Almost immediately after being installed as President, I found myself holding the Saints’ Lombardi Trophy from Super Bowl XLIV. This thrill was provided by Rita Benson LeBlanc, who was the keynote speaker at our annual meeting. She shared her perspectives on New Orleans and the New Orleans business environment, along with some great stories about the Saints and Hornets. She also brought the Lombardi Trophy and graciously stayed after the meeting to meet with our members and take photographs. It capped off a memorable meeting that closed out an excellent FBA year.

Within a few weeks of the annual meeting, I again found myself holding a well deserved trophy for another hardworking team – our very own chapter. At the FBA National Convention in San Diego, I accepted the Presidential Excellence Award for the New Orleans Chapter. This is the highest award a local chapter can receive based upon its work in providing outstanding bench-bar activities, CLEs, social functions, and philanthropies. Let me take this opportunity to again thank Judge Engelhardt, our Board, and our Younger Lawyers Division for their hard work this past year. Their efforts led to great programs and made our organization shine.

Now the new FBA year is upon us, and this year’s Board of Directors is already working hard to make it another banner year. First, I need to highlight our Annual Federal Judges’ Reception to be held on Wednesday, November 7th from 5 to 8 p.m. This year we are excited to host the event at the Ogden Museum of Southern Art. The reception will take place on the 5th floor terrace and in the galleries on the 4th and 5th floors. So please plan to join us for great local food, music, drink, and art.

Also on the horizon is another flagship FBA program, the annual Malcolm Monroe Seminar. This seminar will be held Thursday, December 6th. It will provide a full day of CLE, including professionalism, ethics, and law office management. It will also give all attendees the opportunity to be admitted and sworn into all three United States District Courts of Louisiana and the United States Fifth Circuit Court of Appeals.

And while looking ahead at the calendar, I want to remind you to note the FBA Holiday Party. This year’s party will be held on the evening of December 6th. All FBA members are welcome to attend this terrific party with food and drinks on us!

These are by no means our only upcoming activities and programs. There will be Lunches with the Court, one-of-a-kind CLEs, the Rubin Symposium, Last Chance CLEs, Cocktails with the Court, philanthropies, and more. I invite you and encourage you to see what our chapter is doing and how you can participate. In addition to our quarterly Advocate, you can visit us online at nofba.org. I am looking forward to a great year.
A NEW CHIEF JUDGE AT THE FIFTH CIRCUIT

On October 1, 2012, Judge Carl E. Stewart of Shreveport, Louisiana, became the Chief Judge of the United States Court of Appeals for the Fifth Circuit, which hears appeals from federal courts in Louisiana, Texas, and Mississippi. Judge Stewart succeeded Judge Edith H. Jones, who completed her service as the Chief Judge.

Judge Stewart received his undergraduate degree magna cum laude from Dillard University in 1971 and his J.D. from Loyola University New Orleans School of Law in 1974. Immediately following admission to the Louisiana Bar Association in October 1974, he entered the United States Army, duty stationed at Fort Sam Houston in San Antonio, Texas, and served as a Captain in the Judge Advocate General Corps until October 1977.

Following his military service, Judge Stewart served as a Staff Attorney with the Louisiana Attorney General’s Office, Assistant United States Attorney, Special Assistant City and District Attorney, and private practitioner. In 1985, he was elected as a District Judge for the First Judicial District Court of Caddo Parish, Louisiana, and was reelected without opposition five years later. In 1991, again without opposition, he was elected to the Louisiana Second Circuit Court of Appeal.

Judge Stewart is National Vice President of the American Inns of Court Foundation and a member of the National, Federal, Louisiana and Shreveport Bar Associations, and the Federal Judges Association. He is the immediate past Chair of the Advisory Committee on the Federal Rules of Appellate Procedure of the Judicial Conference of the United States, a post to which he was appointed by Chief Justice of the United States William H. Rehnquist and later extended by Chief Justice John G. Roberts, Jr. He has served as a member of the Fifth Circuit Judicial Council and for seven years chaired its Space and Staffing Committee, which oversees resources for federal building construction. As Chief Judge of the Circuit, Judge Stewart will sit on the Judicial Conference of the United States, which establishes policies for federal courts nationwide.

STATEMENT FROM CHIEF JUDGE STEWART:
“I am honored to serve as Chief Judge of the Fifth Circuit and to have the opportunity to work with the 23 circuit, 107 district, 28 bankruptcy, and 65 magistrate judges during the next seven years. I am sure that it will be a period of many challenges and opportunities.”

SAVE THE DATES FOR UPCOMING EVENTS

CRIMINAL CONCERNS - The Basics of and Tips for Practicing Criminal Law in Federal Court
Tuesday, November 6, 2012
2:00 - 4:00 p.m.
Courtroom B-407 • Hale Boggs Federal Bldg.

ANNUAL FEDERAL JUDGES' RECEPTION
Wednesday, November 7, 2012
5:00 - 8:00 p.m.
Ogden Museum of Southern Art

MALCOLM MONROE SEMINAR
Thursday, December 6, 2012
8:00 a.m. - 5:00 p.m.
Pan American Life Center, 601 Poydras St.

YLD HOLIDAY PARTY
Thursday, December 6, 2012
5:30 - 8:00 p.m.
Great Hall of the U.S. Court of Appeals for the Fifth Circuit

Be sure to check future issues of The Advocate and monitor our website, www.nofba.org, for exact dates.
THE FEDERAL BAR ASSOCIATION PRESENTS:

CRIMINAL CONCERNS
THE BASICS OF AND TIPS FOR PRACTICING
CRIMINAL LAW IN FEDERAL COURT

TUESDAY NOVEMBER 6, 2012
2:00 - 4:00 p.m.
Courtroom B-407
Hale Boggs Federal Building
500 Poydras Street, New Orleans, Louisiana

United States Attorney Jim Letten, Federal Public Defender Virginia Schlueter, and Chief Probation Officer Kito Bess discuss the process of a criminal prosecution in federal court from the decision to bring charges to the resolution of the case, their respective roles in the process, and tips for working on criminal cases in federal court.

Approved for 2 hours of CLE credit, including 1 hour of professionalism

Registration Form

Name ___________________________________________________________________________
Firm/Employer ____________________________________________________________________
Address _________________________________________________________________________
Phone __________________________________________________________________________
Email __________________________________________________ Fax______________________

Enclosed Fee_________ Cost: $30 for FBA members if paid by Nov. 2/ $40 after Nov. 2
$60 for non-FBA members if paid by Nov. 2/ $70 after Nov. 2
$20 for government attorneys

Please return this form with payment to:
Camille Zeller, Attorney Conference Center
500 Poydras Street, Room B364
New Orleans, LA 70130
Phone: 504-589-7990 Fax: 504-589-7995
Email: fbano@bellsouth.net

Please make checks payable to the FBA.
NEW MEMBERS

The Federal Bar Association welcomes its new members:

Amenah M. Abdelfattah
Matthew E. Acuff
Michael P. Arthur
Addie D. Arvidson
Slattery Marino & Roberts
Nicole M. Babb
Victoria J. Bagot
Skylar C. Barbosa
Lauren C. Barrera
Rachel E. Bell
Blake M. Bernard
Alexander Campbell
U.S. District Court for the Eastern District of Louisiana
Trey W. Carter
Eric S. Charleston
Gieger Laborde & Laparouse LLC
Tulio D. Chirinos
Lindsey H. Chopin
Benjamin S. Clark
Jeffrey A. Clayman
James Ryan III & Associates
Jeff B. Clement Jr.
Jorge L. Costales
Joshua O. Cox
Jacob C. Credeur
Ogletree Deakins PC
Jennifer Crose
Becnel Law Firm, LLC
Blair A. Crunk
Dominik J. Cvitanovic
Jessica C. Engler
Duane A. Evans
U. S. Attorney’s Office
Abigayle C. Farris
Stone Pigman Walther Wittmann, L.L.C.

Paul C. Fleming
Fleming Law Firm
Caroline E. Frilot
Gretchen Fritchie
Kathleen C. Gasparian
Ware Gasparian
Keren E. Gesund
Sessions Fishman Nathan & Israel LLC
Laura M. Gillen
Soren E. Gisleson
Herman Herman & Katz
Nicolas A. Gonzalez
Lindsay M. Graham
Shapiro & Daigrepont LLC
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Davillier Law Group
Gerald J. Hampton
Cassandra R. Hewlingo
Mark C. Holden
Mary E. Jeanfreau
Susan Keller-Garcia
Fowler Rodriguez Valdes-Fauli
Sharika L. King
Heather L. Kirk
Alexander C. Landin
Joseph B. Landry
Kaile A. LeBlanc
Laurence D. LeSueur
Heather S. Lonian
Stone Pigman Walther Wittmann, L.L.C.
Ryan O. Luminais
Sher Garner Law Firm
Sam M. Lyddan
Kara K. McQueen-Borden
Anne-Marie Mitchell
Stone Pigman Walther Wittmann, L.L.C.

Sona Mohnot
Thomas K. Morrison
Phelps Dunbar LLP
Stephanie N. Murphy
U.S. District Court for the Eastern District of Louisiana
Fabian M. Nehrbass
Krystal D. Norton
Jonathan S. Ord
Samuel E. Perrone
Sally B. Richardson
Tulane University
Alexandra E. Rossi
David Samuels
John C. Scarborough
Elliot W. Scharfenberg
Elizabeth B. Schilling
Teua Sempel
William W. Sentell III
Pugh Accardo et al. LLC
Patrick K. Shockey
Matthew B. Smith
John B. Stanton
Jayne E. Wabeke
Michael F. Walther
Walther Law PC
Reilly K. Ward
Ashley M. Wheelock
Edward M. Wilhelm
Christopher L. Williams
Josphet T. Wilson
Joshua T. Wood
Timothy J. Young
The Young Firm APLC

If you would like to become a member of the FBA, or know someone who would like to become a member, please call Celeste Coco-Ewing, Membership Chair at (504) 589-9725, or Camille Zeller at 589-7990 for more information.
Each year the Younger Lawyers Division of the Federal Bar Association, New Orleans Chapter, hosts the Malcolm W. Monroe Federal Practice Seminar. Malcolm W. Monroe was president of both the national Federal Bar Association and the New Orleans Chapter and a leader in the New Orleans legal community. It is in his honor that we present this seminar each year.

The Malcolm W. Monroe Federal Practice Seminar offers attorneys a unique opportunity to fulfill continuing legal education requirements and, at the same time, obtain admission to all federal courts in Louisiana, including the U.S. Court of Appeals for the Fifth Circuit, in a joint admission ceremony held at the end of the seminar.

In addition, by registering for the seminar, attendees receive a year-long membership in the Federal Bar Association, an organization dedicated to improving the quality of practice in federal courts and facilitating interaction and communications between the bar and the judiciary. The many benefits of Federal Bar Association membership include invitations to Federal Bar Association activities and functions, such as our popular Lunch with the Court program, our annual Federal Judges’ Reception, and the YLD Holiday Party. Special member rates for CLE programs, complimentary subscriptions to national and local Federal Bar Association publications, and numerous opportunities to interact with members of the federal bench and bar are additional benefits.

Speakers for this year’s program include: Hon. Jay Zainey, Dane Ciolino of Loyola University School of Law, Buddy Stockwell of the Louisiana State Bar Association, Dana Douglas of Liskow & Lewis, Ernie Svenson of the Svenson Law Firm, Sara Mouledoux of Gordon Arata, Brian Capitelli of Capitelli & Wicker, Michael DePettrillo of Jones Walker, William Sentell of Pugh Accardo, and Corey Dunbar of the Pivach Law Firm.

The program will provide seven hours of Law Practice Management, Professionalism, and Ethics credit.

The registration deadline is November 16, 2012.

If you are interested in attending this year’s Malcolm Monroe Federal Practice Seminar, please contact Camille Zeller at the Attorney Conference Center (589-7990), or visit the website at www.nofba.org. The packet of court enrollment forms must be completed and received at the Attorney Conference Center no later than November 16, 2012.

Immediately following the seminar, please join us for the

YLD HOLIDAY PARTY
Thursday, December 6, 2012
5:30 - 8:00 p.m.
Great Hall of the U.S. Court of Appeals for the Fifth Circuit

It will be an enjoyable evening with esteemed members of the Federal Judiciary.
On August 16, 2012, the New Orleans Chapter of the Federal Bar Association held its Annual Meeting and Luncheon in the Ballroom at the Westin Hotel in the French Quarter. The attendees were treated to lunch, chapter business, an engaging talk by Rita Benson LeBlanc, and a surprise visit by some impressive hardware.

The Honorable Kurt Engelhardt, now the immediate Past President, performed as the master of ceremonies. Judge Engelhardt informed the members that we are still the largest FBA Chapter in the nation. Judge Engelhardt looked back on his year as the President of the Chapter, and he commended the Board of Directors for the work that they did in furtherance of the mission of the FBA over the past year.

The Honorable Sarah S. Vance, Chief Judge of the United States District Court for the Eastern District of Louisiana, provided an update on the state of the Eastern District of Louisiana.

In addition to chapter business, Judge Engelhardt presented the President’s Award, an annual award that recognizes a lawyer for community leadership outside the practice of law. This year’s recipient was Thomas G. Fierke. Mr. Fierke was recognized for his contributions via the “Employer Support of the Guard and Reserve” (“ESGR”), a Department of Defense volunteer organization that seeks to promote a culture in which all employers support and value the military service of their employees.

Next, Virginia Schlueter presented the John R. “Jack” Martzell Professionalism Award for outstanding professionalism in the practice of law to John Wilson Reed of Glass & Reed. Mr. Reed was recognized as a long-standing and shining example of professionalism. Mr. Reed was also recognized for his mentoring of young lawyers as a faculty member and in the courtroom.

Donna Phillips Currault presented the final award, the Camille F. Gravel, Jr. Pro Bono Award, to Judy Perry Martinez, Vice President and Chief Compliance Officer at Northrop Grumman Corporation. Ms. Martinez was recognized for her years of pro bono work, including serving as the first chair of the New Orleans Pro Bono Project, serving as lead counsel in post-conviction capital habeas proceedings, and her extensive pro bono work with the American Bar Association.

Following the awards and the election of officers and directors, Judge Engelhardt passed the gavel to Eric Nowak, and Mr. Nowak assumed the role of our Chapter President. Other officers elected were Wendy Hickok Robinson, President-Elect, Christopher J. Alfieri, Treasurer, Kelly T. Scalise, Recording Secretary, Celeste Coco-Ewing, Membership Chair, and Amy S. Malish, Younger Lawyers Chair.

(cont’d on next page)
After the formal business activities, Ms. Rita Benson LeBlanc gave an inspiring keynote speech. Ms. LeBlanc’s enthusiasm for the New Orleans community is evident and infectious. Ms. LeBlanc surprised the attendees by bringing the Vince Lombardi Trophy from Super Bowl XLIV to the Ballroom. Each attendee was given the opportunity to take a photo with Ms. LeBlanc and the Vince Lombardi Trophy.

The inclusion of a championship trophy at this year’s event was a pleasant surprise to the attendees, and the trophy further supports the notion that our New Orleans Chapter is a champion-caliber Federal Bar Association.
Chapter members enjoy the Luncheon

Chief Judge Vance reports on the state of the EDLA

Attendees during the keynote address

Judge Feldman addresses the attendees

Douglas Moore, Rita Benson LeBlanc, and the Vince Lombardi Trophy
The Younger Lawyers Division of the Federal Bar Association’s New Orleans Chapter hosted an Inside Chambers CLE on August 2, 2012. The CLE was presented by several current law clerks, including Annie Miller (Judge Feldman), Jason Johanson (Magistrate Judge Knowles), Pam Starns (Judge Zainey), Kathy Manchester (Magistrate Judge Wilkinson), Megan Dupuy (Judge Lemmon), and Erin Arnold (Bankruptcy Judge Brown). The law clerks discussed effective strategies for practicing in federal court, including insightful tips for properly submitting, briefing, and arguing motions. Many of the attorneys who attended commented afterwards that they found the Inside Chambers CLE to be one of the most useful CLE presentations they had ever attended.
Please help us honor our judiciary and celebrate their contributions to our community.

Federal Bar Association
New Orleans Chapter’s
Annual Federal Judges’ Reception
Cocktails and Buffet Dinner

Wednesday, November 7, 2012
5:00 p.m. - 8:00 p.m.
Ogden Museum of Southern Art • 925 Camp Street

R.S.V.P. to 504-589-7990

If you are interested in attending this year’s Annual Judges’ Reception, please forward your completed registration form to Camille Zeller at the Attorney Conference Center, 500 Poydras Street, Room B-364, New Orleans, Louisiana 70130. Please contact Camille if you are interested in participating as a sponsor of this event.

FEDERAL BAR ASSOCIATION – NEW ORLEANS CHAPTER
ANNUAL FEDERAL JUDGES’ RECEPTION • WEDNESDAY, NOVEMBER 7, 2012
Ogden Museum of Southern Art • 925 Camp Street • 5:00 - 8:00 p.m.

Registration Form

Name (Individual or Sponsoring Firm):

Address:

Phone: _______________ Fax: _______________ E-mail: _______________

A. No. of persons attending: ____ at $50.00 per person, or
   ____ at $45.00 per person (federal law clerks and employees)

B. Sponsorships: ___ Platinum ($1,250 – 10 tickets)
   ___ Gold  ($750 – 5 tickets)
   ___ Silver  ($500 – 2 tickets)

   Total enclosed: $ _______________

SPONSORS: Please submit a separate list of the persons who will attend the event.

NOTE: Please make checks payable to:
Federal Bar Association
LUNCH WITH THE COURT PROGRAM

The Younger Lawyers Division of the FBA continues to organize monthly lunches with members of the local federal bench through its “Lunch with the Court Program.” Judges Mary Ann Vial Lemmon and Susie Morgan hosted the July and August Lunches with the Court. Both judges graciously donated their time and provided invaluable advice to the attendees.

LUNCH WITH JUDGE LEMMON

Judge Lemmon answered questions from the guests, including her perspective on the effectiveness of aggressive lawyering and the usefulness of Rule 11 sanctions. She also arranged a tour of her courtroom and a demonstration of the electronic presentation equipment for lawyers in attendance. Guests enjoyed a jury’s-eye view of the court and benefited from Judge Lemmon’s thoughts on effective use of technology in the courtroom.

LUNCH WITH JUDGE MORGAN

Judge Morgan generally discussed the Senate’s recent confirmation of her nomination as a district court judge. She also shared memories of her unique experiences as a practitioner prior to taking the bench. The younger lawyers in attendance particularly benefitted from Judge Morgan’s suggested “dos and don’ts” for lawyers practicing in federal court.
The National Federal Bar Association held its annual meeting in San Diego on September 20-22, 2012. The New Orleans Chapter sent a strong contingent that was recognized throughout the meeting. After a national election, Matt Moreland was installed as National Treasurer, and Patrick O’Keefe was sworn in as a National Director. Both Matt and Patrick are distinguished past Chapter Presidents who have taken on active leadership roles in the national organization. Likewise, our Chapter Secretary, Kelly Scalise, was selected as the Chair of the National Younger Lawyers Division, and Chapter Director Donna Currault was elected Treasurer of the National Labor and Employment Law Section. Former Chapter and National President Ashley Belleau also was elected to be a Director of the National FBA Foundation – the 501(c)(3) philanthropic arm of the national organization. Finally, President Eric Nowak and President-Elect Wendy Hickok Robinson represented the Chapter as National Delegates, and past Chapter President Barry Ashe attended the meeting and petitioned to serve as a Circuit Vice President for the national organization.

In addition to being seen as a Chapter that provides national leadership, our Chapter was also recognized for its successful local activities. The New Orleans Chapter received the highest award possible for chapter activities, membership, and administration – the Presidential Excellence Award. And The Advocate, our quarterly newsletter, received the highest distinction by receiving an Outstanding Newsletter Recognition Award.

Additionally, our Chapter had the honor of seeing one of our own members receive an individual award for distinguished service. The Honorable Jay C. Zainey received the Elaine R. “Boots” Fisher Award. This prestigious award recognizes exemplary community, public, and charitable service by a member of the Federal Bar Association. Judge Zainey received this year’s award for his work in creating and growing the SOLACE (Support of Lawyers/Legal Personnel - All Concern Encouraged) program. The SOLACE program allows the legal community to reach out in meaningful and compassionate ways to judges, lawyers, court personnel, paralegals, legal secretaries, and their families who experience deaths, illnesses, sickness, injury, or hardship. The program has been so successful in Louisiana that several other FBA chapters are actively setting up SOLACE programs in their own areas.

Congratulations to all.
Trials and Tribulations is your quarterly summary of matters recently tried in the United States District Court for the Eastern District of Louisiana. Organized by topic, the summaries below are compiled by the Editorial Board from Verdict Reporting Forms provided by the Court.

**CIVIL RIGHTS**

➤ Racial Harassment

In Rita Brown v. Jabez Sports Clips, LA, LLC, plaintiff, a hair stylist for defendant’s Houma store, was hired in April 2008 to be a part of the store’s grand opening team. Plaintiff’s employment ended in January 2009, when defendant considered her to have voluntarily abandoned her employment. Plaintiff subsequently filed suit alleging retaliatory discharge, racially discriminatory hiring, and racial harassment. At the time of trial, only her racial harassment claims remained.

After approximately thirty minutes of deliberation, an eight-person jury found that defendant’s employees did not subject plaintiff to racial harassment. Judgment therefore was entered in defendant’s favor.

Docket No.: 10-852, Section H (Jury trial held on September 24-25, 2012)

**CONTRACTS**

➤ Louisiana Products Liability and Redhibition

In Jack B. Harper Contractor, Inc. v. United Fiberglass of America, Inc., plaintiff had entered into a contract with the Louisiana Department of Transportation and Development to install a multi-cell conduit system along the raised portions of I-10 and I-310. Plaintiff purchased the conduit from United Fiberglass. Prime Conduit, Inc. designed the conduit system and manufactured the PVC components of the system. United Fiberglass manufactured the fiberglass components and then assembled the system pursuant to Prime Conduit’s design. Plaintiff claimed that the conduit system was defective and that the defective system caused delay in the project.

An eight-person jury apportioned fault among the parties as follows: 53% to plaintiff; 35% to defendant United Fiberglass; and 12% to defendant Prime Conduit. The jury awarded a total of $1,915,696.00 in damages.

Docket No.: 11-20, Section H (Jury trial held June 25-26, 2012 and July 2-12, 2012)

➤ Redhibition

In David and Laura Edwards v. LaMesa RV Center, Inc. and Winnebago Industries, Inc., plaintiffs claimed that their 2007 Winnebago Adventurer motor home contained redhibitory defects. They purchased the motor home in 2008 from LaMesa RV Center, Inc., an RV dealership in Mesa, Arizona. Shortly thereafter, they reportedly noticed that the motor home’s factory-installed air conditioning units produced excessive noise and vibrations, which caused them to be unable to sleep. After a series of unsuccessful attempts to have the air conditioning system repaired, plaintiffs asserted claims in redhibition against the dealership that had sold the motor home to them, as well as against the manufacturer of the motor home, Winnebago Industries, Inc. Plaintiffs sought to rescind the sale and to recover damages.

After approximately 30 minutes of deliberation, the jury found that the motor home did not contain a redhibitory defect and rendered a defense verdict.

Docket No.: Middle District case 09-826, Section J (Jury trial held July 30-31, 2012)

**CRIMINAL**

➤ Sex Trafficking of Children; Coercion and Enticement of a Minor to Engage in Prostitution or Unlawful Sexual Activity

In United States v. Benson Coriolant, the Government alleged that defendant met the minor, R.V., in 2008, when she was 14 years old. Soon afterwards, the defendant began having sex with the minor, and he recruited her to work as a prostitute. The Government argued that the defendant taught the minor how to advertise and how much to charge; that
he coached her on how to perform various sexual acts; that he made her account for all of her money; and that he provided her with drugs to keep her happy.

R.V. testified that she engaged in prostitution of her own free will. She stated that the defendant was her boyfriend and not her pimp. She denied being a victim and testified that the defendant did not coerce or entice her to do anything.

The jury deliberated for less than four hours and found the defendant guilty on all counts: conspiracy, sex trafficking of children, coercion and enticement of an individual to engage in unlawful sexual activity, and coercion and enticement of a minor to engage in prostitution.

**Docket No.: 11-241, Section I (Jury trial held September 17-20, 2012)**

### TORTS

#### Jones Act – Personal Injury

In *Jonathan Moore v. Enterprise Marine Services, LLC*, the plaintiff, a member of the crew of the M/V XENA, claimed that he was injured when he fell down some stairs. Plaintiff alleged that the stairs had become slippery after he cleaned the area with Pledge. He filed suit under the Jones Act seeking to recover damages for the defendant’s alleged negligence under the Act and/or for the alleged unseaworthiness of the XENA. Plaintiff also asserted his right to maintenance and cure, including future medical expenses and past and future lost wages.

The defendant answered and denied liability, arguing that plaintiff’s injuries were an aggravation of a preexisting condition, that he was negligent in failing to use the stairs properly, that the vessel was properly equipped, that plaintiff failed to mitigate his damages, and that he was capable of returning to work.

A six-person jury rendered judgment in favor of plaintiff on his Jones Act claims but in favor of defendant on the unseaworthiness claim. The jury also found both parties to be negligent and allocated 80% of fault to plaintiff and 20% to defendant. The jury then awarded damages as follows: pain and suffering, $60,000.00; medical expenses, $12,000.00; past lost wages, $30,000.00; future lost wages, $20,000.00; future maintenance, $4,000.00; and future cure, $12,000.00.

**Docket No.: 11-2504, Section L (Jury trial held July 30-August 1, 2012)**

#### Torts to Land

Plaintiffs in *Aertker, et al. v. Placid Holding Company, et al.* were the undisputed owners of certain property located in LaSalle Parish, Louisiana. In 1981, the lessee of plaintiffs’ land granted a right-of-way across plaintiffs’ property. The right-of-way agreement authorized the construction of an 8-inch wide crude oil pipeline across 1.214 miles of plaintiffs’ property. Plaintiffs were not parties to the right-of-way agreement between the lessee and defendants, and the lessee was not authorized to grant the right-of-way.

Defendant Placid Holding Company used the pipeline to transport oil across plaintiffs’ land from 1982 until 2000. On December 1, 2000, Placid sold the pipeline to Central Louisiana Energy Pipeline Co. (“CLEPCO”). In 2005, plaintiffs were put on notice that the pipeline had been built on their land. Thereafter, plaintiffs sued CLEPCO in 2006, claiming that they were the true owners of the pipeline under the doctrine of accession. On May 1, 2007, plaintiffs settled with CLEPCO and granted it a right-of-way over the land.

On October 6, 2007, plaintiffs filed suit against Placid, the original owner of the pipeline. Plaintiffs claimed that they were the true owners of the pipeline from 1981 until 2000, under the doctrine of accession to immovables. As a result, plaintiffs asserted they were entitled to the profits that Placid earned from its use of the pipeline. Alternatively, plaintiffs claimed that the pipeline constituted a continuing tort to their property and sought the same measure of damages.

After a bench trial, the Court found in favor of the plaintiffs on the continuing tort claim. The Court held that the use of the pipeline across plaintiffs’ land constituted a continuing trespass from 1981 until plaintiffs granted the right-of-way to CLEPCO in 2007. The Court awarded plaintiffs $96,145.33 in damages, which was the percentage of Placid’s profits attributable to the illegal use of the right-of-way across plaintiffs’ land.

**Docket No.: Middle District case 07-473, Section J (Non-jury trial held June 21, 2012)**
Interested in becoming a member of the Federal Bar Association?

Contact:
Federal Bar Association
1220 North Fillmore St., Suite 444
Arlington, VA 22201
(571) 481-9100
Fax (571) 481-9090
www.fedbar.org

or

Membership Chair
Celeste Coco-Ewing
c/o Attorney Conference Center
500 Poydras Street, Room 364
Hale Boggs Federal Building
New Orleans, LA 70130
(504) 589-7990

Membership fee includes both national and chapter membership in the FBA. You can apply online at www.fedbar.org.

EDITORIAL BOARD:
RALEY ALFORD, KATHRYN KNIGHT, AND STEVE GRIFFITH

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