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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING—NOVEMBER 7, 2009

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 72 members and guests:

Anthony Banker	Alexander Giles
James W. Bartlett, III	Geoffrey Ginos
Joe E. Basenberg	Robert S. Glenn, Jr.
Michael Bell	J. G. Grasso
Philip A. Berns	Donald C. Greenman
Nash Bilisoly	Raymond P. Hayden
Phillip A. Buhler	Keith W. Heard
Paul E. Calvesbert	Barbara Holland
Robert G. Clyne	Anne D. Hopkins
Mark Coberly	Carol Hurst
William R. Connor	Bradley Jackson
Lafadio Darling	Lawrence Kahn
Martin Davies	Kimbley Kearney
Frank P. DeGinlio	E. Michael Keating, III
John Farmer	Allan R. Kelley
Anthony Filiato	Donald J. Kennedy
Robert B. Fisher, Jr.	Sandra L. Knapp
Richard Fiske	Marker Lovell
Vincent J. Foley	Christopher Mann
Joshua S. Force	Marc Marling
Gene George	

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Janet W. Marshall
Raymond L. Massey
Doug Matthews
Dan McDermott
Brian McEwing
Dennis Minichello
Jim Moseley, Jr.
Tom Muzyka
Francis X. Nolan, III
George W. Nowell
Francis M. O'Regan
Paul W. Painter
Edward Powers
Katharina Powers
Donald C. Radcliff
Edward C. Radzik
A. Clay Rankin, III

Edwin D. Robb
Thomas S. Rue
Robert J. Ryniker
John Scalia
Charles E. Schmidt
Jonathan Spencer
Norman M. Stockman
Kevin J. Thornton
Alan Van Praag
Arthur J. "Skip" Volkle
M. Hamilton Whitman, Jr.
Andrew Wilson
John Woods
JoAnne Zawitoski

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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING
HILTON HEAD ISLAND, SOUTH CAROLINA
NOVEMBER 7, 2009

PROCEEDINGS

MR. MARWEDEL: Good morning. I want to welcome all the members and guests.

I hope you've enjoyed this meeting. We've had perfect weather, which is somewhat unusual for our meetings. I think the arrangements that have been made were just great. The seminars and the program were probably the best I've attended at the MLA, and an awful lot of work went into the CLE and into the committee meetings. I tried to get around to most of the committee meetings, and I'm always impressed with the work that the officers of the various committees put into making these meetings really a learning experience, and I think I now have enough CLE to glide to June in Illinois.

Also, while they're not here, Admiral Baumgartner and Captain Kenney were very helpful in the background getting Admiral Allen to come and speak to us. I think he was an interesting speaker. I'm glad that we had a wireless mic for him, because I think he would have taken out a few chairs walking around.

But if you go back over our history, we've not had too many speakers of that note. We've had two Supreme Court justices, we've had the usual industry leaders, insurance leaders, but it is nice once in a while to get somebody of Admiral Allen's stature.

This relationship we have with the Coast Guard has grown considerably over the years. I think Jim Moseley, Sr. was the one who really reached out to the Coast Guard so that we could work with them not always as adversaries, but as partners, and this has really grown and

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matured over the years, and I think the admiral coming to speak to us really demonstrates that.

And it's not just the Coast Guard. They give us access to all sorts of people in the government that are involved in maritime activities, so that if committee chairs need to know who's who in their particular area in the government, we now have a list of the people we should get to know in other rather obscure parts of the government that have an impact on what we do.

I'd like to start off with our secretary's report, Hal Watson.

MR. WATSON: Thank you, Mr. President.

First a couple of administrative details. If you haven't signed in, please do so. There are the blue cards sitting out on the table outside the hall here. We like to know who attends these meetings.

Secondly, if you're speaking, if you're giving a committee report, please hand a copy of your business card to the court reporter so she can identify you.

With regard to the court reporter, we want to express our appreciation to the court reporter this morning, Marie Bauer of the firm of Tom Crites & Associates International, who are providing their services to the Association free of charge, which we greatly appreciate. They have some materials in the back, my left, back in the back corner of the room there. They are experienced court reporters in maritime matters, and I think it would be a nice sign of appreciation to them for providing these services to use their services when appropriate.

The Board of Directors of the Association has met twice since our general meeting in last May. We met on August 22nd in Quebec City in conjunction with a meeting with the board of the Canadian MLA, and then we met again Wednesday here in Hilton Head.

One issue of concern that the Board has been considering over

the last several meetings has been whether some revisions to our membership policies were in order, and the Board has adopted two changes to our membership policies.

First, our Academic Members have all been a very valued part of our membership, but for historical reasons, they were not given the vote, and we decided that that was inappropriate and that our Academic Members should be allowed to vote. Of course, going with that, just as our revolutionary forebears did not believe that it was appropriate to have taxation without representation, we similarly thought it was probably not right to have representation without taxation, and so our Academic Members are going to be asked to pay dues from this point forward. I think that Professor Davies will probably think this a small price to pay to be given a forum to display his terpsichorean talents.

The second change in our membership policies regards Law Student memberships. The amendment to the bylaws that we adopted recently to allow for Law Student Members required that a Law Student Member not be admitted to the bar, and we have had some inquiries about Law Student membership from foreign lawyers who are attending U.S. law schools getting graduate degrees, and we thought that it was appropriate that these people should be eligible for Law Student membership in the Association, and so the bylaws are being changed in that regard as well.

Another issue that has been under consideration by the Board has been the issue of certification of admiralty as a specialty. This came about because this was proposed and has been adopted in California. The Association has a long history of opposing certification as a specialty for a variety of reasons. To start with, admiralty law is a variety of specialties. It's so broad a field that any representation of someone as a specialist in admiralty has probably been misleading, and to devise a test that would be all-encompassing would be almost impossible. Also, most maritime clients tend to be sophisticated clients who know who the specialists are anyway, and so we opposed that effort in California -- unsuccessfully, since it did pass -- but we restated our opposition as a general rule to state certification.

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Finally, two more matters. One of the benefits that many members appreciate is the information that is provided in the form of publications. Traditionally, this was the Proceedings of these meetings and the MLA Report, and it's difficult to get two publications out and the timing of the two publications is difficult to coordinate, which we like to do to minimize mailing expenses. I think what you're likely to see from this point forward is a lot more material being provided in the Proceedings, rather than having a separate MLA Report. And so just a word to committee chairs, if you have a formal report from your committee meetings, if you have a newsletter, if you would forward that to me, we will try to include those in the proceedings.

Finally, we are going through our archives to try and determine just what is in our archives and to make these materials more accessible to the membership.

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

MR. MARWEDEL: Do I have a second?

MEMBERS: Second.

MR. MARWEDEL: All in favor?

MEMBERS: Aye.

MR. MARWEDEL: So noted.

Treasurer's report, Bob Clyne.

MR. CLYNE: Thank you, Mr. President.

At present, the finances of the Association are strong. We have approximately \$400,000 in cash and investments, which is pretty good for this time of year. We do have some expenses to pay before the dues go out again, including some down payments on Pier 60, so that number

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will go down by the end of the year.

One problem we are having is our dues collection are really trending down over the last few years, and this year it was a marked decrease. Right now we're at about 84 percent of collection, and that's probably just a sign of the times. However, one of the problems we encounter, and I say this at every meeting so it gets into the Proceedings, is that we have trouble keeping track of people that move. They change firms, they change e-mail addresses, and then we lose track of them. So just keep that in mind, if you will. If you're changing your e-mail address, if you're changing your firm, or whatever, please let the MLA know. Bar associations seem to be the last people that are notified of this.

Reluctantly, the board has decided to increase the dues \$10 next year. It was a subject of some debate, and we just felt that we needed to have a dues increase at this time. We haven't had a dues increase since 2003, seven years ago, and hopefully, we can go another seven years before we do it again, but I think if you look at \$145 as dues to this Association and you compare it to other bar associations, it's pretty reasonable.

Lastly, we just completed our audit, the third audit I've had since I've been treasurer, and it went well, so that makes me a happy treasurer. I'm glad it's over.

That concludes my report. I move for its adoption.

MR. MARWEDEL: Second?

MEMBERS: Second.

MR. MARWEDEL: All in favor?

MEMBERS: Aye.

MR. MARWEDEL: So adopted.

Membership Secretary's report, Dave Farrell.

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MR. FARRELL: Thank you, Mr. President.

Good morning.

Endorsing the recommendation of the Committee on Proctor Admissions, the Board of Directors, at its meeting this week, approved the elevation of four associate members to Proctor status. They are Carolyn Elizabeth Bundy, of New York; Steven Galati, of Philadelphia; Steven M. Stancliff, of Norfolk; and Norman M. Stockman, of Mobile.

The Board also approved the application of 12 Associate members and three Non-Lawyer members -- Anthony Barker, James D. Jones, and Ralph Markarian -- as well as 54 Law Student applications. That brings us to a total of 3,063 members.

I regret, however, to advise of the following deaths since our New York meeting: The Honorable George C. Pratt, of Central Islip, New York; John Edward Hurley, Jr., of San Francisco; the Honorable W. Brevard Hand, of Mobile; the Honorable John William Black, III, of Brownsville; Joseph A. Murphy, of St. Louis; Donald Macleay, of Washington, D.C.; Thomas C. MacDonald, Jr., of Tampa; Thomas F. Molanphy, of Rockville Centre, New York; Geoffrey H. Longenecker, of Covington, Louisiana; Chris J. McGrath, of Houston; James K. Carroll, of New Orleans; Michael O. Hardison, of New York; Frank C. Allen, of New Orleans; Kent E. Westmoreland, of Houston; and Emery W. Harper, of New York.

Please rise and join me for a moment of silence.

(Moment of silence)

MR. FARRELL: Thank you.

As always, I ask you to please identify good maritime lawyers you're aware of and encourage them to submit Associate and Proctor applications to the MLA.

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

MR. MARWEDEL: Second?

MEMBERS: Second.

MR. MARWEDEL: All in favor?

MEMBERS: Aye.

MR. MARWEDEL: We'll go to committee reports. I'm going to make a couple of little changes in the order because a few people need to get to the airport. The first will be International Organizations, Alan Van Praag.

MR. VAN PRAAG: Thank you, Mr. President.

We had a very well-attended meeting at 8:00 a.m. on Thursday with lawyers from France, the Netherlands, Morocco, and England attending. We had a busy schedule of issues to discuss.

On the Rotterdam Rules our first speaker was Warren Marwedel, our President, who made a report regarding the signing ceremony in September. He reported the U.S. Ambassador signed the treaty and made a policy speech indicating U.S. support for participation. Fourteen countries signed the Convention. The U.S. State Department expressed its support for the treaty, but there's one risk: Only one senator can put ratification on hold. That's all it takes.

Our next speaker was Bertrand Courtois from France. He reported on the French perspective. The Rotterdam Rules are well regarded in France. Major changes include enforcing arbitration agreements and the ability for cargo to sue stevedores directly. Also, the Rotterdam Rules may conflict with some domestic and land transit laws in France.

Our next speaker was Michiel Van Leeuwen from the Netherlands. He reported on the Dutch view. The Dutch took a pragmatic

approach to wait and see what is actually brought into force in Europe. The Dutch are very much encouraged by the participation of the United States and China in supporting the Convention. He spoke about the fact that the jurisdiction and arbitration provisions may conflict with European regulations, and it was noted in response to a question, the EU law will override national law in the Netherlands and France with regard to the interpretation of the Convention's content.

Our next speaker was Archie Bishop, of the United Kingdom, who spoke on environmental salvage. He reported on the efforts to replace Articles 13 and 14 of the Salvage Convention, the special compensation provisions, with provisions that allow an award to salvors based on protection of the environment with a cap on liability linked to the international oil spill limitations, such as the CLC. He also noted discussions with P&I clubs and others to amend Lloyd's Open Form to address environmental salvage. He reported on the CMI working group, where our own Chris Davis is a member looking at environmental salvage.

Our next speaker was Vince Foley, who spoke on the status of the PRESTIGE litigation. Vince has been involved with this litigation since its inception. He reported on the Second Circuit's reversal of the district court's decision to dismiss Spain's complaint against the ABS. The court ruled that the CLC is not U.S. law, and the district court cannot dismiss claims based on the CLC. However, the court directed that the district court may consider ABS counterclaims to be reinstated against Spain based on the delay to a vessel in distress.

The district court was also to directly consider discretionary grounds for dismissal under forum non conveniens or comity. This court was further ordered to address conflicts of law issues. Spain and the ABS agreed to a briefing schedule for dispositive motions on choice of law issues, and whether Spanish law, UAE law, Chinese law, or Bahamian law are applicable to the merits of Spain's claims and ABS's counterclaims. November 24th is the date for the main brief. January 29th is the date for the brief in opposition. March 1, 2010, is the date for the reply brief.

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Then we received an international update from Captain Kenney of the U.S. Coast Guard. He reported on U.S. IMO participation in the IMO/ILO working document for seafarers, which has been approved by IMO and sent to the Labor Committee for final approval. On port state control, he spoke of efforts to approve a single insurance certificate, which failed, citing the authenticity of certificate problem and the need to amend underlying conventions.

With regard to the Law of the Sea Convention, we received some good news. He reported that Senator Kerry wants to bring a vote on the Senate floor very quickly, and there's an expectation that it will happen shortly after the healthcare matters are voted upon. He indicated the failure to ratify affects outer Continental Shelf rights, Northwest Passage rights, and relations between the U.S. and Canada.

He further spoke about the proposed rule-making on ballast water standards. The plan is to start with the IMO Ballast Water Convention and move to a higher standard. Nineteen countries, representing 20 percent of worldwide tonnage, have signed. Indeed, industry technology requirements for new buildings will meet Convention standards by 2010. Technology is now available to allow vessels to meet the IMO Convention.

Finally, he gave a short report on piracy. He reported that the Coast Guard is involved with building the capacity for effective jurisdiction using the U.S. Model Maritime Service Code to build up enforcement capability. He emphasized that a legal foundation in these countries is a prerequisite for enforcement capabilities.

That is the conclusion of my report, and I move for its adoption, Mr. President. Thank you very much.

MR. MARWEDEL: Thank you.

MEMBERS: Second.

MR. MARWEDEL: Procedurally, I don't think we move for the adoption of reports. But there is a second. Frank DeGiulio for

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Recreational Boating, and then Joshua Force for Practice and Procedure.

MR. DEGIULIO: Good morning, Mr. President. Thank you for the courtesy of taking my report out of order so I can catch my plane.

The Recreational Boating Committee met yesterday, November 6th, here in Hilton Head. Daniel Wooster, who is the Committee secretary and the current editor of the newsletter "Boating Briefs," reviewed the cases reported in this issue.

I'd like to tell everybody that the entire history of the newsletter is now on the website. I think it's 18 years. One of the things I'm going to try to do, maybe by the Young Lawyers Committee, is to digest those newsletters so that people can consult that when they have a recreational boating issue.

We discussed the status of the development of discharge management practices by the EPA for recreational vessels, which was mandated by the Clean Boating Act of 2008. That project was to have been completed by July of this year. We have learned that no action has been taken by the EPA to date.

The Committee then adjourned briefly, reassembled for a joint meeting with Marine Finance to discuss the status of the Uniform Certificate of Title Act for Vessels, which is being prepared by the National Conference of Commissioners on Uniform State Laws. I think you'll hear more from Frank Nolan on that. We did hear from David Williams.

And I do want to say that all of those materials relating to this Uniform Act are posted on the Committee website. Anybody that has an interest in this subject is encouraged to consult the draft materials and to comment on it. The next meeting to address this uniform law is scheduled for March of next year.

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

MR. MARWEDEL: Thank you.

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Josh Force, Practice and Procedure, to be followed by Keith Heard, Arbitration and ADR.

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

The Practice and Procedure Committee met yesterday, and, not surprisingly, we focused most of our attention and discussion on Rule B and the attachment of EFTs under the recent *Jaldhi* decision. Because our meeting followed the excellent CLE program that addressed that issue in depth, we didn't want simply to rehash the discussion that everybody had just heard. Instead, we discussed hypothetically whether if certiorari were sought in that case and if the MLA were asked to participate by filing an amicus brief, whether it would be an appropriate case for the MLA to file a brief in or not. Of course, because certiorari has not yet been sought, and we heard a little bit of an update as to whether that may or may not happen, the discussion was hypothetical, and we had to discuss both what the issues might be and what the MLA's position would be on those issues.

What we wanted to focus on was not just whether or not the members who were in attendance agreed or disagreed with the result of the decision, but whether the decision presented issues that would qualify under the MLA criteria for the filing of an amicus brief, and our discussion focused on those criteria. Ultimately, I think we had views on both sides, and any type of decision obviously had to be put off to see not only whether or not a cert petition were filed but also what particular issues might be brought up.

We also heard updates on the adoption of the recently amended Model Local Admiralty Rules, in particular in Maryland and California, and we continue to monitor the extent to which those recent amendments have been adopted in various jurisdictions.

I'd appreciate it, actually, if any members of the Association are participating in or aware of the adoption of the Model Local Admiralty Rules in their own home jurisdictions, they would let the Committee

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know by e-mail or otherwise because we are trying to monitor the extent to which those rules are being adopted. Periodically, we get inquiries from around the country from courts and clerks who really want to know whether or not the rules have received any attention and adoption and whether or not they should consider adopting those rules or not.

Lastly, at the request of the President and along those lines, we are going to be compiling the historical documentation of the Committee and the Association in the adoption of Model Local Admiralty Rules and making that available online on the website for everybody to be able to reference as historical documents.

Mr. President, that concludes my report.

MR. MARWEDEL: Thank you.

Arbitration will be heard, followed by Carriage of Goods.

MR. HEARD: The Committee on Maritime Arbitration and Alternative Dispute Resolution met late yesterday afternoon at two locations, here in the hotel, of course, but also in the New York office of Holland & Knight. We had some seven attendees here in Hilton Head and at least 15 in New York, plus an additional four or five who participated by telephone, including Jon Zinke, in Hong Kong, where it must have been about 4:00 o'clock Saturday morning.

David Martowski, a past president of the Society of Maritime Arbitrators in New York, reported on the 17th Biennial Meeting of the International Congress of Maritime Arbitrators held in Hamburg last month. Several other members of the Committee also attended this week-long event, at which numerous papers were presented on a variety of charter party and arbitration issues. David said that during a users forum held as part of the Congress, some favorable comments were made about maritime arbitration in New York, which we are hoping will translate, of course, into more cases.

The next ICMA conclave will be held in Vancouver in May of

2012, and when I realized that in the meeting yesterday afternoon, I resolved to contact the organizers of that event to make sure that when they schedule it, it hopefully will not compete with our Spring Meeting that year.

Bill Honan of New York reported on the status of *Animal Feeds International v. Stolt-Nielsen*, a complicated case in the Second Circuit in which the Supreme Court granted certiorari earlier this year. The claimants in *Animal Feeds* are thousands of cargo shippers seeking to recover overcharges from parcel tanker operators who settled charges of antitrust violations brought by the federal government several years ago. A panel of three AAA arbitrators ruled that the claims could proceed in a class action arbitration because nothing in the arbitration clause in the charter parties prohibited that.

I find the arbitrators' ruling troubling because it essentially says that commercial arbitrators can do virtually anything that is not illegal, provided it is not specifically prohibited by the language of the arbitration clause.

Judge Rakoff of the Southern District of New York also found the award objectionable, and he vacated it on the basis that it was rendered in manifest disregard of the law. However, the Second Circuit reversed Judge Rakoff and reinstated the award, which meant that the claims could be brought in one class action arbitration, rather than thousands of separate proceedings.

Stolt-Nielsen and the other ocean carriers successfully petitioned for writ of certiorari, the case has been fully briefed, and oral argument will take place on December 9th.

The case really presents two major issues. One is whether the concept of manifest disregard of the law as a basis for vacating an arbitration award survived the Supreme Court's decision in *Hall Street Associates v. Mattel*, which was decided I believe last year. Some circuits, like the Second, say yes, manifest disregard is still alive, while others, including the Fifth, say no, there is no more concept of manifest

disregard after the *Hall Street* decision.

However, certiorari was not granted on that basis. Instead, the Supreme Court is focused on the class action arbitration issue, which it dealt with a few years ago, perhaps not very satisfactorily, in the case of *Greentree Financial v. Bazzle*.

So the question is: Did the arbitrators exceed their authority or misinterpret the contract when they ordered class action arbitration in this case? I'll be interesting to hear what the Supreme Court decides on that issue.

Evanthia Coffee of New York told us about the ruling of the New York State Court of Appeals in the case of *Koehler v. Bank of Bermuda*, which is not an arbitration case, but one that has relevance to the collection of arbitration awards that are reduced to judgment.

Essentially, what the Court of Appeals said is that if a bank or other financial institution or even just an ordinary business corporation holds funds or other property belonging to a judgment debtor at some location outside of New York, be it another one of our 50 states or a foreign country, that entity can be required to physically transfer those funds or that property to New York in response to a turnover order served as part of the judgment execution process.

In *Koehler*, the Bank of Bermuda, which was jurisdictionally present in New York, held stock certificates in Bermuda belonging to the judgment debtor. The plaintiff obtained a default judgment against the debtor in Maryland and then registered that judgment in New York. A turnover order was then served on the bank, requiring it to repatriate the stock certificates from Bermuda to New York for levy of execution by the plaintiff. The bank challenged that ruling, but the New York State Court of Appeals said it was a proper interpretation and application of New York law.

This case also may wind up in the Supreme Court on constitutional grounds. The bank has until about November 20th, I think, to file

for certiorari, if they haven't already done so.

Bobby Glenn, of Savannah, who, as many of you know, acts as a mediator, addressed our committee on the use of neutral experts and dispute review boards. Neutral experts are persons of special expertise hired by a mediator, with the consent of the parties, to render an opinion or just provide specialized information that the mediator needs to understand a case better or help the parties resolve it.

Bobby gave us an example of a tax case that he mediated in Georgia where a professor of tax law from one of the universities in Georgia served with Bobby in mediating the case, and Bobby relied pretty heavily on his expertise to better understand the tax law and the tax issues in the case.

Bobby thought that this concept might have some application to maritime cases, for example, if the parties hadn't already done their expert discovery to have the mediator hire, with the consent of the parties, an independent expert, for example, a navigation expert, to help advise the mediator on some of the issues in the case.

Dispute review boards are different. They are standing dispute resolution boards that convene on short notice to resolve disputes as quickly as possible to prevent delay in a project the parties are undertaking, such as a major construction project.

Bobby suggested there could be a role for dispute review boards in the shipping industry, for example in major ship building or ship repair projects. He also suggested that having such boards in place might help resolve disputes under lengthy time charters and other long-term contracts.

We enjoy having Bobby on our committee. He thinks outside of the box, and he comes up with some interesting ideas.

The final part of our meeting was a presentation I gave on recent efforts by governing bodies in international commercial arbitration -- in

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other words, nonmaritime arbitration -- to place limits on document production and the use of other discovery devices. All three of the organizations warned of the specter of U.S.-style discovery. What they are really concerned about is commercial arbitration, which is supposed to be fast and flexible, becoming too much like litigation.

In the past, these organizations relied more on the parties to prevent this from happening, but now these governing bodies, which include the International Chamber of Commerce, the International Center for Dispute Resolution, which is the international arm of the AAA, and the International Institute for Conflict Prevention and Resolution, are establishing rules that empower arbitrators to prevent discovery abuse from happening or deal with it effectively when it does happen.

Our committee had a lively discussion as to whether we actually have discovery abuse in maritime arbitration in the United States, and I think the general view was that we have been reasonably successful in avoiding those problems, but the potential for abuse is always there, so we need to watch it closely.

Shortly after our meeting ended, Jon Zinke sent me an e-mail from Hong Kong saying, "Keith, that was a good meeting. I'm going back to bed."

On that note, Mr. President, I conclude my report.

MR. MARWEDEL: Thank you.

Carriage of Goods, Edward Radzik, followed by Fisheries, Kevin Thornton.

MR. RADZIK: Good morning, Mr. President, members of the Board of Directors, members of the Association, and guests.

The Committee of Carriage of Goods met yesterday. We had an attendance of about 15 in person and also participation of another 10 by telephone conference.

The committee started off with a presentation by Professor Michael Sturley, who gave us an overview of his participation as a U.S. delegate at the September signing ceremony for the Rotterdam Rules and gave us a background on how various countries were leaning toward signing the Rules and implementing those Rules as domestic legislation. So far, there are 20 countries that have signed the Rotterdam Rules. I think the consensus is that eventually more countries will sign on, and the movement is apace toward implementing the Rules as domestic legislation. As you know, 20 countries must ratify the Rules before they come into force, and they come into force a year after the 20th ratification.

The meeting then followed with a presentation by Vince DeOrchis, who presented a paper that had been prepared by the Young Lawyers Committee on a study or a comparison of how cases that had been decided under COGSA would fare under the Rotterdam Rules. They took 15 cases that had been decided under COGSA, and I think that there were no changes in four of the cases, six had different results, and ten had the same results, but it was interesting to see the interplay between the two regimes. The presentation and paper qualified for CLE credit.

We formed a subcommittee to study how the Rotterdam Rules would affect the Pomerene Act and members of the committee have volunteered to study that and see what has to be done to adjust the Pomerene Act to conform to the new legislation.

Finally, we had a discussion about the *Regal-Beloit v. K Line* case, which has been accepted for certiorari by the Supreme Court. That case, as you know, went a step further than the Second Circuit did in *Sampo*, which held that the land movements on an intermodal transport would be governed by the Carmack Amendment. The Ninth Circuit went a step further and held that the ocean carrier qualified under a broad definition as a rail carrier and held the ocean carrier liable under Carmack. So that's a case that's going to be heard by the Supreme Court in the next term.

Mike Ryan from New York sent down about 100 copies of the Cargo Newsletter. I hope everybody had the opportunity to pick one up,

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but if you have not, just contact Mike or myself, and we'll get a copy out to you.

That concludes my report.

MR. MARWEDEL: Thank you.

Kevin Thornton, Fisheries, followed by Charlie Schmidt, for the Planning and Arrangements Committee.

MR. THORNTON: Good morning, Mr. President, Board members, members of the MLA, and guests.

My report will involve mention of gratitude, a measure of serendipity, making lemonade out of lemons, and some bad news and some good news.

First I would like to thank our President, Warren Marwedel, for appointing me as chairman of the Fisheries Committee. It's a great opportunity, and I'm thrilled to have the chance to work with members of the MLA dealing with subject matters that are important to us and to our clients.

Also, I'd like to thank our President for giving me the opportunity to introduce the Commandant, and I would also like to thank the members and their spouses and significant others who put this meeting together. I think it was outstanding. The food's been great, as I can evidence. The weather's been spectacular. Whoever was responsible for that, double kudos. And we've had a great time here in Hilton Head, so I thank everyone responsible for that.

As to serendipity, I can report that shortly after I was appointed as chairman of the Committee, it just so happened that Commandant Allen appeared in Cape May, which is where I live, and he was making a presentation on small vessel safety, boats 79 feet and under. Small commercial fishing boats, and there are a lot of them of that size on the East Coast, are unregulated or uninspected, and we've had just a rash of fatal

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incidents along the East Coast, and that is, I think, a major item on the admiral's agenda.

And having noticed that he was in Cape May, it dawned upon me that I should maybe just ask him to come to speak to my little Fisheries Committee meeting, expecting entirely that he would say thanks, but no thanks, and then maybe pointing me in the right direction of someone from the Hilton Head area who is in the Coast Guard who could accommodate us. And as it turns out, he said, "I can't do it on the 6th," but his staff was able to maybe see if he could come on two days before, either the Wednesday or the Thursday.

So I immediately called Warren, and I said, "I guess I would need your permission, because I'm only the committee chairman of the little Fisheries Committee, which is one of our smaller ones." I said, "Would it be okay to have the Commandant join us?" Warren said, "He's a four-star admiral. He can come if he wants to."

So that's how it turned out after a couple of months of phone calls and emails. It's remarkable how busy the admiral is and all the issues behind the scenes with the security. I don't know if you saw. There were bomb-sniffing dogs, and the room was locked, and they had incredible security. So that is serendipitous, if nothing is, so that worked out really well.

And in connection with serendipity, as a courtesy to the Coast Guard officials in my region, when I figured out that with Warren's help and Admiral Baumgartner's help that the Commandant was actually going to attend our meeting here, I thought it was a good idea to reach out, as we've been working on for decades, to get an opportunity to talk to local Coast Guard folks.

And I did that, and I introduced myself to the captain of the Cape May Training Center, which is the only training center in the United States for the Coast Guard, which is also in my hometown. And I also made arrangements to communicate with the Captain of the Port in Philadelphia, and they're responsible for safety from the Delaware River,

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Philadelphia, down all the way through Cape May, down to Delaware, and then back up to Sandy Hook. And I had a conference already with the two officers, lieutenant commanders, who are in charge of vessel inspection and safety and NOAA fisheries enforcement.

And the irony is that some of those folks had heard of the MLA, and some of them hadn't. And so as good a job as we've done, I think it's a great opportunity for all of us not to assume that we're famous and well-known personally, professionally, and as a group, and to pick up the phone, because my serendipitous experience is that every person that I've spoken to in the Coast Guard, from Washington, D.C. to Philadelphia to Cape May and Atlantic City, they're happy to talk to us, and they're eager to work with us.

And we can assist them almost exponentially. If I have 50 clients that are in the commercial fishing vessel industry, when they talk to me, I can relate those messages back to them. And there's been a history of fear or antagonism sometimes between commercial fishing folks and Coast Guard and NOAA and all the people that seem to want to regulate them from the second they get out of bed till the moment they return to bed.

But there's a great opportunity for us, as kind of like a mediator, to reach out. And I'm speculating that that opportunity exists not just for commercial fishing, but for virtually any area of law that we're practicing in. If you're doing cargo or if you've got immigration or stowaways or pollution, it's my experience that it's a lot easier to deal with the governmental officials if you've had some kind of contact or relationship with them before you're in hot water or your client is in hot water with them.

So I would respectfully suggest that we can probably all redouble our efforts and reach out to and establish relationships with the Coast Guard and NOAA and whomever else may be of import to you.

The making lemonade out of lemons was just a reference for my own mind to talk about how when the admiral said, "No, we can't come

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to your little meeting,” it worked out that something better occurred, that he came to the cocktail party and the General Meeting.

But also, I don't know if it's a coincidence or what, but I was thrilled to have Captain Kenney appear, and he attended the meeting yesterday of the Fisheries Committee, and his attendance was much appreciated because of his input, and also because due to fierce competition from the CLE program and wonderful weather, the attendance at the Fisheries Committee meeting was far from sterling, but those who did attend were outstanding, including our vice chair, Mark Coberly, and some others who participated by phone.

We actually did do some substance at the meeting. As I mentioned before, the extreme increase in the loss of lives due to sinkings has inspired the Coast Guard to have pending in the U.S. Congress some legislation to adopt safety and stability requirements for commercial fishing vessels 79 feet and under, which may not be welcome by some people in the industry, but predominantly, it's a good idea for all concerned because the Coast Guard's mission is that everybody come home safe, and that's what the commercial fishing industry wants, too. They want the men and women to come home, and they want the cargo to come home. So we discussed that pending legislation.

We also spoke about regulations. The new NOAA chief, Lubchenco, seems inspired to try to have national catch shares imposed to try to regulate the fisheries. That's going to be a real hornet's nest, and the commercial fishing industry really needs to roll up its sleeves and protect that which it has, but also try to work with NOAA and others who are regulating the catch.

And finally, the secretary of the Fisheries Committee is Lisa Reeves. Lisa puts together and has for several years now an excellent report on cases dealing with commercial fishing vessels. And she prepared that, and we distributed it, and regrettably, she was a victim of the flu and had to cancel her plans on Monday, so Lisa was not able to attend.

That concludes my report. Thank you very much.

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MR. MARWEDEL: Thank you, Kevin, and thank you again for your efforts in landing the big fish.

(Applause)

MR. SCHMIDT: Good morning, Mr. President, ladies and gentlemen. Thank you all for being here.

I think we've had a very successful meeting this week. We've had 140 professionals in attendance, of whom about 110 are members of the Maritime Law Association, 20 additional members who are young lawyers, that is, members of the Association for less than ten years, and ten invited guests. We've also had about 70 accompanying family members in attendance. This represents just about the same attendance as we had in Sanibel, as far as the professional attendance is concerned. Unfortunately, we've had fewer accompanying family members.

Mr. President, I would like to take a little liberty now and recognize our Committee for this meeting, because one of our members has to leave momentarily, and I'd ask them all to come forward at this time.

I'm going to start with Alex Giles and his wife Danielle. Alex was responsible for organizing our golf tournament, and from all I have heard, it was an absolutely spectacular affair on a wonderful course, and I would like to thank them for their wonderful work. And Alex and Danielle actually have to leave now to catch a plane, so that's why I wanted to do this now. So you are excused, and we thank you for your service.

(Applause)

MR. SCHMIDT: Continuing to your left, my right. Larry Kahn was our treasurer and also assisted with the CLE. I'm pleased to report that we are on a sound financial bottom for this meeting, and I think everyone enjoyed and was enriched by a spectacular CLE program, so I'd like to thank at this time both Jim, who was principally responsible for the CLE, as well as Larry.

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(Applause)

MR. SCHMIDT: Next to your left is Marc Marling. Marc was a spectacular coordinator of all of our committees and events and getting the calendar to fit and getting all of you who needed those Star phones so badly, getting them all set up, and we thank you for making all that happen smoothly. Thank you.

(Applause)

MR. SCHMIDT: Next to your left is JoAnne Zawitoski, the vice chair of this Committee, who is my right-hand person and always valued to have someone else to bounce ideas off of and help make things happen. JoAnne, thank you very much.

(Applause)

MR. SCHMIDT: Next to your left, the tall guy, Bobby Glenn. Bobby Glenn was the author of the concept for our oyster roast. He also located and recommended the caterer of the oyster roast, as well as that spectacular band that we had last night, and without his guidance on local affairs, I don't think we would have had nearly as good a meeting, so Bobby, we're particularly indebted to you. Thank you.

(Applause)

MR. SCHMIDT: Next we have Marker and Alli Lovell. They were in charge of the fishing and the sailing. I understand everybody caught a fish, which is probably a first at one of these meetings, and I also understand sailing was much enjoyed by everyone and a beautiful, beautiful club, so thank you as well.

(Applause)

MR. SCHMIDT: We next have John and Jill Farmer. They are the ones who organized the wonderful sunrise over the Fun Run yesterday. Could have had the heaters. I really thought that would have been

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a little bit of an enhancement. But that was the best Fun Run I have been on. I try to refrain from spectaculars and comparatives and things like that, but I think we hit a lot of home runs, and the Fun Run was definitely one of them. Thank you.

(Applause)

MR. SCHMIDT: Next we have the MLA's own Perle Mesta, our queen of hospitality, Janet Marshall, who executed so beautifully all of our hosted events in the evenings. Janet, thank you so much. They were all really, really fun.

(Applause)

MR. SCHMIDT: Donny Radcliff, last but not least, and his wife Dare are the ones, of course, responsible for taking all those registration sheets and getting you all in here and organized and ticketed, and it's an essential role that's a very, very tedious role, and they carried it off with great grace and accuracy, and I don't envy them that job at all, but they did it great, and I thank you very much.

(Applause)

MR. SCHMIDT: I was not really prepared to give a report. I think you said in your e-mail to me you were going to tell bad stories about me, so I was just going to introduce my committee, so --

MR. MARWEDEL: I'll be nice.

MR. SCHMIDT: You can go off the record now if you want. That concludes my report.

MR. MARWEDEL: Do you have any comments about tonight?

MR. SCHMIDT: Tonight we will be outside on the Basshead Deck again. We will have a menu that will be a very informal menu of hamburgers and pizza, with an ice cream bar and things like that. It'll be

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the kind of thing that you can come to for a while and grab a bite to eat, go back and pack, if you so choose, or come and hang out if you choose to. I'll be hanging out, and we look forward to seeing you all then.

MR. MARWEDEL: I really want to thank the Committee. I've been on the Committee in the past, and they're working all the time. They give up a lot to man all these events and plan and deal with all of the surprises that come along, so I really want to thank you sincerely for all of the time and effort that you've put into it.

MR. SCHMIDT: Thank you.

(Applause)

MR. MARWEDEL: We'll have Marine Ecology with Dennis Minichello, followed by Regulation of Vessel Operations, Tony Whitman.

MR. MINICHELLO: Mr. President, officers, members, and guests, as has been the custom for several years now, my Committee and Tony Whitman's Committee on Regulation of Vessel Operations have been having joint meetings, and we continued that practice for this meeting in Hilton Head, and I'm glad to say that it worked out very successfully, as it has in the past. There's a lot of overlap between our two committees in certain areas, and so we decided some years ago that it would be best if we joined efforts, and we did that again this year.

And really, our efforts this year were divided between both our regular committee meeting, which we had Thursday morning, as well as the piracy portion of the CLE program, which we worked on together with a few others, and Tony's going to comment on that. So we were instrumental in making sure that that part of the program proved to be successful.

With regard to the joint committee meeting, we had two speakers. First of all, Captain Fred Kenney is chief of the Office of Maritime and International Law for the Coast Guard, and he briefed us on the latest

events that the Coast Guard attended and projects that they were involved in, which included the IMO/ILO International Labor Convention of 2006, where there was an approval of an issue related to the abandonment of seafarers, and that was discussed at the meeting. With regard to the creation of a single insurance certificate, unfortunately, the proposal has been rejected, and that was removed from the IMO/ILO Committee's agenda for future consideration.

Bunker certificates for tankers under charter for another flag were also discussed, and there was a discussion of the upcoming Global Warming Conference in Copenhagen and the concern by the IMO that they were going to lose their mandate to regulate emissions from vessels, and they wanted to make sure that in the upcoming meeting that they retained that jurisdiction

Captain Kenney also commented on the Coast Guard's recent comment period for rule making on ballast water. That recently ended, and basically, that rule is going to start off with the standards set by the IMO Convention, with the intention that going forward, that the standard is going to go to a much higher level. But initially, the comment period for the rule-making process has ended.

He commented on the Buzzards Bay litigation in Massachusetts, where Coast Guard preemption was upheld.

With regard to piracy, always a hot topic, he emphasized the Coast Guard's efforts to help increase the capacity of other countries to deal with piracy issues. There's a recognition that other countries where piracy is a serious problem do not have either the marine capabilities and/or the legal structure in place to deal with piracy issues, and the Coast Guard is working with those countries to try and get that capacity in place to help deal with piracy problems.

Our next speaker was Larry Kiern, who is always an able and very generous contributor to our meetings. Larry's focus was primarily what was going on in Washington, and he commented on very many things and also gave us a copy of his firm's briefing on maritime and ad

miralty practice, which focused on the various legislative developments that have taken place.

Larry commented on several things. First of all, with regard to the EPA regulations regarding vessel emissions, there was an exception that was put into place for Great Lakes carriers, which would affect about 13 ships and provide them with a one-year reprieve with regard to some funding issues. He commented on the efforts that are being made with respect to cruise ship lines and safety of passengers.

And in addition to that, in his briefing, there were several other topics that were discussed involving LNG vessel terminal security, and all of these items were contained in the U.S. House of Representatives' authorization bill, which was passed on October 23rd, 2009. This was a bill with regard to legislation for the Coast Guard. It contained 300 pages of diverse maritime legislative provisions, and this, I guess, will now go to the Senate for consideration. And it is hoped that while this is very similar to what was passed by the House in 2006, but not passed by the Senate, that this time it will get through the Senate.

This particular legislation, as I started to say, involved LNG vessel terminal security, some issues with regard to ballast water treatment, but this bill omitted any mention of ballast water regulation because of the EPA's new vessel regulation general permits that have been put into place.

This particular legislation did not deal with air emissions. That was in the previous bill, but it was dropped because of stand-alone legislation which was enacted in 2008.

This bill does retain the previously proposed provisions regarding double hull equivalent, added protection for vessel bunker tanks. There is an incorporation of some language with regard to legislation aimed to protect Americans from crimes on cruise ships that will enhance safety for cruise ship passengers.

And finally, with regard to the National Pollution Fund claims,

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the bill would cut the limitation period for claims to the National Pollution Fund Center in half, from six years to three years.

So those were the highlights of Larry's presentation to us.

And Mr. President, that concludes my report.

MR. MARWEDEL: Thank you. Tony Whitman.

MR. WHITMAN: Mr. President, members, and guests, Dennis has done an outstanding job of summarizing the substance of our joint committee meeting on Thursday morning. Dennis did that in approximately the length of time that we had for our joint committee meeting.

We got started on time. Shortly thereafter, we discovered that we were going to need to vacate the premises for the dogs to come in and do their security sweep, so we had a truncated, at best, time period which both Fred Kenney and Larry Kiern filled to the gills, so to speak.

I won't go into the substance any further, but I did want to acknowledge, in particular, the assistance of a number of people in putting together what I thought was a -- and I will use the word "spectacular," Charlie, my apologies for that -- a spectacular CLE program on piracy. Piracy is no longer the lead story on the CBS news every night and not necessarily on the front page of every newspaper, but the statistics are alarming, and piracy, in terms of numbers of incidents and in terms of severity, is a very serious problem. It hasn't gone away, it's not going to go away, and so the program that we had, I thought, was wonderful.

Allen Black was the moderator and really responsible for pulling all of that together. Dennis and Jonathan Spencer, in his role as committee chair, and Alan Van Praag, in his role as committee chair, all contributed immensely to finding the speakers and to putting that program together at the last minute. Liz Burrell, thank you very much, for pinch hitting. And the other members, I hope you all were here, and I hope you went away with a better understanding of that problem and the things that are going on in the world of piracy, so to speak.

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One final comment, and I'll be done, and that is a plug for next MLA week, Tuesday of next MLA week, spring MLA. We will be going forward with our Tuesday in DC joint meeting of the Committee on Vessel Regulations and the Committee on Marine Ecology. It's a great opportunity for people who are coming from out of town or from wherever to spend some time in Washington face to face with people who are involved with the Coast Guard.

For instance, last year, Bud Darr, whom Fred Kenney has now appointed to be his deputy in the Office of International Law, came and talked to our group. I hope that Bud will be there again, and others who are really the people in the Coast Guard who are hands-on accomplishing things in the world of vessel regulation and a lot of other areas will be there. It's a great opportunity. I hope you will join us.

Mr. President, that concludes my report.

MR. MARWEDEL: Thank you. Marine Financing, Frank Nolan, followed by Marine Insurance, Jonathan Spencer.

MR. NOLAN: Mr. President, members, officers, the Marine Finance Committee met yesterday afternoon from 3:30 to 5:00 with about ten members present and Captain Kenney. We also had about 15 participating by telephone in the meeting.

The first item of business was the sad one of reporting on the death of Emery Harper, who was our founding chair. Standing for the minute and observing the passage of our MLA members, I thought it would be only fair to point out the importance that Emery Harper had for this Committee and for the Association.

I can recall my involvement with Emery in matters of ship mortgaging going back into the late 70s, when I first came to know him, and the time I spent with the CMI conference in Lisbon in 1985 as part of the U.S. delegation discussing what became the 1993 Convention on Liens and Mortgages and listening to the kinds of conversations that went on between Emery Harper and Nick Healy and others, all of these former

and past grandees of the MLA, and what an urbane and sophisticated, and sometimes very difficult individual Emery Harper was, having been his partner for a time, having worked with him on the drafting of what became 46 U.S. Code 12106(e), now 12119, and a number of other initiatives.

I personally shall sorely miss him, and I'm sure that other people here who had an involvement with him will miss him, always with that footnote, because he could be a difficult person. But he was a brilliant man, and he had a big heart, and that was our first order of business.

Then we went on to our agenda, and I would just like to briefly summarize some of the points without getting into too much detail. We discussed the status of our various legislative initiatives. The vessel leasing amendment, I've been back and forth to visit the House and Senate committees over the past couple of years. We were basically pushed aside as the House considered the Coast Guard authorization bill. They wanted to put as few bells and whistles on the legislation to get it through the House as they possibly could and make it acceptable to the Senate. We'd basically been told that the congressional committee would like us to hold off pressing them until the next session or even the next Congress, but we're still considering our options and taking this up on the Senate side to see if we can get our decorations hung on the tree as it goes through committee. It has no real opponents. It's just a hard thing to get the twenty-something gatekeepers in the House of Representatives to motivate their members to act on, but we'll get there.

The second initiative, which has gone back into the shop for amendments and repairs, is the mortgaging of vessels during construction initiative. That is probably going to come up for some further Marine Finance Committee discussion and activity between now and the May meeting.

It was already reported on the NCCUSL efforts to come up with a uniform statute on boat titling and registration.

Then we moved on to recent developments and talked about

rulings in the Eastern District of Pennsylvania and in the Fourth Circuit on the issues of U.S.-built and U.S.-rebuilt determinations in vessel construction, basically concerned with the continued eligibility to operate in the Jones Act trades. The good news from those decisions is that the courts basically upheld the Coast Guard's interpretations of their own regulations and the validity of those regulations, so there is some kind of consistency there.

We also reported on the recent ruling revocation proceeding that Customs and Border Protection initiated in late July and then only discontinued in September in an effort to revoke 25 years of prior rulings in the definition of vessel's equipment in the offshore trades on the outer Continental Shelf. And as much on the wings as that may sound to some of you, it really involves hundreds of millions, maybe billions of dollars of investment, and it's an issue that Brad Jackson and I have discussed as a possible short seminar discussion sometime in the coming year.

We discussed experience in mortgage foreclosures in recent times and the perception that the federal bench is somehow less familiar with maritime concepts and preferred mortgages and vessel arrest issues than they have been in the past, and that the Marshals Service has gone on vacation.

So we discussed it further in the context of our desire to put on a CLE program in the spring, and what we voted on was to put together a program that takes the Practice and Procedure Committee's drafts of vessel arrest documentation and builds models to discuss how the decision is made to foreclose on a mortgage, what the steps are, and what can be done, and we think this might be an excellent program, particularly for young lawyers in the Association, so we hope to put together perhaps a two- or three-hour program for the May meeting.

We also determined to have at least bimonthly meetings by telephone to supplement these twice-a-year meetings and to put shorter agendas and have more complete discussions and perhaps consider some webinars in that time, which, of course, is a major challenge to somebody who is getting old enough to be considered for the list of deceased

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members that was just read by the Membership Secretary.

Fred Kenney responded to a question about why is it that the Maritime Administration is forwarding all requests for foreign transfers to the EPA, and the answer to that is that apparently the Coast Guard is considering whether foreign transfers for reflagging are, in some cases, subterfuges for foreign scrapping, which brings into question the various criminal statutes. So that was actually a very productive item in a very practical way. Of course, we don't like to be too practical, with the kind of profession that we're in.

And that, Mr. President, concludes my report.

MR. MARWEDEL: Thank you. Marine Insurance.

MR. SPENCER: Good morning, Mr. President, ladies and gentlemen.

The Committee on Marine Insurance and General Average met yesterday afternoon, with members attending in person and by telephone.

We had a guest speaker, and in keeping with custom, we invited somebody local, Edward T. Brennan, Jr., of Savannah, who is the president of an insurance brokerage company called Brennan & Company, LLC. Some of you will recognize the name. His father is a lawyer of long-standing practice in Savannah, still attending the office at the age of 80, we're told.

Ed spoke about the levels of sophistication that a professional insurance broker can bring to a marine operator's insurance program. He concentrated particularly on strategies that are available to them to ameliorate the premiums paid for employers' liability insurance, both crews and shore-based employees.

We then went on to hear from a new subcommittee, the Newsletter Subcommittee, and Gene George, who has stood aside from the Committee vice chair, is now chairing the Newsletter Subcommittee. He presented our newsletter, which is available on the table just outside the

door, and I commend it to you.

We have a lot of case reports from various domestic and international jurisdictions. We also have a lead article that discusses the insurance gap that a vessel operator is exposed to when incurring expenditure by way of unsuccessful salvage efforts under a typical hull and machinery and P&I package. The proportion of those costs that is attributable to trying to salvage the cargo is typically not recoverable, something that doesn't come up very often in practice, but when it does, it's a huge problem.

Numerous members of the committee contribute to this newsletter, but I want to particularly acknowledge also the contribution of Gene's legal assistant, Brenda Marmol, in his office in Cleveland, who unstintingly patiently accommodates various rewrites and last-minute additions to our newsletter and always comes up with a super product.

We then heard from Joe Grasso, who's the vice chair of our Committee, and he spoke about three different things. First, we were approached shortly after our last General Meeting by the American Institute of Marine Underwriters to participate with them in a comparison of the new English cargo clauses with the American cargo clauses, and we assembled very quickly a team of volunteers from the AIMU Technical Committee and from our Marine Insurance Committee, and they have done a very detailed comparison of the two sets of clauses. This will be submitted to the AIMU board when it meets in New York on the 19th of this month. We will then circulate it widely.

We put the Internet to very productive use, and I want to both acknowledge the members of the Committee who contributed to this effort and invite you to recognize the geographical diversity of the contributors. We had Joe running the effort from Philadelphia. In New York, we had John Ryan and Steve Rible. In New Jersey, we had Jim Carbin. In Miami, we had Michelle Otero Valdes. In Houston, we had Michael Orlando. In Los Angeles, we had Andy Kehagiaras and Dennis Seider. I thought that this was a sort of commendable use of the Internet to do something constructive, other than the use to which some of us sometimes put it.

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Joe then went on to report on his attendance at the International Marine Claims Conference in Dublin. This is essentially a blue water hull and machinery group of people, but they have produced a claims handling protocol, which has been brought back to the various national markets to, we hope, be adopted and to streamline the handling of hull and machinery claims.

And then Joe reported briefly on two pieces of legislation that we're watching, the Federal Insurance Office Act and the Reinsurance Regulatory Modernization Act, which address at the federal level different aspects of different lines of insurance. We don't expect either to go anywhere, but we will continue to watch them.

John Woods, who heads our Hull and P&I Subcommittee, then reported on the revision of the American Institute Hull Clauses. The current version was adopted June 2, 1977, and we are now expecting a September 29, 2009, version. Again, this is subject to approval by AIMU's board of directors in New York on the 19th of this month.

As John described it, we don't expect any major changes in the coverage that's being offered. There is apparently now a time limitation on how soon claims must be reported and the time limitation on how soon claims must be presented, but it doesn't seem likely to be very arduous in practice, because it's a ten-year time limit.

The war exclusions will not include terrorism. That hasn't been formally written into the policy previously. It's been the subject of an endorsement for many years. The war risks policy will also now include a blocking and trapping provision, which, again, has been the subject of a separate endorsement heretofore, but really no major change.

And that's about it for the Marine Insurance Committee. We will be meeting next spring in New York when we hope our guest speaker will be John Witte, Jr., of Donjon Marine, and we hope to see you at this meeting.

Thank you, Mr. President.

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MR. MARWEDEL: Thank you, Jonathan. Next will be Marine Torts, Jack Scalia, and followed by Offshore Industries, Brad Jackson.

MR. SCALIA: Mr. President, members, and guests, the Marine Torts and Casualties Committee held its meeting on Friday, November 6th, at 1:00 p.m. Seventeen members and guests were in attendance.

We reported on the progress made on our study of limitation of liability, in conjunction with the Young Lawyers. We discussed the possibility of forming a subcommittee of plaintiffs' attorneys, and we'll be taking further steps to implement that suggestion.

We also briefly discussed the new requirements under the HIPAA, which is the Health Insurance Portability and Accountability Act, and HITECH, which stands for Health Information Technology for Economic and Clinical Health Act, urging that all concerned with the handling of medical records review these updates to ensure in compliance with these acts.

We then heard from our speaker, Robert Klawetter, of Houston, who discussed the ramifications of *Atlantic Sounding*. Mr. Klawetter was the attorney of record in the Fifth Circuit *Guevara* case and the *Walters* case in the Texas Supreme Court, which effectively eliminated punitive damages in maintenance and cure cases. He took exception with the Supreme Court's finding of a grand history of punitive damages in maintenance and cure cases.

He went on to question whether *Atlantic Sounding* will further erode the uniformity principle established in *Miles*, open the door for courts to award both attorneys fees and punitive damages, create insurance problems for employers, as many underwriters will not cover punitive damages, and severely limit employers' abilities to challenge the need for extensive or unnecessary medical treatments.

A lively discussion followed in which a member of the plaintiff's bar took exception to some of the statements made by Mr. Klawetter. We missed the presence of our vice chair, Paul Edelman, who was recently

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hospitalized, and Lisa Reeves, who is down with the flu. Our limitation newsletter will be posted on the committee Web site. Paul's usual newsletter has understandably been delayed.

That concludes my report.

MR. MARWEDEL: Thank you, Jack. Brad?

MR. JACKSON: Mr. President, officers, members, and guests, I asked for a moment to discuss the Offshore Industries Committee because there are some important developments that have been taking place.

We heard reference earlier to the Customs notice. In July of this year, Customs gave notice that they were going to modify and revoke at least 20 rulings, specifically concerning what constitutes merchandise as opposed to vessel equipment subject to Jones Act restrictions, the cabotage laws.

This comment period drew numerous comments, and as a result, effective October 1st, Customs withdrew the proposed modification and revocation of ruling letters, but promised in the withdrawal that a new proposal would be forthcoming. We haven't seen it yet, but this would be a very important development to those operating offshore in the Gulf of Mexico currently in development of energy resources, and so we believe that this will be an important topic to develop a program on to present in New York next May.

On Monday of this week, I also received notice that the Internal Revenue Service is now going to investigate foreign vessel owners in terms of tax reporting on the profits that they make working offshore.

Other than those developments, I wanted to again emphasize that although some may think of the Offshore Industries Committee as those guys down in the Gulf of Mexico area, it really is something that should be interesting to lawyers on the West Coast and the East Coast as well, because despite our current national policy, I think the day will come

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when we'll see operations offshore of both coasts in development of natural resources, and if not in the oil and gas area, certainly in the offshore windmill farm area. And forward-looking lawyers who aren't familiar with how leasing of blocks takes place, how you deal with the Minerals Management Service and their interaction with the Coast Guard, and what the effect of the Outer Continental Shelf Lands Act really is, those sort of forward-looking lawyers would want to become familiar with those things, so when a client calls and says, well, what about this, they'll know what they're talking about, and one avenue for that is participation in the Offshore Industries Committee.

We also wanted to point out that plans are being made for the MLA to meet in Houston next November, and we're looking into whether there are some things we can do in connection with offshore industries to facilitate that meeting.

Mr. President, that concludes my report.

MR. MARWEDEL: Thank you, Brad.

As a note, the meeting in November will be the second week of November in Houston, and we'll have information on the website fairly soon.

Stevedores, Marine Terminals, and Shoreside Facilities, Nash Bilisoly.

MR. BILISOLY: Mr. President, thank you.

I feel like a member of the House of Representatives giving a midnight speaking billet during a debate. This is when the camera can't pan the room.

I'm speaking on behalf of Tony Filiato, who is our chair. This is a somewhat schizophrenic committee. We can talk about the Rotterdam Rules and Social Security set-asides in the exact same meeting; half the room is asleep, and the other half wakes up.

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The longshore lawyers reviewed the cases and things going on generally in that area, primarily the fee-shifting litigation, which takes place all the time, and the DC Circuit's recent injunction of a rather silly rule involving the Benefits Review Board declining to name claimants in their opinions.

JoAnne Zawitoski also reported -- this is the other side -- on new rules involving the intermodal equipment inspections which go into effect or become mandatory on December 17th and urged those of us representing shipping lines and marine terminals to be aware of that.

David Loh reported. His subcommittee is Freight Forwarders and Custom House Brokers. He reported on events in that forum and pointed out a recent case involving the interplay between forum selection clauses and statutes of limitations.

We had a general discussion of various things that were going to take place during the CLE, the very good CLE that we had here, the Rule B attachment brouhaha that we've all heard about, the punitive damages discussion, the Rotterdam Rules, and also, as I said, the Social Security set-aside situation. Primarily, the longshore lawyers in the room, and I'm serious about this, our recommendation to the Jones Act lawyers was to get over that and stop whining. The Social Security set-asides are here and are now part of every significant settlement and judgment.

And with that, that concludes the report. Thank you.

MR. MARWEDEL: Thank you.

There's no formal report from the Website and Technology Committee, but I did want to point out that as of today, on the home page, there's a new button on the left-hand side called Breaking News, and that's where we will put in -- we're still working on the list of the types of things that will be posted, but certainly and sadly, the passing of a member and details. We're often asked if we can provide details. What we're going to do is put that in Breaking News. Anything that we think is of interest to the membership will go on there, so it will eventually be

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a much smaller version of Dennis Bryant's daily news thing. We'll try to focus it primarily on MLA issues, but that's a new feature. We are also looking at some other enhancements on the website.

Phil Berns, would you like to come up and give us a few words on the project that you're engaged in?

MR. BERNS: Mr. President, would you make up your mind? Do you want me to speak, or do you want a few words?

(Laughter)

MR. BERNS: Basically, right now I'm only working on one project, which is on the CMI relationship to the MLA, the needs, et cetera, but at the same time, we have all these archive projects, and I've become the archivist, purely out of age, and trying to get all of the stuff that we have -- I don't know if many of you have ever taken the time to look at our links on the history and the various meetings.

And my problem is while I'm doing the CMI, as I read things, my curiosity gets the better of me, and I'm going off on other unrelated subjects, the Death On the High Seas Act, Jones Act, Suits in Admiralty Act. Anyone who does anything that's a traditional admiralty cause of action that doesn't look at our links is really depriving himself, herself, the clients of a load of materials that really should be presented.

Now, what we're trying to do -- and I'll keep it short so that you won't recognize me -- what we're trying to coordinate, because apparently we have a load of us doing different things, possible duplicative, and I'll be getting all my reports together for Warren, and then we'll set out who's doing what.

That constitutes my report.

MR. MARWEDEL: Thank you, Phil.

Have I missed any committee reports? Any old business? Any

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new business?

Mr. Hayden, Past President Ray Hayden.

MR. HAYDEN: Thank you, Mr. President.

It's nice to have the last word, even after Phil Berns. I haven't had that since I was President of this Association except at home, where I live alone.

I do want to commend the Association on another excellent out-of-town meeting, and I think I'm qualified to comment on that, because this is my 18th consecutive out-of-town meeting, and I don't think anybody matches that. So congratulations. It's been a great meeting.

With that said, I move wse adjourn.

MR. MARWEDEL: Second?

MEMBERS: Second.

MR. MARWEDEL: We are adjourned.

(Meeting adjourned at 11:00 a.m.)

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

**Held in the Saint-Louis Room
Fairmont Le Chateau Frontenac
1 Rue des Carrieres
Quebec, Quebec
Canada**

**on
Saturday, August 22, 2009
8:00 a.m.**

The August 22, 2009 meeting was called to order by President Warren J. Marwedel at 8:00 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:

Donald J. Kennedy	C. Kent Roberts
Kimbley A. Kearney	Robert B. Hopkins
Barbara L. Holland	Bradley A. Jackson
James F. Moseley, Jr.	Arthur J. Volkle, Jr.

In addition, the following persons were present at the invitation of the President:

Kenneth H. Volk	Thomas S. Rue
Raymond P. Hayden	Geoffrey J. Ginos

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the April 30, 2009 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the April 30, 2009 meeting of the Board of Directors will be included in the Fall 2009 PROCEEDINGS.

TREASURER'S REPORT

Mr. Clyne reported that the Association's financial position remains strong, with approximately \$470,000 in cash and investments. Dues collection, on the other hand is trending down, with 76% of the dues for 2009 having been collected, and another \$30,000 expected to be collected.

The auditors have suggested that the Treasurer become more involved with financial aspects of the meetings of the Association that are held outside of New York, which have, heretofore been handled principally by the Arrangements Committee for the meeting in question. Mr. Clyne indicated that he was taking steps to accomplish this. The other recommendations made by the auditors, and approved at the April 30, 2009 meeting, are being implemented.

The May 2009 dinner made a small profit sufficient to cover the other expenses of this meeting. While the Marriott Marquis has expressed interest in hosting the May dinner in the future, Pier 60 has offered the same price as last year, and the consensus of the Board was to remain at Pier 60 for the time being.

Mr. Clyne reported that efforts are underway to prepare a budget for the Association. He also reported that large savings were achieved by sending the materials for the spring meeting electronically.

Mr. Clyne also pointed out that the Board needed to approve the new signatories for the accounts for the convention accounts. Accordingly, upon motion made and duly seconded, the Board unanimously approved the following signatories for the convention money market

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account (account # 641469853) and convention checking account (account # 641730543) with HSBC: (1). Robert G. Clyne, (2) Charles E. Schmidt, (3) Patrick Bonner, and (4). Joanne Zawitowski.

On motion duly made and seconded, the Treasurer's report was approved.

MEMBERSHIP SECRETARY'S REPORT

Mr. Farrell delivered the Membership Secretary's report. The following 16 applications for Associate membership have been received:

Dena S. Aghabeg, Long Beach, California
Kendra S. Canape, Long Beach, California
Kerri M. D'Ambrosio, Oyster Bay, New York
Clayton L. Diamond, Washington, DC
Gary Emery English, Charleston, SC
Anacarolina Estaba, Houston, Texas
Zachary B. Herschensohn, Bellingham, Washington
Jeremy M. Joseph, Long Beach, California
Demetra Karafotias, New York, New York
Jennifer L. Meeker, Long Beach, California
Jason McDonald Payne, Oxford, Mississippi
Jennifer M. Porter, Long Beach, California
Briton P. Sparkman, Oyster Bay, New York
Tara Beth Voss, Long Beach, California
Justin Waytowich, New York, New York
William H. Whitaker, Houston, Texas

The following eight Law Student applications have also been received:

Bjorn G. Anderson, Fernandina Beach, Florida
Chessie F. Brown, Neptune Beach, Florida
Gillian V. Gurley, New Orleans, Louisiana
Ashley R. Hebert, Jacksonville, Florida
David Lincoln, Chestnut Hill, Massachusetts

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Casimir Christian Lukjan, Jacksonville, Florida
Robert James Morris, III, Crystal Beach, Florida
Bradley Scott Robinson, Jacksonville, Florida

Mr. Farrell also noted with regret the deaths of the following members:

Nicholas J. Healy, Ireland
John E. Hurley, San Francisco, California
James K. Carroll, New Orleans, Louisiana

Mr. Farrell also reported that the Young Lawyers Committee has found email addresses for 171 members.

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

ASSOCIATION MANAGEMENT

Officer/Board Committee and Standing Committee Liaison Assignments

President Marwedel announced the Board Committee and Standing Committee liaison assignments. A listing of these assignments is attached.

Committee leadership appointments

President Marwedel announced that he has appointed Michael K. Bell to serve as chairman of the Arrangements Committee for the Fall 2010 meeting to be held in Houston, Texas. He also announced that the State Certification & Specialization Committee has been reinstated, and that Forrest Booth will chair this committee. He also announced the formation of a Government Counsel Committee, and that R. Michael Underhill has been appointed as the chairman of this committee.

Board Subcommittee Reports

Committees

Mr. Parrish reported that he will send an email to committee chairs, 60 days prior to the Hilton Head meeting, reminding them of their duty to post committee agendas and to have CLE programs on a regular basis.

Finance

Mr. Clyne reported that the exploration of ways to raise additional revenue continues. President Marwedel requested the subcommittee to have a proposal regarding advertising to discuss at the next meeting.

The Board discussed the requests that the Association has been receiving from various groups to provide email “blasts” to the membership. The Association has been willing to provide mailing labels to groups who are hosting seminars and publishers, but has never been willing to provide a list of members. There was a general consensus of the Board that providing email blasts was essentially the same thing as providing mailing labels, but that some means should be devised whereby the emails did not indicate that the Association was the sender, because this could dilute attention from emails sent to the membership relating to Association business. Mr. Watson was asked to consult with PC Solutions to see how this could be accomplished.

President Marwedel advised the Board that the Association had received the invoice from the Comité Maritime International in the amount of approximately \$28,000. He pointed out that the Association’s CMI subscription is one of the largest single expenses of the MLA, and that while the CMI did have some financial concerns some years ago, it has built a substantial surplus that has been growing significantly every year. A discussion was held regarding the Association’s relationship with the CMI, and while some Board members questioned the continued relevance of the Association’s participation, others pointed out that the

MLA was formed to exist as a member of the CMI, and that this role is recognized in the Articles of Incorporation. On motion duly made and seconded, the Board authorized President Marwedel to negotiate on the best terms possible a reduction of the subscription, and to encourage the CMI to make the necessary changes to increase its relevance to the Association.

It has been seven or eight years since the last dues increase, and the Board discussed the need to increase dues. On motion duly made and seconded, the Board approved an increase of dues of \$10 a year for all dues-paying classes of members except Law Student Members, and authorized an increase of Law Student Members' dues to \$50 per year.

President Marwedel then pointed out that publishing the directory costs approximately \$40,000. Various options were discussed to reduce this cost, which ranged from ceasing to publish a hard copy directory entirely, reducing the size of the directory, or sending the directory by email. There was a consensus that publication of the directory should continue for the time-being, but that these options should be explored.

Membership

Mr. Rue reported on the results of his inquiries to the past presidents of the Association regarding the creation of a new class of members that would include foreign lawyers. He reported that majority of the former presidents were not opposed in principle, but did express certain concerns. The past presidents all felt that foreign members should not have voting rights, and should be required to have some strong connection with the work of the Association. Additional concerns were expressed about the difficulties in screening potential members. A discussion by the Board expressed similar concerns, as well as the concern that having foreign members would potentially compromise the Association's advisory role to the United States government. The general consensus of the Board was that the By-Laws should not be amended at this time in this regard.

The Board next discussed the status of Academic membership. The Board approved in principle the amendment of the By-Laws to give

Academic members the right to vote and to require them to pay dues. The Board discussed simply eliminating the category of Academic members, since most Academic are eligible for Proctor or Associate membership. However, it was pointed out that there are some academic members who are not admitted to the bar and are hence ineligible for other classes of membership, and the consensus was to retain the category of Academic membership, thus giving academicians an option to choose either of these classes of membership. A proposed By-Law amendment will be circulated for Board approval.

President Marwedel expressed his appreciation to the New York firms for their continuing support of the spring dinner, and indicated that he had written a letter to them expressing the Association's thanks.

A discussion was also held regarding ways to attract new members. It was suggested that lawyers with cases in American Maritime Cases who are not members could be asked to join, and Mr. Hopkins noted that it would be a simple matter for the AMC editors, upon receiving a case which is being submitted for publication, to determine whether all counsel of record are members of the Association, and, if not, suggest that they become members.

Website

President Marwedel asked the directors to look at the website and suggest changes. He noted that the new page that was intended to serve as an information source for breaking news regarding members and their firms has encountered difficulties because of spam. This issue is being reviewed.

Ad-Hoc Reports

Rule B Attachment

Mr. Bonner reported that the judges of the Southern District of New York are not taking a uniform approach to Rule B attachments. Additionally, the New York Court of Appeals recently handed down a ruling

that may create negative consequences for registering to do business in New York, which had been viewed as a means of avoiding Rule B.

Special Committee Reports

President's Advisory Committee

Immediate Past President Burrell delivered the report of the President's Advisory Committee regarding the Association's position regarding admiralty and maritime law as a specialty. Ms. Burrell reviewed the documents setting forth the longstanding opposition of the Association to certification on the basis that the breadth of maritime practice makes certification misleading, and that all certification programs have given emphasis to narrow areas of maritime practice. She reviewed the various efforts that have been made over the years to approve the certification of admiralty and maritime law as a specialty, and the consistent position that the Association has taken with regard to these efforts. Because the history of the Association's position in this regard is located in a variety of places over a considerable period of time, the Board felt that it would be helpful to restate the Association's position, and on motion duly made and seconded, the Board unanimously passed the following resolution:

BE IT RESOLVED that

WHEREAS Admiralty and Maritime Law is a system of law, embracing many specialties, of an inherently national and international character, and

WHEREAS it is impossible to devise an examination that would recognize the breadth of maritime practice and yet permit an accurate representation to the public of the scope of an individual practitioner's expertise, and

WHEREAS the reasons for certifying specialties in nonbusiness areas of law are not generally present in the field of shipping law,

NOW, THEREFORE, the Board of Directors of The Maritime Law

Association of the United States formally

ADOPTS a policy opposing state certification of admiralty and maritime law as a specialty,

CONFIRMS all actions taken by MLA Presidents in opposition to California's certification proposals as acts of the Association endorsed by the Board, and

EXPRESSES the Association's continuing opposition to state certification of admiralty and maritime law as unnecessary, misguided, counter-productive, and improper.

MLA Meetings and Events

President Marwedel reported that the site selection committee for the 2011 meeting is looking at Hawaii and Bermuda for that meeting. He also reported that the registration materials for the Hilton Head meeting are out, and that there will be a follow up email urging the members to attend. There then followed a discussion of the pricing for the meeting.

Recent Association Activities

Rotterdam Rules ABA Endorsement

President Marwedel reported that he is working with the American Bar Association to obtain its endorsement of the Rotterdam Rules. There are three separate Sections that have admiralty and maritime law committees, and all are involved in this process.

Amicus Briefs

President Marwedel reported that in the past 14 months, there have been 14 requests for amicus briefs, and we have rejected all of them. He also pointed out that nothing precludes the Association taking a position on the merits, although it is rarely done. Uniformity of maritime law is the goal, and taking a position on the merits may from time to time be necessary.

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Coastwise Coalition Meeting

Mr. Farrell reported that he attended a meeting in Washington, DC on July 16, 2009 of the Coastwise Coalition and then met with representatives of members of Congress to discuss amendment of the Harbor Maintenance Tax as it applies to short sea transits. There does not appear to be any substantive opposition to the proposal, but it has gotten bogged down in the legislative process.

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

Respectfully submitted,

Harold K. Watson,
Secretary

**OFFICER/BOARD COMMITTEE AND LIAISON
ASSIGNMENTS**

<u>OFFICERS</u>	<u>SUBCOMMITTEE</u>	<u>COMMITTEE LIAISON</u>
Warren J. Marwedel		President's Advisory; Special Board Liaison Uniformity of U.S. Maritime Law; In-House Counsel Committee; American Bar Association Relations, Site Selection; BIMCO; Government Liaison
Patrick J. Bonner	Website - Chair	International Organizations, Conventions and Standards; Special Board Liaison Committee on Website and Technology
Robert B. Parrish	Committees - Chair	Marine Torts and Causalities; Special Board Liaison Committee on Continuing Legal Education; Young Lawyers
Harold K. Watson	Website	Practice and Procedure; MLA Report
Robert G. Clyne	Finance - Chair	Carriage of Goods; Meetings and Events
David J. Farrell, Jr.	Membership - Chair	Proctor Admissions; Special Committee on Non-lawyer Nominations
Lizabeth L. Burrell		Nominating Committee

<u>BOARDS OF DIRECTORS</u>	<u>TERM</u>	<u>SUBCOMMITTEE</u>	<u>BOARD LIAISON</u>
Forrest Booth	2010	Committees	Salvage; Special Committee on State Certification and Specialization
Donald J. Kennedy	2010	Finance	Marine Ecology and Maritime Criminal Law
Janet W. Marshall	2010	Finance	Recreational Boating
C. Kent Roberts	2010	Membership	Marine Financing; Ad Hoc on America's Marine Highways
Frank P. Degiulio	2011	Finance	Cruise Lines & Passenger Ships
Kimbley A. Kearney	2011	Membership	Marine Insurance and General Average
Robert B. Hopkins	2011	Committee	Regulation of Vessel Operations, Safety, Security and Navigation
Barbara L. Holland	2011	Membership	Stevedoring, Marine Terminals, and Shoreside Services
James F. Mosley, Jr.	2012	Finance	Inland Waters and Towing
Joshua S. Force	2012	Committees	Arbitration and ADR
Bradley A. Jackson	2012	Committees	Fisheries
Arthur J. Volkle, Jr.	2012	Membership	Offshore Industries

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

**Held at the
Hilton Head Marriott Resort & Spa on
Wednesday, November 4, 2009
8:00 a.m.**

The November 4, 2009 meeting was called to order by President Warren J. Marwedel at 8:00 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:

Donald J. Kennedy	Robert B. Hopkins
Kimbley A. Kearney	Arthur J. Volkle, Jr.
Barbara L. Holland	Frank P. DeGulio
James F. Moseley, Jr.	Joshua S. Force

In addition, Philip A. Berns, Charles E. Schmidt and Michael K. Bell were present at the invitation of the President.

SECRETARY'S REPORT

Upon motion duly made and seconded, the minutes of the August 22, 2009 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the April 30, 2009 meeting of the Board of Directors will be included in the Fall 2009 PROCEEDINGS.

Mr. Watson reported that the MLA Report has not progressed towards publication. Accordingly, the Proceedings for the May 2009 meeting will include committee newsletters to provide some of the material that had formerly been included in the MLA Report.

A question was raised as to whether providing printed copies of the Proceedings was necessary, or whether it might be more cost effective to simply provide the Proceedings on line. It was pointed out, however, that when the membership was surveyed by the committee chaired by Immediate Past President Burrell, the Association's publications were deemed an important benefit of membership. It was also pointed out that the volume of the Proceedings makes them cumbersome to read in electronic form for many members.

Mr. Watson reported that he has received a bid to have a podium fall with the Association logo made for a cost of approximately \$400. Once we have obtained the dimensions of the podium in the Great Hall of the Association of the Bar of the City of New York Building, this item will be purchased.

TREASURER'S REPORT

Mr. Clyne reported that the Association has more than \$400,000 in cash and investments. However, dues collection is down somewhat, with 84% of dues having been collected. The Board members have been asked to contact delinquent members that they know and remind them to pay their dues.

Mr. Clyne reported that a contract has been given to Pier 60 for the May dinner, with no change in price.

Mr. Clyne also reported that the auditors' recommendations will be in place by the May meeting, and that a budget will be presented for approval at that time.

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

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MEMBERSHIP SECRETARY'S REPORT

Mr. Farrell delivered the Membership Secretary's report.

The Committee on Proctor Admissions has recommended the four following Associate members for elevation to Proctor status:

Carolyn Elizabeth Bundy, New York
Stephen Galati, Philadelphia
Steven M. Stancliff, Norfolk
Norman M. Stockman, Mobile

On motion duly made, the recommendation of the Committee on Proctor Admissions was approved.

The following applications for Associate membership have been received:

Craig Brewer, Metairie, Louisiana
Lafcadio H. Darling, Seattle
Brian M. Doyle, New York
Tammy Fastman, New York
John F. Karpousis, New York
Jason Kenney, Metairie, Louisiana
Jason L. Kesler, Wilmington, North Carolina
Jessica L. Martyn, Norfolk
Frank Michael Modich, Minneapolis
Scott S. Sheffler, Washington, D.C. 20374-5066
Jeff R. Vogel, Annapolis

In addition, the following application for reinstatement to Associate member status has been received:

Peter G. Drakos, Stamford, Connecticut

Also, the following 54 applications for Law Student membership have been received:

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Alessandro Apolito, Florida Coastal School of Law
Cassie du Bay, Tulane Law School
Kallin Brooks, Tulane Law School
Lauren Burk, Tulane Law School
Aaron J. Bryan, Florida Coastal School of Law
Donald G. Cassels,
Minseo Choi, Tulane Law School
Gunner laCour, Tulane Law School
Robert Colby, Rutgers School of Law
Chris Dopson, Tulane Law School
Patrick Gibbons, Tulane Law School
Page Griffin, Tulane Law School
Megan Halkitis, Florida Coastal School of Law
Noe Hamra, Tulane Law School
Carrol Hand, Tulane Law School
Meg Helstowski, Florida Coastal School of Law
Kenneth J. Janesk II, Florida Coastal School of Law
Ryan Johnson, Florida Coastal School of Law
Michael Kelley, Florida Coastal School of Law
Theodore Langan, Tulane Law School
Byunghoon Lee, Tulane Law School
Eric Lee, Tulane Law School
Brian W. Leeds, Florida Coastal School of Law
Bess Lochocki, Charleston School of Law
Catherine J. Mansfield, Florida Coastal School of Law
Jonathan McConnell, University of Alabama School of Law,
Cameron J. Miller, University of Alabama School of Law
Euyelit Adriana Moreno-Paredes, University of Miami School of Law
Charles R. Ostertag, Tulane Law School
Joshua Parks, Tulane Law School
Joseph Peck, Charleston School of Law
Michael Beck Pemberton, Tulane Law School
Phillip Perinchief, Tulane Law School
Orjanel Pointer, Tulane Law School
Eric Ranchoff, Tulane Law School
Ricardo Rivas, Tulane Law School
Clarence B. Rivette, Tulane Law School

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Marie del Rosario de Roux, Tulane Law School
Herschel J. Rush, Tulane Law School
Christopher Ryan, Florida Coastal School of Law
Robert Shreve, University of Alabama School of Law
Iden Sinai, Columbia Law School
Mahsa Soheil, Tulane Law School
Julie Solis, Florida Coastal School of Law
Brandon Sousa, Tulane Law School
Michael L. Stewart, University of Alabama School of Law
Jessica R. Svajgert, Florida Coastal School of Law
Raveena Tamoria, Fordham School of Law
Peter Walbridge, Tulane Law School
Yanchen Wang, Tulane Law School
Ryan Williams, Florida Coastal School of Law
Gregory M. Wise, Florida Coastal School of Law
Charles R. Wood, Florida Coastal School of Law
Xiaochen Yu, Tulane Law School

In addition, the Committee on Non-Lawyer Nominations recommended the following three people for Non-Lawyer membership:

Anthony Barker, Elk Grove Village, Illinois
James D. Jones, Glen Allen, Virginia
Dr. Ralph Markarian, New Castle, Delaware

On motion duly made and seconded, all these applications for membership and reinstatement were approved.

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

Hon. George C. Pratt, of Central Islip, NY; Judicial, elected 1979
John Edward Hurley, Jr., of San Francisco, CA; Proctor, Life Member, elected 1967
Hon. W. Brervard Hand, of Mobile, AL; Judicial, elected 1977
Hon. John William Black III, of Brownsville, TX; Judicial, elected 1978

Joseph A. Murphy, of St. Louis, MO; Proctor, Life Member, elected 1962
Donald Macleay, of Washington DC; Proctor, Life Member, elected 1951
Thomas C. MacDonald, Jr., of Tampa, FL; Proctor, Life Member, elected 1957

Thomas F. Molanphy, of Rockville Centre, NY; Proctor, Life Member, elected 1958

Geoffrey H. Longenecker, of Covington, LA; Proctor, elected 1975

Chris J. McGrath, of Houston, TX; Proctor, elected 1990

James K. Carroll, of New Orleans, LA; Proctor, MLA Director 2000-2003, elected 1976

Michael O. Hardison, of New York, NY; Proctor, elected 1981

Frank C. Allen, of New Orleans, LA; Proctor, Life Member, elected 1968

Kent E. Westmoreland, of Houston, TX; Proctor, elected 1977

Emery W. Harper, of New York, NY; Proctor, Life Member, elected 1968

Mr. Farrell reported that there are still a couple of hundred members for whom the Association does not have email addresses. He also reported that the application forms for the various classes of membership have now been consolidated, and that the consolidated application form can be found on the website.

BOARD SUBCOMMITTEE REPORTS

Committees

It was reported that Marc Marling of the Arrangements Committee has coordinated well with the committee chairs to arrange the committee meetings. President Marwedel also indicated that he has asked the Committee on Website and Technology to determine how we can use our own equipment at meetings.

Finance

The Finance Subcommittee is continuing to look at possible alternative sources of revenue, including sponsorships and advertising in the program for the May dinner and on the website, and Mr. Clyne requested suggestions for other possibilities. He did point out that there

are limits on the amount of money we can raise via sponsorships and still retain our tax exempt status.

Membership

Ms. Holland opened the discussion of several proposed amendments of the by-laws relating to membership. First, the amendments would broaden the eligibility for Law Student membership by deleting the requirement that an applicant for this class of membership not have been admitted to the bar, so long as the applicant is enrolled as a full time student at a law school accredited by the American Bar Association. Second, the proposed amendments would amend the by-laws with respect to academic members to allow them to vote, with the concomitant obligation to pay dues. The amendment would also allow academic members who desired to do so to apply for Proctor membership, and thus become eligible for leadership positions. On motion duly made and seconded, By-Laws 208, 209 and 210 were amended to read as follows:

208. ELIGIBILITY FOR LAW STUDENT MEMBERSHIP

Any person who is a resident of the United States, who is enrolled as a full time student in a U.S. school of law, accredited by the American Bar Association, and who has expressed an interest in the practice of admiralty law, shall be eligible for Law Student membership, which shall terminate at the end of the calendar year in which the member graduates or ceases to be a student in good standing at the school. An applicant shall file with the Membership Secretary an application for Law Student membership on a form provided by the Membership Secretary. Each application shall be supported in writing by a professor or administrative official at the law school attended by the applicant or by a member of the Association. The letter shall be annexed to the application.

209. ELIGIBILITY TO VOTE

All members of the Association in good standing, excepting Honorary, Ex-Officio, Judicial and Law Student members, shall have the privilege of voting at the Association's regular meetings.

210. DUES

The amount of annual dues of members shall be fixed by the Board of Directors and shall be payable on May 1 of each year, with the exception of Law Student members, whose dues shall be payable on a date set by the Board of Directors. The following classes of members shall be exempt from the payment of dues:

1. Honorary, Ex-Officio and Judicial members.
2. Members in good standing who have, as of May in any year, maintained membership in the Association for 40 years. Members so exempted shall be designated as Life members.

Mr. Farrell also noted that there were certain discrepancies between the text of the by-laws as they appear in the directory and as they appear on the website. These discrepancies are as follows:

<u>By-Law</u>	<u>Discrepancy</u>
101	“by-laws” should be in lower case
204	“maritime law” should be changed to “Maritime Law”
211	“100” should be changed to “one hundred”
213.4 702.4	The first sentence of the second paragraph should be changed to: “A written complaint specifying the alleged misconduct or cause must be sent to the President.” (Delete the word “with” in that sentence.) Delete the comma after “opposition papers”
1101	In the first sentence, change the word “communicate” to “communication”
	Appendix A
	Change “BY-LAW211” to “BY-LAW 212”
	Code of Professional Conduct
	In paragraph 8, italicize “pro bono”

PC Solutions will be informed of these discrepancies so that the website can properly reflect the by-laws.

There was also a discussion of ways in which to attract new members. It was again mentioned that lawyers who have cases published in American Maritime Cases were a potentially fruitful source of new members, and this approach will be coordinated with Mr. Hopkins.

Website

The “Breaking News” feature of the website, which will provide a place for members to post news of interest to the membership, should be operational soon. There is still work to be done to determine the type of news that will be posted and how it will be posted. In addition, the subcommittee is exploring ways in which advertising might be posted on the website in a manner whereby members can view the advertisements only if they choose to do so.

President Marwedel announced that he will be appointing a committee to coordinate the Association’s archives, including the preparation of a good index. He also reported that he has authorized the acquisition of an anti-spam program at a cost of \$500.

The possibility was raised of soliciting sponsors to defray the cost of upgrading the website. It was pointed out that this must be weighed against the possible compromising of the Association’s independence, and that the Association is generally viewed as the model national maritime law association in that we do not have corporate members.

BOARD REPORTS

Ad-Hoc Reports

Rule B Attachment

The recent decision of the Second Circuit in *Shipping Corporation of India v. Jaldhi Overseas Pte Ltd.* was discussed. It is anticipated

that the Association will be asked for an amicus brief in this matter.

MLA Meetings and Events

Fall 2009 Meeting

While there are fewer spouses and guests attending this meeting than were present at Sanibel Island in 2007, there are more members in attendance. Mr. Schmidt reported that all activities that are customarily held are going forward, and that room occupancy is sufficient to meet our contractual requirements, and that the meeting should end up in the black.

A discussion was also held regarding requests for refunds of registration fees. President Marwedel stated that typically this has been done after the meeting is concluded and it is known whether the meeting has made a profit or a loss. It was also noted that requests for refunds are accompanied by reasons for the request that vary from a serious illness to people who simply do not show up without notifying the Association and then request a refund. Mr. Schmidt was requested to formulate a policy or guidelines to deal with this issue.

Fall 2010 Meeting

Mr. Bell, the chairman for the Fall 2010 meeting to be held in Houston, reported on plans for that meeting. His committee has been looking at the holding the meeting from Thursday through Saturday either the first or second week of November. However, during the first week of November there is a major knitting convention in Houston, and members who registered late might have great difficulty in finding a hotel room. Accordingly, it was felt that the second week in November is a better option. The Hilton Americas in downtown Houston is available with rooms at a rate of \$185 a night. The committee is coordinating with the University of Texas Admiralty Law Seminar, which will be held the day before the meeting begins.

Future Fall Meetings

The Board discussed various issues relating to future fall meetings. First, a discussion was held regarding the pricing for spouses. The Arrangements Committee believes that it is helpful to have a lower rate for spouses than is charged for the member attending. The Arrangements Committee has typically tried to tie the price to cost, charging the spouse an amount that does not include conference rooms, etc.

A discussion was also held regarding possible changes to the way in which the fall resort meetings are conducted. Mr. Bonner suggested that a three year cycle might be more attractive. It was also noted that the CLE and committee meeting schedules were very compressed, and President Marwedel suggested that perhaps the focus of the resort meetings should be on CLE, and that perhaps foregoing committee meetings at the resort meetings might make sense. It was also noted, however, that some members, including some committee chairs, attend because of the committee meetings, and that this is often a selling point in obtaining firm approval to attend.

It was also suggested that the number of dinners included in the registration fee might lower the price and make the meetings more attractive.

The site of future meetings was also discussed. At one time, the meetings alternated between the east and west coasts, but a decision was made by a prior Board to seek the best location possible without regard to geographic location. Moreover, in the survey that was conducted of the membership under Ms. Burrell's leadership, location was deemed very important by many members.

Finally, a proposal made by Board member Forrest Booth whereby the fall meeting would be held every other year in San Francisco in conjunction with the Pacific Admiralty Law Institute was presented. President Marwedel encouraged the Board to discuss on the Board section on the website.

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INTERNATIONAL ACTIVITIES

President Marwedel reported on his attendance at the signing of the Rotterdam Rules in Rotterdam in September. There does not appear to be any real opposition to the adoption of the Rules.

President Marwedel also reported that he met with representatives of the CMI to discuss its future work and finances, including a reduction in the financial contribution of the Association.

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

Respectfully submitted,

Harold K. Watson,
Secretary