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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING—NOVEMBER 4, 1988

PRESENT:

RICHARD W. PALMER
KENNETH H. VOLK
GEORGE W. HEALY, III
DAVID W. MARTOWSKI
MARSHALL P. KEATING
HOWARD M. MCCORMACK

and the following 225 members:

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Robert B. Acomb, III
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David R. Owen
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Alexander F. Vitale
George L. Waddell
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Sidney A. Wallace
Robert E. Warren
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David McIntosh Williams
Frank L. Wiswall, Jr.
Harold L. Witsaman
Harvey I. Wittenberg
Paul N. Wonacott
John M. Woods
Charles E. Yates
James F. Young
Robert J. Zapf
Joanne Zawitoski
Richard M. Ziccardi

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PROCEEDINGS

President Palmer: This meeting should now come to order. Good morning, ladies and gentlemen. I'm not sure about the good part of it outside.

I had to resort to a lifeboat drill this morning to be sure I could get you all up, and we had the rain just to keep you here, so I'm sure you understand how efficient this Arrangements Committee is.

It is a great pleasure for all of us to welcome the members to Marco Island and this very interesting conference, and I'm delighted that we have had such good attendance. Lucky the rain came today and not last Monday.

I will now call upon the Secretary to give his report and make a cautionary note to other speakers or those who have questions to please use the microphone. We are having the proceedings recorded and it would be very helpful if you will get next to the mike and give your name and where you are from so that the reporter can get an accurate recording of your remarks.

Mr. Secretary, would you please give us your report.

REPORT OF THE SECRETARY

Mr. Martowski: Good morning, Mr. President, fellow members and guests of the Association.

By way of housekeeping, would you please fill out the attendance cards which you will find on the tables outside this room. You will do me and the IRS a great service by clearly printing your names.

The minutes of the Executive Committee meeting held in Philadelphia on September 16, 1988*, appear in the *President's Fall Newsletter* which was mailed to the membership within the past month. Mr. President, if there are no modifications, I move that the minutes be approved and accepted.

President Palmer: Do I hear a second?

From The Floor: I second it.

President Palmer: Any discussion? (None) So ordered.

Mr. Martowski: The Executive Committee met on October 31, 1988 and briefly this morning. With quorums being present, the meet-

*Appendix "A"

ings were called to order by President Palmer.

The Secretary noted that the minutes of the Executive Committee meeting held in Philadelphia on September 16, 1988, have been distributed to the membership in the *President's Fall Newsletter* and upon motion duly made and seconded, the minutes were approved.

Treasurer Marshall P. Keating distributed his report, a copy of which is annexed to the original of these minutes, and on motion duly made and seconded, his report was accepted and approved.

He noted that while our financial position continues to be sound and that we are ahead of last year at this time, the cost of the new directory has not yet been included. We will hear from him this morning.

Immediate Past President, Francis J. O'Brien, moved for an Executive Committee resolution extending the Association's appreciation to President Palmer, Treasurer Keating and Membership Secretary McCormack for their efforts in the printing and distribution of the *Fall 1988 Directory,* which was seconded and unanimously approved.

Membership Secretary McCormack distributed his report, which was accepted and approved and you will also hear from him this morning. On motion duly made and seconded, the Membership Committee's recommendations regarding applications for prospective Judicial, Proctor, Associate and Non-Lawyer members, were unanimously approved.

President Palmer then reported on his attendance as speaker at the Houston Mariners' Insurance Seminar, September 18-20, 1988, and the L.S.U. Marine P & I Seminar held at Baton Rouge, September 7-9, 1988.

President Palmer and David Sharpe also briefly summarized the Summit Conference held at the Department of Transportation, Washington, D.C., regarding the Hague/Visby-Hamburg Rules on October 20, 1988. Messrs. Leckszas, Sharpe, Paulsen and Palmer participated in various panels arranged by the DOT. Manfred Leckszas, as Chairman of the Committee on Carriage of Goods, also briefly summarized his committee's work in this regard and he will provide us with a more detailed report this morning.

President Palmer also summarized recent developments involving the CMI and the IMO, and Mr. Leckszas will report on the CMI meeting in London on Sea Waybills and Electronic Documents which was held on October 13, 1988, and which was attended by John C. Moore.

You will also hear from Neal D. Hobson, Chairman of the Com-

mittee on the Transportation of Hazardous and Noxious Substances regarding his attendance at the IMO meeting in London on October 10-14, 1988.

Next Ms. Amy B. Siegel, Secretary of the Committee on Marine Financing reported on the most up-to-date developments with respect to H.R. 3105, the proposed Recodification of the Ship Mortgage Act of 1920, including the Maritime Lien Act. Dick Barnett, Chairman of the Committee on Marine Financing, will provide us with a detailed report this morning with respect to H.R. 3105.

Next, First Vice President Volk, reported that the United States Supreme Court denied the Association's petition for writ of *certiorari* with respect to the WESERMUNDE case. He also noted that the guidelines for appearances and briefs on behalf of the Association are set forth in the new *Fall 1988 Directory* on pages 13 and 14. Also on the subject of briefs *amicus,* President Palmer reported that the HERCULES case, in which the Association filed a brief *amicus,* will be heard by the U.S. Supreme Court on December 6, 1988.

Next, President Palmer emphasized the Association's continuing commitment to the work of the Young Lawyers Committee under the leadership of Robert B. Acomb, Jr. This Committee on Tuesday afternoon presented a panel discussion dealing with "Practical Problems in Maritime Practice."

Next Robert M. Hughes, III, Chairman of the Committee on Site Selection and Arrangements for 1988, reported 657 paid registrants as of October 30th. He will be reporting to us further this morning. A unanimous resolution was passed thanking Mr. Hughes and his committee for their hard work in making this meeting a success.

Bill Dorsey, Chairman of the Committee on Site Selection and Arrangements for 1989, reported on the status of the arrangements for next Fall's meeting at Orlando, which is scheduled for the week of October 23, 1989. We will also hear from him this morning.

Mr. Dorsey, in his capacity as Chairman of the Ad Hoc Committee on the Revision of the Foreign Sovereign Immunities Act of 1976, also reported on his committee's and the Association's successful support of the passage of H.R. 1149 to amend the Foreign Sovereign Immunities Act with respect to admiralty jurisdiction. He will also report further on his committee's work.

President Palmer closed the meeting with commendations for the exceptional committee work and seminars conducted during this past week.

There being no further business, the Executive Committee meetings were adjourned.

Mr. President, that concludes my formal report. If there are no modifications, I move its acceptance and approval.

President Palmer: Thank you, David.

I'll entertain a motion to approve the minutes as read.

From The Floor: Seconded.

President Palmer: All those in favor?

Opposed? (None).

So ordered. Thank you very much.

We will now have the Treasurer's report from Mr. Keating.

REPORT OF THE TREASURER

Mr. Keating: Good morning, Mr. President, ladies and gentlemen.

I would first like to thank Bob Hughes and his committee for all the fun filled hours that he has given to me and I'm sure to many of you trying to figure out how to set the damn souvenir clock.

To more serious financial business, I would like to report that we are now halfway through fiscal 1988-89 and that we have on hand as of October 31st cash and equivalents of about $360,000, which compares with the same period a year ago of about $325,000, so we are slightly ahead of last year at this time.

On the other hand, we have just produced the 1988-89 *Directory* which was handed out here at the meeting and will be mailed again to you shortly. This is the first edition of the *Directory* under a new arrangement that we have worked out with a computer software firm who is in the process of taking over data processing for the Association. We have been looking for many years to try and find a software house that would undertake this function. We have been turned down by everybody we approached as not wishing to do the job until we found this particular organization, with whom we now have signed a contract for one year to test their facility and we will see how that works out.

In the meantime, we will have to pay for the cost of producing the *Directory,* which will reduce the funds on hand somewhat.

I want to thank Howard McCormack, particularly, and his secretary for all the work they did in proofreading the *Directory;* it's a

major job, and they were most helpful indeed.

In the front of the *Directory,* there is a green card for change of addresses.

We are now adding FAX numbers to everybody's listing in the *Directory,* so if you will send in that green card with your FAX number on it, your FAX number will be reproduced in the next directory.

That concludes the Treasurer's report, Mr. President, and I ask that it be approved by the membership.

President Palmer: I will entertain a motion for approval.

From The Floor: I so move.

President Palmer: Second?

From The Floor: I second it.

President Palmer: Any opposition?

Hearing no opposition, and with much silent approval, the Treasurer's report is accepted and approved.

We really are greatly indebted to Marshall for his work on this *Directory.* It's a superhuman task and he and Howard did a truly stupendous job to get it printed by about the 20th of October.

I now ask for the report of our Membership Secretary, Mr. Howard McCormack.

REPORT OF THE MEMBERSHIP SECRETARY

Mr. McCormack: Good morning Mr. President, members and guests.

During the recent Membership Committee meeting, the Membership Committee and thereafter the Executive Committee, have approved the applications of the following 71 new Associate Members: Rick C. Blacker, Roy E. Blanchard, Kurt E. Bosshardt, Donald J. Brannan, Timothy M. Buck, Gregory F. Burch, Joan L. Califf, Phyllis D. Carnilla, William M. Cassarini, Fernando D. Castro, Dwayne L. Clark, Raymond W. Cobb, David Colker, Raymond J. Conlon, Vincent F. Corteselli, Robert M. Dees, Sidney W. Degan, III, Andrew S. deKlerk, Andrew B. Downs, Michael J. Eisele, Laurie A. Frost, Joel E. Gooch, Nance E. Graham, Joseph G. Grasso, Martin L. Grayson, Keith S. Grybowski, Albert A. Hatem, David M. Hehr, William C. Henderson, II, Hyman Hillenbrand, Catherine R. Holcomb, Michael R. Hope, Stephen R. Johnson, Craig I. Kartiganer, Michael J. Keane, Robert J. Killeen, Jr., Maria M. Livanos, Juan A. Lopez-Conway,

Sidney A. Luscutoff, John M. Maciejczyk, Richard H. McDuff, Reginald E. McKamie, Peter A. McLauchlan, David M. McQuiston, William A. Moore, James F. Moseley, Jr., Rockne L. Moseley, Neil T. O'Donnell, Edward J. Patterson, III, James W. Paulsen, Robert D. Peltz, Timothy D. Person, B. Peter Podniesinski, Michael D. Riley, Bradley M. Rose, Erik Rosenquist, Gary F. Seitz, Timothy P. Shusta, William T. Storz, Raymond L. Sweigart, R. Timothy Swiecicki, Patrick A. Talley, Jr.; Brian L. Thompson, Clifford B. Thompson, R. Leah Turchin, Jack E. Truitt, Conrad S. P. Williams, III, Andrew C. Wilson, Edward A. Woolley, Lawrence D. Wright and George G. Zarubin.

I am also pleased to announce the election of five new Proctor Members. They are: Charles M. Davis of Seattle; Robert T. Lemon, II, of New Orleans; Richard J. Reisert of New York; G. J. Rod Sullivan, Jr., of Jacksonville and John F. Unger of Houston.

In addition, four new Non-Lawyer Members were elected to membership. They are John T. Cappadoccia of New York; Randolph T. Fitz-Hugh of New Orleans; John T. McLaughlin of New York; and Jerry M. Wood of Seattle.

In addition, we have elected one Judicial Member, the Honorable Edward R. Korman of the United States District Court for the Eastern District of New York.

Since the meeting in May, I regret to have to report the deaths of the following members: James J. Donovan of New York; David C. Wood of New York; Leslie C. Krusen of Philadelphia; Solomon Kaplan of Baltimore; Harold S. Bowser of Ogdensburg, New York, and just last week, Charles Kohlmeyer, Jr., of New Orleans.

As of the meeting this morning, Mr. President, the membership of the Association stands at 3,698, which includes 2,269 Proctor Members; 886 Associates; two Honorary; 278 Non-Lawyer; 51 Academic, and 212 Judicial.

Mr. President, that concludes my report. I move the adoption of the report as stated.

President Palmer: Do I hear a second?

From The Floor: Second.

President Palmer: All those in favor?

All those opposed? (None).

So ordered. Thank you very much, Howard.

At this moment I would like to invite an old friend of Jim Donovan's to come to the microphone. He has a few words he would like

to say for his friends in London of his friendship with Jim Donovan. Mr. Leonard Watson.

Mr. Watson: Mr. President, I would not normally seek to address an audience of this size, but today I welcome the opportunity on behalf of all your foreign visitors to say a few words about our great friend, the late Jim Donovan.

Jim quite rightly enjoyed worldwide reputation in his professional capacity, but as the insurance industry is frequently referred to as a people's business, I intend to speak only of Jim, the delightful person that he was.

There are many words available to me which are appropriate to describe his many qualities. He was kind, considerate and gracious. He was thoughtful, friendly and helpful, and he possessed a quiet but unassuming personality which was both warm and totally genuine.

Looking for one sentence to summarize his many qualities, I found it from an unexpected source when I was reading Charles Dickens' *Great Expectations* on the flight here when Joe the blacksmith chose an inscription for his father's tombstone which read, "Remember he was that good in his heart."

The warmth of Jim's heart was demonstrated to me for the last time in July last year when I was fortunately able to accept an invitation to be his guest at his beloved Westchester Country Club. He was then only days away from a major operation, but despite that, the generous hospitality extended to me by both Jim and his delightful wife, Ginny, was something which I will remember for a long time.

Mr. President, this week you have once again demonstrated, at least until this morning, that you choose ideal venues for these meetings. However, the number one attraction for your overseas visitors will always be the great pleasure of meeting your members, and particularly people such as Jim Donovan. To have known Jim and Ginny Donovan and to be able to claim their friendship was both a pleasure and a great privilege. Thank you.

President Palmer: Thank you, Len, for your kind words and your very thoughtful remarks about our dear friend Jim Donovan.

I would like now to call upon David R. Owen, if I may, to give us his thoughts about a subject dear to his heart.

Mr. Owen: I just asked you for about three minutes to say something about the *MLA Report*. The *MLA Report* was first published in 1983 during the reign of his Majesty Gordon Paulsen. Therefore, we

will be going into the seventh year in 1989. The next issue will come out in early March.

It seemed time to restate the objectives that we established back in 1983 to which we have rather doggedly adhered during the past six years, and they are as follows: First, a rhetorical question. What is the *MLA Report* inetnded to do? It was and is intended to report on the substantive work of all of the committees of this Association, work that does not otherwise appear in print in the minutes or elsewhere, so it is a function of the committee structure of this Association and nothing else.

I emphasize the word substantive, because it leads me to say something about what the *MLA Report* is not. It is not a bulletin board for the administrative functions of the Association. We do not publish notices of this or that. Those must come from the President or the Secretary.

The *MLA Report* also is not just another law review. We will not publish even the best articles simply because it was written by a member of MLA. It must be work done for or sponsored by a committee of the Association; for example, the very fine piece of work by Professor David Sharpe in the last issue on all of the current treaties and the status of negotiations leading toward the treaties pending in the United States. It is an original piece of work; very, very valuable.

It will be continued, incidentally, published under the auspices of Clay Maitland's Committee on Intergovernmental Organizations.

I should like to invite the chairman or any committee member who at this meeting or thereafter during the next month thinks of things that could properly be published in the next issue, which I will put together in January, to let me have them, preferably sometime during the month of December. I will certainly consider the papers in the seminar book, some of which incidentally are already booked to be published in the *Journal of Maritime Law and Commerce* or elsewhere. But I do invite suggestions from committee chairmen or other members or officers of the Association in the next month for anything produced at this meeting that might be appropriate.

Lastly, in view of the fact that we have so many loyal and distinguished friends from abroad here, I should like to invite them to let me put them on our mailing list. I should be happy to send each of them a copy of every issue if they will simply give me their names and addresses. I do ask them not simply to come up to me in the bar,

which is my usual place of business, because I shall then forget it. Simply hand me a card or write on a slip of paper the names and addresses and they will be put on our mailing list, and I think that they might enjoy getting this publication semiannually.

Thank you, Mr. President.

President Palmer: Thank you. We also owe a great debt of gratitude and our admiration and respect for the creative work that David has done in putting this publication together. He has developed a staff now, but it was a single-handed proposition and very creative and very important for our Association.

His comments give me an opportunity to use them as a spring board to congratulate the committees that I saw working this week, and I'm sure those that I did not see, from what I've heard, have had very creative and outstanding meetings. Much work was well done and interestingly presented with some panels in certain committees and David will have a lot of good material to work over, I'm sure.

The seminars that we have had here have been particularly outstanding. Each year the Continuing Legal Education Committee come up with new and creative ideas. They were started, of course, many years ago in New Orleans by Ben Yancey and have been continued every other year since.

The most recent format was really outstandingly created by Bob McCreary, and this brought us into the modern world of continuing legal education, and that was done on the prodding and initiative of Gordon Paulsen and John Sims, two distinguished past presidents here with us this morning.

And today, of course, we now have the great work of these seminars continued through the outstanding chairmanship of Dick Binzley. We all are very pleased and grateful that he is willing to work so hard and put this program together. It's very important for our Association, very interesting and informative.

I thought you would also be interested to know that your President is automatically fitted into a kind of a computer track which some people in some industries call the rubber chicken circuit, but for me it has been really a great pleasure, and the first thing that happened to me was the SEALI Seminar in Savannah. SEALI has been going for many years. It's an outstanding seminar and has continually done very fine work, and of course, it gives us an important regional base for continuing legal education in the South Atlantic states.

Also, I had the honor to be invited to the Houston Mariners'

Seminar, and again the hospitality of the South showed itself. There were several outstanding speakers, including distinguished insurance authorities from London of particular interest to all of us in the practice of maritime law. This outstanding seminar is one that has been continuously contributing to our knowledge of the insurance industry here and abroad for some twenty-five years.

Then, in October I was invited to go to L.S.U. and attend an important seminar on "Maritime Personal Injury Practice." One of our very genial and gracious hosts was Warren Faris, an L.S.U. graduate. He did not tell me that he had arranged the L.S.U.-Auburn game, which if any of you read in the paper or saw the television, was a display of outstanding running and blocking for about three quarters, with a couple of field goals producing six points for Auburn and zero for L.S.U., to say nothing of a very depressed group of L.S.U. fans sitting around. All of a sudden L.S.U. took to the air and pulled a touchown out of the hat, followed by a successful conversion, to produce a 7-6 final score for L.S.U. The game set L.S.U. off for the next 24 hours. We had a very good time.

The seminar on "Maritime Personal Injury Practice" included a panel chaired by Circuit Judges Rubin and Higginbotham, and District Judges Duhe and Gex. This format provided an extraordinary opportunity for the attendees to submit questions to them and for some very helpful discussions on the floor as we have done here with Circuit Judge Roney and District Judge Scott. This is a new tradition for us at our MLA meetings and I hope we will continue with this very helpful and productive precedent.

The L.S.U. Seminar was very stimulating and dealt with the many significant questions of maritime personal injury law currently facing many of us and also engaging most, if not all, of the circuits of the United States.

At this point, we will hear the reports from our Standing Committees, and the first committee to report today is the CMI Committee and I call upon its Chairman, Frank Wiswall.

REPORT OF THE COMMITTEE ON THE COMITE MARITIME INTERNATIONAL

Mr. Wiswall: Mr. President, at our breakfast meeting on Tuesday, we had in attendance a total of 44 committee members, foreign

guests and other interested persons. Among those present were three International Vice Presidents and the Secretary General Executive of the CMI, all of whom participated in our deliberations.

It was an over-subscribed meeting in the sense that not all who attended were able to eat breakfast in the room, but I dare say that despite the constraints of time, it was a successful meeting and we accomplished a good deal.

The reports which your committee heard included news of the seminar on bare-boat charters which is to be held by the CMI at the beautiful resort of Knokke-Zoute in Belgium early next April, just before the CMI Assembly; organizational plans for the hosting of the CMI conference in Paris, which will take place in early July 1990; and finally the subjects of that conference and the preparations to be made by our Association, which of course are the particular concern of the Committee on the Comité.

There is one subject of the 1990 conference, that concerning uniformity of the law of carriage of goods by sea in the 1990's, which does give rise to certain concerns. Broadly stated, these concerns stem from the increasing politicization of the international situation regarding Hague/Visby on the one hand and the Hamburg regime on the other.

With a probability of the entry into force of Hamburg on a limited scale in the early 1990's, followed by an inevitable period of dis-uniformity during which the two different systems will be in simultaneous operation, these factors will have to be dealt with in such a way by the CMI that the political aspects are de-emphasized and the practical problems of bridging the gap between two simultaneously operating and imperfect systems are cooly and rationally debated.

In short, the CMI must take great care to avoid any appearance of declaration of favor as between Hague/Visby and Hamburg and must at the same time be persistent in highlighting the shortcomings of both regimes and must seek a consensus through reasoned debate as to the best practical measures to survive a period of dis-uniformity which will certainly extend into the next century.

No one can doubt that the CMI is the organization best qualified to accomplish this immediate task, and in the process the foundation may well be laid for future work on a modern regime to replace both the present Hague/Visby and the present Hamburg and which will deal at last with such matters as sea waybills, electrodocs and multi-modalism.

Mr. President, at the Spring meeting (and this is a confession of error) I praised CMI's yearbook and I rashly recommended its purchase to the membership. This has run into the snag that at the present time the yearbook is only available as part of a subscription to all CMI publications at a cost of about $30 a year.

Your Committtee has authorized me to recommend to the Comité that the yearbook itself be made separately available, and I should have a report concerning this at our next meeting.

Meanwhile, those who have requested information as to how to obtain the yearbook will be told how to enter a general subscription to CMI publications.

We have been informed by Bill Birch Reynardson, International Vice-President of the CMI, that the CMI Charitable Trust now has about 100,000 pounds sterling capital. The CMI American Foundation should receive its IRS approval by our next Spring meeting. We can then get underway our plans for contribution to the American Foundation which in turn will make, under certain specified circumstances, grants to the CMI Charitable Trust.

Thank you very much.

President Palmer: Thank you, Frank. In speaking about our international relations, as in association with other maritime law associations of the world, I should mention that the Maritime Law Association of the Soviet Union and the Academy of Science has invited Frank O'Brien and me to go to Moscow the first week in December to attend a joint US-Soviet Symposium on the Law of the Sea. Frank already has his fur hat, but I will have to look for one.

In any event, we are seriously considering attending this event and of course we are honored by this invitation. If it is at all possible and if consistent with the goals and purposes of our Association, then it is likely we will go.

The next report is requested from the Committee on Marine Ecology, Tom Wagner.

REPORT OF THE COMMITTEE ON MARINE ECOLOGY

Mr. Wagner: Thank you, Mr. President. Fellow members, honored guests, I shall be brief.

The Marine Ecology Committee held a breakfast meeting yester-

day and enjoyed a very productive meeting. In attendance included our former chairman, Sid Wallace, as well as two representatives from Paris law firms, Mr. Emmanuel Fontaine and Henri de Richemont. These gentlemen represented adversary interests in the oil spill litigation involving the TANYO oil spill as well as the now famous AMOCO CADIZ spill off the coast of France. Their comments and insights were most illuminating, and they demonstrated with clarity the impact of oil spills on the international scene as well as the tremendous importance of a uniform international plan for resolving these disputes.

From the informational legislative viewpoint, a seventh Congress, the 100th Congress, has considered but failed to act upon any superfund legislation for oil spills. It had been hoped that the provisions of the FWPCA and four other spill schemes could be consolidated into one plan with a preemptive scope to provide a single approach to the oil spill problem. This has not been done. That task has become mired down into a fight between those favoring preemption and those opposed to preemption and a seventh successive Congress will come and go without action.

Unfortunately, the 1984 Protocols to the Civil Liability and International Fund Conventions were likewise mired in this struggle. Nonetheless, there is some hope that those protocols can be freed from that fight and that the Senate can give ratification, if not in this Congress, in the next Congress.

For your information, a 1988 amendment to the Outer Continental Shelf Lands Act has been enacted. This is known as an Indemnification Clarification Act. The act provides that a party who is primarily responsible for oil spill liabilities under the Outer Continental Shelf Lands Act may obtain contractual indemnity from another party, but the indemnified party will nonetheless remain primarily responsible under the statute. It is believed that this is not a change in the law, but it is supposed to be a clarification of the law.

For your further information, MARPOL 73/78, or more specifically Annex V dealing with garbage and plastics, will come into effect on January 1, 1989. On October 27, proposed regulations were published in the *Federal Register*. Comments are requested and hearings will be held this month in Washington, D.C., Houston and Seattle. Discharge of plastics will be prohibited, and discharge of other garbage will be significantly regulated. You may look in the future to the potential proposal of the Gulf of Mexico as a "special area," which

would mean it would be an area in which very limited, if any, disposal of shipboard garbage would be permitted.

Finally, there are two items of significance on the jurisprudential side of the ledger. You should look for post-trial amendments or decisions in AMOCO CADIZ. These decisions will concern the dates and rates of currency exchange, pre-judgment interest and related damage issues which are presently before former Judge McGarr, who is now serving as special master in that case. Following those decisions, you should anticipate, I believe, an appeal of both the liability and the damage rulings.

One last area of significant interest concerns the Ashland Oil spill in Pittsburgh. That spill resulted in a discharge of over 500,000 gallons of oil into the Monongahela and Ohio Rivers in Pittsburgh. Ashland Oil conceded its responsibility, paid for the U.S. Government clean-up costs of some $680,000 and then undertook the active role of clean-up for that spill. Estimates of Ashland Oil's expenditures for that clean-up exceed $11 million.

The significant development pertains to the filing of an indictment by the Federal Grand Jury in Pittsburgh against Ashland Oil on two misdemeanor counts, one for the violation of the Refuse Act for discharging "refuse" without a permit and the other for a violation of the Clean Water Act for negligently discharging oil into navigable waters. While a specific statutory penalty is set at $200,000, a maximum discretionary penalty is permitted up to twice the amount of the loss. The U.S. Attorney in Pittsburgh currently estimates a maximum penalty of nearly $30 million.

More significantly for you and for your principals is the action itself. This indictment marks the first time since the 1972 amendments to the FWPCA that the United States has sought criminal penalties for a negligent or non-intentional spill which was properly reported to the authorities. This departure from past policy is something for you and your principals to be aware of. The civil responsibilities under the acts are very significant as drafted. If this departure becomes the new policy, there can be very serious penal and/or monetary consequences beyond those necessary to compensate and/or restore the damaged environment.

Thank you very much.

President Palmer: Thank you very much Tom, for your interesting and thorough report. I now call upon the Chairman of the Marine Financing Committee, Richard Barnett.

REPORT OF THE COMMITTEE ON MARINE FINANCING

Mr. Barnett: Mr. President, members and guests. Within the next few days the United States will have a new Ship Mortgage Act. This act was the focus of attention at the meeting of the Marine Financing Committee which was held yesterday morning. The legislation has now cleared both houses of Congress and awaits only the President's signature. The Act represents the first major changes in the Ship Mortgage Act since it was passed in 1920.

This new act arose out of the recodification process relating to the shipping laws which has been going on, as you know, since 1984. When the recodification process reached the Ship Mortgage Act, we appointed a subcommittee of the Marine Financing Committee to make sure that no inadvertent substantive changes were made in the Ship Mortgage Act during the process of recodification. Our subcommittee developed, I think, a very good working relationship with the staff of the House Committee on Merchant Marine and Fisheries during that process.

Then our perspective changed somewhat. We saw the recodification process as a unique opportunity to make improvements in the Ship Mortgage Act to accommodate modern financing techniques.

When the Ship Mortgage Act was passed back in 1920, a typical ship financing transaction was a simple one. A loan was made and was repaid in a period of time with interest at two and a half or three percent. Since that time ship financing has gotten much more complex. We have revolving credit loans, multi-currency loans . . . all sorts of financing techniques that were not contemplated at all by the original Ship Mortgage Act.

Our Committee developed a group of proposals. First, we wanted to get rid of a number of formal requirements that no longer serve any useful purpose, such as the requirement for endorsement of the particulars in the mortgage on the ship's document, the affidavit of good faith and the requirement that a partial discharge be filed every time a payment is made on a mortgage. That provision has been largely ignored.

Secondly, we wanted to make the Act more flexible to accommodate modern financing techniques, such as multi-currency loans, revolving credit loans and so forth.

Third, a problem had arisen as to whether or not a so-called West-

hampton trustee acting for foreign lenders could buy a ship at a foreclosure sale in the United States if the vessel was a United States flag vessel. We wanted to make it possible for the Westhampton trustee to buy the ship provided that the ship still remained subject to the requirement that it could not be sold foreign without Maritime Administration approval.

Next, questions had arisen as to the jurisdiction of certain territorial courts, such as the court in American Samoa to foreclose ship mortgages. We felt this should be clarified.

Another important proposal that we worked with the House Committee to develop was to have a mortgage valid as of the time filed if it meets all of the substantive requirements of the law rather than at the time the actual recording takes place. The reason for that was the tremendous backlog in the recording of instruments that has developed in the Coast Guard offices, in large part because of the enormous increase in the volume of yacht financing transactions.

These recommendations were prepared by the subcommittee and our Committee on Marine Financing, and last spring we obtained the approval of the Executive Committee of the Maritime Law Association to go forward and participate in making these recommendations to Congress. It was necessary to act very quickly last spring because it was apparent that hearings were going to be held this past summer and that Congress was prepared to move ahead quickly with this legislation.

Hearings were held in late June. I testified, as did representatives of the Coast Guard and the Maritime Administration and some other industry organizations. After the hearings were held, we sat down in drafting sessions with the House Committee staff. Our committee's former Chairman, Emory Harper; Vice Chairman, David Williams; Bob Fisher; Amy Siegel and others participated in this drafting process. I am pleased to report that all of the recommendations which we made last spring have been incorporated into the new Ship Mortgage Act.

Of course, once the legislative process got underway and the negotiations went on with the various interests, other proposals were included too that we were not so enthusiastic about and didn't actively support. One of the features of the new law, is a vessel identification system which is to go into effect in 1994, and which will, if it works out, result in a central system which will include not only federally documented vessels but state titled vessels, so that it will be possible

to go to this system and determine the ownership of any vessel which is either federally documented or titled under state law.

One of the provisions in this vessel identification system that has caused some concern is that it will be possible to have a preferred mortgage on a vessel which is titled under the state system. This means that the preferred mortgage claim would have priority over claims for supplies and repairs furnished to recreational vessels which are now titled under state law. That is not presently the law. We had no mandate to support this change and did not do so.

Another area that we were quite concerned about was the amendment which has been made to Section 9 of the Shipping Act. Section 9 of the Shipping Act, as you know, prohibits transfers of interests in vessels to non-citizens without the approval of the Maritime Administration.

The Maritime Administration succeeded in having included in the new law a change in Section 9 so that it now prohibits not only transfers of "interests" in vessels but tranfers of "control" of vessels.

I think all of you can see that this can lead to some real problems. We had urged that that change in Section 9 not be included as part of HR 3105 and be deferred until later when there could be a general consideration of all the citizenship laws as part of the recodification process.

However, the amendment to Section 9 urged by the Maritime Administration has been included.

There were other concerns expressed. One, for example, was the definition of "necessaries" which reads "necessaries for a vessel includes repairs, supplies, and towage of a vessel and the use of dry dock and marine railway for the vessel."

Concern was expressed that this language was intended to be limiting and that there could not be a maritime lien for necessaries other than those specified here.

However, the legislative history makes clear that under the rules of construction used in the recodification process, "includes" means "including but not limited to," so no change in substantive law is intended there.

A similar problem arose in connection with the description of lien claims arising in the United States that come ahead of a foreign ship mortgage. The present language limits such liens to those for repairs or supplies "performed or supplied in the United States." The new language is "provided in the United States." Again, the legis-

lative history makes clear that no substantive change in the law is intended.

One change in the law outside the Ship Mortgage Act that is made by the statute that you should be aware of relates to all *in rem* proceedings to enforce maritime liens. As the law existed in the past, if you were foreclosing a ship mortgage in the United States, it was necessary to give notice to any person who had filed a notice of claim of lien with the Coast Guard or who had another mortgage on record with the Coast Guard.

There is now a similar provision with respect to all *in rem* proceedings whether to enforce a preferred mortgage or otherwise. For example, if you have an *in rem* proceeding to enforce a maritime lien for supplies or repairs, it will be necessary to obtain a court order specifying the manner in which notice of this proceeding is given to anyone who has filed a notice of claim of lien or preferred mortgage against the vessel.

This requirement is not a pre-condition to arrest of the vessel. It simply must be done in a timely fashion so that anyone who has a preferred mortgage or some other lien claim on the vessel of which notice has been filed, has the opportunity to intervene so that the claim may be asserted against the sale proceeds.

Statements were made on the floor of the House and the Senate during the course of the consideration of this legislation that it would revolutionize vessel financing in the United States. I think that's an overstatement; however, I think it is extremely important, very useful legislation. The final text of the bill appears in the October 21st *Congressional Record*. For those of you who don't already have copies and would like to get copies, I think there are still some available on the table outside.

I was pleased that a number of members of Congress on the Senate floor and the House floor did recognize and thank the Maritime Law Association for the contribution that had been made to this legislation.* Thank you.

President Palmer: This was indeed a milestone and we thank you, Dick, for your close attention to this legislation and to the work of the Committee in watching it as it proceeded. It is a great accomplishment in working with the Congressional staff. Thank you again.

*The Bill was signed by President Reagan on November 23, 1988 and is now PL 100-710.

May I now call on Mr. Betts. I believe he has a brief report on taxes as Chairman of the Subcommittee on Taxes of the Committee on Marine Financing.

Mr. Betts: I suspect all of you are not much different than my partners. At the very mention of tax their eyes start to glaze and they head for the exits. Fortunately, I have only been allocated three minutes for my report so everybody is in luck.

Before discussing the recent tax developments I would like to try, if I could, to give you a primer in the area. Tax burst into the maritime vocabulary in 1986 with a vengeance. The 1986 U.S. Tax Reform Act significantly changed the method of taxing foreign corporations that existed for over fifty years. The principal change was the inspection of a four percent *gross* basis tax. Each foreign owner and charterer of a vessel trading the United States is potentially subject to such tax.

There is an exemption from such tax. Qualification therefore requires satisfying a two-prong "residence" type test. The first prong is that the foreign taxpayer has to be organized in a "good" jurisdiction.

The second prong is that more than fifty percent of the stock value of the foreign taxpayer has to be beneficially owned by individuals resident in "good" jurisdictions.

A "good" jurisdiction is a jurisdiction that grants a "reciprocal" tax exemption to United States companies and citizens.

There is also a U.S. tax filing obligation. The filing obligation applies to each foreign owner and charterer of a vessel that trades to the United States. It's important to recognize that this filing obligation exists without regard to whether the filing company qualifies for the exemption from the 4% tax as just described. So much for the primer.

The Tax Subcommittee report is in written form and will appear with the formal committee reports at the end of these proceedings. It touches on the following areas:

First, the problem of foreign companies filing U.S. tax returns on December 15, 1988, which is the filing deadline. There is currently no IRS guidance on the scope of information to be provided and it's unlikely that there will be prior to the filing date.

Second, the current status of "good" jurisdictions. Of note, in recent months, the following countries have attained "good" jurisdiction status: Cyprus, Finland, Greece, Jordan, Netherlands, Netherlands Antilles, Singapore and Taiwan. Most notable among the "bad"

jurisdictions that have not yet attained "good" status is Hong Kong, India and Pakistan.

Third, the technical amendments made to the 1986 Tax Reform Act by the 1988 Tax Act which was passed by Congress on October 22, 1988.

Fourth, the U.S. Tax indemnity clause recommended by BIMCO for inclusion in all bareboat, time and voyage charters. All I can say to charterers who agree to use this clause, *caveat emptor,* because it doesn't provide full protection for you.

Lastly, the status of the Subcommittee in connection with preparation and submission of comments to the IRS on a variety of subjects pertaining to the regulations currently being drafted by the IRS to implement the new tax law.

Thank you, Mr. President.

President Palmer: Thank you, Mr. Betts.

The next report is from the Chairman *pro tem* of the Committee on Marine Insurance, General Average and Salvage, Mr. George Waddell.

REPORT OF THE COMMITTEE ON MARINE INSURANCE, GENERAL AVERAGE AND SALVAGE

Mr. Waddell: Thank you, Mr. President. As you know, I am standing in for Barbee Winston who has been ill but you will be happy to hear is on the mend, so this report is given as chairman, as it were, *pro tem.* I will only hit the points that I think are of general interest to the membership regarding a very busy meeting we had two days ago.

First, there was a rather lengthy discussion, in which Captain Burgess actively participated, about the proposed Salvage Convention that is going to be considered again at a diplomatic conference next year.

Captain Burgess, if he may, will add to my report when I am done, Mr. President. He has a few words to say about the upcoming conference.

The next subject that was undertaken was a selection of topics to be addressed in the seminars at the Maritime Law Association meeting in Orlando next year. After a lot of discussion, three general areas were decided upon, and I thought I would mention them to you now because they may be of particular interest to some of you.

We attempted to get subjects which were, as the description went, frequently involved in litigation these days. Three general areas were selected. The first was the general area of concealment and misrepresentation, including a discussion of bad faith.

The second, which came as somewhat of a surprise to me as being one that is actively litigated, is the relationship between primary and excess underwriters, particularly when primary is insolvent, and including the question of the effect of drop-down provisions. Members of my committee tell me that there is a great deal of discussion and litigation on that subject going on today.

The third topic is recent developments in the sue and labor clause.

Some refinements of these subjects may become necessary before we actually put them on.

One of the problems in selecting topics for a discussion of the law of marine insurance is that every time you think of an issue to be dealt with, the spectre of *Wilburn Boat* raised its head and first has to be disposed of.

After a great deal of discussion of the subject of *Wilburn Boat,* the sense of the committee—in fact it was unanimous—was that the *Wilburn Boat* case has a pernicious and pervasive influence on maritime law which is profoundly undesirable, and undesirable in a way which is of interest to this entire Association.

First, I don't have to tell you that the courts are in disagreement as to what it means. There are directly conflicting statements in Court of Appeals decisions as to its significance, particularly on the matter of interpretation of marine policies.

Secondly, and even more important if you think about it, the *Wilburn Boat* case in effect freezes the general maritime law on marine insurance as of the date of the decision, which was in the Fifties. There can be no jurisprudential development of the general maritime law in that area after 1955: If the point in question has not already been decided as a matter of general maritime law, state law is turned to, but the decisions on state law will remain forever decisions on state law and will never become part of the general maritime law.

Thirdly, for the reasons that I have just said, it profoundly detracts from, if not virtually eliminates, uniformity in the law of marine insurance, the promotion of which is one of the original and principal objectives of this Association.

For that reason, this Committee has authorized its Chairman to request the Executive Committee of the Association to keep its eye

out for an appropriate case which may go or will go to the Supreme Court on *certiorari* in which this Association can participate as *amicus curiae* in an effort to do something, whatever it may be, and that's not easy to say, about the present state of the law under *Wilburn Boat.*

Mr. Chairman, may I now ask Captain Burgess to say a few words on the subject of the Salvage Convention.

President Palmer: Certainly, George. Captain Burgess.

Captain Fred Burgess: Thank you, Mr. President.

Needless to say I didn't expect to be back up here in uniform, but I am, and I will be continuing this work until the first of July of next year.

I appreciate the opportunity to just say a couple of things about some of the international activities that we are engaged in.

We do have a diplomatic conference that's coming up on the 17th through the 28th of April next year on salvage. We will be commencing more serious preparations over the next several weeks.

In terms of timing, we have to get whatever written submissions we have to the International Maritime Organization by the end of January. What that really means is that if anybody wants to submit something to us in writing, we need to have it by the beginning of January, no later than the 10th of January.

We will have a Shipping and Coordinating Committee meeting concerning IMO Legal Committtee matters in Washington at the end of this month. It will be held on Tuesday, the 29th of November, at 9:30 in room 6332 of the DOT building. At that meeting we expect to deal with three subjects that we have been wrestling with internationally; salvage, of course, and we would expect that we may have at least one more Shipping Coordinating Committee meeting dealing with that subject.

We will also deal with the liens and mortgages issue. We will have an IMO/UNCTAD Joint Intergovernmental Group of Experts meeting the 12th through the 20th of December in Geneva. It will be the next-to-last meeting on this subject that we have been working on for several years.

Lastly, at our Shipping Coordinating Committee meeting we will also talk about what happened with HNS at our last IMO Legal Committee meeting several weeks ago.

I would encourage those who represent people who have interests in any of these areas, most especially in salvage because we are coming up to the diplomatic conference, to please make their concerns

known to me so that we can take them into account. We have an information mailing on all of these subjects that we recently sent out to a number of people. If you haven't received such mailings from us in the past and desire to receive them, I would ask you to please give me your card at the end of this meeting.

Thank you very much, Mr. President.

President Palmer: Thank you very much, Captain Burgess.

As you all know, this is the opportunity for a close liaison with the U.S. Government, and the International Treaty Section of the Coast Guard. This section is active in a great part of our international work and we are very grateful for our opportunity to participate with Captain Burgess and his people as well as for continuing the good relations of the MLA with the Coast Guard. We are very honored and pleased to have Captain Burgess and his colleague Commander Fred Rosa here to participate in our meetings.

May I now call on the chairman of the Maritime Legislation Committee, Mr. Byrn.

REPORT OF THE COMMITTEE ON MARITIME LEGISLATION

Mr. Byrn: Thank you, Mr. President and members of the Association.

We met for breakfast on Tuesday and discussed a number of subjects, including first, the Bill to Abolish Diversity of Citizenship Jurisdiction in the Federal Court.

Once again, this perennial bill didn't go anywhere,* probably to the usual dismay of the federal judiciary and the delight of most of the state judiciary. The Association has not taken any position on this while the ABA and ATLA actively oppose it.

Until it reaches a serious stage we don't think we should take any action.

The second topic we discussed was the expansion of the maritime Statute of Limitations legislation which was introduced and passed in 1980 and which at that time covered only maritime personal injury and death cases.

*However, note that subsequent to this report, threshold jurisdiction was raised from $10,000 to $50,000 by P.L. 100-702 (November 19, 1988).

This was the subject of a later resolution by the Association seeking to cover all types of maritime cases not otherwise listed statutorily. There is a need for this. There are a number of examples I can cite, such as the fairly recent decision in *American Insurance Company v. Benjamin Shipping Company,* 829 F. 2d 281 (1st Cir. 1987) where a one-year statute was applied by *laches* to a property damage case. Such a one-year statute is probably less than in most states in the Union.

Probably the most egregious case is *United States of America v. Arrow Transportation Co.,* 658 F. 2d 392 (5th Cir. 1981), a wreck removal case, where although dismissed in the District Court, the action was allowed to proceed by the Court of Appeals of the Fifth Circuit in 1981 saying *laches* didn't apply even after 28 years. If we had a Statute of Limitations, I think that would curtail that kind of delayed litigation.

Recently in March of this year, the District Court of Michigan ruled in *Reed v. American Steamship Co. et al,* 682 F. Supp. 333, that maintenance and cure was not covered by the existing statute. I think that conflicts with another District Court case—again, pointing up the need for a uniform statute.

With this in mind, last month Dave Sharpe and I visited the staff counsel of the Merchant Marine and Fisheries Committee. Since it was toward the end of the Congressional session, they advised that nothing would happen until the next session.

Staff counsel advised that any further limitation statute would probably come in as part of a package in the next Congress. We would like to get it through on its own, but that may not happen. In any event, nothing will occur at all until 1989 when the Committee will be discussing liability as part of the codification and recodification of Title 46.

Our next topic was punitive damages, which has a venerable tradition in the maritime law.

To my amazement, when the psychologist, Dr. Gallipeau gave his lecture on Tuesday, he said that woman jurors were more punitive than men. This may be more than a coincidence because the earliest cases on punitive damages were deceptively called *The Amiable Nancy,* 16 U.S. 56 (1818), and *The Charming Betsy,* 6 U.S. 64 (1804).

Well, what are we going to do about it? Punitive damages are a larger subject than maritime law. They are pervasive throughout the nation, and the ABA is actively working on this.

One of the courses we discussed was to liaise with the ABA. Another is to watch the Supreme Court, which in the Spring of this year handed down its decision in *Banker's Life & Casualty v. Crenshaw,* 108 S.Ct. 1645 (1988), where several of the Justices showed a constitutional disdain for punitive damages.

I think there is another case that may go up. A few weeks ago Justice O'Connor stayed execution on a $4 million judgment where a *certiorari* petition had been filed out of the Eighth Circuit from Minnesota.

So there are possibilities out there. We don't know that we should be doing anything particular about it. There are certain reforms that could be undertaken, especially in the maintenance and cure area where there is conflict as to what punitive damages consist of, whether it's limited to just attorney's fees or a full punitive award.

In conclusion on that subject, there was no consensus reached by the Committee and we are just going to watch and wait and see what developments are, meanwhile, however, developing something in the peculiarly maritime areas of punitive damages.

We are also considering and continuing our subcommittee studies on insurability of punitive damages in the fifty states and also the legislative effects of certain reforms that have been undertaken in the fifty states.

So without further *laches,* I will turn the microphone over to the next speaker.

President Palmer: Thank you very much for your report on this volatile subject.

May I call on the Committee of Uniformity of U.S. Maritime Law, Ms. Burrell.

REPORT OF THE COMMITTEE ON UNIFORMITY OF U.S. MARITIME LAW

Ms. Burrell: Good morning, Mr. President, and fellow members and guests. At the meeting of the Uniformity Committee yesterday we discussed several cases having an effect on the uniformity of U.S. maritime law, including four cases in which the MLA has filed *amicus* briefs. Two of those cases have already been mentioned in the Executive Committee's report, *The Hercules* and *The Wesermunde.*

In *The Hercules* case the position taken by the MLA was that to

the extent that the Foreign Sovereign Immuities law prohibits the District Court from exercising its traditional maritime jurisdiction, in this case a tort on the high seas, the act must be deemed unconstitutional and we will be, of course, awaiting with interest the decision of the Supreme Court on this subject.

The second case in which the MLA and in particular this committee, has had a continuing participation is the case of *Chick Kam Choo,* which was discussed by James Cooney in the seminar on Tuesday. One of the elements of the Committee's discussion of this case was the problems that will continue to occur until some of the issues raised by that case have been finally resolved.

The third case in which the committee has participated over several years is the Exxon case in San Francisco involving interference by the Coastal Commission in the off-shore transfer of oil. The case has now become moot because the oil companies involved have decided to build a pipeline which will eliminate the problem entirely. However, the position taken by the Association appears ultimately to have prevailed in that the Coastal Commission has dropped its efforts to interfere with the transfer of oil offshore.

Finally in *The Wesermunde* case as noted before, *certiorari* was denied. This is a disappointing result, because the issue in that case was whether a clause which provided for arbitration abroad and was incorporated from a charter into a bill of lading, was invalid because the clause conflcted with COGSA's prohibition of any lessening of the carrier's liability.

The position taken by the MLA was not for or against the validity of the clause or its incorporation but rather was a request for review of this issue because this kind of question will continue to arise. In fact at the Committee meeting we learned of a recent decision by the Fifth Circuit which was mentioned by John Sims which raises exactly the same question, and again a petition for *certiorari* has been filed there.

The committee was visited by Jim Roussel who is participating in this case, and over the next week or ten days the Committee will try to investigate all of the decisions that have been rendered so far in this matter and consider whether any participation of the Committee is advisable at this time, perhaps including a request to the President for *amicus* participation. However, we will need to take a vote on that.

We also discussed a couple of other cases which raise issues of

uniformity of U.S. Maritime law; however, it appeared that no further participation was necessary because while the results were perhaps somewhat askew, the principal of uniformity was not really strongly threatened.

We were also fortunate to have as a visitor to our committee George Waddell who spoke earlier today about the problems raised by *Wilburn Boat*. This will also continue to be an area that is followed by the committee to see whether there is an appropriate case in which the uniformity issue is in the forefront and might be appropriately treated.

Finally, the committee, of course, desires to keep itself apprised of any issues, cases or statutes which will adversely affect the uniformity of U.S. maritime law. A suggestion was made, which will be followed up, that we attempt to coordinate with the editors of AMC to keep ourselves aware of any case law which might raise important issues of uniformity.

However, in the statutory area, it will be a little bit more difficult to follow, and therefore, I would request all of the members of the Association, and as you go off to your offices, please ask any other people that you work with, to advise me of any statutes that are enacted or regulations that come into force that appear to affect uniformity issues, so that we can follow through on these and see whether any further work of the Committee is necessary on these points as well. Thank you very much.

President Palmer: Thank you very much. We greatly appreciate your report on this complex subject.

May I now call upon Mr. Dorsey, Chairman of the Committee on Foreign Sovereign Immunity.

REPORT OF THE COMMITTEE ON THE REVISION OF THE FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976

Mr. Dorsey: Thank you, Mr. President. Can everybody hear me back there?

I'm happy to report that the bill containing what I call the admiralty amendments to the Foreign Sovereign Immunities Act, H.R. 1149, has passed both houses of Congress and now awaits the President's signature.

I would like to give a little background on how this came to be,

because I think it is interesting.

Five years ago the American Bar Association formed a special committee to discuss and propose certain changes to the Foreign Sovereign Immunities Act. And they came to the Maritime Law Association and asked that it appoint one of the members of the ABA Committee to give admiralty law input, and President Paulsen appointed me as a member of that ABA Committee and we established a small committee within the Maritime Law Association.

We formulated basically three admiralty amendments. One was designed to change the Draconian effect of wrongful arrest that the *Jet Line Services* case in Baltimore had brought about. The second was to permit foreclosure under the Ship Mortgage Act, and the third aspect was to put language in the Act to make sure that actions under section 1605(b) were handled as substitute *in rem* actions.

And so these amendments were folded into a bill that contained other provisions put forth by the American Bar Association, and in Puerto Rico in 1984 you all adopted a resolution in favor of that bill, our admiralty amendments and the ABA amendments and authorized me to appear to promote this bill.

It became evident rather early in the game that there was some controversy about some of the ABA proposals, particularly the one involving pre-judgment attachment.

Accordingly, we split our bill off from the ABA bill in 1986, so that there were two bills now, one that had just the Maritime Law Association proposed amendments and the other which had the other ABA proposed amendments, and I went to Congresswoman Mikulski, who was from Baltimore, and got her to introduce the admiralty bill, and then testified at a hearing before one of the House subcommittees in 1986 on that bill, and there was no opposition to the admiralty bill.

Indeed, the State Department with whom the members of the ABA committee had met earlier and I had met with them as well, came in in favor of our bill, as did the Justice Department. But that bill died in Congress just through lack of action.

The bill was re-introduced—our bill was re-introduced in the 100th Congress by Ben Cardin from Maryland, and I went down and testified again.

Again there was no opposition. Again State and Justice came forward on our side, still, however, opposing various provisions of the ABA bill.

And while I was mildly optimistic, I was perhaps not as optimistic

as various reports may have indicated to you, because, quite frankly, without meaning any disrespect to any foreign sovereign, the Foreign Sovereign Immunities Act is not a very sexy topic, and it isn't the kind of topic that really stirs the hearts of Congressmen.

But lo and behold, this summer the bill began to gather a little steam. The National Association of Stevedores was pushing it, behind it. It eventually passed the House and went over to the Senate and was before one of the subcommittees, a subcommittee of the Committee on the Judiciary, and it became very evident that if we were going to get the thing passed, we had to get it passed without any hearing being held.

In other words, the Senate Committee on the Judiciary was going to have to decide that no hearing was necessary because of the non-controversial nature of the measure and that was the way we were going to get it passed, if it was going to happen at all.

It also became very evident that one of the key members of the Senate Subcommittee was Senator Heflin from Alabama, so I wrote to Ray Crowe to see if he would write to Senator Heflin and urge him to support the bill. I wrote to every Senator on the Committee, including Barbara Mikulski who is in the Senate now.

And lo and behold, it came out of the committee without any hearings and did pass the Senate. It was passed on October 21st, the last day of the session, at 7:00 p.m.

Interestingly enough, because it was non-controversial, there were a number of attempts to attach various amendments to it. The one I liked was an amendment that would have established a Miner's Hall of Fame, but all those efforts failed and our bill passed unscathed, and unless the president has a heart attack, I expect him to sign it.

There are copies of the bill in the back of the room which you can pick up if you want to .

That's my report, Mr. President.

President Palmer: Thank you very much, Bill. This is another outstanding example of the close working relationship between our Association and certain members of Congress and/or the Executive branch of the Government and the Federal agencies, and we much appreciate this very high degree of communication and cooperation.

May I now call upon our intrepid and versatile Chairman of the Arrangements Committee, Bobby Hughes, master of all kinds of magic, rabbits out of the hat, and so forth.

REPORT OF THE COMMITTEE ON PLANNING AND ARRANGEMENTS FOR THE 1988 FALL MEETING

Mr. Hughes: Thank you, Dick. I have the winners of various sporting events and a couple of announcements. In the two-mile run on Wednesday morning by Jim Moseley, the men's winners were Rick Whelan, John Cowden, Andrew Taylor and Carl Buchholz.

The women's winners, the number one gal didn't turn her name in; we don't know who she is, and if she will identify herself, we will put her in the records.

Second place, Mary Beth Mulder, Lee Nelson and Yvonne Gelpi.

The Over 50 category; first place, John Edgington, Walter Muff and Jack Gruber.

Paul Calvesbert ran the sailing regatta. First place was Peter Commette; second place, Georgio Berlingieri and third place, Jack Gooch.

Almer Beale ran the fishing tournament. He had four categories of winners, snook, Mark Muller; red fish, Ray Massey; trout, Jim Carroll; and snapper. Morton Good.

Rusty MacLaughlin is still in the process of running the tennis tournament and asked me to make the following announcements:

The women's tennis finals will be played today at 2:00 p.m. The finalists will be Mary Ann O'Neil, Grace Reynolds, Ann Lucas, Marie McDonald, Joan Muller, Alva Patton, Sally Taylor and Kay Robb.

The men's tennis finals will be played today at 3:30 p.m. The finalists will be Al Kelley, Dick Leslie, Bob Glenn, George Alvey, Hy Hillebrand, John Crumpler, K. Hiratsuka and Michael Cohen.

Ray Letulle ran the golf and asked me to announce the following winners. The men's winners are Pierre Cote, Rob Wallis, Jack Cassedy, Nick Edggell, Fred Wentker, Jack Timms, Jerry Mali, Bill Dorsey and John Foster.

The women's glof winners are Allison Taylor, Joan Maddy, Mary Sullivan, Margarite Lindfelt, Ann Nelson, Sybil Berkley, Nina Foster and Margie Lippman.

We are going to have the registration desk open approximately fifteen minutes after this meeting is over. Bags and clocks are on sale for $15 each. We don't want to take any back; we are going to shut it down, so come over and relieve us of the shipping problem.

I want to welcome every one of you and thank you for coming to Marco. There is going to be another great meeting next year in Or-

lando. Bill Dorsey is in charge of that and you will be hearing from him in a minute. Thank you.

President Palmer: You can call this an unanimous resolution and congratulations to Bobby Hughes. He has done a magnificent job. Thank you again, Bobby.

One of the things that makes these meetings this year and every other year—did I say every other year? Well, next year, but in the past—such a great pleasure and a success for us as practicing lawyers and a chance to meet friends is the custom of inviting overseas visitors and our Canadian friends. And you have already heard about our London friends and those friends who are from Scandinavia, Europe and Latin America, from the Far East and other parts of the world coming to see us there are some gentlemen here from Hong Kong, but especially our next-door neighbor we feel very close to, the Canadian Maritime Law Association, and its president, David Brander-Smith. He is here this morning and would like to say a couple of words.

Mr. David Brander-Smith: Thank you Mr. President. Distinguished guests, I want to speak to all of the members of the American Maritime Law Association in particular but to all guests also.

We have come here; we have participated in your sports events; we have sat in occasionally on your meetings and we have had a wonderful time. We have golfed, played tennis, fished, gone sailing and you may have noticed that whenever we did these things, we enjoyed ourselves.

We did sit in on some meetings, and I must tell you that the effort that has gone into your papers and the quality of those papers has, in my view, Mr. President, and I congratulate you and your committee particularly, made this a very worthwhile working meeting.

The thing that we have most enjoyed, as always, is the friendship that's extended to us by the Maritime Law Association. We see you people on many occasions, not only when we are here by special invitation, this year by general invitation, but at other meetings in the Maritime Law Conferences, and at all times we have enjoyed from you and have appreciated from you the very warm hospitality that you have extended to us.

I would like to say, Mr. President, in particular, to you and all the hard working members of your Executive and your Organizing Committee and the many, many people that I know are involved in all the planning that's necessary to make this meeting the success that it's been, I would like to extend our congratulations.

I now have a small token of our appreciation for the invitation that has been extended to us which I will present to your President. Thank you very much.

President Palmer: Thank you very much, David.

Do you recommend that I open this now?

Mr. David Brander-Smith: Oh, yes, carefully.

President Palmer: This is very interesting. This wrapper is one of these plastic covers which Tom Wagner was talking about, and I understand that this cover will survive for approximately 450 years.

Mr. O'Brien: It will take 450 years to get it open.

President Palmer: It's magnificent.

As you can see, this is a magnificent piece of statuary. It is "Presented to the Maritime Law Association of the United States on November 4, 1988, by the Canadian Maritime Law Association Friends."

On behalf of my fellow officers of this Association, the Executive Committee and all of our fellow members of this Association, we thank you very much for this magnificent statuary.

My friends, take a good look at this. It's a most appropriate symbol of the warm best wishes of our Canadian friends. We thank you all.

May I now call upon Bill Dorsey who will tell us something about his plans for Orlando and our next meeting next year, in October, 1989 not the year after.

REPORT OF THE COMMITTEE ON PLANNING AND ARRANGEMENTS FOR THE 1989 FALL MEETING

Mr. Dorsey: Let me just make a personal comment, if I may, Mr. President, because when Bobby Hughes was reading out the golf prizes, I hope everybody was listening carefully, because I want to make an announcement on behalf of the fraternity of tennis players, and it shows the old adage that old tennis players never die, they just turn into golfers. Waverley Berkley eat your heart out.

I want you to reserve the week of October 23rd, 1989, on your calendars, because that's the week that we are going to have the MLA meeting in Orlando and it is going to be sensational, and I say that for a number of reasons.

The first is that the hotel we are going to stay at is the Hyatt Grand Cypress, and it is a world class first class hotel. The physical plant is out of this world; 750 rooms on 1500 acres and it is designed

along the lines of the Maui Hyatt Hotel, an 18-story atrium with plants and birds and art work that will knock your socks off. It is magnificent, and hopefully there will be no repairs going on in the lobby.

The pool area at this place is also reminiscent of Maui. It's on about a half acre. Part of it is heated, part of it isn't. It's got twelve waterfalls, two slides, one of which is 45 feet. I must caution you that they ask you to stay off of the slides after 6:00 p.m.—

President Palmer: After six drinks.

Mr. Dorsey: Yes, exactly. The main thing I think about the hotel is the people who run it, and the people who manage it and the people who are in the restaurants, and they are more than what I would call friendly.

I had been told this by my friends from Baltimore who have been there for other events, but your committee, which is in charge of the arrangements for '89, is on the job, and we were there this past weekend inspecting the place. I can say to you that the people who run this, the people behind the desk, the people in the restaurants in this place are sensational, and the way they approach you is not unctious; it's not overdone. Rather they make you feel as if they want you to have a good time, and you really believe that after you have been dealing with them.

They are professional as well and fully staffed.

I have to tell you that your Committee has taken its duties seriously and has tested out the restaurants at the Grand Cypress, sampled all the things on the menu and they are wonderful restaurants, good restaurants, first class. As far as the bars are concerned, my prediction is that the White Horse Saloon will go down in the annals of this organization's good spots, and I know a few people who I predict will find that a second home.

As far as the activities are concerned, golf can't be beat. There are 45 holes of golf. They are designed by Jack Nicklaus and are what they call Jack Nicklaus signature courses. One of the courses is designed to be reminiscent of St. Andrews and I can testify personally to the difficulty of the bunkers on that course. The greens are in great shape.

The tennis facilities won five stars from *World Tennis Magazine.* There is a 21-acre lake and they have sunfish, canoes, paddle boats, a beach; there is an equestrian center; there is a racketball; there is volleyball—just more activities than you can string together or that I have time to talk about.

As far as local attractions, your Committee, of course, arranged today to have in your *U.S.A. Today* a special section on Walt Disney World, and I ask you to look at that. That, of course, is the big attraction in Orlando, but in addition to that, there is Sea World; Cape Canaveral is nearby; the golf courses in the area are wonderful, and the local restaurants are first class. Information about those other restaurants and the golf courses will be disseminated to you in due course.

The weather: it's not raining in Orlando today, at least not according to *U.S.A. Today,* and I've been checking the weather for the last two weeks and no rain, 85 degrees, low of around 61.

Travel to Orlando is a lot simpler than to a lot of other places because of Disney World.

We are going to go back to a more truncated format for our meeting, a Tuesday through Friday format, which is traditional. We will not have a spare day in the midst of the meeting. The idea behind that is if you want to come just for the business portion of the meeting you can cut down the number of days that you are going to be there, but if you want to be there for the full week, you can spend the early part of the week going to Disney World and seeing some of the other attractions.

The hotel will be on a European plan. The way the hotel is geared, it does not lend itself to a modified American plan. I myself prefer the European plan, because I think it gives everybody more flexibility about what they are going to do in the evening, and that's the way we are going to run it. Your committee is trying to come up with some special events to make this a memorable meeting. Various suggestions have been made, including a swamp party. I hesitate to tell you any more about that. I just wanted to whet your appetite about a swamp party. We may or may not have a swamp party.

There is a video tape that is running now continuously on the monitor outside of this conference room and it gives you a little look at the place.

We will try to get our first mailing out sometime in March. My advice to you is do not wait. Do not put that first mailing aside. Do not let it get buried on your desk. Send the money in quick, because I think we are going to have a big crowd; we have a limited number of rooms, and you don't want to be left out.

I will see you in Orlando.

President Palmer: Thank you, Bill. I'm sure there are a lot of

people ready to sign up right now.

At this moment I will ask if there are any other items of business. Gordon, welcome to the microphone.

Mr. Paulsen: Just a small item but I think it could be an important one. Yesterday at the Continuing Legal Education session, Judge Roney spoke about a new bill which is on the President's desk concerning study of the Federal court system and the possibility that maybe specialized admiralty courts could somehow come into our system. I trust some consideration will be given to having MLA input into that study which will, I believe consist of a year and a half study by fifteen people.

President Palmer: That's a very important proposal that Judge Roney discussed yesterday, and my fellow officers and I immediately exchanged our enthusiastic reactions of support for Judge Roney's proposal. David Sharpe, Chairman of our Practice and Procedure Committee, shortly thereafter expressed his great interest in the whole concept. With his base of operations in Washington, he volunteered the full support of his committee. It is most appropriate that you have raised this subject this morning; we wish to record that this program will be reviewed promptly with a view to making our interest and offer of supporting work known to the Court Commission through the good offices of Judge Roney. Our view this morning is that this project deserves our full professional support and effort to contribute whatever professional assistance is required to assure the progress and success of the project. Thank you Gordon, for your comments.

Is there any other item of business?

At this moment I have a message here from a very dear friend of ours. It comes from Ben Yancey in New Orleans. He says "I feel like the little boy outside with his face against the window looking in. My very best to you and all the members and my love to Nancy and all the ladies, reminding the latter that though they are too young to remember it"—what a diplomat he is—"I am the reason they are there"—here—"where I especially wish I were too. Have a good time. Ben."

You can be sure that I will tell him what a good time we had and how we missed him, and I'm sure many of you will do that when you next see him.

We are now ready to entertain a motion from a gentleman named Mr. Herbert Lord.

Mr. Lord: Mr. President, with appreciation, which I'm sure we

all join, to you and to our officers and to our Executive Committee, and for the magnificent reports of the Committee Chairmen evidencing a great deal of substantive work of those committees, and also an expression of appreciation, in which I'm sure we all join, for the magnificent meeting at Marco Island chaired by Bob Hughes and his committee, I move that we adjourn.

President Palmer: It's unanimous. Thank you very much, Herb.

(Applause)

(Whereupon, the meeting was adjourned at 12:00 noon.)

FORMAL REPORT OF THE COMMITTEE ON CARRIAGE OF GOODS

The Committee met in New York on October 24, 1988, to give those who might not be attending the meeting in Marco Island an opportunity to express their views. The Committee met again at Marco Island on November 1, 1988. At the latter meeting the Committee welcomed Professor Jan Ramberg of Sweden, the Secretary General Executive of the Comité Maritime International (CMI), who reported on the CMI's plans for the Plenary Conference in Paris in July 1990.

Since its report to the Association in New York on May 6, 1988, the Committee has (1) participated in the on-going discussion of the Hague/Visby/SDR and Hamburg Rules, (2) assisted in the work of the CMI International Sub-Committee preparing Uniform Rules on Sea Waybills and Electronic Documentation, and (3) made progress in exploring, in depth, through its Sub-Committees, the subjects of multimodal transportation, electronic data interchange, and marine fraud. While the Sub-Committee on Marine Fraud, which is chaired by Tom Howarth, has been active for some time, the Sub-Committees on Multimodal Transportation and Electronic Documentation have now been duly constituted and staffed and, through their membership consisting both of lawyers and private sector experts, have defined their goals and gone to work to achieve them. More on the work of these Sub-Committees will appear later in this report.

I. *Hague/Visby/SDR and Hamburg Rules*

In accordance with the plans which Mr. Arnold Levine, the Direc-

tor of the Office of International Transportation and Trade. DOT, revealed to the Committee during its meeting in New York on May 4, 1988, the DOT held meetings throughout the summer with various industry representatives to assess the need to revise the Carriage of Goods by Sea Act (COGSA) to bring it into line with what are conceived to be more modern shipping practices. These meetings revealed continued disagreement about the type of revisions that should be undertaken. Generally, ocean carriers, cargo insurers, P&I insurers, some shippers and most maritime lawyers continued to favor adoption of the 1968 Visby Amendments and the 1979 SDR Protocol. The Visby Amendments adjust upwards the liability limits for packages below about 333 kilos, replace the package limitation with a weight limitation for heavier cargo, and further provide that a container, pallet or similar article of transport used to consolidate goods is a package or unit, except where the packages or units packed in the article of transport are enumerated in the Bill of Lading, in which instance they shall be deemed the packages or units for the purpose of determining the liability limits. Many shippers, on the other hand, remained firm in their position that only the 1978 Hamburg Rules would be acceptable. The Hamburg Rules, in addition to the container rule in the Visby Amendments, would also revise the carrier's defenses to liability, shift the burden of proof, increase liability limits .5% above the Hague/Visby limits, extend the time for suit, extend the carrier's period of liability, hold the carrier liable for delay, and make the bill of lading compatible with modern data processing technology. Finally, the DOT, supported by one shipper organization, The American Association of Exporters and Importers, continued to favor adoption of what the Government considers a compromise legislative package consisting of, first, adoption of the Visby Amendments to the Hague Rules, and, subsequently, the Hamburg Rules, preserving constant maximum uniformity with our trading partners. As you will recall, this compromise, also known as the "Hamburg trigger", was recommended to the Association by the Carriage of Goods Committee in 1983, but was not approved; rather, the MLA's position remains in favor of prompt adoption of Hague/Visby. Additionally, the American Bar Association has recommended the further study of the continued viability of the nautical fault defense, multimodal transportation, liability of stevedores and terminal operators, and a further increase in the limits of liability provided in Hague/Visby and Hamburg.

In hopes of advancing the cause of an industry-wide consensus,

the DOT called a Conference in Washington, D.C., on October 20, 1988, which was attended by representatives from all sectors of the shipping community, including numerous members of the MLA. The DOT planners had selected four topics for discussion:

(1) International Trade Implications;
(2) Transportation Cost Changes Due to COGSA Revisions;
(3) Uniformity of Law Implications; and
(4) Areas of Common Ground.

These topics were to be discussed by panels of experts intended to be representative of various viewpoints in the shipping community. MLA members were included in those serving as panel chairmen and as panelist (see Exhibit A), and others participated in the discussions from the floor. Pursuant to the DOT's request, each panel chairman introduced his subject, with each panelist making preliminary remarks. Thereafter, discussions took place between panel members, and panel members and the audience. Although these discussions were uniformly on a high level, it rapidly became apparent that they had produced few, if any, new insights and, more importantly, revealed little willingness to abandon old positions in favor of new ones. What did emerge, however, was a clearly unfavorable reaction by most of those in attendance to the Hamburg trigger mechanism, which was undoubtedly enhanced by letters from the Japanese Shippers' Association and the Japanese Shipowners' Association, read at the meeting, urging the Japanese Government to adopt the Visby SDR Protocols. Thus, no uniform industry position became manifest which could justify the DOT's recommending to the State Department that either Hague/Visby or Hamburg be sent up to the U.S. Senate for its advice and consent.

Several alternatives to the treaty route were discussed, including direct congressional involvment through unprecedented oversight proceedings implementing Hague/Visby with the ABA proposals and perhaps others, or by separate domestic legislation.

At the end of the Conference, Mr. Levine announced that a transcript of the record of the proceedings would be circulated to all participants within 30 days, with an invitation for further comment. Thereafter, a list of the Meeting's conclusions on the principal subjects of discussion would be submitted to the Secretary of Transportation, including the impact of the Visby/SDR Amendments and the Hamburg Rules on (a) uniformity of law, (b) facilitation of trade, (c)

effect on total transportation costs, (d) effect on transitional and long term administrative costs, (e) development of documentation technology, (f) allocation of liability, (g) the unique nature of the shipping industry, as compared with others, and (h) how much Government involvement is warranted at this time in restructuring the maritime/multimodal transportation industry.

A list of options which, presumably, will be weighed prior to its being submitted to the Secretary, will be added to the list for the latter's consideration:

(1) Adopt Hague/Visby, with SDR Protocol.
(2) Adopt Hamburg;
(3) Adopt Hamburg trigger or some similar compromise measure;
(4) Send to the State Department for transmittal to the U.S. Senate both Hague/Visby and Hamburg without a link;
(5) Do not send up either treaty, but implement Hague/Visby and recommended changes by domestic legislation via the oversight route, or draft domestic legislation independent of the Treaties;
(6) None of the above.

II. *Uniform Rules on Sea Waybills and Electronic Documentation*

At the CMI Colloquiums at Venice in 1983 and Lisbon in 1985, strong support was expressed for finding a solution to the problems caused by faster ships and slower mails, delaying delivery of the goods. A desire was expressed for "paperless" documentation.

By way of background, an English statute enacted in 1855 required the Master of a vessel to take up, in exchange for delivery of the goods, any document entitled "bill of lading". The statute did not distinguish between negotiable and non-negotiable bills of lading. Thus, even a straight bill of lading is quasi negotiable, in the sense that it can be used as a security document. The English statute was followed throughout the British Empire (now the Commonwealth) and also in Europe and elsewhere. It is, of course, unlike U.S. law which does not require surrender on a non-negotiable bill of lading.

Modern transportation technology, particularly in short trades, e.g. between England and France, and even between USNH and UK/Cont., have intensified the problem. The CMI appointed a Sub-Committee chaired by Sir Anthony Lloyd of London to deal with this subject, and former President Frank O'Brien appointed John C. Moore

to serve as U.S. member. The Sub-Committee has held three formal meetings and has distributed a questionnaire and two drafts, resulting in contents from many MLA's.

The most recent meeting of the CMI Sub-Committee was held in London on October 13, 1988, at which time a revised draft was worked over. It will be polished by a drafting committee and distributed in the near future. We shall continue to follow this matter closely and to keep the Association informed.

In the course of the Sub-Committee discussions, pressure intensified for an electronic solution, resulting in a proposal based on earlier work of the U.S. National Committee on International Trade Documentation. That proposal was circulated as a Sub-Committee draft. We understand that the CMI has recently decided to refer the subject of electronic documentation to a separate Sub-Committee chaired by the CMI's Secretary General Executive, Jan Ramberg.

III. *The Paris Plenary Conference of the CMI, July 1-6, 1990*

The agenda for the Paris Plenary Conference of the CMI, in addition to Seaway Bills and Electronic Documentation, will have on its agenda as an additional subject of study responsibility for the Carriage of Goods by Sea in the 1990's. CMI President Francesco Berlingieri has appointed himself to chair an International Sub-Committee which will prepare this subject for discussion at the Plenary Conference.

IV. *Work of the Sub-Committees and Working Groups*

1. *Sub-Committee on Multimodal Transportation:* In May, 1988, the Sub-Committee divided the subject of multimodal transportation into four study groups: (1) Conflict of Cargo Liability Laws; (2) Changing Complexion of the Transportation Industry; (3) Administrative Regulations; and (4) Insurance. Sub-Committee members were assigned to various study groups and asked to prepare presentations for a Sub-Committee meeting to be held in Marco Island regarding the following:

(1) Changing Complexion of the Transportation Industry. This presentation included some thoughts and predictions by the committee member John Reeve of the transportation consultant firm of Temple, Barker & Sloan.

(2) Conflict of Cargo Liability Laws. This study group's presentation included the following reports: "Staggers Act", by Hy Hillenbrand: "Contractual Methods to Resolve Conflicts of Law", by David Ainsworth; "Legislative Methods to Resolve Conflicts", by Bill Augello; "Insurance Aspects", by Michael Ryan.

After hearing the various reports and discussions at Marco Island, the Sub-Committee outlined goals for its further action.

2. *Sub-Committee on Sea Waybills and Electronic Documentation:*

The Sub-Committee was appointed this year, incorporating into its membership the previous Sub-Committee on Sea Waybills, but being expanded to include members interested in and knowledgeable about electronic documentation. The Sub-Committee has studied the CMI drafts and commented thereon. It is expected that it will be in a position to make a full report to the Committee, for recommendation to our Association, in preparation for our 1989 Annual Meeting.

3. *Sub-Committee on Maritime Fraud:*

The Sub-Committee on Maritime Fraud is continuing in its efforts to coordinate a worldwide cooperation among maritime law associations through the Comité Maritime International and expects to have a report on its efforts ready by the Spring.

4. *Study Group on COGSA Package Limitation:*

This Study Group is chaired by Michael J. Ryan and is collecting and collating "package" and "unit" limitation of liability decisions. The Study Group's intention is to publish the decisions in a future issue of the *MLA Report.* Mike makes the observation, however, that these efforts may become more a "labor of love" or an academic exercise if the Hague/Visby Amendments (with SDR) are adopted. Under Hague/Visby, the issue of what is a "package" would be fairly clear cut and the limitation amount would, as a practical matter in most instances, not be bound to the package. The matter in Hague/Visby limitation is couched in the alternative: package or weight, *whichever is greater.*

Respectfully submitted,
MANFRED W. LECKSZAS, Chairman

Exhibit A

Proposed Agenda for COGSA Meeting
Thursday, October 20, 1988
Room 2230 DOT

8:00 A.M. Registration & Coffee

8:30 A.M. Introduction—Symposium Objectives
Acting Assistant Secretary Greg Dole—DOT
Administrator John Gaughan—MarAd
Deputy Assistant Secretary Jeff Shane—State Dept.

9:00 A.M. International Trade Implications
Moderator: Professor Joseph Sweeney, Fordham Law Center
Panelists: Eric Bergsten, Secretary, UNCITRAL
Bill Johnson, Economist, Commerce Dept.
Roger Wigen, Manager, Policy & Industry Affairs, 3M Company
Tom Wajda, Director, Maritime Transport, State Dept.
Discussion

10:30 A.M. Transportation Cost Changes Due to COGSA Revisions
Moderator: Paul B. Larsen, Office of General Counsel/DOT
Panelists: Sam Tranchina, Vice President, Great American Insurance Cos.
William Augello, Executive Director, SNFCC, WOSCHA, ASHA
George Chandler—COGSA Committee, MLA
David Ainsworth, Assistant General Counsel American President Lines
Discussion

Lunch

1:00 P.M. Uniformity of Law Implications
Moderator: Professor David Sharpe, GWU Law Center
Panelists: Bill Coffey, Associate General Counsel—Sea-Land
Manfred Leckszas, Chairman, COGSA Committee, MLA

Tom Smerdon, Assistant General Counsel
Chemical Manufacturers Association
George Taft, Office of Legal Adviser, State Dept.
Discussion

3:00 P.M. Areas of Common Ground for COGSA Revision
Moderator: Arnold Levine, Director, Office of Int'l Transportation & Trade/DOT
Panelists: William McCurdy, Commerce Counsel, DuPont
Richard Palmer, President, MLA
Ward Mauck, President, AIMU
Gordon Paulsen—Admiralty Subcommittee, ABA
Gerard J. Muller, Executive Director, Amer. Assoc. of Exporters and Importers
Discussion

5.00 P.M. Summary—What Next?
Arnold Levine—DOT

FORMAL REPORT OF THE COMMITTEE ON COMPULSORY DISPUTE RESOLUTION

At the time of our meeting on November 1, 1988, Robert G. Phillips presented a talk on the results of the sub-committee on research and development. This generally provided for the committee studying the variety of alternatives available to resolve disputes, short of litigation, and then see if we could decide on a program which we could recommend to the MLA membership for adoption. We would then consider means to be used to disseminate this program to the members and the maritime industry.

A number of specific courses of action were recommended and discussed by the members present.

These courses of action included preparing and distributing a white paper of the Committee's adopted program, monitoring and periodically informing members of its success as well as failures, liaising with other groups to discuss this program, sponsoring seminars, and having articles published dealing with this subject in trade magazines.

The members present at the meeting were in disagreement as to

whether or not the mission of our committee included actually recommending a specific type of alternative dispute resolution program to the membership as a whole. Instead, many members thought that our mission was merely informative. It was decided that all members present would consider what the scope of our committee should be in the future and send letters to the Chairman detailing their recommendations. In addition, the Chairman would solicit the opinion of those members who were not present concerning what they believe the scope of our mission should be .

Respectfully submitted,
RAYMOND T. LETULLE, Chairman

FORMAL REPORT OF THE COMMITTEE ON ECONOMIC REGULATION OF OCEAN COMMON CARRIERS

This Committee's activities since the last meeting of the Association have been directed toward preparation and securing attendance as part of the official advisory group to the United States delegation to the UNCTAD Liner Code Review Conference, scheduled to begin in Geneva October 31, 1988 and to continue up to November 18. The Committee was successful in having three members designated as part of the delegation: W. P. Verdon; Albert E. May; and H. Clayton Cook, Jr., each of whom are scheduled to cover part of the Conference. The issues before the Conference involve first of all the extent of United States participation in view of the fact that the United States is a non-signatory. The group of the developed nations known as Group B are generally in support of United States participation and of permitting the United States to vote. The LDCs are expected to oppose voting. In addition to the procedural points, other issues expected to come up at the Conference involve possible expansion of the Code to cover non-Conference liner carriers and bulk carriers. The extent to which these subjects will be considered cannot be determined at the time this report is being written, and a review of developments at the UNCTAD Liner Code will be part of the Committee's report at the May meeting of the Association.

The Committee continues to follow the development and implementation of the shipping regulations of the European Common Market and their possible impact on United States shipping. The decision in the *Hyundai* case in which sanctions are sought against a Korean

carrier is awaited with considerable interest. By and large, the implementation of the regulations has been slower than anticipated, and we expect that more will be known by the May meeting of the Association.

The Committee is exploring the possibility of holding a winter meeting to consider the results of the UNCTAD Code Review Conference and other developments.

Respectfully submitted,
RUSSELL T. WEIL, Chairman

FORMAL REPORT OF THE COMMITTEE ON FISHERIES

The Fisheries Committee met on November 3, 1988 at Marco Island. Matters discussed of interest to the membership were:

1. Passage of the legislation which remedied the problems of vessel owners with respect to paying and obtaining refunds of the off-highway user tax. This was the legislation that the Maritime Law Association endorsed at its September, 1988 meeting. The remedial legislation became effective December 31, 1985.
2. Final passage by Congress of Part II of HR 1841. This was the part of HR 1841 that dealt with the safety provisions. Part I dealing with the changing of the Jones Act and general maritime rights of fishermen was dropped from the bill. See Public Law 100-424 entitled "Commercial Fishing Industry Vessel Safety Act of 1988".
3. Passage of HR 3105 dealing with vessel mortgaging and financing expanded a number of institutions relative to financing vessel requirements for such mortgaging.
4. Status of the Omnibus Drug Bill. Congress mandated that the Attorney General's Office and the United States Customs Service agree on procedures with respect to seizing vessels in drug related cases.
5. A written and oral report was submitted by James Hanemann, Jr. of New Orleans concerning status of ocean pollution from vessels covered in 33 CFR Parts 151, 155 and 158 and 46 CFR Part 25. A copy of Mr. Hanemann's report can be ob-

tained by writing to him directly or to the Chairman of the Fisheries Committee.

Respectfully submitted,
PAUL M. POLIAK, Chairman

FORMAL REPORT OF THE COMMITTEE ON LIMITATION OF LIABILITY

As the members of the Association are aware from previous reports, Congressman Biaggi introduced bills in both the 99th and 100th Congresses to modify the American law on limitation of liability. It is worthwhile to give a thumbnail description of that situation.

On January 3, 1985 Congressman Biaggi introduced H.R. 277, a bill to revise limitation of liability law very closely modified on the MLA draft bill which had been prepared in 1979. H.R. 277 received substantial support from the maritime industry (and the MLA) but was opposed by seamen's organizations. A number of hearings were held, reported in *Hearings before the Subcommittee on Merchant Marine,* Serial No. 99-36, but the 99th Congress expired without action.

Subsequently, during the 100th Congress, Congressman Biaggi introduced H.R. 3135 on August 6, 1987. This bill was modelled largely on H.R. 277, but with substantial increases in limits of liability and other significant changes. This legislation was regarded with disfavor by much of the maritime industry. No hearings on the bill were held, and it is clear that the bill will lapse with the expiration of the 100th Congress in early 1989.

In view of this history of failed legislative attempts, a questionnaire was circulated among Committee members to elicit their views on the situation with respect to possible limitation of liability legislation and what, if anything, the MLA should do with respect to that subject.

A number of Committee members responded in writing to the questionnaire and, on November 1, 1988, some 18 members and guests attended a meeting of the Committee at Marco Island, where further views were given.

There is a general Committee consensus on several points, as follows:

(1) It would be desirable from a legal/economic point of view to change U.S. law to conform more closely to the 1976 Convention. [It should be noted that the MLA has gone on record as favoring such a change and, specifically, H.R. 277. As mentioned, H.R. 3135 provides for higher limits and has not been formally approved by the MLA. In any event, with the demise of the 100th Congress, it appears doubtful that it will be reintroduced.]

(2) Most of the Committee members were uncertain whether the potential results of the 1988 election would affect chances of limitation of liability change. Some members were concerned that there is a substantial risk that any proposal to change limitation might lead to unforeseen consequences that might worsen the situation insofar as the American merchant marine is concerned.

(3) At this juncture the MLA should play a more passive role, not actively promoting a change in the law but keeping a watch on the situation, remaining alert to possible introduction of a new bill, and taking appropriate action if a new bill should be introduced.

(4) In view of the foregoing situation, it is not considered useful to attempt a further revision of H.R. 3135 or to put together an updated MLA draft, on the reasoning that such steps would be premature.

(5) There is some possibility that IMO will take action to modify the 1976 Convention in 1989 or, more likely, in 1990; this may be accomplished either by devising a separate fund for hazardous and noxious substances and/or revising the Convention itself by increasing limits.

For the present, the Committee plans to take no affirmative action with regard to limitation of liability but will keep a watch on the legislative situation through its Washington members.

There was also some sentiment for having the Committee keep aware of significant issues and court decisions under existing limitation of liability law and, in appropriate circumstances, advocating MLA action with regard thereto. In connection with this, we would appreciate any MLA members notifying the chairman of any noteworthy issues or decisions involving limitation of liability. If an MLA *amicus* brief is desired, appropriate action should also be taken under the provisions of Section 500 B of the Association's By-Laws.

Respectfully submitted,
RICHARD H. BROWN, JR., Chairman

FORMAL REPORT OF THE TAX SUBCOMMITTEE OF THE COMMITTEE ON MARINE FINANCING

This is to report on the recent legislative, administrative and other developments that have occurred since the last Committee meeting held in New York City in May of 1988, pertaining to the new regime for the taxation of foreign shipping as enacted by the Tax Reform Act of 1986 (the "1986 Tax Act") and to advise on the current activities of the Subcommittee with respect to said Act.

1. *U.S. Tax Filings In Absence of IRS Guidance.*

In general, based on informal inquiries to tax and accounting practitioners, our impression is that many (but not all) foreign shipping companies operating vessels to the U.S. in 1987 filed, either on March 15, 1988 (applicable in the case of regularly scheduled transportation connected to a U.S. office—e.g., liner service) or on June 15, 1988 (in all other cases), for an automatic six (6) month extension to file their U.S. tax returns (Form 1120F). Filing entities were hopeful that the IRS would issue, prior to the extended filing date, regulatory or administrative guidance on the information required to be included on Form 1120F, including, *inter alia,* the information required to claim the benefit of the exemption from tax provided by Section 883. Regrettably, the IRS failed to issue, prior to the extended September 15, 1988 filing date, any clarifying regulations or guidelines and it is highly unlikely that any will be issued prior to the extended December 15, 1988 filing date. Thus, foreign shipping companies have already been left (as to the September 15, 1988 filing date), or alternatively, will be left (as to the December 15, 1988 filing date), to their own devices in making a "best efforts" approach to filing Form 1120F.

2. *Current Equivalent Exemption Status of Various Foreign Jurisdictions.*

In general, a foreign shipping company's eligibility to claim the benefit of the exemption from tax provided by Section 883 is dependent upon such company (i) being organized in a foreign country which grants an "equivalent exemption" from tax to U.S. companies, and (ii) having more than 50% of the value of its stock beneficially owned

by individuals residing in one or more foreign countries granting such "equivalent exemption". Subparagraph (ii) is not required to be satisfied in the case of U.S. controlled foreign corporations and certain "publicly traded" corporations described in Section 3(a) below.

A foreign country may qualify for "equivalent exemption" status in one of three ways: (i) by having an income tax treaty with the U.S. (ii) by exchanging diplomatic "tax notes" with the U.S. or (iii) by virtue of its internal law.

Since the May meeting, some major shipping jurisdictions have qualified for "equivalent exemption" status by either exchanging "Tax Notes" with the U.S. (Cyprus, Finland, Greece, Jordan, Singapore, Spain and Taiwan), or by obtaining IRS confirmation that its internal law entitles them to such status (Netherlands and Netherlands Antilles). The current status of countries qualifying or attempting to qualify for equivalent exemption status is attached hereto as Schedule A.

3. *Technical and Miscellaneous Revenue Act of 1988 (the "1988 Tax Act").*

The 1988 Tax Act was passed by Congress on October 22, 1988. There is every expectation that President Reagan will shortly sign the same into law.

Included among the 1988 Tax Act's provisions are "technical" amendments to clarify certain "unintentional" errors made in drafting the 1986 Tax Act and the Revenue Act of 1987. The principal technical amendments that impact foreign shipping companies and the Code Sections affected are summarized below:

(a) *Section 883(c)(3).* The "shareholder look-through" test is inapplicable to any foreign corporation whose stock is primarily and regularly traded on an established securities market located in either its country of incorporation, another foreign country qualifying for "equivalent exemption" status or the United States. Further, the stock of a foreign corporation owned directly or indirectly by any such "publicly traded" corporation will, for purposes of applying the "shareholder look-through" test with respect to such first level foreign corporation, be treated as owned by individuals residing in the country of organization of the publicly traded corporation.

(b) *Sections 883/872.* The "equivalent exemption" status of a foreign country is to be independently applied and tested with respect

to individuals (Section 872) and corporations (Section 883). The exclusions from tax provided by these Sections apply only to "international" operations of vessels.

(c) *Section 887(b)(1).* The application of the 4% tax is limited to transportation income which is "sourced" on a 50/50 basis under Section 863(c)(2). Treasury is given authority to promulgate regulations to make clear that 4% tax is intended to apply only to the types of income covered by the Section 883 exemption.

(d) *Section 952(c).* A limited chain deficit rule was reinserted. To obtain the benefit thereof, the relevant foreign corporation must be engaged in a "qualified activity" (which includes shipping) and the relevant members must be in a single chain organized under the laws of the same foreign country in which the "deficit" foreign corporation is organized.

(e) *Section 884(f).* Treasury is authorized to eliminate, by regulation, the potential withholding obligation of a foreign shipping corporation, which is exempt from tax under Section 883, with respect to interest payments made to foreign lenders (e.g., there should be no withholding obligation to the extent the interest so paid is not expected to be claimed by the foreign borrower as a deduction against income subject to U.S. tax).

(f) *Sections 4091-4093.* Treasury is given regulatory authority to allow retail sellers of diesel fuel to make sales to *marine* users without having to collect excise taxes "up front" provided both the seller and buyer comply with IRS administrative registration requirements. This change now relieves marine users, which were never intended to be subject to the excise tax, from the current economic and administrative burden of having to pay such tax "up front" and thereafter having to apply for a refund as an exempt user.

4. *New BIMCO Tax Indemnity Clause.*

In the face of the new U.S. tax exposure to foreign owners and charterers of vessels trading to the U.S., BIMCO has recommended a new "U.S. tax indemnity" clause for inclusion in its standard form bareboat, time and voyage charters and in addition, a new "tax information" clause for inclusion into its standard form of bareboat charter. Such clauses were discussed in BIMCO's August 1988 Bulletin, an excerpt of which is attached as Schedule B.

On its face, the one readily apparent deficiency with the proposed tax indemnity clause is that the obligation to indemnify for the U.S.

tax is passed "down the chartering chain" without regard to the right (or obligation) of the indemnitee to claim the benefit of the exemption from tax provided by Section 883 or a comparable tax treaty provision.

One can readily anticipate more attention and refinement coming to bear on the inclusion of such U.S. tax indemnity clauses in charters as owners and charterers alike attempt to shift the ultimate tax risk and exposure among themselves.

5. *Preparation of Comments By Subcommittee.*

Pursuant to IRS request, the Subcommittee is in the process of preparing for submission comments in two areas that are the subject of current IRS regulatory projects:

(a) how the 4% tax imposed by Section 887 is to be applied to the cruise line industry;

(b) how to determine "U.S. source transportation income" in a chartering chain (e.g., the "sourcing" of hire paid and received as between owner, charterer and subcharterer).

The Subcommittee would welcome any comments that MLA members might have on either issue.

Respectfully submitted,
DERICK W. BETTS, Jr., Chairman

Schedule A

Countries qualifying for full or limited equivalent exemption status under Section 883 as of 10/31/88.

I: *Qualification by Treaty*

Australia
Austria
Barbados
*Belgium
Canada
China
Cyprus
*Denmark
Egypt

*Finland
France
West Germany
*Greece
Hungary
*Iceland
*Ireland
*Italy
Jamaica
*Japan
Korea
*Luxembourg
Malta
*Morocco
*Netherlands
New Zealand
Norway
*Poland
*Romania
*Sweden
*Switzerland
*Trinidad and Tobago
United Kingdom
*USSR

II. *Qualification by Tax Notes*

a. *Notes already exchanged.*
Argentina (Provisionally only)
Bahamas
Belgium
Bolivia
Colombia

*Countries whose treaties with the U.S. have national flag requirements and hence are potentially affected by IRS Notice 88-5. Belgium, Denmark, Finland, Greece and Sweden have eliminated the potential impact of IRS Notice 88-5 by exchanging diplomatic notes with the U.S. The Netherlands has also eliminated such impact by obtaining confirmation from the IRS that it qualifies for equivalent exemption status based on its internal law.

Cyprus
Denmark
El Salvador (aviation only)
Finland
Greece
Jordan
Liberia
Panama
Singapore
Spain (Provisionally only)
Sweden
Taiwan
Venezuela

b. *Notes awaiting or in the process of negotiation.*

Brazil
Costa Rica
Ecuador
Guatemala
Hong Kong
Iceland
India
Mexico
Pakistan
Thailand

III. *Qualification by Internal Law as Confirmed by IRS*

a. *Confirmed*

Netherlands
Netherlands Antilles
Turkey (Liner Income only)
Vanuatu

b. *Confirmation Pending*

Bermuda
Chile
Czechoslovakia
Isle of Man
Liechtenstein
Mauritius
Yugoslavia

Schedule B

United States

Tax Reform Act 1986 Clause

At the meeting held in Vienna on 19 May, 1988, it was decided by the *BIMCO* Documentary Committee that one or more special charterparty clauses covering the problems created by the U.S. Tax Reform Act 1986 should be drafted as a matter of priority and announced as soon as possible.

It may be useful to recapitulate in brief what finally prompted the decision to draft a specific clause for the U.S. Tax purposes and not simply to stick to one of the well-known tax clauses appearing in various *BIMCO* charter parties.

First of all, the new U.S. Tax Law defines the new tax as a Gross Transportation Income Tax and good arguments can be put forward in favour of the point of view that the new tax is not an ordinary tax but rather an income tax (personal or corporate). What is important to note is that the tax is not levied on the vessel or the cargo but is levied on the shipowner by reference to the monies received from the charterer.

Secondly, the tax is levied on transportation income which is not restricted to ordinary voyage revenues but also applies to time charter and bareboat charter hire.

After consultation with legal experts, it was found that one general clause should be sufficient to cover voyage charter as well as time charter and bareboat charter income.

The following charterparty clause for use with voyage chartering as well as time and bareboat chartering is, therefore, recommended for use forthwith:

> "U.S. Tax Reform Act 1986 Clause
> Any U.S. Gross Transportation Tax as enacted by the United States Public Law 99-514, (also referred to as The U.S. Tax Reform Act of 1986), including later changes or amendments, levied on income attributable to transportation under this charter which begins or ends in the United States, and which income under the laws of the United States is treated as U.S. source transportation gross income, shall be reimbursed by the Charterers."

What seems to have been the general perception among members

is that the only potential liable party for tax is the actual owner of a vessel. However, emphasis should be placed on the fact that in a chain of transactions involving, for instance, bareboat charter arrangements and also time charter agreements, the bareboat charterer and the time charterer may also be exposed to tax. Equally, it should be noted that the taxpayer should not be responsible for any other income than the actual income received under his own contract regardless of whether such tax be applied to the various charterers in a chartering line.

A simple example may be illustrative of the problem:

A company incorporated in Singapore bareboat charters its vessel to a Filipino company which again charters out the same vessel to a company based in Hong Kong. The company based in Hong Kong decides to undertake a voyage from Japan to the United States.

The various liable sources involved in this case will include the bareboat charter hire derived by the company incorporated in Singapore, the time charter hire derived by the company based in the Philippines and, finally, the freight revenues derived by the company incorporated in Hong Kong trading the vessel to the United States. Irrespective of whether the three companies are owned by residents of Singapore, the Philippines or Hong Kong, respectively, they will be subject to U.S. tax because, as the situation stands at the present, none of these countries has so far entered into bilateral agreements with the United States.

Therefore, by inserting the above-mentioned Clause in the bareboat charter, the company based in Singapore transfers tax liability for bareboat hire derived to the Filipino company. Again, by inserting the tax clause in the time charter party, the Filipino company transfers tax liability for time charter hire to the company based in Hong Kong and finally by inserting the tax clause in the voyage charter party, the Hong Kong based company transfers tax liability for freight revenues to the actual voyage charterer.

In other words, this clause transfers tax liability from the owner to the charterer, be it the bareboat charterer, the time charterer or the voyage charterer, as the case may be.

It should be noted that tax will be transferred on a reimbursed basis according to the wording of the last two lines in the new U.S. Tax Clause, i.e., that ". . . U.S. source gross transportation income, shall be reimbursed by the charterers". Tax liability in the first instance rests with the taxpayer, be it the actual owner, bareboat charterer, or the time charterer, because they are the parties which have

to file the tax return and thereby pay the tax in the first instance. As soon as the actual tax estimates have been calculated by the tax authorities, the taxpayer can seek reimbursement from the charterer.

Attention is drawn to the fact that when chartering has been made on bareboat basis, where the owner has no control over the vessel's trading pattern, the owner should be notified of the voyages undertaken to and from the U.S. during a taxable year, so that he can complete his tax estimate accordingly. It is therefore recommended that a clause to that effect be inserted in the bareboat charter which may, for instance, read as follows:

"The charterers shall, within 45 days of the completion of any port-call by the vessel involving the carriage of cargo to or from a United States port provide the owners with a report for each voyage on which U.S. cargo is carried stating (a) the port and date of commencement of the voyage and (b) the port and date of conclusion of the voyage."

FORMAL REPORT OF THE COMMITTEE ON NAVIGATION AND COAST GUARD MATTERS

On November 3, 1988 the Navigation and Coast Guard Committee held its fall meeting at Marco Island, Florida with 29 persons in attendance.

Presentations were delivered by several speakers. Patrick Griggs of London discussed the problems in the Piper Alpha loss in the North Sea. Jean Warot of Paris reviewed current matters before the CMI and the 1990 CMI meeting to be held in Paris. Morton Clark discussed Pilotage matter and the plans of the Subcommittee on Pilotage. James Moseley spoke about the activities of the CMI Collision Committee. Gordon Paulsen commented on the Inland Rules of the Road and the activities of the Rules of the Road Advisory Committee. Hilliard Lubin spoke about radar matters and an appropriate site for the Committee to meet and review the subject, Kings Point being one of those considered. The proposed U.S. Coast Guard mandatory drug testing regulations were also discussed.

It is noted that the two key international treaties dealing with safety at sea have now been ratified by 100 different countries. They are the International Convention for the Safety of Life at Sea, 1974 (SOLAS) and the Convention on the International Regulations for

preventing Collisions at Sea, 1982 (COLREG).

On 29 January 1988 Antigua and Barbuda became the 100th countries to ratify the Collision Regulations and on 1 February Mauritius became the 100th Contracting Party to SOLAS. The Collision Regulations now apply to 94% of world merchant tonnage and SOLAS to 95%.

Respectfully submitted,
DOUGLAS A. JACOBSEN, Chairman

FORMAL REPORT OF THE COMMITTEE ON MARITIME PERSONNEL

The Committee has been very active in the preceding six months, culminating with a series of meetings at Marco Island directed specifically to the legal rights and obligations, and proper allocation of partial settlements among the contesting parties, when less than all of alleged joint tortfeasors settle with plaintiff. A subcommittee headed by Renny Daly of Baltimore and consisting of Fred Wentker of San Francisco, Paul Daigle of Seattle, Carl Nelson of Tampa, Paul Edelman of New York and John Biezup of Philadelphia, studied the joint tortfeasor contribution issue extensively and exchanged drafts of proposed reports. The subcommittee met on several occasions at Marco Island, and then the report was debated extensively at a meeting of the whole committee. It was agreed after debate and vote to adopt the position suggested by the Uniform Comparative Fault Act. Two of the basic principles of this proposal are that the settling alleged joint tortfeasor is immune from further suits for contribution, and that the non-settling parties at trial receive credit for the equitable proportion of the claim settled by the settling defendant, rather than a dollar for dollar credit for the prior settlement. A formal report will be prepared and presented to the Executive Committee before the next semi-annual meeting of the Association.

During the summer, Congress suggested rather extensive rules concerning testing of seamen for drugs and other deleterious substances. These proposed rules, if put into effect, would require preemployment drug testing, drug testing at intervals and even on some occasions random drug testing. Chairman Wentker prepared a written analysis and report to the President. The congressional committee hearing the matter decided to postpone further action until after two

cases pending before the Supreme Court, which were argued in September, are decided.

As a result of the Committee meeting at Marco Island, a subcommittee has been formed headed by Thomas Wendel of Olympia which will study various plans for mandatory, or at least recommended, health standards for initial employment in the maritime industry, and for maintaining employment in the maritime industry. We hope to present a report on this matter to the committee at its next meeting in May, 1989 in New York.

Respectfully submitted,
FREDERICK W. WENTKER, JR., Chairman

FORMAL REPORT OF THE COMMITTEE ON MARITIME PRODUCTS LIABILITY

The Committee is continuing its collection of maritime products liability cases. Since our last report we have added the following cases or articles to the list:

Snyder v. Whittaker Corp., 839 F.2d 1085 (5th Cir. 1988), 1988 AMC 2534, defective manufacture and design of fiberglass laminate under balsa core sheathing.

Anderson v. Whittaker Corp., 692 F.Supp. 734 (W.D. Mich. 1987) manufacturer of cabin cruiser liable for deaths of crew because vessel so constructed that water could come in through air vents at stern.

Forbes v. A&P Boat Rentals, Inc., 689 F.Supp. 625 (E.D. La. 1988) manufacturer of transmission used in boat liable for injury to workman's hand suffered while workmen were attempting to remove clutch from vessel. One originally installed I-bolt screw became loosened and the clutch fell without warning. Twin Disc was the manufacturer.

State of Maryland v. Garzell Plastics Industries, 152 F.Supp. 483 (E.D. Mich. 1957), 1957 AMC 2117, drowning following distintegration of plastic boat.

Pavlides v. Galveston Yacht Basin, Inc., 727 F.2nd 330 (5th Cir. 1984) swamping as a result of defective bilge drain plug.

In re LADY D, 416 F.2nd 454 (6th Cir. 1969) carbon monoxide poisoning, question of interaction between State court death action and boat owner's limitation proceeding.

Schaeffer v. Michigan-Ohio Navigation Co., 416 F.2nd 217 (6th Cir. 1969) dumbwaiter counterweight on cruise vessel, admiralty rule divided damages held to apply rather than applicable state court rule.

In re MARINE SULPHUR QUEEN, 460 F.2d 89 (2nd Cir. 1972), 1972 AMC 1122, disappearance of vessel, no direct evidence of cause.

In re Oil Spill by the AMOCO CADIZ, 1986 AMC 1945 (E.D. Ill. 1986) shipowner cannot escape liability on ground that ABS passed vessel, ABS disclaimer effective as to indemnity, but ABS may be liable for contribution.

Zidell, Inc. v. Cargo, etc. of Barge ZPC 404, 661 F.Supp. 960 (W.D. Wash. 1987), 1987 AMC 2494, on motion for summary judgment, Judge Dimmick observed that if negligent manufacturing procedure on barge tow pads were shown, contract rather than tort principles would be applied when the parties were operating in a commercial setting and there was no injury to persons or property. This is one to watch for future developments.

McIssac v. Didriksen Fishing Corp., 809 F.2d 129 (1987) Court of Appeals upheld district court judgment awarding damages to fisherman under products liability theory of negligent design and installation. *East River* was not discussed. Manufacturer's obligation to anticipate environment in which product will be used and design against reasonably foreseeable risks considered.

Boson Marine Six, Ltd. v. Crown Point Indus., Inc., No. 87-3646 (5th Cir. August 10, 1988) followed *East River* and dismissed barge owners' strict product liability claim against equipment supplier in absence of personal injury or damage to other property. Claim for breach of warranty held not within admiralty jurisdiction.

Gulf Boat Marine Services, Inc. et al. v. George Engine Co., Inc., 659 F.Supp. 6 (E.D. La. 1986) owners' claim against manufacturer of engine for manufacturing defect dismissed on basis of *East River.*

Hebert v. Outboard Marine Corp., 638 F.Supp. 1166 (E.D. La. 1986), injured pleasure boater got strict liability and negligence action against motor manufacturer. Court entertained lawsuit but held plaintiff failed to establish product was dangerous.

Shipco 2295, Inc. v. Avondale Shipyards, Inc., 631 F.Supp. 1123 (E.D. La. 1986) hull stress fractures and steering mechanism failures prompted suit by owner against builder. The interplay between attempted tort and contract remedies is worth perusal.

Ingram River Equip., Inc. v. Pott Indus., Inc., 816 F.2nd 1231

(8th Cir. 1987), 1987 AMC 2343, purchaser of tank barges succeeded in recovering damages from builder/seller under theory of breach of implied warranty of fitness, but Supreme Court vacated district court judgment following *East River* decision as to award of damages on negligence theory. The Eighth Circuit looked to Missouri's Uniform Commercial Code definition of "particular purpose" in reaching decision.

Rubin v. Brutus Corp., 487 So.2d 360 (Fla. 1st DCA 1986) trial court of passenger's action against boat manufacturer reversed, the District Court of Appeal holding the manufacturer's liability to passenger depended upon manufacturer's fulfillment of their duty under "crash worthiness" doctrine to exercise due care in design and production of a boat and its components.

Committee members Douglas Freyer, David Davies and Allan R. Kelley contributed much of this new material.

I hope all members of the MLA will watch for maritime products liability cases and inform this committee accordingly.

Respectfully submitted,
DEWEY R. VILLAREAL, JR., Chairman

FORMAL REPORT OF THE COMMITTEE ON PRACTICE AND PROCEDURE

The 1988 Fall Meeting of the Committee on Practice and Procedure at Marco Island, Florida, began at 1:37 p.m. on November 3, with 30 persons in attendance.

James W. Bartlett, III, reported for the Subcommittee on Local Admiralty Rules that New Jersey has adopted the Maryland version of the model local admiralty rules. Other members reported that Hawaii is about to adopt local admiralty rules based upon the Northern District of California version, and that copies of the same rules had been sent to the Eastern District of Texas for discussion. The Eastern District of Virginia is overhauling all of its local rules.

Subcommittee chairman Alan Van Praag was unable to attend and report for the Subcommittee on Insolvency and Bankruptcy. The chairman said that the Committee on Marine Financing, through the chairman of its Subcommittee on Insolvency and Bankruptcy, James B. Kemp, Jr., had invited Practice and Procedure members to a joint meeting. A lengthy discussion followed, dealing with recent admiralty and bankruptcy cases.

The Subcommittee on Judicial Sales has been renamed and reconstituted. John E. Edginton, chairman of the newly named "Subcommittee on Vessel Foreclosure Sales," announced that it will be a joint subcommittee, with members appointed by the chairmen of both the Committee on Marine Financing and the Committee on Practice and Procedure. The joint subcommittee will examine federal statutes, the Uniform Commercial Code, and judicial decisions dealing with private sales of vessels; the right of a ship mortgagee to claim deficiencies from a mortgagor; and the effects of the recodified Ship Mortgage and Maritime Lien Acts—for example, upon bringing security interests in state-documented vessels into the federal scheme, and upon United States citizenship requirements for mortgagees of fishing and recreational vessels.

David McI. Williams enumerated changes in ship financing law enacted by H.R. 3105 [P.L. No. 100-710 (Nov. 23, 1988)] that went well beyond recodification. (1) The time of effectiveness of a ship mortgage is the time of filing rather than the time of recording, codifying *In re Alberto,* 823 F.2d 712, 1987 AMC 2409 (3rd Cir. 1987). (2) Eliminated are the requirements of an affidavit of good faith, endorsement on the vessel's papers, and the mortgage's express statement that the mortgagee does not waive preferred status. (3) A new Vessel Identification System is established, to go into effect in 1994. (4) Actual notice of pendency of the foreclosure action and the proposed sale must be given both to registered lien claimants and to mortgagees, with serious consequences for failure to notify.

Subcommittee chairman Robert N. Dunn was unable to attend and report for the Subcommittee on Federal Rules and Statutes. The chairman reported that the only pending proposal to amend the Federal Civil Rules would harmonize Fed. R. Civ. P. 6(a) with other federal rules that tell how to compute short periods of time affected by weekends and legal holidays.

Subcommittee member Mary Jane Keriakos discussed her draft report, proposing to amend 28 U.S. § 1333(1) so as to give federal judges in admiralty cases full jurisdiction to award equitable remedies, including injunctions. This amendment would remove a conflict among the circuits, and it would carry out the apparent intention to unify the General Admiralty Rules with the Federal Rules of Civil Procedure. The Subcommittee intends to circulate the completed report to the Committee early in 1989, with a call for comment and perhaps approval.

The chairman reported on the progress of a proposal, prepared by Subcommittee member Steven V. Gibbons and reported at the draft stage to the Committee's 1988 Spring Meeting, to repeal provisions in the Judicial Code on appeals of admiralty cases that conflict with the general provisions in the Federal Rules of Appellate Procedure. This proposal likewise will be circulated to the Committee early in 1989, for Committee action, with the hope of asking for MLA approval at the 1989 Spring Meeting.

Edward V. Cattell, Jr., reported on the work of the Subcommittee on Administrative Forfeitures. The project originated in an inquiry from the Marine Financing Committee regarding the impact of forfeiture proceedings on the validity, priority, and enforceability of ship mortgages. The Subcommittee has expanded its survey of administrative forfeitures to deal with judicial forfeitures. While there are two different kinds of forfeitures, instantaneous ones and those requiring court orders, there does not appear to be a great difference in the procedures applied.

The forfeiture of vehicles and vessels has recently achieved national prominence under the zero tolerance program in drug enforcement. The Subcommitte has been contacted by the chief litigating counsel for the Drug Enforcement Administration, who requested MLA assistance in developing procedures by which the DEA could turn over seized property, such as an airplane or a ship, to an innocent interested party, such as a mortgagee. Upon foreclosure, the mortgagee would sell the property, maximizing the sale price, then satisfy other secured claims, and finally would turn over the remnants to the Government. Consequently the Subcommittee's inquiry has expanded to examine a large number of United States Code titles that contain provisions on seizure and forfeiture.

Some of the forfeiture procedures may need improvement. For example, under new drug enforcement measures, the agencies have been given only 21 days to determine whether to proceed with a forfeiture after seizure; and while requiring the government to act quickly is usually beneficial, giving the agencies more time to determine a course of action might be desirable. As another example, more protection should be provided to innocent owners, mortgagees, and others having an interest in a vessel, after the government seizes a vessel. While the new Ship Mortgage Act preserves the validity of mortgages in the context of administrative seizures and forfeitures, the 1984 Crime Control Act prohibits intervention in seizure cases by anyone,

even a mortgagee, and only preserves the right to seek remission of the forfeiture after the fact.

The Subcommittee has drafted a table that identifies the steps in administrative forfeiture proceedings and points out the differences among the various statutes. For example, due process requirements set by decisional law under some statutory schemes do not appear to have carried over into other schemes. The Subcommittee's next step is to examine the case law on the different schemes, to determine how other courts have dealt with specific procedures under one statute, and to compare them with procedures used by the other agencies. Ultimately the Subcommittee may propose an Administrative Forfeiture Procedure Act, which in most cases would only require agencies to modify their existing regulations.

The Subcommittee reports having concluded, Captain Frederick F. Burgess, USCG, reported that two proposed multilateral conventions (maritime liens and mortgages, and arrest of seagoing vessels) are being examined by the Joint Intergovernmental Group of Experts, which is nearing the end of its allotted time. Hearings before the Shipping Coordinating Committee in Washington are scheduled for December 12 and 20, and again in June 1989, to obtain input from United States interests. A discussion followed on the international recognition and enforcement of maritime claims and liens, and the practical importance of international uniformity.

The chairman made the following announcements:

(1) The Committee's five subcommittees are active and need volunteer members.

(2) A report on the draft Salvage Convention's jurisdiction article is in the hands of Captain Burgess to assist the negotiators in establishing the United States position at the 1989 IMO diplomatic conference.

(3) The Committee on Maritime Personnel will study multiple-defendant cases for the liability effects of settlements by some defendants upon the defendants remaining in the case.

(4) The 14th issue of the *Practice and Procedure Newsletter* has been put in the Committee's hands, and it should be reprinted in the February *1989 MLA Report.*

(5) A proposal to give the Coast Guard certain Federal Tort Claims Act protections in offshore drug interdiction efforts, H.R. 4658 (100th Cong.) has apparently died in the House of Representatives.

(6) J. Dwight LeBlanc, Jr., will prepare a letter for the MLA presi-

dent's signature, addressed to the Chairman of the Commission on Executive, Legislative and Judicial Salaries (the Quadrennial Commission), endorsing higher pay for federal judges as a continuing concern of the MLA.

(7) Richard C. Binzley, Chairman of the Committee on Continuing Legal Education, has asked this committee to furnish a speaker for a seminar during the 1989 Fall Meeting in Orlando. Volunteers may contact either chairman.

(8) Legislation enabling the Chief Justice of the United States to appoint a committee to examine the federal courts and report in 15 months from January 1, 1989, has been passed and is awaiting the signature of the President. [P.L. No. 100-702 (Nov. 19, 1988)]. Open to the committee would be such recommendations as creating a "super" intermediate federal appellate court, and creating specialty courts such as admiralty courts. First Vice President Kenneth H. Volk said that President Palmer felt this was an area where the Committee on Practice and Procedure ought to take an active role, and the MLA will ask to participate in the study as an association. Mr. Volk also reported that the act raises the jurisdictional amount in diversity cases to $50,000 from the present $10,000.

On behalf of the Committee, the chairman expressed special thanks to three members: Robert J. Zapf, for taking detailed minutes, copies of which may be obtained from the chairman; and Edward V. Cattell, Jr., and Jeffrey S. Moller, for continuing to prepare and distribute the *Practice and Procedure Newsletter*.

Respectfully submitted,
DAVID J. SHARPE, Chairman

FORMAL REPORT OF THE COMMITTEE ON STEVEDORING AND TERMINAL OPERATIONS

The Committee met on the afternoon of November 1, 1988, the undersigned acting as Chairman *pro tempore* and Peter Commette as Recorder, and considered the following matters:

UNCITRAL-proposed convention on the liability of terminal operators: Joanne Zawitoski of Baltimore has prepared a proposed position paper, which Chairman Reeves has reviewed and forwarded to the President of the Association. Her conclusion is that the Convention is as unlikely to be revised further as it is to be adopted. Inas-

much as the report had been acted upon in the interim, no further action by the Committee was necessary.

A Committee newsletter on significant legal developments affecting stevedores and terminal operators: It was the consensus of the Committee that it should channel cases of interest to David Owen for inclusion in his newsletter rather than attempt a separate, and probably inferior) publication of its own. Volunteers undertook assignments of coverage by federal circuits, subject to further advice on deadlines for the Owen newsletter.

Passage of HR 3105, which is awaiting signature by the President, and its apparent deletion of the "other necessaries" provision for maritime liens: Members of the Committee expressed concern that this deletion would abrogate the stevedore's lien for services, but no text of the final act and the related committee reports was available at the time of the meeting.

A possible trend in the maritime business away from use of independent stevedores toward large carriers' conducting their own stevedore operations or utilizing captive firms: The Committee was advised of a discrimination action pending in the Federal Maritime Commission by an independent stevedore against a marine terminal as a result of the latter's offering terms to a large carrier more favorable than those available to the independent stevedore.

Recent cases of interest involving the use of state-law intentional tort theories against stevedore employers: Two cases presenting this issue are now pending before the Fifth Circuit Court of Appeals.

Respectfully submitted,
DAVID G. DAVIES, Vice Chairman

FORMAL REPORT OF THE COMMITTEE ON THE TRANSPORTATION OF HAZARDOUS AND NOXIOUS SUBSTANCES

This report will cover developments with respect to the proposed Convention on Civil Liability Concerning the Carriage of Hazardous and Noxious Substances since the May, 1988 MLA meeting.

By way of general background, it should be recalled that, in 1984, there was a failed attempt to adopt a convention. The delegates of the states represented disagreed concerning many proposed provisions, including (1) whether coverage should be for bulk carriage only, or

for both bulk and packaged goods; (2) whether liability should be imposed on the ship, on the shipper or on both; (3) whether there should be compulsory liability insurance; (4) what particular substances should be established; (5) what damages should be covered/recoverable; and (6) what standards of liability should be included. As a result of the failure of the Convention, this matter was not actively pursued for several years.

In 1987 several nations, including The Netherlands, East Germany, West Germany and Canada suggested to the International Maritime Organization (IMO) that the Legal Committee again consider an HNS convention, on the following basis:

(1) Liability, insofar as possible, should be strict;
(2) Packaged materials, as well as bulk, should be included;
(3) Limits should be high enough to cover all losses.

At the October, 1987 International Maritime Organization (IMO) Legal Committee meeting, the member states resolved to proceed to consider the adoption of an HNS convention. At the May, 1988 Legal Committee meeting, the United States suggested, without necessarily advocating, that consideration should be given to the adoption of an international fund, perhaps to be modeled on the IOPC fund to cover HNS losses. It was decided to continue to consider the matter further at future Legal Committee meetings; various delegations were asked to consider and report on particular aspects at the October, 1988 meeting, namely:

(1) United Kingdom—use of insurance in connection with a fund;
(2) United States—possible structure of a fund;
(3) International Union of Marine Insurers (IUMI)—extent of insurance coverage available for HNS incidents;

During the interim period, the United States Coast Guard International Legal Office convened Shipping Coordinating Committee (SHC) meetings on June 30, August 9, August 18 and September 27, 1988 to solicit industry views. Most industry segments were represented, and broad discussions resulted. While no agreements were reached, and each industry group continues to advocate that it should not bear responsibility under the proposed convention, the following positions seem to have substantial support:

(1) The first level of liability could most efficiently be imposed

on the carrying ship; if liability is to be "strict" then the *quid pro quo* should be an "unbreakable" limitation, in an amount within the levels of insurance coverage available to shipowners;

(2) Higher levels of liability could be handled by a fund, if one can be established.

(3) In general, it would seem equitable to finance the fund through some charge assessed on international maritime shipments of HNS materials; however the details of levying appropriate assessments and the establishment of a system of collecting such assessment will be extremely complex and difficult; governmental agencies are reluctant to take on these new responsibilities;

(4) The list of hazardous materials established for the IMDG would be the most appropriate list to include in the proposed HNS convention; to attempt to establish a new list would be unduly burdensome; it may be necessary to establish threshold amounts, which will be a difficult technical task;

(5) Damages covered should include personal injury and death, property damage, necessary evacuations of the population and environmental damage including cleanup, but should exclude indirect and consequential damage; several groups advocate permitting recovery for even indirect and consequential damages ("all damages");

(6) The time to assert claims should be strictly limited;

(7) Before determining limits of liability under the Convention, it will be necessary (or at least highly desirable) to know the available amount of insurance available from the insurance industry; the insurance industry has difficulty in determining this until it can be told the risks and harms to be covered and the limits required.

Representatives of the chemical manufacturers generally have doubted the necessity for such a convention, probably seeing no benefit, but perceiving the possibility of added liabilities. Thus far the plaintiff's personal injury bar has been unrepresented at the SHC meetings. Steps are under way to obtain representation at future meetings.

At the Legal Committee meeting in London in October of 1988, the following proposals/reports were submitted:

(1) The United States delegation submitted a discussion paper which, it was careful to point out, did not represent the position of the United States, but was submitted in response to the request for consideration of a fund proposal. This paper suggested consideration of a fund which would be generally similar to the IOPC fund, and would be financed by payments from each nation based on the amount of HNS materials either shipped or received. It would be and it is up to each nation to determine the source of these funds, which could come either from a levy on HNS shipments, or from general tax revenues. This fund could be a "first dollar" loss fund, or could be excess of underlying levels of liability on ship, shipper or both.

(2) The United Kingdom submitted a proposal for a "fund" which would in fact be a large pool of liability insurance, to be paid for by a charge imposed on each international maritime shipment of HNS material, to be collected by cargo insurers. It would insure an HNS casualty occurring in, or affecting, any signatory nation.

(3) The Kingdom of the Netherlands submitted a draft convention generally similar to the 1984 draft convention, placing all responsibility on the ship owner.

(4) IUMI reported that it was unable to report available limits of insurance until more details of the structure of the Convention were known, and pointed out that because of the volatility of the insurance market, it could not predict what might be available several years hence, when any convention would first come into effect.

It was decided that the HNS Convention would not be considered at the May, 1989 IMO Legal Committee meeting, but that the Fall 1989 Committee Meeting would be devoted primarly to this subject.

The HNS Committee met at Marco Island, Florida during the MLA Annual Meeting on Thursday, November 3, 1988. The meeting was attended by nine committee members, as well as the Chairman of the HNS Committee of the Canadian Maritime Law Association, and LCdr Fred Rosa of the Coast Guard International Legal Office. LCdr Rosa gave an outstanding presentation concerning developments of the HNS Convention. The Canadian position on the Convention was discussed. Copies of the various documents referred to

above were distributed to those at the meeting.

Because not all of the expected proposals have been presented to IMO, it was not deemed appropriate for the committee, or the MLA, to take any position concerning the proposed Convention. It is a distinct possibility by the Fall 1989 MLA meeting that the IMO will have produced a first draft of convention and the committee may be able to recommend an MLA position at that time.

All members are urged to pass this information on to their clients and to urge this submission be submitted to the Coast Guard International Legal Office by mid-January, 1989.

Copies of the following documents are available and may be obtained by forwarding a request to:

Neal D. Hobson
Milling, Benson, Woodward, Hillyer, Pierson & Miller
909 Poydras Street, Suite 2300
New Orleans, LA 70112-1017
(504) 569-7000

1. Draft Convention submitted to the 1984 Diplomatic Convention;
2. Revised Draft Convention (Compulsory Insurance) produced during the 1984 Diplomatic Convention;
3. August, 1987 submission to IMO by the Netherlands, et al;
4. Submission by United States, October, 1981, IMO Legal Committee Meeting;
5. Submission by United States, May, 1988, IMO Legal Committee Meeting;
6. Submission by United States, October, 1988, IMO Legal Committee Meeting;
7. Submission by The Netherlands, October, 1988, IMO Legal Committee Meeting;
8. Submission by United Kingdom, October, 1988, IMO Legal Committee Meeting; and
9. Submission by IUMI, October, 1988, IMO Legal Committee Meeting.

Respectfully submitted,
NEAL D. HOBSON, Chairman

NOTE: Following the Marco Island Meeting, several significant de-

velopments occurred, and are included here, namely:

1. A further SHC Meeting was held in Washington, D.C. on November 29, 1988. While the primary subjects were the proposed IMO Salvage Convention and the proposed UNCTAD/IMO Convention on Maritime Liens and Mortgages, several hours were spent reviewing the status of the HNS Convention.

Although several industry group representatives continued to object to the need for an HNS Convention, and presented arguments that any convention should place responsibility elsewhere, there seems to be a general consensus that the United States should continue to participate actively in IMO consideration of the proposed HNS Convention, and seek a balanced convention which would provide equally and constructively for the treatment of each of the United States industry segments, and other interest groups.

Although no further official action is contemplated until the Fall 1989 Legal Committee Meeting, there may be inter-sessional discussions prior to that time. The Coast Guard International Legal Office has requested written position papers addressing the various proposals outlined above, to be submitted by mid-February, 1989. Papers should be submitted to:

Captain F. F. Burgess, Jr.
LCdr Fred Rosa
United States Coast Guard
Chief, Maritime and International Law Division
Washington, DC 20593-0001

2. Following the November 29, 1988 SHC meeting, IMO, because of budgeting problems, has decided that it is unable to devote time to the HNS convention at the Legal Committee meeting in September, 1989. As a result Great Britain offered to host a non-official intersessional meeting in London, tentatively scheduled for May 2 thru 4, 1989. It is likely that a draft convention will be adopted at that time.

A further SHC meeting on January 24, 1989 considered this subject, and the following schedule was adopted.

February 15, 1989—Interested parties to submit comments on the proposals of Great Britain and The Netherlands.

March 1, 1989—Last date for submitting proposed drafts of a convention to the Coast Guard International Legal Office.

This schedule should be publicized to all interested groups.

FORMAL REPORT OF THE COMMITTEE ON YOUNG LAWYERS

The Young Lawyers Committee continued its operation and a number of new members were appointed to the Committee by President Palmer. One of the main purposes of the existence of the Committee was to assist new lawyers in obtaining their credits for Proctor Membership.

In this regard, the Committee conducted a business meeting and on Tuesday, November 1, 1988, at Marco Island, the Committee presented a panel discussion involving "Practical Problems in Maritime Practice". Committee members Stephen Smith of Seattle discussed "Rules"; George Tankard of Baltimore discussed "Sanctions"; Denise Blocker of San Francisco discussed "Cargo" and Andy Port of San Francisco discussed "P&I". In addition, the Committee was joined by Proctor members, Robert Acomb, III of New Orleans, who discussed "Insurance", and George Alvey of New Orleans, who discussed "Client Relations Problems".

It is the intention of the Committee to continue its meetings and panel programs as an educational tool to the young lawyers in the Association.

The Chairman wishes to remind any young lawyer or non-proctor attorney member of the Maritime Law Association who wishes to become a member of the Committee and take part in Committee activities to write to the Chairman at Place St. Charles, 201 St. Charles Avenue, New Orleans, Louisiana 70170.

Respectfully submitted,
ROBERT B. ACOMB, JR., Chairman

APPENDIX "A"

Minutes of the Meeting of the Executive Committee of the Maritime Law Association of the United States held in the Independence Room of The Down Town Club of Philadelphia, Public Ledger Building, Independence Mall, Philadelphia, Pennsylvania, held on September 16, 1988

The meeting was called to order by President Richard W. Palmer at 9:30 A.M. In addition to the President, there were present:

Messrs. Kenneth H. Volk
George W. Healy, III
David W. Martowski
Marshall P. Keating
Howard M. McCormack
Francis J. O'Brien
Gerard T. Gelpi
Michael D. O'Keefe
David J. Sharpe
Robert K. Tisdall
Chester D. Hooper
Henry C. Lucas, III
Francis J. MacLaughlin
James Hanemann, Jr.
Raymond P. Hayden
Raymond T. Letulle
Paul N. Wonacott

and by invitation, Neal D. Hobson, Robert M. Hughes, III, and Manfred W. Leckszas. President Palmer welcomed aboard Messrs. Hanemann, Hayden, Letulle, and Wonacott as new members of the Executive Committee.

Secretary Martowski reported that the *Minutes of the Spring Meeting, The MLA Report,* and the announcement regarding special air fares and hotel rates for the annual meeting in New York of the Association of Average Adjusters on October 6, 1988, were sent to the membership. The *Minutes of the Spring Meeting* held on May 6, 1988, were accepted and approved. Secretary Martowski also reported that letters confirming the appointment of committee members will be sent during the next week.

Treasurer Keating distributed his report for the period February 1, 1988, through April 30, 1988, which reflects the Association's continuing sound financial position. The Treasurer's Report was accepted and approved and is appended to the original copy of these minutes. Treasurer Keating reviewed the Association's travel expense policy with respect to attendance at the Executive Committee meetings and reported that the *Directory of Members* is expected to be distributed prior to the Fall Meeting. Treasurer Keating also presented

the proposal submitted by Barrister Information Systems Corporation for the provision of data processing services for the Association, which was unanimously approved by the Committee.

Membership Secretary McCormack distributed his report summarizing the total membership of 3,620 as of September 12, 1988. He reported two applications for Judicial Membership and two applications for Academic Membership, and upon motion duly made and seconded, the Honorable James M. Fitzgerald, United States District Court, Anchorage; the Honorable Thomas S. Zilly, United States District Court for the Western District of Washington; Professor John E. Noyes, California Western School of Law; and Professor George A. Zaphiriou, George Mason University School of Law; were elected as Judicial and Academic Members, respectively.

Membership Secretary McCormack also reported with regret the deaths of Past President James J. Donovan, David C. Wood, and Leslie C. Krusen. Upon motion duly made and seconded, the Membership Secretary's report was accepted and approved and is appended to the original copy of these minutes.

Continuing concern was expressed with respect to the upgrading of Associate to Proctor Members, and it was agreed that the requirements for Proctor Membership should be reviewed by the Membership Committee.

President Palmer reported on his attendance as speaker at the Tulane Seminar held in London, May 9-11, 1988, and the Southeastern Admiralty Law Institute Seminar held in Savannah, June 24-25, 1988; the meeting of the United States Shipping Coordinating Committee held in Washington, D.C., on June 30, 1988; and the American Bar Association's meeting held in Toronto, August 9-11, 1988.

He also reported that the Executive Committee authorized the Association's participation as *amicus curiae* in the appeals to the United States Supreme Court in the WESERMUNDE and HERCULES cases in accordance with the Association's policy, and that *amicus* briefs have been filed accordingly.

Next, President Palmer reported on legislative activity that concerns the Association. Executed resolutions have been prepared and are ready for filing on behalf of the Association (a) in support of favorable consideration of appropriations for the United States Coast Guard; and (b) in support of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and the Protocol for the Suppression Against Unlawful Acts against the Safety

of Fixed Platforms Located on the Continental Shelf, which were adopted at Rome on March 10, 1988, in accordance with the Proceedings at the Spring Meeting on May 6, 1988 [MLA Doc. 676, at 9141, 9164-65, and 9212-13].

Michael D. O'Keefe briefly reported on the status of H.R. 3105, the proposed Recodification of the Ship Mortgage Act of 1920, including the Maritime Lien Act, and Paul N. Wonacott summarized developments with respect to H.R. 1841 regarding fishing vessel safety which was signed into law by President Reagan on September 9, 1988. The status of H.R. 3105 and H.R. 1841 will be reported in detail at the Fall Meeting. President Palmer also distributed a recent report regarding the "Proposed Coast Guard Regulations for Drug Testing of Commercial Vessel Personnel" prepared by Frederick W. Wentker, Jr., Chairman of the Committee on Maritime Personnel. This area is of increasing concern to the shipping industry and will be reported on in detail at the Fall Meeting. President Palmer also announced the formation of an Ad Hoc Committee consisting of the President, Immediate Past President, First and Second Vice Presidents, and selected committee chairmen which will be charged with supporting the adoption by the U.S. Congress of the Hague-Visby Amendments.

Lastly, President Palmer reported on developments involving the Comité Maritime International and the International Maritime Organization. John C. Moore, Chairman of the Subcommittee on Sea Waybills and Electronic Documents, will attend a CMI meeting addressing this subject in London on October 13, 1988.

Neal D. Hobson, Chairman of the Committee on the Transportation of Hazardous and Noxious Substances, will attend an IMO meeting in London on October 10-14, 1988, and his status report follows below. Past President, Gordon W. Paulsen, has agreed to collect and collate the Association's responses to CMI questionnaires addressed to National Law Associations over recent years and, in particular, the recent supplementary CMI questionnaire circulated in May-June 1988.

Next, First Vice President Volk proposed that the Association's By-Laws be amended by incorporating the present policy concerning briefs *amicus curiae* which was previously adopted at the Executive Committee meeting held in New Orleans on March 17, 1987 [MLA Doc. No. 670 at 8856]. Upon motion duly made and seconded, the By-Laws were amended accordingly.

Manfred W. Leckszas, Chairman of the Committee on Carriage of

Goods, provided an historical review of the Association's involvement with and support of the Hague-Visby Amendments and the present status of efforts seeking their adoption by the United States. The United States Department of Transportation is conducting an in-depth study of the Hague-Visby Amendments and the Hamburg Rules and is sponsoring a summit conference at Washington, D.C., on October 20, 1989, which will consider the proposed Conventions' economic impact on international trade. This conference will involve many interested groups including representatives of this Association. Chairman Leckszas also briefly summarized the work of the Subcommittee on Sea Waybills and Electronic Documents.

Next, Neal D. Hobson, Chairman of the Committee on the Transportation of Hazardous and Noxious Substances, reported on his attendance at the meetings of the United States Shipping Coordinating Committee in Washington, D.C., and IMO in London, with respect to the reconsideration of the draft Convention on Liability and Compensation in Connection with the Carriage of Noxious and Hazardous Substances by Sea (the "HNS Convention"). These discussions have focused on the complex issues of liability funding, apportionment of liability as between manufacturers and shipowners, and limitation of liability. Chairman Hobson was requested to represent the Association at the IMO's next meeting which will be held in London in October 1988, and he will report further at the Fall Meeting.

Next, Robert M. Hughes, III, Chairman of the Committee on Site Selection and Arrangements for 1988, reported on the status of registration for the Fall Meeting at Marco Island, October 31-November 4, 1988.

By way of other business, President Palmer reported that the Committee on Maritime Personnel is completing a multi-jurisdictional study of the rights and obligations of settling maritime torefeasors which will be reported on at the Fall Meeting. Lastly, President Palmer reported that the Association of the Bar of the City of New York has confirmed its availability for this Association's New York meetings, reservations for the next meeting scheduled for May 1989, having been specifically confirmed.

There being no further business, the meeting was adjourned at 11:50 A.M.

Respectfully submitted,
DAVID W. MARTOWSKI, Secretary