first responders arrived at 4:32 a.m. Officials had difficulty fighting the already large fire, due to the remoteness of the location. The fire was mostly extinguished by 5:23 a.m. and had burned to the waterline of the hull. The *Conception* eventually sank stern-first at 6:54 a.m., after having been towed to shallower waters.

Salvage efforts began on September 4 and lasted until September 13 when it was transported to Naval Base Ventura County. The Coast Guard, ATF, FBI, Santa Barbara Fire Department, and the NTSB all inspected the wreck over the next couple of weeks. The sinking of the *Conception* is considered one of the worst maritime disasters in California history, and the deadliest in US history since 1989.

A variety of legal action has sprouted from the disaster. The owner of the *Conception* was the first to file a limitation of liability action (to \$0, as the boat was a total loss) almost immediately after the sinking. After a survivor of one of the passengers filed a counterclaim, the court effectively paused the LOLA action while other lawsuits proceeded through both the federal and state courts. The counterclaim demanded a jury trial.

One of the injured surviving crewmembers, Ryan Sims, filed a lawsuit against Truth Aquatics and other related defendants shortly thereafter. He brought a personal injury claim under the Jones Act, as well as actions for maintenance and cure, unseaworthiness, general maritime negligence, and a strict products liability claim. Sims demanded a jury trial.

Meanwhile, the USAO of the Central District of California had opened a criminal investigation. A Federal grand jury eventually indicted the *Conception's* captain, Jerry Nehl Boylan, on 34 counts of seaman's manslaughter in December 2020, followed by a superseding indictment on July 19, 2022.

Most of the families of the victims brought wrongful death and survival actions against both Truth Aquatics (and related defendants) as well as the U.S. Coast Guard. Litigation against the Coast Guard was brought in federal court under the SIAA, seeking both pecuniary and non-pecuniary damages. The action against Truth Aquatics, et. al. was brought in state court and demanded a jury trial.

Aside from a FOIA action brought by one of the related defendants in many of the aforementioned cases (Bader, d.b.a Sea Landing) against the DOJ and ATF, all cases are still active.

1. *In the Matter of Truth Aquatics, Inc. and Glen Richard Fritzler and Dana Jeanne Fritzler, CACD, case no. 2:19-cv-07693-PA-MRW (LOLA action)*

<https://advance.lexis.com/f/courtlinkdocument/jobstatus/downloadfile?jobId=437a2613-6afc-4d4f-ae93-af34f26bd4bc&lni=urn:contentItem:5WYY-MNS1-DXDT-GOK6-00000-00&isZip=false&isCombine=false>

- Truth Aquatics filed a lawsuit on September 5, 2019, in U.S. District Court of C.D. Cal. seeking to limit its liability under Limitation of Liability Act
- Parties reached stipulation that permitted plaintiffs to file CA state action in LA Superior Court under “savings to suitors” clause
- Court administratively closed action in January 2021, but required parties to file semi-annual status reports beginning August 1, 2021, and continuing for every six months until the related actions are resolved
- Last status report filed on August 24, 2022
- Case is basically “paused” until state court cases are resolved

2. **Ryan Sims v. Truth Aquatics, et. al., case no. 21STCV08228**

<https://advance.lexis.com/f/courtlinkdocument/jobstatus/downloadfile?jobId=fb8412be-d1f6-4425-a2b0-45f7bca2e363&lni=urn:contentItem:661B-7231-J9YR-S2CG-00000-00&isZip=false&isCombine=false>

- First lawsuit against Truth Aquatics – filed on September 12, 2019, in Ventura County Superior Court by one of the surviving crew members (*found original complaint, but not sure if ever filed*)
- Plaintiff sought damages for four causes of action against Truth Aquatics: Jones Act negligence, maintenance and cure, unseaworthiness, and general maritime negligence
- Filed on March 3, 2021, in LA Superior Court – same crewmember
- Against Truth Aquatics, Fritzler, Worldwide Diving Adventures, Sea Landing Dive Center, Seaway Boat Co., Robert Stapp, Roy Hauser, Russel Izor, Ventura Boatyard, and Does
- Plaintiff sought damages for five causes of action against defendants: Jones Act negligence (Truth Aquatics); maintenance and cure (Truth Aquatics); unseaworthiness (all defendants); general maritime negligence (all defendants); strict products liability (Sea Landing)

3. **Christine Alexandra Dignam, et. al. v. Truth Aquatics, Inc., et. al., case no. 21STCV08698**

<https://advance.lexis.com/f/courtlinkdocument/jobstatus/downloadfile?jobId=fddfbf35-c7f4-4c02-8654-c35b64f60688&lni=urn:contentItem:661B-7241-J9YR-S55H-00000-00&isZip=false&isCombine=false>

- A widow of a passenger who died filed a counterclaim against the original limitation of liability suit in November 2019 (<https://apnews.com/article/4e1a8d819de94dc4883158d90c276912>)
- But Docket shows filing date of March 2, 2021, of a complaint for wrongful death, survival, and punitive damages
- Plaintiffs demanded jury trial
- Last filing was August 1, 2022, one defendant's answer to complaint

4. **United States of America v. Boylan, case no. 2:20cr600**

<https://advance.lexis.com/f/courtlinkdocument/jobstatus/downloadfile?jobId=5136f133-5f9c-42b0-a6ad-9c9963d18d6b&lni=urn:contentItem:61WB-J6K1-DXDT-G0BN-00000-00&isZip=false&isCombine=false>

- Federal grand jury indicted captain, Jerry Nehl Boylan, on 34 counts of seaman's manslaughter in December 2020. Brought by US Attorney's Office for the Central District of California

- Court continued Boylan’s motions for Order for dismissal of indictment for failure to allege gross negligence (a first superseding indictment had been filed July 19, 2022) on August 4, 2022
- Updates since August 4, 2022
 - August 26, 2022 – Ex Parte Application to continue trial from October 4, 2022, to May 9, 2023
 - August 29, 2022
 - Order Continuing Motions Hearing and Post-indictment Arraignment to September 1, 2022. Ex Parte Application as to Jerry Nehl Boylan good cause having been shown, it is hereby ordered that the motions hearing and post-indictment arraignment is continued from August 29, 2022, to September 1, 2022.
 - August 30, 2022
 - Minutes in Chambers – Tentative rulings on defendant’s motions – including granting defendant’s motion to dismiss indictment (minutes attached separately)
 - US files Opposition to Ex Parte Application to Continue trial
 - September 7, 2022
 - Notice of Appeal to Appellate Court filed by US
 - Notification of Circuit Court – Final Judgment
 - September 15, 2022 – Designation of record on appeal filed by US
 - October 7, 2022 – Order of USCA filed – Appellants unopposed motion for voluntary dismissal of this appeal is granted.
 - On October 18, the grand jury issued a new indictment against Boylan <https://www.justice.gov/usao-cdca/pr/federal-grand-jury-issues-new-indictment-conception-boat-fire>. The one-count indictment naming Jerry Nehl Boylan, 68, of Santa Barbara, alleges a series of failures and the abandoning of his ship, which constituted “misconduct, gross negligence, and inattention to his duties” and led to the deaths of 34 victims.

5. ***Nancy Fielder, et. al. v. United States of America, case no. 2:21cv7065***

<https://advance.lexis.com/f/courtlinkdocument/jobstatus/downloadfile?jobId=ae29b17e-49dd-41f9-89da-92a2b858da13&isZip=false&isCombine=true&proceedingId=1&documentId=0&itemId=d139605032e7521>

- Families of the victims filed wrongful death suit (under SIAA) against the Coast Guard on September 1, 2021, in federal court in Los Angeles (US District Court for Central District of CA)

- They allege that the Coast Guard failed to enforce its regulations, which led to the fire and deaths onboard
- Seeking survival damages
- Seeking pecuniary and non-pecuniary damages
- August 29, 2022 – Rule 26(f) discovery plan – estimated length of trial 15 days filed by plaintiffs
- September 21, 2022 – Entry Order – On the court’s own motion, Scheduling Conference set for September 26, 2022, is vacated
- On October 14, the court issued an order granting the United States’ request that it be allowed to file a motion for summary judgment based upon the discretionary function exception to the waiver of sovereign immunity before deciding whether the action should be stayed pending the outcome of both the criminal case and the civil action filed by plaintiffs’ in State court. The court also granted plaintiffs leave to conduct limited discovery aimed only at the Government’s DF defense.

6. ***Nancy Fielder, et. al. v. Truth Aquatics, Inc. et. al., case no. 21STCV08121***

<https://advance.lexis.com/f/courtlinkdocument/jobstatus/downloadfile?jobId=dc62f520-8dcd-4b06-a902-3a1a9e92572a&lni=urn:contentItem:65X4-D241-J9YR-S24J-00000-00&isZip=false&isCombine=false>

- Families of the victims filed wrongful death and survival action in California state court (Superior Court of California, Los Angeles County, Central District) on March 1, 2021
- Plaintiffs demanded jury trial
- Plaintiffs filed an amended master complaint on November 9, 2021
 - Claimed general maritime gross negligence for wrongful death action against Truth Aquatics and Fritzlers
 - Claimed fraud, deceit, and nondisclosure for wrongful death action against Truth Aquatics, Fritzlers, Sea Landing Center, Bader and Does 1-5
 - Claimed negligence for wrongful death action against all defendants
 - Brought strict products liability claim for wrongful death against Sea Landing Center, Bader, and Does 16-75
 - Brought survival action against all defendants
- All defendants have filed answers to plaintiffs’ complaint
- On August 31, Plaintiffs filed an amended complaint for wrongful death.
- September 2, 2022 - Cross-complaint – Truth Aquatics and Fritzlers individually and as trustees of Fritzler family trust DTD cross-complaint
- September 26-29, 2022 - Multiple answers/responses/notices re: amended complaint

- Next status conference is scheduled for November 4, 2022

7. ***Daniel Bader v. United States Department of Justice, et. al., case no. 2:22cv202***

<https://advance.lexis.com/f/courtlinkdocument/jobstatus/downloadfile?jobId=cfccf2c3-8dd0-484e-98b6-9aaaf4a46ece&isZip=false&isCombine=true&proceedingId=1&documentId=0&itemId=d139823726e564>

- Bader (DBA Sea Landing Center) brought FOIA action seeking injunctive relief and disclosure of agency records from DOJ and ATF on January 10, 2022, in US District Court for Central District of California
- The ATF report and its supporting data on its investigation into the cause and origin of the fire have not been made public because it is an ongoing investigation
- Case was dismissed with prejudice on August 9, 2022 (had trouble accessing order on CourtLink)