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DOCUMENT NO. 758
May 4, 2001

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING — MAY 4, 2001

PRESENT:

WILLIAM R. DORSEY, III

RAYMOND P. HAYDEN

THOMAS S. RUE

LIZABETH L. BURRELL

PATRICK J. BONNER

WINSTON E. RICE

HOWARD M. MCCORMACK

and the following 186 members:

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Frank A. Atcheson	Edward V. Cattell, Jr.
James W. Bartlett, III	Mary L. Cervati
Joe E. Basenberg	George F. Chandler, III
George D. Benjamin	Peter D. Clark
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Jack S. Rockafellow
Antonio Rodriguez
Norman J. Ronneberg, Jr.
John M. Ryan
David M. Salentine
John P. Sandercock
John P. Schaffer
John Scott Scherban
Charles E. Schmidt
Gordon D. Schreck
Janis G. Schulmeisters
David J. Sharpe
James T. Shirley, Jr.

Timothy P. Shusta
David F. Sipple, David F.
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Michael F. Sturley
Norman C. Sullivan, Jr.
Prof. Joseph C. Sweeney
William Tetley
Jack Vayda
David N. Ventker
Kenneth H. Volk
Arthur J. Volkle, Jr.
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Guilford D. Ware
Harold K. Watson
William H. Welte
Gerard W. White
James F. Whitehead, III
M. Hamilton Whitman, Jr.
Malcolm J. Williams
Dr. Frank L. Wiswall
John M. Woods
Christopher A. Young
Robert J. Zapf
Joanne Zawitoski

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and the following ten guests:

Sandra Andry

John Billera

Roger Croft

Ed DeWitt

Daniel Farkas

Nadine R.A. Gilbert

James E. Gould

David F.H. Marler

John O'Connor

Leonel Pereznieto

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PROCEEDINGS

PRESIDENT DORSEY: Good morning, ladies and gentleman. I'm going to get started because we have quite an agenda here this morning, so I'll call the meeting to order and we'll start with the Secretary's report.

MS. BURRELL: Good morning, Mr. President and members and guests.

The Board met on March 27th in New Orleans, just before the Tulane Institute, and yesterday in New York. The Board was quite busy over the last six months and engaged in considerable correspondence on several matters between the meetings.

Five Resolutions were passed by poll.

The first Resolution authorized a statement on behalf of the Association to the Department of Transportation concerning the environmental agenda for the Coast Guard. Last fall, at the Board's request, Fred Kuffler, the Chair of the Environmental Crimes Subcommittee, together with Dennis Bryant and Matt Marion, who are respectively the Chairs of the Committees on Navigation, Coast Guard and Government Regulation and Marine Ecology, drafted a statement giving the Association's views on what policies should guide government actions in connection with pollution incidents. The Board approved a statement advising that the current government policy of criminalizing acts in connection with pollution incidents actually works against the public interest in protecting the environment. The statement also proposed that only acts undertaken with criminal intent be subject to criminal sanctions, and also urged the government to adopt as its priority policies which encourage effective responses to spills. A copy of the statement is appended to the original of the Minutes of the March 27, 2001 Board meeting.

The second Resolution passed by poll authorized President Dorsey to cast the Association's vote in favor of the new CMI constitution and procedure for suspension and expulsion at the Singapore Plenary of the CMI in February 2001.

The remaining Resolutions passed by poll between regular Board meetings also relate to the Singapore Plenary, and were necessitated by the lack the availability of an agenda in advance of that conference. The third, fourth and fifth Resolutions authorized our President and his designees to express views in accordance with existing Association policies and acts in connection with the subjects of marine insurance, international transport law and piracy that were to be treated at that meeting. Each of these Resolutions appears in full in the Minutes of the March 27, 2001 Board meeting.

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At that Board meeting, the Board passed a Resolution honoring Dean Sherman of Tulane University Law School, the text of which also appears in the Minutes.

As usual, the Board heard reports from officers, which you will hear also right after I conclude.

A subject occupying much of the Board's attention both at and between its recent meetings was the Singapore Plenary, but you will hear more on all of the subjects treated at the Plenary from Michael Marks Cohen, Chair of the CMI Committee, and from other Committee Chairs who were also involved directly in these events. President Dorsey's Spring Newsletter also gives a very full account of the CMI Plenary, and I urge you to read it.

As for other international activities, the CMI passed a resolution creating an International Working Group to monitor the progress of the Draft UNESCO Convention on underwater cultural heritage and to seek to avoid conflicts between the Draft Convention and existing salvage law. John Kimball, who chairs the Association's Study Group on the Draft UNESCO Convention was appointed the Rapporteur of that International Working Group. He will be telling you again more about this subject later today.

There was also an informal meeting of the International Subcommittee on Offshore Mobile Craft coinciding with the Singapore Plenary. Our Association has urged the CMI to leave off work in this area as unnecessary, but it evidently will go forward.

Graciously acting on very short notice, Past President Chet Cooper agreed to accompany the U.S. State Department delegation to the OECD workshop on transport law that was held in Paris in January of this year. It appeared to be the consensus among the attendees of this workshop that it would be wasteful to go forward with another drafting exercise for an international transport law regime while the CMI Sub-Committee on International Transport Law was going forward with its same work.

The Association also continues its involvement in IMO subjects. A Diplomatic Conference was held on the Bunker Pollution Convention on March 19th through 23rd. The Convention establishes liability for bunker spills for non-tank vessels, imposes joint and several liability on shipowners, requires a registered owner to maintain insurance in a prescribed form, and allows a direct action against the insurers.

At the conference, the question of the threshold tonnage for vessels to fall within this Convention was much debated. Eventually, even though opinions

about the appropriate threshold ranged from 300 gross registered tons to 5,000 gross registered tons, there was a 1,000 gross registered ton compromise.

Another significant provision involving the Bunker Pollution Convention is the lack of responder immunity. To address this problem, a separate resolution was passed recommending that States which adopt the Convention also adopt laws for responder immunity.

The Board also heard reports on and discussed the Draft Protocol to the Athens Convention on Liability relating to the Carriage of Passengers and their Luggage by Sea. That work will be completed at the IMO Legal Committee meeting during the week of October 8, 2001. You will hear today about this subject from Ann Miller, the Chair of the Association's Committee on Cruise Line and Passenger Ships, who has been attempting to gather industry response to the provisions of the Draft Protocol.

Board member Vince DeOrchis reported on the status of the Association's COGSA proposal and the work of the CMI International Sub-Committee on Transport Law, but you will hear very full reports on those issues later this morning.

We heard from Board member and Chair of the Committee on Practice and Procedure, Jim Bartlett, on several issues before that Committee, including the substantial variation in the amount of security deposits required in the District Courts. He will also report on the role that he and others will play in assisting the Association's participation in the ABA's new and significant Study on Multijurisdictional Practice.

Mr. Bartlett also reported to the Board that the parties in *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000), have settled this case, which rendered moot the Eighth Circuit's ruling involving the constitutionality of the court rules regarding use of unpublished opinions.

We've heard from Tony Whitman on the delights that are awaiting us at the Del Coronado. I'll let him speak further about that himself.

The Board also approved a Resolution concerning the Marine Finance Committee, presented by its Chair, Sandy Knapp, at the Board meeting yesterday, and I believe she'll be reporting to you about that directly today.

We also learned about the progress of the Young Lawyers Committee on their project in the MLA documents so that these can be available for research and eventually put on our website.

Other Committees have also been involved in a very important project concerning the government's consideration of a major recodification of Title 46 of the U.S. Code. While the purpose of the recodification is simply to modernize the language of the statute and more efficiently organize its various sections, and the government's expressed intention is to avoid any change in existing law, unintended modifications can always creep in, so this development needs to be carefully monitored. President Dorsey has asked Dennis Bryant, Chair of the Committee on Navigation, and Hal Watson, who chairs the Maritime Legislation Committee, together with other relevant substantive Committee Chairs, to work together to examine the various provisions of the proposed revisions to Title 46 for consistency with existing law. The Association expects to have an opportunity to comment on this recodification in its various stages of progress.

President Dorsey reported on an effort by the American Law Institute to redraft Article 7 of the Uniform Commercial Code to take account of the developments in electronic documents.

President Dorsey also reported that the final TITANIC Guidelines have appeared in the Federal Register. There still has been no response to the Association's comments and questions concerning the earlier draft of the Guidelines, but there appear to have been some revisions from earlier drafts which would clarify that the Guidelines are not mandatory.

The Association has been presented over the last six months with an unusual number of amicus requests in cases that involve issues very close to the heart of the Association's work, but because we're going to have a report by Pat Cooney, Chair of the Uniformity Committee, these requests will be more fully covered then.

The Board authorized expenditures to allow us to honor the Canadian Maritime Law Association's 50th Anniversary. They did us great honor in our Centennial celebration. The Association will host a cocktail party at the CMLA meeting in June and will also present a gift. I will not state the nature of the gift as I see the CMLA is represented in this audience, and I do not want to spoil the surprise.

Finally, the Association, honoring what has become a tradition, supported the Judge John R. Brown Moot Court Competition by offering the services of its members in grading the briefs and acting as oral argument judges, and also by awarding a prize for the best brief. The final stages of the competition took place in Newport in early April.

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

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PRESIDENT DORSEY: Great job, Liz, as always.

Do I heard a second?

(Chorus of seconds.)

PRESIDENT DORSEY: All in favor?

(Chorus of ayes.)

PRESIDENT DORSEY: Opposed?

(No response.)

PRESIDENT DORSEY: The report is adopted. Thank you very much.

The Treasurer's report.

MR. BONNER: Thank you, Mr. President.

I know you've all been sitting on the edges of your seats waiting for the Treasurer's report and I'm not going to keep you in suspense any longer.

We're in good shape financially. We have about \$260,000 in assets, including money in the bank and Treasury bills, and this is about \$30,000 more than we had last year at this time. We're looking ahead to normal operating expenses. We should be able to cover them. We have a directory coming out, and we should be able to finance the activities to support the goals of the MLA.

However, just because you have money, doesn't mean you have to spend it. My mentor, Marshall Keating, drilled that into me. I'm trying to build up a reserve. Our reserve was depleted for the Centennial, and last year we had a lot of traveling, so we really didn't build up a reserve. This year I'm going to try to do that.

One other point. Over the past year we have deleted about 100 or so members for failure to pay dues. Now, some of these people lost interest in the MLA, but many of them moved firms, had their firms moved, or whatever, and their mail wasn't forwarded to them. If you have a question about your dues, please call up Robin at the MLA office—that's 1-800-MLA-LIST—and ask her, because we do charge a reinstatement fee, and if you don't pay your dues, we will get your reinstatement fee.

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

PRESIDENT DORSEY: Is there a second?

(Chorus of seconds.)

PRESIDENT DORSEY: All in favor?

(Chorus of ayes.)

PRESIDENT DORSEY: Opposed.

(No response.)

PRESIDENT DORSEY: The report is adopted.

We are making strides toward increasing the size of our kitty, and it is something that the Board is paying a great deal attention to. For instance, this summer the Board decided that it would not go to another city to have a meeting. We're going to be in New York—actually by teleconference—which will save the Association quite a bit of money that we can use for other activities.

I do not like to do that, frankly, because one of the things I think is very important for the Board is to have meetings away together. It promotes collegiality, and it helps us get to know one another better and do a better job. But this will be the second time since I've been on the Board that we have had a teleconference Board meeting, and we are doing it because of financial considerations.

As you can see from the Secretary's report, we have a lot of activities going on, a lot of people that we're sending to various parts of the world, and we need to keep doing that.

Thank you, Pat.

Membership Secretary, Mr. Rice.

MR. RICE: Thank you, Mr. President.

On the membership front, we have good news and sad news. And with a departure from prior procedure, I would like to take the sad news first, and that is to say that I regret to report that I have learned since our last general meeting of the deaths of the following of our members: George Marshall Bates of New York; James B. Kemp, Jr. of New Orleans; Carl Kimling of Stamford; Judge

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Lombard of New York; Judge Mitchell of New Orleans; Marty Miller of New York; Dante Petrizzo of New York; Donald Rogers of New York; Donald Volpe of New Orleans; Ross Warren of Clear Lake Shores, Texas; and Professor Stefan Riesenfeld of Berkeley.

Might I ask that there be a moment of silence in honor of their passing.

(Moment of silence observed.)

MR. RICE: Thank you.

Now on to the happier side of my report, and that is to say, Mr. President, that there has been a lot of activity on the membership front since last we met here in the Fall. You just heard the Treasurer state that he has since that meeting been forced to strike from our roles some 100 members for various reasons. My job, of course, is to see that there are replacements at the other end of the list and hopefully maintain our numbers and make sure that there are a large number among those who are current in the paying of dues.

More particularly, at our meeting in New Orleans in March, the Board of Directors approved the proposal of Chancellor John Costonis of Louisiana State University as a new Academic Member.

The Board has approved the advancement to Proctor member status of Robert Clyne of New York, and has under submission and consideration three further applications for promotion from the status of Associate to that of Proctor member.

Happily, I'm able to report the application for and approval of 38 new Associate members, so we're adding in at the bottom at a very healthy rate, we hope.

Furthermore, I've learned that the Board of Directors yesterday approved the President's recommendation for admission of the following six non-lawyers as new members of the Association; being John Daidola of New York, Harry Diamond of New York, Charles Droll of New York, Eileen Fellin of New York, Catherine O'Connell of New Jersey, and David Roberts of New York.

With these changes, Mr. President, the total membership of the Association as of today stands at 3,345, being made up of 14 Ex-Officio members, 4 Honorary members, 151 Judicial members, 59 Academic members, 1,602 Proctor members, 1,268 Associate members, and 247 Non-Lawyer members.

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I would like to encourage our members to identify, if you will, and propose for membership members of the Judiciary, Federal, State and Administrative, who might be interested in the work of our Association. We feel that the attention of and participation by the members of the judiciary in our activities is a very important aspect of not only our membership, but the activities of our membership.

I would also like to report on behalf of our web master, Glen Oxtan of New York. During the first quarter of the year, that is to say, January through March of the year 2001, we received in excess of 700 hits per day on our website, which is fairly significant. That is in excess of 20,000 per month! Of these, a significant number stay and visit for significant lengths of time and peruse in depth the various sections of the website, so we are attracting significant attention on that front. I would invite your attention to the website and your suggestions on possible links and additions to the website and improvements of that which is already on there.

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

PRESIDENT DORSEY: Is there a second?

(Chorus of seconds.)

PRESIDENT DORSEY: All in favor?

(A chorus of ayes.)

PRESIDENT DORSEY: The motion is carried and the report is adopted. Thank you, Winston.

I'm going to depart from the usual routine and take things a little bit out of order because we have a number of people presenting Resolutions and reports who have other commitments and need to get on early. I'm going to start right away with a couple of Committee reports and a Resolution or two. We've got a number of Resolutions today. Then I'll come back with the introduction of some of our distinguished guests, which we usually do in the beginning. I'm going to defer that just a bit. So, let's start off right now with the report of the Chair of the Salvage Committee, Jim Shirley.

MR. SHIRLEY: Thank you very much, Mr. President.

The Salvage Committee met on Wednesday morning for an hour-and-a-half in the Haight Gardner Holland & Knight offices. We had full attendance, as usual. We had 30-odd members of the Committee attending, counting Phil Berns, one very odd member.

(Laughter).

MR. SHIRLEY: We had a lot that could be talked about in that Committee meeting, but because of some very good work that Professor David Sharpe had done on a particular assignment, we devoted the entirety of the meeting to that topic. We have a Resolution to put before the membership.

If I may, Mr. President, I'm going to depart just slightly from the procedure you and I agreed to, and before presenting the Resolution, I would like to ask Professor David Sharpe to give a brief review of the very meticulous study he did on this subject. It has to do with whether the U.S. should implement legislatively the 1989 Salvage Convention, whether the United States should denounce the 1910 Salvage Convention, and whether we should amend the legislation as needed to do those things.

Professor Sharpe—I think I said this when we saw the first part of his work on this issue, or his first report six months ago—did a meticulous job. It's even better now. I remember the old adage, those who can do and those who can't teach. Well, believe me, Professor Sharpe can teach, can do, and has done.

Thank you very much.

PRESIDENT DORSEY: Jim, give your card to the court reporter.

I'd ask everybody who is coming up to give their card to the court reporter. I should have mentioned that earlier, but I forgot.

Go ahead, Dave.

PROFESSOR SHARPE: Thank you Mr. President, members, guests. I will speak slowly but briefly. I have made notes on my card, which says "red, right, returning."

(Laughter.)

PROFESSOR SHARPE: What are we asking the Association to do by our Resolution?

Although the United States has a bad reputation in the international community for not adhering to treaties that we encourage, here we have an embarrassment of riches. The United States is a state party to both the 1910 Salvage Convention and the 1989 Salvage Convention. So the Resolution proposition is to denounce the 1910 Convention.

Jim said the D word, “denounce,” and I just said the D word. To denounce a treaty terrifies public law scholars, conveying the idea that we should hunker down, prepared to shoot at any minute. But the actual operation and intention of both the 1910 and the 1989 Conventions has been for nations to assure one another that they will conform or harmonize their domestic laws with the language of the treaties.

This is a different type of convention from a public law agreement. This does not create relations between governments. What it does is try to harmonize the private law of the nations involved. And so if we substitute the 1989 language for the 1910 language, we have in effect gone from one version of holy writ to a different version of holy writ—except that, so far as I’m aware, there are no conflicts between the languages of the two. Do not fear, then, to “denounce” this treaty; all the word means is to “repeal” it. But in the language of international law, there is no verb except “denounce.”

In the language of law, you recognize terms of art that sound more violent than they are in application, such as *vi et armis*, with force and arms, which was the minimum for stating a claim in common law pleading. Today your complaint demands relief, which has the practical effect of saying “Boo!”

(Laughter)

PROFESSOR SHARPE: So don’t be afraid of denouncing the treaty.

There is not much wrong with the 1910 treaty. And yet I cannot help thinking with my learned brethren on the Salvage Committee, that if you decide to pull up an old wreck, you always see marks and scars on it. Somebody has hit the sucker and probably gotten hurt, but often nobody filed a claim. Likewise, there is no reason to think that the paucity of reported conflicts between the 1910 and the 1989 Conventions is the sum total of all of the difficulties that have been considered by counsel and the courts.

What are the risks of repeal or denouncing the 1910 Convention? I think none. We have no diplomatic relations that were created by the Convention. We do have bilateral Salvage Conventions with Canada and with Mexico. These treaties create government-to-government relations having to do with the use of otherwise foreign-flag vessels in domestic waters. If we were to denounce such a bilateral treaty, this would be serious business. But shifting our attention from promising to conform our domestic law from 1910 to 1989 should not cause pulses to pound.

There are some benefits. The 1989 Convention was put in force primarily in order to take care of protection of the environment, Articles 13 and 14, which

express ideas that were nowhere treated in the 1910 Convention. If we had a conflict of laws problem with a nation that is a state party only to the 1910 Convention, our having only the 1989 Convention would make our national policy quite clear, that we endorse these measures to prevent and to abate pollution. I think this is important because our salvage law is still growing by means of judicial decision.

Other national cultures tend to enact the Convention language. We have not done that, and I rather hope we don't. Why was this not done in 1989? The United States Department of State, in advising the President of the United States and the Senate of the United States to go ahead with giving advice and consent to the 1989 Convention, was concerned with economy of time and effort. The letter of transmittal said, "This does not change U.S. domestic salvage law." Everyone believes this. It's true. It saved putting the whole treaty through the Congress of the United States. It also saved the hassle of going through denunciation of the 1910 Convention, which was considered to be simply unnecessary.

Why us now? This is a good-housekeeping measure in some ways. The MLA is a law reform organization, as stated in the Articles of Incorporation. And consequently, I stand before you to urge you to take this tender step of endorsing our Resolution to denounce the 1910 Convention, with the idea—if you believe me, and I hope you do—that it has some benefits and no risks.

Thank you, Mr. President.

PRESIDENT DORSEY: Are you going to read the Resolution?

MR. SHIRLEY: Yes, Mr. President.

That will conclude the Committee report. However, I would like to read the Resolution and move for its adoption by this membership.

At its meeting on May 2, 2001, the Committee on Salvage unanimously passed the following Resolution and I now move it before the Spring Meeting of the Maritime Law Association of the United States.

"Be it resolved, that the Maritime Law Association of the United States recommends that the United States Government denounce the Salvage Convention of 1910 to make it clear that the Salvage Convention of 1989 is the only Salvage Convention that affects the law of the United States, and that the President of this Association shall take such steps as necessary to communicate this resolution and recommendation to the appropriate U.S. Government official."

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PRESIDENT DORSEY: Is there a second?

(Chorus of seconds.)

PRESIDENT DORSEY: Is there any discussion, any questions anyone wants to ask?

(No response.)

PRESIDENT DORSEY: If not, I'll call the question.

All in favor of the Resolution say aye.

(A chorus of ayes.)

PRESIDENT DORSEY: Opposed?

(No response.)

PRESIDENT DORSEY: The Resolution is carried.

Thank you very much, Jim.

You know what this means, ladies and gentlemen, it means that I now get to write a letter to either the President of the United States or the Secretary of State urging denunciation of this treaty. I can see CNN the next day, "Maritime Law Association creates International incident. Denounces long-term treaty at convention." Well, it's going to be a lot of fun.

I just want to let you know that Jim Shirley is retiring as Chair of the Salvage Committee. I mentioned at his Committee meeting earlier in the week that his Committee is one of our gems. One of the reasons that is so is because of the leadership that Jim Shirley has shown over the last four years. So thank you, Jim, very much for all your work.

(Applause.)

PRESIDENT DORSEY: Thanks also to David Sharpe for one of the really great pieces of research, thought and effort. He has now written the definitive piece of work on the interplay of the Salvage Act, the 1989 Salvage Convention and the 1910 Salvage Convention. I recommend it to everyone.

(Applause.)

PRESIDENT DORSEY: Next we have Carriage of Goods, and the CMI International Sub-Committee on Transport Law.

We are taking Michael Sturley first because he is in the midst of drafting the outline instrument for the International Sub-Committee, or participating in the drafting, I should say. The work is going on as we speak, and he wants to make sure he gets back there so that they get it right.

MR. STURLEY: We're trying to get all of the law professors out of the way first.

Mr. President, ladies and gentlemen, in October I stood before you to report on our progress and predict our future schedule. All of those predictions turned out to be wrong, but I nevertheless have been invited back to try again with yet more predictions.

In February, the Issues in Transport Law International Sub-Committee was reconstituted as Committee A at the Singapore Conference. We had what I think was a very successful meeting in Singapore. We did not try to go through the draft outline instrument section by section. We only had a week in Singapore, after all. We instead focused on the so-called "hot topics" that we thought would attract the most interest.

I think we got very good feedback on a number of issues at the Singapore Conference. Perhaps navigational fault was the most interesting issue. Roughly two-thirds of the member associations supported the elimination of the section 4(2)(a) defense for error in navigation or management, which was somewhat surprising for some of us. Of the remaining one third of the national associations, the overwhelming majority of them, about 70 percent, said that they were willing to discuss the elimination of the navigational fault exception as part of a larger package. Very, very few, in fact, only two, of the national associations supported the retention of the error in navigation defense.

The CMI has come a long way on this project. We still have quite a bit of work to do. At the end of the Singapore Conference, the Assembly directed the International Sub-Committee to proceed with its work to redraft the outline instrument in line with the information that we had received at the conference. We are proceeding with this work on an expedited basis.

Many of you may know Jernej Sekolec, who has been with the UN Commission on International Trade Law (UNCITRAL) for many years, and has been involved with the CMI's work on Carriage of Goods for many years. He has recently been elevated and is now the Secretary of UNCITRAL and is very eager

for UNCITRAL to begin its work formally on this project as soon as possible. In particular, he has asked the CMI to produce a draft outline instrument and deliver that to UNCITRAL by the end of this year. So what was described as an ambitious schedule six months ago has now been expedited.

The Working Group met on Monday and Tuesday this week, and the drafting group, an even smaller subset, has continued work Wednesday and today. Indeed, they are at work right now and I will join them when I leave here. The revised draft will be circulated in a couple of weeks when the drafting committee finishes its work. It will circulate its proposals to the rest of the Working Group for their review, but we expect that, not next week, but by the end of the following week, the revised draft will be circulated to all of the national associations, interested industry groups, and so forth.

With this revised draft there will also be what we're describing as a consultation paper. We will be seeking reaction from all the member associations, including the U.S. Maritime Law Association, all of the interested industry groups, and anyone else who has opinions to express. Of course, everyone will get the draft. It's a fairly substantial draft. The purpose of the consultation paper is to call attention to some very specific issues on which we feel the need for specific guidance. We don't want people to look through the draft and be overwhelmed by it and not respond to our specific concerns on the hot topics, so we're calling some of those hot topics to people's attention in the consultation paper.

We expect that some of the more industrious maritime law associations will, in fact, go well beyond the issues in the consultation paper and give us very full reports on the entire draft. I certainly expect our Association to be one of those more industrious associations.

Answers will be due by September 28th. Earlier answers will be encouraged. The earlier the answers come in, the more time the Working Group will have to think about them in getting the next draft ready.

While this consultation process is going on, the International Sub-Committee will also meet on July 16th, 17th, and 18th, to focus on three specific chapters of the proposal: the chapters on right of control, transfer of rights, and right of suit. These are three topics that proved particularly controversial in Singapore. Perhaps more significantly, they were three topics that the International Sub-Committee had not had much time to focus on before the Singapore conference, so they had been less fully considered than the other topics in the draft.

A meeting of the Working Group has been tentatively scheduled for October 4th and 5th to revise the draft instrument in light of the answers that we receive from the consultation project.

Remember, those answers are due on September 28th, so the Working Group will have only a few days to think about them and then meet and revise the instrument.

The proposal is that the International Sub-Committee will then meet on November 12th and 13th to discuss the proposed final draft, so that it can be forwarded to the Executive Council in plenty of time for consideration at their meeting on December 7th and 8th. Assuming the Executive Council approves the draft, the prospect is that it will go forward to the UNCITRAL, so Jernej Sekolec can have it by the end of the year, as he has requested.

I will be happy to answer any questions. Otherwise, I need to go down and help our Chairman Stuart Beare draft the consultation paper.

PRESIDENT DORSEY: Michael, I have one question.

Do you think that the final draft will be ready by the time of our meeting in San Diego? You are going to have the Working Group meeting on what, October the 4th and 5th, and our meeting in San Diego is October the 15th. I just wondered.

MR. STURLEY: We're meeting a week-and-a-half before the San Diego meeting. It will depend a lot on what sort of reaction we get through the consultation process. I suspect that there will be at least a draft of the final report. I am not sure whether or not the Working Group will have signed off on it before the San Diego meeting.

PRESIDENT DORSEY: The reason I asked is that one of the things we are doing in San Diego, and it is a little bit out of the ordinary this year, is to have a CLE Credit Committee meeting, which is the Carriage of Goods Committee meeting. At that meeting we had planned to have papers on the draft outline instrument and comparisons between that and our COGSA meeting.

Well, thank you, Michael, very much.

Is there anyone else that has any questions for Michael?

If not, we'll release you, Michael, with thanks, and let you go back to work.

MR. STURLEY: Thank you.

PRESIDENT DORSEY: Bob Connor, followed by Lisa Reeves.

[12622]

MR. CONNOR: Good morning. The bulk of what our Committee is doing will be found in my formal report, but I just want to report this morning on the status of the COGSA proposal. With the changes in the administration of both the White House and in the Senate specifically, we're being delayed once again.

Senator Gordon Smith of Oregon is now the chairman of the committee that is reviewing our proposal. At the present time, they are more concerned with the proposed tax cut and confirmation issues. Quite frankly, according to my conversation Tuesday with the new legislative aide who is following this subject, Wally Chu, it appears that nothing is going to happen until September.

We have been invited to come to Washington, a small group, and speak with the legislative aide, Wally Chu, and some of the other aides about the proposal to educate them so it will go forward. Senator Hutchinson has moved to another committee, and she was the one who was really shepherding this for us.

That's my report, Mr. President.

PRESIDENT DORSEY: Thanks, Bob. Lisa Reeves, Limitation of Liability.

MS. REEVES: Thank you, Mr. President, for taking me out of order. Good morning, everyone.

For the past year, our Committee has been closely monitoring an important limitation case that has now been resolved by the Supreme Court. That case is Lewis versus Lewis and Clark Marine and it originated in the 8th Circuit.

By way of a brief background, this was a single claimant, adequate fund case. The claimant was a Jones Act seaman. He filed suit in the state court just a few days after the vessel owner had filed for limitation of liability in Federal Court. The claimant did not demand a jury in his state court action.

In a unanimous opinion, the Supreme Court reversed the 8th Circuit, which had held that absent a jury demand, the vessel owner was entitled to litigate its right to exoneration in Federal Court, even though limitation of liability was no longer an issue in the case, because the claimant had stipulated that his claim was less than the value of the vessel. The Supreme Court held that although a vessel owner need not confess liability in order to seek limitation, Supplemental Admiralty Rule F does not create a freestanding right to have the issue of exoneration litigated in Federal Court under circumstances in which limitation of liability is not the issue.

The Court then found that the plaintiff's failure to demand a jury trial in State Court did not deprive him of his right to have his case litigated in the State Court.

In other words, the Court found that plaintiff's right to a jury trial was not the only right saved to the suitors or the only remedy saved by the savings to suitors clause. Therefore, if a single claimant makes the appropriate stipulations, the limitation action should be dismissed or stayed so that the claimant can pursue his remedy in State Court even in the absence of a jury demand.

The citation is 121 S. Ct. 993, and the decision was rendered by Justice O'Connor in February of this year.

Fortunately, the Court did not find it necessary to address the issue of whether Supplemental Admiralty Rule F was ultra vires, which was something that had been initially raised by the claimant.

Thank you.

PRESIDENT DORSEY: Thank you, Lisa.

At this time I would like to introduce a number of the distinguished visitors that we have here today.

Actually, I'm not sure I should refer to them as visitors because they are here almost all the time at our meetings and attend probably more Committee meetings than most of our members do. But Captain Joe Ahern, who is the Chief of the Maritime and International Law Division of the United States Coast Guard, and his assistant, Lieutenant Dan Goettle, are here, and welcome to you both.

(Applause.)

PRESIDENT DORSEY: It is invaluable to us to have them here to report on what the Coast Guard is doing, and we very much appreciate it.

At lunch yesterday I made note of the fact that, sadly, Lieutenant Goettle is moving on to another position in the Coast Guard after his tour of duty with the Maritime and International Law Division and he leaves that post this summer. We'll miss you, Dan. You have been terrific. I appreciate all of the courtesies you have extended to me, and I hope that you keep in touch with us. Good luck in the future.

I also would like to introduce Lucienne Bulow, who is the President of the Society of Maritime Arbitrators. Lucienne, greetings.

(Applause.)

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PRESIDENT DORSEY: This is a big year for the Society of Maritime Arbitrators because they are hosting the 14th International Congress of Maritime Arbitrators which will take place here in New York City during the week of October 22nd to October 26th, which is the week immediately following our meeting in San Diego. I might add, the MLA is one of the sponsors of this international conference, and we are assisting the SMA in the acquisition of CLE credits for this event. There are some very handsome brochures pertaining to this International Congress, and they are available. Lucienne, can people get a copy from you?

MS. BULOW: We have a few on the tables outside this room. They have been mailed this week. If you do not receive them within two weeks, call the SMA office and we will send you one.

I want to express our gratitude to you, Mr. President, and to the Board for agreeing to issue the CLE credits, and to Larry Bowles, the Chairman of the CLE Committee.

PRESIDENT DORSEY: You're very welcome. We're delighted to do it. We have very close ties to the Society of Maritime Arbitrators and we want to keep on with that close relationship.

We have a number of visitors from Canada. As a matter of fact, at lunch the other day I wasn't sure that we didn't have most of the members of the Canadian Maritime Law Association here. But we have a number of them here today, and I would like to recognize them.

David Marler, who is head of the Canadian Average Adjustors Association is back there.

David, greetings.

(Applause.)

PRESIDENT DORSEY: Professor William Tetley, who is not only a member of the Canadian Maritime Law Association, but he's also a long-time honorary member of this Association. So, Bill, where are you?

(Applause.)

PRESIDENT DORSEY: Nigel Frawley was at the lunch yesterday, but I don't think Nigel is here this morning. Peter Cullen of the Canadian Maritime Law Association, who is in charge of arrangements for the Canadian Maritime

Law Association's 50th Anniversary meeting, which will take place in June of this year, is here, and, Peter, greetings.

(Applause.)

PRESIDENT DOSEY: And finally, Jim Gould, the President of the Canadian Maritime Law Association is here. And, Jim, I would invite you to say a few words about your upcoming 50th Anniversary meeting.

MR. GOULD: Thank you, President Dorsey. We also thank you for the generous offers, the cocktail reception which you are providing to us at our 50th Anniversary celebration, and the mystery gift which is going to keep us fascinated now for well over a month.

(Laughter.)

MR. GOULD: We very much appreciate it, too, because I think it symbolizes the very cordial and deep relationships between our two Associations.

I'll just give you a hint as to what we're going to talk about. Global warming, its effect on shipping in Canadian shipping lanes with emphasis on the Arctic. We foresee very fundamental changes occurring in the next 20 years. A northwest passage from Europe to Japan, that is, say, from Rotterdam to Yokohama, would save 5,000 miles, it's 5,000 miles shorter than through the Panama canal. Mr. Cullen has coined the phrase Canama Canal. We'll have some interesting speakers on this. We have the chief weather scientist and advisor to the Canadian Government; we have an oceanographer from the Bedford Institute of Oceanography; we have a retired legal advisor to the Minister of Foreign Affairs on Canadian Sovereignty; and we have a Canadian Coast Guard navigator with experience in ice navigation in the Arctic, and much more.

We invite as many of you as can come to celebrate with us, as we celebrated with you for your 100th Anniversary. Peter Cullen is the Chair; his phone number is (514) 397-3135. We hope we see you in the beautiful city of Montreal on the 15th and 16th of June this year.

Thank you.

(Applause.)

PRESIDENT DORSEY: Thank you. Can we bring our own scientists on global warming?

(Laughter.)

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PRESIDENT DORSEY: I have had the opportunity and the privilege of seeing first-hand the Canadian Maritime Law Association in operation. Although they are younger than we are and smaller than we are, the quality of the work that they produce is really quite remarkable and quite impressive.

Sometimes we have disagreements as to various aspects of the law and positions that we take, but no shots have yet been fired across the border between us and Canada, and long may it stay that way. We have good relations with them and I certainly enjoy going there and having the Canadians come to our meetings. It's a very nice, close relationship.

Now, a little bit out of the ordinary. I just want to make a few comments about the MLA REPORT.

The MLA REPORT was started in 1983 and the first editor was David Owen. Actually, there have only been two editors of the MLA REPORT since 1983. The current editor, Gordon Paulsen, took over that job in 1991.

Gordon has indicated his intention to resign that post effective today. Matt Marion is going to take over the role. I didn't want to let this pass without some recognition of Gordon, because during his time as editor he has done a superb job in maintaining the professionalism of that publication. It reflects so well on this Association. It is such a good publication and he's done a fantastic job as the editor. I think all of us in this Association owe Gordon a very great debt of gratitude for all of the effort and work that he has put in on this job over the years.

I have a small token of appreciation that I want to present to Gordon. I'm coming down the stairway there, Gordon.

“The Maritime Law Association of the United States, in Recognition and Appreciation of the services of Gordon W. Paulsen, as Editor, MLA REPORT, presents this testimonial as a token of its gratitude.

/s/ William R. Dorsey, III, President

May 4, 2001”

(Standing ovation and applause.)

PRESIDENT DORSEY: Now, I think we'll hear from Tony Whitman on the Arrangements Committee. Usually we do this at the end of the day, but I would like to get as many people here to listen to what Tony has to say about our meeting in San Diego, because I think it is going to be a terrific meeting.

MR. WHITMAN: Thank you, President Dorsey.

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I have great pleasure in once again addressing you in connection with our meeting this fall at the Hotel Del Coronado the week of October 15th. On the table in the hallway there is for each of you a copy of the registration brochure which in the spirit of thrift, which suffuses the Maritime Law Association at this time, will also be sent to you by bulk mail in a second class slow boat, but it will get to you within the next couple of weeks. Feel free also to take with you, if you like, a copy of the Hotel Del Coronado brochure, which is also out there. I have to say it does not do the hotel justice, but it's a little something to take with you as a memory jogger for this event.

We have a wonderful program planned. The schedule is a little bit different from what it has been. The athletic events are for the most part on Tuesday. That includes a golf tournament at Steel Canyon Golf Course, which has been organized by Jim Moseley, Jr., and I understand that's going to be a wonderful event. The fishing and the sailing are also that same day.

Also on Tuesday we have various family excursions planned. There is a family trip by chartered bus to Disneyland and Disney's California Adventure Theme Park, which is a new theme park for all ages, from the Hotel Del Coronado. Spend the day out there and come back on Tuesday, or in the alternative, enjoy an afternoon at the San Diego Wild Animal Park, which is also a terrific opportunity. All of those offerings are described in the registration brochure.

I would ask that you pay close attention to the fact that there are a limited number of rooms at the MLA rate. The Hotel Del Coronado does sell out routinely, and so I would urge you to send in both your MLA registration and your Hotel Del Coronado registration at an early opportunity.

The cutoff date for saving \$100 on the MLA meeting registration is August 15th. That sounds like it's a long way from now, but I urge you not to wait until August 15th because the best rooms are going to be gone, and it is certainly possible that all of our MLA rate rooms will be gone by that time.

Take one of these with you, and look for it in the mail, as well (indicating).

On the issue of power failure in San Diego, I am assured of two things. Number one, the power company in San Diego is not one of the ones that is currently having problems, but more importantly, the Hotel Del Coronado was built before air conditioning existed, the windows open, the ceiling fans work, and the weather in October will be perfect. So plan to join us then, please.

PRESIDENT DORSEY: Thank you, Tony.

(Applause.)

PRESIDENT DORSEY: I think we'll call next on the Fisheries Committee, another one out of order because we have a Resolution from the Fisheries Committee. Then I'm going to start more back in the usual order. Next will be ABA Relations.

MR. BIRKHEAD: The next topic we addressed was some new fishing history, fishing permit cases, all coming out of the First Circuit. They are cases of first impression. In fact, the First Circuit decision that came out March 30th indicated in its own language that it was clearly a case of first impression.

People familiar with the fishing industry will know that the fishing history/fishing permit issued by the National Marine Fisheries Service is often the most valuable asset the fisherman owns; more valuable, in fact, than the vessel. The question had never come up before, at least had not been litigated to a decision before, as to whether the fishing history which is assigned to a vessel is an appurtenance.

We now have two cases; one was a District Court case in Maine, and another a District Court case in Massachusetts handled by my partner, Eddie Powers, that have addressed that very question. Both were foreclosures of maritime liens, not mortgages, but maritime liens. The Maine case decided that, in fact, the fishing history, regardless of the National Marine Fisheries Service regulations on how you can transfer histories or licenses, did constitute an appurtenance to the vessel and did pass to the high bidder at the Marshal's auction of the vessel.

Our case was very similar to that. We had one in the District of Massachusetts, and the District Judge of Massachusetts agreed with the District Judge in Maine and found the same way, which unfortunately was against our position.

The very day that Eddie was completing his appellate brief to the First Circuit, the First Circuit came down affirming the Maine case, and obviously two weeks later per curiam affirmed our case. Eddie is now reviewing the possibility of petitioning for a writ of certiorari.

Interestingly enough, in our case the National Marine Fisheries Service was also a party defendant and they took no position as to whether there were any property rights in fishing history, whether it constituted property or just a privilege.

In another recent case, the government was being sued in the Court of Claims on a taking theory by a fisherman whose fishing permit had been rendered valueless by a change in regulations. The government successfully took the position that the fishing permit/history was not a property right, but was merely a privi-

lege granted by the United States, which obviously is what argued unsuccessfully in Massachusetts. So that question still is open to some extent and will be the subject, I'm sure, of further litigation.

The third topic was the discussion of the New American Fisheries Act. It is not that new now since it was passed in 1998, but the implementing regulations have been dribbling out.

We have some deadlines that are hard upon us now. For vessels under 100 feet in length with a Fisheries endorsement, the Coast Guard is in charge. Any owner of such a vessel is required under the new act to prove that it meets the new higher citizenship requirements of the American Fisheries Act or lose the Fisheries endorsement.

For vessels 100 feet in registered length or greater, the MARAD has jurisdiction. The MARAD requires a submission of proof by affidavits and other documentation as set forth in their regulations, by June 1st. October 1st of this year is the deadline for receiving approval by the Maritime Administration for vessels under its jurisdiction or losing the Fisheries endorsement. There is no grandfathering provision under this statute at all.

It also imposes citizenship requirements for mortgagees, again, with no grandfathering.

The mortgagees now have to be either (1) qualified as a vessel owner to the same standard, which is now 75 percent at each level and in the aggregate, 75 percent U.S. citizenship, or (2) a state or federally chartered financial institution of 51 percent American citizenship or better.

There is also a provision for what we all remember from the old days, a trustee mortgagee situation via a qualified trustee. There are no qualified trustees at this time, nor as far as we can determine, have any applied. As I mentioned, there is no grandfathering provision, and while the statute and regulations are not entirely clear, it appears that if the qualification has not been obtained by October 1st from the Maritime Administration, the existing good preferred ship mortgage will lose its preferred status, and it is possible that the failure of the mortgagee to qualify could also lose the innocent vessel owner his Fisheries endorsement.

It appears now that some of the mortgagees have started to awaken to the problems we have here. We believe that there are some political moves afoot to delay the effective date of October 1st of this year for the implementation of either the owner citizenship requirement or the mortgagee citizenship requirement.

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In our Committee meeting there was unanimous approval of a Resolution that the MLA go on record rging an 18-month delay in the implementation of the mortgagee qualification provisions. That is what I have come to present to the membership here today.

I do apologize to the Marine Finance Committee. I was looking for Sandy this morning to go over the Resolution because, as you can tell, it does slop over from one Committee to another.

The lead in this project has been Steve Johnson from Seattle, who is a member of both Committees and has been a Joint Subcommittee of our two Committees to do the research and to follow the regulations as they have come dribbling out.

The Resolution which I will read to you now takes no position on the merits of this statute, but urges only a delay in the implementation of the requirements, a delay in the October 1, 2001 deadline for qualification of the mortgagees:

“BE IT RESOLVED:

“The Maritime Law Association of the United States takes a position in favor of extending the effective date of Section 202(b) of the American Fisheries Act (the “AFA”) and 46 U.S.C. 12102(c)(4), as implemented by the AFA for at least 18 months from the current effective date of October 1, 2001, to permit development and consideration of amendments to protect the interests of the current holders of preferred ship mortgages on fishing vessels of 100 feet or greater in registered length and the interests of the vessel owners.

“BE IT FURTHER RESOLVED:

That the President of the Association is hereby directed to communicate this position to the appropriate members and committees of the United States Congress.”

PRESIDENT DORSEY: Do you move the Resolution?

MR. BIRKHEAD: I move the Resolution.

PRESIDENT DORSEY: Is there a second?

(A chorus of seconds.)

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PRESIDENT DORSEY: Are there any questions or any discussion?

(No response.)

PRESIDENT DORSEY: Are you ready for the vote? All in favor say aye.

(Chorus of ayes.)

PRESIDENT DORSEY: Opposed?

(No response.)

PRESIDENT DORSEY: The Resolution is carried.

Thank you.

MR. BIRKHEAD: Thank you.

PRESIDENT DORSEY: Thank you for your four years of service on the Fisheries Committee. A job well done. Bill is going to be replaced by David Farrell of Cape Cod as Chairman of the Fisheries Committee. Thank you very much, Bill.

MR. BIRKHEAD: Thank you.

(Applause.)

PRESIDENT DORSEY: Next I'll call on Frank Wiswall to give a report with respect to the American Maritime Law Foundation, and Chet will be next.

MR. WISWALL: Thank you, Mr. President.

The former CMI American Foundation has almost, but not quite, completed its name change to the American Maritime Law Foundation.

In the process of this transition I want to acknowledge this morning a very generous and anonymous gift—or series of gifts—from a non-lawyer member of this Association; this has materially advanced our ability to participate in such programs as the recycling of used law books to foreign and even in some cases American law libraries by helping to underwrite the postage costs, to offer—of course—the Elliot Nixon Prize, and a new venture which we are embarking on.

Sometime about the middle of this summer there will be a website for the American Maritime Law Foundation. On this website will be posted the rules for

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the Elliot Nixon Prize. We decided not to press ahead with a new prize competition until the name change was complete. It would be too confusing. We are also going to have news of our other endeavors and some links to other useful sites.

I hope you will look in on this site, and I don't think you will find the web address too difficult to remember. It is www.silver-oar.org. Just don't forget the dash in the middle.

Thank you, Mr. President.

PRESIDENT DORSEY: Thank you, Frank. Chet Hooper, ABA relations, and next, I'll call on Jim Bartlett for Practice and Procedure, who has a Resolution.

MR. HOOPER: Thank you, Mr. President, members and guests.

I attended the San Diego midyear meeting of the ABA House of Delegates right after the CMI Plenary in Singapore. It was a fun exercise to travel from Singapore, through London to Los Angeles and rent a car and get to San Diego. And I made it.

The ABA mentioned two things of interest to our Association. Jim Bartlett will describe one of them, which is the multi-jurisdictional practice. Jim is the head of an Ad Hoc Committee to work on that problem.

The other topic discussed at the ABA meeting was the International Conference on Harmonization of Laws. We were invited to attend, mainly because my partner has been President. This day-long session was attended by the head of the IBA, the head of the Law Society of England and Wales, and various ABA section heads who were interested in international affairs. Each attendee generally described the work of all of his or her association. I was in a position to describe the very recent work of our Singapore CMI meeting. I think we'll see further meetings concerning these issues sponsored by the ABA.

Thank you.

PRESIDENT DORSEY: Thank you, Chet. Next Jim Bartlett, Practice and Procedure and Multi-Jurisdictional Practice.

MR. BARTLETT: Thank you, Mr. President.

A few things that the Committee is doing: We have an ongoing project of trying to work to harmonize Rules C and B with the Civil Asset Forfeiture Reform Act of 2000, 18 U.S.C. § 983. There are various little bits and tucks, things that

have to be corrected or harmonized, and that is an ongoing project headed by Robert Zapf.

Another thing, we have completed a study or a survey of local admiralty rules dealing with the security deposits required in the various districts and the notice requirements. We are finalizing that survey. We will make it available to the membership when it is in final form.

The Committee unanimously passed a motion recommending that the Association adopt the following Resolution, and I so move its adoption:

“Be it resolved, that The Maritime Law Association of the United States supports an amendment to Rule B to clarify and define the time for determination of when the defendant is ‘not found within the district’ to be at the time of the filing of the complaint and affidavit required by Rule B(1).

“And be it further resolved, that The Maritime Law Association of the United States encourages the Advisory Committee to include a comment cautioning practitioners about the necessity of filing the complaint and affidavit together in order to obtain Rule B process.”

PRESIDENT DORSEY: Is there a second?

(Chorus of seconds.)

PRESIDENT DORSEY: Any discussion or comments or questions?

(No response.)

PRESIDENT DORSEY: Seeing none, I’ll call the question. All in favor say aye.

(Chorus of ayes.)

PRESIDENT DORSEY: Opposed?

(No response.)

PRESIDENT DORSEY: The Resolution is carried. Jim, thank you. You have got some other things to say.

MR. BARTLETT: Yes, I do. President Dorsey has appointed an Ad Hoc Committee entitled now the Ad Hoc Committee on Multijurisdictional Practice. This is a Committee that the President has directed provide the Association with

recommendations as to the Association's position regarding a study being conducted by the American Bar Association dealing with multijurisdictional practice.

The President has appointed various or has directed that the heads of various Committees participate or delegate someone to participate in this Ad Hoc Committee. Those constituent Committees are the American Bar Association Relations Committee, the Carriage of Goods Committee, the Comité Maritime International Committee, the Marine Financing Committee, the Marine Insurance Committee, the Maritime Arbitration and Mediation Committee, the Navigation and Coast Guard and Government Regulations Committee, the Practice and Procedure Committee, the Uniformity of U.S. Law Committee, the U.S. Maritime Legislation Committee and the Young Lawyers.

The President has been kind enough to appoint me Chair of this Ad Hoc Committee. We are on sort of a fast track. There is a comment period that actually ends in June, but more importantly, they would like formal input from the Association before the end of the year.

Consequently, our Committee met yesterday at 2:00 o'clock at Haight's office and we are moving quickly to study the various proposals and to make recommendations to the Board of Directors, which will then presumably be passed on and hopefully approved by the Association. And we will have our recommendations presented to the Board of Directors by the San Diego meeting in October, Mr. President.

PRESIDENT DORSEY: Thank you.

MR. BARTLETT: Thank you.

PRESIDENT DORSEY: Thank you, Jim.

This Ad Hoc Committee on Multijurisdictional Practice obviously is an extremely important one for this Association, in my view, because the problems of multijurisdictional practice are certainly ones that every maritime lawyer faces from time to time in his practice. It cuts across a broad line of the work that we do, it cuts across a broad line of the various Committees that we have, and hopefully we'll get the input that we need.

If there are others who are not on this Committee who think that they can contribute to the work of the Committee and advance the work of this Ad Hoc Committee, please contact either me or Jim Bartlett. Our goal is to come up with some specific proposals, comments, recommendations to the ABA Commission that is studying this problem. And as Jim says, the time is short because the ABA

Commission has to report by next year at this time, and so we've got to get our comments in to them in time for them to consider them and look at them. I regard this work as extremely important for the Association.

Next we'll have Michael Marks Cohen for the CMI Committee, and following him will be Ann Miller for the Cruise Lines and Passenger Ships Committee.

MR. COHEN: Thank you, Mr. President.

There will be a formal written report of the CMI Committee. I just want to mention a few things this morning.

First, President Dorsey lead a very big and well prepared delegation to the CMI conference in Singapore. We were one of the largest delegations there. I want to single out particularly several people in our Association who put in a great deal of effort in order to make sure that the delegation was well prepared. This includes, of course, Vince DeOrchis, Chet Hooper, George Chandler and Michael Sturley on issues of transport law; George Gabel, Sam Menefee and Frank Wiswall on piracy; Howard Meyerson and Howard McCormack on General Average; and Jean Knudsen and Gray Staring on Marine Insurance. We were, I think, the best prepared delegation from our Association to the CMI conference in all the CMI conferences that I've been attending in the last 20 years.

The CMI will hold a colloquium in September 2002 in Vancouver, and the next Plenary will be in September 2004 in Greece. I'm told, Crete.

I just want to mention two other things.

First, if you're throwing out your advance sheets and your obsolete maritime law treatises, please don't do that. Get in touch with me, because there are maritime law schools abroad that would like to have your advance sheets and treatises as a way of building up a library on American maritime law. American Maritime Cases is donating ten sets of 26 years of AMC's with digests, which will be sent to law schools abroad. The American Maritime Law Foundation has very graciously agreed to provide matching funds for postage and handling.

Finally, I want to mention that Francesco Belingieri at the Singapore conference announced that he was setting up a case base to collect summaries of cases from around the world implementing maritime conventions that the CMI was instrumental in getting adopted. If you have a case involving one of those conventions, you ought to be able to come up on the CMI website, and there will be a special place there where you can look to see whether the Admiralty courts in other countries have given the convention an interpretation of the particular issue

that you're involved in.

Thank you, Mr. President.

PRESIDENT DORSEY: Thank you, Michael. I join Michael in his commendation of the people that he mentioned. I would also say that there were others who were there from the American MLA, Michael Sturley was rapporteur for the International Sub-Committee on Transport Law; Sam Menefee was the rapporteur to the group working on piracy—Frank Wiswall chaired that session—and John Kimball was the rapporteur on the Working Group on UNESCO and spoke at the plenary session.

I think we were well prepared and I think that the one person that Michael omitted in that connection was himself, because I'm a bit of a rookie when it comes to CMI and without Michael's assistance and energy, typical of him, I might add, I don't think we would have been anywhere near as prepared as we were. There were many people involved in getting us ready for that conference and a lot of people deserve kudos for that, but at the top of my list is Michael Marks Cohen. Michael, thank you very much.

(Applause.)

PRESIDENT DORSEY: I might comment in connection with that conference, and particularly with respect to me, again, being a rookie with respect to CMI, on the help and assistance I got from Frank Wiswall concerning the inner workings of the CMI, or, if you will, the politics of the CMI, the procedures of the CMI. Frank was very gracious and helpful to me in squaring me away on where the bodies were buried and what I should be doing.

So, Frank, thank you very much again.

Ann Miller for Cruise Lines and Passenger Ships. We have some interesting developments here.

MS. MILLER: Thank you, Mr. President.

The Cruise Line Committee met yesterday at the DeOrchis offices, as usual, and mainly discussed the Athens Convention and the proposed new protocols that are being discussed in the Legal Committee of the IMO.

There was a comment earlier today that there was hope that the Protocol would be ready to be sent to the Diplomatic Conference after the October meeting. But I think that those who are very close to this project now believe that that

may be a bit premature. Although there has been much discussion about the proposed changes to the Athens Convention, only recently have the clubs and now the cruise industry become individually very aware of what is going on. In fact, yesterday at the Cruise Committee we were presented with a position paper from the International Council of Cruise Lines—its President, Michael Crye, attended—and they cited the various portions of the Athens Convention, which I won't go into today, but they relate, of course, to strict liability, reverse burden of proof and direct suits against insurers. The position paper reflected what the cruise lines are beginning to consider, at least by a representative body, and began with:

“Dear Mr. Dorsey:

“We at the International Council of Cruise Lines have reviewed the proposed new protocol to the Athens Convention and believe the proposed changes are inimical to the maritime industry in general, the United States based cruise lines and in the long run the consuming public.

“We are strongly opposed to these proposed changes and will urge the United States delegation to the IMO not to endorse or sign the new protocols currently drafted.

“We urge the Maritime Law Association to adopt a similar position.”

The position paper concluded in that same vein.

The clubs working through the secretary and executive officer of the International Group of P&I Clubs are also I think taking notice of the significance of some of these changes. And so I suspect we are going to be very active in the next few months, which brings me to great disappointment to having heard this morning, Dan Goettle, that you are going to be moving on, because it has been a real pleasure working with you. Thank you very much.

It has been said that the MLA is receiving input from these various representative bodies, if you will, or individuals or entities which have an interest in the Athens Convention. It is really Joe Ahern and Dan Goettle who as our representatives to the IMO Legal Committee are seeking this input. We are seeking it to assist them and so that the Association through President Dorsey can take a position. That is what we'll be working on in the next few months. If any of you have input or wish to give input, you can feel free to contact me, or if you know of anyone that you believe we should contact, I will be happy to do that.

Thank you very much.

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PRESIDENT DORSEY: Thank you, Ann.

Just some background: Joe Ahern and Dan Goettle have been trying to elicit comments from concerned industry sources for quite some time, really since last October. Ann Miller has been trying to do that, as well. But it's only just within the last couple of weeks that we really have begun to get a reaction. So the pot is now boiling and things are coming to a head. We are going to get some interesting comments, I think, and we're moving ahead on that issue.

Next we'll have Sam Menefee, International Law of the Sea, followed by Matt Marion on Marine Ecology.

DR. MENEFEE: Thank you, Mr. President.

The Committee on the International Law of the Sea met at the South Street Seaport Museum. One of our major concerns was a reorganization of the Committee's Subcommittees. Depending upon interest, we hope to have two levels of Subcommittees; the first dealing with an overview, and the second dealing with substantive matters within the purview of our Committee.

The four Subcommittees dealing with overview will be the Subcommittee on the Law of Sea Convention and Other International Agreements, which is an expansion of the current Subcommittee on the subject, the Subcommittee on the ICJ and the International Tribunal of the Law of the Sea, the Subcommittee on Foreign Decisions and Legislation, and the Subcommittee on Customary Law on International Incidents.

Insofar as specialized Subcommittees, we're going to continue to have a Subcommittee on Offshore Exploration, we are upgrading our Piracy Working Group to a Subcommittee on Piracy and Maritime Crimes of Violence, and we're going to have a Subcommittee on Marine Mammals.

There were also three suggestions that came up at the meeting which I did not mention to the Committee Chairs so I'm going to mention them now. If anybody feels that we are treading on other people's toes, please let us know and we will see what arrangements we can make.

It was suggested that we have a Subcommittee on Defense and Naval Warfare, one on Illegal Immigration, and a temporary Subcommittee dealing with the Ocean Policy Commission.

If there are any young lawyers who are interested in working in this, in any of these areas, we would like to put you to work.

There were 469 reported piratical attacks last year, according to the statistics, which is a rise of 57 percent over 1999 and four-and-a-half times the number of attacks in 1991. In the year 2000, 72 seafarers were killed and 99 were injured.

We now have 135 ratifications of the 157 signatories to the Convention on the Law of the Sea, and next week there is going to be a meeting of the open-ended informal consultative process held in New York, which will deal with technology transfer and with piracy.

The Committee reviewed several decisions of the International Tribunal for Law of the Sea, which basically dealt with fishery disputes, seizures of fishery vessels. We also noted that the rules of procedure for the Commission on the Shelf have now been issued.

Doug Burnett brought to our attention the fact that there is an Ocean Policy Commission which has been appointed similar to the earlier Stratton Commission. This is going to have six public meetings and issue a report within two years. It was suggested that the MLA be proactive in the area and this matter be taken to the Board of the Association for consideration.

We would like the Association through the Committee on the International Law of the Sea and other interested Committees to participate in public hearings of the Ocean Policy Commission of 2000 by attending all public hearings. Hopefully that can be done by people in the area, and making summary reports of the proceedings available to MLA members. It was also hoped that the MLA might be able to find partial costs for reimbursement.

That concludes my report.

PRESIDENT DORSEY: Thank you, Sam. Matt Marion next, and then following Matt will be Sandy Knapp from Marine Financing.

MR. MARION: Thank you, President Dorsey.

The Marine Ecology Committee met Wednesday afternoon. We received reports from ten Committee members. My allotted time probably wouldn't do justice to any one of those reports, but I'll mention a couple of the cases and recent developments that we discussed.

As you may recall, Maritrans filed suit against the U.S. Government alleging that the single hull tank vessel requirements imposed by OPA '90 effected regulatory takings of Maritrans' fleet of single-skin barges. At our Committee meeting, we received a detailed report from Maritrans' trial counsel about the recent trial of that dispute.

Maritrans claims \$73.5 million in damages resulting from the scrapping and sale of eight tank barges whose commercial life in the United States, they claim, was shortened by the double hull regulations. The government has argued that no takings occurred because the barges still have a useful life and could be retrofitted or otherwise sold for service outside of the U.S. That case has survived a motion to dismiss by the government. A decision is expected shortly and we'll report on the result in due course.

In a recent Circuit Court decision, *Southport Marine v. Gulf Oil*, the First Circuit denied a claim for punitive damages under OPA '90 and held that OPA pre-empts remedies otherwise available to claimants under the general maritime law. However, the Court specifically recognized the continued availability of properly pleaded claims under state law. The decision isn't remarkable, but sometimes there is comfort in reading what we expect to read in a circuit court decision.

One insurance-related matter that we discussed, something I think of considerable interest to all of us involved in marine casualties, was a report from counsel for WQIS regarding a claim they've lodged with the National Pollution Fund Center. As you may know, WQIS was the guarantor and insurer for the responsible party in the MORRIS J. BERMAN casualty. The responsibility party was charged with, and pleaded guilty to, certain intentional criminal acts related to the incident.

Subsequently WQIS lodged a claim with the National Pollution Fund Center seeking recovery of the \$10 million that it paid out under the applicable Certificate of Financial Responsibility and insurance policy on the ground that its assured's conduct constituted a defense under the Certificate and under the policy.

The National Pollution Fund Center has not yet acted on WQIS's claim. However, the issue is obviously of importance as it suggests, among other things, that overzealous criminal prosecutions may threaten the guaranteed insurance coverage otherwise available to pay pollution costs and damages resulting from casualties. We expect to receive a follow-up on that issue.

There have been several major settlements in the last six months. I'll mention two such examples. The MORRIS J. BERMAN is certainly at the top of the list. The amount involved in the settlement was \$83.5 million. Notably, a cargo owner, Caribbean Petroleum Corporation, agreed to contribute \$16.5 million based on its potential liability arising from the oil spill. In a second settlement, the IGLOO MOON case, the National Park Service announced that it will receive a million dollars from the owner and operators of the IGLOO MOON for reef damage caused by the vessel. This is the largest settlement ever under the Parks System Resource Protection Act, which is a strict liability statute like OPA.

We received excellent summaries of pending state laws and regulations which we will publish in the next MLA REPORT. We also received a report on recent developments under criminal law. I know that Fred Kuffler is here and will be giving a report, so I won't steal Fred's thunder, but I would like to note his he always makes a significant contribution to our Committee's work.

Last, but not least, we received a report on developments under Canadian law from John O'Connor, who is my counterpart from the Canadian MLA. We're grateful for John's support and look forward to working with him in the future.

Thank you.

PRESIDENT DORSEY: Thank you, Matt, and thank you very much for agreeing to take over as editor of the MLA REPORT. I should have mentioned earlier that the latest copy of the MLA REPORT is on the desk over there.

Following Sandy Knapp will be Jean Knudsen on Marine Insurance.

MS. KNAPP: Mr. President, thank you, fellow members. Before your eyes start glazing over, I'll try and talk quickly. I just want to let you know some things that I think are important to the general membership, and that's why I decided to address you today.

We continue to be very active. We have various Subcommittees and Ad Hoc Committees. We're monitoring legislative efforts and protocols and regulations, including the changes in the Liberia Corporate and Maritime Code and the Marshall Islands' Corporate and Maritime Code.

We are monitoring House Bill 1098, which passed the House and is now in front of the Senate. I spoke about this at the fall meeting. Essentially it permits the filing of a notice of claim of lien with the Coast Guard, even though there is no preferred mortgage of record.

The MLA has not taken a position on this legislation, so you are on your own. If you are interested, if you have any questions or comments, please contact Dave Williams, who is one of our Committee members and former Chair of the Committee. He has been monitoring it for us.

We are also following the regulations under the American Fisheries Act, which you have heard about. We passed a Resolution that Bill proposed. Steve Johnson has been reporting to us on that. And although we did not address the same Resolution, I would like to state for the record that based on the discussion at our meeting, I'm sure there will be no objection to us supporting a delay in the deadline of October 1st.

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There have been regulations on foreign repairs, numbering of undocumented barges and the vessel identification system. The UN Convention on Movable is also of interest to us, for it will essentially be an international registry of security interests. Charley Donovan, Charlie Brown and Christie Helmer are now our little study group on that and will be drafting and following the progress of other equipment protocols which now include satellites, rail cars, and some other items, aircraft included.

We're also following the Uniform State Boat Title Act. Bob Fisher is following that for us. And on Wednesday, the date of our meeting, the Coast Guard published a notice of proposed rule making regarding the foreign leasing provisions found in 12106(e) of Title 46. With respect to these last two items, I went to the Board of Directors meeting yesterday. We asked for permission to engage in discussions and monitor the session on behalf of the MLA with respect to that Uniform State Boat Title Act. We will go back to the Board if there are any substantive changes to maritime law upon which we would like to comment. But I want you to understand that this law will essentially eliminate the various titling statutes of the states and establish a uniform system. That is the plan. I do not know how long that will take, but you can imagine each state having its own system is quite a nightmare, not only for vessel owners, but also lenders.

I also brought up with the Board our need to comment on the regulations regarding the foreign leasing companies. As you may or may not know, a foreign leasing company can own a coastwise trade vessel as long as a bona fide U.S. citizen has a demise charter on that vessel for a three-year period, among other requirements. There's a 60-day window on those regulations, which is, naturally, before the Association's Fall meeting. We have comments. We will work with the Board on those comments.

As you heard, we have also been appointed part of the Multi-Jurisdictional Practice Ad Hoc Committee. Our designee is Christie Helmer of Portland. We all do interstate transactions and it's very relevant to our Committee. We are also involved in the Title 46 Recodification Project.

Thank you.

PRESIDENT DORSEY: Thank you, Sandy. Now, Marine Insurance, Jean Knudsen, and then following Jean, Don Kennedy on Maritime Arbitration.

MS. KNUDSEN: Good morning, ladies and gentlemen.

The Subcommittees and main Committee of Marine Insurance met this Wednesday, and we are delighted to announce that the annotations to the P&I pol-

icy have been completed. They will be published by the MLA and sent to the general membership in June. They are an excellent work, and are in excess of 300 pages. I want to extend thanks, on behalf of the Marine Insurance Committee, to Simon Harder, who chaired this project, and to all of those individuals who worked so hard and made excellent contributions.

Thank you.

During the course of our meetings we reviewed the ongoing projects, and I wish to highlight and mention that our Committee has put out a newsletter which is available in the foyer, along with a summary of the CMI International Working Group on Marine Insurance discussion paper, which was issued at Singapore, as well as Gray Staring's paper on marine insurance, which was also presented at Singapore. It's an excellent work and I urge everyone to take a copy and review it.

The CMI has set up a Working Group on general average. At the request of President Dorsey, next Tuesday I'll be attending, along with Howard Myerson, a meeting in London to discuss the proposal to set up a working group to consider a revision to the Antwerp Rules.

We'll look forward to representing the MLA and the Average Adjustors' Association and will report in due course.

Thank you.

PRESIDENT DORSEY: Thanks, Jean. Don Kennedy, and following Don, Harold Watson on Maritime Legislation and Title 46.

MR. KENNEDY: Thank you, Mr. President. I will be submitting a formal report to the Association, but just a couple of highlights.

We have been working on proposed amendments to the Federal Arbitration Act. Those amendments were unanimously approved by our Committee at the Spring meeting. But we wanted to get some input from the American Arbitration Association on their reaction to our proposed amendments.

I've had discussions with the General Counsel of the AAA, and the Associate General Counsel of the AAA attended our Arbitration Committee meeting this week. Basically the AAA's position is they don't favor any amendment to the Federal Arbitration Act. Their nightmare scenario is that somebody tries to propose an amendment to the FAA and someone else will put an amendment in that provides for an appeal of an arbitration award. It's not that they take issue with

our proposals; it's the philosophical approach. They have no objection to our tacking on our amendments or putting them in another statute, if that's possible.

What the Committee has decided to do is to reevaluate the procedural aspects of moving forward with the proposed amendments. The proposed amendments as such have been published in the *MLA REPORT* and the *PROCEEDINGS* of this meeting. I don't believe they're controversial.

What we're going to do is look at this again, and if there is a realistic shot of getting something done, we'll come back in November and ask for a Resolution.

In addition, the AAA feels that arbitration is under attack in the United States. As many of you know, there have been a lot of cases dealing with manifest disregard of the law as a basis for overturning an arbitration award. Our Committee had a program this week which was moderated by Don Murnane, and it was sort of a debate between Glenn Bauer and Jay Paré, pro and con against this issue, and we'll try to get that published one way or another soon.

Thirdly, I have been a member of the State Department delegation, participating in the *UNCITRAL* meeting, the Working Group on arbitration. I attended a meeting in November. I've been invited again to participate in the delegation which will be meeting in New York later this month in early June.

Finally, I would like to thank Jay Paré and Keith Heard for the newsletter that they put together. It has a lot of very interesting cases and an excellent analysis.

Thank you.

PRESIDENT DORSEY: Thank you, Don. Harold Watson, followed by John Schaffer.

We're getting toward the end the meeting. I would like to finish this by noon-time. By my brief calculation of how many more people we have to speak, and what we still have to do, I would say three minutes apiece.

MR. WATSON: Thank you, Mr. President.

The Maritime Legislation Committee met on Thursday and discussed, among other things, the House Bill 1098 that Sandy Knapp commented on.

The principal point of our discussion, however, was the Title 46 recodification effort. As most of you know, there's a proposal to recodify Title 46. We have been coordinating with the Assistant General Counsel of the Department of

Transportation, who has put this proposal together, and he has indicated that he would welcome our comments on it.

The proposal is intended as a recodification. It is not intended to affect substantive changes in the law. I think we have to be careful to make sure that that, in fact, is the case. I think some people have taken a look at it and think there are substantive changes.

We have been in contact with various Committees of the Association and asked for their input on particular portions of this proposed legislation that fall into the bailiwick of the substantive Committees of the Association, and we're going to be gathering comments from those individuals within those Committees who have been appointed to take on this job.

As far as a timetable for this, we understand that it probably will be a year before there is any action on it in Congress, but the Coast Guard has set this July as their timetable for making their comments, and we would like very much to coordinate with the Coast Guard and be able to get our comments in at that time, as well. So if any of you have been asked to take this on from the various Committees, I would hope that you would keep that in mind and that we do that with some dispatch, and make some progress in the next month or so, so we can get our comments together.

Thanks very much.

PRESIDENT DORSEY: Thank you. John Schaffer, and next Warren Marwedel on Proctor Admissions.

MR. SCHAFFER: Good morning, everyone.

The Personnel Committee met yesterday afternoon and we had 34 members and guests participate in a very lively conference.

We are involved as a Committee in the Title 46 recodification, and we're also involved—and I have to read this because I haven't been able yet to get it memorized—the IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers. It goes along with the Athens Convention in making liability strict and the clubs being on the hook directly as defendants. We're just going to have to see where it goes. In fact, that Ad Hoc Committee is meeting this week in London as we speak.

We also talked about any possible changes to the Death on the High Seas Act, as well as punitive damages, which is always an area of interest. There are about

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three cases that are before the Supreme Court right now in the personnel area and we expect to have decisions shortly.

We discussed and reviewed about ten different decisions from all over the country on various areas involving claimants, shipowners, as well as the P&I clubs.

As always, we welcome suggestions from the Association for new or interesting projects and we're always looking for people to join our group.

Thank you very much, Mr. President.

PRESIDENT DORSEY: Thank, John. Warren, and next after Warren, Don Greenman for Recreational Boating.

MR. MARWEDEL: Mr. President, ladies and gentlemen.

Just a short note: I assume everybody here is a proctor, but we would like to make sure that you look at the other members in your firm, associates, and make sure that they join the organization. Some of them are active in Committees and somehow haven't necessarily joined. But more importantly, as they get their experience in the Committees and after they're a member for four years, get their application in to be a proctor member. You can download it from our website. It's not an onerous application. But I think it's the minimum standard for people who want to be active in the organization and move ahead and be Committee Chairs, et cetera. So I encourage you to get everybody in your office that is doing maritime law, get those applications in.

Thank you.

PRESIDENT DORSEY: Thank you, Warren. I second that. You cannot be a Committee Chair of this Association unless you're a proctor member, and you can't be a member of the Board of Directors unless you're a proctor member. I hope that people will keep that in mind.

Don Greenman and after Don, Frank Billings for Stevedoring and Terminal Operations.

MR. GREENMAN: Thank you, Mr. President. I'll be fairly brief and shall be submitting a formal report.

First, I would like to thank Frank DeGiulio, who once again has put together Boating Briefs. You will find that on the table in front to keep you advised of what is going on in the boating law.

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The principal thing I wanted to talk about at this meeting is something that is a little bit of old news.

Several meetings ago we brought up the subject of whether the Sail Racing Rules and the Inland Rules of the Road can be made to match. There is a proposal to amend the Inland Rules to take into account the ENDEAVOR decision, 1995 AMC 2678, in the First Circuit which said that when parties are racing, they are bound by the racing rules rather than the Rules of the Road. In my last formal Committee report, I said that we had tabled the motion to do so, and I discovered that people actually read your reports, because it now has become untabled.

What we are doing now is putting together a working group to study the issue of whether the Association should take a position on the subject and, if so, what position we should take.

I know that there are a lot of members of the Association who, apart from whether they are interested in the law, are also sail racers, and so there has been an expression of interest from outside our Committee in this project. I would invite anyone who might be interested in making their views known or working with us to see me or send me a note or letter after the meeting.

Thank you, Mr. President.

PRESIDENT DORSEY: Thank you, Don. Frank Billings, and after Frank Billings will be Pat Cooney for Uniformity.

A VOICE: He's here, but probably outside.

PRESIDENT DORSEY: We'll get him later or maybe he loses his place. After Pat, we'll go to Josh Force.

MR. COONEY: Thank you, Mr. President.

The Uniformity Committee met on Wednesday at Donovan, Perry and we were privileged to have their usual fine hospitality. We had an interesting and a fairly unique meeting.

We focused on the recent case out of the New York Court of Appeals, Cammon v. City of New York, which involves injury to an individual who is a harbor worker who was involved in repairing a garbage dock and apparently hit his head as a tug passed by and surged the platform on which he was standing. He has sued the City of New York and through contractual arrangements liability was passed down to his employer in a third-party situation. The New York courts

have chosen to apply the New York Labor Law, more precisely the Scaffolding Act, which is a strict liability statute. It does not provide for comparative negligence, which runs directly in the face of the law, and maybe even after Miller, a characteristic feature of the maritime law: comparative fault.

The meeting was unusual because both sides in the case have applied for assistance from the Association to appear as amicus in support or in opposition to a petition for certiorari. Counsel were all local: Michael Mitchell and James Power with Haight Gardner, and Paul Hoffman for the plaintiff. We invited them all to attend and have it out at our meeting, and we invited the Board of Directors and the officers to attend. We had a very lively discussion and it was extremely useful.

I have to report that after due consideration, the Board of Directors have decided to not appear as amicus in support of the petition, but reserve their right to get involved should the Supreme Court decide to grant a writ in this case.

What we are dealing with is a real concern after the Miller case as to the viability of Jensen, and the articulation of Jensen uniformity standard. Those who listened to Professor Force last year understand the considerations and are searching for an articulation of uniformity that will be meaningful to the current Supreme Court. As a result, we are trying to pick our cases very carefully.

It was the decision of the Board that this was not the case to go up on, but if the Court decides to take it, we'll be there, most likely, because I assume that one of the other parties will again ask us to appear.

One other case that I would ask you to keep on your radar screens, one that we were not involved with, the Garris case. It has been argued before the Supreme Court on April 3rd. This, of course, is the case that deals with the question as to whether there is a maritime cause of action for wrongful death resulting from negligence, and it is with the Court now and we shall be seeing what they do and we'll all watch it with interest.

Mr. President, that concludes my report.

PRESIDENT DORSEY: Thank you, Pat. Let me just comment a minute on the Cammon case.

Not while I have been on the Board has there been an opportunity for the Board to consider an amicus request at one meeting where everybody is sitting around the same table. Usually these requests come in between our scheduled meetings and require fast action. So what happens is you send the papers out to

all the members of the Board, and in essence they review the issues alone in their office, talk to whoever they want to talk to, and then make their own decisions. We poll the Board and that's the way we get the vote on whether we participate or don't participate.

But this case, which is very interesting and involves the very problems of federalism that Professor Force spoke to us about during the Healy lecture and that Professor Robertson has written about, both taking different sides on the issue as to what rule the Supreme Court should follow.

This particular case arose just prior to our meeting here in New York, and so provided an excellent opportunity to get views of attorneys on both sides. Then, at our Board meeting, we had a chance to debate the matter among ourselves and hear everybody else's comments, which was unique in my experience and certainly a beneficial.

As Pat said, we declined to take any action one way or the other. We're not going to oppose the petition for certiorari and we're not going to support the petition for certiorari.

I think if certiorari is granted by the Supreme Court, we want to know about it because, while I won't predict what we will do, but the question will then be, well, should we participate on the merits, and if we do participate on the merits, which side will we take and what position we should put forward. Professor Force would say we should be on one side and Professor Robertson would say you ought to be on the other side. So, it's a fascinating case.

Joshua Force for the Young Lawyers. Then next will be Fred Kuffler, Environmental Crimes.

MR. FORCE: Thank you, Mr. President. I'll try to keep my remarks on the Young Lawyers and not weigh in on the professors' duel.

The Young Lawyers Committee met yesterday.

PRESIDENT DORSEY: You were on one side of the issue in the brief that you submitted, were you not?

MR. FORCE: I still seem to be able to get dinner every now and then.

The Young Lawyers Committee met yesterday. We had 25 members and guests that attended. We also hosted a social function last night with another 20 members and guests in attendance.

We began our meeting yesterday by introducing the new slate of officers for the Committee. I am the new Chairman of the Committee. We also have a new Vice Chair, who is Larry Kahn of New York, and a new Secretary, Katharine Newman of New York.

In connection with the change in the leadership and the officers of the Committee, we gratefully recognize Doug Muller, who has been the Chair for the past two years, and has provided us with great leadership and guidance over that period of time.

At present, the Young Lawyers Committee is engaged in assisting the various Standing Committees in approximately 15 projects. We're working with ten of the Standing Committees in the Association.

One of the projects that I would like to mention that has been alluded to earlier is a project that we're working with President Dorsey on, and that is indexing the various MLA publications. The index looks similar to the AMC index, it follows a similar type of format, and Alex Giles, who is one of our members, has completed already the indexing for one year. He presented that to us yesterday, and we were able to review it.

In addition to that, we're working with a number of other Committees. One other that is worth mentioning is we are working with the Arrangements Committee in organizing part of the CLE presentation for the San Diego meeting, which will involve recent developments and presentations by various members of our Committee.

In addition to discussing the old and new projects that we're working on, we also had a very lengthy discussion on how to get more young lawyers involved not only in our Committee, but also in the Association and with the Standing Committees.

One proposal that we adopted was to draft a letter that would be sent by the Chair of the Young Lawyers Committee to all new members of the Association encouraging them to participate in not only our meetings, but also in the works of the various Standing Committees and hoping to introduce them, at a very early stage, to what our Committee does and help facilitate the introduction of new members to the Standing Committees.

In addition to that, I also ask all of you to encourage the younger members of your firms, or as we were reminded yesterday, the younger at heart, to attend our meetings, our social functions, or to contact me or any of the officers if they wish to participate in any of the activities of our Committee.

Thank you, Mr. President.

PRESIDENT DORSEY: Josh, thank you very much. We continue to rely more and more on assistance from the Young Lawyers Committee, and we've been very fortunate over the years in having such capable leadership. I'm delighted that Josh is going to be the new Chair. I want to extend my thanks and appreciation to Doug Muller, who is the past Chair of that Committee. And, Doug, if you're here, if you'd come up after the meeting, I have a little certificate of appreciation I would like to present to you.

Now Fred Kuffler on Environmental Crimes and next it will be John Kimball on UNESCO.

MR. KUFFLER: Mr. President, Board members, ladies and gentlemen, I have attempted to stay in line with the first report I gave here about two-and-a-half years ago. This was a long-term project the Committee had been assigned.

Before talking about what is going on with the Committee I'm privileged to chair, I would like to in bullet fashion talk very briefly about some recent cases and the fallout from things that are happening in this area.

The first one is the NEPTUNE DORADO. There is a plea agreement in that case out in San Francisco. That was a prosecution for failure to report before arrival a hazardous condition as required under the Ports and Waterways Safety Act. The interesting part of that case is there was no environmental incident as a result of this hazardous condition, but there was a prosecution and plea agreement nevertheless.

The FRITJA JUTLANDIC matter in Baltimore has resulted in the indictment of the vessel's ISM designated person. I don't expect that that is a particular surprise, but it appears to be the first case in which that has actually happened.

The Supreme Court recently refused certiorari in the Stepanski matter. That involved prosecution of a state law crime that took place on the vessel about 100 miles offshore. The significance of this case I think is that it demonstrates the jurisdictional reach that prosecutors are engaging in and the support that the courts will give to these efforts.

We also have the example of the Command matter on the West Coast several years ago, and before that Royal Caribbean prosecutions in Florida.

I want to mention for a moment the fallout from these plea agreements. People are not going to jail at the moment and there are the obvious, very heavy penalties, but more than that, we're finding individuals who are convicted or

enter guilty pleas are finding themselves prohibited for certain amounts of time from serving on vessels which call in U.S. ports.

The owners and operators are being subjected to very stringent environmental compliance programs with the added fill-up that the governmental authorities are supervising performance under these programs; and of course for a civil practitioner a guilty plea or conviction can severely hamper our ability to defend the civil litigation which will follow many of these incidents.

Let me turn to what my Committee has been doing since the last time I stood before you.

First of all, Liz Burrell mentioned the statement that was drafted for President Dorsey to submit to the Coast Guard. That was done, and unfortunately we find that the program which lead to the Coast Guard's call for comment on its environmental agenda is now on hold. Nevertheless, I continue to believe that that program afforded us another opportunity to put forward the Association's views on some of the things that are going on in this area.

Now, the Committee met Wednesday noon at the offices of Healy & Baillie, and again Healy & Baillie hosted a very nice luncheon, although we all had to sing for our supper. The main subject of the meeting was what do we do next.

The consensus was now that the election is over and there's a new administration in place, the opportunity to reach out and try to establish a dialogue, particularly with the Department of Justice, had probably arrived. So it was agreed that we would put together a proposal to be submitted to the Board with a view that, if approved, it would be taken to the Justice Department, to the Coast Guard, and now unfortunately we have another big player in this game, the Environmental Protection Agency.

There was some discussion about how that approach should be made. We have some ideas, but the first thing is to put together a program. In broad form, we'll be putting the flesh on the bones of the positions advanced by Former President McCormack in a statement he submitted to Congress about two years ago, and President Dorsey's statement to the Coast Guard at the end of last year. We will suggest we continue to support elimination of the use of crimes of strict liability in the aftermath of an environmental incident; that there be certain qualified privileges and immunities for cooperation with investigators, particularly casualty investigators on the theory that OPA '90 has set a priority for government policy, and that is clean-up and prevention take priority over all other considerations in ordinary circumstances.

[12653]

As an adjunct to that, we will be looking at possible privilege for ISM audits, and perhaps environment audits of a broader nature. I should—

PRESIDENT DORSEY: Red light is on.

MR. KUFFLER: The red light is on.

Then let me conclude, Mr. President, by saying that the suggestion has been that this summer would be a very good time to try and begin approaching these various agencies. With that in view, we're going to try very hard to get something to the Board for an action in time for your summer meeting.

PRESIDENT DORSEY: Thank you very much.

MR. KUFFLER: Thank you, and I apologize you had to flash the red light.

PRESIDENT DORSEY: No, no, problem. You had the disadvantage of being placed at the end of the meeting when we start truncating things.

I want to advise everyone that Fred was on the panel with me at Tulane. Actually his was the major paper which was delivered on this subject, and it will be published in the TULANE LAW REVIEW. It's a terrific paper and all of us who are concerned with this subject should read Fred's article. He spent a lot of time on it and did a great job.

John Kimball is next, and then Tony Whitman will do the Navigation Committee.

MR. KIMBALL: Thank you very much, Mr. President.

The UNESCO Study Group has been monitoring the development of a Convention that has been under discussion by UNESCO for about five years now. This is a Convention that would deal with the protection of underwater cultural heritage. For our purposes, underwater cultural heritage includes old shipwrecks and other property on the ocean floor.

The Draft Convention is of particular concern to our Association because of its potential impact on the Law of Salvage. In its draft form, the Convention would abolish the application of the Law of Salvage with respect to property covered by the Convention.

The Study Group has worked closely with the United States delegation, and, in fact, I have been honored to be a member of the United States delegation.

[12654]

I'm happy to report that during the meeting that took place this past March there was some progress made in adopting language which should have the effect of preserving the application of the Law of Salvage with respect to property covered by the Convention. The proposed clause would place limitations on salvage operations, and would require that salvage operations be conducted in conformity with the Convention.

The Convention includes very broad annex rules that basically have been devised by the marine archeological community that would certainly regulate the activities of salvors. But the good news from our standpoint is the Law of Salvage would seem to have a continuing role, as would the United States Admiralty Court, our District Courts.

The fate of the Convention hangs in the balance. There will be a further meeting in July.

I was very happy to hear the Treasurer's report early on today. I am one of the guilty people who has been depleting our treasury and I'll continue to do so by making a trip to Paris in July as a member of the United States delegation and we'll see what happens.

It's very unclear whether the Convention will get through. I personally doubt that it will, but that's a personal prediction.

Thank you very much.

PRESIDENT DORSEY: Thank you, John. Tony Whitman.

MR. WHITMAN: Thank you Mr. President.

Very briefly, the Navigation Coast Guard Government Regulation Committee met on Tuesday of this week. Dennis Bryant being out of town, I had the honor of chairing that meeting, which Joe Ahern and Dan Goettle attended. I think the swelling numbers of attendees at this particular Committee meeting is an indication of the practical appreciation that people have for the opportunity to speak one-on-one with members of the Coast Guard officials and I thank you again for that.

For the two or three of you who might not be on the e-mail address list for Dennis Bryant's Bryant-Grams, which are coming out on an almost hourly basis, Dennis does a fabulous job with this Committee and with updating members on what is happening with the Coast Guard. If you're interested in being on his e-mail list, I'm sure he will be happy to add you.

A couple of issues of interest that we touched on that have not been mentioned by other Committee Chairs who have, in fact, talked about many of the issues that we talked about. One is that it appears that the Coast Guard is no longer pushing for a strict enforcement of the Ocean Dumping Act; that if it had been strictly enforced, it would have found us in conflict with MARPOL on a couple of issues. So that's a good situation.

Secondly, we discussed the legislation for gray water and black water discharge in Alaska, which is something that people should be aware of as a potential model for gray water and black water discharge legislation nationwide.

Also, on the very day of its issuance, we heard of the notice of proposed rule making for ballast water discharge, which was published as of May 1st. This is really looking for a solution to this significant problem rather than trying to mandate anything.

Finally, Joe mentioned the interagency memo of understanding with regard to oil spill response, which as Fred just said, does acknowledge that the chief priorities are spill response, personnel safety and environmental protection. Criminal enforcement not being among those highest priorities.

If I may have 30 more seconds, I would like to cure an oversight earlier. You heard from Josh Force on the CLE, and Bill Dorsey has mentioned the CLE for the San Diego meeting. I might also add that among the CLE presentations will be something that I think you will find very interesting: a panel presentation led by David Taylor, and including as panelists Steven Martin of Steamship Mutual and Fred Pietropola of Marsh on where we are in the marine insurance industry and where this industry is going as a whole. I think that everybody will find that very interesting on Thursday morning of the week in San Diego.

Thank you very much, Mr. President. This concludes both of my reports.

PRESIDENT DORSEY: Thank you, Tony.

Frank Billings, is he here? He's done good service for us for four years and I gave him his certificate at the Committee Chairs' meeting. He is going to be replaced by John Ryan of Norfolk.

I think that concludes the regular Committee reports. Before we go to the Nominating Committee report, just a few announcements.

The dinner tonight includes a 6:30 reception on the fifth floor in the Westside Ballroom of the Marriott Marquis Hotel, followed by the dinner at 8:00 p.m. upstairs on the sixth floor.

[12656]

This afternoon there will be a CLE presentation in this room. The speakers will be Captain Malcolm Williams, who is well-known to all of us, and Lieutenant Commander Bruce Dalcher, who is also well-known to us. Their subject has the intriguing title of "Coast Guard as Maritime Enforcer." I don't think we should miss that. There is probably a lot of concern about that. So I think that should be a very interesting topic.

Now, before I do call on Howard McCormack, I just want to say a word about the four retiring members of the Board, who are Jim Bartlett, George Koelzer, Bruce King and Jean Knudsen. I told them yesterday at the Board meeting that if it were up to me, I would appoint them directors for life. I can't say how much I have appreciated the effort and work and support that they have put forth during their term of office, and believe me, they served you and the Association well and truly.

Fortunately, they are not going anywhere. They are not going to be forgotten, nor are they going to be gone, and my hope is we will have their help and advice and assistance for many years to come.

So, I wish you would give a round of applause to those Board members.

(Applause.)

PRESIDENT DORSEY: And now the envelope, please, Mr. McCormack.

MR. McCORMACK: Thank you, Mr. President.

The Nominating Committee met on Wednesday afternoon to consider nominations for officers and four new directors. It is my privilege and pleasure to announce the results of the Nominating Committee as a recommendation to this body.

For President, William R. Dorsey, III; First Vice President, Raymond P. Hayden; Second VicePresident, Thomas S. Rue; Secretary, Lizabeth L. Burrell; Treasurer, Patrick J Bonner; and Membership Secretary, Winston E. Rice.

For four directors to replace the four excellent directors who are leaving as their term of office expires, the Committee has recommended the following:

James Patrick Cooney of Houston; Armand J. Paré of New York; Robert J. Zapf of Los Angeles; and Joanne Zawitoski of Baltimore.

Mr. President, that concludes the recommendations of the Nominating Committee.

[12657]

I would ask if there are any further nominations to be heard from the floor.

(No response.)

PRESIDENT DORSEY: Seeing none, I will call upon Mr. Healy to make a motion in support of the nomination.

MR. NICHOLAS J. HEALY: Mr. President, ladies and gentlemen.

You all have heard the report of Howard McCormack as Chairman of the Nominating Committee, and there being no other nominations, I move that the secretary be directed to cast one ballot in favor of all of the candidates named in the report, for the respective offices to which they have been nominated.

PRESIDENT DORSEY: Is there a second?

(Chorus of seconds.)

PRESIDENT DORSEY: All in favor?

(Chorus of ayes.)

PRESIDENT DORSEY: Opposed?

(No response.)

PRESIDENT DORSEY: Motion is carried. The Secretary is so directed. I see she has cast the ballot, and I declare the nominees elected.

Thank you very much, ladies and gentlemen.

(Applause.)

PRESIDENT DORSEY: I'd also say my thanks to the Nominating Committee for presenting me and the other officers with a superb group of four lawyers to help us over the next number of years. I look forward to working with them. For those that are here, I would ask you to come see me immediately following this meeting, because we want to put you to work right away.

I don't think there is any other business to come before this group. I see it is just two minutes before 12:00 and I would entertain a motion to adjourn.

Do I hear a motion?

[12658]

MR. NICHOLAS J. HEALY: So moved.

PRESIDENT DORSEY: Second?

(Chorus of seconds.)

PRESIDENT DORSEY: All in favor.

(Chorus of ayes.)

PRESIDENT DORSEY: Carried.

The meeting is adjourned.

(Time noted: 12:00 o'clock p.m.)

[12659]

FORMAL REPORT OF THE COMMITTEE ON
CARRIAGE OF GOODS

The Committee met at the offices of Haight, Gardner, Holland & Knight commencing at 9:00 a.m. on May 2nd. There were forty-five members of the Committee present. A copy of the attendance list is attached to the original of these minutes.

The first area of business was to discuss the current status of the “new” COGSA proposal before the United States Senate. The chairman reported that he had recent conversations with Senator Gordon Smith’s legislative aid, Wally Chu, concerning the status, and a date for a meeting in Washington. Mr. Chu indicated that at the present time Senator Smith was not going to take up the COGSA proposal until some time after Labor Day. He indicated that there were other priorities, including the President’s tax package which needed to be considered first. Mr. Chu agreed to meet with the chairman and another representative of the organization in September to discuss the proposed bill.

Subsequent to the chairman’s report at the spring meeting, a reorganization of the Senate has taken place shifting committee chairmen’s positions from Republicans to Democrats. At the present time, we are not sure who will be taking over control of this particular subcommittee which must deal with the proposed legislation.

It was reported by the chairman that the time allotted for the Carriage of Goods Committee meeting, in San Diego Wednesday morning 9:00 to 11:00 a.m., will be a CLE seminar. The topic will be the status of the CMI draft of the proposed convention to replace the current Hague/Hague Visby/Hamburg Rules which are currently in force around the world. The presenters will include the MLA delegates to the Singapore CMI meeting in February of 2001.

Although time was limited, a brief presentation followed by a thorough discussion of the CMI draft took up most to the time allotted. Details of that presentation can be found in the report of the CMI Committee.

Following the main Committee meeting the individual Subcommittees held a brief session.

Respectfully submitted,

William Robert Connor, Chair

[12660]

FORMAL REPORT OF THE COMMITTEE ON
CARRIER SECURITY

The Committee on Carrier Security met at 4:00 p.m. on Wednesday, May 2, 2001, at the offices of Seward and Kissel, One Battery Park Plaza, New York City. Though attendance was rather light (five members), a lively and thought-provoking discussion was had on topics relevant to the Committee's interests.

Current U.S. Immigration policies and practices in the handling of stowaways were discussed. Of continuing interest to Committee members is the INS treatment of asylum petitioners, and the varying attitudes of local INS officers at various ports in the deportation of stowaways. The Committee hopes to be able to bring an INS representative to one of its meetings in the near future to discuss these issues, in the hope of developing a more flexible and consistent approach in the handling of stowaways.

Another item of concern discussed was the continuing problem of pilferage and theft of containerized cargo; both from vessels and from container terminals. The Committee hopes to involve industry representatives in dialogue aimed at addressing this problem. In this connection, the possibility of putting together a roundtable discussion on the issue of container theft and pilferage at the San Diego meeting was discussed and this will be explored in the coming months.

The Committee does expect to meet in San Diego this Fall. A newsletter to all members was published prior to the Spring meeting in New York, and it is anticipated that a second newsletter will be circulated prior to the Fall meeting in San Diego. The Committee continues to seek new members, both from the legal and industry sectors, and to solicit ideas for carrier security-related projects.

Respectfully submitted,

Gordon D. Schreck, Chair

FORMAL REPORT OF THE COMMITTEE ON
CLASSIFICATION SOCIETIES

The Committee met on April 30, 2001, with eight members or guests attending.

1. In its formal report following the October 2000 meeting the Committee advised that European Union (EU) Directive 94/57, addressing actions to be

taken by the EU after the ERIKA casualty, was under revision, which might affect issues of classification society liability and that, meanwhile, the CMI stood ready to assist if it could in that connection. Within the EU, the European Commission has advanced a proposal to create a European supplementary fund, to be financed by European oil receivers, to compensate victims of oil pollution under the international regime. That proposal is to be considered by the European parliament and council. However, it does not directly affect classification societies.

2. We have been informed by CMI Vice President Frank Wiswall that the classification societies are in serious negotiation with the EU authorities to produce, if possible, a mutually acceptable directive on liability of classification societies. So far, no agreement has been reached, and we understand that negotiations are difficult, particularly as regards limitation of liability. It is not expected that the Classification Societies Joint Working Group (CSJWG) which has dealt with classification society liability issues will meet again until the issues with the EU have been settled, and even then there is no assurance of effective agreement. Accordingly, there has been no further progress by the CSJWG on the issues of class society liability and limitation of liability.

3. Aside from the foregoing subject, the Committee is monitoring significant classification society developments and court decisions concerning classification societies. In March 2001 three leading classification societies, American Bureau of Shipping (ABS), Det Norske Veritas (DNV), and Lloyd's Register of Shipping (LR) issued a statement of ten initiatives to improve shipping safety, which has resulted in comment from the other classification societies which also are members of the International Association of Classification Societies (IACS). The principal initiatives are designed to link the future issuance of Safety Management Certificates (SMC) to the classification of the vessel and to strengthen transfer of class arrangements. Comments from the other class societies are to the effect that the ten initiatives are not new and had already been agreed by IACS. The issue may largely center on the speed of implementation.

4. With regard to court cases, an interesting foreign development was a judgment of the Multi-Member Court of First Instance in Piraeus in an action brought by Raffle Marine Ltd. against a number of defendants, including LR, holding under Greek law that LR was not liable to a subsequent buyer of a vessel on the ground, among others, that a class certificate was not intended to protect the financial interests of the prospective buyers of a vessel (Judgment No. 6885/2000, decided October 14, 2000, and published November 19, 2000).

Respectfully submitted,

Richard H. Brown, Jr., Chair

FORMAL REPORT OF THE COMMITTEE ON
COMITÉ MARITIME INTERNATIONAL

I. Maritime Projects of Other Organizations

A. IMO

1. A Convention on Pollution from Bunkers was adopted at a Diplomatic Conference in March. The primary source of funding to pay for damages and cleanup of bunker spills will be the shipowners' underwriters who are subject to direct action suits. Because there is no stand-alone compensation fund, if the insurance is inadequate, funding will have to be found somewhere else. Acting on the principle that the polluter should pay, the delegates to the Diplomatic Conference declined to shield salvors from liability, much to the distress of the salvage industry.
2. A draft Convention on Control of Harmful Anti-fouling Systems (i.e., hull paint) will go before a diplomatic conference in October.

B. IMO/ILO: An IMO/ILO joint working group is giving further consideration to liability and compensation for death, personal injury and abandonment of seafarers.

C. UNESCO. It is not yet known whether experts who had been meeting to consider the proposed Convention on Underwater Cultural Heritage have managed to overcome their difficulties.

D. UNIDROIT. The UNIDROIT draft Convention on Security Interests in Mobile Equipment, along with a separate protocol for aviation equipment, will go to a diplomatic conference in Capetown next fall. Protocols have also been drafted for rail and aerospace equipment. But they will probably not be sufficiently completed in time to be considered at the conference. A Marine Finance Subcommittee of our Association is drafting a protocol covering containers and marine equipment.

E. Hague Conference on Private International Law. At the urging of the MLA, the draft Convention for Enforcement of Foreign Judgments excludes admiralty judgments. This was done because the jurisdictional provisions of the Convention would prevent U.S. courts from issuing Rule B attachments.

The State Department is now concerned that the Hague Conference may not produce a draft convention which the United States can sign, which

would be a pity since the original initiative for the convention, to complement the Brussels and Lugano Conventions, came from America. If the gloomy prognosis becomes a reality, the State Department is expected to turn toward negotiating bilateral arrangements and/or possibly an Inter-American convention under the auspices of the Organization of American States.

In the meantime, the American Law Institute has a parallel project to draft a proposed statute for enforcement of foreign judgments. Recently, the ALI agreed to include admiralty judgments in the statutes.

- F. ABA International Law Section. The Practice and Procedure Committee is liaising with an ABA working group which proposes several changes to the Foreign Sovereign Immunities Act. None of the ABA proposed changes deal with the admiralty provisions of the Act.
- G. Natural Conference of Commissioners on Uniform State Laws: The Commissioners are considering changes to Title 7 of the Uniform Commercial Code especially to accommodate the use of documents of title in electronic commerce. One model which has been proposed for them to evaluate is the CMI Rules for Electronic Bills of Lading.

II. Other Committee Activities.

- A. Foreign Internships. The Committee still intends to go forward with a project to coordinate placement of young American maritime lawyers for several months of internships in admiralty firms abroad, and vice versa.
- B. Enactment of Most of the Provisions of the 1910 Collision Convention into Federal Law. In an effort to overcome the reputation of the U.S. for aggressively participating in the preparation of new maritime conventions, and then ratifying very few of them, some thought is still being given to a project, jointly with the Coast Guard and Navigation Committee to draft a bill containing most of the provisions of the 1910 Collision Convention (excluding the innocent cargo rule).
- C. Enactment of Most of the Provisions of the 1998 Arrest Convention into Federal Law. A similar proposal for a joint project with the Practice and Procedure Committee is under study to draft a bill containing most of the 1998 Arrest Convention (excluding those provisions which would narrow the scope of remedies under Rules B and C).

Respectfully submitted,

Michael Marks Cohen, Chair

FORMAL REPORT OF THE COMMITTEE ON
CONTINUING LEGAL EDUCATION

This past year, the MLA Continuing Legal Education (“CLE”) Committee has prepared its Annual Report to NYS CLE Board, which is necessary to maintain the MLA’s status as an accredited provider of CLE programs in New York State. The Committee has also guided coordinators of the various MLA’s CLE Programs; provided information as a co-sponsor of the ICMA XIV Congress CLE; and guided attorneys from states other than New York as to their state’s reciprocity for credit for CLE Programs given by the MLA which is accredited only in New York.

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

Respectfully submitted,

Lawrence J. Bowles, Chair

FORMAL REPORT OF THE COMMITTEE ON
ELECTRONIC COMMUNICATIONS AND COMMERCE

1. The chair reported on the status of the website library. It was suggested that other types of documents be added to the library, including practice forms, and the index of MLA seminar papers prepared by the CLE Committee. As to the index, the chair is to follow up with Bob Glenn. It was also suggested that all meeting notices sent by the MLA secretary be posted in the library.

Two additional projects were suggested. The first is to investigate whether the website could be used to streamline the process of appointing and confirming and listing Committee members. David Sharpe of New Orleans volunteered to investigate the possibilities in this area and make a report to the next meeting of the Committee.

The second project was to investigate whether the Committee might be able to recommend to other Committees an efficient way to organize, set up and find a host for listservs. John Edginton agreed to investigate the possibilities. The Committee looks forward to his report at its next meeting.

[12665]

2. Ed Cattell made a report to the Committee. Ed has been appointed as one of two American Law Institute members to the committee which is redrafting Article 7 of the UCC, covering documents of title such as bills of lading and warehouse receipts, etc., in order to accommodate e-commerce. Ed reported that the committee would be looking at the 1990 CMI Rules as well as a possible new convention being produced by UNCITRAL.

Ed reported that President Dorsey had asked him to work with this committee as well as the CMI committee during the redrafting process for Article 7. Any ideas that anyone has for Ed should be brought to the attention of this Committee. Ed will periodically update this Committee on developments.

3. The chair made a presentation of E-sign, UETA and New York's ESRA. An outline of the presentation is attached as Schedule A. A handout consisting of extracts of the three laws including the introductory notes and some comments on § 16 of UETA was distributed. (Extra copies of which are available from the Chair.)

4. John Edginton reported that the Northern District of California has initiated an electronic filing system similar to the one (demonstrated at our last meeting) in effect in the Eastern district of New York. Only one member of the Committee present had actual experience in e-filing and mentioned that the scanning and filing of bulky exhibits is somewhat inconvenient, but otherwise the system seemed to be working well.

Thirteen members attended the meeting, including David Sharpe by conference telephone from New Orleans.

Respectfully submitted,

Glen T. Oxtan, Chair

SCHEDULE A to Report of Committee
on Electronic Communications and Commerce

Is a Negotiable Bill of Lading Covered by the New Electronic Signature Laws? — Answer: it depends.

I. The Federal Electronic Signature Law (“E-sign”) became effective in October, 2000 and is contained in 15 U.S.C. §§ 7001, et seq.

- A. Section 7001 of E-sign generally validates electronic signatures and electronic documents and records. With respect to transactions in interstate commerce, E-sign preempts state law to the contrary.
- B. Section 7001 of E-sign excludes
 - 1. Wills and Trusts
 - 2. Matters of family law
 - 3. Any contract or record to the extent it is governed by the UCC other than Articles 2 (Sales) and 2A (Leases)
- C. Section 7021 of E-sign deals with “transferable records,” which is essentially a new definition for a negotiable instrument, except that under E-sign it is limited to promissory notes secured by real property.
 - 1. A transferable record is defined as an electronic record that:
 - a. would be a note under UCC Article 3 if it were in writing
 - b. the issuer expressly agrees that it is a transferable record
 - c. relates to a loan secured by real property.
 - 2. Transferable records may be electronic, provided that there is a method of control as defined in the statute to reliably establish the owner of the transferable record.
- D. Section 7002 of E-sign contains its two preemption exemptions.
 - 1. If a state adopts the Uniform Electronic Transactions Act (“UETA”) “as approved and recommended” for enactment by NCCUSL, it is exempt from preemption, except that:
 - a. any restriction of the scope of UETA by a state under Section 3(b)(4) of UETA shall be preempted to the extent it is inconsistent with E-sign;
 - b. any requirement by a state of any particular technology (in violation of Section 2002(2)(A)(ii) of E-sign) will be preempted.
 - 2. If a state law other than UETA is consistent with the requirements of E-sign, does not require a particular technology, and, if enacted

after the enactment date of E-sign (June 30, 2000) makes specific reference to e-sign, then it will be exempt from preemption.

II. The Uniform Electronic Transactions Act (“UETA”) was approved by NCCUSL in July 1999. The full text is available at <http://www.law.upenn.edu/bll/uls/fnact99/1990/s/ueta99.htm>.

- A. UETA Section 3 defines its scope. It applies to electronic records and electronic signatures relating to a transaction. A transaction is defined as including interaction between two or more persons. It excludes transactions governed by
 1. Laws governing wills and trusts
 2. UCC Articles 2 and 2A
 3. The Uniform Computer Information Transactions Act (“UCITA”)
 4. Other laws, if any, identified by the state (this is Section 3(b)(4) referred to in E-sign Section 7002).
- B. Like E-sign, UETA (in Section 16) defines a “transferable record” and states that they are governed by UETA provided that there is a method of control over the transferable record in a single identifiable person.
- C. The categories of documents that may constitute a transferable record under UETA is broader than that under E-sign. UETA includes:
 1. a note under UCC Article 3 if the issuer has expressly agreed it shall be a transferable record, regardless of whether it is secured by real estate; and
 2. a document under UCC Article 7 if the issuer has expressly agreed it shall be a transferable record. This would include a negotiable bill of lading.
- D. The UETA comments to Section 16 acknowledge that the most likely means of satisfying the control requirements for transferable records is a registry system of some kind. Section 16 leaves open the possibility that control could be provided by some kind of technological advance that would provide a standalone method for establishing control such as by permitting each holder to transfer the record only once.

III. ESRA — New York adopted an Electronic Signatures and Records Act in September 1999, predating E-sign, as Chapter 57-A of the Technology Law. ESRA generally validates electronic records and electronic signatures.

- A. ESRA appears to satisfy Section 7002(a)(2)(A) of E-sign and is thus exempt from preemption.

- B. Section 107 of ESRA contains its exceptions to applicability, which are as follows:
1. Wills, trusts and healthcare proxies
 2. Any negotiable instruments — “unless an electronic version of such record is created, stored or transferred pursuant to this article in a manner that allows for the existence of only one unique, identifiable and unalterable version which cannot be copied except in a form that is readily identifiable as a copy.”
 3. Any instrument “recordable under Article 9 of the Real Property Law.”
 4. Any other document specifically excepted in the rules and regulations.

IV. Conclusion. If the law governing the issuance of an electronic negotiable bill of lading is that of a state which has passed UETA, is governed by New York State’s ESRA or by another state’ laws which are similar to ESRA, then the negotiable bill be covered by the electronic signature laws, provided that the control provisions referred to above have been satisfied. The CMI Rules (1990) provide a specific type of registry system that would comply with these provisions. Registry systems such as those provided by Bolero would also comply. If the governing law is that of a state that does not have a digital signature act, E-sign would be applicable without supplementation by state law, and an electronic negotiable bill of lading would not be recognized.

V. The possibility of including a governing law clause in an electronic record was discussed. It was pointed out that a governing law clause might have no effect on the threshold issue of whether a valid contract had been made. The chair reported that in order to sidestep this threshold issue, some companies are unilaterally declaring that they will not challenge a contract solely on the grounds that it is in electronic form or is electronically signed. If both parties to an electronic contract have taken this position, then the threshold question of whether a contract was made at all, at least to the extent of issues as to its electronic form and electronic signatures should no longer be a concern.

On the other hand, the Restatement 2d of Conflicts of Law §187, states that parties may bootstrap themselves into a valid contract based on a choice of law provision in the contract except when the law chosen has no substantial relationship to the parties or the transaction, or when the law chosen would be contrary to a fundamental policy of a state with a materially greater interest in the transaction. The first exception has been diluted by subsequent cases. With respect to the second, few, if any, jurisdictions have a policy expressly against the use of electronic signatures and documents in commercial transactions. The problem in jurisdictions that do not have electronic signature acts, is a lack of clarity as to whether electronic documents satisfy the requirements for legality.

FORMAL REPORT OF THE COMMITTEE ON
MARITIME ARBITRATION

Since November, 2000 the Committee has met twice to discuss issues relating to Maritime Arbitration and Mediation and has been working on a variety of projects.

1. Proposed Amendments to the Federal Arbitration Act

We previously reported that the Arbitration and Mediation Committee unanimously approved four proposed amendments to the Federal Arbitration Act (FAA) at the meeting on October 4, 2000. The proposed amendments were published in the record of the proceedings of the November 3, 2000 meeting and in the MLA Report.

The proposed amendments were forwarded to the American Arbitration Association (AAA) for their comments. At our meeting on May 2, 2001 Eric Tuckmann, Associate General Counsel for the AAA attended our meeting and provided us with the AAA's comments. In general, the AAA does not favor any amendments to the FAA regardless of the nature of the amendments. The AAA expressed the concern that if the FAA was amended, it would be difficult to control the process. They are concerned that amendments could be included which would undercut the arbitration process. In particular, the concern was expressed that an amendment providing for a right to appeal an arbitration award would undercut the process in general. The AAA is not opposed to this specific maritime amendments that were proposed and would have no objection if those amendments were included in other legislation.

The Committee, in light of the AAA's comments decided not to request a resolution from the Association at this time. The Committee will evaluate what options are available for enacting the proposed amendments and if it is concluded that there is a realistic possibility of enacting the proposed amendments, we will present the Association with a resolution at the next meeting.

2. Manifest Disregard of the Law as a Federal Law Basis for Vacating Arbitral Awards

There have been recent cases which have discussed the issue of vacating an arbitration award on the basis of "Manifest Disregard of the Law." In response to these recent cases, Don Murnane, Jay Pare and Glenn Bauer organized a presentation at our meeting on May 2, 2001. Since their presentation, provided an excellent historical perspective on this issue and collected the significant cases in this area, their outline is set out below:

MANIFEST DISREGARD OF LAW
AS A FEDERAL LAW BASIS FOR
VACATING ARBITRAL AWARDS

(MODERATOR OUTLINE)

Moderator: Don P. Murnane, Jr., Esq. (Freehill,
Hogan & Mahar, LLP)
The Case For the Doctrine: Armand M. Paré, Jr., Esq. (Nourse &
Bowles, LLP)
The Case Against the Doctrine: R. Glenn Bauer, Esq. (Haight, Gardner,
Holland & Knight)

I. Legislative History

- N.Y. Act
- Historical resistance to arbitration based on court concept of “erosion of jurisdiction.”

II. Federal Statutory Bases for Vacating Award (9 U.S.C. §10): Enacted in 1925
– no mention of “manifest disregard of law”

- (1) Award “procured by corruption, fraud or undue means.”
- (2) “Evident partiality or corruption in the arbitrators, or either of them.”
- (3) Arbitrators guilty of
 - (a) “misconduct in refusing to postpone the hearing, upon sufficient cause shown”; or
 - (b) “in refusing to hear evidence pertinent and material to the controversy,” or
 - (c) “any other misbehavior by which the rights of any party have been prejudiced.”
- (4) “Arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.”

III. Chronological Matrix of “Some” Important Cases

IV. The Debate: Is There a Need for the Manifest Disregard Standard?

- (1) For the Manifest Disregard Standard: (Jay Paré)

Additional cases to be discussed:

Halligan, 143 F.3d 197 (2d Cir. 1998), and the Supreme Court case it relies on, *Interstate/Johnson*, 500 U.S. 20 (1991) see p. 32, n. 4 (i.e. the same point later made in *Sky Reefer*).

- Daily News, 1999 U.S. Dist. LEXIS 19024 (S.D.N.Y. 1999) (“manifest disregard of evidence”).
- Neary, 63 F. Supp. 2d 278, 210 (D. Conn. 1999) (dismissal on summary judgment basis vacated as apparently inconsistent with “overwhelming evidence”).
- W.K. Webster, 32 F.3d 665, 669 (2d Cir. 1994) (the law to be disregarded must be “well established, explicit and clearly applicable”).
- Sunshine Shipping, 2000 U.S. Dist. LEXIS 17462 (evidentiary rulings are vacatable only where they “deprive a part of a fundamentally fair hearing”).
- Possehl, 2001 U.S. Dist. LEXIS 2169 (S.D.N.Y. March 2001) (possible vacation of COGSA award discussed).
- Exxon, 118 3d 841, 849 (1st Cir. 1997) (award vacated for violating “well defined and dominant public policy”).
- De Gaetano, 983 F. Supp. 459 (S.D.N.Y. 1992) (arbitration award vacated when it failed to award statutorily mandated attorneys’ fees in employment discrimination case).

(2) Against the Manifest Disregard Standard: (Glenn Bauer)

Historical perspective within maritime arbitration context.

V. Practical Concerns

- (1) Goal is to balance fairness and predictability with utility and benefit of efficient ADR.
- (2) Counsel:
- (a) Do not argue to Panel to disregard settled law.
 - (b) Should counsel argue to Panel that refusal to follow settled law will constitute manifest disregard which is reviewable?
 - (c) Do not assume court will overturn award which is contrary to settled law if you have not raised point of law in the proceedings.
- (3) Arbitrators:
- (a) Substantial leeway and deference remains.
 - (b) Failure to provide “reasoned” award will not insulate award from review. Court may infer manifest disregard.
 - (c) Goal should not be “bullet proof” incorrect awards.
- (4) “Users”/Clients: The “manifest disregard” doctrine should encourage fairness and predictability of legal rulings in arbitral process but it applies only very rarely and only in severely limited circumstances. Vast majority of awards will not be overturned or even candidates for

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application of the doctrine. Arbitration remains utilitarian and efficient cost effective means of dispute resolution. Expect higher judicial scrutiny/involvement if subject matter involves statutory consumer claims, unequal bargaining power, or issues of public policy rather than private commercial dispute. Most “garden variety” maritime claims will not qualify for review.

DPM 4/30/01

3. MLA/SMA Liaison Committee

The Liaison Committee has been working with the Society of Maritime Arbitration in coordinating activities for the International Convention of Maritime Arbitration to be in New York on October 22-26, 2001.

Respectfully submitted,

Donald J. Kennedy, Chair

FORMAL REPORT OF THE COMMITTEE ON
MARITIME PERSONNEL

The Committee met on Thursday, 3 May 2001, in New York City at the Spring Meeting of the Association. John Schaffer chaired the conference. Thirty-four members and guests participated in a lively meeting on proposed changes in legislation and important cases and developments affecting maritime personal injury practitioners.

1. Tort Reform

The Legal Times had a recent article highlighting proposed legislation that would provide federal jurisdiction for single accident mass tort cases, including trains and airplanes. It would require claims of more than (25) plaintiffs, each of which would have at least a value of \$150,000. Thus, it would involve serious multiple catastrophes. It would not encompass consumers or toxic tort class actions. The bill in the House of Representatives is HR860.

2. Punitive Damages

The latest case taken up by the U.S. Supreme Court is *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, No. 99-2035, argued 26 February 2001 and decided on 14 May 2001. At issue was the proper standard of review for appellate courts when faced with a constitutional challenge to a punitive damage award as grossly excessive. Is there a *de novo* review or a review only for an abuse of discretion in the decision of a trial court judge? In this case, the Ninth Circuit upheld a punitive damage award of \$4.5 million, while the compensatory award was only \$50,000. The punitive damages award was 90 times the compensatory award.

The Supreme Court held in a substantial victory for opponents of punitive damages, that appellate courts must give searching scrutiny to whether a jury's award of punitive damages was excessive. Appellate judges who are asked to review a trial court's determination of excessiveness must conduct their own independent examination rather than defer to the lower court's judgment. This is a *de novo* review.

3. *Lewis v. Lewis & Clarke*, 121 S. Ct. 993 (2001)

Claimant had filed a state court action and did not demand a jury. A limitation proceeding was also filed in Federal Court and eventually the Eighth Circuit reversed the trial court holding that claimant could not proceed in state court, even after a usual stipulation reserving the privity issue for the federal court and

claiming an amount within the limitation fund. The Supreme Court reversed, following the weight of authority allowing claimant to choose his or her forum under the Savings to Suitors Clause, 28 U.S.C., § 1333, so long as a proper stipulation was filed in the limitation court.

4. *Calhoun v. Yamaha*, ___ U.S. ___ (Dec. 4, 2000)

The U.S. Supreme Court denied certiorari for the Third Circuit's decision at 216 F. 3d 338 (2000), following remand from the court. The Third Circuit allowed application of the law of the state of domicile for damages (Pennsylvania) and applied the punitive damage law of Puerto Rico, within whose waters a young girl was killed on a jet ski. Puerto Rico did not allow punitive damages in a death case. The Third Circuit further held that federal maritime law would govern the liability standard.

5. *In re Air Crash off Point Mugu, California (Alaska Airlines, et al.)* (N.D. Cal. May 1, 2001 (Legge, D. J.))

An important maritime decision was made in the case arising out of the Alaska Airlines crash of 30 January 2000, which occurred in California waters within a marine league of shore. The case is a Warsaw Convention case, but under Warsaw, local forum damage law is to be applied. *Zicherman v. KAL*, 516 U.S. 217 (1996). However, punitive damages are not allowed under the Warsaw Convention and Warsaw would not allow damages for purely emotional distress. Nevertheless, plaintiffs had expert testimony that a turbulent ride would cause physical injury which, in turn, caused emotional distress. Lastly, admiralty jurisdiction applied to this international flight. The judge interpreted *Yamaha v. Calhoun* as a case expanding remedies for wrongful death so that state and maritime remedies are available. *Moragne v. States Marine Lines* would apply to allow for wrongful death and survival, as well as pecuniary and non-pecuniary damages, such as loss of society, but not survivors' grief. A maritime products liability claim would be viable. The Ninth Circuit recognizes a survival action under the General Maritime Law and punitive damages might also be available in the products liability case. As to crewmembers, their rights would be governed by the state of employment; Washington State allows an employee to sue his or her employer for maritime negligence, for example.

6. *Cammon v. City of New York*, 95 N.Y.2d 583, 721 N.Y.S.2d 579, 2001 AMC 210 (N.Y. 2000)

New York's highest appeals court has allowed a marine construction worker, on a work platform on navigable waters, to assert a claim for negligence and strict liability under New York Labor Law against third parties. *Cammon* was covered

by the Longshore Act, but the raft on which he was injured was probably not a vessel. The “Scaffold Law” of the Labor Law governs falls from a height or objects falling upon someone during construction because of failure to properly secure an object. This is the strict liability statute against an owner, as well as a third party contractor. See *Narducci v. Manhassat Bay Associates and Capparelli v. Zausmer Frisch Associates*, decided by the New York Court of Appeals on 10 May 2001. The Board of the MLA apparently has decided not to take a position on the Cammon case on both parties’ applications for certiorari.

7. *Norfolk Shipbuilding v. Garris*, 121 S. Ct. 693(2000)

The Supreme Court granted certiorari and heard argument in April 2001 on the Fourth Circuit’s decision in this death case allowing recovery for negligence under the General Maritime Law. *Moragne* specifically dealt with unseaworthiness. There is a long history of death cases involving negligence in the maritime context. On 4 June 2001, the Supreme Court affirmed and recognized a general maritime law action for wrongful death caused by negligence.

8. *Sealand v. Sellan*, 321 F.3d 848 (11th Cir. 2000)

Where a seaman represented by counsel agreed never to sail again as a condition of settlement, his waiver was upheld when he tried to sue the same shipowner for another injury when he subsequently rejoined Sea-Land.

9. The Americans with Disabilities Act (ADA)

A problem confronting shipping lines and employers generally is how to handle employment of those suffering from diabetes, epilepsy and other disabilities, especially in cases where impairment may be expected to occur in remote places.

Recent cases indicate that no employer may legally have a policy which has zero tolerance for employment of people with disabilities. In *Lawson v. CSX Transportation*, No. 00-1179, F. 3d (7th Cir. March 26, 2001), the appellate court reversed and remanded a decision which dismissed the case of a man who was refused employment as a train conductor trainee because of his Type 1 insulin dependent diabetes. The appellate court described the elements of a prima facie case under the ADA, which then puts the burden on the potential employer to offer a lawful, non-discriminatory reason for non-employment. Then the plaintiff must rebut the defense by showing that the proffered excuse is actually a pretext for discrimination. The Court did determine that plaintiff had a disability under the ADA. The plaintiff’s diet was a major problem for him. The leading U.S. Supreme Court case is *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999), which

determined that eyesight problems, myopia, which could be corrected by eye-glasses, was not a disability under the ADA. Sutton, in dictum, did refer to uncomplicated diabetes problems as also not within the ADA limitations. The Seventh Circuit distinguished the circumstances of Mr. Lawson's situation. In another case, the Equal Employment Opportunity Commission (EEOC) has a recent national class action suit pending against Northwest Airlines, which has a policy barring applicants who suffer from diabetes or epilepsy from jobs as baggage handlers or aircraft cleaners.

The problem for shipowners is that seamen, who pass tests that would qualify them for coastwise voyages, are often sent home from remote locations because of certain disabilities and claim maintenance, cure and unearned wages. There is a danger in either employing people with disabilities or not employing them.

10. Orsini v. O/S Seabrook, 2001 U.S. App. LEXIS 7398 (9th Cir. Apr. 24, 2001)

This was a release case in which there was payment of \$500, maintenance and cure, unearned wages and airfare. The claimant did not have a lawyer. The injuries proved to be more severe than expected. The district court was reversed on the basis of the usual rule that, as crew members are wards of the admiralty, the burden of proving fairness is on the shipowner.

11. Chao v. Mallard Bay

Certiorari was granted in February 2001 in a Fifth Circuit decision holding that Coast Guard Regulations pre-empt OSHA regulations on uninspected vessels, like local barges and tugboats. The Second Circuit in particular has upheld OSHA regulations based on agreements between OSHA and the Coast Guard as to their respective responsibilities for safety on uninspected vessels. In a Ninth Circuit decision upholding OSHA participation, it was stated by one of the meeting participants that the Coast Guard did support the memorandum sharing responsibility with OSHA.

12. IMO/ILO Memorandum

This Committee has helped to put together a memorandum for an IMO/ILO ad hoc expert working group dealing with the abandonment of seafarers and claims for death and personal injury. At issue is whether there should be a regime of strict liability and direct actions against insurers. Compulsory insurance is also to be considered.

13. The Athens Convention

The Athens Convention deals with passenger cases and is applicable to many countries other than the U.S., which has not signed it. The Convention has a damage limitation of about \$77,000 and a two-year statute of limitations. It has been applied to Americans who are on cruises, which do not involve U.S. ports. The State Department is promoting U.S. adoption of an amended Athens Convention, which: (a.) would track the Warsaw-Montréal Protocol; (b.) which covers airline accidents; (c.) which provides for strict liability up to about \$135,000 (100,000 Special Drawing Rights), and a burden on the shipowner above that amount to show it was not negligent. The places to sue would be similar to the Warsaw Convention, e.g., place of ticket contract, etc. The cruise line industry is apparently in strong opposition.

In the IMO/ILO review as to seamen, much of the Athens Convention Amendment has been urged to be made applicable, or language similar to it, to injured seamen.

14. Ad Hoc Committee on Revision of Title 46 of the U.S. Code

There is a move in place to re-codify Title 46 to make it more understandable and cohesive, but not to make substantive changes at this time. The Personnel Committee is to review the sections pertinent to seamen's injuries. Dennis Bryant and Hal Watkins have been appointed, as Chair and Vice Chair of the Ad Hoc Committee.

15. Old Business

We previously reported the case of *LeBlanc v. Cleveland*, 198 F. 3d 353 (2^d Cir. 1999), which held that there was no admiralty jurisdiction for an accident involving a kayak hit by a motor boat on the upper reaches of the Hudson River. Between that area near Albany and the main part of the river are two waterfalls and several dams. The admiralty suit was dismissed, the plus for the plaintiffs being that the limitation action filed by the boat owner failed, so that his whole policy was at risk. Suit was settled against the boat owner and operator and Ms. LeBlanc sought to continue her suit against the lessor of the kayak in a diversity suit in the same federal court. She was a non-permanent alien at the time of filing the original lawsuit. Her application to sever the non-diverse co-plaintiff and sue in diversity was denied by the district court judge. On 4 May 2001 the Second Circuit reversed and allowed the diversity suit to continue.

We also reported on *Complaint of Bernstein*, 2000 AMC 760 (D. Mass. 1999), which, contrary to *LeBlanc*, allowed a limitation action to proceed in a

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boating accident on a New Hampshire lake, not federal maritime navigable waters. The case relied on a 1911 case allowing a limitation action to proceed when a ship hit a bridge which was not then considered an action within the admiralty jurisdiction. However, the accident in the 1911 case did occur on federal navigable waters. The recent weight of authority is against the Bernstein decision.

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

Respectfully submitted,

John P. Schaffer, Chair

FORMAL REPORT OF THE COMMITTEE ON RECREATIONAL BOATING

The Committee met on May 3, 2001. For information purposes, we noted that the Coast Guard had amended the Voluntary Vessel Identification System regulations on March 20, 2001 (Fed. Reg. 15625). We also noted that the National Recreational Safety Coalition is a good source of up-to-date information on the status of boating laws in each state, and that members could be added to its e-mail distribution list. Also, one can find the Reference Guide to State Boating Laws, 6th Ed., on the home page of the National Assoc. of State Boating Law Administrators. It summarizes the laws of each state.

Frank DeGiulio brought us up to date on significant boating cases, and produced the semi-annual newsletter Boating Briefs. It should appear in the next issue of the MLA REPORT.

We also noted the potential technological innovation of the HydroSki. This is a design producing extremely fast vessels, ranging in size from a personal watercraft to over 300'. Prototypes were scheduled for production this summer, mostly for governmental use at first.

We also discussed the topic of Sail Racing Rules v. Rules of the Road. The result of that discussion is in our oral report to the general meeting.

Respectfully submitted,

Donald C. Greenman, Chair

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

Held at the offices of
Montgomery Barnett Brown Read Hammond & Mintz, New Orleans
on
March 27, 2001

The meeting was called to order by President William R. Dorsey, III, at 9:00 a.m. In addition to President Dorsey, the following officers were present:

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

The following Board members were present:

James W. Bartlett, III	Jean E. Knudsen
Geoffrey F. Birkhead	George J. Koelzer
James K. Carroll	Robert B. Parrish
Vincent M. DeOrchis	Mary Elisa Reeves
John B. Gooch, Jr.	Alan van Praag
Bruce A. King	James F. Whitehead, III

President Dorsey thanked Mr. Gooch for his firm's hospitality in providing the Board with a meeting place and arrangements in connection with the meeting.

SECRETARY'S REPORT

Secretary Lizabeth L. Burrell of New York reported that the Proceedings for the Fall 2000 General Meeting have been distributed to the membership. Secretary Burrell noted that our website library is functioning well because the Proceedings appeared on the Association's website before the published version was in the membership's hands.

Upon motion duly made and seconded, the minutes of the November 2, 2000 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the August and November 2000 Board meetings were published in the Proceedings of the Fall 2000 General Meeting.

After the November 2, 2000 meeting of the Board, the Board duly approved by poll five resolutions.

The first resolution authorized a statement on behalf of the Association to the Docket Management Facility of the U.S. Department of Transportation commenting on Docket Number USCG 2000-8079, "Setting the Environmental Agenda for the Coast Guard." At the November 2, 2000 Board meeting, Alfred J. Kuffler of Philadelphia, Chair of the Environmental Crimes Subcommittee, Dennis L. Bryant, Chair of the Committee on Navigation, Coast Guard and Government Regulation, and Matthew A. Marion, Chair of the Committee on Marine Ecology, were asked to draft a statement setting forth the Association's views on government policy in connection with pollution incidents. In particular, the draft statement was to communicate that the current government policy of criminalizing acts in connection with pollution incidents actually works against the public interest in protecting the environment, propose that only acts taken with criminal intent be subject to criminal sanctions, and urge the government to adopt as its most important priority policies which encourage effective responses to spills. Such a statement was to be drafted and approved by the relevant Committees, and then reviewed by the Board.

The Board approved the resulting statement, which provided comments replying to questions concerning the Coast Guard's agenda for oil pollution prevention, preparedness and response in the 21st century posed by the Coast Guard in its Notice of Public Meeting, 65 Fed. Reg. 62408 of October 18, 2000. The Association's statement again notes the conflict between criminal and civil issues in oil spill cases and the deleterious effect such conflict can have in achieving the common goal of minimizing the physical consequences of spills. The statement encourages that priority be given to safety and response by eliminating strict liability environmental crimes. A copy of this statement is appended to the original of these minutes.

A second resolution duly passed by the Board authorized President Dorsey to cast the Association's vote in favor of the new Constitution and Procedure for Suspension and Expulsion of the Comité Maritime International and to exercise his discretion, after consultation with our delegation, in connection with any amendments that may be raised at the CMI's February 2001 plenary meeting in Singapore.

The third resolution duly approved by the Board gave President Dorsey and his designees power to act in accordance with positions taken previously by the Association on issues of marine insurance in connection with the meetings at the CMI conference concerning harmonization of such laws:

WHEREAS, a plenary session and an Assembly of the Comité Maritime International will be held at the CMI Conference at Singapore in February 2001; and

WHEREAS, National Associations may be asked to express their views on various issues pertaining to the issue of harmonisation of Marine Insurance Law; and

WHEREAS, the Board wishes to authorize its President, or his designee, to express such views insofar as they are not inconsistent with previously stated positions of the Association or that, in his opinion, necessitate Board or Association approval.

NOW, THEREFORE, the Board of Directors of The Maritime Law Association of the United States, authorizes its President, or his designee, to express such views as may be appropriate concerning issues on the harmonisation of Marine Insurance Law that arise during the CMI Conference in Singapore, provided, however, he, or his designee, may express no views that are inconsistent with positions previously taken by this Association or that, in his view necessitate the approval of this Board or the Association.

The fourth resolution duly approved by the Board gave the authority necessary for the Association to participate in the matters of transport law arising at the Singapore plenary of the CMI:

WHEREAS, a plenary session and an Assembly of the Comité Maritime International will be held at Singapore in February 2001 and will address the CMI's ongoing work on issues of Transport Law; and

WHEREAS, The Maritime Law Association of the United States wishes to urge the CMI to prepare an instrument as close as possible to the proposed new COGSA that was approved by the Association in May 1996; and

WHEREAS, the Association wishes the instrument to track as closely as possible United States case law for those issues not covered by the proposed new COGSA; and

WHEREAS, the Association wishes to give its President and his designees sufficient discretion to negotiate an instrument that comes as close as possible to achieving these goals;

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NOW, THEREFORE, the Board of Directors of The Maritime Law Association of the United States authorizes its President, with the advice of the U.S. Delegates to the CMI International Sub-Committee on Transport Law, to use his discretion to advance the goal of achieving an instrument that:

- (a) is consonant with, and does not vary in any significant material way from, the proposed new COGSA; and
- (b) is consonant with, and does not vary in any significant material way from, United States law on those subjects not covered by the proposed new COGSA.

The President is further authorized to delegate this authority to such U.S. Delegates to the CMI International Sub-Committee on Transport Law as he deems necessary or appropriate.

The fifth resolution duly approved by the Board also concerned the CMI plenary session in Singapore:

WHEREAS, a plenary session and an Assembly of the Comité Maritime International will be held at the CMI Conference at Singapore in February 2001; and

WHEREAS, National Associations will be asked to vote in favor of recommending to the CMI that it endorse the Draft Model National Law on Acts of Piracy and Maritime Violence submitted by the Joint International Working Group; and

WHEREAS, the Board wishes to authorize its President to vote on behalf of this Association, in favor of recommending to the CMI that it endorse said Draft Model Law, and also to authorize him to indicate what reservations or suggested changes, if any, are part of such favorable vote;

NOW, THEREFORE, the Board of Directors of The Maritime Law Association of the United States authorizes its President, on behalf of this Association, at any CMI plenary session or Assembly held in Singapore, to vote in favor of recommending that the CMI endorse said Draft Model Law, and the President is further authorized, in connection with such favorable vote, to state any reservations or suggested changes

to said Draft Model Law that the President in his discretion, with the advice of those members of the Association present at said Conference, deems necessary or appropriate.

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

TREASURER'S REPORT

Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ending on October 31, 2000. Treasurer Bonner reported on the cash on hand and investments as of the date of the meeting, both of which reflected the cost of our participation in international activities, and on the substantial expenditures anticipated in the coming year.

Treasurer Bonner also noted that dues payments were being received earlier this year because the bills were sent out earlier, and that members who remain in arrears have been dropped from the membership. We must continue to exercise a policy of fiscal caution in view of other Association projects and activities that will require expenditures over the next two years, but expect to be able to participate fully in all current areas of endeavor.

Treasurer Bonner also reported that the Association lost money on the Fall 2000 dinner dance due to low attendance. This result is consistent with our recent experiences with the New York Fall dinners.

Upon motion duly made and seconded, the Board passed a resolution authorizing the opening of a checking account at the Bank of America for the expenditures of the Committee on Planning and Arrangements for the Fall 2001 General Meeting in San Diego and all other resolutions incident to opening such an account. A copy of the banking resolutions are appended to the original of this report.

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

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

MEMBERSHIP SECRETARY'S REPORT

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

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The Board approved Chancellor John J. Costonis of Louisiana State University Paul M. Hebert Law Center as a new Academic member.

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

George Marshall Bates of New York
James B. Kemp, Jr. of New Orleans
Carl F.E. Kimling of Stamford
Donald J. Volpi, Jr. of New Orleans
W. Ross Warren of League City

Upon motion duly made and seconded, the Board resolved that in order to be considered for approval at a May board meeting, applications for Proctor and nonlawyer membership must be submitted by April 15, and in order to be considered at a Fall board meeting, such applications must be submitted by September 15.

Membership Secretary Rice also reported that a new directory will be published in the Fall of 2001.

After the November 2, 2000 Board meeting, the Association had 3,307 members. As of March 27, 2001, after the changes approved by the Board at its meeting, the total membership was 3,338.

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

The list of all the successful candidates for membership and Mr. Rice's written report are appended to the original of these minutes.

INTERNATIONAL ACTIVITIES

Comité Maritime International

President Dorsey's report on the CMI Plenary and Assembly that took place in Singapore in February 2001 appears in his March 2001 Winter/Spring 2001 Newsletter (MLA Document number 755) and provides a comprehensive description of the events of this conference.

President Dorsey reported that at the CMI Assembly meeting on February 16, Patrick Griggs was elected as President for a second term; Frank Wiswall was elected for a second term as Vice President; Alexander Von Zeigler was elected

to another four-year term as Secretary General; Karl-Johan Gombrii of Norway was elected for a first term as Vice President; Thomas Reme of Germany, Johanne Gauthier of Canada and Professor Feng Li Qi of China were elected to the Executive Council; and Professor Hisashi Tanikawa was elected an Honorary Vice President. Association members Michael Sturley, Vincent DeOrchis and Lawrence Bowles were elected Titulary members.

The Board heard reports on the various topics treated at the plenary conference, as follows.

International Sub-Committee on Transport Law

Board member Vincent M. DeOrchis reported on activities of the International Sub-Committee on Transport Law at the Singapore meeting, which he attended together with Past President Chester D. Hooper, who chaired the Association's delegation on this subject, George F. Chandler, III, and Professor Michael Sturley (the Sub-Committee's Rapporteur), who provided a summary report on this part of the conference.

There appears to be a consensus that a regime for transport law should provide some type of door-to-door coverage, but at the same time, there is concern over the post-delivery period and interaction with the CMR provisions which govern road and rail transport in Europe. There are indications of consensus on fault-based liability but without more specificity on what kind of fault might be the basis for liability. There also appeared to be support for eliminating the defenses of errors in navigation and management. There is some support for "performing carrier" liability, but these provisions need to be refined, and limited to the performing and contracting carriers. Delay damages also seem to find general support, but with time limits. The consensus on burden of proof appeared to be that it should remain as it is under the Hague-Visby Rules.

It had been expected that an outline instrument would be available by this coming summer and then distributed to the national associations for comment, but it may not be possible to hold the necessary meetings in time to meet that schedule.

Harmonization of Marine Insurance

The Association's delegation on this extraordinarily multifaceted topic was very ably chaired by Past President Graydon Staring. A resolution by the Conference endorsed the current study by the CMI International Working Group on the National Laws of Marine Insurance as an exercise worth carrying on and directed the IWG to continue to seek to identify and evaluate areas of difference in national laws in which harmonization may be feasible and desirable.

Model Piracy Laws

The Conference considered the draft of a Model Piracy Law submitted by the Joint International Working Group composed of representatives of the CMI, BIMCO, ICS, Interpol, IUMI and other organizations. Professor Samuel Menefee was the group's rapporteur, and George Gabel chaired the Association's delegation on this subject.

Board member James F. Whitehead, III, one of the Association's delegates to the piracy meetings, reported on the severity of the increasing problem of piracy and the CMI's efforts to assist through development of model national laws providing a legal framework to combat this problem.

Because of the number of organizations that had been involved in the drafting, it had been hoped that no substantive amendments would be proposed at this meeting, but several national associations proposed changes to the draft. For example, the U.S. delegation was concerned that a provision might result in forfeitures by innocent ship or cargo owners, or their mortgagees, whose property was used in acts of piracy or maritime violence. These and other suggestions for improvement will be taken into consideration and a draft will be submitted to the IMO and national maritime law associations for further comment. It is anticipated that the new draft will be available in the fall of this year.

General Average

Immediate Past President Howard M. McCormack reported on the discussions about whether or not the CMI should consider revisions to the York-Antwerp rules proposed by the International Union of Marine Insurers. The Association's position remains that the CMI need not consider these issues at this time in view of the full discussion of these ideas at the 1994 conference in Sydney and the lack of any developments in the maritime trade since that time affecting these matters so as to require a review. At the plenary session, however, a resolution was adopted asking the group to continue its work of considering what, if any, revisions to the York-Antwerp Rules were required. The Association dissented from this resolution. A joint working group will be formed for the work prescribed by the resolution.

UNESCO Convention on Underwater Cultural Heritage

John Kimball, who chairs the Association's Study Group on this subject, has been appointed the rapporteur of the International Working Group on the UNESCO Draft Convention. A resolution was approved at the plenary requesting the Chairman of this IWG to monitor the Draft Convention's progress, to seek to avoid

conflict between the Draft and existing international salvage law and to explore the possibility of promoting a draft protocol to the Salvage Convention such as that proposed by the late Geoffrey Brice. The resolution also asked the Executive Council to appoint an International Subcommittee to go forward with this work.

Implementation and Interpretation of Conventions

A resolution was adopted approving a draft report on the implementation of the 1976 LLMC Convention and recommending that the International Working Group continue to develop possible measures to promote uniform implementation and interpretation of international conventions.

Offshore Mobile Craft

There was an informal meeting of the International Subcommittee. Our Association has urged that the CMI to leave off this work as it does not appear to be necessary, but others involved in this subject consider that the CMI should prepare for the possibility that such a convention might be useful in the future and noted that it continued to be an item on the agenda of the IMO Legal Committee.

Constitution

President Dorsey reported that the Conference and Assembly approved the new constitution, which allows the CMI to have the juridical personality required to be lawfully domiciled in Belgium.

OECD Workshop on Transport Law

President Dorsey reported that on very short notice, Past President Chester D. Hooper agreed to accompany the U.S. State Department delegate to the OECD workshop on Transport Law held in Paris on January 25 and 26, 2001. The workshop centered on a paper advocating strict liability, high limits, delay damages and consequential damages. The consensus of the workshop that it would be wasteful to go forward with still another draft of an international liability regime while the CMI Sub-Committee on Transport Law was engaged in the same work, and to support the CMI effort.

International Maritime Organization

IMO Diplomatic Conference on Convention on Bunker Pollution

A diplomatic conference on the Bunker Pollution Convention was held from March 19 through 23, 2001. The Draft Convention establishes liability for bunker

spills from nontank vessels; imposes joint and several liability on shipowners; and requires the registered owner to maintain insurance in a prescribed form, with a right of direct action against the insurer. The threshold for tonnage subject to the terms of the Convention was still a debated issue before the March meeting.

While there had not been time before the Board meeting to get a formal report on the results of this conference, it was learned that in view of the lack of responder immunity in the Convention, a resolution was passed recommending that States which adopt the Convention also adopt a law on responder immunity.

Protocol to the Athens Convention

It is anticipated that the Draft Protocol to the Athens Convention on Liability Relating to Carriage of Passengers and their Luggage by Sea will be completed at the IMO Legal Committee meeting during the week of October 8, 2001. President Dorsey will attend this meeting.

Proposals have been drafted that would: (1) make it clear that a carrier's, as opposed to an insurer's, liability was not subject to a "cap"; (2) impose strict liability with a per capita damages cap for death or personal injury incurred in connection with an "operational incident," such as shipwreck, collision, stranding, explosion, fire or a defect in the ship; (3) reverse the burden of proof and impose liability based on negligence for damages resulting from operational incidents that exceed the strict liability per capita limit and for damages resulting from all other causes. Recent ferry accidents may encourage progress on the protocol because without an international regime, there is a possibility that conflicting national legislation may be enacted in response to these incidents.

It is the Association's understanding that the U.S. government's objection to the Athens Convention was the low limitation limit, an objection which might be overcome by the current draft protocol's provision for unlimited liability for the carrier itself. Accordingly, President Dorsey has asked Ann Miller, Chair of the Committee on Cruise Ships, to attempt to discover the position of the members of industry on the current draft protocol, even though carriers whose cruises originate or end in a U.S. port are not subject to the Athens Convention. Ms. Miller reported that to date, there does not appear to be any response within the industry to the terms of the draft protocol.

UNESCO Convention on Underwater Cultural Heritage

The next meeting of the joint group of experts considering the UNESCO Draft Convention will start on March 27, 2001 and continue for two weeks. There is an effort to finish the draft instrument in time to send it to UNESCO in the Fall of 2001, and after UNESCO review, on to a diplomatic conference.

While there appeared to have been some progress at earlier meetings, or at least an exchange of ideas, the Chairman of this group has now circulated a "single negotiating text" which appears to be a step backward in terms of the Association's issues of concern. It is expected that at the next meeting, the U.S. delegation will suggest a return to the former drafts, which incorporated alternative positions.

The single negotiating text is objectionable to the Association because the proposed draft does away with the law of salvage and gives too broad a definition of "cultural heritage." The Association continues its contact with the U.S. State Department delegation to support proposed changes to the current draft to harmonize it with existing international law.

COMMITTEE AND STUDY GROUP REPORTS

Carriage of Goods

Vincent DeOrchis reported on the comments reported by Bob Mottley in American Shipper by Senator Hutchinson, which indicated that she still believed that the proposed new COGSA should be introduced in Congress, but that in view of her move to the Aviation Committee, she would no longer maintain her former level of involvement in activities supporting the proposed new COGSA bill.

Practice and Procedure

At the August 5, 2000 Board meeting, the Board was advised by Board member James W. Bartlett, III, Chair of the Committee, that an amendment had been proposed to the Local Admiralty Rules for the United States District Court for the District of New Jersey that would increase the security deposit for seizure of vessels more than 65 feet in length to \$10,000. The Board then authorized President Dorsey to send a letter to the Clerk of the Court noting that the security deposit in every district should reflect the reasonably anticipated costs to be incurred by the Marshal and recommending that the proposed amendment not be adopted because it might discourage legitimate claimants from exercising their admiralty rights. President Dorsey reported on November 2, 2000 that the Court had withdrawn the proposal and would seek further commentary from the bar on the proposed amendment. Andrew Goldstein, Vice Chair of the Committee, and Chair of the Subcommittee on Local Admiralty Rules, has continued to work with the Court. A current proposal addresses the concerns of the Marshal's office about higher costs in situations in which a substitute custodian is not appointed by providing for a supplementary deposit when the ship remains in the marshals' custody beyond a certain period; if the supplementary deposit is not made, the ship will be released.

The Committee is making a survey of the security deposits required in the maritime district courts. Responses have been received from thirty-one districts and a formal report will be made at the May meeting. So far, there does not appear to be any uniformity in the level of security required by the various districts.

Mr. Bartlett reported that the parties' subsequent settlement rendered moot the decision of the United States Court of Appeals for the Eighth Circuit in *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000), which involved the issue of the constitutionality of that Court's policy concerning the use of unpublished decisions. The issue was specifically stated to "remain an open question" in that Circuit.

Possible amendments to the Foreign Sovereign Immunities Act are being monitored by Mr. Bartlett and Professor David Bederman, who is in the Working Group of the International Litigation Committee of the Section on International Law and Practice of the American Bar Association and closely involved in this project.

Young Lawyers

The Committee is moving forward with its project of indexing the Association's documents, with the intention of making these materials available on the website for research.

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

A contract has been signed with the Southampton Princess for our meeting in Bermuda from October 28 through November 1, 2003. The format for this meeting will adopt an abbreviated schedule, with Committee meetings starting on Thursday, the General Meeting on Saturday morning and concluding with a dinner on Saturday night.

TITLE 46 RECODIFICATION

The U.S. government is considering a major recodification of Title 46 of the United States Code, with the expressed intention of avoiding any modification of existing substantive law. The purpose of the recodification is to modernize language and organize the material. President Dorsey has asked Dennis Bryant, Chair of the Committee on Navigation, Coast Guard and Government Relations, to head an Ad Hoc Committee made up of Committee Chairs, including Harold Watson, Chair of the Committee on Maritime Legislation, and the Chairs of sev-

eral substantive Committees affected by Title 46, to examine proposed revisions for consistency with existing law and report further on the results of this examination. The Association expects to be able to comment on proposed revisions throughout the revision and recodification process.

ABA STUDY ON MULTIJURISDICTIONAL PRACTICE OF LAW

President Dorsey reported that the American Bar Association has established a Commission to undertake a study of multijurisdictional practice. The MLA has been asked to assist in the study and to propose, where possible, various solutions to the problems frequently encountered in practices that by their nature have a wide geographic scope. President Dorsey has created an Ad Hoc Committee headed by Mr. Bartlett, as Chair of the Committee on Practice and Procedure, to develop positions on the questions posed by the ABA study. In view of the nature of maritime practice, and the recent litigation in this area, this study is of extreme importance to our members and will be carefully considered by the Ad Hoc Committee.

ALI REVISION OF UCC ARTICLE 7 FOR E-COMMERCE

President Dorsey reported on an effort by the American Law Institute to redraft Article 7 of the Uniform Commercial Code to take account of the role of electronic documents in today's commercial world. Edward V. Cattell, Chair of the Association's Study Group on the Marine Insurance Project and a member of the ALI's committee undertaking the Article 7 revision, expressed interest in the CMI Rules on Electronic Commerce and will consult with George Chandler on these issues.

RESOLUTIONS

President Dorsey introduced, and upon motion duly made and seconded, the Board made the following resolution honoring Dean Edward F. Sherman of Tulane Law School:

The Maritime Law Association of the United States expresses its appreciation to Edward F. Sherman for his distinguished service in the advancement of maritime law.

Edward F. Sherman has been Dean of the Tulane University School of Law since 1996 and is scheduled to retire from that position in June of this year. During his tenure as Dean, in addition to his many other duties, he has given unstintingly of his time and effort to the promotion and support of the maritime law program at the Tulane

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University School of Law, a program which is now recognized as the most advanced in the country. In addition, he has served as a member of the Planning Committee and energetically supported the programs of the Admiralty Law Institute, programs with which this Association has been involved since their inception. As a consequence, Dean Sherman has made valuable contributions to the field of maritime law and the education of numerous students and practitioners of maritime law. In so doing, he has maintained and strengthened the close relationship that this Association has with the Tulane University School of Law.

In consideration of the foregoing:

BE IT RESOLVED, that The Maritime Law Association of the United States expresses its sincere and profound appreciation for the work and contribution of Dean Edward F. Sherman to the field of maritime law, and we express our gratitude to our professional colleague and friend,

BE IT FURTHER RESOLVED, that, upon the occasion of his retirement as Dean of the Tulane University School of Law, we express our best wishes to him in his continuing career as professor of law at the Tulane University School of Law, and

BE IT FURTHER RESOLVED, that a copy of this Resolution be made a part of the permanent records of this Association.

/s/ William R. Dorsey
President
The Maritime Law Association
of the United States

Dated this 27th day of March, 2001

CANADIAN MARITIME LAW ASSOCIATION 50TH ANNIVERSARY

The CMLA will celebrate its fiftieth year with a meeting on June 15 and 16, 2001. The Association will host a reception and present a gift to the CMLA at their meeting, as that Association so graciously did at our Centennial.

AMICUS REQUESTS

President Dorsey reported that the Supreme Court denied certiorari in Mobil Mining v. Nixon, on which the Association supported a grant of the petition for review of a salvage law issue.

Other cases on which the Association received requests were not deemed appropriate for amicus participation.

WEBSITE

President Dorsey reported that more and more materials are available on the website's library and that the number of links will soon be expanded. Members should continue to advise President Dorsey of events which might be listed on the website calendar and links that might be appropriate.

JUDGE JOHN R. BROWN MOOT COURT COMPETITION

Many Association members devoted great attention to their duties on brief judges in this respected competition. Oral argument will take place in Newport on April 6 and 7, 2001, and at their conclusion, the Association will give the Best Brief award.

* * *

There being no further business to come before the Board, the meeting was adjourned at 12:00 p.m.

Respectfully submitted,

/s/ Lizabeth L. Burrell
Secretary

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

Held at the
Association of the Bar of the City of New York, New York, New York
on
May 3, 2001

The meeting was called to order by President William R. Dorsey, III, at 9:30 a.m. In addition to President Dorsey, the following officers were present:

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

The following Board members were present:

James W. Bartlett, III	George J. Koelzer
Geoffrey F. Birkhead	Robert B. Parrish
Vincent M. DeOrchis	Mary Elisa Reeves
John B. Gooch, Jr.	Alan van Praag
Bruce A. King	James F. Whitehead, III
Jean E. Knudsen	

At the invitation of President Dorsey, James Patrick Cooney of Houston, Chair of the Committee on Uniformity of U.S. Maritime Law, Sandra L. Knapp of Philadelphia, Chair of the Committee on Marine Financing, and M. Hamilton Whitman of Baltimore, Chair of the Special Committee on Planning and Arrangements for the 2001 Fall Meeting, were also present at the meeting.

SECRETARY'S REPORT

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

Upon motion duly made and seconded, the minutes of the March 27, 2001 meeting of the Board of Directors were unanimously approved and accepted. The minutes of the March 2001 Board meeting, together with the Minutes of this meeting, will be published in the Proceedings of the Spring 2001 General Meeting.

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

TREASURER'S REPORT

Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ending on January 31, 2001. Treasurer Bonner reported on the cash on hand and investments as of the date of the meeting, both of which reflected the cost of our participation in international activities, and on the substantial expenditures anticipated in the coming year. Treasurer Bonner commented that the Treasurer's Report for the three months ending on January 31, 2001 reflected the financial position at the least favorable time of year because the dues had not yet starting coming in at that time, but even in view of the timing, we are in a somewhat better financial position than we were at the same time last year. We must, however, continue to exercise a policy of fiscal caution in view of other Association projects and activities that will require expenditures over the coming years, including the large expenditures expected for the Directory and participation in international activities. Nonetheless, we expect to be able to participate fully in all current areas of endeavor.

Those who have fallen behind on their dues payments are being purged from the membership.

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

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

MEMBERSHIP SECRETARY'S REPORT

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

The following six applicants were recommended for Non-Lawyer membership:

John Daidola of New York
Harry Diamond of New York
Charles Droll of New York
Eileen Fellin of New York
Catherine O'Connell of New Jersey
David Roberts of New York

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

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

Michael J. Armitage of Long Beach
Robert J. Clyne of New York
R. Brett Kelly of New York
David S. Smith of Beverly

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

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

The Honorable J. Edward Lumbard of New York
The Honorable Lansing L. Mitchell of New Orleans
Professor Stefan A. Riesenfeld of Berkeley

After March 27, 2001 Board meeting, the Association had 3,327 members. As of May 3, 2001, after the changes approved by the Board at its meeting, the total membership was 3,345.

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

The list of all the successful candidates for membership and Mr. Rice's written report are appended to the original of these minutes.

INTERNATIONAL ACTIVITIES

Comité Maritime International

International Sub-Committee on Transport Law

Board member Vincent M. DeOrchis reported on developments following the Singapore Plenary. While the Association was holding its Spring meetings, the Working Group and smaller drafting group of the CMI International Sub-Committee on Transport Law were meeting to revise the current draft based on developments in Singapore, with a view towards getting a draft to UNCITRAL by

the end of the year to comply with the schedule proposed by UNCITRAL Secretary Jernej Sekolec. A meeting in London will follow in September to polish the draft, which will then be submitted to bar and trade associations for comment.

International Maritime Organization

IMO Diplomatic Conference on Convention on Bunker Pollution

A diplomatic conference on the Bunker Pollution Convention was held from March 19 through 23, 2001. The Draft Convention establishes liability for bunker spills from nontank vessels; imposes joint and several liability on shipowners; and requires the registered owner to maintain insurance in a prescribed form, with a right of direct action against the insurer.

Since the March diplomatic conference, the aspect of the Convention which has received the most criticism is the lack of responder immunity, despite the passage of a resolution recommending that States which adopt the Convention also adopt a law on responder immunity.

The threshold limits for application of the Convention were the subject of the most vigorous debate at the conference, with suggestions for a threshold as low as 300 GRT up to a high of 5,000 GRT. The threshold of 1,000 GRT was ultimately adopted.

Protocol to the Athens Convention

Since October 2000, both the Coast Guard and the Association had solicited, without significant success, comments from the cruise industry on the Draft Protocol to the Athens Convention on Liability Relating to Carriage of Passengers and their Luggage by Sea. Recently, however, President Dorsey received a position paper from Michael Crye, President of the International Council of Cruise Lines, criticizing the proposed Protocol, particularly those provisions relating to strict liability, the reverse burden of proof and direct suits against insurers, and urging the United States delegation to the IMO and the Association not to endorse the proposed Protocol. The International Group of P&I Clubs are also taking notice of the significance of effect of some of the provisions of the proposed Protocol.

President Dorsey will attend the next meeting of the IMO Legal Committee during the week of October 8, 2001 at which the proposed Protocol will be discussed. President Dorsey asked Ann G. Miller of San Francisco, Chair of the Association's Committee on Cruise Lines and Passenger Ships, with the advice of her Committee, to prepare a draft position paper based on the industry reac-

tions she has gathered and historic concerns of the Association, for President Dorsey to send to the Coast Guard after Board approval.

After this Board meeting, at the Board duly resolved by poll that the resulting position paper should be transmitted by President Dorsey to the Coast Guard after the addition of comments on the reverse burden of proof. The position paper conveys the view that the approach taken by the proposed Protocol is fundamentally at odds with current U.S. law and practice and that these deviations are without inherent merit. In particular, the position paper notes that the proposed Protocol provisions on liability, burden of proof and direct action conflict with not only U.S. maritime law but also transportation tort law in most U.S. jurisdictions, and that there has been no showing of a need to change existing law, which balances both carrier and passenger interests, on these issues.

UNESCO Convention on Underwater Cultural Heritage

The Joint International Group of Experts considering the UNESCO Draft Convention met in Paris for two weeks starting on March 27, 2001, but has not completed its work. Among the most contentious subjects were coastal state jurisdiction and the application of the Convention to warships. The next meeting will take place during the week of July 2nd, also in Paris, and will be attended by the Chair of the Association's Study Group, John D. Kimball of New York, who has attended these meetings with the United States delegation.

There have been a few encouraging developments in that there is language in the current draft that would retain the applicability of salvage law to situations in which the salvor has done everything required by other Convention provisions. Nonetheless, the current draft is still in conflict with several of the goals of the Association.

COMMITTEE AND STUDY GROUP REPORTS

Carriage of Goods

Mr. DeOrchis reported on the discussion which took place at the Committee meeting concerning the status of the proposal for a new Carriage of Goods by Sea act, and the delays in its consideration caused by the changes in congressional committees. While Senator Hutchinson no longer chairs the committee that would consider the proposed bill, she has offered to educate her successor about the issues involved.

In connection with the "plain language" revisions to COGSA and other U.S. legislation, including the proposed recodification of Title 46, Professor Tetley

commented at the Committee meeting that legislation which has its origin in a treaty or convention should retain the language drawn from the international agreement as the legislation is in effect an enactment of the international accord, as is the case with COGSA's relation to the Hague Rules.

Marine Financing Committee

Upon the request of the Committee Chair, Sandra L. Knapp, the Board resolved that the Marine Financing Committee is authorized to participate with the National Conference of Commissioners on Uniform State Laws to develop a uniform boat title act either as a separate law or as part of a law of larger scope affecting vehicles and mobile home titling in addition to boats, as well as to continue to monitor, review and comment on related regulatory efforts by the United States Coast Guard. The Board further resolved that the Committee should report to and obtain the approval of the Board of Directors if there are any substantive provisions of such laws or regulations affecting maritime law.

As an additional matter, the Committee's Subcommittee on Coast Guard Documentation, U.S. Citizenship and Related Matters will prepare and submit to the Board proposed comments on a Notice of Proposed Rulemaking concerning 46 C.F.R. Part 67, 66 Federal Register 85 (May 2, 2001), concerning a leasing exemption so that foreign leasing entities can own a vessel so long as it is a bare-boat chartered to a bona fide U.S. citizen for two years.

Practice and Procedure

Board member James W. Bartlett, III, Chair of the Committee, reported that the Committee had completed its research confirming the significant disparity in the amount of the security deposits required by the various district courts for vessel arrests and arrangements for substitute custodians, issues which were also discussed at the March 27, 2001 Board meeting.

Mr. Bartlett also reported that he had been advised by Michael Marks Cohen of New York, Chair of the Committee on the CMI, that the American Law Institute is considering a project involving the revision of the venue provisions of the U.S. Judicial Code, but that the scope of the project specifically excludes cases in which jurisdiction is founded on 28 U.S.C. § 1333.

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

A. Hamilton Whitman, Chair, reported that the arrangements for our Fall meeting in San Diego during the week of October 15 at the Hotel del Coronado are coming along very well. There will be a theme dinner party on the night of

Wednesday, October 17, at Sea World, with a special performance by Shamu, the killer whale, and the availability of water park rides. The meeting's athletic events and competitions will all be on Tuesday, with the exception of the Fun Run, which will be on Thursday morning. Special excursions, including very inviting trips for families to Disneyland and Disney's Adventure Theme Parks and San Diego Wild Animal Park, are available on Tuesday, as well. Committee meetings, including a special meeting of the Committee on Carriage of Goods by Sea for which CLE credit will be offered, will take place on all day on Wednesday and Thursday afternoon. The CLE seminar program will be offered on Thursday morning.

Mr. Whitman urged everyone to make their hotel reservations early in view of the number of rooms which will be available at the meeting rate.

TITLE 46 RECODIFICATION

The U.S. government is considering a major recodification of Title 46 of the United States Code, with the expressed intention of avoiding any modification of existing substantive law. The purpose of the recodification is to modernize language and organize the material. Dennis Bryant, Chair of the Committee on Navigation, Coast Guard and Government Relations, heads an Ad Hoc Committee made up of Committee Chairs, including Harold Watson, Chair of the Committee on Maritime Legislation, and the Chairs of several substantive Committees affected by Title 46, to examine proposed revisions for consistency with existing law and report further on the results of this examination. Based on the Coast Guard's advice that this project is moving forward quickly, the Association's comments will be drafted on an expedited basis in order to provide them before the end of the summer.

ABA STUDY ON MULTIJURISDICTIONAL PRACTICE OF LAW

Mr. Bartlett reported that the Ad Hoc Committee, which was formed to develop positions on the questions posed by the ABA study, will have its first meeting at this General meeting. The Ad Hoc Committee will endeavor to have a draft of its comments by the Association's Fall 2001 meeting in San Diego in view of the need of the ABA committee undertaking this study to draft its recommendations to the ABA within a year.

AMICUS REQUESTS

President Dorsey reported that the Association has been asked to participate as amicus in *U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co.*, 241 F.3d 135 (2d Cir. 2001), in which, on petition for rehearing en banc, the Court of Appeals for the Second Circuit has invited briefs from, inter alia, maritime law and trade organizations. The sole issue on the petition for rehearing is whether or not the

Second Circuit should overrule *Great Circle Lines v. Matheson & Co.*, 681 F.2d 121 (2d Cir. 1982), in which the court had held that a fixture “subject details” constituted a binding charter. Appellant Guangzhou is asking the court to overrule *Great Circle* on the ground that it is out of step with maritime law in other jurisdictions, particularly that of the United Kingdom, as well as international trade practice, on the issue of whether or not a charter “subject details” is a binding agreement.

Subsequent to the Board meeting, on the recommendation of the Committee on Maritime Arbitration and Mediation, the Board resolved, by poll, to file a brief urging that the Second Circuit revisit *Great Circle* for clarification.

In a second case, after a very lively discussion introduced by the Chair of the Committee on Uniformity of U.S. Maritime Law, James Patrick Cooney of Houston, the Board declined to file an amicus brief in *Cammon v. City of New York*, 95 N.Y.2d 583, 721 N.Y.S.2d 579, 2001 AMC 210 (N.Y. 2000). In this suit, New York’s highest court allowed a marine construction worker, who was injured on a work platform on navigable waters allegedly because of a surge caused by a passing tug, to assert a claim for negligence and strict liability under New York Labor Law against third parties. The case raises the issue at the center of the current debate among commentators of such stature as Professors Robert Force and David Robertson about the vitality and proper application of *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 216 (1917).

While the issue is at the heart of the Association’s concerns, in view of the unresolved procedural issues in the case (denial of a motion for summary judgment), the Board resolved that amicus support for the petition for certiorari was not appropriate at this time. President Dorsey will contact the parties to ask them to keep us advised of the progress of the matter to determine whether or not the Association should participate at a later point in time, particularly if the Supreme Court decides to accept the petition for certiorari.

TITANIC GUIDELINES

Pursuant to a 1986 congressional act, the State Department has been negotiating an international Agreement with Canada, France and the United Kingdom establishing the TITANIC as a memorial. The proposed Agreement provides rules in many respects similar to those in the Annex Rules to UNESCO Draft Convention on Underwater Cultural Heritage, including in situ preservation as the preferred management of the site and provisions for stringent State oversight and management of the wreck.

NOAA’s “Guidelines for Research, Exploration and Salvage of R.M.S. TITANIC,” which are identical to the proposed Agreement rules, have now been

finalized. The only significant difference from earlier versions is that the Guidelines' lack of mandatory force and advisory status has been more clearly stated. Once the agreement with France, Canada and United Kingdom has been concluded, the Guidelines will become mandatory. The current Guidelines have been published in the Federal Register.

JUDGE JOHN R. BROWN ADMIRALTY MOOT COURT COMPETITION

Oral argument, the final aspect of the competition, took place in Newport, Rhode Island, on April 6 and 7, with President Dorsey, Past President Chester D. Hooper, Secretary Burrell and Association members Philip A. Berns and Karen C. Hildebrandt participating as oral argument judges. Many other Association members devoted great attention to their duties on brief judges in this respected competition. At the awards ceremonies that followed oral argument, President Dorsey presented the Best Brief award on behalf of the Association. President Dorsey commented on the extraordinary quality of the oral arguments.

CANADIAN MARITIME LAW ASSOCIATION 50TH ANNIVERSARY

The CMLA will celebrate its fiftieth year with a meeting on June 15 and 16, 2001. The Association will host a reception and present a gift to the CMLA at their meeting, as that Association so graciously did at our Centennial. Our gift will be a banner bearing the same design as the home page on the CMLA website, in a size similar to our own Association banner.

INSURANCE ARRANGEMENTS

Treasurer Bonner reported on the current coverage provided by the Association's CGL and D&O policies to determine whether or not our these policies continue to be adequate to protect the Association, particularly during our resort meetings and in view of the proposals of hotels being considered for future meetings, which include novel provisions for the Association's liability for certain occurrences. At present, the cover appears to be adequate.

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There being no further business to come before the Board, the meeting was adjourned at 12:00 p.m.

Respectfully submitted,

/s/ Lizabeth L. Burrell
Secretary