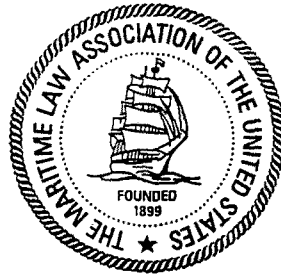


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March 4, 1999

Document # 741

WINTER 1999 PRESIDENT'S NEWSLETTER

Dear Member:

As I indicated in my Newsletter of August 15, 1998, your Association continues to be involved in many significant projects and studies. I anticipate that some of these projects will have an impact upon the entire maritime industry, including not only your firm, but your clients and colleagues in the maritime community. The purpose of the newsletter is to keep each of you advised of substantial areas of involvement of the Association relative to the actions of the Committees and other issues prior to the time of reporting to you at the meeting of the Association on May 7. You have now received the detailed Proceedings of the Fall Meeting of November 6, 1998. We commend our Secretary, Liz Burrell, for the extensive work she has done in this endeavor. We also want to express our appreciation to the members of the Marine Insurance Committee, and its chairperson, Jean Knudsen, for the outstanding work of the subcommittees in the preparation of their reports on Rejection insurance and the American Institute Cargo Clauses Annotated, which can be found at pages 11444 through 11505 of the Proceedings.

I also refer to my Centennial Special Edition of the Newsletter of February 4, 1999, a copy of which was enclosed with the Proceedings. Invitations to the Centennial events will have been received by all members at the time of the delivery of this Newsletter. I urge all of you to make reservations for these events as soon as possible since space is limited. A limited number of hotel rooms are being held at the following hotels:

Grand Hyatt New York
Park Ave. at Grand Central
(800) 233-1234 or (212) 850-5900
MLA Special Rate \$245
Reservations must be made by April 3, 1999

Park Central
870 Seventh Avenue
(800) 346-1359 or (212)247-8000
MLA Special Rate \$229
Reservations must be made by April 3, 1999

Hotel Avalon
16 E. 32nd St.
Contact Evelyn Gelman
(212) 251-1354
MLA Special Rate \$240 (Jr. Suite)
Reservations must be made by April 19, 1999

In the event that further assistance is required at other hotels, please contact:

Mary Williams
MSW Travel
630 Fifth Ave., 30th fl
New York, NY 10011
(800) 333-7733 or (212) 332-8900
Fax: (212) 332-8950

CENTENNIAL WEEK EVENTS

1. Cocktail Reception at The Boathouse in Central Park - Tuesday, May 4, 1999 from 4:45 to 6:45. The cost will be \$75 per person. There is a limitation of numbers at The Boathouse.

2. Museum of Modern Art - Wednesday evening May 5, 1999. This will be the main event of the Centennial. It will be a black tie buffet reception and viewing at the Museum at 11 W. 53rd Street, from 6:30 to 9:30 p.m. The cost per person is \$185. We look forward to having many members, spouses, friends, guests, and distinguished foreign visitors attend the reception, since we have taken over the Museum for the entire evening.

3. Maritime Exhibition - Lecture and Reception at the United States Courthouse - 500 Pearl Street, Thursday, May 6, 1999 from 5:00 to 7:00 p.m. The Admiralty Judge of the United Kingdom, Sir David Steel, as well as Judge Charles S. Haight of the Southern District of New York will be in attendance and comment on events of historical significance in maritime law. There will be a selection of models of the Blue Ribband Ocean Liner winners and display cases exhibiting items of memorabilia and artifacts from the North Atlantic's fastest liners.

4. General Meeting - Friday, May 7, 1999 at the Association of the Bar of the City of New York, commencing at 9:30 a.m. The usual general business meeting format will be revised so that the members and guests will be able to hear an interesting discussion and commentary from Judge Steel, Judge Haight, the President of the CMI and other dignitaries, as well as members of our Association.

Please note there will be no official function on Friday evening, May 7, 1999, which is a departure from the normal activities we have held in the past. The Centennial celebration will terminate with the conclusion of the meeting on Friday morning. I look forward to having you join our Officers, Board of Directors, and your fellow members in celebrating the Centennial of the Association.

SCHEDULE OF FUTURE MLA EVENTS

An Officers and Board Meeting will be held in New Orleans on March 15 and 16, 1999. We also suggest you mark your calendar for future events that you may wish to attend:

1. Centennial Celebration annual meeting, May 4 - 7, 1999 in New York
2. Committee meetings and general meeting of the Association in Orlando, Florida at the Hyatt Regency Grand Cypress Hotel during the week of October 11, 1999.

COMMITTEES, PROJECTS AND STUDY GROUPS

The Association has various Study Groups at work including:

I. ALI/MLA PROJECT ON RESTATEMENT OF THE LAW OF MARINE INSURANCE

The Association will be cooperating and assisting the American Law Institute in

Philadelphia in a special project that hopefully will lead to a Restatement of the Law of Marine Insurance. Two of our members, Edward V. Cattell of Philadelphia and Professor Michael Sturley of the University of Texas Law School are expected to be the co-chairs or rapporteurs on behalf of the ALI. The members of our Association who comprise the Study Group are the following:

Jean E. Knudsen- Chairperson of the Marine Insurance Committee
Edward F. Lebreton- Former chairman of the Marine Insurance Committee
Marilyn Lytle- Chairperson of the Marine Ecology Committee
James F. Moseley, Immediate Past President of the Association
Robert H. Nicholas
Graydon S. Staring- Past President of the Association

The Study Group will be meeting in New Orleans during the Tulane Admiralty Institute and will finalize the documents they intend to submit to the Board, and if approved, to the American Law Institute prior to their May meeting in San Francisco. This is an exciting project. We expect it will go forward with the ALI together with the substantial assistance of the members of the Study Group and others of the Association.

II. STUDY GROUP ON THE PROPOSED UNESCO CONVENTION ON UNDERWATER CULTURAL HERITAGE

UNESCO is considering a proposed convention on Underwater Cultural Heritage which will impact upon the commercial activities of various entities in the United States, including salvage, fisheries, offshore oil exploration, marine insurance and underwater cables. On June 10, 1998, I submitted a letter to the State Department expressing the position of the Association on the Draft Convention. Our suggestion to include a member of the Association as a delegate was not accepted. The first session of the Draft Convention took place in Paris in June 1998. The next session is expected to take place in mid April 1999. We have reiterated our position to the State Department offering to send a member of our Association as a technical advisor to the United States delegation.

A Study Group has been formed on behalf the Association which is in the process of formulating a position and recommendation to the Officers and Board of Directors. This will be presented at the Board Meeting in New Orleans. Members of that committee are as follows:

Chairman - John Kimball
Sanford Balik
Lawrence Brennan
Marilyn Lytle
Prof. Samuel Menefee
Richard Robol
James Shirley

Vice Chairman - Prof. David Bederman
F. Bradford Stillman
William Storz
Capt. Rand Pixa
Guy Maitland
Peter Hess

We have also attempted to coordinate the significance of this Draft Convention with other maritime law associations, who have expressed their appreciation to the Association for bringing this issue to their attention. They will deal with their governments with regard to this Draft Convention.

III. COGSA PROPOSAL

I refer again to the report in my August 1998 Newsletter. There has been substantial work by the steering committee of the Carriage of Goods Committee under its Chair Vince DeOrchis. The proposed Bill has been redrafted by the Senate Committee Staff and is almost in final form. The remaining issues are being resolved by Professor Sturley and the members of the subcommittee's working group. A copy of the Bill was enclosed with my Newsletter. I expect the Carriage of Goods Committee to submit copies to its members at the May Meeting. We again encourage you to review the proposed draft. In the event you have any questions, we urge you to call upon the Chair of the Carriage of Goods Committee or members of the steering committee, who are the following:

William J. Augello
Karyn Booth
George F. Chandler, III
Raymond P. Hayden
Chester D. Hooper

Marilyn Lytle
Howard M. McCormack
James F. Moseley
Jon Roethke
Michael Sturley

Some of the members of the Subcommittee, particularly Chet Hooper, Michael Sturley and Vince DeOrchis have been meeting with various other groups and entities both in the United States and abroad, in an attempt to answer any questions or explain any provisions of the Act. Vince DeOrchis and Chet Hooper were in London in November 1998 attending the CMI Carriage of Goods Study Group and had the opportunity to meet with various groups including P&I Club executives and others to explain any questions that had arisen. Vince DeOrchis was also invited by the Finnish Maritime Law Association in the latter part of last year to explain to that Association the provisions of our proposed Bill and

answer any of their queries. In addition, members of the Study Group have been meeting with representatives of the American Waterways Operators (AWO) and others within the maritime industry in the United States to respond to their questions and comments. We are attempting to resolve all of the remaining issues as expeditiously as possible.

As previously advised, there have been concerns expressed about the Proposal, primarily from groups outside the United States. It appears that we must continue our educational efforts in order to assuage any concerns of our colleagues abroad about their perceptions of extraterritorial effects of the Proposal, which are not accurate. Toward that end, some members of our steering group have responded to various letters from FIATA in Europe and in Canada, to AWO, to the CMI and to various other entities abroad as well as to members of other organizations in the United States. At the meeting in November, the representatives of FIATA were invited to attend the Carriage of Goods Committee. They had a full opportunity to express their views to the members of the Committee. Subsequent to that, there has been an exchange of correspondence among members of the steering group and FIATA and others.

On behalf of our Association I want to express my appreciation to those members of the steering group who have spent untold hours in their assistance to their Association in dealing with these substantial comments, questions and the objections raised to the Proposal, which we believe have been fully and completely answered by our Association. We are optimistic, based upon our discussions with the Senate and House staff who would be involved in this proposed Bill, that we will be in a position to submit the Proposal to Congress sometime in the late Spring of this year. We wish to assure our members that all steps that could possibly be taken to respond to any and all comments, questions and suggestions have been undertaken by the steering group and their colleagues, for which we owe them a debt of gratitude.

OTHER INTERNATIONAL ACTIVITIES **ARREST CONVENTION**

As this letter is being prepared Bob Zapf, the chairman of the Practice and Procedure Committee is in Geneva as a member of the United States delegation on the proposed Draft Convention on Arrest of Ships. Mr. Zapf expects to be returning to the United States and reporting to the Officers and Board of Directors at the Board Meeting in New Orleans on March 16, 1999 on the Convention activities. Mr. Zapf has worked closely with the CMI Executive as well as with the United States Coast Guard. The Coast Guard officers form the remaining part of the United States delegation. Mr. Zapf has kept them fully apprised of the position of the Association. Further details will be reported in the next Newsletter and

certainly in the minutes of the Board of Directors meeting in New Orleans in March.

SUBCOMMITTEE ON ENVIRONMENTAL CRIMES

As a result of various activities that have been undertaken by Congress as well as recent legal decisions, I have formed a subcommittee of the Maritime Criminal Law and Procedure Committee which is chaired by Charles S. Donovan of San Francisco. This subcommittee has been designated the Environmental Crimes Subcommittee. It is chaired by Fred Kuffler. The other members of the committee are: Jane Barrett, Pat Bonner, Larry Kiern, Matt Marion, and Tom Russo.

Some members of this subcommittee attended the House of Representatives Committee on Transportation and Infrastructure, and its subcommittee on Coast Guard and Maritime Transportation hearing on May 14, 1998 in connection with the Coast Guard policies and procedures for the criminal enforcement of environmental laws. A subsequent report was made to the Board of Directors by Chairman Kuffler and his colleague Tom Russo on this important activity.

The Congress has now indicated a further meeting of its subcommittee in Washington on March 24, 1999 in connection with OPA 90. We have requested Congress to permit the Association to express their views on OPA 90. Those views had been expressed in connection with two *amicus* briefs. The first had been filed with the First Circuit Court of Appeals in the Rivera case in connection with statutory recodification of Title 46 by the Coast Guard. Professor Robert Force of Tulane Law School wrote the *amicus* brief to the United States Supreme Court in connection with the BALSAs 37 matter, which involved the issue of uniformity concerning the problems of concursus between the Limitation of Liability Act and OPA 90. The Supreme Court denied the writ of *certiorari* by the BALSAs 37 interests on February 22, 1999. It is our intention to attempt to advise Congress of the position of the Association on these issues as articulated in these briefs and in the report of the subcommittee. We are awaiting advices from Congress on this point.

IMO LEGAL COMMITTEE

The 78th Session of the IMO Legal Committee was held during the week of October 19, 1998. The United States delegation was headed by Rear Admiral John Shkor, Chief Counsel for the United States Coast Guard. It also included Captain Malcolm J. Williams, United States Coast Guard, Lt. William Rospars, United States Coast Guard, Captain Derek Capezzi, United States Coast Guard, and Ms. Linda Burlington of NOAA. Also included in the delegation were Howard M. McCormack, President of the Association, and William R.

Dorsey, III, First Vice President. Four main topics were discussed, including proposed changes to the 1974 Athens Convention on Passenger Claims, the proposed convention on Wreck Removal, the proposed convention on Bunker Pollution and IMO Code on Financial Security for Maritime Claims. A detailed report to the Board of Directors and to the Association is contained in the report of our First Vice President, William Dorsey, in the Proceedings of the Fall Meeting at pages 11541 through 11544.

The IMO Legal Committee intends to work exclusively on those items and has requested comments from the United States and other delegations on these points, particularly the Athens Convention on Passenger Claims. The chairperson of our Cruise Line Committee Ann Miller, and the chairperson of the Marine Insurance Committee, Jean Knudsen, together with First Vice President Dorsey and myself, have been working on the responses of the Association to these issues. We have advised the Coast Guard delegation and have responded to the CMI in connection with their queries on these proposals. The IMO Legal Committee will meet once again in London during the week of April 19. It is anticipated that First Vice President Bill Dorsey and I will attend as advisors to the United States delegation.

ACTIVITIES OF THE PRESIDENT ON BEHALF OF THE ASSOCIATION

I have been most pleased and honored to be able to represent the Association at various activities of other maritime law associations and governmental entities since the last Newsletter report.

1. September 1998 - I attended the Houston Marine Insurance Seminar and delivered a paper on Classification Societies, Insurance Coverage and Potential Liabilities.
2. October 2, 1998 - I attended the Centenary Dinner of the American Institute of Marine Underwriters in New York.
3. October 15, 1998 - I was a speaker at the monthly meeting of the Society of Maritime Arbitrators. At their request, I gave them an overview and update on the activities of the Association.
4. On October 17, 1998 I was in Baton Rouge, Louisiana as a speaker at the Louisiana State University Personal Injury Seminar together with our Immediate Past President James F. Moseley. I delivered a paper on the issue of Defining a Vessel for Maritime Purposes.

5. October 19-24, 1998 - First Vice President Bill Dorsey and I attended the IMO Legal Committee. Both Bill and I were privileged to receive the invitation of Lord Michael Mustill, the President of the British Maritime Law Association and its Secretary, Patrick Griggs, also President of the CMI, to attend the Annual Meeting and Dinner of the British Maritime Law Association in London.

6. November 5, 1998 - I attended the New York University Law School Fourth Bi-Annual Nicholas J. Healy Lecture. I introduced the lecturer, The Right Honorable The Lord Michael Mustill, retired Law Lord of the House of Lords, who gave his lecture on Marine Insurance. It was a matter of extreme personal pride for me as President of the Association to express the thanks of the Association not only to Lord Mustill, but also to Nicholas J. Healy, my esteemed senior partner, on the occasion of this fourth lecture. The prior lecturers were Judge John R. Brown of the Fifth Circuit, Lord Justice Staughton of the Court of Appeal in London, and Judge Charles S. Haight of the United States District Court for the Southern District of New York.

7. On November 17, 1998 I was a speaker at a seminar in Washington, sponsored by the Center for Ocean Studies of the University of Virginia on the Proposed UNESCO Convention. There were other participants discussing divergent points of view on this issue. At that time I was able to present the position of the Maritime Law Association in connection with the proposed UNESCO Convention, which was the topic of the Seminar.

8. January 19, 1999 - An Officers meeting was held in Washington at the Army and Navy Club. We had the pleasure of hosting a lunch for officials from the United States Coast Guard, the United States Navy Judge Advocate General Corps, the State Department, and NOAA. This has become an annual event and we look forward to continuing these meetings in the future.

9. January 20-24, 1999 - I had the privilege of attending the Centennial celebration of the Italian Maritime Law publication *Il Diritto Marittimo* at Genoa. The meeting and seminar produced an outstanding lineup of speakers and papers. Our member Dr. Frank Wiswall, as Vice President of the CMI, gave an outstanding paper entitled "United States Domestic Law and International Connections: The Few Lights and the Many Solutions" explaining the history of United States jurisdiction and other aspects. I had the opportunity to express the position of the Association on the issue of uniformity and the continued efforts our Association was making to work toward harmony in the international sector.

10. February 5, 1999 - I had the pleasure of attending the annual Department of Justice - Pacific Admiralty Bar Meeting and Dinner in San Francisco, hosted by Phil Berns.

I congratulate Mr. Berns and his colleagues for the impressive numbers at the meeting and the excellent location for the meeting and dinner.

AIMU SEMINAR

During MLA Week in May the American Institute of Marine Underwriters will be holding a full day seminar on Marine Insurance Issues at the Marriott Marquis on Thursday, May 4, 1999. The cost is \$225 for non members and \$200 for members. If you have any interest in attending, you should contact the American Institute at 212-233-0550.

REMINDER

I again exhort everyone to try to attend the Centennial proceedings which have been the product of long hours of work by the members of our Centennial Committee under the excellent chairmanship of Ted Cunningham. We are also delighted to be able to welcome to the Centennial program the members of the Executive Council of the CMI as well as various presidents of the constituent members of the Maritime Law Associations that comprise the membership of the CMI. The CMI will be holding an Executive Council meeting as well as an Assembly meeting in New York to commemorate our Association's celebration of its Centenary. The CMI Executive Councillors and foreign MLA Officers will be invited to any of the MLA Committee Meetings that they may wish to attend. We encourage all of you to welcome them on behalf of our Association.

Sincerely,

Howard M. McCormack
President