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November 8, 2008

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING—NOVEMBER 8, 2008

PRESENT:

WARREN J. MARWEDEL
PATRICK J. BONNER
ROBERT B. PARRISH
HAROLD K. WATSON
ROBERT G. CLYNE
DAVID J. FARRELL, JR.
LIZABETH L. BURRELL

And the following 66 members:

| | |
|-----------------------------|--------------------|
| Paul B. Arenas | Gene B. George |
| Paul A. Barns | Steven V. Gibbons |
| James W. Bartlett, III | Alexander M. Giles |
| Admiral William Baumgartner | Jay R. Gordon |
| Michael K. Bell | Donald C. Greenman |
| Denise S. Blocker | Keith W. Heard |
| Murray A. Bloom | Dana A. Henderson |
| Robert J. Bocko | Seth S. Holbrook |
| Forrest Booth | Grady S. Hurley |
| Guillermo Cancio | Bradley A. Jackson |
| Christopher E. Carey | Kim Jefferies |
| John H. Cigavic, III | George M. Jones |
| Scott E. Collins | Kimbley A. Kearney |
| Eric M. Danoff | Frances L. Keeler |
| Christopher O. Davis | Allan R. Kelley |
| Frank P. DeGiulio | Sandra L. Knapp |
| John A. Edginton | Victor I. Kooock |
| Robert B. Fisher, Jr. | Richard M. Leslie |
| Vincent J. Foley | D. Elena Makin |
| Joshua S. Force | W. Brett Mason |

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Douglas P. Matthews
Charles J. McCarthy
Daniel G. McDermott
Pamela L. Milgrim
Dennis Minichello
Robin C. Minturn
Joseph N. Mirkovich
George W. Nowell
Christina L. Owen
Alan Van Praag
C. Barrett Rice
C. Kent Roberts
Thomas S. Rue
Thomas A. Russell
Robert J. Ryniker

Alan G. Sampson
John C. Scalia
G. Bryon Sims
Jonathan S. Spencer
Kevin J. Thornton
James F. Whitehead, III
M. Hamilton Whitman, Jr.
Andrew C. Wilson
James R. Woeppel
Robert J. Zapf
Joanne Zawitoski

The following guest was also present:

Jabir J. Makin

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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING
LONG BEACH, CALIFORNIA
NOVEMBER 8, 2008

PROCEEDINGS

MR. MARWEDEL: Good morning. I'd like to welcome you to the General Meeting. We have a couple of housekeeping announcements. Make sure you fill out the blue cards at the table outside the door. That indicates that you were here. We will have coffee and something arriving shortly so you won't fade away. Mr. Secretary, would you give your report.

MR. WATSON: Thank you, Mr. President. One other housekeeping detail. I would ask that if you're going to be speaking, when you come to the front, please give the court reporter one of your business cards. Thank you.

The Board of Directors met twice since our last General Meeting in May. We met in August at the Merchant Marine Academy at Kings Point, New York, and then yesterday morning we met here at the Long Beach Hyatt Regency. We discussed many items that will be addressed by others, so I will try to be brief and not spend time on issues that other people will be addressing.

There are four Subcommittees of the Board of Directors: Committees, Finance, Membership, and Website. The Treasurer and the Membership Secretary will be making reports of their own and there will be a separate report regarding the website, so I will only address the work of the Board Subcommittee on Committees. The Subcommittee on Committees is chaired by the Second Vice President, Mr. Parrish, and it coordinates with the various Committee chairs. A point of discussion at our Board meetings has been the need to post the agenda of Committee meetings at least six weeks of advance of the Committee meetings. This is essential since the agenda is important to some members in planning their attendance at Committee meetings. The Board is appreciative of the Committee chairs who have been increasingly good at doing this.

The Board has been monitoring efforts that are currently underway in California to certify specialists in admiralty and maritime law. The Association opposes these efforts since the certification will address only a small part of the maritime bar. These views have been made known to the California Board

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of Legal Specialization, but we have no real control over this process and, in fact, have very little information about what they're doing.

Immediate Past President Burrell has been spearheading efforts of the Association to establish a Coast Guard forum where Association members can voice their views to the Coast Guard, and Admiral Baumgartner is going to be addressing this later in the meeting.

The Association has received since the last General Meeting a number of requests for amicus briefs. Consideration of whether or not to participate and file an amicus brief is an important and sometimes difficult Board function, particularly in view of the requirement in the By-laws that this function be exercised sparingly.

First Vice President Bonner recently attended a meeting of the Maritime Labor Convention Roundtable. This organization was set up by the Seamen's Church Institute to discuss the proposed convention on repatriation of abandoned seamen. Mr. Bonner also attended the IMO/ILO Expert Working Group on Abandonment and Compensation for Death and Injury Claims, and President Marwedel attended the meeting of the IMO Legal Committee in London. At that meeting, Captain Michel of the Coast Card made a presentation on the abandonment of seafarers and met with various P & I clubs to discuss this issue. The IMO Legal Committee then unanimously voted to support the convention. The IMO Legal Committee also considered a protocol to the NHS convention.

President Marwedel will be forwarding a copy of proposed local rules dealing with admiralty and maritime matters to the chief judges of every district court in the country.

There have been regional meetings of the Association in Jacksonville and Portland. The Board strongly encourages these meetings as a means of informing the membership about the activities of the Association and increasing the involvement of the membership.

The U.S. delegation also attended the CMI meeting in Athens and Chris Davis will be reporting on this later.

The Board also received reports regarding America's Marine Highway and plans for the November 2009 meeting, and you'll be hearing reports about these matters as well.

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

MR. MARWEDEL: Second?

MEMBERS: Second.

MR. MARWEDEL: All in favor?

MEMBERS: Aye.

MR. MARWEDEL: Treasurer's report.

MR. CLYNE: Thank you, Mr. President. The Association's finances remain in good shape. Right now we have approximately \$375,000 in cash and investments. By "investments" I mean things like CD's, Treasury securities and the like. Our dues are down a little bit this year. And we're asking everyone that hasn't paid his or her dues, please pay them. Just as importantly, if you leave, relocate, or if you leave a firm and go to another firm, please let the Association know because we get lots of dues notices returned and we can't find people. So please let us know about that.

That concludes my report and I move its adoption.

MR. MARWEDEL: Second?

MEMBERS: Second.

MR. MARWEDEL: All in favor?

MEMBERS: Aye.

MR. MARWEDEL: Membership Secretary's report.

MR. FARRELL: Thank you, Mr. President, I think. I hesitate because I'm in the unenviable position of trying to fill the shoes of Mr. Berns, who is, of course, a legend in this Association and beyond. I'm not sure it's official, but I understand he was recently appointed Captain of the Port of Las Vegas where he'll be continuing his duties as a bookish scholar and bookmaker. Clearly I'll never be able to entertain you with his stand-up routine, but I will try to be brief.

Pursuant to our By-laws, Section 2, yesterday the Board of Directors approved the Honorable Roy L. Paul as a judicial member. He sits on the Los Angeles Superior Court.

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The Board also, on recommendation of the Committee on Proctor Admissions, elevated to proctor status four associate members. They are Scott E. Collins of Seattle, Joshua E. Kirsch of San Francisco, Mark E. Newcomb of Norfolk, and James R. Woeppel of Seattle.

In addition, I'm pleased to report that since the New York meeting last spring, the Board approved 39 new associate members and 14 new law student members.

I regret to report, however, that since the New York meeting, I've been advised of the death of ten members, some of whom were very long-time, active members of this Association. They are R. Glenn Bauer of Westfield, New Jersey; the Honorable Charles L. Brieant of White Plains, New York; Kent Brooks of Pottsboro, Texas; Rae M. Crowe of Mobile; John G. DeRussy of New Orleans; T.C.W. Ellis of New Orleans; James W. Parker of Bermuda; John R. Peters, Jr. of Edgar, Louisiana; Richard Howard Webber of Branford, Connecticut; and George W. Williams of Savannah. Also, this week Sam Hopkins passed away. Many of you know his wife and long-time member, Anne Hopkins, the Managing Editor of American Maritime Cases, and his son Rob Hopkins of our Board. I would ask you all to join me in rising for a moment of silence. Thank you.

One of the ways we could pay tribute to our late members would be to encourage lawyers who we know that are engaged in maritime practice and young lawyers to join the Association and to encourage those people who have been in the Association for a while to elevate themselves to proctor status. Please don't hesitate to contact me for any assistance with those applications.

Finally, the hard cover Directory will be in the mail this week. You should be receiving it shortly. With it there will be a note reminding everybody to make sure that your e-mail addresses are up-to-date with the Association since that's the way we communicate.

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

MR. MARWEDEL: Second?

MEMBERS: Second.

MR. MARWEDEL: All in favor?

MEMBERS: Aye.

MR. MARWEDEL: Thank you. Before we get to Committee reports—and I'm trying to move the meeting along this morning because, as I said, I know many of you have planes to catch—I'd like to have Bob Zapf come up and his Committee. Maybe somebody could go out in the hall. I think they're out by the table. I think you'll all agree that this has been a very good meeting. These city meetings are something relatively new for the Association, and the idea is to get around to areas of the country that have a significant admiralty practice so that people from the rest of the country can see what that admiralty practice is. We also get many of the younger members and members that don't always get to New York or to our resort meetings and we get to meet them and they participate in the Committee meetings.

Bob, if you would, also introduce the members of your Committee.

MR. ZAPP: Good morning. We're very happy that you're all here and that as many of you came as have come. This was truly the work of a committee. No one person can do everything that needs to get done to organize one of these events. I'm sure you are aware of all the work that needs to be done, but there were a number of us who put it together.

I'm going to first mention Bill Collier from the Keesal firm who was a tremendous asset to us in terms of providing not only his own time, but that of his office, his staff. Stephanie Frieberg, his assistant, was tremendously receptive. Any time we needed anything, we'd give Bill or Stephanie a call. Neil Klein and his office were also very helpful. His office manager/paralegal, Sarah Stowe, was also tremendous in putting together attendance lists, et cetera.

Institutional knowledge is a great asset and necessary. John Edginton and Forrest Booth had put together the program in San Francisco. They also provided a tremendous amount of background and help. Mike Swain worked putting together the Committee schedules and getting things organized in that fashion. We also had Ed Walton and Erich Wise locally who were of assistance to us in providing office space as well as financial support. The out-port people that we called upon, Bruce King in Seattle and Kent Roberts in Portland, were of great assistance in beating the bushes in their local territories to get people to come sign up.

I can report on the Aquarium Reception, which was a sponsored event. You saw the signage of the people who were of assistance to us in putting that together. It was really a truly unique event, great venue, and we hit our number exactly on the head. We had guaranteed a certain number and that's exactly the number that showed up. So that was a miracle.

I don't have a count for the dinner last night. I'm going to have that later. I'll let the officers and Board know, but I think it was very well attended and I think everyone had a good time.

The weather cooperated for us. We had a little rain last week and it looked like we were going to be doing some false advertising about sunny Southern California, but it came through in the end for us. We've had a good meeting, I think, and we appreciate your all being here. And I second Warren's comments about doing these things around the country when we have the opportunity. I think it does bring out a lot of new faces and people who would not otherwise have an opportunity to see what we do. As you know, the work of this Association and the Committees is what makes this such a wonderful Association.

So thank you for the opportunity of presenting Long Beach and Los Angeles in the Southern California area and I hope you all have a good time the rest of the weekend. Thank you.

MR. MARWEDEL: One of the things I hope you have all noted is that we had a couple of functions for which there was no charge to the membership. Tom Russell put together a fantastic tour of the port area and a bus tour to actually see how these ships come in and how they're unloaded and trains are loaded and trucks, et cetera. A lot of us deal with these cases somewhat in the abstract and it was really nice to get out and see that. Tom, thank you for putting that together.

Bob talked to you about the Aquarium. The local committee really went out and raised the money so that there was no charge to the membership. A philosophy of our Association is to keep the expense to the members as low as possible so that they get the maximum return for all the efforts that are put in. Once again, I want to thank the committee for their hard work. John Edginton and Forrest Booth were on the San Francisco committee and they came down with kind of a template of what they did there and that helped considerably in this meeting.

I'm going to go ahead with Committee reports. We have probably about 18 to 20 presentations. Sixteen people have asked to be first, so I'm going to do my best. I'll jump around a little bit. And I ask you to remember that we want you to make a report but it should be short, well-focused. And you can always augment it with a written supplement, send it to the Secretary, and that will become part of the PROCEEDINGS.

The first one will be JoAnne who will talk about our meeting in 2009.

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MS. ZAWITOSKI: Mr. President, fellow members and guests, I'm here reporting today on behalf of Charlie Schmidt who is the Chairman of the Planning and Arrangements Committee for our Fall 2009 meeting. Charlie regrets that he could not be here today.

If you loved Long Beach, you are really going to love the destination for our 2009 resort meeting, which is going to be Hilton Head, South Carolina. We have selected a great location for this meeting. It's the Marriott Golf and Tennis Resort, which sits right on the ocean. Picture a beautiful, fluffy, white, big, sand beach, and a resort that has something for everybody. Most people tend to think of Hilton Head Island as a golf or tennis destination, but there are many activities on the island for everyone, including fishing, sailing, horseback riding, parasailing and canoeing. There are eco-tours you can take if you are interested in the environment. You can participate in turtle watches on the beach. There are also lots of activities for families on Hilton Head, and we are working on a really great meeting for you.

So, mark your calendars. Our Hilton Head meeting is going to be November 3rd through the 7th of 2009. Again, it will be at the Marriott Beach and Golf Resort. You can go online and check out the resort if you want to see what it looks like. We're working on trying to get very affordable rates so that those who want to bring their families will feel welcome. Hilton Head is served by two airports. There's an airport that is actually on the island and also an airport in Savannah that is about 40 miles away. In fact, you can easily take a day trip to Savannah if you want to see Savannah during this meeting as well.

We are, as a committee, meeting next weekend to work with the hotel and try to finalize the plans. We're very excited about it and we hope you will be too. We're going to have our traditional social events that you're all familiar with. We're also going to have a wonderful CLE program. Our president has asked us to try to see if we can get some really good speakers for the CLE including some prominent judges or justices to try to speak at that meeting. We're going to try our best to do that for you.

If you have any suggestions, things you'd like to see at the meeting that we haven't done before or ways you think we can make the resort meeting even better than it's ever been before, I would urge you to either contact Charlie Schmidt or me and let us know your ideas. We think you're really going to love Hilton Head if you've never been there, and it's just going to be a fabulous meeting. So I hope to see you all there.

That concludes my report, Mr. President.

MR. MARWEDEL: Thank you. International Organizations, Chris Davis. I'm sorry. Alan is going to do it and then Chris is going to talk about some other issues.

MR. VAN PRAAG: Thank you, Mr. President. Good morning, everyone. We had an excellent meeting yesterday with 17 members attending. First Captain Chuck Michel of the U.S. Coast Guard reported on the IMO Legal Committee meeting which was also attended by Warren Marwedel. The issues addressed at the Legal Committee were the Hazardous and Noxious Substances Convention, and they deferred decision on a diplomatic conference until April of 2009. They expect a diplomatic conference will happen in 2010.

Another issue was a joint IMO/ILO Working Group Committee which addressed the issue of abandoned seafarers' claims and agreed on the content of a written instrument to be drafted at the next meeting in April 2009.

Thirdly, there's a casualty investigation code issue where the U.S. reserved its position because of a conflict with domestic criminal law. Other issues discussed were the long-range interdiction and tracking system which is based on our satellite system which will be implemented on SOLAS class vessels on December 31, 2008 on new buildings as of December 31, 2008.

Other issues discussed were the small vessels security strategy. IMO came to adopt voluntary guidelines for non-SOLAS vessels engaged in international voyages, basically the ISPS code.

Further, Captain Michel talked about the territoriality of arctic waters where there are major disagreements between Canada, the U.S., and other nations such as Russia.

Lastly, he spoke about piracy issues. The problem he noted is with regard to the prosecution of pirates. There is no judicial system in place for prosecution once they're captured. The suggestion is for the affected nations to extradite captured pirates to the flag states or other interested states for extradition for prosecution under SUA.

Chris Davis reported on the CMI meeting—and hopefully he'll be reporting some more on that this morning. The CMI meeting in Athens approved the UNCITRAL instrument, approved the draft instrument on places of refuge, and approved draft guidelines for procedural rules on limitation of liability.

The CMI appointed a new president, Karl-Johan Gombrii, and a second vice president, Johanne Gauthier. The next meeting is in 2010 in Santiago, Chile.

Vince Foley, in line with the CMI issues concerning ports of refuge, addressed the implementation of IMO guidelines in the United States through Coast Guard documentation and Coast Guard regulations.

Finally, Phil Buhler discussed the Supreme Court *Medellin* case and the issue of whether a treaty is self-executing or not. *Medellin* upheld a Texas criminal court ruling which conflicted with the Vienna Convention pertaining to the right of an individual to speak with his consulate and the appropriate notice of that right.

Lastly, I reported on the choice of court convention and advised that the Secretary of State has issued a letter of memorandum approving ratification. The same is true with regard to UNCLOS where we understand that President-elect Obama is very much in favor of its ratification, and we hope that finally after 28 years that convention will be approved by the United States.

Mr. President, that's my report. Thank you very much.

MR. MARWEDEL: Thank you. Chris. Chris is on the CMI Council.

MR. DAVIS: Good morning, Mr. President, members, and guests. The 39th CMI International Conference and Assembly were held in Greece on October 12th through 17th, 2008. In excess of 400 registrants attended the conference, including 10 members from this Association.

As Alan mentioned, there were three major accomplishments at the conference. First, the approval of the draft UNCITRAL instrument on transport law. I believe Don Greenman will report more fully on that in his report.

The second accomplishment was the approval of the draft instrument on places of refuge. As you may recall, the IMO Legal Committee issued guidelines on this subject. The draft instrument goes further. It actually imposes obligations on the various stakeholders. The thought is that at least the IMO will have this instrument in place should there be another PRESTIGE incident and should the IMO decide or determine that a convention or formal instrument is required in this area.

The third accomplishment was the approval of draft guidelines in respect of procedural rules relating to limitation of liability. These reign primarily in

countries or states which have ratified conventions on limitation of liability, but they're also meant for states that apply national law relating to limitation of liability not based on any convention.

As Alan mentioned, at the assembly a new president was elected, Mr. Gombrii of Norway. Justice Johanne Gauthier replaced him as vice president. I would add that this was the second contested election in the CMI's 111 years. It was a fairly contentious election. Louis Mbanefo of Lagos, Nigeria and Andrew Taylor of London were also elected as counselors at the assembly.

Finally, I'd like to mention very briefly a new project on piracy that has been undertaken by the IMO. The increase in acts of piracy have been well-recorded in Lloyd's List and Tradewinds. There's a recent resolution by the European parliament calling for action on piracy, and the IMO has been coming under increased pressure from member states to take the lead in combating piracy. Thus, the IMO has approached the CMI to assist in this new and important project. And in a letter dated November 7, 2008, yesterday, Mr. Gombrii on behalf of the CMI has confirmed the CMI's willingness to assist with any work that IMO would like or would wish us to undertake in respect of legislation on piracy.

A final point on this subject. As many of you, Frank Wiswall of this Association and the CMI put a lot of work into the 2001 model law on piracy as well as the draft guidelines for national legislation on maritime violence and criminal acts which was completed in 2007. However, this new project on piracy is likely to have a much more narrow focus, perhaps simply the more effective implementation of the SUA convention and protocols. And it is hoped that these guidelines may convince states to pass national legislations to more effectively effect prosecution or extradition of pirates to a jurisdiction that will, in fact, prosecute them.

Thank you, Mr. President. That completes my report.

MR. MARWEDEL: Thank you. Arbitration and ADR, Keith Heard.

MR. HEARD: Thank you, Mr. President. The Committee on Maritime Arbitration and Alternative Dispute Resolution met on Thursday afternoon in the sumptuous offices of Keesal, Young & Logan. At the same time we had a parallel meeting in the offices of Holland & Knight in New York, chaired by Committee Co-chair Sandra Gluck in which we had about 12 people in attendance. I think we had about 25 at the Keesal office. We dealt with three principal topics.

The first part of the meeting involved a presentation by Jason Kostyniuk of Bull, Houser & Tupper in Vancouver. Jason enlightened us on two important Canadian decisions in which Canadian courts have departed from the mandate of Canada's Marine Liability Act, which was enacted in 2001. And that would be near and dear to all of our hearts because that is essentially an anti-*SKY REEFER* law designed to keep in Canada maritime disputes that would otherwise go overseas due to forum selection clauses in the governing contracts. In two appellate cases, Canadian courts have allowed cases to go overseas when it appeared they should have stayed in Canada under the dictate of that law.

One of the cases arises out of the listing of the COUGAR ACE car carrier in the North Pacific. The losing party in that case has petitioned Canada's Supreme Court to appeal. So I don't think we've heard the end of that yet. Jason did a fine job. We really appreciate his contribution.

The next topic was one I presented to the Committee on proposed revisions to the UNCITRAL arbitration rules which have been in effect since 1976. They have not been amended. UNCITRAL decided that these rules need amending. But I didn't focus so much on these changes. It was apparent to me that many members of the Committee were not even aware of the existence of these rules. So we really summarized some of the most important features. The rules are complex. They're interesting. If you ever have a spare moment and are interested in arbitration, it's something you might want to thumb through. The revision process is just getting started. I am pleased to advise the treasurer that UNCITRAL has not asked our Committee to provide three members to travel to meetings around the world to participate in this revision process.

The final principal topic we had involved a discussion on what has become of the doctrine of manifest disregard of the law. In the late 1950's in a securities case called *Wilco v. Swan*, the Supreme Court said in what may be regarded as dictum that an arbitration award could be vacated if the arbitrators acted in manifest disregard of the law. In fact, that concept can be traced in Supreme Court cases back to the 1870's. Earlier this year in a case coming up in the Ninth Circuit, *Hall Street Associates v. Mattel*, the Supreme Court seemed to sound the death knell for that concept. The Supreme Court's language in the *Hall Street* case has provided difficulty for the lower courts and cases have gone both ways now as to whether manifest disregard of the law is still a viable principle on which you can argue that an award should be vacated. We discussed this at a meeting in October. And since then the Supreme Court has vacated another Ninth Circuit decision involving mani-

fest disregard of the law and returned that case to the Ninth Circuit for consideration in light of the *Hall Street* ruling. That was a case that had been briefed and decided by the Ninth Circuit before *Hall Street*. And then very helpfully and very coincidentally, on Tuesday of this week, after we set the agenda for the meeting, the Second Circuit Court of Appeals handed down a ruling in the case of *Stolt Nielsen v. Animal Feeds International* where the Second Circuit rejected the argument that manifest disregard is no longer available as a valid grounds to seek vacatur of an award. I don't know whether that case will wind up in the Supreme Court or not, but this is a really interesting area of the law. As I said, there are cases on both sides, so it's one our Committee will continue to watch. Sandra Gluck made the presentation on the *Stolt Nielsen* case.

The final point is that 11 months from now, in early October, the International Congress of Maritime Arbitrators will meet in Hamburg. That may be too far off for you to put on your schedules, but I bring it to your attention because if you plan to submit a paper, outlines of papers are due by January 15th and the full papers are due by April 15th.

Thank you very much. That concludes my report.

MR. MARWEDEL: Thank you. Carriage of Goods, Don Greenman, followed by Cruise Lines and Passenger Ships.

MR. GREENMAN: Thank you, Mr. President, fellow members, and guests. Before I start with my Committee report, I have some news from AMC. Our 17th five-year digest is now available. A sample is out front. As AMC has done for decades, we dedicated it to a person who has had enormous influence on the admiralty law here and abroad, namely Michael Sturley.

The sad news you've heard is that Sam Hopkins died on Wednesday of this week. He was not only the husband of Anne, who is our managing editor, but he also participated very actively in the production of the publication. We will miss him greatly.

Turning to the Committee on Carriage of Goods, we had a lively meeting on Wednesday. It may have been because the principal subject of the meeting was to take a straw vote on whether the MLA should approve the UNCITRAL Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. Prior to the meeting, there had been a number of e-mails back and forth among Committee members that indicated that we may not be unanimous on the subject. We had a large turnout in person and

by conference call. Interestingly, there were more nonmembers of the Committee present at the meeting here in Long Beach than there were members of the Committee. Also, a number of nonmembers such as the head of NIT League and two representatives from the World Shipping Council also participated in the meeting by conference call.

We began the meeting with a presentation by Mary Helen Carlson, who is the State Department head of the United States delegation to Working Group III that produced the Convention. She explained to us how the Convention had been worked on or will be worked on by the U.S. government. The present status of the Convention is that it has been approved by UNCITRAL and has been submitted to the United Nations Committee 6, which is a legal committee for the United Nations. It is anticipated that the legal committee will shortly approve the Convention if it has not already have done so, from where it will go to the United Nations General Assembly as a whole. It is planned that there will be a signing ceremony for the Convention next fall in Rotterdam. Hence, from now on the Convention will probably be called Rotterdam Rules.

The procedure for the Convention will be different than it was for the Hamburg Rules. There, there was a diplomatic conference at which the draft convention as presented could be amended, and, as I recall, the limitations of carrier liability were finally set at the diplomatic conference, this not having been previously done. The UNCITRAL rules, on the other hand, are only subject to a signing ceremony. This means that the form in which they now exist can only be accepted or rejected; there will be no further discussion about redrafting this article or that article. We are stuck with what we have whether we like it or not.

Mary Helen, by the way, as a State Department employee, was not in a position to say how our Association should vote on the subject because government employees cannot advise private organizations as to what sort of recommendations these organizations should make to the government.

Professor Sturley addressed the Committee. As you all know, Professor Sturley has been involved with these efforts from the early stages, having served as the reporter for the working group of the MLA Committee on Carriage of Goods that drafted the MLA revision of COGSA. He then went on to serve as the rapporteur for the CMI Drafting Committee, and finally was an advisor for the United States delegation to the UNCITRAL working group. Professor Sturley explained the major differences between the existing law and what the Convention would provide.

First, it's a door-to-door convention for both land and sea carriage. Second, it allows some freedom of contract, in that the Convention can be avoided in volume contracts, which we call service contracts in this country. This was a contentious point in Working Group III and there was a final resolution of it after at the last meeting of the Working Group. It was insisted upon by the United States because industry wanted the Working Group to do it. There are jurisdiction and arbitration provisions in the Convention. The countries who sign the Convention can opt into these jurisdiction and arbitration provisions. If they do not do so, then they do not bind that particular country that signs the Convention. If these jurisdiction and arbitration provisions become the law of the United States, though, they will have a very big effect on the SKY REEFER situation.

The limitation amount for the UNCITRAL convention is raised above that in the Hague Rules, the Hamburg-Visby Rules, and the Hamburg Rules. It will be 875 special drawing rights for packages or three special drawing rights per kilogram, whichever is higher. There are a number of other lesser changes in the Convention from present law, and our Committee will prepare a summary of the Convention for distribution to the members of the Association as a whole.

Chet Hooper appeared by phone (as had Mary Helen and Professor Sturley), and he gave us the history of the development of the Convention, from the MLA's proposed revision of COGSA in 1996, the CMI Drafting Committee in 2001, and ending with the current UNCITRAL effort.

After the initial presentation, we had a debate of sorts. Some perceived that there were drawbacks for cargo interests in the convention, particularly in volume contracts, a position voiced by David Maloof. Michael Marks Cohen had comments concerning jurisdiction and arbitration provisions, and there was a good discussion of all of these issues.

It appeared, though, that a lot of the people present needed more time to study the issues. Accordingly, rather than taking a binding vote of the Committee, we decided to just have a show of hands to see who was in favor, who was against, and who abstained. The majority were in favor of the Convention. A substantial number abstained, but this probably included people who were not members of the Committee, and may not even have been members of the MLA. There were only two negative votes. This, again, was a nonbinding indication of where people stood at the moment. We plan to have a formal vote on the Convention next May, and we will have advance reports to the Association as a whole so that it could be considered at the May meeting.

Having finished with the UNCITRAL part of our Committee meeting, we discussed cases in the Southern District of New York dealing with the issue of the Carmack Amendment. Professor Sturley gave us a discussion of four cases that have come down since our last meeting in May, which are all over the lot. In one of the cases, a district judge stated that he was going to follow the Supreme Court in *Kirby* and ignore the Second Circuit in the *Sompo* case and therefore held the Carmack Amendment doesn't apply to inland parts of international through carriage.

Other judges in the Southern District have held that a through carrier, such as an ocean carrier who issues a through bill of lading that covers inland transport, becomes a railway itself for purposes of the Carmack Amendment. In one of the cases the judge found that the ocean carrier or NVOCC was a rail carrier, and then he dismissed the suit because the venue was improper under the Carmack Amendment.

At least two of these decisions are on appeal and all four of them are printed in the current issue of AMC. Three of them are summarized in the cargo newsletter which was out front that I hope everyone picked up.

With that, Mr. President, I conclude my report.

MR. MARWEDEL: Thank you. Cruise lines, Pamela Milgrim, followed by Young Lawyers.

MS. MILGRIM: Good morning, Mr. President, members, and guests. Our meeting took place on Friday morning at the offices of Keesal, Young & Logan. There were approximately 30 attendees. And I'm happy to report that that included members from the plaintiff's bar, the defense bar, representatives of P&I Clubs, U.S. Coast Guard, and the judiciary. So that was a nice mix which provided for a lively discussion of some of the points and issues.

The meeting began with a discussion of trends in crew arbitration clauses. Many cruise lines are now incorporating these clauses into standard crew contracts. This is somewhat of a departure from the way these cases have been handled previously. Most had resulted in litigation in the U.S. and the cruise lines are now incorporating these clauses as an attempt to have a faster, more cost efficient resolution to these disputes.

Following that we had the first of two speakers. The first speaker was Bob Peltz who is the vice chair of our Committee. He spoke about medicine on the high seas. This is a very significant area in cruise line litigation and it involves

whether cruise lines are vicariously liable for the negligence of shipboard medical personnel.

The next topic was by Carol Finklehoff, who discussed prosecuting and defending sexual assault cases. She spoke about the unique challenges in handling these cases during both the investigation stage and litigation.

That concludes my report. Thank you very much.

MR. MARWEDEL: Thank you. Dana Henderson, Young Lawyers, followed by Fisheries.

MS. HENDERSON: Good morning, Mr. President, members of the association, and guests. The Young Lawyers Committee met yesterday for a lunch social meeting. We had about 25 lawyers in attendance including a great number of new members. So I'm pleased to report that some of the MLA's outreach efforts to other ports seem to be working as we have a number of people here whom we haven't seen at other MLA events. We had lawyers in attendance who were from places as far afield as Panama and Vancouver, British Columbia. And we were happy to see our CMLA members join us for lunch and we were also pleased to have two attendees who are new law student members of the Maritime Law Association.

As some of you may know, the MLA has relatively recently put into place a law student category of membership. So together with these representatives—one of whom was from Tulane University, the other one was from the University of San Francisco—the Young Lawyers Committee is hoping to be the first stop for our law student members and is also looking to work with these student members and bring them into the Association because they'll certainly be the future of the Association.

For our members who are not here but who may be reading the PROCEEDINGS, we want to make it known that we are no longer publishing our newsletter by sending it out by e-mail. It is only available by logging onto the website. So we ask that if you want to know what's going on with Young Lawyers Committee, you join our Committee through the website and then check out our goings on by our Committee's section of the website.

I also wanted to take this opportunity to address the Committee chairs and special project chairs and let you know and remind you that we have a number of excited, eager, active young members who are looking to become more involved in this Association. I am routinely approached by new mem-

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bers who are looking to be put to work. They want to work on your special projects. They want to help you out with legal research, contribute to your newsletter, or even help coordinate some of your meetings. So if you get in touch with me, Alex Giles, or Betsy Bundy and give us a little bit of notice, we should be able to help you staff whatever project you might have. So, please do put us to work.

Mr. President, that concludes my report.

MR. MARWEDEL: Thank you. Fisheries, Steve Johnson, followed by Inland Waters.

MR. THORNTON: Good morning, Mr. President, officers, guests, and members. Steve Johnson couldn't be here, so I'll be accepting the award in his place. Steve's actually on the east coast. My name is Kevin Thornton. I'm from the Atlantic City offices of Cooper Levenson. I'm the vice chairman of the Fisheries Committee.

We had our meeting yesterday morning at 10:00 A.M. until noon at the offices of Flynn, Delich & Wise. I thank them for their hospitality. It's important as we all have to go from different city to city that the local firms support the effort, and the Fisheries Committee particularly appreciates their generosity and hospitality.

Steve participated by phone. So we had Steve and I essentially running the meeting and we had 12 people show up, and they did something unique and interesting here in Long Beach, and in our Committee, too. We had one new member and a significant number of non-committee members attend. They outnumbered members of the Committee who were actually in attendance. We welcome anybody who's interested to stop by. The guests generally enjoy the meetings and have things they can contribute and they learn something about the Fisheries Committee. We're small in number but our enthusiasm and commitment far exceed our membership. So feel free to drop by.

Steve started the meeting by discussing a new pet project he's looking at. It's in the initial stages. He is trying to come up with some new legislation that might inspire the few remaining traditional lenders as well as new non-traditional lenders to get involved in investing in the commercial fishing industry. That's barely out of the dugout. This is something that Steve is working on and we're going to circulate a draft among our committee members and see if we can get any input with that.

We next had an update on the legislative proposals to address issues of maritime liens and security interests and limited access permits. There is a big issue in terms of how one values the boats themselves versus the value of the rights to fish. When those are separated, lenders have a different point of view sometimes from other people about whether they should be able to recover against the fishing permit and the rights to fish as opposed to the boat itself. And when the boat sinks and all you have left is the permits, you are in a sticky wicket. So we always talk about that and then we move on to the next subject because we're unable to resolve it ourselves.

We had some discussion about recent case law developments with the Jones Act in the U.S. build rulings. The Coast Guard has, in the view of some, been leaning too favorably to conclude that work that's done offshore still constitutes U.S. built. Certain U.S. trade and labor organizations are actively litigating the issue and having a measure of success in persuading the courts that the work has to really all be done in the United States or a very, very significant portion of the work has to be from the United States. So we reported on that.

We next discussed the continuing growth in aquaculture and that segued into nontraditional energy sources, including wind power, waves, and currents. There are proposals for constructing new facilities like windmills and such, there are issues relating to the decommissioning of existing offshore oil platforms and other similar projects.

Peter McLauchlan from Texas was able to share with us the Rigs to Reef program in the Gulf where they're trying in an economically and environmentally sensitive fashion to decommission oil rigs and turn them into something that will work. The environmentalists are concerned about decommissioning and removing reefs because you've already created an environmental asset that wasn't there before.

It's also interesting that this dovetails into the expansion of offshore windmills. I think two years ago in San Francisco I reported briefly that this was coming on fast. Just within the last 60 days in New Jersey, where I'm from, the state awarded a \$35 million contract for the construction of offshore windmills, and there are two more contracts teed up that are going to be going to bid in the not too distance future.

The other interesting thing is that I do a lot of work for the commercial fishing industry in New Jersey, and originally the industry was adamantly opposed to offshore windmills. The tide changed. The commercial fishing

industry was one of the groups that put together a for-profit business entity called The Fishermen's Wind Cooperative. They were one of the unsuccessful bidders, and they did not get the opportunity to construct and manage windmills, but they were one of the top three bidders. So it may be that fishing folks and maybe other shipping industry folks who may have initially been opposed to offshore wind farms may want to revisit the issue and see if there are not any opportunities for these types of clients.

We also talked briefly about two other things under the topic of "new developments." A new Coast Guard rule is going to affect commercial fishing boats that are 50 to 79 feet in length, in that it will impose substantially more significant and stringent requirements for stability and safety because of the increase in fatalities. There has previously been a loophole for boats of that size. But the interesting issue is that the obligations regarding training and safety and stability are going to be specifically visited upon the owners so that the masters and the owners are going to have to be personally involved. That gets dicey because a lot of these boats are relatively small and are held by single-asset corporations. So if you have a person or entity that owns 12 boats or 15 boats or 20 boats, they're literally going to have to go down and find out about their 62-footer, how that one works, and their 78-footer. It's a sticky wicket.

Again, thanks for the hospitality from Flynn, Delich & Wise. And we ask again if you're in town at these meetings, feel free to drop in and visit. Thank you.

MR. MARWEDEL: Thank you. Inland Waters, David Ventker, they had a joint meeting with Kent Roberts.

MR. ROBERTS: Thank you, Mr. President. I report on behalf of David Farrell for the Ad Hoc Committee on America's Marine Highway, also for Dave Ventker for Inland Waters and Towing.

We had a meeting on Thursday at the offices of Flynn, Delich & Wise, whom we also thank for their hospitality. We had over 30 attendees. Most of those folks were there for the America's Marine Highway meeting. And because of the interest in this initiative, we are working with the Association to open up that membership from its ad hoc status to a general subcommittee for more membership involvement.

On the Inland Waters side, we had a report on the NPDES permitting through the EPA, as well as the U.S. Coast Guard's recently announced crack-

down—maybe that’s not the right word—increased inspections, to verify licensure of tug personnel. This is a result or outgrowth of the MEL OLIVER collision incident on the Mississippi River.

Gene George gave his report for the Great Lakes as he does at every meeting. We heard about the Fednav Challenge to the State of Michigan ballast water regulations, which I believe was argued before the Sixth Circuit Court of Appeals in September.

We also discussed the Great Lakes Compact, a compact amongst the Great Lake states with federal government sponsorship to control, manage, and decrease water diversions from the Great Lakes. The Bush Administration finally realized after much work from the Great Lakes states that if you take all the water out of the lakes, vessels won’t float. And they’re working together to see if they can manage that problem.

But the main part of the program was America’s Marine Highway, what used to be called the Short Seas Shipping Initiative. MARAD went for a name or a phrase, America’s Marine Highway, that you could say repeatedly without violating FCC rules.

Our featured speaker was Stas Margaronis with Santa Maria Shipping of California. Stas is something of the “Pied Piper” for short seas shipping. He has been working for many years to try to get more investment, more interest, more support, and more government support for an integrated land/sea system that involves short seas, coastwise, domestic shipment of cargo by water that is truly coordinated with the land transportation system. We’ve seen benefits in the last year, since everybody has been talking about cost of fuel and highway congestion. And this type of system could reduce that congestion, reduce the need for expensive infrastructure rebuilding, reduce carbon emissions, and increase investments in ports and shipyards. It’s a great idea. Of course it just takes a lot of money.

If you’re interested in some of the studies around this, I highly commend you to Santa Maria Shipping’s website, Greenships.org. There’s a lot of information there. There was a very lively discussion with Mr. Margaronis about the economics of the proposals.

One of the economic points that is an impediment to even modest development of a short sea shipping business—and we see this now in some of the tug barge traffic that is developing around the country—is the Harbor Maintenance Tax. The Harbor Maintenance Tax is assessed upon importation of cargo.

If that same cargo, say a container, then moves from the port of importation to another destination by water, the Harbor Maintenance Tax is assessed a second time. This second assessment, the double taxation, does not occur if that “can” or that cargo moves by truck or rail. So it is a targeted tax that hits this water mode of transportation only. There is a new bill in the senate, Senate Bill 3199, that’s been introduced to eliminate the double assessment of the Harbor Maintenance Tax. The Committees on America’s Marine Highway and on Inland Waters and Towing unanimously passed a resolution recommending that this Association address the Harbor Maintenance Tax.

The resolution reads as follow:

Be it resolved that the Maritime Law Association of the United States recommends amending the Internal Revenue Code, 24 U.S.C. § 4462, as implemented in 19 C.F.R. § 24.24, by exempting assessment of the .125 percent ad valorem harbor maintenance tax on non-bulk cargo carried aboard vessels between ports of the United States.

Be it also resolved that the purpose of the proposed amendment is to facilitate the Short Sea Transportation Program, 46 U.S. Code § 55601-5, and further the establishment of America’s Marine Highway with the goal of mitigating landside traffic congestion, increasing the efficiency of intermodal transfers, reducing fuel consumption, and improving air quality. The current Harbor Maintenance Tax is an impediment to the full development of a marine highway system because it twice taxes cargo—upon import and again during coastwise transit. In short, sound public policy supports exempting America’s Marine Highway from the Harbor Maintenance Tax. U.S. vessel owners and maritime unions alike support the exemption.

Be it further resolved that the President of the Association is hereby authorized and directed to inform appropriate Committees and Members of Congress of the Association’s position with respect to the foregoing and to authorize representatives of the Association’s Committee on America’s Marine Highway and the Association’s Committee on Inland Waters and Towing to represent the Association in communication with Congress with respect thereto, subject to such conditions as the President may deem appropriate.

Mr. President, this resolution was unanimously adopted by the Ad Hoc Committee on America’s Marine Highway and the Committee on Inland

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Waters and Towing, and those Committees move adoption of this resolution by the Association. That concludes my report.

MR. MARWEDEL: Thank you. Is there a second?

MEMBERS: Second.

MR. MARWEDEL: Any discussion? All in favor?

MEMBERS: Aye.

MR. MARWEDEL: Any opposed? Let the PROCEEDINGS reflect that the resolution was unanimously approved by the members present.

The next is Marine Ecology and Maritime Criminal Law, followed by Marine Financing.

MR. MINICHELLO: Thank you, Mr. President. The Committee on Marine Ecology and Maritime Criminal Law met jointly with the Committee on Regulation of Vessel Operations, and Tony Whitman will give the summary of that portion of our meeting.

We had on behalf of our Committee a very excellent series of presentations. First of all, we had a presentation by Paul Johansen who is with the Port of Los Angeles. He briefed us on the various environmental programs that are going on at the Port of Los Angeles as they attempt to deal with both air and water pollution issues in the port which have become a big issue in the surrounding communities. So they are on the forefront of that effort in the United States, and it was a very informative and, I think, very useful presentation.

We also had a presentation by Colin de la Rue, a partner with Ince & Co. in London. Mr. de la Rue spoke with regard to pollution matters at the international level and brought us up to date both from a historical perspective as well as a present day perspective on the pollution laws that govern in a good part of the world. That too was a very informative presentation and we're appreciative to Mr. de la Rue for that.

I want to thank Tom Russell for making the arrangements to have Mr. Johansen from the Port of Los Angeles present at our meeting. And on behalf of the Committee, I also want to thank him for making the arrangements for the port tour. I think having Mr. Johansen following the port tour

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that we all took really enhanced our appreciation for what is going on with the port. Mr. President, that concludes my presentation.

MR. MARWEDEL: Thank you. Marine Financing, Sandy Knapp, followed by Marine Insurance.

MS. KNAPP: Thank you, Mr. President. I'm reporting on behalf of Frank Nolan, the chair of our Committee. We had attendance by members from all over the country. We had some people participate by phone. We had two Maritime Administration attorneys in attendance at our meeting.

We discussed two legislative initiatives that we've been working on. One is the ability to record charters/leases with the Coast Guard for purposes of lease financing. It's been a problem. You can do that under other registries, you can do it with your aircraft charters, but you can't do it with your vessel charters in the U.S.

Also, we're talking about recording ship mortgages during the vessel construction period. There's a problem in the financing area with some of the UCC provisions, and a great fix for that would be to be able to record a mortgage.

We're also following U.S. built cases. There are some cases going on around the country. If you're involved in construction contracts, it's a big issue where components are being made and purchased overseas but assembled here in U.S. shipyards and whether or not that constitutes a violation of our coastwise trading laws. We're also following several Coast Guard regulatory initiatives, and that's about it. Thank you very much.

MR. MARWEDEL: Thank you. Marine Insurance, Jonathan Spencer, followed by Marine Torts.

MR. SPENCER: Thank you, Mr. President. We met yesterday jointly with Offshore Industries and Marine Torts. I'll leave it to the chairs of those two Committees to describe more of our proceedings because it would be selfish of me to leave them with nothing to say.

We had a well-attended meeting at the offices of Keesal, Young & Logan. About 100 people were there whose visit to Long Beach clearly was so enriched that they didn't feel the need to come this morning.

From the broader point of view, there are three things that the Committee has been doing or has done that I would like to share with you. The first is

our newsletter. Gene George of Cleveland, my vice chair, edits our newsletter and he raises the bar every time. We have a lead article this time by Chuck Davis of Seattle on the gradual erosion of coverage that he sees on yacht policies. Super article by Andy Wilson of New Orleans who's the Committee secretary, which is a dramatic review of the developments that we see in the last few month's legal decisions. I want to publicly thank George and Andy for their contribution to the Committee. They make my job not only effortless, but fun.

We talked yesterday a little bit about piracy as other Committees clearly have done. It's a hot topic. From the insurance perspective, the payment of ransom, we can document back to the 9th century A.D. as having been treated as general average. That doesn't seem to be the way things are developing at the moment. We hear about ransom payments being funded by property underwriters, by war risk underwriters, to some extent by P&I clubs because they feel that the payments are also a benefit to the crews of the affected vessels. We would appreciate feedback from anybody who encounters ransom payments in practice to see if we can track how this is developing.

Then the third topic that I wanted to mention, David Taylor was there yesterday. David wears many hats. He's based in London. He's of counsel to Keesal, Young & Logan. He's a special advisor to the International Underwriting Association and he's honorary secretary of the Association of Average Adjusters of the United Kingdom. He's one of the founders of something called the International Marine Claims Conference which has now met for five consecutive years, an annual meeting in Dublin, which is attended by people from about 40 different countries, and two quite important initiatives have arisen from the conference. One is a claims handling protocol which is designed to streamline the processing and settlement of marine claims. The one that's of greater interest to us here is an educational initiative. An organization is being formed which is likely to be called the International Association of Marine Claims Professionals which is going to attempt to introduce educational standards to bring the level of preparation of people involved in marine insurance claims back to what we remember it as having been 20 or 30 years ago. This is of great interest to us in New York because we have a joint initiative there between our Association of Average Adjusters and the Institute of Marine Underwriters and St. John's University to implement training programs. We want to see more participation from industry. So to the extent that you have contact with clients in insurance companies, we'd be very grateful if you'd help make them aware that these things are going on. And, of course, I'm always happy to pass on more information about it.

That concludes my report.

MR. MARWEDEL: Thank you. Marine Torts, Jack Scalia, followed by Offshore Industries.

MR. SCALIA: Mr. President, members, and guests. The Marine Torts and Casualties Committee met jointly, as Jonathan said, with the Marine Insurance and Offshore Committee on Friday, November 7th, at the offices of Keesal, Young & Logan. Jonathan reported that over 100 members attended. That's a record for our Committee. We were very pleased. I think the joint committee format works very well because people with varied interests come to the meeting and add to the dynamic of the meeting.

We were pleased to have Kim Jeffries of Gard who gave all in attendance an excellent presentation which she titled "Punitive Damages Post EXXON VALDEZ, a Bird's Eye View." The presentation will be available on the Committee website next week. Kim mentioned that the New York Times recently reported Exxon's daily profits for the last quarter exceeded \$230 million per day. While on the surface the *Exxon* decision seems to contradict *Miles v. Apex*, Kim predicted that the decision, in fact, will not contradict *Miles*. She drew our attention to the case of *Townsend v. Atlantic Sounding*, which was granted certiorari by the Supreme Court, I believe, just this week. The court will decide on the availability of punitive damages in maintenance and cure cases.

Kim went on to compare the reaction in Europe to the ERICA disaster to the U.S. and the EXXON VALDEZ. She opined that the atmosphere in Europe is now not very different from that of the U.S. where there seems to be a blurring of the distinction between civil and criminal penalties. I quote Kim saying, "Sensational cases engender creativity in liability theory."

There is now an implied duty to prevent pollution with fines and punitive damages serving the public function of extracting punishment for those events. Kim ended her presentation by emphasizing the importance of shipowner/operators understanding that while they can subcontract operations and management of their ships, they cannot subcontract responsibility.

The presentation was followed by a discussion of Paul Edelman's report and an update on interesting cases and Lisa Reeve's report on limitation. Both of these papers are available on the Committee website.

A communication from Tom Langdon of Weeks Marine was read in which he invited an amicus brief in *Townsend v. Atlantic* to be submitted to David McCreadie of Tampa who is point of contact for that. He wasn't asking the

Association for the amicus brief. He was just asking anyone who is interested in submitting an amicus brief to be in touch with David McCreaty.

I'd also like to recognize the efforts of my vice chair Paul Edelman and secretary Lisa Reeves in helping to organize and run our Committee. Also, a big thank you to Keesal, Young & Logan for their assistance and hospitality.

That concludes my report.

MR. MARWEDEL: Thank you. Offshore Industries, Brad Jackson, followed by Practice and Procedure.

MR. JACKSON: Mr. President, fellow members, and guests, we did have a joint meeting yesterday. And to see if you are awake, can anyone tell me how many people attended? Nearly 100, which was terrific. This joint meeting developed because of the common interests among these Committees. And if anyone was fearful of seeing a three-hour block of committee meetings, rest assured that we took breaks and the meeting was so fascinating that it seemed to go by in virtually no time at all. So if this happens again, don't be wary of attending because of a three-hour block because it turns out to be a terrific idea.

The speaker that we arranged, together with Jonathan, was someone you may know, Hal Watson, who spoke to us on removal of wreck and insurance issues associated with removal of wreck. And the PowerPoint presentation will be on our website shortly.

We discussed the increasing relevance of the Offshore Industries Committee because of development of energy resources we currently have nationwide. There's been a lot of discussion about nationwide development and getting away from a Gulf of Mexico focus. So the point was made that folks on every coast should consider joining the Offshore Industries Committee. Also, for a second reason—and that is as we go forward—development of alternative energy resources. And, in particular, I think this is something that the young lawyers ought to be interested in. Several years ago in my law firm I suggested that young lawyers develop a paper on the law governing construction and operation of offshore wind energy facilities, and that met with a resounding silence. So I prepared the paper myself and presented it at the Offshore Industries Committee a year or so ago, and it turned out to be a fascinating subject. The young lawyers should be interested because this is the future. And the law is that there is an overlay of development of alternative wind energy offshore with the Outer Continental Shelf Lands Act and it's been

delegated to the Minerals Management Service. So a lot of the regulations dealing with offshore energy development in the old sense are now going to control development in the new sense, and I predict there's going to be some tension there because it's not exactly a square peg in a round hole but it could come close.

We encouraged membership and meeting attendance. We had speakers. We're going to work on CLE and we emphasize that we do have a website where we're going to have these PowerPoint presentations. Now, this is a relatively new committee. It's about four years old and we have had our first change in leadership. Grady Hurley, who established the Committee as chair, has moved to the board and is our board liaison. And I want to thank Grady for his service in developing the Committee and getting us to this point of a change in leadership. Because of that, Ryan Acomb of New Orleans is now the vice chair. David Walker of Houston is our new secretary. I am, of course, the new chair and pleased to assume that role.

It comes coincidentally at the time of a personal move. After over 34 years at Royston, Rayzor, Vickery & Williams, I have now joined an offshore company. I'm general counsel for Fugro, Inc., and it dovetails nicely to now be a member of the offshore industry and see things from that perspective.

I want to thank Jack and Jonathan for cooperating with us on putting together what I thought was just a terrific meeting. And I want to thank the Keesal firm for the facilities and the opportunity to meet there. It was just a wonderful facility and great hospitality. So thank you very much.

With that, Mr. President, I conclude my report.

MR. MARWEDEL: Thank you. The only criticism I've heard of your Committee meeting was that you ate up all the cookies and those of us at one of the other meetings had nothing to eat.

MR. JACKSON: I can attest that there were plenty of cookies left after I had mine.

MR. MARWEDEL: Practice and Procedure, Josh Force, followed by Recreational Boating.

MR. FORCE: Good morning, Mr. President, members of the association, and guests. For the past several meetings the Practice and Procedure Committee has been monitoring cases in the Second Circuit addressing whether

Rule B may be used to attach electronic funds transfers in the hands of intermediary banks. At this meeting, Keith Heard reported on the Second Circuit's recent decision in *Consub, Delaware*. This is the third in a trilogy of cases from the Second Circuit, and it reaffirms the Second Circuit's earlier holding in *Winter Storm*. Following the *Winter Storm* decision, the Court of Appeals held that the plaintiff could attach an EFT from the defendant in the hands of an intermediary bank, applying maritime law as opposed to state law, as the defendant had urged. The Second Circuit rejected the defendant's argument that the Second Circuit, in the *Aqua Stoli* decision, had cast some doubt upon *Winter Storm*. The *Consub* court expressly did not decide whether Rule B could be used to attach funds that were sent to a defendant, but Keith reported that most judges in the Southern District of New York, with the exception of one, have allowed such attachments. The opinion also held that the plaintiff could attach the EFT in the United States even though the contract at issue contained an exclusive UK choice of forum clause.

Mike Underhill, who is the vice chair of the Committee, reported on recent efforts to enact legislation to vest jurisdiction over maritime bid protests exclusively in the United States. No such legislation has yet been enacted, and recent efforts by the MSC, which introduced such legislation, have failed. A split exists among the courts, however, as to whether or not there is jurisdiction over maritime bid protest cases in the federal district courts or only in the Court of Federal Claims as is the case with respect to other bid protests. The Committee will continue to monitor this issue, but, for the time being it appears that the legislative efforts have ceased.

The Committee is also working with President Marwedel and the Association in presenting the recently revised model rules to the various district courts in an effort to obtain adoption of the model rules by as many district courts as possible.

Lastly, the Committee is reexamining its e-filing project, which was started a number of years ago, to try to identify and track the differences among the various district courts in their e-filing procedures. The Committee is going to expand its list of district courts that are being reviewed and, in addition, try to focus on any particular rules that may apply to attachment and arrest procedures to see how the different courts are treating those issues.

Mr. President, that concludes our report.

MR. MARWEDEL: Thank you. Recreational Boating, Frank DeGiulio, followed by Regulation of Vessel Operations.

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MR. DEGIULIO: Thank you, Mr. President. Good morning, members and guests. The Recreational Boating Committee met Thursday for three hours at Keesal, Young & Logan. We appreciate their hospitality.

We were fortunate enough to have a speaker at our meeting, Mr. Gavin O'Hare, of CED Investigative Technologies in Annapolis. His company has been commissioned by the Coast Guard to conduct a study of propeller strike injuries and to make recommendations to the Coast Guard about possible corrective action which may or may not include propeller guards. That report is due to come out in about a month. He had some very interesting data about these injuries and how they occur. The data relates the causes to experience, education, that sort of thing, and it's fascinating study. We're very grateful that he was able to give his presentation to us.

We also discussed the Clean Boating Act of 2008 which was signed by President Bush in July. You may recall that the EPA permitting process was held to be applicable to recreational boats by the Ninth Circuit last year. This act corrected that situation, exempting recreational boats from the EPA permitting process. However, Congress has instructed the EPA, working with the Coast Guard, to develop something called management practices and performance standards to be imposed on recreational boats. We have no idea what that is going to amount to and we're following that situation.

We also heard a presentation from one of our members, Robert Fisher, on a number of proposed legislative and regulatory projects. The Committee is currently considering those proposals and will take them up as we move forward.

Finally, Daniel Wooster, our secretary, gave us a presentation reviewing the cases reported in the current edition of our newsletter "Boating Briefs." I want to express my thanks to Mr. Wooster who has taken over as editor of that newsletter and seems to be continuing a fine tradition.

Thank you very much, Mr. President.

MR. MARWEDEL: Thank you. Regulation of Vessel Operations, Safety, Security and Navigation, Tony Whitman, and after that I'll call on Admiral Baumgartner.

MR. WHITMAN: Thank you, Mr. President, members, and guests. Your Committee with the longest name met on Thursday afternoon at Keesal, Young & Logan. You have heard allusions this morning to hospitality at Keesal,

Young & Logan. Nobody has actually confessed to you that Skip Keesal, at the end of our meeting at least, provided a very nice provision of wine for a socialization hour, which turned out to be a tremendous opportunity for those of us in our joint committee to get together. And we thank Skip, as others have, for his hospitality.

We had an overflow crowd for our meeting. You have heard from Dennis Minichello about his part of the meeting. We were thankful and pleased to have Admiral Baumgartner and Captain Michel brief us as they have done historically with regard to Coast Guard activities. And you will hear from Admiral Baumgartner, but let me mention two specific points that he addressed. One is the emphasis on the Marine Safety Performance Plan, which is available on the Coast Guard website, and establishment of centers of expertise to commit the Coast Guard to bring appropriate expertise to bear in its relationships and dealings with industry.

A second point that Admiral Baumgartner mentioned is the Coast Guard ALJ system and the current litigation, the *Bivens* litigation, which is going on against individual ALJ's which puts the Coast Guard and the government in a little bit of a bind with regard to being able to respond. The constraints on Coast Guard response because of this litigation out there against individual ALJ's are rather severe.

The Committee will be pleased, however, to serve as a repository or to receive any sorts of comments that members may have on the Coast Guard ALJ system; anecdotal evidence, good, bad, indifferent. I stress the good and the indifferent, actually, because one of the things I think that happens naturally is that people react to the bad experiences but don't perhaps say anything about the good experiences. So we would like to encourage your sending to our Committee and to me any anecdotal evidence that you have with regard to experiences with Coast Guard ALJ's.

Captain Michel spoke to us with regard to the passage and adoption of MARPOL VI. The U.S. will become a party to MARPOL VI in January of '09. Questions remain as to treatment of greenhouse gases. On ballast water, Captain Michel mentioned that a comprehensive bill was presented to Congress but not taken up and that there remain issues of preemption and how the relationship between the states and the federal government will play out on the ballast water side.

Frank DeGiulio mentioned with regard to recreational vessels that EPA permitting will not be required for recreational vessels, courtesy of Congress.

However, the 9th Circuit ruled that the exemption for incidental operational discharges is inapplicable, still standing with regard to commercial vessels, and there may be a bit of a train wreck on that.

Finally, our eyes and ears on Washington, Barbara Burke and Larry Kiern, reported to us by telephone with regard to thoughts as to how the new administration may be approaching or may intend to approach maritime issues. They agreed that it is unlikely that this will be a transformational kind of change, but they will be keeping, again, a close watch on things.

We will be having in MLA week of May '09—when I glanced at my calendar, it looks like it will actually be April 28, Tuesday—our meeting in Washington, D.C.; the joint meeting of the Vessel Regulations Committee and Marine Ecology Committee. Last year that was a tremendous opportunity to hear directly from congressional staff members with regard to what their congressional committees were doing. They were interested in input from our members, and I suspect we will have the same kind of opportunity this coming year. So if you will make a note that MLA week in May, we will have on Tuesday our joint meeting in Washington.

Mr. President, that concludes my report.

MR. MARWEDEL: Thank you. Admiral Bill Baumgartner. He's going to say a few words on the Coast Guard Forum that he proposed. He's an admiral. He can say a few words on anything he wants.

ADMIRAL BAUMGARTNER: Thank you very much. I'm always very pleased and excited to come to the MLA meetings. I certainly have always cherished the open and honest feedback that I've gotten from the MLA members. And I'm particularly grateful to Liz Burrell and Warren Marwedel for setting up the Coast Guard Forum. It's something that I think all of us really wanted to do to ensure that we had a formal mechanism to funnel and address feedback issues in all sorts of matters that deal with the Coast Guard and how we're doing our job. I feel very strongly and I know my boss feels very strongly that we're accountable for how we do our job and we want to hear the good, the bad, the indifferent. Most of the time we really do want to hear the bad because—well, that's the only way we can do anything about it.

On Wednesday morning the Coast Guard Forum met with the first major issue which deals with the domestic pollution insurance business here. Some of the specifics have to do with claims processing—both RP reimbursement claims for payments exceeding their statutory limits of liability and third party

claims—questions about processing, transparency, explanation of decisions, as well as the standards being applied, and also questions and issues dealing with our federal on-scene coordinators. Were they cognizant of how their actions might impact insurance interests and what kind signals they might be sending? Several other ancillary issues were folded into this series of issues.

For many of these things, I did not realize there were particular problems and concerns. So right away I know the Coast Guard Forum is a success, because it brought items to my attention that were not previously on my radar scope, as we like to say.

We've already figured out how we want to address the concerns raised at this week's Forum. In fact, when these issues first came into the Coast Guard, I decided that I wanted to coordinate the Coast Guard response through my directorate.

I've already reached out to the principals in the major domestic pollution insurance companies. And, along with the MLA, we're looking at holding at least the first of a series of meetings to get all these issues out on the table. That looks like that will be sometime in the beginning of February. We haven't really finalized a date yet. The only reason that it's going to take that long to have the meeting is because I'm not available for the rest of the month of November and the insurance industry is not available in December and January. That's the only reason it will be in February and not next week.

Anyway, I'm very anxious to get moving on this and I'm looking forward to addressing the issues raised in the next Coast Guard Forum. As I put to some other of my colleagues in government when they came to me with complaints about how some of my people were handling a particular issue, "These are my people. If they're doing things that aren't quite right, that means I can fix the problem; I can make progress." That's how I look at it.

Again, thank you very much for your time. I've really enjoyed it here. I look forward to hearing about lots more from you all about how we're doing our job.

MR. MARWEDEL: Thank you, Admiral. Just to give you a flavor, on Wednesday we had our first Forum meeting and we knew what the agenda was. We had submitted some materials to the Coast Guard to review and we were prepared to sit down with suggestions to have a meeting of principals, et cetera. The Admiral came in, sat down, and before we got halfway through our proposal, he had already done it. He'd call the principals as he described

trying to set up a meeting as early as possible. So this is a very good form of communication. It's not meant to be a forum for anybody's particular claim that has to be handled in litigation or Coast Guard hearings. However, these are industry-wide issues that we're trying to deal with through the Forum. We will reach out to individual members pending on the issue before the Forum to bring in your expertise so that if there's a story to tell to the Coast Guard, we have the right people, the people who have been there and know the issue so they can explain it rather than try and filter it through us. Thank you.

Also at this point I want to remind the membership that the MLA for a long time has supported adoption of the Law of the Sea Convention. One of the things that we need is for constituents to write and contact their senators. So I encourage MLA members to do that, contact your senator, write them, e-mail them, and let them know that you're in favor of the Law of the Sea Convention. Of course if you're not in favor of it, you can say that too.

The next Committee is Stevedores, Marine Terminals, and Vessel Services, Doug Matthews. That will be followed by the ABA Relations.

MR. MATTHEWS: Mr. President and fellow members, I report on the meeting of the Stevedores, Marine Terminals, and Vessel Services Committee that was held on Thursday at CMACGM. They had provided us a very nice venue in which to hold our meeting and I thank them for that.

As usual our agenda encompassed a report on recent decisions under the Longshore Act that were of some importance. We talked about some circuit court decisions dealing with tolling of time limitations, issues dealing with attorney's fees, and a recent benefit review board opinion that seems to indicate that the employer when settling a case with an employee can contract a limitation to the late payment assessments. And we are going to keep an eye on that type of legal issue as it will then save the employer the problem that he has when an order is issued and has to make payment within ten days and you have no excuses. And when the district director sends you the order the day after it's been issued and it doesn't get to you until the sixth day, then you have four days to put the money into the hands of the employee. So that's a very important issue insofar as compensation insurers and employers are concerned.

After discussing issues under the act, I asked Anthony Filiato to give us an update on the legislative and administrative aspects under the act. He indicated that as far as he could see, the Department of Labor in regards to the OWCP was overwhelmed with Defense Base Act cases and they were being

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spread around the whole country rather than just being assigned and, I think, handled through the New York office. Furthermore, he indicated that the Department of Labor is very concerned about the security that's been posted or they've had posted by insurance companies and self-insureds in light of our recent economic downturn, and they are looking at that very closely and may come out with some further rules in that regard.

We then had a presentation by Nash Bilisoly, an update on the TWIC. It was very interesting. While we had 18 people in the room, about 8 already had their TWIC cards and it seems to be moving along. There was a discussion of whether you can use your TWIC card as an I.D. in airports, and certain people have been doing that.

I then asked JoAnne Zawitoski to give us a presentation on the Rotterdam Rules that are being opposed by stevedores and terminal operators. She had attended the meeting of Carriage of Goods and had given us, I think, a thorough summary of those rules and how they would apply to stevedores and terminal operators. She said that Chet Hooper had asked her to present to our Committee a question whether we would give any comment with regard to those proposed rules and whether any of our clients would. And I asked JoAnne then to shepherd that and she will be contacting other members of our Committee to see if they and/or their clients would like to provide any comment that can then be sent back to Chet Hooper.

I guess the last item on our agenda, we have had a subcommittee for ship builders and vessel repairers. We have never had much interest in that insofar as the people who show up at our meeting. I would like to ask all members of the MLA and all chairmen of other Committees if they know of anyone who would be interested in being part of that subcommittee, to please contact me. Otherwise we may just propose to the board that we do drop that subcommittee due to lack of interest.

This concludes my report, Mr. President.

MR. MARWEDEL: Thank you. ABA Relations, Dick Leslie, followed by Jim Bartlett.

MR. LESLIE: Thank you, Mr. President. I'm a little bit hoarse. I hope you'll be able to hear this. My name is Dick Leslie. I'm from Coral Gables, Florida. I'm the Maritime Law Association representative to the ABA. I started in the ABA in the 1960's. It really wasn't too relevant to us then. Maritime law, which I also started in in the 1960's, was much more relevant. The ABA is getting

relevant now. That's why I really want to tell you a couple things quickly why this applies to you.

I've been doing the House of Delegates now for ten years because I was elected for five years from Miami Dade County as their only representative and then Florida for four years and now I'm your representative. It's important to you because things happen here that are crucial. About six or seven years ago, the accountants tried to get us together so that we would have accounting and law firms. That was before Enron. You could imagine what would have happened to us if that had happened and that issue was before the ABA. That was your multi-disciplinary stuff. Then you had multi-jurisdictional which always comes up with us because we're in different spots.

What I want you to know is we've got a lot of avenues there. The incoming president from Washington, D.C., Caroline Lamm, happened to go to the University of Miami law school. The next ABA president-elect, who's unopposed, so he's not literally there, is Steve Zack, a long-time friend from Miami. So we've got ways of getting things done. I happen to be in the leadership of the Torts, Trial and Insurance Section. They are always proposing things. I'm on the senior lawyers leadership. So if we want things, we can do it. But mostly we don't want things. I just want to tell you when things are going on. Let me just give you a couple of them quickly now that you probably don't even know about. These happened in the last meeting and I won't tell you too much about that, but I will report to the Board.

Coming up in Boston is disqualification of judges. I never knew the ABA was going to get into that. That will get into the states. They're calling it disqualification. I always thought it was two parts. Recusal was one and disqualification was our motions. Recusal was the judge saying, well, I've got these things coming up. Now they're lumping those together. They're going to be forcing the judges to come up with everything that is on their plate. You don't have to go and beg them anymore. They're going to be forcing, hopefully, if this passes, somebody else besides that judge to decide whether he or she will be recused. This is a total change. So if this recommendation goes through, this will change a lot of things for you. It will also give a stricter statement as to the public so that they can know when these things are happening, why the judges are being recused, and it will put us in a lot better light because it will show that we are cleaning our house those few times where it needs to be done. This is something that hasn't been done before, but this is coming up in Boston.

The other thing that is coming up in Boston that would be of interest to you is in the standing committee on ethics. They are raising the issue of the

disqualification within a law firm. It's what you used to hear described as a Chinese wall. That couldn't be done in most places. What they're trying to do now is if you're in a firm that's got like 1,400 people in it but there's only one person creating the conflict, it doesn't conflict all the other 30 offices, et cetera, or the offices around the world. This is a very important piece of legislation, if you will, because when the ABA passes something and they put it back to the states, the history has been that the states have followed through. So this is of importance to us.

The next thing that they're going to be doing besides the judicial disqualification is a judicial education, if you will. Any lawyer who wants to be a judge is going to have a little course now that he can go through. This is going to teach you how to be a judge. Well, as you can imagine, the judges were all incensed about that. They were afraid that this would give somebody a stepping stone. They talked about could it cost more. They did all sorts of things to kind of stop it, but it's going to happen also. This is great because if somebody wants to be a judge, they ought to know what it takes to be a judge before just having been a trial lawyer and standing before them.

So these are the kinds of things that are happening. If you have any questions, holler. If not, thank you for allowing me to serve.

That concludes my report. Thank you, Mr. President.

MR. MARWEDEL: Thank you. Our last report will be Jim Bartlett on MLA historical documents.

MR. BARTLETT: Thank you, Mr. President.

President Marwedel has asked me to address very briefly where we are in a project that we started a few years ago. We were approached a few years ago by a consortium of law school libraries who wanted to digitalize all of our numbered documents so that they would be accessible to a number of law schools. We gave them our documents—at that time I was the custodian of all of them—and they went off to the University of Hawaii for digitalization. That took several months.

In exchange for providing those documents, they provided us with a disk containing the digitalized documents. I am pleased to report that we have now put those documents in accessible form on the MLA website. This is still a work in progress. We're going to improve the index or list of documents, but

otherwise right now essentially all of the MLA numbered documents are on the website and accessible to you by literally a click of a button.

If you go to the website, then go to “Library,” you will find a list of documents in the Library—the “Numbered MLA Historical Documents.” If you click on that, you will see in reverse chronological order essentially all of the MLA documents from, I think, 789, which is the PROCEEDINGS of one of the 2007 meetings. You click on that, and there it is.

We do not yet have word search capabilities, but we’re hopeful that in the future we’ll be able to add that. So if you have need of the MLA documents, please use this. It should be a very valuable tool.

Mr. President, that concludes my report.

MR. MARWEDEL: Thank you. I do recommend that you go on the website and look at this. There’s some fascinating documents. We have the minutes from the very first meeting of the MLA. You’ll see references to the “Jones Bill” and the Harter Act and all of that. We also have boxes of documents in various warehouses, and we’re going to call upon Phil Berns, just to keep him out of the casinos, to be our archivist and go through these, get them organized, and ultimately put up on the website. It really takes no more than a click of a button. It’s been a lot of hard work and probably—well, Ken Volk had the first meeting on this project. That’s how long it’s taken to get all of these old documents ultimately onto our website.

I do want to again thank the local law firms that provided office space. Flynn, Delich & Wise; Cogswell, Nakazawa & Chang; Russell, Mirkovich & Morrow; Keesal, Young & Logan; and also the French shipping company for providing meeting space. When you put together a meeting like this, you start to see what the New York firms have done for years in providing their conference rooms and coffee and doughnuts and what have you. It not only keeps our cost down, it allows us to meet lawyers from other states in their offices. But until you work on one of these, you don’t realize the effort that’s been put out by the local firms.

Is there any old business to be discussed? Yes, Bob Zapf.

MR. ZAPF: I just want to remind people there are still some goodie bags from the Chamber of Commerce. Help yourselves. What we don’t take, they’ll take back. There’s an interesting little cookbook. Help yourselves.

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MR. MARWEDEL: If you didn't hear that, there are still some of those registration bags out there.

Again, if you have not signed up, please sign up on those blue cards outside. Is there any new business?

All right. I'll call on Tom Rue, past president.

MR. RUE: Mr. President, I move that the business of the Association be declared complete and we adjourn.

MR. MARWEDEL: Do I have a second?

MEMBERS: Second.

MR. MARWEDEL: See you next spring in New York. Thank you.

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

Held in the Elliot M. See Room of Wiley Hall,
United States Merchant Marine Academy,
Kings Point, New York

on
August 9, 2008
9:30 A.M.

The August 9, 2008 meeting was called to order by President Warren J. Marwedel at 8:30 A.M. In addition to President Marwedel, the following officers also were present:

Patrick J. Bonner, First Vice President
Robert B. Parrish, Second Vice President
Harold K. Watson, Secretary
Robert G. Clyne, Treasurer
David J. Farrell, Jr., Membership Secretary
Lizabeth L. Burrell, Immediate Past President

The following directors also were present:

| | |
|----------------------|------------------------|
| Joe E. Basenberg | Donald J. Kennedy |
| Forrest Booth | Janet Wessler Marshall |
| Grady S. Hurley | C. Kent Roberts |
| Barbara L. Holland | Robert B. Hopkins |
| Frank P. DeGiulio | Vincent J. Foley |
| Kimberley A. Kearney | |

The following individuals were also present at the invitation of the President:

| | |
|---------------------|--------------------|
| Thomas S. Rue | Lawrence J. Bowles |
| Vincent M. DeOrchis | Charles E. Schmidt |
| John P. Schaffer | Richard M. Leslie |

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the May 1, 2008 meeting of the Board of Directors were unanimously approved and accepted.

The minutes of the May 1, 2008 meeting of the Board of Directors will be included in the Fall 2008 PROCEEDINGS.

TREASURER'S REPORT

Treasurer Robert G. Clyne presented the Treasurer's report for the three months ended April 30, 2008. He reported that cash and investments total \$589,105.97, but stated that the cash and investments as of April 30 are always somewhat unrepresentative of the Association's financial position because bills in connection with the May dinner have not been received as of that date. The only major upcoming expense is the Association's CMI dues, which are effectively increased because of the weakness of the dollar versus the Euro. He indicated that approximately 76% of dues for 2008 have been collected. 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 April 30, 2008 will be appended to the original of these minutes,

With regard to the venue for the Spring 2009 Dinner, Mr. Clyne reported that while a number of venues were contacted, Pier 60 and the Marriott Marquis were the only ones that submitted competitive bids, with Pier 60 being about \$10 per head cheaper. While certain board members expressed a preference for the Marriott Marquis because of the relative difficulties in getting transportation leaving Pier 60, the number of people attending the dinner since the event has been held at Pier 60 has increased by a fairly substantial number over the numbers that attended the dinner when it was held at the Marriott Marquis, and when polled, a clear majority of the board favored returning to Pier 60. President Marwedel suggested that better information about the departure times for the busses provided to transport attendees to mid-town should help ease the potential problems with post-dinner transportation. The issue of firms sponsoring a post-dinner cocktail party was discussed.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary David J. Farrell, Jr. presented the Membership Secretary's report.

Mr. Farrell reported that 22 applications were received for Associate membership. Upon motion duly made and seconded, the applications of the following 22 Associate members were approved unanimously:

John J. Bromley, Boston
Chris D. Collings, Houston
Stephanie A. Espinoza, Chicago

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Nicholas Fell, London
Ivan A. Guzman, Christiansted, St. Croix, USVI
E. Francois Hestres-Rodriguez, San Juan
Anthony C. Iacocca, New Brunswick, NJ
Travis William Jeric, Cleveland
Brian Keane, Boston
Christopher E. Klawinski, Houston
Kathleen Mackie LaVoy, Oak Brook, IL
Thomas O. Lind, New Orleans
Jennifer Ann Mehaffey, Washington, DC
W. Spencer Murphy, New Orleans
Timothy C. Nies, Boca Raton, FL
Susan Regeimbal, Costa Mesa, Ca
Jean Cooper Rose, New York
Matthew D. Shaffer, Houston
Brook M. Thibault, Norfolk
Melinda Weber, Cape May Court House, NJ
Patrick Whitford, Jacksonville, FL
Nancy E. Zimmer, S. Chatham, Ma

One application for reinstatement as a Proctor member was received from Victor Edwin Stewart, and four applications for reinstatement as Associate members were received from Michael Richard Jackson, Samuel R. Mandelbaum, Graeme Alexander Reid, Douglas A. Winegardner. Upon motion duly made and seconded, the applications for reinstatement of these former members to their previous status was approved unanimously.

Membership Secretary Farrell reported that four applications have been received for Law Student membership. Upon motion duly made and seconded, the applications of the following four persons were approved for Law Student membership:

Brian Carideo of the University of San Francisco School of Law
Craig A. Graham of Roger Williams University School of Law
A. Ross Pearsall of Widener University School of Law/Roger Williams
University School of Law
Geoffrey L. Wendt of Charleston School of Law

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

Hon. Charles Briant of White Plains, NY, Judicial Member, 1989
Kent Brooks of Pottsboro, Texas, Associate Member, 1993

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Rae M. Crowe of Mobile, Life Member, 1959
John G. DeRussy of New Orleans, Proctor Member, 1976
T.C.W. Ellis of New Orleans, Life Member, 1960
James W. Parker of Hamilton, Bermuda, Proctor Member, 1974

After the admission of 22 Associate members and four Law Student members, and the reinstatement of one Proctor member and four Associate members, the total membership of the MLA is 3,100. This number includes 20 Law Student members. 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.

Mr. Farrell also reported that the Association Directory will come out this fall.

ASSOCIATION MANAGEMENT

President's Advisory Committee

President Marwedel reported that former president Thomas S. Rue has been asked to assemble the Association's policies.

BOARD SUBCOMMITTEE REPORTS

Committees

Mr. Parrish, chairman of the Board Committee on Subcommittees, reported that he had convened a meeting of the subcommittee, and had also spoken with the Association's committee chairs and emphasized to them the need to post the agendas for their committee meetings well in advance of the committee meetings.

Finance

Mr. Clyne reported that the subcommittee has met and discussed the investment account, a formal budget for the Association, means of cutting costs, and a possible dues increase.

Membership

Mr. Farrell reported that the subcommittee had met by phone, and discussed the possibility of updating the directory with an interactive PDF doc-

ument to show changes. However, whether this would accomplish anything more than access to the website was questioned. The matter was referred to the Association Website & Technology Committee.

The subcommittee has also been asked to look at the Association's residency requirements.

Mr. Roberts suggested that non-members who have acted as counsel in cases reported in the American Maritime Cases be contacted and invited to join the Association.

Discussions were held regarding law student access to draft and internal documents on the website.

Website

Mr. Bonner reported that all numbered Association documents are being put on PDF. The cost of this will be less than \$1,500. On motion duly made and seconded, the expenditure of this amount to fund this operation was approved.

DISCUSSION ITEMS AND REPORTS

Standing Committee Liaison Reports

Mr. Kennedy reported on a recent decision from the Ninth Circuit dealing with ballast water discharges.

Mr. Hurley reported that Bradley A. Jackson of Houston is the new chair of the committee, and that William Ryan Acomb of New Orleans is the new vice chair. The committee will be co-sponsoring a presentation of issues arising out of the 2005 Gulf of Mexico hurricanes at the Long Beach meeting. In addition, Mr. Hurley reported on two recent Fifth Circuit cases dealing with vessel status and seaman status.

America's Marine Highway

Mr. Roberts reported that manner in which harbor maintenance taxes are imposed poses an impediment to the development of short sea shipping. Under current legislation, this tax is imposed at each port. Accordingly, a cargo can be taxed more than once if the vessel visits multiple ports. Legislation has been proposed to eliminate this multiple taxation, and a resolution supporting this legislation will be presented to the Association at the November meeting.

Special Committee Reports

Fall 2008 Arrangements Committee

Mr. Forrest Booth reported that arrangements for the Fall 2008 Meeting to be held in Long Beach, California, at the Long Beach Hyatt, on November 5–8, 2008 are on track. The meeting is being organized by Robert P. Zapf and William H. Collier, Jr., with assistance from Mr. Booth and others who organized the meeting in San Francisco in 2006. The meeting will commence with a tour of the Port of Los Angeles on Wednesday, November 5, which is being provided at no cost to the Association or its members by the Port. A reception on Thursday, November 6 at The Aquarium of the Pacific is being hosted by various local firms, with possible additional funding from West Law. The only event involving a charge to the members will be the Friday night dinner.

Fall 2009 Meeting Site Selection Committee

Mr. Schmidt reported the recommendation of the Site Selection Committee that the Fall 2009 meeting be held at the Hilton Head Marriott Beach & Golf Resort from November 3–7. This is a Four Diamond resort, and Mr. Schmidt has negotiated a room rate of \$200/night, and is attempting to negotiate additional savings for the Association with regard to guarantees. On motion duly made and seconded, the Board authorized Mr. Schmidt to negotiate a contract with the facility. In addition, upon motion duly made and seconded, the Board approved adding Joanne Zawitoski and Lawrence J. Kahn as signatories to the arrangements committee account for the meeting.

Environmental Crimes

Mr. Rue reported on his discussions with the new head of the Environmental Crimes unit of the Department of Justice.

Certification

Mr. Booth reported on the proposal of the California Board of Legal Specialization to certify specialists in admiralty and maritime law. The proposal is principally supported by the maritime personal injury plaintiffs' bar. In addition, the proposal contains CLE requirements that will be extremely difficult to meet. These problems have been pointed out to the California Board of Legal Specialization, but it impossible to know what it will recommend to the Board of Governors of the California Bar Association.

American Bar Association

President Marwedel reported that the ABA is currently meeting in New York City, but that there is nothing on the agenda of consequence for the Maritime Law Association. Mr. Leslie, the Association's representative to the ABA, discussed the importance of having a representative to the ABA that is familiar with the ABA and its leaders. He pointed out that Henry F. ("Hank") White, Jr., a member of the Association, is the Executive Director of the ABA, and is helpful in keeping the Association informed about issues of importance to the Association.

Regional Meetings

A lunch is planned in New Orleans for August 14. Hon. Martin L.C. Feldman, a judicial member of the Association, will discuss the issue of punitive damages. A social gathering will be held in Mobile in September, and in Oregon on September 9. It was emphasized that these meetings generate much good will for the Association, and are good means of attracting new members.

Coast Guard Forum

Ms. Burrell reported that she has been in contact with Adm. Baumgartner to coordinate a forum for discussions between the Association and the Coast Guard. She reported that the Coast Guard would like to have a forum where Association members with complaints about Coast Guard actions can voice their views.

Subpoena

Mr. Watson reported on a recent discussion with the Department of Justice concerning a subpoena that the Department was proposing serving on the Association. Mr. Watson explained to the Department representative that the Association was not involved with the subject of the investigation in question, and has had no further contact from the Department about the matter.

Coast Guard Administrative Law Judges

Mr. Marwedel passed out materials relating to Coast Guard Administrative Law Judges.

American Maritime Law Foundation

Mr. Marwedel reported that the activities of this organization have ceased. The Foundation has approximately \$5,000, and the Association has

had discussions with Frank Wiswall on behalf of the Foundation about using this money to having the Association documents put in shape and donated to a library. Tulane Law School has indicated that it is not interested in housing these documents, but the Merchant Marine Academy may be willing to do this.

West Law

Mr. Marwedel reported that West Law has approached the Association and asked to enter into a contract whereby West Law could use Association seminar papers. While the contract would require West Law to pay royalties under certain circumstances, Mr. Hopkins pointed out American Maritime Cases has had a similar contract with West Law, and that historically royalties are seldom earned.

Amicus briefs

A discussion was held regarding the standards for filing amicus briefs.

Seaman's Church Institute Silver Bell Dinner

Mr. Marwedel announced that Association member Paul Edelman had received an award at the Seaman's Church Institute Silver Bell Dinner.

INTERNATIONAL ACTIVITIES

UNCITRAL Draft Convention

Mr. DeOrchis presented copies of the final version of the Convention, and reported that he and former president Hooper attended the final session in June. No significant changes were made at that meeting. Some countries had suggested reopening the discussions, but this was rejected. The Convention will be offered to the General Assembly of the United Nations this fall, and, if accepted by the General Assembly, a signing ceremony will be held in Rotterdam in September 2009. Accordingly, the Convention will be known as the "Rotterdam Rules."

The Convention must be ratified by 20 states within 10 years to come into force. It is accepted that the United States position will be critical. The State Department believes that there will not be opposition in Congress, and that the change of administrations next year will not be important. If adopted by the United States, it is anticipated that the Convention will be self-executing and that domestic legislation will not be necessary.

Mr. DeOrchis also discussed various substantive aspects of the Convention.

After the conclusion of Mr. DeOrchis' report, President Marwedel expressed his appreciation to Mr. DeOrchis and to Mr. Hooper (who could not be present) for all their work on this project, and all present joined in this expression of thanks.

Maritime Labor Convention Roundtable

Mr. Bonner reported that he had attended a meeting of the Maritime Labor Convention Roundtable on behalf of the Association. This organization was set up by the Seaman's Church Institute for various organizations to discuss the Convention that was agreed in 2006 in Geneva. He reported that while shipowners generally support the Convention, the offshore industry is concerned because the Convention requires a three watch rotation as opposed to the two watch rotation customary in that industry.

IMO/ILO Expert Working Group on Abandonment and Compensation for Death and Injury Claims

Mr. Bonner reported that he attended the Eighth Session of the Expert Working Group in Geneva on July 21 through July 25. With respect to abandonment of seafarers, Mr. Bonner reported that seafarers state that they are more concerned with compensation than abandonment, and that the issue of compensation for death and injury claims presents difficulties for the United States since it conflicts with established United States law under the Jones Act. The United States and United Kingdom are working with representatives of the seafarers and owners to develop an appropriate wording for an instrument.

Association of Average Adjusters Dinner

President Marwedel attended the annual meeting and dinner of the Association of Average Adjusters in London on behalf of the Association. He reported that Immediate Past President Burrell delivered the response on behalf of the legal profession, a distinct honor in that she was only the second American in history to do so. Ms. Burrell further distinguished herself by delivering the response to the tune of "When I Was a Lad" by Sir Arthur Sullivan to the reported delight of all present.

Meeting with Canadian MLA

President Marwedel reported that the Canadian MLA has proposed a joint meeting of the boards of both organizations in Quebec City on August 21–22, 2009.

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CMI Meeting in Athens

President Marwedel reported on the nominations for officers of the CMI. The meeting will be held in Athens October 12–18.

There being no further business to come before the Board of Directors, the meeting was adjourned.

Respectfully submitted,
Harold K. Watson,
Secretary

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

Held in the Shoreline B Room,
Long Beach Hyatt Regency Hotel,
Long Beach, California
on
November 7, 2008
8:30 A.M.

The November 7, 2008 meeting was called to order by President Warren J. Marwedel at 8:30 A.M. In addition to President Marwedel, the following officers also were present:

Patrick J. Bonner, First Vice President
Robert B. Parrish, Second Vice President
Harold K. Watson, Secretary
Robert G. Clyne, Treasurer
David J. Farrell, Jr., Membership Secretary
Lizabeth L. Burrell, Immediate Past President

The following directors also were present:

Forrest Booth
Donald J. Kennedy
Grady S. Hurley
C. Kent Roberts

Frank P. DeGiulio
Vincent J. Foley
Kimberley A. Kearney
John D. Kimball (by telephone)

The following individuals were also present at the invitation of the President:

Thomas S. Rue
William H. Collier, Jr.
Robert J. Zapf

Joanne Zawitoski
James W. Bartlett III

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the August 9, 2008 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the August 9, 2008 meeting of the Board of Directors will be included in the Fall 2008 PROCEEDINGS.

TREASURER'S REPORT

Treasurer Robert G. Clyne presented the Treasurer's report for the three months ended July 31, 2008. He reported that cash and investments as of November 7 total approximately \$375,000, and that the Association's finances remain in good shape. Mr. Clyne reported that dues collections were down approximately \$22,000 and that attempts will be made to remedy this situation. The principal upcoming expenses will be the May dinner and the directory. Mr. Clyne reported that a lower price has been negotiated for the dinner. 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, 2008 will be appended to the original of these minutes.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary David J. Farrell, Jr. presented the Membership Secretary's report. Mr. Farrell reported that the Association had received one application for Judicial membership, four applications for Proctor membership, 17 applications for Associate membership, one application for reinstatement, and 10 applications for Student membership. Upon motion duly made and seconded, the applications of the following members were approved unanimously:

Judicial Applications (1)

Roy L. Paul, San Pedro, CA

Proctor Applications (4)

Scott E. Collins, Seattle, WA
Joshua E. Kirsch, San Francisco, CA
Mark E. Newcomb, Norfolk, VA
James R. Woepfel, Seattle, WA

Associate Member Applications (17)

Muge Anber, New York, NY
Alberto J. Castaner-Padro, San Juan, Puerto Rico
Marcella R. Chambers, Costa Mesa, CA
David S. Cohen, Dallas, TX
Paxton N. Crew, Houston, TX
Jessica A. DeVivo, New York, NY
Giancarlo Font Garcia, Guaynabo, PR
Andrea Jansz, East Brunswick, NJ
Raymond T. Kaiser, Long Beach, CA
Jonah M. Levine, New Orleans, LA
Dennis M. McElwee, Houston, TX
Joseph P. Moschetta, Washington, PA
Stephen P. Moschetta, Washington, PA
Maya A. Nair, Seal Beach, CA
Vicki L. Quinn, San Francisco, CA
Steven P. Solow, Washington, DC
Andrew J. Turner, Washington, DC

Reinstatement (1)

Lisa M. Conner, Long Beach, CA

Student Applications (10)

Covington Smith Campbell, Adventura, FL
Brian Eisenhower, Bristol, RI
Kathleen M. Haber, Newport, RI
Samuel C. Higginbottom, Falls Church, VA
Christina Hoefsmitt, Bristol, RI
Sung Hoon Kim, Torrance, CA
Dana Merkel, Bristol, RI
Garrett C. Parks, Hoboken, NJ
Joseph Akin Rayzor, III, Oxford, MS
Aaron Shahan, Chicago, IL

Mr. Farrell also reported the deaths of the following four members:

R. Glenn Bauer, New York/Westfield, NJ

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John R. Peters, Jr., New Orleans/Edgard, LA
Richard Howard Webber, Branford, CT
George W. Williams, Savannah, GA

Note was also made of the death of Sam Hopkins, husband of Ann Hopkins, Managing Editor of American Maritime Cases, and father of director Robert H. Hopkins.

With these changes, the total membership stands as follows:

| | |
|--------------------|-----------|
| Honorary | 4 |
| Ex-Officio | 14 |
| Judicial | 140 |
| Academic | 57 |
| Proctor | 1433 |
| Associate | 1255 |
| Non-Lawyer | 188 |
| <u>Law Student</u> | <u>30</u> |
| Total | 3,121 |

Mr. Farrell reported that the new directory had not yet been mailed, but will go out shortly, and all members should have it in four weeks.

A discussion was had regarding how to deal with members who are delinquent in their dues. A list of these members will be circulated to the officers and directors, and those who have been delinquent for three years will be dropped from membership.

ASSOCIATION MANAGEMENT

Special Appointments

Past President Rue reported on his meeting with a representative of the Department of Justice regarding enforcement regarding environmental crimes. He will meet with the International Chamber of Shipping to discuss how to move forward on this.

BOARD SUBCOMMITTEE REPORTS

Committees

Second Vice President Parrish, chairman of the Board Committee on Subcommittees, reported on efforts to have committee chairs post agendas

on the website, and pointed out that the failure to do this in one instance had resulted in a meeting not being listed on the schedule for the meeting in Long Beach Efforts will continue in this regard.

Finance

Mr. Clyne reported that he did not believe that a dues increase was necessary at this time, and reported that mailing information about the Fall Meeting only to those members who have not provided the Association with their email addresses had saved considerable expense.

Membership

Mr. Farrell reported that it will cost \$500 to make it possible for members to change committee memberships on the website. On motion duly made and seconded, this expenditure was approved.

A discussion was then held regarding creating a class of membership for non-residents of the United States. The Membership Subcommittee was asked to discuss this further and report back to the Board.

Website

President Marwedel raised the idea of adding a “Member News” section to the website that would include such items as member deaths and change of firm affiliation. First Vice President Bonner would serve as censor to review the information posted on this section.

Mr. Bartlett reported that all of the Association’s numbered documents are now on the website, and that the cost of doing this was only \$1,200. A description of the documents will be put on the website, which will eliminate the need for the index.

DISCUSSION ITEMS AND REPORTS

Standing Committee Liaison Reports

Mr. Hurley reported that the Offshore Industries Committee had planned a joint meeting with the Marine Insurance and Marine Torts and Casualties committees.

President Marwedel reported that the Arbitration and ADR Committee meeting was well-attended.

Mr. Foley reported that the chairman of the Fisheries Committee is looking for suggestions for topics for his committee to address.

Mr. Kennedy reported that the Marine Ecology and Maritime Criminal Law Committee was well attended. A presentation was made to the committee by representatives of the Port of Los Angeles and Long Beach.

Mr. DeGiulio reported that the Recreational Boating Committee had a CLE presentation on human factors and propeller strikes injuries and propeller guards. The Coast Guard is expected to publish a report on this subject.

Mr. Roberts reported that the Marine Finance Committee discussed the possible availability of preferred ship mortgages during vessel construction, and that the National Vessel Documentation Center has asked for feedback on interrelationships between state and federal law on this subject.

Mr. DeGiulio reported that the Cruise Lines Committee had a CLE presentation on arbitration clauses in crew contracts.

Ms. Kearney reported that the Marine Insurance Committee would be meeting jointly with the Offshore Industries Committee.

Mr. Clyne reported that the Carriage of Goods Committee held a spirited discussion of the UNCITRAL Convention. The committee will issue majority and minority reports on whether or not to support adoption of the Convention, whether or not to opt in or out on the jurisdictional provisions, and, along with the Inland Waters and Towing Committee, what effect the Convention will have on the Harter and Pomerene Acts. These proposals will be put to a vote of the membership at the May 2009 meeting.

Mr. Watson reported that the Practice and Procedure Committee had discussed the *Consub* case and efforts to vest jurisdiction over maritime bid protests in the Court of Federal Claims.

Practice and Procedure Proposed Model Rules

President Marwedel reported that he has drafted a letter to the chief judge of each district forwarding the Proposed Model Local Rules.

Amicus briefs

Mr. Bonner reported that the Association had filed a brief in *Consub v. Delaward v. Schabin Engneburia*, urging that the standard for Rule B attach-

ment should be governed by a uniform federal rule under Rule B rather than state law. A discussion was held regarding the Board's practices regarding the filing of amicus briefs. It was noted that certiorari had been granted in *Townsend*.

Coast Guard Forum

Immediate Past President Burrell reported that efforts to establish a forum in which interested parties could voice concerns to the Coast Guard had resulted in a meeting attended by Admiral Baumgartner to discuss the handling of pollution events. The meeting resulted in meetings being set up with the insurers who had expressed concern about this issue. The issue of Coast Guard administrative law judges was also discussed.

America's Marine Highway

Mr. Roberts reported that this ad hoc committee has unanimously recommended that the Association support efforts to amend Section 4462 of the Internal Revenue Code to exempt from the Harbor Maintenance Tax shipments of non-bulk cargoes carried on vessels between U.S. ports. The present law results in multiple taxation of the same cargoes, and is a serious impediment to developing short sea shipping with its attendant benefits for the economy and environment. Repeal is supported by both vessel owners and maritime unions. A resolution, a copy of which is attached to these minutes, will be presented at the General Meeting for approval.

The Board also discussed the need to make this special committee a subcommittee of the Inland Waters and Towing Committee so that its activities can continue on a permanent basis.

Special Committee Reports

Fall 2008 Arrangements Committee

Messrs. Collier and Zapf reported that 152 members and guests had attended the tour of the Port of Long Beach arranged by Thomas A. Russell, Association member and attorney for the Board of Commissioners of the Port. 245 members and guests attended the reception held at the Aquarium. It was also noted that many young local members had attended, fulfilling one of the goals of having general meetings in cities outside of New York. A preference was expressed for having committee meetings at these meetings in the offices of local firms when this is possible, since it gives visiting members a

better chance to mingle with the local members. President Marwedel expressed thanks to the committee for their work in organizing the meeting.

Fall 2009 Meeting Site Selection Committee

Joanne Zawitoski reported on the plans for the Fall Meeting to be held at the Hilton Head Marriott Beach & Golf Resort November 3–7, 2009. The committee has negotiated room rates starting at \$175 per night, and other advantageous terms with the hotel. It may be possible to get sponsors to help defray some of the costs, and the committee is looking into the possibility of getting a Supreme Court justice to address the Association.

Certification

Mr. Booth reported that the process underway in California to create a certification for admiralty and maritime law is not public, so it is impossible to know where this stands. The Association has made its opposition to certification known to the relevant authorities in California.

City/Regional Luncheons

Second Vice President Parrish reported on a successful luncheon held in Jacksonville, and all Board members were encouraged to organize similar events.

INTERNATIONAL ACTIVITIES

CMI Meeting in Athens

President Marwedel reported on the recent CMI meeting in Athens. Guidelines were passed with regard to the Limitation Convention. Immediate Past President Burrell made a presentation on the Coast Guard's methodology for ports of refuge and a document was approved with regard to this subject. The UNCITRAL Convention was also discussed, and a vote was taken to show support. The U.S. delegation voted in favor of this measure.

IMO Legal Committee

President Marwedel reported on his attendance at the IMO Legal Committee. The HNS Convention Protocol was postponed. Captain Chuck Michel made a presentation on the abandonment of seamen, and then met with representatives of various P&I clubs about this issue, who have agreed to waive

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the “pay to be paid” requirements of their rules with respect to these claims, but are unwilling to pay these claims until their members have exhausted any applicable self-insured retentions.

CALENDAR

MLA Officers Meetings

President Marwedel announced that the officers will meet with representatives of various governmental organizations in Washington, D.C. in January.

MLA Board of Directors Meetings

President Marwedel announced the following upcoming Board meetings:

March 10, 2009 in New Orleans prior to the Tulane Admiralty Law Institute

August 21, 2009 in Quebec with the Board of Directors of the Canadian MLA.

Possible sites for future meetings include Washington, D.C. in March 2010, and Houston for November 2010. The possibility of having a fall meeting in New York was also discussed.

There being no further business to come before the Board of Directors, the meeting was adjourned.

Respectfully submitted,
Harold K. Watson,
Secretary

RESOLUTION

The following resolution was approved by the unanimous vote of the members present at the General Meeting of the Association on November 8, 2008, and was ratified by the unanimous vote of the Board of Directors by a vote concluded on November 21, 2008:

Be it resolved that the Maritime Law Association of the United States recommends amending the Internal Revenue Code, 24 U.S.C. § 4462, as implemented in 19 C.F.R. § 24.24, by exempting assessment of the .125 percent ad valorem harbor maintenance tax on non-bulk cargo carried aboard vessels between ports of the United States.

Be it also resolved that the purpose of the proposed amendment is to facilitate the Short Sea Transportation Program, 46 U.S. Code § 55601-5, and further the establishment of America's Marine Highway with the goal of mitigating landside traffic congestion, increasing the efficiency of intermodal transfers, reducing fuel consumption, and improving air quality. The current Harbor Maintenance Tax is an impediment to the full development of a marine highway system because it twice taxes cargo—upon import and again during coast-wise transit. In short, sound public policy supports exempting America's Marine Highway from the Harbor Maintenance Tax. U.S. vessel owners and maritime unions alike support the exemption.

Be it further resolved that the President of the Association is hereby authorized and directed to inform appropriate Committees and Members of Congress of the Association's position with respect to the foregoing and to authorize representatives of the Association's Committee on America's Marine Highway and the Association's Committee on Inland Waters and Towing to represent the Association in communication with Congress with respect thereto, subject to such conditions as the President may deem appropriate.

