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What We Will Discuss

- A risk Nautilus insured.
- The claim that arose from the risk that ultimately went to trial.
- The decision making involved from both the Claims and defense attorney's perspectives.

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The Risk

Ahab's Outpost

- Tackle shop
- Boat rental
- Restaurant
- Gift shop
- Charter fishing

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What risks do you foresee?

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The Claim

- The plaintiff (Jones) docked his boat at Ahab's to fuel it.
- Jones had been to Ahab's many times before and had refueled his boat at the insured's business many times before.
- Jones removed the gas cap. An Ahab employee handed the plaintiff the gas nozzle.
- Jones inadvertently placed the gas nozzle into a fishing rod holder and **NOT** into the gas tank.
- Jones pumped 30 gallons of gas into the boat which went into the bilge and **NOT** the gas tank.

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The Claim (continued)

- The fuel caused the bilge pump to start (creating a "spill").
- Jones was warned not to start the boat motor, to turn off the bilge pump, and to call Sea Tow (think AAA for boats).
- The Sea Tow captain (who was also a volunteer fireman) arrived and instructed Jones to disconnect the battery to tow the boat. The disconnected battery would prevent the bilge pump from activating.
- Smith, a friend of Jones, saw Jones and offered to help with disconnecting the battery.
- A spark was created while attempting to disconnect the battery, igniting the fumes/fuel in the bilge, and resulting explosion which injured both Smith and Jones.
- The entire event was captured on surveillance videos from several angles/positions.

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The Boat

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The Injuries

<u>Jones</u>	<u>Smith</u>
<ul style="list-style-type: none"> • Burns covered 35% of his body (arms, hands, legs, face). • Skin grafting was required. • He also had poorly controlled diabetes. • Claimed below knee leg amputation from burn injuries. • Future lost earnings (unable to work). 	<ul style="list-style-type: none"> • Burns covered 15% of his body (face, hands, feet, arms, legs, and abdomen). • Skin grafting required. • PTSD. • Loss of consortium. • Comparatively, Smith was not as badly injured as Jones.

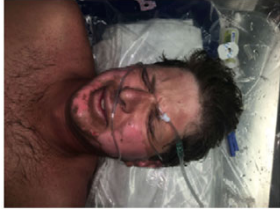
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The Burns - Jones




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The Burns - Smith



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The Claims

- Both Smith and Jones filed suit for their injuries.
- Jones sued Ahab's Outpost, the local Sea Tow franchisee, and Sea Tow International, the franchisor.
- Smith sued Ahab's Outpost, both Sea Tow entities, and Jones.

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Applicable Law

- The accident occurred near Wilmington, NC.
- Both Smith and Jones were residents of Charlotte, NC.
- NC follows the doctrine of contributory negligence (a complete bar).
- **BUT** this loss occurred on *U.S. navigable waters*, which is governed by maritime law.
- Maritime law follows pure comparative negligence.
- Jones and Smith cases were originally consolidated, then last minute separated for trial. Jones trial was bifurcated on liability and damages. Smith trial was not bifurcated.

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How Would You Assess Fault?

- Jones?
- Smith?
- Ahab's Outpost?
- Sea Tow franchisee?
- Sea Tow International?

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Would you settle or take the case to trial?

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How Do We Win or Lose?

How we win

- Jones' "mistakes" caused the loss.
- Smith assumed the risk by boarding the boat.
- Sea Tow's captain gave improper instruction.
- Disconnecting the battery was intervening and superseding negligence.

How we lose

- Ahab's had no protocol for an accident like this.
- Regulations required Ahab's to call Fire Department (and Coast Guard) for the spill.
- Claim that Ahab's should have cleared the dock.
- Sympathy factor for significant burn injuries to both Jones and Smith.

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No Opportunity to Settle

- Jones and Smith banded together.
- Originally neither Jones nor Smith would settle without the other.
- The demand had always been policy limits of \$1M or higher (Pre-trial demands of Smith (\$4M) and Jones (\$13M) during two mediations.
- Joint and Several still applied for non-settling parties
- Pre-judgment interest = 36% of verdict

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Other Defendants

- The local Sea Tow franchisee settled with both Jones and Smith.
- Eventually, Sea Tow International (the franchisor) settled with both Jones and Smith.
- Jones' boat insurer offered its limits to Smith, but Jones' umbrella insurer refused to pay.
- Settlements with other defendants were held confidential and unknown
- But no offset due to maritime law.
- Jones separately represented as Plaintiff and as Defendant.

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How Do We Position the Claim?

- Jones and Smith have separate trials [De-Consolidated last minute]
- After discovery, we filed a motion asking the court to find that Jones was negligent. That motion was granted [But recognized in Jones trial only].
- Jones went to trial first [Bifurcated – Phase 1: Liability]
- Smith next went to trial [Not-Bifurcated]

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The Jones Trial

- Ahab's Outpost was the only defendant.
- Remember, Jones was determined negligent as a matter of law.
- Claim that Ahab's Outpost was negligent *per se* for not calling 911 and/or clearing the dock
- Neither Sea Tow entity was present since both settled.
- Prior to trial, we offered Jones \$100,000.
- Hung Jury (11-1 in Ahab's Outpost favor) = Mistrial.
- Jones settles for \$75,000 after the mistrial.

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The Smith Trial

- Jones was a defendant in the Smith trial (but was not determined negligent as a matter of law during trial)
- Remember, it was Jones who incorrectly pumped the gas.
- Neither Sea Tow entity was present since both settled.
- Jones' umbrella carrier settled with Smith late during trial.
- Multiple discussions between Kirk and Nautilus after Jones settles.
- Offered a high-low agreement of \$250K low and \$925K high.
- Smith refused the high-low agreement.

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The Smith Verdict

- Apportioned verdict.
 - Jones 9%
 - Ahab's Outpost 18%
 - Smith 8%
 - Sea Tow 65%
- Total award \$230,000
 - \$250,000 gross award.
 - \$20,000 reduction for failure to mitigate damages.
 - No award for loss of consortium.
- Net award against Ahab's Outpost \$41,400

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Questions?

Thank you!!!

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