



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2020 004255

**FINDING INTO DEATH WITHOUT INQUEST**

*Form 38 Rule 63(2)*

*Section 67 of the Coroners Act 2008*

Findings of:	Coroner Simon McGregor
Deceased:	GFE <sup>1</sup>
Date of birth:	July 1954
Date of death:	On or about 22 March 2020
Cause of death:	1(a) Unascertained
Place of death:	Bass Strait, off Pearl Point/Cape Conran
Key words:	Missing person, drowning, sailing, lifejacket, PFD, Refuge Cove, Cape Conran, Pearl Point, Lakes Entrance, EPIRB, yacht, LPG, Marine Safety Victoria

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<sup>1</sup> This Finding has been deidentified by order of Coroner Simon McGregor to replace the names of the deceased and their family members with pseudonyms of randomly generated three letter sequences to protect their identity and redact identifying information.



## INTRODUCTION

1. On 22 March 2020, GFE was 65 years old when he died during a voyage from St Kilda Marina, Victoria (VIC), to its pre-arranged mooring at Gladesville Bridge Marina, Drummoyne, New South Wales (NSW) in his yacht, the *Affirmation*. At the time of his death, GFE lived in North Parramatta, NSW, with his wife, YDP.
2. GFE and YDP had been married since 1997, and GFE had one son from a previous marriage, AES. In 2018, GFE became a grandfather, and he was much-loved by his family as well as his friends.<sup>2</sup>
3. GFE had retired after a long and successful career as a lawyer, first becoming a partner at in Blacktown before going to the Bar. His legal career involved high-profile criminal cases which had resulted in occasional death threats.<sup>3</sup>
4. His only major health issue was diagnosed hypertension, and there is no record of mental health issues. He was prescribed the medication Norvasc for his hypertension. YDP describes him as ‘*a man who was very happy and contented and relishing his retirement*’.<sup>4</sup>
5. GFE was a passionate and experienced sailor and had been sailing regularly since his childhood.<sup>5</sup> AES stated that his father was ‘*not one to let a mechanical failure stop him from achieving a task he had set himself*’.<sup>6</sup> GFE was safety-conscious whilst sailing, and consistently fastened himself to a lifeline whilst on deck during long voyages. He also wore a lifejacket<sup>7</sup> which he would generally only remove when in bed.<sup>8</sup>
6. GFE had dreams of competing in the trans-Tasman race and completed a survival at sea and radio operators course in 2016. He later purchased a boat from a broker in Tasmania and attempted to bring it back to Sydney by himself. During the voyage, GFE ran into mechanical issues and was forced to abandon ship, being rescued by Tasmania Police. He eventually brought the boat back to Sydney with the assistance of a professional skipper and friend. GFE later gave up on his dreams of competing in the race and elected to purchase a ‘more comfortable cruising boat’.<sup>9</sup>

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<sup>2</sup> Statement of YDP; Statement of AES.

<sup>3</sup> Statement of YDP; Statement of AES.

<sup>4</sup> Statement of YDP.

<sup>5</sup> Statement of YDP.

<sup>6</sup> Statement of AES.

<sup>7</sup> Also known as a ‘Personal Flotation Device’ or ‘PFD’.

<sup>8</sup> Statement of VLM.

<sup>9</sup> Statement of AES.

## THE CORONIAL INVESTIGATION

7. GFE's suspected death was reported to the Coroner as it fell within the definition of a reportable death in the *Coroners Act 2008* (the Act). Reportable deaths include deaths that are unexpected, unnatural or violent or result from accident or injury.
8. The role of a coroner is to independently investigate reportable deaths, including suspected deaths, to establish, if possible, identity, medical cause of death, and surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related, and can include a finding that the suspected death in fact occurred. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.
9. Under the Act, coroners also have the important functions of helping to prevent deaths and promoting public health and safety and the administration of justice through the making of comments or recommendations in appropriate cases about any matter connected to the death under investigation.
10. Victoria Police assigned an officer to be the Coroner's Investigator for the investigation of GFE's suspected death. The Coroner's Investigator conducted inquiries on my behalf, including taking statements from witnesses – such as family, the forensic pathologist, treating clinicians and investigating officers – and submitted a coronial brief of evidence.
11. This finding draws on the totality of the coronial investigation into the suspected death of GFE including evidence contained in the coronial brief. Whilst I have reviewed all the material, I will only refer to that which is directly relevant to my findings or necessary for narrative clarity. In the coronial jurisdiction, facts must be established on the balance of probabilities.<sup>10</sup>
12. In considering the issues associated with this finding, I have been mindful of GFE's basic human rights to dignity and wellbeing, as espoused in the *Charter of Human Rights and Responsibilities Act 2006* (Vic), in particular sections 8, 9 and 10.

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<sup>10</sup> Subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction as to those matters taking into account the consequences of such findings or comments.

## MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE

### Circumstances in which the death occurred

13. On 1 February 2020, GFE and YDP purchased the boat *Affirmation*. They transferred the purchase monies on 24 February and drove to Melbourne to provision the boat on 4 March 2020.<sup>11</sup> GFE had told a friend about *Affirmation* having a self-furling genoa and self-folding main sail which would make it easier for him to sail solo.<sup>12</sup>
14. *Affirmation* is a 10.95 metre Radford aluminium sailing vessel with a beam of 3.2 metres and draught of 1.9 metres. She has a displacement of 6000kg and was equipped at the time with a 21-horsepower diesel motor. Her electronics were powered by three 12V batteries charged via alternator, solar wind generator and 240V shore power. She had a Simrad navigation system, and an autopilot all powered by the electrical system.<sup>13</sup>
15. Before the completion of the purchase, GFE had *Affirmation* examined by marine surveyor who noted no structural issues and provided a report noting '*It has been well equipped with electrical and plumbing systems with no major faults noted. The mast, rigging and sails were of serviceable condition with no major faults noted.*'<sup>14</sup>
16. In preparation for the journey, GFE ensured that there were sufficient provisions aboard the *Affirmation*, including a hand-held VHF radio, a satellite phone, an Emergency Position Indicating Radio Beacon (**EPIRB**), two lifejackets, five lifelines, fully charged batteries, and additional diesel for the motor.<sup>15</sup>

### Melbourne to Queenscliff Harbour

17. GFE's friend joined him in Melbourne, and YDP flew back to New South Wales. On 8 March 2020, GFE and VLM collected *Affirmation* and set sail for Sydney. A mooring was already paid for at Gladesville Bridge Marina.<sup>16</sup>

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<sup>11</sup> Statement of YDP.

<sup>12</sup> Statement of VLM.

<sup>13</sup> Statement of Chris Furey.

<sup>14</sup> Statement of Campbell McMillan.

<sup>15</sup> Statement of VLM.

<sup>16</sup> Statement of YDP.

18. In the process of assisting a stranded jetskier, *Affirmation*'s hull hit an uncharted sandbar. GFE and his friend brought the boat into Queenscliff Harbour and left it there to undergo some repairs. They returned to Sydney and GFE planned to return to Victoria on 17 March 2020 to pick up *Affirmation* and finish sailing to Sydney.<sup>17</sup>
19. The boatyard manager at Queenscliff Harbour stated that in addition to structural issues GFE reported problems with the VHF radio and the depth sounder. The radio was replaced, and the depth sounder was fixed by pushing a transducer into place.<sup>18</sup>
20. The boatyard team noted a pin-hole visible about one inch in front of the keel and a crack in the external filler and antifoul consistent with running aground. They repaired these issues and put it back in the water on 16 March. GFE's boat was inspected on 18 March and with no water having entered the hull over the two days.<sup>19</sup>

#### Queenscliff Harbour to Refuge Cove

21. On 18 March 2020, the boatyard manager spoke to GFE whilst passing him on the marina. GFE stated he was happy with the completed works, and the manager wished him a happy and safe journey to Sydney.<sup>20</sup>
22. At around noon on 18 March 2020, GFE brought *Affirmation* into Refuge Cove on the eastern side of Wilson's Promontory. He anchored and then broadcast on the radio that he was having motor problems and requesting assistance.<sup>21</sup>
23. A nearby yachtsman was skippering a boat from Queenscliff to Metung which was also anchored in the cove. He went to assist GFE and found that the ignition key to the motor had been snapped, leaving the blade of the key in the ignition. A means of operating the ignition using a screwdriver was devised, and GFE was instructed in its use.<sup>22</sup>

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<sup>17</sup> Statement of YDP; Statement of VLM.

<sup>18</sup> Statement of WFG.

<sup>19</sup> Statement of WFG.

<sup>20</sup> Statement of WFG.

<sup>21</sup> Statement of KHN.

<sup>22</sup> Statement of KHN.

24. The yachtsman recalls that GFE '*seemed ok, didn't look that fatigued*'. He noticed that '*the cockpit was a bit messy*' and that GFE did not have his lifejacket on, however he was at anchor. They spoke casually about the weather and GFE indicated that he intended to motor all the way to Sydney. According to the yachtsman, '*I felt that when he said this he was in a bit of a hurry*'.<sup>23</sup>
25. At 7.30am on 19 March, witnesses saw GFE motoring *Affirmation* out of the cove, without any sails up.<sup>24</sup>

#### Last contact with GFE

26. On 20 March 2020, YDP received a phone call from GFE in which he spoke about being hijacked. YDP rang Victoria Police who soon attended YDP's residence. In the presence of the police members, YDP spoke to GFE over the phone during which he told her in a panicked state that he had been '*hijacked by African pirates*' who could '*shapeshift*'.<sup>25</sup> YDP told him to put his lifejacket on and attach himself to a lifeline. The call was then terminated.<sup>26</sup>
27. Shortly after, GFE was able to be contacted by Sergeant (SGT) Wade O'Toole of the Melbourne Water Police unit. SGT O'Toole had a brief conversation with GFE who stated that he was okay, that the '*Africans were already on board when [he] met them in Melbourne*' and that he had an electrical failure and was drifting in the ocean without an engine, radio, or GPS tracker. SGT O'Toole told GFE that the Water Police would attend his position to aid, however GFE refused to answer any further questions and terminated the call. This was the last time that anyone spoke to GFE.<sup>27</sup>

#### Search attempts and recovery of *Affirmation*

28. At 7.00pm, Leading Senior Constable Michael Newstead of the Gippsland Water Police Squad was recalled to duty by the Rescue Co-Ordination Centre (RCC) although his shift had ended several hours earlier. Leading Senior Constables Glen Mackenzie and Graham Shoobert were also recalled.<sup>28</sup>

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<sup>23</sup> Statement of KHN.

<sup>24</sup> Statement of KHN.

<sup>25</sup> Later investigations would determine that GFE was apparently suffering from hallucinations caused by hypoxia resulting from an LPG leak within the cabin of the *Affirmation*.

<sup>26</sup> Statement of YDP; statement of Ellen Wilson.

<sup>27</sup> Statement of Wade O'Toole.

<sup>28</sup> Statement of LSC Michael Newstead.

29. LSC Newstead was informed that *Affirmation* was unable to be contacted and its last known position was nearby the coast off the Cape Conran/Pearl Point area. LSC Newstead recalls thinking at the time that the wind and sea state offshore would have been terrible.<sup>29</sup>

30. According to LSC Newstead:

*‘Refuge Cove to Cape Conran is approximately 130nm [nautical miles – 1nm is 1.852km] in a straight line, ie “as the crow flies”. If one were to follow the coastline it is approximately another 15-20nm. ... The vessel had travelled between approximately 240-280 kilometres since departing Refuge Cove at 0700/0730 hrs 19<sup>th</sup> March 2020.’<sup>30</sup>*

31. At the request of Sgt Wade O’Toole, Marine Co-Ordinator at the RCC, LSC Newstead, LSC Mackenzie and LSC Shoobert prepared a Victoria Police vessel, *VP09*, and departed from Lakes Entrance toward Cape Conran. Cape Conran is approximately 35nm from Lakes Entrance.<sup>31</sup>

32. *VP09* arrived at Cape Conran around 11.00pm and began to search the area by radar and FLIR (thermal imaging using infrared). LSC Newstead notes that due to the darkness of the night, heavy cloud cover, sea state, wind, and spray, it was almost useless to search by eye through the windows of the boat.<sup>32</sup>

33. *VP09* continued to search coastlines near the area, and a crew change occurred relieving LSC Newstead, LSC Mackenzie and LSC Shoobert at 2.30pm.<sup>33</sup>

34. At 5.30am on 22 March 2020, LSC Newstead and LSC Shoobert were recalled to duty. They were informed that a fixed wing aircraft had sighted a vessel drifting around 8nm southeast of Cape Howe which fit the description of *Affirmation*. LSC Newstead and LSC Shoobert met the Mallacoota Coast Guard at 6.15am to be taken out to *Affirmation*.<sup>34</sup>

35. They arrived on scene at 7.15am and LSC Newstead noted that the sails were not raised. At 7.30am LSC Newstead was able to board *Affirmation*. He attempted to raise the attention of anybody on board by calling out but was unable to elicit a response.<sup>35</sup>

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<sup>29</sup> Statement of LSC Michael Newstead.

<sup>30</sup> Statement of LSC Michael Newstead.

<sup>31</sup> Statement of LSC Michael Newstead.

<sup>32</sup> Statement of LSC Michael Newstead.

<sup>33</sup> Statement of LSC Michael Newstead.

<sup>34</sup> Statement of LSC Michael Newstead.

<sup>35</sup> Statement of LSC Michael Newstead.



36. LSC Newstead was able to board the vessel at which point he noted several things, including GFE's wallet which was located on the starboard side rear seating area, an open access hatch to the cabin, which was in a messy state, likely due to the drifting motion of the vessel, and that all of the small windows and hatches inside were closed tight.<sup>36</sup>
37. LSC Newstead conducted a search of the vessel but was unable to located anyone on or in the boat. Numerous safety items were located, including flares, radios, inflatable lifejackets, and EPIRBs. LSC Newstead noted that the level of safety equipment on board the *Affirmation* was exceptional, indicative that GFE was very safety conscious.<sup>37</sup>
38. The *Affirmation*'s extensive circuit breaker panel was noted to be in a switched-off position at the time LSC Newstead boarded the vehicle. LSC Newstead tested the breakers and found them to be in an operable condition. LSC Newstead also noted that the toilet was not connected and that several rail wires on the port side of the vessel were open, indicating that GFE may have attempted ablutions over the side as a result.<sup>38</sup>
39. When later collecting GFE's effects from the boat, AES found a strip of Norvasc, GFE's hypertension medication, in a zip-loc bag at the bottom of a backpack. Due to the location of the medication in the backpack, AES considered it unlikely that GFE had accessed it during his trip.<sup>39</sup>
40. Extensive search operations conducted over the following days failed to locate GFE or any evidence of his body. To this day, GFE has not been found, and a lack of any signs of life indicate that he is most likely deceased.

## **EXAMINATIONS OF THE VESSEL**

### Eden Water Police inspection

41. On 13 April 2020, *Affirmation* was examined by Senior Constable Scott McRae of Eden Water Police. SC McRae is a licensed mechanics with experience in vehicle investigation including marine vehicles. Notably, his experience includes experience with fitting, tuning, servicing, and repair of Liquid Petroleum Gas (LPG) devices.<sup>40</sup>

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<sup>36</sup> Statement of LSC Michael Newstead.

<sup>37</sup> Statement of LSC Michael Newstead.

<sup>38</sup> Statement of LSC Michael Newstead.

<sup>39</sup> Statement of AES.

<sup>40</sup> Statement of SC Scott McRae.

42. SC McRae noted several modifications that had been made to the original design of the vessel. Among these was:
- ‘Running through the tiller room is gas plumbing from a Liquid Petroleum Gas tank that is fitted to the stern of the yacht. This plumbing is diverted to a ball valve that directs the gas to either a Barbeque on the stern or to the galley to supply the stove/oven on the starboard interior.’<sup>41</sup>*
43. On his examination that day, he did not discover any major mechanical issues, but had suspicions that there may be issues with fumes within the boat. To address these issues, he arranged for the HAZMAT team from Eden Fire and Rescue to attend on the following days to test the atmosphere with a multi-head gas detector.<sup>42</sup>
44. Extensive testing of the engine did not reveal any concerns about leakage of exhaust fumes or carbon monoxide from the engine into the cabin area or tiller compartment.<sup>43</sup>
45. On 20 April 2020, SC McRae arranged to test the LPG bottle. After sealing the vessel in a watertight state for three hours with the LPG bottle open, testing of the tiller compartment found it filled with sufficient LPG to combust, as well as 157ppm of carbon monoxide. Further testing found LPG at lower levels on the floor of the cabin entry, in the sitting area and in the forward berth sleeping area in the bow of the vessel.<sup>44</sup>
46. As a result of the atmospheric testing, SC McRae drew the following conclusions:
- (a) The LPG system was leaking from somewhere in the tiller room, resulting in the vessel being susceptible to gas ingress into the accommodation area due to the modifications that had been made to the watertight bulkhead between the tiller road and engine and accommodation areas;
  - (b) These modifications compromised the original design to keep the tiller room watertight in the event of water ingress via the rudder stock or other means; and
  - (c) It was likely that LPG filled the accommodation area whilst GFE was using or had the LPG bottle on.<sup>45</sup>

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<sup>41</sup> Statement of SC Scott McRae.

<sup>42</sup> Statement of SC Scott McRae.

<sup>43</sup> Statement of SC Scott McRae.

<sup>44</sup> Statement of SC Scott McRae.

<sup>45</sup> Statement of SC Scott McRae.

### Energy Safe Victoria testing

47. Following mechanical and atmospheric testing conducted by SC McRae, the *Affirmation* was sent for further inspection and testing of the LPG gas system by Energy Safe Victoria on 28 April 2020.
48. The tests revealed that the *Affirmation's* gas fitting was non-compliant with AS5601.2 at the time of the inspection and that it failed to hold pressure due to a fracture in the body of the ball valve. The lack of proper seals surrounding the partitions allowed leaking LPG to migrate through the service ducts into the sleeping quarters and engine compartment and had the potential to displace oxygen within the sleeping quarters of the vessel.

### Transport Safety Victoria inspection

49. On 20 May 2020, Gareth Johnson, Manager Recreational Boating Safety within the Maritime Safety business unit of Transport Safety Victoria conducted an inspection of the *Affirmation's* lazarette and galley, including the structure and fittings within the space, and the gas installation to the galley and outdoor BBQ. Mr Johnson is a qualified Naval Architect who has been a Marine Surveyor of commercial vessels for 19 years.<sup>46</sup>
50. Mr Johnson came to several conclusions following his inspection of the *Affirmation*, including:
  - (a) The LPG gas system had been installed and certified as compliant at the time of its installation in 2010;
  - (b) The connections used to the valve fitted at the galley bulkhead were in accordance with Australian Design Standards;<sup>47</sup>
  - (c) Flexible conduit was fitted to the rigid copper tubing throughout the internal spaces of the hull, however this conduit was not airtight or vented to the outside of the hull;
  - (d) The valve fitting supplying the BBQ from the main line appeared to have failed, allowing LPG to enter the below deck spaces slowly when the gas bottle was turned on; and

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<sup>46</sup> Statement of Gareth Johnson.

<sup>47</sup> AS5601.2.

- (e) The aft bulkhead was not designed to be watertight or gastight and would have allowed gas to move throughout the below deck accommodation space, falling to the lowest points due to its weight.<sup>48</sup>

## FINDINGS AND CONCLUSION

51. On the balance of probabilities, I find that GFE died on or about 20 March 2020, approximately 8nm east of Cape Howe. It is likely that he died after having fallen overboard from his yacht, the *Affirmation*, possibly due misadventure whilst attempting ablutions overboard due to a broken toilet.
52. It is reasonable to conclude that GFE was suffering from a hypoxic episode caused by a combination of sleep deprivation due to the prevailing rough conditions and the slow LPG leak seeping into the sleeping quarters at the time he spoke to YDP and police on 20 March 2020. I note the statement from LSC Newstead in which he indicated that there was no evidence of anyone else being on board the vessel with GFE, and that no suspicious circumstances were found during the subsequent investigation.
53. Pursuant to section 67(1) of the *Coroners Act 2008* I make the following findings:
- (a) the identity of the deceased was GFE, born 04 July 1954;
  - (b) the death occurred on or about 22 March 2020 in the Bass Strait, off Pearl Point/Cape Conran, from 1 (a) *Unascertained*; and
  - (c) the death occurred in the circumstances described above.
54. The absence of GFE's body is consistent with the hypothesis that he fell into the ocean where large waves and strong tides and currents carried away his body. I note that both lifejackets were found on board the *Affirmation* by LSC Newstead, indicating that GFE was not wearing his lifejacket at the time he likely fell overboard.

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<sup>48</sup> Statement of Gareth Johnson.

## COMMENTS

Pursuant to section 67(3) of the Act, I make the following comments connected with the death.

55. GFE's unfortunate accident highlights the importance of marine operators carrying safety equipment and wearing appropriate safety gear, such as highly visible lifejackets. I note that, under current prescribed regulations by Marine Safety Victoria, marine operators must always wear a lifejacket when in an open area of a recreational vessel (such as the deck) when the vessel is underway.
56. Whilst the carrying and use of registered EPIRBs are mandated when a recreational vessel is greater than 2 nm from the coast in Victoria, the EPIRB is not currently required to be attached to the operator's lifejacket. In situations where immediate rescue is not possible (such as on solo voyages), it is vital that the operator always have access to their lifejacket and EPIRB.
57. Furthermore, I note that there is currently no legal requirement for recreational vessels in Victoria to have an LPG detector installed. LPG is a colourless highly flammable gas that is denser than air. Whilst LPG will quickly evaporate when exposed to room air at normal temperatures, in enclosed spaces (such as the internal cabin of a boat), it can displace the air resulting in high-dangerous environmental conditions. The proper installation of an LPG detector is a simple and effective tool to mitigate this risk.
58. Accordingly, I have made recommendations in line with these comments.

## RECOMMENDATIONS

Pursuant to section 72(2) of the Act, I make the following recommendations:

- i. I recommend that Marine Safety Victoria and the Department of Transport develop legislation mandating that solo operators in enclosed and coastal Victorian waters must wear a PFD Type 1 with an attached registered EPIRB; and
- ii. I further recommend that Marine Safety Victoria and the Department of Transport develop legislation mandating that any recreational vessel that has an LPG system on board in an enclosed area must have an operable gas detecting system.

I convey my sincere condolences to GFE's family for their loss, especially in the tragic circumstances in which it occurred.

Pursuant to section 73(1A) of the Act, I order that this finding be published on the Coroners Court of Victoria website in accordance with the rules.

I direct that a copy of this finding be provided to the following:

YDP, Senior Next of Kin

Marine Safety Victoria

Department of Transport

Leading Senior Constable Mick Newstead, Victoria Police, Coroner's Investigator

Signature:



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**CORONER SIMON McGREGOR**

**CORONER**

Date: 26 August 2022

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NOTE: Under section 83 of the *Coroners Act 2008* ('the Act'), a person with sufficient interest in an investigation may appeal to the Trial Division of the Supreme Court against the findings of a coroner in respect of a death after an investigation. An appeal must be made within 6 months after the day on which the determination is made, unless the Supreme Court grants leave to appeal out of time under section 86 of the Act.

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