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#### **PRACTICE AREAS**

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#### **INDUSTRIES**

Logistics & Supply Chain  
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#### **LICENSED IN**

Georgia

#### **EDUCATION**

University of Georgia School of Law: J.D.,  
cum laude, 1999

Yale University: B.A., History, 1995

## **EXPERIENCE**

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Colin McRae is a partner in the Savannah office. His practice areas include admiralty, transportation, logistics, business litigation, real estate disputes, landlord/tenant law, and tax appeal disputes involving both real and personal property. Colin's maritime experience includes defense of personal injury claims, collisions, bill of lading and charter party disputes, cargo damage claims, oil spill and other environmental pollution cases, Coast Guard penalties, and recreational boating casualties. In addition to his experience in disputes involving real estate and commercial transactions, Colin has over fifteen years of experience representing property owners in tax appeal disputes in the Boards of Equalization and Superior Courts of southeast Georgia counties, including several jury trials representing property owners against county Boards of Assessors.

Colin is one of a select few United States-based attorneys to hold Qualification Certificates from the International Group of Protection and Indemnity (P&I) Clubs in connection with his work as a P&I Correspondent for the Port of Savannah. As part of his twenty-year service to the P&I Clubs, which insure the oceangoing vessels that call the Port of Savannah, Colin recently sat for and passed the P&I Qualification examinations for Module 1 (The Shipping Business), Module 2 (P&I Insurance: History, Operation and Practice), and Module 3 (Underwriting, Loss Prevention and Claims Handling) of the qualification process.

Colin is a member of the State Bar of Georgia and is admitted to practice in all courts of Georgia; the U.S. District Courts for the Southern, Middle, and Northern Districts of Georgia; and the U.S. Court of Appeals for the Eleventh Circuit. He is a member of the Savannah Bar Association, for which he served as president in 2015 and 2016. Colin has also served two terms as a member of the Savannah Bar Association's Executive Committee and as president of its Young Lawyers Division. Colin was presented by the Savannah Bar Association with the Robbie Robinson Award for outstanding service to the Savannah community in 2010. In recognition of Colin's two decades of experience in the maritime law field, he has been appointed an Adjunct Professor in Admiralty Law on the faculties of both the Mercer University School of Law and the Savannah Law School. He is also AV rated by his peers on Martindale-Hubbell.

A native Savannahian, Colin graduated from Yale University with a B.A. in History in 1995 and from the University of Georgia School of Law with a J.D., cum laude, in 1999. Colin is the current chairperson of the Chatham County Board of Registrars and served for fifteen years as attorney coach of the High School Mock Trial team at Savannah Country Day School, his alma mater, leading to an award from the State Bar of Georgia as Outstanding Attorney Coach for the 2008-2009 season. Colin and his wife, Lindsay, live with their two children in the Ardsley Park neighborhood of Savannah, where they are active members of First Presbyterian Church.

# IMPACT OF USCG LOCAL NOTICES TO MARINERS IN PRIVATE PARTY DISPUTES

MARITIME LAW ASSOCIATION -  
RECREATIONAL BOATING COMMITTEE

SPRING 2023 GENERAL MEETING

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# USCG Local Notices to Mariners

What are they, and  
what is their purpose?

# USCG Regulations on Local Notices to Mariners

## 33 C.F.R. § 72.01-5 (“Local Notice to Mariners”):

- A “Local Notice to Mariners” (LNM) reports changes to and deficiencies in aids to navigation that are established / maintained / operated by USCG or under its authority
- Published weekly by each USCG district, or more often if there is a need to notify mariners of local waterway information
- Automatic receipt of notices can be set up at:

[www.navcen.uscg.gov](http://www.navcen.uscg.gov)

## USCG Regulations on Local Notices to Mariners (cont'd)

### 33 CFR § 62.21 (US Aids to Navigation System):

- § 62.21(c): “A navigator should maintain and consult suitable publications and instruments for navigation depending on the vessel’s requirements.”
- LNMs can cover a range of topics:
  - Changes to Aids to Navigation
  - Reported dangers
  - Scheduled construction
  - Scheduled disruptions
  - Chart Corrections
  - “Similar useful marine information”

## USCG Regulations on Local Notices to Mariners (cont'd)

### 33 C.F.R. § 164.33 (Navigation Safety Regulations):

- “Each vessel must have the following:”
  - Marine charts of the area to be transited
  - A “currently corrected” copy (or extract) of:
    - U.S. Coast Pilot
    - Coast Guard Light List
  - Tide tables
  - Tide current tables
- “Currently corrected” means the copy contains LNMs

## USCG Regulations on Local Notices to Mariners (cont'd)

### 46 C.F.R. § 26.03-4 (“Charts and nautical publications”)

- “As appropriate for the intended voyage, all vessels must carry adequate and up-to-date:”
  - Charts of appropriate scale to make safe navigation possible
  - US Coast Pilot (or similar publication)
  - Coast Guard light list
  - Tide tables; and
  - Current tables

# USCG Local Notices to Mariners

How have they been  
applied in private  
party disputes?



# *Nat'l Union Fire Ins. Co. v. Weeks Marine, Inc.*, 88 F. Supp. 3d 1348 (S.D.Fla. 2015)

How do the courts interpret what is “adequate” or “appropriate” for the intended voyage?

- Allision between a yacht and a floating dredge pipeline
- Dredge operator contended the yacht was not carrying the most recent LNMs
- Court looks at the language of the regulations
  - 33 CFR § 62.21(c): “navigator *should* maintain and consult suitable publications” – read to be permissive, rather than mandatory
  - 46 CFL § 26.03-4(a): says nothing about “**consulting** or **reading**” the LNM, just that the vessel must **carry** adequate and up-to-date charts and tables
- The issue was raised on summary judgment, so the Court punted by noting that the concepts of “adequacy” and “appropriateness” are not susceptible to summary judgment

# *Higman Towing Co. v. Dredge Tom James, 637 F.Supp. 925 (E.D.Tex. 1986)*

Failure to abide by the requirements of a Local Notice to Mariner can be grounds for a finding of negligence.

- Tug and barge struck an unlit and unmarked submerged pipeline
- QUESTION #1: does the issuance of a LNM relieve the dredge from obligation to mark the pipeline
  - ANSWER: Not in this case. Dredge operator still had a duty to light or mark the pipeline, even after the issuance of the LNM.
- QUESTION #2: can a tug captain's failure to obtain or consult a LNM be the basis of a finding of negligence?
  - ANSWER: Yes. Without citing any "mandatory" language from the CFRs, the judge found the tug captain's failure to consult the LNM issued by USCG concerning this location to be negligent and contributory to the casualty.

# *Stolt Achievement, Ltd. v. Dredge B.E. Lindholm,* 447 F.3d 360 (5<sup>th</sup> Cir. 2006)

Violation of the obligations under a LNM can be considered a “statutory” violation giving rise to the presumptions under the *PENNSYLVANIA* Rule.

- A vessel traveling inbound in the Houston Ship Channel when it struck a vessel traveling outbound.
- The LNM cautioned that vessels transiting the Houston Ship Channel in the vicinity of the Red Fish Island Shoal do so at “slowest safe speed.”
- The Stolt vessel’s proceeding at “customary speed” was deemed inappropriate under the circumstances
- This triggered the *PENNSYLVANIA* Rule and its ping-pong burden shifting scheme. Fifth Circuit ultimately affirmed the District Court’s allocation of fault equally between the two vessels.
- Interesting footnote #9 – can a violation of an Inland Rule (and by extension, a LNM) trigger the *PENNSYLVANIA* Rule?

# *In re Supreme Towing Co.*, 2010 U.S. Dist. LEXIS 158046 (E.D.La. 2010)

Failure to outfit a vessel with updated LNM can destroy limitation under the Limitation Act.

- Tug allides with a submerged obstruction near an oil well off the Louisiana coast in July 2007.
- Tug was outfitted with a navigational chart issued in 1982. Electronic chart was similarly outdated.
- In April 2006, USCG issued a LNM regarding a submerged obstruction in the well's vicinity.
- The failure on the part of the owners to equip the tug with current navigational charts (including LNM) was deemed a proximate cause of the allision, and one about which the owners had privity and knowledge.
- Court focused on this failure to outfit with updated navigational charts as an unseaworthy condition which the tug owners had constructive knowledge (and perhaps even actual knowledge) of prior to the vessel leaving port.

*In re F/V GULF KING 55*, 1995 A.M.C. 232, 1994  
U.S. Dist. LEXIS 8944 (E.D.La. 1994)

Can the **absence** of a Local Notice to Mariners be used proactively?

- Fishing vessel snags Amoco's underwater "control line"
- Seeking exoneration from claims brought by Amoco and its partners, the fishing vessel argued successfully that despite the "general warnings" on the charts about potential submerged pipelines and cables, there was no Local Notice to Mariners identifying the presence of the 4 1/2-inch pipe in question
- "The right to navigation is paramount and those who place objects in, under or over a waterway must do so in a way that does not interfere with navigation."
- "A vessel owner has no duty to foresee a vessel's striking a pipeline which is not identified as a hazard to navigation ... particularly [] where the vessel has safely navigated the area previously."
- Fishing vessel granted exoneration

# Thank you

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