

NEWS FROM THE DOCKS



Louisiana Ports Deliver

ASSOCIATION OF LOUISIANA

April 2011
Volume 12, No. 4

Message from the PAL Office

A huge thank you to the Ports of Shreveport-Bossier, Alexandria, Red River, Ouachita, Lake Providence and Natchitoches and the Red River Waterway Commission for hosting our annual conference last week in Shreveport. It was a tremendous success. The golfers enjoyed a beautiful course at StoneBridge. How about this for a winning team! Congratulations Gary Soileau, Randy Walters and Tom Budelman.



photo by Jamie Mabile

Our opening night reception was well attended and gave everyone an opportunity to meet all in attendance. On Thursday the program was excellent with speakers touching on topics that impact us all. And on Thursday evening we visited the extraordinary new Regional Commerce Center located at the Port of Shreveport-Bossier.

These conferences represent a lot of effort at the local level. PAL would especially like to recognize Marilyn Haley with the Port of Shreveport-Bossier for all of her time and planning. You did a great job!

PAL is also very appreciative of our sponsors and exhibitors. Without them it simply could

not happen. We realize what an effort it is to set up and man displays and to provide us with little goodies. All of our sponsors and exhibitors are listed at the end of the newsletter. You make an enormous difference!

If you weren't able to attend this conference, start planning for 2012. We look forward to doing it all over again next year in Lake Charles!

(For more conference photos, see page 7)

Legislative Update

The legislature is in special session, busy with reapportionment. This is an all-consuming task and promises to keep them occupied. A few bills have been pre-filed for the upcoming regular session but at this time, none are specific to ports. PAL will continue to monitor that activity and will keep you posted as the regular session approaches.

A Public Hearing is scheduled on the Port Construction and Development Priority Program on April 6th at 10am. Those with projects appearing in the Recommended Construction Program will be notified by DOTD prior to the hearing. It is always helpful to attend and remind legislators how important the program is to your port and how essential it is to fund it at an adequate level.

PAL members have drafted "design build" legislation, which will apply to all ports. In its current form, the draft legislation is limited to projects that are production related in scope. At this time, the bill has not been pre-filed.

Corporate Member News

Port of Morgan City

InterMoor Celebrates Grand Opening

InterMoor moved to its new location in Morgan City in January and had its official ribbon cutting ceremony Thursday afternoon, March 24th.

“It’s been a long journey since many of you witnessed us break ground in November 2009,” Scott Thomas, InterMoor vice president of finance, said Thursday. “Fourteen months of blood, sweat and yeah, a few tears along the way. We finally moved in January. Today, we’re proud to welcome you to our 24-acre state of the art facility that houses our fabrication, administration, operations and maintenance groups. A special thanks to our employees here that are the best in the business at what they do.”



Raymond "Mac" Wade Port of Morgan City Commission President received a plaque at the InterMoor Grand Opening in appreciation for the Port's dedication towards making this project happen. Pictured from left with Wade are Tori Henry, Administrative Assistant POMC; Deborah Garber, POMC Commissioner and Treasurer; William "Bill" Pecoraro and Matt Ackel, POMC Commissioners; Mac Wade; Greg Aucoin POMC Commissioner and Treasurer; Jerry Hoffpauir, POMC Executive Director; Duane Lodrigue, POMC Commissioner; Michael Knobloch, Knobloch Professional Services; Jerry Gauthier, POMC Commissioner and Vice President.

InterMoor’s newly constructed 24-acre facility in Morgan City contains a fabrication facility utilizing two fabrication buildings, both with engineering capability to design and provide the most comprehensive offshore equipment and mooring systems as well as repair capabilities.

“In the past you guys have done a very superior job of working in facilities that have been far from ideal,” InterMoor President Tom Fulton told local InterMoor workers. “You’re now in a facility in which you can be proud of and a facility that you deserve.”

Morgan City Mayor Tim Matte welcomed InterMoor to the business community now that they are in the city limits.

“InterMoor is proud to be a member of the Morgan City business community, and we appreciate the support we received from the Port (of Morgan City) commission and other state agencies in bringing this great facility into fruition,” Fulton said. “We have been in this community for over 25 years and are happy that our move kept us here. This 24-acre facility is a culmination of a long-term goal of ours, which demonstrates our commitment to growth to our employees, the community of Morgan City, and the oil and gas industry. We’re excited about the opportunities that this facility has already brought and will continue to bring to InterMoor, the Port of Morgan City and the state of Louisiana.” (The Daily Review, Friday, March 25, 2011)

PORT OF MORGAN CITY CREDITS THE H & B YOUNG FOUNDATION AND THE PORT PRIORITY PROGRAM AS MAJOR CONTRIBUTORS TO THE SUCCESS OF THE INTERMOOR PROJECT

President of the Morgan City Harbor and Terminal District Board of Commissioners also addressed those in attendance at the Grand Opening Celebration of the new InterMoor facility.

"When approached by InterMoor, we contacted Ms. Brenda Ayo of the H & B Young Foundation. Ms. Ayo immediately began putting a proposal together. Brenda and her board recognized the importance of keeping InterMoor here and made it happen. Let me say right now, if it had not been for the H & B Young Foundation, this project would not have happened. "



727.520.8881
www.aerophoto.com Youngswood Site Development Bldg Phase 2 Image # 110301 6050
Date 03.01.11

Mr. Wade also stated, "without the involvement of DOTD and its Port Priority Project Fund along with the Louisiana Department of Economic Development this project would not have become a reality. DOTD and LED put the project on the fast track and provided the all too important funding for the project. The Federal Government also stepped up, and through EDA and DRA provided necessary funding for the bulkhead."

Port of New Orleans

Big Deal Brewing at Port of New Orleans

The Port of New Orleans should be able to retain its largest shipping carrier for an additional decade under a new lease arrangement approved by the port's Dock Board.

The agreement aims to consolidate New Orleans Terminal's current leases with the port and add an additional 5 acres at the Napoleon Avenue Container Terminal for 10 years at an annual rate of \$6 million, which would rise by less than 1 percent each year, according to the proposal.

Since New Orleans Terminal is a joint venture owned by the Mediterranean Shipping Co. and Ceres Gulf, a terminal operations and ancillary services company, the new pact lets the port hold onto its largest shipping carrier for another decade.

"We are obviously delighted with [Mediterranean's] decision to camp here with us and to commit to such a long-term contract," Dock Board Chairman John Fay Jr. said during a special meeting called to discuss the lease. The board voted unanimously, 6-0, to authorize Port President and CEO Gary LaGrange to enter discussions on the proposal, which would still

need to be approved by the company's board. LaGrange believes a final decision could come before the end of the month.

"If they weren't interested in staying here long term, they wouldn't pursue a long-term deal like this," LaGrange said about Mediterranean's plans, which he described as "a huge, huge win for the port" and a deal three years in the making.

By Richard Thompson Business writer Times Picayune

Port Fourchon

Ex-port head, others honored

by Ted Macaluso – The Advocate

Most times when anyone saw Ted Falgout in action, it was directing the growth of Port Fourchon.

In his 31 years in the land off La. 3090 — Fourchon Road off La. 1 — he was the overseer of what arguably was south Louisiana's biggest industrial project. The port became the major oil-support site for the Gulf of Mexico and enriched Lafourche Parish and its surroundings.

Falgout balanced that growth with an ever-present eye on the coastal environs and managed to carve out enough time to serve on countless local and state commissions to advocate coastal restoration on state and national levels through his work with the America's Wetland Campaign.

Last year, amidst the country's worst oil spill, the BP-Deepwater Horizon disaster, the Larose resident, who retired from the port in 2009, came back to work with the Louisiana Oil Spill Coordinator's Office.

Falgout's knowledge of the gulf, his experience in marshaling resources and his direction in dealing with the oil spill earned recognition Saturday night in Alexandria where he was named the recipient of the 2010 Conservationist of the Year at a banquet, which stands as the headliner during this weekend's 72nd-annual Louisiana Wildlife Federation Convention.

Others honored at the Governor's Conservationist of the Year fete included four individuals, youth-based and church-based groups and the Baton Rouge ExxonMobil refinery.

The individuals included:

- Michael Carloss, a Department of Wildlife and Fisheries Coastal and Nongame Resources Division biologist, for his leadership in the state's wildlife-rescue response to the Deepwater Horizon oil spill. Carloss, from Baton Rouge, also had a hand in developing post-spill habitat restoration plans;
- Kenneth Sayes of Woodworth and Sayes Office Supply owner, for volunteering his time and talents to get more central Louisiana youngsters involved in outdoor activities, notably his work with the Avoyelles Sportsman's League;
- Amy Griffin Ouchley, a retired biology professor from Farmerville, for her efforts in involving other teachers to continue to stress environmental education, through her workshops, as part of an overall biology-course instruction and for work as Volunteer Environmental Education Director for Black Bayou Lake National Wildlife Refuge;
- Plaquemines Parish President Billy Nungesser for what the awards committee explained was "... developing the Parish Strategic Implementation Plan to proactively address coastal restoration and for his advocacy and leadership during the Deepwater Horizon oil spill to protect the coastal marsh of Plaquemines Parish."

The organizations included:

- The Houma-based Future Leaders of America's Gulf, an organization started by high school students in response to the Deepwater Horizon oil disaster. FLAG organized, then continued educating fellow local and area students about the ongoing work and the issues facing their area in the disaster's wake, then expanded its scope, through media and social networking, to national high school audiences;
- The ExxonMobil Baton Rouge Complex Wildlife Habitat Team's work in developing and implementing a wildlife

restoration plan for 10 sites throughout Louisiana, notably for its work in and around its Scenic Highway refinery and for its partnership with Southern University in developing ecologically-sound programs;

- First Presbyterian Church of Bayou Blue for what the committee described as "... the church's advocacy efforts at the regional and national level that explain the importance of Louisiana's wetlands and the need for coastal restoration by hosting national and international citizen leaders, visiting other coastal sites facing coastal erosion and supporting local conservation projects."

Legal News



Cap on Punitive Damages Under Fire

In 2008, nineteen years after Exxon's supertanker Exxon Valdez grounded on Bligh Reef fracturing its hull and spilling millions of gallons of crude oil into Prince William Sound, the U.S. Supreme Court considered the question of whether the award of \$2.5 billion in punitive damages was greater than maritime law should allow in the circumstances. *Exxon Shipping Company v. Baker*, 128 S.Ct. 2605 (2008).

In the lower court trial, Phase I, the jury found Exxon and Hazelwood reckless (and thus potentially liable for punitive damages) under instructions providing that a corporation is responsible for the reckless acts of employees acting in a managerial capacity in the scope of their employment. In Phase II, the jury awarded \$287 million in compensatory damages to some of the plaintiffs. Others had settled their compensatory claims for \$22.6 million. In Phase III the jury awarded \$5,000 in punitive damages against Hazelwood and \$5 billion against Exxon. The Ninth Circuit upheld the Phase I jury instruction on corporate liability and ultimately remitted the punitive damages award against Exxon to \$2.5 billion. Exxon then appealed to the Supreme Court.

The Court found the punitive damage award against Exxon was excessive as a matter of maritime common law, and that "in the

circumstances of this case the award should be limited to an amount equal to compensatory damages.” In doing so, the Court noted that although some state studies showed the dollar amount of awards growing over time, most accounts showed that the median ratio of punitive to compensatory awards remained less than 1:1. Continuing, the Court stated that the data did not show a marked increase in the percent of cases with punitive damage awards. The real problem was the stark, unpredictability of punitive damages. Stating that courts are concerned with fairness as well as consistency, the available data suggested that the spread between high and low individual awards was not acceptable. In coming to this conclusion, the Court found that a penalty should be reasonably predictable in its severity so that even the “bad person” can look ahead with some ability to know what the stakes are in choosing one course of action or another. The Court considered the option of setting a hard dollar punitive cap, but rejected this because there is no “standard” tort or contract injury, thus making it difficult to settle upon a particular dollar figure as appropriate across the board. The Court found the more promising alternative was to peg punitive awards to compensatory awards, using a ratio or maximum multiple. The Court found that this is a model used in many states, and an analogous of federal statutes allowing multiple damages. The question was what ratio would be most appropriate. To arrive at its answer, the Court analyzed studies reflecting the judgment of juries and judges in thousands of cases as to what punitive awards were appropriate in circumstances reflecting the range from the least blame -worthy conduct, to malice and avarice, to recklessness, to gross negligence. The Court found that the data in question put the median ratio for the entire gamut at less than 1:1, meaning that the compensatory award, in most cases, exceeds the punitive award. Accordingly, the Court found that a 1:1 ratio was a fair upper limit in maritime cases.

In recent years the issue of punitive damages has been the subject of several noteworthy cases, all of which trend toward expansion of its use. In *Atlantic Sounding Co v. Townsend*, 129 S.Ct. 2561 (2009), the Supreme Court overruled longstanding case law and found that as a matter of general maritime law, a seaman is entitled to seek punitive damages for his employer’s alleged willful and wanton disregard of its maintenance and cure obligation. This ruling

has opened the door for plaintiffs to try to expand the claims and causes of action for which punitive damages may be recoverable. In *Wagner v. Kona Blue Water Farms, LLC*, 2010 WL 3566731, the United States District Court in Hawaii ruled that punitive damages are available under the general maritime law claims of unseaworthiness, citing the Ninth Circuit of Appeals’ decision in *Evich v. Morris*, 819 F.2d, 256 (9th Cir. 1987). In *Rogers v. Resolve Marine*, 2009 WL 2984199, a case decided here in the Eastern District of Louisiana, plaintiff, a Jones Act seaman, moved to amend his Complaint to claim punitive damages for the alleged gross, willful and wanton negligence of his employer in causing his injuries. Judge Barbier did not specifically rule that he would recognize this cause of action, but did allow the amendment “in light of the movement of the law in this area, to avoid re-trial in the event the law changes.”

On March 16, 2011, U.S. Senator Sheldon Whitehouse (D-RI) introduced Senate Bill 592 entitled *The (Maritime Liability Fairness Act.)* Here Senator Whitehouse, quoting directly the Supreme Court’s reasoning in *Baker*, introduced legislation stating “Except as otherwise provided in its title, in a civil action for damages arising out of a maritime tort, punitive damages may be assessed without regard to the amount of compensatory damages assessed in this action.” This Bill was introduced March 16, 2011. It is in committee at this time.

This is evidence of a continuing trend towards the expansion of rights of recovery and punitive damages in the maritime law. Following the Deep Water Horizon event, Senate Bill 3755 entitled “A Bill to Ensure Fairness in Admiralty and Maritime Law” was filed. It would have eliminated the right to seek limitation of liability by vessel owners in all but a few scenarios, eliminate the cap on punitive damages, allow the award of non-pecuniary damages (loss of care, comfort and companionship) in claims for death on the high seas and allowed non-pecuniary damages in Jones Act claims. This bill stalled during the legislative process.

Nevertheless, the mood of Congress and the judiciary appears to be moving for a more liberal philosophy when it comes to the type and amount of damages available to maritime workers. We can expect to see continued attempts by counsel for injured maritime

workers to expand the circumstances when punitive damages can be awarded.



BY WILTON E. BLAND, PARTNER
MOULEDOUX, BLAND, LEGRAND &
BRACKETT.
504-595-3000 OR WWW.MBLB.COM

Mississippi River Dredging

Efforts Continue For Funding Lower Mississippi River Dredging

By *Eugene J. Schreiber*
Schreiber International Trade
(eugene@schreibertrade.com)

A wide-ranging group of businesses and organizations that rely on Mississippi River commerce and U.S. exports via the river system are continuing their coordinated efforts to convince the Obama administration and the Congress to adequately fund the dredging and deep-draft navigation maintenance of the lower river channel. The Big River Coalition has been warning that budget restrictions have caused the Army Corps of Engineers to delay and reduce dredging on the deep-draft portion of the Mississippi, resulting in restrictions that are now being put in place.

This year, the Army Corps has \$63 million budgeted for the deep-draft Mississippi, even though the actual cost of maintaining the river has averaged more than \$100 million for the past few years. As a result, the Corps has delayed dredging even though silting has caused the river to become steadily shallower and narrower for several months. Corps officials have warned that they can only guarantee a 40-foot channel in the late spring when silting is at its worst. That would be five feet less than the authorized channel depth.

The members of the Louisiana Congressional delegation and other members of Congress from states along the Mississippi River are spearheading legislation in Congress that would direct needed funding for

the dredging and maintenance work. One possible remedy is to authorize the use of the Harbor Maintenance Trust Fund, which is a tax paid on cargo that moves through U.S. ports in order to pay for channel maintenance. The trust fund already has a surplus of nearly \$5 billion which could be used to keep the Mississippi and other rivers properly dredged. Instead these funds have been added to the U.S. treasury and spent on projects unrelated to harbor maintenance.

The Mississippi River dredging problem has serious repercussions for America:

- * The 14,000 miles of waterways connecting through the river system carry the most cargo of any river in America and is the second most productive river transportation system in the world, behind only the Yangtze River in China.

- * The Mississippi allows some 30 states to ship their goods to export markets.

- * Cargo exports through the ports on the lower Mississippi are estimated to be worth more than \$100 billion a year.

Neglecting the maintenance needs of the river threatens to raise the cost of transportation in a way that harms farmers, industries and shippers throughout the heartland of American. More importantly, it harms America's international competitiveness.

MARK YOUR CALENDARS

May 4-6, 2011, IRPT Annual Meeting, Pittsburgh, PA,
Omni William Penn Hotel
<https://www.z2systems.com/np/clients/irpt/event.jsp?event=15>

May 3, 2011 PAL Monthly Meeting, 10 AM, Best Western
Richmond Suites, Baton Rouge, LA



Photos
Courtesy of
Jamie
Mabile





Association of Louisiana

THANKS TO OUR CONFERENCE SPONSORS

DIAMOND

**PORT OF SHREVEPORT-BOSSIER
RED RIVER WATERWAY COMMISSION**

PLATINUM

**ASSOCIATED TERMINALS, LLC
LA RIVER PILOTS ASSOCIATION
OIL MOP, LLC
PLAQUEMINES PORT HARBOR AND TERMINAL DISTRICT
PORT OF SOUTH LOUISIANA
URS CORPORATION**

GOLD

**ADS LOGISTICS COMPANY, LLC
HONEYWELL BUILDING SOLUTIONS
NATCHITOCHE PARISH PORT COMMISSION
PORT OF LAKE CHARLES
PORT OF NEW ORLEANS
RED RIVER PARISH PORT COMMISSION**

SILVER

**BURK-KLEINPETER, INC.
COTHREN, GRAFF, SMOAK ENGINEERING, INC.
COOK YANCEY
DAVIS LAW OFFICE, LLC
ENTERGY LOUISIANA
G4S TECHNOLOGY (FORMERLY ADESTA)
GOVERNMENT CONSULTANTS OF LOUISIANA, INC.
KEVIN BRYAN ARCHITECTS, LLC
SHAW E&I, INC.
PORT FOURCHON
PORT OF ALEXANDRIA
PORT OF OUACHITA
ST. BERNARD PORT, HARBOR AND TERMINAL DISTRICT
WASHINGTON & WELLS LAW FIRM
WEST CAMERON PORT COMMISSION**

BRONZE

**AILLET, FENNER, JOLLY & MCCLELLAND, INC.
BOH BROS. CONSTRUCTION Co., LLC.
CLECO**

**CRESCENT TOWING
FENSTERMAKER
GLAZER'S DISTRIBUTORS
GREMILLION AND POU INTEGRATED MARKETING
HANSON PROFESSIONALS
LAKE PROVIDENCE PORT COMMISSION
PORT OF IBERIA DISTRICT
PORT OF KROTZ SPRINGS
PORT OF MORGAN CITY
PORT OF WEST ST. MARY
RED RIVER VALLEY ASSOCIATION
STEPHENS INC.**

THANKS TO OUR EXHIBITORS

**ADS LOGISTICS COMPANY, LLC
GENERAL DYNAMICS
HONEYWELL BUILDING SOLUTIONS
INGERSOLL RAND
OIL MOP, LLC
T. BAKER SMITH
URS CORPORATION
WIELAND-DAVCO**