

AGENDA

JOINT SUBCOMMITTEE ON VESSEL FORECLOSURES & INSOVENCY AND MARITIME LIENS & MORTGAGES

8:30 AM to 9:30 AM

Holland & Knight LLP
195 Broadway
New York, New York 10007
May 4, 2005

I. Old Business

- A. MLA Resolution regarding Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 et seq.
- B. U.S. Marshal's Commission Guidelines under 28 U.S.C. §1921. *See Small Business Loan Source, Inc. v. F/V ST. MARY*, 2005 WL 697957 (E.D. La. 2005)

II. New Business

A. Recent Court Decisions:

Lykes Lines Ltd v. M/V BBC SEALAND, 398 F.3d 319 (5th Cir. 2005)

Chembulk Trading LLC v. CHEMEX Ltd., 393 F.3d 550 (5th Cir. 2004)

Leonardo v. Nancy-Christine, Inc., 345 F.Supp.2d. 60 (D. Mass. 2004)

PNC Bank Delaware v. F/V MISS LAURA, 381 F.3d 183 (3rd Cir. 2004)

B. Open Discussion

SUBCOMMITTEE ON YACHT FINANCING
of the MLA Marine Financing Committee

May 4, 2005 9:30 – 11:00 A.M.
Haight Gardner Holland & Knight, 195 Broadway, New York City

AGENDA

1. Opening remarks and introduction of guests - Chair, Mark Buhler
2. Update on Recent Developments at U.S.C.G / NVDC – Tom Willis
3. Open questions / comments / suggestions to Coast Guard from Subcommittee members
4. Briefing on the current state of yacht lending business – Lenders’ perspectives (Jim Coburn of NMBA)
5. Briefing on the state of non-performing yacht loans – Liquidator’s perspective (Bob Toney of National Liquidators)
6. Insurance issues of concern to lenders/borrowers on yachts transported as cargo on heavy-lift or other ships (Gaps in the “cargo” insurance coverage, suspension of coverage under yacht policy(ies), possible solutions, etc) – Mark Buhler
7. Legislative Matters of Interest:
 - a. American Jobs Creation Act of 2004 - provision limiting a donor’s deduction for a donated vessel, if sold by the charitable organization, to the gross proceeds from the sale.
 - b. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 – any known provisions that would affect yacht financing?
 - c. (Problematic) Amendment of problematic Florida legislation (Fla. Stat. §328.17) re: non-judicial sale of vessels to enforce state-created liens for various services furnished by marinas. (Bob McIntosh or Mark Buhler)
 - d. Any input from Subcommittee members as to other new and relevant legislation?
8. Administrative Matters of Interest:
 - a. Amendment to 33 CFR §174.31 to allow States to impose requirement for liability insurance as a condition to obtaining a vessel numbering certificate. Final Rule effective April 18,2005 (Fed. Reg. Vol. 70, No. 52, page 13102, March 18, 2005)
 - b. Member input on any experiences yet relating to the new interpretation of “passenger” by Customs and Border Patrol?
9. Recent Court Cases of Interest ? – Member input
10. Other matters of interest:
 - a. Choice of flag issues for mortgaged yacht from lender’s or borrower’s perspective:
 - i. recent developments in EU necessitating “commercial” registration (and extensive regulatory compliance) for “crewed” charters in Europe, particularly U.K., France and Italy;
 - ii. Promulgation by U.K. Maritime and Coastguard Agency (“MCA”) of Large Commercial Yacht Code (LY2), applicable as of September 24, 2004 , and applicable to “Red Ensign” registered yachts;

- iii. Similar codes either in practice or under development in The Bahamas, Marshall Islands, St. Vincent & the Grenadines
 - iv. foreign definitions of “pleasure vessel” more restrictive than in U.S. (in treatment of “business guests”), and adversely impacting ability to bareboat charter;
 - v. “registration options available to owners wishing to bareboat charter their vessel ?;
 - vi. “flipping” between “commercial vessel” and “pleasure yacht” registration, and getting new Certificate of Registry to qualify for Cruising License in the U.S. (British Flags, Marshall Islands);
 - vii. Types of chartering permitted by various registries (e.g., Marshall Islands allows “pleasure” yachts to charter with crew for up to 84 days per year, but prohibits bareboat chartering).
- b. Registration and mortgaging of vessels under construction (Discuss U.S. proposal, and compare with foreign registries. Formal Subcommittee support of concept?)
 - c. St. Vincent & the Grenadines Shipping Act 2004 (changing registration and mortgaging laws, and creating various requirements that were deleted from U.S. vessel mortgaging laws in 1988.
 - d. Member experience with yacht title insurance, and online lien databases?
 - e. Member experience with financing of fractional ownership of yachts?
11. Regulatory Issues (Possible formal actions?):
- a. Regulation for Temporary Certificates of Documentation for recreational vessels;
 - b. Regulation for combined Builder’s Certificate & Manufacturer’s Certificate of Origin form;
 - c. Regulation to establish process for surrender of State titles for federally documented vessels;
 - d. Regulation to expand Hull Identification Numbers to 17 digits;
 - e. Regulation to mandate filing of Satisfaction of Mortgage by the mortgagee;
 - f. Regulation to require HIN on Builder’s Certification and on application for federal documentation;
 - g. Regulation regarding citizenship requirements for documentation of vessels owned by LLC
 - h. Possible regulation requiring the filing of any bill of sale affecting a documented vessel?
 - i. Effort to get Customs to recede from its reinterpretation of its definition of “passenger” for coastwise trade purposes?
 - j. Status of VIS/VDS)
 - k. FDCPA venue issue –for enforcement of liens on vessels and planes?
 - l. Status of Uniform Boat Title Certificate Act (Resolution supporting?)
12. Solicit volunteers to assist in drafting, on behalf of MLA President, letter and supporting memorandum to Coast Guard
13. Solicit volunteer(s) to prepare Subcommittee Report for publication in MLA Report

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**MLA Subcommittee Meeting on Coast Guard Documentation;
U.S. Citizenship and Related Matters**

**May 4, 2005
11:00 AM to 12:30 PM**

**Holland & Knight LLP
195 Broadway
New York, New York 10007**

AGENDA

1. Recent Legislation and any proposed Coast Guard Regulations Covering Lease Financing of Vessels Engaged in the Coastwise Trade
2. "Collateral agents" as mortgagees, as opposed to trustees.
3. Meeting Coast Guard citizenship tests in the case of public companies.
4. Recent Decisions of Interest:
 - (a) GECC v. Acosta (US 5th Cir., April 8, 2005) - erroneous CG abstract of title; personal liability and nondischargability of indebtedness under 11 U.S.C. §523(a)(2)(A).
 - (b) Stewart v. Dutra Construction Co. (U.S. Sup. Ct., February 22, 2005) holding that a dredge is a vessel for Jones Act purposes.
5. Proposed legislation on "Enforcement of Ownership Standards"
6. Recodification of Title 46 - Status Report

MINUTES

MARINE FINANCING COMMITTEE AND ITS SUBCOMMITTEES

9:00 A.M. – 12 A.M.

November 11, 2004

The Marine Financing Committee and two of its subcommittees met at the Fall meeting of the Maritime Law Association in New Orleans. The meeting was held at the offices of First American Transportation Title in the French Quarter. Attendance was excellent – 40 – including some visitors from Panama, Samuel Chi from the National Marine Fisheries Service, and Tom Willis, Pat Williams, and Doug Cameron from the U.S. Coast Guard/National Vessel Documentation Center.

Vessel Foreclosures & Insolvency/Liens and Mortgages (Joint Subcommittee with the Practice and Procedure Committee)

Edward Powers, Chair

Mr. Powers called the meeting to order. The sole item on the agenda was the proposed legislation concerning the attachment of maritime liens on fishing permits and catch history, and the encumbrance of them by means of preferred mortgage. David Farrell, the chair of the MLA Fisheries Committee and Stephen Johnson, a vice-chair of that committee, presented the proposal which would provide that maritime liens to not attach to this property and that the filing of a preferred mortgage would not perfect a security interest in them, along with other details. There was considerable discussion, during the course of which the draft legislation was modified.

Coast Guard Documentation, U.S. Citizenship, and Related Matters

Bruce King substituting for Thomas Whalen, Chair

There was a general discussion of how the laws of various states handle the perfection of security interests in vessel construction projects, how the priority of those security interests relate to the liens of construction suppliers under state law, and the transition to federal documentation of completed vessels and filing of preferred mortgages on them. There was discussion about whether it would be advantageous to have a system whereby (as in Canada), a vessel under construction can be documented as a vessel construction project, with the result that a preferred mortgage with maritime lien priority can be filed when construction commences. A member from Louisiana noted that Louisiana has a special state statute dealing with this subject. There was no consensus reached on that topic, which presents several issues. It was agreed that a construction financing working group would be formed, that a short questionnaire would be circulated in order to determine the variety of state variations that currently exist. It was agreed

that we would ask the MLA Young Lawyers Committee to circulate the questionnaire to its members for a response.

Volunteers to participate in this working group should contact Bruce King at bking@gsblaw.com.

Main Committee Meeting

Bruce King, Chair

The vote on the proposed legislation on liens and mortgages on fishing rights was deferred to the main committee meeting. The committee voted to forward the proposal to the MLA general meeting for adoption by the MLA. [This was adopted at the general meeting later in the week.]

There was general discussion of the recent amendments to the Oil Pollution Act of 1990 concerning liability of finance lessors. A paper submitted on this topic by Glen Oxton and Matt Marion, and another by Greg Mendenhall and Eileen Gorman are attached the agenda for this meeting that is available on the MLA website in the Marine Financing Committee area of the site.