NEWS FROM THE DOCKS

Louisiana Ports Deliver

Ports ASSOCIATION OF LOUISIANA September 2015

Volume 16, No 9

Message from the PAL Office

On a Personal Note:

I would like to take a moment to introduce myself, and thank the Association's Board members for allowing me the opportunity to represent PAL as the new Association Manager.

With my background in Journalism, Public Relations, and Nonprofit Management I am hoping to not only continue in the footsteps of Mrs. Dot, but help pave a new road for PAL as well. My goal is to boost PAL's presence not only statewide, but nationwide & hopefully worldwide via a more substantial social media presence. Another major goal on the horizon will be significantly increasing Associate Memberships to enhance our networking capabilities.

I am looking forward to working with all of you and I ask that you please update your email lists to include PAL's new contact information. Don't hesitate to get in touch with me should you need anything!

Email: Candaceatpal@gmail.com
Office: 225.334.9040
Cell: 504.228.3582

Candace L. Griffin

Back to Business:

On September 3, PAL met in Baton Rouge and approved a lease agreement that will allow the organization to relocate its main office.

Our new domicile will be:

666 North Street
Baton Rouge, LA 70802.

Please be sure to update your mailing lists to reflect our new address.

....

Dates for the 2016 PAL Conference have tentatively been set for March 2-4. We are hoping to hold the Conference at the Cyprus Bayou Casino in New Iberia, but a contract is still under negotiation.

Legislative Update

The following is a summary of subjects which are of interest to Ports and the maritime industry:

Port Infrastructure Funding

The Port Construction and Development Priority Program (PPP) receives its funding from four cents of the total of 16 cents of fuel taxes deposited to the Louisiana Transportation Trust Fund (TTF), which in Fiscal Year 2015-16 is $19.7 million.

As a result of Representative Terry Landry's Act 380, the current fiscal year appropriations of $71 million of TTF funding for certain State Police traffic control will be limited to $25 million in fiscal year 2016-17 and $10 million in subsequent fiscal years. This reduction of TTF funding to State Police has been replaced by legislation authorizing an increase in fees charged by the State Police. As a result of limiting the State Police TTF funding, there may be additional available funds for appropriations to the Port Priority Program.

The PAL Executive Committee has recently met with DOTD Secretary Sherri LeBas and her staff to request that as a result of the potential additional revenue accruing to the TTF that the future budget recommendations of the DOTD include increased funding for the Port Priority Program. Secretary LeBas indicated that she was cognizant of the great economic benefits of the PPP, and would continue her long standing support for PPP by considering the request.

Secretary LeBas also discussed the provisions of Act 275 by Senator Adley relative to appropriations of an additional $100 million to the TTF when mineral revenues exceed $850 million. Act 275 designates an additional $7 million for the PPP. This additional funding is dependent on the price of oil and natural gas and future Legislative appropriations.

Secretary LeBas also referenced proposed Constitutional Amendment 1— which reorganizes the LA Budget Stabilization Trust Fund, which has an approximate $800 million balance, by creating the Budget Stabilization Trust Fund, with up to $500 maximum of mineral revenues. Thereafter, mineral revenues will flow into a Transportation Stabilization Trust Fund until it reaches $500 million, with not less than 20% to be spent on the LA Intermodal Connector Program. Secretary LeBas acknowledged that the Intermodal Connector Program could include port related connector roads and bridges. However, the Legislative Fiscal Office estimates that with the price of oil and gas at its current level, the earliest date funds will be available for the Budget Stabilization Trust Fund is in fiscal year 2018

However, the existing state law relative to the disposition of Economic Damages from the Deepwater Horizon oil spill provides for a portion of economic damages to be deposited to the LA Budget Stabilization Trust Fund. This may result in accelerating deposits to the Transportation Stabilization Trust Fund and resulting in funds being deposited to the Transportation Stabilization Trust Fund.

All of the potential additional funding discussed above will be dependent on future Legislative appropriations.

Changing Course—Coastal Restoration/Mississippi River/Atchafalaya Basin

In late August, the Delta For All organization released its Phase 1 proposal designated as "Changing Course", which is the result of a design competition for a sustainable Lower Mississippi River Delta that extends west to Vermillion Bay. The competition brought three teams together. Each of the proposals utilizes the LA Coastal Master Plan to generate designs for how to maximize the rebuilding of the LA delta wetlands.

Additional information can be found on the Changing Course website.

Coastal Protection and Restoration Authority (CPRA)

The CPRA 2017 Coastal Master Plan Navigation Focus Group, which includes PAL members, will meet on October 9 at 1 pm to review and consider the provisions of the 2017 Master Plan that may affect navigation.

Joe Accardo
Executive Director

325 Belle Terre Blvd, Suite A
Laplace, La. 70068
985-817-0238 (cell)
985-359-4300 (office)
985-359-4303 (fax)

Corporate Member News

Port of New Orleans

PORT NOLA
THE PORT OF NEW ORLEANS

Congressman Scalise, LaGrange Join for Hurricane Katrina Remembrance Ceremony

Congressman Steve Scalise (R-La.) and Port President and CEO Gary LaGrange joined a host of elected officials and industry representatives in honoring federal partners that played major roles in assisting the entire Port community to reach new heights in the decade following Hurricane Katrina.

"Since August of 2005, the Port of New Orleans has overcome great obstacles and has risen to historic highs in terms of cargo and passenger volumes, revenues and industrial tenants," LaGrange told the crowd gathered at the Port's Erato Street Cruise Terminal. "With the help of many, the Port was able to reopen to commerce just 12 days after the storm to prove to the world that New Orleans was open for business."

Honored at the ceremony for their roles in the resiliency of the industry were the U.S. Coast Guard, U.S. Maritime Administration, U.S. Army Corps of the Engineers, National Oceanic and Atmospheric Administration and U.S. Customs and Border Protection.

Congressman Scalise said federal partners in Louisiana played and continue to play a vital role in the overall mission of the Port and maritime industry.

"The story of recovery in south Louisiana is inspiring, and the Port of New Orleans has played such an important role in this remarkable story," Rep. Scalise said. "While there is still work to be done, together we have rebuilt a world-class port and a region that is even stronger and more resilient today than it was before the storm."

The ceremony, which was also attended by U.S. Senator Bill Cassidy (R. La.), Congressman Cedric Richmond (D-La.) and Congressman Garret Graves (R-La.), was jointly sponsored by the Port, Crescent River Port Pilots Association and the Louisiana Maritime Association. Since 2005, the Port has reached new highs in container volumes, a 14-year high in overall tonnage in 2014, surpassed the 1-million annual passenger mark in 2014 and reimagined the more than 1,000 acres of industrial property along the Inner Harbor Navigation Canal into a center for logistics and value-added cargo operations.

More than $500 million was invested in the Port in the last decade, including terminal expansions, completely renovated transit sheds, upgraded infrastructure and new state-of-the-industry cruise terminals. And the Port continues to build momentum with recent announcements. For example, the return of Chiquita after a 40-year hiatus, new shipping lines and alliances serving every trade lane in the world, and a booming cruise industry – both oceangoing and inland river – with the recent announcement by Viking River Cruises to create their first North American homeport in New Orleans.

"We are continuing to invest in the Port to stay ahead of the curve," LaGrange said. "Nearly $40 million in new investments to increase efficiencies and expand container handling capabilities are under construction and nearing completion at the Port of New Orleans' Napoleon Avenue Container Terminal."

Included among the projects is a $7.9 million refrigerated container racking system, which is jointly financed by New Orleans Terminal LLC and the Board of Commissioners of the Port of New Orleans. The state-of-the-art racking system will have the ability to store more than 600 refrigerated containers at one time. The project is needed due to surging demand for refrigerated cargo – primarily imported bananas from Chiquita and exported poultry from New Orleans Cold Storage. Construction is ahead of schedule and due to be complete by the fall.

New Orleans Terminal is also assembling two rubber-tire gantry cranes (RTGs) to add to their container marshalling yard in an effort to increase container handling and turn times. The project is a more than $4.5 million private investment. These projects are complimented by the new Mississippi River Intermodal Terminal currently under construction, as well. The $25.1 million project will result in a modern and efficient intermodal container transfer terminal to facilitate the movement of marine and rail cargo, while enhancing safety and reducing the carbon footprint of the regional and national transportation systems. The 12-acre terminal is partially funded by a $16.7 million federal Transportation Investment Generating Economic Recovery (TIGER) grant. The project is due for completion in February of 2016.

"All of these projects enhance efficiencies, expand capacity and create new, high-paying maritime jobs in the region," said LaGrange. "New shipping services, such as CMA CGM's weekly European service, the MSC/Great White Fleet (Chiquita) Central American service, G6 and 2M shipping alliances regularly calling the Port have led to record volumes."

Industrial real estate along the Port's Inner Harbor Navigation Canal is surging with 42 tenants leasing more than 500 acres. Tenants include Folger's Coffee, New Orleans Cold Storage, Boh Bros. Construction Co., Transportation Consultants Inc., Dupuy Storage and Forwarding, EMR Recycling, and Kearney Companies.

"The investment in our Port infrastructure is a testament to the resilience of Louisiana's maritime industry and our people," Rep. Scalise said. "Ten years later, we see that our maritime industry is thriving, our economy is growing, and our City is stronger than ever. The sky is the limit for our future."

At the conclusion of the event, Rep. Scalise unveiled an exhibit entitled "Partners in Resilience," which included an installation of nine iconic Port photos from the last 10 years and a video from the maritime industry thanking federal partners who contribute to the success of Louisiana's maritime industry on a daily basis. To view the exhibit and video please visit: http://portno.com/partners_resilience_kten.

Carnival on Track for Record Year from Port of New Orleans in 2015; Expects to Embark 3 Millionth Passenger Post-Katrina Next Year

Carnival Cruise Line– New Orleans' number one cruise operator– continues to expand its presence at the port and expects to carry a record 400,000 passengers from the Crescent City this year. Additionally, the cruise line estimates that next year it will welcome its three millionth passenger at the Port of New Orleans since Hurricane Katrina hit in 2005.

Carnival pioneered year-round cruising from New Orleans in 1994 and over the past two-plus decades has become the port's largest cruise operator with two ships offering more than 125 four- to seven-day departures on an annual basis.

Following Hurricane Katrina, the cruise line resumed service in New Orleans in October 2006 – just 14 months after the storm – with one year-round ship, Carnival Fantasy carrying less than 16,000 passengers that year. The company gradually increased its capacity from the Big Easy deploying newer and larger ships and next year expects to carry a record 450,000 passengers from New Orleans.

Currently, Carnival's two New Orleans-based ships include the 3,646-passenger Carnival Dream, offering seven-day Caribbean cruises, and the 2,052-passenger Carnival Elation sailing four- and five-day cruises to Mexico. Carnival will increase capacity on short cruises from New Orleans by 34 percent when the 2,758-passenger Carnival Triumph replaces Carnival Elation next spring.

Carnival and other cruise operators have a significant impact on the Louisiana economy accounting for more than 8,000 jobs and in excess of $400 million in direct purchases each year, according to a study commissioned by the Cruise Lines International Association. Additionally, data collected by the Port of New Orleans indicates that cruise guests on average spend two nights pre- or post-cruise to enjoy the city's many outstanding restaurants, shops and attractions.

"Carnival has a long and deep history with the city of New Orleans," said Carlos Torres de Navarra, Carnival's vice president of commercial port operations. "We not only enjoy a very successful New Orleans-based cruise program but strive to be valuable community partners providing strong economic impact and supporting a variety of philanthropic initiatives." He added, "We look forward to continuing to grow our operations in New Orleans in partnership with this great city as it thrives and expands in the post-Katrina era."

Commented Port of New Orleans President and CEO Gary LaGrange, "Carnival Cruise Line is a valuable partner not only to the Port, but to the City of New Orleans and the state of Louisiana. Cruising has grown 180 percent since 2001, the year the Port began in earnest marketing itself as a premier cruise destination and we could not have realized such growth without Carnival's investment in New Orleans."

Louisiana International Deep Water Gulf Transfer Terminal Authority

LIGTT

LOUISIANA INTERNATIONAL DEEP WATER GULF TRANSFER TERMINAL AUTHORITY

First Phase of Planned Offshore Megaport Could be Open by Late 2016, Backers Say

With the Panama Canal expansion moving closer to reality, a group backing development of the nation's first offshore megaport — slated to be built off the coast of Plaquemines Parish — said that the project's first phase is fully financed and could be operational by the end of 2016.

The announcement comes seven years after planning began for the Louisiana International Deep Water Gulf Transfer Terminal, which is intended to be a cargo transfer point for mega-vessels that are too big to navigate the lower Mississippi River.

When the multibillion-dollar Panama project is finished, the canal will be able to accommodate ships with drafts as deep as 50 feet below the water's surface. That is 5 feet deeper than what's now available on the lower Mississippi.

The design and engineering work on the offshore project's first phase — a $25 million dry-bulk transfer terminal — is scheduled to wrap up by next summer. Applications for the necessary permits will be submitted to the U.S. Army Corps of Engineers and the U.S. Coast Guard in coming weeks, officials said, with an eye toward finishing construction by next fall.

The dry-bulk terminal is the first of five phases planned for the mega-port, its backers said during a news conference in New Orleans.

The full development, which could take five years and cost $10 billion to build, also will include facilities to handle liquid bulk; petroleum; liquefied natural gas; and container cargo on large vessels entering and leaving the U.S.

The dry-bulk terminal will handle grains, beans, fertilizer and other items.

The proposed terminal will use a hub-and-spoke distribution system that will allow freight to move through coastal and river transit systems to smaller ports. The transfer terminal will be able to off-load eight 18,000-TEU — or 20-foot equivalent units, a measure of cargo capacity for containerized shipping — ships simultaneously in about 36 hours.

For shippers, that quick turnaround means more revenue because ships can make more trips each year.

The project's backers, including state Sen. A.G. Crowe, R-Slidell, contend that the mega-port makes the most sense for goods being shipped internationally because the larger vessels can carry more cargo.

The average U.S. port harbor is 35 feet deep, while the average draft of newer, so-called post-Panamax ships is about 50 feet.

The transfer terminal will have water depths of more than 80 feet, allowing it to accommodate "the largest vessels in the world," Christine Lowenberg, the project's manager, said Monday.

Tom Thornhill, the project's co-manager, said the financing is fully in place for the first phase of the project, and he's optimistic that the full five phases will be built.

"The response of the industry has been overwhelming," he said, noting that the project has "multiple investors on the private side."

Crowe, who drafted the legislation to establish the Louisiana International Deep Water Gulf Transfer Terminal Authority in 2008, said the project will fill an obvious need.

But he also acknowledged that not everyone is behind the project. "No doubt this project has its skeptics," he said. "So did the Superdome, by the way."

Noting the ongoing financial challenge of finding money to continue dredging the lower Mississippi River, Crowe said the new terminal would help ensure that the state doesn't lose container traffic to other Gulf Coast ports like Houston.

"You're going to see containers going from 4,000 on a ship to 12,000 to 13,000," he said. "What that means is the draft will be deeper and it will be even more of a challenge to the money coming in from the federal government to keep (dredging) Southwest Pass even deeper."

Meanwhile, the Corps is studying the feasibility of a potential $300 million effort to deepen the lower Mississippi River by as much as 5 feet.

The project — which would cover the stretch from Baton Rouge to the Gulf of Mexico — is being considered largely in light of the work underway at the Panama Canal, which is slated to wrap up next year.

Port of Lake Charles

Port of Lake Charles to Host 18th Annual Rice Cook-Off

September is National Rice Month, and in celebration, the Calcasieu-Cameron Rice Growers will sponsor the 18th Annual Rice Cook-Off on Tuesday, Sept. 22, at Brick House Catering in Lake Charles. The contest will begin at 10:30 a.m. with an awards luncheon to follow at 11:30 a.m. The Port of Lake Charles will host the event and sponsor the awards luncheon.

Family and Consumer Science students from area middle schools and high schools are invited to participate. First, second and third cash prizes are given in the Best Rice Dish category and first place is given to the Most Heart Healthy Dish. Farmers Rice Milling Co., Inc., sponsors a rice cooker for each contestant.

The production, milling and exportation of rice have major economic effects on Southwest Louisiana, and the event helps to educate local students in health and nutrition issues facing Southwest Louisiana families.

For more information, contact Jimmy Meaux at 337-475-8812 or Michelle Bolen with the Port of Lake Charles at 337-493-3501.

Port Fourchon

CAMO & Port Fourchon Launch AIS Vessel Safety Initiative

The Coastal and Marine Operators (CAMO) group recently announced that it has successfully completed the first step in rolling out a major initiative to protect the safety of mariners, the environment and hydrocarbon pipelines from being damaged. The CAMO group began transmitting Automatic Information System (AIS) safety messages directly to mariners in two charted pipeline corridors in Port Fourchon, significantly improving their situational awareness by providing immediate alerts for vessels in close proximity to submerged pipelines. These vessel safety messages use existing AIS technology that is already deployed on most commercially operated vessels.

"Pipeline protection is increasingly important, with the typical incident costing an average of at least $1 million to repair, not counting the incalculable costs of injury, death, or environmental impact," said Ed Landgraf, director of CAMO. "This AIS-based safety broadcasting system culminates several years of hard work on a solution that enables vessel and pipeline operators to collaborate on protecting mariners from the risk of pipeline strikes. The system makes it easier for mariners to know where and when to take protective measures as they transit or operate near submerged pipelines, and we look forward to a successful roll-out here and in other ports nationwide."

The first phase of CAMO's AIS-based pipeline damage prevention and awareness program is being launched in partnership with the Greater Lafourche Port Commission (Port Fourchon) and Oceaneering®, a global provider of engineered services and products primarily to the offshore oil and gas industry. Oceaneering's PortVision® AIS-based vessel-tracking service is being used to monitor vessel activities in the two charted pipeline corridors north and south of Port Fourchon that pass under its main navigable channel. When the PortVision service detects a vessel operating at a speed less than 0.5 knots for three minutes or more within one of these corridors, an addressed, one-time AIS Safety Related Message (also known as message 12) is immediately transmitted directly to the vessel's wheelhouse that says, "PIPELINE BELOW."

Depending on the equipment installed on the receiving vessel and its equipment configuration, there may be visual and audible variations in how the AIS safety alert is received. Mariners capable of receiving and displaying the CAMO AIS messages are encouraged to provide feedback and report any anomalies to Oceaneering,
Global Data Solutions support at
portvisionsupport@oceaneering.com
or by calling 713-396-8644.

About the CAMO Initiative

CAMO initiated its joint pilot project for marine pipeline damage prevention and awareness in August 2012 with the United States Coast Guard (USCG). The pilot system was developed using Oceaneering's PortVision AIS-based vessel monitoring service through a grant partnership with Port Fourchon and the Pipeline and Hazardous Materials Safety Administration (PHMSA). The transmission of AIS safety messages has been approved by the FCC and USCG as part of an experimental AIS transmission. The safety message transmission will be operational for 250 days following the USCG notification to mariners recently issued earlier this month. A decision about continuing the transmission will be made after an assessment of how well it has increased vessel operator awareness of subsea infrastructure while reducing the threat of pipeline damage when vessels stop, anchor, drop a spud, or push aground inside one of the designated corridors.

About CAMO

The Coastal and Marine Operators (CAMO) group was developed with a goal to diminish the gap between onshore and offshore spills, releases, and pipeline damage prevention initiatives. A key component of this group's mission is to educate marine stakeholders and the public about the risks that damage to offshore utilities and pipelines can pose to personal safety and the environment. Although pipeline operators have vigorous inspection and maintenance programs to insure the integrity of their assets, the risk of third-party damage to a pipeline is a continual threat. For more information about CAMO, visit CamoGroup.org.

LED News

LED | LOUISIANA ECONOMIC DEVELOPMENT

Port Tax Credit Reduction

Mandi Mitchell, LED Assistant Secretary, recently reported that port tax credits were reduced by 28%, and tax credit application forms have been updated to reflect that change.

She also stated that there will now be an application fee associated with the tax credit form. The fee will be five tenths of a percent of the anticipated credit.

For more information please visit OpportunityLouisiana.com.

………………………………………

Area Development Magazine Ranks Louisiana among Top States for Business

Early this month, Louisiana earned its fifth consecutive Top 10 ranking in *Area Development* magazine's annual Top States for Doing Business report, placing No. 8 overall. The 2015 Top States for Doing Business report from *Area Development* magazine surveyed the nation's top site selection consultants to produce the report's findings.

Gov. Bobby Jindal said, "Today's recognition by *Area Development* magazine reinforces what business and industry leaders have long known. Over the past seven years, we have cultivated a competitive business climate that makes it possible for us to attract world-class capital investment and job creation projects. Our success since 2008 has paid off in quality jobs for Louisiana residents like never before, and more of our citizens are able to build rewarding careers without having to leave our great state."

In addition to the overall Top States for Doing Business ranking, *Area Development* ranked states in several specific business categories. For example, Louisiana ranks No. 2 in Incentive Programs; No. 2 in Leading Workforce Development Programs; No. 3 in Cooperative State Government; No. 3 in Speed of Permitting; No. 4 for Access to Capital and Project Funding; No. 4 for Most Favorable Regulatory Environment; and No. 4 in overall Business Environment. Louisiana also was rated No. 6 for Cost of Doing Business; No. 6 for Water Availability and Cost; No. 7 for Competitive Utility Rates; No. 7 for Competitive Labor Costs; No. 8 for Rail Accessibility; No. 9 for Certified Sites/Shovel-Ready Program; and No. 9 for Corporate Tax Environment.

Area Development editors lauded LED FastStart® – Louisiana's customized workforce development program – as a key element in the state's successful business environment.

"Louisiana's FastStart program was established in 2008 and relies on experienced industry professionals to interface with companies to create highly customized employee recruitment, screening, and training solutions for clients," the magazine said. "FastStart constructed a new 65,000-square-foot, advanced training center to support Benteler Steel/Tube's $975 million manufacturing project in Shreveport. To meet projections of fast job growth in Louisiana over the next five years, FastStart is developing more advanced job-matching and recruitment tools."

Louisiana now places higher in all national business climate rankings than it ever did prior to 2008. In five national business climate rankings – those published by *Area Development*, *Business Facilities*, *Chief Executive*, *Site Selection* and international location marketing firm DCI – Louisiana now ranks among the Top 10 states in the U.S. *Site Selection* named LED the best-performing state economic development agency in the nation in 2011 and No. 2 in the nation in 2015, and Pollina Corporate Real Estate ranked LED tied for the best-performing state economic development agency in the nation in 2013.

Since 2008, LED has secured economic development projects that are creating more than 91,000 new jobs and more than $62 billion in new capital investment, along with hundreds of millions of dollars in new sales for small businesses throughout the state.

Legal News

Mouledoux, Bland, Legrand & Brackett

Robins Dry Dock & Louisiana One Call

Last month, the Fifth Circuit Court of Appeals issued an interesting decision worthy of sharing. The case did not involve unique circumstances, and the Court's rulings should be of interest to those engaged in maritime commerce.

In *Plains Pipeline, L.P. v. Great Lakes Dredge & Dock Company*, decided August 12, 2015, a dredge owned by Great Lakes damaged a pipeline owned by Plains Pipeline and used by Phillips 66 Pipeline, LLC when it lowered its cutter head into the seabed while seeking to secure its position for anchoring. With the pipeline out of commission, Phillips incurred costs to transport its oil by other means. Plains, of course, incurred the cost to repair the pipeline and return it to service. Plains and Phillips sued Great Lakes to recover their respective losses.

Plains and Phillips moved for summary judgment, seeking a ruling from the Court that Great Lakes had violated the Louisiana One-Call

Statute, La. Rev. Stat. Ann. 40:1749.12(6). Great Lakes moved for summary judgment seeking a ruling from the Court that because Phillips had no proprietary interest in the pipeline its claims were barred under the rule set out by the Supreme Court in *Robins Dry Dock & Repair Co. v. Flint* (1927).

In addressing plaintiffs' allegations that Great Lakes violated the One-Call Statute the Court noted that it requires persons planning to "excavate" near an underground utility or facility must first give at least 48 hours' notice to the appropriate regional notification center. Once notice is given, the center notifies the owners of nearby underground facilities who must then mark their location on the surface before excavation begins. The purpose of the process is "to promote the protection of property" and persons "in the immediate vicinity...from damage, death or injury." Excavators who fail to give notice are subject to civil penalties.

In concluding that Great Lakes did not violate the One-Call Statute the Court determined that the statute defined "excavation" as any operation "for the purpose" of movement or removal of rock or earth by a variety of means including pile driving, digging, blasting, boring, tunneling, etc. Plaintiffs argued that the anchoring activity had the purpose of moving earth because to accomplish the objective of moving and stopping the dredge the "cutter head would have to dig into the seabed and displace the earth." The Court found that there is a distinction between purpose and knowledge. It found that while Great Lakes may have known that the cutter head would displace or cause movement of earth, but the statute plainly states that an activity constitutes "excavation" only if the "purpose" – the actual object – of engaging in it is the movement of earth. The object of "anchoring" is unmistakably, the securing of a ship, not the movement of earth.

The Court then considered Great Lakes' motion to dismiss Phillips claims for its lack of an ownership in the pipeline. In *Robins* the Supreme Court ruled that a plaintiff may not recover for economic loss due to physical damage to property unless he has proprietary interest in the thing damaged. The Supreme Court found this to be a reasonable means of limiting the number of claims that may arise from a maritime casualty. For example, when a stretch of the Mississippi River is shut down to traffic due to a vessel hitting a bridge, dock or other vessel the economic losses expand far beyond the owners of the vessels and facilities actually involved. The Court found this rule to be a reasonable means of administering claims and allowing parties to "order their affairs in view of predictable outcomes." Over the years the rule has been challenged, but has remained intact. Phillips did not contest that it was not an owner of the pipeline. It argued that its contractual relationship between it and Plains, governed by two contracts, a Service Agreement and an Operating Agreement, gave it a sufficient "proprietary interest". Phillips argued that it was given exclusive use of the full capacity of the pipeline and that it was "almost totally responsible for all the expense associated with ownership including insurance and taxes."

The Court strictly applied the *Robins* rule. It recognized that to have a proprietary interest the plaintiff must have "complete control" over the property – control "tantamount to full ownership." On review of the contracts the Court noted that Plains retained the responsibility to manage, operate, maintain and repair the pipeline using its own employees as well as to obtain insurance and pay taxes. Plains also paid all maintenance and repair costs without reimbursement to the extent they, along with other costs, exceeded $2.6 million annually. The Court found that for Phillips to have a proprietary interest sufficient to meet the *Robins* test the interest left Plains must amount to nothing more than a "right of reversion."

BY WILTON E. BLAND, PARTNER

MOULEDOUX, BLAND, LEGRAND & BRACKETT.

Associate Member News

Two Louisiana Firms Playing Important Roles in Creation, Construction of Offshore Wind Farm

With construction underway, two Louisiana firms with roots in the oil and gas industry are playing a leading part in what could be the nation's first offshore wind farm.

Once it's operating next year, Deepwater Wind's Block Island project is in line to generate 30 megawatts of electricity — enough power for 17,200 homes — roughly 3 miles off Rhode Island's coast.

The massive steel foundations for the wind farm's five turbines were designed by Keystone Engineering, of Mandeville, and built by Gulf Island Fabrication in Houma.

The two Louisiana firms were a natural fit for the project: Though destined for the East Coast, the foundations were modeled on offshore technology used by the oil industry in the Gulf of Mexico.

"It was a nice bit for two Louisiana companies who have been in the oil and gas industry for more than 30 years to put their experience together and try to come up with a solution," said Kirk Meche, president and CEO of Gulf Island, which has about 700 workers in Louisiana.

Deepwater Wind's turbines are supported by a traditional "jacket" foundation, which resembles a radio tower. Keystone's innovative design puts the structure's three legs twisted around a central column, which makes it easier and less expensive to build. Using more than a dozen construction and transport barges, tugboats and other vessels, Deepwater Wind began installing the foundations in July. With the first 400-ton steel jacket piled onto the sea floor, the company is officially moving ahead with development after years of delays and legal battles pushed other offshore wind farms to the brink. Perhaps most notably Cape Wind, which missed deadlines and became engulfed in litigation during its 14-year push to build a 130-turbine wind farm off the coast of Massachusetts.

"Offshore construction is now well underway on the Block Island wind farm," Deepwater Wind CEO Jeff Grybowski said in a statement. "We know the world is watching closely what we do here, and we're incredibly proud to be at the forefront of a new American clean-tech industry launching right here in the Ocean State. We're confident it's just the start of something very big."

Meanwhile, President Barack Obama's administration has pushed initiatives to promote clean energy through the Clean Power Plan. Unveiled this year, the plan aims to reduce carbon dioxide emissions by 32 percent below 2005 levels over the next 15 years at the country's power plants. It also calls for increasing renewable energy production by 30 percent while cutting costs associated with it.

After years of false starts, the federal government stepped in last year to try to speed up the pace of offshore wind development. The U.S. Department of Energy announced plans to provide up to $47 million apiece to three wind projects that sought to build farms off the coasts of New Jersey, Oregon and Virginia. Despite the help, the efforts largely have stalled in light of legal and financial challenges.

Keystone's innovative twisted jacket design is slated to be used on two of the projects.

The design gained industry attention after it was named a finalist among more than 100 entries in Carbon Trust's 2011 Offshore Wind Accelerator competition, which was held to promote less expensive wind turbine designs.

In Block Island, the jackets are attached to the seabed with piles. Each structure is up to 108 feet tall and weighs nearly 380 tons. The platforms add another 50 feet and 340 tons. Once it's assembled, the turbine's hub is almost 330 feet above the platform, and its blades stretch up to 270 feet long.

Ben Foley, who heads Keystone's offshore renewables unit, said he's optimistic that the U.S. will make bigger strides in offshore wind-power production in coming years.

"Globally, everything's just kind of slowed down, but now we see it turning the way we hoped it should," he said, noting that 15 percent of Keystone's revenue is driven by offshore renewables. The company has 300 employees.

Designing the wind farm's foundations required some adjustments from building for an offshore oil and gas platform, such as taking into account the added strain from the steady, repetitive vibration from the spinning turbine.

"Every time a blade goes past 12 o'clock, it's picking up a maximum load," said Zach Finucane, Keystone's manager for Block Island, "and when it's down at 6, it's picking up a minimum load."

Keystone engineers ran thousands of tests to ensure that the design would hold up under various weather conditions and load scenarios. Each calculation was done multiple times. Altogether, nearly 10 million tests were completed.

At Gulf Island, which began work on the structures early this year, workers relied on many of the same concepts they've used to build marine structures for the Gulf's oil and gas industry. "There was a little bit of difference in terms of how the foundation mounts for the turbines themselves," Meche said.

It took almost two months to build each jacket. The structures were delivered to Rhode Island by barge, and each trip took about two weeks, depending on the weather.

"This is really a test project of sorts to see if the energy can be produced at a reasonable rate for customers, and so I think this is the start of something that can really be a big segment of our business going forward," Meche said.

The National Renewable Energy Laboratory, a federal research lab, estimates that the U.S. has 4,200 gigawatts of offshore wind potential that's within reach, compared with 11,000 gigawatts of onshore wind potential.

Offshore wind is attractive to some clean energy advocates because the massive turbines can use more consistent winds blowing over the ocean. That leads to more power that can be generated than from similarly sized turbines installed on land.

But the extra potential comes with a catch, the federal Energy Information Administration noted last month as construction began on Deepwater Wind: Offshore turbines are far more expensive to build and maintain.

Still, offshore wind development has grown in Europe, which last year had 90 percent of the estimated 8.8 gigawatts of the world's installed capacity. The first offshore turbines were installed off Denmark's coast in 1991, although it took another decade before it gained much headway.

Industry analysts believe the long-term success of offshore wind development ultimately will hinge on whether developers can lock up long-term contracts to market the electricity — an often difficult hurdle to clear but one that Cape Wind had overcome until National Grid and Eversource Energy canceled pacts this year to buy a majority of its output.

"So far, the high cost of domestic offshore wind projects has made them economically unattractive, despite the availability of federal tax incentives and state policies to promote use of renewable energy," the EIA, the Energy Department's statistical arm, said Aug. 14. "In contrast, onshore wind capacity has grown by more than a factor of 25 since 2000."

Many experts, including David Dismukes, head of the LSU Center for Energy Studies, expect wind power will continue to face financial hurdles for the near future. But if it catches on, Dismukes believes Louisiana's oil and gas industry will have a natural advantage for its experience designing and building marine structures.

"They certainly have the technical know-how and the ability," he said. "We're always well-positioned for something like that. It's just a matter of whether the market can sustain that or not."

Meche, of Gulf Island, believes offshore developments will need to show larger returns than what's expected near Block Island before it gets a serious look.

"You've got five platforms out there trying to generate 30 megawatts of power," he said. "When we talk about trying to generate 250 to 300, a lot of people start paying attention."

By: Richard Thompson
The Advocate
August 31, 2015

MARK YOUR CALENDARS

October 1, 2015, PAL Monthly Meeting, Natchitoches, LA