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FREEHILL
HOGAN &
MAHAR LLP

MARITIME CRIMINAL DEFENSE GROUP

EXPERIENCE

DEPTH

RESPONSIVENESS

ADVOCACY

RESULTS

FREEHILL HOGAN & MAHAR
MARITIME CRIMINAL DEFENSE GROUP

Freehill Hogan & Mahar is a top tier U.S. law firm recognized for excellence in representing the maritime industry for over 60 years. Our firm's Maritime Criminal Defense Group has extensive experience in handling maritime criminal matters in all jurisdictions of the U.S. While oily water separator cases have been particularly active matters in recent years, we also have dealt with criminal investigations and/or prosecutions arising out of oil spills and marine casualties and have advised or defended clients who have been the subject of a variety of government investigations.

Over the years we have handled maritime criminal cases, always difficult situations, with positive results for our clients. We take an objective and aggressive approach to these cases. Our philosophy is to objectively evaluate the strengths and weakness of the matter and recommend solutions and strategies in order to obtain the most favorable results for our clients. Solutions have ranged from: 1) no criminal prosecution; 2) identify and propose a successful trial defense; or 3) negotiate a favorable settlement, enabling our clients to continue to do business in the U.S. with minimal problems. We have structured and helped clients implement reasonable and effective environmental compliance programs as part of settlement agreements with the government. We take pride in serving as strong advocates and utilizing our extensive experience in obtaining the most favorable outcome for our clients. We do not litigate our cases in the press, recognizing that our clients do not want unfavorable publicity, but handle them discreetly, quietly and effectively.

FHM's Maritime Criminal Defense Group consists of four partners, supported by the full resources of our firm. The individual attorneys in the Group have varied expertise in all aspects of maritime criminal matters. If you are confronted with a maritime casualty or other incident which occasions an investigation by the authorities which could lead to criminal exposure, we can assist. If you require an audit of your operational policies to insure that you are in compliance with relevant regulations, we can advise you. For more information, please contact us.

REPRESENTATIVE CASES

Over the years FHM has handled many maritime criminal cases. The following are but a few representative samples.

- M/V NEW CARISSA – 1999 – This grounding and total loss of a vessel on the Oregon coast resulted in major pollution and natural resource damages. FHM defended the shipowner/operator in a criminal Grand Jury investigation by U.S. Attorney in Oregon for Clean Water Act violations.
Result: The government was persuaded not to prosecute criminal charges against owner and operator.
- Defense of Shipowner – 2004 – FHM defended a shipowner/operator in a U.S. Grand Jury investigation in New Jersey for a possible OWS violation.
Result: We were successful in blocking the government from filing any criminal charges.
- Defense of East Coast Tug Operator – 2005 – We represented a New York tug operator in the U.S. government's investigation of major oil spill from a barge in Long Island Sound, which resulted in significant pollution of Long Island beaches. FHM defended the tug owner/operator in respect of Clean Water Act criminal investigations.
Result: Persuaded authorities not to bring any criminal charges.
- OWS Defense – 2009 – We were called in to represent Spanish owner/operator in a pending criminal case brought by U.S. Attorney in Boston charging violations of the Act to Prevent Pollution for Ship and obstruction of justice. The government was demanding a \$10 million dollar fine to settle the case.
Result: We objected to the fine as excessive and after several meetings with the U.S. Attorney and high level individuals from the DOJ in Washington, the fine was settled for \$2 million dollars to be paid in installments. This was the first such case in the U.S. where a shipowner was permitted to pay a fine in installments over a period of five years rather than all at once on the date of settlement. Also, on our motion, the Court reduced the probation period of the Court mandated Environmental Compliance Program from 5 years to 2 years, thereby permitting our client to do business with oil majors.
- Defense of Greek Shipowner – 2011 – An OWS violation prosecuted by the U.S. Attorney in San Francisco.
Result: We investigated the incident and then negotiated a \$500,000 fine, which was the lowest fine leveled against a shipowner for an OWS violation in recent years. Most settlements of these types of cases in the U.S. result in multi-million dollar fines.

THE TEAM



THOMAS M. RUSSO
Partner

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Mr. Russo, the Leader of the Group, was an Assistant District Attorney for Queens County, New York from 1976 to 1984 and an Executive Assistant District Attorney from 1984 to 1988. During his career as a prosecutor, he was Chief of the Homicide Bureau, Rackets Bureau and Economic Crimes Bureau. As Executive Assistant District Attorney he supervised all the DA's investigations bureaus consisting of 200+ lawyers. He was an instructor at the National Institute of Trial Advocacy and a lecturer in trial advocacy at Hofstra University Law School.

Mr. Russo entered private practice in 1988 and in 1989 served as one of the lead criminal and civil attorneys in defending the Master of the Exxon Valdez. Since that time, he has represented numerous clients concerning environmental criminal law matters throughout the United States as related to oil spills, oil pollution violations, and related governmental investigations. He has defended corporations and crew members in Oily Water Separator (OWS) criminal cases in New York, New Jersey, Florida, Georgia, North Carolina, Maryland, Virginia, Massachusetts and California. Mr. Russo has defended corporations and/or individuals on major oil spills involving various federal and state statutes in various venues, such as Prince William Sound, Alaska; Buzzard's Bay, Massachusetts; South Carolina; Puerto Rico; Oregon and Rhode Island.

Mr. Russo frequently writes and speaks on maritime criminal law and has been a featured presenter at seminars in Singapore, Hong Kong, Greece, Norway, Belgium, the United Kingdom, Australia and Russia. He has been singled out in publications such as *Chambers USA*, *Legal 500* and *Best Lawyers in America* as a leading attorney for his representation in criminal maritime cases.

Education:

Queens College of the City University of New York, B.A., 1968
Fordham University, J.D., 1975
Member, Fordham Urban Law Journal, 1975

Positions:

Chairman, MLA Maritime Criminal Law and Procedure Committee, 2002-2004



MICHAEL FERNANDEZ
Partner

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Michael Fernandez graduated from the United States Merchant Marine Academy at Kings Point, New York in 1981 and thereafter sailed on a various types of commercial vessels ultimately obtaining an unlimited Master's license issued by the United States Coast Guard. He received a J.D. from Rutgers Law School and joined Freehill Hogan & Mahan in 1990, where he has been a partner for over 15 years.

Mr. Fernandez is a member of the Maritime Criminal Defense Group at Freehill Hogan & Mahan and routinely defends both corporations and individuals in investigations, proceedings, and prosecutions involving the alleged by-passing of oily water separators and other MARPOL related violations, pollution and civil/criminal enforcement actions. He has dealt with such cases in numerous jurisdictions, including, for example, New York, Massachusetts, Florida, Maryland, California, Georgia and North Carolina. His sea-going background and experience provide Mr. Fernandez with unique insight and expertise while conducting shipboard investigations, reviewing vessel records, interfacing with crewmembers and interacting with the USCG, DOJ, NTSB and other governmental entities.

Mr. Fernandez routinely conducts internal investigations and lectures clients on best practices for enhanced MARPOL compliance, training of crews and the role of counsel during governmental investigations both in the USA and abroad. He has been selected as a leading lawyer in publications such as *Chambers Global*, *Chambers USA*, *The Legal 500* and *The Best Lawyers in America*.

Education:

United States Merchant Marine Academy, B.S., 1981
Rutgers Law School, J.D., 1990



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Mr. Pallas graduated from Georgetown University in 1991 with a bachelor's degree in political science. He received his law degree from Tulane Law School in 1994, *cum laude*, with a Certificate of Maritime Law, where he served as Managing Editor of the Tulane Maritime Law Journal. Mr. Pallas has extensive experience in handling both civil and criminal environmental defense cases on behalf of vessel owners and operators involving various State, Federal and Flag State authorities in jurisdictions throughout the United States, including New York, New Jersey, Pennsylvania, Maryland, North Carolina, Georgia, Florida and California. Mr. Pallas has represented the interests of owners and operators in the course of numerous on-board investigations conducted by the United States Coast Guard, the U.S. Dept. of Justice, Environmental Crimes Section and various state law enforcement agencies in connection with alleged MARPOL violations, including "Magic Pipe" cases.

Mr. Pallas has written many articles on various issues concerning maritime criminal liability. Mr. Pallas has also given presentations on criminal liability both in the U.S. and abroad.

Education:

Georgetown University, B.A., 1991
Tulane University, J.D., 1994 – *cum laude*
Certificate of Maritime Law
Managing Editor, Tulane Maritime Law Journal, 1993-1994



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After graduating from the State University of New York, Maritime College, Mr. Fitzgerald served in the U.S. Coast Guard for five years, where he conducted investigations of significant marine casualties before receiving his law degree from New York Law School in 2001. Mr. Fitzgerald has extensive experience with U.S. Coast Guard investigations of vessel owners and managers for casualties involving loss of life and for environmental violations resulting in marine pollution. Mr. Fitzgerald represents owners and operators in the areas of environmental compliance and internal corporate compliance investigations and has conducted numerous on-board investigations in various U.S. and foreign jurisdictions. Mr. Fitzgerald continues to represent marine companies in areas including criminal prosecutions involving MARPOL and the Clean Water Act. Mr. Fitzgerald is a frequent speaker on environmental criminal and compliance issues.

Education:

State University of New York, Maritime College, B.S. With Distinction, 1996
New York Law School, J.D., 2001