



The Marine Assistance Industry Journal

Volume V; June 2011

CHAIRMAN'S ADDRESS:

First half of 2011 in review-



I know that most of you will not be reading this as you are diligently finishing off-season repairs/improvement projects and vessel outfitting for the upcoming season. I think we are all looking for an upturn in business with the slow recovery of portions of the economy. I can report a much better 1st quarter here in FL that last year as a result of the improved weather (sorry snowbirds). The biggest concern we are facing in the short term seems to be fuel prices, as limiting our activities and keeping the boaters closer to home. No matter what you are preparing for this season, be assured that C-PORT will be working diligently on our ongoing projects and keeping an eye out for the periodic fires that need to be controlled should one of our representatives temporarily forget what our industry does to support the waterfront community.

I would like to sincerely thank our membership for their participation in this year's C-PORT conference. This was the first West Coast event we have had since Las Vegas 4 years ago and the feedback from the attendees is 4-5 out of 5 across the board. I would also like to thank our vendors for their continued participation. Their support of the conference proves commitment to what we do and I encourage everyone to break out of your routine and shop these supporting vendors. I can assure you that our conference vendors will welcome your inquires and business and go the extra mile to gain your trust. The speaker list over the 2 days was terrific, from how to use Facebook to how to successfully work *with* insurance companies and adjusters to successfully resolve claims. The NASBLA BOAT program presentation generated some of the most interest and Mr. Mark Dupont answered all the questions and concerns. The business strategy session was very informative and brought to light some of the business items we all need to be considering as we move forward. Rescue, Recover, Re-warm was an investment of less than 2 hours that has been proven to save countless lives. Capt. Dave McBride, Chief, USCG Office of Search and Rescue, was again in attendance and has become a good friend and advocate of our industry unequalled in our 25 years. One of the most entertaining banquet speakers we have had in a long time was Mauricio Garrido, President, T&T Bisso. Gabe Kinney former USCG SAR Chief represented the AFRAS award for the first time at a C-PORT event and we look forward to a long term relationship with that organization. Look for information on our 25th Anniversary Conference and plan now to attend as it will be an event to remember.

I would like to wish you all the best of luck this summer and please keep these important lesson learned in mind while on the water this year:

- Wear your lifejackets, and be sure your EPIRB's are current. Invest in PLB's they are the difference between a story and a headline.
- Cell phone usage along with other distractions has claimed multiple lives already this year. Invest in a hands free device and avoid texting while running your boats.
- Be aware of boaters as they are getting back on the water after a long time off, give them a little extra space.
- Establish the highest level of professionalism when dealing with customers, competitors, and partners on the water.
- Be sure to keep our boaters happy, without them we are adrift.

My best wishes to you all this summer,

Chris Shaffner, Chairman

FEATURES:

Lecturing About Salvage Invoices

By John K. Fulweiler, Esq.



Old man Winter had nearly throttled the life out of me when suddenly it was time to fly to Long Beach for C-Port's annual conference. A warm breeze, some sun and the conviviality of the C-Port attendees was the elixir I needed. That and C-Port gave me an hour or so to speak about strategies for invoicing salvage claims which unfolded a lot better than I'd expected.

You see, C-Port assigned me the topic and it wasn't one which I would have delivered if left to my own. The topic was tough because it required taking the audience on a stroll of sorts to the other side of their invoice and pointing out the flaws and missteps in certain common invoicing approaches. Typically when guest lecturing, the goal is to keep the industry audience cheery and smiling all of which promises some post-lecture back slapping and a free beer or two. Here, however, I laid bare some issues in the hope of providing some meaningful value.

One of my major themes was underscoring the oddity of what this industry requires of the salvor. Specifically, I noted how the salvor and the insurer are compelled to work with each other to reach a resolution and yet each of them often bring very unique characteristics to the bargaining table. Painting with a broad brush, I noted that salvors are often small businesses perhaps noted for their ingenuity and off-grid approaches to getting things done. While on the other hand, using the same broad brush, you might characterize an insurance adjuster as wearing a more corporate view and being more risk adverse and traditional in thinking. Whatever the case, these two disparate parties are thrown together and expected to reach an amicable resolution which can be tough. What I described as a "Fulweiler Observation" was that if both parties stepped away from treating invoice negotiations personally, invoice negotiations would almost have to proceed more smoothly.

Similarly, I talked about another "Fulweiler Observation" which was that I believed the most successful salvors were those that could negotiate in a competitive and aggressive way and yet hang-up the phone, or get up from the table with a smile and amiable quip. That is, successful salvors appreciate that any business runs on personal relationships and an ill word can undermine not only the current negotiation, but those that you can expect to have in the future.

And recognizing that it might cost me a beer, I also took aim at the "aim high, settle low" approach to invoicing for salvage services which I believe sometimes occurs. Nothing sticks in my craw more than this short-sighted tactic which not only hurts a salvor's reputation, but devalues the salvage claim. A better approach, I argued, was to invoice for the full value of the salvage claim as is supported by the general maritime law. I urged the salvor to reach out to his or her admiralty attorney and really explore where the value range for the services lay. Like anything, being on sure footing out of the gate gives you a lot more confidence to finish the race on your terms.

Oh, there was more, but without my in-person delivery, I'm probably already losing some readership! At any rate, it was a real pleasure to have been invited to speak at C-Port and I hope that opportunity will be there in the future. In the meantime, you can reach me at my new law firm "Fulweiler llc" which I started on my return from Long Beach and which fill focus exclusively on admiralty, aviation and transportation issues. With offices in Rhode Island, New York and Florida, we look forward to assisting the maritime industry in the years to come. My best to all for the Summer season.

- John K. Fulweiler, Esq. (John is an admiralty attorney and licensed mariner. He can be reached via e-mail at john@fulweilerlaw.com or at 401-667-0977.)

C-PORT Insurance Capstan

By Larry Keefe, Starkweather & Shepley

What is the C-PORT Insurance Program? It is Insurance Developed & Designed exclusively for the unique exposures of the C-PORT Membership & the Assistance Towing Industry:

Marine General Liability Insurance- is a coverage often overlooked and/or sometimes assumed as standard or generic. However, this Coverage is not standardized, and proper and complete coverage can be of measurable value in protecting your business from both land and waterborne exposures to loss. Marine General Liability Insurance (MGL) can provide valuable & fundamental protection from costly Third Party Claims (including costs to you in defending) for allegations of Liability for Bodily Injury, & Property Damage, and may include & extend to alleged damage to Customer's Boats in your Care, Custody and Control. In addition to paying for the covered damages for which you may be found legally liable, MGL also provides valuable defense cost coverage for covered claims & other associated Marine and Non- Marine Business Activities & exposures including Land Based Salvage, Service, Repair, Dockage, Storage, Hauling, Launching, and other associated Office & Business activities.

A take away and important to know, the Marine General Liability policy offered through C-PORT, similar to entire C-PORT Marine, Tower's, Salvor's, Hull and P&I policies offered have been broadened and enhanced for member benefit and value.

The C-PORT Marine General Liability Policy, Underwritten by Travelers and Administered by Starkweather & Shepley, provides six (6) important and additional coverages for insured members. Coverage specifically includes General Business Liability, Salvor's Liability (Shore Side Activities), Marina Operators' Legal Liability (care, custody and control coverage for recreational watercraft), Ship Repairers' Legal Liability (care, custody and control coverage for commercial vessels), and include an additional \$1,000,000 Defense Cost Limit in addition to and outside the \$1,000,000 Limit of Liability.

For more information on this important coverage and a possible review of your current coverage please contact Linda or Larry at Starkweather & Shepley, our C-PORT Insurance professionals at 1-800-788-8225 or lwagner@starshep.com, or Lkeefe@starshep.com.

EDITORIAL:



From the Desk of Tina Cardone, Executive Director

Relationship- “the way in which two or more people, groups, countries, etc., talk to, behave toward, and deal with each other” (Merriam-Webster). We talk about partners and partnerships and we develop Memorandums of Understanding. How we interact with these partners and each other is what makes or breaks the relationship.

Some of our relationships include TSAC (Towing Safety Advisory Committee), NASBLA (National Association of State Boating Law Administrators) and US Coast Guard. We also have relationships with other associations, our competitors and our local agencies. For us to grow and develop our businesses, all of these relationships are important.

Lately it seems that our local agency relationships are being strained. Many of you have commented that local law enforcement is performing routine towing operations. Some have reported more marina operators towing their customers. As frustrating as this can be, how you approach the situation will dictate the outcome.

You have a few things on your side. One is C-PORT. We are here to represent you to all federal, state and local agencies as well as to the boating community in general. Another important aspect is the legal requirement that anyone engaged in assistance towing be properly licensed to do so. What does that mean?

Some definitions:

- “Assistance towing” is defined as towing a disabled vessel for consideration (46 CFR 10.107(b)).
- “Disabled vessel” means a vessel needing assistance whether docked, moored, anchored, aground, adrift or underway, but does not mean a barge or any other vessel not regularly operated under its own power (46 CFR 10.107(b)).
- “Consideration” is defined as an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expensed of the voyage, by monetary contribution or donation of food, fuel, food, beverage, or other supplies (46 USC 2101(5a)).

To engage in assistance towing the operator must hold a US Coast Guard license or credential authorizing them to do so. This includes in the majority of cases a specific assistance towing endorsement. US Coast Guard Sector San Francisco in their September 2010 letter stated the following:

“This credentialing requirement extends to all operators who receive consideration for assistance towing, including emergency responders employed by a municipality. However, this credentialing requirement only applies to assisting disabled vessels and does not apply to assisting vessels in distress, whereby a mariner is in imminent danger and in need or immediate assistance.”

Seems pretty clear. The rule applies to everyone. (There are liability ramifications as well but I’ll save that discussion for another time.)

In these economic times, local agencies are trying to justify their budgets and marina operators and others are trying to find other avenues to produce income. Approach them first to educate (they can be fined for towing without the proper license for example) and then to recapture your business. If all else fails, before the relationship is so strained it will take years for anyone to sit at the same table, call me. I’m here to help you.

Wising you all a safe and successful season! As always, you can reach me at 954-261-2012 or by email at tcardone@cport.us.

Best Regards,

Tina Cardone, Executive Director

NEWS AND BULLETINS IN REVIEW:

May 31, 2011 – Vessel Inspections are on the horizon. Some of you have received notices from your Sectors suggesting your vessels be inspected. The regulation has not yet been approved. As a matter of fact, the regulation has not made the NPRM (Notice of Proposed Rulemaking) stage. That being said, we know it is going to be there soon and our vessels will be liable for inspection at some point in the future. Why are some of us getting these letters now?

Some background. The Coast Guard instituted a voluntary program called "Towing Vessel Bridging Program (TVBP) - Vessel Inspections". The goal of the program was to have as many companies volunteer to go through the inspection process as possible prior to implementation so the CG could work with industry to design the best possible program they could within the restraints imposed by legislation. Assistance towing vessels are not excluded from TVBP, they are just not the focus. At this point, the Coast Guard wants to gather some information about our population of vessels. They believe, and we agree, that examinations facilitate this effort. In their own words, "although assistance towing vessels are not the focus, part of the reason to exam such vessels now is to accurately ascertain the population of this subset. As they are uninspected vessels, we just don't have a good handle the size of the assistance towing community".

Currently, the Bridging Program is about compliance with existing regulations and since our vessels are uninspected vessels at this point, there should be little concern of any repercussions. In addition, it is important for Coast Guard examiners to become more acquainted with our vessels and understand what it is they do. This will not only benefit us when it comes time to be inspected but also now as our Coast Guard partners will know our equipment capabilities should the need arise. We want to cooperate with this program as we see the benefits to us in the long run. Successfully completing the examination during this Phase I will exempt you from additional examination for 3 years.

May 30, 2011 – In response to many of your comments, C-PORT has been working to create a better working relationship with Travelers Insurance Claims Department. As many of you know, Travelers-Ocean Marine, underwrites the C-PORT group policy that insures our members. Our relationship and coverage options on that side of the table are strong and remain so. There was a weakness detected with the recreational boat claims handling side and we went to work to try to improve that relationship.

At the end of April, a number of us met in New York with the upper management team of Travelers recreational boat claims division. Attending and representing C-PORT were Tina Cardone, John Andrews and Larry Acheson. Additional committee members included Chris Shaffner and Terry Hill. I am pleased to report the meeting was very successful and we are well on our way to building a stronger relationship and creating a lasting partnership with Travelers Claims.

May 4, 2011 - C-PORT announces a new program for our members. It is the C-PORT Sector Representative Program. We believe it will be beneficial to all parties and will help to strengthen our relationship with the USCG and with the local agencies that attend mandated Sector meetings. Found within the USCG document commonly referred to as the SAR (Search and Rescue) Addendum, is a section that details the requirement for bi-annual meetings and the need for CG to remain familiar with the SAR Assistance resources in their AOR. Marine Assistance Operators are urged to attend these meetings and to make sure their local stations and Groups have current, accurate information about their equipment and personnel. In many areas of the country, these meetings are working well. In others, there is need for improvement in communication and meeting content. C-PORT has developed this program to help all areas have consistent, productive Sector meetings. There is a comprehensive Sector Meetings Guidelines document as well as a Helpful Hints document available to members at our website, <http://www.cport.us/>.

April 27, 2011 - SAVE THE DATE! 2012 C-PORT 25th Annual Conference will be held January 8 - January 9, 2012 at the Grand Hyatt Tampa Bay, Tampa, FL! Don't miss this special **25th Anniversary Conference** celebrating the growth and development of the Marine Assistance Industry! Something for everyone from informative presentations and discussion panels, networking, exhibits and more! More information is coming soon.



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C-PORT was founded in 1985 to act as a liaison between the marine assistance industry and public agencies and organizations involved with boating safety, marine assistance, marine salvage and other marine-related operations. The association was created in part to afford a means of cooperation with the government in matters of national concern; to provide an objective, self-regulating body for the marine assistance industry; and to promote, through legislative, regulatory, and governmental initiatives, the maintenance and expansion of the marine assistance industry. For more information, contact C-PORT at (954) 261-2012 or visit www.cport.us.