

PRESENTED AT

28th Annual David W. Robertson
Admiralty and Maritime Law Conference

November 22, 2019
Houston TX

Look Out the Window. That is What it is There For.

Raymond J. Burke, Jr.

Raymond J. Burke, Jr.
Burke & Parsons
600 3rd Avenue, FL 2
New York NY 10016-1919

burke@burkeparsons.com
(212) 354-3812

LOOK OUT THE WINDOW. THAT IS WHAT IT IS THERE FOR.

Raymond J. Burke, Jr.¹

During the early morning hours of June 17, 2017, the guided missile destroyer USS FITZGERALD (DDG-62) was proceeding on a southerly course, from her homeport of Yokosuka, Japan, towards naval operating areas in the South China Sea. Unknown to the watchstanders on FITZGERALD's darkened bridge, the Philippine-flag container vessel ACX CRYSTAL, having sailed the previous afternoon from Nagoya, Japan, was headed eastward, towards the destroyer, along the southern coast of Honshu, enroute to the Port of Tokyo.

With both vessels traveling at relatively high rates of speed, they quickly closed on one another and, at about 0130, they collided, roughly 12 nautical miles south southeast of the city of Shimoda on Honshu's Izu Peninsula. The force of the collision caused ACX CRYSTAL's bulbous bow to penetrate FITZGERALD's starboard side below the destroyer's water line, flooding a machinery space, the radio room and two berthing compartments. This tragic accident took the lives of seven of FITZGERALD's crew and caused hundreds of millions of dollars of damage to the destroyer, necessitating prolonged repairs that removed her from service as one of several ballistic missile defense platforms assigned to the U. S. Seventh Fleet.²

During the months that followed this collision, and USS MCCAIN's collision with the tanker ALNIC MC on August 21, 2017, the Navy's protracted root cause investigation into these fatal accidents was heavily covered in the media. On August 6, 20129, the National Transportation Safety Board ("NTSB") issued its final report on MCCAIN collision. The NTSB's report on the FITZGERALD-ACX CRYSTAL collision is expected to be released later this year.

It is not my intention to use this paper as an opportunity to engage in any causal or liability analysis of this tragic occurrence. Instead, I shall briefly review the events leading up to the collision, from the perspective of the bridge watch team onboard FITZGERALD, as reported in the press and in published reports issued by the Navy³. With

¹ Partner, Burke & Parsons. The author would like to thank William Dougherty for his assistance in preparing this paper.

² FITZGERALD left her drydock at the Ingalls Shipbuilding repair facility in Pascagoula, Mississippi on April 16, 2019, almost two years after her collision with ACX CRYSTAL. A date has not yet been set for the destroyer's return to service with the Seventh Fleet. Sam McGrone, *USS FITZGERALD Leaves Mississippi Drydock After More Than a Year of Repairs*, (April 16, 2019), <https://news.usni.org/2019/04/16>.

³ Burke & Parsons was retained to advise ACX CRYSTAL interests in the aftermath of this collision. In the course of this representation, we naturally obtained access to various privileged materials and also to materials provided to us by U.S. Government agencies, which we have agreed to hold in confidence. As stated above, these restrictions should not hamper the basic purpose of this paper.

these facts in hand, I shall offer several basic lessons to be learned from this experience in the hope that it might help foster greater safety at sea.

FACTUAL SUMMARY

The Vessels

FITZGERALD is an 8,261-gross ton, 505-foot long ARLEIGH BURKE-class guided missile destroyer of the U.S. Navy, commissioned on October 14, 1995. She is one of eight destroyers assigned to Destroyer Squadron 15, which is forward-deployed to Yokosuka, Japan as part of the U.S. Navy's Seventh Fleet. FITZGERALD has twin controllable pitch propellers, twin rudders and is powered by four G.E. LM2500-30 gas turbine engines. She is capable of developing 100,000 shaft horse power for a sustained maximum sea speed in excess of 30 knots. At the time of her collision with ACX CRYSTAL, FITZGERALD was under the command of CDR Bryce Benson, who had most recently served as FITZGERALD's Executive Officer.

ACX CRYSTAL (IMO 9360611) is a 29,060 gross ton, 730-foot long, Philippine-flagged container vessel, built in 2008. She is powered by an MAN B&W 8K80MC-c Mark VI diesel engine and equipped with a single rudder and a single fixed-pitch propeller. ACX CRYSTAL is capable of a maximum sea speed of 22.4 knots, in ballast.

FITZGERALD'S Approach to the Collision

FITZGERALD departed her homeport of Yokosuka at 1130, June 16, anchoring a short time later to load ammunition and then to conduct day and nighttime flight operation qualifications before beginning her south-southwesterly transit towards the South China Sea operating areas at about 2300 that evening.

The team of officers assigned to the 2200-0200 navigation watch consisted of an Officer of the Deck ("OOD"), who is in overall charge of the watch and responsible for the safe navigation of the vessel, assisted by a Junior Officer of the Deck ("JOOD") and a conning officer, who was responsible for issuing engine and steering orders to the helm. The Captain left the bridge at approximately 2300, followed about 5 minutes later by his Executive Officer, CDR Sean Babbitt.

Due to high vessel traffic density, FITZGERALD proceeded at a speed of 16 knots on various courses until 2345 when she altered course to 230° and increased speed to 20 knots. At 0022, the vessel's course was changed to 220°. Eleven minutes later, at 0033, she again altered course to the left, steadying on 215°. Finally, at 0052, FITZGERALD steadied on 190°, the course she would follow until just before her collision with ACX CRYSTAL.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Look Out the Window. That is What it is There For.

Also available as part of the eCourse

[2019 David W. Robertson Admiralty and Maritime Law eConference](#)

First appeared as part of the conference materials for the
28th Annual David W. Robertson Admiralty and Maritime Law Conference session
"Naval Collisions: The Importance of Training and Looking Out the Window"