

NEWS FROM THE DOCKS



ASSOCIATION OF LOUISIANA

Louisiana Ports Deliver

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Message from the PAL Office

Another conference has come and gone...and what a conference it was. The French Quarter is a great venue and PAL certainly enjoyed the opportunity to be there once again. Many thanks to the Ports of St. Bernard, Plaquemines and New Orleans for all they did to make it such a success.

Highlights included golf under the beautiful oaks at Audubon Park and lunch at world-famous Anotine's. The speaker's roster was filled with prominent people in the transportation and maritime industry. Realizing they took time out of busy schedules, PAL would like to thank Real Admiral Mary Landry, Kurt Nagle, President of the American Association of Port Authorities, LED Asst Sec. Don Pierson and DOTD Interim Secretary Sherri LeBas for addressing the group.

PAL also would like to recognize all of our sponsors and exhibitors who went to a great deal of trouble and expense to support us. A complete list is at the end of this newsletter.

Sometime you just can't remember everything. We neglected to post the sign at the Oceana Grill on Wednesday evening indicating Adesta and Honeywell had sponsored that entire event. Our apologies to both of those generous companies and please know that we appreciate all that you have done for us in the past.

As we end one conference, we immediately start looking forward to next year. The ports of Fourchon, Grand Isle and Terrebonne will be our hosts next year. Plans are just starting to be formulated. So, stay tuned!

Legislative News

The 2010 Regular Session of the Louisiana Legislature convened at noon on Monday, March 29th. Over 2000 bills have been introduced for consideration during this non-fiscal session. This is a sixty-day session that must adjourn by June 21st. Several bills have been introduced that will impact ports. They include the abolishment of the Millennium Port Commission, revision of the tax credit legislation passed last year and several dealing with expropriation. PAL will be monitoring all of these bills.

Corporate Member News

Port Fourchon

Retired Port Fourchon Port Director, Ted Falgout, was honored recently with the Samuel Plimsoll Award for Outstanding Service by the editors of Professional Mariner, journal of the maritime industry.

The award honors individuals and organizations that have made great contributions toward moving the maritime industry to become safer and more efficient. Falgout, winner of the award for outstanding service by an individual, retired last year after 31 years as port director of Port Fourchon, La.



Port Fourchon experienced rapid growth during Falgout's tenure as port director. Today the

vessels based at Port Fourchon support 90 percent of all the deepwater oil and gas production and 45 percent of the Gulf's shelf operations. It also supports the Louisiana Offshore Oil Port (LOOP), this country's only offshore terminal capable of handling supertankers.

"Under his leadership, the port grew from a tiny fishing center into the primary base for offshore oil and gas operations in the Gulf of Mexico," said John Gormley, editor of Professional Mariners and presenter of the award. "The offshore oil and gas industry has recognized Port Fourchon as the ideal base for its operations, in terms of efficiency and safety. That fact is testimony to the outstanding design of the terminals and channels that have been developed under Falgout's leadership."

Despite the need to expand rapidly, Port Fourchon went to great lengths to protect the environment. Large tracts of wetlands were turned into a permanent wildlife sanctuary and beachheads, barrier islands and low-lying ridges were nourished to recreate some of the natural features that protect the low-lying coastal areas from storms and land loss.

"Over the years, Falgout has earned a reputation not just as an advocate of the maritime industry, but as a defender of the environment. In doing so, he has created a model that shows it is possible to protect a highly sensitive and fragile environment, while building a safe and efficient port," said Gormley.

In his acceptance, Falgout acknowledged that he was most proud of the role he had the opportunity to play in the development of Port Fourchon and that the economic viability of the Port has led to national interest in protecting Louisiana's coastal areas.

The award is named after Samuel Plimsoll, a member of British Parliament who strove to end the dangerous practice of overloading ships. His efforts culminated in legislation passed in 1876 requiring load lines to be visible on all ships, which is referred to as the "Plimsoll Mark."

The London-based Nautical Institute was also honored with the award for outstanding service by an organization for its support of the professional development of mariners and for its promotion of safety in the maritime industry.

The awards were presented on March 23 at the Connecticut Maritime Association's Shipping 2010 conference in Stamford, Conn.

Lake Providence Port Commission

Myriant Draws From DOE-Awarded Funds
(From Biomass Magazine By Lisa Gibson)

Using funds it was awarded from the U.S. DOE, Massachusetts-based Myriant Technologies LLC has begun design and engineering phases in the development of its biobased succinic acid facility at the Port of Lake Providence, La. It will be the biggest of its kind in the world.

Myriant, a biotechnology developer and renewable biochemical manufacturer, was awarded up to \$50 million for the project and hopes to begin construction on the facility by September of this year, according to Myriant. The company's process for producing its biobased succinic acid uses both carbon dioxide and local sorghum to displace petroleum-based feedstocks. Succinic acid is used in a variety of applications including plastics, fibers, polyesters and pigments.

Of the 19 integrated biorefinery projects that won funding or loan guarantees from the DOE in 2008, Myriant's is the only one focusing exclusively on biobased chemicals rather than biofuels. The project, which will also benefit from an additional \$10 million from the Lake Providence Port Commission and the Louisiana Department of Transportation, will help revitalize the U.S. manufacturing base, bringing much-needed job growth to northeast Louisiana, according to the company. Myriant and the Port had previously invested more than \$13 million to make the site shovel-ready and Myriant has plans to further expand at the location.

Port of Lake Charles

(By Eric Cormier – American Press)

Interim Port of Lake Charles Director Mike Dees characterizes his job as keeping the facility's business and operations moving forward. "The way I like to describe it to people who ask me is to say, 'Steady as she goes,'" Dees said.

Dees, a longtime legal counsel at the port, took on the additional duties of day-to-day management of the port on March 6 after former director Adam McBride's retirement. Dees said he's been in the middle of negotiations on several deals that could benefit the port and community, along with keeping in contact with companies that have investments on port property.

"We have a number of things going on, several longterm lease agreements with different groups," he said. "Ultimately, we're just trying to address issues we normally do when there is a permanent director."

Among the projects the port is working on:

- \$1.6 billion Lake Charles Cogeneration plant on 70 acres of port land near Citgo. "We're assisting them in the process to get their permits and approvals and those types of things," Dees said. "They are close but haven't concluded the necessary agreements to sell the products they will make at the plant. Until that's concluded, the company won't start construction. Yet clearing the site, to me, means they're optimistic."
- Negotiating a deal for a tugboat company that could locate its home base at the City Docks. "We're in the middle of those negotiations," Dees said.
- Discussions with BG Group and Trunkline LNG about expansion of their project on the industrial canal.
- Shaw Group is wrapping up construction of its nuclear reactor component facility, which is on 300 acres of port property.

Dees, who has said he has no intention of vying for the full-time port director job, will serve as both interim director and legal counsel until a permanent director is hired.

Regarding the search, Dees said an advertisement has been out for several weeks. "The deadline for applications is

March 22. Some are coming in, and I'm sure we'll get more," he said.

Port of South Louisiana

During the March 2010 regular Commission meeting, the Port of South Louisiana board elected Mr. Louis A. Joseph as President for 2010-2011. He succeeds

Mr. P. Joey Murray, who served as Commission President for the past five years. Mr. Joseph has served on the Board of Commissioners since 1998 as the Governor's appointee to represent St. John the Baptist Parish and was



previously elected President from 2000 to 2003.

Elections were also held to fill the remaining positions of the Port's governing panel. Former President P. Joey Murray, the Governor's at-large appointee representing St. Charles, St. John, and St. James Parishes, remains as Executive Vice-President. Sheila Bonnette and Raymond Fryoux remain as Treasurer and Secretary, respectively. Gregory Gravois, Rusty Gaudet, and Robert "Poncho" Roussel remain as Vice-Presidents.

All positions are elected for one-year terms.

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In March 2007, the Port of South Louisiana and the River Parishes –St. John, St. James, and St. Charles- formed an economic development coalition called the River Region Economic Development Initiative (RREDI) to develop strategies to further the economic growth and diversification of the river region. The economic development departments of the Port and the River Parishes have historically had a strong commitment and working relationship to attract and secure new industry and additional commerce to the area.



At the end of 2009, the Port of South Louisiana adopted a resolution to award each of the River Parishes \$15,000 for the specific purpose of promoting economic development. The grants were presented to each parish President during separate ceremonies at their respective council meetings.

Port of New Orleans

Chilean President Sebastián Piñera Visits New Orleans to Discuss Recovery

The City of New Orleans welcomed Chilean President Sebastián Piñera as he visited the Crescent City for a detailed briefing about the impact of Hurricane Katrina and the city's recovery. President Piñera spent five hours in New Orleans, which was his only stop before traveling to Washington, D.C. for a conference on nuclear energy. President Piñera, who has been in office for one month, is leading the recovery from the recent devastating earthquake in Chile.

Lt. Gov. and Mayor-Elect Mitch Landrieu discussed the state's response to the catastrophic event and Mayor C. Ray Nagin discussed the planning, recovery and reconstruction of New Orleans. Port of New Orleans President and CEO Gary P. LaGrange participated in the briefing, as well.

Legal News



Medicare and Medicaid

Benefits and the Collateral Source Rule

There arise occasions when the defendant in a maritime personal injury lawsuit will claim that the plaintiff's claim for damages, such as lost income or medical costs, should be reduced or offset by benefits or payments received from a source independent of or "collateral" to the plaintiff. For instance, the employer of an injured seaman may claim that the seaman's medical bills paid pursuant to an insurance policy provided by the employer should be credited to the employer and that it should not have to pay medical costs as a recoverable item of damages. When faced with this issue the

courts look to how the policy of insurance is procured and paid for. If the employer has purchased the policy and paid for it in its entirety with no contribution by the employee, and if it was made clear that any benefits provided in the policy would satisfy any responsibility by the employer to pay medical costs should the seaman be injured, then the courts have generally allowed the employer to credit or offset that which the insurer paid against the seaman's claim for medical costs. However, if the seaman has contributed to payment of the premium either directly or through payroll deductions the credit will not be allowed the employer as the payment is not derived from a source collateral to the seaman. The rationale is that the defendant should not benefit in a reduction of its liability by any amounts the plaintiff receives from a source collateral to or independent of the tortfeasor. Several justifications have been advanced to support the substantive rule that a tortfeasor may not obtain a setoff: the plaintiff should not be penalized for having the foresight to obtain insurance, particularly where, but for the tortfeasor's actions, that insurance would have continued to be available for other purposes; allowing the tortfeasor a credit for the plaintiff's insurance detracts from the function of deterrence in tort law; and the defendant deserves to pay for its fault. The rule's formulation that the plaintiff's recovery is not subject to a setoff for benefits independent of the tortfeasor leads to the straight forward conclusion that medical insurance, disability insurance and other forms of protection purchased by the plaintiff, as well as gifts he receives, cannot reduce the recovery.

In cases where the tortfeasor contributes toward the benefit, however, the justifications for denying a setoff become less compelling. The rule is intended to ensure that the availability of outside sources of income does not diminish the plaintiff's recovery, not make the tortfeasor pay twice. Thus the courts have recognized that it would be unfair to allow the plaintiff a double recovery when both the liability judgment and the collateral benefits are paid for by the defendant. The courts have held that the application of the collateral source rule depends less upon the source of funds than upon the character of the benefits received. For instance, payment by the employer into a fund for the purpose of providing a fringe benefit or deferred compensation would make the benefit subject to

the collateral source rule. Such payments by the tortfeasor were not made as a voluntary undertaking by the employer to indemnify itself against its possible legal liabilities or for the purpose of responding to legal liability.

If an injured plaintiff's medical bills are paid for or satisfied by either Medicaid or Medicare, the courts have generally held that the tortfeasor's liability will be limited to the amount that was paid to satisfy the debt. By law the health care provider is required to accept a scheduled amount from either Medicaid or Medicare which is less than the actual amount charged. Acceptance of the payment extinguishes the debt.

But what about the amount written off by the provider? Is the injured plaintiff entitled to recover that amount from the tortfeasor?

When faced with the issue of whether tortfeasor should be able to get a setoff for any amounts written off by the provider, the courts have held that the tortfeasor should be entitled to that credit. The courts have held that Medicaid is a system for providing payment of medical costs for the poor. Neither the beneficiary nor his employer pays premiums or underwrites the cost of the program. The plaintiff whose medical bills are paid for by Medicaid pays no enrollment fee, has no wages deducted, and otherwise provides no consideration for the collateral source benefits he receives. It has been stated that it "would be unconscionable to permit the taxpayers to bear the expense of providing free medical care to a person and then allow that person to recover damages for the written off amounts and pocket the windfall. Thus, when it comes to Medicaid payments, the courts have allowed the tortfeasor a setoff and have held that the injured plaintiff cannot recover the full value of the medical bills.

When it comes to Medicare payments the courts are divided in their application of the rule. Some courts have held that when Medicare pays for the injured plaintiff's care and satisfies the medical bills by paying a percentage of the bill which the provider is by law required to accept in satisfaction of the debt, the plaintiff is entitled to recover not only that which Medicare paid, but the entire amount of the cost of the services. For instance, if the bill is \$100,000 and Medicare paid \$30,000 to extinguish the debt, the plaintiff, although he has not paid a cent, can recover the entire \$100,000. The theory behind

this award, which the author believes is clearly a windfall to the plaintiff, is that payment into the Medicare trust fund, though involuntary, is in exchange for health care coverage, and gives rise to the duty on the part of the government to pay benefits when required.

Some courts have taken the opposite position and held that the benefits of the written off amounts are not procured by the plaintiff but are required by operation of federal law. The collateral source rule is designed to protect innocent victims whose patrimony has been diminished in order to procure the benefit of a payment from a source other than the tortfeasor. These courts have held that although the plaintiff's patrimony is diminished by the amounts paid in premiums or deductibles under the Medicare program, the charges written off are not actually paid by anyone, Medicare or the victim. Thus the plaintiff should not receive the windfall of the amount written off by the health care provider.

On this issue there are divisions among the courts. It seems clear to the author that mandatory payment into the Medicare trust fund was not intended to provide a windfall recovery to a plaintiff in tort litigation. It was meant to provide cost effective, inexpensive health care to a segment of the population. It was not meant to be the source of income to those who may be injured.



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

MARK YOUR CALENDARS

*May 13 – PAL Monthly Meeting, Baton Rouge, 10AM,
Richmond Suites Hotel*

Welcome New Members

This month PAL welcomes a new associate member:

Weston Solutions – is a consulting engineering firm located in Baton Rouge and they will be represented by April Dykes.



Association of Louisiana

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