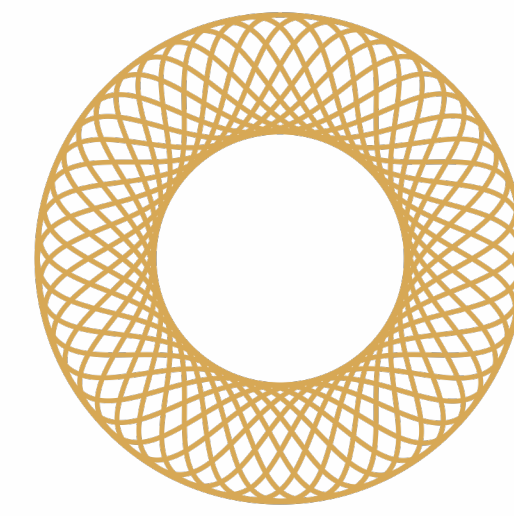




Work related accidents involving Seamen and Offshore workers



Sarah Crowther KC
Chair



Outer Temple



Simon Richards

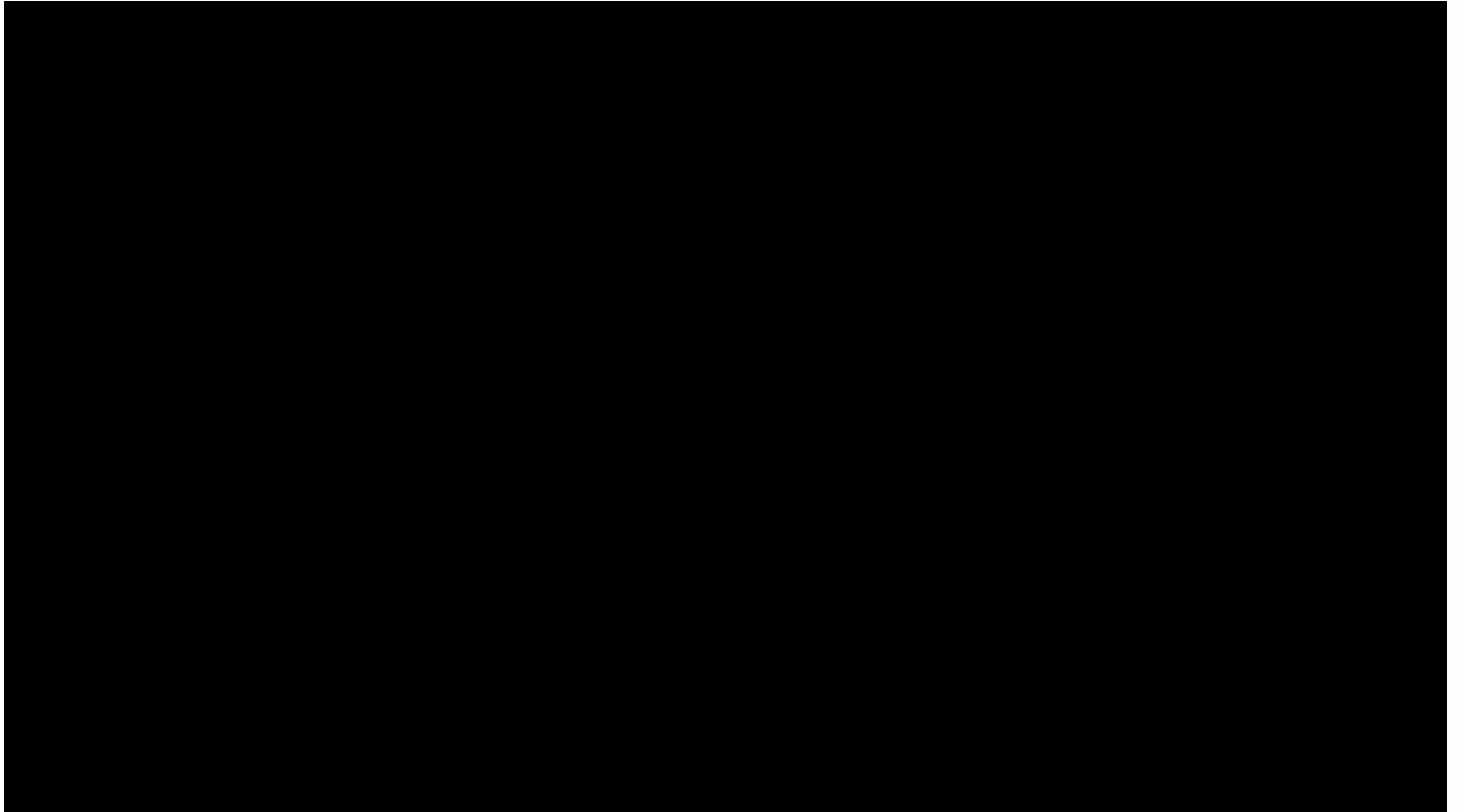


Michael Patrick Doyle



Silina (Vassiliki)
Pavlakis Moschou

These situations don't just happen in the movies



Example---Standard Slip and Fall

**On a drilling
rig offshore
anywhere**

Bad step

D/V VALARIS RENAISSANCE



Critical Area Verification – Drill Floor

Vice President – Quality, Health, Safety and Environment

PR-CO-HSE-903
8-Oct-20

EXHIBIT

Hooten 6

Rig:	Name:	Position:	Date:
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Category	Verification	Results
Safety		✓ Yes X No — N/A
1	Fire and Gas Alarms Visual and audible alarms are operational	
2	Escape route Marking enables personnel to identify the routes of escape and readily identify the escape exits	

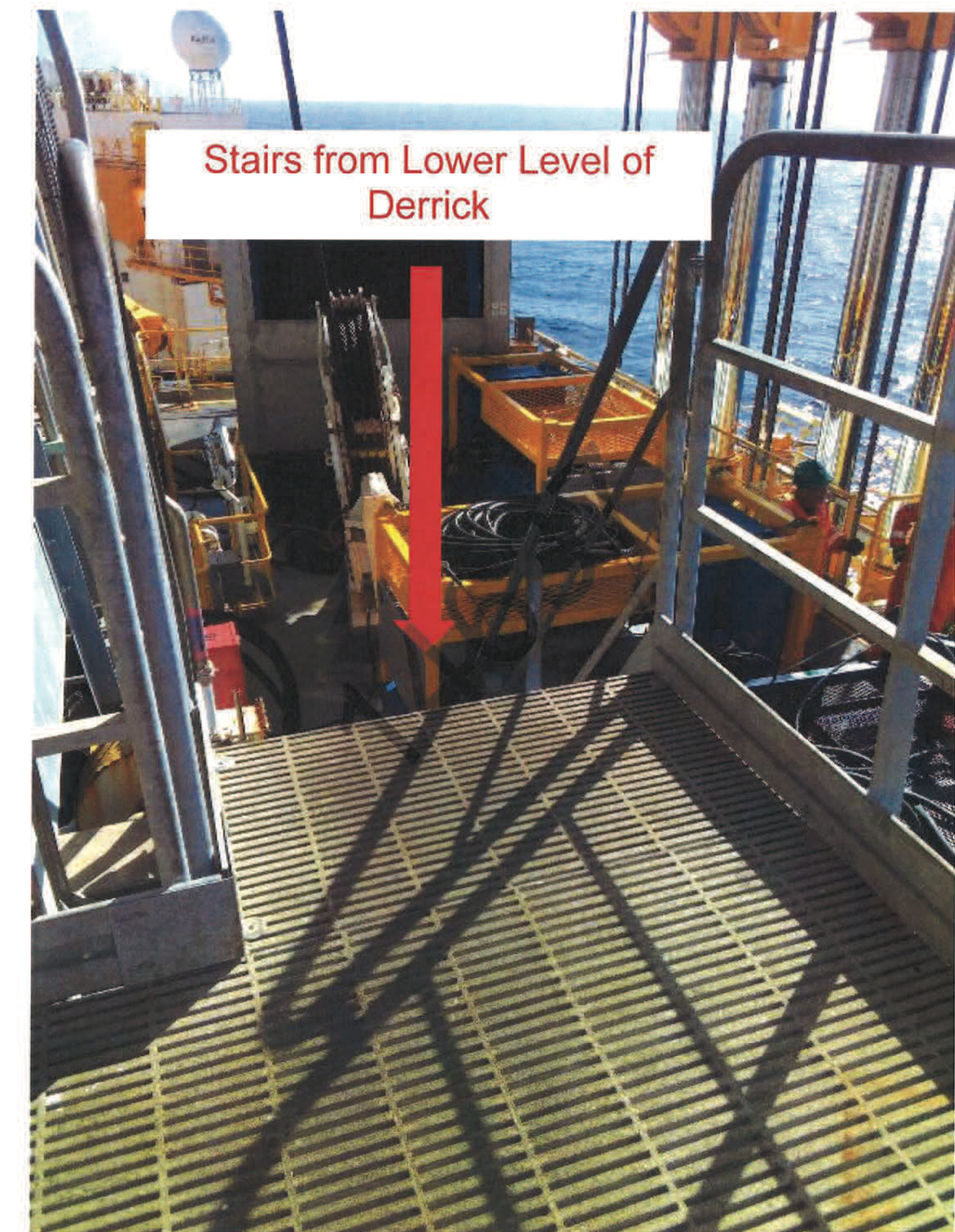


Critical Area Verification – Drill Floor

Vice President – Quality, Health, Safety and Environment

PR-CO-HSE-903
8-Oct-20

3	Safety signs (RS-Sample)	
4	Fire extinguishers hose stations (RS)	46 Shut down devices Protected from accidental activation Clearly labeled and identified (e.g. ESD or E-Stop)
		47 Talk back system In place, Operational
5	Personal fall protection (including harness, lanyards, self-retracting lifelines, LAD-SAF devices, etc.) (RS)	48 Tools (RS) Stored in tool boxes or on shadow boards Properly organized Dedicated tools aloft are controlled by lock, all accounted for, with no additional tools in the box No rig built or modified tools
		49 Trolley and trolley beam Fitted with end stops Marked with identification number Marked with safe working load Marked with current color code Markings clearly visible
		50 V-door barrier In place when v-door not in use Provides protection from falls (e.g. No chains, hard barrier etc.) No leaks on fittings, hoses or piping (load cell to Driller's cabin)
6	Primary Fixings (F)	
7	Secondary retention	
8	Safety securing (F)	51 Weight indicator Calibrated within last year Third party sensor or data interfaces installed properly (eg mounted per design, cables in wireways, stainless steel ties used on cables etc.)
		52 Zone management / floor saver Operational with evidence of being tested
Structure		✓ Yes X No — N/A
9	Spill Kits	53 Ladders – fixed (RS) In good condition with no damage When installed, fall protection equipment removes fall hazard and does not introduce additional hazards Kept clear at all times
		54 Stairways (RS) No damage to stair treads or handrails Free from corrosion



D/V VALARIS RENAISSANCE



Critical Area Verification – Drill Floor

Vice President – Quality, Health, Safety and Environment

PR-CO-HSE-903

8-Oct-20

EXHIBIT

icker.com

Structure

✓ Yes X No → N/A

53	Ladders – fixed (RS)	In good condition with no damage
		When installed, fall protection equipment does not introduce additional hazards
54	Stairways (RS)	Kept clear at all times
		No damage to stair treads or handrails
		Free from corrosion
		Fitted with non-slip nosing and toe boards
55	Wind walls	Not modified, deformed, or missing



“Fitted with non-slip nosing”?

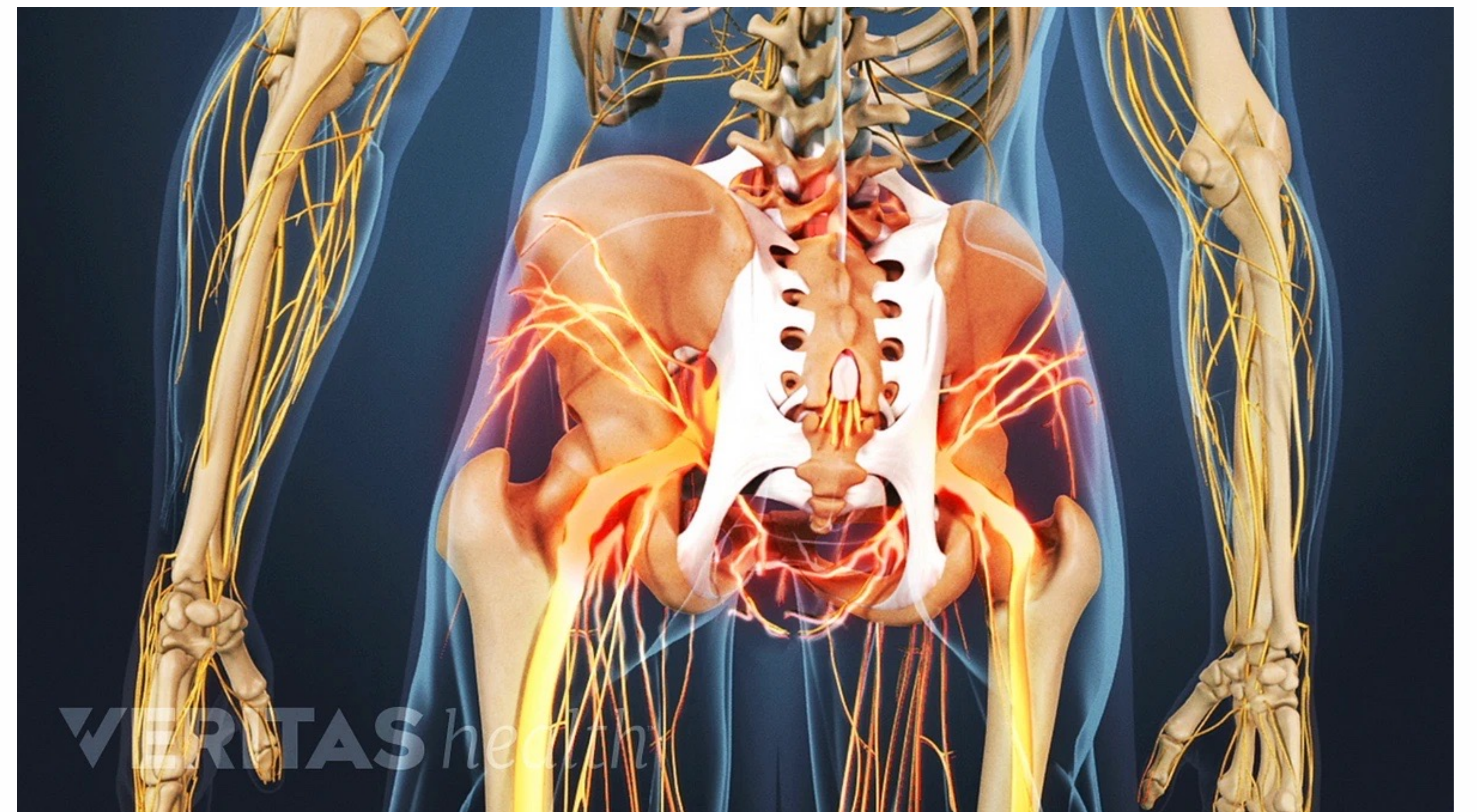
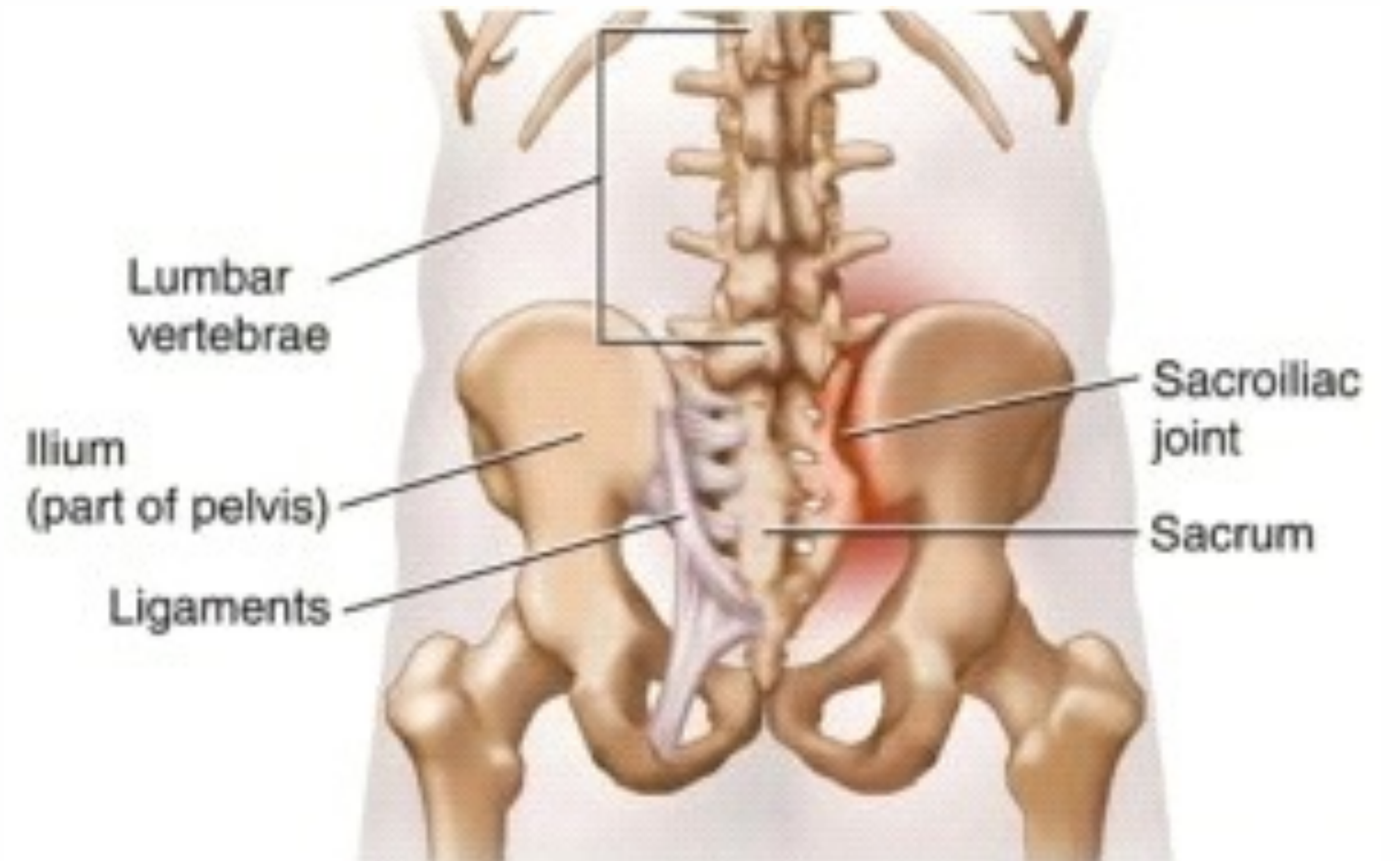


What happened?



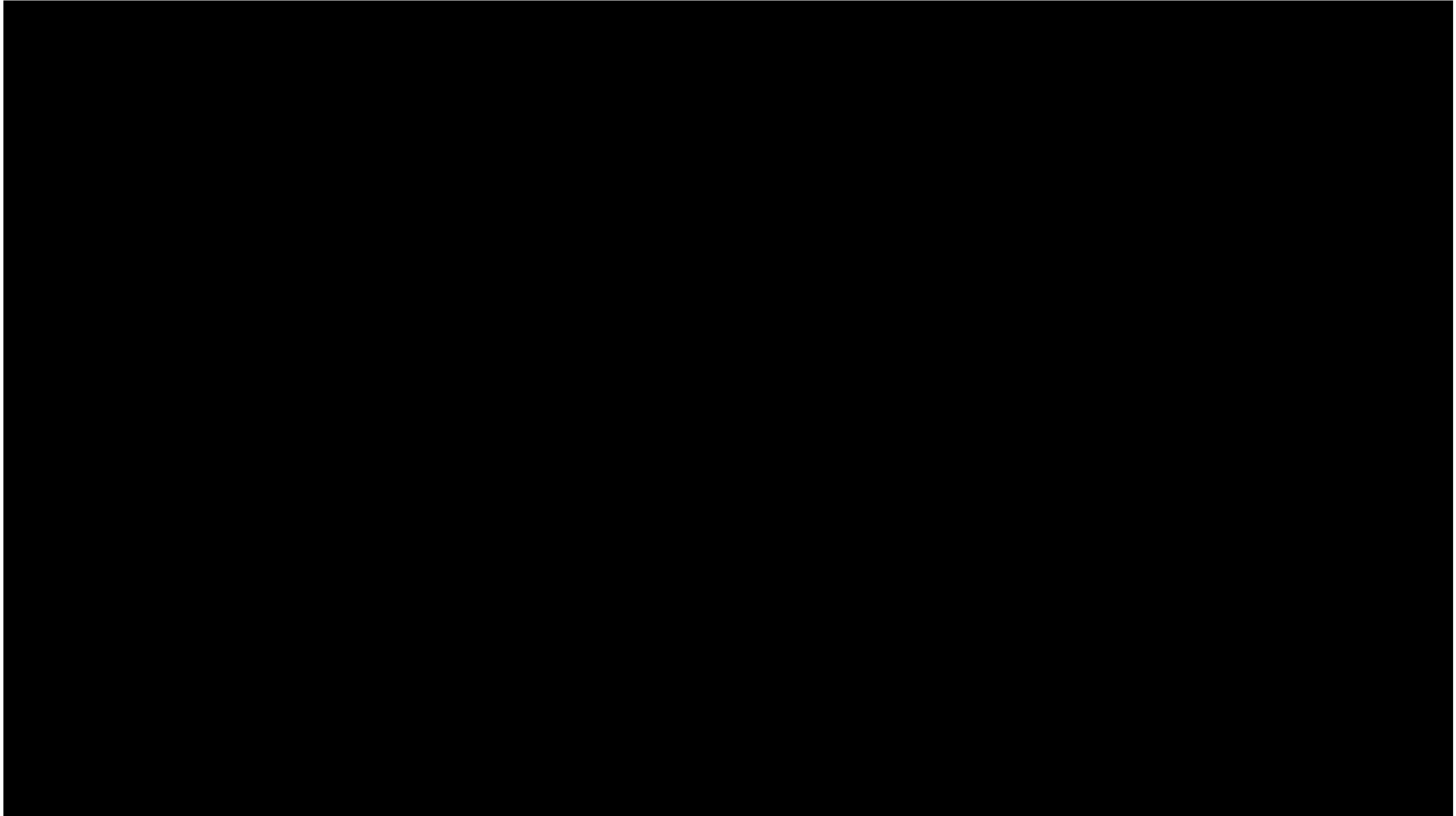
EXHIBIT 5

What worker faces faces



Dr. Jose Rodriguez
MD, FACS
Diplomate,
American Board of Orthopaedic Surgery
Orthopaedic Institute For Spinal Disorders

Get Ready



The 4 pillars of International Maritime law for SAFETY AT SEA

- **Safety of Life at Sea (SOLAS) – IMO**
- **International Convention for Prevention of Pollution from Ships (MARPOL) - IMO**
- **Standards of Training, Certification and Watchkeeping (STCW) - IMO**
- **Maritime Labour Convention (MLC) - ILO**



Piracy attack

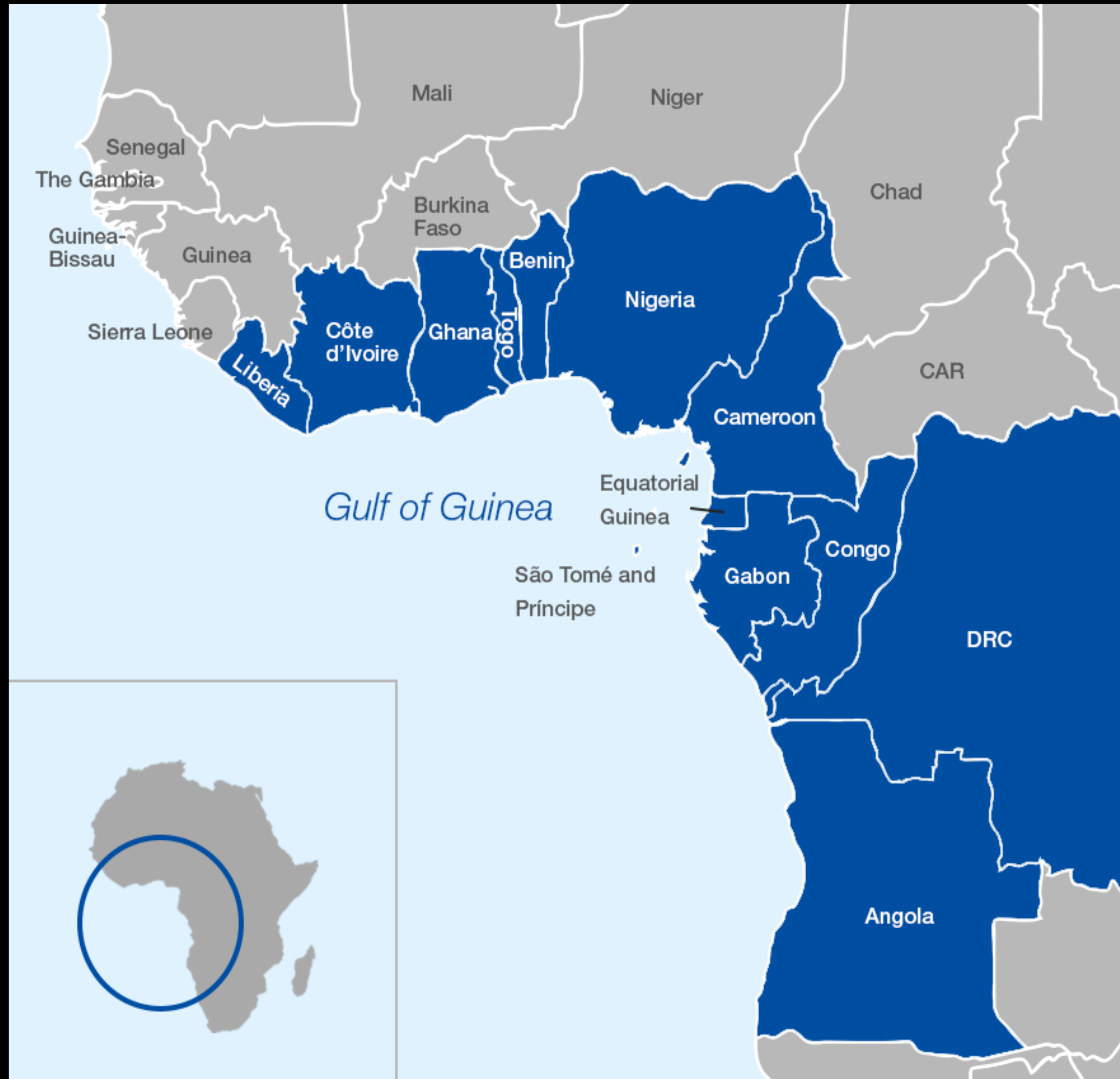


crew hostage
Personal injury

FACTS

- Panama flagged– Greek interests’ tankership “G.P.”
- Pirates attack in January 2017 in the Gulf of Guinea, West Africa
- Five crewmembers taken as hostages including the Chief Engineer

Gulf of Guinea





FACTS

- they were taken deep into jungle and were kept as hostages for 21 days
- released upon payment of ransom by the shipowners/P&I insurers

DAMAGES

The Chief Engineer suffered:

- fractured ankle and permanent deformation and dysfunction – untreatable
- psychiatric damage
- pronounced permanently disabled and unfit for sea service

CLAIMS – LIABILITY BASES

Jurisdiction and Applicable Law

validity of choice of venue and law clauses

Contractual Liability

- International Transport Workers' Federation (ITF) Collective Bargaining Agreement (CBA)

17.3 If the vessel enters a Warlike Operations area:

- The seafarer shall have the right not to proceed to such area. In this event the seafarer shall be repatriated at Company's cost with benefits accrued until the date of return to his/her home or the port of engagement.
- The seafarer shall be entitled to a double compensation for disability and death.
- The seafarer shall also be paid a bonus equal to 100% of the daily basic wage for the durations of the ship's stay in a Warlike Operations area - subject to a minimum of 5 days' pay.
- The seafarer shall have the right to accept or decline an assignment in a Warlike Operations area without risking losing his/her employment or suffering any other detrimental effects.

- Maritime Labor Convention, 2006 and 2014 Amendment (MLC) = direct action against the civil liability insurer - for contractual compensation

Applicable National Law on Labor Accidents' Compensation

- Non-fault liability e.g. Greek Law 551/1915
- fixed formula for calculation of the compensation on the basis of the salary

Tort liability

- Well known high risk

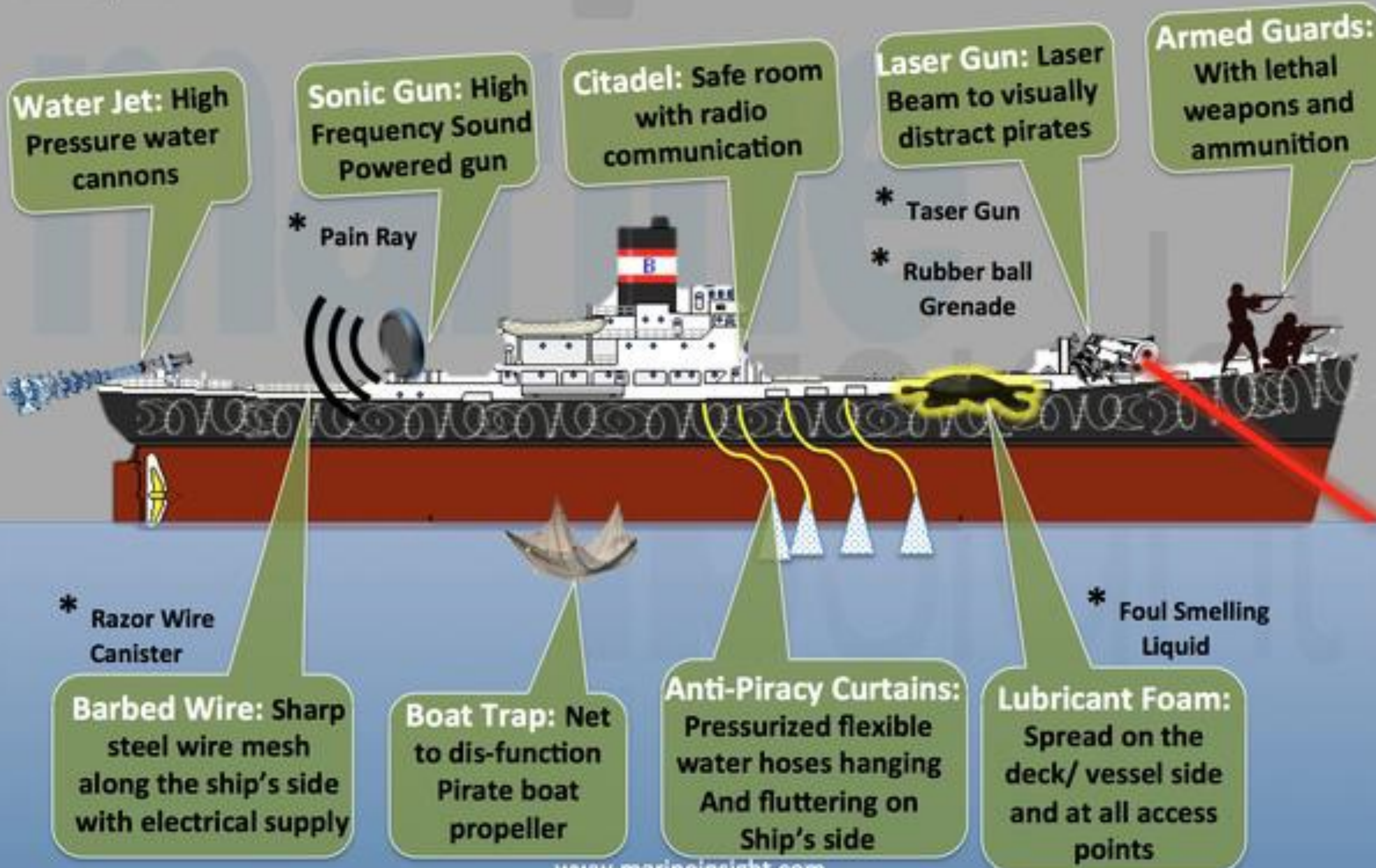
[High Risk Area – IMO, ICC, UN, NATO and others
Warnings, Recommendations, Guidelines]

- SOLAS Chapter X-2

International Security Protection System (ISPS)
Ship Security Plan (SSP)

Anti-Piracy Weapons on Ships

* Similar Systems



Water Jet: High Pressure water cannons

Sonic Gun: High Frequency Sound Powered gun

Citadel: Safe room with radio communication

Laser Gun: Laser Beam to visually distract pirates

Armed Guards: With lethal weapons and ammunition

* Pain Ray

* Taser Gun

* Rubber ball Grenade

* Razor Wire Canister

* Foul Smelling Liquid


Barbed Wire: Sharp steel wire mesh along the ship's side with electrical supply

Boat Trap: Net to dis-function Pirate boat propeller

Anti-Piracy Curtains: Pressurized flexible water hoses hanging And fluttering on Ship's side

Lubricant Foam: Spread on the deck/ vessel side and at all access points





Illness of
seafarer
on board

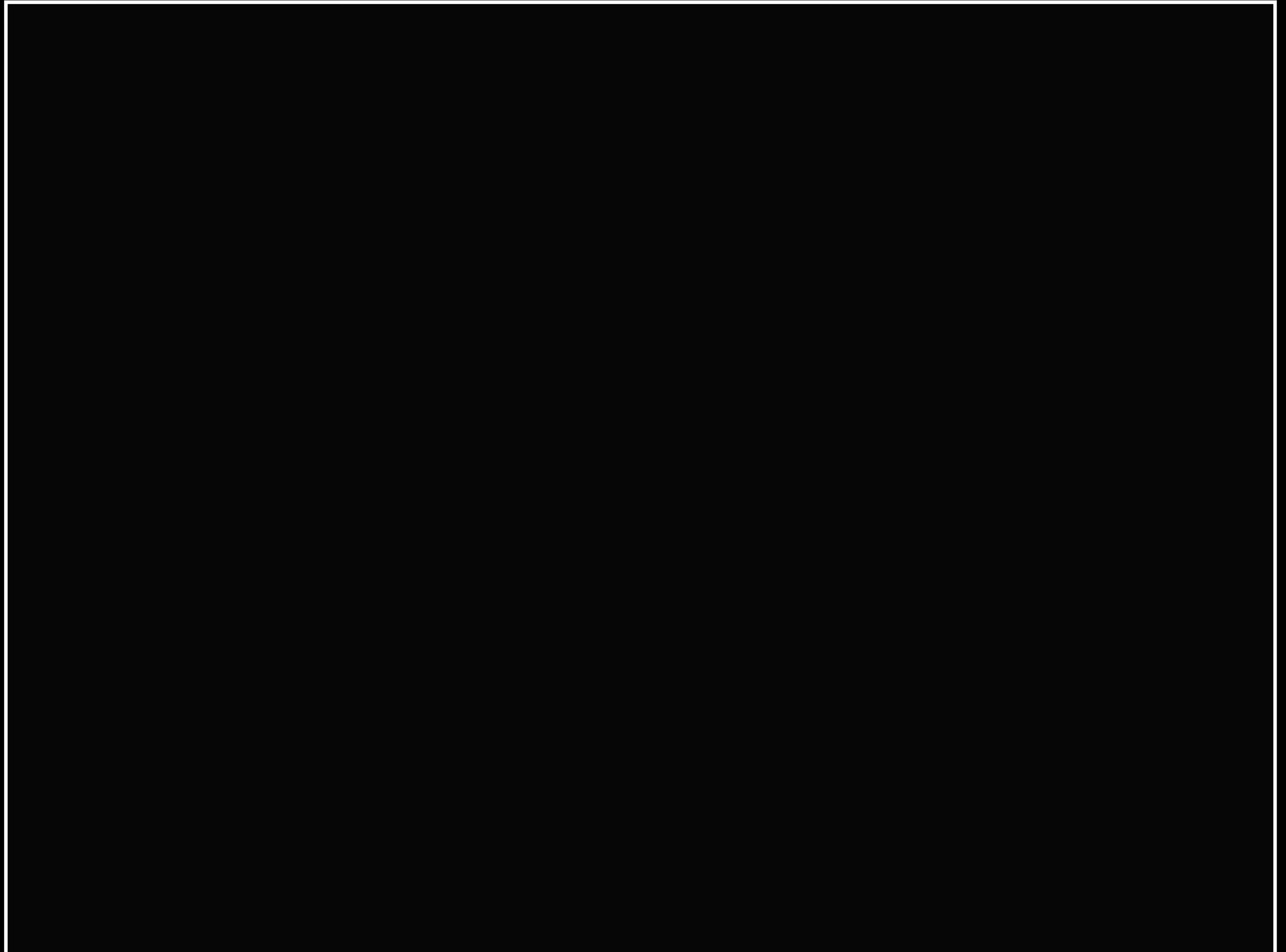


Is it a labor
accident?

FACTS

- Intestine-constipation problem for 10 days
- Visit to doctor at port of call in Argentina
- Deterioration while at 180nm from shore
- Medical advise sought via INMARSAT (global satellite communications)
- helicopter evacuation impossible – change of course at full speed to return to Bahia Blanca
- Death while on evacuation barge from intestinal infarction

ILLNESS – DISEMBARKATION OF SICK SEAMAN



Tort liability

when the illness or its aggravation and fatal result can be attributed to the shipowner or his servants or agents

- working conditions
- living conditions onboard
- lack of medicines and equipment required by international regulations for ships' medical chests
- inadequate medical care despite complaints
- delay in transfer ashore

Non-fault liability

risks inherent to the service on ocean going vessels

- lack of medical knowledge and experience of the ship officers
- objective inability to provide effective specialized medical care
- distance from shore and medical facilities and unavailability transport means

Under Greek law and jurisprudence, such “objective” factors that cannot be attributed to the shipowner but are inherent to the service onboard, give rise to the liability of the Employer under the non-fault regime

- for the limited non-fault compensation

Contractually agreed compensation

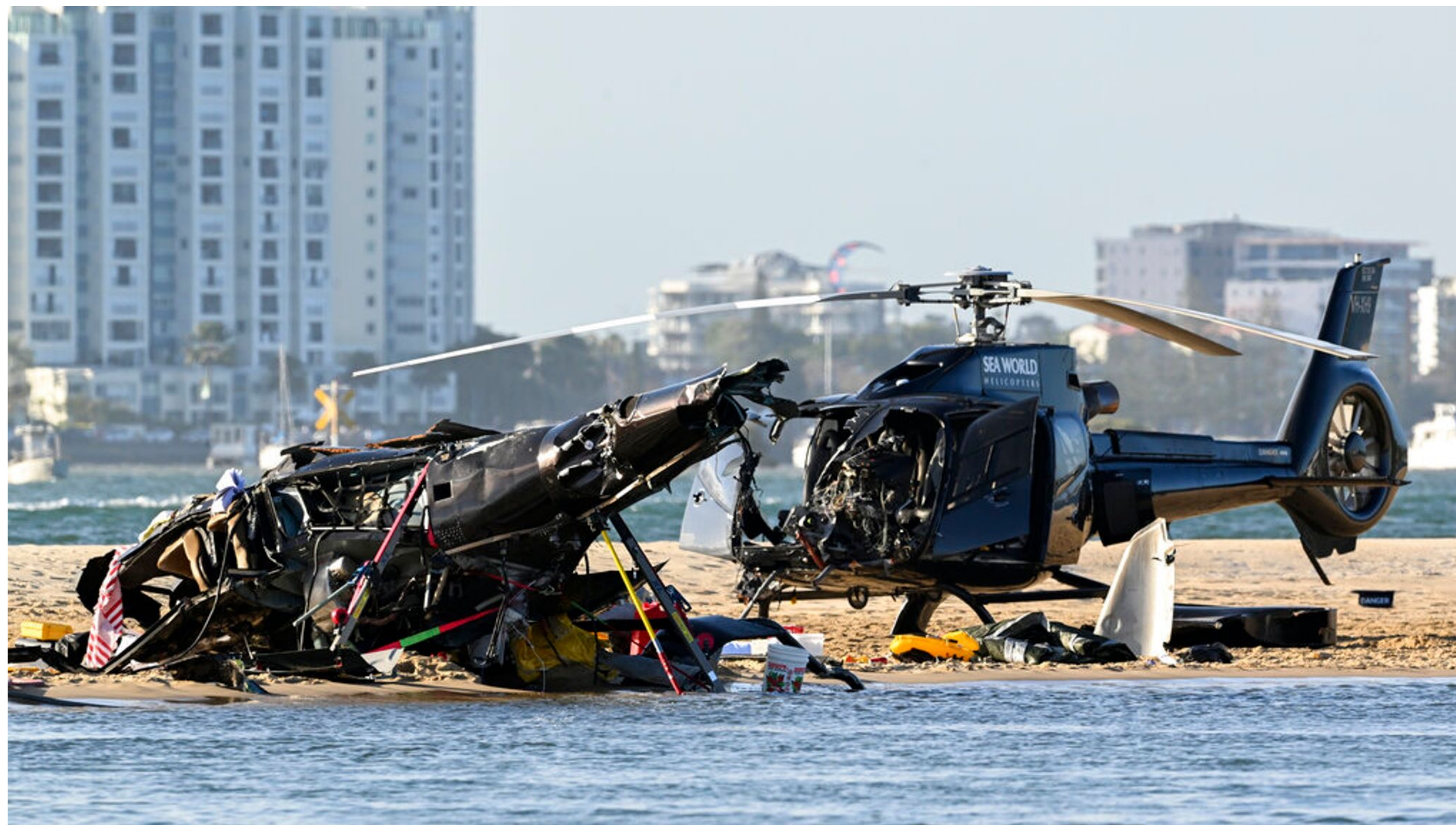
- by the individual sea service agreement
- and/or by ITF CBA agreements
- limited to a fixed amount

Example---Offshore Helicopter Crash (simon)

**Maritime
worker**

Simon says....

HELICOPTER CRASHES



PASSENGER OR CREW?

- An important distinction – different laws for each.
- What is the difference?
- *Fellowes or Herd v Clyde Helicopters* 1997 S.C. (H.L.) 86
- The family argued that there was no contract of carriage.
- [Section 10 of the Carriage by Air Act 1961](#) applied the Warsaw Convention of 1929 (as amended) to domestic flights. That Convention provided for strict liability for death sustained by a passenger during any ‘carriage by air’ and also imposed an upper limit on any damages recoverable in respect of that death.
- See also *Holmes v Bangladesh Biman Corp* [1989] A.C. 1112. Purely domestic carriage is a matter for the country in question.

HERD v CLYDE

1. **Lord Hope:** Sergeant Herd was being carried by air in the helicopter when it crashed, and the carriage was being performed for reward by the respondents under their contract with the police authority. It is not suggested that the surveillance and detection duties on which Sergeant Herd was engaged at the time involved him at any stage in the handling of the helicopter. It is a matter of admission that the flying of the helicopter was a matter for which the pilot, Captain Pryke, was solely responsible. Although Sergeant Herd was on board the helicopter in the course of his duties as a police officer, he was there merely as a passenger so far as the performance of the contract of carriage for reward was concerned.
2. All those who are involved in carriage by air, whether as carriers or as passengers, and their insurers should be able to assume that the same law applies no matter where the event occurs or where the forum is for the dispute.
3. The Lord Justice Clerk (Ross) in the Inner House: I see no reason to hold that police officers such as Sergeant Herd were being carried in any capacity other than that of passenger. I recognise that the defenders and their employees were obliged to take all reasonable instructions from the chief constable or his authorised representatives, but there was no question of Sergeant Herd having any degree of control over the defenders' pilot during the flight. It was the defenders' pilot who was to fly the helicopter, and I am satisfied that at no time was Sergeant Herd to be one of those engaged in doing the carrying function which the defenders had undertaken. On the contrary he was one of those who was being carried.
4. Further discussion in *Laroche v Spirit of Adventure* – goes through other authorities on passenger v non-passenger.

Wucher Helicopter GmbH v Santer

- A man who was employed by a company operating ski pistes, performed the specific task of avalanche blasting which was carried out from a helicopter. In order to perform this task he had to open the helicopter door at the pilot's direction and hold it open in a particular manner, for a particular period of time. The first defender, an Austrian air carrier, which flew the man and other employees of the ski company under a contract with the ski company, came within the definition of a "Community air carrier". The man was seriously injured while on a flight in a helicopter owned by the air carrier, the purpose of which was the carriage of the ski company's employees to places where they performed their usual tasks. The man brought a claim for damages against the air carrier and its insurer.
- it followed from the nature of the injured party's job that, since he did not perform tasks of the flight crew of the aircraft, he did not fall into the category of "member of the flight crew"; that, further, the fact that he had the task of opening the helicopter door at the pilot's direction did not suffice to confer on him the status of "member of the cabin crew" since, in fact, the pilot was always authorised to give instructions to any of the people on board the aircraft, including the passengers; and that, accordingly, the occupant of a helicopter held by a Community air carrier, who was carried on the basis of a contract between that carrier and the occupant's employer in order to perform a specific task, such as that in issue, was a "passenger" within the meaning of article 3(g) of Parliament and Council Regulation (EC) No 785/2004 ; and that, moreover, a person who came within the definition of "passenger" in article 3(g) of the Regulation also came within the definition of "passenger" for the purposes of article 17 of the Montreal Convention , once that person had been carried on the basis of a "contract of carriage" within the meaning of article 3 of that Convention.

What does Warsaw/Montreal do?

The Warsaw/Montreal Convention: (1) imposes liability on an air carrier for damage sustained in the event of death or injury of a passenger arising out of an accident on board the aircraft or in the course of embarking or disembarking. This liability can be avoided if the carrier proves that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them so to do. (2) Limits the liability of a carrier for each passenger to a fixed sum and makes null and void any provision tending to reduce or exclude the carrier's liability. (3) Removes the carrier's right to limit his liability if the damage is caused by his wilful misconduct. (4) Specifies a number of fora in the territory of High Contracting Parties to the Convention, in one of which the plaintiff must elect to sue the carrier. (5) Imposes a time limit on the raising of actions. (6) Provides that any clause in the contract whereby the parties purport to infringe the rules in the Convention whether by deciding the law to be applied or by altering the rules as to jurisdiction shall be null and void.

King v Bristow Helicopters Ltd

- Only the English text of the Convention applies intra-UK
- Philip King sustained psychiatric injury only when the helicopter he was in crash landed on the heli-deck of an oilrig.

Contract of Carriage

- There must simply be a contract for air travel. It does not need to specify from one location to another:
- *Herd v Clyde Helicopters*
- *Laroche v Spirit of Adventure* – a hot air balloon flight where the end point could not be specified. A passenger does not need to be going from one point to another.

What is the Law for Passengers Now?

- The Carriage by Air Acts (Application of Provisions) Order 2004 s4 Schedule 1 to the Order shall have effect in relation to non-international carriage.
- Schedule 1 is a list of amendments to the Montreal Convention and the Convention itself.
- Article 21 – Compensation in Case of Death or Injury of Passengers. Strict liability up to 100,000 Special Drawing Rights.
- Carrier not liable for damages greater than 100,000 SDRs if they prove damage not due to negligence or other wrongful act or omission of the carrier or its servants or agents (see *Mather v Easyjet*) or damage was solely due to the negligence or wrongful act or omission of a third party.

EUROPE

- Council EC Reg 2027/97 of 9 October 1997 on air carrier liability in the event of accidents.
- Art 3 – liability of a Community air carrier cannot be limited
- Art 4 – Nothing shall imply that a Community air carrier is the sole party to pay damages
- Preamble 4 – appropriate to have the same level of protection for national and international transport
- Regulation 889/2002 of 13 May 2002 amending Reg 2027/97 of 9 October 1997 on air carrier liability in the event of accidents.
- The EU is a member of the Montreal Convention
- Applies to national and international flights
- Prior Reg 4 deleted

BREXIT?

- Exiting the European Union Civil Aviation – The Air Passenger Rights and Air Travel Organisers’ Licensing (Amendment) (EU Exit) Regulations 2019
- Makes amendments to the Carriage by Air Act 1961, the Carriage by Air Acts (Application of Provisions) Order 2004, the Air Carrier Liability Regulations 2004 etc. Effectively changes “Community Air Carrier” to “UK Air Carrier” and other geographic type changes.

Crew?!

- The Montreal Convention does not apply.
- What are your options?
- Employer's Liability (Defective Equipment) Act 1969
- Common Law
- Vicarious Liability
- Provision and Use of Work Equipment Regulations 1998 (no strict liability following the Enterprise and Regulatory Reform Act 2013)
- The Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006

Employer's Liability (Defective Equipment) Act 1969

- S1 - Where after the commencement of this Act—
- (a) an employee suffers personal injury in the course of his employment in consequence of a defect in equipment provided by his employer for the purposes of the employer's business; and
- (b) the defect is attributable wholly or partly to the fault of a third party (whether identified or not),
- the injury shall be deemed to be also attributable to negligence on the part of the employer (whether or not he is liable in respect of the injury apart from this subsection), but without prejudice to the law relating to contributory negligence and to any remedy by way of contribution or in contract or otherwise which is available to the employer in respect of the injury.
- Strict liability if defect caused not by the employer

Provision and Use of Work Equipment Regulations 1998

- A breach of these Regulations will not give rise to liability but are likely to show common law negligence. Employers still require to follow them.
- Particular regard with helicopters is likely to be had to Reg 5 (Maintenance) and Reg 6 (Inspection)
- A helicopter would be considered work equipment.
- See *Budden v Police Aviation Services Ltd*

The Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006

- Put in place by virtue of the Merchant Shipping Act – a breach does create liability
- Applies to work equipment on a ship
- If an offshore vessel has a helicopter or one is used to get there then it might be argued that the helicopter is work equipment for the purposes of these Regulations
- Very similar duties to PUWER

Rescue but still injured, seriously

Coast Guard rescue of 12 people from a downed helicopter 23 miles south of Sabine, Texas. The video was taken by a Coast Guard HU-25 Falcon jet from Air Station Corpus Christi, Texas. The helicopters in the video are HH-65 Dolphins from Air Station Houston.

Sept. 7, 2005

Example---American military contractor law

**Military
Contractor
Employees
(Not just
American)**

USA says....

Maritime law in the desert?

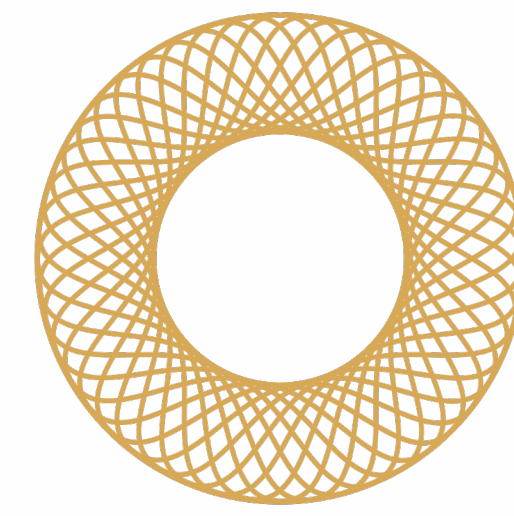




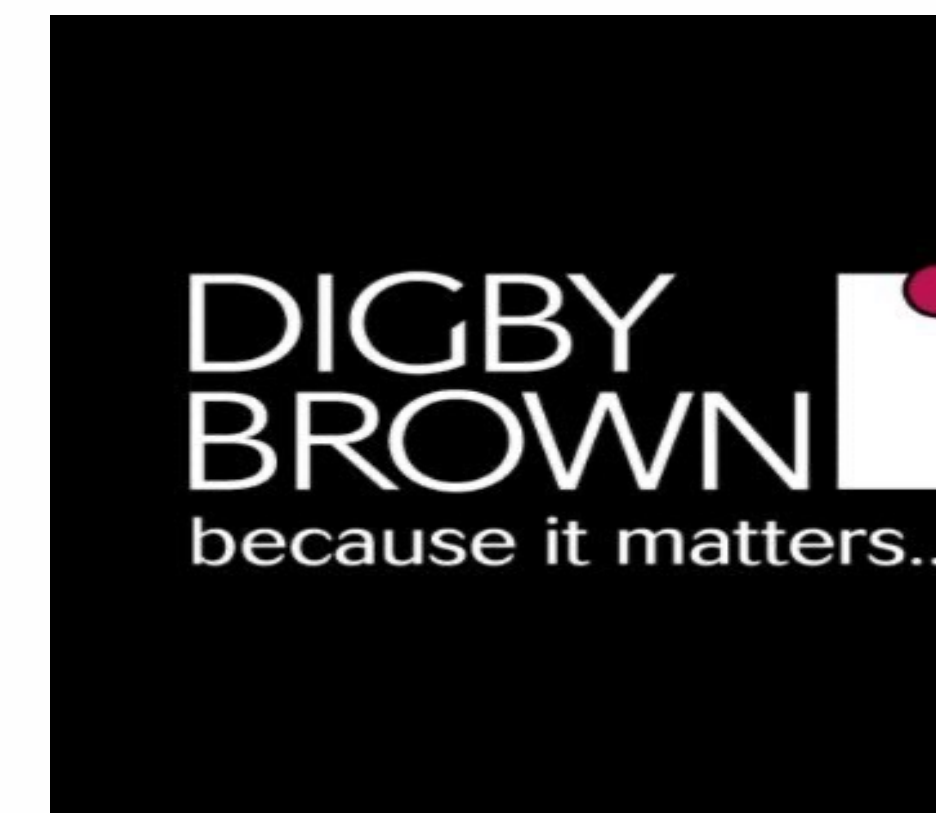
Thank You!



Sarah Crowther KC
Chair



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Silina (Vassiliki)
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