



SOUTHEASTERN ADMIRALTY LAW INSTITUTE

NEWSLETTER

John F. Unger, Editor in Chief

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CHAIRMAN'S COLUMN

John Merting

It is hard to believe that it has been more than one year since the undersigned was elected as Chairman of SEALI at the annual meeting in Yellowstone. That meeting was just a few days after hurricane Ivan devastated our area of Florida. This year, the Pensacola area was hit by Arlene and Cindy (both tropical storms). Hurricane Dennis, whose eye wall passed one mile from our home. Then Emily wreaked havoc on the Aventura Spa, the site of this year's annual meeting. We received substantial dock damage from Katrina, even though the center point was the Mississippi Gulf Coast. The day we arrived in Cancun, they were feeling the final effects of Stan, which caused major damage in Guatemala. As most people know, Wilma, a major hurricane, struck Cancun with two full days of fury, a short time after our group departed. Wilma, of course, went on to cause extensive damage to South Florida shortly thereafter. Very few of our members' homes or offices were completely spared of any effects of these last two record breaking hurricane seasons, and we are not done yet! For those of you who think my election and the unprecedented hurricane devastation was cause and effect, I am preparing a Daubert challenge to your experts!

Elsewhere in this newsletter, you will find more detailed reports from John Unger, Chairman of the Editorial Committee, David Sipple, Chairman of the Long Range Planning Committee, and Geoff Losee, Chairman of the IT Sub-Committee. Needless to say, a tremendous amount of what SEALI was able to accomplish this year was a direct result of the efforts and energies of these three gentlemen and their committees.

In my initial column, which followed a lengthy letter to all of the new officers, committee chairmen, members, and port directors, I set a number of goals for SEALI this year. Many are addressed in the Committee Chairmen's reports elsewhere in this newsletter.

Additionally, I wanted SEALI to expand its membership, with particular focus on adding younger members. I am pleased to report that we added 53 new members. Some are the result of several after work cocktail parties in major cities which were coordinated by the Long Range Planning

Committee and financed by SEALI. The relatively small expense thereof was more than covered by the new members' dues from just this year alone.

Due to several somewhat unusual factors, SEALI sustained a \$10,000.00 operating shortfall during the preceding year. Rather than raise dues, we sought to do a few things differently which resulted in SEALI having an excess of income over expenses from preliminary indications from Larry Jones, although the calendar year is not yet over.

We hosted the Planning Meeting in January on Pensacola Beach, although only a single hotel and a hand full of restaurants were re-opened as a result of hurricane Ivan. Since this is our off-season, we were able to secure rooms at about one-half of the rate usually charged in Atlanta or other previous venues. I was honored by the fact that more than a dozen former Chairmen chose to attend, even though SEALI reimburses certain limited expenses for only the five previous Chairmen. However, this unprecedented attendance by the "college of cardinals" reminded me of when I was a child, my dad would let me sit on his lap and "drive." This year, maybe I would get to "hold the wheel," but was I really "driving?"

The Seminar Planning Meeting under Vice Chairman Frank Billings' able leadership resulted in the customary excellent speakers and papers with a very high level of attendance. All of the new members and first-time seminar attendees' name tags bore a gold star which made it easy for them to be recognized and welcomed appropriately into SEALI. Forms, checklists, and other practice benefitting materials were again emphasized at the seminar, as it had been my goal the preceding year.

The Annual Meeting was perhaps the highlight of the year for those able to attend, notwithstanding the devastation brought by hurricane Katrina to many of our members' homes and offices. Due to the all inclusive nature of the five star resort, we were able to lower the registration fee without adverse financial impact. I extend my appreciation to Jim Chapman who volunteered again to direct the CLE program at the Annual Meeting, and to those

CHAIRMAN'S COLUMN

continued

members who took time away from fishing and the pool bar to present an excellent program over two days. Linda and I attended our first SEALI fall meeting in 1984 on Cape Cod. Many of you may remember a full blown hurricane struck Chatham during our meeting - that was our fifth hurricane of that season. Just twenty years later I was honored to be elected Chairman. Due to this apparent "pattern," David Collins opined that perhaps I should not be elected "Past Chairman." Notwithstanding, the following slate of officers was unanimously elected: Chairman - Frank Billings, Vice-Chairman - Mary Hubbard, Secretary - Jim Hurley, and Treasurer - John Unger. Congratulations to all!

I wanted to extend my sincere appreciation for the honor bestowed upon me by the organization, and thank my wife, Linda for her support and efforts on behalf of SEALI this year, as well as previous years, and my mentor, Ed White, the first plaintiff's lawyer to serve as SEALI Chairman (I believe I am the second). As those of you who have served as Chairman know, this organization absolutely could not

exist, much less function, at the high level which it does without the tremendous capabilities, competence, and enthusiasm of Larry Jones, Martha Phillips (who retired this year), Karen Sorrells, Scarlett Smith, and Web Master, Brian Davis, as well as all of the other staff of ICLE upon whom we depend.

Obviously, my appreciation is also extended to all officers, committee chairmen, committee members, port directors, and the general membership for the opportunity and privilege of serving as Chairman.

Thanks also to Sandy Hogue, my long-time assistant and "keeper" during business hours - she gets the credit for the things that got done correctly and I'll accept the blame for all that went wrong (except for the hurricanes)! I know many of you feel, as I do, that we have formed lifelong personal friendships through SEALI, as well as professional bonds, both of which I treasure beyond my powers to describe.

I look forward to many more years of association with this group of professionals.

F. Y. I.

- The IT Subcommittee worked with Larry Jones and his staff to make significant improvements to the SEALI website (many of which were implemented as early as March 2005). Included in these improvements are:
 - Categorized membership directory with alphabetical and geographic indexing for quicker on line searches
 - Downloadable membership application
 - Enhanced calendar (with downloadable brochure and registration data for upcoming event(s))
 - Enhanced index to SEALI materials, a new "links" page with sites useful to maritime practitioners
 - Three most recent SEALI newsletters
- Still in process:
 - Availability of SEALI materials online
 - This will require additional server storage space and the scanning of older materials; the costs associated with these processes are beyond what ICLE can assume.
 - Signing up for meetings/seminars online
 - The database of expert witnesses (submitted by members, with curriculum vitae)
 - A certain number of experts have been listed
 - Numerous issues have been raised generally relating to avoiding liability and the appearance of endorsement of the listed individuals. It appears that these concerns have now been addressed, and the subcommittee is awaiting final approval from the Board of Directors prior to implementation
 - An e-server list will require additional server storage space and certain software for the interface; the costs associated with these are beyond what ICLE can assume.

MESSAGE FROM THE EDITOR

Some past listings in the Martindale-Hubbell to the contrary, my undergraduate degree from The University of Texas was a BJ (as in Bachelor of Journalism) and not JB (as in Scotch). So it was with pleasure and interest that I received the assignment to be the editor of the SEALI Newsletter several years ago. Hopefully you have found the Newsletter to be useful in your practice, as this was my main (if not sole) objective in putting out each issue. It was rewarding to receive calls and emails from you asking for a copy of one decision or another to be forwarded. The post of editor is not without similarity to a castaway who finds oneself on a desert island with a supply of bottles. The missives go out, but you never know if or how widely they are read; so indeed the feedback on the cases was appreciated. Also appreciated were the contributions and guidance received from the officers and members of the editorial board over the years, particularly Mike Bagot, Scott Bluestein, Teeto Graham, Jim Hurley, John Merting, Hodge Alves and Bob Barbier, a former editor. I am sure I have overlooked several others who are due thanks. Finally it must be said that the newsletter would not be possible without the tireless efforts of Larry Jones.

SEALI EXPERT WITNESS DATABASE

Long Range Planning Committee Chairman David Sipple reports the expert witness database has now been assembled at long last and should be up and running at or shortly after the beginning of the new year. David thanks all members who have submitted experts for the database.

COURT CASES

Rossetti v. Charleston Freight Station, Inc., 354 F.Supp.2d 612 (D.S.C. 2005)

This case involved the re-occurring issue of what constitutes a package under the Carriage of Goods by Sea Act ("COGSA"). The district court found that COGSA's limitation of liability of \$500.00 per package applied to each individual piece of the shipper's goods that were packed in a single container and that the container was not considered the COGSA package for limitation of liability purposes. The court reasoned that the bill of lading did not clearly and unequivocally treat the container as a COGSA package. Instead, the bill of lading contained a notation that 169 pieces of the shipper's goods were being shipped in one container.

Rofail v. United States, 227 F.R.D. 53 (E.D.N.Y. 2005)

The defendant was required to produce the plaintiff's pre-litigation statement, statements of defense witnesses and an incident report before the plaintiff's deposition, because it was not able to show any good cause for a protective order delaying the production of these documents. The district court held that the possibility of the plaintiff tailoring his testimony to his prior statement does not amount to good cause, which would permit the withholding of the statement and other documents.

AXA RE Property & Casualty Insurance Co. v. Tailwalker Marine, Inc., 2005 AMC 749 (D.S.C. 2004)

This case involved the theft of two engines from a vessel while the vessel was located at the vessel repairer's facility on land. The defendant filed a motion to dismiss for lack of admiralty jurisdiction since the loss occurred on land. The district court found that admiralty jurisdiction existed, because the plaintiff alleged that the vessel repairer breached a maritime contract, a contract to repair a vessel.

Young v. Hair, 2005 AMC 28 (E.D.N.C. 2004)

A Jones Act employer was found liable for failing to pay maintenance and cure to a fisherman, who was injured on a dock after he had finished assisting with the unloading of seafood from a vessel. The district court awarded attorney's fees and cost to the fisherman for the employer's failure to pay maintenance and cure. The employer contended that the fisherman was no longer employed by him at the time of the injury.

Continental Ins. Co. v. Collinworth, 898 So.2d 1085, 2005 AMC 1293 (Fla.. DCA 2005)

During a race between two powerboats a collision occurred and one of the vessel operators was killed. The descendant's marine insurer denied coverage based upon an exclusion in the policy that excluded coverage during any speed race. The court of appeals reserved an adverse summary final judgment that held the exclusion did not apply because the race was not officially sanctioned. The court of appeals found that the exclusion for any speed race was ambiguous and covered any races, whether officially sanctioned or not. The exclusion even covered impromptu races.

CALL FOR SEMINAR TOPICS

The annual SEALI seminar will be held June 16-17, 2006 at the Marriott Riverfront Hotel in Savannah. Mary Hubbard, Secretary of SEALI will be chairing that program. Mary is seeking suggestions for seminar topics. If you have any ideas, please email Mary at mch@fre-law.com.

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