

**THE MARITIME LAW ASSOCIATION OF THE UNITED STATES
FISHERIES COMMITTEE MEETING**

Fowler, Rodriguez & Chalos, New Orleans

Thursday November 11, 2004

1400-1600

Agenda

1. Recent Cases (attached).
2. Congressional Developments:
 - a. Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act;
 - b. Individual Fishing Quotas ("IFQs").
3. GUEST SPEAKER William V. Trufant, Jr. of G & M Marine Inc. on fishing vessel insurance issues.
4. Fisheries Committee Motions for MLA Support of Congressional Amendments:
 - a. Amend 16 U.S.C. § 1855(h), the Central Registry System for Limited Access Permits (which has not been implemented by NMFS since 1996) by eliminating maritime liens on fishing permits consistent with Congressional intent and returning to UCC-9 financing to reflect industry needs;
 - b. Amend 46 U.S.C. § 12102(5) of the American Fisheries Act to prevent large fishing vessels from permanent ineligibility for a fisheries endorsement due to a simple lapse with an unintended draconian result.
5. New Business.

Respectfully submitted,

David J. Farrell, Jr.
Chair, MLA Fisheries Committee

Insurance

United States v. Water Quality Insurance Syndicate, 324 F.Supp.2d 100 (D. Me. 2004). After fishing vessel sank due to owner's and crew's drunkenness, oil pollution clean up underwriter excluded coverage for willful misconduct. U.S. attempted to use state statute to reach and apply "casualty" policy proceeds for reimbursement of clean up costs. Certified to State of Maine on whether clean up policy is casualty insurance.

F/V Sailor, Inc. v. City of Rockland, 329 F.Supp.2d 176 (D. Me. 2004). Restates THE UMBRIA, 166 U.S. 404 (1897), that constructive total loss limits the owner's damages to fair market value of vessel, plus interest, and the "net freight pending" but not loss profits.

Fishing Permits

Sailor Incorporated F/V v. City of Rockland, 324 F.Supp.2d 197, 2004 AMC 1558 (D. Me. 2004). Constructive total loss fair market value did not include permits which were transferred to another vessel.

PNC Bank Delaware v. F/V MISS LAURA, 381 F.3d 183 (3d Cir. 2004). Maritime lien on permit is extinguished when Vessel A sinks and does not survive transfer of permit to Vessel B. In conjunction with Gowen, Inc. v. F/V QUALITY ONE, 244 F.3d 64, 2001 AMC 1478 (1st Cir.)(maritime liens attach to permits as appurtenances), cert. denied, 534 U.S. 886 (2001), MISS LAURA makes it impossible to reliably perfect and maintain first lien priority over permits.

Lush v. TERRI AND RUTH F/V, 324 F.Supp.2d 90 (D. Me. 2004). Whether oral contract for sale of fishing vessel customarily includes its permits is a genuine issue of material fact defeating summary judgment dismissal.

American Pelagic Fishing Co. v. United States, 2004 U.S. App. LEXIS 16709 (Fed. Cir. 2004). Reversed \$37 million award, finding that Congress' revocation of NMFS permits was not a Fifth Amendment taking.

Fish Shipments

EIMSKIP v. Mayflower International, Ltd., 2004 AMC 1904 (D. Mass. 2004). "Less than credible" party who booked and orally

agreed to pay for shipment of 32 containers of frozen herring to Estonia is primarily liable for freight charges; shipper is secondarily liable; and both are on the hook for attorney's fees.

Personal Injury/Death

Martin v. Cape Fear, Inc., 2004 U.S. Dist LEXIS 7722 (D. Mass. 2004). Jones Act incorporation of FELA precludes contributory negligence when owner violated statute enacted for employee's safety which contributed to injury or death.

Blake v. Cairns, 2004 U.S. Dist. LEXIS 16837 (N.D. Cal. 2004). Odd procedural posture but case recites various reasons for possible denial of maintenance and cure: plaintiff continued to work onboard and did not see doctor until months after alleged incident; concealed a similar pre-existing condition; incurred no maintenance costs by living with father; incurred no medical expenses under state disability scheme.

Johnson v. Arctic Storm, Inc., 99 Fed. Appx. 799 (9th Cir. 2004). Affirms finding of no negligence or unseaworthiness regarding allegedly greasy ladder; no duty to instruct crewman to face ladder when going up and down.

Zilko v. Golden Alaska Seafoods, Inc., 2004 Wash. App. LEXIS 2205 (Wash. Ct. App. 2004). After bar hopping, engineer seen near fishing vessel but disappears. Body later found in water. Affirmed bench trial's finding that there was an accident; vessel was unseaworthy and owner negligent under Jones Act for inadequate ingress; no evidence of comparative negligence; and award for conscious pain and suffering even absent signs of struggle.

Limitation of Liability

Renfrow v. Silver Spray Seafoods, LLC, 2004 U.S. Dist. LEXIS 11947 (D. Or. 2004). Crab vessel owner's limitation denied in leg amputation case. Managing owner designed vessel and established operating procedures. Thus held to have privity and knowledge of failure to train, failure to maintain onboard cameras monitoring blind spot near pot launcher, and failure to implement safety procedures.