



Monthly
Meeting



February Luncheon

February 6th, 2014
11:30 Registration

Location:
Pier 66 Pier Top Restaurant
Hyatt Regency

2301 SE 17th Street, Ft. Lauderdale, FL
(954) 525-6666

Speaker:
Elaine Heldewier
Sustainability Director for
Carnival Corporation on
Carnival Corporation & Plc's
Sustainability Journey

Cost for Members & Guests \$20

RSVP for the luncheon via the website

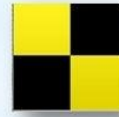
www.ftlmc.org

on the Event Calendar or by email:

Arlene Weicher at

arlene.weicher@crystalco.com

561-273-2343 (work)



TO GET THE NEWS WHILE IT'S STILL NEW...

You no longer need to wait for the next newsletter to get information on upcoming events and items of interest to FLMC members. All individual news items will be posted on the club website, www.ftlmc.org, as soon as they have been vetted by the Yeoman or another club officer.

SEND THE NEWS WHILE IT'S STILL NEW!

If you have information on some upcoming event or item of interest to FLMC members, please send the details to your Yeoman, Michelle Otero Valdés, at mov@chaloslaw.com, or any other club officer. We'll do our best to get the information posted on the club website as quickly as possible. The information will also be published in the monthly newsletter, if appropriate.

Industry Corners

We are still seeking articles for our new Industry Corner, highlighting a different aspect of our industry each month. Once again, the lawyers are in the lead with a second article this month. If you are interested in educating the membership in what you do, please provide your own submission including:

- Legal Corner
- Repair/Refit Corner
- Insurance Corner
- Surveyor's Corner
- Expert Corner
- Maritime Provider's Corner
-

Please submit your article for consideration by the 20th of each month of 500 words or less to Michelle Otero Valdes at mov@chaloslaw.com.





Fort Lauderdale
Mariners Club

Fort Lauderdale Mariners Club
PO Box 21750
Fort Lauderdale, FL 33335-1750
www.ftlmc.org



Fort Lauderdale Mariners Club

About Us

The Fort Lauderdale Mariners Club is dedicated to the promotion of ethical business practices among the sea-going community as well as the circulation of accurate and useful information to the boating community.

Our membership includes professional and leisure boating enthusiasts, as well as industry experts and professionals in many disciplines from around the world.

Join Us

We welcome your interest in the Mariners Club and invite you to become an active member to the benefit of each of us individually and all of us as a community.

The easiest way to join is to attend a monthly meeting as a guest of a current member.

Request an application form from an officer, complete it and mail it with your check for \$50.00 to the Mariners Club for consideration by the membership committee. Two sponsors are required.

If you want to join and do not know an active member, contact Kristene Lundblad at klundblad@lankoil.com.

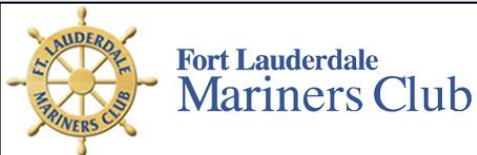
Please visit our website at
www.ftlmc.org
to find out more about us!

HIGHLIGHTS FROM THE FORT LAUDERDALE MARINERS CLUB JANUARY 2014 LUNCHEON

On January 9th, 2014, FLMC Members and guests gathered at Bistro Mezzaluna to hear from our speaker, Allen Reesor on Employee Loyalty: Who Do I Develop for the Future-Who Will Stay and Who Will Go? The discussion sparked a lively question and answer session! We hope you will join us for our next luncheon, details on the first page of this Newsletter.



Photos by Historian Jonathan Dunleavy



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Legal Corner: Limitations of Warehouse Liability

By Daniel W. Raab, Esq.

Daniel W. Raab, Esq. is an attorney with offices in Miami Dade County, Florida. He is the author of Transportation Terms and Conditions, Chapter 47 of the New Appleman Practice Law Guide, Chapter 5 of the Benedict on Admiralty Desk Reference Book and a Contributing Author to Goods In Transit. He has taught as an Adjunct Professor of Law at the University of Miami School of Law, St. Thomas University School of Law and the Florida International University College of Law.

In the past, I have discussed limitations of liability with regard to the Carmack Amendment and the Carriage of Goods by Sea Act. In this column, I am reviewing limitations of liability found on warehouse receipts.

If your client has a warehouse, he should make sure that he has limitations of liability in its warehouse receipt.

There are some Florida cases dealing with limitations of liability in a warehouse receipt. The care of *San Fisket, Inc. v. Atlanta Cold Storage, Corp.*, 347 So. 2d 647 (Fla. 3d DCA 1977), is a Florida case that held a low limit of liability. There was also a case in New York entitled *United States Gold Corp. v. Federal Express Corp.*, 719 Fed. Supp. 1217 (S.D.N.Y. 1989), which specifically held that under the Uniform Commercial Code provisions adopted in both New York and Florida, a bailee may contractually limit its liability for negligence and refer to U.C.C. § S-309(2).

If your client asks you to draft a warehouse receipt, you should make your client is aware that it can put in limitations of liability. In fact, your client's insurance carrier would prefer you to include such limitations of liability.

The one conceivable way around this could be if the warehouse itself was active in creating a conversion. See the case of *ICC Metals, Inc. v. Municipal Warehouse Co.*, 50 NY2d 657 (New York 1980). The actual warehouse statutes state that the bailee's own conversion cannot be limited by the warehouse receipt. It is not necessarily easy to prove conversion.

There are organizations that are involved with creating standardized warehouse receipts. A standard form can be found in *Transportation Terms & Conditions*, 2nd Edition at p. 105. The standard warehouse agreement provides an opportunity for the depositor to declare a higher value. When you get a case like this, it is important to read the front and back of the warehouse receipt.

Please be advised that at times, many of the conditions refer to an online location. So if you are making a claim and you are informed that the limitations of liability are online, you should review the terms and conditions that are online. The case of *One Beacon Ins. Co. v. Crowley Marine Services*, 648 F.3d 258 (5th Cir. 2011), held that you could incorporate online terms into a contract. Another case which held this specifically with regard to a bill of lading is the case of *Ana Distrib. v. CMA-CGM (Am.) Inc.*, 329 F. Supp. 2d 565 (D.N.Y. 2004).

There is no reason to see why these legal principles would not be extended to a warehouse. This would be consistent with advances in modern day technology. Of course the safest thing to do is to have all of the terms and conditions on the front and the back as well as online, however it is likely that either online and/or on the back of the document should provide an adequate basis for limiting damages.

So if you have a claim against a warehouse, check the warehouse receipt. If you represent a warehouse, then check to see if the warehouse has a standard warehouse receipt. It is also a good idea for a party depositing cargo in the warehouse to have its own insurance, given the limitations of liability that are on warehouse receipts.

2014 Officers & Chairs

Skipper: Charlie Davant
First Mate: Kristene Lundblad
Yeoman: Michelle Otero Valdés
Purser: Bryan Emond
Bosun: Arlene Weicher
Program Chair: Terry Jones
Activities Chair: Elaine Frawley
Historian: Jonathan Dunleavy
Seminar Chair: Hector Ramirez

The Ft. Lauderdale Mariners Club Proudly Supports:

Boys & Girls Club of Broward
County
Marine Industries Association of
South Florida
MIASF Waterway Cleanup
MIASF Plywood Regatta
South Broward High School Skills
USA Program
Seafarers House Fort Lauderdale
Shake-A Leg Miami
Women's International Shipping &
Trading Association
Fort Lauderdale Sea Cadets,
Spruance Division

South Florida is Digging Deep

Port Miami's Deep Dredge project will deepen the Port's existing channel from its current 42-foot depth to minus 50-52' in preparation for the Panama Canal Expansion, scheduled for completion in 2015. The Deep Dredge will make Port Miami the only U.S. port south of Norfolk, Virginia, that can accommodate the new, mega cargo vessels that will pass through the expanded Panama Canal.

The deepening of Miami's channel will create 33,000 new jobs, double cargo throughput, and increase Port Miami's annual economic impact to more than \$34 billion. Located in the heart of downtown Miami, Port Miami is the second largest revenue producing department in Miami-Dade County. Port Miami contributes nearly \$27 billion annually to the local and state economies and supports 207,000 jobs, both directly and indirectly, in the State of Florida. Port Miami is recognized and known for being the Cargo Gateway of the Americas.

The Dania Cut-Off Canal in Broward County, Florida, is now 14 feet deep — up from 10 feet and making life easier for the owners of super yachts who want access to a half-dozen shipyards including Derecktor.

And with that multimillion-dollar project complete, the Florida Inland Navigation District is now seeking permits to dredge about two and a half miles of the Intracoastal Waterway (ICW) from the 17th Street bridge to Sunrise Boulevard in Fort Lauderdale. The new depth would be 15 feet (instead of the current 10 feet) cruising into Las Olas Marina and the Bahia Mar Yachting Center, where more and more super yachts could then bring business.

Palm Beach County also has plans to dredge the ICW leading to Viking Yachts, the Rybovich shipyard and Riviera Beach Marina. Like the Fort Lauderdale plans, Palm Beach's are still in the permitting stage, running up against environmental concerns about sea grass and other such issues.



Photo courtesy of the Bahia Mar Yachting Center

Nautical Dates in February

February 1, 1917

Germany begins unrestricted
Submarine warfare

February 3, 1962

Maiden voyage of S.S. France
into Atlantic Line Service

February 6, 1917

German sub sinks U.S.
Passenger Ship California

February 26, 1914

S.S. Britanic, sister ship of
Titanic, launched

February 28, 1849

S.S. California brings first
Eastern '49ers to San Francisco

New York Times - January 17, 1914

VERDICT OF \$12,000 FOR WIDOW IS UPSET

Her Husband Saved Railroad Laborer's Life at Cost of His Own

ENGINEER NOT NEGLIGENT

**Erie Wins In Court of Appeals, which Says Imperiled Man
Had Fair Warning**

Mrs. Mary O'Brien, whose husband, John O'Brien, foreman of a truck gang on the Erie Railroad, was killed on June 27, 1908, while saving the life of one of the members of his gang, had her verdict of \$12,000 against the railroad company set aside yesterday by the Court of Appeals. O'Brien's action is analyzed in the opinion of the court which granted the railroad's appeal and demand for a new trial. The Court said:

Plaintiff's intestate was an employee of the defendant in the capacity of foreman over a body of men, including one Vitalli, who were engaged in the work of repairing the tracks and roadbed of the defendant company near a station known as Turners (Harriman) situate between Paterson, N.J., and Port Jervis, N.Y.

About 10 o'clock in the morning of June 27, 1908, an express train bound west on track 1 approached the spot where the accident occurred at a rate of 50 miles an hour. East of Turners Station there is a curve in the tracks. A locomotive traveling westerly over the curve in question would be visible from where the accident occurred for several hundred feet.

The evidence of Vitalli discloses that at the point where he was at work a train coming from the east could be seen for a distance of about twenty-five rails, each about 30 feet in length. Vitalli was at work on track 1, his back toward the east, the direction from which the train was approaching. While thus employed he heard plaintiff's intestate (O'Brien) call out several times, 'Look out, look out!' but did not think O'Brien, the foreman was calling to him. Thereupon the intestate came near to him and exclaimed:

'What are going to do, going to be killed, or do you want to die?' and pushed him (Vitalli) off of track 1 and on to track 2, the east-bound track. As intestate was stepping off track 1 he was struck by the locomotive, and as a result thereof was killed.

The Court established the "Open Run" rule: An engineer is not bound to stop his train the moment he sees some living object upon the track. He has the right, in broad daylight, when his train is perfectly visible and its approach must be heard and known, at least in the first instance, to assume that the object, whatever it is, will leave the track in time to escape injury. Reasonable care in the management of trains which must make their time between stations, and have the right of way, does not require more.

Assuming that the engineer in charge of the train saw Vitalli on the track, he would have the right to assume that Vitalli would leave the track in time to escape injury. The engineer was bound to exercise only reasonable care in the management of the train. As it was not due to stop at Turners Station, negligence cannot be attributed to the act of the defendant in running through a country district at the rate of speed stated, nor to a failure on the part of the engineer to have his train under control in approaching the curve in expectation of finding a person upon the track west of the curve. Such a rule would materially interfere with the running of trains and impose upon defendant a rule of conduct heretofore disapproved by this court.

Editor's Note: The case is reported: *O'Brien v. Erie R. Co.*, 210 N. Y. 96.

Article provided with permission of Hurwitz & Fine, P. C.

Mark Those Calendars!!!
The FLMC 2014 Calendar Is Here

February 2014

- 2 - Jazz Fest- Las Olas Riverfront near Riverhouse restaurant and Gazebo
6 - Luncheon-Pier 66
12 – Shake-a-Leg Miami boat show kick off party
14 -Valentines Day

March 2014

- 6 – Luncheon
8 - Ft Lauderdale St Patrick's Day Parade –Las Olas
9 - Daylight Savings begins
15 - FLMC Picnic- Bring your Irish to Snyder Park
17 - St Patrick's Day

May 2014

- 1 – Luncheon
10 - Mother's Day
14/15 - Tampa Bay Mariners Seminar- St Pete Yacht Club
26 - Memorial Day

July 2014

- 4 - Fourth of July
18-20 - Getaway weekend

September 2014

- 1 - Labor Day
4 – Luncheon
20 - Comedy Night (Tentative)

November 2014

- 2 - Daylight Savings ends
11 - Veteran's Day
13 – Luncheon
27 – Thanksgiving

April 2014

- 3 - Luncheon
18 - Good Friday
20 - Easter Sunday

June 2014

- _____ Dinner Cruise (TBA)
15 - Father's Day

August 2014

- 7 - Luncheon

October 2014

- 2 - Luncheon
13 - Columbus Day
28 - FLMC Seminar Golf Tournament and Meet the Speakers Reception
29/30 - FLMC Seminar
30 to Nov 3 - Ft Lauderdale Boat Show
31 - Halloween

December 2014

- 6 - Holiday Party (Tentative)
13 - Winterfest Boat Parade
16 - Hanukkah Begins
25 - Christmas



**Fort Lauderdale
Mariners Club**



Fort Lauderdale
Mariners Club

hosted by



Latin Fiesta

Join us for the
4th Annual **Yacht & Brokerage
Show Kickoff Party**

February 12, 2014 | 6-9 PM

\$30 per person

*Includes 2 drink tickets
food, music, silent raffle
at the

**Yacht & Brokerage Show Cocktail Barge
4700 Block of Collins Ave Miami Beach**



Come network with your fellow marine
professionals before the MIBS
and support a great organization too.

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For event information contact the FYBA office at 954.522-9270 or email fyba@fyba.org
For more sponsorship details call Laura Sherrod at 954-653-2835 or email Lsherrod@atlassinsurance.com

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