I would like to remind all Corporate members to please send in your high resolution photos if you would like to be featured in the upcoming newsletters.

This is a chance for you to showcase your facility and everything you have to offer. I hope you all will take advantage of this opportunity!

Candace L. Griffin
Association Manager
candaceatpal@gmail.com

Legislative Update

This being my very first official letter to you, I would like to begin by once again giving great credit to Joe Accardo for his steadfast leadership and guidance of PAL over the last twelve years; THANK YOU JOE – from ALL of us.

Needless to say, having officially begun as your new Executive Director on April 3, 2017 and with the legislative session beginning only days later along with our Annual Meeting in Baton Rouge, it was quite chaotic. Thank you all for pitching in where asked and most importantly “shout outs” to Candace Griffin for successfully orchestrating a very well attended and informative 34th Annual PAL Conference.

I would also be very remiss if I did not acknowledge our stellar Executive Committee for their great contributions of time and dedicated effort – David Allain, President; Drew Heaphy, Vice President; Matt Gresham, Treasurer; Lynn Hohensee, Secretary; and Chett Chiasson, Past President.

Also, thanks to all who were involved in arranging the Ports Day at the Legislature, but mostly, Matt Gresham (again) for making it all come together along with Chett Chiasson (again) for being there all afternoon, and of course the great evening event at the “Beer League” with Legislators and friends and our great sponsors.

Legislative Update

With the legislature still in session, I must say it has been quite interesting and challenging with most of our effort going toward the proposed 17 cents fuel tax hike – now HB 632 by Rep. Steve Carter and SB 148 by Sen. Norby Chabert and others of course. Following is a list of Bills of interest that we have monitored since the beginning:

According to Matt Gresham, there are two major bills filed dealing with the Governor’s Taskforce on Transportation Infrastructure Investment Recommendations, which would raise the fuel tax and dedicate new revenue to funding State Mega Projects. The Taskforce initially recommended a 23-cent increase to boost revenue by $700 million per year to begin paying for the State’s backlog of maintenance and repair and new capacity projects. Gov. Edwards has kept his promise of “doubling” the Port Construction and Development Priority Program with $39.4 million requested in Capital Outlay (up from $19.7 million) and he has expressed his desire to double the current funding level if the State’s fuel tax is increased to a recommended figure.

HB 632 by Rep. Steve Carter
HB 659 by Rep. Major Thibaut
SB 57 by Sen. Page Cortez
HB 294 by Rep. Tony Bacala
HB 346 by Rep. Cameron Henry
HB 561 by Rep. Sam Jones
HB 348 by Rep. Sam Jones
HB 354 by Rep. Major Thibaut
HB 598 by Rep. Neil Abramson
HB 599 by Rep. Chris Broadwater
HB 600 by Rep. Sam Jones

Primary Budgetary Legislation:
HB 1 by Rep. Cameron Henry
HB 628 by Rep. Sam Jones
Waterways Legislation:
SB 148 by Sen. Norby Chabert
HB 669 by Rep. Jerome Zeringue “bill is DOA”

Senate Bills:
SB 218 by Sen. Conrad Appel
SB 149 by Sen. Norby Chabert
SB 150 by Sen. Norby Chabert
SB 172 by Sen. J.P. Morrell
SB 89 by Sen. Jim Fannin
SB 138 by Sen. Neil Riser
SB 208 by Sen. Mike Walsworth
SB 104 by Sen. Conrad Appel

House Bills:
HB 391 by Rep. Robby Carter
HB 604 by Rep. Kenny Havard
HB 90 by Rep. Mike Danahay

HB 112 by Rep. Joe Bouie
HB 135 by Rep. Valarie Hodges
HB 138 by Rep. Sam Jones
HB 139 by Rep. Jack McFarland
HB 222 by Rep. Helena Moreno
HB 234 by Rep. Jerome Zeringue
HB 282 by Rep. Barbara Norton
HB 324 by Rep. Vincent Pierre
HB 335 by Rep. Jerome Richard
HB 384 by Rep. Chris Broadwater
HB 456 by Rep. Neil Abramson
HB 522 by Rep. Terry Landry
HB 622 by Rep. Stephanie Hilferty
HB 623 by Rep. Stephanie Hilferty
HB 2 by Rep. Neil Abramson
HB 658 by Rep. Walt Leger

As one might expect, with less than 1 week remaining in the session, things are really beginning to heat up. We expect that things will really begin to move either rapidly or not at all at this point.

On the federal level, we apparently have more work than anticipated with the new Trump Administration as they begin their preliminary efforts to piece together the 2018 Budget. Plans do not bode well for ports and puts us all in a defensive position to begin; much work remains to be done there as well.

“The budget document outlines a plan for an infrastructure initiative to support $1 trillion in private and public infrastructure investments, as called for by President Trump during his campaign. The document states that the President’s target of $1 trillion will be met with a combination of new federal funding, incentivized non-federal funding, and expedited projects. “While the Administration will propose additional funding for infrastructure, those funds will be focused on incentivizing additional non-Federal investments. While the Administration continues to work with the Congress, States, localities, and other infrastructure stakeholders to finalize the suite of direct Federal programs that will support this effort, the Budget includes $200 billion in outlays related to the infrastructure initiative. The impact of this investment will be amplified with other administrative and regulatory actions the Administration plans to pursue.”

The document goes on to say “Simply providing more Federal funding for infrastructure is not the solution.” The budget also includes a 10-year spending plan for the $200 billion in direct spending for the President’s infrastructure initiative, but doesn’t specify exactly where that money would be spent. For FY 2018, the budget calls for $5 billion, increasing to $50 billion in FY2021 and then decreasing through FY 2026 when it is phased out. The Administration has stated that it will release a more detailed infrastructure plan soon.”

All in all, nothing has changed and we will certainly not be short on any challenges. It is certainly with much eagerness that I look forward to continue to work with you (albeit in a different capacity) for the good and improvement of all our ports as well as Louisiana and our country.

Gary P. LaGrange
Executive Director
Port of Terrebonne

Recently, Terrebonne Port Commission held a ribbon cutting ceremony at their new office located at 1116 Bayou Lacarpe Rd. in Houma. The port purchased the old building from bankruptcy court in 2011. US Customs and Immigration & Customs Enforcement, commonly referred to as ICE, now lease space in this building.

The port constructed the two facilities in the old building’s warehouse, and the old office space was gutted and the port now occupies that space in a brand-new office. Key Note Speaker Senator Norby Chabert, who made navigation and maritime commerce the cornerstone of his service in Baton Rouge, said he was surprised how little the rest of the state realizes the importance of ports. He also discussed the fact that Terrebonne Port didn’t go to the state and simply request the money for the project, they purchased the building and negotiated federal leases. They then leveraged the leases as matching dollars for capital outlay dollars. The state participated and has funded 30% of the total project to date.

The port also built a marina and boat launch that is partially leased to US Customs. Port of Terrebonne is presently negotiating two additional leases on the property.

Port of South Louisiana

Recently, Louisiana Department of Transportation and Development (LA DOTD) Intermodal Transportation’s Deputy Assistant Secretary Phil Jones, BARTON International Chairman/CEO Charles “Chuck” Bracken, and Associated Terminals President Todd Fuller joined Port of South Louisiana Executive Director Paul Aucoin and Commission Vice President Judy Songy in a ribbon-cutting ceremony that marked the official opening of the expansion to warehouse #19 at Globalplex Intermodal Terminal.

The $9.6 million expansion, which created 22 new jobs while retaining 19, was funded in part (approximately 90%) by LA DOTD’s Port Construction and Development Priority Program.
The 77,520 square-foot annex, which was designed to store and process bulk commodities, consists of a 14” thick pile-supported concrete floor with a load capacity of 2,160 pounds per square foot, a metal frame designed to resist up to 136 MPH hurricane-force winds, and a pitched metal roof deck 67’10” in height overall and 36’ eaves. Its six bays have a storage capacity of 106,000 cubic feet each for a total storage capacity of approximately 45,000 tons of material. Connected to the existing 35,000 square foot warehouse #19, the Port of South Louisiana planned this extension based on the needs of BARTON International. Designed by URS Corporation, the annex improves functionality and increases the storage capacity of the warehouse. The expansion project also included a new roadway and other paved areas, a loading dock ramp, truck scales, conveyors, bulk storage bins, and the acquisition of a Hyundai HL-980XTD wheel loader.

“We dedicate a beautiful warehouse today,” said Aucoin during the event. “This is the result of a joint effort by the Port of South Louisiana, the State of Louisiana, Associated Terminals and Barton International. We couldn’t be more pleased.” BARTON International, a resident tenant of Globalplex since 2006, is using the warehouse for their garnet abrasive operation. The expanded facility, which triples their previous storage footprint, will hold vast quantities of industrial garnet used in waterjet cutting, coatings removal, and other specialized abrasives applications. Associated Terminals will continue to provide the bulk logistics services (vessel unloading, storage of raw product, product processing, finished product storage, and finished product loading and distribution) as they have done in the past.

“We are excited to be a part of the continuing growth story of the Port of South Louisiana, which is the premier sea gateway for U.S. export and import traffic,” BARTON International CEO & Chairman Charles H. (“Chuck”) Bracken Jr. said. “BARTON International’s expanded warehouse and processing center is proud to join the other first-class port facilities at America’s largest tonnage port district. BARTON’s new facilities include an additional processing line, as well as a state-of-the-art air washing process, a sophisticated screening operation that ensures high product consistency and quality, and a high-tech packaging unit. Thanks to the collaborative efforts of the Port of South Louisiana, BARTON has been able to streamline, consolidate, and centralize our garnet abrasives operations under one roof in this wonderful new facility.”

“This warehouse is another example of the Port of South Louisiana’s and Associated Terminals’ commitment to helping customers create strategic solutions for their operating requirements,” said Fuller. “BARTON International has had a presence in the Port of South Louisiana with their services provided by Associated Terminals for more than a decade. We want to thank Barton for putting their trust in our team to handle their high quality abrasive products for their processing and distribution functions.”

Among those in attendance were St. John the Baptist Parish President Natalie Robottom and Sherri LeBas, who was LA DOTD Secretary when this project was initiated.
Noranda Alumina to Expand Facility within Port of South Louisiana

The Port of South Louisiana is happy to report that today, Gov. John Bel Edwards and Noranda Bauxite & Alumina CEO David D’Addario announced the company will invest $35 million to expand and upgrade its alumina refinery in St. James Parish. The company also plans to establish its company headquarters at the Gramercy complex.

The project will create 65 new direct jobs, including 15 corporate headquarters jobs, at an average annual salary of $90,000, plus benefits. Louisiana Economic Development estimates the project will result in 185 new indirect jobs, for a total of 250 new jobs for St. James Parish, the Southeast Region and surrounding areas. In addition, the project will retain 395 existing jobs at the refinery. The plant, built by Kaiser Aluminum & Chemical Corp., has operated in St. James Parish since 1958. It is located on the east bank of the Mississippi River, less than a mile downriver from the Veterans Memorial Bridge.

Governor Edwards said: “This is a great opportunity to create new good-paying jobs and to secure hundreds of existing jobs at an industrial mainstay in our River Parishes. Noranda’s new ownership team is committed to the success of its business, and we are pleased to provide strategic assistance to their efforts to modernize and expand their operation in Gramercy.”

The project will include the design and installation of equipment to increase the production, storage and shipping capabilities of chemical-grade alumina. Known as CGA, the product is used in many industrial applications, including water treatment, flame retardants, catalysts for oil, gas and petrochemical refining, building materials and insulation.

D’Addario said: “These capital improvements represent the largest capital expenditure at Gramercy in more than a decade. The projects will not only expand the production capacity for our valued CGA customers and create new jobs for our community, they will help ensure the continuation of this business and its 400-plus jobs by enabling us to operate more efficiently and effectively and with even greater environmental responsibility. We are grateful to Louisiana Economic Development and Gov. Edwards for the confidence they have shown in the success of our business as demonstrated by LED’s significant financial support.”

LED has been working with Noranda in May 2015 on business retention efforts at the alumina manufacturing site. To secure the project, LED offered the company an incentive package that includes the comprehensive solutions of LED FastStart®, the top-ranked state workforce training program in the nation. LED also offered Noranda a performance-based, forgivable loan of $1 million under the state’s Economic Development Award Program for facility construction and equipment, and a Modernization Tax Credit of $200,000 a year for five years on capital investment for facility upgrades and equipment. The company is expected to utilize the state’s Quality Jobs and Industrial Tax Exemption programs.

“The Port of South Louisiana is excited about Noranda’s $35 million investment in St. James Parish within our port district, together with the retention of existing jobs and the new jobs the expansion will create for the River Region community,” said Executive Director Paul Aucoin of the Port of South Louisiana. “We look forward to working with Noranda throughout the process.”

St. James Parish President Timothy “Timmy” Roussel said: “To hear an announcement of a $35 million investment is good news to begin with, but to learn that this company wants to locate its corporate offices in St. James Parish brings it to another level. We commend Noranda and their new ownership. In speaking with Noranda representatives, it is the belief that we can make a difference – for the better – in people’s lives, and my administration will continue to take advantage of every opportunity. I am happy for Noranda and for St. James Parish as well. This is a statement on their part that they want to continue to be a large part of our community, because St. James Parish is a great place to live, work, play and grow.”

Michael Hecht, President and CEO of GNO, Inc. said: “GNO Inc. is proud to support Noranda’s expansion in St. James Parish, which will create 65 jobs and result in a $35 million capital expenditure. This announcement confirms that the River Region is a great location both for operations and headquarters. We look forward to working with Noranda as they grow in greater New Orleans.”
The Natchitoches Parish Port Commission announced recently announced the selection of Travis Tyler as its new executive director. Tyler was named after an extended search and selection process.

“We are very pleased to announce this appointment,” stated Nettles Brown, president of the Natchitoches Parish Port Commission. “Travis brings much experience and knowledge to the Port, which is instrumental in carrying out our mission.”

A native of Atlanta, Louisiana, Tyler graduated from Northwestern State University where he earned a Bachelor of Science in criminal justice. He has worked in Louisiana’s oil, gas, and transportation industries for the past 9 years.

“There is no greater issue facing our state than the urgent need to curb our coast’s massive land loss. If we take no action, Cameron Parish could lose 40 percent of its entire land area in the next 50 years. Cameron could have the unenviable position of having the highest total amount of land loss of any coastal parish in the state.

Fortunately, the state has an answer for protecting and restoring coastal lands, including those in Cameron Parish and lands that could be affected by coastal flooding and storms in Calcasieu Parish. The 2017 Coastal Master Plan prioritizes a list of coastal restoration and risk-reduction actions to address Louisiana’s increasingly severe land loss and sea level rise.

This plan is based on the best available science. It updates the state’s existing Coastal Master Plan and balances coastal restoration and protection. And, it is realistic about the coastal challenges we face.

Cameron and Calcasieu parishes would benefit from one of the most significant projects in the master plan and one that Gov. John Bel Edwards has put on his list of top five restoration projects for the state — controlling salinity from the Calcasieu Ship Channel. This $441 million project is aimed at reducing the amount of salt water that enters Calcasieu Lake and eats away at the marshes that are our first line of defense against hurricanes and tidal surges. It would not only control salinity in the marshes and provide

The Natchitoches Parish Port is a multi-modal facility with river, rail and highway transportation options and the only slack water port on the Red River.
The type and scope of damages available to persons injured in maritime casualties are not unlike the remedies available to those injured on land. Aside from pain and suffering, the personal injury claimant may be entitled to medical expenses, loss of income, loss of future income and/or loss of earning capacity. When it comes to proving loss of future income the burden is strictly on the plaintiff. Generally, the plaintiff will attempt to prove the amount of money he was making before the injury, that because of his injury he is prevented from performing that work and as a consequence, he has had to take a lower paying position. The Law of Maritime Personal Injuries, 5th Ed., Force and Norris.

Occasionally, the defendant in a maritime personal injury action will contend that the plaintiff’s claim for future lost income should be reduced or offset by additional or collateral sources of income. In Davis v. Odeco, Inc. the plaintiff, subsequent to his injury, received disability benefits from a group insurance plan largely funded by Odeco, his employer, to compensate employees from non-work related accidents and injuries. Odeco claimed that plaintiff’s claim for lost income should be reduced by the amount of disability benefits received. The court rejected Odeco’s argument, finding the disability benefits to be a collateral source. The Court said the collateral source rule is a substantive rule of law that bars a tortfeasor from reducing the quantum of damages owed to a plaintiff by the amount of recovery the plaintiff received from other sources of compensation that are independent of (or collateral to) the tortfeasor. In other words, a tortfeasor is not entitled to benefit from funds received by a plaintiff from sources independent from the tortfeasor’s contribution.

In explaining the rationale for the rule, the Court
stated that the plaintiff should not be penalized because he had the foresight and prudence to establish and maintain collateral sources of income or compensation. The idea is that tortfeasors should not be able to reduce their liability simply because other sources of compensation are available, thus allowing them to escape the consequences of their actions.

Sources of compensation that have no connection to the tortfeasor are inevitably collateral. However, where the tortfeasor (as in Davis) contributed to the source of compensation, whether the compensation is collateral is not so clear cut. If the source of compensation is a fringe benefit of his job, such as health or disability benefits insurance, compensation received under that fringe benefit should not be deducted from an award to the plaintiff as a result of his employer’s negligence. To do so would undercompensate the employee and provide a windfall to the employer.

Thus, the courts generally assess whether the benefit is in the nature of a fringe benefit or instead reflects a tortfeasor’s effort to anticipate potential legal liability. In these situations, application of the collateral source rule turns on the character of the benefits received as well as the source of those benefits.

This was the focus of Fullam v. County of Nassau, decided in July 2008. There the Court ruled that a disability pension received by a Nassau County police officer who was injured tying off a police boat was a collateral source and could not be used to offset his lost income claim. The Court found that the purpose of the disability plan was not to offset liability.

The prudent employer that provides health, disability or pension benefits and further desires to offset its potential legal liabilities will ensure that the benefit plans contain specific language stating that any benefit payments or compensation derived therefrom shall offset legal obligations it may owe in the future to injured employee, including claims for maintenance, cure, lost income and lost earning capacity.

In 2015, in a case of first impression, the Louisiana Supreme Court in Hoffman v. 21st Century North America Insurance Company was asked to decide whether a write-off from a medical provider, negotiated by the plaintiff’s attorney, may be considered a collateral source from which the tortfeasor receives no set-off. The Court found that such write-offs do not fall within the collateral source rule.

At trial Hoffman was awarded $2,478.00 for medical expenses even though he had presented evidence of $4,528.00 in medical expenses. Hoffman appealed asserting that the trial court had erred in awarding the lesser amount. Hoffman had introduced a bill in the amount of $3,000.00 for two MRIs. The bill showed that his attorney had paid $950.00 and the imaging center had written off the balance of $2,050.00 pursuant to “an arrangement” the plaintiff’s attorney had with the center. Hoffman contended that under the collateral source rule he was entitled to the total billed amount.

In reaching its decision the Court noted that Hoffman had not incurred any expense for the discount. The Court explained that allowing the plaintiff to recover an amount for which he has not paid and for which he has no obligation to pay is at cross-purposes with the basic principles of tort recovery. The tortfeasor is responsible only for the damages he has caused. Hoffman suffered no loss to obtain the discount and therefore the defendant cannot be held responsible for any medical bills he did not actually incur and which he need not repay. To allow full recovery would be a windfall to Hoffman.

The Court also relied upon a California decision, Howell v. Hamilton Meats & Provisions, Inc. (2011) where it was held that the collateral source rule should not expand the scope of economic expenses to include expenses the plaintiff never incurred. There the plaintiff’s health care providers, pursuant to an agreement with her insurer, waived $94,894.00 of her $122,841.00 medical bill. Because the plaintiff was never obligated to pay the full amount the collateral source rule did not apply.

The Louisiana Supreme Court concluded that because Hoffman did not incur any additional expense in order to receive the attorney negotiated write-off he cannot receive the advantage of the collateral source rule. Additionally, allowing the plaintiff to recover expenses he has not actually incurred and for which he has no obligation to pay is contrary to the basic
Mark Your Calendars

Upcoming Board Meetings

July 13:
Associated General Contractors
Building, Baton Rouge, LA
10am

August 3:
Port of Lake Charles,
Lake Charles, LA
10am

By: Wilton E. Bland, Partner
Mouledoux, Bland, Legrand & Brackett

principles of Louisiana tort law.