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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING—OCTOBER 31, 1997

PRESENT:
JAMES F. MOSELEY
HOWARD M. MCCORMACK
WILLIAM R. DORSEY, III
LIZABETH L. BURRELL
MARSHALL P. KEATING
RAYMOND P. HAYDEN
CHESTER D. HOOPER

and the following 139 members:

Robert B. Acomb, Jr.
Robert B. Acomb, III
Charles B. Anderson
Paul B. Arenas
Roman Badiak
James W. Bartlett, III
Mark G. Beard
Michael K. Bell
George D. Benjamin
Waverley L. Berkley, III
Philip A. Berns
Frank E. Billings
Richard C. Binzley
Geoffrey F. Birkhead
George W. Birkhead
Denise S. Blocker
Patrick J. Bonner
Lawrence D. Bradley, Jr.
Richard E. Bragg
Lawrence B. Brennan
Charles D. Brown
Francisco G. Bruno
Paul E. Calvesbert
Edward V. Cattell, Jr.
Michael G. Chalos
Rex M. Clack
Edward M. Cohan
Michael Marks Cohen
William R. Connor, III
John M. Cowden
Richard A. Corwin
Paul N. Daigle
Bruce P. Dalcher
David G. Davies
Mark S. Davis
Vincent M. De Orchis
Charles S. Donovan
John A. Edginton
Wayne F. Emard
David J. Farrell, Jr.
John F. Fay, Jr.
Rodney Q. Fonda
Joshua S. Force
Prof. Robert Force
Carter B.S. Furr
Jason W. Gaarder
George D. Gabel, Jr.
Albert R. Galik

G. Beauregard Gelpi
Gerard T. Gelpi
Gene B. George
G. Michael German
Stanley L. Gibson
Geoffrey J. Ginos
Harvey G. Gleason
Andrew J. Goldstein
Donald C. Greenman
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George P. Hassapis
Reginald M. Hayden, Jr.
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Anne D. Hopkins
William D. Hughes
Louis G. Juliano
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Alfred J. Kuffler
Alexander F. Lankford, III
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Michael W. Lodwick
Herbert M. Lord
Marilyn Lytle
Allan L. MacDougall
Irene Manske
Patrick V. Martin
Warren J. Marwedel
Raymond L. Massey
Dante Mattioni
Michael B. McCauley
Marion E. McDaniel, Jr.
Peter A. McLauchlan
John F. Meadows
Samuel P. Menefee
Hugh S. Meredith
Ann Gray Miller
William C. Miller
Dennis Minichello
James F. Moseley, Jr.
Steven E. Mulder
Douglas M. Muller
Craig C. Murphy
Thomas O. Murphy
Lloyd C. Nelson
Richard J. Nikas
Lorraine P. Ocheltree
Michael A. Orlando
Christina L. Owen
Richard W. Palmer
Gordon W. Paulsen
Paul M. Poliak
A. Clay Rankin III
Winston E. Rice
Robert L. Richmond
James H. Roussel
Thomas S. Rue
Thomas A. Russell
Robert J. Ryniker
John C. Scalia
John P. Schaffer
Charles E. Schmidt
Gordon D. Schreck
Ralph M. Sharpe
James T. Shirley, Jr.
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Kathy W. Stein
Michael F. Sturley
Lee A. Thorson
Thomas L. Tisdale
J. Kirk Trombley
Alan van Praag
Kenneth H. Volk
Thomas H. Walsh, Jr.
Guilford D. Ware
Harold K. Watson
Reed M. Williams
Russell R. Williams
James C. Winton
Dr. Frank L. Wiswall, Jr.
John M. Woods
A. Christopher Young
James F. Young
Robert J. Zapf
JoAnne Zawitoski

and the following ten guests:

Brian J. Brooke-Smith
David W. Cox
Roger Croft
Karl-Johan Gombrii
Barry Oland
Toby Orford
Jean S. Rohart
Richard J. Sayer
Tim Taylor
David Tonna

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PROCEEDINGS

MR. MOSELEY: Good morning, ladies and gentlemen. May I ask you all in the back to please feel free to take a seat so we can get started. If someone in the rear of the room would be kind enough to look outside the door and ask the ones who are just outside to come in, I would be much obliged.

As is readily apparent, we have some coffee and some other things to drink. During the meeting, if you see fit to help yourself, please do. Also, administratively, there are some sign-in sheets in the back. And if there are some of you who have not signed in, at the conclusion of the meeting they will still be there.

I think there is more activity by persons walking around this room than there is currently on the golf course.

MR. BERNS: I move we adjourn.

MR. MOSELEY: I would accept that motion except the man who made it is not a member, having not paid his dues for ten years.

Let me welcome each and every one of you, our guests from abroad who grace us with their attendance, the members who have kept this organization going in such fine fettle for so long and each and every one of you who are attending. It's greatly appreciated.

In addition to signing the attendance sheets in the back, any speaker who comes forward to give a committee report, would you please be kind enough to give to our reporter a business card so that your name will be spelled correctly. It will greatly assist him and it will greatly assist us.

I hope that during this week, each of you has had a very good time and enjoyed the situation of being here in Palm Springs. I would like to report to you that the Arrangements Committee did a wonderful job. We will recognize them just a little bit later. I did nothing to assist. My only function was to provide good weather, and I hope everyone has enjoyed the sunshine.

I call on our Secretary, Liz Burrell, to give the Secretary's report, please.

MS. BURRELL: Though you just heard this, it bears repeating: There are now sign-up sheets in the back. If you missed an opportunity to sign one of the sheets, you can leave your business card on the tables in the back. That will also reflect your attendance.

The board met in St. Louis in July, on Monday this week in Palm Desert, and also this morning. The full minutes of those meetings will be published

along with these proceedings, and I urge you to read those in detail for a full report of what the board has been doing.

The full minutes of the March and May 1997 board meetings were published in the May 1997 proceedings, which you should already have received. In all of these meetings, the Secretary, the Treasurer and the Membership Secretary issued their reports, which were unanimously approved and adopted. You will hear more about these reports from the other officers.

The directory that is now in your hands reflects some changes in the committee structure that President Moseley instituted in order to avoid duplication of effort of committees and also to reflect more accurately the role of some of the ad hoc committees, many of which have now been changed to study groups. The purposes section of the directory has also been updated in order to reflect some of the more recent activities of our committees, which are among the most valuable contributions that we make as an Association. Some of the committees have been combined as well; again, to avoid the duplication of effort.

In terms of our international endeavors, at both the July and October 1997 meetings the board heard reports about the Association's activities in connection with the IMO and the CMI. We were especially fortunate to have Lieutenant Commander Bruce Dalcher, who is the Coast Guard liaison to the MLA, report to the board at our meeting on Monday. He spoke to us about the current hot topics in the IMO, which include provision for financial security; wreck removal; and, although these issues formerly occupied more high priority position, compensation and liability for bunker bills.

He also reported that the Chairman of the IMO meeting, Mr. O'Neil, had recommended that the IMO take a more active role in implementing existing conventions, which may have application to the HNS Convention on which the Coast Guard is seeking MLA advice. The next meeting of the IMO will be on April 24th.

A full report of the Association's participation in the June 1997 Centenary meeting of the CMI appeared in the President's Newsletter, and I will not repeat it except to refer you to that fine document for a full report.

At the board meeting last Monday, First Vice President McCormack reported that President Moseley had a long meeting with CMI President Patrick Griggs about the future of that organization and our participation in it. The board unanimously approved and adopted a resolution authorizing President Moseley to make an appropriate contribution to the CMI.

Also on the international front, I note that the Association has been honored by the attendance of many, many foreign guests who represent a variety of associations and nations, including Australia, Canada, France, Italy, the Netherlands, Norway, South Africa, Spain, Switzerland and the United Kingdom. We have enjoyed and have felt very honored by the presence of all of these representatives.

As far as the activities of the committees have been concerned, we have had many reports, and at both board meetings heard about the status of the Association's proposed Carriage of Goods by Sea legislation. Since the Committee Chair, Vince DeOrchis, will be reporting later, I will not update you on the status, as I am sure he will.

The Association will also be presented with a resolution this morning to adopt the Code of Professional Conduct that was developed by our Study Group on Professionalism. That Committee was chaired by Ben Reynolds, and Second Vice President Dorsey will bring the resolution before the Association this morning. The proposed Code was published in the directory and also was included in the minutes of the May 1997 meeting.

At the July meeting, President Moseley reported on the efforts of Steve Vengrow, who is Chair of the Carrier Security Committee, to have the INS create a set of fair standards that would limit the discretion of its officials to provide disparate treatment for stowaways.

At the July meeting, board member Ray Massey reported on a questionnaire from AIDE, which had been referred to the Committee on Marine Insurance and General Average and in particular the Subcommittee on General Average. The questionnaire dealt with issues of national law affecting general average and general average in relationship to safety at sea. The Subcommittee provided model answers, which were then approved as Committee resolutions.

At the July meeting, the board addressed issues raised by Jimmy Kemp, who is Chair of the Association's Committee on ABA Relations, who will report to you later today.

The board unanimously resolved that on matters affecting maritime issues, the MLA delegate to the ABA should if time permits consult with the President, who if he deems it necessary, will consult with the board. On other matters, the MLA delegate should vote his conscience.

At the July meeting, the board also heard a report from Bill Mahley, Vice Chair of the Committee on River and Ocean Towing, on the activities of that Committee.

At the May meeting of the board, the Ad Hoc Joint Subcommittee on OPA Concursus, which has as its parent committees the Committees on Marine Ecology, Marine Finance and Practice and Procedure, brought to the board a resolution proposing an amendment to 33 U.S.C. § 2717(c) to provide for concursus proceedings for adjudication of all claims arising from oil spills by vessels. Because the May board meeting, however, had preceded the meeting of one of the parent committees, the Practice and Procedure Committee, action on that resolution was deferred until that Committee had also had a chance to look at and fine tune the resolution. After the board meeting, a vote was taken by poll, and in June the resolution was unanimously approved and adopted by the board.

The board's resolutions will be published in the minutes of the July meeting.

At the meetings here in Desert Springs and in written reports in the interim, the board has been kept advised by the Chair of the Practice and Procedure Committee, Bob Zapf, on the work of the Federal Rules Advisory Committee affecting Supplemental Rules B and C. Bob will tell you about this later this morning as well as new model local admiralty rules which are a fine product of that Committee.

The board heard from Don Greenman, Chair of the Limitation of Liability Committee, and Second Vice President Dorsey about meetings of the Shipping Coordinating Committee, which are held by the Coast Guard both to prepare for and to report on activities of the IMO and allow for comment by any interested group.

At all three board meetings, we also heard reports from Tom Rue, Chair of the Planning and Arrangements Committee for this very fine meeting, to whom we all express our gratitude for all of the effort that went into making this a great time and a very educational time here as well.

The Association has filed an amicus brief in the case of the *United States v. Rivera*. This was a rather unusual instance of the Association's participation because the First Circuit actually invited the MLA to file an amicus brief when the Court was reconsidering the case *en banc*. The case involves the criminal conviction of a dockmaster under 46 U.S.C. § 10908 for sending the barge MORRIS J. BERMAN to sea with a deteriorated tow line, which broke and contributed to a spill. The Association had participated in the recodification of Title 46 and our knowledge of the intent of the recodification was the basis of the position taken in the brief, which was very ably authored by Pat Bonner and Bob Parrish. The intent that the Association had perceived at the time Title 46 was recodified was to make no changes in the

existing rules and principles embodied in the Title. Therefore, the Association's amicus brief adopted the position that the other parts of the chapter which impose certain conditions precedent on criminal liability should also be read into the part that was the basis for the criminal liability. There still has been no decision.

Finally, the Association has made a contribution to the John R. Brown Moot Court Competition, and we have been granted the honor of awarding the prize for the best brief, which since many of the Association members participate as brief judges, we feel is very, very appropriate.

That concludes my report, and I move respectfully for its adoption.

MR. KEATING: Second.

MR. MOSELEY: Any discussion?

Thank you very much, Liz. The minutes will be approved as read. Thank you.

Before turning the floor over to our Treasurer, let me tell you about the John R. Brown Moot Court Competition. About thirty law schools participate. A brochure is going out to various law schools that the MLA will give the prize for the best brief. Financial contributions will be to underwrite a part of the actual operation. There will be probably a hundred young people who will have a wonderful opportunity to participate. It was held in Richmond last year, it will be at Tulane in 1998 and then in 1999 will be elsewhere in the country. It's a wonderful program, and it's one that we are privileged to participate in.

Our pleasure to ask you to report, Marshall.

MR. KEATING: Thank you, Mr. President.

Fellow members of the Association and guests, I am indeed pleased to see the turnout this morning, which is one of the best turnouts we have seen in a long time, undoubtedly because you have been waiting in eager anticipation all week to hear the Treasurer's report.

Before I get to that, I would just like to say one thing about our President. I have had the pleasure of serving with President Moseley for almost two years now. He is one of the most thoughtful people that I have met in my experience with this organization. And he has once again demonstrated that marvelous attitude in the selection of this year's convention's gift to the attendees. Obviously he had some sense of the coming disarray in the world financial market and the difficult times that some people are incurring in

the practice of maritime law and decided in honor of this situation to provide each of us with a tin cup. It's my sincere hope that we won't need it, at least before we leave here.

In any event, I will now turn to the financial report. We are halfway through the fiscal year 1997-1998, and we have on hand cash equivalents amounting to some $281,000. That compares with a year ago at this time of when we had some $334,000, so we have had a reduction in current assets of about $53,000. This relates to many things that happened this year where we incurred some unusual expenses. We had the Centennial of the CMI, and we have had other expenses which are not necessarily routine, so I am not disturbed by the reduction in current assets at this time.

I would like also to report on behalf of the Centennial Committee that we—the members of the Centennial Committee, chaired by Ted Cunningham, who unfortunately could not be here today—have been going around the City of New York and environs looking for suitable event sites, and probably we have seen at least thirty. It's not been entirely unpleasant though time consuming, and we have seen some very interesting possibilities. One particular site, which I think is almost definite for one evening during the centennial of 1999, is the Museum of Modern Art, where we will probably have a dinner. That is a particularly interesting site and I am sure it will be very enjoyable. We've planned four events, one of which will be a maritime exhibit at the Southern District of New York, which is co-sponsored by the Second Circuit's Historical Committee. We will have more information on this probably by May.

The other matter I wanted to mention is that we have been in the process of constructing a web site for the Association. Like many things that supposedly move at the speed of light, the programmers have not completed the preparation of the web site in time for us to show it on this occasion, which we had hoped to do. It is nearing completion and we will let you know as soon as it is up and available to members.

That constitutes the Treasurer's report, Mr. President, and I respectfully move its adoption.

MR. MOSELEY: Do I hear a second?

(Motion was seconded.)

MR. MOSELEY: Any opposition, otherwise it will be approved as read?

Thank you, Marshall, also for the left-handed compliment. We also have some pencils up here to put in the tin cup to move business along.

I must say that those of you who have been in the Association for a long time will remember a time many, many years ago where the finances of this organization were not in the condition that they are in now, and we owe a great debt to our Treasurer and to the board members who have made sure that we operate in the fashion we do.

For those who are foreign guests from abroad, you may be interested in knowing there is one organization that has comparable size and activities that we do, the American College of Trial Lawyers. Their dues are substantially greater than ours.

We remain a voluntary organization. We do everything as volunteers, and we believe that's the way it should be. And as a result of that, everyone has an opportunity to participate and to advance the Association. It's merely a fact of life that we are able to have reduced costs by so doing, but we are proud of that part, that everybody has a chance to play a significant part in the Association.

I call on Ray Hayden, our Membership Secretary, please.

MR. HAYDEN: Thank you, Mr. President. Good morning, members and guests.

I am pleased to report to you that the directory has been published. You all should have received your copy of it. The last corrections were effected on June 30. So if anything has been forwarded to the office in Buffalo since June 30, it will not appear in this directory. Although the proofs of the directory were vetted twice by the all officers here, we are certain there are some minor mistakes in it. If you find anything that needs correction, please use the blue card in front of the directory and forward it to the office in Buffalo so it can then be corrected.

Lastly, the most important thing to help Marshall Keating is if anybody needs an extra copy, we are happy to sell them, and Marshall always keeps an extra stack of these, and he'll be happy to see that it is forwarded to you for, I believe, the price of $35.

The members of the Association as of Monday were 3,592. At the board meeting on Monday, thirty-three associate applications were approved. In addition, there was approved this morning seventeen members being moved to proctor status. This means that the seventeen have met the qualifications of having been an associate member for four years, and also exhibited an interest in the Association and maritime matters by obtaining either twenty credits of CLE in maritime matters or publication of articles, et cetera, in maritime situations.

The seventeen members who were approved for proctor status are: Gregory Barnett, James Beard, Michael Butterworth, Michael Eisele, James Forde, Frederick Goldsmith, David Hilleren, Paul Kettunen, Robert Kiely, Steven Levi, Michael McHale, Daniel McKiernan, John O'Donnell, Salvador Pusateri, Michael Shanahan, Russell Williams and Mary A. Wilson.

In addition, I am also pleased to announce that four persons have been approved for non-lawyer membership in the Association. They are George Boothby, John Chamberlain, Peter L.M. Vismans and Dr. Chao Wu. We welcome these four as honorary members.

I regret to advise that since the May meeting, I have learned of the deaths of two of our members, Mr. Brendan O'Sullivan of Tampa who recently died, and Mr. Sam Tranchina, a non-lawyer member whose death I was unaware of at the time of our last meeting in May and who died earlier in the year.

If one of our members dies, we would appreciate your advising President Moseley or myself in order that our member's passing may be appropriately acknowledged. It's very difficult for us to keep track of them when people die from the areas that we are not located in.

The totals as of this morning after the admission of the various non-lawyer and proctor and associate members are as follows: We have three honorary members, fifteen ex officio members, one hundred sixty-nine judicial members, 1,759 proctor members, 1,350 associate members, fifty-nine academic members, two hundred seventy-seven non-lawyer members, making a total of 3,632 members of our Association.

Mr. President, that concludes the Membership Secretary's report and I respectfully move its adoption.

MR. MOSELEY: Do I hear a second?

All in favor, please indicate by aye.

(The motion was seconded.)

MR. MOSELEY: May I ask you, out of respect for those who of our members who have passed on, would you please be kind enough to stand for a moment of silence in their honor and memory.

Please be seated.

At this time, if someone towards the rear of the room would have Tom Rue and his team march in here, it would be greatly appreciated. Some Committee members are still working at the desk.

Tom, would you be kind enough to come down front and have your Committee stand in front of us, please.

MR. RUE: Yes, sir.

MR. MOSELEY: I would like to thank all of you for coming here. We wanted to express the appreciation of the assembly to the entire Committee, and I am going to ask Tom to say a few words. And also I wanted all of you to know that this is a two-year operation at minimum. They have continually been working on it. I wish to thank Bobby Glenn, who chaired the CLE Committee and who had to leave this morning.

Tom, we wanted to thank you and Joy.

From a personal standpoint, my wife, Anne, who is here today, worked with Joy in selecting the favors. The George Washington pewter cup for the men and the MLA pin for the ladies were selected by Anne in conjunction with Joy. Thank you.

Tom, we thank you very much. It's been a labor of love for you, and I know many of the people here have thanked you and your Committee.

I hope you wish to take the opportunity to thank your individual Committee members.

MR. RUE: Thank you, Mr. President.

We are glad you all have come. We hope you have had a wonderful week. We have worked hard to ensure that, and the result of this meeting is, of course, due to the hard work of my Committee members and the support of the officers and the board of directors, for which we are grateful.

The Vice Chair was Jim Bartlett, and his wife Jane was responsible for all of the spousal activities. Jim was also in charge of fishing. Robby Acomb was instrumental in putting together a list of restaurants for you and also the Desert Guide. Geoff Birkhead was in charge of lawn sports and mini-golf, and we had a record turnout, I think, of eighty-one. And he said, "we won't have any holes-in-one because this is such a difficult course." I am happy to report there were seven.

Michael Cohen and Bette were responsible for your transportation, air and ground transportation, as well as tours.

Beau Gelpi is the only member who is still working because he has to arrange the dinner seating for tonight. So he's fast at work.

Bobby Glenn, as Jim said, was responsible for the great seminar that we had yesterday.

Arthur Kelsey was responsible for food and beverage. He is the guy that walks around to be sure and makes certain that the bars are open and hopefully closed.

Dick Leslie and Nancy were responsible for the tennis. The finals are today on the grass courts, I think at 1:00 or 1:30, so you might want to turn out for that.

A special thanks goes to Peter and Susan Lindh, who started our children's program. We think that's going to be a successful addition to our away meetings, and we hope you will take advantage of that in the future. They are trail blazers, and they did a great job. If you are not aware of that, you might just drop by the Halloween carnival tonight which will be going on for the children.

Howard and Patti McCormack were guest speaker coordinators.

Bill and Anne Miller were responsible for your space and your committee meetings and all the assignment of the rooms.

Dennis and Janine Minichello were in charge of registration, and he is a great paper shuffler.

Steve and Mary Beth Mulder and their best asset, Mikaela, were in charge of sailing and other assorted activities.

Tom and Mary Murphy held the golf tournament. I hope you had a great time out on these wonderful golf courses.

Bob and Forrest Parrish were in charge of the run, and I regret that they had to leave early because of a family emergency.

Tom and Dolores Paul put on one of the greatest theme parties, the Fiesta Mexicana, and we will try to let you know next time what the theme is going to be.

And Charlie Schmidt is the purse string, so we have to be real nice to Charlie so that he will be sure to pay for this.

Once again, we thank you very much for coming. We enjoyed doing it for you.

(Applause.)

MR. MOSELEY: Thank you very much, Tom, and everybody on the Committee.

We have had resolutions which we have given to the families of board members and past presidents that are deceased. And we prepared a resolution for John Moore, which will be going to his wife. And as we were putting things together, it seemed that we had worked on that for a long time, and I had neglected to mention the memorial for John Moore of New York, who had been a Second Vice President of this organization and Committee Chair. John passed away shortly after our May meeting. So I apologize for that oversight, and would I ask you again, in memoriam for John Moore, would you please be kind enough to stand and observe a moment of silence.

Please be seated.

There are many visitors with us. Patrick Griggs, who is President of the CMI, found it necessary to leave today for various other commitments, and he had been kind enough to jot down a few words and share those with Karl Gombrii, who is on the executive council of the CMI. And I am going to ask Karl if he will be kind enough to stand in Patrick's stead at Patrick's request and to share with us some of the insight concerning the CMI.

Karl? If you would care to use the microphone here, please.

MR. GOMBRII: Thank you, Mr. President.

Patrick has asked me to tell you how very sorry he is to be missing this general meeting, but that he has enjoyed the company during this week of all his old and new friends. He has also asked me to deliver the following message on his behalf:

> "There is something unique about these MLA meetings. Serious business is done, but this is not allowed to get in the way of the sporting contests and social events. I recall that at the last Orlando meeting, I managed to compete in all events, golf, tennis, sailing and what I then christened the "Moseley Mile." Little did we know then that Jim's organizational skills were being sharpened on the early morning run in preparation for the onerous responsibility of becoming President of this Association.
>
> "It has been a great pleasure to me over the years to attend many U.S. MLA meetings. We foreigners have always been made most welcome, and I hope that I have done nothing this week which would

cause my invitation for the 1999 meeting to be withdrawn. 1999 will be a big year in the history of this Association. You will then be celebrating your centenary about two years after the CMI celebrated its own. For some reason, which I cannot explain, the British MLA did not come into existence until 1908, so we have ten years to go before we become centenarians.

"Wearing my CMI hat, I would like to say a few words about the relationship between this Association and the CMI. The support of the United States MLA, both financially and in terms of the contributions to the work of CMI, is quite outstanding. We certainly need your money because the finances of the CMI are not in good shape, but more than that, we need your continued input on the subjects which the CMI decides to examine. You are aware of the topics currently under discussion within the CMI. Perhaps the most important at the moment is a wide ranging review of the whole subject of carriage of goods by sea. For years we have struggled to reestablish some degree of uniformity on liability issues. Hamburg seems to have been a blind alley, and I assume that in frustration the United States has joined with the Scandinavians and other countries in seeking to produce a new liability regime which suits your trade. This is not a criticism. I see it as a justifiable response to the confused international situation.

"What the CMI, along with our international organizations, now seeks to do is to produce an instrument—convention or whatever—which would seek to harmonize the law governing all the functions of the bill of lading—as a document of title, as a contract of carriage, as a bankable security. This exercise will also tackle the need to create an international regime to regulate the use of electronic means in connection with the sale and transportation of goods by sea. The CMI believes that a much more broadly based instrument of the sort envisaged could then become the vehicle for a new liability regime, incorporating much of the thinking and texts produced in recent years by Francesco Berlingieri and his hard-working International Subcommittee.

"I betray no secrets in indicating that the CMI is now likely to take up the subject of marine insurance. Over the years, the U.S. has, for all sorts of good reasons, applied in the field of marine insurance a law very similar to English law. Many other countries with marine insurance business have done the same with one or two variations. There now seems to be a general feeling that the terms of the 1906 Marine Insurance Act are no longer adequate to suit current market conditions, and many countries—yours included—are busy drafting their own law.

I believe that before this tendency develops into a stampede, the CMI has a legitimate role to play in attempting to devise a model law or code which incorporates the best of the law as it stands, which could be adopted and incorporated into domestic national law by those countries which choose to.

"In a task of this sort, the contribution of your Association will be not just important but essential.

"I invite your continued support for the work of the CMI. The centenary gave us an opportunity to look closely at our methods of work, organization, et cetera. The Executive Council will, over the next few months, in consultation with member associations try to prepare the CMI for life in the 21st century. Please help the CMI in its continuing and vitally important efforts to harmonize private international maritime law.

"Finally, a word of thanks to President Moseley for all his kindness, friendship and support in recent years. I cherish that and hope that his faith in me in my new job at CMI will prove to have him justified."

Finally, finally, Mr. President, if you will allow me, I would like to say a few words of thanks on behalf of all foreign visitors. I must stress that I have no mandate or authority of any kind to do so. I am convinced that I speak on behalf of all non-U.S. participants when I say that we are truly grateful for the very warm hospitality which we have met here. We have had a great week with a great association in a great country. Thank you very much.

(Applause.)

MR. MOSELEY: Thank you, Karl. I hope you will convey back to Patrick how much we appreciate his kind words and that you can always count on us to be supportive of CMI and its projects in every way we can. It's very kind of you to say those very generous, overly generous words about what has transpired this week.

I believe this may be an appropriate time for us to recognize the Immediate Past President of CMI, Allan Philip, who is present. We have been delighted to have you. And also seated is Alexander von Ziegler, who is the Secretary General of CMI. We have been happy to have both of you, and you paid us an honor by coming.

There is an important matter that I would also like to move on to, to get it before you. The study group which studied professionalism for the last year has concluded their work. The Code was submitted to the board some

months ago. The board unanimously approved it. The Code is very brief and meaningful, somewhat like the Ten Commandments.

The Study Group was worked on very, very hard by many members of the federal judiciary, our own—who are our own members, many of the very, very good practitioners, and was ably led by Ben Reynolds of Houston. In addition, John Kimball of New York was Vice Chair. Both of them for professional reasons are not here today, that were beyond their control.

I have asked Bill Dorsey to be kind enough to present the motion for adoption by the assembly, and he will do so in a brief fashion, but you all have had a chance to look at this. It was included in my Newsletter. While our objectives are stated as our goals, I and my predecessors have tried to preach what is really the truth, that our goal is always excellence. We have the stewardship to maintain the excellence that was started a hundred years ago. It should give everyone pride to be part of this Association. When members of the judiciary or our own academic members talk about the standing the Maritime Bar, that we can all take great credit for it, each and every one of us.

And so it's in that spirit of excellence that we are proposing the Code that has been worked on so long by so many.

Bill Dorsey, our Second Vice President.

MR. DORSEY: Well, Jim has left me very little to say about the Code. He sort of said it all. It's my pleasure to present it for your approval. The reason that Chairman Ben Reynolds is not making this presentation is because he and John Kimball, his Vice Chairman, are both trying cases.

I don't know whether you heard Alex Howard's address—I assume most of you did yesterday when he described maritime lawyers as the finest group of lawyers in the country. And that's high praise indeed, and it's the kind of praise that we get from many judicial members. One of the members of the Study Group on Professionalism was Judge Howard. Also Judge Brieant of New York was a member of the Study Group, and I commend to you his article on professionalism which appears in the latest issue of the "Journal of Maritime Law and Commerce," and he says essentially the same thing about maritime lawyers.

That's high praise to live up to, and I concur with Jim that one of the things of which I am proud is the special pride that maritime lawyers take in professionalism, that is, the adherence to very high standards of competency, ethics, collegiality, honor, duty to client, duty to the courts, all those things. This Code has been published in many places, and you have had a

chance to see it, so I won't go through the whole Code. I'll just point out that this Code is a rather simple and concise formal statement of these principles that we cherish.

And so it is a great honor for me, Mr. President, to move the adoption of the Code of Professional Conduct.

MR. MOSELEY: Is there any discussion? If not, I would call the question and ask all in favor to please indicate by aye.

THE MEMBERS COLLECTIVELY: Aye.

MR. MOSELEY: If there are any opposed, please indicate. It is unanimous.

I congratulate each one of you not only for upholding the standards that we hold dear, but the fact that you are unanimously supporting the Code of conduct. I apologize, Bill, if I stole any of your thunder. Give me a microphone, and I am incorrigible.

Anyway, it's a good thing for us to do, and I commend you for it, and I commend the Study Group and Ben and John and all of the ones that worked on it, Judge Black from the Eleventh Circuit and many other members of the judiciary. That was a joint effort, and I am sure it will do us credit.

If I may mention this, many of you—many, many of you—had mentioned to me when the Code was passed that they would like to send it on to their chief judge and their state, district—and also to their district judges. So we will have a unified effort. So please let me know, and I will send a letter from the board directly to them enclosing a copy of our Code so they will know what our standards are internally.

As you know, we have had the tradition of somewhat long standing that when our brothers and sisters from north of the border come, we allow them a brief statement. Nigel Frawley and his team have been so hospitable to the MLA for so many years until it's hard to express our appreciation. Nigel is in a trial back at home, and we are fortunate indeed to have Barry Oland of Vancouver to be here to say just a brief few words. Barry, please.

MR. OLAND: Mr. President, members of the board, ladies and gentlemen. Nigel Frawley, who is our President, is away. Unfortunately, he couldn't come because of a trial. On his behalf and on behalf of all the Canadians present, I wish to extend my heartfelt thanks to the United States MLA and to the board and to President Moseley. And in this formal meeting whenever I hear the term President Moseley, I can't help but think that if

Jim has another calling, he could very well use that term. President Moseley has a very nice ring about it.

The generosity of the United States MLA to us in Canada and to the foreign guests is outstanding. For many years we have been invited to your semi-annual meeting in places such as Maui and here. We have benefited from your knowledge and your organization. We have particularly benefited from access to your committee system, which we have followed and which we have found to be the foundation of our strength. Your President, Jim Moseley, and First Vice President, Howard McCormack, both attended our annual general meeting. Nigel Frawley attended yours.

President Moseley will be a speaker at the end of November at a seminar we organized with judges of the Federal Court of Canada. I think it's somewhat unique because we got the judges together really at their request, at the federal court's request, and we have a seminar where we try a to do a little CLE for judges on maritime law, and actually it works quite well. We hope we will have the benefit of the United States' experience from Jim Moseley's contribution.

Finally, there has been reference from Karl to the CMI and the close relations. At CMI meetings that I have attended, the conferences, there has been very close work between our delegation and the United States MLA. I think that's going to continue and grow. We support the efforts of Patrick and of course the members of the executive of CMI who are here. We think that with the collective effort of everyone, we can assist and help the CMI for its next hundred years.

And lastly, my thanks to you and the board for all of your generosity to all of the Canadian members who have been made so welcome here.

(Applause.)

MR. MOSELEY: Thank you, Barry.

The time has now come for our committee reports. But before so doing, I will call on Bruce Dalcher, Commander Bruce Dalcher, who is the Coast Guard liaison to the MLA and ask Bruce if he would give us a very brief report on the IMO, and a more complete report will be in the Newsletter that will be sent out right after Thanksgiving.

Bruce, could you say a few words, and then I will begin calling on the Committee Chairs for their brief reports. And for your own administrative needs, the committee reports will not take more than an hour, so I will have you out of here no later than a quarter to 12:00, I guess, at the latest.

Thank you, Bruce.

COMMANDER DALCHER: Mr. President, members of the board, ladies and gentlemen, thank you very much. I am appearing here on behalf of the U.S. Coast Guard in the stead of Rear Admiral Paul Blayney, our chief counsel, and Captain Malcolm Williams, who heads our office of Maritime and International Law.

In that capacity, it's been my pleasure to attend a number of committee meetings here this week—including the CMI Committee, Navigation and Coast Guard, International Law of the Sea, Marine Insurance and General Average, Practice and Procedure, Marine Ecology, Young Lawyers Committee and even Cruise Lines and Passenger Ships; and in fact, a very impromptu meeting with the Transportation of Hazardous Substances Committee, which you may not even know met.

It was a distinct pleasure to give brief reports to a number of those committees concerning the events of the IMO Legal Committee, and I don't think there would be any purpose in a general repetition of them now. As usual, however, we consider ourselves very fortunate to enjoy not only the interest but the great support of the MLA in our efforts on the international front and IMO. One reflection of this, of course, is the presence on our delegation to the recent meeting of the Legal Committee of both President Moseley and First Vice President McCormack, who provided many valuable insights not only at the meeting of the Legal Committee but also in time and effort in preparation for that meeting. We value their counsel then and now very highly and hope we can rely upon them in the future.

Unfortunately, neither Admiral Blayney nor Captain Williams was able to be here, so I have been lucky enough to have been the recipient of the many courtesies and expressions of esteem that the committees and members have seen fit to extend, and I thank you all very much.

(Applause.)

MR. MOSELEY: Thank you. We will now start with the committees, and I would call first on the ABA to see if they have a Committee report. Mr. Kemp.

MR. KEMP: Thank you, Mr. President.

I would like to report that at our Committee meeting this week, we worked on implementing the program and the resolution that was passed by the board about your vote in the American Bar Association House of Delegates. That procedure is under way, and we will continue it. I will vote your vote following those instructions and suggestions received from my Committee.

I am pleased to report that at the meeting that was just held recently in San Francisco, I noticed in the House of delegates—and I have now been to three of those meetings as your representative—that there has been a decided move away from pure social issues to be considered by the House of Delegates and more of a movement towards real legal problems and legal measures, and I think that that's an important movement and hope that it continues.

Mr. President, that concludes my report.

MR. MOSELEY: Thank you, Jimmy. Peter, I will call on you next.

MR. McLAUCHLAN: Thank you, Mr. President, members of the board, ladies and gentlemen. I'm standing in for Norman Cowie, who is in the middle of two limitation proceedings simultaneously.

The Uniformity Committee met at a different time than originally scheduled in the bluebook, and so only those who are very, very diligent made it to the meeting. We have a couple things going on, one of which we need some volunteers for. We have one volunteer currently, and Young Lawyers are going to consider it. It is a report on the conflicts among the circuits in the admiralty jurisdiction area. We are going to try to get a report together for the May meeting. So if any of you are interested in assisting with that update, let me or Norman Cowie know, please.

The one decision that came out since the last meeting that is significant and that you might want to peruse, is unfortunately another slip opinion out of the Ninth Circuit called Exxon Shipping against Airport Depot and Diner. The Ninth Circuit said some things that were very much against uniformity in that decision. So you might want to take a look at that. It was decided on July 15th.

That's all I have to report.

MR. MOSELEY: Thank you very much. Good luck in the tennis finals today.

Vince DeOrchis. But before you start, Vince, if I may say, Vince has done a superb job in working with Chet Hooper and Michael Sturley in advancing before Congress the need for the amendments to the Carriage of Goods by Sea Act. We couldn't have had a better Carriage of Goods Committee Chair than you have been, so we owe you a great deal of gratitude.

MR. DeORCHIS: Thank you, Mr. President, members and guests.

I wish I could say that the COGSA proposal which was passed by this Association back in the spring of 1995 has now been passed by Congress. Obviously it has not. We waited until the elections were over, and then we

did a full forward press in trying to get the proposal through Congress. I must say that with the assistance of President Moseley and Immediate Past President Hooper, an awful lot of effort has gone into trying to get the bill moving. However, there is just so much that the Association can do, and much of the momentum of the proposal is dependent upon the powers that be down in Washington, D.C.; specifically both the Democratic and Republican counsel to the Transportation Committee, as well as various senators.

Having said that, let me point out that there has been some movement recently which we are very pleased to hear about. Senator John Breaux has been appointed as the sponsor of the bill, and we understand that as early as this Monday, Senator Kay Hutchinson, a Republican, has agreed to co-sponsor the bill. Hopefully Senator Lott and Senator McCain will also sign on board as co-sponsors as well.

However, there still has not been a formal introduction of the bill. There has been a suggestion by Carl Benzel, who is the Democratic counsel to the Transportation Committee, that there will be a formal introduction before the end of this term, which I believe is sometime in mid-November.

Even if the bill is formally introduced, that does not mean it will be passed in 1997. What it does mean is that it will probably come up in early 1998 after Congress reconvenes sometime in February. There will probably be at least one Senate committee hearing. The bill in itself is considered technical and of relative insignificance to Congress. I'm sorry to say that, but that's the reality. And as a result, the bill will probably have to be tacked onto something much larger in order to get it through Congress.

Right now the suggestions from those in Congress who are assisting us is that the bill will probably be attached to the Coast Guard Authorization Act, which in and of itself has been stalled in Congress for other reasons. Therefore, this Committee is speculating that sometime, hopefully in the first half of 1998, this bill will come up for vote in Congress. That's on the Senate side. We then have to go over to the House side. We have been told if the Senate passes the bill, it should be relatively easy to get it through the House.

The bottom line is that we are probably talking close to another year before we see this bill enacted. That's unfortunate, but the bill is moving a lot faster than its predecessor, since it took from 1924 to 1936 to get the first COGSA enacted.

At the meeting on Tuesday of the Committee on Carriage of Goods, we did receive a report from Professor Sturley with respect to the CMI conference in Antwerp and their progress on the bill. Indications by both Professor Sturley and Frank Wiswall are that it probably will be quite a while

before the CMI can come up with their own regime; and therefore, there probably is some justification for our going ahead with our own COGSA.

There was also commentary by Immediate Past President Hooper with respect to a meeting before the Department of Transportation during the midsummer in which several people, including Marilyn Lytle, joined us down in Washington, and we gave an explanation of the new COGSA proposal to the DOT people. They were very impressed with it, and they have promised us their support.

I might add that the list of supporters for the COGSA proposal has grown longer and longer. There has been no major opposition to the proposal, with the exception that in the last two weeks we have heard some criticism or concern—I am not quite sure which—from the American Waterways Operators. A decision was made at our Committee meeting to approach the president of the AWO and try and go through an educational process about our proposal. I think it has very little effect upon them, and to the extent that it does, it probably helps rather than hurts the coastal operators.

During our meeting on Tuesday, we also had a very interesting symposium in which five lawyers from overseas gave us their historical view of the COGSA laws that are operating in their countries. We listened to speakers from the Netherlands, England, Canada, Italy, Australia. That proved to be very successful, and I hope to continue something in the same format in the future.

Lastly, at a meeting this morning with Pat Martin, who is Chair of the Committee on Maritime Arbitration, we have agreed to approach the Young Lawyers Committee for their assistance to send out some sort of a survey to determine what effect the *Sky Reefer* case has had on cases being handled here in the United States. Of course some cases are reported. That's easy enough to pick up; but a lot of cases are being settled or voluntarily transferred in fear that a negative decision will come down. A survey will be sent out shortly.

What we are looking for in the survey is where the cases are being sent, and what are the conditions under which they are being sent. I think this will be important information to provide to Congress when the Senate holds its committee hearings. We may also include in our survey a request for information on the effect of the Visby limitations on the settlement of cases. If you have cases in your office which have settled on the basis of the $500 package limitation, we are interested in learning what would the effect have been if the Visby limits were instead applied. I think that that is some-

thing Congress will be looking for as well. So your support, or your firm's support, in answering this survey will be very helpful.

Mr. President, that concludes my report.

MR. MOSELEY: Thank you very much, Vince. I might just add one or two sentences to what Vince said on the DOT meeting that was held in July. And really the compliment went to all MLA members. There were sixteen people heading up sixteen departments of the DOT, including Paul B. Larsen. I think they were all happy to see volunteer, non-lobbyist types participate. They paid a compliment to the Association, which I would like to share with you, in that they said it was amazing the consensus that we were able to achieve throughout the industry, and it was a consensus which they could not have achieved. So I think they are very much supportive of what we are doing, and it was great to have everyone there at that meeting.

I would now like to call on Charlie Anderson.

MR. ANDERSON: Thank you, Mr. President. I can be brief, but I would like to start by mentioning something about the CMI conference in Antwerp.

I was very pleased that we had a delegation of almost fifty people from our Association. I think it was probably the largest turnout of any of the national associations at the centenary conference. By all reports, it was quite a successful conference for a number of reasons. One was of course to celebrate the hundredth anniversary of the CMI. I think that was done in great style. Secondly, because the plenary session of that meeting dealt with the future of the CMI, quite an important topic that has already been touched on by some of the speakers. But in any event, I think we did quite well at that conference. We had various representatives at each of the international subcommittee meetings. Either Committee Chairs or actual members of working groups were in attendance, and there were about ten of those groups; we had good representation there.

In terms of the future work, we concentrated at our meeting here very much on the future of the CMI. We were very fortunate to have both the Immediate Past President, Allan Philip, and the new President, Patrick Griggs, at our meeting as well as the Secretary General, Alexander von Ziegler, and several members of the Executive Council. In fact, I think we had probably enough for a quorum at the Executive Council meeting at our session.

I am not going to dwell on the reports of the various working groups because, for one thing, President Moseley has provided a very excellent summary of the status of those groups in this summer's Newsletter, but I

would like to say a few words echoing what Patrick Griggs said about the future of the CMI. Patrick gave us a brief report, and there were two things that came out of the report that I think bode very well for the future.

One is that the emphasis will be on involving the national associations more directly in the CMI's work, and Patrick pointed out that it's not possible for many of the national associations to send delegates to meetings of the various international subcommittees because of the expense of travel. So there will be set up correspondence groups which can participate in these working groups, either through e-mail or various types of correspondence, so that the national associations which have not to date had as great a participation in the work of the CMI will be able to do that.

The second principle which he gave some emphasis to was to maintain the independence of the CMI by encouraging more broadly based support. That means getting representatives from all the maritime trades, not simply lawyers, but also average adjusters and other organizations which have an interest in fostering maritime commerce. This will be one of the mainstays of the CMI in the future. Another priority will be to encourage younger lawyers to take part in CMI, which of course has been one of the major goals of our Committee. I think we are making progress in that respect as well.

That concludes my report, Mr. President. At this point I would like to turn it over to Nick Healy for the report of the CMI American foundation.

MR. HEALY: Mr. President, honored guests and fellow members. We had a board meeting on Monday, and I am happy to report that we had several very distinguished guests at our meeting, the current President, the Immediate Past President of the CMI, and the Secretary General of the CMI. Mr. Griggs and Mr. Philip both made very valuable suggestions.

The main thing we accomplished was to inaugurate a campaign to increase our balance so that it could earn interest and help in that way to finance our various projects, such as the Elliott Nixon Prize Competitions, the third of which is now under way and is being supported actively by the current Chairman of the Young Lawyers Committee, Jim Moseley, Jr. and the equally able and industrious Vice Chairman of the Committee, Joe Tabrisky.

The current amount in our till is about $4,000, and that includes about $600 in contributions in memory of John Moore and Frank O'Brien. I would encourage you all, please, to contribute to the fund in their memory or in the memory of other friends who have passed away, or in no one's memory in particular but just for the benefit of the CMI American Foundation.

The competition that is now under way will end on December 31, 1998. That is the deadline for submission of articles in support of the idea of uniformity in national and international maritime law. So please encourage your sons and daughters who are in law school or your young associates who have graduated not more than five years ago from law school to submit papers in this competition.

Thank you very much.

MR. MOSELEY: Thank you, Nick.

I believe I am correct that George Chandler had turned his report on the web site over to Marshall, who gave a report that the web site should be up and running soon.

Let me call on Bill Birkhead.

MR. BIRKHEAD: Thank you, Mr. President.

Yesterday I chaired my first meeting of the Fisheries Committee. We are attempting to define our scope and our roles since the Fisheries Committee has been fairly inactive over the last number of years. President Moseley, based on his voluntary approach to things, has volunteered me to be Chair of this Committee.

We have a mix of international, national and local issues in the Fisheries Committee, and our initial goal is to have someone designated in each fishing port as a reporter so that we can correlate information coming out of the—say the Canadian/Alaskan salmon wars that are going on right now or the summer flounder disputes going on and things like that.

We filled up our slots on the West Coast yesterday fairly well from Alaska all the way down to San Diego—including a couple of Canadian members from Vancouver. We are still looking for Gulf Coast, Florida, and some more East Coast members. So if there is anyone that is interested in being an active member of the Fisheries Committee, dealing with pure fisheries matters as opposed to Jones Act or collision matters on fishing vessels, please contact me. We are going to be continuing to define our role and our scope in the membership committee over the next six months or so.

I hope to have a good report in May. Thank you.

MR. MOSELEY: Thank you, Bill.

I would next like to call on one of our very distinguished members who enjoys the status of being a proctor member here but is also of the academic world, Dr. Samuel Menefee of the International Law of the Sea Committee. Sam.

DR. MENEFEE: Mr. President, fellow members, I am here representing Doug Burnett and the Committee on the International Law of the Sea.

Obviously one of our major duties is to continue to monitor the progress of the 1982 Convention on the Law of the Sea. I think it's fair enough to summarize that by saying "the political condition of the patient remains unchanged."

Two other things we have been looking at are the work that CMI has been doing on offshore mobile craft and the work of our ad hoc Working Party on Archeological Shipwrecks. However, most of our meeting was taken up with a discussion of piracy.

Over the past nine months, there have been about 142 incidents of piracy, involving fifteen deaths of seaman in maritime violence. One of the activities that the Committee has been peripherally involved in is a three-day conference on Modern Piracy: New Methods for an Old Track, which is going to be held at the Mariners' Museum in Newport News, Virginia on November 13-15. It's going to give us a chance to highlight the problem of contemporary piracy and showcase the draft code on piracy approved by the MLA. We were fortunate enough to have Professor Frank Wiswall at our Committee meeting, and we discussed the possibility of getting an initiative going with CMI so that we could get other countries involved with updating their national piracy laws and making such statutes more uniform in the process.

It was the sense of the Committee, Mr. President, that we would appreciate your writing a letter to the CMI Executive for their November meeting, stating that the MLA is interested in seeing that this initiative is advanced, and offering the MLA draft piracy laws and the product of the Working Party on Piracy as a potential background for work by the CMI on that subject.

That concludes my report. Thank you very much.

MR. MOSELEY: Thank you very much, Sam. I hope we'll be in touch in the next couple of weeks so that the letter can be sent. May I call on Bob Zapf, Chair of the Committee on Practice and Procedure.

MR. ZAPF: Thank you, Mr. President and officers, directors and members. I am just going to report on two events that are proceeding through the Practice and Procedure Committee.

The first deals with the changes to Rules B, C and E. The Advisory Committee to the Standing Committee on Civil Rules of the Judicial Conference met in Deer Park in early October to address the draft rules which we had worked on together with the MLA and the DOJ. It's a joint effort to address certain problems that have arisen primarily in the context of forfeiture pro-

ceedings, which are also governed by the admiralty rules. I am very pleased to report that after a very animated discussion and vigorous debate, the Advisory Committee adopted all of the recommendations that the MLA and DOJ had jointly put forward.

That's not the end of the story, however. The version that has come out has yet to be submitted to the Style Committee of the Advisory Committee. We hope that there will not be any drastic changes, but it is premature at this point to circulate to you or other members a copy of the version as it currently exists because there might be some changes to it; none substantive, but in terms of style.

The Advisory Committee, I must say, was very, very appreciative of the fact that there had been a joint effort between the two interested entities, the DOJ and the MLA. And they also expressed their appreciation for representatives being there to address their questions, of which there were many, and, as I say, a very vigorous questioning and give-and-take. It was well received that we were there, and that the MLA had supported this proposition of having someone there to represent their position.

I must add that Mark Kasanin, who is a member of the Advisory Committee, did a tremendous job in terms of laying the groundwork for this to go through; he did a lot of lobbying in advance, and his presence on that committee was a very big factor in having this go as well as it did.

I should also mention that Phil Berns, representing the DOJ, did a very good job differentiating between himself as DOJ and himself as MLA. We had our disagreements, but they worked out well.

The other activity that the Practice and Procedure Committee has devoted a significant amount of time to is the revision of the Model Local Admiralty Rules. The MLA promulgated a version in 1988, which received some attention and adoption, but not as much as we would have liked. There have since been changes to the Federal Civil Rules, in 1993. The Federal Rules of Civil Procedure were amended. There have been some decisions which have come down construing local admiralty rules that we wanted to address in the context of a revised version.

I am happy to say that after a very active and animated discussion at our meeting on Wednesday, we have now unanimously adopted a version of the 1997 Model Local Admiralty Rules which was submitted to the board of directors. They will review them, and hopefully they will be able to get back to us. We have received a significant amount of expressions of interest from the various district courts around the country asking us to put forward something for their local rules committees to review. We hope to get that out as soon as we can achieve board review and approval. And if there are

any comments or changes to them, we would be happy to take those into account.

If anyone would like a copy of the Model Local Rules as they currently exist, I would be happy to circulate them to you, and you can get in touch with me or Andy Goldstein, who is our Chair of that Subcommittee and who did a marvelous job in terms of focusing all of our attention and efforts in getting this longstanding project done.

Thank you very much, and that concludes my report for today.

MR. MOSELEY: Thank you, Bob.

I now would like to call on Don Greenman.

MR. GREENMAN: Thank you, Mr. President, officers, directors, members and guests.

The Committee on Limitation Liability met on Tuesday. We were honored to have Barry Oland, who is the Chairman of the Canadian Maritime Law Association's Limitation Committee, present to fill us in a little bit on what is going on in limitation law in Canada.

As an information report, you may recall that the United States has been considering the Protocol to the 1976 Limitation Convention. The deadline for signing the Convention, or the Protocol was September 30. Obviously the United States has not signed. That does not preclude the United States from joining in the Protocol, and thereby the Convention, at some time in the future.

Thanks to Commander Dalcher, I learned that by the deadline, there were eight countries which had signed the Protocol. Ten countries are needed to bring it into force. As far as the Convention itself is concerned, there are twenty-eight countries that are parties to that Convention. Canada, according to Barry, was one of the countries that signed the Protocol, and I understand the limitation statutes to implement it are presently pending in Parliament. It may be a factor at some time in the future that the United States should consider if our Canadian neighbor adopts the 1976 Convention and the Protocol, because without uniformity between these two nearby countries, there could be some problems.

Lastly, I mentioned at the May meeting that we had organized a working group to study the ISM Code. I can now report that our working group has been expanded by President Moseley into a Study Group that takes into account the interests of various other committees. It's still chaired by Tony Rodriguez of New Orleans, and I am sure he would be happy to have any

comments or suggestions for the Committee's work from members of the Association.

Thank you, Mr. President.

MR. MOSELEY: Thank you very much, Don. Don was certainly responsible for the suggestions about the ISM Study Group, and I am very beholden to him about that, and it will be up and running soon. It will be of assistance to each of you.

With a great deal of pleasure, I call on Marilyn Lytle, who has not only been a mainstay of the Ecology Committee, but is Vice Chair, and has been very helpful in the Carriage of Goods effort. We appreciate your efforts and your time, Marilyn.

MS. LYTLE: Thank you, Mr. President. Your Committee on Marine Ecology met this morning, and there are several developments in connection with OPA 90 that would I like to report upon.

Congressman Boehlert, who is the Chairman of the Water Resources Subcommittee in the House, within the last week introduced legislation which would reform Superfund. But more importantly, it contains a Title 7, which would reform the natural resource damages assessment provisions under OPA 90. It appears that some of those reforms are consistent with the resolution adopted by this Association last year urging Congress to reform natural resource damages assessment procedures.

Significantly, it would do away with recovery for psychological damages—in other words, how people feel about a resource—and this would appear to limit assessment of damages by "public opinion poll." That legislation, as I said, was just introduced and there may be a mark up next week. Of course Congress is adjourning next week, so we may see some activity on that next year.

In other OPA developments, the Department of Justice legal counsel has issued an opinion which permits the trustees for natural resources to assert claims for natural resource damages against the Fund without prior Congressional authorization. This differs with an opinion issued by the Controller General in 1995.

As a result of the North Cape spill last year, OPA was amended to require fire suppressant equipment and anchoring and retrieval equipment on tank barges, and the Coast Guard has just issued on October 6 its proposed regulations implementing those changes.

An interesting and somewhat controversial opinion was issued by the Fourth Circuit in September. It was issued as an unpublished opinion. It

appears to stand for the proposition that a spilling vessel cannot use state law to recover costs incurred by an OPA responsible party in excess of the limitation of liability of the vessel which was the sole cause of the casualty.

Finally, we enjoyed a report by Lieutenant Commander Dalcher about environmental developments with the IMO Legal Committee, and we are grateful for his contributions.

And that concludes my report, Mr. President.

MR. MOSELEY: Thank you, Marilyn.

I would like to call on Charlie Brown next. Charlie remains one of our hardest working, most dedicated Committee Chairs. And Charlie, we appreciate everything. I am surprised, however, that you think you can finish in three minutes, but I welcome the break if you can.

MR. BROWN: Mr. President, fellow members, our main guest speaker was Dr. Jorge Loaiza, III, from Panama from the firm of Arias, Fabrega & Fabrega. He showed us how to register both title and mortgages in Panama, in an expeditious manner by recording the data sheet to preliminarily register both title and mortgages. You have six months to definitely register your mortgage or title. You can probably learn from that procedure yourselves.

The next topic was our Title XI project. Sandy Knapp is the Chair of her seven-member Subcommittee. We had about a foot-high stack of boilerplate documents from MARAD to go through on a Title XI guaranteed ship loan. The sad part is that a lot of this documentation is redundant. You have to use a trustee in every transaction, and Sandy is talking with Joan M. Bondareff, Chief Counsel of MARAD, who now wants us to first simplify the documentation; and secondly, to get a new set, a completely new set of documents. We will do that one step at a time. We will simplify it first and then get a new documentation packet. It's going to be a big project.

Next date was October 21, 1997, the Coast Guard Authorization Act of 1997—that's for fiscal years 1998 and 1999—went sailing through the House. It's now bogged down in the Senate. That Act contains our Vessel Identification System ("VIS"). Dave Williams went through the VIS and explained everything, what the status is and what the problems are. Dave is monitoring Coast Guard's fleshing in of the Vessel Identification System by regulation. Dave has commented on these new regulations and is guiding us so far as the Coast Guard is concerned. This will be another big project. The Vessel Identification System is still in a morass, but it can be worked out.

Charlie Donovan reported on UNCITRAL and Article 9 of the Uniform Commercial Code just to make is sure our maritime lien system isn't destroyed by people who know nothing about admiralty. We are going to

monitor and comment when necessary. The UNCITRAL draft Convention covers receivables—an international convention. It's a very good tool to work with.

Another main topic was the Fair Debt Collection Act. The Act's problems were discussed by Bruce King. Now, the Fair Debt Collection Act covers consumer loans and only involves yachts. It doesn't really involve blue water vessels. But you can only, say, attach a vessel in the judicial district where the owner resides. So if your yacht is in another state, you may be out of luck if you are a debt collector. This needs a legislative fix, and we have prepared a resolution. Bruce King is going to get up to speed on that, and we will probably have a draft proposed for adoption for next Spring.

Bruce also mentioned that he has the foreclosure forms ready. Phil Berns is giving it a final check. They are all set to go, and it should be distributed to someone like Matthew Bender for printing shortly.

Bruce also has a new international insolvency group made up of really non-admiralty lawyers. They are bankruptcy types who don't even like admiralty. They will be getting together in May, I guess, for a funeral or something like that, and we will hear from them.

The next thing Bruce was involved with was the seaman's wage claims. There is case in AMC now stating that if you don't have a written contract, a shipowner can get sued when the owners hire seamen, meaning fishermen. Phil Berns will be flying out to Hawaii on a similar case.

That concludes the report.

MR. MOSELEY: Thank you, Charlie. I think no one deals with as many issues as you do, Charlie, and I really appreciate your efforts. Charlie is not comfortable—Charlie, let me praise you for a second, please.

Your Committee deals with probably more issues than any other, and believe me, Charlie is so committed and does such wonderful work—and for so long. Charlie, everyone in this Association greatly appreciates it. Your commitment to the Association is really second to none. I wanted to have this public opportunity to thank you very, very, much, and I hope you will keep up the good work. Your Committee is also certainly second to none. Thank you very, very much.

(Applause.)

MR. MOSELEY: I would now like to call on John Schaffer of Maritime Personnel. I have several people that have asked me to say something, and after the predesignated order set, I will call on them, too.

MR. SCHAFFER: Good morning, everyone.

The Committees on Maritime Personnel and Legislation held a joint meeting on Tuesday, the 28th of October. We had thirty members and guests present. We had a lively discussion about punitive damages, particularly the recent $3.5 billion verdict in New Orleans by a class of plaintiffs allegedly injured and/or anguished by certain railroad defendants. We continue to closely and carefully monitor this area of the law.

We have established a working group to review and consider House Representatives Act 2005 and Senate Bill 943, which appears to amend the Death on the High Seas Act to apply state and common law to airline accidents. This will affect recovery for wrongful death and may affect how the Death on the High Seas Act will apply to maritime incidents.

We are also discussing whether the Committee on Maritime Legislation should modify its role and become proactive and a watch dog for the MLA with regard to prospective and proposed maritime legislation. We are considering the feasibility of identifying and tracking proposed maritime legislation and deciding just how to keep the Association advised.

Furthermore, we also reviewed several significant current decisions all over the United States that particularly impact on the members of the Committees on Maritime Legislation and Maritime Personnel.

Finally, we welcome suggestions from the Association as to new and interesting projects, and we are always looking for new members. Please let me know if you want to join our Committees.

Thank you very much. That concludes my report.

MR. MOSELEY: Our thanks should really go to John and his Committee officers. Our hope and credibility before Congress or any agency is dependent on the fact that we represent every aspect of the industry. John and Paul Edelman and several of his other officers in the Committee have done quite an incredible job in making sure that we have a broad-based representation on your Maritime Personnel Committee, and he has done a lot of work. Paul has done a good deal of work, and it's worked. You have really increased the prestige of the Association by increasing the diversity of that Committee. And thanks to you, John.

Jim Shirley.

MR. SHIRLEY: Thank you very much, Mr. President.

The Salvage Committee met on Tuesday morning, and following in the tradition I inherited from Paul Poliak, we had a very active discussion for about an hour and forty-five minutes covering more than a half dozen topics. For purposes of this report, I would just like to identify those topics so

that any of the members, guests or others who may have comments or information that they would like to direct to the Committee's attention will know what we have in the works at the present time. They can forward their comments to me.

We are still working on the project of updating The Blackwall Rules criteria. We also are working on—or are sort of in the infancy stages of working on—treasure salvage and marine archeology issues.

We are working on modifications to the U.S. Open Form salvage contract.

We are also, at the request of the Committee on Forensic Naval Architecture of the Society of Naval Architects and Marine Engineers, working with them to help develop a program.

We discussed implementation of the salvage, firefighting, and lightering provisions of OPA 90, some of which come into effect in February of next year.

We also discussed Salvage 2000, which is a joint undertaking of the International Group of P&I Clubs and the International Salvage Union. This undertaking has been organized to deal with, amongst other things, some problems that have arisen from the 1989 Salvage Convention. We were fortunate to have Archie Bishop at this meting who is counsel or solicitor to the International Salvage Union, and Paul Hinton, who is a member of the salvage working group of the International Group of P&I Clubs, to assist us in that discussion.

We also discussed an old topic, identifying salvors as persons entitled to "responders immunity" under OPA 90.

And finally, following some comments Jerry Scowcroft had provided at the Board of Directors meeting, we discussed the "Tugs of Opportunity" system now in place in the Straits of Juan de Fuca in the Northwest.

That concludes my report, Mr. President.

MR. MOSELEY: Thank you, Jim, very much. We have only a couple more Committee Chairs, and I will indicate, so you will have advance notice, that at the May meeting, we will start at the end of the alphabet and work forward so that everyone will have a chance to be number one.

I would like to call on Charlie Schmidt, please, of the Committee on Transportation of Hazardous Substances.

MR. SCHMIDT: Thank you, President Moseley, officers, directors, members and guests.

The Chair of the Committee on Transportation of Hazardous Substances—I am not actually a Committee member—is my partner Jack Lillis, who regrets not being able to be here today, but he asked me to make a few comments about the work of the Committee.

Jack reported in May that the Committee voted to recommend adoption of a resolution by this Association which endorses U.S. ratification of the HNS Convention. Since May, the U.K., Canada and five European nations have signed the Convention. The Committee's goal is circulation of a report or reports to the membership in a timely manner with the objective of both making a final Committee recommendation and seeking board and general membership consideration of this issue in the May 1998 session.

That concludes my remarks. Thank you, President Moseley.

MR. MOSELEY: Thank you, Charlie, and thanks for the work you did on the arrangements also.

Our last substantive law Committee is the Young Lawyers, which I must say the Chair of this proves that certain things can be done in spite of a hereditary weakness. Secondly, that a very talented chip may come from an untalented block. Jim Moseley, Jr.

MR. MOSELEY, JR.: Thank you, Mr. President.

The Young Lawyers Committee met yesterday with the Cruise Lines and Passenger Ships Committee at the invite of that Committee, and we certainly appreciate it. At that meeting, we heard the talk of Stephen Martin, and after his words were concluded, we began our business at hand.

Our Committee has been working hard. Joe Tabrisky of our Committee has been working hard on soliciting Proctor applications. He sent out 270 solicitations for applications for the proctor, and the proctors that were approved here today are a result of his hard work.

The Committee is also working again on recent developments in maritime law for the Tulane Maritime Law Journal. We are also working on the Elliott Nixon prize contest. As you heard Professor Healy say before, we are hoping to get a bigger response than we did last year. The deadline for that is December 31, 1998.

Besides those projects, we are also working, as you heard this morning, with other substantive committees. Without going into a lot of detail, we are working on three separate projects with the Committee on Maritime Legislation, which is chaired by Mark Spansel. We also will be working, as you heard this morning, with the *Sky Reefer* update. That is being done in conjunction with both the Carriage of Goods Committee as well as the Mari-

time Arbitration Committee. We will also be working with Peter McLauchlan on the Uniformity Committee by doing a survey of conflicts in the admiralty jurisdiction in the circuits.

If anyone has any projects from any committee, we certainly invite you to request us to assist. Young Lawyers do appreciate the opportunity to work on your committees.

That concludes my remarks.

MR. MOSELEY: Thank you, Jim.

In place of Cliffe Laborde for our administrative report is Warren Marwedel, who will give a very brief review of the anticipated Orlando meeting in 1999, which we hope all of you will attend. Warren.

MR. MARWEDEL: Mr. President, members and guests, that's basically the report. In 1999, the week of Monday, October 11, it will be at the Hyatt Grand Cypress in Orlando. It's right next to Disney World. We'll have more details about the meeting at the next Spring meeting. Thank you.

MR. MOSELEY: Thank you, Warren. I know you put a lot of effort into getting us down to Orlando.

There are two persons on the agenda before we close, and I appreciate the opportunity to call upon the Vice President of CMI, one of our members, Frank Wiswall.

Frank, do you have something you would like to say?

MR. WISWALL: A brief sales pitch, Mr. President. Patrick Griggs bought with him from headquarters in Antwerp a number of copies of the CMI centenary history. There a few of these left for sale at the registration desk at $5 apiece. If they run out and you still desire one, just send me $5 and you will get them post paid.

MR. MOSELEY: Thank you, Frank.

Are there any other committee reports, substantive or procedural, that I have not called on? As you know, we do this ahead of time, some weeks ahead, to try to schedule everyone.

If not, before I call upon Mr. Healy for our motion to adjourn, Mr. Phil Berns had indicated to me that he had a point of order which he wished to bring up.

MR. BERNS: Mr. President, I would like to speak from here, from the section of the area that has not paid its dues.

As you know, I too, as with Judge Howard, adhere to a strict reading of the Constitution; in this case, the MLA's. Over the last ten years, I have not paid my dues as a protest as a result of Mr. Keating's finding out that bagels had holes in them; finding we were not getting full value from them; and, therefore, withholding them from our general meetings. And as a result of the public embarrassment that you have subjected me to today, I have now proffered my check to Mr. Keating for the full payment of the ten years less the cost of bagels, and he now has a check for $7.93. So I did want to present my side of this and also, Mr. President, so that you can see there are no hard feelings when I am reviewing your IRS returns next week—thank you.

(Applause.)

MR. MOSELEY: Thank you, Phil. The levity that Phil brings to our meetings as well as the hard work that he brings is an evenly balanced matter, and we thank him for both.

May I call on Mr. Nicholas Healy, and I will entertain a motion, sir.

MR. HEALY: Mr. President, honored guests and ladies and gentlemen of the MLA, I am sure that most of you have had the same experience recently that Margaret and I have had. Our friends have asked what our next trip was going to be, and we say—we have been saying to Palm Desert for a meeting of the Maritime Law Association. And the reply inevitably goes something like this: "Why are a bunch of sea lawyers meeting in the desert, of all places?" And the only suggestion that one of them made was that maybe it had something to do with drydocking.

In any event, after burning up in the heat of the desert all week, we will soon be enjoying our nice, wet environments. And in order to make that possible, I move we adjourn.

MR. MOSELEY: So moved. We are adjourned.

(Whereupon, at 11:40 o'clock a.m., the meeting was adjourned.)

FORMAL REPORT OF THE COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION

The meeting of the ADR Committee was held on Tuesday, October 28, 1997. The following people were in attendance: Bob Phillips from New York City, Bobby Glenn from Savannah, Steve Johnson from New Orleans, George (Bunky) Healy, III of New Orleans, Victor Kooch of New Orleans, Jorge Loaiza, III of Panama, Capt. Arnie Bleicher, Forrest Booth and John Meadows of San Francisco and Harvey I. Wittenberg, Chair.

The first order of business was a discussion concerning the present status of the Mediation Rules and Mediator's Questionnaire which had been submitted to the MLA Board of Directors for approval after the Spring 1997 meeting in New York. The ADR Committee is awaiting approval from the Association's Board of Directors.

The next order of business was consideration of a draft Maritime Arbitrator Application. A copy of this Application is attached to the minutes for review and comment. Comments should be submitted directly to the Committee Chair. It is the intent of the ADR Committee to submit a Maritime Arbitrator Application to the Board of Directors for approval. The purpose of the application is to create a roster of persons interested in serving as maritime arbitrators.

The next order of business was a matter presented by Vice Chair Bobby Glenn of Savannah with regard to the ADR Committee putting on an ADR seminar/presentation at the Fall 1999 meeting in Orlando. This matter was first discussed at the Spring 1997 meeting of the ADR Committee in New York. Some of the topics mentioned for inclusion in the ADR presentation were ADR procedures, negotiating techniques, advocacy techniques, ethics and recent developments in ADR. Also discussed was presenting an actual mediation.

A motion was made, seconded and passed that the Chair of the ADR Committee write to the Board of Directors to obtain its approval for an ADR seminar at the Fall 1999 Orlando meeting of the MLA. This letter has been written by the Chair of the ADR Committee and he is awaiting a response from the Board of Directors.

The Committee next discussed, in anticipation of approval by the Board of Directors, forming a subcommittee of the ADR Committee to be in charge of the seminar and several Committee members volunteered.

The advantage of the seminar were discussed, including providing continuing legal education credits as well as attracting the young lawyers to this new area of practice.

Members of the MLA are encouraged to contact the Chair as well as the Board of Directors in support of the ADR's proposal to present a seminar at the 1999 Orlando meeting.

The next order of business was the ADR newsletter. Members of the ADR Committee as well as all members of the MLA, are encouraged to send to the Chair of the ADR Committee, any matters of interest in the area of ADR, including recent decisions, legislative enactments and ADR practice techniques. These submissions will then be included in the ADR newsletter along with the name of the person providing the material.

The Committee Chair requests that all materials, correspondence and communications be sent to him at his new address below:

Harvey I. Wittenberg
Law Office of Harvey I. Wittenberg
1807 Arlington Blvd.
El Cerrito, CA 94530
Tel: (510) 235-0707
Fax: (510) 235-0606

Respectfully submitted,
Harvey I. Wittenberg, Chair

EXHIBIT A to Report of the ADR Committee

MARITIME ARBITRATOR APPLICATION

The Committee on Alternative Dispute Resolution of The Maritime Law Association of the United States is considering publication of a list of members of the Association who have experience as maritime arbitrators. If you are a member of the Association who has had experience as a maritime arbitrator, and would like to be included in this publication, please complete this application in full and forward it to the Chair of the Committee, whose name and address appear below.

Please note that the information requested on this application is for the benefit of the Committee and may not be subject to publication.

NAME:

DATE OF BIRTH:

BUSINESS ADDRESS:

TELEPHONE/ TELECOPIER/ E-MAIL ADDRESS:

DATE OF MLA MEMBERSHIP:

CLASS OF MLA MEMBERSHIP: (Proctor/Associate/Non-Lawyer)

EDUCATIONAL BACKGROUND: (List schools, dates of attendance and degrees achieved)

BAR MEMBERSHIPS: (List Bars and dates of admission)

DESCRIPTION OF EXPERIENCE AS AN ARBITRATOR: (List on a separate sheet your 5 most significant cases, indicating for each (a) the type of dispute, (b) the parties involved, (c) the amounts or issues at stake, (d) your role (*i.e.*, sole/party appointed/umpire/court appointed) and (e) the outcome (with citation if the award was published. Also state, in general terms, the extent of your experience as an arbitrator, indicating the numbers of cases in which you have been involved and the years of experience).

MEMBERSHIP IN COMMITTEES OR ORGANIZATIONS RELATING TO ARBITRATION: (List name, address and indicate your role)

OTHER EXPERIENCE OR QUALIFICATIONS RELEVANT TO YOUR WORK AS AN ARBITRATOR:

DESCRIPTION OF AREAS OF DISPUTE WITH WHICH YOU WOULD LIKE TO BE INVOLVED):

_____

Signature

DATE:

Please forward this application by mail to:

Harvey I. Wittenberg, Esq.
LAW OFFICES OF HARVEY I. WITTENBERG
1307 Arlington Blvd.
El Cerrito, CA 94530

FORMAL REPORT OF THE COMMITTEE ON CARRIER SECURITY

The Committee has been monitoring the final text of the Final Rule (to be published) dealing with the detention of non-political and political asylum stowaways in the context of the statutory language of the Immigration Act of 1996.

As we understand from the Immigration & Naturalization Service ("INS")/Washington, D.C., the Final Rule dealing with stowaways will not address the issue of letters of understanding to be used by P&I Clubs as security for payment of detention monies statutorily owed to the INS by the vessel owner while the stowaway is in an INS facility. This is a matter which I will be talking to the Committee about at the next meeting in terms of the best approach to have the INS accept such letters of understanding.

In addition, the Committee is monitoring what the U.S. Customs is doing in regard to drug seizures.

Lastly, the Committee is encouraging its members to identify additional projects and/or recommendations and/or other issues which would fall within the area of the Committee's jurisdiction.

Respectfully submitted,
Stephen H. Vengrow, Chair

FORMAL REPORT OF THE COMMITTEE ON MARINE FINANCING

Charles D. Brown, Chair, called the meeting of the Committee on Marine Financing to order at 1:30 p.m. on October 30, 1997, at the Marriott's Desert Springa Resort and Spa, Palm Desert, California. Introductory remarks were made by the Chair, Charles D. Brown, who then proceeded to introduce our guest, Jorge Loaiza, from Panama. An agenda of the meeting is attached as Exhibit "A"[1] together with an attendance list.

1. Mr. Brown generally discussed the U.S. Coast Guard Authorization Act of 1997 and its impact on the Vessel Identification System ("VIS") and pending Title XI applications. A list of the pending applications is attached as Exhibit "B".

2. Jorge Loaiza gave a presentation on ship financing in Panama. He informed us that Panama is the number one registry with 13,011 vessels and approximately 113 billion gross tons. They are in second place for pleasure vessels and also for tankers. The Maritime Court of Panama has seen an increase in the number of attachments. He reported that approximately 1,000 mortgages are recorded in one year against Panamanian vessels.

Dr. Loaiza informed us of the procedures for registering a vessel and recording mortgages. First there is an application to register the vessel and

[1]The Exhibits to the Formal Report of the Committee on Marine Financing are appended to the original minutes.

apply for radio permits. Usually the application is done through attorneys or Consulates. A Panamanian mortgage will secure obligations including future obligations. A mortgage can be in a foreign language. It must be certified by a Notary Public where it was issued and then a Consulate certifies it. The mortgage is eventually translated officially in Panama. At the end of the process, the original mortgage is filed and also the translated version.

There is an expedited procedure whereby a vessel owner can make a preliminary registration which can be finalized in one day. Also, if a ship owner has a lengthy document, the owner can register a simple form and obtain a one-day turnaround time. Then the owner has six months to submit a translated version. This procedure can be used even if you are transferring title. A release of mortgage can also be preliminarily registered. The original and translated version can be submitted later and the release will then relate back to the filing date of the preliminary registration.

Mr. Brown thanked Dr. Loaiza for attending our meeting and for giving his presentation.

3. Sandra Knapp then reported on the Title XI documentation simplification project. She reported on her conversation with Joan Bondareff, Chief Counsel of the Maritime Administration. The Ad Hoc Subcommittee consists of seven attorneys from various geographical locations and varying backgrounds. Ms. Knapp reported that she discussed with Ms. Bondareff the purpose of the Subcommittee since Ms. Bondareff was the person who requested input into the Title XI documents. First, the Committee set out to consolidate, revise and simplify the Title XI documents. It became apparent to some of the Subcommittee Members that perhaps the whole set of form documents needed to be totally redone.

Ms. Bondareff stated that she would be interested in our suggestions for simplifying the existing documents and also our suggestions for a new set of documents. Ms. Bondareff is expecting by January of 1998 our suggestions for simplifying the Title XI documents and by Spring 1998 our suggestions for a new structure of the standard transaction and documents together with required legislative changes (if any are necessary).

4. Dave Williams then gave a report on the status of U.S. vessel documentation and VIS. Attached as Exhibit "C" is a copy of the U.S. Coast Guard Authorization Act of 1997 as passed by the House to be acted upon by the Senate and also some recent regulations, including an interim final rule regarding the VIS. A copy of the Bill has been marked with some corrections. There seems to be no question that the "seven deadly words" should be part of whatever version of the Act passes. Mr. Williams reported that no one changed the seven deadly word provision. There is continued law

enforcement interest in the VIS according to Mr. Williams. Yacht financing entities naturally continue to be interested. The proposed rule making regarding VIS included in Exhibit "C" was discussed by Mr. Williams and it continues to be an issue. The states will need to comply with federal laws in order to obtain certain funding. Mr. Williams also discussed vessel documentation in the federal regulation included in Exhibit "C" dated August 18 which addresses a combined certificate of origin and builders' certificate. Mr. Williams prepared a comment letter to respond to this regulation.

There is some discussion over the problem of having lenders satisfy mortgages that are paid. We considered whether or not a sunset provision was appropriate similar to the Uniform Commercial Code. Mr. Williams also discussed the Federal Register handout included in Exhibit "C" dated October 20. There were questions over public access to the system. There are privacy act considerations for each state. Each state's enabling legislation may need to include permission for public access to the system. We discussed whether or not our Committee should support public access to the system. Upon motion duly made by Dave Williams and seconded by Bob Zapf, the Committee unanimously decided to comment in favor of public access and adoption of the October 20 suggestions.

Also upon motion duly made by Dave Williams and seconded by John Edginton, the Committee is authorized to submit comments in the form attached to the August 18 Federal Register. Mr. Brown will talk to Mr. Moseley regarding the Committee's comments.

Also briefly discussed were OPA '90 amendments. Mr. Brown reported that there is a Senate Study Commission for the next session. A secured lender exemption amendment will be part of the discussion. We will be part of this discussion regarding secured lenders.

5. Bob Zapf reported on the Comité Maritime International and new rules on maritime arrests and forfeiture. Mr. Zapf reported that JIGA 9 met last year. The United Nations addressed the issue of national maritime liens giving right to an arrest. There are issues of jurisdiction, *i.e.*, whether the place where the vessel was seized has jurisdiction to decide on the merits. We will continue to monitor these discussions.

6. Charley Donovan reported on maritime liens and mortgages and UCC revisions. He reported that UNCITRAL was working on accounts receivable financing. He reported that there was a working group appointed by UNCITRAL to establish a convention on security interests in accounts receivable. Some countries do not recognize such a lien but it will be essential for international financing to modernize accounts receivable financing around the world similar to UCC concepts. The flow of freight depends on

these issues. It would probably look similar to UCC. Mr. Donovan reported that the working group is leaning towards electronic filing and search capabilities and perfection by notice to, for example, a freight debtor. We discussed whether we need MLA support for this effort. Mr. Donovan reported that the State Department is involved.

Mr. Donovan also then reported on the Article 9 revisions, in particular proposed Section 9-103, Security Interest in Accounts Receivable, to be filed in the state and principal place of business of the debtor. If the debtor is outside the United States, file where the principal place of business in the United States is located. If there is no principal place of business in the United States, then file in Washington, D.C. He also reported on proposed Section 9-310. Charley Donovan suggested that he communicate to the UCC Revision Committee our concerns regarding 9-310 and the suggested revisions to make sure that maritime lien status is not changed in any way.

7. Bruce King reported on the efforts of the Maritime Administration ("MARAD") concerning changes to 46 CFR 221 regarding the deletion of the requirement that mortgagees must be citizens. Mr. King reported that MARAD's position now is that the mortgagee citizenship requirement may be gone but there still is a question of control. Mr. King suggested that Marine Finance Committee Members write letters to MARAD suggesting that MARAD should fall back, take a hands-off approach and not get involved in any control issues. The attendees believed that evaluation of a mortgage transaction should not be of interest to MARAD anymore. Mr. King led a discussion about attracting foreign capital. He noted that foreign banks are still hesitant because they have to go to MARAD to sell in a foreclosure situation. MARAD still has to approve a foreign buyer in foreclosure. It was discussed whether or not a statutory change was necessary since MARAD probably does not have authority to give a blanket waiver. The Committee decided after a discussion to prepare a letter to MARAD regarding (i) mortgage transactions and (ii) foreclosure sales.

8. Mr. King then led a meeting of the Joint Subcommittee on Vessel Foreclosures and Insolvency. Members of the Practice and Procedure Committee attended the meeting. Mr. King reported that the foreclosure forms are well underway to being published.

Mr. King also generally discussed the recent focus of the Committee now on insolvency issues and particular international and cross-border insolvency issues.

Attached as Exhibit "D" are materials regarding the Fair Debt Collection Practices Act which Mr. King circulated. The issue with the current Act is that the lender is required to institute litigation in the place where the con-

sumer resides instead of where the vessel is located. These provisions should be revised for vessel debt collection purposes and suggested amendments to the Act are contained in Exhibit "D". The exception should be similar to the real estate exception found 15 U.S.C. § 1692. Mobile vehicles and the aircraft industry have similar concerns. There are two different suggested changes to the attached. The Committee worked on the language in the course of its discussions and the changes the Committee agreed on are marked on the memorandum from Andy Tsukamoto.

9. Attached as Exhibit "E" is a report from the Taxation Subcommittee.

The meeting was adjourned by the Chair, Mr. Brown.

Respectfully submitted,
Sandra L. Knapp, Secretary

FORMAL REPORT OF THE COMMITTEE ON MARINE INSURANCE AND GENERAL AVERAGE

At the meeting of the Committee on Marine Insurance and General Average, it was reported that Richard Stone of New York, Chair of the Subcommittee on General Average, had transmitted to the Association of Average Adjusters of the United States, the MLA's contribution to the response to the A.I.D.E. Questionnaire. A.I.D.E. had forwarded to the Association a questionnaire regarding the legal and policy bases of general average in the United States. With the approval of the Association President, the Subcommittee provided proposed responses with respect to legal questions.

Donald Rave of Locust Valley reported that the necessary Publication Agreement forms for all contributors to the annotation to the cargo policy now have been forwarded to the ABA. The latest delay was caused by the death of one of the contributors, Leslie C. Buglass. It is hoped that the ABA shortly will publish the annotation.

The Subcommittee on Cargo Insurance is continuing its work to finalize the paper on debris removal and to draft a paper on all-risk insurance. These subjects will be discussed at the 1998 Spring meeting.

The Subcommittee on Hull and P&I Insurance will discuss the status of the annotation of the P&I policy at the 1998 Spring meeting. There also was discussion of the possibility of a paper on U.S. law involving energy insurance. Harold Watson of Houston, Vice-Chair of the Subcommittee on Hull & P&I Insurance, will look into this and report at the 1998 Spring meeting.

LCDR Bruce Dalcher gave a further report with respect to the IMO agenda item for financial security, which involves issues of marine insurance. The International Group of P&I Clubs has expressed some objection, and LCDR Dalcher stated that, at this time, financial security for general third party liabilities is receiving less attention at the IMO Legal Committee than financial security for passenger claims.

There was discussion of the ISM Code which is scheduled to come into effect in 1998, and the effect of the failure of insureds to qualify timely on their insurance. The Committee will discuss this subject further at the 1998 Spring meeting.

Respectfully submitted,
Edward F. LeBreton, III, Chair

FORMAL REPORT OF THE COMMITTEE ON MARITIME ARBITRATION

The Committee met on Tuesday, October 28, 1997. In addition to the Committee Members, we also had several overseas guests including Dr. Allan Philip, the immediate past president of the CMI.

The Committee discussed several items of continuing interest. The first was the use of pre-hearing discovery and whether it is being abused by the participants and whether arbitrators should exercise more control over the process. A subcommittee has been established to examine into the various aspects of this issue and whether the guidelines published by this Committee in 1989 should be updated.

There was also examined the awarding of interest and whether compound interest should be awarded and, if so, on what basis. A working group has been established and a preliminary paper will be submitted at the next meeting.

Third, the ramifications of the *Sky Reefer* were considered insofar as it affects arbitration in the United States.

The consensus was that even though the courts will maintain jurisdiction over the arbitration process, this is not particularly helpful in view of the limited review of awards under the Arbitration Act. Nobody at the meeting has seen the results of a referral to arbitration in a foreign forum.

There was a general discussion at which the foreign guests participated concerning the speed and cost of the arbitration process. In most countries, there is a far greater use of formal witness statements to be submitted with

the relevant exhibits prior to the evidentiary hearings. This saves a good bit of arbitrators' time at the hearings but as a practical matter, they take the lawyers a great deal of time to compose. The feeling amongst some of our members is that there is no great savings in costs to the client by preparing witness statements.

We also publish a newsletter and Mr. Paré has done an excellent job on the most recent edition which will be published in the MLA reports.

There is also a new magazine being published directed primarily to arbitration. It is called *The Maritime Advocate.* There is an article on 1996 British Arbitration Act.

Lastly, I wish to bring up future events:

1. This Committee meets several times a year. The next meeting will be December 3rd or 4th.

2. The annual dinner of the London Maritime Arbitration Association will be held on March 11, 1998.

3. Jose Maria Alcantara of Madrid reminds us that there will be a Congress in Barcelona on June 24-28, 1998 on International Arbitration and Maritime Law.

4. We have also received word that the 13th International Congress of Maritime Arbitrators will be held in Auckland, New Zealand on March 1-5, 1999.

It is likely that the 14th ICMA Congress will be held in New York in the Fall of 2001.

Respectfully submitted,
Patrick V. Martin, Chair

FORMAL REPORT OF THE COMMITTEES ON MARITIME PERSONNEL AND MARITIME LEGISLATION

Because of mutuality in membership and certain projects, the Committees on Maritime Legislation and Maritime Personnel held a joint meeting on Tuesday, October 28, 1997, at the Fall meeting of the Maritime Law Association in California. Thirty (30) members and guests participated, and recent important cases and developments in areas of interest were discussed.

1. ***Harbor Tug & Barge Co. v. Papai,*** 65 USLW 4330, 5/12/97. *Chandris v. Latsis,* 515 U.S. 347 (1995), held that, for seaman status under the Jones Act, the seaman must have duties that "contribute to the function of the vessel or to accomplish its mission" and have a "connection to a vessel in navigation (or to an identifiable group of such vessels)" that is substantial in terms of both its duration and its nature.

Papai was injured during a one day job painting on a docked tugboat. He was not going to sail with the vessel and was hired through a local hiring hall. This was the type of work he did for unrelated employers.

The Supreme Court reversed a decision in Papai's favor by the Ninth Circuit. *Chandris* was held to require that the group of vessels be under common ownership or control, not present here. The substantial connection requirement was meant to separate sea based employees from land based workers. Although plaintiff was listed as a qualified deckhand, he had worked for too many different employers to qualify as a seaman. Three justices dissented, saying he did seamen's work.

2. ***Metro-North Commuter R.R. Co. v. Buckley,*** 65 USLW 4586, 6/23/97. Despite the "physical impact rule" enunciated in *Consolidated Rail Corp. v. Gottshall,* 512 U.S. 532 (1994), which allowed an emotional injury claim, the Supreme Court held in *Buckley* that physical contact with a substance that **might** cause a disease at a later time was not what *Gottshall* contemplated. *Gottshall* had a "zone of danger" test that requires the threat of a physical contact that might cause an immediate traumatic harm. The prior decision did not encompass "every form" of physical impact.

The Supreme Court in *Buckley* was concerned that valid, substantial cases could be confused with invalid or trivial claims where there was exposure to toxic substances, but where no disease might eventually occur. The Court did not want to create a "new full-blown, tort law cause of action." The Court did leave open the possibility of a FELA claim for medical monitoring. But here, since the emotional distress claim was held not to be compensable, a lump sum award to Buckley was also set aside.

3. ***Gautreaux v. Scurlock Marine, Inc.,*** 107 F.3d 331 (1997). The Fifth Circuit has ruled that, in a Jones Act case, the plaintiff must prove lack of due care. If the lack of due care causes the injury, then plaintiff may recover. *Gautreaux* rejected the charge that the slightest lack of due care would allow a recovery. In other words, plaintiff must prove lack of due care, but on causation, the quantum of evidence need only be slight.

At least one court has not applied the *Gautreaux* analysis. A recent Southern District of New York case charged "slight negligence" which was thought to be the wording required by the Supreme Court.

Gautreaux also required that plaintiff show due care based on his/her experience to overcome a comparative negligence defense. It rejected a charge that a Jones Act crew member had only a slight duty of care to protect himself.

The case was settled and will not go to the Supreme Court. There may remain a products liability case. Thus, the controversy might continue.

4. ***Whyte v. Canada Steamship Lines,*** Court of Appeals of Ohio, Eighth District, County of Cuyahoga, No. 71414 (7/24/97). This case involved the question of whether there was jurisdiction over defendant in Ohio, where defendant had a vessel coming regularly to the U.S. from Canada, and had a subsidiary in Cleveland, but where the office only had a one man dispatcher, who arranged for customs and immigration among other duties. The Court held that there was no base of operations in the U.S. as there were very few U.S. customers for shipments. There were also two local agents.

A motion to certify the case for an appeal to the Ohio Supreme Court is pending.

Parenthetically, the widow plaintiff would have recovered more in Canadian compensation that the Jones Act claim, and by making a Jones Act claim, her compensation was suspended.

5. **Punitive Damages and *BMW v. Gore,*** Alabama Supreme Court, 19-20324 (1997). This was the case on remand from the U.S. Supreme Court, 116 S. Ct. 1589 (1996). The Alabama court award was $50,000.

The *BMW* case established three guidelines: (1) the degree of reprehensibility; (2) the disparity between the harm or potential harm and the award; and (3) the difference between this remedy and the civil penalties authorized or imposed in comparable cases.

Chair John Schaffer was of the opinion that large punitive damage cases were few and far between. Plaintiffs' attorneys seldom see such a recovery. However, when there is such a recovery, it makes headlines.

A case in point is a recent award against a railroad, CSX, and other defendants of $3.4 billion. The award against CSX was for $1.5 billion. The railroad had a fire at a rail interchange and some 4,000 to 5,000 people were evacuated as a precaution. No one was actually injured, but plaintiffs alleged environmental racism in the case. In a Louisiana class action involving over 8,000 class members, a Louisiana statute was applicable that allowed a recovery for reckless conduct involving hazardous substances. The statute was repealed after the incident. In a bellwether trial, compensatory damages were awarded of $100,000 each to 20 plaintiffs. Multiplied by over 8,000 class members, this is almost $1 billion. The tank car owner and manufacturer and other defendants were involved.

Some class members opted out and sued in federal court. The award there was $500 each.

On 3 November 1997, however, the Louisiana Supreme Court set the punitive damage award aside, but the jury verdict still stands. The court required that all damage and liability issues be resolved before punitive damages could be awarded. As a result, defendants need not post a huge appeal bond at this time. The compensatory awards were also set aside. Compensation awards for the 8,047 plaintiffs must now be heard first.

In Broward County, Florida, CSX was again recently held liable for a South Carolina train wreck due to faulty maintenance. Plaintiff recovered $6.1 million in compensatory damages and $50 million in punitive damages. The judge issued a scathing decision against the railroad in upholding the awards in October 1997.

Newspaper articles have referred to pending legislation concerning Amtrak restructuring which would require Amtrak to indemnify private track operators regardless of responsibility. Legislation would also cap punitive damage awards.

Another case—*Jimenez v. Chrysler*—led to punitive damages against Chrysler in a court in Charleston, South Carolina, a conservative jury area. A six year old was killed and plaintiff alleged a faulty latch on the back. The evidence offered by defendant was quite different as to how the death occurred. The child was not secured by a seat belt. The car had been driven through a red light, but the evidence was not admitted.

Compensatory damages of $12.5 million were awarded. Punitive damages of 2 percent of Chrysler's minivan profits were awarded, amounting to $262.5 million.

In a Dallas case, a recovery was had of $118 million for sexual abuse of children by a priest. *Eleven Sexually Abused Men v. Diocese of Dallas.*

Chair Mark Spansel noted that the Committee on Maritime Legislation had done a study of punitive damages recoverable in state courts. Jim Moseley, Jr. has agreed to have the Young Lawyers Committee update the study.

The New York Law Journal of 20 October 1997 reported a decisions in *O'Hara v. Celebrity Cruises, Inc.,* 96 Civ. 2079, and *Rossi v. Celebrity Cruises, Inc.,* 96 Civ. 5763, in the Southern District of New York, Rakoff, D.J., that punitive damages were not recoverable in passenger cases against a cruise line. The judge relied on *Miles Marine Corp. v. Apex,* 498 U.S. 19 (1990). Since there were cases denying punitive damages in Jones Act and DOHSA cases, he held that punitive damages were not recoverable in maritime cases in general. State law would not be allowed in this case, although it could be allowed in other cases such as *Yamaha Motor Corp. v. Calhoun,* 116 S. Ct. 619. Even if state law were allowed, he found that New York state courts would defer to a rule of the General Maritime Law.

Judge Rakoff conceded that his decision was "arguably" at variance with an unreported decision of another judge in his court in *Taylor v. Costa Cruises, Inc.*

The Eleventh Circuit also had a case involving the interplay of the General Maritime Law and the Alabama punitive death statute in *In re Amtrak "Sunset, Ltd." Train Crash,* 121 F.3d 1421 (1997). A towboat pushing barges struck a bridge support causing a railroad track to be misaligned and an Amtrak train derailed. There were both deaths and injuries. The Court distinguished *Yamaha v. Calhoun,*116 S. Ct. 619 (1996), holding that a state punitive death statute was repugnant to maritime law and would not be applied. Additionally, the injured passengers were denied punitive damages and consortium claims.

Other Damage Cases. The Second Circuit, without discussing *Miles,* has allowed a loss of consortium claim in a passenger injury case. *Wartman v. Commodore Cruise Line, Ltd.,* 100 F.3d 943, 1996 WL 47964 (2d Cir. 1996) (not to be cited as a precedent in unrelated cases). *Contra, Lollie v. Brown Marine Serv. Inc.,* 995 F.2d 1565 (11th Cir. 1993).

6. **46 U.S.C. § 6308.** Coast Guard investigation reports barred from legal proceedings. The Coast Guard Appropriation Bill of 1996 contained the following language:

> Notwithstanding any other provisions of the law, no part of a marine casualty investigation conducted under section 6301 of this title, including findings of fact, opinions, recommendations, deliberations or conclusions, shall be admissable as evidence or subject to discovery in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

The discussion, in which Phil Berns was most knowledgeable, indicated that this provision made Coast Guard investigation reports inadmissible in evidence comparable to a similar statute for the NTSB which comes up in marine and aviation cases and, particularly, oil pollution cases.

On the other hand, apparently, the factual statements of what a Coast Guard officer actually sees would be admissible. The Coast Guard must be asked to allow depositions of its factual witnesses. You might get opinion evidence in through an expert.

7. **Louisiana Unfair Trade Practices Act.** The Louisiana legislature recently amended La. R.S. 51:1407 to include the following language:

> It being against the public policy of the State of Louisiana to allow a contractual selection of venue or jurisdiction contrary to the provisions of the Louisiana Code of Civil Procedure, no provision of any contract which purports to waive these provisions of venue, or to waive or select venue or jurisdiction in advance of the filing of any civil action, may be enforced against any plaintiff in any action brought in these courts.

This provision probably interacts with Louisiana law disallowing *forum non conveniens* in maritime cases. It might make the Louisiana forum available to foreign seamen whose employment contracts contain a forum selection clause and possibly passenger and other types of cases.

8. **Developments Involving Death on the High Seas Act and Proposed Amendments.** *Zicherman v. Korean Air Lines*, 116 S. Ct. 629 (1996), held that DOHSA allows only recovery of pecuniary losses and not loss of society. Following the TWA 800 tragedy in the Summer of 1996, in which a large number of Pennsylvania school children were killed, the Congressman from the district introduced legislation, which was passed by the House of Representatives, to allow recoveries in aviation accidents on the high seas "under common law" or "under State law." Similar legislation was introduced in the Senate.

Professor Andreas Lowenfeld, an international law expert, was asked to submit a paper on the subject to the Senate Commerce Committee, which he did, suggesting that the legislation be broadened to cover ship disasters.

He suggested broadened compensation beyond pecuniary loss, but no punitive damages. Damages might also be recoverable based on domicile. Allan Mendelsohn, another aviation legal expert who worked on aviation international agreements at the State Department, also provided a statement suggesting that damages be recoverable based on a decedent's domicile. He would also extend the proposed amendment to maritime deaths.

A Committee hearing was held while we were in Palm Desert. As of 4th November, the matter was put over until the next session in 1998, giving the staff time for further study. The Senator from Boeing's home state, Washington, will try to cap any additional damages.

On the judicial front, the Eleventh Circuit has a recent decision allowing pre-death pain and suffering in a DOHSA case. *Gray v. Lockheed Aeronautical Systems,* 95-8459, 10/24/97. The Court differed with the Ninth Circuit, which disallowed such a recovery in *Saavedra v. KAL,* 93 F.3d 547, and with *Dooley v. KAL,*117 F.3d 1477 (D.C. Cir. 1997).

9. ***U.S. v. Rivera.*** This is a criminal case now argued with a decision pending in the First Circuit Court of Appeals since September 1997. Various counts of an indictment were dismissed, but Rivera was convicted for sending the tug to sea in an unseaworthy condition, since he had a knowledge that the towing wire was worn. The original opinion of the appellate court was withdrawn and the case was heard by an *en banc* panel. The MLA was requested to and did file an *amicus* brief, which was an excellent job, written by Pat Bonner and Robert Parrish.

The underlying facts concern a major oil spill off the coast of San Juan, Puerto Rico, in January 1994. The company involved apparently had a poor maintenance and safety record. A tow line of the tug EMILY S parted, allowing its barge MORRIS J. BERMAN to run aground and spill its oil cargo. Rivera was the general manager of an entity which managed the tug. The EMILY S's crew had previously reported to Rivera that the tow line was in a seriously deteriorated condition. A new wire was available but was not installed prior to the voyage in question, apparently as a result of the confusion associated with a local holiday. Shortly after leaving San Juan Harbor, the wire in question parted. It was repaired by the tug's captain (who failed to install a thimble), but parted again several hours later, resulting in millions of dollars in damage being claimed, as well as extensive clean up costs being incurred.

Rivera was convicted under U.S.C. § 10908, which reads as follows:

> A person that knowingly sends or attempts to send, or that is party to sending or attempting to send, a vessel of the United States to sea, in an unseaworthy state that is likely to endanger the

life of an individual, shall be fined not more than $1,000, imprisoned not more than 5 years, or both.

The above-quoted code section is part of Chapter 109, 46 U.S.C., which is entitled "Proceedings on Unseaworthiness". In the chapter's sections preceding the one quoted above, provision is made that upon complaints being filed by the vessel's chief mate, second mate or the majority of the crew that their vessel is unfit to proceed on a voyage, the master shall immediately apply to the district court where the vessel is located for the appointment of surveyors (§ 10902); that upon the receipt of such a complaint, the judge shall appoint three experienced surveyors who are then charged to report to the court concerning the vessel's condition (§ 10903); and that should the report indicate that the vessel is fit, a seaman failing to proceed on the voyage shall forfeit his wages (§ 10903). The subject section provides criminal sanctions should the vessel be unseaworthy. Other sections in the chapter deal with handling of such matters in foreign courts. In the instant case, the vessel's crew did not follow the procedures outlined in the earlier sections of Chapter 109. The government simply brought charges under § 10908. It is their position that § 10908 is a "stand alone" section, the applicability of which is not predicated on the earlier sections.

As reflected in the court's 29 May 1997 order calling for an *en banc* hearing, one of the issues to be addressed is whether the legislative scheme set forth in Chapter 109 imposes any statutory preconditions on the United States in conjunction with prosecution under § 10908. The MLA filed an *amicus* solely addressing the first question and supporting Rivera's position. As set forth in the *amicus* brief, the upholding of such a conviction would have a significant impact on the U.S. maritime industry. In essence, the MLA position was that the statute is merely a rearrangement of previous sections, so that the present recodification must read §§ 10901-10908 together, with all preconditions. One argument advanced is that if the shipowner failed to prevail in a limitation action, it might be *prima facie* proof of a crime. In fact, any finding of unseaworthiness might lead to criminal charges. Congress never intended to have a separate crime for unseaworthiness and at least there is no Congressional debate to indicate a change in the criminal statute.

10. **Products Liability Legislation.** *The New York Times* of 6 November 1997 reported that negotiators for the Executive Branch, Senate and business interests put over the discussions of product liability legislation in this Congress. Negotiations intensified following President Clinton's veto of last year. Business interests are arrayed against consumers groups and the trial lawyers. This year's negotiations considered punitive damage caps for small manufacturers, but not large corporations. Joint liability would be

retained. Manufacturers may now concentrate more on state legislative changes.

11. **Miscellaneous Items:**

a. Pending Maritime Legislation. The DOHSA amendment discussions in Congress point out the need for an MLA watchdog in Washington. R. Christian Johnsen, (202) 828-8363, has volunteered for such an assignment. There are bills of importance to maritime lawyers such as: Ocean Shipping Act Reform, Shipbuilding Subsidies, Coast Guard Authorization, Jones Act Cabotage Changes, Cruise Ships and various provisions in defense bills. Late reports indicate the legislation will not be considered this session for Ocean Shipping and the OECD shipbuilding subsidies ban.

MLA by-laws might have to be changed to have a Washington source. Perhaps Young Lawyers could monitor pending national legislation. Westlaw might also be a source.

b. Uniform Statute of Limitations Statute. This proposal to do away with laches in all cases is being studied by Jim Moseley, Jr.

c. Restatement (Third) Law of Torts: Apportionment: Michael Marks Cohen has sent in a letter to the MLA alerting the Maritime Personnel Committee and others that reporters for a new ALI draft are dealing with apportionment of liability. Michael, an Institute member, would like a survey of admiralty decisions on the subject, which should be considered by the reporters. Volunteers were requested to review the matter.

We are always looking for new and interesting projects and we are continuously seeking potential new members.

The meeting was then adjourned.

Respectfully submitted,

John P. Schaffer
Chair, Maritime Personnel

Mark J. Spansel
Chair, Maritime Legislation

FORMAL REPORT OF THE COMMITTEE ON RECREATIONAL BOATING

The Recreational Boating Committee has continued its efforts in connection with the dissemination of the Maritime Law Association's Model Legislation for Safe Boating Certificate. Recently many states have passed specific legislation directed towards personal watercraft ("Jet Skis") but, with few exceptions, have not addressed the subject of recreational boating safety in a comprehensive way. Moreover, the legislation concerning personal watercraft has been anything but uniform.

The Recreational Boating Committee has been studying the various forms of state legislation concerning personal watercraft. The Committee has concluded that the Maritime Law Association's Model Legislation together with traditional principles of maritime law adequately address most, if not all, concerns of the state legislatures as embodied in their enactments concerning personal watercraft.

In these circumstances, at present, the Committee has determined that it is not necessary or appropriate to consider the development of separate model legislation to govern the operation of personal watercraft.

The Committee also considered the U.S. Coast Guard's request for comments concerning the need for national legislation or alternatives, to regulate the operation of recreational vessels. The Coast Guard's request for comments is directed to the public at large. Any interested individual or party may submit comments consistent with the Association's concern for uniformity and marine safety.

The Committee resolved that it would be appropriate to submit to the Coast Guard the Maritime Law Association's Model Legislation for Safe Boating Certificate together with appropriate comments.

A survey of recent legal decisions and developments in recreational boating law has been conducted over the past several months. Those deemed timely and of important interest were digested by Frank P. DeGiulio, of Philadelphia, and included in the Committee's publication, "Boating Briefs". Copies were distributed at the 1997 Fall Meeting at Palm Desert.

The principal matters reported in "Boating Briefs" are as follows:

FIRST CIRCUIT HOLDS THAT STATE LAW MAY INVALIDATE POLICY EXCLUSION

In August 1995 Michael McNeil and his father George McNeil were boating on Lake Winnipesaukee in New Hampshire. The vessel, a Sea Ray jet boat, was owned by Michael McNeil who was at the helm. Michael's father

sustained serious injuries during the outing, allegedly because of his son's negligent operation of the boat. George McNeil subsequently filed suit against Michael in New Hampshire State court seeking to recover damages for his alleged injuries.

The boat was insured by Acadia Insurance Company under a yacht policy issued and delivered to Michael McNeil in New Hampshire. After Michael was sued by his father, Acadia denied coverage. Acadia maintained that it had neither a duty to defend or indemnify Michael in connection with his father's claim because its policy contained an exclusion for liability resulting from injury to a family member of the named insured.

Acadia filed a Declaratory Judgment action against Michael McNeil in the U.S. District Court for the District of New Hampshire, seeking a declaration that it had no duty to defend Michael in the lawsuit or to indemnify him for any damages which might be awarded to his father. The parties filed cross motions for summary judgment on the issue of the validity of the yacht policy's intra-family exclusion. The exclusion provided that "[w]e will not pay damages for any amount . . . for any liability between or among members of your family."

The New Hampshire District Court granted summary judgment in favor of Michael McNeil and against Acadia, holding that the intra-family exclusion was unenforceable under N.H. Rev. Stat. Ann. § 412.2-a(II) (Supp. 1996). The New Hampshire statute provided that: "No liability policy issued or delivered in this state shall contain any exclusion which would preclude coverage for intra-family or inter-spousal claims."

Citing *Youell v. Exxon Corp.*, 48 F.3d 105 (2d Cir. 1995), and *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310 (1955), the district court held that the state statute could supply the rule of decision if it did not conflict with a federal statute or federal maritime common law and if the court determined that there was no need to fashion a uniform federal common law rule to address the issue. The court found no conflict with any existing federal statute or common law rule. Noting that Acadia had not argued that a uniform commercial law rule was necessary, the court declined to fashion such a rule.

Acadia argued that the policy at issue was a marine insurance policy rather than a liability policy and, therefore, the New Hampshire statute did not apply. The district court rejected Acadia's argument, holding that although it covered other marine risks, the policy did provide liability insurance and was, therefore, subject to the state statute.

Acadia appealed the district court's decision to the U.S. Court of Appeals for the First Circuit. *Acadia Ins. Co. v. McNeil,* 116 F.3d 599 (1st Cir. 1997).

On appeal, the First Circuit considered two issues: (1) whether the Acadia policy was a species of liability insurance as opposed to a species of ocean marine insurance; and (2) if the policy was ocean marine insurance, whether the state statute applied.

As to the first issue the court held that the Acadia policy was a policy of ocean marine insurance within the court's admiralty and maritime jurisdiction. The policy provided coverage for traditional marine risks including hull damage, liability and worker's compensation. The geographical limits included the waters of five states up to fifty miles offshore. The court rejected McNeil's argument that the policy must be viewed as a liability policy because it included liability coverage, holding that the predominant purpose of the *type* of policy at issue, rather than its specific terms, must be considered when classifying the policy. Thus the court held as follows: "The short of it is that the yacht policy . . . insures a maritime interest (the boat) and insures primarily (if not exclusively) against risks associated with marine ventures . . . . [It] is, therefore, one that falls within the admiralty realm."

Having concluded that the Acadia policy was an ocean marine policy, the court then addressed the issue of whether the New Hampshire statute governing liability policies applied. The court initially noted that no federal statute or maritime common law rule governed the validity of intra-family liability exclusions and declined to fashion a new rule. Therefore, the court held that the New Hampshire statute could govern if in fact the statute was intended to apply to ocean marine insurance policies. Observing that the issue of whether the statute applied to marine insurance policies was one of apparent first impression under New Hampshire law, the First Circuit certified the question to the New Hampshire Supreme Court.

MASSACHUSETTS AND MINNESOTA DISTRICT COURTS HOLD LIMITATION ACT APPLIES TO PLEASURE CRAFT

Judges within the U.S. District Courts for the Districts of Massachusetts and Minnesota recently joined the ranks of the majority of federal courts in holding that the Limitation of Liability Act, 46 U.S.C. § 183 *et seq.,* is applicable to pleasure craft. In both instances the courts rejected prior decisions in the same districts which held the Act inapplicable to recreational boats. Massachusetts and Minnesota had constituted two of only three federal districts in which decisions refusing to apply the Act to pleasure craft had not been reversed or abrogated by a subsequent appellate court decision.

In *Keller v. Jennette,* 940 F. Supp. 35 (D. Mass. 1996), the owner of a sailing yacht filed a Petition for Limitation in connection with the death of a passenger who had been struck by the mainsail boom. The estate claimant, relying on the district court's prior holding in *Complaint of Tracey,* 608 F. Supp. 263 (D. Mass. 1985), moved to dismiss on the grounds that the Act does not apply to pleasure boats. The Massachusetts District Court, persuaded by decisions of other courts subsequent to *Tracey* and noting that the First Circuit had yet to rule on the issue, held that the Limitation Act is applicable to pleasure craft.

In *Keller* it was undisputed that the owner had been at the vessel's helm when the decedent was injured. The estate claimant had also moved to dismiss on the alternative grounds that the owner's presence at the helm made it legally impossible for him to demonstrate lack of "privity or knowledge" and therefore, no limitation of his liability could be granted. In denying the claimant's motion to dismiss on this basis, the district court adopted the reasoning of the majority of courts which have been faced with this argument, holding that the owner's mere presence on board was not in itself fatal to his right to limitation.

In *Moeller v. Mulvey,* 959 F. Supp. 1102 (D. Minn. 1996), a small fishing boat valued at $15,000 collided with a second pleasure boat on Rainy River in Minnesota. The collision resulted in one death and several injuries to the boat occupants. The fishing boat was co-owned by two individuals, only one of whom was aboard at the time of the incident. The co-owners filed a Petition to limit their liability. The co-owner of the fishing boat who was not aboard at the time of the incident moved for summary judgment in his favor on the right to limit his liability. In opposition, the claimants argued that the fishing boat was not a "vessel" within the meaning of the Limitation Act and that the Act therefore was inapplicable. The claimants relied on the decision of the same court in *Baldassano v. Larsen,* 580 F. Supp. 415 (D. Minn. 1984), in support of their position.

The court in *Moeller* noted that *Baldassano* and other prior district court decisions holding the Limitation Act inapplicable to pleasure craft had not "weathered the test of time" and that the courts which had most recently considered the issue had "uniformly" held that pleasure boat owners are entitled to the protection of the Limitation Act. The court, rejecting *Baldassano* and holding that the Act was applicable, granted limitation to the co-owner of the fishing boat by way of summary judgment.

MARITIME LAW APPLIED TO INJURY CAUSED BY BOAT CLEAT

Sixteen year old Eileen O'Hara sustained serious injuries when she came into contact with a cleat while attempting to enter the water from a Bayliner power boat. At the time of the incident the boat was anchored in three feet of water, fifteen feet from shore, in Huntington Bay on the North Shore of Long Island. The boat was owned by her companion's father.

O'Hara filed suit in New York State Court against Bayliner, the cleat manufacturer and the boat owner. The suit alleged that the cleat was defectively designed and positioned and that the boat was defectively designed due to the lack of non-skid material and a handrail in the area of the cleat.

The Complaint, filed more than three years after the accident, alleged that New York law applied to the action. Although filed after the applicable New York personal injury statute of limitations had run, a New York tolling statute prevents the running of the limitation period in the case of minors. Accordingly, O'Hara's action was timely filed if New York law applied.

Defendants moved to dismiss the suit arguing that federal maritime law, including the three year personal injury statute of limitations found in 46 U.S.C. App. § 763a, applied. There is no tolling statute for minors under federal maritime law. The trial court denied the defendants' motion to dismiss. The trial court concluded that federal maritime law was inapplicable, because of the nature of the accident and the fact that it occurred on a pleasure boat fifteen feet from shore. New York law, including the tolling statute for minors, was held to apply. On appeal the intermediate appellate court affirmed the trial court's decision.

Defendants appealed the decision to the Court of Appeals, New York's highest court. In *O'Hara v. Bayliner,* 89 N.Y.2d 636, 679 N.E.2d 1049 (N.Y. 1997), the Court of Appeals reversed the decision of the Appellate Division and directed that the case be dismissed as time barred.

After a thorough review of the leading U.S. Supreme Court cases setting out the test for admiralty tort jurisdiction, the Court of Appeals stated that "The plain reading and application of these Supreme Court precedents leads to the inescapable conclusion that Federal admiralty jurisdiction governs the instant controversy." The court reasoned that an injury caused by a cleat on an anchored pleasure boat easily satisfied the second prong of the jurisdictional test established in *Sisson v. Ruby,* 497 U.S. 358, 110 S.Ct. 2892 (1990) (whether the general features of the type of incident involved had the potential to disrupt maritime commerce): "No sustainable analysis or method to escape the force of the United States Supreme Court's precedents, centering on potentiality of interference with maritime commerce,

are present here . . . . [P]lacing a vessel into navigable water with a defect sufficiently carries the potential to disrupt maritime commerce by creating a hazardous situation to nearby vessels and all those engaged in maritime activity."

Having concluded that the case fell within Federal admiralty tort jurisdiction, the Court of Appeals held that the three year Federal statute of limitations for maritime personal injuries must be applied, holding that application of the New York tolling provisions would disrupt the uniformity of Federal maritime law and limit the defendant's substantive rights.

NINTH CIRCUIT SAYS H_2O'S COMPLAINT DOESN'T HOLD WATER

The vacationing Hernandez family rented a houseboat from H_2O Houseboat Vacations, Inc. ("H_2O") at Lake Havasau in Arizona. The family tied the boat up to the lake shore for the night. Because of the heat, all of the windows were kept closed and the air conditioning was turned on. While the family slept they sustained serious injuries from odorless carbon monoxide gas which filled their sleeping quarters.

H_2O filed a Petition to limit its liability pursuant to the Limitation of Liability Act, 46 U.S.C. § 181 *et seq.,* in the U.S. District Court for the Central District of California. The Hernandez family moved to dismiss the limitation action for lack of admiralty subject matter jurisdiction. The district court granted the motion, relying on its findings that the boat was tied to the shore, that the gas was contained within the houseboat and that carbon monoxide is not injurious unless enclosed in a confined space.

H_2O appealed to the Ninth Circuit Court of Appeals. *H_2O Houseboat Vacations, Inc. v. Hernandez,* 103 F.3d 914 (9th Cir. 1996).

The Ninth Circuit applied the two-part test for Admiralty tort jurisdiction established by the Supreme Court in *Sisson v. Ruby,* 497 U.S. 358, 110 S.Ct. 2892 (1990), and developed in *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.,* 513 U.S. 527, 115 S.Ct. 1043 (1995). It was undisputed that the alleged tort occurred on navigable waters and, accordingly, the court held that the situs prong of the test was satisfied.

The Ninth Circuit focused on the part of the second prong of the *Sisson* test, which the court articulated as "whether the general features of the incident causing the injury had a 'potentially disruptive impact on maritime commerce.'" In applying the test as articulated, the court defined the relevant incident as "the emission of carbon monoxide fumes inside a contained space within a houseboat tied to the shore." The court, holding that the incident so defined had no potential to disrupt maritime commerce, refused

to "speculate" concerning whether the test might be met if the boat had drifted onto the lake or had been in navigation at the time. The Ninth Circuit distinguished the incident from the facts of *Sisson,* which involved a fire on a pleasure boat docked at a marina, by emphasizing that the carbon monoxide gas could not have endangered others if it escaped from the boat.

The Ninth Circuit noted that the cause of the gas emission was "probably" due to defective equipment aboard the boat but declined to decide the question as unnecessary to its jurisdictional analysis. The court also held that the district court's alleged refusal to permit discovery or receive evidence regarding the cause of the gas emission was not an error because the details of the alleged defect were irrelevant to the jurisdictional question.

The Ninth Circuit affirmed the district court's dismissal of the limitation action for lack of admiralty subject matter jurisdiction, holding that "[t]he emission of carbon monoxide by a vessel tied to a shoreline does not have the potential to disrupt maritime commerce."

The Supreme Court in *Sisson* emphasized that courts must consider only the general type of incident in determining whether there was a potential to disrupt maritime commerce and that the test should not turn on the actual geographic locale or the specific facts of a particular case.

The Ninth Circuit's decision turned on the manner in which it defined the relevant incident and, in particular, the emphasis placed on the fact that injury from the carbon monoxide gas was limited to the occupants of the boat and that the houseboat was tied to the shore.

DISTRICT OF MARYLAND HOLDS ECONOMIC LOSS RULE APPLICABLE TO PLEASURE CRAFT

In *East River Steamship Corp. v. Transameria DeLeval, Inc.,* 476 U.S. 858, 106 S.Ct. 2295 (1986), the U.S. Supreme Court held in a maritime products liability case that a commercial vessel owner may not recover in tort when an alleged defect causes purely economic loss such as damage to the product itself.

The issue of whether the *East River* doctrine applies to non-commercial consumer transactions has been the subject of some debate among federal district courts. *See* "Southern District of Florida Splits on Economic Loss Rule," 5 *Boating Briefs* No. 1 (MLA 1996).

In a 1990 decision, *Sherman v. Johnson & Towers Baltimore, Inc.,* 760 F. Supp. 499 (D. Md. 1990), the District of Maryland held that the *East River* doctrine was limited to commercial transactions and did not apply in the case of a pleasure craft purchased by a consumer. The *Sherman* decision

was often cited by litigants as the leading case rejecting application of the economic loss rule to consumer transactions.

In a 1997 decision, the District of Maryland rejected the plaintiff's reliance on *Sherman* and held that "in light of the clear consensus of recent admiralty decisions addressing this issue, the Court finds that the *East River* rule must be applied in the non-commercial as well as in the commercial context." *Reliance Ins. Co. v. Carver Boat Corp.,* 1997 AMC 2522 (D. Md. 1997).

Reliance involved claims for damage to a 1987 Carver yacht and to personal property of the owners as a result of a fire which occurred on board. The plaintiff owners had purchased the boat second-hand and were, therefore, not in privity of contract with the defendant manufacturer. The Complaint set out causes of action based on strict liability, negligence and breach of warranty. Carver moved for Summary Judgment in its favor as to all counts and claims.

In considering whether the *East River* Doctrine should preclude the plaintiffs from recovering from damage to the yacht itself, the court in *Reliance* reviewed and cited numerous decisions issued since *Sherman.* The district court found persuasive the reasoning employed by the courts which had considered the issue in *Somerset Marine, Inc. v. Forespar Products Corp.,* 876 F. Supp. 1114 (C.D. Cal. 1994), and *Stanton v. Bayliner Marine Corp.,* 866 P.2d 15, 1994 AMC 640 (Wa. 1993). In *Stanton,* the Supreme Court of Washington held that the economic loss rule should be applied to consumer transactions because "the federal interest in protecting maritime commerce cannot be adequately served if restricted to those individuals actually engaged in commercial maritime activity."

In deciding to depart from *Sherman,* the District of Maryland noted that "[a]s to the particular issue raised in this action, the law has obviously evolved in a manner not anticipated by this Court at the time it rendered its decision in *Sherman.*" The Court held that the plaintiffs could not recover in tort for damage to the yacht itself, noting however that the economic loss rule did not preclude their claims for loss of personal property on board.

RESTRICTED APPLICATION OF MORAGNE WRONGFUL DEATH REMEDY

A Virginia state court's restricted interpretation of the general maritime wrongful death remedy established in *Moragne v. State Marine Lines,* 398 U.S. 375 (1970), resulted in the dismissal of a wrongful death action brought by the executor of the estates of two persons killed in a recreational boating accident. The case, *Johnson v. Walsh,* 1997 AMC 1337 (Va. 2d Jud. Cir. 1997), arose from a 1994 collision between a pleasure boat and a fishing

boat in the marshes of Virginia's Eastern Shore during the late evening. The decedents were a mother and daughter riding as passengers in the pleasure boat, which was returning from a weekend hunt club event.

The executor brought an action under the general maritime law for wrongful death, alleging negligence on the part of the boat operators but not unseaworthiness.

The suit was filed two and one-half years after the deaths occurred, well within the three year limitation period for maritime torts set forth in 46 App. U.S.C. § 763a. In contrast, the Virginia wrongful death statute of limitations is only two years. § 8.01-244, Code of Virginia, 1950, as amended.

Defendants filed a motion to dismiss the case as untimely filed under the two year Virginia wrongful death statute of limitations, arguing that the only negligence based remedy available to the plaintiff was pursuant to the Virginia Death by Wrongful Act statute.

Defendants based their motion to dismiss on a 1983 decision of the Supreme Court of Virginia holding that the *Moragne* general maritime law wrongful death remedy was available only for actions based on unseaworthiness and not for negligence based claims. *Brown v. Brown,* 226 Va. 320, 309 S.E.2d 586, *cert. denied,* 467 U.S. 1242 (1983). The Virginia Supreme Court's interpretation was adopted by the local federal district court in *Minnick v. United States,* 767 F. Supp. 115, 1991 AMC 1284 (E.D. Va. 1990). The decisions in *Brown* and *Minnick* reflect a narrow interpretation of the role of the general maritime law wrongful death action.

Prior to *Moragne,* a seaman was permitted to maintain a wrongful death action for unseaworthiness on the high seas pursuant to the Death on the High Seas Act, but did not have a similar cause of action in territorial waters because most state wrongful death statutes did not recognize the maritime duty of seaworthiness. After 50 years of waiting for Congress to expand the Jones Act to include an unseaworthiness cause of action, the United States Supreme Court "filled the gap" in *Moragne* by recognizing a general maritime law wrongful death action based on the uniquely maritime duty of seaworthiness, leaving unaltered the existing wrongful death schemes for negligence.

In the ensuing twenty-five years since the *Moragne* decision, the Third, Fifth and Ninth Circuit Courts of Appeal have expanded the general maritime wrongful death remedy to include actions based on negligence, while the Eleventh Circuit has refused to do so. *Compare Thibodaux v. Atlantic Richfield Co.,* 580 F.2d 841 (5th Cir. 1978), *Nelson v. United States,* 639 F.2d 469, 472 (9th Cir. 1981), and *Purnell v. Norned Shipping B.V.,* 801 F.2d 152 (3d Cir. 1986) *with Ford v. Wooten,* 681 F.2d 712 (11th Cir. 1982).

Like the Eleventh Circuit, the Supreme Court of Virginia and the United States District Court for the Eastern District of Virginia have refused to recognize a general maritime wrongful death remedy for negligence.

In *Johnson v. Walsh* the court found that because there is no federal cause of action for the death of nonseamen occasioned by negligence in Virginia state territorial waters, the plaintiff's sole remedy was under state law. The court therefore granted defendant's motion to dismiss the suit because the limitation period for the state wrongful death claim had lapsed six months before suit was filed.

The journal editors thank James L. Chapman IV and David H. Sump of Norfolk for bringing this case to their attention.

CLAIMS FOR INJURIES FROM UNGUARDED PROPELLER PREEMPTED BY FEDERAL LAW

In *Lewis v. Brunswick Corp.,* 107 F.3d 1494 (11th Cir. 1997), the U.S. Circuit Court of Appeals for the Eleventh Circuit held that the Federal Boat Safety Act, 46 U.S.C. § 4301 *et seq.* ("FBSA"), preempted state law tort claims for wrongful death allegedly caused by the lack of a propeller guard on a pleasure boat.

Mr. and Mrs. Lewis sued to recover damages for the death of their daughter, Kathryn, who was thrown or fell from a pleasure boat and then struck repeatedly by the propeller of an engine designed and manufactured by defendant Brunswick. The accident occurred on Strom Thurmond Lake in Georgia. Kathryn was killed instantly.

The plaintiffs' Complaint alleged that the lack of a propeller guard made the Brunswick engine a defective product, that Brunswick was negligent in failing to provide a guard and that the defendant fraudulently misrepresented performance statistics of guarded propeller engines to discourage the federal government from requiring guards. Brunswick removed the case from the state court to the U.S. District Court for the Southern District of Georgia. Brunswick then moved for summary judgment in its favor, arguing that all claims were preempted by the FBSA. The district court granted Brunswick's motion and entered summary judgment against the plaintiffs. The plaintiffs appealed.

The FBSA grants authority to the Secretary of Transportation to prescribe regulations setting minimum safety standards for pleasure boats. The Secretary of Transportation has delegated rule making authority under the Act to the U.S. Coast Guard. In 1988, the Coast Guard directed the National Boating Safety Advisory Council to examine the feasibility and need for propeller guards on pleasure craft. Following hearings and consideration, the

Advisory Council recommended that the Coast Guard take no regulatory action to require propeller guards. The Council's recommendations were adopted by the Coast Guard in 1990.

On appeal the plaintiffs argued that the FBSA does not expressly or impliedly preempt state law tort claims based on the absence of a propeller guard.

The Eleventh Circuit held that the FBSA did not expressly preempt the plaintiffs' claims because of a provision in the act described as a "savings clause." The "savings clause" provides that "[c]ompliance with this chapter or standards, regulations or orders prescribed under this chapter does not relieve a person from liability at common law or under State law." 46 U.S.C. § 4311(g).

Despite concluding that the plaintiffs' claims were not expressly preempted, the Eleventh Circuit held that the Coast Guard's determination that propeller guards should not be required on pleasure boats impliedly preempted all of the plaintiffs' state law tort claims.

Relying on U.S. Supreme Court precedent, the Court held that preemption can exist by implication where a federal agency, in this case the Coast Guard, determines that a specific subject should *not* be regulated. Thus the Eleventh Circuit held that "because Congress has made the Coast Guard the exclusive authority in the area of boat and equipment safety standards, its position rejecting a propeller guard requirement takes on the character of a ruling that no such requirement may be imposed . . . [and] impliedly preempts state law requirements . . . even in the form of common law claims." The court affirmed the district court's grant of summary judgment in the defendant's favor.

FAIR DEBT COLLECTION PRACTICES ACT DOES NOT APPLY TO MORTGAGE FORECLOSURE

In a case that is believed to be one of first impression, the court in *Oyen v. Rozinante,* U.S.D.C., S.D. Fla., C.A. No. 96-6983 rejected the defendants' argument that a foreclosure action brought under the Ship's Mortgage Act, 46 U.S.C. § 31301 *et seq.,* is subject to the venue requirements of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692i.

William and Carolyn Oyen commenced an action in the U.S. Federal District Court for the Southern District of Florida to foreclose on a preferred ship mortgage which they held on a 43 foot Hatteras yacht. The Complaint named the mortgaged vessel, *in rem,* and the vessel mortgagors, *in personam.* The vessel was located within the Southern District of Florida when

the Complaint was filed. However, the *in personam* defendants resided in the Middle District of Florida.

The defendants filed a motion to dismiss the suit for improper venue on the grounds that the Fair Debt Collection Practices Act, 15 U.S.C. § 1692i ("FDCPA"), governed the plaintiff's cause of action. Defendants argued that under the FDCPA, any action against individual mortgagors must be filed in the District where they reside and that the FDCPA contains no provision permitting suit to be brought in the jurisdiction where the collateral, in this case the vessel, is located.

In denying the defendants' motion to dismiss, the court held that the FDCPA was inapplicable. Because the vessel was located within the district, the court had admiralty *in rem* jurisdiction. The court held that the Ship's Mortgage Act expressly permitted the *in personam* action against the mortgagors to be filed in the same district, noting that it was in the interest of judicial economy to permit the plaintiffs to join the mortgagors as indispensable parties to the foreclosure proceeding. The court opined that "it would be inconceivable that Congress would provide for the foreclosure of the *res* in one district and not permit joinder of the mortgagors in the same action . . . ."

The journal editors thank Robert D. McIntosh of Fort Lauderdale for bringing this case to their attention.

The meeting was then adjourned.

Respectfully submitted,
Michael B. McCauley, Chair

FORMAL REPORT OF THE COMMITTEE ON STEVEDORING AND TERMINAL OPERATIONS

Our Committee met on October 30, 1997 at the Marriott's Desert Springs Resort in Palm Desert, California. Although small in numbers, strong in enthusiasm.

Legislation before Congress related to the reorganization of the Federal Maritime Commission in the Ocean Shipping Reform Act (S.414) and that related to changes in OSHA (S.1237 and HR 2579) were discussed. In addition, significant cases related to stevedores and terminal operations were mentioned.

The recent FMC complaint by Stevedoring Services of America against the Port of Houston was also discussed. As a possible project for the Com-

mittee, it was decided by the Committee to attempt to do a port-by-port study of union/non-union stevedores and how they are integrated into the work of the various ports. It was hoped that some kind of preliminary report could be given at the next Spring meeting.

Respectfully submitted,
Frank E. Billings, Chair

FORMAL REPORT OF THE COMMITTEE ON THE CENTENNIAL

The Committee on the Centennial has developed an initial agenda of social and collegial activities, and, it soon will place in final a schedule of these activities for the entire week of May 3, 1999.

The following already have been booked:

Tuesday, May 4, a maritime exhibit will open at the new Federal Courthouse in Manhattan, and, a reception without charge will follow the opening. The U. S. Second Circuit as well as the MLA will be among the sponsors of the exhibit and reception.

Wednesday, May 5, a formal evening reception will be held at the Museum of Modern Art and will include a buffet and open bar. The entire Museum will be open for viewing.

Thursday, May 6, an early evening cocktail reception will be held at the Central Park Boathouse.

We look forward to providing a comprehensive statement at the next General Meeting.

Respectfully submitted,
Theodore Cunningham, Chair

FORMAL REPORT OF THE STUDY GROUP ON STATE CERTIFICATION PROGRAMS

The Study Group met at Palm Desert, California at 2:00 pm Tuesday, October 28, 1997. The following persons, in addition to the undersigned, were present: Richard C. Binzley, Lizabeth L. Burrell, Robert Force, Robert S. Glenn, Jr., James B. Kemp, Jr., Herbert M. Lord, Richard W. Palmer, Michael F. Sturley, Kenneth H. Volk, and Frank L. Wiswall, Jr.

Our proposed agenda for this meeting did not include the adoption of any substantive resolution, but rather a report of some ideas in our field of study.

I reported on the results of the survey I had made with the assistance of members in Florida to learn more about the practices of those who had been certified as admiralty specialists. I found that a total of forty had been certified. Of those, only seven are not members of the MLA, and of the other thirty-three, twenty-three are proctor members. Of the remaining ten, seven have been members more than ten years, and the other three became members in 1990 or since.

I also reported information from a leading member of a firm engaged in maritime personal injury defense in Florida, as to why he and other members of his firm had chosen to be certified. He told me that they had no desire to advertise and do not advertise their certification, but that he and his partners regarded the move a prudent defense against the possibility that others, soliciting their underwriter clients, especially those abroad, would hold themselves out as "certified" and disparage their competitors who were not. As I understood it, he thought this to be the only practical reason for certification.

Presumably the practices of a number of those certified are divided between maritime and non-maritime work. So far as their practices are maritime, twenty-nine are reported to be engaged in general maritime work with emphasis on defense; five are reported to be in general maritime commercial practice (which I interpret as probably not including much, if any trial work), and six are reported to be in maritime plaintiff personal injury practice. Thus the sector in plaintiff personal injury practice represents about 15% of the total. Of course, a number of those engaged in general maritime work with emphasis on defense are known to be defending personal injury cases.

As might have been expected, the number of those present expressed surprise at these figures, as they would have expected the plaintiff personal injury practice to be more strongly represented.

A discussion followed, starting from three topics I had proposed, as follows:

1. On balance, certification of admiralty is not justified as widely useful;

2. If certification of admiralty is to be done, it should not be certification of the whole field, but of recognized special areas in it;

3. If certification of admiralty is to be done, it should be done under standards set and published by the MLA.

While no votes were taken, the following views were represented. There was little, if any, belief that certification was justified as widely useful. Discussion concentrated on the third question, and on the further question whether anything should be done at all. Interest was expressed by some in the setting of standards by the MLA to guide states if they were determined to set up certification programs. Reservations, if not opposition to this idea, were expressed on the grounds that the publication of such standards might prove an encouragement to state action. The view was strongly expressed that no action should be taken at all by the MLA, on the ground that the certification movement would not get far off the ground in admiralty. A contrary view was to the effect that some action should be taken, and the view that it was our duty to make a recommendation in that regard was also strongly expressed.

It appeared to your Chair that votes on these propositions would not be useful as producing any clear consensus, and none were taken.

It was proposed by Mr. Glenn that at least an informal survey be made in a few principal ports to determine the extent of interest, if any, in certification, and your Chair volunteered that he would devise and carry out that survey.

The meeting closed with the Chair's reading of verses he had written for the introduction of novices to the practice, and thought might have some relevance to specialization:

Be Careful How you Take a Proctor's Word

The proctor projects an aura of mystery
by cunningly clinging to arcane linguistery;
Its obscure words in supply super-ample
Don't mean what a landlubber learns; for example:

Dunnage isn't effort to collect an obligation,
Bottomry and the moon have absolutely no relation;
So barratry with bottomry has not a thing to do,
And privity's not another euphemism for the loo.

Actions called petitory are seldom really small,
You will rarely in a bull ring find a stevedore at all;
It is hardly ever fatal to agree to a demise,
Average isn't simply arithmetic exercise,

Detention's not confinement of a culprit in a jail,
Nor is dispatch the posting of an urgent piece of mail.

A wrongful deviation is an act of navigation,
Rather than an incident of rakish recreation.

Jetsam's not the stream of which an airplane leaves a trail;
Flotsam's not a sibling of little Cottontail;
Demurrage is not a trait of prim or shy sobriety,
Lay time may be mentioned without any impropriety;
Cabotage is not malicious harm to one's defense,
And allision is by no means a literary reference.

Angary's not descriptive of a proctor's bullish roar;
Bunkers aren't balderdash you safely may ignore;
The anchor, by the bay, is not a television bore,
And admiralty has nought to do with admirals anymore.

Enough citations these to start
The study of a speech apart;
The moral, I'd have you understand,
Is, keep a glossary close to hand!

Respectfully submitted,
Graydon S. Staring, Chair

MINUTES OF THE BOARD OF DIRECTORS MEETING OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

Held at the
Offices of Thompson Coburn in St. Louis, Missouri
on
July 19, 1997

The meeting was called to order by President James F. Moseley at 9:55 a.m. In addition to President Moseley, the following officers were present:

Howard M. McCormack, First Vice President
William R. Dorsey, III, Second Vice President
Lizabeth L. Burrell, Secretary
Marshall P. Keating, Treasurer
Raymond P. Hayden, Membership Secretary
Chester D. Hooper, Immediate Past President

The following Board members were present:

Denise S. Blocker
Lawrence J. Bowles
David G. Davies
Donald C. Greenman
Alfred J. Kuffler
Raymond L. Massey
Marion E. McDaniel, Jr.
Gordon D. Schreck
Jerome C. Scowcroft
James T. Shirley
Thomas J. Wagner

At the invitation of President Moseley, James B. Kemp, Jr. of New Orleans, Chair of the Committee on ABA Relations, F. William Mahley of Houston, Vice Chair of the Committee on River and Ocean Towing, and Thomas S. Rue of Mobile, Chair of the Special Committee on Planning and Arrangements for the 1997 Fall Meeting, were also present.

President Moseley welcomed the new Board members and thanked Ray Massey and all our members in St. Louis for hosting this meeting.

SECRETARY'S REPORT

Secretary Burrell reported on a joint resolution proposed by the Ad Hoc Joint Subcommittee on OPA '90 Concursus designed to ease the difficulties encountered in multiple arrest situations. At the time of the May 1, 1997 Board meeting, the resolution had been approved by the Committees on Marine Ecology and Marine Financing (two of the Subcommittee's three parent Committees) as well as by the Practice and Procedure Committee's Subcommittee on Federal Rules and Statutes. The third parent committee, Practice and Procedure, had not yet met but later did so and approved the

resolution. After the May 1 Board meeting, the Board studied the proposed resolution, and, by poll, on June 2, 1997 unanimously approved and adopted the following resolution:

RESOLUTION

WHEREAS, the objectives of the Maritime Law Association of the United States include the advancement of the Maritime Law of the United States to facilitate justice and promote uniformity; and

WHEREAS, three standing committees of the Association, the Committee on Marine Ecology, the Committee on Marine Financing and the Committee on Practice and Procedure, have unanimously approved and endorsed the attached proposed amendment (Exhibit "A") to Section 1017(c) of the Oil Pollution Act of 1990 (33 U.S.C. § 2717(c)) to provide for concursus proceedings for adjudication of all claims arising from oil spills from vessels;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Maritime Law Association of the United States that

The Maritime Law Association of the United States approves and recommends said proposed amendment for enactment by the Congress of the United States, and

That the Chairpersons of said standing committees and/or their designee are authorized to present and endorse said amendment on behalf of the Maritime Law Association of the United States to the appropriate legislative authorities for enactment by the Congress of the United States, and

Further, that said representatives are authorized to present, support and endorse any revision or modification of said amendment consistent with the goals of establishing concursus proceedings for the adjudication of claims arising from oil spills from vessels.

/s/ James F. Moseley
President,
The Maritime Law
Association of the
United States

EXHIBIT "A"

CONCURSUS PROVISION (5/7/97)

Section 1017(c) of the Oil Pollution Act of 1990 (33 U.S.C. § 2717(c)) is amended by striking subsection (c) and inserting the following:

(c) Procedure-

(1) A responsible party or guarantor who has complied with any financial responsibility requirements of section 1016 of this Act may, within 6 months of its designation under 1014(a), file a complaint in the appropriate United States District Court for limitation of, or exoneration from, liability pursuant to sections 1003 or 1004 of this Act. After an action is commenced pursuant to this paragraph, jurisdiction shall be retained over the action without regard to whether the requested relief is granted.

(2) Upon compliance with the requirements of paragraph (1), all claims and proceedings against a vessel, responsible party, guarantor, or their property with respect to an incident shall cease. Upon application of a responsible party or guarantor, the District Court shall enjoin the further prosecution of any action or proceeding in any State or United States court against a vessel, responsible party, guarantor, or their property with respect to any claim arising out of an incident. The court shall issue a notice to all persons asserting claims with respect to which the complaint seeks limitation or exoneration, requiring them to present their respective claims to a responsible party or guarantor pursuant to section 1013(a). Thereafter, the court shall direct each claimant to file such claim in accordance with section 1013(c) within such time as the court may direct.

(3) Nothing in this section shall preclude a person from filing a concurrent limitation action under section 4203 of the Revised Statutes of the United States (46 U.S. App. § 183).

Secretary Burrell advised that the Proceedings of the May 1997 General Meeting were about to be distributed to the membership.

Secretary Burrell also reported on the rewriting of the Purposes section and committee descriptions in the Directory, remarking on the cooperation she had received from the committee chairs in that endeavor. Secretary Burrell advised that arrangements are in place for the Board and General Meetings in the Fall of 1997 and the Spring of 1998.

Upon motion duly made and seconded, the minutes of the May 1, 1997 meeting of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the May 1 Board meeting are published in the Proceedings of the May 1997 General Meeting.

TREASURER'S REPORT

Treasurer Marshall P. Keating of New York reported on the cash on hand and investments as of July 15, 1997, on the Report for the three month period ending on April 30, 1997 and on a summary of the fiscal years 1995, 1996 and 1997, all of which reflected the Association's sound financial condition.

Treasurer Keating also reported on the status of development of an MLA web page, for which a prototype is expected to be available later this year.

Upon motion duly made and seconded, the Treasurer's report was unanimously approved and accepted.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Raymond P. Hayden of New York, reported that the total membership of the Association as of July 18, 1997 was 3,607 members. He presented twenty-two applicants for Associate Lawyer membership.

Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected, bringing the total membership to 3,629.

The list of all the successful candidates for membership and Mr. Hayden's written report are appended to the original of these minutes.

Membership Secretary Hayden also reported, with regret, the death of the John C. Moore of New York, former Vice President of the Association.

Upon motion duly made and seconded, the Membership Secretary's Report was unanimously approved and accepted.

In connection with the 1997-98 Directory, Membership Secretary Hayden noted that the deadline for corrections had been July 3, 1997, and that the directory was expected to be in the hands of the membership according to the usual schedule.

COMMITTEE ORGANIZATION

President Moseley described his efforts to rationalize our committee structure in order to avoid duplication of effort and more effectively utilize Association resources.

To this end, President Moseley recommended that two Standing Committees—those on Continuing Legal Education and Marine Regulation and Promotion—be eliminated. The Committee on Proctor Admissions would take over the Continuing Legal Education Committee's task of determining whether CLE programs satisfy our proctorship requirements. The Committee on Navigation and Coast Guard Matters, now renamed the Committee on Navigation, Coast Guard and Government Regulations, would include in its scope those matters previously treated by the Committee on Marine Regulation and Promotion.

President Moseley also addressed the ad hoc and special committees, some of which, having been formed originally to deal with a discrete project, had out-lived their intended duration. Some special committees—for example, the Special Committees on Professionalism and on State Certification Programs—should become Study Groups. Other special committees, like the former Special Committee on Government Liaison, should be consolidated into single position Special Appointments.

Board Member Donald C. Greenman of Baltimore, who also chairs the Association's Committee on Limitation of Liability, suggested that another Study Group be appointed to address the issues arising from the 1996 Protocol to 1976 Limitation of Liability for Maritime Claims Convention.

Each of the Study Groups would have a Board Liaison.

Upon motion duly made and seconded, the Board unanimously approved the foregoing changes in committee structure.

All changes to committee structure and leadership will be reflected in the upcoming directory.

REPORT OF THE SPECIAL COMMITTEE ON PLANNING AND ARRANGEMENTS FOR THE 1997 FALL MEETING

Chair Thomas S. Rue of Mobile reported on the Fall meeting, which will take place during the week of October 27, 1997 in Desert Springs, California. The importance of timely registration with the Association and the hotel was stressed.

The seminar, which will be presented on Thursday morning, will address Supreme Court practice, as well as how district courts interpret Supreme Court opinions.

A new feature of the meeting will be a special cocktail party for those who have never before attended an Association gathering at a resort.

The Board will meet on Monday, October 27, and may meet as well on Friday, October 31, before the General Meeting to act on any committee resolutions or recommendations that may arise during the course of the week.

REPORT OF THE SPECIAL COMMITTEE ON THE CENTENNIAL

First Vice President Howard M. McCormack of New York advised that the Association's Centennial meeting in the Spring of 1999 may coincide with a special exhibition by the Second Circuit on the history of that illustrious Court of Appeals.

The Committee will start this summer to examine specific sites in New York for Centennial events. Because of space limitations, it is expected that attendance at Centennial events will be restricted to members and distinguished guests invited by the President.

The Fall 1999 meeting will continue the celebration of the Centennial. It is expected that the Fall meeting will take place at the Hyatt Grand Cypress resort in Orlando, Florida during the week of October 11, 1999.

ASSOCIATION CONTRIBUTION TO THE JOHN R. BROWN COMPETITION

Many MLA members have participated as judges in this valuable moot court competition for law students interested in admiralty and maritime practice. Upon motion duly made and seconded, the Board unanimously resolved to contribute $2,500 to sponsor next year's competition.

INTERNATIONAL ACTIVITIES

International Maritime Organization

President Moseley reported on the Association's efforts to become more involved in the IMO, which is part of the United Nations and garners government delegations from forty to fifty nations as well as representatives from international organizations such as the Comité Maritime International

and certain carrier groups and P&I clubs. Because the IMO is very active, it is important that the Association have consistent contact with this group. President Moseley has been acting as an advisor to members of the U.S. delegation to the IMO in order to provide both needed advice and continuity. The Coast Guard has asked the Association to provide two advisors for the IMO meeting scheduled to take place in October, and it is anticipated that President Moseley and First Vice President McCormack will attend in this capacity.

Second Vice President Dorsey commented that the IMO Legal Committee will probably be the most fruitful source of new conventions in the foreseeable future.

Don Greenman advised that the Association's Committee on Limitation of Liability has created a new working group to study the ISM code because the code provisions requiring certain management procedures to handle problems and emergencies may eventually affect a shipowner's right to limit. Mr. Greenman told the Board that the IMO home page has valuable articles on the ISM code which will be of use to practitioners addressing legal issues involving almost any aspect of shipside and shoreside management.

Comité Maritime International

First Vice President McCormack reported on the CMI's Centenary meeting, which took place in Antwerp from Sunday, June 8 through Saturday, June 14, 1997. The general subject of the meeting was the future of the CMI, but several substantive topics were also discussed in smaller meetings, each of which was attended by an Association officer together with another Association delegate.

Among those MLA members who attended, there appeared to be a consensus that the CMI will continue to be a tremendous resource for the drafting of international conventions, with the IMO taking a more active role in their passage, as well as for the development of rules for industry use.

A full report of the delegates will be published in the President's Newsletter.

The new leadership of the CMI, including Patrick Griggs as President and Association member Dr. Frank L. Wiswall, Jr. of Castine as one of two vice presidents, promises to enhance the CMI's prestige even more.

DECEASED MEMBERS

President Moseley reported on the resolutions passed to honor our late members, Past President Francis J. O'Brien, Past Vice President John C. Moore and Past Vice President Stanley R. Wright.

COMMITTEE REPORTS

Carriage of Goods

Immediate Past President Hooper reported on the progress of the Association's proposed COGSA revisions, which we hope to have introduced soon. A remaining issue is how much of the Himalaya clause can be taken advantage of by the railroads. President Moseley will send a letter to the Senate, detailing the history of COGSA and the Association's work.

President Moseley, Past President Hooper and Vincent M. DeOrchis of New York, Chair of the Committee on Carriage of Goods, met with the National Industrial Transportation League, which represents most U.S. shippers, and with the National League of Underwriters in order to gain their support for the proposed legislation.

It is expected that the proposed bill would be first introduced in the Senate.

Carrier Security

President Moseley reported that this Committee is attempting to create a fair standard so that local INS officials don't have unbridled discretion with respect to the disposition of stowaways. Stephen H. Vengrow of New York, Chair of the Committee on Carrier Security, has made several trips to Washington, D.C., in order to promote such a standard.

Professionalism

President Moseley reported on the fine efforts of this Study Group, which produced the proposed Code of Professional Conduct presented to the Board and Association in May 1997, and which will be the subject of a vote at the General Meeting in October 1997.

Strategic Planning

President Moseley reported on the progress and work of this Study Group. All proposals will require careful consideration by the Board, but it is anticipated that some recommendations may be implemented sooner than others. Authorities on strategic planning advise that it usually takes about three years to implement a significant plan.

General Average Subcommittee of the Committee on Marine Insurance and General Average

Board Member Raymond L. Massey of St. Louis reported that the Committee received a questionnaire from A.I.D.E., which was referred to the Subcommittee on General Average, about the national law affecting general average and general average in relation to safety at sea. The Subcommittee prepared a clear and concise legal report, and upon motion duly made and seconded, the Board unanimously approved the Subcommittee's report as a Committee response to A.I.D.E.

ABA Relations

James B. Kemp, Jr. of New Orleans, Chair of the Committee on ABA Relations, reported on the role of the Association's delegate at ABA meetings. Mr. Kemp also sought the Board's guidance about a voting policy to govern the actions of the MLA delegate at ABA meetings.

Among the possible policies considered by the Board were that: the MLA delegate should vote his own conscience; the MLA delegate should abstain from voting on all resolutions except those which involve maritime matters and as to those, the delegate should consult with the Association President, who may or may not seek Board approval; or the MLA delegate should seek advance instructions from the MLA President and the Board concerning resolutions which are to be considered by the ABA.

After discussion, and upon motion duly made and seconded, the Board unanimously resolved that on matters affecting maritime issues, the MLA delegate should, if time permits, contact the President, who will consult the Board if he sees fit, and that on other matters, the MLA delegate should vote his conscience.

River and Ocean Towing

F. William Mahley of Houston, Vice Chair of the Committee, reported on the history of river transportation and the Committee's development over the years. He described river towing as the circulatory system of the Midwest.

The Committee used to be called the Western Rivers Committee and took as its first task the job of bringing the inland navigation rules into conformity with the international rules, taking into account the differences between ocean and river transportation. As its scope widened, the Committee was renamed the River and Ocean Towing Committee.

Oil spills and OPA '90 have added to the importance of the Committee's work because the barge system now serves coastal as well as inland

trade. Proposed legislation and regulations are proliferating, especially concerning tank barge manning, structure and other safety issues. There is a strong industry presence in the Midwest to give input to the Coast Guard, and there has been a tremendous amount of cooperation and voluntary action, particularly in connection with inspections. Nonetheless, changes in licensing are being considered.

The Committee has published a newsletter to keep members advised about matters affecting this developing area of law, and the Committee will provide the CLE presentation at the Spring 1998 General Meeting.

Shipping Coordinating Committee

Second Vice President Dorsey reported on the Committee's June 5, 1997 meeting hosted by the Coast Guard which he attended together with Don Greenman of Baltimore. The topic was the IMO's consideration of whether there should be compulsory insurance for all vessels, a topic introduced by delegates from the United Kingdom.

The Shipping Coordinating Committee is seeking comments from government agencies, industry sources and the MLA about whether the United States should adopt the INS Convention.

The issue of whether the Association should recommend adoption of the INS Convention will be brought before the membership at the Spring 1998 meeting. The Convention will affect some U.S. businesses whether or not the United States becomes a signatory.

PRESIDENT'S REPORT

President Moseley reported that a newsletter will go out in summer describing the CMI meeting and the President's activities on behalf of the members, including his attendance at the Average Adjusters' meeting in London and his speech at the recent SEALI meeting.

President Moseley will speak at the Houston Marine Insurance Seminar on September 21 through 23, 1997 and will represent the Association at the October 1997 meeting of the Association of Average Adjusters of the United States. Maintaining our close ties to the Canadian Maritime Law Association, President Moseley will speak on pendent and supplement jurisdiction in November of this year at the Canadian Judicial Conference, which is sponsored by the CMLA.

AMICUS BRIEFS

Two days before this Board meeting, President Moseley was contacted by a clerk of the United States Court of Appeals for the First Circuit, who asked the Association to file an *amicus* brief in the Court's *en banc* rehearing of the panel's decision in *United States v. Rivera,* No. 96-2188 (May 1, 1997) (withdrawn *en banc* May 29, 1997), *aff'g,* 942 F. Supp. 732 (D.P.R. 1996). The case involved the criminal conviction under 46 U.S.C. § 10908 of Pedro Rivera, a dockmaster, for sending the MORRIS J. BERMAN to sea with a deteriorated tow wire. The failure of the tow wire contributed to a spill of the BERMAN'S oil cargo off Puerto Rico. One of the issues presented was whether the prerequisites set forth in other sections of chapter 109 of title 46 must be satisfied before bringing an action under § 10908. The MLA had participated in the recodification of title 46, and had understood from the Coast Guard that no substantive changes of law were intended by the recodification.

After considerable discussion, the Board requested more information before voting on whether to authorize an *amicus* brief in this case.

NEW BUSINESS

First Vice President McCormack reported on the calendar of events of interest to maritime lawyers and asked those with information about such events to bring them to his attention.

There being no further business to come before the Board the meeting was adjourned at 1:00 p.m.

Respectfully submitted,
/s/ Lizabeth L. Burrell
Secretary

MINUTES OF THE BOARD OF DIRECTORS MEETING OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

Held at the
Marriott Desert Springs Resort in Palm Desert, California
on
October 27 and 31, 1997

The meeting was called to order by President James F. Moseley at 9:30 a.m. In addition to President Moseley, the following officers were present:

Howard M. McCormack, First Vice President
William R. Dorsey, III, Second Vice President
Lizabeth L. Burrell, Secretary
Marshall P. Keating, Treasurer
Raymond P. Hayden, Membership Secretary
Chester D. Hooper, Immediate Past President

The following Board members were present:

Denise S. Blocker
Patrick J. Bonner
Lawrence J. Bowles
David G. Davies
Donald C. Greenman
Alfred J. Kuffler
Raymond L. Massey
Marion E. McDaniel, Jr.
Gordon D. Schreck
Jerome C. Scowcroft
James T. Shirley
Thomas J. Wagner

At the invitation of President Moseley, Lieutenant Commander Bruce P. Dalcher, U.S.C.G., of Washington, D.C., Vincent M. De Orchis of New York, Chair of the Committee on Carriage of Goods, Robert J. Zapf of Los Angeles, Chair of the Committee on Practice and Procedure, and Thomas S. Rue of Mobile, Chair of the Special Committee on Planning and Arrangements for the 1997 Fall Meeting, were also present at the October 27, 1997 meeting.

SECRETARY'S REPORT

The Proceedings of the Spring 1997 meeting were sent out to the membership, and included the minutes of the March and May 1997 Board meetings as approved and adopted by the Board.

Secretary Burrell reported that arrangements have been made with the Association of the Bar of the City of New York for the Association's general meetings on May 1, 1998, November 6, 1998 and May 7, 1999, and for the Board meetings in New York.

Upon motion duly made and seconded, the minutes of the July 19, 1997 meeting of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the July 19, 1997 Board meeting will be published in the Proceedings of the Fall 1997 General Meeting.

TREASURER'S REPORT

Treasurer Marshall P. Keating of New York reported on the cash on hand and investments as of September 30, 1997, the results of the May 1997

dinner and on the Report for the three month period ending on July 31, 1997, all of which reflected the Association's sound financial condition.

Treasurer Keating reported on our generally successful experience with the party planner who assisted with the May 1997 dinner.

Treasurer Keating also reported on the status an MLA web page, which is soon expected to be up and running.

Upon motion duly made and seconded, the Treasurer's report was unanimously approved and accepted.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Raymond P. Hayden of New York reported that the Directory has been distributed to the membership and asked that any errors be corrected by forwarding accurate information to our data processor in Buffalo using the blue card in the front of the Directory.

At the October 27 Board meeting, Membership Secretary Hayden presented thirty-three applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.

In addition, at the October 27 Board meeting, Membership Secretary Hayden reported that four applicants had been recommended for Non-Lawyer membership. Those recommendations are:

George H. Boothby
John A. Chamberlain
Pieter L.M. Vismans
Dr. Chao Wu

Upon motion duly made and seconded, the four Non-Lawyer applicants were unanimously elected to Non-Lawyer membership.

At the October 31 Board meeting, Membership Secretary Hayden reported that the Proctor Admissions Committee had recommended that seventeen Associate Lawyer members be advanced to Proctor status. They are:

Gregory G. Barnett	Steven Levi
James M. Beard	Michael J. McHale
Michael M. Butterworth	Daniel P. McKiernan
Michael J. Eisele	John A. O'Donnell
James E. Forde	Salvador J. Pusateri
Frederick B. Goldsmith	Michael F. Shanahan
David I. Hilleren	Russell R. Williams
Paul A. Kettunen	Mary A. Wilson
Robert E. Kiely	

Upon motion duly made and seconded, the recommendations of the Proctor Admissions Committee were approved and the seventeen Associate Lawyer members were granted Proctor status.

Membership Secretary Hayden also reported, with regret, the death of the following members:

Brendan O'Sullivan of Tampa
Sam V. Tranchina of Manhasset
Past Vice President John C. Moore of Bloomfield

As of October 26, 1997, the total membership of the Association was 3,592 members. As of October 31, 1997, after the changes in membership approved by the Board during their October 27 and 31, 1997 meetings, the total membership was 3,632.

Upon motion duly made and seconded, the Membership Secretary's Report was unanimously approved and accepted.

The list of all the successful candidates for membership and Mr. Hayden's written report are appended to the original of these minutes.

COMMITTEE REPORTS

Carriage of Goods

Immediate Past President Hooper and Vincent M. De Orchis of New York, Chair of the Committee on Carriage of Goods, reported on the progress of the Association's proposed COGSA revisions. The proposed legislation has encountered obstacles not because it is controversial but because it requires knowledge of the technical aspects of this area of law and does not have wide-spread appeal to voters and thus is not a priority issue with legislators. The Association has been working with counsel to the Senate, Carl Santucci (Democrat) and Carl Benzel (Republican). President Moseley,

Immediate Past President Hooper and Mr. De Orchis have made four trips to Washington, D.C. to discuss the proposed legislation.

The Association has been told that the legislation will probably be attached to other legislation, such as the Coast Guard Authorization Act. The earliest that the bill would come up for consideration in the Senate would be in February 1998, with a vote in the Spring of 1998.

President Moseley and Immediate Past President Hooper reported that the problems with the railroads would probably be ironed out. It was pointed out that the lengthy report and analysis in MLA Document No. 724 concerning the proposed legislation will be distributed to those considering the legislation.

Practice and Procedure

Chair Robert J. Zapf of Los Angeles reported on his success in persuading the Advisory Committee to the Judicial Conference to adopt the Association's recommendations in amending Rules B and C. After initial changes were approved, the Advisory Committee turned its attention to so-called "stylistic" changes, which would have produced, however, some significant changes to admiralty practice, two of which would have been particularly troublesome in maritime litigation.

One of the areas of disagreement between the Association and the Advisory Committee dealt with the identity of parties entitled to defend seized property, which was being amended in part because of confusion about the term "claimant" that had come to exist in civil forfeiture proceedings. The Association wanted to provide for a broad definition of interests that would entitle a party to come in and claim the seized property, especially in recognition of the fact that many foreign jurisdictions recognize interests other than legal title as giving standing to claim seized property. The Advisory Committee's reporter had taken the position that "any ownership interest" would cover legal, beneficial and equitable ownership. In order to leave no doubt about who could claim seized property, the Association's suggestion was that a "claimant" be defined as anyone who asserts a "legal or equitable ownership interest" in the seized property. A compromise was reached that the notes accompanying the rules would explain the breadth of the intended interests.

The second area of disagreement between the Association and the Advisory Committee concerned the provisions of Rule B that permit the use of state court attachment procedures when a Rule B attachment is not permitted because the defendant can be found within the district. Rule B permits state law attachments "pursuant to [old]Rule 4(e)," which had pro-

vided for service upon a party not found within the state. Rule 4(e), however, has been amended and its current version has been renumbered as Rule 4(n). The reporter's suggestion had been merely to substitute a reference to Rule 4(n) for the reference to Rule 4(e), but the effect would not have been the same as the practice under Rule B because Rule 4(n) provides for state court attachments only if the defendant cannot be served under any other provision of Rule 4, and Rule 4 now contains many expanded, long-arm and substituted service methods. Accordingly, the availability of state law attachments would therefore have been restricted if a reference to Rule 4(n) had merely been substituted for the reference to Rule 4(e). The solution ultimately reached was to substitute a reference to Rule 64, which permits the use of state court attachment provisions in federal proceedings, instead of Rule 4(n).

The next step to be taken by the Advisory Committee is the circulation of the draft rules, but the amended rules are not likely to be finalized in the near future.

Special Committee on Planning and Arrangements for the 1997 Fall Meeting

Chair Thomas S. Rue of Mobile reported on registrations for the ongoing meeting, which were anticipated to be about the same as that for 1995 Fall meeting in Hawaii. Mr. Rue urged the Board members and their spouses to attend the welcoming reception for registrants who had not previously attended a resort meeting of the Association. Mr. Rue was optimistic that the new, specially coordinated program for members' children would be successful.

The seminar, which will be presented on Thursday morning, will address Supreme Court practice, as well as how district courts interpret Supreme Court opinions.

Special Committee on the Centennial

Treasurer Keating reported on the activities of the Committee on the Centennial and advised that at least one of the events would take place at the Museum of Modern Art and another at the Boathouse in Central Park. The Committee also hopes to hold an event at Gracie Mansion, if feasible.

The Federal Bar Association, together with the Second Circuit and the Southern District of New York, is planning an exhibition at the Southern District's new courthouse, and members will be able to attend an event there as well.

Treasurer Keating and First Vice President McCormack reported on the extensive efforts of the Centennial Committee members to find locations that were both interesting and affordable. Unlike our usual registration format, it is anticipated that registrants for the Centennial meeting will sign up for the events that they particularly want to attend and will pay a registration fee according to which events they have selected.

Study Group on Professionalism

President Moseley advised that because the Study Group's Chair, Ben L. Reynolds of New Orleans, and Vice Chair, John D. Kimball of New York, were prevented by professional obligations from attending this meeting, Second Vice President Dorsey will present the Study Group's proposed Code of Professional Conduct to the membership for a vote at the General Meeting on October 31, 1997. President Moseley expressed gratitude to the many judicial members who contributed so much to the drafting of the proposed code. It was suggested that if the proposed code is adopted, that it be sent to judges handling admiralty and maritime cases to show the Association's commitment to maintaining its standards of excellence.

ASSOCIATION CONTRIBUTION TO THE JOHN R. BROWN COMPETITION

President Moseley reported that the Association had made a $2,500 contribution to next year's competition and that the funds will be used to award a "best brief" prize. Board members invited to participate as judges were encouraged to accept this task.

FUTURE MEETINGS OF THE BOARD OF DIRECTORS

Board member Gordon D. Schreck reported that the next meeting of the Board of Directors will take place on March 4 and 5, 1998 in Charleston, South Carolina.

President Moseley reported that there will be an officers' meeting in January or February 1998 and reminded Board members of future meetings on April 30 and November 5, 1998.

INTERNATIONAL ACTIVITIES

International Maritime Organization

President Moseley introduced Lieutenant Commander Bruce P. Dalcher, who is the Coast Guard liaison to the Association and has been an active member for several years. Together with USCG Rear Admiral Paul M. Blayney, Chief Counsel, and USCG Captain Malcolm J. Williams, Jr., Chief of the Office of Maritime and International Law, Commander Dalcher contributes to the successful operation of the Coast Guard's the International Department. The Association is grateful for the cooperation and assistance offered by the Coast Guard and coordinated by Commander Dalcher.

Commander Dalcher reported on the 76th Session of the IMO Legal Committee, which had met on October 13 through 17, 1997 in London. Commander Dalcher thanked President Moseley and First Vice President McCormack for their attendance and assistance at the session, as well as all the members who have assisted in the U.S. delegation's preparations for IMO meetings.

IMO Secretary General O'Neil began the meeting with an exhortation to the delegates to increase the effort devoted to implementing existing conventions rather than developing new ones, and many delegations seemed to be responsive to this request, resulting in more focus on implementation of the Convention on Hazardous and Noxious Substances.

Increased attention to the HNS Convention, however, did draw some attention away from other drafting projects, such as proposed conventions as that for provision of financial security, which began a few years ago as compulsory insurance, compensation and liability for bunkers, and wreck removal. The financial security issue has been effectively split in two: the first issue, which is being given a higher priority, is security for passenger claims, which will proceed within a correspondence group under the framework of the 1974 Athens Convention as modified; and the second issue is general financial security for third party claims, *i.e.*, a common, minimal core of P&I coverage for all vessels.

First Vice President McCormack was of great assistance in the deliberations on wreck removal, which will also be the subject of continued discussion in a correspondence group between sessions.

Commander Dalcher said the Coast Guard would continue to rely on the Association to assist in developing and urging the U.S. position on issues before the IMO. The next meeting of the IMO Legal Committee will be April 24, 1998.

Comité Maritime International

First Vice President McCormack reported that President Moseley and CMI President Patrick Griggs had had a long and productive meeting about the future of the CMI.

José M. Alcantara, President of the Spanish Maritime Law Association, Karl J. Gombrii, President of the Swedish Maritime Law Association, Patrick Griggs, President of the CMI, Barry Oland, Vice President of the Canadian Maritime Law Association, Allan Philip, immediate Past President of the CMI, Jean-Serge Rohart, President of the French Maritime Law Association, and Alexander von Ziegler, Secretary General of the CMI, all were attending the Association's meeting and planned to attend the Association's CMI Committee meeting.

President Moseley reported that the CMI will need a contribution from the Association to continue the CMI's work, and at the motion of Board member Marion E. McDaniel, Jr., which was duly seconded and unanimously passed, it was RESOLVED that the Association's President is authorized to make an appropriate contribution.

Shipping Coordinating Committee

Board member Donald C. Greenman reported on the last meeting of the Shipping Coordinating Committee, which affords a forum for discussion with the Coast Guard of items on the agendas for impending IMO Legal Committee meetings as well as an opportunity to hear about what transpired at the last IMO Committee meeting. Many of the documents distributed at the Shipping Coordinating Committee meetings, such as a paper by P&I clubs about their position on financial security, are of considerable value to those involved in the maritime field.

PRESIDENT'S REPORT

President Moseley reported that a newsletter will go out in November. President Moseley described his other activities on behalf of the Association, including his speech on recent developments in maritime law at the Houston Marine Insurance Seminar on September 21 through 23, 1997. President Moseley also attended the most recent meeting of the Average Adjusters Association of the United States and the MICA claims dinner.

President Moseley will also speak at the Canadian Judiciary Conference in Ottawa on the subject of pendent (now supplemental) jurisdiction and will attend a meeting in New York of the American Institute of Marine Underwriters.

AMICUS BRIEFS

At the request of the United States Court of Appeals for the First Circuit, and with the approval of the Board taken by poll after the July 19, 1997 Board meeting, the Association filed an *amicus* brief authored by Board member Patrick J. Bonner of New York and assisted by Robert B. Parrish of Jacksonville, Chair of the Committee on Navigation, Coast Guard and Government Regulations, in the Court's *en banc* rehearing of the panel's decision in *United States v. Rivera*, No. 96-2188 (May 1, 1997) (withdrawn *en banc* May 29, 1997), *aff'g*, 942 F. Supp. 732 (D.P.R. 1996). The case involved the criminal conviction under 46 U.S.C. § 10908 of Pedro Rivera, a dockmaster, for sending the MORRIS J. BERMAN to sea with a deteriorated tow wire. The failure of the tow wire contributed to a spill of the BERMAN'S oil cargo off Puerto Rico. One of the issues presented was whether the prerequisites set forth in other sections of chapter 109 of title 46 must be satisfied before bringing an action under § 10908. The MLA had participated in the recodification of title 46, and had understood from the Coast Guard that no substantive changes of law were intended by the recodification. Thomas J. Muzyka of Boston attended the oral argument and issued a written report to the Board about the course of the argument.

The Board also discussed the Eleventh Circuit's opinion in *In re Amtrak "Sunset Limited" Train Crash,* 121 F.3d 1421 (11th Cir. 1997), which was authored by one of our seminar speakers, The Honorable Alex Howard, United States Senior District Judge sitting by designation. In that case, the court held that federal maritime law, not Alabama state law, governed wrongful death claims arising from a train derailment resulting from a bridge support having been damaged by a barge. The time for petitioning for certiorari had not yet expired at the time of the Board meeting. President Moseley expressed the Association's appreciation of Judge Howard's attendance as a speaker at our seminar.

NEW BUSINESS

Board member Jerome C. Scowcroft discussed the International Tug of Opportunity System, which is mandated under federal law and intended to allow for emergency response to vessels in distress through a central computer system developed through industry initiatives. Transponders which show location are being placed on tugs that have enrolled in the system so that an agency, such as the Seattle Marine Exchange, with a computer linked to the central database and equipped with navigational charts and information about each enrolled tug, can locate a tug that may be able to respond to an emergency. Vessel owners who are linked to this system can

actually observe on their computers, in real time, the progress of their vessels, and members of certain organizations and exchanges may be able to gain access to this system through the Internet. Mr. Scowcroft will gather available materials on this system and forward them to the President so that a brief discussion of this development can be included in the President's Newsletter.

Board member Donald C. Greenman advised that the Coast Guard has published a questionnaire in the Federal Register seeking public commentary about whether the federal government should license recreational boaters. The Association has adopted a model law for states that wish to license recreational boaters.

There being no further business to come before the Board the meeting was adjourned at 12:00 p.m.

Respectfully submitted,

/s/ Lizabeth L. Burrell
Secretary