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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

ADDRESS OF MR. WILLIAM D. WINTER
AT THE SEMI-ANNUAL FALL DINNER
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I appreciate this opportunity of addressing the members of the Maritime Law Association and their guests. Perhaps I have the right to feel at home with you as I, too, am a member of the New York Bar, having entered the easy way 40 years ago when a clerkship was not a necessary qualification. Soon thereafter this became a requirement, and I know the reason why. After acquiring the right to hang out my shingle, an old lady - a friend of my family - asked me to help her with a legal difficulty. I called on her and was able to solve her problem quickly. As I was making my adieux, she stopped me and asked about my fee. I was somewhat stumped. Not having had a clerkship, I had no notion of what was a proper charge. I remembered that my mother, when I was ill, called in the Doctor and paid him two dollars for getting me to open my mouth and say "ah." So I said, "Would two dollars be about right?" She quickly opened her purse and paid me the two dollars - all the money I have ever earned as a lawyer in 40 years. How inadequate my charge was, I now realize; as it has been my duty - shall I say my privilege? - to approve for payment legal bills in three, four, five - yes and even six figures to the left of the decimal point. Oh, that like the lad in "Pinafore", I had served a term as office boy - and junior clerk - to an attorney's firm!

But for better or worse I decided to forsake the law, and so tonight, instead of listening to a learned address on the law, you are asked to listen to a less learned discourse on "Why America Needs a Marine Insurance Market."

When I refer in this paper to the marine insurance market, I include not only the native American companies, but also the alien companies which have complied with our laws and are under the control of our insurance departments. When I refer to the foreign market, I mean all underwriters and companies that have not submitted to the jurisdiction of our laws.

To get a perspective for the proper consideration of our subject, let us go back a full hundred years. The United States was then a leader in overseas commerce. It was the Clipper Ship era, and American ships were the envy of the world. American ships beget American insurance, and over 40 mutual marine insurance companies flourished and many stock companies were actively engaged in marine

insurance. Commercially the United States was a strip along the Atlantic Coast and foreign trade was in everybody's mind.

Then came the gold rush and the need for ships became more insistent, and the Pacific Coast became a trading center, giving another boost to maritime trade.

The Civil War followed and when it ended the country lost interest in foreign trade as it was busy bridging the gap between the Atlantic and the Pacific Coasts with railroads, and building its gigantic industrial empire.

Foreign nations, particularly Great Britain, regained the mastery of ocean trade and, with the disappearance of our ships, our marine insurance companies languished and many died. British companies entered the United States, and at the beginning of the twentieth century the marine insurance facility of the United States consisted of one mutual company, a handful of sizable stock companies in the major coastal cities, and a few local companies in smaller ports which had no interest in foreign trade. In addition, there were numerous foreign admitted companies, mostly British, which wrote a major part of the marine insurance that was available.

At this time the United States had just emerged from its first foreign war in almost a hundred years, a victor over Spain. For the first time in its history the United States rated as a World Power. However, it was poorly equipped to assume its new role; its navy was inefficient; its merchant marine depleted, and its marine insurance facility dependent, to a considerable degree, on British companies. Less than 10% of its overseas trade was carried in American ships. In view of the condition of our foreign trade this marine insurance facility seemed reasonably sufficient for our needs. Prices of commodities were low; ships were relatively small; and the total value of ship and cargo, judged by present standards, was not large.

But how inadequate it really was became evident when the first World War started and the United States found itself the food basket and the arsenal of Europe. Then, as values mounted and marine and war insurance were both needed, the insurance market faltered and in truth proved its inadequacy to meet the demands of commerce. Fire companies heretofore uninterested in marine insurance entered the market and many alien companies qualified to do a marine insurance business in the United States.

Then it was demonstrated conclusively that a marine insurance facility is not a service that can be turned on and off like water at a spigot. Capital funds can be obtained quickly if there is a reasonable chance of a profit, but qualified underwriters and adjusters can not be wished into being; they must be trained, and that training is a long, arduous and expensive task.

With the advent of new capital in the marine insurance business, men were at a premium and poaching on trained staffs became a common practice. Competent underwriters and adjusters could name their own price. The trained man, however, was wary, knowing that a war finally ends and a period of bitter competition ensues. Not many good

men were tempted by this ready cash and the few old established companies kept their best talent.

The new enterprises had to content themselves with such men as they could get, and the sad spectacle appeared of brokers - many of them new and inexperienced in the marine field - in long queues awaiting their turn at the amateur underwriter. Some of these so-called underwriters would have made good bookmakers at a race track. Their theory was to write a stipulated amount on every sailing, say \$50,000, scaling the rate of a quarter of a percent, if necessary to get that line. The market was no longer price conscious, but only capacity conscious, for values had mounted and the sum required to cover all the cargo of a ship was very large, and the rate of premium often was of secondary importance.

In 1917 the United States suddenly lost its neutral status and became a combatant. Cargo must move, and we must win the war. Many brokers - and particularly the newcomers - prepared lists of expected sailings and, presuming to represent shippers who had cargo to insure, reserved large amounts of insurance in fictitious names. Later they sold this insurance, often at increased rates, to legitimate shippers. The underwriters could do little to stop this practice as there was neither time nor opportunity to check the good faith of the broker or his alleged shipper. This practice was promptly stopped by law. If you have wondered why Sections 128 and 129 are in the New York Insurance Law, this is the reason.

Prior to our entrance into World War I the Merchant Marine Act of 1916 was approved. It contains the following Section 12, reading in part: "The Shipping Board shall examine into the subject of marine insuranceand ascertain what steps may be necessary to develop an ample marine insurance system as an aid to the development of an American merchant marine."

When this investigation was completed, it revealed, among other things, that if an efficient insurance system was to be developed, companies should be permitted to act in concert. Accordingly, in the Merchant Marine Act of 1920, Section 29 was included, reading in part: "nothing contained in the anti-trust lawsshall be construed as declaring illegal an association entered into by marine insurance companies for the following purposes: To transact a marine insurance and reinsurance business in the United States and in foreign countries, and to reinsure or otherwise apportion among its membership risks undertaken by such association of any of the component members."

It is interesting to observe that more than 20 years before the Southeastern Underwriters' Decision, Congress indicated by this Act that insurance, particularly marine insurance, might be subject to the Anti-trust laws if this exception was not made.

I wish to refer to one further Act of Congress. In 1922 a new section was added to the Insurance Law for the District of Columbia, defining marine insurance and providing that the business should be taxed not on premiums, as was and is the practice with respect to other forms of insurance, but on profits averaged over a three year period. Within the next few years similar laws were passed in a number of our maritime states. This Act tended to ease the competitor

- the British market.

Thus various moves on the part of the Federal and State Governments gave recognition to the fact that an adequate marine insurance facility is essential to a foreign trade carried on in American ships and financed by American capital.

In harmony with these laws and as evidence of their desire to establish a marine insurance market adequate to meet the needs of American commerce, the American Marine Insurance Syndicates for the insuring of hull risks were organized in 1921. Other syndicates were formed for the insurance of automobiles, burlap and intercoastal cargo, while the Cotton Syndicate established in 1909 was continued.

The next two decades were not spectacular, but they did witness the firm establishment of an American marine insurance market. The insurance business feeds and grows on premiums. As more and more premiums flowed in, the market for marine insurance in the United States grew stronger and stronger.

New problems had to be faced in the nationalistic schemes of many countries, nevertheless the American underwriters had serene confidence that the Government and its people were backing up their endeavors. They neither received nor asked for special favors, but they did have the consciousness that they were free competitors in a country that believed in the free enterprise system.

As the rumblings of World War II were heard in the distance, the marine underwriters faced the future believing that this time they could meet the demands of American steamship owners, merchants and shippers engaged in foreign trade.

The American Hull Syndicate, which was made possible by the Act of 1920, was now fully able to insure any American hull, except the few large passenger vessels. Hull owners could thus procure both marine and war insurance. So that cargo owners might be in an equally satisfactory situation, the American Cargo War Risk Reinsurance Exchange was organized. Backed by more than 150 companies with surplus funds in excess of \$1,000,000,000, it commenced business on June 10, 1939, more than two months before the shooting began.

The underwriters faced many problems, and many anxious days ensued. By Sections 221 and 222 of the Act of June 29, 1940 the Maritime Commission was authorized, under certain conditions, to write war risk insurance, but this power was subject to the following proviso:

"Provided, That in the event of the suspension of the present neutrality law no vessel or its officers and crew, carrying contraband and no cargo of contraband shall be insured under any provision of this Act...."

Thus no government agency could write insurance on American ships carrying military or other supplies to ports of our Allies after we entered the war. This proviso was repealed by the Act of

March 6, 1942, and in the Act of April 11, 1942 the Maritime Commission was relieved of the necessity of charging premiums adequate for the risks assumed.

In the interim the underwriters realized that unless they assumed the hazardous risks of war on hulls, the maritime commerce of the United States would be greatly handicapped and the war effort would suffer. So they continued to insure the war risk on hulls until the Act of April 11, 1942 became effective and as a result suffered very severe financial losses. Thereafter the War Shipping Administration insured all American hulls against war risks.

The Government did little cargo war insurance except on commodities which, because of their ceiling prices, could not pay market rates. These were insured by the Government at non-compensatory rates. As soon as the need for such rates passed this business was returned to the underwriters. Thus the War Shipping Administration, in spite of its attitude with respect to hull war insurance, showed that it was not entirely unmindful of the intent of Congress that an American marine insurance market should be encouraged.

The war ended and the marine underwriters, because they had proved their worth to American commercial interests, felt more confident of their ability to serve America than ever before. They also believed that they had the right to expect the Government to continue to foster their enterprise.

But before long it was evident that foreign trade was facing new problems and that marine underwriters were to be vitally affected by them. Under existing conditions commerce is no longer conducted in a free market. Foreign exchange restrictions, for instance, no longer permit the free play of competitive forces. Each government is trying to protect its own position and American marine underwriters need the cooperation of their Government to maintain their position in the field of international trade. This requires little more than the application of the principles laid down in the law and again set forth in the Declaration of Policy in the Merchant Ship Sales Act of 1946. In Section 2 it is stated that "it is necessary for the national security and development and maintenance of the domestic and the export and import foreign commerce of the United States that the United States have an efficient and adequate American owned merchant marine.....supplemented by efficient American owned facilities for shipbuilding and ship repair, marine insurance, and other auxiliary services." Were this policy carried out as it would seem Congress intended, American underwriters would receive protection against foreign currency blocs and other forms of control of trade by foreign governments, which cause their normal business to be diverted to foreign insurance markets. Let me quote from a memorandum on the American Marine insurance market in its relation to the foreign trade of the United States, prepared by the American Institute of Marine Underwriters. On page 13 the Underwriters state: "All we seek is to preserve the historical pattern of the business. In connection with shipments to and from the United States, which constitute the very heart of our business, we feel entitled to retain the same proportion of the marine insurance business which we have

had in the past, as long as we are prepared to write it on terms and conditions comparable to those offered in other markets for the same terms and security. In connection with foreign business which formerly went to Germany, Italy and Japan, we feel that we are entitled to compete for a fair share of this business. Unless our Government takes steps to protect the American market, however, it will have no opportunity to expand and is almost certain to lose a very substantial share of its present business."

It is evident that the Maritime Commission, which is charged by Congress to develop and maintain a marine insurance facility, among other things, in connection with our merchant marine, has been counted out and the State Department is calling the plays. Two years ago in a letter to the President of the American Institute of Marine Underwriters, the Chairman of the Maritime Commission stated, in connection with hull insurance on vessels sold to foreign governments: "The Commission did not revise its insurance program because of protests of prospective purchasers, but did so on the statement of the Department of State that the program was not in accordance with the foreign policy of that Department." If time offered, other instances could be mentioned which indicate that the mandate of Congress is being overlooked. Department groups endeavor to carry out the intent of the law and give marine insurance a chance to compete for its fair share of the insurance on American shipments, only to find their decisions reversed or their efforts otherwise frustrated. The most recent example is in connection with the European Recovery Program. When, after many interviews, it seemed that underwriters were once again to be put in a competitive position, it was suddenly announced on September 13, 1948 "that no E.C.A. funds will be allocated in the future to cover the cost of insurance premiums for E.C.A. financed cargoes." The probable effect of this is that insurance, if taken, will be in foreign currencies with underwriters of the benefited countries. It surely was not the intent of Congress to disturb the normal channels of trade in this manner.

The mandate of Congress to the Maritime Commission still stands. Does each new loan legislation require a restatement of American marine insurance policy? American underwriters have been counted out from the time of the first great loan to Great Britain down to the present time.

Steamship owners have a measure of protection in the requirement "that shipments financed by the United States Government to foster the export of agricultural or other products shall be carried in vessels of the United States, whenever available at reasonable rates". Marine underwriters have no such protection. Heretofore they have not sought any protection other than the protection of the right to compete for the business at rates comparable to those available in other markets for equal coverage and security.

For 25 years American underwriters had that right and because of that in World War II no American merchant or shipper lacked adequate marine insurance protection. But marine insurance cannot live without premium; it cannot grow without premium.

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Our dry cargo ships are being laid up for want of cargo. Each month a greater portion of American cargoes is carried in foreign ships. The shipyards of foreign countries, meanwhile, hum with the building of new ships to carry cargoes in foreign trade made possible largely by American loans and gifts, and the marine insurance companies are losing that business to foreign markets.

I believe that the American people would be shocked if they realized that their will, as expressed in Congress, was being thwarted in the manner which I have described. I am sure that they would insist that their merchant marine and its attendant services, including marine insurance, be protected. If not, and America continues to permit its merchant marine services to fall apart through lack of encouragement and of reasonable protection, then the question put each week to Mortimer Snerd might well be addressed to all of us - "America, how can you be so stupid?"