

NEWS FROM THE DOCKS



ASSOCIATION OF LOUISIANA

Louisiana Ports Deliver

April 2009
Vol. 10, No. 4

Message from the PAL Office

PAL's Annual Conference...in just 2 weeks

You have your conference registration flyer in hand...just fill it out and return it and I can guarantee that you will enjoy our 26th Annual Conference.

All of the planning and preparation is nearly complete and we are ready to welcome you to Morgan City. The program promises to be informative and entertaining. Plus, all of the other activities will provide opportunities for you to network with the leaders in Louisiana's maritime industry.

If you do not have a registration flyer, just visit our website at www.portsoflouisiana.org and click on the link to the annual conference. Registration, the agenda and sponsorship options are all available on line. If you have any questions, please call the PAL office at 225/334-9040.

Our new edition of Profiles of Louisiana Ports 2009-2010 will be available at the conference. All of our member ports are represented in the report with statistical information, which includes the facilities and services each one offers. Contact information for all of our associate members is also included. PAL appreciates the Tier II grant provided by LED, which has helped us to develop and print this document.

This has been a record-breaking month for PAL in the associate membership category. This month we are pleased to welcome eight new members. Membership information can be found on our website under the "Join" link.

Legislative Update

The 2009 Regular Session of the legislature is set to open on April 27th and will adjourn no later than 6pm on June 25th. PAL plans to support legislation for tax incentives for ports. There are currently two bills that are being discussed. One will provide a \$10 per ton tax credit for shipping Louisiana products. This would create 13,000 new jobs and millions of dollars in new tax revenue. It would apply to any Louisiana grown or manufactured products, both for import and for export. It is anticipated that Rep. Jim Tucker will introduce this bill.

The second would provide tax incentives for infrastructure development. The primary purpose of this legislation is to encourage private investment in state port facilities. Because public funding sources for ports and port infrastructure facilities have not kept pace with the need to expand our ports and port facilities, it is determined that private investment and public-private partnerships should be encouraged as a means to assist the state in financing improvements to our state ports and port infrastructure facilities. This bill has been pre-filed by Rep. Nita Hutter as H.B. 215.

PAL will also be closely watching to assure there is adequate funding for the Port Construction and Development Priority Program. To fully fund the recommend construction program would require \$78.2 million is state funding. Only \$20 million is being allocated through the Transportation Trust Fund. Therefore it will be necessary to obtain an additional \$58.2 million from another source. PAL has written to the Governor, all of our legislators, Commissioner Davis and to

Secretaries Ankner and Moret asking for support in obtaining this funding through surplus funds.

Corporate Member News

Port of Shreveport-Bossier

The Port of Shreveport Bossier set the spotlight on another successful year at its recent Annual Meeting held in conjunction with the Red River Valley Association's Annual Convention on February 18. James Pannell, president of the Caddo-Bossier Parishes Port Commission, presented an overview of The Port of Shreveport-Bossier's operations and activities in 2008 and new developments on the horizon for 2009. Pannell stated that one reason The Port is so attractive to new business is because of its commitment to stay focused on future growth and future needs. Unlike many ports in the U.S. that are congested and beyond capacity, The Port of Shreveport-Bossier strives to stay ahead of the growth curve, and as a result, offers a tremendous multi-modal industrial site that is not congested and is definitely "open for business!"

According to Pannell, "2008 was one more year Port operations were conducted 100% from self generating business units, such as the general cargo operations, rail operations and land use development. Jobs and total investment continues to be The Port's major focus. With the level of expansion of our current business partners, as well as our own operations and infrastructure, 2009 promises to be another strong year in terms of jobs and investment. And the credit for this new dynamic era at The Port goes to the citizens of Caddo and Bossier Parishes, our legislators, elected officials, customers and governmental officials."

Terrebonne Port Commission

Walter Industries, a leading producer and exporter of U.S. metallurgical coal for the global steel industry has donated 284.6 acres of land to the Terrebonne Port Commission as a part of the ongoing economic development partnership between the port commission and the company. The port commission purchased 400 acres from Walter Industries in 1974 and that site comprises much of the existing new port facilities.

"This land donation will allow us to move forward with an expansion plan that would drastically increase our waterfront property" said Dan Davis, president of the Terrebonne Port Commission. "We anticipate that this expansion, over time, will not only significantly increase this region's employment opportunities but will also add to the annual economic impact the Terrebonne Port contributes to the local economy."

Port of South Louisiana

As a result of the collaboration between the New Orleans U.S. Export Assistance Center and the United States Commercial Service in Colombia, representatives from the Port of South Louisiana and 12 other Louisiana-based companies with maritime-related ties participated in the Louisiana Trade Mission to Colombia, March 8-15, 2009. The Trade Mission group, led by U.S. Embassy Commercial Service Counselor Margaret Hanson-Muse, traveled to four Colombian cities --Bogotá, Cartagena, Barranquilla, and Santa Marta-- to partake in pre-arranged one-on-one meetings with prospective shippers and business partners. The Port's main objective for this mission was to introduce to Colombia's maritime industry the advantages of the Port of South Louisiana as an alternative cargo destination in the U.S. Such advantages include its strategic location along the Mississippi River, its intermodal transportation network, and its access to almost two-thirds of the U.S. market via barge.



Margaret Hanson-Muse, U.S. Embassy Commercial Service Commercial Counselor; William R. Brownfield, U.S. Ambassador to Colombia; and Joel T. Chaisson, Port of South Louisiana Executive Director

The trade mission kicked off in Bogotá, where members were welcomed by U.S. Ambassador William Brownfield, who delivered a briefing regarding Colombia's political and economic status. According to Ambassador Brownfield,

Colombia is in a better position for growth than any other Latin American nation: it is not experiencing a negative growth as are other nations, the reality of Colombia is better than its perception, its political stance has stabilized since President Uribe has been in office, neighboring countries are unattractive and high-risk for business, and it is the most pro-U.S. country, with an 80% approval rating.



Louisiana Trade Mission Delegation

The Port of South Louisiana met with over 20 Colombian maritime-related company representatives at pre-arranged Gold Key meetings throughout the week. In connection with these meetings, the Port of South Louisiana had the opportunity to interact with other firms at a VIP networking reception, where over 50 Colombian representatives were in attendance, along with U.S. Commercial Service Deputy Chief of Mission Brian A. Nichols, Diane Farrell and Xiomara Creque of EXIM Bank, and Suzanne Etcheverry of OPIC.

During the week, the Port of South Louisiana and the Louisiana Trade Mission delegation were taken on tours of several ports along Colombia's Caribbean coast: *Regional Port Society of Cartagena*, a container, general cargo, and cruise ship terminal; *Docks el Bosque Port Operators*, a private port for public use specializing in dry bulk (esp. grain); *Regional Port Society of Barranquilla*, the largest public port of the city of Barranquilla, and the *Free Trade Zone of Barranquilla*, where the cargo handled includes dry bulk (esp. grain) and steel. While in Barranquilla, the Louisiana group attended a networking reception hosted by the American Chamber of Commerce in Barranquilla and the U.S. Commercial Service. In Santa Marta, they toured the Drummond port facilities and coal mine.

“The country of Colombia and, particularly, their Ports are to be commended for the huge strides that they have made to promote

international trade and peace through trade,” commented Joel Chaisson, Port of South Louisiana's Executive Director. “It is obvious that Colombia, one of our most important trading partners, is positioning itself to capture its share of international trade expected upon the re-opening of the expanded Panama Canal.”

The Port of South Louisiana supports Colombia it is efforts and looks forward to formalizing sister port agreements with several of their ports, which should lead to future growth and prosperity for the people of both Colombia and the U.S.

Port of New Orleans

NCL, Port Sign Long-Term Agreement
*Deal Allows NCL To Sail From New Orleans
Through 2014*

Norwegian Cruise Line (NCL) and the Port of New Orleans recently signed a three-year agreement, with a three-year option, which allows NCL to homeport one of its Freestyle Cruising ships in New Orleans through Oct. 31, 2014. The agreement also provides certain berthing privileges through the entire term of the agreement.



The 1,966-passenger Norwegian Spirit, shown berthed at the Port of New Orleans' Erato Street Cruise Terminal, seasonally sails seven-day Western Caribbean itineraries from New Orleans.

“This agreement underscores Norwegian Cruise Line's commitment to New Orleans,” said Port President and CEO Gary LaGrange. “NCL is a valued partner of the Port and a great asset to the entire City and our bustling tourism industry.”

NCL was the first cruise line to re-commit its ship to New Orleans following Hurricane Katrina – returning its Norwegian Sun on Oct. 15, 2006. NCL has home-ported cruise ships here annually since 2003.

“NCL and the Port of New Orleans have enjoyed an exceptional relationship for more than six years. This agreement allows NCL to continue to offer cruise guests in New Orleans and its surrounding areas another convenient drive-to option to experience our unique Freestyle Cruising vacations,” said Kevin Sheehan, NCL’s CEO.

Currently, Norwegian Spirit offers seven-day western Caribbean cruises seasonally from the Port of New Orleans. The ship’s itinerary includes Costa Maya and Cozumel, Mexico; Santo Tomas De Castilla, Guatemala; and Belize City, Belize.

The cruise industry is vital to Louisiana’s economy, supporting 3,617 jobs, which result in \$108.8 million in wages. Industry spending totals about \$149 million annually, which results in \$23.7 million in state and local taxes and cruise passengers account for more than 180,000 room nights in area hotels.

For more information on cruising from New Orleans, visit the Port of New Orleans Web site at www.portno.com and click on “cruises.”

West Calcasieu Port

West Calcasieu Port awards contractor bid for barge basin dredging project

The West Calcasieu Port board of commissioners voted this week to award Mike Hooks, Inc. the contract for the maintenance dredging of the port’s west barge basin located on the north shore of the Gulf Intracoastal Waterway. The successful bid of \$1,951,425 was the lowest among six bids received by the port during its competitive public bid process.

“The West Cal Port board of commissioners was encouraged to have received such a large number of bid packets for the project,” said Larry Mashburn, president of the West Calcasieu Port board. “The commissioners were equally impressed with the quality of the contractors that were interested in the port’s project and spent a considerable amount of time reviewing all of the data and information included in the packets.”

Lynn Hohensee, WCP director noted that the West Calcasieu Port will work closely with local, state and federal officials to make sure that all dredging operations are in line with regulatory permits for the project and that an aggressive time schedule is followed for the maintenance dredging. “Our port specializes in servicing commercial barge transportation operations along the Gulf Intracoastal Waterway,” he said. “It is critical to the port and its tenants that we provide a fully operational barge basin where barges can be safely secured in the facility’s west barge basin.”

He noted that the timing is critical so that the port’s barge transportation infrastructure can be at 100 percent efficiency as Southwest Louisiana prepares for another hurricane season.

WCP Engineer Chuck Stutes with Sulphur-based Meyer & Associates has estimated that approximately 180,000 cubic yards of spoil will need to be dredged in order to return the port’s west barge basin to a depth of 12 feet. The dredged spoils will be deposited on a 40-acre spoils area at the port that has been approved by the U.S. Army Corps of Engineers.

Hohensee explained that the WCP’s largest tenant, Devall Towing, currently operates one of the largest barge fleeting facilities along the Gulf Intracoastal Waterway, and that demand for quality barge docking space is essential if the company is to meet growing demand shallow-water maritime transportation in Southwest Louisiana.

Significant funding support will come from a \$1.5 million Port Priority Fund grant from the Louisiana Department of Transportation & Development. Additional funding support is being provided by the Federal Emergency Response Administration as a result of the destructive impact that Hurricanes Rita and Ike had on the port’s barge basin.

Located 12 miles south of Interstate 10 and just west of Highway 27, the WCP offers 2,500 feet of waterfront property on the GIWW. Current tenant activity includes barge operations, maritime fueling service, dry cargo barge cleaning, diesel repair, heavy-equipment contracting and maritime supply operations.

Legal News



Dealing With Worker's Compensation Fraud

Louisiana Revised Statutes 1208 and 1208.1 Their Applications and Implications

The Louisiana Legislature has in the last decade recognized the significant adverse economic impact that fraudulent workers' compensation claims have on business in our state. Fraudulent claims result in increased administrative costs, out of pocket expenses and higher insurance premiums, which are inevitably passed on to the consumer. As a result, the legislature has, on several occasions since 1989, amended Louisiana Revised Statutes 1208 and 1208.1, which embody the law in Louisiana combating workers' compensation fraud, to make them easier to enforce and to enhance penalties.

Historically, workers' compensation laws in Louisiana are given a liberal interpretation, usually with the injured worker given the benefit of the doubt. However, the Louisiana Supreme Court has narrowly interpreted these statutes, resulting in decisions favorable to business and demonstrating a will to curb fraud. The courts have made it clear that if a claimant makes a fraudulent statement relative to a claim for compensation benefits he will not only forfeit his right to benefits, but can expose himself to civil penalties, criminal fines and/or incarceration.

In 1995, the Louisiana Supreme Court decided *Resweber v. Haroil Construction Co.*, 660 So.2d 7 (La. 1995), and specifically addressed "the appropriate interpretation and application of the anti-fraud provisions of the Louisiana Compensation Act, La. R.S. 23:1208 and 1208.1." Prior to this decision there had been a split among the various Louisiana Circuit Courts of Appeal as to the applicability of each statute and what tests must be met in order for a fraudulent misrepresentation by a claimant to result in forfeiture of benefits.

In addressing Section 1208, Justice Kimball, writing for the court, found that it "applies to any false statement, including one concerning a prior injury, made specifically for the purpose of obtaining compensation benefits and therefore generally becomes applicable at the time of an employee's accident or claim." Thus, for there to be a forfeiture of benefits under Section 1208 the claimant must (1) have made a false statement or representation, (2) that was willfully made (3) for the purpose of obtaining any benefit or payment.

This encompasses false statements or misrepresentations made to anyone, including the employer, physicians or insurers. It is not required that the employee/claimant be put on notice of the consequences of making such false statements. Further, there "need be no showing of prejudice on the part of the employer prior to the forfeiture of an employee's benefits under Section 1208." In other words, mere utterance of a false statement that meets the three prong test of Section 1208 is sufficient to mandate forfeiture of benefits.

Continuing, Justice Kimball wrote that the purpose of La. R.S. 23:1208.1 is to allow the employer to ask prospective or current employees about prior injuries. It applies to employment related questioning of an employee or prospective employee by an employer concerning a prior injury when there is no pending workers' compensation claim. The statute results in forfeiture of benefits when the claimant made false statements concerning a prior injury in response to such an inquiry. To be enforceable, written notice must be given to the employee that giving false statements may result in forfeiture of benefits.

The test for forfeiture of benefits under Section 1208.1 requires that the claimant must have (1) made a false statement regarding a prior injury (2) which statement relates either directly to the medical condition for which he is seeking benefits or affects the employer's ability to get reimbursement from the second injury fund and (3) the employer must have provided written notice that any false statement may result in forfeiture of benefits.

In *Resweber*, the claimant alleged that he was injured in the scope of his employment of July 17, 1991. On August 21, 1992, he gave a statement to an investigator wherein he denied

any history of back injuries except for a minor muscle pull. Subsequent investigation turned up medical reports suggesting the claimant had suffered a herniated disc in his low back in 1989. The hearing officer found that the claim was disqualified under Section 1208 from receiving benefits. However, the Third Circuit reversed, relying on Section 1208.1 and held that notice should have been given to the claimant that false statement could result in forfeiture of benefits.

The Supreme Court reviewed the legislative history of Sections 1208 and 1208.1 and stated that “the legislature has determined workers’ compensation fraud is a severe and growing problem and has continually amended Section 1208 to make it easier to enforce and to make the penalty stiffer. It is clear from the history of the statute that the legislature intended that any false statements or misrepresentations willfully made for the purpose of obtaining benefits would result in forfeiture of those benefits, and this legislative intent cannot be ignored.”

In explaining the difference between the two sections such that notice is required in one situation but not in the other, the court stated “that the legislature intended that where one is given a questionnaire concerning prior medical history by his employer or prospective employer, not in the context of any pending workers’ compensation claim, the employee may be in a position of trying to obtain or maintain employment and would not readily appreciate that giving a false statement at that point in time will have consequences on a subsequent workers’ compensation claim, and therefore notice of such is required... In other words, the critical consideration of the legislature in requiring notice in Section 1208.1 and not in Section 1208 was not the type of false statements made, but rather the timing of the statement and the context in which it is made. If a false statement is directly made in relation to a claim for the purpose of fraudulently obtaining benefits, no notice should be required, and Section 1208 accordingly requires no notice. However, where the false statement is made at a time prior to any workers’ compensation claim, and arises in a context completely unrelated to workers’ compensation, an employee may not be aware of the full ramifications of giving a false statement and, accordingly, the legislature, in Section 1208.1 imposed a notice requirement in such a situation.”

Continuing its analysis of Section 1208.1, the court stated that “the legislature has seen fit to clearly impose a requirement under Section 1208.1 that the false statement concerning a prior injury which is not made specifically to defraud the workers’ compensation system, *i.e.*, not for the purpose of obtaining benefits, will only result in forfeiture of benefits when the false statement directly relates to the medical condition for which a claim for benefits is made or affects the employer’s ability to receive reimbursement from the second injury fund.” Thus, it appears the legislature has decided that where the false statements are not made specifically to obtain benefits, and thus not to defraud the workers’ compensation system, the penalty of forfeiture of such benefits will only be imposed where the employer is prejudiced, *i.e.*, where the false statement directly relates to the medical condition for which a claim for benefits is made or affects the employer’s ability to receive reimbursement from the second injury fund. This requirement that the false statement “directly relate to the medical condition for which a claim for benefits is made” is not required where the false statements are made specifically to obtain benefits and thus to defraud the workers’ compensation system.

Finding that the claimant made these false statements in order to procure benefits and not in response to employment related questioning, the court found that Section 1208 was applicable and claimant’s benefits forfeited.

A review of how the various courts of appeal in Louisiana have applied Section 1208 and 1208.1 and their interpretation by the Louisiana Supreme Court reveals that the courts will still liberally apply the workers’ compensation law to the benefit of the injured employee, but if the criteria in *Resweber* are met, the courts will affirm forfeiture of benefits.



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World Trade Center

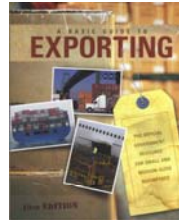


World Trade Center
of New Orleans

www.wtcno.org

Membership Trade Programs

For many years, businesses have turned to “**A Basic Guide to Exporting**” for answers on how to establish and grow overseas markets for their products and services. Now the 2009 version is available for purchase, with updated information and an easy-to-read format. Topics covered include: Identifying markets for your company's products; Financing your export transactions; The best methods of handling orders and shipments; Sources of free or low-cost export counseling; Sample forms needed to export.



America's Wetland



KEEP IT ALIVE!

The America's WETLAND Foundation Chairman of the Board, R. King Milling, has received the 2008 New Orleans Times-Picayune Loving Cup award. The Loving Cup has been awarded since 1901 to "men and women who have worked unselfishly for the community without expectation of public recognition or material reward." Milling was recognized for his tireless work leading the charge to save and restore Louisiana's coastal wetlands.



Long before hurricane Katrina propelled the issue into the nation's headlines, Milling was championing the protection of the marshes and estuaries along Louisiana's coast. Mr. Milling has lead the America's WETLAND Foundation's 7 year award-winning public education campaign that has been raising awareness on a global scale about the impacts of Louisiana's wetland loss.

Last year, Milling helped focus the nation's attention on one of the Foundation's most recent initiatives, America's Energy Coast, focused on sustaining the vulnerable landscape of the Gulf coastal region of Texas, Louisiana, Mississippi and Alabama and the activities that take place there, so critical to the nation's energy and economic security.

Welcome New Members

This month PAL welcomes eight new associate members:

Transportation Security Associates, LLC (TSA) deals in security consulting: planning, design and construction management services. They are headquartered in North Palm Beach, FL and will be represented by Jeff Brown.

Adesta is a systems integrator headquartered in Omaha, NE. They will be represented by Misty Stine.

Halcrow is a consulting engineering firm located in Baton Rouge, They will be represented by Jon Porthouse.

Canal Barge Company is a marine transportation company located in New Orleans. They will be represented by Tom Dowie.

Moffatt & Nichol is an engineering firm located in Baton Rouge. They will be represented by Jonathan Hird.

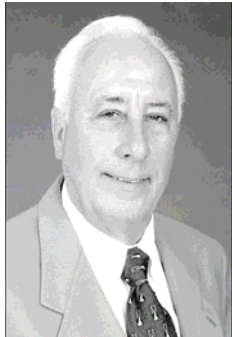
Onsite Guardian, LLC is a manufacturer of remote, wireless video security systems located in Hammond. They will be represented by Jerome Stuart.

Crescent Guardian, Inc. sells and installs port security, video technology, and container security. They are located in New Orleans and will be represented by Mr. Benjamin Wells.

Gremillion & Pou and Associates is a full service marketing firm located in Shreveport. They will be represented by Anne Gremillion.

In Memoriam

Port of Iberia Commissioner Ralph J. Provost passed away on February 21, 2009. He was 68. A native and resident of Loreauville, he was co-owner of Control Devices Inc. for the past 28 years. A U.S. Navy veteran, he served aboard the USS Bradford. He also was a member of the Sacred Heart Church Choir, and was an active volunteer at the church.



Provost was appointed to the Port of Iberia Commission in 2005 as Loreauville’s Representative. Mark Dore’, president of the commission, said he and Provost became close friends while working together on various port projects. “Serving on the Port Commission with Ralph was definitely a rewarding experience. Ralph approached most issues using his most valued asset, his common sense,” Dore said. “He talked often about his childhood and his time in the Navy, but most of all his love for family. He will be greatly missed by all who knew him.” Executive Director Roy Pontiff said Provost made significant contributions to the commission, and noted that he was instrumental in establishing the video surveillance system currently in place at the port. Just recently, cameras from that system caught a tugboat damaging the bulkhead at the public dock.

“He played a significant role in the development of the surveillance system, and now it’s obviously paying off,” Pontiff said. “He brought a lot of technical knowledge to the table, and he’ll definitely be missed.”

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Mrs. Louise Monsour Busada passed away on April 6th in Shreveport, LA. Mrs. Busada was the wife of former Caddo-Bossier Port Commissioner A. K. Busada. She always attended PAL conferences and events and we looked forward to seeing her smiling face. She will be missed by all of PAL’s extended friends and family.



MARK YOUR CALENDARS

April 22-24, 2009 – 26th Annual PAL Conference- Morgan City, LA – Holiday Inn 1-985/385-2200

April 28-30, 2009 Critical Commodities Conference, New Orleans, LA, Hilton Riverside Hotel

May 12-13, 2009, Coastal Development Strategies Conference, Biloxi, MS – for additional info. Call Susan Perkins (228) 523-4124 or (228) 216-4202 - email: susan.perkins@dmr.ms.gov

November 16-18, National Brownfields Conference, New Orleans <http://www.criticalcommoditiesconference.com/>

