Assigning Liability In Key Bridge Collapse May Be Challenging

By **Clay Robbins** (April 19, 2024)


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In the early morning hours of March 26, the massive cargo ship Dali collided with a support pillar of the nearly 50-year-old Francis Scott Key Bridge in Baltimore, triggering a catastrophic collapse. The ship is owned by Grace Ocean Pte. Ltd. and operated by Synergy Marine Group, and was time-chartered to Danish shipping and logistics giant Maersk.

The collapse of the steel truss bridge sent multiple vehicles and people into the Patapsco River. Six construction workers with Brawner Builders Inc., who were working to fill potholes in the middle of the bridge when the collision occurred, died in the collapse.

Federal investigators from the National Transportation Safety Board and other agencies have launched a multipronged investigation. Accident investigators will be digging into the vessel's maintenance and safety history and its operational protocols, as well as the design, maintenance and overall structural integrity of the Key Bridge.

The investigators, and attorneys for those with claims stemming from the collision, will also likely focus on known deficiencies in the design of the bridge. But holding either private or governmental entities responsible for damages related to the incident will be challenging under applicable state and federal laws.

Background

According to reports, the crew of the Dali issued a distress signal, noting catastrophic loss of power moments before the 984-foot cargo ship collided with the bridge. Video footage of the incident shows that internal and upper deck lights on the bridge of the ship flickered on and off at least twice before the collision, which suggests a sudden loss of power that was restarted with the activation of the ship's onboard emergency generator.

Propulsion, however, could not be reestablished. Investigation has recently identified potential electrical malfunctions as causally related to the loss of power. Concerns have also been raised about the possibility of fuel contamination, which may explain the sudden loss of power and mechanical failure.

A previous inspection conducted last year noted issues with the ship's propulsion and auxiliary machinery, specifically related to thermometers and gauges. Nevertheless, at approximately 1 a.m. on March 26, the cargo ship departed from its berth in Baltimore Harbor, bound for Sri Lanka.

Officials from the Federal Bureau of Investigation have determined that no credible evidence exists to suggest the incident was, in any way, caused by terrorism.

An inspection of the bridge last year found that it was in fair condition. The bridge was known to be "fracture critical," which means it was built without redundancy and was known to be subject to collapse upon substantial impact.

Such a collapse could be expected to affect the entirety of the bridge, or only a portion. The

Key Bridge is one of 17,400 fracture critical bridges in use in the U.S., out of a total of 615,000 bridges currently in use.

Potential Liability of the Ship's Owner and Manager

On April 1, Grace Ocean and Synergy Marine filed a petition in the U.S. District Court for the District of Maryland, seeking to limit their potential liability for the damages caused by this disaster. The petition was filed under the authority of Title 46 of the U.S. Code, Section 30505, known as the Limitation of Liability Act.

That federal statute allows a ship's owner and manager to ask a federal court to limit their financial responsibility for a maritime loss to the post-accident value of the vessel, plus the value of its freight. Grace Ocean and Synergy Marine have asked that their potential responsibility be capped at approximately $43.6 million.

The court filing estimates that the vessel itself is valued at up to $90 million, and was owed more than $1.1 million in income from freight. The estimate also deducts two major expenses: at least $28 million in repair costs and at least $19 million in salvage costs.

The Limitation of Liability Act allows for such limitations if, and only if, it can be shown that the ship's owner and manager are not in any way at fault in this maritime loss.

The Key Bridge's collapse has not only cost six lives, but it has also resulted in severe economic costs. The closure of the Port of Baltimore alone will potentially cost the local economy hundreds of millions of dollars in lost labor. Moreover, rebuilding the bridge is estimated to be a colossal financial undertaking, with costs potentially exceeding $800 million.

Total potential losses stemming from all claims arising from this incident could exceed $4 billion. By filing the petition, the owners could, if successful, insulate themselves from most of the financial responsibility arising from this disaster.

Claimants' inquiries into the liability of the ship's owner and manager will therefore focus on whether the owner and manager had any knowledge of, or involvement in, the issues revolving around the mechanical failures that ultimately resulted in the ship colliding with one of the pillars of the Key Bridge. If so, claimants may be able to defeat the efforts to cap the owner's and manager's liability under the act.

Potential Liability of Entities Responsible for the Bridge

As noted, investigators and claimants' attorneys will likely focus their liability inquiries on the known structural design deficiencies of the Key Bridge itself. The bridge was constructed in such a way that it is susceptible to catastrophic collapse in the event one of its support features sustains a high-magnitude impact.

The size and tonnage of cargo ships has grown dramatically since the bridge was designed and constructed. So the possibility of a large, container-filled ship coming into contact with one of the bridge's support piers could hardly be said to have been unforeseeable in the past few decades.

Possible engineering modifications to the design of the Key Bridge have been well-understood for some time. The availability of these modifications will be evaluated, as will the availability of protective measures, such as artificial islands to buttress the bridge's piers.

Holding any governmental entity legally responsible for damages associated with the bridge's faulty design, or the failure to adopt preventative modifications, will be challenging, due to Maryland's legislative limitations and immunities on liability for governmental acts associated with conditions of public works that give rise to incidents such as this. Also, governmental liability in Maryland is limited to $400,000 per claim.

As to the potential liability of nongovernmental entities involved in the design, construction and maintenance of the Key Bridge, Maryland has a statute of repose that relieves architects, contractors and engineers from liability for damages caused by catastrophic construction design defects. Such claims cannot be brought against those individuals if the loss occurs more than 10 years after substantial completion of the structure.

All claims for damages caused by construction defects are extinguished in Maryland after 20 years following substantial completion of the construction. Efforts will be directed toward identifying those involved in the periodic inspections that were undertaken concerning the Key Bridge, in an effort to present a viable claim against responsible parties related to errors and omissions in the maintenance and inspection of the structural integrity of the bridge and its component parts.

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