

My reconstruction of this collision is based on my expertise in Marine Accident Reconstruction and collision dynamics. I reviewed the Vessel Accident Reports taken by the Sacramento Sheriff's Department, the Lake County Sheriff's Department and depositions of operators Bismark Dinius and Russell Perdock. The information contained in these documents was also used since they contain pertinent information to this case.

My inspection of damage to both vessels indicated physical evidence consistent with the events that took place following the impact. The vessels involved was a 1994 24 foot Baja Outlaw powerboat operated by Mr. Russell Perdock and a 1989 27 foot O'Day 272 Sailboat operated by Mr. Bismark Dinius. Both vessels are of fiberglass composite.

In reviewing documents, there were inconsistent statements that I will individually address in my report. There were two separate light globe examinations conducted resulting with different conclusions. The lights being illuminated is a very major factor in this collision.

This collision occurred on Konocti Bay, Clear Lake on April 29, 2006 at approximately 2110 hours. It was an almost moonless night with a waxing crescent showing five percent of the Moon's visible disk illuminated.<sup>1</sup>

Based on statements of Operator Perdock and other witnesses, both vessels were traveling on a south-east course on Konocti Bay heading towards Richmond Park from Frasier Point.

Both Vessel Accident Reports indicate that Mr. Perdock stated that he was traveling at approximately 40 miles per hour prior to impact. When Mr. Perdock saw the sailboat in front of him, he stated it had no lights illuminated.

The Baja powerboat impacted the O'Day sailboat on the starboard (right) quarter approximately at 156 degrees from the bow. The power boat ramped over the sailboat, indicated by the prop marks on the starboard rear quarter and the crushing damage to the starboard gunwale. The weight of the Baja would have caused the sailboat to roll starboard and depress in the water. The powerboat continued on, striking the cabins bulkhead indicated by the crushing damage. The cabin roof had been torn off. A piece of the fiberglass roof, measuring approximately 26 inches by 14 inches, was embedded in the bow of the Baja powerboat with approximately 21 inches of intrusion. I observed a bundle of electrical wires in the starboard gunwale had been severed. The Baja powerboat struck Victim Lynn Thornton who was sitting in the starboard right seat fatally injuring her.

The Baja powerboat struck the aluminum mast shearing it at the base. The aluminum boom was bent. As the Baja powerboat continue a line was wrapped around the propeller. The powerboat exited on the port (left) bow of the sailboat. It is not known how far the powerboat traveled prior to falling back into the water.

I have concerns over the violations that were recommended and charged. When investigating a vessel collision, all violations that are committed must be shown. All the violations must show the elements of the violation. In a CA State Vessel Accident report, the most responsible operator is listed as Party One. The two reports I reviewed have Mr. Dinius as Party One.

I will address each violation that was violated in this collision showing the elements of the violation, the specific code and what operator(s) were in violation.

There are four different codes involved in this collision. They are the CA Harbors and Navigation Code, CA Code of Regulations Title 14, the Federal Navigational Rules of the Road and the CA Penal Code. The Federal Rules of the Road have been incorporated by reference into Title 14 (6600.1 T-14 C.C.R.). All of the following Rules of the Road are under this code.

### **Rule 2 Responsibility**

(a) Nothing in these Rules shall exonerate any vessel, or the owner, master, or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

(b) In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.

This rule says no one will be exonerated from any neglect which includes both vessels involved in this collision. This includes Mr. Dinius and Mr. Perdock.

### **Rule 5 Lookout**

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

Every vessel must have a lookout to maintain a proper lookout and use any means to appraise the situation. Mr. Dinius and the sailboats owner, Mr. Weber was charged with this violation. Mr. Perdock's vessel was the give way vessel and had a responsibility to maintain a proper lookout therefore he too was in violation of Rule 5 Lookout.

### **Rule 6 Safe Speed**

Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

In determining a safe speed the following factors shall be among those taken into account:

(a) By all vessels:

- i. The state of visibility;
- ii. The traffic density including concentrations of fishing vessels or any other vessels;
- iii. The manageability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;
- iv. At night, the presence of background light such as from shore lights or from back scatter from her own lights;
- v. The state of wind, sea and current, and the proximity of navigational hazards;
- vi. The draft in relation to the available depth of water.

Mr. Perdock told both Sgt. Ostini and Sgt. Slabaugh that he was traveling at 40 to 45 miles per hour prior to the collision. While taking his deposition under oath, he said he was misunderstood or misspoke as he was traveling 30 to 35 miles per hour. To cause the Baja Outlaw to ramp over the O'Day's starboard gunwale required more speed than 30 miles per hour. The O'Day sailboat has a high freeboard and the Baja power boat is heavy weighing approximately 4,000 pounds.

I have witnessed over 100 staged boating accidents from ranging from 5 miles per hour to 50 miles per hour. The higher the boat sits out of water, the more speed it takes to ramp over it.

Mr. Perdock said in his deposition that following the collision, the two vessels were separated by 60 to 70 feet and he vaguely could see the sailboat. This was due to the poor visibility.

For every 1 mile per hour, a vessel travels 1.47 feet per second. If the Baja Outlaw was traveling 40 miles per hour, it would be traveling approximately 59 feet per second. At 30 miles per hour, it would be traveling approximately 44 feet per second. With a perception reaction time of 1.25 seconds, the vessel would be traveling 55 feet (30 mph) or 73.75 feet (40 mph) when the operator observes something before reaction.

There was almost no moon and no artificial lighting therefore the visibility was reduced and poor. Operating any vessels on waters under these visibility conditions, call for a safe speed. Forty milers per hour is not a safe speed. Even thirty miles per hour is not a safe speed under these conditions. I have logged hundreds of hours of vessel operation at night and even with radar, maintained a speed no greater than 20 miles per hour even when on an emergency response.

The waterways have floating debris, logs and other floating objects. These objects do not have lights, are unable to see in the dark and are an easy target for a collision therefore it is prudent to operate at a safe speed.

Independent witnesses listed in both reports indicate that Mr. Perdock was traveling 45 to 55 miles per hour prior to the collision.

It is my opinion that this was a high speed collision caused by Mr. Perdock who was operating his vessel at an unsafe speed for the prevailing conditions.

Due to the collision dynamics of ramping over the sailboat and the damage I observed, it is my opinion that Mr. Perdock was traveling in the 40+ mile per hour range. Mr. Perdock was in violation of Rule 6 Safe Speed.

### **Rule 7 Risk of Collision**

- (a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.

Had Mr. Perdock been operating his vessel at a safe prudent speed, he could have determined that a risk existed. The sail boat had the right of way and was traveling at approximately 5 miles per hour.

Mr. Perdock was in violation of Rule 7 Risk of Collision

### **Rule 8 Action to Avoid Collision**

- a) Any action taken to avoid collision shall *be taken in accordance with the Rules of this Part and [Int]* shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.
- (b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.
- (c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.
- (d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.

(e) If necessary to avoid collision or allow more time to assess the situation, a vessel may slacken her speed or take all way off by stopping or reversing her means of propulsion.

(f)

- i. A vessel which, by any of these rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.
- ii. A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the rules of this part.
- iii. A vessel, the passage of which is not to be impeded remains fully obliged to comply with the rules of this part when the two vessels are approaching one another so as to involve risk of collision.

The Baja Outlaw powerboat was the give way vessel and should have taken positive action to avoid a collision. Had the vessel been traveling at a safe speed with a proper lookout, this action could have been taken.

The operator Mr. Perdock was in violation of Rule 8 Action to Avoid Collision

### **Rule 13 Overtaking**

- (a) Notwithstanding anything contained in the Rules [of Part B, Sections I and II / 4 through 18], any vessel overtaking any other shall keep out of the way of the vessel being overtaken.
- (b) A vessel shall be deemed to be overtaking when coming up with a another vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the stern light of that vessel but neither of her sidelights.
- (c) When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.
- (d) Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

This was clearly an overtaking situation and it was the responsibility of Mr. Perdock to keep out of the way of the sailboat he was overtaking.

Mr. Perdock was in violation of Rule 13 Overtaking.

### **Rule 18 Responsibilities Between Vessels**

- a) A power-driven vessel underway shall keep out of the way of:
  - i. a vessel not under command;
  - ii. a vessel restricted in her ability to maneuver;
  - iii. a vessel engaged in fishing;
  - iv. a sailing vessel.

Rule 18 (a) (iv) says a power boat shall keep out of the way of a sailing vessel. The sail boat had the right of way as it was under sail. It was the responsibility of Mr. Perdock to keep away from the sailboat.

Mr. Perdock was in violation of Rule 18 (a) (iv) Responsibilities Between Vessels.

### **Rule 20 Lights and Shapes; Applications**

- (a) Rules in this part shall be complied with in all weathers.
- (b) The Rules concerning lights shall be complied with from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights which cannot be mistaken for the lights specified in these Rules or do not impair their visibility or distinctive character, or interfere with the keeping of a proper look-out.
- (c) The lights prescribed by these Rules shall, if carried, also be exhibited from sunrise to sunset in restricted visibility and may be exhibited in all other circumstances when it is deemed necessary.

Mr. Dinius and Mr. Weber were charged with this violation as the investigating officers reported they had no lights illuminated on their sailboat.

### **Rule 25 Sailing Vessels Underway and Vessels Under Oars**

- (a) A sailing vessel underway shall exhibit:
  - i. sidelights;
  - ii. a stern light.

Mr. Dinius and Mr. Weber were charged with this violation as the investigating officers reported they had no lights illuminated on their sailboat.

The lights being illuminated is of major importance in this collision. Mr. Perdock said the sailboat had no lights illuminated. Mr. Dinius said there was illumination from the cabin light as he was able to see the sails and mast and he was able to see the wind indicator. It was the first time he had sailed at night and did not know if the stern light or navigation lights were illuminated.

The light globes were taken as evidence and submitted to the California Department of Justice for examination. A report was written on April 12, 2007 with the following findings;

Masthead Light - Couldn't determine if the bulb was on or off at the time of the incident.

Stern Light - The bulb from the stern light was not on.

Bow Light - It could not be determined whether they were on or off during the collision.

A second examination of the light globes was conducted on December 4, 2007 by Dr. William Chilcott from Marine Testing Company. A report was written on January 21, 2008 with the following findings;

Masthead Light - Neither bulb had significant cold flow.

Stern Light - The stern light was illuminated at the time of collision indicated by portions of the filament being stretched.

Bow Light - Was illuminated before impact indicated by stretching of the filament near the filament support arm.

I examined the photographs of the O'Day's light globes. I have had training on the detection of cold breaks and hot shock deformation and concur with Dr. Chilcott's findings that the mast light and bow light was illuminated prior to the collision.

Based on witness statements, cabin light was illuminated giving additional lighting. The power cord to the mast light was severed by the Baja which would cause the mast light to go dark.

The Sacramento Sheriff's Department report shows the switch/breaker panel was found with the switches for Running Lights – Off and Bow Lights – Off. The Cabin Light switch was on. This observation was recorded two days after the collision. This was not addressed in the Lake County Sheriff's Department report. They were on scene following the collision and impounded both vessels.

### **655 H&N Reckless and Negligent Operation**

(a) No person shall use any vessel or manipulate water skis, an aquaplane, or similar device in a reckless or negligent manner so as to endanger the life, limb or property of any person.

(b) No person shall operate any vessel or manipulate water skis, an aquaplane or similar device under the influence of any alcoholic beverage, any drug or the combined influence of an alcoholic beverage and any drug.

(c) No person shall operate any recreational vessel or manipulate any water skis, aquaplane, or similar device if the person has an alcohol concentration of 0.08 percent or more in his or her blood.

(f) No person shall operate any vessel or manipulate water skis, an aquaplane, or similar device while under the influence of an alcoholic beverage, any drug, or under the combined influence of an alcoholic beverage and any drug, and while so operating, do any act forbidden by law, or neglect any duty imposed by law in the use of the vessel, water skis, aquaplane, or similar device, which act or neglect proximately causes body injury to any person other than himself or herself.

Mr. Dinius had a B.A. of .12 and was intoxicated by CA statute. He should have not been operating any vessel on state waters. He was in violation of 655 (b), (c), and (f).

Mr. Perdock who was in violation of 6600.1 T-14 CCR Rules 5 (Lookout), 6 (Safe Speed), 7 (Risk of Collision), 8 (Action to Avoid Collision, 13 (Overtaking) and 18(a)(iv) Responsibilities Between Vessels, therefore is in violation of 655 (a) H&N (Reckless & Negligent) as these violations would constitute a reckless and negligent operation of his vessel.

### **192.5 PC Vessel Manslaughter**

192.5. Vehicular manslaughter pursuant to subdivision (b) of Section 191.5 and subdivision (c) of Section 192 is the unlawful killing of a human being without malice aforethought, and includes:

(a) Operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence.

(b) Operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of an unlawful act, not amounting to felony, but without gross negligence; or operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence.

Mr. Dinius was in violation of 655 (b) (c) (d) H & N as shown in 192.5 PC, however the question is, did that unlawful act of operating a sailboat at 5 miles per hour while under the influence of alcohol cause the death of Lynn Thornton? Mr. Dinius was at the tiller



and if he was not intoxicated, he still would have not been able to maneuver the sailboat prior to the impact. Mr. Dinius was not the proximate cause of the death to Lynn Thornton.

The proximate cause was by the unsafe speed of Mr. Perdock who said the sailboat had no lights illuminated. He said he did not see the sailboat until it was directly in front of him and he was unable to avoid collision. He was unable to see the sailboat as he was operating at an unsafe speed for the prevailing conditions of darkness and poor visibility.

### **Conclusion**

This collision occurred on a dark moonless night on Konocti Bay, Clear Lake on April 29, 2006 at approximately 2110 hours. A 27 foot O'Day sailboat was heading southeast under sail at approximately 5 miles per hour. Mr. Bismarck Dinius was at the sailboats tiller while the sailboats owner Mr. Mark Weber was tending to the sails.

Passenger Lynn Thornton was seated to Mr. Bismarck's right in the rear starboard seat. Passengers Zina Dotti and Henry Dominguez were seated to Mr. Bismarck's left. They had completed a sailing regatta earlier that day. At 6:00 PM they attended a reception and wine tasting at Richmond Park. Mr. Dinius, Mr. Weber and his fiancée Lynn Thornton consumed alcoholic beverages prior to taking out the sailboat.

Mr. Perdock was operating his 24 foot Baja Outlaw powerboat with three passengers. He was southeast on the same waterway and by his admission was traveling at 40 to 45 miles per hour when he saw the sailboat in front of him. He was unable to avoid a collision and impacted the sailboat at approximately 156 degrees from bow on the starboard quarter. His boat ramped over the starboard gunwale striking Lynn Thornton, fatally injuring her. His boat continued over the top of the sailboat, exiting over the port bow into the water.

Mr. Perdock said the sailboat had no lights illuminated. Mr. Dinius said that the cabin light was definitely illuminated as he could see the wind indicator. He did not know if Mr. Weber had turned on the mast light or bow light.

Two independent witnesses saw the sailboat without lights; however that was 10 minutes prior to the impact.

The CA Department of Justice examined the sailboats light globes and determined the stern light was not illuminated and the mast light and bow light could not be determined if they were on or off during the collision.

Dr. William Chilcott of Marine Testing Company examined the sailboats light globes and concluded that the mast light and bow light was illuminated prior to impact.

My conclusion is that speed was the primary factor in this collision. In order to ramp the sailboat and cause the amount of damage done, Mr. Perdock would have had to be going 40+ miles per hour based on my previous experience of vessel accident investigation and witnessing staged vessel accidents. On page 18 of the Sacramento County Sheriff's

Department Vessel Accident Report, it states “The point of impact and damage indicate Vessel 2 (Perdock) struck Vessel 1 (Dinius) at a high rate of speed.

As a result of Lake County’s investigation, no charges were filed on Mr. Perdock, even though he violated several violations as shown above.

Inland Navigational Rule 4 - Application, states that the rules (Rules of the Road) apply in any condition of visibility. Under the application rule it is to include good seamanship and to make adjustments as necessary to accommodate for this. Due to darkness and poor visibility, Mr. Perdock should have reduced his speed to avoid collision or damage.

Had Mr. Perdock encountered a log in the water, he would have been unable to avoid it due to the poor visibility and the fact that logs have no lights. Coupled with the speed he was traveling and the poor visibility, it is my opinion that it would have been difficult to avoid a collision under those conditions.

Had Mr. Dinius not been intoxicated, he would have not been able to maneuver the sailboat in time to avoid a collision. Had Mr. Perdock been operating his vessel at a safe prudent speed, this accident could have been avoided.

**April 30, 2008**

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**Wes Dodd**