

**Fowler, Rodriguez, Chalos,  
Flint, Gray, McCoy,  
O'Connor, Sullivan  
& Carroll L.L.P.**



# NEWSLETTER

Spring 2004

Volume II, Issue I

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## Michael G. Chalos in the news

Michael G. Chalos is in the news again representing the mate aboard the Staten Island Ferry, Andrew J. Barberi, which struck a pier on October 15th, 2003 at St. George, New York, killing 10 people and injuring at least 34 others.

Mr. Chalos has been engaged in the practice of maritime law for over 25 years. His expert legal knowledge and demonstrated skills have been sought in numerous high profile and complex cases over the course of his career, including the successful defense of the Master of the Exxon Valdez, the Tuxpan, the Andina litigation, the Morris J. Berman spill, the Cape Mohican spill, the NPL litigation, and a number of other cases of legal significance.

On another matter Mr. Chalos and Mr. Charles S. Cumming, obtained a decision from the Maryland Public Service Commission to the effect that the Maryland State Pilots had overcharged *Carnival Cruise Line* for pilotage services on one of their passenger vessels.

This decision is significant in that it is the first instance where a regulatory body has squarely and adequately addressed the issue of pilots calculating fees based upon the arbitrary measurement of depth in rate calculations based upon ship volumes. The same arguments against the practices of other pilot associations are being presented to regulatory bodies in other ports on the East Coast of the United States, which have adopted the same volume formula used in Maryland.

The decision will, therefore, impact not only the cost of pilotage in the Port of Baltimore, but could also result in significant savings for *Carnival* in other ports. (See details on page #6)



## New Orleans moves to new office



cocktail reception for its clients, friends and colleagues, officially inaugurating the new offices. Big Easy music was provided by none other than Harry Connick (the dad and District Attorney).

During the reception, the visitors were able to appreciate the many features of the site, including the 30<sup>th</sup> floor conference center with an atrium which extends the full length of the building and offers a spectacular view of the Mississippi River and the city. Outstanding architectural features include rare woodwork and twenty foot floor to ceiling windows.

**Fowler Rodriguez & Chalos** is pleased to announce the relocation of the New Orleans office to the 29<sup>th</sup> and 30<sup>th</sup> floors of the Texaco Center, effective January 1, 2004.

On Thursday March 4<sup>th</sup>, the firm held a



## Attorneys' News

**George M. Chalos (1.-)** contributed to an article on "When it is Safe to Destroy your Documentation?" in ITIC's 2003 annual publication to its Members, *The Intermediary*. FRC New York provided its expertise to Steamship Mutual for its published article on criminal prosecutions of oily water separation in its Sea Venture publication, Volume 21.

**George J. Fowler, III (2.-)** was recently named Vice Chairman of the International Business Committee of the World Trade Center in New Orleans. Mr. Fowler was also re-elected as Chairman of the 2004 Tulane Latin American Law Institute to be held in New Orleans on September 15, 16 and 17, 2004.

**George J. Fowler, IV (3.-)** was named one of the top 25 Hispanic Young Leaders in New Orleans by *El Vocero Magazine*.

**Delos E. Flint, Jr. (4.-)** participated on the panel Mediation and Alternative Dispute Resolution in an Offshore Setting at the 11<sup>th</sup> Annual Louisiana Bar Association Admiralty Seminar.

**Mat M. Gray, III (5.-)** judged oral arguments in the Eleventh Annual Judge John R. Brown Admiralty Moot Court Competition hosted by Tulane University School of Law and the University of Texas School of Law, held on March 25 -27, 2004.

**Mat M. Gray (5.-), III, Edward F. LeBreton, III (6.-), and Jon W. Wise (7.-)** began publication of the Texas/Louisiana Insurance newsletter which summarizes key cases and insurance developments. The newsletter is issued monthly and distributed to the insurance market.

## New Partners and Associates

**G. Luis Dominguez (12 L.-)** joins the FRC office in Miami. Mr. Dominguez' experience is mainly in civil litigation, both in state and federal courts. He is primarily engaged in preparing and trying cases. Other aspects of his litigation experience include arbitration and appeals. Mr. Dominguez has litigated a number of diverse subjects from general commercial to personal injury. He has successfully represented clients in cases involving maritime contracts and personal injuries; commercial and property disputes; construction defects; trademarks infringement; business torts; defamation, invasion of privacy, malicious prosecution and political crimes. Outside the legal field, Mr. Dominguez has been involved in the maritime industry. He has worked for various steamship lines and was the managing director of an agency that provided general and stevedoring services for both tramp and liner operations. Mr. Dominguez completed his undergraduate studies at Auburn University in

Congratulations to **Mary C. Hubbard (8.-)**, who was elected Treasurer at the 80th Annual Meeting of the Southeastern Admiralty Law Institute. Ms. Hubbard is presently in rotation to become Chairman of the Institute in 2007. She lectured on ship foreclosure and sale issues at the Institute's annual seminar. The paper will be available on the firm website. Meanwhile, if you would like a copy, contact her at [mch@frc-law.com](mailto:mch@frc-law.com).

**Robert R. Johnston (9.-)** was a panelist at the Tulane Fall Maritime Seminar on Cruise Ships, Gaming and Recreational Vessels.

**Edward F. LeBreton, III's (6.-)** article on Additional Insured and Other Problems was published in *Benedict's Maritime Bulletin* Third Quarter 2003 edition. Mr. LeBreton judged legal briefs written for the Eleventh Annual Judge John R. Brown Admiralty Moot Court Competition hosted by Tulane University School of Law and the University of Texas School of Law.

**Antonio J. Rodriguez (10.-)** participated on the Planning Committee for the New Orleans Fall Maritime Seminar, which recently held its 21<sup>st</sup> conference.

Mr. Rodriguez also completed his 21<sup>st</sup> year as an Adjunct Professor at Tulane Law School, teaching maritime collision law and ship-owner limitation of liability for the LLM in Admiralty program.

**Timothy W. Strickland (11.-)** spoke at the October luncheon of the Marine Insurance Association of Seattle on the topic of handling marine claims along the U.S. Gulf Coast.

Auburn, Alabama and his graduate studies at the State University of New York in Fort Schyler, the Bronx, New York. He studied law at Nova Southeastern University in Fort Lauderdale, Florida. He takes his golf seriously.

**George J. Fowler, IV (13.-)**, joins the New Orleans office as an associate. Mr. Fowler received a J.D. degree and Certificate in Maritime Law from Tulane Law School in 2003. While pursuing his law degree, he studied maritime law in Greece in a program sponsored by the Aegean Institute of the Law of the Sea and Maritime Law. He received a B.S.M. in Finance from Tulane University in 1999, where his studies included courses in international finance at ICADE in Madrid, Spain, the American University of Paris and ITESM in Mazatlan, Mexico. Prior to attending law school, Mr. Fowler worked as a London Market Insurance Broker for JLT Risk Solutions in London. Mr. Fowler's practice focuses on commercial, maritime and energy related matters.



## New Partners and Associates (Cont.)

### H. Wexler (1.-)

is an associate in our Houston office. She attended the University of Texas at Austin (B.A. 1995) and South Texas College of Law (J.D. 1998). While a law student, Robin was active in the school's moot court. Ms. Wexler's primary areas of practice include insurance coverage work, insurance defense, personal injury litigation, and general commercial litigation. Ms. Wexler is admitted to the Texas Bar, as well as the U.S. District Court for the Southern District of Texas.

### John Todd (2.-)

joins the Houston office as an associate. He is a graduate of the University of Mississippi (B.Accy. 2000) where he was a Herrin-Hess Scholar and W.P. McMullen Scholar. Mr. Todd attended law school at Vanderbilt University School of Law (J.D. 2003) in Nashville, TN, graduating in the Law & Business Program. He was a Contributing Editor to Vanderbilt Law School's *Obiter Dictum* and was an active member of the Legal Aid Society. Mr. Todd's primary areas of practice include admiralty litigation and general commercial and civil litigation. Mr. Todd is admitted to the Texas Bar. He is a member of the American Bar Association, Texas Bar Association, Texas Young Lawyers Association, and Houston Mariners Club.

### Matthew S. Kish (3.-)

joins the Miami office as an associate. He attended Arizona State University (B.S. 1991, Justice Studies/Pre-Law; Vice-President of the Justice Studies Students Association, Dean's List); and California Western School of Law (J.D. 1996), a private law school affiliated with the University of California, San Diego. He worked with the U.S. Marine Corps' Western Area Counsel Office at Camp Pendleton, California and practiced in a California full service law firm before relocating to South Florida in 2000. Prior to joining FRC's Miami office, Mr. Kish was in-house counsel to an e-commerce fulfillment company in Florida. His area of practice is primarily commercial litigation and business transactions, while he is also experienced in employment and labor law, corporate and securities law, mergers and acquisitions, as well as commercial and residential real estate development. Mr. Kish has litigation experience in both state and federal court. His reported cases include Lawrence v. Wal-Mart Stores, 236 F. Supp. 2d 1314 (M.D.Fla. 2002). Mr. Kish is admitted to the bars of Florida and California, the United States Supreme Court, the United States Eleventh District Court of Appeals, the United States District Courts for Southern and Middle Districts of Florida, and the United States District Courts for Southern and Eastern Districts of California.

### Robert Boyce (4.-)

joins the New Orleans office as an associate. His background includes an LL.M. in Banking and Financial Law in May, '04 from Boston University; a Juris Doctor from Tulane University School of Law in May '03; he also received an M.B.A. from A.B. Freeman School of Business at Tulane University in May '03; and at Millsaps College he was awarded a B.B.A. cum laude in May '99. His experience as clerk consists of corporate and business consolidation of public corporations and debt restructuring for public companies; insurance defense, tobacco litigation and contract disputes. He has also been active in volunteer associations such as the New Orleans Legal Assistance Corporation.

### Richard Sahuc (5.-)

returns to his native New Orleans as an associate of the firm. Mr. Sahuc is a graduate of Dartmouth College (B.A. 1994) and the University of Miami School of Law (J.D. 2002, magna cum laude), where he served as Articles and Comments Editor for the University of Miami Law Review. As a law student, he interned with the Honorable Adalberto Jordan in the United States District Court for the Southern District of Florida and worked as a summer associate with Dewey Ballantine, LLP in New York. Prior to attending law school, he worked in the special markets departments of both Sony Music Entertainment and Arista Records in New York. Mr. Sahuc is pleased to return home from Miami where he was employed as litigation associate with the Miami office of Jordan Burt, LLP. His practice focuses on insurance, maritime, and general commercial litigation and is currently admitted to practice in the State of Florida and in the United States District Courts for the Southern and Northern Districts of Florida.

### Philip C. Brickman (6.-)

joins the Firm as an associate in New Orleans. Mr. Brickman was born in New Orleans, Louisiana on August 18, 1971. He graduated from Millsaps College with a B.A. in 1993; obtained his J.D. in 1988 from Tulane University School of Law; and, was admitted in 1998 in Louisiana, U.S. District Court, Eastern, Middle and Western Districts of Louisiana and U. S. Court of Appeals, Fifth Circuit, 1999, U.S. District Court, Southern District of Texas. He has practiced in Admiralty and Maritime Law and Insurance Defense.



## Michael Chalos ( continued from page #1)

The substance of the dispute revolved around whether the Maryland Pilots could use an arbitrary measurement of the vessel (in this case the depth) in the formula used for computing rates for pilotage services. The Commission's first ruling on that topic was both decisive and definitive. The Commission's February Order stated that, "A consideration of the presentation of the parties as well as an examination of the ship's plan shows that the Pilots' measurement of depth does not satisfy the tariff." In reaching this conclusion, the Commission directly addressed the contention by Carnival that the only valid depth measurement of the vessel was, in fact, contained in Lloyd's Register (the data reference specified in the tariff). Furthermore, the Commission's order directly addressed a second major issue of the dispute, over what constitutes the "uppermost continuous deck" (the uppermost terminus of the depth measurement). In that respect, the Commission concluded that tariff "depth" of the subject vessel was to be measured to the statutory deck line, precisely as we had argued on behalf of Carnival.

The latest decision re-affirms the Commission's decision to accept the Lloyd's measurement of depth (which coincides with the international headline convention, USCG regulations, IACS class rules, and the common usage of the term throughout the industry) "as the proper measurement of depth." The Commission noted that, "It is not up to the Pilots to apply its interpretation of the tariff's definition of depth to secure a measurement that differs from the measurement of depth certified by Lloyds." Accordingly, the Commission ruled that, "the Pilots cannot look beyond Lloyds Registry to make its own determination as to the measurement of depth."

## FRC International Group of Independent Law Firms

The Fowler Rodriguez & Chalos firm leads the FRC International Group of Independent Law Firms with the purpose of facilitating and improving the Group's ability to serve the needs of our clients across the Western Hemisphere.

CARACAS      GUATEMALA CITY      MEXICO CITY      MONTREAL  
 SAN JOSE      SAN JUAN      SAN PEDRO SULA      SAN SALVADOR  
 SAO PAULO      SANTO DOMINGO

## Tulane Latin American Law Institute: September 15-17, 2004

The Tulane Latin American Law Institute was established in New Orleans, Louisiana as a forum to address the business, political and legal issues affecting Latin America. The Institute aims to identify common ground and foster cooperation to meet the challenges in Latin America.

### With the participation of:

#### Ambassador Roger Noriega

U.S. Assistant Secretary of State  
Bureau of Western Hemisphere  
Affairs

#### President Gonzalo Sanchez

#### Lozada

Former President of Bolivia

#### Miguel Angel Rodriguez

Former President of the  
Republic of Costa Rica

#### Hon. David Vitter

U.S. Congressman, (LA)

#### Ing. Luis Marin

Chief Executive Officer, CITGO

#### Jose Sariego

Senior V.P. - Business and  
Legal Affairs

#### HBO Latin America

#### Elmer A. Johnston

General Counsel  
Harken Energy Corporation

#### Gary Paulson

Assistant General Counsel  
British Petroleum

### Highlights:

#### U.S. Latin American Policy:

A view from the current  
Administration  
Concerns about preemption.

#### Energy in Latin America

Selected countries review.  
How it can affect national security and  
self sufficiency.  
Preservation of cultural protected sites.  
Alien Tort Statute.

#### International Justice and the Reality of Universal Jurisdiction.

The Spanish experience.  
Guantanamo.

#### Ethics in Foreign Investment:

Lessons from Enron.  
Anti corruption developments.

#### The OAS and its contribution to enforce the rule of law in Latin America

**Enhance your  
knowledge of the  
region and its  
business opportunities.**

*We highly recommend  
attendance by: Attorneys,  
Businessmen, Public Officials  
and all those that are involved in  
international activities in the  
Americas.*



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**Mark your calendar !!**

## CASES OF INTEREST (New Orleans)

**Dee E. Flint** and **T.C.W. Ellis** received a favorable ruling from the United States District Court for the Eastern District of Louisiana in an oil spill action. *Texaco Trading & Transportation, Inc. v. T.L. James, Inc.*, 2003 U.S. Dist. Lexis 8567 (E.D. La. May 15, 2003). On May 16, 1997, a Texaco crude oil pipeline ruptured, spilling approximately 6,500 barrels of crude oil into Lake Barre, Louisiana. Texaco sued TL James Company, alleging that the spuds of its Dredge Barge ALROAR had been dropped on the pipe, triggering the pipeline rupture some four weeks after the ALROAR had been in the area. Dee Flint represented TL James' \$20,000,000 excess coverage by London Underwriters (through Thomas Miller (Miami), Inc.) over the \$5,000,000 primary limits.

As a result of the extensive pollution and clean-up costs, loss of production and pipeline repair, Texaco asserted a claim in excess of \$25,000,000. Texaco sought, through use of circumstantial evidence, to establish that the sole source of the pipeline rupture was the TL James dredge ALROAR. The litigation lasted over three years, involving two limitation of liability proceedings, complex factual and contractual issues and extensive discovery including over 60,000 pages of exhibits. After a five-day trial before Judge A.J. McNamara in the United States District Court, the matter was submitted on briefs. To that point, Texaco's lowest settlement offer had been \$14,000,000. In an exhaustive opinion by Judge McNamara, the M/V ALROAR was exonerated in the limitation proceeding and judgment rendered in favor of TL James. Texaco elected to forego an appeal and TL James was awarded its costs.

**Dee Flint** and **Larry DeMarcay** received a favorable dismissal at trial in Lafayette Parish, Louisiana. At trial, Delton Coutee, a 34-year-old roughneck, alleged that he was injured while working aboard the M/V GLOMAR ADRIATIC II, a jack up drilling rig owned by Global Santa Fe Drilling Company. While Coutee was attempting to remove the hy-drill, a component of the BOP stack, he slipped, lost his balance and fell off of the elevated platform that he was working on.

After hearing several days of testimony, Judge Marilyn Castle found that Coutee's account of the accident was unsubstantiated, that the work platform was reasonably safe, that the inertia reel worked properly, that Global Santa Fe was not negligent and that the ADRIATIC II was reasonably fit for its intended purpose. Based on her analysis of the facts, the Judge dismissed Coutee's Jones Act negligence and unseaworthiness claims.

**Bret LeBreton** and **Kristina Irvin**, representing vessel owners in a survival action, received a favorable ruling from the United States District Court for the Eastern District of Louisiana. *Cagata, et al. v. General Charterers, Inc. et al.*, No. 01-2425. Plaintiffs, heirs of deceased Philippine seamen, originally filed suit in Louisiana state court. The seamen were each members of a seamen's union (AMOSUP) and had signed a contract agreeing to submit any claims to arbitration in the Philippines. Defendants successfully removed the case to federal court, where the matter was stayed pending arbitration in the Philippines. While arbitration was pending, the plaintiffs entered into settlement agreements in the Philippines.

Plaintiffs' Louisiana counsel attempted to remand the action to Louisiana state court. The District Court dismissed the claims filed in the United States on the basis that the settlements constituted a resolution of the Philippine arbitration proceedings. Plaintiffs' Louisiana counsel sought an appeal with the Fifth Circuit, arguing that the proceedings in the Philippines were proceedings in court and not arbitration, and, therefore, the Convention on Enforcement of Foreign Arbitral Awards should not apply. They further argued they were entitled to compensation for unpaid attorneys' fees. Before the appeal was heard by the court, Plaintiffs' Louisiana counsel voluntarily filed a Motion to Dismiss the Appeal.



## CASES OF INTEREST (New Orleans) Cont.

**Toney Rodriguez and Mary C. Hubbard** won a significant victory for BP, in which the U.S. Fifth Circuit Court of Appeals held that the United Nations Convention on Contracts for the Sale of Goods (CISG) governs private sales between citizens of signing countries unless the parties specifically opt out. Further, it held that the CISG incorporates the INCOTERMS. It reversed the district court, which had held that under domestic Ecuadorian law; the CFR term of a contracts for sale of gasoline would not be given effect. *BP Oil International, Ltd. V. Empresa Estatal Petroleos De Ecuador*, 33 F. 3d 333 (5th Cir. 2003).

**G. Beauregard Gelpi** recently successfully defended a multi-million dollar cargo claim arising out of a shipment of twine from Brazil to New Orleans. At trial, in addition to denying the cargo claimants' recovery of over \$3,500,000.00 on the basis of the defenses provided by the United States Fire Statute, Mr. Gelpi was able to obtain a ruling in favor of the shipowner, requiring the cargo interests to contribute roughly \$325,000.0 in general average.

## CASES OF INTEREST (New York)

**George C. Chalos** received a favorable ruling where the Second Circuit held that there was no jurisdiction over a Belgian corporation responsible for stowing cargo containers on ship.

The plaintiff insurance company, Hartford Fire Insurance Co., sued defendant, Mediterranean Shipping Co., S.A. and the M/V MSC INSA ("MSC"), to recover damages for cargo shipped from Antwerp to New York. MSC asserted a third-party complaint against Hesse Noord Natie, N.V. (HNN), a Belgian corporation that contracted to stow cargo container's aboard MSC's vessels. MSC alleged in its third-party complaint that contrary to instructions, HNN stowed the cargo above deck which caused damage by exposure to seawater enroute to New York. The court granted HNN's motion to dismiss on the ground that the court lacked personal jurisdiction over it.

The threshold issue in the case was whether the injury was caused "within the state". The Second Circuit has set forth that courts must apply "a situs-of-the-injury test" to determine the original event which caused the injury. In the court's consideration of the Rule 12(b)(2) motion, it credited MSC's jurisdictional allegations as true. Thus, HNN's negligent stowage of the cargo above deck constituted the initial tort. The first effect of the tort was seawater damage to the cargo. Therefore, the original event that caused the injury occurred somewhere en route from Antwerp to New York. The only effect of the tort to occur in New York was the economic injury felt by the consignee, a New York corporation, as a result of the damaged cargo. Such consequential economic injury was insufficient to make New York the situs of injury under CPLR 302(a)(3)(ii).



## Last minute news



FRC's Partner Luis Enrique Cuervo participated in the World Trade Center's Round Table discussion with Luis Alberto Moreno, Ambassador of Colombia to the U.S. who has overseen dramatic improvement in Colombian-U.S. bilateral relations, on the U.S.-Colombian Trade Agreement.

Dr. Cuervo gave a broad explanation, during the event, of the importance of actively pursuing the Free Trade Area Agreement. He clearly presented some of the effects that this would have on the potential of new trade, realizing new investment options and the possibility of improving security and stability in Colombia and the Region. He also pointed out the new opportunities that will be available for New Orleans.



Congratulations to New Orleans Associate Lawrence R. DeMarca, III.

Larry has recently been accepted to the Texas State Bar, he is also an active member of the New Orleans, Federal, Louisiana State and American Bar Association; the Louisiana Association of Defense Counsel; Defense Research Institute and the Transportation Lawyer Association.

He is licensed to practice in both Louisiana and Texas.