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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING—OCTOBER 27, 2007

PRESENT:

LIZABETH L. BURRELL
WARREN J. MARWEDEL
PATRICK J. BONNER
JAMES W. BARTLETT, III
ROBERT G. CLYNE
PHILIP A. BERNS
THOMAS A. RUE

And the following 66 members:

Joe E. Basenberg	Geoffrey J. Ginos
Michael K. Bell	Robert S. Glenn, Jr.
Forrest Booth	Jay Gordon
Phillip Buhler	Donald C. Greenman
Robert W. Burger	Michael O. Hardison
Paul E. Calvesbert	Jason R. Harris
Allen F. Campbell	Raymond P. Hayden
Christopher E. Carey	Dana Henderson
William E. Cassidy	Barbara Holland
Michael Marks Cohen	Grady S. Hurley
William R. Connor, III	Bradley A. Jackson
James Patrick Cooney	Ronald A. Johnson
Paul S. Edelman	Stephen B. Johnson
John A. Edginton	Lawrence J. Kahn
John S. Farmer	Kimbley A. Kearney
David J. Farrell, Jr.	John D. Kimball
Bryant Everett Gardner	Bruce A. King
Gene B. George	P. Michael Leahy
Alexander M. Giles	Richard M. Leslie

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Todd Lochner
Patrick J. Maloney
David Maloof
Janet W. Marshall
Raymond L. Massey
Daniel G. McDermott
Dennis Minichello
Michael Moore
James F. Moseley, Sr.
James F. Moseley, Jr.
Kevin G. O'Donovan
W. Sean O'Neil
Rand Pixa
Donald Radcliff
Mary Elisa Reeves
Stephen V. Rible
C. Kent Roberts

John M. Ryan
Robert J. Ryniker
John Scalia
Charles E. Schmidt
Jonathan S. Spencer
Lee Thorson
Alan van Praag
Harold K. Watson
James F. Whitehead, III
Thomas L. Willis
JoAnne Zawitoski

And the following 2 guests:

Michael J. Bird
Carlos Llorente

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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING
SAN FRANCISCO, CALIFORNIA
OCTOBER 27, 2007

PROCEEDINGS

MS. BURRELL: Please come in and take your seats. I'm going to try to get you out of here in time to have a lovely afternoon in Florida.

Good morning everyone. I thank you all for being here. I thank the Committee Chairs for holding very informative meetings. I have received many comments from first-time attendees about how wonderful a time they have had and how great the Committee sessions have been. People have been especially impressed by how informative the Committee meetings have been and by the quality of our Committee work. It shouldn't be a surprise. Our Committees' work is up there on the website for the whole world to see and enjoy. The Committee Chairs deserve special thanks for their efforts in putting on such a fine program.

I would like to welcome some of our honored guests who have also chosen to come and grace us with their presence and participate in these meetings and lend their special viewpoints to our Association. One of those people is Mike Bird, who is the President of the Canadian Maritime Law Association.

I'd also like to recognize Admiral Bill Baumgartner, who is the Judge Advocate General of the United States Coast Guard. Thank you very much for coming. We have also somebody else of very high rank, Admiral John Crowley, commander of the Ninth District of the Coast Guard. In addition, we have Captain Brian Judge, who is the Chief Trial Judge of the Coast Guard, and Dave Cantor, United States Coast Guard Captain, Retired, who is in Chuck Michel's office and has filled in for Chuck by attending meetings that have relevance to vessel regulation, navigation, and operations. We were also honored by the presence of Rand Pixa, Deputy Chief Counsel of MARAD; Tom Willis, who heads the Coast Guard Documentation Center; and Jay Gordon, Chief of MARAD's Division of Litigation and General Law.

All of these folks made extremely valuable contributions to the work of the Association and added their good fellowship to all of our events.

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I want to extend special thanks to the people who put on the show. They got us the rooms, made the parties, and otherwise enabled us to enjoy both the recreational events and the substantive events of this meeting. Let me introduce the members of 2007 Planning and Arrangements Committee: for the tennis tournament and fun run/walk, Hal and Sheri Watson; more water-borne activities—the sailing and fishing—were handled by Paul and Mildred Calvesbert, and although we didn't have enough sailors to make for a full regatta, I understand the fishing was really good; for registration, Donny and Daré Radcliffe; for an activity that I know is clearly close to the hearts of many here, golf, we have Ray and Lynn Massey; for the evening functions that I know I certainly enjoyed with great vigor we have JoAnne Zawitoski and Dave Logan; for the Committee arrangements, Dana Henderson; for the exceptionally fine and very stimulating CLE program Jim and Heather Moseley, Jr.; and in that very, very important function, the Treasurer, otherwise the person who has to make sure that the decimal are all in the right place, we have Larry Kahn and Kristin Larson.

The Vice Chairmanship is by no means a ceremonial position. Charlie Schmidt and Phyllis Jo Kubey worked tirelessly on all aspects of the meeting. Finally, the ones who put it all together, who labored for years in getting everything organized, we have the Chair, or should I say Chairs, Dennis and Janine Minichello. Dennis, Janine, you deserve real thanks. In fact, I know that the beautiful box that you got as your favor for this meeting was the result of Janine's scouring of the shops of all local artists to get us something really beautiful and then make sure that it was turned into an appropriate memento for this event. Dennis, or course worried, poked, prodded, and fixed almost 24/7 to prepare a wonderful meeting for us all.

Now, with all of that said, I would like you to thank them all as a group, because they functioned as a friendly and very, very integrated working group. Much appreciated everyone. Thank you very much.

Having given thanks to the people who made this possible and who enriched this program by their presence, I will move on now to the more conventional aspects of our meeting and call upon our Secretary, Jim Bartlett, who will summarize the Association's activities over the last six months.

MR. BARTLETT: Thank you, Madam President.

I'd like to first ask all the speakers to come to the podium to speak. We're recording all of this on tape so that's the way it works best. Also, at the back of

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the room there are attendance lists, and I'd like you all to sign those if you would, please. We need to know that you were here.

The Board of Directors met twice since our last General Meeting. We met on August 4 in Portland, Maine, and we'd like to thank the members of the MLA in Portland for their wonderful hospitality. We also met this past Thursday, October 25, here in Sanibel Harbour Resort. I will report on some of the subjects addressed at these two meetings, but other subjects I will leave to more detailed reports from Committee Chairs and others.

One of the accomplishments in the past six months was probably completed this week, the digitalization of all of the numbered MLA documents. This is being done by some people at the University of Hawaii and once this is completed, all of the MLA numbered documents will be accessible on the MLA website. They are also accessible to a consortium of law professors for their research purposes.

At our August 4 meeting, the Board of Directors approved amended By-Laws that are now on the MLA website, so if you have need to consult the By-Laws, please go to the website, because the directory, as it only comes out every two years, does not have the new amended By-Laws. The amendments consist mainly of small changes to bring the By-Laws up-to-date, but one major change adds a new category of membership, Law Student membership. At our October 25 meeting, we approved various recommendations of the Membership Subcommittee of the Board regarding the implementation of the Law Student membership, so that will be going into effect very shortly.

During the last six months, the Board of Directors approved filing of amicus briefs in two cases: one was in support of a petition for writ of certiorari in the case of *Exxon Shipping Company v. Grant Baker*, and we think we should be hearing whether cert is granted in the very near future. And we also approved the filing of an amicus brief to an appeal to the Second Circuit in *Consub Delaware, LLC v. Shabin Engenbaria Limitada*.

The Board has voted in favor of the 2008 Fall Meeting being held in Long Beach, California, November 5 to the 8th of 2008, and John Edginton will be making a report later in this meeting with more details of that.

During the past few months, President Burrell and other officers have represented the MLA at various meetings or other events. Past President

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Rue and First Vice-President Marwedel attended the CMI Assembly and Symposium in Dubrovnik May 10th–12th of this year. President Burrell, at more or less the same time, attended the IMO Diplomatic Conference on the Draft Wreck Convention, in Nairobi from May 14th to May 18th of 2007. President Burrell also attended the CMI Working Group on Places of Refuge in London, on May 22, 2007. She also has attended the MICA Seminar and Dinner in New York on September 28. President Burrell also attended the meeting and dinner of the Average Adjusters of the United States in New York October 3rd and 4th of this year. And she will be attending the Ibero-American Institute of Law Twelfth International Congress in Sevilla, Spain November 13th to 17th of this year.

That completes my report, Madam President, and I move for its approval.

PRESIDENT BURRELL: Second? All in favor? Opposed? Well done, Jim.

I'm just going to add that I also had the pleasure of visiting Toronto and the honor of attending the Canadian Maritime Law Association meeting as well as the Board meeting of the Canadian Maritime Law Adjusters. As always, those were both wonderful, informative events, and I was treated with the cordiality that we have come to expect and hopefully to extend to our Canadian neighbors.

You heard Jim mention some of the work of our Board Subcommittees. I would like to emphasize how important the Board is in the management of this Association, not only on day-to-day issues but also looking forward into the future. We have four Board Subcommittees, and their names are self-explanatory: Committees, Finance, Membership, and Website. The function of these Subcommittees is not only to manage those areas on a day-to-day basis but to consider how those Association functions should be managed over the long term.

The Board does not just meet; the Board does work in between its meetings for the continuing vitality of this Association. Not all MLA members are aware of what goes on at Board meetings, and some members may not know that the work continues outside of Board meetings. The work of these Subcommittees goes forward throughout the year with real vigor. We always have things that we're doing on the fly. The Board is immensely responsive when I send out an e-mail. They get back to me so quickly, and we manage things with such alacrity, that this Association is very prompt in taking action in a timely manner, even on matters that arise suddenly and require an urgent

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response. The Board really is an active component in the management of this Association present and future, and I want to thank them all, too. With that said, let us move on to our Treasurer's Report from Bob Clyne.

MR. CLYNE: Thank you, Madam President.

The Association's finances remain stable as of the last fiscal quarter, which is the first fiscal quarter of the year, May 1 to July 31st. We had about \$406,000 in cash and investments. Now that represents basically a high point for the year, because by that time we collected the bulk of the dues, and we spent the rest of the year spending the money. Presently, we have about \$345,000 in cash and investments. By the end of the year, we look to target to maintain a reserve of about \$250,000, and we're on track for that this year.

The only other thing I wanted to report is that we successfully, or that I survived my first audit as Treasurer and that went very well. I'm pleased to report that.

That completes my report. I move for its adoption.

PRESIDENT BURRELL: In favor? Opposed? Well done, Bob. Let us move on to our Membership Secretary.

MR. BERNES: Geoff, if you can come up after the meeting I'll introduce you to Liz. And by the way, I do have a complaint despite all our thanks to the Committee, etc., this humidity is killing my hair. In Las Vegas we call this heavy rain.

At our May meeting we had elevated sixteen members to Proctor status, reinstated two members, and also one of the reinstatements was an elevation to Proctor, and we admitted seventeen Associates, one Academic member, three Non-lawyers were also elected. At the August meeting, the Board approved the reinstatement of one Non-Lawyer member and the admission of twenty Associates.

In October, as reported by our MLA rep, Robin, whom most of you are familiar with, we had a membership of 3,021. This week we elevated seven Proctor members and the Proctor members and the new Associates. If anyone's interested, I'll give you the names if you come up afterwards. We also and very happily admitted twenty-eight new Associate members. We had

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no completed applications for Non-lawyers, and we had no applications for Judicial or Academic membership or anything other than what we have reported on. We reinstated one Associate.

The part that I'm usually loathe to report on, the deaths that I received notice of since the May 2007 meeting. I will name those people.

The Honorable William M. Steger
Professor Frederick W. Swaim
David M. Salentine
Mark O. Kasanin
George J. Koelzer
Francis V. Elias
Irene W. Haefner
Lionel Rene Saporta
Mayo J. Thompson
Professor Robert A. Jenkins
William J. Augello
Ann-Michele G. Higgins
The Honorable James L. Oakes

And I just received notice that Charles D. Kennedy is also deceased.

As to Mr. Augello, a scholarship has been established in his name at the University of Arizona Law Center if anyone is interested, please contact them. Madam President.

PRESIDENT BURRELL: I would like to have a moment of silence for our departed members, please.

Thank you very much. They are a loss to this Association.

MR. BERNS: We continue to make a concerted effort to get your e-mail addresses, and we request that particularly you who attempt to be the activists in this Association, showing up at these meetings taking part, etc., please check the records to make sure that we have your accurate information, addresses, e-mail addresses. If you see an error in anything, please contact me and/or Robin, we'll take care of it immediately.

The Special Subcommittee on Membership has been reported on as to our activities, submitting our reports, including that for the Law Student membership. Hopefully, I will be getting an application form with the outline

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of the parameters of that membership on the website within the next two or three weeks.

With the approval of the Board this week of reinstatement of one Associate member, the initiation of twenty-eight new Associate members, and the elevation of seven Associate members to proctor status, the Association is now constituted as follows for a total of 3,048 members. We seem to be holding our own on the membership. As a matter of fact, this last year we had a slight gain. I do encourage, and I continue this *ad nauseum* as is usually associated with any of my presentations, and that is, we request that you continue to seek new members, not just for numbers, but we want assets, people who will be active. If you have judges who you feel would be interested, contact Liz. Again, if you have professors, you contact me, and we will take care of that. And of course the regular members. And those of you who are Associate members, we recommend strongly that you become Proctors so that you can become Committee Chairs and also most importantly, recommend new members. Thank you. I move for the admission of this report.

PRESIDENT BURRELL: Second? In favor? Thank you very much.

I will also mention that some weeks prior to our General Meetings I have been sending out notices to the entire membership, inviting them to nominate members in all categories and giving them instructions about how to do so. We try not to overburden your e-mail inbox, but nevertheless, some of those communications might trigger an impulse to make a nomination. Please act on that impulse. Thank you.

We will now start our Committee reports, and we will start with a report from John Edginton about the Fall 2008 Meeting in Long Beach. John will be followed by Michael Cohen for Arbitration and ADR.

MR. EDGINTON: Thank you, Madam President, and good morning to everyone.

I seem to find myself occupying the role of meeting planner, and this morning that's only because Bob Zapf couldn't be here. He sends his apologies, but from our West Coast Arrangements Committee, Forrest Booth is here and some others. All would like to welcome you to a meeting next year, the first week in November, in Long Beach, California.

I'll tell you a little bit more about that in a moment, but the dates are consistent with the regular MLA meeting schedule, and the precise dates for

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this meeting are November 5th through November 8th; it's a Wednesday through Saturday. The hotel is a lovely, relatively new Hyatt Regency hotel. The good news is that the rates are about on a par here or a little bit less, which means you should end up with less than \$200 for a hotel day. If you want less expensive accommodations, you will find other hotels in the neighborhood, and we will tell you all about that.

Everyone is always interested in the attractions at the meeting, and I would emphasize that this is a meeting on the New York model as opposed to the resort model. But the hotel is located waterside, there are great restaurants in the Los Angeles area and near the hotel. Essentially, when you think of Long Beach and Los Angeles, you are thinking of the same place for those of you who are really not familiar with the geography. Nearby attractions include a brand new aquarium, there's the Queen Mary, and places like Disneyland and Knotts Berry Farm will entice people that like to bring children. Catalina Island is not very far and Universal City and similar attractions along with museums, gardens and parks all are available. There is convenient public transportation to downtown L.A., and there's the Tijuana Trolley for those who would like to experience a taste of Mexico.

Now, travel to and from Los Angeles/Long Beach should be familiar to most of you, but in casual conversations here I think people do not understand that Long Beach and downtown Los Angeles are about equidistant from LAX, the major airport. Also, there is a Jet Blue nonstop from New York directly to Long Beach., but the Orange County Airport in addition to those two is also in the same area, so your travel agent can find you, I'm sure, a very good airfare coming into the area. L.A. from the east coast is one of the lowest fare corridors, because it's one of the most heavily traveled, so that should help you.

Meetings and functions. Probably one of the more attractive things about this meeting is that most likely there will be no registration fee. There'll be a full schedule of Committee meetings in the hotel and local offices nearby. You'll have a chance to meet all of the local lawyers, and we will dredge up all of the people on the west coast to get them to attend so you'll have a chance to meet them. As I say, it'll be along the New York style, but we do hope to put together is a sponsored—meaning no cost to you, cocktail party to open the affair. We will have a traditional Friday night dinner but probably on a more casual basis than even Pier 60 in New York. The dinner will be a separate ticket and run the same way.

Friday will be largely occupied by what we hope to be a very innovative CLE program. The Port of Los Angeles/Long Beach is one of the most tech-

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nologically advanced and one of the biggest in the entire country, if not the biggest. And we have been working with one of our members, Tom Russell, to put together a VIP tour of the port facilities, which include all of the multi-modal features that are there. We're going to have this visit accompanied by speakers, so that you will be able to get some number of hours of CLE credit on it. I think that this will be a totally unique function, and I think it's something that everyone really will enjoy. The one thing I might say is if you are going to get your TWIC card, it probably would be a good idea to get it before you come to Long Beach and bring it with you.

The weather in the Long Beach area this time of year is dry and balmy. I can almost certainly promise more sunshine than we've had here. And one thing I'd like to emphasize is that the area where we're going to be is not in the area where any of the big fires in Southern California have been going on, or likely to occur, so you don't have to worry about that.

Finally, while we're not offering any sporting activities, everything that you can think of that you might want to do is available nearby, and we hope to see as many of you as possible.

Within the next month you're going to receive a flyer or e-mail that looks something like what I have in my hand, but I'm going to leave this one down in front of the table over here. Well, actually I'll put it on the front table here. It has a picture of the Hyatt Regency Hotel, and it has a picture of the gorgeous view out over the harbor and the Queen Mary that you will see. That's my report, Madam President. Thank you very much.

PRESIDENT BURRELL: Thank you, John. I now call on Michael Marks Cohen, for the Committee on Arbitration and ADR, who will be followed by Don Greenman.

MR. COHEN: Thank you, Madam President. Good morning. I'm here to report in place of Jay Paré, the Chairman of the Arbitration and ADR Committee. He conducted a meeting of the Committee both here and in New York simultaneously by phone, and it was fairly well-attended.

There were two papers that were presented at that meeting for CLE credit. One of them was on "Expanded Judicial Review of Arbitration Awards by Agreement of the Parties." This paper was delivered by Keith Heard in connection with the pending case in the Supreme Court of *Hall Street Associates v. Mattel*, which involves whether or not businessmen can provide in their agreements for such expanded judicial review of arbitration awards. A

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second very interesting paper, was presented by Lindsay East of Reed Smith Richards Butler in London concerning the existing and historical basis for appeals of arbitration awards on the merits in England.

Prior to the meeting there was a distribution to the Committee of a decision of a Canadian court, The *COUGAR ACE*. This is related to a decision by the District Court of Oregon involving the same voyage from the Far East to Canada and the U.S. The vessel suffered a casualty en route and never made it actually to Canada. It offloaded all of the cargo in the U.S. The suit in Portland was dismissed under authority of *SKY REEFER*. The suit in Canada, which incidentally was heard by a good friend of many people in this Association, Sean Harrington, was not dismissed, because of the Canadian anti-*SKY REEFER* legislation. Justice Harrington noted that the U.S. and Canada had switched positions over the years, Canada now keeping such suits, and the U.S. dismissing them.

According to the latest report from Chet Hooper, Vince DeOrchis and Michael Sturley from Vienna, the codification of *SKY REEFER* for charter party bills of lading is now fixed in concrete in the Uncitral Draft Instrument. But that provision can be avoided when a state ratifies the Draft Instrument. There will, therefore, still be an opportunity for our Association to implement its policy of seeking anti-*SKY REEFER* legislation when the time comes for implementing the Draft Instrument with a statute. Thank you.

PRESIDENT BURRELL: Thank you, Michael. We will now hear from Don Greenman, Chair of the Carriage of Goods Committee.

MR. GREENMAN: Thank you, Madam President. The first thing I want to mention is, thanks to Mike Ryan and Ed Radzik and David Mazzerolli, there is a cargo newsletter outside, not inside, it's outside. If you would like to pick one up, please do.

At our meeting the other day, we principally had a joint session for a portion of our meeting with the International Organizations Committee, in which we had a live telephone call-in from Chet Hooper and Professor Sturley with respect to what has just happened in Vienna. I have here two documents that if they were on electronic documents system now you might be interested in. MLA documents 723 and 724 of May 3, 1996 are the documents in which this Association approved revision of the U.S. Carriage of Goods by Sea Act. That is still in the background, but in the last eleven years things have been proceeding apace.

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Before we had their telephone report, we received the written report from our Vienna compatriots, and I want to read just one paragraph out of that, because it gives you what the status of the UNCITRAL Draft Instrument is:

The reports of this session, which are the one in Vienna, of the working group are being sent to the Secretariat to prepare the next draft. The next draft should be circulated before the next Working Group meeting, which will last from January 14th through January 25th, 2008. That meeting should be the last Working Group meeting. The Draft Convention will be sent to the UNCITRAL Commission in New York for a meeting in the Summer of 2008. After approval by the Commission, the Draft Convention will be sent to the General Assembly in the Fall of 2008 for approval. The Secretariat of UNCITRAL reported that the General Assembly has received reports from Uncitral and should receive and approve the Instrument in the fall of 2008.

So we are looking now at a pretty close period of time in which we are going to have this UNCITRAL Convention. There is supposed to be a signing session in 2009. I asked our delegation whether the U.S. was going to sign, because the State Department has a position that they usually don't sign things unless they intend to submit them for ratification. Chet Hooper has assured us that there was little chance that the U.S. was not going to sign this convention. So we will probably be looking at some change in the U.S. law, at least in the career path of the new lawyers that were admitted by Phil today. The full report by Chet Hooper and Vince DeOrchis of the Working Group's Vienna meeting will be on the Committee's page on the MLA website.

With that I end my report. Thank you, Madam President.

PRESIDENT BURRELL: Thank you very much, Don. Sean O'Neil for Cruise Lines and Passenger Ships, to be followed by Steve Johnson on Fisheries.

MR. O'NEIL: Thank you, Madam President. I have the honor to appear here this morning for the excellent Chair of the Cruise Committee, Pam Milgram, who spent this past week criss-crossing the United States doing work and unfortunately could not make the meeting today. She sends her regrets for being unable to attend.

Yesterday the Cruise Committee held a meeting late in the afternoon. We had approximately 20 people in attendance. We changed the format from the

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way the Cruise Committee usually conducts its business of just having a discussion of the case law update and instead went with three presentations. The first one was by Bob Peltz, who's the Vice Chair of the Committee. He gave a presentation on the current status of the law in light of the *Carlisle* case on vicarious liability of shipboard physicians. And for those of you who did not attend, I would recommend calling Bob and getting the information; it was very informative.

Second, Bob's partner, Carol Finklehoff, gave a presentation entitled "Seafood: Who's Liable For a Bad Catch?" It was a very rousing presentation, discussing food poisoning claims in the cruise industry. Those of you who are thinking about going on a cruise may want to contact Carol about that presentation.

Finally, I gave a presentation on international arbitration of claims. I have to give thanks to Gerry Hamilton, who originally prepared the presentation and presented it at the ICCL meeting earlier this year. He graciously allowed me to plagiarize it, so I wouldn't have to do that much work in preparing for the Cruise Committee meeting after also giving this presentation earlier in the day at the CLE meetings.

For those who could not attend the meeting, we will be publishing our case law update on the Cruise Committee website. That concludes my report.

PRESIDENT BURRELL: Thank you very much, Sean. As Steve Johnson comes to the podium, I will mention that I tried to get to as many Committee meetings as I could, which presents the quandary of balancing the value of showing interest in each Committee against the risk of being rude as you exit before the conclusion of the program. In that fashion, I caught a bit of Bob's presentation, and like all of the other Committee meetings that I attended, it was really excellent.

MR. JOHNSON: Thank you, Madam President.

The Fisheries Committee meeting took place on October 25, Thursday, at 10:00 A.M., and we managed to continue until noon. We did allow participation by conference telephone, and, although the 10:00 A.M. start time was a little early for our west coast contingent, we had a number of people from the east coast on the phone from Camden, Maine, Gloucester, Massachusetts and New York City, and we benefited greatly by their participation.

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I would like to mention that we had some very important guests at our meeting, including Rand Pixa of the MARAD chief counsel's office, and Tom Willis, the director of the Coast Guard's National Vessel Documentation Center. And I'd like to introduce Tom and ask Tom to stand if he's still in the room. I don't know if he is here; there he is, in the back. I think we should give Tom a round of applause. Tom tells me he will be leaving the National Vessel Documentation Center by the end of the year, so this will be the last meeting that he will attend as a representative of the National Vessel Documentation Center, but we certainly hope that he will continue to attend the MLA meetings and the Fisheries Committee in particular. So we welcome the participation of those guests. MARAD, the Coast Guard, and the National Vessel Documentation Center are extremely important agencies to fisheries regulation.

I'd like to also introduce Jay Gordon, who's here with the MARAD Chief Counsel's office as well. I think he was perhaps overlooked in the earlier introductions. Jay, are you out there? Okay, he was here earlier.

The Fisheries Committee addressed a number of issues. I'll mention the main points on the agenda.

One issue we dealt with was the citizenship of pension plans for purposes of investing in fishing industry vessels. Recently I was involved in a large private equity transaction involving investment in a major seafood company active in the North Pacific and Bering Sea, and we were faced with the difficulty of qualifying pension plans that were part of that investment group as citizens under the American Fisheries Act Citizenship Standards as well as the coastwise standards, and it turns out that of course pension plans are not mentioned by terms in the statutes or regulations dealing with citizenship. And in fact the agencies do not have a fixed, established practice in terms of determining the citizenship of pension plans. And so it was a fairly complex task to navigate between the Coast Guard and MARAD and their divided authorities on citizenship to arrange for adequate comfort for this transaction to take place.

We dealt with legislative and regulatory developments. In particular we dealt with the regulatory fallout of the Magnuson-Stevens Act amendments that passed the Congress early this year and their effect on limited access programs. We discussed the status of pending legislation affecting positions taken by the Maritime Law Association and the Fisheries Committee on the

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attachment of maritime liens to fishing permits, particularly limited access permits.

And for the benefit of those who weren't in attendance at our meeting I'll mention a couple of bills that are pending, the two Coast Guard reauthorization bills, S1892 in the Senate and HR2830 in the House. S1892 includes a provision at Section 505 that would prohibit maritime liens from attaching to fishing permits, including limited access permits. It would prohibit any civil action brought to enforce a maritime lien on a fishing permit. If that passes, it would adopt one of the positions taken by the Fisheries Committee and its resolutions in this Association to preclude maritime liens attaching to fishing permits. There was a spirited discussion of that position within the Committee, and dissenting views were expressed with respect to whether that was a good idea or not. We appreciated the opportunity to hear from the members that had a different point of view, and we referred them to Congress to make their views known.

HR2830, the House companion, does not include a similar provision but HR2830 picks up another part of one of the resolutions we adopted, which was to repeal a provision of the American Fisheries Act, which would permanently bar from the fisheries a large vessel whose fishery endorsement becomes invalid and if the owner of the vessel does not reapply in fifteen business days, the effect of which would be to create a trap both for vessel owners and lenders in the many cases in which a fishery endorsement could become invalid, sometimes without even the knowledge of the vessel owner. So the repeal of that provision is in Section 301 of HR2830, and we'll see what happens to that provision.

We had a brief discussion of the status of several challenges to the Coast Guard's recent U.S. build determinations that are pending. Apparently summary judgment motions are pending in the Philadelphia shipyards case. There is a Matson case that was brought against the Coast Guard on a rebuild partially taking place in China, partially taking place in Alabama, and the question there was whether the two should be combined and whether the Coast Guard was following the proper standards. The original case was dismissed as premature, but apparently the vessel has been brought back from China on a registry endorsement and has had additional work done in Alabama and will soon be out of that yard and will be seeking presumably a coastwise endorsement. That issue will be brought back presumably to the Coast Guard and again perhaps to the court.

Lisa Reeves provided us a brief discussion of recent cases of interest and which we're very grateful to Lisa for, and that concludes my report.

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PRESIDENT BURRELL: Thank you very much, Steve. While Kent Roberts is coming to the podium to report for the Inland Waters and Towing Committee, I will note how responsive the government has been, especially The Vessel Documentation Center in the person of Tom Willis, to various initiatives of the MLA and requests that we've made for rulemaking. Thank you very much.

MR. ROBERTS: Thank you, Madam President.

The Inland Waters and Towing Committee met on Thursday. The feature for the meeting was a presentation by Gene George on the recent challenge to the State of Michigan ballast water regulations on a state level, *Fednav v. Chester*. This regulation requires vessels to obtain a state ballast water discharge permit from the State of Michigan. The ballast water treatment systems on board the vessel are also regulated by the state. The state discharge system was upheld or the permit system was upheld. It went through a due process analysis, a commerce clause analysis, and a preemption analysis very similar to those that occur in state environmental regulations on air quality, oil spills, and safety. It was a great presentation. There are copies in the back and I commend those to you.

We also had a discussion on the boat waters amendment and a new project to develop changes to the boat waters amendment for increased flexibility for inland operators. That concludes my report.

PRESIDENT BURRELL: Thank you very much, Kent. Phil Buhler will report for International Organizations and Standards, to be followed by Jim Moseley, Jr.

MR. BUHLER: Thank you, Madam President.

The International Organizations Conventions and Standards Committee met yesterday, Friday, at 1:45 P.M. Our chairman, Chris Davis, was unable to attend, as he was attending an IMO function in Panama.

The first fifteen minutes of our meeting served as a partial joint session with the Carriage of Goods Committee. Don Greenman has reported on that very interesting presentation live from Vienna concerning the developments in UNCITRAL.

We were then privileged to receive a presentation by President Liz Burrell, reporting on her attendance at the IMO Diplomatic Conference on the Wreck

Removal Convention. Liz served as a private sector advisor to the U.S. delegation. She provided some interesting insight on procedural maneuvering at the Conference. Issues of note included whether the Convention would modify international law other than by specific provision in the Convention. The United States and several other participating countries expressed concern about potential interference under provisions of the Convention with the right of innocent passage. There was controversy over the issuance of financial responsibility certificates by large port states. The U.S., however, seemed to have taken some significant steps toward possible eventual approval of the Convention.

One of the issues of great concern that arose during this Conference was the apparent skepticism that the United States met in almost any action that it took. There's a question among many states of the U.S. motives in any actions that it might take, and this seems to be a trend in many of the multilateral negotiations the United States now participates in. It may be a sign of conditions in the early twenty-first century with regard to the United States' participation in multilateral conventions.

We were next treated to a PowerPoint presentation concerning the International Law of the Sea Tribunal presented by Thomas Rankel of Hamburg, Germany, one of our foreign visitors. The International Law of the Sea Tribunal is headquartered in Hamburg and has 155 member states. It issued its first decision in 1997. In ten years it has issued a total of fifteen decisions. There are twenty-one judges on the Tribunal, and they are now concerned to try to promote the Tribunal as an alternative forum. The Tribunal was established to address public maritime law—particularly seabed regimes and fisheries. The Tribunal is attempting to become a competent center for international maritime law. Mr. Rankel emphasized the Tribunal was not trying to compete with New York and London arbitration regimes but is still trying to attract a wider range of claims and to prove itself as a competent jurisdiction for such claims.

We next received a presentation by Alan van Praag, a report on his attendance at the Advisory Committee on Private International Law. Much of the meeting of that Committee was taken up with the Choice of Court Convention. Alan reported that there is only one more state ratification necessary for implementation of the Choice of Court Convention, and this Convention would allow member states to enforce forum clauses and judgments in different member states. Alan reported on the e-commerce provisions of UNCITRAL, particularly issues concerning e-commerce signatures, the Electronic Communication Convention, where he said there's been no progress in the United States, and finally, on the Hague Evidence Convention, which seems to be

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promising for practitioners, as this would make discovery in member states much easier. He used the example of India, which until India's accession to this Convention, discovery procedures were found to be extremely difficult and time-consuming.

Finally, I gave a report on the recent hearings in the U.S. Senate Foreign Relations Committee on possible ratification of the 1982 Law of the Sea Convention. Hearings were held on September 27 with a host of supporting testimony provided by the Deputy Secretary of State, the Deputy Secretary of Defense, and the Vice Chief of Naval Operations. Follow-up hearings were held on October 4. Most of the testimony was supportive, and it came from a wide range of Administration officials, private and public sector representatives of industry, academia, and environmental groups.

Opposition to ratification of the Law of the Sea Convention has been rather sporadic and disorganized; however, Mr. David Kantor, who attended our meeting, reported that he attended these hearings and is concerned now that the opposition seems to be growing. Whereas it was hoped that this matter would be fast tracked for a full vote in the Senate Foreign Relations Committee very shortly and perhaps in the full Senate by the end of the year, this does not appear to be the case now. The longer this drags out, the concern is that the opposition may grow strong enough to once again prevent its ratification. So we can all hope that perhaps support can be overwhelming enough to get this through in the next month.

Incidentally, there is a website with live video of the testimony at the two Senate hearings and that was reported in Committee. Madam President, that concludes my report.

PRESIDENT BURRELL: Thank you very much, Phil. Jim Moseley, Jr. will now report for both the Marine Ecology Committee and the Committee on Regulation of Vessel Operations.

MR. MOSELEY: Madam President, members of the Association. I have the honor of being here on behalf of Tony Whitman and myself. The Committees for the Regulation of Vessel Operations and Marine Ecology and Criminal Law met on Thursday here. We had approximately forty members in attendance. Special thanks go to Tony, who put together a very good agenda. We both worked hard at having a very good meeting.

Our meeting lasted 2-½ hours, and we had over ten speakers. Some of the speakers spoke at other Committees. I cannot do them justice by reporting

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here today in just two minutes, but I would like to highlight a few things. We are certainly appreciative of all of the members who participated.

We heard from David Kantor, who spoke on IMO activities and the conventions that Bill Buhler just spoke about that are currently pending before Congress. David also gave a report on an issue that our Committees are following very closely, which is fair treatment to seafarers. In fact, there's a delegation that is currently meeting in Panama. That delegation from the United States consists of Captain Chuck Michel and Department of Justice Environmental Crimes Section Greg Linsin, who usually attend our meetings but instead are in Panama. We were told by their deputies that they would rather be here. Part of what they are discussing are guidelines for seafarers that are being detained for criminal action. David Kantor also informed us of the initiative for a special seafarers fund which would pay for the costs of mariners being held during the pendency of such actions.

We also heard from Rand Pixa, Deputy Chief Counsel of MARAD, who presented to us a discussion concerning older fleet issues. Recently, MARAD had two ships that took over two months to move. The move was delayed due to scamping operations, which can potentially release toxins into the water, and special precautions have to be taken. Also, exfoliation of paint on older vessels has created some problems.

Joe Poux from the U.S. Department of Justice Environmental Crimes Section in Washington gave us an update on his department. He reported that the U.S. Government has now recovered over \$200,000,000 in penalties and fines in criminal prosecutions. Their department has been thinking that they would see a decrease in these prosecutions, but they have seen an increase in such prosecutions. They are now receiving a new case once every two weeks. Other countries are stepping up their enforcement as well.

One of our participants that we are very happy to have is Admiral Bill Baumgartner. I don't know if he's here today. On behalf of both Committees, we certainly appreciate his participation. He addressed two specific issues. One is the marine safety mission. Basically, as some of you may know, there is currently an issue as to breaking up the Coast Guard duties. One is moving marine safety to a separate agency. As a result the U.S. Coast Guard has instituted a plan to enhance its current safety mission. That plan is available on the web, and the website is www.homeport.uscg.mil. He gave us details of that plan. As to the second issue, concerning ALJ irregularities and their decisions favoring the U.S. Coast Guard, the U.S. Coast Guard and the ALJ's are working to improve the system. They're looking to have a better separa-

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tion of the ALJ and U.S. Coast Guard investigation units, more U.S. Coast Guard attorney involvement, and also investigating officers cooperating with other counsel. They're hoping that these and other things that they will implement will improve the current system.

Gene George gave us a report with Larry Kahn on ballast water regulations, and I heard Kent Roberts give an update on that. He basically gave us the same information, but Gene also added that there are currently seventeen bills pending before Congress on aquatic nuisance species and aquatic invasive species, and this is an issue that our Committees are following very closely and probably will have more information at our meeting in May. There is a concern that these bills could be overly broad and have expansive application in marine situations.

Dave Dickman gave us an update, as he has usually been kind enough to do, of criminal cases. Barbara Burke gave us a congressional update.

Dennis Bryant led a discussion on Clean Water Act and places of refuge. Briefly, in 2003, the IMO said states do have a right to deny entry for safe refuge for ships. The U.S. Coast Guard is currently setting forth a system to allow or deny the entry. It takes into account human safety and human life and also environmental resources. Under this new policy, no ship will be allowed access unless they have one, a coffer; two, a salvage plan; three, a transit plan; and four, a site safety plan.

I certainly thank Tony Whitman and his Committee for joining forces with us. I think it helped consolidate resources. Madam President, that concludes our joint report.

PRESIDENT BURRELL: Thank you very much, Jim. I now call on Bruce King, for the Marine Financing Committee, who will be followed by Jonathan Spencer.

MR. KING: Thank you, Madam President. I'm Bruce King, Chairman of the Marine Financing Committee.

We met yesterday afternoon on two ongoing Committee projects. Both were statute drafting efforts that we started at earlier meetings and are continuing. We hope to bring them to a conclusion at the main meeting. One is a vessel-leasing statute. Frank Nolan, our Vice Chair, is heading that effort. It would provide for essentially the maritime equivalent of filing an informational UCC financing statement that would perfect the interest of an

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equipment lessor, when, due to its economic terms, the lease is considered by a court to be a sale of the asset and a retention of the security interest. As you probably know, currently under the U.S. flag, if the economics of a bare-boat charter are such that a bankruptcy court treats it as a sale with a retention of the security interest, the nominal owner is treated as an unsecured creditor in the bankruptcy. This statute would convert that nominal owner, as a matter of law, into a preferred mortgagee, with all the benefits of that status. As you can imagine, there are a number of technical difficulties that have to be worked through in drafting such a statute, but we're almost done. We're down to just a few tweaks in the language, so we expect to be bringing a final version of that legislation to the full Association in May.

We have a second statute drafting effort that is not quite as far along, but we do hope to bring it to a conclusion at the May meeting as well. This is a statute that would follow the example of our friends to the north in Canada, the Cayman Islands, and a few other countries, to allow a vessel under construction to be documented so that a ship construction mortgage could be filed that would enjoy preferred mortgage perfection, priority and *in rem* enforcement. That also presents a host of technical issues, as you can imagine.

With both statutes we were greatly aided by the attendance and participation of Tom Willis from the National Vessel Documentation Center, Rand Pixa from the General Counsel's Office at the Maritime Administration, as well as Robin Mintern and Jan Jordan from Caterpillar Financial Services. Their contributions were all very helpful. We were able to spend the entire afternoon drilling down into these statutes, and we advanced the ball considerably. Both statutes are available for your review on the Committee area of the website.

Madam President, that concludes my report.

PRESIDENT BURRELL: Thank you very much, Bruce. I dropped in for a little while on one of those drafting sessions, and it is such a pleasure and such a confirmation of the importance of the Association's work when you see people really trying to fix things. We don't just react and report, we also try to fix the law.

Jonathan Spencer will report for the Marine Insurance Committee.

MR. SPENCER: Thank you, Madam President.

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The Marine Insurance Committee met on Thursday morning with some thirty members and guests in attendance. Hal Watson of Houston spoke on behalf of John Woods, the absent chair of our Hull and P&I Subcommittee, and he reviewed various recent cases addressing particularly the duty of disclosure and *uberrimae fidei*, and these are summarized in the Committee's newsletter.

Gene George of Cleveland, the Vice Chair, continued his ongoing review of the insurance ramifications of the 2005 Gulf hurricanes, particularly the wind versus water debate. And on the same theme Hal spoke again about the problems that are flowing from wreck removal claims, particularly spilling over onto excess liability policies in the Gulf, and this is a topic of such importance that he's going to give a speech in Long Beach to a joint meeting of the Marine Insurance Committee.

Gene also presented the Committee's fall newsletter, which is available in the MLA document library and on the Committee webpage, and we have some copies available just outside the door. This has a lead article by Rhys Clift, who's a London solicitor, on fraudulent insurance claims and the number of case summaries prepared principally by Gene and also by Cary Weiner, who is the Committee Secretary. We are grateful to both of them and also acknowledged Michael Marks Cohen of New York for bringing various cases to our attention.

Our guest speaker was Bill Boeringer, who is a member of the Miami firm of Hayden & Milliken, and he addressed the relationship between assured insurer and attorney, and he talked about it particularly within the context of a statement of insured clients' rights which members of the Florida Bar are required to give to assureds whom they are defending on the instructions of insurers. And although the talk had a Floridian emphasis, Bill did range over the situation in various other states, and we're going to reduce his remarks to paper in some form so that we can give those a wider circulation, because he's done a lot of research on this topic.

And we concluded with an open discussion of a problem that two west coast members are grappling with involving the overlap between labor and removal of wreck. It was the liveliest part of the meeting, I think. They received at least five different opinions from various members of the Committee and as far as I can tell, all those opinions were correct.

And that concludes my report.

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PRESIDENT BURRELL: Thank you very much, Jonathan. Jack Scalia will tell us what the Maritime Torts and Casualties Committee has been doing.

MR. SCALIA: Madam President, members and guests of the Association.

I am pleased to report that the Maritime Torts and Casualties Committee met at 2:00 P.M. on Friday, the 26th of October with thirty-two members and guests present. We met jointly with the Offshore Committee.

Rob Berger of Cleveland presented a paper, a very excellent presentation, on the hot button topic of Medicare offsets. I would suggest that anyone involved in personal injury cases should be alert to this issue, as it does not only apply to the over-65 claimants, it may apply to anyone who qualifies for Medicare and who will qualify in the future with a thirty month lookback. The Government can collect from anyone who receives payment from a primarily responsible party. Therefore, a plaintiff's attorney or an employer can be responsible for payment. Should the government be forced to sue for this payment they are entitled to collect double damages.

Following Rob's report, Lisa Reeves brought us up to date on recent punitive damages cases, and Paul Edelman reviewed his recent case update and his paper on that. I would like to take this opportunity to thank Paul Edelman, my Vice Chair, and Lisa Reeves, my Secretary, for their continued hard work in preparing their papers and making this Committee as successful as it is. They make my work very easy; I'm pleased to have them.

All of our papers will be posted on our Committee section of the website and there are a few still available in the back of the room. We are currently looking for suggestions for topics for the May meeting for discussion and presentation. That concludes my report.

PRESIDENT BURRELL: Thank you very much, Jack. Grady Hurley, Chair of the Offshore Industries Committee will now report. He will be followed by Josh Force.

MR. HURLEY: Good morning, Madam President. As a point of personal privilege our Committee would like to add its thanks to the Host Committee, not only for your hospitality, but for facilitating our meeting. Also as to my Tulane alumnae, I must recognize that it's Tulane's homecoming this weekend, and I thank my friends from Tulane for their CLE program and also Professor Martin Davie, who attended part of our meetings.

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Lastly, I'd like to thank our friends with the Maritime Tort Committee and its Chairman, Jack Scalia, for facilitating a joint meeting in which 32 individuals attended.

Since our last meeting and report to our Association, the President, Ms. Burrell, has authorized the formation of two new subcommittees involving offshore operations and offshore facilities or vessels; Delos Flint and Mike McGlone chair those subcommittees. We are also studying two other subcommittees, with the help of Hal Watson and Mike Bell. As Jonathan Spencer indicated, we are in the planning stages of a joint meeting with the Marine Insurance Committee in Long Beach.

After a brief review of new case law affecting offshore industries, there was a presentation on a new emerging offshore industry, and that is wind. That industry is growing off the east coast of Massachusetts, also in the Great Lakes and is of great interest to members in the Gulf of Mexico. Our member Brad Jackson made a presentation in power point on that, which we hope to have up on our website for those of you who could not attend our meeting to see that new industry and the issues which it will present to us.

That is our report, Madam President, and I thank you for your time.

PRESIDENT BURRELL: Thank you very much, Grady. Josh Force, will now report for the Committee on Practice and Procedure. He will be followed by Dana Henderson.

MR. FORCE: Officers, members of the Association.

The Practice and Procedure Committee met yesterday, and we focused principally on recent developments in the use of Rule B attachment of electronic funds transfers. We've discussed this issue previously, and Larry Kahn of New York gave us the most recent updates on cases that have been utilizing this procedure to attach EFTs. In that connection, we also discussed the two amicus briefs filed by the Association in the *Vamvaship* and *Consub* cases before the Second Circuit. The Association has taken a position urging the Second Circuit to apply maritime law in determining whether or not EFTs should be restrainable under Rule B.

We also discussed two new issues related to Rule B. One was the delay parties are experiencing in obtaining vacation of attachment orders under Rule B. Also, another issue that we'll probably look at much more in the future

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is the effect of e-filing on attachment and arrest procedures and, in particular, the effect that that may be having on notice and the ability of a property owner to evade service of attachment or arrest and move its assets.

Jim Bartlett reported on a recent case out of the Fourth Circuit, *In re Lockbeed Martin*, in which the court permitted a defendant, by way of a counterclaim, to request and have a jury trial even though the action had been instituted initially as a maritime action without a jury.

Finally, we continue our work on the local admiralty rules. Professor Sharpe is leading that effort and anticipates being able to present the revised Model Local Admiralty Rules to the Committee at the next meeting. We plan on discussing those rules and hopefully being able to present the revised rules to the Association shortly.

That concludes my report. Thank you.

PRESIDENT BURRELL: Thank you very much, Josh. Dana Henderson, Chair of the Young Lawyers Committee, will now report. She will be followed by Kim Kearney.

MS. HENDERSON: Good morning.

The Young Lawyers Committee was very pleased to join all of you this week. We did not have a formal business meeting, but I did want to take this opportunity to thank the Arrangements Committee. I don't know if you all have had the opportunity to see this this week but we've had so many new faces. And I think that's very clearly as a result of the reduced registration fee for our members. That is a true gift to our Committee, and we want to thank you all for making that happen. We hope that is a trend for the future.

We would also like to thank the Association this week for inviting our members to present the CLE. And that is something we are always happy to do and am quite pleased this week to have had Sean O'Neil, Michael Leahy, and Bryant Garner invited to give presentations. I thought their papers were very well researched, and they brought great information to the table. The Young Lawyers Committee hopes to have that invitation also again in the future.

In terms of business since our last meeting, our past Chair, Larry Kahn, proposed a resolution which I'm quite pleased to announce passed unanimously, to honor Ann-Michele Higgins. Ann-Michele was a very dear friend

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of our Committee, and she was a great leader among our group, so we have—it's a small gesture—but truly in honor of her, we have re-named our gavel and every Chair moving forward in the Young Lawyers Committee will have the honor of holding the Higgins gavel. Thank you, Larry, for that resolution.

Madam President, that concludes my report.

PRESIDENT BURRELL: Thank you very much, Dana. I think that's a very, very fitting tribute to somebody who unfortunately will forever remain as a young lawyer in our minds. Kim Kearney will now report for the Uniformity Committee. She will be followed by Kevin O'Donovan.

MS. KEARNEY: Good morning, Madam President, members and guests.

The Uniformity Committee met on Wednesday morning, and once again we were able to offer CLE credit for participation in our meeting through the efforts of Betsy Bundy of New York, who is on the Young Lawyers Committee and helped us a great deal in making the arrangements to get the credit. During the meeting presentations on recent cases of interest were given by the Vice Chair, Dan McDermott of New York and Secretary Joanne Zawitoski of Baltimore. I presented one of the most significant cases that we discussed, *Sinachem v. Malaysia International Shipping*, in which our member who will be greatly missed, Ann-Michele Higgins, argued on behalf of Malaysia International before the United States Supreme Court. In that case the Supreme Court resolved a conflict among the circuits and held that where federal court jurisdiction is not readily apparent but forum non-convenens factors weigh heavily in favor of dismissal, a federal court may dismiss the case on forum non-convenens grounds without first determining that it has jurisdiction.

Finally, the Committee resolved to update the Committee's prior survey of conflicts between the circuits on various issues of U.S. maritime law, and we will be seeking help from the Young Lawyers Committee in doing so.

Madam President, that concludes my report.

PRESIDENT BURRELL: Thank you very much, Kim. I would like to point out that Kim, the leader of the Uniformity Committee, has also been a leader among the Committees in offering CLE at Uniformity Committee meetings. I really can't recall the last time that she didn't offer CLE credit and go through all of the procedures that are necessary to do so, not to mention having interesting events and some really fine papers.

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Kevin O'Donovan, who will report for the Website Committee and be followed by Tom Rue.

MR. O'DONOVAN: Good morning, Madam President.

The Website and Technology Committee met on Thursday morning at 9:00 A.M. We also had phone-in calls, including our Secretary, Lynn Krieger, who got up at 6:00 in the morning in California to attend by phone. That's devotion above and beyond, I think.

We talked about some developments and changes in the website including the fact that the website now has the ability to send e-mails that will actually identify the Committee from which the e-mail is coming as well as a re: clause. I am pleased to report that I got far fewer calls before this meeting from people who are unable to access the website. People seem to be able to either remember their passwords or have figured out how to get them from Robin Becker. We will also be changing the format of the e-mails so that there will be an ability to attach a link for a document that is on the website, rather than just telling people to go to the website to find the document.

You've already heard that the Hawaii documents are going to be loaded on the website very shortly. We discussed ways in which we could try and improve the access to those documents, perhaps a way to make them searchable or at least if there is an index to try and correlate the index with the documents themselves.

As usual, we had some discussions about things we think could be improved on the website, and we are planning on coming up with some suggestions for the May meeting that we will bring to the members of the Board for their review and approval.

And then finally, turning to the technology side of things, we had some discussion about TWICs, which as I understand it, is about to begin in Wilmington, Delaware, of all ports. We also talked about the scanning of containers, the use of black boxes, things like that and ways in which perhaps the delay that everybody foresees could be avoided.

That concludes my report, Madam President.

PRESIDENT BURRELL: Thank you very much, Kevin. Immediate Past President Tom Rue will now report.

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MR. RUE: Madam President, it is my privilege to report on behalf of the MLA *Ad Hoc* Committee on Environmental Crimes. I am reporting for Mike Chalos, and I'm reporting with regard to the MLA initiative to get industry and the government together with regard to MARPOL violations. We've had several meetings with the government. The last one was in June. We are formulating some guidelines for owners and operators to observe. We're also working on an agreement similar to that which you would find in the sea carriers' initiative, so that if the owner adopts and follows the provisions of this agreement the owner will receive some consideration from the government if it is caught for a MARPOL violation.

Our next meeting with the government is scheduled in January of 2008. We are working towards a public workshop at which all of this can be discussed and adopted. More to come.

PRESIDENT BURRELL: Thank you very much, Tom. Dave Farrell, speaking as Chair of our new *Ad Hoc* Committee on Short Sea Shipping.

MR. FARRELL: Thank you, Madam President. Good morning.

As you know, at the Board of Directors meeting on Thursday, you appointed an *Ad Hoc* Committee on Short Sea Shipping, and I'm here to invite everyone's involvement in this new Committee.

At the risk of sounding overly optimistic, we're going to be focusing on rejuvenating domestic U.S. shipping and movement of cargo up and down our coasts in an effort to build America's marine highway. This is an outgrowth of regional lunches we held in New England earlier this year under the kind sponsorship of Clinton & Muzyka. We were able to get industry people, port directors, academics, and state officials in one room and kick around ideas so that we could all build business, and I think we can take this the next step now.

I've had some great conversations over the last couple of days with MARAD Deputy Chief Counsel Rand Pixa, who's very enthusiastic about MARAD's America's Marine Highway Initiative; with Kent Roberts, who will be monitoring short sea shipping developments on the west coast; with Dennis Minichello, our MLA liaison with the Transportation Lawyers Association; and with Hy Hillenbrand, who's also involved with the rail and trucking industries. We're going to look at European short sea shipping as an example.

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While it certainly seems to make sense to move cargo and people off-shore to reduce highway congestion and improve fuel consumption in an effort to revitalize the U.S. maritime industry in a green way, in order to have that make good dollars and cents for user groups we're going to have to tackle some hurdles that are in place by way of local, state, and federal regulations. Key among them is the Harbor Maintenance Tax.

Our kickoff meeting will be in New York during MLA week next spring. I invite your attendance. Watch for our agenda, we'll be on the MLA website. I plan on having a CLE to introduce the topic to everybody and with any luck, we'll get a good group of industry players in the room, and we can formulate an MLA action plan to assist industry and government in coming up with a way to improve maritime business. Thank you.

PRESIDENT BURRELL: Thank you very much, Dave. I didn't have Recreational Boating on the agenda, but I see Todd Lochner sitting here in the front, and I assume he would like to tell you what went on there.

MR. LOCHNER: I'm standing in for Frank DeGiulio, who had to take his leave.

We had 26 persons in attendance, some of whom were via the conference call-in feature, which was very useful this year. Four or five folks attended in that manner.

There are a few things that I'd like to highlight from our agenda. First, we heard from Frank DeGiulio, who attended a June 2007 meeting of the Department of Homeland Security. This was a summit on security issues involving recreational boats. A few points that you might like to take away are first, look for the report October 31st. Some of the issues addressed included vessel identification and proving specifically that the AIS system now at play for vessels greater than sixty-five feet is being recommended for all vessels including smaller vessels, which of course brings a whole host of problems. Some of the manufacturers have suggested a radio frequency identification system, which could be turned on and off by the Coast Guard as they deem fit. They could ping various vessels and find out which vessel it is. There's been some discussion about changing the hull identification numbers as well. Finally, there has also been discussion by the Department of Homeland Security of requiring owner/operator identification registration cards of all owners and operators, which of course again would be a huge undertaking. There will be regional meetings held by the Department of Homeland Security, and we encourage everyone to attend their regional meetings to provide input.

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We also heard from Bob Fisher regarding the National Conference on Commissions for Uniform State Law. They are considering, and in fact are proceeding, on the task of producing a uniform certificate of title for all states to use. Currently they're in the process of a one-year study group with a two-year plan for the drafting of such a uniform certificate of title.

Finally, we heard from Tom Willis, who was good enough to give us some information about the new electronic filing system, which is going into effect at the end of this month. Some of the things you may not be able to catch in the regulations are that if you want some confirmation from National Vessel Documentation Center regarding what you have filed, you have to specifically ask for it, or you will not receive any confirmation from them regarding your electronic filing. The confirmation you will receive from them if you do specifically ask for it will be a confirmation that they received X number of pages and that will be what you get back to confirm that all is well.

Furthermore, there will be no more originals required on the bill of sale, mortgages, or satisfactions. That you will of course find in the regs. You will find that builder's certificates will be required in original format. On the technical side of the equation, Tom informed us that the Coast Guard has a ten-meg maximum, and you will not be able to upload anything greater than ten megs. If you need to zip it, you must do it with Winzip only. Nothing else will be accepted by Coast Guard at this time. They have a ten-point font requirement for all the electronic filed documents as well as an 8-½ by 11 requirement, so you can no longer have those Bank of America small print on legal-sized mortgages making their way in. Everything's going to have to change in that regard.

As far as security issues go, they are still working on some of the security issues, so with respect to your credit card, you might want to continue to fax in your credit card data and identify what it is you have uploaded, rather than using the website, until they've solved those security issues. That also stands true for any documents that have Social Security numbers attached to them, but they're going to work on that over the course of time.

We also heard from Frank DeGiulio regarding the Clean Water Act permitting requirements for recreational vessels, which arose out of the *Northwest Environmental Act v. EPA* case. Theoretically all gray water discharges from recreational vessels require notice to the EPA and a point search permit, which of course is impossible and ludicrous to even consider that such a thing would happen. The EPA has been directed by the District Court to begin writing regulations. There are three bills that are kicking around the

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House of Representatives. Nothing transpired, and the case was also on appeal. I have heard from one of our members who is familiar with the counsel in the case that within the last few days there actually has been a decision. I have not had an opportunity to read that decision, so I don't know what has transpired, but you might want to look into that regarding the permitting requirements for recreational vessels.

Finally, you will find outside next to the Cargo Newsletter, the Boating Briefs, which is about twelve pages long and chockablock full of cases that might be of interest to all of you. That concludes my report.

PRESIDENT BURRELL: Thank you very much, Todd.

This is not even preaching to the choir, this is just congratulating the choir on the wisdom of attending this meeting. We've all been alerted to important developments that may be slightly out of our normal spheres, but which we need to know about nevertheless. I will again voice my thanks to the Committee Chairs for being so concise and telling us the high points. The Chairs should also know how many people have phoned me about the Proceedings and have told me how valuable it was to have such a fine summary of all of the important things that are going on in the Association, all of the important developments in maritime law that are recorded in the Proceedings and generally how impressed they are with the quality of the Committees' work. Thank you all very, very much indeed.

Anybody else wish to report? Old business? New business? Before we take the final step of this meeting, that I would like to remind you all that if you have not already done so, please put your name on the signup sheets in the back so that we have a record of your attendance. Thank you.

It is now my privilege and pleasure to call upon the most senior—note that I did not say the oldest or even the eldest—Past President here to make the traditional motion. Jim Moseley.

MR. MOSELEY, SR.: Thank you, President Burrell. We appreciate the job that you've done for this meeting and during your term. All the accolades for this meeting that you have given to the Arrangements Committee rightfully should be shared by you. I hope you will let a Past President of this organization thank you for your leadership, and thank you for the greatness to which you have lifted this Association. Thank you for having that unique quality that so few have, but that you have, and that is to share the Association's appreciation with the Officers, the Board, the Committee

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Chairs. This makes a better organization and makes us more learned in our field. Thank you.

So having said that and wanting everyone to go out today in the bright sunshine of Florida, albeit "cloud-filtered." The reason that it is "cloud-filtered," and you may not know this, is that the world's greatest citrus fruit, which is also the richest, comes from Florida. These six days of continued clouds here in Sanibel are needed to allow proper vitamin C, nutrients, and benefits to be created in the fruit. Having said those words, the first of which is heartfelt, the second of which shows that I'm still as silly as always, I move that we adjourn.

PRESIDENT BURRELL: Thank you very much. Thank you all for attending.

FORMAL REPORT OF THE COMMITTEE ON MARINE INSURANCE AND GENERAL AVERAGE

The Committee held an informative meeting on October 25, 2007 at the Sanibel Harbour Resort and Spa in Fort Myers, Florida. Some 30 members and guests were in attendance.

Regrets were received from all three Subcommittee Chairs.

Hal Watson of Houston spoke in place of John Woods, Hull and P&I Subcommittee Chair, and he reviewed recent cases addressing particularly the duty of disclosure and *uberrimae fidei*.

Gene George of Cleveland, Vice Chairman of the Committee, reported on recent cases arising out of the 2005 Gulf hurricanes and, in particular, the wind versus water debate. Hal Watson then spoke on this theme and described the growing difficulties surrounding wreck removal claims following the hurricane activity, affecting in particular excess liability insurers. That situation has become complicated the fact that superannuated equipment that would in any case have been required to be removed on the expiration of the operator's concession had now become wrecks and thus the subject of removal claims. This topic presents so many challenges that Hal is preparing a paper on it for presentation at a joint meeting of the Marine Insurance Committee and Offshore Industries Committee, planned for the 2008 Fall MLA meeting in Long Beach.

Gene George, in his additional capacity as Editor of the Committee's Newsletter, next introduced the Committee's Fall newsletter, containing a

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lead article, Fraudulent Insurance Claims—Part II, by London solicitor Rhys Clift, and summaries of recent insurance cases prepared by Gene and by Committee Secretary Cary Wiener of New York. Gene acknowledged the contribution of Committee member Michael Marks Cohen of New York in drawing various cases of note to our attention.

Current and past issues of the Committee's newsletter can be found in the MLA document library and on the Committee's web page.

Our guest speaker, William R. Boeringer, Esq., a member of the Miami firm of Hayden & Milliken, addressed "The Tripartite Relationship—insurer/insured/defense attorney pitfalls". His talk was given largely in the context of the Statement of Insured Client's Rights, a Florida Bar Association document that Florida practitioners are required to give to, and have acknowledged by, clients whom they are appointed by insurers to defend. However, the talk also ranged over the ethical requirements in other states. It represented a significant amount of research, and we expect eventually to promulgate a written version.

The meeting concluded with open discussion of a topic raised by two West Coast members, involving a claim arising from a grounding incident in which the refloating costs fell into a grey area between sue & labor and wreck removal. Several Committee members had grappled with the point in their own practice and offered helpful insights.

Respectfully submitted,
Jonathan S. Spencer
Chair

**FORMAL REPORT OF THE COMMITTEE ON
MARITIME TORTS AND CASUALTIES**

Punitive Damages

The employer filed suit seeking a declaratory judgment with respect to its maintenance and cure obligations to its seaman, Townsend, following an alleged injury. Townsend filed Jones Act and unseaworthiness claims in a separate action and also filed a counterclaim seeking compensatory and punitive damages for failure to pay maintenance and cure. The two actions were consolidated, and Atlantic Sounding moved to dismiss the punitive damages on the basis of *Miles v. Apex*. The district court denied the motion, holding

that it was bound by the Eleventh Circuit's pre-*Miles* decision in *Hines v. J.A. LaPorte, Inc.*, 820 F.2d 1187 (11th Cir. 1987). Contrary to the law of almost every other circuit, *Hines* held that punitive damages were available in the event of a willful and arbitrary failure by the shipowner to pay maintenance and cure.

Since *Miles*, every circuit that has considered the issue has held that punitive damages are not available for a failure to pay maintenance and cure, irrespective of the degree of culpability on the part of the shipowner. *Miles* did not deal directly with either maintenance and cure or punitive damages but rather addressed the issue of whether the family of a deceased seafarer could recover non-pecuniary damages in a wrongful death action under general maritime law. The court held that because such damages were unavailable under the Jones Act, they could not be awarded under judge made law either.

Atlantic Sounding argued that "the *Miles* uniformity principle dictates that all subsequent courts determining the availability of damages in a maritime case, must provide for uniform results in similar factual settings regardless of whether the action is brought pursuant to the Jones Act, DOSHA or general maritime law." The Eleventh Circuit rejected this argument, since it is based only on the reasoning of *Miles*, and not its holding, which addressed neither maintenance and cure nor punitive damages. Therefore, the court had no basis on which to overrule its prior decision in *Hines*, which was directly on point. *Atlantic Sounding Co., Inc. v. Townsend*, 496 F.3d 1282 (11th Cir. 2007).

Less than one month later, the Third Circuit took the opposite view and held that the Supreme Court's decision in *Miles* precluded an award of punitive damages for a failure to pay maintenance and cure. "Although the *Miles* case addressed a wrongful death action brought under general maritime law, the holding is applicable in this case because the failure to provide maintenance and cure is similarly 'a judicially created cause of action in which liability is without fault.'" *Kopacz v. Delaware River & Bay Authority*, 2007 WL 2623605, slip op. (3d Cir. 2007) (quoting *Miles*).

Although the Ninth Circuit does not permit punitive damages in maintenance and cure cases, it did recently permit such damages in a pollution case despite the fact that the Clean Water Act already provided penalties for the willful or grossly negligent pollution.

The May 2007 decision of the Ninth Circuit denied a rehearing en banc on the issue of whether maritime law would permit punitive damages in the

EXXON VALDEZ case. The jury originally awarded \$5 billion in punitive damages, and the case had been up to the Ninth Circuit on several prior occasions, due to the Supreme Court's decisions such as *State Farm* and *BMW* on the permissible ratio of punitive damages to compensatory damages. In 2001, the Ninth Circuit addressed the maritime arguments raised by Exxon against an award of punitive damages, which were twofold: (1) a shipowner could not be vicariously liable for punitive damages based on the reckless conduct of the master at sea; and (2) *Miles* uniformity principles preclude an award of punitive damages if such damages are not available under a statute which addresses the conduct (Clean Water Act). With respect to the first argument, the Ninth Circuit held in 2001 that the jury's verdict was based on the reckless conduct of Exxon's corporate managers and not just the conduct of Captain Hazelwood. The court had more trouble overcoming the second argument but held that because the Clean Water Act does not address private causes of action for any damages whatsoever, the *Miles* prohibition did not apply.

After several trips to the Ninth Circuit and back on the permissible ratio of punitive damages, in December 2006, the Court reduced the damages to \$2.5 billion based on recent non-maritime decisions of the Supreme Court. 472 F.3d 600 (9th Cir. 2006). Exxon requested a rehearing *en banc*, which was denied in May 2007 over a vigorous dissent by Judge Kozinski, who believes that the decision to award punitive damages is contrary to the two-hundred-year-old decision of the Supreme Court in *The AMIABLE NANCY*, which held that a shipowner could not be held vicariously liable for punitive damages based on the conduct of the master.

Exxon has filed a petition for a writ of certiorari to the Supreme Court, supported by no less than a dozen amicus briefs, including one by the MLA. The claimants have filed a conditional cross petition for certiorari, seeking to have the \$5 billion damage award reinstated. *In re Exxon Mobil*, 490 F.3d 1066 (9th Cir. 2007).

The Ninth Circuit reversed and remanded a \$52 million punitive award against Ford following the U.S. Supreme Court decision in *Philip Morris USA v. Williams*, 127 S. Ct. 1057 (2007). The Supreme Court held that harm caused by non-parties should not be a factor in these cases and the district court had failed to have the jury aware of this. The compensatory award was \$2.3 million. A new trial was ordered for Nevada. *White v. Ford Motor Co.*, 500 F.3d 963 (9th Cir. 2007). The Third Circuit applied a restrictive view of punitive damages in *CGB Occupational Therapy Inc. v. RHA Health Services*, 499 F.3d 184 (3d Cir. 2007). The case involved a bitterly fought case of a violation of a con-

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tract with a non-complete clause and a tortious interference claim. A \$30 million verdict was reduced by the district court to \$2 million. The Third Circuit reduced it further to \$750,000, citing the Supreme Court decisions.

The Jones Act

On a motion for judgment as a matter of law the non-movant receives the benefit of all reasonable inferences. Here the featherweight test was applied. A new trial was ordered on damages, because the economic expert's testimony failed. *McMillan v. Weeks Marine, Inc.*, 478 F. Supp. 2d 651 (D. Del. 2007).

The Jones Act can apply to a shore-based injury related to service on a vessel. (The issue was coverage on a catastrophe liability policy.) *Sentry Select Ins. Co. v. Royal Ins. Co.*, 481 F.3d 1208 (9th Cir. 2007).

The master slipped and fell. He asserted claims for working long hours and insufficient crew, violating Coast Guard safety regulations. It was held to have been his decisions and his sole fault. There was no violation of 46 U.S.C., § 8104(b). The basis of the Jones Act was discussed. *Park v. Stockstill Boat Rentals*, 492 F.3d 600 (5th Cir. 2007).

The plaintiff has the option to sue in admiralty or with a jury. A shipowner's jury demand was stricken. *Eubanks v. Noble Offshore Corp.*, 224 Fed. App'x. 319 (5th Cir. 2007) (motion to strike granted after entry of pre-trial order; plaintiff's recovery decision allowed).

Jones Act-Casino

Employees on a gambling boat that moved approximately 200 hours per year were held to be Jones Act seamen, since they helped to accomplish the vessel's mission. *Harvey's Casino v. Isenbour*, 724 N.W.2d 705 (Iowa 2006).

OSHA Violations

A seaman sued for a hearing loss suffered in engine rooms on uninspected vessels. The court held that an OSHA regulation applied, but it is only evidence of negligence, not negligence per se. *McCoy v. Foss Maritime Co.*, 447 F. Supp. 2d 1103 (W.D. Wash. 2006). The Second Circuit is in accord. Ninth Circuit cases cited also. Elements of collateral estoppel from a similar case are discussed.

Post-Accident Arbitration Waiver

Some cases enforce a post-accident waiver of a crew member's benefits in favor of arbitration. A waiver of maintenance and liability rights in favor of arbitration was denied in *Harrington v. Atlantic Sounding Co., Inc.*, 2007 WL 2693529, slip op. (E.D. N.Y. 2007). The evidence showed that the crew member was not in mental or physical condition when he signed the waiver, and he was not advised of his rights or right to seek a lawyer's advice. Who had the burden of proof (like a seaman's release) was not decided. The waiver was set aside as unconscionable under state law. In accord was *Nunez v. Weeks Marine*, 2007 WL 2008105, slip op. (E.D. La. 2007) (no knowing consent).

Forum Selection Clause in a Jones Act Employment Agreement

Great Lakes Dredge and Dock Co. v. Larriquitu, 2007 WL 2330187, slip op. (S.D. Tex. 2007), dealt with forum selection clauses in a Jones Act employment contract providing that suit was to be filed only in certain state and federal courts. The Jones Act seamen chose a presumably more favorable state court county in which to sue. Several court cases have found these agreements unenforceable, since FELA cases with such clauses are unenforceable under FELA language, and a 1949 Supreme Court case, *Boyd*. However, the Fifth Circuit in *Terrebonne*, 477 F.3d 271 (5th Cir. 2007) allowed a post-accident arbitration clause to be made effective, because it had held in *Suarez* previously that the Jones Act had its own venue provisions different from the FELA. *Terrebonne* also held that the Federal Arbitration Act would not bar arbitrating a seaman's case, even though the FAA disallows these claims in employment contracts, not post-accident agreements. The Fifth Circuit has also enforced arbitration agreements in employment contracts of foreign seamen.

The court did allow one plaintiff to fight the clause on the basis of overreaching, since he was illiterate. It will be interesting to see if the Fifth Circuit will eventually be vindicated in enforcing post-accident arbitration agreements and Jones Act forum selection requirements in employment contracts, when opposing arguments seem so valid. The Texas court also held that a federal court in this situation could not enjoin a state court action under a U.S. anti-injunction statute.

A foreign seaman was required to arbitrate his case in Singapore or India. *Dabiya v. Talmidge Int'l*, 931 So.2d 1103 (La. App. 4th Cir. 2006), *writ denied*, 943 So.2d 1988 (La. 2006), *cert. denied*, 127 S. Ct. 2878 (2007).

Declaratory Judgment Action

An employer was allowed to bring a declaratory judgment action where a seaman had not yet started a suit. admiralty jurisdiction applied. *Norfolk Dredging Co. v. Phelps*, 433 F. Supp. 2d 718 (E.D. Va. 2006).

Emotional Distress Recovery Jones Act/FELA

Carmack v. National R.R. Passenger Corp., 486 F. Supp. 2d 58 (D. Mass. 2007) reviewed the applicability of an emotional distress claim in an FELA suit. The *Gottshall* case of the Supreme Court requires either a physical injury or fear of injury within the zone of danger. Here there were claims of slander, libel, defamation, invasion of privacy, discrimination for disability and religion, and retaliation. Since there was neither a physical injury nor place of danger, no recovery was allowed. Cited was a case holding some intentional torts were actionable, *Teague v. National R.R. Passenger Corp.*, 708 F. Supp. 1344 (D. Mass. 1989).

Jones Act: Forum Non Conveniens

Although an accident occurred in New York state waters, foreign seamen killed on a foreign flag vessel were denied Jones Act and general maritime law recoveries, and the case was dismissed on forum non conveniens grounds. An appeal was not filed, and an offer prior to the district court opinion was turned down. *Akofin v. Jumbo Navigation*, 481 F. Supp. 2d 310 (S.D. N.Y. 2007).

Where there was a Honduran forum clause, but the incident was at a U.S. port, the Fifth Circuit reversed a ruling in a Honduran seaman's favor. The employer paid for gall bladder surgery but refused to pay for a heart transplant. The circuit court held that there is a strong presumption in favor of a forum selection clause. *Calix-Chacon v. Global Int'l Marine*, 493 F.3d 507 (5th Cir. 2007).

Conditional Dismissal

An alien seaman's suit was conditionally dismissed. Thereafter, an English court refused jurisdiction and plaintiff sought to reopen the U.S. case. The Fifth Circuit case held that the case was not appealable until the district court entered an order. *Oyuela v. Seacor Marine* (Nigeria), 198 Fed. App'x. 370 (5th Cir. 2006).

Maintenance and Cure

Maintenance and cure was held not subject to the Limitation Act. It was a question of fact on a Jones Act claim involving training and procedures and on an unseaworthiness claim. There is no recovery from the time a seaman is found to be incurable, but the case illustrates various maintenance and cure recoveries. Actual expenses for electricity, heat, water, food (one half shared by mother), nurses aide if necessary, laundry expense, gas and car insurance needed for medical care. He was not a union member but if he were, the collective bargaining agreement could set the rate. *Brown v. Teresa Marie IV*, 477 F. Supp. 2d 266 (D. Me. 2007).

Retaliatory Discharge

State claims were held to be preempted by 46 U.S.C. § 2114. Reporting of illegal drugs, which led to discharge, was not actionable. But under federal law, it is actionable for an employer to terminate employment because of filing a personal injury suit. *Robinson v. Alter Barge Line, Inc.*, 482 F. Supp. 2d 1032 (S.D. Ill. 2007).

A complaint was made to the Coast Guard alleging that the employer was hiring engineers with only a limited license in violation of safety regulations, i.e., 46 C.F.R. § 15.915. Several officers were fired. Back pay and punitive damages were ordered under the Whistleblower Statute. 46 U.S.C. § 2114. *Gaffney v. Riverboat Services*, 451 F.3d 424 (7th Cir. 2006), *cert. denied*, 127 S. Ct. 933 (2007).

Wage Claim

A requirement for fishermen's contracts to be in writing was violated. 46 U.S.C. § 101601 and also 11107. If not in writing all fishermen receive the highest share provided. Many fishermen were involved, but the court applied the doctrine of laches and enforced a three-year Rhode Island statute of limitations. Interest was allowed. *Doyle v. Huntress, Inc.*, 474 F. Supp. 2d 337 (D.R.I. 2007).

Plaintiff was assaulted on a ship by his employer after he left employment due to an unpaid wage claim. The court found general maritime law jurisdiction, since it was on a ship, and the dispute was over a wage claim. *Gruver v. Lesman Fisheries*, 489 F.3d 978 (9th Cir. 2007).

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Seaman's Wage Act

Carnival Cruise Lines employees were not paid overtime. A class action based on the Seaman's Wage Act, 46 U.S.C. § 10313, and the employment contract resulted in a large settlement. *Borcea v. Carnival Corp.*, 238 F.R.D. 664 (S.D. Fla. 2006).

Jones Act/Longshore Act

A worker on an oil rig sued under the Longshore Act. The employer asserted he was a Jones Act employee. An estoppel was not applied. *Goldman v. Halliburton Energy Services*, 224 Fed. App'x. 317 (5th Cir. 2007).

Longshore Act

A longshoreman was injured when a steel coil fell on him. The vessel owner and also the charterer would be liable for negligence even if the condition was open and obvious. Cargo shifted due to high winds at sea. A judgment was entered for employee. The bases of LHWA actions are described at length. *Kirksey v. P&O Ports Texas, Inc.*, 488 F. Supp. 2d 579 (S.D. Tex. 2007).

The Fifth Circuit affirmed a judgment in favor of the shipowner, where *Scindia* applied, but active control during loading was not proven. *Fontenot v. McCall's Boat Rentals, Inc.*, 227 Fed. App'x. (5th Cir. 2007).

Morganti v. Lockheed Martin, previously reported, was settled after a Second Circuit opinion and just prior to trial. Morganti was drowned when he took the company boat from a barge that his company had in Lake Cayuga, N.Y. He was an acoustics test engineer, held to be a Longshore Act employee.

Independent Contractor Not Covered

A contractor was hired to raise a sunken barge. He was held to have special skills and he was not doing the usual work of the employer. He was also not a "Sieracki seaman." *Prestenbach v. Global Int'l Marine, Inc.*, 244 F. App'x. 557 (5th Cir. 2007).

A commercial photographer employed on the U.S.S. MISSOURI at Pearl Harbor to take photos of tourists was held not covered. This was held not to be a traditional maritime activity. *Peru v. Sharpshooter Spectrum Venture*, 493 F.3d 1058 (9th Cir. 2007).

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Where an employee's lawyer failed to sue under the proper act (Defense Bases Act) and was guilty of malpractice, the employer/insurer may not sue him. *ITT Federal Services Corp. v. Montano*, 474 F.3d 32 (1st Cir. 2007).

A principal was held not liable for the negligence of an independent contractor where the principal was not in operational control and the activity was not inherently dangerous. *Bertrand v. Chevron USA*, 211 Fed. App'x. 294 (5th Cir. 2006).

Passenger Case

If negligence can be proven, a plaintiff has a cause of action against a shipowner where injuries occurred on a personal watercraft while participating in the cruise-line sponsored island tour. *In re Complaint of Royal Caribbean Cruises*, 459 F. Supp. 2d 1275 (S.D. Fla. 2006), but a release on the rental agreement bound adults but not a child.

Passenger Case: Statutory Violation

A claim for violation of the manning statute was a question of fact, the issue being what is a deckhand where two "deckhands" were required. The manning statute involved was 46 U.S.C. § 8101(a) and (d). *Clinton River Cruise v. De La Cruz II*, 213 Fed. App'x. 428 (6th Cir. 2007).

ADA

A ban on seeing-eye dogs from a ship's lounge was held not to violate the ADA involving a ferry boat. *Lockett v. Catalina Channel Express*, 496 F.3d 1061 (9th Cir. 2007).

Vicarious Liability

A shipowner was held not liable for the negligence of an onboard physician. *Carnival Corp. v. Carlisle*, 953 So. 2d 461 (Fla. 2007).

Suits in Admiralty Act

The Discretionary Function Doctrine was applied in a situation involving a Coast Guard decision in marking and failing to remove a submerged wreck. Motorboat passengers were injured and one killed. The government had intentionally sunk the wreck to make a breakwater. *Cranford v. U.S.*, 460 F.3d 955 (11th Cir. 2006). Contra, previously reported, *Bagner v. U.S.*, 428

F. Supp. 2d 101 (N.D.N.Y. 2006); jet ski goes over improperly marked spillway dam. Signage violated regulations.

Foreseeability Claim in Maritime Cases

It was not foreseeable that a malfunctioning freezer would cause a back injury to a ship's captain. *Gisclair v. Galliano Marine Service*, 484 F. Supp. 2d 518 (E.D. La. 2007) (rulings on indemnity contracts also discussed).

Ship Collision

The 1910 Collision Convention was applied to make the Pennsylvania Rule inapplicable, since the Convention does away with all presumptions. Fault was to be apportioned in a decision by the Second Circuit. *Otal Investments Ltd. v. M/V CLARY (TRICOLOR)*, 494 F.3d 40 (2d Cir. 2007).

Loss of Society and Loss of Consortium

Apparently the Second Circuit decision in *Wartman v. Commodore Cruise Line*, 100 F.3d 943, slip op. (2d Cir. 1996), which allowed a wife to sue for loss of consortium for her husband's injury on a cruise ship is not generally known. The Miles case was distinguished to its facts. See also, *Burke v. Quick Lift, Inc.*, 464 F. Supp. 2d 150 (E.D. N.Y. 2006).

Several recent cases have denied loss of consortium in cases which do not involve longshoremen where the *Alvez* and *Gaudet* cases of the Supreme Court would allow loss of consortium and loss of society. *Matter of Everglades Boat Tours*, 484 F. Supp. 2d 1259 (M.D. Fla. 2007). An airboat was held to be a vessel within admiralty jurisdiction. The case cites *Lollie v. Brown Marine Service*, 995 F.2d 1565 (11th Cir. 1993).

Ramsey v. Delaware River and Bay Authority, 912 A.2d 176 (N.J. Super. Ct. App. Div. 2007). This case relies on *Friedman v. Cunard Line*, 996 F. Supp. 303 (S.D. N.Y. 1998). The *Friedman* case was decided after the *Wartman* case, and apparently neither the court nor plaintiff's attorney knew of the Second Circuit decision. *Ramsey* does cite several cases allowing loss of consortium claims.

The Fifth Circuit has held that even in a longshoreman's death case, there is no recovery if there are only nondependent parents. *Matter of American River Transp. Co.*, 490 F.3d 351 (5th Cir. 2007). *Ponce v. M/V ALTAIR*, 493 F. Supp. 2d 880, 894, 895 (S.D. Tex. 2007), cites earlier Fifth Circuit cases

to the contrary (dependency not required; *Scindia* case discussed; shipowner liable for failure of turnover duty).

Prejudgment Interest

Admiralty law allows prejudgment interest. A federal court sitting in a diversity case should award prejudgment interest under state law even in a maritime case, here, an oil spill. *In re Exxon Valdez*, 484 F.3d 1098 (9th Cir. 2007) (food processing plant damaged).

Limitation of Liability

A company's non-marine employee drowned after falling from his employer's small shuttle boat. The company sought to limit its liability to the value of the boat, which was only \$10,500. Summary judgment denying limitation was entered, because the death was caused by the negligence of the shipowner's marine employees, and the shipowner was not able to meet its burden of showing that the negligence was outside of its privity or knowledge. *In re Lockheed Martin Corp.*, 2007 A.M.C. 1338 (N.D. N.Y. 2007).

In this collision case, the Second Circuit confirmed that the concursus that is created in a limitation action does not have any effect outside of the United States, thus the district court was correct in refusing to enjoin litigation outside of the United States. *Otal Investments, Ltd. v. M/V CLARY*, 494 F.3d 40 (2d Cir. 2007).

This is the continuation of a case reported in the May 5, 2006 PROCEEDINGS, in which the district court granted summary judgment to the claimant, because the vessel in question lacked the requisite number of deckhands. The owner had argued that one of the food service workers on the night in question was qualified as a deckhand, and therefore the vessel did have an adequate crew. On appeal, the Court of Appeals considered affidavits which the vessel owner had used to supplement deposition testimony and found that the facts contained therein created an issue of fact, which precluded summary judgment. The lower court had disregarded the affidavits, citing the rule that deposition testimony could not be contradicted by affidavits manufactured to defeat a summary judgment motion. The appellate court carefully compared the affidavits to the testimony and found that the former was not contradictory, but rather added information that had not been asked about at deposition. *Clinton River Cruise Co. v. DeLaCruz*, 213 Fed. App'x. 428 (6th Cir. 2007).

In a case involving damage to pipelines following Hurricane Katrina, the claimants filed the appropriate stipulation and sought to lift the stay so that

their claims could proceed in state court. The vessel owner opposed the motion, claiming that there were potential indemnity claimants who had not signed the stipulation. The court held that no indemnity claims had been filed within the deadlines set by the court, and therefore the mere potential was not enough to preclude lifting the stay. Given that the value of the claims, if successful, was in excess of the value of the vessel, it retained jurisdiction to determine the vessel owner's right to limitation, if necessary, following the state court proceedings. *Popich v. Shell Pipeline Co., LP*, 2007 WL 2908198, slip op. (E.D. La. 2007).

Hill was a passenger on a party boat when he suffered a severe asthma attack during a wedding that was being held onboard. Although there was oxygen and other medical supplies onboard, none were administered by the crew, who would not allow medically trained passengers to use the ship's medical supplies. By the time the vessel returned to the dock and Hill was delivered into the hands of paramedics, he was in severe distress and later died at the hospital. After trial, a U.S. magistrate recommended that limitation be denied, because the captain should have diverted the vessel to a closer dock so that Hill could be evacuated for medical treatment. The court noted that "although a carrier has no duty to furnish a doctor for its passengers' use, it does owe its sick and injured passengers a duty to exercise reasonable care to furnish such aid and assistance as ordinarily prudent persons would render under similar circumstances." *Gateway Clipper, Inc. v. Hill*, 2007 WL 2692248, slip op. (W.D. Pa. 2007).

The claimant and her group of friends rented a motor boat from the limitation plaintiff's dock manager, who also suggested that the group rent an inner tube that could be towed behind the boat. Although the claimant expressed reluctance about renting the boat, since none of the group had any experience operating one, she was told "if you can drive a car, you can drive a boat." Claimant also asked about how to properly deploy the inner tube and was told to "just throw it in the water" and "don't let the towline get caught in the propeller." Ultimately, the tow line did become caught in the propeller, causing the boat to turn in a circle and strike the inner tube and person riding in it. The court found that the dock manager was grossly negligent in not providing the group with proper instructions and that the waiver of liability that was signed by the claimant did not insulate the boatowner. Not surprisingly, limitation was denied. *KDME, Inc. v. Bucci*, 2007 WL 2345026, slip op. (S.D. Cal. 2007).

In a practical decision, the district court held that it did not have subject matter jurisdiction over a limitation of liability action in which the vessel owner was charged with negligent entrustment or supervision of a minor. The court

found that the state law elements of both causes of action mirrored the “privity or knowledge” standard of the limitation act and that therefore if he was liable under either state law theory, the owner would also have had privity or knowledge of the negligence that caused the injury. Thus there was no need for the limitation action. *In re Ruiz*, 494 F. Supp. 2d 1339 (S.D. Fla. 2007).

A crewmember and his former employer got into a fight over wages allegedly due the seaman. The crewmember had made threats against his prior employer, who confronted him onboard another vessel on which he was employed, and fisticuffs ensued. The brawl occurred while this vessel was at the dock and sent the crewmember to the hospital. His suit for negligence against the former employer was dismissed by the district court for lack of admiralty jurisdiction, and the seaman appealed. The Ninth Circuit held that the factual allegations met all of the tests for admiralty jurisdiction. It occurred on the navigable waters and had the potential to disrupt commercial maritime commerce, since an injured crewmember may be unable to perform his fishing duties, possibly disrupting a commercial fishing venture. Finally, the fact that the fight broke out over a dispute over maritime wages had a sufficient nexus to “traditional maritime activity.” *Gruver v. Lesman Fisheries, Inc.*, 489 F.3d 978 (9th Cir. 2007).

The District Court of Maine confirmed that a seaman’s claim for maintenance and cure is not subject to limitation of liability. With respect to the Jones Act and unseaworthiness claims, the court clarified the order of proof in a limitation case. The seaman must come forward with proof of negligence and/or unseaworthiness, and if he is successful, the vesselowner must then establish a lack of privity or knowledge. Where the claimant has proved general unseaworthiness, rather than a specific instance, the vesselowner’s burden on privity and knowledge is also a more general one, and he can prevail if he took appropriate steps to ensure that the ship was seaworthy. In other words, “the specificity of the claimant’s proof in the first stage of the proceeding determines the level of specificity at which the defendant’s second-stage proof must operate.” *Brown v. Teresa Marie IV, Inc.*, 477 F. Supp. 2d 266 (D. Me. 2007).

The fact that the Everglades are not navigable during the dry season does not prevent the court from exercising its admiralty jurisdiction over this limitation case. The same is true with respect to certain northern waterways that become non-navigable due to ice in the winter. *Everglades Island Boat Tours, LLC Limitation Proceedings*, 484 F. Supp. 2d 1259 (M.D. Fla. 2007).

Respectfully submitted,
John C. Scalia
Chair

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

Held at
Preti Flaherty Beliveau & Pachios LLP
One City Center
Portland, Maine 04112-9546
on
August 4, 2007
9:00 a.m.

The August 4, 2007 meeting was called to order by President Elizabeth L. Burrell at 9:00 a.m. In addition to President Burrell, the following officers also were present:

Warren J. Marwedel, First Vice President
James W. Bartlett, III, Secretary
Robert G. Clyne, Treasurer
Thomas S. Rue, Immediate Past President

The following directors also were present:

Joe E. Basenberg	Donald J. Kennedy
Forrest Booth	John D. Kimball
Dennis L. Bryant	Janet Wessler Marshall
David J. Farrell, Jr.	Stephen V. Rible
Grady S. Hurley	C. Kent Roberts
Allan R. Kelley	John M. Ryan

Also in attendance were Past Presidents Richard W. Palmer and James F. Moseley and Proctor members Seth S. Holbrook, Michael Kaplan, and William H. Welte.

Membership Secretary Philip A. Berns and Chester D. Hooper participated by telephone.

SECRETARY'S REPORT

Secretary James W. Bartlett, III reported that he had distributed the minutes of the May 3, 2007 meeting of the Board of Directors and had made all

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suggested corrections. Upon motion duly made and seconded, the minutes of the March 13, 2007 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the May 3, 2007 meeting of the Board of Directors will be published in the Spring 2007 issue of the PROCEEDINGS.

Mr. Bartlett reported that the Spring 2007 issue of the PROCEEDINGS was in final galley form and was being reviewed by him for final corrections. The PROCEEDINGS corrected galley will be going to the printer next week and should be in the mail to the members by early September.

Secretary Bartlett also reported that the numbered MLA documents have been sent to the University of Hawaii for digitalization, which process is expected to begin in September and be completed in October 2007. Once this project is completed, all of the numbered MLA documents will be accessible on the MLA website.

Secretary Bartlett and Treasurer Clyne reported on their visit to PC Solutions, the MLA administrator, in Tonawanda, New York on July 11, 2007.

President Burrell led a discussion relating to the custody and safekeeping of the non-numbered MLA papers, such as correspondence of the MLA Presidents over the years. The preservation of these historical papers possibly can be facilitated through the American Maritime Law Foundation. This possibility will be studied.

TREASURER'S REPORT

Treasurer Robert G. Clyne presented the Treasurer's report for the three months ended April 30, 2007. He reported that cash and investments total approximately \$490,000.00. The annual dues bills have been sent, and 72.67% of the annual dues have been collected to date.

Upon motion duly made and seconded, the Treasurer's report was unanimously approved and accepted. A copy of the Treasurer's formal written report for the three months ended April 30, 2007 will be appended to the original of these minutes.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Philip A. Berns reported that 20 applications were received for Associate membership. Upon motion duly made and sec-

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onded, the applications of the following 20 Associate members were approved unanimously:

Devon Howard Decker of Houston, Texas
Aleksandrs E. Drumalds of Long Beach, California
Eric P. Ebeling of Bethesda, Maryland
Paul B. Erickson of Palm Beach, Florida
Jean-Paul A. Escudier of New Orleans, Louisiana
John K. Fulweiler of New York, New York
Marina Ann Gaglias of New York, New York
Kenneth J. Gelpi, Jr. of New Orleans, Louisiana
Russell D. Giancola of Pittsburgh, Pennsylvania
Danielle Sullivan Kaminski of New York, New York
Ronald J. Kitto of New Orleans, Louisiana
Michael James Nakano of Honolulu, Hawaii
C. Barrett Rice of New Orleans, Louisiana
Elizabeth Haecker Ryan of New Orleans, Louisiana
Elizabeth Rotenberg-Schwartz of New York, New York
Lance M. Sannino of New Orleans, Louisiana
Jeanne L. Sexton of San Francisco, California
Nicolas J. Vikstrom of Seattle, Washington
Katherine L. Winters of New Orleans, Louisiana
Nicholas H. Walsh of Portland, Maine

An application for reinstatement has been received from a former Non-Lawyer member, Thomas J. Lynch of New York, New York. Upon motion duly made and seconded, the application for reinstatement of Thomas J. Lynch was approved unanimously.

No applications were received for Judicial or Academic membership.

Mr. Berns reported with regret the deaths of the following MLA members:

The Hon. William M. Steger of Tyler, Texas
Professor Frederick W. Swaim of New Orleans, Louisiana
David M. Salentine of San Francisco, California
Mark O. Kasanin of San Francisco, California
George J. Koelzer of Los Angeles, California

After the admission of 20 Associate members and the reinstatement of one Non-Lawyer Member, the total membership of the MLA is 3,038.

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Upon motion duly made and seconded, the Membership Secretary's report was unanimously approved and accepted. A copy of the Membership Secretary's written report will be appended to the original of these minutes.

BOARD SUBCOMMITTEE REPORTS

Committees

President Burrell reported that the MLA and the Canadian Maritime Law Association are cooperating to encourage communication at the committee level. A list has been prepared aligning the MLA Committees with their CMLA counterparts. President Burrell has written the Chairs of the MLA Committees and asked them to reach out and cooperate with the corresponding CMLA committees.

Finance

Treasurer Clyne reported that a simplified mission statement for the Finance Subcommittee had been prepared. Two recently elected Board members, Janet Marshall and Donald J. Kennedy, will be joining the Finance Subcommittee. The Subcommittee intends to prepare a projection of finances for review at the next Board meeting.

Other concerns being addressed by the Finance Subcommittee are the 60–80 members who are not paying dues and who are being dropped from the membership each year. Another concern is the effect on MLA finances of lifetime memberships. Steve Rible has done some work on this, and one solution might be to amend the By-Laws concerning lifetime membership. The Subcommittee hopes to have recommendations in this regard to the Board at its October meeting.

Membership

Membership Secretary Berns reported that an e-mail will go out to the Subcommittee as to how to disseminate information concerning Law Student membership. The Subcommittee is to submit a report pertaining to the Law Student members and their functioning as members of the MLA.

Website

First Vice President Marwedel reported that the Website Subcommittee and the Website and Technology Committee are looking into 16 possible

enhancements listed in the Subcommittee's written report. The Subcommittee was authorized to get further information concerning a security enhancement and to implement a feature by which a member can program the website to recognize the member every time he or she logs on to the website.

DISCUSSION ITEMS AND REPORTS

By-Law Amendments

A motion to approve the By-Law amendments that were sent to the Board of Directors on July 4, 2007 was made, seconded, and passed by a unanimous vote of the Board of Directors.

Board Liaison Reports

President Burrell urged the Board liaisons for each Committee to get in touch with the Chairs of each Committee to get feedback from them, e.g., what went right, what went wrong, at the May meeting. Each Committee should have a CLE liaison to assist the CLE Committee when a Committee wants to put on a CLE program.

City/Regional Luncheons

Grady Hurley reported that he and Janet Marshall organized a luncheon program in conjunction with the Maritime Law Committee of the New Orleans Bar Association. One hour of CLE credit was given for attendance at the luncheon program. This may become an annual event. David Farrell reported on a "think tank" lunch held in Boston with industry people on the subject of short sea shipping.

Position Papers

President Burrell reported that, as approved by the Board of Directors at its last meeting, she had sent a letter to the National Conference of Commissioners on Uniform State Laws urging development of a Uniform Certificate of Title Act for Vessels and a letter to Admiral Thad W. Allen, Commandant of the United States Coast Guard, requesting that the Coast Guard commence or recommence rulemaking to develop and publish for public comment regulations concerning vessel documentation. She also reported that while she was attending the IMO Diplomatic Conference on the Draft Wreck Convention

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in Nairobi on May 14–18, 2007, President Bush issued a message to the United States Senate urging that the Senate give early and favorable consideration to the Convention on Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which he said builds upon the 1982 United Nations Convention on the Law of the Sea. This presented an opportune moment to urge that the Senate give its advice and consent to the United States's accession to the Law of the Sea Convention, so on July 5, 2007, President Burrell sent a letter to Senator Joseph R. Biden, Jr., Chairman of the Senate Foreign Relations Committee, urging the Senate to give its advice and consent in favor of accession to the Law of the Sea Convention.

ABA Representative

James F. Moseley, MLA representative to the American Bar Association, gave his report concerning the current status of the ABA and what it is doing at the current time in connection with issues of interest to the MLA.

Fall 2008 Site Selection Committee

The Fall 2008 Site Selection Committee has recommended that the meeting be held at the Hyatt at Long Beach, California November 4–8, 2008. After discussion, a motion was made that the Board authorize negotiations for a contract with the Hyatt at Long Beach. The motion was seconded, and it passed with one vote in opposition.

***Ad Hoc* Committee on Environmental Crimes**

Past President Rue reported that on June 11, 2007, he, President Burrell, Joseph J. Cox of the Chamber of Shipping of America, and Joseph Ludwiczak of the Liberian Shipowners Council, Ltd. met with Gregory F. Linsin of the Department of Justice and Captain Charles D. Michel and Rear Admiral William Baumgartner at Coast Guard Headquarters in Washington, D.C. The subject was the draft of proposed guidelines. They are shooting for a public workshop concerning the guidelines in the September 15–October 15, 2007 time frame in New York.

Title 46 Codification

Dennis L. Bryant reported that legislation has been introduced to correct three additional errata in the Title 46 codification. It is not certain when these corrections will be addressed by Congress.

Certification

An effort to certify admiralty and maritime practitioners is in the early study stages in California, Forrest Booth reported. It is generally felt that admiralty and maritime law is too broad an area of law to justify certification. A comment period is to end on August 9, 2007. Several lawyers and groups have written in opposition, including the Pacific Admiralty Institute, writing on San Francisco Bar Association letterhead. President Burrell will send a letter in opposition next week.

Certification is also being addressed by the New York State Bar Association, and President Burrell is in contact with the NYSBA committee that is dealing with this, which will meet in September.

Amicus Requests

Gregory S. Coleman, former Solicitor General of Texas, has agreed to draft the amicus brief of the MLA in support of the petition of Exxon Shipping Company for a writ of certiorari to the Supreme Court of the United States in *Exxon Shipping Co. v. Grant Baker*. James A. Saville, Jr. of New York will draft the amicus brief of the MLA in *Consul Delaware, LLC v. Schabin Engenbaria Limitada*, which is on appeal to the United States Court of Appeals for the Second Circuit.

Coast Guard Justice System

The Coast Guard justice system dealing with suspension and revocation hearings has been the subject of recent publicity and Congressional hearings. A discussion of the experiences of Board members followed. A motion was made, duly seconded, and passed to direct the Committee on Regulation of Vessel Operations to report back to the Board of Directors before its October meeting with the current status of and recommendations concerning the Coast Guard justice system.

Coast Guard Functions

Congressman James L. Oberstar of Minnesota, who is the senior Democrat on the Transportation and Infrastructure Committee, has raised the issue of possibly transferring some of the functions of the Coast Guard to a new maritime safety agency in the Department of Transportation. The Coast Guard is opposed to this idea. The Board will monitor this subject but not take any position at this time.

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Qualifications for Marine Claims Personnel

Charlotte Warr of London is attempting to improve the training and competence of marine claims practitioners in the insurance market and is seeking the cooperation and assistance of the MLA. Secretary Bartlett will monitor this effort and report back to the Board.

Maritime Arbitration Association of the United States

The Board discussed the recent emergence of a private maritime arbitration association, the Maritime Arbitration Association of the United States, which lists in its Executive Committee and National Advisory Board several members of the MLA. A motion was made, seconded, and passed that the MLA will request the Maritime Arbitration Association of the United States to put a disclaimer on its website and in its printed materials that it is not affiliated with the MLA.

Presidential Activities

President Burrell or other MLA officers have attended the following meetings or events:

- A. Past President Rue and First Vice President Marwedel attended the CMI Assembly and Symposium, Dubrovnik—May 10–12, 2007
- B. President Burrell attended the IMO Diplomatic Conference on the Draft Wreck Convention, Nairobi—May 14–18, 2007
- C. President Burrell attended the CMI Working Group on Places of Refuge, London—May 22, 2007
- D. President Burrell attended the Canadian Law Association meeting, Toronto—June 17–18, 2007
- E. President Burrell attended the Association of Average Adjusters of Canada meeting, Toronto—June 18, 2007
- F. President Burrell attended the Southeastern Admiralty Law Institute meeting, Amelia Island, Florida—June 22–23, 2007

Future Officer and Board Meetings

- A. MLA Fall Meeting, Fort Myers, Florida—October 24–28, 2007
- B. Officers Meeting, Washington, D.C.—January 2008

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There being no further business to come before the Board of Directors, the meeting was adjourned at 12:15 P.M.

Respectfully submitted,
James W. Bartlett, III Secretary

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

Held at
Sanibel Harbour Resort & Spa
Ft. Myers, Florida
on
October 25, 2007
7:30 a.m.

The October 25, 2007 meeting was called to order by President Lizabeth L. Burrell at 7:30 a.m. In addition to President Burrell, the following officers also were present:

Warren J. Marwedel, First Vice President
Patrick J. Bonner, Second Vice President
James W. Bartlett, III, Secretary
Robert G. Clyne, Treasurer
Philip A. Berns, Membership Secretary
Thomas S. Rue, Immediate Past President

The following directors also were present:

Joe E. Basenberg	Donald J. Kennedy
Forrest Booth	John D. Kimball
Dennis L. Bryant	Janet Wessler Marshall
David J. Farrell, Jr.	Stephen V. Rible
Grady S. Hurley	C. Kent Roberts
Allan R. Kelley	John M. Ryan

SECRETARY'S REPORT

Secretary James W. Bartlett, III reported that he had distributed the minutes of the August 4, 2007 meeting of the Board of Directors, and there were

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no corrections. Upon motion duly made and seconded, the minutes of the August 4, 2007 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the August 4, 2007 meeting of the Board of Directors will be published in the Fall 2007 issue of the PROCEEDINGS.

TREASURER'S REPORT

Treasurer Robert G. Clyne presented the Treasurer's report for the three months ended July 31, 2007. He reported that cash and investments total approximately \$405,000.00. Approximately 90 percent of dues have been collected.

The annual audit went well.

Upon motion duly made and seconded, the Treasurer's report was unanimously approved and accepted. A copy of the Treasurer's formal report for the three months ended July 31, 2007 will be appended to the original of these minutes.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Philip A. Berns reported that seven Proctor membership applications had been received and had been recommended by the Proctor Committee for elevation to that status. Upon motion duly made and seconded, the following Associate members were unanimously approved as Proctor members:

Paul B. Arenas of San Francisco, California
Robert W. Burger of Cleveland, Ohio
Kris Elliott of Gulf Breeze, Florida
Buford Boyd Pollett of Cedex, France
William Gilbert Rospars of Delray Beach, Florida
Ruth Brewer Schuster of Washington, D.C.
Arthur J. Volkle, Jr. of Seattle, Washington

Membership Secretary Berns reported that 28 applications were received for Associate membership. Upon motion duly made and seconded, the applications of the following 28 members were approved unanimously:

Karin A. Bentz of St. Thomas, U.S.VI.
John Cox of San Francisco, California
Brandon Diket of Houston, Texas

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Demetrios Eleftheriades of New York, New York
Edward William Floyd of New York, New York
John Gill of Wilton, Connecticut
Jan P. Gisholt of New York, New York
Michael P. Hartman of New York, New York
Frances L. Keeler of Long Beach, California
Keri Ann Kilcommons of New York, New York
Kenneth F. Klanica of Pittsburgh, Pennsylvania
Amy W. Larson of Washington, D.C.
Erik N. Latimer of Warrenville, Illinois
Bruce A. Lindsay of Los Angeles, California
D. Elena Makin of New York, New York
Zaharoula Mavrikos of New York, New York
Albert J. Myburgh of New York, New York
Patricia M. O'Neill of Philadelphia, Pennsylvania
Jeffrey Orenstein of Washington, D.C.
Amy A. Parker of Providence, Rhode Island
Brent Wm. Primus of Minneapolis, Minnesota
Jacob C. Robinson of Portland, Oregon
Shaul Serban of San Francisco, California
Joshua Southwick of San Francisco, California
William Myles Thomas of Delray Beach, Florida
Christopher A. Tribolet of Alameda, California
Scott Andrew Wagner of Coral Gables, Florida
Christoph M. Wahner of Los Angeles, California

An application for reinstatement was received from a former Associate member, Steven C. Weiss of Chicago, Illinois. Upon motion duly made and seconded, the application for reinstatement of Steven C. Weiss was approved unanimously.

No complete applications were received for Non-Lawyer, Judicial, or Academic membership.

Mr. Berns reported with regret the deaths of the following MLA members:

Francis V. Elias of New York, New York
Irene W. Haefner of Stockton, California
Lionel Rene Saporta of Summit, New Jersey
Mayo J. Thompson of Houston, Texas
William J. Augello of Marana, Arizona

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Ann-Michele G. Higgins of Philadelphia, Pennsylvania
The Hon. James L. Oakes of Brattleboro, Vermont
Charles D. Kennedy of Houston, Texas

After the admission of 28 Associate members and the reinstatement of one Associate member, the total membership of the MLA is 3,048.

Upon motion duly made and seconded, the Membership Secretary's report was unanimously approved and accepted. A copy of the Membership Secretary's written report will be appended to the original of these minutes.

BOARD SUBCOMMITTEE REPORTS

Committees

Second Vice President Patrick J. Bonner reported that the members of the Subcommittee will be coordinating the meetings and activities of the Standing Committees.

President Burrell advised the Board that the Committee on Continuing Legal Education recommended the appointment of Danielle Sullivan Kaminski of New York as its Secretary. Upon motion duly made and seconded, the Board of Directors confirmed the appointment of Danielle Sullivan Kaminski as Secretary of the Committee on Continuing Legal Education.

President Burrell reported that the Special Committee on In-House Counsel has been well received, and she is in the process of making appointments to that Committee.

Finance

Treasurer Clyne reported that the Subcommittee is looking at the long-term financial posture of the MLA.

Membership

Membership Secretary Berns presented the oral and written report of the Membership Subcommittee. The written report contained recommendations concerning the implementation of Law Student membership. After a discussion and various amendments to the Subcommittee's recommendations, and after a motion was duly made and seconded, the following guide-

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lines for Law Student membership were adopted by unanimous vote of the Board of Directors:

1. Applications supported in writing by a professor or administrative official at the law school attended by the applicant or by a member of the MLA are to be sent by e-mail to the Membership Secretary for review and submission to the Board for approval.
2. It shall be the responsibility of the Law Student member to notify the Membership Secretary when the Law Student member graduates or ceases to be a student in good standing at the school.
3. The President will appoint a Law Student membership liaison.
4. Dues statements for Law Student members will be sent at the same time as other dues statements.
5. Law Student members shall be non-voting members.
6. Law Student members will receive all published, public materials provided to other members of the MLA.
7. All materials provided in accordance with paragraph 6 will be sent via e-mail.
8. The Law Student member will not have full access to the members-only portal of the MLA website.
9. At the request of a Committee Chair, and with approval of the President, a Law Student may be given limited access to the members-only portal for specific projects.
10. A separate chat room shall be set up for Law Student members.
11. Entry into the Law Student chat room shall be restricted to Law Student members, MLA Officers, and the webmaster.
12. The chat room shall be used solely for MLA Law Student membership matters, including but not limited to, the practice of law, admiralty issues, job opportunities, exchanges of ideas relating to admiralty, liaison with the Law Student members, and joint meetings. All entries shall meet ethical and professional standards.

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13. The President will appoint one or more Academic members to monitor the usage of the chat room to ensure it meets the requirements of paragraph 12.
14. Violation of the standards shall result in termination or suspension of the membership of the Law Student.
15. Law Student members will be listed on the MLA web membership list.
16. Law Student members will not be listed in the bi-annual printed Directory.
17. MLA Academic members should be encouraged to take part in assisting the Law Student members in their relationship with the MLA and coordinate with the Law Student membership liaison.
18. Law Student members are encouraged to attend MLA “open” Committee meetings and, if a Committee Chair requests and the President approves, closed meetings.
19. The Law Student members are particularly encouraged to attend Young Lawyers Committee meetings.
20. If there are any charges or fees related to attendance at any meeting, consideration will be given to a lower rate for Law Student members, and, if the Law Student member claims hardship, the Law Student member may contact the President.

Website

First Vice President Marwedel reported that various enhancements of the website had been or would be soon implemented. These include security enhancements, password retrieval, and identification of the sender when e-mails are sent via the website, i.e., the Committee issuing the e-mail will be identified. He also reported that the digitalization by the University of Hawaii of the numbered MLA documents is almost completed.

DISCUSSION ITEMS AND REPORTS

Board Liaison Reports

Donald J. Kennedy commented that greater emphasis should be placed on the Committees trying to get outside speakers for their programs. A dis-

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cussion followed, and it was agreed that Board liaisons should be working with Committee Chairs to put together programs of interest to the membership.

Ad Hoc Committee on Environmental Crimes

Past President Rue reported that, following the meeting on June 11, 2007 with representatives from the Department of Justice, the Environmental Protection Agency, and the United States Coast Guard, the proposed guidelines were revised. He also has enlisted the assistance of Dave Dickman to draft a document similar to the Sea Carrier Initiative. Mr. Rue is in the process of scheduling a meeting in Washington in January with the representatives from the Department of Justice, the Environmental Protection Agency, and the United States Coast Guard and Peter Hinchliffe, president of the International Chamber of Shipping. After that meeting occurs, it is hoped that a public workshop can be scheduled.

Certification

Forrest Booth reported that he received a telephone call from a lawyer serving on the Certification Committee of the California State Bar and tried to convince him that it was not a good idea to certify a specialty in admiralty.

President Burrell reported that she has been frustrated in her attempts to communicate with the New York State Bar Association in connection with certification efforts in that state.

Short Sea Shipping

President Burrell is creating a Special Committee on Short Sea Shipping with David J. Farrell as its Chair. This has been an active topic in the United States and in Europe, and the Committee will look into whether there is a way that the MLA can be effective and assist in this area.

International Activities

With respect to the guidelines on fair treatment of seafarers in the event of a maritime accident proposed by the IMO, the United States delegation had some problems with some of those provisions. President Burrell has spoken with Captain Chuck Michel of the United States Coast Guard, and he understands that this is a subject of interest to the MLA, and he has no problem with our participation in this process. President Burrell has referred this to the Committee on Marine Ecology for analysis and recommendations.

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Presidential Activities

President Burrell attended the following meetings:

- A. Marine Insurance Claims Association, New York—September 28, 2007
- B. Association of Average Adjusters of the United States, New York—October 3–4, 2007

Future Officer and Board Meetings

- A. Officers Meeting, Washington, D.C.—January 30, 2008
- B. MLA Board Meeting, Amelia Island, Florida—March 15–16, 2008
- C. MLA Spring Meeting, New York, New York—April 30–May 2, 2008

There being no further business to come before the Board of Directors, the meeting was adjourned at 9:15 a.m.

Respectfully submitted,
James W. Bartlett, III
Secretary