

M.L.A. OFFSHORE INDUSTRIES COMMITTEE
MINUTES OF MEETING ON MAY 5, 2005
Conference Room at Healy & Baillie in New York, NY

The Chairman Grady Hurley of New Orleans called the Committee meeting to order at 3:45 p.m. The attendees introduced themselves.

Chairman Hurley reported that since our last meeting, other organizations had the following meetings:

The ABA House of Delegates met and did not discuss any maritime related issues.

The Admiralty Law Institute (“ALI”) had its symposium entitled “The Uniqueness of Admiralty and Maritime Law” on March 16 – 18, 2005 at Tulane University. The ALI has requested suggested topics for future symposiums. Mr. Hurley suggested that our Committee propose offshore related topics for their next symposium. Hal Watson of Houston volunteered to coordinate with Tom Wagner of New Orleans, Ivan Rodrigues of New Orleans and Michael Bell of Houston to develop suggested topics and they will give a preliminary report at the Fall, 2005 meeting in Arizona.

The GSPEC meeting held in N.O. discussed deep water drilling and deep drilling in shallow waters to enable production in older fields.

The Offshore Marine Service Association (OMSA) met in April, 2005 and discussed:

- 1) A recent case upholding a passenger boarding agreement entitled Johnson v. Seacor Marine Corp.;
- 2) The inspection of offshore vessels by the U.S. Coast Guard;
- 3) and, the safe gulf initiative.

The Fifth Circuit Judicial Conference met in New Orleans. The only maritime case pending before the U.S. Supreme Court is a Fifth Circuit case entitled Spectra v. Norwegian Cruise Lines, in which the Fifth Circuit held the ADA Title 3 did not apply to a foreign cruise line ship. Also, e-discovery was discussed, including the scope of documents that may be produced, the cost of producing documents and potential spoliation claims.

Professor Michael Sturley of the University of Texas gave a presentation on the recent United States Supreme Court case entitled Stewart v. Dutra Construction and the impact of the decision on the definition of a vessel. Professor Sturley participated in the preparation of the writ to the Supreme Court. He believes the Supreme Court gave the broadest possible definition of a vessel. Under the decision, it is clear that jack-up rigs will be vessels. The Court gave

specific examples of what is and is not vessels based on past cases. Transportation is an essential part of the purpose of a vessel even if it is in one place for a long period of time. There was a general question and answer session regarding what may or may not be a vessel in the future, such as, whether a floating production storage offloading facility will be considered a vessel.

NEWSLETTER

The Committee published its first newsletter called "Offshore Observations" in the Winter, 2005. A Newsletter sub-group will be formed get members actively involved by contributing case summaries and recent developments.

MEMBERSHIP

MLA members can now self appoint themselves to a committee through a request submitted to the President. The website is still under construction to allow the self appointments online.

SUBCOMMITTEES

Frank Allen has been appointed by President Tom Rue to Chair our subcommittee on membership.

At the Fall, 2005 meeting there will further discussions about formation of additional sub-committees, including a subcommittee on Oilfield Indemnity.

NEW BUSINESS

Charles "Chuck" Lane, Senior Counsel for Halliburton in New Orleans gave an update on red letter clauses contained in offshore work orders. In a recent Louisiana State Court case, Commonwealth Insurance Companies, et al v. Halliburton Energy Services, Inc., 2004 WL3142444 (La. App. 1st Cir. 12/30/04), the Court followed the ruling in the U.S. Fifth Circuit Court of Appeal case of Houston Exploration Co. v. Halliburton, 359 Fed.3d 777 (5th Cir. 2004), confirming that a "company man" has authority to bind his principles to an indemnity agreement.

VESSEL BOARDING AGREEMENTS

Acomb reported on the recent decision in Johnson v. Seacor, 2005 WL668450 (5th Cir. 2005), in which the U.S. Fifth Circuit upheld a vessel boarding agreement between the vessel owner and third party. Seacor had a charter agreement with the oil company to provide transportation for the oil company and its subcontractor's employees. Seacor knew it would have to provide transportation to PMI employees. Seacor contacted PMI directly and got PMI to sign a vessel boarding and indemnity that required PMI to name Seacor as an additional insured under PMI's CGL policy. The Court held that the passenger boarding agreement was valid since there was an exchange of promises constituting consideration. The agreement gave PMI a legally enforceable right to board Seacor's vessels. The agreement was a maritime contract so the Louisiana oilfield and indemnity act was not applicable. However, on the additional insured

issue, the Court found that PMI's insurance with Gray Insurance Company contained a valid watercraft exclusion that plainly excluding coverage to Seacor.

ADJOURNMENT

Hurley adjourned the meeting promptly at 5:00 p.m.