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The Brokerage Forum — Doing the Deal -v- Making the Market

Eric Goldring	Goldring & Goldring
Michael Moore	Moore & Co
Jim Perry	James H Perry
Barb Tierney	Northrop & Johnson

Chairman—Martin Redmayne

Sorry, I'm late. Simple, simple session. I was asked by a broker last year why don't the brokers get a chance to take the podium and talk about their world. And we invited several brokers to take part in this session but only one showed up. They're obviously far too busy and making too much money. The session is entitled Doing the Deal -v- Making the Market. I think ultimately what it comes down to is, that little statement is suggesting that there's too much focus on doing the deal and not enough focus on making the market from a long term perspective. And I don't have any axe to grind against brokers providing they do things professionally and make the market better. When they're just in it for a short term deal it tends to frustrate everyone in this room because they can cause more problems than we need.

The panel to my right consists of Barb Tierney, our resident broker from Northrop & Johnson, and alongside her are three wise men from the world of the legal department. Quite appropriate really—the typical scenario—one broker, three lawyers. OK. Interesting session I hope—we've now got 1 hour 25 minutes for Eric to start off—he won't take 1 hour 25 minutes this time, I promise. Eric, please, kick off.

Eric Goldring Goldring & Goldring

Well I thought the best thing to do was put things into perspective. So I'm going to ask a proposition. There's a lawyer and a yacht broker in a room. The room bursts into fire. Who do you save? You don't—you get a cup of coffee. And the reality of it is, that's the problem. Because we all go—that's the right answer. The issue—and Ken Hickling said it really the best—it's a lack of trust. And so what we have with the—and I'm not picking on the yacht brokers, being a lawyer, but I'm supposed to talk about them—there are some excellent yacht brokers. But there's also a tremendous number of yacht brokers that just hang up a shingle and say I'm a yacht broker. And they have to make that deal, because that deal is their livelihood. And they're not around long enough to know that when you make a representation that a yacht can be operated with a crew of 6 when it needs 8, or its running costs are X and they're really Y, that they're destroying the market. I don't think destroying the market is a bad or overstated term. Because we have tremendous turnover in yachts, not because the yachts are broken, but because owners get frustrated. So what I think we need to do is set up a way somehow for brokers to have policing as it were and not by market forces, because you have short term versus long term—the reality of it is dishonest brokers, unscrupulous brokers, brokers working on the one deal, will come and they will go. So they do get out of the market but the market suffers, the

carnage remains. As attorneys we have rules of professional conduct that we are guided by. Some of us are governed by them, others try to skirt them, but we have them. For yacht brokers it doesn't really exist and I think part of this comes down to again the issue I said before about—are we actually an industry? And I think it's incumbent upon the yacht brokers to create an established rules of engagement, rules of conduct, so that when the brokerage firms send out their newer yacht brokers they know what their conduct has to be and they know that the information they're providing is accurate. But that's only the beginning. Because there's another feeling that most attorneys have when dealing with brokers and that is—OK you got the buyer and seller together, now get out of the way because you're going to come up with issues to inject yourself into this transaction and make yourself more important in the transaction than the transaction itself. So there needs to be education as to how to make the transaction occur without the issues. And it's very difficult, because people like to think they're important, people want to believe they're important in whatever they're involved in. Me personally, if I got the kind of cheques that the brokers got, I'd go here's the owner, here's the buyer, I'll sit back, you send me a cheque. But generally that doesn't happen. The other thing that I think is important and this is probably going into a different area but I think it's actually the area where there's probably more disputes which is charter brokers. The number of times I have heard that the yacht was not satisfactory. The yacht didn't do what it was supposed to do, the crew wasn't qualified to do what it was supposed to do. The charter agreements are written so that the charterer's specific desires aren't actually in there and so you wind up with large fights that really, if the agreements were reviewed properly, not just—let's sign it up—you'd have happy owners, happy charterers and there'd be more business. On the superyacht side of things, many times the problem is finding a yacht. But there are a lot of charters that are not for yachts in the 150 plus range, and those are the ones where I think we really could polish things up. So that's basically what I've got to say just as an intro.

Martin

Thank you Eric. Jim?

Jim Perry

James H Perry

Good morning. In my practice we probably oversee 2 to 3 yacht closings a week and it's an interesting perspective for a lawyer because I get to really work with a lot of different brokers. And you can tell which brokers are in it for the long term and which brokers are in it for the short term. And kind of based upon my experience in working with brokers really on a daily basis I'm not going to talk about the ABCs of yacht brokers but I'm going to talk about the CDEs of yacht brokers in terms of the long term growth of the marine industry and certainly how yacht brokers can help sustain or even help the industry grow as a whole. And I really think that what we all need to realise in terms of long term growth is really how our mantra should be a happy yacht owner buys yachts and a happy yacht owner uses yachts and requires services and equipment and things that will benefit the industry as a whole. So ultimately as a lawyer, as a yacht broker, our goal should be to ensure that a yacht owner is happy. And that's really what this is all about. And in terms of the CDEs for yacht brokers, the issues that I see would be—with C would be certification, D would be duty and E education. And I guess that the core complaint with most individuals dealing with brokers is—the guy is trying to sell me fibreglass to make his commission and move on. And that does hold true for some situations. But in many situations you deal with a broker who—the smart ones are creating a relationship, a long term relationship and that broker understands the importance of being competent at being a yacht

broker or surrounding himself with competent individuals. Because ultimately what he is trying to do is not sell fibreglass but create a relationship, and most relationships again are based upon trust. So how does a yacht broker obtain this competence? Well yacht brokers come from many different backgrounds. Some are engineers, some are old captains, some people just fall into it, others come from a different sales background or something in the industry as a whole. As Eric wisely pointed out, there is no school—I mean if you're a surveyor, you're accredited, you take tests, you have recognition, you have an engineering background or something of that nature. With yacht brokers there's no real formal process or education or training and with that, because there is no uniform training there is no minimum standard and I think that's where certification helps brokers which in turn helps owners which in turn helps the industry as a whole. And I think the Yacht Brokers' Association do a great job of educating their members—the problem is that not everyone is a member. So how do you ensure that everyone is getting that minimum education of what it takes to be a competent yacht broker? There is a programme out there with certified yacht brokers that I think is an excellent programme and I think for all brokers again there should be some sort of standard in terms of education and training that you understand the pitfalls of when you list a boat's sales tax, duty, warranty issues, things of that nature. When you sell the boat, what are the contractual issues that one needs to look for, and again, without having any type of school or minimum training or certification you're going to get a wide variety of responses and approaches and that again doesn't necessarily bring the best result for the yacht owner. And if the yacht owner is not happy—and he has a bad purchase experience and the boat he bought was too big, or the boat that he bought he spent too much money on, or the boat that he bought had all kinds of mechanical problems because the broker was not competent, or didn't have an idea of what it entails to purchase a boat and actually use a boat, then you have an unhappy owner, and if you have an unhappy owner—I don't need this, I'll buy a plane next time. If you don't have a happy owner you're not going to have any growth in the industry. So again, having competent brokers would certainly help sustain the growth of the industry. D is duty—and far too few brokers realise that they have a fiduciary duty to their client. And that really means putting your client's interests ahead of your own. Certainly we as attorneys all realise that we put our clients' interests first. But I think a lot of yacht brokers forget that really the interests of the client need to come before the interests of the broker. And I think if they recognise this formal duty and certainly say no when they need to say no and put the interests of the owner first then ultimately again the transaction is going to go smoothly, they're going to have a happy experience, they'll have a pleasant experience, they'll buy another boat, another boat, and another boat. It sustains the industry. E under our CDEs of yacht brokers would be education. And again that falls somewhere into the certification process. The certification process I think should be an initial threshold that each broker understands his duty and competence issues. But in terms of education we as lawyers and many other professionals have ongoing educational requirements to ensure that we know the status of the law. If you're in the medical field certainly you have continuing medical education so that you understand the issues in your industry. Because ultimately you may be a broker that doesn't know anything about sail boats, you don't know anything about power boats, you don't know anything about fibreglass versus steel construction or things of that nature. So by requiring a broker to continually educate himself on technical issues and legal issues ultimately he's going to bring that benefit to the buyer that he represents and when he brings that experience and education and expertise it's going to be a pleasant experience. And again, your yacht owner is going to be happy, and your yacht owner is going to use his boat and it's going to be a pleasant experience and he's going to tell two friends, they tell two friends and again, that competence I believe is what will create or certainly assist with long term growth in the industry.

Martin

Thank you Jim. Michael—you've never come across a bad broker, have you?

Michael Moore Moore & Co

I beg your pardon? No, never. It's remarkable. And I do note that the brokers did not show and that they sent their lawyers, which is sort of a typical pattern for that scene. But you know, I've been thinking about this challenge when I read the synopsis of what we're to talk on today for 5 minutes, you know doing the deal versus making the market. And quite frankly I was having trouble getting inspiration and yesterday—I don't know if all of you went to the clambake? Did all of you go to that? It was remarkable. I had never been to one and one of the fascinating part of it was apparently as they were getting up to the unveiling of the clams Martin Redmayne and Esther Barney did this little thing around the clams. A little dance. And it was at that moment that this gentleman standing next to me said who is that gentleman? And I said well, I'm not sure he's a gentleman but his name is Martin Redmayne—he's the Chairman of The Yacht Report, he's Editor in Chief of The Yacht Report. He said and the lady? And I said well that's Esther Barney, I think of her as the sort of IT person, website, I see her name on a lot of the emails, I don't really know specifically. And he says well Mr—did you say his name was Redmayne? I said yes. He said as in Red Man? I said well maybe in Britain maybe it's Redman. I don't know, but why do you ask? He said well I'm a student of Native American culture. And those two are doing a spot-on ritual mating dance of the Narragansett tribe. I said wow, that's utterly fascinating to me. What does this mean? He says well you know, in their tradition, the mating and marriage was the same thing. I mean you mated and therefore you were married. He said and I've never seen anything quite like it. And I'm intrigued by his last name. He said we haven't seen that around here since the 1600s. I said really. He said yes, during King Philip's war. I said who was King Philip? And he said well that's what the English Colonists called Chief Metacom, that was his nickname. It was a 2 year war. But it's really something to come here today and see this. I'm really beside myself. I said well look my name's Mike Moore. And yours? He said my name's Charles Dickens. I said well you mean—he said yes yes, like the best of times, the worst of times, the season of light, and I'm thinking the season of darkness, the spring of hope, the winter of despair. I'm thinking this is my inspiration. Because it strikes me that this is the kind of market that we're in, this parallel market in the yachting world, where there seem to be almost two different markets at work. And on the low end the behaviours by brokers that we see are getting a little intense and maybe a little bit more unacceptable shall we say. And on the high end the brokers are on a roll. But we know that the yacht brokers can be the best of our industry. And they can also be the worst. They can be the prince of light and they can be the prince of friggin' darkness. And they can bring the joy and wonder of a perfectly matched owner and yacht and they can bring on the utter despair when nothing works from the moment the deal is brought into your law office. And you know that you can either facilitate this process and try to get through it, or maybe there will be litigation. I think that brokers, with respect to the deal and the role that the brokers play in the market—my sense is that this is not a market where if you build it they will come. In my experience if you simply build it they won't know about it. It's remarkable because everyone in this room knows the players and you make an assumption in some cases that everyone else knows the players and that's simply not the truth. But the brokers create the market, in my view, to a great extent. If you look at this month's Yacht Report, and look at the first 22 pages, you will see that 6 pages have broker ads on them. But we are living, it seems to me, based on the people that are now making their way to our small law firm, in a market that is being

made and sort of involved in destroying itself at the same time. Frankly all to the benefit of certain people in this room. Because the world is being shaped by people in distant lands and foreign people in distant lands relative to what they were 5 years ago. My sense is that the brokers very quickly move into that breach. They follow the money. They follow the buyers. And they create the introductions –and this is fundamental of course—but they are bringing people into the marketplace that reflects what we're all reading in the paper. Where the tallest building is now in Taipei, and when the Dubai Building is finished it'll be the tallest building in the world and the largest public traded company is in Beijing and the largest refinery is in India and only two of the top 10 richest people in the world are Americans and the largest investment fund is in Dubai. And so on and so forth. And yesterday morning a gentleman, a broker that I'm sure all of you know but who will remain nameless had a Chinese buyer, he's matching the buyer with the yacht and he was from Macao—who someone told me is now the largest casino operation in the world, surpassing in revenues Las Vegas. So it's not going to stop, it's frankly just beginning. But in every case, just as Jim said and Eric alluded to and I'm sure Barbara appreciates—because you might recall Barbara actually started the International Yacht Council—I mean she virtually single-handedly drove that bus—we could talk about that another time—but it was the beginning of the globalisation and the merger of the yacht brokers' communities globally. So I do think the brokers, they do the deal, and we'll talk about that in a few minutes—maybe you'll have questions of what makes the deal or what should be in the deal the way I see it—but I think the most beautiful thing that I'm seeing because I benefit from it, sitting in only two spots in the world and both spots in South Florida, to have people coming to my door that are Chinese—the question yesterday morning was do you have anyone who speaks Mandarin Chinese and of course the answer is yes. At least we'll need 3 hours to get back to you while we try to find them. So we appreciate brokers, we think they certainly do the deals and in my view in conjunction with publications and so forth they make the market. Thank you.

Martin

Thank you very much. Barb?

Barb Tierney Northrop & Johnson

Wow. I think my whole train of thought has just gone upside down and sideways. I have been a broker for 30 years and if there's one thing that all of us in this room, panel included, have in common, is that we follow the trend of the owner. It's the owner that writes the cheque, period. And the owner is looking for professionalism and hopefully the brokerage community is evolving to the point of providing that professionalism. There really are two things that we do as a broker, and one is to maintain a base of knowledge and the second thing as a professional broker—hopefully we appear to have that reputation—but as a professional broker, attention to detail, and doing what the owner wants. I had an owner one time that I did ask him, I said what makes you select the broker that you're going to select? He's been a client for the better part of close to 20 years now. What makes you look at a broker when you want to list the boat, when you want to buy the boat? And his response to me was very simple. He said I don't have enough time in my day to try and reinvent relationships—and Jim talked about relationships. When I think about boat, I think about Barb and I pick up the phone. So understand our base of knowledge in response to the owner is we're not going to be experts on everything and a broker who claims to be an expert on every facet is the broker who gets in trouble— that takes him beyond his own competency. But you do have an owner that will call and say the boat just got arrested. Or I'm letting the captain go tomorrow, will you find us

someone new. I mean that's the position the broker gets put in. And our relationship hopefully will be a long term relationship with that owner and our base of knowledge has had to evolve with the growth of the industry, the growth of the owner, the maturity of the owner and the growth of the product. The old days of knowing who your surveyors were, who your lawyers were, you had a handful of people that you depended on. And those days now have moved into a larger boat, an owner that's more fluid, no pun intended, but they're more fluid in where they're going. They've globalised. The boat is now in Singapore and they're calling you to get materials or something to the boat. So we're being asked to do a broader range of things, so we're adding, we haven't lost our original base of knowledge, but we've added to it now the additional responsibilities that go with the larger boat if we're going to maintain that same client and service their ongoing needs. And that's where the attention to detail comes in, and that's where the competency comes in. Michael made mention of the International Yacht Council. Going back in it's amazing—it's almost 10 years ago now, Jonathan Beckett, Carlo Agliardi and myself sat down and we said we need to have a set of standards for professionalism within the brokerage industry. And we need to do that surrounding our information and the networking that we do. We founded—Michael gives me full credit but he was actually there through all the bloodbath of those early years—there are 13 associations, professional yacht broker associations worldwide. Each one has a code of ethics and each one has an accountability to those codes of ethics. That's not to say that every broker belongs to that association. We took those 13 associations and reached out to them and that's Mediterranean, Florida yacht brokers, California, up here in the north east, there are groups in Greece, and there are 13 around the world in total. We identified them, we took their individual codes of ethics and collectively reviewed each other's. And that became one single code of ethics that is the basis and the foundation of the International Yacht Council. You don't hear about it a lot and it is still lying in the background and has been bogged down in litigation for the better part of the past 6 years but Mr Moore is still our legal counsel and we do have a tribunal, we do have arbitration, we do have accountability, and I guess if you were really going to put it into summary as a group and as an organisation and or as industry, there is honour among thieves. So hopefully we have a group that has given a core response to some of the ongoing questions—there are always going to be people that are going to get in it for the short term and as long as the owner surfs the internet and picks up the phone and engages that person—I don't know that there's too much we can do. They end up coming back to the professional broker and at that point we respond to it. But the internet has changed the way everyone does business. Including the brokers. So we've had to stay in front of that curve. And if you look at where we're going as an industry we're taking that base of knowledge that we have had and where we're going forward and networking, and there are brokerage houses that have very sophisticated computer systems or software, intellectual systems that can tell what captain was on the boat three years ago, who owned that boat, tracking the footprint, tracking the history, and going forward as to all the people that have been involved—the dog's name, when the kid had braces, all of those things that will pull together the relationship between our brokerage community, the industry, the service end, the vendors, the product, the attorneys, the finance, we can sit down now and actually put in a contract on a boat—it'll pull the information out of our database, it'll tell who owned the boat before, it'll start the tracking and doing the due diligence—I mean there are some companies that are actually on their third generation of software. The International Yacht Council has a multiple listing system, and that system will do a contact manager that will flag whose birthday it is, and what owner is looking for what boat, and when a boat comes on the market or when a boat is reduced, modified, off market, sold, you've got that instant information exclusive to that client—it comes to you as a broker so that you can make the contacts. And we're

just leaping—and hopefully it's the professional brokers who will ultimately end up rising to the top. I think we just become a better target the closer we get to the top!

Martin

Barb—thank you very much. Can I have some light please? Thank you. Any comments from the floor on the world of brokerage? There are a few brokers out there I'm going to point fingers at.

Barb

Defend yourselves!

Martin

Dan—what do you have to say?

Dan Wood Crows Nest Yacht Sales

I'm with the Crows Nest on the other coast which is the left coast of the United Coast, that is. Wonderful quip there in the beginning about brokers and lawyers and I'm just wondering if there were 3 brokers up there and one lawyer, if we would have had a quote from Shakespeare.

Martin

But then they'd say who's Shakespeare.

Dan

Yes, remember, let's fix the world. First we'll kill all the lawyers. I know from experience that there are good lawyers out there and bad lawyers out there. There's good doctors out there and bad doctors out there. I think you can find that in any industry. I think the biggest thing that Barb pointed out, that you're trying to get this IYC thing going—the certified professional yacht broker programme has done exactly what we needed and I think if we had a show of hands from all the brokers in here—how many brokers are there? I see some hands, not that many. And how many of you are certified professionally yacht brokers? Only one. OK. So much for that analogy. But there are many houses in Florida that I'm aware of that if you don't become a certified professional yacht broker you can't do business there and there's more and more certified yacht brokers which are just that—it is an informational thing, they have their own code of ethics, they have all their things in place and I believe there's more of those now than there ever has been. So are you aware of that, Barb? So there you have it, and I think there's a lot of good people in every industry and I can't imagine someone not wanting to be in the business for a long time, nothing gets sold until somebody sells it so we're a necessary evil, if you will. But for every broker out there that I'm aware of we want to be in this business for a long time, just like everybody in this room wants to be in their business for a long time.

Eric

If I could just comment to that? I think what Barb highlighted is, there's some really good brokers out there. And part of the problem believe it or not is there are some really good brokers out there. So when potential owners, or owners, depending on

which side of the deal you're on, get involved with a yacht broker there's an expectation of a certain level of sophistication, that these brokers know more than the owners do, or that they have the information available to them that the owner wants or needs. And then when it's not forthcoming, that's when the disaster happens. When the information is incorrect. There are some brokers here and they're not driving round in their Mercedes today. Those are the brokers that you want. And that's really I think the fundamental problem. To me it's really not that much different from a case I've got going on now on a bad charter. There was an attorney that was involved and he said this is what you need to do. And we're not going to arbitrate that in London, we're going to handle it here and spent a fortune in legal fees in a certain state. And I got involved, looked at it and went this is a total waste of money and you've probably prejudiced the charterers' rights here by going this whole route. Now he's a lawyer, he's got a licence. I mean to be fair you have this on both sides. But with the broker the difference is it's not a piece of litigation over X number of dollars, relatively small compared to the entire yacht. It's the person's life experience, it's not a business deal, it's the thing that's really important. And for our industry if it is that, to truly develop and not implode, we need to have more than a semi voluntary entity that has a training programme that some brokers get involved in. And I'm not necessarily putting the burden on the yacht brokers to establish a self policing thing, I think our industry needs to do more and I think—SYBAss, which was started for the manufacturers, the shipyards, but this has been years happening, and we just need to be more pro active so that good brokers, like Barb, can really do their thing and go above and beyond and the other ones don't get into the mix.

Martin

Eric, thank you. There's a comment over there please?

Steve Jackson Electrowave USA

I'm an unregulated broker because I live on the Gulf Coast, it's not quite the same in Texas as it is elsewhere. But Barb I appreciate what you said—I think in defence of some of what we discussed you cannot legislate honesty. It's just not going to happen, but what we do need to do is continue to build organisations like she's doing, hopefully that becomes extremely well known and extremely marketable, we brand that and then the discipline that's around it with your regulations and rules for the brokers would be held closely to their rules. If you got a broker that's a problem, he needs to go, bye bye, or she does. And it really needs to be publicly made known of that. I think sometimes we forget that when we sell a boat, no matter what size it is, there's a learning curve for the client—I can't tell you—I just got off the phone after talking to you a moment ago Barb—with a boat I sold, it's closing tomorrow, and I have spent a year and a half, almost 19 months, with this client, and that's not unusual. It's not unusual to spend 2 or 3 years with a client. Has not owned a boat before, we're going through the complete education that you have to give, and then after he takes possession of it I'm also going to spend time with him just teaching him how to use it, I don't care what size it is—if he's got a 4 crew and a captain he still needs to have at least the knowledge of what to expect out of that as you've already mentioned. So I think you end up living with them to some extent, that's how you get repeat business. And we all want that. We want a business that continues to grow with people that we can grow with and have for 20 years as a customer. And I think the only way to really do that is to regulate it internally like you're trying to do, but then stick to your guns and when somebody messes up they're out of business. And they need to be scorned for that, so to speak. Thank you.

Michael

I frankly think that there's an over emphasis on—to me it's just assumed that in business you have to be honest. I think if you're not honest you're going to pay a price. You may not pay it immediately but you will pay it. And the problem with the dishonest broker—and I've heard the mutterings regarding that, as if it's the biggest issue—because it's not the biggest issue, in my mind anyway—because of what we call the 3 Cs—character, competence and commitment and I think that the year and half that Steve Jackson just spoke about is the commitment part of it, the character part is the honesty part that we don't really see a problem that much, in terms of sheer dishonesty—frankly the dishonesty comes because—and it has nothing to do with being certified—it has something to do with being qualified. The brokers simply are not qualified in the cases that would dissolve into lawsuits and evolve into name calling and allegations of dishonesty. What I mean by that is the really qualified brokers are to me sort of amazing—they sometimes come with various personality disorders that I give a sort of armchair analysis to, but at the end of the day they have what Tom Wolfe called the right stuff. They can sometimes be brilliant. They understand the technical systems that we heard about this morning to an *nth* degree, they understand the engineering systems that I can barely translate what these things are about but they know other things. And they pick up on things—they're incredible—the best brokers are the people that can look at a guy that's sweating in a room like this one and know that this particular vessel will not work because the cooling plant is not adequate for a guy that's always hot. And a broker who understands that that vessel will not work for that particular buyer because the bottleneck at his home in the Bahamas will not let a vessel of that draught cross that bottleneck. And it's the broker that understands that if that guy lives in the St Juan Islands off Seattle he isn't going to be going back and forth on that boat because he's going to be running out of gas every single time he goes out there and tries to make it back to shore. So I really do believe—and I heard the certification point made earlier by Dan but I think that frankly in my view if you're a broker and you're in this room today you've got the right idea. Because 9 out of 10 times in my experience as an attorney—and we thank you for your screw ups because you know it's the way we make our living. But I'm telling you, in my experience it's rarely a lack of character. It has to do with a lack of appreciation that what they were seeing was what they were selling to this particular buyer and the buyer gets it and realises he can't do what he thought he was going to do with that particular vessel, it doesn't do what he thought it was going to, it doesn't go where he thought it could go and lawsuits ensue.

Tork

The thing that's more worrying though is I mean how many brokers are here, certified or otherwise? As a percentage, that's extremely small and that we struggled to get them to come on the panel is in itself is quite worrying. Yes there are excellent brokers out there but we had a captains' meeting recently and every captain said of almost every charter broker that almost every client that came on board had no idea of the capabilities and limitations of the boat that they were chartering.

Eric

I think that that's what we're all really saying is that you have to make an investment in education, you have to make an investment in experience, you have to make an investment in learning from the errors of others.

Tork

But you need the checks and balances as well? I mean it's pretty easy to educate a charter broker. Tell the client what the boat can do. That's the end of the first lesson. But if you can't have feedback that's feeds back into the system then there's no incentive to perform. And the supply demand equation for yacht charter at the moment is ridiculously under supplied. So therefore it's an easy sell.

Eric

I agree. And that's why I said the industry needs to have regulation, not brokers self regulate. I think there's got to be a way that you get a key to get into the door, through the door, into what we do. And I think we're shooting ourselves in the foot by not doing it.

Tork

Barb, what's your take on that?

Barb

Really you're talking about two distinct industries when you're talking about charter and yacht brokerage. I have never been a charter broker but one of the discussions that we had more recently, and I grew up with 30 years in this business, my first clients were buying a 50 foot craft and grew into an 80 foot and they got into a 100 foot and all of a sudden wanted to justify owning their boat so I'm going to put it into the charter market. So this is really a phenomenon that has happened over the course of probably the past 15 years and that is again the owner calling the shots. I want to put that boat into service for a period of time. As a yacht broker, and I was with Bradford for many years, we did not have a charter department. So what ended up happening was I had Bob Saxon and the Sax Group and a couple of other companies that I was able to turn to and say he wants to put the boat into charter management and I need a third party, uninvolved, somebody that's not selling boats out the back door, that I'm going to lose that relationship with the client. And I had that opportunity to turn that over. Those independent companies have gone by the wayside. So that has been absorbed by the cost of doing business in a yacht brokerage—capacity has brought in what I call the value added services where that cost of doing business as a yacht broker is pulling in the additional services, the brokers, the charter brokers, the charter management, the yacht management, and that's where the conflict starts to come in, when you've got the crew placement and all of those ancillary things. I remember when one of the larger worldwide houses first did their first crew placement and if you went on to Dockwalk and in the early years Dockwalk was really one of the first and foremost Blogs, Greg and John Gattuso had put it together on the internet base and everybody was going there—you probably see it on your websites and that's become really the state of the industry there—there was a lot of conflict. There was a huge conflict because they did not want to be controlled by a yacht brokerage firm. And yet the yacht brokerage firm had very little choice but to offer crew placement because the owners were calling and saying I need crew. Whether that will evolve, going forward, into something else—I suspect it probably will because the cost of doing business now as a yacht broker—I think part of what you're seeing is just the evidence of that in this room. One of my favourite stories is a very dear friend of mine who lives in London, went to visit a client with an appointment, got on a plane, went to Hong Kong and got greeted by the secretary who said oh I forgot to call you, he's not going to be able to make the meeting. And so as a yacht broker, as my loving friend Michael Moore says, you eat what you kill. And if you kill it before you eat it—

Tork

But that's kind of part of the problem, because one of the negative perceptions of the broker is that they capture the client and then they encapsulate the client and keep them away from everybody else in the equation then down the line, especially in the case for example of a new build, there are owners' expectations which have not been managed, which are unfulfillable. And yet nobody's able to sort of get round the wall to say to the boss hey listen, you can't run it with 3 crew. It's an exaggeration but—

Barb

I don't think it is an exaggeration. Because there are brokers out there that will say what they think the owner wants to hear. I want to put this boat into charter service—no problem, you can charter it 20 weeks a year. So yes, you do have that. But I think the knowledgeable owners are getting a little bit wise to that now and have actually migrated back to their old brokerage community.

Martin

There's a huge number of new people coming in though that are uneducated and are easy pickings.

Barb

Give me their names. I have people.

Martin

Their names end with -ov, normally.

Tork

Interestingly enough, one of the points sent in to us was another comment which kind of leads from that—Barbara rightly points out the important relationship the broker has with the owner. This is a unique aspect that very much drives our industry and it ties into yesterday's talk about what the captain wants. It's a fine line for the broker to tread, because he needs to keep in regular touch with the owner so as to continue to grow his relationship and business with that owner. However often conflict arises when the broker steps over the line and interferes with the captain's and/or manager's relationship with the owner.

Barb

I think that is exactly it and it's when the broker walks over that line of competency in the legal arena, or the charter arena, or in the appropriateness of the boat for the application. It's when the broker doesn't know when to say no, or, I don't know. And it's at that point that they have to have that trusted network and that base of knowledge and that's why you've seen the growth of the larger and larger companies. The Frasers, the Northrops—

Martin

But even in the larger companies you get internal fights over clients and stuff and this imbalance—

Barb

Well because there's really only one—I used to always say, the clients are really kind of like—there's only one fruit cake at Christmas and we just pass them around from house to house. When you look at the growth of this industry, 10-15 years ago we had maybe 1500-2000 boats over 100 feet worldwide. And that was it. We did an inventory and said what is our universe, what are we really dealing with? And now what do we have—probably about 6,000-7000

Martin

Over 30 metres there's about 4,000 boats now. It's doubled in the last 10 years.

Barb

OK. It has more than doubled in the last 10 years but it's still a really small universe.

Tork

I think it's also fair to say you know brokers are vulnerable little creatures even with the dorsal fin. But the owners do have a responsibility themselves, because they are very fickle and they have got no fidelity to the broker and that does make—the same is true of captains as well—that insecurity partly drives this sort of protecting the kill so you can eat it.

Eric

I think that the concept of the owners having some responsibility—I was actually going to make the comment earlier that there's more—and I can't believe I'm doing this, but I'm going to defend the brokers to a degree—there's more than a broker that's involved in a transaction. You've got a shipyard that's involved if it's a new build, or if they're planning a refit. You've got surveyors that are involved. You've got lawyers involved, you may have various contractors involved. There's a crew that actually in most instances exists on the yacht, so there's a tremendous pool of information and it's all available to the owner. And I think one of the things--this encapsulation issue's critical because rather than the brokers going—here's all this information out here, be sure you go through it all—they're like--we'll tell you what you need to know, there's too much. Now you take that on the one hand and then you go —this owner or potential owner has made lots and lots of money. Generally that means the person is relatively smart and educated. Either schoolwise or just school of hard knocks. So they see all these things and they don't utilise them. And that's always baffled me. It's sort of like—I'll be sexist and say men lose their actual logical thought when it comes to two things—women and boats. And I think it's important that we as the lawyer or as the surveyor or as the contractor, as an industry, make sure the owner looks at everything and educates himself so that he takes partial responsibility to purchase, to charter, what it is he actually wants.

Martin

OK. A question over there, thank you. Can I have some more light so I can see faces?

Will Kohnen SEAmagine Hydrospace

We're just aspired to cause even more trouble. We build little submarines to put on these yachts. We'll have the discussion about it tomorrow. But falling right into the subject that Eric just brought up, you know we hear the issue of honesty coming in. A lot of times that's directly related to availability of knowledge and we kind of feel sorry to some extent for the brokers because they end up being on the front line and they've got to react to new technologies and they've got to translate that to the owners. Clearly assumptions get made on the issues—they'll make assumptions probably on the last thing they read in the Popular Mechanics magazines or something that's very top level. The question is really—we know they can't be an expert on everything—certainly by the time we come to submarines—yes, they're yellow, they go underwater, what more do I need to know? We're all in this room knowing there's a lot that goes behind the curtains that you have to know about. The question is what's the most practical mechanism, or channel, to communicate information like that to brokers? Because they are ultimately the ones that are setting the expectations and once you've set that off, and you're off by a factor of 4, it doesn't matter how many miracles you make, it just won't get there, and that causes trouble. To the panel—the dissemination of proper educational material on some level of technical issues, what's the best channels or places where you could put that so it's available? So essentially the knowledge is available to brokers?

Eric

Well I think if—you know the main brokerage houses—they're all out there and you know the smaller ones, they're out there too—with the internet the information's actually very easy to get. So dissemination of it by email, hard copy mail, it's actually pretty easy. The problem is not getting the information to them, the problem is getting them to (a) read it and (b) understand it. And I think that conferences like this are the things that brokers need to be more involved in. You're going to be speaking tomorrow—there's the information. Everyone knows that this conference is going on, and we've got 6 brokers.

Jim

Certainly if you contact some of the local or even the global yacht brokers' association—if you contact them they put on a number of educational seminars, yacht sales and the law, listings and closings, there's a number of different venues, either by advertising or just offering to speak—I think again they would probably welcome the information. So it's one of those things where there are many ways if you really want to get to the brokers I don't think it's overly difficult.

Martin

You could put them all in a submarine.

John [From the floor]

Can I put a comment in here for a moment? I'm one of those brokers that's in the audience and I actually just became a broker. I've been a yacht salesman for 15 years. Now to be a yacht salesman you have to work underneath a licensed broker. So there actually is a training process between being a salesman and a broker, and it's the responsibility of the broker of that house to make sure that that salesman is doing a proper job. So there is an educational path that you go through. And you just mentioned the seminars that are available for different issues dealing with the laws and the changing environment we work in. It's extremely difficult for any broker I think to maintain an up to date moment to moment knowledge of all the different areas that

an owner will need information about. And frankly part of that is the legal arena and many times I'll bring a client to a certain level of information on the legal side of things and then just say look, you need to talk to one of these attorneys who specialise in this, because he needs to sit down with you and recognise your unique position with this. Where they live, their domiciles, all the things we talked about. At that moment what is current because it changes all the time. I was also a captain for 15 years and I worked with brokers both in sales and charters. And it's a very distinct view difference between being a captain and looking at a broker's job and being a broker and looking at the captain's job. And the best way I can explain it to the captains in the room—it's like being the first mate and telling the captain what an easy job he has and how it's so easy to do and I'll be able to take that over, no problem. And then stepping into the captain's shoes. There's a quantum shift in views. Once you put on the responsibilities of a captain. And there is a great deal of responsibility as a broker to educate and to guide and to be able to ensure that this person's trust is well placed and that you're going to enhance his enjoyment of his vessel. Because it all comes down to the fact that these are toys. And they need to have fun with them. And the more education and the clearer path you can get, the better it's going to be. And bringing captains in is definitely part of that. And bringing management in has become a necessary part not only for a lot of owners but frankly I think there's so much paperwork involved now that a captain should welcome some of the paperwork being taken off him to allow him to focus on the owner having fun, the boat being well run, well maintained. There's a lot of education available to brokers if they choose it. And to salesmen, if they choose it. It's there. And I think that many of the upper level brokers do take advantage of that. I'm not sure I'm for fixed mandatory regulation, I don't think it will really help, you can make somebody take a test and study a book but I'm not sure you can make them apply that knowledge well. An owner selects a broker, sometimes they select a good one and they do well, and sometimes they select a bad one and don't do so well. And they get an education. Other times owners really aren't looking for a good broker. They're looking for somebody who's going to do what they want to do and how they want it done—and just like there are good attorneys there are good brokers, there are good buyers and owners. So you're dealing with so many different levels of personalities, and so much knowledge. And a broker does have to be a filter, we have to take this information in—when I was a starting broker after being a captain one of the very, very high end brokers looked at me and said I don't think you're going to do that well in this industry John. You just know too much. You give out too much information. You have to start filtering down what you present.

Tork

That's a profoundly scary comment.

John

It is a profoundly scary comment. And it's driven by the client. And he was correct. I had to be very careful about how I presented information so they could understand it. And these were intelligent people. As was stated before—they were very wealthy, they're used to being in total control, they're used to getting the answers they want, and they often choose not to use information that's presented. You have to be very careful. When you're a captain and you're spending weeks on board with him you can have numerous talks and chats, you have a great deal of opportunity to educate. When you're a broker you have a smaller period over a long time because it is 1½yrs if you're doing a new build, it's 18 months-2years to sign, 3 years to build the project, another year working with him afterwards very closely, it's a long relationship but you have very limited amounts of time to actually input information to him. It's a very

tricky process, it's a very balanced process. That's why I've become a very strong believer in utilising pre-emptive knowledge, if you will. Turn him over to the attorneys, get him a little knowledge of what he should know, then get him to the experts. Have him speak with the captain at the right moment. Have him speak to the surveyors and the project managers at the right moment. It's very much an effort to coordinate the input of knowledge to the client. Some people may agree or not agree, they may have other ways of doing it. But I've been through the whole process and seen it from a lot of different sides. And I think you have to be knowledgeable in your industry in all areas. But if you try to be an expert in all areas you're not going to succeed, you just can't maintain the knowledge base. Scary thoughts I know.

Barb

Can I speak quickly to one item. I just wanted to address the legislative comments on certification and that was certainly when we looked at the Yacht Council and we were putting together these 13 organisations from Mediterranean to British Columbia to Australia, there were far too many logistics or legal ramifications that were geographically specific. Your VATs, your laws over in British Columbia and Canada that vary dramatically and differently from that which we see in Florida, which is dramatically different than California. It would be virtually impossible to put together a certification or a single set of standards that is going to be as global as the yacht industry is itself, and as long as those boats move and as long as Skype is free, or modestly free, this market and this industry is going to expand and is going to find every corner of the world and we just need to make sure that we've got the best sources of professionalism, of attorneys, of vendors, of shipyards, that we can build on as a referral source.

Martin

Barb, do brokers ever get exposed? Not physically, sorry.

Barb

Oh absolutely. They get arrested. There's one now—

Michael

On that point Martin I think that with increased wealth—I think you have to have three things for a successful lawsuit—liability, damages and collectability. And I think even captains who historically may not have had the kind of wealth that attracted a lawsuit currently some captains do, so they get named. A lot of the parties that we're talking about here are agents for disclosed principals, lawyers are special agents for their principals, brokers are agents for their principals, captains—we all know if you're involved in maritime affairs at all you know agents of the vessel and to some extent the people behind the vessel, the beneficial owners, they're all targets unfortunately.

Barb

Been there.

Martin

OK. Graeme please ? Oh—

Peter Ho Bradford Marine

One of the conflicts that I see, as Barbara pointed out, is that the owner or the potential buyer, comes to the broker, the broker finds the buyer a yacht. The broker then hires a surveyor to survey the yacht. The owner then comes back to the broker and asks for an interpretation of the survey. So is it not self serving, I mean a survey is an opinion, what do you suggest an owner does when they have a survey on a vessel, not being a maritime person, whom should they go to for a proper interpretation of it? Because the broker has a 10% commission and probably 2 years invested in it and doesn't want the deal to go south. Well in the shipyard business, I've been in it for 7 years and I have been told personally by brokers under no circumstances talk to the owner because we know the history of the vessel.

Eric

Right. And I think that's really the point. There are some very good surveyors out there and I personally think there's a conflict with the broker selecting the surveyor. I think you need to have somebody who's independent—there can be a pool of them, I have no problem with the yacht broker saying look, here's the 5 or 10 best surveyors, they've done however many numbers of yachts, they can give you a CV, tell you what it is. You've got to make that choice. It's no different when I have a piece of litigation on a construction of a shopping centre. I don't pick my experts. I will say you have these to choose from but my picking them is endorsing them. And we know—I don't know it's secret, I think it's out in the open—there are certain surveyors that will write whatever you want them to write. And this may not prevent it from happening but I think it gives the owner very good information. And if the owner needs to get somebody else to interpret it, because he can't interpret it, and the survey is maybe too technical, then you've got to do that. I mean if the owner was making a \$10 or \$20 or \$50 million dollar investment in a business he would have all sorts of due diligence with people poring over all the papers and documents and doing inspections and whatever—and this is what I said about women and boats.

Tork

But I spoke recently to a captain who is involved in a new build. And essentially the broker who brought the owner to the yard was calling all the shots and hiring and firing and dealing with all that stuff, and the captain's viewpoint, which I thought was quite compelling, was that in fact what should happen is that the owner hires somebody, pays him salary, whether it be the captain or an independent project manager, that person then hires the team and part of the team is the broker. But they're hired by the owner's representative whoever that may be who is salaried and therefore directly responsible only to the owner, gets nothing out of it except his salary and only represents the owner's benefit?

Eric

Oh I agree with that totally. I think—there was a comment made yesterday by AJ, I'm not picking on AJ, it's just he was talking about he's got a management company and then you know it's good when a sale comes in and he gets a commission, and I think that there's an issue that's readily avoidable, especially on a new build. There's no reason for that to exist. I think there needs to be the independence, and the transparency.

Barb

I was just going to comment on the survey and the relationship with the owner and is there another—years ago we did a—you may recall the seminar we did and we had some—it was all about project management, the role of a project manager, the role of a broker, and this is going back probably 10-15 years. One of the distinct advantages is that it preserves the relationship between the captain and the owner and the broker and the owner. So I personally would welcome that project manager, because at some point in the new build there are going to be elements that are going to fall apart, that's just going to happen, whether it's overruns, time delays, whatever it is. And you don't want the owner turning around and pointing the finger. So I welcome the opportunity to have someone who is involved and more often than not a team leader. More often than not, that's who the broker's dealing with—I mean you deal with the CFO who has the dubious pleasure of running all the boats and at the end of the day our rollerdexes are probably packed 50% with the owner's right hand person within their company. It's a red line item for the CFO and that's the person that picks up and develops the relationship with the broker. Regarding the surveyor, I can't imagine a broker hiring a surveyor and exposing themselves to that degree and it's certainly something that I would absolutely never do, and I would hope that no other broker would do that. I mean you hand out your list of 4 or 5 people that you've worked with before and make them aware of the other surveyors that are out there, but to take on the ownership with the liability of that, is just mindless.

Tork

But how fine a line is it, handing out 5 names and recommending?

Barb

My basis has always been I'm not smart enough to lie. I'm going to get caught if I'm trying to hedge or move—I just basically hand out the information blatantly—this is who I've used on this, this is who I've used on this—I'll have a handful of owners who are willing to talk directly to the owner and give their experiences and there is no better referral than somebody who has been down that road.

Jim

In my practical experience I find that at least 50% of transactions the broker refers in some way shape or form the surveyor in the transaction. 90% of the time again the relationship starts with the buyer and the broker and at that point he says OK who is your team? Who are your lawyers, who's going to do the closing, who is your surveyor. There is a trust between the broker and the owner and again I think most owners are not going to know a surveyor in South Florida or South Hampton, and they're going to rely on the broker for that knowledge.

John [From the floor]

I can tell you, if it's said the broker referred them, he probably gave them four or five choices. Almost always when you talk to brokers that I know in the industry when you speak to a client and he says who's the surveyor you should use, you say here's 3 or 4 different surveyors—whoever. There's 8 different surveyors—use any one of them. You can use this person or that person, and they pick. And if they're smart, they check the references and they look. Again, I'm with Barb, I would never take the responsibility of selecting the surveyor.

Eric

Unfortunately though the reality is, there can be questionable yachts and you get a surveyor who's willing to, for a small fee, give a rather generous or optimistic survey. It's out there, it happens, you can't deny it happens, there are people here smiling shaking their heads and going yeh. It exists.

John [From the floor]

So you're saying the brokers are paying off the surveyor?

Eric

Yes. Absolutely.

John [From the floor]

OK. I've never seen a surveyor—does anybody know of any broker who's been sued on that point?

Michael

Yes. He was paid off.

John [From the floor]

Was it proven?

Michael

What you can do to protect yourself in your good faith referrals is to have the buyer sign a piece of paper that acknowledges that these names were given, that there are a lot of other marine surveyors available in the marketplace and that you're not to be held in any way responsible or liable, it's their independent choice and it's effectively a disclaimer of your willingness to give them 4 or 5 names.

John [From the floor]

It's always been in the contracts that I've used in different places.

Michael

And it should be in the contracts. It's not in all the contracts but it's in some of them. And it should be in all of them and you're referring to the purchase and sale form I think is what you're referring to when you say the contract. Because that sometimes evolves into other documents. I think on that point, and further to what Barbara mentioned, any time you have a contract, whether it's a charter party, purchase and sale agreement, insurance policy—which is a contract, nothing more than a contract, you are selecting a regime of law. You are selecting law and in many cases you're also selecting venue and so if you sign and if you select English law and London arbitration, well I hope you enjoy London, it's kind of expensive these days, but you need to understand that. And any time you take an action that someone relies on, you can be sued if the facts warrant it. It's just that simple. And you know, that happens. I had one this morning—we filed an answer this morning to a lawsuit

against a surveyor who does not have a lot of money, he's a single—what I would call a sole practitioner, whatever the equivalent of that is in the marine surveying world, I think he's a nice guy, he's a very knowledgeable surveyor, but he got himself sued and so he has to defend that action and we're in the process of trying to figure out how to defend it economically and make it go away.

John [From the floor]

I know surveyors get sued, they have insurance on that. But I personally have never heard of an instance where a surveyor was brought to court and found legally liable that he had been paid off by a yacht broker.

Eric

Stick around a few years.

John [From the floor]

15 years. But maybe I'm a little naïve on that.

Michael

Fortunately John you've stayed out of the court system and I highly recommend that you continue to do that.

John [From the floor]

Well hopefully with your good help.

Martin

Graeme please with the last comment ?

Graeme Lord IYC

It's mind boggling to me the amount of deals that are going on right now in the business and I think that the owners have overtaken our business. I know personally at any given time I'm involved with at least three 50 metre or bigger boat deals. And for the last year it's been consistent. There's always at least 3 going, they don't all stick but what I do know if you're talking 50 metres or bigger it is impossible for any one person to know how to structure that deal. They're very, very complicated deals and Barb hit it right on the head—you've got to know when to say I don't know, boss. It takes—the way you're doing it now it's a team. You need 3 or 4 people in the team to correctly close a 50 metre deal and keep that client coming back to you. And the problem that the client then has and the problem the broker has, it's a lot of information, too much information. And if you start feeding that much information to the owner he's going to get information overload and he's going to walk. So it has to be presented in a factual way—Eric hit it on the head there too. In my field as a yacht manager I will not have a meeting on board the yacht with the owner. I'll meet him in his office, I'll meet him at home, whatever. But when he's on the yacht his brain is turned to mush. And so they want to do the deal, they want to own the yacht, but you can't feed them all this information because their brain is mush when you're talking about the yacht. So I feel bad for the brokers—I see it at first hand every single day when I go to work. And I really think we all have to be honest with ourselves and say

that the owners have overtaken us and we need to know when to say I don't know but I do know who can help you and we're going to put this team together and get this deal done as a team.

Martin

OK. Panel, thank you very much. I can see the headlines—Graeme Lord—owner's brains turned to mush!

Thank you very much. See you at 2.30.
