

PROJECT USA 2007

Conference Day 3 — Friday 11th May 2007

Legal, Tax, Admin & Ownership

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Martin Redmayne

OK let's settle down please so we get on schedule. On your way through can you pick up the little handout on the two chairs in the middle of the corridor from Wenthur. Thank you.

OK, you've made it to day 3. The session this morning is Legal, Tax, Administration, Yacht Ownership. Lots of subjects to be covered so I'll make my introduction as short as possible. The four people on my right will take 10 minutes each to give some snapshot information on the legal positions they want to raise and focus on. Then we'll open it to more discussion across the floor so we focus on the topics you want to know more about. Just on a point of order for lunchtime today, the boat will be leaving no later than 1 o'clock. The last session should finish at 12.30, that means you've half an hour to assemble outside by the registration desk. If you want to change, or leave things in your room, or dump things in with the concierge let's try and do it so we have not too many people lagging behind. Because we'll be going to go and snake through the marina to find the yacht. Well, ship. But let's try and keep that all on time.

I'm going to start off by introducing the person on my right, Cris Wenthur, with a local legal perspective, followed by Bill Dysart, Fred Robinson, and finally with Eric, who has lots to say I'm sure but we'll try and keep it to 10 minutes. Sorry Eric.

Cris, please?

Cris Wenthur Wenthur Law Group LLP

Good morning. I'd like to cover four topics for you today. I've given you a handout on the two primary issues I was asked to speak about, and that's the notice of arrival rules and also boat show bonds. I'm also going to touch briefly on what my primary area of expertise is, sales and property tax and also income tax. Issues regarding yachts.

But let's first talk about the notice of arrival rules. It's best to keep this little handout on the boat, that's my recommendation. There's a website there and I would highly recommend you not develop your own form for your advance notice of arrival, because if you use the website form you are deemed to be in compliance with the CFR. So just go ahead and use that and it's easy to track where you are on your A&OA and also to update it if you have changes in your cruising plan. So just a brief summary of what the new advanced notice of arrival rules are. This is for foreign flag boats only that are over 300 tons, so this is not a huge part of the market, but it's for

foreign flag boats over 300 tons. If you're coming from a point of departure that's at least 96 hours away from the US you need to give at least 96 hours notice before you enter your first US port. You just go to the website that I have in the handout there and you fill in the information. There's a lot of information but basically this is all in response to the terrorism issues; they want to know the nature of the boat, the last 5 ports you've been in, who's on board that boat, who's in control of the boat. And if you're over 300 tons as well, you also kind of, whoever is here as a captain, you've got to watch your safety inspection certificate, they do want to see that, and you've been through that issue yesterday, you understand that they are at least cutting people slack if you are in a flag state that does not generate a safety inspection certificate for a foreign flag that you're under. So again, if you follow your A&OA, you've got to stick with your plan. If for example, you have under your A&OA that you're going to come from South America to San Diego then up to San Francisco and you decide that you're going to go to Catalina for the weekend you have to amend your A&OA. And the penalty for failing to do it? Somewhere between \$1000-\$32,000, and generally I see them do that at a flat amount of \$25,000 as a penalty. So it's not difficult to do. And if you've got less than 96 hours on your remaining US cruise then you've got to give at least 24 hours notice. If you've got less than 24 hours left on your US cruise then you've got to give, well it says as soon as possible but not less than 12 hours. So again, just go to that website, it's not difficult to do, but make sure you do it because the fines are heavy. The next issue is boat show bonds. If you ever read the back of your cruising licence, you'd see that it's illegal for that boat to be made available for charter or sale in the United States while you're under that cruising licence. Sometime read it, it's right there. So a common way if you want to bring your foreign flag in for sale in the United States is to apply for what's called a boat show bond. And I've got a memo there that lays out everything for you, and also a local customs broker that we find to be knowledgeable that can actually get you that boat show bond. And basically it's a six month bond, that allows you to come in and participate in a boat show and that show needs to be somewhere within that 6 month time frame. It can be at the end, in the middle, the beginning, whatever it is. The beauty of a boat show bond over a TIB (temporary importation bond) —it really is a variation of a TIB bond but the value of it is that you can actually engage in survey, sea trial, and things of that nature. If you come in under a TIB display bond you're allowed to display your yacht but you're not allowed to engage in any type of survey, sea trial or things like that. So the boat show bond is available only for large yachts. This is on page 4 of your handout. The boat's got to be at least 79 feet. So if you have a foreign flag boat that's under 79 feet that you want to bring in for sale your only other recourse is to come in under a TI display bond. And the bond premium under the TIB is quite a bit higher than the boat show bond. For example, the premium on a \$12million, foreign flag, yacht under a boat show bond is right around \$1500, very cheap actually. Whereas under a TIB bond, I did a similar bond, it was say \$7500. and why it's different, it's probably an insurance company issue, I'm not sure. But I highly recommend, whoever of you are here as brokers, it's very dangerous listing a foreign flag boat for sale in the United States if the duty has not been paid. And the way you really want to protect your brokerage firm is going to be to make that client get a boat show bond. So you can read that in more detail. Next issue—sales and use tax update. Just to give you an update of where the new law is. We've been under the new law now for a couple of years and the state has really, in my opinion, bought into trying to convert the California resident into a non resident by using an out of state LLC or a corporation and generally always recommend LLCs for income tax purposes because of the ability to use 754 step up, which you cannot use inside of a corporation. But basically the state has not looked through these LLCs to see who the beneficial members or shareholders are. And so the rule for the non resident just generally is that there's two prongs to it—boat's got to be gone for more

than one half of 12 months, and the boat can not be subject to property tax during the first 12 months. So the key dates on non resident tax are the lean dates for property tax purposes. I always find second half of the year closing so much better than first half closings. For second half of the year closings you do an offshore delivery off California, my recommendation is get the boat straight down to Mexico, or go north, or Pacific north west, whatever you want to do, and once the 6 months are past and that'll take you past that January 1 lean date, which is the critical date, as to whether or not the vessel has status as of that date, follow your exemption package immediately, get your blessing letter, come back home, you're done forever. First half of the year closing is more tricky. They require—if your principal is an Arizona resident, for example, I have no problem with that Arizona resident being here for three or four months, maybe five, before they head down south or north to the Pacific north west. Because they're under one half of the 12 month test. But I do worry about California principles applying as in non resident when you form an out of state entity form, I recommend a conservative approach on that, I'm just waiting for the state board to try to look through a non California entity and try to look at the beneficial owner and try to hammer him on that approach. This beneficial ownership issue, by the way, it actually is addressed in a legislative analysts report, so the idea for turning California residents into non residents, it actually is embodied in that legislative analysts report and I always cite that to the SPE as in my compliance package, in support of it. But so far every single one has been approved. Property tax—just a couple of comments on this. Especially boat captains. If you're going to be coming in for a big repair job retrofit, my recommendation is get your blessing letter from the accounting in advance, and San Diego in general it's one day, if I file a ruling request from San Diego that I've got a big boat coming in from Miami for an 8 month retrofit, they're not coming in here unless you can give them a blessing that they're going to be exempt from property tax, they'll give that to you. They want to know a little bit about where the boat has been, but generally speaking San Diego county especially, very very favourable in giving you an advance ruling so when your client comes in, you know you're not going to get hit with that 1% property tax. Last issue on property tax, because more stuff will come up when we have a panel discussion, is the issue of business inventory. Orange County has recognised the brokers, this is a big deal for brokers and a big marketing issue, you bring a boat in, or you've got a US client, and they're going to list that boat for sale with you, and the listing is going to take you over the lean date. We prepare what's called an Addendum to the listing agreement, which redefines care custody and control, because no-one wants care custody and control for liability purposes, and our revision of that definition—basically it keeps the risk responsibility on the owner, which makes the brokerages happy. And then the brokerage files the vessel on its annual inventory statement, and Orange County has now accepted, as long as the owner of that yacht is willing to give up the right to use that boat they will not get hit with property taxes even though that boat has been here on the lean date. And you file that as a vessel business inventory. It's very important for someone who's really serious about selling their boat that they're willing to relinquish the right to use it. But the quid pro quo is, if you want to get out of the property tax, you've got to give up the right to use the boat. I'll pass over to Bill.

Martin

Thank you very much Cris. Bill ?

William Dysart

Wright & L'Estrange

Good morning, and welcome to San Diego. I'm also from San Diego. A couple of things I want to comment on. Let me just add one comment to what Cris said about property tax. California has somewhat of a unique rule and that is best illustrated by a story. And the story is about a young man who is walking down the dock, he looks just like you and me, he's got boater clothes on, boater shoes, you'd think he's a boater. And he walks up to this yacht with someone sitting on the aft end of it and he says my goodness, this is a beautiful yacht. Is this your yacht? And the individual says proudly, because he's just bought it, yes, that's my yacht. Well and they introduced themselves and moved on. Well about two weeks later that individual who was sitting on the back of the boat gets a tax bill. And the reason he gets a tax bill is because California can property tax assess not only the owner of a vessel but anyone who is in possession of it. And as a result some of the things that we try to do to help owners avoid the property tax that Cris alluded to a moment ago, somewhat are exacerbated by the fact that people are overly enthusiastic about telling others they own the boat, they do that unwittingly to a tax assessor and as a consequence they get tax bills.

Let me talk a little boat about COFRs. Certificates of Financial Responsibility. In the United States as you all know, those are Federal requirements that must show that the vessel and the vessel owner is able to financially respond in the event of an oil spill. California adds requirements on to that, as do several other states. I think Washington, if I'm not mistaken, Fred? California's COFR is administered by the California Department of Fish & Game. And we don't say that with a lot of enthusiasm in California, partly because they are extremely legalistic and difficult to deal with. If you are entering California with a vessel over 300 tons and you indeed are in possession of a COFR be sure that you or whoever is assisting you in applying for that COFR has complied with California. Don't wait to the last minute. The Department of Fish & Game may take up to 3 weeks to respond to your request for a COFR, there are no interim permits, and the fact that it may be pending does not necessarily give you an opportunity to enter California. So be sure that you and your owners or people who are coming into California on the boats know to apply in ample lead time. Having said the bad news, let me give you some good news. You may have been hearing about California's new effort to try and clear up the air. And air pollution has always been a problem in California. It's been a great concern to all of us. There's been some new legislation that's amplified the Federal standards of air quality and one of those new state laws is requiring vessels within 24 miles of the California coast to burn 5% sulphur fuel. Now. You all know, particularly the engineers among you, know that that requires some modification to your vessels to be able to do so, requires other tankage to be able to do so. The good news is that at the present time it applies to vessels in excess of 400feet or in excess of 10,000 gross tons. Fortunately we don't have a lot of yachts that exceed that. The danger we always have in California when we start to see that little chipping away we know that there's probably more to come. But the good news is that that legislation has been constitutionally challenged by the cruise ship industry and the shipping industry. There is a hearing on July 7 with an effort to try and avoid that statute in its entirety as being usurping Federal standards. I've talked to counsel in connection with that suit and they're very optimistic that it will be overturned. But if you've heard about it, that's what the story is about it. If you're on a yacht, recreational, under 40 feet at the present time don't worry about it. If you're on a vessel, and lucky you, over 400 feet then watch this case, because it's going to be interesting. Pilotage—this is becoming an increasing concern to all of us. We're starting to see more and more requirements for pilotage; San Diego does not have a pilotage requirement at all for any vessels. However we will never find a vessel much over 1000 tons that does not take a voluntary pilot. We only have four pilots in San Diego. The Navy has its own cadre of pilots here. But San Francisco is a different story. They have a requirement for any

vessel over 300 gross tons to take a mandatory pilot, all foreign flag vessels entering San Francisco must take a pilot. There are provisions, as there are in Alaska, and I believe in Puget Sound as well as in San Francisco, that if a captain has provable experience in that port they may be able to opt out but it takes some lead time to get that application on file. But just remember that's so far the only port in California that requires mandatory pilotage for vessels, over 300 tons or all foreign flag vessels. Bottom paint—bottom paint is a concern worldwide; the toxic bottom paints are obviously an environmental hazard, some will disagree as to the effect on the environment, whether it's permanent or whether it's able to be absorbed in the environment. San Diego has unfortunately been somewhat of a test market, let me say a test bed, for some of the regulations having to do with sloughing copper loaded bottom paint. The yacht basin, which is not far from where we are, in fact you were in it last night if you went to the dinner at San Diego yacht club, which is located in what is known as the Yacht Basin in San Diego. That is under a clean up and abatement order. And in so many years, I've heard 20, vessels must not be using copper based bottom paint. The object is to get away from biocidal bottom paints, so obviously the industry is trying desperately to find some alternative but so far—funny stories I suppose you've all heard, about the boatyard that was testing some of these new silicon based paints; they picked a boat up that had the silicon based material on it, picked it up in slings, the slings slipped off the boat, the boat crashed, the bottom was so slippery. That's the humorous side of it. The serious side of it is that when you apply some of these new coatings it requires a complete clean down to nearly raw material because you can then apply some of these new proposed coatings. Cruising in Mexico—very briefly, this is relatively easy these days. Two things to remember. One is do not carry firearms. You can certainly carry emergency flares, those devices, but not firearms. Number two is, fishing licences. If the vessel is going to be engaged in any fishing activity be sure that it has a fishing licence. In addition, and people don't know about this very often, but if you are going to carry fishing gear in a dinghy have a fishing licence for that dingy. Merely having fishing gear on board is a presumption in Mexico. It's a good idea, and I'm recommending more and more now that people do obtain policies of Mexican insurance on their vessels. It's relatively inexpensive and can save one a great deal of headaches, should there be any difficulty with the vessel. But generally sailing into Mexico is not difficult. If the vessel is owned by an entity, corporation or an LLC, it must have some sort of letter of permission by that entity to the individual or individuals who are operating the boat. Many years ago, working with Mexican counsel, we worked out a letter called a Maritime Letter of Permission; you've got to have lots of stamps and signings and things on it to make it get past the officials, make sure that there are enough copies that you can surrender them to any official that asks. And you will be asked. So I always make sure that my client has an ample number of those original copies, signed and notarised. And lastly, do I have a minute? I want to talk about one other thing that's just been surfacing in California recently. If you have a foreign vessel, foreign in a general sense, that is, it's not based in California, whether it's foreign flag or US flag, but not operating here other than on some casual visiting basis, then you don't need to be worried about what I'm going to talk to you about. If you have a client, or if you have a vessel that's based in California and if it is operating out of a California port, if it is hiring individuals that reside in California, and if its operations for the most part are limited within California's coastal waters, there is a high degree of probability that any employee on that vessel is subject to the California Wage and Hour act. There are two cases that came down fairly recently—one, the night circuit court of appeals and the other is the California state Supreme Court. Both of those cases held. That the California Wage and Hour Law does extend beyond California's 3 mile territorial limit provided the vessel is more or less home ported in California, that the person who is hired is residing in California and that the ultimate owner is a

California resident. The impact of that we don't know yet. We're not seeing too many cases; I've had only one in my experience and the facts were just not within any of those. But nevertheless that is an interpretation that we need to be very careful of. For foreign flag vessels, you're here, this is a port of convenience, there should not be any problem at all with regard to that issue. And with that I will pass it to my neighbour to my right.

Martin

To the north west.

Fred Robinson Carney Badley Spellman

Thanks Bill. Can you hear me OK? My name is Fred Robinson, I'm an attorney CPA from Seattle, I practise on a world wide basis with yacht transactions and yacht tax planning. Washington State—I'm going to be talking about predominantly sales and use tax issues and foreign registration, but I just want to point out that Washington State has a number of major yacht builders, it's really got more superyacht construction than any other state in the country. The three major yacht builders are Westport shipyard who as many of you know built some 160 foreign, we'll be starting a 145 I learned this morning, and Christensen yard, they've got their 157 and other yachts, and then Delta shipyard as well. We've also got 6-8 smaller shipyards in Washington State, all of whom have repair facilities as well. That includes Northcoast Yachts, Northern Marine, and many other facilities. Washington State really has great protected cruising grounds and I know there was discussion here at the seminar or this conference about San Diego becoming the next Fort Lauderdale. And in fact the Fort Lauderdale of the West Coast. I certainly hope that occurs, because it's really going to further open up the cruising grounds in the north west in not only Washington but British Columbian Alaska for the superyachts that do visit the west coast, so the more San Diego thrives, the more the north west will thrive as well, and they'll feed off each other. So I certainly hope that's an accurate projection.

On the two main topics; the first thing I want to talk about just for a few minutes is offshore registration. This is really somewhat relatively new on the west coast of the United States, it's been very popular on the east coast, and particularly in Florida since probably about 1987, and the reason it's so popular in Florida is that in 1987 the Florida Department Revenue came down with an administrative ruling that if a foreign owned yacht, a yacht registered in one of essentially 33 different countries as Customs pointed out yesterday, entered the United States, even if the entity itself was owned by a US citizen and a Florida resident, but if was a foreign owned yacht in a foreign company that was registered in one of those 33 countries it could enter the state of Florida under the terms of a US cruising licence, issued by Customs, for up to a year, that's renewable, and not be subject to Florida sales and use tax. But that was an administrative ruling that was really done in my view in recognition of the practical reality that the state of Florida needed to open up and provide certainty with respect to these vessels coming into the state of Florida so there wouldn't be taxation and that's really how Fort Lauderdale and Miami built up their cruising industry. Now that same ruling principle has not been applied, to my knowledge, to any other state in the country. I do have a written ruling request pending, before the Washington State Department of Revenue on a yacht that's coming in from Asia, offshore registered, that's going to be in Washington for a short period of time before it goes on a round the world cruise and it happens to be owned by Washington residents. And I'm looking for the Department of Revenue hopefully to tell us that that same protection exists in Washington as it does in Florida. But frankly I'm not optimistic they will and I've got other ways to plan around that matter from a tax standpoint. But

nonetheless, offshore registration has really been popular in Florida for two decades now. On the west coast it's relatively new, and the reasons are that there haven't been the tax benefits to be gained, generally, the same protections as in Florida, but the reasons for the increased use of the offshore registration on the west coast is one for security considerations unfortunately—do large yachts want to be flying the Stars and Stripes as they cruise beyond the US protected waters and cruise the world. Generally they will want to fly a foreign flag because of security considerations and also with the increased wealth on the west coast in part, in the north western part because of the presence of Microsoft there and amazon.com and other corporations doing so well including Starbucks, there's confidentiality that's given so that the owners cruise the seas with confidentiality. In terms of state and local taxation, we've had a few comments on that, but I wanted to address really some of the issues on the west coast. I won't talk about California because we've got California attorneys here who can certainly handle that, but I want to talk about the other states going right up the coastline. The state of Oregon does not have a sales and use tax and the state of Alaska at the other end does not have a state level sales and use tax but some of its cities and boroughs have a sales and use tax that is really extremely limited. The tax rates, where they do apply, in very few cities and boroughs, can range from 5-6% but there's a cap on the transaction value that it applies to and in many instances only the first \$1,000 of a transaction is subject to a sales or use tax. So as a practical matter it's not an issue. It's really only an issue in California, Washington and British Columbia. And because we've got members at the conference from Europe, I just wanted to draw a short distinction between the value added tax, which is common in the EU from the sales and use tax, which is used in 46 states in the United States. The VAT is really a progressive tax that applies to every step of a manufacturing and sales process. And essentially the tax amount that's paid at each step in that process, is the increase in value. Ultimately the tax is borne by the ultimate consumer of the product, or in this instance, the vessel. The sales and use tax in the United States is really substantially different. There's very little parallel. For one, keep in mind that the sales and use taxes can vary from state to state and they do, it's not a Federal imposition, but it's a state imposition that follows Federal guidelines. And with the sales and use tax, this typically only applies if, and this isn't true in all states, California's a little different, but at least in Washington and in British Columbia, if delivery of that vessel occurs in that state. If delivery does not occur in that state and that's the physical transfer of possession, control and ownership in that state, then the sales tax does not apply. But on the flip side, because of the ease of getting around the retail sales tax, when a vessel on which—this is true whether it's owned by a resident or a non resident—sales or use tax has not been paid in another state or another country, enters the state of Washington their use tax can apply. Now there are exemptions from the use tax; those exemptions are generally applicable to non residents. If a non resident owned yacht owned by a non resident entity enters the state of Washington, it could be in Washington waters for 60 days in any twelve month period without tax. If a non resident owned yacht owned by a non resident individual enters the state, it can be in Washington waters for 6 months in any twelve month period. But please note that in meeting that 6 month requirement, every 60 days they have to get a permit from the Department of Licensing, so they can't just come in and cruise for 60 days and then head out and not be exposed to the tax. They have to meet certain requirements. On effective July 1, the Washington legislature just passed new legislation in Washington to make it easier for non resident owned yachts to come into Washington waters, it was signed by the governor and will become effective July 1. And under that new law if a non resident individual either acquires a yacht in Washington of 30feet in length or longer or acquires it elsewhere and brings it into the state if they get a simple permit, the cost of which is, I think, a couple of hundred bucks, the use permit forms haven't been drawn up, from the broker or the dealer, the boat can be in Washington

waters for 12 months without needing other requirements. It can just hang out in Washington waters for 12 months. However at the end of the 12 month period it has to get out of the state and can't come back in for another 24 months. So you know, that law was meant to promote the sales of yachts in Washington and also to allow greater cruising in Washington waters. You know, from a planning perspective, on the face of it that sounds great, but—and it certainly works for someone if they're going to keep the yacht out of Washington waters and they know they can do that for 24 months after they leave. But what I will generally work with for non residents is we'll work with the current rules, and I anticipate doing this in the future, and basically move the yachts between Washington and British Columbia. And stay within the 6 month rule for individual owned yachts or 60 days for non resident entity owned yachts. British Columbia has its sales and use tax too, it's called the provincial sales tax. The tax rate there is 7%, it applies fairly similarly to Washington tax, the Washington state sales and use tax, and in the case of—one thing they don't have is a sail away exemption for sales of boats in British Columbia to non residents. So if a non resident is going into British Columbia to buy a boat, and we run into this in Washington periodically, we don't close the transaction in British Columbia, we'll actually close the transaction in US waters in the streets outside the state of Washington so we'll come over the midway mark but we'll stay 3 miles from the Washington coast and then close the transaction, and that way the foreign buyer is not subject to either Washington sales tax or provincial British Columbia tax. Canada also has the goods and services tax which is a Federal level sales tax, the rate is 6%, and that applies if there's delivery of a yacht in Canada or in some instances to non residents that bring yachts into Canada and spend some time. But just one final comment about Canada and British Columbia in particular. The British Columbia rules for use of yachts there are very liberal and they allow non residents to take boats in there for long periods of time without taxation. Two final comments—I think one of the common themes that maybe you've heard with the other two speakers and certainly you'll hear from Eric and you've heard from me is, the rules vary from jurisdiction to jurisdiction whether it's Customs rules or state tax rules. When you've got customers buying boats in a jurisdiction, where there's real money involved, have them get technical tax advice well ahead of the transaction if possible, although that's not always possible, and some of the time the transactions come together quite quickly and, secondly, if you've got clients that are taking substantial yachts to different states make sure they get tax help in advance of coming into that state so that they can meet the requirements. And that's it, I'll pass it over to Eric. Thank you.

Eric Goldring Goldring & Goldring

Good morning. What I'm going to talk about is not taxes but it will be about what is actually more taxing. And that's contracts dealing with the refit of yachts and why qualified lawyers need to be involved, not only in drafting these contracts, but in managing them.

Owners ask me why do I need to have the contract before the yacht's even there? And why do you need to be on the dock when the boat arrives? There's things that have to happen first. And it reminds me of two things that I say often. If you remember the old Fram oil filter commercials, you can pay me now, or you can pay me later. It's prevention. The other one is mad comics, Alfred E Newman. What? New worry? You know there's going to be a problem. We all know there's going to be problems and the concept is not to, as they say, lawyer up so you can have your fight. The concept is to have things in the structure and parameters so that you can avoid them. Now in years past when yachts were smaller and this industry was

smaller the captain did everything. And I think it's important to note that now a \$250,000 bill for refit work is commonplace and multi million dollar expenditures are pretty much a regular event. And you pause and say, if this was a real estate transaction, would the owner have an attorney? Absolutely. A lease, would the owner use an attorney. Absolutely. So why is there the resistance to use attorneys in yachts. Well I think part of it is the sociology of it, this is supposed to be a thing of pleasure, this is an owner's monument to himself, it's very personal, so you have that aspect of I'm doing this. The other thing—and there were some comments earlier in the conference about it—about how there is a tremendous dependence on captains and on engineers, that these are the people that really know things. Well, I think the first thing that needs to be done, there needs to be a breaking of associating lawyers with lawsuits. Because there's more than that. And I think lawyers have an obligation to learn how to interface with their experts. That's not only a captain, and not only an engineer. Could be a naval architect, and it most certainly is the shipyard that you're going to be doing the work with. And that doesn't mean all the lawyers get into a room and just bill. It means figure out what's happening. This is not an affront to captains and engineers, no more so than to say than I as an attorney am not competent to do what I do because I can't drive the yacht and I can't rebuild the top end of an engine. Clint Eastwood once said a man must know his limitations. Now when an owner empowers a captain and says well, you're the captain of my 80footer, I trust you, you're great, now I've got this 180footer, you're in charge. Well, what gives him the skill set to do that? What gives the skill set to an engineer who can operate an engine room with the assistance of others and calling in specialists, good luck working on an MY engine for example, to all of a sudden determine what the right or wrong thing is and how you're going to interface warranties—there was a comment about where does my warranty come in as opposed to the shipyard's warranty, where do they overlap, what happens, who's voiding which. These are all questions that your captains and engineers simply can't answer. There are yacht management companies out there as well. Some are very good, some have individuals that are very good. But there's a lot out there that don't have the skill sets, just as there are lawyers out there that don't have the skill sets necessary and I think it's incumbent on our industry to educate each other rather than segregate, which is what I've seen. Now. Let me give you a few examples of how this interplays. There's a shipyard that gave me some fairly standard language for the hauling of a yacht. And I'm leaving insurance and pricing issues aside. This was the language. *Shipyard will prepare the engraving dock the marine wellway drydock the yacht and perform the services as described herein and launch upon completion for the price as established in accordance with the enclosed proposal. Hauling will occur on or about X date.* Sounds pretty standard I think. Well. Now this is the language that I added to it. *And shall be in full cooperation with the local American Bureau of Shipping surveyor. Shipyard shall provide the client with reasonable notice as to the unavailability of the dry dock sufficiently far in advance so that the client will not be prevented from having the yacht hauled any work performed the ABS survey completed and then relaunched no later than date Y.* These two sentences make sure both sides appreciate that coordination with ABS is required, that the shipyard cannot without consequence claim the lift is not going to be available because there's work on another yacht that's taking longer, that there are time constraints that must be considered which will extend the work to be done which avoids *we have to put you back because we have another yacht coming in*, and the yacht being locked in by other yachts subsequently hauled. Now we all know that this is what happens. Time and time again. The idea is to address it in advance so everyone knows. Is my work done? No. That's just the predicate. What also happens is people take these contracts, they stick them in a drawer and then they wait for the fight. Then they pull the contract out and go oh you see, it says here.... So what we need to do is say now

that we have the framework, we need to apply it. OK. Now the next thing comes up. While we're out of the water the surveyor says you also need to do this, which was not anticipated. Or you get the, well while we're here, let's get this other thing done. Well now you need to marry that with the expectations of the yards not, *it says in the contract any work that's done.* Well, is your captain going to be negotiating that? Your engineer isn't going to be doing that although he may say I think it'll take X or Y time. Who's going to do that, taking into account your dealings with ABS, costs etc. Now I'll give you another example. The shipyard provides this language. *Manhours material and/or all service utilities will be agreed to in writing by both parties on a daily basis or work item completion as applicable.* How many people have actually sat down every day and signed off on stuff and agreed it. It doesn't happen. So let's add some other language. *The shipyard will provide time sheets for all jobs which are not charged on an agreed to price basis which if agreed shall be signed off on solely by the captain or owner's representative.* Well, that helps because now there's a way to agree or not to agree and some substantiation which many times isn't there. You've all seen it. You get a bill, and it says X number of hours. Well where's the substantiation? Now we know it has to be. But you still have issues with did Frank really do that work? Or was he standing in my non smoking engine room smoking a cigarette or was he just goofing off while he was there. Well, these things need to be dealt with and that's where the team approach comes in. The engineer isn't going to be having that conversation with the shipyard where you don't want him to be, the captain really needs to do many things and that's only part of it, so we need to integrate that as well. Some would say well you don't really need a lawyer for that but where does it go if the conflict isn't resolved. To the lawyers. Now. The third area is change orders. And this is where the concept of the best laid plans. There are more disputes over change orders than anything else that I'm aware of in the years I've been doing this. And the reason is in large part because these are not considered contracts. They're not considered amendments to contracts. It's exactly what they are. So when there's some cryptic writing that many times is done after the fact, all you've done is create a tremendous problem with an owner going I just paid how much money for what? Or, that's not really what I wanted. So it's important that every change order be looked at, reviewed, specifications defined and deal with that again. Is that something that someone who's not involved in the wording of things and the interpretation of things is going to take care of? And I believe the answer to that is no. Though you do need them. Now the next area and I touched on it before—outside suppliers. There are different philosophies in different shipyards. Some shipyards try to do everything inhouse. Some rely very substantially on outside contractors to come in, subs. There are yet other shipyards that provide space and certain things and go you're going to now do the rest of the work. Get your own people in. And so now you have all different liabilities and issues, which all interplay upon each other. Many of you in the audience are not the shipyards but the guys caught in the crossfire. I think it's incumbent upon all of you also to say contractually what are we doing. How are we going to avoid the problems. You know, I've said a lot of things on a lot of issues, as you all know, during the course of the conference, and the reason why I do it is because I am involved in many aspects of yacht construction, yacht refit, and also yacht conflict. And I just find that there's too much focus on keeping lawyers out of it and trying to just get stuff done without the consequences. And I think if we plan things and there is sort of a team approach with a hierarchy, the management of these contracts and the management of the refits will result in a better product, shipyards that actually make money on the projects rather than going I just lost this much, owners that are happy to come back and a better yachting experience. And on that last point I want to focus on one other thing, which is years ago there were yachtsmen. And the owners were real involved in every aspect of their boat, and in boating—where they were going, charting, being hands on. Now one of the hottest topics is helicopter landing on yachts because the

owners don't even want to be on them when they're sailing. They want to get there when they're there. And that concept is now missing and we're going from being a cottage industry to being something that's far more complicated with owners that have far different expectations. And I hope that the industry with all its complexity that is out there now will start to respond to that and not do things the old way because that's the way we've done them. Thank you

Martin

Eric, thank you very much. Right, before we open the forum, Cris, a few more things you want to say?

Cris

Yes, just 30 seconds on a couple of topics. Issue no. 1. Constructive receipt. Make sure in all of your purchase contracts, especially in California, and this will apply in any state, the issue of constructive receipt—if you do not have a clause in your contract that requires delivery outside the state of California you can be gone for a year, it doesn't matter if that transaction, I don't care if you even closed offshore. Because the issue is you *could* have taken title in California therefore under the doctrine of construction receipt you took title in California so make sure your contracts have a clause that requires delivery outside the state of California. And this will apply to Canada as well, and probably any other state.

Next issue. Mexico. Selling a boat in Mexico—owners don't even realise this. When you go into Mexico now you're getting a ten year temporary importation permit. The old bond thing has gone. It is a felony in Mexico to sell your boat while you're under a ten year temporary importation permit. That boat needs to be exported back to a port outside Mexico, and typically it's San Diego. You cannot close a deal. So the one way to get out of the felony? pay the 10% VAT tax. Chartering in Mexico—You cannot charter a boat in Mexico. You must work through a Mexican charter operator. At least 51% control by a Mexican national. Do not try to do it yourself. It's a very tight industry down there and you don't want to have your boat arrested. Very costly process. Be aware of one more thing. US Coastguard is down in Mexico right now, looking at US operators that are chartering a boat. It's been well known for many years for a long time the Coastguard—their position is, they have a right to enforce US law on a US boat anywhere in the world. So if you are going to try and have a cocktail cruise with 50 people on your 130 footer yacht, down in Kabul, be aware. You are violating the national vessel passenger safety act unless you're an inspected vessel. And so the risk for the people they're going after, they're going after the captains, first, to revoke their licences, so if you're a captain you don't want to be involved in it, and lastly the owner. So be aware of it. The Coastguard, they know who's chartering down there, and you've got to follow the rules and also the vessel passenger safety act. Which means if you're a boat, you're supposed to have a coastwise trade endorsement and not recreational. Wage withholding? I had a similar case. If your yacht owner is involved in foreign commerce there is a Federal statute that pre-empts all state statutes but Bill is absolutely correct, if you are doing inter state, California absolutely has the right to suck you into wage withholding. Even if you're foreign flag, if you're one of these clients that's spending 11½ months in California and then 2 weeks outside each year, I think you have enough status there for California to get you even if you're foreign flag. If you're inter state, they will look to the base of operations. So if you have a broker involved in helping you charter, try to establish contractually where the base of operations is going to be. Because if your owner is up in LA they're going to argue that the base of operations is where the

owner is. So try to establish the base of operations is where your broker is, if it's outside of California. Last issue. The Washington ruling. I did get a ruling back from the state of Washington. Just be aware of a few things. Applies only to individuals, you can not be an LLC or a corporation, once the permit expires it cannot be renewed, it's a one time shot, and once you use it, you can't come back for 24 months. If you do not file for the permit you are deemed to make an election to be under the old rules. The 60 day rules. With two successive 60 day permits if you're an individual. RRM—I just want you to be aware, if you do bring your boats into California for RRM, repair, retrofit or modification, you can be here for ever. You can always come into California for RRM. Under the sales and use tax rules. There's no limit. If you buy a boat, the contract requires offshore delivery, take delivery offshore, come in for a 13 month repair job, that is an exempt transaction. RRM is treated as if you are not here. And that's it.

Martin

Cris, thank you very much indeed. Alright, we have hands already up.

Alan Gilbert Gilbert Yacht Design

Eric, you mentioned the word managing. And that can mean anything. Not in your ideal world, but in general, where does the function you're proposing fit into the process of a new build and a refit. The kind of question I'm asking is, do you sit there and see all correspondence going back and forth between the entities, as an example, or what?

Eric

Well a lot of it depends on what the owner ultimately wants, because I don't get to make that decision. I had one client that said it's my boat, it's my money, it's my decision. And that stayed with me for the last few decades. Because ultimately it's up to him. Generally what I find is the most efficient way, especially with email, if it's not directed directly to me, I get a copy of everything. It takes me sometimes 5-10 seconds to look at something, spot an issue and then I can deal with it. Similarly it might take me 5-10 seconds to just file it. And what I do with each yacht is, I break down in outlook separate categories for every separate thing so if I have a vendor I might have 5 sub categories so I can find whatever I'm looking for and that way, not only now but historically—someone said something about how this functioned—I can find it. So it's managing a lot of information and the making the decision. As I tried to say, it's not a matter of being the man. But being part of a team so that you can manage who's going to be doing it.

Alan

So perhaps maybe oversight is the more appropriate word.

Eric

No. Oversight is sort of like you're assigning things to people.

Alan

Well if you oversight everything then that's true.

Eric

You know if you're actively involved in, for example, let's say there's a change order for re-zincing some chain. Well, what's the thickness? What inspection is being done? Are you going to strip the paint beforehand? All those things need to be in there, those are contractual items. So I would get involved in that. Am I going to be the guy flying down to wherever and inspect it? No. So it's not oversight of everything but it's oversight of some of it and then you have your engineer and your captain who would be your eyes and ears on some of the other issues.

Sam Browne Knight & Carver YachtCenter

Cris, I wanted to just make a comment about two of the things you said and I appreciate them, and that's that San Diego in particular, and if you look at the sales and use tax issue, you're right, the repair and maintenance and refit is exempt and people don't realise that sometimes, and also the property tax issue, that if you do ask, they're very cooperative. And I think that's generally true, in what we found to be our experience in San Diego, is that we haven't experienced the problems that people have talked about because we're aware and we make sure that we deal with those things in advance and generally speaking we don't see all of the problems. I mean if someone comes in and does something reckless, and without planning, and without thinking about it, there can be issues. But if you are telling someone that you're not going to bring your boat for anything other than repair and maintenance, you usually don't have a problem. I wanted to make sure that that was clear to everyone and appreciate the comments. Thank you.

Eric

If I could just make a comment on that. Being someone who's involved, much more so on the east coast and in Europe, and I do have a place in California so I am somewhat aware of this, but that's pleasure, this is business. California has many regulations and from the outside looking in, it's fairly scary. Because you don't know how it's going to be addressed. And I think yesterday, which is a topic we'll talk about later, was one of the examples. I know there's a tremendous desire for San Diego to become the Fort Lauderdale of the west coast. It's imperative that some really good marketing be done, to make sure that yacht owners and manager and brokers know that though there are these regulations, that they can easily be dealt with. Because right now there is sort of a fear factor.

Fred

Can I follow up as well on the comment about repair and maintenance in California. Washington also has a similar exemption where, you know I spoke earlier about the time limits that vessels can be in Washington waters, but if boats are coming in to Washington waters for repair and maintenance they're also exempt from the use tax on the vessel itself.

Cris

And just one point of clarification on RRM under the non resident test—if you get sucked into property tax because you're here for RRM because you didn't get your private blessing letter from the county—and the county, they get it, believe me. They understand the economics of getting boats here. They want to get boats here in San Diego. I've got it through to them that we want to bring dollars into our county. But if you get sucked into property tax as a result of being here for RRM that does not suck

you into use tax. You have to be sucked into the property tax for a reason other than being here for RRM.

Martin

So when the refit is finished, what do you have to do?

Cris

There's nothing to do.

Martin

So how long can you stay in California after the RRM?

Cris

The best way in your mind to think about RRM, there are two bookends. There's when you come in, and when you leave. And between those two bookends you get 25 hours of sailing time. Even though it's a moored yacht, they call it sailing time. And that sailing time within California waters, I always tell clients don't be greedy on that issue. Don't push it to the limit. The state board has not been checking that. We provide an RRM log when we file our compliance package, but between those bookends you get 25 hours of time. Coming in to California, if you're coming from Washington, my recommendation would be travel down more than 3 miles out, make a hard turn in to the port. Because the statute is unclear as to the hours coming in for RRM. However through application, the state board has not been looking at that issue at all. If you travel 3 miles I don't think they'll give you hassle. Once you finish your RRM there is no time limit to get out. It needs to be reasonably expedient. So if you're going from San Diego up to Pacific north west I would not have a problem with you stopping in to San Francisco for some fuel or whatever. The state board has told me that coming in for fuel is not RRM. So if you want to come in you should probably have some kind of repair done. I did get a ruling back on inclement weather. If you can prove that there was inclement weather, and the captain should document that there was inclement weather, as to why you came in, that's going to be OK as well. I said, you're creating a nightmare for someone trying to come from Washington down to Mexico, if the weather's bad, they've got to come in.

Bill

The same regulation that Cris has been talking about also of course pertains to aircraft and to vehicles. And the 25 sailing hours is borrowed, I'm told, from the 25 hours of an aircraft. Well that's rather simple to calculate for those of you among us who are pilots. We all know that we use the Hobbs meter on the aircraft. That's when you turn your engine off and it measures the time that the engine is on until you turn it off. Well we don't use the tachometer, we don't use the engine hour meter on a vessel. That would be absolutely absurd. So the sailing hours is a little bit of a terrible abstraction in the law. But it was I think thrown in there at the last minute as an appeasement to the vessel industry to give them some period of time. The period of time that the vessel, after the work is completed, has to get it out of the state, we know does not count against that 25 hours. So the time inbound, arguably could count against it, the time outbound does not. Provided that is, that it's an expeditious exit.

Martin

I have one more question, Cris. The RRM, does that have to be carried out in a shipyard or can it be tied up at the dock with contractors?

Cris

It can be tied up at the dock with contractors and many of your sailing clients, you know are somewhat anal. They do it themselves. So keep all your West Marine receipts and your other receipts.

Neal Esterly Fraser Yachts Worldwide

Bill, San Francisco pilotage. You said foreign flag of any tonnage, has to have a pilot?

Bill

Yes, their current rules are, Neal, that any vessel that foreign flag is supposed to have a pilot entering San Francisco. If you contact ahead and explain to them who you are and what you are, my understanding from personal experience is that they exempt smaller vessels. That's the rule.

Neal

Right. And what about Alaska? Can you update us on any—

Bill

Alaska, 300 tons or greater, mandatory pilotage. They board and stay with you the entire time you're up there. Very difficult to get an exemption in Alaska. What I mean by an exemption is to determine or get an established qualified master that can get an exemption. The pilotage, I don't know if you know, but it's a 6 year programme in Alaska to become a qualified pilot. I had a client of mine who actually was a pilot here, went up there for a period of time and he gave it up at about the third year and said this is going on for ever. But it takes 6 years to be qualified in Alaska. They're very jealous of their occupation and it is rather treacherous, many of you who have sailed up there know that it can be rather serious. But my understanding is that's a mandatory pilotage.

Eric

I tried to get an exemption for one of my clients and she thought if I hired a captain with local knowledge and experience that would be sufficient. And it's not. They were very polite, they were very nice, they said that if you're at anchor you don't need to have the pilot but of course, if you're anchoring out, the only way to get the pilot off the ship is by seaplane, which costs more than keeping the pilot there. She said but they're all very polite and they wear ties.

Cris

Yes, Bill is correct about Alaska protecting its own. With regard to your waivers, for you who have clients that have foreign hulled boats, you know it's illegal to charter that boat as a foreign hulled boat in the United States. Once the boat is at least 3 years old you pay your \$500 on line now and you can get your waiver but if you apply

for San Diego up to Alaska you'll get San Diego to Washington, it's very rare to ever get Alaska.

Mike Hein MCA Marine

Last year took our foreign flag boat more than 300 tons, less than 50 metres, to Alaska. And the ruling, we applied for a pilot exemption and were granted one, the ruling was that we had to take a pilot on our first port going into Alaska which in our instance we went from British Columbia so we had to take a pilot going in to Ketchikan and I would recommend that because it's the shortest distance therefore the pilot has to travel the least amount of distance and they're based in Ketchikan. There were places within southern and south west Alaska where we were not allowed to go unless we had a pilot, but between Ketchikan and Cregg and Juneau we could pretty much drive where we wanted. We couldn't go to Wrangle Deros and we couldn't make the inside passage to Sitka, but you can go around it either way, around Baranof Island. So they have a programme which you can apply for, and you can be granted it except for those two locations in south west Alaska and its vessels over 65 feet. So it's not necessarily superyacht size. It's foreign flag vessels over 65 feet. It was last year. And with regard to San Francisco, they told me absolutely not. There's no way we're going to give you an exemption, we're not going to consider it and you have to have a pilot because you're foreign flag. There was no ifs ands or buts. And San Diego you already covered, about the pilot. In Los Angeles it's a 40 metre issue. If you're greater than 130 feet you're supposed to have a pilot. And I just had one question about Mexico. If you're in California and you depart California, clear into Mexico and come back into California, does that start your time in California clock over again, or is it a cumulative clock?

Panel

Cumulative.

Mike

OK. Thank you.

Cris

One issue. On your cruise up to Alaska, that place where they didn't allow you to go, I don't know why you would ever go through that Kukulneros, I think you always want to go around Baronof. It's so dangerous going through that Kukulneros. You wonder what all those crosses are all along the side? It's because there's huge boats have been sucked over right there. I went through there in a kayak and it was very scary with the whirlpools. So I'd always go around.

Martin

A long kayak ride.

Bill

There's an upper limit too on the pilotage. I think, well there's a boat called the Ice Bear that goes up there, I think it's 172 feet, and I think that the upper end of the law is 175 feet and if you're greater than that in length you've got to have a pilot everywhere, for sure.

Eric

I think that was the issue—most of the yachts that some of us deal with are over the 175 foot length and there's just no way around that. You also should be aware that once you go north of Juneau it's another pilot association, so whatever they did for you in the southern part they may not in the northern part.

Martin

Yes, John, thank you. Didn't you bring your girls this morning?

John Kropf Camper & Nicholsons

Mr Wenthur, good to see you. Could you give a clarification again on the foreign hole that you just mentioned, the exemption, I'm assuming you're talking about the same thing that we did for Dream Seeker?

Cris

Exactly. The small vessel waiver programme.

John

Could you just go through it one more time.

Cris

Once your boat is at least three years old, you can make an application to the marine administration, it's called a small vessel waiver programme, still going, and what's beautiful about getting that waiver, it doesn't stay with the owner. It goes with the boat. So when you sell the boat it goes with it. It's pretty cool.

Bill

What you get is a limited coastwise endorsement, is what you get on your certificate, your documentation.

John

I thought they had ended that?

Cris

No, still going.

Bill

It was a little confusing because of the way it was recorded in the law, and it was sort of like a footnote. But the programme is still alive and well. The last I talked with the people, they were just sort of sitting there waiting for applications to come through. They weren't particularly busy. Alaska, as mentioned a moment ago, is virtually impossible. Because there is so much controversy. Remember, that when you make that application, that's only part of it. Because the local area where you intend to operate can make comments on that application and if they feel they're being threatened, having complied with US build vessels, that is, they have an abundance

of US build vessels they think, then they can object to that limited waiver endorsement. I've had that happen, once.

Billy Smith Trinity Yachts

We have a number of designs we're working on at the present time for vessels that will be under 300 tons US Coastguard. We feel we can probably get into the 175 range and still keep them under 300 tons. But built in compliance with MCA for over 500 tons. So for the US clients or the US based boats that may be something they want to consider in the future and just basically they just have to switch Registries when they cruise in the US. It looks like it's going to work.

Cris

As far as which flag you're under ? whatever appears on your registration, that's what they go with.

Doug Sharp Sharp Design

Correct me if I'm wrong, but yesterday did I not hear that the Coastguard looks at gross tonnage, whichever is the greater ITC or US?

Bill

That has been my experience with regard to COFR requirements yes, the certificate of financial responsibility.

Cris

But that has not been my understanding with regard to the NOA rules. It's what appears on your country of registry. What your gross tonnage on that document is, for the NOA rules. Different from Bill's rules.

John Aune Cayman Islands Shipping Registry

I think what Bill Smith was saying from Trinity Yachts as well, they can build it basically to US flag or to a different flag and if they build it to a different flag it will go on international voyages, yes it will have an international tonnage certificate, but normally they would anyway get ABS to calculate the domestic US tonnage, the GRT. And if that vessel then changed flag to US flag when it was in US waters it probably surrenders the international tonnage certificate and only sails on the US domestic tonnage certificate.

Bill

It can happen, and I've had that happen, and I've done that actually. But one thing to bear in mind, and I know that though you know this, that obviously the GRT calculation under the coastguard is quite a bit different from what the ITC measurement is. And I've had some clients be very shocked when they have taken a vessel perhaps into foreign flag and for whatever reason we had to have an ITC only to find that suddenly what they thought was 225 gross ton yachts suddenly became 310 gross tons under the ITC. And again, we've even had them re-measured, because we were questioning the accuracy and indeed, that was affirmed.

John

Oh yes, definitely, the light vessels that he was referring to, when they build them, they do measure them in accordance with ITC so they're fully aware of the ITC basically as well. And they meet all due requirements, they can have all the certificates they need for international trading. But if they go to US waters they can then start using a domestic tonnage certificate if they're flagged in the US, and then they will get away with being less than 300 gross tons, in US domestic tons.

Cris

But there's a lesson, Bill, before someone chooses to change their flag. They really should do a calculation.

Martin

OK. Any more?

Ed Harley Foster Pepper Seattle

I just wanted to make a quick comment on the boat show bond which Cris brought up earlier, which I agree is a great mechanism but one word of warning. If the bond is for over \$1million you need to try to get it in place as early as possible and not wait until the 11th hour, because the Customs brokers generally can write their own bond up to \$1million but anything over \$1million requires an underwriter. And that requires a letter of credit to make the underwriter happy, and then there's certain negotiations that go with respect to having the underwriter hold the letter of credit, which is about as close to cash as you can get, so just a word of warning if you anticipate your boat show bond being over \$1million, to try and get it in place in advance as soon as possible.

Gene Sweeney Marshall Islands Yacht Registry

Good morning. I would like to ask the panel how they advised their clients—if I have a 150 foot yacht and I have a 20 foot tender, what do you advise your client as to how to paper that 20 foot tender bearing in mind the security issues here in the United States and the fact that it will probably do most of its trading internationally?

Eric

My experience is that the Coastguard really doesn't care much about the tenders. I've got US owners with foreign flag vessel and basically they just get motor boat stickers and put them on them. The tax issues are minimal. And getting insurance on them is simple.

Fred

In Washington state I generally recommend for the tender just a state registration rather than trying to register it in a foreign country.

Cris

If we're doing an offshore delivery and we want to save the dough I'd just have you do a Delaware registration for the first year and convert to California thereafter.

Bill

It depends on where the boat's going to be used, but obviously the tender issue is acknowledged in most areas of the world except certainly not in California. California if the vessel was here and used at all on the water, if it stays in the chocks and isn't splashed, then probably there's no issue. But if it's brought and used then it should be registered. If the vessel isn't going to be here in excess of 60 days then I would often recommend that we do a Delaware registry on the vessel and as I recall I think that we can do that as small craft sometimes in RMI. Isn't that right, Gene? And I think I've done that a couple of times. Depending on the size, and where I've had an issue and I wanted to be sure that a vessel that was going to stay for any length of time in California—because I really try not to expose the yacht and the yacht owner be it foreign to any more California connection than we possibly can. I like them to be here, by all means. But I just like to be sure that they enjoy their time here and not fighting taxes all the time.

[From the floor]

You don't see any issue if you do register that tender in Delaware and then after a year you flip it to California. You don't see any conflict with that based on the fact that that large yacht is flying an offshore flag?

Cris

No I don't see any conflict either. But the place that you get really hassled in California is Catalina. They hate Delaware registrations or TTs. They want to see some kind of registration.

[From the floor]

Yes, maybe you don't want this question. Yesterday we had a bit of a discussion with local Federal officials regarding something that has put a bit of a scare into the incoming community of yachties, and I know a couple of you up there have had some experience with this. And I don't really want to get too much into it other than the idea was yesterday that it is written into our US law that it's for want of a better word perfectly acceptable to pierce the corporate veil on a foreign registered vessel for the purpose of figuring out who the beneficial owner is in the United States. The question I have for you on the stage, who's had experience here in San Diego, are these isolated instances, is the situation being changed or did we have a little foot shuffling yesterday and we're not addressing it.

Bill

There is a headquarters ruling that came out of US Customs in 1991 and I believe that is the basis. Now headquarters ruling is an independent opinion based on certain facts and circumstances. And it's rendered in writing and has been promulgated. Quite frankly it is can be carefully read and can be construed a couple of ways. One of the ways, unfortunately, happens to be the way our local Customs office has chosen to interpret it. And we believe it is incorrect. I have been dealing with some volunteer attorneys in New York, where they've been working directly with US Customs in an effort to try and get a clarification and a rejection of that interpretation. We've been at it about 18 months, it's gone back and forth and I know that's under way. I know that the people, I believe Peter Jago sitting right behind you, I know he's worked diligently, as have others in San Diego trying to get that interpretation modified. I don't believe it is universally accepted, I've talked with counsel in Florida,

I've talked with customs house brokers in Florida. They do not interpret it the same way. So obviously there is a difference of opinion. We just happened to be in the unfortunate corner of the world that I believe is rather myopic in its interpretation.

Eric

I would like to add to that that it's not a San Diego issue, this is a question of Federal law. So the fact that there's a local interpretation in San Diego doesn't really carry tremendous amounts of weight. It does create a tremendous amount of hassle and concern locally. But this is the only place that I think any of us are aware that there has been this interpretation. I personally believe that both the interpretation that was published and also what was said yesterday is unconstitutional, and we lawyers have bored each other talking about it. But I think there's pretty much uniform agreement among the attorneys here that what was said is wrong. The reality of it is, so what. You have to live with the potential problem and it's really, from what I'm hearing, and I'm on the outside looking in, a political solution that's required more than a legal one.

Fred

In the State of Washington I haven't seen the Coastguard try to penetrate the entity veil and try to look at the nationality of the beneficial owner.

[From the floor]

I guess my real question on the whole thing is you know, I look at the CFRs all the time, more instability and subdivision, that type of thing. But yesterday we heard a good litany of well, look up in the CFR, you can get on the website, you can do this and you can do that. How do I tell my clients who say hey, look, I'd like to come with this beautiful boat you just designed for me and visit you in San Diego but I hear there's a problem. What do I tell them?

Sam Brown

It's a little bit what I was going to talk about, west coast strategy. But I have some personal experience with this issue. And here's the way I see it. In San Diego in real fact the interpretation which I was unfortunately not here to listen to, yesterday, is not in fact the way that the law is being applied. Several years ago I took the opportunity to actually read every case, every statute, every interpretative opinion that had to do with the issue, because it was economically important that I do so. And—just in case anybody doesn't know, before I became the President and CEO and principal shareholder of Knight & Carver I practised law for 18 years—so what I'd looked at, I decided to go ahead and look it all up. I came up with an interpretation that was not consistent with the interpretation that was being forwarded and that culminated in a point of information notice which was published by the United States government which I think you can rely upon. And it has in fact been the practice in San Diego. So the simple answer is, if you take a look at the websites and find that point of information notice, our website, other websites, that is a document published by the United States and the interpretation is that if a vessel is here, in particular for our purposes, if a vessel is here for repair and maintenance there is no issue of going behind the corporation to the beneficial ownership for the purposes of excise tax or anything else. And the issue in that particular circumstances was Federal excise tax. Importation. And in my opinion that's the answer to the question. Unfortunately because people can get up and say something doesn't make it true. The real issue here is that we have had many large vessels at our docks, at our facility, for repairs and refit; we have never had a problem with this. We have always reassured our

customers that they won't have a problem; we have actually had the head of Customs and Border Protection call our clients and assure them that there wouldn't be a problem. And the problem has never occurred. So I think that a great deal of damage was done by making comments that are in fact not true and not consistent with actual documentation that's been published by the United States government as a result of the work that we did several years ago. So I was going to comment on this during my time. I'm commenting on it now but I wanted to make sure that everyone understood that. I'd be glad to make more comment on that. It's real important, it's obviously important to everyone in this room that relies upon this industry for a livelihood, and for the 200 people that we have working for us in San Diego today. And for the additional people we would like to hire. So that's just a short comment.

Eric

I think, you know, I've looked at the Port information notice here, it's June 9, 2005, if anybody wants to look it up. It's 2005-003. And what it does it actually skirts the issue. It says we can do it to you, we will hit you with the tax but we're going to interpret it differently. It says *foreign flag vessels arriving with the sole intent of receiving repairs or taking on dockside provisions are not considered to be dutiable and are not required to have a cruising licence. Foreign flag vessels arriving for repairs or provisions not in possession of a cruising licence are required to deposit their vessels' registration at the Customs house until departure.* Now. Practically speaking, to bring, if you go with this interpretation, or this exemption, which I don't think is based in law, I think someone just said it, then bring your boat and get it fixed. But don't take it out for a boat ride, don't sleep on it, because it says the *sole intent*. As an attorney, if I have a foreign flag vessel and I want to bring it in, what do I tell my client. Well the law is, there's no duty. The Customs officials sat here and said well there is duty. And then there's this information notice which is from the port, and not from Washington, which says well there is duty but we're going to carve out this exception based on we're just saying it. So be forewarned. I know it's uncomfortable and I know it's not right and I know it shouldn't be. But when Leticia comes up and knocks on the wheelhouse door and says give me your certificate and here's a bill, they're looking at me. And I really think it's critical that the local community don't rely on this but get the ruling, a real ruling, as to what it is.

Lance Savaria Seagull America

Like I mentioned before, coming from the commercial side, I've participated in many of the regulatory commission workshops in Washington with the Coastguards, for example the sub chapter and regulations that are coming, but there's two points that I think are very important to everyone here. The assumption that the Coastguard and the Customs agents actually know their job is a bit troubling. How is commercial industry addressing that? Well they have two ways. One is they have a grass roots outreach to Congress and they visit these representatives regularly and let them know the economic impact on their communities and on their constituents, which is very important to them. The second, which is on a day to day basis, which is very very important, is that although we had a Lieutenant Commander here yesterday and he was a very good person and I think his intentions are right, you really need to meet with the captain of the port, the Coastguard, on a regular basis and bring issues that are important to you to his attention. And work with them to clarify the bumps that are happening. They do have some leverage with the Border & Customs. Because their Border Customs people for example when they come on board will inspect your COFRs but it's generally under a memorandum of understanding. So they are working under the authority of the Coastguards permission. So if you would take time and find a group of people that represent the industry well, visit the captain

of the port, get them to know you on a very personal basis, you will find that a lot of your problems will be lessened. Thank you.

Martin

Alright. Thank you very much gentlemen for your time. We'll come back in 25 minutes after coffee for the final session, West Coast strategy.

There's a reminder, if anyone hasn't yet signed up for the shark dive tomorrow morning, I believe that Leticia has been invited to go along too from CBP..
