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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING -- OCTOBER 19, 2001

PRESENT:
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RAYMOND P. HAYDEN
THOMAS S. RUE
LIZABETH L. BURRELL
PATRICK J. BONNER
WINSTON E. RICE
HOWARD M. MCCORMACK

and the following 130 members:

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Paul B. Arenas
Manfred W. Arnold
James W. Bartlett, III
Michael K. Bell
Philip A. Berns
Richard C. Binzley
Geoffrey F. Birkhead
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Carter B.S. Furr
George D. Gabel, Jr.
Albert R. Galik
John J. Gallagher
John D. Giffin
Alexander M. Giles
Robert S. Glenn, Jr.
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Donald C. Greenman
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Michael D. Hardison
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Dana Henderson
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Samuel A. Keesal, Jr.
Allan R. Kelley
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Sandra L. Knapp
Jean E. Knudsen
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Raymond T. Letulle
Peter A. Lindh
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K. H. Mao
Matthew A. Marion
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Marion E. McDaniel, Jr.
Samuel P. Menefee
Ann G. Miller
Dennis Minichello
Michael T. Moore
James F. Moseley
James F. Moseley, Jr.
Douglas M. Muller
George W. Nowell
Christina L. Owen
David R. Owen
Armand M. Paré
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Edward J. Powers
Scott T. Pratt
Donald T. Rave, Jr.
Mary Elisa Reeves
Barbara L. Ristow
J. Ramon Rivera-Morales
C. Kent Roberts
Thomas A. Russell
David M. Salentine
Robert I. Sanders
Charles E. Schmidt
Gordon D. Schreck
James T. Shirley, Jr.
Graydon S. Staring
William T. Storz
Michael F. Sturley
Lee A. Thorson

Stephen M. Uthoff
Alan van Praag
Joseph A. Walsh, II
Harold K. Watson
Jess G. Webster
Gerard W. White
James F. Whitehead, III
M. Hamilton Whitman, Jr.
Frank L. Wiswall, Jr.
Harvey I. Wittenberg
John M. Woods
Robert J. Zapf
JoAnne Zawitoski
Wayne G. Zeringue, Jr..

and the following twelve guests:

José M. Alcantara
Michael J. Bird
Graham Charnock
Roger Croft
Makoto Hiratsuka
David F.H. Marler
Stephen Martin
Pieter Ruitinga
Richard J. Sayer
David W. Taylor
Tim Taylor
Robert Wallis

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[12938]

A Service of Commemoration and Remembrance for the Attacks on America

Held at Coronado, California
on October 17, 2001 at 9:00 A.M.

PRESIDENT DORSEY: Ladies and gentlemen, I'd ask you to take your seats, please. I want to try to get started as close to on time as possible. Has everybody gotten a program? Because we're going to call on you to do a little singing this morning, and I want to make sure you know the words.

Let me start off by saying thank you for coming. We're going to begin our service with Bette Cohen leading us in three verses of "America The Beautiful." I know the first verse. Everybody knows the first verse, I guess. But the second and third are, perhaps, not quite so familiar. They're in your program.

If Bette is ready, I would ask you all now to stand and rise and join in the singing of "America The Beautiful."

(Singing of "America the Beautiful.")

PRESIDENT DORSEY: Thank you.

New York Mayor Rudy Giuliani, quoting from Charles Dickens, referred to September 11 and its aftermath as the worst of times and the best of times. Certainly he is right in calling it the worst of times. The horror and the carnage of September 11th have left wounds from which we will not soon recover.

The impact on our membership, on our Association has been significant. First, of course, is the fact that we have lost two members of the immediate MLA family. One is Glenn Winuk. He was Chet Hooper's partner in the firm of Haight Gardner Holland & Knight.

The second is Maureen Rene Olson, wife of member John Olson, Ray Hayden's and George Chandler's partner at Hill Rivkins & Hayden.

I'd like to say a few words about both Rene and Glenn.

Rene was a vice-president for Marsh Mac with an office on the 96th floor of Tower One of the World Trade Center. She was there when the plane hit that tower. She was 50 years old, the mother of two children, Christopher, 19, and Maeve, 17.

She loved working in New York City. Indeed, she loved almost everything about the city and wanted to live there when her children had left the nest. My wife and I had dinner with Rene and John in Singapore at the CMI meeting this past February. She was a charming person to be with. Very interesting, friendly, outgoing and cheerful. But perhaps her teenage son paid her the best compliment when at the memorial service in her honor he described her as a cool mom.

Glenn Winuk was in Haight's litigation department, and Chet Hooper describes him as a bulldog in the courtroom. For those of you who don't know it, his story is unique.

He was a volunteer fireman and had been a fire commissioner in Jericho, Long Island, where he lived. In addition, he was trained in rescue work and had assisted in rescue efforts when the World Trade Center was bombed in 1993.

On September 11th, upon the evacuation of his building at 195 Broadway, Glenn got a mask and a pair of gloves from a passing firefighter and set off toward the World Trade Center to help with the rescue. He has been missing ever since. He is truly an American hero.

We mourn the loss of Rene Olson and Glenn Winuk, and our hearts and our prayers go out to John, Christopher and Maeve Olson, and to Glenn's parents and brother.

Our loss is not limited to those in the MLA immediate family. Many, if not all, of our New York members have friends, acquaintances, business colleagues, clients, and others who perished.

The World Trade Center contained the offices of many in the maritime community: law firms, insurance companies, the America Bureau of Shipping, New York Port Authority, and many others. At least three members of the United States Average Adjusters Association–Bob Colin, Bill Miller, and Bill Wilson–are missing.

K.H. Mao, who, thank heavens, is with us here today, has lost several hundred of his AON co-workers who were in their offices at the 102nd floor of Two World Trade Center.

In short, the ripple effect is staggering. I dare say that all of our members in New York were touched in some way and suffered the loss of friend, neighbor, or business colleague. I'm sure the same is true for many of us who do not work in New York.

In addition, the loss of life at the Pentagon affected those of us who work in Washington and who work with the dedicated men and women of our armed services and government.

Let's remember that not all the victims of September 11th were Americans. As President Bush indicated, citizens of 80 other nations died with our own, including hundreds of British citizens and men and women from China, Japan, Australia, New Zealand, Spain, Canada, Italy, just to name a few. This truly was international terror.

As do all Americans, we mourn the loss of all the victims of these unforgivable acts.

Of course, the impact of September 11th extends even beyond the death of family, friends and colleagues. Think of the impact on those who survived but who were at or near the scene and who witnessed all or part of the aftermath. I'm sure that you have all read the chilling descriptions of the survivors and eye witnesses. There's no need to repeat those here today. Needless to say, the effect of this on those involved was traumatic and has left scars that will not easily heal.

Then there is the appalling destruction of the offices themselves: Thacher Proffitt, Hill Betts, Richard Zimmerman, Bob Phillips, Martha Adams, K.H. Mao, our members at Fireman's Fund. Their offices, all destroyed. Hill Rivkins' office, not in the World Trade Center but nearby, totally gutted. Almost everyone with offices in lower Manhattan had their work totally disrupted for a week and some much longer. Some of that still continues today as we speak.

In addition, those members who had homes in the lower part of Manhattan, like Alan van Praag or Mark Jaffe, Sheldon Tabak, were forced to leave their homes and take temporary living quarters in motels in New Jersey or wherever they could find shelter, sometimes without even a toothbrush in their hand.

Alan Van Praag and Lynn Van Praag are with us this week. They still are not in their home and may never get back to their home. They're living in the Waldorf Astoria. Sounds glamorous, but it isn't home.

So there is little doubt about the worst of times.

What about the best of times? How can it even be considered? Is there any aspect in all of this for which we can be grateful?

Well, first is the fact that with the exception of Glenn and Rene, all the other members of the MLA, both in the World Trade Center and the surrounding buildings, survived. Certainly a miracle. Certainly something for which we should be grateful and give thanks. Indeed, given the fact that 20- to 22,000 people worked in the twin towers, and that an additional 20,000 worked in the World Trade Center complex, and that many more visited these buildings every day, walked by them every morning, it's truly remarkable that so many survived.

In addition, it could be said, I think, without contradiction, that the response to this tragedy by the New Yorkers, Washingtonians and others throughout our country has brought out the very best in people.

The courage of firefighters, policemen, rescue workers like Glenn Winuk, those on Flight 93 is truly thrilling. The quiet courage of those who were on planes heading for Washington and of those who were trapped in their offices in New York who made cell phone calls to their loved ones is heartbreaking, but it's also inspirational.

The response of the New York MLA members to the plight of their colleagues who lost their offices, their files, their records is no more than I expected, but no less gratifying and has made me more proud than ever to be a member of this Association.

And then there is the support and sympathy from abroad. Who among you was not moved by Tony Blair's eloquent and unequivocal support? Or when you heard that "The Star-Spangled Banner" was played during the changing of the guard at Buckingham Palace and on the streets of Paris and at the Brandenberg Gate?

All of us have received many notes of concern, sympathy and condolence from abroad. I've received messages from the presidents of the CMI, the Spanish, Irish, Israeli, Canadian, Japanese, Chilean, Italian, Hong Kong, and Pakistani maritime law associations, as well as from representatives of the Australian, New Zealand, German, Panamanian, and South African maritime law associations. These messages are heartwarming and a great source of encouragement.

Some of those who wrote or called me are here today. To you and to the others who have come from abroad to attend this meeting, I express my appreciation and gratitude for your words of sympathy and condolence.

On behalf of the Association, we thank you for your support, but particularly for your friendship.

So I think Mayor Giuliani got it right in noting that in these difficult times, the best in people often emerges.

The decision to go forward with this meeting was not, in my view, a difficult one. Nervously made, perhaps, but not difficult.

President Bush, Mayor Giuliani, and all our leaders have asked us to get on with our daily lives and our businesses. In a small way, we can answer that plea by continuing with our business here in California.

There's another side to this as well, of course. Mayor Giuliani asked everyone in New York to go out and spend some money, go to a restaurant, take in a show. You have already responded to this plea to spend money just to get in the door here, and I'm sure the hotels and restaurants of Coronado and San Diego will give you ample opportunity to do more of that while you're here.

The point–and I think that you all demonstrate by your presence here your agreement–is that we should not and we will not be cowed by evil fanatics in the disruption of our lives and our work.

I know that for many of you it was not easy to attend this meeting, but I truly believe that just by being here, by seeing old friends and meeting new, by doing our business, by sharing a drink or a meal together, we thumb our nose at the terrorists, and we help each other deal with the trauma of September 11.

In that spirit, we will shortly commence our first business session, the meeting of the Carriage of Goods Committee, as scheduled. But before we do, I'd like to call on Winston Rice to close our program.

Thank you.

(Applause.)

MR. RICE: May the words of our mouths and the meditations of our hearts be always acceptable to you, Father God, our only strength and our only redeemer.

Hear the words of the Prophet Isaiah from Chapter 59 of his book beginning at the sixth verse.

> Their works are works of iniquity,
> and deeds of violence are in their hands.

Their feet will run to evil,
and they rush to shed innocent blood;
their thoughts are thoughts of iniquity,
desolation and destruction are in their highways.

The way of peace they do not know,
and there is no justice in their paths.
Their roads they have made crooked;
no one who walks in them knows peace.
Truth is lacking,
and whoever turns from evil is despoiled.

The LORD saw it, and it displeased him
that there was no justice.

He saw that there was no one,
and was appalled that there was no one to intervene;
so his own arm brought him victory,
and his righteousness upheld him.
According to their deeds, so will he repay;
wrath to his adversaries, requital to his enemies . . . .

Now, if you wish, please join me in reading from Psalm 140 found on page 3 of the program you received this morning.

Deliver me, Lord, from evildoers;
protect me from the violent,
who devise evil in their hearts
and stir up strife all day long.

Keep me, O Lord, from the hands of the wicked;
protect me from the violent,
who are determined to trip me up.

Do not grant the desires of the wicked, O Lord,
nor let their evil plans prosper.

Surely the just shall give thanks to your name;
the upright shall dwell in your presence.

Finally, we paraphrase the words of Abraham Lincoln, with whose historic address at Gettysburg you're all familiar and whose words, with but minor adjustment, remain so applicable to these modern times:

> Two centuries ago our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal.
>
> Now we are engaged in a great global war, testing whether that nation or any nation so conceived and so dedicated can long endure. We have witnessed great battlefields of that war. We pause now to mark the loss of thousands of innocent victims and their rescuers. We and the world will never allow them to be forgotten. It is left for us the living to be dedicated to the great task remaining before us, and we here highly resolve that these dead shall not have died in vain, that this nation under God shall have a new birth of freedom and that government of the people, by the people, for the people shall not perish from the earth.

Now please join with me in our closing prayer on the last page of the program, if you wish.

> May God bless and save The United States of America and all peace-loving peoples of this world. May God further bless us with his mercy, strengthen us with his love, and enable us to walk in charity and peace with our fellow man.
>
> Amen.

Now Bette Cohen will give us some music and then ask us to join with her, following which our President has a couple of closing announcements.

(Singing of "God Bless America.")

(Time noted: 9:22 o'clock a.m.)

PROCEEDINGS

PRESIDENT DORSEY: I'll ask you to begin taking your seats, please. There are plenty of seats up front, and I promise that I'm not going to call on you just because you're sitting up front.

Good morning, ladies and gentlemen. I'm going to get underway here. Just a couple of brief announcements.

In the back of the room is the latest edition of MLA Report. This is a special edition devoted solely to the publication of the Marine Protection and Indemnity Policy Annotation Project. This collects in one volume annotations to the primary provisions of the most frequently used U.S. marine P&I policy forms. It's quite a work. A lot of effort went into it, and this is the result. Copies will be mailed to all members, but there are extra copies in the back of the room for those of you who want an extra copy and, of course, for our friends from abroad. Also in the back of the room, if you want a little light bedtime reading, is my summer/fall Newsletter guaranteed to bring on sleep after about five minutes. Again, that's on the website. It is also mailed to all members and to the presidents of the Maritime Law Associations throughout the world, but not mailed to all the foreign guests that we have here today. So that's there if they'd like it.

We'll open the meeting now with a report from our Secretary.

MS. BURRELL: Good morning, Mr. President, members and guests. I would first like to mention two administrative matters. One is that there are blue cards in the back of the room. I urge you to sign one of these cards so that your attendance can be reflected in the Proceedings of this meeting.

The other item is that every speaker should give a business card to the reporter so that she can get your name right and I can then send you the portions of the transcript that reflect your remarks so that you can make sure that they are accurate.

The Board met on August 3 in New York by telephonic conference and also on Tuesday and this morning here at the Hotel del Coronado. We heard reports from the officers and from several Committees, some of which you'll get directly from their sources a little later this morning, so I won't duplicate those here. Our President, however, will not be describing his many efforts on behalf of this Association; so I'll tell you a little bit about some of them right now. They are more amply reported in the

President's Newsletter which is not only available on the tables in the back but also on our website.

Among the President's activities was his attendance at the Canadian Maritime Law Association meeting at which that Association celebrated its 50th anniversary. President Dorsey was joined by Immediate Past President Howard McCormack and Past President Jim Moseley as well as First Vice President Ray Hayden. In an effort to reciprocate some of the kindness and recognition that they showed us at our Centennial, our Association hosted a reception and presented a banner in honor of the Canadian Maritime Law Association's 50th birthday.

In addition, President Dorsey attended the Average Adjusters meeting in London in May, and also the SEALI conference in June at which he spoke about the *Cammon* case, which I'll mention a little later in connection with our *amicus* activities.

President Dorsey also attended the Coast Guard's Shipping Coordination Committee meetings in both July and August which centered on the draft protocol to the Athens Convention, which was also the subject of some of Steve Martin's very insightful comments at yesterday's seminar and will be fully discussed later today in the report of the Cruise Committee by its Chair, Ann Miller. In addition, President Dorsey gave a paper at the Houston Marine Insurance Seminar on the subject of the Athens Convention draft protocol.

The Association continues its extensive activity in the international arena. A major topic, in which we're very heavily involved and which was dealt with very comprehensively at the Wednesday meeting of the Carriage of Goods Committee, was the present draft of the CMI International Sub-Committee on Issues of Transport Law. I'll leave a discussion of that draft and its status to Michael Sturley and to Don Greenman who will be reporting on the activities of the CMI International Sub-Committee activities and the Association's Carriage of Goods Committee. This morning at its meeting the Board approved a position paper which will be forwarded to the CMI commenting on the current UNCITRAL draft document on transport law.

Another international activity the CMI project headed by Francesco Berlingieri to collect cases from all over the world that interpret maritime conventions. Dr. Berlingieri has requested that anybody who knows of a case that interprets a maritime convention to forward it to him so that he can include it in this study. Having mentioned Dr. Berlingieri and the CMI,

I should like to add that not only has this Association received letters from other national maritime law associations expressing their sorrow and sympathy concerning the events of September 11th, but also that Dr. Berlingieri has advised President Dorsey that for the next year on the 11th of each month there will be a memorial mass, a special mass, held at his church, St. Marta's, in remembrance of the victims.

We continue to act as advisors to U.S. delegations to the IMO Legal Committee which met during the week of October 8 in London. The main topic was the draft protocol to the Athens Convention. Before that meeting of the Legal Committee, the Cruise Committee of this Association had gathered comments and made recommendations to the Board after which President Dorsey prepared a position paper based on industry reaction and the historical concerns of this Association which was sent to the Coast Guard in an effort to shape the views of the U.S. delegation. At the same meeting of the IMO Legal Committee, the IMO/ILO resolutions on repatriation and contract claims of seafarers was also passed. Work on a convention on offshore mobile craft was taken off the agenda of the IMO Legal Committee because of more immediate concerns with work on places of refuge and suppression of acts of terrorism.

The Board also received a comprehensive and very thoughtful report from John Kimball on the July meeting of the Joint International Group of Experts considering the UNESCO Convention on Underwater Cultural Heritage. John is not only Chair of the Association's Study Group on Underwater Cultural Heritage but also the rapporteur of the CMI's Working Group on this subject. John's report, by the way, is also available in full on our website. The Association has already criticized the provisions of the draft UNESCO Convention on Underwater Cultural Heritage because it would abrogate the law of salvage and finds and oust the courts of jurisdiction over objects that have been underwater for more than 100 years. It would deny recognition of any kind of commercial usage of recovered artifacts. Its definition of "underwater cultural heritage" is overly broad. In addition, that draft Convention would potentially conflict with the Law of the Sea Convention.

John Kimball reported that the Working Group has finished its work and that a vote was taken, which in and of itself is a departure from the custom in drafting conventions in which consensus is usually sought to approve the draft. Maritime nations don't support this draft, but because of the composition of UNESCO, there will be no review of this Convention by the United Nations Security Council. Mr. Kimball noted that there may be some attempts to modify the language of the current

draft before it goes to the U.N. General Assembly, but there won't be any diplomatic conference prior to its submission to UNESCO.

The U.S. delegation's main objection to the current draft is its extension of coastal state jurisdiction to the exclusive economic zone out to the continental shelf which is, as I mentioned, regarded as a potential violation of the Law of the Sea Convention. Other problems exist in the ambiguity of jurisdictional provisions, but proponents of the draft have argued that this ambiguity is both constructive and desirable in that it would leave states which became parties to the Convention free to interpret its provisions in a very, very flexible manner. Of course, that would defeat the purpose of most conventions which is to achieve uniformity throughout the signatory nations on how these matters will be treated.

The current draft is in direct conflict with virtually all of the positions taken by the Association, and the Association was encouraged by Mr. Kimball to continue its work with the U.S. government in the valuable objective of trying to protect underwater cultural heritage but in a way that is more consistent with the recognition of other rights.

Moving on to domestic issues, with the endorsement of the Board, Past President Chet Hooper, our delegate to the ABA's House of Delegates and also the Chair of our Committee on the ABA supported a resolution making unpublished opinions generally available and permitting their citation. That resolution passed in the ABA House of Delegates. On the other hand, the Ninth Circuit has just decided that you can't cite to an unpublished opinion; so this will remain a very uncertain area and one that will continue to concern us.

Past President Hooper also reported on the status of the new COGSA proposal, but, again, that will be covered in a later report.

The Electronic Communications and Commerce Committee, chaired by Glen Oxton, is studying issues arising from the court's increasing use of electronic filings which is definitely raising some interesting problems for practitioners.

The Environmental Crime Subcommittee, chaired by Fred Kuffler, authored a position paper to be forwarded to government officials noting the Association's recommendations, which have received Board approval over the past few years, concerning environmental crimes. The Board approved the position paper, and the Subcommittee will now formulate a plan for approaching relevant government agencies to express the

Association's concerns with the current state of the law. The paper reiterates the Association's longstanding positions that OPA was intended to prevent pollution and facilitate its cleanup rather than to promote criminal prosecutions, and that the current state of the law, which criminalizes negligence, interferes with investigations, discourages voluntary disclosures and cooperation during investigations, and hampers businesses in their efforts to discover what really went on so that they can take corrective action and make sure that these same conditions do not occur again.

Consistent with the resolution proposed by the Fisheries Committee and adopted at the General Meeting last May, a statement was forwarded encouraging the deferral of the effective date of the American Fisheries Act. The resolution proposes a deferral to allow development of amendments to protect current holders of preferred ship mortgages on fishing vessels 100 feet and over as well as the interests of their registered owners. That effective date has now been extended to permit for development of appropriate amendments.

In the area of Navigation, Coast Guard and Government Regulation, President Dorsey reported that in June, Representative Green introduced a new bill in the House entitled the Maritime Disaster Family Assistance Act. The proposed legislation would delegate to the Secretary of Transportation certain duties to assist families of victims of maritime disasters and would also prohibit certain parties from contact with families of victims for the purpose of soliciting lawsuits within 45 days of the disaster.

In the area of Practice and Procedure, pursuant to the Association's resolution at the May meeting, President Dorsey forwarded to the Advisory Committee on Federal Rules the Association's position that Rule B should be clarified so that the time for determining when the defendant is not found within the district should be the time that the complaint is filed. Association member Mark Kasanin, has had his term on the Advisory Committee extended, no doubt because of his invaluable contributions and expertise on maritime procedure.

Pursuant to the Association's action at the May meeting, President Dorsey forwarded to the State Department our resolution recommending denunciation of the 1910 Salvage Convention.

Of course, Tony Whitman, who chaired the Planning and Arrangements Committee for this meeting, reported frequently to the Board about all of the work that was being done to prepare for this meet-

ing. I think that the splendid time that we've all had here is, in and of itself, a sufficient report on the success of all of those preparations, and I would like to say thank you to all members of the Committee right now.

We've also had *amicus* requests over the past several months. Most of them have been denied consistent with the Association's general policy of authorizing such briefs sparingly. Indeed, the wisdom of that approach was illustrated in connection with *Cammon*. That case involved a fall by a worker on a floating platform, possibly caused by the surge of a passing tug. The court had denied defendants' motion to dismiss a claim brought under the state labor law, and defendants planned to petition for *certiorari*. We declined to participate as *amicus* on the basis of the procedural status of the case. President Dorsey, however, asked the parties to keep him advised of the progress of that case. Subsequently we learned that the defendant had been unable to satisfy the Supreme Court's finality doctrine and, therefore, wasn't going to file a petition for *certiorari*, showing that our reticence to join in was justified in that case.

The Association did, however, file an *amicus* brief in the case of *U.S. Titan versus Guangzhou Zhen Hua Shipping Company*, because of the very unusual circumstance that the Second Circuit, on a petition for rehearing *en banc*, asked for *amicus* briefs from maritime law and trade organizations. The sole issue on the petition for rehearing was whether or not the Second Circuit should overturn its prior precedent in *Great Circle Lines*, in which the court had held that a fixture sub details always constitutes a binding charter. President Dorsey expressed the appreciation of the Association to Don Kennedy, who is Chair of the Committee on Maritime Arbitration and Mediation, for the Committee's recommendations which were formulated on a very, very expedited and pressured basis, and to board members Jay Paré and Vince DeOrchis and Committee member Keith Heard for their efforts in writing the brief. A copy of that brief is available on the website.

As you may have noticed from my many references to our website, it has been much improved. It has now a "What's New" section, as well as having a more extensive library and many, many valuable elements that I think you will find of great use. I urge you to visit the website and explore its many features because it will become increasingly a method of communication for this Association.

The last official item on my report is to offer congratulations to immediate Past President Howard McCormack who has been nominated to chair the Average Adjusters for the coming year.

Finally, on a personal note, I would like to thank President Dorsey and Winston Rice and Bette Cohen for the fine commemorative service, which was very moving and very appropriate. I would also like to thank all of the members of the Association. As a New Yorker, I must say it has meant a great deal to me to hear your sympathy, your sorrow, and your support. I'm sure that I speak for everybody who was nearer to these events geographically when I say, "Thank you very much."

Mr. President, that concludes my report, and I respectfully move its adoption.

PRESIDENT DORSEY: Is there a second? (Chorus of seconds.)

PRESIDENT DORSEY: All in favor say aye. (Chorus of ayes.)

PRESIDENT DORSEY: Opposed? (No response.)

PRESIDENT DORSEY: The motion is carried and the report is adopted.

Thank you very much, Liz.

You can see why Liz is an indispensable treasure to this Association. She's got a mind like a steel trap, and she articulates things better than–I mean, I wish in my wildest dreams that I could articulate things the way she does. She also has other talents that weren't really expressed or shown from her report that had to do with the Canadian Maritime Law Association meeting and the banner that we gave as a present to the CMLA because it was Liz who essentially designed and oversaw the manufacture or the production of that banner. So she's a woman of many talents, and I don't know what I would do without her. Thank you, Liz, very much.

I might add one other thing in connection with her comments about the UNESCO Convention on Underwater Cultural Heritage, which is to report that Patrick Griggs, President of CMI, has written to the director general of UNESCO advising him that he could see no possibility that the CMI would be able to support the draft Convention in its current form. We aren't the only ones that are rattling the sword about that Convention, and I'm glad to see the CMI take that position.

Now we'll have the report from our Treasurer.

MR. BONNER: Thank you, Mr. President.

As someone who works near the World Trade Center, I'd like to echo Liz's thanks to you all for your sympathy and understanding and inquiries.

Today the MLA has assets of about $135,000. Last year at this time we had assets of about $200,000; so we're about $65,000 down. There are a number of reasons for this.

The general treasury loaned about $33,000 to Coronado Committee as seed money for this meeting, I expect to get that back.

Our printing costs have continued to increase. We are looking into ways of reversing this trend, and we may be using our web page more to reverse the increases on both the printing and the postage.

We also had expenses due to the CMI meeting in Singapore, and we've had additional travel expenses which continue over the past few years for various international projects, such as the CMI Transport Law, UNESCO, and various other ones. However, I'd like to assure you that we do have sufficient assets to fund and operate and to maintain all of our activities and to fulfill all of our goals.

We are continuing our efforts to weed out those who do not pay dues. Last year we struck many members from the rolls. In fact, we sent out $17,000 less in invoices this year than we did last year. That's how many people that we dropped from our organization for nonpayment of dues. However, our dues collection this year has equaled last year's, so we haven't lost any money due to this. We're in the process of sending out a lot of letters to people who owe dues, and if you do get a letter signed by me, you should answer it. Answer it with a check, or else you may find that you're not a member of the organization.

Finally, we had our annual audit by a national accounting firm in the summer. They come to my office and they spend a few days looking through the books. I'm happy to say they found nothing amiss. Please let me know if you'd like to read a copy of our audit. It's really fascinating, and I'm sure you'll all really enjoy it.

Mr. President, this concludes my report, and I move for its adoption.

PRESIDENT DORSEY: Thank you, Pat. Is there a second?

(Chorus of seconds.)

PRESIDENT DORSEY: All in favor of the motion, please say aye.

(Chorus of ayes.)

PRESIDENT DORSEY: Opposed? (No response.)

PRESIDENT DORSEY: The motion is carried, and the report is adopted. Thank you, Pat. You'll understand now the reason why there are no coffee or bagels in the back of the room here.

Membership Secretary Winston Rice.

MR. RICE: Thank you, Mr. President.

As of a week ago, the membership of this Association was 3,327. At its meeting on Tuesday, and ratified earlier today, the following five associate members were elevated to the status of proctor. That would be Mike Armitage of Long Beach, Susan Dorgan of New York, Grady Hurley of New York, Brett Kelly of New York, and David Smith of Beverly.

In addition, the Board approved my recommendation for admission to associate membership of thirteen new members as well as the new nonlawyer members Paul A. Smith of New York, Bob Toney of Fort Lauderdale, and Stephen Gillen of New York.

I regret to advise that since the last General Meeting of the Association in New York, I've learned of the death of the following among our membership: Professor Charles Black of New York; James Dixon of Miami; Sam Levinson of Seattle; Donald Rogers of New York; Judge Thomas of Cleveland; Thomas Ward of Staten Island; Glenn Winuk of New York; and Judge Caleb Bright of Wilmington, Delaware.

At this point in my report, Mr. President, I'd like to ask that we observe a moment of silence in memory of these members who have passed as well as for the victims of September 11 and those whose lives were closely linked with theirs. (A moment of silence.)

MR. RICE: Thank you.

So, Mr. President, with these activities, it appears that we have been somewhat successful in replenishing our membership ranks at the bottom in replacement of those at the top who our Treasurer has flushed out by means of expulsion for nonpayment of dues, as well as ordinary attrition due to deaths and withdrawal from practice. With the actions I've previously reported, our membership numbers as of this morning stand at 3,348. I ask that this formal part of my report, Mr. President, be received and approved.

PRESIDENT DORSEY: Is there a second to that motion?

(Chorus of seconds.)

PRESIDENT DORSEY: All in favor of the motion please say aye.

(Chorus of ayes.)

PRESIDENT DORSEY: Opposed?

(No response.)

PRESIDENT DORSEY: The motion is carried and the report is adopted.

MR. RICE: Mr. President, I have a few more membership-related matters, if I may.

PRESIDENT DORSEY: Sure.

MR. RICE: The directories have been mailed. We unfortunately received return from the United States Postal Service of about 100 directories, the address information on which was blurred beyond recognition. We have absolutely no way of knowing to whom these directories were addressed and for whom they were intended. If you have not by now received your copy of the 2001-2002 Membership Directory, please call 1-800-MLA-LIST, that's 1-800-MLA-LIST, and ask that you be sent another copy of the directory.

In spite of the fact that we continue to stay ahead of attrition in our membership numbers, we would like to attract even more members, especially those who represent plaintiffs, personal injury and death plaintiffs, among whose numbers we have not enough, quite simply. So if you're taking a deposition with someone, please let them know that they should apply for membership and see our website for information on how to do that.

Chet Hooper has asked me to announce that there will be a memorial service for Glenn Winuk held this coming Wednesday, October the 24th, at 2:00 o'clock in the afternoon. The service will be held at what used to be called Park Avenue Synagogue. I think it may still be called that, but it also may have another number. In any event, it's on East 85th between Park and Lexington Avenues. If you would be kind enough to send Chet an e-mail if you plan to attend so he could insure that there will be adequate seating and arrangements to be made for that.

Additionally, Ann Miller, Chair of the CLE program at this meeting, has asked me to remind you of the need to submit your forms so that you can get credit for your participation in the CLE event. In connection with this, Ann is present this morning at the back of the room. She will be here only until 11:00 o'clock at which time she has a professional matter requiring her attention. In any event, you can see her for a form for completion if you haven't already, and I urge you so to do. Additionally, there are extra copies of the CLE booklet which was prepared, and you may want to pick up an extra one or two of these for submission to your respective states for approval of your CLE credits.

Finally, there is, across the way over there in the Garden Room where you registered, a lingering stock of significant haberdashery items which we, from time to time, have to offer to our membership and others consisting of ties and burgees, fantastic MLA bow ties, as a matter of fact, which are suitable for wear with your tuxedo when you're attending formal affairs. They can either be blue or crimson as these are, and I commend them to you. There have been significant reductions in our prices, and if you don't like our reduced price, make an offer.

Mr. President, this concludes my report.

PRESIDENT DORSEY: Thank you, Winston.

You didn't know you were going to get a commercial when you came today. Winston is in charge of our directory, and the new directory recently published got out in record time. I think it was published in the fastest time in my memory, and that is almost completely due to Winston's efforts. So, Winston, thank you very, very much. If Tony Whitman is here, could you come up and give a quick report.

MR. WHITMAN: Thank you, Mr. President. I have a couple of items to report, but before I go on to those, let me simply say thank you to all of you who have attended in these uncertain times. It makes the effort that the Arrangements Committee has gone to worthwhile to see everybody show up here.

We had in excess of 300 attendees and in excess of 250 of those are expected at the dinner dance tonight; so we look forward to seeing you then. The CLE programs, as Winston mentioned, are on the back tables. Feel free to take one even if you don't need it for CLE certification. We'd be happy for you to take those home to those in your firm who may not have been here. It does save us some effort so that we don't have to offship everything to Bob Parrish.

Secondly, there are changes in the dinner dance seating on account of last-minute no-shows and people who have arrived and people who have changed their mind. So I would urge everyone, please, to stop into the garden room across the way between 3:00 and 5:00 this afternoon when the registration is open to double-check your table assignment because many of those will have changed. Third, a pair of sunglasses was found at Seaworld. If they belong to you–sunglasses in a nice sunglass case–they also are in the garden room, as well as photographs taken by Chet and Stephanie Hooper of the finish line of yesterday morning's fun run. Even if you weren't a participant in the fun run, you will enjoy seeing those photographs which are spread out. Please take the photographs of yourself.

PRESIDENT DORSEY: Well, some of us may enjoy seeing those photographs.

MR. WHITMAN: There are also, in addition to the ties which Winston mentioned, there are bags, the Coronado bags this year, and other items which are there for sale below cost at this point. Please feel free to stop in.

Finally, the officially sanctioned MLA secretarial gift, for anyone who is interested in taking a gift home to his or her secretary, is this lovely porcelain dish which was prepared. It is the lady's gift in your registration package. Comes gift-wrapped already so you can take it on home. It does not say "MLA 2001," nor does the bag, so that they are suitable for gift giving on any occasion. We hope that people will feel free to stop over and pick some up. Thank you very much, Mr. President. (Applause.)

PRESIDENT DORSEY: Thank you, Tony. The Arrangements Committee work is always difficult at best, but this year, of course, made even more difficult because of the circumstances, late-minute changes, the uncertainty of things, and what have you. So I think we owe a special debt of gratitude to the Arrangements Committee. I would like to call the names of the Arrangements Committee, and I just ask them to stand in place so we can give them a round of applause after I've announced all the names.

Of course, Tony and Susan Whitman; Bob and Forrest Parrish; Geoffrey and Maridy Birkhead; Chris and Lisa Carey; Bobby Glenn; Jeremy Harwood and Mary Ann Cate; Ann Miller; Dennis and Janine Minichello; Jim and Heather Moseley; Doug and Mary Muller; Tom and Mary Russell; Bob and Gail Sanders; Charlie Schmidt and Phyllis J. Kubey; Gerry and Laura White; and JoAnne Zawitoski and Guy Fernandez.

Troops, you've done a great job. Thanks a lot. While I'm in the thanksgiving mode, I'd like to say a word about our seminar speakers: Ann-Michelle Higgins, Mark DeLangis, and Dana Henderson, the young lawyers. They did a terrific job, and the feedback we're getting from the attendees at that seminar is quite heart-warming.

Jean Knudsen, who came on very short notice, a special word of thanks. A special tribute to our speakers from abroad: David Taylor, Steve Martin, and Derek Luxford. You've added another dimension to our meeting for which we are very grateful. I'm particularly grateful that David Taylor, who was not so sure whether this meeting was going to be in Santiago or San Diego, was able to find his way.

Also a word of thanks to Bob Conner and our, what I call, the gang of four–Chet Hooper, Michael Sturley, Vince DeOrchis, and George Chandler–for providing us with very interesting insights on the Carriage of Goods issues. I'm sure those of you from abroad found it interesting to hear about some of the domestic aspects of the industry and how it works and what impact it's going to have. Good news, I think, for CMI–and I think good news for the U.S. Maritime Law Association–because many of the positions that NIT League and the World Shipping Council are espousing, or are going to espouse, follow very closely our COGSA bill.

We have here many distinguished visitors from abroad. I can't introduce all of them, but I do want to give special recognition to Patrick Griggs, President of CMI. Patrick, do you want to say anything?

MR. GRIGGS: I'd like to, if I may.

PRESIDENT DORSEY: Please do.

MR. GRIGGS: Thank you very much, Bill. I presume to say a few words of thanks on behalf of your–you've described them as friends from abroad. I think that's a very nice and appropriate way to refer to us. I had a quick count at breakfast time, and it seemed to me there were something like sixty of us here, and I am pleased to speak unofficially on their behalf.

It can't have been a very easy decision to go ahead with this particular event so soon after the events of September the 11th. I think you and your Board and the Committee of Arrangements ought to be congratulated on putting together a most successful event.

We, the foreigners, have been, as usual, honored to be treated as guests at your biennial conference. I think the high point for me was being

on the beach yesterday morning–a rather misty, cold morning–and to discover that I just squeezed past your President on the finishing line, and that there were at least three Past Presidents there, all, at the end, talking and walking. I assume that proves that to be able to walk and talk at the same time is an essential requirement for a President of this Association.

Due to increasing age and disability, I was not able to play quite as much tennis and golf as usual, and I couldn't go in for the sailing, but it did mean that I could spend a bit more time at some of the Committee meetings and conference sessions. I must say I was most impressed by these. Whether this is partly due to the need for these confounded CLE points or not; whether that led to the extra quality this year, I'm not sure, but there were some very interesting discussions, and I know that all meetings were well attended.

I would just like to repeat what I said at lunch time on Wednesday at the CMI Committee meeting: The U.S. MLA shares the distinction with the British Maritime Law Association of making the highest financial contributions to the CMI. Frankly, without your contributions, we would not exist as an organization. I think it's even more important that I can, I know, rely upon the U.S. MLA always to respond to CMI questionnaires. I know some of these must come as a considerable irritation to you, but if it makes you feel better about them, there are one or two more in the pipeline. We need you: That is really my message.

In particular, I do appreciate the willingness of the U.S. MLA to join enthusiastically, and I really mean enthusiastically, in the search for some sort of international harmonization in the field of carriage of goods by sea. I am grateful for the tremendous contribution which you are making to that project.

Anyway, I've said quite enough. Bill, many thanks once again on behalf of your friends from abroad. It's been a tremendous week. I've thoroughly enjoyed it, and I know they have as well. Thank you.

PRESIDENT DORSEY: Thank you, Patrick.

(Applause.)

PRESIDENT DORSEY: Also here this morning is the President of the Spanish Maritime Law Association, José Alcantara. José?

MR. ALCANTARA: Probably most of you know me, but I'd like to address to you, dear friends, from the MLA on behalf of the Spanish

Maritime Law Association and on my own behalf of my family as well. I wish such a capacity to express to all of you in this meeting our most sincere sentiments of sorrow, condolence, and sympathy. You must know that we there in Spain, we support you with true friendship, rather, with brotherhood. I say brotherhood because we there know what terrorism is about.

After many years of fighting and suffering, our message to you today is one of courage and of the utmost moral strength. Terrorism is something that no matter the place where it strikes, it's a reaction against civilization. We are nowadays globalized by the struggle against terror. So be sure that you do not stand alone in this war. May this cause unite us more in the future. May this cause lead us to know each other better. We offer you alliance and determination in the struggle ahead. Also, unhesitatingly, we aim at taking our link, our friendship further, so to include in the exchange of activities or even a double membership so that we can share efforts not only in the defense of our lives, but also importantly in the construction of the culture of corporation, uniformity of laws, and international solutions. I have come from too far across the Atlantic and across your immense territory to say this which is our commitment to you. Thank you.

PRESIDENT DORSEY: Thank you, José. (Applause.)

PRESIDENT DORSEY: Also with us this morning is David Marler, the President of the Canadian Average Adjusters Association. David, would you like to say something?

MR. MARLER: Thank you, President Dorsey.

Actually, I'm standing in for the current Chairman of the Canadian Association, Peter Boucher of Vancouver, who, unfortunately, could not attend. I also stand in for Jim Gould, the President of the Canadian Maritime Law Association who also, unfortunately, could not attend.

We are forever grateful in Canada, with our proximity to the United States, for the hospitality extended to us perennially and, indeed, often many times a year to both organizations.

This year I had the pleasure, as President of the Average Adjusters, of being your guest at the Spring Meeting in New York. And, of course, your contribution, which has already been mentioned, to our CMLA 50th Anniversary was much appreciated. I was not aware until this morning of Liz Burrell's involvement in the banner, which we did then proudly

unfold, and will unfold at all of our meetings. I think I will take this news back, and henceforth it should have the name: Burrell's Banner.

What President Dorsey did not mention is that at the cocktail party in Montreal–and this is our first opportunity to thank you as an Association for that reception–he had arranged for the tall ship, the PRIDE OF BALTIMORE, to appear off the pier where the reception was held and to fire, whether for him or for us, a salute. When I heard Mr. Bonner's report, I was hoping that the $65,000 deficit was not a result of President Dorsey's initiative in respect of the PRIDE OF BALTIMORE. I've also been expecting the PRIDE to appear off the beach at some point, but that has yet to come.

This event has, of course, been spectacular. They always are. I wish to echo the remarks of Patrick Griggs and José Alcantara. I won't repeat them, other than to say that the perseverance and dedication which has been demonstrated by your resolve in putting on this event has been magnificent. It is not my place to make a suggestion to the U.S. MLA, which does everything perfectly, but I would be very proud to wear in Bermuda at the 2003 conference, a T-shirt saying "I was at the Del in 2001." Thank you.

PRESIDENT DORSEY: David, thank you.

(Applause.)

PRESIDENT DORSEY: A couple of announcements concerning the sports events on Tuesday. I thought I'd get it in the record who were the winners.

The run contest was won by Josh Force, barely narrowing out some older men at the end of the pack. The fishing was won by that old man of the sea, Winston Rice. The sailing was won by ancient mariner Dwight LeBlanc, accompanied by a not-very-ancient mariner, Kristen Weber. A young mariner, I should say.

For the golf, I'll call on Richard Sayer and Patrick Griggs.

MR. GRIGGS: This is going to be sort of a double-act, if you'll excuse us. (To Richard Sayer:) You take the cup.

Ladies and gentlemen, I know a little bit about the history of this cup. It was presented by Don Linet shortly before he sadly died. I think he decided that it should be awarded to a category of golfer on the basis that

it was a cup that he would never be embarrassed enough to win because he was a moderate golfer, as am I, and it goes to the lowest gross score.

This year the competition has been won by John Carden. I'll just ask Richard to present it to him. I would ask him if he would kindly look after it rather better than the previous winner. It's absolutely filthy. I won't tell you who the previous winner was. Anyway, John Carden, if you're here, would you come forward?

MR. CARDEN: I'll take good care of it. Thank you.

PRESIDENT DORSEY: Thank you, John. Thank you, Patrick. Thank you, Richard.

MR. SAYER: Could I just take this opportunity to say that the golf tournament seems to me to epitomize what the MLA is all about. The camaraderie which you develop here, the multiplicity of skills, the international aspect of it all have made it great fun.

President Dorsey earlier this week spoke about the worst of times and the best of times. Being here this week has meant that one has been able to better understand the worst of times from your point of view, but it's also enabled one to experience the best of times because, for me personally, to see the way you've created an example to us as to how to handle tragedy and to feel the warmth of your reception to us all has been very uplifting.

This is probably my last MLA. I'd just like to say thank you to you all on behalf of Georgina and me, and may God continue to bless America.

PRESIDENT DORSEY: Thank you. (Applause.)

PRESIDENT DORSEY: I might just mention some of the other winners in golf. The Swedish Cup, which is for the low net, was won by Christopher Young. First place on the team gross was won by Tim Taylor, Steve Calder, Hal Watson, and Rob Wallis. No surprises there. However, the first place team net, I'm embarrassed to say, was won by Howard McCormack, Jim Moseley, Sr., Ray Hayden, and David Marler. I don't know whether this is a tribute to the handicap system or a vivid demonstration of its defects. Also, I am compelled to announce that the winner of the women's golf trophy was someone named Anne Dorsey. It comes as no surprise to her husband, who is regularly beaten by her anyhow. Tennis finals will be this afternoon. I might just mention who the finalists are. In

the women, it's Booty Bowles and Gwen Johnson against Elaine McEwen and Corinna Cresswell. That's an international event.

For the men, Alan Kelly, a perennial finalist, and Rob Hopkins against Bertrand Courtois and Jess Webster. That will be at 2:00 o'clock this afternoon.

I think that completes my announcements before we go to the Committee reports. We're going to start off a little bit out of order because of people's schedules. We'll start with Ann Miller for the Cruise Lines and Passenger Ships Committee.

MS. MILLER: I want to second what you said, President Dorsey, to the speakers of yesterday. That was an excellent program. I also wanted to note that I thought the attendance and attention was excellent. It's rare that in a meeting such as this you see people who really did stay, sat here, listened, didn't go to the back and drink coffee–maybe that's an argument for not having coffee–and also came back after the break for the Young Lawyers who did a particularly excellent job.

In putting together the CLE program, our goal was to have people that were not only substantively good, but who were good speakers. I think you will agree that we achieved that. Of course, in doing that, you go to the busiest people, so I want particularly to thank again the speakers of yesterday, and all of you for your attention. Also, I have extra certificates of attendance in case you left yours in your room or didn't sign it yesterday. I'm going to send all of them to Larry Bowles for those of you in states which require a signature of a sponsor's representative. Larry will then send them back to you. If anyone wants an extra copy of the materials of yesterday, we have them in the back as well.

Now for the Cruise Committee report, which concerns the Athens Convention.

This Convention has been the subject of much discussion over the past three years. A very substantive meeting of the IMO Legal Committee, which President Dorsey attended, took place last week in London. I have seen various written reports, some of which are inconsistent, so I've talked with several people, and I think I've got it right.

I think one of the greatest achievements of the Cruise Committee in the last few years was in getting the attention of people that needed to give input in the drafting of this Protocol. It is one thing when a commit-

tee of lawyers sits around and considers what we think would be important and an appropriate outcome, but getting the attention, particularly of the industry, was very difficult–not surprisingly, since the people that are leading the industry are not aware of the various legal ramifications from time to time. But we did finally get the attention of the ICCL–the International Council of Cruise lines–and Michael Crye, who is its president. Larry Kaye, who serves as counsel to them from time to time has also done a very good job in being able to present that point of view in order to reach a balanced approach.

At the moment, it appears that there will be a diplomatic meeting in 2002 or 2003 when perhaps the Athens Convention will be adopted by the Legal Committee.

What is of interest, I think, to those of us in the United States and elsewhere now is that I have been told that the U.S. delegation may favor signing the revised Athens Convention, particularly because of the opt-out provision, which enables signatory nations to opt out of liability limits. Liability limits have been one of the sticking points for years and have prevented the U.S. from signing because of our particular policy in that regard. The liability limits under the Athens Convention are as yet undecided and may be the subject of an intersessional meeting in Spring 2002.

The insurance regime is likely to be compulsory with direct action. Again, the limits are, as yet, undecided, but there is a movement to make them extremely high. Stephen Martin addressed that yesterday; so I will not repeat his discussion.

At the moment, there will be no punitive damages provided under the Athens Convention.

The venue provision will essentially remain as now in the Athens Convention. Place of residence of the passenger, domicile of the ship owner, port of embarkation, port of disembarkation, and leaving to the nations, who may be applicable in those categories, to adopt or not forum selection clauses. For example, in the United States, the *Shute* case, which I think is the most significant case which does allow enforcement of forum selection clauses. The various nations will still be allowed to have their own particular venue, forum selection, and related provisions.

Of significance is the strict liability regime for shipping incidents and "defects of the ship" which was the subject of much discussion because in its broadest form, of course, think of a cruise ship. If strict liability for

"defects of the ship" were not limited to shipping incidents, a defective hair dryer could be seen as a "defect of the ship," leading to strict liability. The word"defect" has now been narrowed to the maritime operational type–sinkings, groundings, fire, et cetera–in order to avoid strict liability in "hair-dryer" type cases, and appropriately so, in my view. There would be strict liability to a certain layer, a certain limit of damage and then damage to a higher limit, again, subject to the opt-out provision under that for shipping incidents with the reverse burden of proof.

As to other incidents, non-shipping incidents, the burden of proof would remain the usual with the plaintiff, or claimant, bearing the burden of proof.

There was some discussion about claims for emotional distress without physical injury or the threat of physical injury. That will not be allowed, at least at the moment. Again, nothing is final yet.

The general time for bringing claims is two years, which can be extended to three or even five years for injuries that are slow-manifesting.

I believe that's it, President Dorsey. Thank you, everyone, and thank you again for your great attendance yesterday at the CLE.

PRESIDENT DORSEY: Thank you. Thank you, Ann. Now we will hear from Jim Bartlett.

MR. BARTLETT: First, with respect to the Special Committee on Multijurisdictional Practice, following the May meeting of the MLA, the Committee presented to the MLA Board recommendations concerning what I'll call a safe harbor approach to multijurisdictional practice.

The Board has considered and has essentially adopted the recommendations of the Committee. Your President then wrote a letter to Mr. Positan, who is the chair of the ABA Committee studying the multijurisdictional practice question. That letter, I believe, went out in June. We have not as yet heard any more from the ABA, and so that's where this matter stands right now. If anyone would like a copy of Mr. Dorsey's letter, please feel free to contact myself or Mr. Dorsey. I've changed firms in the last few months, and Mr. Dorsey and I share a wall because I'm back at Semmes Bowen & Semmes. So one or the other of us will send you a copy.

With respect to the Practice and Procedure Committee, we met on Wednesday afternoon. Eighteen members were present. We had a discus-

sion that lasted about two hours on various subjects, the first of which was the *Submersible Systems* case out of the Fifth Circuit, as to which the MLA had been requested to file an *amicus* brief. There was quite a bit of communication between myself, President Dorsey, and Bob Zapf, the Chair of the Subcommittee on Federal Rules and Statutes. Ultimately our recommendations were adopted. The Association declined to file an *amicus* brief in that case.

There were discussions concerning electronic filing which is being instituted in many of the districts of this country and some of the resulting problems. Your Committee is watching those, and we will be reporting further on those.

The MLA had been asked by the Advisory Committee to the Federal Rules as to whether the MLA had a position on what has been described a technical fix to Rule C(6)(b) that resulted from the recent amendments to that rule. Somehow language had snuck into Rule C(6)(b) that really no one realized how it got in there, I guess. We have a resolution to make this technical fix which can then, if approved, be instructive to the Advisory Committee on the position of the MLA. The Committee voted unanimously in favor of the following resolution with two abstentions, and we ask the Maritime Law Association to adopt the resolution as follows.

> RESOLVED that the Maritime Law Association of the United States supports an amendment to Rule C(6)(b)(i)(A) and (B) to provide that a person asserting a right of possession or any ownership interest in the vessel must file the statement of such right or interest within ten days of the execution of process or within such time that the court allows, deleting any reference to publication in the context of determining when such statement is to be filed.

I move the adoption of this resolution.

PRESIDENT DORSEY: Is there a second?

(Chorus of seconds.)

PRESIDENT DORSEY: Is there any discussion? Any questions that anybody wants to ask about this?

MR. DONOVAN: Jim, you refer to a vessel as being arrested. Would this also apply to any arrested property, not just vessels?

MR. BARTLETT: Yes.

MR. DONOVAN: So should the word "vessel" be changed to "arrested property"?

MR. BARTLETT: Well, in the rule, that actually is the way it would read. What we're taking out is the reference to publication. This really brings the rule back to the exact wording the rule was before the amendment that went into effect last year.

MR. DONOVAN: Okay.

PRESIDENT DORSEY: Any other questions? Ready to call the question? All in favor say aye.

(Chorus of ayes.)

PRESIDENT DORSEY: Opposed?

(No response.)

PRESIDENT DORSEY: Then the motion is carried, and the resolution is adopted.

MR. BARTLETT: One final subject to advise the membership. The Justice Department, the Asset Forfeitures and Money Laundering Office, AFMLO, has proposed a new Supplemental Rule G. Interestingly, Supplemental Rule G deals not at all with anything having to do with admiralty law. It would deal entirely with forfeitures.

The reason that it is perceived–and not everyone agrees with this–but the reason it is perceived that this needs to be in the Supplemental Rules is that the various forfeiture statutes refer to the Supplemental Rules as being the guidelines for forfeitures. There is a need, and we all agree on this, to separate the procedures for civil forfeitures and maritime seizures, so this Rule G has been proposed, and we are monitoring this. We are having input into this, and we will continue to advise you, but it seems that the creation of Rule G, even though, again, it won't deal with any of your procedures, is the way to fix confusion that now exists between these procedures. It is perceived that trying to change the statute would be too difficult; so the idea is to deal with it in the Supplemental Rules. We are watching it very closely because what we do not want to have happen is to have this Rule G on forfeitures have some effect on the procedures we

all utilize. This will also require some changes to Rule C at least. Again, we will be having input into this process and monitoring it on your behalf.

Mr. President, that concludes my report.

PRESIDENT DORSEY: Thank you, Jim. Next will be Don Greenman for the Carriage of Goods Committee.

MR. GREENMAN: Thank you, Mr. President.

As many of you know by your attendance the other day, the Carriage of Goods Committee sponsored the CLE program on October 17. The topic was the CMI transportation outline document and proposed revised U.S. COGSA. We were pleased to have speakers who were members of our MLA Committee but also are working with the CMI. Michael Sturley, who is the rapporteur of the CMI's International Sub-Committee on Issues of Transport Law, and the MLA delegates to that Sub-Committee, Chet Hooper, George Chandler, and Vince DeOrchis.

We also had a telephone hookup with representatives of the National Industrial Transportation League, which is what Bill referred to earlier as NIT League, and the World Shipping Council. These two organizations are trade organizations, the NIT League representing shippers, and the World Shipping Council representing virtually all of the liner operators calling on the United States. They have recently produced a joint statement on the development of a new international cargo liability instrument, dated September 25, and joint comments which were submitted to the CMI.

The joint position taken by these two groups is based in large part on the MLA proposed revision of COGSA, but there are some substantive differences, and it is anticipated that our members will have a continuing dialogue with those groups to see if their views can be worked out.

Meanwhile, the CMI International Sub-Committee is on a fast track, if you will, to produce a document that can be worked on by the UNCITRAL Working Group next April in New York. There are two weeks set aside for that meeting.

With that, I will turn the microphone over to Michael, who may be able to fill in a little bit more about the details of how we get from here to there.

PRESIDENT DORSEY: Thank you, Don.

PROF. STURLEY: Thank you. For those of you who were unable to attend on Wednesday morning, let me briefly summarize the work of the International Sub-Committee, the International Working Group, and the work that UNCITRAL (the United Nations Commission on International Trade Law) has on its program.

You may recall the last time I reported to you was in May. At that time I was shuttling between our meetings and the meetings of the International Working Group, which was producing a new draft of the outline instrument based on the results of the CMI Singapore Conference.

That new draft was circulated near the end of May along with a consultation paper. The consultation paper highlighted nine specific topics on which the Working Group was seeking input from national associations and industry groups. We received responses from an impressive number of national associations and industry groups, including the NIT League and the World Shipping Council. As part of the consultation process, the International Sub-Committee also met in London in July, focusing on areas that had not been highlighted in the consultation paper and that had not received as much discussion in previous International Sub-Committee meetings. The responses were due on September 28th. The Working Group then met in Vienna, October 4th through 6th, 2001, went through the responses as expeditiously as possible, and did quite a bit of new drafting. That drafting, I hope, has now been completed. Some of the members of the Drafting Committee were meeting in London yesterday and today, and they should be finishing up about now. That new draft will circulate early next week to all of the national associations and industry groups.

Our friend José Maria Alcantara has graciously offered to host the next meeting of the International Sub-Committee which will be held in Madrid next month, November 12th and 13th.

At this point it is expected that the International Sub-Committee will take the Provisional Draft Instrument and turn it into the Final Draft Instrument which will then go to the CMI Executive Council for approval before submission to UNCITRAL. Unlike many CMI projects, the expectation is not that this draft will be a finished product ready for adoption, but that it will be the basis for further work by UNCITRAL. Thus, on many issues there will be language still in brackets. There will be different choices presented so that UNCITRAL will be in a position to make the final policy choices.

UNCITRAL has indicated that it is very committed to this project. Our meeting in Vienna was at UNCITRAL headquarters, and the UNCITRAL staff participated heavily in these meetings. As Don just told you, UNCITRAL has set aside two weeks for discussion of this project in New York, April 15th to 26th, which is the two weeks immediately before our next meeting. UNCITRAL will then be back at work for a week in September in Vienna, September 16th to 20th. This means that next year, 2002, UNCITRAL will devote three solid weeks to the discussion of this project.

UNCITRAL has clearly put this project on the fast track, and we hope that before the MLA treasury is completely depleted, we will have finished something that will be acceptable to the world community.

Thank you very much.

PRESIDENT DORSEY: Thank you, Michael. I hope so, too. Next Michael Marks Cohen for the CMI Committee.

MR. COHEN: Thank you, Mr. President.

The primary work of the CMI are issues of transport law, marine insurance, general average, and piracy, and those will be in the reports of other Committees this morning. A tentative CMI colloquium has been scheduled for Vancouver next September, and the next plenary of the CMI is expected to be in 2005, probably in Greece but possibly in Capetown.

I just want to mention a few other recent developments in international law which are subjects of interest to our Association that will not be discussed elsewhere this morning.

First, there is a new Convention prohibiting certain anti-fouling paints as a danger to marine life. CMI President Griggs at our Committee lunch earlier this week described the new Bunker Pollution Convention. The IMO Legal Committee is working on the problem of places of refuge for ships in distress whose condition or cargos are potentially dangerous. That's the CASTOR situation.

The IMO/ILO jointly are continuing their project on abandoned seamen and how to deal with them. Seems to be they're moving in the direction of a requirement for mandatory insurance.

As we speak, there is a UNIDROIT diplomatic conference in Capetown on security interest in mobile equipment. Initially a protocol

will be adopted to apply the Convention only to aviation equipment. Then protocols are already in the development stage for aerospace and railway industry application. All three protocols are expected to provide for new international registries. Our Marine Finance Committee is looking into whether the Convention is adaptable for financing seaborne containers and marine equipment, possibly using existing national registries rather than an international registry.

Finally, the Hague Conference on Private International Law is still doing some work on an International Judgments Convention, but the outlook is bleak that the United States will join in that Convention if it's adopted, primarily because of foreign opposition to long arm jurisdiction and our attachment remedies.

In the alternative, the American Law Institute is drafting domestic statutes to recognize foreign judgments.

That, Mr. President, concludes my report.

PRESIDENT DORSEY: Thank you, Michael. Dave Farrell for Fisheries.

MR. FARRELL: Thank you, Mr. President.

I'm pleased to report that sometimes the system works very smoothly. Last spring at the New York meeting under Steve Johnson's and my predecessor, Bill Birkhead's leadership, the Association passed a unanimous resolution to lobby Congress to amend certain provisions of the American Fisheries Act. President Dorsey immediately sent letters to Congressman Dave Obey of Wisconsin on the Appropriations Committee, and Senators Stevens of Alaska and Byrd of West Virginia, and a bill was ushered through Congress and passed by President Bush on July 24th, less than two months after our meeting. I'm not going to bore you with all the details because I know that not many of you have fisheries issues on your plate, but I will say that because of the amendments, you're still going to be able to put fish on your plate.

This was a real problem. The American Fisheries Act would have precluded foreign lenders who were defined as preferred ship mortgage holders with less than 75 percent of U.S. citizen ownership from continuing their mortgages. The problem was with entities like Bank America, Caterpillar Financial, and Fleet Capital, which are publicly traded: They are unable to know from one moment to the next the exact citizenship of their stockholders.

The Lender Amendments continued until April 2003 the implementation of regulations and, more importantly, allow for a normal FDIC bank to now become a domestic mortgage trustee for these foreign lenders. The Lender Amendments also allow for U.S. vessels that are over 100 feet in length which largely operate in the northwestern Pacific and Alaska to continue their operations without threats to the eligibility of their fisheries' endorsements.

We're looking forward in the next several months to working with Pat Wiese of MARAD, who was good enough to attend our meeting, in putting into effect some implementing regulations on the Lender Amendments, and also working with the National Marine Fisheries Service.

Next year the original 200-mile-limit legislation, which is the Magnuson Fishery Conservation and Management Act, is up for reauthorization, and there are a number of problems with a case that came out of the First Circuit that Bill Birkhead also has reported to you about, the *Gowen v. Quality One* case, which the Supreme Court recently denied a petition of *certiorari*. There is some serious doctrinal and practical concerns we have with maritime liens on fishing permits as now provided in the Magnuson Act. We're going to be following that very closely, and I hope to be able to report to you on those developments in May in New York.

Thank you very much.

PRESIDENT DORSEY: Thank you, Dave. Professor Menefee.

PROF. MENEFEE: Thank you, Mr. President.

The Committee on the International Law of the Sea met, and it was reported that the President had sent a letter to Senator Biden reiterating the MLA's support for accession to the 1982 Convention on the Law of the Sea and offering to testify should hearings be held.

We've also received an inquiry from the U.S. Coast Guard concerning the updating of our piracy laws in the aftermath of the terrorist attacks in New York and Virginia. We hope that this may create an opportunity for consideration of the MLA-endorsed Draft Model Law on Piracy.

Phil Buhler of the Committee provided a summation of the issues in *U.S. v. Allie B, et al.*, a case which is now under consideration involving damage to a reef in the Biscayne National Sanctuary in which issues of ownership and jurisdiction under international treaties have arisen.

Professor John Noyes of California Western School of Law provided an extensive overview of the International Tribunal for the Law of the Sea's jurisdiction and decisions based on his expertise in the area.

Finally, Frank Wiswall noted the recent introduction into Congress in the wake of the September attacks of the Mark and Reprisal Act to go which would reestablish letters of mark for use against terrorists.

The final meeting of the IMO Joint International Working Group on Uniformity of the Law of Piracy and Maritime Terrorism will take place on December 3rd in London.

Mr. President, that concludes my report.

PRESIDENT DORSEY: Sam, a question before you leave. I'm not sure I quite heard it correctly. On the inquiry about the Coast Guard on the piracy, where do we stand on the CMI's model piracy law?

PROF. MENEFEE: The MLA is already on record at their Bermuda conference on supporting a draft U.S. law. The Coast Guard also expressed interest in the CMI initiative, but that depends upon further work with the Committee. I informed him we would send them a copy of the draft as of Singapore, but certain concerns have been raised at the CMI meeting in Singapore about the matter, and that that was under review and had not been finalized.

PRESIDENT DORSEY: Was there any targeted date when the CMI model of piracy law might be completed?

PROF. MENEFEE: I believe Professor Wiswall could speak better to that, but it will be sometime presumably early in the new year.

PRESIDENT DORSEY: Great. Thank you very much. Matt Marion of Marine Ecology.

MR. MARION: Thank you, President Dorsey.

The Marine Ecology Committee met this past Wednesday, and discussed recent marine environmental case law and regulatory developments in the United States and abroad.

Two particular cases drew the Committee's attention. The first, *U.S. v. Great Lakes Dredge & Dock*, is an Eleventh Circuit decision under the

National Marine Sanctuaries Act in which a pipeline owner which had hired tow boats to transport its pipelines was held strictly liable for damage to the Florida Keys Marine Sanctuary caused when the tow boat dragged pipeline over Florida Keys reefs and then grounded.

The circuit court's decision is noteworthy in several respects. First, there is very little case law interpreting the National Marine Sanctuaries Act ("NMSA"). Thus, the appellate court provided some basic guidance for practitioners interpreting the statute. Specifically, the Eleventh Circuit construed NMSA's third party defense narrowly, rejecting Great Lakes' contention that it could not be held strictly liable for a third party tow boat operator's negligence, at least where the tow boat was acting under Great Lakes' orders. In addition, the Eleventh Circuit reversed the district court and reinstated the federal trustee's primary restoration plan, extending significant deference to the trustee's determination about the methods for addressing natural resource damages.

In a second noteworthy case, *BEC Corporation v. The Connecticut Department of Environmental Protection*, the Connecticut Supreme Court expressly adopted the responsible corporate officer doctrine and imposed personal liability on a corporate president and vice-president in a tank farm pollution case. The basic rule announced by the state supreme court is that where a corporate officer has responsibility over a particular environmental practice and fails to act, he or she may be subject to personal liability. We think this decision reflects a trend, and has obvious implications for marine environmental casualties.

On the regulatory side, we discussed federal regulations by NOAA, the EPA, Fish and Wildlife, and the U.S. Coast Guard covering areas ranging from recreational boat air emissions, the designation of critical habitats, and natural resource damage assessments, all of which fall within the extremely broad ambit of our Committee.

The Committee had a lively discussion about NOAA's proposed amendments to the Natural Resource Damage Assessment ("NRDA") Regulations. Comments on these regulations are due on November 5th, and the main issue for our Committee was whether or not it would be appropriate for the Committee to draft a comment for submission to the MLA Board and possible submission in the rule-making proceedings.

The rule-making itself addresses several issues in NOAA's original NRDA regulations. Specifically, the proposed rule addresses whether a Natural Resource Damage trustee has the authority under OPA to conduct oil spill

removal activities. OPA clearly delegates that authority to the federal on-scene coordinator, and NOAA concedes this point. However, in this current rule-making, NOAA argues that OPA always intended to authorize the trustee to eliminate or reduce pollution exposure as well. Thus, NOAA proposes eliminating the word "remove" from the existing regulatory description of the trustee's authority and substituting the more expansive term "address," albeit without purportedly changing the existing authority of the environmental trustee. In addition, NOAA proposes adding new criteria for emergency restoration activities by the trustee and amending the NRDA regulations to include NOAA's legal costs, both direct and indirect, under the rubric of "assessment costs." Thus, under the proposed regulation, if NOAA were forced to litigate a natural resource damage claim, they would be permitted to recover their litigation costs as part of their "assessment costs."

The consensus of the Committee was that formal comment in NOAA's rule-making by the Association would serve no purpose. Ultimately, in the Committee's view, the courts rather than NOAA will have to construe the federal trustee's spill response authority and the legality of including litigation costs within the definition of assessment costs in light of OPA to determine whether the proposed regulations are permissible.

In conclusion, we covered several topics on the international front and received an excellent report by a friend and guest of the Committee, Derek Luxford, from Sydney, Australia. Thank you.

PRESIDENT DORSEY: Thank you, Matt. Sandy Knapp.

MS. KNAPP: Thank you, Mr. President, members and guests. I have a short report. I just wanted to get you up to date since the last meeting. At that time I reported that we were following various legislative and rule-making proposals. We continue to monitor those developments, and now there are additional ones by MARAD and the Coast Guard. I'll name one, which is the Coast Guard's request for comments on the term "sold foreign" and their treatment of vessels owned by entities that have become non-citizens because of some technicality as the term is used.

We also had a report from Graham Charnock of Findlay & Tait, on recent developments in South African law. It was very interesting. Also from Steve Johnson of Garvey Schubert & Barer in Seattle regarding the American Fisheries Act which our colleague already discussed this morning.

Ed Powers of Norfolk gave us an update on the status of the fishing rights cases and whether they are appurtenances to the vessel and how that affects maritime lien law.

In the yacht financing area, we had a discussion, and we've decided to work with President Dorsey and the Board in contacting the appropriate officials at the Coast Guard to address four yacht financing initiatives that are primarily related to fraud in that area.

These four areas are, No. 1, consolidation of builder's certificate and manufacturer's certificate of origin into one form; No. 2, requirement of a hull identification number for U.S. federal documentation purposes; No. 3, requiring the surrender of a state certificate of title if issued before federal documentation; and, No. 4, requiring the holder of a preferred mortgage to discharge the mortgage of record directly when the loan is paid off. I spoke with President Dorsey after our meeting, and I'll be working with him closely in the next few months to work with the Coast Guard.

Lastly, I'd like to mention that Marjorie Krumholz of Thomas Coburn, who unfortunately couldn't attend our meeting from Washington, D.C., spearheaded our effort on the Title 46 Recodification Project. We had quite a few sections assigned to us, and our Taxation Subcommittee and other Subcommittee members did a great job. Ms. Krumholz pulled it all together. I'd like to thank her for her effort.

That's it, Mr. President. Thank you.

PRESIDENT DORSEY: Thank you, Sandy. Jean Knudsen.

MS. KNUDSEN: Good morning, ladies and gentlemen.

The Committee on Marine Insurance and General Average met on Wednesday, and we reviewed various ongoing projects, legal decisions, and topics of interest.

We prepared a newsletter which is available at the back table. The Committee and I wish to extend our congratulations to Howard McCormack as the incoming Chairman of the Association of Average Adjusters.

Congratulations, Howard. We've established a working group which is going to be chaired by Howard McCormack to work with the CMI General Average Committee which is considering a proposal to revise the York-Antwerp rules.

During the past year as Chairman of the U.S. Association of Average Adjusters, I've had the pleasure to attend both the fall and spring dinners

as a guest of the MLA, as well as the board luncheons. I wish to thank the Association for its kind hospitality. Thank you.

PRESIDENT DORSEY: Thank you, Jean. Jay Paré.

MR. PARÉ: Thank you, Mr. President.

Speaking on behalf of Don Kennedy for the Arbitration and Mediation Committee, last May we ran a program on manifest disregard of the law and how that might make available a challenge to an arbitration award. It was a spirited debate. It was something that was moderated by Don Murnane. I understand that he has written an article in *The Advocate* which is available here somewhere. I did not see it in the back of the room, but if anybody is looking to read that, if you just see Manfred Arnold, he can hook you up with a copy.

As has already been mentioned, over the summer the Committee wrote an *amicus* brief on behalf of the Maritime Law Association on the subject of whether a fixture sub details created a binding contract or not. The Association has taken the position that it's essentially a question of fact and urged that that approach be taken in the Second Circuit. There's been no decision yet on that case.

A third item that we have been doing on the Committee is that we have been involved in the drafting of amendments to the Arbitration Act. Specifically we have some ideas, such as bringing back consolidated arbitration, which has been removed since the *Boeing* decision, and also providing an amendment that would permit nationwide subpoena process for the arbitrators. The AAA has decided not to assist us in that regard, and so we are essentially going it alone, and we trying to determine how to effect that goal. Those amendments would only apply to maritime arbitration and not any other type of arbitration.

Fourth, let me just say a word about mediation. It's been suggested earlier in the week that perhaps we're behind the curve with respect to some other unnamed arbitration centers. We prefer to take the view that our arbitration system is working quite well and there's perhaps less of an urgent need for mediation, but, nevertheless, the Committee actually is the Committee on Arbitration and Mediation of the Maritime Law Association, and we have been actively pursuing programs on mediation. In fact, we have, as a result of the meeting here today–or yesterday, actually, come up with the idea for another program perhaps next May.

That's the end of my report.

PRESIDENT DORSEY: Thank you, Jay. Jay was on very short notice the lead lawyer in preparing our *amicus* brief in the *U.S. Titan* case. A very, very tight schedule. He did a great job. Thank you very much, Jay, for that.

So, Dennis, if you're ready. This is the Coast Guard and Navigation Committee. Dennis also is the Chair of our Special Committee on Recodification of Title 46.

MR. BRYANT: Ladies and gentlemen, the Navigation, Coast Guard and Government Regulation Committee met on Wednesday. We were honored to have with us Pat Wiese who is the acting chief counsel for MARAD.

I'd indicated a year or so ago that I was going to work to try to bring other federal agencies that deal with maritime issues into involvement with the MLA, and Mr. Wiese is the first who was able to take us up on this. The FMC was going to attend and then discovered that coming to Coronado would break their budget, but we're going to try to get them to New York in the Spring. Mr. Wiese gave us a very good overview of what the Maritime Administration does and how they interact with ship owners.

We discussed criminal liability, a growing problem. It seems that federal agencies are much more prone to invoke criminal sanctions in maritime cases than they ever were in the past, and it's becoming a serious problem, and it's impacted other areas, such as marine casualty investigations. In the *New Carissa* case in Oregon, the U.S. Attorney threatened to prosecute the master for the oil spill. The master took the Fifth Amendment and refused to cooperate during the Coast Guard's marine casualty investigation, and the investigation largely went nowhere.

Port security. In the post-September 11 environment, port security is a major issue. The Coast Guard has promulgated a new 96-hour advance notice of arrival. Additional information is required. Many more restrictions being imposed. As we know here in San Diego now, the Coast Guard puts armed boarding parties on all deep craft vessels coming in and out of port. Hopefully the process will get smoothed out in the near future, we'll have a more uniform system from port to port, but right now it's causing our clients some difficulty, and we hope that will be resolved soon.

We discussed the exclusive tug arrangement problems in the lower Mississippi River and in Florida, and the FMC's investigations into those. It bears close watching.

Then the growing role of state governments and the EPA in the maritime environment. There were many who thought that with the *INTER-*

TANKO decision a year ago that the states would pretty much be out of the picture on the maritime side. Absolutely untrue. They shifted their focus from trying to control operations on the ship to just defining everything as an emission and attacking it from the environmental side, and the EPA is doing pretty much the same thing.

Changing the focus to the Title 46 Recodification Project, first of all, I want to express my appreciation to all the Committee Chairs and other Committee members who worked hard to submit comments. Hal Watson helped consolidate all that stuff. It's sitting on my desk. I have not finished consolidating it yet. It's solely my fault. I hope to have that done soon, but I can also say that the federal government is also behind the time line for various reasons, including the September 11th issue, and the fact that this whole project is being driven largely by the assistant general counsel in the Department of Transportation who is having trouble keeping the interest level up in the other federal agencies, to say nothing of Congress. So while he initially had a very ambitious time schedule, that has also fallen victim to all this stuff. It's going clearly to be a multi-year project, but he very much appreciates and values our input, and so we are going to continue the process with him but expect that it's going to be an interlude process that we will provide comments on this version, he will make adjustments to the proposal and send it back out for re-review probably in the spring, but we don't know exactly when.

That finishes my comments.

PRESIDENT DORSEY: Thank you, Dennis. Proctor Admissions, Warren Marwedel.

MR. MARWEDEL: Mr. President, members, as you heard this morning, we have five new proctor members. I wanted to ask all of the proctor members that are here to go back to their offices and encourage the associate members of their offices to apply. Being a proctor member is one of the requirements for any of the leadership positions in the organization. More importantly, when you become a proctor member, your dues do not go up; so there's no cost to it. Thank you.

MR. STORZ: Thank you, Mr. President.

The Salvage Committee had an interesting meeting on Wednesday. We got into recent cases and also the role of salvage master during complex salvage operations. We dealt at length with the draft UNESCO Convention on Underwater Cultural Heritage. I'm not going to repeat what's already

been said. I will say this, though. I think a lot of people thought that the Convention was a dead letter because the Convention obviously enlarges coastal state competence over areas, including the exclusive economic zone, the continental shelf, and in certain cases states that have a cultural link with a particular cultural heritage will have enlarged authorities and competence over activities taking place in the deep ocean within the area. Many people thought that was a dead letter because it did conflict with the Law of the Sea Convention. I made some phone calls last week, and I will tell you that it's not completely clear at this point whether the United States will accede to the Convention or, in fact, not sign it. So that may be a little bit of news to you all.

Thank you very much.

PRESIDENT DORSEY: Let me ask you a question on that last point, Bill, because the United States delegation at the Meeting of the Joint Experts did express its dissatisfaction with the Convention as currently drafted: Do you know whether or not there have been any changes in the Convention since the Meeting of the Joint Experts and now?

MR. STORZ: No.

PRESIDENT DORSEY: Okay.

MR. STORZ: There haven't been any changes that I'm aware of. However, the United States government's position is one that is based on a number of different governmental agencies. Their interests are all very different. The bottom line is there was concern and perhaps some unhappiness with the terms of the Convention, but what I heard from people at the State Department was they didn't come right out and say they wouldn't sign it. What they said, instead, was "We don't think this is in a form that the Senate will ratify." So that's a little different than saying, "Hey, there's no way we're going to sign this."

PRESIDENT DORSEY: Okay. Thank you. Larry Kahn for Young Lawyers.

MR. KAHN: Thank you, Mr. President.

The Young Lawyers met a couple days ago with two goals in mind: to discuss ways of increasing membership and increasing participation, recognizing that in many ways these two goals are going to be linked together. We decided that there are several areas that we needed to improve.

One was to resolve an ambiguity that appears to have arisen with regard to how many Committees a Young Lawyer member is allowed to

join. It had been the general understanding that we were permitted to be members of two Standing Committees in addition to Young Lawyers, but that appears to be simply an understanding and not actually something official. We've discussed ways of resolving that ambiguity, one of which may be a proposal to amend the bylaws, but we've yet to decide on a final method of resolving this difficulty.

We also decided to better define our internal guidelines with regard to membership to, among other things, facilitate our mailing list, but also to correct some, perhaps, aged language in our membership descriptions to make it more modern and gender neutral, to strike things that would require Vice Chairs to have, for instance, facial hair, et cetera.

We also decided, importantly, that one way to increase and inspire new membership and more active participation would be to have smaller regional meetings that the entire Young Lawyer membership would be invited to but only local members would be expected to attend. These smaller meetings would be educational in nature or social in nature, or hopefully both. The first of these is going to be this Monday in New York. It's going to be a presentation on South African law, and that will be at Freehill's office, and we're expecting hopefully a number of Young Lawyers will attend that, and we will continue from there. We hope that by having these smaller regional meetings, we will be able to inspire participation from either Young Lawyers who are not currently all that active or inspire membership and participation from firms that don't currently support the MLA as much as we would hope they would. We think that by presenting important programs that are educational and social would help us accomplish our goals.

Finally, we enjoyed participating in the CLE program here. We've received a lot of very positive feedback, and we appreciate that. We hope to continue being invited to participate in these CLE programs.

With that, Mr. President, thank you.

PRESIDENT DORSEY: Thank you, Larry. I can assure that you will be continue to be invited to do just that. I also want to say that one of the Young Lawyers projects that they've got going now is the indexing of our prior proceedings. That's a Herculean task, quite frankly. It's going to take a long time, but once we get it completed, it's going to be very worthwhile.

The last report will be Bob Parrish, who will report on Planning and Arrangements for our Fall 2003 Meeting.

MR. PARRISH: Thank you, Mr. President.

I'm pleased to announce what I think many of you know, which is that our meeting in 2003 will be in Bermuda. We are going to return to the Southampton Princess which is now operated by the Fairmont chain. They have put in approximately $25 million in renovations, and we're very excited that their facility will be splendid for us to attend. The dates are Wednesday, October 29th through Saturday, November 1st, 2003.

I want you to pay particular attention because what the Board has done, the President has, is it's shifted from a Tuesday start to a Wednesday start with a Saturday finish as opposed to a Friday finish.

So Wednesday, October 29th, through Saturday, November 1st. You will hear more from us.

Thank you, Mr. President.

PRESIDENT DORSEY: Thank you, Bob.

Before I call on Nick Healy for the final motion, I'd like just to comment on the fact that the format we've used for this meeting is different from other meetings in that we had sports day on Tuesday and then our business sessions from Wednesday on. I'd like to get some feedback on that to see what those who came here think about that new format. You have heard from Bob that we're going to carry that new format forward a little further next time by moving the business sessions up to Thursday through Saturday.

Well, that completes the Committee reports, and Past President Nicholas J. Healy, would you like to make a motion?

MR. HEALY: Mr. President, honored guests, and fellow members of the Maritime Law Association, I think it was very appropriate that the business end of this fall meeting commenced with a very touching memorial service conducted by President Bill Dorsey, Membership Secretary Winston Rice, and Bette Cohen. I think that it may also be appropriate to close this business end of the fall meeting in memory of those who died in the awful attack on America which occurred on September 11th.

So without more, Mr. President, I move that the meeting be adjourned in fond memory of Maureen Olson, Glenn Winuk, and all those relatives and friends of members who perished as a result of that event.

PRESIDENT DORSEY: Is there a second to that motion?

(Chorus of seconds.)

PRESIDENT DORSEY: All in favor?

(Chorus of ayes.)

PRESIDENT DORSEY: The ayes have it, and the meeting is adjourned. Thank you very much, ladies and gentlemen, and thank you, President Healy.

(Time noted: 11:26 o'clock a.m.)

FORMAL REPORT OF THE COMMITTEE ON CARRIAGE OF GOODS

The committee on the Carriage of Goods met on Wednesday morning at the San Diego meeting. The entire two hour session served as a CLE seminar and was devoted to the current status of the U.S. COGSA proposal, and an update of the current CMI draft. In addition, during the second hour we had a telephone conference with members of NIT League and the World Shipping Counsel. In September, a joint statement was issued by both NIT League and the WSC endorsing the U.S. COGSA proposal with certain exceptions. Unfortunately, this joint statement was issued without any consultation with other parties and there are several areas which have created a problem with respect to liability of the performing carrier and forum selection. These two issues were "hotly" debated during the conference call. Since that time, representatives of the MLA have met with both parties in an attempt to discuss the areas of concern.

In January of 2002, the U.S. Department of State and the Department of Transportation held the first of several hearings in order to gain information, as well as opinions of the various representatives of the insurance and shipping industries with respect to the CMI proposal that will be debated by UNCITRAL (United Nations Commission on International Trade Law).

The good news for U.S. shipping interests is that the sum and substance of our COGSA proposal has become the basis for the CMI draft. The CMI draft is the basic working document from which UNCITRAL will begin its study of the International Carriage of Goods by Sea. We are hopeful that within the coming months the U.S. representatives, which include four members of the MLA, will persuade the other nations to adopt a final document which will closely resemble the original MLA proposal.

The bad news, for the time being, the proposal to amend the current COGSA will not be addressed by the U.S. Congress until such time as the UNCITRAL document has been completed.

The CLE seminar/meeting was attended by approximately 150 people in San Diego and served as an update to the complicated process which the U.S. is going through in an attempt to create an international shipping law subscribed to by all of the major countries.

Respectfully submitted,

William R. Connor III, Chair

FORMAL REPORT OF THE COMMITTEE ON CARRIER SECURITY

The Committee on Carrier Security met at 3:00 p.m. on Thursday, October 18, 2001, at the Hotel del Coronado, Coronado, California, in conjunction with the 2001 Fall Meeting of the Association. There were seven members of the Association in attendance, including the Committee's Board Liaison, Mary Elisa Reeves, Esq. In addition, we were pleased to have with us as a guest Mr. Stephen Martin, a Director with Steamship Insurance Management, Manager of the Steamship Mutual P&I Club.

Agenda items discussed at the meeting included updates on current problems with stowaways at various U.S. ports, increasing problems with theft of containerized cargo while in the carrier's possession, and carrier responses to the threat of terrorist activities prompted by the events of September 11, 2001.

On the subject of stowaways, there was discussion on current INS practices in dealing with stowaway deportations and asylum requests in different ports. The increased traffic in "human contraband" was also discussed, including both practical and legal problems which the large-scale traffic and illegal aliens poses for ocean carriers, particularly container operators with limited control over "house-to-house" container shipments.

The primary topic of the meeting was the subject of terrorism, and the ocean carriers' response to increased terrorist threats. It was noted that a number of private security services were actively marketing anti-terrorist training programs for vessel operators, aimed at addressing the threat of terrorism by the use of advanced technology, including satellite communications, global tracking and reporting services, automated identification systems, and enhanced voyage data recording. As an example, Mr. Martin provided an overview of the services being offered by one such London-based company.

The Committee plans to meet again during the 2002 MLA Spring Meeting in New York. It is anticipated that a newsletter will be circulated prior to that meeting.

Respectfully submitted,

Gordon D. Schreck, Chair

FORMAL REPORT OF THE COMMITTEE ON CLASSIFICATION SOCIETIES

Due to the lack of Committee members at the October 2001 meeting in San Diego, it was not possible to conduct a meeting there. Accordingly, this report is an update of the report following the April 2001 meeting of the Committee, found at page 12660 of MLA Document No. 758.

In December 2001, The European Union (EU) Parliament and Council adopted a number of anti-pollution measures recommended by the European Commission, Directorate General for Energy and Transport (Commission), as a consequence of deliberations following the tanker ERIKA casualty in December 1999. With respect to classification societies, those measures include rules intended to provide greater controls over the activities of classification societies. As described in a memorandum entitled *ERIKA: two years on*, the rules (the so- called ERIKA I package) introduced in particular:

> a new sanction: suspension of Community approval [of the society] for a year, which can lead to complete withdrawal of approval if the deficiencies resulting in suspension persist;
>
> the requirement of good safety and pollution control performance [of the society] before Community approval is granted;
>
> stricter quality criteria, in particular compliance with certain procedures in the event of a switch of class and greater transparency in the communication of information on vessels in that class.

The measures adopted as part of the ERIKA I package are to enter into force in eighteen months time, *i.e.*, in June 2003. However, according to the above- mentioned memorandum, the Commission is already looking into the activities of classification societies and has carried out a number of audits on them.

In addition to the ERIKA I package, the ERIKA II package concerned measures still under discussion. These include establishment of a European maritime safety agency which will have a great many functions concerning maritime safety, one of which will be to monitor classification societies. The memorandum *ERIKA: two years on* and related lengthy pol-

icy papers can be found at http://europa.eu.int/comm/transport/themes/maritime/english/safety/policy_pa pers.htm. In these papers the Commission's suggestions about a liability regime included increasing the fund for compensation for oil pollution damage to a global ceiling of EUR one billion and suggestions of imposing fines for negligence of anyone involved in the transport of oil by sea, a rather broad category.

An article in LLOYDS LIST for February 4, 2002, states that in December 2001 the EU issued a directive establishing maximum – minimum figures for classification society liability of EUR 4 million (about $3.6 million) for personal injury and death and EUR 2 million (about $1.8 million) for property damage, but leaving open possible unlimited liability for gross negligence. The directive is supposed to take effect in 2004. There have been suggestions that steps be taken to have IMO address the issue of classification society liability internationally. Parenthetically, as a consequence of the ERIKA casualty, her class society (Registro Italiano Navale (RINA)) and numerous other parties are involved in litigation concerning liability for the casualty.

Respectfully submitted,

Richard H. Brown, Jr., Chair

FORMAL REPORT OF THE COMMITTEE ON CONTINUING LEGAL EDUCATION

This past year, the MLA Continuing Legal Education ("CLE") Committee has prepared its Annual Report to NYS CLE Board, which is necessary to maintain the MLA's status as an accredited provider of CLE programs in New York State. The Committee has also guided coordinators of the various MLA's CLE Programs; provided information as a co-sponsor of the ICMA XIV Congress CLE; and guided attorneys from states other than New York as to their state's reciprocity for credit for CLE Programs given by the MLA which is accredited only in New York. At the Committee's request, Bob Acomb, Charles E. Lugenbuhl, Donald Abaunza, Dwight LeBlanc Jr., George Healy, Winston Rice, and Bill Porteous of New Orleans; Marion McDaniel, the Honorable John Woolridge, Gray Miller, G. Byron Sims, Louis McCarter, James Sentner, Joseph Cheavens, Ronald White, Robert Klawetter, and Michael Bell of Houston; and Jim Moseley and Jim Moseley, Jr. of Jacksonville, lobbied their respective states' CLE Boards requesting that they grant reciprocity

to CLE credits offered at MLA CLE programs. Although the state CLE Boards did not give the Committee the result the Committee had hoped, the Committee is grateful for the assistance of these individuals.

In the coming year, the MLA CLE Committee expects to continue with the above, plus every three years, the Committee will apply to be reaccredited as CLE provider in New York.

Respectfully submitted,

Lawrence J. Bowles, Chair

FORMAL REPORT OF THE COMMITTEE ON MARITIME PERSONNEL

I would like to thank Paul Edelman, Esq. very much for kindly chairing the Committee Meeting for me and also for preparing these excellent minutes. Paul is a real credit to our Association.

The Committee met on Thursday, October 18, 2001, in Coronado at the Fall Meeting of the Association. Twenty members and guests participated in a lively meeting on proposed changes in legislation and important cases and developments affecting maritime personal injury practitioners.

In the Supplement to the July 23, 2001 agenda, supplied by John Schaffer, the following items were discussed:

1. Tort Reform: Products Legislation

Products liability legislation is being drafted in Congress with Republican sponsorship. Proposed legislation will probably cap punitive damages at $250,000 for small businesses with (25) or fewer employees. Sellers and wholesalers may receive a similar cap and small businesses would be exempt from joint and several liability for non-economic damages. This may not pass the Democratic controlled Senate, but if it does, the President will sign it.

2. Victim Compensation Fund

Congress established a fund for the compensation of victims of the 11th of September disasters. The airlines' liability will be limited to its lia-

bility coverage. Any lawsuits are to be filed in the Southern District of New York. Regulations are to be issued within (90) days and claims are to be made within (2) years after claim forms are available. A Special Master, appointed by the U.S. Attorney General, will make a final, non-appealable determination. Liability will not be an issue. Pecuniary and non-economic losses are recoverable. "Collateral sources", yet to be determined, will diminish awards. An election must be made between filing a claim and suing airlines, building owners and lessees, Al Qa'eda, the Port Authorities, any foreign country linked to the terrorists and any others potentially liable.

3. Punitive Damages

a. A $3 billion jury verdict against Philip Morris in a smoker's lawsuit was reduced to $100 million, or a retrial. Evidence of criminal convictions was not allowed, held to be prejudicial.

b. A study indicates that judges rule for punitive damages as often as juries do and generally in about the same proportions.

c. A jury gave $1.06 billion in damages against Exxon Mobil for radioactive contamination of thirty-three acres of land owned by a former Louisiana judge. There will be an appeal.

4. *Lewis v. Lewis & Clarke*

After remand from the Supreme Court, the 8th Circuit affirmed the order of a district court dissolving an injunction against a state court proceeding irrespective of a limitation proceeding with a single claimant, who stipulated to recover less than the limitation fund.

Michael Marks Cohen, Esq. raised the question of whether a shipowner's declaratory judgment could nullify the state court trial. An argument could be made that, in many cases, declaratory judgments, seeking to deprive an injured party of a jury trial, have more often than not been dismissed.

5. *Espinal v. Royal Caribbean Cruises*, ___ F. 3d ___ (11th Cir. June 8, 2001)

The sick pay provisions of a collective bargaining agreement may take precedence over the maintenance and cure obligation. The agreement here provided for payment of a minimum monthly wage until cure. The

agreement was enforced, although M&C would be higher and the average monthly wage (presumably including overtime) would also be higher.

6. The IMO/ILO *Ad Hoc* Expert Working Group On Liability and Compensation For Death, Personal Injury and Abandonment Of Seafarers

John Schaffer provided a memo on this subject. The consensus was that U.S. seamen have adequate protections compared to many other seafarers in the rights to a Jones Act negligence claim, an unseaworthiness claim, maintenance and cure, unearned wage claims and statutory wage claims, including penalties. When stranded abroad, U.S. seamen may receive help from U.S. consulates.

The major problem is foreign seamen stranded in foreign ports far from home, with wages owed for months and inadequate food monies. This does not happen too often and, when it happens in U.S. ports, there are charities to help and generosity from local U.S. citizens.

Michael Marks Cohen favors a super priority, also favored by Douglas Stevenson, Esq., of the Seamen's Church Institute. A creditor with a low priority, who pays for repatriation expenses and perhaps two months back wages, could receive the highest priority for this and his own claim, coming ahead of a mortgagee. This would motivate a mortgagee and others. Also proposed is insurance with a COFR, as in OPA '90. If the insurance idea is supported by an international convention, a whole bureaucracy might be needed, although for coverage for ships in U.S. waters and passing of regulations, we already have a COFR bureaucracy (the Federal Maritime Commission).

7. Revision of Title 46 of the U.S. Code

Correspondence was received on various aspects of the proposed revision of the Code. Provisions affecting the Death On the High Seas Act, the Jones Act, the Limitation Of Liability Act and the Admiralty Extension Act made no substantive changes. For § 30304, the old § 688 of the Jones Act, concern was expressed that section (b), with a title of "venue", may be interpreted in a way which limits venue from the broader venue now allowed.

There was some concern over some of the drafting referring to training at the Merchant Marine academies, some fines and penalties and other items.

8. *Bradshaw v. Unity Marine Corp.*

Appended was an opinion by Judge Kent, of Galveston, gently chiding both counsel for missing the point of the issue in the case *sub judice*, and failing to shed any light beyond the smoke they created. Judge Kent did his own research to cover the obligations of a shipowner where a crew member is injured off the ship on a dock. Coincidentally, this is an issue about which some other lawyers are presently confronted and the answer is on page 6 of Judge Kent's decision.

In addition to the items on Chairman Schaffer's list, the following cases were discussed:

1. Jones Act

a. A maritime employer is not liable in admiralty for off-the-job injuries of an employee. *Greenwell v. Aztar Indiana Gaming Corp.*, 7th Cir. 10/4/01.

b. For Jones Act coverage, crew members must be on a vessel, or fleet of vessels, 30 percent or more of his employment time. *Roberts v. Cardinal Services, Inc.*, 5th Cir. 10/2/01.

c. There is no recovery for asbestos monitoring claims where there is exposure, but no symptoms. 9th Cir. 9/14/01, 2001 WL 1028293.

d. Release case: coercion is a good defense. *Orsini v. O/S Seabrooke O.N.*, 247 F. 3d 953 (9th Cir. 2001).

2. Wage Penalties

Statute does not apply to the master. Where there is a bareboat charter, the owner may be liable *in rem*. A claim must be verified. A good discussion of the statute. *Madeja v. Olympic Packer*, 155 F. Supp. 2d 1183 (Hi. 2001).

3. Limitation Actions

By filing a limitation action, personal jurisdiction is waived. *Karim v. Finch Shipping Co.*, 5th Cir. 9/5/01.

4. Offshore Continental Shelf Lands Act

Although plaintiff was a helicopter pilot to an offshore oil rig, if the accident is on land, OCSLA does not apply. *Pickett v. Petroleum Helicopters*, 5th Cir. 9/28/01.

5. Longshore and Harbor Workers' Compensation Act

A shipyard employer may offset the amount of each periodic payment given to claimant where there is a third party recovery. The offset is against the employer's liability. The tort recovery was against the manufacturers and suppliers of asbestos. *Gilliland v. E.J. Bartells Co.*, 9th Cir. 10/16/01.

6. The *Mallard Bay* Case

Concerning the interaction of Coast Guard and OSHA regulations, was to be argued in the U.S. Supreme Court on the 31st of October.

* * *

We are always looking for additional and interesting projects, relevant decisions, and are also continuously seeking potential new members.

Respectfully submitted,

John P. Schaffer, Chair

FORMAL REPORT OF THE COMMITTEE ON RECREATIONAL BOATING

The Recreational Boating Committee held a well-attended meeting on October 18, 2001. Frank De Giulio produced his usual excellent newsletter, *Boating Briefs*, which we distributed at the committee and general meetings.

We noted that a working group is now in existence to recommend whether the MLA should take a position on amending the Inland Rules of the Road to ameliorate potential conflicts with the Sail Racing Rules, and, if so, what the position should be. Todd Lochner of Annapolis is heading the group and we hope to have a report by the Spring 2002 meeting.

The principal subject of our October meeting was a presentation by Lyn Kagey, an MLA member of BOAT/U.S., concerning the organization's activities. In addition to giving us general material about the organization, Lyn handed out a very interesting table of BOAT/U.S. salvage arbitrations, showing, *inter alia*, the vessel and value involved, type of service, award, and date for each case. She also gave us the BOAT/U.S. recommended Salvage Agreement and the Salvage Arbitration Plan booklet. In addition, G. Robert Toney of National Liquidators in Ft. Lauderdale prepared and sent us a description of four current salvage cases of which he was aware. We had a lively and interesting discussion of boat salvage, and should carry over the topic to the meeting next Spring.

Between meetings we are following the activities of the National Recreational Boating Safety Coalition. We have been distributing information from the Coalition, and from others, from time to time to members of the Committee via the wonders of e-mail.

Respectfully submitted,

Donald C. Greenman, Chair

FORMAL REPORT OF THE COMMITTEE ON SALVAGE

The Fall meeting of the Salvage Committee of the Maritime Law Association was held on October 17, 2001 from 11:00 AM to 12:00 PM at the Hotel del Coronado in Coronado, California. Nine people attended the meeting.

Richard Buckingham, the Committee's Secretary, gave a useful summary of recent cases. Other topics included responder immunity, and the role of a Salvage Master during complex salvage operations. James Shirley provided some helpful insights on the basis of his past experience as a Salvage Master.

Copies of recent articles concerning utilization of Lloyd's new Open Form Salvage Agreement (LOF 2000) and the new SCOPIC Clause 2000 (Special Compensation P&I) were distributed. SCOPIC can be incorporated into the LOF and is used to provide adequate remuneration for salvors on the basis of prearranged rates when potential salved values are low or nonexistent.

SCOPIC encourages salvors to undertake operations when there is a threat of pollution damage (which might be prevented by the salvor's intervention) but no real prospect for a conventional salvage award. SCOPIC is intended to improve upon the Special Compensation provisions of Article 14 of the Salvage Convention 1989. It will avoid some of the shortcomings that were revealed during litigation involving that Article. These included the determination of the salvor's expenses (especially the fair rate allowed for equipment and personnel), and the triggers for special compensation (threat of damage to the environment in coastal or inland waters or areas adjacent thereto).

We discussed the draft UNESCO Convention on the Protection of Underwater Cultural Heritage (hereafter UCH). In particular, we discussed the version of the Convention prepared during the Fourth Meeting of Governmental Experts, held in Paris from July1-8, 2001. This version of the draft is scheduled for submission to the General Congress of UNESCO for approval within the next 30 days.

The draft Convention, in general, allows States Parties to regulate activities "directed at" UCH. "Directed at" is a defined term, which means "activities having underwater cultural heritage as their ***primary*** purpose and which may, directly or indirectly, physically disturb or otherwise damage underwater cultural heritage." Art. 1 ¶ 6 (emphasis added). The inclusion of the word "primary" should help limit the draft Convention's effect on ordinary maritime operations, unless they involve "treasure" salvage.

Cables and pipelines placed on the seabed are not considered UCH. Art. 1 ¶ 1(b). Other installations, placed on the seabed, and still in use are also not considered UCH. Art. 1 ¶ 1(c). The definition of UCH otherwise remains broad, and includes "all traces of human existence having a cultural, historical or archeological character which have been partially or totally underwater, periodically or continuously, for at least 100 years . . . ." Art. 1 ¶ 1(a).

The law of salvage and finds are not expressly outlawed but are significantly constrained by the draft Convention. Salvage operations must be authorized by a competent authority. Art. 4 § (a). This might not be a neutral court applying the maritime law of salvage and finds, but could be a government agency or executive that is unsupportive of such operations.

More importantly, any activity relating to UCH shall not be subject to the law of salvage or finds unless it is in full conformity with the Convention, and "ensures that any recovery of the underwater cultural

heritage achieves its maximum protection." Art. 4 §§ (b), (c). It will be difficult to undertake traditional salvage operations in conformity with the Convention, as the irretrievable dispersal of UCH is deemed incompatible with its protection. Also, UCH "shall not be traded, sold, bought or bartered as commercial goods." *See* Art. 33 & Rule 2 of the Annexed Rules.

The Convention will substantially increase the jurisdiction of a Coastal State over its Continental Shelf. Coastal States will have the right to authorize or prohibit activities directed at UCH in those areas. Art. 10 ¶ 2.

Articles 11 and 12 concern reporting, notification, and protection of UCH in the Area (the seabed beyond the limits of national jurisdiction). The Director General of UNESCO shall invite all States Parties, which have declared an interest in particular UCH, to consult on its protection in the Area. A State Party will be appointed to serve as the Coordinating State for such consultations. Art. 12 ¶ 2. This Coordinating State has a primary role in granting all necessary authorizations for activities directed at UCH in the Area. Art. 12 ¶¶ 4, 5.

Mr. Patrick Griggs, President of the Comité Maritime International, wrote the Director General of UNESCO on September 10, 2001 to express the CMI's position on the draft Convention. He stated that there are fundamental problems with it, and he could "see no possibility that the CMI would be able to support the Draft Convention in its current form."

These problems include the possible inconsistency of the Convention with the Law of the Sea Convention, greatly expanded Coastal State jurisdiction over shipwrecks on the Continental Shelf, an over-broad definition of Underwater Cultural Heritage (which includes property without historic, cultural or archeological ***significance***), and the possible use of Article 4 to restrict legitimate salvage operations.

We closed the Committee meeting by noting how much passion and controversy this somewhat obscure draft Convention has generated over the last three years. It is still not clear whether the United States will accede to this Convention and sign it. The Salvage Committee will continue to monitor developments, as there is no doubt that the Convention would seriously limit and perhaps effectively eliminate any salvage of historic shipwrecks.

Respectfully submitted,

William T. Storz, Chair

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

Held by telephonic conference call and at the offices of
Hill Rivkins & Hayden, New York,
on
August 3, 2001

The meeting was called to order by President William R. Dorsey, III, at 12:00 p.m. In addition to President Dorsey, the following officers were present:

Raymond P. Hayden, First Vice President
Thomas S. Rue, Second Vice President
Lizabeth L. Burrell, Secretary
Patrick J. Bonner, Treasurer
Winston E. Rice, Membership Secretary
Howard M. McCormack, Immediate Past President

The following Board members were present in person or telephonically:

Geoffrey F. Birkhead
James Patrick Cooney
John B. Gooch, Jr.
Armand J. Paré
Alan van Praag
James F. Whitehead, III
Robert J. Zapf
JoAnne Zawitoski

At the invitation of President Dorsey, Past President Chester D. Hooper of New York, the Association's delegate to the American Bar Association House of Delegates, and M. Hamilton Whitman of Baltimore, Chair of the Special Committee on Planning and Arrangements for the 2001 Fall Meeting, were also present at the meeting.

SECRETARY'S REPORT

Secretary Lizabeth L. Burrell of New York reported that many Committee Chairs are forgoing written reports on Committee meetings and activities, so that Association members are deprived of the benefit of reading about the areas of law covered by such Committees. Secretary Burrell therefore asked Board members, each of whom designated as a liaison to two or more Committees, to encourage Committee Chairs to submit written reports for inclusion in the Proceedings.

Upon motion duly made and seconded, the minutes of the May 3, 2001 meeting of the Board of Directors were unanimously approved and

accepted. The minutes of the March and May 2001 Board meetings were included in the Proceedings of the Spring 2001 General Meeting, which had been published at the time of this Board meeting.

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

TREASURER'S REPORT

Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ending on April 30, 2001, the date our fiscal year also ends. Treasurer Bonner reported on the cash on hand and investments as of the date of the meeting, as well as anticipated expenses for our next fiscal year, including the publication of the Directory, an audit, and travel in connection with many of our on-going projects.

Treasurer Bonner noted that dues collections are progressing well. We must, however, continue to exercise a policy of fiscal caution in view of other Association projects and activities that will require expenditures over the coming years. Nonetheless, we expect to be able to participate fully in all current areas of endeavor.

Those who have fallen behind on their dues payments continue to be purged from the membership.

Treasurer Bonner also reported on the filing of the Association's tax returns and on the auditors' report.

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

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Winston E. Rice of New Orleans presented eleven applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.

The Proctor Admissions Committee recommended that Associate Lawyer member Nancy L. Hengen of New York be advanced to Proctor status. Upon motion duly made and seconded, the recommendations of the Proctor Admissions Committee were approved and Ms. Hengen was granted Proctor status.

After the May 3, 2001 Board meeting, the Association had 3,324 members. As of August 3, 2001, after the changes approved by the Board at its meeting, the total membership was 3,336.

Membership Secretary Rice also reported that the Directory has been prepared and will be published considerably earlier than in prior years, for which President Dorsey expressed great thanks. In addition, Membership Secretary Rice has made changes to the website to make membership applications more accessible.

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. Rice's written report are appended to the original of these minutes.

PRESIDENT'S REPORT

Canadian Maritime Law Association 50th Anniversary

On behalf of the Association, President Dorsey attended the CMLA's celebration of its fiftieth year during its meeting on June 15 and 16, 2001, together with First Vice President Raymond P. Hayden, Immediate Past President Howard M. McCormack and Past President James F. Moseley. The Association hosted a reception and presented a banner bearing the same design as the home page of the CMLA website, in a size similar to our own Association banner, to reciprocate the kind recognition given this Association by the CMLA at our Centennial.

Average Adjusters' Meeting

President Dorsey attended the meeting of the Association of Average Adjusters on May 10, 2001 in London as the Association's representative.

Southeastern Admiralty Law Institute

President Dorsey attended the SEALI meeting in Orlando on June 19 and 20, 2001, at which he spoke about the *Cammon* case (discussed below in the *Amicus* Request section of these Minutes) and the Association's policy and procedures concerning participation as an *amicus curiae*.

Shipping Coordinating Committee

On behalf of the Association, President Dorsey attended the July 20, 2001 and will attend the August 7, 2001 meetings of the Coast Guard's Shipping Coordinating Committee, which have to do the with draft Protocol on the Athens Convention discussed below.

Houston Marine Insurance Seminar

President Dorsey will attend the Houston Marine Insurance Seminar, at which he will present a paper on the draft Protocol to the Athens Convention, discussed below.

INTERNATIONAL ACTIVITIES

Comité Maritime International

International Sub-Committee on Transport Law

Past President Hooper reported on the present draft of the International Sub-Committee's work, and the plan to get a draft to UNCITRAL by the end of the year to comply with the schedule proposed by UNCITRAL Secretary Jernej Sekolec. National maritime law and trade associations have been invited to comment on the present draft by September 28, 2001. There will be another meeting of the International Sub-Committee in November 2001 in Madrid, after which the instrument will be given to UNCITRAL by the end of the year. UNCITRAL meetings on the draft will start in April 2002 in New York. Further meetings will follow in Vienna in the Fall of 2002.

A difficulty posed to the Association is that our comments on the draft are being sought before our next Board and General Meetings, but it is difficult to determine in advance of those meetings whether the draft will generally accord with the COGSA proposal, greatly differ from the COGSA proposal or deal with subjects on which the Association has not previously taken a position. Accordingly, President Dorsey asked President Hooper to work with Association's Committee on Carriage of Goods to provide comments to the Board describing where the draft falls among these various possibilities so as to guide the Board's action in providing comments to the CMI.

Jurisprudence on Interpretation of Maritime Conventions

Dr. Francesco Berlingieri is heading a CMI project to gather information on how the courts in various nations are construing maritime conventions. He has requested all members of this Association to forward to him any court decisions interpreting maritime conventions.

International Maritime Organization

Protocol to the Athens Convention

President Dorsey will attend the next meeting of the IMO Legal Committee during the week of October 8, 2001, at which the Draft Protocol to the Athens Convention on Liability Relating to Carriage of Passengers and their Luggage by Sea will be the main topic. After receiving recommendations from Ann G. Miller of San Francisco, Chair, with the advice of the Committee on Cruise Lines and Passenger Ships, President Dorsey prepared a position paper based on the industry reaction and historic concerns of the Association, which he sent to the Coast Guard, with Board approval by poll after its May 3, 2001 meeting.

The paper conveys the view that the approach taken by the proposed Protocol is fundamentally at odds with current U.S. law and practice and that these deviations are without inherent merit. In particular, the position paper notes that the proposed Protocol provisions on liability, burden of proof and direct action conflict with not only U.S. maritime law but also transportation tort law in most U.S. jurisdictions, and that there has been no showing of a need to change existing law, which balances both carrier and passenger interests, on these issues.

The Coast Guard expressed its appreciation of the Association's comments, but the official position of the U.S. delegation has not yet been determined.

UNESCO Convention on Underwater Cultural Heritage

The Joint International Group of Experts considering the UNESCO Draft Convention had its fifth meeting in Paris from July 2 through 6, 2001. John D. Kimball of New York, Chair of the Association's Study Group on Underwater Cultural Heritage, and Rapporteur of the CMI's Working Group on Underwater Cultural Heritage, is also a member of the U.S. delegation. The Association has already criticized the provisions of the draft Convention which abrogate the laws of salvage and finds, oust

the courts of jurisdiction over matters involving objects which had been underwater for over one hundred years, omit any recognition of commercial usage of recovered artifacts, define "underwater cultural heritage" in an overly broad manner without any requirement that the artifacts have some historical or cultural significance, and potentially conflict with the Law of the Seas Convention.

Mr. Kimball reported that the Working Group has finished its work and that a vote was taken–in itself a deviation from custom in drafting Conventions, in which consensus is usually sought–to approve the draft. The U.S. delegation, which has only observer status because the United States is not a member of UNESCO, together with other maritime nations which are members, does not support the draft. Because of the composition of UNESCO, there will be no review of this Convention by the United Nations Security Council.

U.S. delegation's main objection to the current draft is its extension of coastal state jurisdiction to the exclusive economic zone out to the continental shelf, which is regarded as a violation of the Law of the Sea Convention. Other problems exist in the ambiguity of the jurisdictional provisions, but proponents of the draft argued that ambiguity was both desirable and constructive in that it would leave the States which became parties to the Convention free to interpret these provisions as they wished.

Mr. Kimball noted that there may be some attempts to modify the language of the current draft before it goes to the UNESCO General Assembly, but there will be no diplomatic conference prior to the submission of the draft to the UNESCO General Assembly. Mr. Kimball pointed out that the current draft is in direct conflict with virtually all of the positions taken by the Association, and encouraged the Association to continue to work with the U.S. government towards the laudable end of protecting underwater cultural heritage in a manner that would be consistent with the recognition of other rights and interests.

Mr. Kimball's report will be available on the Association's website.

Law of the Sea Convention

In view of the change in leadership of the Senate committee dealing with this Convention, President Dorsey will forward a copy of the Association's earlier resolution urging the United States to ratify this Convention.

COMMITTEE AND STUDY GROUP REPORTS

American Bar Association Relations

Past President Hooper reported that at the August 2001 meeting of the ABA, the House of Delegates will consider the following resolution concerning unpublished opinions:

> Resolved, that the American Bar Association urges the Federal Courts of Appeals uniformly to
>
> (1) take all necessary steps to make their unpublished decisions available through print or electronic publications, publicly accessible media sites, CD-ROMs, and/or internet websites; and
>
> (2) permit citation to relevant unpublished opinions.

Upon motion duly made and seconded, the Board unanimously resolved to instruct Past President Hooper, our delegate to the House of Delegates, to vote in favor of the ABA resolution concerning unpublished opinions.

Past President Hooper is also making efforts to foster exchange of information between the ABA and the Association so that we can better coordinate our work and avoid duplication of effort.

Carriage of Goods

Past President Hooper reported on that the status of the proposal for a new Carriage of Goods by Sea act, and the delays in its consideration caused by the changes in congressional committees. In view of the delays, it is possible that CMI International Sub-Committee on Transport Law might complete its draft for UNCITRAL, and even that UNCITRAL might act, before the proposed new COGSA is acted on by Congress. In such case, it would make little sense to advocate purely domestic legislation if an appropriate international regime might be adopted by the United States, particularly as it now appears that the current CMI draft is in many respects similar to the COGSA proposal.

Electronic Communications and Commerce

The Committee is studying issues arising from the courts' increasing use of electronic filing, including difficulties that may arise when a variety

of system failures prevent compliance with deadlines. President Dorsey will forward to the Committee Chair, Glen T. Oxton of New York, comments by Philip A. Berns of San Francisco on these issues.

Fisheries

Pursuant to the action taken by the Association at its May 4, 2001 General Meeting, President Dorsey forwarded to the Chair and minority leaders of the House and Senate Appropriations Committees the Association's recommendation that the effective date of the section 202(b) of the American Fisheries Act and 46 U.S.C. 12102(c)(4) be extended for at least 18 months to permit development and consideration of amendments to protect the interests of the current holders of preferred ship mortgages on fishing vessels of 100 feet or greater in registered length and the vessel owners. A bill extending the effective date has now been passed.

Marine Ecology

In his helpful and timely newsletter, Dennis L. Bryant of Washington, D.C., Chair of the Committee on Navigation, Coast Guard and Government Regulation, reported that the National Oceanic and Atmospheric Administration (NOAA) is proposing to amend its Natural Resource Damage Assessment (NRDA) regulations under OPA 90 to clarify issues raised in a 1997 federal court decision, as well as to make various technical changes, and that comments should be submitted by September 29, 2001. 66 Fed. Reg. 39464.

President Dorsey forwarded this report to Committee on Marine Ecology to determine whether or not the Association should comment.

Mr. Bryant subsequently reported that the NRDA comment period had been reopened to November 5, 2001. 66 Fed. Reg. 50919.

Marine Financing Committee Subcommittee on Coast Guard Documentation

Pursuant to a request from the Board, the Subcommittee, chaired by Robert L. Poster of New York, drafted comments in response to a request by the Coast Guard on proposed changes to 46 C.F.R. Part 67, dealing with documentation of vessels in the coastwise trade, and in particular with lease financing for such vessels. There was a difference of opinion within the Subcommittee, however, about certain of the comments, and

some Subcommittee members suggested that the Association should remain neutral in view of the controversial nature of some of the proposed regulations and varying views about whether or not the proposed regulations accord with the purpose of the statute.

Accordingly, the Board, upon motion duly made and seconded, resolved that the Association should take no position on the proposed regulations, noting, however, that individual members could of course comment as they wished, provided they made clear that they were not speaking on the Association's behalf.

Marine Insurance and General Average

The valuable work of this Committee in creating Annotations to the P&I policy will be published in the Fall 2001 MLA REPORT. The Annotations are already available on the Association's website.

Navigation, Coast Guard and Government Regulation

President Dorsey reported that a new bill, H.R. 2228, was introduced in the House of Representatives on June 19, 2001 by Representative Green of Wisconsin, entitled "The Maritime Disaster Family Assistance Act of 2001." The proposed legislation would delegate certain duties to the Secretary of Transportation in the event of a maritime disaster, including: the provision of mental health services and counseling to the families of victims and a place for them to grieve privately; to contact, meet with and arrange for travel of the families to the disaster; and to arrange for a suitable memorial, in concert with the families. The act would also prohibit a range of persons from contacting the families of victims for the purpose of soliciting them to commence suits for personal injury or death for forty-five days after the disaster.

Practice and Procedure

Pursuant to the action taken at the Association's May 4, 2001 General Meeting, President Dorsey forwarded to the Advisory Committee the Association's resolution to clarify Rule B and define the time for determination of when the defendant is "not found within the district" to be at the time of the filing of the complaint and affidavit required by Rule B(1).

Salvage

Pursuant to the action taken at the Association's May 4, 2001 General Meeting, President Dorsey forwarded to Assistant Legal Advisor for Treaty

Affairs of the State Department the Association's resolution recommending that the United States denounce the 1910 Salvage Convention.

Uniformity of U.S. Maritime Law

In his newsletter, Dennis Bryant reported that the Coast Guard has issued a Supplemental Notice of Proposed Rule-making ("SNPRM") concerning the reporting of maritime casualties. The proposal would add "significant harm to the environment" as a reportable marine casualty. As stated in Mr. Bryant's report, "Comments were submitted after issuance of the initial Notice of Proposed Rule-making indicating that the federalism section of that document could be read to mean that states were preempted from promulgating their own reporting requirements. The federalism section has been revised to indicate that the federal government has exclusive jurisdiction over issues such as design, construction, and operation of inspected commercial vessels operating on U.S. navigable waters. States continue to have concurrent jurisdiction with regard to certain aspects of marine environmental protection. Comments on the SNPRM should be submitted by September 10, 2001. 66 Fed. Reg. 36530."

President Dorsey has asked Board member James Patrick Cooney of Houston, who also chairs the Uniformity Committee, to undertake a study of the SNPRM to determine if any federalism issues that might concern the Association are raised, and to make a recommendation about whether or not the Association should file comments.

Special Committee on Planning and Arrangements for the Fall 2001 General Meetings

A. Hamilton Whitman, Chair, reported that we were getting a good number of registrations for our Fall meeting in San Diego during the week of October 15 at the Hotel del Coronado in San Diego, with about one third of the registrants coming from overseas. Mr. Whitman reported that he is monitoring the number of registrations so that, if necessary, we can reduce the number of registrations guaranteed to the hotel by the applicable deadline.

Special Committee on Site Selection for the Fall 2005 General Meetings

Arrangements have been made to hold our Fall 2005 meeting at the Scottsdale Princess from November 2 through 5, 2005. President Dorsey thanked Second Vice President Thomas S. Rue and Marion E. McDaniel,

Jr., of Houston, Chair of the Special Committee, for their work in negotiating favorable terms for this event.

TITLE 46 RECODIFICATION

The U.S. government is considering a major recodification of Title 46 of the United States Code, with the expressed intention of avoiding any modification of existing substantive law. The purpose of the recodification is to modernize language and organize the material. Dennis Bryant, Chair of the Committee on Navigation, Coast Guard and Government Relations, also heads an *Ad Hoc* Committee made up of Committee Chairs, including Harold Watson, Chair of the Committee on Maritime Legislation, and the Chairs of several substantive Committees affected by Title 46, to examine proposed revisions for consistency with existing law and report further on the results of this examination.

Based on the Coast Guard's advice that this project is moving forward quickly, the Association's comments will be drafted on an expedited basis in order to provide them before the Fall meeting.

ABA STUDY ON MULTIJURISDICTIONAL PRACTICE OF LAW

After Board approval of the comments of the *Ad Hoc* Subcommittee on Multijurisdictional Practice, President Dorsey forwarded these comments to the ABA.

***AMICUS* REQUESTS**

President Dorsey reported on developments in *Cammon v. City of New York*, 95 N.Y.2d 583, 721 N.Y.S.2d 579, 2001 AMC 210 (N.Y. 2000). In this suit, New York's highest court allowed a marine construction worker, who was injured on a work platform on navigable waters allegedly because of a surge caused by a passing tug, to assert a claim for negligence and strict liability under New York Labor Law against third parties. The case raises the issue at the center of the current debate among commentators of such stature as Professors Robert Force and David Robertson about the vitality and proper application of *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 216 (1917).

While the issue is at the heart of the Association's concerns, in view of the unresolved procedural issues in the case (denial of a motion for summary judgment), the Board resolved at its May 3, 2001 meeting that *amicus* support for the petition for *certiorari* was not appropriate at that time.

After that meeting, President Dorsey asked the parties to keep us advised of the progress of the matter to determine whether or not the Association should participate at a later point in time, particularly if the Supreme Court decides to accept the petition for *certiorari*. The wisdom of the Board's view of the procedural posture of the case was subsequently borne out by the fact that the defendant's counsel reported that the defendant had been unable to satisfy the Supreme Court's finality doctrine and therefore was not going to file a petition for *certiorari* at this time.

The Board had resolved by poll after its May 3, 2001 meeting to authorize the Association's participation as *amicus* in *U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co.*, 241 F.3d 135 (2d Cir. 2001), pursuant to an invitation from the United States Court of Appeals for the Second Circuit, on petition for rehearing *en banc*, for *amicus* briefs from, *inter alia*, maritime law and trade organizations. The sole issue on the petition for rehearing is whether or not the Second Circuit should overrule *Great Circle Lines v. Matheson & Co.*, 681 F.2d 121 (2d Cir. 1982), in which the court had held that a fixture "subject details" constituted a binding charter.

President Dorsey expressed the Board's appreciation to Donald J. Kennedy of New York, Chair of the Committee on Maritime Arbitration and Mediation, for the Committee's recommendations, which were composed on an urgent basis, and to Board members Armand J. Paré and Vincent M. DeOrchis and Committee member Keith W. Heard, for their efforts in writing the brief, also under great time pressure. A copy of the Association's *amicus* brief is available on the website. The Association's brief urges the Second Circuit to revisit *Great Circle* for clarification.

President Dorsey reported on a request for the Association to participate as *amicus* in *Senator Lines v. Eastern Sunway*, which involved the issue of whether strict liability or negligence standard should govern the liability of a shipper of dangerous cargo when that cargo causes damage to a ship and other cargo. The case was on appeal to the United States Court of Appeals for the Second Circuit after a ruling by the trial court that the carrier had to prove negligence–by showing that the shipper knew of but failed to disclose the cargo's dangerous propensities–to recover. In light of By-Law 702.1, which requires that *amicus* participation be sparingly authorized, and the procedural posture of the case, *amicus* participation was declined.

RESOLUTION TO CHANGE DATE OF FALL 2002 MEETING

Upon motion duly made and seconded, the Board resolved to hold the Fall 2002 General Meeting on Friday, November 1, 2002.

MEMBER NEWS

Immediate Past President McCormack has been nominated to serve as the next Chairman of the Association of Average Adjusters of the United States.

President Dorsey conveyed the Association's congratulations to honorary member Dr. Francesco Berlingieri on the occasion of his being awarded the honorary degree of *lauriate ad honorem* from the University of Bologna.

* * *

There being no further business to come before the Board, the meeting was adjourned at 2:15 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 Hotel del Coronado, San Diego, California
on
October 16 and 19, 2001

The meetings were called to order by President William R. Dorsey, III, at 2:35 p.m. on October 16 and at 8:30 a.m. on October 19. In addition to President Dorsey, the following officers were present at both meetings:

Raymond P. Hayden, First Vice President
Thomas S. Rue, Second Vice President
Lizabeth L. Burrell, Secretary
Patrick J. Bonner, Treasurer
Winston E. Rice, Membership Secretary
Howard M. McCormack, Immediate Past President

The following Board members were present at the October 16 meeting:

Geoffrey F. Birkhead
James K. Carroll
James Patrick Cooney
Vincent M. DeOrchis
John B. Gooch, Jr.
Armand J. Paré
Robert B. Parrish
Alan van Praag
James F. Whitehead, III
Robert J. Zapf
JoAnne Zawitoski

The following Board members were present on October 19:

Geoffrey F. Birkhead
James Patrick Cooney
Vincent M. DeOrchis
John B. Gooch, Jr.
Armand J. Paré
Robert B. Parrish
Alan van Praag
Mary Elisa Reeves
James F. Whitehead, III
Robert J. Zapf
JoAnne Zawitoski

At the invitation of President Dorsey, Past President Chester D. Hooper of New York, was present at both meetings, and M. Hamilton Whitman of Baltimore, Chair of the Special Committee on Planning and Arrangements for the 2001 Fall Meeting, was present at the October 16 meeting.

SECRETARY'S REPORT

Secretary Lizabeth L. Burrell of New York reported on the arrangements for future General Meetings and other administrative matters.

Upon motion duly made and seconded, the minutes of the August 3, 2001 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the August 2001 Board meeting, together with these Minutes, will be published in the Proceedings of the Fall 2001 General Meeting.

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

TREASURER'S REPORT

Treasurer Patrick J. Bonner of New York presented audited reports for the fiscal year which ended on April 30, 2001 as well as the Treasurer's Report for the three months ending on July 31, 2001. Treasurer Bonner

reported on the cash on hand and investments as of the date of the meeting, as well as anticipated expenses for our next fiscal year, including the publication of the Directory, an audit, and travel in connection with many of our on-going projects.

Treasurer Bonner noted that dues collection was not as strong this summer as it was last summer, and the cost of printing and mailing the PROCEEDINGS, the directory and the MLA REPORT have risen steadily. Accordingly, a special committee will look into ways to reduce these costs. We must continue to exercise caution in our expenditures.

Those who have fallen behind on their dues payments continue to be purged from the membership.

Treasurer Bonner also reported on the filing of the Association's tax returns.

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

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Winston E. Rice of New Orleans presented thirteen applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.

The Proctor Admissions Committee recommended that two Associate Lawyer members be advanced to Proctor status. They are:

Susan M. Dorgan of New York Grady S. Hurley of New York

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

The Membership Secretary reported that three applicants had been recommended for Non-Lawyer membership. Those recommendations are:

Paul A. Smith of New York G. Robert Toney of Fort Lauderdale
Stephen W. Gillen of New York

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

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

Professor Charles L. Black, Jr., of New York
James H. Dixon of Miami
Sam L. Levinson of Seattle
Donald Rogers of New York
The Honorable William K. Thomas of Cleveland
Thomas F. Ward of Staten Island
Glenn J. Winuk of New York
The Honorable Caleb M. Wright of Wilmington

After August 3, 2001 Board meeting, the Association had 3,327 members. As of October 19, 2001, after the changes approved by the Board at its meetings, the total membership was 3,348.

Membership Secretary Rice reported that the directory had been completed at an earlier point in the year, and with more accuracy, than has been the case in the past.

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. Rice's written report are appended to the original of these minutes.

PRESIDENT'S REPORT

On behalf of the Association, President Dorsey attended the Houston Marine Insurance Seminar on September 24 through 27, 2001, at which he presented a paper on the draft Protocol to the Athens Convention, discussed below.

INTERNATIONAL ACTIVITIES

Comité Maritime International

International Sub-Committee on Transport Law

Past President Hooper reported on the present draft of the International Sub-Committee's work, and the plan to get a draft to UNCITRAL by the end of the year to comply with the schedule proposed by UNCITRAL Secretary Jernej Sekolec. National maritime law and trade associations were invited to comment on the present draft in preparation for another meeting of the International Sub-Committee in November 2001 in

Madrid, after which the instrument will be given to UNCITRAL by the end of the year. UNCITRAL meetings on the draft will start in April 2002 in New York. Further meetings will follow in Vienna in the Fall of 2002.

NIT League is also participating in the development of the instrument, having sought and obtained observer status by the CMI. NIT League and the World Shipping Council will also be filing position papers.

President Dorsey asked Past President Hooper, together with the other members of the Association's working group–Professor Michael Sturley of Austin (who is also the rapporteur for the International Sub-Committee), Vincent M. DeOrchis of New York, and George F. Chandler of Houston–and the Association's Committee on Carriage of Goods to advise the Board about whether the current Sub-Committee draft generally accords with the Association's COGSA proposal, greatly differs from the COGSA proposal or deals with subjects on which the Association has not previously taken a position.

Past President Hooper reported to the Board on October 16 that the CMI's draft instrument was generally in accord with the Association's draft COGSA proposal. The Association working group's draft position paper was then presented for comment to an open meeting of the Carriage of Goods Committee meeting held on October 17, 2001 during the Fall General Meeting. At the ensuing October 19 meeting, the Board, upon motion duly made and seconded, approved the position paper and directed that it be forwarded to the CMI. A copy of the position paper will be appended to the original of these minutes.

General Average

At the CMI's Singapore Plenary, IUMI proposed further revision to the York-Antwerp rules, a proposal opposed by the United States delegation because of the extensive review of this subject conducted at the Sydney meeting. Nonetheless, a working group was formed to study the parameters of such a project and Immediate Past President Howard M. McCormack, Chair of the Average Adjusters Association, will represent the Association at a December 5, 2001 meeting of the working group in London.

UNESCO Convention on Underwater Cultural Heritage

The Joint International Group of Experts considering the UNESCO Draft Convention had its fifth meeting in Paris from July 2 through 6,

2001. John D. Kimball of New York, Chair of the Association's Study Group on Underwater Cultural Heritage, and Rapporteur of the CMI's Working Group on Underwater Cultural Heritage, served as a private sector advisor to the U.S. delegation and filed a full report which is available on the Association's website. A summary of the developments at this meeting was included in the minutes of the August 3, 2001 Board meeting.

On September 10, 2001, Patrick Griggs, the President of the CMI, wrote the Director General of UNESCO to advise that he could "see no possibility that the CMI would be able to support the Draft Convention in its current form."

President Dorsey again extended the thanks of the Association to Mr. Kimball, who had devoted so much time and energy to this matter.

International Maritime Organization

Protocol to the Athens Convention

President Dorsey attended a meeting of the IMO Legal Committee during the week of October 8, 2001, at which the Draft Protocol to the Athens Convention on Liability Relating to Carriage of Passengers and their Luggage by Sea was the main topic. After receiving recommendations from Ann G. Miller of San Francisco, Chair, with the advice of the Committee on Cruise Lines and Passenger Ships, President Dorsey prepared a position paper based on the industry reaction and historic concerns of the Association. With Board approval by poll after its May 3, 2001 meeting, President Dorsey forwarded the position paper to the Coast Guard.

The paper, which is available on the Association's website, conveys the view that the approach taken by the proposed Protocol is fundamentally at odds with current U.S. law and practice and that these deviations are without inherent merit. In particular, the position paper notes that the proposed Protocol provisions on liability, burden of proof and direct action conflict with not only U.S. maritime law but also transportation tort law in most U.S. jurisdictions, and that there has been no showing of a need to change existing law, which balances both carrier and passenger interests, on these issues.

At the Legal Committee meeting, the International Council of Cruise Lines (ICCL) participated as a nongovernmental organization and

expressed the cruise industry's opposition to several points of the proposed Protocol.

A pleasing result of the October meeting of the Legal Committee was the acceptance of the U.S. delegation's criticism of the reverse burden of proof on the issue of liability for nonshipping incidents and the adoption of the U.S. delegation's definition of a defect in the ship so as to distinguish defects from unseaworthiness.

On the other hand, because the concept of a direct action against insurers has become so common in civil law liability regimes, both domestic and international, in Europe, the provisions for direct actions will be included in the draft sent to the Diplomatic Conference. Indeed, there are provisions for strict liability and direct actions in all recent IMO-generated conventions, like the CLC, HNS and Bunker Pollution Conventions.

Other Issues treated at IMO Legal Committee Meeting October 8-12, 2001

The IMO/ILO draft resolutions on repatriation and contract claims of seamen were passed. The work on a convention Offshore Mobile Craft has been taken off the IMO work program. Important work on issues such as places of refuge and suppression of acts of terrorism will take precedence, and the Legal Committee will review the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf. The next major projects expected to come out of the IMO will be the draft Convention on Wreck Removal and IOPC Fund limits. The Coast Guard expressed its thanks to the Association for assistance in developing positions on many of the issues raised at the meeting.

The next IMO Legal Committee meeting (84th session) will take place from April 22-26. 2002, just before the Association's Spring 2002 meeting.

COMMITTEE AND STUDY GROUP REPORTS

American Bar Association Relations

Past President Hooper reported that at the August 2001 meeting of the ABA, the ABA House of Delegates passed the following resolution concerning unpublished opinions:

Resolved, that the American Bar Association urges the Federal Courts of Appeals uniformly to

(1) take all necessary steps to make their unpublished decisions available through print or electronic publications, publicly accessible media sites, CD-ROMs, and/or internet websites; and

(2) permit citation to relevant unpublished opinions.

In accordance with the Board's August 3, 2001 resolution, Past President Hooper, our delegate to the House of Delegates, had voted in favor of the ABA resolution.

Fisheries

Pursuant to the action taken by the Association at its May 4, 2001 General Meeting, President Dorsey forwarded to the Chair and minority leaders of the House and Senate Appropriations Committees the Association's recommendation that the effective date of the section 202(b) of the American Fisheries Act and 46 U.S.C. 12102(c)(4) be extended for at least 18 months to permit development and consideration of amendments to protect the interests of the current holders of preferred ship mortgages on fishing vessels of 100 feet or greater in registered length and the vessel owners. A bill extending the effective date has now been passed.

International Law of the Sea

In view of the change in leadership of the Senate committee dealing with this Convention, President Dorsey forwarded to Senator Joseph Biden, the new chair of the Senate Committee on Foreign Relations, a copy of the Association's December 22, 1995 letter urging the United States to ratify this Convention. Douglas R. Burnett and Lawrence B. Brennan assisted President Dorsey in drafting the forwarding letter volunteering, *inter alia*, to testify in support of the Convention. Given the change in Senate Committee leadership, it is possible that the United States will ratify this important Convention once the immediacy of the current crisis has passed.

Marine Ecology

Matthew A. Marion of South Norwalk, Chair of the Committee, reported that in the view of his Committee, there was no need for the

Association to submit comments to The National Oceanic and Atmospheric Administration (NOAA) concerning its proposal to amend its Natural Resource Damage Assessment (NRDA) regulations under OPA 90 to clarify issues raised in a 1997 federal court decision, as well as to make various technical changes. 66 Fed. Reg. 39464; 66 Fed. Reg. 50919.

Marine Finance

The Committee reported that it will make recommendations to the Board about and prepare a draft letter to the Coast Guard concerning Builder's certificates, certificates of origin and other vessel documentation matters.

Practice and Procedure

Board member and former Committee Chair Robert J. Zapf of Los Angeles reported that the Committee unanimously recommended and would put before the Association a resolution endorsing an amendment to the notice requirements of Admiralty Rule C, as follows:

> RESOLVED that the Maritime Law Association of the United States supports an amendment to Rule C(6)(b)(i)(A) and (B) to provide that a person asserting a right of possession or any ownership interest in the vessel must file the statement of such right or interest within ten days of the execution of process or within such time that the court allows, deleting any reference to publication in the context of determining when such statement is to be filed.

The purpose of the proposed amendment is to make sure that forfeiture and admiralty actions are treated differently with respect to when a person with an interest should file a statement of his interest.

Young Lawyers

The Young Lawyers Committee is seeking ways to improve its efficiency in involving new members in the Activities of the Association.

Environmental Crimes Special Subcommittee

Alfred J. Kuffler of Philadelphia, Chair of the Environmental Crimes Subcommittee, reported the Subcommittee's recommendation that the

Association adopt a position paper to serve as a briefing booklet for government officials interested in such issues. Accordingly, the Subcommittee drafted a position paper restating the Association's positions on issues of environmental crimes, *i.e.*, that OPA '90 gives highest priority to prevention and clean-up of spills rather than criminal prosecution; that ordinary negligence should not give rise to criminal liability; that statutes imposing criminal sanctions for damage to the environment should be applied only in situations in which OPA is inapplicable; that legislation should be enacted prohibiting the Department of Justice from seeking waivers of attorney-client and work product privileges as conditions for plea bargains; that there should be a qualified immunity for statements made in Coast Guard and National Transportation Safety Board casualty investigations; and that there should be an evidentiary privilege for self-audit materials.

The Board, after motion duly made and seconded, resolved to adopt the position paper, which may then be forwarded to government officials, as appropriate. A copy of the position paper will be appended to the original of these minutes.

Special Committee on Planning and Arrangements for the Fall 2001 General Meetings

A. Hamilton Whitman, Chair, reported that while there had been some cancellations since September 11, the vast majority of those who signed up were attending the Fall meeting in San Diego at the Hotel del Coronado in San Diego. President Dorsey commended Mr. Whitman and the Committee for its extraordinary work.

Special Committee on Planning and Arrangements for the Fall 2003 General Meetings

President Dorsey reported that while it will be difficult to draw conclusions about the new format adopted for the Fall 2001 General Meeting, we will try to monitor the success of starting resort meetings with a day devoted to all the sports competitions so that it is easier to plan committee meetings and CLE seminars.

Study Group on a Restatement of Marine Insurance

In view of the difficulties of managing such a project through more than one organization, and at the request of the Study Group, President Dorsey has decommissioned this Study Group.

AMICUS REQUESTS

President Dorsey reported on the two most recent requests for the Association's participation as *amicus curiae*. The first was in *Submersible Systems, Inc. v. Perforadora Central, S.A.* (5th Cir.), in which plaintiff sought to attach defendant's rig. The defendant denied the existence of personal jurisdiction, but also sought to avoid the attachment by contending that it could be found within the district. The Court of Appeals held that personal jurisdiction was lacking and that because defendant's rig had left the district, foreign attachment was not proper. The Fifth Circuit also held that the defendant had not waived its right to deny jurisdiction by statements made in attempting to fend off the foreign attachment. After careful consideration and consultation with members of the Practice and Procedure Committee, the President, in consultation with the two Vice Presidents, decided in accordance with Rule 702.4 not to grant the request for *amicus* participation in the petition for *certiorari*, but counsel was asked to notify President Dorsey if *certiorari* is granted so that the Association will be able to consider whether a brief on the merits should be filed.

As of the time of the board meetings, a request for *amicus* participation was pending in *Fish v. Regal*, a Ninth Circuit unpublished opinion involving prejudgment interest in Jones Act cases. After the board meeting, in a vote taken by poll, the Board resolved not to participate in this case.

WEBSITE

President Dorsey reported on the new features of the website, including the ability to post very current items, such as his reports on the effects of September 11, in a timely fashion so as to keep the membership fully advised on matters of urgency or great concern.

SERVICE OF REMEMBRANCE AND COMMEMORATION OF THE VICTIMS OF SEPTEMBER 11, 2001

President Dorsey spoke to the Board about this special ceremony, which was conducted at the opening of the Fall 2001 to honor the victims of the terrorist attacks which occurred on September 11, 2001.

At the October 15 board meeting, President Dorsey also announced that Professor Francesco Berlingieri has arranged for a special mass to be held at Saint Marta's church on the eleventh day of each month for the

next year in remembrance of those who lost their lives on September 11, 2001. President Dorsey also expressed the thanks of the Association to all those across the world who sent messages of sympathy and support. We are all sincerely grateful for each expression of kindness and solidarity from those abroad.

* * *

There being no further business to come before the Board, the October 15 meeting was adjourned at 4:15 p.m. and the October 19 meeting was adjourned at 9:00 a.m.

Respectfully submitted,

/s/ Lizabeth L. Burrell
Secretary