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Issues Arising from Further Commercial Development of the Great Lakes

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ISSUES ARISING FROM FURTHER COMMERCIAL DEVELOPMENT OF THE GREAT LAKES

Session Chair – Bill Hearn
United States Speaker – Rose Ann DeLeón
Canadian Speaker – Georges Robichon

INTRODUCTION

Bill Hearn

MR. HEARN: Well, let us get started. Good afternoon. My name is Bill Hearn. I am a partner at McMillan in their trade and transportation group.1 I also chair our public policy and government relations group.2 McMillan is a Canadian law firm with offices in Toronto, Montreal, and Calgary. Indeed, our firm's brand south of the border in North America is America's Canadian law firm.3 So it is my privilege and pleasure to chair this panel today entitled "Commercial Development of the Great Lakes."

I am going to play with the title a little bit, because I cannot think of the Great Lakes without the Saint Lawrence in the system, the system that has been dubbed lately and rebranded as Highway H2O.4 That is the Saint Lawrence River, the Saint Lawrence Seaway, and the Great Lakes, a region covering 2,400 miles, 3,700 kilometers of navigable waters, lakes, canals, ports, and locks.5 The infrastructure investment in the Seaway has brought 2.3 billion tons of cargo worth more than $350 billion dollars in the last fifty years.6 So we are going to talk not so much about commercializing that; we are already

2 See id.
5 See id. at 19.
6 See id. at 20.
there. We are talking about further commercializing this asset, this asset that has also been called America's fourth sea coast.7

We will talk about shores and shipping, Canada-United States ferry projects, and container port expansion, among others. We are fortunate to have two eminently qualified speakers. Let me introduce first Rose Ann DeLeón. Her bio, of course, is in the conference materials, but let me just draw your attention to a few highlights. Rose Ann is vice president of strategic development for the Cleveland County Port Authority.8 Actually, I did not want to pronounce that word that I think means "crooked river."

MS. DeLEÓN: Cuyahoga.

MR. HEARN: Okay. Thank you. She is responsible for strategic planning, project management for major projects, government relations with the city, county, state, and federal governments, and I can attest that is a big part of her work because we could not connect all week because she was in Washington.9 She also manages and supports the Port Authority's tax levy campaign, and I can tell you that is a power that many of my Canadian ports would dearly love to have.10 She also manages its foreign trade zone.11 Rose Ann is a member of the American Association of Port Authorities, which, in fact, held their annual meeting last June in my hometown, Toronto.12

Rose Ann is a graduate of Baldwin Wallace College and Cleveland State University, and she is currently pursuing her PPM, which, for those not in the know, is the Professional Port Manager's certification through the American Association of Port Authorities (AAPA).13

We also welcome Georges Robichon. His bio is also in the materials, but let me give you some highlights. Georges is senior vice president and general counsel at Fednav.14 That is essentially an international carrier, Canada's largest dry bulk ocean going, ship owning, and chartering, group.15

As I look through your bio, Georges, I cannot help but notice, like the Canada-United States Law Institute, you are celebrating what must be your

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9 See id.
10 Id.
11 Id.
12 Id.
13 Id.
twenty-fifth year at Fednav.\textsuperscript{16} He is responsible for defending that group's corporate commercial and financing legal requirements as well as the group's Government relations.\textsuperscript{17} Georges worked very closely with my partner in McMillan, Peter Cathcart, for several years in the commercialization of the Saint Lawrence Seaway and through the user group the establishment of the management corporation that I guess now is past the twenty-first year agreement.

Georges is a founding member of the Government and chair of the Government's committee of the Saint Lawrence Seaway Management Corporation from its creation, as mentioned, from July of 1998 to August 2006.\textsuperscript{18} He also has been actively involved for years in the aquatic invasive species and ballast water issues in the Great Lakes. Georges is a member of the Ontario and Quebec bars, and Georges graduated from the University of Ottawa and the London School of Economics and Political Science.\textsuperscript{19}

The format for this session is essentially each speaker will speak for twenty minutes, and then we will open it up for questions from the floor. I am going to ask Rose Ann to start, and Georges will follow. Thank you.

**UNITED STATES SPEAKER**

\textit{Rose Ann DeLeón}\textsuperscript{*}

**MS. DeLEÓN:** Thank you and good afternoon everyone. I am very happy to be here with you today, and as was said in the introduction, I want to


\textsuperscript{17} \textit{Id.}

\textsuperscript{18} \textit{Id.}

\textsuperscript{19} See generally \textit{Id.} (stating that Mr. Robichon holds a masters in law from the London School of Economics and Political Science).

* Rose Ann DeLeón is vice president of strategic development for the Cleveland-Cuyahoga County Port Authority. She joined the Port Authority in 1993 and is responsible for strategic planning, project management of major projects, including the Trans-Erie Ferry Feasibility Study and Implementation Project, intergovernmental relations with city, county, federal and state governments, community relations and public relations. She manages the port authority’s tax levy campaign and Foreign-Trade Zone program. Prior to her current position, Ms. DeLeón was senior development finance manager for the port authority and managed the financing initiatives of its Development Finance Group, securing financing for northeast Ohio projects totaling $500 million during her tenure with the group. Ms. DeLeón is a member of the American Association of Port Authorities and serves on their Planning and Research Committee.
talk a bit about the port of Cleveland today and some of our initiatives that we are working on, especially as they relate to our strategic plan and the diversification of cargo that comes to our Port Authority.

For those you not familiar with the Port of Cleveland, we are located downtown just north of Case Western Reserve University's campus. We are considered a 'bulk and break bulk port' because of the cargos that we carry. Our break bulk is typically steel and some heavy machinery through the Seaway International. Then we have a lot of bulk materials: iron ore, limestone, cement that comes through the lakes. That is the inter-lake and domestic cargoes. One of the areas we are looking at and that the Port of Cleveland has actually taken a bit of a lead on is short sea shipping and bringing both containers through the Seaway and also short sea shipping across the lake with Canada or inter-lake with other parts of the Great Lakes.

As I explained, our port is downtown, and several years ago the City of Cleveland looked at it, the entire lakefront to see how they could improve it, how they could make it more friendly, and get people to the waterfront, and they determined that they would like to move the Port Authority.

We sit on the east side. If you see the river in the middle, the right side of the screen is the east side port. That is where our international dock operations are, and it is about 110 acres, and those are the facilities they would like moved. Over the last several years, we have been looking at where can we move? Where should we move? And, does it make actual sense to move? After that, we determined that if we move, we will move just to the east, just to the other side of Burke Lakefront Airport, just several miles to the east, which you see there on kind of the rectangular section would be the new port facilities at East 55th Street and the waterfront. It would actually be built by the Army Corps of Engineers as a dike disposal facility, and then as it is built in phases, the port would move on there, and end phases would move off our downtown property so we could redevelop the downtown property.

In doing that, however, in this day and age, just picking up the port and moving, we probably are the only port in the United States that is moving at this time or even contemplating moving. But our port, 110 acres, moving it,
creating 200 acres is a size of most larger ports, where just a terminal would be, but for the size of our port, for the City of Cleveland, it is actually quite an undertaking and something that we are studying quite a bit.

This is something that will take hundreds of millions of dollars to happen. Well, land creation is estimated to be about $300 million dollars, and that is before infrastructure connections to it. And for the community to look at spending that kind of money, whether it comes from port, locally, state, federal, or even some private dollars, what is the reasoning for that? What makes sense?

What we believe makes sense is sort of a green area that you see there, and we will call it the international trade district. This is an area of older industrial Cleveland. The green area encompasses about 1,100 acres. It is where old Cleveland manufacturing was done.

It is in one of the most distressed areas of the city, and what we would like to do is, if we build a new port, work with the city to develop that adjacent land area into a new center for attracting manufacturing, attracting logistics, attracting new business into Cleveland, so that the port move is not about a port moving, but it is about economic development for a distressed city.

As we do that and we are doubling the size of the land, we have to look at new opportunities of what the port can do to attract businesses. We think that looking at short sea shipping and seeing if we could bring containers from the East Coast directly into Cleveland versus having them come to a United States East Coast port on a train or a truck, will make a lot of sense for our company. It would hopefully give them a competitive advantage. We think it would be faster and cleaner. We hope it would be cheaper too.

As we all know, for anyone who lives in the Great Lakes area and the Seaway area, the reason that we are successful, the reason we were built here originally was because we are on the water, and our water connects us through the Saint Lawrence Seaway to the rest of the world. It is amazing to me that most people in the United States do not really understand that; that we are on the coast, and we are connected by the Seaway to the rest of the world, so the business we do at our port and most Great Lakes ports is international. We have international shipping as well as the inter-lake shipping.

For Cleveland, our connections would be through the Seaway, and we would hope it would be either Montreal or possibly Nova Scotia. We would need deep water or what we would consider an East coast port, and ships would come into there, the large ships that bring international trade that are

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the big container ships. We would have stuff that is bound for this area of the country transshipped, put on to a smaller vessel, a vessel that can come through the Seaway that has size restrictions and come directly to Cleveland to service our market.

I wanted to put up there the definition of short sea shipping. It is defined as a commercial water point transportation that does not transit an ocean. So they said everything that comes into the United States from the rest of the world comes across the ocean. We are proposing to put it on a smaller vessel and bring it directly in, thereby relieving congestion.

For example, if you are taking trucks off the highways, you are lessening the burden on the road systems, and you are alleviating congestion at critical choke points. A secondary effect of short sea shipping would be a reduction of air pollution and fuel consumption that all those trucks and trains are presently taking today. What we would like to see in the United States, is short sea shipping becoming a part of the national transportation system. Short sea shipping is nothing new. It happens in the rest of the world. In fact, it is common place. Probably one of the few places it is not common is here in the United States, and there are a number of reasons for that. Here in the United States, we have a fantastic roadway system. Everything is put on the roads.

We do not need to put it on the water, even though that is where things started probably back in the 1940s and 1950s when there was a lot of traffic cross-lake. There were a lot of ferries and barges going across the lake because there was not a great interstate system.

As the interstate system in this country was created, things came off of the water. You can see that in some of the countries there is public subsidy. A lot of it is because they do not have roadways or a great roadway system and it is put on water. The United States is certainly lagging in this. It is the buzzword these days, "short sea shipping." Everyone is talking about it on all parts of the coast where they think it has real possibilities. It would be a little bit tougher here in the Great Lakes, but we think it is worth a look. We are a distressed area, and we have to see what we can do to bring back jobs.

Recently, there was a Brookings Institute study on the Great Lakes, and it talked about the manufacturing base that we have here, which is largest in North America. For manufacturing jobs, Ontario leads with the most man-

28 See AUSTIN, supra note 25, at 14.
 Manufacturing jobs followed second by Ohio and third by Michigan; kind of surprising but probably not to those of us in Ohio.29

Here, in Northeast Ohio, we have in excess of 6,000 manufacturing companies.30 People here make things, and they bring their pieces and parts in. They send their finished goods out or vice versa, typically done from the coast inward. We would like to see it done a slightly different way. I will put this up here in a little bit.

The Department of Transportation, in a study done a couple years ago, projects that trade, cargo coming into the United States, would double over the next ten to twenty years.31 So we understand the amount of traffic we have currently, as you can see. The heavier the red line, the more traffic on those roadways. In 2020, again, traffic would more than double with the trade coming in. I think what we could all see from this, is that this country needs to look at some alternatives. Our roads are not going to be able to handle it. People do not want new roadways built. They understand that the rail lines are at capacity or near capacity and what can we do. What is quite interesting on this slide is that you cannot always see Lake Erie because there is so much traffic going around Lake Erie.

What are some lessons from northern Europe where it is pretty common, short sea shipping, say it quickly, is growing and growing. It reduces road congestion. It is economical, and it is environmental, but there are things that are needed.32 For a service to really take off, you need reliability, you need high frequencies, you need short transit times, and you need infrastructure to do it. The benefits of marine transportation, we always say it is safer, economical. It is environmentally sound. One ship with 225,000 metric tons equals 225 rail cars or 870 trucks, just one ship. And then, if you look at the index comparisons, by far double and well beyond every category, the ship is the most economical and the safest form of transportation.33

Here is our Seaway, and as I said, when we are looking at short sea shipping for Cleveland, we think it is multifaceted. It certainly is the short sea

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29 See id.
shipping that is sort of the broader picture of bringing things in from the coast, then inland using our inland waterways.

Then there is offshore sea shipping, but that is to bring the international cargo in, and as I said earlier, we would look here in Cleveland, and we think we probably have the best advantage if it happens to take place here on Lake Erie. We are the first major port on the United States’ side, and we have Toledo, and the way the rest of the lakes are structured, you have to go up and around to start getting to some of the other major ports, and if it ever happens, it will happen here first, and then it will grow to other areas and the other lakes.

Also, we talk about short sea shipping cross-lake; there are a number of ferry proposals out. We in Cleveland did one. I managed it several years ago. We did an extensive study to say that in Cleveland, we are situated in the middle of Lake Erie, anything from this region goes from the east to west all the way around to get to your manufacturing base; and same from there coming back over. In talking with one of the manufacturers, they said for one part like on a brake system, it actually goes back and forth six times before it is put into an automobile.

A lot of trucks are coming over the bridges, meaning a lot of traffic and pollution. We think there is a better way of doing it. The problem is figuring out which port, and whether that port is ready to handle cargo, or has the will to handle cargo. On this side, our infrastructure is in place. On the other side of Lake Erie, your ports are a bit smaller. They were industrial ports at some point, but a lot of them are smaller and more ‘touristy.’ They have gotten away from some of their industrial heritage but are still on the table with us, a little bit on the back burner right now for a true ferry, but certainly will be in the future.

We were looking at Port Stanley, Ontario, and talking with them quite extensively. We have some neighbors down the road just to the east of us talking to Port Burwell. We have spoken with Dover, but that is just here in Lake Erie. All of the lakes are looking at different cross-lake opportunities for short sea shipping. What would it look like? I think for it to happen, we would need a really strong United States and Canadian bi-national coordination. We have a lot of it now. There is still much more to be done.

Again, as I said, it would be Saint Lawrence. It would be inter-lake. We hope it would help the environment. It would relieve border congestion, save some highways, save some taxpayer dollars, be environmentally friendly, and be there for Cleveland. This is a Cleveland perspective. It can certainly help to breathe some fresh life, give some new industry here, not just bringing in containers, but then the businesses that would benefit by having a direct container shipment to them that we think can come back into our city, bring more tax dollars, bring a new base of workers and residents into our cities.

However, there certainly are impediments. First of all, I think number one, it is a new way of thinking. Old ideas and old habits die hard. There is a lot of talk about doing it. There is not a lot of things being done about it for a number of reasons, and for the Great Lakes, it is compounded. Everything that everyone else is facing is the same here. We are facing a little more because for us it is a bi-national objective. We would need a Canadian port. We would have to work with the Canadian ports. We would have to work with the Seaway, again something that is on both sides of the two governments here. Again, we have a powerful truck and rail lobby in this country.37 They do not want to see short sea shipping and will certainly do things and be out there against it. Probably one of the biggest things is seasonality of the Seaway. Everyone understands that. It is a startup operation, and there are risk factors.

Can it be successful? Will businesses use it? How do you get businesses to use it? If a vessel is not here, how do you get the vessel if the businesses are not willing? Do we need some Government subsidies? All those things are being talked about, discussed, trying to be put into action. Our United States and Canadian laws and policies are not always; one is always ahead of the other.

And then on the United States side, we have a harbor maintenance tax, a United States tax on the value of goods and containers being moved which we tried to get it waived. If something goes into Halifax today and gets put on a truck or a train and comes into the heartland of the United States, it does not pay a harbor maintenance tax, but if you take that same cargo and put it on a short sea vessel, there is a tax associated with it.38 That is an automatic disincentive. So we have a lot of things to overcome but for us at the Port of Cleveland, we think that we are required to look at it. We need to look to the


future. We need to see what can help our city and what can help our environment, what brings jobs and people back into our city, and it is pretty much the same around the Great Lakes. We are a distressed region. We are looking for new ideas and new initiatives. We think that we start today, if it happens, it will happen. But if we do not start it, it will never happen, if we do not start looking at it and trying to look at it. You will hear Georges, and Georges will talk much more on some of these things that are the difficulties of the Great Lakes and the shipping industry on the Great Lakes. Thank you.

MR. HEARN: Thank you, Rose Ann, and Georges?

CANADIAN SPEAKER

* Georges Robichon

MR. ROBICHON: Thank you very much. I do not have a power point presentation. I am just not sophisticated enough to use these fancy machines, but I will speak to you generally about our company, shipping in the Great Lakes, and the concerns we have about the Seaway/Great Lakes system.

We keep referring to it as the Seaway/Great Lakes System, and yet, there are so many impediments to the system working as a system that make it difficult for companies like ours to operate in the Great Lakes and make it difficult for what Rose Ann is trying to do, which is to attract new businesses, new opportunities for the Great Lakes.

So thank you for the invitation. This is the first time I have been here. I appreciate it.

The Seaway/Great Lakes is a system. It was set up as a system, and the only way it will ever become what it should be is if it operates as one. However, it is not operating as a system today. The Seaway is running at less

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* Georges Robichon is a member of the Ontario and Quebec bars and is a graduate of the University of Ottawa, holding Bachelor degrees in arts and law, and is a graduate of the London School of Economics and Political Science, holding a Masters of Law. Prior to joining Fednav Limited, he practiced law in Ottawa from 1975 to 1984. Mr. Robichon joined Fednav, Canada’s largest dry bulk ocean-going ship owning and chartering group, in 1984 as Secretary and Corporate Counsel, was appointed Vice-President and General Counsel in 1988, Senior Vice-President and General Counsel in 1998, and became a member of Fednav’s board of directors in 2000. Since February, 2000, Mr. Robichon has been actively involved in the AIS/ballast water issue in the Great Lakes and crafting acceptable ballast water legislation. Mr. Robichon was a member of the board of directors of OceanSaver AS, and a founding member of the board of directors and chair of the Governance Committee of The Saint Lawrence Seaway Management Corporation from its creation in 1998 to August, 2006.
than fifty percent capacity. 39 This is incredible in this day and age with all
the congestion we have on our roads in Ontario, Quebec, and throughout
the Great Lakes states. We have a system that was built, paid for, and it is effi-
cient but running at only fifty percent capacity.

Now, why is that? First of all, let me put the Seaway/Great Lakes system
in context. There are roughly 200 million tons a year moved by ship in the
Great Lakes, a significant amount of tonnage, comparable to what goes
through the Panama Canal. 40 About a hundred million tons move on United
States flag lakers, and those lakers do not go anywhere outside the Great
Lakes. 41 They do not even go into Lake Ontario. The Canadian flag fleet
runs from the Great Lakes, the lakehead, all the way up to the Gulf of the
Saint Lawrence, and that is another seventy-five million tons. 42 The remain-
ing small portion of traffic in the Great Lakes is ocean vessels; and our com-
pany, Fednav Limited, based in Montreal, is the largest operator of ocean
vessels in the Great Lakes. 43

To give you another example, a typical United States flag laker makes a
round trip every eighty hours. 44 It keeps going back and forth bringing iron
ore, what have you. It is probably the best example of short sea shipping.
Canadian lakers, because they go outside of the Great Lakes into the Saint
Lawrence River, average a return voyage in twelve days. 45 Our ships trade
all over the world, from Europe, Australia, South America, and, on average,
take sixty-five days for a round trip. 46 So a typical Fednav vessel will make,
in a good year, three trips into the Great Lakes, a big difference in the vo-
lume of cargoes moved among the three fleets. 47

42 See generally id. at 17 (describing total tons moved by Canadian fleet).
43 Id. at 16.
45 Id.
So what are some of the impediments? These days I am associated with ballast water and aquatic invasive species. Not very popular I must admit, but I address the concerns because our company has been at the forefront of this issue in trying to address it, a serious problem for the lakes, a serious problem around the world but primarily here because of the fresh water nature of the Great Lakes. But the Great Lakes, as an area for shipping, cannot develop as a successful shipping corridor into North America's heartland if you have inconsistent regulations.

Right now in the Great Lakes, we have federal regulations requiring that our ships have their ballast tanks inspected by the United States Coast Guard when they enter the Seaway at Montreal to verify that all tanks have either been flushed or the ballast exchanged at sea to ensure a minimum salinity level of thirty parts per thousand (ppt). Furthermore, we also have every state in the Great Lakes with its own regulations.

Five of the eight states have consistent regulations. Three states have inconsistent regulations. The worst example is Michigan. The next worst is New York, and the third one, which is still an unknown because it has not decided what to do, is the state of Wisconsin.

It is very difficult for a company like ours (and for the domestic fleets as well because they are also affected by some of these regulations) to operate vessels around the world under international convention, under federal law, and then to come into a system that requires obtaining permits from different states with different regulations and requirements. It is just a completely negative way of trying to attract business.

A lot of people in the Great Lakes area do not want to see shipping. They prefer no ships at all, certainly no ocean ships because they attribute to us, to ocean shipping, some of the difficulties and problems associated with the introduction of aquatic invasive species, and they are right. There is no doubt about it.

Ships contribute to the introduction of aquatic invasive species. The problem is being addressed. It can never be addressed as fast as some people

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50 See generally Kari Lydersen, In Great Lakes, Invasive Species Create Labor Quandry, IN THESE TIMES, Sept. 4, 2009, http://www.inthesetimes.com/working/entry/4813/the_quagga_mussel_and_the_longshoreman_invasive_species_create_labor_quanda (stating that Michigan currently regulates ballast treatment, and New York and Wisconsin standards are equally as strict).
51 See Great Lakes St. Lawrence Seaway System: The Environment: Ballast Water, supra
want, but it is being addressed by the requirement that all tanks in all ocean vessels be flushed before they come into the Great Lakes. This process is accepted as the best available technology to treat ballast water against aquatic invasive species today.\textsuperscript{52} There are systems being tried, but the only intelligent way to regulate ballast water, and this is a significant concern for shipping, is for it to be regulated federally. I cannot tell you the number of times we said that it has to be dealt with at the federal level; Captain Thomas was here this morning talking on this issue.

I am going to give you specific examples of issues that I deal with all the time. We require pilots to guide our ships safely because they come from all over the world. There are forty-two Great Lakes pilots on the United States side of the Great Lakes, and there is a whole group of them on the Canadian side.

The forty-two United States Great Lakes pilots are in three districts.\textsuperscript{53} They have three corporations, three administrative structures, all of which make for a very inefficient system.\textsuperscript{54} The cost of pilotage is a disincentive, and there is a significant reluctance on the part of American Great Lakes pilots, to change because it has been like that since day one. They do not want to change. I cannot tell you the number of times we have sat down with them to try to get them to change, to listen, to reason.

The Canadian and the American vessels are not required to take on pilots because their ships trade regularly into the Great Lakes.\textsuperscript{55} But for us, the current structure in the Great Lakes, primarily on the United States' side, is a significant disadvantage with the United States pilots being under three corporations with their own directors and own administrative structure, all of which we pay for. The pilots on Canadian side, at least, are under a single corporation.\textsuperscript{56}

Next example of inefficiency in the Seaway system: to get into the Great Lakes, you have to go through the Saint Lawrence Seaway. The Saint Lawrence Seaway is made up of locks in Canada and the United States. The overwhelming number of locks are in Canada.\textsuperscript{57} There are two locks in the

\textsuperscript{52} Id.
\textsuperscript{54} See id.
\textsuperscript{57} See Great Lakes-St. Lawrence Seaway System: Locks, Canals \& Channels,
The locks are there for the sole purpose of allowing ships to go safely through the system. We are proud of our locks in Canada and in the United States.

There are two Seaway corporations to administer it: in Canada, The Saint Lawrence Seaway Management Corporation, which is a corporation that I was associated with; and in the United States, the Saint Lawrence Seaway Development Corporation. So you have two Seaway corporations managing the Seaway system. A number of years ago we looked at the possibility of creating a bi-national Seaway corporation. Why do you need two Seaway corporations to run the locks in the system? Unfortunately, the concept never advanced beyond the looking-at stage. It is illogical to run a Seaway system with two corporations. But that is the way it is.

Another example mentioned at the outset is that there are three fleets in the Great Lakes. There is the United States flag fleet, the Canadian flag fleet, and the ocean fleet. Shipping in the Great Lakes does not speak with one voice. In fact, we are famous for pointing fingers at each other.

The lakers are pointing fingers at us saying all they do is move the AIS around, that the ocean vessels are the ones bringing it in. The Canadians say they are in the middle, they just go down the Saint Lawrence, and so it is not their fault. So as an industry, we are totally ineffective in promoting shipping and the advantages of shipping as being something that should be considered more seriously because we talk in a divided way.

I was in Milwaukee recently testifying before the Wisconsin Department of Natural Resources concerning their proposed ballast water permit process, and you had the American lakers saying that it was not them, all they did was move the stuff around, that the blame belonged squarely with the ocean vessels. So there is no industry perspective. There is no single shipping industry as such in the Great Lakes. There is domestic shipping and international shipping. On the domestic side, you have the American and the Canadian flag fleets. I have worked with a chap who heads the Lake Carriers Association, Jim Weakley, who was supposed to be on this panel; I am sorry he is not here today. I know he is preoccupied in Washington. We have tried to identify areas where we should work together but have had a lot of success. That is unfortunate.


58 *Id.*


The next disincentive part of the Great Lakes, the one that I find myself often times dealing with, is the environmental community. It is well organized in the Great Lakes with dedicated people, increasingly vocal.

We opened the Seaway on March 31st, and I was there for the opening, the fiftieth anniversary of the Seaway. All the press coverage was about what an irrelevant, obsolete system it has become and about bad things being brought in. It is difficult to deal with this kind of publicity when you are in the business and are doing things in as efficient a way as you think possible moving bulk cargo; we bring steel into the lakes, we take American grain out of Duluth and Lake Superior. The environmental community has done a masterful job of portraying the Seaway/Great Lakes system in a very negative light and has put us to shame. I have to give them credit, absolute credit. I really do not know if that is going to change.

The other thing about the Great Lakes is that at one time there was a lot of heavy industry in the Great Lakes; Rose Ann made reference to it. It was the industrial heartland of America. I have been with Fednav now twenty-five years. I have seen things change, and I think the Great Lakes as an industrial area is changing.

So the people that worked in the steel factories and the iron ore mines knew and recognized the importance of shipping to their businesses, to the success of their businesses. Now the farmers and what have you are slowly being displaced by service industries. Shipping for the service industry is probably seen a lot less sympathetically than it would be for industrial concerns. So as the Great Lakes region is changing, so is the perception of the usefulness of shipping to the area. That is a fact of life.

I do not think you are going to see more auto plants built in Michigan. You are not going to see more steel plants built in Indiana. We used to bring a lot of steel to the Chrysler plants in Michigan. Now we are seeing this change, we are seeing our trade decline, and we are going to adjust. The nice thing about shipping is that our assets are mobile. We can take our assets and move them someplace else.

It is easier said than done for Fednav because we have built ships specifically designed to go through the Seaway. We built a lot of ships. We spent a

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62 See, e.g., William Kates, St. Lawrence Seaway Turns 50, N. NY NEWS, July 10, 2009, available at http://www.gouverneurtimes.com/index.php?option=com_content&view=article&id=5144:st-lawrence-seaway-turns-50&catid=60:st-lawrence-news&Itemid=175 (arguing that seaway was obsolete before even finished); see also David Patch, Size of St. Lawrence seaway limits traffic, trade: Kaptur backs upgrades as system marks its 50th year, TOLEDO BLADE, July 12, 2009 (quoting general solicitor for American Association of Railroads as saying that seaway is obsolete).
lot of money building ships that are state of the art. But it is a problem, and it is time to stop complaining and do something.

People are saying we are going to get short sea shipping. We are going to have all kinds of new ideas out there, some of them very good, some of them less so. Do not forget, you are talking about a system that only operates nine months a year, and if anybody knows anything about moving goods by container, it is a just-in-time service.

If somebody wants to move goods by container, he is not going to say, "okay, I am going to move my box of Christmas lights, but I understand you are not open for three months, so do not worry about it, we will let it sit somewhere." That is not going to happen. Is it possible to have the system operating twelve months a year?

When I sat on the board of The Saint Lawrence Seaway Management Corporation, the first mandate we gave to the new president was to tell us, engineering wise, if it was possible to operate the Seaway year round? Forget about cost; forget about using ice breakers to break the ice. Was it just physically possible to operate the Seaway year round? The answer came back no. You could probably operate it ten months a year, but that was pushing it. So you have a system that cannot operate year round, that has a shipping industry that is divided, and that is being referred to as obsolete as recently as last week when I appeared in Milwaukee. They say the system is obsolete. They do not need ships. They are happy with sail boats and canoes. They do not want goods moved by ship.

This is a real concern because if that is the case, you have a system that for Canada is absolutely essential for moving goods. The Seaway is essential to industry in Ontario, and to make the system work, you need to have ocean vessels go through it because we bring the high value cargoes that pay the tolls that keep the Seaway, at least on the Canadian side, open.

In Canada, we are renowned for how we tax people and charge everybody for everything and have pretty good services. In the United States, it is free to go through the Seaway. For how long, I am not sure, but right now, it is free to go through the American locks. It is not free to go through the Canadian locks.

If ocean shipping is prevented from going through the Seaway, its economic future will be put in serious jeopardy, and that will just not be accept-


able to the Government of Canada. It should not be acceptable to the Government of the United States either. When you load 200 million tons, which is a lot of cargo. If you want to shut everything down, take those 200 million tons and put them on the streets or in rail cars, well, that is just absolutely impossible to do.

How do we improve it? The first thing we need to do is to promote ourselves and work with the environmental groups to demonstrate what is being done, the successes we have achieved, and to show that this is not a bad way of moving goods.

There has not been any significant money put into the Seaway in fifty years, and yet ships go in day in and day out, moving goods. For many years, we did not have to show ourselves; we just did our business. We followed the rules, played by the rules. We need to convince governments to look more seriously at the Seaway/Great Lakes system as a shipping corridor and forget about building more roads. We then need to try to get certain regulators, those that oversee and decide the future of the two Seaway corporations and the United States Coast Guard, which oversees the Great Lakes United States pilots, to work together to make the system thrive and not become irrelevant like the Erie Canal.

It is not working as a system at the moment and runs the risk of possibly becoming redundant. Some people, unfortunately, probably feel that is not such a bad thing. They do not know shipping; they see lots of planes, cars, trucks, and trains, but they do not see many ships.

So on that somewhat bleak note, I will stop. Thank you very much.

MR. HEARN: So we have about twenty minutes for questions. We will start over here.

DISCUSSION FOLLOWING THE REMARKS OF ROSE ANN DELEÓN AND GEORGES ROBICHON

MR. KNAPPS: About twenty years ago, one of the things we were looking at on the Great Lakes was the total number of foreign flag vessels that actually would fit through the well, and it is not intuitively obvious to non-transportation people, but you have a shelf life of a salty versus the hundred years you see on fresh water.

MR. ROBICHON: Right.

MR. KNAPPS: The real question was the declining global fleet that would be available for all cargo.

MR. ROBICHON: Right.

MR. KNAPPS: Could you address that global fleet? It has been a few years since I read an update.

MR. ROBICHON: Right. Right now in terms of optimum fleet, there are a lot of small ships in the world, but there are about 150 ships that would be
operating on the Seaway side of the vessels. They control about seventy of those ships, either own them, or we have them on long-term charter. They are not being renewed. We are renewing our fleet. We are building ships, new ships, but it is declining; the cost of building a Seaway size vessel, there are various classes of vessels.

I do not want to take other people's time, but there are various classes of vessel sizes. There is Seaway size, a relatively small size. There is Panamax size, and there are the Cape sizes, which are huge vessels. The cost of building a Seaway size vessel is almost the same as building a Panamax size vessel, and yet, if you build a Panamax size vessel, you are going to carry fifty percent more cargo, if not more.

So to get people interested in building ships through the Seaway that will fit through the locks of the Seaway, where there are width restrictions as well as length restrictions is difficult. There are essentially three principal companies that operate; the nice thing about the Great Lakes is the number of shippers and shipping companies is relatively small.

There are three principle companies that operate in the Great Lakes, operate Seaway size vessels, two Canadian and one Polish, and then there are smaller companies, like BBC and the Wagonboy, that operate smaller ships. The steel companies, which are merging everyday, the grain companies, it is an interesting community of shipping companies and shippers. Sorry I went on a bit longer to your question, but there is the answer to your question.

MR. CARMODY: Just a question: We have had news that in December the United Nations General Assembly approved a new set of marine liability rules that are to be known as the Rotterdam Rules, and these rules are now seen to supersede or to be the next generation of marine liability rules for cargo. The preliminary indication now is that these rules will be open next September for signature in Rotterdam and presumably applicable to those countries that decide to sign on to cargoes that are leaving their ports or per-

haps being transited within their ports, depending on the tenor of the law if they decide to implement this.\(^{70}\)

The United States, we are led to believe, says it is going to sign on to this, and now Transport Canada circulated a document asking for comments as to asking whether Canada should be going with respect to marine liability, whether, in fact, we should be acceding to Rotterdam or whether we should simply keep the current marine liability rules under the MLA as they are present, which would foresee us moving on to Hamburg.\(^{71}\) So I am curious from an American and Canadian perspective, do you think we will be moving along step with respect to marine liability at this point?

MR. ROBICHON: Well, do you want to answer that question? I did not think so.

Let me tell you, notwithstanding that I am Senior Vice President, General Counsel of Fednav, I do not do marine law, I do not do admiralty law, but I am going to answer because I am aware of the new Marine Liability Act that came into force into Canada about a year ago.\(^{72}\) So I cannot answer your question. It would be my belief that if the United States decides to sign on to a United Nations convention or International Maritime Organization (IMO) convention, Canada is not going to be far behind. What would be nice is if the United States started picking up some of these IMO conventions and adopting them.

MR. HEARN: The only thing I would ask is, and I should have said at the outset, can you state your name and your organization you represent before your question? Thank you.

MR. PETRAS: I am Steve Petras with Baker & Hostetler. I have two questions, one for Rose Ann and one for Georges. Rose Ann, what is the status of a ferry from Cleveland to Port Stanley? We have not heard anything. Is it officially dead? And if it is dead, is there any chance that there is another opportunity out there? It seems to make a lot of sense when you see all the traffic going around Lake Erie. Then, Georges, the question to you is: It would appear that the invasive species issue should be technically solvable. Why is not, why cannot you convince anybody that it really is? That is my question.

MR. ROBICHON: Do you want to answer the ferry question? It is probably easier to answer than mine.

MS. DeLEÓN: I do not think the ferry project is totally dead. Cleveland did their study several years ago and did quite an extensive ferry feasibility

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\(^{71}\) See generally id. (stating that United States is signatory to Rodderdam Rules).

study that our United States government paid for, and it said having a ferry service cross lake for passengers and cargo would actually be an endeavor that someone could actually make money from; that it would be something that could happen without subsidy.\footnote{See Lake Erie Ferry Service Closer to Reality, supra note 35.}

We worked on it quite extensively. We went out, sought a ferry operator, and had a partner come in, and as I said earlier, we were working with Port Stanley, Ontario. It was just at the time that Port Stanley was being targeted by their federal government for divesting, so in Canada, the federal government owns all of their ports, I believe, and they were divesting their non-essential ports or basically having the local governments take over the ports from the federal government. And by divesting, actually, the federal government would pay the local community to take over that port. Port Stanley is a very tiny community. The municipality is tiny, and they were concerned of taking it over. They wanted to control their harbor and keep it in public hands, but for the first year they did not. They were not interested.

So it sort of went out for letters of interest, and the federal government wanted like seventeen separate parties to come together as one party to take it over. It was a very long process that happened, and when Port Stanley got back into it and started negotiating, they wanted to make sure that they would be made whole, that they would not lose by taking over such a large endeavor for something so small. So they had been negotiating for a long time.

Over the past several years, the Canadian Government has had elections several times, and Port Stanley negotiates to transport, and the minister has changed, and so the negotiations have just gone, stopped, started, and stopped. I think they are getting very close. They feel pretty confident, I think, that they may within the next year actually get control of that, and I think when they do, so we had a three-way partnership, but one did not have the control of the land.

If that happens, I think we will, whether it would be the ferry we looked at originally, which was both passengers and cargo, it was a rather large ferry that would have taken a number of trucks or cars and passengers, a couple of ferries that would actually be a system, that would operate ten months a year, again, the ice issue, the weather issue. I think if it comes back, it might be something a little bit different.

So we are moving to the spot where the ferry was going to come into might not be in the exact spot. It might work better in the downtown location for passengers in the new location for cargo. So we may see something, but for the most part, it is not dead, but it is on the back burner until we have a partner on the other side that has control of their harbor.

MR. PETRAS: Thank you.
MR. ROBICHON: To your second question, the International Maritime Organization (IMO) adopted the ballast water convention in February 2004. I was part of the Canadian delegation to that. It set standards, treatment standards that some people questioned, whether it was strong enough, but they were international standards and accepted by the international convention.

Since February 2004, there have been four that I am aware of, ballast water treatment systems that have gone through the three levels of approval of the IMO. It is a very complicated process, but you have basic approval, final approval, and type approval. There are four systems, including one that was on a company that we invested in Norway, and I was on the board until recently.

The process that you have to go through to receive ultimate and just type approval is extremely complicated. The testing protocols, all of which would be developed at the same time as technology develops, were out there trying to develop systems. So today, as I speak, I believe that in terms of mechanical systems, there is one that has type systems. Ocean Saver, the company that Fednav has an interest in, has received final approval, received final approval last October, but has yet to receive type approval. There is one biocide being developed in Germany that I think has got final approval. I do not believe it has type approval.

Deep sea ballast exchange is the accepted process that exists today to exchange your ballast at sea so that when you come into fresh water, you have got salt water in your tanks, and if you come in with no ballast on board (NOBOB) that is; most of our ships come into the Seaway full of cargo. We are not paid to bring water into the Great Lakes. We are paid to bring cargo into the Great Lakes. So almost every ocean ship that comes into the Great Lakes comes in what is called NOBOB and before that ship is allowed into the Great Lakes, it has had to have flushed its tanks out at sea, and it is tested at Montreal.

Every ballast tank and every ship, every ocean ship that enters the Great Lakes through the Seaway has had its level and tanks tested to make sure it is

75 See generally id. (detailing ballast water treatment system approval process).
76 See Press Release, OceanSaver has received full Type Approval Certification by the world's leading classification company, DNV (Apr. 15, 2009), available at http://www.oceansaver.com/ (follow News hyperlink).
77 See Great Lakes St. Lawrence Seaway System, supra note 48.
78 See id.
thirty parts per thousand. That is the accepted best available technology today. When will these new systems come on?

Everybody is waiting because the United States is saying, look, we do not think the IMO standard is good enough. We want another standard. The United States Coast Guard has been talking about a standard since a long time. I was in a meeting with them in 2001, that terrible day in September. We were talking about the United States Coast Guard's standards. So the world is saying, well, if the United States decides it does not like the IMO standards and because so much trade goes in the United States, so many ships go in the United States, why should we bother putting on systems that meet the IMO standards if the United States is going to say it is not good enough? We want a United States standard.

So with all due respect to everybody here, I assume most of you are American; I am not, one of the impediments is the fact nobody knows what the United States is going to do, and the United States does not have a long history of being supportive of the IMO or international conventions. Maybe it is changing now that we have, I better watch out, you have a good president running the show now and may change, but it has not been good. So that is it.

MR. HEARN: David and then Chi.

MR. CRANE: David Crane. My question is about the Seaway. First of all, you talked about the need for reinvestment in the Seaway, and I wondered is that principally for maintenance and repair, or is that for adding new capacities into the system?

MR. ROBICHON: No. It is purely for maintenance and repair. There is no need and no justification to expand the Seaway.

MR. CRANE: What kind of money are we talking about?

MR. ROBICHON: The United States just appropriated $180 million dollars and they have two locks. We have thirteen locks.

MR. CRANE: Okay. My next question is: You think of the Seaway as a business, and its traditional customer base is declining. So you have to find new customers.

MR. ROBICHON: Right.

MR. CRANE: And I wonder what research you have done. Now, I know this is not anywhere near a solution, but it is a contribution perhaps. What is

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79 See id.
the potential for, if you look at Scandinavia, you see the summer tourists going up and down the Scandinavian coast? Well, Lake Superior is pretty spectacular and would be something to land in Montreal and take a vessel up to the Great Lakes. I know people have talked about this from time to time. Are the economics basically against it, or is that something which has potential?

And then, finally related to the developing of new business, is there any potential for the auto industry operating between Ontario and the Great Lakes states itself to make greater use of the water transportation given the congestion problems we have on Highway 401 and elsewhere and on the bridges?

MR. ROBICHON: You can deal with that one.

MS. DeLEÓN: So the first question was on cruising the Great Lakes?

MR. CRANE: It is not a big solution.

MS. DeLEÓN: There is an organization called the Great Lakes Cruising Coalition, and I believe several years ago there was actually a line that did cruising on the Great Lakes. And it has since gone out of business or went to another part of the country. We do see every once in a while several ships come in, I think, possibly German ships, that come in the fall and do some cruising but certainly, it is not on a schedule. But there is an organization of United States and Canadian ports and cities and chambers of commerce that is trying very hard to bring that back, work on it. They work on it year round. In the industry, they think that it is probably where Alaska cruising was, I do not know how many years ago, thirty years ago, and everyone understands how great Alaska cruising is now, but at the time, it was sort of the same thing.

Yeah, I think any of us on the Great Lakes; we think it would be a fantastic thing, and most cities and ports are working on it, trying to bring that in. And I am sorry; your second question was on the auto industry?

MR. CRANE: The auto industry.

MS. DeLEÓN: Absolutely. When we were looking at a ferry going cross lake, it was because Cleveland and the Port Stanley or the Saint Thomas-London area has so many synergies with the auto industry and the manufacturing base, and we actually spoke quite extensively with Ford's logistics firm, used an outside firm about what about putting it on water? We were talking about the entire truck, the cab and trailer and going on to a ferry and going cross lake and would they do that or not? Would they do it seasonally, ten months? And their reply was, if it were there, they would probably look at it very closely. They were concerned about, number one, what is the timeliness of it? That if it was leaving, it was leaving without question when it

83 See generally id. (listing companies that offer recreational cruises on the Great Lakes).
was scheduled to and, second, was cost. They were very close, but their timing was their number one question. And, of course, we had not worked out a ferry system, and we had not looked at any other forms. I do not know if your company has.

MR. ROBICHON: We did look at, well, not a ferry system. We looked at in conjunction with a big international container operator, the possibility of a feeder service from Montreal into the lakes. We looked at it seriously. We looked at developing a tug and barge operation, which is the most efficient way to move on the lakes in a short, on a container base. It did not matter how we ran, how we did it, what we thought, and we are a pretty efficiently run company, but the numbers simply did not work. They simply do not work. It is unfortunate.

We operate a terminal in Albany, New York. The state of New York offered a subsidy for bringing trucks up from New York City up to Albany on a barge. We are the terminal operator in Albany. That system, the first shipment of trucks came up on a barge to Albany, and there was one truck on it. It got up to I do not know how many, and the Government just said, look, this is just ridiculous. We are not going to pour any more money into this.

So I think anybody that believes that a short sea shipping system on the Great Lakes can get going is going to have to be prepared to put some serious Government funds into it. Otherwise, I do not think it is feasible.

MR. HEARN: So while tempted to let Chi have a final word, I am getting a buzz from Henry King to keep this ending. So let me just say this, if you cannot get enough of this Seaway stuff, there is a wonderful Seaway review publication out there. Among other things for novices like myself who thought the Seaway and its commercialization only began fifty years ago, I believe the first, at least, recorded infrastructure project was 1680 when a five-foot deep canal to bypass Lasheen Rapids was constructed, 1680. It was completed in 1824. Now, perhaps on time, on budget, but that is 144 years by my calculation. I think the projects that we are talking about now, the maintenance and things are important, and I think Canada has contributed and is, in fact, it is in the economic action plan to do something. I want to thank our speakers. I want to thank you for your questions, and we have got ten seconds to end. Thank you very much.