

New Carissa trials

By Linda Strine

A 639-foot freighter, the *New Carissa*, ran aground in inclement weather off the southern Oregon port of Coos Bay on February 4, 1999. It broke in two after several unsuccessful salvage attempts, and the bow was eventually sunk at sea by a Navy torpedo. The massive stern section remained in the surf zone 150 yards from the beach.

Almost three years later, from October 1 through November 13, 2002, a judge, attorneys, and a jury were submerged in scientific data, mathematic formulas, and the documentation of human error associated with the grounding and attempted recovery of the freighter. The purpose of the trial was to determine the fate of the stern of the *New Carissa*, which was mired in sand off the coast of Coos Bay, an area that is part of the Oregon Territorial Seas.

The State of Oregon v. Taiheiyō Kaiun Co., Ltd., TMM Co., Ltd. and Green Atlas Shipping was filed in the circuit court of the State of Oregon in Coos County. Judge Richard Barron presided over the courtroom in Coquille, and the jury represented a cross-section of the county, including several retirees, business office men and women, medical workers, and a stay-at-home mother.

The attorneys for the plaintiff were led by Bill Wheatley of the Jaqua and Wheatley law firm in Eugene. He was assisted by Department of Justice attorney Becky Kamitsuka. The legal team for the defendants was headed by Roman Silberfeld, of Robins, Kaplan, Miller, and Ciresi in Los Angeles, and Robert Sanders, of Wood, Tatum, Sanders, and Murphy in Portland.

Over sixty witnesses were deposed from throughout the United States, the United Kingdom, the Philippines, Japan, and New Zealand. Ship captains, scientists, and engineers provided information on everything from beaufort scales and bathymetric studies to fathometers and windlasses. Testimony was given by a geomorphologist, a meteorologist, a retired admiral, professional salvors, and at least thirty-five others, including Oregon Governor John Kitzhaber, the owners of the ship, and the owners' insurance representative.

The arguments were completed on November 13, 2002. The jurors brought in a 10-2 verdict that the owners of the *New Carissa* were guilty of negligent trespass and voted unanimously to award the State of Oregon \$25 million to pay for the stern's removal. They determined that the wreck was an attractive nuisance and a threat to public safety, that it should be removed, but that the state's claim that the people of Oregon suffered from the past and future loss of recreation at the site was not viable.

The verdict was influential in settling *Green Atlas Shipping S.A., et al. v. United States*, a pending \$96 million lawsuit filed by the *New Carissa*'s owners. The ship's owners alleged that the U.S. Coast Guard charts did not indicate that the *New Carissa*'s anchorage was in dangerous waters, made more so by dredging spoils. The U.S. government countersued for \$7 million for cleanup costs. After an April 2004 trial, a settlement favorable to the U.S. government was reached. In June, a settlement was reached in which the ship's owners paid \$10.5 million to the U.S. government and the government paid \$4 million to the owner, operator, and insurer.

In March 2008, Titan Salvage commenced preparations to remove the wreck, and residents of the Coos Bay area watched the *New Carissa*'s stern being methodically and safely dismantled and hauled away. The last visible piece was removed on September 28, 2008. Coos Bay and North Bend businesses provided 99 percent of the fabrication, excavating, and painting services to prepare for the removal of the wreck, and the two port cities benefited from the salvage operation by approximately \$4 million.

The 2009 legislature allocated \$1.13 million from the *New Carissa* insurance settlement fund to the Oregon Department of Fish and Wildlife to help pay for mapping the sea floor along the Oregon coastline beginning in 2010.

Sources

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