

W. DOUGLAS EASTON  
BRIAN W. EASTON  
MATTHEW D. EASTON  
TRAVIS R. EASTON  
GABRIEL M. MENDOZA  
BRENDA COLEMAN  
STEVEN M. DOMINGUEZ

**EASTON & EASTON**  
A PERSONAL INJURY LAW FIRM

650 TOWN CENTER DRIVE  
SUITE 1850  
COSTA MESA, CALIFORNIA 92626

TELEPHONE (714) 850-4590  
FACSIMILE (714) 850-1978  
EMAIL [info@eastonlawfirm.com](mailto:info@eastonlawfirm.com)  
WEBSITE [www.eastonlawfirm.com](http://www.eastonlawfirm.com)

[deaston@eastonlawfirm.com](mailto:deaston@eastonlawfirm.com)  
[beaston@eastonlawfirm.com](mailto:beaston@eastonlawfirm.com)  
[mdeaston@eastonlawfirm.com](mailto:mdeaston@eastonlawfirm.com)  
[teaston@eastonlawfirm.com](mailto:teaston@eastonlawfirm.com)  
[gmendoza@eastonlawfirm.com](mailto:gmendoza@eastonlawfirm.com)  
[bcoleman@eastonlawfirm.com](mailto:bcoleman@eastonlawfirm.com)

December 3, 2019

Friedenthal, Heffernan & Brown, LLP  
ATTN: Daniel R. Friedenthal, Esq.  
Kevin N. Heffernan, Esq.  
215 N. Marengo Ave., Suite 165  
Pasadena, CA 91101  
(626) 628-2802  
(626) 628-2828 [FAX]  
[dfriedenthal@fhblawyers.com](mailto:dfriedenthal@fhblawyers.com)  
[kheffernan@fhblawyers.com](mailto:kheffernan@fhblawyers.com)

The Hartford  
ATTN: Charles J. Kraemer  
3655 North Point Parkway, Suite 500  
Alpharetta, GA 30005  
(678) 597-4613  
(678) 597-4613 [FAX]  
[charles.kraemer@thehartford.com](mailto:charles.kraemer@thehartford.com)

Clearview Law  
ATTN: Shannon Gallagher  
507 E. 1<sup>st</sup> Street Suite E  
Tustin, CA 92780  
(949) 955-2880  
[sgallagher@clearviewlaw.com](mailto:sgallagher@clearviewlaw.com)

Re:	Our client:	Maynard Poynter
	Your Insured:	Catalina Sea Ranch
	Your claim number:	BDG-3025502-01-01
	Date of accident:	01/03/2019

Dear Mr. Friedenthal, Mr. Heffernan, Mr. Kraemer, and Ms. Gallagher:

As you know, this firm represents the Poynter family who tragically lost their patriarch — devoted husband and loving father, Maynard Poynter — to an entirely avoidable drowning accident on the Catalina Sea Ranch (CSR) facility on January 3, 2019. As you will gather from the facts set forth herein (if not already known), this incident and Maynard's untimely death would not have occurred if CSR had taken appropriate action when they learned on December 17, 2018

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

---

(16 days before this incident) that one of their anchored lines had broken. Unfortunately, they failed to timely repair or cut the line to ensure it could not become a hazard to recreational boaters in the area, ultimately allowing the line to entangle and capsize Maynard's boat, causing his tragic drowning during the ensuing hour before rescuers could arrive.

The basic facts of this incident are indisputable:

1. CSR operated a submerged muscle farm structure anchored into the San Pedro Sea Shelf pursuant to their permit with the Army Corps of Engineers under the Outer Continental Shelf Lands Act (OCSLA).
2. CSR was required to keep all anchored lines and muscle farm lines at least 20 feet submerged below the ocean surface pursuant to their permit with the Army Corps of Engineers for the safety of recreational boaters.
3. CSR knew that recreational boaters frequented the CSR facility for fishing and other purposes (including over 200 boats on a single Sunday several weeks before this incident) and the CEO of CSR actively invited the Southern California fishing community to come out and fish on top of the CSR facility prior to this incident, calling it "the hottest fishing spot in Southern California."
4. CSR knew at least 16 days before this incident by their own admission that the subject line had broken and failed to immediately repair the line or cut the line so that it would remain 20 feet below the surface, choosing instead the easiest, cheapest, and least secure response of simply tying the excess line to a nearby buoy.
5. Had CSR simply cut the broken line at least 20 feet below the ocean surface, Maynard's boat would not have capsized on January 3, 2019 and he would still be alive with his family today.
6. Even after this incident and in the face of a tragic death on their property due to their negligence, CSR failed to take any appropriate action to cut the line and prevent further injury in the 10 days after this incident, such that the line had to be cut by investigators on January 13, 2019 when CSR failed to do so.

From these basic, indisputable facts, certain conclusions are obvious (and set forth in greater detail below). First, liability in this matter is clear and incontestable. Second, CSR's negligent conduct before this incident and continued reckless disregard for the safety of the public after this incident as they refused to cut the line evidences a persistent effort to place profits over safety, such that punitive damages will be necessary to deter future such conduct. And lastly, because the CSR facility is anchored/embedded into the sea floor pursuant to a permit from the Army Corps of Engineers (which derives its authority from the Outer Continental Shelf Lands

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

Act), the OCSLA holds that California law will apply to this incident and the Death on the High Seas Act is inapplicable.

As such, CSR will be liable to the Poynter family for the full wrongful death damages they have suffered with the loss of Maynard pursuant to California law (and not limited to pecuniary damages by DOHSA), which damages are set forth in detail below amounting to more than \$10,000,000. Accordingly, **the Poynter family submits the following information and documentation to support an offer to jointly settle their wrongful death claims against the Catalina Sea Ranch for \$10,000,000**, as set forth at the end of this letter. This offer will remain open for 30 days.

### **FACTS OF THE INCIDENT**

This accident occurred on January 3, 2019, when Maynard (age 70), father of 4 and devoted husband, was fishing on the boat of his friend Tracey Marc Haase. It was a clear, sunny, beautiful day as the two men spent the morning fishing over the Catalina Sea Ranch (CSR) muscle farm. After some time, the two began motoring toward a new location, at which time Mr. Haase's boat suddenly jolted to a stop as one of the two propellers became entangled by one of CSR's broken lines that was anchored to the ocean floor. As the line suddenly and unexpectedly wrapped around the propeller, the rear of the boat was immediately pulled underwater and the boat capsized within a matter of seconds. As the 25-foot boat flipped over, Maynard and Mr. Haase were both thrown into the 56-degree water. A photograph of the overturned boat is shown below (further photographs depicting the scene of the incident are attached as Exhibit 1).



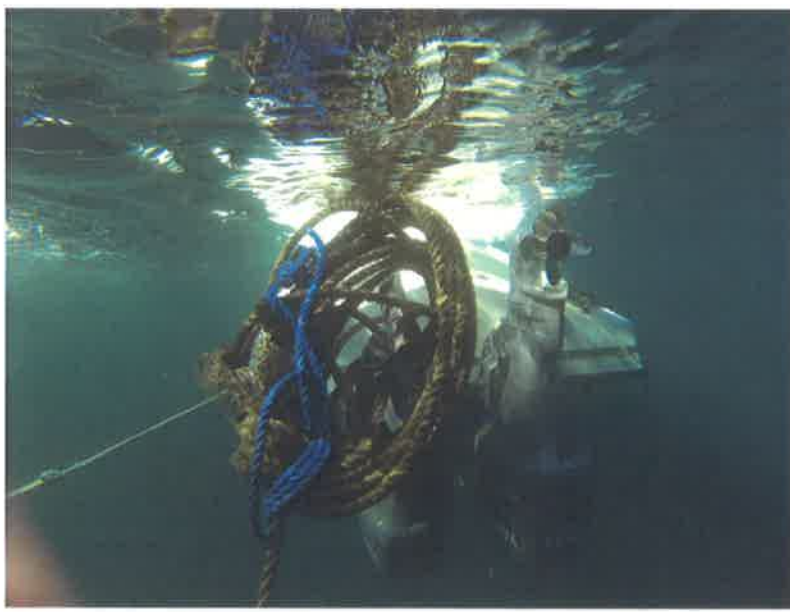
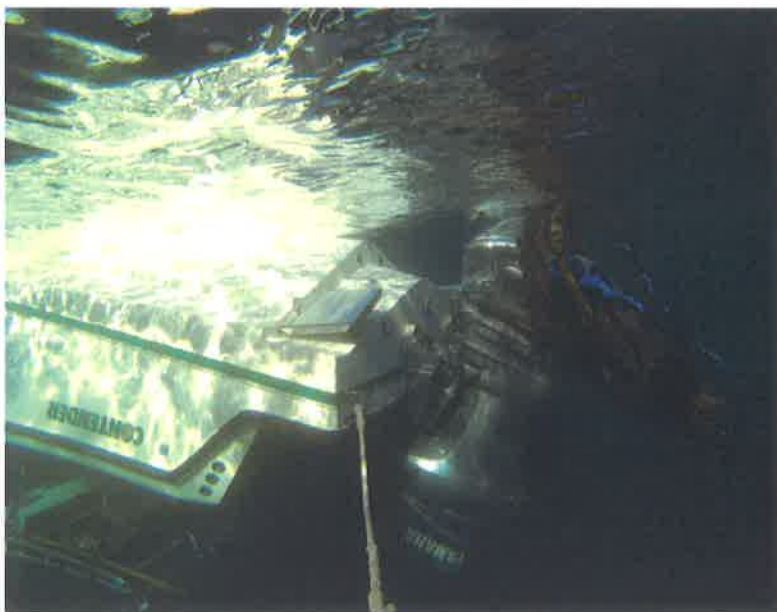
Photo  
Courtesy of  
OC Sheriff

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

Mr. Hasse was able to climb onto the overturned hull of the boat and survive. Unfortunately, Maynard was unable to climb onto the hull and had to remain in the 56-degree water for more than an hour before rescue arrived. By the time help reached the capsized boat, Maynard had stopped breathing and was suffering from hypothermia and cardiac arrest. Rescue personnel provided CPR and other life-saving measures, but Maynard never regained consciousness and officially died later that day. A copy of Maynard's autopsy is attached as Exhibit 2 showing his cause of death as "drowning."

### **LIABILITY**

The cause of this accident is not in dispute. Maynard's boat was suddenly capsized due to a broken CSR line that was still tethered to the sea floor and had wrapped around the boat's right propeller, as shown in the photos below:



The Sherriff's Vessel Accident Report and the incident photographs of the CSR line wrapped around the outboard propeller of the boat clearly establish the sole cause of this incident — that Maynard's boat capsized because one of the propellers became entangled in a broken CSR line that was still tethered to the sea floor. **Note the taut nature of the tethered line that pulled the rear of the boat under water in the above photographs.** This broken line was part of the underwater ranch facility constructed by CSR. Further photographs of the broken line wrapped

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

around the boat and showing portions of the line after it was cut by authorities are attached as Exhibit 3.

According to the plans and specifications of the CSR facility, this broken line was supposed to be anchored to the ocean floor on each side of the line by a 15-foot auger drilled into the bottom of the ocean floor at a depth of about 150 feet. The lines were intended to be anchored **20 feet below the surface**, which was a requirement of the approval process through the Army Corps of Engineers. In fact, part of the approval process that allowed the Army Corps of Engineers to approve the operation of the CSR was **a promise that the lines would remain 20 feet below the surface at all times and not obstruct boat or surface traffic**. **If CSR had fulfilled its promise to the Army Corps of Engineers, then Maynard would still be with us today.**

The heartbreaking nature of this tragic event is that Maynard's death could have easily been prevented. CSR had actual notice of the broken line on **December 17, 2018**. **This means that over 2 weeks elapsed where CSR could have repaired the known broken line that was anchored to the seabed floor** or simply cut it off below the surface so that no watercraft could come in contact with the broken line. Unfortunately, CSR put profit over safety and failed to take appropriate action to ensure that the known broken line did not present a hazard to boaters lawfully and permissibly travelling over the CSR muscle farm. These facts are clear and undisputed by the admissions of CSR's Operation Manager to investigators, as indicated in the Vessel Accident Report:

**"[Matt Grant], who is the Ranch Operation Manager with the CSR [stated] [...] line #34 parted in December and was found and logged as broken on December 17th. Mr. Grant did not know why line #34 parted during mid-December.** Mr. Grant said about the same time, one of the cranes on their maintenance boat broke and needed to be repaired. They were unable to use the cranes to fix line #34 so they secured the lines as best as they could. Mr. Grant said line #34 parted about 100' into the 600' section from the west end. **There was an approximately 400' section and 800' section of broken line that needed to be spliced back together.** Mr. Grant said the anchor points between the east and west side crisscross on the bottom of the ocean. Mr. Grant said they coiled up the approximately 400' section and tied it off with a green or blue line and secured it to a west side line to keep it out of the way. Mr. Grant said they also attached a black buoy on it.

**Mr. Grant said the CSR's procedure on how they secure unfixable broken lines has changes since the accident.** If they have an uneven break in a line and they are unable to fix it, they will take the short end down to about 40' and secure the line below the surface to avoid any accidents. **In additions, signs were added to the four yellow buoys that mark the four corners of the CSR.**

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

**The signs say, 'Danger, underwater ropes and floats' on the side and, 'Danger, enter at your own risk' on the other"**

A courtesy copy of the Sherriff's Vessel Accident Report is attached hereto as Exhibit 4 for your reference.

Accordingly, CSR had 16 days to (1) simply cut the dangerous tethered broken line at least 20-40 feet below the surface to ensure it was submerged below the path of a propeller, (2) repair their inoperable crane so they could promptly repair the broken line, (3) find a replacement crane (temporary or otherwise) to repair the broken line, or (4) tie the broken line off at least 20 feet below the surface in a manner that they were certain would not break free. Unfortunately, CSR did none of these things and it appears quite clear (and will be alleged in our Complaint) that CSR failed to take any of the above actions because it was placing profit over safety. Despite the risk presented by simply tying the line off as they did before this incident, CSR made a conscious decision not to cut the line in order to save money, time and energy so that a splice of that line could occur later.

Just as CSR's negligent response to the broken line in the 16 days before this incident clearly evidences their liability in this matter, **their continued lack of remedy or response to the broken line in the 10 days after this incident further evidences their conscious and reckless disregard for the safety of the public throughout this incident.** As you will note in the attached Vessel Accident Report, the investigating officer returned to the scene of the incident on January 13, 2019 (10 days later) to observe the scene. Officer Baugh was motoring very slowly and inspecting the scene, yet his boat almost ran over the same broken line that had capsized Maynard's boat 10 days earlier. **Whatever action (or lack thereof) taken by CSR in the 10 days after this incident had once again been recklessly inadequate, as they placed profits over safety and failed to take the one action that would ensure the safety of the public — cutting the line well below the surface.** Recognizing that this line continued to present a significant hazard to the public and that CSR seemed incapable of taking appropriate safety measures of their own accord, Officer Baugh took matters into his own hands and dove down to cut the broken line at least 30 feet below the ocean surface so that it could not come in contact with the propeller of another boat. When CSR's negligent failure to safely secure the broken line before this incident is coupled with their continued reckless disregard to protect the public from this same deadly broken line in the 10 days after this incident, we believe it becomes clear that **CSR placed profits over human safety and an award of punitive damages will be necessary to deter future such conduct (as set forth in more detail at the end of this Demand Package).**

While it appears that CSR has now installed warning signs at the entrance to the muscle farm, seeming to discourage fishing over the facility and warn of the underwater lines, such was not the case at the time of this incident. To the contrary, CSR actively encouraged persons like Maynard to fish on its ranch and above its structure for its own pecuniary gain and provided no

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

---

warnings to the fishermen regarding the underwater lines or any concerns they might present. In fact, less than two months before this incident, Phil Cruver (CEO and Founder of CSR) boasted in an interview on the Dr. Gundry Podcast on November 10, 2018 that the Sea Ranch was **“the hottest fishing spot in Southern California,”** stating:

Mr. Cruver: Right now, Catalina Sea Ranch is the hottest fishing spot in Southern California.... Three Sundays ago, I went out there on a Sunday cause I kinda keep an eye on things, and there was over 200 recreational fishing boats on top of the ranch.

Q: What are they doing there? Isn't there a sign saying, “Catalina Sea Ranch – Keep Out”?

Mr. Cruver: **No. No, we welcome them!** We welcome them cause the recreational fishing industry is in the billions of dollars and we want support for our expansion! So, I go out there and say, “Hey, write a letter of support for us. This is good for us. It's attracting fish.”

After touting the appeal of the CSR as So Cal's hottest fishing spot and inviting all fishermen to come out and fish on top of the farm, Mr. Cruver went on to further boast regarding the safety of the CSR and ability of recreational boats to pass right over the top of the CSR without concern:

Q: Big ships and things, you don't have to worry about them?

Mr. Cruver: Well, we're right outside the two largest ports in the United States – the port of L.A. and the port of Long Beach. . . . So, the transit lines for these big ships, which have a keel of 40 – 50 feet deep, well they would tear everything up. But why we're lucky is the shipping lanes are outside. . . .

But, for the commercial fisherman, the recreational fisherman, we're not in the way of people going to Catalina like that, **they don't have to go around us and so forth, they go right over the top of us, it doesn't hurt us.** We lose a couple floats every once in a while, that's all. . . .

A link to this video excerpt can be found here:

<https://us.workplace.datto.com/filelink/50186-219fb654-7946c74fe4-2>

The entire interview of Mr. Cruver on the Dr. Gundry Podcast can be found on YouTube at the following link if interested: <https://www.youtube.com/watch?v=8ISTer1NiZI&feature=youtu.be>.

Mr. Cruver invites the fishing community out to fish on top of the CSR because he wants their support for expanding his business and boasts that the boats can driver right over the top of



Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

---

the CSR without danger or fear of damaging the CSR or being damaged by the CSR. Unfortunately for Maynard and his family, Mr. Cruver made these assertions to the public while also trying to save costs and failing to ensure that all of their tethered lines were kept at the required 20 feet below the ocean surface, as he had promised the Army Corps of Engineers. This failure constitutes negligence and also malicious conduct.

Subsequent to this incident, CSR has recognized that their property is not as safe for boats to pass over as they previously believed, as evidenced by the meager, self-serving remedy of posting 4 small warning signs essentially stating: “Danger – Enter At Your Own Risk.” Of course, if CSR acted reasonably and fulfilled the requirements they agreed to with the Army Corps of Engineers at the time they were given approval to embed their lines into the sea floor, these warning signs would not be necessary — rather, they would take the steps necessary to ensure their lines remained 20 feet below the surface, away from the propellers of any fishing or other leisure boats in the area, as they had initially promised.

Regardless of the lackluster response by CSR to ensure an incident like this does not occur again, the facts of this incident are undisputed and clearly evidence that CSR bears sole and complete responsibility for this tragic incident. Accordingly, CSR is liable to the Poynter family for all of the damages that they have suffered as a result of the wrongful death of Maynard Poynter, as set forth below.

### **APPLICABLE LAW TO DETERMINE DAMAGES**

Recognizing that liability in this matter is clear and incontestable, it is not surprising (but disappointing nonetheless) that CSR has attempted to limit the Poynter family’s damages with the application of inapplicable maritime law. As is set forth below, the Death on the High Seas Act (DOHSA) does not apply to this case because of the nature of the CSR farm structure embedded into the sea floor, such that CSR will be liable for the full wrongful death damages owed to the Poynter family under California law.

### ***DEATH ON THE HIGH SEAS ACT (DOSHA) DOES NOT APPLY***

Simply put, because CSR built their facility using Augers and lines embedded into the sea floor, California law rather than Federal law applies to Maynard’s death. The Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. § 1333, applies to anything embedded into the seabed floor. **When OCSLA applies, then state damage rules apply to any injury or death, and the federal DOSHA damage limitation does not.** (*Rodrigue v. Aetna Cas. & Sur. Co.*, (1969) 395 U.S. 352). Under OCSLA, the law of adjacent states is applied to structures and facilities that are permanently and/or temporarily embedded into the seabed. The OCSLA states:



Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, **and all installations and other devices permanently or temporarily attached to the seabed**, which may be erected thereon **for the purpose of** exploring for, developing, or **producing resources therefrom**, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State.

To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, **the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf**, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

The purpose of the OCSLA was to define a body of law applicable to the seabed, the subsoil, and fixed structures in the outer continental shelf. (*Rodrigue v. Aetna Cas. & Sur. Co.*, (1969) 395 U.S. 352) **As such, the OCSLA has regularly applied to accidents or wrongful deaths that arise, or take place, on oil rigs, its platforms, pipelines, legs, and any structure attached to the seabed.** (*Id.*) This is due to the fact that these offshore structures are closely tied to the adjacent state, where the families of the workers live and commute, and where the production of the materials are regularly transported to. (*Id.* at 355) When the OCSLA applies, the adjacent State laws are “borrowed” for the structure. As such, a man injured or killed on a facility subject to the OCSLA (e.g. on an oil rig platform or on CSR’s offshore structure) will apply adjacent state law.

The OCSLA applies here for three primary reasons: (1) Maynard’s death took place on CSR’s offshore structure, which is “permanently or temporarily attached to the seabed” and is similar to an offshore oil facility where Courts had determines that OCSLA always applies; (2) If it were not for the OCSLA, CSR would not have been able to construct its offshore structure; and (3) the Death on High Seas Act does not apply to accidents that occur on structures permanently or temporarily attached to the seabed.

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

**1. CSR's offshore facility, where Maynard's death took place, was embedded into the seabed, which triggers the application of the OCSLA**

CSR's offshore structure is constructed off the coast of California and is a self-proclaimed "aquaculture facility." The operation of the CSR is quite novel. In its simplest terms, the CSR is an offshore ranch constructed to grow mussels and crops. These mussels and crops are then distributed across California and even across the country. It is the first of its kind. The plan of operation for CSR was to construct a 100-acre farm that utilized 40 longlines. A complete description of CSR's plan is shown in the following excerpt from the permit CSR had to apply for from the U.S. Army Corps of Engineers (a copy of this permit is attached as Exhibit 5).

Revised Project Description-

The Project area will be developed with 40 longlines on 100 acres (see figures below). The longlines are 689 feet in length spaced 100 feet apart and anchored on each side to the ocean floor in depths of approximately 110 to 150 feet. Buoys will suspend the backbone longline about 20 feet under the water surface which will have a series of hanging nets containing shellfish and ropes with attached mussels and kelp. Each longline will be marked with a support buoy. In addition, the four corners of the 100-acre site will be marked with Coast Guard-approved lighted anchor buoys.

Longline Backbone Components:  
750 feet of 1-inch-thick poly-blue steel rope  
28 - 16 inch polyethylene floats  
Oyster Longlines will suspend 60 5-level lantern nets  
Mussel Longlines consist of 1,800 feet of looped fuzzy rope

Each longline will have two (2) anchors with one (1) anchor attached at each end of the longline backbone which will be submerged approximately 20 feet below the surface in ocean depths of about 150 feet. The applicant intends to deploy an anchor design from Hafbor EHF, Siglufjörður, Iceland, a firm with worldwide ocean floor anchor installation experience. Each anchor is comprised of a 12-foot long steel shaft with an approximately one square foot helical screw plate which is rotated into the seafloor using a video controlled, rotary hydraulic jig. Disturbance of the sea floor would be negligible since the only protrusion is the eye attached to the top end of the shaft which protrudes only several inches from the sea floor. Contrary to many other anchoring systems, there is no disturbance from the typical 5-feet of steel chain typically attached to the eye. In this system the 1-inch diameter rope leading to the longline is attached directly to the eye. The anchors will be removed if the project is vacated. There would be no obstruction to recreational or commercial vessels since the longlines will be submerged 20 feet below the surface.

The ranch was to be constructed by anchoring 40 longlines to the seabed by attaching a 2-foot long steel shaft with a 1-square foot helical screw plate on each end. The plate would be rotated into the sea floor using a video operated rotary hydraulic machine. A photograph of the plate screws CSR utilized is shown below:

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019



*“CSR’s Anchors”*

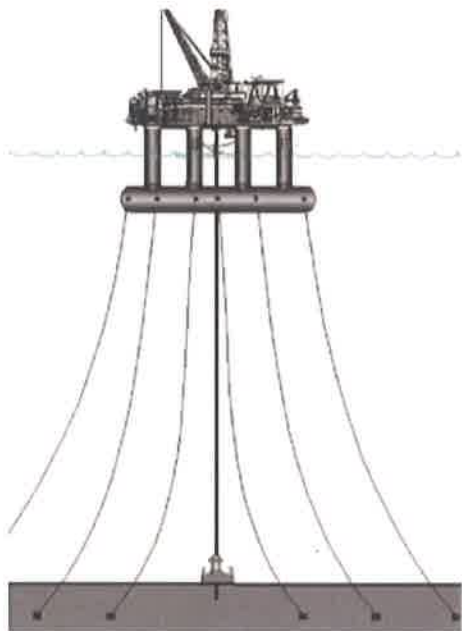
The idea to construct CSR’s offshore structure originated with Mr. Cruver from the oil rigs that were located a couple miles away from CSR’s offshore facility. In discussing the origination of the idea, Mr. Cruver indicated:

**“Mussels, after doing my homework, they grow prolifically on the oil rigs two miles away from where we have our ranch right now [...] those oil rigs are 37 years old. So I said, you know, if they are growing out here, and I know that the oil companies have to scrape the legs every year [...] it’s kind of like two and two you look at the oil rigs and say can I do them over here? And here we are!”**

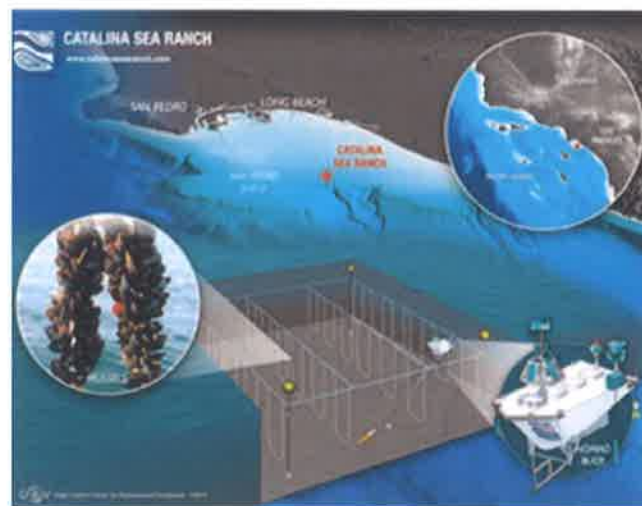
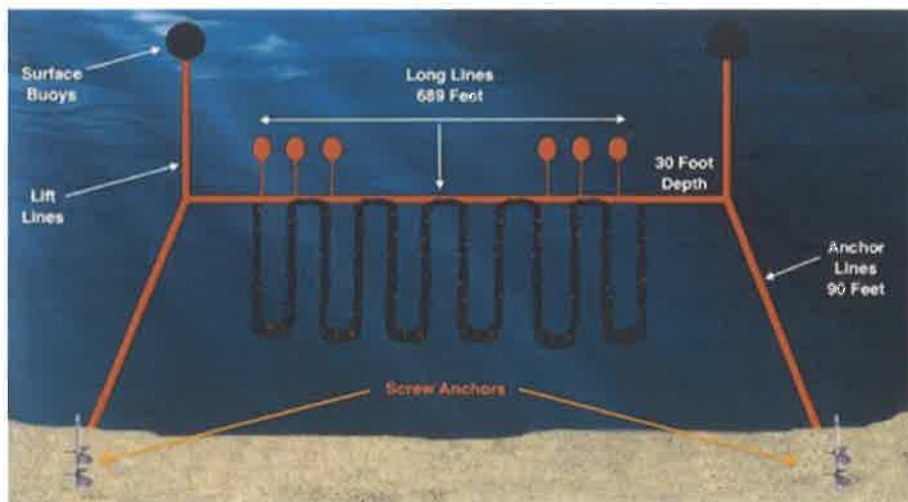
A link to this excerpt from Mr. Cruver’s interview can be found here:  
<https://us.workplace.datto.com/filelink/50186-21628a96-2aef25182f-2>

Significantly, the OCSLA is regularly applied to oil rigs, its platforms, and its extending pipelines and legs. In every practical sense, CSR’s offshore structure is “two and two” — identical to an oil rig facility (where the OCSLA applies). First, both facilities are constructed similarly. Even without Mr. Cruver’s admission that he derived the idea of his muscle farm from the oil rig structures embedded into the sea floor, the resemblances are uncanny. Both structures are permanently and/or temporarily embedded into the seabed floor — and are embedded to the seabed floor in similar ways. A variety of floating oil platforms are anchored to the seabed through mooring lines anchored to the ocean floor that are similar to CSR’s anchoring system. Photographs of an oil rig’s similar construction are shown below:

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019



Comparing the photo of CSR's Anchors on the prior page to the photo of the oil rig anchor above, it is clear they are similar in nature and function. Moreover, the similarities continue as the entire underwater structure of the anchor lines for the oil rig structure (shown above) is compared to CSR's underwater structure (shown below):



Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

---

As these photographs demonstrate, CSR's structure was designed and constructed to mimic an oil rig's platform — with mooring lines anchored to the seabed to support and keep afloat a structure above. The way that both structures are embedded to the sea floor, built, and even the body of space they occupy in the water are similar.

Second, like oil rig platforms, CSR's offshore structure is closely tied to adjacent states. Workers commute from California to CSR's offshore structure, the families of worker's live in California, and, significantly, Mr. Cruver felt that it was part of his business tactic to ensure that California fishermen came and fished in the CSR offshore facility, which he touted as the "hottest fishing spot in Southern California."

Finally, an integral part of the application of the OCSLA to offshore structures imbedded in the ground is the fact that platforms, such as oil rigs, are novel structures. (*Rodrigue, Supra*, 395 U.S. at 355) By CSR's own admission, the CSR offshore facility is a novel structure — the first of its kind.

As such, because CSR's offshore structure is attached to the seabed and shares exactly the same qualities of an oil rig structure, Maynard's death (which occurred on and due to CSR's offshore structure) is governed by the OCSLA, such that California law will apply to the wrongful death damages owed to the Poynter family.

**2. If it were not for the OCSLA, CSR would not have been able to construct its offshore facility.**

Before CSR could construct its offshore structure in the continental shelf, CSR was required to obtain a Section 10 permit from the U.S. Army Corps of Engineers. The Corps regulates placement of all aquaculture facilities in federal ocean waters. **The Corps obtains its authority to provide these permits pursuant to the OCSLA.** Congress has expressly extended the Corps' powers to regulate the construction of artificial islands and other devices on the seabed via the OCSLA. (*Alliance to Protect Nantucket Sound, Inc. v. U.S. Dept. of Army* (D. Mass. 2003) 288 F.Supp.2d 64, 75) Pursuant to this authority, all persons wishing to construct a facility in the continental shelf, such as an oil rig or CSR, were required to obtain a permit from the Corps.

It is important to note that the mandatory permit is only required for those structures that are attached to the seabed. If there is a scallop ranch or other installation that is merely floating or not attached to the seabed, then no permit from the Corps is required. However, before CSR constructed its ranching facility, it applied for a Section 10 permit from the Corps. The application outlined how the lines would be anchored to the seabed floor, the devices to be used, and the proposed location of the farm. Through its inherent powers bestowed via the OCSLA, the Corps granted the permit to CSR. **Because CSR required this permit to complete their structure and Maynard's death was caused by a tethered rope of that exact structure, California law applies to this incident, and DOHSA does not.**

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

Thus, if it were not for application of the OCSLA, CSR would have never obtained its permit and CSR's offshore structure would never have been constructed. The fact that CSR's permit and the construction of its offshore facility were absolutely dependent on the OCSLA further evidences that the OCSLA applies here and DOHSA is inapplicable. **Thus, the Poynter family's wrongful death damages are not limited to those under DOHSA, but rather they are entitled to all of the wrongful death damages available under the State of California.**

**3. The Death of High Seas Act does not apply where the OCSLA applies on facilities such as the ranch constructed by CSR**

Finally, the OCSLA and DOHSA do not apply simultaneously — because the OCSLA clearly applies to the CSR structure, DOHSA is therefore inapplicable. On this issue, the United States Supreme Court recently recognized that adjacent state law would apply to a wrongful death that occurred on an offshore structure. (*Parker Drilling Management Services, Ltd. v. Newton* (2019) 139 S.Ct. 1881, 1891) In *Parker*, the Court recognized that DOHSA did not apply to offshore facilities when the OCSLA applied. The Court acknowledged that DOHSA did not apply to accidents on the outer continental shelf, which left a gap for wrongful deaths. Given this gap, state law was applicable to the death that occurred on the offshore structure.

Thus, under the regulations of the OCSLA and all applicable case law, the OCSLA applies to the CSR structure and any incidents that occur on the structure, such as Maynard's wrongful death. Accordingly, the Poynter family's damages will not be limited by DOHSA to pecuniary damages, but rather they are entitled to full wrongful death damages under California law, including loss of Maynard's love, companionship, comfort, care, assistance, protection, affection society, and moral support.

**THE POYNTER FAMILY'S WRONGFUL DEATH DAMAGES**

In a wrongful death action in California, the wife and children of a deceased husband and father are entitled to recover for **the loss of the decedent's "love, companionship, comfort, care, assistance, protection, affection, society, and moral support."** (Judicial Council of California, Civil Jury Instructions 3921) The value of this loss will vary from case to case, depending on the relationship that existed between the family members before the death. "Factors such as the closeness of a family unit, the depth of their love and affection, and the character of the decedent as kind, attentive and loving are proper considerations for a jury assessing noneconomic damages..." (*Soto v. BorgWarner Morse TEC Inc.* (2015) 239 Cal.App.4th 165, 201.) As such, it is imperative for CSR to understand Maynard and the close bond he had with his family. Only in this way can one appreciate the loss that the Poynter family has suffered due to Maynard's wrongful death.



Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

---

***Who Was Maynard Poynter:***

Maynard was born on December 11, 1948 in Los Angeles. Early on in his life, Maynard's parents instilled the love of the outdoors and fishing. He loved sports and played football throughout high school. This love of sports was passed onto his children. After high school Maynard enlisted in the United States Navy where he would serve throughout the Pacific, and in the Vietnam War.

After finishing his service in the Navy, Maynard met the one love of his life, Patty. Patty lead Maynard toward the love of God, and on June 9, 1974, Maynard and Patty were married. In their 45 years of married life together, Maynard and Patty would eventually have four children together - Sean, Leah, Melissa and Adam.





Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

---

Anyone who knew Maynard would tell you that he had a heart of gold. Maynard was always the first person to talk to a stranger and make them feel welcome no matter where he was. He would help anyone in need. He loved to fish and became deeply involved in a Fishing Club called "FIB'ers," which is a Christ-centered, inter-denominational club whose objective is to create a comfortable, fun, and relaxed environment in which Christian fisherman, their families, and their guests may fish and enjoy Christian fellowship. Maynard helped and was proud to sponsor an underprivileged child from Olive Crest every year and take him or her out fishing to guide, teach and provide mentorship to these children.

Maynard was beloved by so many people that over 800 people attended his funeral and over 600 others live streamed the service all over the world. Since the loss of Maynard, his wife and children continue to be approached by friends, family, and strangers, who tell them stories of how Maynard positively impacted their lives. Maynard was a light to everybody around him but, first and foremost, he was a devoted husband and loving father to his family. Various photographs to help you understand who Maynard was are attached as Exhibit 6.

***Patty Poynter***

Patty and Maynard spent over 45 years together and were each other's best friend, life-long love, and steady supportive rock. Every single Friday, Maynard would bring Patty flowers, without exception. Frequent trips and surprise get-a-ways every year for their anniversary included going to San Diego, Arizona, Palm Springs, Hawaii, Alaska, and even a cruise to Jamaica. Maynard spent every single day with Patty, and he made her feel special every single day. The love that they had for each other is a love that everyone wishes that they can achieve.

For the past sixteen years, every Thanksgiving, Maynard and Patty would drive out to Scottsdale, Arizona to visit, their daughter Leah and her family. Keeping family close was tantamount to both Maynard and Patty. Maynard and Patty also shared a devotion to God, and for over 40 years were deeply involved in their church. This shared love of God fostered a deeper and stronger love for one another. Maynard and Patty were some of the longest active members of their Church. They served on the Marriage Couples Committee and would help plan and attend the Married Couples Retreat every year. They were an inseparable team who helped those who needed help in their relationships.

*Yours, Lord, is the greatness and the power  
and the glory and the majesty and the splendor.*

1 Chronicles 29:11

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

Every morning before they would start their day, Maynard and Patty would read the day's passage from "Our Daily Bread" – 1 Chronicles 29:11. In fact, this passage was read together on the morning of January 3, 2019 before Maynard departed to go fishing. Neither Patty nor Maynard suspected this would be the last time they would read this scripture together. Photographs of Patty and Maynard are provided below and attached as Exhibit 7:



Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

***Simply put, the tragic loss of Patty's king, guide, mentor, partner, lover, and best friend can never be replaced.***

***Sean Poynter***

Sean, age 41, was the first born of Patty and Maynard. His dad was his number one fan and cheerleader. From T-ball, through High School there was not a game, or practice that Maynard would miss. Even when Sean made the tough decision to confide in his father that he wanted to focus on basketball, and move away from the family sport, football, Sean always felt the support of his dad every step of the way. Thanks in large part to Maynard's help, Sean would go on to earn MVP for 3 years in high school. Sean hopes to pass on the lessons he learned from his father about hard work and dedication and unending devotion to his children. Unfortunately, Sean is now deprived of his dad's guidance and love.



Maynard was big on family traditions, and it has already been very hard on Sean during the few holidays he has already had without his Dad. Every Easter, Maynard and Patty would make Easter baskets, and put together plastic eggs for Easter egg hunts for all of the kids and

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

grandkids and then relate the true story of the purpose of Easter. This past Easter was the first time that Sean's father wasn't there to tell the story. Every one of Sean's birthdays he and his dad would go have lunch just the two of them for a special day together. Because CSR refused to properly cut a line on their ranch, Sean and his father are now unable to spend his birthday together.

To Sean, his father was always his teacher, friend, teammate, biggest role model and someone he could always turn to in times of need or guidance. Maynard was the man who taught Sean a hard work ethic and a never give up attitude. Maynard was not a "do as I say, not as I do" father — he taught Sean how to be a man by example. Maynard taught Sean how to love, support, and care for everyone in his life. Sean will now forever be without his father's presence, guidance, support and love. Sean and Maynard planned to go to Lambeau field this year for a Green Bay Packers game. Unfortunately, this will never happen. Additional photographs of Sean and Maynard together are attached as Exhibit 8.

### ***Leah Poynter***

Leah was 39 years old at the time of Maynard's passing. To Leah, her father was her best friend, and they spoke almost every day. Leah has lived in Arizona for the past 16 years raising her family, but she always felt an unconditional love and consistent support from her dad. Leah found out she was pregnant when she was 18 years old, and like anyone at that age, she was scared not only to tell her parents, but what the future would entail. Leah first summed up the courage to tell her Mother one day while Maynard was still at work. Still in a panic, Leah was in a rush to leave before her dad arrived home. Patty knowing the strength and love of her husband would not let Leah leave until she told her father the news.

When Maynard arrived home, Leah told him that she was expecting, and Maynard replied with the simple statement of a loving father: "I am way too young to be a grandpa." When Leah's daughter, Savannah, was born, she became the light of Maynard's life. Maynard showed the same love for Savannah as he had for all of his children. Maynard did everything in his power to make sure that Savannah had everything she needed and that she would never yearn for anything.





Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

---

Around 2003, Leah, her husband, and Savannah made the extremely tough decision to move to Arizona, away from Leah's family. Leah was worried that the distance between her and her parents would limit their ongoing relationship. To remedy the distance, as often as they could, Leah and her family would come visit her parents in California, and Maynard and Patty frequently traveled to Arizona to see their daughter.

Every year for Savannah's school breaks and vacations, Maynard and Patty would drive a little over halfway, to Blythe, to meet Leah, and to pick up Savannah for the break. Additionally, ever since Leah and her family moved to Arizona, Maynard and Patty would drive out to Arizona for Thanksgiving. This special weekend would involve donuts, chorizo and eggs, and Black Friday shopping. This Thanksgiving will be the first since Leah and her family moved to Arizona that Maynard will not be there as part of the family traditions.

Maynard showed his daughter how a man should treat a woman, and how a father should treat a daughter. Before Maynard's tragic unnecessary death, Leah relied on her father's daily love and guidance. Some might erroneously assume that family members living hundreds of miles away cannot have a strong relationship, but for Maynard and Leah the distance meant nothing — they might as well have been next door. Now, Leah must go on with her daily life, helping her family all alone without the constant love and guidance of her dad. Photographs of Leah and Maynard together are attached as Exhibit 9.

### ***Melissa O'Donnell***

Melissa, the third child of Maynard and Patty, was born in March 1982. After Melissa lost her second son, in 2009, she was in despair and Maynard was there for her. He told Melissa: "Life is short, treasure your family." These prophetic words will never be forgotten. As Melissa despaired for weeks, months, and years over the death of her son, Maynard was always her rock by her side faithfully praying, sobbing, grieving, comforting, and loving her. Maynard would call Melissa occasionally crying when his pastor would mention Jacob's birthday at a church service, or a men's retreat. In the October before Maynard's passing, he called Melissa crying saying that his pastor wanted to recognize his grandson's birthday in heaven. Melissa shared his pain and without him by her side, she would not have survived. This year will be especially hard on Melissa without her dad, since it marks 10 years since her son's passing. Words cannot describe the foundation and comfort Maynard provided to Melissa.

Melissa was fortunate in that she was able to see her father almost every single day the year before his death. Melissa and her husband had hit hard times, and like with so many others, Maynard was the first to extend a helping hand. Melissa and her husband were down to one car and without hesitation or a single complaint Maynard came every morning to pick up Melissa and her sons Kristopher and Zacchary and take them to school and work. When school and work were over, it was Maynard once again who would pick them all up and take them home. Every morning

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

Melissa and Maynard would drink their coffee together, sing along to their favorite radio station 95.9, and have meaningful deep conversations about life and God. Maynard always encouraged Melissa to do her best, provided guidance to her and her children, and made Melissa feel like she was doing something great in the world. Melissa's children have learning disabilities and Maynard's support has been priceless.



Prior to Melissa and her husband losing their car around 2016, Maynard was already picking up Kristopher and Zacchary from school every day. This was a huge help for Melissa and her husband, who were both working full time jobs. Maynard filled a gap in Melissa's family that her and her husband will never be able to replace. Words cannot describe the inescapable loss of love and guidance that Maynard's death has caused and will continue to cause to Melissa. Additional photographs of Melissa and Maynard are attached as Exhibit 10.

#### ***Adam Poynter***

Adam, who is 35 years old, recognizes that his dad played a vital role in his life. Maynard's guidance and training helped Adam become the man he is today. Maynard taught Adam the virtues of discipline, hard work, manly strength, and love and compassion for others. The relationship that Adam and Maynard had was one that every son dreams of experiencing with his father. Among other things, Adam and Maynard, shared a love of camping, watching movies, and cooking tasty meals. Adam would go to his parent's house 3-4 nights a week just to hang out, cook dinner, play games on game nights, and watch movies. Maynard and Adam also enjoyed going out

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

---

together to places like Disneyland, dinners, movie screenings, live musicals, the OC Fair, and so much more.

Maynard and Adam were both actively involved in their church and were both in the Royal Rangers (Christian Boy Scouts) for about 14 years. Maynard assisted in running the community outreach program while Adam was involved. Maynard taught Adam and the other boys how to set up a campsite, start a fire with flint and steel, shoot a black powder rifle, throw a tomahawk, tie knots, and everything a true outdoorsman should know. During this time, they both joined a special re-enacting group called the Frontiersman Camping Fellowship. This group would go out into the wilderness for periods of time in specific period clothing and only use items available to people like Davey Crocket and Daniel Boone. Finally, in 2000, with the years of help and support from Maynard, Adam reached the highest rank in Royal Rangers and received a Gold Medal of Achievement.

Adam will never forget the time his dad took to guide, train, teach, and show him how hard work, and dedication can pay off.

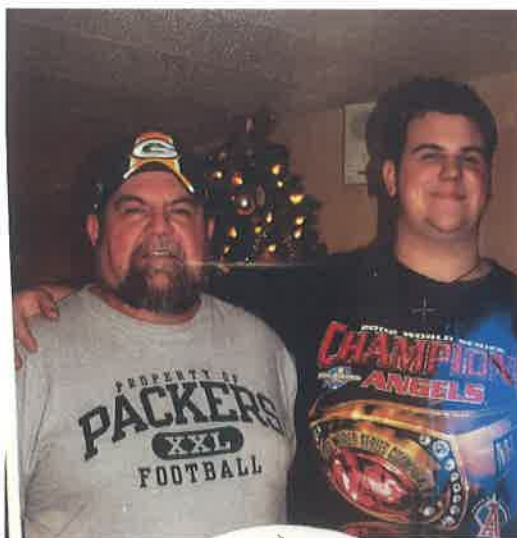




Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

In 2008, Adam was diagnosed with non-Hodgkin's Lymphoma. This could not have come at a worse time for Adam, as he had recently stopped working due to a severe spinal injury that required 3 different surgeries. Like with his other children, Maynard stepped in during Adam's time of need. Maynard, without hesitation, moved Adam back into the family home — rent free. After Adam's initial surgeries, Adam could hardly walk, let alone drive, but Maynard was there every step of the way making sure Adam got to all of his appointments. Adam's cancer treatments started in late 2008 and finally ended mid 2009. The chemotherapy treatments easily took over 5 hours every session, and Adam received treatments twice a week. Of course, Maynard was there with Adam during every treatment and kept Adam company and his spirits resilient. Maynard would bring Adam books and things to do to keep his mind busy, off his treatments, and off of the reality of what he was going through. The years between the back surgeries and then going straight into chemotherapy left Adam emotionally drained, but Maynard was always there telling Adam to fight and stay strong. It was this love and support that helped Adam survive.

To Adam, his father was always his mentor, friend, biggest role model, and the man who sat day in and day out with him through his darkest hour. Never again will Adam be able to go to his parent's house for dinner or Sunday game nights and not think of the father they lost due to the stupid failure of CSR to cut a rope below the surface instead of saving it so that it could be spliced at cheaper cost. The next tragedy life throws at Adam, he will be left to deal with without the strength of his dad. Photographs of Adam and Maynard are attached as Exhibit 11:



As you can see, the Poynter family revolved around Maynard. The loss of this man is unimaginable. This family truly had a unique bond. Their loss goes far beyond any amount of compensation. A few additional photographs are provided below showing some of the "good times" that the Poynters will never be able to repeat again after the loss of their patriarch.

**EASTON & EASTON**  
A PERSONAL INJURY LAW FIRM

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019



Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

### **CALCULATING THE WRONGFUL DEATH DAMAGES**

As discussed above, the wife and children of a deceased husband and father are entitled to recover for the loss of the decedent's "love, companionship, comfort, care, assistance, protection, affection, society, and moral support." (Judicial Council of California, Civil Jury Instructions 3921). The pecuniary value of the society, comfort, and protection that is lost through the wrongful death of a spouse, parent, or child may be considerable in cases where, for instance, the decedent had demonstrated a "kindly demeanor" toward the statutory beneficiary and rendered assistance or "kindly offices" to that person. (*Corder v. Corder* (2007) 41 Cal.4th 644, 661-662.)

As I am sure you would agree, Maynard's passing has left a huge hole in the life of his wife and his 4 children. While all wives and children miss a departed husband and father, the years, the struggles, and Maynard's selfless sacrifices have made this family bond truly unique, and Maynard's loss is unfathomable. Given the unique bond of this family and the profound loss experienced by each member with Maynard's death, we expect the jury in this matter to award significant **wrongful death damages of at least \$1,500,000 for each child and \$3,000,000 for Patty Poynter.**

### **THE POYNTER FAMILY'S "PECUNIARY" DAMAGES**

Although, it is clear that DOHSA does not apply in this matter, we have prepared a breakdown of the Poynter family's pecuniary damages, which are still significant and must be remedied by CSR regardless of whether DOHSA applies or as part of the wrongful death damages. Under DOHSA certain surviving relatives can bring suit for economic damages caused by the death of a relative on the high seas. Specifically, Section 30303 states: *The recovery in an action under this chapter shall be a fair compensation for the **pecuniary loss** sustained by the individuals for whose benefit the action is brought. The court shall apportion the recovery among those individuals in proportion to the loss each has sustained.*

DOHSA's pecuniary damages provision allows damages based upon the economic benefits that the surviving beneficiaries could reasonably have expected to receive from the decedent but for the untimely death, such as lost financial support, the value of the household services the decedent would have rendered around the home, the value of the nurturing, guidance, care and instruction the decedent would have provided his or her surviving children, the cost of funeral expenses borne by the surviving relatives, and in some instances, prospective loss of inheritance. These economic and pecuniary losses are set forth below:

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

### **BURIAL EXPENSES**

The burial expenses totaled **\$9,164.81**. Attached as Exhibit 12 are documents relating to the burial expenses and some of the receipts. Some of the smaller expenses were paid in cash, for which there is no receipt.

### **MEDICAL EXPENSES**

Maynard's medical expenses including ambulance services totaled **\$2,482.87**. Attached as Exhibit 13 are documents relating to the medical expenses.

### **LOSS OF VA DISABILITY COMPENSATION AND OTHER BENEFITS**

At the time of his death, Maynard Poynter was receiving VA disability compensation, a pension, and social security payments. Because Maynard died, the VA ceased all payments, such that Patty is losing **\$3,227.58 of VA benefits every single month**. Further, the Poynter family had their social security pension payments reduced. Before Maynard's death the family was being paid \$2,783 per month and since his death, Patty is only receiving \$2,052 and so she is losing **\$731.00 each month in social security benefits**. Finally, Maynard had a pension that was paying him \$65 per month that has also stopped.

Thus, Patty Poynter is losing **\$4,023.89 each month in VA, Social Security, and Pension Benefits due to Maynard's death**. Maynard was 70 years old at the time of his death and had a life expectancy of an additional 14.50 years. Thus, the total loss of these benefits for the remainder of Maynard's expected life amounts to **\$700,156.86** ( $\$4,023.89 \times 12 \text{ months} \times 14.50 \text{ years} = \$700,156.86$ ). Proof of this loss is attached as Exhibit 14.

Obviously, the amounts calculated are not in present value. However, in light of today's low discount rate and the fact that inflation and the treasury yield are almost identical, most economist experts are testifying that the straight calculations are essentially the present value of money at this time.

### **LOSS OF SERVICES, NURTURE, GUIDANCE AND INSTRUCTION**

The loss of the household services performed by the decedent, such as lawn maintenance work, painting and repair of the family home, maintenance of the family vehicles, and providing transportation to family members, constitutes pecuniary losses to the family. (*Sea-Land Services, Inc., v. Gaudet*, (1974) 414 U.S. 573); and (*Tallentire v. Offshore Logistics, Inc.*, (1985) 754 F.2d 1274, 1287). The loss of the nurture, instruction, guidance and the physical, intellectual and moral training that they would have received from their parent, or spouse, but for the wrongful death of

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

a parent, or spouse, constitutes a pecuniary loss recoverable under DOHSA. The fact that care, nurture and guidance damages may not be quantified to a mathematical certainty does not bar their recovery. (*See Mascuilli v. U.S.* (E. D. Pn 1972) 343 439). Evidence of the manner in which [the deceased] interacted with his child prior to his death may be adequate alone to support a beneficiary's claim for loss of care, nurture and guidance under DOHSA. (*See Adventure Bound Sports* (S.D. GA 1994) 858 F. Supp. 1192). As demonstrated above, the relationship that Maynard had with each of his children and his wife will be probative (even under DOHSA) to evidence the significant loss of services, care, nurture, and guidance suffered by the Poynter family.

Any jury will conclude that Patty and the 4 children have lost significant pecuniary damages to not have the love, guidance, and instruction of Maynard. Patty is in therapy and attending grief classes and each of the children also need counseling. Additionally, the loss of Maynard affects each child in both caring for Maynard's grand kids and the help and loss of transportation. It is reasonable to assume that Patty will have to spend \$20,000 per year for the help Maynard provided and each of the 4 children will spend \$10,000 per year for the loss of the services and help their dad provided. **For Patty, at 14.5 years, this amounts to \$290,000.** (14.5 years x 20,000 per year). **For each child, at 14.5 years, this amounts to \$145,000.** (14.5 x 10,000 per year) **Thus, the total for all 4 children amounts to \$580,000.** (4 children x 145,000)

#### **CALCUALTED TOTAL PECUNIARY LOSS**

<u>Pecuniary Loss</u>	<u>Amount</u>
Burial Expenses	\$ 9,164.81
Medical Expenses	\$ 2,482.87
Loss of Support	\$ 700,156.86
<u>Loss of Services/Guidance and Instruction</u>	<u>\$ 870,000.00</u>
<b>TOTAL</b>	<b>\$ 1,581,804.54</b>

#### **PUNITIVE DAMAGES**

The conduct of CSR's employees and that of their CEO of inviting and welcoming persons to fish at CSR's offshore structure so that CSR would gain support for its expansion and the failure to safely cut and remove a known hazard for over 2 weeks show a reckless and malicious disregard for the safety of the public, placing profits over human life. Moreover, CSR's conduct after this incident in failing to take any action to cut the line or further remove the hazard in the 10 days after this incident, even after they knew someone had died due to their negligence, is quite astounding and will be admissible at trial to further establish CSR's conscious disregard for the safety of the public.



Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

In California, “punitive damages are awardable to the decedent’s estate in an action by the estate representative based on the cause of action the decedent would have had if he or she had survived.” *Rufo v. Simpson* (2001) 86 Cal. App. 4<sup>th</sup> 573, 616. Here, Maynard was alive for at least one hour from the time the boat overturned due to CSR’s reckless conduct until he succumbed to the hypothermia and drowned. During this hour, Maynard suffered profound and heartbreaking pain, fear, and anxiety as he struggled to stay alive and hoped for rescue. **Accordingly, in addition to the wrongful death damages of his family, Maynard’s estate will be entitled to the punitive damages that accrued during this final hour of his life as he struggled to survive due to CSR’s conscious disregard for the safety of others.**

Punitive Damages are available where the defendant’s conduct arises to the level of “malice,” which is defined as conduct done with a “conscious disregard of the safety of others.” *Taylor v. Superior Court* (1979) 24 Cal. 3d 890, 897. The jury instruction on this issue states: “A person acts with knowing disregard when he is aware of the probable dangerous consequences of his conduct and deliberately fails to avoid those consequences.” CACI 3943.

Mr. Grant of CSR admitted to authorities that CSR and its employees knew that there was a broken line in the water as early as December 17, 2018, at least 16 days before the accident. The broken line was nearly 400’ long and 1 ½” thick. CSR knew that this would be a dangerous life-threatening condition to boats that were in the offshore structure’s area and due to the fact, it was tethered to the seabed floor. In CSR’s application for its permit, CSR had promised that “there would be no obstruction to recreational vehicles” in order to establish that the construction of the structure would not pose a danger to recreational boats in the region.

However, CSR’s lazy response to the broken line changes from negligent to a reckless and conscious disregard for the safety of the public because CSR had actual knowledge that recreational boats were consistently using the area and CSR’s CEO was actively encouraging them to do so. As you will recall, Mr. Culver encouraged people such as Maynard to visit the “**hottest fishing spot in Southern California**” in order to increase CSR’s pecuniary gain and support for their expansion. Despite this actual knowledge of the broken line, the actual knowledge that the broken line presented a danger to persons, and the actual knowledge that persons such as Maynard regularly fished in the area, CSR did not remedy the danger (e.g. by repairing the rope in 16 days), did not mitigate the danger (e.g. preventing access to fishing on the structure or removing the line), and did not warn or caution against any dangers (e.g. by placing warning signs, which CSR has only done now after Maynard’s death).

The egregious nature of CSR’s conduct is further compounded by their reckless disregard for the safety of the public even after Maynard’s death. As indicated in the Vessel Accident Report (Exhibit 4), CSR took no action in the 10 days after this incident to further repair, remedy, or warn of the dangerous broken line that caused Maynard’s death. Were it not for the continued investigation and follow-up of the Sherriff’s department, it is very possible that another

Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

---

recreational boater could have fallen prey to the same hazardous line in the days after this incident as CSR left the coiled line unattended in the ocean, floating on top of the water and still tethered to the seabed floor.

While the investigating officer was reviewing the incident scene on January 13, 2019 (10 days after this incident), he almost hit the same coiled line with his boat once again. The officer noted how easy it would be for a boater to miss the obscure broken line just below the water's surface and run over the hazard with their boat, suffering the same tragic fate of Maynard. **Consequently, the officer took matters in his own hands and dove down to cut the line 30 feet below the surface to ensure it could no longer pose a hazard to boaters in the area, since it was clear that CSR was unwilling to take action on its own.** This failure by CSR to take the simplest and easiest action to protect the public in the 10 days after a death had occurred damningly confirms their reckless disregard for the safety of the public as they placed the value of their line (and the loss of cutting it) above the value of human life. Punitive damages are reserved for just such circumstances where a Defendant must be punished for their wrongful, insidious, and reckless disregard for the safety of human life in order to deter future such conduct.

Accordingly, we will be pursuing a significant claim for Punitive Damages in any future litigation of this matter based on CSR's conduct in the 16 days before and 10 days after this tragic incident. If this issue proceeds to trial, the jury will be instructed that Punitive Damages are intended to "punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future." *CACI* 3943. The jury would then be asked to consider some of the following in determining a proper amount for the Punitive Damages award against your insured:

1. How reprehensible was the defendant's conduct?
2. Is there a reasonable relationship between the amount of punitive damages and plaintiff's harm?
3. In view of defendant's financial condition, what amount is necessary to punish the defendant and discourage future wrongful conduct? (*CACI* 3943)

Based on the criteria that the jury is asked to use in calculating Punitive Damages and the evidence that would come forward at trial regarding CSR's extremely reckless conduct, CSR's actual notice of the broken line and the danger it posed, CSR's encouragement of inviting persons to fish on its offshore structure for pecuniary gain, CSR's failure to mitigate, remedy, or warn/caution against the dangerous broken line, CSR's reprehensible failure to take action to protect the public in the 10 days after this incident, and the unique loss experienced by the Poynter family as a result of Maynard's death, we believe the jury will award a significant and sizeable Punitive Damages award against CSR in this matter. Please govern your evaluation accordingly.



Friedenthal, Heffernan & Brown, LLP  
The Hartford  
Clearview Law  
December 3, 2019

**SETTLEMENT DEMAND**

No amount of money can fully compensate the Poynter family for the loss of Maynard, but a substantial contribution will at least recognize the magnitude of their loss. As indicated above, in addition to the \$1,581,804 in pecuniary damages suffered by the Poynter family, we expect any jury award in this matter to exceed \$1,500,000 in additional wrongful death damages for each child and more than \$3,000,000 in additional wrongful death damages for Patty Poynter, such that the family's total award will exceed \$10,000,000.

Accordingly, the Poynter family hereby jointly offers to resolves their wrongful death claim against CSR for **\$10,000,000**. While the Poynter family recognizes the legitimate and sizeable Punitive Damages claim that is available to them against your insured, for the purposes of pre-litigation settlement negotiations, they are willing to waive that claim. Should this case proceed to litigation, however, they will vigorously pursue the punitive damages claim to its fullest.

These settlement proposals are being offered within the spirit and intent of *Evidence Code* section 1152, and nothing set forth herein can be used or referred to in this litigation, should the case not settle.

This offer will remain open for 30 days from the date of this letter and will then be withdrawn. If the matter is not settled, we will proceed with litigation. If you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,

EASTON & EASTON, LLP



BRIAN W. EASTON

BWE/jmm  
Enclosures