



CHAIRMAN'S COLUMN

This is not the "State of the Institute" address, but rather my goals for the direction of SEALI this year. I have discussed many of these ideas with a number of you in the past, but I thought it might be beneficial to put it in writing addressed to all of the membership.

I previously conveyed these thoughts to all of the SEALI leadership in a five page letter. We have, as some of you know, recently concluded this year's planning meeting at Pensacola Beach which sustained massive damage from Hurricane Ivan. Notwithstanding this, from preliminary indications, we had a very successful meeting, and the June seminar topics are selected and we are well on our way to having all of the speakers committed. You will all be receiving shortly from Larry Jones the full program so you can be in attendance in Atlanta Thursday evening, June 23 through Saturday, June 25, 2005.

David Sipple and the Long Range Planning Committee will continue the work on the expert witnesses database

which has been in progress for some time. I am asking each of you to add as many experts as you can confidently recommend within the next thirty (30) days. This database will play a significant role in the goals that we started at last year's annual seminar to make this organization the number one most useful source of practical benefits to each member's personal law practice, and to further multiply the many benefits of networking within the membership.

I am committed to grow the membership of SEALI, particularly with younger practitioners in the areas of maritime law. To this end, I am challenging all of you to personally recruit at least one new member who can be from your own firm, another attorney with whom you may have worked, or from the ranks of referring counsel. No one should forget the ranks of associate members—many marine insurance adjusters, claims personnel, industry officials, etc., could clearly benefit from our educational programs as well as the networking and camaraderie which

have long been the hallmarks of this organization.

To further that goal of new member recruitment, I have asked David and his committee to schedule 4-5 after work cocktail receptions to be hosted in the major SEALI cities—approximately 4-5 this calendar year with another 4-5 next year. A budget of \$500.00 per event to be paid by SEALI has been established. I would hope that the events could be scheduled in advance of the June seminar in order to procure new members in time so that they could plan to attend.

Geoff Losee will continue as the IT Chairman, and in addition to the fine presentations he has made in this area at prior seminars and annual meetings, I have asked him to work with the ICLE webmaster to continue to expand the SEALI website by adding links, past copies of the newsletter, and to revisit the issue of whether or not any of the annual seminar papers ought to be available on line. I have asked Geoff and his committee to look especially hard at including on line those

...continued on next page

SEALI WELCOMES THE FOLLOWING NEW MEMBERS:

JAMES L. AZZARELLO, JR.
Cohen, Gorman and Putnam, LLP
Houston, TX

DENISE L. DAWSON
Romaguera Baker Dawson Bringardner & Dias
Palm Beach Gardens, FL

JOANNE M. FOSTER
Kaye Rose & Maltzman, LLP
Miami, FL

RUFUS C. HARRIS III
Harris & Rufty, LLC
New Orleans, LA

MICHAEL H. KESTENBAUM
Lau, Lane, Pieper, Conley & McCreddie, PA
Tampa, FL

LISA O. O'NEILL
James M. Walker, PA
Miami, FL

CHRISTINA SCHOVAJSA
Eastham, Watson, Dale & Forney, LLP
Houston, TX

J. ANDREW TALBERT
Bozeman, Jenkins & Matthews
Pensacola, FL

TERENCE W. WALDORF
Diamond Offshore Drilling, Inc.
Houston, TX

JAMES M. WALKER
James M. Walker, PA
Miami, FL

IRVING J. WARSHAUER
Gainsburgh, Benjamin, David, Meunier & Warshauer, LLC
New Orleans, LA

2005 SEALI Officers

*John W. Merting, Chairman
Frank E. Billings, Vice-Chairman
Mary Campbell Hubbard, Secretary
James N. Hurley, Treasurer*

REGIONAL EDITORS

*Michael H. Bagot, Jr., New Orleans, LA
Allen E. Graham, Mobile, AL
Mark T. Coberly, Norfolk, VA
Kimberly H. Israel, Jacksonville, FL*

CHAIRMAN'S COLUMN (continued)

papers that contained checklists and forms such as those excellent ones at last year's seminar prepared by John Unger and Ed White. I have also asked Geoff to look at the possibility of creating an e-server list that members who chose could enroll (perhaps for a modest annual fee) in order to seek and exchange information on various maritime issues, suggestions as to how to approach current problems members might be facing in pending cases, suggestions of potential experts or feedback regarding disclosed experts.

John Unger has agreed to continue as Editor of the newsletter. I have asked John and the members of the Editorial Committee to continue to produce this high quality publication on a timely basis, and to seek to expand the number of case summaries published in each issue. I encourage each member to forward recent cases to John for consideration for publication.

The dates for the annual seminar are June 24-25, 2005, in Atlanta, Georgia, and October 6-9, 2005, for the annual meeting at the 5-star Aventura Spa Resort on the Carribbean, less than one hour's drive south of Cancun, Mexico. Our group rate for this 5-star resort is only \$289.00 per night per couple, which includes all meals, snacks, beverages, all taxes and gratuities, and all adult beverages! (What have they been drinking?!)

Jim Chapman and his panel did an excellent inaugural CLE program at last year's annual meeting, and he is well on his way toward assembling another diverse and interesting program with dynamic speakers.

Finally, I very much appreciate the confidence placed in me, and I look forward to an exciting and eventful year, and each of your valued efforts and input towards SEALI's continued growth and continued fulfillment of its mission. As always, if any of you have any suggestions, concerns or feedback regarding any aspect of our organization or these comments, please feel free to discuss those with me at any time.

John W. Merting

On-Line Database of Maritime Expert Witnesses

David Sipple advises that submission of names of expert witnesses for the SEALI database are slowly trickling in but he needs to hear from more members, particularly the port directors. Send your submissions to dsipple@huntermaclean.com or by fax to 912-232-3253.

SEALI ANNUAL MEETING
October 6-9, 2005
Aventura Spa Palace • Cancun, Mexico



INFORMATION TECHNOLOGY SUBCOMMITTEE REPORT AND UPDATE

Check the SEALI website for these added features, as well as future implementation of the following:

- ❖ A more thorough calendar adding numerous dates as they become available, e.g. planning meetings, annual meetings, summer seminar meeting (including draft agendas as they are available), along with due dates for registration, etc.
- ❖ Online access to the Library Index (with possibility of links to authors' email addresses and/or availability of certain materials for purchase and/or download)
- ❖ Addition of useful weblinks (as suggested by the membership)
- ❖ Availability of online copy of the newsletter(s) published by SEALI (with the most recent and three past issues available)
- ❖ Signing up for meetings/seminars online

In addition, the following items were discussed as future projects of the IT Subcommittee:

- ❖ A database of expert witnesses (submitted by members, with curriculum vitae and members' commentary on the utility of the expert).
- ❖ Feedback is welcome. Please e-mail your thoughts to IT Subcommittee Chair, Geoff Losee at glosee@rlblawfirm.com

Geoff Birkhead Memorial Scholarship Fund

A scholarship fund has been established in memory of SEALI member Geoffrey Birkhead, Norfolk, Va., who passed away last year.

Checks from individual SEALI members may be made payable to "The Geoff Birkhead Scholarship Fund, Inc." which is a 501(c)(3) tax exempt scholarship fund, contributions to which are tax deductible. Please include the notation "SEALI Family" on the memo line for your check.

Checks may be sent to:

Carter Gunn
Vandeventer Black LLP
500 World Trade Center
Norfolk, VA 23510-1699

Carter will track SEALI members' contributions, and each contributor will receive a letter as to the deductibility of his contribution from the fund administrator.

Qualifications for Application: The scholarship may be applied for by any graduating senior at First Colonial High School in Virginia Beach who has been accepted by either The University of Virginia or James Madison University and has demonstrated a record of academic achievement, good citizenship, and school/community involvement.

RECENT CASES OF INTEREST

I. Stewart v. Dutra Construction Co.

2005 WL 405,475 (U.S. 03-814, Feb. 22, 2005)

The United States Supreme Court rejects the 1st Circuit's approach to seaman and vessel status and holds that the term "vessel" for use with both the LHWCA and Jones Act is the very broad definition set forth in 1 U.S.C. § 3—"every description of watercraft or other artificial contrivance used, or capable of being used, is a means of transportation on water." The 1st Circuit had decided that a large dredge being used to dig a tunnel in Boston Harbor was not a vessel; and therefore, an engineer on the dredge who was injured when the dredge collided with a scow did not come within coverage of the Jones Act, but rather this remedy was under the LHWCA. The 1st Circuit opinion had drawn concern from a variety of maritime interests, including those engaged in offshore drilling who operate mobile offshore drilling units. Their employees would have likely been required to be covered under the Longshore and Harbor Worker's Compensation Act if the 1st Circuit's position had been upheld. SEALI member, Pat Cooney prepared the *amicus* brief on behalf of a number of offshore drilling contractors and the IADC.

II. Commonwealth Insurance Co. v. Halliburton Energy Services, Inc.

2004 WL 3142444

(L.A. APP. 1 Cir. 2003 CA2490 Dec. 30, 2004)

This is a Louisiana Court of Appeals decision, which is notable for its determination that the oil company operator's company man on the rig had bound the oil company to indemnity obligations, when he signed work orders out on the rig which contained the indemnity language.

III. Verossi v. Nat'l Loss Management

3-02-CV247 (D. Conn. July 29, 2004)

The U.S. District Court for the District of Connecticut ruled that federal admiralty law preempts the Connecticut Unfair Trade Practice Act. In the instant case Plaintiff insured his boat with defendant insurers. The boat sank in a storm and plaintiff filed a claim. After receiving payment, plaintiff filed a supplemental claim. When the parties could not reach an agreement, plaintiff sought and obtained an extension of time to file suit. After the agreed extension expired, plaintiff filed suit alleging that defendants violated the state Unfair Trade Practices Act entitling him to attorney's fees and punitive damages. Defendant sought summary judgment on preemption grounds, and the court ruled the action that federal admiralty law preempted the provisions of state law concerning attorney's fees and punitive damages.

IV. Bautista v. Star Cruises

No. 03-15884 (11th Cir. Jan. 18, 2005)

The 11th Circuit held that crewmembers' employment agreements were subject to the arbitration agreements contained within their employment contracts. The Federal Arbitration Act, 9 U.S.C. §116 (2002) exemption as to seaman employment contracts did not apply to foreign seamen who were employed through a program administered by the Philippine Overseas Employment Administration (POEA).

V. Scarborough v. Clemco Ind.

No. 03-30985 (5th Cir. Nov. 18, 2004)

The 5th Circuit held that a wrongful death claim brought by a sandblaster's survivor against the manufacturers of hoods and masks used by decedent were governed by maritime law because the decedent sandblasting work was done mostly on movable drilling rigs, or from boats adjacent to fixed platforms, even though it acknowledged that some of the decedent's work was performed while actually on the fixed platforms. Accordingly, summary judgment was granted for defendants with respect to the survivor's claim for non-pecuniary damages pursuant to *Miles v. Apex Marine Corp.*

VI. Brown v. Parker Drilling Offshore Corp.

No. 03-30782 (5th Cir. Jan. 5, 2005)

The 5th Circuit reversed the district court's judgment on a jury finding that the employer had been unreasonable in withholding maintenance and cure benefits. The employer contended that it was not responsible for maintenance and cure benefits because the plaintiff had willfully concealed a prior back injury. The jury had determined that there was no willful concealment. The 5th Circuit reversed and rendered a holding that a jury could not have rationally determined that Parker was unreasonable in relying on the defense where the plaintiff had denied "past or present back and neck trouble" on the medical questionnaire he filled out prior to beginning work.

VII. Frango v. Royal Caribbean Cruise Lines, Ltd.

A Florida Appellate Court in *Frango v. Royal Caribbean Cruise Lines, Ltd.* 30 Fla. L. Weekly D320 (Fla. 3rd DCA 2005) has ruled that a spouse of an injured passenger on board a cruise ship may not recover for loss of consortium. Plaintiff Iris Frango was injured on board Royal Caribbean's cruise ship "GALAXY" due to an alleged malfunction in the vessel's automatic doors. Joseph Frango filed a claim for loss of consortium. The court noted the rule that state law may be applied to a maritime claim providing that the same does not conflict with federal maritime law. Citing to *In re Amtrack "Sunst Ltd" Train Crash in Bayou Canot, Ala.* 121 F.3d 1421 (11th Cir. 1997), the court found that the greater weight of authority precluded recovery for loss of consortium and therefore Plaintiffs could not pursue this remedy under state law. The Court did note the contrary position taken by the Second Circuit in *Wartman v. Commodore Cruise Line, Ltd.*, 100 F.3d 943 (2nd Cir. 1996) but found this to be a minority rule.

Join SEALI Now!



Join SEALI Now!

SOUTHEASTERN ADMIRALTY LAW INSTITUTE, INC.

Application for New 2005 Membership

(Please type or print)

The Applicant must complete this application and secure the sponsorship and seconding. The application together with the application fee of \$20.00 and the first year's annual dues of \$70.00 (total of \$90.00) should be sent to SEALI, P.O. Box 1885, Athens, GA 30603-1885. If you have any questions, please call the SEALI administration office at 706-369-5664.

NAME: _____ SPOUSE'S NAME: _____

FIRM: _____

BUSINESS ADDRESS: _____

CITY: _____ STATE: _____ ZIP+4: _____

BUSINESS TELEPHONE NO.: (____) _____ OFFICE FAX NO.: (____) _____

E-MAIL ADDRESS: _____

BAR ASSOCIATIONS: _____ Adm. _____

_____ Adm. _____

PROFESSIONAL ORGANIZATIONS: _____

LAW DEGREE: _____

(College or University)

Date

Percent of Practice in Admiralty & Maritime Law: _____

Description of Relationship to Maritime Activities (to be answered only by applicants for Associate Membership):

- I have enclosed a check for the Annual Dues and Membership Fee in the amount of \$90.00 OR
- I authorize SEALI to charge the Annual Dues and Membership Fee in the amount of \$90.00 to my MASTERCARD VISA AMERICAN EXPRESS*

Account #: /

Credit Card Verification Number: A three-digit number usually located on the back of your credit card; *AmEx is four-digits on the front of the card

Expiration Date: ____/____ Signature: _____

SPONSORSHIP

Applicants for Membership must be sponsored and seconded by a Member of SEALI. Applicants may also be sponsored and seconded by **one** officer or **one** director.

SPONSOR:

Name _____

Address _____

SECONDED:

Name _____

Address _____