

SB285_OAG_Finberg_FAV.pdf

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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

ANTHONY G. BROWN
Attorney General

January 28, 2025

TO: The Honorable Pamela Beidle
Chair, Finance Committee

FROM: Jessica Finberg
Assistant Attorney General, Civil Litigation Division, Office of the Attorney General

RE: SB285 - Attorney General - Collapse of Francis Scott Key Bridge -
Reporting - **Support**

The Office of the Attorney General (“OAG”) requests a favorable report of Senate Bill 285, which will modify Section 2(g) of the Maryland Protecting Opportunities and Regional Trade (PORT) Act to reduce the frequency of reporting required from the Attorney General to the General Assembly on OAG’s efforts to recover for the State all possible economic damages arising from the closure of the Port and the collapse of the Francis Scott Key Bridge.

As you are aware, the Attorney General is pursuing litigation against Grace Ocean Private Limited, the owner of the M/V DALI, the ship that allided with the Francis Scott Key Bridge, and Synergy Marine PTE Ltd., the manager of the M/V DALI. On November 7, 2024, the United States District Court for the District of Maryland determined that the litigation would proceed in two phases. The State, along with many other claimants, are currently litigating the first phase, which will determine only whether the owner and manager of the M/V DALI are entitled to a limitation of their liability. Fact discovery is ongoing and will continue until July of this year, and expert discovery will continue until the end of February, 2026. The trial for the phase one limitation action is set for June 1, 2026.

After phase 1 is complete, the State will then litigate on the merits of its claims. Litigation deadlines or trial dates have not been established for this second phase, but it is expected that the merits phase will have a timeline as lengthy as the limitation phase. Even should the court partially lift its stay on merits litigation and it becomes possible to begin litigation as to the merits of claims

that would not be subject to a limitation of liability, it is expected that any such litigation would also move at a similar speed.

Currently, under the PORT Act, the Attorney General is required to submit monthly reports to the General Assembly describing the status of the Attorney General's efforts to pursue and recover all possible economic damages arising from the closure of the Port and the collapse of the Francis Scott Key Bridge. Much information regarding the pending litigation, including communications by OAG and Assistant Counsel with agency clients and witnesses, legal analysis and litigation strategy, are privileged or otherwise are protected attorney work product. As such, we can only report on aspects of the litigation that are known publicly, such as decisions by the court. Thus, to date, our reports have predominantly provided short updates explaining that OAG and Assistant Counsel continue to engage in factual development and data gathering. *See Exhibit A, Report on the Status of the State's Efforts to Pursue and Recover Damages Caused by the M/V Dali's Allision with the Francis Scott Key Bridge (Feb. 1, 2025).*

Given the timeline of the ongoing litigation and the pace of events about which we can report, it is the assessment of the Attorney General that a six-month reporting period will better serve to keep the General Assembly meaningfully, and substantively, informed of OAG's efforts. Reports every six months would encompass a more meaningful period of time relative to the litigation's anticipated timeline.

Accordingly, the Office of the Attorney General requests the Committee issue a favorable report of Senate Bill 285.

cc: Finance Committee Members

Exhibit A

*Report on the Status of the State's Efforts to Pursue and Recover Damages
Caused by the M/V Dali's Allision with the Francis Scott Key Bridge*

**Submitted to the Maryland General Assembly under
Maryland Protecting Opportunities and Regional Trade (PORT) Act (Senate
Bill 1188, Chapter 3, 2024 Laws of Maryland, Section 2(g)(2))**

**Anthony G. Brown
Attorney General**

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February 1, 2025

The Honorable William C. Ferguson, IV
President of the Senate
100 State Circle
Annapolis, Maryland 21401

The Honorable Adrienne A. Jones
Speaker of the House of Delegates
100 State Circle
Annapolis, Maryland 21401

Re: MSAR # 15653: *February 1, 2025 Report on the status of pursuing and recovering economic damages on behalf of the State of Maryland in response to the collapse of the Francis Scott Key Bridge*

Dear Mr. President, Madam Speaker, and Members of the General Assembly:

In accordance with Section 2(g)(2) of the Maryland Protecting Opportunities and Regional Trade (PORT) Act, I am submitting this report detailing, subject to the limitations imposed by ongoing litigation, the status of the State's efforts to pursue and recover damages caused by the M/V Dali's allision with the Francis Scott Key Bridge, and the Key Bridge's subsequent collapse, on March 26, 2024.

The PORT Act requires a report to be submitted monthly to the General Assembly on the first of every month, beginning on July 1, 2024. Enclosed, please find our February 1, 2025 Report. The prior reports are included within.

The Honorable William C. Ferguson, IV
The Honorable Adrienne A. Jones
Re: MSAR # 15653
February 1, 2025
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I would like to express my sincere gratitude for your legislative efforts and continued support for the State's legal response to the tragic catastrophe that occurred when the Francis Scott Key Bridge collapsed in March of this year. My Office, in conjunction with Governor Moore's Office and the impacted State agencies, will continue to diligently represent the State of Maryland as we navigate the legal challenges we face from the Bridge collapse.

If you have any questions or concerns about this information in this report, please do not hesitate to contact Special Assistant to the Attorney General Katie Dorian at 410-576-6458.

Sincerely,

A handwritten signature in black ink, appearing to read "AG Brown". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anthony G. Brown

cc: Sarah T. Albert (sarah.albert@mlis.state.md.us)
Mandated Reports Specialist Library and Information Services
90 State Circle
Annapolis, MD 21401

Report on the Status of the State's Efforts to Pursue and Recover Damages Caused by the M/V Dali's Allision with the Francis Scott Key Bridge

February 1, 2025 Report

Assistant Counsel continued to represent the State in all aspects of the Limitation Action, including engaging in discovery, further developing the factual record, and gathering underlying data to understand the complete impact of the allision and its aftermath on the State and the public.

January 1, 2025 Report

Assistant Counsel continued to represent the State in all aspects of the Limitation Action. On November 7, 2024, the Court issued a Case Management Order providing that the Limitation Action will proceed in a "Phase 1" period confining the Court's determinations to those necessary to resolving whether the DALI's owner and operator are entitled to exoneration from or limitation of liability. The parties have begun the discovery process, and during December, Assistant Counsel assisted with the State's responses to discovery requests served by the Vessel Interests.

The Assistant Counsel also continued the activities discussed in our prior reports, including further developing the factual record, and gathering underlying data to understand the complete impact of the allision and its aftermath on the State and the public.

December 1, 2024 Report

Assistant Counsel continued to represent the State in all aspects of the Limitation Action, including during the October 29, 2024 court conference. On November 7, 2024, the Court issued a Case Management Order providing that the Limitation Action will proceed in a "Phase 1" period confining the Court's determinations to those necessary to resolving whether the DALI's owner and operator are entitled to exoneration from or limitation of liability. The parties have begun the discovery process.

Assistant Counsel also continued the activities discussed in our prior reports, including further developing the factual record, and gathering underlying data to understand the complete impact of the allision and its aftermath on the State and the public.

November 1, 2024 Report

On September 23, 2024, the State filed the Answer and Claim by the State of Maryland, the Maryland Transportation Authority, the Maryland Port Administration, and the Maryland Department of the Environment, in the Limitation Action pending in the U.S. District Court for the District of Maryland. Through its Claim, the State intends to hold accountable the DALI interests and their insurers for the DALI's gross negligence in destroying the Key Bridge, killing six Marylanders, and causing significant damage to the State, our citizens, and our economy. The State asserts claims under maritime law,

including but not limited to negligence, unseaworthiness, gross negligence, punitive damages, and public nuisance. The State also asserts several state and federal environmental claims and breach of maritime contract related to MPA's Tariff.

Assistant Counsel has represented the State in all aspects of the Limitation Action, and has coordinated with other parties in response to certain orders issued by Judge Bedar. Counsel for the State attended oral argument on a motion filed by certain claimants on October 1, as well as a scheduling and status conference on October 29, 2024.

The Assistant Counsel also continued the activities discussed in our prior reports, including further developing the factual record, and gathering underlying data to understand the complete impact of the allision and its aftermath on the State and the public.

October 1, 2024 Report

On September 23, 2024, the State filed the Answer and Claim by the State of Maryland, the Maryland Transportation Authority, the Maryland Port Administration, and the Maryland Department of the Environment, in the Limitation Action pending in the U.S. District Court for the District of Maryland. Through its Claim, the State intends to hold accountable the DALI interests and their insurers for the DALI's gross negligence in destroying the Key Bridge, killing six Marylanders, and causing significant damage to the State, our citizens, and our economy. The State asserts claims under maritime law, including but not limited to negligence, unseaworthiness, gross negligence, punitive damages, and public nuisance. The State also asserts several state and federal environmental claims and breach of maritime contract related to MPA's Tariff.

The Assistant Counsel also continued the activities discussed in our prior reports, including conducting inspections and further developing the factual record, and gathering underlying data to understand the complete impact of the allision and its aftermath on the State and the public.

September 1, 2024 Report

During August 2024, the Assistant Counsel continued the activities discussed in our prior reports. Assistant Counsel continues to develop the factual record and underlying data to understand the complete impact of the allision and its aftermath on the State and the public.

August 1, 2024 Report

During July 2024, the Assistant Counsel continued the activities discussed in the below July 1, 2024 Report, including with regard to the preservation of evidence and electrical testing of the ship. Assistant Counsel continues to develop the factual record and underlying data to understand the complete impact of the allision and its aftermath on the State and the public.

July 1, 2024 Report

Background about the Francis Scott Key Bridge Litigation

On March 26, 2024, a container ship, M/V Dali, allided with the Key Bridge, resulting in its collapse. Eight construction workers were on the Key Bridge at the time, six of whom were killed and two of whom were injured. The shipping channel was blocked, and all ship traffic was halted to/from that portion of the Port of Baltimore that is located northwest of the former Key Bridge and encompassing the majority of marine terminals. Clearing the federal channel took approximately ten weeks, and the Port was only able to begin accepting deep draft vessels starting on approximately June 9, 2024.

The State of Maryland and numerous Federal agencies, such as the National Transportation Safety Board (NTSB), the US Army Corps of Engineers (USACE), the US Navy (USN), and the US Coast Guard (USCG), were immediately mobilized in response to the Key Bridge's collapse. The efforts made by the State and our sister agencies have been nothing short of herculean.

Sadly, the collapse of the Key bridge has caused tremendous damages to the people and the State of Maryland, including many of the State's agencies and departments, including but not limited to:

- Maryland Department of Transportation (MDOT)
- Maryland Transportation Authority (MDTA), the Key Bridge's owner and operator
- Maryland Port Administration (MPA)
- State Highway Administration (SHA)
- Maryland Department of Labor (MDOL)
- State Treasurer's Office (STO)
- Board of Public Works (BPW)
- Maryland Department of Emergency Management (MDEM)
- Maryland Insurance Administration (MIA)
- Department of Commerce (COMM)
- Department of Natural Resources (DNR)
- Department of the Environment (MDE)
- Maryland Environmental Service
- Department of Budget and Management
- Maryland State Police (MSP)
- Maryland Lottery and Gaming (MLGCA)
- Department of Human Services (DHS)

The Attorney General intends to identify and hold accountable the parties responsible for the Key Bridge collapse and to recover compensation for the damages and

other harms suffered by the State. As discussed below, activities to recover for the State's damages are already underway.

Search for and Retention of Assistant Counsel

The Office of the Attorney General (OAG) has experienced, specialized counsel who represents the State and its agencies in large and small matters every day. However, under State Government Code, §6-105(b), the Attorney General may, with the Governor's approval, retain assistant counsel to represent the State in "extraordinary" or "unforeseen" cases or other matters. The Attorney General determined that the Key Bridge collapse was an extraordinary and unforeseen matter that called for the retention of assistant counsel. By letter dated March 28, 2024, Governor Moore approved the Attorney General's request to retain assistant counsel for the purposes of the Bridge disaster.

After receiving the Governor's approval to retain Assistant Counsel on March 28, 2024, the OAG issued a Request for Proposals (RFP) on April 5, 2024, with a April 27, 2024 response deadline. The RFP was widely distributed by posting on the RFP page of the OAG website, and by email to 23,660 people subscribed to the RFP email list, 27 attorneys/firms that requested to receive notice of bridge-related RFPs, 24 attorneys/firms identified from the MDOT Directory of Certified Firms, and 10 minority bar/legal associations and organizations.

The OAG received 34 proposals, 14 of which proposed joint ventures of multiple firms, involving a total of 63 firms. After narrowing the field, the OAG conducted interviews of six firms/joint ventures on April 22, 2024. The OAG then recommended for approval to the Board of Public Works a joint venture composed of the five law firms to serve as assistant counsel for Key Bridge-related litigation with compensation under a contingent fee arrangement. The five law firms the OAG selected to serve as assistant counsel, are:

Kelley Drye & Warren LLP, Houston TX
Liskow & Lewis APLC, Houston TX
Downs Ward Bender Herzog & Kintigh PA, Hunt Valley MD
The Lanier Law Firm, New York NY
Partridge LLC, New Orleans LA

These Assistant Counsel are now working with the OAG to undertake a variety of actions designed to best protect the State of Maryland and the public at large.

Limitation Action

On April 1, 2024, Grace Ocean Private Limited and Synergy Marine PTE Ltd., the owner and manager of the M/V Dali, respectively, filed a Petition for Exoneration From or Limitation of Liability in the U.S. District Court for the District of Maryland, which has been assigned to Judge James K. Bredar. *See In the Matter of the Petition of Grace Ocean Private Limited et al for Exoneration from or Limitation of Liability*, Case No. 1:24-cv-00941 (D. Md.) (Limitation Action).

The Limitation Action seeks to limit Grace Ocean's and Synergy Marine's damages under the Limitation of Liability Act, 46 U.S.C. § 30501, *et seq.*, and Supplemental Rule F of the Federal Rules of Civil Procedure to either the vessel's value or the owner's interest in the vessel and pending freight. Among other things, the Limitation Action also prevents lawsuits concerning the Key Bridge disaster from being filed in any other court. Under the applicable schedule set by Judge Bredar, the deadline to file claims related to the disaster is September 24, 2024. The Assistant Counsel is closely tracking developments in the Limitation Action and is advising the senior OAG staff concerning those developments.

Protecting the State's Interests

A detailed report on the steps being taken by the OAG and Assistant Counsel to protect the State's interests in pending litigation would be inappropriate, but at these early stages, we can report that Assistant Counsel and the OAG have together:

- Assembled a team of leading maritime and engineering experts and pushed for the experts to be given access to the Dali for multiple inspections. These inspections and investigations are ongoing.
- Acted to protect and preserve evidence on the Dali and our ability to obtain deposition testimony from the crew at an agreed-upon location;
- Investigated and retained experts in a variety of other fields that will be necessary to develop and prosecute the State's case against the responsible parties;
- Begun the process of developing the factual record and underlying data to understand the complete impact of this tragic event on the State and the public.